

Notes on the *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies*

Approved by the State Council, China Securities Regulatory Commission (hereinafter referred to as “CSRC”) formulated *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies* (hereinafter referred to as “Trial Measures”), in order to implement the recently revised *Securities Law* and ensure a sound regulation of overseas securities offering and listing by domestic companies.

I. Background

Currently, overseas securities offering and listing by domestic companies is mainly regulated in accordance with *Special Provisions of the State Council Concerning the Overseas Securities Offering and Listing by Limited Stock Companies* (hereinafter referred to as “Special Provisions”) promulgated by the State Council in 1994, and the *Notice of the State Council on Further Strengthening the Administration of Overseas Stock Offering and Listing* (State Council Announcement [1997] No. 21, hereinafter referred to as the “Notice”)

promulgated by the State Council in 1997. The *Special Provisions* and the *Notice* have both played a positive role in regulating overseas listing activities of domestic companies, supporting effective use of foreign capital, improving corporate governance and promoting the opening-up of the Chinese capital markets. In recent years, however, there have been new developments and new issues with overseas offering and listing as opening-up of the Chinese capital market deepens. Some overseas-listed domestic companies, for example, caused adverse consequences by committing financial fraud, while some have intentionally circumvented regulation to offer and list securities overseas, running against national industrial policies and endangering national security. The institutional design of the *Special Provisions* and the *Notice*, which has become divergent from the higher laws and lagging behind practice, cannot meet the demand for opening-up on a higher standard and the international development of Chinese companies. Thus it is imperative to adjust the incumbent regulatory system for overseas securities offering and listing by domestic companies.

In March 2021, *Opinions on Strictly Cracking Down on Illegal Securities Activities in Accordance with Law* promulgated by the General Office of the CPC Central Committee and the General Office

of the State Council required to make adjustments to the special provisions concerning the overseas securities offering and listing by limited stock companies, and specified the responsibilities of domestic competent authorities and regulators, with a view to strengthening inter-departmental coordination.

In order to implement the decisions of the central government and provisions of the *Securities Law*, the CSRC conducted comprehensive stocktaking of practical experience, in-depth research and public consultation, and worked with relevant governmental departments to formulate the *Trial Measures* with substantial research and successive revisions.

II. Overall Considerations

The *Trial Measures* is developed under the guidance of the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and aimed at comprehensively implementing the decisions of the central government on improving the regulatory system of overseas listings. Adopting a holistic approach, the *Trial Measures* seeks to ensure both development and security, and support companies' lawful use of both domestic and overseas market resources for sound growth. With a focus on compliance supervision, the *Trial Measures* establishes a filing-based regulatory system, safeguarded by

regulatory coordination and in accordance with the following principles: **First** is ensuring the full coverage of regulation. The *Trial Measures* seeks to bolster the weak links and fill the blanks in the current arrangements, apply unified regulation on direct and indirect overseas offering and listing activities, and ensure that market entities fulfill their responsibilities; it aims to specify prohibited cases for domestic companies seeking to offer and list securities overseas, and promote the cohesiveness between capital market regulation and industry regulation. **Second** is implementing requirements of “streamlining administration and delegating power, improving regulation and upgrading government services”. The *Trial Measures* adopts a filing-based approach instead of the current approval-based one and aims at strengthening interim and ex-post supervision on a continuous basis, so as to create a more transparent and predictable institutional environment and promote lawful use of overseas capital market by domestic companies to achieve sound development. **Third** is an unremitting focus on deepening opening-up. The *Trial Measures* aims at further relaxing restrictions on overseas offering and listing by domestic companies in terms of investor eligibility, circulation of existing shares and currency requirement, ensuring the smooth functioning of the overseas financing channels, improving the

overall compliance of the companies and pushing forward the institutional opening-up on a higher standard.

III. Main Contents

The *Trial Measures* is consisted of 6 chapters with 35 articles.

