

Legal Commentary

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Highlights of Draft Refinancing Policies for Listed Companies

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The refinancing policies for listed companies on the Shanghai and Shenzhen Stock Exchanges will be revised as a part of the full implementation of the registration-based stock issuance system reform, in addition to the reform of the IPO-related rules. Relevant rules include: the *Measures for Administration of Securities Issuance Registration by Listed Companies (Draft for Comment)* (the “**Draft Refinancing Measures**”) and the *Measures for Administration of the Pilot Project for Preferred Shares (Revision Draft for Comment)*, issued by the China Securities Regulatory Commission (“**CSRC**”) on February 1, 2023; the *Rules Governing the Review of Offering and Listing of Securities by Companies Listed on Shanghai Stock Exchange (Draft for Comment)* (the “**Draft SSE Refinancing Review Rules**”), issued by the Shanghai Stock Exchange (“**SSE**”); and the *Rules for Reviewing Stock Offering and Listing (Draft for Comment)* (the “**Draft SZSE Refinancing Review Rules**”), issued by the Shenzhen Stock Exchange (“**SZSE**”). This article will share the key points of the draft rules regarding the refinancing of listed companies.

The revisions seek common ground while retaining differences

Based on the experience of the pilot registration-based system on the STAR Market and the ChiNext Market, the revisions of the relevant rules for the refinancing of listed companies seeks common ground while retaining differences on each board:

I. Unify CSRC and stock exchange rules

The Draft Refinancing Measures would comprehensively apply to listed companies on all boards. After its official promulgation and effectiveness, relevant rules on the refinancing of listed companies promulgated by the CSRC will be abolished.

Similarly, the Draft SSE Refinancing Review Rules and the Draft SZSE Refinancing Review Rules would generally follow the style and main institutional arrangements of the current listed company refinancing rules on the STAR Market and the ChiNext Market issued by the SSE and SZSE, respectively, and be applied to all boards. After the official promulgation and effectiveness of these draft rules, the corresponding current review rules for the STAR Market and the ChiNext Market will be abolished.

II. Set up general issuance criteria and procedures for all boards

Issuance criteria would be unified for companies listed on the main boards, STAR Market, and ChiNext Market with respect to issuing stocks to non-specific investors, issuing stocks to specific investors, and conditions for issuing convertible bonds. Except for the specific issuance criteria set by each market, the criteria and procedures would be the same for the issuance of stocks and convertible bonds by companies listed on the main boards, the STAR Market, and the ChiNext Market.

III. Set up differentiated issuance criteria based on the positioning of each board

The differentiated issuance criteria of each board are reflected in:

- In contrast to companies listed on the STAR Market and the ChiNext Market, listed companies on the main boards must be profitable in the last three fiscal years to allot shares, issue additional shares, or issue convertible bonds to non-specific investors. In addition, if a company listed on either of the main boards issues additional shares or convertible bonds to non-specific investors, the weighted average return on net assets in the last three fiscal years may not have fallen below an average of 6%, and the net profit is calculated based on the lower of either before or after accounting for non-recurring profits and losses.
- Compared with companies listed on the main boards and ChiNext Market, funds raised by the issuance of shares and convertible bonds by companies listed on the STAR Market would need to be invested in businesses in the field of scientific and technological innovation.

Further improve issuance criteria for the STAR Market and the ChiNext Market

For companies listed on the STAR Market and the ChiNext Market, the issuance conditions stipulated in the Draft Refinancing Measures are basically the same as those stipulated in the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the STAR Market (for Trial Implementation)* and the *Measures for Administration of Securities Issuance Registration of Listed Companies on the ChiNext Market (for Trial Implementation)*. Further improvements would be made on this basis:

I. No substantial issuance criteria added for the STAR Market

Compared with the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the STAR Market (for Trial Implementation)*, the Draft Refinancing Measures would further explicitly require that “except for financial enterprises, the proceeds raised shall not be for holding financial investments, and shall not directly or indirectly be invested in companies whose main business is to buy and sell securities.” Such restrictions on the use of proceeds have previously been required in the relevant regulatory Q&A of the CSRC, and there are no substantial issuance criteria added.

II. Issuance criteria reduced for the ChiNext Market

Compared with the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the ChiNext Market (for Trial Implementation)*, the Draft Refinancing Measures

would delete the requirement of positive net profit in the latest two years to issue securities for companies listed on the ChiNext Market (including stocks, convertible bonds, etc.) to non-specific investors, and would lower the requirements for companies listed on the ChiNext Market to issue securities to non-specific investors.

