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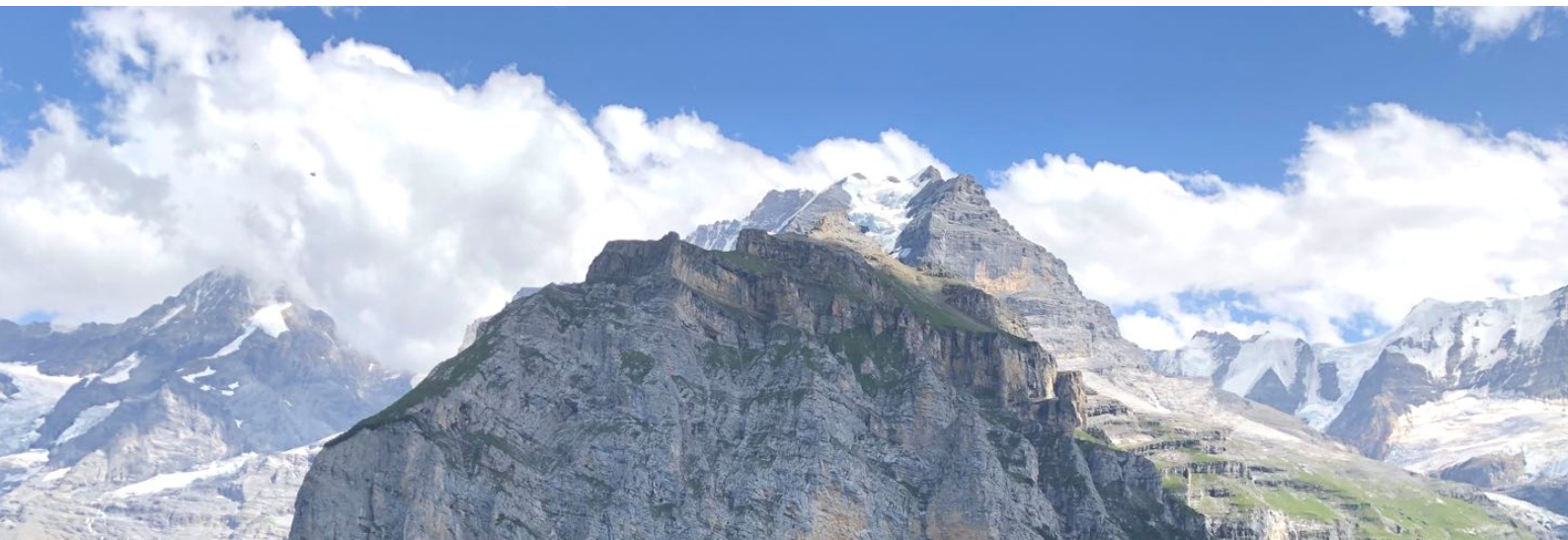


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CAPITAL MARKET / 资本市场

CSRC Specified Definition of Strategic Investor in Private Placement 证监会进一步明确战略投资者的认定标准

中国证券监督管理委员会（“证监会”）于2020年2月份发布了再融资新规（具体分析请见我所《每月立法动态》2020年3月刊），从定价基准日、定增折扣及锁定期等方面为战略投资者参与上市公司再融资带来利好消息，但新规并未明确规定战略投资者的含义及认定标准。实践中已公布的上市公司定增方案不乏将公募/私募基金、保险公司、上市公司董监高、员工持股计划、外部自然人等多类主体认定为战略投资者的情形，上述主体是否真正符合战略投资者定位也引发了一些市场争议和监管部门关注。为正确理解和适用再融资新规的相关规则，证监会于3月20日发布《关于上市公司非公开发行股票引入战略投资者有关事项的监管要求》（“《监管问答》”），明确战略投资者的认定标准，要求战略投资者应具有与上市公司同行业或相关行业的战略性资源（如技术、市场、渠道、品牌等资源）、愿意长期持有上市公司较大比例股份、与上市公司签订战略合作协议并委派董事实际参与公司治理等。

我们注意到，《监管问答》并未排除私募股权投资基金（PE）作为战略投资者参与上市公司再融资，实践中已有上市公司按照《监管问答》规定的战略投资者认定标准发布或修改定增方案，其中也包括PE作为战略投资者的情形。鉴于《监管问答》对战略投资者的资质提出了较为严格的要求，上市公司应当就投资人是否符合该等要求进行充分论证，以财务投资为主的PE是否能够达标并取得证监会的核准存在不确定性。我们将对后续的资本市场相关规则及案例保持持续关注。

