Full Length Research Paper

Disclosure and corporate governance of insider trading: The Malaysian perspectives

Edward Sek Khin Wong *, Choong Kwai Fatt and Priscilla Yap

Faculty of Business and Accountancy, University of Malaya, Kuala Lumpur, Malaysia.

Accepted 14 June, 2010

This study examined the issues of disclosure of and corporate governance of insider trading in Malaysia. Insider trading has evolved itself in various jurisdictions from the agency theory to the misappropriation theory. In Malaysia, the mere fact of the receipt of information itself resulted in a triggering of a breach of insider laws regardless of unrealized gain or loss. In this paper, documents from several articles, section 183 - 188, Capital Market and Services Act 2007 (CMSA), including the inclusion of “Chinese walls” were used as a defence for a corporation with regard to conduct of its officers under section 194 of the CMSA. Moreover, the Malaysian disclosure best practises guidelines of 2004 were scrutinized in studying and establishing an evolution of insider provisions leaning towards the philosophy of disclosure theory. The findings indicated that should the insider misappropriated the “property information” of a Company by non-disclosure, by not disclosing it in a timely manner, by being inaccurate, by being ambiguous, or by disclosing to another person who have proprietary information before it officially reached the market warrant the prospect of violating insider-trading rules? As a result, the removal of intentional misappropriation and the inclusion of the recipient of such information being liable depict the emphasis of disclosure. This study can assist law enforcement bodies to provide legitimacy to the transparency rules and insider trading provisions to reduce the gap between the legal norms and the social norms of the day.

Key words: Inside trading, corporate governance, homo-economicus, homo-sociologicus.

INTRODUCTION

Insider trading has evolved itself in various jurisdictions from the agency theory to the misappropriation theory. In Malaysia, the mere fact of the receipt of information itself results in a triggering of a breach of insider laws regardless of unrealized gain or loss. Under Malaysia Securities Law, section 183 - 188, Capital Market and Services Act (2007) (CMSA), including the inclusion of “Chinese walls” used as a defence for a corporation with regard to conduct of its officers under Sec 194 of the CMSA, and the release of Disclosure Best Practises in 2004, created an evolution of insider provisions leaning towards the philosophy of disclosure theory. In other jurisdictions, failure of disclosure, by itself, warrants prosecution merely from the market stability view of the particular stock in question. Particularly desirable due to the complexities involved, the securities markets should not be left to the realism effect of Homo-Sociologicus.

Under the homo-economicus theory of Adam Smith, behaviour is supposed to be guided by instrument rationality, while the behaviour of homo-sociologicus (Emilie Durkheim) is dictated by social norms. The homo-economicus (market theory) is “pulled” by the prospect of future rewards, whereas homo-sociologicus is “pushed” from behind by quasi-inertial forces (Gambetta, 1987). The former adapts to changing circumstances, always on the lookout for improvements while the latter is insensitive to circumstances, sticking to the prescribed behaviour even if new and apparently better options become available.

The homo-economicus is easily cari-catured as a self contained a social atom, and the homo-sociologicus as the mindless plaything of social forces1. Here the authors

*Corresponding author.
edwardwong@graduate.uwa.edu.au.