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OF SHARES, SECURITIES, AND STAKES:
THE CHINESE INSIDER TRADING LAW
AND THE STAKEHOLDER THEORY OF LEGAL
ANALYSIS

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I. INTRODUCTION

After the 1949 Chinese Revolution, Chinese society frequently restrict-
ed or challenged the idea of private ownership of capital in China.1 In
fact, the notion of private, third party ownership of enterprises, through
shares or other means, was largely unthinkable.2 The dismantling of the
financial centers in Shanghai3 was testament, on both a local and a na-
tional level, to the official attitude toward passive income.4 For better
or worse, a national distaste for passive income characterized national
policy for thirty years.5 The economic reforms in the post-Mao era

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Law School 1996; M.A. East-West Center-University of Hawaii 1993; B.A. Catholic
University of America 1991, phi beta kappa. I would like to thank Yanping Cao for
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work.

1. See ALEXANDER ECKSTEIN, CHINA’S ECONOMIC REVOLUTION 26-30 (1977)
(discussing the state of the Chinese economy after 1949).
2. Cf. Thomas C. Casey, Taking Stock of China: An Executive Examines
Nation’s Interest in Capitalism, L.A. TIMES, Sept. 26, 1988, at 6 (discussing China’s
newfound interest in free-market principles).
3. See id. (noting that the Shanghai stock market flourished prior to 1949).
4. The author has borrowed the term “passive income” from the United States tax
code, see I.R.C. § 1296(b)(1) (1996), to call attention to the fact that many govern-
ments treat passive earnings differently than income earned from labor or other “ordi-
nary income.”
5. See generally ROBERT C. HSU, ECONOMIC THEORIES IN CHINA, 1979-1988, at

971
(1978-present) challenged these taboos, and the “opening-up policy [duiwai kaifang zhengce]” extended the domestic economic reforms to include foreign participation in an increasingly capitalist interpretation of “socialism with Chinese characteristics.”

Approximately fifteen years after the initial domestic economic reforms, the capital markets are still in an early stage of development. The Chinese securities markets are charged with the task of building a bridge between domestic enterprises and sources of capital, and must efficiently manage the exchanges in order to shore up confidence in the Chinese capital markets as a whole. Not surprisingly, the challenges of regulating these markets are great. Undertrained and understaffed government regulators must tackle such problems as insufficient disclosure, insider trading, and shareholder rights in a precedential vacuum. In addition, the Chinese markets must study and quickly achieve the standards of transparency and equitable operation that the major world markets have developed over decades and centuries.

The knotty problem of insider trading is an excellent example of the difficulties that the Chinese regulators must confront. Chinese efforts to combat insider trading demonstrate the government’s ability to react to

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11. Walker, supra note 9, at 23 (recognizing that the task for China’s emerging regulatory system is difficult in the climate of China’s rapid and chaotic economic transformation).

12. Id.
market demands in an incremental, yet rapid, manner. Most importantly, the development of an insider trading jurisprudence demonstrates the importance of "stakeholders" in the legal system. As investment opportunities in the Chinese equity market grew, government drafters increasingly focused their attention on the abuses in, and deficiencies of, the securities markets. Because more citizens are holding financial stakes in the efficient and fair operation of the market, and more Chinese enterprises are becoming dependent on the influx of capital through the stock exchanges, the Chinese government is investing more resources in confidence-improving measures, such as the drafting of insider trading legislation, and in the hiring and training of securities regulators. The efforts and influence of such a broad group of stakeholders will ensure that the insider trading laws succeed where other laws, such as intellectual property laws, have failed.

This article intends to fulfill two goals. First, this article will provide a comprehensive summary of the current state of the law of insider trading in China. Second, this article will illustrate the feasibility of a meaningful implementation of such laws in China through the use of a "stakeholder jurisprudence," which provides a realistic method for evaluating the implementation of a new law in a developing legal environment, such as China.

II. THE CREATION OF STAKEHOLDERS IN THE CHINESE SECURITIES MARKETS

The theory of stakeholder capitalism is recently a subject of much public discussion, particularly in Great Britain. Tony Blair, the leader of the British Labor Party, adopted this theory, which promotes a vision of the national economy in which all citizens are meaningful participants, and enterprises make decisions after weighing the impact of the decision on the enterprise's financial health and examining the ef-

13. See id. (discussing China's increasing interest in free-market principles).
15. See Unhappy Families: Stakeholder Capitalism, supra note 14, at 23 (discussing the use of stakeholder capitalism principles in Germany and Japan and Blair's promotion of the theory in Britain).
fects of the decision on the rest of society.\textsuperscript{17} By giving all citizens a "stake" in macro- and micro-economic decisions,\textsuperscript{18} proponents of this theory hope to create a society that benefits all, and achieves legitimacy and wins support from all sectors of the economy.

Although the stakeholder economy vision may well be a political ploy,\textsuperscript{19} and the economics of implementing a stakeholder version of a company law may prove unworkable,\textsuperscript{20} the inclusive ideal it proposes is not necessarily flawed. It may, in fact, be an excellent tool for analyzing the legal systems of many developing nations, including China. An analysis that uses a stakeholder jurisprudence may explain the schizophrenia of the Chinese political and legal system in adapting to the requirements of the global economy.

In order to draft a legitimate and realistically enforceable law under a stakeholder jurisprudence, not only must the lawmakers consider the general well-being of the society, but a wide cross-section of citizens must agree that the law is in their own interests. Just as a stakeholder economy would enjoy widespread support from the populace, a stakeholder jurisprudence would earn the necessary endorsement of the citizenry. The converse also rings true: just as the economic non-representation in the warlord period of the Republic of China engendered the Communist Revolution,\textsuperscript{21} a legal system without stakeholders will lead to the rejection of unpopular laws, and possibly the entire Chinese legal system.\textsuperscript{22}

A stakeholder jurisprudence would measure the strength of a law or a legal system by examining implementation and enforcement, rather than

\begin{itemize}
\item \textsuperscript{17} Id.
\item \textsuperscript{18} Unhappy Families: Stakeholder Capitalism, supra note 14, at 23.
\item \textsuperscript{19} Cf. Anthony King, Voters Left Baffled by "Stakeholder Society," DAILY TELEGRAPH (London), Feb. 12, 1996, at 8 (stating that most voters have never even heard of the term "stakeholder society").
\item \textsuperscript{20} See Sir Stanley Kalms, Dangerous Concepts for a Market Economy, FIN. TIMES, Mar. 5, 1996, at 14 (Letter to the Editor) (suggesting that the stakeholder policy may promote dangerous socialist policies); CITY, PENSION FUNDS HIT OUT AT BLAIR VISION, DAILY TELEGRAPH (London), Feb. 23, 1996, at 25 (warning that the diversion of company shareholder returns in a stakeholder economy would deter investors from investing new capital).
\item \textsuperscript{21} Cf. ANN KENT, BETWEEN FREEDOM AND SUBSISTENCE: CHINA AND HUMAN RIGHTS 42 (1993) (tracing the historical link in the human rights movement and explaining how the Chinese Communist Party was able to gain power as a result of the Kuomintang's inability to deal with its unrepresentative government).
\item \textsuperscript{22} Id. Kent then discusses the Kuomintang's emphasis on the rule of law, which was meaningless to the poor majority of the people. Id.
\end{itemize}
the codification or the stated intent of certain laws. Like the critical legal studies approach, a stakeholder jurisprudence focuses on implementation. But while the critical legal studies approach looks to the underlying intents of the legal authority, a stakeholder jurisprudence looks to the interests of the groups that influence the legal authority. In the stakeholder interpretation, the government is merely a reflection of the largest or most powerful group of stakeholders. A stakeholder analysis also accounts for the fluidity of politics; the power of groups of stakeholders may vary over time and government policies reflect the changes in their relative strengths. It can also account for an imbalance of power between small, powerful, well-organized stakeholders, and larger, more diffuse groups with a contrary stake.

In nations like China, where the rule of law is still developing and the government is still more dependent on individual personalities than institutional influence, one may utilize the stakeholder jurisprudence to examine legal developments. At the proposal or passage of a new law, it should be possible to estimate the relative strengths of the stakes different groups have in endorsing or opposing the implementation of the law by using a "stakeholder jurisprudence analysis." By examining the different implementations of the legal regimes of insider trading and intellectual property rights, one may identify groups of stakeholders that have a strong interest in reducing insider trading, but no interest in intellectual property rights. This analysis allows one to predict and assess the future enforcement of insider trading laws, in spite of what might seem to be the failure in the enforcement of intellectual property laws.

One may find a second, and potentially greater, application of stakeholder jurisprudence in the potential for reverse engineering administrative actions and judicial decisions. Stakeholder jurisprudence analysis allows observers to refine their estimates of the relative power of groups in China, and provides some answers to questions on legal developments.

23. See supra notes 14-18 and accompanying text (propounding that the frame of reference in a stakeholder analysis is the individual and how the individual can influence the system).

24. See generally Mark V. Tushnet, Perspectives on Critical Legal Studies, 52 GEO. WASH. L. REV. 239 (examining the foundations of critical legal studies).

25. See supra notes 14-18, 21 and accompanying text (suggesting that stakeholder analysis focuses on citizen influence in the legal system).

26. See Walker, supra note 9, at 23 (discussing China's initial attempts to formulate a securities law and regulatory structure).
A. BACKGROUND TO THE CHINESE SECURITIES MARKETS

The trials of the “gang of four” and the forced retirement of Hua Guofeng, which followed the death of Mao Zedong, marked the end of the Maoist era of Chinese politics. These events also marked the end of the command economy and the peculiar economic practices of China in the years immediately following the 1949 Liberation, as well as during the Cultural Revolution. One of Mao’s bequests was a nation in economic shambles, and the reformist group that succeeded Hua focused on reviving the economy. Under the leadership of Deng Xiaoping, the Chinese economy grew dramatically. Such rapid growth, however, may sometimes be a precursor to “growing broke,” as many young businesses have discovered. The growth of the economy as a whole was so dramatic that, by the late 1980s, the government and many enterprises, both privately and publicly owned, sorely needed cash infusions. A bond market was introduced in 1981 to meet the liquidity needs of the government, but the bond market did not address the urgent needs of many private or privatizing enterprises for equity investment capital.

27. Jiang Qing, Zhang Chunqiao, Wang Hongwen, and Yao Wenyuan. See HARDING, supra note 6, at 49.
28. Id. at 48-69.
30. HARDING, supra note 6, at 99-130.
31. Id.
33. Joyce Barnathan, China; Birth of a New Economy, BUS. WK., Jan. 31, 1994, at 42.
35. HSU, supra note 5, at 68.
36. Id.
The Chinese government was aware of the crisis private enterprises faced, and responded with a further development of debt markets, and with plans for the creation of a market for the public trading of equity. After much internal debate on the wisdom and correctness of a public equity exchange, the government reached a consensus, and in 1987, the first public issue of equity securities took place on the Shenzhen exchange. The first efforts at an equity market were humble, but development has been rapid. By the end of 1995, there were two stock exchanges (the Shanghai Stock Exchange and the Shenzhen...
Stock Exchange\textsuperscript{45} with over 1,700 trading offices; a computerized quotation system; 304 listed companies; 91 securities companies; 1,200 trust and investment firms; 150,000 trained industry professionals; 10 million shareholders nationwide; and a total market capitalization of 409 billion yuan.\textsuperscript{46}

B. CAPITAL STRUCTURE OF LISTED COMPANIES

Given the fact that China's economic condition is the result of an unusual history,\textsuperscript{47} and that the Chinese government created the equity markets to perform a specific function,\textsuperscript{48} it is not surprising to find that the capital structure of Chinese firms differs somewhat from those of other nations. While companies listed on the New York Stock Exchange (NYSE) often have only one or two classes of stock (e.g., common or preferred\textsuperscript{49}), the Chinese stocks consist of two classes, three pools, and five categories.\textsuperscript{50}

The different "pools" of stocks in Chinese companies represent groups of shares available to strictly defined groups of potential purchasers.\textsuperscript{51} These three pools of stocks include state shares (\textit{guojia gu}), legal person shares (\textit{gongsi gu or faren gu}) and individual shares (\textit{geren gu}).\textsuperscript{52} Only the individual shares are traded on the domestic stock markets in any
noticeable volume.\textsuperscript{53} Thus, the remainder of this article will focus primarily on the individual shares traded on China's markets.

