

An analysis of the role-players in the enforcement of the Zimbabwean insider trading laws¹

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Abstract

Insider trading is statutorily prohibited in Zimbabwe. This is primarily aimed at promoting public investor confidence, market efficiency and enhancing the integrity of the Zimbabwean financial markets. As a result, some activities that could amount to insider trading in the Zimbabwean financial institutions and financial markets are outlawed in the Securities Act 17 of 2004 [Chapter 24:25] as amended (Securities Act). Despite these commendable efforts, various flaws and gaps in the aforesaid statute have somewhat impeded the role and effectiveness of the anti-insider trading regulatory bodies and enforcement authorities in Zimbabwe to date. Given this background, the article investigates the role of the relevant enforcement authorities and other key role-players in the detection, investigation and prosecution of insider trading activities in Zimbabwe. This is done by discussing the role of the Securities and Exchange Commission of Zimbabwe (SECZ), the Zimbabwe Stock Exchange (ZSE) and the courts.

Keywords: *insider trading, enforcement, role-players, detection, market integrity.*

JEL Classification: K22, K33

1. Introduction

Insider trading could be defined as a practice by which one person that possess price or value sensitive non-public (confidential) information, concludes a transaction in securities to which that information relates without sharing that piece of information with those that do not possess it in order to gain an unfair advantage over such persons.⁴ Notwithstanding the fact that insider trading is statutorily

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⁴ C.P. Osode, 'Defending The Regulation of Insider Trading on Basis of Sound Legal Orthodoxy: The Fiduciary Obligations Theory Law' in C. Okpaluba, (ed), *Law in Contemporary South African Society*, Cape Town, New Africa Books South Africa, 2004, p. 303; also see sections 88-94 of the

regulated in Zimbabwe, there are still various flaws and challenges in the enforcement of the anti-insider trading prohibition in terms of the Securities Act.⁵ For instance, the insider trading provisions in the Securities Act are relatively inadequate.⁶ Moreover, regulatory bodies, enforcement authorities and/or other role-players have inadequate resources to effectively and timeously detect, investigate and prosecute insider trading activities in the Zimbabwean financial institutions and financial markets.⁷ Another challenge affecting the enforcement of the anti-insider trading prohibition is the lack of cooperation between regulatory bodies and/or enforcement authorities and other role-players responsible for enforcing the insider trading laws in Zimbabwe.⁸ Notably, such enforcement authorities and role-players include the Securities and Exchange Commission of Zimbabwe (SECZ),⁹ the Zimbabwe Stock Exchange (ZSE) and the courts.¹⁰ It is submitted that these enforcement authorities should be equipped with adequate resources in order to effectively curb insider trading practices in Zimbabwe. The anti-insider trading enforcement authorities and related role-players should also cooperate well with each other in order to effectively enforce the insider trading provisions contained in the Securities Act. In this regard, it is important to note that there are very few insider trading cases that have been successfully investigated, settled or prosecuted in Zimbabwe to date.¹¹ This flaw is *prima facie* proof that the SECZ, the ZSE and the courts are currently grappling with the detection, investigation and prosecution of insider trading activities in the Zimbabwe.¹² For

Securities Act 17 of 2004 [Chapter 24:25] as amended (Securities Act); D. Botha, 'Control of Insider Trading in South Africa: A Comparative Analysis', 3 *SA Merc LJ* (1991), p. 2-3.

⁵ 17 of 2004 [Chapter 24:25] as amended (Securities Act), see sections 88-94.

⁶ See sections 88-94 of the Securities Act.

⁷ See related comments by P. Saungweme, P. Ricardo, and B. Pradeep, 'A Framework for Combating Insider Trading on Developing Stock Exchanges: Evidence from the Zimbabwean Stock Exchange', 7(17) *African Journal of Business Management* (2013), p. 1630, 1635-1636; A. Carvajal, and J. Elliott, 'The Challenge of Enforcement in Securities Markets: Mission Impossible?', *International Monetary Fund Working Paper WP/09/168* (2009), <https://www.imf.org/external/pubs/ft/wp/2009/wp09168.pdf> accessed 23 September 2018, p. 12-32.

⁸ See related discussion by H. Chitimira, and V.A. Lawack, 'An Analysis of the General Enforcement Approaches to Combat Market Abuse (Part 2)' 34(1) *Obiter*, (2013) p. 64, 65-76; A. Carvajal, and J. Elliott, (2009) <https://www.imf.org/external/pubs/ft/wp/2009/wp09168.pdf>, accessed 23 September 2018, p. 12-32.

⁹ Section 3 of the Securities Act; see further L. Bromberg, G. Gilligan, and I. Ramsay, 'Insider Trading and Market Manipulation: The SEC'S Enforcement Outcomes', 45(2) *Securities Regulation Law Journal* (2017), p. 109, 110-125; Q. He, and O.M. Rui, OM, 'Ownership Structure and Insider Trading: Evidence from China' 134(4) *Journal of Business Ethics*, (2016), p. 553, 555-574.

¹⁰ Sections 88-94 of the Securities Act; see further H. Chitimira, 'Overview of Selected Role-Players in the Detection and Enforcement of Market Abuse Cases and Appeals in South Africa', 1 *Speculum Juris* (2014), p. 108, 110-124.

¹¹ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018. See related comments by T. Frankel, 'Insider Trading', 71(3) *SMU Law Review*, (2018) p. 783, 790-797.

¹² This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018. See further M.A. Spitz, 'Recent

instance, since the inception of the Securities Act in 2004, there is no single case of insider trading that has been successfully investigated by the SECZ and/or prosecuted by the courts to date.¹³

It is submitted that the SECZ, the ZSE and the courts have not done enough to effectively enforce the anti-insider trading prohibition in Zimbabwe.¹⁴ In this regard, the article investigates the role of the regulatory bodies and other enforcement authorities in the enforcement of the anti-insider trading prohibition in Zimbabwe.¹⁵ This is done to recommend possible measures that could be adopted by enforcement authorities and other role-players to enhance the curbing of illicit insider trading practices in the Zimbabwean financial markets.¹⁶ Moreover, the statutory powers of the enforcement authorities and/or relevant role-players responsible for the prevention, detection, investigation and prosecution of insider trading activities in the Zimbabwean financial markets are also discussed. Accordingly, the SECZ, the ZSE and the courts should be adequately empowered to enforce the anti-insider trading prohibition in order to promote public investor confidence, market integrity and the competitiveness of the Zimbabwean financial markets.¹⁷ The SECZ, the ZSE and the courts should also be equipped with adequate resources to consistently and timeously curb insider trading activities in

Developments in Insider Trading Laws and Problems of Enforcement in Great Britain', 12(1) *Boston College International and Comparative Law Review* (1989) p. 265-299, 271-274.

¹³ The lack of successful prosecutions of insider trading cases can also be attributed to the high burden of prove required in criminal cases where the prosecution must prove its case beyond reasonable doubt. See related comments by H. Chitimira, 'A Historical Overview of the Regulation of Market Abuse in South Africa', 17(3) *Potchefstroom Electronic Law Journal* (2014), p. 937, 943-962; C.P. Osode, 'Insider Trading Regulation in South Africa: A Public Choice Perspective', 11 *African Journal of International and Comparative Law* (1999), p. 688 693-708; D. Botha, 3 *SA Merc LJ* (1991), p. 4-18.

