Securities Commission

12TH FLOOR, RESERVE BANK BUILDING
2 THE TERRACE, WELLINGTON
NEW ZEALAND
TELEPHONE 64-4-472 9830
FACSIMILE 64-4-472 8076
P.O. BOX 1179

Our Ref: 28 Sept 1995

REVIEW OF THE LAW ON INSIDER TRADING

A DISCUSSION PAPER

Introduction

The primary rules of law in New Zealand about insider trading in listed securities are contained in Part I of the Securities Amendment Act 1988 ("the Amendment Act"). These came into force in December 1988 and have thus been in force for more than 6½ years. In August 1994 we issued a discussion paper in the course of which we made a number of suggestions for reform and invited public comment. We received extensive comment from a number of interested persons. We were grateful to receive these. With the benefit of this comment we have reviewed our earlier suggestions and have formulated a number of proposals on which we would welcome further comment from interested persons.

Broadly speaking we believe the policy of Part I to be to promote informed trading on the New Zealand Stock Exchange by encouraging improved procedures for the conduct of transactions and by imposing civil liability on insiders for dealing with the benefit of inside information. Part I does not impose criminal liability and it does not confer on the Securities Commission or any other agency any direct powers of enforcement. It establishes procedures to facilitate civil actions by listed companies and their shareholders.

In preparing the present proposals we have considered it desirable:

(i) to address certain questions which have arisen in the administration of the present law, and

(ii) to strengthen the procedures for security holder enforcement action.

We do not propose any changes to the general policy of the law in relation to enforcement. In particular, we do not propose enforcement powers for the Commission. The consideration of any

such proposal should be in the context of a review of the Commission's power generally.

We have received comments on the policy of the present law in relation to the circumstances in which liability arises. We have considered these carefully. One matter which continues to arise is the application of the law to persons undertaking due diligence preparatory to making a bid for a major interest in a listed company. We note that this matter is referred to in the 1995 Annual Report of the Market Surveillance Panel. We recognise that a listed company may benefit from the advent of a new major interest holder and any managerial skills which it is able to bring to bear. However, we are firmly of the view that there should be no exception from insider trading law to facilitate this process. There is an underlying policy to the law, "disclose or abstain", disclose the inside information to the market before trading or abstain from trading. It had been our hope that the matter would be satisfactorily covered by new rules of law about company takeovers. This would have been a substitute for insider trading laws in relation to such transactions (Section 8(2)(b) of the Amendment Act). We believe it is for the New Zealand Stock Exchange and the Market Surveillance Panel to formulate and administer rules of disclosure which will ensure that, if complied with, the obligation to abstain from trading will no longer apply.

Our proposals for reform are:

1 To extend the definition of "insider" to include employees of related parties of public issuers.

1.1 Consistent with our earlier discussion paper we propose that the definition of "insider" should be amended to include officers and employees of related companies of the public issuer who have received information "about the public issuer" by virtue of their employment.

1.2 This will have two principal effects. First, it will expose officers and employees of related companies of a public issuer to liability in respect of trading while having inside information about the public issuer. This will be so notwithstanding that the information may have been information of the related company. Secondly, it will provide a basis on which to extend the benefit of the Insider Trading (Approved Procedure for Company Officers) Notice 1993 ("the Commission's Insider Trading Notice") to officers and employees of related companies of public issuers. At present this notice applies to officers and employees of a public issuer but not to officers and employees of related

companies of that public issuer.

1.3 We propose that section 3(1) of the Amendment Act be amended by inserting the words underlined below:

> *"For the purposes of Part I of this Act, "insider", in relation to a public issuer, means -*
>
> *(a) the public issuer;*
>
> *(b) a person who, by reason of being a principal officer, or an employee, or a company secretary of, or substantial security holder in, the public issuer, or a related company of the public issuer, has inside information about the public issuer or another public issuer;"*

1.4 The term "related company" would be defined as in Part I of the Companies Act 1993.

1.5 Section 3(2) of the Amendment Act would be similarly amended to provide that inside information possessed by an officer or employee of a related company would be presumed to be held by that person as an officer or employee of the related company.

