

**INSIDE INFORMATION: SECURITIES ACT 2015 ANOTHER
INADEQUATE ATTEMPT**



LL.M (Corporate Law)

Supervised by

Dr. Samia Maqbool Niazi

SUBMITTED BY

Sidra Zulfiqar

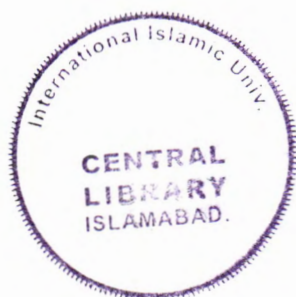
438-FSL/LLMCL/F14

A thesis submitted in partial fulfilment of the requirements for the degree of LL.M Corporate Law (Faculty of Shariah and Law) in the International Islamic University Islamabad, November 2016.

Department of Law


Faculty of Shariah and Law

International Islamic University Islamabad



Faculty of Shariah & Law, IUI
Despatch No. 1993
Dated: 18/04/17

1219
10/11

★ 
Accession No TH17065

MS
345.49102662
SII

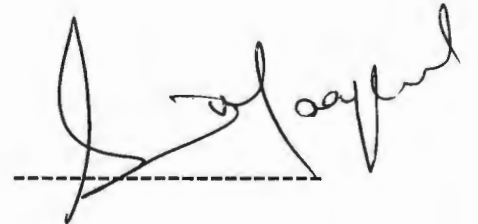
Freedom of information.
Public records - law and legislation - Pakistan.

Approval Sheet

It is certified that the thesis submitted by Ms. Sidra Zulfiqar, Reg. No.438/FSL/LLMCI/F14, titled "Insider Information: Securities Act 2015 Another Inadequate Attempt" as partial fulfilment for the award of degree of LLM Corporate Laws is up to the requirement in its scope and quality for award of the degree.

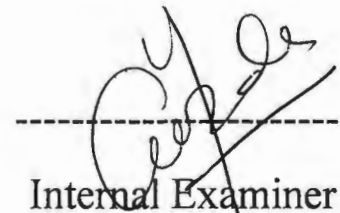
LLM Viva Voce Committee:

1-Dr. Samia Maqbool Niazi
(Assistant Professor, FSL,IIUI)



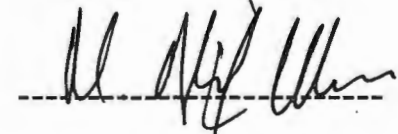
Supervisor

2- Dr. Warda Yasin
(Head of the Department, FSL,IIUI)



Internal Examiner

3-Mr. Muhammad Akif
Sr. Legal Counsel (OMV Pakistan)



External Examiner

Table of Contents

List of Figure	iv
List of Tables	v
List of abbreviation.....	vi
Table of Cases.....	vii
Declaration.....	viii
Acknowledgments	ix
Abstract.....	x
1. Overview of Inside Information Legislation	1
1.1 Introduction	1
1.2 Research Problem.....	2
1.3 Significance of the Study	4
1.4 Literature Review	6
1.5 Methodology	11
1.6 Framing of Issues	12
1.7 Characteristics of Insider Information.....	13
1.8 Historical background of Insider Trading	13
1.9 Brief Summary of Policy Debate	15
2. Inside Information Laws of Pakistan	17
2.1 Pakistan Insider Information abuse legislation	18
2.2 An Overview of Existing Case Law.....	22
2.3 Inadequacy of Legal Provisions	33
2.3.1 Civil liability for Insider Trading	35
2.3.2 Market Manipulation and Inside Dealing in SEO 1969	36
2.3.4 Liabilities of Intermediaries in SEO 1969.....	36
2.4 Recent Legal Developments.....	37

3. Addressing Inadequacies in Legal Provisions of Pakistan	40
3.1 Comparison of Securities Act 2015 and SEO 1969	40
3.2 Addressing Significant Features of Inside Information Abuse Legislation	41
3.3 Insider Information.....	42
3.3.1 Confidentiality	45
3.3.1.1 Procedures for making information public	45
3.3.1.2 A Legitimate Disclosure of information.....	46
3.3.2 Materiality	47
3.3.2.1 Significance of the information	47
3.3.2.2 Impact of the information	50
3.3.2.3 Origin of the information.....	51
3.4 Tender Offer setting	51
3.5 Insiders	53
3.5.1 Primary Insiders.....	55
3.5.2 Secondary Insiders.....	56
3.5.3 Tippee	56
3.5.4 Accidental Insider	57
3.5.5 Temporary Insiders.....	58
3.6 Prohibited Activities.....	58
3.7 Defenses to Insider Trading	59
3.7.1 Disclosure required under law	59
3.7.2 Operations of the State	60
3.7.3 Chinese wall	60
3.7.4 Research based on market data.....	60
3.7.5 Completion of an unaffected Transaction	61
3.8 Criminal and Civil liabilities for Insider Trading	61
3.8.1 A brief view of criminal sanctions in some jurisdictions	63
3.9 Disclosure requirements and procedure	64
3.10 Market Manipulation and Inside Dealing.....	65
3.10.1 Types of Market Manipulation	67
3.11 A Critique of Pakistani Legal Regime	70

4. Substantive Law Reforms Proposal	72
4.1 Proposed Provisions For Inside Information Abuse Law	73
Conclusions.....	85
Annex- I	89
Annex-II.....	90
Annex –III	94
Select Bibliography	96

List of Figure

FIGURE 1 DEVELOPMENT OF INSIDER TRADING LAW IN PAKISTANI LAWS.	21
FIGURE 2 ELEMENTS OF INSIDE INFORMATION DEFINITION	44
FIGURE 3 APPROACHES TO DEFINE INSIDERS.....	53
FIGURE 4 SOME CATEGORIES OF INSIDERS	55

List of Tables

1.1 Table	-----	15
3.1 Table	-----	41
3.2 Table	-----	64

List of abbreviation

SECP Securities Exchange Commission of Pakistan

SEC Securities Exchange Commission of USA

IOSCO International Organization of Securities Commissions

SEO 1969 Securities Exchange Ordinance 1969

CEO Chief Executive Officer

BOD Board of Director

DAWH Dawood Hercules Corporation Limited

PPPFTCL Pakistan Petroleum Provident Fund Trust Company Limited

KSE Karachi Stock Exchange

GDP Gross Domestic Product

CDC Central Depository Company

KATS Karachi Automated Trading Data

APC Access Promotion Contribution

Table of Cases

- CYAN Limited v. Securities and Exchange Commission of Pakistan, 2013 CLD 1637.
- Muhammad Amir v. Securities and Exchange Commission of Pakistan, 2013 CLD 158.
- Pakistan Petroleum Provident Trust Company Limited v. Securities and Exchange Commission of Pakistan, 2013 CLD 1150.
- Muhammad Ahmed v. Securities and Exchange Commission of Pakistan, 2012 CLD 589.
- Wasim Hyder Jalbani v. Securities and Exchange Commission of Pakistan, 2012 CLD 944.
- Messers Pattoki Sugar Mills Limited v. Securities and Exchange Commission of Pakistan, 2011 CLD 589.
- Irfan Aslam v. Securities and Exchange Commission of Pakistan, 2011 CLD 317.
- Alfalah Securities (PVT.) LTD v. Securities and Exchange Commission of Pakistan, 2006 CLD 1068.
- Bawany Air Products Limited v. Securities and Exchange Commission of Pakistan, 2006 CLD 571.
- MAHMOOD AHMED and another v. Securities and Exchange Commission of Pakistan, 2006 CLD 1167.
- United States v. O'Hagan, 117 S.Ct. 2199 (1997).
- SEC v. Switzer, 590 F. Supp. 756, 758, 762 (W.D. Okla. 1984).
- Dirks v SEC, 463 U.S 646 (1983).
- Chiarella v. United States, 445 U.S. 222 (1980).
- Re Cady, Roberts and Co., 40 SEC 907 (1961).
- SEC v Texas Gulf Sulphur Co., 401 F 2d 833 (2d Cir 1968).

Declaration

I Sidra Zulfiqar hereby, declare that this Dissertation is original and duly acknowledged piece of work. I also declare that no part of this work has been presented or published elsewhere nor has this been presented or submitted in any other Academic Institute.

Sidra Zulfiqar

438-FSL/LLMCL/F14

Acknowledgments

My first thanks to the Lord of heavens and earth. To Whom belongs all knowledge and intellect. I thank Him for making this possible. I am thankful to Professor Imran Ahsan Khan Nyazee for paving this path for me. His utter guidance, kindness and precious time made this whole process look easier and vivid. I owe to thank him for being the sole guide in my research work. I would like to thank my worthy supervisor Dr. Samia Maqbool Niazi for having the nerves to tolerate me in the whole time. Her invaluable advice, insight into the content and form made this work look real on paper. I owe a lot to my family and friends for constantly ushering me to concentrate and progress in my research. Their reminders, constant support and continuous encouragement made me get through all frustrating and troublesome phases of my research work. Moreover, I thank all my teachers who taught me the skills to research, analyze, review, read and write.

All of the mistakes, negligence, delays, ignorance in this work belongs to me solely and I totally take responsibility for that. I believe that attributing mistakes as experiences is a form of cowardice, hence I open heartedly accept my faults and don't feel guilty. These mistakes will eventually lead me to a new avenue of success someday as they are original, and a profound work in good faith.

Sidra Zulfiqar

438-FSL/LLMCL/F14

Abstract

Pakistani Stock Market is currently facing numerous restraints to become an efficient and deep market. One major cause of market manipulation is insider information abuse by the people in know. Insider trading is one of the most infamous and celebrated white collar crime. This practice devoid the investors' confidence from securities market. Good corporate governance is directly related with prevention of all kind of market manipulation. Pakistani Stock Market is in dire need of an overhaul of its legal and financial practices. One of the most awaited and anticipated legislation named Securities Act 2015 has been passed by the legislature. Regulator and legislator have devised a new legal mechanism to address the issue for the third time. This new legal mechanism will be critically studied in light of international experience to evaluate that is there something new in this bill or it's just the old wine in new bottle. First chapter gives an overview of Insider Trading, its historical background and elements of this offence in short. Second chapter deals with a comparison of earlier legislation and highlights the inadequacies present in the substituted law. Third chapter addresses the new legislation along with its inadequacies and an insight into the standard notion for the legislation on inside information abuse prevention. Fourth chapter provides a law reforms proposal along with proposed provisions, which ultimately brings us to concluding remarks of this research analysis.

Chapter #01

1. Overview of Inside Information Legislation

1.1 Introduction

Financial markets being essential elements in the economy,¹ impact the whole Pakistani nation. Financial markets are directly linked to revenue generation and over all progress of a state, thus they lead to increased employment rates, nurturing investor confidence, and improved GDPs. These objectives and results can be achieved and are maximized if the securities market functions under fair, transparent and competitive practices. On ground facts show that this process is not as smooth, transparent and efficient as it ought to be. There are a number of speed breakers in this process like market manipulation, Stock Bashing², Insider Trading, Ramping the market³ and a number of market abuses and securities fraud.

Financial Markets of Pakistan are under pressure of continuous destabilization and security threats in the country. Pakistan's economic condition is in dire need to curb and curtail all market abuses so that the best possible benefits can be gained in terms of capital, investment and production. It is the third time that Inside Information being defined by law of Pakistan and yet the meaning is not clear nor are the implications evident for the inside information law and stock market transactions therefore the meaning needs to be refined in light of US and UK experience. Insider trading is seen as commercially immoral

¹ A place where buying and selling Activities occur, the trade includes securities, shares or stock, commodity derivative, other instruments. These markets are commonly described as heavy trading Activity, with transparent vale determination, market participants, and rules of the business implemented there.

² Stock bashing: decreasing price of shares through fake news or propaganda.

³ Ramping the market: give an impression of heavy trading and increase stock.

and should be prohibited. It is argued that generally investors will be at a disadvantage and such insider trading malpractice may even drive away potential investors.⁴ The rationale being that investors will be reluctant to invest in a market where insiders trade on private information to make undue profits or avoid personal losses at their expense without legislative control.

1.2 Research Problem

Corporate insiders may engage in activities that may decrease enduring value of the company and this will affect the investments of shareholders. They may undertake production and investment decisions that will increase the volatility of company's securities prices and destabilize the firm's performance in order to gain from price swings. This tend to discourage corporate investment and reduce market efficiency. Therefore regulation is deemed necessary to preserve confidence in the markets. According to good corporate governance objectives Insider Trading preventive regulations must exist to control any possible Inside Information abuse.⁵ As insider information has the tendency to directly affect the securities market, legislative measures are being taken around the globe to prevent its illegal use by insiders. In Pakistan first step towards addressing the issue was amendment in Finance Act 1995 as Chapter III-A introduced in Securities and Finance Ordinance, 1969.

⁴Aaron Gilbert,Alireza Tourani-Rad,Tomasz Piotr Wisniewski, "Insiders and the Law: The ImpAct of Regulatory Change on Insider Trading", *MIR: Management International Review*, 47: 5, Innovation, Competition and Change in International Business (2007), 745-765, Stable URL: <http://www.jstor.org/stable/40658233>, (Last Accessed May 27th, 2015.)

⁵kwasi opoku,"What is wrong with Insider Trading?" ,(LLM. diss. ,university of cape town School of advanced legal studies, (2008), 18.

Along with this ordinance (SEO1969), regulator (SECP) issued Listed Companies (Prohibition of Insider Trading) Guidelines 2000. Insider information dissemination prohibition law came into limelight after stock market crashed in 2000⁶ as violation of this law was supposed to be main cause of this financial crisis. All these financial crisis and halt in economic growth lit the fire to review the legal provisions in this regard. A Report (2004) of the International Monetary Fund maintains that “the SECP has started the review of legal provisions pertaining to Insider Trading and security disclosure.”⁷

In all these years a number of cases arose as whistle blowers. Some significant cases include Pakistan Kuwait Investment Company, Jahangir Siddiqui Group (JS Group)⁸, Aqeel Karim Dhedhi (AKD) and Dawood Capital Management⁹ Company which were investigated and penalized by SECP in 2012-2013. These facts and figures compelled an up gradation in the existing system to cater the issue. In January 2015 a government Bill named Securities Act 2015 has been passed by Senate of Pakistan¹⁰ aimed to remove gaps in previous laws. Securities Act 2015 is one of the most awaited and anticipated, more extensive than its predecessor. It is intended to eliminate inadequacies, lacunas in the 1969 SEO, and to reform the grey areas in the law. It will bring an exhaustive, broad, and ample regulation. Key issues addressed in this law are strict prerequisites of accreditation for all market participant inclusive of the exchanges, the clearing company, the CDC, stock

⁶ Samia Maqbool Niazi, *The Law of Insider Trading in Pakistan* (Federal Law House, 2007), 5.

⁷ International Monetary Fund, IMF Country Report No.04/215 Pakistan: Financial System Stability Assessment, including Reports on the observance of Standards and Codes on the following topics: Monetary and Financial Policy Transparency, Banking Supervision, and Securities Regulation (July 2004).

⁸ Press Released by SECP at http://www.secp.gov.pk/news/PDF/News_13/PR2_April24_2013.pdf

⁹ Before the Executive Director (Securities Market Division) in the matter of show Cause Notice No. SCD-SD (Enf)/khi/dcml/2013/061 dated March 22, 2013 issued to M/S Dawood Capital, pdf available at http://www.secp.gov.pk/orders/pdf/Orders_2013/19_Order_SCN-DCML.pdf (Last Accessed on May 6th, 2015.)

¹⁰ Act Available at <http://www.senate.gov.pk/en/index.php> (Last accessed on May 6th, 2015).

dealers, intermediaries , syndicates, mediators , prevention of Inside Information abuse and deceptive and manipulative techniques.¹¹

A critical analysis brings forth the short comings as no extension in existing provisions concerning prohibition of insider information disseminating or divulging .If this Act is compared with prevailing laws in different jurisdictions, it becomes evident that a number of basic and vital elements are missing. Civil as well as criminal liabilities are imposed¹² on insiders involve in trading private information in most of the jurisdictions, but the imposition of penalties to create deterrence have not been adopted in the mentioned recent legislation.

This study aims to build on the prevailing academic date through a rational criticism of the current anti-insider information domain and suggesting a set of proposed provisions for a pragmatic law reform. The basic purpose to carry out this research is analyzing the basic inadequacies in the legal frame work in perspective of current market practices of Pakistan and international experience to curb these practices.

1.3 Significance of the Study

Insider Trading proceeds are earned by damages incurred by others,¹³consequentially investment is decreased or shunned by the stockholders .This absence of reliability decreases the liquidity, subscription offers, drastically upsetting resource allocation and elevating cost capital for companies, ultimately plunging the

¹¹ Ibid.

¹² Ibid.

¹³ Other shareholders, investors and general market participants.

worth.¹⁴ Therefore traders, investors, and companies in enhanced regulatory environment have an upper hand over entities in poorly regulated markets. To attain better regulated markets noticeable number of jurisdictions have coined laws to prevent any Inside Information abuse. Earlier to 1990 Insider Trading was regulated in only thirty four jurisdictions, however till 1998¹⁵ eighty seven states out of the one hundred and three adopted these laws.¹⁶

Pakistan's Legal Frame work has a new addition in form of Securities Act 2015 which needs critical assessment to unveil its true impact and affect. This research will serve the purpose with special focus on insider information law, part IX of the Securities Act. Stock market crash has become a pattern in Pakistan's securities market because no appropriate legislation and penalties are there to deal with insiders' committing this crime. This study will be beneficial to investors, regulator, academicians and researchers as it will propose some legal reforms to nip the evil in bud. A legal system which has capacity to prevent the market manipulation specifically insider trading and in case of occurrence penalize the wrong doer to the extent of deterrence can gain investor confidence.¹⁷ A legal system of this efficiency can be achieved by making exhaustive laws. This research will assist the purpose by highlighting strengths and weaknesses of the new promulgated law.

¹⁴Asim Ijaz Khwaja, Atif Mian, "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market", *Journal of Financial Economics*, Available at: <http://ssrn.com/abstrAct=631722> (Last Accessed on May 22nd, 2015).

¹⁵ No recent update on the statistics have been found from an academic research in this regard.

¹⁶Aaron Gilbert,Alireza Tourani-Rad,Tomasz Piotr Wisniewski, "Insiders and the Law: The ImpAct of Regulatory Change on Insider Trading", *MIR: Management International Review*, 47:. 5, Innovation, Competition and Change in International Business (2007), pp. 745-765, Stable URL: <http://www.jstor.org/stable/40658233>, (Last Accessed May, 27th 2015.)

¹⁷ Ibid.

Forthcoming researchers, may find quite up to date status of Insider information laws being implemented in 2015.

1.4 Literature Review

Insider information must be disclosed to public in accordance with the law of financial disclosure of the concerned jurisdiction. If any information has not been disclosed to public it should not be used to gain profit by the people privileged to have inside information. Pakistan stock market is a developing market and market abuse of any kind creates serious problems in any emerging market of this kind.

*The Law of Insider Trading in Pakistan*¹⁸ by Samia Maqbool Niazi is a book which deals with the issue in depth. This book deals with scope of Insider Trading, the debate of regulating and deregulating, law of Insider Trading in different jurisdictions like USA, UK and India in detail. The famous debate on regulation and deregulation has been dealt with sophistication and briefly. The most significant feature of this book is the manner in which a comparative analysis of different jurisdictions has been presented. This study observed a number of technical inconsistencies such as chapter II of guidelines for listed companies prohibit the associated person from Insider Trading but not the insider.¹⁹ This book analyzed the Insider Trading laws prevailing under SEO 1969 but with latest developments in anti-insider information abuse legislation (Securities Act 2015) there is wide scope for feasibility of proposed research.

¹⁸Samia Maqbool Niazi, *The Law of Insider Trading in Pakistan* (Federal Law House, 2007), 56.

¹⁹ Listed Companies guidelines (Prohibition of Insider Trading) issued at Islamabad on 27th March 2000. Available: http://www.secp.gov.pk/Guides/Guide_Listing_Companies_Initial_Public_Offerings.pdf. (Last Accessed May 21st, 2015).

An empirical analysis conducted by Nuno Fernandes and Miguel exhibits an obvious pattern of price fluctuation in Securities market due to market manipulation and Insider Trading. Though this research by Nuno Fernandes and Miguel in "Insider Trading Laws and Stock Price Informativeness"²⁰ is technically more from economic back ground but it does provide good understanding of insider information trading laws' impact on Stock Market. These authors investigated the impact of Insider information law on Stock Market of 48 countries when these laws are enacted for the first time. This study dealt with developed and emerging market separately this adds another significant aspect which can be helpful to understand the impact of insider information laws on Pakistan Stock exchange. Insider trading laws first emerged in USA and later on adopted by rest of the world. It is of great importance to study Pakistani laws in context of the doctrines coined in USA. This will enhance the quality of legal provisions as well as understanding for conducting the research.

