

# Investigation difficulties and optimization suggestions of insider trading criminal cases in securities market

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**Abstract:** Insider trading crime is a kind of securities and futures crime. With the development of China's securities and futures market, insider trading crime has gradually become the mainstream of securities and futures crime, and presents a high incidence trend. For this kind of criminal suspect, "keep running without missing" business not only infringes the interests of the majority of small and medium investors, but also destroys the normal order of the capital market, which is not conducive to the stable development of the economy during the social transition period in China. China's public security organs in the investigation of evidence is still lacking a lot. The public security organs did not perform the main investigation function. In fact, the main investigation activities are mostly completed by the securities supervision and administration department. Therefore, investigators can perfect the investigation, prevention and control of criminal cases of insider trading in the securities market from the aspects of investigation preparation, selection of investigation route, application of investigation measures and means, collection of evidence and so on.

**Keywords:** stock market, criminal cases of insider trading, the case investigation

## 1. Introduction

The regulation of insider trading in China's Securities Law is that "insiders of insider information in securities trading and those who illegally obtain insider information engage in securities trading activities using insider information". According to the relevant provisions of the Securities Law, as long as the subject of insider trading trades securities with inside information, it is regarded as insider trading [1]. In respect of criminal law, the special provisions in article one hundred and eighty of the criminal law of the People's Republic of China the insider trading and divulging inside information, article one hundred and eighty not only against insider trading behavior were described in detail, and the second paragraph of the securities financial institutions and other regulatory staff using convenient working knowledge of other undisclosed information, for the illegal behavior of regulation, If their behavior meets the relevant conditions, they shall also be punished according to the crimes of insider trading and disclosing inside information.

The crime of insider trading in the securities market is a typical crime in the securities market, which is rooted in securities fraud and involves a wide range of people [2]. Only by protecting the basic investment rights and interests of small and medium investors can the security market develop stably in a long term and play a better role as a financing platform. However, in practice, the crime of insider trading in the securities market is becoming more and more significant, and the transaction amount is also expanding. In order to curb the trend of crime and carry out precise strikes on insider trading in the securities market, this paper starts from the categories of criminal acts of insider trading in the securities market and the techniques of insider trading. Then on the characteristics of the securities market insider trading crimes comprehensive summarization, at the same time to investigate how to choose as the breakthrough, survey and take relevant measures, the integrated use of various means to solve the stock market insider trading crimes, to explore the situation of our country's effective way to crack down on the crime of securities insider trading market, curb securities market insider trading crimes from the source.

In this paper, based on the related theory, combined with the reality of China's securities market, the formation of the illegal crime of the securities and identification, of the securities market insider trading crimes of systematic research, investigation and evidence collection of case-handling organ, the securities regulatory body to provide relevant theory and policy support, has certain academic significance and

practical significance.

## 2. Analysis of the current situation of insider trading crime in securities market

Since the early 1990s, China's securities market, as an important part of the domestic financial field, has experienced more than 30 years of development and change. In the past decades, along with the vigorous development of China's securities industry, the rapid development of economic level has played a very important role in the optimization of China's resource allocation. However, with the rapid development of the securities market, a series of illegal behaviors have appeared, among which insider trading is one of the three high-frequency violations in the field of securities.

### 2.1 The number of insider trading cases is increasing

According to the summary of insider trading cases of China Securities Regulatory Commission in the past decade, the number of insider trading cases clearly shows the change in the number of insider trading cases. Although the number of insider trading cases in 2015 and 2018 decreased slightly compared with the number of cases in the previous year, it did not affect the development trend of a steady increase in the overall number of cases. In the past ten years, the number of cases involving insider trading has been 360. Although the state has continuously improved the laws and regulations governing insider trading and imposed more severe penalties, it can be seen from Figure 1 that the number of insider trading cases is still high and showing a steady growth trend. This shows that violations of insider trading and those of the entire stock market are on the rise, except for a slight decline in 2020 due to the impact of the epidemic.

