

CLIENT ALERT

BANKING & FINANCE | TURKEY

MAY 2020

REGULATION ON MANIPULATION AND MISLEADING TRANSACTIONS

In February 2020, a number of articles in Banking Law were amended in order to introduce several changes regarding the scope of credit risk groups, bank secrecy, oversight and supervision in the banking sector and authority to determine banking fees and commissions. Among the measures introduced for the oversight and supervision of the market, a new Article 76/A was brought into the Banking Law (effective from 25 February 2020) for the purpose of specifically regulating manipulation and misleading transactions.

This article broadly defines the market manipulation as banks' transactions and practices intended to create or increase artificial supply, demand or price formation, including exchange rates; spreading incorrect and misleading information by various means, including social media; incorrect and misleading guidance for savings account holders; performing similar transactions to mislead or manipulate transactions in financial markets; and any other transactions and practices the BRSA may determine.

In this respect, the Banking Regulation and Supervision Authority ("**BRSA**") has also introduced its new Regulation on Manipulation and Misleading Transactions in Financial Markets ("**Regulation**") based on the above-mentioned new Article 76/A of the Banking Law to clearly define the scope of the acts falling within the scope of the said article.

According to Article 4 of the Regulation, the following actions carried out by banks licensed in Turkey shall be deemed as manipulation and misleading transaction and practices within the scope of Article 76/A of the Banking Law:

- being involved in or acting as intermediary in transactions that provide or may provide a false or misleading impression of the supply, demand, or price of a financial instrument, or that cause or may cause that the price of a financial instrument (including exchange rates and interests) be kept at an abnormal or artificial level, or giving orders for such transactions or engaging in similar activities;
- during the periods when the supply-demand balance is not realized under normal conditions, being involved in transactions that will affect the price of a financial instrument or affect the reference values such as interest, exchange rate, CDS, etc., by way of benefiting from the fluctuations or shallowness of financial markets, which will increase the irregularity of the financial markets or negatively affect its stability, or giving orders for such transactions or engaging in similar activities;
- carrying out transactions and practices or act as intermediary to such transactions and practices in order to break the rules, find a way around the decisions and limitations imposed/taken by the BRSA regarding currency swap, forward, option and other derivative transactions (with one leg in foreign currency and the other leg in TL) or transactions made

by banks to provide TL liquidity abroad, by way of using indirect methods, including the early redemption of transactions, deferring the transactions which are due and/or defaulting on their obligations;

- being involved in transactions that affect or may affect the price of a financial instrument including exchange rate and interest, via a deceptive mechanism or by way of fiction, intermediation to such transactions, placing orders for such transactions or performing similar activities;
- spreading by way of a mass media instrument including internet or any means, false or misleading information or rumours which give or may give false or misleading impressions regarding supply, demand, or exchange rate and (interest included) price of a financial instrument, or that keep or may keep relevant price at abnormal or artificial levels;
- by way of hiding a conflict of interest from the public regarding a given position, expressing opinions via internet or other mass media about a financial instrument regarding which a financial position has previously been taken, in order to make an impact on the price of a financial instrument (including its interest rate and its exchange rate);
- communicating false or misleading information about a reference value, providing false or misleading input, or acting to manipulate the calculation of a reference value (even though the bank knows or should know that it is false or misleading);
- taking actions to fix the trading prices of the financial instrument or to make another unfair gain by using the dominant position on the supply or demand of a financial instrument;
- ensuring that investors who take their positions according to the opening or closing prices are misguided, by carrying out purchase or sale transactions that affect or may affect the opening or closing prices of a financial instrument, including interest and exchange rates, at the opening and closing of financial markets;
- guiding savings account holders in a false or misleading way; and
- spreading information and rumours that could cause systemic risk by undermining trust in the financial system.

Article 146 of the Banking Law determines the level of administrative fines to be applicable if one of the above-mentioned actions is committed by the institutions falling within the scope of the Banking Law. Accordingly, if the institutions that commit manipulative activities or engage in misleading transactions in the financial markets, make any profit from such actions, they shall be imposed an administrative fine which shall amount to not less than twice the amount of the realized profit but which shall not exceed 5% of the total amount of interest, dividend earnings, fees and commissions and banking services revenues of the relevant bank indicated in its previous year-end financial statements. BRSA may double the amount of the administrative fines by taking into account any recurrence within a two-year period, or multiple occurrence of punishable acts until a fine is imposed on the perpetrator.



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