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Financial Services Regulatory Update
金融服务监管资讯

2018.10.12

Highlights of the Speech by Ms. Julia Leung, Deputy Chief Executive Officer and Executive Director, Intermediaries of the Hong Kong Securities and Futures Commission, at 2018 Refinitiv Pan Asian Regulatory Summit on Addressing Misconduct in Capital Markets

In a speech at the 2018 Refinitiv Pan Asian Regulatory Summit held on October 9, 2018 by Ms. Julia Leung, Deputy Chief Executive Officer and Executive Director, Intermediaries of the Hong Kong Securities and Futures Commission (SFC), she addressed misconduct in the capital markets. Some key points of the speech are summarized as follows:

Importance of regulating capital markets

As a regulator in an international financial center, the SFC is charged with maintaining and promoting the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures markets. But as both a conduct regulator and a prudential regulator, SFC's objectives are not limited to safeguarding the interests of investors and minimizing fraud and market misconduct. SFC's role also extends to maintaining Hong Kong's financial stability and mitigating systemic risk.

Characteristics of capital markets that give rise to misconduct

Conflicts of interest

In capital markets, there are inherent conflicts of interest in the way firms operate. Whether as market makers or as sole proprietary traders, they may be trading as an agent for clients or as principal. Their interests in price movements may conflict with those of their clients, opening the way for possible misconduct.

For example, when transacting for clients as agents in opaque markets, they may hide and retain any price differences behind obscure fees and charges. The SFC reprimanded Societe Generale in July 2012 for failing to disclose that it retained the difference between the actual transacted price and what it charged clients for over 3,000 secondary market transactions in over-the-counter (OTC) bonds, options and structured notes. As part of the resolution of this case, Societe Generale, without admitting liability, agreed to reimburse affected customers with interest. It has since taken steps to overhaul its systems and procedures to be fully compliant.

The opacity of OTC trading makes it relatively easy to charge mark-ups or spreads to unsuspecting clients. This opacity and the complexity of some of the financial products traded over the counter impede effective market surveillance by regulators and make it more difficult to detect misconduct such as manipulation, mis-use of information, front running and collusion.

Lack of senior management accountability

Even when charges were brought against individuals, senior management deflected attention from their own failings during the Global Financial Crisis and laid the blame on rogue traders. Very few senior executives were prosecuted. It's not difficult to see why the public and even the individuals concerned have the false impression that senior management or star employees are not personally liable for misconduct.

Financial innovation

Financial innovation, particularly automation and algorithmic trading, heightens misconduct risk by magnifying existing concerns and introducing new ones. By enabling more transactions to be conducted even more quickly, automation makes it even more challenging for regulators to monitor and analyses the huge volume of trading data as well as to ensure that market integrity is maintained.

Questions have been raised over the role of automation and algorithms in flash crashes such as the one in August 2015 when the S&P 500 fell 5% within minutes of opening. Some commentators argued that market volatility was exacerbated by high-frequency trading and market makers holding back liquidity because their computer models malfunctioned or shut down.

The SFC's regulatory approach

The SFC aims to drive and mould good conduct to achieve the desired regulatory outcomes. Rather than letting potential issues fester and morph into more serious problems later on and then using its enforcement and disciplinary powers to deal with the fallout, its tactic is to pre-empt them. This means adopting a front-loaded regulatory approach whereby SFC intervenes at an earlier stage with targeted actions designed to achieve a quicker, more impactful outcome.

Enforcement still has an essential role as a regulatory tool for deterring bad behavior. However, disciplinary action is not the panacea, and it takes time. The point is, no single regulatory function can address today's complex misconduct risks.

SFC needs to pool its regulatory expertise and industry knowledge to home in on nascent issues and tackle misconduct in a coordinated, holistic manner. That's why SFC has adopted the "One SFC approach", so that it can put its heads together to unmask the masterminds, unravel ulterior motives and hidden agendas and expose linkages among the connected parties behind misconduct.

Misconduct in the listed market

Two years ago, SFC formed a multi-disciplinary project team called ICE after the first letters of its Intermediaries, Corporate Finance and Enforcement divisions. The team's objective was to identify patterns of misconduct that aims to manipulate stock prices, rig shareholders' votes or scam minority shareholders. Even though the so-called "con stock" activities involve a small number of listed companies, the reputation risk for Hong Kong is not small.

The ICE team's strategy has had tangible results. An early success was against price manipulation of GEM shares. There was a pattern: high concentrations of GEM shares were placed with a few shareholders, with 10% or less suspected to be distributed among a number of nominees. On the first day of listing, prices soared multiple times only to fall flat later, suggesting a pump-and-dump scheme.

In response, the SFC and Hong Kong Exchanges and Clearing Limited issued a joint statement in January 2017 which detailed their regulatory concerns. The SFC concurrently issued a guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM stocks. Following its intervention, the average first day price change of newly listed GEM stocks immediately dropped to a more normal level of 20%, where it has since remained.

ICE also took on the dubious market activities associated with shell companies. SFC's response was clear – better gatekeeping at both the front gate and the back gate. In cases where it suspected that listing applicants reported seriously inflated sales figures, the SFC exercised its power to query the listing applications, which were subsequently withdrawn. In cases where vote rigging was suspected, SFC invoked its power to order suspension of trading in the shares. In 2017, around 40 cases involved the actual or potential use of these powers, compared to only two or three such cases in prior years.

SFC identifies sponsors with a history of having their sponsored listings rejected because of substandard work. These sponsors have a higher chance of being inspected by it. If SFC's supervisory inspection identifies poor quality sponsor work, it opens an enforcement investigation.

SFC recent inspections uncovered a worrying trend of intermediaries concocting convoluted arrangements to either conceal the identities of the beneficial owners of securities or cloak their true intentions, such as to engage in margin lending. Firms should not facilitate market misconduct by making "nominee" or "warehousing" arrangements for their clients. To protect investors and maintain the integrity of the markets, the SFC will not hesitate to take stiff enforcement action against the perpetrators as well as the firms and individuals who participate in such arrangements.

SFC's intervention tools also include requiring immediate rectification of bad behavior, imposing licensing conditions or issuing a restriction notice on the intermediary to limit or, in extreme cases, to prohibit some or all of their regulated activities to mitigate and control the risk. SFC has adopted similar approaches to manage the risks posed by persistently loss-making but thinly capitalized brokers who struggle to meet their minimum liquid capital requirements.

Misconduct in the wholesale market

Regarding the decentralized wholesale market, inherent conflicts of interest coupled with a lack of transparency is a recipe for misconduct. That's why globally, this issue is most taxing to conduct regulators. The SFC Code of Conduct requires intermediaries to disclose material interests or conflicts to the client. The client's best interest is the overarching principle.

Firms sometimes conflate their principal roles and their agency roles. SFC has made this the theme of a joint inspection it conducted with the Hong Kong Monetary Authority (HKMA). The HKMA examined the wealth management unit of a bank that sourced in-house products as agent, and the SFC inspected the books of the securities unit in the same banking group that sold the products as principal. The SFC is able to identify

conflicts of interest by examining both ends of the same transaction.

Thematic reviews allow SFC to deploy its limited regulatory resources to increase its touch points with intermediaries on specific risks identified from its intelligence gathering and monitoring activities. This helps focus SFC's risk-based supervision on imminent, high-impact issues. In the past two years, SFC completed five thematic reviews on conduct issues in capital markets.

Innovation and technology can help the industry improve performance, but it can also amplify the risks in capital markets. Quant funds have long employed algorithms to execute large orders to achieve particular statistical benchmarks, such as Value Weighted Average Price. Algorithmic programmed now use a vast number of hidden layers to process large, unstructured data sets to drive investment decisions. These programmed may be too complex and hard for humans to comprehend. SFC's regulatory handle is over the operator, and to hold senior management responsible for implementing a robust governance structure and appropriate policies and procedures with effective controls to ensure reliability, data protection and security.

SFC introduced the Manager-In-Charge regime in 2016 to reinforce the message that senior management are responsible and accountable for fostering good conduct and behavior. SFC will vigorously pursue individuals culpable for misconduct.

To improve the effectiveness of SFC's gatekeeping function, the SFC has embarked on a strategic effort to more closely track bad apples involved in misconduct and to keep bad actors out of the market altogether. New initiatives help SFC collect and analyses data as well as to more easily identify and visualize the relationships between firms, listed companies and individuals. To enhance the market surveillance, SFC also uses big data processing techniques to analyses trading information. Those who exploit technology should be aware that the SFC is also leveraging technology to make sure that they have no place to hide.

Conclusion

While misconduct appears throughout the ages in various forms and guises, the behavioral patterns always remain the same. In this rapidly changing world, on the cusp of revolutionary breakthroughs in financial technology, it seems the adage “the more things change the more they stay the same”, still rings true today.

The SFC's steadfast determination to keep the capital markets clean. Hong Kong is open for business, but not at any cost. That’s why the SFC has shifted to a front-loaded regulatory approach. Ms. Julia Leung said that the examples cited demonstrate the positive impact that this new approach has had, as well as the SFC’s resolve to tackle misconduct.

香港证券及期货事务监察委员会副行政总裁及中介机构部执行董事梁凤仪女士就如何打击资本市场的失当行为于 2018 年 Refinitiv 泛亚监管峰会上发表的主题演说重点

香港证券及期货事务监察委员会(证监会)副行政总裁及中介机构部执行董事梁凤仪女士在 2018 年 10 月 9 日于 2018 年 Refinitiv 泛亚监管峰会发表题为《如何打击资本市场的失当行为》的演说 。演讲的重点摘要如下：

监管资本市场的重要性

作为一个国际金融中心的监管机构, 证监会有责任维持和促进证券及期货市场的公平, 效率, 竞争力, 透明度及秩序。然而, 作为同时负责操守监管及审慎监管的机构, 证监会的目标并不限于保障投资者的利益及尽量减少欺诈和市场失当行为。证监会的角色亦涵概维持本港的金融稳定及缓减系统性风险。

引致失当行为出现的资本市场特点

利益冲突

在资本市场中, 公司的营运方式存在固有的利益冲突。无论是作为市场庄家还是单一自营交易商, 公司都可能以客户代理人或主事人的身分进行交易。公司因价格波动而得到的利益可能与客户利益有所冲突, 失当行为遂有可能出现。

举例来说, 当公司作为代理人为客户在欠缺透明度的市场中进行交易时, 可能会在复杂的费用及收费背后隐藏和扣取差价。证监会在2012年7月谴责 Societe Generale, 原因是该公司 在就场外债券, 期权及结构性票据而进行的超过3,000宗二手市场交易中, 保留了实际交易价与向客户收取的金额之间的差价, 但却没有作出披露。作为这宗个案的解决方案 的一部分, Societe Generale 在不承认法律责任的情况下, 同意向受影响客户归还有关款项连同利息。自此, 该公司采取了步骤优化其系统及程序, 以达致全面合规。

场外交易市场欠缺透明度, 故相对较容易向不虞有诈的客户收取差价或利差。透明度不足, 加上部分场外交易的金融产品性质复杂, 妨碍了监管机构进行有效监察,亦令操纵市场, 滥用信息, 超前交易及串谋违规等失当行为较难被侦测。

高级管理层欠缺问责性

即使有个别人士遭到指控，高级管理层却将人们对其在全球金融危机期间的缺失方面的注意力转移，并将问题归咎于行事不当的交易员。被检控的高层人员为数极少。证监会 不难理解，为何公众甚至当事人都存有错误印象，以为高级管理层或主要职员无须为失当行为负上个人法律责任。

金融创新

金融创新尤其是自动化及程式买卖,, 加剧了现有的问题，并带来新的关注，令失当行为的风险增加。自动化虽然令交易得以更为迅速地进行，但监管机构由于须要在监察及分析庞大数量的交易数据的同时维护市场廉洁稳健，因而面对更大的挑战。

自动化及程式买卖在“闪崩”中所扮演的角色一直都引起疑问。举例来说，在2015年8月，标普500指数在开市后数分钟便已下跌5%；部分评论者指，市场波幅加剧，是因为高频交易及市场庄家因其电脑模拟程式发生故障或停止运作而抽回流动资金所致。

证监会的监管方针

证监会锐意推动和培养良好的操守，以取得预期的监管成果。证监会的对策是先发制人，不会容许潜在问题发酵，恶化，或待日后演变得更严重时，才动用其执法和纪律处分权力去处理。这表示证监会会采取前置式监管方针，及早采取具针对性的行动介入个案，借以取得更快，更具影响力的效果。

要杜绝不良的行为，执法始终是不可或缺的监管工具。然而，纪律处分行动并非灵丹妙药，而且需时。重点是，没有任何单一监管职能可以独力应对今时今日的复杂失当行为风险。

证监会需要将其在监管方面的专业技能与行业知识结合起来，聚焦处理新冒起的问题，并互相配合，全方位地打击失当行为。这正是证监会采纳“一个证监会”方针的原因，此举让其能够集思广益，合力揭穿幕后主谋的真面目，破解不可告人的动机和目的，同时揭露失当行为背后各关连方之间的关系。

上市市场的失当行为

两年前，证监会成立了一个跨部门工作小组，名为 ICE. ICE 分别代表中介机构部，企业融资部和法规执行部的首个英文字母。这个工作小组的目标是找出那些旨在操纵股价，种票或欺骗小股东的失当行为的模式。虽然所谓的“老千股”活动只涉及少数上市公司，但对香港的声誉所构成的风险却不小。

ICE 小组的策略已取得实质成果，并已初步成功打击 GEM 股份的操纵股价问题。进行股价操纵的模式是：高度集中的 GEM 股份被配售予小量股东，而有10%或以下的股份则有似似被分配予一些代名人。股价在上市首日往往急升几倍，但之后却暴跌，可见这是一个抬价后抛售的诡计。

