

Is a Growing China a Threat to United States IPO Market Dominance?

COMPARATIVE SECURITIES LAWS AND COMPETITION IN THE MARKET FOR MARKETS

By Bjorn Sorenson*

I. INTRODUCTION

In short: Not yet. China's young securities markets¹ are at an all time high and attracting investors worldwide who are eager to ride the progress to fortune. However, the Shanghai and Shenzhen markets also display high volatility, often jaggedly lurching up and down rather than rising at steady rates. In the United States, critics from all sides blame Sarbanes-Oxley ("SOX")² for the loss of market share in the competition for initial public offerings ("IPOs"). Despite the meteoric rise of China's capital markets, they are not a significant factor in the decline of foreign IPOs in United States markets, nor are they likely to be soon. However, given the proper development of consistency and confidence in Chinese markets, and the growing and increasingly liquid Chinese middle class, in the next decade the United States may have actual cause to worry.

II. UNITED STATES SECURITIES REGULATION

A. History

After the 1929 Great Stock Market Crash, Congress enacted the Securities Act of 1933 and the Securities Exchange Act of 1934.³ The Securities Act regulates the initial distribution of securities of various types, including notes, stocks, bonds, options and all manner of investment contracts.⁴ The Securities Exchange Act governs the manner in which securities are traded in the secondary markets.

After wide-spread fraud and corruption caused the crash, Congress was faced with a choice to govern the market by merit regulation-evaluating each offering for the underlying merit of the business, or by disclosure provisions — mandating information disclosure to investors. In the end, Congress opted for free market regulation allowing investors to choose whether offerings succeed or fail based on the interests of the market. Justice



Brandeis, in approving of the disclosure laws, famously stated: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants."⁵ Mandated disclosure, rather than direct supervision is the defining aspect of United States securities regulation.

B. Insider Trading

Insider trading laws in United States markets are premised on making the markets fair for everyone. United States securities laws in general are based on the free access of information

rather than merit determination. An inequality of access or a perceived inequality of access to information inhibits confidence in the market. Thomas C. Newkirk, in a speech at the International Symposium on Economic Crime stated: "[O]ne of the main reasons that capital is available in such

quantities in the U[nited] S[tates] markets is basically that the investor trusts the U[nited] S[tates] markets to be fair."⁶

Rules and interpretation of the Securities Act and Exchange Act all serve to instill confidence in the market. Each contains real enforcement actions with teeth, be it civil or criminal, private, derivative, or SEC enforcement. Fifty years of jurisprudence and predictability have shown companies all over the world that the United States is a fair place to do business. Though this brief section does not provide in-depth treatment of United States

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insider trading laws, the breadth of coverage and the ready availability of enforcement serves as a backdrop to what is missing from Chinese regulations and enforcement.

C. Sarbanes-Oxley

Insider trading regulations, however, do not cover the depth of fraud that an insider may inflict on a company and the millions of the company's stockholders. The collapse of Enron and Worldcom showed how securities laws did not adequately address corporate governance, supervision of the CEO and CFO, and the ability to "cook the books" to increase stated profits.

In 2002, Congress passed the Sarbanes-Oxley Act in response.⁷ While there was little debate *that* something needed to be done, there was much debate about *what* needed to be done. SOX primarily prohibits insiders from certain transactions, and creates drastic changes and new mandates for the way that financial information is audited.⁸

Additionally, SOX mandated changes to the auditing committee and auditing firms to make them more independent of corporate influence. This auditing and certification process has increased the cost of compliance drastically. General Electric, for example, spent approximately \$30 million setting up the system of compliance in the first year SOX was mandated.⁹



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While the additional checks, balances and other requirements are undeniably necessary for the public confidence in the market, SOX is also undeniably expensive. While large companies, like GE, may be able to afford compliance with minimal detriment to the bottom line, many small companies have chosen to de-list rather than comply,¹⁰ and smaller businesses and foreign business who might have chosen to list in the United States with an initial public offering have chosen to stay private or seek capital on a competitor market.¹¹

III. THE UNITED STATES IPO MARKET

A. Choosing a Market

Companies have many different venues for raising capital for business expenses, operations, investment or expansion. One of the most effective ways for a company to gain equity is by listing on a national exchange where any investor may buy stock and then trade on the value. For decades the NYSE — the “big board” — was the most prestigious of these institutions.

