

# The Construction of Securities Public Interest Litigation System from the Perspective of Protecting Small and Medium Investors

Shan Li<sup>1, \*</sup>

<sup>1</sup> Macau University of Science and Technology, Macau, 999078, China

\* Corresponding author: Shan Li

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**Abstract:** Securities violations have dual consequences, both damaging public and private interests. The emergence of securities public interest litigation can bridge the gap between "private remedies" and "public enforcement" in the governance paths. However, due to the lack of legal provisions and judicial practice, the establishment of the securities public interest litigation system and its operation need to be explored. This article, from the perspective of protecting small and medium investors, discusses the goals and challenges of constructing the securities public interest litigation system. It also examines the necessity of using public interest litigation to restrain the abuse of controlling shareholders' rights and protect the interests of small and medium investors. Regarding the obstacles faced by current securities public interest litigation, the main issues include the questionable legislative positioning and the need for clarity in specific procedures. In the process of exploring the construction of the securities public interest litigation system, this article focuses on discussing the scope of application of public interest litigation, the selection of suing entities, and the allocation of burden of proof. It aims to enhance the understanding of the public and relevant departments regarding the construction of the public interest litigation system, while highlighting its significant role in protecting the rights and interests of small and medium investors, effectively promoting the protection of public interests and the lawful performance of regulatory authorities in the securities market, and safeguarding the healthy development of the securities market.

**Keywords:** Securities public interest litigation, Protection of small and medium investors, Public interests, Private interests.

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## 1. Introduction

China's capital market is mainly composed of small and medium investors, with a current number exceeding 190 million people, of which 97% are small and medium investors with stock holdings valued below 500,000 yuan.<sup>[1]</sup> Investors are the foundation for the sustainable development of the capital market, and whether their legitimate rights and interests are protected determines the healthy and orderly development of the market. The protection of investor rights and interests relies not only on their own safeguarding efforts but also on the establishment of a sound and effective institutional guarantee and supervision system. Securities violations such as false statements, market manipulation, and insider trading not only infringe upon shareholders' property rights but also disrupt the financial regulatory order of China's securities market, causing harm to both private and public interests. Given the dual nature of the harm caused by securities violations, countries worldwide have established two paths for securities regulation: "private remedies" and "public enforcement". In this regard, China has also established two regulatory paths for securities violations through private litigation and administrative enforcement. However, both models have certain limitations and cannot comprehensively deter securities violations. Among them, the judicial practice of private securities litigation is often limited to the scope of false statement infringement, with a narrow scope of application. The plaintiff's litigation claim is only for seeking compensation for losses and does not have the nature of punishing securities violations. It is a prerequisite for initiating a lawsuit based on administrative penalties or criminal sanctions for illegal acts. The various factors, such

as shareholders' failure to seek relief through litigation, intertwine to create the dilemma of private securities litigation. In terms of securities administrative penalties, there are also issues such as insufficient enforcement efforts, weakening of the deterrent effect due to the prioritization of compensation, imbalance in the establishment of administrative and criminal responsibilities, and the frequent use of administrative penalties to replace criminal penalties.<sup>[1]</sup> Considering the challenges faced by small and medium investors in litigation and safeguarding their rights, investor protection agencies such as the Investor Protection Center have explored supporting securities lawsuits to help small shareholders protect their rights. At the legislative level, the promulgation of the new Securities Law in 2019 officially provided legal provisions for securities support for litigation. However, due to the lack of clarity in the operational procedures of securities support for litigation, conflicts of function within the Investor Protection Center, the ineffectiveness of securities support for litigation in restoring market order, and the need to enhance the effectiveness of the system, there are practical challenges facing securities support for litigation.<sup>[2]</sup> As a result, many scholars and politicians have called for the exploration of establishing a securities public interest litigation system in China.<sup>[3]</sup> Securities public interest litigation can help leverage the advantages of a diverse dispute resolution mechanism, optimize problem-solving solutions, enhance the effectiveness and targeting of small and medium investor protection, and regulate the abuse of controlling shareholders' rights. Therefore, it is necessary to systematically reflect on the current situation and shortcomings of securities public interest litigation in China, deeply discuss the necessity, legitimacy, and feasibility of securities public interest

litigation, and propose ideas and plans for the development of China's securities public interest litigation system.

