

AN ETHICAL AND ECONOMIC CRITIQUE OF INSIDER TRADING REGULATION

YAGO MATEOS VELA*

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1. Introduction

Insider trading, a controversial phenomenon in finance, has been the subject of extensive debate both in the field of economics and in the legal framework. Insider trading refers to the practice of purchasing or selling financial securities by individuals with inside information about a particular company or market. Although the exact definition may vary by jurisdiction, it generally involves the use of non-public information to gain an advantage in financial transactions. The ban on insider trading is widely supported and regulated in many countries with the aim of promoting equality of information and fairness in financial markets.

This paper aims to present an alternative perspective on insider trading under the theoretical framework of the Austrian School of Economics. Unlike conventional economic schools, the Austrian School emphasizes the importance of market mechanisms and voluntary coordination in the economy, placing special emphasis on the entrepreneurial function and private property. From this perspective, it is argued that the ban on insider trading is an unnecessary and counterproductive regulation that hinders the proper functioning of the market and economic efficiency.

In sections 2 and 3, we briefly present the historical origins of this type of regulation, as well as the current state of affairs. In section 4, we introduce the most common arguments, of an ethical

* Independent Researcher. ORCID 0009-0007-8089-6159

and economic nature, over which these policies are built and justified. A praxeological analysis of the ethics underlying the former arguments will be carried out in section 5, where we attempt to formalize previous contributions on this topic, as well as present some new insights under the framework of the theory of demonstrated preference and the method known as praxeological criticism of ethics, both developed by Murray N. Rothbard (Rothbard, 1956; Rothbard, 2006).

In section 6, a thorough economic analysis of both the effects of insider trading, and insider trading regulation, is achieved. Throughout the paper, the hypothesis is put forward that insider trading, far from harming the functioning of the market, can be beneficial in terms of efficient allocation of resources and information discovery. Likewise, it will be argued that insider trading not only benefits investors with privileged information, but can also favor those who do not have said information, by making inside information available to everyone through the price mechanism, and contributing to greater efficiency and liquidity in financial markets.

Ultimately, this study aims to provide a critical insight into the regulation of insider trading from the perspective of the Austrian School of Economics. By exploring its theoretical and practical implications, it is expected to contribute to the academic debate and promote a greater understanding of this complex and controversial issue in the economic and legal fields.

2. Texas Gulf Sulfur case: a milestone in the regulation against insider trading

The Texas Gulf Sulfur case is considered one of the key events that led to the initiation of highly enforced insider trading regulation in the United States in the 1960s. This prominent case involved the Texas Gulf Sulfur (TGS) mining company and set an important precedent in the definition and legal approach of insider trading (Fleischer, 1965).

In 1964, TGS discovered a mineral deposit in Canada that was expected to have a significant impact on the company's share value. Rather than release this information to the public immediately,

several TGS directors and employees, including senior executives, bought shares in the company before the news were made public.

Subsequently, TGS officially announced the discovery and the company's share value skyrocketed. Those who had inside information and bought shares before the announcement made substantial profits. However, this conduct aroused suspicion and led to an investigation by the United States Securities and Exchange Commission (SEC).

In 1968, the SEC filed a lawsuit against TGS and the individuals involved in the case for violation of securities laws. The case focused on the obligation of directors and employees to disclose relevant information before carrying out transactions in company shares.

The court found that TGS officers and employees had breached their fiduciary duty by not disclosing information to the public, thus allowing those with inside information to benefit unfairly.

The decision in the Texas Gulf Sulfur case laid the foundation for the application of insider trading laws in the United States (Steinberg, 2018) and was a turning point in the recognition of the importance of equal information in financial markets. Since then, stricter regulations have been implemented to prevent and penalize the use of privileged information in financial transactions, both in the United States and in other countries.

