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# Financial Services Regulatory Update 金融服务监管资讯

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## Hong Kong Securities and Futures Commission Publishes Latest Takeovers Bulletin

The Hong Kong Securities and Futures Commission (SFC) has published the latest March 2019 Takeovers Bulletin which highlights the following issues:

- Disclosure of relevant understanding, arrangement, agreement, or special deal (between, for instance, a shareholder and a transaction party or any of the parties acting in concert with it) in Rule 3.5 announcements under the Takeovers Code
- Presumption of acting in concert - class (g): obligation to identify recent dealings of financiers (except authorized institutions within the meaning of the Banking Ordinance lending money in the ordinary course of business)
- Use of email by the Takeovers Executive
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the statistical activities of the Takeovers Team

The Takeover Bulletin is available on the SFC's website: [sfc.hk/web/EN/files/CF/pdf/Takeovers%20Bulletin/Takeover%20Bulletin\\_March%202019\\_E.pdf](http://sfc.hk/web/EN/files/CF/pdf/Takeovers%20Bulletin/Takeover%20Bulletin_March%202019_E.pdf)

## 香港证券及期货事务监察委员会发布最新的收购通讯

香港证券及期货事务监察委员会（证监会）发布最新的2019年3月收购通讯，其中摘要说明以下事项：

- 据《收购守则》规则 3.5 发出的公布必须披露相关谅解、安排、协议或特别交易（例如任何股东与任何交易当事人或与之一致行动的人士之间者）
- 一致行动的推定第(g)类别：贷款方(除在日常业务过程中提供贷款的银行业条例所指的认可机构)的近期交易必须查明
- 收购执行人员提倡使用电邮
- 与收购有关的委员会委员的任命及重新任命
- 收购及合并组 2019 年第一季内工作的统计数字

收购通讯载于证监会网站:

[sfc.hk/web/TC/files/CF/pdf/Takeovers%20Bulletin/Takeover%20Bulletin\\_March%202019\\_C.pdf](http://sfc.hk/web/TC/files/CF/pdf/Takeovers%20Bulletin/Takeover%20Bulletin_March%202019_C.pdf)。

Source 来源:

[sfc.hk/web/EN/published-resources/industry-related-publications/takeovers-bulletin.html](http://sfc.hk/web/EN/published-resources/industry-related-publications/takeovers-bulletin.html)

## Hong Kong Securities and Futures Commission Concludes Consultation on Securities Margin Financing

On April 4, 2019, the Hong Kong Securities and Futures Commission (SFC) released consultation conclusions on proposed Guidelines for Securities Margin Financing Activities. Respondents generally supported the SFC's initiative to provide guidance on the risk management practices expected of brokers when they provide securities margin financing.

The consultation conclusions are available on the SFC's website:

[www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=18CP7](http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=18CP7).

Under the guidelines, the maximum total margin loans-to-capital multiple brokers can adopt is five times to avoid excessive leverage. They should also control the concentration risks posed by holding individual or connected securities as collateral and by significant exposure to margin clients. In addition, brokers are required to set prudent triggers for margin calls and strictly enforce margin call policies. Guidance is provided to help brokers set prudent haircut percentages for securities acceptable as collateral and conduct stress testing to assess the financial impact of their securities margin financing activities.

The guidelines were gazetted and will take effect on October 4, 2019.

To facilitate the SFC's monitoring, the returns under the Securities and Futures (Financial Resources) Rules will be revised to collect additional financial data from brokers engaged in securities margin financing activities.

The revised requirements will be published in due course.

### 香港证券及期货事务监察委员会发表有关证券保证金融资的咨询总结

2019年4月4日, 香港证券及期货事务监察委员会(证监会)就建议的《证券保证金融资活动指引》发表咨询总结。回应者普遍支持证监会发出指引, 以说明经纪行在提供证券保证金融资时应采用的风险管理手法。

咨询总结载于证监会网:

[sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/consultation/conclusion?refNo=18CP7](http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/consultation/conclusion?refNo=18CP7)。