## **2. Barriers to Building Securities Public Interest Litigation**

### **2.1. Uncertain legislative positioning of securities public interest litigation**

Currently, the types of civil public interest litigation determined by laws such as the Civil Procedure Law of China are limited to cases involving environmental pollution and public hazards, numerous consumer rights violations, and protection of martyrs' rights. Whether other areas of cases can be included in the scope of civil public interest litigation has been a subject of debate in academia. Scholars who oppose expanding the scope of public interest litigation, such as Professor Hu Weilie, argue that the legislation and practice of public interest litigation in China are still being explored, and blindly expanding the scope of public interest litigation may lead to adverse consequences. [4] On the contrary, supporters like Professor Lin Yiming believe that besides the defined domains of public interest cases, there are numerous cases in practice that cause damage to national and public interests, and expanding the scope of public interest litigation is not only practical but also necessary. [5] In response, the Supreme People's Procuratorate advocates for local procuratorial organs, with the support from local party committees, National People's Congress, government, and courts, to cautiously and actively explore cases that seriously harm public interests, draw strong public attention, and lack qualified subjects for ordinary litigation. As scholars have pointed out, with the issuance of the Supreme People's Court's "Several Opinions on Providing Judicial Safeguards for the Establishment of the Science and Technology Innovation Board and Pilot Registration System Reform." and the Shanghai Higher People's Court's "Several Opinions on Serving and Guaranteeing the Establishment of the Science and Technology Innovation Board and Pilot Registration System," public interest litigation in the securities field has become an inevitable trend. Especially after the Fourth Plenary Session of the 19th Communist Party of China in November 2019 explicitly called for the expansion of the scope of public interest litigation cases, there has been an increasing number of theoretical perspectives and practical explorations on expanding the scope of public interest litigation. [3] In this context, it has become an urgent issue to transform securities public interest litigation from an academic proposition into national law, as well as to establish operational procedures for securities public interest litigation.

### **2.2. Clarification Needed on Specific Procedures for Securities Public Interest Litigation**

To ensure the smooth implementation of the civil public interest litigation system in the securities field, scholars suggest that China should establish a comprehensive system for this institution based on the combination of legislative and practical considerations, including the subject framework, scope establishment, procedural standards, and supporting measures. Regarding the subject framework, it is proposed that China adopts a "joint operation" approach in determining the subjects of securities public interest litigation, which includes prosecuting authorities and qualified public interest

organizations or institutions. By separating the China Securities Investor Protection Fund Corporation from the China Securities Regulatory Commission, it can obtain the independent standing to initiate public interest litigation, or by enhancing the litigation skills of institutions such as the Investment Association of China's Securities and Investment Fund, they can become subjects of securities public interest litigation. However, there has long been controversy over the role of prosecuting authorities in public interest litigation. Although the "Reform Pilot Plan for Procuratorates Initiating Public Interest Litigation" and the "Implementation Measures for Procuratorates Initiating Public Interest Litigation Pilot Work" specify that prosecuting authorities can initiate civil and administrative public interest litigation as "litigants in the public interest," it is still unclear whether their role is that of a "representative of public interest" or a "legal supervisory authority." Moreover, there are concerns about the impact of prosecuting authorities' participation in administrative public interest litigation on the administrative litigation model and the management of administrative law enforcement. There is also suspicion of selectively focusing on major cases in order to ensure a higher success rate, as well as ambiguity regarding the burden of proof in public interest litigation. Therefore, the subject of securities public interest litigation still warrants further exploration. [2] In terms of scope establishment, securities infringements commonly seen in China include false statements, insider trading, and market manipulation. Public interest litigation should also be established in these areas. Regarding procedural standards, on one hand, the initiation of public interest litigation should be determined based on the specific circumstances of each case. Although both prosecuting authorities and investor protection agencies can initiate securities public interest litigation, if the priority of initiation is unclear, it may lead to a competition or a mutual deferral of initiation. On the other hand, securities public interest litigation should be organically integrated with private interest litigation. Moreover, the initiation of securities public interest litigation should be modest and humble. Only when the rights holder finds it difficult to protect their rights or when the case has significant social impact, can prosecuting authorities or investor protection agencies initiate securities public interest litigation in accordance with the law.

## **3. Using Public Interest Litigation to Restrain the Abuse of Controlling Shareholders' Rights and Protect the Interests of Small and Medium-sized Investors**

Publicly traded companies have a large and widely dispersed number of shareholders. When their rights are infringed, it not only harms the legitimate interests of numerous shareholders but also aggregates the interests of these small and medium-sized shareholders, giving them a certain public interest nature. Furthermore, securities infringements not only harm investors' rights but also pose a threat to national financial security, securities market stability, and order. Therefore, lawsuits arising from securities infringements possess the dual attributes of both public interest and private interest. Private interest litigation faces the challenge of collective action by small and medium-sized shareholders and suffers from a low litigation rate and an inability to effectively safeguard the public interest. Securities

public interest litigation can address the dual dilemma of inadequate protection of public interest and administrative enforcement failures faced by private interest litigation. It is conducive to preventing further losses, safeguarding national economic and financial security, and promoting fair competition in the securities market. The current absence of securities public interest litigation in China will hinder the further development of the securities market.

From the perspective of public interest protection in practice, securities public interest litigation is the best choice. As plaintiffs in public litigation, based on their professional knowledge and the information advantage of accessing financial information, they can select the most representative cases that involve the most serious harm to investors' rights and initiate public interest litigation. This can help address the deficiencies of private interest litigation and also act as a deterrent to securities market infringements. Through securities public interest litigation, the dual shortcomings of private interest litigation and administrative enforcement can be effectively addressed, thereby safeguarding the public interest in the securities market.