Kylie Franklin in his research article "U.S. v. U.K. Insider Trading Laws: Who is the Top Dog?"²¹ carried out an extensive and deep analysis of USA an UK in terms of *similarities* and differences of laws and their interpretation by court. This study provides a clear picture of anti-insider information legal regime of both these countries in very efficient manner.

²⁰Nuno Fernandes and Miguel A. Ferreira, "Insider Trading Laws and Stock Price Informativeness", Available At: registration.akm.ch/images/img.php?abstrAct_file_id=13509 (Last Accessed on May 21st, 2015).

²¹Kylie Franklin, "U.S. v. U.K. Insider Trading Laws: Who Is the Top Dog?" (February 21, 2013). Available at SSRN: <http://ssrn.com/abstrAct=2308356> or <http://dx.doi.org/10.2139/ssrn.2308356> (Last Accessed on May 27, 2015).

A study "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market" conducted by Khwaja and Mian deals with market manipulation in an emerging Stock market²² with special perspective of intermediaries role in market manipulation deals mainly with economic and financial aspect but indeed provided a fair idea of market manipulation practices in Pakistan specially related to price manipulation. This study concludes that more than 44% of brokers earning is from manipulative practices and brokers are directly related to private information trading in Stock Market.

Ludan A. Bebchuk and Zvika Neeman in their research titled "Investor Protection and Interest Group Politics"²³ established a framework to analyze the influence of interested entities on investor protection remedies. This study revealed dynamics of shifting priorities from investor protection. It is stated that Corporate Insiders have the capabilities to sway the law makers and the institutional investors are helpless in protecting outside investors.

James H. Thompson in his study named "A Global Comparison of Insider Trading Regulations"²⁴ provides valuable literature in respect of international trend regarding insider information law. A comparative analysis of almost 14 legal jurisdictions provides a great opportunity to check the merits and demerits of Pakistani law and possible reforms. This research highlights the variances of 14 jurisdiction with regard to law and enforcement mechanism of insider dealing.

²²Asim Ijaz Khwaja, Atif Mian, "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market", available at: <http://ssrn.com/abstract=631722> (Last Accessed on May 27, 2015).

²³Ludan A. Bebchuk and Zvika Neeman, "Investor Protection and Interest Group Politics", *The Review of Financial Studies*, 23: 3, Corporate Governance (March 2010):1089-1119.

²⁴James H. Thompson, "A Global Comparison of Insider Trading Regulations", *International Journal of Accounting and Financial Reporting*, 3: 1, ISSN 2162-3082, (2013).

These variances include fluctuating fines and penalties among the countries. Apparently no synchronization is found in advanced and developing markets. Another important observation is deficiency in implementation of Insider Trading laws as a common trend in several jurisdictions. This study can help a lot to learn from international experience to enhance efficiency and comprehensiveness in inside information abuse prevention laws for Pakistan.

Ernst Maug in his research "Insider Trading Legislation and Corporate Governance"²⁵ analyzed impact of insider information abuse on corporate governance. It is concluded that managers bribe the dominant shareholders in form of Inside Information and expect the dominant shareholders to abstain from intervention. This practice is being curtailed by regulator but more preventive measures need to be taken.

Laura Nyantung Beny in her research article "Insider Trading Laws and Stock Markets around the World: An Empirical Contribution to the Theoretical Law and Economics Debate"²⁶ brings a unique aspect of insider information abuse by connecting the regulating laws and market practices. Through exploration of variant global data this article states that most rigorous regulations are linked to discrete equity ownership, better stock price precision and higher liquidity rates. These regulations govern numerous factors relevant to Insider Trading. This article emphasizes on stricter approach towards information abuse and its implication for Stock Markets.

²⁵Ernst G Maug, "Insider Trading Legislation and Corporate Governance" (March 25, 1999). EFA 0664. Available at SSRN: <http://ssrn.com/abstract=157598> or <http://dx.doi.org/10.2139/ssrn.157598>. (Last Accessed on May 28th, 2015).

²⁶Laura N. Beny, "Insider Trading Laws and Stock Markets Around the World: An Empirical Contribution to the Theoretical Law and Economics Debate", *J Corp.* 32: 2 (2007): 237-300.

Stephen M. Bainbridge in his renowned book *Insider Trading*²⁷ elaborates a number of aspects including The disclose or abstain rule, rule 14e of SEC, arguments for regulation and deregulation .This great piece of work by Stephen sets the base of the issue to understand insider information abuse ,its regulation or deregulation arguments and other related issues. Therefore it provides assistance to basic structure of the proposed research.

Henry G Manne in his article “Insider Trading and Property Rights in New Information”²⁸ provided an argumentative thesis against regulation of insider information. While doing so he discussed several features related to inside dealing its different perspectives thus laid penned down a number of basic concepts to be utilized by other researchers.

Utpal Bhattacharya and Hazem Daouk in their study “The World Price of Insider Trading ”²⁹ shows mere introduction of Insider Trading regulations cannot ensure lower rate of stock offering. Actual cost reduction depends on implementation of the laws and regulations. Important factors in this sense are risk, liquidity and legal features of a market. According to this investigation 5% discount in equity value is actual outcome of implementation of these laws. This analysis of literature shows that the gap to address the flaws of Pakistani legal regime with respect to insider information laws needs to be filled.³⁰

²⁷Stephen M. Bainbridge, *Insider Trading*, available at <http://encyclo.findlaw.com/5650book.pdf>. (Accessed on April 15th, 2015).

²⁸Henry G. Manne, “Insider Trading and Property Rights in New Information”, *Cato Journal*.4: 3, Cato Institute, Winter 1985.

²⁹Utpal Bhattacharya and Hazem Daouk, “The World Price of Insider Trading”, *Journal of Finance*57(2002):75-108

³⁰ With advent of new Securities regulation, the proposed research does have a sound ground and novel features with respect to area of research.

The literature available on Pakistani chapter of insider information mostly falls under economic and financial analysis which lacks legal scholarship. Some of the studies like "Insider Ownership and Discretionary Accruals: Empirical Evidences from Pakistani Listed Companies, by Muhammad Junaid Iqbal³¹ and others do throw light on different aspects of insider information abuse with economic perspective and expose very vital aspects of the issue under consideration. The main area of focus in most researches is only economic, financial or interest group politics. The recent legal developments (Securities Act 2015) provide strong grounds for the proposed research. Moreover, the proposed research has the capacity to add to the present literature a valuable share. The research expectation is that this enquiry will inform the newly propagated legal regime on insider information abuse in securities market effectively.

1.5 Methodology

Insider information prohibition laws are not a new incident, it emerged in 1934 in USA and from 1980's in rest of the world.³² Insider trading is an interesting crime as it is one, like most white-collar crime, whose motivation can only be greed.³³ To deal with this issue in depth requires investigation from many different aspects. For this purpose it is mandatory to deal with some theories related to doctrine of insider information law. The famous academic debate on justification of prohibition or permission will be excluded as

³¹Muhammad Junaid Iqbal, Sadia Rafique, Nagina Jamil, Muhammad Younas Missun, Syed Zulfiqar Ali Shah, "Insider Ownership and Discretionary Accruals: Empirical Evidences from Pakistani Listed Companies", *Interdisciplinary Journal of Contemporary Research in Business* 3, 7:1. (NOVEMBER 2011), 115-171.

³²Uptal Bhattacharya and Hazem Dauk, "The World Price of Insider Trading," *Journal of Finance* 57, (2002) 75-108

³³P. Tappan, *Crime. Justice and Correction*, (New York: McGraw Hill, 1960), 7-10.

in Pakistani circumstances it is an agreed fact that Insider Trading must be prohibited. It will be necessary to isolate the issue of possession-use theory to apply it in Pakistani law.

The most important part will be exploration of the effect of new provisions and its improvement from the earlier legislation. In a global world it is indispensable and constructive to have a comparison with other jurisdictions. This type of comparison will result in differentiating the law and will help to ascertain the stand point of Pakistani legal structure in this area. The objective of this investigation is to understand the definition plus application of insider information laws in different countries and provide a sound and broad definition of insider information. First the meaning its application will be explored then the inadequacies, lacunas and gray areas of in law of Pakistan will be discussed.

To have a clear idea that how other countries have dealt with this issue a study of some jurisdictions will be carried out. In the light of international experience inadequacies of legal Provisions will be addressed in the best possible manner. Data analysis will be included in the research to provide the exact scenario and practical impact of legal provision on Insider Trading practices. After analyzing the legal scenario in some countries and data analysis a substantive Law reform proposal will be provided for Pakistan.

1.6 Framing of Issues

These are some important issues to be analyzed in the thesis:

1. What are important lacunas in contemporary legislation on insider information?
2. Comparative analysis of criminal liability for Inside Information traders.
3. What is the connection between insider information abuse and market transactions?

4. Inconsistencies between international and Pakistani practice to deal with insider information abuse
5. Are the new legal provisions sufficient and efficient to deal with the issue?
6. How can new legislation address the gray areas of previous statute?

1.7 Characteristics of Insider Information

Insider trading is known as white collar crime,³⁴ it has some of its elements to conclude its occurrence. The elements include Inside Information, insider and transactions based on the Inside Information. Inside information abuse is quite easy, as a person accesses material, confidential information and uses this to trade, recommend or tip that information. Actually trading has both legal and illegal aspects related to it. Whenever corporate insiders transact and disclose that to the public and regulator it falls into legal insider trading. On the other hand if trading occurs due to undisclosed information it is illegal insider trading. If we are to identify the main characteristics of Insider Trading it includes³⁵

1. material, nonpublic information,
2. Any transaction based on this information,
3. Any person natural or legal who uses this information

1.8 Historical background of Insider Trading

Insider Trading laws are said to emerge in 1933 in USA. The Federal Securities and Exchange Act 1934,³⁶ has on its credit to be first ever direct legislation to address Insider

³⁴ Nancy Reichman, "Insider Trading", *Crime and Justice, Beyond the Law: Crime in Complex Organizations* (1993), pp. 55-96, published by: University of Chicago Press, available at <http://www.jstor.org/stable/1147654> (Accessed: 18-01-2016).

³⁵ Stephen Herne, *Inside Information: Definitions in Australia, Canada, the U.K., and the U.S.*, *Journal of international law*, 8:1, (1986)1-19. Available at: <http://scholarship.law.upenn.edu/jil/vol8/iss1/1>. (Last Accessed August, 2016).

³⁶ Securities Exchange Act OF 1934 available at: <https://www.sec.gov/about/laws/sea34.pdf>

Trading. Federal Securities and Exchange Act 1934, combined with federal securities Act 1933,³⁷ determined the anti-fraud standards, and under these standards specifically Section 10b of the 1934 Act, insider trading legislation developed.³⁸ Though this section defined fraudulent activities but did not prohibit insider trading originally and directly.³⁹ In 1942 another rule now known as 10b-5, by SEC became the direct device to address insider trading. This proscribes manipulative and deceptive practices regarding financial markets. This rule does not speak in terms of insider trading, nor does it provide any definition to related terms. Hence SEC gets a chance to interpret definition of insider trading, insiders and other terminologies but this authority is subject to judicial scrutiny.⁴⁰ It is worth mentioning here that before this specific section any prohibition of insider trading, if any, was practiced through common law actions.⁴¹

³⁷ Securities Act Of 1933, available at <https://www.sec.gov/about/laws/sa33.pdf>.

³⁸ Amusingly, in 1779 at the time of drafting a bill to establish a Treasury department, due to an apparent link in securities trading and political exploitation the First US Congress banned speculation as well. The Act enacted then, any violator of the law was imposed a fine of \$3,000 whether being an official and for a clerk \$ 500, and was reckoned guilty of a grave crime. Along with it the offender will be dismissed from the office and an embargo in federal services would also be imposed. The person who informed the authority about the offence would be paid half of the fine. Even though since 1779 till 2 centuries no prosecution under this Act has been recorded, Stuart Banner states that this law laid the foundation of modern day inside dealing regulation. See further Stuart Banner, *Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1860* (1998) 161-164.)

³⁹ SEC Rule 10b-5, 17 CFR 240.10b-5 (1942) which makes it illegal to use any means, devices or techniques of any kind of communication with regard to any financial market by any person, to use that device or technique for fraud or to alter the facts in a way by addition or omission to deceive, to Act in a way to deceive any one in trading or to use any fraudulent practice in trading.

⁴⁰ As an SRO, SEC has the status of an "independent" agency. Thus it has not only executive rather quasi-legislative and quasi-judicial powers as well. These were delegated in different statutes. In 1933-1940 first 6 powers were delegated and the h power was passed on in 1970. See Louis Loss, *Fundamentals of Securities Regulation* (1983) 818-819.)

⁴¹ Before a law came into being particularly addressing insider dealing, a common law Action for fraudulent transactions was in Action. The doctrine of "special circumstances" was coined by US Supreme court in *Strong v Repide*. This doctrine was based on a concept that a director and shareholder connection is unlike a connection between far away alien traders. In the mentioned case an influential shareholder and a GM of a company bought the stock of a minority shareholder. Meanwhile no information about this deal was made public. Special circumstances was based on the duty of trust towards the minority shareholder. As the

Most of the law to date, thrive and developed through courts. With the passage of time different theories, to interpret the intent of the law, develop which include classical theory, and misappropriation theory. Though these theories are essential to understand this legal regime but in this research they are not being made the main focused area. Thus no further discussion regarding their origin, their critique or credits is being mentioned here.

1.9 Brief Summary of Policy Debate

There exists a well-known academic debate over justification of Insider Trading regulation and its counter arguments to allow Insider Trading as a business practice. Economic and legal scholarship deals with this debate with their own perspective. A brief summary⁴² of these arguments⁴³ and their relative supporters is being presented here to lay the ground for further research on this legal regime.

Arguments to justify Regulation	Arguments against Regulation
It devoid the investor confidence in market	It is a compensation for insider's cost of generating this information
It harms the securities company	It makes market competent
It leads to market manipulation	It does not affect the market on whole but some limited persons take benefit
It amounts to theft of someone's property	

Table 1.1 Arguments for regulation and deregulation of Insider Trading

director was entrusted to trade the stock for shareholders. This duty was imposed on the director for his special circumstances. So this way the directors and officials at times owe a duty to stockholders. see further Louis Loss, *Fundamentals of Securities Regulation* (1983) 818-819, 413

⁴² For a summary of both regulation and deregulation arguments see Stephen M. Bainbridge, *Insider Trading*, available at <http://encyclo.findlaw.com/5650book.pdf>. (Accessed on April 15th, 2015).

⁴³ Samia Maqbool Niazi, *The Law of Insider Trading in Pakistan* (Federal Law House, 2007), 22-23.

Henry G Maine is amongst the leading opponents of Insider Trading regulation and Stephen M. Bainbridge is supposed to be finest leading supporters of Insider Trading regulation.

2. Inside Information Laws of Pakistan

Controversy and humiliation has always been associated with Insider Trading in a number of incidents it has destroyed reputes. Incidents relating to Inside Information abuse have always made great stir in electronic and print media.⁴⁴ It instigates detriment, as Inside Information abuse provides to an already fortunate minority partial benefit or upper hand as compare to common shareholders in greater number. This minority is already privileged to have access to this information which majority does not have. The use of this privileged information to avoid loss or earn benefit is legally and morally improper.⁴⁵

The most common violation of law in capital markets is Inside Information abuse. It is one of the most popular doctrine of corporate law among lawyers and economic experts equally .As Bainbridge says “Surely no other corporate or securities law doctrine has provided the plot line of as many crime thrillers and motion picture as has Insider Trading.”⁴⁶ For an efficient market to have good reputation and smooth working, it is a must to stop inside trading altogether. Previously in Pakistan, the laws regulating Insider Trading gradually became insufficient with growing complexity in economy. Financial market in Pakistan needs to eradicate market manipulation of any kind to survive in the global scenario. This chapter will deal with the legislative measure to deal with Inside

⁴⁴ Insider Trading And Other Market Abuses (Including The Effective Management Of Price Sensitive Information)E-booklet available at <https://www.jse.co.za/content/JSERulesPoliciesandRegulationItems/Insider%20Trading%20Booklet.pdf>

⁴⁵ Ibid.

⁴⁶ Stephen M. Bainbridge, An Overview Of Insider Trading Law And Policy: An Introduction To The Insider Trading Research Handbook, (Edward Elgar Publishing Ltd, 2013), Electronic copy available at: <http://ssrn.com/abstrAct=2141457> (Last Accessed January, 2016).

Information abuse, a brief case study on the matter and the inadequacies in the existing laws. In the end the most recent legal developments have been discussed. A thorough analysis of this new legislation will be done in the next chapters.

2.1 Pakistan Insider Information abuse legislation

Market manipulation control is the most significant aspect of corporate governance. There are a handful of laws and regulations to deal with corporate governance in Pakistan. Some of the major laws are being mentioned here.

- (a) Finance Act 1995⁴⁷
- (b) Companies Act 2016⁴⁸
- (c) Securities and Exchange Ordinance, 1969⁴⁹
- (d) Income Tax Ordinance 2001⁵⁰
- (e) Central Depository Act, 1997⁵¹
- (f) Code of Corporate Governance, 2002⁵².

⁴⁷ Finance Act 1995 available at http://www.na.gov.pk/uploads/documents/1329725424_374.pdf (Last Accessed on October, 2016).

⁴⁸ Companies Act 2016 available at http://www.na.gov.pk/uploads/documents/1472206174_329.pdf (Last accessed on February, 2016).

⁴⁹ Securities and Exchange Ordinance, 1969, available at <https://www.secp.gov.pk/document/companies-ordinance-2016/?wpdmdl=21214> . (Last accessed on May 2016).

⁵⁰ Income Tax Ordinance 2001, available at [http://download1.fbr.gov.pk/Docs/2014101313102634216I.T.Ord.2001\(updated\)AmendedJune2014.pdf](http://download1.fbr.gov.pk/Docs/2014101313102634216I.T.Ord.2001(updated)AmendedJune2014.pdf) (Last accessed on May 2016).

⁵¹ Central Depository Act, 1997, available at <http://www.na.gov.pk/uploads/documents/Central-Depositories-Act-1997.pdf>. (Last accessed on April 2016).

⁵² Code of Corporate Governance, 2002, available at <https://www.secp.gov.pk/document/code-of-corporate-governance-2012-amended-july-2014/?wpdmdl=1472>. (Last accessed on April 2016).

(g) Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008⁵³

(h) The Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance 2002 (Takeovers Ordinance).

(i) Any Rules and Regulations issued by Securities and Exchange Commission.

In 2015 and 2016 some new regulations have been included to govern the securities market these are as follows:

(j) Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015⁵⁴

(k) Central Depositories (Licensing and Operations) Regulations, 2016⁵⁵

(l) Securities Brokers (Licensing and Operations) Regulations 2016⁵⁶

⁵³ Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008, available at <https://www.secp.gov.pk/document/listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2008/> (Last Accessed on April 2016).

⁵⁴ Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015, available at <https://www.secp.gov.pk/document/reporting-and-Disclosure-of-shareholding-by-directors-executive-officers-and-substantial-shareholders-in-listed-companies-regulations-2015/?wpdmdl=713> (last accessed on June 2016).

⁵⁵ Central Depositories (Licensing and Operations) Regulations, 2016, available at <https://www.secp.gov.pk/document/central-depositories-licensing-and-operations-regulations-2016/?wpdmdl=699> (Last accessed on July 2016).

⁵⁶ Securities Brokers (Licensing and Operations) Regulations 2016, available at <https://www.secp.gov.pk/document/securities-brokers-licensing-and-operations-regulations-2016/?wpdmdl=14922>. (Last accessed on July 2016).

Most of these laws directly or indirectly deal with insider information abuse. After the 2000 Stock Exchange crash, the SECP⁵⁷ adopted chapter III-A⁵⁸ along with the Listed Companies guidelines⁵⁹ in the SEO 1969.

The purpose was to curtail insider information abuse by ensuring a flawless information generation and circulation mechanism, to save investors from any deceptive practices. The need to legislate was acute. The most initial step to control this fraudulent practice in securities market was amendment in Finance Act 1995⁶⁰ which subsequently became part of Securities and exchange ordinance (SEO 1969). Both of these acts constitute the foundations of the legal regime of Pakistan on Inside Information abuse. Along with this ordinance, Listed Companies (prohibition of Insider Trading) Guidelines 2000⁶¹ were also issued.

The SEO 1969 has some major goals to provide market participants data regarding financial status of issuers, and to prohibit deception, false or misleading information, and other mal practices in securities market.

⁵⁷ Securities and Exchange Commission of Pakistan.

⁵⁸ Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) (28 June, 1969 as amended up to 2012) available at <http://www.secp.gov.pk/laws/ordinances/>.

⁵⁹ Listed Companies guidelines(Prohibition Of Insider Trading) issued at Islamabad on 27th March 2000. Available http://www.secp.gov.pk/Guides/Guide_Listing_Companies_Initial_Public_Offerings.pdf

⁶⁰ Finance Act 1995, available at http://www.na.gov.pk/uploads/documents/1329725424_374.pdf.

