

Legal Research on the Construction of Advance Compensation Mechanism in China's Securities Market

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Abstract: *The legal nature of the advance compensation in the securities market is more inclined to the legal agency settlement system. As the main body of the advance compensation, the sponsor institution bears the liability for compensation externally and enjoys the right of claim internally. The existing advance compensation mechanism has problems such as unclear compensation standards, opaque and unfair compensation procedures, unclear starting point, and unclear relationship with the issuer's administrative reconsideration administrative litigation. There are not many related research results. In the future mechanism construction process, the amount of compensation should consider market risk factors, clarify the legal concept of the advance compensation mechanism, handle the relationship between advance compensation and administrative reconsideration, administrative litigation and administrative compensation, and introduce solutions such as the hearing system.*

Keywords: *advance compensation mechanism, advance compensation procedure, settlement agreement, legal agency settlement*

1. Introduction

With the development of China's securities market, the number of compensation cases for false statements is increasing every year, and the protection of investors is imminent. The China Securities Regulatory Commission takes the reform of the securities market as an opportunity to propose the construction of an advance compensation mechanism. This paper will elaborate it from four aspects: compensation mechanism, compensation standard, compensation problem and compensation procedure from three perspectives: its legal principle, the defects of the current system and the construction of conjecture.

2. Construction principle of advance compensation mechanism

Article 18 of the second chapter of " Guidelines for the Content and Format of Corporate Information Disclosure of Publicly Issued Securities No.1 - Prospectus (2015 Revision) " states that if the sponsor promises to compensate investors for losses caused to investors by false records, misleading statements or major omissions in the documents produced or issued by the sponsor for the issuer's initial public offering of shares, it will compensate investors in advance. It is not difficult to find that the advance compensation mechanism is the sum of the legal systems in which the sponsor institution compensates the qualified investors before the judicial judgment and obtains the corresponding internal recovery rights based on the prior self-discipline commitment when the issuer first makes a false statement. The main point is to compensate the qualified investors before the judicial judgment, rather than to reduce the intensity of the administrative penalty before the administrative penalty. Therefore, the core of advance compensation is to advance the damaged investors in a short period of time. It is presumed that the sponsor institution has certain responsibility for this, and its purpose is to ensure the stability of the securities market. The responsibility of the sponsoring institution does not necessarily mean that it is at fault. According to the spirit of the ' Securities Law ' and ' Several Provisions on the Trial of Civil Cases Caused by False Statements in the Securities Market ' (hereinafter referred to as ' Provisions '), it is presumed that it should bear certain social responsibility and legal responsibility, and whether it bears the ultimate civil liability is not in question. However, this system design itself has a greater burden on sponsors. Therefore, before the start of the advance compensation mechanism, it is necessary to confirm whether the issuer has a false statement, and the confirmation of this situation should be based on a

credible report or punishment. The specific time point of the administrative penalty of the CSRC is of course an important point in the advance compensation mechanism[1].

The construction principle of the advance compensation mechanism can be divided into three parts of the legal relationship with the sponsor as the core: first, the internal legal relationship based on the sponsor liability and the issuer; the second is the legal relationship based on the external advance compensation to investors; the third is the legal relationship between the sponsor and the securities investor protection fund, which will be discussed below [2].

2.1. Internal legal relationship

The internal legal relationship refers to the internal responsibility sharing problem and the legal nature of the advance compensation mechanism between the sponsor institution of the advance compensation subject and the issuer of other compensation liability subjects, the issuer's board of directors and the securities service institution, the issuer's controlling shareholder and the actual controller.

When the sponsor institution makes advance compensation to investors, the sponsor institution bears a possible liability for compensation. In other words, according to Article 7 and 'Provisions' of the 'Measures for the Administration of Sponsor Business', the advance compensation of the sponsor institution is essentially a legal mechanism for advance payment in the case that the sponsor institution may have fulfilled its sponsor liability, but there is still a case of false statement by the issuer. If the sponsoring institution constitutes the situation of Article 27 of the "Regulations," if it knows or should know the false statements of the issuer or the listed company, and does not correct or does not issue a reservation, it constitutes joint infringement and bears joint and several liability for the loss of the investor, that is, in the case of joint infringement, the advance compensation of the sponsoring institution is to a certain extent the commitment of its own responsibility and the advance fund-raising behavior of other responsible subjects such as the issuer[3].

