When the Ant Gets Too Big: Understanding China’s Financial Regulation Through the Suspension of Ant Group’s IPO

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Cover Page Footnote
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When the Ant Gets Too Big: Understanding China’s Financial Regulation Through the Suspension of Ant Group’s IPO

Cherie Xinyi Zhang*

Abstract:

The suspension of Ant Group’s IPO in 2020 sent shockwaves through China’s financial landscape. Amid speculation that founder Jack Ma’s criticism towards the Chinese government triggered the suspension, this note argues for a nuanced understanding rooted in legal and economic factors unique to the Chinese financial regulatory system. By analyzing Ant’s case, this note contributes to contextualizing China’s evolving banking, securities, and FinTech regulation, while providing lessons for both regulators and fintech companies in fast-growing markets.

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INTRODUCTION

“We do not believe bigger is better” – Ant Group (Ant), China’s largest FinTech company with 1.2 billion users and $18.5 billion annual revenue, made such a statement in its dual-listing prospectus. If the IPO succeeded, Ant could raise about $34.5 billion, making it the largest IPO in modern history. But, to everyone’s surprise, the IPO was halted two days before the company’s official listing. After that, Ant was restructured under the supervision of the People’s Republic of China (PRC) government, and it has not yet publicly revived its IPO plan up to the writing of this paper.

Although many believed that Ant’s founder Jack Ma’s criticism of the PRC government was the trigger for the suspension, this paper argues that an adequate account of the suspension should recognize the legal basis relied upon by decision-makers and the economic reasons at the core of the episode. There is no lack of literature on the everchanging landscapes of China’s banking, securities, and FinTech regulation. Nevertheless, we still know very little about how the bodies of regulation may work together in a case like Ant, the most prominent Chinese technology company that dominates digital financial services in the PRC, including mobile and online payment platforms, wealth management, and microfinance. The story of Ant is not only a story of regulating securities, but also one of curbing shadow banking and strengthening fintech regulation. Thus, this paper contributes to the literature on China’s finance regulatory scheme by illustrating the background and applying the regulations to the largest Chinese FinTech company’s IPO suspension. Further, this paper aims to highlight the challenges regulators encounter in emerging markets, especially when they are trying to strengthen a regulatory framework that has been historically lax.

This paper is divided into four parts. Part I introduces the necessary background of China’s securities, banking, and FinTech regulations. Part II moves to offer an account of Ant’s IPO process and delineates what might have counted as the material events that happened after the registration approval. In Part III, this paper summarizes the lessons for Chinese regulators and other Chinese FinTech companies from the case of Ant. Last but not least, this paper concludes in Part IV that Ant’s IPO suspension showcased the challenges faced by regulators in a newer market and declared more stringent regulations for Chinese FinTech companies.
I. BACKGROUND

It is impossible to understand the suspension of Ant’s IPO without some knowledge of China’s financial system. The supervision of financial activities and financial institutions is carried out by the People’s Bank of China (PBOC), the China Banking and Insurance Regulatory Commission (CBIRC), and the China Securities Regulatory Commission (CSRC). The PBOC and the two commissions are mutually independent ministerial-level public institutions with rule-setting power under the State Council. Apart from these entities, the Financial Stability and Development Committee (FSDC) was established in 2017 to strengthen coordination between financial regulators. The membership of FSDC comprises the highest-level financial regulators, including the Vice Premier, the Governor of PBOC, the Chair of CBIRC, the Chair of CSRC, the head of the State Administration of Foreign Exchange, and so on. Companies like Ant would be under the oversight of all regulatory entities mentioned above. The rest of Part I provides a brief overview of the development of China’s capital market, banking, and FinTech regulation.

A. Chinese Capital Market Issuance System

The PRC securities markets (in the sense of traded stock and bond markets) have a history of only about thirty years. Despite the brief history, the markets snowballed. By the end of 2020, the Shanghai Stock Exchange (SSE) had caught up with its foreign counterparts with a market capitalization of $7 trillion, ranking third among the world’s exchanges, right after NYSE and Nasdaq. Since the emergence of national stock exchanges like SSE, fundamental changes have happened to the rules of the Chinese capital market: the degree of government intervention has continuously dropped, as reflected by the evolving issuance systems and price controls. However, “social stability” remains a goal of the CSRC, the Chinese version of SEC, and motivated it to engage in an IPO market moratorium when it perceived...
the market to be over-heated.\textsuperscript{11}

**1990-1999: Quota System.** Though the SSE had been established in 1990, the first version of the Securities Law of the PRC (hereafter “the Securities Law”) wasn’t passed until the end of 1998. A quota system might be strange to people familiar with western capital markets. But for China, it was a reasonable starting point, for the country was still transitioning from a planned economy to a semi-market economy during that period, and the private sector had just started to pick up. Under the quota system, the central government set and allocated quotas for the total number of offerings to different provinces and ministries. The SSE was subject to the administration of the municipality where its jurisdiction was established – namely, the Shanghai municipal government – instead of a central regulatory agency.\textsuperscript{12} An issuer had to first get the quota from the local government before making an application for review by the central government.\textsuperscript{13} Opportunities for public offerings were mainly awarded to state-owned enterprises (SOEs).