In February 2020, the China Securities Regulatory Commission (or CSRC) has issued some new financing rules to ease restrictions on private placements and strategic investors are expected to benefit from a more flexible price making mechanism including deeper discount on offering prices as well as shortened lock-up periods (please refer to our March 2020 issue of *China Regulatory Updates* for details). However, absent clear definition and qualification requirements for strategic investors under the new rules, it is seen in practice that entities such as public funds, private funds, insurance companies, directors and senior management members of listed companies, holders of employee stock option plans and third-party natural persons are described as strategic investors in private placement plans, drawing attentions and concerns from the market and regulators. On March 20, CSRC unveiled the *Administrative Requirements on Strategic Investors Participating in Private Placements of Shares by Listed Companies* (the “Administrative Requirements”), according to which a strategic investor must (i) hold such key resources as technologies, markets, supply channels and brands, among others, with synergy effects in the same or similar industry of the target listed company, (ii) agree to hold a relatively large portion of shares for a certain long period of time, (iii) enter into strategic corporation agreement with the listed company, and (iv) send director(s) to participate in the company's governance.

Since the Administrative Requirements do not exclude PE funds from participating in private placements as strategic investors, we noted that in practice, some PE funds are still introduced as strategic investors by listed companies in their stock offering proposals. However, given the quite stringent qualification requirements, it is yet to see whether such PE funds can be recognized by CSRC as strategic investors. We will monitor further developments in this area.

CSRC Amended Series of Regulations to Implement New Securities Law 证监会修订一系列证券规章，全面落实新《证券法》

新修订的《证券法》于2020年3月1日起正式施行（关于《证券法》的主要修订内容及相关分析，请见我所《每月立法动态》2020年1月刊），为配合新《证券法》的修订，证监会于2020年3月20日发布《关于修改部分证券期货规章的决定》，对包括《上市公司收购管理办法》（“《收购管理办法》”）在内的一系列证券规章进行了集中修订。我们注意到，该等修订均体现并落实了《证券法》对相关制度的修订意见，消除了法规适用的不确定性。其中，《收购管理办法》还进一步明确了持股5%以上股东的权益变动报告书的披露要求，以及对免除收购人要约收购义务的事中事后监管要求。我们将对相关规则的后续实践保持持续关注。

The new Securities Law has officially taken into effect since March 1, 2020 (please refer to our January 2020 issue of *China Regulatory Updates* for analyses on major revisions). To promote the new law and facilitate the registration-based reform, CSRC further amended the *Administrative Measures on the Acquisition of Listed Companies* (the “Acquisition Measures”), along with a series of other rules and regulations governing securities and futures. Among other things, CSRC specifies requirements for information disclosures concerning change of positions by any shareholder with 5% or more stocks in a listed company. It also strengthens supervision on acquisitions exempted from mandatory tender offers. As always, we will monitor and update our clients and friends of major developments in this connection.

FINANCE INDUSTRY / 金融业

Limitation on Foreign Shareholding Ratio in Financial Industry Removed Completely 金融业全面取消外资股比限制

《外商投资准入特别管理措施（负面清单）（2019年版）》（“负面清单”）对证券公司、证券投资基金管理公司、期货公司及寿险公司均规定了最高不超过51%的外资持股比例限制。2020年3月13日，为落实中美第一阶段经贸协议要求，证监会正式宣布将于2020年4月1日起取消证券公司的外资股比限制（比原计划提前8个月），而根据此前的金融业开放计划，期货公司和寿险公司的外资股比限制已于2020年1月1日起取消，证券投资基金管理公司的外资股比限制也明确将于2020年4月1日起取消。因此，自2020年4月1日起，关于金融业的外资股比限制将全部取消，符合条件的境外投资者可持有金融机构的股权比例至100%。

在金融业逐步开放的背景下，已经有外资取得了前述金融机构的控股权或计划设立外商独资金融机构。考虑到金融机构的设立及股权变更普遍需要银保监会、证监会等监管部门的事前许可审批，且相关实施细则中暂未放宽对境外投资者的财务指标等资质要求，金融业全面开放外资持股的具体落地情况尚待后续观察。

After April 1, 2020, foreign investments in China's financial industry are no longer subject to shareholding ratio caps as a result of the nation's commitment to further opening up, which allows qualified foreign investors to hold 100% equity interests in financial institutions. Previously, according to the 2019 *FDI Negative List*, foreign investments in Chinese securities companies, public fund management companies, futures companies or life insurance companies should not exceed 51%.

