

Securities Arbitration: An Alternative Form of Dispute Resolution for Public Investors in China

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Abstract

With 134 million active stock accounts and approximately two decades of history, the Chinese securities markets are still fairly young. In 2010, the Chinese securities markets had 2,171 listed companies with domestic IPOs, a total market value of approximately \$4.2 trillion dollars and a total value of approximately \$8.6 trillion dollars in completed transactions. With an exponentially growing number of securities transactions taking place on the Chinese stock exchanges, more listed companies have been investigated and penalized for securities misconduct. But given the nascent nature of the Chinese civil legal system in providing monetary compensation to injured public investors, this article discusses using arbitration as an alternative method to resolve securities violations and suggests that the American FINRA arbitration process can serve as a model to improve the Chinese arbitration process.

I. Introduction

Arbitration is not a novel concept in China. Indeed, aside from legal consultation, administrative complaint, civil lawsuit, and mediation, securities arbitration is already available to redress Chinese investors' grievances.¹ But China's securities arbitration system is arguably still in its incipient stage. To better protect investors' rights and interests, this paper proposes that the American securities system established under the Financial Industry Regulatory Authority (FINRA) can serve as a model for improving the Chinese securities arbitration system.

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1. *How Can Securities Investors Protect Their Interests*, CHINA SEC. REG. COMM'N (Dec. 5, 2007), http://www.csrc.gov.cn/pub/xiamen/sxfw/tzzbh/200712/t20071205_88200.htm (China).

Part II begins with an anecdote illustrating the market vulnerabilities faced by Chinese public investors. Part III discusses the Chinese civil litigation process, with a focus on securities litigation, and explains China's need for an investor-friendly alternative dispute resolution (ADR) forum—a need that has been recognized by the Chinese legal scholarly community. Part IV summarizes Chinese arbitration laws and analyzes its securities arbitration system. Part V examines the FINRA arbitration system. And Part VI proposes adopting some characteristics of the FINRA arbitration system to better serve Chinese public investors' interests.

II. Chinese Securities Markets and the Blue-Chip Company Yinguang Xia

With 134 million active stock accounts in 2010² and approximately two decades of history, Chinese securities markets are fairly young. Yet by 2010, the Shanghai Stock Exchange³ and the Shenzhen Stock Exchange⁴, two independent exchanges operating in China, had become the world's sixth and sixteenth largest equity markets by domestic market capitalization, respectively.⁵ By the end of 2010, China's markets had 2,171 listed companies with domestic IPOs, encompassing a total market value of 26.54 trillion yuan (approximately \$4.2 trillion) and a total value of 54.6 trillion yuan (approximately \$8.6 trillion) in completed transactions.⁶ From an empirical perspective the Chinese securities markets have been prosperous and have played a significant role in supporting the development of the Chinese socialist market economy.

As the number of securities transactions continues to increase exponentially, more and more listed domestic companies have been investigated and penalized for misconduct such as insider trading, misrepresentation, and market manipulation. One highly publicized corporate misconduct case emerged in 2001 when the well-respected Chinese financial magazine *Caijing Magazine* exposed that Yinguang Xia, a blue-chip technology company, was forging its accounting methods.⁷ Yinguang Xia's misconduct had a devastating impact on investors, who were misinformed on the existence of a multi-year, contract worth six billion yuan (approximately \$942 million).⁸ The *Caijing* article triggered an official investigation into Yinguang Xia, which found that over a three-year period, Yinguang Xia had overinflated profits by more than 762 million yuan (approximately \$122 million).⁹

2. *December 2010 Statistics*, CHINA SEC. REG. COMM'N (Jan. 26, 2011), http://www.csrc.gov.cn/pub/zjhpublic/G00306204/zqscyby/201101/t20110126_191194.htm (China).

3. *Shanghai Stock Exchange: Brief Introduction*, SHANGHAI STOCK EXCHANGE, http://www.sse.com.cn/sseportal/en_us/ps/about/bi.shtml (last visited June 3, 2012). The Shanghai Stock Exchange was founded on November 26, 1990. *Id.*

4. *SZSE Overview*, SHENZHEN STOCK EXCHANGE, <http://www.szse.cn/main/en/aboutsse/sseoverview/> (last visited June 3, 2012). The Shenzhen Stock Exchange was established on December 1, 1990. *Id.*

5. *January 2011 Market Statistics*, WORLD FED'N EXCHANGES, <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization> (last visited June 3, 2012).

6. *Statistics from December 2010*, *supra* note 2.

7. See Ling Huawei & Wang Shuo, *Yinguang Xia Xianjing [The Guangxia Trap]*, CAIJING FIN. MAG. (Aug. 7, 2001, 11:01 AM), <http://finance.sina.com.cn/t/20010807/92215.html> (China).

8. *Id.*

9. See Jin Liping, *Caijing: Yin Sheji Yinguang Xia Zhaojia An Zhongtian Qin Bengta [Caijing: The Collapse Following Yinguang Xia's Fraud Case]*, Aug. 5, 2001, <http://finance.sina.com.cn/o/20011230/160433.html> (last visited June 16, 2012).

Yinguang Xia's misconduct had a devastating impact on its investors, and a slew of investors filed civil suits seeking damages against the company.¹⁰

At the time, the case implicated about 847 investors, who were spread across over twenty provinces, municipalities, and autonomous regions and who were seeking over 180 million yuan (approximately \$28.9 million) in monetary damages.¹¹ In September 2001, the first set of civil claims against Yinguang Xia was filed by investors residing in Wuxi City, Jiangsu Province,¹² and the claims were accepted by the People's Court for Wuxi City, Chong'an District.¹³ But the Wuxi People's Court soon received instructions to stay the civil claims in anticipation of further instructions from the Supreme People's Court (SPC), the highest court in China.¹⁴ On January 15, 2002, the SPC issued a notice ordering a temporary freeze on all civil securities claims.¹⁵ It took another six years to fully resolve the Yinguang Xia case, with the plaintiffs' damages paid in the form of additional shares in the company.¹⁶

The story of Yinguang Xia exemplifies the difficulties Chinese public investors face when they seek civil compensation for securities law violations through the judicial process. The continuing boom of the Chinese securities markets throughout the 2000s is mirrored by the severe losses suffered by public investors. With its markets developing at a swift pace, China has turned to focusing on constructing a complementary securities legal infrastructure. Despite the progress it has made, Chinese public investors seeking civil compensation continue to face a judicial mechanism that is unable to provide them with sufficient protect.

