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ANALYZING THE FORMS OF MARKET ABUSE: MARKET MANIPULATION AND INSIDER TRADING

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ABSTRACT

Market abuse is a broad term which defines any action that disadvantages other investors in a qualifying trading platform or market. Two major types of market abuse are ‘Market Manipulation’ and ‘Insider Trading.’ Market manipulation is referred to as an act of attempting to deceive the investors by way of misleading appearances of the price of security or commodity or any other financial instruments. This can be achieved through ‘Pump and Dump Schemes’ and ‘Spoofing and Layering’, which are called types of market manipulation. Market manipulation can be challenging for the regulators to detect and prove. Certain ways have to be taken into consideration to prevent market manipulation and safeguard the investors. Insider trading indicates the illegal practice which is conducted by the employees or directors of a company, wherein they supply crucial information related to the stocks to the third parties. Insider trading can be illegal as well as legal. Challenges come into the picture when detecting insider trading practice. Various effective ways can be noted for the prevention of insider trading in the company.

Keywords: Market abuse, Market manipulation, Insider trading, Challenges while detection, Tactics for prevention, Illegal and legal insider trading.

I. Introduction

Corporate fraud has always been an issue in the global economy. It seems that both its frequency and scale have been growing over the time. Corporate frauds generally refer to the activities that are illegal and are undertaken by an individual or an organisation or a company. As per the Companies Act, 2013, corporate fraud means undertaking of an illegal activity by an individual or company, with an intent of deceiving and gaining undue profits or impose an injury upon the interests of company or its shareholder or investors[703]. Corporate frauds damage a company’s reputation, erodes confidence in the financial markets, and can have a significant impact on workers or employees, investors and the overall economy. Corporate frauds frequently stem from a desire for organisational or personal gains at the expense of stakeholders and can result in fines, legal action and long term harm to one’s reputation. Corporate frauds and market abuse are closely linked to each other. Like corporate frauds, even market abuse is a term that identifies any act that disadvantages investors in a trading platform.[704] Both have the potential to cause significant damage to the financial health of investors. Market abuse basically refers to the behaviours that complicate the fair functioning of financial market. It involves unethical or illegal methods to manipulate the markets. There are two major types of market abuse. They are:

1. Market manipulation
2. Insider trading

[703] Corporate fraud under the Companies Act, 2013 https://www.geeksforgeeks.org/corporate-frauds-under-companies-act-2013/#what-is-corporate-fraud-under-companies-act-2013

[704] Market abuse https://www.barclays.co.uk/smart-investor/important-information/what-is-market-abuse

The main aim of market abuse is to manipulate the trading activity and prices of financial instruments. Such practices sabotages investor's confidence and affects financial markets. The Securities and Exchange Board of India (SEBI) is the primary regulatory body which is responsible for monitoring the market conduct. A strict regulatory framework has been established by the Securities and Exchange Board of India (SEBI) to identify and stop market abuse in India. Among the important laws that govern and control these sorts of activities are the Securities Contracts (Regulation) Act of 1956 and the Prevention of Insider Trading Regulations of 2015. Those found guilty for such manipulative activities may face the following-

1. Fines
2. Suspension
3. Criminal prosecution

Securities and Exchange Board of India's surveillance systems monitor odd trading patterns and look into suspicious activity. To ensure that India's financial markets run fairly and openly, SEBI has increased its emphasis in the recent years on high frequency trading, algorithmic trading and the use of technology to stop the manipulation. SEBI strives to protect the investor interests and promote confidence in the Indian financial markets by reducing the market abuse.

II. Market Manipulation

Market manipulation is considered as one of the most destructive hazards to the investor's trust as well as market integrity in the world of finance. Market manipulation consists of certain actions which are undertaken by an individual or groups in order to artificially influence the price of a security or any other financial instrument. Market manipulation is very much vital to perceive, for not just regulators but for anyone who participates in the financial market, for example, investors. It is an intentional attempt to obstruct the free as well as equitable functioning of financial markets. The obstruction or interference is done by fabricating or misrepresenting the price value of security or commodity or any other financial instruments. Market manipulation can be achieved by various practices. Such practices are known as types of market manipulation. [705]

A. Types of Market Manipulation

There are several types of market manipulation, each with its own methods. Understanding the types of market manipulation us vital for ensuring that the financial markets remain in a transparent, trustworthy as well as efficient position. Here are two major types of market manipulation:

