Cross-Border Insider Trading: Challenges in International Securities Regulation and Enforcement

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Abstract—Insider trading has become difficult to police inside any single legal system because the people who hold confidential information, the companies that issue securities and the markets that trade them are frequently located in different countries. This paper examines how that mismatch weakens securities regulation and enforcement. Using a doctrinal and comparative method, it studies the insider trading frameworks of the United States, the European Union and India, and then reviews the cooperative machinery, chiefly the IOSCO Multilateral Memorandum of Understanding, through which regulators try to bridge national boundaries. The analysis identifies six recurring obstacles: overlapping and uncertain jurisdiction, divergent legal definitions of the offence, difficulty in obtaining evidence located abroad, opaque trading structures, the risk of duplicate punishment across states, and unequal enforcement capacity. Short case studies show how these obstacles appear in practice. The paper argues that the weakest point is not the absence of prohibitions but the gap between domestic rules and the tools available to enforce them across borders, and it proposes a set of targeted reforms covering convergent definitions, stronger information-sharing powers, protocols for allocating cases between states, and capacity building for smaller regulators.

Index Terms—Cross-border enforcement, Extraterritorial jurisdiction, Insider trading, IOSCO MMoU, Market abuse regulation, SEBI, Securities regulation.

I. INTRODUCTION

Securities markets stopped respecting national borders long ago. A company incorporated in one country may have shares listed in two others, derivatives on those shares traded in a fourth, and an adviser who learns of an approaching takeover sitting in a fifth. Insider trading, meaning trading on undisclosed information that would move a security's price, travels easily along these lines. The regulators who police it do not. They work under national statutes, national budgets and national courts, and each can compel evidence only within its own territory.

Whether insider trading should be prohibited at all has long been argued. Manne contended that it may improve price accuracy and compensate entrepreneurs [1], yet legislatures in nearly every major market have taken the opposite view: that trading on privileged information erodes the fairness and credibility on which public markets depend. Empirical work suggests that the existence of a prohibition matters less than its enforcement. Bhattacharya and Daouk found that the cost of equity in a country did not change noticeably when an insider trading law was introduced, but fell after the first prosecution under it [2]. If that finding is right, then enforcement capacity, and not statute-writing alone, is what gives the prohibition its value, and cross-border cases are where that capacity is tested hardest.

This paper asks four questions. First, how do the United States, the European Union and India define insider trading and decide how far their rules reach beyond their own territory? Second, what practical and legal obstacles do regulators meet when the offence crosses a border? Third, how do existing cooperation arrangements work, and where do they fall short? Fourth, which reforms would most improve enforcement without requiring a single global code? Section II sets out the conceptual background, Section III describes the method, Section IV compares the three national frameworks, Section V analyses the obstacles, Section VI examines cooperation mechanisms, Section VII discusses three illustrative cases, Section VIII offers proposals, and Section IX concludes.

II. CONCEPTUAL BACKGROUND

A. What the law prohibits

Although every major system prohibits insider trading, they get there by different routes. United States law grew out of the general antifraud provision of the Securities Exchange Act rather than from a statute written for the purpose. Early decisions required those with access to material inside information either to disclose it or to abstain from trading [4]. The Supreme Court later tied liability to a breach of duty, holding in *Chiarella* that silence is fraudulent only where there is a duty to speak [3]. Liability was extended to recipients of tips where the tipper acted for a personal benefit [5]. That requirement produced a split on how close a relationship between tipper and tippee must be, with the Second Circuit demanding a meaningful close personal relationship in *Newman* [6] before the Supreme Court rejected that gloss in *Salman* and confirmed that a gift of information to a trading relative or friend suffices [7]. The misappropriation theory then filled a gap by reaching outsiders who trade on information taken in breach of a duty owed to its source rather than to the company's shareholders [8]. The Second Circuit has further held that obtaining information through hacking can be deceptive, and so fall within the antifraud rule, where it involves a misrepresentation [9].

Other systems start from a different premise. European and Indian law do not require proof that a trader breached a fiduciary duty. They ask instead whether the person possessed inside or unpublished price sensitive information and traded or tipped on it. This difference in architecture is the first source of the friction discussed later.

B. Why borders complicate the picture

Three geographical facts can each point to a different country in a single case: where the issuer is incorporated or listed, where the trade is executed, and where the person and the information are situated. A regulator that is entitled to act under one of these links may still lack any power to reach evidence under the others. Cross-border insider

trading is therefore less a problem of missing prohibitions than of fragmented authority.

