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博 士 学 位 论 文

中国股票首次公开发行监管研究

——基于现实制度的分析

Study on Regulation of IPO of Stocks in China

——Analysis Based on Realistic Institutions

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厦门大学博硕士学位论文摘要库

内容摘要

我国证券市场建立十多年来取得了巨大的成就，证券市场对国民经济的影响越来越大，但是证券市场的欺诈、违规行为也是屡禁不止。这些欺诈和违规行为不仅严重影响了证券市场的健康发展，同时也严重侵害了证券市场投资者的利益。在此背景下，证券市场的监管问题也引起了学界和业界越来越多的关注和重视。

作为证券市场监管的一个重要组成部分，股票首次公开发行的监管在证券市场中所发挥的作用是非常关键的。我国证券监管部门自证券市场设立之初，就对股票发行进行了严格的监管。证券监管部门通过设立并实施发行标准、建立专业发行审核机构——发行审核委员会、建立规范的发行审核程序对拟公开发行股票的公司实施实质性审核，希望以此把劣质公司或者存在欺诈行为的公司剔除在外。但是从实际的执行情况来看，我国股票发行中的违规与欺诈行为屡禁不止，制度的设计并没有达到预期的目的。为此本文对股票发行监管制度作了详细的分析，希望能够为我国股票发行监管制度的改革提供相关的建议和理论支持。

本文包括导论共六章：

第一章“导论”。导论首先全面阐述了本文研究的背景与意义，然后对相关概念作了界定，并对本文涉及的研究方法进行了说明。同时，回顾了股票发行监管的主要理论，梳理了国内外相关的理论文献，并介绍了论文的研究思路、结构安排、论文的创新与不足。

第二章“股票发行监管理论一般分析”。本章是股票发行监管的理论基础，通过对发行监管的各种经济的理论分析，较为深入地研究了股票发行监管的必要性、股票发行监管失灵问题并对股票发行监管的理论作了简要的总结。

第三章“发达国家和地区股票发行监管制度的比较与启示”。本章详细分析了西方主要的发达国家和地区股票发行监管制度各自的特点，并对其作详细的比较，在此基础上提出了对我国发行监管制度的启示以及可借鉴的经验。

第四章“中国股票发行监管制度发展：历史沿革与现状剖析”。本章首先对中国股票发行监管所经历的主要制度“审批制”、“核准制”的历史沿革进行介绍，并对各个阶段的监管制度作了简要的评述。本章对中国股票发行监管制度的现状

作了较为详细的剖析，通过研究，本文认为：现行的发行监管制度无法达到选优去劣的效果；无法杜绝欺诈发行上市的行为；无法有效解决信息披露的失真问题；无法解决上市公司随意改变募集资金投向问题；无法有效改善上市公司治理结构；无法有效配置证券市场资源；无法有效保护证券市场投资者。

第五章“中国发行监管制度的定位现状”。本章认为我国股票发行监管制度的定位出现问题。通过研究，指出我国股票发行监管制度存在政府监管的越位、投资者保护的缺位、中介机构监管的缺位、对证券监管者监督的缺位、自律监管的缺位，而发行监管制度的越位与缺位会对证券市场的各个参与主体产生不利的影 响。最后，本章分析了我国股票发行监管制度越位与缺位的原因，并结合制度变迁理论提出了监管制度选择应注意的问题。

第六章“中国股票发行监管制度的再定位”。本章针对股票发行监管制度存在的越位与缺位问题，提出必须对我国股票发行监管制度进行重新定位，政府的行政监管部门应该逐步放松对股票发行的实质性审核，把政府的行政监管定位在加强对投资者利益保护、股票发行监管相关法律法规的完善等需要政府发挥作用的方面，做到有所为有所不为。应充分发挥证券承销商、保荐人的市场中介作用。同时应重新定位证券交易所、证券业协会在股票发行中的自律监管作用，建立以证券交易所、证券业协会、证券承销商、政府监管部门为主体的多层次监管体系，改变目前过分依靠行政性监管的局面。

关键词：股票首次公开发行； 监管； 制度

Absrtact

Chinese securities markets has achieved a great deal since its establishment more than ten years ago, which plays an increasing role in national economy. But as a result of the market failure phenomena such as information asymmetry, externality etc., there are frequent violations of regulations, like swindle, in Chinese securities markets. These illegal acts not only affect the healthy development of securities markets badly, but also seriously damage the investors' interests. From the analysis of domestic and foreign theories and practice, we could find that to regulate the securities markets is an effective way to solve the problem of market failure. That's why the regulation sectors have been strengthening the regulation and striking the violation behaviors heavily.

