INSIDER TRADING

Trinidad and Tobago Securities and Exchange Commission
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TTSEC as the Securities Market Regulator

Section 6 of the Securities Act 2012 outlines the functions of the TTSEC. These functions are as follows:

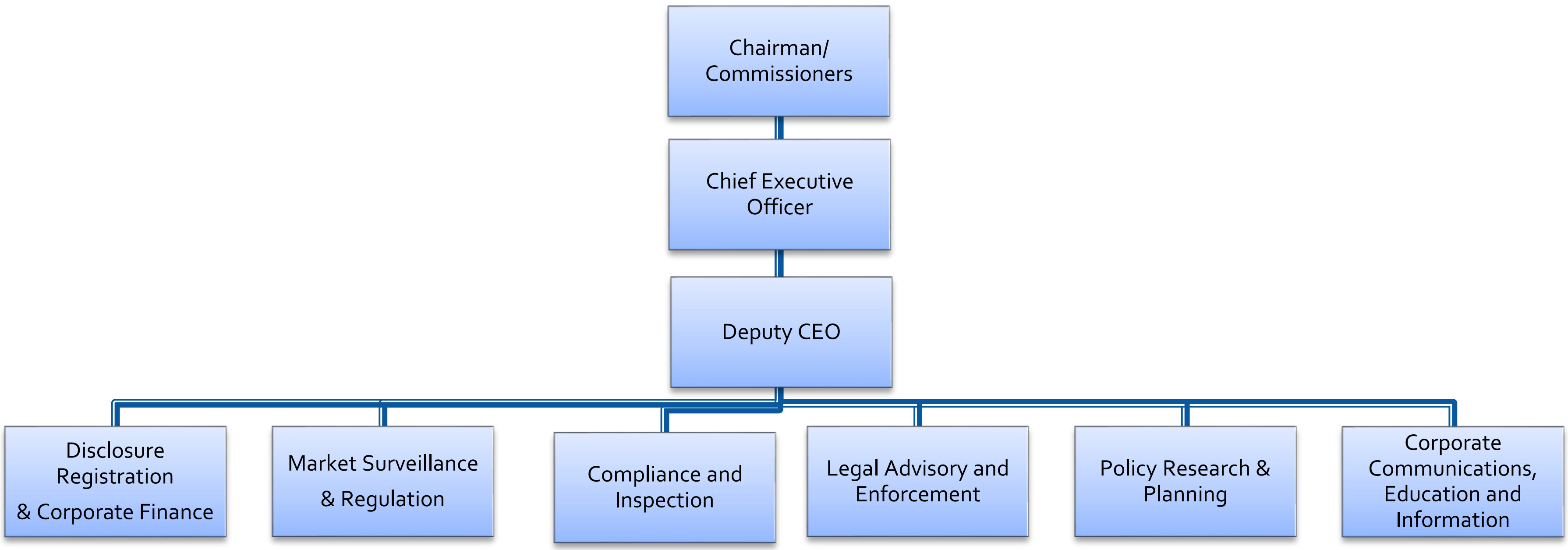
- Registration.
- Market surveillance.
- Regulating and supervising timely and accurate disclosure of information to the investing public;
- Conducting compliance reviews and examinations of its registrants.
- Protection against market abuse and insider trading
- Ensuring its registrants comply with AML/CFT laws
- Promoting the growth and development of the securities industry
- Co-operation with other jurisdictions
- Assess, measure and evaluate risk exposure in the securities industry

