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by
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Introduction

> "A new breed of investor, more informed, more inquisitive, more cynical, more in touch with our markets than ever before has been spawned by the Information Age." Arthur Levitt, [former] Chairman of the Securities and Exchange Commission.[1]

In February 1999, the Japanese Supreme Court ruled on an insider trading issue for the first time in its history.[2] Judicial acknowledgment of the importance of insider trading regulations was a historic event for the Japanese government as a whole. It was a symbol of triumph in the battle against the insider trading problem that had plagued the Japanese financial markets for decades. With this ruling, it appeared that all the branches of the Japanese government were finally working synergistically to overcome years of bureaucracy, societal indifference, and other obstacles in addressing the lingering insider trading problem.

Now, the Japanese government could be facing new problems. As the Internet spreads in acceptance across Japan[3] and new forms of communication technology continue to be created, insider trading enforcement may take a more complex turn. With the rise in popularity of such technology as online trading, instant messaging, and chat rooms, the insider trader can now realize profits for himself or others through means that are increasingly difficult to detect. Several high-profile cases in the United States indicate how easily these technologies can be abused to further securities crimes on the Internet.[4] With all the recent developments in Japanese business and

1. Sarah Lai Stirland, *SEC chairman seeks better best execution* <http://www.redherring.com/insider/1999/1105/inv-bestexec.html> (Nov. 5, 1999) (quoting Mr. Levitt at the Securities Industry Association's annual conference in Boca Raton, Florida).

2. *Supreme Court Demotes Insider Trading Case*, Mainichi Daily News, 12 (Feb. 17, 1999). The Osaka High Court had reversed the conviction of Kazuhiko Takizawa in October 1997 for selling on inside infromation pertaining to Nippon Shoji Kaisha. The Japanese Supreme Court concluded that the sale of shares based on information regarding fatal side effects of certain drugs constituted insider information. A Commentary on the Securities and Exchange Law: Cases and Theories (Oct. 1999).

3. Twenty-seven million Japanese, or one in five, have Internet connections. Lori Enos, *7-11 To Tackle E-Commerce, Japanese Style*, E-Commerce Times <http://www.ecommercetimes.com/news/articles2000/000622-6.shtml> (June 22, 2000). In addition, 30.5% of all Japanese households went online in September 2000. *See Survey explores Japanese web use*, SiliconValley.com, <http://www.mercurycenter.com/svtech/news/breaking/ap/docs/4748001.htm> (Oct. 3, 2000).

4. For example, in October 2000, Mark S. Jakob, a former community college student, was indicted after allegedly selling short 3,000 shares of Emulex Corp. borrowed from an online brokerage, fabricating a press release that the Emulex president would

technology relating to the Internet,[5] one may think that the Japanese government may be adjusting to the changes of the digital age. However, if the regulation restricting the role of the Internet in public disclosure of material information is any evidence,[6] the Japanese government could be falling far behind the times.

This note will explore the impact of Internet and communication technology on the insider trading problem in Japan in three parts. First, it will briefly present the historical problems of securities regulation in Japan. Second, it will generally discuss Japanese insider trading law. Third, this note will present the challenges current technology creates for the insider trading problem in Japan.

I
Historical Obstacles To Effective Insider Trading Regulation

Throughout most of the 20th century, Japanese corporate ownership remained largely out of reach of private investors. At the conclusion of World War II, the Allied Forces ordered the dissolution of the large corporate conglomerates that had dominated the Japanese financial landscape.[7] As a result, shares previously held by holding companies were finally made available to the general public.[8] Despite this attempt to create a more democratic marketplace, the Japanese marketplace remained effectively closed for decades due to corporate reliance on indirect financing techniques, such as bank borrowing.[9] Even with the rise of public securities trading in the 1970s, corporate cross-shareholding under the *keiretsu* system, where several interconnected companies are arranged around a central bank, preserved the status quo.[10]

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resign and the company was under investigation, and causing the press release to be released over the news wires. *E.g.*, SEC Litigation Release No. 16747, *Federal Judge Grants Preliminary Injunction, Continues Asset Freeze in SEC Case Involving Emulex Hoax* <http://www.sec.gov/enforce/litigrel/lr16747.htm> (Oct. 3, 2000).