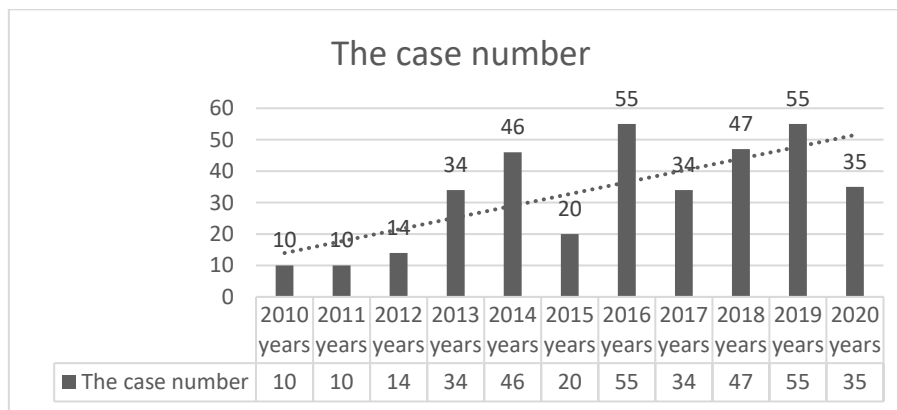


Figure 1. The case number

### 2.2 The inside information of the company's major investment and major purchase property is the disaster area

Insider trading behavior as the three tops the list of violations of the securities market, with the company's significant investment and major decided to purchase the property type accounted for most, the 10-year period from 2010 to 2020, the statistics of securities supervision committee of 360 administrative punishment book, there were 241 cases of the company's significant investment and property purchase decision of administrative punishment book, proportion is as high as 66%, Secondly, the number of administrative penalties related to dividend distribution in the past decade was 43, accounting for 12%. Other types include changes in shareholders and ownership structure involving more than 5% of the company's shares, significant sales contracts entered into by the company, significant losses or losses incurred by the company, changes in the company's senior management, changes in the company's operating policies and business scope, and information that has a significant impact on prices. The number of these types of administrative penalties is relatively small compared to the cases of major investment and purchase of property and dividend distribution of the company. The number of penalties is 79, and the number of administrative penalties for each type is about a dozen, accounting for 22% in total, as shown in Figure 2.

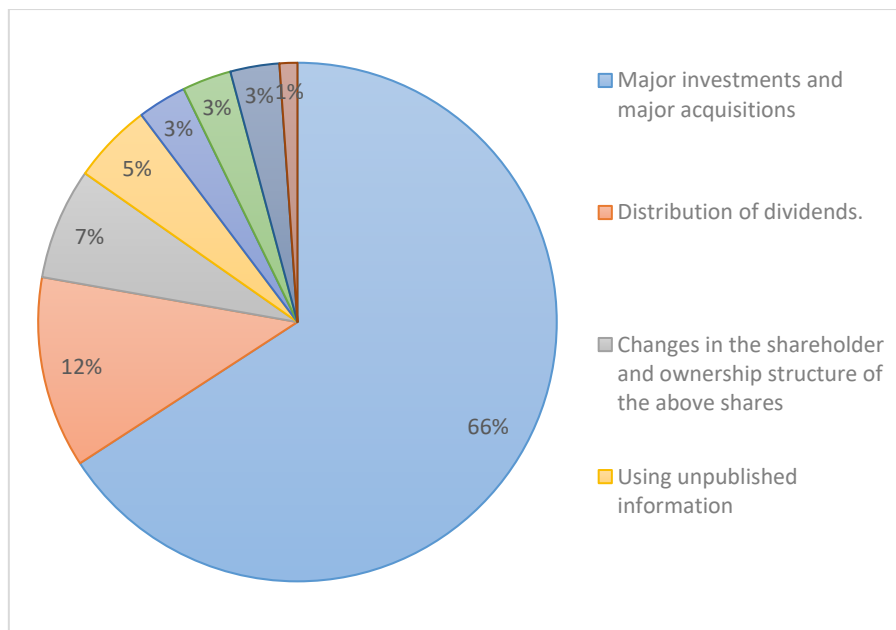


Figure 2. Types of insider trading cases

### 2.3 Transitive insider trading is becoming more serious

Pass-through insider trading refers to the behavior in which people other than insiders of insider information are directly or indirectly informed of insider information by legitimate and reasonable means, and then directly or indirectly conduct insider trading during the sensitive period of information or transmit the insider information to others in a continuous relationship, and then others directly or indirectly conduct insider trading [3]. According to the China Securities Regulatory Commission (CSRC), insider trading incidents have accounted for about 30% of the crimes of insider trading in the securities market that have been investigated since 2020. Introductions from relatives, friends, classmates, teachers and partners account for a larger proportion of the process of obtaining information. There are also about 10 percent of CPC members and leading cadres engaged in illegal insider trading, more selfish people do not engage in insider trading, but use vested interests to party members and cadres in the ideological level of corruption, bribery and erosion.