Simplify and optimize the issuance criteria for the main boards and introduce directional convertible bonds

As the revisions to the Draft Refinancing Measures are based on the administrative measures for the issuance and registration of securities on the STAR Market and the ChiNext Market, the substantive revisions for the main boards are reflected in the following points:

I. Cancel the criteria related to dividends in the public issuance of stock

Compared with the currently effective *Measures for Administration of Issuing of Securities by Listed Companies* on the main boards, the Draft Refinancing Measures would cancel the requirement that “the accumulated profits distributed in cash in the last three years shall be no less than 30% of the average annual distributable profits realized for the last three years.”

II. Increase share allotment quotas and loosen the criteria for accumulated bond balances

In the registration-based stock issuance system reform, the maximum number of allotted shares of companies listed on the main boards would be raised from 30% of the total share capital to 50%, and the proportion of the accumulated corporate bond balance not exceeding the net asset value at the end of the latest period after the issuance of convertible bonds would be raised from 40% to 50%, which would be in line with the existing rules for the STAR Market and ChiNext Market.

III. Adjust the issuance criteria for major violations of law

The Draft Refinancing Measures would adjust the major violations of law that would prevent listed companies from issuing securities to be consistent with those of the STAR Market and ChiNext Market.

IV. Promote directional convertible bonds on the main boards

The varieties of directional convertible bonds in the pilot registration-based stock issuance system for the STAR Market and the ChiNext Market have been tested in practice and have facilitated the refinancing of listed companies. This revision would apply and extend to the main boards, allowing companies listed on the main boards to issue directional convertible bonds for financing.

Optimize the procedures for issuance review and registration

I. The main boards to adopt the registration-based stock issuance system

After the full implementation of the registration-based stock issuance system, the review and registration procedures for securities issuance by companies listed on the main boards will be the same as those for the STAR Market and ChiNext Market. The stock exchanges will be responsible for accepting listed company securities issuance applications and conducting a comprehensive review

mainly through making review inquiries to registrants. The review departments of the stock exchanges will determine whether a listed company's issuance application meets the issuance criteria and information disclosure requirements and form a review opinion as to whether the listed company meets the issuance conditions and information disclosure requirements. If the exchange believes that the listed company meets the issuance conditions and information disclosure requirements, it will submit to the CSRC for registration a review opinion, the company's registration application documents, and the relevant review materials. If the exchange believes that the listed company has failed to meet the issuance conditions or information disclosure requirements, it will terminate the review. After receiving the review opinions of the stock exchanges and relevant materials, the CSRC will perform the issuance registration procedures.

II. Further optimize the issuance review and registration procedures

Compared with the current stock issuance and registration procedures of the STAR Market and the ChiNext Market, the optimization of the stock issuance and registration procedures in the Draft Refinancing Measures is reflected in:

- Establishing a request and reporting system for major matters

During the stock exchange review process, if there is discovered material sensitive matters, material unprecedented circumstances, major public opinions, or evidence of a major violation of law, it will be reported to the CSRC in a timely manner.

- Focus on industrial policies and the positioning of each board

The CSRC will, as of the date on which the stock exchange receives the registration application documents from the listed company, concurrently focus on whether the company is in compliance with national industrial policies and the positioning of the boards.

- The CSRC will perform the issuance registration procedures based on the review opinions of the stock exchanges

After receiving the review opinion and relevant materials, the CSRC will perform the issuance registration procedures in accordance with the law based on the review opinion. The CSRC will no longer look for omissions in the stock exchange's review, whether the review procedures complied with the provisions, or whether the listed company complies with the relevant provisions in significant aspects of issuance criteria and information disclosure requirements. However, where the CSRC discovers any new matter affecting issuance criteria during the registration period, it may require the stock exchanges to make further inquiries and form a review opinion on the new matter.

III. Add new classification review provisions and expand the scope of the summary procedures

- At the stock exchange level, the Draft Refinancing Measures would add some new provisions to the classification review, promoting the CSRC classification review system on the main boards to the STAR Market and ChiNext Market. The Draft Refinancing Measures specify that when a listed company applies for issuing securities to specific investors and meets the conditions for classification review, the issuance and listing review department of the stock exchange may issue

a review report without conducting review inquiries after performing the review procedures.

