

證券交易法之「操縱股價」構成要件明確性暨審查體系之研究

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證交法第 155 條「反操作條款」在性質上屬「附屬刑法」，適用上應有罪刑法定原則與完整構成要件審查體系。然我國法界囿於證交法歸屬財經法體系的傳統法學觀點，研究多著眼於法條描述之構成要件文義解釋，較少從刑法體系角度進行探討。職是，本文以「操縱股價」為研究核心，從司法上適用的爭議與困難，找出條文內容與詮釋上的缺陷；並從刑法體系觀點出發，找出法律應保護的核心價值，同時參考國外立法例，與「操縱股價」行為特徵與態樣，提出具體的修法與法律詮釋方案，俾以徹底解決現存爭議，同時符合法治國家之刑法構成要件明確性與完整審查體系的要求。

關鍵詞：操縱股價、構成要件、行為外觀、意圖、法益。

「政策與管理意涵」

透過外國立法例文本與國內實務研究，對證券交易法第 155 條「反操作條款」關於操縱股價相關規定中，立法技術疏漏提出具體修法暨法律解釋建議，俾以釐清目前司法實務上入罪化的標準不一的情形，並符合刑法罪刑法定主義的人權保障精神。

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A Study on the Clarification of the Constitutive Requirement of Stock Price Manipulation and Its Review System in the Securities Exchange Act

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The "Anti-Manipulation Clause" stipulated in Article 155 of the *Securities Exchange Act* is deemed to be "subsidiary criminal law" in nature, and as such should reflect the principles of criminal law as well as the comprehensive constitutive requirement review system in practice. However, Taiwan's legal system is limited by the *Securities Exchange Act* and is deemed a part of the financial law system under the traditional legal perspective. Most previous studies have interpreted the Act literally based on its constitutive requirements, and few researchers have explored the Act from the criminal law perspective.

Therefore, we focused on "stock price manipulation" as the core topic of this study to identify the flaws in the content and interpretation of the Act based on controversies and difficulties associated with judicial application. We also identified the core values that the law must protect from the perspective of the criminal justice system while referencing foreign legal precedents as well as the characteristics and patterns of "stock price manipulation" in order to propose specific amendments and legal interpretation solutions. The objective of this study is to help thoroughly resolve current disputes in a way that complies with criminal law constitutive requirements and comprehensive review requirements of the nation's legal system.

Key Words: Price Manipulation, Constitutive Requirements, Behavioral Appearance, Intention, Legal Interest.