A Study of Issues Related to Illegal and Criminal Acts in Securities in China

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Abstract
The article mainly discusses the status quo of legal regulations on illegal and criminal acts in securities in China, analyzes major problems existing in the judicial practice, and puts forward relevant countermeasures and suggestions in terms of legislation, justice and law enforcement to solve relevant problems, in order to improve the governance mechanism for illegal and criminal acts in securities in China.

Keywords
Criminal Acts in Securities, Legal Regulations, Linkage between Administrative Law Enforcement and Criminal Justice, Countermeasures and Suggestions

1. Introduction
The problems of illegal and criminal acts in securities have been highly concerned and reflected by all sectors of the society in China, and also the object that the judicial authorities try hard to fight against. At present, attaching great importance to the comprehensive treatment of illegal and criminal acts in securities, the Chinese Government has accelerated the legislation and amendment of the Criminal Law and the Securities Law, increased the judicial supply in the capital market, explored the establishment of the class action system, released relevant judicial interpretations, improved compensatory responsibilities for civil damage, obviously lifted the cost of illegal and criminal acts, and further cracked down upon illegal and criminal acts in securities.

However, due to the development of China’s securities market is not mature enough, there are a lot of factors that induce illegal and criminal acts in securities in the whole market and environment. Therefore, securities crimes are very
common in China’s securities market. The main reasons are as follows: Firstly, the legal mechanism to regulate securities crimes is not perfect; Secondly, the corresponding regulatory system is not complete; Thirdly, the problems of the linkage between administrative law enforcement and criminal justice for illegal and criminal acts in securities are prominent.

2. Conceptual Characteristics and Legislative Status Quo of Illegal and Criminal Acts in Securities in China

2.1. Conceptual Characteristics of Illegal and Criminal Acts in Securities in China

Collectively known as illegal and criminal acts in securities herein, illegal acts and criminal acts in securities refer to those acts conducted by securities market players in violation of relevant provisions of the Securities Law and the Criminal Law, which severely impairs the order of securities management (Lin, 2005). It mainly comprises the following three acts: 1) Criminal acts. Once conducted, the criminal act will constitute a crime and shall be investigated for criminal responsibility; 2) Illegal acts. Such acts will only be subject to administrative sanctions or civil sanctions instead of criminal punishments; 3) Illegal and criminal acts. Such acts will generally constitute violations of laws and even crimes in case of severe circumstances (Li, 2007). In addition, illegal and criminal acts in securities can be divided into two categories according to the nature, i.e. securities fraud and other illegal and criminal acts. The former mainly comprises four kinds of acts, namely, manipulation of stock markets, insider trading, false statement and customer cheating, and the latter includes issuing securities without approval and putting bank funds in the stock market in violation of regulations.

In addition to basic legal characteristics, the illegal and criminal acts in the new era also have following new characteristics: firstly, illegal and criminal acts in securities continue despite repeated prohibition with increasing incidence of criminal offenses, a high involved amount and a high dark figure of crime; secondly, illegal and criminal acts in securities continuously change with diversified patterns including manipulation of stock markets, fraudulent issuing, insider trading and false information; thirdly, the subjects of illegal and criminal acts in securities take on an organized tendency with increasing unit crimes and joint crimes; fourthly, more intelligent and professional methods and means are adopted in crimes with strong concealment.

