

Comparative Case Law on Capital Market Manipulation

Lecturer **Claudiu-Gabriel GALU**¹

Abstract

Capital market manipulation is one of the most complex issues in the field of business criminal law. Unlike insider dealing, which is based primarily on an informational advantage, market manipulation seeks to distort the price-formation mechanism itself by creating false or misleading signals regarding supply, demand, liquidity, or the price of financial instruments. This study examines, from a comparative perspective, the legal criteria used to distinguish legitimate trading activity from manipulative conduct in the United States, Canada, the European Union, Japan, Australia, and Romania. Particular attention is paid to the role of manipulative intent, artificial pricing, fictitious or deceptive transactions, and algorithmic trading practices. Through an analysis of relevant legislation and leading judicial decisions, the study identifies both converging approaches and significant differences among the jurisdictions examined. It concludes that effective enforcement depends on clearly defining the element that transforms otherwise lawful market conduct into manipulation, while ensuring an appropriate balance between market integrity, technological innovation, and fundamental procedural guarantees.

Keywords: capital, market, transaction, manipulation, trading, shares.

JEL Classification: K21, K22

DOI: <https://doi.org/10.62768/ADJURIS/2026/7/12>

Please cite this article as:

Galu, Claudiu-Gabriel. "Comparative Case Law on Capital Market Manipulation." In *Comparative and International Law in an Era of Global Transformation: Sovereignty, Justice, Cooperation, and Emerging Technologies*, edited by Liliana Tymchenko and Paulina Guli Hoti, 208–222. ADJURIS – International Academic Publisher, 2026. <https://doi.org/10.62768/ADJURIS/2026/7/12>

1. Preamble and Legal Framework

Capital market manipulation is subject to both European, transnational regulation and a national one. The provisions of Article 12 of Regulation (EU) No 596/2014 on market abuse (MAR) govern capital market manipulation, together with Directive 2014/57/EU on criminal sanctions for market abuse (the Market Abuse Directive), which required all Member States to harmonize their legislation on criminal offences for market abuse.

¹ Claudiu-Gabriel Galu – Drăgan European University of Lugoj, Romania. E-mail: claudiu.galu@deu.ro.

At the national level, market manipulation is regulated and sanctioned by the provisions of Article 137 and Article 157 of Law No 24/2017 on issuers of financial instruments and market operations, as republished. Capital market manipulation is also addressed by the provisions of Article 3(2) of Law No 126/2018 on markets in financial instruments, which classifies such unlawful conduct on financial markets within the category of market abuse.

Because of their considerable length, we shall not quote in full the provisions referred to in the articles indicated above; instead, we summarize this information as follows: capital market manipulation is conduct, whether by commission or omission, expressed in the situations expressly determined by the regulation and the laws, by which a market participant artificially intervenes in the mechanism for the formation of the demand, supply or price of a financial instrument — whether through transactions or trading orders capable of conveying false or misleading signals or of fixing the price at an abnormal level, through resort to fictitious devices or other forms of deception, or through the dissemination of information or the provision of false or misleading input data, thereby affecting market integrity and public confidence in it.

It is very important to note that the particular importance attached to protecting the integrity of financial markets and public confidence leads to the classification of manipulation as a criminal offence and its punishment, pursuant to Article 157(5) of Law No 24/2017, with imprisonment from one to five years.

Thus, there are several types of conduct sanctioned by European and national legislation. In summary, market manipulation consists in carrying out a transaction or engaging in conduct that gives or is likely to give false or misleading indications as to the supply/demand or price of a financial instrument, or that fixes or is likely to fix the price of a financial instrument at an abnormal or artificial level. To these are added forms of conduct that may consist of a transaction or behavior involving resort to a fictitious device or any other form of deception; the dissemination of misleading information; the transmission of false or misleading information; or the provision of false or misleading input data. This last modality concerns in particular the manipulation of benchmarks that is, precisely one of the matters of present public interest, relating to the manipulation of the Robor index, sanctioned from the perspective of competition law through the fining of ten banking companies operating in Romania.²

The types of acts or omissions regulated as instances of capital market manipulation seek to capture specific abusive strategies that may be implemented by any available means of trading, including algorithmic and high-frequency trading³. These examples are neither exhaustive nor do they suggest that such

² JURIDICE.ro, “Consiliul Concurenței a sancționat 10 bănci pentru coordonare în stabilirea RO-BOR,” accessed September 13, 2026, <https://www.juridice.ro/833419/consiliul-concurenței-a-sancționat-10-pentru-coordonare-in-stabilirea-robor.html>.