### **3.1. Society has a long-term demand for public interest litigation**

Securities disputes involve both public and private interests. Currently, there is a continuous occurrence of cases involving false statements, market manipulation, and insider trading in the securities market. From an external perspective, the disputes in the securities field seem to involve private interests between infringers and affected investors or target companies, with no connection to public interests. However, due to the diversity and large number of interest entities involved in the securities market, the distinction between public and private interests is not clear-cut. Some scholars even argue that distinguishing between public and private interests in civil litigation is an "illusion".<sup>[1]</sup> From the perspective of the consequences of securities disputes, actions such as false statements and market manipulation not only harm the interests of specific investors but also affect the judgment and choices of potential investors in the securities market. They also undermine the trading and regulatory order of the securities market. This demonstrates that the interests involved in securities litigation have typical characteristics of "aggregate public interests."<sup>[3]</sup>

Fraudulent activities are rampant in today's securities market, and small and medium-sized investors whose rights have been infringed face obstacles such as high litigation costs and heavy burdens, which deter them from pursuing private litigation to protect their rights. There is a long-standing demand for securities public interest litigation in society. According to information disclosed in the 2022 annual report of China Securities Regulatory Commission (CSRC), there were 383 cases of administrative penalty decisions in 2022, with a high proportion of violations including illegal or irregular information disclosure, insider trading, violations by securities practitioners, and illegal activities in the private equity fund sector.<sup>[3]</sup> This indicates that 383 listed companies engaged in actions that infringed investor rights in the previous year. Disclosed data shows that the amounts involved in securities fraud cases are significant, such as Kangmei Pharmaceutical's over 30 billion RMB in inflated capital. Moreover, individual listed companies are involved in numerous cases of securities fraud. Based on the aforementioned analysis, there are fewer cases where small

investors initiate lawsuits regarding securities disputes. This is due to the unclear positioning of investor protection agencies and the lack of mandatory provisions for representative litigation. The avenue of using investor protection agencies to initiate representative litigation and safeguard the legitimate rights of small investors has limited effectiveness and the outlook is not too optimistic. It is evident that the number of infringement cases resulting from fraudulent activities in China's securities market continues to rise, and individual shareholder lawsuits and representative litigation cannot resolve the current predicament. Thus, there is a practical demand for securities public interest litigation.

Currently, public enforcement of securities regulations is constrained by limited law enforcement capabilities and improper allocation of responsibilities, which affects the effectiveness of government agencies in the field of securities regulation. The main reasons for this are as follows: On one hand, administrative enforcement is relatively weak. In recent years, the China Securities Regulatory Commission (CSRC) has been continuously enhancing its supervision of illegal activities in the securities market. However, due to factors such as limited number of law enforcement personnel and restricted access to case leads, there are numerous cases of violations and irregularities that have been overlooked and not subjected to punishment during the CSRC's enforcement process. On the other hand, the CSRC's punitive measures primarily consist of fines and the confiscation of illegal gains, with disqualification penalties being less frequently applied. Even if individuals involved in violations and irregularities are subject to administrative penalties, they can still continue their business activities through other channels. For example, they can continue trading through the accounts of friends and relatives. The financial loss from these penalties can be swiftly compensated in subsequent business endeavors, making it difficult to create a practical and effective deterrent against violators.<sup>[2]</sup> Furthermore, securities infringement cases may also involve civil, criminal, and administrative liabilities, and there is a frequent occurrence of substituting fines for criminal responsibility during the securities regulation process. One scholar analyzed 449 penalty decisions issued by the CSRC between 2001 and 2013 for securities violations, and the results showed that there were 65 penalty decisions exceeding one million yuan, with five of them exceeding one billion yuan.<sup>[3]</sup> This prominent phenomenon of substituting fines for criminal responsibility affects the effectiveness of securities law enforcement.

### **3.2. Private Remedies are Ineffective in Safeguarding Securities Public Interest**

In 2003, China established the securities private remedies system by promulgating the "Supreme People's Court's Several Provisions on the Acceptance of Civil Compensation Cases Arising from False Statements in the Securities Market" (hereinafter referred to as the "Provisions on Civil Compensation for False Statements in the Securities Market"). However, litigation costs, difficulty in gathering evidence, complex and specialized legal procedures, and other issues still exist in securities litigation involving false statements. Subsequently, the China Securities Investor Protection Fund Corporation Limited (SIPC) has played its role in supporting securities lawsuits, providing material and immaterial support for small and medium-sized investors in initiating securities dispute litigation, as well as assisting in the investigation and collection of evidence. The earliest case was the "P2P case."

<sup>[3]</sup>Despite these efforts, the current securities private remedies system still struggles to effectively resolve disputes and safeguard public interests in the securities market.

