

Margin Transaction Legal System Analysis

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Abstract: Margin transaction generally implemented in overseas securities markets. China has started to run the pilot of margin transaction business and some existing legal problems should be solved during the process of operation. This article briefly analyses the insufficient legislative provisions of China margin transaction and give related countermeasures.

Keywords: margin transaction; minimum margin ratio; trust system; transfer security

Margin transaction is a mature system widely adopted abroad, based on which the basic functions of security markets could work smoothly. Margin transaction has some active effects such as advancing market liquidity, mitigation market volatility, forming reasonable prices, hedging the risks and making profits for the institutions. It is an important way to improve market mechanism, push ahead the products innovation and promote the resources reasonable disposal. Margin transaction pilot has not officially launched until March 31, 2010. At the present stage, It is necessary to take research on Margin transaction which will be applied to our security market, and perfect transaction legal system.

1. Overview of margin transaction system

Margin Transaction, also known as margin trading transaction or pad head transaction, is often said the fictitious. In this trading, according to a defined proportion, stock transactions deliver a part of the purchase price or a certain number of securities to the securities brokers, the insufficiency is advanced by securities brokers through bank loans or raising from money market. This special security trading activities can be divided into two parts: brokers provide to investors with financing or securities lending, and financial institutions provide to brokers with refinancing or again securities lending. In this way, stock transactions use only part of self-owned funds, the rest parts can get credit from securities companies or financial institutions by handing over margin. By credit transactions as the core, the margin transaction is a set of trading system which constitute with credit relationship, operation methods, procedures and regulatory elements and their mutual connections.

2. Legal problems in the implementation of margin transaction business

2.1 Legislative level exist defects

Legal system of margin transaction mainly includes laws and departmental rules and regulations. 2005, the new security law was issued, which is the basic law in our country securities. Margin transaction gained its legal status firstly. This law only prescribes the provisions of

the principle, but it is too general and lack of the substantive provisions and operability. In addition, in 2006, China Securities Regulatory Commission promulgated 'Securities Companies Margin Business Management Measures' (hereinafter to be referred as Management Measures), and Implementation Rules of Shanghai and Shenzhen stock exchanges, which provide the specific operating rules and supervision form. However, compared with the law, Department regulations and standards have defects, such as low effectiveness, poor stability, insufficient authority and limited punishment.

2.2 Inappropriate discretionary subject of minimum margin ratio

In margin transaction business, in order to guarantee the debt incurred during the margin process, investors should pay a certain amount of bond to securities firms. Margin ratio is the most important parameters, which affects the expansion degree of trade credit. When the amount of margin is confirmed, the higher the proportion is, the smaller scale of financing from securities companies to investors is, the lower the financial leverage effect is. Because the margin ratio can affect the money supply of a country or region, in most of the foreign mature securities markets, the ratio decision often exercised by central bank and the securities regulatory authority, they can formulate and adjust the margin ratio to control the amount of funds of financial institutions into the securities market, also can make the regulation of the margin transaction as a regular mechanism to monitor.

2.3 Too strict regulation to participating subject

In the preliminary stage, in order to prevent and control risk, China Securities Regulatory Commission adopted the policy of strict conditions and control number. They make strict requirements in aspects of broker's qualification, such as operating time, risk prevention and management, senior management conditions, financial status, billing systems and internal regulation, but in aspects of customers' qualification, there are the corresponding qualification restrictions, margin transaction business not only eliminates common small investors, and also completely ruled out of the fund, trust

and other professional institutional investors. Limiting small retail investors to participate the margin transaction market is to avoid large-scale risk. But in this way, only self-capital and large institutions can trade in margin transaction market. This obviously has become a minority participation in the games, only a few people participation of credit transactions cannot reflect the four functions of margin transaction, including price discovery, market stability, risk management and enhance the liquidity.

Moreover, not only the participating, but also the object of margin transaction-underlying securities, is limited strictly. To avoid the risk, the underlying securities should be taken into account the performance of listed companies, stock liquidity and volatility, so at present mainly are blue-chippers. But with the margin transaction business continues to develop and expand, the current type of qualified stock is clearly too few.

3. Perfection of margin legal system

3.1 Improving the legislative level

According to the securities law, when provide the service of margin transaction business for the customer, the securities companies should be in accordance with the provisions of the state council and approved by the securities supervision and administration institution. The new Management Measures was issued by China Securities Regulatory Commission, which is only a departmental rule and regulation. In order to maintain the legal authority and guarantee the development of margin transaction, we must improve the legislation level. According to the author point, a special administrative regulation should be promulgated by the State Council as soon as possible to regulate the margin transaction market. The "securities law" just formulates principle rules, but as the basic law, it lacks operability and should be modified and added some basic operating principles, such as the broker's credit model, the ratio of deposit rate, conditions of commercial banks, loan rate and so on. Only in this way, we can ensure the margin transaction business can have a sustainable, healthy and stable development.

3.2 Decision of minimum margin ratio should be performed by central bank

By studying the experience of mature markets, generally this proportion should be formulated by monetary policy department to adjust according to the macroeconomic situation. At this stage, the minimum margin ratio is formulated by the Stock Exchange in order to guarantee the stability of the securities market in a certain extent. But it is not conducive to our monetary policy to develop and implement. At the same time, it also cannot effectively control the scale of credit transaction funds into the securities market. We should revise the related law as soon as possible to make the decision power

implemented by central bank.

3.3 Gradually liberalize restrictions on broker's qualification and expand the scope of margin transaction business

In the pilot stage, the China Securities Regulatory Commission imposed a policy to restrict condition and control the number to prevent the financial risks, which in fact only a few of qualified brokers involved in the business. Specifically, eligible for the pilot margin trading brokerages, first of all must be innovative pilot securities companies, and also must have a range of other conditions. Accordance with the condition listed in 'Management Measures', only about five brokers can meet the requirement. Due to the China Securities Regulatory Commission approved Examination and approval system, the very few number brokers have the first pilot business qualification. The purpose of margin transaction business is to provide to the market subject equal opportunities for participation, rather than open to the select minority. But after the end of the pilot phase, eligibility restrictions should be relaxed. Taking into account equality of market competition, we hope that the regulate securities firms can obtain the qualifications to carry out this business.

3.4 Clear the legal nature of margin transaction system

Introducing the trust system into the margin transaction system is mainly to resolve the problems of disposition power, independence of the trust property. But it is also facing many issues, such as the subject inappropriate, against the wishes of the parties, as well as conflict with the margin transaction practice and others. In view of this, the author considers that on the surface there are many similarities between margin system and trust, but it can not be confused, its nature more accords with transfer security. Although existing law can not confirm transfer security system, it often uses in practice. Law is a product of economic and social, innovation of financial product will bring about the changes in the legal system, so amending and perfecting the law is inevitable. for the transfer security, we can first provide in judicial interpretation by Supreme People's Court, when the time is ripe, can be clearly identified in 'Property Law' and 'Guarantee Law'.

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