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Legal Updates

1. AMAC Issued New Rules on Fund Filing and Manager Registration

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On December 30, 2022, the Asset Management Association of China ("**AMAC**") issued a consultation draft of the *Measures for Registration and Filing of Private Investment Funds* (《私募投资基金登记备案办法（征求意见稿）》) and the ancillary Guidelines No. 1-3 on private fund manager registration (collectively, the "**Draft Rules**").

On February 24, 2023, AMAC issued the updated *Measures for Registration and Filing of Private Investment Funds* (《私募投资基金登记备案办法》) (the "**Measures**") and the ancillary Guidelines No. 1-3 (i.e. Guideline on Basic Operational Requirements ("**Guideline No. 1**"), Guideline on Shareholders, Partners and Actual Controllers ("**Guideline No. 2**") and Guideline on Legal Representative, Senior Management Personnel, Executive Partner or Its Authorized Representative ("**Guideline No. 3**") (together with the Measures, the "**New Rules**")[1]. The New Rules will take effect as of May 1, 2023.

The New Rules are intended to update and clarify the registration and filing requirements for private fund managers and private funds by amending the *Measures for the Registration of Private Investment Fund Managers and Filing of Funds (for Trial Implementation)* (《私募投资基金管理人登记和基金备案办法（试行）》) issued by AMAC in 2014, as well as consolidating relevant requirements provided under other self-regulatory rules. We summarize in this newsletter the key noteworthy aspects of the New Rules, in order to provide readers with a general understanding of the proposed amendments.

Private fund manager registration

I. Qualifications for registering as a private fund manager

- **Requirements on applicant's basic information**

The main requirements in the New Rules for the basic information of applicants are generally consistent with the current AMAC rules, while the New Rules, especially Guideline No. 1, provide further specific requirements as listed below:

Item	Content
Industry name	No words such as "finance (金融)", "financial management (理财)" or "wealth management (财富管理)" may be used in the manager's name, unless otherwise stipulated by laws, administrative regulations, or the China Securities Regulatory Commission ("**CSRC**"). Without approval, no words such as "financial holding (金融控股)", "financial group (金融集团)" or "China Securities (中证)" may be used in the manager's name, no words identical with or similar to major national development

[1] The Rules are available at:https://www.amac.org.cn/businessservices_2025/privatefundbusiness/gzdt/202212/t20221230_14355.html (Chinese only).

Item	Content
	strategies, financial institutions or well-known private fund managers, or that may mislead investors may be used in the name, and no words contrary to public order and good customs or causing adverse social impact may be used in the name[2].
Business scope	The business scope must not include any business that conflicts with or is unrelated to the private fund management business. The business scope of a private securities fund manager may not include "investment consulting (投资咨询)" or other consulting related words[3].
Business premises	The manager must have an independent and stable business premises, and may not use as a business site a location that is not stable, such as shared space. The manager may not work at the same business premises as its shareholders, partners, actual controllers or related parties. If the business premises are held by lease, the remaining lease term must be no less than 12 months from the date of applying for the registration, except that reasonable cause can be provided[4].
Staffing	The number of full-time employees must be no less than five. Full-time employees include the following: regular employees who have signed labor contracts with the private fund manager and paid social insurance, foreign employees who have signed labor contracts or service contracts, re-employed retired employees, and senior management personnel ("**SMP**") appointed by enterprises controlled by state organs, public institutions, government and their authorized institutions[5].
Internal controls	Other than internal control policies provided by the current AMAC rules, the manager must also formulate policies relating to business isolation, fund security guarantees, investment business controls, fair trading, outsourcing controls, etc.[6]
Emergency handling plan	The manager must establish an emergency disposal plan to make clear arrangements for handling emergencies that seriously damage the interests of investors, affect normal operations or may cause systemic risks[7].
Registration time	The entity that intends to register as a private fund manager must apply for registration with AMAC within 12 months from the date of industry and commerce registration, except for those whose registration needs to be suspended due to circumstances such as policy changes of relevant state departments[8].

[2] Guideline No. 1, art. 3.
[3] Guideline No. 1, art. 4.
[4] Guideline No. 1, art. 8.
[5] Measures, art. 8 (4); Guideline No. 1, art. 9.
[6] Guideline No. 1, art 10.
[7] Guideline No. 1, art. 11.
[8] Guideline No. 1, art. 2.

- **Standardized requirements – private fund manager qualifications**

Article 8 of the Measures stipulates certain requirements that a fund manager must continuously meet, and Article 15 of the Measures specifies certain circumstances where an entity may not act as a private fund manager, among which note the following two:

- The private fund manager's paid-in monetary capital is no less than RMB 10 million or its equivalent, except for any special requirement otherwise provided for venture capital fund managers.

  This is the first time for AMAC rules to specify a paid-in capital requirement for private fund managers.

- The private fund manager's legal representative, executive partner or its authorized representative, and SMP in charge of investment management must, directly or indirectly, hold a certain percentage of equity shares of the private fund manager separately; meanwhile, their total paid-in capital may not be less than 20% of the paid-in capital of the private fund manager or not less than 20% of the minimum paid-in monetary capital of the private fund manager as stipulated in item (i) [9].

The above equity holding restrictions do not apply to private fund managers controlled by commercial banks, securities companies, fund management companies, futures companies, trust companies, insurance companies and other financial institutions, private fund managers controlled by the government and its authorized institutions, private fund managers controlled by an institution which is regulated by a foreign financial regulatory authority, and other private fund managers in line with the relevant provisions. Compared with the Draft Rules, the New Rules expand the exemption scope to include foreign-owned private equity fund managers among others.

- **Reiteration of special requirements for foreign-funded managers**

Article 14 of the Measures stipulates that any private securities fund manager that has a total foreign ownership of 25% or above must fulfill the following requirements:

- the private securities fund manager is a company established in China;
- the foreign shareholder is a financial institution approved or licensed by the financial regulatory authority of the country/region in which it is located, and the securities regulatory authority of the country/region in which it is located has signed a memorandum of understanding on securities regulatory cooperation with CSRC or other institutions recognized by CSRC;
- the private securities fund manager and its foreign shareholder have not been subject to significant penalties by any regulator or judicial authority in the last three years;
- the use of capital and RMB funds derived from foreign exchange settlement must comply with the relevant regulations of the State Administration of Foreign Exchange;
- when engaging in securities and futures trading within China, it must make independent investment

[9] Guideline No. 1, art. 6.

decisions and not place trade orders through foreign institutions or foreign systems, except as otherwise provided by CSRC; and

- other requirements specified by laws, administrative regulations, CSRC and AMAC.

Where the private securities fund manager has a foreign actual controller, the foreign actual controller must also comply with the requirements set out in (ii) and (iii) above. While the above requirements are generally consistent with the current ones applicable to foreign-invested private securities fund managers, it is worth noting that AMAC has set the foreign ownership threshold at 25%.

