PRYOR CASHMAN LLP

LEGAL UPDATE

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"GOING PRIVATE" – PROCESS AND CONSIDERATIONS
"私有化" – 过程和注意事项

Due to recent market conditions, negative publicity generated by certain high profile accounting fraud allegations and legal actions, and increased scrutiny by the Securities and Exchange Commission (the "SEC") and the Public Company Accounting Oversight Board, many public companies based in the People's Republic of China that obtained listings on U.S. securities exchanges through a reverse merger with a publicly traded domestic shell company have seen their valuations decline despite positive business performance. This trend has caused many such companies to reexamine the costs and benefits of remaining a public reporting company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The costs associated with being a public company have increased dramatically over the past several years due, in part, to the continued requirements of the Sarbanes-Oxley Act. These costs are expected to rise as a result of further regulatory action arising from both the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the heightened scrutiny on China-based reverse merger companies by the SEC and other self-regulatory organizations.

由于近期的市场条件，某些高调会计欺诈指控及法律行动所导致的负面宣传，以及证券交易委员会（以下简称"SEC"）和上市公司审计监督委员会强化审查，许多通过与美国上市壳公司进行反向并购而在美国证券交易所上市的中国公司的市值被低估，尽管其有良好的经营业绩。这种趋势已经引起许多此类公司重新审视在修订的 1934 证券交易法（以下简称"交易法"）下作为上市公司的成本和收益。在过去几年内，部分由于萨班斯法案的持续要求，上市公司的相关成本显著增加。这些成本预计将因 2010 多德-弗兰克华尔街改革和消费者保护法，
以及 SEC 和其他自律组织对中国反向并购企业的严加审查等进一步监管措施而继续上升。

As a result of these pressures, management and other major shareholders of such companies are increasingly considering "going private". "Going private" is the term used to describe the process whereby majority shareholders, management and/or affiliates of a public company – often in conjunction with private equity firms - take a company private by buying out its public shareholders.

由于这些压力，这些公司的管理层和其他主要股东越来越多地考虑通过私有化方式退市(“私有化”)。"私有化"是指上市公司的主要股东，管理层和/或关联公司，往往与私募基金一起， 通过购买其公众股东所持有的股票使一家公司私有化的过程。

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[1] Special thanks to Corporate Associate Ying Cao and Corporate Paralegal Dina Zhang for preparing and finalizing the Mandarin translation of this Legal Update.
特别鸣谢本所曹英律师及法律助理 Dina Zhang 协助编制和完成这一法律更新的中文翻译。

This memorandum will examine the nature of, and structural considerations to keep in mind when evaluating, "going private" transactions. This memorandum is only intended as a general primer on such topics. Management considering a "going private" transaction should consult with the Pryor Cashman attorney with whom they work, or any member of the China Practice Group, regarding the finer timing and procedural aspects before moving forward.

本备忘录将探讨"私有化"交易的性质，及运作时需要考虑的架构问题。本备忘录仅作为此类议题的初步介绍。在实施"私有化"交易前，管理层应就时机和程序方面的问题咨询普凯律师事务所与之合作的律师，或中国法律事务组的任何成员。

"GOING PRIVATE" – GENERAL
"私有化"- 概述

Companies typically consider "going private" to be an attractive option when they believe that their stock is undervalued in the public market. The benefits of being a public company are quickly evaporating for companies with declining stock prices that are unable to access the public markets for financing on desirable terms, while the regulatory and compliance costs and risks associated with being a public company are steadily increasing. When the valuations of a company's stock are depressed, controlling shareholders, private equity firms, management or some combination of affiliates of the company may see the opportunity to return the company to private ownership through a "going private" transaction. Private equity investors may be eager to invest in a more developed company at a favorable price, and controlling stockholders may believe that the company can be more effectively managed and expanded without worrying about quarterly results, public and regulatory scrutiny, and unfounded allegations. Management may also believe that the company will be more accurately valued and have better prospects by moving its stock listing to a non-U.S. trading market.

当公司认为其股票被市场低估时，"私有化"是一个有吸引力的选择。当公司股票价格下跌以致无法在公共市场上以理想的条款融资，同时对上市公司的监管及合规成本和风险却不断增加时，作为上市公司的好处迅速蒸发。当公司的股票低迷时，控股股东，私募基金，管理层或某些关联公司可能会借机通过"私有化"交易使公司回归私有。私募股权投资者可能会急于以优惠的价格投资于一个较发达的公司，控股股东可能会认为公司可以更有效地被管理和扩大而不用担心季度业绩，公众和监管审查，以及毫无根据的指控。管理层也可能认为将其股票在非美国交易市场挂牌，公司将能被更准确地估值及拥有更好的前景。

There are many legal and practical issues to consider when "going private", including the ability to secure the necessary capital to buy out public shareholders and the prospects for achieving shareholder approval of the transaction (which can vary depending upon the chosen structure). In any "going private" transaction, the parties involved must comply with both federal securities laws and state corporate law, which are designed to protect public and minority shareholders. Foreign private issuers will also have to consider the corporate law of the country in which the issuer was formed – most typically the Cayman Islands or the British Virgin Islands. Before engaging in any "going private" transaction, close attention should be paid to the structure and timing of the transaction, the likelihood of legal challenges to the transactions, the procedural safeguards necessary to defend any legal challenges, and disclosure obligations. These items are discussed more fully below.