- Promote the summary procedures for the STAR Market and ChiNext Market to the main boards to facilitate the refinancing of listed companies.

Adopt the registration-based stock issuance system for preferred share issuances

After full implementation of registration-based stock issuance reform, listed companies issuing preferred shares would be required to make a declaration to the stock exchanges, according to the *Measures for Administration of the Pilot Project for Preferred Shares (Revision Draft for Comment)*, the Draft SSE Refinancing Review Rules, the Draft SZSE Refinancing Review Rules, and the relevant comment drafts. Issuance application, review, registration, issuance, and other relevant procedures would be subject to the registration-based stock issuance system and refer to the Measures for Administration of Securities Issuance Registration of Listed Companies and Measures for Administration of Issuing and Underwriting of Securities. The relevant examination and approval matters concerning the issuance of preferred shares by listed companies are included in the stock exchange's scope of examination and approval and the issuers of preferred shares will also be expanded to companies listed on the STAR Market or the ChiNext Market.

Clarify the application of relevant laws to red-chip enterprises

The full implementation of the registration-based stock issuance system is intended to provide a broader space for the IPOs of red chip enterprises on the main boards, hence the Draft Refinancing Measures further clarify the legal application of refinancing by issuing shares and depositary receipts of red-chip enterprises after listing on the main boards, which is consistent with the current rules of the STAR Market and the ChiNext Market. Specifically, after the IPO of shares or depositary receipts of red-chip enterprises is listed on a main board, the STAR Market or the ChiNext Market, the refinancing by issuing shares will be subject to the provisions of the Measures for Administration of Securities Issuance Registration of Listed Companies concerning the issuance of shares by listed companies. Refinancing through the issuance of depositary receipts of newly added securities of red-chip enterprises as the underlying securities would be governed by the provisions of the issuance of shares by listed companies and the relevant provisions of the CSRC on depositary receipts in the *Securities Law of the PRC, Circular on Several Opinions on Launching Pilot Projects for the Domestic Issuance of Shares or Depositary Receipts by Innovative Enterprises*, the Measures for Administration of Securities Issuance Registration of Listed Companies, and the relevant provisions of the CSRC on the issuance of stocks by listed companies. In addition, when a red-chip enterprise issuing depositary receipts allocates overseas underlying stocks, the relevant plan and arrangement must ensure that depositary receipt holders actually enjoy rights and interests equivalent to those enjoyed by overseas underlying stockholders.

Impact of the registration-based system reform on listed company refinancing applications and reviews

The launch of the full implementation of the registration-based stock issuance system would further optimize the procedures for the issuance review and registration (see above), it has no substantial impact

on the listed companies' application and review process for refinancing on the STAR Market and the ChiNext Market. For companies listed on the main boards, according to the *Notice on Arrangements for the Transition Period of Relevant Administrative Licensing Items before and after the Full Implementation of the Stock Issuance Registration System*, issued by the CSRC on February 1, 2023:

- From February 1, 2023, the CSRC will continue to accept refinancing applications from companies listed on the main boards. Before the full implementation of the registration-based system, the CSRC will proceed with the administrative licensing for refinancing of companies listed on the main board in accordance with the current rules.
- Before the promulgation of the main rules of the registration-based system, if the refinancing application of a company listed on one of the main boards has passed the review of the CSRC, the CSRC will continue to carry out the follow-up procedures. From the date of the promulgation of the main rules of the registration-based system, if the refinancing application of the company listed on the main boards has been approved, and the underwriting work has not begun, the stock exchanges will carry out the subsequent underwriting supervision procedures.
- From the date of the promulgation of the main rules of the registration-based system, the CSRC will terminate its review of refinancings on the main boards and transfer the relevant materials to the stock exchanges. The CSRC will not process refinancing applications of listed companies on the main boards that have been accepted but have not yet been completed.
- Within ten working days from the date of the issuance of the main rules for the full implementation of the registration system, the stock exchanges will accept applications from companies under CSRC review for refinancing on the main boards. Ten working days after the release of the main rules for the full implementation of the registration system, the stock exchanges will begin to accept applications submitted by applicants for the main boards.

Conclusion

The launch of the full implementation of registration-based stock issuance reform is being carried out simultaneously in terms of refinancing of listed companies, which promotes incremental reform and resource reform. We look forward to the finalization, introduction, and improvement of relevant systems and supporting rules to accelerate the financing efficiency of listed companies and improve the overall quality of listed companies.

Important Announcement

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