



Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update 金融服务监管资讯

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Altaba, Formerly Known As Yahoo!, Agreed to Pay US\$35 Million to Settle Charges by U.S. Securities Exchange Commission for Failing to Disclose Massive Cybersecurity Breach

The U.S. Securities and Exchange Commission (SEC) announced that the entity previously known as Yahoo! has agreed to pay a \$35 million penalty to settle charges concerning its failure to disclose that hackers have stolen personal data relating to hundreds of millions of user's accounts.

While Yahoo's information security team had reported information related to the security breach to members of Yahoo's senior management and the legal department, Yahoo failed to properly investigate the breach and to fully consider the need to disclose the breach to investors. The fact of the breach was not disclosed to the investing public until 2016 when Yahoo was in the process of closing the acquisition of its operating business by Verizon Communications, Inc.

The SEC found that Yahoo did not disclose the breach or its potential business impact and legal implications when it submitted several quarterly and annual reports within two years after the hacking. On the contrary, the company's SEC filings show that it only faced the risk of, and negative effects that "might" flow from, data breaches. In addition, Yahoo did not share information about hacking with its auditors or outside counsel to assess the company's disclosure obligations in its public filings. Finally, Yahoo failed to maintain its information disclosure controls and procedures.

This incident is yet another reminder about the need for a corporation to regularly check its information security system and timely plug any cybersecurity loopholes.

Altaba (前称为 Yahoo!) 向美国证券交易委员会支付 3,500 万美元以平息有关其隐瞒大规模网络安全漏洞的指控

美国证券交易委员会宣布，原名为 Yahoo! 的公司（前雅虎）已同意支付 3,500 万美元的罚款以解除因其未及时

披露其网络安全漏洞的指控；该漏洞引致黑客盗取了数以亿计用户账户的个人资料。

虽然前雅虎的信息安全团队已经向前雅虎高级管理层和法律部门报告了其网络安全漏洞及黑客入侵的相关信息，但前雅虎未能适当调查有关的黑客入侵行为，并没有充分考虑公司向投资者披露该黑客入侵行为的必要性。直到 2016 年，前雅虎在完成 Verizon Communications, Inc. 对其运营业务的收购的过程中，这一违规事件才被披露给公众投资者。

美国证券交易委员会发现前雅虎在黑客入侵后的两年内提交几份季度和年度报告时，该公司未有披露该黑客入侵事件或其对业务及法律方面的潜在影响。此外，前雅虎没有及时让其审计师或外部律师得知该黑客入侵的相关信息，以协助评估该公司在其公开文件中的披露义务。前雅虎亦没有维持有效的信息披露控制系统和程序。

这事件又一次提醒企业必需定期审视其信息安全系统并及时纠正任何漏洞。

Source 来源:

<https://www.sec.gov/news/press-release/2018-71>

Hong Kong's Listing Regime Enters New Era, Featuring Emerging and Innovative Firms

Following support as reflected in a consultation process, the Stock Exchange of Hong Kong Limited, a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, has announced on April 25, 2018 that the proposed new rules to broaden Hong Kong's listing regime will take effect on April 30, 2018. From that day onwards, companies in emerging and innovative sectors seeking to list under the new regime may submit formal applications. The first listing under the new regime is expected to be in June or July 2018.

The main requirements under the new regime:

1. Pre-revenue companies - Biotech companies

- Products are regulated by Authorities such as US Food and Drug Administration, China Food and Drug Administration or European Medicines Agency.
 - Completed Phase I and received no objection to commence Phase II (or later). Product subject to human testing
 - Meaningful investment from at least one Sophisticated Investor
2. Weighted Voting Rights (WVR) – Non-standard governance companies
- New applicants only
 - Market capital not less than HK\$10 billion and with HK\$1 billion or more in revenue if less than HK\$40 billion
 - Innovative (as defined by guidance)
 - Track record of high business growth
 - Meaningful third-party investment
3. Secondary Listing - Mainland and international companies
- Listed on Qualified Exchanges (NYSE, NASDAQ & LSE’s Main Market (premium only))
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 - Listed on Qualified Exchanges (NYSE, NASDAQ & LSE’s Main Market (premium only))
 - Compliance record of at least 2 financial years on Qualifying Exchange
 - Market capital not less than HK\$10 billion and with HK\$1 billion or more in revenue if less than HK\$40 billion
 - Greater China companies permitted to apply for secondary listing

