

# Information Manipulation of Securities Market Crimes Revisited: From the Perspective of the Amendment XI to the Criminal Law

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## Abstract

In 2020, the Amendment XI to the Criminal Law and the Latest Judicial Interpretation in 2019 by the Supreme Court and Supreme Procuratorate have made information manipulation a key target of regulation. Information manipulation is a new type of securities manipulation crime in which the perpetrator relies on the abuse of information advantage to induce investors to make decisions in order to indirectly influence the securities market. This behavior has some similarities with traditional trading manipulation, but there are still significant differences in the manipulation methods and the infringement of legal interests, and it is necessary to clarify the rules of its judicial application with typical cases. In addition, it is difficult to judge the subjective intent of information manipulation. Due to the complexity of the act, the previous path of subjective intentional determination has been difficult to apply, so it is necessary to try to establish the judicial presumption path of “objective proof of subjective”. This path is achieved by considering three elements: objective behavior, purposeful intent and complementary factors, which are used to judge the subjective intent of information manipulation.

**Keywords:** information manipulation, legal regulation, subjective intent, judicial presumption

## 1. Introduction

Information manipulation refers to the use of information advantage to achieve the manipulation of securities prices (Yu Chen, 2014). China began to regulate information manipulation of the securities market in Article 39 of the “Notice of the Supreme People’s Court on Reference to and Application of the Provisions (II) of the Supreme People’s Procuratorate and the Ministry of Public Security on the Standards for Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution in the Trial of Economic Crimes”(Hereinafter referred to as ‘Criteria for Prosecution (II)’), which was promulgated in 2010. Thereafter, in 2019, the Supreme People’s Court and the Supreme People’s Procuratorate promulgated the “Several Issues concerning the Application of Law in the Handling of Criminal Cases regarding the Manipulation of Securities or Futures Market“( Hereinafter referred to as ‘Judicial Interpretation of Market Manipulation’), which clarified six “other methods” of manipulating securities and futures markets based on the 2010 regulations, including compulsive trading manipulation, significant event manipulation, manipulation by taking advantage of information and other modes of behavior. Among them, significant event manipulation and manipulation by taking advantage of information are both patterns of market manipulation behavior based on the significant influence of information on the market price of financial instruments, which can be collectively referred to as information manipulation (Jie Xie, 2020). In addition compulsive trading behavior is also achieved by means of abusing the information advantage. This was followed by the adoption of Amendment XI to the Criminal Law in 2020, which formally brought compulsive trade practices within the scope of the criminal law. Therefore, against the background that information manipulation of the securities market is receiving more and more legal attention, it is necessary to revisit the issues related to the first case of information manipulation of the securities market in China (Xiang Xu case) and Amendment XI to the Criminal Law, in order to clearly define the behavioral characteristics and adjudication standards of information manipulation of securities crimes.

## 2. The Controversial Point of Xiang Xu Case

From the judgment of Xiang Xu case, the key points and controversies on its judicial application mainly lie in the following two aspects:

First, on the specific characterization of securities market manipulation. The judiciary characterized Xiang Xu's conduct as "continuous trading by taking advantage of information", which was then applied as Article 182(1)(3) of the Criminal Law. So, from the facts of the case, is it complete and accurate to evaluate Xiang Xu's behavior as a manipulation method of "continuous trading with the advantage of information"? Some scholars point out that Xiang Xu's case is a manipulation with mainly information-based manipulation and transaction-based manipulation means, so it should be applied Article 182(1)(4) of the Criminal Law (Hao wen Shang & Dong dong Guo, 2018). According to the 2010 "Criteria for Prosecution (II)" and the "Judicial Interpretation of Market Manipulation", the application of the "classification clause" and the "underwriting clause" corresponds to different criminalization standards. In addition, after the promulgation of the Amendment XI, can the new compulsory trading act in Article 182 evaluate the Xiang Xu case? In this regard, it is necessary to further clarify the judicial determination of the act in the context of the case.

