

On the Improvement of Information Disclosure System in China's Securities Regulation

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ABSTRACT

The development of securities law is the development of the information disclosure system, which is very important for the healthy development of the securities market. 2020 saw the promulgation of the new Securities Law, which means that the information disclosure system in China's capital market has taken a big step forward. However, China's securities market is not yet mature, and there is still much room for improvement in the information disclosure system. The article believes that the disclosure system should be further improved in three aspects, namely the disclosure of non-compliance, criminal sanctions for information disclosure and off-balance sheet information disclosure, and the article also analyses some advantages of the information disclosure system of the US Securities Act, which will serve as a reference for improving the above three issues.

Keywords: *Information Disclosure System, Securities Law, Off-balance sheet information disclosure*

1. INTRODUCTION OF THE BACKGROUND OF THE INFORMATION DISCLOSURE SYSTEM IN CHINA

The information disclosure system is the basis for the regular operation of the capital market. Its core value is to reduce the information asymmetry existing between investors and listed companies, prevent fraudulent acts of listed companies and enhance the effectiveness of the securities market. Listed companies often have more insider information than investors, and their familiarity with and knowledge of the market as a whole puts investors mainly at a disadvantage. As a result, under pure market conditions, there is often an inadequate supply of practical information and thus an inability to optimise the allocation of resources. To ensure the smooth transmission and refined collection of securities information and effectively overcome the asymmetric and incomplete distribution of data among securities market participants, the government must intervene in the securities information market to prevent people from taking advantage of information to engage in fraudulent activities and insider trading, to achieve openness and fairness in the securities market, then the establishment of a securities information disclosure system is an inevitable choice [1]. The research direction and content of the information disclosure system are closely related to the 30-year development of

the capital market. In recent years, the focus of research on the information disclosure system has become more diversified, closely related to China's capital market moving towards the registration system and policy shifts such as differentiated disclosure and disclosure by industry. At this stage, more and more scholars have focused on the deeper meaning of information disclosure and put forward the idea of legalising the CSR information disclosure system [2].

2. METHOD: CURRENT SITUATION AND DEFICIENCIES OF CHINA'S INFORMATION DISCLOSURE SYSTEM

2.1 *The problem of illegal information disclosure*

Because listed companies often have more compelling information than investors, and they may exaggerate or falsify some helpful information such as financial statements for many reasons and may conceal some unfavourable information for listed companies to confuse and induce investors to achieve the purpose of "circling money" and make false information disclosure for their profit. Or inadequate disclosure of information. For example, Kangmei Pharmaceutical Co., Ltd. was investigated by the Guangdong Securities Regulatory

Bureau for alleged information disclosure violations and it was found that from 2016 to 2018, Kangmei Pharmaceutical had inflated its operating revenue by counterfeiting and altering special VAT invoices. Inadequate information disclosure can affect the rights of many small and medium-sized investors, and there have been many "takeover oolongs" in China's capital market, such as the "8.16 oolong finger" incident of Everbright. Inaccurate and untimely information disclosure is also a current problem. The January 2021 Tianshan Biological Directors received a supervisory letter from the Shenzhen Stock Exchange and the December 2021 "Tibet Mining received a supervisory letter from the Shenzhen Stock Exchange", etc. These listed companies received a supervisory letter from the Shenzhen Stock Exchange for untimely information disclosure. Still, they did not receive any substantial punishment. The fact that such incidents are occurring all the time shows that there is still much room for improvement in the regulation of inaccurate and untimely information, and the principle should be further strengthened.

2.2 Criminal sanctions for information disclosure

In the new Securities Law released in 2020, a new chapter on information disclosure has been added to the newly amended Securities Law, and it can be seen that criminal sanctions have been increased, with a maximum fine of 10 million for information disclosure violations and a maximum penalty of ten times the liability for insider trading. Although the fixed penalty has been increased compared to the previous, consideration should also be given to penalising the offence by a multiple of the amount of the crime to improve the cost of the offence fundamentally. Of the 20 companies sampled in the IPO disclosure inspection conducted by the Securities Industry Association on 31 January 2021, 16 withdrew their listing applications in less than a month, a withdrawal rate of 80% [3]. The increase in criminal sanctions and criminal costs for information disclosure offences under the Amendment to the Criminal Law (XI) has demonstrated a strong deterrent effect since 1 March, when it came into effect. The bitterness of non-disclosure and non-disclosure of material information under the ordinary criminal law: legislative changes and judicial application [4].

2.3 Off-balance sheet information disclosure issues

Off-balance sheet information is important information that the provider of the accounting statements cannot or does not have the convenience to reflect in the statutory accounting statements. However,

it can help the users of the statements to fully and correctly understand the content of the accounting statements, the financial position of the enterprise, contingencies and future developments, and which complements and illustrates the accounting statements [5]. Nowadays, in the era of big data, the sources of information acquisition and dissemination can be described as overwhelming. The fast-developing Internet era has brought a lot of convenience in obtaining information, but at the same time, it has also caused a particular burden. When we need to find some practical information related to the securities market, apart from going to listed companies' annual reports and financial statements to find out information, there is also off-balance sheet information. The uncertainty, ambiguity and complexity of off-balance sheet information can lead to information overload for information users. Off-balance sheet information is different from financial reports, which are mainly presented in the form of accounting data, which are both relevant and reliable, and are information that the CPA has confirmed after audit. Whether the source of this information is accurate and reliable needs to be re-judged, which creates a particular obstacle and time spent for investors to analyse the market better and make correct judgments.