1. Pre-revenue companies - Biotech companies

	Proposal	Amendments
(1)	Broad definition of Sophisticated Investor and meaningful investment	Provided examples of Sophisticated Investors & quantified benchmark for meaningful investments
(2)	Cornerstones and Pre-IPO investors subscriptions excluded from the public float	HK\$375m of the public float ring-fenced but Cornerstones and Pre-IPO investor subscriptions can count in remainder

2. Weighted Voting Rights (WVR) – Non-standard governance companies

	Proposal	Amendments
(1)	Prohibition on listing if WVR beneficiary holds 50% or more economic interest	Prohibition on listing if WVR beneficiary holds 50% or more economic interest
(2)	Corporate Governance Committee composed of majority of INEDs	Corporate Governance Committee composed of majority of INEDs
(3)	Change to constitutional documents a one-share, one-vote matter	Change to constitutional documents a one-share, one-vote matter

Some concerns and clarifications:

3. Secondary Listing - Mainland and international companies

- (1) Concern: Applicants should be able to submit an application on a confidential basis (e.g. to enjoy a non-disclosure safe harbor available in primary market)
- (2) Amendment/clarification: Eligible applicants can submit a listing application on a confidential basis

香港上市制度进入新时代，着眼新兴和创新型企业

香港交易及结算所有限公司全资附属公司香港联合交易所于二零一八年四月二十五日宣布，为拓宽香港上市制度而新订的上市规则条文将于 2018 年 4 月 30 日生效，有意按新制度申请上市的新兴及创新产业公司可于该日起提交正式申请。新制度下的首次上市预计将在 2018 年的 6 月或 7 月。

新制度下的要求:

1. 未来收益公司 – 生物科技公司

- 产品受主管当局规管，例如美国食品和药物管理局、中国国家食品药品监督管理总局以及欧洲药品管理局
- 已通过第一阶段临床试验，且主管当局不反对开展第二阶段（或其后阶段）临床试验。产品须进行人体测试
- 证明已得到一名资深第三方投资者认可

2. 不同投票权 – 采用非传统管治架构公司

- 只限新申请人
- 市值至少 100 亿港元，如市值少于 400 亿港元，至少 10 亿港元收益
- 创新企业（涵义与指引相同）
- 业务高增长的纪录
- 第三方相当数额的投资

3. 第二上市 – 中国大陆及国际公司

- 在合资格交易所上市（纽约交易所、纳斯达克及伦敦交易所主市场（只限高级上市分类）
- 在合资格交易所上市最少两个会计年度
- 市值至少 100 亿港元，如市值少于 400 亿港元，至少 10 亿港元收益
- 大中华公司可作第二上市

市场的建议/疑虑及有关的修订厘清:

1. 未来收益公司 – 生物科技公司

建议

修订

- (1) 资深投资者及相当数额的投资定义广泛

提供资深投资者的例子及相当数额的投资的量化基准

- (2) 基石投资者及首次公开招股前投资者的持股不计入公众持股量

核心公众持股量须至少达 3.75 亿港元；只要符合此规定，基石投资者及首次公开招股前投资者在首次公开招股中认购的股份可计入其余的公众持股量

2. 不同投票权 – 采用非传统管治架构公司

建议

修订

- (1) 如不同投票权受益人持有半数或以上经济利益，公司不得上市

删除禁制（反正同股同权股东任何时间都必须拥有 10%投票权）

- (2) 企业管治委员会成员大部分是独立非执行董事

企业管治委员会成员全部是独立非执行董事

- (3) 修订组织章程文件必须按一股一票的基准表决

厘清并非要令同股同权股东能够取消不同投票权架构

3. 第二上市 – 中国大陆及国际公司

- (1) 关注: 申请人应可以保密方式提交申请（例如：以受惠于主市场所提供不披露的安全港条文）

- (2) 修订/厘清: 合资格申请人可以保密方式提交上市申请

Source 来源:

http://www.hkex.com.hk/News/NewsRelease/2018/180424news?sc_lang=en

A Company's Listing on China National Equities Exchange and Quotations and H Shares Market Made Possible

Hong Kong Exchanges and Clearing Limited, the operator of Hong Kong's stock exchange, has signed an agreement on April 21, 2018 with Beijing's over-the-counter exchange, the National Equities Exchange and Quotations (NEEQ) (also known as the "new third board"), to pave the way for NEEQ + H shares listings (without delisting from NEEQ) in future. This may help Hong Kong to land more mainland technology start-up listings.

一家公司可以同时在新三板及 H 股上市

香港交易及结算所有限公司(香港证券交易所的运营者)于2018年4月21日与北京的场外交易所-全国中小企业股份转让系统(NEEQ)(也称为新三板)签署协议,为未来新三板+H股上市达成共识(不需从新三板退市)。这有助于促进香港吸引更多大陆科技创业公司来港上市。

Source 来源:

<http://www.scmp.com/business/companies/article/2142826/hk-ex-beijings-new-third-board-dual-class-listings-accord>

Hong Kong Stock Exchange Updates Guidance Letter on Initial Public Offering Vetting and Suitability for Listing

The Stock Exchange of Hong Kong Limited (the Exchange) published an updated Guidance Letter on Initial Public Offering (IPO) Vetting and Suitability for Listing HKEX-GL68-13A (GL68-13A) on April 13, 2018. After vetting recent listing applications, the Exchange has become aware that the market has begun to use the list of characteristics set out in paragraph 1.4 of GL68-13A as a checklist against which to determine an applicant's suitability for listing, which was not the intention of the Exchange. The Exchange therefore reiterated that it assesses a listing applicant's suitability holistically and, in particular, examines whether the use of proceeds and funding needs are consistent with its future objectives and strategies; whether the listing applicant has a commercial rationale for listing as well as all other relevant information; not on the basis of the checklist.

The Exchange added paragraph 4 to GL68-13A, to emphasize that it will use its broad discretion in determining suitability of the applicants. If the applicant is unable to demonstrate the commercial rationale for listing, or if the Exchange is aware of specific facts and

circumstances which give it a reasonable basis to believe that an applicant is likely to invite speculative trading upon listing or to be acquired for its listing status, the Exchange may find the applicant not suitable for listing. The voluntary provision of longer lock-up undertakings by the controlling shareholders or major shareholders of an applicant do not in and of themselves address the concerns of the Exchange.

Further, the Exchange emphasized that it would closely monitor the developments of the listed issuers. An issuer must ensure, after listed, that it and its business continue to be suitable for listing, otherwise the Exchange may cancel the issuer's listing.

香港联交所更新有关首次公开招股审批及申请人是否适合上市的指引信

香港联合交易所有限公司(联交所)于2018年4月13日刊发有关首次公开招股审批及申请人是否适合上市的指引信 HKEX-GL68-13A (GL68-13A) 的更新版。联交所在审阅上市申请后,察觉到市场逐渐将 GL68-13A 第 1.4 段所载之特点视为厘定申请人是否适合上市的清单,而这并非联交所的原意。故联交所强调审视申请人是否适合上市时是评估公司素质方面,特别是集资所得款项的用途及融资需要是否切合公司的未来目标及战略、申请人可有上市的商业理据以及所有其他相关资料,而非以清单作为判定基准。