- **Consolidation and addition of circumstances where a fund manager registration will be suspended or rejected**

Articles 24 and 25 of the Measures provide detailed circumstances where a fund manager registration will be suspended or rejected. Compared to the current AMAC rules, the requirements are stricter - e.g., if the applicant, which has been rejected due to not meeting the registration requirements of Articles 8 to 21 of the Measures, is rejected again for not meeting such requirements, the applicant may not apply for the private fund manager registration again within six months from the date of the second rejection.

II. Qualifications for controlling shareholders, actual controllers and related parties

The New Rules, especially Guideline No. 2, provide further specifies requirements for the qualifications of a private fund manager's controlling shareholder, actual controller and related parties as listed below.

Item	Content
Identification of the actual controller	Articles 11, 12, 15 and 16 of Guideline No. 2 specify the identification approach of the actual controller of the company and the partnership enterprise respectively, as well as the circumstances of joint actual controllers and absence of an actual controller, which are consistent with the current AMAC rules. Article 13 and Article 14 of the Guideline No. 2 stipulate the look-through to the actual controller, especially where the actual controller involves a foreign party: ■ for a private securities fund manager - where the actual controller is an offshore institution, ownership look-through will be traced back to an institution regulated by the offshore financial regulator which has signed a memorandum of cooperation with CSRC; and ■ for a private equity fund manager - where the actual controller is an offshore institution or natural person, it will be traced back to an institution regulated by the offshore financial regulator which has signed a memorandum of cooperation with CSRC, an overseas listed company or a natural person.
Qualification conditions	■ Article 9 of the Measures specifies the circumstances of not being qualified as the private fund manager's contributor (shareholder, actual controller or partner) – e.g. the controlling shareholder, actual controller

Item	Content
	or general partner does not have relevant experience in operations, management, or engagement in asset management, investment or other related industries, or possesses less than five years of relevant experience. The experience for the actual controller of the private securities fund manager and private equity fund manager is separately regulated in Articles 9 and 10 of Guideline No. 2. ■ Article 15 of the Measures stipulates the qualification requirements for a private fund manager's controlling shareholder, actual controller, general partner or major contributors by using the negative list method. ■ The actual controller of a private fund manager must not be an asset management product ("**AMP**"). An AMP may not act as the major contributor to a private fund manager and the proportion of direct or indirect capital contributions in the private fund manager may not be higher than 25% in total. Such requirement is exempted for the private fund managers established by governments at or above the provincial level and their authorized agencies[10]. ■ Where the actual controller of a private fund manager is a natural person, he/she must also serve as the director, supervisor, SMP or executive partner or its authorized representative of the private fund manager, unless otherwise specified[11]. ■ Where the private fund manager's controlling shareholder or actual controller acts as the SMP of a listed company, materials evidencing that the listed company is aware of relevant situation must be provided[12].
Contribution structure	Without justified reasons, the capital contribution structure of a private fund manager may not establish more than two levels of a nested structure through special purpose vehicles and must not circumvent relevant requirements for finance, integrity and professional competence of shareholders, partners and actual controllers by setting up special purpose vehicles or other means[13].
Groupization	According to the Articles 17 and 18 of the Measures, if the same controlling shareholder or actual controller controls more than two private fund managers, it must have reasonable and necessary reasons for doing so. The above controlling shareholder or actual controller must also establish a continuous compliance and risk management system that is commensurate with the management scale and business conditions of private fund managers under its control, and strengthen the supervision and inspection of private fund managers on the premise of guaranteeing the independent operation of such managers.
Stability	According to the Article 20 of the Measures, a private fund manager's

[10] Guideline No. 2, art. 5.
[11] Measures, art. 9 (2).
[12] Guideline No. 2, art. 3.
[13] Guideline No. 2, art. 2.

Item	Content
	controlling shareholder, actual controller or general partner may not transfer equity, property shares or effective control within three years from the date of registration/change of registration, unless the following: ■ The equity or property shares are subject to administrative transfer or change in accordance with the regulations; ■ The equity or property shares are transferred between different entities controlled by the same actual owner; ■ The private fund manager implements employee equity incentives without changing the actual controller; ■ The equity or property shares are transferred due to inheritance and other legal reasons; and ■ Other circumstances as stipulated by laws, administrative regulations, CSRC and AMAC. The newly added cases may give more comfort to foreign-funded managers, as the restructuring of the shareholding structure within the group or the implementation of employee incentives would not trigger the stability requirement.

Regarding the scope of related parties of private fund managers, the New Rules propose further amendments as below:

Current AMAC Rules[14]	New Rules[15]
■ branches of private fund managers; ■ a financial institution or a listed company in which the private fund manager holds more than 5% of the equity interests, or other enterprises in which the private fund manager h olds 20% of the equity interests; and ■ financial institutions, private fund managers, investment enterprises, institutions conducting business in conflict with the private fund management business, investment consulting enterprises, financial service enterprises and others that are controlled by the same controlling shareholder/actual controller.	■ branches of the private fund manager; ■ a financial institution or a listed company in which the private fund manager holds more than 5% of equity interests, or other enterprise in which the private fund manager holds more than 30% of the equity interests or serves as the general partner, except for private funds filed with AMAC; ■ financial institutions, private fund managers, listed companies, companies listed on the National Equities Exchange and Quotations, investment enterprises, institutions conducting business in conflict with the private fund management business, investment consulting enterprises, financial service enterprises and others that are directly controlled by the same controlling shareholder, actual controller or general partner; and ■ other legal persons or organizations that have a

[14] *Registration Instructions of Private Fund Managers* (《私募基金管理人登记须知》), art. 6(1).

[15] Guideline No. 2, art. 18.

Current AMAC Rules[14]	New Rules[15]
	special relationship with the private fund manager, which may affect the interests of the private fund manager.

III. Qualifications of SMP and other personnel

AMAC has shown its consistent focuses on the qualifications of private fund manager personnel. The New Rules not only explicitly set out the qualification requirements for private fund manager SMP, executive partners or their authorized representatives by adopting the negative list approach[16], but also strengthen the requirements for SMP's work experience and personnel stability of private fund managers.