⁶¹ Listed Companies (Prohibition Of Insiders Trading) Guidelines, 2001 available at <http://www.secp.gov.pk/document/listed-companies-prohibition-of-insider-trading-guidelines/>.

Thus every direct legislation of Pakistan on insider information abuse or Insider Trading with its amendments is being summarized in the diagram given below:

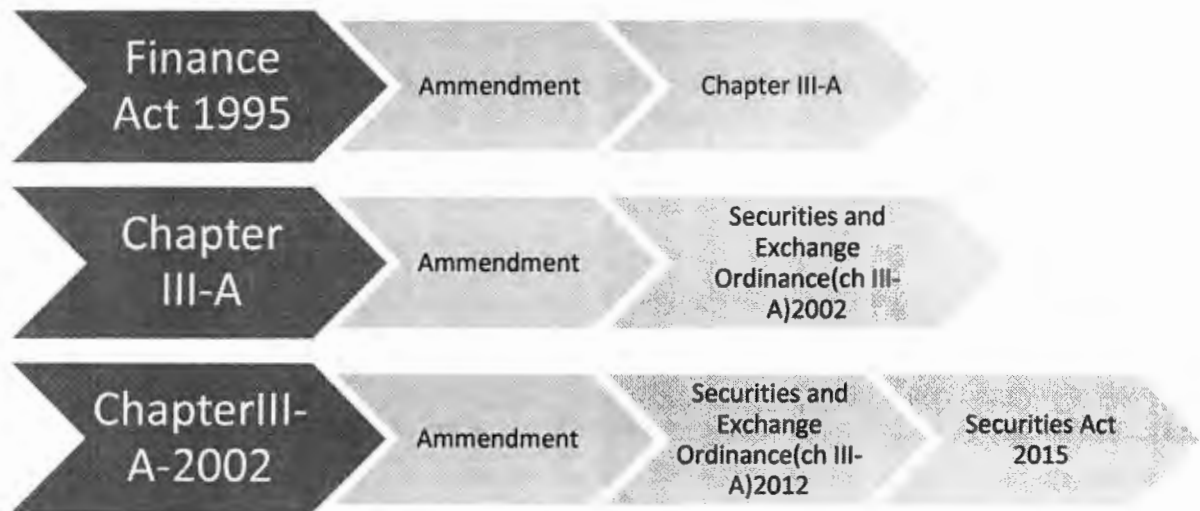


Figure 1 development of Insider Trading law in Pakistani Laws.

However, these statutes and guidelines could not serve the purpose effectively. International Monetary Fund published a country report (2004)⁶² which maintains that the SECP has initiated the laws dealing with Disclosure requirements and Inside Information abuse. In 2005 a task force⁶³ was constituted to investigate the causes and factors of Stock Market crisis. The findings of this report maintains that insider information and deceptive devices are wide spread in securities market. In 2005, 2008, 2009 and 2013 Karachi Stock

⁶² International Monetary Fund, IMF Country Report No.04/215 Pakistan: Financial System Stability Assessment, including Reports on the observance of Standards and Codes on the following topics: Monetary and Financial Policy Transparency, Banking Supervision, and Securities Regulation (July 2004). Available at: <https://www.imf.org/external/pubs/ft/scr/2004/cr04215.pdf>. (Last Accessed January, 2016).

⁶³ SECP, Report of the Taskforce: Review of the Stock Market situation March 2005, Available at: <https://www.secp.gov.pk/document/stock-market-task-force-report-2005/>. (Last Accessed January, 2016).

Market crashed several times. Meanwhile the watchdog experienced some significant cases of insider information abuse. This catalyzed the need of new legislation to address this significant issue and now another law named Securities Act 2015 has been enacted.

2.2 An Overview of Existing Case Law

To develop a better understanding of existing laws and legislation on a particular issue the best option is to analyze the relevant case law. Here is a brief review of existing cases on Insider Trading. Mostly these cases include proceedings initiated by SECP through show cause notice.

In *CYAN v. SECP*⁶⁴ show cause notice was issued to CYAN Limited the respondent according to SEO S-15E to explain its position. Dawood Hercules Corporation Limited (DAWH) on July 23, 2012 notified three stock exchanges about meeting of board of directors to be held on 31 July, 2012 regarding annual accounts of the company for second quarter. DAWH⁶⁵ announced its financial results on August 1, 2012 which declared a loss of Rs. 214.363 million though in 1st quarter the profit was Rs. 871.147 million. From May to July 2012 a significant decrease in share price of DAWH was observed. Karachi Stock Exchange data showed that respondent sold 5,391,872 shares between May to July 2012 at an average price of Rs. 33.78. This sale by respondent consisted of 28% of the total trading volume in scrip of DAWH. A significant fact is in four and half years before this, respondent sold on 4,618,515 shares of DAWH at an average rate of Rs.83.33.

⁶⁴ *CYAN Limited v. SECP*, 2013 CLD 1637.

⁶⁵ DAWH stands for Dawood Hercules Corporation Limited in case law several abbreviations has been used as the abbreviations have been used by the competent authority in relevant order.

Just before announcement of financial results, heavy sale by respondent became a reason of decrease in share price of DAWH. The investigation revealed that three directors of DAWH were chief executive officer and directors at the respondent CYAN.⁶⁶ Further it was observed that Mr. A. Samad Dawood and Mr. Sulaiman S.Mehdi were authorized to handle the accounts. The respondent rejected any occurrence of Insider Trading. According to CYAN this rigorous sale activity was a pre-planned, shareholder approved decision to reduce company' exposure in group companies and particularly in fertilizer companies. Furthermore the respondent claimed that the CEO of CYAN, a BOD member at DWAH was a non-executive director which, curtails any flow of undisclosed information to him. During the hearing it was revealed that in April 2012 ASD⁶⁷ did not attend the bod meeting but had received the minutes of the meeting as usual course of business.

Examination of minutes of meeting discovered that it contained the information to prediction off loss in 2nd and 3rd quarter. It was also shown that ASD attended the BOD meeting of DAWH June 25, 2012 and after this particular meeting the responded old a considerable amount of shares. The heavy trading activity of respondent in a specific period, lack of documentary evidence to prove this sale a prior decision and involvement of ASD in investment decisions of CYAN respondent while in possession of undisclosed information of DWAH, proved the occurrence of Insider Trading. It was held that "ASD was the insider deteriorating financial and operating position of DAWH and financial results was Inside Information."⁶⁸ A fine of Rs. 2,000,000 was imposed on the respondent.

⁶⁶ *Supra note, 64.*

⁶⁷ A. Samad Dawood, abbreviated in the court documents as ASD.

⁶⁸ 2013 CLD 1660.

In 2013 SECP investigated another major incident of Inside Information abuse in *Muhammad Amir v. SECP*.⁶⁹ SECP while reviewing the trading data of B.R.R Guardian Modarba (BRRGM) and First Dawood Investment Bank Limited (FDIBL) observed that the respondent's trading activity was in correlation with trading of BRRGM and FDIBL. In Most of the transactions the respondent bought the scrip from market and sold it to BRRGM⁷⁰ and FDIBL.⁷¹ This provided significant profit to the respondent. Further investigation revealed that the respondent was in contact with Muhammad Yusuf (YT) who was equity investment portfolio at BRRGM and was also serving FDIBL during the review period. It was disclosed that YT and respondent were in contact and the respondent transferred an amount of Rs. 3.614 million to account of YT in review period.

The pattern of trading and respondent's contact with YT⁷² maintained that these trading activities were based on confidential and unpublished information. The respondent claimed that the matching trading activity was very insignificant, immaterial fraction of the total trading by the respondent. The respondent and YT are familiar with each other over many years. The transfer of amount was also due on respondent as in normal course of business he buys commodities and prize bonds from YT. The respondent failed to prove that the correlated trade was a mere coincidence. It was observed through inquiry that correlated trading with BRRGM and FDIBL was not accidental rather it was pre planned arrangement. YT due to of his position was privy to insider information which lead to

⁶⁹ Muhammad Amir v. SECP, 2013 CLD 158.

⁷⁰B.R.R Guardian Modarba.

⁷¹ First Dawood Investment Bank Limited.

⁷² Muhammad Yusuf

trading activity of respondent in harmony with BRRGM and FDIBL. The matter was disposed of by imposing the fine of Rs.4.500 million on respondent.

In another case *Pakistan Petroleum Provident Trust Company Limited v. SECP*⁷³ a prominent provident Fund Trust company was found involved in Insider Trading hence SECP initiated the proceedings through a notice to explain submit their written statement. Pakistan Provident Fund Trust Company (pvt) manages several fund of Pakistan Petroleum Limited. It was noted that the Pakistan Petroleum limited senior provident trust company (PPPFTCL) bought shares of PPL through a broker of Karachi stock exchange. The commission investigated the matter and it was revealed that board of trustees of the fund of members of senior management of PPL. Significant figure is the CEO of the board of trustees of the fund who is managing director /CEO on the BOD of PPL.

It seemed that management of Fund had prior information about financial results of PPL. This information was not public at that time and has the ability to effect the price of securities. The respondents denied the claims of Insider Trading altogether and insisted that the decision was made on recommendation, market analysis and research and performance of PPL. But these claims were nullified due to many issues. The time of trading was "closed period" and just before the announcement of PPL financial results. According to the order the elements of insider, Inside Information and Insider Trading have been established in the instant case. The matter was disposed of by imposing a penalty of Rs. 1,000,000.⁷⁴

⁷³ Pakistan Petroleum Provident Trust Company Limited v. SECP, 2013 CLD 1150.

⁷⁴ Ibid.

In *Muhammad Ahmed v. SECP*⁷⁵ a show cause notice was issued Muhammad Ahmed. Ex-fund manager of first Dawood Mutual Fund, Dawood Islamic Fund and Dawood Fund at that time. Brief facts of case are that onsite inspection of Dawood Capital Management Limited and Collective Investment Schemes under its management by Commission on December 3, 2010 was carried out. This investigation revealed that the trading activity of accounts of respondent's wife (Yasmeen Ahmed) was maintained by the respondent. Yasmeen Ahmed has been an active market participant and carried out her trading through five brokerage houses. Trading in Yasmeen Ahmed's account was in correlation with trading of funds which were managed by the respondent as being the fund manager. Through proper observation and investigation it was concluded that trading activity synchronized between accounts of Yasmeen Ahmed and respondent was a mere coincidence. No stance of Insider Trading could be established. Respondent did not play any part in trading activity of his wife but it is maintained that the respondent had not exercised due care and diligence while performing his duties. The respondent was strictly warned to abstain from any carelessness and unprofessional conduct in future.

In *Wasim Hyder Jalbani v. SECP*⁷⁶, a proceeding was initiated through show Cause Notice dated October 19, 2011 under the S-15 E of SEO 1969 to Mr. Wasim Hyder Jalbani, ex Fund manager of JS Investment limited (JSIL) and funds under its management. SECP ordered an onsite inspection of JSIL and the funds under its management. This inspection reviewed trading details of employees of funds. It revealed the trading activity of Mr. Shakeel Ahmed Jalbani (SAJ) for the period January 2009 to June 2010. SAJ came out to

⁷⁵ Muhammad Ahmed v. SECP, CLD 2012 589

⁷⁶ Wasim Hyder Jalbani v. SECP, CLD 2012 944.

be an active market participant and most of his transactions involved Funds. The suspicious transactions included purchase of scrip at low rate from market and selling to Fund on higher rate, scrips sold in market at higher rate and same quantity bought from Funds at lower rate. Most of the trading by SAJ was in correlation with the trading of the Funds.⁷⁷

The details of brokerage house of SAJ exposed that the respondent had the authority to operate this account. Another notable issue was money transfer into respondent's bank account through SAJ's account. During 2009-2010, respondent was Fund Manager and a member of Investment Committee. The respondent was involved in investment decisions of funds namely JS Islamic Fund, JS Capital protected Fund IV, JS Value Fund and JS Aggressive Asset Allocation Fund. Hence, respondent had the access to Inside Information. The respondent maintained that he was unaware and uninvolved in the transactions carried out by SAJ. He also stated that front running is not covered by Section 15 A of the Ordinance. Respondent could not prove that correlation of SAJ's trading activity and Funds was a mere coincidence. A fine of Rs. 2,500,000 was imposed for contravention of 15A (1) of the SEO 1969.⁷⁸

In *Messers Pattoki Sugar Mills Limited v. SECP*,⁷⁹ Baba Farid Sugar Mills (BAFS) shares' witnessed a sudden surge with a very low volume. The analysis of trading data revealed that several orders were placed in the closed period. Another observation was that share price of scrip rose from Rs. 5.50 to Rs. 16.44 resulting in increase of 198.91%. The doubtful transactions were in March-April 2005. In April 2005 KSE disseminated two

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ *Messers Pattoki Sugar Mills Limited v. SECP*, 2011 CLD 589.

notices on 2nd and 5th April consecutively. First notice was from Infinite Securities Limited, manager to public offer of BAFS shares and second notice was from BAFS that PSML (unlisted Company) has intentions to purchase 4 million shares. Before this information became public significant trading activity and price of scrip witnessed sharp increase.

The person falls under the definition of an insider as he was holder of 38% shares in PSML. PSML is a family owned business where chief executive officer is brother of the respondent and another main shareholder is respondent's brother in law. It was established that price sensitive unpublished information was used in the transaction. The respondent through his representative "admitted the mistake and termed the act as unintentional." According to the order passed here both ingredients of the offence of Insider Trading were established.⁸⁰ Section 15. As the order itself concludes that "to constitute an offence under section 15 A of the ordinance, the quantum of gain made or loss avoided' is immaterial. The very fact that the respondent has taken the lack of gain as a defense is actually admission to the commission of offence of 'Insider Trading' captured section 15E of the Ordinance.⁸¹" Despite the establishment of evidence and actual admission of the offence, a penalty of just 200,000 rupees was imposed

In *Irfan Aslam V. SECP*⁸² Shaheen Cotton Mills Limited (SCML) a Public Limited Company sold all of its holding of 2,608,200 shares of another Public Limited Company named Shahzad Textile Mills (STML) from July 30, 2009 to August 24, 2009 (Period under Review). Scrutiny of Karachi Stock Exchange trading data it was discovered that 2,548,200

⁸⁰ Offence of Insider Trading has two essential elements: Insider and Inside Information. A person being insider as under section 15C of the ordinance and the information being price sensitive unpublished in section 15 B

⁸¹ 2011 CLD, 596.

⁸² *Irfan Aslam v. SECP*⁸² 2011 CLD 317.

shares out of 2,608,200 shares were purchased by the respondent. He acquired 2,148,200 shares of STML from SCML through Karachi Automated Trading Data (KATS). Another off-market cross transaction between respondent and SCML resulted in purchase of 400,000 shares by respondent. In both deals through KATS an off-market cross transaction from SCML same terminal ID was used.

The respondent continued to place order to purchase share of STML on KATS. The respondent hold 34.51% shares of SCML and 15.66% of STML. He was the brother of Mr. Imran Aslam, who was CEO of STML and a director at SCML. Interestingly, father of the respondent was CEO of SCML and a director at STML simultaneously. After STML shares were purchased by the respondent the STML⁸³ share price increased significantly from Rs. 1.56 per share to Rs. 6.00 per share. In the mean while STML notified KSE regarding a meeting to be held on October 5, 2009 about financial results of the company. In the same meeting a decision to merge SCML⁸⁴ and STML was passed in the BOD meeting. Scrip of SCML had a thin trading history on KSE but the said transactions were substantially significant. On KATS⁸⁵ these transaction were 91.12 % of the total market trading activity. Due to these considerable dubious transaction the commission sought the investigation from Brokerage Company.

It was disclosed that the Director Imran Aslam had the sole authority to operate the SCML brokerage account. Moreover the respondent paid an amount of Rs 4,810,000 to Brokerage Company for purchase of STML share. Respondent maintained his bank

⁸³ STML stands for Shahzad Textile Mills.

⁸⁴ SML for Shaheen Cotton Mills Limited.

⁸⁵ Karachi Automated Trading Data.

TH17065

account jointly with Mr. Imran Aslam. The respondent was issued a show cause notice to seeking explanation on contravention of SEO 1969 S -15 for Insider Trading. The respondent denied that there was any pre-arranged manner for these transaction. It was argued that financial results and share price of other textile sector companies increased as well. The respondent claimed to have no knowledge about financial results of STML and there was no proof of Inside Information being disclosed by Mr.Imran Aslam to respondent as per show cause notice.⁸⁶

It was also claimed that Mr. Imran was authorized to maintain the bank account of respondent in any emergency and unforeseen event only. The written reply at first and second hearing contained numerous contradictions. The respondent failed to provide satisfactory answers to important questions like the main reason of sudden price surge, was the respondent an insider at the time of transaction or if the Inside Information was disclosed to respondent by Mr. Imran Aslam?⁸⁷ The circumstance, market data analysis and price surge after announcement of financial results of STML in four trading day's exhibit that there existed an Inside Information abuse. The Commission imposed a penalty of Rs.1, 000,000 and the respondent was ordered to pay a sum of Rs.11, 541,140 to SCML as compensation of the loss caused.

*Alfalah Securities (PVT.) LTD v. SECP*⁸⁸ was an appeal against an earlier decision of SECP on Insider Trading matter. This was an appeal filed against the decision of Commissioner (Securities Market Decision) by Alfalah Securities. Alfalah securities was

⁸⁶ Supra note, 79.

⁸⁷ Supra note, 79.

⁸⁸ *Alfalah Securities (PVT.) LTD v. SECP*⁸⁸, 2006 CLD 1068.

held guilty previously by the regulator and a fine for the offence of Insider Trading was imposed. An appeal against this decision was filed by the respondent. Facts of the case are that Alfalah Securities (pvt) limited published a Morning Note on 11-1-2005. This note revealed a potential increase in revenue of PTCL. The note also included a statement "according to our sources in the company PTCL" to strengthen the provided information. The day on which this note was published, the PTCL shares price was closed at Rs. 53.30 as against price of Rs. 49.60 per share. The trading activity of appellant suggested it had traded PTCL shares between 10-1-2005 and 14-1-2005. The SECP issued show cause notice to the appellant and subsequently imposed fine. The appellant filed the appeal which was decided in favor of appellant and the final verdict disposed of charges of Insider Trading. Though the statement that appellant has acquired information "from their sources within PTCL". Rs.100, 000 was levied as penalty "under rule 8(b)"⁸⁹. In this case two main issues were discussed.

- i. Whether the information used was insider information
- ii. Whether the Inside Information was used to attain the profits.

The commissioner established his findings on the fact that the information relating to the reversal of APC⁹⁰ revenues was a managerial decision. No one other than Board of Directors PTCL had access to it. Appellant could access this information through any insider. It was held that the information does not fall in "Inside Information" rather it was derived from the accounting information and information derived from any legal requirement does not fall within the Inside Information. Another significant issue discussed

⁸⁹ Ibid.

⁹⁰ Access Promotion Contribution

here was that the commissioner has the power to impose fine or not. According to the judgment in light of SEO 1969, commissioner does not has any power under section 15B (3) or 15B (4) to impose any fine. However the Commission has the power to order direct imbursement of compensation to the victim who incurred the loss.⁹¹

Another significant case is *Bawany Air Products Limited v. SECP*.⁹² Facts of the case are that Respondent of this show cause notice was the Chief Executive and Director of a Public Limited Company 'A' listed on the KSE. He was also the Chief Executive and Director of another company named 'B'. Respondent in his dual capacity as Chief Executive and Director of 'A', possessed price sensitive Inside Information. The respondent possessed Inside Information about improved business of said company. Respondent being privy to the insider information was able to pass that information to other company 'B', which purchased shares of 'A' Company, at lower market price and indulged in Insider Trading-- Respondent being in his capacity as the Chief Executive and Director of both the companies was obliged a fiduciary duty to the enterprise 'A' and its stakeholders, he was supposed to exercise care consistently to maximize the value to all of the shareholders of company "A". It was held that the respondent possessed Inside Information which he passed on to another company. A fine of rupees 1,000,000 for disclosing information regarding financial results of the company.⁹³

In *Mahmood Ahmed and another v. SECP*⁹⁴ a corporation sold its share to another company and avoided loss to itself. The company and another associated company had a

⁹¹ Supra note, 85.

⁹² *Bawany Air Products Limited v. SECP*, 2011 CLD 571.

⁹³ Ibid.

⁹⁴ *MAHMOOD AHMED and another v. SECP*, 2006 CLD 1167.

common Director and Chief Executive. The total securities sold to JOV amount to 24.5 million shares. The commission after inspection of books and accounts of the seller company made a communication to the board of directors of that company regarding mismanagement of books and accounts and unauthorized transactions. It was apparent that these transactions included unpublished price-sensitive information. It contravened the provisions of securities and Exchange Ordinance, 1969. The issues raised here included no claim by the effected party, absence of intention of making profit or avoiding loss, transactions made in good health, loss not realized and absence of knowledge.