As an important part of government regulations in the securities markets, the regulation of the initial public offerings (IPO) plays a key role. The evolution of Chinese securities markets is propelled by the government all alone, so the market smacks of obvious government-dominant color. That's why at the first establishment of securities market, Chinese government has introduced serious regulations to supervise the initial public offerings of stocks, which guaranteed the issue could perform or act effectively. Chinese regulation institutions of IPO have experienced two systems, Examining system and Authorizing/Approval system, and the general principle is to institute and practice substantive examination, by setting issue standards, organizing professional examining team, like examining committee, establishing a canonical examination process, and China's Securities Regulatory Commission screens the corporations applied to issue securities publicly, then leave the good and weed out the inferior corporations or ones having defrauding behaviors. By examining and approving the corporations applied, the quality of public companies is somewhat guaranteed preliminary. However, from the actual performance of this institution, we could still find that the violating of regulation and the defrauding behaviors keep coming in all the times, and the institutions failed to achieve the anticipated result. This paper is to analyze the regulation institutions of IPO, and try to provide some reforming suggestions about Chinese regulation institutions of IPO and relevant theoretical guidelines.

This article consists of six chapters including the introduction:

Chapter 1: Introduction. This chapter elaborates the background of the research topic selection, research significance and the methodology firstly. Then the author looks back to the main regulation theories of IPO, combs the relevant, previous researches, and introduces the arrangements, the main innovations and deficiencies of the whole paper.

Chapter 2: The General Analysis of Theories on Regulation of IPO. This part is the theoretical basis of this paper. During this part, the author makes a relatively intensive study of the necessity, the failure problems of the regulation of IPO, and give a neat summary of the regulation theories of IPO.

Chapter 3: The comparison and Instruction of Institutions of Regulation on IPO in Developed Countries and Areas. In this chapter, the author analyzes in very great deal of the respective characteristics of regulation institutions in several main western developed countries and areas firstly. Secondly, the author makes an elaborate comparison of these institutions. Finally, on the basis of all above, the author provides some instruction and quotable experience to Chinese regulation institutions of IPO.

Chapter 4: The Evolution of Chinese Regulation Institutions of IPO: the Course of History and the Analysis of Actuality. This chapter introduces the history of the two principle regulation institutions of IPO: Examining system and Authorizing/Approval system, then makes a neat comment of them. After a detailed analysis of the regulation institutions of different stages, the author considers there are some inefficient problems of Chinese actual regulation institutions of IPO, like failing to select good and leaving bad; failing to stamping out swindle behaviors of IPO; failing to solve the distortion problem of Information disclosure; failing to solve the listed companies' behavior of changing the casting of collecting capital randomly effectively; failing to optimize the management structure of listed companies; failing to optimize the allocation of resources of securities markets; failing to protect investors effectively.

Chapter 5: The Actual Orientation of Chinese Regulation Institutions of IPO. In this chapter, the author points out that there are offside and absence of Chinese regulation institutions of IPO, like the regulation offside of the government, the protection absence of the investors, the regulation absence of the intermediaries and self-discipline. After making an elaborate analysis of these offside and absence

behaviors,the author analyzes the bad influence on the main participators of securities markets bought by these behaviors.Finally, the author analyzes the reasons of those offside and absence behaviors, and by employing the theory of institutional change , points out there are some problems of the selection of regulation institutions claiming attention .

Chapter 6: The Reorientation of Chinese Regulation Institutions of IPO.In this chapter ,according to the problems of offside and absence pointed out in last chapter, the author believes it's necessary to reorient the regulation institutions of IPO, the administrative regulation sectors should relax the substantial auditing gradually,and reorient the administrative regulation on the protection of investors,perfecting the relevent laws and regulations of IPO,etc.which needs the government plays its role.This chapter also insists the securities regulation sectors should not intervene in the judgement of the stocks'quality, where the securities underwriters should play its intermediary part . At the meantime,we should reorient the self-discipline regulation of stock exchange and securities association in IPO,change the actual state of depending on administrative regulation too much,and establish a synthesized regulation system whose principles are the Stock Exchange, Securities Association ,securities underwriters,regulation sectors.