Although small and medium-sized investors constitute a large proportion of China's securities trading market, the percentage of these investors resorting to private remedies to protect their rights when they are harmed is relatively low. The main reason for this is as follows: Firstly, the scope of securities private remedies is limited. The "Provisions on Civil Compensation for False Statements in the Securities Market" allows for the application of securities private remedies in civil compensation cases arising from false statements made by disclosure obligations in the process of issuing and trading securities in securities trading venues. In such cases, aggrieved investors can initiate civil lawsuits for securities false statement infringement. However, legislation is still lacking clear provisions regarding the justiciability of infringement disputes arising from common securities violations such as market manipulation, insider trading, and insider information disclosure, apart from false statements. Furthermore, although according to the "Provisions on Representative Actions in Securities Disputes," representative actions in securities disputes include both general representative actions and special representative actions arising from false statements, insider trading, market manipulation, and other behaviors in the securities market, in practice, the courts have only accepted disputes related to securities false statements. Therefore, due to the diversification of infringement disputes caused by securities market violations and the limitations imposed by the legal provisions on the scope of securities private remedies, it is difficult for the private remedies system to achieve the goal of comprehensive rectification of securities violations. Secondly, private remedy lawsuits are insufficient to cover public interests. Securities disputes often involve significant amounts of investors, resulting in harm to both investor rights and the management order of the securities market. These disputes have both public and private aspects. However, in reality, securities representative actions and false statement lawsuits initiated by parties only seek to hold the infringers accountable for damages, without addressing punitive compensation or other claims related to public interests. Therefore, through the avenue of private remedies, it is difficult to uphold public interests and effectively prevent illegal activities in the securities field. In fact, the purpose of private interest litigation and public interest litigation in civil lawsuits determines the distinction in the litigation requests between private and public interests. Achieving private interests does not necessarily mean that public interests are protected.

Thirdly, the implementation of securities representative actions has been ineffective. Based on the analysis mentioned earlier, in securities disputes, small and medium-sized investors rarely initiate general representative actions due to high costs of seeking legal remedies and the lack of cost-effectiveness. Similarly, the effectiveness of special representative actions is not significant. There is no mandatory requirement for investor protection institutions to initiate representative actions. Being a right rather than an obligation, there is insufficient motivation to initiate special representative actions, and therefore, it is not advisable to have high expectations for the effectiveness of such actions currently. On the other hand, according to data published by the Investor Protection Center, as of the end of March 2023,

the center has initiated 50 support litigation cases since the first "P2P" case. This number is noticeably smaller compared to the number of cases punished by the China Securities Regulatory Commission. Restricted by insufficient personnel in the Investor Protection Center and having multiple functions such as supporting litigation, dispute mediation, and special representative actions, it is understandable for the center to selectively support lawsuits in infringement disputes. However, objectively, this leads to the inability of the supporting litigation system to fully play its role and effectively protect the rights and interests of small and medium-sized investors who have suffered damages.

### **3.3. Public Interest Litigation: Bridging the "Dual Deficiency" Defect**

Based on the above analysis, in securities dispute cases, private remedies are insufficient to effectively protect public interests, and small and medium-sized investors are unlikely to actively initiate securities dispute litigation based on cost-benefit assessments. On the other hand, regulatory agencies such as the China Securities Regulatory Commission (CSRC) have weak law enforcement efforts and inadequate supervision. To address the dual deficiency issue of both private interest litigation and securities administrative law enforcement, it is necessary to introduce securities public interest litigation to prevent the tragedy of the commons, promote the regulatory authorities to fulfill their legal obligations, protect public interests, and maintain a healthy order in the securities market.

The protection of public interests in the securities market is to protect the legitimate rights and interests of small and medium-sized investors to maintain their trust in the securities market. <sup>[3]</sup>China's Civil Procedure Law limits the scope of public interest litigation by adopting an incomplete enumeration method, including acts that damage the ecological environment and resource protection, as well as infringements on the legitimate rights and interests of numerous consumers in the field of food and drug safety that harm social public interests. [Article 58 of the Civil Procedure Law (2021 Amendment).] This enumerative approach does not completely restrict the scope of application of public interest litigation, leaving room for its development. In judicial practice, public interest litigation has gradually expanded to include issues involving public interests, such as the protection of the reputation of heroes and martyrs, and the Fourth Plenum of the 19th Central Committee clearly called for the expansion of the scope of civil litigation cases. <sup>[3]</sup>

Even though securities public interest litigation is not expressly defined as a category of public interest litigation under the law, disputes in the securities market involve obvious public interests and should be included within the scope of public interest litigation. On the one hand, maintaining order in the securities market and protecting public interests are the responsibilities of the securities market, and it is the obligation of the securities market to fully protect the legitimate rights and interests of investors. On the other hand, small and medium-sized investors in the securities market are in a clearly disadvantaged position and should be adequately protected based on the principle of protecting the weak. The principle of protecting the weak requires that securities public interest litigation should be conducted by public interest organizations representing small and medium-sized investors to reduce the cost of litigation for these investors. Taking public interest organizations as the plaintiff

in securities public interest litigation helps to compensate for the disadvantages faced by individual small and medium-sized investors, such as difficulties in collecting evidence and lack of professional knowledge. It can effectively utilize the resources advantages through the China Securities Regulatory Commission and resolve difficulties in evidence presentation against actual controllers. [12]

