

监管者变更与执法力度^{1,2}

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摘要

法律的完善和严格执行有助于推动证券市场的发展。本文认为,处于转型时期的国家法律基础薄弱,执法质量也不高,选择性执法可能作为一种重要的替代机制,即管制者的执法力度会受到多种因素影响。以转型的中国为例,本文发现,上市公司发生违规的时期不同会影响监管机构的执法力度,执法者更有可能从重处罚任期前发生的违规。进一步分析发现,违规企业的国有背景也影响了执法力度,同样是跨期处罚,国有企业面临处罚的处罚更轻。上述理论分析,得到了经验证据的支持。本文为理解转型经济国家法律执行的效率和影响提供了一个新的视角。

关键词:监管者变更、执法力度、任期、国有企业

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¹ 本文之前版本的题目是“监管者变更与执法精度”,但与本文的编辑深入探讨之后,我们觉得采用“监管者变更与执法力度”的表述更为贴切。使用“执法精度”概念需要解决的重要问题在于准确的基准(Benchmark)如何选取,这是具有相当难度的。在法律环境和执行较差的中国,有可能本文研究的违规都是被轻判了。比如2002年以前,上市公司违规权益受到损害的中小投资者甚至不可能依靠司法体系获得民事赔偿。如果能够准确度量出最终处罚结果和违规程度相比,是否真的“过轻”或者“过重”,可能会进一步提高本文的理论意义和重要性,这也是我们今后思考的方向。

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一、引言

法经济学认为,法律制度对金融市场乃至整个经济发展都举足轻重(La Porta *et al.*, 1997, 1998, 1999, 2000, 2002; Beck *et al.*, 2005),进一步的研究则指出对新兴和转型经济体而言,有效执法更为关键(Johnson *et al.*, 2000)。Pistor *et al.*(2000)研究发现,制约转轨国家金融市场发展的主要因素是执法效率低下,在转轨国家,提高执法质量比完善法律法规更具实际意义。Bhattacharya *et al.* (2009)提出,得不到有效执行的良法还不如没有法律,也即有法不依还不如无法可依。然而法律体系的完善和执法效率的提高并非可以一蹴而就,在新兴和转型经济国家,切实提高管制执行质量可能会比加快完善法律法规更具现实意义。转轨和新兴经济体中因为法律不够健全,基础薄弱,作为替代的管制的比重较大,其执行质量值得学术界给予更多的关注(Glaeser *et al.*, 2001)。Coase (1988)也认为,“在某些情形下,政府管制确实可以提高效率”。作为新兴和转型经济中的重要一员,中国经济脱胎于计划经济,计划经济色彩尚未完全褪尽,法律体系尚未完工,而政府管制居于非常重要的位置。⁴ Chen *et al.*(2011)提出,在处于转轨期的中国,政府管制广泛盛行,但是,管制的执行质量受到哪些因素的影响,在经济现实中表现为怎样的特征,则探究甚少。这就使得研究管制执行的效率在中国变得极为重要。

管制执行的效率受到哪些因素影响一直是学术界关注的焦点。陈冬华等(2008)发现了证监会基于隐性契约来分配资源的管制证据。Jiang *et al.*(2009)以中国股权分置改革为例,研究了信息成本对政府管制执行效率的影响,发现当信息成本较低时,政府管制的执行比较容易到位。除了公众目标、信息成本等约束条件之外,管制者自身的异于公众的利益驱动,也会影响管制的执行方式。近年一些学者也从领导人变更视角进行了探索,研究显示,领导者(地区或国家)变更对经济体的政策选择或经济增长甚而微观的公司行为都会产生影响(Li and Zhou, 2005; Jones and Olken, 2005; Ramanna and Roychowdhury, 2010)。那么,管制机构权力交替(或执法者变更)是否会影响证券市场监管政策的选择呢?管制者虽掌握大量资源并且制定资源的配置规则,但囿于行政隶属约束及问责机制的缺乏,事后监管却不足,无法有效威慑有违规动机的上市公司,资本市场欺诈盛行,市场功能无法发挥,其可持续发展更无从谈起。理解管制执行的质量是非常重要的理论问题,监管政策的连续性和稳定性若因执法者变更发生改变,那么,管制机构的执法力度是否会受到影响?这是本文致力于进行理论和经验分析的问题。

以中国证监会对违规上市公司的处罚行为作为研究样本,本文观察、分析并检验了管制机构对不同时期违规公司处罚的执行情况。具体地,我们关注了证监会2002至2009年处罚公告中被处罚违规上市公司128家和手工收集的1994至2001年违规公司85家。本文的“监管者变更”指证券市场管制机构(中国证监会)主席换届。

⁴ 中国的法律传统历来重行政和刑事责任,轻视民事责任,证券民事赔偿制度建设较为缓慢。2002年以前,上市公司违规权益受到损害的中小投资者甚至不可能依靠司法体系获得民事赔偿。随着2002年1月15日最高人民法院发布的《关于受理证券市场因虚假陈述引发的民事侵权纠纷案件有关问题的通知》,以及2002年12月26日,最高人民法院通过的《关于审理证券市场因虚假陈述引发的民事赔偿案件的若干规定》,中国证券民事赔偿制度建设有了一定进展,但其实施情况并不好。截止2007年11月,因违规(虚假陈述)受到中国证券监督管理委员会及其派出机构、财政部等处罚而被中小投资者起诉的上市公司仅24家。

“执法力度”指的是执法主体所施量刑的轻重程度，我们根据证监会对违规公司处罚的类型加以定义。采用两种方法度量违规轻重，一是根据上市公司的违规类型划分是否严重，二是以违规期间投资者遭受损失严重程度加以度量。采用上述数据和变量定义，我们的实证结果发现：首先，上市公司违规严重程度是执法力度的重要解释变量，违规程度越严重，执法力度越重；其次，违规发生的时期会影响执法力度，执法者更有可能从重处罚任期前发生的违规；最后，违规企业的国有背景也影响了执法力度，同样是跨期处罚，国有企业面临处罚的处罚更轻。

本文的贡献在于：管制的执行及其效率是非常重要的问题，尤其对于法律环境较为薄弱的新兴和转型国家，然而此类研究长时期内较为匮乏，本文则为之提供了直接的经验证据。此外本文也有助于理解政府换届对经济发展的影响，比如换届初期严厉地执法对经济发展可能产生正面的或负面的作用。

二、文献、理论与制度

2.1 政府管制的重要性

政府既可以通过金融、货币等宏观政策影响市场经济，又可在微观领域为企业制定游戏规则，政府管制无处不在。出于弥补市场缺陷考虑而建立起来的政府管制普遍存在于法治国家，而在新兴转型国家，政府主导的改革发展模式使得社会对政府管制有着更多的倚重。Shleifer(2005)提出了“落实理论”(Enforcement Theory)，该理论认为政府管制是基于社会无序(Disorder)成本和政府独裁(Dictatorship)成本的一种权衡。政府管制具备有效控制无序的诸多优势，如管制者更积极地发现违规，而且与法官相比，他们也更难被贿赂。Pistor and Xu(2002)认为，管制者可以由专家担任，他们会被激励在某些领域达到社会目标，如在证券市场就要实行政府管制。Zingales(2009)提出，市场失灵的弥补和系统风险的控制需要由政府实施管制。每次大危机之后对管制的需求总在增加，无论1933年经济危机还是2002年安然、世通丑闻等，2008年爆发的金融海啸更凸显了管制重要性。此外，管制还可以更好地保护不老练投资者(Unsophisticated Investors)，Aghion *et al.*(2008)跨国研究显示，市场的高度不信任需要政府管制，为挽回证券市场投资者的信任，管制机构有必要施行新的证券管制。

结合中国转型期经济发展的实际情况看，也许结构性强化政府管制是必要的，但是要解决政府管制中的越位和缺位问题，积极向市场模式的管制制度转变(孙彩红，2004)。处于经济转轨期的中国必须经历“市场失灵—政府管制”的过程后，才能建立起现代意义上的政府管制，中国未来的公共政策思路应重视政府管制作为公共管理制度“模块”之一的制度构建，并进而强化政府的管制职能(王华，2004)。一些研究实证检验了管制的效果。吴溪(2006)认为，由于证券民事诉讼的发展难以一蹴而就，监管执行力对中国证券市场具有特别重要的作用，文章显示了管制对会计信息质量提高的正面影响。赵子夜(2009)则关注了中国审计业务量效应的形成机制，考察了监管的经济后果，如对违规者实行“从业资格取缔”型的惩罚机制，这显示了政府监管的积极作用。当然，也有管制非效率的证据。比如，薛云奎和朱秀丽(2010)以2003年的金融体系改革例，研究了政府主导的强制性制度变迁是否可以对

银行业的集体腐败行为形成有效的约束，但没有发现强制性的制度变迁在短期内达到了预期效果。

2.2 选择性管制的起因及影响

不同国家的法律环境有很大差异，其活动的复杂性和多样性往往使得相同的执法质量难以维系。法律规则制定者所设计的规则不可能是无所不包的，完美的法律在现实生活中并不具备广义上的可行性。当法律制度变迁缓慢或制度改变成本过高时，选择性管制可能成为一种次优选择。选择性管制的产生存在诸多动因，以我国证券市场的监管为例，有以下几点原因：一、监管需求：证券市场的发展，交易丑闻和舞弊时有发生。管制机构对上市公司违规的处理若未达到公众期望，满足投资者需求，在政治和社会舆论压力下可能会加大执法力度。如2001年全国人大在检查证监会执法时，发现对违规公司的处罚明显偏轻，不能有效威慑违规公司，此后证监会加大了对违规公司查处力度，⁵再如涉及金融稳定，类似对社会政治稳定产生影响或受害股民众多的案件，管制机构往往采用更大强度执法力度。不同时期，案件的普遍性、严重性不同，出现不定期的“严打”的运动式执法(戴治勇，2006)。二、利益集团俘虏：信息不对称和合约不完备使得权威性不足的执法主体易受到各种利益集团的巨大影响。管制机构的行动逻辑受制于资源丰富、组织化程度高的利益集团，被强势的利益集团俘获。监管者未能全面地回应公众福利需求，偏离了社会资源的最优配置，可能在客观上造成选择性执行的既成事实(王成，2007)。三、管制资源及成本：管制资源的多少决定了管制的广度和深度。监管机构也有自身追求的特殊利益，这是其作为特定社会主体无法消除的，在决定是否实施管制以及管制的广度和深度时需要平衡管制成本与管制收益。管制资源有限而管制成本又很高时，监管机构可能会有选择性地施行管制。比如，国家在现有执法体制下也特别开设了信访渠道，⁶对于个别影响大且严重的案件，往往得到重视处理。此外，政府既要为国企融资创造条件，又要保护投资者利益以保持证券市场的可持续发展，管制机构在两难中，可能会选择性地对部分违规公司进行重处，以示警戒。⁷

管制的选择性执行可能会推动经济取得成功和获得增长，管制机构在面临金融和经济形势巨变时，在法律赋予其的自由裁量权的范围内，灵活地执行管制，可以确保其完成政治和经济目标(戴治勇，2006)。在转轨经济时期，选择性管制

⁵ 2001年，全国人大常委会组织的证券执法检查组的检查报告强调：上市公司虚假包装上市，造成恶劣影响这类问题并不是一家两家，证券监管部门在当初被其蒙混过关后，也就承认既定事实，并未见到有公开的处罚。

⁶ 如中国证监会和各地方证监局均设立了信访接待办、举报电话和举报信箱等，规定“以事实为依据，以法律为准绳，统一受理，分级负责，归口查办，保护举报人的合法权益”。

⁷ 以证监会为例，其执法重要依据《中华人民共和国证券法》第一百九十三条规定：“发行人、上市公司或者其他信息披露义务人未按照规定披露信息，或者所披露的信息有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。发行人、上市公司或者其他信息披露义务人未按照规定报送有关报告，或者报送的报告有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款”。即便处罚同类型违规公司，证监会在具体实施时也会有所选择，如均为“未按照规定报送有关报告”，广东科龙电器股份有限公司(简称科龙电器)公司被“警告处罚”，而“安徽古井贡酒股份有限公司(简称古井贡酒)”则被“罚款”。

可能是常态，其存在作为法律薄弱的有效补充具备一定合理性。Sugarman(2009)认为，选择性的、基于业绩的管制(Performance-based Regulation)可以有效促使企业减少影响公共健康产品的供给(如烟、酒和枪支等)，这类管制也抑制了个体消费需求。Cory and Rahman(2009)发现，在执行安全饮水法案时，执法者会考虑居民的肤色、收入等，对于有色人种和低收入居住社区会执行不同的标准，存在歧视性执行(Discrimination)。

2.3 中国制度背景

我国证券市场监管的发展大体经历了三个阶段：第一阶段是1992年以前，没有统一、专门的证券市场管理部门，证券市场的相关事宜由中国人民银行兼管，此时证券市场呈现多头、分散管理状态；第二阶段是1992年10月至1998年上半年，由国务院证券委和中国证监会负责证券市场的日常管理。1992年10月国务院撤销中国人民银行证券市场管理办公室，成立了国务院证券委员会和中国证券监督管理委员会，统一协调股票、债券市场等有关政策，这一阶段我国证券的监管体制由分散向集中过渡；第三阶段是从1998年8月开始，国务院决定撤销国务院证券委员会，工作改由中国证券监督管理委员会承担，并决定中国证券监督管理委员会对地方监管部门实行垂直领导，从而形成了集中统一的监管体系(高建宁，2005；周国有，2007)。

然而尽管经历了历次改革，我国的证券监管机制仍然存在不少问题，比如监管机构职权过多、自身缺乏监督等等(周国有，2007)。这些问题之中就包含法律的选择性执行。比如，Chen *et al.*(2011)发现证监会在处罚违规公司时，国有企业所受处罚系统性偏轻。

