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The Role Positioning and Reconstruction of the "Gatekeeper" in the Capital Markets of China

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ABSTRACT

The gatekeeper theory is originated from the United States to make securities intermediaries agency more accountable by making them carry out their verification duties with diligence and responsibility. It is hypothesized that the Gatekeeper provides the issuer authentication services. The issuer will be carefully examined, and the accuracy and precision of the issuing documents will be ensured, otherwise severely punished. However, China's failure to become accustomed to the localization environment during the introduction has resulted in identity positioning conflict with Gatekeeper, poor performance of reputation mechanisms, misallocation of duties and other dilemmas. To address those problems, the securities market commission framework shall be reorganized with the China Securities Regulatory Commission as the principal, the Gatekeeper shall be stripped from its issuer constraints, and a "Whistleblower Report" framework shall be established, a novel framework of reputation intermediary shall be established and the intermediary agency's reputation information in the application documents and data disclosure system shall be disclosed , and a new framework that applies punishment as the primary measure and encouragement as a supplement shall be created. As a consequence, a new environment of a virtuous cycle in the securities market will be formed.

Keywords: *Gatekeeper; System of Agency; Reputation; Reporting obligations; Reward.*

I. INTRODUCTION

(A) The Origin of the Gatekeeper System

The term "gatekeeper" has not appeared in Chinese legislation and has been transplanted from American law. It refers to the regulatory administrations entrusting conduct-absolute responsibility for their actions to these private actors or "gatekeepers", to make up for law enforcement deficiencies by recruiting deputies within the enterprise.[2] The true gatekeeper theory combines conduct-absolute responsibility with active responsibility for monitoring

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[2] See Reinier H. Kraakman," *Corporate Liability Strategies and the Costs of Legal Controls*." The Yale Law Journal, vol.93, no.5, 1984, pp. 868.

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illegal behavior, imposing this responsibility on new and innocent gatekeepers to reduce law enforcement costs and the incidence of violations. [3]The widely recognized concept of a gatekeeper in educational circles is defined as Professor Coffee's view, which is that a gatekeeper is a capital markets intermediary that uses its reputation as a warranty to ensure that the securities issued by an issuer meet the quality of the securities. [4]Under the premise of the separation of corporate control and ownership, the gatekeeper system has emerged as the times require, which mainly solves the problem of information asymmetry in this context, requiring professional institutions to provide professional advice for investors to invest prudently. Professional institutions provide reliable information to investors through their professional abilities, while investment bankers, lawyers and accountants depend on their professional knowledge to provide reliable information disclosure reports for secondary market investors, ultimately ensuring the quality of information disclosure and securities in the securities market.

(B) Theoretical Hypothesis of the Gatekeeper System

It is essential to define the theoretical foundation of the gatekeeper system and then assess the discrepancy between it and what we should expect from a practical standpoint if we are to have high expectations for the gatekeeper system's operation in the capital markets field. The main hypotheses about the gatekeeper system are as follows: Firstly, A hypothesis that argues the gatekeeper has substantial influence over the issuing. Gilson believes that the services provided by the gatekeeper system can effectively support the implementation of the legal system, and issuers need securities intermediate agencies such as securities lawyers to provide certification services for the quality of issuers.[5] When an issuer hires a lawyer, that lawyer is expected to give long-term services at a high cost; therefore, the lawyer's ability to verify won't be reduced out of fear of firing, and the lawyer will be more inclined to offer the issuer independent opinions. Secondly, those who are gatekeepers are considered "reputation intermediaries". As stated by Coffee, a gatekeeper's primary responsibility is to safeguard investors from the issuer's incorrect actions by offering efficient verification and authentication services. They will take great care to safeguard their most valuable asset, which is their reputation, so that the gatekeeper will also carefully verify the issuer's prior securities issuances.[6] Reputation