3. Current state of insider trading regulation in the United States and the European Union

Insider trading regulation varies greatly depending on each jurisdiction. Historically, the enforcement of these regulations has been more robust and effective in the United States than in the European Union. Various explanations have been put forth to account for this enforcement disparity, including the differing allocation of resources by regulators and distinct cultural attitudes towards insider trading (Ventoruzzo, 2015). Nevertheless, the situation has evolved, and Europe has also started to take insider trading more seriously, gaining momentum in prohibiting such practices (Ventoruzzo, 2015).

In the United States, the enforcement of insider trading regulations falls under the purview of the Securities and Exchange Commission (SEC). The SEC, an autonomous federal agency, plays a critical role in overseeing and ensuring the integrity of the nation's securities markets. As part of its regulatory mandate, the SEC is entrusted with the enforcement of laws and regulations that prohibit insider trading activities.

In Europe, the regulation against insider trading is based on a combination of directives and regulations at the European Union (EU) level and the national laws of the member countries.

Here are some of the main sources of regulation against insider trading in Europe:

1. **Markets in Financial Instruments Directive (MiFID II):** MiFID II is an EU directive that establishes a regulatory framework for financial markets and investment services. This directive establishes information disclosure requirements to ensure transparency and a level playing field in the markets.
2. **Market Abuse Regulation (MAR):** The Market Abuse Regulation is another EU regulation that aims to prevent and detect market abuse, including insider trading. The MAR establishes specific prohibitions on the use of privileged information and requires the notification of operations carried out by persons with access to privileged information.
3. **National laws:** Each EU member country has its own national legislation that complements the EU regulations. These national laws implement and reinforce the requirements set out in EU directives and regulations. Some countries may also have additional specific regulations related to insider trading.

As for the penalties for incurring in insider trading, these vary according to the legislation of each country. Some of the possible penalties and legal consequences for these types of financial crimes may include:

1. **Economic fines:** Fines can be imposed both on the people who carry out the insider trading and on the companies or institutions involved. These fines are often significant and can be based on the amount of illicit proceeds obtained or a predetermined amount set by law.
2. **Criminal Penalties:** In some cases, insider trading can be considered a criminal offense, which can lead to prison terms for offenders. The length of imprisonment may vary depending on the seriousness of the crime and the applicable legislation.
3. **Disqualification and ban from activities:** Violators can be disqualified from engaging in certain activities in the financial markets or even banned for life from participating in securities trading or working in the financial industry.

It is important to note that penalties may differ between countries and that insider trading cases are dealt with on an individual basis and depending on the specific circumstances of each case.

4. Purpose of the regulation against insider trading.

It is commonly argued that the regulation of insider trading has been established with the purpose of guaranteeing that all investors have equal access to information relevant to their financial decisions. Below are the main reasons that usually support the regulation and restriction of insider trading:

1. **Unfair advantage for insiders:** The prohibition against insider trading is based on the premise that those individuals who possess inside information obtain an unequal advantage in the market. By using non-public information to make financial decisions, it is argued that these investors benefit unfairly to the detriment of other market participants, generating inequality and eroding confidence in the integrity of the financial system.
2. **Disincentive for the participation of ordinary investors:** Another reason often given for the regulation of insider trading is its supposed discouraging effect on the participation of

ordinary investors in financial markets. It is argued that the knowledge that some participants have privileged access to information could discourage ordinary investors from actively participating in the market. This lack of participation could negatively affect the ability of companies to efficiently raise capital. Another variant of this argument states that insider trading increases the volatility of financial markets, keeping investors with insufficient capital from being able to adequately withstand price shocks, and consequently leaving them out of the market.

3. Harm to common investors: Another of the justifications that is usually given to the regulation of insider trading is that the use of privileged information not only discourages common investors from investing, but also directly harms them economically.
4. Insider trading as a form of fraud: Finally, the prohibition of insider trading is often justified to the extent that it is perceived as a form of fraud. By using confidential information for personal financial gain, it is argued that insiders violate the principles of honesty and transparency that are fundamental to the proper functioning of financial markets. This approach views insider trading as a deceptive practice that undermines public confidence in the financial system.