III. Civil Securities Litigation in China

A. COMMENCING A CIVIL CLAIM

The Chinese judicial system and its civil litigation process are similar to their American counterparts. China has a four-level court system. The basic courts, China's trial courts, have general jurisdiction over most civil cases, with certain classes of cases, such as maritime claims, delegated to specialty courts.¹⁷ The intermediate and high courts, China's appellate courts, have limited jurisdiction—they can hear appeals and try cases involving

10. *Id.*

11. See 陶雨生 (Tao Yushen), 银广夏虚假陈述证券民事赔偿案律师手记 (*Yinguang Xia Xuji Chenshu Zhengquan Minsbi Peichang An Lusbi Shouji*) [*Lawyer's Notes of the Guangxia False Statements in Securities Civil Compensation Case*], LEGAL DAILY (May 25, 2007), available at http://www.legaldaily.com.cn/zmbm/content/2009-01/22/content_1025525.htm (China). http://www.legaldaily.com.cn/zmbm/content/2009-01/22/content_1025525.htm (China).

12. See Wang Lu, *Redian Fujiao: Yibo Duoze De Yinguang Xia Peichang An* [*Spotlight: Many Twists in the Yinguang Xia Compensation Case*], SINA.COM (Sept. 27, 2011, 8:49 AM), <http://finance.sina.com.cn/t/20110927/111977.html> (China).

13. See *Wuxia Fayuan Zan Bu Shenli Yinguang Xia Suopei An* [*Wuxia Court Temporarily Stays Hearing on Yinguang Xia*], NETEASE (Sept. 24, 2001, 4:08 PM), http://money.163.com/editor/stock_change_folder/010924_62091.html (China).

14. See *id.*

15. Tao, *supra* note 11.

16. *Id.*

17. Jun Ge, *Mediation, Arbitration and Litigation: Dispute Resolution in the People's Republic of China*, 15 UCLA PAC. BASIN L.J. 122, 134 (1997).

significant amounts of money or having an important social impact.¹⁸ The SPC presides over all lower courts as the supervising organ.¹⁹ To commence a civil action in China, like in America, a plaintiff begins by filing a written complaint, which sets forth the claim, the facts, the legal grounds upon which the claim is based, and any available supporting evidence.²⁰

B. THE CHINESE LEGAL FRAMEWORK FOR CIVIL SECURITIES SUITS

As previously suggested, although the Chinese securities markets have matured in the past twenty years, the laws that protect public investors have lagged. The Company Law of China²¹ (Company Law) and the Securities Law of China²² (Securities Law) are the two reigning bodies of law that protect Chinese public investors' rights and interests. Within the context of securities litigation, the Company Law ensures that public investors have access to information about limited liability companies, such as their names, registered addresses, legal representatives, registered capital, business classification, scope of business, and identity of shareholders.²³ The Securities Law standardizes securities trading and issuance, creates regulatory bodies for the exchanges, and provides legal liabilities for certain violations.²⁴

Although these two bodies of law have supplied the building blocks to a functioning securities market structure, the civil remedies available under these laws have remained limited. For example, scholars have argued that the Company Law does not arm Chinese public investors with enforceable legal rights such as shareholder derivative suits,²⁵ piercing the corporate veil,²⁶ or fiduciary duties,²⁷ nor does the Securities Law provide Chinese public investors with a clear, enforceable cause of action to bring civil claims against insider-trading.²⁸

Instead, the Chinese state has relied upon administrative and criminal penalties to remedy infractions in the securities industry, and until 1998, no civil securities claim was ever filed in China.²⁹ The first one was brought in a basic court by a public investor, who alleged false representation against a board of directors.³⁰ The basic court denied the

18. *Id.*

19. *Id.*

20. *Id.*

21. Zhonghua Renming Gongheguo Gongsifa (中國人民共和國公司法) [Company Law of the People's Republic of China] (by the Standing Comm. Nat'l People's Cong., Oct. 27, 2005, effective Jan. 1, 2006) (China) [hereinafter Company Law].

22. Zhonghua Renming Gongheguo Zhenquan Fa (證券法) [Securities Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 27, 2005, effective Jan. 1, 2006) (China) [hereinafter Securities Law].

23. Company Law, *supra* note 21, art. 32.

24. Securities Law, *supra* note 22, chs. II, VII, XI.

25. See Baoshu Wang & Hui Huang, *China's New Company Law and Securities Law: An Overview and Assessment*, 19 AUSTL. J. CORP. L. 229, 241 (2006).

26. *Id.*

27. See Rebecca Lee, *Fiduciary Duty without Equity: Fiduciary Duties of Directors Under the Revised Company Law of the PRC*, 47 VA. J. INT'L L. 897, 902 (2007).

28. Securities Law, *supra* note 22, art. 63.

29. Li Peng, *Discussion on the Structure of Civil Securities Litigation*, 2 J. OF XINJIANG FIN. & ECON. INST. 41, 43 (2002) (China).

30. *Id.*

claim on the ground that all securities-related violations were under the jurisdiction of the appropriate administrative agency.³¹ It is no surprise, then, that three years later the Chinese court system was unequipped to handle the influx of Yinguang Xia claims.

Faced with public investors harmed by Yinguang Xia and recognizing China's judicial shortcomings, the SPC took action and stayed the Yinguang Xia litigation.³² On September 21, 2001, the SPC temporarily disallowed all lower courts from accepting securities cases that sought civil compensation for insider trading, fraud, market manipulation, and other misconduct of listed companies.³³ At the time, Chinese legal scholars agreed with the SPC's decision.³⁴ The SPC was concerned that (1) the claims filed by the aggrieved investors seeking civil damages were cases of first-impression for the courts; (2) the various courts would arrive at different results on these claims even though all the investors were similarly harmed by the same company; (3) the various courts would reach their decisions at different times, which would have enabled some investors to recover before others; and (4) the basic courts lacked the expertise to handle such cases.³⁵ Thus, the stay bought time for the SPC to implement a strategy for adjudicating civil securities claims that ensured fairness to investors.