## 3. China's existing securities insider trading investigation measures and characteristics

### 3.1 Investigation measures for criminal cases of insider trading in the securities market

#### 3.1.1 Survey the generation and development of inside information

As for inside information after a stock listing, the company will be investigated to identify the scope of insiders and clues that may be used or leaked. As for information from listed companies, the acquisition companies are subject to investigation.

#### 3.1.2 Investigate and interrogate insiders

When investigating insider trading personnel, we should first deal with those with poor psychological quality, lack of social experience and easy to break through, and choose them as the priority to break through, gradually eliminate their fluke psychology, and then develop comprehensively and deeply according to the investigation activities. At the same time, appropriate legal policy education should be combined to straighten out the relationship between primary and secondary interests, so as to obtain good results.

#### 3.1.3 Take various measures to collect evidence

Actor insider trading in the process of formation, a lot of material evidence of documentary evidence, but because all conventional survey measures stipulated in the criminal procedure law is not only the indirect evidence, unable to fully complete collection, so in addition to the usual survey, seal up, distraint, and other measures, we can with the aid of secret investigation, secret surveillance, etc.

### ***3.1.4 Investigate and interrogate the suspects***

According to the actual situation, the investigators choose the appropriate interrogation method by combining the social experience of the criminal suspect, the means to deal with the incident, the ability to adapt to the situation and the ability to counter the investigation.

## ***3.2. Characteristics of investigation of criminal cases of insider trading in the securities market***

### ***3.2.1 The subjects of securities insider trading are diversified, and the trading objects are obviously characterized by "nepotism"***

There are various subjects in the criminal cases of internal securities trading. In recent years, with the reform and reorganization of China's securities market, mergers and reorganization of listed companies are more and more active [4]. The subjects involved in insider crime cases are gradually extended from the directors, supervisors and other senior management personnel of listed companies to state civil servants, law firms, accounting firms and other intermediary service organizations. Taking the insider trading crime of Shenzhen Tianwei Video Co., LTD in 2014 as an example, the perpetrator was not only the office director after the merger and reorganization of the group, but also the financial director of the contract buyer. From the perspective of objects, there are relatives, friends, classmates, colleagues, as well as insiders who leaked information to business strategic partners and local party and government cadres [5]. Since 2016, 70 percent of insider trading cases were carried out by relatives or business partners, while only 30 percent involved Dong Jiangaao.

### ***3.2.2 Administrative punishment is the main punishment method for such cases and the punishment is relatively light***

The main control and legal responsibility of insider trading in China are clearly stipulated in criminal law and civil law. In the criminal field, article 180 of China's Criminal Law has clear provisions on the prohibition of insider trading and disclosure of insider trading information. Those who commit the crime should be sentenced to a maximum of 5 to 10 years in prison [6]. Under Article 53 of the Securities Act, investors or families can claim civil damages against insider losses. According to incomplete statistics, the official website of China Securities Regulatory Commission (CSRC) only retrieved 34 criminal judgment documents among the 275 cases of administrative punishment decision documents for insider trading published in the past 10 years, and the number of administrative punishment cases was six times more than that of criminal punishment cases. According to the author's analysis, there are three reasons: First, China Securities Regulatory Commission is the main regulatory department of China's securities exchange market, which plays a very important role in the investigation of insider trading events. Second, the government and the bureau shall not intervene in the judicial organs of the foreign exchange public security Bureau to crack down on insider trading crimes. Third, it's very difficult to find significant evidence because it takes so long for the xiaoan police department to accept the case, and that's enough time for the person involved in the case to reverse the confession, or reverse the confession, and it's very difficult to impose a fine on that[7]. As a result, many cases in which sentencing benchmarks have been agreed have ended up in the hands of the executive branch, and insider traders have committed crimes without fear of the good restraint of the law.

