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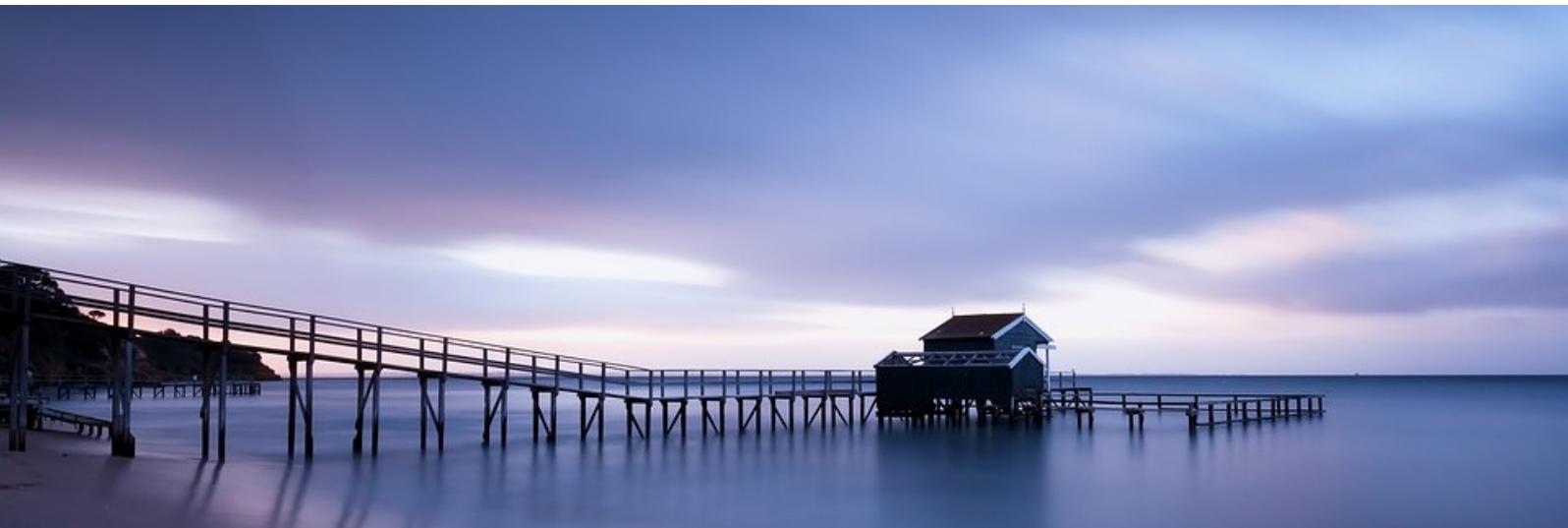


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CAPITAL MARKET / 资本市场

CSRC Issued New Rules Governing Listco Equity Incentives 证监会公布上市公司股权激励新规

The China Securities Regulatory Commission ("CSRC") has recently released the *Administrative Measures on Equity Incentives of Listed Companies* (Order 126 of CSRC, the "New Measures"), which will become effective on August 13, 2016. The New Measures only apply to the proposed and future equity incentive plans which have not yet been approved by the shareholders' meetings of the listed companies when the Measures become effective, while the already approved plans shall be implemented according to the *Administrative Measures on Equity Incentives of Listed Companies* previously issued in 2005 and relevant supplemental regulations (collectively, the "Old Measures").

Compared with the Old Measures, the New Measures grant the listed companies with more discretion in deciding and implementing their equity incentive plans, and further standardize and streamline the requirements on implementation procedures and information disclosure. Under the New Measures, independent directors and the board of supervisors will have more influence over equity incentives, and law firms are expected to play a more critical role, as special legal opinions are required to be issued throughout the whole process of implementation of equity incentives. The highlights of the New Measures include:

1. The New Measures clarify the circumstances under which a listed company is not allowed to adopt equity incentive plan: (i) a certified accountant has issued an audit report with adverse opinion or disclaimer of opinion in respect of the company's internal control in the most recent fiscal year; (ii) the company fails to distribute profits in accordance with laws and regulations, articles of association or publicly announced commitments in the recent 36 months after the listing; (iii) the applicable laws and regulations prohibit the company from implementing equity incentive plans.
2. The New Measures further perfect the rules on the implementation time, persons receiving incentives, number of granted shares, grant price and exercise price, performance evaluation etc. under equity

incentive plans. Specially, the mandatory 30-day interval period from the occurrence of a major event (e. g., the issuance of new shares, merger, acquisition and reorganization, assets injection, issuance of convertible bonds or regular bonds) to the implementation of the incentive plan is canceled, so that the company may carry out the equity incentive plans simultaneously with those major events. Independent directors, supervisors, shareholders who individually or jointly hold more than 5% of the shares of the company or the company's actual controller and his/her spouse, parents and children are not eligible for equity incentives, while the expatriate employees working in China are allowed to receive equity incentives. Moreover, the maximum percentage of reserved interests is raised from 10% to 20% of the interests to be granted under the proposed equity incentive plans. Also, the grant price and exercise price are only subject to general principles rather than mandatory requirements, so that the company may choose its preferred pricing mechanism based on its actual situation. The New Measures further provide that the indicators for performance evaluation shall include performance indicators for both the company and the person receiving equity incentives.

