

Determination of Materiality of Misrepresentation of Securities after Elimination of Preliminary Procedures

Yuxin Li ^{1,*†}, Yifan Wang ^{2,†}

¹ Department of French, Communication University of China, Beijing, China

² Department of Japanese, Shanghai International Studies University, Shanghai, China

* Corresponding Author Email: 2020216133015@cuc.edu.cn

†These authors contributed equally

Abstract. The new regulations on securities misrepresentation in China at the beginning of 2022 have clearly eliminated the need for the antecedent procedure, which has made the issue of the criteria for determining the materiality of securities misrepresentation ambiguous in academic circles, including in judicial practice. In this study, the authors focus on the issue of the criteria for determining the materiality of securities misrepresentation after the elimination of the antecedent procedure. In the course of the study, the authors mainly adopted the thesis analysis method and the case analysis method. Through analyzing the literature, the views of different scholars are combined with actual cases, and finally came to the conclusions. The significance of this study lies in the discussion and clarification of the standard of materiality determination after the elimination of the antecedent procedure, which will provide partial guidance for the academic discussion and judicial practice encountered in this issue.

Keywords: Materiality, administrative penalties, price sensitivity.

1. Introduction

China's securities market is in the process of continuous development and maturity, and disputes over securities misrepresentation are also increasing. The standard of the materiality of the misrepresentation is too high or too low, which will affect investor protection and corporate information disclosure costs in all aspects. Therefore, new requirements for materiality determination are constantly put forward in various ways in legislation and judicial proceedings. The materiality element is a key element in judging the existence of misrepresentation, which directly affects whether the responsible subject is judged to be in tort. If there is no proper scope of misrepresentation triggering tort liability, it will increase the burden of information disclosure of listed companies, reduce the quality of information disclosure and erode the positive effect of information disclosure on investors' decision-making [1]. It helps investors to clarify the direction of proof. In 2003, the Supreme Court adopted the Several Provisions of the Supreme People's Court on the Trial of Compensation Cases arising from Misrepresentation in relation to the Protection of the Interstate (hereinafter referred to as the "Several Provisions"), which clarified that the acceptance of securities misrepresentation cases is premised on the preliminaries. In 2022, the Supreme People's Court amended the Several Provisions on the Trial of Civil Compensation Cases for Misrepresentation in the Securities Market (hereinafter referred to as the "New Interpretation of Misrepresentation") to provide clear criteria for judging the materiality element. This indicates that the prior procedural determination in securities misrepresentation has been abolished, which inevitably gives rise to the question of how the materiality element is to be determined after the abolition. There is still no unified view in academic circles today, and this is still an issue worthy of in-depth discussion and research.

With regard to the study on the criteria for determining materiality, due to the short period of time since the introduction of the new Interpretation of Misrepresentation, there are few effective precedents. Zhu Li and Fu Fuxing, from the perspective of the rights and interests of investors and the basic situation of China's securities market, believe that the "rational investor standard" set out in Article 17(4) of the Regulations is more in line with the reality of China's securities market [2]. In addition, in accordance with Article 85 of the Minutes of the National Conference on Civil and

Commercial Judicial Work of the National Courts (hereinafter referred to as the "Jiumin Minutes"), the People's Courts should give priority to the "materiality" test. In addition, in accordance with Article 85 of the Minutes of the National Conference on Civil and Commercial Judgments (hereinafter referred to as the "JCCJ"), which deals with the determination of the materiality element, the administrative penalty is equivalent to materiality.

However, in judicial practice, sometimes the ideal situation of the above-mentioned study is not always present, and there are often complex situations. So the authors require a case-by-case analysis in order to reach a more comprehensive conclusion on determining materiality after the abolition of the pre-requisite procedure.

2. Preliminary Proceedings and the Civil Litigation Relationship

2.1. Types of Original Predecessors

Preliminary proceedings can be broadly divided into two categories, one being administrative penalties and the other being criminal penalties. In judicial practice, most plaintiffs use administrative penalties as a precursor to court proceedings as a means of proving the materiality of the misrepresentation made by the company making securities misrepresentation.

