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Investor compensation funds as a remedy for insider trading losses: Comparative perspectives and implications for Vietnam

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Abstract: Insider trading is a serious violation that undermines market transparency and may cause losses to investors. Although most jurisdictions provide administrative, civil, and criminal measures to address insider trading,

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investor compensation remains difficult because of obstacles in identifying injured investors, establishing causation, and quantifying losses. An investor compensation fund may therefore serve as a complementary mechanism for strengthening investor protection. Employing a functional comparative method, this paper analyses the case-based U.S. Fair Funds mechanism alongside two Asian models which are Taiwan's Securities and Futures Investors Protection Center (SFIPC) and China's investor-protection institutions under the Securities Law and assesses their compatibility with Vietnam's legal framework governing insider trading. The analysis shows that Vietnamese law primarily focuses on detecting and sanctioning insider trading, while its investor-compensation framework remains underdeveloped. Drawing on these comparative experiences, the paper proposes a statutory, extrabudgetary Investor Compensation Fund financed through a combination of enforcement proceeds recovered from individual wrongdoers, capped ex-ante contributions from market intermediaries, and investment income. It also designs eligibility rules, a compensation formula, and governance safeguards adapted to the legal and institutional constraints of an emerging market.

Keywords: Insider Trading, Investor Compensation Fund, Civil Liability, Securities Law, Vietnam

1. Introduction

Most jurisdictions regulate insider trading to promote market fairness, reduce information asymmetry, and strengthen investor confidence. Empirical scholarship confirms the economic significance of this regulatory objective: the first enforcement of insider trading law in a country has been shown to reduce the cost of equity capital significantly, whereas the mere existence of unenforced rules has no such effect.² Although investor protection is a central objective of insider-trading regulation, existing legal regimes primarily emphasize sanctions against violators. The effectiveness of insider-trading regulation should be assessed by reference to its ability to detect and penalize illegal activities (public enforcement mechanisms) as well as its ability to ensure access to justice and the recovery of investor losses (private enforcement mechanisms).³ In the context of insider trading, private enforcement faces significant obstacles arising from difficulties in identifying injured investors, quantifying losses, and establishing a causal link between the illegal conduct and the resulting market losses. These limitations have prompted several jurisdictions to develop collective investor-protection institutions, including investor-compensation mechanisms. Although such mechanisms are not necessarily designed specifically for insider-trading cases, they offer a means of addressing investor losses where conventional civil litigation fails to provide an effective remedy.

Vietnam has legislation on administrative sanctions and criminal liability for insider trading. Nevertheless, Vietnam still lacks a specific legal framework for investor compensation. Accordingly, an Investor Compensation Fund should be considered as a supplement to the existing system of civil liability for insiders in Vietnam. This paper addresses two research questions: (i) whether an investor compensation fund could effectively compensate investors harmed by insider trading in Vietnam; and (ii) which fund model would be most suitable for the Vietnamese securities market. To answer these questions, the paper conducts a functional comparative analysis of the U.S. Fair Funds mechanism and two Asian

² BHATTACHARYA, U., and DAOUK, H. "The world price of insider trading". *The Journal of Finance*, v. 57, n. 1, 2002, pp. 75-108. <https://doi.org/10.1111/1540-6261.00416>

³ INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO). "Insider trading and how jurisdictions regulate it". 2003. Available at: <https://www.iosco.org/library/pubdocs/pdf/ioscopd145.pdf> (accessed on 10 June 2026).

investor-protection models which are Taiwan's SFIPC and China's investor-protection institutions before assessing the legal basis for prohibiting insider trading and compensating investors in Vietnam.

The original contribution of this paper is therefore not the general suggestion that a compensation fund should exist. Rather, the paper (i) identifies, on the basis of comparative and empirical material, the specific legal and institutional obstacles that any compensation mechanism must overcome in Vietnam, including the budgetary rules that currently require enforcement proceeds to be paid into the state budget; (ii) designs a legally feasible, statutory, and extrabudgetary Investor Compensation Fund whose funding structure is deliberately insulated from the "circularity" and procyclicality problems identified in the literature; and (iii) develops concrete eligibility criteria and a capped, pro-rata compensation formula that remains administrable in an anonymous, order-matching market while preserving the causal link between the violation and the compensation paid.

2. Literature review and research methodology

2.1 Literature review

Research on insider trading generally focuses on the theoretical foundations for prohibiting such transactions, the effectiveness of enforcement tools, and securities-market regulation. By contrast, questions of investor compensation and mechanisms for mitigating losses caused by insider trading receive comparatively limited attention in the academic literature. Against the background of increasing emphasis on investor protection in capital markets, three emerging strands of research can be identified: (i) the right of investors to seek compensation for damages incurred in the process of insider trading; (ii) the involvement of public agencies in the distribution of recovered assets via securities law enforcement; and (iii) the possibility of establishing investor compensation funds.

A number of studies have been devoted to the issue of investor rights to claim damages through civil suits. A leading contribution is William K.S. Wang's "Trading on Material Non-Public Information on Impersonal Stock Markets",⁴ which makes an important contribution to the analysis of the nature of damages related to insider trading. Wang shows that the identification of victims of insider trading is problematic because of the impersonality of secondary market transactions because the insider has no direct relationship with the injured investor. Researchers studying emerging markets have identified the same difficulties. In his paper "Enforcement of Chinese Insider Trading Law",⁵ Robin Hui Huang shows that although Chinese law has begun to recognize civil liability for insider trading, the need to establish causation and quantify loss remains a serious obstacle to effective implementation. In other words, these studies explain why civil liability mechanisms are hardly ever applied in practice. Nonetheless, most of this literature deals only with the conditions of liability and does not propose solutions to the existing problems.

To address the constraints inherent to private lawsuits, some researchers have shifted their attention to the involvement of public authorities in asset recovery and compensation to investors. Verity Winship's research on the U.S. Fair Funds mechanism in the article "Fair Funds and the SEC's Compensation of Injured

⁴ WANG, W. K. S. "Trading on material non-public information on impersonal stock markets: Who is harmed, and who can sue whom under SEC Rule 10b-5?". *Southern California Law Review*, v. 54, 1981, pp. 1217-1321. Available at: https://repository.uclawsf.edu/faculty_scholarship/777 (accessed on 10 June 2026).

⁵ HUANG, R. H. "Enforcement of Chinese insider trading law: An empirical and comparative perspective". *American Journal of Comparative Law*, v. 68, n. 3, 2020, pp. 517-575. Available at: <https://ssrn.com/abstract=3325717> (accessed on 10 June 2026).

Investors”⁶ represents a significant development in this area. Under this model, securities regulators not only detect and sanction violations but also participate directly in the distribution of recovered funds. Winship describes this model as a form of “public attorney,” in which a public authority performs functions typically associated with class action lawsuits in civil litigation. However, the effectiveness and legality of this approach remain controversial. In the article “Should the SEC Be a Collection Agency for Defrauded Investors?”,⁷ Barbara Black argues that shifting regulatory attention from enforcement to compensation may weaken deterrence and lead to an inefficient allocation of enforcement resources. By contrast, Evan Barth argues in “Financial Law-No Harm, No Foul: Investor Loss and the Future of SEC Disgorgement”⁸ that the law increasingly links the recovery of ill-gotten gains to compensation for injured investors. Urska Velikonja’s empirical study of Fair Fund distributions further shows that, between 2002 and 2013, the SEC distributed more than USD 14.4 billion to injured investors, an amount comparable to aggregate recoveries in private securities class actions over the same period.⁹ Together, these studies reflect a shift from a predominantly punitive perspective toward an approach centred on investor protection.

Both private litigation and regulator-directed distribution nevertheless present significant challenges. These difficulties have led researchers to examine investor compensation funds as an alternative remedial mechanism. One of the most developed proposals is advanced by Alicia Davis Evans.¹⁰ Rather than relying on costly class-action litigation with uncertain outcomes, Evans proposes an investor compensation fund financed by firm contributions calibrated to each firm’s fraud risk. This approach would compensate investors while encouraging issuers to improve governance and reduce fraud risk. Evans’s framework marks a shift from “post-violation compensation” to a more comprehensive concept of “systemic risk management,” thereby broadening the conception of investor protection in securities markets. Moreover, Chien-Chung Lin and Huan-Ting Wu, in “How to Test an Insider Trading Law and Its Effectiveness”,¹¹ examine the function of Taiwan’s Securities and Futures Investors Protection Center (SFIPC) as an institution authorized to act on behalf of investors in litigation and compensation cases concerning securities fraud and insider trading. The institutional design and litigation record of the SFIPC have also been examined by Christopher C. Chen, who documents the Center’s intensive use of collective securities litigation, and by Wallace Wen-Yeu Wang and Jian-Lin Chen, who present the Taiwanese government-sanctioned non-profit enforcement model as an alternative to the U.S.

⁶ WINSHIP, V. “Fair funds and the SEC’s compensation of injured investors”. *Florida Law Review*, v. 60, n. 5, 2008, pp. 1103-1144. Available at: <http://scholarship.law.ufl.edu/flr/vol60/iss5/3> (accessed on 10 June 2026).

⁷ BLACK, B. “Should the SEC be a collection agency for defrauded investors?”. *The Business Lawyer*, v. 63, n. 2, 2008, pp. 317-346, Available at: <https://www.jstor.org/stable/40688469> (accessed on 12 June 2026).

⁸ BARTH, EVAN. “Financial law – no harm, no foul: Investor loss and the future of SEC disgorgement”. *Western New England Law Review*, v. 48, 2026, pp. 1-27. Available at: <https://ssrn.com/abstract=6404119> (accessed on 12 June 2026).

⁹ VELIKONJA, U. “Public compensation for private harm: Evidence from the SEC’s fair fund distributions”. *Stanford Law Review*, v. 67, n. 2, 2015, pp. 331-395. Available at: <https://www.jstor.org/stable/24247004> (accessed on 12 June 2026).

¹⁰ DAVIS EVANS, A. “The investor compensation fund (Law & Economics Working Papers Archive: 2003-2009, No. 76)”. *University of Michigan Law School*, 2007. Available at: https://repository.law.umich.edu/law_econ_archive/art76 (accessed on 12 June 2026).