While these traditional objectives of regulation against insider trading are widely accepted, this paper will explore an alternative perspective from the point of view of the Austrian School of Economics, with the aim of critically analyzing these arguments and assessing whether banning insider trading is an effective and coherent response.

5. Praxeological criticism of the ethics underlying insider trading regulation

This section intends to analyze the ethical nature of the traditional arguments against insider trading. In the first place, we attempt to find errors made in the formulation of these ethical propositions,

as well as possible inner inconsistencies in the goals themselves. Citing Rothbard (2006): "If an ethical goal can be shown to be self-contradictory and *conceptually impossible* of fulfillment, then the goal is clearly an absurd one and should be abandoned by all". We also attempt to establish some alternative ethical propositions under the demonstrated preference approach to utility theory, as developed by Rothbard (1956). According to Rothbard (1956), "the concept of demonstrated preference is simply this: that actual choice reveals, or demonstrates, a man's preferences; that is, that his preferences are deducible from what he has chosen in action". Every individual acts expecting to achieve a more satisfactory state of affairs (Mises, 1998), which means that any voluntary action will always increase his ex-ante utility. Since this utility, however, is not *measurable*, and only informs about one alternative being preferred to another (Rothbard, 1956), in order to set forth any ethical proposition in terms of social utility regarding a given policy, it is necessary that every individual in society either gains (or loses) utility as a result of said policy (unanimity principle).

5.1. *The unfair advantage*

The argument that insider trading gives some investors an unfair advantage over others is a questionable ethical approach. Although it is true that insiders have an advantage in terms of inside information, there are fundamental aspects that must be considered to assess the ethical validity of this statement. The relevant points in this context are presented below:

1. Recognition of insider advantage: There is no denying that insiders do gain an advantage by accessing inside information. This recognition is essential to understanding the dynamics of insider trading.
2. Unequal information in different areas: It is important to recognize that, in various settings, all individuals have more or less accurate information on different subjects. Information asymmetry is an inherent aspect of society and is not limited solely to insider trading.

3. The division of knowledge and social cooperation: The advantage achieved by trading with inside information is a consequence of the division of knowledge in society. This division is essential for the proper functioning and coordination of economic and social activities. Social cooperation is based on specialization and the division of labor, which makes it possible to maintain the high standards of living that we enjoy today.

If we consider that the unfair advantage based on knowledge is ethically unacceptable, we are faced with a relevant question. Why is only the advantage of insider trading being questioned? As Block & McGee (2006) point out, every professional from any field “utilizes his own expert information sources in order to benefit himself”. The coherent position if one is to defend a ban on insider trading, is to try to end any kind of division of knowledge in the society, which in turn would make almost any kind of trade pointless, as the root of market exchanges and social cooperation (Hayek, 1937) lies in the division of knowledge. We then conclude that this argument is inconsistent with the goal of banning insider trading, which it renders absurd in a world without financial markets.

It is also common to come across a metaphor that equates financial markets in which the use of privileged information is allowed, with an uneven playing field. This analogy is unfortunate and misleading, as it ignores that, unlike sports, the market is not a zero-sum game. As Rothbard (2006) explains, when individuals operate freely in the market, they carry out those actions that maximize their ex-ante utility. When an outsider decides to trade a security, he is demonstrating preference for performing that trade with the information available to him at that time, even if this information is not perfect and complete, as is always the case in an uncertain world. Since there is no harm to third parties when this trade is carried out, and the people involved always increase their ex-ante utility, we can argue that, under the demonstrated preference approach to utility theory (Rothbard, 1956), ending the ban on insider trading is a socially desirable goal. Besides, it can be demonstrated that the monetary gain for both the insider and the outsider will always be

higher when insider trading is allowed. A more detailed explanation of this phenomena will be developed in section 6.

5.2. *The disincentive to participate in financial markets*

It is often argued that ordinary investors, seeing themselves at a disadvantage compared to investors with privileged information, refrain from operating in financial markets, thus making it difficult for companies to raise capital and endangering the proper functioning of the capitalist system. In section 6, we will see why this problem is not likely to happen in the context of a free market economy. For now, for dialectical purposes, we will analyze if the fact that investors in a disadvantaged position decided not to trade in the financial markets, would justify the ban on insider trading.