Key words: Initial Public Offerings(IPO) ; Regulation ; Institutions

厦门大学博硕士学位论文摘要库

目 录

第一章 导 论	1
1.1 选题背景	1
1.2 相关研究综述	2
1.3 概念界定	8
1.4 研究思路与结构	14
1.5 研究方法	15
1.6 研究创新与不足	16
第二章 股票发行监管理论一般分析	18
2.1 股票发行监管的必要性分析	18
2.1.1 股票发行市场失灵与监管的公共利益理论.....	18
2.1.2 股票发行信息监管的相关理论.....	23
2.2 股票发行监管失灵问题	32
2.2.1 股票发行的寻租现象与监管的俘获理论.....	32
2.2.2 信息的不对称导致的监管失灵.....	34
2.2.3 股票发行监管中存在官僚主义与监管滞后.....	35
2.2.4 股票发行监管引发的道德危险.....	35
2.2.5 股票发行监管引发的逆向反应.....	36
2.2.6 股票发行监管引发的中介机构低效率.....	36
2.3 关于股票发行监管若干理论的总结	37
第三章 发达国家和地区股票发行监管制度的比较与启示.....	40
3.1 美国股票发行监管制度的特点	40
3.1.1 股票发行实行注册制.....	40
3.1.2 注重对强制性信息披露的监管.....	41
3.1.3 行政监管与自律监管的平衡.....	42
3.1.4 中央监管和地方监管的平衡.....	43
3.2 英国股票发行监管制度的特点	44

3.2.1 股票发行实行注册制.....	44
3.2.2 自律监管为主的监管模式.....	44
3.2.3 由证券交易所的审核向政府审核过渡.....	46
3.2.4 强调证券中介机构在发行中的作用.....	47
3.2.5 强调股票发行的信息披露监管.....	48
3.3 日本股票发行监管制度的特点	49
3.3.1 股票发行审核为注册制.....	49
3.3.2 行政监管与自律监管并重.....	50
3.3.3 注重对股票发行中违规行为的打击.....	51
3.4 德国股票发行监管制度的特点	51
3.4.1 行政监管与自律监管并重.....	51
3.4.2 注重发挥证券承销商等中介机构的作用.....	52
3.5 香港地区股票发行监管制度的特点	53
3.5.1 自律监管为主，行政监管为辅.....	53
3.5.2 交易所对发行与上市公司进行实质性审核.....	54
3.6 发达国家和地区股票发行监管制度的比较与启示	54
3.6.1 不同证券市场背景导致了监管制度的差异对我国监管制度的启示	54
3.6.2 充分发挥自律监管的作用对我国股票发行监管制度的启示.....	57
3.6.3 市场选择作用的发挥对我国股票发行监管制度的启示.....	58
第四章 中国股票发行监管制度发展：历史沿革与现状剖析.....	61
4.1 股票发行审批制阶段	61
4.1.1 股票发行审批制的历史沿革.....	61
4.1.2 发行审批制的简要评述.....	64
4.2 股票发行核准制阶段	64
4.2.1 股票发行核准制下的审核程序.....	65
4.2.2 股票发行核准制的两个阶段及其简要评述.....	66
4.2.3 股票发行核准制的最新调整.....	72
4.3 我国股票发行监管制度现状剖析	73

4.3.1 无法达到选优去劣的效果.....	74
4.3.2 无法杜绝欺诈发行上市的行为.....	74
4.3.3 无法有效解决信息披露的失真问题.....	75
4.3.4 无法有效杜绝任意更改募集资金投向问题.....	75
4.3.5 无法有效优化上市公司治理结构.....	76
4.3.6 无法有效发挥市场的资源配置功能.....	76
4.3.7 无法有效保护投资者.....	77
第五章我国发行监管制度的定位现状	78
5.1 股票发行监管制度存在的越位与缺位	78
5.1.1 过度干预市场机制的越位.....	78
5.1.2 投资者利益保护的缺位.....	82
5.1.3 对中介机构监管的缺位.....	82
5.1.4 对证券监管部门监督的缺位.....	84
5.1.5 自律监管的缺位.....	84
5.2 监管制度越位与缺位对投资者的影响	85
5.2.1 导致投资者的道德风险.....	85
5.2.2 导致投资者的市场风险意识以及市场的判断能力不能提高.....	87
5.2.3 导致机构投资者无法有效发挥定价作用.....	88
5.2.4 导致了中小投资者对证券市场的信心受到打击.....	89
5.3 监管制度越位与缺位对发行人的影响	89
5.3.1 导致发行市场无法有效配置资源.....	89
5.3.2 导致上市公司的逆向选择.....	90
5.4 监管制度越位与缺位对中介机构的影响	93
5.5 股票发行监管制度越位与缺位原因的分析	99
5.5.1 诱致性制度变迁理论与西方发达国家股票发行监管制度选择.....	99
5.5.2 强制性变迁理论与我国股票发行监管制度的选择.....	101
第六章 我国股票发行监管制度的再定位	105
6.1 证券监管机构的定位分析	105
6.1.1 发行实质性审核的逐步放松.....	105

