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ETHICAL VIOLATIONS: INSIDER TRADING AND MARKET FRAUD IN THE TURKISH CAPITAL MARKETS

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Abstract

The aim of this study is to examine the unethical and criminal acts of insider trading and market fraud in the capital market. For this purpose, the bulletins of the Capital Markets Board (CMB) published between 2019-2021 were examined in accordance with document analysis, which is one of the qualitative research methods. Initially, the research evaluated the ethical dimension of the actions, as these actions affect the parties in the capital markets and cause economic and social losses since they influence the decisions of individuals. It has been observed that the number of transaction-based market fraud detected is higher than the information fraud action in the specified years of the research. Accordingly, it has been determined that various sanctions have been applied to the aforesaid actions. However, considering the difficulty of detecting the actions and the ethical dimension, it is important to consider behavioral ethics studies in order to prevent ethical violations in businesses and to establish ethical values in the behavioral dimension, and not to ignore cognitive processes, professional and business-related features in managerial processes and staff selection.

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1. Introduction

The concept of ethics consists of codes of conduct and principles that include the evaluation of the actions taken and determining what is right and what is wrong. The protection and support of ethical values in a society also demonstrates a more transparent, reliable, and stable structure in that society. It can be said that the support of these ethical rules and principles by the law provides a more effective system (Avşar, 2004). Ethics engage in moral (righteous and unrighteous behaviors) (Aifuwa et al., 2018). Ethics also makes us feel that we need to consider not only our own personal well-being, but the well-being of others and society as well (Maddux & Maddux, 2010). The ethical compliance of the behaviors is affected by many factors. Although individuals' own personal values are important, interest groups and society are effective in the formation of ethical behaviors (Aktaş, 2014). When we narrow the concept as business ethics, it is thought of as revealing the rules of a game or practices in a limited area (Gibson, 2007). On the other hand, in the formation of ethical behaviors in businesses, in addition to factors such as the characteristics of the professional environment and job roles, the effects of the stages in the development of the individual are also highlighted (Aytemiz & Bolat, 2007). In addition to these, the importance that businesses will attach to the issue of ethics within work environment and in their managerial processes is important in this respect. One of them is the research of behavioral ethics, which provides important information that organizations can benefit from by working on ethical perception and decision making (Heudek, 2020). Behavioral ethics studies emphasize cognitive processes and indicate that this process is an important determinant of ethical or unethical behavior. This process initiates with moral awareness and ends with judgment, motivation and whether the behavior is ethical or not. Awareness is important for the acceptance of the moral issue. The second stage of the process is judgment. In moral judgments of individuals, Kohlberg's (1969) theory of moral development is one of the foremost. The theory enumerates six stages of moral judgment placed in three broad categories. According to the theory, individuals go through stages in an unchanging, irreversible order, because higher stages depend on cognitive capacity that is not available in lower stages (Trevino et al., 2006).

When the literature is examined, there are many studies that reveal various models, methods and suggestions to eliminate or reduce organizationally unethical actions (Ayal et al., 2015; De Cremer et al. 2011; Dacin & Murphy, 2011; Fichter, 2018; Gino, 2015; Gino & Margolis, 2011; Moore et al., 2018). Gino and Margolis (2011) investigated the effects of framing ethical behaviors for businesses to provide, and the results of practices that encourage ethical behavior and the situations of preventing unethical behaviors. In the mentioned study, it was found that incentive practices resulted in more unethical behaviors than prevention practices. De Cremer et al. (2011) by mentioning the prevalence of unethical behaviors in management, emphasized the importance of determining when managers, leaders and businesses tend to behave unethically. In addition to the traditional methods, it refers to the application of the knowledge of the field based on the researches of the science of psychology as a complementary behavioral ethics.