In addition to the three pools of stocks, there are five categories of shares, differentiated by eligible buyers, denominating currency, and the listing location.\textsuperscript{54} The first category is the A-share (A gu). A-shares reflect most of the common elements of stock ownership. There are two classes of A-shares: common and preferred.\textsuperscript{55} Voting rights are allocated on the basis of one-share-one-vote,\textsuperscript{56} which is a universally recognized arrangement. A-shares are listed on the national exchanges, where the principal and dividends of the stock are denominated in the local currency (the Chinese yuan, or renminbi (RMB)).\textsuperscript{57} The unusual feature of the A-shares is that both classes are limited to domestic purchasers.\textsuperscript{58} The exclusion of foreign investors from a market denominated in a semi-convertible currency serves, ironically, as a double obstacle to foreign investment, which is one of the reasons for establishing a securities market.\textsuperscript{59}

\begin{itemize}
\item \textsuperscript{53} Andrew Xuefeng Qian, Why Does Not the Rising Water Lift the Boat?, 29 INT'L LAW. 615, 626 (1995). The trading of faren gu has been actively discouraged by the central government. Renee Lai, New Market Stagnates: Investors Believe Legal-Persons Shares May Be Phased Out, S. CHINA MORNING POST, June 2, 1994, at 5.
\item \textsuperscript{54} Zhang & Yu, supra note 50, at 119.
\item \textsuperscript{55} Yi, supra note 37, at 265.
\item \textsuperscript{56} For a comprehensive discussion of voting and other shareholder rights in China, see Matthew D. Latimer, Gilding the Iron Rice Bowl: The Illusion of Shareholder Rights in China, 69 WASH. L. REV. 1097, 1097-1119 (1994).
\item \textsuperscript{57} Zhang & Yu, supra note 50, at 119.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} With full convertibility of the renminbi likely in the near future, this has become less of a structural impediment to foreign investment in A-shares. See Bank Official On Renminbi's Convertibility, XINHUA NEWS AGENCY, Sept. 7, 1994, available in WESTLAW, Allnews Database, 1994 WL 9100461 (noting that convertibility of the renminbi is a goal for the Chinese foreign currency management system). Perhaps with the convertibility of the renminbi, there will no longer be a justification for the severance of the A- and B-share markets, thus compelling the Chinese government to reexamine the efficacy of the B-share system. In the meantime, however, derivatives and swap contracts make it possible for a determined overseas investor to assume the risks of an A-share investment.
\end{itemize}
In 1991, the Chinese government responded to this dilemma by opening the equity markets to foreign capital through the creation of the B-share (B gu).\(^6\) B-shareholders are entitled to the same voting and other rights as common A-shareholders, and both principal and dividends are denominated in renminbi.\(^6\) Unlike an A-share common stock, however, B-shares are only available to foreigners and must be purchased with foreign currency.\(^6\) To issue B-shares, a company must satisfy a number of government requirements,\(^6\) which effectively limit foreign par-

\(^{60}\) See Zhang & Yu, supra note 50, at 119 (outlining the primary market for B-shares).

\(^{61}\) Id.


\(^{63}\) Andrew Xuefeng Qian, Riding Two Horses: Corporatizing Enterprises and the
ticipation to the least risky companies. Despite these limits, B-shares have proved to be enormously popular. In the three months following the first B-share issue in November 1991, RMB 385 million worth of B-shares were sold.

The successful results of the B-share experiment prompted the government to expand B-share issuances in the subsequent years. In addition to the third category, known as C-shares, which are largely non-tradable corporate shares in the company, foreign listings belong to two categories of shares. H-shares, also referred to as “red chips” in Chinese, are stocks of Chinese companies listed on the Hong Kong Stock Exchange (HKSE). N-shares are New York-listed stocks, and exist in the form of American Depository Receipts. Both the H- and N-share listings allow for foreign capital injections into Chinese enterprises under conditions that encourage broader participation. A stock listed on the NYSE or the HKSE signifies the company’s compliance with the requirements of the American Securities and Exchange Commission or the Hong Kong Securities Futures Commission, which bolsters the confidence of foreign investors.

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64. State Council Sets National Rules on B-Shares, supra note 62, at 43.


66. Id.


68. Qian, supra note 53, at 626.

69. See id. at 627 (outlining the international stock markets as H-shares for Hong Kong listings and N-shares for New York listings).

70. Id. at 622, 626.

71. Id. at 626.

72. Id.

73. See Stock Market, supra note 67, at 38 (noting the influence of increased state revenue and absorption of foreign capital on the development of industries and the increased public awareness and interest in investing and finance).

74. Id.


76. See Sondra W. Dunn, Dealing With China: H-Share Appeal Dims, But Isn’t
C. IDENTIFYING THE STAKEHOLDERS IN CHINA’S SECURITIES MARKETS

This effort at encouraging both domestic and foreign investment into the Chinese equities markets resulted in the development of several groups with vested interests in the efficiency and fairness of the Chinese capital markets. This creation of stakeholders is one reason for the orderly, but rapid, development of securities law in China,\(^\text{77}\) exemplified in the developing law of insider trading.\(^\text{78}\) The fragmentation of the equities market through the use of five classes of shares helped to diversify the stakeholders in the securities market.\(^\text{79}\) The classes of shares created five distinct groups of stakeholders that are able to independently or collectively press their demands for an improvement of the securities system upon the Chinese government.\(^\text{80}\) Of these five groups of stakeholders, the two groups that have had the largest impact on the formulation of anti-fraud and insider-trading measures are the A-share domestic investors and the B-share foreign investors.\(^\text{81}\)

The existence of stakeholders in a well-run securities industry, however, may not inevitably lead to the conclusion that these same parties have “stakes” in the imposition and enforcement of insider trading laws. After all, there are numerous examples of developed economies with weak prohibitions on insider trading, including Chinese societies such as Hong Kong and Taiwan.\(^\text{82}\) In spite of these experiences, the absence of insider trading laws would hinder materially China’s development.\(^\text{83}\)

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\(^{77}\) See Dede Nickerson, Zhou Puts Steady Hand on Securities Tiller, S. CHINA MORNING POST, Apr. 2, 1995, at 3 (noting the China Securities Regulatory Commission’s focus on securities legislation and enforcement enhancement).

\(^{78}\) Id.

\(^{79}\) Cf. Qian, supra note 53, at 626 (stating that the five classifications of shares do not create a consistent regulatory framework).


\(^{81}\) The interests of the H- and N-share investors are also important, but are largely governed by the regulations of the overseas exchanges their shares are listed upon. See generally Qian, supra note 53, at 626-27 (discussing international standards imposed on H- and N-shares for stock issuance and listings on major stock markets).

\(^{82}\) See Dow Jones Asian Equities Report, Apr. 30, 1996, at 1 (describing an example of Hong Kong insider trading violation where the director for JLJ Securities Limited misled investigators and withheld information).

\(^{83}\) See Tony Walker & Deidre Nickerson, International Capital Markets: China’s
order to attract foreign investment in China's markets, and to keep domestic capital from fleeing to foreign exchanges in the future, the Chinese government resorted to a capitalist model of public ownership and safeguards like strict insider trading laws. Hence, although insider trading laws by themselves may not be necessary for economic development, the internationalization of capital flows made them a necessary condition for large-scale investment of non-captive capital.

1. Small domestic investors

The most prominent group of new stakeholders created by the Chinese securities regulations is the small Chinese investor who purchases A-shares. As "millions of Chinese have become stockholders for the first time," the profiles of the average Chinese investor and the average Chinese citizen have coalesced. The market provided an investment option for the estimated three trillion yuan saved in the banks, and the Chinese are eager to invest in it.

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85. See id. (recognizing the need for new securities laws to raise confidence and to aid in recovering the equities market).

86. In the future, Chinese mutual funds and American/European style pension funds will develop and serve as a new group of domestic stakeholders. See Stock Market, supra note 67, at 39 (discussing future development of investment funds). At present, however, the owners of the largest (in the aggregate) domestic stakes are small private shareholders. See Kahn, supra note 80, at All (stating that individual speculators make up the majority of China's stock market participants).

87. Kahn, supra note 80, at A11.


90. See id. (predicting an increase in share trading as deposits total three trillion yuan).

91. See id. (stating that by the end of 1995, Chinese citizens had invested 100 billion yuan in stocks). But see Teresa Poole, China Teeters Between 0 and Survival, THE INDEPENDENT - LONDON, Aug. 8, 1994, at 21 (describing China's heavy trading in A-shares as having more to do with government policy than small Chinese
Unfortunately, the ability to invest may be dangerous when the average investor does not understand the mechanics of the market. Small, individual investors constitute the majority of the 10 million investors in the stock market, and they "tend to trade based on rumors, as opposed to the outlook for stock dividends or long-term appreciation." In this environment, an effective regulatory mechanism to address the problem of fraud is a necessity.

A major form of fraud which merits particular attention is insider trading. The academic debate over whether insider trading is actually harmful in an efficient market does not apply to the Chinese stock market, because it is decidedly informationally inefficient. In an inefficient market, insider trading is harmful because it allows insiders to profit from the informational inefficiencies, and discourages insiders from disclosing material information, which would lead to the development of an informational mechanism to transmit the information. As Chinese domestic institutional investors develop, their influence should only add to the depth of the domestic shareholder's stake in eradicating insider-trading.

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92. Kahn, supra note 80, at A11.
93. Id. at A11.
94. See id. (noting the difficulty of proving an incident of insider trading without an effective policing unit).
96. See Barnathan et al., supra note 88, at 102 (observing that a journalist was sentenced to twelve years in prison for writing about an interest rate increase).
97. In this scenario, under the semi-strong theory of market efficiency, investors would trade on imperfect information, and the insider gain on the sale or purchase of securities would be subsidized by a general 'informational inefficiency tax' unwittingly paid by all investors trading on imperfect information. See STIGLITZ, supra note 95, at 169-71 (defining theories of market efficiency); Kahn, supra note 80, at A11 (discussing the tendency of stock market participants to trade based on rumors).
99. Though it is too early to tell, there are some signs that the Chinese media may assume the role of an independent watchdog in the securities market. See Barnathan et al., supra note 88, at 102 (discussing the newborn investigative journalism of the Chinese business press).
100. Id.
The interesting effect of the creation of a large body of small investors is that one coordinated or many simultaneous and independent expressions of dissatisfaction with the administration of the system may be enough to reverse the conventional balance of power between the high-level party cadres and other insiders, and the small individual investors. Generally, the “insiders” wield enough power to keep the disorganized, unhappy investors out of the picture. As China becomes a “nation of small investors,” however, the probability of widespread dissatisfaction with an inequitable situation or a scandal increases. The government has not generally tolerated public expressions of dissatisfaction or anger, and it is the fear of luan (“chaotic situations”) that allows the vast body of small shareholders to have an impact on national policies. A concerted government effort to prevent information sharing among investors is certainly possible, and would do much to prevent unrest, but would also harm the capital markets substantially.

2. Foreign Investors

The second major group of stakeholders created by the new securities regime is the collection of foreign investors supplying capital for the Chinese markets through investments in B-, H-, or N-shares. Much of the pressure for legal reform and enforcement in the securities industry comes from foreign lawyers and multinational lenders. Major American institutional investors hope that reforms begun by China Securities Regulatory Commission (CSRC) will help eliminate much of the insider trading by providing sufficient sanctions for fraudulent activities in the securities markets.

In the view of this group of stakeholders, insider trading is problematic because it allows domestic insiders to profit at the expense of foreign

103. See Ian Williams, Straits the Gate, INVESTOR REL., Mar. 1, 1996, at 52 (stating that 80 percent of the Chinese stock market consists of small investors).
104. See Poole, supra note 91 (describing the Shenzhen riots by citizens angry about the method for deciding A-share subscribers).
105. This article focuses on the B-share investors, because the H- and N-share investors are subject to, and protected by, the rules of trading exchanges. See generally Qian, supra note 53, at 626-27 (discussing international standards imposed on H- and N-shares for stock issuance and listings on major stock markets).
106. Walker & Nickerson, supra note 83, at 28 (noting the insistence of foreign lawyers and leaders for the enforcement of securities law and regulations in the stock market).
capital investors. Insider trading is, in effect, an indirect funneling of capital into the pockets of Chinese insiders. The foreign investors play an important role in the market because of their influence on prices. Much of the downturn in the A- and B-share markets has been attributed to investor disenchantment of a system with pervasive insider trading. When the B-share market is threatened, foreign and domestic investors will exert pressure for the rectification of the situation. The pressure of this large group of stakeholders should serve as a constant prod for the government to take action.

3. The Government

The third major stakeholder of the new securities environment is the government itself. The government holds a number of stakes in the securities market. It is the regulator, a market participant, and the recipient of all shareholder dissatisfaction with the management of the exchanges. The government’s self-interest becomes quite powerful in the examination of insider trading laws.