The Powers of the Commission

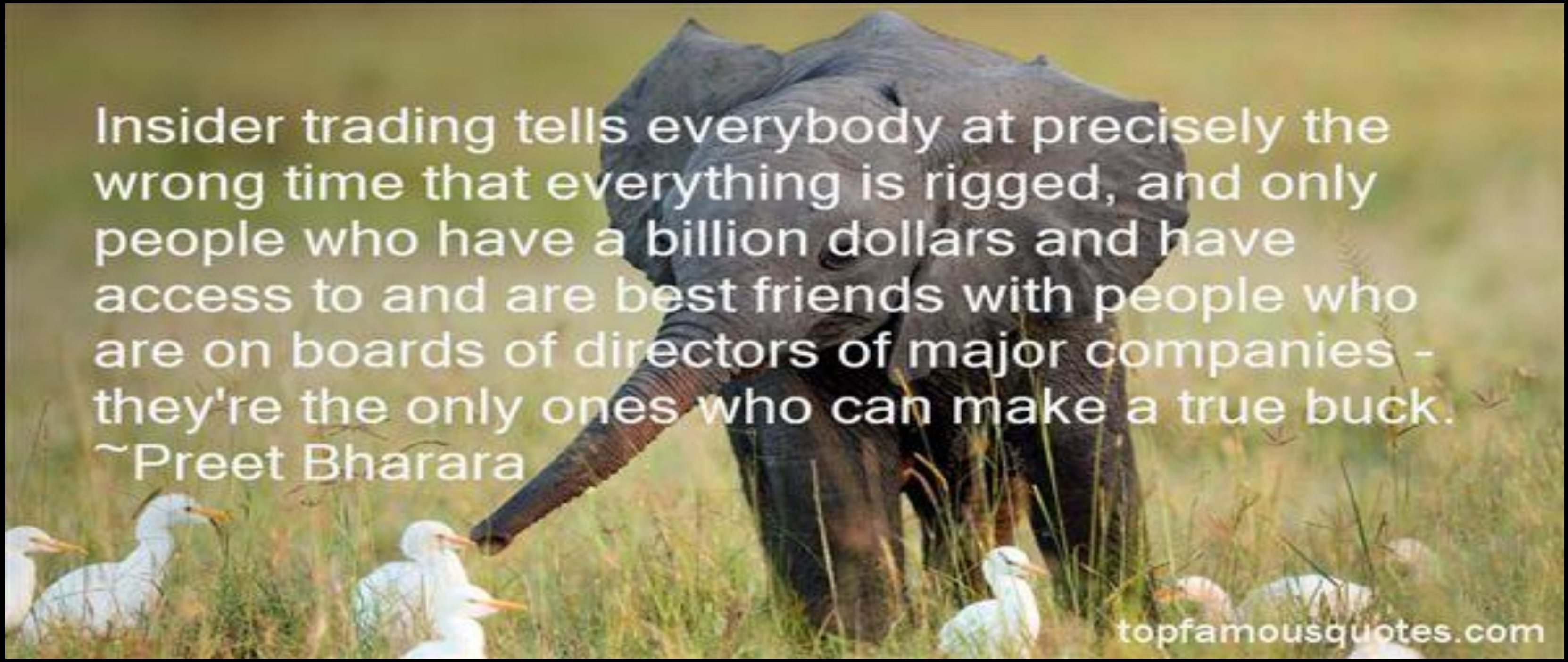
Section 7 empowers the Commission to inter alia:

- Formulate principles for the guidance of the securities industry.
- Register and regulate market actors in accordance with the Act.
- Monitor the solvency of registrants and take measures to protect the interest of investors where the solvency of any such person is in doubt.
- Review, approve and regulate takeovers, amalgamations and all forms of business combinations in accordance with the Act.
- Take enforcement action for contraventions of the Act.
- Do all things and take all actions, which may be necessary, expedient, incidental or conducive to the discharge of any of its functions and the exercise of its powers under the Act.

INVESTOR PROTECTION FRAMEWORK



INSIDE: INSIDER TRADING



What is Insider Trading?

Section 100(1) of the SA 2012 states that

"No person connected to a reporting issuer shall directly or indirectly:

Buy, Sell or Otherwise trade

in any securities of such reporting issuer

On any securities market when in possession of material non-public information

Until such information had been published"

Division 5- Insider Trading

S100(2) No person connected to a reporting issuer shall directly or indirectly:

Counsel, procure or otherwise advise any person to buy sell or trade

In any securities of such reporting issuer

On any securities market during any time that such person has knowledge or possession of material non-public information, however obtained

Until such information had been published

Who is a reporting issuer?