1. Pump and dump scheme – A pump and dump scheme is a kind of securities fraud. It is a fraud in which the price of a security is artificially inflated (pump) by making false or inflated claims about it. Then the fraudster takes advantage of the inflation of price by selling the securities immediately and at a high price (dump). [706] A substantial loss of the capital will be faced by the new owner because the price of securities will fall quickly. This is considered as an illegal or unethical activity. Such practice will lead to loss of significant portion of money of investors.
   The fraudster spread misleading information. Such false information can be spread through:
   i. Social media
   ii. Investment related websites
   iii. Emails
   iv. Newspapers
   v. Magazines, etc. [707]
2. Spoofing and layering – Spoofing and layering is a strategy of market manipulation where a market participant manipulates the market by placing a large number of buy or sell orders on one side of the order book in an attempt to artificially create the

[705] market manipulation https://www.sanctionscanner.com/knowledge-base/market-manipulation-900

[706] pump and dump https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/pump-and-dump/

[707] https://www.investor.gov/introduction-investing/investing-basics/glossary/pump-and-dump-schemes

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appearance of substantial supply or demand. The true intent of the manipulator is to execute trade on the opposite side of the order book, which means they wish to purchase or sell the asset in the opposite sequence. The manipulator begins with the placement of large number of buy or sell orders for the same financial asset on the opposite side of the order book. The manipulator then waits for other traders to react to the apparent significant demand or supply by placing their own orders in the same direction. The manipulator executes trades in the opposite direction from how they initially appeared after other traders have reacted or responded and the market has moved in the desired direction. If the manipulator created a false demand, they could sell the asset for more money, or if they created a false supply, they could buy it for less money. Other investors may suffer losses because of being deceived by the initial appearance. [708]

B. Regulatory Challenges / Challenges while detecting and proving Market Manipulation

As market manipulation purposely involves distorting financial markets for personal gains, it raises severe regulatory issues and imposes threats upon investor's confidence and fairness in the market. Regulatory agencies or regulatory bodies face difficulty while identifying and eradicating such manipulative practice. Following are the challenges that occurs while taking action against the market manipulation – [709]

1. The standard of proof for civil, administrative and criminal actions fluctuates in many jurisdictions. In criminal proceedings, highest standard of proof will be needed. In all the three categories of cases, it is frequently challenging for the regulatory body to gather direct evidence of the manipulation. In certain instance the regulatory body may be able to do so when a co - conspirator testifies or attests that they and the defendant had an intention to manipulate the price of a particular security or any other financial instrument.
2. If the charge of manipulation is based on trading, then the regulatory body will have to generate or produce a chart of transactions as soon as required data is obtained. The investigators may think for utilising statistical analysis in addition of charts. This is to be done to show that there was an intention and to contradict the claim that the trading was carried out for genuine business reasons. The data can be arranged and analysed with the assistance of both internal as well as external consultants and professionals.
3. Professionals with current experience from the industry can help the investigators with the enquiries or investigations and prosecutions by giving a detailed explanation of what would be regarded as legitimate activity or normal market behaviour. Such kind of knowledge can be helpful to the investigators in finding the evidence that can be useful for disproving the defences which are made during the prosecution. The extent to which an expert witness can determine whether there was occurrence of manipulation from trading patterns and additional data may be restricted by the jurisdiction's procedural regulations.

C. Solutions for Market Manipulation

A complex strategy that incorporates strong regulatory frameworks and technological innovations is needed to combat the market manipulation. Following can be useful for

[708] Spoofing layering
https://www.afterdata.com/en/market-abuse-spoofing-layering/
[709] challenges in taking action against manipulation
https://www.iosco.org/library/pubdocs/pdf/ioscopd103.pdf

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detection and prevention of market manipulation – [710]

1. In the era of digitalization, technology is very much necessary in order to determine and make an attempt to restrict the market manipulation. The use of sophisticated algorithms and machine learning techniques to track the trading activity in real time and spot trends and irregularities that might point to manipulative activity is expanding. These technologies facilitate rapid and precise detection by identifying suspicious activity for additional investigation.
2. Regulatory body or agency like The Securities and Exchange Board of India (SEBI) have been leading the charge to prevent the market manipulation. strict policies, regulations and procedures have been put in place by such organisations to identify, dissuade and penalize the manipulative behaviour.
3. Along with regulatory bodies and technological advancement, individual investors must also be vigilant in preventing and detecting the market manipulation. Some of the best practices that all the investors must follow are as follows –
    a. Stay informed and have adequate knowledge about the market and regulatory developments.
    b. The hazards of the market manipulation in any one of the security or industry can be diminished with the diversification.
    c. Make doubly sure that your broker has a solid and decent track record.
    d. Assure that the broker is registered with the competent and proper authorities.
    e. An investment opportunity is perhaps most likely fraudulent or illegitimate if it appears too good to be true. Before choosing to make any investments, an extensive due diligence is important to be conducted.
    f. Investigate and analyse your investment portfolio regularly and keep an eye out for any anomalies or inconsistencies. Investors can strengthen their defences against the market manipulation risks and help create a more open and equitable marketplace by implementing these best practices.

