2015-2019年上海法院证券虚假陈述责任纠纷案件审判情况通报

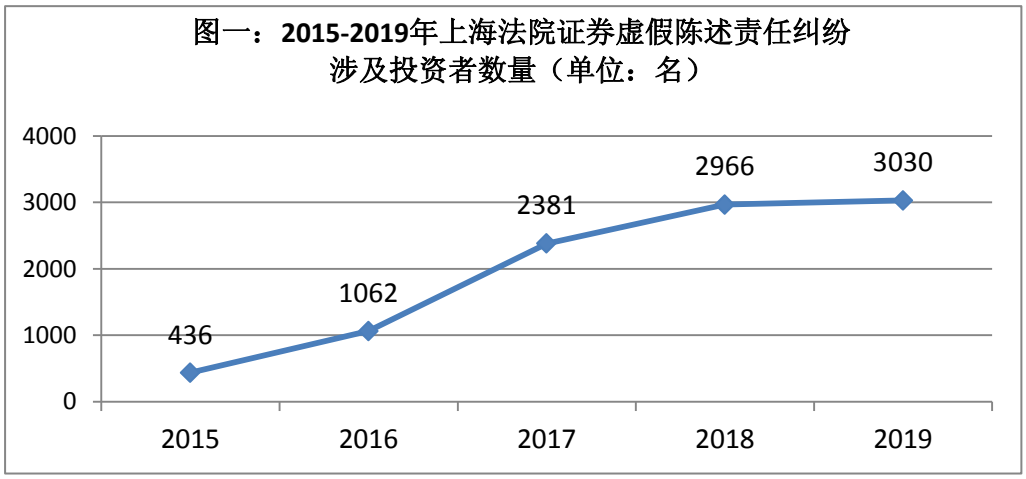
证券市场虚假陈述，是指信息披露义务人违反证券法律规定，在证券发行或者交易过程中，对重大事件作出违背事实真相的虚假记载、误导性陈述，或者在披露信息时发生重大遗漏、不正当披露信息的行为。根据《中华人民共和国证券法》（以下简称《证券法》）及《最高人民法院关于审理证券市场因虚假陈述引发的民事赔偿案件的若干规定》（以下简称《虚假陈述司法解释》），证券虚假陈述行为致证券市场投资人遭受损失的，相关主体应承担民事赔偿责任。与传统民商事案件相比，证券市场上的虚假陈述案件，具有当事人众多、案件复杂、内容专业等典型特点。现将2015-2019年度上海法院证券虚假陈述责任纠纷案件的审判工作情况通报如下。

一、证券虚假陈述责任纠纷案件特点

（一）涉及投资者人数众多

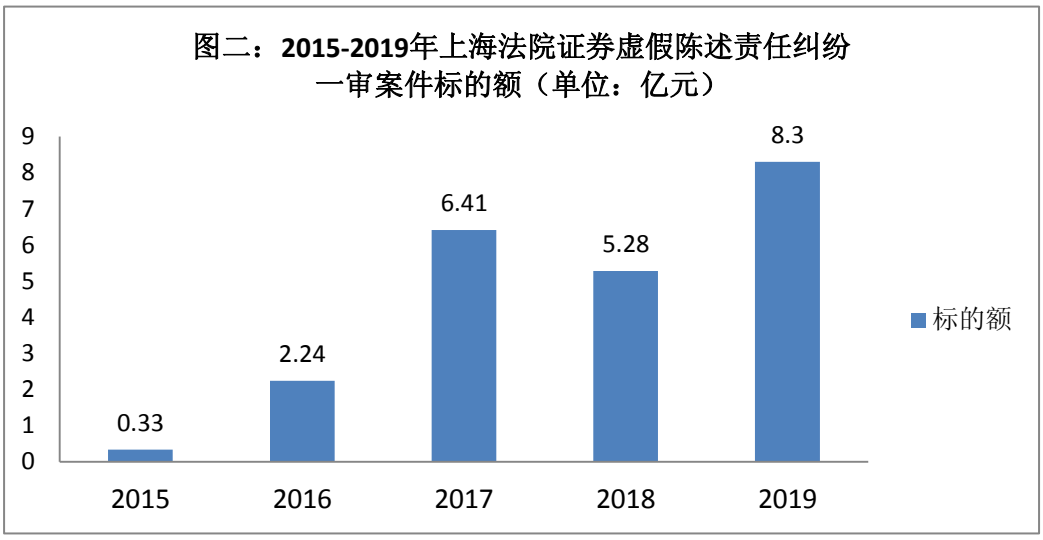
2015-2019年，全市法院共受理证券虚假陈述责任纠纷一审案件原告共涉及9,879名投资者，数量呈逐年增长态势。其中2015年436名，2016年1,062名，2017年2,381名，2018年2,966名，2019年3,030名（见图一）。被告共涉及方正科技、普天邮通（终止上市）、*ST毅达、*ST游久、界龙实业、*ST中安、锐奇股份、大智慧、ST岩石（匹凸匹）、飞乐音响、绿庭投资、ST创兴、康达新材、华鑫股份（上海仪电）、上海三毛、神开股份、安硕信息、上海家化、顺灏

股份（绿新材料）、上海物贸、新绿食品等 21 家上市公司，涵盖上交所主板、深交所主板及新三板市场等。



（二）标的总额呈增长态势

2015-2019 年，全市法院共受理证券虚假陈述责任纠纷一审案件起诉标的总额达人民币 22.56 亿元（以下币种同），其中 2015 年为 0.33 亿元，2016 年为 2.24 亿元，2017 年为 6.41 亿元，2018 年为 5.28 亿元，2019 年为 8.3 亿元，标的总额呈增长态势（见图二）。21 家上市公司平均涉诉标的额为 1.08 亿元。投资者人均起诉标的额为 22.84 万元，呈现小额、分散的特点。



