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I. Decision to Amend the Measures for the Administration of the Initial Public Offerings and Listing of Stocks

On April 8, 2022, the China Securities Regulatory Commission decided to amend the Measures for the Administration of the Initial Public Offerings and Listing of Stocks (the **"Measures"**). This decision has been adopted at the 2nd executive meeting of the China Securities Regulatory Commission and came into force immediately. The Measures will be amended in accordance with the decision of April 8 and promulgated in the near future. The new version of the Measures is anticipated to bring about the following key change to Article 9 of the Measures.

According to the Article 9 of the current Measures, a stock issuer must be a joint stock limited company that has been legally established and lawfully operated its business for 3 years or more. Exceptions to this principle in Art. 9 were barely made and if, then only with the approval of the State Council. For instance, Foxconn Industrial Internet Co., Ltd. (**"FII"**), a company established in March, 2015, chose to send the document of application to China Securities Regulatory Commission in February, 2018.

In its prospectus, FII revealed that they have only been established and operated for less than 3 years, which means that the principle in Art. 9 of a limited company that has been legally established and lawfully operated its business for 3 years or more was disregarded. But as a matter of fact, they had already obtained the approval on such circumstances from the relevant authority. But those exceptions were officially barely made, this is why it is not surprising that in the last five years FII was the only officially reported company exempted from this principle in Art. 9, which requires the company to have established and lawfully operated its business for 3 years or more. However, the number of unreported exceptions could be higher than those officially reported.

Following the new modification of the Measures, those special exceptions from the State Council will no longer be possible. This is laying a solid foundation for fully introducing a system of registration without privileged listings. Therefore, the overall transparency and fairness of the capital market will be enhanced by unifying the qualification of issuers across all boards. Those changes will make the

capital market (respectively the indexes) less susceptible to the risk of listing a "black sheep", which could increase the risk of capital deficiency for investors. Therefore, this new modification of the Measures in Art. 9 can provide more safety for the investors.

II. The Supreme People's Court's Interpretation of Several Issues Concerning the Application of the Anti-Unfair Competition Law

On March 17, 2022, the Supreme People's Court promulgated the Interpretation of Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China (the **"Interpretation"**) as a supplement of the current Anti-Unfair Competition Law (the **"Anti-Unfair Competition Law"**). For the sake of understanding and applying the Anti-Unfair Competition Law better, some preliminary comments regarding certain key issues are provided.

The Interpretation, in a first part, clarifies the meaning of some legal terms in the Anti-Unfair Competition Law that are relatively controversial in practice, including the definition of "*other businesses*" and what it means to be "*with certain influence*".

The term "other businesses" is used in Article 2 of the Anti-Unfair Competition Law, which defines the unfair competition as the acts that disrupt the order of market competition and cause damage to the lawful rights and interests of *other businesses* or consumers. Given that potential competition relationship is the prerequisite of such unfair competition. The Interpretation indicates that only market participants that are in a potential competitive relationship in their business activities may be determined as the "*other businesses*", effectively reducing the circle of possible harmed parties.

The term "with certain influence", on the other hand, is used in Article 6 of the Anti-Unfair Competition Law. The article states that a business must not use without permission a label identical or similar to the name, packaging or decoration of another person's commodity "*with certain influence*". The Interpretation of The Supreme People`s Court describes that only the commodity with a certain level of market awareness and distinctive characteristic can be

determined as “certain influence”. This Interpretation seems to be a rather unsatisfying clarification for the term “certain influence”. The definition *“certain level of market awareness and distinctive characteristics”* itself is a rather undefined term and still gives a poor explanation of what “certain influence” is supposed to mean in that context.

The Interpretation also expands the application of statutory compensation. So far, statutory compensation had to be paid as a consequence of business obfuscation and infringement of trade secrets.

Henceforth, it will also be due as a consequence of false or misleading commercial publicity, the act of fabricating or disseminating false or misleading information to damage goodwill or product reputation of a competitor and the act of sabotaging the operation of online products or services of a competitor.

Lastly, the Interpretation also states that if an infringement act is remedied according to the applicable intellectual property laws, the infringed party can no longer obtain remedy in accordance with the Anti-Unfair Competition Law. However, it’s noteworthy that this provision does not restrict the conforming party from claiming causes of action for both intellectual property infringement and anti-unfair competition in the meantime, namely when the other party’s behaviours can constitute an infringing act in both, intellectual property law and anti-unfair competition law, the party is allowed to claim both, intellectual property infringement and anti-unfair competition. However, the infringement can only be remedied from one side.

III. Provisions on the Administration of Algorithm-Generated Recommendations for Internet Information Services

On March 1, 2022, the Cyberspace Administration of China alongside other government ministries issued the Provisions on the Administration of Algorithm-Generated Recommendations for Internet Information Services (the **“Provisions”**). These Provisions, for the first time, set out the basic system for the regulation of recommendation algorithm technologies in China. Those recommendation algorithm technologies are used to provide or recommend information to users.

The key issues addressed by the Provisions include the following and should be of particular interest to all companies providing internet information service by making use of algorithm technologies:

(1) What may be determined as the "Recommendation Algorithm Technology"?

The Provisions do not give an actual definition of the term "*recommendation algorithm technology*", they merely enumerate several typical circumstances of algorithm-recommended services. These circumstances include "*[..] applying generation and synthesis, personalized push, selection sort, search filtering, scheduling decision, and other algorithm technologies to provide information to users*". This provides a preliminary guideline for internet information service providers to conduct self-evaluation to see whether it's governed by the Provisions. It also leaves some room for the legislators to further release relevant law and regulations as a supplement in the future.

(2) The Main Obligations of Algorithm-Recommended Service Providers

Article 7 of the Provisions requires an algorithm-recommended service providers to formulate and publicly disclose rules related to algorithm-recommended services, and arrange professionals and technical support sufficient for the scale of algorithm-recommended services. This is to ensure, that the algorithm-recommended services are running safely and lawfully.

Article 8 of the Provisions establishes the obligation of conducting the regular review and assessment towards the applied algorithm mechanisms and models as well as the data, and application results. It also prohibits the creation of algorithm models that entice users to indulge in or engage in overconsumption.

In consideration of the huge potential effects of the content being presented on the homepage, trends or pop-up windows, the Provisions also oblige the algorithm-recommended service providers. This is strengthening the management of algorithm-recommended service page ecology and actively presents information that conforms to the mainstream value orientation.

(3) Protection of Users' Rights and Interests

The new Provisions aim is to improve the protection of users' legitimate interests by expressly establishing the following legal rights of them:

First, the users are entitled to know the basic principles, purposes, and main mechanics of algorithm-recommended services. Second, the users shall be provided with simple options to turn off the algorithm-recommended services and choose to receive information that is not customized to their personal characteristics. Third, the Provisions also require algorithm-recommended service providers to set up convenient and effective portals through which users can complain or report relevant problems. These complaints and reports shall be addressed in a timely manner.

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