3. THE DEVELOPMENT OF INFORMATION DISCLOSURE SYSTEM IN THE UNITED STATES SECURITIES REGULATION AND EXPERIENCE LEARNING

3.1 Background of US securities law.

As early as 1911, the United States enacted legislation on the information disclosure system, and the first state securities law was passed in Kansas, and since then, various states have enacted similar regulations, called the "Blue Sky Law". However, the severe economic crisis that occurred between 1929 and 1933 led the US Congress to recognise the inadequacy of state securities legislation, so in 1933 the Securities Act was enacted and the following year the Securities and Exchange Act was enacted. Exchange Commission (from now on referred to as "SEC") as an independent securities market supervisory authority.

3.2 Information disclosure requirements in the United States

There are four requirements for disclosing information in the United States: truthfulness, completeness, accuracy and timeliness. Article 78 of our Securities Law sets out three conditions for information disclosure: truthfulness, accuracy, and completeness. In comparison to our legislation, the US has implemented a stricter "timeliness" requirement, with a shorter time

frame for disclosing relevant documents to the public. The US has established a comprehensive disclosure system in terms of disclosure content [6]. The authors also suggest improving the safe harbour rule, which requires listed companies to disclose complex information and some soft information, and encourages listed companies to voluntarily disclose more knowledge to enhance the openness and transparency of the securities market. However, since soft information, especially predictive information, is inevitably inaccurate and can easily lead to misleading statements by listed companies, the US has introduced the Safe Harbor system to protect public companies under certain conditions [7].

3.3 The US disclosure regime concerning criminal sanctions

In terms of criminal sanctions, Section 24 of the Securities Act of 1933 provides that a person who knowingly makes a false statement of material fact or a material omission, thereby misleading investors, is punishable by a fine of up to \$10,000 and imprisonment for a term of up to five years, either singly or in addition. The Sarbanes-Oxley Act substantially increased the penalties in Section 32(A) of the Securities Act of 1934 to \$5,000,000 and a single or concurrent term of imprisonment of 20 years, or \$25,000,000 in the case of a corporation, for making a false or misleading statement of a material fact. The imprisonment for the offence of misrepresentation has since been increased to 25 years. Once a listed company faces criminal proceedings, it faces severe property and personal sanctions.

3.4 Rewarded reporting system in US disclosure

The Dodd-Frank Act of 2011 formally established a "whistleblower bonus" to encourage people at all levels of society to provide information on law violations through extremely generous monetary rewards. For example, In 2020, the SEC will offer a reward of nearly \$50 million to a whistleblower who provides detailed first-hand information about a company's wrongdoing. Also, section 21A(e) of the Securities Exchange Act of 1934 states: "Of the fines collected by the SEC or the Attorney General under this section. In the view of the SEC, in appropriate circumstances, no more than 10% of the penalty should be payable to a member of the regulatory body. Department of Justice and self-regulatory organizations, and information providers other than officers and employees of the companies are involved. Such payments, and the recipients and amounts thereof, shall be at the discretion of the SEC." The establishment of this provision provides more room for rewarding whistleblowers. At the same time, in addition to rewarding whistleblowers with high bonuses, it also does an excellent job of protecting the identity of

whistleblowers' information as well as their lives, thus making this system evolve and play a non-trivial role in the US securities market.

4. CONCLUSION

4.1 Suggestions for a non-compliant disclosure system.

Neoclassical economic theory believes that institutions have precisely the critical function of reducing the world's complexity, simplifying the "recognition task" (Cognition Task), making the complex process of human interaction easier to understand and more predictable, thus reducing transaction costs and improving efficiency. However, if the system is unstable and lacks trustworthiness, it can be much more costly to implement. Therefore, it is always necessary to pursue a more complete disclosure system in securities regulation as early as possible, provided that the requirements for truthfulness, accuracy and completeness of information disclosure remain unchanged. More attention should also be paid to the timeliness of information disclosure, and corresponding penalties should be given for this problem.

4.2 Improvements in terms of penal sanctions.

In terms of criminal law sanctions, the strength of the penalties for information disclosure has been dramatically increased from the new Securities Law. Also, in line with the reform of the registration system for securities issuance, the probability of applying the offence of non-compliance with disclosure and non-disclosure of material information will be significantly increased in the coming period. However, although 10 million is high but still a fixed amount, the amount of penalties should consider doubling the penalty according to the amount of the violation, for the securities regulatory authorities to make administrative penalties for securities violations resulting in property forfeiture and administrative fines, the judicial authorities to make criminal sanctions for securities crimes resulting in property confiscation and criminal penalties, as the relative of the securities market investors infringement damage, should be established similar to the United States "Fair Fund" of the investor loss compensation fund, in the offender / criminal inability to pay, by the fund to compensate, the money from the market and investors to use for the market and investors [8]. According to the US SEC's performance report, an average of 80% of Fair Funds are paid to aggrieved investors within 24 months, promptly compensating investors for their financial losses. This initiative has not only achieved the fundamental goal of the SEC to ensure the stability and harmony of the securities market. Still, it has also further enhanced the credibility of government departments.

4.3 Reflections on the Overload of Off-balance Sheet Information Disclosure "Reasons for Overload of Off-balance Sheet Information in Listed Companies and Countermeasures"

For the overload disclosure of off-balance sheet information, the scope of off-balance-sheet information should be regulated. The matters that a company should report externally are not equal to the accounting information disclosed in the financial report, but the accounting information recognised in the financial statements [9]. Furthermore, the content of off-balance-sheet information should be condensed to achieve the purpose of the appropriate amount of data. At the same time, the standardisation of off-balance sheet information should also be strengthened. Last but not least, the supervision of off-balance-sheet details should be maintained. Off-balance sheet information is widely sourced and rich in content, but its quality is not high and the authenticity of much of the data cannot be verified. This therefore places a higher demand on CPAs, who should make provisions for the relevant content to ensure that the information is accurate and reliable.

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