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# Crimes of the Breaches of Trust and Equity in Financial Securities Trading

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**Abstract**

The study focused on crimes involving breaches of trust and equality in securities trading, particularly in stock markets. These markets hold significant economic value for people, investors, and financial institutions. This research aims to investigate crimes that may occur in the context of the stock market and trade and have a detrimental impact on the national economy. The primary objective of this study is to ascertain the fundamental legal framework governing the criminalization of illegal acts that disrupt securities trading, determine the extent of criminal liability and penalties for such acts, and evaluate the efficacy of UAE law in safeguarding financial securities markets through criminal legislation. The research primarily examines crimes involving breaches of trust and equality, as trust and equality serve as fundamental principles underpinning transactions in the stock market. Violating these principles can have detrimental consequences, impacting both investors engaged in market activities and the overall national economy. Numerous crimes are committed in the stock market that undermine trust and equality.

**Keywords:** Trust. Equality. Securities. Financial Market. Stock Exchange.

## Introduction

Stock markets play a crucial role in the economy by providing a sophisticated platform for investing excess funds and savings in productive sectors, facilitating financial transactions, and allowing shareholders to sell their shares or purchase additional ones.

The concept of financial markets is based on the correlation between market size and production volume. As projects grow in size and diversify their activities, their product distribution expands. This results in the emergence of large-scale production systems in the market, accompanied by the separation of ownership and management. Consequently, the demand for additional funding for these projects increases, leading to the establishment of financial institutions that gather savings from individuals and provide loans to support their commercial and investment endeavors. As the demand for funds from investors and partners exceeded the available supply in the financial market, the developed markets

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appeared and gave attention to the interest rates for loans and term deposits (Abdul Salam Al-Saeed Al-Ra'i, 2018).

As a result, the financial markets hold significant value for the economy at large, investors, and companies that issue securities for trading in the market. These markets provide companies with the funds they need to finance expansion and growth initiatives, as well as the capital required for investment projects. Moreover, they serve as a prerequisite for economic reform.

**Research Questions**

The issue being addressed in this study pertains to the adverse consequences of trust and equality violations in securities transactions, specifically the hindrance it poses to investors' ability to allocate their funds in the stock market effectively. This, in turn, results in detrimental effects on the overall national economy.

Consequently, the problem at hand raises the following inquiries:

1. What is the legal foundation for the criminalization of offenses involving breaches of trust and violations of equality in securities transactions?
2. What are the primary forms of crimes involving breaches of trust and equality in securities transactions?
3. In what manner has the UAE legislator responded to illegal activities or criminal activities that impact the securities trading industry?

**Study Methodology**

This study utilizes a descriptive-analytical approach to examine crimes involving trust and equality in securities transactions. We thoroughly analyze the available data and information to identify patterns and trends in the field. This will provide a comprehensive and realistic understanding of the challenges and issues related to trust and equality in the financial market. Exploring the factors that influence recent developments to uncover the origins of these crimes and provide valuable suggestions to build trust and encourage equality in the industry.

**Results and Discussion**

**A. The crime of disclosing professional secrecy and clients' identities in the stock market**

The legislator intends to make it a crime to disclose professional confidentialities to protect two interests: the first being the confidentiality of the secret owner, and the second being the integrity of the profession itself. The trust placed in professionals is what allows them to gain insight into the specifics of their work, and they are obligated to uphold this trust by safeguarding the confidentiality of their work and clients. This becomes even more crucial when these confidentialities pertain to matters of public interest and financial and economic activities within the state, such as the disclosure of professional secrecy and client names in the stock market.

**B. The concept of professional secrecy and the requirements it entails**

The Federal Penal Code does not provide a specific definition for professional secrecy, as the determination of confidentiality depends on various circumstances. What may be considered confidential for one person may not be deemed as such for another, and what may be considered confidential in certain situations may not be regarded as such in different scenarios. Thus, the definitions of professional secrecy in jurisprudence have been diverse. Some interpretations (Mahmoud Hussein Al-Wakeel, 2017) describe it as “a situation where knowledge is restricted to a select group of individuals, as long as there is a recognized interest (acknowledged by law) by one or more individuals, and the knowledge remains confined within that group.” If there is no desire for confidentiality, then the nature of the secret is not determined, and if there is a desire for confidentiality but the law does not acknowledge it, it also does not confirm the status of the secret. The judiciary of the United Arab Emirates has adopted this theory, with the Federal Supreme Court defining a secret as "an event or capability known only to a restricted number of individuals and whose importance necessitates that it be kept confidential among them, under the laws regarding the crime of disclosing a secret." (Judgment of the Federal Supreme Court, 1998)