The defense provided in "S -15B (2) a" of the Ordinance was discussed here. While no satisfactory legal claim in this regard could be provided by the counsel, the chain of circumstances, timing of transactions and other facts prove that price sensitive information was involved. The respondent also took defense provided in clause (b) of subsection 15 B which was rejected altogether in light of correlated facts. It was ordered to compensate an amount of Rs. 182.435 million to JOV.⁹⁵ The facts of the case include that members of Board of Directors of CSBM namely, Mr. Mahmood Ahmed and Siyyid Tahir Nawazish were associated with both companies and were in possession of price sensitive unpublished information. Yet, no exemplary penalties have been imposed on both.⁹⁶

2.3 Inadequacy of Legal Provisions

Some major deficiencies in the SEO 1969,⁹⁷ are lack of duties imposed on securities exchange, no audit of these listing authorities/entities., inadequate authority of powers of

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) (28 June, 1969 as amended up to 2012) available at <http://www.secp.gov.pk/laws/ordinances>.

regulator for stakeholder in investment sector, rules regarding clearing houses, admissibility requirements and duties of clearing house, depository, central depository, a deficient arrangement for investor complaints, rules and regulations for the regulating authority.

Major deficiencies in SEO 1969⁹⁸ revealed that there are insufficient provisions regarding eligibility criteria of stock exchanges, financial reporting, inquiries, scrutiny, and rules for judicial inquiry, information abuse and entities functional without license.⁹⁹ The continuous rising of Stock Market crisis and crashes give rise to questions about the efficiency of the regulator and concerned laws and regulations as well. The previous law of Insider Trading prohibition had a number of flaws. In securities market, the brokers are indulged in fraudulent sales and in Insider Trading as well. Moreover a number of incidents, as mentioned earlier, brought the issue of Insider Trading into lime light.

These all factors highlighted the need of a new legal regime to address these issues effectively. Resultantly, Pakistani legislature passed a new Securities law in 2015.¹⁰⁰ Main concern here is “Insider information Abuse” prohibition. This new legislation of prohibition of insider information abuse is not exhaustive. Some of the major flaws and inadequacies are being discussed here.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Securities Act ,2015 available at <http://www.secp.gov.pk/laws/Acts/>

2.3.1 Civil liability for Insider Trading

In SEO 1969 only civil liabilities have been imposed on the offender. Section 15 E defines the liabilities for contravention from Section 15 which prohibits Insider Trading. The section¹⁰¹ is being reproduced here.

15E. Liability for contravention [15A. Prohibition of insider trading.—(1) No person shall indulge in insider trading. (2) Insider trading shall include, — (a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals; (b) any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals; (c) transaction by any person as specified in clauses (a) and (b), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information; (d) an insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities: (3) Nothing in this section shall apply to— (a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or (b) the disclosure of inside information by an insider person as required under law (4) No contract shall be void or unenforceable by reason only of an offence under this section.¹⁰²

This section¹⁰³ contains civil liabilities for contravention from the law, which include a fine ranging from ten to thirty million rupees, to pay any amount gained through inside dealing or any evaded harm and expulsion from office. No criminal liabilities have been provided in this ordinance (SEO 1969).¹⁰⁴ Insider Trading is known as white collar crime worldwide

¹⁰¹ Section 15 E, Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969)(28 June, 1969 as amended up to 2012) ,S15. <http://www.secp.gov.pk/laws/ordinances>.

¹⁰²Ibid.

¹⁰³ See Annex-I.

¹⁰⁴ Ibid.

and mostly criminal penalties are included with civil liabilities. Absence of criminal penalties for Insider Trading is an anomaly.¹⁰⁵ For all persons indulge in Inside Information abuse civil as well as criminal penalties must be provided.

2.3.2 Market Manipulation and Inside Dealing in SEO 1969

In most of the developed securities markets,¹⁰⁶ market manipulation and insider trading has been linked together. Insider Trading is considered a form of market manipulation or at least both these fall under market abuse which are linked together. In SEO 1969, Section 15 of Chapter III-A deals with Insider Trading and section 17 and 18 of chapter IV deals with other market manipulation practices.¹⁰⁷ As in the laws of UK, Hong Kong and India both of these must be linked which will enhance implementation. Moreover this issue existed in the SEO 1969 amendment in 2002 as well.¹⁰⁸ Now is the time to bring the law in harmony with rest of the Insider Trading regimes. This would not become a mere tool to harmonize the national law with rest of the world but it will enhance efficiency and understanding. From financial and economic perspective both market manipulation and Insider Trading are inter linked thus a linkage from legal point of view will bring more coherence in law.

2.3.4 Liabilities of Intermediaries in SEO 1969

Intermediaries play a vital role in securities market. With respect to Insider Trading most important issue is their indulgence in the deals potentially backed by Inside Information abuse. The perks of indulging in these transactions include associated

¹⁰⁵ Samia Maqbool Niazi, *The Law of Insider Trading in Pakistan* (Federal Law House, 2007), 79.

¹⁰⁶ For further details see UK, Hong Kong and India's law on insider trading.

¹⁰⁷ *Supra* note, 98.

¹⁰⁸ *Ibid.*, 77.

commission, receipt of good name in the market and addition in clientage. To curtail these practices some regulators have imposed prohibitions on intermediaries to avoid any transaction which seems to include Inside Information abuse and proper sanctions are imposed in case of violation of these rules.

Danish legislation sets a decent example by maintaining a fair ground for legitimate trade and prohibiting any aiding or abetting the Insider Trading: "If a security dealer knows or assumes that the one who wants to buy or sell securities is in possession of Inside Information, the securities dealer shall not participate in the completion of the transaction"¹⁰⁹ along with it the securities dealer have been obliged to inform the concerned authority regarding any trading activity which amounts Inside Information abuse.¹¹⁰

2.4 Recent Legal Developments

Chapter III-A of Securities ordinance 1969 addresses Inside Information abuse in securities market. As cited previously, along with this law SECP issued guidelines for listed companies. But both these enactments did not serve the purpose. There were a number of contradictions between the sections of SEC 1969 and the SECP guidelines. Some of which include person associated and person connected inconsistency and insider himself not prohibited from insider dealing¹¹¹. With the passage of time it was realized that a more efficient, comprehensive and exhaustive legislation is needed to overcome the inadequacies of existing law. In this scenario the first mile stone was 2012 amendments which addressed some of the essential issues. Like any other law it was not perfect so in 2015 National

¹⁰⁹ IOSCO report on Insider Trading legislation" Insider Trading how Jurisdiction regulate it" by International Organization of Securities Commissions available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPDI45.pdf> (Last accessed on February, 2016).

¹¹⁰ Section 3(6), Securities Trading, etc. Act 2008 of Denmark available at https://www.finanstilsynet.dk/upload/finanstilsynet/mediafiles/newdoc/Acts/cAct214_020408_new.pdf

¹¹¹ See SEO 1969 before amendments in 2012 and SECP guidelines for listed companies 2001.

Assembly passed the most awaited and anticipated Securities Act 2015. This is certainly an extensive piece of legislation.

This law deals with several matters about listed securities activities, procedures for issuers, accounting and assessment; market mediators, prerequisites, accreditation, registration and licenses, authority and jurisdiction of the commission to issue guidelines, conduct, control and inspect, code of conduct,¹¹² professional comportment procedures, issuance of contract note, and financial autonomy. This Act has dealt with important issues like subscription offer, take-overs, Inside Information abuse, Disclosure in prospectus and required material, impartiality of expert-statement, criminal and civil sanction and liabilities, Disclosure by public companies, market manipulation and legislative authority assigned to the regulator.¹¹³

Moreover, the legislation deals with malpractices in market, contravention of law, Supervision and investigation, Intercession powers of commission, white wash, Painting the tape/ Runs, artificial heavy trading, Improper matched orders: Advancing the bid, Pumping and dumping, Liability in case of damages, Authority to check any information, Examination, assessment, Investigation substantive and procedural authority in this regard. This Act targets to eliminate the grey areas and lacunas in the SEO 1969, and seeks to streamline the anomalies in the law. A comprehensive, inclusive and broad regulation is intended which will address several significant issue by providing provisions for proposing prerequisites of accreditation of all market intermediaries including the stock

¹¹² Securities Act 2015, Part VI, available at <http://www.secp.gov.pk/laws/Acts/>

¹¹³ Securities Act 2015, Part X, available at <http://www.secp.gov.pk/laws/Acts/>

exchanges,¹¹⁴ the clearing company,¹¹⁵ the CDC, stock brokers, agents of stock brokers, underwriters, balloters, transfer agents etc.

It aims to provide fundamentals and preconditions for all entities credited under this law, rules of business and a strict compliance standard for perpetual financial market. In a briefing to print and electronic media the SECP Chairman claimed that this new Act will provide a much operative and implementation oriented regime. It will delegate an increased authority for severe punitive action against any contravention of law, comprising a variety of penalties. The new law also has thorough provisions regarding roles and liability of stock exchanges, CDC ,clearing houses, any Inside Information abuse, market manipulation remedies and penalties, legislative authority to prevent money laundering, regulating business of brokers, securities advisors and analysts and their conduct as well.¹¹⁶

¹¹⁴ Securities Act 2015, Part II, available at <http://www.secp.gov.pk/laws/Acts/>.

¹¹⁵ *Ibid.*, part IV.

¹¹⁶ *Ibid.*

Chapter #03

3. Addressing Inadequacies in Legal Provisions of Pakistan

This chapter covers the shortcoming of newly introduced law. Some of the significant aspects of Inside Information abuse legislation are being discussed here. This method will serve in dual capacity, as to highlight the gaps of Pakistani legislation and to provide a standard view of legislation on Inside Information abuse.

3.1 Comparison of Securities Act 2015 and SEO 1969

The previous chapter mainly dealt with the inadequacies of the predecessor legislation though most of the insufficiencies are still there in the new legislation. Here a brief comparison of SEO 1969¹¹⁷ and Securities Act¹¹⁸ 2015 will be done. Along with it the features of Insider Trading legislation will be described in a manner that expose the loop holes in Pakistani legislation.

In SEO 1969 some of the problems were lack of criminal penalties, a lack of linkage between market manipulation and Insider Trading, no measure to forbid intermediaries from Insider Trading. All these are still there in Securities Act 2015 except criminal liabilities.

¹¹⁷ Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) (28 June, 1969 as amended up to 2012) available at <http://www.secp.gov.pk/laws/ordinances/>.

¹¹⁸ Securities Act ,2015 available at <http://www.secp.gov.pk/laws/Acts/>

As mentioned earlier a comparison of SEO 1969 and Securities Act 2015 can be precisely presented in a tabular form hence below is the table to explain this comparison.

Features	SEO 1969 ¹¹⁹	Securities Act 2015 ¹²⁰
Civil Liabilities	✓	✓
Criminal Liabilities	X	✓
Market manipulation and Insider Trading linked together	X	X
Obligations on Intermediaries	X	X
tender offer setting addressed	X	X
Time to consider information public	X	X
Disclosure procedure available	X	X

Table 3.1 comparison of SEO 1969 and Securities Act 2015.

3.2 Addressing Significant Features of Inside Information Abuse Legislation

It cannot be said that the recent piece of legislation is exhaustive or perfect. There are some grey areas in this Act. Rather than merely numerating the loopholes in this Act significant aspects, related to Inside Information abuse legislation, are being described here. This methodology will not only elaborate the weak areas of this legislation rather it will provide the possible solution to be considered while legislating.

Like any legal issue to be legislated, Insider information abuse also has some basic features to be addressed while legislating. These features include not only the elements of the offence under consideration but some relative aspects as well. As the inadequacies of

¹¹⁹ *Supra note, 97.*

¹²⁰ *Supra note, 96.*

legal provisions in Pakistan have been discussed earlier now the important aspects of legislation related to Inside Information abuse will be discussed here. This will provide a view of important issues to be taken care of while legislating and also the best possible way to curb insider dealing will be addressed. These features include:

- i. Insider information definition
- ii. Insiders
- iii. Prohibited activities
- iv. tender offer settings
- v. Duties of intermediaries
- vi. Duties of public listed companies
- vii. Civil –Criminal Penalties /liabilities
- viii. Exceptions or Defenses
- ix. Disclosure requirements and procedure

3.3 Insider Information

Definition of “Insider information” is the basic pivotal point of all legislative measures to address insider information abuse. The broad and vivid definition will enhance the efficiency of control system.¹²¹ To deal with this important pillar of Insider Trading legislation a section from Securities Act 2015 is being described here. Insider Information is defined in Section 129 of the Act¹²² as

129. Inside Information. — for this Act is defined as

¹²¹ Stephen Herne, “Inside Information: Definitions in Australia, Canada, the U.K., and the U.S”. *Journal of International Law* (1986)8:1, available at <http://scholarship.law.upenn.edu/jil>. (Last Accessed March,2016).

¹²² Section 129, Part XI, Securities Act 2015 available at <http://www.secp.gov.pk/laws/Acts/>

- (a) "Information" not public, concerning, in a direct or indirect manner, to Public listed company or companies and about their stock, if this information is announced it may have an impact on the value of listed stock or the value of other listed stock in the securities market.
- (b) Any information about derivatives on commodities, which is nonpublic, concerning one or more derivatives
- (c) concerning senior executive officers who decide in lieu of listed stock, any information regarding a communication between these persons and any clients or investors and about any directions about transactions in securities or
- (d) Any Information concerning future transactions of a person in securities or any decision to trade.¹²³

For the occurrence of information abuse, the section provides following elements to be present:

- i. Information which is not made public
- ii. Information about listed securities and derivatives on commodities
- iii. Information about intermediaries and any other person's transactions in future
- iv. Information which will have effect on price of listed securities

Insider information-definition has a very significant role in legislation to prevent Insider Trading. There are some points emphasized by International Organization¹²⁴ in a report¹²⁵ regarding inside dealing laws in different jurisdictions.

¹²³ Section 129, Part XI, Securities Act 2015 available at <http://www.secp.gov.pk/laws/Acts>. See Annex-II.

¹²⁴ International Organization of Securities Commissions (IOSCO).

¹²⁵ IOSCO report on Insider Trading legislation" Insider Trading how Jurisdiction regulate it".

The IOSCO report¹²⁶ has mentioned that mainly two issues are to be addressed by the regulator while legislating about the Insider Trading. These issues are¹²⁷:

- 1. Confidentiality**
- 2. Materiality**

Both confidentiality and materiality¹²⁸ can be considered as elements of “Inside Information” definition. These have been broken down into more basic points which will be discussed further in detail.

A simple categorization is being provided below for better understanding.

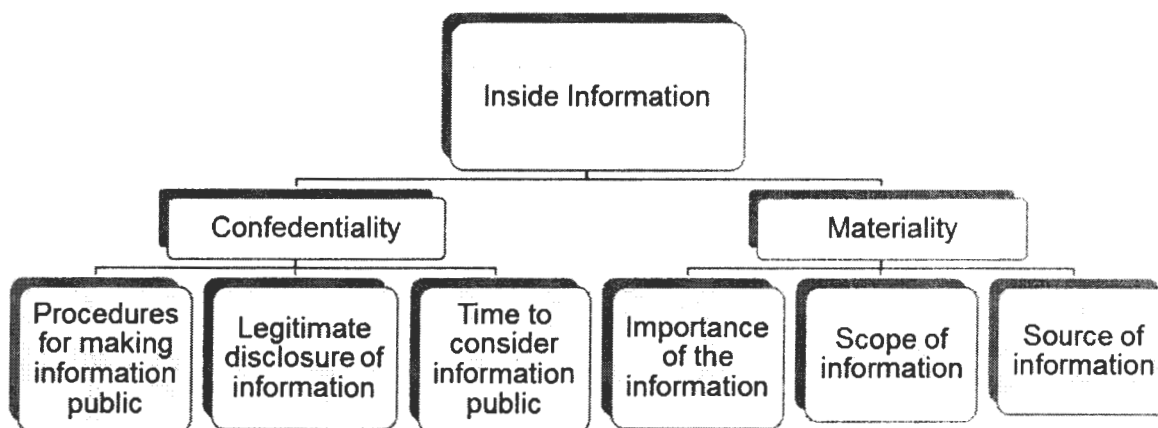


Figure 2 Elements of Inside Information Definition

¹²⁶ IOSCO report on Insider Trading legislation” Insider Trading how Jurisdiction regulate it” by International Organization of Securities Commissions available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD145.pdf> (Last accessed on February, 2016).

¹²⁷ Francis J. Burke, Jr, STEPTOE & JOHNSON, “Insider Trading Securities Violations”, ABA Section of Litigation 2012 Corporate Counsel, CLE Seminar(2012) available at http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2014_women/written_materials/b4_1_insider_trading_securities_violatons.authcheckdam.pdf

¹²⁸ *Supra* note 104.

Both these elements have specific points to be discussed further. Now the confidentiality of information in Securities Act 2015 will be discussed according to the standard of IOSCO and international legislation.

3.3.1 Confidentiality

To estimate the standard of confidentiality of Inside Information as defined by Securities Act 2015 some international standards are to be compared with national legislation. There are certain issues to be analyzed to determine if a definition fulfills the standard of confidentiality or not.

Some of important factors to be considered are:

- i. Procedures for making information public
- ii. A Legitimate Disclosure of information ¹²⁹

3.3.1.1 Procedures for making information public

Inside Information is “the information not yet disclosed publically” so the procedure to declare the information as public is of vital importance.¹³⁰ Securities Act 2015 does not provide any procedure to be followed in order to make information public. Instead of giving a proper procedure to make information public no events or situations to indicate an information as public are mentioned.

¹²⁹ IOSCO report on Insider Trading legislation” Insider Trading how Jurisdiction regulate it”.

¹³⁰ Qiang Cheng and Kin Lo, “Insider Trading and Voluntary Disclosures”, *Journal of Accounting Research*, 44: 5 (2006): 815-848 , Wiley on behalf of Accounting Research Center, Booth School of Business, University of Chicago, available at <http://www.jstor.org/stable/4092497>. (Last Accessed March, 2016).

3.3.1.2 A Legitimate disclosure of information

Legitimate disclosure of information is a necessary evil. This can complicate the efforts to curb and curtail the practices of insider information abuse. Section 131 of Securities Act¹³¹ deals with legitimate disclosure of information. Though no specific persons are mentioned but this section directs to the professionals who receive sensitive information in the ordinary business practices. A positive thing to note here is that the law backs any Disclosure of information to specific persons, by a mandatory public Disclosure of information. There are some exceptions required by the business and market practices worldwide. Same exceptions are provided in this section as well.

Moreover, Section 131(2) and 131(3) of Securities Act¹³² impose a duty on listed companies to provide a complete list of persons who have connection to the flow of privileged information to the commission. This data shall be updated regularly. This list is supposed to mention that the persons in the list hereby acknowledge the fact that they are prohibited from using any Inside Information for personal gains or advising or tipping anyone else.

This is another significant step to prevent Inside Information abuse as it mitigates the plea of not intended Inside Information abuse and leaves no room behind for the culprit. As *Huge et all* describe that when the disclosure per unit time increases the expected profits of an insider decreases as even to half of the expected profits before disclosure. So

¹³¹ Supra note 102, section 131.

¹³² Supra note 102, section 131.

disclosure of information not only moderates trading costs but brings market efficiency as well.¹³³

3.3.2 Materiality

Materiality of information¹³⁴ is based on these three factors

1. Significance of the information
2. Impact of the information
3. Origin/ Source of the information

3.3.2.1 Significance of the information

Some¹³⁵ legal regimes describe¹³⁶ information as material when this information upon disclosure, would probably effect the price of securities. This term “material” information is referred to any information which is precise and specific. In Pakistani legislation no terms like “material”, “precise” and “specific” have been used to describe the insider information. The single attribute mentioned in section 129 is any information which can influence the price of securities.¹³⁷

¹³³ Steven Huddart, John S. Hughes and Carolyn B. Levine, “Public Disclosure and Dissimulation of Insider Trades”, *Econometrica*, 69:3(May,2001):665-681, available at <http://www.jstor.org/stable/2692205> (Last accessed on March 25th, 2016)

¹³⁴ Ibid., 179.

¹³⁵ For instance Australia, Malaysia, Singapore. See further note 120

¹³⁶ Harvey L. Pitt And David B. Hardison, “Games Without Frontiers: Trends In The International Response To Insider Trading”, *Law And Contemporary Problems*, 55: 4(1992): 200-230.