In the advance compensation mechanism, regardless of whether it should finally assume responsibility or not, a special responsibility is formed between the sponsor and other responsible subjects. In essence, it is a legal agency settlement behavior for other internal responsible subjects. The legal connotation is determined according to the 'Guidelines for the Content and Format of Corporate Information Disclosure of Publicly Issued Securities No. 1 - Prospectus (revised in 2015)'. The so-called agency settlement is the characterization of the legal nature of the part that is responsible for the responsibility of other responsible subjects. In this agency liquidation relationship, there is no need to sign a relevant agency agreement between the agent and the principal, but it is regulated by normative documents. In the internal relationship, the sponsor institution can enjoy different degrees of recourse rights to other responsible subjects according to the size of its own fault, and such recourse rights should be ordinary creditor's rights. If the sponsor has fulfilled the sponsor's responsibility, it will obtain the full recovery right. If there is a fault, it will share the responsibility with the corresponding responsible subject according to the degree of fault[4].

2.2. External legal relations

The external legal relationship refers to the relationship of rights and obligations between the subject of advance compensation and other responsible subjects and objects of compensation. According to the securities law and 'regulations', if there is no advance compensation mechanism, the issuer will bear strict liability, the controlling shareholder and the actual controller will bear fault liability [3], and other institutions, including sponsors, will bear fault presumption liability; in the case of being able to prove its fault, the above-mentioned subject shall bear joint and several liability. In the case of the confirmation of the establishment of the advance compensation mechanism, the advance compensation does not actually change the above-mentioned imputation principles and exemptions, but only an act of agency settlement. The debts paid under the system and the creditor's rights enjoyed by the sponsoring institution will have different legal effects on the principles and exemptions according to different provisions for different subjects. Under this system, the sponsor institution should become the legal liability subject of the first agent due to its due diligence and continuous supervision. Therefore, in the external legal relationship, investors can only first claim against the sponsor institution, that is, the legal agent of the responsible subject, under the advance compensation mechanism. Investors who refuse to participate in the advance compensation mechanism can also directly safeguard their legitimate rights and interests through litigation. Considering the time cost factor and the investor's right to choose, allowing investors to pass litigation without the advance compensation mechanism is the embodiment of protecting the

investor's right to appeal[5].

2.3. Legal relationship of special compensation fund

As the main body of advance compensation, sponsors must introduce specific compensation standards and determine the amount of compensation funds for investors. According to the current situation of China's securities market, tens of billions of losses have been brought to investors by false statements. Therefore, how to properly manage the compensation funds has become the top priority of the compensation mechanism. In order to prevent conflicts of interest, sponsors should set up a special compensation fund to manage the compensation funds. Once the special compensation fund is established, its management power should be transferred from the sponsor to the China Securities Investor Protection Fund Company. The legal relationship between the investor protection fund company and the sponsor is between the trustee and the principal. The sponsor pays the management fee to the fund company, and the value-added part of the compensation fund can only be used for the compensation of the investor. The special compensation fund needs to be separated from the investor protection fund company's own funds and other assets to establish a firewall system. The trustee has two standards of behavior, namely, the duty of loyalty of 'preventive' and the duty of care of 'protective'. Such trust trusteeship should be clearly regulated by normative documents to clarify the obligations of investor protection fund companies. Of course, the special compensation fund also has the legal independence granted by the trust law to ensure the exclusive use of funds[6].

3. Analysis of the institutional practice of the advance compensation mechanism

3.1. The operation mode of the current advance compensation mechanism

According to the advance compensation model of Xingye Securities, it can be found that the current operation mode of the advance compensation mechanism is that when the CSRC conducts a case-filing inspection of the false statement behavior of the initial public offering of listed companies, in order to obtain the CSRC's discretion to mitigate the punishment, the sponsoring institution will announce the establishment of a corresponding special compensation fund to compensate investors who are damaged by false statements. The compensation standard is determined by holding a meeting of the internal board of directors of the sponsoring institution. When appropriate, experts and scholars related to securities law are invited, and several investor representatives and securities rights lawyers are invited to negotiate the relevant compensation standards. According to the actual situation, a special compensation fund is set up, and the China Securities Investor Protection Fund Company acts as the manager of the fund. The investor who applies for compensation is examined for eligibility and finally paid. And recover the relevant final liability subject [7].