If China follows the Taiwanese model, which seems likely, then it will remain “a nation of small investors.” In nations of small inves-

108. This assertion assumes a link between the fluctuations of B- and A-share prices. In this situation, increased foreign investment would drive up the prices of B-shares. Through the implied link with the A-share market, the prices of A-shares in these companies will also rise. If an insider holds non-public information which indicates that the stocks are overvalued, the foreign investment increases the profits made when the insider sells the shares for more than their true value.

109. The A-share market fell by 50 percent and the B-share market experienced real volatility and an extended decline. Walker, supra note 84, at 10.

110. *Hong Kong Status ‘Won’t Fade’: Memorandum of Cooperation Signed, VANCOUVER SUN*, July 5, 1995, at D4; Kahn, supra note 80, at A11; see Walker, supra note 84, at 10 (noting the equity market’s depression and the desertion of local investors for futures and currencies). Ironically, it was a slump in the market that caused some brokers to turn to insider trading in an effort to find those few issues that would result in a healthy return. Christine Chan, S. CHINA MORNING POST, May 28, 1994, at 1, available in WESTLAW, Chinapost Database. This effort, however, ultimately only added another reason for the slump to continue. *Id.*

111. See Walker, supra note 84, at 10 (naming China’s state trading corporations as one of the biggest players in the Chinese commodities exchanges).

112. See Barnathan et al., supra note 88, at 102 (noting the profit the government is making from its businesses).

113. *Id.*

114. See Walker & Nickerson, supra note 83, at 28 (discussing Chinese self-regulation).

115. *Democracy’s Downside: Taiwan, ECONOMIST*, Feb. 10, 1996, at 37. See Wil-
tors, governments rise and fall based on the performance of the mar-
ket,116 because the average citizen’s stake in the market is large (at
least as a percentage of personal assets), and market regulation becomes
a high priority. This ‘proletarianization’ of the market will have a pro-
found impact on the government,117 as the average investor-citizen
pressures the government to regulate the market, protect domestic inves-
tors, and prevent or punish malfeasance.118

The government should not take these responsibilities lightly, because
there is a high price to pay for market instability. One important aim of
the Chinese “opening up” policy was to ensure that rights under the
new system were not inequitably distributed,119 but the 1993 Shenzhen
riots were an example to the contrary.120 The 1993 riots resulted from
frustrated would-be investors in the market, angered when they discov-
ered that insiders snapped up the majority of shares in a public offering
before trading offices opened.121 Also, the government may not now
refuse its regulatory duty. Citizens have accepted the stock market and
have staked a claim on its proper operation.122 To refuse to accept this
duty would be to ignore the “groundswell among China’s citizens to
demand accountability from their government.”123 It might also foster a
disrespect for law and order, and further encourage an entire generation
to earn profit through any means possible.124 Thus, because the elim-
nation of insider trading fosters domestic tranquillity, the government
has a strong, visible stake in combating insider trading.

116. Democracy’s Downside: Taiwan, supra note 115, at 37.
117. See Barnathan et al., supra note 88, at 102 (noting that an economic boom
caused a political revolution); contra Carrel, supra note 98, at A31 (stating that the
Chinese government is aloof to the demands of its citizens).
118. See Barnathan et al., supra note 88, at 94 (discussing the differing ways
Chinese citizens are demanding justice).
119. Ni Pin, Zhongguo Gaige de Xiayibu—Shinian Jingyan de Qidi, [The Next
Step of Chinese Economic Reform], in Zhongguo Jingji Gaige: Fenxi, Fansheng,
Qianzhan [China’s Economic Reform: Analysis, Reflections, and Prospects] 93, 96 (Xu
Dianqing et al. eds., 1991).
120. See Poole, supra note 91 (describing the riots by investors angry about cor-
rupion in allocating shares).
121. Solomon M. Karmel, Emerging Securities Markets in China: Capitalism with
122. Id.
123. Carrel, supra note 98, at A31.
124. Id.
Moreover, the government is under pressure to respond to the demands of foreign investors. While the government may ignore the demands of the foreign capitalists, it cannot ignore the domestic enterprises that would suffer from the lack of foreign investment in the Chinese B-share market. Ignoring problems such as insider trading would, according to a 'government leader' in China, "impose an increasingly negative impact on the country's economic reform." Commentators note that the "reaping of staggering profits" presents a serious threat to the construction of a stable securities market, and the president of the Shanghai Securities Exchange, Wei Wenyuan, called insider trading one of the exchange's "[m]ost important problems."

The Chinese government, however, does not appear to be ignorant of the problems in the market, but it is, rather, "alarmed" at the possibility of a market failure. The recent appointment of Zhou Daojiong as acting chairman of the CSRC demonstrates the central government's desire for financial stability. The appointment represents an imposition of discipline by the government upon the financial markets following a recent scandal in the futures market.

125. See Walker & Nickerson, supra note 83, at 28 (listing foreign lawyers, bankers, and institutions as investors urging Chinese economic reforms).

126. See supra note 68 and accompanying text (noting the importance of B-shares in absorbing foreign capital through the stock market).

127. Walker & Nickerson, supra note 83, at 28.


129. Kahn, supra note 80, at A11.

130. See Walker & Nickerson, supra note 83, at 28 (noting the economic characterization of Shenzhen and Shanghai by a member of the leadership as extremely risky).

131. Id.

132. Id.

133. Nickerson, supra note 77, at 3. Mr. Zhou's appointment has not been universally acclaimed. One former CSRC employee expressed his disappointment: "The central authorities don't want experimentation, they don't want new products, they only want stability and that's what they'll get from Mr. Zhou, who prides himself on knowing little about the industry. Hopefully they will not choke the market to death...." Id.

134. The scandal involved a dramatic imbalance between long and short positions in the government debt futures market, a situation which was the result of companies flouting the Shanghai Exchange's rules. See Foo Choy Peng, Merger Set to Give Birth to Colossal Brokerage, S. CHINA MORNING POST, Feb. 15, 1996, at 1 (noting the brokerage's ban from underwriting for its role in a treasury bond futures scandal); see also Leadership of Securities Firm Reshuffled, XINHUA NEWS AGENCY, Apr. 27,
The government also has reason for concern about the performance of the stock market because as a direct market participant, a downturn in the market would be harmful to it. The government holds from fifty-one to eighty percent of most companies listed on the Chinese exchanges, and therefore a market downturn has a direct effect on the government's fiscal viability. This may well be the most powerful reason for vigorous enforcement of measures that ensure market stability and profitability.

Government officials' frequent engagement in insider trading forms the third aspect of the government's stake. In order for the government to obtain the public's confidence that it can act as an 'honest broker' and enforcer of the securities laws, it must have its own house in order. Hence, the government has a vested interest in the impartial and effective enforcement of laws such as the insider trading regulations.

An interesting question arises after examining the treatment of government employees who commit insider trading. How will the government, acting as a shareholder and a market participant, be able to trade without violating insider trading rules or without angering the broad base of shareholders? No one has yet addressed this question, although it will likely pose a problem in the distant future if government shares become marketable.

III. THE CREATION OF A SECURITIES REGULATORY REGIME

The diversification of stakeholders in the insider trading laws helped spur the development of a securities regulatory mechanism, and is likely to ensure vigorous and effective enforcement of its provisions in the future. While this effort began as a confused set of overlapping ef-

1995, available in Westlaw, Allnews Database, 1995 WL 7711964. Blame has been affixed to Guan Jinsheng, of Shanghai International Securities Company (commonly known as Wanguo), and he has been sentenced to a 16-year prison term for "disrupting the financial order." Id.


136. See infra notes 229-35 and accompanying text (discussing de facto insiders—insiders whose status derives from their official positions—and measures taken to curb the problem).

137. See id. (discussing the de facto insider trading regulations).

138. See Qian, supra note 53, at 625-28 (discussing the securities regulatory regime).
forts, the trend became one of rationalization of the regulations and an increase in the power, sophistication, and resources of the regulators who will enforce them.

From the beginning, a regulatory confusion characterized the securities markets. Over a dozen different government bodies share the task of supervising different aspects of the market. The People's Bank of China (PBOC) and the Commission of Economic System Reform were originally the nominal, official government regulators, but local governments supplemented (or hampered) the national regulatory efforts, especially the governments of Shanghai and Shenzhen which have their own municipal securities regulatory commissions, and a number of administrative organs (including the CSRC, the National Asset Control Bureau, the Finance Ministry, the Taxation bureau, the structural reform commission, and the economics and trade commission)

139. See Christine Chan, Duties on Mainland Ill-Defined Clear Up Role of Watchdog, Say Brokers, S. CHINA MORNING POST, Apr. 27, 1994, at 1, available in WESTLAW, SCHMP Database, 1994 WL 9339407 (quoting a Chinese official as saying there is an "overlap of pavers" and it is not always clear "which authorities are responsible for what.").

140. Cf. Pete Engardio & Joyce Barnathan, Take A Nap. Read A Book. It's The Shanghai Bourse: Half-Baked Reforms Are Stalling China's Markets And Economy, BUS. WK., May 1, 1995, at 56 (stating that while China is moving toward a national securities law, it still has "dragged its feet.").

141. See Qian, supra note 53, at 627 (discussing China's need for securities lawyers, judges, and government regulators because China's securities laws and regulations are increasing in volume and the securities transactions growing more sophisticated).

142. See China Securities Watchdog Urges Uniformity, AGENCE FR.-PRESSE, May 8, 1994, at *2, available in WESTLAW, AFP-ENG Database, 1994 WL 9613902 [hereinafter Securities Watchdog] (stating that some companies were unaware of regulatory requirements and were confused without the clear definition of their rights and responsibilities).

143. Engardio & Barnathan, supra note 140, at 56.

144. Yi, supra note 37, at 257.

145. Id.

146. Engardio & Barnathan, supra note 140, at 56.


148. ZHONGGUO SHICHANG FAZHAN BAOGAO [CHINA MARKET DEV. REP.] 116 (Sun Shangqing et al. eds., 1995) (stating that the administrative organs include the CSRC, the National Asset Control Bureau, the Finance Ministry, the Taxation bureau, the Structural Reform Commission, and the Economics and Trade Commission).
which issues a variety of forms of regulations (including *guiding* [rules], *banfa* [methods], *tongzhi* [notices], and *jueding* [decisions]).

In spite of the cacophony of regulators, the State Council holds the real regulatory power in the securities industry. The State Council and its subordinate institutions, the Securities Commission (Guowuyuan Zhengquan Weiyuanhui) and the CSRC (Zhongguo Zhengquan Jiandu Guanli Weiyuanhui), which is the Chinese counterpart of the Securities and Exchange Commission, were both established in 1993. They issue most of the relevant regulations for the securities industry, influence the drafting of national legislation for the securities field, regulate all but the most local of securities

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149. Id.
150. Yi, *supra* note 37, at 258.
151. From a functional perspective, the CSRC should be subordinate to the State Council, if the alternatives are subordination to the Judiciary (Sifa Bu), the legislature, the Ministry of Finance, or the Party. In fact, this may be a more conceptually appealing model than the American “headless fourth branch” approach to regulatory bodies. See John M. Hawthorne, *DEP’s Title S Defense Based on Faulty Assumptions*, 24 MASS. L. Wkly. 11 (1996) (calling the “tyranny of unelected bureaucrats” of federal regulatory agencies the “headless fourth branch”). If China’s legal and institutional development continues to follow a “separation of powers” model, it makes sense that the regulatory body be part of the executive branch. Cf. Bing Song, *supra* note 7, at 388 (discussing China as an economy in transition that is not yet able to break-up public monopolies). With the State Council as the head of the administrative branch, it is easier to coordinate the development and enforcement of regulations with the enforcement of laws. Id. at 407 n.111 (stating that administrative companies are often headed by incumbent party or government officials and controlled by the State Council).
153. See Qian, *supra* note 53, at 625 (stating that China borrowed from western models, including U.S. securities laws, when it developed its securities regulatory system); id. at 627 n.58 (stating that the SEC and the CSRC signed a memorandum of cooperation and reconciliation in early 1994).
155. See Qian, *supra* note 53, at 626 n.54 (discussing the regulations promulgated by the State Council and the CSRC); Tarbutton, *supra* note 37, at 420 (stating that the Securities Commission and the CSRC were responsible for formation of nationwide regulatory policy).
156. See *Securities Watchdog*, *supra* note 142, at *1 (discussing the need for companies to standardize their operations and to strictly adhere to new government laws and regulations governing the securities market); Chan, *supra* note 139, at 1 (discussing the joint orders of regulators and police calling for more professionalism and an end to fraud in the stock market).
activity,\textsuperscript{157} and refer cases to the Supreme People's Procurator for investigation and criminal prosecution.\textsuperscript{158} The CSRC performs all of the supervisory, regulatory, and enforcement functions,\textsuperscript{159} guided by the more abstract directives of the Securities Commission,\textsuperscript{160} which has overall responsibility for administering the national securities market.\textsuperscript{161}

While terming the CSRC as the "real regulatory power\textsuperscript{162}" would be overstating its effective authority, the opposite view, that of a self-admitted "tiger without teeth,"\textsuperscript{163} may be equally as incorrect. A more apt comparison might be to a teething cub that can only take tiny bites.\textsuperscript{164} The cub is also growing quickly; in 1994 alone, there were 110 resignations or discharges of directors, chairpersons, and presidents of 56 publicly traded companies following charges of corruption and incompetence.\textsuperscript{165}

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\textsuperscript{157} Cf. Qian, supra note 53, at 626-27 (discussing the more detailed and specific local rules that have limited jurisdiction).

