Historical Trends in Investor Protection Mechanisms-Lessons for Chinese Securities Law

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論　文　内　容　の　要　旨

China is now considering to reform its securities laws, since the old investor protection mechanism of securities law can't keep up with time. As securities market becomes more complicated, the advanced jurisdictions also chose to revise their securities regulations and reconstruct their regulatory structure. After historical analysis, theoretical analysis and comparative studies of investor protection mechanisms in selected advanced jurisdictions, I found out several lessons that can be learned by China.

Firstly, for information disclosure, there should be two reforms. The first one is to focus on risk disclosure and meaning explanation and plain language and formal to ease the burden of understanding of investors. Secondly, only focusing on contents disclosure is not enough, increasing enforcement of information disclosure is the key. In China, the enforcement against violations of information disclosure is too weak. We can empower SRO with certain enforcement powers to alleviate the government's burden and also increase the punishment level to deter violations.

Secondly, for gatekeeper regulation, there are 2 problems. The first one is the liabilities shifting problem and the second one is the third party liabilities problem. To solve these problems, there are 2 suggestions. Firstly, China should not ease the burden on the shoulder of the gatekeepers, but rather the liabilities put on the sponsor should be applied to different gatekeepers. For securities analyst, the solution is o use payment regulation, since securities analyst makes prediction about the future and using liabilities rule to prove prediction false us very difficult, and payment regulation can cut the rots of conflicts of interest. For underwriter, lawyer and accountant, there are 2 solutions. The first solution is for issuance of stocks, whre we should put strict liabilities on underwriter and also allow underwriter to sue lawyer and accountant for their shares. The second solution is for continuous information disclosure, where we should use ex ante inspection and public sanction to solve the problem.

Thirdly, to combat market abuse, China followed US steps, however, such approach is not efficient. US regulatory system is too complicated, and the burden of proof on the regulators side is too heavy. So my proposal is to follow EU to build an objective standards-based regulation, in which the examples and indicators and exceptions of these objective standards can be modified by the regulators according to new situations. Lastly, neither class action nor public enforcement should be used as the main method to regulate, since a full scale class action tends to over-deter and public enforcement tends to under-deter, and it's also hard to adjust the incentives to achieve balance. Secondly, we should reconsider our policy choice, and focus on increasing compensation rate and decreasing costs rather than increasing the number of cases should be

built to form a new administrative regulatory style, because the optimal deterrent level is hard to ascertain therefore we couldn't know what the right number is, and decreasing costs and increasing compensation are more meaningful and easy to calculate. Therefore, I suggest a new enforcement style combining private and public enforcement, where the resolution especially the compensation regime is led by securities regulators instead of court.

Fourthly, in terms of financial regulatory structure reform, China should build a UK style Twin-Peak Model and reconsider the empowerment of SRO's. There are two reasons. First of all, regulatory vacuum and weak enforcement against illegal behaviors are two of the most important causes to financial crisis, and Twin-Peak models is built upon the separation of risk and conduction regulation, so therefor it won't have the regulatory vacuum problem in the traditional sectoral model. Also, separation of conduct and risk can help regulators focus on one task and use their expertise more properly, thus helpful for increasing enforcement intensity. Secondly, SROs have too many conflict of interest and are weak enforcers, so therefore some of their regulatory functions should either be taken back by the government while the others should be separated from the profit centers to make regulatory function independent from industry influence.