

## Financial

### Client Briefing: Increased Scrutiny of Offline IPO Subscriptions in the A-Share Market

Regulators have recently strengthened self-disciplinary management of offline investors in the A-share market. The Shanghai Exchange (SSE) and the Shenzhen Exchange (SZSE) (collectively, the “Exchanges”), together with the Securities Association of China (SAC), successively conducted special inspections of certain offline investors and imposed self-disciplinary measures against several institutional investors found to have committed violations in the participation of offline IPO subscriptions earlier this year. Based on public information, below we offer a brief overview to these special inspections as well as the typical violations that have been subject to disciplinary sanctions.

#### I. More Frequent Special Inspections of Offline Investors

It has been reported that in 2021, the Exchanges, together with the SAC, have conducted two special inspections on the bidding behaviors of certain offline investors, namely, the joint self-disciplinary inspections of offline investors conducted by the SZSE and the SAC, and the special on-site inspection of the STAR Board offline investors conducted by the SSE. Based on the findings arising from these special inspections, the SSE and the SAC respectively imposed the

following self-disciplinary measures against offline investors whose bidding behavior was not in compliance with the relevant offline IPO rules:

(1) The SSE has issued written regulatory warnings to six private fund managers (PFMs) for their violations of relevant offline IPO rules in the STAR Board offline IPO subscriptions<sup>1</sup>.

(2) The SAC has imposed self-disciplinary measures on 11 institutional investors for their violations. Specifically, the SAC suspended offline investor credentials of a subsidiary of fund management company (FMC), and a PFM for three months, and one month for another PFM and a QFII; moreover, the SAC imposed self-disciplinary warnings to seven other PFMs.<sup>2</sup>

Since then, the SSE has formed seven workgroups to conduct special inspections on a number of offline investors in Beijing, Shanghai, Guangzhou and Shenzhen, of which the inspection targets including ten FMCs, six PFMs, one insurance company and two asset management subsidiaries of securities

<sup>1</sup> See <http://www.sse.com.cn/disclosure/credibility/members/measures/>.

<sup>2</sup> See [https://www.sac.net.cn/ljxh/xhqzdt/202107/t20210717\\_146922.html](https://www.sac.net.cn/ljxh/xhqzdt/202107/t20210717_146922.html).

companies<sup>3</sup>.

It is reported that the above-mentioned inspection targets were institutional investors who submitted highly consistent price quotes, have a large number of placement targets, or have significant market influence, selected by the SSE out of numerous recent IPO projects that have finished the Request for Quotation (RFQ) procedure by using the so called “big data” analysis. The SSE has discovered that certain institutional investors had non-compliant bidding behaviors such as incomplete internal control policies and operation procedures, non-compliant decision-making mechanisms for pricing, insufficient pricing basis, and failure to properly archive working documents.<sup>4</sup>

## **II. Summary of Violations Committed by Offline Investors**

Based on our observations of the recent special on-site inspection of the STAR Board offline investors conducted by the SSE in July 2021, as well as other special inspections conducted thereafter, below we summarized the most common activities targeted by regulators for sanctions:

### **(1) Insufficient Internal Policies and Operation Procedures or Failures of Implementation**

- Incomplete posts for bidding or unclear division of duties of relevant posts.
- Incomplete evaluation, decision-making or review procedures for bidding.
- Failure to establish a double-post for a double review for major operation process, for example, bidding is

implemented by only one person.

- Failure to establish policies to control communication devices or implement controls of communication devices of the personnel responsible for bidding on the date of RFQ.

### **(2) Insufficient Justification for Pricing or Non-Compliant Mechanisms for Determining Pricing**

- Pricing not based on sufficient research.
- Failure to establish effective evaluation and pricing models.
- Failure to clarify pricing range suggestions or failure to elaborate on parameter setting in the research report.
- Lack of logical reasoning from the pricing research to a final determined price quotes.
- Pricing arbitrarily based on subjective factors.
- Intentionally lowering price quotes in the evaluation and pricing process in order to increase the likelihood of winning the bid.

### **(3) Mishandling Price Quote Information, Increasing the Risk of Information Leakage**

- Conveying price quote information to traders verbally or through group messages in chatting APPs.
- Failure to control communication devices of the personnel responsible for bidding on the date of RFQ, increasing the risk of leaking important information such as price quotes.

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<sup>3</sup> See *Shanghai Securities News: Regulators Punch Out Again! Seven Workgroups Synchronized On-Site Inspections at Multiple Places, Details of Price Quotes Associated with STAR Board IPO Issues Were Exposed*, published on July 23, 2021.

<sup>4</sup> Please refer to footnote No.3.

(4) Failure to Properly Archive Working Documents

- Failure to keep records of and archive research reports, materials associated with the decision-making process for pricing, and the basis for pricing.
- Failure to finalize research reports or submit finalized research reports to internal system before the closing of RFQ.

### III. Supervision Mechanisms for Offline Investors

It is also reported that the SSE has established standard supervision mechanisms of bidding behavior of offline investors. The SSE may employ the following supervision methods:

(1) With respect to daily supervisory practices, the SSE may gain access to the issuer or lead underwriter of IPO projects that receive price quotes highly consistent with each other to understand the situation, as well as arrange regulatory interviews via phone or on-site with institutional investors exhibiting abnormal bidding behaviors to closely monitor the situation and reiterate regulatory requirements.