Was a reporting issuer under the former Act

Whose existence continues or comes into existence following a takeover business combination

Reporting issuer

Issuer registered or required to be registered under SA 2012 as a reporting issuer;

An issuer whose securities are listed on a registered securities market

Who is " a person connected" to a reporting issuer?

A senior officer of the reporting issuer or a senior officer of an affiliate of the reporting issuer

A person who beneficially owns directly or indirectly or exercises control or direction over, voting securities of the reporting issuer or a combination of both, carrying 10% or more of the votes of the reporting issuer outstanding

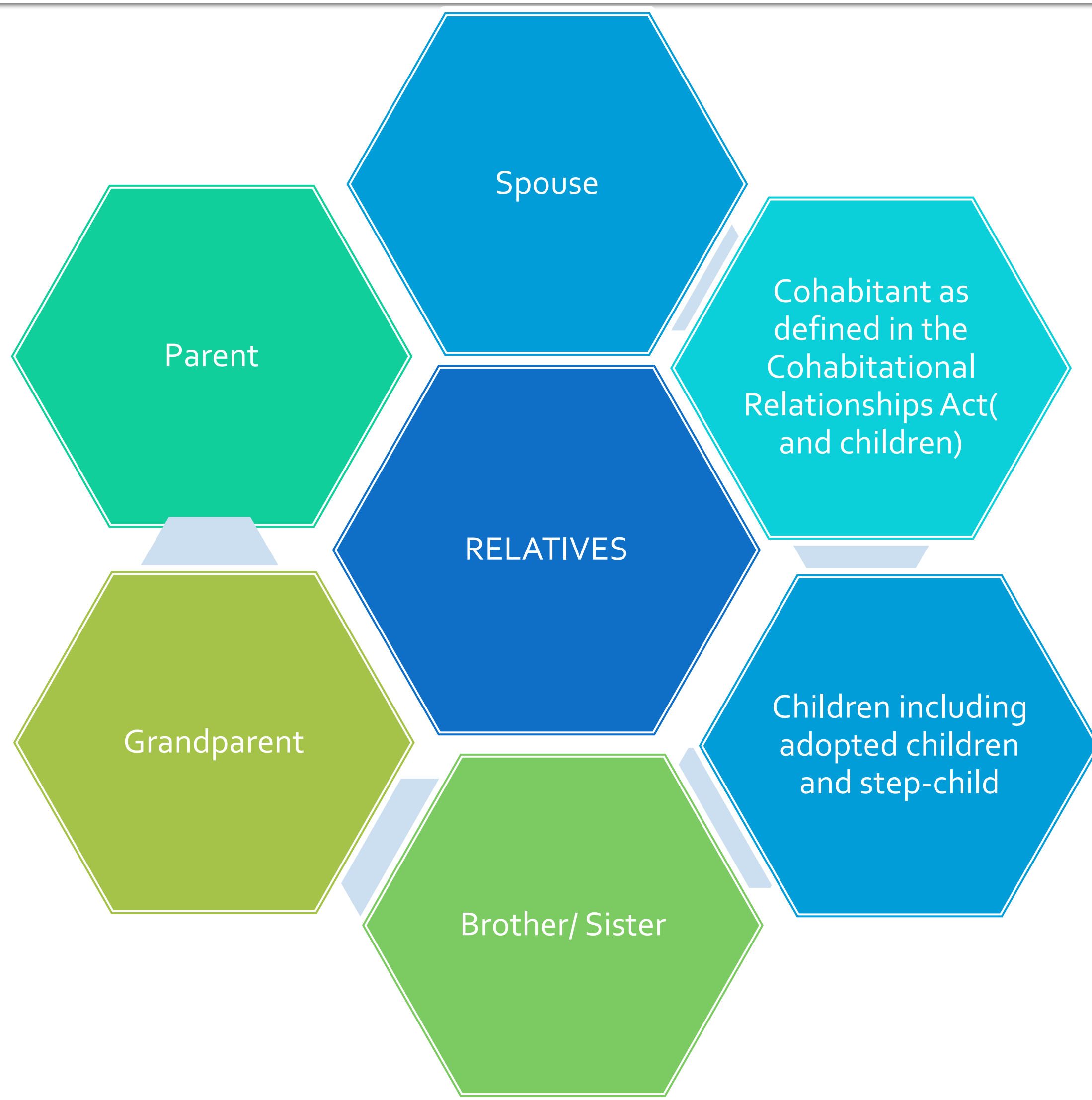
A person engaging in or proposing to engage in a take-over bid for any securities of the reporting issuer; any amalgamation, merger or similar business combination with the reporting issuer