¹¹ LIN, C-C, and WU, H-T. “How to test an insider trading law and its effectiveness: Price movements and comparative empirical data from Taiwan”. *International Review of Law and Economics*, v. 57, 2019, pp. 22-36. <https://doi.org/10.1016/j.irle.2018.11.002>

class action for transition economies.^{12,13} With respect to China, recent scholarship has analysed the “special representative action” mechanism introduced by Article 95 of the 2019 Securities Law and the role of the China Securities Investor Services Center (CSISC) as a state-sanctioned non-profit litigation representative, most prominently in the landmark Kangmei Pharmaceutical case.^{14,15} This literature demonstrates both the diversity of investor-compensation models and the growing use of specialized intermediary institutions to administer collective remedies.

Nevertheless, these studies have identified two main research gaps. First, most studies address securities fraud generally, whereas the role of an investor compensation fund in remedying losses caused specifically by insider trading remains underexplored. Second, the literature relies predominantly on the experience of developed markets, with limited research on emerging-market jurisdictions. The purpose of this study is to review the comparative experience of the United States, Taiwan, and China and assess the relevance of those experiences to Vietnam’s existing legal system.

2.2 Research methodology

This research employs the functional comparative law method as its principal methodology. Under a functional approach, legal institutions of different jurisdictions are compared not according to their doctrinal labels but according to the social and economic problem they are designed to solve, specifically, the problem of compensating dispersed, anonymous investors for losses caused by insider trading. The functional method is particularly suitable for the present study because the mechanisms compared (a case-based distribution mechanism attached to enforcement proceedings in the United States, a standing non-profit protection institution in Taiwan, and regulator-affiliated investor protection institutions in China) take very different legal forms while performing a functionally equivalent task.

The jurisdictions are selected on the basis of three criteria. The United States is selected because the Fair Funds mechanism is the most developed and most extensively documented instrument for converting public enforcement proceeds into investor compensation. Taiwan is selected because it is an Asian jurisdiction whose market has historically been dominated by retail investors, whose supervisory structure is centred on a strong administrative regulator, and whose standing, statutorily created SFIPC shares structural features relevant to Vietnam. China is selected as the emerging market whose enforcement-centred legal tradition and concentrated regulatory power most closely resemble the Vietnamese institutional environment.

To ensure methodological consistency, the comparison of all three models is organized around six criteria: (i) legal basis; (ii) funding sources; (iii) eligibility of beneficiaries; (iv) distribution mechanism and calculation of compensation; (v)

¹² CHEN, C. C. “Enforcement of the duties of directors by the securities and futures investors protection center in Taiwan”. SSRN Working Paper, 2015. <https://doi.org/10.2139/ssrn.2588254>

¹³ WANG, W. W.-Y., and CHEN, J.-L. “Reforming China’s securities civil actions: Lessons from PSLRA Reform in the U.S. and Government-Sanctioned Non-Profit Enforcement in Taiwan”. *Columbia Journal of Asian Law*, v. 21, n. 2, 2008, pp. 115-160. Available at: <https://journals.library.columbia.edu/index.php/cjal/article/view/3269> (accessed on 15 July 2026).

¹⁴ CHEN, F. “The Chinese-style securities class action mechanism for investor protection: Context, content, comparison and consequence”. *Asia Pacific Law Review*, v. 30, n. 2, 2022, pp. 287-308. <https://doi.org/10.1080/10192557.2022.2073907>

¹⁵ LIN, L. Y.-HS., and XIANG, Y. “The rise of non-profit organizations in global securities class actions: a new hybrid model in China”. *Columbia Journal of Transnational Law*, v. 60, 2022, pp. 1-56. Available at: <https://ssrn.com/abstract=3895540> (accessed on 15 July 2026).

institutional governance; and (vi) judicial or administrative oversight. These criteria are then used in Section 7 to assess the compatibility of each design element with the Vietnamese legal system.

The comparative method is complemented by three auxiliary approaches. First, a conceptual approach is used to clarify the theoretical foundations of insider trading liability, including the classical and misappropriation theories that define who qualifies as an “insider.” Second, a historical approach traces the evolution of the U.S. mechanism from Section 20A of the Securities Exchange Act of 1934 through Section 308 of the Sarbanes-Oxley Act of 2002 to the reforms of the Dodd-Frank Act of 2010 and the National Defense Authorization Act for Fiscal Year 2021. Third, a case-study approach draws on concrete enforcement and compensation cases: the Kangmei Pharmaceutical special representative action in China; the insider-trading compensation actions brought by Taiwan’s SFIPC; publicly reported Vietnamese insider-trading enforcement cases involving XMC, FBT, and SKG; and, as a related but doctrinally distinct illustration of mass investor compensation, the FLC Group/Faros securities-fraud proceedings. These cases are used to assess how the respective enforcement and remedial mechanisms operate in practice.

Concurrently, this study applies doctrinal legal analysis to assess the efficacy of Vietnamese law in curbing insider trading and safeguarding investors. This analysis addresses two questions: (i) the current level of protection afforded under Vietnamese law to investors affected by insider trading; and (ii) the deficiencies in compensating losses arising from transactions involving inside information.

Together, these methods permit an evaluation of the compatibility of the investor compensation fund scheme with the Vietnamese legal system. On this basis, the study develops policy recommendations for the creation of the Investor Compensation Fund as an additional compensatory mechanism alongside civil liability for insider trading. The study is limited to compensation mechanisms for losses caused by insider trading.

3. The need for an investor compensation fund

Before turning to the question of damage, it is necessary to clarify who may be liable as an “insider”, since the scope of the prohibited class determines the scope of the compensable harm. Under the classical theory developed in U.S. jurisprudence, liability attaches to corporate insiders who owe a fiduciary duty to the company’s shareholders, and to tippees who knowingly receive information in breach of that duty.^{16,17} The misappropriation theory, endorsed by the U.S. Supreme Court in *United States v. O’Hagan*, expands the category of insiders beyond the fiduciary relationship with shareholders: a person who misappropriates confidential information in breach of a duty owed to the source of the information, such as an outside lawyer, printer, or consultant also commits securities fraud.¹⁸ This expansion is significant for investor protection because it captures the full range of persons who can exploit informational asymmetry, and thereby delineates more clearly the class of wrongdoers whose gains may be recovered for the benefit of injured investors. Vietnamese law adopts a functionally similar, conduct-based approach: Article 12 of the 2019 Securities Law prohibits any person who possesses inside information from using it to trade, from disclosing or providing it to others, or from advising others to trade on it, without confining the prohibition to persons owing fiduciary duties to shareholders. The category of potential violators in

¹⁶ *Chiarella v. United States*, 445 U.S. 222 (1980). Available at: <https://supreme.justia.com/cases/federal/us/445/222/> (accessed on 20 June 2026).

¹⁷ *Dirks v. SEC*, 463 U.S. 646 (1983). Available at: <https://supreme.justia.com/cases/federal/us/463/646/> (accessed on 20 June 2026).

¹⁸ *United States v. O’Hagan*, 521 U.S. 642 (1997). Available at: <https://supreme.justia.com/cases/federal/us/521/642/> (accessed on 20 June 2026).

Vietnam therefore already extends to secondary recipients and other outsiders, which is consistent with the protective rationale of the misappropriation theory and reinforces the need for a compensation mechanism that reaches the victims of all such violations.

Although insider trading can cause substantial harm to investors and the securities market, civil litigation is often an ineffective remedial mechanism. The principal difficulty is not that harm is conceptually impossible to establish, but that identifying injured investors, proving causation, and quantifying individual losses are exceptionally difficult in an anonymous market.

Any remedial framework for insider trading depends on identifying the nature of the harm caused by the violation. The threshold question is whether insider trading harms identifiable investors or only market integrity. Some scholars characterize insider trading as a form of victimless misconduct^{19,20} on the ground that no person suffers direct harm. This view reflects the structure of modern securities markets, in which transactions are executed anonymously through centralized exchanges. Market participants make independent trading decisions and do not transact directly with insiders. The matching of their orders with an insider's order is simply a consequence of the exchange's order-matching system. Consequently, it is difficult to identify which transactions transferred value to the insider or to prove that a particular investor was directly harmed by the insider's conduct. This view has nevertheless been widely criticized in securities-law scholarship. The legal frameworks adopted in most jurisdictions reflect the view that insider trading harms both investors and the operation of capital markets. Such harms are dispersed among numerous market participants and are therefore difficult to quantify at the individual level. According to William K.S. Wang, the gains that insiders receive or losses that they avoid are not generated but transferred from other market participants.^{21,22} On this account, insiders' gains correspond to losses borne by one or more uninformed investors. Those losses may be caused by: (i) executing trades at disadvantageous prices as a result of insider trading; and (ii) foregoing trading opportunities due to their orders being replaced by orders of insiders. The difficulty of identifying victims and quantifying their losses does not establish that no harm occurred. Insider trading also creates additional costs for the entire market. It exposes market makers to adverse selection risks, and therefore they must widen their bid-ask spreads to protect themselves against trading with better-informed counterparts.^{23,24,25} As a result, transaction costs increase for all market

¹⁹ MANNE, H. G. "Insider trading and property rights in new information". *Cato Journal*, v. 4, n. 3, 1985, pp. 933-957. Available at: <https://www.cato.org/cato-journal/winter-1985/insider-trading-property-rights-new-information> (accessed on 22 June 2026).

²⁰ For the fullest law-and-economics defence of deregulating insider trading, see CARLTON, D. W., and FISCHER, D. R. "The regulation of insider trading". *Stanford Law Review*, v. 35, n. 5, 1983, pp. 857-895. <https://doi.org/10.2307/1228706>

²¹ WANG, W. K. S. "Trading on material non-public information on impersonal stock markets: Who is harmed, and who can sue whom under SEC Rule 10b-5?". 1981. *Ibid*.

²² For the author's later restatement of the victim and harm analysis, see WANG, W. K. S. "Stock market insider trading: Victims, violators and remedies – including an analogy to fraud in the sale of a used car with a generic defect". *Villanova Law Review*, v. 45, n. 1, 2000, pp. 27-64. Available at: <https://digitalcommons.law.villanova.edu/vlr/vol45/iss1/11/> (accessed on 15 July 2026).