“私有化”时要考虑许多法律和实际问题，包括获得必要的资金以收购公众股东手中的持股及能否得到股东批准该交易的前景 （因架构而异）。在任何“私有化”的交易中，各方都必须遵守旨在保护公众和小股东利益的联邦证券法和州公司法。设有海外架构的私营企业也将须考虑其所在国的公司法 – 最典型的是开曼群岛或英属维京群岛。 在进行任何“私有化”交易前，应密切关注交易架构和时间，这些交易可能被卷入法律诉讼的可能性，抵御任何法律诉讼的必要程序保障，和信息披露义务。下面更详细的讨论这些项目。

STRUCTURE OF “GOING PRIVATE” TRANSACTION
“私有化” 交易的架构

“Going private” transactions are generally structured as either a tender offer, a merger or, to a lesser extent, a reverse stock split. Each structure is summarized below. The majority of the China-based reverse merger companies that have publicly announced an intention to engage in a “going private” transaction as of the date of this memorandum – including China Fire & Security Group, Inc., China Security & Surveillance Technology, Inc., Funtalk China Holdings Limited, Tongjitang Chinese Medicines Company and Harbin Electric, Inc. - are doing so utilizing a cash-out merger.

“私有化”交易的一般架构是邀约收购，合并，或（在较小的程度上）缩股。每项架构总结如下。截至本备忘录之日，多数已公开宣布有意进行“私有化”交易的中国反向并购公司 – 包括中国消防安全集团，中国安防技术有限公司，乐语中国控股有限公司，同济堂药业，及哈尔滨泰富实业有限公司 – 在利用现金排挤合并进行此类交易。

TENDER OFFER
邀约收购

In the case of a tender offer, the acquiring entity (the “Acquirer”), which is usually owned by or affiliated with controlling shareholders of the company that is “going private” (the “Target”) and backed financially by a private equity firm, makes an offer to purchase the Target’s outstanding shares directly from the Target’s shareholders. The Acquirer sends the shareholders of the Target written offering documents and must file a Schedule TO with the SEC containing disclosure required by SEC rules. The Acquirer’s goal is to obtain over 90% of the Target’s outstanding shares following the tender offer, thereby allowing the Acquirer to effectuate a “short-form” merger with the Target and cash out the remaining public shareholders without requiring approval from the Target’s board of directors or remaining shareholders.

在邀约收购的情况下，收购实体（以下简称“收购方”），通常是由控股股东拥有或有关联，并由私募基金出资支持的，将被私有化的公司（以下简称“收购目标”）通过邀约直接从收购目标的股东手中收购其拥有的流通股份。收购方向收购目标的股东发出书面的收购文件并须向 SEC 提交一份 SEC 规则要求的披露性文件-附表 TO。收购方的目标是通过邀约收购获取收购目标90%以上的流通股份，从而在无需收购目标董事会或其他股东批准的情况下，使收购方与收购目标达成短式合并（以下简称“简易合并”），并以现金购回其余公众股东所持有的股票。

The Target’s board of directors is required to file a Schedule 14D-9 within 10 business days of the commencement of the tender offer disclosing whether it recommends that the Target’s stockholders accept or reject the tender offer, or whether it expresses no opinion. In the case of a “going private”

transaction where conflicts of interest are likely involved, it is advisable that the Target's board of directors form a special committee of independent, disinterested directors to oversee the process of considering the offer and filing the Schedule 14D-9. The special committee will hire its own legal counsel and financial and other advisors to assist it in this process.

收购目标的董事会必须在邀约收购开始后的 10 个工作日内提交附表 14D- 9 来披露其是否建议收购目标的股东接受或拒绝该邀约收购，或者表示没有意见。"私有化"交易在可能涉及利益冲突时，我们建议收购目标的董事会成立一特别委员会，由独立的，无利害关系的董事来监督考虑该邀约收购过程和提交附表 14D -9。该特别委员会将聘请自己的法律顾问和财务及其它顾问以协助它完成这一过程。

Tender offers provide the advantage that they can generally be completed more quickly than can mergers. This greater speed is due to the fact that tender offers do not require SEC review of the tender offer documents prior to their distribution to the Target's shareholders, whereas in a merger, the SEC must review the proxy statement before it can be delivered to shareholders. As a result, tender offers can generally be completed within 1-2 months of the date on which the Acquirer launches the tender offer. In addition, shareholders who accept the tender offer will not have the right to seek an independent court appraisal of the value of their shares (commonly referred to as "appraisal rights" or "dissenters' rights"), which applies in the merger context.

