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Financial Services Regulatory Update 金融服务监管资讯

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Hong Kong Regulators Consult on Further Enhancements to the Over-The-Counter Derivatives Regulatory Regime

The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC) has published a joint consultation paper on enhancement to the Over-The-Counter (OTC) Derivatives Regulatory Regime for Hong Kong (Consultation) on March 28, 2018, and welcome comments from market participants and interested parties.

The Consultation focused on the three subjects as follows:

(1) Mandating the use of Legal Entity Identifiers (LEIs) for the reporting obligation

Given the international trend towards adopting LEIs as a global standard, and its benefits to the financial market as a whole, the HKMA and SFC proposed to mandate the use of LEIs in OTC derivatives trade reporting so that all entities contained in a transaction report to be submitted to the Hong Kong Trade Repository (HKTR) would eventually be identified by their LEIs. The proposal would cover HKTR members, reporting entities, transacting parties of trades, and other entities contained in transaction reports.

(2) Expansion of the clearing obligation (Phase 2 Clearing)

The HKMA and SFC proposed expanding the scope of products subject to clearing obligation to include certain standardized Australian Dollar interest rate swaps.

(3) Adopting a trading determination process for introducing a platform trading obligation.

As a first step towards the possible introduction of a platform trading obligation, the HKMA and SFC proposed to formally adopt a trading determination process for identifying which products are appropriate to be subject to a platform trading obligation in Hong Kong.

香港监管机构就进一步改善香港的场外衍生工具监管制度进行咨询

香港金融管理局（金管局）与香港证券及期货事务监察委员会（证监会）于2018年3月28日发布有关进一步改善香港的场外衍生工具监管制度的联合咨询文件，并欢迎市场参与者和受咨询有关方面的意见。

该咨询文件集中讨论以下三个方面：

(1) 就汇报责任强制使用法律实体识别编码(LEI)

鉴于采用 LEI 为全球标准已成为国际趋势，并能对金融市场整体带来裨益，金管局及证监会建议分阶段实施在场外衍生工具的交易汇报中强制使用 LEI，致使须向香港交易资料储存库（香港储存库）提交的交易报告内的所有实体最终能够以其 LEI 作识别。

该建议将会覆盖香港储存库成员、汇报实体、交易各方，以及交易报告内载有的其他实体。

(2) 扩大结算责任（第二阶段结算）

金管局及证监会建议扩大履行结算责任的产品范围，以便将若干标准化澳元掉期息率包括在内。

(3) 为引入平台交易责任而采用交易确定程序

作为可能引入平台交易责任的第一步，金管局及证监会建议正式采用交易确定程序，以考虑适合就那些产品在香港履行平台交易责任。

Source 来源：

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=18CP2>

<http://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180327-5.shtml>

The Hong Kong Securities and Futures Commission's Regulatory Action Halts Initial Coin Offer to Hong Kong Public

The Hong Kong Securities and Futures Commission (SFC) was concerned that by its initial coin offering (ICO) to the Hong Kong public, Black Cell Technology Limited (Black Cell) had engaged in potential unauthorized promotional activities and unlicensed regulated activities, and therefore had taken regulatory action against Black Cell. Subsequently, Black Cell had agreed to return to Hong Kong investors all the relevant tokens and unwound the ICO transactions.

The ICO transactions of Black Cell included promotion of an ICO to sell digital tokens to investors through its website, and informing relevant investors that the ICO proceeds would be used to fund the development of a mobile application and holders of the tokens would be eligible to redeem equity shares of Black Cell. The SFC considered such arrangement may constitute a Collective Investment Scheme (CIS).

The SFC indicated that where an ICO involves an offer to the Hong Kong public to acquire an interest or participate in a CIS, prior authorization or licensing requirements under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) may be triggered unless an exemption applies.

The SFC suggested that parties engaged in ICO activities seek legal or other professional advice and reminded the investors to exercise caution.

香港证券及期货事务监察委员会采取监管行动叫停向香港公众进行的首次代币发行

香港证券及期货事务监察委员会（证监会）认为 Black Cell Technology Limited (Black Cell) 向香港公众进行的首次代币发行(ICO)可能曾进行未获认可的推销活动及无牌进行受规管活动，因此对其采取监管行动，Black Cell 随后统一将相关的代币归还于香港投资者，并取消有关的 ICO 交易。

Black Cell 的 ICO 交易包括透过其网站推销一项 ICO 以便向投资者出售数码代币，并告知投资者相关收益将被用于开发一项流动应用程序，代币持有人将有资格赎回 Black Cell 的股权。证监会认为上述安排可能构成集体投资计划。

证监会指出若 ICO 涉及向香港公众提出购买集体投资计划中的权益或参与集体投资计划的要约，除非获得豁免，须根据香港法例第 571 章《证券及期货条例》事先获得认可或符合发牌规定。

证监会建议从事 ICO 活动的人士或机构征询法律及其他专业意见，并提醒投资者审慎考虑相关投资。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR29>

The Hong Kong Securities and Futures Commission Identifies Continued Deficiencies in Sponsor Work

The Securities and Futures Commission (SFC) issued a circular urging licensed corporations carrying out sponsor work to critically review and enhance their systems and controls following a thematic inspection of sponsors which found deficiencies in standards of conduct, due diligence practices as well as internal systems and controls.

