

## **A HISTORICAL OVERVIEW OF THE REGULATION OF MARKET ABUSE IN SOUTH AFRICA**

**H Chitimira\***

### **SUMMARY**

In an early attempt to combat market abuse in the South African financial markets, legislation such as the *Companies Act*, the *Financial Markets Control Act* and the *Stock Exchanges Control Act* were enacted. However, these Acts failed to effectively curb market abuse activities that were allegedly rife in the financial markets. Consequently, the *Insider Trading Act* was enacted and came into effect on 17 January 1999. While the introduction of the *Insider Trading Act* brought some confidence in the financial markets, market abuse activities were still not extinguished. The provisions of the *Insider Trading Act* were to some extent inadequate and ineffectively implemented. Eventually, the *Securities Services Act* was enacted to repeal all the flawed provisions of the *Insider Trading Act*. Notwithstanding these efforts on the part of the legislature, more may still need to be done to increase the number of convictions and settlements in cases involving market abuse in South Africa. It is against this background that a historical overview analysis of the regulation of market abuse is carried out in this article to expose the flaws that were previously embedded in the South African market abuse laws prior to 2004. This is done to raise awareness of the situation on the part of the relevant stakeholders, as they consider whether such flaws were adequately resolved or subsequently re-introduced under the *Securities Services Act* and the *Financial Markets Act*. To this end, the article firstly discusses the historical development and regulation of market manipulation prior to 2004. Secondly, the regulation and enforcement of insider trading legislation prior to 2004 are examined. Moreover, where possible, certain flaws of the previous market abuse laws that were re-

---

\* Howard Chitimira. LLB LLM (UFH), LLD (NMMU). Lecturer, Faculty of Law, North-West University (Mafikeng Campus). E-mail: Howard.Chitimira@nwu.ac.za. This article was influenced in part by Chitimira's doctoral thesis entitled *A Comparative Analysis of the Enforcement of Market Abuse Provisions* 27-50. In this regard, he wishes to acknowledge the expert input of Professor VA Lawack.

incorporated into the current South African market abuse legislation are isolated and recommendations are made in that regard.

**KEYWORDS:** insider trading; market abuse; regulation; financial markets; market manipulation