有见及此，证监会与香港交易及结算所有限公司于2017年1月发表联合声明，详述监管关注的事项。同时，证监会亦向参与 GEM 股份上市及配售的保荐人，包销商及配售代理发出指引。自证监会介入后，新上市 GEM 股份的平均首日股价变动即时回落至20%，此后亦一直维持在这个较为正常的水平。

ICE 亦负责应付与空壳公司相关的可疑市场活动。证监会的回应十分清晰——无论是前门还是后门的把关工作都要做得更好。在怀疑上市申请人严重夸大销售数字的个案中，证监会行使其的权力，就相关上市申请提出质疑，而这些申请最终都被撤回。在怀疑种票的个案中，证监会援引了其下令股份暂停买卖的权力。在2017年，涉及实际或可能使用上述权力的个案大约有40宗，相比之下，往年这类个案只有两，三宗。

保荐人若曾经多次因工作未达标而令所保荐的上市申请被拒，将会被证监会识别出来，而且有较高机会须接受其视察巡查。假如证监会在视察的过程中发现保荐工作质素恶劣，便会展开执法调查。

证监会在近日的视察中发现，借着错综复杂的安排以隐瞒证券的实益拥有人身分或隐藏其真正意图(例如从事保证金借贷)的中介人数目有上升趋势，情况令人忧虑。公司不应替客户作出“代名人”或“以他人名义代持股份”的安排，从而助长市场失当行为。为了保障投资者和维护市场的廉洁稳健，证监会将毫不犹疑地对犯罪者以及参与相关安排的公司和人士严厉执法。

证监会介入个案的方法亦包括要求即时纠正不当行为，及对中介人施加发牌条件或发出限制通知书，以限制或在极端个案中禁止其进行部分或全部受规管活动，从而减轻并控制风险。对于持续录得亏损，资本薄弱且只是勉强符合最低速动资金规定的经纪行，证监会已采取类似做法以管理它们构成的风险。

批发市场的失当行为

关于分散式批发市场，固有的利益冲突加上市场缺乏透明度是失当行为的成因。这解释了为何对全球的操守监管

机构而言，失当行为是非常棘手的问题。证监会"操守准则"要求中介人向客户披露重大利益或冲突，首要原则是要维护客户的最佳利益。

要遵循这项规则看似容易，但公司有时会将其主事人的角色与代理人的角色混淆。证监会以此作为与香港金融管理局(金管局)展开联合检视的主题。金管局审视了某银行内以代理人身分搜罗内部产品的财富管理单位，而证监会则检视同一银行集团内以主事人身分销售该等产品的证券单位的纪录。透过审视涉及同一交易的两个单位，证监会能够识别出相关的利益冲突。

主题检视让证监会能够分配有限的监管资源，借以增加其与中介人透过情报收集及监测活动识别出的特定风险而进行接触的机会。这有助证监会将以风险为本的监察工作聚焦在迫切且会带来重大影响的问题上。过去两年来，证监会完成了五项关于资本市场操守问题的主题检视。

创新及科技有助业界提升表现，但也能扩大资本市场的风险。量化基金长期以来使用算法来执行大额买卖盘，以达到特定的统计基准，例如价值加权平均成交价。当今的算法程式使用大量隐层来处理大型非结构化数据集，以作出投资决定。这些程式可能过于复杂，一般人难以理解。证监会的监管措施是用来对付机器的操作者，以及促使高级管理层尽责实施强而有力的管治架构，及能发挥有效监控作用的适当政策和程序，以确保可靠性，数据受到保护和安全性。

证监会于2016年引入了核心职能主管制度，以强化高级管理层有责任促进良好操守及行为并就此接受问责的这个讯息。证监会将会严厉执法，对干犯失当行为的人追究到底。

为了更有效地履行把关的职能，证监会已着手实施策略性的方针，更密切地追踪涉及失当行为的害群之马，务求将坏分子赶出市场，一个不留。新的举措有助证监会收集和分析数据，以及更容易识别和了解中介人，上市公司及个人之间的关系。为了加强市场监察力度，证监会还利用大数据处理技术来分析交易资料。利用科技犯案的人应该知道，证监会同样也在利用科技来确保他们无所遁形。

结语

虽然失当行为在不同年代以各种形式乔装出现，但行为模式始终不变。在当今这个瞬息万变的世界，身处金融科技革命性突破的风口浪尖，"万变不离其宗"的谚语仍然适用。

证监会将坚定不移地维持资本市场的廉洁稳健。香港门户大开做生意，但并非不惜一切代价。这就是证监会转而采用前置式监管方针的原因。梁凤仪女士表示引述的例子证明这项新方针带来了正面影响，以及证监会打击失当行为的决心。

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Hong Kong Securities and Futures Commission Concludes Consultation on the Offline Sale of Complex Products

On October 4, 2018, the Securities and Futures Commission (SFC) released conclusions to its further consultation on requirements applicable to the offline sale of complex products.

On March 28, 2018, the Securities and Futures Commission (SFC) issued consultation conclusions on proposed Guidelines on Online Distribution and Advisory Platforms (Guidelines), which included additional protective measures applicable to the distribution of complex products on online platforms (for example, when the sale is concluded with a client face-to-face, over the telephone or via other forms of interactive communication), and further consulted the industry on SFC's proposal that these measures also apply to the offline sale of complex products.

Having regard to the responses to the public consultation, the SFC has decided to proceed with the proposed amendments to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) to apply the additional measures to the offline sale of complex products, whilst clarifying some aspects of their implementation. The main conclusions are summarized as follows:

1. Offline requirements applicable to complex products

Rationale for aligning online and offline requirements

The main purpose of introducing the additional protective measures for complex products is to better protect clients' interests by ensuring that clients are well informed about the nature, risks and features of the complex products and that the complex products are suitable for them.

SFC said that it has aligned the requirements for intermediaries to conduct suitability assessments of clients in the sale of complex products so that they are the same both online and offline. This levels the playing field, provides better protection for customers and prevents regulatory arbitrage.

It is important for intermediaries to conduct due diligence on a product before offering it to clients. As the products involved may be traded over-the-counter with limited publicly available information, the clients may have little knowledge of the products and may not be aware that they are complex and thus extra caution should be exercised. Hence, SFC considers that the additional measures, including ensuring suitability of transactions in complex products, shall be applicable even if the complex products are not on an intermediary's products list. Intermediaries should conduct more frequent reviews and updates of their products lists and ensure staff have an adequate level of knowledge to respond to clients' requests and properly discharge their duties.

SFC does not agree that an intermediary should request that its clients sign a document or make any statement to exempt the intermediary from conducting a suitability assessment for a specific transaction. This will not serve the purpose of investor protection.

SFC will also work with the Investor Education Centre on educational materials to raise investors' awareness and understanding of these new requirements. Definition of "complex products" and "non-complex products" "Complex product" refers to an investment product whose terms, features and risks are not reasonably likely to be understood by a retail investor because of its complex structure (paragraph 6.1 of the Guidelines).

Set out below are factors to determine whether an investment product is complex or not:

(i) whether the investment product is a derivative product;

(ii) whether a secondary market is available for the investment product at publicly available prices;

(iii) whether there is adequate and transparent information about the investment product available to retail investors;

(iv) whether there is a risk of losing more than the amount invested;

(v) whether any features or terms of the investment product could fundamentally alter the nature or risk of the investment or pay-out profile or include multiple variables or complicated formulas to determine the return; and

(vi) whether any features or terms of the investment product might render the investment illiquid and/or difficult to value.

Funds

With respect to currency-hedged funds, SFC-authorized funds can use derivatives for hedging purposes and as a result are not subject to the proposed derivatives investments limits.

The responsibility to classify products as non-complex or complex lies with intermediaries, having regard to the factors set out in paragraph 6.1 of the Guidelines and the non-exhaustive list of examples of non-complex and complex products set out on the SFC's website. Intermediaries should determine whether a product may be treated as non-complex or complex with due skill, care and diligence. Where the product is not regulated in a specified jurisdiction, intermediaries should exercise extra caution in making this determination.

Bonds and other products

In determining whether a high-yield bond should be treated as complex, intermediaries should make reference to the Guidelines and the non-exhaustive list of examples. Intermediaries should not focus on the yield generated by the bonds. Intermediaries should, however, consider other features such as whether multiple variables or complicated formulas determine the return, whether it is a perpetual or subordinated bond or whether it has variable or deferred interest payment terms or contingent write down or loss absorption features.

SFC wishes to clarify that complex products are not restricted to derivative products only. Non-derivative investment products whose terms, features and risks are not reasonably likely to be understood by retail investors would also be treated as complex products. Bonds with "multiple credit support providers" be treated as complex as SFC noted that some bonds have multiple credit support providers with no material operations, or involve complex structures which subordinate the bondholders' rights to those of the multiple credit support providers. Hence, investment products with such features should be treated as complex products and subject to a suitability assessment regardless of the risk.

SFC also wants to point out that insurance products are excluded from the definition of "securities" under the Securities and Futures Ordinance and any sale of contracts of insurance does not fall within the remit of the Guidelines or paragraph 5.5 to the Code of Conduct.

Other comments or clarifications sought

• The purpose of disclosing minimum product information and warning statements is to draw a client's attention to the key nature, features and risks of a complex product before the client makes a decision, irrespective of whether a solicitation or recommendation is made. Hence, the SFC is of the view that such disclosure should be made on a transaction-by-

transaction basis.

• Regarding "required information", paragraph 15.4(e) to the Code of Conduct has been amended to the need to ensure the suitability of a transaction in a complex product, to provide sufficient and disclose the required information about a complex product and to provide warning statements.

• An intermediary could be exempted from ensuring the suitability of a transaction in a complex product and providing the minimum product information and warning statements when it is serving Institutional Professional Investors and Corporate Professional Investors. Notwithstanding this exemption, intermediaries are reminded of their obligation to comply with General Principle 5 of the Code of Conduct (ie, intermediaries should make adequate disclosure of relevant material information in their dealings with their clients).

• In determining whether the display of advertisements, or other materials, for an investment product triggers the suitability obligations, the assessment should be made at the point of sale or advice. It would depend on whether there is communication with clients and whether such communication is relevant to the selling or advisory process. In the absence of direct communication with the client, suitability obligations are unlikely to be triggered by the mere posting of an advertisement for an investment product.

• The Guidelines are applicable to all SFC-licensed and registered persons when conducting regulated activities in providing order execution, distribution and advisory services in respect of investment products via online platforms. An offshore intermediary does not have operations in Hong Kong would suggest that it does not carry on a business in regulated activities in Hong Kong. However, licensing requirements may still be triggered if: (i) the intermediary holds itself out as carrying on regulated activities in Hong Kong; or (ii) its services, if provided in Hong Kong, would constitute regulated activities, are actively marketed to the public in Hong Kong, whether by itself or by other entities on its behalf in Hong Kong or from elsewhere.

• While the Guidelines in general will not apply to websites that only showcase products, SFC would like to reiterate that it will take into account activities targeting Hong Kong investors conducted by the intermediary via all channels in their totality in considering the intermediary's compliance with the Guidelines and applicable requirements governing the conduct of intermediaries in relation to other non-online channels.

• While offering documents authorized by the SFC should contain the key features and risks of the relevant product, it is the responsibility of intermediaries to provide product information and warning statements to their clients at the point of sale and provide proper explanations.

• If an intermediary, being under the obligation to ensure suitability, has assessed a transaction in a complex product to be unsuitable for a client, the intermediary should not effect the transaction for the client even if the client still wishes to proceed. This is because the SFC is of the view that it is very unlikely that effecting an unsuitable transaction for the client could still be acting in the best interests of the client.

2. Transition period

Aligning the effective dates of the online and offline requirements will ensure a level playing field and avoid confusing sales staff. Hence, the SFC has decided that the proposed requirements applicable to the offline sale of complex products will come into effect six months following the gazettal of the final form of the amendments to the Code of Conduct, ie, on April 6, 2019, the same date as the online requirements.