Moreover, issuers and underwriters were unable to price their shares freely with market conditions. The government imposed restrictions on the IPO price, capping the price-earnings ratio at around 15.\textsuperscript{14} As such, the Chinese IPO market faced extreme underpricing, meaning that the issuing price in the primary market was significantly lower than the trading price in the secondary market.\textsuperscript{15}

**1999-2018: Approval System (merit-based review).** With the Securities Law coming into effect, China’s capital market stepped into the era of the approval system (核准制), also known as the merit-based review system.\textsuperscript{16} The 1998 Securities Law vested the CSRC with the exclusive authority to regulate the securities market. The CSRC introduced a range of new policies and set up the Public Offering Review Committee (Review Committee) following Article 14 of the 1998 Securities Law.\textsuperscript{17} The Review Committee decided the fate of the proposed offerings by substantively examining their merits under the criteria set by relevant administrative regulations promulgated by the CSRC.\textsuperscript{18}

\begin{thebibliography}{10}
\bibitem{huang2011} Huang, supra note 9, at 54–55.
\bibitem{qian2012} Qian, supra note 11.
\bibitem{qian2013} Qian, supra note 11, at 3.
\bibitem{id} Id.
\end{thebibliography}
Compared to the quota system, the approval system is more market-driven in the sense that there is no maximum number of offerings and no government approval requirement for the shares’ issuance price. Empirical studies have shown that incremental reforms gradually led to a decline in the unusual IPO underpricing phenomena. However, the merit-based review system led by the CSRC Review Committee is still far from the disclosure-based issuance system in other mature capital markets. For example, the U.S. Securities Exchange Committee (SEC)’s Division of Corporation Finance reviews issuance filings, but it “does not evaluate the merits… or determine whether an investment is appropriate for any investor.” The SEC approach is disclosure-based: it aims to provide the market with sufficient information for investment decisions rather than make the decisions for the investors. The CSRC Review Committee, on the other hand, performed quality control of proposed offerings. The Review Committee has a set of financial tests for the issuers. For IPOs, the issuers must have reported profit within the past three accounting years, with an aggregate profit exceeding RMB30 million. Because the Review Committee’s decision is not legally challengeable, it enjoys broad discretionary authority in practice and prioritizes SOEs or specific industries.

The discretion of the Review Committee had attracted much criticism, along with charges of corruption. CSRC’s Review Committee has also been accused of the “paternalistic” halting of all IPO filing reviews for about ten months in response to the 2008 financial crisis. Within the past twenty years, however, China’s economy has expanded vastly, as has the merit-review workload. It took an average of about one and a half years, precisely 553 days, for an IPO application to get a final review in 2019, while hundreds of other companies were “queuing” for the review. Many Chinese companies sought IPOs in Hong Kong or New York because they were affected by these regulatory hurdles.

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20 Qian, supra note 11.
23 Huang, supra note 16, at 267.
24 Huang, supra note 16, at 269.
26 Huang, supra note 16, at 260.
28 See Lerong Lu, The Rising Star in the East: Unveiling China’s Star Market, the
2019-present: Registration System (disclosure-based review). In 2018, the Chinese government started a new wave of capital markets reform to create a more friendly financing environment for its home-grown, high-tech, and innovative companies. During the first China International Expo that year, President Xi Jinping announced that the CSRC and SSE would set up the Science and Technology Innovation Board (STAR Market) and experiment with the registration-based IPO issuance system.29

As revised in 2019, the new Securities Law shows that China would gradually implement the registration system in all national exchanges, with the State Council setting the implementation procedures.30 Following the policy direction, the CSRC issued “Measures for the Administration of IPO Stocks on the Science and Technology Innovation Board (for Trial Implementation),” and the SSE issued “Rules Governing the Review of Offering and Listing of Stocks on the Science and Technology Innovation Board of Shanghai Stock Exchange” in 2019. The CSRC also revised the “Measures for the Administration of Information Disclosure by Listed Companies” (“Disclosure Measures”) in 2021. It is worth noting that Ant’s IPO was reviewed in 2020, before the publication of the new Disclosure Measures.

On February 17, 2023, the CSRC announced the “full implementation” of the disclosure-based registration IPO system, which means that the new system has finished its pilot phase with the STAR market and will be extended to all boards across mainland China.31 The Review Committee no longer exists under the new regime. Instead, the stock exchanges vet the issuers’ registration with a focus on information disclosure.32 Although the regulators stressed that the new system “takes information disclosure at its core” and “the essence of this reform is letting the market make the choice,” the CSRC still retains the power to check the issuing companies’ “alignment with the country’s industrial policies and the features of the respective boards.”33

32 China Rolls out Registration-based IPO System Across the Board in Milestone Reform, XINHUA (Feb. 18, 2023), https://english.news.cn/20230218/3fd5da9cd70b41b7ac83fd988ca488de/c.html.
33 Id.
B. Banking Regulation

In contrast to the newborn securities market, China’s banking sector has a more profound history and broader acceptance by the public. According to the World Bank Group’s data, the gross domestic savings rate in 2020 was 44.7% of GDP for China, 26.1 for the European Union, and 18.0 for the U.S. 34 Chinese banks also intermediate more than half of the economy’s capital. 35 The banking sector’s extraordinary ability to attract savings brought it a dominant position in the Chinese financial system. 36

In 2003, the Chinese Banking Regulatory Commission (CBRC) took over the regulatory role previously held by PBOC and became responsible for supervising the operation of the banking sector. 37 Under the PRC Banking Regulation and Supervision Law, the CBIRC can enforce rules regarding prudential regulation through standards such as “risk management, internal control, capital adequacy, asset quality ... and liquidity management of assets.” 38 It is worth noting that, in March 2023, the State Council of PRC replaced CBIRC with the National Financial Regulatory Administration (NFRA). The NFRA was established based on CBIRC to conduct more unified supervision and regulation of China’s ever-growing financial industry. 39

Besides commercial banks, CBIRC also licenses and regulates non-bank financial institutions, such as trust companies (typically the legal structure for private equity funds in China), financial leasing companies, foreign exchange companies, consumer financial companies, and automobile financial companies. 40 Even though CSRC treated non-bank financial institutions as within their regulatory scope, the rules were still entity-focused rather than activity-oriented, leaving room for China’s vast shadow banking sector. Shadow banks generally refer to financial institutions that act like banks but are not supervised like banks. 41 Characterized by a lack of disclosure,

35 HUANG, supra note 9, at 15 (describing China’s unbalanced market structure).
36 Id.
39 Supra note 5.
40 Id.
“little regulatory or supervisory oversight,” and “loss-absorbing capital or cash for redemptions,” shadow banking can pose significant risks to the financial system. The key motivations for shadow banking in China are regulatory arbitrage and demand for credit. On the demand side, shadow banks have the potential to help stimulate economic growth because they provide an additional source of lending that is cheaper and widely available.