In the capital market, on the other hand, investors develop their transactions according to the expectations in the light of current data and information. From this point of view, creating a situation that disrupts equality in information leads to unfair profits and loss of confidence in investors (Usluadam, 2019). The existence and prevalence of ethical violations in financial markets are indicated on many

platforms. The most important reason for its widespread use in this field is the opportunities obtained from unethical behaviors. In addition, it is seen that the aims such as making profits quickly and easily in short periods of time in the capital markets lead to many unethical actions. Another important finding is that although personal ethical codes of conduct are more effective in other areas, their effect is more limited in the financial area (Avşar, 2004). Veit and Murphy (1996) examined the ethical violation behavior perceptions of investment professionals and other employees doing the same job. According to the results of the research, the presence of unethical behaviors was the second highest after politicians, compared to many occupational groups. In various similar studies, there are plenty of studies on unethical behaviors in financial markets (Aifuwa et al., 2018; Sarumpaet & Hendrawaty, 2018). In their study, in which Sarumpaet and Hendrawaty (2018) analyzed 247 news reports on ethical violations such as insider trading, market fraud, corruption, bribery, employee underpaid, and environmental irregularities, it is concluded that these situations affect the share prices of companies. It is seen that insider trading and market fraud, are one of the common actions in financial markets. These actions point to an activity to gain privileges by obtaining information that is unknown to the public in return for some monetary and other benefits (Q'Hara, 2001). From an ethical point of view, there are four arguments against insider trading. These are first discussed in terms of information asymmetry. From this point of view, it is argued that it is unethical that information does not come equally to both parties. Second, it is seen as unethical as the information is not appropriately available to existing shareholders. Thirdly, this behavior is seen as unethical because the information possessed brings about a property right and it is a behavior against this right. Fourthly, this behavior is unethical, since people who do business based on trust are those who need to protect the long-term interests of outside shareholders (Q'Hara, 2001). McGee (2008) states in his study that there should be no laws or regulations restricting the practice until it is clearly determined that a person has been fraudulently harmed by insider trading. It states that such restrictions may violate individual rights and possibly cause a negative market reaction. In another study, it is stated that insider trading provides market efficiency as it provides information efficiency, but market fraud occurs when non-public information is used to move stock prices away from their fundamental values. This argument states that market manipulation reduces market efficiency (Engelen & Liedekerke, 2010). In some studies, emphasizing the difficulties of detecting such an act, it is stated that the deterrence of the sanctions that the perpetrators may face is important in preventing the act (Cline & Posylnayab, 2019). Similarly, Veit and Murphy (1996) mentioned the difficulties of documenting the act of ethical violation in their studies and stated that previous studies in this area also examined ethical violations and professional standards in the investment specialist profession. Law constitutes an important framework in questioning the actions in this context. There are points where the rules of law are important in addressing and preventing actions but make certain freedoms possible. These points also lead to violation of ethical rules (Michael, 2006). When considered in terms of the market, it has been determined that insider trading and manipulation, which causes economic and social costs, cause capital market crimes to occur, since information dynamism affects investment decisions and expectations (Esen, 2015).

When the literature on ethics is examined, it has been observed that there is a lack of specifically examining some unethical actions. For this purpose, the study focuses on market fraud and insider trading in the Turkish Capital Market.

In the study, first, after giving the conceptual definitions of insider trading and market fraud, the legal measures that can be taken to prevent these actions are examined. The following sections include the details of the research process and research findings in line with the purpose of the study. The study concludes with the result.

2. Insider Trading and Market Fraud from Capital Markets Crimes

In the Capital Market Law No. 6362; insider trading, market fraud, illegal public offering and unauthorized capital market activities, abuse of trust and fraud, failure to provide information and documents and prevention of audit, irregularity in legal books, accounting records, financial statements and reports, violation of confidentiality obligation and crimes and sanctions against these crimes are explained.

Since the scope of the research is insider trading and market fraud crimes, these crimes are explained below.