It is important to recognize that the abstention of ordinary investors due to the perception of a disadvantage compared to those with inside information is a natural behavior in any field where the necessary knowledge to act rationally is considered to be lacking. In the context of insider trading, this behavior is in fact beneficial and not detrimental to the financial market. Here are the fundamental reasons that support this statement:

1. **Relevant information filter:** When ordinary investors refrain from investing due to information asymmetry, this serves as a natural filtering mechanism. Only those people who consider having relevant and valuable information to make investment decisions will become actively involved in the market. This helps investment decisions be based on more solid information and reduces the likelihood of irrational or rumour-based decisions.
2. **Protection against bad decisions:** By refraining from investing, those who perceive they have less information are avoiding potential mistakes or significant financial losses. We can illustrate this with a medical example. If someone lacks medical knowledge, it is preferable that they refrain from providing care to sick patients, as they could make the situation worse. Similarly, in the financial market, those who

do not feel secure in their knowledge may avoid making decisions that could be detrimental and introduce misinformation in the price system.

3. Incentive to seek additional information: The abstention of common investors can also be an incentive for them to seek additional information and training in the financial field. As they gain more knowledge and confidence in their abilities, they are likely to become more inclined to participate in the market and make informed investment decisions.

By supporting the ethical proposition that individuals should trade securities even when they feel they lack the necessary information to do it rationally, one endangers the financial market by increasing the risk of input of wrong information into the price system. This directly confronts the aim of a well functioning capitalist system, making this argument inconsistent with the goal it attempts to justify.

In short, the refraining of regular investors due to the perceived disadvantage in insider trading is beneficial to the market. It acts as a filter so that only the most relevant information is expanded in the market and reduces the risk of irrational decisions. In addition, it provides protection to those who lack sufficient knowledge and serves as an incentive to seek additional information and training in the financial field. It is important to recognize that this abstention mechanism should not be criticized, but valued as part of the process of making informed and responsible decisions in the financial market.

5.3. *The damage to common investors*

The argument according to which insider trading causes harm to common investors is based on fallacious economic reasoning, as will be demonstrated in section 6, since the practice of insider trading, on the contrary, benefits investors without access to privileged information. However, let us accept for dialectical purposes that, indeed, insider trading tended to produce losses for common investors.

Block & McGee (2006) explain how the fact that a certain practice reduces other people's income does not mean that it should be prohibited. If this were the case, to be consistent, all competition in the market should be prohibited, since the entry of new agents into a specific market tends to harm its original sellers by increasing the offer and tending to reduce profit margins. Since prohibiting any kind of market competition would virtually end the financial market, this argument is not coherent with the aim of preserving a well functioning financial market and it should be discarded.

5.4. *Insider trading as a form of fraud*

The argument has been made that insider trading is a form of fraud. However, as Block & McGee (2006) point out, this statement is not supported when the nature of fraud and the characteristics of the financial market are analyzed in detail. Here are the key points to argue why insider trading cannot be considered inherently a form of fraud:

1. Fundamental element of fraud: For fraud to occur, there needs to be a transaction based on false premises that causes a loss to one of the parties involved. In the case of insider trading, the advantage gained by the insider is based on the purchase or sale of securities on the open market, and the resulting gain or loss is not generated through a fraudulent transaction with another specific party.
2. Impersonal nature of the financial market: The financial market is characterized by its essentially impersonal nature. Transactions are carried out in an environment where investors make decisions based on the information available. Insider trading, in its essence, takes advantage of privileged information, but it does not involve active deception towards other investors, nor does it imply manipulation or deception towards other market participants.
3. No identifiable loss: no specific loss associated with the practice of insider trading can be identified. Common investors do not suffer a direct and tangible loss due to insider trading.

The insider's gains may be based on taking advantage of an information advantage, but it does not necessarily imply a loss for other market participants.