邀约收购的优势是一般比合并更快。更快速度的原因在于邀约收购分发给收购目标股东的文件不需要 SEC 事先审查。而在合并交易中，股东投票说明书在送给收购目标的股东之前必须受 SEC 审查。因此，邀约收购一般都可以在收购方启动邀约收购后的 1-2 月内完成。此外，接受邀约收购的股东将无权寻求独立法庭对其股票价值的鉴定（通常称为"评估权利"或"异议股东权利"），而在合并交易中，股东由此权利。

However, since tender offers are commonly conditioned on the Acquirer holding at least 90% of the Target's stock following the tender offer (which percentage would permit the Acquirer to effectuate the short-form merger), the effective shareholder approval requirement for a tender offer may be more difficult to achieve than in the case of a merger. Those considering a "going private" transaction via a tender offer should carefully consider the likelihood of achieving this 90% threshold when selecting a transaction structure. Upon completion of the short-form merger, the Target's shares can be delisted from the national securities exchange on which they were listed, if any.

然而，由于邀约收购的一般条件是，在邀约收购后收购方持有收购目标至少 90%的股份（该百分比将允许收购方进行"简易合并"），邀约收购的有效股东批准要求可能比合并交易更难达到。考虑通过邀约收购进行 "私有化"交易时，在选择交易架构时应认真考虑达致这 90%门槛的可能性。当"简易合并"完成后，收购目标的股票可以从其挂牌的全国证券交易所上摘牌，如果有的话。

MERGER
合并

Another means to acquire and take the Target private is a negotiated merger transaction. As noted above, this is the most common structure utilized recently by China-based companies seeking to "go

private." In a negotiated merger transaction, the Acquirer and the Target typically enter into a merger agreement providing that an acquisition subsidiary owned by the Acquirer be merged into the Target, resulting in the Target becoming a wholly-owned subsidiary of the Acquirer. As part of the merger, the Target's shareholders would be entitled to receive the consideration negotiated by the Target's board of directors (typically by a special committee composed entirely of independent, disinterested members of the board of directors, as discussed elsewhere in this memorandum). Once a definitive agreement is signed between the Acquirer and the Target, the Target will prepare and send to its shareholders a proxy statement soliciting their approval of the merger. Although state corporate law typically requires that the holders of a majority of the outstanding stock of the corporation be voted in favor of a merger in order for it to be approved, many of the recent "going private" transactions by China-based public companies are conditioned upon the approval of a majority of the minority stockholders (i.e., those stockholders who are not part of the Acquirer group).

另一种取得并使收购目标私有化的方法是通过谈判的合并交易。如上所述，这是目前中国公司寻求"私有化"最常见的架构。在谈判合并交易中，收购方和收购目标通常签订一项兼并协议：收购方拥有的收购附属公司与收购目标合并，使得收购目标成为收购方的全资子公司。作为合并的一部分，收购目标的股东有权收到收购目标董事会通过谈判得到的对价（该董事会通常是由完全独立且无利益冲突的董事会成员组成的一个特别委员会，如在本备忘录其它地方讨论到的）。一旦收购方和收购目标签署最终协议，收购目标将筹备并向其股东发送股东投票说明书，征求他们对合并的批准。虽然州公司法通常规定持有公司大部分股票的股东投赞成票，合并即可获得批准，但许多近期进行"私有化"交易的中国上市公司是以获得少数股东（即那些不属于收购方集团部分的股东）的大多数投票批准为条件的。

A negotiated merger may be the most efficient "going private" transaction structure from the perspective of the Acquirer due to the fact that it has the greatest probability of achieving two key objectives: (1) the Acquirer's desire to take a controlling equity position in the Target, and (2) its desire to eliminate all unaffiliated public shareholders of the Target. However, due to the possibility that the SEC will provide comments to the proxy statement before it can be sent to stockholders, and the need to hold a special meeting of shareholders to approve the transaction, the most likely time frame for consummating the merger is 2-4 months following the execution of the merger agreement.

从收购方的角度来看，谈判合并可能是最有效的"私有化"交易架构，因为它最有可能实现两个主要目标：（1）收购方在收购目标中占控股的地位，（2）清除收购目标中所有无关联的公众股东。然而，由于存在 SEC 在股东投票说明书被发送给股东前会对其发表意见的可能性，及需要举行股东特别会议来批准该合并交易，完成合并最可能的时间框架是执行合并协议之后的 2 到 4 个月。

MERGER AND TENDER OFFER
合并与邀约收购

When a "going private" transaction is structured as a negotiated merger, the Acquirer may also commence a tender offer to acquire the shares from the Target's shareholders at the same price per share as is set forth in the merger agreement as the consideration payable in the merger to the Target's shareholders. The merger agreement will typically require the tender offer to be commenced within a short period of time from when the merger agreement is signed and announced publicly. While the Target will agree in the merger agreement to hold a meeting of its shareholders to approve the terms of

the proposed merger, this meeting may not be required if the Acquirer acquires at least 90% of the outstanding shares of the Target in the tender offer. Once the tendered shares are accepted for payment, the Acquirer, as the 90% shareholder of the Target, will be able to complete a short-form merger without holding a shareholder meeting. Of course, any shareholders who did not tender their shares in the tender offer will retain their appraisal/dissenters' rights (if applicable state law so provides). Thus far, most of the "going private" transactions by China-based public companies that have been structured as mergers have not included an additional tender offer component.