（三）诉讼争点相对集中

该类案件诉请类型单一，均为投资者因上市公司虚假陈述行为导致其损失而提起诉讼，诉请赔偿投资差额损失、佣金及印花税等。其中，案件涉及的虚假陈述行为以虚增利润居多，占比为 38.09%。诉讼中，各被告的抗辩理由比较类似，呈定型化倾向。上市公司的抗辩理由多为虚假陈述行为不具有重大性、交易因果关系不成立、部分损失由系统性风险造成等；会计师事务所等中介机构的抗辩理由多为投资损失与其执业行为无因果关系、不存在主观故意、不应承担连带赔偿责任等。

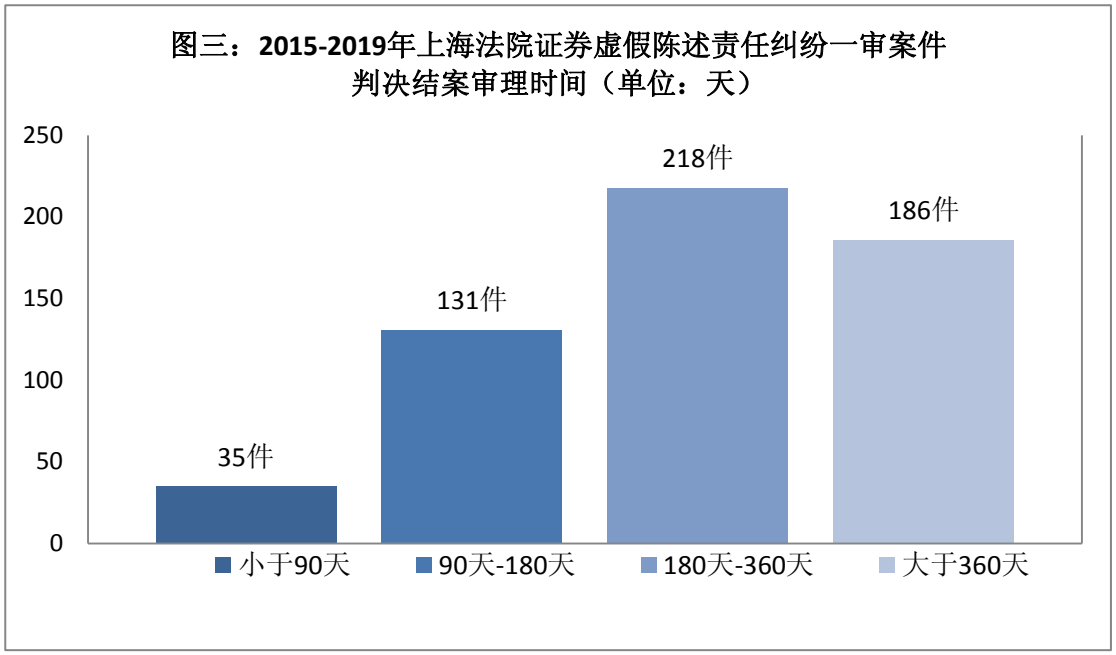
（四）案件调撤率大幅提升

随着多元化纠纷解决机制的深入推进，调解结案的案件数量和案件占比均有所提升。近三年上海法院该类案件调撤率分别为 2017 年 55.14%（涉及 404 名投资者），2018 年 44.38%（涉及 182 名投资者），2019 年 88.51%（涉及 2,103 名投资者）。其中，截至 2020 年 4 月 20 日，全国首例适用示范判决机制的方正科技系列案件调撤率为 98.49%，合计 1,311 名投资者通过多元纠纷化解机制解决纠纷，调撤金额达 1.62 亿元。

（五）判决结案审理时间较长

证券市场专业程度高，虚假陈述案件的事实查明和具体法律适用，往往涉及法律、金融、会计等多学科知识的综合运用，案件审理难度较大。各原告投资情况不同且数量众多，需要逐一确定赔偿责任。同时当前审判所依据的法律法规和司法解释相对原则，各当事人之间就

具体问题的争议较大。上述已审结案件中，以判决方式结案的 570 件（涉及 2,781 名投资者），其中审理时间超过 180 天的 404 件，平均审理时间为 267 天，诉讼周期较长（见图三）。



（六）被告担责比例较高

以被告涉同一上市公司作为分组，在上海法院审理的 21 组虚假陈述案件中，除尚未有生效裁决的 5 组案件外，16 组案件中法院判令被告承担赔偿责任的有 14 组，占比达 87.5%。该情况反映出在有行政处罚作为诉讼前置程序的情况下，投资者对虚假陈述行为的举证责任大大减轻，胜诉比例较高。

二、证券虚假陈述责任纠纷案件趋势研判

（一）损失计算的精细化程度不断提升

损失计算是虚假陈述案件的审理难点之一，同时也是制约审判效率的主要瓶颈。每一投资者持股区间不同，且交易记录往往不只一笔

买入卖出，计算工作量极大。此外还涉及证券系统性风险等因素的认定与扣除等专业性较强的问题，需要具备专门知识的第三方机构辅助法院进行损失核定。上海法院在方正科技系列案件中首次引入了第三方专业支持，由中证中小投资者服务中心作为专业机构就投资差额的损失计算及系统性风险的扣除出具损失核定意见。其中，在系统性风险的扣除上创新采用同步指数对比法，即根据每个投资者的持股期间和交易记录，将同期个股跌幅均值与大盘、行业指数的跌幅同步对比，用相对比例方法较为精准地核定出了每个投资者受市场风险影响的比例程度，更加契合投资者真实损失情况。当前，上海法院该类案件的损失核定工作均委托第三方专业机构完成，大大提升了损失计算的精细化程度。

（二）中介机构、上市公司控股股东等涉诉比例不断提高

从增强被告整体赔付能力的角度考虑，部分投资者选择将中介机构以及上市公司控股股东等其他责任主体列为共同被告，要求其承担连带赔偿责任。在上海法院受理的虚假陈述案件中，上市公司控股股东、董监高等个人被告涉诉的为 10 组，会计师事务所、证券公司等中介机构涉诉的案件为 4 组，个别案件中还出现投资者仅起诉中介机构的情况。《证券法》修订后，对上市公司控股股东、实际控制人的归责原则由之前的“过错原则”修改为“过错推定原则”，进一步减轻了投资者的举证负担。可以预见，投资者在上市公司之外同时起诉中介机构以及上市公司控股股东、实际控制人、董监高将成为常态化。