¹³⁷ Inside Information has been categorized due to its 03 features according to EU Directive. It infers it should be that (1) precise, (2) not made public, and (3) likely to have an influence if disclosed (Article 1). It is demanded that Inside Information ought to be specific or precise in UK law. Before this directive Belgium and English Law had similar standards. Paris Court of appeal in a certain case held that rumors are “not of a precise, specific and certain nature such as a piece of information must have if it is to be regarded

In some countries (Australia, Canada, UK and US)¹³⁸ the potential impact of information is the basis of categorizing any information as material¹³⁹ or immaterial. In US if a person in possession of “information” can gain profit or avoid loss then the information will be classified as material.¹⁴⁰

Malaysian law calls an information “material” if a reasonable person would consider that this information has significant effect on the securities. Along with this a catalogue of events to categorize the information material is also provided.¹⁴¹

This methodology to define materiality will be helpful to classify information as material. Providing a catalogue of events to define information material as in the case of Malaysia deems to be result oriented. This approach should be considered by Pakistan’s regulator when designing or amending insider trading regulations. Some jurisdictions prefer to attribute material information with specificity and precision like UK and EU

as Inside Information”. Precise and specific as compared to the Inside Information as it must be precise. It is noticeable that precision is altogether separate feature from materiality. *See Further* Jane Welch, Matthias Pannier, Eduardo Barrachino, Jan Bernd, Philip Ledebuer, Comparative Implementation Of Eu Directives (I) – Insider Dealing And Market Abuse, The British Institute of International and Comparative Law, CITY Research Series ,December 2005. Available at https://www.cityoflondon.gov.uk/business/economic-research-and-information/research_publications/Documents/2007. (Last accessed August 2016).

¹³⁸ Stephen Herne, “Inside Information: Definitions in Australia, Canada, the U.K., and the U.S.”, *Journal of Comparative Business and Capital Market Law*, 8:1 (1986). Available at: <http://scholarship.law.upenn.edu/jil/vol8/iss1/1>. (Last accessed August 25th, 2016).

¹³⁹. If there exists any information with a potential of material impact on stock prices, the company which owns such information must evaluate if this information will impact the price or not. A “likely to have a material price effect” test will not be adequate to assess the information. As only a minimal alteration will not make an information worth it. Any information must have a tendency to fluctuate the market scenario to a magnitude that it will count as a material effect. Usually this kind of information which has a material impact on stock value of public issuers is assumed as significant information. But there is information which can create quite a stir but no material effect on the market transactions. On other instances important data of a public company may be interesting but neutral against market transactions. *See note*, 120.

¹⁴⁰ *Supra* note, 137.

¹⁴¹ IOSCO report on Insider Trading legislation” Insider Trading how Jurisdiction regulate it”.

Directive on Insider Dealing.¹⁴² Maug contends that the requirement of information being precise as in EU legislation narrows.¹⁴³ In Australia's legislation any attribution to specific or precise information is absent but it does attribute "materiality" to define inside information.¹⁴⁴

Mostly Information is defined in terms of assumption and possibility of any decision to be made.¹⁴⁵ It is an inclusive definition rather than exhaustive and cast the net wider. It has been argued that the specificity or precision requirement removes vagueness and brings clarity and easiness to the law. As by mentioning specific elements of precision and specificity, the transactions based on rumors, suspicion, conjecture and speculation are out of the prohibited sphere.¹⁴⁶

It is essential for a watchdog and court to ascertain exactly if the information can affect the price, whether the person in possession could gain profit or avoid loss or not. Nonetheless the price movements, transactions and other factors themselves become evidence of materiality or immateriality of the information. The materiality of information must be appraised using a dynamic methodology because there lies a possibility of becoming non material information material in future and vice versa.¹⁴⁷

¹⁴² Sections 56 and 60(4) of the Criminal Justice Act 1993 of the UK states what constitutes Inside Information and is based on the EU Directive on Insider Dealing (Dir 89/592[1989] OJ L334/30).

¹⁴³ EG Maug 'Insider Trading Legislation and Corporate Governance' (March 25, 1999) EFA 0664. Available at <http://ssrn.com/id=157598.pdf> (Last Accessed 30 December 2016).

¹⁴⁴ Australia Corporations Act, 2001.

¹⁴⁵ Corporations Act, 2001, s1042A (1).

¹⁴⁶ PC Osode "The New South African Insider Trading Act: Sound Law Reform or Legislative Overkill?" *Journal of African Law*, 44:2 (2000):239 -243.

¹⁴⁷ IOSCO report on Insider Trading legislation" Insider Trading how Jurisdiction regulate it"

3.3.2.2 Impact of the information

Impact of information is the scope of information at different levels and different parts of the market. Most jurisdictions define scope of information in somewhat similar manner. Mostly the context of insider information changes with regard to a particular jurisdiction such as the entities concerning them information is material or issue or stock or certain markets. A piece of information may be important in some geographical boundaries but may be irrelevant for others.¹⁴⁸

Materiality of information has a much closed connection with its impact on different levels of market or on different components. If any Inside Information has an influence on the issuer, the securities or the securities market it will be deemed material. Mostly¹⁴⁹ materiality is defined as specific and precise information but these terms are not defined by law.¹⁵⁰ UK¹⁵¹ and New Zealand's law include a reference to issuer/issuers to define Inside Information.¹⁵² Jurisdictions with this perspective consider information material if it is related to any issuer.¹⁵³ On the other hand some define Inside Information, as "material" with respect to securities market.¹⁵⁴

¹⁴⁸ Impact of information can be better understood with this illustration. A company is planning to diversify its business operations in Karachi, it will have impact within business community of Karachi and no effects in international market of that company.

¹⁴⁹ See laws of US, UK, Australia, and Hong Kong. For further details IOSCO report on Insider Trading legislation" Insider Trading how Jurisdiction regulate

¹⁵⁰ Precision and materiality are not same in most of the literature available. For details see Karen Schoen, Insider Trading: The "Possession Versus Use" Debate, *University Of Pennsylvania Law review* 148 (1999):2390. Available at http://scholarship.law.upenn.edu/penn_law_review/vol148/iss1/12. (Last Accessed July, 2016).

¹⁵¹ Stephen Herne, "Inside Information: Definitions in Australia, Canada, the U.K., and the U.S.", *Journal of Comparative Business and Capital Market Law*, 8:1 (1986). Available at: <http://scholarship.law.upenn.edu/jil/vol8/iss1/1>. (Last Accessed August 13th, 2016).

¹⁵² Securities Amendment Act 1988, See for details Reform of Securities Trading Law: Volume One: Insider Trading: Fundamental Review Discussion Document (2002).

¹⁵³ *Supra* note, 101.

¹⁵⁴ IOSCO report on Insider Trading legislation" Insider Trading how Jurisdiction regulate it" by International Organization of Securities Commissions available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD145.pdf> (Last accessed on February, 2016). Peru

3.3.2.3 Origin of the information

Some jurisdictions¹⁵⁵ describe materiality by source of information as well. To fulfill the criteria of materiality the information must come from issuer or person connected to issuer. This trend is evident in Peru.¹⁵⁶ In Jordan the information to be material depends on the fact the person used this information was aware of the source of information.¹⁵⁷ It is an obvious fact that any piece of information originating from a connected person or an employee of the company will have much larger effect.

On the other hand any speculative information or rumors will have a much smaller magnitude in the market. Nevertheless, mostly “source of information” has not been included to define materiality of Inside Information. Apparently the reason to exclude this from definition is, the difficulty it will create in enforcement of law.¹⁵⁸

Tender Offer setting

Insider information abuse more often takes place in securities market but another significant aspect is “tender offer.” The US legislation does not differentiate in illegality of tender offer Insider Trading and securities Insider Trading.¹⁵⁹ In Pakistan, this is the third time Insider Trading law is being defined but not once “tender offer”-in context of Insider Trading has been discussed. In US legal regime SEC Rule 14e-3 relates specifically

legislation on Insider Trading has been roughly translated on this website link <https://legaleasesolutions.com/memospdf/Peruvian-Securities-Law.pdf>

¹⁵⁵ *Supra note*, 120.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ See SEC rule 14e (3) of US 17 C.F.R. available at <https://www.sec.gov/rules/final/33-7881.htm>. (Last accessed September, 2016).

to tender offer setting.¹⁶⁰ In tender offer inside information abuse, a person acquires material, nonpublic, intimate information about a tender offer from bidder, targeted issuer, or an intermediary under this rule anyone who obtains any Inside Information which is material and not made public, that person cannot trade nor tip any one till proper public Disclosure and dissemination of this information in the market.¹⁶¹ Furthermore, a tippee who intentionally or recklessly obtained information from or about a certain corporate entity, intermediary or a bidder is prohibited from trading or tipping before proper Disclosure of this information.¹⁶² The US law apparently prohibits tender offer Insider Trading more strictly than securities or merger Insider Trading. Sometimes this is considered an inconsistency like the results of SEC v Switzer may have been different if it was a tender offer than being a merger. To explain this issue Steinberg is being quoted¹⁶³:

Some concrete examples demonstrate the erratic treatment of inside dealing law in the US. An outstanding illustration is the different treatment accorded to tender offers due to SEC Rule 14e-3. Literally, a person may hold his gains through Inside Information abuse unless it being a tender. As in case a Barry Switzer (Ex- football coach Dallas Cowboys and the University of Oklahoma), accidentally possessed material nonpublic information from a top manager or executive regarding a future merger. Switzer assumed this information reliable¹⁶⁴ as he had a relationship with insider, He traded depending on this information and his associates were also involved in this trade. He incurred significant profits. It was revealed that the insider had no knowledge that Switzer is aware of this information or communication¹⁶⁵. It was held that no illegal tipping occurred. As according to Section 10(b) tippee's liability is derivative¹⁶⁶ Hence insider-tipper has not contravened

¹⁶⁰ Inside Information was defined relating to tender offer in rule 14e3(a) as "material nonpublic information concerning a pending tender offer that he knows or has reason to know has been acquired 'directly or indirectly' from an insider of the offeror or issuer, or someone working on their behalf" (United States vs. O'Hagan, 96-842).

¹⁶¹ See Rule 14e-3(a), (d), 17 C.F.R. § 240.14e-3(a), (d). The US Supreme Court upheld Rule 14e-3's validity in United States v. O'Hagan, 117 S.Ct. 2199 (1997) Available at <https://supreme.justia.com/cases/federal/us/521/642/case.html>. (Last Accessed September 12th, 2016).

¹⁶² Rule 14e-3(d), 17 C.F.R. § 240.14e-3(d).

¹⁶³ See Annex-III.

¹⁶⁴ SEC v. Switzer, 590 F. Supp. 756, 758, 762 (W.D. Okla. 1984).

¹⁶⁵ Ibid., 762-764. (the same case)

¹⁶⁶ Ibid., 758, 766.

the law ¹⁶⁷ and Switzer's trade was legal and he could retain his profits.¹⁶⁸ If the subject matter in this case would have been tender offer instead of a merger, ruling of the court would have absolutely different. In tender offer setting Rule 14e-3 and Section 10(b) both will be applicable. Switzer may possibly have evaded Section 10(b) but contravention to Rule 14e-3 would make him guilty.¹⁶⁹ His trading based on Inside Information with knowledge and connected to an insider.¹⁷⁰

3.5 Insiders

Inside Information abuse consists of three basic elements: Inside Information, insiders and prohibited activities or the act of misuse of Inside Information by insiders. Inside Information and insiders are the basic pivotal points of inside dealing legislation. Insiders are defined depending upon two basic approaches.

These approaches are as follows:

1. Information Connection Approach
2. Person Connection Approach

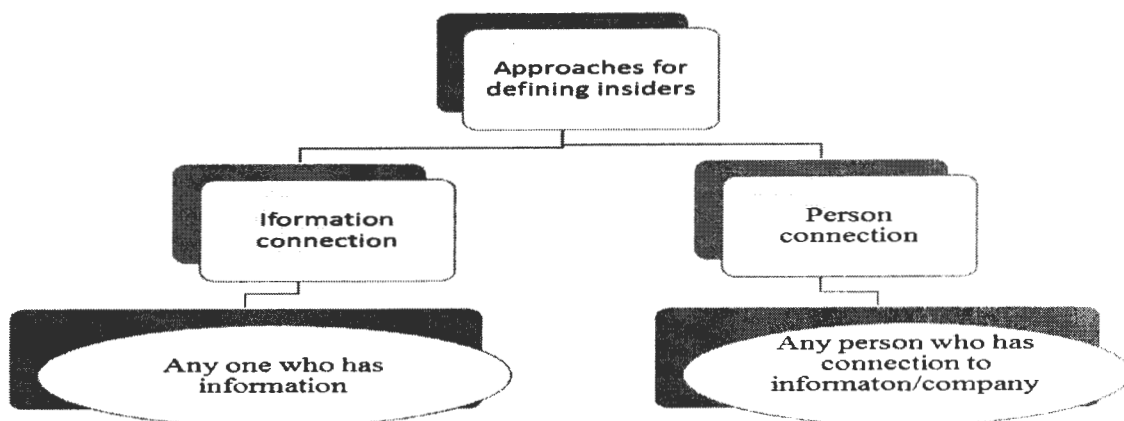


Figure 3 Approaches to define insiders

¹⁶⁷ Dirks, 463 U.S. at 660-664.

¹⁶⁸ Switzer, 590 F. Supp. at 764-766

¹⁶⁹ See Rule 14e-3(a), 17 C.F.R. § 240.14e-3(a).

¹⁷⁰ Steinberg, Marc I. "Insider Trading Regulation—A Comparative Analysis." *The International Lawyer* 37: 1 (2003) :153. <http://www.jstor.org/stable/40707725> (Last accessed on March,2016).

1. Information Connection Approach

This approach defines insiders as any person who possess privileged information.¹⁷¹ In this approach no need of any personal connection natural or legal is needed to construct a person as insider. Anyone who knows any information which is material and confidential about security or securities is an insider by virtue of that information.¹⁷²

2. Person Connection Approach

Any person who has any connection to Inside Information due to the connection with that securities issuer, being any employee or because being in a fiduciary relationship with the company, company's officials, employees or any other position.¹⁷³ This category will be explained in detail later.

In information connection approach the criteria of defining insiders is simple and clear hence no further discussion is deemed necessary. Insiders defined based on the person connection approach are being described here. According to this approach generally insiders are categorized as primary and secondary insiders.¹⁷⁴ Primary insiders extract the

¹⁷¹ Described in Ministry of Economic Development(New Zealand),Reform of Securities Trading Law: Volume One: Insider Trading: Fundamental Review Discussion Document(May 2002), Part III,27, available at : <http://www.mbie.govt.nz/info-services/business/business-law/past-work-older-topics/review-of-securities-legislation/documents-and-images/discussion-document-insider-trading-fundamental-review-31-may2002.pdf>. (Last Accessed March, 2016).

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Z. Su and M. A. Berkahn, The Definition Of "Insider" In Section 3 Of The *Securities Markets Act 1988*: A Review And Comparison With Other Jurisdictions, Discussion Paper Series, School of Accountancy, School of Accountancy,Massey University Available at <http://www-accountancy.massey.ac.nz/Publications.htm>, (Last Accessed August,2016).

information from its source and in normal course of business have knowledge of the impact of the information. They are usually aware of the consequences of any misuse of this information due to their standing in the market and experience.¹⁷⁵ Secondary insiders generally access the information through primary insiders. Some jurisdictions deduce that primary insiders have access to Inside Information. Corporate entities are included in insiders according to some jurisdictions along with natural persons in other dominions only natural persons are limited to be insiders.¹⁷⁶

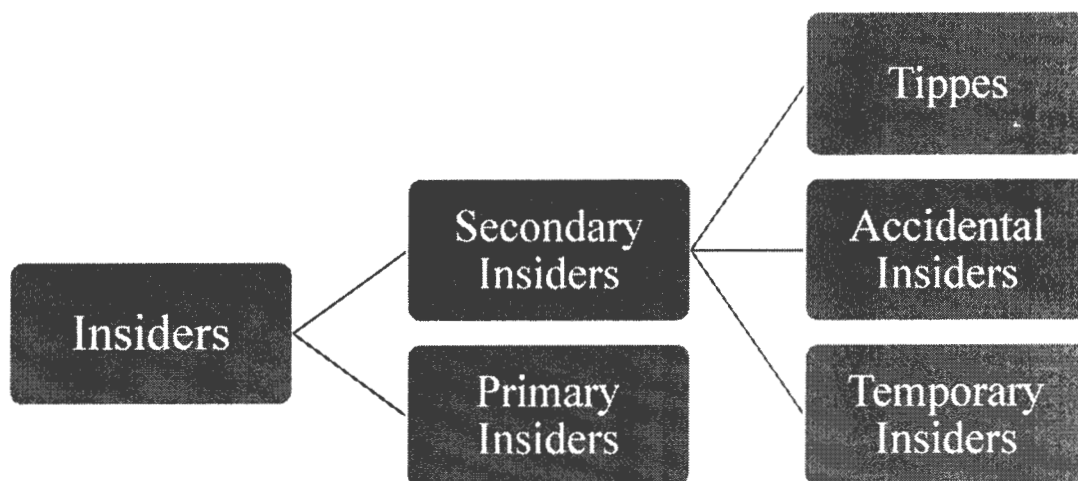


Figure 4 Some categories of Insiders

3.5.1 Primary Insiders

In this category management of the company and its administration is included. The scope of insiders' definition varies jurisdiction to jurisdiction. In some jurisdictions insider

¹⁷⁵ Supra note, 120.

¹⁷⁶ Ibid.

is defined as employee of the company, any service provider¹⁷⁷ who may have connection with the Inside Information and large shareholders as well. Primary insiders were made liable for Insider Trading law in *Kardon v National Gypsum Co.*¹⁷⁸

Primary insider's definition should comprehend any employee in the company who generate, receive, conduct, manage or circulate the Inside Information and any outsiders who get in touch with that information. If there is any regulator or any other body in access to Inside Information at any point, they must also be included in definition of insiders. For enforcement purposes the burden of proof to nullify any knowledge of Inside Information must be on the insider.

3.5.2 Secondary Insiders

This category includes individuals who receive Inside Information from another person. This other person is not always an insider rather can be a tippee or accidental insider or in some cases a temporary insider.

3.5.3 Tippee

The process of passing Inside Information from an insider to a 2nd party, to empower that party to use that information is "tipping".¹⁷⁹ The one who receive

¹⁷⁷ These include outside lawyers, accountants and financial advisers.

¹⁷⁸ *Kardon v. National Gypsum Co.*, 73 F. Supp. 798 (E.D. Pa. 1947) available at <http://law.justia.com/cases/federal/district-courts/FSupp/73/798/2125350/> (Last Accessed June, 2015).

¹⁷⁹ *Supra* note,174 .

information from primary insider is known as “tippee”. Almost all jurisdictions prohibit the trade by tippees.^{180 181} But on the issue of secondary tippees there is difference.

3.5.4 Accidental Insider

This category includes individuals who do not have access to Inside Information nor have they been tipped but access the material nonpublic information accidentally.¹⁸² Like finding confidential documents,¹⁸³ overhearing conversation or any other similar incident. In most jurisdictions they fall in secondary insiders and have the similar responsibilities. In *Re Cady, Roberts and Co*¹⁸⁴, US court interpreted the law to draw the duties other than fiduciary duties, hence including outsiders or persons not directly connected to company to be liable of Insider Trading in case of any contravention of law.¹⁸⁵

¹⁸⁰ In *Dirks v SEC* US Supreme Court revised this issue. It was held that a tippee is not liable unless the tipper is under a fiduciary duty. Moreover the tipper himself gained through the tip. Next the “personal gains” were interpreted to extend their boundaries from monetary benefits to good will, repute and any possible advances from a friend to whom information is provided.

¹⁸¹ Nasser Arshadi and Thomas H. Eysell, “The Law and Finance of Corporate Insider Trading: Theory and Evidence”, *The Journal of Finance*, 52:53(1993):749-751. Available at: <http://www.jstor.org/stable/2329428>. (Last Accessed August 13th, 2016).

¹⁸² Supra note 112,158.

¹⁸³ *Chiarella v. United States*, 445 U.S. 222 (1980) available at <https://supreme.justia.com/cases/federal/us/445/222/case.html> this case involves an individual working in printing. He acquired privileged information regarding a takeover bid. In fact he was assigned to publish the announcement about this take over.

¹⁸⁴ *Re Cady, Roberts and Co*, 40 SEC 907 (1961) available at <http://insidertrading.procon.org/sourcefiles/CadyRobertsCo.pdf> the “disclose or abstain” theory is among fundamental theories of inside dealing legislation. This case is the initial point of this theory’s origin. It states that if any one possess Inside Information should make this information public or abstain from trading. Trade will only be legal if Inside Information is disclosed before trading.

¹⁸⁵ *Ibid.*, 912. SEC stressed that the duty in this respect is imposed through 02 principles. These principles are (i) a relationship providing or giving access to Inside Information through direct or indirect method while this information is solely for the issuer and its functions. (ii) The delinquency of insiders transActing without disclosing the information.

