

Research on Legal Issues of IPO False Statement Civil Liability

Wei Jiang

School of Law, Tiangong University, Tianjin 300387, China;

1731106068@tiangong.edu.cn

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Abstract: The core of the registration system lies in the information disclosure system. The function of the civil liability system helps to regulate the misrepresentation and promote the improvement of the information disclosure system of the securities market. The civil liability system for the false statement currently faces the dilemma of both physical and procedural difficulties. The abolition of the civil liability pre-procedure is a key measure to resolve the predicament of the false civil liability system procedure, clarify that there is no real joint and several liability between the persons responsible for the false statement, and strictly establish the civil liability for the behavior of the false false statement based on the presumption of causality, Making the definition of the disclosure date of the false statement flexible, and unifying the starting point of the statute of limitations for false statement cases is an indispensable path to improve the civil liability system for false statements.

1. Introduction

With the accelerating progress of the IPO registration system, we are anxious about what kind of impact the IPO will have on China's financial market. Some have suggested that the registration system be postponed and some have completely rejected the IPO registration system. Both the defermentist and the negationist believe that the IPO registration system is not suitable for China's national conditions. The biggest worry is that under the current strict IPO approval system, false false statements of the IPO still appear repeatedly. At present, China mainly relies on administrative means to resolve such problems, but the disadvantages of this method are very large. In practice, it is often when the problem of misrepresentation is serious or when it is speculated and exposed by the media. The consequence of the process is often that the person in charge of the company is sentenced to jail and fined the company, but the legitimate rights and interests of investors have not been effectively paid attention to and protected. It is for this reason that we need to rationally analyze China's existing legal regulations on false statements in IPO that can adapt to the rapid development of China's securities market, and use effective regulatory measures to resolve emerging issues. In order to implement the IPO registration system in China, we must learn from the United States its advanced legal protection system, and we cannot rely solely on administrative means to regulate the securities market. At the same time as the introduction of the IPO registration system in China, we should adopt diversified regulatory measures and introduce class actions in a timely manner for possible false statements of IPO, and gradually explore a class action model suitable for China's national conditions, so as to match the IPO registration system in China Matching and matching. In view of this, the paper devoted to research and resolve several legal ways and means to regulate such problems studies.

2. The IPO false sense jeopardize its legal control statements

2.1 Harm and Causes of IPO False Statements

The harm of IPO false statements is so great, it provides investors and market entities with false information, which will cause investors to conduct their own investment behaviors based on wrong information, and eventually cause investors to suffer large economic losses. At the same time, it

also undermines the concept of integrity management in the securities market, resulting in the inability of the securities market to develop healthily and causing damage to China's market economic order.

2.1.1 Causes of IPO false statements

There are many reasons why companies make false IPO statements. Some are based on false statements, so that companies can have a better corporate image, others are to obtain better corporate premiums when stocks are issued, and at the same time, national level legislation is not perfect, administrative agencies' enforcement is not strict enough, and investor speculation is serious. All this will prompt companies to make false statements during the IPO. Below we state from the following two aspects:

(1) External factors

First of all, China's legal regulations for false statements in IPO are too crude and insufficient to deter companies and companies that make false statements. Regarding the false statement of IPO, China's criminal law and securities law do not provide special provisions, but it is regulated under the framework of large false statements, and its regulatory strength can be imagined. Second, administrative enforcement is not strict enough, penalties are small, and the cost of counterfeiting is low. In real life, there are very few cases of criminal penalties for IPO misrepresentations. Often, major incidents are reduced and minor incidents are reduced. Generally, no punishment is imposed on perpetrators. Finally, civil claims are difficult. In terms of civil liability, China's legislation on securities misrepresentation is relatively weak, and there are not many specific provisions that can be made. For example, Article 69 of "Securities Law of the Chinese People's Republic" provides information on issuers in prospectuses or financial accounting reports Those who make false statements in the disclosure materials and cause investors to suffer losses as a result shall clearly bear the corresponding compensation liability[1]. Because the relevant regulations are too general and vague, it is difficult for the injured investors to prove and defend their rights. Even if they win the verdict, they will encounter difficulties in enforcement. The above reality has led many companies to be willing to take risks, because the cost of taking risks is really low.