香港证券及期货事务委员会发表有关非网上销售复杂产品的谘询总结

2018 年 10 月 4 日, 香港证券及期货事务监察委员会(证监会)就适用于复杂产品的非网上销售规定的进一步谘询, 发表总结文件。

证监会于 2018 年 3 月 28 日就有关建议的《网上分销及投资咨询平台指引》(《指引》) 发表咨询总结, 并且就该等措施应同样适用于复杂产品的非网上销售(例如当销售是透过与客户进行面对面, 电话或其他互动沟通的方式来完成)的建议, 进一步咨询业界的意见。

经考虑公众咨询所接获的回应后, 证监会决定落实对《证券及期货事务监察委员会持牌人或注册人操守准则》(《操守准则》) 的建议修订, 令额外措施能适用于复杂产品的非网上销售, 以及就其实施作出某些方面的澄清。主要结论摘要如下:

1. 适用于复杂产品的非网上销售要求

划一网上及非网上销售规定的原因

划一网上及非网上销售规定及增加相关规范的目的是为复杂产品引入额外保障措施, 确保投资者充分知悉复杂产品的性质、风险及特点, 以及确保复杂产品是适合客户, 借此更妥善地保障客户的利益。

证监会表示: 划一规定中介人在销售复杂产品时须进行合适性评估, 使网上及非网上的规定保持一致, 此举确保公平的竞争环境, 为客户提供更妥善的保障及避免监管漏洞。

中介人在向客户提供产品前, 必须对产品进行尽职审查。由于有关产品可能是在场外交易, 公开资料有限, 故客户可能对产品所知甚少, 或未能察觉到有关产品乃属复杂产品及应格外审慎。因此, 证监会认为即使复杂产品并非列于中介人的产品清单上, 额外措施(包括确保复杂产品的合适性)亦应适用。中介人应更频密地检视和更新其产品清单, 及确保其职员对产品有足够程度的认识, 以便回应客户的要求及恰当地履行其职责。

证监会不赞同中介人要求客户签署任何文件或作出任何声明, 以豁免中介人就特定交易进行合适性评估。此举将无法达到投资者保障的目的。

证监会认为, 规定中介人考虑客户的所有个人状况, 从而进行合适性评估, 及向客户提供产品资料和警告声明, 可令投资者获得更妥善的保障。证监会亦始终认为, 划一适用于分销复杂产品的网上与非网上规定, 可确保公平的竞争环境及避免潜在的监管漏洞。

证监会亦将与投资者教育中心合力制作教育材料, 让投资者加深认识和理解该等新规定。

"复杂产品"及"非复杂产品"的定义

"复杂产品"是指由于结构复杂, 致令其条款, 特点及风险在合理情况下不大可能会被零售投资者理解的投资产品(《指引》第 6.1 段)。

用以厘定某投资产品是否复杂的因素包括:

(i) 该投资产品是否衍生产品;

(ii) 是否有第二市场可供该投资产品按公开价格买卖;

(iii) 有否就该投资产品向零售投资者提供足够及具透明度的资料;

(iv) 是否存在损失大于投资金额的风险;

(v) 该投资产品是否有任何特点或条款可从根本上改变投资的性质或风险或支付形式, 或是否有任何特点或条款包含多个可变因素或复杂的计算公式以厘定有关回报; 及

(vi) 该投资产品是否有任何特点或条款, 致令投资失去其流动性及/或难以估值。

基金

就货币对冲基金而言, 证监会认可基金可就对冲目的而使用衍生产品, 因此无须受到建议的衍生产品投资上限所约束。

中介人应考虑《指引》第 6.1 段所载的因素, 及证监会网站所载非复杂及复杂产品的非详尽例子列表,以履行将产品分类为非复杂或复杂产品之责任。中介人应以适当的技能、小心审慎和勤勉尽责的态度,厘定产品是否可被视为非复杂或复杂。若产品并不是在特定司法管辖区内受到规管, 中介人在作出有关决定时应格外审慎。

债券及其他产品

在厘定高息债券是否应被视为复杂产品时, 中介人应参照《指引》及非详尽例子列表。中介人不应着眼于债券所产生的孳息。然而, 中介人应考虑其他特点, 例如有关回报是否由多个可变因素或复杂的计算公式所厘定, 是否属永续性质或后偿性质的债券, 或是否具有浮息或延迟派付利息条款, 或是否具有或然撇减或弥补亏损特点。

证监会希望澄清, 复杂产品并非只限于衍生产品。若非衍生投资产品的条款、特点及风险在合理情况下不大可能会被零售投资者理解, 亦会被视为复杂产品。具有"非单一信贷支持提供者"的债券应被视为复杂产品, 因为证监会注意到, 部分债券的非单一信贷支持提供者并无重大营运, 或涉及将债券持有人的权利置于非单一信贷支持提供者的权利之下的复杂结构。因此, 具有该等特点的投资产品应被视为复杂产品, 而且不论风险高低都须接受合适性评估。

证监会亦希望指出, 保险产品并不包括在《证券及期货条例》下"证券"的定义范围内, 而任何保险合约的销售均不属于《指引》或《操守准则》第 5.5 段的范围。

其他意见或寻求作出澄清

• 不论中介人有否作出招揽或建议行为, 亦应向客户披露最低限度的产品资料及警告声明, 以提醒客户在作出决定前注意复杂产品的主要性质、特点及风险。因此, 证监会认为有关披露应在每次进行交易时作出。

• 就"所需资料", 《操守准则》第 15.4(e)段已修订为须确保复杂产品交易的合适性,提供有关复杂产品的充分资料及提供警告声明。

• 中介人在为机构专业投资者及法团专业投资者服务时, 可获豁免而无需确保复杂产品的交易是否合适及提供最低限度的产品资料和警告声明。虽然获得上述豁免, 但中

介人仍有责任遵守《操守准则》第 5 项一般原则(即中介人在与客户交易时, 应充分披露有关的重要资料)。

• 在厘定展示投资产品的广告或其他材料是否触发为客户提供合理适当建议的责任时, 应在销售或作出建议时进行评估。这取决于是否与客户进行沟通, 以及有关沟通是否与销售或建议的过程相关。若没有与客户直接沟通, 单纯刊登投资产品的广告不大可能会触发为客户提供合理适当建议的责任。

• 所有证监会的持牌人或注册人在进行受规管活动时, 若涉及透过网上平台提供有关投资产品的交易指示执行、分销及投资咨询服务, 一律成为《指引》的适用对象。

如境外中介人并非在香港营运, 即表示其并无在香港经营受规管活动的业务。然而假如：(i) 该中介人显示自己在香港经营受规管活动的业务; 或(ii) 该中介人(不论 是 由其自行或由其他实体代为在香港或其他地方)积极向香港公众推广服务(而有关服务如在香港提供, 便会构成受规管活动), 仍有可能触发发牌规定。

• 虽然《指引》一般来说将不适用于仅展示产品的网站, 但证监会重申是考虑中介人是否符合《指引》及监管中介人在其他非网上渠道方面的操守的适用规定时, 将会在整体上顾及该中介人透过所有渠道进行以香港投资者为目标的活动。

• 虽然证监会认可的要约文件应载有相关产品的主要特点和风险, 但中介人仍有责任在销售时向其客户提供产品资料和警告声明, 以及作出恰当的解释。

• 若有责任确保合适性的中介人已评估某项复杂产品的交易为不适合客户, 便不应为客户执行有关交易, 即使该客户仍希望进行有关交易。原因是证监会认为, 为客户进行不适合的交易不大可能仍是以维护客户的最佳利益行事。

2. 过渡期

划一网上及非网上规定的生效日期将可确保公平的竞争环境, 及避免令销售人员感到混淆。因此, 证监会决定, 适用于非网上销售复杂产品的建议规定将会在《操守准则》的修订定稿刊宪后六个月生效, 即 2019 年 4 月 6 日, 这与网上规定的生效日期相同。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR112

Hong Kong Securities and Futures Commission Issues Circular to Remind Intermediaries Use of "Nominees" and "Warehousing" Arrangements in Market and Corporate Misconduct

On October 9, 2018, the Securities and Futures Commission (SFC) issued Circular to remind intermediaries to be mindful of red flags indicating potential improper activities, make due follow-up enquiries with clients and report promptly to the SFC and other authorities where necessary.

Background

The SFC notes with concern the increasingly prevalent use of "nominees" and "warehousing" arrangements in schemes which may amount to market and corporate misconduct. Nominee arrangements may be legitimate if they are set up and operated in a manner that complies with relevant laws and regulations. However, the SFC noted cases where nominee clients took instructions from "masterminds" and participated in activities to manipulate share prices or voting results in general meetings of listed companies, or to conceal the actual shareholding in a listed company to evade regulatory requirements. These activities seriously undermine market integrity and prejudice the interest of investors.

These arrangements may be associated with one or more red flags which should arouse the reasonable suspicion of intermediaries. If intermediaries fail to take reasonable steps to detect or properly address apparent red flags, they may be in breach of legal or regulatory requirements. Intermediaries may also be exposed to civil and criminal liability as a result of their involvement in misconduct or crime.

The "I-C-E" team of the SFC (consists of senior executives and officers from the Intermediaries, Corporate Finance and Enforcement divisions) has pooled resources from different divisions to tackle these issues. In particular, the Enforcement Division is currently investigating market and corporate misconduct cases involving "nominees" and "warehousing" arrangements and scrutinizing the role played by the intermediaries in these cases.

Purpose of the circular

The circular serves to –

• remind intermediaries of their existing obligations under the Code of Conduct, the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML Guideline);

• provide examples of the more common red flags identified to date; and

• set out the standard of conduct expected from intermediaries.

Obligations of intermediaries

Intermediaries should be wary of potential red flags and critically review and enhance their systems and controls for the purpose of complying with related legal and regulatory requirements, including:

• General Principle 1 of the Code of Conduct, requiring intermediaries to act honestly, fairly, and in the best interests of their clients and the integrity of the market;

• General Principle 2 of the Code of Conduct, requiring intermediaries to act with due skill, care and diligence, in the best interests of their clients and the integrity of the market;

• Paragraph 5.1 of the Code of Conduct, requiring intermediaries to take all reasonable steps to establish the true and full identity of each of their clients, and of each client's financial situation, investment experience, and investment objectives;

• Paragraph 5.4 of the Code of Conduct, requiring intermediaries to be satisfied on reasonable grounds about:

(i) the identity, address and contact details of (a) the person or entity ultimately responsible for originating the instruction in relation to a transaction; and (b) the person or entity that stands to gain the commercial or economic benefit of the transaction and / or bear its commercial or economic risk; and

(ii) the instruction given by the person or entity referred to in (i). The intermediary should keep in Hong Kong a record of the details referred to above and give the SFC access to that record upon request;

• Section 5(1) of Schedule 2 to the AMLO, requiring financial institutions to continuously monitor their business relationship with customers by conducting appropriate scrutiny of transactions (cash and non-cash transactions) carried out for the customers;

• Paragraph 5.1 of the AML Guideline, requiring financial institutions to identify transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose and which may indicate money laundering or terrorist financing; and

• Paragraph 4.3.3 of the AML Guideline, requiring financial institutions to make appropriate enquiries about customers who are individuals, where there are indications that the customer is not acting on his own behalf.

Red flags

Intermediaries should be vigilant in looking out for potential red flags that may suggest use of "nominee" and "warehousing" arrangements for illegitimate purposes. The following is a non-exhaustive illustrative list:

• clients effecting transactions involving large amounts of funds that are not commensurate with their financial profiles;

•clients only transacting in one or two stocks over an extended period. The circumstances would be more suspicious if the clients are walk-in clients, opening an account to effect a single transaction involving a large sum of money;

• a large number of seemingly unrelated clients having authorized the same third party (who is not a licensed representative or registered individual of the intermediary) to operate their accounts;

• a large number of seemingly unrelated clients that share the same trading and settlement patterns (for example, investing in same stocks) or the same correspondence address;

• frequent and large fund transfers to and from third parties absent a credible commercial rationale or explanation; and

• clients transferring a large quantity of stock (representing a sizeable portion of the typical daily turnover of the stock on the stock exchange) to and from third parties by way of bought and sold notes which do not appear to have been concluded on a normal commercial basis (for example, the executed price is substantially below the prevailing market price or the stock has been transferred to the client unaccompanied by any payment).

Expected standards

Intermediaries should take reasonable steps and implement robust systems and procedures to know their clients, identify the beneficial owner of the account, detect potentially illegal or manipulative activities, make prompt follow-up enquiries and report suspicious transactions where necessary. For example:

• Know your clients: Intermediaries should take reasonable steps to establish the true and full identify of each client and the beneficial owner.

• Third party operated accounts: Intermediaries should implement proper controls and approval procedures for the opening of third party operated accounts. When intermediaries become aware that two or more unrelated

clients have authorized the same third party to operate their accounts, intermediaries should make enquiries to ascertain the relationship between the clients and the third party operator, request evidence as proof of the relationship in case of doubt, critically evaluate the reasons for the arrangement, document the same and properly monitor these accounts for irregularities. Third party authorizations should only be accepted after approvals have been obtained from senior management.

• Third party payments: Intermediaries are expected to make payments directly to their clients (i.e. by making bank transfers to clients' designated bank account(s) or issuing crossed cheques in clients' names) and discourage third party payments. When handling a client's third party payment requests, intermediaries should make enquiries of the client and consider whether the requests are reasonable in the circumstances, the frequency of third party payments, the relationship between the client and the third party and the purported reasons for these third party payments. Third party payments should only be allowed when enquiries do not identify any concerns. Furthermore, enquiries and their results should be properly documented, and approvals from senior management should be obtained before making third party payments.

• Third party fund deposits: Intermediaries should take all reasonable steps to tighten their controls to monitor third party fund deposits. Intermediaries should, among other things, inquire about and document the reasons for the deposits and the relationship between the client and the third party, obtain supporting evidence from the client where necessary, evaluate whether the third party fund deposit is reasonable in light of the client's profile and circumstances and assess whether there are any reasonable suspicions of improper activities having regard to the circumstances of the client and the transaction.

• Suspicious transactions: Intermediaries should implement proper transaction monitoring procedures and pay special attention to transactions which may be indicative of potential illegal or manipulative activities.

For example:

(a) Cross trades: Intermediaries should implement systems to identify cross trades between clients. If repeated patterns of cross trades are noted between the same group of clients, intermediaries should ascertain the reasons for these cross trades and assess whether these transactions are part of an improper arrangement to manipulate prices or voting results in general meetings of listed companies, or to conceal the actual shareholding in a listed company to evade regulatory requirements.

(b) Transfer of stocks: Intermediaries should conduct appropriate enquiries and evaluate whether there is any cause for suspicion if:

(i) there are transfers of stocks through bought and sold notes between parties that do not appear to be commonly controlled or have an apparent relationship, especially when transactions do not appear to be on a normal commercial basis; and

(ii) there are transfers of large amount of stocks of a listed company from Client A to Client B following the announcement of a major corporate action by the listed company and before the book close date, and a subsequent request by Client B to vote in relation to the said corporate action.