3. Insider Trading

The act of the crime of insider trading, which is expressed as "insider trading" in the literature, is defined as making an unfair advantage by taking action in favor of important information. In other words, information fraud is the abuse of information about a company's key indicators and internal data. For example, making a profit by using the news about a significant profit-enhancing activities of a public company that has not yet been disclosed to the public may be within the scope of insider trading (Erdoğan & Sancak, 2016). Any information that may affect the market value of the company must be disclosed to the public in line with the principle of public disclosure. This is an extremely important issue for the "trust" element, which forms the basis of the capital market (Gündoğdu, 2017).

The legal subject of the crime of insider trading regulated in Article 106 of the Capital Market Law is the protection of the functionality and reliability of the capital market. In this sense, the victim of the crime is society (Uğraş, 2021).

Article 106 of the Capital Markets Law No. 6362 clearly explains the ways in which information will be abused. Accordingly, the crime of information fraud is "giving a purchase or sale order or changing or canceling the order given and thereby obtaining benefits for themselves or someone else for the relevant capital market instruments, based on information that has not yet been disclosed to the public, and which may directly or indirectly affect the prices, values, or decisions of the investors, about the capital market instruments or the issuers" (Capital Market Law No:6362, Article 106). In line with this explanation, we can express the elements of the crime of information fraud as follows (Duman, 2022, p. 392; Uğraş, 2021, pp. 470-479):

- i. The information is true and real, but confidential and not made public. The perpetrator somehow obtains this information and uses it for their benefit.
- ii. The information has not been made public. For example, if the information is disclosed at a conference with a limited number of participants, it will not be disclosed to the public, as

investors trading in the market do not have access to this information and equal opportunity is not provided.

- iii. The information is about capital market instruments and issuers. In the law, capital market instruments are defined as “other capital market instruments determined by the Board, including securities and derivative instruments and investment contracts”. Again, in the law, issuers are defined as “legal entities that issue capital market instruments, apply to the Board for issue or whose capital market instruments are offered to the public, and investment funds subject to this law, excluding those that raise money through crowdfunding platforms”.
- iv. The information should be of a quality that can affect the prices and values of capital market instruments or the decisions of investors. It is emphasized here that the transaction should be made using effective information, not all kinds of information.
- v. In Article 106 of the Law, the sanctions against those who commit the crime of insider trading are also explained. Accordingly, those who commit the crime of insider trading use are punished with imprisonment from three to five years or imposed a punitive fine. If a punitive fine is imposed for this crime, the penalty is not less than twice the profit obtained.

3.1. Market Fraud

The crime of manipulation, which was not mentioned by name in the old Capital Market Law, was expressed as "market fraud" in the new law, the Capital Market Law No. 6362. Manipulation in finance refers to actions aiming to deceive or defraud market participants by knowingly and willingly controlling or artificially influencing the prices of capital market instruments (Kadıoğlu, 2015). Manipulation is an element that prevents the establishment of trust, transparency, stability, and price formation in a free environment, which are the basic element, by preventing the functioning and price formation in a fair competitive environment in the capital markets. For this reason, manipulation is prohibited by the law to protect the rights and interests of investors (Aktaş, 2017).

Article 107 of the Capital Markets Law No. 6362 explains what market fraud actions are and the sanctions to be applied for these actions. Market fraud crime is explained in two main categories as “transaction-based market fraud crime” and “information-based market fraud crime”. In Article 107/1 of the Law, the crime of transaction-based market fraud is defined as “those who buy or sell, give orders, cancel orders, change orders or make account movements in order to create a false or misleading impression regarding the prices, price changes, supply and demand of capital market instruments.” Accordingly, those who commit this crime are punished with imprisonment from three to five years and imposed a punitive fine from five thousand days to ten thousand days. However, the amount of the punitive fine to be imposed for this crime is not less than the benefit obtained by committing the crime. In Article 107/2 of the Law, the crime of information-based market fraud is defined as “the one who gives false, wrong or misleading information, rumors, spread that news, comments or prepares reports or spreads them in order to influence the prices, values, or decisions of investors, of capital market instruments, and thus take advantage of”. Accordingly, those who commit this crime are punished with imprisonment from three to five years and imposed a punitive fine of up to five thousand days. Article 107/3 of the Law also explains the regulation of remorse for the crime of transaction-based market fraud.