3.2. Deficiencies

The shortcomings of the current advance compensation mechanism are very obvious. First, the formulation of compensation standards. The subject of the pre-payment standard after foreign securities infringement is separated from the subject of liability for pre-payment. However, whether in the Wanfu Biotechnology case or in the recent Xintai Electric Appliance case, the model they adopted is to formulate relevant compensation standards on their own. Although the advance compensation mechanism has a certain color of civil law, that is, there is a certain factor of autonomy of will, however, in the securities law, the strict requirements of the procedure are the embodiment of the intrinsic value of the securities law. The susceptibility of securities infringement makes it fair and just as far as possible in the subsequent relief channels, with a certain nature of public law. Therefore, only by holding closed-door meetings and formulating the compensation standard, it does not conform to the 'three fair' principles of fairness, openness and justice in the securities law. The compensation standard formulated by this procedure should be invalid from the legal point of view.

Second, the setting of the amount of advance compensation is not clear enough, and this point is essentially the nature and effectiveness of the advance compensation agreement. There is no conclusion on whether this kind of compensation agreement with the color of securities law should comply with the autonomy of will or the mandatory provisions of public law. At present, the China Securities Industry Association has not yet made provisions on the scope of compensation and specific compensation standards for the advance compensation mechanism. Whether the application of the advance compensation mechanism is to apply the judicial interpretation 'provisions' on the victim's loss, or to

follow the autonomy of the will to allow limited fluctuations, or to be both a referee and an athlete by the sponsor institution, whether it is theoretical or practical, has not reached a consensus[8].

The third is the starting point and mandatory problem of the advance compensation mechanism. Although in the eyes of some scholars, it is a process of voluntary compensation, if there is no relevant norms to regulate its start and end, clear and appropriate mandatory, it will make the advance compensation mechanism become a mere formality. In the face of this problem, it is necessary to deal with the mandatory issue of the start and end of the advance compensation mechanism and whether there is an inevitable conflict between administrative reconsideration and administrative litigation.

These three problems exist in the latest advance compensation mechanism of Xintai Electric Appliance, which has become the biggest obstacle to the advance compensation, seriously damaging the interests of investors, and there is no way to play the role of advance compensation.

4. The ought-to-be construction idea of the advance compensation mechanism

4.1. The nature of the advance compensation agreement

The essence of the advance compensation agreement is a settlement agreement between the two civil subjects. The two parties agree on the relevant compensation standards, and a settlement agreement is reached. However, the settlement agreement has certain particularity. It is a standard contract, and it also needs to follow the relevant regulations of the legal provisions of the standard terms. That is, the sponsor institution, as the legal agent of the responsible subject, shall not set the terms that are obviously unfavorable to the investor in the compensation standard, otherwise the terms are invalid.

After the settlement agreement is reached, the author believes that whether it can be prosecuted based on the settlement agreement should be specifically analyzed according to the construction status of the advance compensation mechanism. At present, there is no direct normative document to provide clear and detailed provisions on the advance compensation mechanism, especially in the formulation of standards with a very strong nature of unfairness. Sponsoring agencies use the high time cost of judicial relief procedures and the complexity of relief procedures. In the specific compensation process, they may use their own advantages to formulate a compensation standard that is obviously unfavorable to investors through unfair procedures, and is far from the calculation of the amount of compensation in the 'provisions', which is not conducive to the protection of investors. In this case, it is not reasonable to deprive investors of the right to appeal after accepting the advance compensation agreement. If the China Securities Association makes detailed and specific provisions on the compensation conditions, standards and procedures of the advance compensation mechanism, it needs to review the effectiveness of the agreement according to specific procedures. Due to the existence of the association's review of its agreement, then generally speaking, after reaching a pre-payment agreement, it is sued to the court, and the court should not accept it, otherwise it will make investors take advantage of the loopholes in the system, first through the pre-payment mechanism to get a lower standard compensation amount, and then through litigation to obtain high compensation, which is contrary to the original intention of the establishment of the pre-payment mechanism. Investor abuse of litigation is not conducive to the stability of the securities market. However, in certain circumstances, such as the standard terms of exemption from their responsibilities, increase the responsibility of investors, excluding the other party's main rights, investors can sue to declare the standard terms invalid[9].

