学校编码: 10384

学号:13620081150837

分类号_____密级

UDC _____



硕士 学位论文

论新闻媒体对上市公司信息披露监督权的 制度建构

On the Construction of the Supervision System of Listed
Company's Information Disclosure by Media
苏荣城

指导教师姓名:朱炎生 教授

专业名称: 法律硕士

论文提交日期: 2011.04

论文答辩时间:

学位授予日期:

答辩委员会主席: _____

评 阅 人:_____

2011年 月

厦门大学学位论文原创性声明

兹呈交的学位论文,是本人在导师指导下独立完成的研究成果。本人在论文写作中参考的其他个人或集体的研究成果,均在文中以明确方式标明。本人依法享有和承担由此论文产生的权利和责任。

声明人(签名):

年 月 日

厦门大学学位论文著作权使用声明

本人完全了解厦门大学有关保留、使用学位论文的规定。厦门 大学有权保留并向国家主管部门或其指定机构送交论文的纸质版和 电子版,有权将学位论文用于非赢利目的的少量复制并允许论文进 入学校图书馆被查阅,有权将学位论文的内容编入有关数据库进行 检索,有权将学位论文的标题和摘要汇编出版。保密的学位论文在 解密后适用本规定。

本学位论文属于

- 1、保密(),在年解密后适用本授权书。
- 2、不保密 ()

(请在以上相应括号内打"√")

作者签名: 日期: 年 月 日

导师签名: 日期: 年 月

内容摘要

上市公司信息披露法律制度的目的是为所有投资者提供公开获取信息的法律保障,旨在实现市场参与者的机会公平,即促使每个市场参与者都能平等地获得所有与其投资决策相关的公开信息,任何人都不能凭借着在信息占有上的优势而获利。与融资者相比,投资者需要保护,与一般投资者相比,中小投资者则更应当重点保护,因为投资者尤其是广大中小投资者的信息搜集和分析能力相对较弱,市场交易力量也小,客观上需要重点保护。新闻媒体具有新闻自由的权利,包括了采访、报道权等权利,与其他监督方式相比较,在监督上市公司方面,具有自身的优势,能有力促进新闻媒体的监督权走向制度化、规范化、程序化。正是基于这原因,从新闻媒体对上市公司信息披露的监督方面,把充分保护投资者尤其是中小投资者的利益作为首要任务和宗旨。

本文分五个部分:

第一章对信息披露制度做了概述,包括信息披露的概念、原则和意义。第二节介绍了媒体监督上市公司信息披露的法理基础。

第二章从三个方面对新闻媒体监督上市公司信息披露必要性进行了 阐述。第一是,上市公司信息披露公平性以及公司内部治理机制要求;二 是,新闻媒体自由权;三是,新闻媒体有效增强其他监督方式。

第三章介绍了国外新闻立法及新闻媒体监督上市公司信息披露的立 法概况和特点,并且以英国、美国、法国、德国为例进行了阐述。

第四章论述当前我国新闻媒体监督上市公司存在的困境以及成因,并 做了详细的解释。

第五章则针对我国的实际情况做出了制度建构的建议,提出了一些可 行的措施。

关键词:信息披露:新闻媒体监督:上市公司

Abstract

The purpose of Information disclosure system is to provide investors with all the normal legal protection for the public to access information, market participants gain the opportunity to achieve fair and that each market participants equaly access to all investment decisions related to their public information, with no one can hold the advantage in the information to profit. Investors and financiers are two main participators in stock market market. Compared with the financiers, investors need to be protected more, compared with retail investors, small investors should focus even more protection, because investors, especially medium and small investors, information gathering and analysis capacity is relatively weak, the power of market transactions also small, the objective need special protection. The development process from the capital market perspective, protecting the interests of investors so that investors confidence is to nurture and develop the most important aspects of the market,not only administrative, justice, self-regulatory approach, a more social form of supervision in order to protect small and medium shareholders, is to protect the development of securities markets, which is particularly important for China's socialist stock market. For this reason, from the news media, information disclosure of listed company supervision, the full protection of investors, especially in the interests of small investors as a top priority and purpose.

This article is divided into five parts:

The first chapter provides an overview of information disclosure system, including Concept, principles and meaning of the media monitoring information disclosure of listed companies

Chapter two describe the need for information disclosure of listed companies to news media from monitoring. The first is that the fairness of information disclosure of listed companies and the requirements of internal corporate governance

mechanisms; second,the media freedom; third,the media and effective way to

enhance other monitoring.

The third chapter describes the foreign news media legislation and supervision

of information disclosure of listed companies profile and characteristics of the

legislation, and take the United Kingdom, the United States, France, Germany for

example.

Chapter IV discusses the current plight of supervision of the news media for the

listed company, and detailly explains the reasons.

Chapter V puts forward feasible measures and suggestions on the system

construction based on the actual situtation in China.

