

Bolstering The Insider Trading Regulation to Curb Negative Consequences of Mergers and Acquisitions in South Africa: A Comparative Assessment

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ABSTRACT

This article considers the inclusion of express statutory provisions aiming at curbing insider trading in Mergers and Acquisitions (M&As). Insider trading constitutes market abuse and is prohibited because it creates information asymmetry and undermines investor confidence. M&As potentially allow the incidence of insider trading. In South Africa, there is no specific statute that regulates insider trading in M&As. However, insider trading is generally regulated under the Financial Markets Act 19 of 2012 and the Johannesburg Stock Exchange Listing Requirements. The institutions that regulate insider trading include the JSE Market Regulation Division and the Financial Sector Conduct Authority. In addition, sections 126 and 127 of the Companies Act 71 of 2008 (“the Companies Act”) and the Companies Act’s related regulatory institutions, including the Takeover Regulation Panel (TRP) and Takeover Special Committee (TSC), may be classified to be the statutory and institutional framework that implicitly regulates insider trading in the context of M&As. Conclusively, this article underscores the importance of M&As to the economy, simultaneously reiterating the need to infuse express statutory provisions that mitigate potential insider trading in M&A processes.

Keywords: Mergers and Acquisitions, Insider trading, market abuse, information asymmetry