[3] See Reinier H. Kraakman," *Corporate Liability Strategies and the Costs of Legal Controls*." The Yale Law Journal, vol.93, no.5, 1984, pp. 889.
[4] See John C. coffee, Gatekeepers: "*The professions and Corporate Governance*". Changhe Wang Translated, Peking University Press, 2011, pp. 3.
[5] See Ronald J. Gilson, "*The Devolution of the Legal Profession: A Demand Side Perspective*". Maryland Law, Vol 49, No. 4, 1990, pp, 869, 898-899.
[6] See John C. Coffee, Jr., Understanding Enron: " *It's About the Gatekeepers, Stupid*". The business Lawyer, Vol 57, No.4, 2002, pp. 1403-1405. John C. Coffee, Jr., "*Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms*". Boston University Law Review, Vol 84, No. 2, 2004, pp. 301-308.

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intermediaries stem from the repetitive nature of securities market transactions. Based on previous disclosure reports from intermediary agencies, investors have reasons to believe that they will truthfully disclose all information for the sake of their reputation, otherwise the loss of reputation capital will make it difficult for gatekeepers in the securities market.[7] Thirdly, compared to investors in the capital markets, gatekeepers have authentication functions, which ensures the authenticity and accuracy of the issuance documents. Fourthly, a strict punishment mechanism to perfect the gatekeeper system shall be established. Compared to internal controls, a gatekeeper system can effectively prevent the company's internal management from engaging in illicit acts.[8]

Concerning the gatekeeper system, its theoretical system consists of several propositions. The core concept of the gatekeeper system is that while issuing securities, the gatekeeper shall prioritize the interests of investors over their own and prevent unqualified issuers from entering the capital markets.[9]

II. THE DILEMMA AND ITS ROOTS OF THE APPLICATION OF THE GATEKEEPER THEORY

The Enron incident occurred only ten years after the gatekeeper theory was put forward in the last century, which resulted in the collective failure of the intermediary institutions responsible for the gatekeeper role. After the Enron incident, the United States passed the Sarbanes Oxley Act, which strengthened the regulation of accountants and prohibited them from providing nonaudit services to audit clients. Therefore, there are still significant practical issues with the gatekeeper theory's application, and it is not perfect.

(A) Conflict in securities intermediary agency identity positioning

As the gatekeeper of the securities market, the core function of a gatekeeper is to review issuers who meet the requirements for issuance and listing, and to safeguard the interests of investors. However, there is a disconnect between theory and practice regarding the positioning of intermediary agencies. The theory of "Punishment of Principal Culprit" holds that intermediary agencies are independent professional advisors who should conduct (independent) inspections of issuers and its securities in accordance with the provisions of the securities regulation and

[7] See JING Pei-liang, Security Market Gatekeeper SYStem, "*Cognitive correction, Root of Failure and Reform Approach*". Hainan Finance, vol 7, 2023, pp, 57.
[8] See Reinier H. Kraakman, "*Corporate Liability Strategies and the Costs of Legal Controls*". The Yale Law Journal, vol.93, no.5, 1984, pp. 889.
[9] See Xing Huiqing, "*The Application Dilemma of the Theory of Capital Market Gatekeeper in China and its Solution*". Tribune of Political Science and Law, Vol 6, 2022, pp, 178.