\textsuperscript{158} Christine Chan et al., Business News, S. CHINA MORNING POST, May 28, 1994, at 1, available in WESTLAW, Chinapost Database.

\textsuperscript{159} See Yi, supra note 37, at 257 (describing the CSRC as "coordinating" and "regulating" the securities market); see also Securities Watchdog, supra note 142, at \*1 (referring to the CSRC as China's "top Securities Watchdog.").

\textsuperscript{160} Stock Management, supra note 152 (stating that the Securities Commission will "guide and supervise" the CSRC in "setting day-to-day policy for securities trading"); Tarbutton, supra note 37, at 420 n.73 (stating the Securities Commission was created to shape policies for new securities regulations that the CSRC executes).

\textsuperscript{161} Pitman Potter, P.R.C. State Council Issues National Stock Regulations, E. ASIAN EXECUTIVE REP., July 15, 1993, at 9, 9; Stock Management, supra note 152. There is some hope that an effective industry self-regulatory body will develop to supplement the CSRC. The China Financial Security Association (Zhongguo Zhengquanye Xiehui) was established in 1991 with the express hope of becoming such a self-regulator, but its development has been slow. Yi, supra note 37, at 257.

\textsuperscript{162} See text accompanying note 152 ((correctly) naming the State Council the "real regulatory power").

\textsuperscript{163} Engardio & Barnathan, supra note 140, at 56; see Joseph Kahn, Beijing Holds the Cards, ASIAN WALL ST. J., Nov. 22, 1994, at S3 (stating that "Authorities say they believe insider trading and market manipulation are rampant, but that they don't have the means to crack down.").

\textsuperscript{164} See Securities Watchdog, supra note 142, at \*2 (reporting the comments of Liu Hongru, then-chairman of the CSRC, who noted that although the CSRC had grown quickly and had a notable impact on illegal practices, "many problems persisted").

\textsuperscript{165} On the Record: International, ORLANDO SENTINEL, Apr. 7, 1995, at B5. Yet in the classic rock-and-a-hard-place scenario, these changes of personnel only fueled vocal fears of instability in the market from the same investors who complain about corruption and insider trading. Id.
The CSRC's station in the authoritative hierarchy is validated in practice. Zhang Zhiping, a director at the CSRC's Securities Institution Department, described a four-tier system commonly used to reduce conflict:166 "The first [tier] is the two national stock exchanges which have control over the discipline of their respective members. The second is the CSRC, the third [is the several] domestic regulatory bodies and the fourth the courts if violations are deemed to be criminal."167 The CSRC is the primary regulatory force in the market because it implements the initiatives of the Securities Commission, which is the major "domestic regulatory [body]."168 It is also clear that the strength of the CSRC is directly related to the absence of insider trading (and other forms of fraud) in the Chinese securities markets.169

IV. INSIDER TRADING

A. THE POPULAR VIEW

One criticism of the many efforts by American investors to encourage other countries to change their domestic laws or practices is the assertion that American (or any nation's) investors have no right to impose foreign morals upon another culture, especially when the efficiency of insider trading prohibitions has been questioned in several western nations.170 While the counter-argument that customers have the right to dictate the terms upon which they will invest their capital has merit,171

166. Chan, supra note 139, at 1.
167. Id.
168. See supra notes 149-61 and accompanying text (discussing the Securities Commission and the CSRC).
169. See Chan et al., supra note 158, at 1 (discussing the joint order by the CSRC and police calling for more thorough control of information, promotion of better understanding of stock investment among the public, and a complete ban on unauthorized information, illegal stock publications and fraud).
171. See Investors See Red Over Grey Shares, S. CHINA MORNING POST, Apr. 23, 1995, at 8 (questioning whether only the favored few with access to insider information should benefit at the expense of those who do not have access to such informa-
it is unnecessary to discuss it here because the Chinese government and the public agree that insider trading is contrary to the basic principles of equity which govern the markets.\footnote{See supra note 170 and accompanying text (discussing attitudes about illegal trade activities).}

The Chinese securities markets are governed, in principle, by the "three gongs:" gongping [equity], gongzheng [fairness], and gongkai [openness].\footnote{See supra note 128, at 17.} Anecdotal evidence indicates that Chinese investors themselves see insider trading as contrary to at least one of the three gongs.\footnote{See supra note 171, at 8 (stating that "Chinese investors are angry enough over rife insider trading and want a level playing field.").}

There is even a special term for stock speculation, including stocks traded by insiders: "stir-fried shares (chaogu)."\footnote{Luo Yunfan, Shanghai-Shenzhen Guipiao Fenxi Yu Caozuo [The Shanghai-Shenzhen Stock Markets: Analysis and Operations] 219 (1993).} A chaogu can result from the "use of inside information to the advantage of the insiders and the detriment of medium and small-sized investors, and affects fair and efficient trading (lianzhuan) in the market."\footnote{Id. Western observers seem to accept the Chinese fears that insider trading will harm small investors. See Walker, supra note 84, at 10 ("Insider trading is a persistent problem . . . . This poses a threat to individual and smaller institutional investors who are in danger of being squeezed.").} The negative connotation of the term reflects the general opinion that insider trading is indeed wrong and should be prevented or punished. The official attitude is similar, as reflected in a recent China Daily article:\footnote{An Lu, To The Point: No Prohibition, China Daily, Dec. 6, 1995, at 41.}

Some people think that the market price is a result of balance between supply and demand and should be accepted rather than interrupted. They say the high profit some investors make is their reward for the risks they face in the stock market. When the market is manipulated by a few large investors, certain kinds of monopolies will be formed, and market prices may become far from reasonable.\footnote{Id.}

The general condemnation of market manipulation applies to insider trading as well as all other manifestations of fraud in the market.\footnote{See supra note 169 and accompanying text (discussing the ban on fraudulent trading activity).}
consensus between the general attitude and the official position that insider trading is wrong or inequitable satisfies the primary condition for the enforcement of insider trading prohibitions.\textsuperscript{103} This condition is important to the development of a stakeholder jurisprudence,\textsuperscript{181} which builds upon the shared values of a legal system’s citizens and other constituents, such as the government.\textsuperscript{182}

B. INSIDER TRADING LAW

Given that we can conclude that insider trading is “wrong” in China, the next question is: Is insider trading illegal? Determining what is illegal in China can be a tricky exercise because China still does not have a national securities law, though one has been promised for several years.\textsuperscript{183} In the absence of a securities law, the legal hierarchy looks to the many varieties of regulations, and insider trading certainly violates the regulations, if not the law.\textsuperscript{184} Violation of the regulations in China carries penalties such as fines and, in some cases, incarceration; therefore, a distinction between the violation of a regulation and a law may not be meaningful.

One of the earliest pieces of national securities legislation to address insider trading,\textsuperscript{185} the 1990 Zhengquan Gongsi Guanli Zanxing Banfa [Temporary Measures Controlling Securities Firms], stated clearly that “securities firms must not engage in price-fixing, insider trading, fraud, or other trading or behavior which influences the quoted market prices in order to reap undeserved profits.”\textsuperscript{186} The local regulations governing the Shenzhen and Shanghai exchanges implemented this prohibition against insider trading and fraud: the Shenzhen Municipality Stock Issu-

\textsuperscript{180} See supra notes 169-71, 174, 176 and accompanying text (discussing official and public attitudes about insider trading).

\textsuperscript{181} Cf. Unhappy Families: Stakeholder Capitalism, supra note 14, at 23 (discussing the stakeholder capitalism found in Japan, which mandates that companies behave with greater social responsibility to all stakeholders in society and not just to shareholders).

\textsuperscript{182} Id.; see supra notes 14-25 and accompanying text.


\textsuperscript{184} See Qian, supra note 53, at 626 (stating that Chinese securities law at the national level only consists of rules and regulations, which has impeded fast development of the Chinese securities industry).

\textsuperscript{185} Zhao Zhengbing et al., supra note 128, at 17.

\textsuperscript{186} Zhengquan Gongsi Guanli Zanxing Banfa [Temporary Measures Controlling Securities Firms], art. 17 (October 1990) (emphasis added).
ance and Trading Control Measures (Shenzhen Measures),\textsuperscript{187} and the Shanghai Municipality Securities Trading Control Measures (Shanghai Measures).\textsuperscript{188}

The current national law on insider trading is provisional, consisting of a pair of 1993 regulations: \textsuperscript{189} the Temporary Regulations for the Oversight of Stock Issuance and Trading (Temporary Regulations),\textsuperscript{190} and the Temporary Measures Forbidding Fraudulent Behavior (Temporary Measures).\textsuperscript{191} Until the promised securities law is promulgated in the next two to three years, the current regulations will continue to govern insider trading. In any event, the insider trading provisions of the law should not materially differ from the insider trading regulations, because they were all part of the same drafting effort.\textsuperscript{192}

1. The Definition of Insider Trading

The Chinese literature generally distinguishes between two main types of insider trading: \textsuperscript{193} the use of inside information by an insider for self enrichment,\textsuperscript{194} and the leaking of information by an insider to a

\begin{enumerate}
\item \textsuperscript{187} Shenzhen Gupiao Faxing yu Jiaoyi Guanli Zanxing Banfa (Shenzhen Municipality Stock Issuance and Trading Control Measures) art. 43(4), \textit{reprinted in} LUO YUNFAN, \textit{supra} note 175, at 247 [hereinafter Shenzhen Measures] (listing insider trading as an activity prohibited in stock trading).
\item \textsuperscript{188} Shanghaishi Zhengquan Jiaoyi Guanli Banfa [The Shanghai Municipality Securities Trading Control Measures] art. 39(2), \textit{reprinted in} LUO YUNFAN, \textit{supra} note 175, at 225 [hereinafter Shanghai Measures] (prohibiting the use of inside information to trade stocks).
\item \textsuperscript{189} Chan, \textit{supra} note 139, at 1.
\item \textsuperscript{190} Gupiao Faxing yu Jiaoyi Guanli Zanxing Tiaoli [Temporary Regulations for the Oversight of Stock Issuance and Trading], Zhonghua Renmin Gongheguo Zhengquan Fagui Huibian 1-9 [hereinafter Temporary Regulations]. The State Council promulgated the Temporary Regulations. \textit{Id.}
\item \textsuperscript{191} Jinzhi Zhengquan Qizha Xingwei Zanxing Banfa [Temporary Measures Forbidding Fraudulent Behavior] Zhonghua Renmin Gongheguo Zhengquan Fagui Huibian 2-147 [hereinafter Temporary Measures]. The State Council approved and the State Council Securities Committee (Guowuyuan Zhengquan Weiyuanhui) issued the Temporary Measures. \textit{Id.}
\item \textsuperscript{192} \textit{Id.}
\item \textsuperscript{193} Zhao Zhengbing et al., \textit{supra} note 128, at 17.
\item \textsuperscript{194} \textit{Id.}
\end{enumerate}
third person, causing the third person to engage in illegal trade practices. The insider trading regulations cover both in detail.

The most specific definition of "insider trading" comes from the Temporary Measures, which define insider trading as follows:

1. an insider trading on inside information or suggesting to a third person that he buy or sell certain securities;
2. an insider leaking inside information to a third person, enabling that person to use the information to engage in insider trading;
3. a non-insider, through improper means or other channels, obtaining inside information and trading on the basis of that information, or encouraging another person to trade;
4. other insider trading behavior.

"Other insider trading behavior" includes:

[A] work unit or an individual, with the purpose of earning profits or mitigating losses, [using] its capital, information, or superior position, or abuses the powers or authority of its office to manipulate the market, to influence stock prices, to foster a false perception of the condition of the market, to cause investors who do not understand the real situation to decide to make a securities investment, [or] to disrupt the order of the securities market ....