3. The New Measures no longer require a listed company to conduct prior filing with CSRC for the purpose of implementing equity incentive plans. Instead, the company shall publish the names and titles of the persons covered by the incentive plan within the company, and publicly announce the board resolutions, the draft plan and the opinions of independent directors and the board of supervisors before submitting the plan to the shareholders' meeting for approval. The company shall also conduct internal inspection and disclose the inspection results on whether any person possessing insider information has traded company shares or relevant derivatives within 6 months before the date on which

the plan is announced.

4. The New Measures add a separate chapter for information disclosure and strengthen the supervision and administration over information disclosure by specifying detailed requirements for the time, contents and procedures for information disclosure during the implementation of equity incentive plans.

中国证券监督管理委员会（“证监会”）于2016年7月13日公布了《上市公司股权激励管理办法》（中国证券监督管理委员会令第126号，以下简称“新办法”），自2016年8月13日起施行。新办法正式实施时，已经股东大会审议通过的股权激励方案继续按照现行的《上市公司股权激励管理办法》（证监公司字[2005]151号）及相关配套规定（以下统称“原办法”）执行，未经股东大会审议或者新提出激励方案的，按照新办法执行。

与原办法相比，新办法落实“宽进严管”的监管转型理念，在提高上市公司自主权的同时，更加重视股权激励实施程序的规范化以及信息的全流程披露，独立董事、监事会的作用更加重要，律师事务所在股权激励中所起的作用也愈发突出，专项法律意见贯穿股权激励全流程。其中要点内容如下：

1. 上市公司实行股权激励的条件更趋严格，增加了不得实行股权激励的3种情况：(1)上市公司最近一个会计年度财务报告内部控制被注册会计师出具否定意见或无法表示意见的审计报告；(2)上市后最近36个月内出现过未按法律法规、公司章程、公开承诺进行利润分配的情形；(3)法律法规规定不得实行股权激励的。
2. 对股权激励计划的实施时间、激励对象、授权份额、授予价格及行权价格、绩效考核等规定均作了进一步完善。如，取消了有关股权激励与上市公司启动及实施增发新股、并购重组、资产注入、发行可转债、发行公司债券等重大事项30日间隔期的规定，明确股权激励计划与该等重大项目可并行；独立董事、监事，以及单独或合计持有上市公司5%以上股份的股东或实际控制人及其配偶、父母、子女，不得成为激励对象；在境内工作的外籍员工可以成为激励对象；设置预留权益的比例从原办法规定的不得超过本次股权激励计划拟授予权益数量的10%上调为20%；对授予价格和行权价格不作强制性规定，仅作原则性要求，允许公司从本身价值出发灵活选取定价方式；绩效考核指标应当包括公司

- 业绩指标和激励对象个人绩效指标。
3. 在股权激励的实施过程中，不再要求证监会事前备案，而是增加了公司内部公示制度，并明确了将股权激励计划提交股东大会审议前的公告内容（包括董事会决

议、股权激励计划草案、独立董事意见及监事会意见）；增加了上市公司对内幕信息知情人在股权激励计划草案公告前6个月内买卖本公司股票及其衍生品种的情况进行自查的规定，并需披露自查报告。

4. 对信息披露作专章规定，对上市公司实行股权激励过程中相关信息披露的时间、内容及程序等方面均有具体规定，加强了信息披露的要求。

FREE TRADE ZONE POLICIES / 自贸区政策

State Council Further Relaxed Restrictions on Foreign Investment in FTZs 国务院进一步放宽自贸区内外商投资限制

On July 1, 2016, the State Council issued the *Decision on Temporarily Adjusting the Provisions of the Relevant Administrative Regulations, Documents of the State Council and Departmental Rules Approved by the State Council in Pilot Free Trade Zones* (the "Decision"), which has become effective on the date of promulgation. According to the Decision, the State Council decided to, in the Guangdong, Tianjin, Fujian and Shanghai Pilot Free Trade Zones (the "FTZ(s)"), temporarily adjust certain provisions of 18 administrative regulations, 4 State Council documents and 4 departmental rules approved by the State Council. The Decision involves 51 adjusted items in total and the major adjustments include:

1. First of all, foreign investments in the industrial sectors outside of the negative list are now only subject to record-filings instead of administrative examinations and approvals. To be specific, relevant foreign-invested projects (*unless the State Council reserves the approval requirements for the same domestic invested projects*) as well as the establishments and changes of relevant foreign-invested enterprises (*including division, merger, increase or decrease of registered capital, equity transfer, change of operating period, termination of enterprises*) are only subject to record-filings instead of governmental approvals.
2. Moreover, the restrictions on foreign investments in certain industrial sectors have also been relaxed. Specifically, the Decision temporarily (i) cancels the restrictions on foreign shareholdings and qualification requirements for foreign investors in steel industry, and open the gate for wholly foreign-owned steel production enterprises; (ii) allows foreign investors to establish wholly

foreign-owned enterprises to engage in the construction and operation of gas stations, as well as the utilization of mine gas; (iii) replaces the approval requirements with record-filing procedures for foreign investors to carry out mineral explorations and establish mining enterprises in the non-oil/gas mineral resources sectors that are not included in the negative list; (iv) cancels the requirements on the controlling position of mainland parties in the Mainland-Taiwan equity joint ventures engaging in the breeding of new crops (*excluding genetically modified crops and grain, cotton and oil crops*) and production of crop seeds (*excluding genetically modified seeds*); (v) abolishes the restrictions on foreign investments in the purchase of grain, wholesales of grain and cotton, and construction and operation of large-scale wholesale markets for agricultural products; and (vi) allows foreign investors to establish wholly foreign-owned entertainment venues to provide services within the FTZs. Even though the Decision has already become effective, detailed measures still need to be stipulated by relevant government agencies in order to implement the adjustments in certain sectors (e.g., *establishment of for-profit Sino-foreign cooperative training institutions and the wholly foreign-owned entertainment venues*).

It is noteworthy that, while most of the adjustments are applicable to all four FTZs, some only apply to one or several specific FTZs. For example, the adjustments concerning the breeding of new crops and the production of crop seeds will only be implemented in Fujian FTZ.

2016年7月1日，国务院公布了《关于在自由贸易试验区暂时调整有关行政法

规、国务院文件和经国务院批准的部门规章规定的决定》（国发[2016]41号，以下简称“《决定》”），自公布之日起施行。根据《决定》，将在广东、天津、福建及上海四大自由贸易实验区（“自贸区”）内暂时调整18部行政法规、4件国务院文件和4件经国务院批准的部门规章的有关规定，共计51项调整事项。《决定》主要涉及如下两大方面的内容：

1. 一是对负面清单之外的领域的外商投资事项由审批制或核准制变更为备案制管理。暂时停止实施外商投资项目核准（国务院规定对国内投资项目保留核准的除外），改为备案管理。另外，对外商投资企业的设立、分立、合并、注册资本变更、股权转让、经营期限变更、企业终止等事项，均暂停实施核准或审批，而实行备案管理。
2. 二是在某些行业领域对于外商投资的限制也有所放宽。例如，暂时停止实施外商投资钢铁行业原则上不允许外商控股的要求，以及对外商的资质要求，允许设立外商独资钢铁生产企业；允许外商以独资形式从事加油站建设、经营；允许外商以独资形式从事煤矿井瓦斯利用；外商在负面清单之外的非油气矿产资源领域从事风险勘探和设立采矿企业，由审批改为备案管理；对从事农作物（粮棉油作物除外）新品种选育（转基因除外）和种子生产（转基因除外）的两岸合资企业，暂时停止实施由大陆方面控股的要求，但台商不能独资；暂时停止实施对外商从事粮食收购，粮食、棉花批发，大型农产品批发市场建设、经营的限制；允许设立外商独资经营的娱乐场所，在自贸区内提供服务等。同时，某些规定的调整还需由相关行业的主管部门进一步制定相关管理办法，如就经营性的中外合作举办的培训机构，由国务院教育主管部门会同有关部门制定相关管理办法；上述允许外商独资设立经营的娱乐场所，由国务院文化主管部门制定相关管理办法。

需注意的是，《决定》中相关法规调整的实施范围不尽一致，如对上述农作物新品种选育和种子生产的规定，其实施范围仅为福建自贸区。

PRIVATE ASSET MANAGEMENT / 私募资管

CSRC Strengthened Administration over Private Asset Management Business of Securities and Futures Institutions

证监会加强证券期货经营机构私募资管业务的监管

CSRC has recently released the *Interim Administrative Provisions on the Operation of the Private Asset Management Business of Securities and Futures Operation Institutions* (the "Provisions"), which has become effective on July 18, 2016. This new regulation to some extent is an updated version of the *Detailed Rules on the Prohibited Acts during the Implementation of the "Eight Bottom-Lines" in Asset Management Business by Securities and Futures Operation Institutions* issued and implemented by the Asset Management Association of China since March, 2015 to further strength the regulation of the private asset management business.