5. NTT DoCoMo's IMode service, for example, launched in Feb. 1999, has 14 million subscribers, more than 10 percent of the Japanese population. NTT DoCoMo is expanding. It has partial ownership of a European telecommunications company and has current plans to build a subsidiary and research facility in Europe. Bruno Giussani, *Attack Mode*, The Industry Standard, Nov. 6, 2000 <http://www.thestandard.com/article/display/0,1151,19868,00.html>.

6. *See* Robert A. Prentice, *The Internet and Its Challenges for the Future of Insider Trading Regulation*, 12 Harv. J.L. & Tech. 263, 283 n. 91 (1999) (citing Yoshiharu Ohi, *For Corporate Data, It's Plug In or Lose Out*, The Nikkei Weekly 7 (October 28, 1996)).

7. *See* Hiroshi Oda, Japanese Law 29 (2d ed. 1992).

8. *Id.* at 268

9. *Id.* at 272.

10. *See id.*

As Japanese business began to flourish and expand into the global economy in the 1980s, many foreign investors began to challenge the inequities of the Japanese financial markets.[11] Insider trading was rampant, and many outside investors were denied investment opportunities. Pressure from foreign countries helped to bring about changes in the Japanese marketplace. The Japanese government abolished foreign exchange and investment controls.[12] It liberalized the financial markets by reciprocating opportunities for foreign subsidiaries.[13] More significantly, the Japanese government dissolved the main-bank system, thus increasing equity financing (i.e., reducing the debt/equity ratio in all listed companies).

Even after adoption of these reforms, insider trading remained a persistent problem. Several different societal factors likely contributed to its prevalence. Political influence, pressure from the major securities firms, and inaction by the securities enforcement agency all played a role.[14] However, it is more likely that the Japanese legislative process (controlled by bureaucrats who draft over an estimated ninety percent of the legislation passed by the Diet,[15] the Japanese national legislature, and who have historically thwarted reform) acted as the most significant impediment to the implementation of effective insider trading regulation.[16]

In 1987, a highly publicized insider trading scandal forced the hand of the Japanese government. Tateho Kagaku Kogyo K.K., a Japanese magnesium company, lost 23 billion yen in the governmental bond market. A day before the public announcement of these losses, the Hanshin Sogo Bank, one of the principal shareholders in Tateho, sold all of its shares in the company and thereby avoided extensive losses.[17] The humiliating publicity from the Tateho scandal forced the Japanese government to re-evaluate its securities regulations.[18]

In 1988, the Japanese Diet passed amendments to the nation's securities laws, the *Shoken Torihikiho*, to strengthen its insider

11. *See* Harald Baum, *Japanese Capital Markets: New Legislation*, 22 Law in Japan 1-2 (1989).

12. *See id.* at 2.

13. *Id.*

14. *See* Shen-Shin Lu, *Are the 1988 Amendments to Japanese Securities Regulation Law Effective Deterrents to Insider Trading?*, 1991 Colum. Bus. L. Rev. 179, 194 (1991).

15. *See* Gregory D. Ruback, *Master of Puppets: How Japan's Ministry of Finance Orchestrates Its Own Reformation*, 22 Fordham Int'l L.J. 185, 194 (1998).

16. *See* Lu, *supra* n. 14, at 195.