In terms of regulatory arbitrage, banks have incentives to keep some loans off their balance sheet and have non-banks participate to avoid regulatory constraints (such as loan-to-deposit ratio) and costs. The high savings rate in China exacerbates the risk posed by shadow banking, as the banks seek to use the surplus funds for higher returns outside the regulated system. Traditionally, trust and guarantee companies have been the non-bank participants in such arbitrage maneuvers; recently, microfinance companies and fintech companies like Ant have also come into play.

In November 2017, the central government created the FSDC in response to the growing shadow banking sector and the changing mode of financial services. The PBOC took over the legislative and rulemaking functions of the CBRC and CIRC under the theory that a single policymaker could better focus on rules for regulating the activities rather than the entity types.

C. FinTech Regulation

The evolution of China’s FinTech regulation is another piece that fits nicely into the puzzle of Ant’s IPO. FinTech refers broadly to various technology-enabled financial services, such as mobile payment, digital banking, insurance, wealth management, cryptocurrency, and cross-border payment. Each service mentioned above has found a corresponding business model in China. Ant, broadly speaking, is a pioneer for all of them.

Unlike FinTech in the United States, which was born within an intricate financial services system subject to federal and state regulations, China’s

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42 Id.
44 Id. at 9–13.
49 Brian D. Christiansen et al., Fintech Disruption: It’s Not That Simple, SKADDERN (June 16, 2021), https://www.skadden.com/insights/publications/2021/06/the-informed-
Fintech emerged in “the Wild West,”\textsuperscript{50} Initially, the Chinese government took a laissez-faire approach to FinTech companies, almost the opposite of its capital market policies. From 2000 to 2010, the government prioritized innovation and development of internet finance over regulation (先发展后监管). There were almost no threshold requirements for internet companies to enter the financial sector before 2010. In fact, the Chinese government relied on internet finance to advance financial inclusion for SMEs and individuals in rural areas.\textsuperscript{51} Because FinTech companies, including Ant, were not subject to CBRC’s direct supervision at the beginning of the century, they became heavily involved in the shadow banking sector.\textsuperscript{52}

A landmark event in 2010 was the promulgation of the “Administrative Measures for the Payment Services Provided by Non-Financial Institutions” (PBOC Order No.2 [2010]).\textsuperscript{53} The new rule addressed the potential risks associated with third-party payment services.\textsuperscript{54} It was also the first time Chinese regulators set a threshold for FinTech companies to engage in financial services. Order No. 2 prohibited non-financial institutions from providing third-party payment services unless licensed. The licensure requirements cover the company’s minimal capital, investor, personnel, organizational, and facility aspects. Although Order No. 2 applied retrospectively to all non-financial institutions already engaged in payment service businesses, it gave the companies one year to comply with its services uninterrupted. Ant quickly fulfilled the requirements and received the Payment Service License within the one-year term.

Despite the regulatory attempt, the Chinese government remained friendly to FinTech companies. In the Financial Stability Report of 2014, the PBOC still praised the FinTech sector, noting that it “has helped lower the cost and improved the efficiency of fund allocation and the quality of financial services.”\textsuperscript{55} This report also raises five principles for the oversight of FinTech, which include (1) focus on real economy, (2) abide by the overall requirement of macro-management and financial stability, (3) protect legitimate rights and interests of consumers, (4) ensure fair competition, and (5) balance government supervision and industry self-discipline.\textsuperscript{56}

\textsuperscript{50} Zhu, supra note 47.
\textsuperscript{52} See supra note 44.
\textsuperscript{54} Zhou et al., supra note 51, at 52.
\textsuperscript{56} Id. at 178–79.
It was not until the investor flight of the online peer-to-peer lending (P2P) market in 2015 that regulators began to pay attention to the credit side of FinTech and the risks associated with unregulated shadow banking. Most significantly, the regulators launched a “remediation storm” for all P2P lending platform services in 2016.\(^{57}\) This campaign-style regulation marked a shift in the Chinese government’s attitude towards FinTech companies.

At the time of writing, China has adopted a sector-based regulatory regime for its FinTech sector. The PBOC oversees payment services by non-financial institutions. The CBIRC regulates online lending and online insurance. The CSRC takes care of online fund sales and crowdfunding.\(^{58}\) In August 2019, the PBOC issued the first three-year ‘FinTech development program (2019-2021),’\(^{59}\) which talks about strengthening financial prudential supervision and realizing the constant improvement of FinTech in supporting the real economy.\(^{59}\) Since then, the agencies have started focusing on strengthening regulation over large internet companies, foreshadowing the suspension of Ant’s IPO.

II. THE CASE OF ANT

Ant was born when China’s financial system and FinTech industries were both in their rudimentary stages. It took Ant about a decade to single-handedly start China’s mobile payment and internet finance trend. To illustrate how successful Ant has been, one just needs to look at three pre-IPO data points: First, Ant’s mobile application has more than 730 million monthly users, more than twice the population of the United States.\(^{60}\) Second, on the Double 11 Shopping Festival (China’s Black Friday) in 2017, Ant processed an average of 256,000 payment transactions per second.\(^{61}\) Third, the valuation of Ant was about $150 billion in 2018, which skyrocketed to about $315 billion at its IPO pricing.\(^{62}\) To call it Ant is almost a misnomer.

When Ant decided to go IPO, it stood at the crossroads of two complicated regulatory frameworks – the securities regulation system and the banking/FinTech regulation regimes. In the following section, we will examine the history of the Ant Group and its business models. More

\(^{57}\) Xu et al., supra note 48, at 13.


\(^{61}\) @Alipay, TWITTER (Nov. 10, 2017, 5:09 PM), https://twitter.com/Alipay/status/929123909970153472.

importantly, we will analyze the plausible legal basis for suspending Ant’s IPO, focusing on the materiality of the external changes in the regulatory environment and Ant’s internal identity crisis.

