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*A career is not about making money together, it's about creating value together. / 事业不是一群人在一起赚钱，而是在一起创造价值。--L. Zhang*

## MACRO-POLICY / 宏观政策

### The State Council Encourages Corporate Mergers and Reorganizations 国务院发文力推企业兼并重组

On March 24, 2014, the PRC State Council released the *Opinions on Further Optimizing the Market Environment for Corporate Mergers and Reorganizations* (the "Opinions"), encouraging corporate M&A and restructuring activities in various aspects.

The Opinions mainly focus on the mergers and reorganizations related to listed companies and overseas M&As, among which the adjustments of various approvals as follows are mostly noteworthy: (i) prior review of report for acquisition of listed companies is cancelled; (ii) except for back-door listing activities, approvals for material asset reorganization deals involving listed companies are cancelled; (iii) approvals for exemption of tender offer during acquisitions of listed companies under certain circumstances are also cancelled; (iv) approvals for qualified corporate merger and reorganization deals will be greatly simplified or even exempted; (v) approval authority for transfers of shares owned by local

SOE shareholders in listed companies will be delegated to applicable local governments; (vi) foreign exchange registration and prior reporting proceeds for overseas M&As are to be streamlined and optimized; and (vii) efficiency of the PRC antitrust review process will be enhanced and the registration procedures with respect to the change or renewal of production permits, SAIC filings and property title certificates necessary in merger and reorganization deals will be further streamlined.

In addition, PE/VC funds, foreign and private capitals are all welcomed by the Opinions to participate in mergers and reorganizations. More favorable reforms on taxation and land policies are also promised by the Opinions although detailed implementing rules are yet to be promulgated by relevant authorities.

2014年3月24日，国务院印发《关于进一步优化企业兼并重组市场环境的意见》（“《意见》”），在多方面出台一系列措施力推企业兼并重组。

《意见》重点针对上市公司的兼并重组及境外并购，其中最值得注意的是行政审批的调整，具体如下：(i)取消上市公司收购报告书事前审核；(ii)取消上市公司重大资产购买、出售、置换行为审批（构成借壳上市的除外）；(iii)取消上市公司要约收购义务豁免的部分情形的审批；(iv)对符合条件的企业兼并重组实行快速审核或豁免审核；(v)地方国有股东所持上市公司股份的转让下放至地方政府审批；(vi)简化海外并购外汇登记管理，优化企业境外收购事前报告程序；以及(vii)提高经营者集中反垄断审查效率，简化企业兼并重组涉及的生产许可、工商登记、资产权属证明等变更手续。

《意见》还提出应丰富兼并重组的交易模式，比如鼓励各类财务投资主体通过设立股权投资基金、创业投资基金、产业投资基金、并购基金等形式参与兼并重组，鼓励外资参与企业兼并重组，并放宽民营资本准入等。此外，《意见》还提出了财税政策、土地管理、职工安置政策等方面的改革和优化措施。对于《意见》提出的一系列措施，还有待各监管部门出台、修订相关法规予以落实。

## PE & VC / 私募股权及创业投资

### CSRC and AMAC Urge Registration and Filing of Private Funds 证监会、基金业协会推进私募基金登记备案

Following the *Pilot Measures on Registration of Private Fund Manager and Filing of Private Funds* (the "Measures") effective as of February 7, 2014 (see 2014 February issue of our *China Regulatory Updates for a brief introduction*), the Asset Management Association of China (or AMAC) announced via its official website on March 5, 2014 that managers of existing private funds (including managers for privately-raised securities investment funds and private equity funds, the "Fund Managers") shall apply for registration with AMAC before April 30.

It is noteworthy that private equity funds and their Fund Managers are also required to go through the relevant filing and registration procedures in accordance with the Measures. This has been further clarified by CSRC during its March 7 press conference and CSRC is now formulating unified rules for all kinds of private funds. According to CSRC,

PE/VC funds and their Fund Managers shall not engage in fund raising or investment activities without duly go through the registration and filing procedures. Thus, to secure their compliant and smooth operations, PE/VC funds and their Fund Managers shall conform to the registration/filing requirements under the Measures. Further note that according to the written explanations made by AMAC on its website, Fund Managers registered overseas are not subject to the registration requirement for the time being.