The establishment of securities public interest litigation effectively addresses the "dual deficiency" issue of private litigation and administrative law enforcement, in order to protect the public interests in the securities market. On the one hand, the introduction of securities public interest litigation is beneficial in providing a more convenient avenue of relief for small and medium-sized investors, thereby resolving the predicament of private litigation. Whether as individual plaintiffs or in collective actions, small shareholders should participate in the entire litigation process as victims of rights infringement, including initiating the litigation, collecting evidence, and engaging in negotiations, all of which can be burdensome and delay the legal proceedings. Moreover, the substantial costs of litigation often discourage small and medium-sized investors from pursuing legal action. However, through securities public interest litigation, the advantages of public interest organizations in providing professional and authoritative services to small and medium-sized investors can be effectively utilized, reducing the barriers to safeguarding their rights. The establishment of securities public interest litigation is beneficial in urging public law enforcement agencies to actively perform their functions in accordance with the law. The protection of public interests in the securities sector requires regulatory authorities to enhance their efforts in preventing and combating fraudulent activities in the securities field. According to Article 25 of the Administrative Litigation Law, if the securities regulatory authorities unlawfully exercise their powers or fail to fulfill their duties, resulting in damage to national or public interests, and if administrative agencies fail to fulfill their responsibilities in accordance with the law, the people's procuratorate may bring a lawsuit to the people's court to supervise the regulatory authorities to perform their duties in accordance with the law. Secondly, securities public interest litigation grants standing to entities such as supervisory agencies, allowing them to directly initiate lawsuits to provide relief for small and medium-sized investors. In summary, securities public interest litigation can promote comprehensive and lawful performance of duties by securities regulatory authorities and protect public interests through the direct participation of plaintiffs in the litigation process.

#### **4. Specific Institutional Construction of Securities Public Interest Litigation**

Securities public interest litigation is beneficial in supplementing the deficiencies of private remedies and administrative law enforcement in safeguarding public interests in the securities sector. However, civil securities litigation in China is still in the exploratory stage. The civil litigation system only vaguely lists the scope of public interest litigation, and the Securities Law does not specifically establish the securities public interest litigation system. The legislation of the securities public interest litigation system requires more clear and operational rules regarding its applicability, plaintiffs, and burden of proof. Therefore, there is an urgent need to address the construction of the securities

public interest litigation system in terms of its scope of application, plaintiffs, and allocation of burden of proof.

#### **4.1. Scope of Application of Public Interest Litigation**

Currently, in China, Article 58 of the Civil Procedure Law defines the scope of public interest litigation in an incomplete and non-exhaustive manner. It includes acts that harm social public interests, such as the destruction of the ecological environment and resource protection, as well as infringements on the legitimate rights and interests of numerous consumers in the field of food and drug safety. This non-exhaustive approach does not completely exclude the application of securities public interest litigation. There is considerable controversy regarding the interpretation of the term "etc." in the listed scope. Some scholars argue that, according to the method of legislative interpretation, "etc." should be interpreted as including both within and beyond its scope, rather than excluding anything.[13] In other words, it should include the range of matters listed before the term "etc." and also similar matters outside the listed items, indicating that the listed matters in the legislation are not exhaustive.

In light of the purpose-oriented interpretation system, the term "etc." should not be limited to the matters listed before it in the legal provision. The scope of public interest litigation should be appropriately expanded. The reasons are as follows: Firstly, it aligns with the purpose of public interest litigation in safeguarding public interests. Securities disputes involve a large number of victims and have widespread geographical distribution, characteristics that go beyond typical civil tort disputes. Securities infringement disputes not only involve the interests of numerous investors but also have a close connection to the orderly development of the securities market and the stable operation of the socio-economic system. Securities public interest litigation is beneficial in safeguarding social public interests. Secondly, it serves to fully leverage the procuratorial function. Expanding the scope of public interest litigation appropriately enables timely response to societal needs and provides assurance for events concerning public interests that receive close attention from the public. In fact, in judicial practice in China, the scope of public interest litigation has been expanded to some extent, such as gradually extending to cases involving infringements on the honor of heroes and martyrs, as well as issues related to harassment calls in recent years.

Securities public interest litigation relating to infringement and public interest litigation arising from consumer rights protection disputes are similar, as both involve public interest litigation caused by diffuse interests being harmed. [3] Although from an individual standpoint, these cases may involve private interests, when viewed as a whole, the large number of individuals affected and the cumulative amounts involved highlight their public nature. Therefore, it is necessary to introduce the model of public interest litigation to achieve swift and fair relief for diffuse interests. In the United States, securities tort litigation is referred to as "private enforcement of the law", which vividly illustrates the significant importance of securities public interest litigation in safeguarding public interests.