A. Who is Ant

It all started in late 2004 when Alibaba, China’s largest retailer and e-commerce company (China’s Amazon), launched its online payment system, Alipay. The payment system initially only served Alibaba’s B2B platform, Taobao, providing escrow services for online transactions between Taobao merchants and buyers. Soon, Alipay developed its mobile payment app and established an innovative QR code payment method in 2011. The same year, Alipay was spun off from Alibaba and rebranded as Ant Financial.

By 2013, Ant had already shared a duopoly with WechatPay (Tencent’s FinTech arm) in the realm of mobile payment, but it had more ambitions. From 2011 to 2015, Ant dramatically expanded its services. Ant described its post-spin-off business model in its preliminary prospectus as a “digital finance technology platform,” encompassing CreditTech, InvestmentTech, InsureTech, and other technology-enabled financial services.

InvestmentTech. Ant took its first step in 2010 by launching the shipping return insurance service for Alibaba’s e-commerce platform. In 2013, Ant leaped toward its FinTech empire by establishing Yu’ebao (余额宝), an online sparse cash management platform. Yu’ebao means balance treasure or piggy bank in Chinese. This product enabled consumers to be matched with investment products that fit their individual risk tolerance. Consumers can also shop instantaneously with their Yu’ebao account balance while generating returns. According to EY and DBS, by mid-2016, Yu’ebao had become one of the largest online funds in China, managing $96 billion for more than 295 million clients. As of June 30, 2020, Ant’s assets under management (AUM) totaled approximately $594 billion, making it the most prominent online investment service platform in China by AUM matched and distributed.

CreditTech. In 2014, Ant created Huabei (花呗), “the first digital

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64 Ant, supra note 1, at 135.
65 Ant, supra note 1, at 294.
66 Ant, supra note 1, at 167.
67 Ant, supra note 1, at 170.
69 Ant, supra note 1, at 166; dollar figure calculated with the 2020 average RMB/USD exchange rate (6.9).
unsecured revolving credit product” in China.\textsuperscript{70} The following year, it launched Jiebei (借呗), a short-term digital unsecured consumer credit product serving small and medium business (SMB) credit needs, and Zhima Credit (芝麻信用), its proprietary trust score based on user spending history.\textsuperscript{71} These services bypass the traditional banking system and arguably contribute to the growth of shadow banking in China. Ant does not provide guarantees for micro-loans “originated” from its platform. Instead, its partner financial institutions back up the loans independently.\textsuperscript{72} Thus, Ant was able to receive hefty loan-brokering fees “with little skin in the game.”\textsuperscript{73} According to Oliver Wyman’s data, Ant’s CreditTech products provided a consumer balance totaling RMB1.732 trillion and SMB credit of RMB422 billion as of June 30, 2020. In the eyes of Ant, it had a noble goal of serving the unmet credit demand by consumers and small businesses with limited credit history, as they were traditionally unfavored by banks in China.\textsuperscript{74}

**InsureTech and Others.** The size and scale of Ant became unparalleled in 2020. It had over one billion active users on its Alipay app. It launched many more FinTech products, such as Haoyibao (好医保), a mutual aid health program, AntChain, a cross-border remittance service leveraging blockchain technology, and its own Blockchain-as-a-Service open platform.\textsuperscript{75} For its pre-IPO round of financing in 2018, Ant’s valuation had already soared to $150 billion.\textsuperscript{76}

\textbf{B. Ant’s IPO and Ma’s Criticism}

**The IPO.** Ant announced its pursuit of A Shares and H Shares dual-IPOs in mid-2020. It is worth noting that companies incorporated in mainland China can be co-listed in the Hong Kong Exchange subject to CSRC’s approval. The shares in these companies that are subscribed for and traded in Hong Kong dollars or other currencies are called H shares, while those traded via a mainland exchange are referred to as A shares.\textsuperscript{77}

\textsuperscript{70} Ant, supra note 1, at 136. Huabei means “just spend it” in Chinese.
\textsuperscript{71} Ant, supra note 1, at 136. Jiebei means “just borrow it” in Chinese.
\textsuperscript{72} Ant, supra note 1, at 166.
\textsuperscript{74} Ant, supra note 1, at 174; see also HUANG, supra note 9, at 16.
\textsuperscript{75} Ant, supra note 1, at 170.
The dual listing valued Ant at more than $300 billion. If it had succeeded, the offerings would raise about $34.4 billion, on par with Saudi Aramco’s record-breaking IPO in 2019. It would also be the largest-ever market debut on the SSE STAR market. In its prospectus, Ant promised to mainly use the proceeds to further digitalize the service industry, enhance its research and development capabilities, and expand cross-border payment initiatives, which align with the PBOC FinTech committee’s 2021 development goals.

Compared to other STAR market IPO applicants, Ant had a relatively smooth and expedited process. It sprinted through a process that normally takes four months or longer. On September 18th, only 24 days after Ant submitted its registration statement to the STAR market, the SSE completed its application audit and certified its approval to CSRC. On October 20th, the CSRC approved the registration, and two days later, the registration was valid. By then, Ant was all but ready to press “go” on its listing debut.

Ma’s Criticism. An unnecessary twist happened on October 24th. A video of a businessman criticizing the Chinese financial market system and calling for further reform went viral online. That man was Jack Ma (马云), co-founder of Alibaba and Ant. He orchestrated the spin-off of Ant in 2004 to prevent the FinTech company from being deemed as controlled by major foreign investors like SoftBank. He went on to be the controlling shareholder of Ant with slightly more than 50% of its voting rights.

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80 Ant, supra note 1, at 399.


The video depicted Ma’s keynote speech for the Shanghai Bund Summit. During the speech, Ma called the international financial system “the product of the Industrial Age” and the Basel Accords – the current global banking rules – “a seniors club.” He opposed following this set of outdated rules because, as he explained, China had a financial market “just grown up.” “[W]e are a country that bears the risk of lacking a healthy financial system… not worry about financial systemic risks.” Ma also criticized the worldwide trend of strengthening the regulation of FinTech companies. He said that “we cannot use yesterday’s way to manage the future” and that Chinese banks had a “pawnshop mentality” that hurts entrepreneurs. At the end of the speech, Ma said that the Ant Group had always aimed for a sustainable and inclusive new financial system – even if Ant’s inclusive finance “is the wrong thing to do, we will continue to make this mistake, again and again.”