The Shenzhen Measures set forth a simpler definition of insider trading. They define it as "the use of inside information" when "engaged in securities trading." This definition includes trading in a company's stock, warrants, or other marketable securities by its directors. Like Shenzhen, the Shanghai Measures also prohibit insider trading, although the definition of insider trading in the Shanghai

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195. See id. (allowing a third person to gain inside information for illegitimate purposes).
196. Id.
197. Temporary Measures, supra note 191, art. 4.
198. Id.
199. Id.
200. Id.
201. Id.
202. Temporary Measures, supra note 191, art. 7.
203. Id.
204. Shenzhen Measures, supra note 187, art. 43(4).
205. Id.
206. Id. arts. 41, 43(4).
207. Shanghai Measures, supra note 188, arts. 39(1), (2), (6).
Measures is less elaborate. They state simply that “in securities trading, it is forbidden for any unit or individual to . . . use inside information to engage in the purchase or sale of securities [or to,] . . . through other direct or indirect means, manipulate the market or disrupt the orderliness of the market.”

It is also worth noting that in China, as in the United States, “short swing profit (duanxian jiaoyi)” constitutes insider trading. In China, an “incorporated company’s directors, supervisors, officers, or shareholders with over five percent of the voting shares who sell shares bought within the last six months, or who buy shares sold within the last six months, must remit to the company the profit gained on the transaction.” One should note that this is a strict liability system. Hence, a purchase and a sale within six months are automatically deemed as insider trading. As a Chinese article notes, however, this system may serve only to “postpone insider trading,” although it does present a barrier to some types of insider trading on the presumption that inside information has a short useful life.

2. The Definition of “Insider”

One Chinese securities dictionary defines “insider” as “directors, administrative personnel and other managers or professionals [lawyers, accountants, and so forth] who may, through the performance of their duties, encounter inside information.” The technical definition, found in the Temporary Measures, elaborates on and expands the dictionary

208. Id.
210. Temporary Regulations, supra note 190, art. 38.
211. Id.
212. See Zhao Zhengbing et al., supra note 128, at 20 (stating that article 38 of the Temporary Regulations applies regardless of whether or not the inside information was used and whether it was an act of good intentions).
213. Id.
214. Id.
215. Id.
216. ZHENGQUAN CIDIAN, [SECURITIES DICTIONARY] 282 (Yan Jie et al. eds., 1993).
definition. The Temporary Measures define “insiders” as follows:

1. directors, supervisors, officers, secretaries, typists, and other personnel of the issuer who come into contact with or obtain insider information through the performance of their duties;

2. lawyers, accountants, capital asset appraisers, investment consultants, regulators of securities institutions, market participants, and others who because of the performance of their duties encounter or obtain inside information;

3. an individual who, on the basis of laws or regulations has control or supervisory rights over an issuer, including the employees of securities regulators and exchanges, employees of the issuer, and the employees of any examiners or auditors . . . ;

4. an individual who, on the basis of his occupation, or who, by means of a contractual or employment relationship with the issuer, may encounter or obtain insider trading, including news reporters, magazine editors, television directors and printers;

5. other employees who may through lawful channels encounter inside information.

The local exchange regulations similarly define an “insider.” The Shenzhen Measures define insiders as “a listed company’s directors, supervisors, managers, and officers.” During their terms of office, these insiders cannot transfer title or possession of their company’s stock, warrants, or other marketable securities. The Shanghai Measures are broader and also include in the definition of “insider” an addition to the standard insider categories listed above: "employees of institutions related to or directly subordinate to the issuer and other employees who may through lawful channels encounter inside information.

217. See Temporary Measures, supra note 191, art. 6 (defining insiders by five groups).
218. Id.
219. Id.
220. Id.
221. Id.
222. Id.
223. Id.
224. Compare Shenzhen Measures, supra note 187, art. 41 with Shanghai Measures, supra note 188, art. 40(1)-(5) (defining insider).
225. Shenzhen Measures, supra note 187, art. 41.
226. Id.
227. See Shanghai Measures, supra note 188, art. 40(1)-(5) (expanding the definition of insiders to include not just issuers and their employees, but anyone who may come in contact with the trading process).
insiders with ties to issuers or traders. As in Shenzhen, the Shanghai Measures prohibit insiders from either directly or indirectly buying or selling stock for their own account.

The second type of insider derives his or her insider status from his or her official position. This de facto insider is a government employee who comes into contact with inside information through the performance of his or her official duties. Improper trading by these de facto insiders has been a recurrent problem in the Chinese markets, as well as in Hong Kong, where Chinese officials often trade shares listed on the Hong Kong exchange, which rises and falls largely based on the British-Chinese relationship. To combat de facto insider trading in China, the Temporary Regulations provide that "securities industry regulators, administrators, and other actors are prohibited from trading by the government, cannot directly or indirectly hold or trade shares, excluding the buying or selling of securities in approved investment fund." The local Shenzhen Measures also prohibit de facto insider trading by forbidding "party cadres, active duty military personnel, personnel engaged in the securities industry, and employees of government agencies whose work necessitates involvement in the securities industry" from buying or selling stock.

Because the regulators of the securities markets often lack control over the acts of government officials, additional measures to curb de

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228. See id. art. 40(4)-(5) (detailing prohibitions against insiders who are directly or indirectly connected with the trading process from engaging in the securities trade).
229. Id. art. 40.
231. See id. (discussing insider trading in the Shenzhen and Shanghai stock markets).
232. Yojana Sharma, Hong Kong: Insider Knowledge Lets Chinese Ride Out Stocks Storm? INTER PRESS SERVICE, Apr. 5, 1993, available in WESTLAW, Allnews Database, 1993 WL 2541999 (discussing the use by Chinese officials of "insider knowledge of Beijing's tirades against Hong Kong governor Chris Patten.").
233. Id.
234. Temporary Regulations, supra note 190, art. 39.
235. Shenzhen Measures, supra note 187, art. 29, ¶3.
236. Id. The Shenzhen Measures continue to state that, with respect to these de facto insiders, specific administrative measures will be separately formulated by the appropriate government bureaus and presented to the People's Bank of China and municipal government for approval. Id.
237. Cf. Sharma, supra note 232 (noting the huge profits government officials are
"facto" insider trading are needed and have already begun to be implemented. In 1993, for example, the Communist Party's top disciplinary committee barred party officials from engaging in stock market transactions. Whether a serious attempt to impose internal party discipline will materialize and ultimately prove successful is uncertain, but, as discussed below, party edicts have not yet solved the "de facto" insider trading problem.

3. The Definition of Inside Information

The careful efforts made in defining "insider" are surprisingly sparse when defining "inside information," as shown by the only one available, but rather cursory, definition of "inside information." The Temporary Measures define inside information as information which is "not yet public and capable of influencing the listed price of a security." The Temporary Measures include twenty-six specific categories of potential inside information, which include, inter alia, events such as the signing of an important contract by the issuer, the changing of the issuer's management policies, large investments or expenditures by the issuer, the shouldering of large debts, non-public difficulties for the repayment of debts, and non-public knowledge of operating losses.

The implications of such a broad definition of insider trading are clear. Apparently, the State Council intended to grant the regulators a considerable degree of discretion in prosecuting insider trading cases through the choice of such broad definitions. Whether the delegation of broad discretion will ultimately prove to be a wise policy is a question to be answered in the distant future, but it appears to be a natural reaction to the many calls for action on insider trading.
4. Sanctions for Insider Trading

Vice-Premier Zhu Rongji has stated that the policing of the securities market should focus on implementing the following four principles: Legal system, supervision, self-discipline, and standardization [fazhi, jianguan, zilu, guifan]. These principles work well with two common Chinese aphorisms about the legal system: youfa biyi (laws must be enforced) and zhifa biyan (enforcement must be strict). These characters translate, in practice, to a threefold system of administrative, civil, and criminal sanctions for insider trading.

a. Administrative Sanctions

i. National Regulations

Both the Temporary Regulations and the Temporary Measures provide for a RMB 50,000 to RMB 500,000 fine for insider trading, and also permit the confiscation of "illegally-obtained stocks and other illegal income." Furthermore, for insider trading by the directors, officers, or other insiders connected with an issuer during a public offering, a wider range of sanctions is available. In addition to criminal liability, "an issuer who commits insider trading during the issuance of securities . . . can receive a reprimand, . . . have illegal income confiscated, pay a fine, or have its issuance approval stopped or canceled."

Administrative sanctions also exist for de facto insider trading. De facto insiders who violate the trading prohibitions "by either directly or indirectly holding or trading stock, except for those instructed to sell

245. Qian, supra note 53, at 627.
246. Temporary Regulations, supra note 190, art. 72; Temporary Measures, supra note 191, art. 13.
247. Temporary Regulations, supra note 190, art. 72; Temporary Measures, supra note 191, art. 13.
248. See Temporary Measures, supra note 191, art. 14 (setting forth sanctions for insider trading by issuer during the issuance of securities).
249. See supra notes 184-192 and accompanying text (discussing a model criminal code for insider trading and criminal liability provisions under the Temporary Regulations, Temporary Measures, and Shenzhen Measures).
251. See Temporary Regulations, supra note 190, art. 72(2) (detailing the 5,000 to 50,000 yuan penalty for de facto insider trading).
their stock within a definite time, can, according to the specific circumstances, be assessed one or both of the following: confiscation of the illegal income, or a RMB 5,000 to RMB 50,000 fine.\footnote{252}

\section*{ii. Exchange-Specific Measures}

Violators of the Shanghai Measures' insider trading provisions may receive a fine ranging from 50,000 to 100,000 yuan.\footnote{253} For serious offenses, the fine can range from 100,000 to 200,000 yuan.\footnote{254} While there are no specific enforcement measures for articles 41 and 43(4) of the Shenzhen Measures, which define "insider" and prohibit "insider trading," the "catch-all" provision of article 93 appears to serve as the enforcement measure, stating that "in the issuance, trading, and settlement process those who employ fraud or other illegal methods of gaining profit are subject to . . . a fine of up to 5\% of the total sum involved, [and/or] confiscation of the securities."\footnote{255}

Both exchanges have administrative sanctions for \textit{de facto} insider traders.\footnote{256} Violators of the Shenzhen Measures' \textit{de facto} insider trading prohibition face the possibility of a 20,000-50,000 yuan fine from the (local) Administrative Bureau of Industry and Commerce, or other appropriate measures that the competent authorities may impose.\footnote{257} In addition, the Shenzhen Measures allow "a reprimand from the work unit, discharge [\textit{kaichu liuyong}], removal from public office, and other administrative measures.\footnote{258} Securities related enterprises may not employ public officials discharged under these provisions."\footnote{259}

\begin{footnotes}
\item[252] \textit{Id.}
\item[253] Shanghai Measures, \textit{supra} note 188, art. 75(6).
\item[254] \textit{Id.} Employees of an institution, who have an administrative/control relationship to or are directly administratively subordinate to an issuer of shares and the other knowledgeable people with relations to stock issuers or traders, however, face 5,000 yuan to 50,000 yuan fine if engaged in the prohibited activities. \textit{Id.}, arts. 40 and 75(7).
\item[255] Shenzhen Measures, \textit{supra} note 187, art. 93(1)-(2).
\item[256] See \textit{id.}, arts. 88(1)-(2), 93(3) (detailing the penalties for insider trading); Shanghai Measures, \textit{supra} note 188, art. 75(7) (providing a 5,000 to 50,000 yuan fine for engaging in \textit{de facto} insider trading).
\item[257] Shenzhen Measures, \textit{supra} note 187, art. 88(1)-(2). "Competent authorities" can also be translated as "appropriate agency" or "agency-in-charge."
\item[258] \textit{Id.}
\item[259] \textit{Id.} art. 93(3). \textit{Kaichu liuyong} differs from "removal from public office [\textit{kaichu gongzhi}]" because it implies a formal termination, but with the opportunity for the official to redeem himself within a limited time and be reinstated.
\end{footnotes}
In Shanghai, violators of the local de facto insider provisions also face a fine ranging from 5,000 to 50,000 yuan. A violator, however, may well find himself facing the same punishments as a de facto insider in Shenzhen (reprimands, discharge, removal from office, and so forth) even though the regulations do not explicitly detail the form of punishment. Violators may face unspecified party discipline for violation of the party prohibitions on trading in either market.

b. Civil Sanctions

Civil sanctions also exist as an alternative or a supplement to administrative sanctions. The Temporary Regulations imply a civil remedy for insider trading which is strikingly similar to the American derivative suit, where a shareholder sues the company’s directors or officers on behalf of the corporation, often seeking restitution (for the company) of the director’s or officer’s improper income. In China, when a third party experiences a loss as a result of insider trading, “that person can institute a civil action for compensation.” For insider trading during a public offering, a separate, but equivalent, provision mandates that an inside trader return (suochou kuanxiang) improperly obtained income to the company.