(2) The SSE has established behavior analysis models with respect to offline investor bidding, by which the SSE may analyze the details of bidding behaviors in the STAR Board IPO projects that have finished the RFQ procedure based on “big data”, screen out institutional investors who submitted highly consistent price quotes or whose bidding behaviors are seemingly arbitrary, and conduct special on-site or off-site inspections of such institutional investors by survey, regulatory interviews, or review of working documents.

(3) The SSE will strengthen coordination and consultation with the SAC in supervision of the

offline IPO process, and work more closely with the SAC to strictly punish violations arising thereof in accordance with regulations.

### IV. Self-Disciplinary Measures Applicable to Offline Investors for Non-Compliant Bidding Behaviors

Pursuant to Article 13 of the *Detailed Rules for Administration of IPO Offline Investors*, Article 7 and Article 9 of the *Detailed Rules for Administration of IPO Offline Investors on the STAR Board*, offline investors shall establish and strictly implement internal policies and operation procedures for offline IPO biddings and subscriptions. Moreover, offline investors shall bid reasonably based on sufficient research and in accordance with decision-making procedures for pricing.

In addition, pursuant to Articles 16 and 45 of the *Norms of Business of Underwriting IPO Shares*, and Article 15 of the *Norms of Business of Underwriting IPO Shares on the STAR Board*, behaviors prohibited in the offline IPO bidding and subscription include (1) bidding through consultation with other offline investors; (2) colluding with the issuer or underwriter of the bid; (3) using multiple accounts to bid; and (4) deliberately depressing or raising prices.

The Exchanges and the SAC may impose the following self-disciplinary measures within their respective authorities against offline investors found to have committed violations in accordance with the relevant Exchanges rules and the SAC disciplinary rules:

(1) Self-disciplinary measures by the Exchanges: Based on the circumstances of each case, the Exchanges may apply self-disciplinary measures such as regulatory talk, verbal or written regulatory warning, or may impose disciplinary punishments such as restrictions on trading, circulating a notice of criticism, and public censure.

(2) Self-disciplinary measures by the SAC: Based on the circumstances of each case, the SAC may impose a warning against offline investors, order them to rectify the matter, suspend their qualifications, or apply other self-disciplinary measures.

(3) Restricted List and Blacklist System of the SAC: In addition to the measures above, if offline investors or placement targets violate Article 45 or Article 46 of the *Norms of Business of Underwriting IPO Shares*, or Article 15 or Article 16 of the *Detailed Rules for Administration of IPO*

*Offline Investors on the STAR Board*, the SAC may add the offline investor or placement target to the “restricted list for allotment of IPO shares” (the “Restricted List”) or the “blacklist of offline investors” (the “Blacklist”). A placement target shall not participate in offline bidding on the STAR Board, Main Board, and ChiNext for the duration that it appears on the Restricted List, while all placement targets managed by an offline investor shall not participate in offline bidding on the STAR Board, Main Board, and ChiNext for the duration that the offline investor is on the Blacklist.

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## 金融法律热点

### A股市场加强对网下投资者的监管

近期，我们关注到监管机构加强了对A股市场网下投资者的自律监管。自今年起，上海证券交易所(以下简称“上交所”)、深圳证券交易所(以下简称“深交所”)(以下合称“沪深交易所”)联合中国证券业协会(以下简称“证券业协会”)先后对网下投资者开展了专项检查，并对存在违规行为的多家机构投资者采取了自律措施。我们将上述专项检查的基本情况以及涉及的网下投资者报价违规行为总结如下：

#### 一、沪深交易所、证券业协会频繁开展专项检查行动

据报道，自2021年以来，沪深交易所和证券业协会已先后两次对网下投资者的报价行为启动了专项检查，分别是深交所和证券业协会针对网下投资者开展的联合自律检查，以及上交所针对科创板网下投资者开展的专项现场检查。根据检查结果，上交所和证券业协会分别对存在违规的网下机构投资者采取了如下自律措施：

- (1) 上交所对在科创板首发网下询价过程中存在违规行为的6家私募基金管理人予以监管警示。<sup>1</sup>
- (2) 证券业协会对11家存在违规情形的机构投资者采取自律措施，其中包括：对1家基金公司子公司、1家私募基金管理人暂停网下投资者资格3个月；对1家私募基金管理人、1家QFII暂停网下投资者资格1个月；对7家私募基金

管理人予以警示。<sup>2</sup>

此后，上交所再次成立了7个专项检查小组，在北京、上海、广州、深圳等地对多家网下机构投资者开展专项检查，检查对象涉及10家基金公司、6家私募基金管理人、1家保险公司、2家证券公司资管子公司。<sup>3</sup>