Second, the determination of the criminal intent of securities manipulation. In Xiang Xu case, the court found that the perpetrator had the subjective intent of "seeking illegal profits" by manipulating the price and volume of securities trading. The determination of the subjective intent of the perpetrator is a difficult point in securities-related crimes. There are two schools of thought among Chinese scholars on this issue: One side argues that the elemental determination of intent to manipulate focuses on determining whether the perpetrator had the intent to defraud or mislead (Bao Thua Zhang, 2005, Chen Chen, 2005); the other side believes that although securities market manipulation itself has certain fraudulent attributes, it is the abuse of securities market dominance and influence to exert control over securities market quotations that is the essence of manipulation (Hongjie Tian, 2014, Xianquan Liu, 2020). Compared with traditional trading-based manipulation, information-based manipulators are not directly involved in trading, and it is difficult to realize the way to presume the manipulation intention of the perpetrator based on objective behaviors such as trading volume and price impact. In addition, the information publisher is colluding with secondary market traders, and the main body of trading is separated from the main body of disseminating false information, so it is even more difficult to prove the common intention between them. Therefore, how to determine the subjective intent of information manipulation deserves in-depth consideration.

This paper will focus on the above two issues. Since the Xiang Xu case is the first criminal case involving information manipulation of securities market in China, there is no other relevant case for reference and comparative study. The author will refer to the administrative penalties of the CSRC in cases involving information manipulation, with a view to providing relevant references and guidelines for judicial decisions.

### **3. Legal Application of Information Manipulation of Securities Market Behavior**

Due to the era of criminal legislation, information manipulation is not explicitly regulated in China's criminal law, and the interpretation and legal application of the "underwriting clause" has been the most controversial topic in securities crimes (Xianquan Liu, 2013). In addition, information manipulation can easily be linked to other manipulative conduct and thus poses a challenge for courts to determine. In 2010, the "Criteria for Prosecution (II)" regulated information manipulation, specifying the acts that can be prosecuted for "manipulation by taking advantage of information"; the 2019 Judicial Interpretation of Market Manipulation specifies the specific forms of information manipulation, and paragraphs 3 and 4 of Article 1 of the Interpretation correspond to the "manipulation by taking advantage of information" in the "Criteria for Prosecution (II)"; Article 182(1) of the Criminal Law deals with "continuous trading by taking advantage of information". So, does the "continuous trading with information advantage" manipulation and "manipulation with information advantage" are the same pattern of behavior? Therefore, it is necessary to make a further distinction between the two acts in the context of the Xiang Xu case and the relevant laws.

#### *3.1 The Boundary of Criminal Law Regulation of Information Manipulation*

For the determination of the boundary of the criminal law of manipulation by taking advantage of information, we should first clarify the difference between it and "manipulation by taking advantage of information in continuous trading". Firstly, there is a difference between the two in terms of manipulation techniques. The behavior pattern of manipulation by continuous trading with information advantage is "using information advantage + continuous trading", which is essentially a kind of trading manipulation. This type of manipulation is a continuous trading behavior that takes advantage of capital advantage, shareholding advantage, and information advantage. The "information advantage" is only an external advantage and condition for market participants, whose ultimate goal is to use their own capital and shareholding advantage for continuous trading to influence the price and volume of the securities market, and manipulators are usually more directly involved in secondary market transactions. It is this continuous trading behavior that is the essence of the offender's market

manipulation behavior (Haowen Shang, 2020). In contrast, “information manipulation” is the use of false information and control of the timing of information disclosure by market participants to influence the securities market. The offender purposefully makes a controlled release of false information and uses the information gap to make investors make decisions based on untimely, incomplete, and untrue information for the purpose of manipulating the securities market (Haowen Shang & Dongdong Guo, 2018). The essence of this pattern of behavior is that the offender uses the “invisible hand” in the market to manipulate the securities market by virtue of the “information advantage”.