17. Baum, *supra* n. 11, at 20.

18. *See* Lu, *supra* n. 14, at 195 n. 65.

trading rules. The following year, the Japanese cabinet passed an administrative order approving the details of the new insider trading regulations.[19] These changes, however, suffering from textual ambiguity, failed to serve as a useful prosecutorial vehicle.[20] In fact, in the first seven years after the passage of the amendments, the Ministry of Finance secured only one conviction for insider trading.[21] Instead, the securities enforcement agency relied on doctrines such as market manipulation to prosecute securities crimes.[22] Even if successful insider trading legislation could have been passed, the Japanese securities enforcement agency, in general, had been vested at its inception with inadequate legal authority to tackle a problem as severe as insider trading.[23]

Since 1995, the number of convictions has steadily risen. That year, Japan saw its first criminal punishment of a corporate defendant for insider trading violations.[24] In 1997, the securities enforcement agency proposed an expansion to insider trading penalties.[25] Now, riding momentum from these developments, including the 1999 Supreme Court case, the Japanese government faces the task of addressing new challenges in insider trading regulation with the increasing use of Internet and communcation technology in Japanese society.

II
Insider Trading Law In Japan Generally

Japanese law on insider trading, codified in the *Shoken Torihikiho*, follows the U.S. statutory and common law schemes in some respects.[26] Under U.S. law, four general classes of individuals

19. David E. Sanger, *Japan Adopts Insider Trading Regulations*, N.Y. Times D6 (Feb. 1, 1989).

20. One representative of the Ministry of Finance stated, "It is impossible to prosecute unless [public disclosure and other terms] are defined." *Id.*

21. Note, *The Regulation of Insider Trading in Japan: Introducing a Private Right of Action*, 73 Wash. U. L.Q. 1399, 1403 n. 26 (1995).

22. Collusive practices by various executives to manipulate increases in share prices violated Article 125 and other provisions, resulting in findings of guilt. *See* Judgment of Tokyo Dist. Ct., *Keishu* 16-7/8-556 (1984); *see also* Judgment of Dist. Ct., *Hanji* 1020-129 (1981), both reported in Oda, *supra* n. 7, at 312.

23. *See* Part III Sec. 1, *infra,* for further discussion on the problems of enforcement.

24. *Bank, Marubeni Affiliate Fined For Insider Trading*, Mainichi Daily News 14 (Mar. 26, 1995).

25. *MOF to Lengthen Jail Time for Investment Crimes*, Mainichi Daily News 12 (Sep. 6, 1997).

26. In the U.S., the common law rule can be stated as follows: "certain individuals who are knowingly in possession of material non-public information relating to a company

prohibited from insider trading exist: traditional insiders, temporary insiders, misappropriators, and tippers or tippees.[27] Similar classifications can be applied in Japanese law although under different legal doctrines. For example, Japanese temporary insiders are brought within the scope of the law under privity of contract rather than a broader fiduciary relationship.[28]

The standard of materiality varies between the United States and Japan because of the precise nature of the Japanese civil law code. The *Shoken Torihikiho* meticulously enumerates the wide range of information that can be considered "material," including everything from issuances of stock to material change in net income due to revised sales projections.[29] By contrast, the Supreme Court held that materiality exists when there is "a substantial likelihood that a reasonable shareholder would consider [the information] important in deciding how to vote."[30]

The remedial structure of both nations could be the most disparate aspect of the two systems. Under the Securities Exchange Act of 1934, the Securities and Exchange Commission is granted broad authority to seek civil penalties and enjoin violative acts.[31] The Department of Justice can also seek criminal proceedings that could result in penalties of $1 million and/or imprisonment for ten years.[32]

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must disclose such information prior to trading the company's securities . . . [or else] refrain from trading." *International Insider Dealing* 7 (Mark Stamp & Carson Welsh, eds., FT Law & Tax 1996). The Japanese rule, set forth in Article 190-2 of the *Shoken Torihikiho*, may be defined in this way: an insider transaction occurs when "persons having a certain, specifically defined contractual or legal relationship to the company, or those who had such a relationship within the past 12 months, and who on the basis of their position in or relationship to the company received in a certain manner specifically defined, important information, have conducted trades in shares or other papers of the relevant company before such information became generally available." Baum, *supra* n. 11, at 22, 23.

27. *See* Stamp & Welsh, *supra* n. 26, at 8-15.