Because the cost of registering a security and listing it on the market may easily be upwards of \$2 million, a company must be certain that it would raise at least as much in equity through the offering. The cost of compliance with SOX has placed an additional initial financial burden on such a company and also added to the expense of maintaining a listing through the enhanced

regulatory compliance requirements. A company wishing to list in New York, for example, may choose to list in London if the equity raised will be similar but the costs of listing

and compliance with regulatory requirements are lower. In addition to regulatory requirements, different exchanges may value a company differently,¹² and companies often seek out markets that are familiar with their type of business. Arman Pahlavan, a partner at Squire, Sanders & Dempsey whose practice mostly involves IPOs, recently noted, “The question is always ‘where

can you raise the money you need?’ The United States stock exchanges are still the best places to be ... but now there may be other options.”¹³ Time may be another factor: where a listing on NASDAQ may take six months or more, an IPO in London may be completed within two.¹⁴ For a company seeking to raise equity investments in a short period of time in a competitive market, this could be decisive.

For years, Chinese companies have listed on the NYSE for a stable and strong source of equity. However, as foreign markets become stronger, many companies choose to list abroad rather than in the United States. Recently, high-level officials in the United States government and the private

sector have become concerned with the loss of hegemony in the competition in the market for markets.

B. A Call for Change

Glen Hubbard, economist and Dean of Columbia University's School of Business, calls such data reporting on the decline of IPOs in the United States a "canary in a coal mine" because of the growing unattractiveness of listing shares.¹⁵ At the peak of IPO listings in the United States, the NYSE and NASDAQ accounted for 57 percent of world-wide IPO transactions. By 2006, the share fell to 18 percent.¹⁶

The Committee on Capital Markets Regulation issued a report in November 2006 examining the state of United States equity capital markets and United States competition in the global capital markets.¹⁷ The Committee expressed concern about the continued competitiveness of the United States in the global market for IPOs.

Not only are United States markets losing strength in the percentage of IPOs, but companies are also opting to raise capital through private placements.¹⁸ The Committee attributes the loss of United States competitiveness to the strength of the foreign markets, the development of significant "pools of capital," and the increasing ease that investments can be made across borders.¹⁹ However, the Committee pinpoints regulatory costs of compliance and liability risks as compared to other markets as an "important" factor contributing to the loss of market share.²⁰

According to the Interim Report, "twenty-four of twenty-five of the largest IPOs in 2005 and nine of the ten largest IPOs in 2006 [as of the date of the report] took place outside of the United States."²¹ Although the report does not single out China for scrutiny, China was home to most of the referenced IPOs. In 2004, three of the top ten IPOs occurred in China, but none in the United States.²² In the Interim Report, China is mentioned eight times and always mentioned along side of Russia, India, or both.²³ The Committee issued thirty-two specific recommendations that fell into four areas: expanding shareholder rights, effective and efficient regulation of the capital markets, clarity of rules and procedures of private and public enforcement actions, and finally a change in the way SOX is implemented, specifically Section 404.²⁴



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Early in 2007, New York Mayor Bloomberg and New York Senator Charles Schumer issued a similar report titled "Sustaining New York's and the U[nited] S[tates]' Global Financial Services Leadership."²⁵ While the Committee on Capital Markets broadly examined the United States capital markets in the world market, the Bloomberg-Schumer Report focuses mainly on the New York market as the center of United States and global finance. Financial services account for more than eight percent of United States GDP and over 5 percent of United States jobs, with the bulk of these percentages located in New York City.²⁶

Members of the business community, politicians, and academics all specifically criticize SOX implementation and are looking to change the structure in the capital markets. Recently the United States Chamber of Commerce hosted a high-level brainstorming session featuring Treasury Secretary Hank Paulson and Warren Buffet, among others.²⁷ Senator Olympia Snowe, Chair of the Senate Committee on Small Business and Entrepreneurship, wrote directly to SEC Chairman Cox expressing concern with the costs of complying with SOX.²⁸ Gregory Leon of George Washington University Law School, wrote a scathing report of the effect of SOX on United States capital markets, claiming that SOX has drastically reduced the number of foreign listings in the United States.²⁹

C. The Coming Reform

Facing much gnashing of teeth by advocates for less stringent market regulation in the United States, one study disputes that the United States is losing IPOs to other markets.³⁰ The researchers found that the decline in large IPOs in the United States were "simply [because] fewer foreign companies ... fit the historic profile" of large and quickly growing companies.³¹ Contrary to the common notion of "regulatory overkill" from SOX, the United States is actually attracting more foreign companies than expected by historical patterns.