²³ ALI, P. U., and GREGORIOU, G. N. (eds.) *Insider Trading: Global Developments and Analysis*. CRC Press, Boca Raton, 2008. <https://doi.org/10.1201/9781420074031>

²⁴ The canonical microstructure model of this adverse-selection effect is GLOSTEN, L. R., and MILGROM, P. R. "Bid, ask and transaction prices in a specialist market with heterogeneously informed traders". *Journal of Financial Economics*, v. 14, n. 1, 1985, pp. 71-100. [https://doi.org/10.1016/0304-405X\(85\)90044-3](https://doi.org/10.1016/0304-405X(85)90044-3)

²⁵ On the welfare effects of insider trading more generally, see LELAND, H. E. "Insider trading: Should it be prohibited?". *Journal of Political Economy*, v. 100, n. 4, 1992, pp. 859-

participants, regardless of whether they are directly involved in any insider trading. From an economic perspective, this constitutes a negative externality borne by the investing public as a whole.

It is this impersonal and diffuse character of the injury that makes the civil suit so difficult to bring. In a private securities-fraud action, the plaintiff generally bears the burden of proving reliance, transaction causation, and loss causation.²⁶ It becomes especially difficult in the case of insider trading. In a centralized securities market, investors trade at prevailing market prices without knowing either the existence of material non-public information or the identity of their counterparty.²⁷ Consequently, it becomes extremely difficult to establish whether an investment decision was influenced by the undisclosed information. Moreover, substantial evidence is required to show that the losses suffered by the investor are a direct result of insider trading, as opposed to being a result of ordinary market movements. Few civil actions are therefore brought because the expected recovery rarely justifies the substantial costs of investigation and litigation.^{28,29,30,31} The very nature of insider trading also makes it difficult to prove the extent of damages caused by the violation.³² In fact, most civil actions are brought only after regulators have completed their investigations and publicly established the relevant facts.

Individually, none of these barriers is conclusive; however, collectively, it becomes clear that private litigation cannot be a standalone system for remedying the losses incurred due to insider trading. Although insider trading causes harm, the dispersion of losses, difficulty of identifying victims, problems of proving causation, and limited investigative powers of private litigants are serious impediments to the effectiveness of private enforcement. For these reasons, insider-trading regulation in most jurisdictions relies heavily on public enforcement. Comparative empirical research further indicates that the intensity and resourcing of public enforcement is strongly associated with the development of securities markets, although scholars continue to debate the relative contribution of public enforcement and private liability rules, which explains why emerging markets in particular tend to rely on regulators rather than on private plaintiffs.^{33,34,35} Reliance

887. <https://doi.org/10.1086/261843>

²⁶ PATWARDHAN, M. "The insider trading prohibition theories in the literature – A critique". *South Carolina Journal of International Law and Business*, v. 19, n. 1, 2022, pp. 37-74. Available at: <https://scholarcommons.sc.edu/scjilb/vol19/iss1/7> (accessed on 22 June 2026).

²⁷ GAILLARD, E. (ed.). *Insider Trading: The Laws of Europe, the United States and Japan*. Kluwer Law and Taxation Publishers, Deventer, 1992. ISBN 90-6544-592-7.

²⁸ For illustrations of the small body of private insider trading suits and of the doctrinal hurdles they face, see *Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156 (2d Cir. 1980). Available at: <https://law.justia.com/cases/federal/appellate-courts/F2/635/156/136149/> (accessed on 20 June 2026).

²⁹ *Wilson v. Comtech Telecommunications Corp.*, 648 F.2d 88 (2d Cir. 1981). Available at: <https://law.justia.com/cases/federal/appellate-courts/F2/648/88/130582/> (accessed on 20 June 2026).

³⁰ *Neubronner v. Milken*, 6 F.3d 666 (9th Cir. 1993). Available at: <https://openjurist.org/6/f3d/666/neubronner-v-r-milken> (accessed on 20 June 2026).

³¹ In China, civil actions for insider trading likewise remain exceptional in practice; see HUANG, R. H. "Enforcement of Chinese insider trading law: An empirical and comparative perspective". 2020. Ibid.

³² VENTORUZZO, M. "Comparing insider trading in the United States and in the European Union: history and recent developments". *European Company and Financial Law Review*, v. 11, n. 4, 2014, pp. 554-593. <https://doi.org/10.1515/ecfr-2014-0554>

³³ JACKSON, H. E., and ROE, M. J. "Public and private enforcement of securities laws: Resource-based evidence". *Journal of Financial Economics*, v. 93, n. 2, 2009, pp. 207-238. <https://doi.org/10.1016/j.jfineco.2008.08.006>

on public enforcement does not, however, ensure adequate compensation for investors. Regulators may be able to uncover violations, sanction the guilty parties, and recover unlawful gains from them. However, public enforcement is mainly aimed at punishment and prevention rather than at compensation of victims. This remedial gap provides the principal theoretical justification for an investor compensation fund as an intermediate mechanism capable of linking public enforcement with remedial objectives that traditional private litigation cannot attain.

4. The U.S. Fair Funds system: Blending public enforcement with investor compensation

One of the most significant investor-protection reforms in U.S. securities law was the creation of Fair Funds under Section 308 of the Sarbanes-Oxley Act of 2002. The law was passed after a number of corporate scandals of the early 2000s, including the Enron and WorldCom cases, which exposed the limitations of existing civil-litigation and public-enforcement mechanisms for compensating investors. Prior to the Sarbanes-Oxley Act, the U.S. Securities and Exchange Commission (SEC) could use only disgorged ill-gotten gains recovered from violators to compensate aggrieved investors. However, Section 20A of the Securities Exchange Act of 1934 limited the total amount of compensation to the defendant's earned profits or avoided losses, after deducting any funds previously seized under SEC enforcement orders.³⁶ Before Section 308, civil penalties imposed by the SEC were paid to the U.S. Treasury and could not be used to compensate injured investors. As a result, the SEC is often able to recover significant amounts through enforcement actions, but injured investors receive little or no actual compensation.

Section 308 of the Sarbanes-Oxley Act authorized the SEC to combine civil penalties with disgorged funds recovered in a particular enforcement proceeding and distribute the combined amount through a Fair Fund. The resulting fund may then be distributed to injured investors. It must be stressed at the outset that a Fair Fund is not a permanent, standing investor compensation fund. It is a case-based distribution mechanism: a separate fund is created, at the discretion of the SEC or the court, within a specific enforcement proceeding, and it is dissolved once the moneys recovered in that proceeding have been distributed. Three components must therefore be distinguished: disgorgement (the recovery of the wrongdoer's net illicit profits, which is remedial in nature), civil penalties (which are punitive), and the distribution plan (the administrative instrument, approved by the SEC or the court, that determines who receives the money and how). Section 308 merely permits civil penalties to be added to disgorged sums "for the benefit of the victims" within a given proceeding. A Fair Fund is therefore not a continuously available compensation pool but a mechanism for converting proceeds recovered in a specific enforcement action into investor compensation. Amounts recovered from violators can consequently serve not only punitive and deterrent purposes but also a remedial function. The Fair Funds mechanism also illustrates the evolution of the SEC's role. The SEC's traditional mandate has centred on protecting market integrity, enforcing the securities laws, and maintaining public confidence in the capital markets. Traditionally, investor compensation has been treated as a matter

³⁴ COFFEE, J. C., JR. "Law and the market: The impact of enforcement". *University of Pennsylvania Law Review*, v. 156, n. 2, 2007, pp. 229-311. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1462/ (accessed on 15 July 2026).

³⁵ For the contrasting emphasis on private liability rules, see LA PORTA, R., LOPEZ-DE-SILANES, F., and SHLEIFER, A. "What Works in Securities Laws?", *The Journal of Finance*, v. 61, n. 1, 2006, pp. 1-32. <https://doi.org/10.1111/j.1540-6261.2006.00828.x>

³⁶ Securities Exchange Act of 1934 (United States), notably Sections 20A and 21A, codified at 15 U.S.C. §§ 78t-1 and 78u-1. Available at: <https://www.law.cornell.edu/uscode/text/15/78t-1> and <https://www.law.cornell.edu/uscode/text/15/78u-1> (accessed on 16 June 2026).

for civil litigation, particularly securities class actions.³⁷ The introduction of Fair Funds, however, expanded the SEC's role toward what Verity Winship describes as that of "a lawyer representing the public interest".³⁸ The regulator therefore not only sanctions violators but also participates in recovering assets and distributing enforcement proceeds to injured investors.

The legal foundations of the mechanism have continued to evolve. In *Liu v. SEC* (2020), the U.S. Supreme Court confirmed that disgorgement is a permissible form of equitable relief only insofar as it does not exceed the wrongdoer's net profits and is awarded for the benefit of victims, thereby anchoring the remedial rather than punitive nature of disgorgement.³⁹ Shortly thereafter, Section 6501 of the National Defense Authorization Act for Fiscal Year 2021 codified the SEC's authority to seek disgorgement in federal court and extended the applicable limitation periods, although the relationship between the new statutory disgorgement and the equitable limitations of *Liu* remains contested in the scholarship.⁴⁰ Subsequent case law has sharpened the victim-orientation of the remedy further. In *SEC v. Govil* (2023),^{41,42} the Second Circuit held that disgorgement may be awarded only where the investors concerned have suffered pecuniary harm. This requirement is particularly consequential in insider trading cases, where unjust enrichment is easy to establish but individualized pecuniary harm is not. These developments are relevant to the present study because they show that, even in the United States, the mechanism is legally constrained by the relationship between the amount recovered from the violator and the amount distributed to victims, and this is a constraint that any Vietnamese adaptation must also respect.

4.1 Functioning of the Fair Funds under the U.S. securities laws

The principal sources of a Fair Fund are (i) amounts recovered from offenders; and (ii) monetary penalties collected by the SEC through enforcement. Recoveries may also be obtained from other parties involved in the violation, including corporate directors or executives and outside participants such as investment banks, accounting firms, and other financial intermediaries.⁴³ Under the U.S. securities laws, the SEC is also empowered to collect voluntary contributions to augment the fund.⁴⁴

Eligible beneficiaries are investors or groups of investors who have incurred losses as a consequence of a securities-law violation.⁴⁵ In contrast to traditional

³⁷ BLACK, B. "Should the SEC be a collection agency for defrauded investors?". 2008. Ibid.