³ Ann-Christina Lange, Marc Lenglet, and Robert Seyfert, “High-Frequency Trading, Spoofing and

strategies, applied by other means, could not likewise be classified as abusive. At the same time, the current legislation is an advance over the previous one, since it expressly prohibits the attempt to manipulate the market.

Clearly, the attempt to capture through legislation as broad a range of situations as possible that might be classified as manipulation has required the delimitation of lawful from unlawful conduct. It has been observed that manipulation entails a far clearer and more brutal intervention by the perpetrator in the price-formation process, with the controversies concerning the scope this offence should have arising especially in the case of manipulation carried out through ostensibly ordinary market conduct, namely manipulation through transactions or trading orders.

2. Legal Framework Applicable to the Analysis of Civil and Criminal Liability

For the study of cases of capital market manipulation, we have considered the most important world economies and, implicitly, the most attractive and most actively traded capital markets, as well as the diversity of the legal systems that regulate them. Accordingly, we have examined the case law on capital market manipulation in the United States of America, Canada, the European Union, Japan, and Australia.

The fundamental legal difficulty, encountered in all the jurisdictions examined, arose from the fact that almost any stock-exchange order influences the price, yet fraudulent intent does not follow from the mere placing of such an order. A large trading volume, short selling, the placing and cancellation of orders, or supporting a price are not, in themselves, unlawful acts or offences; they constitute normal market behavior. The question that all jurisdictions have sought to answer, however, was what the determining element is, whether of an objective nature (the fictitious character of the transaction) or a subjective one (the purpose of misleading or of creating an artificial price) that transforms a lawful operation into manipulation.

Methodologically, we have indicated the normative framework applicable to each jurisdiction and its concrete application in various published cases.

2.1. Capital Market Manipulation in the United States of America

US federal law addresses manipulation through several overlapping instruments, namely the Securities Exchange Act of 1934, in particular Section 9(a) concerning specific manipulative practices (for example, fictitious transactions) and Section 10(b)⁴, applied through Rule 10b-5 of the Securities and Exchange

Conflicting Epistemic Regimes: Accounting for Market Abuse in the Age of Algorithms,” *Economy and Society* 53, no. 4 (2024): 603–626, <https://doi.org/10.1080/03085147.2024.2413809>.

⁴ United States Code, Title 15, §§ 78i(a)(1)–(2) and 78j(b), Office of the Law Revision Counsel,

Commission, as well as the Commodity Exchange Act of 1936 for derivatives markets, administered by the Commodity Futures Trading Commission⁵. A characteristic feature of the US system is the coexistence of general and special anti-manipulation prohibitions.

The first significant decision in US federal law is the Supreme Court's judgment in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976).

The case had the following particularity. The accounting firm Ernst & Ernst carried out, over several years, the audit of the books of the brokerage firm First Securities Company of Chicago. Its president, Leston Nay, held majority control and created a fraudulent scheme for his own enrichment. He induced clients to invest in escrow accounts that did not in fact exist. In practice, the money accumulated was diverted for his own benefit. The scheme was concealed through the so-called mail rule, in the sense that Leston Nay had ordered that no one was to open correspondence addressed to him personally, not even in his absence, which prevented the fraud from being detected. The scheme came to light only in 1968, when Nay committed suicide, leaving a note describing First Securities as insolvent and the escrow accounts as fictitious.

The injured clients sued the firm Ernst & Ernst, claiming that its negligence in carrying out the audit, in particular its failure to discover the rule on the inviolability of the correspondence, had allowed fraud to continue. It is essential to underline that the plaintiffs did not allege intentional conduct on the part of the auditor, but rather the thesis of negligence by omission.

Another landmark jurisdictional approach was in *ATSI Communications, Inc. v. The Shaar Fund, Ltd.*, 493 F.3d 87 (2d Cir. 2007).⁶

ATSI Communications, a telecommunications company, needed capital and issued, in 1999, four convertible preferred shares. The particularity of these instruments was that they converted into common shares without a floor, that is the more the price of the common share fell, the more common shares were obtained on conversion. ATSI claimed that the defendant hedge funds, namely *The Shaar Fund*, *Rose Glen Capital Management* and others, had orchestrated a "death-spiral" type scheme. The typology of this scheme was that the defendants short-sold the issuer's common shares to drive down their price, then converted their preferred shares into cheap common shares which they used to cover their position. The mechanism enabled the manipulator to increase its profit, to protect itself against the risk of loss, and to dilute the existing common shares, accentu-

U.S. House of Representatives, <https://uscode.house.gov/view.xhtml?req=%28title%3A15+section%3A78i+edition%3Aprelim%29> and <https://uscode.house.gov/view.xhtml?edition=prelim&f=treesort&num=0&req=granuleid%3AUSC-prelim-title15-section78j>.