¹⁴ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018; related discussion by M.P. Dooley, 'Enforcement of Insider Trading Restrictions', 66(1) *Virginia Law Review* (1980), p. 1, 5-83.

¹⁵ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018; see further A. Allott, 'The Effectiveness of Laws', 15(2) *Valparaiso University Law Review* (1981) p. 229, 230-242; H.G. Manne, 'Insider Trading and Property Rights in New Information', 4(3) *The Cato Journal* (1985) p. 933, 935-957.

¹⁶ See related comments by S.M. Luiz, 'Insider Trading Regulation-If at First You Don't Succeed...', 11 *South African Mercantile Law Journal* (1999), p. 136, 138-151; P.C. Osode, 'The New South African Insider Trading Act: Sound Law Reform or Legislative Overkill?', 44(2) *Journal of African Law* (2000) 239, 241-263; L. Bromberg, G. Gilligan and I. Ramsay, 'Financial Market Manipulation and Insider Trading: An International Study of Enforcement Approaches', 8 *Journal of Business Law* (2017), p. 652, 655-679.

¹⁷ See related comments by L. Bromberg, G. Gilligan and I. Ramsay, 8 *Journal of Business Law* (2017) p. 652, 655-679; S.M. Luiz, 11 *South African Mercantile Law Journal* (1999), p. 138-151; P.C. Osode, 44(2) *Journal of African Law* (2000) p. 241-263.

the Zimbabwean financial markets.¹⁸ This approach could, if effectively enforced, enhance the role and duties of the SECZ, the ZSE and the courts in respect of the combating of insider trading activities in the Zimbabwean financial markets.

2. The functions and historical establishment of the SECZ

2.1. Historical aspects of the SECZ

It appears that prior to 1946, there was no regulatory body that regulated securities and financial markets in Zimbabwe.¹⁹ However, after the establishment of the Rhodesian Stock Exchange (RSE) in 1946, the regulation of trading in securities was introduced by the Rhodesia Stock Exchange Act²⁰ in 1974. For instance, the Rhodesia Stock Exchange Act prohibited market participants from engaging in any dishonesty trading in securities and financial instruments in the Rhodesian financial markets.²¹ However, the Rhodesia Stock Exchange Act did not define the term dishonesty. This Act also failed to expressly prohibit insider trading and as such, unscrupulous persons that engaged in insider trading could not be held liable for insider trading. Nevertheless, the RSE committee was empowered by the RSE rules to supervise the operations of the national stock exchange.²² The RSE rules also empowered the RSE committee to investigate any practice of dishonesty by brokers and/or other market participants in the Rhodesian financial markets.²³ This was done to combat illicit trading activities in the Rhodesian financial markets by market participants. It should be noted that the first stock exchange (RSE) was established in Bulawayo after the arrival of the Pioneer Column in 1896 and it

¹⁸ See related comments by M.P. Dooley, 66(1) *Virginia Law Review* (1980), p. 5-83; H.E. Jackson, and M. Roe, 'Public and Private Enforcement of Securities Laws: Resource-based Evidence', 93(2) *Journal of Financial Economics* (2009) p. 207 210-238.

¹⁹ G. Karekwaivenani, 'A History of the Rhodesian Stock Exchange: The Formative Years, 1946-1952', 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 9, 11-20; J.T. Muzamani, 'The Zimbabwe Stock Exchange', 1 *African Review of Money Finance and Banking* (1993), p. 75, 76-85.

²⁰ Rhodesia Stock Exchange Act of 1974 (Rhodesia Stock Exchange Act); G. Karekwaivenani, 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 11-20; J.T. Muzamani, (1993), p. 76-85.

²¹ Section 15(1) of the Rhodesia Stock Exchange Act; see related discussion by G. Karekwaivenani, 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 9-34; R. Tomasic, S. Bottomley, and R. McQueen, *Corporations Law in Australia*, 2ed, (Sydney, The Federation Press, 2002), p. 554-641.

²² See paragraph 27 of the RSE rules; see related comments by G. Karekwaivenani, 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 9-34; M. Aitken, D. Cumming and F. Zhan, 'Exchange Trading Rules, Surveillance and Suspected Insider Trading', 34 *Journal of Corporate Finance* (2015), p. 311-330; T. Chinamo, *Capital Markets Development: A Journey That Never Ends* (2014), <http://www.herald.co.zw/capital-markets-developments-a-journey-that-never-ends/> accessed 24 May 2017 page number unknown.

²³ See related comments by T. Chinamo, (2014), <http://www.herald.co.zw/capital-markets-developments-a-journey-that-never-ends/> accessed 24 May 2017 page number unknown; M. Aitken, D. Cumming and F. Zhan, 34 *Journal of Corporate Finance* (2015), p. 311-330; G. Karekwaivenani, 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 9-34.

commenced its operations and related duties between 1946 and 1952.²⁴ It is submitted that when any dishonesty was detected in relation to the trading of securities, the RSE committee would take disciplinary measures against the perpetrators of such dishonesty activities.²⁵ Nonetheless, the RSE rules did not expressly prohibit insider trading in the Rhodesian financial institutions and financial markets. Consequently, insider trading was not expressly outlawed by any law prior to the enactment of the Securities Act. The Rhodesia Stock Exchange Act was later repealed by the Zimbabwe Stock Exchange Act.²⁶ The Stock Exchange Act was enforced and utilised in Zimbabwe after 1980, prior to 2004. Thereafter, the Stock Exchange Act was later repealed by the Securities Act.

Moreover, in 2013, the Securities Act established the SECZ as an independent regulatory body that regulates trading in securities and/or financial instruments in Zimbabwe.²⁷ In this regard, it must be noted that the SECZ was previously known as the Securities Commission in 2004.²⁸ This name change was brought by the 2013 amendment of the Securities Act.²⁹ The SECZ currently has the statutory authority to supervise the securities and capital markets of Zimbabwe in a bid to, *inter alia*, combat insider trading and other illicit trading practices.³⁰

2.2. Functions and powers of the SECZ

In order to ensure proper supervision and enforcement of the insider trading provisions under the Securities Act, the SECZ is statutorily empowered to:

(a) regulate trading and dealing in securities.³¹ The SECZ oversees the regulation of trading in securities by enforcing the relevant provisions of the Securities Act.³² For instance, the SECZ is empowered to investigate any illicit

²⁴ G. Karekwaivenani, 30(1) *The Journal of Humanities of the University of Zimbabwe* (2003), p. 9-34.

²⁵ *Idem*, p. 9-34; M. Aitken, D. Cumming and F. Zhan, 34 *Journal of Corporate Finance* (2015), p. 313-330; D. Cumming, W. Hou, and E. Wu, 'Exchange Trading Rules, Governance and Trading Location of Cross-Listed Stocks', 24(16) *The European Journal of Finance* (2018), p. 1453, 1458-1484.

²⁶ 27 of 1973 [Chapter 24: 18] as amended (Stock Exchange Act).

²⁷ Sections 3 and 4 of the Securities Act; see related comments by C. Mumbengegwi, *Macroeconomic and Structural Adjustment Policies in Zimbabwe*, (New York, Palgrave MacMillan Publishers, 2002) p. 71-300; M.A. Spitz, 12(1) *Boston College International and Comparative Law Review* (1989) p. 265-299; G. Chen, M. Firth, D.N. Gao and O.M. Rui, 'Is China's Securities Regulatory Agency A Toothless Tiger? Evidence from Enforcement Actions', 24(6) *Journal of Accounting and Public Policy* (2005), p. 451, 457-461.