As for whether the victim can refuse to participate in the advance compensation mechanism, the author believes that there is no problem. If the compensation standard is formulated after a fair and open procedure, the injured party is not satisfied with the compensation standard, of course, it can be claimed through the channel of judicial relief and in the form of litigation, which is the embodiment of protecting the right of action of investors. In practice, most investors will not safeguard their legitimate rights and interests through the channels of judicial relief. Compared with the advance compensation, judicial relief is more time-consuming, and the probability of mediation is high. The courts with jurisdiction are not the same as the location of the investor's household registration, and the geographical cost is high. It cannot make up for its own losses in time. Therefore, there is no obstacle in theory or in practice to protect the investor's right to refuse to participate in the advance compensation.

4.2. The setting of the amount of advance compensation

Regarding the setting of the amount of advance compensation, if the current advance compensation

mechanism is not mature, the author believes that it is best to calculate the calculation formula of the investment difference in strict accordance with the ' regulations ' to protect the rights and interests of investors, and should not consider the impact of other factors.

If the relevant mature mechanism is introduced in the future, the setting of the advance compensation amount should determine a reasonable range and a standard value, and be compensated within a reasonable range. As for whether the market risk factors and inflation factors should be considered in the amount of advance compensation, the current theoretical circles agree that the factors of index fluctuation, that is, the market risk factors, should be considered. Because in the securities market, especially in the stock market, the market risk factors are the systematic risk factors, which have a greater impact on the price of securities, and can be quantitatively analyzed on the size of the influencing factors of individual securities. Considering the market risk, the market risk can also be eliminated in the investment loss, so as to be closer to the real loss value of individual investors.

The impact of inflation factors on stocks and bonds is not the same, limited to space, it is difficult to remove it from the price factor, not discussed in detail, but in practice can be considered to be removed. Eliminating the relevant risk factors can not only make the compensation amount closer to the real value of the loss amount, but also increase the number of advance compensation objects, play a role in extensive compensation and stabilizing the securities market, and also provide reasonable relief to investors.

4.3. The justification of the procedure for the formulation of the advance compensation standard: the introduction of the hearing system

The justification of the procedure for the formulation of advance compensation standards has always been one of the focuses of controversy between securities rights lawyers and related securities companies and sponsors. One thing is certain, although the proof.

Start. The start of the hearing is actually the start of the advance compensation mechanism, and its start should be automatically started and should not be started by the sponsors unilaterally, because in all cases of fraudulent issuance, including false statements, the sponsors have faults to varying degrees. Combined with the principle of imputation of the ' Securities Law ' to the fault presumption of the sponsors, the automatic start of the hearing is also conducive to the protection of the legitimate rights and interests of investors and the implementation of the advance compensation mechanism. And because of the principle of avoidance, the hearing must not be presided over by the sponsor or investor representative.

On the starting point of the hearing, according to the concept of the advance compensation mechanism, its establishment itself does not mean that the sponsor institution should finally assume full responsibility or assume responsibility. It is only an alternative institutional arrangement, that is, investors can choose to take the judicial approach or the way of the advance compensation mechanism. Then, the start of the hearing may be the day of disclosure of false statements, or it may be subject to the filing inspection date of the CSRC. The day of false statement disclosure refers to the day when false statements are publicly disclosed for the first time in newspapers, radio stations, television stations and other media issued or broadcast nationwide. Since the date of public disclosure, the price of securities will be greatly affected by the disclosure. Some scholars have pointed out that the filing inspection date of the CSRC should prevail, because the filing inspection of the CSRC can explain the existence of certain false statements to a certain extent. In fact, this involves a core issue, that is, how to understand the " first " in the advance compensation mechanism. The author believes that the " first " in the advance compensation mechanism refers to the judgment of civil cases caused by false statements in the securities market. To enter the judicial process, it is necessary to first have the administrative penalty decision of the relevant organ or the criminal judgment document of the people's court. Generally speaking, the decision made by the administrative penalty is prior to the criminal judgment documents of the people's court. Therefore, when the decision of the administrative penalty is made, the court can accept the relevant false statement cases. According to the proper meaning of the advance compensation mechanism, the time point of its automatic start should be started the next day after the administrative penalty is made.