1.6 Section 8(1) of the Amendment Act would be amended to apply to officers and employees of related companies of the public issuer on the following terms:

> *"No action shall be brought under section 7 of this Act against a director, or company secretary, or employee of a public issuer or a related company of the public issuer if -* ".

1.7 If this proposal is accepted the Commission would intend to amend the Commission's Insider Trading Notice consequentially.

2 To clarify the application of the Commission's Insider Trading Notice to the insider's spouse or child

The benefit of any Commission insider trading notice may apply in respect of securities sold or purchased in the insider's "own name or in the name, or on behalf, of that person's

spouse or child" (section 8(1))a)). We have difficulty interpreting these words. We think the section is intended to apply in respect of securities sold or purchased by the insider either in his/her own name or in the name of his/her spouse or child and either on his/her own behalf or on behalf of his/her spouse or child. We propose that the section should say so.

3 To give a lawyer appointed pursuant to section 17 of the Amendment Act authority to consult with the Commission while preparing the opinion.

3.1 We think the role of the Commission with regard to a lawyer appointed under section 17 should be amplified. We think the section should sanction the presently evolving practices:

(a) that the Commission obtains information for the lawyer, particularly information which is not readily available without the use of the Commission's statutory powers,

(b) that the lawyer routinely consults the Commission.

3.2 Previously we had suggested for this purpose that the Commission should have power to require the lawyer to consult the Commission, the purpose being to empower the Commission, at its discretion, to assist the lawyer in ensuring that the opinion is prepared efficiently. However, in the view of certain commentators, it is possible that a power of this type could limit the flexibility of the process and could be perceived as prejudicing the independence of the lawyer. After considering these comments we have decided to limit our proposal to empowering the lawyer explicitly to receive information from the Commission and consult the Commission.

3.3 We propose the following amendment to section 17:

17(3A) The barrister or solicitor may -

(a) receive from the Commission the books or papers of any person which may be material to the preparation of the opinion,

(b) consult the Commission in the preparation of the opinion:

(c) provide such reports to the Commission as the barrister or solicitor thinks fit from time to time in the course of preparation of the opinion.

4 To give a copy of the lawyer's opinion to any person against whom the public issuer may have a cause of action.

On occasions the lawyer is asked to consider whether a public issuer has a cause of action against a person who is not and has not been a member of the public issuer. The person may have been an insider who advised or encouraged others to buy or sell securities of the public issuer. It seems important that the public issuer should be obliged to give a copy of the lawyer's opinion to any such person as of right. We propose that section 17(4) be amended to require this.

5 Not to confer privilege in respect of publication of the lawyer's opinion.

5.1 The media have informed us that they have had difficulty in deciding how to handle a section 17 opinion. At present the publication of a section 17 opinion or comment on that opinion does not attract privilege from proceedings for defamation, notwithstanding that copies are readily available to shareholders, present and past.

5.2 The Commission observes that the opinion of the lawyer under section 17 has not been tested by judicial process. It remains important that the opinion should not be accorded a quasi-judicial status. On balance we do not think it appropriate to confer qualified privilege from proceedings for defamation for publishing a section 17 opinion or comments about that opinion.

5.3 There is a related question about the provision by the lawyer of a preliminary draft, or a part thereof, of an opinion to a limited class of persons, in particular, named insiders. While we think it unlikely that an insider would choose to bring proceedings for defamation against the lawyer, and less likely still that the Court would find that there was a cause of action, we think that, in the interests of certainty, this matter should be clarified. Accordingly, we propose that Part I of the Amendment Act be amended to provide that all communications between the lawyer and any other party for the purposes of forming an opinion whether a public issuer has a cause of action against that other party should be absolutely privileged in proceedings for defamation.