（三）支持投资者诉讼力度日益加大

当前，投资者保护机构在虚假陈述案件中承担了支持诉讼、纠纷调解、损失计算等多项职能。2017 年 5 月，上海市第一中级人民法院审结了全国首例证券支持诉讼案。该案中，中证中小投资者服务中心作为投资者保护机构就匹凸匹金融信息服务（上海）股份有限公司的虚假陈述行为，接受多名投资者的委托参加诉讼，这是《中华人民共和国民事诉讼法》（以下简称《民事诉讼法》）规定的支持起诉制度在证券市场领域的首次实践，取得了较好的社会效果。《证券法》修订后，第九十五条第三款规定“投资者保护机构受五十名以上投资者委托，可以作为代表人参加诉讼”，即通过法律直接赋予投资者保护机构“代表人”的独立诉讼地位。相比较依赖投资者自身维权意愿的支持诉讼模式而言，该代表人诉讼的方式将给予投资者保护机构更大的空间，证券投资者诉讼将获得更大支持。

（四）民事诉讼对违法行为的震慑功能得到补强

传统的证券侵权诉讼遵循“不告不理”原则，对违法者民事责任的追究始终建立在投资者向法院提起诉讼的前提之上。《证券法》修订后，在投资者保护机构参与的特别代表人诉讼机制中采用了“默示加入、明示退出”的方式，使得投资者能以“默示加入”的方式参加诉讼并获得胜诉收益，维权成本显著降低。同时，由于诉讼范围默认覆盖所有受到损害的投资者，诉讼人数和诉请总金额均将大幅增加，民事诉讼对违法行为的威慑功能得到加强。

三、证券虚假陈述责任纠纷案件审判机制探索

证券虚假陈述案件数量呈现短期激增、长期稳增的态势，以往民事诉讼“一案一立”、“一案一审”、“一案一结”的立案、审理和结案方式明显不能适应此类案件的司法实践需求。对此，上海法院通过将案件合并审理、在示范判决基础上委托调解、探索代表人诉讼机制等审判机制改革，案件审理的集约化、便利化逐步提高。

（一）常态实行共同诉讼

《虚假陈述司法解释》第十三条规定，多个原告因同一虚假陈述事实对相同被告同时提起两个以上共同诉讼的，人民法院可以将其合并为一个共同诉讼。根据上述规定，上海法院通过将同一律师代理的案件进行合并，并采用集中排期开庭、统一批量裁判的审理模式，省略了部分重复的诉讼程序，在一定程度上减少了群体诉讼的规模和复杂性。

（二）率先探索示范判决

最高人民法院、中国证券监督管理委员会在《关于全面推进证券期货纠纷多元化解机制建设的意见》提出要建立示范判决机制。据此，上海金融法院于 2019 年 1 月出台了《关于证券纠纷示范判决机制的规定》，对示范案件的选定、审理、专业支持、判决效力、审判管理作出了具体规定。

该机制的核心是利用典型案件既判力的示范效应为投资者提供稳定的诉讼预期，加大对群体性纠纷中其他类案的调解力度，从而实现适法统一，提升审判效率，节约司法资源，降低诉讼成本，促进矛

盾化解。2019 年 8 月，经上海金融法院一审、上海市高级人民法院二审维持，全国首例证券群体性纠纷示范判决生效，为健全证券纠纷多元化解机制积累了实践经验。

（三）积极推进代表人诉讼

《民事诉讼法》针对当事人人数众多的群体性纠纷专门规定了代表人诉讼制度，但实践中并未充分发挥作用。近年来，上海法院在处理证券群体性纠纷方面积累了大量的审判经验。最高人民法院多次提出，要用好、用足现行代表人诉讼制度。《证券法》明确规定“明示退出、默示加入”的方式，进一步开创了代表人诉讼的新形式。

在这一背景下，上海金融法院于 2020 年 3 月率先出台《关于证券纠纷代表人诉讼的规定》，为后续案件的规范审理提供了规则指引。这是全国法院首个关于代表人诉讼制度实施的具体规定，全面覆盖了依据《民事诉讼法》第五十三条、第五十四条规定提起的当事人人数确定和不确定的“加入制”普通代表人诉讼和依据《证券法》第九十五条第三款提起的“退出制”特别代表人诉讼，系统规定了各类代表人诉讼的规范化流程，明确回应了各类代表人诉讼中的难点问题，大力依托信息技术创新代表人诉讼机制，为进一步推动完善符合我国国情的证券民事诉讼制度提供了有益经验。

四、审理证券虚假陈述责任纠纷案件应重视的问题

（一）当事人对案件争议较大

《虚假陈述司法解释》于 2003 年制定，为法院受理、审理该类案件提供了法律依据，但因相关规定仍然较为原则，审判实践中当事

人对案件的法律适用存在较大争议。一是揭露日及更正日的认定上，对案件具体情况中揭露内容的全面性、媒体权威性、揭露的警示强度等方面争议较大。例如，上市公司在定期财务报告中自行对虚增收入相关事项进行调整，但未就调整事项进行特别说明的，是否构成更正等。二是在交易因果关系的审查上，包括阻断交易因果关系的事由认定以及交易因果关系与损失因果关系的区分等，例如投资者非理性投机行为是否可推翻因果关系，是否可以在计算投资损失中予以考虑。三是在损失因果关系的审查上，包括市场系统性风险的认定，系统性风险以外其他因素的认定如经营性风险、概念股影响、重大重组等个股事件等，以及在具体扣除比例的确定方法上，就综合指数的选取、各指数影响比例大小、是否考虑投资者持股区间与风险时间段重叠等问题，均存在一定争议。