A person engaging in or is proposing to engage in any business of professional activity with or on behalf of the reporting issuer or is an employee of such person or of the reporting issuer or his affiliate

A person who learns, directly or indirectly of material non public information with respect to a reporting issuer from any person and knows or ought reasonably to have known that the person is connected to the reporting issuer.

An entity that is controlled by a senior officer of the reporting issuer or a senior officer of an affiliate of the reporting issuer or a relative of a senior officer of the reporting issuer

Who is a relative?



S 101 Disclosure of Material Non-Public Information

A person connected to a reporting issuer shall not directly or indirectly, communicate or otherwise disclose any material non-public information to any person until such information as been published, unless in the necessary course of business.

What then is meant by "material non-public information"?

In relation to the securities of a reporting issuer, it means any material fact or material change that has not yet been published.

Material Fact and Material Change

MATERIAL FACT

When used in relation to the affairs of an issuer or its securities, a fact or series of facts, the disclosure of which would be considered important to a reasonable investor in making an investment decision.

MATERIAL CHANGE

“ Material change” refers to a change in business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity.

It can also mean in relation to Collective Investment Schemes means a change in business, operations, affairs of the issuer, the disclosure of which would be considered important to a reasonable investor in determining whether to purchase, sell or transfer or continue to hold securities of the issuer and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity.

Insider Trading offences

Section 102 of the SA 2012 states:

"A person who contravenes section 100 or 101 commits an offence and is liable on summary conviction to a fine of

ten million dollars and to imprisonment for ten years"

Section 104: Exceptions to sections 100 and 101

- A person who entered into a transaction in good faith of his functions as liquidator, receiver, receiver-manager or trustee in bankruptcy;
- A person acquiring securities through an employee profit sharing plan or employee stock ownership plan where such person participated in the plan before the material no-public information came to him or the plan provided for the automatic acquisition of securities by participants in such plan
- Where the person is completing a transaction already agreed to before acquiring the knowledge of the material non-public information
- An entity who buys, sells or trades on securities with knowledge or possession of material non-public information proves that no senior officer, partner employee or agent of that entity that made or participated in making the decision to buy or sell or otherwise trade had knowledge of the material non-public information. Or that no investment advice was given with respects to the purchase, sale or other trade of securities to the senior officer, partner, employee or agent of the entity. This exemption is not available to an individual who had knowledge of the material non-public information.

DEFENCE Not Available and Presumptions

Section 105- where a person is accused of an offence under section 100 or 101, it shall not be a defence to the charge that the material non-public information in respect of which the accusation is made came to his knowledge or possession without having been solicited by him or that he made no effort to procure the acquisition of such information.

** The burden of disproving the presumption falls on the accused. The civil standard of proof is applicable here.

Section 106 – (a) A person who trades in a security at a time when he has knowledge or possession of material non-public information is presumed to have traded in the security as a result of his knowledge or possession of the material non-public information unless the contrary is proven by him; and

(b) An entity is deemed to have knowledge or possession of material non-public information at and from the time such material non-public information comes to the knowledge or possession n of any senior officer, partner, employee or agent of such entity.

Why is insider trading bad?

- Insider trading puts the average investor at a disadvantage

- Illegal insider trading causes substantial damage to market efficiency, market fairness and investor confidence

- Insider Trading is one of the most difficult market frauds to successfully investigate and prosecute, almost always requiring "circumstantial evidence" to prove.