⁵ Commodity Exchange Act, 7 U.S.C. § 1 et seq., Office of the Law Revision Counsel, U.S. House of Representatives, <https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid%3AUSC-prelim-title7-section1>.

⁶ *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87 (2d Cir. 2007).

ating the price decline. To prevent this conduct, ATSI had obtained from the buyers declarations that they would not short-sell and did not intend to resell the shares.

The third jurisdictional approach concerns the case *Markowski v. SEC*, 274 F.3d 525 (D.C. Cir. 2001).⁷

Michael J. Markowski was president, chief executive officer and majority shareholder of the brokerage house Global America Inc., while Joseph F. Riccio was also an employee of the company. Global America Inc. acted as market maker for the securities of a company called *Mountaintop*. According to the findings of the National Association of Securities Dealers, *Global America Inc.* artificially maintained the prices of Mountaintop's securities, in the sense that the firm bought these securities in order to support their apparent market price, entered buy quotations above the level necessary for acquisition, which did not reflect genuine demand, and bought up all Mountaintop securities not wanted by the market. The essential point is that these findings were not based on a quantitative analysis of the transactions, but on the statements of the firm's own staff. In practice, there was a distinction between the objective approach (requiring a false act or a transaction without economic substance) and the subjective approach (focused on manipulative intent). *Markowski* established the thesis that legitimate open-market transactions may breach the legislation if they are executed with the intent to influence the price. This intent-based approach is of direct relevance to contemporary litigation concerning algorithmic manipulation.

The most significant recent jurisprudential development concerns precisely these algorithmic practices, as seen in *United States v. Coscia*, 866 F.3d 782 (7th Cir. 2017). Michael Coscia, a commodities trader, placed large orders through automated trading programs which he intended to cancel before execution, to create an illusion of market movement and to profit from the price variations thus induced. More specifically, Michael Coscia commissioned and used algorithmic trading programs to manipulate the prices of commodity *futures* contracts. The trader simultaneously placed orders of different sizes on either side of the current market price. The large orders were intended never to be executed, their role being that of bait, creating a false appearance of supply or demand that artificially shifted the price. As soon as the market reacted, the trader executed the small, genuine order, profiting from the induced movement, after which he cancelled the large orders.⁸

The court held that placing an order with the intent to cancel it before execution was unlawful.

⁷ *Markowski v. SEC*, 274 F.3d 525 (D.C. Cir. 2001).

⁸ *United States v. Coscia*, 866 F.3d 782 (7th Cir. 2017).

2.2. Capital Market Manipulation in Canada

Canada presents a distinct institutional architecture, in which the regulation of securities falls, in principle, within the competence of the constituent provinces, while criminal law is regulated at the federal level. The Canadian Criminal Code criminalizes the fraudulent manipulation of stock-exchange transactions.⁹

The most important decision of the Canadian Supreme Court in this field is in *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28¹⁰. The facts were as follows. The Poonian spouses, Canadian citizens, orchestrated between 2007 and 2009 a scheme to manipulate the share price of a listed oil company called *OSE Corp.* The mechanism consisted in artificially raising the share price, followed by its sale, at overvalued prices, to vulnerable investors, some of whom were persuaded to unlock their retirement savings to buy the securities, suffering losses of millions of dollars.

In another case, resolved by an administrative tribunal (the British Columbia Securities Commission) and not by a court of law, but of equal importance, namely *Re Lim (David Tuan Seng Lim and Michael Mugford)*¹¹, it was found, as in *Poonian v. British Columbia*, that an investment adviser and an associate of his had created an artificial price for the shares of Urban Barns, a shell company, by financing a crude promotional campaign designed to induce in the reader the mistaken belief that the shares were worth far more than they actually were.

2.3. Capital Market Manipulation in the European Union

Union law has evolved from Directive 2003/6/EC on market abuse (the Market Abuse Directive, abbreviated MAD) to the current dual regime of Regulation (EU) No 596/2014 on market abuse (the Market Abuse Regulation, abbreviated MAR), of direct applicability, and Directive 2014/57/EU on criminal sanctions for market abuse, which requires Member States to criminalize serious forms of manipulation. The Regulation defines market manipulation by reference to transactions and orders that give or are likely to give false or misleading signals as to supply, demand or price, those that fix the price at an abnormal or artificial level, the resort to fictitious or deceptive devices, and the dissemination of false information.

