

Research on the Securities Issuance Supervision Path Based on the Securities Issuance Related Legal System

Jia Minhui^{1,a,*}

¹Hainan University, Haikou, Hainan, 570100 China

*corresponding author

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Abstract: Although there has been a long-standing call for regulatory reform to replace “approval system” with “registration system”. However, the theoretical circles and the supervisory authorities do not have the same understanding of the reform of China's securities issuance system, and there is a lack of discussion on the specific content of the securities issuance supervision path in the process of research on institutional reform. Therefore, from the perspective of economic law, taking the securities supervision chain as a clue, this article comprehensively analyses the legal relationship arising in the process of the country's coordination of the domestic securities issuance market and proposes corresponding legislative reform proposals in conjunction with laws and regulations.

1. Introduction

1.1. Concept of securities issuance

China's Securities Law does not clearly define the concept of securities issuance, and the economics, finance, and law circles have made different opinions on this. For economics, the significance of securities issuance is mainly in the process of the issuer raising funds in order to expand the scale of operation^[1]; but from the perspective of civil law, the nature of securities issuance is a contractual relationship established by the issuer and investors on the basis of agreement^[2]. The reason for this phenomenon is that each subject has its own focus due to different perspectives. Economic law is an independent legal department, and the social relations and adjustment methods it adjusts have the distinct characteristics of being independent of the adjustment objects of other departmental laws. This article chooses to discuss the supervision of securities issuance based on the legal system of securities issuance. From a formal point of view, the so-called securities issuance in this article refers specifically to the issuers with special subject qualifications as stipulated in the Securities Law, the Company Law, and the corresponding administrative regulations and departmental rules.

1.2. Securities Issuance Audit System

After clarifying the meaning of securities issuance, the securities issuance review system can be elaborated. The so-called securities issuance review system in this article refers to a legal supervision system in which securities regulatory agencies review the public offering of securities and decide whether or not to approve the issuer to issue securities. Due to its inherent shortcomings, the market often appears in an imbalanced state of operation, which is called the market defect^[3]. When a market defect occurs, the market's resource allocation function will fail. The securities market is of course an important part of the market, so it also has a problem of failure. The unique nature of the securities market determines that its risks are greater and more unstable. If it is not well controlled, it will cause extremely serious social consequences. Therefore, as the “gatekeeper” of the securities market, the securities public issuance review system has undoubtedly an extremely important role and necessary for the stability of the securities market and the protection of investors and social public interests.

2. The current situation and shortcomings of China's securities public offering review system

2.1. The Reform History of China's Securities Public Offering Review System

China's securities market was born in a special historical period of transition from planned economy to market economy. As far as the public securities issuance review system is concerned, it has mainly gone through two stages, namely the approval system stage and the approval system stage.

(1) Approval stage

Since 1990, China's securities public offering review system has adopted an administrative approval system with Chinese characteristics. Under this model, the public issuance of securities generally needs to go through three steps: quota calculation, allocation approval, and approval for issuance. First, the China Securities Regulatory Commission and the National Planning Economic Commission set out from the overall situation of national economic development, calculate the annual total stock issuance quota based on the face value of the stock, and make it public; then each local government or central ministries and commissions submits to the China Securities Regulatory Commission according to their own development needs. For the issuance application, the China Securities Regulatory Commission will allocate it to the local governments or central ministries and commissions that apply for it on the basis of the total amount; of course, each local government or central ministries and commissions must submit detailed application materials to the CSRC when submitting an issuance application. Make a final review and decide whether to approve^[4].

(2) Approval system

As the shortcomings of the administrative examination and approval system become more and more obvious, a new and more superior model is urgently needed to be replaced. Therefore, China's "Securities Law" has emerged from time to time, and has launched a brand-new securities public issuance review model — Approval system^[5]. This model indicates that China's securities issuance review system has gradually shifted from administrative domination to market selection. First, securities companies and underwriters recommend issuers to securities regulatory agencies and assume responsibility for endangering the securities market by recommending unqualified issuers; second, the number and scale of securities issuance is determined by the issuer based on its own needs, which enhances The degree of marketization; again, both formal and substantive examinations are combined; and finally, the issue pricing reflects the needs of market entities, so that the issue price truly reflects the value of the stock and the degree of risk.

Table 1 Difference between the registration system and the approval system

Project	Registration system	Approval system
Representative country	USA	UK
Legal basis	Federal Securities Law, special regulations of each state	Company Law, Financial Services Law and other relevant regulations
Market structure	Multi-exchange, multi-level market structure	Single exchange, multi-level market structure
Supervision method	Attach importance to the functions of government securities regulatory agencies	Emphasize market self-discipline function
Audit agency	The government securities regulatory department is responsible for the issuance review, the stock exchange is responsible for the listing review, and the industry association participates in the self-discipline review	Substantial review of the stock exchange
Censorship	Formal review	Substantive review
Review content	Full, true, accurate and timely information disclosure	Emphasis on information disclosure, and at the same time require that the qualifications of subjects, standardized operation, profitability, issuance procedures, issuance methods, etc. should meet the conditions
How to acquire the	Obtained naturally without special	Approved by the security's regulatory

right to issue securities	government authorization	agency
Control method	Emphasize ex post control	Simultaneous control before and after

2.2. The main problems under the existing securities public offering review system

Although the issuance review system has been continuously improved since the establishment of the Chinese stock market, no matter what kind of system, due to the excessive concentration of administrative power, the government intervention is too strong and the role of the market has not been fully exerted. The current system has the following problems.