Accordingly, the perpetrator of this crime is not penalized if he repentantly pays twice the amount of the benefit he has obtained or caused to be obtained, not less than 500,000 TL, to the Treasury before the investigation begins. If these benefits are paid during the investigation phase, half of the penalty to be imposed is reduced. In this regard, the penalty to be imposed is reduced by one third if he pays the benefits he has obtained until the penalty is imposed.

3.2. Measures to be Applied in Insider Trading and Market Fraud Investigations

Within the scope of the Capital Markets Law No. 6362, insider trading and market fraud actions and the sanctions applied for these actions are explained above. In Article 101 of the Law, it is stated that necessary measures can be taken against natural and legal entities who have reasonable suspicion due to these actions. In addition, “Communiqué on Measures to be Applied in Investigations of Insider trading and Market Fraud” was published in 2014. The Communiqué clarifies the situation where there is reasonable suspicion of insider trading and market fraud in the capital market. Reasonable suspicion can be defined as “transaction patterns and transfers, past price analysis of capital market instruments, actual circulation rates, news and explanations about capital market instruments, notices or complaints and the evidence supporting insider trading and market fraud, as a result of investigations, in the accounts of persons who make transactions in the capital markets or those who act together with them.” In Table 1, the measures to be applied to natural or legal entities and officials of legal entities, who have reasonable suspicion due to insider trading and market fraud, or who commit these acts are explained.

As can be seen in the table, sanctions are expressed under the headings of prohibition of making transactions, prohibition of temporary transactions or prohibition of permanent transactions. In the Communiqué, it is also explained in which cases the ban on trading will be lifted. Accordingly, the prohibition of taking action is lifted by the Board in case the Prosecutor's Office gives a decision not to prosecute on this matter, when the prohibition of action expires, when the Court gives a verdict of acquittal on this matter, and when the persons who are banned from taking action are re-inspected, and if it is determined that these acts have not been committed (CMB V- 101.1: art.5, art.6, art.7).

Table 1. Measures to be Applied in Insider Trading and Market Fraud Investigations

Prohibition of making Transactions (Art. 5)	Prohibition of Temporary Transactions (Art.6)	Prohibition of Permanent Transactions (Art.7)
Natural and legal entities with reasonable suspicion are prohibited from trading on stock exchanges.	A temporary 6-month ban on trading is imposed.	Since natural and legal entities who are prohibited from making transactions proceed their acts on the account of others, a criminal complaint is filed with the Office of the Chief Public Prosecutor and a permanent ban is imposed for 5 years.
Since they commit acts of insider trading and market fraud, natural and legal entities file a criminal complaint with the Office of the Chief Public Prosecutor, and they are prohibited from trading on the stock exchanges.	Since they commit acts of insider trading and market fraud, natural and legal entities file a criminal complaint with the Office of the Chief Public Prosecutor, and they are temporarily banned from trading in the stock exchanges for 2 years.	
If natural and legal entities who have been banned from trading continue to act in the accounts of others, those who have their accounts used may be banned from trading on the stock exchanges.		

Source: Communiqué on Measures to be Applied in Insider trading and Market Fraud Investigation, Official Gazette No. 28889, 21 January 2014 (CMB V-101.1).

The Capital Markets Board issued the “Communiqué on Obligation to Notify on Insider trading or Market Fraud Crimes” in 2014 to prevent insider trading and market fraud crimes. According to the Communiqué, investment institutions are obliged to report suspicious transactions to the Agency within 5 working days. In addition, investment firms have to keep the documents, books and records related to these notifications for eight years and submit them to the Board if requested (CMB V-102.1: art. 6, art. 10).

4. Research

In this part of the study, the purpose, methodology and findings of the study are included.

4.1. Purpose and Importance of the Research

The aim of this study is to determine the situation by examining the "market fraud" and "insider trading" actions that disrupt the ethical and effective functioning of the capital market. For this purpose, CMB bulletins between the years 2019-2021 were examined. The study is important in terms of revealing the most frequently taken actions by investors and their reasons.