### ***3.2.3 Insider trading cases are rampant, making it difficult for inspection and examination***

According to the data provided by the Shanghai Stock Exchange, of the 52 reorganized stocks in 2001, 46 changed significantly, accounting for 88%, and the calm change rate was 99.59%. Considering the influence of stock prices, the average fluctuation rate was about 98.32%. After the announcement of the theme, 29 stocks did not rise, while 17 stocks rose. The profit margin is only 40%. It can be seen that insider trading, the actor's insider trading has made huge profits before the announcement. At present, although there are strong legal threats, the behavior of insider trading is only half open, open to half underground, and the activities of insider trading are still very serious.

Foreign investors call The Chinese stock market "news market" due to the rampant internal trading of securities in China. This situation has seriously damaged the reputation of China's securities market, affected the investment enthusiasm of securities investors, and had a very bad and serious impact on China's securities market [8]. China's securities regulatory authorities and investigations have made great efforts, and several important cases have been uncovered. Compared with the extremely rampant internal trading, the investigation of criminal internal trading is still in a serious passive standstill, and the smooth trading of China's securities market cannot be guaranteed. By the end of October 2002, China's securities supervision and inspection departments have registered 52 cases of insider trading, including 7 criminal

cases, 27 economic and administrative cases, and the handling of the remaining 18 cases is unknown. The inundation of insider trading and the verification work have formed a sharp contradiction of serious lag.

At present, the Number of listed companies on the Shanghai and Shenzhen stock exchanges has exceeded 3,000. More than 10,000 companies are listed on the "New Third Board". The overall size of the interbank and exchange debt markets is not much different from the stock market, and the market base for securities crime is expanding rapidly. Statistics from the securities supervision department show that from 2012 to the end of 2016, 670 cases were reported, including 87 cases of market operation clues, accounting for 12.99% of the total. In terms of the number of market manipulation clues, there has been a rising trend in the past four years, from 2012 to 2016, 8 cases, 17 cases, 11 cases respectively 29 pieces, 22 pieces. Market manipulation leads accounted for 7.21% in 2012, 20.8% in 2015 and 16.92% in 2016. The proportion of market manipulation cases transferred by securities regulatory authorities is also on the rise. As of 2007, there were 10 cases, accounting for 15 percent of the total. In 2008 there were 56 cases, accounting for 85% of the total. From 2001 to 2008, there were an average of 300 accounts involved in market manipulation cases, involving more than 2 billion yuan of funds and 250 million yuan of illegal profits, with a crime cycle of more than 1.5 years. From 2008 to 2017, during the market operation cases using an average of 3000 accounts, missed more than 200 yuan of funds, the illegal profits reached 100 yuan, crime cycle is only 3 months, Xu Xiang event, China's securities investment fund industry association is Xu Xiang control 139 accounts and decided that 13 listed companies of the chairman of the board of directors or manager to manipulate Illegal profit of 93.38 yuan in share price.

#### **4. Analysis of the existing mechanism and predicament of insider trading investigation in China's securities market**

##### ***4.1 The existing securities insider trading crime detection and prevention mechanism in China***

###### ***4.1.1 Working mode of insider trading prevention and control***

Compared with the high incidence of insider trading crime in China, the prevention of insider trading is very weak. It is mainly reflected in the on-site monitoring of the securities trading place and the supervision and control of the Securities regulatory Commission. In the course of trading, once the stock price changes, the variable share account will be directly monitored. If the warrant is abnormal, it can also be suspended for trading. Securities supervision committee of prevention and control work is a reflection of the daily life of the supervision and management of the business, listed securities supervision committee of district 2005 supervision and management responsibility system under the jurisdiction of the pilot, "initiative" the formation of the supervision and management system, find the problems in the process of daily supervision and administration, review immediately, if there is a significant illegal, in violation of the behavior requirements put on record. Supervisory departments, especially those responsible for filing cases, browse news, network information and other media information every day to pay attention to the trends and hot spots of investors. Whether the listed companies use the media to make improper information disclosure, whether there are private placement, reorganization [9], merger and other easy to cause the stock market instability and instability of the information report, to do a comprehensive and timely comprehensive investigation, so as to find illegal clues of insider trading. The prevention and suppression of securities crimes by the Securities Crime Investigation Bureau is almost a blank sheet of paper. Many of them passively accept the evidence transferred to cases by the supervision department. Based on the preliminary investigation by the evidence supervision department, they improve relevant criminal evidence, compile and collect summary materials and transfer them to the people's procuratorate for examination and prosecution. As a result, the powerful control means of the public security organs have been weakened, and positional control and intelligence information have been almost useless.