28. *See Shoken Torihikiho* Art. 190-2, Para. 1(4) (1989), translation published in Kazumi Okamura & Chieko Takeshita, Laws and Regulations Relating to Insider Trading in Japan 12-18 (Commercial Law Center 1989); *compare United States v. Chiarella*, 445 U.S. 222 (1980) (holding that print shop employee was not in fiduciary relationship with the target company and, therefore, did not have a duty to abstain or disclose information before trading).

29. *See Shoken Torihikiho* Art. 190-2, Paras. 2(1)(a), 3 (1989), translation published in Okamura & Takeshita, *supra* n. 28, at 14-16. Interestingly, the Tokyo Stock Exchange recently announced that information pertaining to the mergers and acquisitions of the subsidiaries of listed firms would be also actionable for insider trading purposes. *TSE Distributes Insider-Trading Rules*, The Nikkei Weekly, Nov. 6, 2000.

30. *TSC Industries v. Northway*, 426 U.S. 438, 449 (1976).

31. *See* Securities Exchange Act of 1934 § 21, 15 U.S.C. § 78u (1995).

32. *Id.* § 32(a), 15 U.S.C. §78 ff.

These penalties can be extended to $2,500,000 for companies found criminally liable.[33] Under the Japanese system, criminal sanctions for insider traders "consist of a maximum fine of 500,000 yen and/or imprisonment of six months or less."[34]

III
Problems Created By Technology In Insider Trading Regulation

Current technological developments in the Internet space could complicate insider trading regulation in Japan in three main areas of law: 1) trade execution; 2) tipping; and 3) disclosure.

1. Trade Execution

Online trading is growing exponentially in Japan. With the recent deregulation in retail brokerage, online trading accounts were estimated to reach 500,000 by the end of 2000.[35] While this figure is dwarfed by current online trading activity in the United States,[36] fueling the Japanese appetite for securities[37] is the over $10 trillion in personal savings, much of which the Japanese are said to have traditionally kept in low-interest or no-interest savings accounts.[38]

With these figures, the potential problems with respect to controlling online trading might be readily apparent. With increased access to the securities markets, the potential insider trader will face fewer barriers in executing fast and easy illegal trades. The Japanese government has expressly acknowledged online trading as a primary reason behind the need for strengthened insider trading rules.[39] Two different factors, however, may complicate the problem. First and more obviously, the speed at which material information is now being

33. *Id.*

34. Baum, *supra* n. 11, at 24. Expansion of these penalties was proposed in 1997.

35. Rob Guth, *Japan Discovers Online Trading*, The Industry Standard <http://www.thestandard.com/article/ display/ 0,1151,6164,00.html> (Sep. 3, 1999).

36. There are approximately seven million people investing in domestic securities markets via online trading accounts. Katrina Booker, *They Want You Wired: Brokerage Firms of All Kinds are Tripping Over Themselves to Compete Online for Customers*, Fortune 113 (Dec. 20, 1999).

37. In 1998, individual investors "accounted for 25.4% of all stocks of listed companies in Japan, up 7% from five years earlier. Those of financial institutions decreased to 39.3%, down 10% from 1993." Natsuko Segawa, *Net Results*, The Nikkei Weekly 3 (June 19, 2000).

38. Guth, *supra* n. 35.

39. *See* The Securities and Exchange Counsil [sic], *Comprehensive Reform of the Securities Market* <http://www.mof.go.jp/english/tosin/e1a505.htm> (June 13, 1997).

disseminated among companies and their partners enables a greater number of insiders to act more quickly on the information.[40] Second, nearly one-third of Japanese companies do not have policies that expressly forbid its employees from acting on this information, once received.[41]

The absence of clear policies prohibiting insider information in many companies points to a deeper cultural condition at the heart of the Japanese insider trading problem.[42] Historically, many who acted on material inside information did not even know they were committing a crime. To some, perhaps this course of action might have appeared to be the natural or even prudent thing to do. In this way, Japan's lack of commitment to educate the public about the deleterious effects of insider trading on the marketplace and investor confidence has preserved a sense of cultural complicity in this area.