While it is true that fraud is equivalent to theft (Rothbard, 1973), none of the conditions to characterize a trade in the financial markets as fraudulent, even if inside information is used by one of the parties, are met. This argument, then, is fallacious and as such should be discarded as a justification of a ban on insider trading.

An anonymous evaluator has contributed with several criticisms that I would also like to address.

It is argued that an analysis of intention is relevant to determine whether a trade based on inside information is fraudulent or not. There is an ongoing debate in the field of ethics about whether intent should affect the imputation of legal responsibility. Kinsella & Kinsley (2004) make a compelling argument for the idea that "intent matters because without intent there is no action and without action there is no actor to whom we may impute legal responsibility. If A did not intend to do anything at all, then we cannot determine that A's actions caused the death of B—because A took no action. Intent is a necessary ingredient in human action; if there is no intent, then there is no action, only behavior: involuntary physical movements guided by deterministic causal relations" (Kinsella & Kinsley, 2004). Accepting the former position, the question of how the intention of the inside trader is different than that of the outsider must be asked. Both traders participate in the market because they believe they have a better judgment about what the right price of an asset should be. In both cases, knowingly or unknowingly, the trader decides to buy or sell an asset because he or she believes that the market is not pricing in all the information available. The fact that the inside trader believes to have a better judgment thanks to the privileged information does not affect the intent of his action.

Intention is also not different when it comes to the search for new information. The evaluator has suggested that it might be okay for a trader who accidentally finds inside information, to act on it and make the market more efficient, but it is a different matter if this same trader acts intentionally to find this kind of

privileged information that the rest of the participants of the market cannot have access to. The plot of the *Back to the Future 2* movie, where the antagonist goes to the future and gets the sports almanac in order to make a fortune in sports betting, is used to illustrate this idea. However, how is the trader looking for inside information intention's different from that of the regular trader? They both are looking for an edge that would allow them to make a pure entrepreneurial gain in the financial markets. What would make a case such as the one portrayed in *Back to the Future 2* illegitimate, would be to incur in unlawful actions in order to get the desired information in the first place.

While it is impossible to make a judgment on whether traveling to the future is or not an unethical action, we can illustrate the idea above with the case of front running orders in financial markets, a case that the evaluator has used as an example of unethical insider trading, referencing Michael Lewis' book *Flash Boys* (2015), where the author illustrates the way in which HFT firms use privileged information from brokers and exchanges to front run investor's orders in the financial markets. Front running does meet the aforementioned characteristics of fraud under certain scenarios. When a broker front runs its clients orders, or gives out this information to third parties such as HFT firms, it is not acting in the best interest of its clients, something which could violate the contracts that said clients have with their broker. If that is the case, front running would be unethical and illegal, but not because of the use of inside information, but because this inside information has been acquired in an illegitimate manner.

5.5. *The conceptual impossibility of enforcing a ban on insider trading*

Different authors have pointed out the ineffectiveness of insider trading regulations (Bris, 2000; Seyhun, 1992; Patel & Putniņš, 2021; Augustin et al, 2015; Morgenson, 2012). Even Arthur Levitt, chairman of the SEC, recognized the high prevalence of insider trading in a 1998 SEC conference. Authors of an Austrian perspective, such as Smith & Block (2016), have also pointed out the empirical ineffectiveness of the regulation against insider trading.

However, we want to address the fact that the impossibility of keeping insiders from making financial choices based on privileged information has a theoretical nature. First of all, it is praxeologically impossible to discern what specific information has motivated a certain financial choice, because of the subjective, practical, exclusive, and tacit nature of the information involved in entrepreneurial action (Huerta de Soto, 2020). The regulator can never acquire the necessary information to determine whether a certain security trade has been motivated by non-disclosed information.

In addition, even if the regulator were able to discern which information has motivated a given investment decision, it will only be able to detect those decisions that are reflected in a market transaction. However, the choice of not trading a given security can also be an act based on privileged information, which gives the insider an advantage over the rest of the participants of the market.