³⁸ WINSHIP, V. "Fair funds and the SEC's compensation of injured investors". 2008. Ibid.

³⁹ *Liu v. SEC*, 591 U.S. 71 (2020). Available at: <https://supreme.justia.com/cases/federal/us/591/71/> (accessed on 20 June 2026).

⁴⁰ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283 (United States), Section 6501, codified at 15 U.S.C. § 78u(d)(7). Available at: <https://www.law.cornell.edu/uscode/text/15/78u> (accessed on 16 June 2026).

⁴¹ *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023). Available at: <https://law.justia.com/cases/federal/appellate-courts/ca2/22-1658/22-1658-2023-10-31.html> (accessed on 20 June 2026).

⁴² On the interpretive questions left open by the codification, see VOLLMER, A. N. "Liu and the new SEC disgorgement statute". *William & Mary Business Law Review*, v. 15, n. 2, 2024, pp. 391-446. Available at: <https://scholarship.law.wm.edu/wmbblr/vol15/iss2/3/> (accessed on 16 July 2026).

⁴³ BLACK, B. "Should the SEC be a collection agency for defrauded investors?". 2008. Ibid.

⁴⁴ Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204 (United States), Section 308, codified at 15 U.S.C. § 7246. Available at: <https://www.law.cornell.edu/uscode/text/15/7246> (accessed on 16 June 2026).

⁴⁵ SECURITIES AND EXCHANGE COMMISSION (SEC). *Rules on Fair Fund and Disgorgement Plans* (Rules 1100-1106). Available at: <https://www.sec.gov/enforcement-litigation/rulesofpracticeshtml/sec-rules-fair-fund-disgorgement-plans> (accessed on 16 June 2026).

civil compensation procedures, Fair Funds do not require each investor to file an individual action and establish every element of civil liability. Rather, after establishing a Fair Fund, the SEC develops a distribution plan identifying eligible beneficiaries, the method for calculating losses, and the allocation procedure.⁴⁶ Consequently, compensation is limited to investors who sustained losses attributable to the violation established in the enforcement proceeding.

However, the creation of a Fair Fund is at the discretion of the SEC or the court, acting on the SEC's application or recommendation. In deciding whether to create a Fair Fund, the SEC considers the economic viability of the payment process, the amount likely to be collected, the number of potential victims, and the administrative costs of managing and distributing the fund. If a Fair Fund is created, the SEC prepares a distribution plan identifying eligible claimants, the method for calculating payments, and the distribution process. One advantage of Fair Funds is their flexibility. Where the identities of the victims and the amounts of their losses are known, the SEC or the court may order the defendant to pay them directly without creating a separate distribution fund.⁴⁷ Where a violation affects numerous investors or causes widespread losses, a Fair Fund provides a single vehicle for collecting, administering, and distributing recovered amounts. When there are numerous pending class actions, the SEC may coordinate with private enforcement by directing Fair Fund proceeds through the distribution process established by a class-action settlement, thereby avoiding duplicative procedures and reducing costs.⁴⁸

4.2 Advantages of the Fair Funds mechanism

Some of the key advantages that the Fair Fund approach holds from the standpoint of investor protection include:

- Significantly expanding the financial resources available to compensate investors. Before Fair Funds were authorized, compensation was generally limited to disgorged proceeds, typically the illicit gains obtained by the wrongdoer. By allowing the inclusion of civil penalties within the same fund, Fair Funds significantly expand the available financial resources for compensation, thereby increasing the likelihood of investor compensation. More specifically, in the context of insider trading, the SEC can impose civil penalties up to three times the profit or loss avoided by the violator.⁴⁹ Accordingly, the combined amount of disgorgement and civil penalties imposed on an insider trader may reach four times the economic benefit obtained from the violation. Furthermore, U.S. securities law extends liability to controlling persons, including brokers, investment advisers, and employers, when they fail to take reasonable measures to prevent insider trading by their employees. Such persons may also face penalties of up to three times the unlawful gain obtained by the controlled person.⁵⁰

- Fair Funds can overcome several obstacles associated with private civil proceedings in insider-trading cases. Unlike private plaintiffs, the SEC need not show that it purchased or sold securities, nor must it establish reliance, transaction

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ VELIKONJA, U. "Public compensation for private harm: Evidence from the SEC's fair fund distributions". 2015. Ibid.

⁴⁹ Securities Exchange Act of 1934 (United States), notably Sections 20A and 21A, codified at 15 U.S.C. §§ 78t-1 and 78u-1. Available at: <https://www.law.cornell.edu/uscode/text/15/78t-1> and <https://www.law.cornell.edu/uscode/text/15/78u-1> (accessed on 16 June 2026).

⁵⁰ Securities Exchange Act of 1934 (United States), notably Sections Section 21A(a)(3), codified at 15 U.S.C. §§ 78t-1 and 78u-1. Available at: <https://www.law.cornell.edu/uscode/text/15/78t-1> and <https://www.law.cornell.edu/uscode/text/15/78u-1> (accessed on 16 June 2026).

causation, or loss causation.⁵¹ These requirements have long constrained the effectiveness of civil liability as a mechanism for regulating insider trading. By relying on regulatory enforcement, Fair Funds enable compensation to be distributed to numerous investors without requiring each claimant to overcome the obstacles of individual civil litigation.

Moreover, transaction costs are substantially lower than those incurred in class-action securities litigation. In U.S. cases, attorneys' fees are typically deducted as a proportion of the total recovery. However, distributions made through Fair Funds are not subject to such deductions, thereby increasing the amount available for distribution to investors.

4.3 Limitations of the Fair Funds mechanism

Besides the advantages mentioned above, Fair Funds still have some significant limitations that have been widely debated by scholars, including:

The most frequently voiced criticism concerns the so-called "circularity" or "pocket-shifting" problem.⁵² Specifically, the SEC may impose substantial penalties on an issuer for securities-law violations involving its insiders and then use those penalties to compensate affected investors. Ultimately, the economic burden of the penalty is borne by the company's current shareholders, many of whom may not be involved in the violation. As a result, this mechanism risks becoming a transfer of wealth from one group of innocent investors to another.⁵³ As Section 7.2 will demonstrate, this criticism has direct implications for the design of any Vietnamese fund. Revenues collected from corporate issuers, whose shareholders are themselves largely innocent, should not form the financial basis of the compensation mechanism.

A former statutory limitation concerned the circumstances in which civil penalties could be transferred to a Fair Fund. According to Section 308 of the Sarbanes-Oxley Act of 2002, civil penalties could only be distributed through the Fair Fund if the penalties were issued in conjunction with an order to recover illicit profits against the same defendant. This requirement created a problem in cases where the penalized entity was a controlling entity. The SEC could impose civil penalties on controlling persons or entities even where they had not themselves engaged in insider trading and therefore had no illicit profits to disgorge. In these cases, the SEC was unable to make use of the civil penalties collected from the controlling parties in the Fair Fund, thus depriving itself of substantial financial resources for compensating investors. Section 929B of the Dodd-Frank Act eliminated this limitation, enabling civil penalties to be distributed to victims irrespective of any order for disgorgement.⁵⁴

Establishing and administering a Fair Fund is complex and costly. Tasks such as determining the list of eligible participants, loss calculations, claim administration, and payment distribution involve many parties such as independent distribution advisors, law firms, fund administrators, tax professionals, and escrow agents.⁵⁵ These costs may reduce the amount ultimately distributed to investors. Beyond cost, procedural scholarship has criticized agency-administered compensation schemes for affording victims fewer safeguards than class actions because of limited

⁵¹ BLACK, B. "Should the SEC be a collection agency for defrauded investors?". *The Business Lawyer*, v. 63, n. 2, 2008, pp. 317-346, Available at: <https://www.jstor.org/stable/40688469> (accessed on 12 June 2026).

⁵² WINSHIP, V. "Fair funds and the SEC's compensation of injured investors". 2008. Ibid.

⁵³ Ibid.

⁵⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (United States), Section 929B, codified at 15 U.S.C. § 7246. Available at: <https://www.law.cornell.edu/uscode/text/15/7246> (accessed on 16 June 2026).

⁵⁵ WINSHIP, V. "Fair funds and the SEC's compensation of injured investors". 2008. Ibid.

opportunities to be heard, weak judicial review of distribution decisions, and poor coordination with parallel private litigation.⁵⁶ These criticisms inform the governance and judicial-review design proposed for Vietnam in Section 7.4. Collection problems add a further difficulty: penalties and disgorgement ordered against insolvent or absconding defendants cannot be distributed unless they are actually recovered, so amounts announced in enforcement actions may substantially exceed the sums ultimately received by investors.

Consequently, Fair Fund administration may divert resources from enforcement and thereby affect the SEC's core regulatory functions. The SEC's core mandate is to protect market integrity, deter and prosecute securities-law violations, and support the efficient functioning of capital markets.⁵⁷ Substantial personnel and financial resources devoted to administering distributions may reduce the SEC's capacity to conduct investigations and enforcement proceedings. An emphasis on monetary recovery may also encourage regulators to prioritize distributions over structural remedies, including measures to improve corporate governance.⁵⁸

In sum, despite their limitations, Fair Funds provide a useful mechanism for converting proceeds recovered through enforcement into investor compensation. Such a mechanism may help balance deterrence with investor protection. The Fair Funds experience therefore provides an important comparative reference for developing countries seeking to remedy losses caused by insider trading.

5. Asian models of investor compensation: Taiwan's SFIPC and China's investor protection institutions

The U.S. stock market is characterized by its depth and high liquidity, supported by strong private law enforcement mechanisms, so its institutional environment is fundamentally different from Vietnam's. Therefore, the comparative analysis needs to be extended to Asian countries with market structures and enforcement traditions more similar to those of Vietnam. This section examines the Taiwanese and Chinese models against the six criteria set out in Section 2.2.

