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CAPITAL MARKET / 资本市场

New Regulations on Shareholding Reduction for Shareholders and Senior Executives of Listed Companies Issued 上市公司股东和董监高减持新规发布

2024年5月24日，中国证券监督管理委员会（“证监会”）发布了《上市公司股东减持股份管理暂行办法》以及修订后的《上市公司董事、监事和高级管理人员所持本公司股份及其变动管理规则》（合称“减持新规”），进一步完善了上市公司股份减持规则，同时《上市公司股东、董监高减持股份的若干规定》、《上市公司董事、监事和高级管理人员所持本公司股份及其变动管理规则》及相关问答（统称为“减持旧规”）即行废止。减持新规在保持原有框架和内容的基础上，针对市场反映的突出问题进行了调整和完善，对防范大股东、董监高绕道减持制定了一系列具体措施，其中亮点内容包括：

1. **完善大股东定义和适用范围：**根据减持新规，“大股东”指持有5%以上股份的股东和实控人，明确了实控人需遵守适用于大股东的监管规定，同时对于IPO时无控规股东、实控人的，IPO时持股5%以上第一大股东及其一致行动人参照适用控股股东、实控人的规定。此外，对于大股东减持通过集中竞价买入的股份，仍需要适用信披要求、禁止减持情形、禁止融券、和违规责任条款，但毋庸适用其他包括破发、破净、分红不达标禁止减持在内的监管规定。
2. **控股股东、实控人破发、破净、分红不达标时禁止减持：**根据减持新规，以下三种任一情形发生时，控股股东、实控人均不得通过证券交易所集中竞价交易或者大宗交易方式减持股份，但按规定履行披露义务的除外：**(i)**最近三年未分红或累计分红低于同期可分配利润30%的；**(ii)**最近二十个交易日股价低于归属于上市公司股东的净资产的；以及**(iii)**最近二十个交易日中，任一日股票收盘价（向后复权）低于首次公开发行时的股票发行价格。
3. **强化防范绕道减持行为：**减持新规新增多条防范大股东、控股股东、实控人或董监高绕道减持的规则，具体包括：**(i)**大股东、控股股东、实控人或董监高因离婚、组织解散或公司分立等分配股份的，应当履行相关披露义务，股份过出方、过入方应当合并计算判断大股东身份，且在股份过户后持续共同遵守大股东、控股股东、实控人和董监高减持规定；**(ii)**大股东通过大宗交易、协议转让或赠与方式减持股份的，受让方在受让后6个月内不得减持其所受让的股份；**(iii)**大股东、控股股东、实控人通过协议转让方式减持股份导致其不再具有大股东、控股股东、实控人身份的，应当在减持后6个月内继续遵守减持限制和预披露的要求；以及**(iv)**禁止大股东、董监高通过融券卖出本公司股份或开展以本公司股票为合约标的物的衍生品交易。需注意的是，除通过融券卖出本公司股份外，上述减持限制并不适

On May 24, 2024, the China Securities Regulatory Commission (“CSRC”) published the *Interim Administrative Measures for Shareholding Reduction by Shareholders of Listed Companies and the Administrative Rules for Equity Shares of a Listed Company Held by Its Directors, Supervisors and Senior Management Personnel and the Related Changes* (the “New Shareholding Reduction Regulations”), further refining the rules for the reduction of shares in listed companies, simultaneously repealing the *Several Provisions on the Stock-selling by Shareholders, Directors, Supervisors and Senior Management of Listed Companies, the Rules on the Administration of Directors, Supervisors and Senior Executives of Listed Companies Holding and Transferring Shares of Their Listed Companies*, and related Q&As (the “Old Shareholding Reduction Regulations”). The New Shareholding Reduction Regulations, while maintaining the original framework, make adjustments and improvements to address prominent issues raised by the market, introducing a series of specific measures to prevent major shareholders and senior executives from circumventing the share reduction rules. Key highlights under the New Shareholding Reduction Regulations include:

1. **Refinement of the Definition and Scope of Major Shareholders:** According to the New Shareholding Reduction Regulations, “major shareholders” include shareholders holding more than 5% of shares and actual controllers, clarifying that actual controllers shall also comply with New Shareholding Reduction Regulations. For companies without controlling shareholders or actual controllers at the time of the IPO, the largest shareholder holding more than 5% shareholding at the time of the IPO and other persons acting in concert (“concerted actors”) shall be subject to the provisions applicable to controlling shareholders and actual controllers. Furthermore, for major shareholders reducing their holdings through centralized auction trading, the shareholding reduction by major shareholders of the shares of a listed company purchased through centralized auction trading on a stock exchange shall only be subject to prohibition on margin trading, and liabilities for violations.
2. **Prohibition on Shareholding Reduction by Controlling Shareholders and Actual Controllers under Certain Circumstances:** According to the New Shareholding Reduction Regulations, controlling shareholders and actual controllers are prohibited from reducing their holdings through centralized auction trading or block trading under any of the following circumstances, except where disclosure obligations are fulfilled as required: **(i)** no cash dividend was distributed in the most recent three fiscal year or the cumulative amount of cash dividend is less than 30 percent of the average annual net profit attributable to shareholders; **(ii)** the closing price of the stock (with backward adjustments) on any of the last 20 trading days is lower than the net asset value per share; and **(iii)** the closing price of the stock (with backward adjustments) on any of the last 20 trading days is lower than the stock issuance price at the time of the IPO.
3. **Strengthening the Prevention of Evasive Shareholding Reduction Behaviors:** The New Shareholding Reduction Regulations introduce several measures to prevent major shareholders, controlling shareholders, actual controllers, or directors, supervisors, and senior executives (“DSS”) from circumventing shareholding reduction rules, specifically including: **(i)** in the event of share distribution due to divorce, dissolution, or separation, major shareholders, controlling or actual controllers, or DSS must fulfill relevant disclosure obligations, and the shares held by the transferor and transferee shall be calculated on a consolidated basis and are both subject to the

用于通过集中竞价买入的股份。

除上述主要修订内容外，减持新规还对一致行动人减持义务、大股东通过大宗交易减持的信披要求、董监高买卖股份窗口期限制时间等其他减持规定进行了明确、优化。整体而言，减持新规相比减持旧规而言法律位阶提升，按照实质重于形式的原则坚决防范各类绕道减持，严格规范大股东尤其是控股股东、实际控制人减持的规则，体现了证监会持续强化规范股东减持行为的监管趋势。

shareholding reduction rules applicable to major shareholders, controlling shareholders, actual controllers, and DSS; (ii) for shareholding reductions by major shareholders through block trading, transfer by agreement, or gifting, the transferee is prohibited from reducing the transferred shares within six months of acquisition; (iii) if major shareholders, controlling shareholders, or actual controllers reduce their holdings through transfer by agreement, resulting in a loss of their status, they must continue to comply with shareholding reduction restrictions and pre-disclosure requirements for six months after the reduction; and (iv) major shareholders and DSS are prohibited from selling the company's shares on margin or engaging in derivatives trading with the company's shares as underlying assets. Note that, except for the prohibition on selling the company's shares on margin, the aforementioned shareholding reduction restrictions do not apply to shares purchased through centralized auction trading.

In addition to the major revisions mentioned above, the New Shareholding Reduction Regulations also clarify and optimize other detailed rules, including the obligations of concerted actors, information disclosure requirements for major shareholders reducing shares through block trades, and the window periods for DSS to buy and sell shares. Overall, compared to the Old Shareholding Reduction Regulations, the New Shareholding Reduction Regulations occupies a higher legislation hierarchy and adhere to the principle of substance over form to firmly prevent various forms of evasive shareholding reductions. They strictly regulate the rules for shareholding reductions by major shareholders, especially controlling shareholders and actual controllers, reflecting the CSRC's ongoing efforts to strengthen the regulation of shareholding reduction behaviors of listed companies' shareholders.

INVESTMENT FUNDS / 投资基金

AMAC Issues Guidelines for Operation of Private Securities Investment Funds 中基协发布私募证券投资基金运作指引

2024年4月30日，中国证券投资基金业协会发布了《私募证券投资基金运作指引》（“《运作指引》”），延续和补充了《私募投资基金登记备案办法》和《私募投资基金备案指引》中的监管规定，通过强化私募证券投资基金（“私募基金”）的募集、投资、信息披露和风险管理等方面的合规要求，助力规范市场、提升行业专业水平，本次《运作指引》亮点内容包括：

- 确定基金最低募集规模和清算标准：**根据《运作指引》，私募基金初始实缴募集规模不低于1,000万元，基金净资产不得连续120个交易日内均低于500万元，否则应当进行清算。此外，为保护投资者利益，《运作指引》提供配套信息披露规则，要求私募基金上一年度日均资产净值低于1,000万的需在5个工作日内向投资者进行披露，提示基金可能清算的潜在风险；
- 新增投资分散度标准：**《运作指引》新增多项提高私募基金投资分散度标准规定，包括对于单只私募基金投资同一资产、上市公司股份以及债权的投资比例以及同一机构私募基金投资上述标的占该标的总资产或数量的比例作出了限制；
- 增设私募基金开展场外衍生品交易门槛：**《运作指引》通过设立净资产门槛、限制投资额度和杠