The so-called "materiality" is in relation to the disclosure of information by listed companies, i.e. information that has a significant impact on investors' investment decisions is information of materiality. When an information disclosure obligor fails to disclose such materiality in accordance with the law, it constitutes an act of securities misrepresentation of materiality. In past practice, under Article 6(1) of the Regulations, a securities misrepresentation could generally be found to be material as long as it was subject to administrative penalties or criminal adjudication. In addition, Article 85 of the "Jiumin Minutes" issued in 2019 clarifies that "during the trial of a case, the People's Court shall not support a party's defense that the conduct of the regulator in making the penalty decision is not material". This means that the Supreme People's Court has confirmed the "materiality" of securities misrepresentation which has been dealt with by the previous procedure as a matter of course. The Supreme People's Court has already confirmed the "materiality" of securities misrepresentations that have been dealt with by the preliminary procedure [3]. However, after the abolition of the preliminary procedure, investors can go directly to court without the preliminary procedure. At this point, the court cannot, on the one hand, rule inadmissible or dismiss the lawsuit on the grounds that the misrepresentation has not been dealt with in the prior procedures and thus does not meet the conditions of admissibility; on the other hand, it cannot, on the grounds that the misrepresentation has not been dealt with in the prior procedures and thus does not have materiality, decide to dismiss the investor's lawsuit from the entity. This requires the court to independently examine whether the misrepresentation is material. Therefore, Professor Li Youxing believes that the following issues need to be improved after the abolition of the antecedent procedures: 1. the perfection of the filing standard in order to prevent abusive prosecution. 2. the civil-execution relationship, civil-criminal cross-relationship processing [4].

2.2. Original Antecedent Procedures and Materiality Binding

For many years, the pre-procedure of civil action for compensation for misrepresentation set up by the Certain Provisions has effectively tied the civil action to the administrative penalty, but the administrative penalty and the civil action should have been two separate legal acts, and they are legal procedures that can be conducted separately. With the abolition of the preliminary procedure of civil litigation, investors with personal interests can participate in the supervision of listed companies, which will be conducive to the construction of a comprehensive three-dimensional accountability system. However, it should be noted that civil litigation for misrepresentation is both different from and related to administrative enforcement, and the abolition of the preliminary procedures cannot simply exclude administrative enforcement. The relationship between the two is not a premise of each other, nor is it the case that they go their own way, and it is more appropriate to position them as a

reference to each other. Logically, the two should be separated, and in practice, they may also be coordinated.

In previous cases of misrepresentation in the securities market, the SFC has almost always been the main remedy sought, with administrative penalties imposed on the subject and the party responsible for the misrepresentation, and civil judgments have been premised on administrative penalties. Admittedly, there are technical difficulties for the courts to investigate and obtain evidence and securities expertise before the administrative supervision makes a finding of securities misrepresentation. It is reasonable to use administrative penalties as a preliminary procedure. However, this practice is unreasonable and scholars unanimously believe that the prior procedure should be abolished for the following reasons. First, the practice of the Supreme People's Court is suspected of overstepping its authority. "As the most basic procedural right of the subject of legal relations, the conditions and procedures for exercising the right of action should be made by the basic provisions of the procedural law. The Supreme Court can only make reasonable interpretations within the scope of the law, and has no right to go beyond the limit of the right of action of the subject of legal relations." Second, the setting of litigation pre-procedure limits the scope of the right to sue, which is not conducive to the protection of investors' rights and interests. Third, the logic of the system is not self-consistent, because the court can only pursue its civil liability with a lower standard of proof after confirming the criminal liability of the perpetrator with a higher standard of proof. Therefore, there is also a logical flaw [5].

3. Analysis of Materiality Cases Based on Physical Cases

3.1. Ding Hongchun et al. and Shanghai Feile Audio Co.

The 315 plaintiffs in the case were all involved in the misrepresentation implementation date (inclusive) to the disclosure date (excluding) during the purchase of Feilu Audio shares. After the disclosure date (inclusive) due to sell or continue to hold losses, it should be presumed that their buying behaviors were related to the misrepresentation.

For the above presumption, the defendant Feilu Audio could provide the industrial development plan and acquisition announcement to prove that the plaintiff was mainly attracted by the macro-good policy and the defendant's own business good news and bought the stock. It also claimed that some trade behaviors after the disclosure date was not out of reliance on false information. The court held that the above evidence provided by the defendant could only prove the existence of favorable policies in the semiconductor lighting industry and the existence of the defendant's acquisition. But it failed to prove that the plaintiff made decisions based on the aforementioned factors to buy Feilu Audio stock. Therefore, its defense is not enough to overturn the presumption of causation based on the "judicial interpretation of misrepresentation" established.

