

资本市场法律热点问题

近期交易所加强一线监管举措一览

自2017年下半年以来，监管层陆续采取一系列举措，通过修订监管规则和强化监管手段，加强沪深证券交易所(下称“**沪深交易所**”或“**交易所**”) 对证券市场的一线监管。根据我们的观察，这些举措主要包括以下方面：

一、修订《证券交易所管理办法》以加强对异常交易行为的监控

2017年11月17日，中国证监会公布了修订后的《证券交易所管理办法》(以下简称“**《办法》**”)，并于2018年1月1日起正式实施。《办法》的如下有关异常交易监控的修订内容特别值得关注：

- (1) 就交易所对证券活动的监管而言，《办法》要求交易所加大对异常交易行为的前端管控，明确交易所应就交易异常情况的认定和处理制定规则，对某些异常交易行为进行重点监控。
- (2) 就交易所对会员的监管而言，《办法》要求交易所会员建立客户交易行为管理制度，同时规定交易所可以对会员采取惩罚性违约金、取消会员资格等处理措施。
- (3) 《办法》明确交易所应当按照其章程和业务规则的规定对会员的遵守情况进行检查并向证监会报告，而会员管理的客户出现严重异常交易行为

或一定时间内多次出现异常交易行为时，交易所亦应对会员履行交易管理职责的情况进行现场或非现场检查。

二、成立合规检查部加强现场检查

为落实《办法》所规定的一线监管职责，深交所于2017年专门成立合规检查部，负责开展现场检查。据报道，沪深交易所自去年以来频繁采取现场检查模式，其检查对象不仅包括上市公司本身，还包括债券发行人、证券公司、中介机构等市场参与主体。相较于过去采用的“问询函”方式，现场检查更容易发现问询函方式无法发现的隐蔽、复杂的违法行为。

三、强化会员的管理责任

交易所对交易行为的监管有赖于会员适当履行对交易行为的管理责任。为此，2018年4月底，沪深交易所双双发布了《关于加强重点监控账户管理工作的通知》(以下简称“**《通知》**”)明确了交易所会员对异常交易的前端管控职责。

1、明确重点监控账户的监控要求

两交易所的《通知》对重点账户的规定基本一致，如下表所示：

	上交所	深交所
重点监控账户定义	因发生严重异常交易行为或者频繁发生异常交易行为，被交易所列入重点监控账户名单的证券账户。	
列入重点监控账户的异常交易情形	(1) 3个月内被交易所采取2次书面警示监管措施； (2) 被交易所采取暂停账户交易监管措施； (3) 被交易所实施限制账户交易纪律处分；	(1) 被交易所出具《限制交易警示函》； (2) 被交易所采取盘中暂停当日交易措施； (3) 被交易所采取盘后限制交易措施；
	(4) 滥用资金、持股、信息、技术等优势，实施严重异常交易行为或明显涉嫌市场操纵的； (5) 中国证监会或交易所认为应当予以重点监控的其他情形。	
重点监控期	6个月。 重点监控账户持有人在重点监控期内再次发生异常交易行为的，重点监控期顺延6个月。	12个月

2、明确交易所会员监管职责

两交易所的《通知》均规定交易所会定期向全体会员发送重点账户监控名单及相关信息，会员应当采取诸如及时联系客户、与客户签订证券交易委托补充协议、重新核查客户情况、对客户交易行为进行重点监控等方式对该等客户予以重点管理，并按时向交易所汇报重点账户监督管理情况。

对涉嫌异常交易的行为，会员应当及时警示客户，要求其规范交易行为；对可能严重影响正常交易秩序的异常交易行为或者涉嫌违法违规的交易行为，会员应当根据委托代理协议，拒绝接受其委托或终止与其他的证券交易委托代理关系，并及时以临时报告形式向交易所报告。

3、追究会员监管不力的责任

两交易所的《通知》均明确了会员监管不力情

况下，交易所可视情况对会员、相关责任人员采取相应自律监管措施，并在必要时对会员开展现场检查。例如，若重点监控账户持有人新开账户发生异常交易行为的，相关券商的合规风控、经纪业务负责人可能被要求进行谈话提醒，并视情况要求相关责任人员参加交易所的合规交易培训。

据报道，近期沪深交易所及证监局将对部分券商的客户交易行为管理工作及投资者适当性管理工作展开现场检查。

四、我们的观察

我们预期沪深交易所将会进一步采取相关措施，落实其自律监管职责并推进以监管会员为中心的监管模式，即加重券商对客户交易行为的管理责任，而针对券商的现场检查将可能成为常态化的监管手段。

谢 青 合 伙 人 电 话： 86 21 2208 6238 邮 箱 地 址： xieq@junhe.com
吴 曼 顾 问 电 话： 86 755 2587 0866 邮 箱 地 址： wum@junhe.com
秦 天 宇 律 师 电 话： 86 21 2208 6140 邮 箱 地 址： qinty@junhe.com

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Capital Market

Overview of the Exchanges' Recent Measures to Strengthen Market Supervision

Starting in the second half of 2017, the regulators adopted a series of measures, including amending regulatory rules and reinforcing regulatory means, to strengthen the front-line supervision of the securities markets by the Shanghai Stock Exchange (“SSE”) and the Shenzhen Stock Exchange (“SZSE”, collectively, “Exchanges”). The following major aspects of these measures have been observed.