Secondly, the nature and extent of infringement on the legal interests of the securities market are different between the two. For trading manipulation, the benchmarks and thresholds for the perpetrators to carry out manipulation are high, and can only be carried out when the amount of capital, shareholding ratio and the number of accounts actually controlled reach a certain level, and the “information advantage” is only a medium and catalyst, thus having relatively small impact on the price and volume of the securities market. Since the manipulation is only carried out between accounts under the actual control of the offender, the scope of the securities market is relatively limited, and it is easier to judge the degree of harm to the securities market position and trading volume. In addition, due to the high threshold of entry, the illegal subjects who carry out transaction-based manipulation are also relatively specific, generally special subjects or relevant practitioners. In the case of information manipulation, there is almost no cost for processing and disseminating false or uncertain information, and therefore the threshold for the perpetrator is relatively low. The perpetrator only needs to use information means to achieve the purpose of influencing the trading volume of the securities market, which is very easy to become an illegal means and be abused. In addition, due to the current information era, the dissemination of information is more rapid and extensive, and then through the amplification of blind investors’ investment behavior, the scope of information manipulation is wider, and the object of the legal interests harmed is more diversified and complex. Compared with the explicit characteristics of transaction-based manipulation, information manipulation has a natural concealment. The subject of information disclosure is relatively independent from the subject engaged in secondary market trading, and the degree of coupling of trading activities between the two is difficult to judge, making it more difficult to pursue responsibility (Yi CAI, 2016). The harm of information manipulation lies not in the means of trading, but in the use of information to bring about discrete harm to affect the order of the securities market.

Thirdly, the sources of profit are different. The main way to obtain illegal benefits from continuous trading with information advantage is the continuous trading behavior of the perpetrator. As mentioned above, the manipulation is mainly through the external condition of “information advantage”, using the means of continuous trading to influence the order of securities trading. In this case, other market participants may not be aware of the relevant information, “information advantage” itself does not affect the order of securities trading, continuous trading means to enable the manipulator to profit from. The use of information advantage manipulation, through the release of information content and rhythm control, to create the illusion of market activity and attract investors to follow the “investment”, so as to achieve the purpose of profit, the source of profit is the illusion of market activity and other investors to follow the transaction caused by the abnormal fluctuations in the secondary market spread, lending others to multiply. The source of profit is the spread generated by abnormal fluctuations in the secondary market caused by the illusion of market activity and other investors’ follow-through trading.

### *3.2 Rules for Judicial Application of Information Manipulation*

The division between “continuous trading with information advantage” and “manipulation with information advantage” is not only related to the application of specific criminal law provisions in relevant cases, but more importantly, the different standards of prosecution for both. From the above analysis, it can be seen that in determining the application of the underwriting clause versus the disclosure clause, the main consideration is whether the perpetrator is taking advantage of information to influence the securities market through continuous trading or using information to influence the decisions of other investors and thus have an impact on the securities market.

First, if the perpetrator uses information to influence the trading decisions of other investors and thus affects the trading volume of securities, even if it is supplemented by continuous trading, it should be considered as “manipulation by taking advantage of information” and Article 182(1)(7) of the Criminal Law should be applied. Xiang Xu case is this kind of behavior pattern. Xiang Xu and others conspired with the chairman and the actual controller of the listed company to release significant good news such as “high transfer” and “advance performance”, and introduced hot news such as “graphene”, “mobile game”, “online education” and “PPP”. Before and after the release of favorable information, they engage in continuous trading behavior of “higher than