（二）新类型疑难法律适用问题频现

证券市场的不断发展，出现新的证券产品和交易模式，伴随产生新的纠纷类型和适法问题。一是随着金融衍生品市场的发展，诱空型虚假陈述的情况逐渐出现。该类型虚假陈述虽不会引导投资者进行买入交易，但是虚假陈述本身势必会改变证券市场供求关系的应然状态，被揭露时亦会造成股价的异常波动，从而造成投资者的损失。但《虚假陈述司法解释》整体基于诱多型虚假陈述制定，未考虑到诱空型虚假陈述的情况，存在法律制度上的空白。二是涉科创板案件存在信息披露的特殊性。相较于主板市场而言，科创企业普遍存在研发投入高、投资周期长、收益不确定等特点，经营风险明显高于传统行业，类型

化的、定性或定量的传统范式难以适用于科创企业的信息披露，在该类案件中如何衔接行政处罚与民事诉讼尚存争议。三是中介机构的责任认定问题。在中介机构涉诉常态化的情况下，关于中介机构的过错如何认定；各中介机构之间勤勉尽责义务边界的界定等均成为新类型的疑难法律适用问题。

（三）市场主体归位尽责意识有待进一步加强

虚假陈述案件数量持续上升、信息披露违规行为屡禁不止，反映出以下问题：一是上市公司治理结构不完善、管理层缺乏诚信意识，对控股股东、实际控制人的控制权缺乏有效监督，为信息披露违规提供了空间。二是证券中介机构未勤勉尽责，对重大舞弊现象未尽到注意义务，审计、评估、尽调等程序流于形式，未能及时发现风险并执行恰当的应对措施。三是监管力量相对不足，行业自律欠缺，违法行为者还存在侥幸心理。

（四）纠纷多元化解的作用有待进一步发挥

从当前审判实践来看，在中小投资者分散维权的情况下，双方当事人诉讼实力悬殊，并无进行和解议价的基础。即使法院或其他机构主持调解，由于该类案件争议空间较大，在法院作出生效判决对相关事实和法律适用明确认定之前，调解工作遇到较大阻力。推行示范判决机制后，该类案件在示范判决作出后的调撤率得到显著提升，但实践中也发现诸多问题。例如，投资者保护机构主持调解的，与其作为原告的支持诉讼人参加诉讼或作为第三方专业机构辅助损失计算的职能存在冲突，调解组织的中立性受到质疑。其次，由于调解相较于诉讼的优势不明显，部分投资者对调解协议达成后实际履行效果存在

顾虑，加上被告更倾向于等待判决后再上诉以拖延赔偿时间，进一步导致调解成功率的降低。再有，部分律师出于自身利益的考量，往往希望当事人进行诉讼而非调解以获得更多报酬，对当事人进行调解持放任甚至反对意见，也对调解产生一定影响。

五、相关建议

2020 年 4 月 15 日，国务院金融稳定发展委员会召开第二十六次会议，专题研究了资本市场投资者保护问题。会议提出，资本市场发展必须坚持市场化、法治化原则，依法诚实经营是最基本的市场纪律。依法保护中小投资者合法权益、维护良好的资本市场环境是人民法院肩负的职责和使命，更离不开监管机关、投资者保护机构、中介机构等主体的共同努力。为此建议:

（一）健全公司治理结构，有效提升上市公司质量

信息披露是资本市场的生命线，有效的公司治理是保障信息披露质量的前提，也是衡量上市公司质量的重要标志。对当前信息披露不真实、不及时、不准确现象频发反映出的上市公司治理独立性不够、内控缺失等深层次问题，建议健全上市公司治理结构，优化中小投资者有效参与上市公司决策的路径，充分发挥投资者保护机构的作用，进一步加强对控股股东、实际控制人及其关联方的约束，从源头上减少信息披露违规的可能性。

（二）压实中介机构责任，切实发挥“看门人”作用

中介机构尤其是审计机构作为资本市场重要的“看门人”，对提高上市公司信息披露质量，特别是定期报告披露质量至关重要。从审

判实践来看，部分上市公司财务漠视法律规则，从事财务造假等严重损害投资者利益的行为与中介机构不专业、不独立有着密切关系。保荐承销、审计评估、法律服务等中介机构应做好本职工作，严格履行核查验证、专业把关等法定职责，督促上市公司规范运作、真实披露。加强行业自律，培育勤勉尽责的行业文化，不断提高执业质量，提升信息披露文件的针对性、客观性和公允性。

（三）加大监管力度，严惩信息披露违规行为

厘清交易所与证券监管部门的职责边界，强化交易所问询、现场调查等一线自律管理职责，形成监管合力。强化精准监管，针对上市公司控股股东资金占用、违规担保、关联交易等高风险点健全监控和防范机制，及时发现、及时制止并从重处罚，提高信息披露违规的成本。加强行政执法与刑事司法的衔接，及时移送涉嫌犯罪的案件与线索，有效遏制重大违法行为。督促中介机构提高执业水平，对执业过程中未能勤勉尽责、甚至与上市公司等串通造假的中介机构，应加大处罚力度，起到对市场的警示作用。完善资本市场诚信监管制度，建立健全失信联合惩戒机制，发挥声誉约束机制对市场主体的引导作用。

（四）加强投资者权益保护，着力提高投资风险意识

当前我国资本市场中小投资者占比95%以上，资金体量小、专业知识和判断能力较低，跟风投机现象较多。金融机构要依法依规履行投资者适当性制度，切实做好客户风险评级、投资风险披露、合同说明提示等工作，将合适的产品推介给合适的投资者。要充分发挥投资者保护机构作用，通过公益宣传、专业咨询、纠纷调解、诉讼支持等

方式，助力投资者权益保障。证券监管机构、交易所及行业协会等要在投资者教育工作上形成立体联动的工作机制，提高投资者教育的辐射面和渗透力，推动投资者教育全面纳入国民教育体系，引导树立价值投资理念，提高风险识别和应对能力。

（五）完善体制机制，积极促进纠纷多元化解

深化证券期货纠纷多元化解机制，加大宣传力度，增进各方对多元化解机制的认识，提升调解的权威性。继续发挥行业协会和投资者保护机构的作用，推动建立全国性的专业调解组织，形成纠纷调解工作多元发展局面。优化“示范判决+专业调解+司法确认”程序，发展在线调解平台，进一步缩短索赔时间、降低维权成本，推动证券纠纷多元化解机制取得实效。

Report on Cases of Security Litigations about False Statement in Shanghai Courts (2015-2019)

False statements in the securities market refer to the acts that are committed by the parties obliged to disclose information and violate the securities laws and regulations by making false records or misleading statements during the course of securities issuance or trade, or making major omission or improper disclosure when the information is disclosed. According to the *Securities Law of the People's Republic of China* ("*Securities Law*") and *Several Provisions of the Supreme People's Court on Trying Cases for Civil Compensation Arising from False Statements in Securities Market* ("*Several Provisions of False Statements*"), the parties shall be liable for compensation if the investors suffer losses for their false statements. Compared with traditional civil and commercial cases, the false statements cases in the securities market are more complicated and expertise-dependent, often involving a large number of parties. The following is to report the cases on securities disputes over false statements tried by the courts at all levels in Shanghai (Shanghai courts).