3.5.5 Temporary Insiders

This category includes individuals who become aware of Inside Information while performing their professional duties. These insiders may include lawyers, accountants, auditors, consultants, analysts and investment bankers. These insiders do have the capability to use Inside Information hence strict codes must be issued for temporary insiders. In *SEC v Texas Gulf Sulphur Co.*¹⁸⁶ it established that mere possession implies the duty to “abstain or disclose”, besides this the extension of Rule 10b-5 in this case included temporary insiders¹⁸⁷ for the first time

3.6 Prohibited Activities

Legislation to control Inside Information abuse mainly depends on how well the prohibited activities have been defined. A narrow definition tends to provide an escape for guilty and a wider definition has the tendency to hinder legitimate trade. Enforcement of law is directly related with the standard of legislative intellect in defining an offence. Hence it is very important to precisely mention prohibited activities and related penalties. Generally prohibited activities include trading, tipping and any other use of Inside Information. Trading includes any acquisition or disposition based on the Inside Information by any insiders, tippees or any one in possession of Inside Information.

Trading is prohibited for the person in possession himself and for any third party as well. Tipping is prohibited for primary and secondary insiders but legislative prohibition on secondary tippees is hard to find in legal literature. In Singapore,¹⁸⁸ Communication of

¹⁸⁶ *SEC v Texas Gulf Sulphur Co.*, 401 F 2d 833 (2d Cir 1968).

¹⁸⁷ For instance, lawyers, brokers and accountants due to their special connection with company.

¹⁸⁸ SECURITIES AND FUTURES Act 2001, Singapore available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p>; (Last accessed July, 2016).

inside information is prohibited to another person if he is expected to use that information in trading in securities market. A side from trading any other use of Inside Information is also prohibited in some jurisdictions.¹⁸⁹ The intent is also an important factor while deciding the offence of Insider Trading. In many jurisdictions the offence must be committed willfully or with gross negligence.¹⁹⁰ If the law does not require the presence of intent at all it may result in penalization of an unaware person. A moderate approach to this issue will be inclusion of rebuttable presumption that insiders have access to inside information unless otherwise proved. On the other hand no proof on intent should be needed in disclosure of inside information to tippees.

3.7 Defenses to Insider Trading

While regulating Inside Information abuse there are certain exemptions which serve in specific circumstances. Disclosing information to a non- insider or using Inside Information does not amount to inside trading. Some of these defenses are being mentioned below.

3.7.1 Disclosure required under law

If any Disclosure is required by law it will not be insider dealing. In normal course of business insiders are required to disclose the information to accountants, lawyers or brokers. This Disclosure is a necessary requirement of law.¹⁹¹ So, this Disclosure is not an

¹⁸⁹ Ibid.

¹⁹⁰ *Supra note*, 128. See regulations in Norway and Finland.

¹⁹¹ Bradley J. Bondi, Steven D. Lofchie, The Law Of Insider Trading: Legal Theories, Common Defenses, And Best Practices For Ensuring Compliance, *Nyu Journal Of Law & Business*, 8:151, available at: <http://ssrn.com/abstract=2028459>. (Last Accessed August 2016).

offence. The professionals to whom the information has been disclosed are duty bound to observe professional secrecy.

3.7.2 Operations of the State

The state run transactions have been exempted from Insider Trading offence by EU Directive on Insider Trading.¹⁹² Immunity to state, central bank and persons carrying out operations of state for prosecution purposes has been exempted from the scope of insider dealing.

3.7.3 Chinese wall

Chinese wall is a defense which provides exemption to a person who is supposed to have Inside Information but due to procedural restraints did not have any access to the information. This defense can only be acceptable if the procedural rules and regulation beyond any ambiguity support the claim.¹⁹³

3.7.4 Research based on market data

Investment consultancy has a great role in securities markets. Market participants give due importance to analysis reports and other estimation about different securities and

¹⁹² Official Journal L 334, 18/11/1989 P. 0030 – 0032 – now superseded by the EU Market Abuse Directive. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596>. (Last Accessed March, 2016).

¹⁹³ It is a usual practice for entities to transact in securities market while one branch or section of the same entity has the material Inside Information about same market or even the same issuer. See John H. Sturc & Catharine W. Cummer, *Possession vs. Use for Insider Trading Liability*, Insights, June 1998, at 3, 7 (clarifying "typical situation a corporate entity or organization being an investor, these entities have several compartments functioning separately. In this scenario one department trades in securities while the other has privileged information"). The liability of "knowing possession" can be evaded by induction of a "Chinese Wall". This Chinese wall is a corpus of rules, principles and measures to avoid any leak of information between different branches of a single entity. See Marc I. Steinberg & John Fletcher, *Compliance Programs for Insider Trading*; 47 SMU L. REV. 1783, 1803-04 (1994) ("Chinese Wall procedures consist of policies and procedures designed to control the flow of material, nonpublic information within a multiservice financial firm."). Any flow of Inside Information from one side cannot seep to other side if a Chinese wall is present.

issues. Any trading activity based on these investment analysis and research is not considered insider trading whether this results in actual gain or any loss avoided.¹⁹⁴

3.7.5 Completion of an unaffected Transaction

If a transaction was planned before Disclosure of any Inside Information and it can be proved its completion will not amount to inside trading. For example in US regulation Rule 10b5-1 an affirmative defense has been provided by SEC to allow any trade conducted in good faith prior to Disclosure of material nonpublic information. For a better understanding Rule 10b5-1¹⁹⁵ is to be consulted.¹⁹⁶

3.8 Criminal and Civil liabilities for Insider Trading

The original source of legislation prohibiting Insider Trading is supposed to be the US regulation Securities Act 1933 and the Securities and Exchange Act 1934. The US congress legislated these Acts in order to control the securities market abuses at that time.¹⁹⁷ In other countries Insider Trading was prohibited in mid-80 and 90's. Till 1990 only 34 out of 103 countries had legislated on Insider Trading.¹⁹⁸ Afterwards a large number of countries took initiative to control this menace through proper legislation and

¹⁹⁴ Christopher P. Montagano, "The Global Crackdown on Insider Trading: A Silver Lining to the "Great Recession", *Indiana Journal of Global Legal Studies*, 19: 2 (2012), 575-598. Available at <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1493&context=ijgls>. (Last Accessed July, 2016).

¹⁹⁵ Final Rule: Selective Disclosure and Insider Trading: Provisions of Rule 10b5-1 available at https://www.sec.gov/rules/final/33-7881.htm#P264_100527 (Last accessed on July 15th, 2016).

¹⁹⁶ See annex-IV.

¹⁹⁷ Christopher P. Montagano, "The Global Crackdown on Insider Trading: A Silver Lining to the "Great Recession", *Indiana Journal of Global Legal Studies*, Vol. 19, No. 2 (Summer 2012), 575-598 (citing thomas C. Newkirk, Assoc. Dir., Div. of Enforcement, SEC, & Melissa A. Robertson, Senior Counsel, Div. of Enforcement, SEC, Insider Trading – A U.S. Perspective, Remarks at the 16th International Symposium on Economic Crime, Jesus College, Cambridge, England (Sept. 19, 1998), available at <http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm>.)

¹⁹⁸ Utpal Bhattacharya and Hazem Daouk, "The World Price of Insider Trading", *Journal of Finance* 57(2002):75-108

till 2000 almost 87 jurisdictions had adopted the law regarding Insider Trading prohibition.¹⁹⁹

Another interesting fact is that till 1990 only 09 countries prosecuted someone for Insider Trading but till 2000 this number increased to 38.²⁰⁰ These prohibitions worldwide resulted in civil liabilities and criminal provisions throughout the world.²⁰¹ However in Pakistan till 2002 no concept of penal sanctions prevailed.²⁰² A Stock Market crash in 2002 gave rise to need of criminal provisions. But till 2012 no penal sanctions were provided in Pakistan only civil liabilities were present for Insider Trading and inappropriate Disclosure was also prohibited.²⁰³

These civil liabilities include fine on person involved in the offence, fine to be paid to victim, paid to Commission and removal from post.²⁰⁴ Being a landmark scenario 2002 Stock Market crash raised some important questions. The Securities market watch dog and legislature both started to think about criminal penalties for Insider Trading and similar offences. Now finally in Securities Act 2015 these criminal penalties are introduced. To get a better understanding about punitive measures for offence of inside dealing a comparative review will serve the purpose.

¹⁹⁹ Ibid.

²⁰⁰ Utpal Bhattacharya and Hazem Daouk, "The World Price of Insider Trading", *Journal of Finance* 57(2002):75-108

²⁰¹ Ibid.

²⁰² See Securities and Exchange Ordinance, 1969, available at <https://www.secp.gov.pk/document/companies-ordinance-2016/?wpdmdl=21214> . (Last accessed on May 2016).

²⁰³ Ibid.

²⁰⁴ Ibid.

3.8.1 A brief view of criminal sanctions in some jurisdictions

To start with the pioneer of insider dealing legislation, USA, the criminal sanctions here seems quite appropriate as compare to the Stock Market of the country. Any natural person will be punished with 20 years of imprisonment or a maximum fine of USD 5,000,000, and the maximum fine for legal persons is \$25,000,000.²⁰⁵ In UK maximum imprisonment²⁰⁶ for Insider Trading is 07 years or an unlimited fine. In Japan the Financial Markets Abuse Act imposes a fine of JPY²⁰⁷ 3 million and 03 years of imprisonment.²⁰⁸

Australia penalized the offender with the AUD\$495,000 or increasing the magnitude of illegal gains three times, or 10 years imprisonment in case of any violation of Insider Trading law.²⁰⁹ The case of Canada is different than most of the jurisdictions as the definition of Insider Trading as an offence is different for civil and criminal liabilities. The maximum fine imposed under criminal penalty will be an equal amount of illegal gain through insider trading and imprisonment may be 10 years. In Canada tipping is punished separately from insider trading by imprisonment up to 05 years.²¹⁰

²⁰⁵ Insider Trading Policy 2013 of US Government available at https://www.sec.gov/Archives/edgar/data/25743/000138713113000737/ex14_02.htm, (Last accessed on July 15, 2016).

²⁰⁶ James H. Thompson, "A Global Comparison of Insider Trading Regulations", *International Journal of Accounting and Financial Reporting*, 3 : 1, ISSN 2162-3082 ,(2013) .

²⁰⁷ Japanese Yen.

²⁰⁸ Thompson, "A Global Comparison of Insider Trading Regulations.

²⁰⁹ Ibid.

²¹⁰ Ibid.

In India fine imposed will be twenty five million Indian Rupees or three time the profit gained, which ever will be higher. The imprisonment for this offence will be from one to ten years. This has been summed up in the table below:

	USA ²¹¹	UK	Australia	China	Japan	India	Pakistan
Maximum Fine	\$5,000,000,	Unlimited fine	AUD\$495,000 or 3 X total benefit gained	five times the illegal proceeds	JPY 3 million	3 times the amount of profits or 250 million Rupees	3 times the amount of profit or 200 million Rupees
Maximum Sentence	20 years.	07 years	10 years	10 years	03years	1-10 years	03 years

Table 3.2 A comparison of criminal sanctions in different jurisdictions.

3.9 Disclosure requirements and procedure

An efficient and formal Disclosure of information is the back bone of Inside Information abuse structure.²¹² A general perception about Disclosure is that it reduces the effect of upper hand insider and levels the field for all market contributors.²¹³ Public Disclosure of material information makes the Stock Market an equal opportunity playground for all investors. Disclosure requirements are almost a mandatory part of

²¹¹ Insider Trading Policy 2013 of US Government available at https://www.sec.gov/Archives/edgar/data/25743/000138713113000737/ex14_02.htm, (Last accessed on July 15, 2016).

²¹² William J. McNally and Brian F. Smith, "The Effect of Transparency on Insider Trading Disclosure", *Canadian Public Policy / Analyse de Politiques*, 36:3 (2010), 345-358, available at <http://www.jstor.org/stable/20799661>. (Last Accessed March 2016).

²¹³ Michael J. Fishman and Kathleen M. Hagerty, "The Mandatory Disclosure of Trades and Market Liquidity", *The Review of Financial Studies*, 8:3(autumn, 1995):637-676, available at: <http://www.jstor.org/stable/2962235> (Last Accessed March, 2016).

market abuse legislation.²¹⁴ For Inside Information abuse control, all of the burden lies on information being public or nonpublic.

A mere requirement of Disclosure of nonpublic information cannot serve the purpose hence a complete procedure laid out is a must. Along with mandatory disclosure requirement, some exceptions like future plans of a company to some extent are exempted from Disclosure.²¹⁵ Hence by imposing conditions of Disclosure results in minimizing the time for which information will remain non –public. It will resultantly control Insider Trading. As far as disclosure requirement is concerned it is present in the Securities Act 2015 but its procedural lay out is absent.

Some of the major issues to be addressed are manner in which disclosure will be considered complete and manner of publication must be addressed by Pakistani legislation. For example in UK, Market Abuse Regulation²¹⁶ deals with significant issue like delaying disclosure of Inside Information, Equivalent information, Publication of information on internet site²¹⁷ etc.

3.10 Market Manipulation and Inside Dealing

Market manipulation and inside dealing are bonded together in a way that numerous jurisdictions deal with Insider Trading as a type of market manipulation. To investigate this relation it is necessary to have an idea of market manipulation here. Market

²¹⁴ Ibid.

²¹⁵ Steven Huddart, John S. Hughes and Carolyn B. Levine, “Public Disclosure and Dissimulation of Insider Trades”, *Econometrica*, 69: 3 (May, 2001), 665-681. Available at <http://www.jstor.org/stable/2692205>. (Last accessed March 2016).

²¹⁶ Market Abuse Regulation 2016, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596> (Last Accessed June, 2016).

²¹⁷ FCA hand book available at <https://www.handbook.fca.org.uk/handbook/DTR/6/3.html#D90> (Last accessed June 2016).

manipulation does not have a compact and exhaustive definition in legal or financial writings.²¹⁸

One of the standard definitions is available in a US case *Cargil Inc. v. Hardin*²¹⁹, according to this case market manipulation is “activity, scheme or artifice” that purposefully effects the value of a financial instrument,²²⁰ and brings a change in price instead of the actual price without this activity. One more definition is found in California Law Review in 1940.²²¹

According to this definition market manipulation is bringing synthetic changes in price of securities rather than changes due to normal course of business in any free financial market.²²² One research claim, market manipulation demonstrates that the players of a market are being fooled.²²³ There are several definitions of market manipulation but most common and agreed features include i) artificial or synthetic device used in market ii) intention iii) artificial price.²²⁴ Some essential components of market manipulation are as follows

The “trigger”: trades to bring specific price in market.

The Target: the price-making position by the potentially benefited trader.

²¹⁸ See generally Matthijs Nelemans, “Redefining Trade-Based Market Manipulation”, *University law review*, 42(2008), 1169. Available at: <http://scholar.valpo.edu/vulr/vol42/iss4/>. (Last Accessed March, 2016).

²¹⁹ *Cargil Inc. v. Hardin*, 452 F 2d 1154, 1163, 1167-70 (1971).

²²⁰ Rebecca Söderström, Regulating, “Market Manipulation An Approach to designing Regulatory Principles”, *Uppsala Faculty of Law*, Working Paper 2011:1

²²¹ *Ibid.*, quoting Porterfield, 378.

²²² *Ibid.*

²²³ , Rosa M. Abrantes-Metz and Sumanth Addanki, “Is the Market being fooled? An Error-Based Screen for Manipulation” (August, 2000), Available at: <https://ssrn.com/abstract=1007348> <http://dx.doi.org/10.2139/ssrn.1007348>. (Last Accessed July, 2016).

²²⁴ *Ibid.*

The interconnection: link between trigger and target²²⁵

3.10.1 Types of Market Manipulation

Market manipulation has a lot of different forms. Sometimes the market manipulation device used is the material information, on other instances it may be the specific hardware to rapidly flow transaction into market to give an impression of heavy trading. The motive behind market manipulation can be different as to avoid loss, gain some profit, and incur losses on a rival.²²⁶ At some times the motive may also be a hostile acquisition or merger. Most commonly used tool in market manipulation is Inside Information in different arrangements. Some of the types of market manipulation are being given as under.

- i. **Painting the tape/ Runs:** several trades to imprint an activity or price movement to achieve higher rates.
- ii. **Wash sales/ Wash trade²²⁷:** fake trade or transaction meanwhile no actual transfer of ownership takes place.
- iii. **Improper matched orders:** simultaneous buying and selling of identical price and magnitude through two parties who mutually conduct these trades.
- iv. **Advancing the bid:** fake increase in auction price to increase value of a security.

²²⁵ Shaun D. Ledgerwood And Paul R. Carpenter, "A Framework for the Analysis of Market Manipulation", The Brattle Group, Review of Law and Economics, DOI: 10.1515/1555-5879.1577

²²⁶ John R. Thompson, ed., "Regulation of Stock Market Manipulation", *The Yale Law Journal*, 56:3 (1947), 509-533 Available :<http://www.jstor.org/stable/793284> (Last Accessed July,2016).

²²⁷ Ibid.

- v. **Pumping and dumping**²²⁸: price is inflated with false and misleading positive statements about owned securities. After some time all stock is dumped in market on lower price hence the investor suffers loss.
- vi. **Marking the close**: any trade at close of market with intent of varying the closing price.
- vii. **Lure and Squeeze**²²⁹: creating artificial prices by using shortage of an asset in a market. Mostly this scheme is applied in companies which seem to be going bankrupt. The price of asset gets lower as people tend to short that company due to its image. When the share price gets its lowest point, preparators of this scheme start buying the stock. Now the company announces a deal with its creditors and the buyers start to sell their stock meanwhile the price goes up. Hence gaining unlawful profit.
- viii. **Churning**: buying and selling by a single trader to fake heavy trades with intention of attracting investors and increase value of security.
- ix. **Stock Bashing**: bringing an asset at low price through false or misleading news or information²³⁰
- x. **Ramping (the market)**: making quick profit by raising price of shares and pretending heavy trading in market.
- xi. **Bear raid**²³¹: bringing the rate of shares down by increased or decreased transactions.

²²⁸ Asim Ijaz Khwaja, Atif Mian, Trading in Phantom Markets: Price Manipulation in an Emerging Stock Market, (November 2003) Available at <https://pdfs.semanticscholar.org/10fb/c7b8b267ddf0038d4f65edd39a9d5a550a3e.pdf>. (Last Accessed September, 2016).

²²⁹ Albert S. Kyle and S. Viswanathan, the American Economic Review, 98: 2, Papers and Proceedings of the One Hundred Twentieth Annual Meeting of the American Economic Association (May, 2008), 274-279.

²³⁰ Supra note 191.

²³¹ Franklin Allen and Douglas Gale, Stock-Price Manipulation, The Review of Financial Studies, 5: 3 (1992)503-529 Oxford University Press: The Society for Financial Studies. Available at: <http://www.jstor.org/stable/2962136>. (Last Accessed March 2016).

xii. **Quote stuffing** : flooding of market by using specialized hardware. Usually this type of schemes are implanted by retail traders to overthrow slow participants in the market.²³²

Above mentioned are some of the many types of market manipulation schemes. The relation of Inside Information abuse and market manipulation is obvious and evident by merely looking towards the techniques of market manipulation. Almost all forms of market manipulation is based or linked with Inside Information. Market manipulation damages the accurate determinants of price in stock market.²³³ Even if no use of material information is present initially, after the implanted devise produce desired illegal results, the possible outcomes are hidden from market.

Whenever any manipulative technique is followed successfully, its aftermaths provide a particular insight in future market transactions of the market to the manipulators. These insights are actual Inside Information. This is why most jurisdictions deal with inside dealing as a form of market manipulation.²³⁴ In Pakistan market manipulation and inside dealing have been addressed as separate, distinct misconducts in financial markets.²³⁵ To eliminate complexity, bring coherence and consistency, an approach is needed to join insider dealing and market manipulation. It will not only bring harmony with international practice rather a step towards proficient and comprehensive legislation.

²³² See further Bahram Moazeni, Faride Asadollahi, "Manipulation of stock price and its consequences", *European Online Journal of Natural and Social Sciences* (2013); ISSN 1805-3602 www.european-science.com,430:2,3, 430-433, available at <http://european-science.com/eojnss/article/viewFile/412/pdf>

²³³ Stephen M. Bainbridge, *Insider Trading*, available at <http://encyclo.findlaw.com/5650book.pdf>. (Accessed on April 15th, 2015).

²³⁴ *Supra note*, 101.

²³⁵ See Securities Act 2015, part X and XI.

3.11 A Critique of Pakistani Legal Regime

Salient features of insider information abuse legislation have been discussed in preceding sections. Now a critique of Securities Act 2015 is being presented in the light of above discussion. Analysis of Inside Information definition as available in Securities Act 2015 does not provide some very essential terms. The term “material” is presumed to be a vital part of Inside Information definition, however this is absent from Pakistani law.²³⁶ Along with it any attribution towards precise or specific information is not present in the Act. Any attribution towards materiality of information with regard to its scope, impact or importance is not available. Any of these issues are not addressed in the new legal regime.