Item	Content
Scope of SMP	Article 80 (1) of the Measures amends the scope of SMP recognized by AMAC, which includes a company's general manager, deputy general manager, compliance and risk control officer, other personnel who actually perform the above duties and other personnel stipulated in the company's articles of association, as well as the personnel in a partnership enterprise who perform the above duties of operation management and risk control and compliance, etc. Any other personnel who do not have the above title but actually perform such duties should be deemed as SMP. Compared with the current AMAC rules, the legal representative no longer falls under the scope of SMP.
Negative list	Article 16 of the Measures specifies the circumstances where the persons may not act as the director, supervisor, SMP, executive partner or its authorized representative of a private fund manager. This is the first time AMAC rules specify the requirements on the directors and supervisors of the private fund manager. Compared with the requirements on directors and supervisors set out in Article 146 of the *Company Law of the People's Republic of China,* the negative list is more concentrated on the administrative regulatory and qualification conditions of such personnel, such as the following: ■ persons who are subject to an administrative penalty imposed by the financial authorities in the last three years for major violations of laws and regulations; ■ persons who are subject to market access prohibition measures by CSRC, and the enforcement period has not yet expired; ■ persons who are subject to administrative regulatory measures by CSRC or disciplinary measures by AMAC with serious circumstances in the last three years; ■ practitioners of fund managers, fund custodians, stock and futures exchanges, securities companies, securities depository and clearing organizations, futures companies or other organizations and personnel of State agencies who are dismissed for committing illegal acts or disciplinary actions, and a 5-year period has not elapsed since the date of dismissal; ■ lawyers, certified public accountants and employees of asset appraisal

[16] Measures, art. 16.

Item	Content
	organizations or other institutions, investment advisory practitioners whose practicing certificate/qualification is revoked/cancelled for committing illegal acts, and a 5-year period has not elapsed since the date of revocation/cancellation of practice certificate/qualification; and ■ persons having a relatively large amount of debt which is due and outstanding, or being listed as a seriously dishonest person or being included in the list of dishonest persons subject to enforcement.
Work experience	■ Private fund securities fund manager - the legal representative, executive partner or its authorized representative, principal persons in charge of operation and management, as well as SMP in charge of investment management should have more than five years of relevant work experience in securities, funds, futures investment management, etc.[17] The detailed contents of the required work experience and investment performance are specified under Article 4 of Guideline No. 3. ■ Private fund equity fund manager - the legal representative, executive partner or its authorized representative, principal persons in charge of operation and management, as well as SMP in charge of investment management should have more than five years of relevant work experience in equity investment or other relevant industry management[18]. The detailed contents of this work experience and investment performance are specified under Articles 5, 7-8 of Guideline No. 3. ■ The compliance and risk control officer should have more than three years of investment-related legal, accounting, supervision, or audit work experience or asset management industry compliance, risk control, supervision, and self-discipline management and other related work experience[19]. The detailed contents of the work experience are specified under Article 6 of Guideline No. 3.
Dual-hatting restrictions	■ The legal representative, SMP, executive partner or its authorized representative may not dual hat in unaffiliated private fund managers or other institutions with conflicts of interest with the private fund manager they belong to, such as the institutions conducting business in conflict with the private fund management business, or become their controlling shareholders, actual controllers or general partners. Notably, the New Rules specify the exemptions of such dual-hatting restrictions, such as acting as directors or supervisors in other enterprises, serving in the private funds under management, etc.[20] ■ The compliance/risk control officer and other professionals may not hold concurrent positions in other for-profit institutions, unless otherwise provided for the private fund managers under the same controlling shareholder or actual controller, as stipulated in the Article 17 of the Measures[21]. ■ Where the private fund manager's general partner, legal representative, SMP,

[17] Measures, art. 10 (2).
[18] Measures, art. 10 (3).
[19] Measures, art. 10 (4).
[20] Measures, art. 11; Guideline No. 3, art. 10.
[21] Measures, arts. 11, 12, 17.

Item	Content
	executive partner or its authorized representative acts as the SMP of a listed company, materials evidencing that the listed company is aware of such circumstances must be provided[22].
Personnel stability	■ After the departure of the original SMP, the private fund manager must appoint a new SMP within six months. ■ Prior to the first private fund filing, the private fund manager may not change the legal representative, executive partner or its authorized representative, principal persons in charge of operation and management, SMP in charge of investment management, as well as the compliance and risk control officer. ■ When employing a person who frequently changes jobs within a short period of time as the SMP in charge of investment management, the private fund manager must conduct due diligence on his/her credit record, professional conduct and professional ethics. An SMP's work experience and investment performance will not be recognized where he/she works in more than 3 unaffiliated enterprises within 24 months or provides the same performance materials for more than 2 registered private fund managers within 24 months[23].

Private fund filing

I. Fundraising threshold

In Article 33 of the Measures, AMAC specifies for the first time the initial minimum paid-in capital scale for each type of private funds as follows.

- private securities fund – RMB 10 million
- private equity fund – RMB 10 million
- venture capital fund – RMB 5 million for the first installment; RMB 10 million within 6 months after the fund filing

The New Rules also add a fundraising threshold requirement for the private fund which invests in a single investment target, which must be no less than RMB 20 million.

II. Investment scope

Compared with the current AMAC rules, Article 31 of the Measures: (i) adds depositary receipt, asset-backed securities, swap contracts and forward contracts for the investment scope of private securities funds; and (ii) adds convertible bonds or exchangeable bonds issued or traded privately, shares of unlisted public companies to the investment scope of private equity funds.

III. Fund documentation

Article 28 of the Measures provides more detailed risk disclosure requirements such as information on

[22] Guideline No. 2, art. 3.

[23] Measures, art. 21; Guideline No. 3, art 11.

private fund manager and the management team, investment scope, investment strategy, investment structure, fund structure, custody condition, relevant fees, dividends distribution principles, fund exit and other important information, as well as investment risks, operation risks, liquidity risks and other risks, which must be disclosed to investors in fundraising and promotion materials, risk disclosure letter.

Article 28 further provides a series of circumstances where the private fund manager must give special notice to investors in the risk disclosure letter, which add the following circumstances compared with the current AMAC rules: (i) risks of overseas investment of fund assets; (ii) risks of hierarchical arrangements or other complicated structures for the fund or the involvement in major unprecedented matters; (iii) risks of non-completion of filing with AMAC of change on private fund manager's controlling shareholder, actual controller or general partner during the fundraising period; and (iv) a catch-all clause of other material investment risks or interests conflict risks. Where the private fund invests in a single target rather than a portfolio, the private fund manager should give a special warning about such risks, disclose in writing the basic conditions of the investment target, investment structure, possible losses arising from the failure to make the portfolio investment, and the dispute resolution mechanism, and ask the investor to sign for confirmation.

Article 29 of the Measures consolidates the essential elements of the fund contracts. Compared to the current AMAC rules, the following elements are newly added or further detailed: (i) the disclosure of the related party transactions including the identification of the related party transactions and determination mechanism of the relevant transaction consideration; (ii) the decision-making mechanisms relating to change of the private fund manager and fund liquidation, the convening parties, voting methods, voting procedures and voting ratios in case the private fund manager is unable to perform or neglects to perform the management duties due to loss of contact, cancellation of the manager registration, bankruptcy and other reasons; (iii) the marketization exit regime as stipulated in the Article 58 of the Measures.