2.4 理论分析及研究假设

法规针对不同对象的选择性执行会对金融市场产生重要影响，但法规的执行者或管制主体的特征对执行效率的影响却极少得到学术界的关注。比如，管制者变更(换届)是否会对执法质量产生影响，具体到中国就是证监会负责人(主席)换届选举后，接任者对前任任期内发生的公司违规事件和己任任期内违规事件是否会区别处理等。现有政府换届研究多集中在地方和国家层面，从政治激励角度探索官员地区的经济行为(Maskin *et al.*, 2000；Blanchard and Shleifer, 2001)，如地区领导人是否为政治晋升锦标赛而更注重地方经济的发展，研究发现地方政府的政绩激励方式确实为地方官员发展当地经济提供了适宜的激励(周黎安等，2005)。Li and Zhou(2005)研究表明，省级领导人提升可能性与其经济业绩正相关，而且任期内平均业绩的敏感性大于年度业绩，政府官员的政治生涯激励对于当地经济增长有紧密的联系。此外，国家领导人变更也会对资本市场和经济增长产生影响。Santa-Clara and Valkanov(2003)考察了1927年至1998年间美国民主党和共和党执政期间内股票市场的表现发现，民主党执政期间的超额回报远远大于共和党，该结果不是商业周期循环结果造成的，同时也不是对风险的补偿，这表明政治周期对股票市场有一定的影响。Jones and Olken(2005)基于1945至1990年间130个国家或地区样本首次考察了

国家领导人变更前后的经济增长表现,发现国家领导人变更能够显著地影响到经济体的政策选择及其经济增长绩效,而且国家领导人效应在缺乏权力约束的经济体会更大。

现有文献已能定量识别国家领导人的影响,但国内有关管制机构权利交替对于证券市场影响文献极少,一方面可能因政治敏感度较高,另一方面是由于缺少研究试验的环境。中国证监会主席改选无疑为我们提供了一个良好的研究契机,有关证监会主席(管制者)对其任期内和任期前违规公司处理是否存在系统性差异的探讨有利于更深层次上解释我们证券监管所表现出来的选择性执法。Croley(1998)认为,现有理论并不能为管制机构的决定或预测管制后果提供合理解释,明确地、全面地理解管制机构本身可能会重建管制理论。

考察监管者的行为,必须首先分析监管者面临的效用函数。对于我国证券市场的监管者—中国证监会而言,其目标函数是要防范和化解市场风险,确保证券市场平稳有序发展。出于维护声誉,更好地发挥法规的常态作用,监管者在处理不同时期的违规行为时,理应保持一致。然而法律法规在实际执行中可能面临种种约束,而使相同程度的违规由于处于不同的处理时期而最终的受罚程度不同,也就是管制者的执法力度在不同时期可能存在差异。本文认为,执法力度的差异可能与以下原因密切相关:

首先,对于监管者而言,保证任期内市场秩序繁荣稳定是其工作的重要内容,而减少任期内上市公司的违规行为正是具体表现之一。通过上任初期执行更严格处罚的策略,监管者可能更低成本地达到减少任期内公司违规的目的。上任初期严格的处罚策略可以向市场传递其严格执法的信号,提高公司潜在的违规成本,而减少任期内公司的违规行为。而本届监管者上任之前的违规公司,如果其处罚的执行在当期未完成,而延至下一任监管者的上任初期,就可能被更严格地处罚。

第二,不同类型公司的处罚(任前违规和任内违规)对监管者的成本可能并不一样。受到处罚,对于上市公司而言肯定是负面事件,公司高管也可能因此而对监管者产生不满情绪。处罚越严重,负面情绪可能越大,这对监管者的工作和仕途都可能是不利的,比如受到重处的上市公司可能消极配合监管者的监管工作。对于监管者,自然也不希望看到与上市公司存在激烈矛盾冲突的局面。而相比严格处罚当期违规的公司,更严格地处罚任前违规公司,监管者面临的负面成本可能较低。因为任前违规的上市公司很难识别究竟是前任监管者还是现任监管者造成了最后的处罚结果。因此相同条件下,监管者可能更倾向于严格处罚任前违规的公司,而降低自身的成本和风险。

第三,前任领导离任后的去向、对继任者是否有领导关系也可能会影响到继任者的执法力度。比如,前任领导者晋升到更高级别,并且考核新任监管者的工作,那么新任监管者就很可能从轻处罚任前违规。本文中,前任监管者卸任后均没有晋升更高级别,因此新任监管者可能并没有动机从轻处罚任前违规。

最后,前期违规却未得到处理的上市公司,其违规的手段可能更为隐蔽,违规方式更为复杂,这就增大了监管调查的难度,管制机构为此可能已经耗费大量资源。从成本收益的角度,管制机构也可能施以重罚,以示警诫。基于上述分析,提出本文的研究假设1。

假设1：控制其他影响因素，上市公司违规行为的发生时期会影响监管者的执法力度。

进一步的，Chen *et al.*(2011)发现，证监会在处罚违规公司时，考虑了公司是否具有国有背景，同等违规下，国有企业所受处罚更轻。对国有企业从重处罚可能会触及地方政府既得利益格局。联系中国实际，证券市场一开始就被赋予为国有企业治理改制创造条件的功能，或者说国企融资优先是政府的目标。国企作为政府的企业、全民的企业使得证监会对国有企业有着较大监管困难，这种“天然关系”也会对证监会的监管规则产生“挤出效应”，因此国有企业违规并非一定受到应有处罚。这种“挤出效应”对于跨期执法力度也会有影响。一方面，在中国社会差序格局、“人际关系资本”潜规则的主导下，监管部门对国企的不当行为，可能有着较明显的“酌情处罚”、“下不为例”倾向。证券执法过程并非纯粹意义上的法律运作过程，而包含着某种意义上的“利益再分配”意味。对国有上市公司实施惩戒直至做出退市决定，证监会都必须直面因为减损了地方利益而带来的诸多纷扰。原因在于国有企业与地方政府或者中央政府之间的存在着紧密的联系，比如税收、就业，甚至官员的升迁(Li and Zhou, 2005)。而对于非国有企业，监管者处罚的顾虑显然更少，没有等量的动机降低其受罚的轻重。另一方面，国有企业的处罚或者规范有着更多途径。除监管者做出的处罚外，可能还存在事前内部沟通、更换经理人等方式，而对于非国有企业，监管者处罚几乎是唯一途径。如果唯一的途径再选择性地偏轻，那么观察到这一信号的其他非国有企业将可能更多地违法违规，这无疑非证监会所愿(Chen *et al.*, 2011)。就这点而言，监管者也是更可能重处非国有企业。综上所述，管制者处罚任期前违规国有企业和非国有企业时亦会区别对待，国有企业受到的处罚可能更轻。基于上述分析，提出本文的研究假设2。

假设2：控制其他影响因素，违规公司的所有权性质会影响监管者的执法力度。

三、实证检验

3.1 样本、数据及描述性统计

本文研究样本主要来自中国证券监督管理委员会(以下简称“证监会”)的“处罚决定”公告，另有部分数据系手工收集。截至2009年底，共计213家因违规而受证监会处罚的上市公司构成本文的研究样本。样本包括证监会2002至2009年处罚公告中被处罚违规上市公司128家，加上手工收集的1994至2001年违规公司85家。本文主要查阅了《中国证券报》、《上海证券报》等，其余数据来自色诺芬数据库(CCER)和万得数据库(Wind)。因1995年没有上市公司因违规被证监会处罚，故在表1中未列示。本文主要从违规轻重和处罚轻重角度来研究违规公司违规行为和管制机构执法力度。上市公司的违规类型可细分为以下15类：1=违规购买股票；2=虚列利润；3=虚列资产；4=擅自改变资金用途；5=延期披露年报；6=虚假陈述；7=出资违规；8=重大遗漏；9=大股东占用上市公司资产；10=操纵股价；11=欺诈上市；12=违规担保；13=违规炒作；14=未及时披露公司重大事项；15=其他(包括业绩预测结果不

准确或不及时和未依法履行其他职责等),当违规类型为1、5、15中一种或其组合时,本文定义为违规轻;否则视为违规重。处罚类型分为以下类:1=公开批评;2=公开谴责;3=行政处罚;4=立案调查;5=警告;6=处以罚款;7=取消证券业务许可;8=其他,当处罚类型为1、2、3、5、8中一种或其组合时,定义为处罚轻;否则视为处罚重。⁸我国的股市作为资本市场最重要改革成果之一至今已成立18年,这18年见证了5任证监会主席的更迭变换,具体如下:刘鸿儒(1992.10-1995.02);周道迥(1995.03-1997.06);周正庆(1997.07-2000.02);周小川(2000.03-2002.12);尚福林(2003.01-2011.10)。

表1: 处罚样本的年度分布

年份/月份	1	2	3	4	5	6	7	8	9	10	11	12	合计
1994				1						3			4
1996				2	1					2			5
1997						<u>1</u>			<u>1</u>		8		10
1998	1		1		2				1		2		7
1999			1					3		3	4	<u>2</u>	13
2000	<u>1</u>	<u>1</u>		<u>1</u>	<u>2</u>		2		3	1		1	12
2001			12		2		5	1	5	1	2	3	31
2002			7	3	2		1	1		<u>1</u>			15
2003			<u>1</u>	3		1	1	2	5		1	1	15
2004	3	2	2			5	2	5	2	4	1		26
2005	2				3	3			1	3		2	14
2006		2	4	1		2	3			1	2	5	20
2007	3	2	1	5	1	4		2	2				20
2008	1		1	1	1	1	2			1		1	9
2009	1	1	2	1	1	1	1		1	2		1	12
合计	12	8	32	18	15	18	17	14	21	22	20	16	213

表1报告了研究样本的年度分布。若换届过度期为六个月(即领导离任的前三个月和后三个月),表1显示,在管制机构领导换届过渡期,较少违规公司被处罚(表1中黑体含下划线数字即为处于过渡期被处罚公司样本),仅11家在权力过渡期被罚。具体的,若处罚样本均匀分布,四次监管变更的过渡期共计24个月,平均每月处罚0.46家(11/24),在其他时间段,共计13年156个月,平均每月处罚却为1.29家(202/156),比较可以发现,监管机构在过渡期实施的处罚远远少于在其他时间段。监管变更过渡期的管制机构人员尚处于磨合阶段,组织架构需要重组,为实现权力交替平稳过渡,若非重大违规,在此期间内监管机构会较少地处罚违规公司,事实上,本文也发现被处罚的11家均为违规严重公司。

⁸ 有关“违规程度”和“处罚轻重”两个变量,我们认为,违规轻重和处罚轻重,轻重只是顺序上的,相对而言的。譬如处罚轻重的划分,公开批评和谴责就整体而言处罚都是偏轻的,这种衡量虽较粗糙但可说明问题,变量定义具有一定的正当性(validity)。

表 2： 处罚样本的分布及统计

		处罚轻	占比 (%)	处罚重	占比 (%)	合计	T	Prob> T
Panel A：分违规程度								
违规程度	违规轻	36	66.7	18	33.3	54	6.43	0.000
	违规重	36	22.9	123	77.1	159		
Panel B：分领导任期								
领导任期	任期内	45	40.2	67	59.8	112	2.09	0.037
	任期前	27	26.8	74	73.2	101		
Panel C：分违规程度和领导任期								
任期内	违规轻	30	71.4	12	28.6	42	0.32	0.747
	违规重	15	21.4	55	78.6	70		
任期前	违规轻	6	50.0	6	50.0	12	1.29	0.216
	违规重	21	23.6	68	76.4	89		
Panel D：分企业性质和领导任期								
国有	违规轻	25	75.8	8	24.2	33	3.66	0.000
	违规重	29	32.6	60	67.4	89		
非国有	违规轻	11	52.4	10	47.6	21	1.73	0.091
	违规重	7	10.0	63	90.0	70		
Panel E：分违规程度、企业性质和领导任期								
(1)任期内								
国有	违规轻	19	79.2	5	20.8	24	1.13	0.259
	违规重	12	30.8	27	69.2	39		
非国有	违规轻	11	61.1	7	38.9	18		
	违规重	3	9.7	28	90.3	31		
(2)任期前								
国有	违规轻	6	66.7	3	33.3	9	2.39	0.019
	违规重	17	34.0	33	66.0	50		
非国有	违规轻	3	42.9	4	57.1	7		
	违规重	0	0.0	35	100.0	35		

表 2 的 Panel A 列示了违规公司因违规程度不同被处罚的分布。轻违规轻处罚、重违规重处罚所占比例较大，分别为 66.7% 和 77.1%，证监会处罚的轻重与违规严重是密切相关的，违规较重通常受重罚，违规情节轻微受罚也较轻，统计检验在 0.01 水平上显著。Panel B 描述了违规公司在不同任期被处罚的分布。若违规和处罚均在同一领导任期内，被重处公司占 59.8%，而在不同领导任期内，计有 73.2% 的公司被重处，管制者对其任期前发生的违规案件更有可能重处，统计检验在 0.05 水平上显著。

表2的Panel C综合列示了根据任期和违规程度的样本分布,管制者在处罚任期前违规时,违规较轻公司被重处比例为50%,而处罚任内违规时,违规较轻公司被重罚比例为28.6%。⁹任期前违规较轻公司被重处的比例更大,但统计检验却不显著(T值为1.29)。Panel C同时显示,违规较重公司的处罚在任期内和任期前的比例相差并不大,分别为78.6%和76.4%,统计检验也不显著(T值为0.32)。表2的Panel D报告了不同类型上市公司违规被处罚的分布。分企业性质看,同属违规较轻,国有上市公司受到重罚的占24.2%,非国有上市公司受到重罚的比例却高达47.6%,高出国有上市公司20多个百分点,统计检验在0.1水平上显著;同属违规较重,国有上市公司受到重罚的只占67.4%,非国有上市公司受到重罚的比例则高达90.0%,统计检验在0.01水平上显著。这表明,国有企业相比非国有企业受到的处罚系统性更轻。表2的Panel E结合了管制者任期、企业性质和违规程度列示了违规样本的分布,在跨期处罚(任期前)中,国有企业不论是违规轻或违规较重,受到重罚的比例均小于非国有企业。国有企业和非国有企业在任期内被重处的比例分别为50.8%(32/63)和71.4%(35/49),国有企业被重罚的比例小于非国有企业,但统计检验却不显著(T值为1.13)。在跨期处罚中,国有企业和非国有企业被重处的比例为分别为61%(36/59)和93%(39/42),统计检验在0.05水平上显著,这表明,在跨期处罚中,国有背景可以帮助违规企业显著降低受重罚的概率。