⁹ Criminal Code, R.S.C. 1985, c. C-46, s. 382, Justice Laws Website, <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-382.html>.

¹⁰ *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28 (Supreme Court of Canada, July 31, 2024), <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20555/index.do>.

¹¹ *Re Lim*, 2017 BCSECCOM 196 (British Columbia Securities Commission, June 5, 2017), <https://www.bsc.bc.ca/-/media/PWS/Resources/Enforcement/Decisions/2017/2017-BCSECCOM-196.pdf>.

A particularity of the European system is that the Court of Justice of the European Union does not adjudicate manipulation cases on their merits, but rules only on the interpretation of Union law, its judgments being subsequently applied by the national courts. The relevant CJEU case law is thus grouped around two axes, namely the substantive delimitation of concepts and the fundamental procedural guarantees.

In *Ipourgos Ikonomikon and Proistamenos DOI Amfissas v. Charilaos Georgakis*, C-391/04 (judgment of 10 May 2007)¹², the CJEU was seised of a situation in which a group of shareholders of a company had agreed in advance on reciprocal transactions intended to artificially support the price of the securities.

The dispute concerned the interpretation of Articles 1 to 4 of Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing (OJ 1989 L 334, p. 30). The concepts at the heart of the interpretation were those of “inside information” (Article 1) and of taking advantage “with full knowledge of the facts” of such information (Article 2).

Following the stock-market crisis of November 1996, the Greek authorities investigated transactions in the shares of the companies Parnassos and Atemke. Mr Georgakis and several members of his family (the “Georgakis group”) were the principal shareholders of Parnassos and, at the same time, members of the boards of directors of Parnassos and Atemke, holding management positions. On the recommendation of their financial advisers, the members of the group decided to support the price of the Parnassos shares at a time when their value was under downward pressure, carrying out among themselves various sale, purchase and repurchase operations. These transactions were agreed upon in advance and sought to artificially increase the trading volume to give a misleading impression of the value of the securities. The Capital Markets Commission imposed a fine on Mr. Georgakis, taking the view that he had carried out operations using inside information.

The Court followed a multi-stage line of reasoning. First, it found that a mere recommendation by financial advisers, based on expert analysis, does not meet the cumulative conditions of “inside information”, and that those advisers were not in any of the situations provided for in Article 2 of the Directive; consequently, the members of the group had not acted on the basis of information obtained from the categories of persons covered by the Directive.

Secondly, the Court held that the group’s decision to support the shares established a common position, and that knowledge of the existence and content of that decision constituted, for those who participated in its adoption, inside information within the meaning of Article 1(1).

Thirdly, the Court emphasized that the purpose of Article 2 of Directive

¹² David Moalem and Jesper Lau Hansen, “Insider Dealing and Parity of Information: Is Georgakis Still Valid?,” *European Business Law Review* 19, no. 5 (2008): 949–84, <https://doi.org/10.54648/EULR2008046>.

89/592 was to ensure equality between the contracting parties in stock-exchange transactions, by preventing one of them, who holds inside information and is thus in an advantageous position vis-à-vis the other investors, from profiting from it to the detriment of the party unaware of it.

In the broader context of the concept of market abuse, the CJEU clarified the notion of inside information in cases such as *Spector Photo Group, C-45/08 (2009)*¹³, which concerns Directive 2003/6/EC, *Markus Geltl v. Daimler AG, C-19/11 (2012)*¹⁴, and *Lafonta v. Autorité des marchés financiers, C-628/13 (2015)*¹⁵, the latter holding that, in order to be inside information, the information need not make it possible to anticipate the precise direction of the movement of the share price.

In *Spector Photo Group*, a listed company governed by Belgian law, it established a profit-sharing scheme for employees, under which it offered them share options. To implement the scheme, the company intended to use the shares it held and, if necessary, to buy shares on the market. On 21 May 2003, Spector informed Euronext Brussels of its intention to implement the option scheme and to buy a certain number of its own shares. On 11 and 13 August 2003, Mr Van Raemdonck placed two purchase orders on behalf of the company, which acquired 19,773 shares at an average price of EUR 9.97; subsequently, because of good performance and the publication of certain information, the share price rose, reaching EUR 12.50 on 31 December 2003.

As regards *Markus Geltl v. Daimler AG*, the judgment delivered is a leading authority on the definition of inside information in staggered decision-making processes. It establishes the principle that intermediate steps may each, individually, trigger the disclosure obligation, which has major practical consequences for issuers regarding the timing of communication to the market.