The inspection found that some sponsors, when conducting due diligence, failed to follow up on obvious red flags, only followed standard checklists without adapting them to the circumstances of specific listing applications and did not confirm that interviewees had the appropriate authority and knowledge to provide the information requested.

In vetting draft prospectuses of listing applications, the SFC also identified concerns which the sponsors should have discovered and addressed through reasonable due diligence prior to the submission of the listing applications.

香港证券及期货事务监察委员会发现保荐人工作仍然存在缺失

证券及期货事务监察委员会（证监会）发出通函，促请从事保荐人工作的持牌法团严格检视及改善其系统和监控措施，因证监会早前对保荐人进行的主题视察发现它们的操守水平、尽职审查的作业手法及内部系统和监控措施存在缺失。

该项视察发现，有些保荐人在进行尽职审查时没有就明显的预警迹象作出跟进，只是依循标准的尽职审查清单，而没有因应特定上市申请的情况作出调整，及没有确定接受会见者具有适当的权限和知识以提供所要求的资料。

证监会在审阅上市申请的招股章程草拟本时，亦识别出保荐人理应在呈交申请前可以透过合理的尽职审查发现和加以处理的关注事项。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=18EC23>

Hong Kong's Requirement for Publication of Full Property Valuation Reports on the Stock Exchange Website When Summary Valuation is Included in Takeovers Code Document

Rule 11.1 of the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (Takeovers Code) provides that when valuations of assets are given in connection with an offer, details of the valuation or an appropriate summary must be included in the offer document, offeree board circular or other documents. Rule 11.1(f) of the Takeovers Code sets out when a valuation report of properties will be required. Commonly, when such a property valuation report is required, the full property valuation report is included in the document. However, there may be situations (e.g., where the offeree company has a large portfolio of properties) where a summary of the property valuation report is included in the document instead. In the March 2018 issue of its Takeovers Bulletin, the Securities and Futures Commission (SFC) clarifies that, in such circumstances, the full valuation report must be made available as a document on display in accordance with Note 1 to Rule 8 and Rule 11.5(d) of the Takeovers Code.

To facilitate transparency and ensure consistency with other cases where the full valuation report has been included and continues to be publicly available after completion of the Code transaction, where only a summary property valuation report is included, the SFC would expect the full version to be published on the Stock Exchange's website by way of an announcement at the same time as the offer document, offeree board circular or the relevant shareholders circular is dispatched to shareholders and published on the Stock Exchange's website.

香港证券及期货事务监察委员会规定，如公司在收购文件中列入物业估值的摘要而非报告的全文，便须同步在联交所的网站上刊登物业估值报告的全文

香港公司收购、合并及股份回购守则（《收购守则》）规则 11.1 规定，如提供涉及要约的资产估值，该等资产估值的详情或其适当的摘要，必须列入要约文件、受要约公司董事局通告或其他文件内。《收购守则》规则 1.1(f) 订明在何种情况下须提供物业的估值报告。一般来说，如须提供物业估值报告，该物业估值报告的全文会列入有关文件内。然而，在某些情况下（如受要约公司的物业组合规模庞大），则会将物业估值报告的摘要列入有关文件内。在这些情况下，便须按照《收购守则》规则 8 注释 1 及规则 11.5(d) 的规定备有全份估值报告，作为一份供展示的文件。

为了促进透明度，及确保做法与其他已将全份估值报告载入并在完成与两份守则有关的交易后继续向公众提供该报告的个案一致，香港证券及期货事务监察委员会在

其于 2018 年 3 月发出的《收购通讯》中要求，如收购文件中只列入物业估值报告的摘要而非全份报告，有关公司在向股东寄发及在联交所网站刊登要约文件、受要约公司董事局通告或相关股东通告的同时，须以公布形式将全份报告刊登在联交所网站。

Source 来源：

http://www.sfc.hk/web/EN/files/CF/pdf/Takeovers%20Bulletin/Takeovers%20Bulletin%2020180328_E.pdf

The Hong Kong Securities and Futures Commission Concludes Consultation on Online Platforms and Further Consults on Offline Requirements for Complex Products

The Securities and Futures Commission (SFC) released consultation conclusions on proposed Guidelines on Online Distribution and Advisory Platforms.

The guidelines provide tailored guidance to the industry on the design and operation of online platforms, including specific guidance on the provision of automated or robo-advice. The guidelines also clarify that the posting of factual, fair and balanced materials on online platforms should not in itself trigger the suitability requirement.

The SFC will implement the requirement for platform operators to ensure the suitability of complex products sold, recognizing that retail investors should be in a position to take responsibility for their decisions to invest in simple products which they can reasonably be expected to understand.

The guidelines will become effective 12 months after gazettal. The SFC will publish frequently asked questions to provide further guidance to the industry.