联交所于 GL68-13A 增加第 4 段,强调其将行使其宽泛的酌情权厘定公司是否合适上市。若申请人未能证明上市的商业理据,或有特定事实及情况使联交所合理相信申请人上市后很可能招致投机买卖或因其上市地位被收购,联交所可能认为申请人不适合上市。申请人控股股东或主要股东自动延长禁售期并不能解决联交所对此的疑问。

此外,联交所强调会密切监察上市发行人的发展,上市后发行人仍须确保公司本身及其业务继续保持适合上市,否则联交所可能取消发行人的上市地位。

Source 来源:

http://www.hkex.com.hk/news/news-release/2018/1804132news?sc_lang=en
http://www.hkex.com.hk/news/news-release/2018/1804132news?sc_lang=zh-HK

Hong Kong Monetary Authority's Knowledge Kit for Independent Non-Executive Directors

The Knowledge Kit for Independent Non-Executive Directors (INEDs) is part of the On-boarding Program for INEDs of locally incorporated authorized institutions launched by the Hong Kong Monetary Authority in October 2017. The Knowledge Kit is a comprehensive

yet easy-to-read reference for basic banking and regulatory knowledge. It helps newly appointed INEDs to take up their role and responsibilities more effectively throughout the on-boarding process.

Six areas of essential knowledge were covered:

1. "Financial System" provides the history and background of the banking industry system. Special attention is given to Hong Kong's financial system and markets. The functions of various financial institutions and central banks are also introduced;
2. "Financial Market Infrastructure" sums up Hong Kong's financial infrastructure, especially with highlights on the retail payment system. The role of the financial infrastructure in supporting the stability of the financial system and the supervision were also mentioned;
3. "Bank Supervision" introduces the bank-related regulatory bodies in Hong Kong and outlines the regulatory and supervisory framework and also the implementation of international banking standards;
4. "Risk Management" researches on risk concepts and management, their application in banking and the structure of banking risk management functions;
5. "Governance and Ethics" examines concepts and issues arising from corporate governance and ethics and introduces banking culture reform and the Code of Banking Practice; and
6. "Banking Services and Operations" provides important knowledge that typically covers banking services and operations in the industry, ranging from the types of services provided at the front desk to back-office operations, for example, legal and accounting issues.

香港金融管理局发出独立非执行董事知识套件

“独立非执行董事知识套件”是香港金融管理局于二零一七年十月推出的本地注册认可机构“独立非执行董事加入计划”的一部分。知识套件是关于基本银行业务和监管知识的全面且易于阅读的参考。它帮助新任命的独立非执行董事在整个入职过程中更有效地了解和履行自己的角色和责任。

知识套件涵盖了六个主要知识领域：

1. “金融体系”提供了银行业体系的历史和背景。当中香港的金融体系和市场受到特别关注，还介绍了各种金融机构和中央银行的职能；

2. “金融市场基础设施”总结金融香港的基础设施，尤其零售支付系统，还提到了金融基础设施在支持金融体系稳定和监管方面的作用；

3. “银行监管部门”介绍与银行有关的监管机构并概述了监管和监督框架以及国际银行业标准的实施情况；

4. “风险管理”研究风险概念和管理，它们的银行业应用及银行风险管理功能的结构；

5. “治理和道德”检查由公司治理与道德产生的概念和问题，并引入银行文化改革与银行业务守则；及

6. “银行服务和运营”提供通常覆盖业界的银行服务和营运的重要知识，范围从前台提供的服务类型到后台运营，涵盖法律和会计等问题。

Source 来源：

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2018/20180424e1.pdf>

Hong Kong Securities and Futures Commission Reprimands and Fines CN Capital Management Limited and Responsible Officers HK\$1.2 Million over Regulatory Breaches

The Hong Kong Securities and Futures Commission (SFC) condemned CN Capital for failing to maintain effective compliance functions for employee account transactions and establishing sound internal control measures and a fine of HK\$1,000,000.