To the extent that any suspicions cannot be dispelled through enquiries, senior management approval must be sought (and any approval with the corresponding reasons documented) before effecting any transactions. Senior management should also consider whether it is necessary to terminate the relevant client accounts. Intermediaries should report suspicious transactions to the SFC in a timely manner, as required under paragraph 12.5(f) of the Code of Conduct, to the Joint Financial Intelligence Unit, or to both.

Cautionary statement

The SFC wishes to reiterate that it does not tolerate any form of market or corporate misconduct.

To protect investors and maintain the integrity of the markets, the Intermediaries Supervision Department will continue to look for signs that may suggest dubious "nominee" and "warehousing" arrangements in the course of SFC's supervisory reviews (covering both onsite inspections as well as offsite monitoring work). All material issues and deficiencies identified as well as Manager in Charge responsibilities in this regard will be investigated. These will include situations where there is reason to suspect that intermediaries and their senior management have knowingly facilitated such arrangements as well as situations where it appears that they have failed to detect and act on any red flags, including inadequate systems and controls.

The SFC will not hesitate to initiate criminal or other proceedings and impose disciplinary penalties where it establishes any failings on the part of intermediaries, including suspension or revocation of a license or a registration, as well as fines on intermediaries and senior management.

香港证券及期货事务监察委员会致中介人的通函提醒市场及企业失当行为中使用“代名人”及“以他人名义代持股份”的安排

2018 年 10 月 9 日，香港证券及期货事务监察委员会(证监会)发出通函，提醒中介人注意潜在不当活动的预警迹象；向客户作出适当的跟进查询;以及在有需要时迅速向证监会和其他有关当局举报。

背景

证监会关注到，在有些可能构成市场及企业失当行为的计划中使用“代名人”及“以他人名义代持股份” 安排的情况愈趋普遍。代名人安排若是依照相关法律及规例的方式设立及操作，可以是合法的。然而，证监会注意到,有些个案中的代名人客户依照“主谋”指示并参与各种活动，藉以操纵上市公司的股价或其股东大会的投票结果,或隐瞒在上市公司的实际持股量以规避监管规定。这些活动严重削弱市场的廉洁稳健和损害投资者的利益。

这些安排可能与一个或以上应令中介人作出合理怀疑的预警迹象有关。假如中介人未有采取合理步骤去侦测或妥善地处理明显的预警迹象，便可能违反法律或监管规定。中介人亦可能因涉及失当行为或罪行而须承担民事及刑事责任。

证监会的“I-C-E”小组(由中介机构部、企业融资部及法规执行部的高级行政人员和主任组成)集合了不同部门的资源，以负责应对上述问题。当中，法规执行部目前正在调查涉及“代名人”及“以他人名义代持股份”安排的市场和企业失当行为个案，并正在审查中介人在这些个案中所扮演的角色。

通函目的

通函旨在：

提醒中介人在《操守准则》、《打击洗钱条例》及《打击洗钱指引》下的现有责任；提供至今识别到比较常见的预警迹象例子；及阐述中介人应有的操守标准。

中介人的责任

中介人应小心留意潜在预警迹象，并审慎检讨和提升它们的系统与监控措施，以符合相关的法律及监管规定，包括：《操守准则》第 1 项一般原则，当中规定中介人以诚实、公平和维护客户最佳利益的态度行事及确保市场廉洁稳健；

《操守准则》第 2 项一般原则，当中规定中介人以适当的技能、小心审慎和勤勉尽责的态度行事，以维护客户的最佳利益及确保市场廉洁稳健；

《操守准则》第 5.1 段，当中规定中介人采取一切合理步骤，以确立其每位客户的真实和全部的身分，每位客户的财政状况、投资经验及投资目标；

《操守准则》第 5.4 段，当中规定中介人基于合理的原因信纳

(i) 以下人士或实体的身分、地址及联络详情：(a) 就一项交易而言，最初负责发出该项交易的指示的人士或实体；及(b) 将会从该宗交易取得商业或经济利益及、或承担其商业或经济风险的人士或实体；及

(ii) 在第(i)点提述的人士或实体所发出的指示。中介人应在香港备存在上文提述的详情的记录，并且须应证监会的要求，允许证监会取得有关记录；

《打击洗钱条例》附表 2 第 5(1)条，当中规定金融机构须藉对为客户执行的交易(现金及非现金交易)进行适当的审查，持续监察与客户的业务关系；

《打击洗钱指引》第 5.1 段，当中规定金融机构须识辨复杂、大额或异乎寻常的交易，或无明显经 济或合法目的之交易模式；这些都可能显示洗钱或恐怖分子资金筹集的活动；及

《打击洗钱指引》第 4.3.3 段，当中规定如有迹象显示个人客户并非代表其本身行事，金融机构则须进行适当查询。

预警迹象

中介人应保持警觉，留意那些可能意味着为不合法目的使用“代名人”及“以他人名义代持股份”安排的潜在预警迹象。以下列表并非详尽无遗，并旨在列举有关情况：

客户进行与其财政状况不相称的大额交易；

客户长时间内只就一两只股票进行买卖。如该客户是自荐客户，开立帐户来进行单一笔的大额交易，情况便更为可疑；

多名看似无关连的客户授权同一位第三者（该人并非中介机构的持牌代表或注册人）操作他们的帐 户；

多名看似无关连的客户有着相同的交易及交收模式(例如投资同一只股票)，或共用同一个通讯地址；

与第三者有频繁的大额资金调拨而没有可信的商业理据或解释；及客户以看来并非按正常商业基准订立的买卖单据(例如执行价大幅低于现行市价或在没有作出任何 付款的情况下将股票转移给客户)，与第三者进行大量的股票转移(转移的数量相等于该股票在交易所 的一般每日成交量的相当大部分)。

预期标准

中介人应采取合理的步骤及实施稳健的系统和程序，以认识它们的客户、识别帐户的实益拥有人、侦测潜在非法或操纵活动、即时作出跟进查询及在有需要时举报可疑交易。例如：

认识你的客户：中介人应采取合理步骤，以确立每位客户及实益拥有人的真实和全部的身分。

由第三者操作的帐户：中介人应就开立由第三者操作的帐户实施适当的监控措施和审批程序。倘若中介人察觉到有两名或以上无关连的客户授权同一位第三者操作他们的帐户，中介人便应作出查询以确定客户与该第三者操作人之间的关系，在有疑问时要求提供证据作为其关系的证明，审慎评估有关安排的理由，以文件载明有关事项，及妥善地监察该等帐户有否出现不当情况。第三者授权只应在取得高级管理层的批准后才获得接纳。

第三者付款：中介人应直接向客户付款（即向客户的指定银行帐户作出银行转帐或发出以客户姓名或名称为收款人的划线支票）并且尽量拒绝第三者付款。在处理客户的第三者付款要求时，中介人应向客户作出查询，以及考虑其要求在各情况下是否合理、第三者付款的频密程度、客户与第三者之间的关系及进行有关第三者付款的声称理由。中介人只应在作出查询后且未有识别任何关注事项的情况下，才批准进行第三者付款。此外，中介人应妥善以文件载明有关查询及其结果，及在进行第三者付款前获得高级管理层的批准。

第三者存款：中介人应采取一切合理步骤，以收紧其监察第三者存款的监控措施。中介人应（除其 他事项外）就存款的理由及客户与第三者之间的关系作出查询，并以文件载明有关事项，在有需要 时向客户取得佐证，依据客户的状况和情况来评估第三者存款是否合理，以及经考虑客户及交易的情况后评估是否有任何关于不当活动的合理怀疑。

可疑交易：中介人应实施适当的交易监控程序，并特别留意可能显示出现潜在非法或操纵活动的交易。例如：

(a) 交叉盘交易：中介人应实施可识别客户之间的交叉盘交易的系统。若中介人注意到同一组客户之间的交叉盘交易模式重复出现，便应确定有关交叉盘交易的原因，及评估该等交易是否属于某不当安排的一部分，以操纵上市公司的股价或其股东大会的投票结果，或隐瞒在上市公司的实际股权以规避监管规定。

(b) 股份转移：中介人应作出适当的查询及在出现以下情况时评估是否有任何引起怀疑的理由：

(i) 看来非属同一人控制或并非有明显关系的各方透过买卖单据转移股票，特别是当交易看来并非按正常商业基准进行时；及

(ii) 继上市公司公布主要企业行动后及在截止过户日期前，客户 A 将大量该上市公司的股票转移至客户 B，及其后客户 B 要求就上述企业行动作出投票。

若经查询后仍未能释除相关疑虑，便须在进行任何交易前取得高级管理层的批准(及以文件载明相 关理由)。高级管理层亦应考虑是否有必要终止相关的客户帐户。中介人应及时向证监会(根据《操守准则》第 12.5(f)段的规定)或联合财富情报组或该两家机构举报可疑交易。

警戒声明

证监会谨此重申不会容忍任何形式的市场或企业失当行为。

为了保障投资者及维护市场的廉洁稳健，中介机构监察科在进行监督检视期间(涵盖现场视察及非现场监察工作)，将继续留意是否有迹象显示可疑"代名人"及"以他人名义代持股份" 的安排。证监会将会对在这方面所识别到的任何重大问题和缺失及核心职能主管的责任进行调查，当中有些情况是关于有理由怀疑中介人及其高级管理层在知情下促成有关安排，而有些情况则是他们看来没有侦测任何预警迹象及就此作出行动，包括系统及监控措施不足。

证监会将会毫不犹疑地提起刑事或其他法律程序，及在证实中介人方面有任何缺失时施加纪律处分(包括暂时吊销或撤销牌照或注册)，以及向中介人和高级管理层处以罚款。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC73

Hong Kong Securities and Futures Commission Froze the Assets of An Unnamed Chairman of a Listed Company on Suspicion of Fraud

On September 28, 2018, the Hong Kong Gazette published a Government Notice that the Hong Kong Securities and Futures Commission (SFC) has exercised the powers conferred by sections 204 and 205 of the Securities and Futures Ordinance (SFO) on September 17, 2018 to serve Notices on Kingston Securities Limited, Satinu Markets Limited and HSBC Broking Securities (Asia) Limited (collectively, Specified Corporations) to prohibit them from disposing of or dealing with, assisting, counselling or procuring another person to dispose of or deal with in respect of all accounts of which a particular person is a beneficiary.

The view of the SFC, as set out in the Statement of Reasons, are summarised at the following:

1. According to the current findings from SFC's investigation, it is suspected that a particular person (who is a beneficiary of various accounts with the Specified Corporations) (the Person) orchestrated fraudulent schemes by colluding with certain personnel of the management of a listed company and/or its subsidiaries (the Group) in 2 suspicious transactions stemming from a loan facility indirectly granted to the Person by the listed company.

2. In relation to the first transaction, it is reasonably suspected that the Person might have colluded with persons within the management of the Group to engage in a scheme to defraud the Group by procuring the listed company's subsidiary to purchase from the Person's wholly owned company, shares of another listed company on terms which were unfavorable to the purchaser and inconsistent with the purported underlying purpose of the transaction. It is reasonably suspected that the true purpose was to enable the Person to profit from the transaction at the expense of the Group.

3. In relation to the second transaction, it is reasonably suspected that the Person colluded with persons within the management of the Group to enable him to sell, via his wholly owned company, a substantial interest in another non-listed company to certain funds subscribed by the Group at a significant overvalue, defrauding the Group to make significant profits for himself to the detriment of the Group.

4. In view of the foregoing, the Person and/or persons connected with him might have committed the offence of fraud or deception involving securities under section 300 of the SFO.

5. The SFC is of the view that the Group through these suspicious acquisitions might have suffered aggregate losses of approximately HK$10.17 billion. If the Person and/or any person connected with him is found liable under any of the provisions of the SFO specified above, he/she may be ordered to take such steps as the Court of First Instance may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into or to compensate these victims under section 213 of the SFO.

6. The Person has securities and cash at the Specified Corporations with an estimated value totaling HK$4.64 billion. The SEC believes that it is necessary to prevent the Person and/or persons connected with them from operating and dealing with the accounts and to preserve the assets in the accounts pending further investigation, including fund tracing.

7. The Person is the Chairman of a listed company. The company purportedly lost contact with the Person and recent news reports appear to indicate that the Person might be abroad or under investigation in the PRC as a suspect in a corruption case. In those circumstances, a risk of dissipation of assets by the Person has arisen.

8. The SEC considers it desirable in the interest of the investing public and in the public interest to impose on the Specified Corporations the prohibitions and the requirements set out in the Notices issued by the SEC.

