Article

The Challenges and Contemporary Issues of Taiwan's Investor Protection System: A Model to Learn or to Avoid

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ABSTRACT

In January 2003, the Securities and Futures Investors Protection Center (SFIPC), an NPO and NGO, was established according to the Securities Investor and Futures Trader Protection Act (SFIPA), enacted in July 2002. The SFIPC was funded by the securities and futures industries. The creation of the SFIPC and the recent securities law reforms aim at enhancing the corporate governance and the investor protection systems. This article provides a comparison of the investor protection funds in Taiwan, Canada, China, Singapore and the U.S. In addition, special functions of the SFIPC are bringing class actions and derivative suits on behalf of investors and listed companies that suffered damages from securities fraud and other market misconducts. Since its establishment, the SFIPC has filed more than 200 class actions as of December 2015. The SFIPC can also bring derivative

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suits against corporate directors or to ask the court to remove unsuitable corporate directors. The investor protection institutions in other jurisdictions, such as Securities Investor Protection Corporation in the US and Canadian Investor Protection Fund, do not have these functions. This article introduces special features of the SFIPC. It also identifies and analyzes the contemporary issues regarding the investor protection system. Particularly, the SFIPC has been criticized for its conflict role in serving as an agent of the government, conducting compulsory mediation, bringing class actions and removing directors. Moreover, what are the duties of the SFIPC in bringing litigation and settling the cases and who are supervising its performance to ensure no breach of duties or abuse of its power? Furthermore, future challenges to the SFIPC will be discussed.

Keywords: *Investor Protection, Class Action, Removal of Director, Derivative Action, Investor Protection Fund, Settlement*

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I. INTRODUCTION

It has been critically argued whether public enforcement or private enforcement is more efficient and effective to deter securities frauds and other market misconducts.[1] While this debate will be going on and on, this article suggests that an efficient model of private enforcement will be complementary to the public enforcement. Private enforcement is to achieve a goal that injured investors will be compensated through this mechanism. Class action is one typical form of private enforcement that benefits a group of investors who suffer damages arising from the same incident. Contrarily, public enforcement may or may not directly benefit or redress the damages of investors. For example, fines imposed on criminal defendants go directly to the Treasury of the nation. Civil penalties also go to the Treasury unless there is similar arrangement like the Fair Fund managed by the US Securities and Exchange Commission that may be used to benefit the investors.[2] As for private enforcement, there are various models to choose from. It can be initiated by individual investors, class actions driven by the lawyers, or performed by non-profit organization. This article will mainly focus on the NPO-led model. It will provide a close study on a unique model, Taiwan's Securities and Futures Investors Protection Center (SFIPC) to examine how this private enforcement model react to corporate scandals and market misconducts.[3]

It has been an ongoing agenda of securities regulators and self-regulatory organizations (SROs) to continuously fight with corporate scandals and emphasize investor protection all over the world.[4] Corporate

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1. *See generally*, Mark Klock, *Improving the Culture of Ethical Behavior in the Financial Sector: Time to Expressly Provide for Private Enforcement against Aiders and Abettors of Securities Fraud*, 116 PENN ST. L. REV. 437 (2011); Amanda M. Rose, *Reforming Securities Litigation Reform: Restructuring the Relationship between Public and Private Enforcement of Rule 10b-5*, 108 COLUM. L. REV. 1301, 1301 (2008) (noting that "[i]s private enforcement of Rule 10b-5 worth preserving, or might we be better off with exclusive public enforcement? This fundamental but neglected question demands attention today more than ever.").

2. The term FAIR Fund stands for the "Federal Account for Investor Restitution" can be found in section 308 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204 § 308 (codified at 15 U.S.C. § 7246 (2015)).

3. Market misconducts include "(a) market manipulation; (b) false trading or market rigging; (c) dissemination of information about illegal transactions; (d) false or misleading information; (e) fraudulently inducing persons to deal; (f) dishonest or deceptive conduct; (g) insider trading; (h) bucketing; (i) failure to disclose, in a continuous manner, material information relating to the company; and (j) dealing on behalf of customers without permission." Lynn Hew & Mohammad Nizam Bin Ismail, *Investor Protection in the Asia Pacific: Findings of the Asia-Pacific Regional Committee Survey on Investor Protection* (2003), http://www.oecd.org/finance/financial-markets/19390444.pdf (last visited Oct. 10, 2015).

4. Corporate scandals, like the virus, have increased their infection and spread in many countries in the past decade. The notorious examples are Enron, WorldCom, Tyco, Adelphi *etc*. in the U.S., Livedoor in Japan. *See generally*, Jennifer G. Hill, *Regulatory Responses to Global Corporate Scandals*, 23 WIS. INT'L L.J. 367 (2005). More recent corporate scandals include the collapse of

scandals could occur in both developed market and emerging markets.[5] Many countries have implemented a series of regulatory reforms by adopting new laws and regulations aiming to deter or to punish securities fraud and other types of market misconducts. Another aspect is to improve corporate governance system and enhance investor protection.[6] Some jurisdictions, such as the U.S. and some European countries, have gone further to emphasize the corporate social responsibilities (CSR).[7] Although it is still controversial whether CSR is to promote or in contradiction with shareholders' interest, Taiwan has followed the global trend without too much delay to promote CSR.[8] For example, Taiwan's academia has paid more attention to this issue recently. For example, Dr. In-Jaw Lai, a securities law professor, former Grand Justice of the Constitutional Court and former President of the Judicial Yuan, published a series of articles and a book talking about CSR.[9] Taiwan Stock Exchange and Taipei Exchange (the official OTC market) jointly promulgated the "Corporate Social Responsibility Best Practice Principles for TWSE/GTSM Listed Companies

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subprime mortgage debt market in 2008 leading to the fall of many financial institutions and global financial crisis, and the Portuguese Banco Espírito Santo, involving financial accounting fraud, bailed out by the Portugal government in 2014. Patricia Kowsmann, *Bank of Portugal Targets Ex-Banco Espirito Santo Officials*, WALL ST. J. (May 28, 2015), http://www.wsj.com/articles/bank-of-portugal-fines-ex-banco-espirito-santo-officials-1432833170.

5. *See*, *e.g.*, Jacob L. Barney, *Corporate Scandals, Executive Compensation, and International Corporate Governance Convergence: A U.S.-Australia Case Study*, 23 TEMP. INT'L & COMP. L.J. 231, (2009) (discussing corporate scandals in the US and Australia); Christopher M. Zoeller, *Corporate Scandals: Global Recognition of Securities Regulation—How is China Faring?*, 41 U. TOL. L. REV. 213 (2009) (discussing corporate scandals in China).

6. In response to the corporate scandals that have seriously impaired the securities market and destructed the public confidence, the U.S. government enacted the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002). The U.S. Securities and Exchange Commission promulgated rules to enforce the new legislation. The self-regulators, such as the New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD), and the Public Company Accounting Oversight Board (PCAOB), have amended or proposed rules regarding corporate governance and auditing standards accordingly. *See* Patricia J. Harned, *Do Ethics Programs Really Work?*, *in* CORPORATE COMPLIANCE AND ETHICS INSTITUTE 2007 317, 331 (Kaye Scholer LLP ed., 2007); *see generally*, Eden P. Sholeen & Rebecca L. Baker, *Unlocking the Mysteries of SOX Whistleblower Claims*, 44-FEB HOUS. LAW. 10 (2007).

7. *See generally*, Shane M. Shelley, *Entrenched Managers & Corporate Social Responsibility*, 111 PENN ST. L. REV. 107 (2006); John M. Conley & Cynthia A. Williams, *Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 J. CORP. L. 1, 1-38 (2005); RON BEVACQUA, THE WAY OF THE MERCHANT: CORPORATE SOCIAL RESPONSIBILITY IN JAPAN (Economist Intelligence Unit ed., 2005), http://graphics.eiu.com/files/ad_pdfs/CSR_JP_English.pdf. Taiwan's academia has paid more attention to this issue recently.

8. One of the theories is called "constituency model" that illustrates CSR to be that among different group of people, such as shareholders, employees and creditors, "conflicts exist among these and other constituencies' interests." David Millon, *Two Models of Corporate Social Responsibility*, 46 WAKE FOREST L. REV. 523, 525 (2011).

9. *See* LAI IN-JAW (賴英照), LAIYINGZHAO SHUOFA—CONG NEIXIAN JIAOYI DAO QIYE SHEHUI ZEREN (賴英照說法：從內線交易到企業社會責任) [LAI IN-JAW SAYING: FROM INSIDER TRADING TO CORPORATE SOCIAL RESPONSIBILITY] (2007, reprinted in 2012).

in November 2014. Designated companies listed on the Taiwan Stock Exchange and Taipei Exchange are required to publish CSR Report on the annual basis.[10]

Even with those efforts, Taiwan's securities market is not exempt from attacks of corporate scandals and market misconducts.[11] The regulators have adopted several regulatory reforms hoping to deter the occurrence of market misconducts and mitigate their impact on the development of the securities market and national economy. These reforms include the introduction of independent directors and the audit committee into Taiwan's Securities and Exchange Act (TSEA) in January 2006 to enhance the internal corporate monitoring mechanism.[12] Under the TSEA, the Financial Supervisory Commission (FSC) is authorized to designate certain types of companies to set up an audit committee to replace supervisors. The FSC gradually expands the scope of companies that are required to set up audit committee. In 2013, an order was issued to require most publicly traded companies to establish audit committees beginning from January 2014.[13] Most publicly traded

10. Designated listed companies, such as companies in the food, chemical, financial and insurance industries, are required to prepare annual CSR Report by referring to the Sustainability Reporting Guidelines published and Sector Guidance by the Global Reporting Initiatives. Taiwan Stock Exchange Corporation Rules Governing the Preparation and Filing of Corporate Social Responsibility Reports by TWSE Listed Companies, §§ 2 & 3, announced Nov. 26, 2014 (last amended on Oct. 19, 2015), http://twse-regulation.twse.com.tw/ENG/EN/law/DAT06.aspx?FLCODE=FL075209&FLDATE=20141126&LSER=001.

11. Examples of corporate scandals happened in Taiwan is available at the website of the Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Juanzhu Zhangcheng (財團法人證券投資人及期貨交易人保護中心) [Securities and Futures Investors Protection Center] [hereinafter SFIPC], Tuanti Susong Ji Zhongcai: Qiuchang Anjian Huizongbiao (團體訴訟及仲裁—求償案件彙總表) [Class Actions and Arbitration: The List of the Cases], http://www.sfipc.org.tw/MainWeb/Article.aspx?L=1&SNO=XqlDNAZ/9DguYlTrwJhJrQ== (last visited Mar. 1, 2016).

12. Taiwan's Zhengquan Jiaoyi Fa (證券交易法) [Securities and Exchange Act] (promulgated and effective Apr. 30, 1968, as amended July 1, 2015) (Taiwan) [hereinafter the TSEA]. In January 11, 2006, the TSEA was amended to add Articles 14-2 to 14-5 to introduce "independent director" and "audit committee" to the corporate structure of the publicly held corporations. Under those provisions, a publicly held corporation may choose to appoint independent directors into the board of directors. It may also establish an audit committee to replace supervisors as the monitoring organ. Although in general a corporation has the option whether to appoint independent directors or establish an audit committee, the TSEA also authorize the competent authority to designate certain types of corporations that must appoint independent directors or establish an audit committee. The above provisions took effect on January 1, 2007; TSEA §§ 181-2 & 183.

13. Jinrong Jiandu Guanli Weiyuanhui (金融監督管理委員會) [Financial Supervisory Commission], 102 Jin-Guan-Zheng-Fa No. 10200531121 (102金管證發字第10200531121號函釋) [Order Financial-Supervisory-Securities-Issuance] (2013) ("The establishment of audit committee requirement is expanded to publicly traded non-financial companies with paid-in capital between NT$2 billion and NT$10 billion."). The following publicly traded companies are required to set up an audit committee:

(1) Financial holding companies, banks, bills finance companies, insurance companies, securities investment companies, securities companies, and listed futures companies;

companies will have the audit committee as the supervisory organ by 2017. Publicly traded companies with paid-in capital between NT$2 billion and NT$10 billion shall set up an audit committee after January 1, 2017 but is permitted to set up when the term of office of supervisors expire in 2018 and 2019.[14] More importantly, the TSEA was amended to make the elements clear regarding the civil liabilities for fraudulent financial reporting. Article 20-1 was added to the TSEA on January 11, 2006 to serve this function. It spells out the scope of plaintiffs and defendants and whether defendants bear strict liability, are presumably negligent and whether they may exercise due-diligence defense to escape from civil liabilities.[15]

Disregarding the amendment of the TSEA, it would not automatically stop the occurrence of the corporate scandals. From investors' point of view, if the existing pre-warning systems cannot effectively avoid investing in problematic corporations or deter the occurrence of corporate scandals, it is still hoped that monetary damages may be recovered from the securities law violators. However, most investors, particularly small investors, after suffering the investment losses because of the fraudulent disclosures, market manipulation, or insider trading activities, do not have ability or strong incentives to bring litigations against the securities law violators. They cannot afford to pay the litigation fees and go through the lengthy litigation procedures without knowing the possible outcome of the lawsuit. In order to restore investors' confidence on the securities market, the government launched a new investor protection program in 2003.

In July 2002, the Legislative Yuan enacted the Securities Investor and Futures Trader Protection Act (Investor Protection Act or the SFIPA) that authorizes the establishment of an investor protection institute to provide investor protection services.[16] In January 2003, the Securities and Futures Investors Protection Center (Investor Protection Center or the SFIPC), a non-for-profit and non-governmental organization, was established with the

(2) Non-financial companies with more than NT$10 billion of paid-in capital (by 2017); and
(3) Non-financial companies with paid-in capital between NT$2 billion and NT$10 billion (by 2019).

14. *Id.*

15. Under Article 20-1 of the TSEA, dealing with civil liabilities for fraudulent financial reporting, the chairperson and general manager were strictly liable for the damages caused by the misrepresentations and omissions contained in the financial reports prior to July 1, 2015. The TSEA was amended on July 1, 2015. Since then, chairperson and general manager are no longer be held strictly liable but are presumably liable for fraudulent financial reporting. TSEA § 20-1, paras. 1 & 2. The responsible persons, such as directors, supervisors, and managers, other than the chairperson and general manager, are presumably liable but may escape liabilities if they could successfully exercise the due-diligence defense. TSEA § 20-1, paras. 1 & 2. The accountants that audit the financial reports are not presumed to be negligent. Plaintiff bears the burden of proof that the accountants are negligent in auditing the financial reports. TSEA § 20-1, para. 3.

16. Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa (證券投資人及期貨交易人保護法) [Securities Investors and Futures Traders Protection Act] (promulgated Jul. 17, 2002, effective Jan. 1, 2003, as amended Feb. 4, 2015) (Taiwan) [hereinafter the Investor Protection Act].

help of the government. The SFIPC was funded by the market participants, such as the exchanges, securities companies and futures companies. The creation of the SFIPC and the recent securities law reforms aim at enhancing the corporate governance and investor protection systems. The Investor Protection Act imposes statutory missions for the SFIPC to enhance investor protection mechanisms and help healthy development of the securities and futures markets.

A special function of the SFIPC is to bring securities class actions to recover damages for investors that most investor protection organizations around the world do not offer such services.[17] As of the end of 2014, the SFIPC has filed 187 class actions on the several major types of cause of actions, such as false disclosure in the prospectus or the financial report, insider trading, market manipulation, and other forms of securities fraud.[18] Among them, 84 cases involving more than 93,000 investors claiming a total of more than NT$37.31 billion (roughly US$1.24 billion) were still pending.[19] The other 103 cases involving more than 18,000 investors were either settled or closed because of the definitive final judgments of the courts.[20] There is no doubt that the SFIPC has made great efforts to enhance investor protection. However, some issues are found during the operation in the past four years.

The purpose of this article is to introduce Taiwan's investor protection system, particularly regarding protection to securities investors.[21] Because most cases seeking for help from the SFIPC are securities investors and most civil class actions are securities fraud and securities market misconducts, this article focus more on the investor protection to securities investors. It will identify and analyze the contemporary issues regarding the system, and hopefully to provide recommendations to resolve or to improve the system. The author wishes that this article could draw more attention from scholars,

17. There are many national and international organizations established to enhance investor protection. Those organizations may be created by statutes. For example, the U.S. Securities Investor Protection Corporation (SIPC) was created according to the Securities Investor Protection Act of 1970 (SIPA 1970), Pub. L. No. 91-598 § 1(a), 84 Stat. 1636 (1970) (codified as amended at 15 U.S.C. § 78aaa-lll (2010), amended at Pub. L. No. 112-90 (2012)). In contrast, the North American Securities Administrators Association (NASAA), an international and voluntary association with 67 members that are state administrators from North America, was established in 1919. *See* North American Securities Administrators Association, *NASAA History a Century of Investor Protection*, http://www.nasaa.org/about-us/nasaa-history/ (last visited Feb. 25, 2016). The major mission of the U.S. SIPC is to protect investors when their money or securities are stolen by brokers or missing owing to bankruptcy or financial difficulties of the brokerage firm. U.S. SEC. INV. PROT. CORP., 2014 ANN. REP. 4.

18. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 20 (2014).

19. *Id.*

20. *Id.*

21. Investor Protection Act protects both securities investors and futures traders. However, this article focuses on the protection to securities investors.

lawyers, and market participants to the issues and may attract the production of more intellectual articles from other experts for the purpose to help the SFIPC work well. It is also intended to provide foreign scholars and governments to consider whether the SFIPC is a good model or any function it performs can improve their own investor protection system. Part II of this article discusses the history of investor protection legislation, including the regimes adopted prior to the enactment of the SFIPA, and the current sources of law regarding investor protection. Part III introduces the Investors Protection Center, the only investor protection institute created by the SFIPA, which is responsible to carry out investor protection measures. It discusses SFIPC's organizational structure, missions and businesses, and management of the investor protection fund. In Part IV, it is followed by the discussion of major investor protection mechanisms adopted by the Investors Protection Act. After introduction and analysis of the current regulatory regime on investor protection, Part V of this article will identify the major issues of the current investor protection system in Taiwan. Part VI is the conclusion.

II. THE EVOLUTION OF INVESTOR PROTECTION LEGISLATION IN TAIWAN

Taiwan's Securities and Exchange Act (TSEA) was enacted in 1968. Under the TSEA, securities fraud, fraudulent financial reporting and prospectus, short-swing trading and market manipulation have been prohibited since 1968 and insider trading have become unlawful since 1988.[22] If the enactment of the TSEA is not considered to be the initiation of investor protection system, the establishment of the Investor Service and Protection Center, a division of the ROC Securities and Futures Markets Development Institute (Securities and Futures Institute, or SFI) should be awarded as the first semi-official organization that was specifically set up for investor protection services.[23] In January 2003, the establishment of the Securities and Futures Investors Protection Center (SFIPC) became Taiwan's first statute-created nonprofit organization specialized in providing investor protection services. We will first discuss the regulatory philosophy and followed by the discussion of investor protection legislations including the

22. TSEA, §§ 20, 32, 155, 157, 157-1.

23. The R.O.C. Securities Market Development Institute was established on March 26, 1984 under the direction of the Securities and Exchange Commission (former name of Securities and Futures Commission) of the Ministry of Finance. The Institute was renamed as the R.O.C. Securities and Futures Market Development Institute in July 1992. SEC. & FUTURES INST., 2002 ANN. REP. 9-10 (2002) (Taiwan) (hereinafter Securities & Futures Institute, or SFI). The major businesses of the Investor Service and Protection Center of the SFI include (1) providing consulting and mediation service; (2) bringing derivative suit for the disgorgement of short-swing trading profit against corporate insider; (3) bringing class action on behalf of investors; (4) holding investor education programs. *Id.* at 33-34.

pre-SFIPA stage, which introduces the historical development of investor protection system, and evolution of the investor protection system after the enactment of the SFIPA and its subsidiary regulations.

A. *Regulatory Philosophy*

The growth of national economy depends heavily on the growth of private sector—especially from the companies.[24] Being able to finance sufficient funds for operation is critical to the success of an enterprise.[25] To be sure, an enterprise may choose to raise fund from shareholders as the capital of a company. It may also decide to borrow money from financial intermediaries or issue debt securities to borrow money directly from investors who become debenture holders. It is the financial strategies of each individual company to choose the optimal financing tools. Some corporations that have met the listing standard of the stock markets may choose to go public so that they may raise fund from the investing public at a lower cost compared with the borrowing from financial institutions. Undoubtedly, a corporation must show its value in order to attract investment. From investors' point of view, securities market provides more investment opportunities because of many listed companies in different industries to choose from. Investing in the stock market is especially attractive when the interest rates remain in a relatively low level.[26]

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24. Taiwan's companies are categorized into "Unlimited Company," "Limited Company," "Unlimited Company with Limited Liability Shareholders," and "Company Limited by Shares" according to the Gongsi Fa (公司法) [Taiwan Company Act] (promulgated and effective Dec. 26, 1929, as amended Mar. 18, 2016) (Taiwan). As of the end of January 2016, there are 657,680 companies registered with the Ministry of Economic Affairs. Among them, there are 20 Unlimited Companies, 492,709 Limited Companies, 11 Unlimited Companies with Limited Liability Shareholders, and 159,792 Companies Limited by Shares. Statistical number obtained from Jingjibu Tongjiju (經濟部統計局) [Department of Statistics, Ministry of Economic Affairs (MOEA)], Tongji Zhibiao Jianyi Chaxun (統計指標簡易查詢) [Common Query for Economic Statistics], http://dmz9.moea.gov.tw/GMWeb/common/CommonQuery.aspx (follow Gongsi Dengji An Zuzhi (公司登記－按組織) [Company Registration: by Category], and set the time range from Jan. 2015 to Dec. 2015.)

25. World Bank conducts survey on the ease of doing business of around 189 economies and has published Doing Business Report on the annual basis since 2003. The survey looks into many aspects of business laws and regulations and one of the index is called "Getting Credit" which indicates the ease of getting credits from the business borrowers and the protection to the lenders. *See e.g.*, WORLD BANK, DOING BUSINESS 2015: GOING BEYOND EFFICIENCY (2014).

26. Interest rate goes lower and lower in recent years worldwide. There have even been cases with negative interest rate loans. For example, the Japanese branch of a European bank extended a 15-billion-yen overnight loan at a negative interest rate of 0.01 percent yearly rate to its customer on January 24, 2003. For more information about the story, *see Negative-Interest Loan Emerge*, NIKKEY WEEKLY (JAPAN) (Feb. 10, 2003), Lexis-Nexis, Business, Business News, http://web.lexis-nexis.com/universe/document?_m=cfea2cd5127b073419480435594ce9af&_docnum=8&wchp=dGLbVzb-zSkVb&_md5=54dc06115c6939f7d1115105b201504a (last visited Mar. 1, 2016). For more discusses on negative interest rate, *see also Japan: A Way out of Financial Gridlock?*,

The government set up the securities market for both the corporations and investors. It enacted securities law and regulations and has been continuously regulating and supervising the securities market to ensure a fair market for both securities issuers and investors. Full disclosure and prohibition of market misconducts are two major mechanisms to help maintain the securities market a fair playground. Additionally, the innovation of telecommunication and computer technologies and the improvement of disclosure rules also make Taiwan's securities market more transparent.[27] Although securities law and regulations have imposed disclosure requirements and prohibitions on insider trading, manipulation, and fraudulent activities, investors may not have strong feeling that they are well protected. Although the TSEA provides private rights of action against wrongdoers of securities market misconducts, investors usually feel helpless because of lack of experiences and financial support to sue for indemnification. Therefore, to create a viable system to help investors redress their losses owing to market misconducts has become an important task for the government.

Perceiving the necessity to improve investor protection system, the government enacted the Investor Protection Act on July 17, 2002 to elevate the level and strength of protection to investors. Accordingly, a new organization, the Investor Protection Center was formally established on January 15, 2003 according to the Investor Protection Act.[28] Taiwan has entered into a new stage of investor protection since 2003. Yet, whether the implementation of the SFIPA has provided investors the right protection and

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BUS. WEEK Oct. 7, 2002, at 88,
http://www.bloomberg.com/. Edward Hadas, *Negative Yields Can Go Much More Negative*, REUTERS BREAKINGVIEWS (Feb. 2, 2015 09:42 AM), http://blogs.reuters.com/breakingviews/.

27. For example, the TSEA was amended on June 2, 2010 to require public companies to publish their annual financial report 3 months (formerly 4 months) after the close of the fiscal year. TSEA § 36, para 1. For trading information, the TWSE adopted a rule on February 20, 2012 to release the updated best bid and ask price of each stock in the last five minutes before market close, and this rule was further improved on June 29, 2015 to release the best five bid and ask prices and the corresponding volumes. Taiwan Zhengquan Jiaoyisuo Gufenyouxiangongsi (臺灣證券交易所股份有限公司) [Taiwan Stock Exchange Corporation (TWSE)], 103 Tai Zhen Jiao (臺證交) [Taiwan-Stock-Exchange] No. 1030025533 (2014); Taiwan Zhengquan Jiaoyisuo Gufen Youxian Gongsi Yingye Xize (臺灣證券交易所股份有限公司營業細則) [Operating Rules of the Taiwan Stock Exchange Corporation] (promulgated and effective Nov. 13, 1992, as amended Mar. 8, 2016) §§ 58, 58-3 (Taiwan).

28. The Securities and Futures Commission (competent authority) approved the Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Juanzhu Zhangcheng (財團法人證券投資人及期貨交易人保護中心捐助章程) [SFIPC Charter] (promulgated and effective Jan. 3, 2003, as amended Apr. 9, 2013) (Taiwan). SEC. & FUTURES INV. PROT. CTR., 2003 ANN. REP. 37-38 (2003). The first board meeting was held on January 7, 2003; the competent authority approved the application for the establishment of the SFIPC; the SFIPC Charter was registered with Taipei District Court on January 15, 2003; and held the opening ceremony on February 20, 2003. SEC. & FUTURES INV. PROT. CTR., 2003 ANN. REP. 38-39 (2003).

whether the SFIPC could carry out the missions delegated by the SFIPA to protect investors remain to be examined and evaluated and it is time to do so after the SFIPC has gone through a dozen years of operation.[29]

B. *Pre-SFIPA Stage*

Prior to the enactment of the SFIPA, the relevant investor protection services were provided by the Securities and Futures Institute (SFI).[30] The SFI established the "Investor Service and Protection Center" (ISPC) in March 1998.[31] Its main function is to implement the disgorgement of short-swing trading profits according to Article 157 of the TSEA by requesting the publicly held corporation to claim for short-swing trading profits from corporate insiders or 10% shareholders who engage in short-swing trading activities. If the company fails to claim for disgorgement of short-swing trading profits, the ISPC may bring derivative suit on behalf of the company to file a claim with the court to order such insider to disgorge the profit to the company.[32] In addition to enforcing the short-swing trading profit disgorgement program, the ISPC also received complaints from investors and provided consultation to investors.[33] The ISPC also provided mediation services to help investors solve disputes with securities or futures companies.[34] In order to provide mediation services, the

29. Because the Investor Protection Center is under supervision of the Financial Supervisory Commission, some scholars have characterized the SFIPC as a "government-sanctioned nonprofit organization." Wallace Wen-Yeu Wang & Jian-Lin Chen, *Reforming China's Securities Civil Actions: Lessons from PSLRA Reform in the U.S. and Government-Sanctioned Non-Profit Enforcement in Taiwan*, 21 COLUM. J. ASIAN L. 115, 118 (2008). There is also concern that owing to government influence, and the selection of NPO model, the effect of deterrence of securities crimes and damage compensation may be undermined. Wang Wen-Yeu (王文宇) & Chang Ji-Ming (張冀明), *Feiyingli Zuzhi Zhudao De Zhengquan Tuanti Susong—Lun Touziren Baohu Zhongxin* (*非營利組織主導的證券團體訴訟－論投資人保護中心*) [*NPO-Led Securities Class Actions: Commenting on Investor Protection Center*], 15 YUEDAN MINSHANGFA ZAZHI (月旦民商法雜誌) [CROSS-STRAIT L. REV.] 5, 26-27 (2007).

