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Market abuse in South Africa

Group assignment

Corporate Governance

Module code: MBAA811

Group Name: The Visionaries

Declaration of own work: We declare that this assignment is our own work and that we have cited the sources from which we completed the assignment.

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Date of submission: 13 April 2019

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1 Current legislation

1.1 The Financial Markets Act, No 19 of 2012 (FMA)

1. The history of the act

The first attempt to prevent market abuse in South Africa was when insider trading was recognised as a statutory offence in the Companies Act (61 of 1973). Even after the enactment of this act and two amendments thereof, there was still a gap in the law to deal effectively with market abuse.

In 1995, a task force was formed, namely the King Task Group at the request of the Minister of Finance, specifically to address the gaps in South Africa's regulation of the financial markets. The task group recommended separate legislation and The Insider Trading Act (135 of 1998) was enacted. This act adopted the legislature of the final King Report.

In February 2005 the Security Services Act (36 of 2004) (SSA) was enacted and consolidated the Stock Exchanges Control Act 1 of 1985, the Financial Markets Control Act (55 of 1989), the Custody and Administration of Securities Act (85 of 1992) and the Insider Trading Act (135 of 1998). The aim of the act was to improve confidence in the South African financial markets by amongst other things, tightening the regulations of insider trading, introducing market manipulation as a statutory offence and the prohibition of false or misleading statements or forecasts.

The SSA also established the Directorate of Market Abuse (DMA) which were to carry out the functions of the previous Insider Trading Directorate (ITD), as well as dealing with all other forms of market abuse.

From 3 June 2013, the SSA was replace by the Financial Markets Act (19 of 2012) (FMA).

2. The purpose of the act

This act replaces the Securities Services Act, (36 of 2004) and provide regulations for the South African financial markets. The purpose of this act is to:

1. Ensure that the financial markets are efficient, righteous and transparent at all times.
2. To increase international confidence in South African financial markets.
3. To protect investors and clients.
4. To reduce risks within the system.
5. To increase the South African financial markets' competitiveness

2 Forms of market abuse

2.1 Insider Trading

(a) *Definition, elements and examples*

In terms of the Financial Markets Act (19 of 2012), insider trading involves trading whilst one has prior market information that is not accessible in the public domain, but can influence the financial market, for self-enrichment or enriching somebody else.

i. Insider trading for your own account – an insider who knows that he or she has inside information and who deals directly or indirectly through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offense.

ii. An insider who deals for another person - no person may, either for their own or another person's behalf, knowingly directly or indirectly participate in any practice that has created or is likely to have the effect of creating a false or deceptive appearance of the demand for, supply of, or trading activity in connection with; or an artificial price for, that security.

iii. A person who knowingly deals for an insider – a person who knowingly deals for an insider through an agent in the securities listed on a regulated market to which the inside information possessed by the insider relates or which are likely to be affected by it, who knew that such person is an insider commits an offence.

iv. An insider who discloses inside information – an insider who knows that he or she has inside information and who discloses the information to another person commits an offence.

v. An insider who encourages or discourages another person to trade – an insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by commits an offence.

(b) Defences

According to subsection 1 of section 78, an insider is not guilty of any offence contemplated in paragraph (a) if such insider proves on a balance of probabilities that he or she –

i. only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.

ii. was acting in pursuit of a transaction in respect of which-

(aa) all the parties to the transaction had possession of the same inside information;

(bb) trading was limited to the parties referred to in subparagraph (aa); and

(cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of security, or a related security, resulting from the inside information.

2.2 Market manipulation

(a) Definition, elements and examples

Market manipulation happens when specific acts are performed intentionally to increase or decrease specific stock prices. It can also appear when false information is spread or misleading forecasts are made intentionally about a company that is listed on the market. This false information is made in order to create uncertainty in that stock and consequentially influence the stock prices significantly.

Market manipulation is described in the FMA (19 of 2012) section 80 as a practice which has created or is likely to create i) a false appearance of demand or ii) an artificial price.

