

# Legal Commentary

March 13, 2023

## Key Points of Fund Management Companies' Subscription for Shares

Author: Ellen MAO<sup>1</sup>

On February 1, 2023, the China Securities Regulatory Commission (“**CSRC**”) solicited public opinions on the *Measures for Administration of the Registration-based Initial Public Offerings of Stocks (Draft for Comment)* (《首次公开发行股票注册管理办法 (征求意见稿)》). Shanghai Stock Exchange, Shenzhen Stock Exchange, Beijing Stock Exchange, National Equities Exchange and Quotations, China Securities Depository and Clearing Corporation Limited (“**CSDC**”), and China Securities Finance Corporation Limited (“**CSF**”) also solicited public opinions on supporting business rules for the full implementation of the registration-based initial public offering (“**IPO**”) system. Based on this, Han Kun Law Offices have published a series of articles on the topic of the full implementation of the registration-based IPO system, providing detailed interpretations of key changes of the new IPO rules, refinancing policies for listed companies, and restructuring rules for listed companies. So in the context of the registration-based IPO system, what are the opportunities and challenges for fund management companies to subscribe for shares? In this article, we intend to focus on the key points that fund management companies should pay attention to from the perspective of fund management companies subscribing for shares in placing tranches in the registration-based IPO system and provide suggestions on work that needs to be implemented or improved further.

### Background

On February 17, 2023, the CSRC released regulatory rules related to the full implementation of the registration-based IPO system, marking the extension of the registration-based IPO system to the entire market and for all types of public stock offerings. On February 17, 2023, to support the reform of full implementation of the registration-based stock issuance system, the Securities Association of China (“**SAC**”) issued and implemented self-regulatory rules and supporting documents such as the *Rules for Administration of Investors in Placing Tranches in Initial Public Offerings of Securities* (《首次公开发行证券网下投资者管理规则》) (“**New Administration Rules**”), and the *Guidelines for Classification and Administration of Investors in Placing Tranches in Initial Public Offerings of Securities* (《首次公开发行证券网下投资者分类评价和管理指引》) (“**Classification Guidelines**”), providing the basis and guidance for

<sup>1</sup> Zhou Zou and Xiaocheng Tang have contributions to this article.

self-regulatory management of investors in placing tranches under the full implementation of the registration-based stock issuance system. And the *Rules for Administration of Investors in Placing Tranches in Initial Public Offering of Stocks under the Registration-based System* (《注册制下首次公开发行股票网下投资者管理规则》) and the *Guidelines for Classification and Administration of Investors in Placing Tranches in Initial Public Offering of Stocks under the Registration-based System* (《注册制下首次公开发行股票网下投资者分类评价和管理指引》) were repealed at the same time.

The New Administration Rules, the Classification Guidelines and other documents have systematically sorted out and consolidated the administration rules and requirements for investors in placing tranches on various boards. They have clarified requirements such as the registration criteria, behavioral norms, and self-regulatory rules for investors in placing tranches, and all investors in placing tranches are included in the classification and administration system for unified evaluation and administration.

## **Impact on fund management companies**

### **I. Product type and scale requirements**

For fund management companies, only equity asset management products and hybrid asset management products are allowed to participate in IPO placing tranches. Mutual funds or private asset management portfolios are required to hold shares in the Shanghai Stock Exchange or the Shenzhen Stock Exchange with daily average value no less than CNY 60 million to participate in inquiries and to place in IPO placing tranches; mini-funds are correspondingly restricted. Closed-end STAR Market and ChiNext Market thematic funds are required to hold shares with daily average value no less than CNY 10 million.

### **II. Professional personnel requirements**

#### **1. For companies to register as investors in the placing tranche**

- Personnel engaged in the research and investment of IPO shares must have at least two years of experience in equity asset research or investment management of equity or hybrid products;
- Compliance management personnel for the inquiry and placing in the placing tranche in the IPO must have at least two years of experience in financial compliance management and hold at least a bachelor's degree in law or finance or have passed the PRC bar exam.

#### **2. For products to register as placing targets**

Product investment managers must have at least two years of experience in equity asset research or investment management of equity or hybrid products. Relevant supporting documents need to be submitted for registration.

### **III. Requirements for establishing and improving internal mechanisms**

- Establish a research mechanism of IPO shares, such as mechanism for quality control and approval of research reports;
- Establish and improve a necessary investment decision-making mechanism, form pricing teams,

and determine the final quotations through strict decision-making process;

- Formulate a compliance management system to review compliance of behaviors in inquiries and placing in IPO placing tranches, and conduct regular or ad hoc compliance inspections;
- Formulate a risk management system to monitor, analyze, and identify potential risks in various business processes;
- Make comprehensive operating procedures for specific businesses and clarify operation procedures, job responsibilities, and division of authorities. For important operation parts such as quotations, subscriptions, and payment, there should be a maker-checker mechanism accordingly;
- Formulate approval procedures for transfer of subscription funds;
- Formulate a relevant personnel behavior management system, establish and improve a business training mechanism;
- Establish a sound communication tool control system;
- Establish a complete working paper archiving system, and file work manuscripts relating to participation in inquiries and placing in IPO placing tranches for future reference.

#### **IV. Account management items to note**

If the placing target account managed by the investor in a placing tranche does not participate in the inquiries in an IPO placing tranche throughout a calendar year, SAC will treat the account as a dormant account, excluding accounts newly registered during that year. If all the placing target accounts managed by an investor in a placing tranche are dormant accounts, the investor's account will be treated as a dormant account. Hence, a fund management company or its managed accounts are not allowed to participate in inquiries and placing in an IPO placing tranche during the dormant period. If a dormant account wishes to participate in inquiries and placing in an IPO placing tranche again, it should submit a dormant account activation application to SAC in accordance with the registration procedure and meet the conditions to become a registered investor in the placing tranche or a registered placing target.

As an investor in the placing tranche, the fund management company needs to avoid becoming a dormant account or blindly participating in IPO inquiries. According to the Classification Guidelines, SAC may evaluate investors in a placing tranche based on their performance in the placing tranche inquiry, publish various lists of investors in a placing tranche such as attention lists, abnormal lists, and restricted lists, and take corresponding self-discipline management measures for investors on different lists. If a fund management company participates in an inquiry and places in a placing tranche without due diligence, it may be included in a negative list, which could lead to SAC taking self-disciplinary measures or imposing disciplinary punishment.

#### **V. Classification adjustments**

As mentioned above, SAC may publish attention lists, restricted lists, abnormal lists, and selected lists in accordance with the Classification Guidelines. The Classification Guidelines specify

circumstances for investors in placing tranches to be included in an attention list, which could be due to the investors making arbitrary quotes and causing quotes to deviate from the normal value significantly. Also, SAC and the stock exchanges will define and adjust the standard of significant deviation and the proportion of such investors. At the same time, the Classification Guidelines make principal provisions on the types and circumstances of violations by investors in placing tranches that will cause them to be included in the restricted list, and emphasize the active investment management ability of the professional organizations who wish to be included in the selected list, requiring them to hold actively-managed equity assets or hold stocks in the secondary market with a value of at least CNY 30 billion in the last two consecutive quarters.

## **Summary**

The New Administration Rules involve various aspects of the overall subscription process of fund management companies. We suggest that fund management companies implement work based on actual business operations to avoid contingent risks. We will closely monitor the latest developments in industry practices and provide further insights on a timely basis.

## ***Important Announcement***

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

### **Ellen MAO**

Tel: +86 21 6080 0506

Email: [ellen.mao@hankunlaw.com](mailto:ellen.mao@hankunlaw.com)