Hank Paulson and the SEC are primed to introduce changes

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to alleviate some of the perceived failings of SOX. Proposed regulations will “address everything from auditing standards ... to the regulatory system.”³² New “principles based guidance” will focus on what is “right” rather than what is “legal” thereby discouraging diving through loopholes and technical compliance with laws over respecting the purpose of the regulation.³³

IV. CHINESE SECURITIES MARKETS

As public figures debate statistics and call for change, lamenting the loss of market share overall, few have evaluated emerging competing markets that are currently “usurping” United States market hegemony, or have the potential to do so.

A. Background

The Shanghai and Shenzhen securities exchanges were established in December 1990 and June 1991 respectively.³⁴ After a period of interim rules and regulations, the National People’s Standing Committee adopted the Securities Law in December 1998.³⁵ The SEC was instrumental in assisting China to develop an effective regime of securities regulation for Chinese needs.³⁶ Shortly after the establishment of the two markets, the State Council established the China Securities Regulatory Commission (“CSRC”).³⁷

In the seventeen years the markets have been in operation, Chinese securities have gone from zero to over 50 percent of GDP.³⁸ In order to develop the markets on the mainland, the CSRC encourages Chinese companies to list in Shanghai rather than in Hong Kong, or at least provide A shares along with H shares in any newly listed HK offering.³⁹ In addition to attracting capital for new company formation via IPOs, China also uses divestment of government shares in businesses as an effective mechanism for controlled privatization.⁴⁰ In 2005, the Shanghai exchange had 1069 listed securities from 834 listed companies, the combined capitalization of which was approximately US \$300 billion.⁴¹

B. Insider Trading

Article 73 of the Securities Law of China prohibits trad-

ing on inside information.⁴² Hui Huang, in his book on insider trading in China, is critical of the implementation, enforcement and effectiveness of China’s insider trading laws.⁴³ Specifically Hui Huang criticizes the definition of insider provided as it creates serious loopholes by which traders of inside information can avoid liability.⁴⁴

China requires a causal link between an inside position and information acquisition. This bright line test does not catch a broad spectrum of insider trading practices and “invit[es] loopholes in an unintended manner.”⁴⁵ Further, the Chinese Securities Law does not provide any liability for tippees — those people who receive information from an insider (a “tipper”) but have no causal connection between employment and the inside information.⁴⁶

United States law provides for SEC actions, private actions, class actions and derivative actions as well as both criminal and civil liability. China relies entirely on governmental enforcement of criminal and administrative penalties.⁴⁷ Article 202 of the Securities Laws of China states that insiders must dispose of illegally obtained securities, and pay a fine of up to five times the amount of the illegal gains or a fine of the total value of the securities.⁴⁸ Even though the Law does seem to provide private right of action under Article 76(3),⁴⁹ no other provision of the Securities Law addresses civil remedies, standing or damage measurement.⁵⁰

With China’s markets at historic highs, the China Securities Regulatory Commission published new rules that govern shares traded by executives, board members and senior managers.⁵¹ The new rules mimic a number of statutory and common law regulations in the United States. Executives may not sell more than a quarter of the shares held during the previous year, and are forbidden from trading stock within a year of an IPO, within six months of leaving a company, or selling or buying company stock within thirty days of a regularly issued report or ten days before a forecast.⁵² Restrictions on the sale of large blocks is analogous to *Ira Haupt* where a sale by an executive was considered a public distribution and required registration.⁵³ Time restrictions on sales are analogous to Section 16(b) of the Securities Exchange Act of 1934 where directors, officers and beneficial owners of more than 10 percent of stock are prohibited from buying and selling stock within a six month window.