一未具名的上市公司董事会主席因涉嫌欺诈而遭香港证券及期货事务监察委员会冻结其资产

2018年9月28日, 香港宪报刊登政府公告, 表示香港证券及期货事务监察委员会(证监会)已在2018年9月17日行使《证券及期货条例》第204及205条所赋予的权力, 向金利丰证券有限公司, 中南金融有限公司及汇丰金融证券(亚洲)有限公司(统称为该等指明法团)送达通知, 禁止彼等以任何方式處置或處理或輔助、慫使或促致另一人處置或處理某人为受益人的所有帐户。

就理由陈述所载, 证监会的观点概述如下：

1. 根据证监会目前的调查发现, 证监会怀疑某人(其为该等指明法团的多个帐户的受益人)(该人)涉嫌在两项源自一笔由某上市公司间接授予该人的贷款融通的可疑交易中, 串谋该上市公司及/或其附属公司(该集团)的某些管理层人员, 策划欺诈性计划。

2. 就第一项交易而言, 有合理理由怀疑, 该人可能曾串谋该集团的管理层人员进行一项计划, 促致该上市公司的附属公司从该人全资拥有的公司买入另一家上市公司的股份, 而交易的条款对买方不利并与声称的交易相关目的不符, 借以欺诈该集团。有合理理由怀疑, 交易的真正目的

是让该人在交易中牺牲该集团利益的情况下得益。

3. 就第二项交易而言，有合理理由怀疑，该人曾串谋该集团的管理层人员，使他得以透过其全资拥有公司，以大幅过高的定价向该集团已认购的数个基金出售另一家非上市公司的重大权益，借此欺诈该集团及以对该集团不利的方式，令自己取得重大利润。

4. 鉴于上文所述，该人及/或与他有关连的人士可能曾犯《证券及期货条例》第300条下涉及证券的欺诈或欺骗罪行。

5. 证监会认为，该集团在该等可疑交易可能已蒙受合共大约101.7亿港元的损失。假如该人及/或任何与他有关连的人士被裁定在该条例中任何上文所指明的条文下负有法律责任，则根据《证券及期货条例》第213条，他/她便可能会被采令采取原讼法庭指示的步骤，包括使任何交易各方回复他们订立交易之前的状况，或对相关受害人作出赔偿。

6. 该人于该等指明法团持有证券与现金，估计合共为46.4亿港元。证监会相信有需要阻止该人及/或与他有关连的人士操作及处理这些帐户，及保存帐户内的资产以待进一步调查，包括资金追查。

7. 该人是某上市公司的主席。该公司据称与该人失去联络，而近日的一些新闻报道似乎显示该人可能身处海外或身处中国正就一宗涉嫌贪污案件接受调查。在上述情况下，出现了资产会被该人耗散的风险。

8. 证监会认为，就维护投资大众的利益及公众利益而言，对该等指明法团施加证监会发出的通知所载列的禁令及规定，是可取的做法。

Source 来源:
https://www.sfc.hk/web/EN/pdf/Gazette/G.N.%207178%20of%202018.pdf

Hong Kong Securities and Futures Commission and the Financial Conduct Authority of the United Kingdom Sign Memorandum of Understanding on United Kingdom-Hong Kong Mutual Recognition of Funds

On October 8, 2018, the Securities and Futures Commission (SFC) and the Financial Conduct Authority of the United Kingdom (FCA) have entered into a Memorandum of Understanding on Mutual Recognition of Funds (MoU), which will allow eligible Hong Kong public funds and United Kingdom retail funds to be distributed in each other's market through a streamlined process.

The MoU also establishes a framework for exchange of information, regular dialogue as well as regulatory cooperation in relation to the cross-border offering of eligible Hong Kong public funds and United Kingdom retail funds.

SFC said that this new cooperation framework with the FCA will not only bring benefit to the asset management industries in the United Kingdom and Hong Kong, but also offer investors in both markets with more investment choices. Equally important, expanding the mutual recognition of funds framework is consistent with the strategic goal of positioning Hong Kong as an international asset management center. SFC looks forward to working closely with the FCA under these strengthened regulatory ties.

FCA said that they are very pleased to have agreed this framework, which paves the way to offering consumers greater choice and diversification in their investments. It reflects the United Kingdom's commitment to open financial markets supported by effective regulation which delivers equivalent outcomes. FCA will continue to work closely with the SFC, both in connection with cross-border fund offerings and in wider areas of mutual benefit.

香港证券及期货事务委员会与英国金融市场行为监管局就英国与香港基金互认安排签订备忘录

2018年10月8日，证券及期货事务监察委员会(证监会)与英国金融市场行为监管局(英国金管局)签署了一份关于基金互认安排的谅解备忘录(备忘录)允许合资格的香港公募基金及英国零售基金透过简化程序，在对方市场销售。

备忘录亦就跨境销售的合资格香港公募基金及英国零售基金建立信息互换，定期沟通及监管合作的框架。

证监会表示：这与英国金管局订立的新合作框架不仅有利港英两地的资产管理业，亦为两地市场的投资者提供更多投资选择。同样重要的是，扩阔基金互认安排框架，与本会将香港定位为国际资产管理中心的策略性目标一致。证监会期望与英国金管局在更有力的监管联系下保持紧密合作。

英国金管局表示：非常高兴能就这个合作框架达成协议，让消费者日后有更广泛，更多元化的投资选择。此框架反映英国在有效的监管措施达致对等效果的前提下致力支持开放金融市场。英国金管局将会就跨境基金销售，以至范围更广泛的互惠措施，继续与证监会紧密合作。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR116

U.S. Securities and Exchange Commission Obtains Final Judgment Against Former Nomura Securities International's Residential Mortgage Backed Securities Trading Supervisor

On October 10, 2018, the US Securities and Exchange Commission (SEC) announced that a final judgment was obtained on October 3, 2018 against Ross B. Shapiro, the former head of the residential mortgage backed securities (RMBS) trading desk at Nomura Securities International (Nomura) in New York, in an action alleging fraud in trading mortgage-backed securities.

The SEC complaint, filed on September 8, 2015, alleges that Shapiro made misrepresentations and omitted material information to investors in order to illicitly generate additional revenue for Nomura's RMBS desk. Shapiro allegedly misrepresented the bids and offers provided to Nomura for RMBS, the prices at which Nomura bought and sold RMBS, and the spreads the firm earned for intermediating trades. Customers sought and relied on market price information from these traders because the market for RMBS is opaque and accurate price information is difficult to determine. In addition, the SEC alleged that Shapiro coached and directed other traders to engage in similar misconduct.

The SEC's complaint charged Shapiro with violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933. The final judgment permanently enjoins Shapiro from violating these antifraud provisions of the federal securities laws and orders Shapiro to pay a $200,000 civil penalty.

The SEC issued an administrative order barring Shapiro from associating with any broker-dealer or investment adviser and participating in any offering of a penny stock, with a right to reapply for securities industry licenses after two years. Shapiro consented to the entry of the final judgment and administrative order against him without admitting or denying the charges.

美国证券交易委员会对前野村证券国际的住宅按揭抵押证券前交易主管获取最终判决

2018年10月10日，美国证券交易委员会(证交会)宣布，就一项指控按揭抵押证券交易的欺诈诉讼，在2018年10月3日，取得对野村证券国际(野村)在纽约的住宅按揭抵押证券交易平台前主管 Ross B. Shapiro(Shapiro)的最终判决。

证交会于2015年9月8日提出申诉，指控 Shapiro 向投资者作出虚假陈述并遗漏重要信息，以便为野村的住宅按揭抵押证券交易平台非法赚取额外收入。

Shapiro 涉嫌误导为野村提供的住宅按揭抵押证券的买卖价，野村买卖住宅按揭抵押证券的价格，以及该公司作为中介交易赚取的差价。客户寻求并依赖这些交易商的市场价格信息，因为住宅按揭抵押证券的市场不透明且难以确定准确的价格信息。 此外，证交会指控 Shapiro 指导并指示其他交易员从事类似的不当行为。

证交会的申诉指控 Shapiro 违反了1934年《证券交易法》第10（b）条和第10b-5条，以及1933年《证券法》第17（a）条。最终判决永久性地禁止 Shapiro 违反联邦证券法相关的反欺诈条款，并命令 Shapiro 支付20万美元的民事罚款。

证交会发布行政命令，禁止 Shapiro 与任何经纪交易商或投资顾问联系并参与任何细价股发行，但可在两年后重新申请证券业牌照。Shapiro 同意在不承认或否认指控的情况下对他作出最终判决和行政命令。

Source 来源:
https://www.sec.gov/litigation/litreleases/2018/lr24312.htm

Elon Musk Settles U.S. Securities and Exchange Commission Fraud Charges; Tesla Charged with and Resolves Securities Law Charge

On September 29, 2018, the U.S. Securities and Exchange Commission (SEC) announced that Elon Musk (Musk), Chief Executive Officer and Chairman of Silicon Valley-based Tesla, Inc. (Tesla), has agreed to settle the securities fraud charge brought by the SEC against him. The SEC also charged Tesla with failing to have required disclosure controls and procedures relating to Musk's tweets, a charge that Tesla has agreed to settle. The settlements, which are subject to court approval, will result in comprehensive corporate governance and other reforms at Tesla — including Musk's removal as Chairman of the Tesla board — and the payment by Musk and Tesla of financial penalties.

According to the SEC's complaint against him, Musk tweeted on August 7, 2018 that he could take Tesla private at US$420 per share — a substantial premium to its trading price at the time — that funding for the transaction had been secured, and that the only remaining uncertainty was a shareholder vote. The SEC's complaint alleged that, in truth, Musk knew that the potential transaction was uncertain and subject to numerous contingencies. Musk had not discussed specific deal terms, including price, with any potential financing partners, and his statements about the possible transaction lacked an adequate basis in fact. According to the SEC's complaint, Musk's misleading tweets caused Tesla's stock price to jump by over six percent on August 7 and led to significant market disruption.

According to the SEC's complaint against Tesla, despite notifying the market in 2013 that it intended to use Musk's Twitter account as a means of announcing material information about Tesla and encouraging investors to review Musk's tweets, Tesla had no disclosure controls or procedures in place to determine whether Musk's tweets contained information required to be disclosed in Tesla's SEC filings. Nor did it have sufficient processes in place to that Musk's tweets were accurate or complete.

Musk and Tesla have agreed to settle the charges against them without admitting or denying the SEC's allegations. Among other relief, the settlements require that:

• Musk will step down as Tesla's Chairman and be replaced by an independent Chairman. Musk will be ineligible to be re-elected Chairman for three years;

• Tesla will appoint a total of two new independent directors to its board;

• Tesla will establish a new committee of independent directors and put in place additional controls and procedures to oversee Musk's communications;

• Musk and Tesla will each pay a separate US$20 million penalty. The US$40 million in penalties will be distributed to harmed investors under a court- approved process.

SEC said that the total package of remedies and relief announced are specifically designed to address the misconduct at issue by strengthening Tesla's corporate governance and oversight in order to protect investors.

伊隆·马斯克就欺诈指控与美国证券交易委员会达成和解; 特斯拉公司被控告并就违反证券法指控达成和解

2018年9月29日, 美国证券交易委员会(证交会)宣布, 总部位于硅谷的特斯拉公司(特斯拉)的首席执行官兼董事会主席伊隆·马斯克(马斯克)同意就证交会对他提出的证券欺诈指控达成和解。此外, 证交会还指控特斯拉未能披露与马斯克推文所需的内部控制及程序措施, 特斯拉同意就相关指控达成和解。和解方案要经法院批准, 这将导致特斯拉带来全面的公司治理和其他改革 - 包括马斯克被解除作为特斯拉董事会主席的职务 - 以及马斯克和特斯拉支付经济罚款。

根据证交会对马斯克的指控, 在2018年8月7日发推文称, 他自己会以每股420美元的价格将特斯拉私有化 – 比当时交易价格溢价颇多。他还表示收购资金已经到位, 而剩下的唯一不确定因素是股东投票表决。证交会的指控声称, 事实上, 马斯克知道潜在的交易是不确定的, 并且受到许多突发事件的影响。马斯克没有与任何潜在的融资合作伙伴讨论具体的交易条款包括价格; 及他对潜在的交易声明缺乏充分的事实基础。马斯克的误导性推文导致特斯拉股价在8月7日飙升了6%以上, 并导致市场出现严重混乱。

根据证交会对特斯拉的指控, 特斯拉仅在2013年告知市场：公司可能会使用马斯克的推特账号作为宣布特斯拉重要信息的手段之一, 并鼓励投资者查看马斯克的推文。特斯拉没有披露所实施的内部控制及程序, 来确定马斯克的推文是否包含提交与证交会存档的文件中所需披露的信息, 也没有足够的流程来确保马斯克的推文准确或完整。

马斯克和特斯拉同意在不承认或否认证交会指控的情况下就相关指控达成和解。除其他救济外, 和解协议要求：

- 马斯克将辞去特斯拉董事会主席的职务, 由独立的董事会主席代替。在未来3年内, 马斯克将不能再次被选为董事会主席。
- 特斯拉将新任命两位独立董事进入董事会。
- 特斯拉将成立一个新的独立董事委员会, 并采取额外的控制程序来监督马斯克与投资者的沟通。
- 马斯克与特斯拉将分别支付2000万美元的罚款。根据法院批准的程序, 这4000万美元将用于赔偿遭受损失的投资者。

证交会表示, 宣布的一揽子补救措施和救济措施专门用于通过加强特斯拉的公司治理和监督来处理相关的不当行为, 以保护投资者。

Source 来源:
https://www.sec.gov/news/press-release/2018-226

China's Ministry of Finance Issues Renminbi Sovereign Bonds through Central Moneymarkets Unit of Hong Kong Monetary Authority

On October 3, 2018, the Hong Kong Monetary Authority (HKMA) announced that the Ministry of Finance of the People's Republic of China (Ministry of Finance) will issue Renminbi Sovereign Bonds through HKMA's Central Moneymarkets Unit.

A tender of the additional 2020 bonds and the additional 2023 bonds (together, Additional Bonds) of the Central People's Government will be held on October 10, 2018, for settlement on October 12, 2018.

A total of RMB3 billion additional 2020 bonds and RMB1.5 billion additional 2023 bonds will be made available for competitive tender on a price-bid basis by any qualified Central Moneymarkets Unit (CMU) members through the CMU BID. Upon issuance, the Additional 2020 Bonds will be consolidated and form a single series with the original 2020 bonds (2020 Bonds) and the additional 2023 bonds will be consolidated and form a single series with the original 2023 bonds (2023 Bonds, and together with the 2020 Bonds, the Bonds). The 2020 Bonds bear interest at 3.65 per cent. per annum. The 2023 Bonds bear interest at 3.80 per cent. per annum. The 2020 Bonds and the 2023 Bonds will mature in 2020 and 2023, respectively, on the last interest payment date of the relevant series of Bonds. Each series of Additional Bonds will be issued at the uniform issue price i.e. the lowest accepted price of the successful competitive tender bids for the relevant series, plus accrued interest.