III. RESEARCH METHODOLOGY

The study is doctrinal and comparative. Primary materials are statutes, regulations, court decisions and instruments of international bodies; secondary materials are scholarly work and regulator publications. The United States, the European Union and India were chosen because they represent, respectively, the most influential case-law driven model, the most developed harmonised regional regime, and a large emerging market whose regulator has been actively reforming its rules. Each framework is examined on four points: the legal test for liability, the sanctions available, the territorial reach claimed, and the means of obtaining foreign assistance.

The paper has limits. It does not present original quantitative data, and its conclusions about effectiveness rest on legal analysis and on existing empirical literature rather than on a new dataset. Other significant markets, including the United Kingdom, Hong Kong, Singapore and China, are outside its scope. Law has been stated as it stood in October 2026 on the basis of the sources cited, and readers relying on a particular provision should check the current consolidated text.

IV. NATIONAL FRAMEWORKS AND THEIR REACH

A. United States

Liability arises under section 10(b) of the Exchange Act and the SEC's Rule 10b-5, with Rule 10b5-1 defining trading "on the basis of" inside information by reference to awareness at the time of the trade [10]. Civil penalties of up to three times the profit gained or loss avoided are available, and criminal prosecution can lead to substantial imprisonment [10].

Reach beyond US territory was reshaped by *Morrison v. National Australia Bank*, where the Supreme Court held that section 10(b) applies only to transactions in securities listed on a domestic exchange and to domestic transactions in other securities, replacing the earlier conduct-and-effects approach [11]. A month later Congress enacted section 929P(b) of the Dodd-Frank Act, which confers jurisdiction on federal courts in actions brought by the SEC or the Department of Justice where significant steps in furtherance of a violation occur in the United States, or where conduct abroad has a foreseeable substantial effect within it [12]. How far this provision restores the older test for government enforcement has been disputed, although the Tenth Circuit has read it as permitting the SEC to proceed on a conduct-and-effects basis [13]. The consequence is a framework in which government agencies may have a wider route to foreign conduct than private litigants, but one whose outer edge remains litigated.

B. European Union

The Market Abuse Regulation (MAR) defines insider dealing as using inside information by acquiring or disposing of financial instruments to which it relates, and extends the concept to recommending or inducing another person to trade [14]. Its scope is built around the instrument rather than the trader: what matters is whether the instrument is admitted to or traded on a venue within the Union, not where the person is based. On the meaning of "use", the Court of Justice held in *Spector Photo Group* that where a person in possession of inside information trades, use may be presumed, subject to the rights of the defence and the possibility of rebuttal [15]. A separate Directive obliges member states to treat serious cases as criminal offences [16]. For cooperation beyond the Union, the Regulation provides for arrangements with third-country authorities and sets conditions on transferring personal data abroad [14].

C. India

The Securities and Exchange Board of India (SEBI) derives its powers from the SEBI Act, 1992, which prohibits dealing in securities on the basis of unpublished price sensitive information and empowers SEBI to impose monetary penalties and, in criminal proceedings, to seek imprisonment [17]. The SEBI (Prohibition of Insider Trading) Regulations, 2015 define an insider broadly, as a connected person or anyone in possession of or having access to such information, and prohibit both communicating it and trading while in possession of it, with defined defences for pre-planned trades [18]. The central term, unpublished price sensitive information (UPSI), is defined inclusively, and SEBI's own consultation paper of November 2024 acknowledged difficulty with the definition and proposed to align it more closely with the material events listed under its disclosure regulations [19]. The framework is organised around securities of Indian listed companies. Its reach over a trader located abroad is therefore not a question of statutory words so much as of whether evidence of the trade and the tip can be obtained from outside India.

D. Comparison

Table I summarises the principal differences discussed above.

TABLE I
COMPARISON OF THREE INSIDER TRADING REGIMES

Feature	United States	European Union	India
Principal source	Exchange Act s.10(b); Rule 10b-5; case law	Regulation (EU) 596/2014; Directive 2014/57/EU	SEBI Act 1992; SEBI PIT Regulations 2015
Core test	Breach of duty or deception; awareness of information (Rule 10b5-1)	Possession plus use of inside information (Art. 8)	Trading while in possession of UPSI (Reg. 4)
Reach over foreign conduct	Transactional test (Morrison); contested effect of s.929P(b) for SEC/DOJ	Anchored to the financial instrument, wherever the trader sits	Anchored to securities of Indian listed companies
Criminal track	Yes (DOJ)	Required of member states by the 2014 Directive	Yes (SEBI Act s.24)
Foreign cooperation	IOSCO MMoU; MLATs	MAR Art. 26; ESMA; IOSCO MMoU	IOSCO MMoU; bilateral channels

V. CHALLENGES IN CROSS-BORDER ENFORCEMENT

A. Overlapping and uncertain jurisdiction

A single trade can fall within several regimes at once, and a trade that falls within none is possible too. A tip given in one country about an issuer listed in a second, executed through a broker in a third, may engage the law of all three. Where the links are weaker, as with a foreign-to-foreign trade in a cross-listed security, the doctrine in the United States since *Morrison* has made it harder to assert authority [11], while the contested status of section 929P(b) leaves regulators uncertain about how much of the gap Congress closed [12], [13]. Regulators in other jurisdictions face their own version of the question.