Enforcement actions of insider trading in China are light. According to Hui Huang, before June 2004, only eleven insider trading cases were reported in China.⁵⁴ Though the Securities Law does provide for criminal liability, the first criminal case was not brought until March 2003.⁵⁵ Hui Huang hypothesizes that

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this is due to two reasons. First, “Chinese courts have not yet been well-prepared to hear complicated insider trading cases.”⁵⁶ In the United States the SEC is adept and practiced at arguing cases and the courts in hearing them. Development of a knowledgeable, capable, and independent judiciary is essential to enforcement actions. Secondly, Hui Huang proposes that there have been no “proper judicial standard[s] for dealing with economic crimes,” and that the standards for prosecuting economic criminal cases provide too much leeway in terms of prosecutorial discretion and a high bar for liability.⁵⁷

The regulation states that insiders should be prosecuted if (1) the profit involved is more than CNY 200,000; (2) he or she has committed insider trading many times; (3) the trading has caused abnormal fluctuation of share prices or trading volumes; or (4) the trading has had a severe social impact.⁵⁸ Apart from the first benchmark which sets a monetary limit of approximately \$25,000, the other three criteria would be quite easy to plead. Insiders only need to trade once to make a huge profit which causes other investors to feel as if the market were not an even playing field. This “as long as you’re not a repeat offender” type of provision does not instill confidence in the market, because one million people each illegally trading *once* can avoid liability but wreak havoc on the market. Further, in a growing and jagged market such as China’s, one would be hard pressed to tell what is an “abnormal” fluctuation. Finally, setting a threshold for a “severe” social impact is vague and undermines the credibility of the market.

In the United States, insider trading has shifted away from fiduciary relationships to a market based theory. However, in China inter-personal relationships (Renji Guanxi) are important, especially in business. From this perspective, insider relationships and insider tipping are actually a form of business development, and in some respects a moral obligation.⁵⁹

There are very low costs to gaining inside information and low costs as well if one is caught. A basic risk-reward calculation seems to indicate that it is *wise* to trade on inside information in China. Information is widely spread and there is an extraordinary high success rate to trading due to the ability to use false names, lack of informants to the ineffective CSCRC, and evidentiary obstacles discussed above.⁶⁰

Legal liability may lead to social disgrace in China. The “loss of face,” and the “stigma and humiliation associated with legal liability [may] have a greater deterrent effect than the liability itself.”⁶¹ However, legal liability in insider trading cases does

not act as an effective deterrent; warnings, confiscations, fines, and other liabilities have been the main “arsenal of China’s securities law,” and courts seem predisposed to impose light sentences, if any, for white-collar crimes.⁶² Despite the potential stigma associated with criminal liability, complicated insider cases committed by people with a high societal position are not judged as harshly in society as violent criminal cases.⁶³

The victim of insider trading is often an impersonal market rather than an individual with privity of relationship to the abuser. “In short,” Hui Huang argues, “because people do not feel the impact of insider trading, they are less repulsed by it.”⁶⁴ Because insider trading is a way to quickly gain fortune and prestige, market practitioners are accepting of the practice and the abuse of insider information is also seen as an expression of wealth and privilege in society,⁶⁵ which is contrary to the alleged detrimental effect of liability.⁶⁶

The role of supervisory institutions is essential in regulating insider trading. Without an institution, such as the CSRC, that is capable of scrutinizing market transactions and understanding ways in which investors might “work” the system or slip through loopholes, insider trading can not be effectively curtailed.⁶⁷

C. Opaque, Hot, and Volatile

One feature article in *The Economist* magazine — a close watcher of markets the world over — recently declared: “Tens of millions of Chinese are risking their shirts in a stockmarket frenzy. If it goes wrong, things could get nasty.”⁶⁸ After a short sixteen years of operation as

a market, China now boasts over 91 million individual accounts and adds more than 200,000 per day.⁶⁹ Even university students are pouring money for living expenses into the market to try to cash in on the return, which was up 40 percent for the year in April 2007, following a 130 percent gain in 2006.⁷⁰ The Shanghai Composite Index grew by 196.67 percent in 2007. The availability of all strata of society to invest may, however, portend bad news to come. If a crash or a major correction occurs, many thousands may lose their entire savings in the market.