3.2. First Instance Civil Case of Xu Weizi and Ruiqi Holdings Company Limited in a Dispute over Liability for Securities Misrepresentation

The court held that information that meets the standard of "materiality" refers to information that may have a significant impact on investors' investment decisions. According to the administrative penalty decision, the amount inflated by the misrepresentation of Ruiqi Holdings exceeded 10% of the company's profit disclosed to the public during the same period, which was a material matter among the matters that should be disclosed in the half-yearly report. In addition, the defendant's misrepresentation had been administratively punished by the regulatory authorities. Therefore, the defendant's claim that the aforesaid misrepresentation was not "material" could not be substantiated.

The causal link between the misrepresentation and the investor's investment loss is presumed to be a causal link. The logical premise of the presumption of causation rule is that in a public and efficient securities market, the price of a company's shares is determined by all material information available about the company. That misrepresentation, as a form of public information, is necessarily reflected in the relevant share price. Investors rely on the trend of the market price to invest and the

market price they rely on reflects the misrepresented information. Specifically, in this case, Plaintiff bought Defendant's shares after the date of the misrepresentation, sold some of Defendant's shares on the disclosure date and continued to hold Defendant's shares until the reference date. Based on the above analysis of the investors' time of buying, selling and holding Defendant's shares, there was a causal relationship between Plaintiff's investment loss and Defendant's misrepresentation.

3.3. Zhong Nanjing et al. and Zhong Anke Co.

Ltd. ("CSC") in its major asset reorganization with CSC Technology Co., Ltd. ("CSC Technology"), there were information disclosure violations: CSC Technology failed to provide true and accurate profit forecast information and inflated 2013 operating income in a timely manner. This results in misleading statements and false records in CSC's publicly disclosed major asset reorganization documents. A total fine of RMB 700,000 was imposed. Subsequently, investor claims litigation also commenced.

The court held that the issues in dispute were as follows: whether the information on the "Classroom Access" project did not constitute a misrepresentation because it was predictive and whether the defendants were not liable on that basis. The defendant argued that the information on the "Classroom Access" project was forecast information and therefore did not constitute a misrepresentation. The court held that even if the variance rate stated by the defendant was true, there might still be other factors that subsequently led to the possibility of the realization of the earnings forecast in the absence of the actual execution of the material contract. Therefore, when there was a significant change in the premise on which the forecast information was based, the defendant Zhong Anke failed to fulfill its obligation to correct it in a timely manner. Also, the defendant China Merchants Securities failed to notice a such change and urged Zhong Anke to correct it in a timely manner. Both of them were at fault and should be held liable for the misrepresentation of the information about the "Classroom Access" project.

Based on the above three cases, it is clear that Article 85 of the Ninth Schedule on the "determination of materiality" has been well implemented. It means that the preceding procedure is to confirm the materiality of the securities misrepresentation. And in this basis, the court will directly prove whether the infringement is established by the existence of a trading causal relationship between the securities misrepresentation and the investor's investment trading behavior.

In addition, in the civil case between Ding Hongchun and Shanghai Feile Audio Co., the defendant proved that the plaintiff was mainly attracted by the macro-good policy and the defendant's own business good news to buy the stock by providing the industrial development plan and acquisition announcement. The defendant also argued that some of the plaintiffs' trading behavior of buying several times after the disclosure date was not out of reliance on false information, but was actually the use of the rational investor standard. Therefore, there is no causal relationship between the investor's investment behavior and the securities misrepresentation behavior, which means that the securities misrepresentation behavior is not significant

Also, in the civil case of the first instance of the dispute between Xu Weizi and Ruiqi Holdings Co., Ltd. over the liability for securities misrepresentation, the court's presumption of transaction causation was that the investor had the ability to invest by relying on the trend of the market price. The market price they relied on reflected the misrepresented information, which to some extent also applied the rational investor standard.

In the first instance civil case between Zhong Nanjing and Zhong Anke Co., the defendant argued that if the misrepresentation itself did not exist, there would be no need to discuss whether it was material.