IV. Closed-ended funds

According to Article 35 of the Measures, private equity fund investors are required not to redeem or quit after fund filing is completed. Compared with the current *Instructions for Private Investment Fund Filing* (《私募投资基金备案须知》), this provision: (i) does not mention the closed-ended module for private asset allocation funds; (ii) does not limit investors' initial/subsequent subscription during closed-ended operations while the current AMAC rules only allow existing investors raise their capital or new investors to subscribe for private funds under certain circumstances; and (iii) adds the detailed exceptions such as reduction of investors' outstanding capital contribution, which would not be deemed as the violation of the closed-ended operation requirement.

V. Filing suspension and prudent filing

The Measures also provide specific circumstances for suspension of filing and prudent filing respectively, as summarized below:

Item	Content
Filing suspension	Article 42 of the Measures provides that AMAC will suspend fund filing of private fund managers if certain instances of non-compliance occur.
Prudent filing	Article 44 of the Measures makes key amendments to the draft version, providing that in case there are great hidden risks in private fund managers, private funds involve in major unprecedented matters, or there are complicated structures, special types of investment target and other circumstances, AMAC may adopt certain measures such as enhancing investor requirements, enhancing scale requirements, requiring fund custody, requiring fund custodians to issue due diligence reports or cooperate with inquiries, enhancing information disclosure, notifying special risks, quota management, restricting related-party transactions, and requiring private fund managers to issue internal compliance opinions, submit legal opinions or relevant financial reports, etc. Prudent filing raised concern for the QDLP manager as the Draft Rules provided specific scenarios for prudent filing which include the case where fund assets are mainly invested overseas, according to which any QDLP fund intended to make overseas investment would automatically be subject to prudent filing. We note the New Rules have removed such specific scenarios, which means the QDLP fund will not directly fall into the scope of prudent filing, although the interpretation and implementation of this requirement would depend on further guidance from AMAC.

Self-regulatory measures and grandfathering mechanism

I. Reporting of basic information and material registration information

- In case of any change to the following information of the private fund manager, the private fund manager will be required to perform change procedures with AMAC within ten working days from the date of such change, which includes: (i) basic information such as name, business scope, capital, registered address, office address; (ii) shareholder(s), partners, related parties; (iii) legal representative, SMP, executive partner or its authorized representative; and (iv) other information stipulated by CSRC and AMAC.
- If the material registration information such as the controlling shareholder, actual controller or general partner of the private fund manager changes, the private fund manager will undertake the change procedures with AMAC within 30 working days from the date of the change and submit a special legal opinion.

If the actual control right of a private fund manager changes, the manager must submit a legal opinion on whether it is in full compliance with the registration requirements as a private fund manager after the change. AMAC will conduct a comprehensive verification of the fund manager pursuant to the new registration requirement. The administrative transfer or change of equity shares in accordance with the provisions, or the transfer between different entities controlled by the same actual controller will not be deemed as a change of actual control.

In case of a change to actual control, the assets under management of the private fund manager for the 12 months prior to the date of change must be continuously no less than RMB 30 million.

II. AMAC self-regulatory management

According to the Articles 66 to 71 of the Measures, in the event a private fund manager has any irregularities, AMAC may impose self-regulatory measures on the manager, relevant practitioners and intermediaries due to their non-compliance with the Measures.

AMAC also intends to strengthen the administration of the time limit for the fund filing – according to the New Rules, unless otherwise stipulated, AMAC will deregister a private fund manager's qualification and announce the same if the manager does not launch its first private fund within 12 months upon registration or does not launch a new private fund within 12 months upon the liquidation of all its filed private funds.

III. Grandfathering mechanism

Compared with the Draft Rules, the New Rules have provided a proper "grandfathering clause" for implementation of the updated manager registration and fund filing requirements which will take effect as of May 1, 2023:

- For the manager registration, fund filing, information change and other business submitted for handling: (i) before the effectiveness of the New Rules, AMAC will apply the current rules to handle the above matters; (ii) after the effectiveness of the New Rules, AMAC will handle the matters in accordance with the New Rules;
- After the effectiveness of the New Rules, where a registered fund manager submits any change to its registered information, the relevant item shall comply with the New Rules after such change, except for a change of control where the fund manager shall comply with the New Rules in full after such change; and
- From May 1, 2023, AMAC will handle the manager registration, fund filing, information change and other businesses that have been submitted but not completed before the effectiveness of the New Rules in accordance with the New Rules.

It is encouraging to note that the New Rules have reflected market players' certain comments on the Draft Rules. However, some pending points may still require further clarification from the regulators, such as for PFM/QDLP managers, whether there could be any reasonable leeway to apply certain requirements which may impact their existing business such as the holding structure and the dual-hatting arrangement permitted thereunder.

We have also prepared an English translation of the New Rules. Please contact us if you wish to receive a copy.

2. Filing-based System for Overseas Listing (VIII) – Post Listing

Author: Transaction Department

With the full implementation of the New Filing Rules, in addition to the requirements for domestic enterprises to file with the CSRC within three (3) business days after the submission of overseas listing application documents, the New Filing Rules also clarify the requirements for the reporting or filing procedures for domestic enterprises after overseas offerings and listings, including the filing requirements for follow-on securities offerings or the development in multiple capital markets of domestic enterprises after overseas offerings and listings, and the reporting obligations of information with regard to the overseas offerings and listings as well as the material events occurred to the domestic enterprises after overseas offerings and listings.

As the eighth episode of the series of *New Era of Filing-based System for Overseas Offerings and Listings*[24], this article introduces and interprets the key points of the procedures that domestic enterprises shall perform or pay attention to after the completion of overseas initial public offerings under the New Filing Rules.

Filing obligations of domestic enterprises after overseas offerings and listings

I. Circumstances triggering filing obligations

The New Filing Rules specify the corresponding filing requirements for the refinancing and developments in multiple capital markets of domestic enterprises listed in overseas markets, which requirements will come into force from the effective date of the New Filing Rules (i.e., March 31, 2023) and are summarized as follows:

Types of transactions	Filing date	Key points	Exceptions
Securities offerings in the same overseas market	Within three (3) business days after the completion of the offerings	■ **The scope of "securities"**: based on the Trial Measures and the relevant provisions of the Guideline No.1, the "Securities Offerings" not only include the issuance of additional shares but also cover the issuance of convertible notes, exchangeable bonds or preferred shares after the overseas offerings and listings, which are also required to be filed.	■ The filing requirements will not apply to the issuance of securities for the implementation of equity incentives, the conversion of capital reserve into corporate capital, the distribution of stock dividends or share split. ■ For securities offerings in installments within the authorized scope, the enterprises shall file with the CSRC after the completion of the initial offering and report

[24] Terms or attributes used in this article but not defined herein shall have the meaning ascribed to them in articles in the series of *New Era of Filing-based System for Overseas Offering and Listing*.