In essence, the objective of stopping the use of privileged information for decision making in the financial market crashes with some of the same epistemological barriers that render socialist economic calculation impossible, namely the characteristics of entrepreneurial information and knowledge.

6. Economic analysis.

In this section, the economic effects of insider trading and insider trading regulation are analyzed, providing a deeper foundation for some of the assertions presented in section 5.

6.1. *Insider trading and the proper functioning of the market*

As Hayek explains in his famous article *The Use of Knowledge in Society* (1945), “in a system where the knowledge of the relevant facts is dispersed among many people, prices can act to coordinate the separate actions of different people in the same way as subjective values help the individual to coordinate the parts of his plan”. Thus, one of the main characteristics of the market is to be a system that allows relevant practical information dispersed in the

mind of each individual to be transmitted to all. The price system is, ultimately, a mechanism for communicating information.

When those with privileged information are allowed to participate in the market, the proper functioning of the market is enhanced, since it fulfills its essential function of transmitting important practical information to the entire society. If, on the other hand, market participants are prohibited from operating with this type of information, the mechanisms through which the relevant information contained in the minds of these individuals is transmitted, are shattered.

This means that when insider trading is allowed, new information becomes available much quicker than it would under restrictive conditions, where news affecting any given security usually become public much later than they could have. This has a detrimental effect for investors who traded that security during the time that elapsed from when the new information was generated, until it was publicly transmitted through channels different than the price system.

Lorie and Niederhoffer (1968) explain how analyzing data on insider trading can be profitable, and point out that "when insiders accumulate a stock intensively, the stock can be expected to outperform the market during the next six months".

6.2. The disincentive to invest in financial markets and the threat to companies' financing ability

In section 5.2 we have explained why it is natural and generally desirable for the efficient functioning of the financial market that those who feel like they do not have the necessary information to make rational investment decisions refrain from participating in the financial markets. However, the concern that too many people keeping away from trading securities in the financial market could endanger companies' financing ability, and ultimately the whole capitalist system, has not yet been addressed.

The problem with this argument is that it assumes a static and homogeneous behavior in all companies whose shares are traded on the stock market, as well as a generalized negative perception from the general public towards insider trading practices. We will address later whether it is reasonable to assume this generalized

negative perception towards insider trading. Even accepting the latter, the argument does not hold up, as in the context of a free market economy, each company is free to regulate, prosecute and punish insider trading practices within its own ranks. In this way, if people actually held negative feelings towards insider trading, it would be only the companies which allowed it, the ones that would suffer the consequences of this practice, and not the financial system as a whole. Moreover, because the market competition mechanisms tend to depurate entrepreneurial mistakes, in the long term all companies would establish their own insider trading restrictions. These restrictions would tend to be more efficient than those established by centralized authorities, as they would be integrated in the entrepreneurial calculations, and the opportunity cost of their enforcement would be kept into account.

This is, however, an unlikely scenario, as there is no historical evidence that insider trading was persecuted by companies prior to the enforcement of regulations established by the SEC (Manne, 2005). In fact, as will be studied in section 6.4, there are reasons to think that companies could be specially interested in allowing, and even promoting, the practice of insider trading.

6.3. Minimization of trading losses for the insider and the common investor

In section 5.1, we explained how social ex-ante utility is maximized when insider trading is allowed. In this section, we argue that insider trading will tend to minimize ex-post monetary losses for everyone involved. This is better explained with an example. We consider the situation in which investor A (outsider) wants to buy a share of company X, which is currently trading at \$30. Suppose there is inside information in the hands of B, which seems to indicate that the share price is very likely to go down to \$10 in the near future. Let's compare what will happen when insider trading is penalized or allowed.

In the case where insider trading is not allowed, the outside investor (A) does not have access to inside information and buys the share at its current price of \$30. When the price decline occurs and the price plummets to \$10, the outside investor suffers a loss of \$20. The inside investor (B), who had the inside information and

anticipated the price drop, also bears the loss of value of his shares by not being able to sell them.