4. Materiality Determination Criteria under the New Misrepresentation Interpretation

4.1. Classification of Materiality Criteria

At present, there are two main views on the criteria for determining materiality in China's legislative model: the "rational investor standard" (subjective standard) and the "price-sensitive standard" (objective standard). The "price sensitivity standard" believes that as long as a certain kind of public information can affect the market price of securities, then that information is material [6]. This criterion is mainly applicable to the continuous information disclosure stage. In China's laws and regulations on information disclosure, there is a tendency for the definition of materiality to be dichotomised between subjective and objective. For example, the Securities Law adopts a "price sensitivity standard" when defining material events. Article 80 provides that "the occurrence of a material event that may have a significant impact on the trading price of the shares of a listed company or a company whose shares are traded on other national securities trading venues approved by the State Council ...". Article 81 provides that. "When a significant event occurs that may have a significant impact on the trading price of the bonds of a listed and traded company, which is not yet known to investors ...".

At the level of the SFC's regulatory rules, the Measures for the Administration of Information Disclosure by Listed Companies have adopted both the "price sensitivity standard" and the "rational investor standard". For example, Article 5 provides: "In addition to the information required to be disclosed by law, information disclosure obligors may voluntarily disclose information relevant to investors' value judgments and investment decisions ...". Article 12, paragraph 1 provides: "The periodic reports that shall be disclosed by listed companies include annual and interim reports. Any information that has a significant impact on investors' making value judgments and investment decisions shall be disclosed." In 2015, in the Supreme People's Court on Some Specific Issues in Current Commercial Trials, it was stated that "materiality refers to the likely impact of the violation on investors' decisions, the main measure of which can be judged by the impact of the violation on the trading price and trading volume of securities." The price sensitivity standard appears to have been chosen.

4.2. Choice of Criteria for Determining Materiality under the New Misrepresentation Interpretation

Article 10 of the new Interpretation of Misrepresentation provides that: "The people's court shall determine that the content of the misrepresentation is material if any of the following circumstances exist: (a) the content of the misrepresentation is a material event as stipulated in Article 80(2) and Article 81(2) of the Securities Law; (b) the content of the misrepresentation is a material event or important matter required to be disclosed in the regulations and normative documents formulated by the regulatory authorities (c) the implementation, disclosure or correction of the misrepresentation results in a significant change in the trading price or trading volume of the relevant securities. In the cases listed in the first and second subparagraphs of the preceding paragraph, if the defendant submits evidence sufficient to prove that the misrepresentation did not result in a significant change in the trading price or volume of the relevant securities, the People's Court shall determine that the content of the misrepresentation is not material. If the defendant can prove that the misrepresentation is not material and, in this way, defends that it should not bear civil liability, the people's court shall support it. It can therefore be concluded that the new Misrepresentation Interpretation's choice of judging criteria tends to be toward statutory matters + price sensitivity.

4.2.1 The provisions of laws and regulations on significant events: used as a shortlisting condition for materiality

The new "Misrepresentation Interpretation" clearly eliminates the pre-procedure of securities misrepresentation liability disputes. Under the condition that the disclosure obligation is not subject

to administrative punishment or criminal judgment, the plaintiff needs to prove two things. The first is to prove the existence of the defendant's misrepresentation; the second also needs to prove that the defendant made a misrepresentation of materiality. However, under the abstract "rational investor standard" or "price sensitivity standard", it is difficult for the plaintiff to prove [7].

In view of this, at the level of specific criteria for judging materiality, Article 10(1)(1) and (2) of the New Interpretation of Misrepresentation responds to the aforementioned controversy. The controversy is about "whether the provisions of laws and regulations on significant events/important matters can be used as the basis for judging materiality". The provisions of laws and regulations on the disclosure of information on material events or important matters can be used as the basis for determining the materiality of misrepresentation. This provision actually reduces the plaintiff's burden of proof. In future disputes over liability for securities misrepresentation, the plaintiff may invoke the relevant provisions on information disclosure as the basis for claiming the materiality of the misrepresentation, which is a relatively clear and specific standard.

4.2.2 "Price sensitivity" as a determinant of materiality

According to Lei Jiping and Li Xiaoyan, this may be due to the fact that changes in the trading price and volume of securities are more direct and objective, which makes it more operable as a criterion for determining materiality [7].