For insiders person connection approach is adopted but it lacks a broad view hence fails to include temporary and accidental insiders. This causes a grave difficulty while prosecuting these insiders. The study revealed Insider Trading regime is inclined towards a broader approach of defining insiders, Inside Information and related elements. Pakistani financial market is at the verge of online or internet based revolution in securities trading. For simplification and efficiency a connection information approach with a blend of connected person approach will be the best possibility.²³⁷ As compared to only person connection approach a balanced approach with features of both will be more result oriented.²³⁸ In this approach listing of all possible connected persons and providing exemptions wisely will be the core issue.²³⁹ Some jurisdiction have used this approach to

²³⁶ See section 130 of Securities Act 2015.

²³⁷ As in UK and Singapore models.

²³⁸ The Definition Of “Insider” In Section 3 Of The *Securities Markets Act 1988: A Review And Comparison With Other Jurisdictions*, Discussion Paper Series 218, Massey University, School Of Accountancy (2003). Available At [Http://www-accountancy.massey.ac.nz/publications.htm](http://www-accountancy.massey.ac.nz/publications.htm) . (Last Accessed July, 2016).

²³⁹ Roman Tomasic, James Jackson and Robin Woellner, *Corporations Law: Principles, Policy and Process* (4th ed, 2002) 998.

deal with these issue. In Singapore the connected person list seems very exhaustive. In UK legislation connected persons' list is not much elaborate moreover presumption of *mens rea* is not similar as in Singapore.²⁴⁰

In terms of prohibited activities a major lacuna is lack of issues addressed including tender offer and prohibition on intermediaries²⁴¹ for dealing in transaction based on Inside Information. Tender offer²⁴² is a frequently practiced form of trade and is equally prone to Inside Information abuse, Pakistan's law is silent on this issue altogether. An addition of tender offer in the covered areas of insider dealing law will yield into legal consistency and fairness in market.

Disclosure requirements are present but not exhaustive. Some core issue like medium of disclosure, delaying disclosure of inside information, equivalent information, publication of information through internet are not addressed appropriately.²⁴³ Additionally disclosure of trades of BOD members and other Insiders are not streamlined too. For defenses, Chinese wall and operations of state must be introduced for fair and just applicability of law.²⁴⁴ Furthermore, public companies have not been held liable to incorporate codes for Disclosure of information and control of its flow.

²⁴⁰ Ibid.

²⁴¹ For details see section 2.4,

²⁴² For details see section 3.4,56.

²⁴³ See section 3.7.1, 64.

²⁴⁴ For details Bradley J. Bondi, Steven D. Lofchie, "The Law Of Insider Trading: Legal Theories, Common Defenses, And Best Practices For Ensuring Compliance", *Nyu Journal Of Law & Business*, 8:151, Available at: <http://ssrn.com/abstrAct=2028459>. (Last Accessed August 2016).

Chapter #04

4. Substantive Law Reforms Proposal

The Securities Act 2015, deals with the abuse of Inside Information. This law replaces the SEO 1969. This new regime could not provide complete financial protection to investors and financial markets. The inadequacies and loopholes need to be addressed for an efficient legislative piece to guard the interests of investors, corporate entities and financial markets as a whole. Some of the major inadequacies include a complete absence of Insider Trading in tender offer setting. The term “insiders” should be redefined as the along with the person connected, the person having information should be included as well. This inclusion of information connection approach will bring ease and efficiency for the purpose of establishing the occurrence of offence.

Another significant issue is complete silence of the securities act on liability of intermediaries in this offence. As a normal course of business intermediaries perform most of the actual trading in financial markets. There are incidents which prove their involvement in the Insider Trading hence they should be made liable.

In the light of these observations some provisions have been proposed. It is to be evident that exact and accurate wording of the provisions is eventually a task of parliamentary experts. The drafting skills of the researcher are no match to the standard hence here the broad and flexible approach should be in focus instead of precise text. The proposed provisions for Inside Information abuse law will be a part of *Securities Act 2015*. This Act contains addresses several issues which are beyond the scope of this

research for example basic definitions, jurisdiction, penalties, licensing and regulation of market participants and other prohibited activities.

4.1 Proposed Provisions For Inside Information Abuse Law

Provision# 01

No person shall indulge in Inside Information abuse of any sort, any contrary action, aiding or abetting shall constitute an offence.

Provision # 02

Inside Information means any material, nonpublic information which is directly or indirectly related to

- a) Listed Securities in financial markets
- b) Derivatives on Commodities
- c) Persons responsible to execute orders in securities market
- d) Intentions of persons concerning securities market transaction.
- e) tender offer

The term material information in this provision means information which is confidential, has the potential to effect investors' decision.

Provision # 03

The term "Insiders" will include:

- i) Any person in possession of Inside Information

- ii) Any person connected to the Inside Information including but not limited to , directors, chief executive officers, shareholders, spouses and children of connected persons.
- iii) Any person who temporarily possess Inside Information in the normal course of business like consultants, lawyers, analysts, auditors, accountants and investment bankers.
- iv) Any person who has been informed by an insider

Provision # 04

Insider Trading shall include:

- a) any person legal or natural, trading directly or indirectly, on the basis of Inside Information related to Listed securities, derivatives on commodities or tender offer
- b) any person, who has been tipped about Inside Information, trading on such information
- c) any insider disclosing information to any person, suggesting or recommending any transaction
- d) tender offer trading based on any material inside information

Provision # 05

Any person dealing in securities, placing orders on behalf of others, responsible for execution of transactions in securities market aids in any transaction knowing that it is

based on Inside Information, will be held liable for abetting and aiding the offence of Insider Trading.

Provision # 06

Any person, while in possession of Inside Information, if trades before public Disclosure, in the same entity whose information he possess will be deemed to committed the offence of Insider Trading if

- i) The trade occurred just before dissimilation of information in the market
- ii) The trade occurred synchronized with time of Disclosure of information
- iii) The trade occurred prior to dissimilation of information in the market.

Hence no defense of trading in good faith will be acceptable

Provision # 07

1-Whenever listed securities issuer or any natural or legal person on behalf of that entity discloses material information to any one, same Disclosure to general public in a prompt and efficient manner shall be made.

Disclosure of Inside Information must be in accordance with the requirements in code of corporate governance and other accounting standards along with the significant events provided but not limited to Changes in control of a company

- a) A company's acquisition or disposition of a significant amount of assets

- b) A company's bankruptcy or receivership
- c) Changes in a company's certifying accountant
- d) Resignations of a company's directors, circumstances for the departure of a director, the appointment or departure of a principal officer, and the election of new directors other than pursuant to a vote of security holders at an annual meeting

3- Any person responsible to order or decide transaction of securities of any issuer shall submit a report of his/her trading within 04 working days.

4- All listed issuers/companies shall maintain a list of all persons who have access to Inside Information and a regular update shall be mandatory.

5- All listed companies shall ensure a proper mechanism to avoid any misuse of Inside Information. This will include blockage of any Inside Information flow to any person not necessarily required to receive that information and adaptation of any "Chinese wall" mechanism.

Provision # 08

No person shall be deemed to commit offence of Insider Trading provided that:

- i) The Disclosure of information was required by law
- ii) The Disclosure was for the purpose of accounting or auditing requirement or consultation in normal course of business
- iii) The Disclosure falls in the category of new subscription offer

4.2 Potential Criticism of Proposed Provisions

Provisions proposed here are supposed to address an inadequacy in the present regime. The definition of basic terms like “financial market”, “financial product”, “securities”, “and securities exchange” will be as provided in the Securities Act 2015.

Provision # 01

This provision states the violation of this act as an offence, this is in accordance with the current regime.

Provision # 02

This proposed provision contains an additional term of “material” and tender offer. Inclusion of “material” will bring more precision and specification in the test of “Inside Information”. In almost every case, the prosecution or the watchdog has to prove whether the information used falls into category of Inside Information or not. This addition will bring ease and conformity with many other jurisdictions internationally. The tender offer setting is a major grey area to be addressed, hence it will curtail any mal practices regarding Inside Information and market fairness.

Provision # 03

The most obvious question here is why to mix up two different theories? As the connected person approach and information connection approach both have different theoretical backgrounds. The simple response is, there exists no rule or doctrine which prohibits amalgamation of two theories for any legislation. Moreover, this will provide a

clear and concrete intent of the law to prohibit any Inside Information abuse with any channel being followed. It will also facilitate in establishing the occurrence of offence.²⁴⁵

Provision # 04

This provision states the acts which amount to Insider Trading and no significant changes are recommended.

Provision # 05

This provision addresses the liability of intermediaries in case of trading based on Inside Information. It is proposed to hold them liable for abetting and aiding the crime of Insider Trading. As it has been observed that 44% of brokers' income²⁴⁶ is from Inside Information trading, thus it will play a very vital role in fairness of market.

Provision # 06

This proposed provision is supposed to suppress, any Inside Information abuse from connected insiders and mitigates the good faith defense. This will provide a strict application of law and "disclose or abstain" rule can be implemented efficiently as per international practice.

Provision # 07

This provision provides the responsibilities of companies regarding Disclosure of information. The companies' responsibilities towards Disclosure of information can

²⁴⁵ In Singapore and Hong Kong insiders are defines as "connected persons", this term connected persons is broadly defined in these jurisdictions and include directors, officers, substantial shareholders of company and related companies and persons who have possession of Inside Information by virtue of any relation to the company or any connected person.

²⁴⁶ Asim Ijaz Khwaja, Atif Mian, "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market", available at: <http://ssrn.com/abstrAct=631722> (Last Accessed on May 27, 2015).

enhance implementation of law if properly addressed and full filed. If a proper mechanism is adopted by a company to secure Inside Information leakage, it can curtail Inside Information abuse simultaneously it can provide the source who used or tipped or mishandled the information. The enhancement in Disclosure of information responsibilities on companies will bring efficiency, fairness and more protection of investor in financial market.

Provision # 08

This proposed provision provides the defenses to Inside Information abuse such as requirement under law or requirement in normal course of business and for any services required for the continuation of business.

The proposed law reforms do not address liabilities and penalties intentionally because the current legal regime has provided both civil and criminal liabilities in case of violation of Insider Trading law. Though these fines and penalties may be increased but this is a minimal issue as compared to broad and flexible approach being adopted in this thesis.

To calculate the merits and demerits of any law or draft some features are observed which include its conceptual soundness, its broad and flexible approach and its capability of enforcement. Hence the proposed provisions are being examined on these grounds as follows.

Conceptual Soundness

The proposed provisions are based on sound understanding of the Inside Information abuse regime. The concepts presented here with regard to Inside Information,

its dissemination and persons concerned with it are well established. The definition of Inside Information is in accordance with international practice. Several jurisdictions define Inside Information with same features.²⁴⁷ The introduction of tender offer brings consistency and efficiency in law as to prohibit any abuse of Inside Information in securities market, commodity exchange and any tender offer setting. The concepts presented here are clear and articulate.

The introduction of tender offer setting, possession of information²⁴⁸ test for inclusion in the term "insider", liabilities on intermediaries, prohibition on trading while possessing Inside Information before public Disclosure and simultaneously providing legitimate and logical defenses demonstrates the clarity and balance in the proposed provisions.

A rational technique has been implemented as to define an offence, its elements, and any possible gateways to be addressed. While dealing with direct market participants any intermediaries have also been made liable to avoid any loopholes. Moreover, public companies have also been addressed to adopt a mechanism for prevention of any Inside Information abuse at the grass root level.

Broad and Flexible Approach

A significant feature of an efficient legal regime is its broad and flexible approach. This is among the key elements to examine merits of any law. The provisions being

²⁴⁷ See further Stephen Herne, "Inside Information: Definitions in Australia, Canada, the U.K., and the U.S", *Journal of Comparative Business and Capital Market Law*, 8:1 (1986):1-19 1, Available at: <http://scholarship.law.upenn.edu/jil/vol8/iss1/1>. (Last Accessed July 2016).

²⁴⁸ See Karen Schoen, Insider Trading: The "Possession Versus Use" Debate, *Universit Of Pennsylvania Law review* (199)148:2390. Available at http://scholarship.law.upenn.edu/penn_law_review/vol148/iss1/12/. (Last Accessed August, 2016).

discussed here tend to follow it. As the definitions are broad and have a lot of room for interpretation while not being vague and ambiguous. An effort has been made to deal with most of the factors concerning any Insider Trading regime. A balanced approach, to deal with prohibited activities leaving no room for fake defenses, while acknowledging any genuine, actual business or legal requirements as exception to the offence has been adopted.

Enforceability

The ultimate goal of any law is to enforce a certain prohibition or permit an act or lay out a specific procedure to be refrain, adopted or followed by the said subjects. Any enactment easy to enforce is supposed to be well drafted enactment. The proposed law reforms attempt to ease the enforcement. Introduction of possession test for an insider is a step to identify any Inside Information abuser easily. As if any person transacts based on Inside Information whether being connected or not will be made liable on the basis of information possession test. This will make it easier for prosecutor to make a person liable of this offence. On the other hand making intermediaries liable for any transaction based on Inside Information will curtail this practice at a greater level and will make the task easier for watchdog when the white knights in financial markets use others as a safety measures. Simultaneously it destroys the defense of working on someone else's orders and not gaining any profit or avoiding any loss thus to avoid any charges.

This proposal will also enhance the capability of courts to decide for unique court cases subsequently a developed and enriched legal domain will be achieved. Additionally disclosure of trades of BOD members and other insiders should be streamline in a rapid and swift manner. For defenses, Chinese wall and operations of state must be introduce for fair and just applicability of law. Furthermore, public companies should be held responsible

for preventive measures to curb Inside Information abuse. A legislative measure should be taken to impose a mandatory code of disclosure requirements and inclusion of Chinese wall to control flow of information. Some other measures to address Inside Information abuse are laying out particular techniques, a requirement of pre- approval, every corporate meeting particularly in regard of market transaction must be documented with highest caution. A formal mechanism for communication follow up should be devised and an efficient surveillance system must exist. Another significant aspect is to provide training and awareness.²⁴⁹

With the advent of corporate governance all around the world, a new era of self-governance in public companies has started. There are many codes and practices being followed by the public companies. If Disclosure requirement's code is adopted and implemented by the public companies, it will catalyze the task of eradicating Inside Information abuse.²⁵⁰ Regulators do keep surveillance on financial market but being an outsider they can never be as efficient as companies themselves in order to identify any Inside Information abuse.

It should be made a corporate governance requirement for a company to adopt a formal Disclosure requirement code and specific practices to prevent Insider Trading.²⁵¹ Hence, any public company should adopt a code to prevent Inside Information abuse and proper

²⁴⁹ Supra note 112, 194-200.

²⁵⁰ Maug, Ernst G., Insider Trading Legislation and Corporate Governance (1999). EFA 0664. Available at SSRN: <https://ssrn.com/abstrAct=157598> or <http://dx.doi.org/10.2139/ssrn.157598>, (Last Accessed March, 2016).

²⁵¹ under Section 406 of the Sarbanes-Oxley Act of 2002, SEC laid out some rules which need issuers to announce (i) in annual reports, if a code of conduct has been implemented for principal executive officer and senior financial officers, if otherwise a reason explaining the reason of failure to do so should be mentioned (ii) in a Form 8-K or on website, if any alteration or exception is provided to any officers or employees Further details available at <https://www.sec.gov/rules/final/33-8177.htm>. (Last accessed July, 2016).

Disclosure requirements. These codes should be a requisite as the accounting requirements on the basis of corporate social responsibility. As these practices not only bring efficiency and fairness to market but also play a positive role in building a law abiding society. These practices or codes may include some of the following issues:

- a. Time required to disclose information
- b. Trades of insiders to be disclosed
- c. Proper Chinese walls to be inserted in the management
- d. Awareness and education about insider dealing laws in the insiders, officials, employees and any person involved in Inside Information generation or mechanism
- e. Public companies self-imposed penalties on insider who violates the law
- f. Imposition of fine on any one who contravenes the law.
- g. A regular check on the trading pattern of the corporate entity

A model code of a public limited may include these issues as in code of "Berkshire Hathaway Inc".²⁵² It is a very precise and simple code to be used as a model which addresses several issues very well.

Moreover a code should be devised in the financial market, with mutual consent of all market participants, which should provide penalties and remedies for any incident of Inside Information abuse. The code should impose fine on any public company which is found involved in any kind of inside trading. A trade embargo/restriction as a penalty,

²⁵² Berkshire Hathaway Inc. has been attributed as 4th largest is the fourth largest public company in the world by the Forbes Global 2000 list and formula . It is an American multinational conglomerate holding company with its headquarters in Omaha, Nebraska, United States. The company solely retains GEICO, BNSF Railway, Lubrizol, Dairy Queen, Fruit of the Loom, Helzberg Diamonds, Flight Safety International, and Net Jets, and also owns 26% of the Kraft Heinz Company and several others.

should be imposed on the legal person who violated the law. Any natural person if contravenes the law should be black listed by the Commission for a certain time period from any securities transaction or from holding office in a public listed company. If an intermediary is found involved in any prohibited activity his license should be cancelled.

Conclusions

With a substantive law proposal, this inquiry into the recent legislation on Inside Information abuse has come to end. Some significant observations are being summarized here. The new legislation (Securities Act 2015) is quite an inadequate attempt to govern the securities market from Inside Information abuse. Though long awaited criminal liabilities have been introduced, still a number of issues are neglected. Provisions of Securities Act have been examined in a comparative manner with international practice. A number of short coming are found with respect to broad approach, enforceability, exhaustive issues to be dealt with. This recent legislation could not answer several crucial questions sufficiently. The gaps existed in SEO 1969-as amended up to date till 2012 are present in the Securities Act 2015. Some of the core issues are an ambiguous definition of Inside Information, as discussed earlier. This definition lacks comprehensiveness in describing the attributes to categorize any information Inside Information. Inside Information definition needs a legislative renovation.

The criteria to include information in Inside Information should be broaden, amplified and intensified. It will provide a strong foundation to control Inside Information abuse. Certain key issues of Inside Information definition need to be dealt with due care in order to being a compact, comprehensive and exhaustive law to deal with the issue.

Market manipulation has been linked with inside trading in most jurisdictions to bring harmony, consistency and simplicity. In Pakistani law the same features can be achieved through connecting both these malpractices in legal perspective. Financial market

of Pakistan is in dire need of investors for a persistent growth. An enhanced mechanism for investor protection and efficient market will boost the economy eventually.

Another significant observation is that no procedural progress took place amid new law. A specific time frame to estimate information to be public after its Disclosure for proper dissemination of information in market is a very imperative aspect in Insider Trading laws. Nonetheless no time frame has been given for publication of information or its dissemination in the market. While imposing the duty to abstain from any indulgence in prohibited activities intermediaries have not been addressed directly and particularly. A very common practice of tender offer has not been included in the scope of Insider Trading. There is an absence of procedural lay out for Disclosure requirement under inside trading legislation directly. Moreover a mandatory requirement like other jurisdictions, to adopt a code of public Disclosure and prevention of inside trading for public companies is missing.

The study reveals that no duties have been imposed on intermediaries, broker houses, temporary or accidental insiders, to abstain from and report any Insider Trading activity. Furthermore the act seems a patch work as no changes are found from previous law SEO 1969 amended up to date till 2012. A mere inclusion of some criminal liabilities (as discussed in chapter 3) is not sufficient to deal with all issues faced in this legal regime. It has been observed in this research that Pakistani law has several loopholes and lacunas as compared to existing international practices. If analyzed in the light of US and UK experiences, this law seems to have a number of gaps and weaknesses. As the doctrines being applied in these jurisdiction now a days are an outcome of decades, hence it is out of question to develop the local law at exactly the same standard. However there are some

features quite essential and articulate to be adopted and applied here. The legislative brilliance can provide a chance for the courts to develop an efficient case law, which will eventually lead to operative legal mechanism to secure market transactions and investors.

A legislative obligation for public companies to adopt a code for Disclosure requirements and prevention of Inside Information abuse, will serve the purpose at a greater magnitude. As inscribed in the last chapter, a substantive as well as procedural law renovation is inevitable to ensure fair financial markets.

Before presenting final words some of the future research aspects relative to this research are being mentioned here. As securities Act 2015 is quite a new law so it has unsaturated research data. A study on flow of Inside Information within a company and other business environment with legal aspect, the determinants of Inside Information being material according to law have a feasibility. An enquiry to distinguish the elements which form a civil or criminal liability in any insider dealing case will bring out a novel aspect of this law and its development through case law. As final concluding remarks a summarized form of the earlier stated conclusions is presented here.

1. The new legislation (Securities Act 2015) is quite an inadequate attempt to govern the securities market from Inside Information abuse. Though long awaited criminal liabilities have been introduced, still several grey areas exist
2. A wide and broad approach towards defining Inside Information and insiders is a dire need to tackle the issue efficiently
3. A link between market manipulation and Insider Trading will provide a smooth and even procedural mechanism to curtail most derelictions in financial market.