Types of transactions	Filing date	Key points	Exceptions
		■ **Paying attention to the coordination with industrial regulation procedures**: for the issuance of convertible notes overseas, the domestic enterprises shall also complete the review and registration procedures for foreign debts in advance in accordance with the regulations promulgated by the foreign debt regulatory authorities.	the unitary combined offering information to the CSRC after the completion of the remaining offerings.
Developments in multiple capital markets	Within three (3) business days after the submission of application documents for the public offerings and listings to the overseas stock exchanges	■ Secondary listings or primary listings in other overseas markets	For the conversion of listing status (such as the conversion from a secondary listing to a dual primary listing) and the transfer of listing board in the overseas markets, which do **NOT** involve the issuance of securities, the domestic enterprises are not required to file with the CSRC but shall report to the CSRC within three (3) business days after the occurrence and announcement of such matters.

II. Requirements for the filing materials

The filing materials for follow-on offerings and listings in different overseas markets by domestic enterprises listed in overseas markets are consistent with those required for the initial public offerings and listings, while the filing materials required for the follow-on securities offerings in the same overseas market are simplified, and the issuer is only required to provide a filing report and relevant commitments, as well as the legal opinions issued by its PRC counsels (the "**Domestic Legal Opinions**") (attached with relevant commitments). Please refer to the previous articles of this series for more details on the introduction and analysis of the contents of relevant filing materials.

Obligations to report the information of overseas offerings and listings

I. Summary of the report on overseas offerings and listings

After the completion of overseas offerings and listings, the issuers shall prepare and submit a report on the information of overseas offerings and listings to the CSRC according to the Trial Measures and the Guideline No.3. For the follow-on overseas issuance of securities after the overseas offerings

and listings of the domestic enterprises, the issuers are only required to specify the information of overseas offerings and listings as required by the Guideline No. 3 in the filing materials submitted to the CSRC rather than prepare a separate report on overseas offerings and listings.

The report on the overseas offerings and listings shall include the following contents:

Contents of the report	Key points
Overview of the offering	■ The issuer's name, the securities abbreviation and number, and the overseas market of the offering. ■ The relevant time points of the offering, including the approval of the foreign regulatory authorities for the offering and the time of such approval, the time of receiving the proceeds, and the listing time of the securities. ■ Type and number (including over-allotment) of the securities issued in the offering and its proportion in the total share capital after the offering, par value, conversion ratio to underlying securities, offering method, underwriting method (such as firm-commitment underwriting, best-efforts underwriting, etc.), listing method (such as primary listing, secondary listing, listing by introduction, etc.), the offering price and its ratio to the benchmark price, the gross proceeds, and breakdown of the offering costs and expenses. Where the securities issued in the offering are financial instruments convertible to ordinary shares, the issuer shall also report the interest rate (dividend yield ratio), term, conversion period, conversion price, redemption and buyback terms, etc. of the securities. ■ The issuer shall indicate the changes in the shareholding structure before and after the offering according to the list of major shareholders, and shall list the affiliate relationships between the new major shareholders after the offering and the issuer and the issuer's shareholders. If the offering involves a change of control, the issuer shall provide the details of such change of control.
Subscription of the securities and the restricted sale	In addition to the public offering to the market, if the offering involves placing, firm commitment underwriting or other methods of offerings to specific investors, the issuer shall also specify the following information: ■ The subscription information of the specific investors. ■ Information of the firm commitment underwriting. ■ Information of the assets transactions of the domestic enterprises.
Register and custody of relevant securities	For the direct overseas offering and listing, the issuer shall state the information and time of the centralized register and custody of relevant securities after the completion of the offering and listing.

II. Key points requiring further attention

The Guideline No. 3 sets out the preparation and reporting requirements for the report on the overseas offerings and listings, but the issuers shall still pay attention to the following key points:

Time

- The New Filing Rules keep silent on the time for submitting the report on the overseas offerings and listings.
- The provision that companies shall submit a written report to the CSRC about the relevant information on overseas stock issuance and listings within **fifteen (15) business days** after the completion of the overseas stock issuance and listings under the Guidelines on Regulation of Application Documents and Examination and Approval Procedures for Overseas Stock Issuance and Listings by Joint Stock Companies has not been abolished yet. The issuers need pay attention to whether this provision still applies by reference after the implementation of the New Filing Rules.

Responsibilities

- The Guideline No. 3 requires that the issuer and its legal representative, the securities companies acting as the sponsors or the lead underwriters and their responsible persons, the sponsor representatives or the persons in charge of the project shall sign or seal on such report.
- Different from the Guideline No. 2 which requires sponsors or lead underwriters to submit undertaking letters as one of the filing materials, the Guideline No. 3 does not impose the same or similar requirements. Whether the responsibilities of sponsors or lead underwriters for the report on overseas offerings and listings will be actually borne with the help of Article 29[25] of the Trial Measures needs further attention.

Post Supervision: report on material events after overseas listings

Based on Article 22 of[26] the Trial Measures and the Guideline No. 3, in respect of the specific material events occurred after the overseas listings, the issuers shall report the details to the CSRC within three (3) business days after the occurrence and announcement of the relevant events. The material events required to be reported and their key points are summarized as follows:

Events to be reported	Key points
Change of control	■ Summary of the change of control: time and method of the change, the performance of information disclosure obligations, and comparison of the number, shareholding percentage, nature and the lock-up information of the shares held by the major shareholders before and after the change.

[25] Article 29 of the Trial Measures stipulates that where a securities company or securities service provider, failing to practice with due diligence, either: 1) makes misrepresentation, misleading statement or material omission in documents produced and issued in compliance with domestic laws, administrative regulations or relevant rules promulgated by the state, or; 2) makes misrepresentation, misleading statement or material omission in documents produced and issued in compliance with rules of the overseas listing market, and thereby disrupts domestic market order and undermines lawful rights and interests of domestic investors, the CSRC and competent authorities under the State Council shall issue correction orders and warnings, and impose a fine of between one and ten times of the revenue if any, or of between RMB 500,000 yuan and RMB 5,000,000 yuan in the absence of a revenue therefrom or if the revenue was less than RMB 500,000 yuan. Directly liable persons-in-charge and other directly liable persons shall be warned and each imposed a fine of between RMB 200,000 yuan and RMB 2,000,000 yuan.

[26] Article 22 of the Trial Measures stipulates that upon the occurrence of any of the material events specified below after an issuer has offered and listed securities in an overseas market, the issuer shall submit a report thereof to the CSRC within 3 business days after the occurrence and public disclosure of the event: (1) change of control; (2) investigations or sanctions imposed by overseas securities regulatory agencies or other relevant competent authorities; (3) conversion of listing status or transfer of listing board; (4) voluntary or mandatory delisting. Where an issuer's main business undergoes material changes after overseas offering and listing, and is therefore beyond the scope of business stated in the filing documents, such issuer shall submit to the CSRC an ad hoc report and a relevant legal opinion issued by a domestic law firm within three (3) business days after occurrence of the changes.