It is noteworthy though that the establishment and shareholding change of any financial institution are still subject to prior approvals by CSRC or CBIRC in general, and such requirements for foreign investments as financial qualifications have not been relaxed, it remains to be seen to which extent foreign investors could actually benefit from this round of reforms.

CBIRC Optimized Administration on Non-Banking Financial Institutions 银保监会优化非银行金融机构的监管

2020年3月27日，中国银行保险监督管理委员会（“银保监会”）发布了新修订的《非银行金融机构行政许可事项实施办法》，主要从以下两个方面进一步优化对于非银行金融机构（主要包括经银保监会批准设立的金融资产管理公司、企业集团财务公司、金融租赁公司、消费金融公司等机构）的股权管理：(i) 取消对非银行金融机构股东首次持有或累计增持股权不足5%事项的审批；以及(ii) 删除了所有股东均适用五年锁定期要求，仅要求非银行金融机构持股5%以上股东履行该等锁定期要求。

On March 27, 2020, the China Banking and Insurance Regulatory Commission (or CBIRC) issued the *Implementation Measures for the Administrative Permits on Non-Banking Financial Institutions* to improve administrations on non-banking financial institutions (or NBFIs, including asset management company, finance company under an enterprise group, financial leasing company, consumer finance company and other non-banking financial institutions established upon CBIRC's approvals), mainly from the following two aspects: (i) removing approvals over shareholdings less than 5% in any NBFIs; and (ii) lifting the universal five-year lock-up period previously imposed on all NBFIs shareholders. Instead, only non-bank financial institutions with 5% or more shares in NBFIs are required to be subject to such a lockup period.

HEALTHCARE / 医疗健康

SAMR Strengthened Supervision on Drug Licensing and Production 市场监管总局细化药品注册及生产监督管理

2020年3月30日，国家市场监督管理总局（“市场监管总局”）发布新修订的《药品注册管理办法》以及《药品生产监督管理办法》，自2020年7月1日起施行。两部法规的修订落实了新《药品管理法》关于全面实施药品上市许可持有人（MAH）制度的要求（*见*

On March 30, 2020, the State Administration for Market Regulation (or SAMR) released revisions on the *Measures for Administration of Drug Registration* and the *Measures for Supervision and Administration of Drug Production* (collectively, the “Revisions”), each will take effect on July 1, 2020. The Revisions introduced implementation provisions of the

关分析请见我所《每月立法动态》2019年9月刊），对药品上市申请的审评审批程序、上市许可持有人与药品生产企业的责任划分等进行了细化规定。此外，值得关注的是，新修订的《药品生产监督管理办法》进一步明确，原料药应当自行生产，不得再行委托他人生产（2015年以来，监管机构曾放开原料药的委托生产，但在2019年年底实践中有所收紧）。我们理解，上述监管规则的调整可能是考虑到原料药生产安全风险大，需要明确责任主体、加强管理。对于企业存量的原料药委托生产业务在上述规定施行前如何处理，目前尚无明确规定，我们将对后续的监管实践保持持续关注。

nationwide drug marketing authorization holder (the “MAH”) mechanism outlined under the new *Drug Administration Law* (please refer to our September 2019 issue of *China Regulatory Updates for details*), such as enhancement of the drug licensing procedures and clarification of separate legal responsibilities of MAHs and drug production companies. In addition, the Revisions have noteworthy clarified that the relevant drug manufacturers shall produce all active pharmaceutical ingredients (or APIs) by themselves instead of outsourcing the task to third-parties (as a background, the government agencies lifted the outsourcing restrictions in 2015 but we saw the practice tighten up from December 2019). This revision seems to suggest the government authorities’ concerns on the safety production and management of APIs, and the inhouse production of the APIs is expected to help allocate responsibilities more clearly and reinforce supervisions of the APIs production process. So far however, there is no implementation rules on how to deal with the existing API outsourcing production business.

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