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the stock exchange, and issue professional opinions.[10] According to this theory, the client who hires professional intermediary agencies shall be investors in the secondary market. However, in reality, all securities intermediary agencies are hired by the issuer. On the one hand, the issuer pays remuneration to the securities intermediary agencies, and on the other hand, the intermediary agencies verify them according to regulatory rules or regulations, resulting in the intermediary agencies being unable to independently bear the responsibilities of gatekeepers. The contemporary civil and commercial law framework is based on the Hypothesis of the "Economic Man", which assumes that all market entities are selfish individuals.[11] However, the gatekeeper theory requires the gatekeeper to maintain the public interest and play the role of a defender of the public interest, which conflicts with the thoughts of contemporary civil and commercial law frameworks. Market entities pursue the goal of maximizing their interests. Although *the Code of Governance for Listed Companies* requires listed companies to maintain the maximization of shareholder interests while also emphasizing their social responsibility, Furthermore, the Shenzhen Stock Exchange has also released the SEG evaluation method, it cannot be denied that profitability remains the core goal of market entities. The gatekeeper theory recognizes securities intermediary agencies as maintainers of investor interests and defenders of public interests, but the institutional design of gatekeepers conflicts with the aforementioned positioning, that is, gatekeepers do not receive income from investors or departments such as the China Securities Regulatory Commission, but require them to assume the responsibilities of the public sector, resulting in conflicts in the positioning of securities intermediary agencies and certain conflicts with the concepts of modern company law.

On the other hand, since entering the full implementation of the stock issuance registration-based IPO regime, the China Securities Regulatory Commission no longer conducts substantive reviews of the issuer's disclosure documents. Instead, securities intermediary agencies verify the issuer and undertake joint and several liability. However, securities intermediary agencies still need to bear responsibility for the stock exchange. Essentially, it transfers the examination and verification responsibilities that originally belonged to the China Securities Regulatory Commission to the stock exchange, and there has been no fundamental change in the verification obligations of securities intermediary agencies. In this context, it is essentially the stock exchange and securities intermediary agencies that jointly undertake the obligation to verify the issuer, while the stock exchange and securities intermediary agencies are different.

[10] See Xing Huiqiang, "*Legal Liability Configuration of Securities Intermediaries*". Social Sciences in China, Vol 5, 2022, pp: 95.
[11] See Xing Huiqiang, "*The Application Dilemma of the Theory of Capital Market Gatekeeper in China and its Solution*". Tribune of Political Science and Law, Vol 6, 2022, pp, 183.

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They are self-regulatory agencies, and their power comes from the authorization of the China Securities Regulatory Commission and directly from legal provisions.[12] The "review power" of securities intermediary agencies comes from mandatory requirements of laws and regulations.[13] In addition to different sources of review power, securities intermediary agencies also bear the responsibility of regulating the supervision of counsel of issuers on listing.[14] In this regard, securities intermediary agencies are not only regulators, supervisors, and responsible persons, but also trustees. The aggregation of multiple functions results in the failure of the gatekeeper system due to the conflict between what shall be and what it is.

(B) The reputation mechanism of securities intermediary agencies isn't working smoothly

The important system of the gatekeeper theory lies in the "reputation intermediary". Kraakman pointed out that investment banks, as Repeat Players in the capital markets, enjoy market reputation and share their market reputation with issuers while disclosing documents to address the drawbacks of information asymmetry.[15] Coffee further believes that reputation is an extremely important asset for gatekeepers, and gatekeepers, to protect their capital markets reputation, will thoroughly verify every securities issuance by the issuer.[16] In comparison with investors in the capital markets, gatekeepers possess higher judgment and analysis skills. They can immediately alert the capital markets of any issues they find and prevent illegal conduct before it starts. Driven by reputation mechanisms and economic benefits, investment bankers will carefully identify issuance projects, promote the formation of a virtuous ecosystem of survival of the fittest in the securities market, and ultimately enhance market operational efficiency.[17]

However, the reputation system is yet to achieve maturity and there is a dearth of fertile ground on which to implement in China. Firstly, the primary factors that capital markets entities consider when choosing securities intermediary agencies are their market share and prior project