表3列示了本文主要变量的设计方法,表4为变量的描述性统计。

表3: 变量的定义

变量名称	变量符号	变量定义
处罚轻重	<i>PUNISH</i>	虚拟变量,当上市公司违规受处罚较重时取1,否则为0
跨期处罚 ¹⁰	<i>CROSS</i>	虚拟变量,当上市公司被跨期处罚时取1,否则为0
违规程度	<i>OFFEND</i>	虚拟变量,当上市公司违规严重时取1,否则为0
企业性质	<i>SOE</i>	虚拟变量,当上市公司为国有性质时取1,否则为0
行业特征	<i>PROTECT</i>	虚拟变量,当上市公司属于受保护行业时取1, ¹¹ 否则为0
市场环境	<i>SOAR</i>	虚拟变量,当上市公司违规被处罚在牛市时取1, ¹² 否则为0
企业规模	<i>SIZE</i>	上市公司违规被处罚前一年总资产的自然对数
地区	<i>REGION</i>	虚拟变量,当上市公司处于东部发达地区时取1,否则为0

⁹ 作者仔细分析了这12个样本,发现任前发生的违规较轻公司更可能受到重罚(比例为50%),通过查阅证监会“处罚公告”发现,监管者区别对待了任期前和任期内的同类型违规公司。以证监会尚福林主席为例,其于2003年上任后,重庆东源钢铁股份有限公司(简称重庆东源)因“未能在2002年8月31日前公布其2002年中期报告”而被“处以罚款3万元”,而石家庄宝石电子玻璃股份有限公司(简称宝石电子)因“未按规定在2006年4月30日之前公开披露2005年年度报告”而被“警告”。可见,监管者对任期前发生同类违规的处罚更重。

¹⁰ 跨期处罚:上市公司违规和处罚不在同一领导任期内,即现任领导对任期前发生违规公司的处理。

¹¹ 受保护行业:受保护行业包括军工、电力(D)、石油(B03)和石化(C41)、市政公用工业(K)、煤炭(B01)、铁路运输业(F01)、航空运输业(F09),行业代码参考上市公司行业分类指引。

¹² 根据雅虎财经(<http://biz.cn.yahoo.com/special/xggl/>)股市历年牛熊回顾划分。

表 4： 变量的描述性统计

变量名	样本量	最大值	最小值	均值	中位数	标准差
<i>PUNISH</i>	213	1.00	0.00	0.66	1.00	0.47
<i>CROSS</i>	213	1.00	0.00	0.47	0.00	0.50
<i>OFFEND</i>	213	1.00	0.00	0.75	1.00	0.44
<i>SOE</i>	213	1.00	0.00	0.57	1.00	0.50
<i>PROTECT</i>	213	1.00	0.00	0.06	0.00	0.24
<i>SOAR</i>	213	1.00	0.00	0.43	0.00	0.50
<i>SIZE</i>	213	22.61	15.77	20.35	20.34	1.03
<i>REGION</i>	213	1.00	0.00	0.48	0.00	0.50

3.2 监管变更及所有权性质影响执法力度检验

本文主要从“处罚轻重”角度来研究管制机构对任期前发生违规企业的处罚力度。回归分析之前，首先对研究的主要变量进行相关性分析，见表 5。表 5 下三角为 Pearson 相关系数矩阵，上三角为 Spearman 相关系数矩阵。表 5 显示，*PUNISH* 与 *OFFEND* 正相关，即违规越重处罚越重；*PUNISH* 与 *CROSS* 正相关，即跨期处罚更重，这与本文理论分析一致。此外，*PUNISH* 与 *SOE* 负相关，即国有企业处罚较轻。

表 5： 变量的相关性检验

	<i>PUNISH</i>	<i>CROSS</i>	<i>OFFEND</i>	<i>SOE</i>	<i>PROTECT</i>	<i>SOAR</i>	<i>SIZE</i>	<i>REGION</i>
<i>PUNISH</i>	1.0000	0.1419	0.4048	-0.2560	0.0163	0.0353	0.1143	0.0293
		0.0385	<.0001	0.0002	0.8125	0.6082	0.0960	0.6698
<i>CROSS</i>	0.1419	1.0000	0.2940	0.0218	-0.0064	-0.2689	0.01950	-0.1574
	0.0385		<.0001	0.7511	0.9254	<.0001	0.7773	0.0215
<i>OFFEND</i>	0.4048	0.2940	1.0000	-0.0451	0.0133	-0.0857	0.1276	-0.1542
	<.0001	<.0001		0.5120	0.8466	0.2127	0.0630	0.0243
<i>SOE</i>	-0.2560	0.0218	-0.0451	1.0000	0.1012	-0.1558	0.1426	0.0109
	0.0002	0.7511	0.5120		0.1408	0.0229	0.0375	0.8735
<i>PROTECT</i>	0.0163	-0.0064	0.0133	0.1012	1.0000	0.0573	0.1192	-0.0481
	0.8125	0.9254	0.8466	0.1408		0.4052	0.0824	0.4850
<i>SOAR</i>	0.0353	-0.2689	-0.0857	-0.1558	0.0573	1.0000	-0.0858	0.0460
	0.6082	<.0001	0.2127	0.0229	0.4052		0.2122	0.5041
<i>SIZE</i>	0.0721	-0.0390	0.0727	0.1563	0.0996	-0.0291	1.0000	0.0548
	0.2949	0.5710	0.2909	0.0225	0.1472	0.6723		0.4256
<i>REGION</i>	0.0293	-0.1574	-0.1542	0.0109	-0.0481	0.0460	0.0604	1.0000
	0.6698	0.0215	0.0243	0.8735	0.4850	0.5041	0.3798	

注：左下角 Pearson 相关系数，右上角为 Spearman 相关系数。

为检验本文研究假设，建立 Logistic 回归模型如下：¹³

$$\begin{aligned}
 PUNISH = & \alpha_0 + \alpha_1 CROSS + \alpha_2 SOE + \alpha_3 OFFEND + \alpha_4 CROSS*SOE \\
 & + \alpha_5 PROTECT + \alpha_6 SOAR + \alpha_7 SIZE + \alpha_8 REGION \\
 & + \alpha_9 \sum TENURE + \alpha_{10} \sum YEAR + \varepsilon
 \end{aligned} \quad (1)$$

回归检验结果见表6。在控制年份变量和任期变量影响下，跨期变量(CROSS)显著为正，这表明管制者倾向重罚任期前发生的违规事件(见列1)；违规性质也显著为正，公司的违规程度显著影响其受处罚轻重，违规性质越恶劣越易遭受重罚(见列3)。表6列4显示，在控制其他变量影响下，若某主席任期内发生的公司违规事件留待下任主席处理，更有可能遭致重罚。管制者在处罚自己任期内的违规公司尽量注重罪罚相当，而对任期前发生违规的公司处理表现出更多的执法随意性，有着重罚倾向。这支持了本文研究假设1。¹⁴表6列2检验显示，在控制年份变量和任期变量影响下，国有企业相比非国有企业受罚更轻，SOE变量在0.05水平上显著为负。加入其他控制变量和交叉变量后，表6列5显示交叉变量在0.05水平上显著为负。这表明，证监会在重罚任期前发生违规公司时，对于不同所有制性质企业是区别对待的，违规国有企业相比非国有企业遭受重罚的可能性更小，检验结果验证了研究假设2。

3.3 稳健性测试

3.3.1 异方差测试

本文进行了考虑异方差的稳健性检验。表7报告的结果基本上支持了本文的研究假设。表7列1显示，在控制年份变量和任期变量影响下，CROSS变量在0.01水平上显著，列4显示，在控制其他变量影响后，违规行为的处理时期会影响监管者的执法准确性，CROSS在0.1水平上显著，监管机构从重处罚了任期前的违规。表7列5表明，控制其他影响因素，所有权性质会影响监管者的执法准确性，交叉变量(CROSS*SOE)在0.1水平上显著，监管者在处理任期前违规公司时区别对待了国有企业和非国有企业，国有企业受罚系统性偏轻。

3.3.2 违规程度的另一种度量

对于违规轻重，本文以另一种划分标准投资者损失的大小(LOSS)来衡量。投资者损失，即上市公司违规给投资者带来的损失率。基本上，投资者损失的计算有两种思路：一种是事件反应法，计算上市公司违规行为受到处罚前后短时间窗口的市场反应，这种方法噪音较小，但可能遗漏投资者损失的大量信息；另一种是因果

¹³ 因样本量较小，为控制年份影响(1994-2009，剔除1995，共15年)，每3年为一期，共计5期。其中Y1(1994-1997)，Y2(1998-2000)，Y3(2001-2003)，Y4(2004-2006)，Y5(2007-2009)。同时，考虑到证监会各届主席任期的长短以及「跨期处罚」可能只是某任主席的特点，在模型中我们加入了TENURE变量，若上市公司被处罚时间在证监会主席*i*的任期内则赋值为1，否则为0。

¹⁴ 我们在表6的列1至列3仅控制了主要解释变量和TENURE、YEAR虚拟变量，解释能力达到了40%多。进一步核对，主要的解释能力是由TENURE和YEAR引起的，YEAR引起的更大，这可能表明违规事件(违规事件的处罚)存在一定的积聚。

关系法，计算从上市公司违规行为开始到被处罚这一长窗口的市场反应，这种方法的缺点是噪音较大，但是，投资者市场损失的信息遗漏比较少。为了能够更好地刻画上市公司违规行为给投资者带来的损失，本文选择采用因果关系法来计算投资者因为公司丑闻遭受的损失。出于尽可能减少噪音的考虑，采用扣除市场系统影响的方法来降低系统性因素的影响(陈冬华等，2008)。投资者损失($LOSS$)的计算如下： $(AR_{i,t} = \text{违规的上市公司 } i \text{ 在 } t \text{ 日的回报率} - t \text{ 日的市场回报率}, T = \text{上市公司违规行为开始日到违规被处罚前一日})$ 。

$$LOSS_i = (-1)CAR_{i,t} = -\sum_{t=1}^T AR_{i,t} \quad (2)$$

表6： 实证检验结果

变量	<i>PUNISH</i>				
	1	2	3	4	5
INTERCEPT	-1.099 (-0.95)	-0.179 (-0.15)	-1.099 (-0.95)	-6.889 (-1.37)	-6.527 (-1.28)
CROSS	1.323*** (2.76)			1.074* (1.86)	2.494*** (2.68)
SOE		-0.920** (-2.22)		-1.515*** (-2.99)	-0.513 (-0.74)
OFFEND			2.032*** (3.84)	2.199*** (3.59)	2.173*** (3.52)
CROSS*SOE					-2.128** (-2.02)
PROTECT				0.120 (0.12)	0.109 (0.11)
SOAR				-0.207 (-0.34)	-0.337 (-0.54)
SIZE				0.360 (1.45)	0.293 (1.15)
REGION				0.652 (1.34)	0.887* (1.73)
TENURE	YES	YES	YES	YES	YES
YEAR	YES	YES	YES	YES	YES
No. of observations	213	213	213	213	213
Pseudo R-Sq	0.411	0.400	0.443	0.502	0.519

注：因变量*PUNISH*为证监会处罚力度，若处罚较重时取1，否则为0；*CROSS*表示跨期处理，若被跨期处理取1，否则为0；*OFFEND*表示违规程度，若违规较重取1，否则为0；*SOE*为企业性质，若为国有企业取1，否则为0；*PROTECT*为行业性质，当所属为保护性行业时取1，否则为0；*SOAR*为市场环境，若处罚所处为牛市时取1，否则为0；*SIZE*为企业规模，处罚前一年总资产自然对数表示；*REGION*表示地区，当违规公司处于东部地区时取1，否则为0；*TENURE*为主席任期哑变量；*YEAR*为年份哑变量。括号内为Z值，*、**和***分别表示在0.1、0.05和0.01水平下显著。

表7： 稳健性测试1

变量	<i>PUNISH</i>				
	1	2	3	4	5
INTERCEPT	-1.099 (-0.95)	-0.179 (-0.15)	-1.099 (-0.95)	-6.889 (-1.10)	-6.527 (-1.03)
CROSS	1.323*** (2.68)			1.074* (1.80)	2.494*** (2.64)
SOE		-0.920** (-2.22)		-1.515*** (-2.96)	-0.513 (-0.81)
OFFEND			2.032*** (3.86)	2.199*** (3.56)	2.173*** (3.79)
CROSS*SOE					-2.128* (-1.90)
PROTECT				0.120 (0.18)	0.109 (0.16)
SOAR				-0.207 (-0.32)	-0.337 (-0.51)
SIZE				0.360 (1.14)	0.293 (0.92)
REGION				0.652 (1.38)	0.887* (1.79)
TENURE	YES	YES	YES	YES	YES
YEAR	YES	YES	YES	YES	YES
No. of observations	213	213	213	213	213
Pseudo R-Sq	0.411	0.400	0.443	0.502	0.519