香港证券及期货事务监察委员会发表有关网上平台的谘询总结并就复杂产品的非网上销售规定展开进一步谘询

证券及期货事务监察委员会（证监会）就建议的《网上分销及投资谘询平台指引》发表谘询总结。

该指引就网上平台的设计及营运向业界提供适切的指引，包括有关提供自动化或机械理财建议的具体指引；该指引亦澄清，在网上平台登载基于事实、持平及不偏不倚的材料本身不应触发合适性规定。

证监会将会落实平台营运者须确保销售复杂产品的合适性的规定。证监会认为，按照合理预期，零售投资者应能够有渠道充分了解简单的产品，以为自己就该等简单产品所作的投资决定负责。

该指引将会在刊宪后 12 个月生效。证监会将会发出《常见问题》，向业界提供更多指引。

Source 来源:

<http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/guidelines-on-online-distribution-and-advisory-platforms/guidelines-on-online-distribution-and-advisory-platforms.html>

Hong Kong Stock Exchange's Guidance on Why the Exchange Returned Certain Listing Applications (HKEX-LD119-2018)

(i) Company A, a GEM Applicant, operating a printing business

Reasons for the rejection:

Company A's controlling and substantial shareholders had previously established, listed and disposed of a printing business. In particular, they sold their interests in this printing business shortly after their lock-up expired. This raised concern on whether the shareholders would be committed to nurture Company A in the long-run.

Company A did not substantiate its business need to substantially expand its facilities and human resources. In addition, Company A could have funded its expansion plan with internal sources, and did not demonstrate that it seem to need external funding. The use of proceeds was not commensurate with its historical and future business strategies.

(ii) Company B, a GEM Applicant, operating restaurants in Hong Kong

Reasons for the rejection:

Low and declining profit margin: during the track record period, half of Company B's restaurants were loss-making and some closed down. Company B's profit-making restaurants also recorded declining operating margins mainly due to the slowing economy and increase in rental and labor costs. Despite the various measures implemented to reduce cost and improve revenue, Company B's net profit margins remained low and below inflation. Assuming restaurant operating costs and headquarter overhead further increased in line with inflation, Company B may not be able to sustain its business after listing.

Susceptibility to escalating rental costs: all of Company B's restaurants operated on leased properties and rental expenses as a percentage of Company B's revenue had been increasing during the track record period. Rental cost in Hong Kong remains high and is a market threat to restaurant operators. Company B is particularly sensitive to escalating rental expenses given that (a) it recently closed down a full service restaurant due to rental increase; and (b) restaurant operators generally

have lower bargaining power when negotiating lease renewals given the significant capital expenditure incurred to set up restaurants and the reinstatement costs in the event of non-renewal.

Short lease period: most of the lease agreements of Company B's restaurants were for two to three years only without an option for renewal. As at the latest practicable date, a majority of Company B's restaurants lease agreements will expire in less than one year and Company B had not been able to reduce its rent when renewing its leases after the track record period. There is an imminent risk that these leases may be renewed on unfavorable terms.

(iii) Company C, a GEM Applicant, an entertainment content provider in Hong Kong which organized and produced concerts for its artistes and produced concerts for other concert organizers

Reasons for the rejection:

During its most recent financial year, one of its three controlling shareholders (Former Controlling Shareholder) ceased to be a controlling shareholder. The sponsor failed to demonstrate that the Former Controlling Shareholder was a passive shareholder during the relevant track record period.

After its most recent financial year but before the date of listing, there was a material change in the voting interests between the two remaining controlling shareholders, who constitute a group of controlling shareholders.

香港交易所为何退回某些上市申请的指引 (HKEX-LD119-2018)

(i) 公司 A, 创业板上市申请人, 经营印刷业务

拒绝原因:

公司A的控股及主要股东过去也曾创立印刷业务并将其上市, 但是在禁售期完结后不久已经将其出售。这难免令联交所质疑有关股东是否有心促进公司A的长远发展。

公司A未能证明其业务需大量扩充设施及人力资源。此外, 公司A其实可动用内部资金作为扩充计划的资金, 也并未证明其有确切的融资需要。集资所得款项用途与过往及未来业务策略并不相称。

(ii) 公司 B, 创业板上市申请人, 经营食肆

拒绝原因:

利润率低且不断倒退：于业务纪录期内，公司 B 旗下半数食肆均录得亏损，部分更已结业。随着经济增长放缓、租金及劳工成本上升，公司 B 有利润的食肆的经营利润亦不断倒退。尽管公司 B 已多管齐下务求开源节流，纯利率仍然偏低，追不上通胀。若然餐厅的营运成本及总部的间接成本随通胀进一步上升，公司 B 未必能在上市后维持业务营运。

租金成本上扬影响大：公司 B 所有食肆均为租赁物业，业务纪录期内租金开支占收入的百分比一直上升。而且香港的租金依然高企，对整个餐厅食肆市场的经营构成威胁。租金开支上扬对公司 B 的影响尤大，因为 (a) 其旗下一家提供全面服务的食肆不久前已因业主加租而结业；及 (b) 鉴于开设食肆须投放大额资本开支，不续约时亦要花费还原，因此餐厅食肆经营者磋商续约时，议价能力一般较低。