Understanding the importance of technology and efforts of the regulatory bodies and inculcating best practices for investors is very much vital for combating the market manipulation.

To sum it all up, market manipulation appears to be a major problem for the regulators, entailing constant adjustments to new trading techniques and technologies. Even though there has been progress in identifying and halting the manipulation, the sheer complexity of modern financial markets urges for a multifaceted strategy that incorporates cutting edge surveillance technologies, global collaboration as well as more robust enforcement.

Manipulators trick other investors by faking the market conditions causing them to base their decisions on inaccurate or misleading information. In addition to undermining investors confidence, this interferes with the market's smooth operation and makes it more difficult for it to accurately reflect supply and demand. Globa regulatory bodies like Securities and Exchange Commission (SEC) and Securities and Exchange Board of India (SEBI) have put in place stringent regulations and enforcement actions to fight market manipulation. These steps are necessary to protect investors and preserve the stability of the larger financial system by ensuring that markets continue to be open, fair and reliable.

[710] how to detect and prevent market manipulation https://www.sanctionscanner.com/knowledge-base/market-manipulation-900

D. Real life examples

Following are a few of the notable real life examples of the market manipulation

J.P. Morgan Chase & Co. and HSBC market manipulation –

Investors related to this lawsuit were represented by the attorneys from Gibbs Law Group LLP in a class action lawsuit against J.P. Morgan Chase & Co. and HSBC, claiming that the banks had engaged in the antitrust violations by manipulating the prices of silver futures and option contracts. According to the class action, HSBC AND J.P. Morgan engaged in a massive coordinated trading to artificially depress the price of silver, thereby manipulating the market. According to the class action lawsuit, these banks hurt investors and repressed the competition by lowering the price of silver, resulting in significant unlawful profits.[711]

The Satyam Computer Services Scam –

In 2009, Satyam Computer Services, an Indian IT company, overstated its earnings by Rs.7,800 crore (roughly $1 billion USD). Following the company's founder, Ramalinga Raju, a new chairman was appointed. He admitted to the offense. The Satyam Computer Services scam remains a key lesson in the importance of corporate governance, ethical business practices and the need for vigilant oversight in the financial reporting.

Enron scandal –

In 2001, Enron, an energy company, falsified its financial reports in order to conceal its actual financial situation and raise the value of its stocks. It manipulated its financial statements to create the illusion of profitability. The executives used complex accounting tricks and special purpose entities to hide debt and inflate profits. They also manipulated the energy markets by creating artificial shortages and driving up prices. The manipulation led to the company's collapse. As a result, the business was filed for bankruptcy and several executives were charged. [712]

III. Insider Trading

Insider trading refers to the illegal act or practice of trading stocks or other securities based on non-public material information about a company. In simple words, insider trading is an act of buying or selling stock in a publicly traded company while in the possession of some important material information that is not yet known to the public. The term 'material information' signifies any information that could significantly influence or have an impact on the investor's choice to purchase or sell the security. The person who has the access to such confidential material information uses it to buy or sell stocks, often to make a profit out of it or to avoid any loss. It is an illegal activity because it creates an uneven and unfair playing field, providing an unfair advantage to some investors over others. Relying on the jurisdiction, the term 'insider' can mean numerous different things. Some may adhere to a restrictive definition, classifying as 'insiders' only those individuals or employees of the business who have direct access to the information. However, some people might also view those who are related to the company officials as 'insiders.' [713]

Following can be recognised as types of insiders

1. Corporate insiders: employees or directors of the company.
2. Significant shareholders: shareholders who hold or own more than 10% of a company's securities.
3. Temporary insiders: persons who receive material and non-public piece of information under a duty of trust. For example, lawyers, accountants, etc. [714]

