

The Implementation Date and Disclosure Date in China's Securities False Statements

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Abstract: Since the issuance of the Securities Law of the People's Republic of China as amended in 2019 and the Provisions of the Supreme People's Court on Hearing Cases of Tort Compensation for False Statements in the Securities Market as amended in 2022, the standards for identifying the implementation date and disclosure date have been gradually improved. But faced with a variety of judicial cases, relevant laws and regulations are still inadequate. This paper makes a comparative analysis of the theories and judicial cases of execution day and disclosure day with the ideas of various scholars, some suggestions on the improvement of the theory of implementation day and disclosure day are put forward. It is hoped that it will be helpful to determine the scope of damage compensation in the false statement of securities in our country.

Keywords: Day of execution , Day of disclosure, Securities Law

1. Introduction

The civil compensation of securities misrepresentation in China is used to compensate investors for their losses. The key lies in how to determine the scope of damage compensation in securities false statements and how to ensure that investors' losses can be reasonably compensated. First of all, it is necessary to determine the two most important time points in the scope of damages - the date of implementation and the date of disclosure. Based on the Securities Law of the People's Republic of China and Several Provisions of the Supreme People's Court on Hearing Cases of Tort Compensation for False Statements in the Securities Market, this paper analyzes the criteria for determination of the implementation date and disclosure date, raise disputes in judicial cases that cannot be resolved under the relevant law, list and summarize the opinions of different scholars. On this basis, individual understanding is put forward to solve the problem of different views in judicial practice.

2. Manuscript Preparation

2.1. Page Setup

According to Article 7 of the Provisions of the Supreme People's Court on Hearing Cases of Tort Compensation for False Statements in the Securities Market (hereinafter referred to as the "Provisions"), the date of implementation of false statements refers to the date on which the

information disclosure obligor makes a false statement or occurs a false statement. Among them, the second and third paragraphs stipulate that false statements are divided into positive acts such as active false records and misleading statements, and negative silent acts such as major omissions. The active act refers to the false act that is not consistent with the actual situation, and this behavior will have a significant impact on the stock price, such as Jiangsu Baoqianli case [1]. Passive silent behavior mainly refers to inaction until the expiration of the performance period of the information disclosure obligation, such as Dalian Dafu and Hainan Haiyao Securities' false statements [2]As shown in the figure.

Although the provisions of Article 7 of the new interpretation on the implementation date are very detailed, when the case is complicated, the provision can not fully confirm the specific time of the implementation date [3].

If the information disclosure obligor repeatedly misrepresents securities in a short period of time, should the court decide whether it is one misrepresentation day or more [4]? Moreover, when a listed company is involved in information disclosure violations, should the date of the implementation of the violations or the date of the disclosure of the illegal acts by the information disclosure obligor be taken as the implementation date?

In addition, there are controversial issues in the audit report. The "Measures for the Management of Information Disclosure of Listed Companies" clearly stipulates that the financial report in the annual report should be audited, then when the information disclosure obligor has a non-standard audit opinion of the document, the court should identify the date of the act or the date of the information disclosure obligor to make subsequent misstatements as the implementation date?

2.2. First Section

The disclosure date in the false statement is an important node in the scope of damages. After the promulgation of the Securities Law of the People's Republic of China and several regulations, the disclosure date has been carefully identified. However, judicial cases are often accompanied by diversification and complexity. To determine the disclosure date, we must first determine the constituent elements of the disclosure date. In addition, the important significance of the disclosure of false statements is that it can alert investors to market risks and facilitate investors to make rational investments [5]. Article 8 of the Regulations states that disclosure should be published in the national media, so does disclosure Day need to provoke a strong reaction from the stock market?

2.3. Implementation day and disclosure day improvement direction

2.3.1. Effective date

When the information disclosure obligor conducts securities misrepresentation several times in a short period of time, different courts have determined different implementation dates. When the information disclosure obligor conducts securities misrepresentation several times in a short period of time, different courts have determined different implementation dates. At present, the mainstream of judicial trial in China is the latter view. For example, in the case of Jinan High-tech Company, the defendant had five misrepresentations in total, but the overall misrepresentations caused greater losses to investors than multiple separate misrepresentations. Therefore, the Jinan Intermediate Court set the release date of the 2014 annual report with inflated operating profits as the implementation date. This publication date is the date on which the first misrepresentation was made [6]. The author is more in favor of this approach because the overall misrepresentation behavior has a significantly higher impact on investors than the individual misrepresentation behavior.