Subsection 80(3) classifies the selling and buying of securities where the beneficial ownership of the securities does not change as a contravention of this act.

There are different types of market manipulation. Some examples of market manipulation is:

i) Churning - when a broker trades excessively in a client's account. This mostly happens in order for the broker to generate more commission.

ii) Pools - A group of brokers can reach an agreement and delegate their powers to one of the brokers. This broker then trades for a certain time in a specific stock, after which the profits are shared between the brokers.

iii) Stock bashing - False or misleading information about a company is circulated, mostly in online posts or on public forums, to create uncertainty in the stock. The people who post these messages are referred to as "Bashers". Their objective is to lower the stock prices so that they can purchase these stock at a much lower price.

iv) Pump and dump – this often appear after stock bashing. After specific stock is acquired at a very low price, the people, or bashers, flood especially new uneducated investors' emails with fake news in order to increase the stock prize as well as the activity, this is the "pump" part. As soon as the stock prize are high enough to their liking, they sell all their shares, this is the "dump" part. The stock prize immediately falls drastically causing the investors to lose a lot of money.

v) Runs, Ramping or Painting the tape - In this instance a group of brokers spread rumours in order to increase the stock price.

vi) Wash trade – this happens when stock is simultaneously sold and repurchased within a very short time, creating the illusion of activity, without the shares actually changing ownership. According to subsection 80(5)

vii) Bear raid - Bear raiding happens if a broker tries to push down the price of certain stocks. This usually happens by significant increase in selling of the stock. It can also be done by short selling.

viii) Lure and squeeze - When a company appears to be financially in trouble on paper, the stock price for the company falls. The people that are aware of the lure and squeeze purchase a great amount of stock while those not knowing, short the stock. (Shorting the stock means to borrow shares of stock and sell them at the current market price, they then re-buy the stock at the lower price and return the borrowed stock to the lender.) The company then announces that they reached an agreement with their creditors to settle their debt in exchange for shares in stock. The price of the stock then increases significantly and the people who knew about the scam sell their stock, causing the stock prize to decrease again.

ix) Spoofing - This kind of market abuse is when people bid on stock without the intent to purchase them, they then cancel the bid before the orders are filled, and these are called spoofers. Their actions can cause false optimism because of the high amount of bids placed as well as pessimism because of high amounts of bids cancelled. In this way they manipulate the price.

x) High closing is done by high amounts of buying or selling close to the end of the trading day, causing the stock prize to close higher than it should.

xi) Cornering the market - When a broker purchase a great enough quantity of stock in order for him to be able to control the supply and price of the stock, it is called cornering the market.

(b) Defences

According to the FMA (19 of 2012) subsection 80(4) a person is not guilty of market manipulation when using price-stabilising mechanisms that is regulated by an exchange.

2.3 Market disinformation or False Reporting

(a) *Definition, elements and examples*

According to section 81 of the Financial markets act (19 of 2012), false, misleading or deceptive statements is any statement, promise or forecast in respect of securities traded on a regulated market, that is false or misleading. This also include statements where the person "ought reasonably to know". The integrity of the market can be harmed by false statements and it can urge investors to trade in shares that they would not have done if the false statement was not published.

This section also includes forecasts or statements that is, by the omissions of important facts, misleading or deceptive.

False statements is not limited to forecasts regarding share prices. In the event where false statements are issued regarding, for example, new product development, and this statement causes an artificial inflation of the share price, it is also regarded as a misconduct according to section 81 of the Financial markets act.

(b) *Defences*

According to subsection 2 of section 81, if a person is unaware that the statement that he made was false, he must, without delay, as soon as he becomes aware of the falseness of the fact, publish a complete correction of the said fact.

This defence however, is not applicable if the false statement is made due to negligence. The directors of a company share the responsibility to ensure that all statements that are published is accurate and true.