With the market rising so quickly and the economy growing at a double digit rate, the Communist Party is trying desperately to cool investment and stabilize the market. China raised interest rates a number of times throughout 2007 and introduced new rules by the China Securities Regulatory Commission.⁷¹ Additionally, China introduced new accounting procedures that require companies listed on the Shanghai and Shenzhen markets to adopt international standards of accounting.⁷²



Even as China seeks to boost transparency in the securities markets, it tentatively offers such transparent reform in the government itself.⁷³ This leads to contradiction between the push for openness and disclosure to investors and openness and disclosure to citizens. Many state run businesses still enjoy the protection of “commercial secrets” and thus do not and cannot fully comply with required disclosure.⁷⁴ During an IPO, a company must bring its accounts into compliance with generally accepted principles of accounting. In most countries with well developed systems of accounting, the process can take a few months, whereas in China such a calculation could take three years.⁷⁵

Because of the information blackout relating to partially State-owned businesses, the numbers are often fabricated, obscured, or not disclosed at all.⁷⁶ Even the control of securities laws reflects state intervention: while the SEC is a bipartisan, independent organization, the CSRC is controlled by the Communist Party.⁷⁷ The fundamental paradox between the need to clearly understand the financial structure of companies on a stock exchange, such as revenues, costs, and debts, and the need for China to tightly control state secrets acts to the detriment of the market. Although more open accounting systems should act to deter “sleazy transfers of mispriced assets from the state to the private sector,” China is likely to resist the effects of accounting that “serve as a force for democracy.”⁷⁸ Even despite this open-State/closed-State paradox, many businesses in China seem genuinely unfamiliar with the purposes of disclosure regulations.

Take for example the \$9.2 billion IPO of China Construction Bank in 2005.⁷⁹ Initially CCB planned on listing in both New York and Hong Kong. However, according to CCB’s counsel, many companies choose not to list in New York “to avoid both potential exposure to shareholder class actions and the regulatory risks and cost of complying with the Sarbanes-Oxley Act.”⁸⁰ This mirrors the criticism of the Paulson Report. Further, the Chinese executives had trouble understanding the distinction between disclosure and promotion in United States securities laws. Where the regulations require a disclosure document, carefully reviewed for factual information and appropriately guided with cautionary language for forward looking information, the executives at CCB initially viewed the document “primarily as a marketing document to raise the bank’s profile.”⁸¹

Despite the ostensibly iron fist of the centralized system of government in China, officials have had a difficult time evening out or even suppressing the growth in the markets. China has told banks to restrict credit to deter borrowing to invest in the market and State-owned enterprises were told to restrict share purchases.⁸² China may have even intentionally circulated rumors of a crackdown on fund managers who trade on material inside information.⁸³ As China’s markets have started to chatter about a coming “bubble,” a concerned CSRC recently introduced new rules, effective May 1, 2007, that discourage high-risk transactions.⁸⁴

China has not succeeded in either smoothing out the volatility in the market or holding the rate of growth. Where fluctuations in a particular investment or portfolio may be fairly steady, the rapid entry and exit of listings on an exchange may lead to rapid fluctuations.⁸⁵ Rapid fluctuations may also happen in cases of market scare and recovery. This fluctuation is exacerbated by China’s need to both introduce reforms that are good for the market and to keep the market from collapsing after any given reform. For example, early in 2007, China introduced new tax laws that would cut corporate tax on some entities from 33 percent to 25 percent.⁸⁶ While this is undoubtedly good for a company’s bottom line, it may also justify the sky-high valuations of a company and perhaps push it higher.⁸⁷

In March 2007, the Shanghai SE Composite dropped almost 9 percent in a single day, prompting global sell-offs. While the exact causes for this plunge are still disputed, the effects are undeniable: the market is not stable, and all markets are interconnected. Despite the plunge, Chinese markets have shown remarkable resilience,⁸⁸ and eager Chinese investors seem willing to pump even more money into the market when they perceive that they can buy stocks low after a drop to sell high in the future.⁸⁹ As China continues to grow exponentially and the middle class continues to invest in a volatile stock market, the effects will likely continue to rattle markets around the world. Though some see China as a gauge of risk tolerance, others see it primarily as an exporter of “financial-market jitters.”⁹⁰

V. CONCLUSION

In the market for IPOs, the United States is clearly losing market share. However, despite SOX, this may be because the disclosure provisions in the United States are actually working. Apart from some enormous IPOs by Chinese banks, the markets in the United States effectively deter businesses that do not openly disclose relevant information to potential and ongoing investors. Though many of these IPOs go to European exchanges, those that list in China may operate in the shadow land between full disclosure and State secret.