Should Insider Trading be illegal?

- Insider trading laws are counter-intuitive as they prevent people from using and markets from adjusting to the most accurate and timely information. "Non-public information" is a legal not an economic concept. We are making today's trades based on yesterday's information.

- Insider trading laws are enforced when a trader decides to buy or sell a security. But the decision to not trade a security is sometimes equally important. If your inside source at a company whose stock you don't own gives you a peek at a financial statement, and it's disappointing, you will decide not to buy that security. And that decision is illegal, but can never be proven.

- By preventing those who know more about a stock from acting on that information, you impede the natural tendency of markets to set a fair price. This argument requires a bit more explanation. Essentially the idea is that if an insider knows that stock X is severely over-valued, and sells his or her holdings in X, then the price of X will drop, thus more accurately reflecting its value.

- It is a victimless crime.

- Increases incentives for company officers to make profits.

- It is difficult to prosecute

Indicators of Insider trading

- Typically picked up by market surveillance
- Material market event
- Large increase or decrease in share price
- Increase in the average trading volume
- Large block purchases of shares

Tipper Liability

- Insider
- Gives material non-public information
- To a friend, relative or comparable outsider
- In order to benefit such individual
- Insider personally benefits
- Tipper liable for tippees trades

Tippee Liability

- Receives material non-public information
- From an insider or one who has misappropriated information
- Knew or should have known information relayed in breach of a duty of trust and confidence
- Trades based on that information
- Benefit to the tipper

Examples of Inside Information

- Profit forecasts- changes in expected earnings or losses
- Unpublished announcements
- Proposed changes in capital structure, including share issues, rights, rights issues and the redemption of securities
- Borrowings
- Formation of a joint venture
- New licences, patents or trademarks
- Significant changes in operations or proposed changes
- Liquidity cash flow information
- Changes in value of assets
- Management restructuring or change in Board of Directors
- Impending mergers, take-overs or acquisitions
- Significant litigation

Investigative Process

- Identify the material non-public information: In most cases the information will concern product announcement, earnings announcement, regulatory approvals or denials, merger and acquisitions and research reports.

- Identify the precise time at which the material non-public information was made public. Assess the impact of the information on the market price of the securities.

- Prepare a timeline of the events.

- Evaluate trading records: Obtain trading records to determine who conducted trading in the relevant securities prior to the information becoming public. Analyse share price and trading volume patterns in the share over time to identify how unusual is the trading.

Investigative Process

- Identify Suspicious trades- size of trades, dates of trades, name of broker, age of account, holders of account. " FOLLOW THE MONEY!!!"

- Check publicly available information to see if there are other explanations for the unusual trading patterns. Public sources include: newspapers, websites, chat rooms, complaints, referrals, and filings with the securities authority and exchanges.

- Identify the "Insiders" and Traders- Names, chronologies, trades etc.

- Connect the Insiders and traders- interviews, rolodexes, call records and bank records

Investigative Process

- Question the traders: Consider calling the person who conducted the trades to ask why they trades in the particular securities.