²⁸ Sections 3 and 4 read with sections 91 and 92 of the Securities Act; for further discussion, see M.A. Spitz, 12(1) *Boston College International and Comparative Law Review* (1989) p. 265-299; G. Chen, M. Firth, D.N. Gao and O.M. Rui, 24(6) *Journal of Accounting and Public Policy* (2005), p. 451-488.

²⁹ Sections 3 and 4 of the Securities Amendment Act 2 of 2013 (Securities Amendment Act).

³⁰ Sections 3 and 4 of the Securities Act; also see P. Saungweme, P. Ricardo, and B. Pradeep, 7(17) *African Journal of Business Management* (2013), p. 1635-1636.

³¹ Section 4(2)(a) of the Securities Act; M.I. Qureshi, 'Regulatory Mechanisms of Securities Trading in Malaysia (With Special Reference to Insider Trading)', 4(3) *Pacific Rim Law and Policy Journal* (1995), p. 649, 651-689.

³² Sections 4; 87-94 of the Securities Act; see further G. Chen, M. Firth, D.N. Gao and O.M. Rui, 24(6) *Journal of Accounting and Public Policy* (2005), p. 451-488; C. Lin, and E. Hung, 'U.S. Insider Trading Law Enforcement: Issues and Survey of SEC Actions from 2009 to 2013', 11 *National Taiwan University Law Review* (2016), p. 37, 40-79.

insider trading activities in the Zimbabwean financial markets in order to combat and adequately prevent the occurrence of such activities.³³ In spite of this positive development, very minimal insider trading cases have been timeously and successfully investigated by the SECZ to date.³⁴ This could have been worsened in part, by the fact that the SECZ does not have its own sufficient electronic surveillance systems in place to detect, isolate, investigate and prevent insider trading activities in the Zimbabwean financial markets.³⁵ It relies on alerts and referrals for suspected insider trading activities from the Zimbabwe Republic Police (ZRP) before investigating such activities. Consequently, the SECZ usually investigates very few insider trading cases after such referrals from the police and other market participants in Zimbabwe. Furthermore, the anti-insider trading regulatory and enforcement functions of the SECZ have been negatively impeded by its lack of sufficient resources to effectively investigate and curb insider trading activities in the Zimbabwean financial markets.

(b) register, supervise and regulate securities exchanges.³⁶ For instance, the Securities Act provides that securities exchanges should be registered with the SECZ before they are eligible to trade in securities in the Zimbabwean financial markets.³⁷ Accordingly, registered securities exchanges are obliged to provide adequate information to investors in order to empower them to make informed investment decisions. All issuers of securities and/or registered securities exchanges should comply with the insider trading provisions contained in the Securities Act.³⁸ However, the registration of the securities exchange will be cancelled by the SECZ if it was, *inter alia*, obtained through fraud or misrepresentation of a material fact or where there is a contravention of any provision of the Securities Act by the securities exchange, or pending winding up proceedings against that exchange.³⁹

(c) promote the development of free, fair and orderly capital and securities

³³ Sections 4, 87-94 of the Securities Act; also see P. Saungweme, P. Ricardo, and B. Pradeep, 7(17) *African Journal of Business Management* (2013), p. 1635-1636; G. Chen, M. Firth, D.N. Gao and O.M. Rui, 24(6) *Journal of Accounting and Public Policy* (2005), p. 451-488; C. Lin, and E. Hung, 11 *National Taiwan University Law Review* (2016), p. 37, 40-79.

³⁴ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018.

³⁵ *Ibid.*

³⁶ Section 4(2)(b) of the Securities Act; see further P.N. Pillai, 'Securities Regulation in Malaysia: Emerging Norms of Governmental Regulation', 8 *Journal of Comparative Business and Capital Market Law* (1986), p. 39, 43-73.

³⁷ Section 30(2) of the Securities Act; P.N. Pillai, 8 *Journal of Comparative Business and Capital Market Law* (1986), p. 39, 43-73.

³⁸ Sections 87-94 read with sections 4(2)(b) and 30.

³⁹ Section 36(1) read with subsections (2); (3) and (4) of the Securities Act; see further R.B. Campbell, 'The Role of Blue Sky Laws After NSMIA and the Jobs Act', 66 *Duke Law Journal* (2016), p. 605, 627-631; P.M. Lager, 'The Route to Capitalization: The Transcendent Registration Exemptions for Securities Offerings as a Means to Small Business Capital Formation', 94(3) *Texas Law Review* (2016), p. 567, 572-600.

markets in Zimbabwe.⁴⁰ This empowers the SECZ to investigate and prevent insider trading. Moreover, this enables the SECZ to refer criminal cases of insider trading to the courts.⁴¹ This is done to promote fairness, efficiency, public investor confidence and integrity of the Zimbabwean capital and financial markets.

(d) license, supervise and regulate licensed persons in order to ensure that they maintain high standards of professionalism and integrity.⁴² The term “licensed person” is not defined in the Securities Act. It is, however, submitted that a licensed person includes a securities exchange or any persons that are licensed to issue securities to the public. Such securities include listed securities that appear on a securities exchange’s official list such as the ZSE. The SECZ is obliged to ensure that all licensed persons maintain high levels of efficiency and professionalism to enhance the integrity of the Zimbabwean financial markets.

(e) advise the government on all matters relating to securities.⁴³ Such advice includes investment-related updates regarding how, when and where to buy listed securities in Zimbabwe. This is normally done through the relevant minister of finance. Nonetheless, it is submitted that the government does not always take such advice from the SECZ seriously.⁴⁴

(f) exercise any other function that may be conferred or imposed upon the SECZ by or under the Securities Act or any other law.⁴⁵ This enables the SECZ to perform any other relevant duties to remedy regulatory challenges and risks that may arise from time to time in the Zimbabwean financial markets.

3. The Role of the SECZ

The SECZ plays a pivotal role in the regulation and enforcement of the anti-insider trading prohibition in Zimbabwe. For instance, it is obliged to promote and enhance investor protection in the Zimbabwean financial markets.⁴⁶ Accordingly, the SECZ discourages all market participants, issuer of securities, licensed persons and other relevant persons from committing insider trading offences as outlawed in the Securities Act.⁴⁷ Offenders will be liable to pay a fine not exceeding level ten to the courts and/or the SECZ.⁴⁸ Furthermore, the SECZ is obliged to reduce and/or prevent systemic risks in the Zimbabwean financial

⁴⁰ Section 4(2)(d) of the Securities Act; Y. Wei, ‘The Development of the Securities Market and Regulation in China’, 27(3) *Loyola of Los Angeles International and Comparative Law Review* (2005), p. 479, 480-514.

⁴¹ Sections 88-94 of the Securities Act.

⁴² Section 4(2)(c) of the Securities Act.

⁴³ Section 4(2)(e) of the Securities Act.

⁴⁴ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018.

⁴⁵ Section 4(2)(f) of the Securities Act.

⁴⁶ Section 4(1)(a) of the Securities Act.

⁴⁷ Section 4(1)(a) read with sections 88-94.