4.2. Method of the Research

Document analysis technique, which is one of the qualitative research methods, was employed to collect data in the research. Document analysis includes the analysis of written materials containing information about the facts and cases that are aimed to be investigated. In cases where direct observation and interview is not possible in qualitative research, or to increase the validity of the research, in addition to the observation and interview techniques, written and visual materials and equipments related to the research problem studied can be included in the research (Yıldırım & Şimşek, 2016).

The crimes of "market fraud" and "insider trading" detected as a result of the audits carried out by the CMB and the sanctions against these crimes are announced to the public on the CMB's website under the heading CMB Bulletins. In the study, a total of 214 CMB bulletins, 71 from 2019, 78 from 2020, and 65 from 2021, were examined. In the research, the reasons for the "market fraud" and "insider trading" actions, which are among the capital market crimes, and the sanctions and measures for these actions and the companies associated with the actions were evaluated. For this reason, the research focused on the "market fraud" and "insider trading" actions included under the "criminal notice, administrative fines and other sanctions and measures" section of the CMB Bulletins.

In the research, the information of public companies related to market fraud and insider trading in the capital market, and the information of natural and legal entities who are sanctioned for these actions, were not disclosed in accordance with ethical rules. The companies associated with these actions are grouped by sectors in line with the public disclosure platform.

4.3. Findings of the Research

In Table 2, investors who were banned from trading in the capital market due to insider trading and market fraud between 2019 and 2021 and the sectors in which they made these transactions can be

seen. Transaction-based market fraud action was committed 32 times in 2019, 17 times in 2020, and 14 times in 2021. This action has often taken place by companies operating in the manufacturing, finance, wholesale and retail sectors. Information-based market fraud action was carried out 1 time in 2019, 7 times in 2020, and 7 times in 2021. This action was taken by companies involved in the manufacturing and financial institutions sector. The information fraud action was carried out 5 times in the years of 2019 and 2020. This action has been identified in the transactions carried out by real entities at Borsa Istanbul A.Ş. and by companies in the manufacturing, financial institutions and construction and public works sector.

Table 2. Sectors in which Investors Act on Insider trading and Market Fraud in the Capital Markets (2019-2021)

Sectors	Year 2021			Year 2020			Year 2019		
	Insider trading	Transaction-based Market	Information-Based Market	Insider trading	Transaction-based Market	Information-Based Market	Insider trading	Transaction-based Market	Information-Based Market
		Fraud	Fraud		Fraud	Fraud		Fraud	Fraud
Manufacturing	-	8	5	3	11	4	3	15	0
Financial Institutions	-	4	2	1	5	3	1	7	1
Wholesale and Retail	-	2	-	-	1	-	-	4	-
Agriculture and Forestry	-	-	-	-	-	-	-	1	-
Chemical, Pharmaceutical, Petroleum and Rubber	-	-	-	-	-	-	-	2	-
Transport and Storage	-	-	-	-	-	-	-	2	-
Construction and Public Works	-	-	-	-	-	-	1	-	-
Administrative and Support Services	-	-	-	-	-	-	-	1	-
Real Entities	-	-	-	1	-	-	-	-	-
Total	-	14	7	5	17	7	5	32	1

Source: Capital Market Board Bulletins, <https://spk.gov.tr/spk-bultenleri/gecmis-yillara-ait-bultenler> (15.03.2022)

Table 3 demonstrates the reasons behind the insider trading and market fraud actions of investors transacting in the capital market and the sanctions applied for these actions between the years 2019-2021. Accordingly, it was decided to file criminal complaints to the Chief Public Prosecutor against investors 31 times in 2019, 8 times in 2020 and 4 times in 2021 due to insider trading and market fraud actions in the capital market. Investors associated with this action are prohibited from trading in the capital market for 2 years. In 2020 and 2021, sanctions were imposed 7 times for information-based market crimes due to the actions of investors that would affect the decisions of investors from their social media accounts. In 2020 and 2021, sanctions were imposed 7 times for information-based market crimes due to the actions of investors that would influence the decisions of investors from their social media accounts. Investors associated with this action have been banned from trading for 6 months. Due to the action that will influence the decisions of the investors, it has been decided to file a criminal complaint to the Chief Public Prosecutor 5 times in 2019 and 2 times in 2020 for the act of insider trading against investors.