The provocative speech allegedly attracted regulators’ attention. In a week, FSDC held an emergency meeting to stress the importance of regulation in preventing systematic financial crises and flagged the risks associated with the development of FinTech. Then, on November 2nd, the regulators (PBOC, CBIRC, CSRC, and the State Administration of Foreign Exchange) together announced that they summoned Mr. Ma and Eric Jing, Ant’s Chief Executive Officer, to a meeting without disclosing the actual conversation (hereafter the “Regulator Talk”). The next day, Ant’s STAR Market IPO was halted.

Soon after the news was out, many believed that the suspension of Ant’s IPO directly resulted from Mr. Ma’s criticism of the Chinese financial system or, broadly speaking, the PRC government. The temporal proximity was one of the main reasons why many people blamed the suspension of Ant’s IPO on Ma’s “reckless” speech. One report even said that the IPO was “personally scuttled” by China’s President Xi Jinping. On the other hand,

88 Yang & Ng, supra note 79.
90 See generally Jing Yang & Lingling Wei, China’s President Xi Jinping Personally Scuttled Jack Ma’s Ant IPO, WALL ST. J. (Nov. 12, 2020, 12:56 PM), https://www.wsj.com/articles/china-president-xi-jinping-halted-jack-ma-ant-ipo-11605203556.
the Chinese state media and some other western reporters framed the incident as a prudent move to protect consumers and prevent a systematic financial crisis.\textsuperscript{91} Was the halt of Ant’s IPO a flex of muscle by the Chinese government? Was it reactionary or a calculated move? Does the regulators’ decision have a legal basis?

Although there might not be definite answers to these questions, examining the texts of newly issued regulations and contextualizing this episode through legal and economic lenses could allow us to understand the various factors contributing to the dramatic suspension. Further, the discussion could provide additional insights into areas where regulatory strategies could be enhanced. The next part will explore the legal basis or lack thereof of this dramatic suspension.

\textbf{C. The Suspension}

1. Is there a legal basis?

On November 3\textsuperscript{rd}, 2020, the SSE issued the “Decision on Suspending the Initial Public Offering of Ant Technology Group Co., Ltd” [关于暂缓蚂蚁科技集团股份有限公司科创板上市的决定] (hereafter Decision). A short statement of only five sentences - the Decision mentioned the recent Regulator Talk and “the changing FinTech regulatory environment reported by the issuer.” The Decision referred to the Regulator Talk and the changing regulatory environment as \textit{potential material events}. It then goes on to say that \textit{such a material event}, without specifying which one, may result in the issuer’s non-compliance with the offering condition or information disclosure requirement.\textsuperscript{92} The Decision cited “Measures for the Administration of IPO Stocks on the Science and Technology Innovation Board (for Trial Implementation)” [科创板首次公开发行股票注册管理办法（试行）] (hereafter CSRC STAR Rule) and SSE’s “Rules Governing the Review of Offering and Listing of Stocks on the Science and Technology Innovation Board of Shanghai Stock Exchange” [上海证券交易所科创板股票发行上市审核规则] (hereafter SSE STAR Offering Rule).

Accordingly, the cited rules and regulations provided the legal basis for halting Ant’s IPO. Article 26 of the CSRC STAR Rule provides that “[a]fter the CSRC makes the registration decision and before the listing and trading


of the issuer’s stock... if any major matter occurs, the issuer... shall report to the SSE in a timely manner."\(^{93}\) The language in the Decision suggests that Ant voluntarily reported “the changing FinTech regulatory environment” to the SSE. Further, Article 60 of the SSE STAR Offering Rule explicitly requires the issuer to suspend the offering of its stocks “[i]f a material event occurs to an issuer after the CSRC’s decision approving the registration of its stocks and before the listing and trading of its stocks, which may result in the issuer’s non-compliance with the offering conditions, listing conditions, or information disclosure requirements.”\(^{94}\) The language in the Decision tracked the language of this provision.

Digging deeper, the amended 2020 Securities Law grants regulators and exchanges a statutory basis to promulgate the abovementioned rules. Article 24 of the Securities Law writes that “where a decision to register the securities issuance is found not in conformity with statutory requirements and procedures... the security regulatory authority... or other department authorized by the State Council shall revoke the said decision and terminate the issuance.”\(^{95}\) In a way, the Securities Law carved out a safety net for the regulators to engage in a last-minute referee stop. This is not an unusual provision. The U.S. SEC also has the power to issue stop orders that can suspend an offering if the filed registration statement includes any untrue statement of a material fact or omits to state any material fact.\(^{96}\)

Despite the above explanations, the Decision failed to clearly outline how the law and rules applied to Ant’s case. It also neglected to mention any political motivation behind it. Simply put, it lacked an explanation of the specific events that had occurred and how they resulted in non-compliance with the offering conditions or information disclosure requirements. The following two parts aim to address and clarify these questions.

2. What is the Material Event?

To begin with, what counts as a material event? The American securities


\(^{95}\) Supra note 30, art. 24.

law examines the “materiality” based on the perception of market participants: the information “is material if there is a substantial likelihood that a reasonable shareholder would consider it important” in decision making.97 Content with a standard rather than a rule, the United States Supreme Court did not provide a clear-cut definition. It asked the lower courts to analyze based on specific facts.98

The Chinese legislators took a similar attitude. The amended Securities Law also did not clearly define “a material event.”99 Article 19 of the Securities Law provides that “[t]he application documents for securities issuance submitted by an issuer shall be truthful, accurate and complete and shall fully disclose the information necessary for investors to make a value judgment and investment decision.”100 Thus, it appears that the determination of “materiality” is also made based on investors’ perspective. The standard is “necessary for investors to make a value judgment and investment decision.” Similarly, then effective “Measures for the Administration of Information Disclosure by Listed Companies” (CSRC Order No. 40 [2007]) Article 11 provides that “[a]ny information which may have a major impact on the investors’ investment decisions shall be disclosed in the stock prospectus.”101 This language, like the standard adopted in the United States, provides lots of flexibility for regulators in determining what meets the standard of “materiality.”