注：变量 *PUNISH* 为证监会处罚力度，若处罚较重时取1，否则为0；*CROSS* 表示跨期处理，若被跨期处理取1，否则为0；*OFFEND* 表示违规程度，若违规较重取1，否则为0；*SOE* 为企业性质，若为国有企业取1，否则为0；*PROTECT* 为行业性质，当所属为保护性行业时取1，否则为0；*SOAR* 为市场环境，若处罚所处为牛市时取1，否则为0；*SIZE* 为企业规模，处罚前一年总资产自然对数表示；*REGION* 表示地区，当违规公司出于东部地区时取1，否则为0；*TENURE* 为主任任期哑变量；*YEAR* 为年份哑变量。括号内为Z值，*、**和***分别表示在0.1、0.05和0.01水平下显著。

表8列1显示,若违规程度用投资者损失来衡量,LOSS变量在0.05水平上显著,公司违规程度越严重所受处罚也越重。列2表明,在控制其他变量影响后,监管机构从重处罚了任期前的违规,执法准确性受到影响。由表8列3可知,交叉变量(CROSS*SOE)在0.05水平上显著,所有权性质会对监管机构的执法准确性产生影响,即便在跨期处罚中,国有性质的违规公司也被系统性轻罚。

表8: 稳健性测试2

变量	<i>PUNISH</i>		
	1	2	3
INTERCEPT	-1.099 (-0.95)	-6.293 (-1.31)	-6.317 (-1.29)
CROSS		1.039* (1.83)	2.484*** (2.75)
SOE		-1.377*** (-2.90)	-0.388 (-0.60)
LOSS	0.424** (2.26)	0.369* (1.82)	0.384* (1.80)
CROSS*SOE			-2.208** (-2.15)
PROTECT		0.222 (0.26)	0.141 (0.16)
SOAR		-0.640 (-1.14)	-0.737 (-1.28)
SIZE		0.322 (1.37)	0.276 (1.16)
REGION		0.385 (0.84)	0.555 (1.16)
TENURE	YES	YES	YES
YEAR	YES	YES	YES
No. of observations	213	213	213
Pseudo R-Sq	0.401	0.460	0.479

注: 因变量PUNISH为证监会处罚力度,若处罚较重时取1,否则为0;CROSS表示跨期处理,若被跨期处理取1,否则为0;OFFEND表示违规程度,若违规较重取1,否则为0;SOE为企业性质,若为国有企业取1,否则为0;PROTECT为行业性质,当所属为保护性行业时取1,否则为0;SOAR为市场环境,若处罚所处为牛市时取1,否则为0;SIZE为企业规模,处罚前一年总资产自然对数表示;REGION表示地区,当违规公司出于东部地区时取1,否则为0;TENURE为主任任期哑变量;YEAR为年份哑变量。括号内为Z值,*、**和***分别表示在0.1、0.05和0.01水平下显著。

四、结论与研究局限

法律规则的完善和执行效率的提高是金融和经济发展的重要助力和保证，这一点在发达国家已得到广泛验证。然而对于广大新兴和转型经济国家而言，法律环境的改善并非一蹴而就，这背后有多方面的制约，如历史、宗教、文化以及提高法律环境需要付出的高昂成本。在法律环境薄弱的制约条件下，管制往往会部分替代法律环境的作用，这就使得管制执行效率的探讨成为一个非常重要的，兼具理论和实践意义的问题。

本文以1994至2009年间被证监会处罚的违规上市公司为样本，研究了证监会主席换届对管制执行的影响，对我国管制机构执行效率的影响因素进行了初步探索。结果发现，违规发生的不同时期会影响执法力度，执法者更有可能从重处罚任期前发生的违规。进一步分析发现，违规企业的国有背景，也在一定程度上会减低执法力度。本文为相关的研究领域提供了探索性的、直面的经验证据，此外本文也可能为管制者变更对经济发展的影响路径提供了一定的启发。

本文还存在以下不足之处：首先，对于违规轻重、处罚轻重的划分略显粗糙。违规轻重和处罚轻重是本文的重要度量指标，然而由于以往研究相对较少，较难找到合适的参考，本文目前的划分方式因此可能存在一定的主观性，并且虚拟变量的定义方式较为粗糙，这可能一定程度会影响结论的稳健性；其次，本文并不能解决是否罪罚相当的问题，也就是说本文仅仅衡量了绝对的执法力度受到的影响，而不是判罚的精确程度（“过轻”、“过重”）受到的影响；第三，监管者从重处罚任前违规是否能有效遏制其任期内的违规？上市公司违规动机是否因较强执法力度而变弱？以及执法有效性等问题，在本文中未加以检验。最后，本文的样本量较小，因此本文也未检验监管者在换届过渡期实施处罚的影响。上述四方面构成了本文的研究局限也是我们未来的研究方向。

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附录：2011年证监会主席变更后系列处罚决定

1、证监会对胜景山河违规的处罚决定

《证券时报》2011年11月30日刊载了《胜景山河两保代资格被取消》的文章，文章报道了证监会对胜景山河IPO造假事件的处罚决定。¹⁵报道摘要如下：

备受关注的“胜景山河事件”终于以一纸严厉罚单画上句号。11月29日，中国证监会向相关中介机构下发相关罚单：向保荐机构平安证券出示警示函，并撤销平安证券胜景山河项目两名签字保荐的保荐代表人资格。业内人士分析，与此前类似情况相比，证监会此次开出的罚单超出市场预期，为史上最严的罚单。

中国证监会最新的《行政监管措施决定书》显示，因在胜景山河首次公开发行并上市项目中，尽职调查工作不完善，对胜景山河经销商、关联方等事项核查不充分，向保荐机构平安证券采取出具警示函的措施，向林辉、周凌云采取撤销保荐代表人资格的措施。11月29日，平安证券和相关中介机构正式收到证监会上述罚单。

2010年10月27日，胜景山河IPO获中国证监会发审委通过，但在12月17日胜景山河即将登陆深交所的前夜，有媒体发文称其招股书披露不实，涉嫌虚增销售收入等情况，监管紧急叫停，公司申请暂缓上市。

2011年4月6日，中国证监会发出《关于撤销湖南胜景山河生物科技股份有限公司首次公开发行股票行政许可的决定》，该《决定》认为，胜景山河在招股说明书中未披露关联方及客户信息，构成信息披露的重大遗漏。经中国证监会发审委会议再次表决，胜景山河首发申请未获通过。

至此，胜景山河继立立电子和苏州恒久之后，成为中国证券史上第三家“募集资金到位、但IPO最终被否”的拟上市公司。2008年过会的立立电子，仅被撤销了发行人上市资格，证监会并未对中介机构进行处罚。2010年过会的苏州恒久，除被撤销上市资格外，证监会还向保荐机构出具警示函、12个月内不受理两名保荐代表人负责的推荐。

胜景山河事件的具体进展如下：2010年10月27日，胜景山河IPO过会；2010年12月6日，胜景山河网上发行；2010年12月16日，媒体报道胜景山河涉嫌造假；2010年12月17日，胜景山河发布公告：上市被紧急叫停；2011年4月6日，胜景山河二次上会被否；2011年11月29日，证监会对胜景山河事件责任人开出处罚。值得注意的是，胜景山河事件处罚日为2011年11月29日，此时上届证监会主席尚福林卸任一个月，新任主席郭树清上任一个月。

2、证监会对并购重组委员违规的处罚决定

几乎与此同时，证监会对内部违规也进行了严厉的处罚。《北京日报》2011年12

¹⁵ 网址：<http://www.p5w.net/today/201111/t3961102.htm>，文章作者吴清桦，此外《第一证券报》、《南方都市报》等多家媒体也报道了该事件，《第一证券报》刊载了题为《史上最严厉保代罚单：证监会撤销胜景山河两保代资格》的文章，网址：<http://dycj.ynet.com/3.1/1111/30/6547343.html>，《南方都市报》刊载了题为《史上最严罚单：两保代被红牌逐出场郭树清“杀鸡骇猴”：从严整肃IPO中介》的文章，网址：http://epaper.oeeee.com/D/html/2011-12/01/node_526.htm。胜景山河全称为湖南胜景山河生物科技股份有限公司。

月2日刊载了《证监会对委员首开罚单并购重组委员违规被解聘》的文章。¹⁶摘要如下：

中国证监会1日宣布，对第三届并购重组委委员、北京天健兴业资产评估有限公司总经理吴建敏实行解聘的决定，这是证监会对包括主板、创业板和并购重组委员开出的首例罚单。经查，吴建敏在借用他人账户持有ST圣方股票的情况下，未按规定提出回避申请，于2010年3月3日参与审核了黑龙江圣方科技股份有限公司并购重组方案。吴建敏的上述行为违反了《中国证监会上市公司并购重组审核委员会工作规程》第十三条“并购重组委委员不得持有所审核的上市公司的股票”的规定。据了解，吴建敏由中国资产评估协会推荐，经过对外社会公示、会内核查、并购重组委提名委员会会议审议后，于2007年12月25日被聘任为中国证监会并购重组委员会委员，后因并购重组委整体续聘，延续至今。

证监会有关部门负责人说，本次事件给每一位委员敲响了警钟，下一步，证监会将增加对委员执行相关规定和工作纪律情况的定期检查工作，并将其作为委员年度考核的重要内容。当前，证监会正在全面修订《工作规程》，特别是对委员买卖上市公司证券的行为做了更为严格的规定和管理。新修订的《工作规程》规定委员不得直接或间接以化名、借他人名义买卖上市公司的证券；委员在接受证监会聘任后，应当及时按照有关规定将证券账户及持有上市公司证券的情况进行申报登记，并在一定期限内予以清理卖出。

3、证监会对其他违规行为的关注和处罚

2011年12月16日，证监会立案调查前中信证券分析师杨治山涉嫌内幕交易案件。2011年12月23日，证监会一天通报了五起证券市场违法违规案件。

《中国证券报》2011年12月16日刊载了《新财富分析师被证监会立案调查》的报道。¹⁷部分摘要如下：漳泽电力一则公告揭开了券商分析师任独立董事弊端的疮疤。公告称，近日，公司独立董事杨治山收到中国证监会调查通知书，因涉嫌违规交易股票对其本人进行立案调查。证监会近期严打违法违规行为，对内幕交易更是“零容忍”。实际上被监管层关注的分析师独董不止杨治山一人。11月4日辞去孚日股份独董一职的李质仙近期遭到深交所通报批评。

“21世纪网”2011年12月23日刊载了《证监会一日通报五案前西南证券高管涉嫌老鼠仓》的报道。¹⁸部分摘要如下：证监会对于内幕交易与证券市场违法违规行为的“零容忍”风暴正在衔枚疾进。2011年12月23日下午，证监会有关部门负责人通报了五起证券市场违法违规案件，其中包括证券公司从业人员“老鼠仓”涉刑第一案、首例涉及阳光私募的“抢帽子”市场操纵案等。此外，证监会当日下午还通报了东北证券保代秦宣涉嫌内幕交易被逮捕的情况，时任东北证券保代秦宣，在担任西南合成重组项目的独立财务顾问时，泄露并利用其他人账户在内幕信息公开前，买入西南合成股票，现已被依法逮捕。此外，证监会还公布了大富投资、新思路投资涉嫌操纵证券市场案以及惠顺装饰法人利用他们账户买卖证券行为等。

¹⁶ 网址：<http://www.abbao.cn/ViewPage.aspx?issueId=3b502902-362e-48f1-b078-220622565ea5&order=10>，文章作者陶俊洁、赵晓辉。

¹⁷ 网址：<http://epaper.cs.com.cn/dnis/>，文章作者李杨丹。

¹⁸ 网址：<http://www.21cbh.com/HTML/2011-12-23/3NMzIzXzM5MDc3Ng.html>，文章作者杨颖华。

Regulator Change and Enforcement Severity^{1,2}

Donghua Chen, Dequan Jiang, and Shangkun Liang³

Abstract

A sound and strictly enforced legal system can help to promote the development of securities markets. This paper argues that in transitional countries with weak legal systems, the selective enforcement of laws may serve as an important alternative mechanism. Taking China as an example, this paper finds that the occurrence time of illegalities affects enforcement severity and that a regulator punishes illegalities that occurred during his predecessor's tenure more heavily. Further analysis indicates that the severity of the punishments enforced by the regulatory authorities is lower for SOEs. The findings of this paper offer a new perspective from which to understand the enforcement of laws in transitional countries.

Keywords: Regulator Change, Enforcement Severity, Term of Office, SOEs

CLC codes: F0, F8, F23

¹ The original title was Regulator Change and Enforcement Accuracy . However, after further study and a discussion with the editor, we believe that Regulator Change and Enforcement Severity is a more appropriate title. In order to use the concept of enforcement accuracy, it is necessary to define an appropriate benchmark, which is quite difficult. The verdicts on the violations studied in this paper are likely to be lenient in China, where the legal environment is immature and enforcement is not so good (e.g. the immature litigation system). Before 2002, individual investors who were harmed because of the violations of listed companies could not ask for compensation via the judicial system. If we can find out whether compared with what they have done, the final punishments for violators are really too lenient or too severe, the article may be of greater theoretical significance and importance. This is what we will try to do in the future.

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I. Introduction

According to the economics of law, legal systems play pivotal roles in financial markets and overall economic development (La Porta *et al.* 1997, 1998, 2000, 2002; La Porta *et al.* 1999; Demirgüç-Kunt and Levine, 2005). Further studies have suggested that effective enforcement is more critical to emerging and transition economies (Johnson *et al.* 2000). Pistor *et al.* (2000) point out that the ineffectiveness of law enforcement is the bottleneck to the development of financial markets in transition countries. Thus, it is more practical for transition countries to improve the quality of law enforcement than to perfect laws and rules. Bhattacharya and Daouk (2009) argue, both theoretically and empirically, that sometimes having no securities law may be better than having a good securities law that is not enforced. However, a sound legal system and efficient law enforcement cannot be achieved without trial and error. In emerging and transition economies, regulation plays an important role as an alternative means of law enforcement because of the imperfections and weak foundations of the law. Thus, more academic attention should be paid to the quality of regulatory execution (Glaeser and Shleifer, 2001). Coase (1988) also believes that government regulation can indeed improve economic efficiency under certain circumstances. China is a key member of the group of emerging and transition economies, and its economy grew from a planned economy system. Still strongly influenced by its origins, and with a weak legal system, China's economy relies heavily on government regulation.⁴ Chen *et al.* (2011) suggest that government regulation is widespread in China, which is going through a transition period, but we know little about the factors influencing the quality of enforcement and their characteristics in the real economy. This makes the efficiency of regulation enforcement in China a very important issue to study.