30. In order to establish an institute to gather and provide securities market information and to research and recommend good policies to improve securities market development, the Taiwan Stock Exchange and stock brokerage firms, under the instruction of the Securities and Exchange Commission (competent authority of the securities market at that time), helped establish the Securities and Futures Institute (SFI). The initial funding of the SFI derived from the stock trading commissions received by the Taiwan Stock Exchange and brokerage firms from January 23 1984 to October 16, 1987. The SFI was established on March 26, 1984 with the name of the "Institute of Securities Market Development."

31. SEC. & FUTURES INST., 1998 ANN. REP. 7 (1998) (Taiwan).

32. TSEA § 157.

33. In 1998, the ISPC of the SFI handled 61 complaints from investors. SEC. & FUTURES INST., 1998 ANN. REP. 39 (1998) (Taiwan). The SFI recruited lawyers and accountants to provide help to investors. For cases involving contravention of law, the SFI forwarded the cases to the competent authority. *Id.* The ISPC provided consulting services to investors regarding securities and futures regulations. In 1998, more than 4,300 consulting phone calls were received. *Id.*

34. *Id.* at 39.

SFI promulgated the "Essential Points Regarding Mediation of Investors Disputes" in July 1988.[35] In 1988, the ISPC mediated 12 cases, of which 3 cases were successfully settled.[36]

In addition to the above stated services, the ISPC assisted investors to file representative class actions to recover damages from those who violated securities law, particularly anti-fraud provisions. The first non-typical class action was brought by the ISPC/SFI, representing 476 investors, against Cheng-I Food Corporation on October 31, 1998.[37] The causes of action were based on material misrepresentation or omission of the prospectus and financial reports in violation of Articles 20 and 32 of the TSEA. This case was taken over by the SFIPC after January 2003 because all of the businesses of ISPC were transferred to the SFIPC. On November 30, 2006, the Taiwan Taipei District Court finally rendered the judgment on this case after the long trial, holding that criminal defendants, accountants, underwriters are civilly liable but not the directors and supervisors.[38] Five years later, Taiwan High Court rendered judgment mostly in favor of plaintiffs imposing liabilities on directors and supervisors.[39] This case was further appealed to the Supreme Court and it was remanded to the High Court for a new trail and is currently pending at Taiwan High Court as of the March 2016.[40] It has taken more than 17 years and this also tells us that individual investors won't be able to spend such a long time to pursue an indefinite and uncertain result. Therefore, it is necessary to have an investor protection system similar to that created by the SFIPA.

It is necessary to mention that prior to the enactment of the SFIPA, the form of class action was different from that under the SFIPA. In the

35. *Id.* Touziren Zhengyi Tiaochu Yaodian (投資人爭議調處要點) [Essential Points Regarding Mediation of Investors Disputes] (promulgated Feb. 3, 1999).

36. SEC. & FUTURES INST., 1998 ANN. REP. 39 (1998) (Taiwan).

37. Because 87 of the 476 investors have received compensation, the ISPC/SFI represented the rest 389 investors to file the civil litigation at the Taiwan Taipei District Court. *Id.* at 41.

38. The importance of this judgment is that this is the first judicial decision holding that accountants are liable for damages arising from the prospectuses and fraudulent financial reports. *In re* Cheng-I Food Corporation, Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 87 Chong Su Zi No. 1347 (87重訴字第1347號民事判決) (2006) (Taiwan).

39. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 96 Jin Shang Zi No. 1 (96金上字第1號民事判決) (2011) (Taiwan).

40. The Supreme Court remanded the case to the Taiwan High Court on October 24, 2012 mainly because the High Court did not provide proper and sufficient analysis on the issues regarding: (1) tort liability of the corporation and its responsible persons; (2) the applicability of the new law (TSEA § 20-1) to the current case; (3) proportionate liability of accountants; (4) liability of the accounting firm; and (5) causation issue. Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division], 101 Tai Shang Zi No. 1695 (101台上字第1695號民事判決) (2012) (Taiwan). The case is pending at Taiwan High Court as of March 25, 2016. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 101 Jin Shang Geng (1) Zi No. 1 (101金上更(一)字第1號民事判決) (pending Taiwan High Court Mar. 10, 2016) (Taiwan).

pre-SFIPA class action brought by the ISPC/SFI, every qualified investor was named as one of the plaintiffs. All of the plaintiffs then appointed the lawyers designated by the ISPC/SFI as the *agent ad litem* to carry out the civil litigation.[41] If during litigation, any plaintiff died, a motion must be filed with the court for approval in order for the heir to be named as plaintiff.[42] In comparison, Article 28 of the SFIPA requires a minimum of 20 or more qualified investors injured under the same incident to authorize the SFIPC to file the civil class action on its own name.[43]

C. *Enactment of the SFIPA and Subsidiary Regulations*

After a long preparatory stage, the Legislative Yuan passed the SFIPA at the end of June 2002, and the President promulgated the law on July 17 of the same year. The SFIPA became effective on January 1, 2003 by the announcement of the Executive Yuan.[44] In order to enforce the SFIPA, the Securities and Futures Commission promulgated three subsidiary legislations at the end of December 2002.[45] The three regulations are (1) Regulations Governing the Securities Investor and Futures Trader Protection Institution; (2) Regulations Governing the Organization and Mediation Procedures of Securities Investor and Futures Trader Protection Institution Mediation Committees; and (3) Regulations Governing Payment Operations of Securities Investor and Futures Trader Protection Funds.[46] The first

41. Yin Ruo-Ying (殷若瑛), "*Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa" Zhi Fazhan Ji Yanbian* (*「證券投資人及期貨交易人保護法」之發展及演變*) [*The Development and Evolution of the Securities and Futures Investor Protection Law*], 29 ZHENGQUAN JI QIHUO YUEKAN (證券暨期貨月刊) [SEC. & FUTURES MONTHLY] 24, 26 (2011).

42. *See e.g.*, Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 96 Jin Shang Zi No. 1 Decrees (96金上字第1號民事裁定) (Apr. 30, 2010 & Jan. 31, 2011) (Taiwan).

43. Investor Protection Act § 28. For further discussion of the class action, *see infra* Part VI.C. "Class Action and Arbitration", at 164.

44. The effective date of the SFIPA was announced by Xingzhengyuan (行政院) [Executive Yuan], 91 Tai Cai Zi No. 0910054773 (91臺財字第0910054773號) (Oct. 31, 2002).

45. The three regulations were promulgated on December 30, 2002 and took effect on January 1, 2003, the same as that of the SFIPA.

46. Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jigou Guanli Guize (證券投資人及期貨交易人保護機構管理規則) [Regulations Governing the Securities Investor and Futures Trader Protection Institution] (promulgated and effective Dec. 30, 2002, as amended July 30, 2009) (Taiwan) [hereinafter Investor Protection Institution Regulation]; Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jigou Tiaochu Weiyuanhui Zuzhi Ji Tiaochu Banfa (證券投資人及期貨交易人保護機構調處委員會組織及調處辦法) [Regulations Governing the Organization and Mediation Procedures of Securities Investor and Futures Trader Protection Institution Mediation Committees] (promulgated and effective Dec. 30, 2002, as amended Feb. 4, 2009) (Taiwan) [hereinafter the Mediation Regulation]; Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Changfu Zuoye Banfa (證券投資人及期貨交易人保護基金償付作業辦法) [Regulations Governing Payment Operations of Securities Investor and Futures Trader Protection Funds] (promulgated and effective Dec. 30, 2002, as amended July 30, 2009)

regulation governs the qualifications and registration and filing procedures for establishing an investor protection institution.[47] It also sets forth provisions regarding the operation and management of the institution. In order to effectively supervise the operation of the investor protection institution, the institution engaging in certain activities are required to report to the Financial Supervisory Commission.[48] The second regulation deals with the establishment of the mediation committee by the investor protection institution, the qualifications and appointment of the mediators, and the procedural rules of the mediation. The third regulation regards the procedural rules of the use of the investor protection fund. These three regulations are fundamental to the establishment and operation of the SFIPC. The SFIPC was established and is operating according to the SFIPA and these three regulations. We can also observe the relationship between the government and the SFIPC from the law and regulations.

III. THE ESTABLISHMENT OF THE SECURITIES AND FUTURES INVESTORS PROTECTION CENTER

The Securities and Futures Investors Protection Center (SFIPC) was established on January 22, 2003. Currently, the SFIPC is the only investor protection institute established according to the Investor Protection Act.[49] We believe the government intends to make the SFIPC the only investor protection institution. The SFIPC performs similar functions formerly performed by the ISPC of the SFI. Although the SFIPC was newly created according to the SFIPA, the SFIPC in reality succeeded the tasks from the ISPC. Most of the investor protection services of the ISPC, including part of the funds, personnel, and even the office chairs and desks of the ISPC were

(Taiwan) [hereinafter SFIPC Fund Payment Regulation].

47. For example, to establish an investor protection institution, all directors of such institution must file application with the competent authority of the SFIPA, *i.e.*, the Financial Supervisory Commission (FSC) and register with the court. Investor Protection Institution Regulation § 2. Any change or amendment of the registered information must be filed with the FSC and registered with the court. SFIPA § 3.

48. For example, the investor protection institution must obtain prior approval from the competent authority when it makes or amend the following self-regulations or engages in certain activities: (1) the procedural rules regarding the obtainment or disposition of fixed assets; (2) internal control system; (3) appointment of the managing personnel; (4) the operational rules of the institution; (5) rules regarding the class action or class arbitration. The Investor Protection Institution Regulation §§ 4, 7, 8.

49. Investor Protection Act does not limit the number of investor protection institutes. However, because the establishment of the investor protection institute was under the direction of the Securities and Futures Commission that relevant securities institutions, such as the stock exchange, futures exchange, securities firms, etc., after discussions and negotiations, agreed to make financial contributions to found the SFIPC. In fact, there should be only one investor protection institute established according to the SFIPA and the SFIPC is the one. Investor Protection Act §§ 5-9.

transferred to the SFIPC.[50] Beginning from its establishment, the source of funding, use of fund, businesses, operations and the governance of the SFIPC must conform to the provisions of the SFIPA and regulations promulgated by the competent authority. In addition to the SFIPC Charter, the SFIPC has adopted internal rules regarding the Organizational Rules, the Operating Rules, the Rules Governing the Acquisition or Disposition of Fixed Assets, the Guidelines Regarding the Selection of Mediators and the Operation of Mediation Committee, the Rules Regarding the Handling of Class Actions and Class Arbitrations, and the Rules Regarding the Handling of Derivative Suits and Removal of Directors/Supervisors Cases.[51] The adoption and amendment of these internal rules must be approved by the board of directors of the SFIPC.[52]

A. *Funding of the SFIPC*

The SFIPC is a non-for-profit organization funded by initial donations

50. Securities and Futures Institute (SFI) is a nonprofit organization, established in 1984. The representative suits brought by the SFI for investors suffering injuries from incidents of securities law violations were brought by Investor Service and Protection Center (ISPC) of the SFI prior to the establishment of the SFIPC in January 2003. All businesses, including the office desks and chairs, of ISPC were transferred to the SFIPC. *See* SEC. & FUTURES INST., 2003 ANN. REP. 33 (2003) (Taiwan).

51. Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Zuzhi Guicheng (財團法人證券投資人及期貨交易人保護中心組織規程) [Securities and Futures Investors Protection Center Organizational Rules] (promulgated and effective Feb. 24, 2003, as amended Sept. 2, 2009) (Taiwan); Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Yewu Quize (財團法人證券投資人及期貨交易人保護中心業務規則) [Securities and Futures Investors Protection Center Operating Rules] (promulgated and effective Feb. 6, 2003, as amended July 9, 2015) (Taiwan); Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Qude Huo Chufen Guding Zichan Chuli Chengxu (財團法人證券投資人及期貨交易人保護中心取得或處分固定資產處理程序) [Securities and Futures Investors Protection Center Rules Governing the Acquisition or Disposition of Fixed Assets] (May 23, 2003) (Taiwan); Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Tiaochu Weiyuanhui Weiyuan Linxuan Ji Yunzuo Yuanze (財團法人證券投資人及期貨交易人保護中心調處委員會委員遴選及運作原則) [Securities and Futures Investors Protection Center Guidelines Regarding the Selection of Mediators and the Operation of Mediation Committee] (promulgated and effective Apr. 18, 2003, as amended Aug. 31, 2009) (Taiwan); Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Banli Tuanti Susong Huo Zhongcai Shijian Chuli Banfa (財團法人證券投資人及期貨交易人保護中心辦理團體訴訟或仲裁事件處理辦法) [Securities and Futures Investors Protection Center Rules Regarding the Handling of Class Actions and Class Arbitrations] (promulgated and effective Apr. 8, 2003, as amended Aug. 31, 2009) (Taiwan); Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Banli Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa Dishi Tiao Zhiyi Susong Shijian Chuli Banfa (財團法人證券投資人及期貨交易人保護中心辦理證券投資人及期貨交易人保護法第十條之一訴訟事件處理辦法) [Securities and Futures Investors Protection Center Rules Regarding the Handling of Derivative Suits and Removal of Directors/Supervisors Cases] (promulgated and effective Aug. 31, 2009, as amended July 15, 2014) (Taiwan).

52. The board of directors of the SFIPC approved the internal operating guidelines and organizational charter at the first board meeting held on January 7, 2003. SEC. & FUTURES INV. PROT. CTR., 2003 ANN. REP. 38 (2003).

from eleven institutions.[53] In addition to the initial contributions of the founders, the continuing sources of funding after the establishment include: (1) contribution from all securities companies assessed on a certain percentage of the trading amount of their brokerage business;[54] (2) contribution from all futures companies assessed according to each company's previous month's trading contract volume times a designated dollar amount;[55] (3) contribution from the Taiwan Stock Exchange, the Taiwan Futures Exchange, and the GreTai Securities Market (Taipei Exchange),[56] five percent of each institution's monthly commission income; (4) interest income and other income based on the management of SFIPC's assets; (5) other donation.[57]

The SFIPC Fund is used in certain areas, mainly for the purpose to compensate the clients of a securities or futures company that has financial difficulty and is unable to pay its debts and it clients who have fulfilled their settlement obligations and are unable to get the funds or securities.[58] The Fund can is also used to pay the court fees and other necessary expenses when the SFIPC carries out its businesses.[59] It is necessary to note that there is a separate Clearing and Settlement Funds maintained by the Taiwan Stock Exchange and the Taiwan Futures Exchange respectively according to the TSEA and the Futures Exchange Act.[60] The Clearing and Settlement Funds

53. The initial funding of the SFIPC came from the donation of 11 institutions designated by the Securities and Futures Commission according to the SFIPC Charter. The total amount of initial donation was NT$1,031 million (equivalent to US$30.3 million) and the details of donation from individual institution are as follows: (1) Taiwan Stock Exchange Corporation (NT$400 million); (2) Taiwan Futures Exchange Corporation (NT$100 million); (3) R.O.C. OTC Securities Exchange (also known as GreTai Securities Market) (NT$100 million); (4) Taiwan Securities Central Depository Corporation (NT$200 million); (5) Chinese Securities Association (NT$200 million); (6) Securities Investment Trust & Consulting Association of R.O.C. (NT$1 million); (7) Taipei Futures Association (NT$1 million); (8) Fuhwa Securities Finance Company Limited (NT$20 million); (9) Global Securities Finance Corporation (NT$3 million); (10) Fubon Securities Finance Company Limited (NT$3 million); (11) EnTie Securities Finance Company Limited (NT$3 million). SFIPC Charter § 5.

54. Each securities company must set aside 0.00285% of the total amount of its brokerage trading account monthly and to remit the money to the SFIPC by the 10th day of next month. Investor Protection Act § 18, para. 1, subparagraph 1.

55. Each futures company must set aside NT$1.88 for each futures contract traded from its client accounts and remit to the SFIPC by the 10th day of next month. Investor Protection Act § 18, para. 1, subparagraph 2.

56. Investor Protection Act § 18, para. 1, subparagraph 3. GreTai Securities Market, established in 1994, functions as the OTC market formerly operated by Taiwan Securities Dealers Association. GreTai Securities Market changed its name to Taipei Exchange on February 24, 2015.

57. Investor Protection Act §§ 6 & 18; SFIPC Charter § 7. The competent authority may adjust the set aside ratio and dollar amount but cannot exceed 50% of the aforesaid ratio or dollar amount. Investor Protection Act § 18, para. 2.

58. Investor Protection Act § 21, para. 1.

59. Investor Protection Act § 20.

60. TSEA § 132; Taiwan Stock Exchange Corporation Rules for Administration of the Joint Responsibility System Clearing and Settlement Fund; Taiwan Futures Exchange Corporation Regulations Governing Clearing Member Deposits to the Clearing and Settlement Fund Following Clearing and Settlement Operations. For discussions regarding how the Clearing and Settlement Funds

are used in case of default of the securities or futures companies to meet their settlement obligations.

The SFIPC sets the fund size at NT$5 billion (US$166 million).[61] When the fund size reaches this scale, the competent authority may order to temporarily exempt certain securities and futures companies that have contributed to the SFIPC Fund for more than ten years from their contribution payment duties.[62] This fund size could probably meet the current need according to the scale of the securities and futures markets and the number of institutions engaging in securities and futures businesses.[63] There are two issues that the SFIPC and the government may need to reconsider or review periodically. First, this article suggests to take periodical reviews on whether the current target fund size of the SFIPC Fund should be adjusted. Currently, the target fund size is set by the SFIPA. When the market continues to grow, the SFIPC and the government will need to reassess whether the target fund size set by the SFIPA is sufficient. We observed that several similar investor protection funds in other jurisdictions have increased the fund size to accommodate the growth of their markets. For example, the U.S. Securities Investor Protection Corporation (SIPC) Fund was established in 1970 according to the Securities Investor Protection Act of 1970.[64] When its member broker-dealer is in liquidation because it is financially troubled or bankrupt, the SIPC initiated the proceeding and the court appointed trustee to oversee and help return the cash and securities to the clients of that member broker-dealer.[65] The initial target balance of the SIPC Fund was US$150 million in 1970 and has been increased to the current US$2.5 billion since 2009.[66] With the expansion of the stock market and the growing impact of global financial market, whether the target fund size of the SFIPC remains adequate should be monitored periodically.

Second, whether the SFIPC Fund is considered as the equivalent of deposit insurance in the securities and futures market? Currently, there are

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operate, *see* WANG CHIH-CHENG (王志誠), XIANDAI JINRONG FA (現代金融法) [MODERN FINANCIAL LAW] 705-08, 804 (2009).

61. Investor Protection Act § 18, para. 3.

62. *Id.*

63. One scholar has pointed out that the fund size seems to be too small. Kuo Da-Wei (郭大維), *Woguo Zhengquan Touziren Baohu Jizhi Zhi Xingsi (Xia)* (*我國證券投資人保護機制之省思(下)*) [*Reflective Thinking of Taiwan's Investor Protection Mechanism, II*], 125 TAIWAN FAXUE ZAZHI (台灣法學雜誌) [TAIWAN L.J.] 22, 31 (2009).

64. SIPA 1970, 15 U.S.C. § 78aaa *et seq.*

65. Each customer enjoys the protection of up to US$500,000 of cash and securities when his/her brokerage firm goes bankrupt. SIPA 1970 § 9(a), 15 U.S.C §§ 78fff-3(a).

66. Bylaws of the Securities Investor Protection Corporation, Art. 6 Section 1 (a)(1) (Aug. 2014). Partially because of the 2008 financial crisis, particularly the collapse of Lehman Brothers, the Dodd-Frank Act increased the SIPC's line of credit with the US Treasury to US$2.5 billion and the protection to each individual securities investor's customer cash account to 250,000. U.S. SEC. INV. PROT. CORP., 2010 ANN. REP. 3 (2010).

two major types of investor protection fund. The first type operates very similar to the deposit insurance in the banking industry, such as the Canadian Investor Protection Fund. The second type provide similar protection to investors but does not consider itself to be the equivalent of deposit insurance, such as the US Securities Investor Protection Corporation.[67] When the SFIPC was created, the legislative materials revealed that it is influenced by the US SIPC and Taiwan's deposit insurance regime. If it is similar to deposit insurance, whether the current assessment of securities and futures companies to contribute to the SFIPC Fund should be modified similar to the deposit insurance that securities and futures companies with higher risk rate should contribute more to the Fund? According to the legislative intent, the SFIPC Fund patterned after Taiwan's deposit insurance program to set forth the payment limit, payment operation rules, and the management of fund.[68] However, according to the SFIPA, each securities or futures firm is required to make monthly contribution to the Fund assessed by the revenues rather than the risk factors of the institution. Unlike Taiwan Central Deposit Insurance Corporation or the Federal Deposit Insurance Corporation in the US, the SFIPC is not equipped with supervisory power or to conduct financial examination over the securities and futures companies. Although the SFIPA authorize the SFIPC to inquire the financial and business operation of the issuer, securities and futures companies, this is not considered to be the power to oversee the operation of the companies.

The SFIPA does authorize the competent authority the power to increase the assessment according to the change of market conditions and the financial and business condition as well as the effectiveness of risk management of individual securities or futures firm, it has not implemented yet.[69] So, it is not suitable to say that under the current regime, the securities and futures companies are the insured institution. Although all securities and futures companies are required to participate the program, under the current system and operation, the concerns of adverse selection and moral hazard may still exist that companies with higher risker factors are benefitted by the system. An expert in the investor protection business commented that Taiwan's current regime is operating properly although participating

67. The SIPC explicitly states that "SIPC is not the securities world equivalent of the Federal Deposit Insurance Corporation (FDIC), which insures depositors of insured banks." *SIPC Mission*, SEC. INV. PROT. CORP., http://sipc.org/about-sipc/sipc-mission (last visited Oct. 10, 2015).

68. *See* Legislative reason of Article 7 of the Regulations Governing Payment Operations of Securities Investor and Futures Trader Protection Funds; Lin Chun-Hung (林俊宏), Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Fazhi Zhi Yanjiu (證券投資人及期貨交易人保護基金法制之研究) [A Study on the Securities and Futures Investors Protection Fund] (June 2005) (unpublished LL.M. thesis, Soochow University, Taipei, Taiwan) (on file with National Taiwan University Library) 41, 122-29.

69. Investor Protection Act § 18, para. 2.

institutions are paying fixed rate to the SFIPC Fund.[70] While agreeing that the current SFIPA provide flexibility for the competent authority to adjust the rate of payment and supervision over securities and futures institutions, this article suggests that a periodical review of the operation of Fund and market conditions and a study on the investor protection fund that provides risk management of the fund as well as over the participating securities and futures companies can be conducted to see whether there is still room to improve the SFIPC Fund. Canadian Investor Protection Fund (CIPF) is a good example that provide risk management in order to protect not only the eligible customer of its members but also to protect its member. CIPF is sponsored by the Investment Industry Regulatory Organization of Canada (IIROC), approved by the competent authority, the Canadian Securities Administrators.[71] The CIPF conducts risk management and the member regulation also contains provisions regarding risk management, including a whistle-blower policy.[72] The amount of assessment is paid by members on a quarterly basis. Unlike Taiwan's SFIPC Fund and the US SIPC Fund, the CPIF member with "more client assets" or "higher risk rating" pays a higher percentage of total assessment. This practice may further enhance the security and confidence to investors.[73] A comparison of the basic features of investor protection funds of Taiwan, Canada, PRC, Singapore and the United States is provided in next section.[74]

B. *Missions and Businesses*

The major missions of the SFIPC, as mentioned in Article 1 of the SFIPA and Article 2 of the SFIPC Charter, are to enhance protection to securities and futures investors, and to foster healthy development of the securities and futures markets. The SFIPC, under the supervision of the competent authority, provides various kinds of services to achieve these goals. Although the TSEA and Taiwan's Futures Trading Act may have provided adequate rights to investors, it is perceived that to create an

70. Lin, *supra* note 68, at 135.

71. CIPF and IIROC are considered to be self-regulatory organizations in Canada. *Related Links*, CAN. SEC. ADMIN., https://www.securities-administrators.ca/industry_resources.aspx?id=57&terms=CIPF%20and%20IIROC (last visited Oct. 9, 2015).

72. CAN. INV. PROT. FUND, 2013 ANN. REP. 10; *Code of Conduct*, CAN. INV. PROT. FUND, http://www.cipf.ca/public/AboutUs/Governance/Codedeconduite.aspx (last visited Apr. 6, 2016).

73. *About Us: The CIPF Fund, Fund Resource and Liquidity*, CAN. INV. PROT. FUND, http://www.cipf.ca/public/AboutUs/TheCIPFFund/Fundresources.aspx (last visited Oct. 10, 2015); *See also*, *Assessment Policy*, CAN. INV. PROT. FUND, http://www.cipf.ca/Libraries/Miscellaneous_PDFs/Assessment_Policy_2Oct12.sflb.ashx (last visited Oct. 10, 2015).

74. In Table 1, you may find comparison of basic features of investor protection funds in selected countries. *See infra* Table 1.

investor protection mechanism, particularly to establish an independent nonprofit organization, is important to the success of enhancing the investor protection. Investor protection funds in most jurisdiction are NPOs. However, most investor protection funds mainly provide protection to investors when they suffer loss of assets owing to the bankruptcy of the securities and/or futures companies. In most jurisdictions, investor protection funds do not provide class actions service for investors and leave it to law firms to lead the class actions. We selected investor protection funds in Canada, China, Singapore, and the United States and compare the basic functions of their national investor protection institution and the basic features of the Fund.[75]

Table 1: Basic Features of Securities Investor Protection Funds in Taiwan, Canada, PRC, Singapore and USA

	Taiwan SFIPC	Canada CIPF	PRC SIPF	Singapore SgxFF	USA SIPC
Legal Source	SFIPA (2002)	Originally created by Agreement and Declaration of Trust among SROs, Approved by Canadian Securities Administrators (1969)[76]	Measures for the Administration of Securities Investor Protection Funds (2005)[77]	Securities & Futures Act (SFA), Part XI, § 176	Securities Investor Protection Act (1970), § 3
Type	NPO	IIROC sponsored nonprofit non-share corporation	100% state-owned corporation	Singapore Exchange maintained	Nonprofit membership corporation

75. The selected investor protection funds include Taiwan's SFIPC, Canada's CIPF, China's Securities Investor Protection Fund Corporation Limited (SIPF), Singapore's Singapore Exchange Fidelity Fund (SgxFF) (*see* Securities and Futures Act, Part XI), and the U.S. SIPC (*see* SIPA 1970).

76. CIPF was called National Contingency Fund originally and renamed CIPF in 1989. It was created by Agreement and Declaration of Trust among exchanges and Investment Dealers' Association (IDA). CIPF formally created a relationship with Canadian Securities Administrators in 1991. The IIROC succeeded IDA and became the sole sponsor of CIPF in 2008. *CIPF Timeline*, CAN. INV. PROT. FUND, http://www.cipf.ca/Public/AboutUs/HistoryofCIPF/CIPFTimeline.aspx (last visited Oct. 12, 2015).