When a listed company involves an illegal act that should be disclosed, the author believes that the date of the illegal act that needs to be disclosed should be taken as the implementation date. When

the listed company makes this act, it has already led to the loss of investors, and the information disclosure only informs investors that they will have losses from the date of the illegal act. Equivalent to the illegal act is the cause of investor losses, the disclosure of information is the result of losses, and the court should be reasonable compensation for investors when determining, the date of the illegal act is identified as the implementation date. Different researchers have different views, and some scholars have summarized 26 cases related to this controversial issue, such as the Foshan lighting case, where the court of first instance determined that the implementation date was July 15, 2010, rather than July 13, 2010 [7], it is not unreasonable to identify the date of implementation as the date of disclosure of the illegal act, at present, the balance of judicial judgment in our country is indeed tilted towards the date of disclosure of illegal acts as the implementation date, but the author believes that the scope of damage compensation should be expanded to minimize the loss of investors.

The attitude retained by auditors after an information audit is audit opinion, except for the standard unreserved opinion, the rest are non-standard audit opinions. Although it is not explicitly stated in the legal provisions, cases in recent years have revealed that non-standard audit opinions affect the determination of implementation dates. For example, in the case of Guizhou Changzheng Tiancheng Holdings, the unaudited performance notice has been indicated, and because it was released at night, the court determined that the next day after the release of the performance notice was the implementation day of the false statement, and the unaudited information did not affect the implementation day of the judicial organ's determination of the false statement [8]. As for the issue of the court's determination of the inconsistency of audit opinions, the author believes that the implementation date should be determined based on whether there are audit opinions and the types of audit opinions. There is no dispute when there is an audit opinion. When there is no audit opinion, the misrepresentation is not hindered, and the court can directly confirm the implementation date. When there is a non-standard audit opinion, although it has no significant impact on investors, it will have a certain impact on the composition of the false statement, so the implementation date should be the date of the next false statement.

2.3.2. Disclosure day

Scholars have different views on what constitutes Disclosure Day. Some scholars believe that a disclosure date can be recognized only when relative certainty, first-time, openness, and stock price volatility are satisfied [9]. Other scholars believe that the disclosure date is determined according to the principle of comparison of market reaction, relative certainty of content, and strict interpretation [10]. It is not difficult to see that the former's identification of the constitutive elements of disclosure day is wider than the latter's. In short, disclosure day must have a certain degree of warning [11], and must enable "the market to be able to and know the relevant truth [12]." Therefore, in addition to the scope of influence of the media, the disclosure date should also be determined by referring to the content of the media. For example, in the Kangmei Pharmaceutical case [13], the Guangzhou People's Court considered that the disclosure information of the two self-media of "Chushan Investment" and "market value relativity" was very detailed, and the date of disclosure of the two media was identified as the day of disclosure of false statements.

As to whether the disclosure day needs to affect the drastic reaction of the stock market, some scholars believe that no matter what the dissemination scope of the media, the disclosure can serve as a warning to investors about the securities they hold, that is, the disclosure day should cause the drastic reaction of the market [14]. Some scholars believe that the disclosure date should be identified in combination with stock price movements, and the recognition of the disclosure date should be identified according to the violent reaction of the market [15]. Some scholars hold the same view that it is necessary to combine the changes in stock prices before and after the disclosure behavior to judge whether it constitutes a significant event [16]. However, some scholars believe that the changes in

stock prices after the disclosure date may not be related to the disclosure of Japan itself and the economic market is affected by many factors, so it is obviously impractical to analyze the relationship between the two [17]. The author believes that whether the disclosure day needs to cause a strong reaction in the market actually refers to whether the disclosure day is known by investors. The author believes that whether the disclosure day needs to cause a strong reaction in the market actually refers to whether the disclosure day is known by investors.

It can be seen from the above that, when determining the specific time of the implementation date, the court should pay attention to whether the information disclosure obligation has repeatedly committed securities misrepresentation in a short period of time, and in the face of such circumstances, it should be identified as a misrepresentation implementation date; When the listed company is involved in information disclosure violations, the date of the implementation of the violations shall be regarded as the implementation date; When the information disclosure obligor carries documents with non-standard audit opinions, the implementation date should be determined based on whether there are audit opinions and the types of audit opinions. In determining the disclosure date, the court can determine and objectively view the reaction caused by the stock market based on the influence of the media and the content of the disclosure. Relevant departments can improve these aspects to expand the scope of damage compensation and boost the maturity of China's capital market.

3. Conclusions

In dealing with judicial cases, the judge has a certain degree of discretion, and the court should balance the interests of all parties when trying the case, especially in the face of the complicated false statements in the securities market, and should grasp the identification of the implementation date and the disclosure date. By further identifying the implementation date and disclosure date, the scope of damage compensation for securities misrepresentation will be further expanded, so that the reasonable period of damage compensation will be clearer, investors' losses will be more protected, and the difficulty of judicial practice will be reduced. However, this paper only makes a detailed analysis of the five outstanding problems in the implementation and disclosure days, and only studies the cases in recent years. The research scope is limited, and the suggestions put forward can not solve all the problems.

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