2.2. Evolution of Legislation for Illegal and Criminal Acts in Securities

Currently, the punishment of criminal acts in securities is based on the Criminal Law, and the punishment of illegal acts in securities is based on the Securities Law and the Company Law. The evolution of legislation for illegal and criminal acts in securities in the Criminal Law and the Securities Law is introduced as follows.
The criminal acts in securities and corresponding criminal responsibilities are explicitly stipulated in Chapter Three of the Criminal Law. 16 articles and 19 crime names are involved in the Criminal Law and three amendments, mainly including the criminal acts in the securities issuing and trading, in violation of fiduciary duty and during securities supervision (Lian, 2017a). Meanwhile, relevant provisions on the securities-related crimes in the Criminal Law underwent one interpretation and three judicial interpretations by the NPC Standing Committee. It is noteworthy that, in order to effectively punish the crimes of manipulating the stock market and futures market, and utilizing non-public information according to the law, the Supreme People’s Court and the Supreme People’s Procuratorate newly released the Interpretations on Several Questions concerning Applicable Laws in Handling Criminal Cases Related to Manipulation of the Stock Market and Futures Market¹ and the Interpretations on Several Questions concerning Applicable Laws in Handling Criminal Cases Related to Utilization of Non-public Information² in July 2019.

Illegal acts and corresponding administrative penalties and civil compensation liabilities are explicitly stipulated in the Chapter 11 “Legal Liability” in the Securities Law, including 43 types of administrative illegal acts. According to statistics, the Securities Law underwent four modifications since its implementation in 1999, including three amendments in 2004, 2013 and 2014, and one revision in 2005. However, with the continuous development of the market economy and continuous reform in the economic system, the existing provisions of the Securities Law can no longer adapt to the needs of the current capital market, therefore, it is urgent to revise laws. Public opinions have been solicited for the Third Draft of Revision of the Securities Law of the People’s Republic of China after “three deliberations in six years” from the initiation of revision in 2013 to the third deliberation in 2019. The new Securities Law is expected to be released next year.

2.3. Highlights of the Revision Draft of the Securities Law in the New Era

As the fundamental law in Chinese capital market, the revision process of the Securities Law is closely related to the reform process of the capital market. At present, the largest highlights of the up-to-date revision draft of the Securities Law are: firstly, the Draft initially piloted the registration system of the Technology Board under the concept of “pilot first”, and include the “registration system” into the Securities Law for the first time. For instance, “special provisions on the registration system of the Sci-Tech Innovation Board” are specially added into the chapter of “securities issuing” (China Economic Net, 2019); se-

¹See Interpretations on Several Questions Concerning Applicable Laws in Handling Criminal Cases Related to Manipulation of the Stock Market and Futures Market, https://www.spp.gov.cn/spp/xwfbh/wsfbh/201906/t20190628_423372.shtml.
²See Interpretations on Several Questions Concerning Applicable Laws in Handling Criminal Cases Related to Utilization of Non-Public Information, https://www.spp.gov.cn/spp/xwfbh/wsfbh/201906/t20190628_423377.shtml.
secondly, it intensified the punishment on illegal acts in securities, and lifted the amount of penalties. “Registration system” indicates “loose admittance and strict management”, so the punishment standard for the fraudulent issuing shall be greatly lifted to strictly prevent the fraudulent issuing. The revision draft made new stricter provisions, for instance, whoever issues shares by “concealing important facts or falsifying major information” in the prospectus shall, if the securities haven’t been published yet, be fined not less than RMB 1 million but not more than RMB10 million, while the existing penalty is up to RMB 600,000³; the penalty for persons directly responsible for the fraud is increased to no less than RMB 500,000 and no more than RMB 5 million, while the existing penalty is up to RMB 300,000; thirdly, new articles were added to regulate the illegal circumstances such as the manipulation of the stock market and intensify the protection of the stock market. For instance, following articles were added in the revision draft: expand the scope of insiders that shall be strictly regulated, and add the circumstances included in the manipulation of the stock market; add the provision that prohibits the securities trading with non-public information; further intensify requirements on the real-name registration for securities trading, and prohibit securities trading by using others’ account (Man, 2019) strengthen the regulation of program trading; standardize the trading suspension and trading resumption, and prevent the impairment of investors’ legitimate rights and interests by listed companies by means of misusing the trading suspension and trading resumption.