77. Measures for the Administration of Securities Investor Protection Funds was promulgated by the Chinese Securities Regulatory Commission (CSRC), Ministry of Finance, and People's Bank of China and approved by the State Council in June 2005 and incorporated in August 2005, *see Corporate Profile*, CHINA SEC. INV. PROT. FUND (Mar. 29, 2011), http://www.sipf.com.cn/NewEN/aboutsipf/corporateprofile/03/40081.shtml (last visited Oct. 11, 2015); Zhengquan Touzizhe Baohu Jijin Guanli Banfa (证券投资者保护基金管理办法) [Regulation on the Administration of Securities Investor Protection Fund] (promulgated June 1, 2005) § 2 (China) [hereinafter China SIPF Regulation], http://www.csrc.gov.cn/pub/newsite/flb/flfg/bmgz/zjgs/201012/t20101231_189795.html; *See also* CHINA SEC. INV. PROT. FUND, 2007 ANN REP. 9.

	Taiwan SFIPC	Canada CIPF	PRC SIPF	Singapore SgxFF	USA SIPC
Government Approval	Yes	Yes	Yes	Yes	Yes
Target Fund Size (2014)	NT$5 billion set by SFIPA	C$459 million (fair value)[78] set by Board of CIPF	RMB 39 billion[79]	S$20 million set by SFA[80]	US$2.5 billion set by SIPC by laws
Coverage of Fund	NT$1 million each person in each firm[81]	C$1 million[82]	State Council approval[83]	S$50,000[84]	US$500,000[85]
Source of Fund	0.000285% Of volume of total consigned securities trades; NT$1.88 for each futures consignment contract executed.[86]	Quarter assessment allocated to each member. More customer assets and higher risk rating will be assessed to pay more to the Fund. Additional assessment may be imposed.[87]	0.5~5% of revenue according to the quality of management and risk rating of securities companies.[88]	No levy now because both Fidelity Funds are above the minimum level S$20 million.	Member pays 0.25% of revenue to the Fund when the balance of the Fund is below the target level.[89]

78. CAN. SEC. INV. PROT. FUND, 2014 ANN. REP. 17.

79. China SIPF Regulation does not set the target fund size. RMB$39 billion was the fund value at the end of 2014. CHINA SEC. INV. PROT. FUND, 2014 ANN. REP. 15.

80. Each fidelity fund maintained by an exchange shall be at least S$20 million. Securities and Futures Act (promulgated Oct. 5, 2001, effective Jan. 1 2002, as amended Oct. 7, 2014) (Singapore), http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis. [hereinafter Singapore SFA] § 181. As of June 2015, the Securities Exchange Fidelity Fund, maintained by Singapore Exchange Securities Trading Limited had S$35.325 million, and Derivatives Exchange Fidelity Fund, maintained by the Singapore Exchange Derivatives Trading Limited, had S$24.011 million, both exceed the minimum requirement. SING. EXCHANGE, 2015 ANN. REP. 129.

81. The payment shall be made in cash and the limitation is that the SFIPC will pay not more than NT$1 million to each investor in a one securities or futures company. SFIPC Fund Payment Regulation § 7, paras. 1 & 2.

82. *Coverage Policy*, CAN. INV. PROT. FUND, http://www.cipf.ca/Public/CIPFCoverage/CoveragePolicy.aspx (last visited Oct. 11, 2015).

83. The payment plan need to be approved by the State Council. China SIPF Regulation §§ 17 & 18.

84. Singapore SFA § 186(11). The prescribed amount for compensation limitation is S$50,000. (G.N. No. S 367/2005).

85. The 500,000 payment limitation for each customer includes securities and cash. SIPA of 1970 § 9(a), 15 U.S.C §§ 78fff-3(a). The cash advance limitation was increased to US$250,000 from US$100,000 in 2010. SIPA of 1970 § 9(d), 15 U.S.C §§ 78fff-3(d); SIPC 2010 ANN. REP. 3; SEC. INV. PROT. CORP., 1998 ANN. REP. 4.

86. Investor Protection Act § 18, para. 1, items 1 & 2. Taiwan Stock Exchange, Taipei Exchange and Taiwan Futures Exchange shall contribute 5% of their commission revenue to the SFIPC Fund. *Id.* item 3.

87. The CIPF imposes an additional assessment on Members that have violated the industry rule

	Taiwan SFIPC	Canada CIPF	PRC SIPF	Singapore SgxFF	USA SIPC
Supervisory Function	No	Yes	Yes	Yes	Yes
Class Action against fraud and market misconducts	Yes	No	No	No	No

(Table created by author, information collected from the law, regulations of each jurisdiction and Fund)

As observed by the author, the reasons to create an NPO investor protection institution, particularly to provide class action service, include:

1. A professional NPO investor protection institution is needed. Because majority small investors usually are either inexperienced or without strong financial support to recover damages from securities law violators, most investors are not willing or unable to seek for compensation when their rights are infringed by the wrongdoers, such as securities issuers, securities companies, futures companies, other securities and futures institutions. The NPO is an appropriate form of institutions to provide the services for investors.
2. By creating a professional NPO to deal with investor protection, such as to bring class actions for investors could prevent the occurrence of abusive litigations. All of the cases are carefully studied by the professional staff lawyers and approved by the board of directors composed of law professors, accounting professors, finance professors, and market experts. All of the cases are publicly announced and most of them are prosecuted by prosecutors. All of these can minimize the abuse of power by the SFIPC.
3. An NPO investor protection institution providing investor protection services to investors without charging investors expenses other than

requiring them to "maintain positive capital at all times." *Fund Resource and Liquidity*, CAN. INV. PROT. FUND, http://www.cipf.ca/Public/AboutUs/TheCIPFFund/Fundresources.aspx (last visited Oct. 11, 2015).

88. In addition to the initial contribution of RMB$6.3 billion by the Ministry of Finance, two stock exchanges shall pay 20% of their commission income into the SIPF. China SIPF Regulation § 12(1). Securities companies shall pay 0.5% to 5% of their revenue to the SIPF that companies with higher risk rating and bad management will be assessed higher payment to the Fund. China SIPF Regulation § 12(2). The SIPF sets the payment rate of all securities companies and approved by the Chinese Securities Regulatory Commission and may change the payment rate on annual basis. China SIPF Regulation § 12(3).

89. SIPA of 1970 § 4(c)(2), 15 U.S.C. § 78ddd (c)(2). The member will be assessed 0.25% of the net operating revenues from the securities business until the target level of the fund (currently US$2.5 billion) has reached and stays above the level for 6 months. SIPC Bylaws § 6 (Revision #15 of August, 2014).

the court fees could maximize the benefits to injured investors.[90] Investors are not required to pay any fees to the SFIPC disregarding the outcome of the cases. The SFIPC bears the cost if court judgments are in favor of defendants. When the SFIPC wins the case, the SFIPC will deduct the court fees and distribute the damages payment received from defendants to investors.

4. An independent and professional NPO investor protection institution, acting for the interests of the investing public, could serve the function of rebuilding and reinforcing investors' confidence on the securities market. The importance for creating the investor protection institution is to provide help to those helpless investors so that a fair and just marketplace can be maintained because of the private enforcement conducted by the SFIPC.

To carry out the missions, the board of directors of the SFIPC is responsible for and is authorized by the SFIPA as the highest decision-making organ.[91] Although the board of directors is the highest decision-making organ of the SFIPC, the Administrative Division and Legal Service Division run the daily operation under the instruction and supervision of the chairman, general manager. The managerial team reports or submits proposals to the board for approval according to the SFIPA, the SFIPC Charter and bylaws, or under the request of the board. According to the SFIPA, to engage in the following matters, a prior approval of the board is required:[92]

1. Amendments to the protection institution's articles of incorporation.
2. Adoption and amendment of the operating rules of the protection institution.
3. Utilization of the protection fund.
4. Amendments regarding the manner of custody and utilization of the protection fund.
5. Borrowing and lending of capital.
6. Matters requiring resolutions of the board of directors pursuant to the articles of incorporation.
7. Other matters requiring resolutions of the board of directors pursuant to regulations of the competent authority.

For the ordinary resolution of the board, the majority of the board members present at the board meeting vote for the proposal.[93] For items 1-5

90. The source of funding of the investor protection institution derives from securities and futures institutions, such as exchanges, securities firms and futures firms according to the SFIPA. Investor Protection Act § 7, para. 2 & § 18.

91. SFIPC Charter § 9.

92. Investor Protection Act § 14, para. 1; SFIPC Charter § 12.

93. Investor Protection Act § 14, para. 2.

listed above, a special resolution is required, i.e., at least two thirds of directors must be present at the board meeting and majority of them approve the proposal.[94]

In practice, the Administrative Division manages the financial matters and human resource of the SFIPC and the Investor Protection Fund. The Legal Service Division provides various kinds of legal services to help investors. The Legal Service Division provides legal consultation services, represents investors to bring class actions or arbitrations, and brings derivative suits against corporate insiders for the disgorgement of short-swing trading profits to the corporation and against directors for breach of fiduciary duties.[95] The Legal Service Division helps prepare and arrange the mediation conference but each conference is conducted by mediators.

C. *Organizational Structure*

The missions and businesses of the SFIPC are carried out by the board of directors, composed of eleven directors that are appointed by the competent authority.[96] Among these directors, at least two thirds must be appointed from scholars and experts, and the rest directors are appointed from the representatives of the founders.[97] The term of office of a director is three years and the director can be re-elected.[98] The board of directors, who meet regularly on a monthly basis, exercise major decision-making power and special board meetings can be called when it is deemed necessary according to the SFIPA, regulations and internal rules.[99] Three supervisors are also appointed by the competent authority to exercise the supervisory power, such as to inspect the financial statements and books of the SFIPC, to monitor the operation of the institution by attending the board meetings, and may request the board to produce report to make sure no violation of the laws, regulations, the SFIPC Charter and the internal rules.[100] Supervisors join the monthly board meeting. The directors elect one from the

94. Investor Protection Act §14, para. 1, *proviso*.

95. Investor Protection Act §§ 10, 10-1, 28; Investor Protection Institution Regulation §§ 7, 8 & 8-1. For details of what the SFIPC can do, please refer to the SFIPC Operating Rules, *supra* note 51.

96. Article 11 of the Investor Protection Act requires an investor protection institution to establish a board of directors with at least three directors. Article 10 of the SFIPC Charter fixes the number of directors to be 11.

97. According to the current composition of the board of directors, 3 of the directors are representatives of three founders, i.e. the chairman of the Taiwan Stock Exchange, the chairman of the Taiwan Futures Exchange, and the chairman of the Taiwan Central Depository Corporation, who contributed the most to the SFIPC Fund. The rest 8 directors are composed of scholars, and experts specialized in law, accounting, finance, and financial management. Investor Protection Act § 11; Investor Protection Institution Regulation § 19.

98. Investor Protection Act § 11, para. 3.

99. SFIPC Charter § 11.

100. Investor Protection Act § 14; SFIPC Charter § 13.

non-founder directors to be the chairman of the board who takes the position on a full-time or part-time basis.[101] It is necessary to mention, that from the composition of the board of directors, each director and supervisor possesses the necessary expertise and can provide services independently and professionally.

To implement the missions and businesses, the SFIPC may hire a president (or called general manager), who was nominated by the chairman and approved by the board of directors.[102] Currently, a legal service division and an administrative division are established to keep the institution running. When needed, the president may propose to create new divisions and nominate the division chief and deputy division chief subject to approval of the board of directors.[103] In addition, a mediation committee, composed of seven to fifteen mediators, is established to handle the mediation cases.[104]

D. *Promulgation of Internal Rules*

The legislative purpose of SFIPA to enhance investor protection is carried out through the establishment of an investor protection institution. The SFIPC was therefore established according to the SFIPA to provide investor protection services and to carry out the missions delegated by the SFIPA. According to the SFIPA and its subsidiary regulations, the SFIPC must also enact operational rules, bylaws, and relevant rules. The board of directors of the SFIPC must first adopt these self-regulations and then file them with the Financial Supervisory Commission for recordation or for approval prior to their effectiveness. In order to provide investor protection services and carry out the mission of the SFIPA, the Investors Protection Center enacted the following rules and by-laws after establishment: (1) SFIPC Class Action or Arbitration Rule; (2) SFIPC Fund Compensation Rule; and (3) SFIPC Management Regulation; (4) SFIPC Mediation Committee Rule; (5) SFIPC Mediation Fee Standard; and (6) SFIPC

101. The elected chairman must be approved by the competent authority. The current chairman of the SFIPC serves on a full-time basis. Directors do not receive salaries. However, the SFIPC may pay a full-time chairman remuneration determined by the board of directors. SFIPC Charter § 10, para. 4 & § 14.

102. SFIPC Charter § 15. Although the SFIPA authorizes the competent authority only to promulgate rules regarding the qualifications of managers but not the appointment or approval of the managers, in practice, in the process of searching the candidates of the higher-ranking officers, such as the president, vice president, and the chairperson, SFIPC normally consults with the competent authority for advice. According to the SFIPA, the competent authority has the power on the appointment of the directors. SFIPA § 11. The chairperson elected by the board of directors also need to be approved by the competent authority. SFIPA § 12.

103. SFIPA § 15.

104. Currently, there are fifteen committee members appointed by the SFIPC and approved by the SFC. Each committee member shall serve a term of 3 years and can be re-appointed. Mediation Regulation §§ 2-6; SFIPC Mediation Committee Rule.

Services Regulation.[105] More rules and by-laws were enacted by the SFIPC when the SFIPA was amended to expand the scope of business in May 2010.[106]

The normal procedure for enacting an internal SFIPC rule, a guideline or a standard operating procedure is that the staffs in charge of the business draft the proposed rules. If the theme of the proposed rules involve complicate issues, one or more consultation meetings may be held to clarify the issues. Opinions, comments and recommendations are gathered and a final rule may come up after careful studies. The final draft of the proposed rules is then submitted to the board meeting of the SFIPC for another round of discussion. Once the board of directors adopts the proposed rule, it is submitted to the Financial Supervisory Commission for final approval or filed with the FSC for recordation. It is necessary to note that the staff normally would also consult with the Securities and Futures Bureau of the FSC, for advice before the proposed rule is submitted to the board meeting. Sometimes, the board of directors may ask the staff to withhold discussion and advice to consult with the FSC and postpone the discussion rules in the future board meeting.

E. *Management of the Investor Protection Fund*

1. *Custodian of the Fund*

In order to soundly manage the Investor Protection Fund and maintain its value, the SFIPA specifies that the SFIPC shall purchase government bonds or deposit in financial institutions for the custodian of the Fund.[107] However, the SFIPA provides some flexibility for the management of the fund. After obtaining prior approval from the competent authority, the SFIPC may use not more than thirty percent of the net assets value of the Fund to purchase real estate for its own use, to purchase listed securities, and other value-maintained investment.[108] The SFIPC may invest in the listed stocks for the sole purpose of becoming shareholders of each listed companies so that the SFIPC may exercise the shareholder's rights under the Company Act or the TSEA.[109] To serve this end and to limit the investment risk, the SFIPA

105. The SFIPC rules must be approved by the competent authority. For reference of internal rules adopted by the SFIPC *see supra* note 51.

106. For example, The SFIPC Rules Regarding the Handling of Derivative Suits and Removal of Directors/Supervisors Cases was adopted after Article 10-1 was added to the SFIPA on May 20 2010. *See supra* note 51.

107. Investor Protection Act § 19, para. 1.

108. *Id.* When the Fund is used to purchase real estate for the use of the SFIPC, the total amount cannot exceed 10% of the initial assets contributed to the Fund at the establishment of the SFIPC. Investor Protection Act § 19, para. 2.

109. For example, when the insider of a listed company engages in short-swing trading and that

allows the SFIPC to purchase one thousand shares of each listed company's shares.[110] Currently, the SFIPC owns each listed company's shares and chooses companies to attend their shareholders' meetings.

2. *Use of the Fund*

The Fund can be used for purposes specified by the SFIPA, mainly limited to the following purposes:

(a) Payments to injured investors according to Article 21 of the SFIPA.[111] One of the major purposes of the Fund is to provide protection to investors when the securities brokerage firm defaults owing to financial difficulties. For example, when the brokerage firm encounters financial difficulties, if its customers (investors) have fulfilled their settlement obligation but the brokerage firm defaults, the SFIPC may use the Fund to compensate investors for their damages arising from the default of the brokerage firm.[112] After the Fund has made the payment to investors, the customers' right to recover damages against the brokerage firm is transferred to the SFIPC.[113]

(b) Operating expenditures and other necessary expenses of the SFIPC in carrying out the investor protection businesses according to the SFIPA.[114]

(c) Fees arising from litigations or arbitrations brought by the SFIPC according to the SFIPA.[115]

(d) Used for other purposes approved by the competent authority.[116]

It is important to note that the SFIPC Fund is used for various purposes and the scope is wider than that of most investor protection funds in other countries. In addition to maintaining the Fund to be used to compensate customers of securities and futures companies for the missing assets owing to the financial difficulties or bankruptcies, the SFIPC Fund can also be used to cover the cost and expenses incurred in carrying out the SFIPC missions,

company fails to request the insider to disgorge the short-swing trading profits to the company, the SFIPC, being a shareholder, may request the company to exercise such right or to bring a derivative suit to enforce the disgorgement. TSEA § 157.

110. Investor Protection Act § 19, para. 3.

111. Investor Protection Act § 20, para. 1, item 1.

112. Investor Protection Act § 21, para. 1. The SFIPC Fund can be used to indemnify investors in three situations: (1) investors place orders to purchase or sell listed securities and have performed the settlement obligations; (2) investors authorize securities firms to exercise warrants and have performed the payment obligations; (3) futures traders buying or selling exchange traded futures contracts or other futures products through legally established futures companies. *Id.*

113. Investor Protection Act § 21, para. 3.

114. Investor Protection Act § 20, para. 1, item 2.

115. Investor Protection Act § 20, para. 1, item 3.

116. Investor Protection Act § 20, para. 1, item 4.

including class actions and arbitrations.

IV. THE MAJOR INVESTOR PROTECTION MECHANISMS UNDER THE SFIPA

The legislative purpose of the SFIPA is to provide extra protection to securities investors and futures traders in addition to what the Taiwan's Company Act, the Securities and Exchange Act (TSEA) and Taiwan's Futures Trading Act (TFTA) have already provided. With regard to the investor protection issues, the provisions of the SFIPA apply first. If the SFIPA is not itself clear about the issue, the provisions of the TSEA or other relevant laws will then be applied.[117] To be more specific, in terms of investor protection, the SFIPA creates a specialized investor protection institution and provides mechanisms and procedures to help investors exercise their legal rights to protect their interests, while the TSEA and the TFTA provides both the mechanisms and substantive law regarding the securities fraud, other market misconducts and liabilities. For example, the TSEA expressly provides private right of action to investors in fraudulent financial reporting, insider trading, market manipulation cases. Investors may bring civil litigation themselves according to the TSEA. However, investors may have the gun provided by the TSEA but without bullets or without the skill to trigger the gun. The SFIPA creates the SFIPC to help injured investors to redress their damages. The SFIPC brings class actions or arbitrations on behalf of investors to make it possible for investors to realize their legal right.

The major investor protection mechanisms under the SFIPA can also be perceived from the services provided by the ISPC of the SFI discussed earlier.[118] During the period of time when the ISPC provided investor protection services, the operation and the management of the investor protection fund was mainly based on administrative order or guidance without any formal legislation.[119] The enactment of the SFIPA was intended to elevate the importance of the investor protection program and to provide more solid legal basis for the investor protection institution to manage the program under the rule of law, particularly making it easier to bring class actions. The persons having actively participated in the investor protection services were also involved in the process of drafting the SFIPA. The

117. Investor Protection Act § 2.

118. *See supra* part II. B, at 8.

119. In 1993, Taiwan's Securities and Exchange Commission, the competent authority at that time, using administrative guidance, instructed the securities institutions to establish the investor protection fund. Lin Chun-Hung (林俊宏), *Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Fazhi Zhi Jieshao* (*證券投資人及期貨交易人保護基金法制之介紹*) [*Introduction of the Securities Investors and Futures Traders Protection Fund*] 530 ZHENGJIAO ZILIAO/ZHENGQUAN FUWU (證交資料／證券服務) [TSEC SECURITIES SERVICES REV.] 2, 2 (2006).

experiences and difficulties encountered by the ISPC were taken into consideration when enacting the SFIPA.[120]

As discussed earlier, according to the SFIPA, the SFIPC provides help to investors to resolve disputes arising from the violation of securities or futures law. Henceforth, a very broad range of cases may be brought to the investor protection institution. According to the record of the SFIPC, most complaints or cases are filed by securities investors rather than futures traders.[121] Normally, cases came to the SFIPC because investors file complaints with the Legal Service Division. Depending on the seriousness of the case and the intention or expectation of the investors to deal with the case, a complaint or consultation case can be brought into mediation procedure or class action or arbitration procedure. Because the SFIPC provides various kinds of services to help investors, in the following paragraphs, this article will briefly introduce the services provided by the SFIPC and identify what types of issues or cases are brought to the SFIPC most frequently.

A. *Consultation and Complaint*

Consultations and complaints are basic services and are used most frequently by investors. The scope of consultation includes questions regarding the securities and futures regulations, and civil disputes regarding the public offering or securities and futures trading transactions between investors and the securities issuers, brokers, dealers, underwriters, the Taiwan Stock Exchange (TWSE), or the Taipei Exchange (TPEx), etc. In terms of legal consultation service and complaints, investors may consult with the SFIPC or bring up a complaint to the SFIPC via phone call, visiting the SFIPC in person, or filing a complaint form.[122] The investor must provide his name, permanent and mailing addresses, contact phone number, purpose of the complaint, and copies of relevant evidence to the SFIPC when making the complaint. In 2003, there were 447 written complaints filed with the SFIPC and more than 4,500 phone-call consultations.[123] In comparison, the number written complaints was 2,614 and phone-call consultation was more than 7,000 in 2014 and the total number since its inception was 11,023

120. The Investor Service and Protection Center of the SFI was established in March 1998. While providing investor protection services, inconveniences and difficulties were encountered because of lack of legal basis. The enactment of the SFIPA has substantially solved the problems.

121. The table of class actions brought by the SFIPC can be found at the website of the SFIPC. *See* SFIPC, *supra* note 11 (last visited Mar. 1, 2016).

122. For consultation service, the SFIPC staffs record each case on the Consultation Diary, including the name of the investor, questions, and solutions. Written complaints can be filed by filing the form at the SFIPC office, mailing or faxing the written complaints to the SFIPC, or completing the form online at the SFIPC's website. SEC. & FUTURES INV. PROT. CTR., 2013 ANN. REP. 18.

123. SEC. & FUTURES INV. PROT. CTR., 2003 ANN. REP. 17.

and 113,400 respectively.[124]

From past experiences, investors asked any types of questions, ranging from opening an account with a securities company, joining the membership of a securities advisor, or how to bringing a legal action against the securities issuer or other institutions for compensation.[125] According to the SFIPC statistics, complaints can be categorized into the following major types:

1. Complaints against listed companies for impairing the interests of the companies or shareholders;[126]
2. Complaints against broker-dealers for disputes arising from trading related matters;[127]
3. Complaints regarding investments in unlisted companies;[128]
4. Complaints against securities investment advisory companies;[129]
5. Others.[130]

B. *Dispute Resolution via Mediation*

When investors have disputes with the issuing companies, securities firms, or other securities related institutions, investors have several options

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124. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 18.

125. *Id.*

126. This type of cases are brought by investors against listed companies or corporate insiders. Some of the cases may have been prosecuted but some have not. Cases regarding disclosure of corporate information, insider trading, wrong business decisions, and embezzlements of corporate assets occur most often. Interview with staff of SFIPC (Dec. 25, 2014).

127. Examples of disputes between investors and broker-dealers include: (1) broker using client's account for trading without permission; (2) investor's trading losses exaggerated by settlement default of securities firms; (3) brokers not obeying client's trading instruction. Interview with staff of SFIPC (Dec. 25, 2014).

128. Shares of a company that are neither listed on the Taiwan Stock Exchange or the Taipei Exchange, nor are they registered with the Taipei Exchange as "Emerging Stock Company," are prohibited from trading publicly because non-publicly traded companies need not conform with disclosure requirement imposed by the TSEA. For the protection of investors, securities firms cannot buy and sell non-publicly traded shares for their clients. Mutual funds are also prohibited from trading unlisted stocks. Regulations Governing Securities Investment Trust Funds § 10. However, investors can still trade these shares via unlicensed persons, and disputes arise frequently.

129. Most disputes against securities investment advisory companies are regarding the refund of membership fee. Disputes arise partly from the bluff of securities investment advisory companies or securities analysts when recruiting new members and partly from the greed of investors for profiting from stock trading. Currently, a good way to solve the problem or to prevent similar cases from happening again is to require securities investment advisory companies to include detailed refund policy in the membership agreement and to remind investors before investors sign the agreement. The Securities Investment Trust and Consultation Act was enacted in June 2004 to reinforce the regulation on the securities investment trust and advisers businesses that were formerly regulated by the Zhengquan Touzi Guwen Shiye Guanli Guize (證券投資顧問事業管理規則) [Rules Governing Securities Investment Consulting Enterprises] (promulgated and effective Oct. 30, 2004, as amended Oct. 29, 2015) (Taiwan), an administrative regulation promulgated by the competent authority according to Article 18 of the TSEA.

130. Other types of cases, such as disputes regarding margin transaction and short-selling, on-line trading, and futures trading, etc., also occur though not so frequently.

to solve the disputes. Investors may contact the counterparty and try to solve the disputes by filing complaint to the counter party's shareholder service department, customer service department of the counterparty or investor protection services provided by relevant securities associations or securities investment trust and consultation association. If the disputes cannot be solved via this means or investors are not satisfied with the responses of the counter party, investors may file lawsuits themselves. Alternatively investors may use the mediation service of the SFIPC to solve the disputes particularly for small amount claims.

The SFIPA authorizes the SFIPC to provide mediation service by establishing a Mediation Committee.[131] The Mediation Committee is organized with the appointment of seven to fifteen mediators.[132] According to the SFIPC Mediation Regulation, the appointment procedure is that the SFIPC nominates the candidates of mediators and submits to the competent authority for approval.[133] The chairperson of the SFIPC holds the position of chairperson of the Mediation Committee.[134] Upon the appointment, the SFIPC must register the information of mediators with the Taiwan Taipei District Court.[135] The current Mediation Committee is consisit of 15 mediators.[136] These mediators are composed of experts in the securities and futures industry, lawyers and scholars specialized in corporate and securities law, accounting, and finance. These fifteen mediators are divided into three groups according to their expertise, one specialized in law, another specialized in finance or accounting, and the other group of mediators are experienced market practitioners. Each panel is composed of three mediators selected from each of the three groups.[137]

The mediation process begins when the SFIPC receives application from investors. The applicant pays the application fee of NT$1,000 to the SFIPC and the fee is refundable when the counterparty refuses mediation or

131. Investor Protection Act § 22.

132. Investor Protection Act § 22, para. 2. A list of the candidates of the mediators is recommended and submitted by the SFIPC to the SFC for approval. After the SFC confirms the appointment, relevant information about the mediators must register with the court. Mediation Regulation § 2.