[711] https://www.classlawgroup.com/securities-fraud/stock/market-manipulation/examples

[712] https://kkc.com/frequently-asked-questions/what-is-market-manipulation

[713] what is insider trading https://corporatefinanceinstitute.com/resources/wealth-management/what-is-insider-trading/

[714] insiders https://www.investopedia.com/terms/i/insidertrading.asp

A. Legal Insider Trading and Illegal Insider Trading

Insiders are authorised by law to buy and sell the stock in the company and any subsidiaries in which they work. Nevertheless, advance filings and proper registration with Securities and Exchange Commission (SEC) are vital for such transactions. Legal insider trading frequently occurs when a CEO repurchases company stock or when other employees buy stock in the company they work for. The movement in price of the stock that a CEO owns can often be influenced by their share purchases.

The unlawful use of material non-public information for profit or gain is a notorious type of insider trading. It is very crucial to keep in mind that anyone can do this, whether be business executives, their friends, family or simply an ordinary citizen as long as the information is kept a secret, that means it is non-public.

Legal insider trading occurs when the executives, directors or major shareholders of a company engage in the activity of buying or selling their company's shares or stock while adhering to specific regulations. Conversely, illegal insider trading takes place when individuals trade by utilising the confidential information, providing them with an unfair edge over other investors. Legal insider trades are visible and the information is accessible in the public databases, whereas illegal insider trades are secretive and are prohibited by the law. [715]

B. Regulatory Challenges / Challenges while detecting and proving Insider Trading

Detecting and proving of insider trading can be very difficult. It may impose certain challenges to the regulatory bodies or regulatory agencies due to the covert nature of the activity and the difficulties involved in gathering sufficient evidence. Following are the challenges which are faced by the regulatory agencies in detecting and proving the activity of insider trading:

1. One of the major barriers is proving that the trade which occurred was based on material and non-public piece of information. The traders which are involved in such activity may try their best to take care to cover their tracks. This makes it hard to directly connect the trade to the insider knowledge.
2. The investigators or the regulators usually depend on the circumstantial evidence such as unusual trading patterns, but proving the intent or source of the information can be challenging.
3. Detection of insider trading poses a challenge due to the involvement of individuals with the access to the confidential information who may be hard to identify.
4. Another major challenge is that, insider trading can often resemble legitimate trading activities. It can be very difficult to differentiate insider trading with legal trading activities.
5. Insider trading can take place at various levels within the company, which complicates the identification of all the individuals involved. [716]

C. Solutions for Insider Trading

Insider trading is a very complicated issue that demands a diverse range of solutions. It is the top -level management's responsibility to necessitate rigorous and strict measures to ensure compliance and prevent the insider trading. Following are the ways through which the activity of insider trading can be restricted or prevented:

1. Restrict or limit information disclosure: extra caution should be taken into consideration while sharing or disclosing information with the employees. Specific issues critical to the company's standing should be limited to a small group of

[715] legal and illegal insider trading https://www.investopedia.com/ask/answers/what-exactly-is-insider-trading/

[716] challenges in insider trading detection https://fastercapital.com/topics/insider-trading-detection-mechanisms.html

employees to avoid unintended leaks and possible insider trading.

2. Educational initiatives: instructing or teaching the employees about legal limits is very essential. Making them aware of the confidential information and promote reporting any attempts to unlawful disclosure will be helpful to prevent the happening of insider trading.
3. Blackout periods: establish blackout periods that restrict the buying or selling of the company stock.
4. Trading windows: at the time of announcement of the earnings, implement trading windows that permit employees to purchase shares within the designated timeframes.
5. Exercise due diligence: during the hiring process, give careful background checks the top priority. Applicants with red flags pertaining to the corporate misconduct must be rejected as soon as possible.
6. Examine and revise lists of restrictions: review and update insider information lists from time to time in accordance with the market developments. Eliminate outdated information following formal announcements such as mergers.
7. Examine and update the policies regarding the insider trading: regularly updating insider trading policies will help to avoid stagnant management perceptions. Demonstrate commitment to stop unlawful activity by promptly updating the policies and regulations.
8. Keep an eye on the trading trends: another primary way to prevent insider trading is to keep a close eye on the trading activity of the company's shares. Examine sudden and abrupt changes in the sale or purchase activities that don't seem to be caused by the outside influences. [717]