3. Analysis of Legal Issues and Reasons in China’s Securities Field

3.1. Prominent Problems Existing in the Judicial Practice

In the judicial practice, the treatment of illegal and criminal acts in China’s securities field mainly has following prominent problems: firstly, due to weak punishment and low illegal cost, illegal and criminal acts in securities such as fraudulent issuing, manipulation of the stock market and insider trading continued despite repeated prohibitions; secondly, due to lack of the class action system for securities or an effective compensation system for affected investors, the protection for investors is far from enough, especially small and medium investors; last but the most important is the linkage between administrative law enforcement and criminal justice for illegal and criminal acts in securities, which serves to prevent the replacement of criminal punishments with penalties, failure to investigate for criminal liability or degraded treatment, and promptly transfer cases suspected of crimes when investigated and handled during administrative law enforcement to the judicial authorities (Cheng, 2011).

At present, the divergence of the administrative law enforcement and criminal justice in China becomes more prominent, and "failure to transfer cases and re-
placement of criminal punishments with penalties” have become the most prominent problems in the administrative law enforcement in the securities field. For instance, according to the information statistics disclosed at the official website of CSRC: in 2018, CSRC totally handled 894 cases, and transferred 114 cases suspected of securities-related crimes and clues to public security organs (only accounting for 12%) (SIPF, 2018); in 2017, CSRC totally handled 335 cases, and only transferred 31 cases to public security organs (only accounting for 9%) for investigation of criminal liabilities (CSRC, 2017); in 2016, Shanghai Municipal Procuratorate reviewed and prosecuted 1683 financial criminal cases, 1% of which were involved in securities-related crimes. Taking the insider trading for instance, according to relevant statistics from the beginning of 1993 to the end of 2010, there were only six cases that held the offender criminally liable for the crime of insider trading (Ye, 2012). In addition, the phenomenon of “replacement of criminal punishments with penalties” could be seen in the securities regulation field from some public reports. For instance, as for the “misoperation event of Ever bright Securities” which was suspected of insider trading in 2013, CSRC issued a strict letter of administrative penalty, deciding to confiscate the illegal gains of Ever bright Securities and impose a penalty five times the illegal gains totaling RMB 523,000,000. Therefore, many people in the society doubted “whether the illegal act of insider trading was suspected of a crime, and whether the case should be transferred to the judicial authority for the investigation of criminal liabilities”.

3.2. Reason Analysis

1) Legislative reasons

Firstly, the Securities Law and the Criminal Law have weak punishments on illegal and criminal acts in securities, which don’t form adequate deterrence to illegal or criminal offenders; therefore, many offenders violate relevant laws blatantly, the protection for affected investors is far from enough, and the corresponding revision is delayed; secondly, there is certain legislative emptiness between the Securities Law and the Criminal Law, which is mainly embodied by the lack of correspondence between illegal acts and criminal acts, and the inadequate linkage between administrative law enforcement and criminal justice. As mentioned above, the Securities Law involves 43 types of administrative illegal acts, and the Criminal Law involves 12 types of criminal acts in securities. Among them, three types of criminal acts don’t have corresponding administrative illegal acts, two types of criminal acts correspond to two administrative illegal acts, and one administrative illegal act may involve three types of criminal acts (Lei, 2018); thirdly, the vague identification standards for illegal and criminal acts. Judging from expressions in relevant legal provisions, the inconformity

“misoperation event of Everbright Securities” was Shanghai Stock Index suddenly rose sharply. More details refer to https://baike.baidu.com/item/8%C2%B716%E5%85%89%E5%A4%A7%E8%AF%81%E5%88%B8%E4%B9%8C%E9%BE%99%E6%8C%87%E4%BA%8B%E4%BB%B6/9509216?fr=aladdin.
in expression may also make it difficult to judge whether a certain illegal act is suspected of a crime in practice (Lian, 2018); fourthly, with the rapid development of China’s financial market, the securities and futures market has continuously led to new illegal and criminal acts without relevant legal basis for regulation. For instance, due to the delay in the promulgation of the amendment to the Securities Law, it is difficult to have legal regulation on new cases suspected of manipulation of the stock market such as scalping, short-swinger trading and frequent request submission and revocation.