租期短：公司 B 餐厅大部分租约只有两至三年，而且没有续租权。于最后实际可行日期，公司 B 大部分食肆只余不足一年的租约期，而且在业务纪录期后，续租时公司 B 亦未能减租。这些租约极可能以不利的条款续约。

(iii) 公司 C，创业板上市申请人，经营娱乐内容，为旗下艺人筹办及制作演唱会，并为其他演唱会主办单位制作演唱会

拒绝原因：

在最近一个财政年度内，三名控股股东中有一名不再是控股股东（前控股股东）。保荐人未能证明前控股股东在相关业务纪录期内是被动股东。

在最近一个财政年度之后至上市前期间，其余两名控股股东（构成一组控股股东）的投票权益有重大变动。

Source 来源：

http://en-rules.hkex.com.hk/net_file_store/new_rulebooks//d/ld119-2018.pdf

Hong Kong Stock Exchange's Guidance on Why the Exchange Returned Certain Listing Applications (HKEX-LD120-2018)

(A) Main Board

(i) Insufficient Disclosure on the Proprietary Trading Business

An applicant company provided brokerage and risk solutions services (Brokerage Business), while it also invested in equity and structured products for its own account (Proprietary Trading Business). The reason of returning the listing application was insufficient disclosure on its Proprietary Trading Business in relation to (i) the company's investment strategy; (ii) funding of investments; (iii) risk management; and (iv) the cost and the percentage level of interest in each investment and the actual performance/ return of the investments, to allow investors to make an informed assessment on the company.

(ii) Failure to Comply with Rule 9.11(10)(b)

Another application was returned because it failed to provide, at the time of filing its Form A1, a profit forecast memorandum covering the period up to the forthcoming financial year end date after the date of listing, as required under Rule 9.11(10)(b).

(B) GEM Board

(iii) Failure to Comply with GEM Rules 12.09(1), 7.03(1) and 11.10

The applicant failed to include the required financial information in the application proof of listing document and the information was regarded as not substantially complete as required under GEM Rule 12.09(1).

Based on the proposed timetable set out in the company's Form 5A, the expected final prospectus date and the expected dealing commencement date are in April 2018. Accordingly, the accountants' report must include the financial information for the two years ending December 31, 2017 according to GEM Rules 7.03(1) and 11.10.

(iv) Insufficient Disclosure on Company Business

The applicant company had two businesses: (a) a trading business where it acted as a principal, bore the inventory and credit risks, and recorded revenue and cost of sales from the transactions; and (b) an agency business where it acted as an agent, did not bear any inventory and credit risks, and recorded agency income which was more profitable than the trading business. The application was returned because the disclosure in the application proof aggregated the two segments into the trading business and had very little disclosure on the agency business. The agency business was not clearly distinguished from the trading business and the different risks and business models were not explained. As such, a reasonable investor cannot appropriately assess the company's two businesses and make a fully-informed investment decision.

香港交易所为何退回某些上市申请的指引(HKEX-LD120-2018)

(一) 主板

(i) 自营交易业务披露不足

上市申请人提供经纪及风险解决方案服务（「经纪业务」），并自行坐盘投资于股票及结构性产品（「自营交易业务」）。香港交易所退回其申请，原因是其自营交易业务披露的以下信息不足：(i) 公司的投资策略；(ii) 投资资金；(iii) 风险管理；和 (iv) 每项投资的成本和利息的百分比水平以及投资的实际业绩/收益，投资者难以对公司作出知情评估。

(ii) 未能遵守主板规则9.11(10)(b)

另一公司的上市申请被退回，原因是在提交表格A1时，未能如主板规则9.11(10)(b)的要求提供涵盖直至上市日期后即将到来的财政年度结束日期为止的盈利预测备忘录。

(B) 创业板

(iii) 未能遵守创业板规则第12.09(1)条，7.03(1)及11.10条

上市申请人未能根据创业板规则第12.09（1）条的规定，将所需财务资料纳入申请版本。

根据该公司表格5A所载的建议上市时间表，预期的最终招股书日期及预期交易开始日期为2018年4月。因此，会计师报告根据创业板规则第7.03(1)及11.10条必须包括截至2017年12月31日止两个年度的财务资料。

(iv) 公司业务披露不足

上市申请人有两项业务：(a) 以主事人身份进行的贸易业务，须承担存货及信贷风险，进行交易后录得收入及销售成本；及 (b) 以代理身份进行的代理业务，不牵涉存货及信贷风险，进行交易后录得代理收入，利润比贸易业务高。香港交易所退回其申请，是因为申请版本披露资料时，将两个分部合并为贸易业务，对代理业务着墨甚少。申请版本中没有将代理业务与贸易业务清楚区分开来，亦没有解释两者不同的风险及业务模式。如是者，一位合理的投资者不能对该公司的两项业务作恰当评估，也就难以作出完全知情的投资决定。

Source 来源：

http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/l/d/ld120-2018.pdf

HKMA's Enhanced Competency Framework on Anti-Money Laundering and Counter-Financing of Terrorism

The Hong Kong Monetary Authority (HKMA) has released a circular to announce the launch of the Professional Level of the Enhanced Competency Framework (ECF) on Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) and has updated the Guide to the ECF-AML/CFT. The ECF-AML/CFT sets out the competency standards for AML/CFT practitioners in the Hong Kong banking industry. Authorized Institutions (AIs) should use the ECF-AML/CFT to enhance the level of professional competence of AML/CFT banking practitioners.