当"私有化"交易以谈判合并方式进行时，收购方也可以着手收购邀约，以合并协议中规定的股价收购收购目标股东的股份。合并协议通常要求邀约收购要从合并协议签署并公布后很短时间内开始。尽管收购目标在合并协议中会同意召开股东大会以批准拟议中的合并条款，但如果收购方购得邀约收购中收购目标至少 90%股份的话， 这种会议可能不需要。一旦邀约股份被接受，收购方，作为收购目标 90%的股东，将可在无需召开股东会议的情况下而完成简易合并。当然，任何没有按邀约收购投标其股份的股东将保留其评估/持异议的权利（如果有适用州法的话）。迄今为止，通过并购方式进行"私有化"的大部分中国上市公司在其私有化交易中没有包括额外的邀约收购之一部分。

REVERSE STOCK SPLIT
缩股

A third structure that a company may use when "going private" is a reverse stock split of its outstanding common stock. To implement a reverse stock split, a company must amend its charter document to provide that each share of stock outstanding will be converted into a fraction of a new share. The company will then pay cash to its stockholders in lieu of issuing fractional shares, which will result in a lesser number of shares outstanding and fewer stockholders. The goal in determining a reverse stock split ratio is to reduce the ownership of each unaffiliated, public shareholder to less than one whole share. Depending on the company's capital structure, the reverse stock split can eliminate some or all of the company's smaller holders, leaving only the company's largest shareholders. To date, the reverse stock split structure has been a less popular structure for a company to "go private."

公司"私有化"时可能使用的第三种架构是对其发行的普通股进行缩股。要实现缩股，公司必须修订其章程文件来规定每一个发行股将被折合成新股的比率。公司将以现金支付股东来代替发行股份，以此来减少外在股份并降低股东数目。缩股的目标是将每个无关联的公众股东的股票所有权减少至少于一整股。根据公司的资本结构情况，缩股可以消除公司的一些或全部小股东，只剩下公司的最大股东。迄今为止，通过缩股达致公司"私有化"还不太常见。

LEGAL CHALLENGES TO "GOING PRIVATE" TRANSACTIONS AND PROCEDURAL SAFEGUARDS
有关 "私有化"交易的法律诉讼和程序保障

Minority shareholders may file lawsuits challenging "going private" transactions, generally based on claims of breach of fiduciary duties and disclosure obligations. While the reviewing court will apply each State's individual statutory and common law, the discussion below focuses on the law of the State of Delaware.

小股东可能提起诉讼来挑战“私有化”交易，一般声称违反受托责任和信息披露义务。虽然复审法院将采用各州的州法及案例法，下面集中讨论美国特拉华州的法律。

As noted above, “going private” transactions usually involve an affiliated controlling stockholder or group of stockholders. This creates potential conflicts of interest. When reviewing a transaction that involves a potential conflict of interest, Delaware courts will apply an enhanced level of scrutiny called “entire fairness” review, to determine whether the process and terms of the proposed transactions are fair to minority shareholders. Under the entire fairness standard, the Target’s fiduciaries have the burden of proving two basic elements of the transaction: “fair dealing” and “fair price.” “Fair dealing” refers to the process by which the transaction was approved (i.e., the timing of the transaction, how it was initiated, structured and negotiated, how director and shareholder approvals were obtained, and whether the disclosure was adequate). “Fair price” involves the fairness of the economic value received by the shareholders in exchange for their shares. The standard of entire fairness is significantly more difficult for the Target’s fiduciaries to fulfill than the business judgment rule, and thus is easier for plaintiffs to overcome in transaction-related litigation.

如上所述，“私有化”交易通常涉及关联的控股股东或一个股东集团。这就造成潜在的利益冲突。在审查涉及潜在利益冲突的交易时，特拉华州法院将采用被称为更高级别的“完全公平”的标准来判断拟议交易的过程和条款是否对小股东是公平的。在完全公平标准下，收购目标的受托人要证明交易的两个基本要素：“公平交易”和“公平价格”。“公平交易”是指该交易被批准的过程（即交易的时间，它是如何开始、构架和谈判的，如何获得董事和股东批准的，披露是否足够等）。“公平价格”涉及股东换取其股份获得经济价值的公平性。对收购目标的受托人来讲，完全公平标准比商业判断标准更难履行，这样原告更容易在与交易相关的诉讼中证明受托人没有达到完全公平这一标准。

By taking certain protective measures, the Target’s fiduciaries can shift the burden of persuasion to the plaintiff shareholders on the issue of fairness or possibly restore the business judgment rule presumption in an interested party transaction.

通过采取一定的保护措施，收购目标的受托人可以将对公平问题举证的责任转移给原告股东，或者在关联交易中恢复使用商业判断这一标准。

The two most effective protective measures that can be used to shift the burden of proof in the case of a cash-out merger initiated by a controlling shareholder are to have the merger approved by either: (i) a special committee of independent, disinterested directors or (ii) a fully informed majority of the minority shareholders. Oftentimes, it may be difficult to obtain the approval of the “majority of the minority” shareholders. Thus, most controlling shareholders and Target boards opt to at least use a special committee to negotiate the terms of a “going private” transaction. In order to gain the benefit of burden shifting, the special committee must be truly independent, fully informed and have the ability to negotiate with the Acquirer independently at arms length to get the best deal for the Target’s shareholders. The special committee should retain its own financial and legal advisors, including obtaining a third-party fairness opinion or valuation of the Target to ensure that the price per share being offered in the “going private” transaction is fair to shareholders. Although achieving the approval of a “majority of the minority” shareholders may be difficult, in the current litigious environment, many recent “going private” transactions structured as mergers are conditioned on achieving that level of approval.