6 **To empower the Court to approve settlement of insider trading claims.**

6.1 It is important that avenues should remain open for the settlement of insider trading claims other than by determination of the High Court. It is clear from experience to date that many insider trading claims may lend themselves to settlement in much the same way as other legal disputes. However special care must be taken in relation to claims to which the public issuer is a party arising under Part I of the Amendment Act.

6.2 Special features include:

(1) the claim may arise irrespective of any conventional loss by the public issuer;

(2) the public issuer may be obliged to obtain legal advice on the initiative of a shareholder;

(3) the right of action of the public issuer may in certain circumstances be exercised by a security holder;

(4) a pecuniary penalty may be imposed at the discretion of the Court if the matter proceeds to trial;

(5) a security holder may be entitled to share in the distribution of any amount recovered by the public issuer from an insider.

6.3 We think it important to ensure that the potential benefit of these features to the company and its security holders should not be lost in the course of formulating procedures to facilitate the settlement of claims by processes other than proceedings in the High Court. We are not sure that the benefit of these features necessarily applies to the settlement process at present.

6.4 Part I does not address explicitly the situation which arises where there is reason to believe that the public issuer has not taken security holders' interests sufficiently into account in reaching a settlement or that the settlement is a sham. We think it should address this matter in order to meet the wider policies of the law. At the present time the remedy available to the shareholder appears to be to apply to the High Court under section 18 of the Amendment Act for leave to exercise the public issuer's right of action against the insider, the court being required to give leave unless it is satisfied that:

(a) the public issuer does not have an arguable case against the insider; or

(b) there is good reason for not bringing the action.

6.5 This appears unsatisfactory to:

(a) the public issuer - which is not readily able to determine the possible courses of action available to shareholders in this type of situation;

(b) the security holders - whose rights are not readily identifiable where a settlement has already been entered into;

(c) the insider - the extent of whose exposure to litigation is not clear where a settlement has already been entered into.

6.6 There is need for more certainty about the position of each of these three groups and for better procedures for ascertaining whether the public issuer has taken all appropriate steps to pursue any material claims which are reasonably open to it, in the interests of the public issuer and of all those persons who may be entitled to act through it or to benefit from any distribution on the recovery of any funds.

6.7 For this purpose we propose that the High Court should have power to approve the settlement of any claim by a public issuer under Part I, whether or not the procedures under section 17 have been invoked. In addition, we propose that the Court should have power to issue directions as to the distribution of any amount recovered or to be recovered under the terms of such a settlement. Arguably the Court already has this latter power under section 19 of the Amendment Act but this should be made clear. These powers of the High Court should be exercisable on the application of either party in the settlement, the issuer or the insider.

6.8 If the public issuer does not seek approval to a settlement and directions as to distribution it is our proposal that the settlement should not be final and binding on the parties and the security holder should have a right to bring proceedings under section 18 for a review of the settlement and a determination on the merits of any claim.

6.9 We also propose that where:

(a) the Commission has given an approval under section 17,

(b) the lawyer has given an opinion that the public issuer has a cause of action against an insider,

(c) the public issuer and the insider negotiate a settlement, and

(d) the public issuer does not seek Court approval to the settlement,

the Court should not have power to award costs against the security holder in any action brought under section 18 in accordance with the security holder procedure proposed in para 6.8 above. Where an opinion has been obtained under s.17 that there is a cause of action a security holder should be able to test the Court's preparedness to direct the bringing of proceedings under s.18 without having to face the risk that, if unsuccessful, costs could be awarded against the security holder. It is consistent with the policy of the Act that the security holder who follows the procedures set out in the Act for obtaining a remedy should not be deterred by having to meet an award of costs.