market selling price and higher than market buying volume” to make the price of the underlying stock move, create the illusion of an active market, induce investors to follow the trend of trading, and boost the stock price. Xiang Xu and others sold the shares in reverse for profit after the associated stocks soared (Asset Management Association of China Disciplinary Decision Letter, 2017). In the Xiang Xu case, the manipulation technique of the perpetrator was mainly to induce investors to blindly enter the market by releasing uncertain or false good news, which in turn affected the stock price. The stock market movement was not based on the perpetrator’s own trading behavior, but on the “following” behavior of secondary market investors. Without the advantage of information, it is difficult for the continuous trading behavior on a specific trading day to have such a significant impact on the stock price and volume. But according to a 2017 first-instance verdict by The Intermediate People’s Court of Qingdao City of Shandong Province, Xiang Xu and others were judged to have “taken advantage of information to continuously buy and sell and manipulate the price and trading volume of securities trading. (The Intermediate People’s Court of Qingdao City, 2017)” The court of first instance held that Xiang Xu and others acted as “continuous trading with the advantage of information”, which is a trading type manipulation. If this is considered, the influence of “information” itself on stock price and volume is auxiliary, while the continuous trading behavior is the dominant factor affecting the price and volume of securities. This is a deviation from the facts of Xiang Xu case, in which he used hot information to speculate and released good news to influence the stock trading volume. In the Xiang Xu case, the dominant factor on the volume of securities market is “information”, not trading behavior, which is only a means to materialize interests. Similarly, in the Qingshan Meng case, the Butterfly Asset Management case and the Xiang Yan case, the perpetrators released favorable news such as proposed acquisition offers and new product development, adopted targeted information disclosure, created the illusion of active secondary market, induced investors to blindly enter, boosted share prices, and then completed arbitrage through portfolio trading (CSRC Disciplinary Decision Letter, 2020, CSRC Disciplinary Decision Letter, 2017, CSRC Disciplinary Decision Letter, 2017). The common feature of the above cases is that “information” is taken as an important advantageous factor to influence the securities market, and the “information” disseminated is false or uncertain, and the perpetrators’ securities trading is only a means to turn the “information advantage” into profit. The perpetrators of the securities transactions are only means to benefit from the “information advantage”, and they all belong to “manipulation by using information advantage”.

Secondly, if the perpetrator used the advantage of information to continuously buy and sell and thus influence the trading volume of securities, it should be considered as “continuous buying and selling using the advantage of information” trading-type manipulation, and if the standard of conviction is met, the classification clause of Article 182(1)(1) of the Criminal Law should be applied. The most typical case is the Shanghai Yong Bang manipulation case. In this case, the perpetrator, as the actual controller of the listed company, grasped the detailed process of the specific acquisition plan and leaked it to Shanghai Yong Bang who was engaged in “market value management”, and Shanghai Yong Bang took advantage of capital and information to trade among the accounts under its actual control to influence the price of the relevant stocks (CSRC Disciplinary Decision Letter, 2016). In the latest case of Lianmo Wu, the CSRC found that “Lianmo Wu used his account group to concentrate his capital advantage and shareholding advantage to continuously buy and sell and trade between accounts under his actual control, and to cooperate with the favorable news released to boost the share price of Kerui Tak. This violated the provisions of Article 77(1)(1) and (3) of the Securities Law of 2005, and constituted “manipulation of the securities market” (CSRC Disciplinary Decision Letter, 2020). In the above-mentioned case, the perpetrator, as the actual controller of the company, knew the significant information within the company and did not announce it to the society, but used the information he had to conduct continuous trading, thus influencing the stock price and volume for unlawful benefits. In this pattern of behavior, continuous trading is the dominant factor causing the stock market movement, and the “information advantage” is only the medium, which should be recognized as the manipulation method of “continuous trading with information advantage”.

Finally, the “Amendment XI” adds the manipulation of compulsive trading to the regulation of the classification clause, and this behavior also belongs to the abuse of information advantage in a broad sense, and has a certain homogeneity with “manipulation using information advantage”, but it should still be distinguished in judicial application. Compulsive trading generally manifests itself by fabricating, disseminating, providing or releasing material information to the securities and futures markets and investors that is untrue, inaccurate, incomplete or uncertain, inducing investors to engage in relevant securities and futures transactions without knowing the true and comprehensive information, and manipulators seek trading profits through expected price fluctuations in the securities and futures markets (Liyang Qian, Jie Xie, 2019). The appearance of the conduct seems to be similar to the manipulation of material matters in Paragraph 1, Item 3 and the manipulation of control information in Item 4 of “the Market Manipulation Interpretation”, both of which are the use of false information, but there are

