

Representative Litigations by Investor Protection Center as Public Interest Suits: A Reexamination, Reconstruction and Reflection

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Abstract

The enactment of Securities Investor and Futures Trader Protection Act (“Act”) in 2002 and the establishment of Securities Investor and Futures Trader Protection Center (“IPC”) in 2003 marked a new era of securities class actions in Taiwan. The IPC, a government-sanctioned non-profit organization, can initiate class actions for securities investors who are harmed in a securities incident. The 2009 amendment of this Act further empowers the IPC to bring derivative suits and removal suits against its directors or supervisors. In the wake of the 2009 amendment, some scholars cast a doubt on the nature of the derivative suits or removal suits brought by the IPC. Is an IPC-initiated derivative suit and removal suit whose purpose is to recover damage or remove someone from office for the private corporation regarded as a public interest suit?

Discussion on the nature of derivative suits as well as other litigations brought by the IPC inspires this article. Instead of focusing on IPC’s shareholdership or who is entitled to compensation, this article reexamines what the IPC actually does in securities class actions and removal suits. The IPC undercuts the holders’ claims in securities class actions and tries to make the removal suits function as director disqualification regime. Such approaches shed strong light on the public interest nature of the IPC-initiated actions. This article then offers suggestions in three aspects for the IPC to reinforce its role in pursuing public interest. First, the IPC should consider not to list the

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issuer-corporation as one of the defendants in a securities class action. Second, the term of “carrying out business” in removal suits should be broadly construed. Third, as the IPC is fully empowered, the securities regulators may err on the side of under-regulating corporate control transactions which are often controversial. The public interest mindset of the IPC is rightfully recognized but not without any questions. The last part of this article points out the potential conflicts among the public interest, the investors’ interest and the IPC’s own interest. The IPC-centered representative litigation regime is far from perfect and needs to be fixed.

Keywords: representative litigation, derivative suit, securities class action, investor protection center, director disqualification