7 Applicant for leave to exercise public issuer's right of action not to be liable for Court costs.

7.1 It is clear that an application under section 18 of the Amendment Act for leave to exercise the public issuer's right of action may be a prolonged matter. A number of persons have said to us that while they may be willing to meet their own costs in making the application they apprehend a possibility that the Court may make an award of costs against them if the application is not successful. They are not willing to subject themselves to this risk.

7.2 We think this is a genuine concern. We also think it undesirable that the matter should not come before the Count solely on this ground. We think that security holders should not be exposed to the risk.

7.3 Consistent with our proposal in para 6.9 above we propose that section 18 be amended more generally to exclude the power of the Court to award costs against a person who has applied for leave under the section where the person is seeking to advance a cause of action identified in a section 17 opinion.

8 The Court to have power to direct any person to reimburse the costs of the public issuer in obtaining an opinion pursuant to a notice under section 17

8.1 The preparation of a section 17 opinion is at the public issuer's expense. Certain public issuers have expressed the opinion to us that it may sometimes be appropriate for the public issuer to recover from another interested party the costs of obtaining the opinion, particularly, but not necessarily, where the issuer has obtained a judgment against an insider under Part I. We agree.

8.2 Previously we had suggested that such a clause should not explicitly exempt the security holder who had required the section 17 opinion. However, we received very strong submissions on this from a number of interested persons. Commentators perceived that the absence of immunity was a strong disincentive to action under an amended section 17, notwithstanding that the Commission had sanctioned the preparation of the opinion. On reflection we agree. In particular, we note in reaching this conclusion that the reference to the lawyer is made with the consent of the Commission and that the security holder is likely to have quite limited access to the lawyer or involvement in the preparation of the opinion.

8.3 We propose the following addition to section 17:

> *17(6) The Court may, on application by the public issuer, make an order directing any person, other than the person who has required the public issuer to obtain the opinion, to reimburse all or any part of the costs of the public issuer in obtaining an opinion from a barrister or solicitor pursuant to section 17 of this Act.*

9 To remove the automatic prohibition on managing companies.

9.1 Section 382(1)(c) of the Companies Act 1993 provides that where a judgment has been obtained against any person in an action under Part I of the Amendment Act that person shall not for five years take part in the management of a company without the leave of the Court.

9.2 The Commission believes that this provision may be too inflexible, particularly in view of the decision of the Court of Appeal in Colonial Mutual Life Assurance Society Limited v Wilson Neill Limited [1994] 2 NZLR 152 that liability under Part 1 of the Amendment Act is strict and is not dependent on fault. Moreover, we believe it possible

that in consequence insiders may be prepared to go to extreme lengths to ensure that proceedings are not brought against them under Part I. We propose that section 382(1)(c) should be revoked.

9.3 Notwithstanding paragraph 9.2 above we think that the Court should continue to have a discretion to disqualify any person against whom a judgment has been obtained under Part I from directing or managing a company. This is provided for in section 383 of the Companies Act. We consider that this provision should remain.

10 The Commission not to have standing to apply to the Court for orders in relation to insider trading

10.1 In our earlier discussion paper we enquired whether the Commission might be given standing to bring proceedings. A number of persons who made submissions to us favoured this policy. However, there were certain carefully considered submissions which opposed any change in the role of the Commission. This question raises quite fundamental considerations about securities market regulation generally. What role should the state or state funded entities have in the enforcement of securities rules of law? In what circumstances should the law, in preference, promote and facilitate shareholder enforcement procedures? Where should the line be drawn between the two?

10.2 The Commission has decided, given the policy of the legislation, not to propose any increase in its enforcement powers.

11 To apply an objective test for the "Chinese Wall" exception.

11.1 The Commission has conducted a number of inquiries into insider trading where the "Chinese Wall" exception (sections 8(3), 10, 12(2) and 14 of the Amendment Act) has been asserted. The text of section 8(3) reads:

> *"No action shall be brought against an insider under section 7 of this Act, in relation to the sale or purchase of securities in a public issuer, if -*
>
> *(a) Arrangements existed to ensure that no individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and*

(b) *No individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information.*"

11.2 In general the quality of the Chinese Walls described to us in evidence in various sharedealing enquiries undertaken by the Commission has not been good and on occasions, we are persuaded, were not in themselves a satisfactory basis to exclude liability for insider trading.

