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CAPITAL MARKET / 资本市场

CSRC Regulated Refinancing Activities of Listed Companies 证监会规范上市公司再融资

2017年2月17日，中国证券监督管理委员会（“证监会”）发布了《关于修改〈上市公司非公开发行股票实施细则〉的决定》，对《上市公司非公开发行股票实施细则》（“《实施细则》”）的部分内容进行了修订，同时发布《发行监管问答—关于引导规范上市公司融资行为的监管要求》（“《监管问答》”），明确了上市公司再融资的相关要求，进一步完善了上市公司非公开发行股票规则。《实施细则》和《监管问答》自修订或发布之日起实施。

现行的上市公司再融资制度随着市场情况的不断变化已逐渐暴露出一些问题，比如部分上市公司存在过度融资倾向、非公开发行定价机制选择存在较大套利空间等，亟待调整以优化资本市场目前不合理的融资结构。本次修订后的《实施细则》进一步突出了市场化定价机制的约束作用，取消了将董事会决议公告日、股东大会决议公告日作为上市公司非公开发行股票定价基准日的规定，明确定价基准日只能为本次非公开发行股票发行期的首日。

《监管问答》则主要明确了以下三个方面的内容：(1) 规模限制：上市公司申请非公开发行股票的，拟发行的股份数量不得超过本次发行前总股本的20%；(2) 间隔期要求：上市公司申请增发、配股、非公开发行股票的，本次发行董事会决议日距离前次募集资金到位日原则上不得少于18个月。前次募集资金包括首发、增发、配股、非公开发行股票。但对于发行可转债、优先股和创业板小额快速融资的，不受此期限限制；(3) 无大额财务性投资要求：上市公司申请再融资时，除金融类企业外，原则上最近一期末不得存在持有金额较大、期限较长的交易性金融资产和可供出售的金融资产、借予他人款项、委托理财等财务性投资的情形。重大资产重组（包含借壳）原则上仍适用于《上市公司重大资产重组管理办法》，不受此次新规出台的影响，但在资产重组的同时募集配套资金的，其募集规模及定价等应按新规要求进行操作。

PRIVATE FUNDS / 私募基金

AMAC Strengthened Regulation on Real Property Investments by Private Funds 基金业协会严格规范私募基金投资房地产

中国证券投资基金业协会（“基金业协会”）于2月13日发布了《证券期货经营机构私募资产管理计划备案管理规范第4号—私募资产管理计划投资房地产开发企业、项目》（“《备案管理规范第4号》”）以及《关于发布〈证券期货经营机构私募资产管理计划备案管理规范第4号〉的通知》，控制热钱流入房地产市场。《备案管理规范第4号》于发布之日起实施。

《备案管理规范第4号》明确，证券期货经营机构设立

On February 17, 2017, the China Securities Regulatory Commission (“CSRC”) issued the *Decision on Revising the Implementing Rules for Private Placement of Shares by Listed Companies* (the “Implementing Rules”), and the *Answers to Issuance Regulation - Regulatory Requirements on Guiding and Standardizing Financing Activities of Listed Companies* (the “Regulatory Answers”), so as to clarify and refine relevant requirements on refinancing activities by listed companies. The Implementing Rules and the Regulatory Answers both took effect upon promulgation.

The current refinancing mechanism has revealed quite some practical problems such as over-financing activities and arbitrage pricings, calling for adjustments and refinements. The revised Implementing Rules have limited the pricing benchmark date for the proposed private offering only to the first date of the private offering period (and the announcement date of board resolutions or shareholder’s meeting under the previous rule is no longer applicable), hopefully leading to a more market-oriented pricing mechanism.

The Regulatory Answers mainly clarified the following rules: (i) **issuance size**: when a listed company applies for non-public issuance of shares, the number of shares to be issued shall not exceed 20% of the total outstanding shares therebefore; (ii) **refinancing interval**: the date of the board resolutions on a non-public refinancing shall be in principle no less than 18 months from the date of a previous fundraising, such as IPO, follow-on offering, share allotment and non-public issuance. However, issuance of convertible bonds or preferred shares, and small-amount quick financing activities on ChiNext are not subject to this time restriction; (iii) **no large-amount financial investment**: when applying for a refinancing, listed companies (financial companies excluded) generally shall not, by the end of the latest reporting period, hold large-amount long-term trading financial assets or financial assets available for sale, engage in money lending activities, or conduct entrusted asset management or other financial investments. Material assets restructurings (including the backdoor listing) will still be governed by the *Measures for Administration of Material Asset Restructuring of Listed Companies* and in general not be impacted by the new rules. However, if any supporting funds are raised along with the asset restructurings, the new rules shall also apply.