The scope of application of public interest litigation should fully consider multiple factors, such as the connection between public interest litigation and private interest litigation, as well as the current status of judicial practice. As mentioned earlier, in China, securities infringements often

manifest as false statements, market manipulation, and insider trading. Therefore, the scope of application of securities public interest litigation should also give priority consideration to the areas where infringement behaviors are prevalent in practice. In 2003, China promulgated the "Provisions on Civil Compensation for Securities Market False Statements", which established a relief system for securities infringements and became the primary legal basis for courts in China to accept securities dispute litigation. Through long-term practice, Chinese courts have accumulated certain experience in handling securities infringement disputes. On the other hand, the China Securities Investor Protection Center has also actively fulfilled its role in supporting prosecutions and initiating representative litigation, accumulating valuable experience in safeguarding the legitimate rights and interests of investors in the securities field. From this, it can be seen that there is already a certain practical basis for resolving disputes related to securities false statements, market manipulation, insider trading, and other issues in China. In order to prevent an unlimited expansion of the scope of public interest litigation, the current approach can limit the scope of securities public interest litigation to disputes involving false statements, market manipulation, insider trading, and similar types of cases. In the future, as the securities public interest litigation system matures, the scope of application of such litigation can be gradually expanded. [3]

## 4.2. Plaintiffs of Public Interest Litigation

The plaintiffs of securities public interest litigation are crucial to its initiation and subsequent operation. Due to limited capacity for investigation, evidence gathering, and bearing costs, individual small investors often lack sufficient motivation to file securities infringement lawsuits. Therefore, it is necessary to empower public interest organizations and other groups with the qualification to act as plaintiffs in public interest litigation. By leveraging their advantages over individual small investors in initiating lawsuits, these organizations can curb behaviors that violate public interests in the securities market and safeguard the legitimate rights and interests of small investors as well as the order of the securities market. Article 58 of China's Civil Procedure Law stipulates that for actions that damage public interests, such as environmental pollution and infringement of the legitimate rights and interests of numerous consumers, legally designated agencies and relevant organizations can file lawsuits with the people's courts. People's procuratorates can file public interest litigation in cases where there are no aforementioned agencies or organizations filing such litigation. While this provision only generically specifies the qualified entities as "legally designated agencies and relevant organizations" for initiating securities public interest litigation, it does not explicitly define the scope of relevant entities, nor are there specific provisions in relevant legislation. Currently, it is widely accepted in academia that the plaintiffs of securities public interest litigation mainly include the people's procuratorates and investor protection agencies.

The public interest litigation efforts of the procuratorate have achieved good results and gained understanding and support from the general public. Regarding the argument that the procuratorate should act as a plaintiff in public interest litigation, the views mainly include the following: First, the power of the procuratorate, as a public authority, originates

from the transfer of private rights, and therefore, the procuratorate itself represents public interest. Second, some scholars propose a tripartite structure in which the procuratorate acts as a quasi-plaintiff, and the prosecutor, public interest representative, and quasi-plaintiff appear together. Other scholars argue that investor protection agencies, compared to the procuratorate, have advantages in professionalism and obtaining evidence. Therefore, they should hold a secondary position, meaning that when investor protection agencies do not initiate public interest litigation, it should be the procuratorate, as the empowered plaintiff in public interest litigation, that initiates it. When investor protection agencies initiate public interest litigation, according to the provisions of the Civil Procedure Law, the procuratorate can support the prosecution. However, there are also isolated dissenting voices that argue if the procuratorate acts as a plaintiff in securities public interest litigation, it will create a conflict between the roles of the litigant and the overseer of legal implementation. Additionally, the procuratorate is skilled in criminal litigation but lacks experience in initiating civil litigation.[6-7]

It can be seen that the mainstream view in academia supports granting the procuratorate the qualification to initiate securities public interest litigation. The author also agrees that the procuratorate should be empowered to file lawsuits. The reasons for this are as follows: First, the function of exercising legal supervision by the procuratorate is not in conflict with its role as a plaintiff in initiating public interest litigation but rather complementary. The procuratorate can carry out legal supervision while handling cases and handle cases during the process of legal supervision. Secondly, the purpose and principles of the procuratorate are inseparable from the protection of public interests. Acting as a plaintiff in securities public interest litigation is in line with its function of safeguarding national and public interests, representing the interests of the state and the public. Thirdly, the procuratorate possesses rich experience and judicial authority. Although securities public interest litigation requires high professionalism and involves complexities, the procuratorate can obtain support through communication with securities regulatory agencies, among other means. Institutions such as the Shanghai Stock Exchange, financial courts, and Shanghai municipal courts have accumulated extensive experience and possess talent advantages, which can be leveraged for knowledge dissemination. Therefore, the procuratorate should be qualified to initiate civil public interest litigation in the securities field in China.

