CHINA
REGULATORY UPDATES

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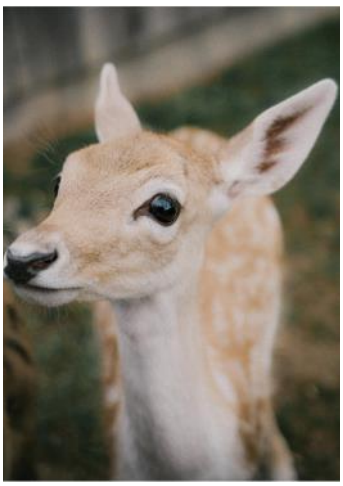

CAPITAL MARKET / 资本市场

CSRC Issues Interpretative Guidance on Articles 13 and 14 of the Administrative Measures for Takeover of Listed Companies 证监会发布《上市公司收购管理办法》第十三条、第十四条的适用意见

2025年1月10日，中国证券监督管理委员会（“证监会”）发布《证券期货法律适用意见第19号》（“《意见》”），对《上市公司收购管理办法》（“《收购办法》”）第13条和第14条做了进一步解释，澄清了此前实务中关于投资者持股达到特定比例时的公告披露和暂停交易的歧义，主要内容包括：

1. 明确投资者权益变动的刻度标准：根据《收购办法》第13条和第14条，(i)投资者通过证券交易所交易和协议转让方式收购上市公司股份达到5%后，持股比例每增加或者减少5%时应进行公告并在该事实发生之日起至公告后3日内暂停交易该上市公司股票，以及(ii)投资者通过证券交易所交易方式收购上市公司股份达到5%后，持股比例每增加或者减1%时应进行公告。实践中对该规定长期存在两种不同理解，一种认为投资人应在持股比例达到5%或 1%的整数倍时（如持股比例达到10%、15%、20%时）履行相应义务，另一种认为投资应在持股比例增减量达到 5%时或1%时（如持股比例从6%增至11%）履行相应义务。为便于投资者理解及统一监管执法的标准，《意见》明确对前述条款采取第一种理解方式。
2. 豁免投资者在持股比例被动变化时的披露义务：若因上市公司行为（如增发股份、减少股本或可转债转股等）导致投资者持股比例变动并触及披露刻度标准，投资者无需公告或暂停交易上市公司股票，应由上市公司在股本变动登记完成后公告相关情况。但是，若被动变化导致投资者成为上市公司第一大股东或实际控制人的，投资人仍需要按照《收购办法》履行相应的公告义务。

On January 10, 2025, the China Securities Regulatory Commission (the “CSRC”) issued *Application Guidance on Securities and Futures Laws No. 19* (the “Guidance”), providing further clarification on Articles 13 and 14 of the *Administrative Measures for the Takeover of Listed Companies* (the “Takeover Measures”). The Guidance addresses ambiguities in practice concerning the disclosure and trading suspension obligations when an investor’s shareholding reaches certain specified thresholds. The key points are as follows:

1. Clarification of the Threshold for Changes in Investor’s Shareholding: According to Articles 13 and 14 of the Takeover Measures, (i) once an investor acquires 5% or more of the shares of a listed company through stock exchange transactions or by negotiated agreement, any subsequent increase or decrease in shareholding by 5% triggers a disclosure obligation and requires a trading suspension of the listed company’s shares from the date of such change until three trading days after the disclosure is made; and (ii) when an investor acquires 5% or more of the shares of a listed company through stock exchange transactions, any subsequent increase or decrease of 1% triggers a disclosure obligation

   In practice, two interpretations of these provisions have coexisted. One interpretation holds that an investor must fulfill disclosure and suspension obligations when the shareholding reaches an exact multiples of 5% or 1% (e.g., upon reaching 10%, 15%, or 20%), while the other interpretation maintains that obligations arise whenever the cumulative change reaches 5% or 1% (e.g., increasing from 6% to 11%). To ensure clarity and consistent regulatory enforcement, the Guidance affirms that the first approach - triggering obligations when holdings reach 5% or 1% increments - shall apply.
2. Exemption from Disclosure Obligations for Passive Changes in Shareholding: If an investor’s shareholding percentage changes and reaches the disclosure threshold due to corporate actions taken by the listed company (such as issuance of new shares, capital reduction, or conversion of convertible bonds), the investor is not required to make a disclosure or suspend trading in the listed company’s shares. Instead, the listed company is responsible for disclosing the relevant information upon completion of the share capital change registration. However, if the passive change results in the investor becoming the largest shareholder or the de facto controller of the listed company, the investor is still required to fulfill the corresponding disclosure obligations under the Takeover Measures.

DATA SECURITY / 数据安全

CAC Issues Administrative Measures for Compliance Audits on Personal Information Protection 国家网信办出台《个人信息保护合规审计管理办法》

2025年2月12日，国家互联网信息办公室（“国家网信办”）颁布了《个人信息保护合规审计管理办法》（“《办法》”）及附件《个人信息保护合规审计指引》（“《指引》”），并将于2025年5月1日起正式实施。《办法》及《指引》涉及的要点有：

On February 12, 2025, the Cyberspace Administration of China (“CAC”) promulgated the *Administrative Measures for the Compliance Audits on Personal Information Protection* (the “Measures”), along with its annexed *Guidelines for the Compliance Audits on Personal Information Protection* (the “Guidelines”). Both the Measures and the Guidelines will come