260. Shanghai Measures, supra note 188, art. 75(7).
261. See id. art. 78 (setting forth further disciplinary measures, in addition to the monetary penalties under article 75(5), to include a reprimand from the work unit, as well as other sanctions imposed by the work unit).
262. See Brauchli, supra note 239, at A1 (discussing the Communist Party leaders’ efforts to ban party officials from participating in the stock markets).
263. Cf. Temporary Measures, supra note 191, art. 77 (indicating that civil laws governing insider trading require an individual engaging in insider trading practices to relinquish his gains and face further penalties).
264. See id. (setting forth the civil law sanction against insider trading, which requires compensation and relinquishment of profits)
266. Temporary Regulations, supra note 190, art. 77.
c. Criminal Sanctions

A recent article on software piracy in China posed the following question:268 "Violators of software and other copyrights face a harsh scale of punishment: those making ‘huge’ profits face up [to] three years in prison plus fines, while those making ‘extremely huge profits’ face seven years plus fines. Will the same principles be applied for insider trading and corporate fraud?"269

The author of the Computer Business Review article might not be surprised to learn that while, in theory, criminal liability for insider trading exists in China,270 this punishment has not yet been implemented in practice.271 The Temporary Regulations provide that violations of the insider trading provisions “which constitute a crime can be subject to criminal liability.”272 Similarly, the Temporary Measures state that “insiders who leak inside information, in addition to the above-mentioned provisions [regarding administrative fines273], still must, under the government’s other provisions, face charges of [criminal] guilt.”274 Criminal liability may also exist on the exchange level.275 The “catch all” provision of article 93 of the Shenzhen Measures276 states that “the serious plots can be [concurrently] referred to the judiciary for resolution[,]”277 which implies criminal liability.

269. Id.
271. He might also not be surprised to learn that enforcement of these laws is lax and that harsh punishments are often not implemented. See infra Section V.A. and accompanying notes (citing the many instances when the foreign press exposed China’s disregard of patent and copyright infringements).
272. Temporary Regulations, supra note 190, art. 78.
273. See Temporary Measures, supra note 191, art. 13(1) (penalizing insider trading by a fine of at least 50,000 yuan, but no more than 500,000 yuan, and by confiscation of the stock certificate and all benefits derived therefrom).
274. Id.
275. See Temporary Regulations, supra note 190, art. 78 (setting forth criminal liability for violation of securities regulations).
276. See supra note 255 and accompanying text (quoting article 93 of the Shenzhen Measures, which penalizes the use of fraud or other illegal methods to gain profit in the securities market).
277. Shenzhen Measures, supra note 187, art. 93(4).
Because at present, China has no specific criminal offense for insider trading, these provisions are without force, though that will change in the future. A recent Chinese law review article advocates the imposition of criminal liability for insider trading, and even presents some model criminal code language toward that end. A recent draft of the securities law reportedly contains a provision that makes insider trading a crime punishable by a five-year jail term. The passage of such a law will expedite the implementation of existing criminal liability provisions, and increase the penalties for insider trading exponentially. While the Chinese courts have proven to be weak in deciding civil cases, no one doubts their ability to quickly impose criminal penalties in cases of economic crime.

At present, only administrative sanctions are effective deterrents to, or punishment of, insider trading. This is likely to change after the passage of the Securities Law, which should, in addition to prescribing sanctions for violations of the Securities Law, explicitly provide a criminal cause of action which will place prosecutions of insider traders under the authority of the insider trading provisions. Civil causes of actions will also become more important as the Chinese legal system develops and the courts become widely accepted enforcers of individual rights.

C. ENFORCEMENT OF INSIDER TRADING REGULATIONS

1. Challenges and Problems in Enforcement

This evaluation cannot end without an explicit recognition of the problems in enforcing these sanctions. The deficiencies of the Chinese equity

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278. See Zhao Zhengbing et al., supra note 128, at 20 (referencing article 8 of the Temporary Regulations, which imposes criminal liability on insider trading).
279. Id.
280. Id.
282. Cf. Brauchli, supra note 239 (pointing out the apparent “breakdown of social order” in China as the central government increasingly loses control over the provinces).
283. See Kahn, supra note 80, at 9 (discussing the suspension and fining of a securities brokerage house in Shanghai).
284. See Legislation, supra note 281, at 3 (detailing the criminal sanctions for violating the proposed securities laws).
285. Id.
markets are well-known; Chinese officials themselves freely admit that they are some of the riskiest in the world. Zhou Daojiong, chairman of the CSRC, stated that “our country’s securities market is still at its initial stage with some congenital deficiencies and non-standard performances, such as an imperfect legal system, lack of powerful supervision and management.”

A primary deficiency in the insider trading regulations is the inability to discipline government officials and party cadres. As Zhou noted, regulators’ abilities to detect and address insider trading must be improved. The CSRC needs control over more resources, and needs to recruit and educate more trained regulators. The primary goal of the CSRC should be to discipline the market players, traders, underwriters, and issuers, although the problem of government insiders, who are largely beyond the scope of the CSRC’s authority, still remains.

The central government is still the largest investor, and it lacks internal discipline. For example, the Guangdong provincial government owns

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286. See Fu, supra note 270, at D2 (noting one of the many examples of fraud within the Chinese stock markets and the difficulties of enforcing or implementing existing regulations).

287. Walker & Nickerson, supra note 83, at 28; Tarbutton, supra note 37, at 412.


290. Irregularities, supra note 288.

291. See also DALU ZHENGQUAN SHICHANG XIANKUANG [THE PRESENT STATE OF THE MAINLAND’S SEC. MARKET] 186 (1994) (discussing the inadequate technology and experience of the securities regulators); Fu, supra note 270, at D2 (stating that the CSRC staff lacks experience and knowledge about the securities market).

292. Barry Porter, CITIC Official: Securities Market to Improve, S. CHINA MORN-ING POST, Dec. 15, 1995, at 6. Until very recently, Chinese accounting firms relied on 70- and 80-year-old accountants with pre-revolution experience and education to manage their books, because they were the only personnel in the country with any accounting experience. Karmel, supra note 121, at 1112, n.31.

293. See China Securities Watchdog Urges Uniformity, AGENCE FR.-PRESSE, May 8, 1994, available in WESTLAW, AFP-Eng Database, 1994 WL 9613902 (“Insider trading, involving communist party officials, local bureaucrats and issuing companies, is prevalent on China’s two formal stock exchanges established in 1991 in Shanghai and Shenzhen. While the situation has improved as the CSRC — established in October last year — has gained in size and experience, Liu [Hongru, then-head of the CSRC] said many problems persisted.”).

294. Karmel, supra note 121, at 1118; see also Henny Sender, CHINA: Rigger Morris, FAR E. ECON. REV. May 26, 1994, at 80 (discussing government participation in the commodities markets).
Guangdong Investment, which enables Guangdong Investment to acquire businesses and land at below-market rates. This kind of public-private overlap only increases the natural ability of government officials to make killings on inside information of future political events, especially in the Hong Kong market. The party and the government need to demonstrate a greater amount of discipline over their own members, or allow an outside body, such as the CSRC, to step in and administer discipline for trading violations.

Zhou also remarked on the "imperfect legal system," which needs to be improved. A market "in a country with all-new securities practices, limited rights for redress of grievances, and a weak, constantly changing constitution is a dangerous market indeed." Obviously, the country needs a comprehensive securities law, a unified regulation system, and a way of disciplining the few companies that refuse to obey the limits of the regulations. The implementation of criminal punishments and private civil causes of action is also important. These changes require a better training of the judiciary, or at least a select group of judges trained in securities matters, and a stricter enforcement of judicial judgments.

There is also a structural weakness that Zhou overlooked: an informational deficit. Average investors need both more information on the listed

297. See Irregularities, supra note 288 (citing in detail the problems inherent in the Chinese securities market at such an early stage of its development).
298. Karmel, supra note 121, at 1118.
300. See CHINA MARKET DEV. REP., supra note 148, at 116 (stating that one of the three problems in the Chinese stock market is the lack of control over some corporations).
301. In the context of insider trading, however, allowing insider trades to take place may aid, rather than hamper, information disclosure. When market observers become aware of insider trading, they will act accordingly, and the information will quickly diffuse throughout the entire market. In China, however, because the financial press is not as free as in western countries, and because investors may be thousands of miles away from each other in a nation with an underdeveloped telecommunications infrastructure, the information discovery of insider trading might be limited to merely observing changes in stock prices. This is an inefficient disclosure method, because it is difficult to pinpoint the cause of a stock change, in the absence of other information, and may not fulfill an exchange's goal of information sharing. Cf. Tarbutton, supra note 37, at 428-29 (stressing the importance of disclosure require-
companies and the education or experience to interpret the information they are able to obtain.\textsuperscript{302} Recent examples of government crackdowns on journalists who report unflattering economic data are disturbing,\textsuperscript{303} as is the widespread lack of understanding of the workings of the stock market.\textsuperscript{304}

2. Hopes for Improvement

Fortunately, reforms are proceeding.\textsuperscript{305} The first example of progress is in the legal system.\textsuperscript{306} China’s forthcoming Securities Law\textsuperscript{307} will address insider trading, and will extend the reach of insider trading sanctions by explicitly prescribing criminal sanctions for insider trading.\textsuperscript{308} It is hoped that the creation of criminal sanctions will go a long way toward curbing insider trading.

Improved detection and administrative punishment of insider trading violations also seem likely. On the national level, the CSRC is becoming more active.\textsuperscript{309} More staff have been hired, bringing the manpower level up to 1,000 personnel from 100 in February, 1994.\textsuperscript{310} Responding to

\begin{footnotesize}
\textsuperscript{302} Karmel, \textit{supra} note 121, at 1118.


\textsuperscript{305} See, e.g., Walker, \textit{supra} note 84, at 10 (discussing impending legislation); \textit{infra} note 309 and accompanying text (describing CSRC’s increased activism); \textit{infra} note 327 and accompanying text (detailing increase in local oversight).


\textsuperscript{307} Walker, \textit{supra} note 84, at 10. \textit{See China Plans New Rules on Insider Trading}, \textit{supra} note 306, at 19 (demonstrating that the law is already two years behind schedule).


\textsuperscript{309} \textit{Securities Watchdog}, \textit{supra} note 142, at 2.

\textsuperscript{310} Id.
\end{footnotesize}
Chairman Zhou's exhortation that, "[w]e must see to it that all laws are observed, that law-breakers are dealt with, and that laws are strictly, justly and impartially enforced[,]" the CSRC has begun to flex its regulatory muscle. The first significant prosecution was in February, 1994, when the CSRC fined Xiangfan Credit & Investment, a securities broker, RMB 2 million and confiscated a further RMB 16 million for trading on inside information. This prosecution is all the more notable for the fact that Agricultural Bank of China, which owns Xiangfan, is a major state-owned commercial bank and policy lender. Even the normally staid Economist gushed, "[t]hat one successful prosecution puts China streets ahead of some far more developed markets. Switzerland and Italy have yet to bring a successful prosecution under their insider-trading laws. Japan has nabbed just one culprit since it banned the practice back in 1989."

This is not an isolated example of regulatory muscle-flexing. The efforts of regulators were at least partially responsible for the removal or forced resignation of 110 directors, chairpersons and presidents of 56 publicly traded Chinese companies, on charges of corruption, old age or incompetence. Indeed, CSRC officials now institute investigations on their own, without waiting for instructions from the State Council. This regulatory zeal has begun to affect the behavior of listed firms. Recently, Shanghai Forever Bicycle fired a managing director after he helped friends


313. See supra note 311 and accompanying text.


315. Turfing Insider-traders Out, supra note 312, at 67 (explaining ownership of Xiangfan).

316. Id.


319. Id.
buy shares in the company before the initial public offer. In November 1994, Guangzhou Shipyard filed information with the Stock Exchange of Hong Kong indicating that several executives of the company had violated Chinese insider trading laws.

The CSRC plans to be even more active in the future. It has promised that it will "suspend the underwriting rights of securities firms with irregular actions, and will turn down applications from the firms involved to issue stocks." It is also looking to learn from the experiences of other market regulators, including the American Securities and Exchange Commission, the Hong Kong Securities and Futures Commission, and the Monetary Authority of Singapore.