(2) Internal factors

Internal factors are mainly from the perspective of a company or an investor. First, through IPO false statements, the company can conceal some relevant information that is not beneficial to its own company, thereby filtering negative information about its own company, giving consumers false guidance, and thus making its own IPO process smooth. Secondly, companies make false statements in the process of IPO to falsify related performance, thereby raising their share prices and obtaining a higher issue premium when the shares are issued. Finally, investor speculation is serious. Some investors, however, have strong speculative preferences, and even in order to obtain high returns, they ignore the legal provisions and use the deficiencies of the securities market system to "adventure" and speculation. This psychology and behavior promotes the behavior of IPO false statements in enterprises, and makes IPO false statements have a certain "market".

2.1.2 The dangers of IPO false statements

False statements refer to acts that, in the process of securities issuance and trading, units and individuals with an obligation to disclose information violate the information disclosure system of the securities market and make false statements or material omissions of important facts in relevant documents or media. The harm of false statements is embodied in the following aspects:

(1) Harm to investors

The dangers of false statements are reflected in many aspects. The first is that false statements will interfere with investors' judgments, making investors unable to make correct investment decisions based on the stock price issued by listed companies, which will cause investors to have an authenticity about the company's stock price It is suspected that once an investment error is made, investors will suffer heavy losses and lose trust in the securities market. The information that a mature and healthy investment market requires to be disclosed must be true and comprehensive, and this principle must not be violated, or the responsible subject must bear adverse legal consequences.

At the other extreme, due to the false information disclosure, investors will make over-investment decisions based on the wrong guidance, and ultimately the investors will be harmed. The information acquisition in the securities market has its asymmetry. Securities investors can only make investment choices that are beneficial to investors when they fully understand the issuer's operations and profitability. Therefore, the laws of all countries protect investors' right to request information disclosure, which is the core of the IPO registration system[2]. The "Securities Law" of the United States, the "Exchange Law of Germany", and the "Securities Law of the Chinese People's Republic" all protect the right to request information disclosure. When this right is violated, investors have the right to file damages.

(2) Harm to society

The core of the securities market is information. Disclosers must disclose true and comprehensive relevant information, and must not conceal or fabricate false information. If a company makes a false statement in IPO, although it can make itself listed and obtain financing qualifications, the result will often cause damage to investors' rights and interests, and it will also be found for violations and punished by law, ultimately causing losses to themselves and investors. Serious cases can also result in criminal penalties for sponsors. This not only hurts the company itself, but also affects the vital interests of its employees. If the company goes bankrupt as a result, a large number of employees will lose their jobs and cause social problems.

(3) Harm to the country

Harmful results caused by false statements not only hurt themselves and investors, but also affect the development of local economies, thereby adversely affecting the country's economic order. If a listed company is reported and investigated for false statements of IPO, the image of the local government where it is located will be affected, and investors will also have a distrust of related companies in this area. This will cause losses to other local listed companies and the local economy, further affecting the stability of China's securities market. At the same time, the country's economic planning and economic goals are adversely affected. This will definitely endanger the stability of society. Since 2015, the number of cases of civil liability disputes involving false statements in IPO in China has continued to increase. The statistics of the results of civil liability disputes caused by false statements of securities from 2015 to 2019 on the China Judgements Online are shown in Figure 1.

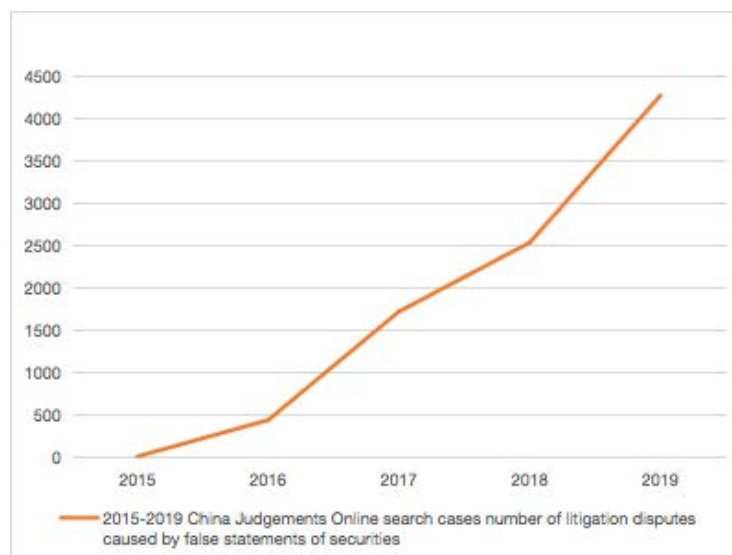


Figure 1 The statistical curve of the results of civil liability disputes caused by false statements of securities from 2015 to 2019 on the China Judgements Online.

