

INSIDER TRADING

by Dr Barry Rider

Commentary by Mr William Wilson

Company Director

At the outset I reflect what, no doubt will be the mood of this seminar, and acknowledge the contribution which Dr Rider has made to our understanding of this difficult and vexed topic.

He remarks that "it is perhaps surprising that so little concern has been felt in New Zealand". I will attempt to put the topic within my knowledge of the New Zealand marketplace.

I notice that at times Dr Rider uses the terms insider dealing and insider trading as being interchangeable. We tend to use the term insider trading in New Zealand. From my earlier professional background in income tax I know that there can be a connotation of repeated transactions when referring to dealing or trading. But, as Dr Rider's paper makes clear, these terms in this context can refer to a once only purchase or sale of securities. Unfortunately the terms insider trading and dealing have acquired an unsavoury ring now and we need another description for the above-board straightforward purchase or sale of securities by a director or officer of a company.

Traditionally we have regarded insiders in New Zealand primarily as a director, his spouse, minor children and family trusts and as senior executives. I should mention that in these days of womens liberation it is difficult even for directors to influence their wives investment decisions.

But, as Dr Rider's paper points out, the definition of an insider can be much wider and can include financial intermediaries and advisers who act for the company.

A concern which I have is the growing trend here for senior management to have private briefings for major institutional shareholders and for investment analysts. These briefings are often fairly detailed expositions of the company's operating position and while they fall short of forecasting profits, often they enable the audience to make very sophisticated forecasts. For example, the leading sharebrokers letters can now forecast a company's profit with an uncanny accuracy.

The depth of information given at these briefings, and more particularly the body language of the management team gives the audience a quality of information which is not available generally to all shareholders.

To what extent does possession of this information make the audience insiders? To borrow from George Orwell does it mean

that all shareholders are equal but some shareholders are more equal than others! From the corporate viewpoint it is desirable to maintain the confidence and support of this audience but it is a trend which we should examine before it gives rise to abuse.

Turning to the New Zealand scene generally, what is the scope of insider trading? I do not think that it is very widespread. We live in a financial village by world standards and it is difficult for an insider to conceal his actions. I don't say it is not happening but we have a feel for who may be involved. Every insider who deals has to take someone into his confidence. He has to instruct a broker or an agent who instructs a broker. Herein lies one of the key points which I took from Dr Rider's paper; these intermediaries probably more than anybody else possess the knowledge of who is doing what to whom.

The Stock Exchange as a self regulating body is in a difficult position because its members, the brokers, ultimately possess the crucial information about share deals. Who checks the gamekeeper?

And yet this whole group of financial intermediaries tend to be self policing the market because they are all acting in their own interest. So that the abuse of information by any of them tends to become known to others who take appropriate action which can range from a complaint to the Stock Exchange to inspired comments in the financial press.

Personally I experience very little difficulty with directors dealing in shares. A good point in the paper is that few of us have sufficiently large holdings to shake the tree but in any event most boards have adequate checks. A simple rule is that all board members should always tell the chairman when they are buying or selling, even in the "open season", and the chairman should always tell his deputy or the managing director.

In New Zealand and Australia there are a group of directors who hold very substantial shareholdings in their companies. In this respect I do not agree with Dr Rider's comment that in "a modern corporation it would be extremely difficult to identify any single person...who might be regarded as an entrepreneur in the traditional sense of the word".

Here we have several companies where the founder and family still hold significant holdings. Because the shares may represent the family's main wealth, their sale and timing of the sale raise difficult questions in the context of insider trading. This aspect is one which still requires more consideration.

A danger in New Zealand is that we take a sledgehammer to crack a nut. I have had limited exposure to raising capital through the London and North American securities markets and really it is far too detailed and nit picking; a dream for the professional advisers fees!

Conclusion

I favour for New Zealand:

1. A recognition that insiders include financial intermediaries and advisers
2. The continuation of a company's board employing its own disciplines for directors and management; any transgressor should be fired
3. The adoption of Dr Rider's proposal to make an insider liable to the corporate issuer for his profit
4. A law which debars any person found liable under 3 from participating in any corporation, financial intermediary or professional practice for stipulated periods. This law would be administered by the Securities Commission.