Specific matters of the hearing. Regarding the presiding party of the hearing, the presiding party of the hearing should also be the initiator of the advance compensation mechanism, and the initiator must not be held by the sponsor institution, otherwise there will be an indefinite delay. Similarly, it cannot be held by the investor group because the interests are related, and the investor group, despite the large number, lacks a certain cohesion, and is vulnerable to other factors in the process of hearing negotiations.

From the perspective of the current reform direction of the advance compensation mechanism, the

China Securities Regulatory Commission has made it clear many times in its announcements and press conferences that the specific provisions on the establishment of the advance compensation mechanism are formulated by the China Securities Industry Association, and the investor protection fund has not become one of the main bodies. This reveals that an obvious attitude of the CSRC is that although the advance compensation mechanism should be mandatory, including the automaticity of initiation, the process of negotiation and the expression of intention are still the affairs between the subject of false statement liability represented by the sponsor institution and the parties represented by the investor, which belongs to the category of private law autonomy. As a public institution directly under the State Council, the China Securities Regulatory Commission is an administrative subject. It is not appropriate to intervene in the exercise of administrative functions and powers. Instead, it is stipulated by the China Securities Association, an organization between public power and private power. And from a professional point of view, the Securities Dispute Mediation Center of the China Securities Association has rich experience in mediation. The China Securities Industry Association can become the host of the hearing, and the specific organizer should be the Securities Dispute Mediation Center of the China Securities Association. The subjects participating in the hearing should include the subjects who are necessarily or may bear the liability for compensation represented by the sponsor institution, as well as the representatives of the investor and their securities rights lawyers. In terms of the number of personnel, the two sides should maintain a balance. Regarding the selection of investor representatives and securities rights lawyers' representatives, it shall be decided during the announcement period, in accordance with the application of the investor and the application of securities rights lawyers, through its internal selection, and if the expiration fails to reach an agreement, it may be decided by drawing lots. In the hearing, the specific compensation plan is determined, including the specific amount of compensation, the timetable for the examination of compensation qualifications and other specific matters. The hearing should make a record and need to refer to the exclusive principle of the case file. The whole process of the hearing needs to be made public. The end time of advance compensation. The start of the pre-compensation mechanism does not mean that the protection of investors has been put in place. The establishment of the pre-compensation mechanism is intended to compensate before the judicial referee in order to quickly restore the confidence and order of the securities market. Therefore, only the timely payment can reduce the number of judicial remedies. The decision of the end point should be made clear in the hearing. However, in order to enable investors to get compensation in time, the China Securities Industry Association needs to limit the time spent on the whole procedure of the advance compensation mechanism when formulating relevant rules. Generally speaking, the civil case is first-instance for 6 months. As an alternative institutional arrangement, the advance compensation mechanism should not take longer than the first-instance, and it is generally appropriate to stipulate 3 months against the summary procedure of civil cases.

4.4. The relationship between the advance compensation mechanism and the administrative reconsideration and administrative litigation of the issuer and other responsible subjects.

The pre-payment mechanism is an alternative institutional arrangement for stabilizing the order of the securities market before the judicial adjudication of investors. After the issuer and other responsible subjects are subject to administrative punishment, administrative reconsideration and administrative litigation are proposed. If the latter's relief approach revokes the administrative punishment previously committed, how should the prior compensation that has been carried out be handled? The biggest role of the pre-compensation mechanism is to maintain the order of the securities market. Once the compensation behavior is completed, it cannot be restored to the original state. According to the principle of the stability of the law, it cannot be rejected on the grounds of administrative reconsideration or administrative litigation. The pre-compensation mechanism will be empty and become a mere formality. As for the revocation of the subsequent administrative act, it is a legal issue between the issuer, the sponsor institution and the China Securities Regulatory Commission, rather than a question discussed in the advance compensation mechanism, which can also urge the China Securities Regulatory Commission to treat it rigorously in administrative penalties. In the case of Xintai Electric Appliance, it is wrong for Industrial Securities to refuse to implement the advance compensation plan on the grounds that the issuer proposes administrative reconsideration, which is an act of delaying time.