⁴⁸ Sections 90 and 91 read with section 105 of the Securities Act.

markets.⁴⁹ Thus, the SECZ should ensure that any non-compliance or failure on the part of one or more registered securities exchanges or licensed persons to meet their obligations as stipulated in the Securities Act does not give rise to other registered securities exchanges or licensed persons being unable to meet their respective obligations in respect of trading in securities and the curbing of insider trading in the Zimbabwean financial markets.⁵⁰ The SECZ is also required to promote market integrity and investor confidence.⁵¹ This entails that the SECZ should robustly discourage any unlawful activities such as insider trading, which have the effect of eroding market integrity and public investor confidence in the Zimbabwean financial markets. The SECZ is further required to combat market manipulation, fraud and financial crime.⁵² This shows that the SECZ is empowered to enforce the market abuse (insider trading and market manipulation) and related financial crime provisions of the Securities Act.⁵³ The SECZ must also ensure that there is transparency in the Zimbabwean capital and financial markets through the effective combating of illicit trading practices such as insider trading.⁵⁴ The SECZ is further obliged to promote investor education and provide insider trading awareness programmes in all provinces to ensure that its efforts as indicated above, increases public investor confidence in the Zimbabwean financial markets.⁵⁵

The SECZ has the authority to investigate any suspected insider trading offences under the Securities Act.⁵⁶ In this regard, the SECZ may appoint inspectors to investigate any alleged insider trading activities.⁵⁷ Notably, the SECZ may appoint one or more of its employees and members of the public service as inspectors.⁵⁸ However, some of these persons do not have sufficient expertise in financial crimes such as insider trading. This has at times negatively affected the effective regulation and combating of insider trading in the Zimbabwean financial markets.

SECZ inspectors have the power to enter and search any premises with the consent of the licensed person, the central securities depository or the person in charge of the premises concerned in order to seize any document or examine information that could assist them in their insider trading investigations.⁵⁹

⁴⁹ Section 4(1)(b) read with sections 88-94 of the Securities Act.

⁵⁰ Section 4(1)(b) read with sections 88-94 of the Securities Act.

⁵¹ Section 4(1)(c) read with sections 88-94 of the Securities Act.

⁵² Section 4(1)(d) read with sections 88-94 of the Securities Act.

⁵³ Section 4(1)(d) read with sections 88-94 of the Securities Act.

⁵⁴ Section 4(1)(e) read with sections 88-94 of the Securities Act.

⁵⁵ Section 4(1)(f) read with sections 88-94 of the Securities Act.

⁵⁶ See section 103(1)(e) read with section 105 of the Securities Act; see further I. Clacher, D.J. Hillier, and S. Lhaopadchan, 'Corporate Insider Trading: A Literature Review', 38(143) *Spanish Journal of Finance and Accounting* (2009), p. 373, 379-398.

⁵⁷ Section 101(1) and (2) read with sections 102-105 of the Securities Act.

⁵⁸ Section 101(1) and (2) read with sections 102-105 of the Securities Act; see further M.A. Spitz, 12(1) *Boston College International and Comparative Law Review* (1989) p. 265-299; J.P. Anderson, 'Anticipating A Sea Change for Insider Trading Law: From Trading Plan Crisis to Rational Reform', 2(2) *Utah Law Review* (2015) p. 339, 345-389.

⁵⁹ Sections 102(1) and (2) of the Securities Act.

However, SECZ inspectors can enter and search premises without the consent of the person in charge of the premises where it is believed on reasonable grounds that such entry is necessary to prevent, investigate, detect or obtain evidence relating to an offence such as insider trading.⁶⁰ Furthermore, the SECZ inspectors must be objectively convinced that the searching of premises is necessary to obtain the evidence relating to such offences. This provision is consistent with the constitution since the alleged offender's rights to privacy,⁶¹ property⁶² and dignity⁶³ can be limited in terms of the Zimbabwean constitution as long as the infringement is fair, objectively necessary and justified.⁶⁴ Accordingly, SECZ inspectors may request documents or information from the alleged offender whenever they consider that he or she may be able to give information which is relevant to their insider trading investigations.⁶⁵

The SECZ may also conduct a hearing into any alleged infringement of the Securities Act, including insider trading.⁶⁶ During this hearing, SECZ inspectors may summon and interrogate any person considered to be in a position to give relevant information on the alleged insider trading violation.⁶⁷ However, the SECZ does not have the power to order any suspected insider trading offender to be detained in custody.⁶⁸ This could be caused by the fact that such authority is solely vested in the relevant courts.⁶⁹ The accused person is entitled to have his or her legal representative present during the hearing.⁷⁰ Legal representation helps the accused person, especially, when giving evidence and addressing the commissioner

⁶⁰ Section 102(2) of the Securities Act; A. Van Osselaer, 'Insider Trading Enforcement and Link Prediction', 96(2) *Texas Law Review* (2017), p. 399, 402-424.

⁶¹ Section 57 of the Constitution of Zimbabwe Amendment Act 20 of 2013 (Constitution of Zimbabwe); V. Basdeo, 'The Constitutional Validity of Search and Seizure Powers in South African Criminal Procedure', 12(4) *Potchefstroom Electronic Law Journal* (2009), p. 307, 315-332.

⁶² Section 71 of the Constitution of Zimbabwe; V. Basdeo, 12(4) *Potchefstroom Electronic Law Journal* (2009), p. 309.

⁶³ Section 51 of the Constitution of Zimbabwe; V. Basdeo, 12(4) *Potchefstroom Electronic Law Journal* (2009), p. 309 and 313.

⁶⁴ Sections 86(2) read with section 87(1) of the Constitution of Zimbabwe; V. Basdeo, 12(4) *Potchefstroom Electronic Law Journal* (2009), p. 309.

⁶⁵ Section 102(1)(b) of the Securities Act; A. Van Osselaer, 96(2) *Texas Law Review* (2017), p. 402-424.

⁶⁶ Section 104 of the Securities Act; see further S.J. Choi, and A.C. Pritchard 'The SEC's Shift to Administrative Proceedings: An Empirical Assessment', 34(1) *Yale Journal on Regulation* (2017), p. 1, 6-32.

⁶⁷ Section 103(3)(b) of the Securities Act; A. Van Osselaer, 96(2) *Texas Law Review* (2017), p. 402-424.

⁶⁸ Section 103(5) of the Securities Act; see further A. Agrawal, and T. Cooper, 'Insider Trading before Accounting Scandals', 34 *Journal of Corporate Finance* (2015), p. 169, 171-190.

⁶⁹ Section 90 read with section 91 of the Securities Act; also see M.A. Spitz, 12(1) *Boston College International and Comparative Law Review* (1989) p. 265-299; A. Agrawal, and T. Cooper, 34 *Journal of Corporate Finance* (2015), p. 171-190.

⁷⁰ Section 103(3)(b)(i)-(ii) of the Securities Act; see further D.L. Rhode, 'Professional Integrity and Professional Regulation: Nonlawyer Practice and Nonlawyer Investment in Law Firms', 39(1) *Hastings International and Comparative Law Review* (2016), p. 111, 113-121.

during the hearing.⁷¹ Furthermore, the accused person may be requested to produce documents related to the alleged insider trading case during the hearing. Thereafter, SECZ inspectors may make a copy of and ask questions based on such documents.⁷² However, the Securities Act does not outline the rules and/or specific procedure for the insider trading hearing. The Securities Act merely states that the rules and procedure for the public hearing must be conducted in accordance with the Commissions of Inquiry Act.⁷³ However, the Commissions of Inquiry Act only applies on matters where the president of Zimbabwe has ordered to be investigated by any relevant institution.⁷⁴ Consequently, insider trading investigations are only instituted by the SECZ and/or any person affected by insider trading activities and not the Zimbabwean president *per se*.⁷⁵ This clearly indicates that the Commissions of Inquiry Act does not adequately complement the Securities Act in relation to the regulation of insider trading investigations and/or hearings. In this regard, the authors submit that the SECZ should enact its own specific rules and procedures on insider trading hearings and/or investigations to provide adequate guidance to all the relevant parties.