Furthermore, online trading – and the unmonitored nature of the Internet – create a sense of anonymity that may embolden potential insider traders to act instinctively and rashly. Without the need to interact with brokers, insiders can trade immediately and subsequently monitor the results as often as they like. This notion can be evidenced in recent stock manipulation cases in the United States. In September 2000, 15-year old Jonathan Lebed settled charges brought by the SEC for stock manipulation.[43] Operating under a custodial online brokerage account, Lebed allegedly made a total $272,826 in a classic "pump and dump" scheme.[44] After buying thinly traded microcap stocks for typically under a dollar each, Lebed accessed Yahoo! message boards under different aliases and seeded them with 200 to 300 identical messages claiming, among other things, that those stocks were grossly undervalued.[45]

40. In one example in the U.S., an engineer at a technology company bought a call options contract upon receiving a "company-wide" email sent by executives regarding plans for new business. Dawn Kawamoto, *Former Nvidia Engineer Charged with Insider Trading*, CNET News.com <http://news.cnet.com/news//0-1006-200-2644877.html> (Aug. 29, 2000).

41. *See Insider-trading loopholes remain in some companies*, The Nikkei Weekly (Oct. 16, 2000).

42. In the early 1990s, insider trading was so pervasive that one prominent political commentator characterized Japan as "a society of insider dealings." James Sterngold, *Stock Scandal in Japan Runs Deep*, N.Y. Times 29 (Feb. 1, 1991).

43. Ronna Abramson, *SEC Tells Teen to Pay Up*, The Industry Standard <http://www.thestandard.com/article/display/0,1151,18710,00.html> (Sep. 22, 2000).

44. *Id.*

45. *Id.* In the case of Lebed and other pump-and-dump traders, the message boards are an ideal vehicle for their crimes because these services do not require individuals to register their real names. In the insider trading scenario, verified identification is not as

Japanese insider traders may have good reason to believe that their activities will go largely unnoticed. Japan simply lacks the enforcement capability to police illegal online trading effectively. The Ministry of Finance arguably continues to exist in the disempowered form in which it was created during the post-Occupation re-development.[46] In comparison with the SEC, its securities agency is vested with little authority and armed with relatively small civil and criminal penalties. The Japanese government has no counterpart to the SEC's Office of Internet Enforcement, which identifies areas of surveillance, formulates investigative procedures, and conducts Internet investigations and prosecutions.[47] As a result, despite recent high-profile off-line convictions, public sentiment among the Japanese as to the enforceability of insider trading on the Internet likely remains skeptical.

2. Tipping

Unlike U.S. law, "subtippee" liability does not exist under the *Shoken Torihikiho*. Under U.S. law, an insider is liable for tipping material nonpublic information if he anticipates some personal benefit from the disclosure.[48] Tippees can be held liable if the tipper breached a duty and the tippee knew that the tipper was breaching the duty.[49] Presumably, the duty to abstain or disclose could be passed down a chain of tippees indefinitely, and individual liability could be attached to each who breached that duty. Under Japanese law, the tipping rule provides that no person to whom an insider has communicated a material fact may trade on that company's stock until the information has been publicly disclosed.[50] Thus, the possibility that liability can be extended to those removed from the original "source" of information under U.S. law can be contrasted

much of an issue. Online brokerages generally require users to complete detailed application forms before receiving accounts.

46. Lu, *supra* n. 14, at 182 (implying that the Japanese might have harbored resentment with regard to the "overreaching occupation provisions" and that this sentiment played a part in the abolition of the initial Japanese securities agency and creation of its replacements).

47. Securities and Exchange Commission, *SEC Internet Enforcement Program* <http://www.sec.gov> (visited Oct. 14, 2000). As further points of comparison, the SEC brought its first case to charge the use of the Internet to pass inside information in March of 2000 and has brought more than 180 Internet-related enforcement actions to date. *Id.*

48. *Dirks v. SEC*, 463 U.S. 646, 660 (1983).