2.2 The significance of IPO false statement regulation

False IPO statements have a destructive effect on the securities market, so China must regulate such dishonesty, and by cracking down on counterfeiters, make them pay a corresponding price, making them afraid to take it in market operations Dishonest behavior to promote the healthy

development of China's securities market. The significance of regulating IPO false statements is mainly reflected in the following aspects:

2.2.1 Conducive to maintaining the normal socialist market economic order

From the perspective of the development process of the securities markets in various countries in the world, securities fraud is a cancer that the securities market cannot always remove, especially the IPO false statement is like a drug, which makes many companies take risks without hesitation. Even in countries with mature and developed securities markets like the United States, IPO misrepresentations often occur. China's securities market is still underdeveloped, and securities fraud is repeatedly banned. False statements in securities fraud violate investors' right to know information, damage their confidence in the securities market, and undermine the stability of the securities market. Due to the false statements of some companies, other legal enterprises have also been harmed as a result, which has affected the financing capacity of these legally operating enterprises. This has also caused the distortion of the normal securities product price system, and even the phenomenon of adverse selection, which has driven bad coins to drive out good coins. It has become a chaotic situation in the securities market, prompting investors to make irrational investments, which has hindered the diversification of the securities financing system[3, 4]. IPO misrepresentation is the leading cause of the confusion in China's securities market. Dishonest information disclosure will cause listed companies to have original sin at the beginning, and will ultimately undermine the three principles of the securities market, causing investors to suffer significant losses.

2.2.2 Conducive to protecting the legitimate interests of investors

The harm of IPO false statements is so great that investors have suffered a lot of unnecessary losses because they have accepted the wrong relevant information. China has also adopted many measures to deal with this phenomenon. Many misrepresentations have been seized during the issuance process, but the power of the CSRC is still limited. Therefore, China must regulate such acts from the system level. For the protection of securities investors, China has also formulated a series of related systems. For example, Chapter 11 of "Securities Law of the Chinese People's Republic" provides for related criminal liabilities. Our legislators hope to increase the cost of violations through severe criminal penalties. In order to stop similar behavior with severe punishment. Article 55 of the "Chinese Consumer Protection Law of the People's Republic of China" recently revised and enacted provides for punitive damages. Although the new consumption law does not explicitly stipulate the fraud in the securities market, there are still many ways and means of consumer protection that China should learn from. When their legitimate rights and interests are harmed, our investors give up their rights because they think the cost of investment is too big. Therefore, our country should introduce and perfect the corresponding legal system as soon as possible, so that investors can use the legal means without concern to safeguard their legitimate rights and interests.

2.2.3 Conducive to promoting the establishment of a good image of honest management of listed companies

By severely cracking down on IPO misrepresentation, it paid a heavy price, delaying its listing, or putting it at risk of bankruptcy. In this way, listed companies are afraid to make false statements in the process of IPO, and can only be honest. Disclosed the company's financial statements, operating conditions, and profitability. This not only promotes the integrity management of the enterprise, but also urges it to work hard to improve its profitability, so that the enterprise itself and investors can achieve a win-win situation[5]. Make them understand that only if they truthfully disclose the relevant situation of their company and operate with integrity, will they be recognized by investors.

3. China's practical review of IPO false statements in civil law regulation

The civil regulation of IPO misrepresentation is to be vigorously explored and developed in China. China does not yet have a relatively effective civil system to protect the legitimate rights and interests of investors, so that investors can find effective ways to claim when their rights and interests are harmed. Often their legitimate rights and interests are passively receiving administrative relief[6].

3.1 Procedural Dilemma of the Civil Liability System of IPO False Statements

In 2002, the Supreme People's Court of the People's Republic of China issued the "Notice of the Supreme People's Court on The Issues Related to the Acceptance of Civil Tort Disputes Caused by False Statements in the Securities Market"(hereinafter referred to as the "Notice "), provides procedural provisions for civil compensation of false statements. Moreover, the preconditions of expediency have been set, which has taken a welcome step towards regulating the securities market and improving the legal system of the securities market. It can be said that it has initially opened the door to China's securities civil compensation system. It also promulgated the "Regulations on the Trial of Civil Compensation Cases Arising from False Statements in the Securities Market"(hereinafter referred to as the "Regulations ")was highly evaluated by all parties and believed that they have solved the Chinese false statements to a certain extent. There are problems in the field of civil liability, but in terms of practical operation, there are still some regrets and imperfections.