Following the stay, the SPC moved to build a legal infrastructure capable of adjudicating securities litigation. On January 15, 2002, the SPC promulgated the Notice of the Supreme People's Court on the Relevant Issues Concerning the Acceptance of Cases of Disputes over Civil Tort Arising from False Statement in the Securities Market (2002 Notice).³⁶ Through the notice, the SPC granted lower courts the jurisdiction to accept cases where public investors sought civil compensation for false statements made by listed companies.³⁷ For procedural and substantive rules that would govern civil securities cases, the SPC issued Some Provisions of the Supreme People's Court on Trying Cases of Civil Compensation Arising from False Statements in Securities Market (2003 Provisions), effective February 1, 2003.³⁸

The 2003 Provisions were the SPC's first attempt to provide judicial interpretation on the substantive and procedural rules of civil securities cases.³⁹ The 2003 Provisions contain eight sections. Under Article 2, any individual, legal person, or organization can be a

31. *Id.*

32. *Zuigao Renmin Fayuan Guanyushe Zhengquan Minshi Peichang Zanbuyu Shouli De Tongzhi* [Notice of the Supreme People's Court on Refusing to Accept Civil Compensation Cases Involving Securities for the Time Being], LAW-LIB.COM, http://www.law-lib.com/law/law_view.asp?id=16373 (last visited July 12, 2012) (China).

33. Sup. People's Ct., *Supreme People's Court on the Admissibility of the Notice of the Issues Related to the Stock Market Caused by Misrepresentation in Tort Disputes* (Sept. 21, 2001), http://www.law-lib.com/law/law_view.asp?id=16373 (China).

34. *Zhuigao Fayuan Geshoufa: Zanbu Shouli Zhengquan Minshi Peichang You Daoli* [Supreme People's Court has Good Reasons to Refuse to Accept Civil Compensation Cases Involving Securities], SOHU.COM (Oct. 11, 2011, 11:45 AM), <http://news.sohu.com/63/57/news146875763.shtml> (China).

35. *See id.*

36. *Zuigao Renmin Fayuan*, *supra* note 32.

37. *Id.*

38. Some Provisions of Supreme People's Court on Trying Cases Involving False Statements Related to Securities Market, (promulgated by the Sup. People's Ct. Judicial Comm., Dec. 26, 2002, effective Feb. 1, 2003) (China), available at <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/civil-proceedings/some-provisions-of-supreme-peoples-court-on-trying-cases-involving-false-statements-related-to-securities-market-2002.html> [hereinafter 2003 Provisions].

39. *Id.*

plaintiff in a civil securities dispute.⁴⁰ Article 3 provides that transactions conducted outside of a government-approved securities market or conducted on a secondary market are beyond the scope of the 2003 Provisions.⁴¹ Article 4 stresses that courts should mediate between parties and encourage settlements.⁴² Article 5 provides that the statute of limitations to bring a false-statements claim starts on the day an administrative penalty is issued or the day a criminal order is made effective.⁴³ Articles 8 and 9 require civil securities cases to be brought directly to an intermediate court rather than a basic court.⁴⁴

The 2003 Provisions also distinguish civil securities litigation from general civil litigation. Article 12 of the 2003 Provisions allows an aggrieved investor to bring a claim against a listed company for false statements on his own behalf, or he can join other similarly injured plaintiffs.⁴⁵ But unlike general civil litigation where courts will accept a class of plaintiffs regardless of whether the class is pre-determined, civil securities litigation requires those investors who choose to form a class to determine the number of class plaintiffs prior to the trial.⁴⁶ By requiring pre-determined classes, the 2003 Provision makes it difficult for investors to bring class actions and lowers the probability that large-scale securities claims will destabilize markets.⁴⁷

Finally, if an aggrieved investor plaintiff prevails in court, the 2003 Provisions provide a formula to calculate monetary damages. Under Article 30, damages are calculated based on a formula that accounts for the buying and the selling prices, the commissions paid by investors, and the interest as computed based on the bank deposit interest.⁴⁸

Despite the SPC's efforts to provide a set of substantive and procedural rules to govern civil securities claims, the 2002 Notice and the 2003 Provisions delineate a narrow set of acceptable civil securities claims. The jurisdiction of the courts extends only to securities disputes arising from false statements.⁴⁹ Civil securities suits that involve insider trading, market manipulation or other misconduct by listed companies are still beyond the jurisdiction of the courts.⁵⁰ The definition of securities market excludes disputes that arise from transactions on secondary or tertiary markets and excludes negotiated transfer of non-traded shares.⁵¹ In addition, an aggrieved public investor can bring a civil securities claim only if a court or an agency has confirmed the defendant company's violation through an administrative or criminal ruling, making such a ruling a prerequisite to civil securities litigation.⁵² In practice, to recover monetary damages, an investor plaintiff must obtain a favorable administrative or criminal ruling and prevail in the subsequent civil trial.⁵³ This procedural requirement places the probability of monetary recovery for an

40. *Id.* art. 2.

41. *Id.* art. 3.

42. *Id.* art. 4.

43. *Id.* art. 5.

44. *Id.* arts. 8-9.

45. *Id.* art. 12.

46. *See id.* art. 14.

47. Chen Jian-Jun, *Comments on the System of Civil Reparations Resulting from False Statements in Chinese Stock Market*, 2 J. YANGZHOU POLYTECHNIC C. 16, 18 (2003).

48. 2003 Provisions, *supra* note 38, art 30.

49. *Id.* art. 1.

50. *See id.*

51. *Id.* art. 3.

52. *Id.* art. 5.

53. *Id.*

aggrieved investor at approximately twenty-five percent at best before a claim is even filed.⁵⁴

Beyond the obstacles to filing a civil securities claim, Chinese legal scholars have noted other difficulties that investor plaintiffs face before trial.⁵⁵ For instance, the 2003 Provisions uses a “plaintiff accommodates defendant principle” in determining the venue.⁵⁶ That is, an investor plaintiff must file the case at an intermediate court located in the city or province where the defendant company is located.⁵⁷ This principle places a burden on public investors to travel and exposes plaintiffs to the problem of local judicial protectionism. Local courts depend on local government organs for budgets, personnel, housing, and other benefits, and local governments rely on the good will of local companies to meet goals in economic growth.⁵⁸ As a result, local courts are reluctant to rule against listed companies.⁵⁹

An additional hurdle for investor plaintiffs is that under the 2003 Provisions, courts will find a causal relationship between the investor plaintiff’s loss and the defendant company’s false statement—and thus, liability for the defendant company—only if the information was disclosed at specific times.⁶⁰ This strict causation test prohibits investors from recovering on securities sold before the existence of false statements was made public through national media, even if the sale took place because of the suspected misinformation.⁶¹

The discussion so far on civil securities litigation in China only highlights a handful of problems that public investors have to face when seeking judicial remedies to their injuries. Given the existing legal uncertainties and obstacles, using arbitration to resolve securities disputes and recover monetary losses can be a powerful and much-needed alternative option for aggrieved investors.