据报道，上述被检查的机构投资者是上交所从近期完成询价的众多IPO项目中，通过大数据排查分析，筛选出报价一致性较高、管理配售对象数量较多、市场影响力较大的网下机构投资者。上交所检查过程中发现，部分机构投资者在参与科创板新股网下询价过程中存在内控制度与业务操作流程不完善、定价决策机制不规范、报价定价依据不充分、工作底稿未妥善保存等问题。<sup>4</sup>

#### 二、网下投资者违规行为类型总结

结合上交所于今年7月对机构投资者在科创板网下询价过程中的违规行为采取的监管警示，以及此后的专项检查中发现的问题，目前，机构投资者在参与A股首发网下发行询价过程中，主要存在以下方面的违规行为：

- (1) 内控制度和业务操作流程存在缺失或执行不规范
  - 询价相关岗位设置不完备，或相关岗位

<sup>1</sup> 详见上交所网页：  
<http://www.sse.com.cn/disclosure/credibility/members/measures/>。

<sup>2</sup> 详见证券业协会网页：  
[https://www.sac.net.cn/ljxh/xhgzdt/202107/t20210717\\_146922.html](https://www.sac.net.cn/ljxh/xhgzdt/202107/t20210717_146922.html)。

<sup>3</sup> 详见上海证券报报道，《监管再出拳！7个检查小组多地同步现场检查，科创板发行问题报价细节曝光》，2021年7月23日。

<sup>4</sup> 同脚注3。

职责与权限分工不明确；

- 报价评估、决策和复核程序存在缺失；
- 在重要操作环节未设置双岗复核机制，例如在询价环节，报价由一名投资人员完成；
- 在内控制度和操作流程规范中，未对相关人员通讯设备管控作出规定，在询价当日未对报价相关人员通讯设备进行管控。

(2) 定价依据不充分、定价决策机制不规范

- 定价未进行充分研究；
- 未建立有效的估值定价模型；
- 研究报告未明确报价区间建议或者缺少参数设置的详细说明；
- 估值区间到最终报价缺少推导过程；
- 凭借主观经验判断，随意定价；
- 估值和定价过程中，出于中签目的，压低报价。

(3) 未对报价信息采取保密措施，存在泄露风险

- 报价信息通过口头、聊天 APP 群消息等方式传达交易人员；
- 在询价当日未对报价相关人员通讯设备进行管控，存在价格等关键信息泄露风险。

(4) 未妥善保存工作底稿

- 研究报告、定价决策过程及决策依据未留痕、存档；
- 存档备查的研究报告未在询价结束前定稿或上传内部系统。

### 三、交易所对网下投资者的监管机制

据报道，上交所已经对网下投资者的报价行为建立了常态化的监督机制，主要包括：

(1) 在日常监管中，对报价集中的 IPO 项目，及时

向发行人、主承销商了解情况，并对存在报价异常的机构投资者进行电话或现场约谈，了解情况、强调报价纪律和监管要求。

(2) 对网下投资者报价行为建立分析模型，对完成询价发行的科创板项目的报价明细进行大数据分析，筛查出存在报价一致性较高、报价较为随意等情形的机构投资者，并对这些机构投资者开展调研、约谈、调阅工作底稿等形式的现场检查或非现场监管。

(3) 加强与证券业协会的监管协作与沟通，并依法从严处理违规行为。

### 四、适用于网下投资者违规报价行为的自律措施

根据《首次公开发行股票网下投资者管理细则》第 13 条，《科创板首次公开发行股票网下投资者管理细则》（以下简称“《科创板网下投资者管理细则》”）第 7 条、第 9 条等规定，投资者参与网下发行询价和申购业务的，应当建立并严格执行相应的内控制度和业务操作流程，同时，投资者应当在充分研究并严格履行定价决策程序的基础上理性报价。

此外，根据《首次公开发行股票承销业务规范》第 16 条、第 45 条，以及《科创板网下投资者管理细则》第 15 条的规定，网下投资者之间协商报价，网下投资者与发行人、承销商之间合谋报价，使用多个账户报价以及故意压低、抬高价格等情形都是禁止的报价行为。

根据沪深交易所业务规则和证券业协会自律规则的规定，对于存在报价违规行为的网下投资者，沪深交易所和证券业协会有权采取以下自律措施：

(1) 沪深交易所自律措施：沪深交易所根据违规情节，对投资者采取监管谈话、书面警示或口头警示等自律监管措施，或者限制交易、通报批评或公开谴责等纪律处分。

(2) 证券业协会自律措施：证券业协会根据违规情节，对投资者采取警示、责令整改、暂停网下投资者资格等自律措施。

(3) 列入“限制名单”或“黑名单”：除上述外，对于存在《首次公开发行股票承销业务规定》第 45 条、第 46 条或《科创板网下投资者管理细则》第 15 条、第 16 条禁止行为的，证券业协会有权将网下投资者或其管理的配售对象列入“首发股票配售对象限制名单”（以下简称“**限制名单**”），或将网下投资者列入“首

发股票网下投资者黑名单”（以下简称“**黑名单**”）。配售对象在被列入“限制名单”期间，不得参与主板、创业板、科创板首发股票网下询价；网下投资者被列入“黑名单”期间，该网下投资者所管理的配售对象均不得参与主板、创业板、科创板首发股票网下询价。

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