The factors influencing the execution efficiency of regulation have been the focus of academic research. Chen *et al.* (2008) find evidence proving that the China Securities Regulatory Commission (CSRC) allocates resources based on hidden contracts. Jiang *et al.* (2009) use the split share structure reform to investigate the influence of information costs on the efficiency of government regulation and find that the enforcement of government regulations can be effective when information costs are low. Apart from public goals, information costs, and other constraints, any differences between the regulators' own interests and those of the public will also affect the way regulations are enforced. In recent years, some scholars have explored the effects of change of

⁴ The Chinese legal system usually pays more attention to administrative and criminal cases than to civil ones. The construction of the civil compensation system in the securities area has been slow. Before 2002, individual investors who were harmed by the regulation violations of listed companies could not ask for compensation via the judicial system. Since the Supreme Court issued the *Notice on Accepting Cases of Torts and Disputes because of False Statements in the Securities Market* on 15 January 2002 and the *Provisions on Trials of Civil Compensation Cases Caused by False Statements in the Securities Market* on 26 December 2002, there has been some progress in the construction of the civil compensation system dealing with the Chinese securities markets. However, its implementation is still not ideal. By the end of November 2007, only 24 listed companies had been sued by individual investors and received penalties from the CSRC and its affiliated agencies or the Ministry of Finance.

office. Studies show that changes of leaders, both at regional and national level, affect economic policies, the growth of an economy, and even the behaviour of companies in terms of microeconomics (Li and Zhou, 2005; Jones and Olken, 2005; Ramanna and Roychowdhury, 2010). Will a power shift in regulatory agencies (or regulator change) affect the regulatory policies of the securities market? Although the regulatory authorities control a lot of resources and govern the allocation of resources, they cannot efficiently deter listed companies from violating regulations due to administrative affiliations and a lack of accountability and effective inspection mechanisms. This leads to rampant fraud in the capital market and hinders the market from fulfilling its duties, *let alone* sustainable development, and this is why the quality of regulation enforcement is an important theoretical issue to study. What we try to answer in this paper, both theoretically and empirically, is whether enforcement severity is affected by changes in the continuity and stability of regulatory policies due to a change in regulator.

Taking the punitive measures taken by the CSRC against listed companies that violate regulations as a research sample, this paper observes, analyses, and examines, at different time periods, the enforcement of penalties against companies that breach regulations. Specifically, we focus on 128 listed companies punished by the CSRC during the period 2002 to 2009, as stated in the penalty announcements, and manually collect data on 85 infringing companies between 1994 and 2001. “Regulator change” is defined as a change in the chairman of the market’s regulatory authorities, which, in this paper, means the CSRC. “Enforcement severity” means the severity of the punishments imposed by the regulatory authorities; we define this according to the types of penalties imposed by the CSRC. We define the severity of violations in two ways: by the types of violations and by the amount of investors’ loss during the violation period. Our empirical results are as follows: First, the severity of the violations by listed companies is an important explanatory variable in relation to the severity of law enforcement: The more severe the violation, the more serious the punishment a company will receive. Second, the time when a company violates the regulations will affect the enforcement severity. Regulators tend to punish companies that violated regulations before their own incumbencies more heavily. Finally, the nature of the company also affects the enforcement severity. In the case of deferred adjudications, state-owned enterprises (SOEs) receive less severe penalties.

Our study makes several contributions to the literature. The implementation and efficiency of regulation is a very important issue, especially for emerging and transition countries with relatively weak legal protection. But, studies on this issue are relatively rare. This paper provides direct empirical evidence for this area of research. In addition, this study also helps us to understand the impact of a change of government on economic development; for example, strict law enforcement in the early period of a new government may have a positive or negative effect on economic development.

II. Literature, Theories, and Institutions

2.1 The Importance of Regulation

Government regulation exists *de facto* everywhere. A government can affect both the market economy via macroeconomic policies, such as fiscal and monetary policies, and enterprises at the microeconomic level by drawing up the rules of the game. Regulations aimed at addressing market failures are very common in countries under the rule of law. In emerging and transition countries, communities rely more on regulations because the mode of reform is led by the government. Shleifer (2005) proposes the Enforcement Theory, which specifically recognises a basic trade-off between the social costs of two institutions: disorder and dictatorship. Government regulation has a number of advantages in terms of controlling disorder; for example, public regulators can be experts and motivated to pursue social objectives in specific areas, and they are more difficult to bribe than judges. Pistor and Xu (2002) argue that specialists can undertake the role of regulators. These specialists are motivated to enhance social welfare in certain areas (e.g. securities markets). Zingales (2009) argues that *ex ante* regulation is needed to correct market failures and control systematic risks. There is always a much greater need for regulation after major crises – from the Great Depression in the 1930s to the Enron and WorldCom frauds in 2002, not to mention the 2008 financial tsunami. What is more, regulation can better protect unsophisticated investors. The cross-national study carried out by Aghion *et al.* (2008) suggests that regulation is needed because of a loss of trust in the market. In order to build up investors' trust, new securities regulations should be implemented.

In the case of China, an economy in transition, it might be necessary to strengthen government regulation, but over-regulation, insufficient regulation, and a reluctance to transfer to a market mode of regulation are still some of the issues that need to be resolved (Sun, 2004). China has to pay the price of market failures and then reinforce its regulations, after which a government regulatory system in the modern sense can be established. In the future, China's policy makers should focus on establishing an institution in which government regulation forms an essential part of the public administrative system so as to strengthen the regulatory function of government (Wang, 2004). Some empirical studies have examined the effect of regulation. Wu (2006) believes that the effectiveness of regulation is of great importance to the Chinese securities markets because the securities civil litigation system in China cannot mature in a short period of time. His test shows the positive effect of regulation in improving the quality of accounting information. Zhao (2009) focuses on the mechanism of the audit business scale effect in China. He inspects the economic consequences of regulation, for instance, the disqualification penalty for practitioners. His findings prove the positive effect of government regulation. On the other hand, there is also some evidence that

shows the ineffectiveness of regulation. Taking the reform of the Chinese financial system in 2003 as an example, Xue and Zhu (2010) study whether institutional changes imposed by the government can act as an effective restraint on the collective corruption of the banking system. Their results show that the mandatory changes imposed in 2003 did not work out as expected in the short term.

2.2 The Causes and Influences of Selective Enforcement

Legal systems in different countries vary greatly. The same quality of law enforcement cannot be ensured because of the complexity and diversity in each country. Law makers cannot design a perfect set of rules; this is not feasible in real life. Selective enforcement might become a second-best choice when a legal system changes too slowly or the cost of change is too high. There are several causes of selective enforcement. In the case of China's securities markets, the causes may be as follows:

1. The demand for regulation. With the development of securities markets, trading scandals and frauds occur. If the punishment does not meet the public's expectation, then the regulatory body may enhance enforcement as a result of political and social pressure. In 2001, during an inspection of the duties of the CSRC, the National People's Congress (NPC) found that the punishments imposed on infringing companies were too lenient to deter companies from violating regulations. The CSRC subsequently stepped up its investigations against infringing companies.⁵ If a violation case affects the stability of the financial system, which means that the case may greatly influence social and political stability, or simply if the number of victims is very large, the authorities may impose heavier punishments. That is why so-called "crackdown movements" occur occasionally depending on the degree of prevalence and the severity of particular cases (Dai, 2006).

2. Puppets of interest groups. It is easy for the regulatory body to give in to different interest groups because of the information asymmetry and imperfect contracts that exist in China. The regulatory body's actions are constrained by these powerful and highly organised interest groups that own a lot of resources. If regulators do not answer the call to protect social interests and cannot achieve the optimal allocation of social resources, they might actually cause selective enforcement to become a *fait accompli* (Wang, 2007).

3. Regulatory resources and the cost of regulation. The breadth and depth of regulation depend on the resources controlled by the regulatory body. As a social subject itself, the regulatory agency inevitably has its own special interests. It must strike a

⁵ In 2001, according to the report given by the Securities Law Enforcement Inspection Team sent by the NPC, quite a number of companies provided false information when they were listed, but the securities regulatory authorities did not take any public punitive measures against them but rather accepted the listings of these companies as an established fact. This gave a very bad impression to the public.

balance between cost and benefit when deciding the breadth and depth of regulation. When the regulatory resources are restricted and the cost is too high, the regulators may enforce regulations selectively. Taking the petition system under the existing legal system as an example,⁶ the regulatory authorities pay special attention to cases that have severe impact on the public. What is more, the government not only needs to help SOEs' financing but also has to protect investors in order to maintain the sustainable development of the securities market. Faced with such a dilemma, the regulatory authorities may choose to take more severe actions against some of the infringing companies as a warning to other companies.⁷

Selective enforcement may boost the economy and help it to grow. In the face of dramatic changes in the economic and financial environment, regulatory authorities can achieve their political and economic goals by conducting flexible law enforcement within its legal discretion (Dai, 2006). Selective enforcement may become very common during a period of transition; to some extent, this might be reasonable improvement on legal weakness. Sugarman (2009) suggests that selective and performance-based regulation can reduce the supply of goods harmful to public health, such as cigarettes, alcohol, and guns. These sorts of regulation also restrain individual demand for these goods. Cory and Rahman (2009) find that authorities will take ethnicity and income into consideration and that disparate-impact discrimination exists in the process of implementing and enforcing the new Safe Drinking Water Act in the United States because minority and low-income communities are at disproportionate risk of environmental harm.

2.3 The Chinese Institutional Background

The development of the securities market supervisory system in China has gone through three phases. The first phase was the period before 1992. During this phase, there was no unified, specialised department for monitoring the securities markets. The People's Bank of China was in charge of the affairs of the securities markets, and the

⁶ For example, the CSRC and the local securities regulatory bureaus have established petition offices, hotlines, and postal mail boxes for receiving reports of irregularities. They have provided that reported cases should be judged according to the facts and relevant laws by the related responsible units at different levels of authority and that the legitimate interests of informants should be protected.

⁷ According to Article 193 of the Securities Law of the People's Republic of China, an important legal basis for CSRC, "Where the issuer of securities listed upon verification pursuant to this Law fails to disclose information in accordance with relevant regulations or the information disclosed contains a falsehood, misleading statement or major omission, the securities regulatory authority shall order the issuer to take remedial measures and impose on it a fine of not less than 300,000 yuan but not more than 600,000 yuan. The persons directly in charge and the other persons directly responsible shall be given a disciplinary warning and also be fined not less than 30,000 yuan but not more than 300,000 yuan. If the offense constitutes a crime, criminal liability shall be pursued according to law. If the issuer mentioned in the preceding paragraph fails to announce its listing documents or submit the relevant reports on schedule, the securities regulatory authority shall order it to take remedial measures and impose on it a fine of not less than 50,000 yuan but not more than 100,000 yuan." Even when considering punishments for companies committing the same illegal behaviour, the CSRC may impose different punitive measures between companies. For example, both Guangdong Kelon Electrical Holdings and Anhui Gujing Distillery failed to "submit the relevant reports on schedule": the former was ordered "to take remedial measures" but a fine was imposed on the latter.

management of these markets was dispersed. The second phase began in October 1992 and ended in mid-1998, when the daily management of the securities markets was taken on by the State Council Securities Committee and the CSRC. In October 1992, the State Council abolished the Securities Market Administration Office of the People's Bank of China and established the State Council Securities Committee and the CSRC to coordinate policies related to the stock and bond markets. During this period, the securities regulatory system was transformed into a centralised system. The third phase began in August 1998. The State Council decided to abolish the State Council Securities Committee, whose duties were then passed on to the CSRC, and appointed the CSRC as the direct leader of local securities supervisory bureaus, thus forming a collective and centralised regulatory system (Gao, 2005; Zhou, 2007).

Despite the fact that it has been through several reforms, there are still a number of problems with the regulatory system of the Chinese securities markets, such as the excess authority of the regulatory institutions and a lack of self-supervision (Zhou, 2007). Selective enforcement is another of these problems; for example, Chen *et al.* (2011) suggest that SOEs systematically receive less severe punishments from the CSRC.

2.4 Theoretical Analysis and Hypotheses

The relation between the effectiveness of law enforcement and regulator change or its own characteristics has received less attention in prior studies than the relation between selective enforcement and the securities market. Taking China as the example, it would be interesting to know whether when a new CSRC chairman takes office, violation cases that occurred during the preceding chairman's term of office and those that occur during the new chairman's term of office are treated differently. Existing research on change of government focuses mainly on the local and national levels and officials' local economic behaviour from a political incentive perspective (Maskin *et al.*, 2000; Blanchard and Shleifer, 2001). For example, local leaders may place more emphasis on the development of local economies because of political promotion incentives. Research shows that local governments' political incentives do motivate local officials to develop local economies (Zhou *et al.*, 2005). Li and Zhou (2005) find that the likelihood of provincial leaders being promoted increases in line with local economic performance. They also find that the turnover of provincial leaders is more sensitive to their average performance over their tenure than to their annual performance. The political incentives of government officials play an important role in promoting local economic growth. Moreover, a change of national leaders also affects the capital market and the growth of an economy. Santa-Clara and Valkanov (2003) examine US stock market performance under Democratic and Republican presidencies from 1927 to 1998. They find that the excess return in the stock market is significantly higher under Democratic presidencies than under Republican presidencies. The difference in return is explained neither by

business-cycle variables nor by a difference in the riskiness of the stock market across presidencies that could justify a risk premium. These results prove that political circles have some effect on stock markets. Using samples from 130 countries and regions between 1945 and 1990, Jones and Olken (2005) conduct the first empirical test on the relation between national leader change and the performance of the economy. They find that countries experience persistent changes in growth rates across these leadership transitions, suggesting that leaders have a large causative influence on the economic outcomes of their nations. Also, the effect of leaders is much stronger in autocratic settings than in the presence of democratic institutions.