In what is perhaps an apocryphal story, Joe Kennedy, the father of late President J.F. Kennedy, sold all of his stock in 1929 just months before Black Tuesday after receiving stock market tips from his shoe shine boy. He was not an abuser of inside information, rather, he saw signs that the market was too hot and if shoe-shiners were making fortunes in the market, the market must be broken. Almost eighty years later, China faces a similar boom as more and more middle class Chinese are heavily invested in the market, insider trading laws are not strictly enforced, and China is seemingly invincible sitting on trillions of dollars of United States reserve notes. One can only hope that the new tycoons in Shanghai and Shenzhen are listening closely to their shoe-shiners.

ENDNOTES: Bjorn Sorenson

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- 1 The stock markets in Shanghai and Shenzhen. For the purposes of this analysis, Hong Kong is not considered in the evaluation of Chinese markets. The Hong Kong Stock Exchange has been a known quantity and competitor in international capital markets for over one hundred years.
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- 3 See generally Elisabeth Keller & Gregory A. Gehlmann, *Introductory Comment: A Historical Introduction to the Securities Act of 1933 and the Securities Exchange Act of 1934*, 49 OHIO ST. L.J. 329 (1988).
- 4 See Securities Act of 1933 § 2(a)(1) (providing a list of securities covered under the Act).
- 5 LOUIS DEMBITZ BRANDEIS, OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT 92 (1914).
- 6 Thomas C. Newkirk & Melissa A. Robertson, SEC Staff, *Insider Trading — A U.S. Perspective*, Speech at the 16th International Symposium on Economic Crime (Sept. 19, 1998), <http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm>.
- 7 See SOX, *supra* note 2.
- 8 For an excellent and comprehensive analysis of SOX, see generally JOHN T. BOSTELMAN, *SARBANES-OXLEY DESKBOOK* (2003).
- 9 Dan Roberts, *GE Says It Faces Dollars 30m Bill for Governance*, FIN. TIMES, Apr. 29, 2004, at 1.
- 10 SOX primarily affects publicly listed companies.
- 11 See, e.g., Peter Stiff & Rod Stone, *British Airways Approves Delisting From NYSE as More European Firms Tire of U.S. Rules*, WALL ST. J., Apr. 26, 2007, at C3; see generally William J. Carney, *The Costs of Being Public After Sarbanes-Oxley: The Irony of "Going Private"*, 55 EMORY L.J. 141 (2006).
- 12 See *Browsing the Bourses: Companies Scour Global Exchanges to Find a Better Price for their Shares*, ECONOMIST, Mar. 31, 2007, at 80. The research found that Canadian extraction companies are typically valued at \$75 an ounce, but Chinese controlled companies listing in Toronto are valued at \$43 per ounce. Gold producers in China or Hong Kong are valued between \$180-240 an ounce.
- 13 Andrew F. Hamm, *Small Startups Look to Foreign IPO Markets*, SAN JOSE BUS. J., Feb. 11, 2005.
- 14 *Id.*
- 15 Greg Ip, Kara Scannell & Deborah Solomon, *In Call to Deregulate Business, a Global Twist: Onerous Rules Hurt U.S. Stock Markets, But So Do New Rivals*, WALL ST. J., Jan. 25, 2007, at A1.
- 16 *Id.*
- 17 COMM. ON CAPITAL MKTS. REGULATION, INTERIM REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION vii (Nov. 30, 2006), available at http://www.capmktreg.org/pdfs/11.30Committee_Interim_ReportREV2.pdf [hereinafter INTERIM REPORT].
- 18 *Id.* at x.
- 19 *Id.* at 2-6.
- 20 *Id.*
- 21 *Id.* at 30.
- 22 Lynn Cowan, *Foreign Offerings Spice Up the IPO Market: China's 3 Popular Issuances Dominate the Top 10 Deals; The U.S. Gets Shut Out*, WALL ST. J., Jan. 3, 2005, at R3.