6.1.2 股票发行信息监管的加强.....	109
6.1.3 加强对发行违法违规行为的处罚.....	113
6.1.4 加强对监管者的约束与监督.....	114
6.2 加强对证券承销商的监管	117
6.2.1 完善证券承销商声誉机制.....	117
6.2.2 加强对保荐人的监管.....	120
6.3 强化自律监管的作用	124
6.3.1 自律监管的定位.....	124
6.3.2 发挥证券交易所的自律监管作用.....	126
6.3.3 发挥证券业协会的自律监管作用.....	128
主要参考文献	130
后 记.....	139

Contents

Chapter1 Introduction	1
1.1 Research Background.....	1
1.2 Summary of Relevant Research.....	2
1.3 Definition of Some Concepts	8
1.4 Thinking behind the Research and Chapter structure.....	14
1.5 Research Methodology	15
1.6 Main Innovations and Deficiencies.....	16
Chapter2 The General Analysis of Theories on Regulaion of IPO..	18
2.1The necessity of Regulations on IPO	18
2.1.1The Failure of the Market of IPO and the Theory of Public Interests of Regulation	18
2.1.2The Relevant Theory of Information Regulaion of IPO	23
2.2 The Failure of Regulation of IPO	32
2.2.1The Rent-seeking Phenomenon of IPO and the Captive Theory of Regulation	32
2.2.2Regulation Failure Caused by Information Asymmetry	34
2.2.3Bureaucratism in Regulation of IPO and the Lagging of Regulation.....	35
2.2.4Moral Risk Caused by the Regulation of IPO	35
2.2.5Reversed Effect Caused by the Regulation of IPO	36
2.2.6Inefficiency of Intermediary Caused by the Regulation of IPO	36
2.3 Summary of Some Theories on Regulation of IPO.....	37
Chapter3 The Comparision and Revelations of Institutions of Regulation on IPO in Developed Countries and Areas ...	40
3.1 The Characteristics of Regulation Institutions of IPO in America	40
3.1.1The Regulation Institutions of IPO- Authorizing System.....	40
3.1.2The Strengthening of Forced Information Disclosure of IPO.....	41
3.1.3The Balance Between Administrative and Self-Discipline Regulation	42
3.1.4 The Balance Between Central and Local Regulation	43
3.2 The Characteristics of Regulation Institutions of IPO in Britain	44

3.2.1	Authorizing System of IPO.....	44
3.2.2	The Regulation Pattern Stressed on Self-Discipline	44
3.2.3	The Transition of Auditing From Stock Exchange to Governments.....	46
3.2.4	Emphasizing the Effect of Securities Intermediaries.....	47
3.2.5	Emphasizing the Regulation of Information Disclosure of IPO.....	48
3.3	The Characteristics of Regulation Institutions of IPO in Japan	49
3.3.1	Authorizing System of IPO.....	49
3.3.2	Paying Equal Attention to Administrative and Self-Discipline Regulation.....	50
3.3.3	Emphasizing the Strike of Violations of IPO.....	51
3.4	The Characteristics of Regulation Institutions of IPO in Germany	51
3.4.1	Paying Equal Attention to Administrative and Self-Discipline Regulation	51
3.4.2	Emphasizing the Effect of Securities Intermediaries.....	52
3.5	The Characteristics of Regulation Institutions of IPO in Hongkong.....	53
3.5.1	Giving Priority to Self-Discipline Regulation,Administrive Regulation as the Adjunct.....	53
3.5.2	Substantial Auditing of IPO and Public Companies by Stock Exchange	54
3.6	The Comparision and Revelations of Regulation Institutions of IPO in Developed Countries and Areas on Chinese Regulation Institutions of IPO	54
3.6.1	The Revelations of Differences in Regulation Institutions Caused by Different Stock Markets	54
3.6.2	The Revelations of Turning the Self-Displine Regulation to Advantage	57
3.6.3	The Revelations of Exertion of Markets' Selection	58
Chapter4 The Development of Chinese Regulation Institutions of IPO:the Course of History and the Analysis of Actuality..		61
4.1	The Stage of Examing System of IPO	61
4.1.1	The History of Examing System of IPO	61
4.1.2	The Capsule Review of Examing System of IPO.....	64
4.2	The Stage of Authorizing System of IPO	64
4.2.1	The Auditing Process of Authorizing System of IPO	65
4.2.2	The Two Stages of Authorizing System of IPO and Its Capsule Review	66

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