

知情交易、證券交易的三面結構 與內線交易的外沿

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摘 要

本文從財務經濟學與法學雙重角度，介紹知情交易的概念。此一概念，藉由財務經濟學的發展，得以量化的知情交易機率的估算，並提供內線交易與優勢交易的有效量化標準。本文並藉由現代證券交易的三面關係，討論市場專業從業人士與金融中介機構在交易與資訊傳遞上所扮演的角色。本文基於以上的介紹，透過近年美國（Steinberg 案、Newman 案、Salman 案、Martoma 案）與臺灣案例（花旗環球張偉凱案）的進一步分析，檢討知情交易與專業人士本於資訊開發與優勢下所為交易所應承擔之法律責任，並對相關法律原則在演進與進退間，所面對的批評與掙扎進行評論。

關鍵詞：知情交易、知情交易機率、證券交易三面結構、花旗張偉凱案、Newman case、SAC Capital

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Informed Trading, the Three-Way Nature of Modern Securities Transaction, and the Halo of Insider Trading

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Abstract

This article discusses the concept of “informed trading” from two dueling angles: financial economics and law. As a concept developed since the 1980s, informed trading has gradually evolved into a concept of “probability of informed trading,” which is a numeric estimation achieved by the OLS and the Poisson Process. Based on this understanding, we discuss the three-way nature of modern securities transactions and the role that market professionals play in securities industry, with a focus on their role in transmitting information to the market and an efficient price. In its last part, this article examines several recent U.S. cases involving tipper-tippee liability and their struggle in developing a stable legal theory that can strike a balance between trading need and market fairness. It concludes

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with a middle-ground approach as a legislative recommendation for the possible solution.

Keywords: Informed Trading, Probability of Informed Trading, Three-Way Nature of Securities Transaction, Citigroup Global and Kevin Chang case, Newman case, SAC Capital