[12] See ZHOU Xuewen, ZHENG Yu, "*Administrative Law Review on the Power of Stock Exchange under the New IPO Registration-based Regulation Model*". China Law Review, Vol 5, 2023, pp, 24.
[13] According to Article 13 of *the Measures for the Administration of Registration of IPO Stocks*, when an issuer applies for the IPO and listing of a stock on the main board, it shall produce registration application documents in accordance with the relevant provisions of the CSRC, which shall be sponsored by the investment bankers and declared to the securities stock exchange.
[14] According to Article 2 of *the Provisions on the Supervision of Counsel on Initial Public Offerings of Stock and Listings.* The guidance institution (recommendation institution) shall carry out guidance work for the issuer.
[15] See Ronald J. Gilson & Reinier H. Kraakman, "*The Mechanisms of Market Efficiency*". Virginia Law Review, Vol. 70, No. 4, 1984, pp. 549, 618-621.
[16] See John C. Coffee, Jr., "*Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms*". Boston University Law Review, Vol 84, No. 2, 2004, pp. 301, 309-310.
[17] See Chao Ren, Wenjie Jiang, "*Overseas SPAC Listing Pattern and Its Enlightenment to China*". Communication of Finance and Accounting, vol 19, 2023, pp, 139, 140.

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experience. Statistics show that the securities market proportion of initial public offering (IPO) projects handled by listed securities intermediary agencies has leveled out. Furthermore, there have been no appreciable variations in the yearly project volume of any securities intermediary agency.

Statistical table of top five intermediaries' IPO business volume from January to October from 2020 to 2023

	Investment Bankers	**Lawyers**	**Accountants**
Jan to Oct, 2023	CITIC Securities, Haitong Securities, Minsheng Securities, CICC, Huatai United Securities	Zhonglun, Allbright, Deheng, Kangda, King& Wood	RSM, BDO, Pan-China, MOORE, Bakertilly
2022	CITIC Securities, China Securities, Haitong Securities, Guotai Junan Securities, CICC	Allbright, Zhonglun, Deheng, Grandway, Junhe	Pan-China, BDO, RSM, MOORE, Bakertilly
2021	CITIC Securities, China Securities, Haitong Securities, Minsheng Securities, Huatai United Securities	Zhonglun, Allbright, King& Wood, Deheng, Grandway,	Pan-China, BDO, RSM, MOORE, Bakertilly
2020	China Securities, CITIC Securities, Haitong Securities, Minsheng Securities, CICC	Zhonglun, Allbright, Grandway, King& Wood, Deheng	Pan-China, BDO, RSM, MOORE, ShineWing

As the above table shows, the annual project volume of the three securities intermediary agencies has stabilized over the past four years. There haven't been many notable shifts in the top-ranked securities intermediary agencies for projects every year. However, it is worth noting that in 2021, Allbright Law Offices was deeply involved in the fraudulent issuance of Wuyang bonds, and in the same year, it was involved in the Shanghai Huaxin bond default case, with a claimed amount of up to 1.5 billion yuan. Nevertheless, Allbright's IPO project continues to hold a sizable portion of the market share even after taking on related compensation obligations and experiencing damage to its reputation. This indicates that the reputation of intermediary agencies will be of little impact on the market share of securities. Issuers primarily select securities intermediary agencies because of their work history and the financial resources that the contractual staff members themselves possess. Organizations acting as intermediaries don't

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have to work hard to keep up with their excellent reputations.[18] Secondly, investors are indifferent to the credentials and reputation of securities intermediary agencies in China's developing capital markets. Investors are more concerned with the issuer's ability to generate profits for them. On the contrary, the issuer places a higher weight on the securities intermediary agencies' experience. As Coffee said, although securities intermediary agencies may occasionally suffer reputational damage, they will not leave long-term memories for investors.[19] The professional reputation of securities intermediary agencies themselves does not form an implicit guarantee for the quality of the issuer's securities.[20] Finally, the reputation capital of securities intermediary agencies will not be effectively transmitted to investors. The reason is that the relevant measures for the IPO and re-issuance of securities in China do not require the disclosure of major matters of securities intermediary agencies, but only require the disclosure of major matters related to the issuer and the securities issued. On the other hand, Article 35 of the "*Measures on Administration of Engagement in Securities Legal Services by Law Firms*" (hereinafter referred to as the "Administration Measures") issued in 2007 stipulates that legal opinions and other documents issued by the law firms and lawyers will not be accepted or reviewed by the China Securities Regulatory Commission or its dispatched agencies during the investigation and rectification period if the law firms and lawyers are the subject of an investigation by the commission. This provision was removed in the amended Administration Measures on October 26, 2023. In summary, there is insufficient foundation for intermediary institutions' reputation mechanisms to function in China.