在由控股股东发起的现金并购案中, 可用于转移举证责任的两个最有效的防护措施是通过以下方式来取得对合并的批准：（1）成立一个由独立的，无利益关联的董事组成的特别委员会，或（2）让小股东中的大多数充分知情。通常情况下，获得小股东的多数批准可能很难。因此，多数控股股东及收购目标董事会至少会选择成立一个特别委员会对“私有化”交易的条款进行谈判。为了取得举证责任转移的好处，特别委员会必须真正独立，充分知情并有能力与收购方进行充分、独立的谈判为收购目标股东挣得最佳交易。特别委员会应有自己的财务和法律顾问，包括获得第三方公平意见或对收购目标的估值以确保在“私有化”交易中提供的股价对股东是公平的。虽然取得小股东的多数批准可能是困难的，在当前的诉讼环境下，最近许多以合并方式“私有化”的交易是以达到这种程度的批准为前提条件的。

Historically, tender offers structured as non-coercive tender offers followed by a second-step short-form merger at the same price were not subject to the heightened “entire fairness” standard of review under Delaware law, but rather were only subject to the less-onerous “business judgment” standard of review. This made tender offers a more attractive option for acquirers seeking to minimize their litigation risk in a “going private” transaction. However, the Delaware courts have recently indicated that a non-coercive tender offer followed by a short-form merger would be subject to the business judgment rule only if it is *both* (i) negotiated and approved by a special committee, and (ii) a “majority of the minority” tender their shares in the tender offer. See In re CNX Gas Corp. Shareholders Litigation, 2010 Del. LEXIS 324 (Del July 8, 2010). As a result, it may now be more difficult to avoid an entire fairness review that it has been in the past.

历史上，根据特拉华州法律，邀约收购若以非强制性邀约收购开始并在接下来第二步的简易合并中提供相同价格的话，该邀约收购不受制于强化的“完全公平”的审查标准，而只受限于不太繁重的“商业判断”的审查标准。这使邀约收购成为对收购方更具吸引力的选择，以求最大限度地减少“私有化”交易所面临的诉讼风险。然而，特拉华州法院日前表示，非强制性邀约收购而后简易合并仅在如下两个条件下才会只受限于商业判断规则：（i）该交易是由一个特别委员会谈判和批准的，及（ii）“小股东中的多数”在收购邀约中投标了他们的股票。参见 CNX Gas Corp 股东诉讼案例，2010 年特拉华州 LEXIS 324（2010 年 7 月 8 日特拉华州）。因此，现在可能比过去更难避免“完全公平”的审查标准。

Additionally, if the Target’s board of directors determines that the Target should be sold for cash to an Acquirer in a “going private” transaction, the board will have a fiduciary duty to shop the Target and consider alternative transactions to maximize the consideration received by the Target’s shareholders. This may happen before or after the deal is signed. If this is not done before, the Target’s board of directors (or special committee) should insist that a “go shop” provision be included in the transaction agreements that would allow the Target to be shopped for a certain period of time following the execution of such agreements. When discussing “go shop” provisions, a controlling stockholder proposing a “going private” transaction may want to specify to the Target’s board of directors that the Target is not otherwise for sale and that the controlling stockholder will block any sale to competing bidders or alternative transactions that require shareholder approval.

此外，在“私有化”交易中如果收购目标的董事会决定收购目标应以现金方式被售予收购方，董事会有受托责任为收购目标寻找其它的买主，考虑其他交易以使收购目标的股东所受到的对价是最高的。这可以在成交之前或之后发生。如果未在成交之前做的话，收购目标的董事会（或

特别委员会）应在交易协议中包括一“待购”条款，以允许收购目标在执行这些协议后的一段时间之内仍然有机会被其他公司收购。在讨论“待购”条款时，提议“私有化”交易的控股股东可向董事会指明收购目标不以其他方式出售；该控股股东将阻止出售给竞标人或其它需要股东批准的交易。

DISCLOSURES NECESSARY IN "GOING PRIVATE" TRANSACTIONS
“私有化”交易中的必要披露

A "going private" transaction requires the same SEC filings as any other public company transaction, but often with the additional disclosure requirements of Rule 13e-3 under the Exchange Act. The applicable SEC disclosure obligations depend on the structure of the "going private" transaction, and the status of the Target immediately prior to such transaction. If the transaction is structured as a long-form merger, the Target must gain shareholder approval of the transaction by sending proxy statements to its shareholders. If the transaction is structured as a tender offer followed by a short-form merger, the Acquirer will need to file a Schedule TO and the Target must file a Schedule 14D-9. In both cases, the Acquirer and its affiliates must be mindful of their disclosure obligations under Section 13(d) of the Exchange Act.