still differences in the actual provisions themselves and the pattern of conduct. From the content of the article, items 3 and 4 have clear limitations on the behavior, such as through the planning and implementation of asset acquisition or restructuring, investment in new business, equity transfer, acquisition of listed companies and other false material matters. And compulsion trading manipulation is only described in general terms as “the use of false or uncertain material information”. The most important difference between the two is the pattern of behavior—whether or not there is a specific false act committed. Compulsive trading manipulation is simply the use of false or uncertain information and the implementation of manipulative behavior by disclosing it to the outside world; it does not orchestrate false matters. In contrast, material manipulation is a misleading act to influence the price and quantity of transactions, and such false material information is a “derivative” of the planned and executed false act. In the case of controlled information manipulation, it is possible that the information itself is not false or uncertain, but merely takes advantage of the “information gap” of investors to release material information and then manipulate the securities market. In the Xiang Xu case, Xiang Xu were responsible for the implementation and planning of false material events. In addition, Xiang Xu and others released false information about the company’s performance, but still cannot be found to constitute the crime of compulsion trading. The transmission of exaggerated financial expectations is only an estimate of the company’s future profitability, and although the information manipulator cannot provide valid evidence of the truthfulness, accuracy, and comprehensiveness of the information it transmits, the prosecution would not actually have the ability to prove beyond a reasonable doubt that such expectations are false if it were accused of constituting compulsive trading manipulation. In the premise that both the truthfulness and falsity of the information cannot be effectively proven, the exaggerated performance expectations announced to the market cannot be found to constitute compulsive trading (Jie Xie, 2014). Therefore, even if Xiang Xu’s case occurred after the introduction of “Amendment XI”, the provisions of compulsory trading manipulation cannot be applied.

#### **4. Determination of the Subjective Intent of Information Manipulation**

The main reason for the lack of criminal jurisprudence in securities market manipulation cases is the difficulty in determining the subjective intent. The determination of the subjective intent of the traditional market manipulation crime adopts the judicial presumption approach, which is to presume the causal relationship between the criminal act and the consequences of harming legal interests through the proportional size of the abnormal trading volume occupying the market trading volume, so as to presume the subjective intent of manipulation. However, the nature of capital markets makes the factual situation of the number of investors, trading volume, capital flows, and distribution of trading prices simply impossible to count in practice, which means that the causal relationship between manipulative behavior and the allegedly dominated and controlled capital allocation behavior of investors is difficult to prove directly (Jie Xie, 2013). This is particularly evident in information manipulation: manipulative behavior alternates with the proliferation of true and false information, creating a non-direct causal relationship between the false boom market and investors’ investment decisions (Xin Wang, 2016). Moreover, it can be seen from the administrative penalty decision letter concerning information manipulation that the main and most common defense of the perpetrator is subjective intent. Therefore, the determination of the subjective intent of the manipulator becomes an urgent issue in judicial practice.

##### *4.1 The Path of Subjective Intentional Determination in Administrative Punishment*

Because of the lack of relevant criminal judgments in practice, and the homogeneity of administrative and criminal penalties against the nature of the act, (Hao wen Shang, 2015) the path of determining the subjective intention in administrative penalties has considerable significance. In this paper, the selected case of Qingshan Meng and Huixing Yang information manipulation (hereinafter referred to as Qingshan Meng case) is used as a sample for analysis (CSRC Disciplinary Decision Letter, 2020). In this case, both Qingshan Meng and Huixing Yang argued that they had no intention to manipulate the share price of the listed company involved. According to the CSRC, “from the perspective of the identity and role of the subject, Qingshan Meng, as the actual controller and chairman of the board of directors of Meihua Group and the guarantor of the proceeds of Jiu Zhi No. 9 trust products, was the decision maker of the entire manipulation. Huixing Yang, as the secretary of the board of directors, was responsible for the specific implementation. From an objective point of view, Huixing Yang manipulated Incremental Stability No. 2 to continuously buy a large number of shares of Meihua Group, while Huixing Yang also pushed Meihua Group to voluntarily disclose the announcement of the progress of Hu Moujun’s increased holdings, stabilizing Meihua Group’s share price near the target price of RMB 10 per share. These facts are consistent with the agreed price between Huixing Yang and Han Moulong in early July 2015. In summary, combined with the objective behavior of Qingshan Meng and Huixing Yang in manipulating the share price of Meihua Group and the superior information position of both, as well as the fact that the two had the common purpose of ensuring that Qingshan Meng would not bear guarantee liability for the loss of Jiu Zhi No. 9

