

The Editors' Responsibilities in the Construction of Known Periodicals

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Abstract: Known Periodicals are the vanguards of the whole periodical square. Known Periodicals' construction is the preference of the entire construction of the periodicals, even as far as the construction of academic journals is concerned. How the editors' sense of responsibility, whether the editors fulfilling their social responsibility are the key to judge whether the Known Periodicals' construction is a mere formality or not. Editors should not take the periodicals as their garden showing personal interests; editors must act as the "gate-keeper"; take the initiative to plan topics; adhere to the principle of social responsibility orientation; have a new dialectic understanding of "the author takes sole responsibility for his views"; build a new relationship between authors and editors. The basic academic responsibility of editors lies in their editing famous articles and books, discovering and developing new academic person.

Key words: Known Periodicals' construction; editing; "the author takes sole responsibility for his views"

观点选萃

论内幕交易罪的举证责任

王冠

河南财经政法大学法学院讲师、法学博士王冠撰文指出,内幕交易是对证券市场危害最为严重的行为类型之一。内幕交易素来是证券监管领域的世界性难题。即使是在制度较为健全、监管较为到位的发达国家证券市场上也不时爆出内幕交易丑闻。对于我国这样一个“新兴加转轨”的证券市场而言,各方面的配套规章制度还很不完善,内幕交易更是层出不穷。

近日有证监会人士在财经媒体上呼吁最高法院应出台司法解释,规定对内幕交易实行举证责任倒置,即在诉讼中由辩方承担对其行为非内幕交易的举证责任。其理由在于,举证责任倒置对于内幕交易的打击更为有效,由监管机构举证证明内幕交易难度很大,所以应当实行举证责任倒置,由辩护方对内幕交易不存在举证证明。

刑事诉讼法领域对于适用举证责任倒置是以刑法对于该种犯罪构成要件做出特殊设置规定作为前提的。我国司法机关不能在立法对于内幕交易犯罪的构成要件规定尚未做出实质性变更的情况下,以司法解释的形式,将内幕交易的举证责任实行倒置。解决内幕交易举证困难问题有两种方法思路:1. 借鉴英国1993年《刑事审判法》第53条规定与我国《刑法》第395条对巨额财产来源不明罪的立法方法,由立法机关对我国《刑法》第180条关于内幕交易罪的规定进行修改,增设内幕交易罪辩护方抗辩事由的明文规定。这样,内幕交易实行举证责任倒置即名正言顺,具备了合法依据。如此,则大大减轻了控诉方的举证责任负担,在诉讼中,控诉方只需证明行为人在内幕信息公布前实施了交易行为即可,而交易合法性则由辩护方承担举证责任。2. 在刑法对内幕交易的规定尚未修改的情况下,充分利用间接证据,形成完整证据链条,亦可推定内幕交易成立。即使由于内幕人员、内幕信息和内幕行为的隐密性,监管机构不能取得内幕交易的直接证据,但是,只要间接证据确实、充分,各项证据之间环环相扣,形成完整的证据链条,就可认定内幕交易成立。

(赵俊 摘编)