After the hearing, the SECZ may impose general administrative sanctions on the insider trading offenders. Notably, the SECZ also impose similar administrative sanctions on other offences committed under the Securities Act. This shows that the Securities Act does not provide any specific administrative sanctions for insider trading offences. The adequacy of the available administrative sanctions is discussed below:

(a) the SECZ may issue a warning letter to the insider trading offender.⁷⁶ Usually warning letters are issued on minor offences such as non-material misconduct by employees.⁷⁷ However, it is submitted such warning letters should be coupled with a severe monetary penalty to deter unscrupulous persons from committing insider trading offences. The monetary penalty should be, *inter alia*, aimed at restoring the insider trading victim to the position that he or she was

⁷¹ D.L. Rhode, 39(1) *Hastings International and Comparative Law Review* (2016), p. 113-121; W. Kruger, *Legal Representation at Disciplinary Hearings and Before the CCMA* (LLM Dissertation University of Pretoria 2012), p. 51-57; S. Van Eck, and R. Jordaan-Parkin, 'Administrative, Labour and Constitutional Law-A Jurisdictional Labyrinth', 27 *Industrial Law Journal* (2006), p. 1987, 1991-1999.

⁷² See section 103(3)(a).

⁷³ Sections 103(5) and 104 of the Securities Act; also see sections 2-20 of the Commissions of Inquiry Act 22 of 2001 [Chapter 10:07] as amended (Commissions of Inquiry Act).

⁷⁴ See section 2(1) of the Commissions of Inquiry Act; see M. Rowe and L. McAllister, 'The Roles of Commissions of Inquiry in the Policy Process', 21(4) *Public Policy and Administration Journal* (2006), p. 99, 101-115, for related discussion.

⁷⁵ Sections 88-94 of the Securities Act read with sections 2-4 of the Commissions of Inquiry Act.

⁷⁶ Section 105(1)(a) of the Securities Act; see further J.J.W. Pfaltzer, 'Naming and Shaming in Financial Market Regulations: A Violation of the Presumption of Innocence?', 10(1) *Utrecht Law Review* (2014), p. 134, 136-148.

⁷⁷ Section 105(1)(a) of the Securities Act; see further P. Drahos, *Regulatory Theory: Foundations and Applications* (Australia, Australian National University Press, 2017), p. 117-555.

before the insider trading offence in question was committed.⁷⁸

(b) the SECZ may instruct the insider trading offender (whether juristic person or an individual) to appoint someone who is qualified to advise that offender on the proper conduct expected of their business.⁷⁹ However, the Securities Act does not clearly stipulates whether the appointed person will merely provide general business advice or relevant advice relating to the combating of insider trading in Zimbabwe. It is submitted that the appointed person should have expertise on market abuse in order to provide sound advice to insider trading offender on the combating of insider trading. Notably, the Companies Act⁸⁰ provides that the company must disclose to the registrar of companies information regarding the company's purchase of its own shares. This primarily aimed at curbing the misuse of non-public inside information by directors, shareholders and other company employees (primary insiders).

(c) the SECZ may instruct the insider trading offender to undertake specific remedial action.⁸¹ The Securities Act does not clearly stipulates how such instruction could assist the SECZ in combating insider trading activities in the Zimbabwean financial markets. In this regard, the authors submit that, perhaps, the SECZ may direct the insider trading offender to do or refrain from doing certain practices and/or activities that amounts to, and/or that may give rise to insider trading.⁸² Accordingly, where the offender is a juristic person, the SECZ may convene a special meeting with its members to discuss the remedial measures in respect thereof.

(d) the SECZ may impose a monetary penalty not exceeding level five (Zim \$200 000) for each day that the insider trading contravention has continued.⁸³ A monetary sanction is normally imposed on the offender to recover the money that he or she gained through insider trading.⁸⁴ It is submitted that the Zim \$200

⁷⁸ See further H. Kawadza, 'Extra-Judicial Enforcement of Securities Regulation and the Public Interest Theory: A South African Perspective', 29(1) *Speculum Juris* (2015), p. 49, 61-67; K.D. Martin, 'Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors', 29 *Criminal Justice Policy Review* (2018), p. 630, 631-662.

⁷⁹ Section 105(1)(b) of the Securities Act; see further discussion by V. Dalko and M.H. Wang, 'Why is Insider Trading Law Ineffective? Three Antitrust Suggestions', 33(4) *Studies in Economics and Finance Journal* (2016), p. 704, 707-715.

⁸⁰ Section 82 of the Companies Act 23 of 2009 [Chapter 24:03] as amended (Companies Act); also see H. Chitimira, 17(3) *Potchefstroom Electronic Law Journal* (2014), p. 943-962; P.C. Osode, 44(2) *Journal of African Law* (2000), p. 241-263.

⁸¹ Section 105(1)(c) and (h) of the Securities Act; also see M. Luchtman and J. Vervaele, 'Enforcing the Market Abuse Regime: Towards an Integrated Model of Criminal and Administrative Law Enforcement in the European Union?', 5(2) *New Journal of European Criminal Law* (2014), p. 192, 206-220.

⁸² Section 105(1)(c) and (h) of the Securities Act; see related comments by T. Eisenbach, A. Haughwout, B. Hirtle, A. Kovner, D. Lucca and M. Plosser, 'Supervising Large, Complex Financial Institutions: What Do Supervisors Do?', 23(1) *Economic Policy Review* (2017), p. 57, 59-77.

⁸³ Section 105(1)(d) of the Securities Act.

⁸⁴ S. Thanitcul and T. Srinopnikom 'Monetary Penalties: An Empirical Study on the Enforcement of Thai Insider Trading Sanctions', 30 *Kasetsart Journal of Social Sciences* (2018), p. 1. 3-7.

000 is not deterrent enough to discourage all persons from committing insider trading in Zimbabwe. This follows the fact that insider trading offenders usually gain a lot of profit from their insider trading activities. Therefore, a more stringent monetary sanction could assist the SECZ to discourage all persons from committing or attempting to commit insider trading activities in the Zimbabwean financial markets.⁸⁵ The SECZ should also consider adopting other administrative sanctions such as disgorgement of illicit profits to recover such profits and injunctions orders to discourage all persons from engaging in insider trading activities.

(e) the SECZ may instruct the insider trading offenders, especially, juristic persons to suspend or remove all their officers and/or employees who committed insider trading.⁸⁶ However, mere suspension of the insider trading offenders from their duties is not deterrent enough for the purposes of curbing insider trading in Zimbabwe. For instance, suspended employees and/or insider trading offenders could still commit further insider trading offences after the expiry of the suspension.

(f) the SECZ may cancel the license or registration of the insider trading offenders. Moreover, the SECZ may amend the terms and/or conditions of the insider trading offenders' license and registration of their companies.⁸⁷ The cancellation of a license or registration will negatively affect the reputation of the insider trading offender as well as their company.⁸⁸ As a result, investors and/or other relevant persons may be reluctant to invest in, or do business with a company or individual that was involved in insider trading activities. This administrative sanction could help to curb insider trading activities in Zimbabwe.