Based on this criterion, an occurrence is considered a secret if a person has a vested interest in not revealing it. In other words, there is a connection between the responsibility of the person in charge to keep it confidential and the desire of the secret owner to keep it undisclosed. (Adel Murad Taima, 2018)

**C. Requirements for professional secrecy**

Professional secrecy necessitates that the secret information be restricted to a selected and determined group of individuals and that the information be professional. However, there is uncertainty regarding the legislator's requirement for the owner of the secret information to entrust it to the person in charge. The following provides a detailed explanation of these requirements.

*The secret information is restricted to a selected and determined group of individuals*

According to the UAE Penal Code, the disclosure of professional secrets must remain confidential to individuals. This is indicated by the term "private secret" mentioned in Article 379 of the UAE Penal Code. It is important to note that if the secret pertains to non-individual entities, such as government secrets, national defense secrets, or the disclosure of professional secrets and client names in the stock market, it does not fall under the crime of disclosing professional secrets as outlined in Article 379 of the Law.

Hence, the UAE legislature has intentionally provided this confidential information with enhanced legal protection by imposing stricter penalties or addressing it specifically in its own legislation. For instance, the disclosure of professional secrets and client names in the financial securities market is criminalized and punished according to Article 40 of Law 4 of 2000, which pertains to the Emirates Securities and Commodities Authority and Market. It states that “individuals such as brokers, their representatives, market employees, auditors, and anybody involved in carrying out transactions in the market, who is not considering the professional secrecy and clients’ confidentiality, will face punishment in the form of imprisonment and a fine.” The maximum amount of the fine is one hundred thousand dirhams, and either imprisonment or the fine may be imposed as a penalty. This is in addition to the disciplinary sanctions provided for in Article 27 of this Law.”

The secret must pertain to the accused's profession and involve the disclosure of knowledge or technical expertise entrusted to them. If this condition is not met, the accused is not obligated to maintain secrecy and will not be punished if they disclose a secret unrelated to their professional activities. Similarly, if the accused becomes aware of the secret in a personal capacity, such as being a friend of the secret's owner, they are not bound by professional secrecy. However, civil liability may still arise under certain conditions. (Adel Murad Taima, 2018)

### D. Elements of the crime of disclosing secret information and clients’ identities in the stock market

Disclosing secret information and the identities of clients in the stock market is a criminal offense, which requires three essential elements: the legal element, the material element, and the moral element. These will be explained as follows:

First: legal element: the legal element of this crime is determined by the existence of legislative texts that explicitly define and penalize the criminal conduct associated with this offense. The only way to enforce crime and punishment is through a written text, as stated in Article No. 40 of Law 4 of 2000 on the Emirates Securities and Commodities Authority and Market. This article specifies that "individuals, such as brokers, representatives, employees, auditors, and anyone involved in market operations, must maintain professional confidentiality and keep clients' names confidential. Failure to do so will result in disciplinary sanctions outlined in Article 27 of this Law."

Second: material element: the essential elements of a crime are the criminal conduct, the resulting harm, and the cause-and-effect connection between the conduct and the harm. In the context of UAE legislation (Text of Article (40) of Law 4 of 2000 Regarding the Emirates Securities and Commodities Authority and Market), criminal behavior related to the disclosing of professional secrets and client identities in the stock market can take two forms: either by disclosing the secret or by utilizing it.

Third: moral element: the act of disclosing a professional secret without authorization is considered a form of general criminal intent. This intent needs both knowledge and will on the part of the offender. The offender must be aware that they obtained the secret by virtue of their profession or craft and that the owner of the secret did not provide permission for it to be disclosed. The perpetrator must be aware that their criminal action is deemed a violation and a crime under the legal system. If the perpetrator is unaware that the incident is confidential, believes that they have been entrusted with the secret as a friend, or believes that the person who shared the secret is content with its disclosure, then the crime does not occur due to the absence of its moral element.