如同任何其他上市公司交易一样，“私有化”交易需要向 SEC 提交相同的文件， 但往往还要依交易法 13e-3 规则进行额外披露。适用的 SEC 披露义务取决于“私有化”交易的构架和收购目标交易前的状态。如果交易是长式合并构架，收购目标必须通过向其股东发送股东投票说明书以获得其股东对该交易的批准。如果交易构架是邀约收购加简易合并，收购方要提交附表 TO, 且收购目标须提交附表 14D–9。 在这两种情况下，收购方及其关联公司必须铭记依证券交易法第 13(d) 履行其信息披露义务。

In addition to the general SEC disclosure obligations discussed above, a "going private" transaction, in most cases, is also subject to the rules and disclosure obligations set forth in Rule 13e-3 under the Exchange Act, known as the "going private" rules. A transaction is subject to Rule 13e-3 if it, or any series of transactions, meets each of (1) to (3) below:

除了上述一般 SEC 披露义务外，一个“私有化”交易在大多数情况下同样受限于证券交易法条款 13e-3 的规定和信息披露义务，称为“私有化”规则。如果一个交易或一系列交易满足如下(1) 至 (3) 中的每一项的话，该交易需受限于 13e-3 的规定：

1. *Type of transaction* – it is one of the following types of transactions:
   交易类型 – 以下交易类型之一：

   - a purchase of any equity security by the Target or an affiliate (as defined in Rule 13e-3(a)(1) of the Exchange Act) of the Target;
     收购目标或其关联公司（定义在证券交易法第 13e-3(a)(1) 条）购买的是股票;

   - a tender offer for any equity security by the Target or an affiliate of the Target; or
     邀约收购是要收购收购目标或其关联公司的股票；或

- a proxy or consent solicitation or distribution of an information statement by the Target or an affiliate of the Target in connection with a merger or similar corporate reorganization, an asset sale or reverse stock split involving a repurchase of fractional shares.

  在合并或类似的企业重组，资产出售或涉及回购少于一股的股份的缩股交易中，征集股东投票或同意，或由收购目标或其关联公司散发信息声明。

2. *Participants* – the transaction is "engaged in" by the Target or an affiliate of the Target. A Target or an affiliate of the Target do not need to be the actual Acquirer to be considered "engaged in" the transaction. For example, if the Target recommends that its stockholders approve a tender offer by an affiliate, or senior management will receive material benefits from the transaction that will not be received by the public stockholders (i.e. retain ownership in the private Acquirer), the Target is considered to be "engaged in" the transaction.

   参与方 – 交易由收购目标或其关联公司参与。收购目标或其关联公司不需要是实际的收购方而被认为是交易参与方。例如，如果收购目标建议其股东批准一关联公司的邀约收购，或高管将从该项交易中得到公众股东得不到得物质利益（即在私人收购方保留所有权），收购目标即被认为是"从事"了该项交易。

3. *Purpose* – the transaction has a reasonable likelihood or a purpose of causing any class of equity securities of the Target to be either eligible for termination from registration under the Exchange Act or delisted from a national securities exchange

   目的 – 该项交易可被合理认为有可能或有目的造成收购目标的任何股票证券类终止（依证券交易法的）登记或从一国家证券交易所摘牌。

If the transaction meets the criteria described above and triggers Rule 13e-3, the Target and each affiliate engaged in the transaction must file a Schedule 13E-3 with the SEC. In cases involving both the Target and affiliates being engaged in the Rule 13e-3 transaction, the SEC allows a joint filing of the Schedule 13E-3 to be made, but requires individual statements regarding the purpose and fairness of the transaction as described below. A Schedule 13E-3 requires most of the same disclosure as would be found in the Target's other public filings or in the proxy/information statement (in the case of a merger) or Schedule TO (in the case of a tender offer), and the Target may incorporate by reference to such other filings.

如果该项交易符合上述标准并触动规则 13e–3，涉及该项交易的收购目标和各关联公司必须向 SEC 提交附表 13E–3。如收购目标及关联公司双方涉及规则 13e–3 下的交易， SEC 允许联合申报附表 13E–3，但需对下述有关该交易的目的和公平性进行单独声明。附表 13E–3 要求披露的大部分信息和收购目标其他公开呈报文件、或在股东投票说明书/信息声明（合并的情况下）中，或附表 TO（邀约收购的情况下）中的所需披露的信息相同。收购目标可以从已提交的其他文件中参考引述。

The Schedule 13E-3 requires disclosure of several significant additional topics, including a discussion of the purposes of the transaction (including a discussion of any alternatives considered, and the benefits and detriments of the proposed transaction), a description of the substantive and procedural

fairness of the transaction, and a description of all reports (oral or written), opinions and appraisals provided by outside parties that are materially related to the proposed transaction (which reports must also be filed as exhibits to the Schedule 13E-3).

附表 13E-3 需要对几个额外的重要事项进行披露，包括对该项交易目的讨论（包括对任何考虑过替代方案的讨论，拟议中交易的好处和坏处），对该项交易的实质性和程序公正性的说明，和对所有报告的说明（口头或书面的），由外界第三方提供的与拟议交易相关的重大意见和评估 (这些报告还必须作为 13E-3 的附表来提交）。

The Schedule 13E-3 must be filed contemporaneously with the preliminary or definitive proxy statement filed in connection with a proposed merger, or as soon as practicable after the tender offer materials are published or provided to shareholders. There is then a constructive 20 day waiting period after the filing of a Schedule 13E-3 under SEC regulations before any vote can be held or shares purchased as a part of the "going private" transaction. In addition, customary SEC review of proxy statements concerning mergers still applies with respect to proxy statements filed in connection with a "going private" transaction, which review could take one to two months depending upon the level of review and the scope of the SEC's comments, if any. The SEC also will review the tender offer documents that are filed in connection with a "going private" transaction, and could require that such documents be amended.