The SFC also condemned its responsible officers, Mr. George Chan Yee Lee and Mr. Stephen Ng Wing Leung, for failing to comply with the employee account dealing requirements under the Fund Manager Code of Conduct that they, when transacting for themselves, must give their clients priority and avoid conflicts of interest, and fined them HK\$100,000 each.

The SFC's investigation revealed that, between January 2011 and October 2016:

- none of the staff members of CN Capital had disclosed their personal investment holdings to CN Capital in writing;
- Chan and Ng conducted a total of 3,188 personal trades without obtaining any written pre-clearance from the designated officer of CN Capital;
- in 619 incidents, Chan or Ng held their personal investments for less than 30 days without prior written approval from the designated officer; and
- a total of 996 personal trades of Chan and Ng were conducted in the same stock and on the same day as the transactions conducted for the fund managed by CN Capital.

In deciding the sanctions, the SFC took into account all the circumstances including:

- CN Capital, Chan and Ng self-reported the regulatory breaches and failures to the SFC;
- they co-operated with the SFC in resolving the SFC's concerns;
- they have taken remedial measures to rectify the breaches and strengthen CN Capital's internal controls and systems;
- there is no evidence to suggest any front-running activities;
- there does not appear to be any client impact arising from the personal trades of Chan and Ng; and
- CN Capital, Chan and Ng have no disciplinary record with the SFC.

香港证监会谴责 CN Capital Management Limited 及相关监管违规并罚款 120 万港元

香港证券及期货事务监察委员会（证监会）谴责 CN Capital Management Limited (CN Capital) 未有就雇员帐户交易维持有效的合规职能及设立完善的内部监控措施并罚款 1,000,000 港元。

证监会亦谴责其负责人陈义理先生及伍永亮先生，因未能遵守《基金经理操守准则》下有关雇员帐户交易规定，违反在为自身进行交易时，必须优先处理客户的买卖盘，及避免出现利益冲突的基本原则而各被罚款 100,000 港元。

证监会的调查发现，于 2011 年 1 月至 2016 年 10 月期间：

- CN Capital 没有任何职员曾以书面形式向 CN Capital 披露他们所持有的私人投资项目；
- 陈及吴在未有取得 CN Capital 专责主任的书面预先批准下，进行了合共 3,188 项个人交易；
- 在 619 宗事件中，陈或吴在事前未获专责主任书面批准下，持有私人投资项目少于 30 日；及
- 陈及吴所进行的合共 996 项个人交易，与 CN Capital 所管理的基金于同日进行的交易涉及相同股票。

证监会在决定上述处分时，已考虑到所有情况，包括：

- CN Capital、陈及吴自行就违规行为及缺失向证监会作出汇报；
- 他们与证监会合作解决证监会提出的关注事项；
- 他们已采取补救措施，纠正违规行为并加强 CN Capital 的内部监控措施及系统；
- 未有证据显示他们曾进行任何超前交易；

- 无迹象显示任何客户因陈及吴的私人交易而受到影响；及
- CN Capital、陈及吴过往并无遭受证监会纪律处分的纪录。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR42>

Shenzhen Stock Exchange Puts Emphasis on the Supervision of Disclosure to Fight Against Environmental Pollution

A number of recent incidents involving violations of environmental regulations have caught the attention of the Shenzhen Stock Exchange (SZSE). For instance, on April 17, 2018, it was reported by China Central Television that Shanxi Sanwei Group (stock code: 000755.SZ) breached environmental regulations by illegally dumping and discharging industrial waste and wastewater, posing serious threats to the surrounding ecosystem.

On April 20, 2018, a notice of criticism (Notice) was issued to Jiangsu Huifeng Agrochemical Co., Ltd. (stock code: 002496.SZ) (Huifeng) because of its environmental problems including illegal disposal, transfer and storage of hazardous wastes, stealthily discharging highly toxic and hazardous wastewater for a long period of time, and improper operation of pollution control facilities.