3 Enforcement of provisions against market abuse

Section 109 of the FMA determines that a person that is found guilty of market abuse in a criminal court, may receive a penalty of up to R 50 million or imprisonment of up to 10 years. The Director of Market abuse may also refer cases to the Enforcement Committee, who can impose a penalty upon the guilty party.

There are currently three role players in the enforcement of the provisions against market abuse.

1. The Financial Services Board

The Financial Services Board (FSB) is established by the Financial Services Board Act 97 of 1990. The FSB is an independent board with the task to supervise market related practices and enforce the prohibition of market abuse. Section 84 of the FMA provides the powers and duties of the FSB and entrusts the FSB with supervisory, full prosecutorial and rule making powers. The FSB however, has no surveillance and monitoring capabilities and relies greatly on the following ways to detect market abuse(Lawack & Chitimira, 2013):

- The JSE surveillance division – suspicious volumes of trading and trading patterns are noted by the JSE's surveillance division.

- The broker-dealer accounts system – the FSB can extract information by investigating, for instance, other brokers' history of trading, in order to detect market abuse. They have access to telephone conversations, bank records and all other relevant trading records.
- The auction-process system – The FSB may investigate all transactions that are carried out by the JSE, specific attention is given to volumes of securities traded at the close of day.
- The FSB is further authorised by section 84(2)(e) of the FMA (19 of 2012), to publish all details of pending investigations and reveal details of alleged market abuse offenders. This practice of "name and shame" is a technique that is recognised as very effective as discouragement to get involved in activities of market abuse, because of the fear of reputational risk.
- Cross border agreements – The FSB has already entered into agreements with the Securities and Exchange Commission of the United States of America and the Financial Services Authority in order to regulate cross border market abuse.

2. The Directorate of Market Abuse

The Directorate of Market Abuse (DMA) is a committee of the FSB that is appointed by the Minister of Finance and consists of representatives of the regulated markets, the Share Holders' association of South Africa, the Fund-management industry, the insurance industry, the South African Reserve Bank, the bankers, and the accounting and legal professions.(Lawack & Chitimira, 2013)

The functions and composition of the DMA is described in Section 85 of the FMA,. Subsection (1)(c) specifically lists the powers of the board as to:

- Institute any civil proceedings regarding market abuse.
- Investigate any matter relating to an offence as stipulated in section 84.
- Institute proceedings against such offences in the name of the board.

The DMA has the power to search, interrogate and seize documents of suspected persons, granted that it obtained a warrant from the relevant court. The DMA furthermore has the power to publish market abuse cases that is under investigation, on behalf of the FSB. The FSB or a competent court must give the DMA permission before they may settle any civil proceedings. The DMA may further decide to i) refer certain matters to the Enforcement Committee, or ii) refer certain matters to the Director of Public Prosecutions, or iii) institute civil proceedings. When the DMA refers a case to the Enforcement Committee, all relevant evidence as well as the investigation report must be submitted.

3. The Enforcement Committee

The Enforcement Committee (EC) is another committee of the FSB and administrates all cases of market abuse that was referred to the committee by the DMA or the Registrar of Security Services as indicated in the Financial Markets Bill of 2012 and the Financial Markets Act.

The FSB appoints the members of the EC, of which at least two members must be legally qualified, but does not stipulate the composition of the EC. The EC may appoint additional members with the relevant knowledge and experience. The EC only deals with matters that are referred to them and is under obligation to submit annual reports of their activities to the FSB.

When a matter is referred to the EC, the matter will be assigned to a panel consisting of a chairperson and at least two other members of the EC. The panel may examine and cross-examine all parties involved in order to reach a decision. The EC may impose administrative sanctions such as i) a penalty, for the purpose of punishment, payable to the FSB or ii) a penalty, for the purpose of compensation, payable to any person that was affected by the act of market abuse or iii) a cost order for the costs incurred by the FSB or the panel members of the EC.

Orders imposed on the offenders must be made public, has the same legal implications as if it were made by the High Court and can be enforced by the Financial Services Board.