1. 细化合规审计的方式及适用情形：《个人信息保护法》规定了个人信息处理者的定期合规审计义务和监管强制合规审计义务。《办法》进一步明确：定期合规审计可以由企业内部机构或委托的外部专业机构进行，而监管强制合规审计应当由按照监管部门要求选定的专业机构进行。触发监管强制合规审计的主要情形有：(i)监管部门发现个人信息处理活动存在较大风险，(ii)个人信息处理活动可能侵害众多个人的权益，或(iii)发生导致100万人以上个人信息或10万人以上敏感个人信息受损害的个人信息安全事件等。
2. 提高大型个人信息处理者的合规要求：《办法》要求，(i)处理超过1000万人个人信息的处理者每两年至少开展一次合规审计；(ii)处理超过100万人以上个人信息的个人信息处理者需指定个人信息保护负责人，负责合规审计工作；(iii)提供重要互联网平台服务、用户数量巨大、业务类型复杂的处理者需成立由外部成员组成的独立机构监督合规审计情况。
3. 明确合规审计的具体事项：根据《指引》，个人信息处理者需要自查的合规审计事项主要涉及：(i)个人信息处理活动，(ii)个人信息合作处理，(iii)个人信息权利保障与义务履行，以及(iv)个人信息保护措施与应急处理等方面。

into effect on May 1, 2025. The key noteworthy points under the Guidelines include:

1. Refinement of Compliance Audit Methods and Applicable Scenarios: The *Personal Information Protection Law* establishes obligations for personal information processors to conduct periodic compliance audits and regulatory compliance audits. The Measures further clarify that periodic compliance audits may be conducted by the organization's internal departments or by external professional institutions engaged by the organization. In contrast, regulatory compliance audits must be carried out by a professional institution designated in accordance with regulatory authorities' requirements. Regulatory audits may be triggered under the following circumstances: (i) when the regulatory authority identifies substantial risks in personal information processing activities, (ii) when personal information processing activities may infringe upon the rights and interests of a large number of individuals, or (iii) when a personal information security incident occurs, affecting over one million individuals' personal information or over 100,000 individuals' sensitive personal information.
2. Enhanced Compliance Obligations for Large-Scale Personal Information Processors: The Measures impose heightened compliance obligations on large-scale personal information processors. Specifically: (i) personal information processors handling the personal information of more than 10 million individuals must conduct at least one compliance audit every two years; (ii) personal information processors handling the personal information of more than one million individuals are required to designate a person responsible for personal information protection, who will oversee compliance audit matters; and (iii) personal information processors that provide essential internet platform services, have a large user base, or engage in complex business operations must establish an independent body composed of external members to supervise compliance audit matters.
3. Specification of Compliance Audit Items: According to the Guidelines, personal information processors are required to conduct self-assessments covering such key areas of compliance as: (i) personal information processing activities, (ii) cooperative processing of personal information, (iii) protection of personal information rights and fulfillment of corresponding obligations, and (iv) personal information protection measures and emergency response mechanisms.

ANTI-MONOPOLY / 反垄断

SAMR Clarifies Discretionary Benchmarks for Penalties on Illegal Concentrations of Undertakings 市场监管总局明确违法实施经营者集中的处罚裁量基准

为配合《中华人民共和国反垄断法》（"《反垄断法》"）的实施，2025年3月25日，国家市场监督管理总局（"市场监管总局"）正式发布《违法实施经营者集中行政处罚裁量权基准（试行）》（"《基准》"），自发布之日起施行并适用于2022年8月1日

To facilitate the implementation of the *Anti-Monopoly Law of the People's Republic of China* (the "AML"), the State Administration for Market Regulation ("SAMR") officially released the *Discretionary Benchmarks for Administrative Penalties on Illegal Concentrations of Undertakings (Trial Implementation)* (the "Benchmarks") on March 25, 2025. The Benchmarks took effect immediately upon issuance and apply to violations occurring on

以后发生的违法行为（但已作出处罚决定的案件除外）。

《基准》旨在对不具有排除、限制竞争效果的违法集中的处罚从“一刀切”的最高可罚款500万元的标准，细化分为3个梯度进行管理。对于此类违法集中的初步处罚标准为250万元，如有从轻情节的，可将初步标准调低为100万元，如有从重情节的，可将初步标准调高至400万元；市场监管总局将在前述初步标准的基础上根据违法案件的具体情形确定最终的处罚金额。《基准》还设置了以下两个不予处罚的特别情形：(A)经营者首次违法且在被市场监管总局发现前已主动报告并整改的，或(B)经营者能够证明已尽审慎评估义务但因客观情况导致违法的。

or after August 1, 2022, except for cases where a penalty decision has already been made.

The Benchmarks aim to refine the penalty standard for an illegal concentration of undertakings does not have the effect of eliminating or restricting competition, moving away from a blanket maximum fine of RMB5 million to a three-tiered approach. the initial penalty benchmark for such violations is set at RMB2.5 million. This amount may be reduced to RMB1 million if mitigating circumstances exist, or increased to RMB4 million if there are aggravating factors. SAMR will determine the final penalty amount based on the specific circumstances of the violation, using the initial benchmark as a reference. Additionally, the Benchmarks specify two exceptional circumstances under which no penalty will be imposed: (A) where the undertaking committed a violation for the first time and voluntarily reported and rectified the issue before being detected by SAMR, or (B) where the undertaking can demonstrate that it has fulfilled its duty of prudent assessment and the violation occurred due to objective circumstances.

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