For a crime to occur, the offender's intention must also be focused on informing others about it. If the offender's intention is not to engage in criminal conduct, the crime will not take place. Neither a noble nor an evil motive considers the presence of criminal intent in this offense, nor does this offense necessitate a specific criminal intent, such as an intent to harm others. The act itself is inherently criminal and does not require a specific intent to justify it. (Ahmed Riad Mansour, 2017)

### E. Penalty for the crime of disclosing professional secrets and identities of clients in the stock market

If an individual reveals or utilizes professional secrets, they will be held criminally responsible and liable to the penalty prescribed by the legislator for committing this crime (Saleh Rashid Al-Hamrani, 2017). According to Article No. 40 of Law 4 of 2000 concerning the Emirates Securities and Commodities Authority and Market, "individuals such as brokers, their representatives, market employees, auditors, and anyone involved in market operations can be subject to imprisonment and a fine of up to one hundred thousand dirhams, or one of these two penalties. The need to maintain professional confidentiality and protect the identities of clients will be upheld. This is in addition to the disciplinary sanctions outlined in Article 27 of this Law."

The previous text clearly states that UAE legislator has authorized the combination of imprisonment and a fine, with the maximum fine being one hundred thousand dirhams. The judgment of either penalty is also allowed, and the decision is left to the discretion of the trial judge based on the specific circumstances of each case. This is in accordance with the previous article, while also considering the provisions of Articles 26 and 27 of the same law. Article (26) specifies that "licensed brokers and their representatives must adhere to certain requirements, such as (1) complying with the law and regulations, refraining from actions that could harm the reputation of the market or its participants, and (2) avoiding involvement in fictitious transactions that do not involve the actual transfer of securities or funds."

Upon examining the criminal penalty outlined in the legislation of the UAE, it is evident that the financial aspect of the penalty is not effective in deterring criminal behavior, particularly considering fluctuations in currency value. Therefore, we suggest that the fine be proportionate and based on a percentage of the losses incurred as a result of the criminal conduct. This is especially important given that the magnitude of losses resulting from such crimes is typically substantial.

**The crime of manipulating stock prices (illegal speculation)**

Stock market price manipulation is a criminal act where a speculator intentionally causes prices to artificially rise or fall through fraudulent means, such as scams, fraud, and theft to exploit price discrepancies and make illegal gains or profits (Saleh Al-Barbari, 1428 AH). We will outline the legal aspects of this offense based on the following:

A. **Methods of manipulating stock prices**

When it comes to the stock market, there are individuals referred to as market makers who employ deceptive tactics aligned with specific events in the market or the state (Mazen Mohamed Reda Al-Morsi, 2018). They strategize their plans based on market conditions and legal actions taken against them. The primary techniques for manipulating stock prices can be outlined as follows (Abdul Salam Al-Saeed Al-Ra'i, 2018):

i. Counterfeit Orders and Promotions
ii. Manipulation by business owners
iii. Manipulation by large groups

iv. Manipulation of the index

**B. Elements of the crime of manipulating stock prices**

Based on the presentation, it's evident that manipulation involves influencing the prices of securities sold at a price different from the actual price determined by supply and demand forces. For the crime of manipulating securities prices to be established, three main elements must be present, and if any of them is missing, the criminal charge is not applicable. Here are the following elements:

First: the legal element of the crime of manipulating stock prices: there is no crime or penalty except by a legislative text. The legal element of this crime is established by the second paragraph of Article 26 of Federal Law No. 4 of 2000 pertaining to the Emirates Securities and Commodities Authority and Market. This provision states that "engaging in actions that harm the market reputation, its members, or traders, or participating in or organizing any fraudulent transactions that do not result in the actual transfer of securities or funds involved in the transaction, constitutes a crime."

Second: the material element of the crime of manipulating stock prices: the material elements of the crime consist of the criminal conduct, the resulting criminal consequence, and the cause-and-effect connection between the criminal conduct and its outcome. (Mazen Mohamed Reda Al-Morsi, 2018)

1. Criminal conduct: as per the UAE legislator, criminal conduct in the crime of manipulating stock prices involves engaging in any action or abstaining from any action to create a false or deceptive impression that implies the presence of active financial trading activities that are contrary to the truth (Mounir Boureicha, 2017).
2. Criminal outcome: the damage to the reputation of the market, its members, or traders represents the consequences of criminal conduct. There must be a cause–and-effect connection between the criminal conduct and the resulting harm, meaning that the damage is directly produced by the offender's illegal conduct.

According to several individuals (Saleh Al-Barbari, 1428 AH), fraudulent methods do not necessarily have to directly manipulate pricing; rather, attempting to do so is enough. This is because economic crimes, in general, do not necessitate actual damage but just the potential for harm.