附表 13E-3 必须与拟议合并相关的初步或最终股东投票说明书同时提交，或在邀约收购材料公布或提供给股东后尽快实行。根据 SEC 的规定，在提交附表 13E-3 之后有 20 天的等待期 ，其后才能进行作为"私有化"交易一部分的投票表决或股份购买。 此外，SEC 惯常的对与合并相关的股东投票说明书的审查同样适用于与"私有化"交易有关的股东投票说明书。该审查可能需要一至两个月，这取决于审查程度和 SEC 评述意见的范围，如果有的话。SEC 也将审查与"私有化"交易有关的邀约收购文件，并可能要求对这些文件进行修改。

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The foregoing is intended to summarize the structural and practical considerations to keep in mind when engaging in a "going private" transaction. Please feel free to contact the Pryor Cashman attorney with whom you work if you have any questions.

上述是进行"私有化"交易时要牢记的架构方面和实际注意事项的总结。如果有任何问题，请随时联系与您合作的普凯律师事务所的律师。

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Selig Sacks is the Senior Partner of the Corporate Group and Co-Head of the China Practice. He regularly acts as legal counsel to Rodman & Renshaw on initial and follow-on public offerings, and private placements (PIPEs). In addition, he represents China-based companies in their accessing the U.S. capital markets and ongoing SEC compliance obligations. Recent transactions include representing Sinopec USA in its acquisition of its corporate offices in midtown Manhattan, representing Rodman & Renshaw in follow-on public offerings and PIPEs for China based companies engaged in the pharmaceutical, consumer products, green technology, new media, and infrastructure industries. For China Shenghou Pharmaceutical Holdings, Inc.(Ticker: KUN), Mr. Sacks helped guide them to a successful conclusion of an SEC investigation and settlement of a class action lawsuit on highly favorable terms. Mr. Sacks has also successfully completed legal projects for AgFeed Industries, Inc. (Ticker: FEED) (PIPE and public offering), Shiner International, Inc. (Ticker: BEST) (resale registration and NASDAQ Listing), and other assignments for China-based companies.

Mr. Sacks is a frequent speaker in China on the public offering and private placement legal process in the United States. He was a member of the Rockefeller Mission to China (March, 2010), NASDAQ Delegation to Inner Mongolia (May 2010) and speaker at the 12th Annual Private Equity and Venture Capital Forum (June 2010) held in Shenzhen. Mr. Sacks is also Co-Chair of the International Awards and Summit of The M&A Advisor to be held in New York (December 2010).

On December 2, 2010, Pryor Cashman became the first law firm in the world to sign a Memorandum of Understanding with the International Cooperation Center of the National Development and Reform Commission of the People's Republic of China to assist Chinese companies to access the capital markets in the United States. Mr. Sacks leads this effort.

In furtherance of this initiative, with NASDAQ OMX in March 2011 Mr. Sacks conducted seminars for Government and business leaders in the Haidian District of Beijing (China's Silicon Valley) and the Guanghua School of Management, Shijiazhuang and Hangzhou. Mr. Sacks also spoke in Shanghai at the China IPO Bootcamp 2011 hosted by CCG Investor Relations on "Building a Great Board of Directors and World-Class Governance Standards". He will be a featured speaker on May 6 in New York City at the "Wall Street China Forum: Assessing U.S. Listed China Companies" sponsored by China Entrepreneurs.

Mr. Sacks is a Graduate of Stanford Law School, where he was Executive Editor of the Stanford Journal of International Studies. He serves on the Board of Visitors of Stanford Law School, Regional Chair. He served for 6 years on Pryor Cashman's Executive Committee and as Co-Chair of its Lateral Recruitment Committee.

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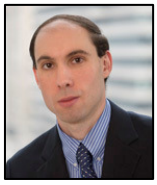
萨思力先生是普凯律师事务所资深合伙人和普凯中国法律事务组的共同主任. 他经常在初期和后续公开上市及 私募 (私募股权投资融资)事务中担任承销商罗德曼的法律顾问。此外他也代表总部在中国的公司在其进入美国资本市场及遵守美国证券交易委员会（SEC）的常规义务方面提供法律咨询. 最近的交易包括代表美国中石化在其收购位于曼哈顿中心的公司办公室, 代表 承销商罗德曼对从事制药，消费品，绿色技术，新媒体，和基础设施等产业 的中国公司处理后续公开发售, 私募股权融资 等事宜. 萨思力先生 帮助中国圣火药业控股公司(股票代码: KUN)顺利完成美国证券交易委员会的调查，并对一个集体诉讼案达成对其极为有利的和解..

萨思力先生还成功地完成了包括 艾格菲国际集团（Agfeed Industries, Inc.，股票代码：FEED）(私募股权融资 和 公开发售), 赛诺国际（Shiner International, Inc.，股票代码：BEST）(转售登记表和纳斯达克上市), 及针对中国公司的其他方面事项的 法律咨询项目.