###### ***4.1.2 Domestic cooperative mode of cracking down on securities insider trading***

Cooperation is necessary to crack down on illegal and criminal activities. At present, the cooperation between the Securities market insider trading Investigation Bureau of the Ministry of Public Security and the investigation and command departments of various regions has been established. For this purpose, the regular cooperation between the internal trading countermeasure departments of various securities markets and other functional departments is also being explored. In the early 20th century, the Public Security Department of Henan Province, the China Securities Regulatory Commission office in Zhengzhou, Zhengzhou Commodity Exchange, and the Industrial and commercial Bureau of Henan

Province held two meetings to crack down on the crime of insider trading in the securities market of Henan Province. In the same year, Guangzhou also held a joint meeting to fight and collect evidence of insider trading in the securities market, which was attended by eight members of the meeting, including the Municipal Economic Commission, public Security Bureau and audit Bureau, to form a corresponding mechanism and strengthen coordination and cooperation in the illegal and criminal activities of securities companies. All localities have gradually established basic ways of mutual cooperation and corresponding coordination measures in the practice of cracking down on insider trading.

#### ***4.2 The difficulties faced by the investigation of criminal cases of securities insider trading in China***

##### ***4.2.1 The preliminary investigation takes a long time***

The preliminary investigation of criminal cases of insider trading includes three main aspects. The first is the determination of the scope of the insider himself. The second is to build the framework of the scope of other related transaction subjects. Such as the insider's close relatives, colleagues, former classmates and so on. The third is the dynamic monitoring and recognition of abnormal situations and abnormal trading behaviors in the stock market. In terms of the first and second items, it takes a lot of time and energy to define the scope of insiders and other related subjects that may be involved in insider trading crimes. The reason is that China has a large number of securities trading groups, the amount of daily transactions and transactions are very large. Since the reform and opening up, with the rapid development of China's economy and the implementation of the basic national policy of opening up to the outside world, enterprise merger, reorganization and listing have become an important way to industrial integration and upgrading and enhance competitiveness. Statistics from the existing securities supervision department show that from 1993 to 2010, the investigation of 31-year-old insider trading incidents, the investigation time is long, short, a few months, two or three years, the Securities Supervision Commission is the average handling of insider trading incidents into nearly a year. For criminals, this lengthy preliminary investigation provides ample buffer time to disperse illicit profits, erase traces of communications, and destroy trading equipment.

##### ***4.2.2 Securities crime is complicated and investigators face many challenges***

The stock market is a place to seek profits, and crimes may occur in every stage of the stock market. Many crimes are not solved individually, so it is easy to have related crimes. This has increased the workload of investigators to a certain extent, but also intensified the working pressure of case investigators, making them face the dual challenges of physical and mental. Take the extremely serious insider trading in the stock market as an example. In order to implement insider trading, first, it is necessary to grasp the inside information and use the inside information to buy and sell relevant securities [10]. Second, when the insider information is made public and the price of relevant securities changes correspondingly, the opposite trading can be carried out to obtain profits or avoid losses. In the process of carrying out the above acts, other securities crimes often occur. , for example, in order to implement the insider trading, securities trading and false information or fabricated, guide the investors in securities trading, securities trading, price manipulation, such as obtaining commercial secrets, the leakage of state secrets, money laundering, embezzlement, misappropriation of public property, abuse of power, corruption and bribery crimes such as complicated, it is difficult to restore the normal survey business conduct [11]. Therefore, it will inevitably increase the cost and difficulty of the inspection of the investigation organs and make the investigators face great challenges.

