



《中国科创板法律解析更新》 |

Update — China's Version of NASDAQ ? Shanghai Stock Exchange to create Sci-Tech Innovation Board

【摘要】

欢迎收阅万商天勤研究速递：《中国科创板法律解析更新》（英文版）

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2019年1月31日，中国证监会和上交所发布了《科创板新政意见稿》。万商天勤国际资本市场团队作为市场上第一家中国律所出具了英文版法律解析，向国际投资者阐述了本次中国资本市场改革创新之处。3月初，中国证监会和上交所正式颁布了科创板新政，并陆续颁布了若干指导意见和细则。本文根据正式颁布的法律文件进行了更新，同时从实务角度，详细、深入地剖析了本次科创板的试点注册制，上市标准不设盈利限制等创新机制。

March 8, 2019

Capital markets; foreign investment

On March 1, 2019, the China Securities Regulatory Commission (**CSRC**) and Shanghai Stock Exchange (**SSE**) released the final version of the Sci-Tech Innovation Board Rules (**STI Board Rules**) that were published in draft form on January 30, 2019.¹ The Chinese authorities rarely finalize draft regulations this quickly. It appears that the Chinese government wishes to enable the SSE's Sci-Tech Innovation Board (**STI Board**) to better compete with the Hong Kong Stock Exchange, NASDAQ, and perhaps even the New York Stock Exchange. Other Chinese boards like Shenzhen's ChiNext board and Beijing's New Third Board claimed to be like NASDAQ, but investor response has not been as positive as had been hoped, and these earlier Chinese boards are not as deregulated and market-oriented as the STI Board purports to be. From the opening of the SSE stock market after Chinese New Year until the day before the finalized STI Board Rules were released, the Shanghai composite experienced its largest monthly gain since April 2015, and major banks like Credit Suisse predicted

¹ The terms "PRC" and "China" are used interchangeably in this client alert and neither includes Hong Kong, Macau, or Taiwan.



that Chinese markets would continue to prosper.² This suggests that investors welcome the finalized STI Board Rules. On February 11, 2019, V&T Law Firm (V&T) published an article that analyzed five characteristics of the draft STI Board Rules.³ This client alert is an update based on the finalized STI Board Rules.

The STI Board Rules

On January 30, 2019, the CSRC published a series of new rules regarding the proposed STI Board: 1) Implementation Opinion on Establishing the Sci-Tech Innovation Board and Pilot Registration-Based Review System (**Implementation Opinion**) (关于在上海证券交易所设立科创板并试点注册制的实施意见); 2) Draft Rules on the Registration of Initial Public Offerings on the STI Board (Trial) (**Draft Registration Rules**) (科创板首次公开发行股票注册管理办法(试行)); and 3) Draft Rules on the Ongoing Supervision of Listed Companies on the STI Board (Trial) (**Draft Supervision Rules**) (科创板上市公司持续监管办法(试行)) (the Draft Registration Rules and Draft Supervision Rules are together referred to as the “**Draft CSRC Rules**”). The period during which public opinion was solicited ended on February 28, 2019.

Also on January 30, 2019, the SSE published six draft operating rules (**Draft SSE Rules**) (the Draft CSRC Rules and Draft SSE Rules are together referred to as the “**STI Board Rules**”) that regulate the review processes, listing procedures, offerings and underwritings, trading, the listing committee, and the consulting committee.⁴ The period during which public opinion was solicited ended on February 20, 2019. The STI Board Rules have been finalized and promulgated based on the Implementation Opinion.

On March 1, 2019, the CSRC and SSE promulgated the finalized STI Board Rules.⁵ On the same day, the SSE also published four implementation rules that provide guidance in the following areas: 1) the content and format of sponsor confirmation letters; 2) the acceptance of listing application documents; 3) trading at a fixed price after the stock market has been closed; and 4) mandatory risk disclosure provisions.⁶ The China Securities Depository and Clearing Corporation Limited (**CSDC**) also

² Eustance Huang, “Credit Suisse on stocks: 'We love China at the moment',” *CNBC China Markets*, March 1, 2019, <https://www.cnbc.com/2019/03/01/credit-suisse-on-stocks-we-love-china-at-the-moment.html>.

³ A V&T client alert regarding the draft version of the STI Board Rules is available at: <http://www.vtlaw.cn/ueditor/php/upload/file/20190214/1550109008571307.pdf>. This client alert is an update.

⁴ The Draft SSE Rules are available at: http://www.sse.com.cn/lawandrules/publicadvice/c/c_20190129_4716796.shtml.

⁵ The STI Board Rules are available at: <http://www.sse.com.cn/lawandrules/sserules/latest/> and <http://www.csrc.gov.cn/pub/zjhpublic/index.htm?channel=3300/3311>.

⁶ The four SSE implementing rules are available at: <http://www.sse.com.cn/lawandrules/sserules/latest/>.



published an implementing rule for the registration and clearing of securities traded on the STI Board.⁷

On March 3, the SSE published guidance regarding listings on the STI Board and said that this guidance will later be supplemented with a series of implementation rules.⁸ On the same day the SSE also published guidance for sponsors in order to clarify when a company is eligible to apply for a listing on the STI Board.⁹

Major revisions

1. Registration-based review system

The registration-based review system is still at the heart of the STI Board Rules. Specific criteria have been added to limit the CSRC's discretion to request that the SSE conduct further review (**Supplemental Review**). The specific criteria state that listing applications may be reviewed for substantive and procedural omissions, and that the SSE may determine if an applicant has complied with listing and information disclosure requirements. It is hoped that the new CSRC criteria will create a more efficient review process.