Trust, while the fact that Qingshan Meng gave Huixing Yang a financial reward afterwards, is sufficient to prove that Qingshan Meng and Huixing Yang had the common intention of manipulating the share price of Meihua Group. (CSRC Disciplinary Decision Letter, 2020)” It can be seen that the CSRC adopts the path of “objective corroboration of subjective” for the determination of the subjective intent of information manipulation, which is the subjective intent is presumed to be corroborated by the four factors of special identity of the subject, objective behavior, price and volume movements and purpose elements.

The CSRC’s adoption of the “objective corroborates the subjective” approach is itself a worthy reference for criminal justice, but there are certain problems with the direct application of its considerations to criminal justice. First, the consideration of the special identity of the subject. The subject of information manipulation is usually the management of the listed company or the actual controller of the listed company who holds significant information of the company and has the responsibility of disclosure. However, it is not possible to attribute the subject of information manipulation to a special subject. Information manipulation is a kind of multiple compound illegal behavior, which includes many types of sub-acts. For example, the subject controlling the pace of information disclosure is a specific subject, but the subject cooperating with the transaction in the secondary market may be a general subject such as an institution, private equity or an individual, all of whom are subjects of information manipulation as a whole. It seems too narrow to circle the scope of subjects by particularized status. At the same time, if only the particularized subject is considered, it is easy to cause circumvention for the subject involved in information manipulation in fact. For instance, if a specific subject “outsources” the information proliferation to the self-media operation and is disseminated by the self-media, the responsible personnel of the self-media are also the factual participants. In fact, the definition of the subject of information manipulation in overseas legislation is relatively broad. For example, the United States provides that “economic dealers, dealers, traders and anyone who buys and sells securities, as well as their employees”; the United Kingdom defines the subject as “companies, operators, and trustees”; and Hong Kong, China provides for “Exchange participants”, and so on.

Second, the consideration of the outcome of market disruptions, namely, the outcome of price and volume disruptions of securities due to manipulative behavior. In its administrative penalty decision, the CSRC presumed the subjective intent of the perpetrators by considering that Qingshan Meng’s and others’ manipulative behavior caused the result of the variation of the securities market price. In fact, the CSRC’s consideration of the harmful results is still based on the criteria of “affecting the trading price and volume of securities” in the Securities Law of 2005. It seems inappropriate to take the price and volume factor as the factor for determining the subjective intent of information manipulation. In terms of criminal legislation, this provision has been removed from the Securities Law in 2019. At the same time, Article 182 of the Amendment XI also deleted the price and quantity standard of “affecting the price of securities or futures trading or the volume of securities or futures trading”. It can be seen that for information manipulation, the legislator is actively promoting the mechanism of determination without the price and quantity criterion. From the perspective of criminal law theory, objective penalty conditions are not a factor for conviction, but merely a basis for sentencing (Shizhou Wang, 2005). If the result of harm is considered as the element of subjective intention, it undoubtedly affirms the actor’s awareness of the objective result of harm. However, the awareness of the harmful result should belong to the “objective more than one factor” in the proof system of the alleged information manipulation, which does not have any effect on the determination of the subjective intention of the perpetrator (Yang LI, 2012). From the viewpoint of securities manipulation crime itself, the legal benefit of the crime is the stability of the securities market and the market-driven price formation mechanism. Therefore, although the relevant legislation only provides for “manipulation” and “influence”, from the standpoint of maintaining market order, it should be understood as “attempted manipulation”. In addition, if the price and volume are considered as subjective intentional factors, it can easily become a defense for the perpetrator. The defense lawyer of Xiang Xu case cited the fact that the data of position and trading volume in the time period involved did not meet the criteria for filing a case as a defense. so, whether the result of information manipulation behavior is achieved or not should not be a subjective intentional consideration.