In conclusion, the insider trading remains a significant challenge for the financial markets and regulators due to its nature and technological advancements. As the financial markets continue to evolve and grow, it will be necessary to adapt the regulatory approaches to address the challenges and maintain trust of the investors. Insider trading seriously compromises the fundamental values of openness and equal opportunity in the financial markets and is a breach of market justice. Insider traders create an unfair playing field where only a few people benefit while others are left at a disadvantage by using material, non – public information to obtain an unfair advantage in trading. In addition to hurting individual investors, this undermines market integrity and erodes faith in the financial system's fairness. Strict rules and sanctions are enforced by regulatory agencies such as the Securities and Exchange Commission (SEC) and Securities and Exchange Board of India (SEBI) to prevent insider trading and hold the playing field level. Detecting insider trading is very much important for maintaining the integrity and fairness of the financial markets. The primary importance of detecting insider trading lies in preserving the investor confidence. Because of such activity of insider trading, they may lose trust in the fairness of the market and be less willing to participate in the market. This can lead to diminished market liquidity as well as decline in the overall economic growth.

D. Real life examples

Following are a few of the notable real life examples of the activity of insider trading

Martha Stewart –

Martha Stewart, a very well-known American businesswoman and television personality was involved in a well-known insider trading case. In 2001, she received confidential information about the biopharmaceutical company ImClone systems that indicated the stock price would decline. Stewart protected herself from significant losses by selling off her ImClone shares prior to the such bad news being announced in the public. Stewart engaged in suspicious trading, which commanded

[717] prevention of insider trading https://enrichmoney.in/knowledge-center-chapter/steps-to-avoid-insider-trading

investigations. In 2004, she was found guilty of securities fraud, which included obstruction of justice and insider trading. The case resulted in Stewart's imprisonment and was a prominent example of the legal consequences and public scrutiny of the insider trading.

Reliance Industries –

Mumbai based multinational Reliance Industries Limited (RIL) was founded in the year 1960. Since, then it has grown to become one of the biggest and most valuable companies in India. Reliance Industries Limited operates in a number of industries, including petrochemicals, refining, oil and gas exploration, telecommunications, retail and media. Reliance Industries Limited was fined by Securities and Exchange Board of India (SEBI) and prohibited from trading in derivatives for a year. The company was accused by the exchange regulator of attempting to profit by lowering the cash market price of stock and circumventing limitations on its legally allowed trading limits.

Raj Rajaratnam -

Born in Sri Lanka, American hedge fund manager Rajaratnam was involved in one of the most prominent insider trading scandals in the recent history. In 2011, Rajaratnam was convicted of conspiracy and insider trading. He founded Galleon Group, a hedge fund company. Rajaratnam was found guilty of obtaining and utilising confidential information from managers at IBM, Intel and Goldman Sachs, among other companies. He committed crimes over a number of years, making huge profits for himself and his hedge fund. Rajaratnam was sent to prison for almost 11 years for one of the most severe insider trading convictions ever. [718]

IV. Conclusion

To summarize, insider trading and market manipulation are the grave examples of market abuse that seriously jeopardize the integrity and equity of financial markets. Market manipulation is the intentional use of strategies like artificial price inflation or the creation of fictitious market activity to skew the real supply and demand dynamics of securities. This practice gives manipulators unfair advantages by misleading investors, who might base their decisions on the skewed market signals. On the other hands, insider trading happens when people who have access to important, non – public information about a company trade its stocks before the information is made public. This creates an unfair trading environment by giving these investors an unfair advantage over other investors who do not have access to such information. In addition to hurting individual investors, these two actions have the potential to cause financial markets to become unstable overall. They undermine trust in the market's fairness and deter investors from participating out of concern that they will be disadvantaged. Furthermore, unrestrained market abuse can jeopardize the healthy operation of capital markets, which are essential for promoting economic expansion and effectively allocating resources. As a result, regulatory agencies such as the Securities and Exchange Board of India (SEBI) in India and Securities and Exchange Commission (SEC) in the United States have implemented strict measures to identify, stop, and penalize the market abuse. These authorities seek to preserve the market transparency, guarantee fair competition and rebuild investor confidence through surveillance programs, legislative measures and rigorous enforcement. Despite these regulations and regulatory authorities or regulatory bodies, market abuse remains a very serious concern, requiring vigilance, effective internal controls and robust as well as proper enforcement to prevent and address such unethical practices.

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[718] https://www.5paisa.com/blog/what-is-insider-trading

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6. https://www.afterdata.com/en/market-abuse-spoofing-layering/
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