Third: the moral element of the crime of manipulating stock prices: the manipulative offender must have knowledge that their actions or lack thereof are considered a crime under the law. The offender must have the intention to commit the act or abstain. Ignorance of the law is not a valid excuse for a natural or legal person, as long as the law has been published in the Official Gazette. The moral element of this crime must be considered by the investor, the broker, or both. However, it is crucial to ensure accuracy when investigating and gathering evidence. If the intention to harm and deceive cannot be proven, the suspects should be presumed innocent. It is particularly challenging to establish guilt in cases involving manipulations, as they often involve hidden complexities and may be impossible to prove. This difficulty arises from the inherent challenge of discerning people's thoughts and intentions (Ahmed Rashid Al-Hashemi, 2018)

**C. Penalty for the crime of manipulating stock prices**

Although there have been advancements in financial securities legislation worldwide to combat market manipulation, investigating and prosecuting these operations still require significant time and effort from authorities. This is due to the widespread and varied methods used to manipulate the prices of both local and international securities. These crimes are typically perpetrated by influential individuals and involve large sums of money. (Saleh Al-Barbari, 1428 AH)

According to Article 32 of Federal Law No. 4 of 2000, the UAE legislator has granted the Emirates Securities and Commodities Market Authority the power to temporarily halt trading in the securities market or the shares of any company, or to engage in trading of specific securities, if there are exceptional circumstances or if there is a threat to the proper functioning and regularity of the market, such as price manipulation (Ahmed Mohamed Metwally, 2017).

This decision can be made by a majority vote of the Board of the Emirates Securities and Commodities Market Authority. (Article (32) of the previous law)

It's evident from the prior text that the consequence of this crime is a temporary suspension from trading in the stock market, company shares, or securities for a set duration.

Regarding criminal penalties, the UAE legislature has not established a specific provision for the punishment of this crime, as it encompasses various criminal acts.

The crime of exploiting undisclosed information affecting stock prices

Strong stock market performance relies on the smooth interaction of demand and supply, along with fair access to accurate information for all investors in terms of both quantity and timing. Therefore, legislation in most countries has banned practices that involve using undisclosed information to manipulate securities, their prices, and trading. This ban is crucial as it is designed to safeguard legitimate third parties of good faith who are involved in buying and selling securities and holding confidential information.

Exploring the elements and penalties of the crime related to using undisclosed information that impacts securities prices in UAE legislation will be outlined as follows:

### A. Elements of the crime of exploiting undisclosed information affecting stock prices

Any crime has three main elements:

First: the legal element: there is no crime or penalty except by a legislative text. The legal element of this crime can be found in Article No. 37 of Federal Law No. 4 of 2000 concerning the Emirates Securities and Commodities Authority and Market. This article states that "it is prohibited to utilize undisclosed information that could impact the prices of securities for personal gain. Any action taken in violation of this provision will be considered invalid." In addition to the content of the initial paragraph, Article 39 of the aforementioned legislation states that "individuals are prohibited from engaging in securities transactions using undisclosed or revealed knowledge that they have acquired by virtue of their position."

Based on the previous texts, it is evident that the UAE legislator has established rules that prevent individuals from using undisclosed information about security prices for personal gain.

Second: the material element: the material elements of a crime consist of the criminal conduct, the criminal consequence, and the cause-and-effect relationship between the criminal conduct and the criminal sequences. The specific components of the material part of this crime are outlined below:

1. Criminal conduct: in UAE legislation, it is the crime of exploiting undisclosed information that affects securities prices, which involves engaging in transactions based on this information as well as any actions that exploit the information for personal gain. This applies to individuals who are directly familiar with the information and use it solely for their benefit. However, the law does not extend criminalization to exploitation

for the benefit of their spouse or children. Additionally, the law also criminalizes the actions of individuals who receive insider information and use it to achieve personal benefits or manipulate securities prices in the market.

Therefore, information and data can significantly impact securities and their prices if they influence investors' decisions to either make profits by buying or avoid losses by selling. In simpler terms, this information and data can cause changes in the supply and demand for securities in the stock market, giving the person who possesses this information an advantage over other shareholders or potential investors. (Ahmed Mohamed Metwally, 2017).

2. Criminal consequence: the criminal consequence of this crime is the illicit acquisition of undisclosed information, which allows the insider to gain personal advantages or financial benefits. By exploiting this privileged information, the insider gains an advantageous position over other securities holders who wish to invest, resulting in fluctuations in the supply and demand of securities in the stock market.

3. A cause-and-effect relationship between criminal conduct and criminal consequence: where there must be a cause-and-effect relationship between criminal behavior and the criminal result, i.e., the damage caused to the demand or supply of securities in the stock market or to its members or dealers, resulting from the criminal behavior.