In contrast, in the case where insider trading is allowed, the insider (B) has the opportunity to sell his shares before the price falls. Because the inside investor is aware of the inside information and wants to get rid of the shares, he bids for his share. Because of the increase in the offer, the price is reduced, and the transaction is achieved at a price of \$25. The outside investor (A) is now able to purchase the share at a lower price, ie \$25. In this case, the outside investor faces a loss of \$15 after the price drop, which is less compared to the previous case. Although the inside investor also suffers a loss by selling his share for \$25, this loss is much less than if he had kept the share in his possession.

The same example can be used for a situation in which the price of a share is expected to rise. If insider trading is allowed, the investor with inside information will be able to make a business profit, and will also push the share price up, increasing the profits of the seller who lacked the advantageous information.

6.4. Insider trading and the Hayekian information argument

Henry G. Manne, one of the pioneering authors when analyzing the effect on the market of the regulation of insider trading, contributed in his article “Insider Trading: Hayek, Virtual Markets, and the Dog that Did Not Bark” (2006), a new argument through which he explains how companies could benefit from operating in the market with privileged information.

Manne proposes that, just as in a centralized economy the planning body will not be able to obtain the relevant information necessary to give a coordinating content to its mandates (Huerta de Soto, 2020), in large companies managers face similar problems, as they are unable to take advantage of the relevant practical information contained in the minds of all employees. If insider trading is allowed, employees will be, first of all, incentivized to create and discover new information of interest, which they can take advantage of to obtain a business profit in the financial market. Secondly, the information created and discovered by the employees can be

used by the managers thanks to the fact that it will be transmitted through the price system.

6.5. *The opportunity cost of fighting against insider trading*

The regulation of insider trading imposes a serious cost on companies, which in turn entails a series of negative consequences. One of these consequences is the misallocation of resources. Companies are forced to dedicate time, effort and economic resources to comply with the requirements and restrictions imposed by the insider trading regulation. These resources could have been used more efficiently on other business activities, such as innovation, growth, or fighting corporate fraud.

The imposition of regulations on insider trading creates a lack of coordination in the allocation of resources within companies. Instead of focusing on maximizing shareholder value and responding efficiently to market demands, companies are forced to dedicate significant resources to comply with the legal obligations imposed by regulation. This lack of coordination can generate inefficiencies in decision making and business management, which can negatively affect the profitability and growth of companies.

It is important to highlight that this misallocation of resources and lack of coordination is a direct consequence of the government's coercive intervention in the markets, which, due to the problem of economic calculation, will never be able to give a coordinating nature to its mandates. As Huerta de Soto (2020) points out, when the government intervenes in the economy through regulations and restrictions, entrepreneurship is hindered and distortions in the coordination of economic activities are created. The regulation of insider trading is an example of this intervention, which can have discoordinating effects on society in general.

7. **Conclusion**

Throughout this paper, the phenomenon of insider trading has been examined, questioning the regulation that prohibits this

practice. It has been contended that the ethical arguments underlying insider trading regulation lack the necessary internal consistency. Besides, we have shown how an effective ban on the use of privileged information for making financial decisions is conceptually impossible and, as such, should be discarded as an ethical goal. Under the demonstrated preference approach to utility theory, we contend that allowing insider trading in the financial markets could be an ethically desirable goal.

The economic effects of insider trading have also been analyzed, and it has been shown how insider trading contributes to the proper functioning of the financial market and to the coordination of society through the transmission of practical, entrepreneurial information. The economic arguments favorable to insider trading regulation have been confronted, as it has been shown that insider trading does not endanger the capitalist system, nor generate monetary losses to common investors. Finally, the discoordination effects that insider trading regulation has in society have been presented.

Ultimately, this paper has explored the arguments against insider trading regulation from the perspective of the Austrian School of Economics, highlighting the detrimental effects of such regulation on business and social coordination. Through rigorous analysis and an understanding of economic fundamentals, the conventional view has been challenged and an alternative perspective on insider trading and its regulation has been proposed.

Conflict of interest

The author declares that it has no conflict of interests.

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