5.1 Taiwan: The Securities and Futures Investors Protection Center (SFIPC)

Legal basis and institutional form. The SITPA, promulgated on 17 July 2002 and effective from 1 January 2003, authorized the establishment of a standing, non-profit protection institution.⁵⁹ The SFIPC was established with court approval in 2003 as a statutorily sanctioned foundation. Its functions include consultation, mediation of securities disputes, collective litigation on behalf of investors, and the management of a protection fund.^{60,61}

Funding. Unlike the case-based U.S. Fair Fund, the SFIPC's protection fund is capitalized ex ante and independently of enforcement outcomes. The fund was valued at approximately NT\$1.03 billion upon establishment, with contributions from Taiwan Stock Exchange, the Taiwan Futures Exchange, the over-the-counter

⁵⁶ ZIMMERMAN, A. S. "Distributing justice". *New York University Law Review*, v. 86, n. 2, 2011, pp. 500-572. Available at: <https://nyulawreview.org/issues/volume-86-number-2/distributing-justice/> (accessed on 20 July 2026).

⁵⁷ BLACK, B. "Should the SEC be a collection agency for defrauded investors?". 2008. Ibid.

⁵⁸ Ibid.

⁵⁹ Securities Investor and Futures Trader Protection Act (Taiwan), promulgated 17 July 2002, effective 1 January 2003. available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400038> (accessed on 15 July 2026).

⁶⁰ Securities and Exchange Act (Taiwan), notably Articles 155 and 157-1. Available at: <https://www.sfb.gov.tw/en/home.jsp?id=123&parentpath=0,117,118> (accessed on 15 July 2026).

⁶¹ SECURITIES AND FUTURES INVESTORS PROTECTION CENTER (SFIPC). "Introduction". Available at: <https://www.sfipc.org.tw/en/cp.aspx?n=7618> (accessed on 15 July 2026).

market operator, the central securities depository, and periodic levies on securities and futures firms calculated by reference to their transaction volumes.⁶² This ex-ante funding structure is of particular relevance to Vietnam since it demonstrates that a protection institution need not be financed out of the very enforcement proceeds whose scarcity motivates its creation.

Eligibility, distribution, and the preservation of the causal nexus. For insider trading and other statutory securities violations (Articles 155 and 157-1 of Taiwan's Securities and Exchange Act, among others), the SFIPC does not distribute money on an abstract basis. Instead, where twenty or more injured investors register their claims, the Center brings a collective action against the wrongdoers, typically in parallel with criminal proceedings, and distributes the amounts actually recovered from the defendants to the registered investors.^{63,64} The Center has been highly active. By the end of 2016 it had initiated more than two hundred collective actions, the majority of which involved insider trading, market manipulation, or financial statement fraud,^{65,66} and it continues to open registration for compensation in insider trading cases, as illustrated by the registrations announced in 2023 concerning UBI Pharma Inc., Kingpak Technology Inc., and Ching Chan Optical Technology Co.⁶⁷ Because recovery is obtained from the violators themselves through litigation, the causal link between the violation and the compensation is preserved, and the "circularity" problem is attenuated when the standing fund finances the machinery of recovery (litigation, administration), while the compensation itself is paid, in principle, out of the wrongdoers' assets.

Governance and oversight. The SFIPC is governed by a board whose composition is regulated by the SITPA and supervised by Taiwan's Financial Supervisory Commission; it operates separately from the regulator's investigative and sanctioning functions, publishes its activities, and is accountable through the courts in which it litigates. Scholars have nonetheless observed that its public character makes it considerably more active in enforcing securities regulation than in pursuing breaches of directors' duties, a reminder that government-sanctioned protection bodies tend to follow the priorities of the supervising regulator.⁶⁸

5.2 China: Advance compensation and the special representative action

Legal basis. China's revised Securities Law of 2019 (effective 1 March 2020) institutionalized two compensation mechanisms of relevance here. Article 93

⁶² Ibid.

⁶³ SECURITIES AND FUTURES INVESTORS PROTECTION CENTER (SFIPC). "Types of cases". 2015. Available at: <https://www.sfipc.org.tw/en/cp.aspx?n=7637> (accessed on 15 July 2026).

⁶⁴ LIN, C-C, and WU, H-T. "How to test an insider trading law and its effectiveness: price movements and comparative empirical data from Taiwan". 2019. Ibid.

⁶⁵ LIN, H-P, WALKER, M. M., and WANG, Y-J. "Shareholder wealth effects of corporate fraud: Evidence from Taiwan's securities investor and futures trader protection act". *International Review of Economics & Finance*, v. 65, 2020, pp. 222-243. <https://doi.org/10.1016/j.iref.2019.09.010> (documenting 216 collective actions initiated by the SFIPC by the end of 2016, most involving insider trading, price manipulation, or accounting fraud, against 28 investor-initiated actions before the Act).

⁶⁶ see also CHEN, C. C. "Enforcement of the duties of directors by the securities and futures investors protection center in Taiwan". SSRN Working Paper, 2015. <https://doi.org/10.2139/ssrn.2588254>

⁶⁷ SECURITIES AND FUTURES INVESTORS PROTECTION CENTER (SFIPC). Announcements of 3 and 31 May 2023 concerning compensation registration in the UBI Pharma, Kingpak Technology, and Ching Chan Optical Technology insider trading cases. 2026. Available at: <https://www.sfipc.org.tw> (accessed on 15 July 2026).

⁶⁸ CHEN, C. C. "Enforcement of the duties of directors by the securities and futures investors protection center in Taiwan". 2015. Ibid.

codifies the “advance compensation” scheme, under which the controlling shareholder, actual controller, or the sponsoring securities firm may compensate injured investors first and then seek recourse against the issuer and other responsible persons. Article 95(3) creates the “special representative action”, under which an investor protection institution, namely the China Securities Investor Services Center (CSISC), a non-profit organization established in 2014 under the auspices of the China Securities Regulatory Commission, may act, on an opt-out basis, as representative of all eligible investors.^{69,70}

Operation and case practice. The special representative action was first applied in the Kangmei Pharmaceutical case. In November 2021 the Guangzhou Intermediate People’s Court ordered compensation of approximately RMB 2.46 billion to more than fifty thousand investors, with the CSISC acting as their representative.⁷¹ The mechanism thus combines public and private enforcement: the CSISC typically acts after the regulator has established the violation, and compensation is recovered from the wrongdoers and other liable parties (including, notably, gatekeepers such as auditors), not from a pre-funded pool. Scholars have observed, however, that the mechanism has so far been applied only very sparingly, that the CSISC’s dependence on the regulator raises independence concerns, and that the advance compensation and special representative mechanisms operate, in practice, as mutually exclusive alternatives.⁷²

Lessons. The Chinese experience offers Vietnam two lessons that the U.S. experience cannot. First, in an enforcement-centred legal system with weak private litigation, a state-sanctioned representative institution can operationalize mass compensation where individual suits are impossible, but its credibility depends on visible institutional distance from the regulator. Second, recovering compensation from wrongdoers and culpable gatekeepers, rather than from innocent corporate treasuries, substantially mitigates the circularity problem discussed in Section 4.

5.3 Comparative synthesis

Assessed against the six criteria of Section 2.2, the three models diverge as follows. As to legal basis and institutional form, the United States uses a case-based administrative distribution mechanism; Taiwan and China use standing statutory institutions. As to funding, the U.S. model depends entirely on enforcement proceeds; Taiwan combines ex-ante industry levies (for the institution and its protection fund) with recoveries obtained from wrongdoers (for compensation); China relies on recoveries from wrongdoers and liable gatekeepers. As to eligibility and distribution, all three systems tie compensation to an established violation, and both Asian systems require investors to register claims. In terms of governance and oversight, all three systems formally separate the compensation function from the investigative function. Judicial control is strongest in Taiwan and China, where compensation is ordered by the courts, while administrative discretion is greatest in the United States.

For Vietnam, this synthesis supports a hybrid model combining Taiwan’s standing institutional form and ex-ante funding, which address scarce and volatile

⁶⁹ Securities Law of the People’s Republic of China (revised 2019, effective 1 March 2020), notably Articles 93 and 95. Available at: <http://www.npc.gov.cn/englishnpc/c23934/202012/1c425b0c93b04caf9857b5eb9c14e727.shtml> (accessed on 15 July 2026).

⁷⁰ LIN, L. Y-HS., and XIANG, Y. “The rise of non-profit organizations in global securities class actions: a new hybrid model in China”. 2022. Ibid.

⁷¹ CHEN, F. “The Chinese-style securities class action mechanism for investor protection: Context, content, comparison and consequence”. 2022. Ibid.

⁷² Ding, P., Zhao, J., Chen, Y., and Sheng, Q. “Trial by case: The unwritten rules of China’s securities compensation”. *Asia Pacific Law Review*, v. 34, n. 2, 2026, pp. 515-548. <https://doi.org/10.1080/10192557.2026.2665145>

enforcement revenue; the U.S. insight that proceeds recovered from individual wrongdoers can be channelled to victims; and the Chinese caution that institutional distance from the regulator must be genuine rather than nominal. Section 7 develops this hybrid design.

6. The Vietnamese context: Current status and gaps

Although Vietnam has achieved some progress in combating insider trading, investor compensation remains difficult. The legal framework focuses primarily on administrative and criminal sanctions rather than on compensating investors. Article 12 of the 2019 Securities Law prohibits the use of inside information to trade securities.⁷³ Decree No. 156/2020/ND-CP,⁷⁴ as amended by Decree No. 128/2021/ND-CP,⁷⁵ prescribes substantial penalties, including a fine of up to ten times the unlawful gain for an organization and up to five times the unlawful gain for an individual. Moreover, Article 210 of the 2015 Criminal Code (as amended in 2017)⁷⁶ prohibits insider trading and provides a maximum term of seven years' imprisonment where the offender obtains an unlawful gain of VND 1 billion or more or causes investor losses of VND 1.5 billion or more. To facilitate enforcement, Circular No. 117/2020/TT-BTC provides a formula for calculating unlawful gains from insider trading.⁷⁷ Where the price of the security increases after the insider information becomes public knowledge, the unlawful gain is determined by subtracting the average price of sale from the average price of purchase within the period before the information becomes public knowledge and multiplying it by the total number of securities sold within 30 days after the information became public. Conversely, where the security price decreases after the information is made public, the unlawful gain is calculated by subtracting the average selling price from the average closing price over the ten consecutive trading days after the information becomes public and multiplying it by the volume of securities sold. These provisions establish a formal method for calculating unlawful gains and therefore permit gain-based sanctions where the relevant trading and price data can be established. They do not, however, create a mechanism for transferring either administrative fines or recovered unlawful gains to investors affected by the violation. The enforcement record illustrates both the operation and the remedial limits of this framework.