Although judicial decisions are not binding precedents in China, they may be used as judicial reference and guidance. Courts and administrative agencies in China have applied the investor decision-making standard. For example, in an administrative proceeding for Changsheng Bio-Technology Co., Ltd., the CSRC decided that an investigation by the Jilin Medical Products Administration (similar to the province-level FDA) was a material event because it could have a major impact on investors’ value judgments.102

100 Supra note 31, art. 19.
At the SSE level, the SSE STAR Rule also uses “the decision-making of investors” as a reference for necessary information disclosure. Naturally, we apply the investor decision-making standard to Ant’s case.

**Financial Holding Companies Decision.** One argument is that the material change in the regulatory environment refers to the issuance of the “Decision on Implementing the Access Management of Financial Holding Companies” (FHC Decision), which was set to take effect on the first of November in 2020. In its prospectus, Ant identified “the evolving and extensive regulation” of the financial services industry as a significant risk factor. It explained that the laws, rules, and regulations are “highly complex, continuously evolving, and could change or be reinterpreted to be burdensome or difficult to comply with . . . .” Half complaining and half bolstering its “leading digital finance platform” position in China, Ant stated that it had a track record of adjusting its business in response to “the evolving regulatory environment with respect to digital payments, consumer and SMB credit, investment, and insurance.” But it also said that it might be subject to additional scrutiny from regulators because of its leading position.

These disclosure statements all seem to be conventional. However, the prospectus also mentioned that, on September 11, 2020, the State Council issued the FHC Decision, followed by the PBOC issuing the “Provisional Administrative Measures on Financial Holding Companies.” Once effective, the FHC decision requires non-financial companies previously outside of the scope of banking licensing regulations to establish a financial holding company upon approval from the PBOC.

A clear departure from the *entity-based* approach, the FHC decision foreshadowed a tighter regulatory environment for FinTech companies to engage in shadow banking activities. But Ant had a chance to give its answers to the change before the official listing. In the prospectus for its H-share IPO, it pledged to use Zhejiang Finance Credit Network Technology Co., Ltd, its
wholly owned subsidiary, as the entity to apply for the status of the financial holding company. Given that the information about the new rule had been out since September, and investors still rushed to participate in the deal in October, it seems unreasonable to consider the FHC Decision alone as the material event.\footnote{See generally supra note 78.} Also, from a procedural perspective, the SSE and CSRC had greenlighted Ant’s registration, knowing that the FHC Decision would take effect right before the IPO. Their approval, thus, likely signaled that they did not think the FHC Decision should halt Ant’s debut. So, what else happened?

\textbf{Micro-loan Measures.} Another pre-IPO bomb for Ant was the Micro-loan Measures. The CBIRC issued the draft version of the Provisional Administrative Measures on Online Micro-loan Operations (Micro-loan Measures) on November 2, 2020, just one day before the suspension.\footnote{Wangluo Xiaoe Daikuan Yewu Guanli Zanxing Banfa (Zhengqiu Yijian Gao) (网络小额贷款业务管理暂行办法（征求意见稿）)[Provisional Administrative Measures on Online Micro-loan Operations (Exposure Draft)] [hereinafter Micro-loan Measures], YINBAOJIANHUI (银保监会) [China Banking & Ins. Regul. Comm’n] (Nov. 2, 2020), http://www.gov.cn/xinwen/2020-11/03/content_5556884.htm, \textit{translated} in Interim Measures for the Administration of Online Petty Loan Business (Exposure Draft), CLI.4.15124(EN)(LFCA) (PKULAW), http://www.lawinfochina.com/display.aspx?id=16777300&lib=law.} The draft was open for public feedback until December 2nd; however, the language of the rules suggested that the regulators were seeking to raise the bar for Ant’s Huabei and Jiebei-type micro-loan services.\footnote{Meemi O., \textit{What Happened to Ant Group’s IPO? Interpreting the New Online Microlending Regulations in China}, INVESTOR INSIGHTS ASIA (Nov. 21, 2020), https://www.investorinsights.asia/post/what-happened-to-ant-group-s-ipo-the-introduction-of-new-online-microlending-regulations-in-china.} The Micro-loan Measures contain requirements about the micro-lender’s locations, loan purpose, loan amount, sources of funding, and ownership of microlending sub-companies.\footnote{See supra note 109.} Among these aspects, \textit{sources of funding} requirements impact Ant the most. As Ant disclosed, it originates loans, which are then independently underwritten by its partner financial institutions. Before, Ant’s cooperators were subject to online lending regulations instead of Ant itself.\footnote{Ant, supra note 1, at 65, 116 ("[T]he CBIRC issued the Provisional Regulatory Measures for Commercial Banks’ Online Lending Business on July 12, 2020 to provide for the regulatory requirements on the extension of credit by commercial banks via online channels in various aspects...Any increase in risk weightings for loans enabled through our platform will increase our partner banks’ capital required, which may reduce the attractiveness of these loans or reduce or eliminate their interests in cooperating with us.")} However, the new regulation now covers online micro-loan operations of \textit{non-financial institutions}, potentially limiting Ant’s leverage ratio and adversely impacting its CreditTech services. Essentially, the Micro-loan Measures require microlenders like Ant to comply with the following prudential requirements for funding:

\begin{quote}
\begin{itemize}
\item The CBIRC issued the Provisional Regulatory Measures for Commercial Banks’ Online Lending Business on July 12, 2020 to provide for the regulatory requirements on the extension of credit by commercial banks via online channels in various aspects...Any increase in risk weightings for loans enabled through our platform will increase our partner banks’ capital required, which may reduce the attractiveness of these loans or reduce or eliminate their interests in cooperating with us.
\end{itemize}
\end{quote}
The total funding obtained from bank loans and money from shareholders that are used for microlending cannot be greater than the net assets of the microlender;

- The total value of loans securitized by a microlender cannot be greater than four times the microlender’s net assets; and

- Microlenders must take on at least 30% of the share of any syndicate loans issued.  