11.3 We think it insufficient for the purpose of the Chinese Wall exception that "*arrangements existed to ensure*" that no individual who bought or sold had access to inside information. It is also necessary to consider whether the arrangements were likely to be effective for this purpose. We propose that the wording of para (a) of the test be amended to read "*Arrangements existed that could reasonably be expected to ensure ...*". The effect of this would be to require not only that Chinese Wall arrangements existed but also that they were sufficiently robust to persuade an objective observer that the confidentiality of inside information was likely to be protected.

11.4 In this regard, we note that this proposed amendment is compatible with the Australian legislation. The Australian Chinese Wall provision was changed, with effect from 1 January 1991, from words matching our current wording to "... arrangements that could reasonably be expected to ensure ..." (c.f. sections 1002N and 1002M Corporations Law 1991, section 128(7) Securities Industry Act 1980).

11.5 It is to be noted that section 8 (1)(b) of the Amendment Act which relates to the power of the Securities Commission to approve procedures for trading by company officers in the shares of their company employs similar wording to that used in section 8(3). Section 8(1)(b) reads:

"(b) *In selling or buying the securities that person complies with a procedure operated by the public issuer for ensuring that no director, company secretary or employee who has inside information about the securities of the public issuer uses that information in selling or buying securities of the public issuer for personal gain*" (emphasis added);

11.6 We do not propose that an objective test should be prescribed in section 8(1). A procedure has been prescribed by the Commission by notice in the Gazette and it should

be sufficient for the company officer to demonstrate compliance with the procedure. However some commentators have argued that the words "*for ensuring*" import an obligation to demonstrate that it was impossible for the company officer by virtue of the procedure to have been able to use inside information in selling or buying securities. We do not think this is the intent of the law. To clarify what we believe to be the intent of the law we suggest that section 8(1)(b) be modified to read:

> "... *complies with a procedure operated by the public issuer for the purpose of ensuring* ..."

12 Use of the Term "member"

12.1 The term "member" is used on a number of occasions in securities legislation. The term is not defined. The usage appears to have followed the Companies Act 1955 in which the term is also not defined but is used as a synonym for "shareholder". This usage is consistent with the common law meaning of the term "member".

12.2 The Companies Act 1993 does not use the term "member". Instead it uses the term "shareholder". Amendments were made to securities legislation with the introduction of the Companies Act 1993. On a number of occasions where the term "member of the issuer" appears, this has been replaced by the words "member or shareholder of the issuer", for example, regulation 18 of the Securities Regulations 1983, and the definition of "voting security" in section 2 of the Amendment Act. This has not happened in the case of sections 17 and 18 of the Amendment Act.

12.3 Under Part I it is possible for a person to be found liable for insider trading in respect of dealing in debt or participatory securities. We think the procedural provisions of Part I should allow for this possibility. We propose that the references to a "member" of a public issuer in sections 17 and 18 should be replaced with references to "security holder".

13 To amend the Commission's Gazette Notice.

13.1 The Commission's Insider Trading Notice provides a significant benefit to company officers or employees who are security holders in the public issuer, a benefit not enjoyed in any other jurisdiction. The procedure, properly applied, confers an immunity from proceedings under Part I.

13.2 In our view the approved procedure imposes a heavy responsibility on the directors and those appointed by them to deal with requests for approval to trade. This is appropriate, given the benefits conferred on company officers by the procedure and the obligation of directors to preserve the integrity of trading in the company's shares.