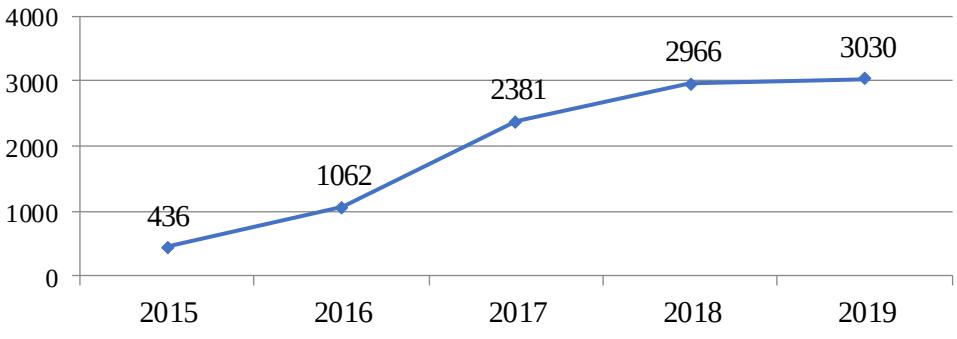
I. Features

(I) Number of investors is large

From 2015 to 2019, a total of 9,879 investors were involved in the first instance cases on securities disputes over false statements accepted by Shanghai courts, representing a year-by-year increase. Specifically, 436 investors were accepted in 2015, 1,062 in 2016, 2,381 in 2017, 2,966 in 2018 and 3,030 in 2019 (see Figure 1). For the defendants in these

cases, there were 21 listed companies[1] in the Shanghai Stock Exchange, Shenzhen Stock Exchange and the National Equities Exchange and Quotations (also known as the New Third Board).

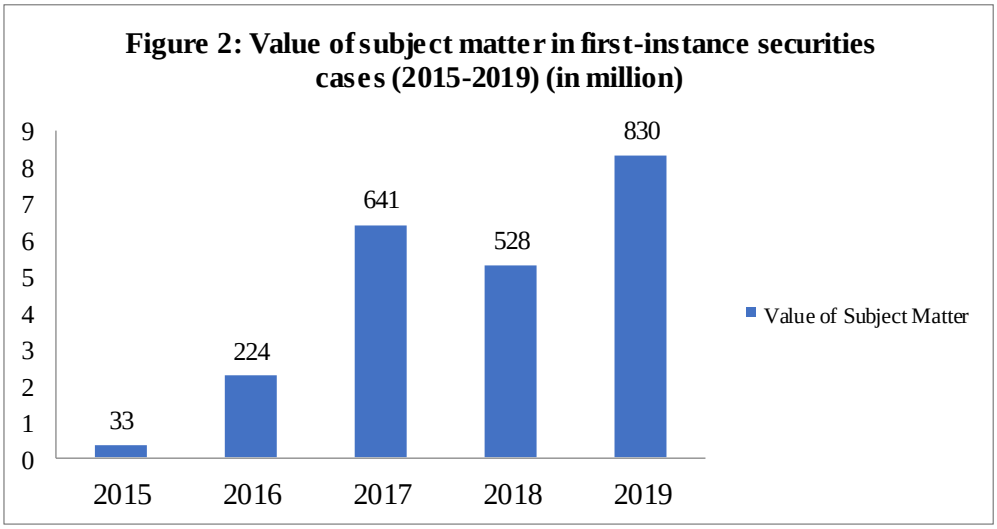
Figure 1: Number of investors involved in securities cases (2015-2019)



(II) Value of Subject Matter Increases

From 2015 to 2019, the total value of the subject matter reaches 2.256 billion yuan in the first-instance trial of securities liability cases for false statements accepted by Shanghai courts. Specifically, 33 million yuan was involved in 2015, 224 million yuan in 2016, 641 million yuan in 2017, 528 million yuan in 2018, and 830 million yuan in 2019, a year-by-year increase (see Figure 2). The average value of the subject matter for the twenty-one listed companies as defendants is 108 million. The per capita value of the subject matter is 2,284 thousand yuan, scattered in a very small number.

[1] Founder Technology Group Corporation, Shanghai Potevio Technology Co., Ltd.(delisted), Shanghai Zhongyida Co.,Ltd., Shanghai Ace Co., Ltd., Shanghai Jielong Industry Group Co. Ltd., China Security Co., Ltd., Ken Holding Co.,Ltd., Shanghai DZH Co. Ltd., Shanghai Guijiu Co., Ltd., Shanghai Feilo Acoustics Co.,Ltd., Shanghai Greencourt Investment Group Co. Ltd., Shanghai Prosolar Resources Development Co.,Ltd., Shanghai Kangda New Materials Group Co.,Ltd., Shanghai China Fortune Co.,Ltd. (controlled by INESA), Shanghai Sanmao Enterprise (Group) Co., Ltd., Shanghai Sk Petroleum & Chemical Equipment Corporation Ltd., Shanghai Amarsoft Information & Technology Co., Ltd., Shanghai Jahwa United Co., Ltd., Shanghai Shunho New Materials Technology Co.,Ltd. (formerly known as Shanghai Lvxin Packaging Co., Ltd.), Shanghai Material Trading Co.,Ltd., Shandong Xinlv Food Co., Ltd.