(1) The audit efficiency is low

On the one hand, complicated audit procedures have taken too long. Although the “Securities Law” stipulates that the review period is 3 months, securities regulatory agencies often temporarily suspend the review of new share issuances due to administrative control considerations, resulting in an artificially long review time^[6]. Due to the substantive review of the issuer under the approval system, it is difficult for the issuer to anticipate the audit results. It will take a lot of time and effort to wait for the audit results to come out. On the other hand, the issue review standards are not clearly unified and uncertain. In addition to the requirements for the review of public offering of securities as stipulated in the Securities Law, the CSRC has other requirements. These conditions are often set according to the needs of national economic policies and the convenience of the supervision of the SFC. Not only are they numerous and complex, they are even changing day by day, and the inconsistencies are both inconvenient to operate and difficult for issuers to adapt to.

(2) Undermine the market mechanism

First, the market pricing mechanism has failed. It mainly includes two aspects, one is the failure of the pricing mechanism of the issuance, and the other is the “very forced” issuance review of transaction pricing. Since the securities issuance price is stipulated in advance by the security’s regulatory agency, rather than being generated by free auction, the consequence is that the issuer is keen to “fake and package”, and the intermediary institution is virtually useless. However, due to the strict control of the number of securities issued by securities regulatory agencies, the price of securities is prone to artificially increase. Therefore, for a considerable period of time after the securities are issued and listed, the stock price will be adjusted downwards under the regulation of market laws.

(3) Power rent-seeking

The power rent-seeking in securities issuance review is well known. The degree of rent-seeking is often proportional to the size of power. Because the power of issuance review is too centralized and the process is opaque, issue applicants cannot understand the review process through normal channels, and only obtain information through public relations, which has led to implicit rent-seeking. In addition, because the development review committee is usually composed of accountants, lawyers, auditors and other professionals in the industry, and the issuer often knows its own audit committee before the start of the audit process, therefore, it will pass the help of the review committee at this time. The office or unit where it works finds customers and pulls business to do hidden rent-seeking.

3. Path selection and system design of securities issuance supervision

3.1. Path selection of China's registration system reform

The dual registration system and the dual filing system are relatively mature securities issuance supervision models, but the dual registration system has a mature environmental market mechanism, a sound supporting mechanism, and a relatively complete legal environment. In contrast, the dual filing system is closer to China's existing system. It is not only easy to sort out the relationship between the SFC and the exchange, but also facilitate the orderly progress of the reform. China should consider reforming securities issuance supervision based on a dual filing system, and gradually establish a set of securities regulatory commissions to be responsible for securities

issuance registration and registration, the exchanges to be responsible for the substantive review of securities listings and report to the Securities Regulatory Commission for record, and the Securities Regulatory Commission to supervise the audit system of the exchanges. First, adjust the power structure of the SFC and return to the role of “gatekeeper” in the securities market. Secondly, the issuance and listing are separated, and the exchange is responsible for reviewing securities listing applications. Finally, the CSRC is given the right to record and object.

3.2. Clarify the issue of adjustment limits between public and private law

In summary, under the reality that the risk of securities issuance is frequent today, and the civil liability system is not yet perfect, and the economic law theory has weak research on the supervision of securities issuance, the author believes that the legal research on the securities issuance market and the entire securities market To clarify the boundary between the adjustment of public law and private law, civil and commercial law and economic law respectively carry out in-depth theoretical research and system construction on the social relationship of their own discipline adjustment, which really has the theoretical necessity and practical urgency. In terms of legislation, it is advisable to carry out a corresponding differentiated construction, that is, to separately formulate the Securities Exchange Law with the attributes of civil and commercial law and the Securities Supervision Law with the attributes of economic law, so as to connect the economic law with the civil and commercial law in a reasonable division of labour. A comprehensive three-dimensional legal system with a clear division of labour and a coordinated coordination of civil and commercial law and economic law is formed to provide full legal support for the conflict and coordination of public and private interests in the securities issuance market, and to complete the requirements of the era of comprehensive legal rule monitoring of the securities issuance market.

3.3. Improve the various supporting mechanisms of the registration system

First, expand the degree of information disclosure. It is necessary to expand the disclosure of audit reports, legal opinions and prospectuses, and increase the disclosure of documents such as asset assessment reports and capital verification reports. Secondly, strict responsibilities of sponsors, underwriters and other intermediaries should be undertaken to improve the inquiry mechanism. Finally, establish a strict delisting system and dividend system, not only to prevent unqualified entrants from entering the securities market, but also to exclude the unqualified ones.

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