Furthermore, since its establishment, the Investor Protection Center (IPC) has been consistently committed to safeguarding the rights and interests of small and medium-sized investors. Therefore, investor protection institutions such as the IPC should have the qualification to initiate civil public interest litigation in the securities field. On one hand, securities public interest litigation encompasses a wide range of specialized areas, requiring not only legal expertise but also a thorough understanding of finance, securities, and other related fields. Clearly, investor protection institutions possess strong professional advantages in this regard. On the other hand, investor protection institutions have an advantage in collecting evidence. They can obtain relevant internal information of listed companies through securities regulatory agencies. Additionally, before initiating public interest litigation, the China Securities Regulatory Commission (CSRC) has already conducted investigations into relevant

companies. This enables investor protection institutions to reduce the steps of investigation and evidence collection, thereby addressing the longstanding issue of small and medium-sized investors' difficulties in providing evidence against the actual controllers of listed companies. [12] Investor protection institutions have already acted as the supporting party in accordance with the provisions of the Civil Procedure Law, and they have practical experience in supporting litigation related to civil disputes in the securities field.

Based on the above analysis, currently in China, both the procuratorate and investor protection institutions are considered suitable as plaintiffs in civil public interest litigation cases in the securities field. This allows both entities to fully leverage their professional advantages in securities dispute litigation. It helps to compensate for the inadequacies of individual small and medium-sized investors in initiating private interest litigation, effectively preventing the proliferation of securities dispute litigation, and also serving as a deterrent to securities investors. It lays the foundation for further expanding the scope of plaintiffs in civil public interest litigation.

### 4.3. The allocation of evidentiary burden in public interest litigation.

The allocation of evidentiary burden in civil litigation addresses the issue of which party should bear the adverse consequences when the facts or main facts of a case are unclear or their authenticity is uncertain and neither party can provide evidence. The allocation of evidentiary burden directly affects the outcome of the litigation. Article 91 of the Interpretation of the Civil Procedure Law establishes the general rule of "the burden of proof lies with the party asserting a claim", but it does not provide specific regulations regarding the allocation of evidentiary burden in public interest litigation such as environmental public interest litigation. Article 4, paragraph 3 of the Supreme People's Court's Provisions on Evidence in Civil Proceedings (Revised in 2008) stipulates that in cases of environmental pollution causing damages, the burden of proof lies with the polluter to prove the absence of causal relationship between the exemption reasons and the harmful acts and their consequences. [7] The special evidentiary burden rules for certain tortious acts as stipulated in that provision were later incorporated into the Civil Code, such as Article 4, paragraph 3, which corresponds to Article 1230 of the Civil Code. According to the current legal provisions, it is known that in environmental pollution cases, the burden of proof is reversed for exemption reasons and causal relationship, with the burden falling on the liable party. If the liable party fails to deny the causal relationship, they will bear the consequences of being defeated in the lawsuit.[7]

When it comes to the allocation of evidentiary burden in securities public interest litigation, the rule of reversing the burden of proof should also be applied, taking reference from environmental civil public interest litigation cases. If we were to follow the general rule of "the burden of proof lies with the party asserting a claim", it would further burden the plaintiffs in securities public interest litigation with their evidentiary burden. By implementing a reversal of the burden of proof, it means that the wrongdoer will bear a heavier burden of proof compared to general tort cases. The design of this reversal of the burden of proof places a heavier burden of proof on the securities wrongdoer. It is precisely because of the negative

nature of this burden that the law should allocate the responsibility to the wrongdoer in securities tort public interest litigation cases. This is because, compared to the victims, the wrongdoer is better positioned to prove the lack of causal relationship between the wrongful act and the resulting harm. Moreover, the establishment of such a burden will serve as a deterrent to securities wrongdoers, contribute to maintaining the order of securities market transactions and economic stability, protect the legitimate rights and interests of small and medium-sized investors, and prevent frequent occurrence of securities infringement cases. Therefore, the rule of reversing the burden of proof should also be applied in securities public interest litigation cases, taking reference from environmental civil public interest litigation cases.

The reversal of the burden of proof is a special rule of evidentiary responsibility in civil litigation. It is in contrast to the general rule of "the burden of proof lies with the party asserting a claim", and should generally be clearly defined by legislation. For example, Article 89 of the Securities Law states: "In disputes between ordinary investors and securities companies, the securities companies shall prove that their actions comply with laws, administrative regulations, and the provisions of the State Council's securities regulatory authority, and that there is no misleading or fraudulent behavior. If the securities company fails to prove this, it shall bear the corresponding liability for compensation." The application of the reversal of the burden of proof in securities public interest litigation is conducive to achieving the objectives of public interest litigation and maintaining fairness and justice in the securities market.