The Ministry of Finance will tender the Additional Bonds through the CMU BID. The tender and settlement of the Additional Bonds will be governed by the Tender Information Memorandum and the Applicable Terms and Conditions of CMU BID issued by the HKMA as the system administrator and service provider of the CMU BID, as amended from time to time, the CMU Operating Procedures and other relevant CMU rules (subject to any amendments under the Tender Information Memorandum).

中国财政部透过香港金融管理局的债务工具中央结算系统发行人民币国债

香港金融管理局(金管局)于2018年10月3日宣布中华人民共和国财政部(财政部)将会透过金管局的债务工具中央结算系统发行人民币国债。

中央人民政府新增 2020 国债和新增 2023 国债(统称为增发国债)将于 2018 年 10 月 10 日进行投标, 并于 2018 年 10 月 12 日交收。

总值人民币 30 亿元的新增 2020 国债和人民币 15 亿元的新增 2023 国债可供合资格的债务工具中央结 算系统(中央结算系统)成员以价格为目标, 通过中央结算系统债券投标平台进行竞价投标。发行后, 新增 2020 国债将与原 2020 国债合并构成同一系列(2020 国债), 新增 2023 国债将与原 2023 国债合并构成同一系列(2023 国债, 连同 2020 国债统称为国债)。2020 国债年利率为 3.65 厘, 2023 国债年利率为 3.80 厘。2020 国债和 2023 国债将分别于 2020 年和 2023 年的最后一个 利息支付日到期。每一系列的增发国债将以统一发行价格(即该系列国债投标中成功获接纳的最低价 格)以及已累积的利息发行。

财政部将使用中央结算系统债券投标平台, 为增发国债进行招标。这次增发国债的投标和交收适用招标章程, 以及金管局作为中央结算系统债券投标平台的管理者和服务提供商不时制定、修改的有关中央结算系统债券投标平台的适用条款及细则、其操作程序的相关规定, 以及中央结算系统的其他有关规定(但招标章程对其修改的部份除外)。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181003-4.shtml

U.S. Securities and Exchange Commission Charges Stryker Corporation A Second Time for Foreign Corrupt Practices Act Violations

On September 28, 2018, the US Securities and Exchange Commission (SEC) charged Stryker Corp. (Stryker) with violating the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act (FCPA), the second time the SEC has brought an FCPA action against the Michigan-based medical device company.

Stryker agreed to settle the charges and pay a US$7.8 million penalty. The SEC's order found that Stryker's internal accounting controls were not sufficient to detect the risk of improper payments in sales of Stryker products in India, China, and Kuwait, and that Stryker's India subsidiary failed to maintain complete and accurate books and records.

In October 2013, Stryker settled charges of FCPA violations and was required to pay a US$3.5 million penalty plus more than $7.5 million in disgorgement of ill-gotten gains and more than $2.2 million in interest.

Without admitting or denying the SEC's findings, Stryker consented to the entry of an order requiring the company to cease and desist from committing violations of the books and records and internal accounting controls provisions of the FCPA and pay a US$7.8 million penalty. Stryker also must now retain an independent compliance consultant to review and evaluate its internal controls, record-keeping, and anti-corruption policies and procedures relating to use of dealers, agents, distributors, sub-distributors, and other such third parties that sell on behalf of Stryker.

美国证券交易委员会指控 Stryker 公司第二次违反《反海外腐败法》

美国证券交易委员会(证交会)于2018年9月28日指控 Stryker 公司 (Stryker) 违反《反海外腐败法》的账簿和记录以及内部会计控制的规定, 这是证交会第二次针对总

部位于密歇根州的医疗器械公司采取《反海外腐败法》行动。

Stryker 同意就这些指控，达成和解并支付780万美元的罚款.证交会的命令发现，Stryker 的内部会计控制措施不足以发现在印度，中国和科威特销售 Stryker 产品的不当支付风险，并且 Stryker 的印度子公司未能保存完整和准确的账簿和记录。

Stryker 于2013年10月曾就违反《反海外腐败法》的指控达成和解，并被要求支付350万美元的罚款加上交回超过750万美元的非法所得和超过220万美元的利息。

在不承认或否认证交会的调查结果的情况下，Stryker 同意记录一项命令，要求该公司停止并且不再违反《反海外腐败法》的账簿和记录以及内部会计控制的规定，并支付780万美元的罚款。Stryker 还必须聘请一名独立的合规顾问来审查和评估其内部控制，记录保存以及透过经销商，代理商，分销商，次级分销商和其他第三方代表 Stryker 销售相关的反腐败政策和程序。

Source 来源:
https://www.sec.gov/news/press-release/2018-222

Credit Suisse Securities (USA) LLC Agrees to Pay US$10 Million to Settle U.S. Securities and Exchange Commission's Charges Related to Handling of Retail Customer Orders

On September 28, 2018, the U.S. Securities and Exchange Commission (SEC) announced that Credit Suisse Securities (USA) LLC (Credit Suisse) has agreed to settle charges brought by the SEC and the Office of the New York Attorney General (NYAG) regarding material misrepresentations and omissions made in connection with its now-closed Retail Execution Services (RES) business' handling of certain customer orders. The settlements require Credit Suisse to pay US$5 million to the SEC and US$5 million to the NYAG for a total of US$10 million.

According to the SEC's order, Credit Suisse created the RES desk to execute orders for other broker-dealers that handle order flow on behalf of retail investors. The SEC's order finds that although RES promoted its access to dark pool liquidity to customers, the firm executed an exceedingly minimal number of held orders – orders that must be executed immediately at the current market price – in dark pools from September 2011 to December 2012.

The SEC's order also finds that although Credit Suisse touted "robust" and "enhanced" price improvement on orders, RES's computer code treated orders for which execution quality is required to be publicly reported differently from orders for which execution quality is not publicly reported. The SEC's order finds that from mid-2011 to March 2015, retail customers did not receive any price improvement from RES on their non-reportable orders, which Credit Suisse failed to disclose.

The SEC's order also finds that for these non-reportable orders, RES disproportionately used a routing tactic that generally caused market impact and resulted in less favorable execution prices for customers, despite claiming to benefit RES's customers. The use of this routing tactic provided RES an opportunity to profit from its execution of the final portions of those customer orders internally.

The SEC's order finds that Credit Suisse negligently violated Section 17(a)(2) of the Securities Act. In addition to imposing the penalty, the SEC's order censures Credit Suisse and requires that it cease and desist from further violations. Credit Suisse consented to the SEC's order without admitting or denying the findings.

SEC said that market makers that handle retail orders must be transparent with their customers about how orders will be executed and how the market maker will profit from their customers' trades.

瑞士信贷证券(美国)有限责任公司同意支付 1000 万美元就相关处理零售客户订单的指控与美国证券交易委员会达成和解

美国证券交易委员会(证交会)于2018年9月28日宣布，瑞士信贷证券(美国)有限责任公司(瑞士信贷)已同意就其现已关闭的零售执行服务(零售执行服务)所涉及处理某些客户订单有关的重要虚假陈述和遗漏的指控;与证交会和纽约州检察长办公室(纽约州检察长)达成和解。该和解协议要求瑞士信贷向证交会支付500万美元,向纽约州检察长支付500万美元，总额为1000万美元。

根据证交会的命令，瑞士信贷创建了零售执行服务平台，代表零售客户投资者处理订单流；将订单发送给其他经纪-交易商处理订单。

证交会的命令发现，虽然零售执行服务平台促使其向客户提供"黑池"买卖的流动性，但该公司在2011年9月至2012年12月的"黑池"买卖中，即以当前市场价格执行订单，执行了极少数的持有订单。

证交会的命令还发现，尽管瑞士信贷吹嘘在执行订单的价格有"强劲"和"增强"的改善，零售执行服务平台的计算机代码处理订单时；要求公开报告的质量与未公开报告的质量不同。证交会的命令发现，从2011年年中到2015年3月，

瑞士信贷没有披露在无须具报的订单; 零售客户没有从零售执行服务平台得到任何价格的改善。

证交会的命令还发现, 对于这些无须具报的订单, 尽管声称有利于客户; 零售执行服务平台不成比例地使用了通常会导致受市场影响的路由策略, 并导致客户的执行价格不太有利。使用这种路由策略为零售执行服务平台提供了从内部执行这些客户订单的最后部分时, 得到获利的机会。

证交会的命令发现瑞士信贷疏忽地违反了《证券法 》第17(a)(2)条。 除了判处罚款外, 证交会的命令还谴责瑞士信贷, 并要求其停止并终止进一步的违规行为。 瑞士信贷同意证交会的命令而不承认或否认调查结果。

证交会表示: 处理零售订单时, 市场庄家必须具透明度; 使客户了解其订单如何被执行以及市场庄家如何从客户的交易中获利。

Source 来源:
https://www.sec.gov/news/press-release/2018-224

Singapore Exchange Launches New FTSE ST Singapore Shariah Index

On October 5, 2018, Singapore Exchange (SGX) announced that FTSE Russell, the global index, data and analytics provider, has launched a new Shariah-compliant index tracking companies listed on SGX. The FTSE ST Singapore Shariah Index (Shariah Index) has been designed to track Shariah-compliant companies listed on SGX and can used as the basis of investment products. Independent screening is carried out by Yasaar Ltd (Yasaar), an organization with a global network of expert Shariah scholars. The indexes have been certified as Shariah-compliant through the issue of a Fatwa by Yasaar's principles.

The global Islamic banking and finance industry has grown over the years to have more than US$2 trillion in total assets as at end of 2017. This growth has been accompanied by a need for appropriate asset management tools, including benchmark equity indexes that are Shariah-compliant.

Using the FTSE ST All-Share Index as a base universe, constituents are screened against a clear set of Shariah principles to create a robust Shariah-compliant index for the Singapore market. At launch, there are 48 constituents in the Shariah Index.

SGX said that the Shariah Index will serve as a benchmark for Shariah-compliant funds looking to invest in Singapore, and potentially pave the way for creation of other Shariah-compliant products.

新加坡交易所推出新的富时新加坡伊斯兰教法指数

新加坡交易所(新交所)于2018年10月5日宣布, 全球指数, 数据和分析提供商富时罗素推出了新的符合回教条律的指数, 追踪在新交所上市公司。 富时新加坡伊斯兰教法指数(伊斯兰教法指数)旨在追踪新交所上市符合回教条律的公司, 并可用作投资产品的基础。Yasaar 有限公司(Yasaar)是一个由全球伊斯兰教法专家学者组成的组织, 负责独立筛选。 通过 Yasaar 的原则发布的一项法特瓦, 这些指数已被认证为符合回教条律。

截至2017年底, 全球伊斯兰银行和金融业的总资产增长超过2万亿美元。这一增长同时对适当资产管理工具的需求, 包括符合回教条律的股票指数基准。

使用富时海峡时报全股指数作为基础框架, 组成成员将根据一系列明确的伊斯兰教法原则进行筛选, 以便为新加坡市场创建一个强大的符合回教条律的指数。 在推出时, 伊斯兰教法指数中有48个成分股。

新交所表示, 伊斯兰教法指数将成为拟投资新加坡符合回教条律基金的基准, 并可能为创建其他符合回教条律的产品铺平道路。

Source 来源:
http://www.sgx.com/wps/wcm/connect/sgx_en/home/higlights/news_releases/launch_of_new_ftse_st_singapore_shariah_index

Hong Kong Insurance Authority Consults on Proposed Guidelines on (i) "Fit and Proper" Criteria and (ii) Continuing Professional Development Requirements for Licensed Insurance Intermediaries

On September 28, 2018, the Insurance Authority (IA) launched a two-month public consultation on drafts of the (i) Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41) (F&P Guideline), and (ii) Guideline on Continuing Professional Development for Licensed Insurance Intermediaries (CPD Guideline) in preparation for commencement of the new regulatory regime for insurance intermediaries.

New Regulatory Regime

It is planned that in mid-2019, the IA will take over the regulation of insurance intermediaries from the three Self-Regulatory Organizations (SROs), namely Insurance Agents Registration Board, Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association. Under the new regime, a person will require a license granted by the IA to carry on regulated activities. A person must be fit and proper

in order to be licensed and this requirement is ongoing.

The draft F&P Guideline outlines the key criteria and matters that the IA will normally consider in determining whether a person is fit and proper. These criteria can be broadly grouped into three categories:

(i) education, qualifications or experience of the person;

(ii) reputation, character, reliability and integrity of the person; and

(iii) the person's financial status or solvency.

The draft CPD Guideline aims to standardize, modernize and update existing CPD requirements applicable to insurance intermediaries in line with new statutory requirements.

Major changes to minimum education and CPD requirements

The two draft guidelines propose certain changes to the current requirements. Major proposals include setting minimum education requirements for individuals licensed under the new regime in order to ensure that they have the necessary language proficiency and numerical skills.

An individual licensee should attain Level 2 or above in five subjects (including Chinese Language or English Language, and Mathematics) in the Hong Kong Diploma of Secondary Education Examination. The IA also proposes to accept a range of professional qualifications and other education qualifications as an alternative means of satisfying the minimum education requirement. In addition, responsible officers of insurance agencies and broker companies should hold a bachelor's degree from a recognized university or tertiary education institution since they are subject to higher levels of responsibility under the new regime.

The IA proposes to raise the minimum CPD hours requirement for individual licensees from 10 hours to 15 hours per annum, of which at least 3 hours must relate to ethics or regulations. Online or e-learning courses will be recognized for up to 5 CPD hours. Training courses offered by organizations, such as the current three SROs and other regulatory or enforcement bodies, will be recognized subject to review by the IA.