B. Divergent legal standards

Differences in the elements of the offence mean that conduct sanctionable in one country may fail a test in another. A duty-based approach asks whether the trader breached an obligation to a source or to shareholders [3], [8]; a possession-based approach does not [14], [18]. The United States requires a personal benefit to the tipper for tippee liability [5], [7], whereas the European and Indian provisions turn on the nature of the information and the knowledge of the recipient [14], [18]. The definition of the information itself also varies, as SEBI's consultation on the UPSI definition shows [19]. These gaps matter in practice because international assistance usually presupposes that the conduct is an offence in the requested state as well as the requesting one. A request may be refused, or delayed while the question is argued, when the elements do not line up.

C. Evidence located abroad

Insider trading is proved largely by circumstantial evidence: who traded, when, with what link to the source, and what the person knew. Much of this sits in foreign hands, including account-opening records, beneficial ownership details, telephone and message records and witness statements. National secrecy rules, blocking statutes and data protection law can each stand in the way. In the European context, for example, personal data cannot simply be sent to a third country without satisfying the Regulation's own conditions and general data protection law [14]. A regulator can often obtain documents voluntarily but cannot compel a foreign witness to attend, and time spent waiting for a reply is time during which funds may be moved.

D. Opaque trading structures

Those who trade on inside information rarely do so openly in their own name. Nominee accounts, omnibus accounts held by foreign intermediaries, offshore companies and trading through derivatives allow the ultimate beneficiary to be hidden behind several layers. Each layer typically sits in a different jurisdiction, so tracing it requires a separate request at each step. Instruments linked to a listed share, such as depositary receipts, options and swaps, raise the further difficulty that a trade in the derivative may occur in a place different from the market where the information has its effect.

E. Parallel proceedings and double punishment

Where several states have a legitimate interest, more than one may act. That raises the question whether a person punished in one place can fairly be prosecuted again elsewhere. In Europe the question has arisen in the context of combined administrative and criminal sanctions for market abuse. The European Court of Human Rights found a breach of the *ne bis in idem* guarantee in *Grande Stevens v. Italy* [20], and the Court of Justice later set out the conditions under which a duplication of proceedings may be justified under the Charter in *Menci* [21]. These cases concern a single state's system, but their reasoning shows the pressure that exists when proceedings multiply, and no general rule yet allocates insider trading cases between competing states.

F. Technology and uneven capacity

Encrypted messaging and cloud storage make it easier to pass a tip without leaving a trace that a regulator can reach, and hacking, as in *Dorozhko* [9], adds the possibility that the tipper is neither an insider nor a recipient but an outsider with no relationship to the company. At the same time, regulators differ greatly in their resources and powers. A well-funded agency may run sophisticated surveillance and obtain telephone records, whereas a smaller one may lack legal authority to compel anything, which limits what it can offer a partner and what it can ask in return.

VI. COOPERATION MECHANISMS

A. The IOSCO Multilateral Memorandum of Understanding

The main instrument for regulator-to-regulator assistance is the Multilateral Memorandum of Understanding (MMoU) of the International Organization of Securities Commissions (IOSCO), adopted in 2002 [22]. It sets minimum standards for sharing information such as bank and brokerage records and beneficial ownership details, for taking statements, and for assistance in locating persons, and signatories commit to ensuring that domestic bank secrecy and blocking rules do not prevent them from providing enforcement information. IOSCO reported in September 2013 that 97 of 125 eligible members had signed [23], and it has since adopted measures to limit the influence of members that have not joined. Its Enhanced MMoU of 2016 extends the minimum powers a signatory should be able to exercise, including obtaining telephone and data traffic records and compelling testimony, to the extent permitted by domestic law [24].

The MMoU is valuable, but it is not a treaty. It creates expectations, not enforceable rights, and requests remain subject to domestic law and to public interest limits. It also serves regulators, and so is not a route to evidence needed for a criminal case, which must generally travel through mutual legal assistance treaties and, if a suspect must be brought to trial, extradition. Those channels are slower and require the conduct to be criminal in both states.