Key roles for AML/CFT compliance practitioners include:

Core Level

- Assist in AML/CFT risk assessment reviews and communication of results.
- Assist management in reviewing the AML/CFT compliance risk management framework by performing periodic compliance tests on the AML/CFT program.
- Execute remediation of compliance deficiencies within a bank.
- Review and investigate suspicious transaction alerts and prepare appropriate documentation on these investigations and escalate cases of suspicious activity to the appropriate personnel where further investigation may be necessary.

Professional Level

- Develop, implement and periodically review the AML/CFT compliance risk management framework and the related controls for identification, management, monitoring and reporting of AML/CFT compliance risks and issues.
- Review, analyse and communicate AML/CFT management information such as trends surrounding suspicious transactions and filed Suspicious Transaction Reports (STR).
- Evaluate and communicate new laws and regulations and be aware of all legislative and regulatory developments relating to AML/CFT, both and local and international levels.
- Review suspicious activity that has been investigated and concluded as reportable and file STRs to the Joint Financial Intelligence Unit (JFIU) in accordance with regulatory requirements.

Qualification and experience, Certification and CPD requirements of Core Level:

1. Qualification: Advanced Certificate for ECF on AML/CFT Programme of the HKIB
2. Certification: Associate AML Professional (AAMLPL)
3. CPD requirements: Minimum 10 hours in 1 year

Qualification and experience, Certification and CPD requirements of Professional Level:

1. Qualification:
 - (i) Professional Certificate for ECF on AML/CFT Programme of the HKIB
 - (ii) Having at least 3 years of relevant work experience in AML/CFT compliance
 - (iii) Holding of valid AAMLPL certification
2. Certification: Certified AML Professional (CAMLPL)
3. CPD requirements: Minimum 12 hours in 1 year

香港金管局推出银行专业资历架构 — 打击洗钱及恐怖分子资金筹集

香港金融管理局（金管局）发出通函，宣布打击洗钱及恐怖分子资金筹集的专业资历架构（架构）的开展并更新架构的指南。该通函明确香港银行业的打击洗钱及恐怖分子资金筹集（AML/CFT）的能力标准。认可机构应该采用框架，作为提高 AML/CFT 合规银行从业者的专业能力水平。

洗钱防制与打击资助恐怖主义合规从业者的关键任务包括：

核心层

- 协助 AML/CFT 风险评估回顾和结果沟通。
- 通过执行 AML/CFT 计划的定期合规测试, 协助管理层审查 AML/CFT 合规风险管理框架。
- 在银行内部补救合规缺陷。
- 审查和调查可疑的交易警报, 准备调查有关的适当文件, 如果需要进一步的调查, 将可疑活动的案件上报给适当的人员。

专业层

- 发展、执行和定期审查 AML/CFT 的合规风险管理框架及有关控制为 AML/CFT 合规风险和问题的查明、管理、监测和报告。
- 审查、分析和传达 AML/CFT 管理信息, 包括可疑交易的趋势及提交的可疑交易报告。
- 评估和传达新的法律和法规, 并了解所有当地及国际立法和规管发展。

- 根据规管要求, 审查已调查的可疑活动, 并将可疑交易报告提交联合财富情报组。

核心层的资历和经验、认证及专业进修要求

1. 资历和经验: 香港银行学会的银行专业资历架构高等证书：打击洗钱及恐怖分子资金筹集
2. 认证: 反洗钱辅助专业人员
3. 专业进修要求: 1 年内最少 10 小时

专业层的资历和经验、认证及专业进修要求:

1. 资历和经验: 香港银行学会的银行专业资历架构专业证书：打击洗钱及恐怖分子资金筹集
2. 认证:
 - (i) 注册反洗钱专业人员
 - (ii) 至少 3 年有关 AML/CFT 的相关工作经验
 - (iii) 反洗钱辅助专业人员认证
3. 专业进修要求: 1 年内最少 12 小时

Source 来源:

<http://www.hkma.gov.hk/media/chi/doc/key-information/guidelines-and-circular/2018/20180322c1.pdf>

HKMA's Implementation Guidance on Securitization Framework under Banking (Capital) Rules

The Hong Kong Monetary Authority (HKMA) has released a circular in response to the questions raised by the industry during the consultations conducted in 2017 on the implementation of the revised securitization framework in Hong Kong; the followings are some points of the main guidance of interpretation of Part 7 of the Banking (Capital) Rules (BCR).