133. Mediation Regulation § 2, para. 2. Mediators must have one of the following qualifications: (1) having experience or combined experiences in securities, futures, or financial institutions, or administration for not less than 5 years, and having held a position of the head of operating division or a position equivalent to or higher than an intermediate civil service ranking; (2) having served as a judge, lawyer, or accountant for not less than 5 years; (3) having served as a mediator in Taiwan's or foreign arbitration organizations for not less than 5 years; (4) having taught courses in law, accounting, or finance and hold the position of assistant professor or above for not less than 5 years. *Id.* § 6, para. 1.

134. Mediation Regulation § 2, para. 1.

135. *Id.* § 2, para. 2.

136. The term of office of the current mediators begins on May 5, 2015 and ends on May 4, 2018. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 14-15.

137. This practice is not required by the Mediation Regulation or the SFIPC Mediation Rules. The regulation and rules require each conference to be composed of three mediators.

both parties could not reach agreement.[138] Most of the disputes arose because of bad communications between the investors and the brokers or the technical problems with the trading system of the brokerage firms that cause damages to investors. Table 2 shows the mediation cases handled by the SFIPC from 2003 to 2015.

Table 2: Mediation Cases Handled by the SFIPC from 2003- 2015

	Party Refuse[139]	Withdraw/ Reject[140]	Failed[141]	Settled before/ Agreed at Conference[142]	Total
2003	11	1/0	4	13/6	35
2004	29	1/2	10	6/7	55
2005	43	0/0	3	1/4	51
2006	19	1/0	6	0/7	33
2007	7	0/3	17	1/3	31
2008	9	0/1	4	2/1	17
2009	3	2/9	3	2/3	22
2010	0	0/6	7	0/1	14
2011	2	1/0	8	0/4	15
2012	2	0/0	3	2/2	9
2013	2	1/1	5	0/3	12
2014	10	0/2	4	3/4	23
2015	3	0/1	5	1/1	11

(Data gathered from SFIPC Annual Reports and Interviews with the SFIPC Staff.[143])

As of the end of 2006, the statistical number prepared by the SFIPC showed that there were 33 mediation cases handled by the SFIPC Mediation Committee. Investors filed application to the SFIPC for mediating their civil disputes with securities or futures companies. Among them, 7 cases were successfully mediated. Most cases failed for different reasons. For example, the counterparties rejected mediation in another 19 cases. One case was

138. Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Tiaochu Shoufei Biaozhun (財團法人證券投資人及期貨交易人保護中心調處收費標準) [The SFIPC Mediation Application Fee Rule] (promulgated and effective Apr. 21, 2003, as amended Mar. 11, 2004) (Taiwan) § 3.

139. This column, "party refuse," shows the number of cases that counterparties refuse to mediate.

140. This column, "withdraw/reject," shows the number of cases that applicants withdraw the application before mediation conference, and cases that are rejected by the SFIPC. The SFIPC may reject to hold mediation conference for various reasons stipulated in the SFIPA and the Mediation Regulation. *See* Investor Protection Act § 23; Mediation Regulation § 12.

141. This column, "failed," shows the number of cases that parties do not reach agreement.

142. This column, "agreed before/at conference," shows the number of cases that both parties reached agreement either before the mediation conference or at the conference.

143. Data collected from SFIPC 2003-2014 Annual Reports and Interviews with staff of the SFIPC on Oct. 8, Nov. 4, Nov. 6, and Nov. 9, 2015, Feb. 3, Feb. 4, and Feb. 5, 2016.

withdrawn by the applicant and the rest 6 were mediated and failed. From January 2003 to April 2015, there are a total of 320 cases.[144] Among them, only 45 cases were successfully mediated and parties reached agreement to settle the disputes; 76 cases were mediated but did not reach agreement; 30 cases were settled before the first meeting of mediation; 7 cases were withdrawn by the applicants; 138 cases the respondents refused to attend the mediation meetings; 24 cases were rejected by the SFIPC.[145] Most of the cases that respondents refused to mediate occurred prior to May 20, 2009.

Beginning from May 2009, the SFIPA was amended to require that without justifiable reasons, respondents are obligated to attend the mediation meeting for all small amount of disputes, i.e. any case with a value of NT$1 million or less ("small-claim mediation").[146] The purpose for adding the compulsory mediation requirement in the SFIPA is hoping to increase the chances of solving the disputes by mediation particularly for small amount disputes. In 2015, there were 11 applications for mediation service. (*See* Table 2) Among them, 7 cases are small-claim mediation in which 1 rejected by the SFIPC, 4 failed to reach agreement, 1 settled before mediation conference, and only 1 cases reached agreement at the mediation conference. The other 4 cases involve claim value more than NT$1 million, in which 1 case did not reach agreement and counterparties of the other 3 cases refuse to participate mediation conference.

There are various reasons that not many cases reached agreement in mediation. For example, the respondents may not think there is any wrongdoing or any responsibility on the securities companies or futures companies. It could be the dispute between brokers and investors. Another major reason is that the both parties could not reach an agreement on the compensation, possibly because the applicants could not prove the actual damages or the respondents think that the applicants are asking an amount of compensation that is much more than their actual damages or is not recoverable, such as damages arising from mental distress because of the alleged of wrongdoing of respondents.[147]

144. Attachment to the Notice of SFIPC Mediators' Meeting (Firth Term First Meeting) (May 28, 2015) (on file with SFIPC).

145. *Id.*

146. Investor Protection Act § 25-1.

147. These are observations of the author served as a mediator and a director of the SFIPC in the past.

C. *Class Action and Arbitration*

Unlike the investor protection institutions in other jurisdictions, one special feature of the SFIPC is that the Investor Protection Act authorizes the SFIPC to use its own name to bring securities class actions for investors against those who violate the TSEA.[148] This unique role of the SFIPC has brought attentions from regulators and scholars in other countries. In this section, it discusses how the securities class actions regime is designed under the SFIPA. Discussions include the following aspects: (1) personnel responsible to bring the class actions for investors, (2) special treatment regarding the litigation and other court fees, and (3) the procedure to bring a securities class action.

1. *Personnel Responsible to Bring the Class Actions*

In practice, the class action is brought in the name of the SFIPC and the chairperson as the representative. In addition, the in-house lawyers who are the staff of the SFIPC are also named as the attorneys for the SFIPC. In June 2007, the Legal Service Division of the SFIPC had 3 full-time lawyers and 10 law clerks responsible for legal service businesses.[149] With the increased loading of class actions, the number of full time staff lawyers increased to 10 and the number of legal assistants and paralegals increased to 14 at the end of 2015.[150] Some of the personnel of the Legal Service Division, including the lawyers and legal assistants, are experienced in securities class actions.

Observed from the past judicial decisions, the courts have adopted many legal opinions or proposed solutions that were suggested by the SFIPC, such as the employment of fraud-on-the-market theory and the methods for measurement of damages. One of the major concerns for the SFIPC is how to keep the experienced staff lawyer. In 2007, the issue was the insufficiency of manpower because there was three lawyers only. The number of staff lawyers has increased to 10, including the Division Chief, at the end of 2015 and this is a good sign in performing its statutory missions. This shows that the SFIPC as well as the competent authority pay attention to the issue of manpower and has adjusted to meet the need of the SFIPC. However, a potential issue is how the SFIPC could keep the experienced staff lawyers. As of the end of 2015, the average year of service of the 10 lawyers at the SFIPC is 4 years.[151] Two of the three lawyers served at the SFIPC in 2007

148. Investor Protection Act § 22.

149. Interview with staff of the SFIPC on Oct. 8, 2015.

150. *Id.*

151. As of July 2015, the most senior lawyer has served for 9 years and two just joined SFIPC this year. Five out of nine served three years or less. Interview with staff of the SFIPC on Oct. 8, 2015.

left the SFIPC but one returned and became the Division Chief at the end of 2015. There could be different reasons why those lawyers decided to leave SFIPC. Unquestionably, the compensation for a senior lawyer that a law firm can offer is usually higher than that of the SFIPC.[152] Although the litigation conducted by the SFIPC is limited to certain types, the leave of the experienced lawyers is still a harm to the SFIPC. How to keep the experienced lawyer will need the wisdom of the SFIPC and the competent authority. Since the budget of the SFIPC, including the compensation of its officers, is supervised by the competent authority and monitored by the Legislative Yuan, namely the congress in Taiwan, unless the rules are liberalized and supported by the congress, it remains an issue to keep the experienced staff lawyers.

2. *Litigation Expenses and Special Treatment under the SFIPA*

Generally speaking, the plaintiff must first pay the court cost when filing the lawsuit with the court.[153] When the SFIPC bring the class actions for investors, theoretically those investors that empower the SFIPC to bring the class actions are jointly responsible for the court cost. The SFIPA also sets forth that prior to distribution of the compensation investors, the SFIPC may deduct the necessary litigation expenses from the amount of compensation.[154] Therefore, the SFIPC may charge the court cost when investors empower the SFIPC to initiate litigation or deduct the necessary litigation expenses from the compensation recovered. In practice, to enhance investor protection and to mitigate the financial burden of investors, the SFIPC does not require investors to pay the court cost at the time of empowerment. If the SFIPC recovers compensations from defendants, the SFIPC deducts necessary litigation expenses.[155] If the SFIPC is the losing party and recovers nothing or if the cost is higher than the recovered compensation, the SFIPC bears the litigation expenses and will not charge

152. The standardized and official reason to leave is usually "for personal career plan."

153. Minshi Susong Fa (民事訴訟法) [Code of Civil Procedure] (promulgated and effective Feb. 1, 1968, as amended Jul. 1, 2015) (Taiwan). sets forth the charging rate of the court cost (litigation cost): "In matters arising from proprietary rights, the court cost shall be NT$1,000 on the first NT$100,000 of the price or claim's value, and an additional amount shall be charged for each NT$10,000 thereafter in accordance with the following rates: NT$100 on the portion between NT$100,001 and NT$1,000,000; NT$90 on the portion between NT$1,000,001 and NT$10,000,000; NT$80 on the portion between NT$10,000,001 and NT$100,000,000; NT$70 on the portion between NT$100,000,001 and NT$1,000,000,000; and NT$60 on the portion over NT$1,000,000,000. A fraction of NT$10,000 shall be rounded up to NT$10,000 for purposes of charging court costs.", Taiwan Code of Civil Procedure § 77-13. When the court makes the judgment, the court will hold the losing party to bear the litigation cost. Code of Civil Procedure § 78.

154. Investor Protection Act § 33.

155. Because the class actions are brought by the staff lawyers of the SFIPC, the necessary litigation expenses do not include attorney fees.

the cost to investors.[156]

With regard to court fees or security deposit, the SFIPA sets forth several favorable treatments to the SFIPC either to exempt or to reduce the court cost. First, when the SFIPC brings a class action in accordance with the SFIPA and applies for a provisional injunction or provisional attachment, the court may exempt the SFIPC from making the security deposit.[157] Second, when the SFIPC brings a class action or appeal the case according to the SFIPA, the court may exempt the SFIPC from paying the court cost for the portion of the claim value exceeding NT$100 million.[158] Third, in the process of litigation, the court may grant provisional execution and exempt the SFIPC from making the security deposit if the court deems it necessary.[159]

In comparison with the lawyer-driven securities class action litigations in the United States where there has been voices questioning whether plaintiffs can effectively monitor the plaintiffs' counsel and whether the counsel fairly represent both institutional and small investors, these concerns do not exist because the SFIPC do not have personal interest in the litigation.[160] The SFIPC does not charge any attorney fees to investors. The SFIPC and its staff are not compensated by any means from the recovered compensation or settlement payment. Instead, the staff lawyers receive remuneration, including salary and performance bonus when there are higher volume of cases in that particular year. The board will evaluate the compensation package for the staff attorney so that the package is in appropriate and competitive level. The budget of SFIPC will be submitted to the FSC for approval.

The securities class action brought by the SFIPC may also avoid the possibility of abusive litigations because the SFIPC has an independent board of directors and each litigation must obtain prior approval from the board. Its operation is also supervised by the competent authority. Moreover, investors have nothing more to lose if they choose to empower the SFIPC to bring the class action. Investors do not have to pay any litigation expenses at the front end. If the SFIPC loses the case, investors choosing to empower the SFIPC do not have to pay any expenses either. Only when the SFIPC wins

156. When investors sign the empowerment contract with the SFIPC, article of the contract specifies who shall bear the cost. SFIPC Empowerment Contract § 7. This information is also provided to investors before they fill the Recovery Registration Form. *See* Directions to Recovery Registration Form, ¶ 6 (3).

157. Investor Protection Act §§ 28 & 34.

158. Investor Protection Act § 35.

159. Investor Protection Act § 36.

160. For discussion of the U.S. securities class action, *see generally*, Stefano M. Grace, *Strengthening Investor Confidence in Europe: U.S.-Style Securities Class Actions and the Acquis Communautaire*, 15 TRANSNAT'L L. & POL'Y 281 (2006); Jill E. Fisch, *Class Action Reform: Lessons from Securities Litigation*, 39 ARIZ. L. REV. 533 (1997).

the case, necessary court cost will be deducted from the recovered compensations. In the U.S., it has been observed that institutional investors having large stakes in the securities class action have in many occasions opted out of the securities class action or settlement, and have increased the cost of litigation and affected the interests of small investors.[161] This scenario is not likely to occur in Taiwan because it is the most cost-effective for the SFIPC to handle the securities class actions and the SFIPC has tried the best efforts to maximize the recoverable compensations.

3. *The Procedure to Bring a Securities Class Action*

(a) Preparation Stage

(i) Sources of Cases

The cases come to the attention of the SFIPC from several channels. The SFIPC could notice the case from the news report, investor's complaint, competent authority, Surveillance Department of Taiwan Stock Exchange and Taipei Exchange, or when a case has been publicly prosecuted. For disputes between investors and securities and futures brokerage firms or securities investment trust companies, cases usually come from investors. For filing derivative suits against corporate insiders for the disgorgement of short-swing trading profits, cases usually come directly from stock exchanges because they have the trading records of corporate insiders. For class actions, such as insider trading, market manipulation or fraudulent financial reporting, SFIPC notices the cases usually because of the news reports and the investigation of the case by prosecutors. For derivative suits against corporate directors for breach of fiduciary duties or violating articles of incorporations or laws and regulations, or to remove directors from their office, cases may be directed from the competent authority, complained from shareholders, or wrongdoings discovered by the SFIPC while attending shareholders' meeting of listed companies. The SFIPA does not require the SFIPC to be a shareholder to bring class actions and derivative suits. However, the SFIPC is authorized to own shares of each every listed companies and is therefore a shareholder owning at least 1,000 shares of each company listed on the Taiwan Stock Exchange and Taipei Exchange.[162] This enables the SFIPC to attend the shareholders' meeting in the capacity as a shareholder.

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161. Jay W. Eisenhofer, *Institutional Investors as Trend-Setters in Post-PSLRA Securities Litigation*, *in* CLASS ACTION LITIGATION 2006: PROSECUTION AND DEFENSE STRATEGIES 579, 590-92 (Joel S. Feldman & Keith M. Fleischman eds., 2006).

162. The SFIPA authorizes the SFIPC to invest in listed companies. Investor Protection Institution Act § 19. The competent authority promulgates regulation requiring the SFIPC to own shares of listed companies so that it can exercise shareholder's right. *Id.* § 9.

(ii) Internal Studies and Board Approval

When the SFIPC acknowledges or receives the cases that fall within the scope of its business, the Legal Service Division begins to study the case, collect evidences and evaluate whether it is necessary to take any legal actions, such as to bring a class action.[163] After conducting research and legal analysis, the Legal Service Division will submit the assessment report to the general manager and the Chairperson for further review before it is proposed to the board of directors for approval. The SFIPC considers many factors in the process in order to determine whether to bring a class action. For example, the SFIPC considers whether the case is still within the statute of limitations, whether there are sufficient evidences, and whether defendant's conducts constitute violation of the securities law. In practice, because it is relatively difficult for the SFIPC to collect evidences, the SFIPC normally chooses to wait for the prosecutor to prosecute the case for the sake of being able to gather evidences from the court.[164] Once the prosecutor has prosecuted the case, the SFIPC has a right or ordered by the civil court judge to examine the case file and exhibits and make copies or photographs according to the Taiwan Code of Civil Procedures and the Taiwan Code of Criminal Procedure.[165] When the SFIPC has collected enough evidences, it may file a civil class action in the civil court or to bring the class action in the form of supplementary civil action attached to the criminal procedure.[166]

(b) Empowerment from Investors to Bring Class Actions

Article 28 of the SFIPA creates a securities class action mechanism allowing the SFIPC to bring class actions on behalf of investors in its own name.[167] However, prior to filing a securities class action, the SFIPC must obtain empowerment to sue from twenty or more investors suffering

163. The SFIPC mediates the disputes between investors and securities and futures related institutions, removes disqualified directors, and brings derivative suits and class actions. Investor Protection Act §§ 10, 10-1, 28.

164. If the case is prosecuted, prosecutors normally have gathered enough evidences that can be used for the purpose of civil litigations.

165. Code of Civil Procedure § 242; Xingshi Susong Fa (刑事訴訟法) [The Code of Criminal Procedure] § 33 (promulgated Jul. 28, 1928, effective Sept. 1, 1928, as amended Feb. 4, 2015) (Taiwan).

166. A supplementary civil action can be filed with the criminal court prior to the end of the oral arguments of the 2nd instance (Appellate Court or High Court). Code of Criminal Procedure § 488. For more discussion, *see infra* Part V. C.Litigation Techniques: Whether the SFIPC Should Bring an Independent Civil Action or to File a Supplementary Civil Action in the Criminal Court?, at 183.

167. When enacting the SFIPA, the class action regime was introduced patterned after the class action regimes adopted in foreign countries, such as Japan, Korea and the UK. It was also influenced by Xiaofeizhe Baohu Fa (消費者保護法) [Consumer Protection Act] (promulgated and effective Jan. 11, 1994, as amended Jun. 17, 2015) (Taiwan) that adopted class action when it was enacted in 1994. "When numerous consumers suffered detriments resulting from the same event, after receive the assignment of rights of claims from 20 or more consumers, the consumer protection institution may bring class action in its own name." Consumer Protection Act § 50, para. 1.

damages because of a single securities or futures incident involving defendants' violation of the TSEA or TFTA.[168] After the SFIPC has determined to bring a class action, it will publicly announce and investors may begin to submit their empowerment to the SFIPC.[169] Taiwan's securities class actions employs the opt-in mechanism distinguished from the opt-out securities class actions in the United States federal courts.[170] After making the empowerment to the SFIPC, investors may opt out by filing the revocation notice to the court prior to the end of oral argument.[171] The SFIPC is named as the only plaintiff in the class action under the SFIPA.

One of the important issues is to determine the qualified investors. That is who are the qualified investors to sue and may empower the SFIPC to bring class actions? Legally speaking, depending on the types of securities law violations, the qualified investors can be identified according to specific provisions under the TSEA. For example, in an insider trading case, corporate insiders trade corporate securities while possessing nonpublic material information or trade within 18 hours after the information has publicly disclosed violate insider trading law and is subject to criminal prosecution and civil liabilities.[172] Investors who traded the opposite side at the same day the insiders traded are eligible investors and may empower the SFIPC to bring class action.[173] Investors qualified to sue may determine at their own will whether to opt-in and empower the SFIPC to sue. In practice, the SFIPC prepares a "standardized Empowerment Form" for the qualified investors to fill out, including to authorize the SFIPC the power to "make waivers, accept liability, withdraw, or enter into a settlement"[174] The law reserves the right to investors to withdraw the empowerment prior to the "conclusion of oral argument or examination of witnesses."[175]

In comparison, in the securities class action under the U.S. Private Securities Litigation Reform Act of 1995 (PSLRA), there is a lead plaintiff provision that authorizes the court to appoint the lead plaintiff from the "member or members of the purported plaintiff class that the court

168. "For protection of the public interest and within the scope defined in its articles of incorporation, the protection institution may bring an action or submit a matter to arbitration in its own name with respect to a single securities or futures matter injurious to a majority of securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders." Investor Protection Act § 28, para. 1.

169. The SFIPC will publicize the announcement on the newspapers as well as on the Market Observation Post System, an online disclosure system maintained by the Taiwan Stock Exchange, and the websites of the SFIPC.

170. FED. R. CIV. P. 23.

171. Investor Protection Act § 28, para. 1.

172. TSEA §§ 157-1, 171.

173. For example, if the insider sold 10,000 shares on August 13 while possessing the material nonpublic information but the total volume of shares traded were 150,000 shares, all investors that bought those 150,000 shares are eligible investors. TSEA § 157-1, para. 3.

174. Investor Protection Act § 31.

175. Investor Protection Act § 28, para. 1.

determines to be the capable of adequately representing the interests of class members."[176] From the criteria imposed by the PSLRA, the lead plaintiffs and are usually the person or group of persons that have the greatest financial interest in the litigation.[177] The profit-seeking counsel of the plaintiffs is another reason why it is so expensive to bring private class action or derivative suits in the US and may involve potential conflicts.[178] These problems are potentially non-existent in Taiwan because the SFIPC does not charge counsel fees from investors and does not share any profits from the compensations recovered from defendants.

The benefits of the opt-in class action allow qualified investors to determine whether to join the class action and the size of the class action is usually much smaller than the opt-out. There has been scholar proposing the adoption of the opt-in system by the US courts to reduce the abusive filing of meritless class actions.[179]

Table 3: Class Actions Handled by the SFIPC

(Amount in NT$ Million)

	Case # (Cumulative)	Investors Empowered	Amount Claimed	Pending Case Number	Settlement Amount
2003	29 (including 23 from ISPC/SFI)	1,050 +2,000	467	28	0
2004	38	4,209 +12,230	1,405	37	22
2005	41	48,934	18,432	36	302
2006	49	56,000	21,647	42	554
2007	58	60,900e	22,814	48	197
2008	70	60,300	23,821	57	166
2009	94	73,000	30,014	71	106
2010	137	93,000	38,500	89	82
2011	150	97,000	41,600	89	113
2012	161	103,000	41,800	81	515
2013	175	108,000	42,900	83	137
2014	187	112,000	43,900	84	719
2015	201	115,000	44,600	96	82

(Data gathered from SFIPC Annual Reports from 2003-2014 & Interviews.)[180]

176. 15 U.S.C. § 78u-4. Private Securities Litigation, (a)(3)(B)(i).

177. 15 U.S.C. § 78u-4. Private Securities Litigation, (a)(3)(B)(iii)(I)(bb). The appointed lead plaintiff is presumed to be the most adequate. However, this presumption may be rebutted by proving that appointed lead plaintiff "will not fairly and adequately protect the interests of the class". 15 U.S.C. § 78u-4. Private Securities Litigation, (a)(3)(B)(i)(II)(aa).

178. Scholars have repeatedly described the counsel of plaintiffs in class actions or derivative suits as "a self-interested, profit-maximizing entrepreneur." Morris Ratner, *Class Counsel as Litigation Funders*, 28 GEO. J. LEGAL ETHICS 271, 274 n. 11 (2015).

179. Hal S. Scott & Leslie N. Silverman, *Stockholder Adoption of Mandatory Individual Arbitration for Stockholder Disputes*, 36 HARV. J.L. & PUB. POL'Y 1187, 1225-26 (2013).

180. Interviews with staff of the SFIPC (Oct. 8, Nov. 4, Nov. 6, and Nov. 9, 2015, Feb. 3, Feb. 4,

4. *Analysis of Class Action Performance*

The information in Table 3 shows the total number of class actions brought by the SFIPC, the total amount of damages claimed, and the status of the cases whether it has been finalized and closed from the SFIPC's point of view. As of the end of 2015, the SFIPC has filed a total of 201 class actions claiming for NT$44.6 billion.[181] Among them, 105 cases, including settlements and cases having final and binding judgments and enforced, have closed; the rest 96 cases claiming for NT$37.99 billion are still pending or in the enforcement procedure at the end of 2015.[182]

If looking at the winning ratio, as shown in Table 4, as of the end of 2015, the SFIPC has received 60 favorable judgments awarding NT$19.7 billion, in which 28 judgments awarding NT$6 billion are final and binding.[183] It is understood that 60 favorable judgments include judgments partially in favor of the SFIPC. Moreover, the favorable judgments may be from the district court or high court level. Therefore, before the judgment is final and binding, the figures are still changeable.

The third aspect is to look at the actual amount of compensation realized by the SFIPC that can be redistributed to the investors. In practice, when one of many defendants, such as the issuer or the chairperson, in a civil action has a final and binding judgment, in some cases, the defendants may come together to settle the case as a package rather than to settle with the SFIPC individually.[184] The actual amount of compensation received, including agreeing to pay by installment, from the settlement is around NT$3 billion and amount of compensation from the enforcement of judgments is around NT$0.31 billion.[185] As of the end of 2015, the compensation amount awarded from the judgments that are final and binding is NT$6 billion but only NT$0.31 billion or 0.51% is enforced. According to Table 3, the cumulative settlement amount as of the end of December 2015 is NT$2.995 billion and the settlement amount is NT$82 million in 2015.[186] These figures indicate that most of damage payments are from the settlement rather

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and Feb. 5, 2016).

181. The information was obtained from the SFIPC via emails and telephone interview where the interviewee requested not to be named. Interview with SFIPC staff (Oct. 8, Nov. 4, Nov. 9, 2015, and Mar. 18, 2016).

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.* The amount of compensation received from the enforcement of judgments is NT$0.31 billion at the end of 2014 too, which means it has not received any compensation from enforcement of judgement in 2015. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 5.

186. According to Table 3, the cumulative settlement amount is NT$2.995 billion. However, the actual amount is a little bit more than this figure and is approaching NT$3.01 billion after adding the mantissa.

than the enforcement of judgments. From the past experiences, the possible and reasonable explanation of the low enforcement results is that while criminal defendants were in the investigation stage, they may begin to hide their assets.[187] Therefore, except for the CPAs have relatively deep packet because of their career, the SFIPC encountered difficulties to find assets of other individual defendants. This also explains why the SFIPC develops its strategy and adopt the Settlement Guideline for the purpose to ensure the settlement is fair to any individual defendants coming over to negotiate the settlement agreement and hoping to recover as much as possible for investors.[188] All of the settlements has records that can be attested if the SFIPC is sued for breach of fiduciary duties.

We further compare the results of the class actions from 2004 to 2015 regarding the favorable judgments rendered and the number of judgments that are final and binding. From Table 4, in 2004, the SFIPC began to receive favorable judgments (including partially favorable) from the district courts and high courts. In the past 12 years, the annual average number of favorable judgments received is 5% where we see a sharp increase of 8 favorable judgments in 2008 and 13 favorable judgment in 2015. We began to see favorable judgements for SFIPC that were final and binding in 2006. As of the end of 2015, near 47% of the favorable judgments are final and binding. It is necessary to note that there are new favorable judgments and some favorable judgments may become unfavorable because the judgments were reversed by the appellate courts or the Supreme Court each year. This has reflected into the figures of Table 4. We also found that the annual or cumulative amount of compensation awarded by the courts were not disclosed consistently in the annual reports. Part of the reason could be that it is not so meaningful because it does not correspond to the actual compensation received by the investors. For example, the total cumulative

187. CAITUAN FAREN ZHENGQUAN TOUZIREN JI QIHUO JIAOYIREN BAOHU ZHONGXIN JUANZHU ZHANGCHENG (財團法人證券投資人及期貨交易人保護中心) [SECURITIES AND FUTURES INVESTORS PROTECTION CENTER], CAITUAN FAREN ZHENGQUAN TOUZIREN JI QIHUO JIAOYIREN BAOHU ZHONGXIN BANLI ZHENGQUAN QIHUO SHIJIAN HEZUO ZHUICHANG CHULI BANFA ZONG SHUOMING (財團法人證券投資人及期貨交易人保護中心辦理證券期貨事件合作追償處理辦法總說明) [GENERAL INFORMATION OF THE SFIPC RULES REGARDING THE HANDLING OF COOPERATIVE RECOVERY MATTERS] 2, http://www.sfipc.org.tw/WebLoadFileUse.ashx?L=1&SNO=pKkYuFUGVo03ZTbdfi3N2w== (last visited Mar. 1, 2016). Because of the concerns that defendants of securities litigations may hide the assets and to enhance the result of the class action, the SFIPC may enter into cooperation agreement with local and international lawyers or law firms in the case the SFIPC has won the litigation or the defendants have been prosecuted. SFIPC Rules Regarding the Handling of Cooperative Recovery Matters § 3.