Third: the moral element: the act of exploiting undisclosed information that affects securities prices is considered a crime of prohibition. This crime can be achieved through general criminal intent, which requires knowledge and will without the need for a specific intention. Therefore, the crime is committed as soon as the person exploiting the information becomes aware of its confidential nature. In other words, the moral element of the crime is fulfilled by having the general intent to exploit undisclosed information that impacts securities prices, without the need for a specific criminal intent. It is not necessary for the insider's intention to be directed toward a specific outcome. This information should be utilized, particularly considering the challenge or impossibility of substantiating the intent to conduct this crime.

### B. Penalty for the crime of exploiting undisclosed information that impacts securities prices

The UAE legislature has approved a criminal penalty for the aforementioned crime, which entails imprisonment for a minimum of three months and a maximum of three years, as well as a fine ranging from one hundred thousand dirhams to one million dirhams, or one of the two penalties. This penalty applies to individuals who violate the provisions outlined in the criminalization articles mentioned earlier (Federal Law No. 4 of 2000 regarding the Emirates Securities and Commodities Authority and Market). It is important to note that this penalty applies to individuals who possess insider information and those who receive such information from unknowledgeable sources. This can be inferred from the statement in the first paragraph of Article 39 of Federal Law No. 4 of 2000, which states that "no person is allowed to engage in securities transactions based on undisclosed information." This law pertains to the Emirates Securities and Commodities Authority and Market.

Therefore, UAE legislature has made a wise decision by making it a crime for anyone who benefits from undisclosed information, regardless of whether they are aware of it or receive it.

**Conclusion**

Most crimes related to trust and equality in UAE securities are deliberate crimes that necessitate criminal intent, whether it is public or private. Therefore, it is crucial to conduct thorough investigations and gather accurate evidence. The absence of intent to cause harm or deceive indicates the innocence of the suspects. This is particularly important considering that proving the elements of securities trading crimes, especially the moral element, can be challenging.

Concerning attempted securities trading crimes, the UAE legislator has incorporated both objective and subjective perspectives. This means that the start of the execution is not restricted to the actual commission of an act that forms the core element of the crime but also includes any action that directly precedes and leads to it. The determination of whether an act is preparatory, which is considered not an attempt or executive and so constitutes an attempt, is an objective decision made by the trial judge based on factors such as the nature and circumstances of the occurrence, the actions of the offender, and the intention behind their actions.

About securities trading crimes, the UAE legislature has determined that legal entities can be held criminally liable if they fail to comply with the provisions of this law, the regulations issued to enforce it, and all market-related decisions and instructions. Additionally, criminal liability can be imposed if a legal entity engages in conduct that harms the reputation of the market, its members, or traders, or if it facilitates or organizes fictitious transactions that do not involve the actual transfer of securities or funds involved in the transaction.

When it comes to the punitive system for securities trading crimes, the UAE legislator's approved penal system for securities market crimes and trading has effectively covered all sides of criminal protection, including criminal penalties, administrative ones, and precautionary measures. However, some areas that need improvement, particularly those related to certain precautionary measures like seizing the offender's assets and appointing a judicial guard as a guarantee for fine payment.

Regarding the crime of disclosing confidential information and clients' identities in the stock market, it has been determined that the punishment specified for this crime in the financial section of UAE legislation is not sufficiently promising.

## Recommendations

Based on the discoveries of this study, the researcher suggested the following recommendations:

- Establish clear legal responsibility for the actions of individuals involved in securities trading crimes to ensure comprehensive criminal protection for the securities market and trade.
- Modifying the punitive legislation regarding the crime of disclosing confidential information and clients' identities in the stock market by implementing a fine that is proportionate to the extent of the losses incurred as a result of the criminal conduct. This modification is particularly necessary due to the typically substantial size of the financial damages caused by this crime.
- The objective is to promote financial and investment literacy and disseminate information about the capital market. This will be achieved by establishing and enhancing an autonomous and unbiased financial press that provides accurate coverage and comprehensive analysis of economic, financial, and administrative news about publicly trading companies. The aim is to enhance knowledge and investment awareness among various stakeholders, including investors, brokers, legislative bodies, and regulatory authorities in the financial markets.
- Enhancing collaboration between the many entities and elements that comprise the capital market and law enforcement agencies, including the police, public prosecution, and courts.
- Delving into extensive research on financial markets, exploring criminal protection strategies, and analyzing trading transactions.

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