在中国, 萨思力先生经常就在美国公开发售和私募法律程序问题的发表演讲。他是洛克菲勒中国代表团（2010 年 3 月） 及纳斯达克内蒙古访问团（2010 年 5 月）的一名成员，并是在深圳举行的第 12 年度风险创业投资论坛（2010 年 6 月）的主要演讲人。 萨思力先生还是将要在纽约举办的第九届年度并购顾问奖和并购峰会（2010 年 12 月）的联合主席.

2010 年12月2日，普凯成为全球第一家与中国国家发展和改革委员会国际合作中心签署合作备忘录的律师事务所; 该备忘录旨在协助中国企业进入美国资本市场。萨思力先生努力地促成了此事。为推进这项倡议，2011年3月萨思力先生与纳斯达克OMX一起为北京海淀区 （“中国的硅谷”）、 北京大学光华管理学院、石家庄市及杭州市的政府领导和商界领袖举办了专题讨论会 。在由智联（CCG）投资者关系公司主办的在上海举行的2011 年中国IPO 论坛上，萨思力先生还就“建立一个优秀的董事会和世界一流的公司管理”作了演讲。在由中国企业家赞助将于5月6日在纽约市举办的华尔街•中国论坛 “评估在美上市的中国公司”上，他将是主讲人之一。

萨律师是斯坦福法学院（Stanford Law School）的毕业生。在校期间他担任《斯坦福国际研究期刊》执行编辑。他任职于斯坦福大学法学院校友捐助委员会，并任区域主席。萨律师曾在普凯律师事务所执行委员会服务六年，并担任其横向招聘委员会的联合主席一职。



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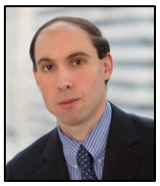
Michael Campoli is a member of Pryor Cashman's Corporate Group and China Practice. Michael devotes his practice to counseling public and private companies on a broad range of corporate matters, including securities law compliance, corporate formation and governance, mergers and acquisitions, public and private debt and equity financing transactions, and limited liability company and partnership counseling.

Mr. Campoli's work at Pryor Cashman has included the representation of:

- Rodman & Renshaw LLC as underwriter's and placement agent's counsel on various public offerings and PIPE transactions
- Marina Biotech, Inc. (NASDAQ: MRNA) as outside general counsel in connection with its equity and debt financings, M&A initiatives and compliance with Securities and Exchange Commission (SEC) reporting requirements
- Javelin Pharmaceuticals, Inc. (Amex: JAV) as outside general counsel in connection with its equity financings and compliance with the reporting requirements of the SEC and other regulatory agencies
- Representation of Henry Schein, Inc. (NASDAQ: HSIC) in connection with the acquisition of various private companies in the medical equipment and software industries
- Briad Restaurant Group in its prevailing tender offer for Main Street Restaurant Group, Inc., the largest T.G.I. Friday's franchisee
- The Kushner Companies in connection with its acquisition of the office building located at 666 Fifth Avenue, New York, New York
- A private telecommunications company in connection with the issuance of a $260 million secured note to the Rural Utilities Service of the U.S. Department of Agriculture and the concurrent placement of $110 million of preferred stock to venture capital investors



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迈克尔坎波利律师是普凯律师事务所公司法律事务部高级律师和中国法律事务组成员。 他的主要工作是向上市公司和非上市公司提供广泛的公司事务法律咨询，包括证券法规定，企业的组建和管治，合并和并购，公开和私人债务，股权融资交易，以及对有限责任公司和合伙经营的咨询等。

坎波利律师在普凯律师事务所的工作包括：

- 在罗德曼公开上市和私募股权投资（PIPE）交易中担任承销商和私募代理的法律顾问
- 担任匡生物科技公司 （Marina Biotech, Inc） （股票代码：MRNA）的股票和债务融资，并购倡议及证券交易委员会（SEC）呈报合规事宜的外部总法律顾问
- 担任标枪制药公司 （Javelin Pharmaceuticals, Inc；美国证券交易所股票代码：JAV）的股权融资，遵守证券交易委员会（SEC）和其他监管机构的呈报要求事宜的外部总法律顾问
- 代表亨利沙因公司（Henry Schein, Inc. 纳斯达克股票代码：HSIC）处理其在收购医疗设备和软件业各种私人公司的有关事宜
- 代表布瑞得餐饮集团 （Briad Restaurant Group）在其对主街餐饮集团 （Main Street Restaurant Group，T.G.I. 周五最大专营公司 ）收购的要约事宜。
- 代表库什纳公司（ The Kushner Companies）处理其收购位于纽约第五大道 666号办公楼的事宜。
- 代表一家私营电信公司 处理其对美国农业部的农村公用事业服务发行2.6亿美元的担保债券及向风险资本投资者同时发放1.1亿美元的优先股事宜。

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David is a 2007 graduate of the Benjamin N. Cardozo School of Law, and earned a B.A. from the University of Michigan in 2004. While in law school, David served as a judicial intern for the Honorable Richard B. Lowe III in the Commercial Division of the New York State Supreme Court, New York County.

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