188. Settlement Guideline is an internal guideline proposed by the staff of the SFIPC and approved by the board of directors of the SFIPC after consultations with experts. It is also reviewed by the board of directors periodically. This guideline is confidential and is considered to be business secret of the SFIPC. Interview with the staff of the SFIPC (Oct. 8, 2015).

amount of compensation awarded by the courts as of 2015 was NT$19.7 billion but only NT$0.31 billion was realized after the enforcement of the judgments. The recovery ratio is 1.8% only.

Table 4: SFIPC Class Actions: Number of Favorable Judgments, Compensation Awarded

(Amount in NT$ Million)

	Favorable Judgment Number (Cumulative)	Compensation Awarded (Cumulative)	Cases Final & Binding (Cumulative)
2004	4	N/A	0
2005	6	N/A	0
2006	11	N/A	6
2007	13	N/A	8
2008	21	N/A	11
2009	25	12,363	13
2010	30	12,300	17
2011	35	12,800	21
2012	38	14,300	22
2013	42	14,500	23
2014	47	14,600	27
2015	60	19,700	28

(Data gathered from SFIPC Annual Reports from 2010-2014 and Interviews.)[189]

This article agrees that this Settlement Guideline is a business secret of the SFIPC and should not be disclosed to the public.[190] The SFIPC should not be required to publish the Settlement Guideline or the criteria in settling the case. The US SEC has disciplinary power as weapons and tokens in reaching a consent settlement with the respondents who violate securities regulation, particularly in the administrative proceeding.[191] Unlike the US SEC, the SFIPC does not have similar power or tokens in settling the case. To disclose the settlement strategies and guideline will undermine the best interest of investors. However, this article suggests that the SFIPC maintains and publishes the statistical numbers in a more logical way to make those figures more meaningful. For example, according to the currently available statistics, the settlement amount might have overlapped with the amount of compensation awarded by the courts. The SFIPC may consider maintaining a record of the amount awarded by the courts against the amount claiming for

189. Interviews with staff of the SFIPC (Oct. 8, Nov. 4, Nov. 6, and Nov. 9, 2015, Feb. 3, Feb. 4, and Feb. 5, 2016).

190. *See supra* note 188.

191. *See e.g.*, SEC. & EXCH. COMM'N, ENFORCEMENT MANUAL (Jun. 4, 2015), ¶ 2.5 Enforcement Recommendation, ¶ 6.2.2 Deferred Prosecution Agreements, ¶ 6.2.3 Non-Prosecution Agreements, ¶ 6.2.7 Settlement Recommendation.

in the cases having final and binding judgments. Moreover, it will also be useful to keep the number of cases which courts have awarded compensation against all cases that are final and binding. The SFIPC is in the best position to provide these figures.

D. *Derivative Suits*

Derivative suits rarely occurred in Taiwan for several reasons. The first reason is that there is a threshold shareholding requirement. Shareholders must hold at least 3% of a company's outstanding shares for more than one year to become eligible to bring a derivative suit against directors or supervisors on behalf of the company.[192] Secondly, there is not much incentive for shareholders to bring derivative suits. To bring a derivative suit, shareholders must first pay the court fee which is 1% or less of the value of the claim involving disputes of property right. The court fee is charged for the use of court services on a progressive-decrease rate according to Article 77-13 of the Taiwan Code of Civil Procedures.[193] Plaintiffs must prepay the court fees when they bring the lawsuits. Although this payment is temporarily prepaid by the plaintiff and may be returned when the plaintiff wins the case, it is still costly for a plaintiff bringing the derivative suits and the plaintiff bears a potential risk of not being able to get the payment back if the plaintiff turns out to be losing the case.[194] Even if shareholders win the case, defendants are paying the damages to the corporation rather than to shareholders. There is no immediate and direct benefits to shareholders who bring the derivative suits. This problem exists in most jurisdictions and reforms on derivative suits regime have always been an important theme in academia and in practice.

There have been different kinds of reforms on the derivative suits in different countries.[195] Taiwan chooses to authorize the SFIPC to bring derivative suits. A breaking through reform on derivative suits occurred on May 20, 2009. The SFIPA added a new provision, Article 10-1, authorizing the SFIPC to bring derivative suits on behalf of the listed company to sue directors or supervisors who materially cause damages to the company or violate the laws, regulations or articles of incorporation while carrying out

192. Taiwan Company Act § 214, para. 1.

193. For the value of the claim falls under NT$100,000, the court fee is NT$1,000; for value between NT$100,001 and NT$1 million, the court fee is NT$100 for every NT$10,000; for value between NT$1 million to NT$10 million, the court fee is NT$90 for every NT$10,000, *etc*. Code of Civil Procedures § 77-13.

194. The general principle is that losing parties of a civil litigation have the obligation to pay court fees and litigation expenses. Taiwan Rules of Civil Procedure § 78.

195. For discussion of derivative suit regimes in various Asian counties, *see generally*, THE DERIVATIVE ACTION IN ASIA: A COMPARATIVE AND FUNCTIONAL APPROACH (Dan Puchniak et al. ed., 2012).

their duties.[196] Although the SFIPC owns only 1,000 shares of each listed company, the SFIPA exempts the SFIPC from meeting the 3% threshold shareholding requirement imposed by Article 214 of the Company Act. The SFIPC is now equipped with this weapon and theoretically may use it to deter the wrongdoing of directors or supervisors of listed companies, or to bring derivative suits when actual harm occurs. Article 10-1 of the SFIPA exempts the threshold shareholding requirement only. The SFIPC must first request the supervisor to sue the director or request the board of directors to sue the supervisor and wait for 30 days. If there is no action taken by the supervisor or the board of directors after receiving the SFIPC's request, the SFIPC may then bring a derivative suit on behalf of the company to sue the director or supervisor.[197]

The responses to this reform are divided. Positive responses are received from the government, the SFIPC, investors, and many scholars.[198] The addition of Article 10-1 to the SFIPA has made the derivative suit revitalizing in Taiwan. The derivative suit was formerly not interested by shareholders in Taiwan because of the threshold barrier and because shareholders who bring the derivative suit do not enjoy direct benefits. It was mainly used for academic discussions in the corporate law courses or conferences. Article 10-1 makes the derivative suits alive. However, there are still concerns from the industries that this special right of action could be abused. They also worry about the threat of being sued by the SFIPC that would adversely affect the normal operation of listed companies. These concerns are reasonably speculated but the chance of actual abuse is very minimum. As will be discussed later in this article, the composition of the board of directors and supervisors and the decision-making process of the SFIPC to bring a derivative suit would effectively minimize the potential risk of abuse of its power.[199]

In order to bring the derivative suits, there must be actual evidences showing that the director has breached the fiduciary duty and caused significant injuries to the company. In most occasions, defendants in the derivative litigations have involved defalcation or misappropriation of corporate assets, breach of trust, non-arm's transaction and caused serious injury to the company. In practice, most derivative litigations brought by the SFIPC are related to the class actions. When the SFIPC is conducting studies

196. Investor Protection Act § 10-1.

197. Investor Protection Act § 10-1, para. 1, subparagraph 1.

198. *See e.g.*, LIU LEN-YU (劉連煜), XIN ZHENGQUAN JIAOYI FA SHILI YANXI (新證券交易法實例研習) [MODERN SECURITIES LAW: CASES AND EXPLANATIONS] 603-04 (10th ed., 2012); LIAO TA-YING (廖大穎), ZHENGQUAN JIAOYI FA DAOLUN (證券交易法導論) [INTRODUCTION OF SECURITIES REGULATION] 497-98 (6th ed., 2013).

199. For discussion of the decision-making process or the SFIPC, *see infra* discussion in Section V. E. "E. Concerns from the Market: Abuse of Power and Decision-Making Process", at 196.

on whether to bring the class action, it also studies the necessity and appropriateness of bringing derivative suits against directors and supervisors and the proposal to bring the derivative suit is submitted to the board meeting for approval.

There are 33 derivative suits brought by the SFIPC during the period from the first case brought in 2010 and December 2015. (*See* Table 5) There were 6 cases in 2010, 3 in 2011, 9 in 2012, 4 in 2013, 5 in 2014, and 6 in 2015. The average is 5.5 cases per year.

Table 5: Derivative Action and Application for Judicial Removal of Directors

	Derivative Action (Cumulative)	Removal of Directors (Cumulative)
2009	0	0
2010	6	3
2011	9	6
2012	18	8
2013	22	13
2014	27	20
2015	33	27

(Data gathered from SFIPC Annual Reports from 2009 to 2014 and Interviews.)[200]

E. *Removal of Directors*

Removal of director is another important regime allowing shareholders to remove unsuitable or disliked directors from the office. In addition to certain circumstances that automatically disqualify a director and such director deemed to be discharged, Taiwan's Company Act provides two channels to remove directors.[201] One is via the special resolution of shareholders' meeting to remove a director.[202] Shareholders' meeting may remove a director with or without cause but may need to compensate the director in case to remove without proper cause.[203] The other channel is judicial removal of directors. The Company Act imposes several conditions

200. Interviews with staff of the SFIPC (Oct. 8, Nov. 4, Nov. 6, and Nov. 9, 2015, Feb. 3, Feb. 4, and Feb. 5, 2016).

201. For example, a person cannot be a manager or a director if he/she has committed fraud, breach of trust or misappropriation and has been sentenced for more than one year of imprisonment, or falls into any other circumstances listed under Article 30 of the Company Act. Another circumstance to deem a director of a public company discharged is that such director transfers his/her shares for more than 50% of his/her shares at the time of being elected as a director. Taiwan Company Act, §§ 30, 108, para. 4, & 197.

202. Taiwan Company Act § 199, para. 2.

203. Taiwan Company Act § 199, para. 1.

to file a claim with the court to remove a director.[204] First, there must be proof that such director has materially injured the company or material violation of law or the articles of incorporation. Secondly, there must be a proposal to remove a director at the shareholders' meeting and such proposal was not approved. Thirdly, after satisfying the previous two conditions, shareholders holding more than 3% of outstanding shares may file a claim with the court to remove the director within 30 days after the close of the shareholders' meeting failing to remove the director. Accordingly, without first proposing the removal of director at the shareholders' meeting will bar the application for judicial removal of a director. Shareholders' meeting may remove a director without cause. However, to request the court to remove a director, there must be proof that the director to be removed has cause serious injury to the company or has significantly violated the law or articles of incorporation. The Supreme Court has narrowly construed the conditions imposed in Article 200 of the Company Act and held that the reason in front of the court to remove a director must be the same as the reason to remove the director at the shareholders' meeting.[205] This interpretation of the statute has similar effect of adding additional condition on the plaintiff who claims to remove the director. All these show that it is extremely difficult to remove a director in Taiwan.

On May 20, 2009, the Investor Protection Act was amended and added a provision authorizing the SFIPC to file a claim with the court to remove disqualified directors without need to comply with Article 200 of the Company Act. The SFIPA not only exempts the SFIPC from the 3% threshold shareholding requirement but also exempt from shareholders' meeting requirement. Once the SFIPC found the director or supervisor who materially causes damages to the company or violates the laws, regulations or the articles of incorporation while carrying out their duties, the SFIPC may file a claim with court to remove the director or supervisor.[206] There is no requirement that there must be a shareholders' meeting failing to remove the director as prerequisite. Of course, it is the court's discretion whether to remove the director or supervisor after taking into considerations all of the evidences and circumstances.

Since the addition of Article 10-1 to the SFIPA in 2009, the SFIPC has brought 27 litigations seeking for judicial removal of director as of the end

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204. Taiwan Company Act § 200.

205. Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 90 Su Zi No. 4550 (90訴字第4550號民事判決) (2002) (Taiwan). *See also*, Lin Andrew Jen-Guang (林仁光), *Caipan Jieren Dongshi Ji Dongshizhang* (*裁判解任董事及董事長*) [*Judicial Removal of Director and Chairperson*], 114 YUEDAN FAXUE JIAOSHI (月旦法學教室) [TAIWAN JURIST], 42, 47-49 (2012).

206. Investor Protection Act § 10-1, para. 1, subparagraph 2.

of 2015. (*See* Table 5) The first case was brought in 2010. We see an uptrend of number of removal cases in the past 5 to 6 years. There were 3 in 2010, 3 in 2011, 2 in 2012, 5 in 2013, 7 in 2014, and 7 cases in 2015. (*See* Table 5) The results of the removal litigations are mixed. There are very few cases receiving favorable judgments that the court ordered to remove the director and supervisor of a publicly traded company.[207] Most cases were denied by courts to remove directors.[208] There are also cases that were dropped by the SFIPC.[209] The reason is usually because the defendants have already resigned or were not reelected in the board election during litigation.

The SFIPC frequently discussed this issue in the board meetings and held consultation meetings to ensure that it appropriately exercises this right so that it can protect investors while not improperly interfering the normal operation of the company and not causing unnecessary threats to directors and supervisors.[210] In practice, the SFIPC evaluate whether to remove the director or supervisor when the staff lawyers evaluate the class actions based on the evidences from the criminal prosecution and other evidence collected. The proposal to bring a removal litigation is submitted to the board for approval.[211]

In order to file a removal-of-director suit, the SFIPC has to carefully collect evidences showing that the director has caused serious injury to the company or has significantly violated the law or the articles of incorporation and without removing such director, an imminent or potential risk of causing harm to the company and investors would occur. To be sure, the court is still acting as a gate keeper to make sure only in necessary situations will a director be removed. However, this article suggests that the SFIPC must be very cautious, like it has done in the past, in bringing litigation to remove

207. *See e.g.*, Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 103 Jin Zi No. 42 (103金字第42號民事判決) (2015) (Taiwan); Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 104 Jin Shang Zi No. 6 (104金上字第6號民事判決) (2015) (Taiwan).

208. *See e.g.*, Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 102 Su Zi No. 180 (102訴字第180號民事判決) (2014) (Taiwan); Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 103 Shang Zi No. 696 (103上字第696號民事判決) (2015) (Taiwan). The annual reports of the SFIPC disclosed the dates and the results of removal cases. *See* SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 41 (Tainan District Court dismissed SFIPC's removal suit against Chia Ta World on Mar. 28, 2014), 42 (Supreme Court dismissed SFIPC's removal suit against Free Power Energy on Apr. 17, 2014), 51 (Taipei District Court dismissed SFIPC's removal suit against Elements Innovation on Dec. 8, 2014).

209. *See e.g.*, SEC. & FUTURES INV. PROT. CTR., 2010 ANN. REP. 45 (report to the board to have withdrawn the removal litigation holding from the court against director of BAFO Technologies on board meeting on May 26, 2010).

210. *See e.g.*, SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 43 (holding a consultation meeting to discuss issues related to removal suits).

211. *See e.g.*, SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 41 (board meeting approved the proposal to bring removal litigation against directors of Genome International Biomedical involving insider trading on Apr. 23, 2014).

directors. The SFIPC must be very cautious to evaluate the impact of its action and must bear in mind that this is the last resort and a necessary approach because the action will have significant impact on the company as well as on investors.

Currently, a new issue came up in the judicial decisions involving removal of directors that may have significant impact on the function of the regime of judicial removal of director. In a judicial removal of director case, before the end of the trial, the company held the shareholders' meeting and the directors subject to removal were reelected. The court dismissed the SFIPC's case for the reason that the cause to remove the directors was based on the factors occurred in their previous term of office and the reelection has made the cause unappealing.[212] The potential impact of this decision is that the unsuitable or disqualified director could not be removed and they could continue to control the company because they can be reelected as directors of publicly traded company. This article urges that the courts, Judges' Academy or at the Judicial Yuan level together with the competent authorities may hold conference to clarify the role of the court on this issue so that we can have a more practicable judicial removal of director regime with more profoundly theoretical basis. Moreover, the competent authority of Company Act and the TSEA are encouraged to carefully review the regime for removing directors. It is suggested that the regime such as Section 20(e) and Section 21(d)(2) of the US Securities & Exchange Act of 1934,[213] the UK Company Directors Disqualification Act 1986,[214] Insolvency Act 1986[215] and Companies Act 2006,[216] can be good examples to study when Taiwan is considering revising the removal of directors' regime. Since this is a more general issue and not directly related to our topic, the author will be addressed in another article.

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212. Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 102 Jin Zi No. 97 (102金字第97號民事判決) (2015) (Taiwan).

213. 15 U.S.C. §§ 77t(e) & 78u(d)(2). *See e.g.*, The U.S. SEC brought a civil penalty litigation in the Federal District Court requesting the court to grant an injunctive relief to bar the defendants, one is the president & CEO and the other the executive VP and CFO, "from serving as an officer or director of any pubic company" for committing securities fraud. Complaint at 41, U.S. Sec. Exch. Comm'n. v. Godwin, No. 15-cv-01414 (C.D. Ill., Sept. 30, 2015).

214. For example, Section 1 authorizes the court to issue disqualification order against a person to prohibit him/her from serving as a director of a company, a liquidator or administrator of a company, receiver or manager of a company's property, and participation in the promotion or formation of a company. Company Directors Disqualification Act 1986, c.46 § 1(1) (UK), http://www.legislation.gov.uk/ukpga/1986/46/contents (last visited Mar. 1, 2016). Depending on the circumstances, the court may issue a disqualification order for a maximum period of 15 years. *See e.g., Id.* §§ 2(3)(b), 4(3), 6(4), 8(4), 10(2).

215. Insolvency Act 1986, c.45 § 390(4) (UK), http://www.legislation.gov.uk/ukpga/1986/45/contents (last visited Mar. 1, 2016).

216. Companies Act 2006, c.46 § 1182 (UK), http://www.legislation.gov.uk/ukpga/2006/46/contents (last visited Mar. 1, 2016).

V. ANALYSIS OF CONTEMPORARY ISSUES OF TAIWAN'S SECURITIES INVESTOR PROTECTION SYSTEM

In previous sections, we have introduced and discussed how the investor protection system works in Taiwan. We identified several issues that need special attention, such as the loss of experienced in-house lawyers. In this section, several other issues will be discussed:

A. *The Nature of the Legal Services of SFIPC: Who Are Protected by the Investor Protection Act?*

Investors Protection Act provides protections to both securities investors and futures traders. This article focuses on the securities investors. Therefore, in order to know whom the Investor Protect Act protects, it will be necessary to examine the definition of securities investors. According to Article 4 of the Investor Protection Act, the term "securities investor" shall be interpreted according to Taiwan Securities and Exchange Act (TSEA). However, the TSEA does not explicitly define what a securities investor is. Therefore, we can only depend on the interpretation of the TSEA provisions to decide under what circumstances and the scope of securities investors are protected by the Investor Protection Act. In other words, if an investor is provided with a private right of action under the TSEA, such investor may seek protection under the Investor Protection Act. For example, the TSEA provides a private right of action to investors who purchase securities from the issuer to recover damages from the issuer, its responsible persons and employees participating in the preparation of the prospectus that contains misrepresentations or omissions of material information.[217] According to the TSEA and the SFIPA, the Investor Protection Center protects investors in one of the following ways:

1. Class Actions: It is to redress the damages of investors owing to the wrongdoings that violate the TSEA, including securities fraud, fraudulent financial reporting, misrepresentations in prospectus, insider trading, and market manipulation.[218]
2. Derivative Actions: It provides indirect protection to investors of publicly traded companies suffering damages arising from short-swing trading, breach of fiduciary duty, including duty of care and duty of loyalty, transactions involving interested directors and

217. Article 32 of the TSEA imposes prospectus liability on the issuer, its responsible persons, employees, underwriters, accountants, lawyers, and other professionals who participate the preparation of the prospectus or express professional opinions on the prospectus if the prospectus contains material misrepresentations or omissions. TSEA § 32.

218. TSEA § 20, para. 1 (securities fraud); § 157-1 (insider trading); § 155 (market manipulation); § 20-1 (civil liabilities for fraudulent financial reports).

taking advantages of corporate opportunities.[219]

3. Removing Director Action: To protect investing public by applying to the court to remove directors who, in the course of performing the corporate affairs, have caused material injuries to the company or are in violation of law, regulation and the articles of incorporation.[220]

If looking at the services of the SFIPC, investors protected by the Investor Protection Act are not limited to those who suffer damages caused by those who violate the TSEA. In terms of class action, class arbitration, and mediation, investors must have suffered damages arising from fraudulent disclosures, market manipulation, insider trading or other securities-fraud activities so that the SFIPC can provide services to investors according to the TSEA and the Investor Protection Act. However, investors not having suffered any damages could also consult with the SFIPC regarding the securities law, regulation, and the securities market, or file complaint with the SFIPC. In addition, the SFIPC is designated by the Financial Supervisory Commission to be in charge of the short-swing trading disgorgement business.[221] Although insiders engaging in short-swing trading are required to disgorge the short-swing trading profits to the company, this can also be considered to indirectly benefit shareholders.

An issue worth of discussion is whether shareholders may seek help from the SFIPC to bring derivative suits based on the Company Act? As mentioned above, the Investor Protection Act creates the SFIPC to provide services to investors as defined under the TSEA. It was questionable whether the SFIPC may bring derivative suits for shareholders of a publicly held corporation before May 20, 2009. To enhance investor protection, the SFIPA has added Article 10-1 in May 2009 and it is now possible for the SFIPC to bring derivative suits on behalf of a public company to sue its director or supervisor. To emphasize the importance of corporate governance and shareholder activism, to utilize but not to abuse the utilization of derivative suits is important and may significantly improve the monitoring function of shareholders to corporate management.

B. *Does Mediation Work on Solving Securities Related Disputes?*

Mediation is an alternative dispute resolution. It is hoped that the disputes between investors and securities law violators can rationally be solved via the help of professional mediators. From the statistics, in 19 out of

219. TSEA § 157; Taiwan Company Act § 23, para. 3 (breach of fiduciary duty); § 193, para. 2 (directors violating laws, regulations and articles of incorporation); § 223 (self-dealing); § 209, para. 5 (competing with company or corporate opportunities).

220. Taiwan Company Act § 200; Investor Protection Act § 10-1, para. 1, item 2.

221. *See* TSEA § 157 and accompanying text.

the 33 mediation cases handled by the SFIPC Mediation Committee in 2006, which constitute more than 57 percent of all mediation cases of the year, the counterparties reject to join mediation. This implicates that most counterparties claimed to be in violation of securities law and cause damages to investors are unwilling to participate the mediation procedure. The possible reasons are the followings:

1. The counterparties think that they are not responsible for the damages to investors. Therefore there are no grounds for them to participate the mediation.
2. The successful rate of mediations is relatively low. The counterparties do not want to waste time to participate this procedure.
3. In the process of mediation, both parties must present evidences in order to determine the whether the counter parties are responsible and how much they agree compensate the investors. The counter parties are very cautious and reluctant to present evidences because it is concerned that if the mediation is not successful, those evidences may be used against them in the class actions. This also triggers the issue of whether there involves conflicts between the roles of the SFIPC in handling the mediation and in representing investors in the class action.

Although there are many factors affecting the success of mediation, in order to increase the use of mediation as the alternative dispute resolution, the SFIPA was amended in May 2009 to introduce a small-claim-compulsory-mediation regime. For disputes with a value of NT$1 million or less, the counterparties have the obligation to participate the mediation meeting. Once the investors file application to the SFIPC for mediation, the counterparties have to appear at the mediation meeting. If the mediation fails, the Mediation Committee may report to the competent authority for record. In 2014, there are 23 mediation cases. Among them, 3 cases have reached agreement; 4 failed; 3 reached agreement prior to the first mediation meeting; 10 counterparties refuse to mediate; 2 were rejected by the SFIPC.[222] The ratio of the parties refusing to participate mediation is lowered to 43%, which could be partially because of the small claim compulsory mediation requirement. However, the success rate remains pretty low.

The introduction of the small-claim-compulsory-mediation regime is in the hope that by requiring the counterparties to present in the mediation meeting, the usage ratio and the success rate of mediations will increase. This is a policy choice. However, this article urges that the competent

222. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 19.

authority, the SFIPC and relative securities institutions may advocate the benefits of using mediation as an alternative dispute resolution instead of forcing the counter parties to appear at the mediation. We have seen that appointed mediators not only are experts specialized in the field relevant to the regulation and operation of the securities market but also have devoted their efforts trying to help parties to reach agreement. The low successful rate is usually because that the parties do not agree with the terms and conditions set by the applicants. However, since special techniques is needed in mediations, it is urged that the SFIPC may hold workshops and invite mediation experts to share the techniques and experiences with the mediators when they are appointed.

C. *Litigation Techniques: Whether the SFIPC Should Bring an Independent Civil Action or to File a Supplementary Civil Action in the Criminal Court?*

The SFIPC normally chooses to file the class action in the form of supplementary civil action with the criminal court after defendants have been prosecuted and before the end of oral argument in the court of second instance.[223] One of the major benefits for bringing the supplementary civil action is the convenience of accessing to the evidences discovered by the prosecutors. Moreover, the defendants of a supplementary civil action are not limited to the defendants of the criminal defendants. Other persons who bear joint liability with the criminal defendants or even independent civil liability can be named as the defendants in the supplementary civil action.[224] Once the defendants are prosecuted, it indicates that prosecutors have gathered sufficient evidences. The evidences investigated and adopted in the criminal litigation are considered to be investigated and the judgment of the supplementary civil action should base on those evidences.[225] Another benefit to file supplementary civil action is that plaintiffs are exempt from paying the court fees.[226] It is important to note that although certain rules of civil procedure are applied in the supplementary civil action, it generally follows the criminal proceeding and applies the Code of Criminal Procedure.[227] The criminal court usually conducts the civil trial after the conclusion of the criminal trial and therefore if the criminal defendants are

223. Code of Criminal Procedure, §§ 487 & 488.

224. Code of Criminal Procedure § 487; Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], Panli (判例) [Precedent], 71 Tai Fu Zi No. 5 (71台附字第5號刑事判例) (1982) (Taiwan). *See also*, LIN YU-HSIUNG (林鈺雄), XINGSHI SUSONG FA XIACE (刑事訴訟法(下冊)) [CODE OF CRIMINAL PROCEDURE, VOL. 2] 513-14 (6th ed. 2010).

225. Code of Criminal Procedure, §§ 499 & 500.

226. Code of Criminal Procedure, §§ 504, para. 2 & § 505, para. 2.

227. Code of Criminal Procedure, §§ 490 & 491.

decided not guilty, the criminal court will dismiss the supplementary civil action.[228] However, with the request of supplementary civil action plaintiff, the case may be transferred to the civil court.[229]

The SFIPC may also initiate independent civil litigation and pay the court fee if it is more appropriate than filing the supplementary civil action.[230] The reasons to file independent civil actions include the following major reasons:

1. In consideration of the statute of limitations: If the SFIPC does not take action promptly, the SFIPC will be barred from bring the civil action after specific date because of the Statute of Limitations imposed on different causes of action.[231] Therefore, the SFIPC cannot wait for the indictment. For example, Article 21 of the TSEA imposes 2-year/5-year statute of limitation. Investors' right of action expired 2 years after they acknowledge the existence of right to be compensated or 5 years after the public offering or trading.
2. The SFIPC has gathered enough evidence by itself. If the SFIPC has gathered enough evidences to prove defendants has violated the securities law and cause damages to investors, it may bring independent civil action. For example, cases like fraudulent financial reporting and misrepresentation or omission in the prospectus are possible to bring independent civil action.