It is reported that as of April 1, 150 Fund Managers have obtained the registration certificates. Please note that the registration of Fund Managers with AMAC is not an administrative licensing item under the PRC law and the registration certificate issued to Fund Managers does not mean that they have become subject to a licensing system.

中国证券投资基金业协会（“基金业协

会”）发布的《私募投资基金管理人登记和基金备案办法（试行）》（“《私募基金登记备案办法》”）已于2014年2月7日施行（相关介绍可参见本所2014年2月刊《中国法律更新》）。3月5日，基金业协会在其官方网站表示，已设立的私募基金管理人（“管理人”）应在4月30日以前履行申请登记手续。

值得注意的是，根据《私募基金登记备案办法》，私募股权投资基金及其管理人也被要求履行相应的备案登记义务。证监会在3月7日的新闻发布会上对这一原则作出了进一步的澄清，并指出证监会正在制定包括私募股权投资基金在内的统一监管法规；按照“统一、公平”的原则，各类私募基金管理人和私募基金均应登记备案，否则不得从事相关业务活动。对于未登记的管理人，证监会将采取相应监管措施。因此，随着证监会对于私募基金监管态度的日益明朗化，我们理解，PE/VC客户应按照证监会和基金业协会的要求及时进行登记备案，以确保今后顺利开展相关资金募集及投资活动。此外，根据基金业协会在其官方网站的解答，境外注册设立的私

募基金管理人暂时不纳入登记范围。据悉，截至4月1日，已有150家管理人

完成了登记工作并获得登记证书。值得注意的是，管理人登记不属于行政许可事项，基金业协会为已登记管理人颁发

登记证书并不是对私募基金管理人实行牌照管理。

## CAPITAL MARKET / 资本市场

### Pilot Rules on Preferred Shares Issued by CSRC

#### 优先股试点正式出台

Following the *Guidance on Trial Issuance of Preferred Shares* publicized by the State Council (the "Guidance", see 2013 December issue of our *China Regulatory Updates for a brief introduction*), CSRC officially issued the *Pilot Administrative Rules on Issuance of Preferred Shares* (the "Rules") on March 21, 2014. The Rules mainly set forth provisions on conditions, objects, and procedures for issuance of preferred shares, information disclosure requirements, M&As/restructurings involving preferred shares, restrictions on the voting rights of preferred shareholders, among others.

Pursuant to the Rules, qualified listed companies may issue preferred shares by public or private offering, while qualified unlisted public companies may issue preferred shares by private offering. The preferred shares issued via private offering should only be subscribed by qualified investors in accordance with the Rules. It is noteworthy that the conversion

mechanism for preferred shares in the draft version of the Rules has been removed. Meanwhile, the Rules specifically provide that except for some listed commercial banks under certain special situations, listed companies are not allowed to issue preferred shares convertible to common shares. This to some extent will restrict the liquidity of preferred shares.

It is reported that CSRC is formulating and will release supporting rules in the near future to detail the requirements for information disclosure, amendments to the articles of associations of the issuers and corporate M&As/restructurings with payment by preferred shares.

继国务院发布《关于开展优先股试点的指导意见》（“《指导意见》”，相关介绍可参见本所2013年12月刊《中国法律更新》）后，2014年3月21日，证监会正式发布实施了《优先股试点管理办法》（“《管理办法》”）。《管理办法》对优先股的发行条件、发行对

象、发行程序、信息披露义务及并购重组等事项进行了规定，并按照《指导意见》的相关内容明确了优先股股东的表决权限制。

根据《管理办法》，符合条件的上市公司可以通过公开或非公开发行的方式、非上市公司可以通过非公开发行的方式发行优先股。其中，非公开发行的优先股的发行对象和转让范围均仅限于《管理办法》规定的几类合格投资者。值得注意的是，《管理办法》在其征求意见稿的基础上删除了关于可转换优先股的条款，明确规定除商业银行相关特殊情形外，上市公司不得发行可转换为普通股的优先股。这在一定程度上阻碍了优先股的流动性。