2) Judicial reasons

Firstly, a great difference in the types and standards of punishments between the administrative penalty and criminal punishment. Administrative penalties mainly include single and double penalties, defamation penalties, property penalties, qualification (capability) penalties, and criminal punishments mainly include imprisonment and penalties. The linkage problem mainly exists in the property penalties, for instance, the maximum limit of the fine in administrative penalties is RMB 3 million, while that in the criminal sanctions is only RMB 500,000, which will easily lead to the application problems in the “replacement of criminal punishments with penalties”; secondly, great difference in the proof standard in the criminal, civil and administrative field. The criminal proof must be up to the highest standard that “beyond all reasonable doubt”, while the administrative proof has a lower standard of high probability, which shall be “clear and persuasive” (Ye, 2012). The great difference in the proof standard has led to many adverse effects. Some cases involved in securities-related illegal acts conform to the administrative proof standard, but cannot meet the criminal proof standard, so finally the only way is that the securities regulatory authority will impose an administrative penalty; thirdly, the difficulty in submitting evidence in the securities field intensifies the difficulty in the law enforcement. Due to the electronic and professional criminal means, and concealed and complicated criminal acts, it is very difficult to submit evidence for the illegal and criminal acts. Currently, China hasn’t established reasonable rules on the inversion of burden of proof for administrative penalties and civil compensation (Wang, 2012).

4. Extraterritorial Experience of the Governance Mechanism for Illegal and Criminal Acts in Securities

With only two decades’ development in China, the stock market has inadequate legal provisions and some system design is still in the exploratory stage. Therefore, Chinese government should learn the advanced experience from foreign countries with mature stock markets such as the U.S. and Britain, in order to better solve the prominent problems in the illegal and criminal acts in China’s securities field.

4.1. Rigorous Punishments

US Securities Law has been strictly cracking down upon on illegal and criminal
acts in securities. Its Securities Law in 1933, the Securities Exchange Act in 1934 and Sarbanes-Oxley Act in 2002 released strict sanction measures on false statement, insider trading and price manipulation (Li, 2018). For instance, once relevant financial data of listed companies such as financial statements prove to be false, major senior managers of the relevant company such as CEO and CFO will be sentenced to fixed-term imprisonment up to 25 years for the crime of securities fraud, and individuals and companies accused of the crime of securities fraud will be respectively imposed penalties up to USD 5 million and USD 25 million⁵. The huge illegal cost greatly deters the listed companies and senior managers in the US. Compared with powerful punitive measures for illegal and criminal acts in the US, the chaotic phenomena such as securities fraud and false statement in China’s stock market derive from weak punishments on illegal and criminal acts in securities.

4.2. Comprehensive Class Action System

The US is the first country to explicitly stipulate the class action system in the statute law. As early as 1938, Federal Rules of Civil Procedure stipulated the class action system, and the Private Securities Litigation Reform Act and Securities Litigation Uniform Standards Act subsequently promulgated further reformed and improved the class action, and successively determined "lead plaintiff mechanism", “opting-out system”, “contingent fee system” and “class action mediation system” (Yang, 2019). Once the class action case filed by US investors wins, all the victims involved in the class action may be uniformly sentenced, and claims shall be made against the listed company within the specific period. In the mature capital market, the class action system has been regarded as the most effective system to protect investors’ interest with the characteristics of low cost of right protection and extensive coverage, which can not only punish the offenders to the largest extent, but also protect the investors’ interests. At present, the class action system has been established in Anglo-American law system countries such as Canada and Australia and the continental law system countries such as Brazil and Sweden (Zhong, 2005). Since the class action system is not supported by Chinese laws, it is difficult for investors to obtain reasonable collective compensation, and it is urgent to include the class action system into Chinese law system as soon as possible.