IV. Securities Arbitration in China

A. CHINESE ARBITRATION SYSTEM

Arbitration in China finds its roots in the teachings of Confucianism.⁶² The modern embodiment of the ancient principles is the Arbitration Law of China. Enacted in 1995,

54. Assuming a two-outcome event where a plaintiff has a fifty percent chance of winning a claim and a fifty percent chance of losing a claim, the probability of a successful criminal conviction and a successful civil claim is the probability of a successful criminal conviction times the probability of a successful civil claim, which equals twenty-five percent ($0.50 * 0.50 = 0.25$). If the probability of prevailing in an administrative or criminal securities proceeding is less than fifty percent, then the probability of monetary recovery for a plaintiff could be less than twenty-five percent before a civil claim is filed.

55. See generally Song Shi-Xin, *Discussion of the Mechanisms of Resolving Securities Disputes*, 18 J. GUANGXIA ADMIN. CADRE INST. POL. & L. 46 (2003); Zhang Shao-Hua, *Securities Dispute: Analysis of Two Dispute Solution Processes*, 26 MOD. ECON. SCI. 20 (2004); Zhao Chun-Lan, *Discussing Mechanism of Resolving Civil Securities Dispute*, 3 POL. & L. 61 (2006).

56. 2003 Provisions, *supra* note 38, art. 9; see also Zhang, *supra* note 55, at 22; Zhao, *supra* note 55, at 61.

57. 2003 Provisions, *supra* note 38, art. 9.

58. Liu Zuoxiang, *A Criticism of Judicial Local Protectionism in China*, 1 CASS J. L. 83 (2003).

59. *Id.*

60. 2003 Provisions, *supra* note 38, arts. 18-20; see also Ling Dai, *The Judicial Application of the Causation Test of the False Statement Doctrine in Securities Litigation in China*, 15 PAC. RIM L. & POL’Y J. 734 (2006).

61. 2003 Provisions, *supra* note 38, art. 19(1); see Dai, *supra* note 60, at 746.

62. See Ge, *supra* note 17, at 128.

the Arbitration Law governs all types of arbitration, including securities arbitration.⁶³ Article 4 of the Arbitration Law permits arbitration if both parties agree to the method; without mutual consent, an arbitration committee does not have the authority to hear a dispute.⁶⁴ Article 5 provides that once parties mutually consent to an arbitration agreement, either before or after a dispute, the courts no longer have jurisdiction over the dispute unless the arbitration agreement is invalid.⁶⁵ If a court mistakenly accepts a case where a valid arbitration agreement exists, the adverse party can move to dismiss the case under Article 26 of the Arbitration Law.⁶⁶ But if the adverse party fails to make the motion, the court then will have jurisdiction because the failure effectively voids the arbitration agreement.⁶⁷

A valid arbitration agreement must include the parties' mutual consent to submit their dispute to arbitration, the matters to be arbitrated, and the parties' chosen arbitration commission.⁶⁸ A court or an arbitration committee can resolve questions about the validity of an arbitration agreement.⁶⁹ In the case where one party submits a validity question to an arbitration committee and the other party submits to a court, the court will give the decisive ruling.⁷⁰

To file a claim with an arbitration commission, a party must submit a statement of the claim and the evidence that supports the claim.⁷¹ Upon accepting a dispute, the commission will impanel a committee, and the parties can choose either a three-member committee or a one-member committee.⁷² If the parties choose a three-member committee, then the commission can staff the committee or each party can each choose an arbitrator, and the third arbitrator will be jointly selected or designated by the commission.⁷³ If the parties choose a one-member committee, they can jointly select the arbitrator or allow the commission to appoint one.⁷⁴

In rendering its judgment, an arbitration commission may conduct its own fact discovery.⁷⁵ All arbitration proceedings must be free from any intervention by administrative organs.⁷⁶ All arbitrations are conducted in private.⁷⁷ Only the parties to the arbitration, the members of the arbitration committee, and the members of the arbitration agency can participate in the arbitration process. In addition, an arbitration judgment can be published only with the consent of the parties.⁷⁸ An arbitration judgment is based on the

63. Arbitration Law of the People's Republic of China (adopted by the Standing Comm. Nat'l People's Cong., Aug. 31, 1994, effective Sept. 1, 1995), 1995 China Law LEXIS 706 (China) [hereinafter *Arbitration Law*].

64. *Id.* art. 4.

65. *Id.* art. 5.

66. *Id.* art. 26.

67. *Id.*

68. *Id.* art. 16.

69. *Id.* art. 20.

70. *Id.*

71. *Id.* art. 23.

72. *Id.* art. 30.

73. *Id.* art. 31.

74. *Id.*

75. *Id.* art. 43.

76. *Id.* art. 8.

77. *Id.* art. 40.

78. *Id.* art. 54.

opinion of the majority of arbitrators.⁷⁹ The parties may request a court to enforce the judgment, and the court must enforce the award.⁸⁰ Once arbitration is concluded, both parties are barred from seeking a judicial hearing on the dispute, and neither party has a right to seek a reconsideration of the claim by the same or a different arbitration committee.⁸¹

Arbitration awards may be reviewed by the courts. Under Article 58 of the Arbitration Law, a party can ask intermediate courts to invalidate an arbitration judgment only if any one of six conditions exists: (1) no arbitration agreement exists; (2) the subject-matter of the dispute is not within the jurisdiction of arbitration; (3) the judgment is based on fabricated evidence; (4) the structure of the arbitration committee or the procedure violates established laws; (5) a misrepresentation by one party negates the outcome's fairness; or (6) bribery, corruption, or abuse of discretion exists.⁸²

In addition to providing a procedural framework, the Arbitration Law also provides for the creation of arbitration commissions. Capital cities of provinces, municipalities, and autonomous regions have the authority to form arbitration commissions.⁸³ Each commission consists of one chairman, two to four vice chairmen, and seven to eleven members.⁸⁴ The chairman, vice chairmen, and members must be legal and trade experts or professionals with relevant experience.⁸⁵ The commissions are independent from administrative organs and from one another.⁸⁶ Arbitrators must be someone with at least eight years of arbitration or legal experience or someone with professional knowledge of economics and trade.⁸⁷ The China Arbitration Association, a self-regulated organization comprised of arbitrators, oversees all arbitration commissions and formulates rules of arbitration in accordance with the Arbitration Law and the Civil Procedure Law of China.⁸⁸