## 5. Conclusion

This study, from the perspective of protecting small and medium-sized investors, elaborates on the necessity of establishing a securities public interest litigation system, the existing obstacles, and corresponding solutions, providing theoretical guidance for understanding and developing China's securities public interest litigation system. Securities public interest litigation is an important means of protecting market fairness and justice, curbing the abuse of rights by controlling shareholders, and safeguarding the rights and interests of small and medium-sized investors. However, the main issues currently faced by China's securities public interest litigation system are the unclear legislative positioning and ambiguous litigation procedures, resulting in complex handling of public interest litigation and unclear effects. Therefore, reforms and improvements to the existing securities public interest litigation system are needed, from both legislative and judicial perspectives. In general, the construction of China's securities public interest litigation system is a systematic project that requires joint efforts from all sectors of society. It is expected that in the future, the securities public interest litigation system in China can play a greater role in safeguarding the rights and interests of small and medium-sized investors and promoting fair competition in the industry.

## References

- [1] Liu Jia, Liu Cang, "Analysis of Litigation Cases by the Investment Service Center: Protecting the Rights and Interests of Small and Medium Investors," *Financial and Accounting Monthly*. Vol. 16, 2023.

- [2] Fan Weiguo, "Securities Public Interest Litigation: Derivative Logic, Theoretical Interpretation, and Institutional Formation," *Journal of Jiangxi University of Finance and Economics*, Vol. 6, 2021 .
- [3] Fan Weiguo, "From Support for Litigation to Public Interest Litigation: Dilemmas and Solutions for the Protection of Investor Rights under the New Securities Law," *Journal of Financial Law*, Vol. 2, 2020.
- [4] Liu Guofeng, Rui Yuehua, "Proposal to Establish a Securities Public Interest Litigation System," *China Securities Journal*, March 7, 2017, A04.
- [5] Hu Weilie, Tian Kai, "Research on Pilot Cases of Administrative Public Interest Litigation Initiated by Procuratorial Organs," *Journal of Administrative Law Research*, Vol. 2, 2017.
- [6] Lin Yiming, "Challenges in Legislative Issues of Administrative Public Interest Litigation in China and Judicial Responses," *East Law Journal*, Vol. 2, 2018.
- [7] Yang Zhihong, "Institutional Reflection on the Expansion of Public Interest Litigation Subjects -- Taking Prosecuting Authorities as the Starting Point of Public Interest Litigation Plaintiffs," *Qinghai Social Sciences*, Vol. 4, 2018 .
- [8] Ding Baotong, "Basic Types and Procedural Paths of Civil Public Interest Litigation," *Journal of Legal Science (Northwest University of Political Science and Law)*, Vol. 2, 2014.
- [9] China Securities Regulatory Commission, <http://www.csrc.gov.cn/csrc/c105752/c7399269/content.shtml>. Last accessed April 20, 2023.
- [10] Lian Yuqiang, "Issues and Countermeasures: Empirical Analysis of the Connection between Securities Administrative Law Enforcement and Criminal Justice," published in the *Journal of Shanghai Political and Law Institute (Series on the Rule of Law)*, Vol. 4, 2018.
- [11] Liu and others suing Company A, Xian, Yun and others for the dispute of securities false statement liability, Shanghai Higher People's Court (2016) Shanghai No. 01 Civil Case No. 166 civil judgment.
- [12] Chen Linji, "Securities Public Interest Litigation: Legal Analysis and Institutional Construction," *Journal of Hubei University of Economics*, Vol. 2, 2020.
- [13] Yu Deming, Cao Ruixuan, "The Construction of China's Civil Securities Public Interest Litigation System," *Chinese Procuratorate*, Vol.6, 2020.
- [14] Zhang Jun, "Introduction of Public Interest Litigation Mechanism in Securities Tort Judicial Relief," in *People's Judicature*, Vol. 2, 2015.
- [15] Pan Shenming, "Civil Public Interest Litigation from a Comparative Law Perspective," Law Press, 2011.
- [16] John Rawls, "A Theory of Justice," translated by He Huaibao, He Baogang, and Liao Shenbai, Peking University Press 2009.
- [17] Ning Li'ang, "Analysis of the Feasibility of Initiating Public Interest Litigation: Analysis from a Local Perspective," in *Political and Legal Studies*, Vol. 4, 2012.
- [18] Liu Shuilin and Gao Feng, "The Theoretical Confirmation of the Establishment of China's Securities Public Interest Litigation System," in *Journal of Shanghai University of Finance and Economics*, Vol. 6, 2014.
- [19] Zhang Liming, "The Procuratorate Should Not be the Plaintiff in Environmental Public Interest Litigation," in *Legal Studies*, Vol. 6, 2011.
- [20] Xiao Jianhua, "Procedural Safeguards for Modern Litigation - Based on the Background of the Amendment of the Civil Procedure Law in 2012," in *Comparative Law Research*, Vol. 5, 2012.
- [21] Supreme People's Court, Provisions on Evidence in Civil Proceedings (Revised in 2008), Article 4.
- [22] Wang Xiuwei, "Reflection and Reconstruction of the Allocation of Evidentiary Burden in Environmental Civil Public Interest Litigation in China," in *Law Review*, Vol. 2, 2019.
- [23] Zhang Weiping, "The Institutionalization and Implementation of the Principle of Civil Public Interest Litigation Research," in *Tsinghua Law Journal*, Vol. 4, 2013.