Civil liability for torts in securities law is not as easy to judge as civil liability for torts in general law of civil law. Because civil liability for infringement on securities involves a wide range of individuals, including a large number of individuals, including listed individuals, listed companies, securities institutions, and intermediaries, they cannot fully take into account the interests of all parties, creating some loopholes in legislation when setting up a civil liability system for false statements.

3.1.1 Unreasonable factors in determining the court of jurisdiction

The author believes that the Supreme People's Court's determination of the intermediate people's court as a court of first instance is correct, but it limits the plaintiff's right to choose the jurisdiction of the court when there are multiple defendants, and may contribute to local protectionism, which may be excessive. Protect the right of action of listed companies. In fact, it is best to handle such cases as exclusive jurisdiction. It is more appropriate for the intermediate people's court where the stock exchange where the listed company's securities are issued to be the court of first instance for two reasons. First, due to disputes in the securities market, in cases, it may happen in multiple courts across the country. Due to the difference in the court of acceptance, there will be more or less deviations in the understanding of some aspects, which may lead to different results in the same case. Therefore, once such cases occur, it is not appropriate to try them separately, but they should be combined and tried by an exclusive court. Second, China's securities market itself is restricted in development. At present, there are only two stock exchanges, the purpose is to strengthen supervision, and the information disclosure of listed companies is also carried out through the stock exchange. The stock exchange has all the information disclosure. Data and transaction data, but these terminal data materials are not available elsewhere, these data materials are one of the basis of the verdict. Therefore, the intermediate people's court where the securities transaction is located as the exclusive jurisdiction of the court of first instance facilitates the trial of the case and also meets the requirements of China's securities market setting.

3.1.2 There are loopholes in the causality identified

If the plaintiff wants to pursue the civil liability of the infringer, he must prove the causal relationship between his actions and the facts of the damage. Whether the plaintiff can prove the existence of causality is often the key to whether the lawsuit can be established. However,

conferring such a heavy burden of proof on the plaintiff is bound to hinder the protection of investors. As can be seen from Article 18 (2) and Article 19 (1) of the "Regulations" above, only when an investor purchases and continues to hold directly related securities, investors' losses may be found to have a causal relationship with the false statement. In this way, investors only find that there is a causal relationship between the false statement and the damage result if the stock is lost after the false statement is disclosed or corrected. If the stock has been sold before, it is not considered to be a causal relationship. That is to say, the victims lost the right to claim the losses of the stocks sold before the disclosure date. Is it necessary to wait until the compensation is lost, and wait to see if the case registration process will be initiated.

3.1.3 There are loopholes on the day of the definition of misrepresentation uncovered

Regarding the standard for the disclosure of false statements, the first paragraph of Article 20 of the "Regulations" provides for the disclosure of false statements, which means that the false statements were first publicly disclosed in newspapers, radio, television and other media issued or broadcast nationwide. Day. The shortcoming of this provision is that it does not give a scientific definition of the credibility of the revealer of false information and the report of the disclosed information. According to statistics, there are recent types of Chinese newspapers and periodicals, which makes it uncertain whether the information that contains the disclosure of false statements can be heard by audiences and viewers. The "Regulations" compulsorily use the media's disclosure reports as the basis for determining the base date, which is equivalent to forcing the public to pay close attention to any media reports at all times and give them unconditional trust. reasonable. These have brought many uncertain factors to judicial practice.

3.2 The physical dilemma of the civil liability system for IPO false statements

Defects in the Civil Liability System of False Statements of Listed Companies in Procedural Law There are also loopholes in the civil liability system of false statements, which are mainly reflected in the following aspects.