4 Case Studies

4.1 Insider Trading - Zietsman and Another v Directorate of Market Abuse and another

(a) The facts

The appellants are:	First appellant: Zietsman, Gavin Lyonel (Zietsman) Second appellant: Harrison and White Investments (PTY) LTD
The Respondents are:	First respondent: Directorate of Market abuse Second respondent: Financial Services Board (FSB)

Although in this case the charges for insider trading were brought under the Securities Services Act (36 of 2004) (SSA), the judgement is relevant to the Financial Markets Act (FMA)19 of 2012, because the definition of "inside information" and the crime of "insider trading" are both identical in both acts.(Cole-Morgan & Swart, 2016)

Zietsman in his capacity of the CEO of Harrison and White Investments (H&W) started, in 2010 and early 2011, with a strategy to acquire controlling interest in Africa Cellular Towers Limited (ACT), by purchasing a majority interest. H&W contracted DP Cohen consulting (Pty) Ltd (DPCC) to do a valuation of the business of ACT. During a meeting early in 2011 between H&W, ACT and DPCC, ACT revealed that they managed to secure a provisional loan of R 99 million from the Industrial Development Corporation (IDC). In the Cohen Valuation report, compiled by DPCC on 9 February 2011 and given to Zietsman and H&W, there was reference made to the exact amount of the loan and name of the lender.

On 28 January 2011 ACT issued a first Stock Exchange News Service (SENS) bulletin. In this bulletin, the public was advised that ACT had secured debt funding. The identity of the lender and the amount of the loan was never revealed. This announcement had no effect on the share price of ACT. On 11 March 2011, a second SENS announcement by ACT the details of the loan and identity of the lender were revealed. This second announcement caused the share price of ACT to increase by 54%, from 11 cents to 17 cents per share.

During the period between 28 January 2011, after the first SENS announcement, and 10 March 2011, a day before the second SENS announcement, H&W acquired 19 491 977 shares in ACT.

(b) The Court's Decision

The question before the court was whether the information of the loan, that ACT was aware of, can be viewed as "insider information" and if the acquisition of shares was then against the Security Services Act.

The defence from H&W was i) That the information was not "specific or precise" as the loan was only approved in principle and ii) that the information would not have a material effect on the share price of ACT. Section 72 of the SSA (36 of 2004) and section 77 of the FMA and describes the definition of "inside information" as:

"specific or precise information, which has not been made public and which –

a) Is obtained or learned as an insider; and
b) If it were made public, would be likely to have a material effect on the price or value of any security listed on a regulated market".

The court reviewed the law on insider trading in Europe and the United Kingdom as well and rejected the defence of the appellant and held that:

1. The information in Zietsman's possession was precise since there was a reasonably and realistic expectation that the loan agreement would be finalised.
2. The court further regarded the information as price-sensitive information and used the "materiality test" as recommended by the King Task group. This test implies that the impact of the information on the share price must be material rather than significant.

4.2 Market Manipulation - FSB v Charles Edward Errol Forsdick

(a) The Facts

The Applicants are:	Directorate of Market Abuse (DMA)	- First Applicant
	Financial Services Boards (FSB)	- Second Applicant
The Respondent is:	Charles Edward Errol Forsdick (Forsdick)	

Forsdick was authorised to trade in various trading accounts held with Sanlam Private Wealth Ltd. Cullinan Holdings Ltd (CULP) shares are listed on JSE Limited. On 3 September 2014 Forsdick offered to sell 100 CULP shares at 200 cents per share from his CEE Forsdick account.

On the same day, he submitted an offer to buy 100 CULP shares at 200 cents per share from his Charles Forsdick Enterprises CC account.

These actions caused the CULP share price to increase from 57 cents per share to 200 cents per share. Forsdick were investigated by the DMA for the contravention of Section 80(1)(a) of the FMA. Section 80(3)(a) of the FMA (19 of 2012) further specifies that it is a contravention when:

"Approving or entering on a regulated market an order to buy or sell a security listed on that market which involves no change in the beneficial ownership of that security, with the intention of creating – i) a false or deceptive appearance of the trading activity in; or ii) an artificial market price for, that security"

- The shares did not change beneficial ownership.
- The orders were place with the specific purpose of increasing the price of the shares.
- The transactions caused a false appearance of trading activity and thus created an artificial price for the shares.