Finally, the CSRC takes the subjective purpose of the perpetrator to maintain the stock price as a presumption factor, which is worthy of recognition. It is generally believed that intent is the subjective state of mind of the perpetrator who, for a specific criminal purpose, strives for the realization of the wrongful constituent element or seeks the occurrence of the intended result of the wrongful constituent element in order to achieve his criminal purpose. As to whether the actor’s purpose can be achieved, it does not matter and does not affect the establishment of the crime (Shantian Lin, 2008). Unlike previous cases, in this case, the CSRC found that the purpose of the manipulation was to “ensure that Qingshan Meng would not be held liable for the losses of the

“Jiuzhi No. 9 Trust”. The previous determination of the intent of the purpose of manipulation tends to revolve around two aspects. One is the purpose of obtaining an undue advantage. “Obtaining undue advantage or transferring risk” was previously stipulated as a subjective purpose element in the 1999 Criminal Law Amendment Act. However, it was removed in the Amendment (VI) Act of 2006. And two, for the purpose of fraud. Some commentators argue that the essence of manipulation is “fraud”, in which the perpetrator creates the illusion of an active market in order to induce or mislead other investors (David C. Donald, 2011). If the manipulator is considered to have a “Fraud” purpose, then the establishment of fraud requires a causal relationship between the perpetrator and the victim’s conduct in disposing of the property accordingly. This causal relationship is difficult to prove in securities market transactions. In contrast to traditional “face-to-face” commodity transactions, securities transactions occur between multiple anonymous subjects, with multiple relationships and without the knowledge of each other. This is particularly true in the case of information manipulation. The spread of false information is so widespread and rapid that it is difficult to prove directly whether investors’ investment decisions were influenced by the false information. Although Article 182(5) of Amendment XI provides for “inducing investors to make decisions”, it does not mean that the perpetrator needs to have “fraudulent” intent. This provision is essentially a presumption of correlation between the abnormal behavior in the information manipulation provision and the misleading influence on the investor, and does not require a direct correspondence between the manipulative behavior and the investor being induced to make a financial transaction (Jie Xie, 2020). Therefore, as long as the perpetrator commits an act that may have a significant impact on the price of the securities market as prescribed by law, the illegality of his act can be determined through the obvious manipulative and abnormal nature of the characteristics of the act. Accordingly, the CSRC has some reasonableness in using the purpose of influencing the price of securities in determining the subjective intent of Qingshan Meng case. That is, the subjective intent of the perpetrator is presumed by having the purpose of manipulating the stock price.

#### *4.2 Attempts to Prove the Path of Subjective Intention in Criminal Justice*

For administrative offenders, administrative enforcement and criminal punishment have a natural connection and qualitative difference. Administrative punishment emphasizes the punishment of objective violations, while in the view of criminal law, not only the wrongfulness of objective behavior is emphasized, but also the determination of subjective intent in order to avoid the tendency of objective imputation. Therefore, to learn and absorb the subjective intentional determination of administrative punishment, we should focus on the presumption path of “objective proof of subjective”, that is, supported by circumstantial evidence, reasonably apply the principle of criminal presumption, and presume the subjective manipulative intention from the objective behavior. In the criminal realm, the basic construction of a presumption is: underlying facts + constant connection = presumed facts (Junfu Zhao, 2009). Based on this construction, I believe that the determination of subjective intent in information manipulation can follow the following path: objective behavior + purposeful intent + complementary factors = subjective intent.