Keywords: Information Disclosure; Media Supervision; Listed Companies

目 录

引	言	1
第-	一章 上市公司信息披露概述	3
第一	-节 信息披露概述	X//
	一、信息披露制度的概念	3
	二、信息披露的基本原则	
	三、信息披露的意义	4
第二	二节 媒体监督上市公司信息披露的法理基础	
	一、上市公司作为"公众人物"	
	二、新闻媒体监督上市公司信息披露的直接法律依据	7
第二	二章 新闻媒体监督上市公司信息披露的必要性	9
第一	─节 信息披露的公平性及改善公司内部治理机制的要求	9
	一、上市公司信息披露公平性要求	g
	二、新闻媒体监督促进公司内部监督机制的改善	10
第二	二节 新闻自由权的体现	11
	一、新闻自由权理论	11
	二、新闻媒体监督的特点	
第三	三节 新闻媒体监督对其他监督方式效果的增强	14
	一、监督权的实现有利于法律监管的展开	
	二、信息不对称的预防	
第三	三章 国外新闻媒体监督上市公司信息披露实践比较	17
第一	─节 各国新闻媒体监督的法律实践	17
	一、英国	17

	<u> </u>	美国	19
	三、	法国	20
	四、	德国	21
第二	二节!	欧美各国新闻监督法律实践的特点	.22
	— ,	媒体监督法律地位高	22
	<u> </u>	对新闻媒体监督法律监管严格	23
	三、	用法律平衡矛盾冲突各方利益	24
第Ⅰ	四章	我国新闻媒体对上市公司信息披露监督存在的困境及其成	, •
		因	.25
第-	一节:	当前我国新闻媒体对上市公司信息披露监督存在的困境	
		监督报道失实	
	<u> </u>	新闻自由与法人名誉权保护的冲突	25
	三、	新闻媒体监督权的错位	27
	四、	监督权受到的法律限制	27
	五、	司法诉讼困扰新闻媒体	30
第二	二节:	当前我国新闻媒体对上市公司信息披露监督存在困境的成因	.30
	— ,	监管体制的约束	30
	_,	立法的滞后性	31
//.	三、	"指定"报刊披露制度	32
	四、	新闻媒体的伦理失范	32
V	五、	监督操作障碍	33
第	五章	新闻媒体监督上市公司信息披露制度的完善	.35
第-	-节 4	在专门性法律中明确新闻媒体的监督权	.36
	— ,	监督权的存在	36
	二、	专门法明确监督权	36
第二	二节、	修改"指定"媒体披露信息制度	.37

	考文献	
结	论	40
	二、司法救济制度的改进	39
	一、严格区分责任	39
第三	三节 司法救济制度上的改进	39
	二、新闻媒体采访报道权的明确	
	一、修改"指定"媒体披露信息制度	37

CONTENTS

Preface1
Chapter 1 Basic information disclosure of listed companies
overview
Subchapter 1 Overview of information disclosure
Section 1 The concept of information disclosure system
Section 2 The basic principles of information disclosure
Section 3 The significance of information disclosure
Subchapter 2 Supervision of information disclosure and the characteristics of
the type5
Section 1 Listed companies as a "public figure"
Section 2 The legal basis for media supervise the Listed companies
Chapter 2 The important of Media monitoring information
disclosure of listed companies9
Subchapter 1 The requirements of the fairness and improving internal
corporate governance mechanisms
Section 1 The requirements of the fairness
Section 2 Media can improve internal corporate governance mechanisms 10
Subchapter 2 The right of freedom of the Media11
Section 1 Theory of freedom of the media
Section 2 the characteristics of Media monitoring
Subchapter 4 Media can enhance other monitoring measures14
Section 1 The right of supervisory will help achieve the control of law 14
Section 2 To prevent the asymmetry of information
Chapter 3 The practice of foreign news media monitoring

	information disclosure of listed companies	17
suł	bchapter 1 The practice of foreign news media monitoring information	
	disclosure practices of listed companies	17
	Section 1 British	17
	Section 2 American	19
	Section 3 France	20
	Section 4 German	21
Sul	bchapter 2 The characteristics of foreign news media monitoring	
	information disclosure of listed companies	22
	Section 1 media's status is high on legal	
	Section 2 The legal and regulatory supervision on news media is strict	23
	Sction 3 Balance the right and duty about everybody with legal	24
Cł	hapter 4 The difficulty and reason what the news media on the	
	current information disclosure of listed companies	
Sul	bchapter 1 The difficulty what the news media on the current informatio	
	disclosure of listed companies	25
	Section 1 The supervision of inaccuracy	25
	Section 2 The conflict between press freedom and the protection of corpora	ıte r
	eputation	25
	Section 3 The dislocation of the news media oversight	27
	Section 4 The legal restrictions under supervision	27
12	Section 5 The media troubled in judicial proceedings	30
Sul	bchapter 2 reason what the news media on the current information	
	disclosure of listed companies	30
	Section 1 The regulatory system constraints	30
	Section 2 The legislative lag	31
	Section 3 The "designated" press disclosure	32

Degree papers are in the "Xiamen University Electronic Theses and Dissertations Database". Full texts are available in the following ways:

- 1. If your library is a CALIS member libraries, please log on http://etd.calis.edu.cn/ and submit requests online, or consult the interlibrary loan department in your library.
- 2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.