13.3 The approved procedure requires a director or a person appointed by the directors to be "reasonably satisfied" as to the truth of the statements made by the officer requesting consent to trade. The approved procedure will not achieve its objective if the directors or approving officer find it difficult to scrutinise the declarations of senior company officers adequately and to challenge statements which may possibly be misleading.

13.4 It is our impression that some directors have from time to time had difficulty in fulfilling their responsibilities effectively in approving requests under the approved procedure.

13.5 We think that directors and those they appoint to act for them owe a duty, when considering requests, to the company and all holders of its listed securities. They must be familiar with the affairs of the company. They must also, while recognising the interests of the insider, set aside considerations of loyalty to the officer concerned . However, it is not always realistic to expect directors to be able to scrutinise applications in appropriate detail. This is all the more so where the responsibility to approve rests on a non-executive chairman or director who may not know as much of the company's affairs as the company officer. It is not always realistic, moreover, to expect the appointed officer to treat the application with complete dispassion.

13.6 We propose that principal officers, that is, directors and those who though not described as directors are in a position to give directions or instructions to directors, should be obliged, as a condition of exemption from liability under the Commission's Insider Trading Notice, to publicly disclose their dealing in listed securities of the public issuer (other than minor purchases and sales) within a reasonable time upon completion of any transactions.

13.7 We believe this would:

(a) improve the incentives for company officers to ensure price sensitive information reaches the market in a timely manner,

(b) assist company officers required to approve requests from insiders for approval to

buy or sell securities,

(c) provide for timely disclosure of trading by company officers which in many cases could itself be price sensitive.

13.8 At present a director is required to disclose information about security dealings where the rules of law about substantial security holders apply. These are not applicable where a director has an interest in less than 5% of the company shares. Moreover, on the basis of information supplied to it by directors, a listed company is required in its Annual Report each year in accordance with the Listing Rules of the New Zealand Stock Exchange to disclose information about directors' shareholding. This does not address the need for timely information about directors' security dealings.

13.9 We are aware that in some overseas jurisdictions, including Canada, the United States of America and the United Kingdom, routine public disclosure of directors' share dealings is required, in addition to disclosure equivalent to that described in paragraph 13.8 above.

13.10 Generally these jurisdictions require a notification to a Stock Exchange to be made for each month in which a change in the director's shareholding take place, with some exemption for small transactions. A period of a week to 10 days from the end of the month in which trading occurred is generally given to enable the director to file the appropriate monthly notification. In the United Kingdom all transactions must be notified to the Exchange by the company. Directors are required to notify the company within 5 days of the date on which the director became aware of the information giving rise to the obligation to disclose. Further details of overseas disclosure requirements are set out in the Appendix to this paper.

13.11 We seek the views and comments of interested persons. We propose to defer preparing a detailed proposal on this matter until we have received these views and comments.

14 To confirm the Commission's function to keep under review practices relating to securities.

14.1 The Commission has a function under section 10(c) Securities Act 1978 to keep under review practices relating to securities and to comment thereon to any appropriate body. From time to time counsel representing parties to Commission enquiries have argued that Part I, also Part II, of the Amendment Act each constitute complete codes in respect

of the matters to which they relate. Accordingly, it is argued, the Commission's power of comment under section 10(c) of the Securities Act does not apply to practices relating to insider trading or substantial security holding, at least insofar as they relate to the specific facts under enquiry. The Commission has several times had occasion to reject this argument.

14.2 It seems desirable in the interests of certainty to make explicit the role of the Commission in relation to market enquiries involving matters which arise under the Amendment Act.

14.3 We suggest that a new provision be included in the Amendment Act, perhaps in section 2, that nothing in the Amendment Act is intended to limit the discretion of the Commission under section 10(c) Securities Act to review or comment on any matter.