4.3. Reasonable Onus Proof of Conversion

In the securities field, “difficult burden of proof” is the universal problem all over the world. Seen from the international experience, some advanced countries determine the securities fraud as a special tort, and adopt the inversion of burden of proof for the causal relationship and the subjective fault of infringers favorable to investors. The above-mentioned inversion of burden of proof refers to the circumstance in the infringement action directly stipulated by laws where the defendant shall bear the burden of proof proving that there is not any causal

⁵See SARBANES-OXLEY ACT, section 807of chapter VIII and section1106 of chapter XI.
relationship with the damages, or that the victim or the third party has errors. Taking the US for instance, US Securities Law has parallel development with judge-made laws and statute laws. At the end of the 1970s, US courts introduced the “fraud on the market theory” to presume the causal relationship, and inverted the burden of proof to the defendant following the principle of “deducing cause-effect relation”, which eased the burden of proof of the plaintiff (Cheng, 2004). It is stipulated in the Insider Trading and Securities Fraud Enforcement Act in 1988 that, the basis for the determination of insider trading of SEC is that, all the behaviors that raise the stock price before the information release will be determined as insider trading. That is to say, the burden of proof will be inverted for insider trading, and the insider dealers shall prove that there is not causal relationship between the investors’ losses and the insider trading. In addition, Britain stipulated the insider trading in a special chapter in the 1993 Criminal Justice Act and provided that the defendant shall bear the burden of proof for the insider trading; should the defendant fail to prove the eight circumstances stipulated in Article 53 “defense causes”, he will be punished as an insider dealer (Bian & Fu, 1999).

5. Countermeasures and Suggestions on the Governance Mechanism for Illegal and Criminal Acts in Securities in China

In order to effectively crack down upon illegal and criminal acts in securities, Chinese government should improve related mechanisms: Firstly, improve the Legal Mechanism for the Governance of Illegal and Criminal Acts, including criminal law and securities law; Secondly, strengthen the Judicial Mechanism of the Governance of Illegal and Criminal Acts in Securities, including the establishment of the class action system, the improvement of the rules on burden of proof and the improvement of the civil compensation system for the securities infringement; Thirdly, strengthen the Law Enforcement Mechanism, especially the improvement of the specific countermeasures for the linkage mechanism between the administrative law enforcement and criminal justice; Fourthly, explore the International Cooperation Mechanism for the Governance of Illegal and Criminal Acts in Securities.

5.1. Improve the Legal Mechanism for the Governance of Illegal and Criminal Acts

In terms of legislation, in addition to the revision of the Securities Law, it is still urgent to revise the Criminal Law from the top-level design, and form the legal structure with orderly centralization and decentralization, tight contents and different emphasis, in order to realize the unified and effective supervision of the capital market.

1) In terms of the Criminal Law

Firstly, improve the composition of the securities-related crimes via the Amendment to the Criminal Law, and include the new severe illegal acts in se-
curities into the Criminal Law following the principle of compatibility of crime, responsibility and punishment. As mentioned above, the revision draft of the Securities Law has new stipulations on the elements of the capital market and the operation of listed companies, and the Criminal Law shall promptly make integrated revisions to guarantee that relevant criminal acts can be regulated; secondly, improve the punishment system. On one hand, intensify the punishments, improve the penalty measurement levels, correspondingly lift the upper limit of imprisonment and amount of penalties and enhance the criminal cost and deterrence of penalties on the basis of obvious intensification of penalties in the amendment draft of the Securities Law. On the other hand, add the stricter qualification penalty of “prohibiting engagement”, deprive the individual and unit crime subjects from the qualification of engagement in securities, and fundamentally eliminate the possibility of repeated crimes; thirdly, where it is difficult to make prompt revisions of the Criminal Law, supplements may be made by releasing relevant judicial interpretations.

