

自美國法的啟示論我國連續交易 炒作罪之適用^{*}

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操縱市場行為泛指所有人為地影響證券市場活動並藉此誤導其他投資人之手段，該等行為除扭曲證券市場因自然供需形成之定價機制外，亦會破壞市場之公正性，美國 1934 年證券交易法第 9 條 a 項、第 10 條 b 項以及第 15 條 c 項皆明文禁止之。我國證券交易法第 155 條 1 項 4 款亦禁止意圖抬高或壓低某種有價證券價格而為連續交易行為，但該款在實務上產生不少的認定與適用爭議，致使個案上縱使合法的交易亦可能事後被指摘為不法操縱行為。如此不確定性對證券交易市場發展實有不利影響。查該款一般認為係師法美國證券交易法而來，因而本文即擬從介紹美國法操縱市場規範出發，再以比較法的觀點就我國法連續交易炒作罪之要件與適用爭議提出本文意見。本文研究成果將有助提升證券交易法制之安定性與可預測性，促進我國證券交易市場之發展。

關鍵詞：操縱市場、反操縱條款、價格操縱、連續交易、操縱意圖。

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證券交易法之連續交易炒作罪構成要件抽象，致使行為人可能動輒違反操縱市場規範，本文參考美國判例法釐清於我國法下適用疑義，研究成果將有助提升我國證券交易法制之安定性與可預測性，促進我國證券交易市場之發展。

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A Study on Issues of the Price Manipulation Clause under Taiwan Securities and Exchange Act: A Comparative Study with the U.S. Law

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Market Manipulation refers generally to practices intended to mislead investors by artificially affecting market activity, which distorts the pricing mechanism and deteriorates the integrity of the market for securities. Manipulation is prohibited under Section 9(a), 10(b) and 15(c) of U.S. Securities Exchange Act of 1934. Like the U.S., Taiwan also strikes behaviors involving price manipulation pursuant to the Subparagraph 4, Paragraph 1, Article 155 of Securities and Exchange Act (the Clause). However, the elements of the Clause seem vaguer and broader than the like provisions under the U.S. law, which makes applications of the Clause unpredictable and not in a consistent manner. Beginning with an introduction to regulations of market manipulation in the U.S., this Article is to study the existing body of cases and literatures, by a comparative approach, about how to apply the Clause, in hopes of clarifying some important issues in practice.

Key Words: Market Manipulation; Anti-manipulation Provisions; Price Manipulation; A Series of Stock Transactions; Manipulative Intent.

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