3.2.1 Start the proceedings is still difficult

Although the scope of acceptance of the "Regulations" has been expanded, the article still requires shareholders to take the administrative punishment decision of the relevant organs or the criminal judgment documents of the people's court to the court for prosecution before the case can be accepted. It is not easy for the people to obtain these instruments from various departments. The possible negative consequences are that shareholders sometimes know that listed companies have issued false statements, but they are suffering from the fact that the relevant departments have not investigated and punished them and cannot sue. The restriction to the sell-off date has inadvertently caused connivance to counterfeit listed companies. Therefore, although the "Regulations" have indeed made considerable progress compared with the previous "Notice", on the whole, I am afraid that the efforts to protect the legitimate rights and interests of investors are still insufficient.

3.2.2 To allow the use of litigation in the form of a lack of intensity

The "Regulations" stipulate that plaintiffs in civil compensation cases may choose to sue separately or jointly. This fundamentally excludes the form of class action lawsuits that provide the greatest protection to investors. There are disadvantages in these two types of lawsuits, which are not conducive to protecting the vital interests of investors. Once securities civil lawsuits occur, there are a large number of shareholders, how to choose a representative is very difficult to operate. At the same time, Articles 52 and 53 of the "Civil Procedure Law of the People's Republic of China" that the litigant representative shall be specially authorized by the plaintiff on his behalf to participate in the trial on behalf of the plaintiff, change or waive the litigation request, and reach mediation with the defendant protocol. This regulation will also encounter certain difficulties in operation. Because after the representative is selected, on behalf of the shareholder, to change, abandon the litigation request, or acknowledge the litigation request of the other party, to understand, you must call a shareholder meeting and obtain consent. This is very important in the

case of a large number of shareholders. Difficult to achieve. Even if it is realized, it will have to pay extremely high costs.

3.2.3 The lack of concrete measures to civil liability

From the sound procedures of China's current legal system, the more controversial is the lack of specific provisions for civil liability, and investors cannot find specific measures to protect their rights in law. The United States' disclosure of false statements of listed companies provides specific measures for civil liability. This is something we can learn from. For example, at the issue stage, it is clearly stipulated that investors who have suffered damage due to false information have the right to terminate the contract and request compensation for losses. In the trading market, you can participate in the provisions of the securities laws of various countries. The amount actually paid by the victim to purchase the security is deducted from the market punishment price when the damage is requested, or the price the victim has disposed of before the claim for compensation[7-9]. If the person liable can prove that all or part of the damage suffered by the plaintiff was caused by reasons other than information disclosure, he will not be liable for all or part of the damage.

4. China's IPO misrepresentation of civil laws and regulations to improve suggestions

4.1 The civil liability pre-procedure should be cancelled

Given the pre-set program of civil liability is not effective hair waving functions securities civil liability, civil liability recommendations should be phased pre-program. On the one hand, in the process of the reform of the IPO registration system, the information disclosure system will be continuously improved, and violations of information disclosure obligations by information disclosure obligors should be strictly regulated. The gradual cancellation of the civil liability pre-procedure and the role of the civil liability system in supervising the information disclosure obligor will help promote the further improvement and development of the information disclosure system; on the other hand, the gradual cancellation of the civil liability pre-procedure also conforms to securities law to protect investment Legislative purpose. Procedure of establishment of civil liability resistance hinder the exercise of the rights of investors in a timely manner, is not conducive to investors and achieve timely, efficient and comprehensive damage relief.

4.2 Joint and several liability should be amended to not truly joint and several liability

The difference between unreliable joint liability and joint and several liability lies in whether the right to claim can be exercised internally. Without true joint and several liability, the actual indemnifier may exercise the right of claim against other true indemnities. The establishment of unreal joint and several liability is in line with the requirements of the principle of self-responsibility, and is conducive to the real realization that the initiator, issuer and listed company should only be held liable for the damage caused by their actions ; replacing the joint and several liability with untrue joint and several liability also helps Achieve a balance within the company's internal governance structure. Therefore, the author proposes to change the civil liability between the responsible persons from joint liability to untrue joint liability, so as to achieve the balance between the principle of self-responsibility and the internal governance structure of the company, and promote the healthy operation and development of the securities market.

4.3 Clarification of civil liability for misrepresentation

An investor buys the related securities before the implementation date of the false statement and sells it before the false statement is disclosed or corrected . The investor chooses to sell at a low price due to the influence of the false statement. The loss suffered by it and the false statement should be considered as a causal relationship. It is an important measure to regulate the falsehood of false statements and to re-establish the standard for establishing the causal relationship between the falsehood of false statements and the damage[10].Therefore, whether it is the requirement of perfecting the rule of law of the securities market or the requirement of protecting the legitimate interests of investors, it is of great practical significance to clarify the civil liability of false false

statement behavior.