- 23 See, e.g., INTERIM REPORT, *supra* note 17, at 32 Fig. 1.8 (showing the share of global IPOs Captured by U.S. Exchanges, Excluding IPOs from China, India and Russia).
- 24 See COMM. ON CAPITAL MKTS. REGULATION, REDUCING REGULATION AND LITIGATION WHILE ENHANCING SHAREHOLDER RIGHTS WILL IMPROVE THE COMPETITIVENESS OF U.S. CAPITAL MARKETS, available at http://www.capmktreg.org/pdfs/summary_11.30interimreport.pdf.
- 25 MICHAEL R. BLOOMBERG & CHARLES E. SCHUMER, SUSTAINING NEW YORK'S AND THE US' GLOBAL FINANCIAL SERVICES LEADERSHIP, available at http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf [hereinafter Bloomberg-Schumer Report].
- 26 *Id.* at 8; see also INTERIM REPORT, *supra* note 17, at 23-24.
- 27 See *Buffettology for Wall St.: America's Finest Capitalists Seek to Fix its Capital Markets*, ECONOMIST, Mar. 17, 2007, at 81; see also *Buffettology for the Chinese: Who Should Manage Buffett's Billions? Or China's?*, ECONOMIST, Mar. 17, 2007, at 81 (comparing the need for competent management of Berkshire Hathaway with China's huge and growing currency reserves).
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- 31 Craig Doidge, G. Andrew Karolyi, & René M. Stulz, *Has New York Become Less Competitive in Global Markets? Evaluating Foreign Listing Choices Over Time* (Charles A. Dice Center for Res. in Financial Eco. Working Paper No. 2007-03-012.) available at <http://www.ssrn.com/abstract=982193>.
- 32 Kara Scannell & Deborah Solomon, *Tweaks to U.S. Financial Rules Are Near*, WALL ST. J., May 4, 2007, at C5.
- 33 *Id.*
- 34 GUANGHUA YU & MINKANG GU, *LAW'S AFFECTING BUSINESS TRANSACTIONS IN THE PRC* 87 (2001).
- 35 *Id.* at 88; see generally Yuwa Wei, *The Development of the Securities Market and Regulation in China*, 27 LOY. L.A. INT'L & COMP. L. REV. 479, 488-500 (2005).
- 36 Patrick Harverson, *U.S. SEC Offers to Advise Beijing Securities Regulators*, FIN. TIMES, Apr. 29, 1994, at 10-11.
- 37 Yuwa Wei, *supra* note 35, at 489.
- 38 *Id.* at 479.
- 39 Nisha Gopalan, *China Crimps Hong Kong IPOs: Regulator Steers New Listings to Mainland*, WALL ST. J., Apr. 18, 2007, at C6. Class A shares are for companies listed in China (Shanghai or Shenzhen) and denominated in RMB. Class H shares are for companies based in China but listed in Hong Kong.
- 40 YU & GU, *supra* note 34, at 90.
- 41 SHANGHAI SECURITIES MARKET FACT BOOK 2005, available at http://www.sse.com.cn/en_us/cs/about/factbook/factbook_us2005.pdf.
- 42 Zhonghua Renming Gongheguo Zhengquanfa [Securities Law of the People's Republic of China] (promulgated on Dec. 29, 1998 and effective from July 1, 1999, amended in 2004 and 2005), available at <http://www.china.org.cn/english/government/207337.htm> (last visited May 1, 2007) [hereinafter Securities Law Of China]; see generally HUI HUANG, INTERNATIONAL SECURITIES MARKETS: INSIDER TRADING LAW IN CHINA (2006).
- 43 See Hui Huang, *supra* note 42.
- 44 *Id.* at 194-197.
- 45 *Id.* at 195 (stating that if a corporate director or other insider, for example, resigns from the company, the causal connection between the insider and the information is formally, but not realistically broken).
- 46 *Id.* at 197.
- 47 *Id.* at 254.
- 48 Securities Law of China, *supra* note 42, §202.
- 49 *Id.* §76 ("Where insider trading activities cause losses to investors, the insider shall be subject to the liabilities of compensation in accordance with the law.").

