

# On the Subject of Securities Insider Trading in China

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**Abstract:** The basic principle of implementation the "Securities Act" is open, fair and just, but the nature of insider trading against the purpose. There will bring tremendous damage for countries and peoples. Therefore, we must be strictly controlled and punish it and prevent similar incidents in the future. An accurate definition of scopes of the insiders in the legal sense has great significance in defining insider trading. This article briefly analyses the insufficient legislative provisions of China in deterring the insiders and give related countermeasures.

**Keywords:** the subject of insider trading; insider trading; the main scope of insider trading

Since the development of China's reform and opening up ,the securities industry development is surprisingly rapid , we can say that it has become important in the national economy's financial industry, however, at the same time, we should also see China's securities market have many problems, the introduction of relevant laws and regulations are lagger. As specification of insider trading is imperfect .From the microscopic point of view, there will give people who master insider information an opportunity to gain an unfair advantage via taking advantage of loopholes in the law; From a macro perspective, these loopholes will give law enforcement bring a lot of uncertainty factors in the law enforcement, leading to social disorder,so the subject of insider trading can be accurately defined is the important prerequisite for the insider trading establishment.

## 1. To determine the specific scope of subject of insider trading in China

For the rules of insider trading in our country, we focus on "Securities Law", "Provisional Measures against securities fraud", "Administration of Information Disclosure of Listed Companies" and "Criminal Law", the " Securities Law" seventy-fourth provisions, the following people are taken as insider of information of security insider trading:the stock or corporate bonds issued directors, supervisors, managers, deputy managers and the senior management personnel; holding more than five percent of the company shareholders; issue of shares the company's holding company senior management; people can gain the stock exchange of information in the position of company ;securities regulatory agency staff, and other personnel that the statutory duties of the securities exchanges ; the legal responsibilities involved in securities trading intermediaries securities registration, settlement institutions and securities trading service institution ; other staff that securities regulatory authority under the State Council.

## 2. The main problems of our subject defini-

### tion of insider trading

"Securities Act" subject to insider trading is divided into insiders and people who illegally obtained insider information, for others outsiders, however, only using the clause that the securities regulatory authority regular other personnel explains, clearly too broad , giving law enforcement agencies in law enforcement too much discretion. So, I think the following points should be specific to the subject of insider trading:

#### 2.1 It is difficulty to define close relatives of insider such as spouse, parents, children and others.

"Securities Act" is not defined for such personnel, the Securities Commission develop our country "insider transaction is determined (for Trial Implementation)," insiders subject to section 74 of the Securities Act expressly provided personnel, including their spouses and have relatives of common interest and participation in the formation of inside information or inside information from the formation of the decision to approve such a major role in their spouses, relatives of common interest, but because there is a relationship of trust between family members, getting evidence would be very difficult, they are likely to collude with each other, and if it is overheard in casual conversation, or just in the nature of the general comments ensuing investment behavior, so that we no definition.

#### 2.2 Whether the subject of insider trading is deemed to belong insider trading should not see to get profit.

Although the prohibition against insider trading is essential to prohibit the use of non-profit public information, but in the actual process, since the subject of insider trading law enforcement agencies investigating their own understanding, in order to avoid responsibility, not deliberately throw the stock in the high point, or even loss , create a false impression as to avoid responsibility. Huang Guangyu, the case is a good example, for Huang

Huang's lawyer argued that insider trading is the purpose of profit or stop loss, buying stocks Huang aims to hold stocks rather than long-term holders, Huang Guangyu, the existing evidence does not sell after buying shares in Zhongguancun, so can not confirm Huang insider information insider trading. Moreover, Huang Guangyu 's incident has happened in November 18, 2008 incident, their earnings have become negative, not to mention profit. Finally, the court, the court proposed that whatever Huang Guan yu's purpose is in the sale of Zhong Guang Cun stock, as long as the insider , buying and saling specific stock durning sensitive phrase on insider trading price,, whether or profit, shall not affect the insider trading identification of criminal nature. This also fully explains the main insider trading in its failure to make profits should not be determined that it is not insider trading