Transitional Arrangements

Insurance intermediaries who are validly registered with the SROs immediately before the new regime commences will automatically be deemed to be licensees for a transitional period of three years. Chief executives/responsible officers will also be deemed as responsible officers under the new regime.

In recognition of the contributions and the value of longstanding industry practitioners, the IA proposes to exempt deemed licensees from the proposed minimum education requirements. The IA also suggests that deemed licensees with at least 15 years of industry experience be exempt from the new education requirements for becoming responsible officers under the new regime.

IA said that the draft guidelines aim at enhancing the professional standards of insurance intermediaries to cater to consumers' growing needs.
Members of the public are welcome to submit their comments to the IA on or before 30 November 2018.

香港保险业监管局就持牌保险中介人(i)「适当人选」准则及(ii) 持续专业培训要求的建议指引进行谘询

香港保险业监管局(保监局)于2018年9月28日就草拟的(i)《保险业条例（第41章）有关持牌保险中介人「适当人选」的准则指引》及 (ii)《持牌保险中介人持续专业培训指引》, 展开为期两个月的公众谘询, 为实施新的保险中介人规管制度作准备。

新的规管制度

保监局预计于2019年年中接手三个自律规管机构, 即保险代理登记委员会、香港保险顾问联会及香港专业保险经纪协会, 的保险中介人规管工作。在新制度下, 任何人士将须获保监局发牌以进行受规管活动。只有适当人选才会获得发牌, 而有关规定是持续性的。

「适当人选」准则的草拟指引概述了保监局在断定某人是否适当人选时, 一般会考虑的重要准则及事宜。这些准则大致可分为三类：
(i) 该人士的学历、资格或经验；
(ii) 该人士的信誉、品格、可靠程度及诚信；以及
(iii) 该人士的财政状况或偿付能力。

持续专业培训的草拟指引则旨在标准化、现代化及更新现时适用于保险中介人的相关要求, 以配合新的法定要求。

最低学历及持续专业培训要求的主要改变

两份草拟指引均建议修改现行要求。主要建议包括设定在新制度下获发牌的人士的最低学历要求, 以确保他们具备所需的语文能力及运算能力。

个人持牌人须在香港中学文凭考试五科达到2级或以上成绩(包括中文或英文, 以及数学), 而保监局亦拟接纳一系列专业和学历资格, 作为符合最低学历要求的其他途径。此

外，由于保险代理机构及保险经纪公司的负责人，在新制度下须肩负更高程度的责任，因此他们须拥有认可大学或高等院校的学士学位。

保监局亦建议提高个人持牌人士的最低持续专业培训时数，由每年10小时增加至15小时，其中最少3小时必须关于道德或法规范畴。保监局并建议认可每年最多5小时的网上或电子学习课程。经保监局审阅后，由现时三个自律规管机构及其他监管或执法机构举办的培训课程，亦将获认可为持续专业培训课程。

过渡性安排

任何紧接在法定发牌制度实施之前已获自律规管机构有效登记的中介人，均会在三年过渡期内自动被视为持牌人士，而行政总裁或负责人亦会被视为新制度下的负责人。

保监局重视资深从业员的贡献及价值，因此建议豁免上述持牌人士遵守新的最低学历要求，另亦豁免当中拥有15年行业经验的人士在新制度下负责人须符合的最低学历要求。

保监局表示草拟的指引旨在提高保险中介人的专业水平，以满足客户不断提升的要求。

欢迎公众于2018年11月30日或之前向保监局提交意见。

Source 来源:
https://www.ia.org.hk/en/infocenter/press_releases/20180928_1.html

Monetary Authority of Singapore Issues Guidelines to Facilitate Provision of Digital Advisory Services

On October 8, 2018, the Monetary Authority of Singapore (MAS) issued the Guidelines on Provision of Digital Advisory Services (Guidelines), to facilitate the provision of these services in Singapore. The Guidelines incorporate feedback from the public consultation as well as learning points from MAS' engagements with the industry.

The Guidelines are applicable to all financial institutions offering or seeking to offer digital advisory services in Singapore (digital advisers). Where certain regulatory requirements or expectations are also applicable to conventional financial advisers (FAs) which use human advisers to provide financial advice on investment products to clients, they are specified in the Guidelines. Digital advisers (also known as robo-advisers) provide advice on investment products through direct access to automated, algorithm-based tools by clients, with limited or no human adviser interaction. In contrast, conventional FAs may rely on similar algorithm-based tools at the back-end to help their representatives advise and service their clients.

The digital advisory process typically begins with the client inputting an investment amount and answering a series of questions on his risk tolerance, investment objectives and investment time horizon. The digital adviser then analyses the client's responses using algorithms and generates a recommended portfolio. If the client accepts the recommended portfolio, the digital adviser may relay the client's trade orders directly to a brokerage firm for execution. Over time, due to market movements, the client's portfolio may deviate from its original recommended asset allocation. When this happens, the digital adviser will adjust the client's investments to maintain the target asset allocation (rebalancing). This rebalancing of portfolios is typically automated and performed periodically.

The Guidelines will improve clarity on how existing rules apply in the context of digital advisory services. To make it easier for entities offering digital advisory services to operate in Singapore, the Guidelines also set out refinements in the licensing and business conduct requirements under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA) as follows:

a. Digital advisers that seek to offer fund management services to retail investors will be eligible for licensing even if they do not meet the SFA corporate track record requirements, provided they meet other specified safeguards. These safeguards include：

(i) having board and senior management members with relevant experience in fund management and technology;

(ii) offering portfolios that comprise only non-complex collective investment schemes (CIS); and

(iii) undertaking an independent audit of the digital advisory business at the end of the first year of operations.

b. Digital advisers will be exempted from the FAA requirement to collect the full suite of information on the financial circumstances of a client, such as income and financial commitments. This is on the condition that they put in place measures to mitigate the risks of providing unsuitable investment recommendations due to limited client information. Examples of mitigating controls include fact-finding questionnaires to identify and decline the onboarding of clients who are clearly not suitable for the digital advisers' product offerings.

c. Digital advisers that operate as financial advisers will be allowed to pass their clients' trade orders to brokerage firms for execution, and re-balance their

clients' portfolios in CIS, without the need for an additional capital markets services (CMS) license under the SFA.

MAS explains that digital advisers are exempted from the need to hold a CMS license for dealing in capital markets products if they merely assist to pass on clients' buy or sell orders to brokerage firms for execution, provided that such dealing is incidental to their financial advisory activities which is referred as Dealing Exemption.

MAS also recognizes that there are merits to exempt digital advisers from holding a CMS license in fund management to carry out rebalancing activities for portfolios that comprise solely of listed and unlisted CIS which is referred to Fund Management Exemption. Portfolio rebalancing is considered incidental to the advice provided where it is solely for the purpose of aligning the portfolio back to its last recommended allocation as agreed or chosen by the client, and there is no change to the constituents of the portfolio. The scope of the Fund Management Exemption is limited to CIS as rebalancing of portfolios comprising individual securities requires FAs to advise clients on which securities to invest in, and the client's consent should be obtained for this purpose.

While MAS is making it easier for digital advisers to set up in Singapore, the business model carries unique risks, such as faulty algorithms and cyber threats. To mitigate such risks, the Guidelines set out MAS' expectations for digital advisers to establish robust frameworks to govern and supervise their algorithms, as well as to manage technology and cyber risks.

MAS said that it is refining its regulatory framework to support innovation in financial advisory services while maintaining adequate safeguards to protect investors' interests. The Guidelines will facilitate new online business models to provide investors with more options to access investment advice.

新加坡金融管理局发布促进提供数字咨询服务的指引

新加坡金融管理局(新金局)于2018年10月8日发布了"提供数字咨询服务指引"(指引), 以促进在新加坡提供这些服务。 指引包含了公众咨询的回应意见以及新**金局**与业界行交流汲取意见的要点。

指引适用于在新加坡提供或寻求提供数字咨询服务的所有金融机构(数字顾问)。当某些监管要求或期望也适用于使用人力顾问; 向客户提供投资产品财务建议的传统财务顾问, 在指引中有详细说明。

数字顾问(也称为机器人顾问), 在有限或没有人力顾问互动下, 通过客户直接进入自动化和基于算法的工具, 提供投资产品的建议。 相比之下, 传统财务顾问可能在后端依赖类似的基于算法的工具; 协助其代表为客户提供建议和服务。

数字咨询流程通常从客户输入投资金额并回答有关其风险承受能力, 投资目标和投资时间范围的一系列问题开始。然后, 数字顾问使用算法分析客户的回应, 并制定推荐的投资组合。如果客户接受推荐的投资组合, 数字顾问可以将客户的交易订单直接转发给经纪公司执行。随着时间的变化, 由于市场变动, 客户的投资组合可能会偏离其原始建议的资产配置。当发生这种情况时, 数字顾问将调整客户的投资以维持目标资产分配(重新平衡)。 这种投资组合的重新平衡通常是自动化的并定期执行。

指引将提高现有数字化咨询服务方面明确性的规则。为了使提供数字咨询服务的公司更容易在新加坡运营, 指引还优化《证券和期货法》和《财务顾问法》对许可和商业行为的要求, 具体如下：

a. 只要符合其他指定的保障措施, 寻求向散户投资者提供基金管理服务的数字顾问即使不符合《证券和期货法》的企业往绩记录要求, 也有资格获得许可。这些保障措施包括：

(i) 拥有在基金管理和技术方面具有相关经验的董事会和高级管理人员;

(ii) 提供仅包含非复杂集体投资计划的投资组合;

(iii) 在第一年营运结束时对数字咨询业务进行独立审计。

b. 数字顾问将免除《财务顾问法》收集有关客户财务状况的全套信息的要求, 如收入和财务承诺。 这是因为由于有限客户的信息而采取措施去减轻提供不合适的投资建议的风险。减少风险控制措施的例子包括事实调查问卷, 以识别和拒绝向明显不适合数字顾问产品的客户提供服务的要求。

c. 作为财务顾问运作的数字顾问将被允许将其客户的交易订单传递给经纪公司执行, 并在集体投资计划中重新平衡客户的投资组合, 无需在《证券和期货法》下获得额外的资本市场服务许可。

新金局解释说, 如果数字顾问只是协助将客户的买卖订单传递给经纪公司执行, 数字顾问就无需持有资本市场服务许可以进行资本市场产品交易; 前提是此类交易是附带于该等财务顾问活动, 称为交易豁免。

新金局还认为，有资格免除数字顾问在基金管理中持有资本市场服务许可，只限于对由上市和非上市集体投资计划组成的投资组合进行重新平衡活动；称为基金管理豁免。投资组合重新平衡被视为附带于所提供的建议，即将投资组合调整回客户同意或选择的最后建议配置，并且投资组合的成分没有变化。基金管理豁免的范围仅限于集体投资计划，因为对包含个别证券的投资组合进行重新平衡需要财务顾问向客户提供有关投资证券的建议，并且应为此目的获得客户的同意。

虽然新金局使数字顾问更容易在新加坡设立，但商业模式带来了独特的风险，例如错误的算法和网络威胁。为了缓解这些风险，指引规定了新金局对数字顾问的期望，即建立健全的框架来管理和监督他们的算法，以及管理技术和网络风险。

新金局表示：正在完善其监管框架，以支持金融咨询服务的创新，同时保持足够的保障措施以保护投资者的利益。指引将促进新的在线商业模式，为投资者提供更多选择，以获取投资建议。

Source 来源:
http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-Issues-Guidelines-to-Facilitate-Provision-of-Digital-Advisory-Services.aspx

Monetary Authority of Singapore's Cyber Security Advisory Panel Proposes Ways to Enhance Financial Sector Cyber Resilience

On October 2, 2018, the Cyber Security Advisory Panel (CSAP) of the Monetary Authority of Singapore (MAS) provided insights and suggestions on how Singapore's financial sector can harness the benefits of new technologies while remaining cyber resilient. At its second annual meeting, the international panel also provided advice on MAS' own cyber resilience strategies. CSAP members shared their views on the growing adoption of new technologies, emerging user authentication methods for online financial services, and the use of open application programming interfaces (APIs) by financial institutions (FIs). They also discussed MAS' roadmap on initiatives to expand its cyber intelligence coverage, reinforce protection capabilities, reduce time to recover from incidents, and develop cyber security talent.

The key issues discussed include:

1. Public Cloud Services – FIs are increasingly using public cloud services for cost savings, system scalability, and speed to market. CSAP members suggested that small and medium sized FIs, given their limited resources and capabilities, can improve their cybersecurity posture by using reputable cloud solution providers that have strong cybersecurity capabilities.

2. CSAP members acknowledged concerns about concentration risks arising from a growing number of financial services relying on a limited pool of cloud service providers. In particular, FIs should implement measures to secure data stored on the cloud and their network connections to the cloud service provider. Members also said that cloud service providers should provide greater transparency to their customers on how they implement security measures to protect their systems and information.

3. APIs – FIs are actively making their APIs available to third parties such as service providers and business partners to enrich the quality and customization of their financial services. As APIs expose FIs to higher risks of cyber threat, CSAP members proposed measures which FIs may adopt when embarking on their open API journey. These measures include performing risk assessment of the third parties using their APIs and monitoring activities related to API services for suspicious events.

4. The CSAP met representatives from the Standing Committee on Cyber Security from The Association of Banks in Singapore, The Life Insurance Association Singapore, and The General Insurance Association of Singapore. The industry associations had candid exchanges with the panel on the benefits that FIs can reap from employing artificial intelligence and machine learning to augment their cyber defense capabilities.