##### ***4.2.3 Artificial cues was inefficient***

According to the feedback from the investigation department, the number of transactions to be investigated involving a single case can easily reach several tons. The root of the problem is that it is difficult to effectively comb through hundreds of thousands or millions of huge trading streams by manual means, which makes it impossible to accurately grasp the scope of key trading accounts. In contrast, teams without audit and financial accounting knowledge can only rely on personal experience and basic computer knowledge to investigate and collect evidence. Today, after the paperless trading system has been upgraded repeatedly, suspicious clues have been found by checking transaction records one by one through traditional manual methods. It's not just about having big team-specific teams. However, the securities transaction records is a part of the clue, the event involved in the people's work records, telephone records, online chat, interpersonal contacts are also the focus of reconnaissance activities, but also the scientific design of computer model cooperation, with the help of the new era of securities crime investigation of the common desire.

## **5. Suggestions on optimizing investigation of criminal cases of insider trading in the securities market**

### ***5.1 Establish and strengthen the concept of taking prevention as the premise and combining prevention and treatment***

In the criminal cases of insider trading in securities market, prevention is fundamental and punishment is necessary. Insider trading in the stock market of criminal investigation, the investigation organ of investigations, the securities insider trading crime vulnerability and find more related personnel incentives, and can prevent the organic combination of securities insider trading activity, prevent leakage information from a criminal investigation, to determine the direction of insider trading after the criminal investigation and investigators effective tracking provide the basic information.

### ***5.2 Public security organs should sort out the crime information database of such cases***

Insider traders are more or less related to events of insider trading and information manipulation of the stock market. The information of criminal cases such as securities insider trading, false information dissemination, and information-based manipulation of securities market can be classified and archived. Make class files. Insider trading in securities market, the events of the false information operation technique, universal way to choose, to deceive investors to invest in trading methods, there may be similar to the database of events, in turn, by contrast, if there is the same or similar event, investigators in a chain of events is analyzed, which can get more clues.

### ***5.3 Establish credit files of insider trading subjects and realize the real-name system for securities trading***

When the monitoring system of the stock exchange discovers abnormal trading behaviors, measures can be taken in time to provide reliable data clues for investigation. The process and results are more effective and accurate than the analysis and locking of behavior subjects. We should strengthen the monitoring and analysis of the high incidence of insider trading. For example, it analyzes the types of high-probability insider trading behaviors based on acquisition and the time points of high-probability insider trading behaviors, and analyzes the changing trend and rule of securities prices from the formation of internal information to the disclosure period, so as to improve the quality and efficiency of the supervision of internal trading behaviors by Securities supervision institutions in China. Firmly control the scene of insider trading, forming a new supervision mechanism combining real-time monitoring, active law enforcement and passive law enforcement [12]. In addition, because insider trading is concealed and difficult to verify, it is obviously not enough to judge abnormal trading behavior in the market only by the changes of the monitoring indicators of the stock exchange. At this time can learn from the Practice of the American stock exchange, make full use of the perfect database system, all the detailed personal information collected in the database. If there is suspicion of insider trading, the system can check the insider's name, stock trading history, and family status.

In a word, to prevent the occurrence and diffusion of securities crimes, the public security organs should give full play to the role of the main force. In order to effectively crack down on the crime of insider trading in the securities market, case investigators are faced with various difficult and difficult situations in the investigation practice of the crime of insider trading in the securities market, and should take the bull by the horns to investigate its causes, and on this basis, In order to make a decisive strategy, constantly standardize their own behavior, break through the shackles of the status quo, turn the adverse environment into a favorable environment, avoid falling into a passive situation, finally make the investigation of the criminal case of insider trading can be carried out smoothly.

## **6. Conclusion**

Insider trading crimes in China's securities market occur frequently and have a bad impact. China's public security organs still have many deficiencies in the investigation and evidence collection of internal transaction crimes in the securities market, which leads to the decline of the efficiency of accurate attack on internal transactions in the securities market. The investigation of China's securities insider trading criminal cases also faces some problems, such as long time-consuming preliminary investigation, complex securities crimes, low efficiency of manual clue collection and so on. In order to improve the investigation efficiency of China's public security organs on insider trading crimes in the securities

market, investigators can carry out work from the aspects of investigation preparation, selection of investigation route, application of investigation measures and means, collection of evidence and so on, so as to improve the investigation, prevention and control of insider trading crimes in the securities market.

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