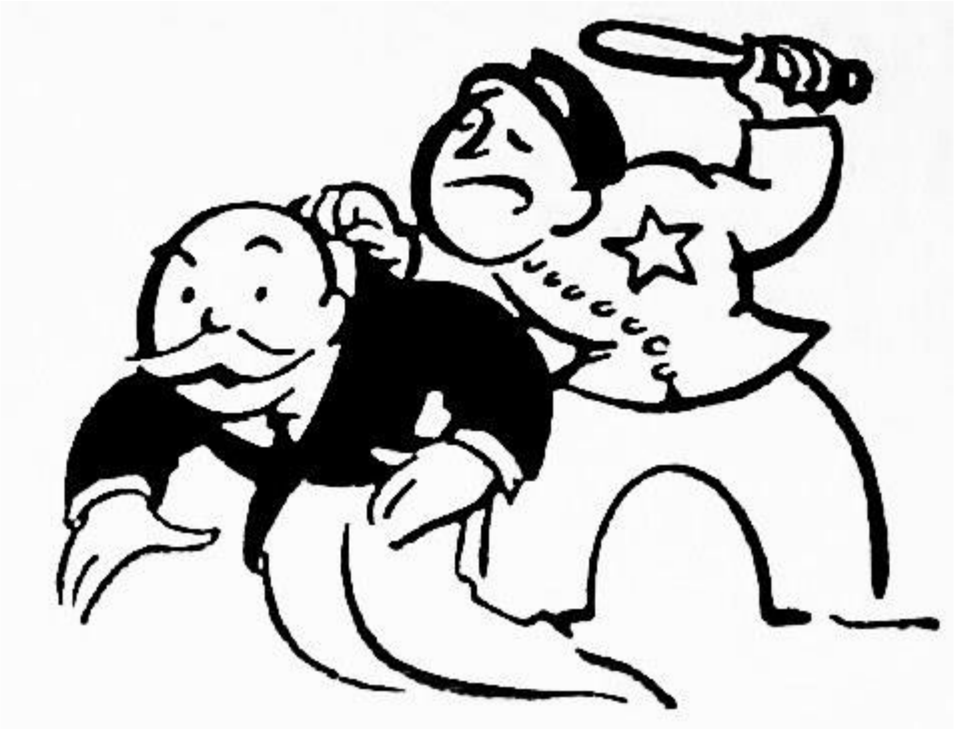
- Questions usually asked:
  - Reasons for the trading?
  - Whether they had knowledge of or access to the material non-public information?
  - Whether they had contacts with any insiders of the companies involved?
  - Whether they have prior trading in the stocks at issue?
  - Did anyone else pay for all or a part of the transactions?
  - Was there any agreement to share proceeds of the transaction with another person?

- Establish Scienter- show perjury, profit sharing, pay-offs, similar acts, use of nominee accounts

- Establish duty- employment contracts; confidentiality agreements etc.

Investigative Process

- Once a case has been made out against the insiders. The TTSEC would initiate an action against the offenders.



INSIDER TRADING

Case Studies

- MARTHA STEWART
- R. FOSTER WINANS
- RAJ RAJARATNAM

MARTHA STEWART:

The HOMEMAKING HOAXER

MARTHA STEWART

- On December 27, 2001, media mogul and celebrity homemaker Martha Stewart sold her stake in the biotech company ImClone.

- Two days later, the company's stock dropped 16 percent when the Food and Drug Administration said it had rejected the ImClone's main drug, Erbitux, for cancer treatment.

- Stewart had owned 4,000 shares of ImClone. By selling just before the FDA's announcement, she avoided losses of $45,673.00 a tiny fraction of her net worth, which Forbes had estimated at $700 million just six months earlier.

- However, that trade would end up being one of the defining actions of her career – and the one that landed her in a federal prison.

MARTHA STEWART

- Stewart was not the only ImClone investor who avoided heavy losses ahead of the FDA's decision. On the same day she placed her trade, Sam Waksal, ImClone's chief executive officer, had sold a $5 million stake, along with his daughters' full holdings in the company.

- For regulators, catching Waksal for insider trading was simple. A CEO selling a large block of his company's stock just days before a significant regulatory announcement is an obvious red flag. Waksal himself said later in an interview with "Dateline" that his case was easy and that "the Securities and Exchange Commission had me."

- Stewart's case was more complicated. She had made a timely sale, but that wasn't enough to accuse her of insider trading. To do that, the government would have show Stewart traded while in possession of information that was non-public and material – something that is not widely known and that a regular investor would consider important in making a decision about a trade.

MARTHA STEWART

- Stewart and Waksal were friends but the source of the information was not Waksal as records showed they had not spoken that day.
- They had another connection: THE BROKER!!!
- Although the brokers were unaware of the Erbitux decision they knew that Waksal was trying to dump his stock and told Stewart about it.
- That Stewart knew Waksal was selling his stock but not the reason behind the sale complicated the insider trading case against her. Knowing about the FDA decision would qualify as nonpublic and material. Just knowing the CEO was trying to sell $5 million worth of his shares was nonpublic information, but on its own, would it have made a difference to a run-of-the-mill investor? For the SEC, the answer was yes. The agency requires insiders like CEOs to disclose trades of company's stock to the public.