In general, the Provisions (i) regulate the marketing and sales activities by expressly prohibiting relevant institutions from promising guaranteed principal/return or circumventing the requirements on qualified investors or the restrictions on the number of investors; (ii) prohibit any guaranteed principal/return arrangement for senior class subscribers and greatly lower the leverage ratios for various structured products to control the risks associated therewith; (iii) specify the qualification requirements on

investment advisers and forbid such advisers to directly perform investment activities; (iv) prohibit business with the nature of "capital pooling"; and (v) prohibit the use of excessive incentives to motivate management teams.

The Provisions apply to institutions operating securities and futures business, including securities companies, fund management companies, futures companies and their subsidiaries that are duly incorporated for private asset management business, and apply by reference to the private securities investment fund managers. However, the Provisions do not apply to the asset securitization business operated by securities companies and subsidiaries of fund management companies. Moreover, the requirements for marketing and sales activities under the Provisions shall also apply to relevant sales agencies.

近日，中国证券监督管理委员会（“证监会”）出台了《证券期货经营机构私募资产管理业务运作管理暂行规定》（“《暂行规定》”），自2016年7月18日起施行。该规定是中国证券投资基金业协会在2015年3月发布实施的《证

券期货经营机构落实资产管理业务“八条底线”禁止行为细则》的升级版。

《暂行规定》主要规范了销售推介行为，明确禁止以各种方式承诺保本保收益、变相突破合格投资者标准或投资者人数限制等要求；严控结构化产品风险，规定了不得对优先级份额认购者提供保本保收益安排，并大幅降低了不同类型的结构化产品的杠杆倍数；明晰了提供投资建议的第三方机构的资质要求，禁止投资顾问直接交易；禁止“资金池”性质业务；禁止对私募资产管理业务主要业务人员及相关管理团队实施过度激励。

《暂行规定》进一步明确了其监管对象为证券期货经营机构（包括证券公司、基金管理公司、期货公司及其依法设立的从事私募资产管理业务的子公司）；同时，私募证券投资基金管理人参照执行；而证券公司、基金管理公司子公司按照规定开展的资产证券化业务则不适用。需注意，《暂行规定》中有关销售推介行为的要求也适用于销售机构。

INTERNET ADVERTISING / 互联网广告

SAIC Released Interim Measures for the Administration of Internet Advertising

国家工商总局颁布《互联网广告管理暂行办法》

Aiming at regulating Internet advertising activities and protecting customers' legal rights, the State Administration for Industry and Commerce ("SAIC") issued the *Interim Measures for the Administration of Internet Advertising* (the "Measures") on July 4, 2016, which will become effective on September 1, 2016.

Under the Measures, Internet advertising activity is defined to include any commercial advertising that directly or indirectly promotes goods or services through websites, webpages, Internet applications and other internet media in the form of text, picture, audio, video or others. Moreover, the Measures expressly include the sponsored-search results in the scope of Internet advertising and require search engine service

providers to clearly identify them as "advertisement" and distinguish them from organic search results.

The Measures strengthen the obligations and responsibilities of the market participants of Internet advertising activities. Specially, advertisers are responsible for the authenticity of the contents of their advertisements, while advertisement publishers and advertising agents are required to verify the relevant supporting documents and the contents of the advertisements. The Measures also specify the responsibilities of media-side platform operators, advertising information exchange platform operators, media-side platform members, and internet information service providers that simply provide information services but

not participate in the Internet advertising business. Those entities are responsible for stopping the publishing of advertisements that they know or should have known to be illegal.

2016年7月4日，国家工商行政管理总局（“工商总局”）正式颁布了《互联网广告管理暂行办法》（“《暂行办法》”），并于2016年9月1日起实施。《暂行办法》旨在规范互联网广告活动，保护消费者的合法权益。

互联网广告是指通过网站、网页、互联网应用程序等互联网媒介，以文字、图片、音频、视频或者其他形式，直接或者间接地推销商品或者服务的商业广告。《暂行办法》对付费搜索广告明确定义，将其列入互联网广告的范围，不仅需要显著标明其是“广告”，还应当与自然搜索结果明确区分。

《暂行办法》强化了互联网广告的各参与主体的责任和义务。其中，广告主应对广告内容的真实性负责。广告发布者、广告经营者应承担预先查验证明文件、核对广告内容的义务。媒介方平台

经营者、广告信息交换平台经营者、媒介方平台成员，以及未参与互联网广告经营活动、仅为互联网广告提供信息服务的互联网信息服务提供者，对其明知

或者应知的违法广告发布行为，均应当予以制止。

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For further information, please write us at inquiry@hanyilaw.com.

CONTACT US

Shanghai Office

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811



Beijing Office

Suite B-1503
15 West Chaoyang Park Road
Beijing 100026, China
Tel: (86-10) 5867-0155
Fax: (86-10) 5867-0155