Although it is possible to bring independent civil action, in practice, relatively few were brought by the SFIPC with the civil court. However, there are still cases that were brought in the civil court rather than supplementary civil action in the criminal proceeding.[232] The major reason is that Taiwan does not have discovery regime and to gather evidence is difficult for the plaintiff in this type of cases. Particularly for insider trading and market manipulation cases, the SFIPC heavily relies on the criminal prosecution because of the difficulties to obtain the evidences regarding the timing of the existence of material information and communications between defendants. As a result, the judgments of the civil litigations are highly influenced by the criminal judgments. A study examining the 43

228. Code of Criminal Procedure, §§ 496, 501, 503.

229. Code of Criminal Procedure § 503, para. 1, proviso.

230. The SFIPC may bring civil action independent from the criminal procedure and paying the court fee according to the Taiwan Code of Civil Procedure. For the supplementary civil action formerly filed with the criminal court, if the criminal court has decided that defendants are not guilty, the supplementary civil action shall be dismissed. However, the plaintiff may request the case to be transferred to the civil court. In that case, plaintiff has to pay the court fee of the civil action. Taiwan Code of Criminal Procedure § 503.

231. For example, Article 21 of the TSEA imposes the time limitation for the harmed investors to bring private right of action within 2 years after the investors know the existence of such rights; such rights lapse 5 years after the date of public offering or securities trading. TSEA § 21.

232. For example, in 2005, three cases were brought before the criminal cases were prosecuted. SEC. & FUTURES INV. PROT. CTR., 2005 ANN REP. 4.

supplementary class actions brought by the SFIPC indicates that not only is the civil litigation highly dependent on the criminal prosecution, the civil court judges also rely on the criminal judgment as a basis in determining the civil liability of defendants.[233] The survey conducted by Professor Lin shows that if the defendants are not guilty in the criminal judgments, 100% of the civil courts render judgments for defendants; if the defendants are guilty, around 75.57% of the civil judgments are in favor of the SFIPC.[234] We provide some reasons to explain this result. The major one is the lack of discovery system in the civil litigation. Judges may consider that since the criminal defendants are not guilty, the civil case judgment in favor of defendants will be more consistent with the outcome of the criminal judgement. Additionally, in order to obtain a favorable judgment in civil litigation without the success of criminal action, plaintiff has to spend extra efforts to prove the existence of damages and its causation with the wrongdoing by him/herself, which is more difficult.

This article urges that civil courts reconsider how to use the judgment and the evidences of the criminal court in reaching the judgment regarding the civil liability of criminal defendants. Moreover, it is also important to reconsider whether there should be a departure of the civil judgment from the criminal judgment because the standard of proof in civil cases is usually lower than the in criminal cases. In the US, the judge usually instructs jurors that plaintiffs shall prove defendants guilty "beyond a reasonable doubt" in criminal case while the plaintiff in civil case usually need to "prove only that a fact is more likely true than not true"[235] or a standard of "preponderance of evidence."[236] In Taiwan, professors of the civil procedure law also take the same view.[237]

To sum up, in most cases, the civil judgment of independent or

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233. Lin Yu-Hsin (林郁馨), *Touziren De Nuoya Fangzhou: Touziren Baohu Zhongxin Yu Zhengquan Tuanti Susong Zhi Shizheng Yanjiu* (*投資人的諾亞方舟：投資人保護中心與證券團體訴訟之實證研究*) [*The Noah's Ark for Investors: An Empirical Study of Investor Protection Center and Securities Class Actions*], 229 YUEDAN FAXUE ZAZHI (月旦法學雜誌) [TAIWAN L. REV.] 75, 82 (2014).

234. *Id.* at 81-82.

235. Lawrence M. Solan, *Refocusing the Burden of Proof in Criminal Cases: Some Doubt about Reasonable Doubt*, 78 TEX. L. REV. 105, 117 (1999).

236. Even in some special cases the civil court requires "a higher threshold than preponderance of evidence" it is still "a lower threshold than beyond a reasonable doubt" in the criminal court. Elisabeth Stoffelmayr & Shari Seidman Diamond, *The Conflict between Precision and Flexibility in Explaining "Beyond a Reasonable Doubt"*, 6 PSYCHOL. PUB. POL'Y & L. 769, 774 (2000).

237. SHYU SHU-HUAN (許士宦), ZHENGJU SOUJI YU FENZHENG JIEJUE (證據蒐集與紛爭解決) [DISCOVERY OF EVIDENCE AND DISPUTE RESOLUTION] 495-96 (2nd ed., 2014) (discussing whether a higher standard of proof equivalent to that of criminal proceeding should be adopted in the case of paternity action but recognizing that in ordinary civil litigation involving only pure economic interest, the standard of proof is lower and requires to satisfy two requirements, i.e., the high probability sufficient to ensure the truth of the judgment and the fairness of the parties).

supplementary civil action is usually influenced by the criminal judgment. The decisions of supplementary civil actions are consistent with the criminal judgments particularly when defendants are found not guilty. This is so because Article 503 of the Code of Criminal Procedure dictates the consequence. Even for independently brought civil action, they usually have the same fate with the supplementary civil action when the criminal defendants are not guilty. However, criminal law and criminal procedure scholars have pointed out that the standard of proof and evidences adopted in the criminal and civil litigations are different, the assessment of the evidences in civil and criminal litigations may produce different result and it is imaginable that the criminal defendants who are not guilty could be held civil liable in the civil action.[238] The scholar also criticizes the dictation of the criminal procedure law that the consequence of the supplementary civil action shall be consistent with the criminal judgment when defendant is found not guilty may cause confusion.[239]

There is a recent case worth of mentioning. The final criminal judgment of the Taiwan High Court decided that the defendant is not guilty in an insider trading case but the civil judgment of the Taiwan High Court held that defendants are civilly liable for the insider trading. The issue is regarding when was the date that an important assets transaction was considered to become material information and the defendant was prohibited from trading until it is disclosed. The SFIPC originally filed supplementary civil action.[240] This case was transferred to the civil court after the High Court found the defendant guilty.[241] The criminal case was then appealed to the Supreme Court and was remanded back to the High Court requiring it to determine the timing of the existence of material information. The Supreme Court held that in determining the time of the existence of material information, it shall be "the date of occurrence of the fact, date of negotiation, date of contract . . . date of audit committee or board resolution, or other date according to specific facts and evidences, whichever comes first" according to Article 5 of the "Regulations Governing the Scope of Material Information and the Means of its Public Disclosure Under Article 157-1, Paragraphs 5 and 6 of the Securities and Exchange Act."[242] The Supreme Court gave a signal that the date of the existence of material

238. LIN, *supra* note 224, at 512.

239. *Id.*

240. Xinzhu Difang Fayuan (新竹地方法院) [Xinzhu District Court], Minshi (民事) [Civil Division], 98 Fu Min Zi No. 66 (98附民字第66號民事判決) (2010) (Taiwan).

241. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Xingshi (刑事) [Criminal Division], 99 Jin Shang Su Zi No. 33 (99金上訴字第33號刑事判決) (2012) (Taiwan).

242. Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], 102 Tai Shang Zi No. 1672 (102台上字第1672號刑事判決) (2013) (Taiwan).

information should be the date earlier than what the High Court determined. After the case was remanded, the High Court held defendants not guilty and this case was final because the Supreme Court denied the appeal on January 2015 according to the Criminal Speedy Trial Act.[243] On September 1, 2015, the High Court declared a judgment in favor of the SFIPC and held those criminal defendant, though not guilty, are civilly liable for the insider trading.[244] The significance of this decision is that it is not influenced by the criminal judgment. The civil court made its own determination according to all of the available evidences. Although the criminal defendants may be found not guilty because criminal court applies a higher beyond reasonable doubt evidence standard, they could be held civilly liable in the civil court that applies a lower preponderance of evidence standard. The implication is that the SFIPC may bring more independent civil actions if it has enough evidence because there is still chance to win even though the criminal defendant is held not guilty. This article gives the most support and encouragement to the High Court not for the result but for the attitude handling the case.

D. *Factors Affecting the Settlement of Class Actions*

Most securities class actions are in the form of supplementary civil action. It is a long procedure for a securities class action to have a final result because the supplementary civil action procedure usually begins after the conclusion of the criminal proceeding is reached, and the judgment of the civil action is announced together with the criminal judgment.[245] In cases where the SFIPC brought independent civil actions, the civil court usually suspends the civil trial and waits for the result of the criminal trial to come out before it begins civil proceeding. Some earlier cases took more than 10 years to have final judgments and one study shows the recent class actions

243. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Xingshi (刑事) [Criminal Division], 102 Chong Jin Shang Geng (1) Zi No. 4 (102重金上更(一)字第4號刑事判決) (2014) (Taiwan); Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], 104 Tai Shang Zi No. 78 (104台上字第78號刑事判決) (2015) (Taiwan); Xingshi Tuosu Shenpan Fa (刑事妥速審判法) [Criminal Speedy Trial Act] (promulgated and effective May 19, 2010, as amended June 4, 2014) (Taiwan) (hereinafter Criminal Speedy Trial Act) was enacted to ensure "fair, legitimate and speedy criminal trials so as to protect human rights and the public interest." Criminal Speedy Trial Act § 1. This case cannot be appealed because the prosecutor could not meet the requirement of Article 9 of Criminal Speedy Trial Act.

244. The High Court in the civil action determined the date of the existence of material information is earlier than the date determined by the Criminal Court. Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 101 Jin Shang Zi No. 20 (101金上字第20號民事判決) (2015) (Taiwan).

245. Code of Criminal Procedure, §§ 496 & 501.

took between 2 to 5.5 years to have final judgments.[246] We also observed that more recent cases took less time to reach final judgment because of situation of lengthy criminal trial was effectively controlled by the Criminal Speedy Trial Act enacted on May 19, 2010.[247] The speedy trial requirements of criminal cases will definitely have positive impact on the length of the trial time of class actions.

To increase the possibility of recovering compensations from the defendants, the SFIPC has adopted a strategy to settle the disputes with the counter parties. Settlement is a technique used together with the litigation. In practice, the SFIPC negotiates with the defendants to settle the case in the process of civil class action or to settle the disputes with potential defendants prior to the filing of class actions. The settlement usually was initiated by the counterparty. It could occur prior to the filing of class action with the court, during criminal or civil trial, or after the criminal court has concluded the oral arguments. The SFIPC could begin to conduct settlement after it has announced to bring the class action and received the empowerment from investors so that it can calculate the amount of compensation in the class action. After settlement is reached with any of the defendants, the SFIPC will reduce the amount of the claim and report to the court. If the settlement is reached by the parties themselves or by the settlement proposal from the judge, the court will produce the settlement transcript that will have the same effect as the judgment.[248] In most cases, one of the conditions of the settlement is that SFIPC withdraw the litigation. Because all of the defendants have agreed to settle the case but do not wish to leave the record at court, the parties may alternatively settle the case and ask the SFIPC to withdraw the case.[249]

There are many factors affecting the SFIPC on deciding whether or not and how to settle the case or not. For example, the chances to win the litigation, the willingness of the defendants to settle the case, and the amount of compensation the defendants agree to pay are some of the major factors. In order to maximize the amount of compensation to investors, how to recover more damages payment from the counterparties should be one of the major concerns of the SFIPC. In practice, some issues have arisen while the SFIPC deals with the settlement of the cases.

First, the SFIPC sometimes may be puzzled on its own role in the

246. The study survey the 47 final judgments handled by the SFIPC as of September 2012. Lin, *supra* note 233, at 76, 87.

247. Except for Article 9 became effective on May 19, 2011 and Article 5, Paragraphs 2-4 became effective on May 19, 2012, the rest articles of the Criminal Speedy Trial Act became effective on September 1, 2010.

248. Code of Civil Procedure, §§ 377, 377-1, 379, 380.

249. The plaintiff may withdraw all or part of the suit any time before the judgment is final and binding. Code of Civil Procedure § 262, para. 1.

securities litigation and settlement? In ordinary private actions, plaintiffs normally pursue the greatest rewards from litigation or settlement and would disregard the defendant's personal factors. However, in the representative actions initiated by SFIPC, the issue is, in settlement, whether the SFIPC shall act like a judge and consider the individual person's degree of involvement in the securities law violations when negotiating with the settling amount? Whether the SFIPC should weigh the most the winning possibility of the litigation in deciding whether to settle and acceptable range of settlement payment? Whether the SFIPC should act like a prosecutors or criminal court justice to consider the cooperative or kind attitude of the counterparties and other personal situations when settling the case? In past experiences, the counterparties voluntarily come to discuss possibilities to settle the case with the SFIPC for various reasons. Among them, many of them come to settle when they are in the bargaining process with prosecutors.[250] In order to exchange for non-prosecution, deferred prosecution, or lower sentences, the defendants usually are cooperative and willing to settle with the SFIPC. It is also observed that many counterparties of the class action willing to settle are not the high ranking officers and usually do not have the decision power though they are the staffs who sign their names on the documents that contain misrepresentations or omissions. Because of many different situations in the first couple of settlement cases, the SFIPC has now developed a Settlement Guideline,[251] which includes a list of factors and an established formula, allowing the SFIPC staff to settle the case with certain degree of flexibility. This guideline is adopted by and could be modified with the approval of the board of the SFIPC. The staff lawyers of the Legal Service Division are responsible to report to the SFIPC board how the cases are settled, including the detailed considerations of each individual counterparty, whenever there is a case settled. If the settlement does not comply with the Settlement Guideline, prior approval from the board is required. It is hoped that this practice can ensure that the settlement has taken into consideration all of the circumstances and is for the best interest of the investors who empowered their rights to the SFIPC. The board of directors of the SFIPC also hopes that this practice can minimize the possibility of arbitrary or abusive practice in settling the case. This article supports this practice and believe this Guideline should remain a business secret and be reviewed periodically and modified if necessary.

Second, one may be curious on whether the SFIPC should settle the case or to continue litigation when the settlement payment constitutes only a small fraction of the total claimed damage payment? Sometimes, it is

250. Code of Criminal Procedure § 455-2.
251. *See supra* note 188.

difficult to decide whether to settle the case or to continue the litigation. To continue the litigation may take a long time and may involve different risks. Since there is no guarantee that the SFIPC would win the case and defendants would still have assets to pay for the damages after the final judgment, whenever there is a chance to settle the case and the settlement amount is within the reasonable range according to the Settlement Guideline, the SFIPC is willing to settle the case after taking into consideration all relevant factors. However, in the earlier settlement experiences, one factor that may bother the SFIPC is that the criminal defendant intended to use the settlement as an exchange for probation or lower sentence.[252] In this case, if the SFIPC has a high chance of winning the litigation, should the SFIPC settle the case? The answer may still positive because even in the cases that the criminal defendants were found guilty, the past experiences show that the SFIPC has only a higher winning ratio rather than 100% winning ratio.[253] It may take a long procedure for the litigation to come to an end. Moreover, the statistics show that among those cases that final judgments were wholly or partially in favor of the SFIPC, only NT$0.31 billion or 1.8% of the total amount NT$6 billion awarded by the court was enforced and collected from 2004 to 2015.[254] During the same period, the settlement amount that has been received by the SFIPC is NT$2.995. (*See* Table 3) Therefore, settlement is still one of the most economical method. However, in this situation, the SFIPC should settle the case at the higher range of permissible scope of settlement amount according to the Settlement Guideline. Otherwise, the SFIPC could be blamed for helping defendants escape from criminal sanctions and harm the interest of investors if it agreed to settle at an amount that is in the lower range but the criminal defendants can exchange for probation or lower sentence.

Third, in fraudulent financial reporting cases, the Article 20-1 of the securities law imposes strict liability on the issuer. To hold accountants liable for auditing the financial report, the SFIPC must prove their negligence. Other defendants, such as chairperson, other directors, supervisors, general manager and staff who signed on the financial report, are presumably liable for the damages. Article 20-1, similar to the Private Securities Litigation Reform Act of 1995 (PSLRA), imposes "proportionate liability" on those who did not intentionally participate the fraud but negligently liable.[255] The

252. Code of Criminal Procedure § 445-2.

253. According to the study of 43 cases all have criminal and civil judgments, the winning ratio of the class actions was 78.57% when the criminal judgments found defendant guilty. Lin, *supra* note 233, at 81-82.

254. *See supra* notes 183 to 187 and accompanying text.

255. The "proportionate liability" was introduced into the securities class actions in the US under the PSLRA 1995 to mean "the percentage of responsibility of such person, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff." 15

PSLRA does provide factors that must be considered in deciding the proportionate liability of each person involving the wrongdoing. One must consider: "(i) the nature of the conduct of each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs; and (ii) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff or plaintiffs."[256] Even with this instruction, it is still a difficult task for jurors and judges to decide and for the plaintiff to make the assertion. Because Taiwan's securities law is mainly patterned after the US securities lawcourts in Taiwan sometimes refer to the wordings of US securities laws, including the PSLRA, as a reference to interpret securities frauds including the liability of fraudulent financial reporting as set forth in Article 20-1 of the TSEA. Similarly, it is difficult for the SFIPC to determine how much it shall settle with different counterparties who bear proportionate liabilities.

Fourth, whether the settlement process should be more transparent and whether the terms and conditions of the settlement shall be disclosed to the public remains controversial. A study pointed out that the SFIPC brings the class actions relying heavily on the criminal prosecution and that the majority defendants agreed to settle with the SFIPC after they are convicted in the criminal courts so that they can settle the case at a lower payment than the higher amount of damages payment the civil courts will decide.[257] The study further revealed that although the civil court judgments may decide a higher amount of damage payment, the actual damage payment from settlements is higher than the enforcement of the civil court judgments and this reveals why the SFIPC is still willing to settle the case.[258] Therefore, it is urged that since settlement is the major source of compensation to redress the injured investors, the SFIPC, acting in the public interest, shall publicly disclose the terms and conditions of the settlement.[259] Moreover, some suggest that the settlement should be supervised by the Legislative Yuan or by the courts.[260] While this article agrees that most of the above observations and inferences are reasonable and agrees that more information can be disclosed, this article alleges that there should be limitation to the information that should be disclosed and the settlement procedures could remain confidential but with the supervision of the board and the competent authority.

Because each case involves different defendants who come to settle at

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U.S.C.A. § 78u-4 (f)(3)(A)(ii).

256. 15 U.S.C.A. § 78u-4 (f)(3)(C).

257. Lin, *supra* note 233, at 85.

258. *Id.*

259. *Id.* at 85-86; *See also* Wang & Chen, *supra* note 29, at 149-50.

260. Wang & Chang, *supra* note 29, at 31-32 (suggesting to model after the U.S. courts that hold Fairness Hearing and approve the settlement).

different stages and for different purposes, not all come to settle because they are convicted. Settlement needs skills and the complexity of cases affects how the case is settled. The major concerns that urge the disclosure of the settlement terms and conditions and ask the court to review the fairness are based on the fear of undue influence from the government in the settlement and to protect the interest of investors that authorize the SFIPC to bring class actions. The concerns are properly addressed. However, there are several reasons that those concerns may be unnecessary.

The first reason is that the settlement is supervised by the board of directors and the staff handling the settlement can exercise the discretion according to the Settlement Guideline approved by the board. After the case is settled with any defendants named in the class action, the consideration and terms and conditions of the settlement will be reported to the board meeting where supervisors are also attending. Any settlement beyond the permissible discretion of the Settlement Guideline requires prior approval from the board. Currently, only the chairperson and the general manager are executive directors. The other 9 directors are either independent or experts from the securities or futures industry. They all have the needed knowledge and expertise to exercise their monitoring power over the practice of the SFIPC. Of course, one may challenge that this form of supervision is not enough. However, the persons participating the settlement are the staff and officers of the SFIPC and there are records on who participated in each settlement. Any settlement involving improper favorable treatment to specific counterparty or breach of fiduciary duty will easily be monitored. The winning possibility in the litigation is one of the most important criteria that affect the decision of the SFIPC staff to settle the case. The comment that most defendants settled the case because they were convicted is true not only in Taiwan but also in other countries.

Second, unlike the U.S. Federal Rules of Civil Procedure, Taiwan's Code of Civil Procedure does not provide discovery system.[261] Therefore, it is inevitable that the SFIPC heavily relies on the criminal prosecution to bring class actions because it has to rely on the evidences discovered by prosecutors. Also, it is reasonable that many counterparties agree to settle the case after they are convicted because both parties are evaluating the best timing and terms and conditions of settlement. From a report regarding the settlement of securities class actions in the U.S. in 2014, more cases are settled and more settlement amount are found at the later stage of the litigation.[262] Again, even after the defendant is convicted, the SFIPC only

261. *See* FED. R. CIV. P. 26-37.

262. CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2014 REVIEW AND ANALYSIS 20 (2015), http://securities.stanford.edu/research-reports/1996-2014/Settlements-Through-12-2014.pdf (last visited

has higher percentage of winning the case and there is possibility that defendants may hide their assets and as a result the SFIPC could not collect the compensation even after it wins the case.

Third, it is difficult and there is no reason for the FSC to intervene the settlement. Some may worry that as a quasi-public enforcer, the FSC may intervene in the process of settlement. Although this is a reasonable speculation, the possibility is pretty low. The major reason is that those cases are always high-profile and whether to bring class actions is the professional discretion of the SFIPC and monitored by the board. If the case has been prosecuted, it indicates that there are presumably sufficient evidences of wrongdoings, and in practice, the SFIPC files the supplementary class action to the criminal courts unless there are less than 20 investors authorizing the SFIPC to bring the class actions or no damages were shown. The SFIPC seldom files independent civil action before the case is prosecuted unless for the reason of the statute of limitation. The SFIPC can always ask the criminal court to redirect the case to the civil court and pay the court fees. Therefore, this article has found no evidence of abuse and found no incentives for the abuse of the power by the SFIPC either. In settlement, the counterparty will not settle the case if the amount is too high. The SFIPC will settle the case according to the Guideline with their profession judgment.

The only concern would be whether the settlement is always at the lower level within the permissible discretionary range and the recovery of damages for investors is not maximized. Again, this article could not imagine the possibility of occurrence. Of course, we do not have evidence to prove that it will or it will not either. The only speculative possibility could be the mercy of all staff involving in the settlement. However, the SFIPA seems to have thought of this concern and provides protection to investors. To settle, the SFIPC must obtain authorization from the investors, and in practice, the investors authorize the SFIPC when they sign the empowerment contract at the beginning.[263] The SFIPA on the one hand grants SFIPC the power to withdraw or to settle the class action, while on the other hand reserves the right for individual investor to impose restrictions on those power, and the restrictions imposed by individual investors do not affect the right of other investors.[264] After the SFIPC receives the judgment, the SFIPC must notify investors about the judgment and its decision on whether

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Oct. 17, 2015).

263. Investors need to sign a contract with the SFIPC to authorize the right to bring litigation and other rights, such as to withdraw and to settle. The form of authorization contract is a standardized contract developed by the SFIPC and is *available at* the SFIPC.

264. Investor Protection Act § 31; Code of Civil Procedure § 70, para. 1, proviso.

to appeal the case.[265] If investors are not satisfied with the result of the class action or settlement, they may withdraw their authorization from the SFIPC and appeal the case themselves.[266] Of course, one may still consider these rights reserved to investors to be window dressing because investors do not have the ability to exercise their rights. However, this article is taking the view that, without negative evidences, the SFIPC and the current regime seem to have provided adequate protection to investors.

The fourth reason is that the settlement basically does not affect the remuneration of the SFIPC staff. They cannot receive benefits from the counterparties or any other sources. There is no reason for them to settle the case at a lower amount. Contrarily, they are under the invisible pressure from the high ranking officers, the board of directors and the investors to pursue the best interest of the investors. To settle at a higher amount will definitely make themselves feel good and relieved. This article suggests that the SFIPC and the FSC may conduct studies to see the possibility to create more incentives, such as performance bonus to the staff who contribute more in the class actions and settlement.

The fifth reason is that the SFIPC is an NPO and not the law firm. The SFIPC cannot receive compensation from the litigations. It is fair that the US court holds the Fairness Hearing to protect the interests of members of a class action because it is initiated by the law firm who may perform as lead plaintiff and may charge fees and receive compensation from the amount of settlement. Contrarily, investors do not pay attorney fees to the SFIPC. The SFIPC bears the court fees when it loses the case. Investors pay court fees only when the SFIPC wins the litigation. Court fees and necessary expenses will be deducted from the amount granted by the court before the compensation payment is distributed to investors.[267]

Six, the information of the settlement has actually already disclosed. The only question is whether we need to impose a disclosure requirement on the SFIPC. Currently, the SFIPC discloses the settlement amount on the annual basis in the annual reports. Moreover, it reports to the FSC more frequently including the individual settlement with the securities or futures companies and certified public accountants because they are under the supervision of the FSC according to the TSEA, Futures Trading Act and the Certified Public Accountant Act.[268] Although the parties involved in the settlement usually sign the settlement agreement including a confidentiality provision, the SFIPC reserves the right to disclose to the competent authority

265. Investor Protection Act § 32, para. 2.
266. Investor Protection Act § 32, para. 1.
267. Investor Protection Act § 33.
268. TSEA, §§ 56, 64-66; Futures Trading Act, §§ 4, 100, 101; Certified Public Accountant Act § 3.

and the court. Moreover, listed companies are required to disclose information regarding any major litigation in the footnote of the financial report.[269] Listed companies are also required in their annual report to analyze the impact of any litigation and non-litigation involved by the company, its directors, supervisor, managers, and shareholders who hold more than 10% of the outstanding shares.[270] Those information are easily accessible by the public free of charge at the Market Observation Post System maintained by the Taiwan Stock Exchange.[271] Therefore, it has already been the obligation of the listed companies, though not SFIPC, to disclose the settlement information according to the relevant laws and the information is publicly accessible.

The above discussions may partially remove the concern of potential abuse of power by the SFIPC in settlement process. In order to further ease the concerns, this article suggests that the SFIPC may invite outside directors or supervisors to participate the settlement so that the supervision can be strengthened. Some are concerned that the disclosure of the settlement will affect both the interests of the investors who empowered the SFIPC to sue and the current shareholders of the listed company involving in the litigation and settlement. If this is truly a concern, a possible way is to amend the law to require the disclosure to the court and the settlement agreement is subject to fairness review of the court. This may be an acceptable solution. However, this article does not think it is necessary under the current structure and operation.

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269. Regulation Governing the Preparation of Financial Reports by Securities Issuers § 15, para. 1, sub-para. 20. For example, a listed company Infodisc and its former chairman were sued by the SFIPC and this case was settled on April 14, 2014 and the SFIPC subsequently withdrew the case on April 21, 2014. The information regarding the litigation and the terms and conditions of the settlement was disclosed in the footnote of the Second Quarter Consolidated Financial Report. *See* INFODISC TECHNOLOGY CO. LTD., 2015 SECOND QUARTERLY CONSOLIDATED FINANCIAL REPORT 26, http://doc.twse.com.tw/pdf/201502_2491_AI1_20151109_192254.pdf (last visited Nov. 9, 2015).