The existing literature recognises the effect of national leaders quantitatively, but very few studies have examined the influence of regulator change on the securities market in China. This might be because there is a high level of political sensitivity associated with this issue and also a lack of experimental environments in which to conduct research. However, chairman changes at the CSRC provide us with a great research opportunity. Exploring whether there is a systematic bias in handling violation cases that occurred before and during a chairman's term of office can help us to better explain selective enforcement by the regulatory authorities at a higher level. Croley (1998) points out that the existing theories cannot provide a satisfactory explanation for regulatory decision making or a reliable means of predicting regulatory outcomes. He also sheds light on how theories of regulation might be reconstructed by incorporating the administrative process more explicitly and comprehensively.

The utility function must be analysed before studying regulators' behaviour. The mission of the CSRC, the regulator of securities markets in China, is to prevent and reduce market risks and ensure an orderly and steady development of the securities markets. To better protect the CSRC's reputation and to maintain deference for the law, the regulator should be consistent in dealing with violations at different times. However, because of all kinds of restraints in real life, the same degree of violation can be treated differently at different times; in other words, the severity of enforcement may be inconsistent at different times. We believe that the severity of enforcement is possibly related to the following factors.

First, for the regulator, guaranteeing a prosperous market during his tenure is an important part of his duties, and reducing violations by listed companies during his tenure is one of the means to achieve this goal. Enforcing stricter penalties during the early period of his tenure may reduce the cost of achieving this goal while sending a signal to the market that the law is to be strictly enforced, thus raising the potential costs of violation and reducing the likelihood of companies breaching regulations during his tenure. If companies violated the laws during the former chairman's tenure and the execution of their punishment has not yet been completed, they might receive more severe punishment during the early stage of the current chairman's tenure.

Second, the penalties imposed on different types of companies (violating regulations during and before the current tenure) may have different costs to the regulator. Being punished is certainly a negative event for a listed company, whose management may show its discontent about the regulator's action. The more severe the punishment, the more discontent there will be. This may have a negative impact on the regulator's work and career because the severely punished companies are likely to be reluctant to comply with the regulator's routine work. The regulator does not want to have fierce conflicts with companies. Compared with severely punishing companies who violate regulations during his tenure, imposing heavy penalties on those who committed violations during the previous tenure may have lower negative costs for the regulator because it would be difficult for these companies to identify whether it was the current or the previous regulator who had made the decision on the final punishment. Therefore, regulators prefer to severely punish companies who violated regulations during their predecessor's term of office in order to reduce their costs and risks.

Third, the new position of the former regulator and whether he is the superior of the current regulator are likely to affect enforcement severity. Violation cases from the previous tenure might be extenuated if the former regulator is promoted to a higher position, one to which the new regulator has to report. In our study, the former regulators were not promoted to higher positions, and so their successors may not have been motivated to adopt this approach.

Finally, listed companies that violated the rules without being penalised during the former regulator's term of office may have used more covert ways of cheating, and conducting investigations into such violations is likely to be very costly for the regulatory authorities in terms of resources. From the cost effectiveness point of view, it is very likely that the authorities will impose heavy punishments on such companies to serve as a deterrent to others. Based on the analysis above, we hypothesise as follows:

H1: The time when a listed company conducts illegal behaviour will affect the severity of law enforcement by regulators, *ceteris paribus*.

Furthermore, Chen *et al.* (2011) find that the CSRC takes into account whether the companies violating the rules have a state-owned background and the strength of this background when investigating and punishing infringing companies. SOEs are punished less severely than private companies. Imposing heavy penalties on SOEs might harm those with vested interests in these enterprises. In fact, one of the functions of the securities market in China is to create conditions for SOE reform; this means that one of the government's priorities is to help SOEs' financing. As these enterprises are owned by the government and the people, this "natural relationship" between SOEs and the government poses a great obstacle to the CSRC in carrying out its investigations and has

a crowding-out effect on the CSRC's regulations. So, if SOEs violate the regulations, they may not be punished as they should be. This crowding-out effect also affects the severity of cross-tenure enforcement. In a society with a complex social hierarchy and hidden rules for building interpersonal relationship capital, the Chinese regulatory authorities tend to administer punishment at their "discretion" or on the basis of "leniency". The process of law enforcement in Chinese securities markets is a sort of "relocation of interests" rather than a mere legal operation. The CSRC has to deal with the troubles caused by harming local governments' interests as a result of imposing heavy penalties on SOEs or delisting them, because SOEs are linked closely to local and central governments in terms of taxation, employment, and even the promotion of government officials (Li and Zhou, 2005). When it comes to private enterprises, the regulator obviously has fewer concerns in relation to punishing them and thus has no motivation to reduce penalties. Moreover, the CSRC may choose internal warnings or manager replacement rather than punishment when an SOE breaches a regulation. However, when breaches are committed by non-SOEs, punishment may be the only option. If this single option is only executed selectively and leniently, then other non-SOEs that observe this signal may disobey the rules and laws much more (Chen *et al.*, 2011). As a result, regulators may punish non-SOEs severely. In summary, regulators will selectively punish companies who committed violations during the preceding chairman's tenure and SOEs may receive less severe penalties. Thus, we propose our second hypothesis:

H2: The nature of ownership will affect the severity of law enforcement, *ceteris paribus*.

III. Empirical Test

3.1 Sample, Data, and Descriptive Statistics

The sample mainly consists of penalty announcements by the CSRC, augmented by a manual search for cases of violations. Our sample consists of a total of 213 listed companies penalised by the CSRC by the end of 2009, of which 128 were announced by the CSRC between 2002 and 2009, and 85 were violation cases between 1994 and 2001 that we collected manually. The supporting materials are mainly the *China Securities Journal* and *Shanghai Securities News*. Our data are taken from two databases: CCER and Wind. Since no companies were punished by the CSRC in 1995, we neglect this year in Table 2. The paper primarily studies the violations of punished companies and the law enforcement of the regulatory agencies from two perspectives: the severity of the violations and the severity of the punishments. As shown in Table 1, we divide the violations of the listed companies into 15 types and the CSRC's punitive measures into 7 types.

If the violation is of type 1, 5, or 15 or a combination of any of these types, we define it as a minor violation; otherwise, a violation is defined as a serious violation. If the final punitive measure is one of types 1, 2, 3, 5, or 8 or a combination of any of these types, it is defined as a light punishment; otherwise, it is defined as a heavy punishment.⁸ The stock markets in China, one of the most important achievements of capital market reform to date, have been established for 18 years; during this time, there have been five CSRC chairmen: Hongru Liu (October 1992 – February 1995), Daojiong Zhou (March 1995 – June 1997), Zhengqing Zhou (July 1997 – February 2000), Xiaochuan Zhou (March 2000 – December 2002), and Fulin Shang (January 2003 – October 2011).

Table 1 Types of Violation and Punishment

Type of violation	Definition	Type of Punishment	Definition
1	Illegal stock purchase	1	Public criticism
2	Inflated profits	2	Reprimand
3	Inflated assets	3	Administrative penalties
4	Changed the assigned use of funds	4	Official investigation
5	Delayed disclosure of annual reports	5	Warning
6	False statement	6	Fine
7	Illegal capital contributions	7	Revocation of securities business licence
8	Major omissions	8	Others
9	Major shareholders occupy listed companies' assets		
10	Manipulated stock prices		
11	Fraudulent listing		
12	Illegal guarantee		
13	Illegal speculation		
14	Delayed disclosure of major events		
15	Others (including inaccurate and untimely prediction of performance and reluctance in fulfilling other responsibilities)		

⁸ For the variables “severity of violation” and “severity of punishment”, we believe that the level of severity is just a comparative concept. For example, regarding the definitions of severity of punishment, public criticism and reprimand are both light punishments. Although the comparison is less precise, this definition of the variables is valid.

Table 2 Annual Distribution of Punishments

Year/Month	1	2	3	4	5	6	7	8	9	10	11	12	Total
1994				1						3			4
1996				2	1					2			5
1997						<u>1</u>			<u>1</u>		8		10
1998	1		1		2				1		2		7
1999			1					3		3	4	<u>2</u>	13
2000	<u>1</u>	<u>1</u>		<u>1</u>	<u>2</u>		2		3	1		1	12
2001			12		2		5	1	5	1	2	3	31
2002			7	3	2		1	1		<u>1</u>			15
2003			<u>1</u>	3		1	1	2	5		1	1	15
2004	3	2	2			5	2	5	2	4	1		26
2005	2				3	3			1	3		2	14
2006		2	4	1		2	3			1	2	5	20
2007	3	2	1	5	1	4		2	2				20
2008	1		1	1	1	1	2			1		1	9
2009	1	1	2	1	1	1	1		1	2		1	12
Total	12	8	32	18	15	18	17	14	21	22	20	16	213

Table 2 shows the annual distribution of punishments. If the transitional period of regulator change is 6 months, from 3 months before a leader leaves to 3 months after the leader has left, Table 2 shows that only a minority of the infringing companies, a total of 11 (numbers underlined in bold in Table 2), are penalised during transitional periods. More specifically, if the sample obeys a uniform distribution, during the total length of the transitional periods covering four changes in regulator (i.e. 24 months), the monthly average number of punishments is 0.46 (11/24) while in the other periods, which total 13 years or 156 months, the monthly average is 1.29 (202/156). From these analyses, we can draw the conclusion that the number of punishments executed in transitional periods is far less than the number in other periods. In transitional periods, people working in the regulatory agency are accommodating each other and the organisational structure is being reconstructed. During such periods, the regulatory agency is not inclined to execute a punishment unless the violation is very serious in order to achieve a stable transition of authorities. In fact, we find that the 11 punished companies all committed serious violations of the regulations.

Table 3 Sample Scattering

		Severity of punishment				Total	T	Prob> T
		Proportion		Proportion				
		Light	(%)	Heavy	(%)			
Panel A: Severity of violation								
Severity of violation	Light	36	66.7	18	33.3	54	6.43	0.000
	Serious	36	22.9	123	77.1	159		
Panel B: Term of office								
Term of office	During	45	40.2	67	59.8	112	2.09	0.037
	Before	27	26.8	74	73.2	101		
Panel C: Severity of violation and term of office								
During	Light	30	71.4	12	28.6	42	0.32	0.747
	Serious	15	21.4	55	78.6	70		
Before	Light	6	50.0	6	50.0	12	1.29	0.216
	Serious	21	23.6	68	76.4	89		
Panel D: Nature of company and term of office								
SOEs	Light	25	75.8	8	24.2	33	3.66	0.000
	Serious	29	32.6	60	67.4	89		
Non-SOEs	Light	11	52.4	10	47.6	21	1.73	0.091
	Serious	7	10.0	63	90.0	70		
Panel E: Severity of violation, nature of company, and term of office								
(1) During								
SOEs	Light	19	79.2	5	20.8	24	1.13	0.259
	Serious	12	30.8	27	69.2	39		
Non-SOEs	Light	11	61.1	7	38.9	18		
	Serious	3	9.7	28	90.3	31		
(2) Before								
SOEs	Light	6	66.7	3	33.3	9	2.39	0.019
	Serious	17	34.0	33	66.0	50		
Non-SOEs	Light	3	42.9	4	57.1	7		
	Serious	0	0.0	35	100.0	35		

Panel A in Table 3 lists the punishment distribution of companies according to the severity of the violations. It presents a high proportion of companies that were punished severely for serious violations and lightly for minor violations (66.7 per cent and 77.1 per cent, respectively). The severity of the punishments imposed by the CSRC is closely related to the severity of the violations: the more serious the violation, the more severe the penalties, and vice versa. This result is statistically significant at the 1 per cent level.

Panel B describes the punishment distributions according to the regulators' terms of office. If the violation occurs and the punishment is executed during the same tenure, the proportion of severely punished companies is 59.8 per cent; the corresponding figure when the occurrence of the violation and the execution of the punishment are scattered over different tenures is 73.2 per cent. Regulators are more likely to impose heavy punishments on those companies that violated the rules during the incumbency of their predecessor. This result is statistically significant at the 5 per cent level.

Panel C lists the distribution of punishments according to the term of office and the severity of the violations. The proportion of companies committing minor violations but being punished severely is 50 per cent if they committed these violations prior to the incumbency of the current regulator, but the corresponding figure is just 28.6 per cent if they commit violations during the current regulator's tenure.⁹ It is more likely that companies committing minor violations prior to the current regulator's incumbency are punished severely, but the results are not significant (the T-value is 1.29). Meanwhile, Panel C suggests that there is not much difference between the proportion of companies committing serious violations and being punished heavily during (a) the tenure of preceding regulator and (b) the current regulator's tenure (78.6 per cent and 76.4 per cent, respectively). The result is also not significant (the T-value is 0.32). Panel D reports the punishment distribution of listed companies according to the nature of the companies. At the 0.1 level of significance, the proportion of SOEs punished heavily is 24.2 per cent, about 20 per cent lower than the proportion of non-SOEs (47.6 per cent). If both SOEs and non-SOEs commit serious violations, only 67.4 per cent of SOEs are punished heavily while the corresponding figure for non-SOEs reaches 90.0 per cent. The result is significant at the level of 0.01. This means that compared with non-SOEs, SOEs tend to receive less severe punishments. Panel E shows the distribution of the severity of punishments according to regulator tenure, the nature of the companies, and the severity of the violations. With regard to cross-tenure enforcement, SOEs are punished less severely than non-SOEs in the case of both minor and serious violations. In terms of current regulator tenure, the proportion of SOEs punished heavily is 50.8 per cent (32/63), which is much lower than the corresponding figure for non-SOEs, which is 71.4 per cent (35/49), but the result is not significant (T-value is 1.13). In the case of cross-tenure enforcement, the proportion of SOEs heavily penalised is 61 per cent (36/59) and that of non-SOEs is 93 per cent (39/42); both are significant at the level of 0.05.