2) In terms of the Securities Law

Firstly, speed up the release of the Amendment to the Securities Law. With the rapid development of Chinese economy, expansion of the capital market, and continuously emerging illegal and criminal means, the Amendment to the Securities Law shall be released as soon as possible; secondly, further improve relevant standards of the Securities Law. In order to better implement the Modest and Restrained Principle and Principle of Final Means of the Criminal Law, the Securities Law shall promptly make supplementary regulations since the aforementioned three types of criminal acts don’t have directly corresponding illegal acts; thirdly, actively explore different means of administrative penalties in line with the rule of the stock market, faced with diversified and complicated illegal acts in securities. For instance, impose an administrative penalty of “ordering the delisting” in case of severe illegal acts of securities companies; fourthly, further improve and optimize Article 231 of the Securities Law “Those violating the provisions hereof and involved in crimes are to be investigated for their criminal liabilities according to law”, and explore the establishment of “independent and decentralized legislation mode”, i.e. to set up criminal norms with independent crime names and statutory sentences in administrative laws. For instance, countries including the US and Japan directly stipulate the crime of securities in the securities exchange act or securities act; fifthly, include the class action system into the Amendment to the Securities Law. China shall learn the advanced practice from foreign countries, bestow the legitimate status upon the class action system, and synchronously revise the corresponding contents in the Criminal Law and the Civil Procedural Law. It shall be noted that the registration system indicates “loose admittance and strict management”. It is necessary to intensify punishments on illegal and criminal acts, utilize the “class action” to encourage the “silent majority”—small and medium investors to actively protect their interests and claim for compensation, which not only effectively protects the legitimate rights and interest of investors, but also creates powerful deterrence to
listed companies.

5.2. Strengthen the Judicial Mechanism of the Governance of Illegal and Criminal Acts in Securities

From the judicial aspect, explore the establishment of the class action system, and improve the civil compensation system for the securities infringement. In addition to the active promotion of the revision of relevant laws, the following three problems shall be solved during the judicial practice.

Firstly, actively explore the class action system for securities with Chinese characteristics during the judicial practice. Currently, China adopts the representative litigation system, requiring that relevant obligees should participate in the litigation after they apply to the court for “registration”. The “opting-out” rule in the US class action procedures may be adopted, namely “implied admission and express opting-out” (Yang, 2019). Claims from several individual investors may be combined into a powerful class action without the active acts of obligees, which can reduce the cost of investors to protect their rights, and enhance the litigation efficiency.

Secondly, improve the rules on burden of proof for illegal and criminal acts in securities, and introduce the rules on the presumption of causal relationship and inversion of burden of proof in the securities fraud field. In 2012, the Supreme People’s Court and the Supreme People’s Procuratorate released the Interpretations on Several Issues Related to Applicable Laws in Handling Criminal Cases such as Insider Trading and Divulgence of Insider Information which innovatively introduces the principle of “inversion of burden of proof”. That is to say, “relevant trading with obviously abnormal acts or without justified reasons or proper information sources” will be probably deemed as insider trading (Ma, 2013). It fully reflects the intention of legislation to gradually adopt the “inversion of burden of proof” in the cases involving insider trading. Considering the feasibility of the judicial practice in China, the concealed illegal means and information asymmetry in the stock market, we shall learn the advanced practice from foreign countries, and introduce the presumption of causal relationship and the rules for inversion of burden of proof into China’s securities fraud field, which creates and provides necessary preconditions for the class action. The rules for inversion of burden of proof may be firstly implemented in the administrative penalty and civil compensation field for securities fraud acts, but the pilot may be made for the securities fraud crimes of three special types with the greatest difficulty in the burden of proof, i.e. the crime of insider trading, the crime of false statement and the crime of manipulation of securities when the time is ripe.