- ⁵⁰ Hui Huang, *supra* note 42, at 88.
- ⁵¹ *China Revises Insider Rules*, WALL ST. J., Apr. 10, 2007, at C2.
- ⁵² *Id.*
- ⁵³ *In re Ira Haupt & Co.*, Release No. 34-3845 (1946).
- ⁵⁴ Hui Huang, *supra* note 42, at 28. (noting that this number is only the reported number and not reflect the accurate enforcement actions taken by the government).
- ⁵⁵ *Id.* at 33.
- ⁵⁶ *Id.*
- ⁵⁷ *Id.* at 33-34.
- ⁵⁸ *Id.* at 34.
- ⁵⁹ *See id.* at 69-70.
- ⁶⁰ *See generally, id.* at 71-87.
- ⁶¹ *Id.* at 89.
- ⁶² *Id.* at 88-89.
- ⁶³ *Id.* at 89-90.
- ⁶⁴ *Id.* at 90.
- ⁶⁵ *Id.*
- ⁶⁶ *But see, In the Stocks: Shame Fills a Vacuum in China's financial Law Enforcement*, ECONOMIST, Mar. 1, 2008, at 82 (describing the increasing effectiveness of public shaming to deter fraud in the Chinese markets).
- ⁶⁷ Comm. of the Int'l Org. of Securities Comm., Report of the Emerging Mkts. Comm., *IOSCO: Insider Trading: How Jurisdictions Regulate It* (Mar. 2003), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD145.pdf>.
- ⁶⁸ *The People's Republic in the Grip of Popular Capitalism*, ECONOMIST, Apr. 28, 2007, at 45.
- ⁶⁹ *Id.* at 45-46.
- ⁷⁰ *Id.*
- ⁷¹ *Id.*
- ⁷² *Chinese Accounting: Cultural Revolution*, ECONOMIST, Jan. 11, 2007, at 63.
- ⁷³ *See* Geoffrey A. Fowler & Juying Qin, *China Moves to Boost Transparency, But Much is Kept Hidden*, WALL ST. J., Apr. 25, 2007, at A6.
- ⁷⁴ *Id.*
- ⁷⁵ *Chinese Accounting, supra* note 72, at 64.
- ⁷⁶ *Id.*
- ⁷⁷ YU & GU, *supra* note 34, at 118.
- ⁷⁸ *Chinese Accounting, supra* note 72, at 63.
- ⁷⁹ *See generally* Brenda Sandburg, *A Chinese Bank's Initial Public Offering Becomes a Marathon*, 28 AM. LAW. 108 (2006).
- ⁸⁰ *Id.*
- ⁸¹ *Id.*
- ⁸² *Hot and Cold: Nervous Officials Talk Down the Market after its Scorching Run*, ECONOMIST, Feb. 8, 2007.
- ⁸³ *Id.*
- ⁸⁴ Press Release, Tightened Regulations for Securities Dealers (Feb. 26, 2007), available at <http://www.china.org.cn/english/BAT/200744.htm> (last visited May 1, 2007).
- ⁸⁵ WENDY DOBSON & GARY CLYDE HUFBAUER, WORLD CAPITAL MARKETS: CHALLENGE TO THE G-10 56 (2001).
- ⁸⁶ Andrew Batson, *China's Tax-Break Shake: Plan Could Push Domestic Shares Even Higher*, WALL ST. J., Feb. 26, 2007, at C9.
- ⁸⁷ *Id.*
- ⁸⁸ *See What Plunge? Shanghai at New High: Chinese Shares Stay Hot Ahead of Index Futures Launch*, WALL ST. J., Mar. 30, 2007, at C6.
- ⁸⁹ Andrew Batson, *Investors Split on Chinese Stocks: Foreigners' Money is Shifting Away; Locals Hang Tight*, WALL ST. J., Apr. 4, 2007, at C3.
- ⁹⁰ James T. Areddy, *China Selloff II: The Attack of the Giant Jitters: Stocks in World's Fourth-Biggest Economy Become a Gauge for Risk Tolerance Everywhere*, WALL ST. J., Apr. 20, 2007, at C7.