(III) Issues and claims tend to be centralized

The claims of these cases tend to be centralized on the losses incurred from the false statements of listed companies and the compensation for their investment balance, commission and stamp duty. The central issue of most cases is the inflated profits, accounting for 38.09%. The defense raised by the defendants during trial is similar. The listed companies claimed that the false statements were insignificant, there was no causality in the transactions, and part of the losses were caused by systematic risks. The agencies, such as accounting firms, claimed that there was no causality between the investment losses and their professional practice and no intention to do so, so they should not take the joint and several liability for compensation.

(IV) The rate of case settlement through mediation significantly improves

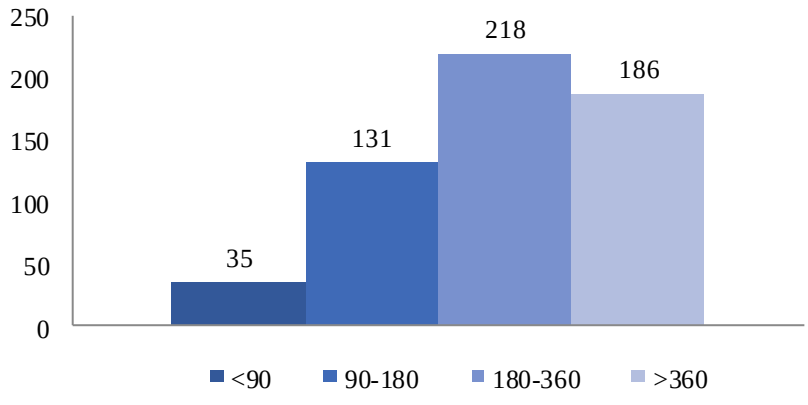
As the diversified dispute resolution mechanism is making progress, both the number and the rate of cases settled through mediation have increased, 55.14% in 2017 (involving 404 investors), 44.38% in 2018 (involving 182 investors), and 88.51% in 2019 (involving 2,103 investors) respectively. As of April 20, 2020, the rate of case settlement through

mediation in the Founder Technology case, the first case in China that deferred to the model judgment, reached 98.49%, in which the diversified dispute resolution mechanism satisfied a total of 1,311 investors and involved a total of 162 million yuan.

(V) Trials take a longer period

As the securities market is a highly professional one, the fact-finding and the application of law concerning false statements often require a combination of multi-disciplinary knowledge, ranging from law, finance to accounting, posing greater difficulty for case settlement. The liability for compensation had to be defined one by one since different investors made different investments and the number of these investors was very large. The investors also had disputes over specific issues regarding which laws, regulations or the principles derived from judicial interpretation should be adopted. In these closed cases, 570 cases (2,781 investors) were concluded by entering judgments, of which 404 cases took more than 180 days of trial and the average trial period was 267 days, a much longer period (see Figure 3).

Figure 3: Days for first-instance trial of securities cases (2015-2019)



(VI) The proportion of defendants to bear liability is high

If one listed company acting as a defendant in different cases is categorized into a group, in the 21 groups of false statements cases, except 5 groups underway, the defendants in the 14 of the rest groups were ordered to bear the liability for compensation, accounting for 87.5%. Even if the administrative penalty is a pre-condition for litigation, the investor's burden of proof in false statements cases is markedly alleviated, and they are more likely to win the case.

II. Trend Analysis

(I) More accurate calculation of losses

Loss calculation is one of the difficulties in trying false statements cases and impedes the efficiency of trial. The calculation is burdensome because different investors may have different shareholding periods, and their transaction records often involve more than one buying and selling. In addition, the calculation also has professional issues, such as the identification and deduction of losses from systematic risks, which requires a specialized third party to verify such losses. In the Founder Technology case, Shanghai courts for the first time introduced a third party, the China Securities Investor Services Center, as the specialized institution to issue opinions on calculating the losses of investment balance and the deduction from systematic risks. In terms of deducting the losses from systematic risks, it adopted an innovative method called "synchronized index comparison". To be specific, based on each investor's shareholding period and transaction records, it makes a comparison between the average fall of stocks over the same period and the fall of the entire market index and sector index, and then accurately verifies the extent of market risks for each investor through a relative

proportion method. Such calculation reflects the real losses of investors. Now Shanghai courts have appointed third-party specialized institutions to verify losses in these cases, which helps significantly improve the calculation's precision.

(II) More agencies and controlling shareholders of listed companies involved in litigations

To enhance the defendants' solvency, some investors chose to list the agencies, the controlling shareholders of the listed company and other parties as joint defendants, asking them to assume joint and several liability. Among the false statements cases accepted by Shanghai courts, in 10 groups of cases the controlling shareholders, directors, supervisors and senior managers were sued as individual defendants, and in 4 groups the accounting firms, securities companies and other agencies were sued. In some cases, the investors only sued the agencies. After the *Securities Law* was revised, the principle of determining the liability for the controlling shareholders and real controllers of listed companies was changed from the "fault liability" to the "the presumption of fault ", which further reduces the investor's burden of proof. It will be much normal for the investors to sue, apart from the listed companies themselves, their agencies, the controlling shareholders, real controllers, directors, supervisors and senior managers.

(III) Greater support for the investors to file lawsuits

The investor protection institutions have undertaken such functions as supporting litigation, dispute mediation and loss calculation in false statements cases. In May 2017, the Shanghai First Intermediate People's Court concluded the first securities case with investor protection institution's support in China. As an investor protection institution, the China Securities Investor Services Center was entrusted by many

investors to participate in the lawsuit against the false statements of P2P Financial Information Service Co., Ltd. This was the first time that the litigation support as stipulated in the Civil Procedure Law of the People's Republic of China ("*Civil Procedure Law*") was implemented in the securities sector, which also made positive social impact. Paragraph 3 of Article 95 of the revised *Securities Law* provides that "an investor protection institution entrusted by more than 50 investors may participate in the lawsuit as a representative", a provision that directly gives it the status as an independent party to a lawsuit. Compared with the litigation support that relies on the investors' own initiative to protect their rights, the presence of such representative will leave more space for these institutions and more support for the investors in securities market.