(b) The Courts decision

Forsdick admitted that he contravened Section 80(1)(a) of the FMA and the parties agreed to a penalty of R 50 000 to be paid by Forsdick.

4.3 Market Disinformation – Directorate of Market Abuse v Comair Limited

(a) The Facts

This is an order from the Enforcement Committee

The applicant	Director of Market Abuse (DMA)
The Respondent	Comair Limited

On 5 November 2013 at 9:35 am Comair announced on the Stock Exchange News Service (SENS) that Mr RS Ntuli purchased 5 772 615 Comair shares at 300 cents per share. At 10:19 am Comair announced again on SENS that Mr AK Gupta purchased 22 794 439 Comair shares at 300 cents per share. Both was non-executive directors of Comair. Both announcements was incorrect, in fact both parties sold their shares instead of buying shares as claimed in the announcement.

On 5 November at 15:18 pm, Comair released a correctional announcement on SENS as soon as they became aware of the mistake.

(b) The Courts decision

The DMA determined that Comair contravened section 81 of the FMA (55 of 1989), which prohibits false or misleading statements to be made that can influence the price of shares. The parties reached a settlement agreement where a penalty of R 70 000 was imposed on Comair for the contravention of section 81 of the FMA and a further order was given that Comair had to pay R 30 000 towards the costs of the investigation.

In my opinion, if Comair could proof that they were not negligent in their announcements, they had a strong case. Section 81(2) of the FMA determines that a person who made such a false statement unconsciously, must publish a correction as soon as they become aware of the falseness of the statement. Comair published a correction within six hours from the publication of the first false statement. Section 81 (3) further determines that a person "who fails to comply with subsection (2) commits an offence." This statement implies that a person who unknowingly publish a false statement is not committing an offence if he publish a correction as soon as he becomes aware of the falseness of the statement.

5 Ethical approaches to deal with insider trading

5.1 Virtue

Virtue theory is the first of the normative theories and focuses on the moral character of the person versus the rule based thinking of deontological. According to this a person's actions are good or bad, because they are acting like a virtuous person would, not like deontology which looks at the action as good or bad with ideas of virtue on top of that. Thus, a person possesses Practical Wisdom, or being completely virtuous, or honest. It is just important to also act in a correct mental state for that virtue. There is for example the virtue of truth of statement or honesty in communication which examines the truth value of one's statements to others and how these statements impact others. The target of a virtue is the intended consequence. What was the person's intention when doing something? If the virtue is correctly carried out, consistent with its intended consequence or target, then a virtue is confirmed. The mode of a virtue refers to the how of the process of behaving relative to a target. This means, what process is followed in carrying out a behaviour that is a virtue. According to this theory, an act is right if it hits the target of the virtue. Virtue theory thinks of actions to fall in three categories: Perfectionistic – referring to the one good action that is the best action in a particular situation, permissive and minimalist, representing three levels of good virtues behaviour. Perfectionist is highest level with all behaviour hitting the target, permissive is in the middle and minimalist is the lowest, or minimum level of acceptable behaviour. The issue is which virtue should I stick with? Which target should I hit? The theory fails to explain this adequately, leaving us within incomplete theory. In virtue theory the motivation or intention of the actor should also be considered, thus lacking in wisdom may result in unintended consequences. Many harmful activities are actioned from good intentions.