4. A regime to prevent Inside Information abuse in market will address Insider Trading and other kinds of market manipulation simultaneously. Market manipulation mainly consists of Inside Information abuse with diverse techniques, devices and intentions. Hence a legal regime focused to regulate and prevent Inside Information abuse will subsequently achieve the goal of eradicating market manipulation i.e. Insider Trading.
5. Introduction of tender offer setting, intermediaries, and temporary insiders into the scope of Insider Trading regime will bring sophistication and integration in this law.
6. A legislative obligation ought to be imposed on public companies in order to adopt a code of Disclosure requirements and prevention of Inside Information abuse at any level.
7. An obligation to abstain and report any incident of Insider Trading should be imposed on all intermediaries, possible insiders(actual ,temporary and accidental), all officials ,employees and any persons connected to companies, stock exchanges, accountancy firms, auditors, investment or consultancy firms and legal analysts or solicitors.

Annex- I

Securities and Exchange Ordinance 1969

Section 15E of

15E. Liability for contravention.—(1) any person who contravenes the provisions of sub-section (1) of section 15A shall, on being found guilty of contravention Commission, be liable to fine, which may extend to ten million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher.

(2) In addition to the fine imposed under sub-section (1), such person,—

- (a) may be directed by the Commission, —
 - (i) to surrender to the Commission, an amount equivalent to the gain made or loss avoided by him; or
 - (ii) to pay any other person who has suffered a loss, an amount equivalent to the loss so suffered by such person; and
- (b) may, where such person is an executive officer, director, auditor, advisor, consultant of a listed company, be removed from such office by an order of the Commission and debarred from auditing any listed company for a period of upto three years; or
- (c) may, where such person is registered as a broker or agent, be liable to cancellation of registration.

(3) Where an insider person discloses Inside Information to any other person who is not required to possess such information for any reason, the insider person shall be liable to fine, to be imposed by the Commission, which may extend to thirty million rupees.

The Commission may, by notification in the official Gazette, make regulations to regulate persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public.

Annex-II

Securities Act 2015

PART X INSIDER TRADING

127. Application of this Part.—The provisions of this Part shall apply to listed securities traded by listed companies and insiders described in section 130.

128. Prohibition of Insider Trading.—

(1) No person shall indulge in Insider Trading and any contravention of this section shall be an offence.

(2) Insider Trading shall include,

(a) an insider person transacting any deal, directly or indirectly, using Inside Information involving listed securities to which the Inside Information pertains or using others to transact such deals;

(b) any other person to whom Inside Information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using Inside Information involving listed securities to which the Inside Information pertains or using others to transact such deals;

(c) transaction by any person as specified in clauses (a) and (b) or any other person who knows or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is Inside Information; or

(d) an insider person passing on Inside Information to any other person, or suggesting or recommending to another person to engage in or dealing in such listed securities with or without the Inside Information being disclosed to the person who has dealt in such securities.

(3) The following shall not be deemed as Insider Trading:

(a) any transaction performed under an agreement that was concluded before the time of gaining access to Inside Information; or

(b) the Disclosure of Inside Information by an insider person as required under law.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

129. Inside Information.—For the purposes of this Part the expression “Inside Information” means—

(a) information which has not been made public, relating, directly or indirectly, to one or more issuers of listed securities or to one or more listed securities and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related listed securities;

(b) in relation to derivatives on commodities, information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets;

(c) in relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client's pending orders; or

(d) information regarding decision or intentions of a person to transact any trade in listed securities.

130. Insiders.—Insiders shall include—

(a) any sponsor, executive officer or director of an issuer of listed securities;

(b) any sponsor, executive officer, director or partners of a legal person or unincorporated business association, in which the issuer holds a share or voting rights, directly or indirectly, of twenty-five per cent or more;

(c) any sponsor, executive officer director or partner of a legal person or unincorporated business association who holds, directly or indirectly, a share or voting rights of twenty per cent or more in an issuer of listed securities;

(d) any sponsor, executive officer or director of an organization that has been engaged in the placement of securities or the public offer of securities, as well as any employee of the issuer or an organization participating in the issuing and marketing of such securities who has had access to insider information during his employment, for a period of one year after leaving employment;

(e) any person holding a share, directly or indirectly, which enables him to appoint director on the board, or ten per cent or more shares of an issuer of listed securities;

(f) any sponsor, executive officer or director of a credit institution in which the issuer of listed securities has an account;

(g) any person obtaining Inside Information as part of his employment or when discharging his usual duties in an official capacity or in any other way relating to work performed under contract of employment or otherwise;

(h) any person obtaining Inside Information through unlawful means;

(i) spouse, lineal ascendant or descendant including step children partner or nominee of a person referred to in clauses (a) to (h); and

(j) any person obtaining information or advice to trade in a security from any person referred to in clauses (a) to (i).

131. Listed companies' responsibilities to disclose Inside Information.—

(1) Whenever a listed company or a person acting on their behalf, discloses any Inside Information to any third party in the normal exercise of employment, profession or duties, complete and effective public Disclosure of that information must be made simultaneously:

Provided that the provisions shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.

(2) Listed companies or persons acting on their behalf, shall maintain a list of persons employed, under contract or otherwise in the prescribed manner, who have access to Inside Information and such companies and persons acting on their behalf shall regularly update this list and send it to the Commission whenever required by the Commission.

(3) Listed company shall in the list of persons that have access to insider information state that the persons listed have acknowledged the requirements of this Part related to the prohibition to conclude transactions with the use of Inside Information and to advise the persons to whom they provide Inside Information.

(4) Any person who contravenes the provisions of this section and regulations made hereunder shall commit an offence.

Part XI

133. Market manipulation.—(1) A person shall commit an offence, if—

(a) he places an order, enters into or carries out, directly or indirectly any transactions, in the listed securities of a company that by themselves or in conjunction with any other transaction

(i) increase or are likely to increase, their price with the intention of inducing another person to purchase or subscribe for or to refrain from selling securities issued by the same company or a related company;

(ii) reduce or are likely to reduce, their price with the intention of inducing another person to sell or to refrain from purchasing, securities issued by the same company or a related company;

(iii) stabilise or are likely to stabilise, their price with the intention of inducing another person to sell, purchase or subscribe for or to refrain from selling, purchasing or subscribing for, securities issued by the same company or by a related company; or

(iv) has the effect of misleading investors who trade in securities on the basis of closing prices.

(b) he, for the purposes of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage the sale or purchase of any security, directly or indirectly, does any act or practice or engage in a course of business, or omit to do any act which operates or would operate as a fraud, deceit or manipulation upon any person, in particular-

(i) makes any fictitious quotation;

(ii) creates a false and misleading appearance of active trading in any security;

(iii) effects any transaction in such security which involves no change in its beneficial ownership;

(iv) enters into an order or orders for the purchase and sale of security which will ultimately cancel out each other and will not result in any change in the beneficial ownership of such security;

(v) directly or indirectly, effects a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;

(vi) being a director or an officer of the issuer of a listed equity security or a beneficial owner of not less than ten per cent of such security who is in possession of material facts, omits to disclose to the public through securities exchange any such facts while buying or selling such security.

Annex –III

Section 10b-5 SEC

S240.10b5-1²⁵³ Trading "on the basis of" material nonpublic information in Insider Trading cases.

Preliminary Note to § 240.10b5-1: This provision defines when a purchase or sale constitutes trading "on the basis of" material nonpublic information in Insider Trading cases brought under Section 10(b) of the Act and Rule 10b-5 thereunder. The law of Insider Trading is otherwise defined by judicial opinions construing Rule 10b-5, and Rule 10b5-1 does not modify the scope of Insider Trading law in any other respect.

(a) General. The "manipulative and deceptive devices" prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b-5 thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) Definition of "on the basis of." Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is "on the basis of" material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.

(c) Affirmative defenses.

(1)(i) Subject to paragraph (c)(1)(ii) of this section, a person's purchase or sale is not "on the basis of" material nonpublic information if the person making the purchase or sale demonstrates that:

(A) before becoming aware of the information, the person had:

(1) entered into a binding contract to purchase or sell the security,

(2) instructed another person to purchase or sell the security for the instructing person's account, or

²⁵³ Final Rule: Selective Disclosure and Insider Trading: Provisions of Rule 10b5-1 available at https://www.sec.gov/rules/final/33-7881.htm#P264_100527 (Last accessed on 15th, July 2016)

(3) adopted a written plan for trading securities;

(B) the contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this Section:

(1) specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

(2) included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(3) did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) the purchase or sale that occurred was pursuant to the contract, instruction, or plan. A purchase or sale is not "pursuant to a contract, instruction, or plan" if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when the contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section²⁵⁴.

²⁵⁴ Final Rule: Selective Disclosure and Insider Trading: Provisions of Rule 10b5-1 available at https://www.sec.gov/rules/final/33-7881.htm#P264_100527 (Last accessed on 15th, July 2016).

Select Bibliography

Articles

Aggarwal, Rajesh K. and Wu, Guojun, "Stock Market Manipulation - Theory and Evidence" (AFA 2004 San Diego Meetings, March 11, 2003). Available at SSRN: <http://ssrn.com/abstract=474582>. (Last Accessed: 27-05-2015).

Bainbridge, Stephen M. "An Overview of US Insider Trading Law: Lessons for the EU?" Law & Economics Research Paper Series, Available At: <http://ssrn.com/abstract=654703>. (Last Accessed: 27-05-2015).

_____. "An Overview of Insider Trading Law and Policy: An Introduction to the Insider Trading Research Handbook" (September 4, 2012). "Research Handbook on Insider Trading", Stephen Bainbridge, ed., Edward Elgar Publishing Ltd., 2013; UCLA School of Law, Law-Econ Research Paper No. 12-15. Available at SSRN: <http://ssrn.com/abstract=2141457>. ((Last Accessed: 27-05-2015)

Bebuchuk, Ludan A. and Zvika Neeman. "Investor Protection and Interest Group Politics", the Review of Financial Studies, Vol. 23, No. 3, Corporate Governance (March 2010):1089-1119. Stable URL: <http://www.jstor.org/stable/40604778> (Last Accessed: 27-05-2015 07:32 UTC).

Beny, Laura N. "What Explains Insider Trading Restrictions? International Evidence on the Political Economy of Insider Trading Regulation", Law & Economics Working

Papers Archive: 2003-2009, Art. 81 [2008] Available at http://repository.law.umich.edu/law_econ_archive/art81. (Last Accessed: 27-05-2015).

_____. "Insider Trading Laws and Stock Markets Around the World: An Empirical Contribution to The Theoretical Law and Economics Debate", J Corp. L. 32, no. 2 (2007): 237-300.

_____. "A Comparative Empirical Investigation of Agency And Market Theories of Insider Trading", Discussion Paper No. 264 9/99 Harvard Law School Cambridge, MA 02138

Bhattacharya, Utpal and Hazem Daouk. "The World Price of Insider Trading", Journal of Finance 57, (2002): 75-108

Carla, Tighe and Ron Michener, "The Political Economy of Insider-Trading Laws", The American Economic Review, Vol. 84, No. 2, Papers and Proceedings of the Hundred and Sixth Annual Meeting of the American Economic Association (May, 1994): 164-168 Stable URL: <http://www.jstor.org/stable/2117822> (Accessed: 27-05-2015).

Fernandez, Nuno and Miguel A. Ferreira, "Insider Trading Laws and Stock Price Informativeness", Available at: registration.akm.ch/images/img.php?abstract_file_id=13509. (Last Accessed: 27-05-2015).

Franklin, Kylie, U.S. v. U.K.” Insider Trading Laws: Who Is the Top Dog?” (February 21, 2013). Available at SSRN: <http://ssrn.com/abstract=2308356> or <http://dx.doi.org/10.2139/ssrn.2308356>. (Last Accessed: 27-05-2015).

Gilbert, Aaron, Alireza Tourani-Rad and Tomasz Piotr Wisniewski. “Insiders and the Law: The Impact of Regulatory Change on Insider Trading”, *MIR: Management International Review*, Vol. 47; No. 5, (2007): 745-765, Stable URL: <http://www.jstor.org/stable/40658233>, (Accessed: 27-05-2015 08:14 UTC)

Goshen, Zohar and Parchomovsky, Gideon, On Insider Trading, Markets, and 'Negative' Property Rights In Information (September 2000). Fordham Law & Economics Research Paper No. 06. Available at SSRN: <http://ssrn.com/abstract=242912> or <http://dx.doi.org/10.2139/ssrn.242912>

Huang, Hui “An Empirical Study of the Incidence of Insider Trading in China”, Available at: <http://ssrn.com/abstract=993341>. (Last Accessed: 27-05-2015).

Ibrahim, Ali Adnan. “Corporate Governance in Pakistan: Analysis of Current Challenges and Recommendations for Future Reforms”, *Washington University Global Studies Law Review*, Vol. 5 no.2 (January 2006).

Iqbal, Muhammad Junaid et al. “Insider Ownership and Discretionary Accruals: Empirical Evidences from Pakistani Listed Companies”, *Interdisciplinary Journal of Contemporary Research in Business*, vol 3, No 7(November 2011).

Jerry Sun, Governance Role of Analyst Coverage and Investor Protection, *Financial Analysts Journal*, Vol. 65, No. 6 (Nov. - Dec., 2009), pp. 52-64, Stable URL: <http://www.jstor.org/stable/40390381> (Accessed: 27-05-2015).

Khwaja, Asim Ijaz Atif Mian. "Unchecked Intermediaries: Price Manipulation in an Emerging Stock Market", available at: <http://ssrn.com/abstract=631722>. (Last Accessed: 27-05-2015).

Kimberly D Krawiec, "Fairness, Efficiency and Insider Trading: Deconstructing the Coin of The Realm in the Information Age", Northwestern University Law Review, Vol. 95, No 2(2001). Available at http://scholarship.law.duke.edu/faculty_scholarship/2049/. (Accessed: 27-05-2015).

Loke, Alexander F." From the Fiduciary Theory to Information Abuse: The Changing Fabric of Insider Trading Law in the U.K., Australia and Singapore", The American Journal of Comparative Law, Vol. 54, No. 1 (winter, 2006): 123-172. Stable URL: <http://www.jstor.org/stable/20454487>.(Accessed: 27-05-2015).

Macey, Jonathan R. "Securities Trading: A Contractual Perspective" (1999). Faculty Scholarship Series. Paper 1430. Available At: http://digitalcommons.law.yale.edu/fss_papers/1430. (Last Accessed: 27-05-2015).

Manne, Henry G, "INSIDER TRADING AND PROPERTY RIGHTS IN NEW INFORMATION", Cato Journal, Vol. 4, No. 3 , Cato Institute, Winter 1985.

_____. Insider Trading and the Stock Market .1966.

Maug, Ernst G, "Insider Trading Legislation and Corporate Governance" (March 25, 1999). Available at SSRN: <http://ssrn.com/abstract=157598> or <http://dx.doi.org/10.2139/ssrn.157598>. (Last Accessed: 21-0-2015)

Securities and Exchange Commission of Pakistan (SECP). Report of the Taskforce: Review of the Stock Market situation March 2005, Report June 2005. Available at http://www.secp.gov.pk/annual_reports. (Last Accessed: 27-05-2015).

Thompson, James H. "A Global Comparison of Insider Trading Regulations, International Journal of Accounting and Financial Reporting" ISSN 2162-3082 Vol. 3, No. 1 (2013).

Tighe, Carla and Ron Michener, "The Political Economy of Insider-Trading Laws", The American Economic Review, Vol. 84, No. 2, Papers and Proceedings of the Hundred and Sixth Annual Meeting of the American Economic Association (May, 1994): 164-168.

Treynor, Jack L. and Dean LeBaron. "Insider Trading: Two Comments, Financial Analysts Journal", Vol. 60, No. 3 (May - Jun., 2004), pp. 10+12. Stable URL: <http://www.jstor.org/stable/4480567> (Last Accessed: 27-05-2015).

Yeon, Asmah Laili. The Malaysian Securities Markets, (Paper Read At 4th International Conference On Business And Economic Research (4th October 2013) Proceeding 04 - 05 March 2013. Golden Flower Hotel, Bandung, Indonesia).

Zaman, Faisal. "Effect of Company Related News and Events On Its Stock Prices Research Conducted On Top Six Companies Listed At Karachi Stock Exchange", Available At: <Http://Ssm.Com/Abstract=1019179>. (Last Accessed: 21-0-2015)

Books

Bainbridge, Stephen M. *Insider Trading*, Available at <http://encyclo.findlaw.com/5650book.pdf>. (Last Accessed: 21-0-2015)

_____. An Overview of Insider Trading Law and Policy: An Introduction to the Insider Trading Research Handbook” (September 4, 2012). “Research Handbook on Insider Trading”, Stephen Bainbridge, ed., Edward Elgar Publishing Ltd., 2013; UCLA School of Law, Law-Econ Research Paper No. 12-15. Available at SSRN: <http://ssrn.com/abstract=2141457>. (Last Accessed: 27-05-2015).

Brickey , Kathleen F., *Corporate and White Collar Crime Cases and Materials*, Wolters Kulwer Law & Business,2011.

FCA, *Disclosure Guidance and Transparency Rules sourcebook*, FCA hand book, Financial Conduct Authority, UK available at <https://www.handbook.fca.org.uk/handbook/DTR/6/3.html#D90> (Last accessed June 2016).

Niazi, Samia Maqbool . *The Law of Insider Trading in Pakistan*, Federal Law House, 2007.

Simpson, Silly S., *Corporate Crime, Law and Social Control*, Cambridge University Press, 2002.

Statutes, Regulations, Guidelines

Australia Corporations Act, 2001.

Central Depositories (Licensing and Operations) Regulations, 2016, available at <https://www.secp.gov.pk/document/central-depositories-licensing-and-operations-regulations-2016/?wpdmdl=699> (Last Accessed July 2016).

Central Depository Act, 1997, available at <http://www.na.gov.pk/uploads/documents/Central-Depositories-Act-1997.pdf>. (Last Accessed April 2016).

Code of Corporate Governance, 2002, available at <https://www.secp.gov.pk/document/code-of-corporate-governance-2012-amended-july-2014/?wpdmdl=1472>. (Last Accessed, April 2016).

Companies Ordinance 2016 available at <https://www.secp.gov.pk/document/companies-ordinance-2016/?wpdmdl=21214>- (Last accessed on December, 2016).

Finance Act 1995, available at http://www.na.gov.pk/uploads/documents/1329725424_374.pdf (Last Accessed April, 2016).

Income Tax Ordinance 2001, available at [http://download1.fbr.gov.pk/Docs/2014101313102634216I.T.Ord,2001\(updated\)AmendedJune2014.pdf](http://download1.fbr.gov.pk/Docs/2014101313102634216I.T.Ord,2001(updated)AmendedJune2014.pdf) (Last Accessed May 2016).

Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008, available at <https://www.secp.gov.pk/document/listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2008/> (Last Accessed April 2016).

Listed Companies guidelines (Prohibition of Insider Trading) issued at Islamabad on 27th March 2000. Available at

http://www.secp.gov.pk/Guides/Guide_Listing_Companies_Initial_Public_Offerings.pdf (Last Accessed May, 2016).

Market Abuse Regulation 2016, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596> (Last accessed June, 2016).

Securities and Exchange Ordinance, 1969 (Ordinance No. XVII Of 1969). Latest version available at: http://www.secp.gov.pk/corporatelaws/pdf/secord1969_sep08.pdf

Securities Act 2015 available at Senate of Pakistan website: http://www.senate.gov.pk/uploads/documents/1425543128_334.pdf. (Last Accessed September 15, 2016).

Securities Act of 1933, available at <https://www.sec.gov/about/laws/sa33.pdf>.

Securities Brokers (Licensing and Operations) Regulations 2016, available at <https://www.secp.gov.pk/document/securities-brokers-licensing-and-operations-regulations-2016/?wpdmdl=14922>. (Last Accessed October, 2016).

Stock Exchange Members Rule 2001. Available at http://www.secp.gov.pk/Guides/Guide_Listing_Companies_Initial_Public_Offerings.pdf. (Last Accessed August, 2016).

Reports

Insider Trading Policy 2013 of US Government available at https://www.sec.gov/Archives/edgar/data/25743/000138713113000737/ex14_02.htm, (Last Accessed July 15, 2016).

International Monetary Fund, IMF Country Report No.04/215 Pakistan: Financial System Stability Assessment, including Reports on the observance of Standards and Codes on the following topics: Monetary and Financial Policy Transparency, Banking Supervision, and Securities Regulation (July 2004), (Last Accessed July 15, 2016).

IOSCO report on Insider Trading legislation” Insider Trading how Jurisdiction regulate it” by International Organization of Securities Commissions available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD145.pdf> (Last Accessed on February, 2016).

Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015, available at https://www.secp.gov.pk/document/reporting-and-Disclosure-of-shareholding-directors_executive-officers-and-substantial-shareholders-in-listed-companies-regulations-2015/?wpdmdl=713 (Last Accessed June 2016).