The CSAP also highlighted the usefulness of identifying vulnerabilities through bug bounty programs and "red-teaming", and recommended FIs to consider adopting these as part of their security testing frameworks.

新加坡金融管理局的网络安全咨询小组提议如何提高金融业的网络应变能力

2018年10月2日，新加坡金融管理局(新金局)的网络安全顾问小组就新加坡金融业如何利用新技术带来的好处，同时保持网络应变能力提供了见解和建议。在第二届年会上，国际小组还就新金局自身的网络应变战略提供了建议。

网络安全顾问小组成员就越来越多地采用新技术，新兴的在线金融服务用户认证方法以及金融机构使用开放式应用程序编程接口分享了他们的观点。成员还讨论了新金局关于扩大其网络情报覆盖范围，加强保护能力,缩短事故复原时间以及培养网络安全人才举措的路线图。

几个主要问题的讨论：

1. 公共云端平台服务 – 金融机构越来越多地使用公共云端服务来节省成本，提高系统可扩展性并加快产品上市速度。网络安全顾问小组成员建议，由于资源和能力有限，中小型金融机构可以通过使用具 有强大网络安全能力并信誉良好的云端解决方案提供商来改善其网络安全状况。

2. 网络安全顾问小组成员承认对越来越多的金融服务；依赖有限的云端服务提供商引致集中风险的担忧；特别是金融机构应采取措施保护存储在云端上的数据及其与云端服务提供商的网络连接。成员们还表示，云端服务提供商应该为客户提供更高的透明度，协助了解如何实施安全措施来保护他们的系统和信息。

3. 应用程序编程接口 - 金融机构正在积极向服务提供商和业务合作伙伴等第三方提供其应用程序编程接口，以提升其金融服务的质量和设定工作。由于应用程序编程接口使金融机构面临更高的网络威胁风险，因此，网络安全顾问小组成员提出了金融机构在开始其应用程序编程接口开放之时可能采取的措施。这些措施包括使用其应用程序编程接口执行第三方风险评估，以及监控与应用程序编程接口服务相关的可疑事件。

4. 网络安全顾问小组会见了新加坡银行协会，新加坡人寿保险协会和新加坡综合保险协会的网络安全常务委员会代表。行业协会与专家组进行了坦诚的交流，讨论了金融机构可以利用人工智能和机器来学习增强其网络防御能力所带来的好处。

网络安全顾问小组还强调通过举报错误赏金计划和"红色团队"识别漏洞的效用，并建议金融机构考虑将这些漏洞作为其安全测试框架的一部分。

Source 来源:
http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-Cyber-Security-Advisory-Panel-Proposes-Ways-to-Enhance-Financial-Sector-Cyber-Resilience.aspx

Financial Conduct Authority of the United Kingdom Fines Tesco Bank £16.4m for Failures in 2016 Cyber Attack

On October 1, 2018, the UK Financial Conduct Authority of the United Kingdom (FCA) has fined Tesco Personal Finance plc (Tesco Bank) £16,400,000 (after being granted 30% credit for mitigation) for failing to exercise due skill, care and diligence in protecting its personal current account holders against a cyber attack. The cyber attack took place in November 2016.

Cyber attackers exploited deficiencies in Tesco Bank's design of its debit card, its financial crime controls and in its Financial Crime Operations Team to carry out the attack. Those deficiencies left Tesco Bank's personal current account holders vulnerable to a largely avoidable incident that occurred over 48 hours and which netted the cyber attackers £2.26m.

Principle 2 of Principles for Business requires a firm to conduct its business with due skill, care and diligence. Tesco Bank is in the business of banking and fundamental to that business is protecting its customers from financial crime.

The FCA found that Tesco Bank breached Principle 2 because it failed to exercise due skill, care and diligence to:

1. Design and distribute its debit card.

2. Configure specific authentication and fraud detection rules.

3. Take appropriate action to prevent the foreseeable risk of fraud.

4. Respond to the November 2016 cyber attack with sufficient rigor, skill and urgency.

Following the attack, Tesco Bank immediately put in place a comprehensive redress program and devoted significant resources to improving the deficiencies that left the bank vulnerable to the attack and instituted a comprehensive review of its financial crime controls. It has made significant improvements both to enhance its financial crime systems and controls and the skills of the individuals who operate them.

FCA said that banks must ensure that their financial crime systems and the individuals who design and operate them work to substantially reduce the risk of such attacks occurring in the first place. The standard is one of resilience, reducing the risk of a successful cyber attack occurring in the first place, not only reacting to an attack.

特易购银行因2016年网络漏洞遭遇攻击而被英国金融行为监管局罚款1640万英镑

英国金融市场行为监管局(英国金监局)于 2018 年 10 月 1 日对特易购个人理财公司(特易购银行)在保护个人往来账户持有人免受网络攻击方面未能采取应有的谨慎，技巧及勤勉尽责，而被处以 1640 万英镑罚款(获得 30％的罚款优惠之后)。 网络攻击发生在 2016 年 11 月。

网络攻击者利用特易购银行借记卡设计，金融犯罪控制和金融犯罪行动小组方面的漏洞来进行攻击。这些漏洞使特易购银行的个人往来账户持有人，本可轻易避免遭受网络攻击；而在48小时内被网络攻击者窃取了226万英镑。

企业营商原则的原则2要求公司以适当的技能，谨慎和勤勉开展业务。 特易购银行从事银行业务，其业务的基础是保护客户免受金融犯罪的侵害。

英国金监局发现特易购银行违反了原则2，因为没有运用适当的技巧，谨慎及勤勉尽责地：

1. 设计和分发借记卡。

2. 配置特定的身份验证和欺诈检测规则。

3. 采取适当行动以防止可预见的欺诈风险。

4. 以足够的严谨性，技巧和紧急性对2016年11月的网络攻击作出回应。

在网络攻击事件发生后，特易购银行立即制定了全面的补救计划，并投入大量资源改善银行易受攻击的不足之处，并对其金融犯罪控制措施进行全面审查。 在改善其金融犯罪系统和控制以及操作人员的技能方面取得了重大改善。

英国金监局表示，银行必须确保其金融犯罪系统以及设计和运营这些系统的人员在一开始就能大幅降低发生此类攻击的风险。 该标准是具有应变力，首要工作是降低成功发动网络攻击的风险，而不单是对攻击作出反应。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-fines-tesco-bank-failures-2016-cyber-attack

Highlights of the Speech by Mr. Fang Xinghai, Vice Chairman of China Securities Regulatory Commission, at the FTSE Russell 2018 China A Share Evaluation Results Press Release and Seminar

In a speech at FTSE Russell 2018 China A Share Evaluation Results Press Release and Seminar held on September 28, 2018 at Shanghai by Mr. Fang Xinghai (Fang), Vice Chairman of China Securities Regulatory Commission (CSRC), he outlined the issues relating to China's opening up of the capital market. Some key issues of the speech are summarized as follows:

A shares were officially included in the FTSE Global Equity Index Series (FTSE GEIS) on September 28, 2018. This is another milestone in the internationalization of China's capital market, an event that facilitates further introduction of long-term overseas funds into China, and that improves the structure of A Share investors, and further elevates the internationalization level and resource allocation efficiency of the A Share market. The CSRC has always welcomed and supported the A Shares' inclusion in the FTSE GEIS. FTSE Russell has done a lot of fruitful work. The two sides maintained regular communication and contacts, gradually increased their efforts and improved their work, and achieved a series of work results. On the basis of the preliminary work, the CSRC puts forward that the inclusion of A Shares into the FTSE GEIS is an important task for the further opening up of the capital market, and continuously promotes relevant works. The announcement of FTSE Russell to include A Shares in its index came out of efforts of various parties, and was in line with the expectations of all parties.

The CSRC have conscientiously implemented the spirit of the important speech by President Xi Jinping at the Boao Forum for Asia on the expansion of the financial industry and the opening of the market, and the decision-making and deployment of the Party Central Committee and the State Council; it vigorously promoted the opening of the capital market, and substantially increased the daily turnover volume of the Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect. The Shanghai Stock Exchange and the Shenzhen Stock Exchange continue to improve the trading suspension and resumption system and the late day trading mechanism. Ever since this year, the overall net inflow of foreign capital into A Shares has reached 230 billion yuan. This intensively reflects the long-term optimism of foreign investors on China's economic base, stable operation, timely risk prevention and control, and full confidence in the prospects of China's accelerating the transformation of economics' new and old kinetic energy, continuous improvement of quality, and stable development of the capital market.

Fang has recently met with many international institutional investors, who energetically support FTSE Russell's inclusion of A Shares, for they focus on the long-term development potential of China's economy and the long-term performance of A Shares over the short-term performance of the market. CSRC welcomes these long-term investors to participate in the A-share market, and CSRC believes that the inclusion of the A Shares into the FTSE GEIS will strongly promote this process. China is a country with a high savings rate. China does not lack funds, nor do China's stock markets. However, China's stock markets lack stable long-term funds, funds that do not fluctuate significantly depending on the financial performance of each year. CSRC will certainly achieve the goal of long-term investment funds dominating China's stock markets. FTSE's decision has narrowed CSRC's distance from this goal.

In the next step, CSRC will revolve around the main line of serving the real economy, unswervingly, proactively, steadily and orderly to promote the opening up of the capital market, continuously improve the quality and international influence of China's capital market, and maintain the healthy and stable development of China's

capital market. On the one hand, CSRC will conscientiously study and solve the concerns and needs of overseas investors, continuously improve the cross-border trading system, optimize the interconnection and interoperability mechanism, and complete the revision of the Qualified Foreign Institutional Investor system rules with relevant departments so as to facilitate the expansion of allocation of long-term overseas funds towards A Shares.

CSRC will accelerate the launch of measures that facilitate foreign institutional investors to use domestic financial futures and other hedging instruments, and gradually meet the needs of institutional investors in risk management. On the other hand, according to the development of China's capital market and the need for opening up, CSRC will coordinate the reform of the basic system of capital markets such as trading suspension and resumption, information disclosure, and transaction settlement, and continuously promote the integration of China's capital market with international best practices.

This year marks the 40th anniversary of Reform and Opening Up and is the new starting point for the reform and opening up journey. Just like the great waves of the Money River, a new round of reform and opening up will definitely push China's economy to a new peak.

中国证券监督管理委员会副主席方星海先生在富时罗素2018年中国A股评估结果新闻发布暨研讨会的演讲重点

中国证券监督管理委员会(中证监)副主席方星海先生(方先生), 在2018年9月28日于富时罗素在上海举办2018年中国A股评估结果新闻发布暨研讨会的演讲中; 概述有关中国资本市场的开放问题。演讲的主要内容摘要如下：

A股在2018年9月28日正式纳入富时罗素全球股票指数系列。这是中国资本市场国际化进程中又一具有里程碑意义的盛事, 有利于进一步引入境外长期资金、改善A股投资者结构, 进一步提升A股市场国际化水平和资源配置效率。一直以来, 中证监对A股纳入富时罗素指数工作持欢迎和支持态度, 富时罗素做了大量卓有成效的工作。双方保持经常性沟通和接触, 逐步加大工作力度、提高工作成效, 取得了一系列工作成果。在前期工作基础上, 近期中证监提出将A股纳入富时罗素指数作为资本市场加大对外开放的一项重要工作, 并持续加以推进。富时罗素将A股纳入其指数的公告, 可以说是水道渠成, 符合各方期待。

中证监认真贯彻落实习近平主席在博鳌亚洲论坛上关于扩大金融行业和市场对外开放的重要讲话精神以及党中央、国务院的决策部署, 大力推进资本市场对外开放, 大幅度提升沪深港通每日额度, 上海证券交易所和深圳证券交易所持续完善停复牌制度和尾盘交易机制。今年以来, 外资净流入A股总体规模达2300亿元。这集中反映了境外投资者对中国经济基础宽厚、运行平稳、风险防控及时有力等优势长期看好, 对中国经济新旧动能加快转换, 质量持续提升, 资本市场稳定发展等前景充满信心。

方先生近期与不少国际机构投资者见面, 彼等积极支持富时罗素纳入A股, 由于其投资规划周期长, 并不在意市场短期表现, 而是着眼于中国经济长期发展潜力以及A股长期表现。中证监非常欢迎这些长期投资者参与A股市场, 相信A股纳入富时罗素指数将有力地推动这一进程。中国是一个高储蓄率国家, 中国不缺资金, 中国股市不缺资金, 缺的是长期资金, 缺的是不需要每年底都要计算盈亏的长期资金。中证监一定会实现长期资金主导中国股市的目标, 富时公司的决定拉近了中证监与这个目标的距离。

下一步, 中证监将围绕服务实体经济这条主线, 坚定不移、积极主动、稳妥有序推进资本市场对外开放, 不断提升中国资本市场运行质量和国际影响力, 维护中国资本市场健康稳定发展。一方面, 认真研究和解决境外投资者关切和需求, 持续完善跨境交易制度, 优化互联互通机制, 会同相关部门完成合格境外机构投资者制度规则修订工作, 便利境外长期资金扩大A股配置。

中证监加快推出便利境外机构投资者使用境内金融期货等避险工具的举措, 逐步满足机构投资者风险管理方面的需求。另一方面, 根据中国资本市场发展情况和开放的需要, 中证监协调推进停复牌、信息披露、交易结算等资本市场基础性制度改革, 不断推进中国资本市场与国际最佳实践接轨。

今年是改革开放40周年, 是改革开放征程新的出发点。犹如钱江巨浪, 新一轮改革开放必将把中国经济推向新的高峰。

Source 来源:
http://www.szse.cn/main/en/AboutSZSE/SZSENews/SZSENews/39780467.shtml

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