The CSRC must now complete its review within 20 working days. If the CSRC requests that the SSE conduct a Supplemental Review, the time required for the review will be in addition to the 20 working days.

Finally, the applicant must complete its public listing on the STI Board within one year of registering with the CSRC. The previous time limit in the draft STI Board Rules was six months.

2. Red Chip Companies

The CSRC issued a regulation (**CDR Regulation**) in March 2018 whose purpose was to encourage Red Chip Companies to list on China's capital markets.¹⁰ The finalized STI Board Rules confirm the Chinese Depository Receipts Regulation and allows Red Chip Companies to be listed on the STI Board through IPOs or CDRs.¹¹

⁷ The CSRC implementing rule is available at: <http://www.chinaclear.cn/zdjs/gszb/201903/dde813e70e95438797298a8d394141a8.shtml>.

⁸ The SSE guidance is available at: http://www.sse.com.cn/tib/marketrules/review/c/c_20190303_4729641.shtml.

⁹ The SSE guidance is available at: http://www.sse.com.cn/tib/marketrules/review/c/c_20190303_4729624.shtml.

¹⁰ A "red chip" corporate structure refers to an offshore holding company that holds Chinese subsidiaries. The holding company is often incorporated in the Cayman Islands, and it often indirectly holds the Chinese subsidiaries through other intermediate holding companies in the British Virgin Islands and Hong Kong. The Chinese subsidiaries are wholly foreign-owned enterprises, or WFOEs.

¹¹ Guanyu Kaizhan Chuangxin Qiye Jinei Faxing Gupiao Huo Cuntuo Pingzheng Shidian De Yijian (关于开展创新企业境内发行股票或存托凭证试点的若干意见) [Opinion of the China Securities Regulatory Commission on Launching the Pilot Program for Innovative Enterprises Domestically Issuing Stocks or Depository Receipts] (promulgated by the CSRC, and effective on March 22, 2018), article 4.

The finalized STI Board Rules also specify the financial requirements of Red Chip Companies that wish to list: 1) estimated market capitalization may not be below RMB 10 billion; or 2) estimated market capitalization may not be below RMB 5 billion and revenue for the most recent financial year may not be below RMB 500 million.

3. More transparent

A company's true, accurate, and complete information must be provided before it may be listed on the STI Board. The methods of disclosing information have also been specified, and may require multiple rounds of questions and answers between the SSE and the applicant. The SSE will also examine whether the disclosed information complies with the form and content required by the SSE.

There is also an additional notification requirement for companies that receive a delisting warning from the STI Board: in that case the company is required to issue periodic public announcements regarding the risk of being delisted.

4. More secure

- Delisting

A company can be delisted if it is in material violation of a law. The finalized STI Board Rules say that a violation of the law is material if: 1) it causes the business or operating license of a company or a major subsidiary to be revoked or suspended; or 2) national or social interests are severely affected. The SSE has more discretion than before to amend delisting requirements because a review performed by the Sci-Tech Innovation Board Listing Committee is no longer required when the stock market is abnormally volatile or when a delisting warning is being issued.¹²

- Investor protections

If a company is not profitable, for the first three fiscal years following an IPO: 1) directors, supervisors, senior management, and other key persons are not allowed to sell shares owned before an IPO (Pre-IPO Shares); and 2) the controlling shareholders and ultimate beneficial owners are prohibited from selling their Pre-IPO Shares; however, in the fourth and fifth fiscal years following an IPO, they may sell the Pre-IPO Shares if the number of these shares does not exceed 2% of the total number of shares listed on the STI Board during that fiscal year. According to the draft STI Board Rules, both of these groups of shareholders were prohibited from selling Pre-IPO Shares until after the fifth fiscal year.

¹² Sci-Tech Innovation Board Listing Committee was created by the SSE to review listing applications for the STI Board.



V&T comments

- More rules and guidance

The STI Board Rules were promulgated immediately after the CSRC and SSE closed the period during which public opinion was solicited. Additional implementing rules and guidance have also been issued by the SSE and CSDC. Because the SSE is already accepting listing applications for the STI Board, we expect that the CSRC and SSE will soon issue more detailed guidance to address specific issues that arise as they review the applications.

- Factors considered for listings on the STI Board

The final STI Board Rules clarify what factors are taken into consideration when the SSE reviews IPO applications:

- Whether the industry comports with China's national strategy;
- Whether the company can successfully operate by relying on its core technologies;
- Whether the company's technologies are innovative;
- Whether the company is stable; and
- Whether the company is recognized by the market, has a good reputation, and has strong growth potential.

- Market-making mechanism

At the appropriate time, the CSRC and SSE will allow market makers to provide professional services for buyers and sellers. The CSRC and SSE will also promulgate rules and guidance for the market makers.

- Information disclosure by Red Chip Companies listed overseas

Full disclosure is still key to the registration review system; the purpose is to protect investors who trade on the STI Board. With this in mind, the SSE devised special disclosure rules for Red Chip Companies listed overseas: 1) documents for listing applications and information disclosure must be in Chinese; 2) the companies must hire an officer proficient in Chinese responsible for information disclosure; 3) information regarding variable interest entities (**VI**Es) and similar contractual arrangements must be fully disclosed and changes must be disclosed in the annual report; 4) a legal opinion is required if the rules for the board of directors or independent directors are different in China than in the place the Red Chip Company is incorporated; and 5) Red Chip Companies must explain the same matter consistently to both Chinese and foreign regulators.

Contact



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If you have any questions about this client alert, or if you would like to discuss how recent changes in Chinese law may affect your business, please call or write:

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