Its main contents include:

(I) Refining institutions for overseas offering and listing to implement reforms. **Firstly**, the scope of application is specified. The *Trial Measures* stipulates that both direct and indirect overseas offering and listing activities are subject to regulation, and clearly defines the circumstances where provisions for direct and indirect overseas offering and listing by domestic companies apply (Articles 2 and 15). **Secondly**, the *Trial Measures* requires that domestic companies that offer and list securities overseas shall refine their corporate governance, financial and accounting practices, and abide by national secrecy laws and provisions (Articles 6 and 7). **Thirdly**, institutional arrangement such as the negative list system is created. A domestic company is prohibited from offering and listing securities in overseas markets where the intended securities offering and listing falls under specific clauses in national laws, administrative regulations and relevant state rules prohibiting such public financing activities, where the intended overseas offering and listing may

endanger national security, where criminal offenses may be involved, where the domestic company is under open investigations for suspicion of criminal offenses or major violations of laws and regulations, or where there are material ownership disputes (Article 8). If the intended overseas offering and listing necessitates a national security review (NSR), relevant security review procedures shall be fulfilled in accordance with law before submitting offering and listing applications to overseas parties such as securities regulatory agencies and trading venues (Article 9). **Fourthly**, filing requirements are specified. The *Trial Measures* requires that domestic companies offering and listing securities overseas shall undergo filing procedures and submit relevant documents within prescribed period of time. Requirements for filing entities, time points and procedures are specified (Chapter III). It is stipulated that filing documents shall be truthful, accurate and complete, and that securities companies, securities service providers and practitioners providing services to such overseas offering and listing shall guarantee the truthfulness, accuracy and completeness of the documents they produce and issue (Articles 12 and 20).

(II) Refining the regulatory system and strengthening regulatory coordination. Firstly, regulatory responsibilities are clearly defined.

The Trial Measures states that the CSRC shall exercise regulation according to law over the activities of overseas offering and listing by domestic companies, and that the CSRC, together with competent authorities under the State Council, take responsibility for the supervision and regulation over the issuing companies, securities companies and securities service providers. A supervisory and regulatory coordination mechanism is created, with a view to strengthening policy reconciliation, regulatory coordination and cross-agency information sharing (Article 4). Secondly, provisions for regulatory measures and legal liabilities are refined. *The Trial Measures* lays out requirements for the reporting of material events (Article 22). It is stipulated that the CSRC and competent authorities under the State Council may carry out supervisory inspections or investigations, and may impose administrative regulatory measures including order for correction, regulatory talks and warning letters, proportionate to the severity of the violations (Articles 23 and 24). *The Trial Measures* defines the legal liabilities for breaches such as offering and listing securities overseas without fulfilling filing procedures, and heightens the cost for offenders by enforcing accountability with administrative penalties and incorporating compliance status of relevant market participants into the Securities Market Integrity Archives (Chapter V). Thirdly, arrangements for cross-border regulatory cooperation are improved. It is required that

the CSRC and competent authorities under the State Council shall, under the principle of reciprocity, step up supervisory and regulatory cooperation with overseas securities regulators and competent authorities; the *Trial Measures* also requires the establishment of a filing information sharing mechanism and specified requirements for cross-border investigative evidence-gathering, with a view to promoting joint efforts to crack down on cross-border illegal and in-compliant activities (Articles 5 and 26).

(III) Strengthening institutional inclusiveness and deepening opening-up. **Firstly**, restrictions on issuer eligibility is relaxed. Giving consideration to the practice of and market demands for enhancing capital markets opening-up, the *Trial Measures* allows domestic companies to offer securities to specific domestic investors when directly offering and listing securities in overseas markets for certain purposes including employee stock ownership plans (ESOPs) and purchasing assets with offered securities (Article 10). **Secondly**, “full circulation” arrangements are laid out. For the overseas offering and listing by a domestic company, holders of its domestically-based unlisted shares are allowed after filing to convert the shares into overseas listed shares to be circulated on overseas trading venues (Article 18). **Thirdly**, currency requirements are relaxed. Domestic companies offering and listing securities overseas are allowed to raise funds and pay dividends in RMB, with a view to meeting the

companies' demands to raise RMB funds overseas and promoting RMB internationalization.

Courtesy translation