On February 13, the Asset Management Association of China (“AMAC”) released the *Administrative Rules No. 4 for the Filing of Privately-Placed Asset Management Plans Established by Securities and Futures Institutions — Investment in Real Estate Developers and Projects by Privately-Placed Asset Management Plans* (the “Rules”), along with a notice on the same, in an effort to control hot-money inflows into the over-booming ordinary residential property market. The Rules took effect upon issuance.

According to the Rules, AMAC suspends filings of privately-

的私募资产管理计划，通过委托贷款、嵌套投资信托计划及其他金融产品、受让信托受益权及其他资产收益（受）益权、以名股实债方式受让房地产开发企业股权以及基金业协会认定的其他债权投资方式投资于房地产价格上涨过快热点城市（包括北京、上海、广州、深圳等在内的16个城市）普通住宅地产项目的，基金业协会暂不予备案。同时，禁止私募产品向房地产开发企业提供融资用于支付土地出让价款、提供无明确用途的流动资金贷款，以及直接或间接为各类机构发放首付贷等违法违规行为提供便利。需要注意的是，为了防范监管套利行为，《通知》将私募基金管理人开展各类私募投资基金业务，投资房地产开发企业、项目的也一并纳入《备案管理规范第4号》的适用范围，避免资金违规流入房地产调控领域。

上述文件的出台从多渠道限制了私募资产管理机构的房地产业务融资渠道，未来的房企融资或将更偏向于其他（比如信托）渠道。

placed asset management plans set up by securities and futures institutions with restricted forms of investments into ordinary residential properties located in 16 hot investment cities (including Beijing, Shanghai, Guangzhou, Shenzhen, etc.). Such restricted forms include, among others, entrusted loans, nested investment in trust plans and other financial products, acquirement of trust beneficiary or other assets beneficiary rights, debt-investment in a form of share-investment, and other ways of debt investment as identified by AMAC. Meanwhile, privately-placed products are prohibited from financing real estate developers for payment of land grant fees, providing liquidity loans without specific purpose, and directly or indirectly facilitating illegal behaviors such as granting loans for down payments. Notably, AMAC specified that the Rules also apply to other private fund managers making similar investments in the real estate market, so as to avoid evasion and speculation of the applicable regulations.

The effect of the Rules on the real property market is yet to be seen, but it is expected that with restrictions imposed thereby, real estate developers may want to explore other more feasible ways of financing activities such as through trust, etc., in the future.

FOREIGN INVESTMENT / 外商投资

NDRC and MOFCOM Amended the *Catalogue of Foreign-Invested Advantage Industries in Central and Western China* 发改委和商务部修订《中西部地区外商投资优势产业目录》

继上月国务院发布若干吸引外资的新政（*详细内容请参见我所2017年2月刊China Regulatory Updates*）后，国家发展改革委、商务部于2017年2月17日正式发布《中西部地区外商投资优势产业目录（2017年修订）》（“《中西部目录》”），进一步扩大中西部地区鼓励外商投资产业范围，促进中西部地区开发开放。《中西部目录》自2017年3月20日起施行，2013年版《中西部目录》同时废止。

新版《中西部目录》共639条，比2013年版《中西部目录》增加139条。本次目录修订的特点在于：推动传统产业转型升级，支持高新适用技术产业发展，鼓励加快发展服务业，促进劳动密集型产业发展，强化基础设施和产业配套，并且对原有条目进行了调整和完善，从而能够更好地反映地方招商引资最新的实际情况。

Following a series of new policies released by the State Council to attract foreign investment last month (*see the February 2017 issue of Han Yi Monthly Newsletter for more details*), on February 17, 2017, the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly issued *the Catalogue of Foreign-Invested Advantage Industries in Central and Western China (2017 Revision)* (the “Catalogue”), further expanding the encouraged industries for foreign investment in central and western China to promote further opening-up of central and western areas. The Catalogue will take effect from March 20, 2017, and the 2013 version of the Catalogue will be repealed simultaneously.

The Catalogue is comprised of 639 encouraged items in total, with 139 items newly added compared to the 2013 version. Through the newly added items and certain amendments to the old version, the Catalogue makes efforts to help promote transformation and upgrade of traditional industries, and support and encourage development of industries involving new and advanced applicative technologies, service industry, labor-intensive industries, infrastructure and associated industries, among others.

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