(C) Improper allocation of responsibilities among securities intermediary agencies

The gatekeeper theory supports the realization of intermediary agency roles by promoting a mechanism based on joint and several liability. *The Securities Law* of China in 2005 did not stipulate that all securities intermediary agencies are joint and several liabilities to the issuer. However, after the revision of *the Securities Law* in 2019, securities intermediary agencies, their sponsors, and the directly responsible personnel of investment bankers are joint and several liability for the issuer's misrepresentations. The mechanism of accountability and punishment

[18] Currently, the issuer chooses securities lawyers rather than the competent authority making the decision. The following are the main factors that the issuer should consider when evaluating the securities intermediary agencies: the issuer's long-term business relationship with the law firm; the securities intermediary agencies' reputation; the securities intermediary agencies' service prices; the opinions of the local government and investments bankers; etc. Frequently, the issuer's price is substantially greater than the incentive provided by the appropriate authority. Therefore, using incentives to strengthen the gatekeeper responsibility mechanism is not the ideal option. See Jinhua Cheng, "*Chinese securities issuers and their lawyers*". Securities Law Review, Vol 1,2014, pp, 89,90.

[19] See John C. coffee, Gatekeepers: "*The professions and Corporate Governance*". Changhe Wang Translated, Peking University Press, 2011, pp. 3-429.

[20] See Murong Bai, "*The "gatekeeper" function of the securities market under the registration-based system*". China Finance, Vol 16, 2021, 57.

of securities intermediary agencies in China is becoming increasingly strict. There are theoretically two liability strategies for misrepresentations, first-party liability is the first liability strategy, and third-party liability is the second liability strategy.[21] The distinguishing criterion is whether the responsible party is an internal employee of the company. The responsibility of securities intermediary agency is also the responsibility of third-party. The gatekeeper theory advocates that gatekeepers combine conduct-absolute responsibility risk with monitoring illegal behavior, imposing it on gatekeepers to reduce law enforcement costs and the incidence of violations.[22] This form of responsibility is placing the gatekeeper in the position of a supervisor. However, the gatekeeper system assigns joint and several liability to supervisors (gatekeepers), stipulating that gatekeepers shall bear joint and several liability.

The gatekeeper does not assume the role of a gatekeeper in practice. As mentioned above, gatekeepers are multi-personas who do more than merely verify the "qualified documents" provided by the issuer. The improper metaphor of gatekeepers directly results in a disconnect between gatekeeper theory and practice. Firstly, the premise for a gatekeeper to work well is that the gatekeeper has an absolute advantage over the issuer, and the gatekeeper is not subject to the issuer. According to this theory, securities intermediary agencies have an advantageous position and certain special rights.[23] However, there is a mismatch between roles and obligations in China since intermediary agencies—especially lawyers and accountants—have no particular powers and are dependent on the issuer. Secondly, the gatekeeper mechanism requires a horizontal bridge between the issuer and investors to prevent issuers who do not meet the requirements from going public. However, the gatekeeper theory requires securities intermediary agencies and issuers to undertake joint and several liability, while the controlling shareholders behind it may have slipped through the net.[24] Securities intermediary agencies may undertake the strictest liability with minimal fault. Finally, the provisions on the liability of intermediary institutions in China's *Securities Law* are based on the theory of gatekeepers, but it does not distinguish between intention or negligence, nor does it distinguish between the primary or secondary markets, and both adopt a joint and several liability mechanism.[25] Such rigid regulations ultimately result in poor accountability since they are not beneficial to the