Publicly reported enforcement cases show that Vietnam's early insider-trading practice relied predominantly on fixed administrative fines. In the XMC case in 2008,

⁷³ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Law on Securities No. 54/2019/QH14* 2019. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=198541> (accessed on 26 July 2026).

⁷⁴ GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM. *Decree No. 156/2020/ND-CP dated 31 December 2020 prescribing penalties for administrative violations against regulations on securities and securities market*. 2020. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=202223> (accessed on 26 July 2026).

⁷⁵ GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM. *Decree No. 128/2021/ND-CP dated 30 December 2021 amending and supplementing a number of articles of Decree No. 156/2020/ND-CP prescribing penalties for administrative violations in the field of securities and securities market*. 2021. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=204890> (accessed on 26 July 2026).

⁷⁶ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Criminal Code No. 100/2015/QH13*. 2015 (as amended in 2017). Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=183216> (accessed on 26 July 2026).

⁷⁷ MINISTRY OF FINANCE OF THE SOCIALIST REPUBLIC OF VIETNAM. *Circular No. 117/2020/TT-BTC dated 31 December 2020 prescribing the method of calculating unlawful earnings and unlawful profits from violations of the law on securities and securities market*. 2020. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=202784> (accessed on 26 July 2026).

an employee of the company's finance department was fined VND 40 million for using non-public information concerning the price and volume of a planned treasury-share purchase to sell her own shares at the same price and during the same period as the company's purchase orders.⁷⁸ In the FBT case in 2009, four individuals were each fined VND 30 million and a company was fined VND 70 million for acquiring substantial volumes of FBT shares before the disclosure that the issuer had received VND 150 billion in capital surplus. Contemporary reports indicated that the economic benefit obtained from the transactions had not been quantified.⁷⁹

Later enforcement demonstrates that the quantification of unlawful gains is possible in some cases, although it has not been applied consistently. In the SKG case in 2017, the company's chief accountant sold 5,400 shares before the issuer disclosed adverse tax-sanction decisions. The SSC imposed an administrative fine of VND 450 million and ordered her to surrender more than VND 85 million in unlawful gains, bringing the total amount payable to more than VND 535 million.⁸⁰ The contemporary reports of these cases identify administrative fines and, in the SKG case, the recovery of unlawful gains, but do not report any distribution of the recovered amounts to investors who traded while the relevant information remained undisclosed. The enforcement record therefore reveals two distinct remedial deficiencies: unlawful gains are not quantified consistently, and even where such gains are recovered, Vietnamese law does not connect the enforcement proceeds to investor compensation.

A related, although doctrinally distinct, illustration is provided by the FLC Group/Faros proceedings. That case concerned stock-market manipulation and fraud rather than insider trading and therefore should not be treated as part of the insider-trading enforcement record. It is nevertheless relevant to the present analysis because it illustrates the procedural and practical difficulties of identifying, calculating, and enforcing compensation for a large and dispersed class of securities investors. Following the arrest of FLC's chairman in March 2022 on charges of stock market manipulation and fraudulent appropriation of assets, in August 2024, the Hanoi People's Court identified more than 63,000 investors who held shares of FLC Faros (ROS) when the stock was delisted in September 2022 and ordered restitution of approximately VND 2.5 trillion. The defendant's family completed payment only in mid-2025, approximately three years after the violations were uncovered. On appeal in 2025, the court substantially reduced the sentences and rejected a number of investors' compensation claims, calculating compensation by reference to purchase prices.^{81,82} Three features of this case are instructive. First, compensation was achievable only because the case proceeded to a full criminal

⁷⁸ HẢI B. "Xử phạt một cá nhân 40 triệu đồng vì giao dịch nội gián cổ phiếu [An individual fined VND 40 million for insider trading in shares]". *VnEconomy*, 2008. Available at: <https://vneconomy.vn/xu-phat-mot-ca-nhan-40-trieu-dong-vi-giao-dich-noi-gian-co-phiieu.htm> (accessed on 26 July 2026).

⁷⁹ HÀ P. "Cháy nhà' ra nội gián [Insider trading revealed]". *Tiền Phong*, 2009. Available at: <https://tienphong.vn/chay-nha-ra-noi-gian-post155678.tpo> (accessed on 26 July 2026).

⁸⁰ DUY, T. "Kế toán trưởng SKG bị phạt nặng vì giao dịch nội bộ" [SKG chief accountant heavily fined for insider trading]". *Thời báo Tài chính Việt Nam*, 2017. Available at: <https://thoibaotaichinhvietnam.vn/ke-toan-truong-skg-bi-phat-nang-vi-giao-dich-noi-bo-35667.html> (accessed on 26 July 2026).

⁸¹ VNEXPRESS INTERNATIONAL. "Former FLC chairman Trinh Van Quyet Fully Pays \$96M to compensate stock fraud victims". 2025. Available at: <https://e.vnexpress.net/news/business/companies/former-flc-chairman-trinh-van-quyet-fully-pays-96m-to-compensate-stock-fraud-victims-4896015.html> (accessed on 15 July 2026).

⁸² VIETNAM NEWS. "Appellate court reduces sentences in FLC Group stock manipulation and fraud case". 2025. Available at: <https://vietnamnews.vn/society/1720303/appellate-court-reduces-sentences-in-flc-group-stock-manipulation-and-fraud-case.html> (accessed on 15 July 2026).

trial of exceptional scale, an avenue unavailable for the ordinary run of insider trading violations, which are handled administratively. Second, even in this extreme case, identifying victims, fixing the measure of compensation, and collecting the money took years and depended on the defendant family's ability and willingness to pay. Third, and most importantly for present purposes, no institutional channel exists through which the far more numerous administrative enforcement outcomes could generate any compensation at all.

Establishing a causal link between an investor's loss and the unlawful transaction is one of the principal obstacles to obtaining compensation. Because the 2019 Securities Law does not provide specific rules governing civil liability for insider trading, investors seeking compensation must rely on Article 584 of the 2015 Civil Code.⁸³ Under this provision, the plaintiff must establish a causal link between the transaction and the loss suffered. As explained above, in a centralized securities market where transactions are executed anonymously through an order-matching system, it becomes almost impossible for the plaintiff to establish that his or her loss was caused by the insider-trading violation.

A second difference from the United States is that Vietnam lacks a class-action mechanism capable of addressing dispersed losses arising from securities transactions. Insider trading may affect numerous investors, each suffering a different and often modest loss. These individual losses may be too small to justify separate litigation. A class-action mechanism could consolidate numerous claims and reduce the litigation costs borne by each investor. Vietnamese civil procedure law does not currently provide an equivalent mechanism. The time and cost required to collect evidence and litigate may therefore be disproportionate to the compensation that an individual claimant could recover.

Third, the powers of Vietnam's securities regulator centre on market surveillance and sanctioning rather than investor compensation. Even though the State Securities Commission of Vietnam (SSC) plays a central role in regulating the securities market, under Vietnamese law, all administrative fines and confiscated unlawful gains must be remitted directly to the state budget. Unlike the U.S. Fair Funds regime, Vietnamese law contains no provision allowing enforcement proceeds to be distributed to investors harmed by the underlying violation. Moreover, although Vietnamese law provides methods for calculating unlawful gains, the SSC may be unable to quantify those gains reliably and may therefore resort to fixed statutory penalties for the following reasons:

(i) Insider trading is difficult to detect because offenders may deliberately conceal their conduct to evade regulation. Persons with access to inside information may fragment their trades across multiple accounts, including accounts held by relatives, or execute transactions at different times. This makes it extremely difficult to identify trades executed on the basis of inside information and quantify the resulting benefit. Consequently, the regulator may discover the violation but lack sufficient evidence to quantify it.

(ii) Insider trading does not necessarily result in profits. In many cases, the economic benefit from insider trading takes the form of avoided losses rather than realized profits. Calculating avoided losses requires constructing a counterfactual scenario of the trader's position absent the use of inside information. This exercise is economically complex because numerous variables may affect the relevant security price. For example, the analysis may require assumptions about market volatility and other price-sensitive events. In any case, although avoided losses constitute an economic benefit from insider trading, they can be difficult to quantify.

⁸³ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Civil Code No. 91/2015/QH13*. 2015. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&doid=183188> (accessed on 26 July 2026).

However, it is essential to distinguish between two analytical tasks that are often conflated. The first is to quantify the unlawful gain or avoided loss attributable to the insider's conduct. The enforcement record indicates that this task is feasible in some cases, as demonstrated by the SKG decision, but that it cannot be performed consistently in every enforcement action.⁸⁴ The second task is to identify which investors traded a particular security, in a particular direction, during a defined event window. Because securities accounts and exchange transactions are centrally registered and recorded through the Vietnam Securities Depository and Clearing Corporation (VSDC), the identity of the traders, the direction of their transactions, and the relevant trading volumes are objectively ascertainable once the security and event window have been defined. This distinction is important for institutional design: inconsistent quantification of unlawful gains may prevent a precise gain-based sanction in some cases, but it does not prevent the Fund from identifying eligible claimants and allocating a defined distributable amount according to objective trading records. Section 7.3 builds on this distinction.

In conclusion, although sanctions imposed by the administrative and criminal process have the potential to improve the level of deterrence and ensure market integrity, they fail to offer a proper means through which investors can be compensated for losses caused by insider trading. It is thus important to take into consideration alternative mechanisms informed by the U.S. Fair Funds regime, Taiwan's SFIPC, and China's investor-protection institutions.

7. Proposal for an Investor Compensation Fund for insider-trading losses in Vietnam

As the preceding analysis demonstrates, neither existing public mechanisms nor private actions provide an effective means of compensating investors for losses caused by insider trading. Civil actions face severe difficulties in identifying affected investors, establishing causation, and quantifying losses, whereas administrative and criminal sanctions primarily deter and punish offenders. Neither route therefore provides a reliable compensatory remedy. A dedicated Investor Compensation Fund should consequently be considered as a complementary remedy for insider-trading losses.