MARTHA STEWART

- For the SEC to build an insider trading case against Stewart, it also would have to show that her transaction violated some duty to refrain from trading on the information in question.

- Stewart did not have such a duty herself. She wasn't on the Imclone board of directors and had no official ties to other insiders like Waksal. She had merely traded on a tip.

- However, she knew Bacanovic had breached his duty as a broker when he told her about Waksal's trades.

- The nuances in Stewart's case ultimately drove the government to back down from charging her with insider trading. Instead, it focused its case on the lies she told to cover the trade.
- When questioned by the SEC Stewart denied knowing that Waksal was selling his shares which was confirmed by the broker.

- The broker's assistant eventually "ratted them out."

MARTHA STEWART

- The defense argued that Stewart was too rich to worry about a few thousand dollars and that she and the broker were too smart and sophisticated to make such obvious mistakes and get caught, but that argument failed to convince the jury.

- Stewart was sentenced to five months in prison, plus five months of house arrest and two years of probation for lying, obstruction of justice and conspiracy.

R. Foster Winans:

The Corruptible Columnist

R. Foster Winans: The Corruptible Columnist

- Winans wrote the "Heard on the Street" column profiling a certain stock.
- The stocks featured in the column often went up or down according to Winans' opinion.
- Winans was caught by the SEC and put at the center of a very tricky court case. Because the column was the personal opinion of Winans rather than material insider information, the SEC was forced into a unique and dangerous strategy.

R. Foster Winans: The Corruptible Columnist

- At the trial, Mr. Winans admitted that in 1983 he had made a deal with Peter N. Brant - a former Kidder, Peabody stockbroker who became the chief Government witness.
- Under their agreement, the reporter would tell the broker what would appear in upcoming "Heard on the Street" columns, many of which were written by Mr. Winans, and Mr. Brant would trade in the stocks that were likely to be affected by publication of the columns. The scheme produced nearly $700,000 in profits.
- The defence had argued that even if his client did violate The Journal's conflict-of-interest policy - which prohibits stock trades based on articles not yet published in the paper - his breach of that policy did not violate the Federal securities laws.

R. Foster Winans: The Corruptible Columnist

- The SEC, however, argued that because Mr. Winans had violated his employer's policy, his "misappropriation" of confidential information could form the basis of a stock-fraud charge.
- The SEC's argument was successful.
- The Court held that because of his duty of confidentiality to The Journal, he had a duty to abstain from trading in securities on the basis of the misappropriated information.

Raj Rajaratnam:

The Hedge Fund Kingpin

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- Raj Rajaratnam, hedge-fund tycoon and Galleon Group manager was the centre of the U.S Insider trading crackdown in 2011.
- Rajat Gupta former director of Goldman Sachs and head of McKinsey consulting ; Warren Buffett, CEO of Berkshire Hathaway an investment company were the major players in this insider trading case.
- In Sept 23 2008 Warren Buffet agreed to pay $5billion for preferred shares of Goldman Sachs. This information was not announced until 6.pm after the NYSE closed on that day.
- Before the announcement, Raj Rajaratnam brought 175,000 shares of Goldman Sachs. By the next day Rajaratnam sold his shares making a $.9M profit. In the same period of time the financial stocks, as whole, fell.

Raj Rajaratnam: The Hedge Fund Kingpin

- Raj Gupta had called Rajaratnam immediately after the board meeting at which Warren Buffet's infusion had been announced and told him of the money Goldman expected to receive.
- The information was material to the price of Goldman stock. Thus inciting Rajaratnam to make the trade, something he would not have done otherwise.
- On May 11, 2011, Rajaratnam was found guilty on all 14 counts of conspiracy and securities fraud.

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SEC

Thank You.

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

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