Oversight on the local level is also increasing. The Shanghai government has instituted a requirement that all securities consulting institutions re-register with the authorities. It is even possible to foresee an end to the battles over regulatory jurisdiction between the local exchanges and the national CSRC. Also, the State Council has endorsed self-regulation within the industry, which seems to be at least a partial answer to the prob-

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320. Henny Sender, Hong Kong: Cold Feet, FAR E. ECON. REV., Dec. 15, 1994, at 68.
321. Id.
322. PRC Securities Arm To Probe Irregularities in Listed Firms, supra note 312, at 51.
328. Id.
329. Chan, supra note 139, at 1 (discussing “red tape documents” - papers with instructions and guidelines from higher authorities).
330. Zhengquan Jiaoqisuo Guanli Zanxing Banfa [Provisional Measures for the Oversight of Securities Exchange], art. 43, Zhonghua Renmin Gongheguo Zhengquan
lem of an insufficient enforcement mechanism. The CSRC seems to be banking on its success, and hoping that this future enforcement will come from the developing group of domestic institutional investors.

Another developing area of securities regulations enforcement involves the public. An awareness of the finite nature of the CSRC's investigative capabilities led to the creation of a reward system for reporting illegal securities trading. The Temporary Measures state that "when a report from the public concerning securities fraud and other illegal securities behavior [is submitted], if [the report] is verified, a reward may be given to the one making the report."

Unfortunately, the criticism that China possesses an excessively weak legal system still rings true. Many of the above-mentioned improvements in securities law hinge on the regulatory power of the CSRC. For remedies and sanctions that rely upon the Chinese courts, the future is still dim. While stating that the "Chinese court system is capricious, communist and presumptively corrupt" may be a bit extreme and overbroad, the new commercial cases do place an undeniable strain on an ill-equipped and undertrained judiciary. Training judges is the most long term of activities, and will require a large investment, both in time and financial resources, by the Chinese government if civil actions for insider trading are ever to become a viable option.

Fagui Huibian 2-127.

331. Kahn, supra note 163, at S3 (discussing the impact of move to long-term investors from speculators).

332. See id. ("[Chinese authorities] hope that institutional investment from Chinese pension funds, mutual funds and insurance firms will make the markets less volatile. They've got a tough battle ahead.").

333. See Temporary Measures, supra note 191, art. 27 (providing a reward to the person who reports securities violations).

334. Id.

335. Id.; cf. Insider Trading and Securities Fraud Enforcement Act of 1988, 15 U.S.C. § 78(a) (providing a reward of up to 10 percent of the penalty for informants whose tips lead to the successful prosecution of an inside trader).

336. See Geoffrey Crothall, Courts Pledge to End Corruption, S. CHINA MORNING POST, Aug. 31, 1992, at 6 (discussing the lax and inconsistent enforcement of securities regulations by Chinese courts).


338. See, e.g., Chan, supra note 139, at 1 (discussing the powers and duties of various securities regulators); PRC: CSRC to Ban Unfair Competition in Underwriting Stocks, supra note 323, at 46 (explaining recent actions of CSRC); Silk, supra note 314, at *8 (detailing the impact of CSRC's actions).

339. Zirin, supra note 337, at 114.

One hopes that an invigorated CSRC will more than compensate for the slow rate of improvement in the judiciary, and enforcement of the securities laws will proceed at a reasonably fast pace.

V. IS THE HOPE FOR IMPROVEMENT ILLUSORY? A COMPARISON WITH THE PROTECTION OF INTELLECTUAL PROPERTY AND AN EVALUATION OF THE STAKEHOLDER SYSTEM

Thus far, this article has argued that the CSRC and the courts will meaningfully implement and enforce the new insider trading regime in China. While this initially seems to be at odds with the experience of intellectual property protection in China, a closer examination of the values underlying the Chinese legal system provide an explanation for the difference in the two areas of the law.

A. THE DEFICIENCIES OF INTELLECTUAL PROPERTY PROTECTION IN CHINA

One of the most visible signs of tension between the Chinese and the American legal systems is the recent disputes over the protection of American intellectual property in China. The disappointment of western coun-

341. This article is not intended to be a comprehensive analysis of intellectual property protection in China. Rather, it contrasts the deficiencies of intellectual property protection with the better possibilities for the enforcement of the insider trading regulations, and uses the stakeholder theory to explain this discrepancy.


tries with Chinese enforcement of intellectual property rights, however, is not new.\textsuperscript{343} A 1924 article concluded,

Although China agreed by treaties twenty years ago to enact adequate legislation to protect foreign trademarks, no law satisfactory to foreign powers has been promulgated . . . . It has been suggested by the United States and Great Britain that extraterritoriality in respect to trade-marks, copyrights and patents be abolished on condition that China enact proper laws covering the subject. The wisdom of this recommendation is to be questioned when we consider the manner in which the Chinese administer their laws.\textsuperscript{344}

Recent conflicts over software piracy, compact disc piracy, and other copyright violations have reinforced the perception that Chinese protection of intellectual property and the enforcement of Chinese laws on piracy are both inadequate.\textsuperscript{345} This situation created a growing rift in the Sino-American trade relationship, one that threatens to widen.\textsuperscript{346} American companies have pressured the United States government to demand that China increase its policing and punishment of intellectual property violations,\textsuperscript{347} and the government, through its Trade Representative, has responded several times,\textsuperscript{348} brandishing the 'big stick' of section 301 sanctions.\textsuperscript{349}

It is, of course, possible to endorse the position that the Chinese government's record on enforcing intellectual property rights is actually good, given China's level of development,\textsuperscript{350} and is improving dramatically.\textsuperscript{351} This is similar to the position that the Chinese government

\begin{itemize}
\item[343.] Robert T. Bryan, \textit{American Trade-Marks, Trade Names, Copyrights and Patents in China}, CHINA L. REV. 424, 432 (1924).
\item[344.] Id.
\item[346.] \textit{China Rejects U.S. Threats Over Intellectual Property Rights}, supra note 342; \textit{China Protests U.S. 301 Trade Investigation}, supra note 342; Parker, supra note 342, at D1.
\item[348.] \textit{China Protests U.S. 301 Trade Investigation}, supra note 342.
\item[349.] Id.
\item[350.] \textit{China Feels Pressure to Improve Copyright Protection}, 6:7 J. PROPRIETARY RTS. 32 (1994).
\item[351.] \textit{see id.} (demonstrating Chinese efforts to upgrade intellectual property vio-
holds. The popular view in the United States, however, is that the enforcement is lax, even after adjusting for developmental differences between the two nations. The actual situation seems to be closer to the "lax enforcement" view, though there are a number of different explanations for the lax enforcement.

B. WHY ARE WE JUSTIFIED IN BEING OPTIMISTIC ABOUT THE ENFORCEMENT OF INSIDER TRADING LAWS, GIVEN THE EXPERIENCE OF IPR ENFORCEMENT?

It may seem curious to be so optimistic about the enforcement of insider trading laws, given the experience of poor intellectual property protection under Chinese law in practice. After all, the Chinese government has made many publicized efforts to stamp out software and compact disc piracy, and many calls for stricter civil and criminal sanctions for intellectual sanctions); see also China Needs Stricter Enforcement on Copyright Piracy: Official, AGENCE FR.-PRESSE, Apr. 10, 1995, available in WESTLAW, AFP-Eng Database, 1995 WL 7789466 (quoting Ren Jianxin, president of the Supreme People's Court, as giving a frank assessment of intellectual property legal protections, and outlining Chinese efforts to improve the protections). 352. See, e.g., China Rejects U.S. Threats Over Intellectual Property Rights, supra note 342 (quoting Shen Guofang, then-Chinese Foreign Ministry spokesperson, as saying, "the Chinese government has done its utmost to ensure the observance of the law and the prosecution of those who violate the law."); China Protests U.S. 301 Trade Investigation, supra note 342 (same); Intellectual Property Theft Convicted in China, XINHUA NEWS AGENCY, Jan. 17, 1995, available in WESTLAW, Allnews Database, 1995 WL 7709623 (providing intellectual property enforcement data); see also Suzanne McElligott, A Better Mindset on Intellectual Property? CHEMICAL WK., Sept. 6, 1995, at S7 (outlining Chinese steps to curb patent infringement).


355. See, e.g., Alford, supra note 341, at 3 (proposing a cultural explanation for intellectual property violations); William P. Alford, You Can't Enforce Copyrights Without Human Rights, NEWSDAY, Feb. 19, 1995 (stating that enforcement of intellectual property rights in China takes a back seat to satisfying basic human needs); Frankie Fook-Lun Leung, Tradition of Copying in China Fuels the Piracy of Intellectual Property, L.A. TIMES, Mar. 5, 1995, at D2 (acknowledging that piracy is rampant and positing a cultural explanation).

356. See Schlesinger, supra note 341, at 135 (stating that administrative and judicial decisions do not effectively deter infringement of intellectual property rights).

357. See Steven Mufson, China Raids 2 Plants Making Pirated Discs: U.S. Neg-
al property pirates. In addition, the Chinese government has passed many laws that appear to make intellectual property piracy illegal beyond doubt: China has a 1982 Trademark Law, a 1984 Patent Law (amended in 1992), and a 1990 Copyright Law. The 1987 General Principles of the Civil Law granted private rights of action for violations of these laws. In spite of these efforts, pirate compact discs and software plants continue to churn out products, and rights are often unenforceable in the weak Chinese legal system. How, then, can one reasonably be optimistic about the future of the insider trading law?

358. See, e.g., Tan Hongkai, Government to Imprison Copyright Buccaneers, CHINA DAILY, May 21, 1994, at 11 (explaining criminal penalties against intellectual property violations); Microsoft Wants Further Action Against Fakers, supra note 347, at 1 (discussing proposed legal action against pirates); Audio Notes, VIDEO WK., Jul. 18, 1994, available in WESTLAW, Videowk Database, 1994 WL 8725123 (discussing sanctions for intellectual property violations); Gary M. Hoffman & George T. Marcou, Who's Stealing America's Ideas? WASH. POST, Nov. 5, 1989, at C3 (explaining proposed sanctions to enforce China's intellectual property laws).


362. Schlesinger, supra note 341, at 97.


364. Schlesinger, supra note 341, at 135; see Kachuriak, supra note 363, at 609-610 (evaluating the Intellectual Property courts in China).
1. There are more stakeholders behind insider trading enforcement.

The enforcement of intellectual property rights and insider trading prohibitions are two entirely different matters, however. The theory that best explains this disparate treatment is the stakeholder theory of jurisprudence.\textsuperscript{365} The Chinese people perceive insider trading and intellectual property piracy very differently: Chinese stakeholders are both directly and indirectly involved in the securities markets, all the way down to the working class individual investor; few Chinese, however, have a stake in the enforcement of intellectual property rights.\textsuperscript{366}

At the same time, it is important to note that the primary domestic stakes in intellectual property are undertaken in the interests of furthering China's bid for World Trade Organization (WTO) membership,\textsuperscript{367} and to avoid reprisals, such as the American section 301 measures.\textsuperscript{368} The long history of poor intellectual property protection in China indicates that these "stakes" in intellectual property right enforcement are not strong enough to overcome apathy or popular opinion against the strict protection of (mostly foreign) intellectual property. Furthermore, as the Chinese government is no longer threatened by the possibility of United States trade sanctions and foreign

\textsuperscript{365} See discussion \textit{supra} part II (explaining stakeholder theory of jurisprudence as a legal system in which "a wide cross-section of citizens must agree that the law is in their own interests" for the law to be legitimate and realistically enforceable).

\textsuperscript{366} It is interesting to note, however, that anecdotal evidence suggests that the enforcement of domestic intellectual property rights against domestic and foreign infringers is improving, or at least is receiving more attention. See Kang Bing, \textit{Managers Call for Better Enforcement}, CHINA DAILY, Oct. 11, 1994 (noting the difficulties of enforcing the Jianlibao soft drink market); \textit{Chinese Composers Sue Matsushita on Copyright}, ASIAN WALL ST. J., Mar. 28, 1994, at 5 (reporting one of the first Chinese plaintiffs in an intellectual property violation case).

\textsuperscript{367} Id.


\textsuperscript{369} See Tan Tarn How, \textit{Sanction Threats Hurt Overall Trade Ties, China Tells
interference with its WTO application, one may conclude that these stakes diminish as time passes. Also, because both stakes are macroeconomic, China has no vested interest in protecting intellectual property on the individual scale. There is no real impetus, in the absence of extreme enforcement measures by the authorities, for individual economic actors to forewarn piracy.