49. *SEC v. Switzer*, 590 F. Supp. 756, 766 (W.D. Okla. 1984) (holding eavesdropper is not liable for trading on overheard information regarding liquidation of company).

50. *Shoken Torihikiho*, Art. 190-2, Para. 3, translation published in Okamura & Takeshita, *supra* n. 28, at 16.

with a mere "direct communication" standard under Japanese law.

The implications from the limitations of this rule are far-reaching. Today, the individual has a panoply of media at his or her disposal that can disseminate information to a seemingly unlimited number of recipients: instant messaging, webcasting, message boards, email, wireless messaging, etc. Put one way, the combined circulations of the *Wall Street Journal* and *USA Today* at approximately 3.4 million still "fall[s] short of the 'self-publishing' reach available to someone who joins a few commercial bulletin board services."[51] Under the direct communication standard, only the outsider who has received the material information from an insider can be held liable, even if the outsider turns around and emails the same information to hundreds of his or her friends. While broad dissemination technology such as message boards or webcasting might not have been reasonably anticipated during the 1988 amendments, the Japanese government might face serious problems if the direct communication standard is not scrutinized for amendment.

3. Disclosure

The issues of tipping and disclosure of material information are closely related under Japanese law because both are addressed by the same general rule: No person to whom an insider has communicated a material fact may trade on that company's stock until the information has been publicly disclosed.[52] New challenges to the interpretation of this dislosure requirement in the advent of widespread communication technologies arise in two areas: a) selective disclosure and b) prohibited Internet disclosure.

A. Selective Disclosure

Selective disclosure is the preferential distribution of material information by corporate management to analysts and other institutional figures before broader market disclosure.[53] The concern raised by selective disclosure is the unfair disadvantage to individual investors, who are deprived of the opportunity to act on breaking news, but are affected by the change in stock value as a result of

51. Prentice, *supra* n. 6, at 282 n. 86 (quoting from North American Securities Administrator Association website).

52. *Shoken Torihikiho*, Art. 190-2, Para. 3, translation published in Okamura & Takeshita, *supra* n. 28, at 16.

53. Brobeck Phleger & Harrison LLP, *The SEC Adopts Rules To Regulate How Public Companies Deal With Analysts And Insider Trading*, Brobeck Securities Law Alert <http://www.brobeck.com/articles/seclit/0800sec_update.pdf> (Aug. 2000).

immediate institutional trading.

Previously, U.S. companies could use selective dislosure as a means to satisfy the disclosure standard.[54] As Professor Robert A. Prentice has stated, "Technology has enabled companies to simultaneously fax-broadcast the full text to 100, 300, 500 or more of the company's closest followers among investment analysts and money managers worldwide."[55] In August 2000, however, the SEC adopted Regulation FD. This rule requires that when an issuer chooses to disclose material information, he must do so through public disclosure and that when an issuer learns that it has made an inadvertent selective disclosure it must make public disclosure within 24 hours.[56]

Japanese law does not carry similar limitations on selective disclosure.[57] Under the *Shoken Torihikiho*, disclosure is satisfied at a minimum when "many persons [are enabled to have] access to such facts."[58] However, disclosure has been interpreted to mean publication "in at least two different news media recognized by the Law."[59] Once publication occurs, two additional provisions apply. The recipient of the information must wait twelve hours before making use of the information, and the issuer must notify the stock exchanges of the disclosure "without delay."[60]

Legislating new rules to address this problem does not necessarily impose difficult obstacles. Certain web-based technologies can serve as easy and effective tools to meet the disclosure requirement. In the U.S., for example, webcasting can partially satisfy the public disclosure standard.[61] With falling costs, expanding capabilities and consumer demand, web-based technology is becoming a more popular method for communications with investors.[62] Thus, the Japanese government can capitalize on these

54. Prentice, *supra* n. 6, at 280.

55. *Id.*

56. Brobeck, *supra* n. 53.

57. While the extent of the interconnection between the Japanese investment analyst community and the companies they cover is not explored here, it is presumed that there is a significant interrelation between the two due to the modernization of the Japanese financial industry and its reception of Western models.