Thirdly, explore the introduction of punitive compensation system into the civil compensation system for the securities fraud. Currently, it is difficult for

*See Interpretations on Several Issues Related to Applicable Laws in Handling Criminal Cases such as Insider Trading and Divulgence of Insider Information, http://www.csrc.gov.cn/shenzhen/xxfw/zzx/com/yysh/201903/t20190310_261052.htm.
the compensatory system within the limit of investors’ losses to effectively crack
down upon the securities fraud, so we can refer to the punitive compensation
system for the product fraud and service fraud stipulated in Article 49 of the Law
on Protection of the Rights and Interests of Consumers, and attempt the puni-
tive compensation system into the securities fraud field (Yang, 2010). In combi-
nation with the actual situation of China’s stock market, the punitive compensa-
tion system may be firstly piloted in the “Sci-Tech Innovation Board + Registra-
tion System”. For instance, the securities company which discloses information
in the form of false statement due to deliberation or gross negligence, which
causes losses to investors shall be applicable to the flexible punitive compensa-
tion liability within three times of the actual damages.

5.3. Strengthen the Law Enforcement Mechanism for the
Governance of Illegal and Criminal Acts

In terms of the law enforcement, it is important to strengthen the linkage me-
chanism between the administrative law enforcement and criminal justice in se-
curities. In October 2014, the Decision on Several Major Problems concerning
the Comprehensive Enhancement of the Rule of Law of the 4th Plenary Session
of the 18th Communist Party Central Committee explicitly stipulated that “ef-
forts shall be made to improve the linkage mechanism between the administra-
tive law enforcement and criminal justice, improve the case transfer standards
and procedures, establish the information sharing, case detail notification and
case transfer system between the administrative law enforcement authorities,
public securities authorities, procuratorates and judicial organs, eliminate the
phenomena such as the failure to transfer cases, difficulty in transfer cases and
replacement of criminal punishments with penalties, and realize the seamless
linkage between administrative penalties and criminal penalties” (Decision,
2014). It can be seen that the linkage between administrative law enforcement
and criminal justice still has urgent problems to be solved, which has been pro-
moted from the level of the national strategy.

Improve the specific countermeasures for the linkage mechanism between the
administrative law enforcement and criminal justice: firstly, it is suggested that
the department concerned in the securities field shall refer to the Working Me-
thods for the Linkage between the Administrative Law Enforcement and Crimi-
nal Justice for Production Safety newly promulgated in 2019, and explore the
establishment and improvement of the linkage mechanism between the admin-
istrative law enforcement and criminal justice in the securities field; secondly,
the administrative law enforcement authorities shall intensify the law enforce-
ment, and transfer the cases suspected of crimes to judicial authorities. Mean-
while, the criminal justice shall be introduced to supervise the law enforcement,
for instance, relevant negotiation may be made with public security organs to

7See Working Methods for the Linkage between the Administrative Law Enforcement and Criminal Justice for Production Safety,
https://www.mem.gov.cn/gk/tzgg/tz/201905/t20190507_257247.shtml.
early get involved in the professional collection and solidification of evidence, which can not only help the professional collection and solidification of evidence, but also effectively solve the transformation from administrative penalties and criminal penalties in terms of evidence during the “linkage between the administrative law enforcement and criminal justice (Li, 2017). Thirdly, further improve the information sharing platform for the linkage between the administrative law enforcement and criminal justice, strengthen the online linkage, information sharing, dynamic follow-up and joint law enforcement between the administrative law enforcement and criminal justice, and enhance the supervision efficiency in the stock market. Meanwhile, strengthen the specific linkage and operation system such as “joint conference system”, “training exchange mechanism”, “case consultancy system”, etc. (Lian, 2017b). Fourthly, explore the establishment and improvement of the legal liability investigation system for illegal acts in securities integrating administrative penalties, criminal sanctions and civil compensation, and greatly enhance the cost of illegal and criminal acts of the capital market. It is noteworthy that, the main barrier to the “three-in-one system” in the actual work is the principle of “non bis in idem”, but such principle is only applicable to the same legal system. The “three systems” are three types of punishment systems of different nature without the violation of the principle of “non bis in idem”. There are good examples in practice. For instance, in September 2019, Shanghai No.1 Intermediate People’s Court sentenced Xian Yan to a five-year imprisonment and a penalty of RMB 11.8 million for the crime of impairing the interests of listed companies and manipulating the stock market. While as early as March 2017, CSRC imposed an administrative penalty totaling RMB 2.892 billion, confiscated the illegal earnings totaling RMB 578,000,000, and prohibited him from entering the stock market for life for the manipulation of “Duolun Stock” by Xian Yan. In May 2017, Shanghai No.1 Intermediate People’s Court pronounced a judgment on the civil dispute over false statement of securities by the Duolun Stock and its actual controller Xian Yan as filed by the Plaintiff Liu Lin, sentencing the defendant to compensation for all the losses totaling RMB 2.33 million to the plaintiff (Oriental Fortune Net, 2019).