I. Amendment of Measures on Administration of Stock Exchanges to Monitor Abnormal Trading

On November 17, 2017, the China Securities Regulatory Commission (“CSRC”) issued the amended Administrative Measures for Stock Exchanges (“Measures”), which took effect as of January 1, 2018. The following amendments of the Measures concerning abnormal trading monitoring are noteworthy.

(1) For the supervision of securities trading, the Measures require the Exchanges to further strengthen their upfront control of behaviors that lead to abnormal trading, formulate rules to define the abnormal trading behaviors and the corresponding disciplinary actions, and prioritize the disciplinary actions against certain abnormal trading behaviors.

(2) For the supervision of members, the Measures require each member of the Exchanges to establish a management system for clients' trading activities. At the same time, the Measures stipulate that the Exchanges may take self-disciplinary measures such as imposing punitive damages and cancelling membership.

(3) The Measures clearly state that the Exchanges shall conduct inspections to check on members' compliance for operation and compliance with the articles of association and the business rules of the Exchanges and report the same to the CSRC. If a client conducts one serious abnormal trading activity or multiple abnormal trading activities within a certain period of time, the Exchanges shall conduct on-site or off-site inspection and report the same to the CSRC.

II. Establishing the Compliance and Inspection Department to Reinforce Onsite Inspection

In order to implement the front-line supervisory duties specified by the Measures, the SZSE established the Compliance and Inspection Department in 2017 to carry out on-site inspection.

It was reported that the SSE and SZSE have undertaken frequent on-site inspections, checking on not only the listed companies but other market participants including bond issuers, securities brokers and intermediaries. Compared to the previous approach of issuing an “Inquiry Letter”, an on-site inspection measure is proving more likely to detect hidden and complicated illegal activities.

III. Intensifying the Management Responsibilities of Members

The Exchanges’ supervision of trading activities relies upon their members’ proper performance of their duties to manage client trading activities. To

this end, the SSE and SZSE respectively promulgated the Circular on Strengthening the Management of Accounts under Special Monitoring (“**Circular**”) at the end of April 2018 to clarify the responsibilities of the members regarding their front-line role in controlling abnormal trading activities.

(1) Specifying the Supervision Requirements for Accounts under Special Monitoring

The provisions of the SSE Circular and the SZSE Circular regulating an account under special monitoring (“**Account under Special Monitoring**”) are basically the same, as illustrated in the following table.

	SSE	SZSE
Definition of Account under Monitoring	Refers to any securities account that is under special monitoring due to the occurrence of one serious abnormal transaction or frequent abnormal transactions.	
Circumstances where an account may be placed under special monitoring	(1) Receiving two written warnings by the SSE within three months. (2) Being suspended for trading by the SSE. (3) Being restricted for trading disciplinary sanctions.	(1) Receiving a warning for restriction on trading by the SZSE. (2) Being suspended for trading during the trading hours of a day by the SZSE. (3) Being suspended for trading after the end of trading hours by the SZSE.
	(4) By taking advantage of capital, shareholding, information or technology, conducting serious abnormal trading activities or being under suspicion of conducting market manipulation; (5) Other circumstances determined by the CSRC or the Exchange.	
Special Monitoring Period	6 months If a holder of an “Account under Special Monitoring” resumes an abnormal trading activity during	12 months

	SSE	SZSE
	the special monitoring period, such period shall be extended for an additional six months.	

(2) Supervisory Duties of Members

Both Circulars stipulate the Exchange’s regular release of a list of “Accounts under Special Monitoring” and the related information to all members. When an account is listed as being an Account Under Special Monitoring, a member is required to take actions such as reaching out to the relevant client, entering into a supplemental agreement to the brokerage agreement with such client, re-verifying the status of such client and conduct additional monitoring on such client’s trading activities, and shall report to the exchange in a timely manner the actions that have been taken in relation to such “accounts under special monitoring”.

When abnormal trading activity is suspected, a member shall promptly alert the client and require it to correct such activity, while for an abnormal trading activity that may significantly affect the order of market or that is alleged to have violated a law or regulation, the member shall exercise its rights under the brokerage agreement to suspend the execution of orders entrusted by the client or even terminate the brokerage agreement with such client, and promptly file an interim report with the exchange.

(3) Liabilities of Members for Failing to Perform Supervisory Duties

Both Circulars specify that each respective Exchange has discretionary power to take self-disciplinary measures as appropriate against

its members or the relevant responsible personnel, or to conduct on-site inspections on its members where necessary, under those circumstances where the supervision and management by the relevant member are believed inadequate. For example, if abnormal trading activity was found relating to an account that had been newly opened by an account holder under special monitoring, both the person in charge of compliance and risk management and the person in charge of the brokerage of the relevant securities broker may be called in for a cautionary conversation, and any personnel held responsible may be ordered to attend a trading compliance training session held by the exchange.

It was reported that both SSE and SZSE and the local agencies of the CSRC will conduct on-site inspections on certain brokers to examine their performance of the management duties for client trading activities and investor suitability.

IV. Our Observations

We anticipate that both SSE and SZSE will take further measures to perform their self-disciplinary duties and to promote a “member-focused” model of supervision, which means focusing on the securities brokers’ responsibility to manage the trading activities of their clients. On-site inspections conducted on the securities brokers will possibly become a routine means of supervision by the regulator.

Natasha XIE	Partner	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Man WU	Counsel	Tel: 86 755 2587 2866	Email: wum@junhe.com
Tianyu QIN	Associate	Tel: 86 21 2208 6140	Email: qinty@junhe.com

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