The most influential European jurisprudential contribution in the matter of manipulation concerns, paradoxically, not the definition of the act, but the limits on the accumulation of sanctions (or, more precisely, the *ne bis in idem* principle).

This is illustrated by *Garlsson Real Estate SA and others v. Commissione Nazionale per le Società e la Borsa (Consob), C-537/16*¹⁶. In that case, the Italian National Commission for Companies and the Stock Exchange imposed on Mr Stefano Ricucci and certain undertakings an administrative fine of EUR 10.2 million for market manipulation, committed through operations on the shares of a

¹³ *Spector Photo Group NV and Chris Van Raemdonck v. Commissie voor het Bank-, Financie- en Assurantiewezen (CBFA)*, Case C-45/08, ECLI:EU:C:2009:806 (CJEU, December 23, 2009).

¹⁴ Alexander Hellgardt, "The Notion of Inside Information in the Market Abuse Directive: Geltl," *Common Market Law Review* 50, no. 3 (2013): 861–74, <https://doi.org/10.54648/COLA2013087>.

¹⁵ Thierry Bonneau, "XVIII. Banque et finances – Cour de justice, 2e ch., 11 mars 2015, Jean-Bernard Lafonta c/ Autorité des marchés financier, aff. C-628/13," in *Jurisprudence de la CJUE 2015: Décisions et commentaires*, ed. Fabrice Picod (Brussels: Bruylant, 2016), 690–91.

¹⁶ Gianni Lo Schiavo, "The Principle of Ne Bis in Idem and the Application of Criminal Sanctions: Of Scope and Restrictions," *European Constitutional Law Review* 14, no. 3 (2018): 644–63, <https://doi.org/10.1017/S1574019618000263>.

listed company. For the same acts, criminal proceedings were also brought against Mr Ricucci, ending in a criminal conviction that became final (handed down following a plea agreement, the penalty being subsequently partly extinguished by pardon). Nevertheless, the administrative-sanction proceedings continued, the challenge against the fine reaching the Court of Cassation, which referred the matter to the CJEU.

The Court held, first, that the administrative sanction was criminal in nature and that a fine of such gravity, with a punitive purpose, is criminal in character, beyond its formal classification as “administrative” under Italian law. Secondly, the Court confirmed that the relevant criterion is the identity of the material facts, the same set of concrete circumstances, inextricably linked, concerning the same person, irrespective of their legal classification or the legal interest protected.

The same logic was extended in the joined cases *Enzo Di Puma v. Consob and Consob v. Antonio Zecca*, C-596/16 and C-597/16¹⁷, concerning insider dealing, where the CJEU addressed the effects of a final criminal acquittal on subsequent administrative proceedings.

2.4. Capital Market Manipulation in Japan

Japanese capital market law is codified in the Financial Instruments and Exchange Act (FIEA)¹⁸. The system combines a general anti-fraud prohibition (Article 157 of the FIEA)¹⁹ and the prohibition of spreading rumors or using fraudulent means (Article 158)²⁰ with a detailed and casuistic regulation of manipulation in Article 159²¹. The latter prohibits, among other things, fictitious transactions (so-called *wash sales*) and orders agreed in advance between the parties (so-called *matched orders*) intended to create a false appearance of active trading.

The most important recent case in this field is the case of *SMBC Nikko Securities, the brokerage subsidiary of Sumitomo Mitsui Financial Group*²². The incriminated conduct consisted in placing, before the close of the trading session, massive proprietary buying orders intended to artificially support the price of certain shares, so that the price thus obtained would serve as an advantageous benchmark for the subsequent overnight block sales of shares carried out on behalf of clients.

¹⁷ Lo Schiavo, “The Principle of Ne Bis in Idem,” 644–63.

¹⁸ Financial Instruments and Exchange Act (Act No. 25 of 1948), arts. 157–159, Japanese Law Translation, <https://www.japaneselawtranslation.go.jp/en/laws/view/2355/en>.

¹⁹ Financial Instruments and Exchange Act, art. 157.

²⁰ Financial Instruments and Exchange Act, art. 158.

²¹ Financial Instruments and Exchange Act, art. 159.

²² Takashi Nakamichi and Ryo Horiuchi, “Ex-SMBC Nikko Managers Found Guilty in Market Rigging Case,” Bloomberg News, July 22, 2025, <https://news.bloomberglaw.com/capital-markets/ex-smbc-nikko-managers-face-verdicts-in-market-manipulation-case>.