On April 30, 2024, the Asset Management Association of China (“AMAC”) issued the *Guidelines for the Operation of Private Securities Investment Funds* (the “Operational Guidelines”), which extend and supplement the regulatory requirements of the *Measures for Registration and Filing of Private Investment Funds* and the *Guidelines for the Filing of Privately Offered Investment Funds*. The Operational Guidelines enhance the compliance requirements for private securities investment funds (“private funds”) in aspects such as fundraising, investment, information disclosure, and risk management. The key highlights include:

- Minimum Fundraising Scale and Liquidation Standards:** According to the Operational Guidelines, the initial paid-in fundraising scale of a private fund shall not be less than RMB10 million, and the net assets of the fund shall not be less than RMB5 million for more than 120 consecutive trading days; otherwise, the fund shall be liquidated. To protect investors' interests, when the average daily net asset value of private funds is less than RMB10 million in the previous year, the Operational Guidelines require private funds to disclose this fact to investors within five working days, warning of potential liquidation risks.
- New Investment Diversification Standards:** The Operational Guidelines introduce several new provisions to improve investment diversification standards for private funds, including restrictions on the proportion of investments in the same asset, shares of a listed company, and debt, as well as the proportion of investments by private funds from the same institution in the aforementioned targets as a percentage of the total assets or quantity of the targets.
- Thresholds for OTC Derivatives Trading by Private Funds:** The Operational Guidelines set restrictions for private funds to engage in over-the-counter (“OTC”) derivatives trading

杆比，限制私募基金参与场外期权合约、收益互换合约、敲入敲出结构的场外期权或者收益凭证，契合目前监管机构收紧私募基金参与场外衍生品交易的趋势，可有效起到“降杠杆、控风险”的作用。

4. **私募基金总杠杆要求：**《运作指引》规定：(i)基金总资产不得超过该基金净资产的200%；以及(ii)基金投向AA级及以下信用债（可转债除外）、流动性受限资产合计超过该基金净资产20%的，总资产不得超过该基金净资产的120%，但投资者投资金额均不低于1,000万元且均为专业投资者的私募基金不受此限制。
5. **过渡期和整改安排：**《运作指引》自2024年8月1日起施行，施行后，(i)已备案私募基金存续规模的要求自2025年1月1日起算；(ii)对于不满足投资分散度要求和总杠杆限制的存量基金则有24个月的过渡期，过渡期后仍不符合的可运作至合同到期，但不得新增募集或展期；以及(iii)对于场外衍生品交易的限制则无过渡期安排，施行当日即生效，不符合条件的私募基金不得新增募集或展期，但存续已开仓的场外衍生品合约可以继续运作至到期。

by establishing net asset and leverage ratios thresholds, and limiting total investment amounts. These restrictions align with the current regulatory trend of tightening the participation of private funds in OTC derivatives trading, aims to reduce the overall leverage and controlling risks.

4. **Total Leverage Requirements for Private Funds:** The Operational Guidelines stipulate that: (i) the total assets of a private fund shall not exceed 200% of the fund's net assets; and (ii) if a private fund's investments in AA-rated or below credit bonds (excluding convertible bonds) and illiquid assets exceed 20% of the fund's net assets, the total assets shall not exceed 120% of the private fund's net assets. However, private funds where all investor invest at least RMB10 million each and are all professional investors are not subject to this restriction.
5. **Transition Period and Rectification Arrangements:** The Operational Guidelines will come into effect on August 1, 2024. After their implementation: (i) the requirement for the scale of existing private funds will start from January 1, 2025; (ii) there will be a 24-month transition period for existing private funds that do not meet the investment diversification and total leverage restrictions. After the transition period, non-compliant private funds may operate until the contract expires but are not allowed to raise additional funds or extend the contract; and (iii) restrictions on OTC derivatives trading will take effect immediately on the effective date, with no transition period. Non-compliant private funds cannot raise additional funds or extend the contract, but existing OTC derivatives contracts may continue to operate until expiration.

BANKING & FINANCE / 银行金融

State Council Introduces New Regulations on Supervision of Non-Bank Payment Institutions 国务院出台非银支付机构监管新规

2023年12月9日，国务院发布了《非银行支付机构监督管理条例》（“《条例》”），自2024年5月1日起施行。《条例》出台前，《非金融机构支付服务管理办法》（“《办法》”）及其配套实施细则为非银支付机构监管领域的主要法律依据，相比之下，《条例》优化了支付业务分类方法、严格化支付机构主体标准、强化行政违法处罚力度，可以预计会对非银支付机构监管态势造成长远而深刻的影响。具体而言：