[21] See Lawrence A. Cunningham, "*Beyond Liability: Rewarding Effective Gatekeepers*". Minnesota Law Review, vol. 92, No. 2, 2007, pp. 338.
[22] See Reinier H. Kraakman, "*Corporate Liability Strategies and the Costs of Legal Controls*". The Yale Law Journal, Vol.93, No.5, 1984, pp. 889.
[23] See Xing Huiqiang, "*Legal Liability Configuration of Securities Intermediaries*". Social Sciences in China, Vol 5, 2022, pp: 88.
[24] See Xing Huiqiang, "*Legal Liability Configuration of Securities Intermediaries*". Social Sciences in China, Vol 5, 2022, pp: 85.
[25] See Xing Huiqing, "*The Application Dilemma of the Theory of Capital Market Gatekeeper in China and its Solution*". Tribune of Political Science and Law, Vol 6, 2022, pp, 184.

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emergence of new situations in practice and are disproportionate to the improper behavior of intermediary agencies.

III. THE LOCALIZATION RECONSTRUCTION OF THE GATEKEEPER THEORY

Given the above-mentioned dilemmas in the gatekeeper theory, the author proposes the following restructuring opinions to adapt to China's localized securities market.

(A) Reconstructing the Commission System in the Securities Market

The core conflict in the gatekeeper theory is that the issuer hires intermediary institutions to assist it in the issuance of securities, while the securities intermediary agencies are also responsible for supervision, regulation, and investor interest consideration. The gatekeeper theory can't move a step in China due to the securities intermediary agencies' multiple identities. Some opinions argue that the system's stability will be shaken if a distinct principal-agent relationship is developed between the gatekeeper and the client. Therefore, restructuring the principal-agent relationship is necessary to ensure the independence of the gatekeeper.[26] Given this, this article proposes the following viewpoint to reconstruct the securities intermediary agency's entrustment system.

Firstly, drawing inspiration from China's selection system of bankruptcy administrator, the Securities Competent Department[27] acts as the principal, appointing securities intermediary agencies to sponsor and verify the issuer, and peeling the conflicting roles of fiduciary duty and verification. Theoretically, there is a viewpoint that company shareholders shall act as principals to isolate management and securities intermediary agencies. However, there is an essential distinction between initial shareholders and secondary market investors, and having them as principals is not enough to change the awkward role positioning of securities intermediary agencies in China. With the competent securities department as the principal, the absolute isolation between the issuer and the securities intermediary agencies can achieve the independence of the intermediary.

Secondly, establish a system for reporting illegal activities by securities intermediary agencies. After the Enron incident, the United States passed t*he Sarbanes Oxley Act*, and the U.S. Securities and Exchange Commission formulated *Part 205 of the Federal Rules* based on *the Sarbanes Oxley Act*, establishing a reporting obligation for securities lawyers, known as

[26] See Wei Li, Wanli Li, "*Securities intermediary and Corporate Governance: reconstructing the "gatekeeper" institutional framework*". Hubei Social Sciences, Vol 10, 2015, pp, 86-91.

[27] The securities competent department referred to in this article include the China Securities Regulatory Commission and the securities regulatory administration where the issuer is located. The CSRC may transfer the power to the CSRC in the future system design in order to carry out territorial jurisdiction.

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"Whistleblowing Reporting". Pursuant to the rules, securities lawyers have a reporting obligation. They shall notify the Chief Legal Officer and the CLO shall look into any potential violations of federal or state securities laws if they discover that the issuer has severely broken any rules or regulations. If the CLO believes that there is no violation, it shall provide feedback to the securities lawyer. The CLO shall take all reasonable steps to compel the issuer to cease the behavior or guarantee that the behavior won't happens again if it believes that the violation has occurred, is occurring, or is about to occur. When securities lawyers believe that CLO has not received an appropriate response from the issuer, they shall report the matter to the issuer's board of directors, audit committee, or committee composed of outside directors. In special circumstances, the SEC allows securities lawyers to disclose reasonably necessary confidential information to it.