(IV) Reinforced Deterrence of civil lawsuits against illegal acts

In traditional securities lawsuits, the civil liability can only be imposed after the investors bring their cases to the court, i.e. "no complaint, no judge". The revised *Securities Law* provides an "implied participation or explicit withdrawal" scheme in which the investors can participate in the lawsuit and benefit from winning the case if they do not clearly state that they are unwilling to participate. This scheme can significantly reduce their costs for protecting rights. Meanwhile, since all the aggrieved investors are involved in the lawsuit, the number of the parties and the total amount of claims will increase substantially, which will reinforce the deterrence against such illegal acts.

III. Mechanism Innovations to settle group disputes over securities

The number of false statements cases in securities surges in the short term but maintains an increase in the long term. The traditional methods

for civil litigation, i.e. “one filing for one case”, “one trial for one case” and “one settlement for one case”, are no longer compatible with the needs of these cases. Considering this change, Shanghai courts choose to merge trials, to mediate based on model judgment, and explore the application of representative lawsuit, which helps improve the efficiency and convenience of trial.

(I) To make joint lawsuits a regular practice

Article 13 of the *Judicial Interpretation of False Statements* stipulates that the people's court may merge cases into a joint lawsuit if several plaintiffs simultaneously filed more than two joint lawsuits against the same defendant for the same false statement facts. According to this provision, the courts merged the cases represented by the same lawyer, and scheduled the trials and make judgements at the same time, which had avoided procedural repetitions and reduced the size and complexity of group lawsuits.

(II) Take the lead in the experiment of model judgement

The Supreme People's Court and the China Securities Regulatory Commission proposed to establish a model judgment mechanism in the *Opinions on Comprehensively Advancing Establishment of Diversified Resolution Mechanism of Securities and Futures Disputes* (“Opinions”). In January 2019, based on the *Opinions*, the Shanghai Financial Court issued the *Provisions of the Shanghai Financial Court on the Model Judgment Mechanism for Securities Disputes*, which specifies the rules for the selection, trial, support from third-party institutions, validity of judgments and administration for model cases.

The purpose of this mechanism is to meet the investor’s expectations by referring to the claim preclusion of a model case, increase the application of mediation in other similar group lawsuits, coordinate the

application of law, improve efficiency for trial, save resources, reduce litigation costs and facilitate dispute resolution. In August 2019, after the first instance of the Shanghai Financial Court and then affirmed by the Shanghai High People's Court, the first model judgment for a group lawsuit over securities disputes in China came into effect, which helps promote the diversified dispute resolution mechanisms for securities disputes settlement.

(III) Actively promote representative action

The *Civil Procedure Law* provides for the representative action to solve group disputes when different parties are involved, but it does not make a difference in practice. In recent years, Shanghai courts have gathered abundant experience in resolving the group disputes in securities. The Supreme People's Court also suggested that the representative action system should be used well and adequately. The *Securities Law* clearly provides for the "implied participation or explicit withdrawal" , a creation of a new type of representative action.

In March, 2020, Shanghai Financial Court took the lead to issue the *Provisions on the Representative Action Mechanism for Securities Disputes*, serving as the guidelines to ensure the standardized trial of subsequent cases. As the first regulation document in China on the implementation of representative action, it includes both the ordinary representative action of lawsuit participation as stipulated in Articles 53 and 54 of the *Civil Procedure Law*, in which the number of parties is either definite or indefinite, and the special representative action of "withdrawal under explicit consent" in paragraph 3, Article 95 of the *Securities Law*. Both provisions stipulate the standardized procedures of different representative action mechanisms. It also responds to the difficulties arising from the representative actions, innovates the

mechanism through information technology, and helps promote the civil litigation system in securities that meets China's national conditions.

IV. Issues on trial of securities disputes over false statements

(I) The parties have more disputes about the case

Formulated in 2003, the *Several Provisions of False Statements* provides legal basis for courts to accept and try such cases. However, the parties often raised questions over the application of these provisions. First, the determination of disclosure date and correction date. The parties may question the entirety of disclosure, the authority of the media through which the disclosure was made, and the strength of the warnings in the disclosure. For example, if a listed company adjusts the matters about the inflated profits in its regular financial reports, but does not offer special explanations for these adjustments, do the adjustments constitute corrections? Second, the review of causality in transactions. It includes the determination of the matters that cut off the causality in transactions and the distinction of causality between transactions and the loss. For example, [can the investor's irrational speculation overthrow a causality and be considered in loss calculation? Third, the review of causality in loss. It includes the determination of the market's systematic risks and other risks in the operations, concept stocks, major restructuring and other events related with specific stocks. In also includes the method to determine the deduction rate. The selection of composite index, the impact factor of different index and the possible overlap of the shareholding period and the period in which the risks may occur.

(II) New types of issues on the application of law rise frequently

As the securities market develops, new securities products and transaction patterns will follow, which leads to new types of disputes and

issues on the application of law. First, with the development of financial derivatives market, more and more false statements that intend to induce securities selling will emerge. Even though this type of false statements does not induce the investors to purchase securities, it will change the supply-demand in the securities market. When the false statements are made, they will bring about stock prices will fluctuate, which may eventually cause losses to the investors. However, the *Several Provisions of False Statements* is based on the consideration of false statements inducing securities buying, leaving loopholes in legal provisions. Second, the particularities of information disclosure in the STAR market. Compared with the main board markets, the companies listed in the STAR often have high R&D investment, long investment cycle, uncertain returns and other more operation risks. The traditional method that is stereotyped, qualitative or quantitative is difficult to be applied in information disclosure for STAR companies. There is also controversy over the connection between administrative penalty and civil litigation. Third, the determination of the agencies' liabilities. It includes how to define the fault liability of the agencies when it is becomes normal for them to be involved in litigation; it also raises question over application of law concerning the agencies' duties and responsibilities.