1. To determine whether a transaction involving securitization of assets is a securitization transaction for the purposes of the BCR:

(i) A transaction involving securitization of assets is a securitization transaction for the purposes of the BCR if there are at least two different tranches of credit risk associated with the assets securitized, where the junior tranche absorbs credit losses first in order to reduce the likelihood of credit losses being allocated to the more senior tranche(s).

(ii) If the differences between different tranches or different classes are solely due to different coupon rates, yields or maturities, and any credit losses will be allocated to all tranches or classes on a pro-rata basis,

the transaction is not a securitization transaction for the purposes of the BCR.

2. The procedures of recognition of credit risk transfer under a securitization transaction

Step 1: The originating institution (AI) must have conducted a prudent assessment against the criteria set out in section 229(1)(a) or (b) of the BCR, as the case requires, and ascertained that the transaction is an eligible securitization transaction.

Step 2: The AI should then make a notification to the HKMA in the manner prescribed in section 230(3) and (4) of the BCR.

Step 3: The HKMA will issue an acknowledgement letter to the AI when it receives the notification made by the AI under section 230(3) of the BCR.

Step 4: The AI could presume the HKMA has no objection to its application if it does not receive a notice issued by the HKMA under section 230(5) of the BCR on or before a date specified in the acknowledgement letter.

3. The persons who are considered by the HKMA as having sufficient seniority and authority under Section 230(4)(b)(ii) of the BCR:

(a) a qualified external or in-house legal counsel; or

(b) a manager (within the meaning of section 2(1) of the Banking Ordinance (BO)) of the originating AI

4. Under what circumstances the HKMA may, under section 16(5) of the BCR, require an AI to classify a pool of underlying exposures of a securitization transaction as an SA pool as defined under BCR?

(i) securitization transactions with highly complex loss allocations;

(ii) tranches of which credit enhancement could be eroded for reasons other than pool losses; and

(iii) tranches backed by a pool with high correlations within the pool, e.g. high concentration to a single sector or a geographical region.

5. If the amount of credit enhancement provided by an AI to a securitization transaction cannot be readily ascertained, the AI should calculate the risk-weighted amount (RWA) of the credit enhancement as if the credit enhancement covered the full value of the securitization exposures that are the subject of the credit enhancement.

6. The amount of capital deduction in respect of gain-on-sale arising from a securitization transaction should be

the “accumulated” amount of the gain-on-sale recorded in the originating AI’s books because such an amount represents the total amount of increase in the AI’s CET1 capital resulted from the sale of the underlying exposures concerned.

香港金管局《银行业(资本)规则》下证券化框架的实施指引

香港金融管理局（金管局）发出通函，回应业界在2017年就执行香港经修订资产证券化架构进行的咨询期间提出的问题；以下为金管局解释银行业(资本)规则（BCR）第七部分的指引之一一些要点。

1. 确定涉及资产证券化的交易是否BCR下的证券化交易：

- (i) 如果与资产证券化相关的信用风险至少有两个不同的组成批次，而初级批次首先吸收信用损失以降低更高级批次的信用损失的可能性，该涉及资产证券化的交易是属于BCR下的证券化交易。
- (ii) 如果不同批次或不同类别交易之间的差异纯粹是由于不同的票息利率，收益率或到期日以及任何信用损失将按比例分配给所有批次或类别，这个涉及资产证券化的交易不是为BCR下的证券化交易。

2. 证券化交易的发起机构旨在为交易的基础风险获得资本救济的程序

步骤1：认可机构（AI）必须根据情况需要对BCR第229(1)(a)或(b)条所列标准进行审慎评估，并确定交易符合证券化交易的资格。

步骤2：AI应按照BCR第230(3)和(4)条的规定向香港金融管理局(金管局)发出通知书。

步骤3：当金管局收到AI根据BCR第230(3)条发出的通知书时，会向AI发出确认函。

步骤4：如果在确认函中规定的日期或之前未收到金管局根据BCR第230(5)条发出的反对通知，AI可以假定金管局不反对其申请。

3. 金管局根据BCR第230(4)(b)(i) 条认为有足够资历及权力的人士：

(a) 合格的外部或内部法律顾问；或

(b) 经理（在银行业条例第2(1)条所指的范围内）

4. 在什么情况下，根据BCR第16(5)条，金管局可以要求AI将证券化交易的基础风险敞口归类为BCR下的“标准组合”？

- (i) 具有高度复杂损失分配的证券化交易；
- (ii) 信用增级会因资金池损失以外的原因被侵蚀的证券批次；及
- (iii) 在资金池内被其支持而具有高度相关性的证券批次，例如高度集中于单个分部或地理区域。

5. 如果AI就证券化交易作出的信用增级金额无法轻易确定，则AI应计算信用增级的风险加权金额时，应按照信用增级涵盖了全部涉及的证券化风险之原则计算。

6. 资产证券化交易产生的有关销售收益的资本减免金额应为AI账簿中记录的“累计”的销售收益金额，因为该金额代表在AI的一级普通股权益资本(CET1)中因出售潜在风险所导致增加的总额。

Source 来源：

<http://www.hkma.gov.hk/media/chi/doc/key-information/guidelines-and-circular/2018/20180326c1.pdf>

Notice on the Publication of Guidelines for Employees' Performance in Banking Financial Institutions Issued by China Banking Regulatory Commission

China Banking Regulatory Commission published its Guidelines for Employees' Performance in Banking Financial Institutions (Guidelines) by its Notice No.9 of 2018.