Finally, in terms of specific institutional design, China can learn from the whistleblower reporting system of the United States. Under the premise that the securities regulatory administration acts as the principal, to ensure that the securities market is fair, it will be specified that securities intermediary agencies must verify and report to the regulatory administration of the security any illegal activities that the issuer is involved in, as well as any significant illegal activities that the issuer refuses to correct. Regarding delegate fees, some opinions argue that the issuer shall pay the fees to the exclusive department of the China Securities Regulatory Commission at market prices, which will pay it.[28] In addition, the listing expenses shall be jointly borne by both new (investors) and initial shareholders. The gatekeeper and issuer are finally segregated by separating the fees and fiduciary relationships stated above, and the gatekeeper's position is reconstructed by utilizing their professionalism and independence.

(B) Building a new type of reputation securities intermediary agencies

"Reputation intermediary" is the core of the gatekeeper theory. Reputation can somewhat make up for a lack of law enforcement, but ultimately, it comes down to the gatekeeper's capacity for objectivity, judgment, and independent thought. Under this premise, establish a reputation mechanism for gatekeepers.

Firstly, taking the reputation of securities intermediary agencies as one of the CSRC's hiring criteria, that is, to reduce the volume of business that securities intermediary agencies that the CSRC monitors and penalizes engage. Specifically, to build a reputation system for securities intermediary agencies, intermediaries engaged in securities and capital market business shall be

[28] See JING Pei-liang, "*Security Market Gatekeeper System: Cognitive correction, Root of Failure and Reform Approach*". Hainan Finance, vol 7, 2023, pp, 62.

registered within this system. The CSRC has issued regulation on the filing of securities service agencies in July 2020, [29]which stipulates the initial filing, major matter filing, annual filing and re-initial filing of law firms engaged in securities services. On this basis, reputation filing shall be added. Include information on securities intermediary agencies that have been regulated and punished.

Secondly, reducing the volume of business of intermediaries, who was subject to monitor and punishment of CSRC. When hiring securities intermediary agencies, the CSRC shall prioritize investigating the intermediary agencies' prior reputation, creating a multi-gradient reputation system, expanding the business volume of unregulated or penalized intermediary agencies, decreasing the business volume of regulated or penalized intermediary agencies, and establishing a multi-gradient intermediary agency list system; To ensure the quality of the listed company, securities intermediary agencies shall have a higher possibility of accepting following hires if they have successfully supported the issuer's listing and have not experienced losses or profits as a result of false information disclosure.

Thirdly, to strengthen the effect of securities intermediary agency reputation on investors, the disclosure of reputation information about intermediary agencies shall be included in the issuer's IPO and refinancing information disclosure system, along with specific "supervision", "punishment", or code indicating the information. Using the reputation of intermediary institutions as one of the reference criteria for investors to invest, thereby affecting their ability to undertake business and achieving a virtuous cycle.

Finally, in its information disclosure filings, securities intermediary agencies must independently disclose the reputation of securities intermediary agencies. The CSRC issued *the Regulations on monitor of Listing Supervision (Revised Draft for Comments)* On November 10th, 2023, which requires that the supervision check materials must include the word of mouth reputation of the issuer and "the key minority".[30] On this basis, securities intermediary agencies shall be forced to disclose their reputation information in their IPO declaration documents, and the reputation information of intermediary agencies shall be integrated throughout the issuer's declaration and issuance, strengthening the reputation impact of intermediary agencies.

(C) Punishment and incentives coexist

As mentioned before, as a third-party responsible entity, the main reason for intermediary

[29] That is, the CSRC issued *the Provisions on the Administration of the Filing of Securities Service Agencies Engaged in Securities Service Business* on July 24th, 2020.
[30] According to *the Regulations on monitor of Listing Supervision (Revised Draft for Comments)*, the key minority refers to the supervised objects and their actual controllers, directors, supervisors, and their senior managers.