How does it affect Ant? According to its prospectus, as of June 30, 2020, approximately 98% of the loan “originated” through Ant is not funded by Ant itself. Financial institutions and banks chose to underwrite or securitize those loans because Ant’s “intelligent decisioning systems” allegedly could provide accurate and efficient creditworthiness evaluation and monitoring. Based on the new regulation, Ant had probably over-lent. Its two subsidiaries, Huabei and Jiebei, had a total asset of RMB35.8 billion. Following the implementation of the Micro-loan Measures, Ant could at most issue, or “originate,” RMB716 billion worth of micro-loans. In stark contrast, this number was RMB1.7 trillion for Ant as of the end of Q2 2020.

The Measures could further impact Ant because CreditTech services had surpassed mobile payments as Ant’s most significant revenue contributor in the first half of 2020. CreditTech alone contributes 39.4% of the 63.4% revenue from digital finance technology platform. Once the regulation is implemented, Ant’s moneymaker would be severely hurt through deleveraging steps. The regulators could have argued this was a material event leading to severe loss or significant change in business scope. Furthermore, Ant might need to modify its representation in public disclosures in light of the new rules.

Ant’s Identity Crisis. Ant begins its prospectus with the statement that “today, Ant Group is not a financial institution, nor simply a mobile payments company,” however, it also says in the last sentence of that paragraph that its “vision is … to enable every consumer and small business in the world to benefit from tailored financial services.” Juxtaposing the two statements, one can already see the inconsistency of Ant’s self-positioning. Ant worked hard to avoid being perceived as a quasi-bank. Right before its IPO application, Ant changed its name from “Zhejiang Ant Financial Services Group Co. Ltd.” to “Ant Technology Group Co” to build a profile for the STAR Market (Science and Technology Innovation

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113 See supra note 109.
114 Ant, supra note 1, at 166.
115 Ant, supra note 1, at 171.
116 Ant, supra note 1, at 9. For a detailed calculation, see INVESTOR INSIGHTS ASIA, note 111.
117 Ant, supra note 1, at 308–309.
118 Ant, supra note 1, at 1.
The company wanted to be seen as an innovative global technology provider. However, this doesn’t change the fact that Ant has enabled a behemoth number of microloans while offering bank-like services to millions of users in China.

By identifying itself as mainly a technology company, Ant could deliver a prospectus with hardly any clear balance sheets or analysis of capital ratios – information usually contained in a bank’s prospectus. More importantly, it could choose to be listed on the STAR Market, which has a more inclusive listing and offering standard. From hindsight, we know that the CSRC revised the “Guidelines for the Evaluation of Science and Technology Innovation Attributes” in 2021 to specify that “financial technology and model innovation enterprises shall be restricted from listing on the STAR Market.” The revision means that if Ant wants to revitalize its IPO, it has to go for the main board. However, in 2020, the rules in effect only required the listed company to be in a relevant industry field set forth under the positioning of the Star Market and pass three quantitative requirements in the aspects of R&D investment, patents generating income, compound growth rate, or business income. As a top FinTech unicorn, Ant passed those requirements. Thus, while the identity crisis might be troubling, whether it could disqualify Ant’s IPO remains uncertain.

**Regulator Talk.** Last but not least, we cannot forget the Regulator Talk when revisiting the interim events. A political event in the modern PRC, the regulator talk could be as significant as the abovementioned legal and economic factors. According to the state media, China’s top financial authority had two critical meetings while Ant was gearing up for the final preparations of its dual listing.

On October 26, 2020, the regulators consulted with the IMF team, which had investigated the shadow banking sector in China for years. Then,
on October 31, the Financial Stability and Development Committee (FSDC) held another meeting to discuss the development plans for China’s financial system. The FSDC stressed that the government should “not only encourage innovation and promote entrepreneurship, but also strengthen supervision, and comprehensively incorporate financial activities into supervision according to law to effectively prevent risks … regulators shall work conscientiously, applying the same standards for the same type of business activity or the same type of business entities.” No one knows for sure if the FSDC mentioned “the same standard” to suggest that Ant was given preferential treatment in its IPO process. What we do know is that, two days later, Ant’s CEO and controller were “summoned” to the Regulator Talk.

On one hand, the two meetings seemed to suggest that the Regulator Talk was premeditated and less relevant to Jack Ma’s provocative speech. On the other hand, CGTN’s report made the meetings sound like a direct rebuttal by the authorities to Ma’s speech. When Ma said that China could not have systemic financial risks, the FSDC stressed that it should ensure that crisis from systemic financial risks never happens. How would the investors assess the policy signals released by these meetings and talks?

Understandably, the market might need a buffer time to interpret the policy attitude, but it wasn’t clear how the shift in attitude would impact Ant’s business, at least less clear as compared to the issuance of the Micro-loan Measures. The regulators could argue that the meetings provided the suspension of Ant’s IPO with praiseworthy reasons, for the policy goals stated were to maintain financial stability, market integrity, and to protect consumers.

In short, Ant was facing more problems than mere political backlash. The FHC Decision and Micro-loan Measures represent the tightening of shadow banking regulation on Ant’s fintech activities. Ant’s self-identification represents a disclosure problem under the securities regulation. The Regulator Talk, on the other hand, reflects the changing policy attitudes and the government’s intention to intervene in the market process.

III. THE LESSONS FOR ALL

A trading halt is not unusual, even for a mature market. But when it happens in China, everyone perceives it as a power show-off. How could the regulators do better if we could go back in time? Is there an inherent conflict between the changing regulatory landscape and China’s newly adopted

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registration-based IPO system? What lessons does the case of Ant provide for other FinTech companies in China? This section attempts to give some preliminary answers to these questions.