The Guidelines mainly focus on the following:

1. Defining the systems for managing the performance of employees of banking financial institutions (Employees) and the duties of the board of directors, the board of the supervisors, and senior management: Banking financial institutions are required to specify a responsible department with assigned managers for supervising and managing Employees' performance and to set up an information system for the management of the Employees.
2. Regulating the establishment of management systems for Employees' performance: Banking financial institutions are required to manage Employees' performance using risk-based principles and to have a code of conduct for the whole institution with definite rules for specific business lines, which call the Employees to observe the laws, regulations and work requirements. Also, in order to strengthen the supervision, education and training of the Employees, the institutions should set up different assessment systems for their

Employees with suitable assessment mechanisms and procedures for the reporting of misconduct.

3. Strengthening the supervision of Employees' performance: Banking financial institutions are required to submit the codes of conduct and assessment reports of their Employees to the banking regulatory bureaus.

中国银行业监督管理委员会关于印发银行业金融机构从业人员行为管理指引的通知

中国银行业监督管理委员会以银监发〔2018〕第9号通知发布了《银行业金融机构从业人员行为管理指引》(指引)。

指引的主要内容包括：

一、明确从业人员行为管理的治理架构及董事会、监事会和高管层的职责，要求银行业金融机构明确从业人员行为管理的牵头部门，并指定专人负责从业人员行为管理工作。同时要求银行业金融机构建立从业人员管理信息系统。

二、规范从业人员行为管理的制度建设。指引要求，银行业金融机构的从业人员行为管理应坚持风险为本，制定全行遵守的行为守则和针对各业务条线的行为细则，要求从业人员遵守法律法规、恪守工作纪律，并针对全体员工开展教育培训。银行业金融机构应开展不同的从业人员行为的考核机制并建立不当行为的举报制度，加大约束和监督。

三、加强从业人员行为管理的监管。指引要求，银行业金融机构应将从业人员行为守则及评估报告报送银行业监督管理机构。

Source 来源：

http://www.cbrc.gov.cn/chinese/home/docDOC_ReadView/DC25F0EA73343948138500D9537728F.html

India's Changing Financial Landscape

The following are some of the key points of the keynote address by Mr Ong Ye Kung, Minister for Education (Higher Education and Skills) and Second Minister for Defence at the ISAS Symposium on "India's Changing Financial Landscape" on March 23, 2018.

1. Financial Liberalization

The Reserve Bank of India (RBI) issued new banking licenses to the Infrastructure Development Finance Company Bank and Bandhan Bank in March 2014. The RBI also introduced two new classes of banking licenses - payment banks and small finance banks, for enabling

small and nimble players to offer services to remote community areas, underserved urban segments and small and medium enterprises (SMEs) that have difficulty accessing banking services.

2. Insolvency resolution

In 2016, the Indian parliament enacted the Insolvency and Bankruptcy Code as part of an overhaul of the insolvency resolution regime in India. According to the World Bank's estimation of the old regime, it takes 4.3 years to resolve an insolvency case in India. Under the new Code, the companies are subject to a 270-day time limit to implement a resolution plan.

3. Tax reform.

The implementation of the Goods and Services Tax (GST) subsumes all indirect taxes that were levied on goods and services and unifies 17 state and federal taxes. The GST has finally created a single market within India. The impact on domestic trade and the way business is conducted would be profound and long lasting.

4. Digitalization of financial services and the ubiquity of mobile devices

This has opened doors to a new generation of FinTech firms offering a wide range of financial services. Notable examples include PayTM and MobiKwik in mobile payments, and BankBazaar in personal finance management. As the digitalization of financial services becomes more prevalent, FinTech firms can be expected to play a larger role in India's financial sector.

印度不断变化的金融生态

以下是星加坡教育部长（高等教育与技能）和第二国防部长王乙康于2018年3月23日关于“印度不断变化的金融生态”的ISAS座谈会上的主题演讲的一些要点。

1. 金融自由化

印度储备银行（RBI）于2014年3月向基础设施发展融资公司银行和Bandhan银行颁发了新的银行业务许可证。还有，为使小型灵活的企业能够向偏远社区，服务不足的城市部门及难以获得银行服务的中小型企业，RBI引入了两类新的银行执照 - 支付银行和小型金融银行。