5.2 Deontological

This is the second of the three main groups of ethical theories. This perspective requires people to rationally consider and reflect on their intended actions before acting. This perspective requires the individual to be disciplined to follow the standard but recognizes the tension between one's natural inclinations that often conflicts with rational thinking. In one's actions one should consider the other person and apply this disciplined, rational mode of acting to all situations, not just certain categories of situations. In this perspective there is no room for relativity and subjective consideration of situations. To the contrary there is a requirement to generalize behaviour as a norm or general standard in society. It is only this ability to generalize across domains that serves as main protection against inconsistency. Normative behaviour implies rather rigidly following the rules and the rules clearly state what is right and what is wrong. Deontological thinking does not recognize grey areas and expects one to always follow what the rules say and you can't break the rule. The problem with these theories is that they lack objective evaluation criteria related to the world that can assist one in decision making.

5.3 Consequentialism

Consequentialism views actions by people in terms of their consequences and these may vary from situation to situation. Furthermore, the ends of a situation may justify the means used. Behavioural actions are judged on strength of the perceived consequences. Where deontological theory is criticized for being too rigid and restrictive, consequentialism is criticised for being too lean and permissive. This theory is also deontic, because it focuses on one's actions, rather than one's virtuous. However, it can be asked to what extent are the consequences the result of a rule or the result of a real action? Are the consequences real, actual or are they only expected? There are many different consequentialist positions to be taken. We may also choose to regard the only consequence to be the pleasure derived from an action (hedonistic) or the view that there is a variety of things that can be considered good. Maximizing consequentialism believes on the best outcome or consequence is good, the rest is all bad. A slightly more lenient way is to view development or slight improvement as sufficient indication of good, you don't have to be the best. There is further variation regarding the extent to which normative views play a role in the ethical consideration

5.4 Rights-based approach

Rights based ethics says there are some rights, both positive and negative that all humans have based only on the fact that they are humans. Basic human rights are captured in our fundamental constitution. The opposite of a rights-based approach is a utilitarian approach which says that good outcomes should be maximized, and bad outcomes should be minimized. Rights theory is a sub-category of deontological theory, which in turn belongs to the main group of normative theories stating how people should or ought to behave. Rights theory is further focused upon a person's intentions rather than the consequences of actions. Thus, behaviour that respects the rights of other people is considered good. Although every person has basic rights, they also have certain obligations to fulfil towards respecting the rights of others

6 Suitability of ethical approaches

An important consideration is that the various ethical theories can apply to individual behaviour and actions, but also operate within a business environment or context where moral decisions must be made in the interest of commercial activity. Thus, individual moral issues are surrounded by complex layers of issues that involve the organization and the institution.

Hence, strategies to address insider trading need to consider the micro, mid-level organizational level and the macro or business environmental context or market level. Ethical behaviour cannot operate solely at one of these levels, without implementing actions at the other. Understanding the article by Wayne Norman (Norman, 2013) it becomes clear that the theories presented here, may be hardly sufficient to act as extensive guidelines at all levels of business. Thus, the first strategy would be at individual level, where the individual must be made aware of the value of virtuous behaviour or acting with honesty and good character. This is probably the first level of ethical behaviour. If a person at least is oriented towards doing his best to behave well, chances are educed that he will compromise. Governing a company from a deontological perspective implies that the way things are done here seeks to be morally right, irrespective of what exactly morally right may mean. Identifying and putting forward basic norms of right and wrong in a company's mission statement and living these values may go a long way in preventing violations in behaviour. The moral dilemma with insider trading is having access to information that is generally not known by the public, and acting upon that information.

Morally right behaviour may prevent in principle that information lies around or is easily accessible by insiders, that they should not have access to. Specifying limitations on trading or instilling a rule that legal trading should be announced before employees can trade may assist in limiting illegal trading. The company directors also have an obligation to ensure that information is shared with shareholders timeously so that shareholders have access to the same information as insiders. This forward-thinking tendency may be an application of consequentialist thinking, considering the consequences if information is not made available to everybody to eel the playing field. Making information available at the same time to all stakeholders may be an expression of the respect for the rights of others. For example, the length of cabling between the computers of trade platforms and brokers at the JSE may either put some at a disadvantage over others. Nano-second trading is now the norm and may be considered an effort to manage and limit the potential of unfair advantage.