B. Regional and bilateral arrangements

Within the Union, MAR obliges competent authorities to cooperate with each other and with the European Securities and Markets Authority and allows arrangements

with third-country authorities [14]. Regulators also conclude bilateral memoranda for matters the multilateral instrument does not cover. These supplement, but do not replace, a common baseline.

C. Assessment

Cooperation has clearly improved since the early 2000s, and the growth in signatories suggests that the principle is widely accepted [23]. The weakness lies in the details. The voluntary nature of the arrangement, differing powers among signatories, the data protection restrictions noted above, and the absence of any mechanism to decide which state should proceed leave open space between what is agreed in principle and what an investigator can obtain in a live inquiry. If enforcement, as Bhattacharya and Daouk's results suggest, is what gives the prohibition its effect [2], these gaps are not mere technicalities.

VII. ILLUSTRATIVE CASES

A. Computer intrusion and a foreign trader

In *SEC v. Dorozhko*, the defendant, a Ukrainian resident, was alleged to have broken into a data service provider's systems, obtained an unreleased earnings announcement and traded options on the issuer through a United States brokerage account. The Second Circuit held that a hacker could violate section 10(b) if the intrusion involved an affirmative misrepresentation, and remanded for the factual question [9]. The case shows how a regime built on duty can adapt to an outsider, and why a possession-based test would have made the legal analysis simpler. It also shows that the United States had a firm anchor, because the trading occurred through a domestic account.

B. Evidence tools at home and abroad

The prosecution of Raj Rajaratnam relied on court-authorised wiretaps, and the Second Circuit upheld their use and accepted a jury instruction under which the inside information needed only be a factor in the decision to trade [25]. The case is a reminder of how much a domestic authority with strong investigative powers can do. Few foreign regulators have anything comparable, and even a cooperative partner may be unable to supply the equivalent, because the tool simply does not exist in its legal system. The case therefore illustrates the capacity asymmetry discussed in Section V rather than a cross-border problem as such.

C. Reach over foreign-to-foreign trading

The line of decisions after *Morrison* illustrates the opposite situation, where the trade has little connection with the enforcing state [11]. When trading takes place on a foreign exchange in a foreign company's shares, US law has little purchase on private claims and a debated purchase on government ones [12], [13]. The practical lesson is that a regulator cannot presume that the state with the strongest interest will be able to act, and that cooperation with the state where the trade took place is therefore not optional.

VIII. PROPOSALS

The following proposals are modest and are directed at the specific gaps identified. They are offered for discussion and have not been empirically tested.

1) Convergence on a core definition. IOSCO could promote a common minimum description of inside information, of the persons covered, and of the mental element, without requiring every state to adopt identical wording. The aim is to make requests for assistance routinely satisfy any dual-criminality requirement.
2) Wider adoption of the enhanced powers. States that have signed the original MMoU should be encouraged to meet the enhanced standard, with technical assistance for those that need legislative change to compel testimony or obtain communication records.
3) Secure data-sharing channels. Regulators and data protection authorities should agree on transfer arrangements specifically for enforcement, so that lawful requests are not delayed by uncertainty over whether data may leave a state.
4) A protocol for allocating cases. A short multilateral protocol, building on the reasoning in the European ne bis in idem cases [20], [21], could set out factors for deciding which state should lead and for crediting sanctions already imposed elsewhere.
5) Beneficial ownership and surveillance sharing. Requiring intermediaries to be able to identify the ultimate beneficiary of accounts on request, and enabling regulators to exchange surveillance alerts on trading ahead of cross-listed announcements, would shorten investigations.
6) Capacity building. Larger regulators should support smaller ones with training, secondments and shared analytical tools, since the effectiveness of a network depends on its weakest participants.
7) Clarifying domestic reach. Each state should state, in legislation or guidance, how far its prohibition applies to foreign persons and foreign trades. For India, this would sit naturally with SEBI's continuing review of the UPSI definition [19].

IX. CONCLUSION

The central difficulty in policing cross-border insider trading is a structural one: markets and information move across borders, while investigative powers and sanctions stop at them. The three systems examined here all prohibit the conduct, but they do so on different legal theories, claim reach in different ways, and depend on foreign partners for much of the evidence that decides a case. The existing cooperation framework has narrowed the gap, yet it remains a framework of expectations rather than obligations.

This does not call for a single global insider trading code, which would be politically unrealistic. A more achievable path combines convergence on core concepts, stronger and better-protected information-sharing, some agreed method for deciding who proceeds, and support for regulators with the least capacity. Future work could test these ideas with enforcement data, examine additional jurisdictions such as the United Kingdom and Singapore, and study how new asset classes, including crypto-assets traded across multiple platforms, strain the same arrangements.

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