⁹ The authors have conducted a comprehensive analysis of these 12 samples and find that it is more likely for companies committing minor violations to be punished severely (the probability is 50 per cent). From the announcements of penalties issued by the CSRC, we find that for companies committing the same type of violation but during different terms of office, the regulators treated these companies differently when imposing punishments on them. For example, former CSRC chairman Fulin Shang took the office in 2003. During his term of office, a fine of 30,000 renminbi was imposed on Chongqing Dongyuan Steel because it did not publish its interim report of 2002 before 31 August 2002 but Shijiazhuang Baoshi Electronic Glass was only warned because it did not publish its annual report of 2005 before 30 April 2006. This suggests that regulators tend to impose more severe penalties on companies who committed violations during the former chairman's term of office than on companies who commit the same types of violations during the current chairman's term of office.

These results suggest that for cross-tenure enforcement, a state ownership background will significantly reduce the probability of receiving heavy punishments.

Table 4 lists the definitions of the main variables in this paper, and Table 5 presents the descriptive statistics of the main variables.

Table 4 Definitions of Variables

Variable	Symbol	Definition
Severity of punishment	<i>PUNISH</i>	Dummy variable: equals 1 if the listed company is severely punished for an infringement and 0 otherwise.
Cross-tenure enforcement ¹⁰	<i>CROSS</i>	Dummy variable: equals 1 if the listed company is not penalised during the regulator's tenure in which the violation occurs and 0 otherwise
Degree of infringement	<i>OFFEND</i>	Dummy variable: equals 1 if the listed company seriously violates the law and 0 otherwise.
Nature of the enterprise	<i>SOE</i>	Dummy variable: equals 1 if the listed company is state owned and 0 otherwise.
Industry features	<i>PROTECT</i>	Dummy variable: equals 1 if the listed company operates in a protected industry ¹¹ and 0 otherwise.
Market environment	<i>SOAR</i>	Dummy variable: equals 1 if the listed company punished for infringement is in a bull market ¹² and 0 otherwise.
Enterprise size	<i>SIZE</i>	Equals the natural logarithm of the total assets reported by the listed company a year before being punished.
Region	<i>REGION</i>	Dummy variable: equals 1 if the listed company is situated in Eastern China and 0 otherwise.

¹⁰ Cross-tenure enforcement: The infringement and punishment of the listed company does not occur in the tenure of the same regulator, meaning that the current regulator takes punitive measures against companies that violated regulations during the tenure of his predecessor.

¹¹ Protected industries include the military industry, electricity (D), petroleum (B03) and petrochemicals (C41), the municipal utility industry (K), coal (B01), railway transport (F01), and air transport (F09). The industry codes in brackets are in accordance with the *Guidelines on Industry Classification of Listed Companies*.

¹² According to the calendar of bull and bear markets by Yahoo Finance (<http://biz.cn.yahoo.com/special/xggl/>).

Table 5 Descriptive Statistics of Variables

Variable	N	Maximum	Minimum	Mean	Medium	Standard deviation
<i>PUNISH</i>	213	1.00	0.00	0.66	1.00	0.47
<i>CROSS</i>	213	1.00	0.00	0.47	0.00	0.50
<i>OFFEND</i>	213	1.00	0.00	0.75	1.00	0.44
<i>SOE</i>	213	1.00	0.00	0.57	1.00	0.50
<i>PROTECT</i>	213	1.00	0.00	0.06	0.00	0.24
<i>SOAR</i>	213	1.00	0.00	0.43	0.00	0.50
<i>SIZE</i>	213	22.61	15.77	20.35	20.34	1.03
<i>REGION</i>	213	1.00	0.00	0.48	0.00	0.50

3.2 The Empirical Test of the Influence of Regulator Change and Nature of Companies on Enforcement Severity

This paper studies the enforcement of regulations by the regulatory institution against companies violating rules before the current regulator's tenure in terms of the severity of the punishments imposed. First, it is necessary to conduct a correlation analysis between the variables. Table 6 provides the correlation matrix of the main variables comprising Pearson correlation coefficients in the lower triangular matrix and Spearman correlation coefficients in the upper triangular matrix. The results presented in Table 6 prove that *PUNISH* positively relates to *OFFEND*; thus, the more seriously a company violates the rules, the severer the punishment it receives. *PUNISH* is positively related to *CROSS*, which means that the penalty will be heavier if its execution is delayed to the following tenure. These results confirm the theoretical analysis in the previous sections. Furthermore, *PUNISH* correlates negatively to *SOE*, which means that SOEs are punished less severely than non-SOEs.

To test the hypothesis, we establish a logistic regression model as follows:¹³

$$\begin{aligned}
 PUNISH = & a_0 + a_1CROSS + a_2SOE + a_3OFFEND + a_4CROSS*SOE \\
 & + a_5PROTECT + a_6SOAR + a_7SIZE + a_8REGION \\
 & + a_9\sum TENURE + a_{10}\sum YEAR + \varepsilon
 \end{aligned}
 \tag{1}$$

The regression results are shown in Table 7. Controlling for the effects of years and the tenure of regulators, the coefficient of *CROSS* is significantly positive. This shows that regulators tend to give heavier punishments for violations that occurred before their

¹³ To fix the time effect (from 1994 to 2009, excluding 1995, a total of 15 years) due to the small sample, we divide the total time into five periods, 3 years in each. Thus Y1 stands for the period from 1994 to 1997, Y2 for 1998 to 2000, Y3 for 2001 to 2003, Y4 for 2004 to 2006, and Y5 for 2007 to 2009. Considering the tenure lengths of CSRC chairmen and that cross-tenure enforcement may be the characteristic of a certain chairman, we add a dummy variable *TENURE* into the model; this variable equals 1 when the listed company is punished during the tenure of chairman *i* and 0 otherwise.

tenure than for violations that occur during their own term of office (see Column 1). The severity of violations is also significantly and positively correlated with enforcement severity. The severity of punishment is significantly influenced by the severity of violation: the more severe the violation, the more serious the punishment (see Column 3). Column 4 suggests that the succeeding chairman is more likely to impose heavy penalties on infringing companies that were not punished during his predecessor's incumbency. Regulators do their best to impose the punishments that violators deserve during their own tenure, but with regard to companies that violated regulations prior to their tenure, they seem to take less care and tend to impose more severe punishments. These results support Hypothesis 1.¹⁴ Column 2 shows that, after controlling for the effects of year and tenure, SOEs suffer less severe punishments than non-SOEs. The coefficient of *SOE* is significantly negative at the 5 per cent level. When other control variables and interaction items are added, the coefficients of *CROSS* and *SOE* are significantly negative at the 5 per cent level (see Column 5). This indicates that the CSRC treats companies differently according to the company's nature. In other words, SOEs are less likely to suffer heavy punishment than non-SOEs in the case of cross-tenure enforcement, which supports Hypothesis 2.

Table 6 Correlations

	<i>PUNISH</i>	<i>CROSS</i>	<i>OFFEND</i>	<i>SOE</i>	<i>PROTECT</i>	<i>SOAR</i>	<i>SIZE</i>	<i>REGION</i>
<i>PUNISH</i>	1.0000	0.1419	0.4048	-0.2560	0.0163	0.0353	0.1143	0.0293
		0.0385	<.0001	0.0002	0.8125	0.6082	0.0960	0.6698
<i>CROSS</i>	0.1419	1.0000	0.2940	0.0218	-0.0064	-0.2689	0.01950	-0.1574
	0.0385		<.0001	0.7511	0.9254	<.0001	0.7773	0.0215
<i>OFFEND</i>	0.4048	0.2940	1.0000	-0.0451	0.0133	-0.0857	0.1276	-0.1542
	<.0001	<.0001		0.5120	0.8466	0.2127	0.0630	0.0243
<i>SOE</i>	-0.2560	0.0218	-0.0451	1.0000	0.1012	-0.1558	0.1426	0.0109
	0.0002	0.7511	0.5120		0.1408	0.0229	0.0375	0.8735
<i>PROTECT</i>	0.0163	-0.0064	0.0133	0.1012	1.0000	0.0573	0.1192	-0.0481
	0.8125	0.9254	0.8466	0.1408		0.4052	0.0824	0.4850
<i>SOAR</i>	0.0353	-0.2689	-0.0857	-0.1558	0.0573	1.0000	-0.0858	0.0460
	0.6082	<.0001	0.2127	0.0229	0.4052		0.2122	0.5041
<i>SIZE</i>	0.0721	-0.0390	0.0727	0.1563	0.0996	-0.0291	1.0000	0.0548
	0.2949	0.5710	0.2909	0.0225	0.1472	0.6723		0.4256
<i>REGION</i>	0.0293	-0.1574	-0.1542	0.0109	-0.0481	0.0460	0.0604	1.0000
	0.6698	0.0215	0.0243	0.8735	0.4850	0.5041	0.3798	

Notes: This table provides the correlation matrix of the main variables comprising Pearson correlation coefficients in the lower triangular matrix and Spearman correlation coefficients in the upper triangular matrix.

¹⁴ In each regression model from Columns 1 to 3 in Table 7, we control for the main explanatory variables and dummies *YEAR* and *TENURE*. The Pseudo R-Sq reaches about 40 per cent. After further checks, we find that this explanatory influence is due to *TENURE* and *YEAR*. The influence of *YEAR* is greater. This indicates that an accumulative effect of punishment is imposed on violations.

Table 7 Empirical Results

Variable	<i>PUNISH</i>				
	1	2	3	4	5
INTERCEPT	-1.099 (-0.95)	-0.179 (-0.15)	-1.099 (-0.95)	-6.889 (-1.37)	-6.527 (-1.28)
<i>CROSS</i>	1.323*** (2.76)			1.074* (1.86)	2.494*** (2.68)
<i>SOE</i>		-0.920** (-2.22)		-1.515*** (-2.99)	-0.513 (-0.74)
<i>OFFEND</i>			2.032*** (3.84)	2.199*** (3.59)	2.173*** (3.52)
<i>CROSS*SOE</i>					-2.128** (-2.02)
<i>PROTECT</i>				0.120 (0.12)	0.109 (0.11)
<i>SOAR</i>				-0.207 (-0.34)	-0.337 (-0.54)
<i>SIZE</i>				0.360 (1.45)	0.293 (1.15)
<i>REGION</i>				0.652 (1.34)	0.887* (1.73)
<i>TENURE</i>	YES	YES	YES	YES	YES
<i>YEAR</i>	YES	YES	YES	YES	YES
No. of observations	213	213	213	213	213
Pseudo R-Sq	0.411	0.400	0.443	0.502	0.519

Notes: The dependent variable *PUNISH* stands for the severity of the punishments imposed by the CSRC; it equals 1 if the penalty is serious and 0 otherwise. *CROSS* equals 1 if the case is a cross-tenure enforcement and 0 otherwise. *OFFEND* stands for the severity of violations; it equals 1 if the violation is serious and 0 otherwise. *SOE* stands for the nature of a company; it equals 1 when the company is state owned and 0 otherwise. *PROTECT* indicates whether the industry of a company is protected; it equals 1 if the industry is protected and 0 otherwise. *SOAR* indicates the prosperity of the market when the punishment is imposed; it equals 1 if it is a bull market and 0 otherwise. *SIZE* stands for the scale of the company; it equals the natural logarithm of total assets reported by the listed company a year before being punished. *REGION* indicates where the company is located; it equals 1 when the company is located in the more developed Eastern China region and 0 otherwise. We define *TENURE* as a dummy variable for the chairman's tenure and *YEAR* as a dummy variable for years. The numbers in brackets are z values. *, **, and *** denote significance at the levels of 0.1, 0.05, and 0.01, respectively.

3.3 Robustness Tests

3.3.1 Heteroskedasticity test

Considering the heteroskedasticity of the sample, we conduct a robustness test. The results presented in Table 8 generally support the two hypotheses. Column 1 shows that after controlling for the variables *YEAR* and *TENURE*, the coefficient of *CROSS* is significant at the 1 per cent level. Column 4 suggests that, after controlling for the effects

of other variables, the time when punishments are imposed influences the accuracy of law enforcement. The coefficient of *CROSS* is significant at the 1 per cent level. Regulators tend to give heavier punishments to companies that violated regulations before their tenure. Column 5 shows that, after controlling for other variables, the nature of companies affects the severity of punishments. The coefficient of *CROSS*SOE* is significant at the 1 per cent level, suggesting that SOEs and non-SOEs are treated differently when the regulators deal with companies that violated regulations before their tenure. SOEs consistently receive less severe penalties.