1. **重新划分业务类型：**《办法》将支付业务按照“场景”和“介质”的不同划分为网络支付、银行卡收单、预付卡发行与受理三大类。随着技术更迭，支付业务产生了诸如刷脸支付、扫码支付等新类型，老分类标准下的监管规则如何适用于新业务类型成为难题。《条例》则以“能否接收付款人预付资金”为标准采用扩展性更良好的分类，将支付业务分类为“储值账户运营”和“支付交易处理”两大类，有利于防范监管空白、统一最低注册资本要求等准入条件和业务规则。
2. **严格主体资格要求：**《条例》从确立“先证后照”的原则、提高最低注册资本限额（不再依据地方和全国展业的需求设置不同的最低注册资本限额，而是根据业务类型的性质、业务类型的数量、经营地域范围设置不同最低限额要求）和实施重大事项变更许可管理（主要包括名称、注册资本、业务类型、经营地域范围等）三个方面对

On December 9, 2023, the State Council of China issued the *Regulations on the Supervision and Management of Non-bank Payment Institutions* (the “Regulations”), which will take effect on May 1, 2024. Prior to the Regulations, the *Administrative Measures for the Payment Services of Non-financial Institutions* (the “Measures”) and its implementation rules were the primary legal basis for regulating non-bank payment institutions. In comparison, the Regulations optimize the classification of payment business types, imposing stricter qualification requirements, and enhance administrative penalties for violations, significantly impacting the regulatory landscape of non-bank payment institutions in the long term. Specifically:

1. **Reclassification of Business Types:** The Measures categorize payment services into online payment, bank card acceptance, and issuance and acceptance of prepaid card. With technological advancements such as facial recognition and payments through QR code, classifications in the Measures may not capture new business types. As a response, the Regulations categorize payment services into operation of stored value accounts and processing of payment transactions, based on whether prepaid funds from payers can be received, aiming to reduce regulatory gaps and provide consistent capital and operational requirements for different types of non-bank payment institutions.
2. **Imposition of Stricter Qualification Requirements:** The Regulations impose stricter qualification requirements by implementing “license before registration” principles, imposing higher minimum registered capital thresholds (no longer distinguishing between local and nationwide operations), and requires approvals for significant changes (including changes in name, registered capital, business type, and operational regions).
3. **Inclusion of Shareholders and Senior Executives in Administrative Penalties:** Unlike the Measures, the

非银支付机构的主体资格实施监管，提高了非银支付机构的准入门槛。

3. **股东和高管纳入行政处罚范围：**相比于《办法》，《条例》明确将股东和高级管理人员纳入处罚范围，对于存在下列情形的相关主体可处没收违法所得以及最高等同于5倍违法所得的罚款：**(i)**通过SPV或者代持等方式规避监管；**(ii)**违规开展关联交易损害非银支付机构或用户合法权益的；以及**(iii)**主要股东质押股权未向人行报告的。而对于非银支付机构因违反监管规则而负有责任的高管，则可能被处以最高50万元的罚款以及在一定期限内禁止担任董监高的惩罚。
4. **建立境外支付机构监管原则：**《条例》明确境外的非银支付机构拟为境内用户提供跨境支付服务的，应当依照《条例》规定在境内设立非银支付机构，并原则性地规定了非银支付机构为境内交易提供服务的，应当在境内完成交易处理、资金结算和数据存储。

此外，作为细化《条例》的《非银行支付机构监督管理条例实施细则（征求意见稿）》于2024年4月22日由中国人民银行对外发布并征求意见，对非银支付机构的展业要求、《办法》与《条例》业务分类的对应关系、非银支付机构设立与存续以及《条例》过渡期安排等诸多内容作出了具体规定。对于与此相关的最新立法动态，我们将持续关注。

Regulations explicitly include shareholders and senior executives in the scope of penalties. According to the Regulations, parties involved in evading regulations through special purpose vehicles or nominee holdings, engaging in irregular related-party transactions harming the legitimate rights of non-bank payment institutions or users, or failing to report significant shareholder equity pledges to the People's Bank of China may face confiscation of illegal gains and fines up to five times the amount of illegal gains. Furthermore, if non-bank payment institutions violate the Regulations, senior executives who play roles in the incidents may face fines up to RMB500,000 and may be disqualified as directors or senior executives.

4. **Establishment of Regulatory Principles for Overseas Non-Bank Payment Institutions:** The Regulations stipulate that overseas non-bank payment institutions intending to provide cross-border payment services to domestic users must establish entities within China and process transactions, settle funds, and store data domestically.

The *Implementation Rules for the Regulations on the Supervision and Administration of Non-Bank Payment Institutions (Draft for Comments)* was released by the People's Bank of China on April 22, 2024 for public consultation. This draft provides detailed rules on operational requirements, establishment and continuation, and transitional arrangements, and clarifies the connections between the Measures and the Regulations. We will continue to monitor the latest regulatory developments in this regard closely.

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