The Japanese courts sanctioned the manipulative conduct both regarding the company SMBC Nikko, which was found guilty of market manipulation and fined 700 million yen, together with the confiscation of approximately 4.47 billion yen representing the gains obtained, and with regard to the natural persons in the company's management. In 2025, the court convicted the company's former directors for their role in artificially supporting prices ahead of block-offer operations, imposing suspended prison sentences.

The case is significant from several perspectives. First, it illustrates the regime of cumulative liability, of both the legal person (through the fine and confiscation) and the natural persons (through individual prison sentences). Secondly, the case highlights the legal risks for foreign professionals working in Japan, as in the situation of Carlos Ghosn, the former manager of the Renault-Nissan group.

2.5. Capital Market Manipulation in Australia

Australian law concentrates the prohibitions on improper conduct in the capital market in Article 1041 of the Corporations Act 2001.²³

This article is structured into several component parts, as follows: the provision of Article 1041A prohibits carrying out a transaction that has or is likely to have the effect of creating or maintaining an artificial price for trading in financial products on an Australian market. Article 1041B targets fictitious transactions and market rigging, while Article 1041C targets transactions without a change in beneficial ownership; Articles 1041E to 1041H cover false statements and misleading conduct. These prohibitions characteristically give rise to both criminal and civil liability.

The most important case is that in *Director of Public Prosecutions (Cth) v JM [2013] HCA 30*.²⁴

The case concerned a subtle form of market manipulation, through strategic trading and not through the dissemination of false information. The accused was the chief executive officer and director of a company called "X Ltd", listed on the Australian Securities Exchange (ASX). A company associated with him, called "Z ApS", had exercised several transactions in the shares of X Ltd, the financing of the investment of approximately AUD 10 million being provided by Opes Prime Securities in exchange for a security constituted over the shares and options. Under the agreement, the accused had to maintain collateral with a value of at least four times the loan amount, Opes valuing the collateral daily based on

²³ Corporations Act 2001 (Cth), ss. 1041A–1041H, Federal Register of Legislation, <https://www.legislation.gov.au/C2004A00818/latest>.

²⁴ Ann O'Connell, "Protecting the Integrity of Securities Markets—What Is an 'Artificial Price'?": DPP (Cth) v JM," *Opinions on High* (Melbourne Law School), August 1, 2013, <https://blogs.unimelb.edu.au/opinionsonhigh/2013/08/01/o-connell-jm/>.

the closing price of the “X Ltd” shares; if the price fell below the required threshold, Opes could react on account of the potential loss.

In agreement with her father, the accused’s daughter (on behalf of a company controlled by her husband) bought “X Ltd” shares in order to prevent the day’s closing price from falling below the value that would have triggered the reaction on her father’s loan; the purchase was allegedly carried out with the sole, or at least dominant, purpose of preventing such an outcome, and the transaction allegedly had the effect of creating or maintaining an artificial price. The accused was sent to trial for market manipulation and conspiracy to commit that offence. The essential question, therefore, was the meaning of the notion of artificial price. Previously, a lower court had adopted a restrictive interpretation, according to which Article 1041A targeted only manipulation of the supply-control type. The High Court of Australia rejected this interpretation. It held that Article 1041A covers transactions carried out by a buyer or seller on the market with the sole or dominant purpose of setting or maintaining the price at a level that does not reflect the genuine interplay of supply and demand on an open market.

Other relevant cases were the *Bank Bill Swap Rate (BBSW)* cases²⁵, concerning an essential benchmark of the Australian money market. They relate to the proceedings initiated by the Australian Securities and Investments Commission against the four major Australian banks, with the object of manipulating the *Bank Bill Swap Rate* benchmark. In essence, it was found that one company, Westpac, traded with the dominant purpose of influencing the yields relevant to the setting of the BBSW in a manner favorable to itself. Unlike *Westpac*, the other banks concerned entered settlements with ASIC, acknowledging improper conduct. The case demonstrated that, regarding genuine transactions, the boundary between legitimate commercial behavior and manipulation is particularly fine.

2.6. Capital Market Manipulation in Romania

As we have shown, capital market manipulation is regulated both at European level, with direct applicability to acts committed in Romania, and at national level, through Law No 24/2017 on issuers of financial instruments and market operations (republished).