A. Lessons for Regulators

How could the regulators do better in the case of Ant? As analyzed above, “the changing regulatory environment” could be viewed as a material event, thus justifying the suspension of the record-breaking IPO by China’s largest FinTech unicorn. But the sudden suspension also caused many domestic and western investors to question the motivation behind regulators’ decision-making. Until recently, prominent western media has still linked the incident with the beneficiaries of Ant, hinting that Ant was cracked down on because it had shadow beneficiaries like Jiang Zemin’s relatives.126

The first lesson for the regulators is to confront the dilemma of development before regulation. The Chinese FinTech sector thrived in a largely unregulated environment – any post-operational oversight could hurt the industry. The Chinese regulators were aware of such a dilemma; they even had a phrase called “If you regulate it, it dies; if you let it go, it causes chaos (一管就死, 一放就乱).” However, they still adopted a “whack-a-mole” approach to fix the potential financial problems brought by FinTech companies, making it hard for investors and companies to foresee policy changes, further depressing the incentives to innovate.128

Moreover, the regulators need to be mindful of the signals they release to the market. Perceptions matter to the markets and the rule of law.129 Although the regulators could argue that the suspension of Ant’s IPO had a sound legal basis, it is unlikely for the public to ignore the political motivation and focus only on the economic and legal considerations from hindsight. Ideally, CBIRC could have coordinated with the CSRC on the timing of the issuance of Micro-loan Measures. Or, the CSRC could have noticed the flaws in Ant’s disclosures earlier. One commentator even suggested that “what happened is deeply embarrassing for regulators because they should have more effectively coordinated before approving the IPO.”130

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127 Ruhe Bimian “Yi guan jiu si, yi fang jiu luan” (如何避免“一管就死，一放就乱”) [How to Avoid the Phenomena of “if you regulate it, it dies; if you let it go, it causes chaos”], XINHUA (新华网) (Dec. 25, 2019), http://www.xinhuanet.com/politics/2019-12/25/c_1125385181.htm.


129 Benjamin L. Liebman, Assessing China’s Legal Reforms, 23 COLUM. J. ASIAN L. 12 (2009) (“[T]he risk is … the popular perception that law and legal institutions primarily serve the interests of the well-off – will undermine popular confidence in legal institutions”).

130 Lingling Wei, Ant IPO-Approval Process Under Investigation by Beijing, WALL ST. J.
Even if the halting was inevitable, the regulators should have provided more explanations in the post hoc announcement by clearly explaining what the material event was and how it affected Ant’s eligibility. Otherwise, the public would naturally associate the material event with Ma’s criticism. Investors would also believe that securities regulation in China is simply part of the government’s “political legitimacy management effort.” Such a distrust in the government’s rule of law can hurt incentives for innovation and investment even further than the changing policy environment.

These hypotheticals reveal a significant disadvantage to China’s capital market reform. Even though the central government had implemented an across-the-board registration-based IPO system, large uncertainties related to government preference and policy switching continue to pose significant challenges for potential issuers. A leading Chinese capital market scholar commented in 2018 that the Chinese government has painstakingly looked after the market in a paternalistic fashion. This statement seems to hold true now. That being said, with the comprehensive adoption of a registration-based IPO system, the Chinese regulators would need to find a way to reconcile the tension between the market force and government intervention. Put in another way, they would need to choose between (1) following the efficient market hypothesis by shifting the focus to disclosure and (2) adhering to its rather paternalistic model of “cherry-picking” the suitable investments for the market. It is beyond the scope of this paper to discuss the economic and political rationale behind the two options further, but the writer still believes that the Chinese market will find its way out.

B. Lessons for FinTech Companies

Although Ant is the leader in the market, there are quite a few other active and fast-growing FinTech companies in China. In April 2021, the financial regulators summoned representatives from thirteen of those FinTech companies (including Tencent Holdings, Baidu’s fintech arm Du Xiaoman Financial, JD.com’s JD Finance, ByteDance – Tik Tok’s owner, Didi Finance, etc.) to a talk. Flagging the tightening regulations, the government officials asked the companies to carry out self-inspections while highlighting that their FinTech services should serve the real economy and

(Apr. 27, 2021), https://www.wsj.com/articles/ant-ipo-approval-process-under-investigation-by-beijing-11619532022?mod=latest_headlines. One might see the establishment of NFRA as an attempt to unify China’s financial regulation—unfortunately, it is simply out of the scope of this paper to delve deeper into the post-COVID financial regulation reforms.


132 He, supra note 6, at 215.

the general public.134 To some extent, the regulators required those private companies to consider the cost and benefit of constituents other than their shareholders.

At the very least, Ant’s case should have helped those companies learn that regulatory arbitrage is no longer an option: they would not be able to dodge prudential financial regulations by positioning themselves primarily as a technology company, be it in the press or prospectus. Depending on the type of financial services they engage in, the FinTech giants would need to set up a financial holding company, get a Micro-loan license, and comply with payment deposit rules. They would also need to abide by new data privacy and anti-trust regulations.135

Further, big FinTech companies like Ant, Tencent, and Baidu must face the reality that compliance with the reformed rules and regulations would hurt their profit margin and growth potential.136 These companies have enjoyed a more significant presence in financial services across banking, payments, lending, insurance, and investment than their Western counterparts.137 For those still eyeing an IPO, seeking an alternative market seems to be the only route. But there can still be barriers. In January 2022, JD Technology, the finance arm of e-commerce giant JD.com in China, engaged with banks to plan a $1-2 billion IPO in Hong Kong.138 However, it couldn’t get CSRC’s approval for listing offshore.139 Even though CSRC has stated that it supports qualified companies to choose its listing venues independently, the hope of regulatory approval for overseas listings is dim now for those home-grown Fintech giants.

135 Zhu, supra note 47, at 35–39.
137 Supra note 55.
IV. CONCLUSION

In conclusion, the case of Ant’s IPO suspension is a good starting point to understand the underlying rationale for China’s financial regulation. The halting had its legal basis, economic reasons, and political motivation. The public’s emphasis on the story’s political aspects highlights the difficulties regulators face in a fast-growing market as they shift from a traditional entity-based regulatory framework to a more activity-oriented approach. While China’s financial regulatory landscape remains in flux, the case of Ant has provided valuable lessons for regulators and other FinTech companies and proclaimed an era of more stringent oversight after 2020.