270. The annual report shall analyze and assess "Litigious and non-litigious matters. List major litigious, non-litigious or administrative disputes that: (1) involve the company and/or any company director, any company supervisor, the general manager, any person with actual responsibility for the firm, any major shareholder holding a stake of greater than 10 percent, and/or any company or companies controlled by the company; and (2) have been concluded by means of a final and unappealable judgment, or are still under litigation. Where such a dispute could materially affect shareholders' equity or the prices of the company's securities, the annual report shall disclose the facts of the dispute, amount of money at stake in the dispute, the date of litigation commencement, the main parties to the dispute, and the status of the dispute as of the date of printing of the annual report . . ." Regulations Governing Information to be Published in Annual Reports of Public Companies § 20, para. 1, sub-para. 6(12). Take the same listed company mentioned in footnote 269 as an example, Infodisc's 2015 annual report disclosed the information of the litigation and settlement with the SFIPC as requested by the law. *See* INFODISC TECHNOLOGY COMPANY, 2015 ANN. REP. 180-82, http://doc.twse.com.tw/pdf/2014_2491_20150617F04_20151109_193652.pdf (last visited Nov. 9, 2015).

271. The home page of the Market Observation Post System is accessible at the following URL: http://emops.twse.com.tw/emops_all.htm (English) or http://mops.twse.com.tw/mops/web/index (Chinese) (last visited Mar. 1, 2016).

E. *Concerns from the Market: Abuse of Power and Decision-Making Process*

The board of directors of the SFIPC is composed of experienced market professionals and scholars specialized in law, accounting and finance. Among the 11 directors, 9 of them are outsider or independent directors.[272] Two executive directors are the chairman and the general manager. There are three supervisors who are market professionals and scholars specialize in accounting and financial management.[273] There is no doubt that the board plays an important role in overseeing the practice of the SFIPC and decides important policies. Of course, most of the policies may further be supervised by the competent authority. While the SFIPC is considered to be a role model of good corporate governance from the author's personal point of view, there are still room for improvement. At least, the SFIPC must be alert to make sure the concern that the board of an NPO plays no effective role in monitoring will not occur.[274] For example, a common phenomenon is that outside directors, similar to those in most companies, do not have full access to the operation of the SFIPC.[275] Although the outside directors may receive information from monthly board meetings, much inside information remains unfamiliar to them if not unknown. For example, although the board members may be informed of the settlement result and is aware of the existence and general content of Settlement Guideline, outsider directors are not involved in the process of settlement. It remains a business secret of the SFIPC. This article suggests that outside directors can be given more access to the operating information or be involved more in settlement negotiations to make this already accountable institution even more reliable to the investing public. For example, outside directors may be invited to participate

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272. The 9 outside directors, as of the current term, include the Chairman of the Taiwan Depository & Clearing Corporation, the Senior Executive Vice President of the Taiwan Stock Exchange, the Chairman of the Taiwan Securities Association, 5 law professors, and one economics professor. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 12-13.

273. The 3 supervisors, as of the current term, include the Vice President of Taipei Exchange and two accounting professors. SEC. & FUTURES INV. PROT. CTR., 2014 ANN. REP. 13.

274. The board of an NPO has been criticized to be "worse than for-profit boards because, in effect, they have no oversight." JOHN TROPMAN & THOMAS J. HARVEY, NONPROFIT GOVERNANCE: THE WHY, WHAT, AND HOW OF NONPROFIT BOARDSHIP 31 (2009), *cited from* George W. Dent, Jr., *Corporate Governance without Shareholders: A Cautionary Lesson from Non-Profit Organizations*, 39 DEL. J. CORP. L. 93, 109 n. 129 (2014).

275. As indicated by many authors, outside directors could not fully access the information partially because of lack of time, so they must rely heavily on insiders for information rather than on their own investigation. Nicola Faith Sharpe, *Information Autonomy in the Boardroom*, 2013 U. ILL. L. REV. 1089, 1092 (2013) ("Independent directors have less knowledge and information . . . outside directors rely almost exclusively on the CEO for information about the company."); Larry E. Ribstein, *Market vs. Regulatory Responses to Corporate Fraud: A Critique of the Sarbanes-Oxley Act of 2002*, 28 J. CORP. L. 1, 26 (2002) ("Outside directors lack the time to do more than review, rather than make, business decisions. They also must depend on insiders for critical information.").

settlement or discussion of important or controversial cases. To protect the business secret of the SFIPC, those outside directors as well as the employees have the duty to keep all of the sensitive information confidential. If necessary, it is suggested that a confidentiality agreement must be signed by the persons participating in each settlement.

Sometimes, it is difficult to tell what decision is the right one on controversial cases. For example, when the SFIPC confronts a case that the listed company goes into reorganization procedure, whether the SFIPC representing shareholders should vote for the reorganization plan and support the company is a difficult decision to make? The answer of course is "it depends." This is going to test the wisdom of the decision maker. Usually, for legal issues, the Legal Services Division will study and provide the professional opinion to the general manager and the chairperson for final approval. The decision could be to support the reorganization plan because if the listed company finally can successfully get out of the reorganization, it definitely will benefit the investors. However, the decision could be not to support the plan because the listed company has caused severe loss to the investors and sentimentally should not support the plan. The internal decision-making process is an important and interesting issue because it is mysterious to the outsiders. Because the SFIPC must report to the competent authority before any class action or derivative suit is filed with the court, some may question whether the competent authority has occasionally giving administrative guidance or instruction to the SFIPC on how it should react.[276] Some may also question whether the decision is formed by a standardized procedure on an informed basis or could be formed by one or few persons. The SFIPC is a non-profit organization and should be even more careful of every decision-making. This article suggests that more board involvement may help to solve many of the questions the investors and all of the listed companies would like to know. After a dozen year of operation, it may be an appropriate time to rethink the function of the board of the SFIPC, and what matters should be approved by the board or reported to the board.

F. *The Nature of Class Actions and Derivative Suits Brought by the SFIPC: Whether It is for Public Interest?*

One of the issues frequently discussed by local scholars is regarding the nature of class actions or derivative suits brought by the SFIPC. Whether those legal actions would change their nature from private interest to public interest because they are brought by the SFIPC, an NPO and NGO, or as a

276. The SFIPC has to file with the competent within 5 days any decision to bring class action or derivative suits is made. Investor Protection Institution Regulation § 5, para. 1 item 5 & para. 2.

"quasi-public enforcer"?[277] From the literatures, there are several reasons that the representative actions, including derivative suits and class actions, brought by the SFIPC are considered to possess the nature of public interest. First, it is a privilege empowered by the SFIPA that makes the representative litigations possess the nature of public interest.[278] Second, the representative litigation itself possesses the nature of public interest.[279] Third, the representative litigations brought by the quasi-public enforcer are for public interest because SFIPC itself has the nature of public interest.[280] Forth, deterrence effect of the representative litigations makes those litigations possess the nature of public interest.[281] Fifth, a combination of the former reasons makes the SFIPC representative litigations possesses stronger public interest nature.[282]

In contrast, some scholars are skeptical on the public interest nature of the representative litigations brought by the SFIPC. For example, one scholar expressed that the Article 10-1 of the SFIPA would not change the nature of the derivative suit merely because it is brought by the SFIPC because it is still based on the right of action according to the Company Act and is for the benefit of the company.[283] Similarly, he also shows his

277. Some scholars consider the SFIPC to be "semi-governmental organization" or "quasi-public enforcer" in addition to the fact that it is a nonprofit organization. *See* Wen-Yeu Wang & Jhe-Yu Su, *The Best of Both Worlds? On Taiwan's Quasi-Public Enforcer of Corporate and Securities Law*, 3 CHINESE J. COMP. L. 1, 1 (2015).

278. Tseng Wang-Ruu (曾宛如), *Woguo Daiwei Susong Zhi Shiji Gongneng Yu Weilai Fazhan: Sikao Shang De Mangdian* (*我國代位訴訟之實際功能與未來發展－思考上的盲點*) [*The Actual Function and Future Development of Taiwan's Derivative Litigations: Blind Spots in Thinking*], 159 YUEDAN FAXUE ZAZHI (月旦法學雜誌) [TAIWAN L. REV.], 27, 32 (2010) (noting that from the language of the provision, that the SFIPC has the right to bring derivative litigations is granted by the law and is irrelevant with the shareholder status).

279. Shao Ching-Ping (邵慶平), *Toubao Zhongxin Daibiao Susong De Gongyixing: Jianshi, Qianghua Yu Fanxing* (投保中心代表訴訟的公益性：檢視、強化與反省) [*Representative Litigations by Investor Protection Center as Public Interest Suits: A Reexamination, Reconstruction and Reflection*], 44 TAIDA FAXUE LUNCONG (臺大法學論叢) [NTU L.J.] 223, 229 (2015).

280. Wang & Su, *supra* note 277, at 5 (noting that "a 'semi-public enforcer' naturally would act in the 'public interest' and, therefore, that its interests would align naturally with the clients' interest").

281. Wang & Su, *supra* note 277, at 17-18 (viewing that the SFIPC is "the de facto monopoly provider of the private litigation enforcement," its own view on the securities litigation . . . to include both compensation and deterrence, and from legislative intent, the SFIPC "may be expected to serve a deterrent function").

282. Shao, *supra* note 279, at 230 (". . . even a representative litigation by private party containing certain degree of public interest. Apparently the public interest is stronger if it is brought by the SFIPC and this can be confirmed from Article 28 of the SFIPA that 'the protection institution may for the public interest . . . bring class action or arbitration.' . . . Moreover, from practices, the SFIPC class actions and judicial removal litigations also reflect public interest consideration and not merely the interest of investors, companies and shareholders.").

283. Liaow Ta-Ying (廖大穎), *Lun Zhengquan Touziren Baohu Jigou Zhi Gudong Daibiao Susong Xinzhi* (*論證券投資人保護機構之股東代表訴訟新制*) [*Commenting on the New Regime of Representative Litigations by Investor Protection Institution*], 32 YUEDAN MMINSHANG FA ZAZHI (月旦民商法雜誌) [CROSS-STRAIT L. REV.] 5, 17-18 (2011).

reservations on the public interest nature of class actions.[284] Another scholar indicated that on one hand the statute created the SFIPC to protect investor to help healthy development of the securities market, and Article 10-1 of the SFIPA authorizing the SFIPC to bring derivative litigation without requiring its shareholding have colored the SFIPC derivative litigation with public interest nature. On the other hand, however, the fact that the SFIPC does hold shares of listed companies and the SFIPA specifically mentioned that the derivative litigation in SFIPA is the same as mentioned in the Company Act make the SFIPC derivative litigation just like traditional derivative litigation. These factors all indicate that the nature of derivative litigations is unclear.[285]

In viewing this issue, this article is reserved on the answer whether the representative litigations brought by the SFIPC are in the nature of public interest. First of all, "public interest" itself is difficult to define and this would affect the answer regarding whether the SFIPC representative litigations are in the nature of public interest and whether the SFIPC brings those litigations for the public interest. For example, whether public interest in this context represents the interests of shareholders, investors, to maintain the order of the market or to deter the occurrence of wrongdoing? Some consider that "a 'semi-public enforcer' naturally would act in the 'public interest' and, therefore, that its interests would align naturally with the clients' interest."[286] Some consider that derivative litigations and class actions are for the interests of the company or investors and this would not make them to have the public interest nature.[287] Some consider that class actions are for the group interests (or class interests) and public interest but some distinguish the class interests from the public interest.[288] Some may consider public interest to be that inherent in the law. So, if the policy adopted by the SFIPC conform to the policy of the SFIPA, it is in line with the public interest. However, a law including dual purposes to protect both public and private interests, such as the TSEA and the SFIPA, on the one hand protects investors and shareholders but on the other hand deters the securities fraud and maintains the integrity of the market.[289] In this case, do

284. *Id.* at 18.

285. Tseng , *supra* note 278, at 32.

286. Wang & Su, *supra* note 277, at 5.

287. Liaow, *supra* note 283.

288. Shen Kuan-Ling (沈冠伶), *Duoshu Fenzheng Dangshiren Zhi Quanli Jiuji Chengxu: Cong Xuanding Dangshiren Zhidu Dao Tuanti Susong* (*多數紛爭當事人之權利救濟程序：從選定當事人制度到團體訴訟*) [*The Remedy Procedure of Disputes Involving Multi-Parties: From the Regime of Appointing Party to Class Action*], *in* SUSONGQUAN BAOZHANG YU CAIPANWAI FENZHENG CHULI (訴訟權保障與裁判外紛爭處理) [THE PROTECTION OF THE RIGHT OF ACTION AND ALTERNATIVE DISPUTE RESOLUTION] 176, 199 n. 60 and accompanying text (2012).

289. For the discussion of the legislative purpose of the securities law Taiwan, *see generally*, Wang Chih-Cheng (王志誠), *Zhengquan Jiaoyi Fa Mudelun Zhi Xingsi Yu Shijian* (*證券交易法目的*

we consider the representative actions brought by the SFIPC in the nature of public interest? Because the SFIPC is an NPO and is considered to act for the public interest, this sometimes puts the SFIPC into puzzled situations. For instance, whether the SFIPC may consider the cooperative attitude and other factors in settling the case or should consider only on how to maximize compensation for investors? From the above discussion, scholars seem to have different answers regarding what the public interest is.

One dimension of the representative litigations is to look at its purpose, which is to compensate the injured company or investors. Disregarding the fact that the SFIPC owns shares of each public company, the representative litigation is for the interest of specific private parties and therefore is considered to be private in nature. However, before the creation of the SFIPC there are relatively few representative litigations based on the Company Act and the TSEA. Article 10-1 and Article 28 of the SFIPA make it possible to have securities class actions and derivative litigations. Therefore, it does create certain degree of deterrence. From this dimension, the representative litigations brought by the SFIPC do have the public-serving function.

The only type of litigation brought by the SFIPC that apparently have a public-serving function is to sue for judicial removal of directors according to Article 10-1 of the SFIPA. Under the Company Act, in order to remove a director, in addition to showing that a director has misconduct causing significant injuries to the company or materially violate the law or the articles of incorporation, the prerequisite is that there was a shareholders' meeting having an agenda item or resolution proposal to remove the director and it was disapproved.[290] The regulatory philosophy is that whether to remove a director is the right of shareholders. The court would not intervene unless shareholders had attempted to remove such director but was unable to do so. Article 10-1 erases the prerequisite and allows the SFIPC to file suit for judicial removal of directors, which has dramatically lowered the barrier and made this type of suit practicable.[291] Without satisfying the prerequisite, it becomes the sole discretion of the SFIPC to bring the suit and wait for the decision of the court. The decision to bring the suit is not premised on the signal of the failed attempt of shareholders' meeting to remove the director. The SFIPC at this point can be considered to be the whistleblower or gatekeeper for the interest of investing public and this type of suits

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論之省思與實踐) [*The Reflective Thinking and Practice of the Purpose of Securities and Exchange Act*], 75 JIBAO YUEKAN (集保月刊) [TAIWAN SEC. CENT. DEPOSITORY MONTHLY] 3, 3-18 (2000).

290. Taiwan Company Act § 200.

291. In the past, the court seldom exercises its judicial power to remove a director and most of the cases were denied because the plaintiffs did not satisfy the prerequisite. *See* Lin, *supra* note 205, at 49-51.

demonstrate the public-serving function.

G. *Future Challenges to the Investor Protection System*

The SFIPC has operated for more than a dozen years. The Investor Protection Fund is managed properly and maintained at a healthy level. In addition to some issues discussed above, there are certain aspects that may affect the future operation of the SFIPC. One of the major aspects is if Taiwan adopted the civil penalties regime against insider trading and other securities frauds, there will be a significant impact on the businesses of the SFIPC. Taiwan has conducted a couple of research projects on the feasibility to introduce the civil penalties liability on securities law violations. Although it is still in the preliminary study stage, once the civil penalty regime is adopted, most civil penalty payment will go to the treasury and this will have great impact on the class actions brought by the SFIPC in terms of the compensation that can be realized from the judgment disregarding whether the civil penalty regime is patterned after the Japanese, Singapore or the US model.[292] Because defendants have limited assets, the imposition of new civil penalty liability together with the disgorgement and criminal fines will incur similar "crowding out effect"[293] on investors' recovery of damages from class actions unless there is a mechanism similar to the "FAIR Fund" authorized by the US Sarbanes-Oxley Act 2003 and operated by the SEC where the fund can be used to redress the harm of investors.[294]

VI. CONCLUSION

Taiwan enacted the SFIPA in 2002 and established the SFIPC in January

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292. *See e.g.*, Lin Andrew Jen-Guang (林仁光) et al., Woguo Zhengquan BuFa Xingwei Caiqu Xingzheng Chufa Kexingxing Zhi Yanjiu: Shihe Woguo Zhi Moshi Jiangou (我國證券不法行爲採取行政處罰可行性之研究－適合我國之模式建構) [A Study of the Viability of Adopting Administrative Sanctions against Securities Wrongdoings in Taiwan: Structuring a Suitable Mode] (Nov. 30, 2014) (unpublished research report) (on file with Taiwan Stock Exchange Corp.).

293. The crowding out effect is used by economists to describe the phenomenon that increasing the investment in public sector will decrease the use of fund in private sectors. The typical example is whether a nonprofit organization funded by the government will reduce the willingness of donation from private sectors. Dru Stevenson, *A Million Little Takings*, 14 U. PA. J. L. & SOC. CHANGE 1, 37-38 (2011) (The answer toward the question whether there would be the crowding out effect is diversified). This term was later on used in different situations to describe the phenomenon that the expansion of one factor and its adverse impact on the other. *See e.g.*, Emad H. Atiq, Note, *Why Motives Matter: Reframing the Crowding out Effect of Legal Incentives*, 123 YALE L.J. 862, 1070 (2014). This articles uses crowding out effect to show that once the violators pay the fine to the government, there will be less assets left to compensate the individual investors.

294. Though with critics, the SEC has been marked as having "quietly become an important source of compensation for defrauded investors." Urska Velikonja, *Public Compensation for Private Harm: Evidence from the SEC's Fair Fund Distributions*, 67 STAN. L. REV. 331, 332 (2015).

2003, bringing Taiwan's investor protection system into a more mature stage. The SFIPC's ability to bring class action for investors and to bring derivative suit according to the SFIPA makes it a very unique investor protection institution compared with the services provided by investor protection organizations in other jurisdictions. This article considers the SFIPC a role model of good corporate governance that is evidenced by the organizational structure, the composition of the board of directors, the independence of the board, monthly board meetings, frequent consulting meetings, and a professional Mediation Committee composed of members with diversified expertise. Furthermore, except for the chairperson who participates daily operation, other directors and supervisors of the SFIPC take the position as an honor without receiving any compensation except for a minimum amount of transportation allowance.[295] There is no reason for them to ruin their reputation and allow the SFIPC to abuse its power.

Reviewing the operation of the SFIPC in the past 12 years, there is no doubt that the SFIPC has performed pretty well in providing excellent investor protection services. However, there are still rooms for improvement. We summarize as follows:

First, regarding the investor protection fund, this article suggests to conduct periodical review of the fund size of the SFIPC Fund to accommodate the changes of market conditions and the securities and futures industries. Also, a review of the nature of the investor protection fund is suggested to reassure whether the current methodology of assessment of the market participants to contribute to the fund shall remain the same or should reconsider whether to adopt risk-based assessment approach similar to the Canadian model.

Second, promoting the mediation services and providing pre-training program for mediators are highly recommended. Mediation service can help solve disputes between investors and securities or futures firms. Statistical number shows that in more than fifty percent of the mediation cases, the counter parties rejected to participate mediation. Although the SFIPA has modified to introduce a compulsory mediation regime requiring respondents of small amount disputes to show up at the mediation conference, the success rate remains low. More efforts on education to investors regarding the function of mediation is needed. Additionally, although the mediators are experts in the law, accounting, finance, and the markets, a pre-training course or workshop to provide tips and experiences of mediation skills will ensure a professional mediation committee could perform more professional.

Third, although it is academically important to discuss the nature of the representative litigations brought by the SFIPC, it is more important for the

295. SFIPC Charter § 14.

SFIPC to clarify its own role and consistently perform the missions designated by the SFIPA. The uncertainty of its own role may have caused dilemma on certain matters to the SFIPC, such as what factors should be taken into consideration in settling the case, whether to support the corporate reorganization plan, and whether to remove a director from its office. It is also important for SFIPC to identify what discretions are reasonable and allowed by the SFIPA. For example, whether to pursue the most compensation is the major, if not the sole, consideration of the SFIPC when deciding whether to bring the representative litigations and the terms and conditions of the settlement.

Fourth, because settlement has become an important strategy to receive compensation from class action defendants, how the SFIPC deals with the settlement is critical to the success of the investor protection system. Although the SFIPC has demonstrated its professional performance in protecting investors, there are still concerns from the public that the SFIPC as a quasi-public enforcer may be improperly influenced by the invisible hands of the government, particularly on the matter whether to bring the litigation and how to settle the case. As discussed earlier, this article does not speculate the possibility of these concerns and instead takes the view that the possibility is pretty low. Besides, the settlement affects only the investors who delegated the litigation power to the SFIPC. However, this article suggests that participation of non-executive director in settlement meetings, and appropriate disclosure of the settlement terms and conditions to the court along with court reviews on the fairness of the settlement will not only ease the concerns of the public, but can also provide more confidence to investors, while the SFIPC can still preserve the business secrets in conducting the settlement. Of course, an amendment of the SFIPA may be needed to achieve this goal.

Fifth, some of the issues existing within the organization, such as how to keep the experienced staff lawyers, should be further contemplated. It is also important to assess the manpower, continue dialogue, investor protection education programs, and more detailed rules regarding the function and power of the board meeting and more involvement of the non-executive board members in certain area of practices. This not only would improve the quality of the services but also could ease the concern of the public on the impartiality of the SFIPC and its agency cost issue, and can also ensure that the SFIPC would not arbitrarily abuse its power. This would further enhance the corporate governance of the SFIPC.

Six, the Supreme Court of Taiwan can take the opportunities to harmonize the disagreements of opinions on important issues. Otherwise, amendment of the TSEA and the SFIPA may be needed to clarify the ambiguities and uncertainties. There are factors involving the substantive

law issues that affect the performance result of the SFIPC and are beyond the power of the SFIPC to solve. It can be improved by awaiting the clarification and opinions of the Supreme Court to provide clear guidelines. For example, with regard to the securities litigations, some of the issues exist within the securities law itself, such as disagreement on what constitute a prospectus, whether business judgment rule is applicable and how it can be applied, and whether the fraud on the market theory and efficient market hypothesis are applied in analyzing the reliance issue. What are the criteria in determining whether the litigation brought by the SFIPC meets the requirement of "securities event" and "public interest"? For instance, whether the SFIPC may representing shareholders of a listed company to bring class action to require the issuer to pay cash dividends that have been approved by shareholders' meeting?[296] A more technical issue is how to decide the proportionate liability in fraudulent financial reporting cases. Aside from waiting for the Supreme Court to unify the legal opinions, this sort of problems can be solved by the amendment of the securities law to clarify such issues, too.

This article take positive view on the performance of the SFIPC that has already been active in enhancing the corporate governance of publicly held corporation by bringing derivative suits and other strategies. Hopefully, the role of the SFIPC in providing investor protection services can be more successful at both the rear-end dispute resolutions and the front-end corporate governance or deterrence of the occurrence of corporate misconducts.

296. Both district court and high court dismissed SFIPC's class action claiming for the payment of cash dividend and held that it is not a "securities event" within the meaning of Article 28 of the SFIPA. Xinbei Difang Fayuan (新北地方法院) [Xinbei District Court], Minshi (民事) [Civil Division], 102 Jin Zi No. 10 (102金字第10號民事判決) (2014) (Taiwan); Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 103 Jin Shang Zi No. 12 (103金上字第12號民事判決) (2015) (Taiwan).

REFERENCES

Atiq, E. H. (Note) (2014). Why Motives Matter: Reframing the Crowding out Effect of Legal Incentives. *Yale Law Journal, 123*, 862-1117.

Barney, J. L. (2009). Corporate Scandals, Executive Compensation, and International Corporate Governance Convergence: A U.S.-Australia Case Study. *Temple International & Company Law Journal*, *23*, 231-267.

Bevacqua, R. (2005). Economist Intelligence Unit (Ed.), *The Way of the Merchant: Corporate Social Responsibility in Japan.* London, UK: Economist Intelligence Unit. Retrieved from http://graphics.eiu.com/files/ad_pdfs/CSR_JP_English.pdf.

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Juanzhu Zhangcheng (財團法人證券投資人及期貨交易人保護中心) [Securities and Futures Investors Protection Center], Tuanti Susong Ji Zhongcai: Qiuchang Anjian Huizongbiao (團體訴訟及仲裁－求償案件彙總表) [Class Actions and Arbitration: The List of the Cases]. Retrieved from http://www.sfipc.org.tw/MainWeb/Article.aspx?L=1&SNO=XqlDNAZ/9DguYlTrwJhJrQ==.

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Juanzhu Zhangcheng (財團法人證券投資人及期貨交易人保護中心) [Securities and Futures Investors Protection Center], Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Banli Zhengquan Qihuo Shijian Hezuo Zhuichang Chuli Banfa Zong Shuoming (財團法人證券投資人及期貨交易人保護中心辦理證券期貨事件合作追償處理辦法總說明) [General Information of the SFIPC Rules Regarding the Handling of Cooperative Recovery Matters]. Retrieved from http://www.sfipc.org.tw/WebLoadFileUse.ashx?L=1&SNO=pKkYuFUGVo03ZTbdfi3N2w==.

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Juanzhu Zhangcheng (財團法人證券投資人及期貨交易人保護中心捐助章程) [Securities and Futures Investors Protection Center Charter], January 3, 2003, as amended April 9, 2013 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Banli Tuanti Susong Huo Zhongcai Shijian Chuli Banfa (財團法人證券投資人及期貨交易人保護中心辦理團體訴訟或仲裁事件處理辦法) [Securities and Futures Investors Protection Center Rules Regarding the Handling of Class Actions and Class Arbitrations], April

8, 2003, as amended August 31, 2009 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Banli Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa Dishi Tiao Zhiyi Susong Shijian Chuli Banfa (財團法人證券投資人及期貨交易人保護中心辦理證券投資人及期貨交易人保護法第十條之一訴訟事件處理辦法) [Securities and Futures Investors Protection Center Rules Regarding the Handling of Derivative Suits and Removal of Directors/Supervisors Cases], August 31, 2009, as amended July 15, 2014 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Tiaochu Shoufei Biaozhun (財團法人證券投資人及期貨交易人保護中心調處收費標準) [Securities and Futures Investors Protection Center Mediation Application Fee Rule], April 21, 2003, as amended March 11, 2004 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Tiaochu Weiyuanhui Weiyuan Linxuan Ji Yunzuo Yuanze (財團法人證券投資人及期貨交易人保護中心調處委員會委員遴選及運作原則) [Securities and Futures Investors Protection Center Guidelines Regarding the Selection of Mediators and the Operation of Mediation Committee], April 18, 2003, as amended August 31, 2009 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Qude Huo Chufen Guding Zichan Chuli Chengxu (財團法人證券投資人及期貨交易人保護中心取得或處分固定資產處理程序) [Securities and Futures Investors Protection Center Rules Governing the Acquisition or Disposition of Fixed Assets], May 23, 2003 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Yewu Quize (財團法人證券投資人及期貨交易人保護中心業務規則) [Securities and Futures Investors Protection Center Operating Rules], February 6, 2003, as amended July 9, 2015 (Taiwan).