Events to be reported	Key points
	■ If there is any ultimate controlling person of the issuer after the change of control, the issuer shall report the basic information of the controlling shareholder(s) and the ultimate controlling person(s) after the change, as well as the specific information on the shares of the issuer controlled by such ultimate controlling person(s) after the change, or the detailed information on taking control by such ultimate controlling person(s) through equity control relationships, agreements or other arrangements rather than the acquisition of the shares of the issuer. ■ If there is no ultimate controlling person after the change of control, the issuer shall state the grounds for determining that the issuer has no ultimate controlling person.
Investigations or sanctions imposed by overseas securities regulatory agencies or other relevant competent authorities	■ The issuer shall report the occurrence time of such material event and its detailed contents. ■ The New Filing Rules keep silent on which information shall be included in the report. It remains to be clarified in the subsequent practice.
Conversion of listing status or transfer of listing board	
Voluntary or mandatory delisting	
Main business undergoes material changes and is beyond the scope of business stated in the filing documents	■ The issuer shall submit a specific report and legal opinions issued by its PRC counsels to the CSRC to report the relevant information.

3. How Registration-based Reform Impacts Dispute Resolution

Author: Capital Market Dispute Resolution

On February 17, 2023, the China Securities Regulatory Commission (CSRC) announced rules related to the registration-based stock issuance system, marking a full transition to the "registration-based" era, 33 years after the establishment of China's capital markets. In four years since President Xi's November 2018 announcement of the registration-based pilot reform of the Shanghai Stock Exchange's (SSE) STAR Market, more directly impactful on market participants than the construction and practice of the offering and trading system may be regulatory actions and dispute resolution. In these intervening years, we have witnessed a comprehensive revision of the Supreme People's Court's Judicial Interpretation of False Statements issued nearly 20 years ago, the integration of the bond markets with cross-market administrative enforcement and unified legal applicability, the establishment of a Chinese-style securities class action mechanism and the first "representative litigation", a decrease in the "shell" value of listed companies and the corresponding transfer of civil liability from issuers to intermediaries, and regulatory storms waged by the CSRC and the downfall of certain high-profile enterprises.

The full roll-out of the registration system is necessary for the maturity of the capital markets, accompanied by adhering to market discipline and solving problems in the market operation in accordance with the rule of law. If the various institutional regulations are the "bones" of China's capital markets, then the dispute resolution system which properly applies relevant regulations and resolving disputes among market participants are the "feathers" supporting the continuous and stable operation of the market.

Dispute resolution in capital markets typically reflects the game of market participants and the market's understanding of the rules. Therefore, it is of great significance to understand and predict the impact of the full implementation of the registration system on dispute resolution in China's capital markets.

"False statement" rules expected to become the main provisions for dispute resolution among China's capital market participants

The registration-based reform aims to return the power of decision-making back to the market and allow investors to judge the quality and value of issuers. Comprehensive, sufficient, and effective information disclosure is the foundation for ensuring investors' access to necessary information and making independent decisions. Therefore, the reform further establishes the disclosure-centered registration system framework.

Emphasizing the business judgment of investors does not mean the government will stand idly by. On the contrary, since the implementation of the registration system, the CSRC has clearly strengthened its enforcement efforts and proactively made negative comments toward information disclosure violations, including those by intermediaries. These regulatory actions have become the practical basis for investors to claim civil compensation based on the legal liability system for false statements under the Securities Law. The core status of false statements rules in capital markets dispute resolution under the registration system can be understood from the following three aspects.

Firstly, false statements are the natural result of violation of disclosure obligations. China has always been equipped with administrative and criminal mechanisms to combat illegal acts of information disclosure, but the results have been unsatisfactory. The civil liability system for false statements can maximize market forces by demanding large civil damage claims from the perpetrators of illegal information disclosure, which will force them to comply with the laws and regulations cautiously. The civil compensation for false statements is the most effective regulating force as tested by the developed market, especially for those who are liable for negligence and to whom the application of criminal and administrative liabilities is limited, such as the managers and directors of listed companies and various intermediaries.

Secondly, the characteristics of the capital markets require the overriding application of special rules in securities law over the general rules of civil and commercial laws. The rules on public offerings, centralized bidding, and net settlement determine that the securities offering and trading should follow the most stringent commercial nominalism. Article 117 of the Securities Law stipulates that the results of transactions conducted according to trading rules developed in accordance with the law may not be changed, except where a securities exchange intervenes. Thus, the general civil and commercial rules such as “recission” and “return of property acquired as a result of contract” are not applicable to securities trading activities. Even fraudulent offerings that directly affecting the implementation of the purpose of the contract need to be dealt with through the false statements system without altering the transaction results.

Thirdly, information disclosure is a fundamental requirement of registration-based capital markets. The scope of false statements rules covers all types of securities. In addition to stocks and bonds, non-traditional securities as specified in Article 2 of the Securities Law are also subject to information disclosure requirements. At the same time, China has not yet clearly distinguished between public and private offerings with respect to information disclosure principles and intermediary performance standards. Therefore, different shades of information disclosure requirements and false statements liability have generally existed for a variety of securities activities. Some capital market activities not regulated by the CSRC due to historical reasons also have distinct securities characteristics, such as inter-bank market bonds and regional equity market transactions. Trends in these areas are also prelude to a return to the essence of the Securities Law and uniform legal application.