5. Perfect the related supporting mechanism of advance compensation

5.1. Construction of positive incentive mechanism

As early as 2015, the CSRC has taken the compensation of the parties involved as one of the prerequisites for starting the administrative reconciliation procedure, and in 2018, the " Decision on Amending Several Opinions on Reforming and Perfecting and Strictly Implementing the Delisting System of Listed Companies " clearly stated that " companies suspected of fraudulent issuance or their controlling shareholders and actual controllers may repurchase or acquire all new shares in accordance with public commitments before being subject to administrative punishment by the CSRC, compensate for the economic losses of small and medium-sized investors, and timely apply for their shares to withdraw from market transactions. Under the authorization of Article 171 of the Securities Law, the relevant responsible subjects for compensating investors for losses may even be completely exempted from punishment because the CSRC terminates the investigation. Appropriately reducing the legal liability of the subject of advance compensation at the administrative supervision level and the criminal justice level is helpful to stimulate the enthusiasm of the subject of liability compensation, which has become the consensus of the theoretical and practical circles. In particular, the revision of the ' Securities Law ' has greatly increased the intensity of administrative penalties for securities violations, and lighter or mitigated penalties are more likely to become the main driving force for the first payment of liability subjects. How to combine the provisions of Article 93 and Article 171 to produce the incentive effect of active compensation by the responsible subject? First, the advance compensation procedure should be initiated during the ' investigation period ' of the parties involved by the CSRC, but it is not necessary to complete all the compensation work before the administrative penalty is made. In theory, the ' investigation period ' of securities administrative reconciliation involves three time nodes: ' notice of investigation ', ' notice of administrative penalty ' and ' decision of administrative penalty '. It covers the period from the receipt of ' notice of legislative investigation ' by the administrative counterpart to the ' decision of administrative penalty ' by the CSRC. According to the design of the time point of administrative reconciliation, the subject of illegal liability can claim advance compensation at any time before the ' administrative penalty decision ' is made. In practice, the advance compensation is more often manifested as a complex continuous process, so it should be allowed to extend the actual compensation work to the end of administrative punishment or criminal punishment based on certain special circumstances. Second, the administrative settlement can include advance compensation. According to the respective rules of the two systems, the compensation subject needs to provide a special fund for advance compensation in accordance with the agreement of the compensation agreement; the administrative counterpart should pay the administrative settlement to fulfill the administrative settlement agreement. The administrative settlement fund is the fund paid by the administrative counterpart according to the administrative settlement agreement reached with the CSRC. It is operated by the investor protection fund company and is used to compensate investors who have suffered losses due to suspected illegal acts. It is not different from the formation, function and management of the advance compensation special fund. The administrative counterpart who applies for administrative reconciliation is often the subject of liability for intentional advance compensation. Combined with the application of the lenient rules of administrative punishment, the administrative reconciliation system can encourage more responsible subjects to actively participate in the establishment of special funds and jointly compensate investors. Third, enhance the effectiveness of the advance compensation agreement through securities administrative reconciliation. The advance compensation agreement belongs to the civil settlement agreement, but it is different from the traditional civil settlement agreement. The strong attachment and otherness need the agreement itself to have certain 'rigidity '. According to the rule design of Article 171, it is a way to strengthen the effectiveness of the agreement by incorporating the advance compensation agreement as a specific measure for the responsible subject to eliminate the impact of illegal acts into the administrative reconciliation system. On the one hand, the securities regulatory agency with a neutral market position acts as the executive guarantor of the advance compensation agreement. Compared with relying solely on the power of civil contract autonomy, it can greatly eliminate the uncertainties in the implementation of the agreement. On the other hand, the CSRC has the role of management and balance. Through the appropriate intervention of public power, the advance compensation plan is confirmed in advance as the content of the administrative reconciliation agreement, which helps to make the compensation plan more reasonable.