(g) the SECZ may appoint a supervisor to monitor the affairs of the committee, operator or any person suspected of committing insider trading.⁸⁹ It is not clear whether the supervisor should be a person with relevant expertise on market abuse regulation. Nonetheless, it is submitted that the appointment of the supervisor is probably aimed at detecting illicit trading activities by the aforesaid persons in order to prevent the commission of insider trading offences in the Zimbabwean financial markets. Where the insider trading offender is a central securities depository, the SECZ may dissolve it or amend any rules governing its operation.⁹⁰ This is done to combat or ameliorate further effects of insider trading in the Zimbabwean financial institutions and financial markets.

Nonetheless, the administrative penalties stated above have not been successfully imposed on the insider trading offenders by the SECZ to date. As a result, the authors submit that the Securities Act should be amended to provide

⁸⁵ D. Linnertová, and O. Deev, 'Insider Trading Activities and Returns of German Blue Chips', 63(6) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* (2015), p. 1995, 1998-2003.

⁸⁶ Section 105(1)(e) and (f) of the Securities Act.

⁸⁷ Section 105(1)(i) of the Securities Act; J.J. Du Plessis, and G. Lyon, *The Law of Insider Trading in Australia*. (Sydney, The Federation Press, 2005) 107-157.

⁸⁸ M. Luchtman and J. Vervaele, 5(2) *New Journal of European Criminal Law* (2014), p. 206-220.

⁸⁹ Section 105(1)(g) of the Securities Act.

⁹⁰ Section 105(1)(j) of the Securities Act.

sufficient and specific administrative penalties for insider trading to deter all persons from committing insider trading offences in the Zimbabwean financial markets. For example, the SECZ should be expressly and statutorily authorised to publish the names of suspected insider trading offenders in appropriate public media or its website whenever such publication is in the interest of the public.⁹¹ Publication of ongoing and completed insider trading cases on the SECZ website and/or relevant public media could discourage market participants from committing insider trading offences.⁹² This could further discourage all the relevant persons from committing insider trading due to fears that their reputation will be affected when their cases are published on the SECZ website and/or in the public media.⁹³

After the completion of insider trading investigations, the SECZ compiles the investigations report and sends it to the accused to enforce the recommendations set out in the report.⁹⁴ Thereafter, the SECZ summons the insider trading offender to comply with the stipulated administrative sanctions.⁹⁵ This gives the accused a chance to mitigate the imposed administrative sanctions and make his or her own representations. The insider trading offender or any person who is not satisfied with the decision of the SECZ may appeal against that decision in the administrative court.⁹⁶ However, the Securities Act does not clearly provide whether the SECZ's administrative sanctions and/or decisions have legal force as if they were made by the relevant courts.⁹⁷ Notably, where administrative sanctions and/or decisions do not have legal force, the insider trading offenders may refuse to comply with such sanctions and/or decisions and no legal action will be taken against them.⁹⁸ In this regard, the Securities Act should be amended to expressly provide that the SECZ's insider trading administrative sanctions have the same effect as those made by competent courts. Furthermore, the relevant courts must take into account any administrative sanction imposed by the SECZ when dealing with insider trading matters that arises from the same facts to prevent the risk of double jeopardy and/or over-prosecution of the same offender for the same

⁹¹ J. Van Erp, 'The Impact of "Naming and Shaming" on Business Reputations: An Empirical Study in the Field of Financial Regulation', *Paper Presented at the Second Biennial Conference on the Standing Group on Regulatory Governance of ECPR and Regulatory Framework*, at the Utrecht University, 5-7 June 2008, p.1, 9-15; H. Chitimira, *A Comparative Analysis of the Enforcement of Market Abuse Provisions* (LLD Thesis Nelson Mandela Metropolitan University 2012), p. 253.

⁹² J. Van Erp, 5-7 June 2008, p.1, 9-15; J.J.W. Pfaeltzer, 10(1) *Utrecht Law Review* (2014), p. 136-148.

⁹³ *Ibid.*

⁹⁴ Section 104(2) of the Securities Act; see related comments by H. Chitimira, and V.A. Lawack, 'Overview of the Role-Players in the Investigation, Prevention and Enforcement of Market Abuse Provisions in South Africa', 34(2) *Obiter* (2013), p. 200, 209-217.

⁹⁵ Section 105(2)(b) of the Securities Act.

⁹⁶ Section 108(5) of the Securities Act; also see H. Chitimira and V.A. Lawack, 34(2) *Obiter* (2013), p. 212.

⁹⁷ Sections 105 and 108 of the Securities Act; see further L. Wolf, 'The Remedial Action of the "State of Capture" Report in Perspective' 20 *Potchefstroom Electronic Law Journal* (2017), p. 1, 5-35.

⁹⁸ Sections 105 and 108 of the Securities Act; see further L. Wolf, 20 *Potchefstroom Electronic Law Journal* (2017), p. 5-35.

offence.⁹⁹ The SECZ may also recover all its expenses incurred during the insider trading investigations from the insider trading offenders.¹⁰⁰ This only occurs when the SECZ submits a certificate signed by the SECZ Chief Executive Officer (CEO) setting out the total amount of the expenses it incurred during such investigations to the court.¹⁰¹ The Securities Act should also be amended to expressly empower the aggrieved persons with the right to institute their own claims for insider trading damages directly against the offenders (private rights of action).¹⁰²

The Securities Act should further provide adequate statutory guidelines on how the affected persons may successfully claim their insider trading damages from the SECZ.¹⁰³ Furthermore, the Securities Act should expressly provide the role of the SECZ in relation to actual calculable damages and other remedies for insider trading in Zimbabwe.¹⁰⁴ As a result, persons affected by insider trading activity may be delayed or fail to receive their damages from the SECZ due to such flaws and disparities.¹⁰⁵ For instance, since 2016, the SECZ has been investigating the CFI Holdings Limited which allegedly unlawfully sold its shares to Messina Investments (Private) Limited during its closed period.¹⁰⁶ The alleged insider trading involves CFI Holdings stock worth US\$189 529, 45. Messina Investments Limited bought 3 313 452 CFI shares at US\$0, 0572 each. The ZSE suspended the CFI Holdings from further trading its shares. However, since the investigation was initiated, the SECZ has not yet finalised this case to date.¹⁰⁷ This shows that the SECZ is still struggling to successfully and timeously investigate insider trading cases in Zimbabwe. These and other flaws could have been exacerbated by the fact

⁹⁹ Section 93 of the Securities Act.

¹⁰⁰ Section 106(1) of the Securities Act; see further S.M. Luiz, 'Market Abuse and the Enforcement Committee', 23(2) *South African Mercantile Law Journal* (2011), p. 151, 157-172.

¹⁰¹ Section 106(2) of the Securities Act.

¹⁰² See sections 91; 92 and 105 of the Securities Act; see further A.A. Durnev and A.S. Nain, 'Does Insider Trading Regulation Deter Private Information Trading? International Evidence', 15(5) *Pacific-Basin Finance Journal* (2007), p. 409, 415-433; T. Frankel, 'Implied Rights of Action', 67(3) *Virginia Law Review* (1981), p. 553, 557-585.