According to the new Interpretation of Misrepresentation, the "price sensitivity standard" has two main functions. First, Article 10(1)(3) provides for a "price sensitivity standard" as a bottom-line provision for the materiality of misrepresentation. If the disclosure matters not stipulated by laws and regulations do not meet the criteria of significant events/important matters as stipulated in Article 10(1)(1) and (2), the disclosure matters can also be deemed to be material. Secondly, according to paragraph 2 of Article 10, the defendant may submit evidence to disprove the materiality of the misrepresentation by proving that the misrepresentation did not result in an appreciable change in the trading price or volume of the securities, in response to the plaintiff's claim of materiality under paragraphs 1(1)(1) and (2) of Article 10. In fact, prior to the implementation of the New Misrepresentation Interpretation, a significant portion of the judicial precedents on materiality had taken the change in the price and volume of securities as an important basis for determining whether the misrepresentation was material. The reason for this is precisely that changes in the price and trading volume of securities are easy to use in judicial practice.

In the above-mentioned civil case of the first instance of the dispute of liability for securities misrepresentation between Xu Weizi and Ruiqi Holdings Company Limited, 25 August 2015 was the implementation date, the share price for Ruiqi Holdings released its 2015 semi-annual report the semi-annual report. 16 December 2016, the day of the announcement of the "Administrative Penalty Decision", the closing price of Ruiqi Holdings was RMB12.99. It was also ascertained that from the date of publication of the Notice of Filing Investigation on 25 November 2015 to 11 December of the same year, the cumulative trading volume of Ruiqi Holdings' shares reached 100% of its negotiable portion. The average price of the closing price of each trading day during the above period was RMB18.56. The price sensitivity criteria can easily be used as a basis for determining materiality even in the absence of administrative penalties.

Also, in the civil case of the first instance in the civil dispute over liability for securities misrepresentation between Ding Hongchun and Shanghai Feilu Audio Company Limited, on 26 August 2017, the defendant Feilu Audio Company released its 2017 semi-annual report. After the release of this announcement, the share price of Feilu Audio rose for three consecutive trading days (i.e. 28 August, 29 August and 30 August 2017), by 3.58%, 1.08% and 2.03% respectively. on 13 April 2018, the defendant Feilu Audio Company issued the "2017 Annual Results Forecast and Alert Announcement on Resumption of Trading of Shares", stating that: after the Company's self-examination, it was found that there were accounting errors in revenue recognition in the half-yearly and third quarterly reports of 2017. It was preliminarily expected that such errors would result in a decrease in operating revenue of RMB1.74 billion from January to September 2017, resulting in a decrease in operating revenue of RMB750 million from January to June 2017. Following the

announcement, the share price of Feilu Audio fell for three consecutive trading days (i.e. 13 April, 16 April and 17 April 2018). It is also clear that the price-sensitive criteria were applied as the basis for determining materiality.

4.2.3 The unreasonableness of the "price sensitivity criteria"

There are also limitations to the market's response to misrepresentation disclosures in terms of the factors that affect the price and volume of securities traded. The price sensitivity criterion may fail at this point. On the one hand, the share price and trading volume of a listed company are affected by various factors, such as positive or negative news about the company, positive or negative news about the industry, the introduction of positive or positive policies, positive or negative information about the company's executives, all of which can have a significant impact on the company's share price. If a listed company makes a misrepresentation of securities during this period, the price sensitivity criterion will be invalidated to some extent because the share price is affected by a number of factors and it is not possible to be completely positive that the misrepresentation of securities has caused the share price to fluctuate. The materiality of the misrepresentation of the securities needs to be determined by a combination of factors.

On one hand, the securities market may not react significantly to some securities misrepresentation, for example, Xinjiang Huijia Times Department Store Co. On the other hand, the securities market may also overreact. For example, in China's securities market, the fact that a listed company is being investigated constitutes a significant shortfall. So, whether the investigation ends with a formal punishment or a dismissal, the price of the securities will fall sharply due to the information of "being investigated" [8].

Therefore, when applying the "price sensitivity" standard, one may be faced with a "price failure" situation, in which case a judgment should be made based on the nature and impact of the misrepresentation, rather than rigidly applying the "price. In such cases, a judgment should be made based on the nature and impact of the misrepresentation, rather than rigidly applying the "price sensitivity" standard to determine materiality.

