

## INSIDER TRADING - CHINESE WALLS FOR BANKERS

RICHARD YOUARD

Slaughter & May  
Solicitors, United Kingdom

My outline contains a lot of detailed differences between what is happening in Australia and what we are doing. In the end I am not sure it matters all that much because what I want to talk about very briefly is attitudes and how real the whole situation is and what one does about insider dealing.

England's approach to the whole thing has been deplorable. We have had the same legal background as everybody else here. For years and years we have talked about the common law system which Roland Brandel has described, we had the same sort of law which had the same sort of theoretical remedies and absolutely nothing happened. As a firm we used to lecture directors of listed companies on their duties and when they could deal and when they could not deal, and quite a lot of them listened and some of those who listened actually acted accordingly. But by and large life went on. A market after all is all about information and stockbrokers and others got that information and a lot of people "tut tutted" and shook their heads, but it was not regarded as something which affected people generally.

It was not in fact until 1980 that we got our first legislation on the subject. In 1980 we produced our first bit of legislation and the effect of that you can see when I quote some figures here which says that six years after that Act was brought in the stock exchange, which by now had got one of these new electrical computer things, the computer had detected 811 unusual price movements compared with half that number the previous year and of these 108 meant a detailed investigation. A large number of those were passed on to Department of Trade and Industry prosecutions.

You can see from that that still nobody is taking the thing seriously and that almost brings us up to date. Now there has been a change in climate as a result of various unsavoury events. the whole subject of insider dealing has become front page news on the papers, and even those papers which are controlled by Rupert Murdoch include them on the front page occasionally if there is room without the pictures. But this is a measure of how much things have changed. The City is unpopular, it has never

been very popular, and anything that looks like scandal is always good reading and insider dealing has become front page news.

The government is very keen on doing something about it and resources are being made available to pursue insider dealing. The system that we have in London is that the Department of Trade puts together a team, almost invariably two people, one an accountant and one an experienced lawyer, and they set off with now very wide powers indeed to find out what is going on and then they report back and hand it over to the police who clap the insiders into jail.

In fact I was recently appointed as an inspector by the Department of Trade and so I am working on one of these things for the Department with Deloitte. It is very revealing and it changes one's attitude. One of the things that I have discovered (and I am not going to tell you all the exciting details that have come to light so far) which has depressed me enormously is the fact that the market has not taken the thing seriously. Wading through the files of quite well-known financial organizations it is too depressing indeed to find that they do not know and they do not care.

The people involved are not crooked. They have an attitude which financial markets have inherited from years and years of thinking that it was just a private activity. Some of these persons are going to be quite taken by surprise when the lock is finally turned on them for two years inside with unlimited fines. Attitudes have got to change.

Now I expect you all know the quotation from a case in the House of Lords in 1831 where Lord Winnford said:

"I believe whenever a man puts his foot into the stock exchange, not being a member of the stock exchange, his ruin is certain, and the only question is a question of time".

That actually has been the attitude in England until very recently. It has been a club for professionals. Now governments do not want it to be a club for professionals, they want it to be open to all and therefore they say everybody has got to operate on the same information. Professionals do not like that much because basically being successful on the stock exchange means using a mixture of information and skill. If you cut out the main source of information you are left trying to make a living on your skill!

One solution to the whole thing - if you are not going to devote sufficient resources, and resources is the key to it, to making the remedies for insider dealing work, is simply to have an entirely professional stock exchange. You gave a sign on the door saying "widows and orphans not admitted. Sharks only". That is not going to happen of course as no government is going to admit defeat. We have all got to make the thing work. We do

not have Chinese Walls as a defence to our statutory offences. It is obviously sensible to erect Chinese Walls to try to avoid insider trading. But if you have a Chinese Wall and it does not work then you are in trouble. Even that is difficult. There is an awful amount of effort being put in the City at the moment to try to work out the answers as to how to make the law work.

But supposing you do the most marvellous system in-house, if you have one canteen for the whole organization, all the guys who are not allowed to talk to each other at 10.30 will be discussing the same information at 1.00 o'clock. How are you going to prove that they were not discussing it at 1.00 o'clock if the information got across the wall. It is very difficult indeed.

As lawyers we have similar sorts of problems. My firm and I think the city firms generally do not regard Chinese Walls as appropriate for use within law firms. What we do is to have very strict rules indeed on conflicts of interest and just try not to get ourselves into the situation where we are going to have problems where we might need a Chinese Wall.

On insider dealing, whether we like it or not, we are going to have that problem. Now we have very strict procedures so that anybody who wants to invest in anything has to go and ask the computer whether anybody in the firm has been involved in the company. The enquirer will have to get a clearance from every single person that the computer throws up. That is the best we can do.

But the fact is that in London we do not know the answers to the problem. We can see more of the questions now than we ever saw before. We can dimly see a few of the answers; we are behind the times but I believe we are eventually catching up.