With regard to the above issues regarding Huifeng, SZSE took the following regulatory measures: (1) reviewing the previous disclosure of information by Huifeng prior to the Notice; (2) making timely telephone requests for explanation and disclosure by Huifeng, followed by letters of inquiry and letters of concern based on the media's reports and investors' complaints; (3) informing the securities regulatory bureau concerned and drawing its attention to potential non-compliances of Huifeng regarding the incident and the truthfulness, accuracy and completeness of Huifeng's disclosure by announcements.

Preliminary investigation of SZSE indicates that Huifeng has failed to promptly disclose its substantial environmental pollution problems and the fact that its senior executives had been under investigation by relevant authorities, posing a serious breach of the Rules Governing the Listing of Stocks on SZSE and Guidelines for Standardized Operations of Companies Listed on the Small and Medium-sized Enterprises Board. SZSE has commenced public reprimand procedures against Huifeng.

SZSE has attached great importance to listed companies' disclosure of environmental protection information and has taken proactive measures including

the establishment of an environmental protection information disclosure system for listed companies and the strengthening of supervision of the disclosure of the environmental information in the recent years.

SZSE indicated that it would pay due regard to its social responsibilities regarding environmental protection, continue to improve relevant rules for the enhancement of disclosure of environmental protection related information by listed companies, strictly supervise listed companies' disclosure of environmental protection information, promote the optimization of industrial structure of companies listed on SZSE in favor of green lifestyle and development, and proactively participate in the establishment of a pollution prevention and comprehensive environmental governance system. If SZSE knows of any breach of disclosure obligations regarding environmental information, it will investigate and deal with it quickly, take appropriate enforcement action, and make concerted efforts with parties concerned to win the fight against the environmental pollution.

深圳证券交易所持续强化信息披露监管，坚决打赢污染防治攻坚战

近期，上市公司环保违规事件接连发生。例如，2018年4月17日，中国中央电视台报道山西三维集团（股票代码：000755.SZ）违规倾倒、排放工业废渣、废水，严重破坏周边生态环境。

2018年4月20日，江苏辉丰生物农业股份有限公司（股票代码：002496.SZ，以下简称辉丰股份）因违反环保规定被生态环境部通报。通报显示，辉丰股份存在非法处置危险废物、违规转移和贮存危险废物、长期偷排高浓度有毒有害废水以及治污设施不正常运行等问题。

对此，深圳证券交易所（深交所）在第一时间采取了下列监管措施：一是结合通报信息，认真核查辉丰股份前期的信息披露情况；二是根据媒体报道情况和投资者投诉线索，及时对辉丰股份采取电话问询、发出问询函和关注函等监管措施，要求公司作出详细说明并督促其认真履行披露义务；三是充分发挥监管合力，向辖区证监局通报相关情况，提请关注公司违规风险及相关信息披露的真实性、准确性和完整性。

经初步核查，发现辉丰股份涉嫌未及时披露重大环境污染问题、高管人员被有权机关调查但披露不及时等问题。辉丰股份的上述行为涉嫌严重违反《股票上市规则》、《中小企业板上市公司规范运作指引》等相关规定，深交所将依法依规严肃处理，对辉丰股份及相关当事人启动公开谴责处分程序。

深交所相关负责人表示，深交所历来高度重视上市公司环保信息披露，近年来多措并举，持续构建上市公司环保信息披露规则体系，不断强化环保信息披露监管。

深交所相关负责人表示，将切实扛起环境保护的政治责任，不断完善上市公司环保信息披露规则体系，从严监管上市公司环保信息披露行为，努力推动上市公司优化产业结构、形成绿色生产方式和发展方式、积极参与污染防治和环境综合治理体系建设。一旦发现环保信息披露违规，深交所将发现一起、查处一起，严厉打击、毫不手软，齐心协力打赢污染防治攻坚战。

Source 来源：

<http://www.szse.cn/main/aboutus/bsyw/39778909.shtml>

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