3.3.2 Another measurement of the severity of violations

We use the loss ratio of investors (*LOSS*) caused by violations as an alternative measurement of the severity of the violations. Basically, there are two ways of calculating the loss ratio of investors. One is the event method, which involves calculating investors' losses caused by market reactions during a short time window around the time when punishments are announced. Calculations made using this method have fewer noises but may lose a large amount of information. The other way is the cause-consequence method, which involves calculating the market reaction during a long time window from the start of the violation behaviour to the time of the punishment. Calculations made using this approach have more noises but suffer less loss of information. To better describe the impact of violations by listed companies on investors, we adopt the second method to calculate investor losses. In order to minimise the noises, we manage to exclude market factors (Chen *et al.*, 2008). Investor loss (*LOSS*) is calculated as follows: ($AR_{i,t}$ = infringing company *i*'s return on day *t* – the market return on day *t*; *T* = the day the violation begins to the day immediately before the company is punished).

$$LOSS_i = (-1)CAR_{i,t} = -\sum_{t=1}^T AR_{i,t} \quad (2)$$

Column 1 of Table 9 shows that the coefficient of *LOSS* is positively significant at the 5 per cent level. The more serious the violation is, the heavier the penalty the violator will receive. Column 2 suggests that, after controlling for other influence factors, regulators are likely to impose more serious punishments on companies that violated regulations before their tenure, and this affects the appropriateness of law enforcement. The coefficients of *CROSS* and *SOE* are significant at the 5 per cent level (see Column 3). This suggests that the nature of companies affects the severity of the punishment imposed by regulators. SOEs consistently receive less severe punishments in cross-tenure enforcements.

Table 8 Robustness Test 1

Variable	<i>PUNISH</i>				
	1	2	3	4	5
INTERCEPT	-1.099 (-0.95)	-0.179 (-0.15)	-1.099 (-0.95)	-6.889 (-1.10)	-6.527 (-1.03)
CROSS	1.323*** (2.68)			1.074* (1.80)	2.494*** (2.64)
SOE		-0.920** (-2.22)		-1.515*** (-2.96)	-0.513 (-0.81)
OFFEND			2.032*** (3.86)	2.199*** (3.56)	2.173*** (3.79)
CROSS*SOE					-2.128* (-1.90)
PROTECT				0.120 (0.18)	0.109 (0.16)
SOAR				-0.207 (-0.32)	-0.337 (-0.51)
SIZE				0.360 (1.14)	0.293 (0.92)
REGION				0.652 (1.38)	0.887* (1.79)
TENURE	YES	YES	YES	YES	YES
YEAR	YES	YES	YES	YES	YES
No. of observations	213	213	213	213	213
Pseudo R-Sq	0.411	0.400	0.443	0.502	0.519

Notes: The dependent variable *PUNISH* stands for the severity of punishments imposed by the CSRC; it equals 1 if the penalty is serious and 0 otherwise. *CROSS* equals 1 if the case is a cross-tenure enforcement and 0 otherwise. *OFFEND* stands for the severity of violations; it equals 1 if the violation is serious and 0 otherwise. *SOE* stands for the nature of a company; it equals 1 when the company is state owned and 0 otherwise. *PROTECT* indicates whether the industry of a company is protected; it equals 1 if the industry is protected and 0 otherwise. *SOAR* indicates the prosperity of the market when the punishment is imposed; it equals 1 if it is a bull market and 0 otherwise. *SIZE* stands for the scale of the company; it equals the natural logarithm of the total assets reported by the listed company a year before being punished. *REGION* indicates where the company is located; it equals 1 when the company is located in more developed Eastern China region and 0 otherwise. We define *TENURE* as a dummy variable for the chairman's tenure and *YEAR* as a dummy variable for years. The numbers in brackets are z values. *, **, and *** denote significance at the levels of 0.1, 0.05, and 0.01, respectively.

Table 9 Robustness Test 2

Variable	<i>PUNISH</i>		
	1	2	3
INTERCEPT	-1.099 (-0.95)	-6.293 (-1.31)	-6.317 (-1.29)
<i>CROSS</i>		1.039* (1.83)	2.484*** (2.75)
<i>SOE</i>		-1.377*** (-2.90)	-0.388 (-0.60)
<i>LOSS</i>	0.424** (2.26)	0.369* (1.82)	0.384* (1.80)
<i>CROSS*SOE</i>			-2.208** (-2.15)
<i>PROTECT</i>		0.222 (0.26)	0.141 (0.16)
<i>SOAR</i>		-0.640 (-1.14)	-0.737 (-1.28)
<i>SIZE</i>		0.322 (1.37)	0.276 (1.16)
<i>REGION</i>		0.385 (0.84)	0.555 (1.16)
<i>TENURE</i>	YES	YES	YES
<i>YEAR</i>	YES	YES	YES
No. of observations	213	213	213
Pseudo R-Sq	0.401	0.460	0.479

IV. Conclusions and Limitations

As has been proven by the experiences of developed countries, improvement of the legal system and execution efficiency are the keys to boosting an economy and finance. However, this cannot be done overnight in emerging and transition economies for many reasons, including historical, religious, and cultural reasons and the expensive cost of legal system reform. When the legal system is weak, regulation may take up part of the functions of the legal system, and thus studies on the execution efficiency of regulations have great theoretical and practical importance.

Taking companies punished by the CSRC from 1994 to 2009 as our sample, this paper conducts a preliminary study into the factors that influence the execution efficiency of China's regulatory authorities by studying the effect of change of CSRC chairman on regulation enforcement. The results suggest that regulation enforcement is affected by the time in which companies violate regulations; regulators are more likely to give severe

punishments to companies who violated the regulations during their predecessor's tenure. The further study shows that the severity of enforcement on companies with a state-owned background has decreased to some extent. The paper also provides exploratory and direct empirical evidence in related research areas, which may help us to understand the effect of regulator change on economic development.

This study has several limitations. First, the classifications of severity of violation and severity of punishment are a little rough. The severity of the violation and the severity of the punishment are very important measurements in this study. However, due to the fact that relatively few studies have been conducted in this area and to difficulties in finding proper references, the current definitions of these measurements may be subjective. Moreover, inaccurate ways of defining the dummy variables may affect the robustness of our conclusions. Second, the study does not solve the problem of whether the violations deserve the punishments. In other words, this study only measures the impact on absolute enforcement severity rather than that on the precise degree of the punishments ("insufficient" or "excessive"). Third, some related questions need to be tested empirically: Will excessive penalties on companies that infringed regulations during the previous chairman's tenure deter companies from committing infringements in the current tenure? Will companies become less inclined to violate regulations due to severe enforcement? Other questions related to the efficiency of enforcement also need to be examined. The last limitation is that this paper does not study the effect of punishments imposed during the transition period between changes of office in the regulatory authorities. These limitations should be addressed and resolved in future research.

References

Please refer to pp. 126-128.

Appendix

1. Punishments imposed by CSRC on Shengjingshanhe Co.

On 30 November 2011, *Securities Times*, one of the main newspapers in the area of securities in China, reported the decision of the CSRC to punish Shengjingshanhe Co. for its fraudulent listing in an article titled “Qualifications of Two Sponsor Representatives of Shengjingshanhe IPO Banned”.¹⁵ The report is summarised below.

The Shengjingshanhe Co. event finally ended with the imposition of a severe punishment. The CSRC issued warnings to the underwriter Ping An Securities and revoked the qualifications of the two sponsor representatives responsible for the initial public offering (IPO) of Shengjingshanhe Co. Experts pointed out that this punishment exceeded market expectation when compared to similar cases before and was the most severe punishment imposed to date.

According to the latest CSRC Administrative Sanction Decision, Ping An Securities was warned because of its dereliction of duty in investigating the company and its insufficient verifications of the company’s dealers and affiliated parties before the IPO. As the sponsor representatives in charge of the IPO, Hui Lin and Linyun Zhou were removed from the list of qualified sponsor representatives. Ping An Securities and other related agencies formally confirmed that they had been notified of the punishment from the CSRC on 29 November.

Shengjingshanhe’s IPO application was approved by the Public Offering Review Committee of the CSRC on 27 October 2007. But on the eve of the company being listed on the Shenzhen Stock Exchange, some media reported that the company might have inflated its revenues and conducted other illegal behaviour in the prospectus. The IPO was then immediately suspended.

On 6 April 2011, the CSRC issued *Decisions on Withdrawing the Administrative Approval of the IPO Applied for by Hunan Shengjingshanhe Bio-Technology Co., Ltd.*, which stated that the company did not disclose information on affiliated parties and customers as required, constituting a major omission in terms of information disclosure. The Public Offering Review Committee rejected Shengjingshanhe’s IPO application after a second vote.

Thus, Shengjingshanhe Co. became the third company in the history of the Chinese securities market, following Suzhou Goldengreen Technologies Ltd. and Ningbo QL Electronics Co., Ltd, to have its IPO application rejected having already raised the funds. Accepted in 2008, QL Electronics’ IPO application was revoked, but the CSRC did not punish any intermediary agencies. In the case of Goldengreen Technologies Ltd., the company’s IPO application was passed in 2010, but the CSRC issued warnings to the

¹⁵ Website: <http://www.p5w.net/today/201111/t3961102.htm>. The author of the article is Qinghua Wu. Other than this report, *First Financial Daily*, *Nandu Daily*, and many other media also reported the incident. *First Financial Daily* published a report titled “Most severe punishment ever in history: CSRC bans two sponsor representatives in Shengjingshanhe IPO”. The article can be found at <http://dycj.yinet.com/3.1/1111/30/6547343.html>. *Nandu Daily* reported the incident in a report with the title “Most severe punishment ever in history: Two red cards for sponsor representatives; Shuqing Guo beats the dog before the lion”. Website: http://epaper.oeeee.com/D/html/2011-12/01/node_526.htm. The full name of Shengjingshanhe Co. is Hunan Shengjingshanhe Bio-Technology Co., Ltd.

sponsor and announced that it would not accept any recommendations from the two sponsor representatives in charge of the Goldengreen case for 12 months.

Here is a summary of the stages of the Shengjingshanhe incident: company's IPO application approved at the first ballot on 27 October 2010; shares issued online on 6 December 2010; company suspected of providing false statements and this was reported by the media on 16 December 2010; emergency stop to the company's IPO announced on 17 December 2010; IPO application rejected at the second ballot on 6 April 2011; and CSRC announced punishment imposed on the persons in charge on 29 November 2011.

It is worth noting that the day the CSRC made the final decision to punish the company was just one month after the former chairman of the CSRC, Fulin Shang, had retired from office and thus one month after his successor, Shuqing Guo, came to office.

2. Punishments Imposed by CSRC on its M&A Committee Members

Almost at the same time as the Shengjingshanhe Co. incident, the CSRC punished its own committee members heavily. *Beijing Daily*, a local newspaper, reported the incident in an article on 2 December 2011 titled "CSRC Fires its Own Committee for the First Time",¹⁶ which is summarised below:

The China Securities Regulatory Commission announced its decision to dismiss Jianmin Wu, a member of the third M&A Committee and the director of Pan-China Assets Appraisal Co., Ltd. This was the first time ever that the CSRC had dismissed one of its Main Board, ChiNext Market, and M&A Committee staff. Wu had participated in the M&A program of Heilongjiang SunField Science and Technology Co., Ltd. while holding the company's shares using another person's account. This violated Article 13 of the Codes of the M&A Committee, which forbids its members from holding shares of listed companies whose applications are being examined by the committee. It was reported that Jianmin Wu was recommended by the China Appraisal Society and appointed as a member of M&A Committee on 25 December 2007 after a series of public announcement procedures, internal verifications, and deliberations by the nominating committee of the M&A Committee. He kept this position until the current chairman's term of office due to the collective reappointment of committee members procedure.

An officer of CSRC made the following statement: "This incident sounds an alarm to every committee member. The CSRC will take the next step and increase regular inspections of members' compliance with and execution of related rules and working disciplines and establish this as an important part of the annual assessment. Recently, the CSRC has been comprehensively amending its work codes, especially drafting stricter rules and requirements for committee members trading stocks of listed companies. The new codes forbid members to trade the shares of listed companies directly or using fake

¹⁶ Website: <http://www.abbao.cn/ViewPage.aspx?issueId=3b502902-362e-48f1-b078-220622565ea5&order=10>. The authors of the article are Junjie Tao and Xiaohui Zhao.

names or in the name of another person. Once a member has accepted appointment as a committee member, he or she must declare and register the shares of listed companies held by him or her immediately and sell these shares out within a certain period of time”.

3. CSRC's Concerns about and Punishments of other Violations

On 16 December 2011, the CSRC initiated an investigation into a former analyst of Citic Securities, Zhishan Yang, who was suspected of involvement in insider trading. It announced five violation cases in the securities market in just one day on 23 December 2011.

China Securities Journal reported the incident in an article titled “New Fortune Analyst Investigated by CSRC” on 16 December 2011.¹⁷ Below is a summary of part of the report:

The Shanxi Zhangze Electric Power Co. announcement rubs salt into the wounds of analysts holding independent director positions in listed companies. The announcement states that Zhishan Yang, one of the company's independent directors, received a notice from the CSRC informing him that he was being investigated because of his suspected involvement in illegal stock trading. The CSRC is cracking down on violations of securities laws and regulations, especially insider trading. In fact, Yang is not the only one to catch the attention of watchdogs recently. Zhixian Li, who resigned as independent director of Sunvim Group Co., has also received a public notice of criticism from the Shenzhen Stock Exchange.

21cbh.com published a report with the title “Five Cases in One Day; Former Southwest Securities Officials Suspected in Rat Trading”.¹⁸ Here is a summary of the article:

The CSRC's no tolerance policy towards insider trading and other violations in the securities market has generated a violent storm. Officials of related departments in the CSRC have announced five cases, including the first criminal prosecution of securities company employees involved in rat trading and the first scalping case involving a sunshine private fund. What is more, the CSRC explained the arrest of Xuan Qin, a sponsor representative of Northwest Securities, for insider trading. While acting as the independent financial consultant for the reconstructing project of the company, he deliberately leaked inside information before publication and purchased stocks of PKU International Healthcare Group Southwest Pharmaceutical Co. through another person's account. The CSRC also announced the cases of Dafu Investment and Xinsilu Investment (suspected of stock market manipulation) and Huishun Decoration Co. (suspected of trading stocks through other persons' accounts).

¹⁷ Website: <http://epaper.cs.com.cn/dnis/> by Yangdan Li.

¹⁸ Website: <http://www.21cbh.com/HTML/2011-12-23/3NMzIzXzM5MDc3Ng.html> by Yinghua Yang.