### **2.3 The company itself should belong to the main scope of insider trading**

In normal circumstances, although the company's own shares may not be sold and bought, but not absolute, and our newly revised in 2005, "Company Law" one hundred and fortieth of Articles: The company shall not purchase its shares. However, except in one of the following circumstances: 1. To reduce its registered capital; 2. And the other held in the Company Merger; 3. To share awards to employees of this company; 4. Shareholders made by the General Assembly of Shareholders merger, division dissent resolution, require the company to purchase its shares. This will inevitably make the company the opportunity to trade their securities. Huang Guangyu, the issue is about insider trading case that, in April 2007 to September, Wong Kwong Yu as Beijing Centergate Technologies (Holding) Co., Ltd. of the actual controller, director, in determining the company's restructuring and other corporate assets, replacement matter, the instigation of others to use the actual control of the 85 stocks account to purchase the company stock, the cumulative turnover of 1.415 billion yuan. To such reorganization, reclassification, exchange of information announcement, the stock account of the book income amounted to 309 million yuan. This is good news that the company knowingly benefit, but not be made public, and buy back shares of the company situation. Even for lawful purposes and interests of the company to buy back shares belong to the company, but do not know the good news for stock investors to sell, to bear the loss resulting therefrom, it is not fair. Therefore, the company buying back its own shares, the companies themselves also belong to the main scope of insider trading, so as to constitute insider trading.

### **2.4 The subject of insider trading should be considered served as the principal directors of the company**

From Japan, "the Securities and Exchange Law" one

hundred and ninetieth bis states: the company has acquired public relations or other relations of people who, during the reign of his position and was informed by insider information, leaving the original position during the year continued to prohibit buy and sell securities before the release of information. For my country, we can claim a certain period of time in the past served as directors of the company in a period of time after leaving office, such as within a year, the disclosure of inside information about the company should belong to the main body of insider trading.

### **3. The main recommendations of definition of the subject of insider trading**

Regardless how to define the subject of insider trading, in essence, it is people to get inside information by abuse of inside information, the final analysis, reducing unnecessary personnel to know insider information is the most fundamental way to prevent insider trading . But insider trading is not only in the main body of the securities market in China, all countries can not be avoid. Through the tough means to control effectively subject of insider trading in most other countries. Although China has the relevant systems and regulations, but still imperfect. Institute of Finance, the State Council Development Research Center, deputy director of Ba said; "At present ,the main body of the definition of insider trading was too narrow." Logically from the law of insider manipulation of securities regulation, we must first insider (or insiders) legal definition of a reasonable range, the main scope of the definition of insider trading or also directly related to improving the effectiveness of supervision. Currently the main body of the definition of insider trading is too narrow ,we propose appropriate to relax. In this regard the following recommendations:

#### **3.1 The statutory insider's spouse, parents, children and other close relatives included in the scope of insider information insider**

"Securities Act" seventy-fourth provision can increase a provision: the provisions of this section of natural persons such as spouses and their close relatives, parents and children as insiders. In accordance with the "prospectus" in the provisions, the issuer should disclose the directors, supervisors and senior management, head of technology and core technical staff of the spouse relationship between each other within three generations, immediate and extended family relationships, so that implementation is more specific and concrete.

#### **3.2 The company as the subject of insider trading**

If the company buy its own shares back or any material information not disclosed, would constitute insider trading. Although the "Company Law" prohibits the company buy back shares in general, but the lack of liability provisions, so useless. Therefore, it is necessary to in-

clude the company itself as the scope of insider trading regulations.

### 3.3 The main criteria should be clearly established

Determined by the Securities Act of insiders, there usually not as a standard whether the stock market has yet publicly available information or not, not limited to inside the company, but also outside the company or any person aware of inside information as the nature of work duties they should be established as the clarity of the subject.

### 3.4 Establish a corresponding obligation to improve the system of public

People of China and the global lack of disclosure obligations within the system. Our obligation to the public within the human is imperfect, and even the more developed of the U.S. Securities Act, in what is insider, insider trading and how to deal with this issue, since many are not the same place. Therefore, the obligation to establish the appropriate sound system, clearly defined definition of insiders is to stop a necessary means of insider trading.

As long as our insider trading in the legislative body selected on a positive, reasonable and effective regulatory measures to build a more perfect control system, then the long-term insider trading problem in China's securities market will be effectively addressed.

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