2. 破产解决

2016年，印度议会颁布了“无力偿债和破产法”，作为对印度破产解决机制进行全面改革的一部分。根据世界银行对旧制度的估计，在印度处理破产案件需要4.3年的时

间。根据新法规，这些公司需要在270天的时间限制内实施解决方案。

3. 税制改革

商品和服务税（GST）的实施取代了对所有商品和服务征收的间接税以及统一了17个州和联邦的相关税项。GST终于为印度建立了一个单一的市场，这对印度国内贸易和经营方式的影响将是深远而持久的。

4. 金融服务的数码化和移动设备的普及化

金融服务的数码化和移动设备的普及化为新一代提供各种金融服务的金融科技敞开了大门。在移动支付领域，著名的例子包括PayTM和MobiKwik；在个人财务管理领域有BankBazaar。随着金融服务的数码化变得越来越普遍，金融科技公司在印度金融领域发挥更大的作用。

Source 来源:

<http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2018/ISAS-Symposium-on-Indias-Changing-Financial-Landscape.aspx>

U.S. Securities and Exchange Commission Stops Ponzi-Schemer Targeting Retail Investors and Obtains Preliminary Injunction and Asset Freeze

The Securities and Exchange Commission (SEC) announced on March 23, 2018 charges and a preliminary injunction and asset freeze against Niket Shah, a New Jersey resident who stole more than \$250,000 in a Ponzi scheme in which his friends and coworkers invested.

Based on investor complaints, the SEC moved quickly to investigate and charge Shah. According to the SEC's complaint, unsealed on March 22, 2018, in federal court in Brooklyn, New York, Shah used Spark Trading Group, LLC to defraud more than 15 investors into contributing hundreds of thousands of dollars to two funds that Shah marketed. Shah obtained investments for the funds by lying about his success as a trader, Spark Trading's returns, and how he intended to use investors' money, including altering financial statements to make the funds appear profitable when they were actually losing money. For instance, the complaint alleges that Shah promised investors he would pay them monthly returns and guaranteed against losses. According to the complaint, Shah misused investor money for his own benefit and suffered substantial losses on the amounts actually invested. When investors sought their money back, he lied and said the money had been frozen by government agencies, including the Commission.

“Fraudsters who swindle their friends and colleagues using doctored financial statements and outright lies should expect the Commission and its staff to act swiftly and decisively, as we have here today,” said Melissa Hodgman, Associate Director of the SEC’s Enforcement Division.

The SEC’s Complaint charges Spark Trading and Shah with violations of the antifraud provisions of the federal securities laws. The SEC is seeking return of allegedly ill-gotten gains with interest and civil money penalties.

A court hearing was held on March 23, 2018, on the SEC’s complaint and requested relief at which the court granted the SEC’s request for a preliminary injunction, asset freeze, order against the destruction of documents, and an accounting. The court had previously issued a March 12, 2018, temporary asset freeze against Spark Trading and Shah, and ordered them to provide an accounting of all money received from investors.

美国证券交易委员会禁止庞氏骗局组织者再向投资者进行销售并取得临时禁令及资产冻结令

美国证券交易委员会 (SEC) 宣布对尼科特·沙赫 (Niket Shah)，一名美国新泽西州居民，于 2018 年 3 月 23 日就其透过一场庞氏骗局盗取他的朋友及同事的投资超过 25 万元美金进行指控并采取临时措施及资产冻结。

根据投资者的投诉，SEC 迅速对沙赫采取调查措施并进行指控。根据 SEC 的控告，在 2018 年 3 月 22 日，在纽约布鲁克林的联邦法院庭审中，沙赫使用斯帕克贸易集团有限公司 (Spark Trading Group, LLC) (斯帕克贸易) 欺诈了超过 15 名投资者；这些投资者向其销售的两个基金投入了数十万美元。沙赫谎称他作为一名成功交易员的经历、斯帕克贸易的业绩以及他将如何使用投资者的资金，当中包括伪造财务报表以使这些基金在实际亏损时仍录得盈利，从而获得了投资者们对这些基金的投资。控方诉称沙赫承诺投资者将向他们支付每月回报并保证不会亏损。根据控诉，沙赫为自己的利益滥用投资者的金钱，并使其投资受到重大亏损。当投资者想追回他们的资金时，他就谎称资金被包括 SEC 在内的政府机构冻结。

SEC 执法部门副主任梅丽莎·霍奇曼 (Melissa Hodgman) 说：“利用篡改的财务报表和彻头彻尾的谎言来欺骗朋友和同事的欺诈者应预想到 SEC 及其工作人员将会迅速采取果断行动，就像本案中 SEC 所做的那样”。

SEC 在控告中指控斯帕克贸易和沙赫违反了联邦证券法的反欺诈条款。SEC 正在寻求以民事罚款和利息将所指控的不正当收益进行返还。

针对 SEC 的控告，法院在 2018 年 3 月 23 日进行聆讯，法院按 SEC 的请求发出初步禁令、资产冻结、销毁文件令及账目交待令。法院此前已于 2018 年 3 月 12 日对斯帕克贸易和沙赫采取了临时资产冻结，并命令他们对从投资者处收到的所有款项进行账目交待。

Source 来源:

<https://www.sec.gov/news/press-release/2018-46>

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