In the national jurisdiction, the act of manipulation has been conditioned on the typicity of the offence, attached to its objective side (the *actus reus*). In the case law, it was held that “following the legislative amendments, the alleged acts of capital market manipulation lack an element of objective typicity, namely the condition of influencing the price; the consequence being that, in the absence of this condition introduced by the new law, the alleged act in accordance with the old law was decriminalized, so that the defendant could not be convicted of these

²⁵ *Australian Securities and Investments Commission v. Westpac Banking Corporation (No 2)* [2018] FCA 751 (Federal Court of Australia, May 24, 2018), <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2018/2018fca0751>.

acts, and the plea agreement had to be rejected”²⁶

According to another decision, it was held that the defendant “could not be sent to trial for the act of capital market manipulation because, at the time the criminal investigation was carried out, there already existed settled domestic case law to the effect that this type of offence is not possible on the RASDAQ over-the-counter market, since the latter did not meet the criteria of a regulated market expressly provided for by the criminal law. In this respect, reference was made to the Judgment of the Court of Justice of the European Union (Second Chamber) of 22 March 2012, delivered in Case C-248/11”²⁷

National practice is significantly influenced by the amendments to the criminal legislation, which have led either to the limitation period barring criminal liability or to the absence of the material elements of the offence of capital market manipulation.

3. Conclusions

Business criminal law in general, and capital market manipulation in particular, highlight the predominantly intentional nature of business crimes, the technical complexity of the applicable rules, and the central role played by the criminal liability of legal entities²⁸.

In conclusion, it should be noted that capital market manipulation takes appreciably different normative and jurisprudential forms. The distinction between legitimate market conduct and manipulation may be drawn by verifying the existence of an additional fictitious or deceptive element (the American orientation), the requirement of a specific subjective purpose objectively inferred (the Japanese model), and the objective criterion of the artificial price (the Australian model).

The leading judgments identified together outline a comparative case law on manipulation in full maturation, confronted at once with the technological innovation of trading and with the requirements of fundamental guarantees. The effectiveness of combating manipulation depends on the clarity of the element that distinguishes the offence from lawful conduct and on the coherence of the architecture articulating criminal, administrative and civil liability, without, however, infringing the *ne bis in idem* principle.

²⁶ Înalta Curte de Casație și Justiție, Secția penală, Decizia nr. 37/RC/2021, Sintact, <https://sintact.ro/#/jurisprudence/520852762>.

²⁷ Înalta Curte de Casație și Justiție, Secția penală, Decizia nr. 668/RC/2023, Sintact, <https://sintact.ro/#/jurisprudence/520876403/>.

²⁸ Claudiu-Gabriel Galu, *Dreptul afacerilor* (Bucharest: C.H. Beck, 2026); Claudiu Galu, *Dreptul de regres. Regresul în dreptul afacerilor* (Bucharest: C.H. Beck, 2020); Claudiu-Gabriel Galu, “Acțiune în anularea unei hotărâri a adunării generale a asociaților unei societăți cu răspundere limitată. Succintă cercetare între calea dreptului special și cea a dreptului comun privind acțiunea în declararea nulității unei hotărâri a adunării generale,” *Pandectele Române*, no. 5 (2025): 75–90.

Bibliography

I. Books and Articles

1. Bonneau, Thierry. "XVIII. Banque et finances – Cour de justice, 2e ch., 11 mars 2015, Jean-Bernard Lafonta c/ Autorité des marchés financier, aff. C-628/13." In *Jurisprudence de la CJUE 2015: Décisions et commentaires*, edited by Fabrice Picod, 690–91. Brussels: Bruylant, 2016.
2. Galu, Claudiu-Gabriel. *Dreptul afacerilor*. Bucharest: C.H. Beck, 2026.
3. Galu, Claudiu. *Dreptul de regres. Regresul în dreptul afacerilor*. Bucharest: C.H. Beck, 2020.
4. Galu, Claudiu-Gabriel. "Acțiune în anularea unei hotărâri a adunării generale a asociațiilor unei societăți cu răspundere limitată. Succintă cercetare între calea dreptului special și cea a dreptului comun privind acțiunea în declararea nulității unei hotărâri a adunării generale." *Pandectele Române*, no. 5 (2025): 75–90. <https://pandectele.ro/actiune-in-anularea-unei-hotarari-a-adunarii-generale-a-asociațiilor-unei-societati-cu-raspundere-limitata-succinta-cercetare-intre-calea-dreptului-special-si-cea-a-dreptului-comun-privind-actiunea-in/>.
5. Hellgardt, Alexander. "The Notion of Inside Information in the Market Abuse Directive: Geltl." *Common Market Law Review* 50, no. 3 (2013): 861–74. <https://doi.org/10.54648/COLA2013087>.
6. Lange, Ann-Christina, Marc Lenglet, and Robert Seyfert. "High-Frequency Trading, Spoofing and Conflicting Epistemic Regimes: Accounting for Market Abuse in the Age of Algorithms." *Economy and Society* 53, no. 4 (2024): 603–626. <https://doi.org/10.1080/03085147.2024.2413809>.
7. Lo Schiavo, Gianni. "The Principle of Ne Bis in Idem and the Application of Criminal Sanctions: Of Scope and Restrictions." *European Constitutional Law Review* 14, no. 3 (2018): 644–63. <https://doi.org/10.1017/S1574019618000263>.
8. Moalem, David, and Jesper Lau Hansen. "Insider Dealing and Parity of Information: Is Georgakis Still Valid?" *European Business Law Review* 19, no. 5 (2008): 949–84. <https://doi.org/10.54648/EULR2008046>.
9. Nakamichi, Takashi, and Ryo Horiuchi. "Ex-SMBC Nikko Managers Found Guilty in Market Rigging Case." Bloomberg News, July 22, 2025. <https://news.bloomberglaw.com/capital-markets/ex-smbc-nikko-managers-face-verdicts-in-market-manipulation-case>.
10. O'Connell, Ann. "Protecting the Integrity of Securities Markets—What Is an 'Artificial Price'?": DPP (Cth) v JM." *Opinions on High*, Melbourne Law School, August 1, 2013. <https://blogs.unimelb.edu.au/opinionsonhigh/2013/08/01/o-connell-jm/>.