58. *Shoken Torihikiho*, Art. 190-2, Para. 4, translation published in Okamura & Takeshita, *supra* n. 28, at 16.

59. Baum, *supra* n. 11, at 23, 24.

60. Baum, *supra* n. 11, at 24.

61. Brobeck, *supra* n. 53.

62. James Christie, *SEC says Internet will make investors equal to analysts*, Red Herring <http://www.redherring.com/industries/2000/0929/ind-secpush092900.html> (Sep.

increasingly affordable and available technologies to begin creating more equality in the marketplace for the individual investors.

B. Prohibited Internet Disclosure

A unique aspect of the Japanese law involves Internet disclosure. As stated before, companies cannot place material information on the Internet until twelve hours after publication in the news media.[63] In addition, no person to whom an insider has communicated a material fact may trade on that company's stock until the information has been publicly disclosed.[64] Thus, Internet surfers that read important information that a company releases (such as in a corporate website) before the twelve-hour window officially closes and then subsequently acts upon it can be held liable for insider trading.[65]

While these rules might be appreciated because it ends up protecting those without access to technology in the same way that Regulation FD serves to protect individual investors against the advantages of the institutional investors, these rules might also be turning Japanese insider trading law into an anachronism. While the case may be made that in the U.S., the distribution of information over the Internet is a "selective and arguably discriminatory" process,[66] as the data presented in this note shows,[67] the digital divide in Japan seems to be closing at a much faster pace than in the U.S. Furthermore, having rules like these on the books may serve to stifle foreign investments. For example, a European investor may have a harder time staying competitive in the Japanese marketplace since it might be financially unfeasible, if not impossible, to track down the latest editions of Japanese newpapers as they come out. Moreover, he might not even invest in the Japanese market at all were he to find out that he would face liability under Japanese law for accessing the websites of companies in his portfolio and trading prematurely. But, hypotheticals aside, the fallacies of the Japanese securities law system actually seem to preserve the status quo for foreign investors. As one

29, 2000).

63. Prentice, *supra* n. 6, at 283 n. 92 (citing Tatsuya Inoue, *Internet: Convenient Medium or Unfair Trading Edge? Immediate Release of Corporate Data May Lead to Insider Trading, Authorities Warn*, The Nikkei Weekly 12 (Dec. 11, 1995)).

64. *Shoken Torihikiho*, Art. 190-2, Para. 3, translation published in Okamura & Takeshita, *supra* n. 28, at 16.

65. Prentice, *supra* n. 6, at 283 n. 92 (citing Tatsuya Inoue, *Internet: Convenient Medium or Unfair Trading Edge? Immediate Release of Corporate Data May Lead to Insider Trading, Authorities Warn*, The Nikkei Weekly 12 (Dec. 11, 1995)).

66. Prentice, *supra* n. 6, at 283.

67. *E.g.*, *supra* nn. 3, 5.

Ministry of Finance official admitted, the Japanese government simply does not have the resources to distinguish between information gained by disclosure on a website rather than through other media.[68]

IV
Conclusion

In summary, Japanese securities law is currently at a crossroads. In the 1980s, the Japanese government acted to remedy the inequities of the financial markets only when economic expansion and insider trading scandals forced the passage of reform. Today, with the current technology boom of the Internet and wireless communications creating new markets, like "Mothers,"[69] the Japanese government should not wait for the threat of further international pressure but rather capitalize on laudable developments in its judicial decisionmaking and recent success in criminal prosecutions to form new laws that adequately protect the marketplace from insider trading.

68. Segawa, *supra* n. 37, at 3.

69. "Mothers" is the Market of the High-Growth and Emerging Stocks. *See* Megan Barnett, *Japan's Bubble Trouble*, The Industry Standard <http://www.thestandard.com/article/display/0,1151,13477,00.html> (Apr. 3, 2000).

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