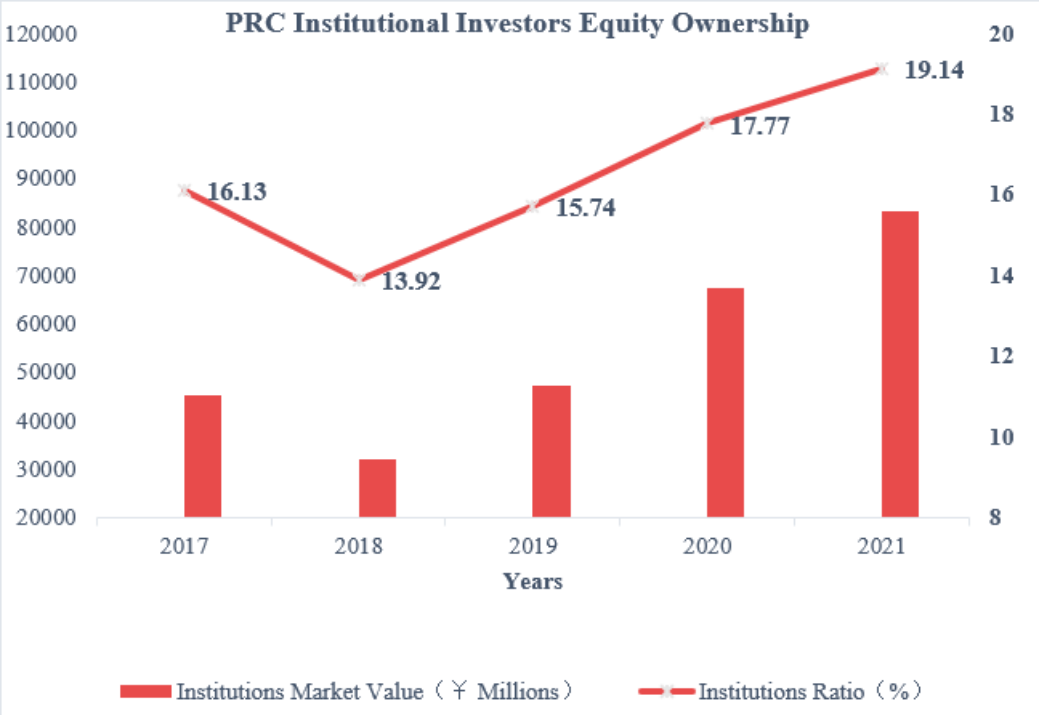
Therefore, it is not an exaggeration to say that the head of the registration system is information disclosure and its tail is regulating false statements. The full roll-out of the registration system implies that the regulation of false statements will become some of the important rules to resolve disputes in China’s capital markets.

The protection mechanisms for Chinese investors are constantly improving, with an increased proportion of professional investment institutions, China’s investors’ willingness and ability to protect their rights have greatly strengthened

The full registration system will form a “sellers responsible, buyers beware” market environment, which poses higher requirements for China’s investor protection mechanisms. Relevant system construction has also been thriving in recent years. The newly revised Securities Law 2019 established the system of special representative litigation in security disputes. In 2021, the China Securities Investor Services

Center (ISC) represented tens of thousands of investors in the “Kangmei Pharmaceuticals case”, marking the beginning of Chinese-Style securities class actions.

At the same time, the registration reform will also bring about profound changes in the structure of capital market investors. For a long time, China’s capital markets were dominated by individual investors. The market structure has changed slightly in recent years, but there is still a huge difference between the developed markets such as the UK and the US (where institutional investors account for more than 60% of the market value of shares). After the full implementation of the registration-based system, the gap between individual investors and institutional investors in obtaining information, industry knowledge, technical support, and information processing and understanding will become more apparent. It can be expected that through the market mechanism process, the proportion of institutional investors will increase further.



Source of data: Statistical Yearbooks of Shanghai Stock Exchange during 2018-2022

The combination of these factors will have a profound impact on China’s capital markets dispute resolution field. On the one hand, China’s unique investment protection mechanism, represented by the ISC and special representatives, allows the “national team” to participate in civil disputes in the capital markets, becoming the strongest force beside regulatory agencies to combat securities violations. On the other hand, institutional investors are significantly higher in terms of professional level and quality of rights protection than individuals, and they can effectively use their advantages in manpower, financial resources, and market information to uncover false statements. Additionally, they are motivated by the institutional responsibility requirements and have extensive experience in evidence preservation and lawyer selection, making them the most powerful opponents in related civil lawsuits.

Finally, although the legal requirement of “preliminary proceedings” has been abolished, false securities statement lawsuits are still mainly based on administrative or criminal investigations. Under the full

registration-based system, the disclosure of information is shifting from "regulator-led" to "investor-led". Perhaps, professional short sellers who specialize in false statement investigations, such as Muddy Waters and Hindenburg Research in the US, will also emerge in China's capital markets one day in the future.

Full implementation of the delisting mechanism and normalization of intermediaries' civil liabilities

Delisting is an important component of the registration-based system. While emphasizing market orientation at the entry gate, exits must also implement legal standards more strictly. There must be "life" and "death" to create a healthy ecosystem for the capital markets with "survival of the fittest." With the full implementation of the registration-based system, the delisting mechanism will enter a new phase of "normalized" operations, with valuable enterprises flowing in and problem enterprises accelerated out.

As delisting involves the interests of many parties, the problem that the process of delisting is stubborn and slow had been very significant in the past two decades before the pilot registration reform. Many listed companies facing delisting risks seized the turning space and used their own listed entity qualifications for capital operations, realizing "resurrection" through "shell selling." In this situation, even if losses were suffered due to false statements or other violations, investors could always be redeemed from the listed company without having to pursue the responsibility of intermediaries. Objectively, this reduced the liability risks of other market participants.

The four-year pilot registration-based reform and its two-year implementation of the delisting rules have had significant effects. In 2022, the number of delisted companies in China reached a new record high with a total of 43 companies delisted, 42 of which were forcibly delisted, including one that was delisted due to serious financial fraud violations. The opening of the supply side and the normalization of the delisting mechanism have greatly suppressed the "shell" value of listed companies, which has also eroded the "safety cushion" between investors and intermediaries. Faced with delisted companies that have no hope of recovery, investors directly target intermediaries with deep pockets.

Meanwhile, strong support for investor rights protection is found in the newly revised Securities Law and the Judicial Interpretation on False Statements, recent judicial precedents, and increasing regulatory intensity. The volume of compliance incidents and lawsuits claiming compensation against intermediaries is skyrocketing. Suing intermediaries becomes a standard action for investors to protect their rights. With the full implementation of the registration-based system, securities disputes arising due to delisting have become an important arena for fierce competition among all parties.

It is foreseeable that as the registration system reform deepens, the securities regulatory intensity will continue to increase. Specifically, companies that have been "eliminated" by the market will undoubtedly become the focus of regulation, and intermediaries, and even directors and supervisors of the listed companies, will continue to be under pressure. At the same time, after a company delists, the civil compensation system becomes the last line of defense for investor rights protection, directly affecting market confidence. Therefore, based upon the previous construction of judicial rules and accumulated practical experience, judicial authorities will deal with related disputes more professionally and carefully.

Considering the impact of the full roll-out of the registration-based system as discussed above,

intermediaries are expected to be heavily scrutinized by the combination of securities regulation and judicial review in the dynamic regulation of listed companies. Only by fulfilling their due diligence can intermediaries better enjoy the benefits of market development and promote the full registration-based system.

Regulatory pressure will further increase with the transformation of CSRC's functional orientation. Effectively responding to securities regulation will become an important component of dispute resolution in China's capital markets

After the full implementation of the registration-based system, it is foreseeable that the numbers and scales of the listed companies will run up high. The regulatory targets will be more complex and diverse. In the long run, while the CSRC has devolved the listing approval power, the securities regulation activities in China may change as follows.

Firstly, the establishment and improvement of coordinated enforcement at the horizontal and vertical level regulatory system.