据悉，证监会及有关部门将于近期出台相关配套文件，以更加明确、详细地规定发行优先股的信息披露义务、公司章程修订、利用优先股作为支付手段实施并购重组等事项。

### CSRC Takes Several Steps to Improve IPO Reform

#### 证监会多举措完善新股发行改革

On March 21, 2014, CSRC circulated the *Decision to Amend the Interim Provisions on Public Placement of Old Shares by Shareholders upon IPO* (the "Decision") to slightly modify and optimize the transfer system of old shares, aiming at restricting the numbers of old shares to be transferred through a market-oriented method and stopping speculations by old shareholders. Major amendments made in the Decision include, among others, (i) restrictions on the use of capitals raised during the IPO are reasonably relaxed and the compulsory link between the raised capitals and the fund needed for proposed projects is removed; (ii) the numbers of old shares to be transferred shall not exceed the number of the placed shares obtained by the investors who are voluntarily subject to a lock-up period of over 12 months; and (iii) there shall be no

illegal interest transfer arrangement (including among others, financial compensation arrangement, nominee shareholding arrangement and shareholding trust arrangement) among the investors who are voluntarily subject to a lock-up period of over 12 months, the shareholders who will publicly sell old shares upon IPO and other relevant parties.

In addition, CSRC issued the *Decision to amend the Administrative Measures on Stock Offerings and Underwritings* on the same day. Several adjustments on pricing/allotment mechanism and qualifications for offline investors together with the adoption of in-process and post-process supervision over stock offerings and underwritings manifest CSRC's determination towards a market-orientation direction.

2014年3月21日，证监会发布实施了《关于修改〈首次公开发行股票时公司

股东公开发售股份暂行规定〉的决定》，对老股转让制度进行了微调和优化。本次修订内容包括：(i)适当放宽募集资金使用限制，新股发行募资数量不再与募投项目资金需求量强制挂钩；(ii)规定老股转让数量不得超过自愿设定12个月及以上限售期的投资者获得的配售股份数量；以及(iii)规定自愿设定12个月及以上限售期的投资者不得与公开发售股份的老股东及相关利益方存在财务资助/补偿、股份代持、信托持股等不当利益安排。本次修订旨在通过市场化方式约束老股转让数量，并遏制老股东套现行为。

此外，证监会还于同日发布实施了《关于修改〈证券发行与承销管理办法〉的决定》，在定价配售机制、网下投资者条件方面进行了多项调整，回归市场化方向，并明确了证监会对证券发行承销过程实施事中事后监管。



## CSRC Brewing Reforms of GEM Board 创业板改革在即

On March 21, 2014, CSRC publicized the *Draft of the Administrative Measures for the IPO of Shares and Listing on the GEM Board* (which essentially are the amendments to the *Interim Measures for the Administration of IPO of Shares and Listing on the GEM Board*) and the *Draft of the Interim Administrative Measures on the Securities Issuance of the Companies Listed on GEM Board*, in order to collect public opinions on the proposed reforms to the Growth Enterprise Market ("GEM") Board. The proposed reforms mainly

include: (i) reducing the market access thresholds; (ii) reinforcing the requirements for information disclosure; (iii) further clarifying the duties of issuers and intermediaries; and (iv) establishing a refinance mechanism and improving the M&A/restructuring system.