(III) Market subject's sense of responsibility needs to be strengthened

The number of false statements cases continues to increase, and the violations in information disclosure still prevail. This phenomenon raises many problems. First, the loopholes of governance structure of listed companies, the dishonest managerial staff and the lack of effective supervision over the controlling shareholders and real controllers leave space for information disclosure violation. Second, the securities agencies

do not perform their duties of giving due care on major securities frauds or take proper measures when the risks are discovered, and take auditing, evaluation and due diligence and other duties as mere formalism. Third, the supervision competence is limited as a whole, the self-discipline is insufficient, the methods, scope and frequency of supervisions can hardly keep pace with the volume of information disclosure, and therefore some still take chances.

(IV) The functions of diversified disputes resolution needs to be enhanced

Based on the court trials, in the cases which small and medium investors separately seek for rights protection, the litigation capacity of both parties are far from equal, which has no basis for possible settlement or bargain. Due to the great controversies in these cases, even if mediation is presided over by the court or other authorities, the mediation will be confronted with greater resistance before the court's judgement becomes effective and the relevant facts and application of law are determined by the court. After the implementation of model judgement, the withdrawal rate of such cases has been significantly improved, but many problems have been found in practice. For example, when an investor protection institution presides over mediation, there is a conflict between its function of supporting litigation and as a third-party specialized institution to assist in loss calculation, and then its neutrality is in question. Furthermore, since the advantages of mediation over litigation are not obvious, some investors have concerns about the actual performance of the mediation agreement, and the defendant is more inclined to wait for the judgment before appealing to delay the compensation, which further leads to a decrease of mediation success. In addition, some lawyers prefer litigation to mediation for the sake of their

own interests. The laissez-faire attitude and even objections from such lawyers to mediation also have a certain impact on mediation.

V. Recommendations

On April 15, 2020, the Financial Stability and Development Committee under the State Council held the twenty-sixth meeting, which specifically studied the investors protection in the capital market. The meeting pointed out that the development of the capital market must adhere to the principle of marketization and rule of law, the most basic market discipline is to operate in good faith in accordance with law. Protecting the legal rights and interests of small and medium investors according to law and maintaining a good market environment are the responsibilities and missions of the people's court. They cannot be achieved without the joint efforts of the regulatory authorities, investor protection institutions, intermediary agencies and other parties. The recommendations are made as follows:

(I) Improve the corporate governance structure and effectively enhance the quality of listed companies

Information disclosure is the lifeline of the capital market. The effective corporate governance is a precondition to guarantee the quality of information disclosure, which is also an important standard to evaluate the quality of listed companies. The lack of independence and internal control in the listed companies can be reflected from the frequent occurrence of untrue, untimely and inaccurate information disclosure, thus it is recommended to improve the governance structure of listed companies and optimize the channels for small and medium investors to effectively participate in decision-making, give a full play of the investor protection institutions, strengthen the constraints on controlling

shareholders, real controllers and their related parties, and reduce the possibility of information disclosure violations from the source.

(II) Consolidate the agencies' responsibilities and make them "watchdogs"

The agencies, particularly the audit firms, are important "watchdogs" in the capital market, and are essential to improve the quality of information disclosure of listed companies, especially the quality of their regular reports. Based on court trials, the financial department of some listed companies disregarded the legal rules and committed financial frauds and other acts that seriously damage the interests of investors. Their disregard and fraudulent acts were often closely related to the incompetence and dependence of the agencies. The agencies such as sponsorship underwriters, auditing firms, and law firms should earnestly and strictly perform their statutory duties such as verification and professional review, and urge listed companies to standardize operations and truthfully disclose information. The industry self-discipline should be strengthened, a diligent and responsible industry culture should be cultivated, the quality of professional practices should be continuously improved, and the information disclosure should be more specific, impartial and fair.

(III) Strengthen supervision and severely punish information disclosure violations

To strengthen supervision from all sides, the line between the responsibility of the stock exchanges and the securities regulatory department should be clarified, and the role of stock exchanges in conducting inquiries and on-site investigation and other frontline activities should be strengthened. Precise supervision should be strengthened by improving the mechanism to monitor and prevent

high-risk activities, such as the occupation of capital by the listed company's controlling shareholders, non-compliance guarantees and related-party transactions. The illegal acts will be discovered, prevented, and severely punished with no delay to increase the cost of information disclosure violations. To effectively curb major illegal activities, the law enforcement and criminal justice should strengthen its cooperation by, transferring criminal cases and the clues. The intermediary agencies will be asked to improve its practice level. For the one who fails to exercise its due duty or even collude with listed companies to fraud, more severe punishment will be imposed as an alarm for the entire market. The integrity supervision mechanism of the capital market will be promoted, the joint disciplinary mechanism for dishonesty will be established and facilitated, and the reputation restraint mechanism will effectively guide market entities.

(IV) Strengthen the protection of investors' rights and interests, and improve the investment risk awareness

The small and medium investors in China's capital market now account for more than 95%. Since they have a small number of capital and lack sound judgment and professional knowledge, they tend to follow speculation. The financial institutions should implement the investor suitability mechanism in accordance with the laws and regulations, earnestly improve customer risk rating, investment risk disclosure and contract description reminders, and recommend suitable products to investors. It is necessary to give a full play of investor protection institutions, and help investors protect their rights and interests through non-profit publicity, professional consultation, dispute mediation and litigation support. Securities regulatory agencies, stock exchanges and industry associations should work together to increase the professional

knowledge of investors, improve the scope and quality of investor education, promote investor education to be fully integrated into the national education system and guide the establishment of value investment ideas to improve risk identification and response capabilities.

(V) Improve the institutions and mechanisms to promote the diversified dispute resolutions

It is advised to apply the diversified resolution mechanism on securities and futures disputes, increase its publicity, deepen the understanding of the diversified resolution mechanism of all parties, and strengthen the authority of mediation. By continuously playing the role of industry associations and investor protection institutions, it is advised to promote the establishment of a national professional mediation organization, and facilitate the development of diverse dispute mediation mechanisms. In addition, it is advised to optimize the procedures of "model judgment + professional mediation + judicial confirmation", develop an online mediation platform to reduce the time for making claims and costs of rights protection, and increase the effectiveness of the diversified resolution mechanism for securities disputes.