

China Law Update

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Stricter Disclosure Requirements In The Growth Enterprise Board Rules

On June 5, 2009, with the approval of the China Securities Regulatory Commission, Shenzhen Stock Exchange formally released the Growth Enterprise Board Rules of Shenzhen Stock Exchange ("Growth Enterprise Board Rules"), paving the way for small and private companies to raise funds publicly, something authorities had been promising for several years.

Before the announcement, Shenzhen Stock Exchange sought opinions for the draft of Listing Rules from May 8th to May 22nd, and received 153 feedback mails in total. It also held two meetings on May 10th and May 11th to solicit opinions on the draft of Growth Enterprise Board Rules from the public. According to the announcement, the Growth Enterprise Board Rules will take effect on July 1st, 2009. Companies are qualified to list on the new board with annual net profits of at least 10 million RMB (\$1.5 million) in the previous two years, or 5 million RMB (\$700,000) for one year with sales of at least 50 million RMB (\$7.3 million), the China Securities Regulatory Commission announced in April. However, it did not specify any details on when companies could apply for listing or when trading would begin.

Compared with companies listed on two main stock exchanges in Mainland China, Shanghai Stock Exchange and Shenzhen Stock Exchange, companies listed on the Growth Enterprise Board will face stricter disclosure requirements, which many potential applicants think is a major hurdle created by the Growth Enterprise Board Rules.

Disclosure Requirements Analyses

The analyses of disclosure requirements in the Growth Enterprise Board are as follows:

- Periodic reports and interim reports of listed companies which are registered in Shenzhen Stock Exchange shall be disclosed on the designated website and the company's website. In addition, summary of periodic reports should be disclosed in the designated press of China Securities Regulatory Commission¹[1]. This provision would reduce the costs of disclosure for the companies listed on the Growth Enterprise Board and facilitate real-time disclosure.
 - In order to promote the timely disclosure of listed companies, companies anticipating that they can not provide company annual reports within two months following the end of the fiscal
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year must disclose a performance flash report in the relevant accounting period within two months after the end of the fiscal year²[2].

- The Growth Enterprise Board Rules require listed companies to hold an annual explanation session within one month after the disclosure of their annual report. In that session, listed companies should provide the investors with an overview of their development strategies, production and management, new products and new technology development, financial condition and results of operations, investment projects and other aspects of the company's operation³[3].
- Listed companies shall disclose their interim report via the designated website during the stock exchange noon rest or after the close of trading at 15:30 each day. In certain emergency situations, listed companies can apply to the stock exchange for temporary suspension of the stock trading and the derivative species, and disclose the interim report via the designated website during the trading hours or before the opening of trading in the morning⁴[4].
- If the transactions involved the subject company's core technologies, listed companies should indicate the impact in the future operation of the overall business and the possible risks brought by the core technologies, which are sold or purchased⁵[5].
- Due to the small-scale of the listed companies on the Growth Enterprise Board, the Growth Enterprise Board Rules reasonably identify the need to fulfill the disclosure obligations of the interim report of major events, including general transactions and related party transactions. Also it confirms several trigger amounts, which decide whether or not to submit to the general meeting of shareholders or provide notice to the public⁶[6]. For example, if the aggregate amount of providing financial assistance in 12 months reaches 1 million RMB, listed companies on the Growth Enterprise Board shall provide notice to the public in time⁷[7].

Conclusion

The origin of the NYSE can be traced to 1792, and the first securities act in the United States was the Securities Act of 1933. However, China's set up of a stock exchange and release of exchange laws and rules has all happened within the past 20 years. Therefore, it is a rapidly developing system with some problems in the regulation. The activation of the new board shows Beijing's eagerness to revive stock market activities and help ease the financing squeeze due to the global economic crisis. In order to protect individual shareholders, listing on the Growth

Enterprise Board in China is more heavily regulated than more established stock exchanges. The Growth Enterprise Board imposes stricter disclosure requirements, including the disclosure of periodic reports, interim reports and annual reports. The general public has high expectations for the Growth Enterprise Board. However, owing to the lack of regulatory experience and professional enforcement force, the enforcement of the Growth Enterprise Board Rules, especially the disclosure requirements, would involve uncertainty and intransparency. Therefore, we should keep an eye on the follow-up rules and interpretation for the Growth Enterprise Board Rules.

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8[1] Article 2.13, the Growth Enterprise Board Rules of Shenzhen Stock Exchange

9[2] Article 6.2, the Growth Enterprise Board Rules of Shenzhen Stock Exchange

10[3] Article 6.12, the Growth Enterprise Board Rules of Shenzhen Stock Exchange

11[4] Article 7.5 , the Growth Enterprise Board Rules of Shenzhen Stock Exchange

12[5] Article 9.15, the Growth Enterprise Board Rules of Shenzhen Stock Exchange

13[6] Chapter 9, 10, 11, the Growth Enterprise Board Rules of Shenzhen Stock Exchange

14[7] Article 9.10, the Growth Enterprise Board Rules of Shenzhen Stock Exchange