Investors associated with this action have been banned from trading for 2 years. A criminal complaint was filed with the Chief Public Prosecutor about an investor for the crime of information-based market fraud due to the act of providing misleading information, and this investor was banned from trading in the capital market for 2 years

In the research, the measures implemented within the scope of Article 101/1 of the Capital Markets Law No. 6362 and the Communiqué on Measures to be Applied in Insider trading and Market Fraud Investigation were also examined. Pursuant to Articles 5/1 and 6/1 of the relevant law and communiqué, it has been determined that investors involved in insider trading and market fraud have been banned for 6 months from trading in the stock market for 21 times in 2019 and 6 times in 2020.

Table 3. Reasons for Insider trading and Market Fraud Crimes in the Capital Markets and Sanctions Imposed (between 2019-2021)

Content of The Crime	Reason of The Action	Sanction Year 2021		Sanction Year 2020		Sanction Year 2019	
		6 Months Ban on Transaction	Criminal Complaint and 2-Year Prohibition	6 Months Ban on Transaction	Criminal Complaint and 2-Year Prohibition	6 Months Ban on Transaction	Criminal Complaint and 2-Year Prohibition
Insider trading and transaction-based market fraud crimes	Transactions in the equity market	10	4	10	8	1	31
Information based market fraud crime	Actions that will influence the decisions of investors from social media accounts	7	-	7	-	-	-
Insider trading	Actions that will influence investors decisions	-	-	2	2	-	5
Information based market fraud crime	Giving misleading information	-	-	-	-	-	1
Total		17	4	19	10	1	37

Source: Capital Market Board Bulletins, <https://spk.gov.tr/spk-bultenleri/gecmis-yillara-ait-bultenler>

5. Conclusion

In the research, insider trading and market fraud actions that occurred in the capital market between the years 2019-2021 and the sanctions applied to these actions were examined. These actions and sanctions are revealed during the audits carried out by the CMB in order to determine whether the transactions carried out by the companies in the share market are in compliance with the legislation, and when a violation of the legislation is detected, sanctions are applied according to the type of violation, and these are communicated to the stakeholders through the CMB bulletins published every month. The findings obtained in the research are as follows.

Between the years 2019-2021, investors most frequently engaged in market fraud in their transactions in the capital market. From this action, especially the transaction-based market fraud action stands out. Transaction-based market fraud action was committed 32 times in 2019 and 14 times in 2021. This action was carried out mostly in the share market of companies operating in the manufacturing sector. Information-based market fraud action also took place in the share market of companies operating in the manufacturing and financial sectors in 2020 and 2021. The information fraud action, on the other hand, was made 5 times in 2019 and 2020 and took place mainly in the share market of companies in the manufacturing and financial sectors.

2019 was the year in which the most sanctions and measures were applied due to insider trading and market fraud action. Investors who carried out these actions were filed with the Chief Public Prosecutor by the CMB, and investors were banned from trading in the capital market for 2 years. In addition, in 2019, according to the relevant communiqué, a 6-month ban on trading in the stock market was applied to investors. The year 2020, on the other hand, is the year in which a maximum 6-month transaction ban sanction is imposed due to insider trading and market fraud actions.

When the scandals, corruption, insider trading and market fraud that emerged in the capital markets are examined after the actions, it is known that there is an effort to solve the problem with new laws and regulations. However, to prevent unethical actions, it is important to focus on how corporate ethics programs can improve business ethics culture and improve ethical decision-making skills of employees, as well as rules and regulations.

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