4.4 Modification of the definition standard of the disclosure date of false statements

In the "presumption of causation" based on the principles of the above, it is recommended to amend the definition of a false statement of disclosure. The "Several Provisions on False Statements" has stricter requirements on the disclosure date of false statements, which is not conducive to investor protection. Changed the strict standard for the disclosure of false statements to a flexible standard of "the date when false statements became widely known to the market and investors", giving the court a certain degree of discretion, so that the false statements were known before the disclosure date of the false statements Investors who state and sell securities "have law to rely on", thereby helping to change the plaintiff's unfavorable status of proof of causality and achieving the legislative purpose of securities law to protect investors.

4.5 Set the day when the investor is aware of the infringement of rights as the starting point for the limitation of lawsuits

The special provisions of the "Several Provisions on False Statements" on the limitation of lawsuits are not conducive to the active exercise of investors' right to sue and the function of the securities civil liability system. It is more reasonable to use the day when investors know that their rights have been infringed as the statute of limitations for cases of misrepresentation. Compared with the day when the administrative punishment is made or the day when the criminal decision is made, the day when the investor knows the infringement of rights is used as the starting point, which helps to avoid the dilemma of the investor losing his right to sue.

5. Conclusions

In summary, listed companies' false statements induce investors, directly infringe on investors' property rights, and shake investors' confidence in the securities market. A civil liability system for listed companies' false statements must be established in securities laws. On the basis of the general functions of civil liability, the civil liability of false statements of listed companies can play a positive role in curbing the false statements of listed companies, realizing the disclosure of company fundamental information in accordance with the law, and protecting the legitimate rights and interests of investors. Due to the imperfection of the current securities laws, and the government information disclosure supervision and justice have not been optimistic for a long time, the false statements of listed companies in China's securities market are very common. Under the combined influence of listed companies' false statements and other various factors, China's securities market has formed many accumulated disadvantages. As a result, the securities market has experienced several shocks. In the long run, not only will the development of China's securities market be restricted, but its own survival will also be limited. Will be threatened, we need to sum up our own experiences and lessons in a timely manner, boldly absorb and learn from the legislation, jurisprudence and doctrines of developed securities market countries, build a relatively complete theory of civil liability for false statements of listed companies, and protect the information disclosure of listed companies Provide theoretical support for conducting and protecting the legitimate rights and interests of investors. As mentioned earlier, the author makes a theoretical comparative analysis of analyzes the existing problems and countermeasures of civil liability of false statements in China. Explore and make my point. This is the end of the text. The author believes that with the acceleration of China's securities legislation, the legislation of a sound system of civil liability for false statements is not far off.

References

- [1] Li Chunrong. Main problems and countermeasures in the process of corporate IPO [J]. China Market, 2019 (36): 82-83.
- [2] Fan Jian. Research on Civil Liability of False Statements of "Holding Type" in China's

Securities Market [J]. *Securities Law Review*, 2017 (00): 264-280.

[3] Trish Saywell. Poor market conditions derail Triple Flag IPO[J]. *The Northern Miner*, 2019, 105(26).

[4] Liu Min. A Discussion on Preceding Procedure in Civil Action [J]. *China Law Science*, 2011 (06): 106-116.

[5] Dimitra Michala. Are private equity backed initial public offerings any different? Timing, information asymmetry and post-IPO survival[J]. *Journal of Corporate Finance*, 2019,59.

[6] Paul Geertsema,Helen Lu. Regulated price and Demand in China's IPO market[J]. *Journal of Economics and Business*, 2019,106.

[7] Jiangjing Que,Xueyong Zhang. Pre-IPO growth, venture capital, and the long-run performance of IPOs [J]. *Economic Modelling*, 2019,81.

[8] Ball R , Shivakumar L . Earnings quality at initial public offerings [J]. *Journal of accounting & economics*, 2008, 45(2-3):p.324-349.

[9] Thomas J. Boulton,Marcus V. Braga-Alves. Price stabilization, short selling, and IPO secondary market liquidity[J]. *Quarterly Review of Economics and Finance*,2019.

[10] Thomas J. Boulton,Scott B. Smart,Chad J. Zutter. Worldwide short selling regulations and IPO underpricing [J]. *Journal of Corporate Finance*, 2020.