In 2005, China had around 30,000 arbitrators and 185 arbitration commissions, including the China International Economic and Trade Arbitration Commission and the China Maritime Arbitration Commission.⁸⁹ By 2009, the number of arbitration commissions climbed to 202, with a total number of 74,811 arbitrated cases.⁹⁰ The 2009 top-three arbitration commissions were Wuhan Arbitration Commission, with 9,770 arbitrated cases, Guanzhou Arbitration Commission, with 4,345 arbitrated cases, and Chongqing Arbitration Commission, with 2,238 arbitrated cases.⁹¹

79. *Id.* art. 53.

80. *Id.* art. 62.

81. *Id.*

82. *Id.* art. 58.

83. *Id.* art. 10.

84. *Id.* art. 12.

85. *Id.*

86. *Id.* art. 14.

87. *Id.* art. 13.

88. *Id.* art. 15.

89. Geng Xiukun, *Comparing Chinese and American Arbitration Acts*, SHENYANG ARB. COMM'N, http://www.syzcw.com/news_info.asp?id=662 (last visited June 3, 2012) (China).

90. See Shangluo Arbitration Network, *2009 Report on Nationwide Arbitration Committees*, SHANGLUO ARB. NETWORK (Apr. 12, 2010), http://www.slzwc.cn/Article_Show.asp?ArticleID=560 (China).

91. *Id.*

B. ARBITRATION OF SECURITIES MATTERS IN CHINA

As discussed above, arbitration is not a foreign concept to Chinese securities regulators, but its application in resolving public investors' claims remains limited in China. The Shanghai Stock Exchange (SSE) provided arbitration as an alternative option for resolving disputes for its members as early as 1990.⁹² Subsequently, the SSE promulgated twenty-six rules that established an internal arbitration system.⁹³ Under the SSE, arbitration was not used to resolve a broad category of securities disputes, rather the SSE used arbitration to resolve claims that arose from the issuance and trading of stocks.⁹⁴ But the SSE rules were nullified because they conflicted with China's civil procedure laws.⁹⁵

In 1993, the Chinese state formally recognized the legality of arbitrating securities disputes. The State Council granted subject-matter jurisdiction of securities disputes to arbitration in the Interim Provisions on the Management of the Issuing and Trading of Stocks.⁹⁶ Article 79 of the Interim Provisions specifically allows concerned parties the option to arbitrate disputes involving the issuance and trading of stocks.⁹⁷ Article 80 requires mandatory arbitration for disputes involving the issuance and trading of stocks that arise among securities managing organizations or between such organizations and a stock exchange.⁹⁸

Although the Chinese state has recognized a right to arbitrate securities disputes, regulatory bodies in the securities industry have focused narrowly on promulgating arbitration rules that governed disputes arising from transactions between securities firms. On October 11, 1994, the China Securities Regulatory Commission (CSRC) promulgated the Notice on Arbitration of Securities Disputes.⁹⁹ The CSRC required all securities organizations and stock exchanges to sign agreements to arbitrate any disputes that arose from the issuance or trading of stocks, and designated the China International Economic and Trade Arbitration Commission (CIETAC) as the supervisory body.¹⁰⁰

In 2004, the State Council and the CSRC jointly issued a Notice on the Arbitration of Securities and Futures Contract.¹⁰¹ This Joint Notice has expanded the scope of securities arbitration to disputes regarding trading of futures contracts and expanded the list of concerned parties to include management firms of futures contracts, securities investment

92. See Li Lei & Huang Xiaokong, *On China Stock Dispute's Arbitrage Solution*, 2 SPECIAL ZONE ECON. 108 (2010).

93. See Shanghai Stock Exchange Arbitration Rules, available at <http://www.518518.com/news6513> (Aug. 30, 2010, 12:23 AM) (China).

94. Lei & Xiaokong, *supra* note 92, at 108.

95. *Id.*

96. Interim Provisions on the Management of the Issuing and Trading of Stocks (promulgated by the St. Council, Apr. 22, 1993, effective Apr. 22, 1993), art. 79, available at <http://www.eng.yn.gov.cn/yunnanEnglish/144397762564194304/20050616/353263.html> (China) [hereinafter Interim Provisions].

97. *Id.*

98. *Id.* art. 80.

99. Securities Dispute Arbitration Agreement Notice (promulgated by Securities Regulatory Commission, Oct. 11, 1994, effective Oct. 11, 1994), available at <http://law.lawtime.cn/d495363500457.html> (China).

100. *Id.*

101. State Council Legislative Affairs Office of China Sec. Regulatory Comm'n, *Notice on the Arbitration of Securities and Futures Contract*, http://www.gx-law.gov.cn/news_show.asp?id=1321 (last visited June 16, 2012) (China) [hereinafter Joint Notice]; see *Introduction of the "Do a Good Job in Securities, Futures Contract Dispute Arbitration in Accordance with the Law"* (Aug. 8, 2007), <http://china.findlaw.cn/fagui/lifadongtai/20080807/217151.html> (China).

consulting firms, and futures investment consulting firms.¹⁰² The Joint Notice also stated that disputes arising between listed companies and public investors will be separately addressed.¹⁰³

Currently, CIETAC has jurisdiction to arbitrate domestic cases based on parties' agreements,¹⁰⁴ and CIETAC has promulgated a set of arbitration rules to govern financial transaction disputes that include securities and futures.¹⁰⁵ In CIETAC's own words: "domestic cases filed with CIETAC are typically multi-industry, trans-regional and interdisciplinary, with a trend towards an increase in those related to the new economy."¹⁰⁶ CIETAC's description arguably does not apply to Yinguang Xia, a blue-chip technology company that engaged in accounting fraud—a common securities infraction encountered by Chinese public investors. This leads to the question of which regulatory body is suited to arbitrate securities disputes arising between listed companies and public investors.