Western lawyers and politicians have yet to officially recognize the realities of the situation. Instead of sponsoring measures that would create more domestic stakeholders, they concentrate on enforcing their rights in an inhospitable climate. This failure by westerners to recognize the real incentives of the Chinese people results, in practice, in a situation that requires so much force on the part of westerners that it destroys any real incentive for the Chinese to enforce the laws themselves. This approach is reflected in the attitudes of many western lawyers. One western-trained Chinese lawyer recently captured the essence of the 'American lawyer' approach in an newspaper interview:

As a U.S.-trained Chinese lawyer practicing in Beijing, it is my belief that American interests in intellectual-property protection can be best served by engaging Chinese courts, not avoiding them. The value of winning a case under Chinese law goes well beyond specific damage awards, because it puts

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371. The development of domestic stakes in the protection of intellectual property, however, may very well offset this weakening, as the Chinese economy develops and begins to earn more revenue from high technology and intangible products like computer software. See Cinque, Note, Making Cyberspace Safe for Copyright: The Protection of Electronic Works in a Protocol to the Berne Convention, 18 FORDHAM INT'L L.J. 1258, 1288-89 (1995) (arguing that the failure of nations to provide laws protecting intellectual property stifles the development of a technological infrastructure).


373. Id.

374. Id.

375. Id.
all Chinese people—consumers and competitors—on notice that foreign businesses will use legal remedies to demand fair treatment from the Chinese legal system.\textsuperscript{376}

This approach finds support in the United States government.\textsuperscript{377} The House of Representatives Democratic leader, Dick Gephardt, recently wrote to the then-U.S. Trade Representative, Mickey Kantor, "[t]he Chinese government needs to understand how seriously we view these violations and that we are prepared to take action if they choose to ignore their commitments."\textsuperscript{378} What the lawyer and Congressman Gephardt both fail to address are the root causes of the reluctance or inability of the Chinese authorities to enforce intellectual property laws.

Many western observers have noted that the absence of domestic economic stakes in intellectual property enforcement is related to lax enforcement.\textsuperscript{379} Some westerners have even sided with the Chinese and endorsed a double standard on the enforcement of intellectual property rights in developing nations.\textsuperscript{380} This view recognizes that effective enforcement will only occur when large numbers of Chinese citizens have a stake in the protection of intellectual property, and explains why it is reasonable to expect insider trading laws (and, indeed, all securities laws) to be more vigorously enforced in the future. Because there are strong domestic, foreign, and governmental stakes in the securities industry,\textsuperscript{381} insider trading enforcement is likely.

\begin{thebibliography}{99}

\bibitem{376} Id.
\bibitem{377} Letter from Richard Gephardt, Democratic Leader, House of Representatives, to Mickey Kantor, United States Trade Representative (Feb. 7, 1996), \textit{available in WESTLAW, Allnews Database}, 1996 WL 8783114.
\bibitem{378} Id.
\bibitem{380} \textit{See id.} (arguing that effective enforcement of intellectual property is directly correlated to the rise of domestic inventors and innovators). \textit{See also} Chinese Checkers, \textit{ORANGE COUNTY REGISTER}, Feb. 7, 1995, at B8 (advocating the support of free-market reforms in China in order to foster the natural evolution of an effective, broad-based intellectual property enforcement regime).
\bibitem{381} \textit{See discussion supra Section II.C} (identifying and discussing the stakeholders in China's securities markets as the small domestic investors, foreign investors, and the government).
\end{thebibliography}
2. The capital markets stakeholders reflect the legitimate economic interests of the Chinese government

While the presence of stakeholders in the economy is essential to a culture of enforcement, it may not be, in the short run at least, a sufficient condition. In the long run, the mere existence of a large group of stakeholders will induce a government to enforce laws that are in the stakeholders' interest, but in the short-term, a convergence of government and stakeholder interests is necessary to effect widespread enforcement.

Enforcement of the insider trading laws is in the government's interest because the government's stability and legitimacy rest in large part on the development of the economy, and the market is an integral part of the Chinese economy. To varying degrees, the market has changed attitudes toward profit, risk, and return, modernized the administration and use of financial assets, taken the responsibility for rating companies and enterprises from the government and given it to the market, has changed the mechanism for raising funds, and has provided a new channel for foreign investment. The market's stability rests, to a great degree, on the existence and enforcement of a reasoned and transparent regulatory regime, and it is likely that this situation will encourage the government to enforce insider trading (and other securities) laws.

A Chinese decision to vigorously enforce insider trading laws would be in accord with conclusions of other governments. In many economically developed nations, governments have concluded that insider trading is harmful to economic growth. The United States, for example, prohibits insider trading on the grounds that it undermines "the fair and honest operation

382. See Barnathan et al., supra note 88 (stating that the government is dependent on the performance of the market).
383. Id.
385. Id.
386. Id.
387. Id.
388. See Barnathan et al., supra note 88 (stating that market regulation is a priority in "nations of small investors," where governments fluctuate based on performance of the market).
389. See infra notes 391-96 and accompanying text (discussing the attitudes toward and actions against insider trading in the United States, the European Union, Germany, and Hong Kong).
390. Id.
of our securities markets based, at least in part, on the fear that the public will either refuse to invest in a market they perceive as being "rigged" or will actually be victimized in a rigged market. The European Union also endorses a union-wide upgrading of insider trading laws and enforcement. Even Germany and Hong Kong, two governments notorious for turning a blind eye toward insider trading, are beginning to see the light. In 1994, Germany finally adopted insider trading regulations, which made insider trading punishable by five years imprisonment, and Hong Kong is also punishing insider traders.

Intellectual property rights, on the other hand, are different. The alignment of the interests of the Chinese government and foreign stakeholders is not reflected in the intellectual property rights battles. There


397. See supra notes 355-57 and accompanying text (describing rampant intellectual property violations and the Chinese government's inability to enforce intellectual property laws).
are few domestic stakeholders, and their interests are not aligned with those of the government. The government is concerned with macroeconomic growth, and strict enforcement of intellectual property rights would be a brake on this kind of development. In fact, the lack of intellectual property protection may increase the speed that technology (e.g., the most advanced software) is disseminated through the economy. There is also the darker side of the non-enforcement of intellectual property rights: the fact that the Chinese government harbors many officials and organs who directly profit from tolerated piracy, which mitigates against enforcement of the intellectual property rights of foreigners and the small number of domestic stakeholders.

3. The requests of the capital market stakeholders are realistic

In China, as in all countries, realpolitik is an important consideration in policy implementation. An important determinant of a law's enforcement in a country such as China is the impact of the law. The insider trading law has a reasonably defined group of activities that it purports to control, and the requests of the securities markets stakeholders are also realistic. Both of these factors increase the likelihood that an effective insider-trading regime will be fully implemented.

399. Id. ("Finally, and perhaps most important, the local population must display the 'will' to enforce punishment when intellectual property rights have been violated"—another way of stating that the Chinese market must create domestic stakeholders before enforcement may become a reality).
400. See Schlesinger, supra note 341 (stating that the Chinese government has a macroeconomic focus on hastening economic growth that is at odds with the interests of the individual investor).
401. See Cinque, supra note 371, at 1289-90 (claiming that if intellectual property is digitized, it will disseminate through society more quickly).
404. Id.
405. See supra Section VI.B.2 and accompanying notes (stating that the enforcement of the insider trading laws benefits both stakeholder and the government).
The stakeholders want enforcement of existing laws, which are supported by much of the government and the populace. To legitimately carry out these laws, the stakeholders plan to use the administrative branch, instead of the judiciary, for enforcement, and do not intend to harm any legitimate, established actors in the economy. In fact, the only parties the strict enforcement of insider trading regulations will harm would be the insider traders themselves. Because government officials cannot openly defend their right to engage in insider trading, and because the insider traders in general are not popular, the enforcement of these rules is likely to be uncontroversial.

As in the previous section, the intellectual property interests are different here as well. The American lawyers' demands are quite severe, when examined in the context of the developing Chinese legal system. The agenda of the American lawyers is not only to sue for strict enforcement of the letter of the intellectual property law, but to use the Chinese courts as the instrument of this action. Either of these actions would be difficult to enforce. Simultaneously advocating both is simply unrealistic.

4. The capital markets stakeholders have advanced their interests in a logical, consistent, progressive manner

One of the reasons that the intellectual property laws have failed is that the Chinese government grafted the mature, fully-formed intellectual property laws onto the existing corpus of Chinese law. Any deliberative procedure entered into was not expansive enough to win widespread support, and there was not much of an opportunity for the Chinese legislators and administrators to learn from earlier versions or limited applications of the law. Clearly, in a young legal system such as China's, the learning curve is a

406. Id.

407. See Qiao, supra note 372 (stating that westerners' focus on enforcement of Chinese intellectual property laws ignores the root causes of the Chinese government's inability to enforce the laws).

408. See id. (advocating that American lawyers should bring suits in Chinese courts in order to place the Chinese on notice that "foreign businesses will use legal remedies to demand fair treatment from the Chinese legal system").

409. See id. at 6 (stating that American intellectual property interests "can best be served by engaging Chinese courts, not avoiding them").

410. See Schlesinger, supra note 341, at 96-98 (stating that since the Cultural Revolution in 1978, China has legislated an intellectual property law in a remarkably short period of time, based on its study of the laws of other nations).

411. See id. at 100-01 (noting that China's first trademark law was "clearly a legislative compromise").
reality, and trying to impose a new set of legal concepts would better be done through progressive growth rather than wholesale imposition.

By contrast, in insider trading law, as in the development of a securities market in general, the regulations have developed in a logical, consistent manner. The regulations on insider trading began as exchange-level regulations that erred on the side of safety. Two successive waves of regulations followed, and the securities law that will be promulgated in the future will be able to build on all of these experiences. This incremental approach to creating a comprehensive insider trading law complements the Chinese attitude toward law, and is a better approach for instituting what is essentially the transplant of a foreign law. Stakeholders have a better chance of seeing insider trading laws implemented and enforced when the law is developed systematically.

VI. CONCLUSION

It is undisputed that China is committed to bringing its exchanges in line with international standards. The stock market is the primary channel for foreign investment in China, and it is needed for China's industries and enterprises to grow. As a condition of that growth, both domestic and foreign investors must be confident that adequate safeguards are in place. The development of the law has been progressive and inclusive, and


413. See id. at 303 (explaining the logical progression in the development of the regulations).

414. See supra notes 185-190 and accompanying text (discussing the current Chinese legislation against insider trading).

415. See supra notes 190-91 and accompanying text (discussing the Temporary Regulations and the Temporary Measures).

416. See supra note 192 and accompanying text (stating that the new insider trading provisions should not differ materially from the current regulation).

417. See supra notes 244-45 and accompanying text (discussing the four Chinese principles and the two common Chinese aphorisms about the legal system, which underlie the Chinese insider trading laws).


419. Id.

420. See supra note 412-13 and accompanying text (stating that regulations have developed in a logical, consistent manner).
most indications are that the Chinese government will systematically develop and apply the law.

We need to revise our view of China, and indeed, perhaps of all developing legal systems. As foreign and domestic lawmakers of all kinds have discovered, it is probably impossible to foist a legal system on a rebellious populace. What American computer software and movie industries have discovered is that it is very difficult to impose a system of legal norms upon a population that does not have a stake in the underlying law. As the comparison between insider trading and intellectual property law demonstrates, the government and a large enough group of the citizenry both need to have a stake in the enforcement of a given law for a legal transplant to be successful.

The presence of a critical mass of stakeholders makes continued development and effective enforcement of the insider trading laws possible. This window of opportunity may constitute a lesson for western intellectual property stakeholders. The way to guarantee strict enforcement of intellectual property rights in China may well be to foster the growth of a class of domestic stakeholders, instead of attempting to force the Chinese courts to protect the interests of foreign stakeholders. The development of a class of domestic stakeholders would require a large, long-term commitment (in terms of effort, money, and perhaps even some opportunity costs from tolerated piracy) to the Chinese market, and there is a huge opportunity for free riding by other companies.

In contrast to the natural tendency of westerners to demand adherence to the codified law, the Chinese insider trading experience demonstrated that in some societies, it would be better to require the legal codes to reflect a common societal vision. When society-wide consensus on the impropriety of an action exists, and enough citizens with a stake in prohibiting and punishing the action exist, these two factors cause the legal system to regulate and its enforcement to develop naturally.

How far have the Chinese regulators come? A considerable distance. Just three years ago, “China analysts” reported that “it was unlikely Communist Party authorities would approve laws banning practices such as insider trad-

421. See supra notes 356, 364 and accompanying text (stating that attempts to legislate and enforce unpopular laws do not effectively deter intellectual property infringements).

422. This would suggest that an industry coalition might be ideal for fostering the growth of this class of IPR stakeholders. Such coalitions (e.g., the Business Software Alliance) already exist, but they constitute enforcement-seeking groups, rather than groups that could foster change.
Today, we are posing a different set of questions, concerning increasing compliance and oversight. The very nature of this change demonstrates that Chinese securities law has made a quantum leap in the area of insider trading. The reasons for this leap can teach us much about the proper way to examine legal development in the People’s Republic of China.