On the horizontal level, the *Opinions of the General Office of the CPC Central Committee and the General Office of the State Council on Strictly Cracking Down on Illegal Securities Activities in Accordance with the Law* emphasizes the need to strengthen the cooperation among the CSRC and public security, judiciary, and market regulation authorities, integrate criminal, administrative, and civil legal means, and form a joint force to effectively crack down on securities illegal activities.

At the vertical level, the current regulatory tools of the CSRC include administrative penalties, administrative regulatory measures, self-discipline measures at the exchange and association level, etc., and a multi-level regulatory toolkit system that is in line with the characteristics of China's capital markets has been initially formed. The CSRC's administrative penalty procedures have become increasingly standardized and mature with the promulgation of documents such as the *Rules of the China Securities Regulatory Commission on Administrative Penalty Hearings*, the *Organizational Rules on the Administrative Penalty Commission*, and the *Measures for Administrative Penalties for Securities and Futures Violations*. However, there is no systematic regulation for non-penalty administrative measures, and the procedures for administrative regulation need improvement, such as filing, investigation, determination, and relief. After full implementation of the registration-based system, in order to follow the principle of "equivalency of fault and punishment", the CSRC is likely to increase the frequency of using regulatory measures to effectively regulate the numerous securities violations and use this as a leverage to continue to improve the multi-level regulatory tools, including administrative penalties, regulatory and self-discipline measures.

Secondly, give importance to the application of technological means in regulation and enhance the construction of technology-based regulation.

The CSRC emphasized in a press briefing on the full implementation of the registration-based system that "it will adapt to the requirements of the full implementation of the registration-based system, accelerate the transformation of regulation, promote the construction of technology-based regulation, and effectively

improve regulatory capacity."

"Construction of technology-based regulation" includes the effectively utilizing technologies such as big data, AI, and blockchain to establish a surveillance and early warning system for the securities and futures markets, building a new regulation enforcement model based on technology, improving the regulation enforcement efficiency, strengthening the identification and early warning of serious violation risks, and achieving effective prevention, timely detection, and precise enforcement. Currently, the CSRC has demonstrated high technological regulatory capabilities in surveillance to provide early warning of insider trading, market manipulation, and other securities violations. In the future, with the development of AI and the increasing need for regulatory practice after the full implementation of the registration-based system, the CSRC will increasingly rely on technology-based regulation in more areas to find and dispose of various securities and futures violations in a timely manner.

Thirdly, the undertaking system for parties in administrative enforcement of securities and futures is further implemented and more administrative reconciliation cases are emerging.

In 2015, CSRC's *Measures for Implementing the Pilot Program for Administrative Reconciliation* and the *Interim Measures for Administration of Administrative Reconciliation Payments* established an initial framework for administrative reconciliation in the areas of securities and futures. In 2021, the PRC State Council issued the *Measures for Implementation of the Rules for Undertakings Made by the Parties to Securities and Futures Administrative Law Enforcement*. Based upon these Measures, in 2022, the CSRC issued the *Provisions on the Implementation of the Rules for Undertakings Made by the Parties to Securities and Futures Administrative Law Enforcement* and the *Measures for Administration of Funds Paid for Undertakings Made by Parties to Securities and Futures Administrative Law Enforcement*, further perfecting the administrative law enforcement and undertakings procedures for the securities and futures industry.

However, due to the high threshold to launch enforcement and undertakings procedures, after years of implementation, the actual number of cases having successfully applied these rules is low. After the full implementation of the registration-based system, it is expected that the administrative law enforcement and undertakings procedures will apply increasingly to cases in which the violations are not serious and being corrected by effective measures, the investors' losses can be compensated, and adverse effects mitigated.

Civil liability for market manipulation, insider trading, and other significant securities violations have entered a practical stage, and relevant judgment rules are gradually being established

When the Securities Law was amended in 2005, it stipulated that those who manipulate the market and engage in insider trading should be held liable for compensating the losses caused to investors. However, these two types of securities violations differ from false statements as they do not target specific investors, and it is very complex in the determination of causation and civil losses. Although there have been studies and discussions on the civil liability issue for more than ten years, judicial practice developed very slowly. In terms of compensation for market manipulation, attempts can be traced back to the "Yi'an Technology"

incident in 2001, but due to the lack of legal basis, the court eventually did not file the case against numerous individual investors. Since then, in two other cases, Beijing's Courts rejected the investors' cases on the grounds that the claimants failed to establish the causation between investment decisions and losses incurred due to market manipulation. In terms of insider trading, in the 2009 "Pan's Case" and the "Huang's Case" in 2012, the court declined the claimants' cases also mainly on the grounds of no causation. The Supreme People's Court has yet to issue any corresponding judicial interpretations.

Recently, cases decided in favor of the investors as plaintiffs have started to emerge in both types of disputes. In the first civil compensation case of market manipulation, a Chinese pharmaceutical company listed on the stock market manipulated stock prices by releasing false information. More representatively, the case of a nature person manipulating the stock price of P2P Financial Information Service Co., Ltd. that was tried by Shanghai Financial Court in 2022 involved multiple severe violations such as continuous trading, wash sale, false declarations, and manipulation by information asymmetry. For insider trading, there is only one civil case, the "xxx Securities Company's Fat-Finger Error case". However, judgments in this case in 2016 have not triggered the emergence of similar disputes.

Generally speaking, the judicial practice in pursuing civil liability for market manipulation and insider trading is far less developed than that of false statements; however, it is likely to enter a period of rapid development after the full registration reform. One reason is that existing cases have drawn on the successful experiences of false statement cases in terms of core judicial logic, namely registration-based capital markets are centered on information disclosure. In the future, with the further development of false statement dispute rules and theories, the handling of civil liability disputes arising from other illegal securities behaviors will also be improved. On the other hand, what is more important is that the full implementation of the registration-based system is a milestone in China's steady approach to "market-oriented and law-based" capital markets. Under this background, the establishment and improvement of civil liability legal systems and judicial rules will be given higher priority. In a public occasion, at the Annual Conference of Financial Street Forum 2022 held in Shanghai in November 2022, Wenxue Lin, Head of the Civil Adjudication Tribunal No.2 of the Supreme People's Court, clearly stated that "[f] raudulent offerings, insider trading, and market manipulation are the 'tumors' of the capital markets. We need to start to study the civil compensation issues arising from insider trading and market manipulation."

Therefore, the impact of full implementation of the registration-based system on China's capital markets is deeply rooted in culture and ideas and reflected in practice, which will further promote the development of major legal issues such as civil liabilities for insider trading and market manipulation in China's capital markets.

4. Key Points of Fund Management Companies' Subscription for Shares

Author: Ellen MAO[28]

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 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

[28] Zhou Zou and Xiaocheng Tang have contributions to this article.

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 Newsletter 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.

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