4.2.4 Rational investor criteria

In contrast, Zhu Qian believes that civil liability for securities misrepresentation rests on the material impact of the act on investors who have suffered losses as a result of the securities misrepresentation. Therefore, the "investor decision sensitivity standard" should be applied in preference, and only when the investor's decision is affected can the "materiality" element of civil liability be constituted. In addition, investors' decision-making behavior is generally influenced by factors such as market conditions and changes in stock prices, so the price element of the "price-sensitive standard" should be internalized in investors' decision-making judgments, and when the overall change in the price of securities shows the same trend as the change in investors' decisions. It means that investors' decisions are influenced by this information, and materiality should be determined. Materiality [9].

At the same time, whether "material events" under the aforementioned new Misrepresentation Interpretation can be equated with rational investor standard decisions also needs to be addressed. Obviously, the rational investor standard is similar to several provisions of the determination method, the presumption that because of the misrepresentation of securities and investments suffered losses. That is to say, the misrepresentation of securities led to the rational investor for the subsequent market direction of the misjudgment, misjudgment, and subsequently investment behavior. Then the investment behavior as long as the plaintiff after the date of misrepresentation, disclosure date or correction date to implement the corresponding trading conduct, i.e., bought the relevant securities in a long-induced misrepresentation, or sold the relevant securities in a short-induced misrepresentation." And in terms of securities law principles, the material events or important matters that are included in the securities law or regulatory department regulations or normative documents can be summarized as rational investor decision criteria because of their impact on a rational investor's decision to trade in general circumstances [10].

However, it should first be recognized that the Securities Act is the legal basis for civil, administrative and criminal liability in respect of securities, and not just for civil liability. Only fourteen of the total number of articles of the Act are provisions directly reflecting civil liability, so when interpreting and applying the provisions of the Act, attention should be paid to the legislative intent of the Securities Act itself. In particular, the provisions of Article 80 of the Securities Law tend to serve as a refined guide, but when determining civil liability, it should be analyzed in the context of whether the elements of civil liability are met, and not as long as it is a material event, it is subject to liability.

In the civil case of the retrial of the dispute over liability for securities misrepresentation between Zhang Xuan and Ningbo Shenglaida Electric Co., the court held that, according to the Administrative Penalty Decision of the SFC, the illegal fact was the fact that Shenglaida's 2015 annual report had inflated its profit, while Zhang Xuan started to buy the shares on 20 December 2016, nearly one year after the implementation date of the misrepresentation claimed by Zhang Xuan. During the period, St. Leda released the First Quarter Report 2016, the Half Year Report 2016 and the Third Quarter Report 2016 successively showing a faster-declining trend of net profit attributable to shareholders of the listed company. Therefore, as an investor, if the stock is selected for investment solely from the perspective of the company's performance, it is clear that the performance of St. Leda for various periods in 2016 is much more important relative to the performance of the 2015 annual report in terms of the influence on the investor's investment decision. Therefore, when analyzed in terms of the timing of Zhang Xuan's purchase of the shares on 20 December 2016, his investment decision lacked relevance to the misrepresentation of St. Leda's publication of its 2015 annual report.

Therefore, the determination of civil liability for securities misrepresentation should follow the principle of "consistency between fault and punishment", and the level of materiality should be differentiated in the light of the specific circumstances of the case.

5. Conclusion

For a long time, in the judicial practice of securities misrepresentation, the court tends to use the antecedent procedure as the judgment standard to determine whether the misrepresentation is material. On the one hand, this has reduced the difficulty of handling such cases and improved the efficiency of litigation, reducing part of the ineffective litigation. But on the other hand, it has largely undermined the litigation rights of individual investors. The elimination of the requirement of prior procedures for securities misrepresentation under the new Misrepresentation Interpretation has brought about changes in the following aspects. The elimination of the requirement for a preliminary procedure for securities misrepresentation under the new Misrepresentation Interpretation has brought about changes in the following areas.

Firstly, the party may bring an action before the administrative penalty decision is issued. Secondly, the plaintiff needs to prove the existence of the misrepresentation and also the materiality of the misrepresentation. Thirdly, the administrative penalty procedure does not necessarily mean that materiality is recognized.