C. SECURITIES ARBITRATION IS MORE INVESTOR-FRIENDLY THAN CIVIL LITIGATION IN CHINA

Despite silence from the State Council and the CSRC on securities disputes arising between public investors and listed companies, the arbitration system instated by the Arbitration Law is friendlier to investor plaintiffs than civil securities litigation. First, the Arbitration Law requires arbitrators to be experts of law or economics and finance.¹⁰⁷ Arbitrators who preside over securities claims are professionals who possess specialized knowledge that Chinese judges may lack. Because parties to the arbitration have a right to select their arbitration committee, Chinese public investors can choose a more appropriate panel of adjudicators of securities disputes than they would in civil litigation.¹⁰⁸

Second, under the Arbitration Law, arbitration commissions are independent entities, separate from state or local agencies.¹⁰⁹ This structure isolates the arbitration process from local or state agencies' influence. It also facilitates arbitrators to make decisions based on law and facts rather than politics.

Third, the Arbitration Law requires the process to be contractual, which helps to place Chinese public investors and companies on more equal grounds.¹¹⁰ For instance, arbitration's contractual nature frees parties from the "plaintiff accommodates defendant principle" in determining venue, unlike in Chinese civil litigation. Arbitration affords parties the opportunity to determine by contract which arbitration commission will adjudicate the dispute.¹¹¹ In addition, parties can contractually select specific provisions from existing

102. Joint Notice, *supra* note 101.

103. *Id.*

104. See China Int'l Econ. & Trade Arbitration Comm'n Arbitration Rules, (revised and adopted by the China Council for the Promotion of Int'l Trade, Feb. 3, 2012, effective May 1, 2012), art. 3(1)-(2), *available at* <http://www.cietac.org/index/rules.cms> (China).

105. *Id.* art. 2(11).

106. China Int'l Econ. & Trade Arbitration Comm'n, *About Us – Introduction*, <http://www.cietac.org/index/aboutUs.cms> (last visited June 16, 2012) (China).

107. Arbitration Law, *supra* note 63, art. 12.

108. *Id.* art. 30.

109. *Id.* art. 14.

110. *Id.* art. 16.

111. *Id.* art. 16(3).

Chinese laws and rules that would apply in the event that arbitration becomes necessary. Thus, parties are free to tailor the arbitration process to their specific needs. Parties can even contract to have the arbitration committee make a decision based on the parties' pleadings alone.¹¹² The flexibility arbitration offers makes the process quicker and more economical than compared to the Chinese civil judicial system.

This paper acknowledges the possibility that public investors and companies may have unequal bargaining power, and thus, investors may never realize the advantages provided by arbitration's contractual nature. But compared with civil securities litigation where judicial rules, such as the "plaintiff accommodates defendant principle," dictate a higher burden on public investors from the start, the contractual nature of arbitration at least provides aggrieved investors the possibility of a leveled playing field.

V. Securities Arbitration under FINRA

A. VALUE OF FINRA'S SECURITIES ARBITRATION SYSTEM TO CHINA

Thus far, this paper has discussed China's civil litigation infrastructure and some of the difficulties Chinese public investors face when they seek civil damages against listed companies. This paper has also suggested that arbitration is a viable alternative for Chinese investors because the Arbitration Law of China is friendlier to investor plaintiffs than the civil system. This paper has noted that although the State Council and the CSRC have promulgated rules for securities arbitration, those rules do not comprehensively address disputes between public investors and listed companies. The existing gap in regulation provides an opportunity for China to look towards the arbitration system established by the Financial Industry Regulatory Authority (FINRA) for guidance and improvement.

B. FINANCIAL INDUSTRY REGULATORY AUTHORITY

The seminal moment in American securities arbitration happened in 1987 when the Supreme Court of the United States confirmed the validity of a pre-dispute arbitration agreement in the securities claims context.¹¹³ Since then, virtually all securities firms have included arbitration agreements in their contracts with customers to secure the right of arbitration, establishing mandatory arbitration as the standard in the securities industry.¹¹⁴ The Securities Exchange Commission (SEC) has the "expansive power" to ensure the adequacy of the arbitration rules and procedures promulgated by the National Association of Securities Dealers (NASD), a self-regulatory organization of the securities industry.¹¹⁵ In 2007, the SEC used its expansive oversight power to approve NASD's proposal to

112. *Id.* art. 39.

113. See Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 220-21 (1987).

114. *A Review of the Securities Arbitration System Before the Subcomm. on Capital Mkts., Ins. & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 109th Cong. (2005) (statement of Constantine Katsoris, Fordham University School of Law Professor) (testifying that *McMahon* transformed securities arbitration "from a voluntary procedure to a mandatory one"), available at <http://archives.financialservices.house.gov/media/pdf/031705cgtk.pdf>.

115. See *McMahon*, 482 U.S. at 233-34; see also 15 U.S.C. § 78s(c) (2006).

consolidate the NASD and the New York Stock Exchange (NYSE) arbitration forums—giving birth to FINRA.¹¹⁶

Arbitration under FINRA encompasses all securities industry disputes that arise between member firms and their customers.¹¹⁷ The FINRA Manual, which remains a work-in-progress as FINRA continues to consolidate NASD Conduct Rules and NYSE Rules,¹¹⁸ provides the procedural requirements of FINRA's dispute resolution. Under the Manual, any agreements with investors that contain a pre-dispute arbitration clause must have the clause highlighted.¹¹⁹ Even absent a written arbitration clause, investors may still request arbitration.¹²⁰ The arbitration clause cannot limit the ability of an investor to file an arbitration claim or the ability of an arbitrator to determine an award.¹²¹ Investors have six years from the occurrence of the event that gave rise to the dispute to file a claim.¹²² Domestic arbitration hearing locations are generally determined based on the customer's residence at the time the dispute arose.¹²³ To file a claim, a party must submit an initial statement of claim specifying the relevant facts and remedies requested with FINRA.¹²⁴ After the initial statement of claim, the responding party has forty-five days to answer.¹²⁵ If the responding party does not timely file its answer, upon motion, the arbitral panel may bar the responding party from presenting a defense.¹²⁶

Depending on the nature of the claim, either a single arbitrator or a panel of three arbitrators may preside over each case.¹²⁷ A claim that is \$50,000 or less is automatically heard by a single arbitrator, and the claim is subject to a simplified arbitration proceeding.¹²⁸ A single arbitrator will preside over such a proceeding, and no hearing will be held unless the customer requests a hearing.¹²⁹ If the claim is more than \$50,000 but less than \$100,000, the panel will consist of one arbitrator unless the parties agree in writing to three arbitrators.¹³⁰ For a claim that is more than \$100,000, that is unspecified, or that does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.¹³¹

FINRA uses the Neutral List Selection System, a computer system that generates random lists of arbitrators for proceedings.¹³² Each party can select their arbitrators through

116. See Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes, Exchange Act Release No. 34-56145, 72 Fed. Reg. 42,169-01, at 42,188 (Aug. 1, 2007).