Given the characteristics of Vietnam's securities market, a standing institutional compensation scheme is preferable to the case-by-case model used for U.S. Fair Funds. The two markets differ materially in enforcement scale and institutional capacity. In the United States, the amounts recovered in major enforcement proceedings may be sufficient to justify the cost of establishing and administering a separate Fair Fund. In Vietnam, by contrast, reported insider-trading cases and the amounts recovered remain comparatively limited. A case-specific scheme may therefore lack a sufficient financial base and generate disproportionate administrative costs. A standing fund could aggregate eligible enforcement proceeds over time, improving financial viability and increasing the likelihood that a meaningful distribution can be made even where the proceeds recovered in an individual case would be too small to justify a separate distribution process. Moreover, a long-term fund will be better suited to the specifics of an emerging market such as Vietnam. The majority of investors in the Vietnamese stock market are individual investors with limited financial means who encounter considerable difficulties in filing a civil lawsuit. Its permanence and visibility may also strengthen investor confidence and market integrity. It should be emphasized that the Fund is conceived as a remedial mechanism attached to established violations, not as

⁸⁴ DUY, T. "Kế toán trưởng SKG bị phạt nặng vì giao dịch nội bộ" [SKG chief accountant heavily fined for insider trading]". 2017. Ibid.

insurance against ordinary market volatility. No distribution is triggered unless a final sanctioning decision or judgment has determined that insider trading occurred.

An immediate objection is that, if current enforcement produces only modest recoveries, a fund financed solely from those proceeds would risk chronic undercapitalization. The proposal answers this objection in three ways, drawing on the Taiwanese experience analysed in Section 5.1. First, the Fund is not financed by enforcement proceeds alone; its base capital is provided ex ante through state seed capital and capped industry levies, so that its solvency does not depend on the very enforcement capacity whose weakness motivates its creation. Second, the Fund is to be introduced in phases, with an initial pilot phase in which its compensation commitments are strictly capped in proportion to its accumulated assets, so that its liabilities cannot exceed its available resources. Third, the long-term accumulation logic of the Fund is precisely designed for an environment of small and irregular enforcement revenues: amounts too small to justify a case-based distribution (as in the U.S. model) are aggregated over time until distribution becomes administratively economical.

7.1 Legal feasibility under Vietnamese public finance law

Any proposal to channel enforcement proceeds to a compensation fund must first confront Vietnamese public-finance law, because the current legal framework creates a genuine legal obstacle rather than a mere administrative detail. Under the Law on the State Budget No. 83/2015/QH13, the state budget is managed on the principle of uniformity and comprehensiveness. Accordingly, state revenues, including revenues from administrative penalties and confiscated illicit gains, must be fully accounted for in the state budget (Articles 7 and 8). The Law on Handling of Administrative Violations No. 15/2012/QH13 (amended in 2020) also requires that amounts collected through the handling of administrative violations must be fully remitted to the state budget (Article 83). Therefore, a simple management decision to “transfer” such revenues to a sectoral fund would be illegal.

However, the State Budget Law also permits the creation of a statutory exception. Article 4(19) defines an extrabudgetary state financial fund as a fund established by a competent authority in accordance with law, operating independently of the state budget and possessing its own revenue sources and expenditure functions. Article 8(11) requires that such a fund’s revenue and expenditure functions not duplicate those of the state budget and limits, but does not prohibit, budgetary support; in particular, the State may contribute charter capital where a specific law so provides. Vietnamese law provides precedents for statutory protection funds established on this basis, most clearly Deposit Insurance of Vietnam, established under the Deposit Insurance Law No. 06/2012/QH13 and financed by insurance premiums collected from insured credit institutions outside the normal budget cycle.^{85,86,87}

The legislative pathway for the proposed Fund is therefore twofold. First, the Law on Securities 2019 should be amended to add a dedicated chapter establishing the Investor Compensation Fund as an extrabudgetary state financial fund with

⁸⁵ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Law on Deposit Insurance No. 06/2012/QH13*. 2012. Available at: <https://luatvietnam.vn/tai-chinh/luat-bao-hiem-tien-gui-moi-nhat-so-06-2012-qh13-71730-d1.html> (accessed on 26 July 2026).

⁸⁶ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Law on the State Budget No. 83/2015/QH13*. 2015. Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=180627> (accessed on 26 July 2026).

⁸⁷ NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM. *Law on Handling of Administrative Violations No. 15/2012/QH13*. 2012 (as amended in 2020). Available at: <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=163070> (accessed on 26 July 2026).

legal personality, defining its revenue sources, spending tasks, and governance, thereby satisfying the “established pursuant to law” requirement of Article 4(19) and the non-duplication conditions of Article 8(11) of the Law on the State Budget. Second, a targeted amendment (or a special provision in the amended Securities Law prevailing as *lex specialis*) must create an express statutory exception to Article 83 of the Law on Handling of Administrative Violations, providing that a defined percentage of fines and confiscated illicit gains arising specifically from securities violations committed by individual wrongdoers be paid into the Fund rather than into the general budget. Because both constraints are statutory rather than constitutional in character, they can be modified by ordinary legislation of the National Assembly; but until such legislation is enacted, the funding mechanism proposed below is not legally available. The paper thus presents the budgetary reform not as an assumption but as the first and indispensable element of the proposal.

7.2 Sources of funding

To ensure financial stability, the Investor Compensation Fund should rely on a diversified funding structure comprising:

- A defined statutory share of administrative fines and confiscated unlawful gains arising from securities violations should be transferred to the Fund. This source should be limited principally to amounts recovered from individual wrongdoers and culpable participants—such as insiders, tippees, and facilitators—and should generally exclude penalties imposed on listed issuers. This approach draws on the U.S. Fair Funds principle of converting eligible enforcement proceeds into investor compensation. The restriction to fines on individuals is a deliberate governance filter that responds to the “circularity” or “pocket-shifting” problem identified in Section 4 where, if a fine is imposed on a listed company, the economic burden may fall on its current shareholders, most of whom are innocent; channelling such fines into the Fund would merely transfer wealth from one group of innocent investors to another. Accordingly, fines and confiscations collected from organizations that are issuers of listed securities should continue to accrue to the state budget (or, at most, be admitted to the Fund only where the sanctioned organization is itself the trading beneficiary of the violation and its ownership is closely held by the wrongdoers). This filter reflects the logic observed in Chinese practice of recovering compensation from wrongdoers and culpable gatekeepers rather than from innocent corporate treasuries.

Earmarking a share of these revenues creates an opportunity cost for the state budget and must therefore be justified rather than assumed away. Three considerations may support such a statutory reallocation, although its fiscal impact requires empirical assessment. First, securities fines are volatile and should not be treated as a stable source of ordinary budget revenue. The present study does not contain sufficient fiscal data to quantify the effect of partial earmarking, and implementing legislation should therefore be preceded by a fiscal-impact assessment. Second, the earmarking converts a purely punitive cash flow into an instrument that directly serves the statutory objective of the sanctioning regime itself, namely investor protection; visible compensation may increase the willingness of injured investors and market participants to report suspicious trading and cooperate with investigations, thereby supporting enforcement effectiveness. Third, transparent compensation may strengthen market confidence and produce indirect economic and fiscal benefits over time. Empirical evidence shows that strict enforcement of insider trading regulations is associated with lower equity costs and deeper markets, and a larger, more liquid market may broaden relevant tax and fee bases. These potential benefits are indirect and should not be treated as a guaranteed fiscal return. The proposal should therefore be understood as a policy

trade-off requiring legislative judgment and fiscal assessment, rather than as a proven net fiscal gain.^{88,89}

- Capped annual contributions from securities intermediaries, including securities firms, fund managers, custodian banks, and other capital-market service providers could provide a supplementary funding source. This is because the existence and profitability of the institutions depend on the presence of market stability and confidence. Two objections to such levies must be addressed. The first is that they burden firms that have committed no offense. The levy is justified not as a sanction but under a benefit principle analogous to Taiwan's SFIPC contributions and deposit-insurance premiums: intermediaries are commercial beneficiaries of the investor confidence that the Fund is intended to protect, and the contribution should constitute a modest, uniform cost of market participation rather than a penalty. To mitigate moral hazard and encourage compliance, the implementing legislation could provide contribution discounts for intermediaries with clean supervisory records and effective internal controls against insider information abuse. A second objection concerns procyclicality: contributions calculated by reference to current revenue may decline precisely when a market crisis makes the Fund most necessary. The design should therefore include counter-cyclical safeguards: a target reserve accumulated during normal periods; temporary suspension of contributions once the target is reached; and a statutory, repayable state reserve credit line for severe depletion events. The amended Securities Law should expressly characterize the levy as a mandatory statutory contribution to an extrabudgetary financial fund, rather than an administrative penalty. Implementing legislation should define the levy base, such as operating revenue, transaction value, or market share and assess its relationship with the laws governing taxes, fees, and charges.

- As a standing fund, it should be permitted to invest its assets only in low-risk, liquid instruments subject to statutory investment limits. Income generated from such investments would provide additional revenue and enhance the Fund's long-term compensation capacity.

- Finally, state seed capital may be contributed once, at establishment, as charter capital in accordance with Article 8(11) of the Law on the State Budget, following the precedent of Deposit Insurance of Vietnam. Seed capital serves the pilot phase and is not a recurring budgetary subsidy.

7.3 Eligibility and scope of compensation

Defining the class of investors eligible for compensation is a central operational question. Vietnam could draw on the U.S. experience with the concept of "contemporaneous traders." Accordingly, eligible investors would include investors who traded in the direction opposite to the insider's trades while the relevant inside information remained undisclosed. Instead of requiring proof of a direct trading relationship with the insider, investors would need to show only that they traded the same security in the opposite direction during a legally defined event window and satisfied the statutory eligibility criteria.

The eligibility rules must, however, be defined with precision. The following parameters are proposed. (i) *Trading window*: the window opens on the date of the insider's first violating trade, as determined in the sanctioning decision or judgment, and closes at the end of the trading day on which the inside information is fully disclosed to the market; this mirrors the event-window logic already used by Circular No. 117/2020/TT-BTC for gain calculation, corresponds to the dominant

⁸⁸ BHATTACHARYA, U., and DAOUK, H. "The world price of insider trading". 2002. Ibid.

⁸⁹ JACKSON, H. E., and ROE, M. J. "Public and private enforcement of securities laws: Resource-based evidence". 2009. Ibid (associating resourced public enforcement with capital market development).