A discussion of the topic on RSG programme Moneyweb (RSG, 11 April 2019) emphasized the relative ease with which insider trading can be identified at the individual level. They stated that transactional data analysis is one way to determine whether insider trading has occurred. For example, if an insider starts transacting a short period before an upcoming trade event, this can easily be detected by information systems. It was then stated that chances of successful insider trading have been minimized substantially. This equates to what McGee describes as price drops when trading increases are noticed by the market. These happen in response to volumes of trade occurring.

McGee (McGee, 2008) maintains that insider trading is not always inherently unethical, as purported in popular media statements, and characteristic of a deontological perspective, indicating some behaviour is inherently right or wrong. Insider trading according to this perspective would be inherently wrong and unethical. This author argues such perspective is an incorrect perspective to take. The difference between legality and morality should also be considered. He states that inside information is continuously used by people in different contexts, such as tax completion to ensure the tax collector receives what is due, but not more than what he deserves. In this kind of example both parties win, and nobody is disenfranchised.

Taking a utilitarian perspective, when both parties gain (profit) and nobody is harmed and there is some element of being in the right place at the right time, then the transaction was correct. It is thus argued that since the consequences were positive and beneficial to both parties, the information only benefited them all.

Taking a virtuous perspective to insider trading, it could be argued that making known ones inside information in a situation where nobody else has the information, would be deemed exceedingly generous to those others wanting to trade, but not having the information. The seller in this case is and from this view, has no moral obligation to disclose his information to others. He just took the benefit of an opportunity to get a higher price for his stock.

A '*level the playing field*' or *human rights* argument that says everybody should have the same access to information and the same chance to trade, disregards competitive advantage gained by skill specialization. This means that the person who does his homework because he is better skilled than the next person, and therefore able to work for getting information, is discriminated against if this perspective holds. McGee (200:211) argues the level the playing field argument only harms everybody because it reduces efficiency and violates rights. From this perspective it can be argued that preventing some people from using their specialized skills and knowledge for personal gain cannot be defended.

7 Conclusion

It is concluded that there is no straight answer to whether insider trading is ethical or not. Applying utilitarian ethics or a deontological perspective is difficult because it is not possible to determine exactly when something is right and when it is wrong. Using a consequentialist perspective may assist as ne then look at the consequences and if everybody, the market and the organization benefits then it is not wrong to trade from the inside.

It seems that a human rights perspective has its flaws because it tries to argue that the playing field should be level, and as in South Africa, this implies that people are sometimes excluded or punished because they are better skilled or have more knowledge than the next person, but because they are of certain race, they are excluded. Of course, all this is in the interest of levelling the playing field.

Applying a virtuous perspective would be exemplary of a generous position where someone undercuts himself to ensure everybody benefits. To the contrary it can be argued that the market is clever, there are other people out there that also know, can read and observe changes in the market and act similarly, bringing down the price when supply increases.

BIBLIOGRAPHY

RSG. (Radio Sonder Grense). 11 April. 2019. Insider Trading

South Africa. 1973. Companies Act, 61 of 1973.

South Africa. 1989. The Financial Markets Control Act. (55).

South Africa. 1998. The Insider Trading Act. (135).

South Africa. 2004. Security Services Act 36 of 2004.

South Africa. 2012. Financial Markets Act 19 of 2012.

Cole-Morgan, C. & Swart, A. 2016. Inside information interpreted by the courts. https://www.werksmans.com/legal-updates-and-opinions/inside-information-interpreted-by-the-courts/ Date of access: 31 March 2019.

Lawack, V.A. & Chitimira, H. 2013. Overview of the role-players in the investigation, prevention and enforcement of market-abuse provisions in South Africa. *Obiter*, 34(2):200-217.

McGee, R.W. 2008. Applying ethics to insider trading. *Journal of Business Ethics*, 77(2):205-217.

Norman, W. 2013. Business ethics. *International Encyclopedia of Ethics*.