According to the above cases, before the introduction of the new Interpretation of Misrepresentation, the courts in most cases still used the antecedent procedure as the criterion for determining materiality and judged whether there was infringement through transaction causation. However, scholars in the field do not exclude some cases where the court found that there was no materiality even if the SFC issued an administrative penalty by using the materiality determination provision. Then, after the elimination of the antecedent procedures, the new "Interpretation of Misrepresentation" for the determination of materiality tends to statutory matters (significant events) + price sensitivity. In this, the authors believe that although price sensitivity is the most objective and direct criterion for determination, but may also be subject to the interference of other information factors and the interference of the market's own laws. The expression "material event" can be

approximately equivalent to the rational investor standard, but a good combination of the two should be used to determine the materiality of a securities misrepresentation.

In addition, there is a need to sever the tie between administrative penalties and materiality. Administrative penalties do not necessarily imply the existence of materiality of securities misrepresentation. For example, in the second instance of the civil case of Wang International and Xinjiang Huijia Times Department Store Co., Ltd., even though Xinjiang Huijia Times Department Store Co., Ltd. received a notice of administrative penalty from the SFC, the misrepresentation made did not cause a change in the share price and therefore was not material, and the court found that there was no transaction between the investor and the misrepresentation made by the company causal link and naturally not liable in tort. However, administrative penalties do have a strong reference value for the court, because in terms of judging standards, the judging standards in the securities law and the new "Misrepresentation Interpretation" are overlapping and similar. So in court practice, administrative penalties can be used as a reference, but cannot rely entirely on administrative penalties as a remedy, but apply the provisions of the new "Misrepresentation Interpretation" to make a reasonable assessment and pay attention to avoid extraneous interference. The court may refer to the administrative penalty as a remedy, but cannot rely solely on the administrative penalty as a remedy. In addition, due to the abolition of the preliminary procedure, there may be cases where the court first determines that the misrepresentation of securities is material but no administrative penalty has yet been imposed, in which case the administrative authorities should, in principle, carry out an investigation. Because the judicial authorities have already made a determination on the nature of the act, the act is bound to violate the relevant laws and regulations on information disclosure. If the administrative authority does not open a case at this point, it may constitute an administrative omission under administrative law.

References

- [1] Ding Yuxiang. The spokes effect of the elimination of securities misrepresentation front procedure and its treatment[J]. Finance and Economics Law, 2021(05):31-46.
- [2] Zhu L, Fu Fuxing. The path of determining the materiality of securities misrepresentation after the elimination of the prior procedure--a practical analysis based on the perspective of claim rights[J]. Financial Market Research, 2022(07):31-40.
- [3] Chen Jie. Judicial response to the elimination of the antecedent procedure of securities civil compensation lawsuit: the perspective of civil compensation for misrepresentation[J]. Securities Market Herald, 2021(05):63-70+78.
- [4] Li Youxing, Qian Hao Yu, Meng Sheng. Research on the trial system of securities misrepresentation tort compensation cases--a review of the high-end forum on the understanding and application of the new judicial interpretation[J]. Legal Application, 2022(03):171-184.
- [5] Li Hailong. Research on the antecedent procedure of civil compensation lawsuit for securities misrepresentation: a perspective of the changing relationship between public and private enforcement [J]. Journal of China University of Political Science and Law, 2021(02):148-165.
- [6] Liao Sheng. The tort of misrepresentation tort liability [J]. Jurist, 2017(01):134-145+179.
- [7] Lei JP, Li XY. A New Exploration of Securities Misrepresentation Liability (II): Wandering and Choosing the Materiality Standard, 2022-09-27
- [8] Zhang Baosheng, Zhou Wei, Zhu Yuanyuan, Xiao Qiang, "Securities Misrepresentation Civil Litigation Case 2019 Annual Observation and Foresight", Zhonglun Opinions, 2020-03-07. Securities Misrepresentation Civil Litigation Case 2019 Annual Observation and Foresight - Zhonglun Law Firm (zhonglun.com)
- [9] Zhu Qian. The identification of the elements of civil liability for securities misrepresentation after the abolition of the pre-procedure [J]. Journal of Fujian Financial Management Cadre College, 2022(02):8-15.

- [10] Chang Liyang. Criteria for determining the materiality of the content of misrepresentation. People's Court Newspaper, 2022-07-21 Criteria for Determining the Materiality of Misrepresentation Content - China Court (chinacourt.org)