Objective behavior, which refers to manipulative behavior by taking advantage of information. The basic pattern of this behavior has been clearly defined in the 2019 Judicial Interpretation of Market Manipulation, which can be summarized as the transmission of false and misleading information, influencing investors’ investment decisions, controlling investors’ capital flows, and artificially creating price signals in the capital market, the essence of which is the abuse of information superiority. The underlying facts are often used as a defense, such as the trading judgment made through its own experience and analysis and research, or the reasons of “market value management”, stabilizing the market value and avoiding the exercise of rights by small and medium shareholders. Generally speaking, it can be judged by a combination of factors such as the perpetrator’s ability to control information, the degree of falsity of information, the degree of awareness of the importance of information and the degree of deviation from the fundamentals. At present, information manipulation is often accompanied by hidden trading behavior as a way to avoid supervision and detection, so the judicial presumption can synthesize information superiority and manipulation behavior for comprehensive judgment.

As mentioned earlier, the purpose intent should be unfolded from the actor’s purpose of manipulating the stock price, which is the actor’s motive of manipulation, and the actor’s motive should be deduced from the objective facts. In the case of Qingshan Meng, the CSRC found the purposeful intent to manipulate the stock price through the promise of guaranteeing that the stock trading of Jiuzhi 9 Good Trust would not lose money, as well as the chatting record of agreeing to maintain the target stock price, which was privately agreed by both parties. It can be seen that the perpetrator generally agreed to manipulate the share price by signing an agreement, verbal agreement or other external representation to form a manipulation motive. However, there are times when the perpetrator does not agree on a clear intent to manipulate the stock price. For example, in the case of Xiang Xu,

Xiang Xu and others agreed that the chairman of the listed company or the actual controller would control the listed company to release favorable news at an opportune time and take advantage of hot topics to speculate. Xiang Xu and others did not make any explicit agreement on the market value or share price of the relevant companies, but their behavior was intended to create the illusion of an active market, thereby boosting the share price of the relevant companies. Therefore, to determine the intention of the perpetrators' purpose, if no direct evidence can be found to prove it, it is possible to make a comprehensive judgment based on the usual connection between manipulative behavior and market movements.

Information manipulation behavior as a new type of manipulation behavior, means and behavior are complex and diverse, and its actors, means of behavior and operation mode are difficult to be summarized by a fixed model. In view of this, when it is difficult to prove the objective behavior and purpose intention and other key points, the judgment can be assisted by the market dominant position and the normal investment behavior. First, the essence of securities manipulation is the abuse of the dominant position in the securities market, and the essence of information manipulation is the abuse of information dominance (Hongjie Tian, 2014). Generally speaking, actors with information superiority have a dominant position in the market and have the ability to manipulate the market more than other investors. Throughout the information manipulation administrative penalty cases mentioned in the article, the perpetrators all have the ability to control information, not only in terms of the right to know important information, but also in terms of holding certain discourse on upstream information release as well as abusing the accessibility of information dissemination in the information age. Therefore, the holder of information superiority can be determined by tracing the source of significant or false uncertain information, and then presumed to be subjective and intentional in combination with the objective behavior. Second, whether it is in line with the characteristics of a standing investment. In general, institutional investors have certain investment experience, but also access to relevant information in the industry, with the appearance of a rational investment. In the subjective intentional determination, can be judged by judging whether its trading behavior belongs to a rational and normal investment of the normal manipulation. The intention of manipulating the securities market can be confirmed from the side by some normal investment behavior that is obviously not in line with professional investors.

## 5. Conclusion

The criminal law of securities market manipulation has been lagging and ambiguous, and the problem is more prominent in the face of information manipulation. The essence of information manipulation is that the perpetrator uses information technology to improperly control and profit from the capital allocation decision of securities investors through market strategy arrangement. China's administrative law enforcement practice of securities market manipulation shows that information manipulation accounts for a relatively high proportion and is on the rise, which is destructive and concealed to the order of the securities market and the optimal allocation of capital, and criminal law should be appropriately involved.

Against the background of the amendment of the Amendment XI to the Criminal Law on securities manipulation crimes, this paper takes the first case of information manipulation in China—Xiang Xu case as the entry point to explore the characteristics of information dominance and the issue of subjective intentional determination. It is hoped that the re-examination of the above two issues will be beneficial to the judicial practice and the development of the securities market in China.

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