117. See *Arbitration Overview*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/ArbitrationandMediation/Arbitration/Overview> (last visited June 3, 2012).

118. See Financial Industry Regulatory Authority Rules, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/Industry/Regulation/FINRARules/> (last visited June 3, 2012) [hereinafter FINRA Manual].

119. *Id.* R. 2268(b)(1).

120. *Id.* R. 12200.

121. *Id.* R. 2268(d)(1)–(4).

122. *Id.* R. 12206(a).

123. *Id.* R. 12213(a).

124. *Id.* R. 12302(a).

125. *Id.* R. 12303(a).

126. *Id.* R. 12308(a).

127. See *id.* R. 12401.

128. *Id.* R. 12401(a).

129. *Id.* R. 12800(a)–(c).

130. *Id.* R. 12401(b).

131. *Id.* R. 12401(c).

132. *Id.* R. 12400(a).

a process of ranking and striking the arbitrators on the generated lists.¹³³ Depending on whether the panel consists of one arbitrator or three arbitrators, the Neutral List Selection System draws from three separate rosters of arbitrators.¹³⁴ FINRA maintains a roster of non-public arbitrators, a roster of public arbitrators, and a roster of arbitrators who are eligible to serve as chairperson of a three-arbitrator panel.¹³⁵ To qualify as an arbitrator, applicants must have at least “five years of full-time, paid business or professional experience.”¹³⁶ Prior to hearing a dispute, arbitrators must disclose any conflicts of interest related to the dispute.¹³⁷ A panel must render an award within thirty business days from the date the proceeding ends, and a party must pay any monetary award rendered within thirty days.¹³⁸

FINRA also developed a set of rules, updated in 2011, to govern discovery in arbitration.¹³⁹ The Discovery Guide denotes categories of documents that are discoverable in all customer disputes and categories that should be discoverable in certain types of disputes.¹⁴⁰ The guide tries to ensure that all relevant materials are exchanged between the parties, but the parties and the arbitration panel may adjust the discovery lists based on the issues in a particular claim.¹⁴¹

C. CRITICISM OF THE FINRA ARBITRATION SYSTEM

The FINRA arbitration system is not without its American critics. Some investor advocates have argued that securities arbitration is unfair, inefficient, expensive, and biased towards the securities industry.¹⁴² For example, critics of securities arbitration point out that brokerage firms consistently try to evade and avoid their discovery obligations in arbitration and that millions of arbitration awards continue to go unpaid.¹⁴³ Investor advocates also point out that many of the arbitrators work in the securities industry so they would not “bite the hand that feeds [them].”¹⁴⁴ Furthermore, according to some critics, arbitrators rarely award aggrieved investors the full amount, even when the proof of damage is overwhelming.¹⁴⁵ These are only some of the criticisms of the FINRA arbitration system.

133. *Id.* R. 12402(d), 12403(c).

134. *Id.* R. 12402(b)(1), 12403(e)(1).

135. *See id.* R. 12400(b).

136. *FINRA's Arbitrators*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/ArbitrationAndMediation/Arbitrators/BecomeanArbitrator/FINRAArbitrators/index.htm> (last visited June 3, 2012).

137. FINRA Manual, *supra* note 118, R. 12405(a).

138. *Id.* R. 12904(d), (j).

139. *Discovery Guide*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/ArbitrationAndMediation/Arbitrators/CaseGuidanceResources/DiscoveryGuide/> (last visited June 3, 2012).

140. *See id.*

141. *See id.*

142. *See, e.g.*, Jill I. Gross, *When Perception Changes Reality: An Empirical Study of Investors' Views of the Fairness of Securities Arbitration*, 2008 J. DISP. RESOL. 349, 351 (2008).

143. *A Review of the Securities Arbitration System Before the Subcomm. on Capital Mkts., Ins. and Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 109th Cong. (2005) (statement of the Public Investors Arbitration Bar Association), available at <http://archives.financialservices.house.gov/media/pdf/031705rs.pdf>.

144. Charles Gasparino, *Judging Wall Street*, NEWSWEEK, Sept. 6, 2004, at 56.

145. Gary Weiss & David Serchuk, *Are Investors Walled Off From Justice?*, BUS. WK., Mar. 22, 2004, at 91.

On the other hand, one proponent of FINRA arbitration has argued that investors' criticisms of the fairness of securities arbitration stem primarily from misunderstandings of the law, not from defects in the arbitration process itself or failures of the arbitrators.¹⁴⁶ For example, if an investor believes his broker's misconduct caused his monetary losses, yet an arbitrator fails to award damages to the investor after a hearing, then he blames the arbitrator instead of the law upon which the arbitrator grounded his decision.¹⁴⁷ Hence, the investor's misunderstandings lead to disillusionment with the process and perceptions of unfairness.¹⁴⁸

VI. FINRA's Securities Arbitration System as a Model

Criticisms of the FINRA arbitration should be acknowledged, but these criticisms do not wholly discredit the system, and FINRA has responded to the criticisms by continuing to amend its arbitration rules. In addition, it is important to keep in mind that American investor advocates' assessment of FINRA arbitration is formed against the backdrop of the American legal system. China has a different legal framework. This paper does not take the position that if FINRA's securities arbitration system is transplanted to China, all its shortcomings will disappear. Rather, this paper simply contends that securities arbitration is a better alternative than civil litigation for Chinese public investors, and the FINRA arbitration system has a number of useful attributes, as discussed below, that can help China improve its own system.

First, the jurisdiction of FINRA arbitration is broader than the Chinese system, which under the 2004 Joint Notice is limited to disputes arising from issuance and trading stocks or disputes involving futures contracts.¹⁴⁹ Under FINRA, acceptable securities arbitration cases include disputes that arise between brokerage firms, between investors and brokerage firms, and between investors and representatives of the firms.¹⁵⁰ Commonly accepted claims include fraud, misrepresentation and omissions, negligence, unauthorized trading, churning, failure to supervise, breach of fiduciary duty, and breach of contract claims.¹⁵¹ FINRA arbitration recognizes that public investors' rights could be violated in a variety of contexts, but the Chinese arbitration commissions only have the authority to accept securities disputes in limited contexts.¹⁵²

Second, under FINRA, the duty for securities firms to arbitrate disputes is mandatory.¹⁵³ American securities firms and their representatives are contractually bound

146. See Gross *supra* note 142, at 349, 395-97.

147. *Id.*

148. *Id.* at 50.