¹⁰³ See sections 88-94; H. Chitimira, 'Overview of the Available Remedies for Market Abuse Victims under the Financial Markets Act 19 of 2012', 5(8) *Mediterranean Journal of Social Sciences* (2014), p. 124, 125-134.

¹⁰⁴ See sections 88-94; see related comments by H. Chitimira, 'An Analysis of the Market Abuse Prohibition Enforcement in the United States of America', 5(7) *Mediterranean Journal of Social Sciences* (2014), p. 188, 190-196.

¹⁰⁵ Sections 88-94 of the Securities Act; see further H. Chitimira, 5(8) *Mediterranean Journal of Social Sciences* (2014), p. 125-134.

¹⁰⁶ B. Mpofu, *ZSE Investigates Toxic CFI Deal* (2017), p. page number unknown, available at <https://www.theindependent.co.zw/2017/08/08/zse-investigates-toxic-cfi-deal/>, accessed 01 October 2018, p. page number unknown; D.W. Hawes, 'A Development in Insider Trading Law in the United States: A Case Note on Chiarella v United States', 3 *Journal of Comparative Corporate Law and Securities Regulation* (1981), p. 193, 194-197; K.R. Ahern, 'Information Networks: Evidence from Illegal Insider Trading Tips', 125(1) *Journal of Financial Economics* (2017), p. 26, 28-47.

¹⁰⁷ B. Mpofu, (2017), p. page number unknown, available at <https://www.theindependent.co.zw/2017/08/08/zse-investigates-toxic-cfi-deal/> accessed 01 October 2018; see related discussion by R.C. Flynn, 'SEC Distribution Plans in Insider Trading Cases', 48(1) *The Business Lawyer* (1992), p. 107, 111-139.

that most of the SECZ surveillance department staff members do not have the relevant expertise in insider trading regulation.¹⁰⁸ Furthermore, the SECZ surveillance department has very few staff members, perhaps, due to limited financial resources. This status *quo* has negatively affected the detection, investigation, settlement and prosecution of insider trading by the courts and the SECZ in Zimbabwe to date. Accordingly, the government and other relevant stakeholders should assist the SECZ with adequate financial resources to enhance the curbing of insider trading in the Zimbabwean financial markets.

4. The role of the ZSE

The Securities Act does not expressly provide for the role of the ZSE in the investigation, detection and combating of insider trading activities in Zimbabwe.¹⁰⁹ However, the ZSE oversees the trading of securities and financial instruments in the Zimbabwean regulated markets. It appears the ZSE does not have sufficient electronic surveillance systems in place to detect, investigate and prevent insider trading activities in the Zimbabwean financial markets. This follows the fact that the ZSE reportedly relies on insider trading tip offs from the police and other market participants to detect and investigate possible insider trading activities in the Zimbabwean financial markets.¹¹⁰ This approach has impeded the regulatory efforts of the ZSE in combating insider trading activities in the Zimbabwean financial markets. Moreover, this suggests that the ZSE is still struggling to effectively and consistently compliment the SECZ in its regulatory efforts to curb insider trading in Zimbabwe. Consequently, it is submitted that the ZSE should establish its own adequate electronic surveillance systems to timeously detect, analyse and isolate all unusual trading patterns in the Zimbabwean financial markets and refer them to the SECZ for further adjudication.

The ZSE Listing Requirements were initially published in 1998 and came into effect in 2002 to, *inter alia*, assist the ZSE in combating illicit trading practices such as insider trading.¹¹¹ It is submitted that prior to 2002 till up to 2004, insider trading was not statutorily outlawed in Zimbabwe. Consequently, the ZSE was not yet responsible for detecting and/or preventing the occurrence of insider trading practices in the Zimbabwean regulated financial markets. Currently, the ZSE

¹⁰⁸ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018.

¹⁰⁹ Sections 88-94 of the Securities Act.

¹¹⁰ This information was obtained from an interview that was conducted at the SECZ by the authors, with T. Mataruka (Legal and Licensing Officer of the SECZ) and N. Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018; also see the ZSE, *Launch of the Zimbabwe Stock Exchange's Automated Trading System* (2015), p. page number unknown, available at <https://www.african-markets.com/en/stock-markets/zse/launch-of-the-zimbabwe-stock-exchange-s-automated-trading-system>, accessed 01 September 2017.

¹¹¹ The ZSE Listing Requirements were initially published on 1 May 1998 and came into effect on 8 February 2002; see related discussion by H. Chitimira, 1 *Speculum Juris* (2014), p. 110-124.

Listing Requirements have very few rules that could indirectly prohibit insider trading practices. For example, section 3.69(i) prohibits directors from dealing in listed securities while in possession of non-public price-sensitive information relating to such securities.¹¹² Section 3.69(ii)(a) of the ZSE Listing Requirements provides that an issuer of securities must provide the ZSE with, *inter alia*, a list of all transactions in securities of that issuer by or on behalf of a director of the issuer concerned or any associate of such director that are held directly, indirectly, beneficially, non-beneficially or by an immediate family member of such director. Section 3.69(ii)(b) of the ZSE Listing Requirements provides that an issuer of securities must provide the ZSE with the: (i) date on which the relevant transaction was effected; (ii) price, amount and class of securities concerned; (iii) nature of the transaction; and (iv) nature and extent of the director's interest in the transaction in question. Furthermore, section 3.1 of the ZSE Listing Requirements states that all companies whose securities are listed on the ZSE should comply with its listings requirements. Section 3.3 of the ZSE Listing Requirements requires all issuers of securities to promptly publish a press announcement giving details of any new developments not yet known to the public or circumstances or events that have or are likely to have a material effect on the financial results or the financial position of the issuer of securities and/or lead to material movements in the price of the listed securities, to avoid the creation of a false market in such listed securities. Sections 3.4 and 3.5 of the ZSE Listing Requirements requires issuers of securities not to give relevant non-public information to third parties and to ensure that such information is only given to other relevant persons in strict confidence prior to its publication respectively.¹¹³ Section 3.9 of the ZSE Listing Requirements obliges an issuer of securities to publish a cautionary announcement as soon as possible after it is in possession of any material price-sensitive information which could lead to material movements in the price of its securities if at any time the necessary degree of confidentiality cannot be maintained or has been breached. However, section 3.10 of the ZSE Listing Requirements provide that the ZSE Committee may dispense with the requirement to make the information public or make such cautionary announcements if such publication could prejudice the listed company's legitimate interests.

The aforesaid ZSE Listing Requirements could be utilised by the ZSE to curb insider trading in the Zimbabwean financial markets. These Listing Requirements could also be employed by the ZSE to enhance market efficiency, market integrity and public investor confidence in the Zimbabwean financial markets. Nevertheless, the biggest flaw of the ZSE Listing Requirements is their failure to clearly stipulate the penalties that could be imposed on those who violate

¹¹² Rule 3.69(i) of the ZSE Listing Requirements. See related comments by N. Bhana, 'Take-over Announcements and Insider Trading Activity on the Johannesburg Stock Exchange', 18(4) *South African Journal of Business Management* (1987), p. 198, 200-208; H. Chitimira, 1 *Speculum Juris* (2014), p. 110-124.

¹¹³ Also see sections 3.6-3.8 of the ZSE Listing Requirements for other instances where the disclosure of non-public information to third parties could be exceptionally allowed.

them through insider trading.¹¹⁴ In this regard, the ZSE should consider amending its Listing Requirements to expressly provide penalties for non-compliance and other stringent rules on how issuers of securities may effectively curb insider trading in the Zimbabwean financial markets and financial institutions.