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agencies to bear responsibility is that they fail to disclose or intentionally fail to disclose the issuer's illegal and irregular behavior in a timely manner. In this way, the responsibility of intermediary agencies shall be distinguished from that of issuers and the key minority, presenting a multi-gradient responsibility system. For companies in the IPO stage or reissuing securities, Chinese securities regulatory administrations are particularly concerned about the independence and sustainable operation ability of issuers. If the gatekeeper is only trying to make up for the lack of law enforcement, it may not be able to fulfill its due functions. In this situation, rewarding lawyers to independently issue their opinions based on their professional abilities through incentive mechanisms has little effect.

In fact, the incentive mechanism supplemented by punitive measures may be more effective. For example, improving the admission threshold for intermediary agencies, improving the criteria for judging professional capabilities, excluding intermediary agencies that do not meet the admission requirements, and giving certain rewards to excellent intermediary agencies on this basis. The current trend of China's capital markets reform is to strengthen the responsibility of intermediary agencies, and the revision trend of *the Securities Law* is also to strengthen the responsibility of intermediary agencies. However, only strengthening responsibility cannot effectively play the role of independent verification by intermediary agencies. At the same time, as restructuring the hire system and reputation mechanism of intermediary agencies, an incentive mechanism for intermediary agencies shall be constructed, forming a mechanism based on punishment and supplemented by incentives.

Secondly, distinguish between intentional and negligent liability. *The Securities Law* stipulates that securities service agencies shall bear joint and several liability with the issuer for providing false disclosure documents during the issuance and listing process due to false information disclosure. The lack of distinction between intention and negligence has been criticized in theory. Based on the principle of equivalent responsibility and fault, it is necessary to distinguish between the intention and the negligence. At the same time, different punishment measures shall be distinguished based on the degree of intention and negligence, rather than simply adding joint and several liability.

Finally, reducing and cautiously applying the joint liability of intermediary agencies will focus on holding the key minority accountable.[31] Intermediary agencies are independent professional consultants who provide capital markets advisory services to issuers based on their professional abilities and practical experience, with "gatekeeping" as their secondary function. The key

[31] Nicewarner v. Bleavins, 244 F. Supp. 261 (D. Colo. 1965).

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minority of false statements is the main body that shall bear direct responsibility for small and medium-sized investors. If the intermediary agency intentionally engages in due diligence, it shall bear joint and several liability with the issuer depending on the severity of the situation. If it is only due to negligence or even if there is no fault, joint and several liability shall not be assumed, and other lighter responsibilities shall be replaced.

IV. CONCLUSION

The gatekeeper theory in the securities market has caused significant controversy since its introduction to China. How to perfect the gatekeeper theory and make it more in line with localization in China is a core research topic of the gatekeeper theory. Indeed, the core of the gatekeeper theory lies in intermediaries acting as gatekeepers in the securities market, blocking low-quality securities from the market and forcing gatekeepers to be diligent and responsible through strict accountability systems. But the premise for the good operation of the gatekeeper theory is that the system has been improved, risk allocation is appropriate, reputation constraints are effective, and gatekeepers can have sufficient capital to maintain their independence. Therefore, while introducing the gatekeeper theory, it shall be embedded with the local legal environment to reconstruct the gatekeeper theory and its system, in order to play its due role and form a fair, just and open securities market.

V. EPILOGUE

This paper introduces the responsibilities of securities lawyers as gatekeepers and their reconstruction, and introduces China's gatekeeper (securities lawyer) system in this paper and provides improvement strategies, including an introduction to its responsibility and delegation system, to highlight the changes in the securities lawyer system and better maintain the relationship between attorneys and clients. It is hoped that the opinions of this paper will be beneficial to perfecting the relationship between securities lawyers and issuers (client) and lawyers' duties.

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