U.S. judicial approach of measuring the compensable period from the insider's trade to the dissemination of the information, and keeps the window objectively ascertainable.⁹⁰ (ii) *Relevant securities and direction*: only trades in the same security, executed in the direction opposite to the insider's trades (purchases where the insider sold on negative information; sales where the insider bought on positive information), qualify. (iii) *Netting*: an investor's eligible volume is computed on a net basis over the window, and investors whose overall position in the security produced a net gain from the disclosure are excluded, since compensating them would constitute unjust enrichment. (iv) *Exclusions*: the wrongdoers, their related persons, and persons sanctioned for violations in the same security are ineligible. All of these parameters are administrable because, as established in Section 6, the identity, direction, and volume of contemporaneous trades are directly observable from VSDC depository records; no counterfactual loss calculation is required to apply them.

Compensation levels need to be equally precise, because a simple "proportional to trading volume" allocation suffers from two drawbacks: it will sever the link between compensation and losses, and it will overcompensate large professional traders while inadequately protecting small retail investors. The proposal therefore adopts a *capped pro-rata* formula with the following elements. First, an aggregate cap should apply to each violation. The total amount distributed in connection with a particular violation should not exceed the illicit gain or avoided loss determined in the sanctioning decision. Where the final decision does not quantify that amount, implementing rules should prescribe a hierarchy of valuation methods, require written reasons for the selected method, and prohibit distribution where no defensible aggregate cap can be established.⁹¹ This approach reflects the ceiling established by Section 20A of the U.S. Securities Exchange Act and preserves the remedial character of the payment rather than transforming the mechanism into a form of investor insurance. Second, each eligible investor's proxy loss should be measured not by raw volume but by the price-impact proxy already embedded in Vietnamese law, which is the investor's net eligible volume multiplied by the difference between the investor's average transaction price during the window and the average market price over the ten trading days following full disclosure, the same reference period used by Circular No. 117/2020/TT-BTC. This proxy approximates the wealth transfer identified by Wang without requiring individualized proof of causation. Third, *pro-rata abatement and a retail-protective ceiling*: where aggregate proxy losses exceed the available amount, claims are paid pro rata; in addition, a per-investor payment ceiling (defined as a multiple of the median payment) applies, so that the distribution cannot be absorbed by a small number of high-volume traders and claims of individual (non-institutional) investors up to a modest threshold receive priority. Fourth, a *double-recovery offset*: amounts an investor recovers in respect of the same violation through civil proceedings or criminal restitution are deducted from the Fund payment, and the Fund is subrogated to the investor's claims against the wrongdoer up to the amount paid.

⁹⁰ On the definitional debates surrounding the "contemporaneous" trading period in U.S. law, see WANG, W. K. S. "The contemporaneous traders who can sue an inside trader". *Hastings Law Journal*, v. 38, n. 6, 1987, pp. 1175-1281. Available at: https://repository.uclawsf.edu/hastings_law_journal/vol38/iss6/2/ (accessed on 15 July 2026).

⁹¹ Even in the United States, courts require of the SEC only a "reasonable approximation of profits causally connected to the violation", whereupon the burden shifts to the defendant; exact quantification has never been the operative standard. See VERRET, J.W. "Disgorgement accounting after Liu v. SEC in securities enforcement cases". *Albany Law Review*, v. 87, n. 1, 2023-2024, pp. 285-332. Available at: <https://www.albanylawreview.org/article/125734.pdf> (accessed on 16 July 2026).

A stylized example illustrates the operation of the formula. Suppose an insider sells ahead of negative information and the sanctioning decision estimates the avoided loss at VND 10 billion; the aggregate cap is therefore VND 10 billion. Depository records identify 4,000 investors who were net purchasers of the security during the window. Their aggregate proxy losses (net purchased volume multiplied by the price decline to the ten-day post-disclosure average) amount to VND 25 billion. Each eligible investor then receives 40 per cent of his or her proxy loss, subject to the per-investor ceiling; a retail investor with a proxy loss of VND 20 million receives VND 8 million upon a simple registration supported by depository data, without litigation. The example demonstrates that the formula can be calculated entirely from observable data contained in the sanctioning decision and depository records. It also allocates compensation according to a measure linked to investor harm rather than merely rewarding trading volume.

Finally, the procedural framework should provide for a claims process initiated by public notice after each final sanctioning decision, with registration primarily automated through VSDC account data. It should also establish a statutory ceiling on administrative costs, rules for insufficient assets—including pro-rata abatement and no carry-forward liability—and an appeal mechanism, discussed in Section 7.4, for challenging eligibility and quantum determinations.

In sum, the Fund does not purport to reproduce individualized tort damages; it applies a statutory presumptive measure of loss derived from observable trading and price-impact data; and it distributes amounts, capped by the established economic scale of the violation, according to a transparent proxy correlated with investor harm. The scheme does not abandon its remedial character; it replaces individualized proof of causation, which Sections 3 and 6 show to be exceptionally difficult in anonymous markets, with a statutory presumption based on observable data.

7.4 Governance structure

The comparative analysis indicates that the same authority should not control investigation, enforcement, and compensation. Assigning full management of the Fund to the State Securities Commission of Vietnam (SSC) would create conflicts of function and place additional demands on its administrative resources. In this context, the appropriate structure for Vietnam would be an independent statutory body with its own legal personality, subject to limited legality, reporting, and prudential oversight by the Ministry of Finance and the SSC but not hierarchically subordinate to either institution. The SSC should remain responsible for surveillance, investigation, sanctioning, and certification of the amounts payable to the Fund under the statutory funding formula. The Fund manager should be responsible exclusively for claims administration, compensation, and related investor-protection functions. This division of functions would distinguish public enforcement from investor compensation.

The independence of the Fund manager cannot, however, rest on organizational separation alone; if the Fund depended on discretionary transfers decided by the SSC and was hierarchically accountable to the SSC, its independence would be nominal. Four safeguards are therefore proposed to give the separation substance. First, *statutory funding by formula*: the percentage of enforcement proceeds and the levy rates payable to the Fund are fixed in legislation, so that no discretionary decision of the SSC determines the Fund's revenues, and ex-ante levies and investment income, neither of which passes through the SSC, constitute the Fund's financial base. Second, *plural governance*: the Fund is established with its own legal personality and governed by a management board appointed for fixed, staggered terms, comprising representatives of the Ministry of Finance and the SSC together with representatives of market participants and independent members (academics,

retired judges, or audit professionals), with specified compensation decisions requiring a qualified majority that includes the affirmative vote of at least one independent member; board members are subject to statutory conflict-of-interest and cooling-off rules. Third, *external accountability*: the Fund's accounts are audited annually by an independent auditing firm and are subject to examination by the State Audit Office of Vietnam; the Fund publishes an annual report disclosing its revenues by source, distributions by case, administrative costs, and investment performance; and personal data of claimants are processed subject to the applicable data protection regulations. Fourth, *judicial review*: determinations of the Fund on eligibility and quantum are administrative decisions reviewable, upon a claimant's complaint, first by an internal review panel including independent board members and subsequently before the administrative courts, so that the ultimate check on the Fund lies outside both the Fund and the SSC.

The Investor Compensation Fund should not replace civil liability or other enforcement mechanisms. It should operate as a supplementary remedial mechanism addressing weaknesses in both public and private enforcement of insider trading.

7.5 Limitations and phased implementation

The proposal is subject to limitations that should be stated candidly. First, the Fund presupposes the legislative amendments identified in Section 7.1; without them, the earmarking of enforcement proceeds would be unlawful. Second, the compensation formula rests on a price-impact proxy rather than individualized loss; it trades doctrinal purity for administrability, and residual over- and under-compensation at the level of individual investors is unavoidable. Third, the Fund's deterrent neutrality must be preserved: because distributions are capped by the violation's established scale and financed predominantly from wrongdoers' payments and ex-ante levies, the Fund neither dilutes sanctions nor insures speculation, although this conclusion depends on disciplined application of the caps. For these reasons, a phased implementation is recommended: a first phase limited to insider trading cases established by final decisions, with conservative caps and a small administrative apparatus hosted operationally alongside existing market institutions; an evaluation after a defined period against published performance indicators (time to distribution, cost ratio, share of retail claimants reached); and only thereafter a possible extension to other securities violations, following the trajectory of Taiwan's SFIPC. Empirical calibration of the levy rates and caps against Vietnamese market data is a task for the implementing legislation and lies beyond the scope of this paper; the stylized example in Section 7.3 is intended to demonstrate computability, not to substitute for such calibration.

8. Conclusion

Insider trading is a persistent violation that undermines the fair functioning of the market. Insider trading may cause financial losses to uninformed investors, increase transaction costs, reduce market liquidity, and weaken confidence in the capital market. Although the economic harm is well recognized, existing legal mechanisms provide no consistently effective means of compensating affected investors. This paper examines the limits of both public and private enforcement mechanisms with regard to compensation for losses caused by insider trading. Through a functional comparison of the U.S. Fair Funds mechanism, Taiwan's SFIPC, and China's investor protection institutions, the paper identifies the design elements that can be transplanted to an emerging market: the U.S. insight that enforcement proceeds recovered from wrongdoers can be converted into compensation; the Taiwanese model of a standing, ex-ante funded, statutorily

created protection institution; and the Chinese lesson that compensation should be recovered from wrongdoers and culpable gatekeepers, under governance arrangements that keep the protection institution at a genuine distance from the regulator.

Although Vietnamese law provides methods for calculating unlawful gains and authorizes substantial penalties, implementation still faces difficulties in quantifying unlawful gains and investor losses. This creates a remedial gap: violators may be sanctioned, while investors who incur losses lack an effective means of obtaining compensation. Subject to the statutory preconditions identified in this paper, an Investor Compensation Fund constitutes a feasible, although necessarily imperfect, response to insider-trading losses in Vietnam. An Investor Compensation Fund would operate as a complementary mechanism bridging public enforcement and private remedies in the protection of investors' interests. The combination of enforcement proceeds collected from individual wrongdoers, capped ex-ante contributions from market intermediaries under a counter-cyclical reserve policy, and investment income can establish a durable source of finance for investor compensation, while the capped, harm-correlated distribution formula and the governance safeguards proposed above address the circularity, quantification, and independence objections that have been raised against comparable mechanisms elsewhere. The proposal offers a context-sensitive model for strengthening investor protection in an emerging market such as Vietnam.

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