In the meantime, the law enforcement authorities for securities shall greatly enhance the publicity and education on the rule of law in the capital market, strengthen the general prevention of illegal and criminal acts in securities, gradually realize the organic unification of legal effects and social effects, and effectively crack down upon illegal and criminal acts in securities.

5.4. Explore the International Cooperation Mechanism for the Governance of Illegal and Criminal Acts in Securities

With the continuously deepened economic globalization and trade liberation, China’s capital market has developed into the second largest stock market, the third bond market and the largest goods futures market in the world (Wen, 2019). With the further implementation of China’s “going-out” strategy in re-
Recent years, more Chinese enterprises have been listed in overseas regions and more foreign enterprises have participated in activities in the stock market, and illegal and criminal acts in securities have taken on a tendency of globalization, however, the existing Chinese laws and rules seldom cover the cross-border supervision cooperation in securities. Therefore, it is imperative to strengthen the international cooperation in the securities supervision, and establish the comprehensive and three-dimensional international cooperation mechanism.

1) In terms of the domestic laws

In order to improve the domestic laws, explore the addition of special chapters in the Securities Law and improve the international cooperation mechanism in the securities supervision. It is generally stipulated in Article 179 of the Securities Law that "CSRC is entitled to conduct external cooperation in the securities supervision", and promptly improve the specific cooperation mechanism for foreign supervision, including the international cooperation principle, competent authorities, mode of cooperation, principle of application of law and extraterritorial right of jurisdiction, which provides complete legal basis for the bilateral or multilateral cooperation in future.

2) In terms of the international cooperation

Improve the international law enforcement cooperation mechanism that cracks down upon transnational illegal and criminal acts in securities, in order to strengthen the international cooperation in law enforcement. Firstly, improve the bilateral cooperation mechanism for securities supervision, further strengthen the feasibility of cooperation, actively establish the mutual recognition principle, and enter into the judicial mutual assistance agreement and memorandum of understanding. Improve the information disclosure system and the bilateral information sharing mechanism, and enhance the specific mode of cooperation such as transnational joint law enforcement. Secondly, strengthen the regional cooperation mechanism for securities supervision, fully learn from the regional supervision cooperation mechanism of EU which cracks down upon securities-related crimes, and actively establish multilateral cooperative law enforcement network by signing relevant framework agreement or memorandum. Especially strengthen the cooperative law enforcement mechanism in the securities field between China and ASEAN countries and various countries along the "Belt and Road"; thirdly, actively participate in the global cooperation mechanism for securities supervision. As early as 1995, CSRC joined the International Organization of Securities Commissions (IOSCO) to strengthen the cooperation and exchange between all member countries, we should take IOSCO as a bridge to actively participate in the formulation of international standards for the securities supervision field, promptly transform the successful experience of IOSCO resolutions into relevant domestic system, and further enhance the level of securities regulation in China (Du, 2017).

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.
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