5. The role of the courts

The effective enforcement of the Securities Act's anti-insider trading prohibition cannot be ascertained without examining the role of the Zimbabwean courts in respect thereof.¹¹⁵ The courts are empowered to enforce the civil and criminal sanctions for insider trading under the Securities Act.¹¹⁶ Nevertheless, the Securities Act does not expressly provide the type of courts responsible for adjudicating insider trading cases in Zimbabwe. It, however, appears that the regional magistrate courts¹¹⁷ and the High Courts have jurisdiction to hear insider trading cases in Zimbabwe. Despite this, it is submitted that regional magistrate courts and High Courts do not usually adjudicate on insider trading cases timeously owing to the backlog of other cases in the courts and insufficient magistrates, judges and/or other court officials with the relevant expertise to adjudicate on insider trading cases.¹¹⁸ Accordingly, these and other related challenges have negatively affected the effective enforcement of the anti-insider trading criminal and civil penalties in Zimbabwe to date. Consequently, very few insider trading cases have been timeously and successfully settled and prosecuted by the relevant courts in Zimbabwe to date. In light of this challenge, the Magistrates Court Act¹¹⁹ was amended to establish commercial courts. These commercial courts are merely magistrates' courts where commercial disputes such as insider trading cases are brought for further adjudication.¹²⁰ This was probably aimed at increasing the timeous prosecution and settlement of commercial disputes in Zimbabwe.¹²¹ The establishment of the commercial courts is commendable and could, if properly utilised, enhance the curbing of insider trading and increase investor confidence in the Zimbabwean financial markets. Despite this, it is unfortunate that the commercial courts have not yet commenced their operations to date. The delay has

¹¹⁴ N. Bhana, 18(4) *South African Journal of Business Management* (1987), p. 200-208; H. Chitimira, 1 *Speculum Juris* (2014), p. 110-124.

¹¹⁵ See sections 88-94 of the Securities Act.

¹¹⁶ See sections 90-93.

¹¹⁷ Section 117 read with sections 88-94 of the Securities Act.

¹¹⁸ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018.

¹¹⁹ Magistrates Court Act 86 of 1995 [Chapter 7:10] (Magistrates Court Act) as amended by the Judicial Laws Amendment Act (Ease of Settling Commercial and Other Disputes) 7 of 2017 (Judicial Laws Amendment Act), see sections 6 and 7.

¹²⁰ Sections 6 and 7 of the Judicial Laws Amendment Act.

¹²¹ Sections 6 and 7 of the Judicial Laws Amendment Act; see further M.A. Al-Khulaif, and I.A. Kattan, 'Establishment of Specialist Commercial Courts in the State of Qatar: A Comparative Study', 5 *International Review of Law* (2016), p. 1, 3-15.

been caused in part, by the failure on the part of the Judicial Services Commission (JSC) to finalise administrative mechanisms and other relevant logistical requirements for the commercial courts to start functioning.¹²² It also remains to be seen whether the anticipated commercial courts will have sufficient magistrates and other court officials with the relevant competences, skills and/or expertise to adjudicate on insider trading cases.¹²³ The authors submit that the operation of the commercial court is long overdue. Therefore, the JSC, the government and other relevant stakeholders should provide sufficient financial resources to the JSC and speed up the process of enabling the commercial courts to commence their operations in Zimbabwe.

More still needs to be done to improve the prosecution and settlements of insider trading cases by the courts in Zimbabwe. For instance, no single insider trading case has been successfully and timeously prosecuted and/or settled by the courts in Zimbabwe to date.¹²⁴ Perhaps, the SECZ should consider organising training workshops on insider trading for magistrates, judges, prosecutors and other court officials to enhance the prosecution and settlement of insider trading cases in Zimbabwe. This entails that the courts and the SECZ should effectively co-operate and assist each other with relevant information, especially, during insider trading investigations to effectively combat insider trading activities in Zimbabwe. Furthermore, the Securities Act should be amended to reduce or streamline the burden of proof required in criminal cases of insider trading. This could enable the courts to increase the successful settlement and/or prosecution of such cases in Zimbabwe.¹²⁵

6. Concluding remarks

The enactment and introduction of the anti-insider trading regime in the Securities Act is commendable. Moreover, the anti-insider trading regulatory efforts of the SECZ, the ZSE, the courts and other related role-players are also welcome. In spite of these commendable efforts, various flaws in the current anti-insider trading regime have impeded the role and effectiveness of the anti-insider

¹²² This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018; see further M.A. Al-Khulaif, and I.A. Kattan, 5 *International Review of Law* (2016), p. 3-15.

¹²³ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018; see further A. Padilla, 'Should the Government Regulate Insider Trading?', 22 *Journal of Libertarian Studies* (2011), p. 379, 391-398, for related discussion.

¹²⁴ P. Saungweme, P. Ricardo, and B. Pradeep, 7(17) *African Journal of Business Management* (2013), p. 1635-1636; R.W. McLucas, J.H. Walsh and L.L. Fountain, 'Settlement of Insider Trading Cases with the SEC', 48(1) *The Business Lawyer Journal* (1992), p. 79, 87-106.

¹²⁵ See sections 90-93 of the Securities Act; also see J. Öberg, 'Is it "Essential" to Imprison Insider Dealers to Enforce Insider Dealing Laws?', 14(1) *Journal of Corporate Law Studies* (2014), p. 111, 115-138.

trading regulatory bodies and enforcement authorities in Zimbabwe to date. For instance, the SECZ, the courts and the ZSE do not have sufficient financial resources and staff members with the relevant expertise on insider trading regulation and financial markets law. Additionally, both the SECZ and the ZSE do not have adequate electronic surveillance systems to detect, investigate and combat insider trading practices in the Zimbabwean financial markets.¹²⁶ The commercial magistrates' courts are still non-functional and there is scant co-operation between the SECZ, the ZSE, the courts and other related role-players that are involved in the combating of insider trading in Zimbabwe. Accordingly, the SECZ and the ZSE should adopt their own separate and adequate electronic surveillance systems to detect, isolate and prevent the occurrence of insider trading in the Zimbabwean financial markets. Furthermore, the SECZ, the ZSE, the courts and other relevant role-players should consistently compliment and co-operate with each other to enhance the curbing of insider trading in Zimbabwe. Likewise, the SECZ, the ZSE, the courts and other relevant role-players should be equipped with sufficient financial and other resources to enable them hire sufficient persons with the required skills, experience and expertise on insider trading regulation, especially, the detection, investigation and prosecution of illicit trading practices such as insider trading in Zimbabwe.¹²⁷ This could enhance and increase the number of insider trading cases that are timeously and successfully prosecuted and settled by the SECZ, the courts and other role-players in Zimbabwe. It is also submitted that the anticipated commercial magistrates' courts should quickly commence their operations to enhance the settlement and prosecution of insider trading cases in Zimbabwe. In this regard, the JSC should ensure that all commercial magistrates' courts are manned by persons with the relevant expertise on commercial law and financial markets law to enhance the settlement and prosecution of insider trading cases in Zimbabwe.

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¹²⁶ This information was obtained from an interview that was conducted at the SECZ by the authors with Mr T Mataruka (Legal and Licensing Officer of the SECZ) and Mr N Mahombera (Surveillance and Risk Manager of the SECZ) on 29 June 2018.

¹²⁷ *Ibid.*

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