Comments on the Suggestions for Reform

The Commission welcomes any comments on these proposals for reform. We request that comments be received by the Commission by Monday 4 December 1995. Please address all submissions to:

The Chief Executive
Securities Commission
P.O. Box 1179
WELLINGTON

28 September 1995

PUBLIC NOTIFICATION OF DIRECTORS' SHARE TRADING IN OTHER JURISDICTIONS

Canada

1. Eight of the ten Canadian provinces require that, upon becoming an insider of a public issuer, a person is required to file with the relevant provincial securities commission a report which discloses any direct or indirect beneficial ownership or control over securities of the public issuer. Further reports must be filed when there is a change in the information required to be contained in an insider trading report. Exemptions from insider reporting requirements can be obtained in certain circumstances. For example, directors or officers of subsidiaries of a public issuer may be exempted from the reporting requirements.

2. As an example of the insider reporting requirements in Canada, the insider reporting requirements under the Ontario Securities Act RSO 1990 are as follows -

Part XXI of the Ontario Securities Act (Insider Trading) provides that:

(i) An insider is defined as:

(1) every director or senior officer of a public issuer,

(2) every director or senior officer of a company that itself is an insider or subsidiary of a public issuer,

(3) any person which beneficially owns, directly or indirectly, voting securities of a public issuer amounting to 10% or more of the voting rights attached to all voting securities of the public issuer, and

(4) a public issuer where it has acquired its own voting securities.

(ii) An insider must disclose its interests in the following circumstances:

(1) every person who becomes an insider of a public issuer must, within 10 days of the end of the month in which that person becomes an insider, file a report disclosing any direct or indirect beneficial ownership or control over the securities of the public issuer;

(2) within 10 days of the end of any month in which an insider's direct or indirect beneficial ownership or control over the securities of the public issuer changes, that insider must file a report disclosing the change;

(3) where any person becomes an insider by reason of being a director or senior officer of a company which itself becomes an insider of the public issuer, the director or senior officer must file insider trading reports for the previous six months - in order to disclose if the director or senior officer was front-running any investment by his or her company.

The United States of America

3. In the United States, section 16(a) of the Securities Exchange Act 1934 requires that, upon becoming an officer, director, or 10% equity shareholder of a public issuer, such an individual must file, with the Securities and Exchange Commission ("SEC") and any national securities exchange on which the stock is listed, a report disclosing the number of shares beneficially owned. Thereafter, in any month where there is a change in beneficial ownership, a statement must be filed with the SEC and the exchange within 10 days of the end of the month in which the change occurred. The insiders must also file annual reports detailing their share ownership. Certain transactions have been exempted by SEC rules.

4. This disclosure is closely linked in the regulatory regime with the prohibition on short swing trading, which provides for disgorgement of all profits made by an insider on purchases and sales, or sales and purchases, within a six month period.

5. Small acquisitions not exceeding $10,000 in market value are not in themselves required to be disclosed, but must be disclosed in the next yearly insider report (if no subsequent acquisition results in the $10,000 threshold being passed, and so requiring a month-end report).

The United Kingdom

6. Section 324 of the United Kingdom Companies Act 1985 imposes a duty on directors to disclose shareholdings in their own company to that company. Section 328 of that Act extends this requirement to include shareholdings held by the director's spouse and children. Section 325 provides that a company must maintain a register of directors' shareholdings. Listing Rule 16.1.3 of the London Stock Exchange provides that a company must notify that Exchange of any information received pursuant to sections 324 and 328 or otherwise entered into the company's register in accordance with section 325, together with further disclosures relating to the date, price and value of the securities and the nature of the transaction and the nature and extent of the director's interest in the transaction.

7. The (UK)Listing Rules oblige listed companies to require each of their directors to disclose the information which the listed company needs to comply with those Listing Rules within 5 days of the date on which the director became aware of the information giving rise to the obligation to disclose.

8. The (UK)Listing Rules only create an obligation with respect to the listed company, and are only enforceable by the Exchange. The effect of this requirement is to create a disclosure regime similar to that in Canada or the United States, although no exceptions for small transactions exist.