

摘要

本文主要在探討內線交易中重大消息之具體認定，就證券交易法之規範內容而言，何謂重大訊息？重大訊息之公開時點如何區隔？均為不確定之問題；此外，該重大影響股票價格之消息成立時點牽涉到「訊息公開前」，則重大消息有無成立時點？如有，應依何種標準決定？消息是否公開？實務上之運作如何？這些問題甚難具體界定，但對內線交易之成立與否而言，卻是相當關鍵的要素。

就消息重大性之判斷而言，在證券交易法第一百五十七條之一第四項重大消息範圍及其公開方式管理辦法公佈之後，應有較為明確之方向。惟消息重大性與否之判斷，具有高度事實認定之特性，必須依個案具體事實認定，而且並非以單一事件作為衡量基準，而應綜合各項因素作整體之判斷。其解決之道似仍有賴實務與學界之努力，經由判決與學說的累積，建立一些較為具體之判斷標準或案例，以供大眾遵循。本文希望能透過美國以及我國法院之實際運作情形，整理出一些具體的認定基準。

在重大消息成立時點方面，任何重大消息都有其形成之過程，如果固守僵硬之標準，認為程序尚未完成、消息尚未確定者，均非屬內線消息，恐過於僵化，應就相關事實之整體及結果以作觀察，不應僅機械性地固執於某特定、且具體確定之事實發生時點而已，否則將無法把握該立法精神。

就重大消息公開與否之判斷，應視已否輸入公開資訊觀測站，如已輸入，則應認為已公開；如未輸入，則須視該重大消息是否已經媒體完整報導，或消息是否經由該公司或相關人士證實，如答案是肯定的，則亦應認為該重大消息已屬公開；反之，如僅為未經完整報導之傳聞或未經公司或相關人士證實之報導，應不得認為該消息業已公開。

關鍵字：內線交易、重大消息、內部人、消息成立時點、消息公

開、重大影響其股票價格之消息、知悉、證券交易法第一百五十七條之一。

Abstract

This thesis mainly discusses the definition of material information under insider trading regulation. When applying insider trading laws, we used to be confused about some issues, such as the definition of “ material information ” and “ the disclosure period ” . Besides, If the information affecting the price of shares was formed before disclosure, how is the timing of material information determined? Is there any standard we could apply to determine when the information is formed and whether the information is disclosed in practice? These questions are very difficult to figure out and they are extremely crucial in recognizing whether insider trading was formed.

In the definition of material information, it should be more precise after the enact of “ Regulations Governing the Scope of Material Information and the Means of its Public Disclosure Under Article 157-1, Paragraph 4, of the Securities and Exchange Act ” . However, the definition of “ material information ” should still be evaluated upon case-by-case basis. Instead of evaluating the definition of material information by certain aspects, it should be determined by considering varies of factors and judged comprehensively. The courts and academias have to develop some more specific standards and precedents. The thesis is trying to provide some specific standards by summarizing judgments made by U.S. and Taiwan courts.

Each event of material information formation possesses its own particular formation process. Thus, it would be inflexible in defining material information if we use certain the traditional definition standards. Provided we considered some information was not “ material ” only if the formation process of this information was unfinished or the information was uncertain, it would be too rigid. In order to follow legislator ’ s original intension, we should observe the facts and outcomes at a more comprehensive sight, and should not mechanically stick at certain the point when the events was happened.

To decide whether the material information is duly disclosed, it should be depended on whether this information was uploaded to Market Observation Post System. If the information is uploaded, we may consider this information was disclosed. Under the circumstances that the information is not uploaded, “ whether the information is completely reported by media ” and “ whether this information is certified by the company or related person ” will be the criterion . If either of these criterion are satisfied, we should also consider that the information is disclosed; otherwise, the information should not be regarded as disclosed.

Key words: insider information, material information, insider, disclosure, the time at which inside information is formed, acknowledge of material information, Article 157-1 of Securities and Exchange Law.