Caituan Faren Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Zhongxin Zuzhi Guicheng (財團法人證券投資人及期貨交易人保護中心組織規程) [Securities and Futures Investors Protection Center Organizational Rules], February 24, 2003, as amended September 2, 2009 (Taiwan).

Canadian Investor Protection Fund (2013). *2013 Annual Report*. Toronto, Canada: Canadian Investor Protection Fund.

Canadian Investor Protection Fund (2014). *2014 Annual Report*. Toronto, Canada: Canadian Investor Protection Fund.

Canadian Investor Protection Fund (n.d.). About Us: The CIPF Fund, Fund

Resources and Liquidity. Retrieved from http://www.cipf.ca/Public/AboutUs/TheCIPFFund/Fundresources.aspx.

Canadian Investor Protection Fund (n.d.). CIPF Timeline. Retrieved from http://www.cipf.ca/Public/AboutUs/HistoryofCIPF/CIPFTimeline.aspx.

Canadian Investor Protection Fund (n.d.). Code of Conduct. Retrieved from http://www.cipf.ca/public/AboutUs/Governance/Codedeconduite.aspx.

Canadian Investor Protection Fund (n.d.). Coverage Policy. Retrieved from http://www.cipf.ca/Public/CIPFCoverage/CoveragePolicy.aspx.

Canadian Investor Protection Fund (n.d.). Fund Resources and Liquidity. Retrieved from http://www.cipf.ca/Public/AboutUs/TheCIPFFund/Fundresources.aspx.

Canadian Securities Administrators (n.d.). Related Links. Retrieved from https://www.securities-administrators.ca/industry_resources.aspx?id=57&terms=CIPF%20and%20IIROC.

China Securities Investor Protection Fund (2007). *2007 Annual Report*. Beijing, China: China Securities Investor Protection Fund.

China Securities Investor Protection Fund (2014). *2014 Annual Report*. Beijing, China: China Securities Investor Protection Fund.

China Securities Investor Protection Fund (March 29, 2011). Corporate Profile. Retrievd from http://www.sipf.com.cn/NewEN/aboutsipf/corporateprofile/03/40081.shtml.

Conley, J. M. & Williams, C. A. (2005). Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement. *Journal of Corporation Law, 31*(1), 1-38.

Cornerstone Research (2015). *Securities Class Action Settlements: 2014 Review and Analysis*. Retrieved from http://securities.stanford.edu/research-reports/1996-2014/Settlements-Through-12-2014.pdf.

Dent, Jr. G. W. (2014). Corporate Governance without Shareholders: A Cautionary Lesson from Non-Profit Organizations. *Delaware Journal of Corporate Law, 39*, 93-116.

Eisenhofer, J. W. (2006). Institutional Investors as Trend-Setters in Post-PSLRA Securities Litigation. In J. S. Feldman & K. M. Fleischman (Eds.), *Class Action Litigation 2006: Prosecution and Defense Strategies*. (pp. 579-593) (2006).

Federal Rules of Civil Procedure, Title V, Rules 26-37.

Fisch, J. E. (1997). Class Action Reform: Lessons from Securities Litigation, *Arizona Law Review, 39* (2), 533-560.

Gongsi Fa (公司法) [Taiwan Company Act], December 26, 1929, as amended March 18, 2016 (Taiwan).

Grace, S. M. (2006). Strengthening Investor Confidence in Europe: U.S.-Style Securities Class Actions and the Acquis Communautaire, *Transnational Law and Policy, 15*(2), 281-304.

Hadas, E. (2015, February 2), Negative Yields can Go Much More Negative, *Reuters Breakingviews*. Retrieved from http://blogs.reuters.com/breakingviews/.

Harned, P. J. (2007). Do Ethics Programs Really Work?. In Kaye Scholer LLP (Ed.), *Corporate Compliance and Ethics Institute 2007*. (pp. 317-331). New York, NY: Practising Law Institute.

Hew, L. & Ismail, M. N. B. (2003). Investor Protection in the Asia Pacific: Findings of the Asia-Pacific Regional Committee Survey on Investor Protection. Retrieved from http://www.oecd.org/finance/financial-markets/19390444.pdf.

Hill, J. G. (2005). Regulatory Responses to Global Corporate Scandals. *Wisconsin International Law Journal, 23*(3), 367-416.

Infodisc Technology Company (2015a). *2015 Anniversary Report*. Retrieved from http://doc.twse.com.tw/pdf/2014_2491_20150617F04_20151109_193652.pdf.

Infodisc Technology Company (2015b). *2015 Second Quarterly Consolidated Financial Report*. Retrieved from http://doc.twse.com.tw/pdf/201502_2491_AI1_20151109_192254.pdf.

Japan: A Way out of Financial Gridlock? (2002, October 7). *Business Week*, pp. 88. Retrieved from http://www.bloomberg.com/.

Jingjibu Tongjiju (經濟部統計局) [Department of Statistics, Ministry of Economic Affairs (MOEA)] (n.d.). Tongji Zhibiao Jianyi Chaxun (統計指標簡易查詢) [Common Query for Economic Statistics]. Retrieved from http://dmz9.moea.gov.tw/GMWeb/common/CommonQuery.aspx.

Jinrong Jiandu Guanli Weiyuanhui (金融監督管理委員會) [Financial Supervisory Commission], 102 Financial Supervisory Commission Order Financial-Supervisory-Securities-Issuance No. 10200531121 (102金管證發字第10200531121號函釋) (December 31, 2015) (Taiwan).

Klock, M. (2011). Improving the Culture of Ethical Behavior in the Financial Sector: Time to Expressly Provide for Private Enforcement against Aiders and Abettors of Securities Fraud. *Penn State Law Review, 116*(2), 437-493.

Kowsmann, P. (2015, May 28). Bank of Portugal Targets Ex-Banco Espirito Santo Officials, Wall Street Journal. Retrieved from http://www.wsj.com/articles/bank-of-portugal-fines-ex-banco-espirito-santo-officials-1432833170.

Kuo, D.-W. (郭大維) (2009). Woguo Zhengquan Touziren Baohu Jizhi Zhi Xingsi (Xia) (我國證券投資人保護機制之省思(下)) [Reflective Thinking of Taiwan's Investor Protection Mechanism, II]. *Taiwan Faxue Zazhi (台灣法學雜誌) [Taiwan Law Journal], 125*, 22-35.

Lai, I.-J. (賴英照) (2012). *Laiyingzhao Shuofa—Cong Neixian Jiaoyi Dao Qiye Shehui Zeren* (*賴英照說法：從內線交易到企業社會責任*) [*Lai In-Jaw Saying: From Insider Trading to Corporate Social Responsibility*]. Taipei: Linking Publishing. (Original work published in 2007).

Liaow, T.-Y. (廖大穎) (2011). Lun Zhengquan Touziren Baohu Jigou Zhi Gudong Daibiao Susong Xinzhi (論證券投資人保護機構之股東代表訴訟新制) [Commenting on the New Regime of Representative Litigations by Investor Protection Institution]. *Yuedan Mminshang Fa Zazhi* (*月旦民商法雜誌*) [*Cross-Strait Law Review*]*, 32*, 5-20.

Liaow, T.-Y. (廖大穎) (2013). *Zhengquan Jiaoyi Fa Daolun* (*證券交易法導論*) [*Introduction of Securities Regulation*] (6th ed.). Taipei, Taiwan: Sanmin Book Company.

Lin, A. J.-G. (林仁光) (2012). Caipan Jieren Dongshi Ji Dongshizhang (裁判解任董事及董事長) [Judicial Removal of Director and Chairperson]. *Yuedan Faxue Jiaoshi* (*月旦法學教室*) [*Taiwan Jurist*]*, 114*, 42-55.

Lin, A. J.-G. (林仁光), Chiang, Y.-K. (江耀國) & Tsai, Y.-H. (蔡英欣) (2014). *Woguo Zhengquan Bufa Xingwei Caiqu Xingzheng Chufa Kexingxing Zhi Yanjiu: Shihe Woguo Zhi Moshi Jiangou* (*我國證券不法行爲採取行政處罰可行性之研究－適合我國之模式建構*) [*A Study of the Viability of Adopting Administrative Sanctions against Securities Wrongdoings in Taiwan: Structuring a Suitable Mode*] (unpublished research report) (on file with Taiwan Stock Exchange Corp.).

Lin, C.-H. (林俊宏) (2005). *Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Fazhi Zhi Yanjiu* (*證券投資人及期貨交易人保護基金法制之研究*) [*A Study on the Securities and Futures Investors Protection Fund*] (unpublished LL.M. thesis). Taipei, Taiwan: Soochow University.

Lin, C.-H. (林俊宏) (2006). Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Fazhi Zhi Jieshao (證券投資人及期貨交易人保護基金法制之介紹) [Introduction of the Securities Investors and Futures Traders Protection Fund]. *Zhengjiao Ziliao/Zhengquan Fuwu* (*證交資料／證券*

服務) [*TSEC Securities Services Review*], *530*, 2-38.

Lin, Y.-H. (林郁馨) (2014). Touziren De Nuoya Fangzhou: Touziren Baohu Zhongxin Yu Zhengquan Tuanti Susong Zhi Shizheng Yanjiu (投資人的諾亞方舟：投資人保護中心與證券團體訴訟之實證研究) [Noah's Ark for Investors: An Empirical Study of Securities Class Action and the Investor Protection Center in Taiwan]. *Yuedan Faxue Zazhi* (*月旦法學雜誌*) [*The Taiwan Law Review*]*, 229*, 75-97.

Lin, Y.-H. (林鈺雄) (2010). *Xingshi Susong Fa Xiace* (*刑事訴訟法(下冊)*) [*Code of Criminal Procedure, Vol. 2*] (6th ed.). Taipei, Taiwan: Angle Publishing Company.

Liu, L.-Y. (劉連煜) (2012). *Xin Zhengquan Jiaoyi Fa Shili Yanxi* (*新證券交易法實例研習*) [*Modern Securities Law: Cases and Explanations*] (10th ed.). Taipei, Taiwan: Angel.

Millon, D. (2001). Two Models of Corporate Social Responsibility. *Wake Forest Law Review, 46*, 523-540.

Minshi Susong Fa (民事訴訟法) [Code of Civil Procedure], Febuary 1, 1968, as amended July 1, 2015 (Taiwan).

Nicola Faith Sharpe (2013). Information Autonomy in the Boardroom. *University of Illinois Law Review, 2013*, 1089-1130.

Nikkey Weekly (Japan) (Feb. 10, 2003). Negative-Interest Loan Emerge, Lexis-Nexis, Business, Business News. Retrieved from http://web.lexis-nexis.com/universe/document?_m=cfea2cd5127b073419480435594ce9af&_docnum=8&wchp=dGLbVzb-zSkVb&_md5=54dc06115c6939f7d1115105b201504a.

North American Securities Administrators Association (n.d.). NASAA History a Century of Investor Protection. Retrieved from http://www.nasaa.org/about-us/nasaa-history/.

Puchniak, D., Baum, H. & Ewing-Chow, M. (Eds.) (2012). *The Derivative Action in Asia: A Comparative and Functional Approach*. Cambridge, U.K.: Cambridge University Press.

Ratner, M. (2015). Class Counsel as Litigation Funders. *Georgetown Journal of Legal Ethics, 28*, 271-316.

Ribstein, L. E. (2002). Market vs. Regulatory Responses to Corporate Fraud: A Critique of the Sarbanes-Oxley Act of 2002. *Journal of Corporation Law, 28*(1), 1-74.

Rose, A. M. (2008). Reforming Securities Litigation Reform: Restructuring the Relationship between Public and Private Enforcement of Rule 10b-5. *Columbia Law Review, 108*(6), 1301-1364.

Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204.

Scott, H. S. & Silverman, L. N. (2013). Stockholder Adoption of Mandatory Individual Arbitration for Stockholder Disputes. *Harvard Journal of Law & Public Policy, 36*, 1187-1230.

Securities and Exchange Commission, Enforcement Manual (2015).

Securities and Futures Act, January 1 2002, as amended October 7, 2014 (Singapore). Retrieved from http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis.

Securities and Futures Institute (1998). *1998 Annual Report*. Taipei, Taiwan: Securities and Futures Institute.

Securities and Futures Institute (2002). *2002 Annual Report*. Taipei, Taiwan: Securities and Futures Institute.

Securities and Futures Institute (2003). *2003 Annual Report*. Taipei, Taiwan: Securities and Futures Institute.

Securities and Futures Investor Protection Center (2003). *2003 Annual Report*. Taipei, Taiwan: Securities and Futures Investor Protection Center.

Securities and Futures Investor Protection Center (2005). *2005 Annual Report*. Taipei, Taiwan: Securities and Futures Investor Protection Center.

Securities and Futures Investor Protection Center (2010). *2010 Annual Report*. Taipei, Taiwan: Securities and Futures Investor Protection Center.

Securities and Futures Investor Protection Center (2013). *2013 Annual Report*. Taipei, Taiwan: Securities and Futures Investor Protection Center.

Securities and Futures Investor Protection Center (2014). *2014 Annual Report*. Taipei, Taiwan: Securities and Futures Investor Protection Center.

Securities Investor Protection Act of 1970, Pub. L. No. 91-598, § 1(a) (1970), as amended at Pub. L. No. 112-190 (2012).

Securities Investor Protection Corporation (1998). *1998 Annual Report*. Washington, DC: Securities Investor Protection Corporation.

Securities Investor Protection Corporation (2010). *2010 Annual Report*. Washington, DC: Securities Investor Protection Corporation.

Securities Investor Protection Corporation (2014). *2014 Annual Report*. Washington, DC: Securities Investor Protection Corporation.

Securities Investor Protection Corporation (n.d.). SIPC Mission. Retrieved from http://sipc.org/about-sipc/sipc-mission.

Shao, C.-P. (邵慶平) (2015). Toubao Zhongxin Daibiao Susong De Gongyixing: Jianshi, Qianghua Yu Fanxing (投保中心代表訴訟的公益性：檢視、強化與反省) [Representative Litigations by Investor Protection Center as Public Interest Suits: A Reexamination, Reconstruction and Reflection]. *Taida Faxue Luncong* (*臺大法學論叢*) [*National Taiwan University Law Journal*], *44*(1), 223-262.

Shelley, S. M. (2006). Entrenched Managers & Corporate Social Responsibility, *Penn State Law Review, 111*(1), 107-136.

Shen, K.-L. (沈冠伶) (2012). Duoshu Fenzheng Dangshiren Zhi Quanli Jiuji Chengxu: Cong Xuanding Dangshiren Zhidu Dao Tuanti Susong (多數紛爭當事人之權利救濟程序：從選定當事人制度到團體訴訟) [The Remedy Procedure of Disputes Involving Multi-Parties: from the Regime of Appointing Party to Class Action]. In Shen K.-L. (Ed.), *Susongquan Baozhang Yu Caipanwai Fenzheng Chuli* (*訴訟權保障與裁判外紛爭處理*) [*The Protection of the Right of Action and Alternative Dispute Resolution*]. (pp. 176-206). Taipei, Taiwan: Sanmin Book Company.

Sholeen, E. P. & Baker, R. L. (2007). Unlocking the Mysteries of SOX Whistleblower Claims. *The Houston Lawyer, 44*, 10-17.

Shyu, S.-H. (許士宦) (2014). *Zhengju Souji Yu Fenzheng Jiejue* (*證據蒐集與紛爭解決*) [*Discovery of Evidence and Dispute Resolution*] (2nd ed.). Taipei, Taiwan: Sharing Publishing Company.

Singapore Exchange (2015). *2015 Annual Report*. Singapore, Singapore: Singapore Exchange.

Solan, L. M. (1999). Refocusing the Burden of Proof in Criminal Cases: Some Doubt about Reasonable Doubt. *Texas University Law Review, 78*, 105-147.

Stevenson, D. (2011). A Million Little Takings. *University of Pennsylvania Journal of Law and Social Change*, 14, 1-51.

Stoffelmayr, E. & Diamond, S. S. (2000). The Conflict between Precision and Flexibility in Explaining "Beyond a Reasonable Doubt". *Psychology, Public Policy, and Law, 6*(3), 769-787.

Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 87 Chong Su Zi No. 1347 (87重訴字第1347號民事判決) (2006) (Taiwan).

Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 90 Su Zi No. 4550 (90訴字第4550號民事判決)

(2002) (Taiwan).

Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 102 Su Zi No. 180 (102訴字第180號民事判決) (2014) (Taiwan).

Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 102 Jin Zi No. 97 (102金字第97號民事判決) (2015) (Taiwan).

Taipei Difang Fayuan (臺北地方法院) [Taipei District Court], Minshi (民事) [Civil Division], 103 Jin Zi No. 42 (103金字第42號民事判決) (2015) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 96 Jin Shang Zi No. 1 Decrees (96金上字第1號民事裁定) (Apr. 30, 2010 & Jan. 31, 2011) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 96 Jin Shang Zi No. 1 (96金上字第1號民事判決) (2011) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 101 Jin Shang Zi No. 20 (101金上字第20號民事判決) (2015) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 101 Jin Shang Geng (1) Zi No. 1 (101金上更(一)字第1號民事判決) (pending Taiwan High Court March 10, 2016) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 103 Shang Zi No. 696 (103上字第696號民事判決) (2015) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 103 Jin Shang Zi No. 12 (103金上字第12號民事判決) (2015) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Minshi (民事) [Civil Division], 104 Jin Shang Zi No. 6 (104金上字第6號民事判決) (2015) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Xingshi (刑事) [Criminal Division], 99 Jin Shang Su Zi No. 33 (99金上訴字第33號刑事判決) (2012) (Taiwan).

Taiwan Gaodeng Fayuan (臺灣高等法院) [Taiwan High Court], Xingshi (刑事) [Criminal Division], 102 Chong Jin Shang Geng (1) Zi No. 4 (102重金上更(一)字第4號刑事判決) (2014) (Taiwan).

Taiwan Stock Exchange Corporation Rules Governing the Preparation and

Filing of Corporate Social Responsibility Reports by TWSE Listed Companies, November 26, 2014, as amended on October 19, 2015 (Taiwan). Retrieved from http://twse-regulation.twse.com.tw/ENG/EN/law/DAT06.aspx?FLCODE=FL075209&FLDATE=20141126&LSER=001.

Taiwan Zhengquan Jiaoyisuo Gufen Youxian Gongsi Yingye Xize (臺灣證券交易所股份有限公司營業細則) [Operating Rules of the Taiwan Stock Exchange Corporation], November 13, 1992, as amended March 8, 2016 (Taiwan).

Taiwan Zhengquan Jiaoyisuo Gufenyouxiangongsi (臺灣證券交易所股份有限公司) [Taiwan Stock Exchange Corporation (TWSE)], 103 Tai-Zhen-Jiao (臺證交) [Taiwan-Stock-Exchange] No. 1030025533 (2014).

Touziren Zhengyi Tiaochu Yaodian (投資人爭議調處要點) [Essential Points Regarding Mediation of Investors Disputes], February 3, 1999 (Taiwan).

Tropman, J. & Harvey, T. J. (2009). *Nonprofit Governance: The Why, What, and How of Nonprofit Boardship*. P. A.: University of Scranton Press.

Tseng, W.-R. (曾宛如) (2010). Woguo Daiwei Susong Zhi Shiji Gongneng Yu Weilai Fazhan: Sikaoshang De Mangdian (我國代位訴訟之實際功能與未來發展－思考上的盲點) [The Actual Function and Future Development of Taiwan's Derivative Litigations: Blind Spots in Thinking]. *Yuedan Faxue Zazhi* (*月旦法學雜誌*) [*The Taiwan Law Review*]*, 159*, 27-33.

U.S. Sec. Exch. Comm'n. v. Godwin, No. 15-cv-01414 (C.D. Ill., Sept. 30, 2015).

UK Companies Act 2006. Retrieved from http://www.legislation.gov.uk/ukpga/2006/46/contents.

UK Company Directors Disqualification Act 1986. Retrieved from http://www.legislation.gov.uk/ukpga/1986/46/contents.

UK Insolvency Act 1986. Retrieved from http://www.legislation.gov.uk/ukpga/1986/45/contents.

Velikonja, U. (2015). Public Compensation for Private Harm: Evidence from the SEC's Fair Fund Distributions. *Stanford Law Review, 67*, 331-395.

Wang, C.-C. (王志誠) (2000). Zhengquan Jiaoyi Fa Mudelun Zhi Xingsi Yu Shijian (證券交易法目的論之省思與實踐) [The Reflective Thinking and Practice of the Purpose of Securities and Exchange Act]. *Jibao Yuekan* (*集保月刊*) [*Taiwan Securities Central Depository Monthly*]*, 75*, 3-18.

Wang, C.-C. (王志誠) (2009). *Xiandai Jinrong Fa* (*現代金融法*) [*Modern Financial Law*]. Taipei, Taiwan: Sharing Publishing Company.

Wang, W. W.-Y. & Chen, J.-L. (2008). Reforming China's Securities Civil Actions: Lessons from PSLRA Reform in the U.S. and Government-Sanctioned Non-Profit Enforcement in Taiwan. *Columbia Journal Asian Law, 21*(2), 115-160.

Wang, W.-Y. & Su, J.-Y. (2015). The Best of Both Worlds? On Taiwan's Quasi-Public Enforcer of Corporate and Securities Law. *Chinese Journal of Comparative Law, 3*(1), 1-27.

Wang, W.-Y. (王文宇) & Chang, J.-M. (張冀明) (2007). Feiyingli Zuzhi Zhudao De Zhengquan Tuanti Susong—Lun Touziren Baohu Zhongxin (非營利組織主導的證券團體訴訟－論投資人保護中心) [NPO-Led Securities Class Actions: Commenting on Investor Protection Center]. *Yuedan Minshangfa Zazhi* (*月旦民商法雜誌*) [*Cross-Strait Law Review*]*, 15*, 5-33 (2007).

World Bank (2014). *Doing Business 2015: Going beyond Efficiency*. Washington, D.C.: World Bank. doi: 10.1596/978-1-4648-0351-2.

Xiaofeizhe Baohu Fa (消費者保護法) [Consumer Protection Act], January 11, 1994, as amended June 17, 2015) (Taiwan).

Xinbei Difang Fayuan (新北地方法院) [Xinbei District Court], Minshi (民事) [Civil Division], 102 Jin Zi No. 10 (102金字第10號民事判決) (2014) (Taiwan).

Xingshi Susong Fa (刑事訴訟法) [The Code of Criminal Procedure], September 1, 1928, as amended February 4, 2015 (Taiwan).

Xingshi Tuosu Shenpan Fa (刑事妥速審判法) [Criminal Speedy Trial Act], May 19, 2010, as amended June 4, 2014 (Taiwan).

Xingzhengyuan (行政院) [Executive Yuan], 91 Tai Cai Zi No. 0910054773 (91臺財字第0910054773號) (2002).

Xinzhu Difang Fayuan (新竹地方法院) [Xinzhu District Court], Minshi (民事) [Civil Division], 98 Fu Min Zi No. 66 (98附民字第66號民事判決) (2010) (Taiwan).

Yin, R.-Y. (殷若瑛) (2011). "Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa" Zhi Fazhan Ji Yanbian (「證券投資人及期貨交易人保護法」之發展及演變) [The Development and Evolution of the Securities and Futures Investor Protection Law]. *Zhengquan Ji Qihuo Yuekan* (*證券暨期貨月刊*) [*Securities & Futures Monthly*], *29*(12), 24-34.

Zhengquan Jiaoyi Fa (證券交易法) [Securities and Exchange Act], April 30, 1968, as amended July 1, 2015 (Taiwan).

Zhengquan Touzi Guwen Shiye Guanli Guize (證券投資顧問事業管理規

則) [Rules Governing Securities Investment Consulting Enterprises], October 30, 2004, as amended October 29, 2015 (Taiwan).

Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Fa (證券投資人及期貨交易人保護法) [Securities Investors and Futures Traders Protection Act], January 1, 2003, as amended Feburary 4, 2015 (Taiwan).

Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jigou Guanli Guize (證券投資人及期貨交易人保護機構管理規則) [Regulations Governing the Securities Investor and Futures Trader Protection Institution] Decermber 30, 2002, as amended July 30, 2009 (Taiwan).

Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jigou Tiaochu Weiyuanhui Zuzhi Ji Tiaochu Banfa (證券投資人及期貨交易人保護機構調處委員會組織及調處辦法) [Regulations Governing the Organization and Mediation Procedures of Securities Investor and Futures Trader Protection Institution Mediation Committees] Decermber 30, 2002, as amended Feburary 4, 2009 (Taiwan).

Zhengquan Touziren Ji Qihuo Jiaoyiren Baohu Jijin Changfu Zuoye Banfa (證券投資人及期貨交易人保護基金償付作業辦法) [Regulations Governing Payment Operations of Securities Investor and Futures Trader Protection Funds] Decermber 30, 2002, as amended July 30, 2009 (Taiwan).

Zhengquan Touzizhe Baohu Jijin Guanli Banfa (证券投资者保护基金管理办法) [Regulation on the Administration of Securities Investor Protection Fund], June 1, 2005 (China). Retrieved from http://www.csrc.gov.cn/pub/newsite/flb/flfg/bmgz/zjgs/201012/t20101231_189795.html.

Zoeller, C. M. (2009). Corporate Scandals: Global Recognition of Securities Regulation—How is China Faring?. *University of Toledo Law Review, 41*, 213-254.

Zuigao Fayuan (最高法院) [Supreme Court], Minshi (民事) [Civil Division] 101Tai Shang Zi No. 1695 (101台上字1695號民事判決) (2012) (Taiwan).

Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], Panli (判例) [Precedent], 71 Tai Fu Zi No. 5 (71台附字第5號刑事判例) (1982) (Taiwan).

Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], 102 Tai Shang Zi No. 1672 (102台上字第1672號刑事判決) (2013) (Taiwan).

Zuigao Fayuan (最高法院) [Supreme Court], Xingshi (刑事) [Criminal Division], 104 Tai Shang Zi No. 78 (104台上字第78號刑事判決) (2015) (Taiwan).

臺灣投資人保護制度之挑戰與當代議題：一個值得學習或避免之模式

林 仁 光

摘 要

我國於2002年制訂投資人保護法，並於2003年設立投資人保護中心，除了延續證券暨期貨市場發展基金會所設立之投資人服務中心與保護中心之任務，也擴大保護之業務範圍。相較於其他國家的投資人保護機構，我國投資人保護中心之任務範圍較。相同之處是設置保護基金，以保障投資人於證券商財務困難無償債能力而違約，如投資人已完成交割義務而未取得有價證券或價款時，由保護基金償付。我國投資人保護中心尚可為投資人提起代表訴訟或團體訴訟，同時也提供投資人申訴、諮詢及調處之服務。本文首先比較我國與加拿大、中國、新加坡及美國之投資人保護機構與保護基金之制度，設置根據、基金規模、基金之來源、基金保障之對象與範圍，並檢討現行保護基金是否有調整改進之空間，並做出本文建議。另一部分，則是針對目前投資人保護中心於投保法規範下運作，進行全面檢討，分別對於調處、根據投保法第10條之1所提起的代表訴訟、裁判解任訴訟，以及根據投保法第28條為投資人所提起團體訴訟及和解之實務操作，於運作上所產生之問題，各界對於投資人保護中心具有半官方執法者性質之質疑，以及未來所面臨的挑戰，提出分析與建議。

關鍵詞：投資人保護、團體訴訟、董事解任、代表訴訟、保護基金、和解