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The optimization of judicial rules on anti-insider trading in China: Focusing on the judicial interpretation for the crime of insider trading

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Abstract

The first judicial interpretation of securities and futures market crime, issued by the Supreme People's Court of PRC and the Supreme People's Procuratorate of PRC, the Interpretation on Several Issues Concerning the Specific Application of the Law in Handling Criminal Cases of *Insider Trading and Leaking of Insider Information*, cannot solve all or even most of the complexities in the insider trading criminal justice. Rethinking the practical obstacles and flaws of the recently enforced judicial interpretation of insider trading not only can provide beneficial references to the judicial practice on the crime of insider trading, but also contributes to make preparatory work for the upcoming legislative reform and judicial interpretation of financial market crimes in China.

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1. Introduction

It may be a stereotypical view of the Chinese capital market that despite its rapid development, it is still in its early stages both in economic structure and legal framework. The

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Chinese capital market is afflicted with the serious problem of insider trading, which destroys market integrity and confidence.¹ Scholars critically pointed out that China made a noticeable achievement in setting up its insider trading regime: the government had shown a great willingness to regulate insider trading, and China's insider trading law benefited from overseas experience,² but China's insider trading legal regime was still far from effective,³ especially on the enforcement level.⁴ For instance, there had been a very limited number of insider trading cases, contrasting strikingly with the perceived prevalence of insider trading activities in the market.⁵

Things, however, have dramatically changed since 2010.

In October 2010, the General Office of the State Council of PRC forwarded the Circular on the Opinion Concerning Combating and Preventing Insider Trading in the Capital Markets (hereinafter referred to as “2010 Opinion”), issued by five ministries and commissions including the China Securities Regulatory Commission (CSRC), the department directly affiliated to the Central People's Government of China, which is responsible for the regulation and oversight of the Chinese Securities Market. 2010 Opinion spelled out overall arrangements for the prevention and control of insider trading through the establishment of such rules as registration of insiders and a whistleblower program.⁶

¹Hui Huang, *An Empirical Study of the Incidence of Insider Trading in China*, (paper presented at the Second Annual Conference on Empirical Legal Studies, New York USA, 9–10/November/2007) 2.

²Hui Huang, *The Regulation of Insider Trading in China: A Critical Review and Proposals for Reform*, 17(3) *Aust. J. Corp. L.* 281, 285–286 (2005).

³Jie Xie, *Economic Analysis of Insider Trading – the Option Model of Financial Crimes Control Measures*, in *ECONOMIC CRIMINAL LAW* (Vol. 8), edited by XIAORONG GU (Shanghai Social Science Institute Press 2009) 280–296; XAINQUAN LIU, *THE THEORY AND PRACTICE OF SECURITIES AND FUTURES MARKET CRIMES* (The Commercial Press 2005) 281–293; Chunfeng Wang et al., *Insider Trading and the Regulation on China's Stock Market: International Experience and China's Response*, 3 *Int'l Fin. Res.* 57, 63 (2003).

⁴Nicholas C. Howson, *Enforcement without Foundation? – Insider Trading and China's Administrative Law Crisis*, 60 *Am. J. Comp. L.* 955 (2012).

⁵HUI HUANG, *INTERNATIONAL SECURITIES MARKETS: INSIDER TRADING LAW IN CHINA* (Kluwer Law International 2006) 1–4.

⁶2010 Opinion is a guiding document which embodies that the CPC Central Committee, the State Council and high officials in the central government are highly concerned with the investigation and punishment of capital market violations and have stated clear goals regarding the crackdown on insider trading. Complying with the requirements and plans set up by the CPC Central Committee, the State Council and the CPC Central Discipline Inspection Commission, the CSRC will vigorously adopt a variety of measures and make significant achievements in cracking down, preventing and curbing insider trading. Law enforcement bodies and other relevant administrations will jointly make persistent efforts in improving the legal system, providing systematical and legal basis for insider trading, regulating the activities of market participants and promoting sound market development, especially under the direction of 2010 Opinion. See Xiaobo Zheng, *Five Ministries and Commissions Get Tough on Insider Trading in the Capital Market*, *Sec. Times* (Nov. 19, 2010) A1. Since 2010 Opinion, following the requirements of the State Council's Coordination Group on Combating Securities-related Violations, judicial and regulatory authorities have jointly conducted ad hoc research on how to address issues existing in the actual fight against insider trading criminal offenses and have developed relevant opinions and interpretations.

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