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The Influence of “Debt-to-Equity Swap” in Reorganization on the Liability of Misrepresentation on Securities Market

FAN Zhiyong TANG Xiaoqing

Abstract: If a bond investor voluntarily chooses “debt-to-equity swap” in the issuer’s reorganization procedure, regardless of whether all creditor’s rights are satisfied in the

reorganization, after the implementation of “debt-to-equity swap”, the investor has no legal loss from the issuer, and the investor has no right to pursue the liability of misrepresentation on securities market after the reorganization. Because the value objectives of reorganization and securities supervision are different, the circumstances identified in reorganization documents should not be directly used as evidence to identify the issuer’s misrepresentation. The determination of the issuer’s misrepresentation is subject to the examination of the “material” standard. When the bond investor, according to the fair share transfer price, has not realized the 100% debt repayment in the reorganization, he has the right to request the third guarantor for repayment, or claims that the “gatekeeper” bears the relatively independent responsibility for misrepresentation. The interest calculated after the issuer’s reorganization procedure is started, as well as the overdue interest caused by the defaulted bond, liquidated damages, and reasonable expenses for realizing the creditor’s rights are within the scope of the gatekeeper’s liability.

Keywords: Reorganization Plan; Debt-to-Equity Swap; Misrepresentation on Securities Market; Loss; Gatekeeper