II. Legislation and Official Sources

1. Australia. *Corporations Act 2001* (Cth), ss. 1041A–1041H. Federal Register of Legislation. <https://www.legislation.gov.au/C2004A00818/latest>.
2. Canada. *Criminal Code*, R.S.C. 1985, c. C-46, s. 382. Justice Laws Website. <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-382.html>.

3. Japan. *Financial Instruments and Exchange Act* (Act No. 25 of 1948), arts. 157–159. Japanese Law Translation. <https://www.japaneselawtranslation.go.jp/en/laws/view/2355/en>.
4. United States. *Commodity Exchange Act*, 7 U.S.C. § 1 et seq. Office of the Law Revision Counsel, U.S. House of Representatives. <https://uscode.house.gov/view.xhtml?edition=prelim&num=0&req=granuleid%3AUSC-prelim-title7-section1>.
5. United States. *Securities Exchange Act of 1934*, 15 U.S.C. §§ 78i(a), 78j(b). Office of the Law Revision Counsel, U.S. House of Representatives. <https://uscode.house.gov/view.xhtml?req=%28title%3A15+section%3A78i+edition%3Aprelim%29>.

III. Cases and Decisions

1. *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87 (2d Cir. 2007).
2. *Australian Securities and Investments Commission v. Westpac Banking Corporation (No 2)* [2018] FCA 751 (Federal Court of Australia, May 24, 2018). <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2018/2018fca0751>.
3. *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30, 250 CLR 135 (High Court of Australia, June 27, 2013).
4. *Enzo Di Puma v. Commissione Nazionale per le Società e la Borsa (Consob) and Consob v. Antonio Zecca*, Joined Cases C-596/16 and C-597/16, ECLI:EU:C:2018:192 (CJEU, March 20, 2018). <https://eur-lex.europa.eu/legal-content/EN/CASE/?uri=celex%3A62016CJ0596>.
5. *Garlsson Real Estate SA and Others v. Commissione Nazionale per le Società e la Borsa (Consob)*, Case C-537/16, ECLI:EU:C:2018:193 (CJEU, March 20, 2018). <https://eur-lex.europa.eu/legal-content/EN/CASE/?uri=celex%3A62016CJ0537>.
6. *Jean-Bernard Lafonta v. Autorité des marchés financiers*, Case C-628/13, ECLI:EU:C:2015:162 (CJEU, March 11, 2015).
7. *Markus Geltl v. Daimler AG*, Case C-19/11, ECLI:EU:C:2012:397 (CJEU, June 28, 2012).
8. *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28 (Supreme Court of Canada, July 31, 2024). <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20555/index.do>.
9. *Re Lim*, 2017 BCSECCOM 196 (British Columbia Securities Commission, June 5, 2017). <https://www.bsc.bc.ca/-/media/PWS/Resources/Enforcement/Decisions/2017/2017-BCSECCOM-196.pdf>.
10. *Spector Photo Group NV and Chris Van Raemdonck v. Commissie voor het Bank-, Financie- en Assurantiewezen (CBFA)*, Case C-45/08, ECLI:EU:C:2009:806 (CJEU, December 23, 2009).
11. *Ypourgos Oikonomikon and Proïstamenos DOY Amfissas v. Charilaos Georgakis*, Case C-391/04, ECLI:EU:C:2007:272 (CJEU, May 10, 2007).