149. *Interim Provisions*, *supra* note 96, art. 79.

150. *What Cases are Eligible*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OverviewofArbitrationMediation/WhatCasesAreEligible/> (last visited June 3, 2012).

151. *Summary Arbitration Statistics 2011*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/index.htm> (last visited June 3, 2012).

152. *Interim Provisions*, *supra* note 96, art. 79.

153. See *A Review of the Securities Arbitration System Before the Subcomm. on Capital Mkts., Ins. and Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 109th Cong. (2005) (statement of Constantine Katsoris, Fordham University School of Law Professor) (testifying that *McMahon* transformed securities arbitration

to arbitrate disputes with public investors, even in the absence of a written contract.¹⁵⁴ The contractual obligation is not rooted in agreements with customers; rather, the obligation comes from being a member of FINRA. Because all securities firms in America are members of FINRA, public investors can demand securities firms to arbitrate disputes.¹⁵⁵ In contrast, consumer securities cases in China are not mandatorily arbitrated, which is to the detriment of Chinese consumers. As previously discussed, given the choice between civil litigation and arbitration, the latter offers more advantages to public investors. But because Chinese securities firms' contractual obligation to arbitrate is rooted in agreements with customers, if Chinese securities firms do not consent to an arbitration clause, Chinese public investors are left with civil litigation as the only remedial means for seeking monetary damages.

Third, beyond providing guidance on arbitrating claims between investors and the securities industry, FINRA can also help China to centralize and specialize its securities arbitration system. Currently, securities arbitration can take place at any one of the hundreds of existing arbitration commissions scattered across China.¹⁵⁶ The Chinese securities industry, like its American counterpart, can play a big role in the supervision of securities arbitration. The Securities Association of China (SAC), which is a self-regulatory organization for the securities industry, is well-positioned to function like FINRA, but the Chinese state has yet to formally bestow that responsibility on the SAC.¹⁵⁷ Unlike CIETAC, which was created to address China's economic and trade relations with foreign countries,¹⁵⁸ SAC was created by China's domestic securities industry. The scope of the SAC's responsibilities can be expanded to include shaping domestic securities arbitration procedures, helping to establish specialized securities arbitration commissions and to manage the selection of arbitrators. As the SAC becomes a more centralized governing body of securities disputes, like FINRA, the SAC can enforce arbitration through membership. The SAC can also expand the classes of arbitrable claims to include disputes arising between securities firms and customers.

Fourth, aside from centralizing arbitration, the SAC can help to promulgate investor-friendly rules, much like FINRA's rules. For instance, emulating FINRA's rules, the SAC can require arbitration to take place where the investor plaintiff resides.¹⁵⁹ This would be more favorable to investors than the current rule that allows both parties to contractually decide the location of arbitration, ignoring the unequal bargaining power between investors and securities firms. In addition, FINRA's Discovery Guide is also very generous to investors, recognizing that a majority of the evidence an investor plaintiff needs to prove a claim is in the hands of the defendant firm.¹⁶⁰ The SAC can consider promulgating similar discovery rules that favor investor plaintiffs.

"from a voluntary procedure to a mandatory one"), available at <http://archives.financialservices.house.gov/media/pdf/031705cgk.pdf>.

154. FINRA R. 12200.

155. See *About the Financial Industry Regulatory Authority*, FIN. INDUSTRY REG. AUTHORITY, <http://www.finra.org/AboutFINRA/> (last visited June 3, 2012).

156. See SHANGLUO ARB. NETWORK, *supra* note 90.

157. Securities Law, *supra* note 22, art. 174.

158. CIETAC, *About Us - Introduction*, *supra* note 106.

159. FINRA R. 12213.

160. *Discovery Guide*, *supra* note 139.

VII. Conclusion

After a six-year struggle in the courts, the Yinguang Xia case finally concluded in 2007.¹⁶¹ From its commencement in 2001, the case endured numerous judicial upheavals. At the start, the Supreme People's Court stayed the civil suits filed by Yinguang Xia's investors.¹⁶² In 2002, the CSRC issued an administrative penalty against Yinguang Xia, which triggered a two-year statute of limitations on the civil claims brought by aggrieved investors.¹⁶³ In 2003, an intermediate court issued a criminal ruling against Yinguang Xia.¹⁶⁴ Meanwhile, the statute of limitations on the civil claims continued to run. Eventually, the SPC had to make a special exception based on the importance of the case and its social impact to extend the statute of limitations by three months.¹⁶⁵ Once the civil claims were finally accepted in court, it took another four years for the case to conclude. Ultimately, in 2007, the parties reached a settlement with investors accepting damages due in the form of additional shares of Yinguang Xia.¹⁶⁶

Using Yinguang Xia as the entry point and the ending point, this paper has presented a discussion of two legal remedies—civil litigation and arbitration—available to Chinese public investors who have suffered monetary damages in their securities dealings. This paper has argued that because of existing uncertainties and obstacles in the Chinese civil litigation system, arbitration provides a valuable alternative method for aggrieved investors to recover damages. To further improve China's securities arbitration, China can and should look to FINRA for guidance and improvement.

Alternative dispute resolution has been an important part of the Chinese securities industry, and there is room for arbitration to play an even bigger role if the existing shortcomings are addressed. Perhaps by the time another Yinguang Xia harms public investors, they will be able to recover some of their monetary damages through arbitration.

161. Tao Yushen, *supra* note 11.

162. *Id.*

163. *Id.*

164. See "银广夏案"诉讼时效无多 投资者利益谁来保护 ("Yinguang Xia An" Susong Shixiao Wu Duo Touzizhe Liyi Shei Lai Baohu) [*"Yingguang Xia Case" Statute of Limitations Running, Who Will Protect Investors' Rights*], XINHUANET NEWS SERV. (Feb. 6, 2004), http://news.xinhuanet.com/stock/2004-02/06/content_1301413.htm (China).

165. Tao Yushen, *supra* note 11.

166. *Id.*