5.2. The conception of reverse incentive mechanism

This round of ' Securities Law ' revision clarifies the important role of investor protection agencies in

several specific rules. Under certain circumstances, investor protection agencies have the right to decide whether to initiate further legal action to help investors defend their claims. The author believes that these institutional rules that focus on protecting the interests of investors are linked to the advance compensation system, which may stimulate the willingness of relevant responsible subjects to pay in advance from the negative side.

First, investor protection agencies can legally support investors to sue the court for acts that harm the interests of investors. In civil litigation, in order to protect the legitimate rights and interests of individuals, the support litigation system supported by organs, groups or enterprises and institutions has a long history, which is mainly applicable to large-scale civil claims. In 2016, the China Securities Small and Medium Investor Service Center (hereinafter referred to as the investment service center) began to try to adopt the way of supporting litigation in the securities field, helping investors to defend their rights in litigation as a supporter, and achieved initial results. According to the " Special Representative Litigation Business Rules (Trial) of the Small and Medium Investor Service Center of China Securities (SISC) " and the existing market practice, the cases that the investment service center chooses to support are generally securities infringement disputes involving numerous small and medium investors, prominent contradictions and great social impact. The " settlement agreement reached by the two parties to the dispute " does not fall within the scope of supporting litigation. For cases where advance compensation has been initiated or completed, it can be determined that the contradiction between the two parties has been weakened, and the investment service center is exempted from legal action accordingly. Secondly, the interests of the issuer suffer losses due to specific reasons (usually directors, supervisors, senior managers violate laws and regulations or the provisions of the company 's articles of association, controlling shareholders, actual controllers, etc.infringe upon the legitimate rights and interests of the company). Investor protection agencies can file lawsuits as shareholders of the company, and the shareholding ratio and shareholding period are not limited by Article 151 of the Company Law of the People 's Republic of China. Investor protection agency derivative litigation is a clause on corporate governance written in the chapter of " Securities Law " and " Investor Protection, " which is intended to demonstrate and lead investors to exercise their rights and safeguard their rights according to law. As a form of shareholder derivative litigation in company law, investor protection agency derivative litigation has a special nature and purpose. It is debatable whether internal relief procedures should still be exhausted from the perspective of legal research. However, the public welfare nature of the investor protection agency requires that it must take into account the cost investment before prosecution. If the company 's directors, supervisors, executives, controlling shareholders, actual controllers, etc.are willing to compensate investors in advance, the investment service center does not seem to be necessary to initiate shareholder derivative litigation. Thirdly, on the basis of not breaking through the existing provisions of the Civil Procedure Law of the People 's Republic of China (hereinafter referred to as the " Civil Procedure Law "), the revised " Securities Law " borrows the body of representative litigation with uncertain number of people, and designs the " Chinese-style securities collective litigation " system. Investor protection agencies are entrusted by more than 50 investors to participate in the litigation as a representative. The litigation mechanism of ' implicit participation and explicit withdrawal ' can effectively organize damaged investors and quickly form a large-scale plaintiff group. A difficult problem that has long plagued securities civil compensation litigation is expected to be solved. However, it should also be noted that there are only two investor protection agencies established by the CSRC.Limited by various resources, it is impossible not to make choices and take actions against all securities violations. According to the authorization of the CSRC, investor protection agencies can independently select pilot cases and initiate special representative litigation in ' typical securities civil cases with significant social impact '. Specific case situation, social public opinion, investor demand, administrative punishment or criminal judgment of relevant organs are the evaluation factors to be considered. The active compensation of the subject of liability for securities violations has left a lot of imagination space for investor protection agencies to exclude litigation.

6. Conclusion

The advance compensation mechanism in China 's securities market needs to play the intermediary role of the China Securities Industry Association, introduce the hearing system, standardize the procedures of the advance compensation mechanism, further clarify the nature of the agreement and the solution to the dispute arising from the agreement in legislation and judicial interpretation, and make a principled provision on the amount of advance compensation and leave appropriate discretion space.

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