2014年3月21日，证监会公布了《首次公开发行股票并在创业板上市管理办法（征求意见稿）》（对《首次公开发行股票并在创业板上市管理暂行办法》进行修订）及《创业板上市公司证券发行管理暂行办法（征求意见稿）》，就创业板改革向公众征求意见。本次拟进行

的改革主要包括以下方面：(i)降低准入门槛（包括适当放宽首发财务准入指标、取消持续增长要求、简化发行条件、不再局限九大行业等）；(ii)强化信息披露要求（增加披露内容、提前披露时间等）；(iii)进一步明确发行人和中介机构的责任和义务；以及(iv)建立再融资制度（推出“小额、快速、灵活”的定向增发机制）并完善并购重组制度。

## ANTI-MONOPOLY / 反垄断

### MOFCOM Decided to Publicize Illegal Concentration of Undertakings 商务部拟对未依法申报经营者集中的案件进行公示

Pursuant to MOFCOM's recent announcement, MOFCOM decided to publicize on its website cases of illegal concentration of undertakings investigated after May 1, 2014 and the corresponding administrative penalties imposed thereon. The fax and telephone numbers for public report are also published on MOFCOM's website.

According to applicable PRC laws and regulations, if the parties to a concentration of undertakings which has reached anti-monopoly filing thresholds fail to go through the relevant filing process with MOFCOM, MOFCOM is entitled to investigate the case at its sole discretion and may order the parties to the concentration to take such measures as suspension

of the related transaction, disposal of the shares, assets or business acquired, restoration to the state before the concentration as well as impose a penalty against the parties involved up to RMB500,000. MOFCOM has never publicized any undeclared case and the administrative punishments imposed thereon before. MOFCOM's decision to publicize illegal concentration of undertakings signaled its resolution to intensify administration and supervision of anti-monopoly cases. In this context, investors may need to take more prudent actions with respect to PRC anti-monopoly review analyses on M&As deals in the future.

商务部近日在其官方网站表示，将通过其网站向社会公示2014年5月1日后立

案调查的未依法申报经营者集中的案件及相关行政处罚决定，并公布了举报电话/电话。

根据法律法规的规定，如果一项达到申报标准的经营者集中案件未进行反垄断申报，商务部有权进行立案调查，并视调查结果责令集中各方采取必要措施恢复到集中前的状态（如停止实施集中、限期处分股份或者资产、限期转让营业等），并可以处五十万元以下的罚款。但在此之前，商务部并未公示依法立案调查案件的具体信息和处罚决定。本次公布举报方式并计划公示案件，体现了商务部进一步加大查处力度的决心。基于以上，投资者可能需要在未来的投资中更加审慎地对待反垄断问题。

## SHANGHAI FTZ UPDATES / 上海自贸区近期动态

### Shanghai FTZ Initiates Publication Platform for Enterprise Annual Filings 上海自贸区率先出台企业年度报告公示办法

On March 3, 2014, Shanghai SAIC released the *Pilot Measures on Publication of Enterprise Annual Report in China (Shanghai) Pilot Free Trade Zone and the Pilot Administrative Measures on Abnormal Operation List in China (Shanghai) Pilot Free Trade Zone*, acting as a pioneer to implement the enterprise annual report publication system recently adopted to replace the annual inspection system in the *Reform Plan of the Registered Capital Registration System* issued by the State Council on

February 18, 2014 (see *2014 March issue of our China Regulatory Updates for a brief introduction*). Based on the aforesaid measures, enterprises registered in Shanghai FTZ from now on should periodically publicize and update their business-related information, otherwise they would be recorded in the abnormal operation list which will also be publicized to the public. The enterprise annual report publication system puts forward a higher standard to the authenticity, accuracy and completion of the

disclosed information, which in turn requires enterprises to be more cautious when making the relevant disclosures.

国务院2014年2月18日印发的《注册资本登记制度改革方案》（*相关介绍可参见本所2014年3月刊《中国法律更新》*）将企业年检制度改为年度报告公示制度，该制度目前在上海自贸区先试先行。2014年3月3日，上海市工商行政管理局印发《中国（上海）自由贸易试验区企业年度报告公示办法（试行）》以及《中国（上海）自由贸易试

验区企业经营异常名录管理办法（试行）》，规定在自贸区注册的企业应按规定公示与其经营活动相关的信息，未

按照规定履行公示义务的企业将被载入经营异常名录向社会公布。年度报告信息公示对企业披露信息的真实性提出了

更高的要求，企业在披露信息时也应该更为谨慎。

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