根据该指引, 经纪行可采用的最高保证金贷款总额相对于资本的倍数将会设定为五倍, 以免杠杆过高。它们亦应控制因持有作为抵押品的个别或关联证券, 以及因对保证金客户的重大风险承担而招致的集中风险。此外, 经纪行须就发出追缴保证金通知设定审慎的触发水平, 并严格执行追缴保证金通知政策。证监会亦提供指引, 协助经纪行就可接纳为抵押品的证券设定审慎的扣减百分率, 和进行压力测试以评估其证券保证金融资活动带来的财务影响。

该指引已刊宪, 并将于2019年10月4日生效。

为利便证监会进行监察, 证监会将会修改《证券及期货(财政资源)规则》下的申报表, 以便向从事证券保证金融资活动的经纪行收集更多财务数据。证监会将于适当时候公布经修改的规定。

Source 来源:

[www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR26](http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR26)

### Former Director of DBA Telecommunication (Asia) Holdings Limited Convicted of Issuing False or Misleading Announcement in a Prosecution Brought by Hong Kong Securities and Futures Commission

On April 11, 2019, the Eastern Magistrates' Court convicted Mr. Chan Wai Chuen (Chan), former chief financial officer, company secretary and an executive director of DBA Telecommunication (Asia) Holdings Limited (DBA) for his role in a false or misleading statement in DBA's announcement in a prosecution brought by the Securities and Futures Commission (SFC).

On March 28, 2013, DBA published its results announcement for the year ended December 31, 2012 on the Stock Exchange of Hong Kong Limited's (HKSE) website. The SFC's investigation revealed that DBA's

financial statements, which Chan was allegedly involved in its preparation and publication at the time, had not been agreed by the auditors, as required under the Rules Governing the Listing of Securities on the HKSE (Listing Rules).

As a result, DBA's statement that the results announcement complied with the applicable disclosure provisions of the Listing Rules was false or misleading in a material particular, in breach of section 384 of the Securities and Futures Ordinance (SFO).

In convicting Chan, the Magistrate found that when DBA's results announcement was published, Chan knew that there were outstanding audit works and that the financial statements had not been agreed by the auditors but in any event, proceeded with its publication. As an officer of DBA, Chan was liable for DBA's breach under section 390 of the SFO.

Chan was fined \$60,000 and ordered to pay the SFC's investigation costs.

### DBA 电讯(亚洲)控股有限公司前董事就香港证券及期货事务监察委员会提出的检控被裁定发出虚假或具误导性公告罪成

2019年4月11日, 东区裁判法院在证券及期货事务监察委员会(证监会)提出的检控程序中, 裁定 DBA 电讯(亚洲)控股有限公司 (DBA) 前首席财务官、公司秘书及执行董事陈伟铨(陈), 参与在 DBA 公告中作出虚假或具误导性陈述的罪名成立。

2013年3月28日, DBA 在香港联合交易所有限公司(联交所)网站上刊发截至2012年12月31日止年度的业绩公告。证监会的调查显示, 陈当时涉嫌参与拟备及刊发的 DBA 财务报表并未按照《联交所证券上市规则》(上市规则)的规定获得核数师同意。

因此, DBA 指该业绩公告已符合《上市规则》的适用披露规定的陈述, 在要项上属虚假或具误导性, 违反了《证券及期货条例》第384条。

裁判官在裁定陈罪成时指, 当 DBA 刊发该业绩公告时, 陈明知尚有核数工作未完成, 而且有关财务报表并未获核数师同意, 但仍不顾情况, 继续发表该公告。根据《证券及期货条例》第390条, 陈作为 DBA 的高级人员, 须为 DBA 的违法行为承担法律责任。

陈被罚款 60,000 港元, 并被命令缴付证监会的调查费用。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR31](http://sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR31)

## Hong Kong Securities and Futures Commission Commences Insider Dealing Prosecution against Legal Adviser

On April 11, 2019, the Hong Kong Securities and Futures Commission (SFC) commenced criminal proceedings in the Eastern Magistrates' Court against Mr. Leung Pak Keung (Leung), a practising solicitor, over alleged insider dealing in the shares of CASH Financial Services Group Limited (CFSG).

The SFC alleges that between December 18, 2014 and January 2, 2015, Leung, at the time a legal adviser to Oceanwide Holdings (Hong Kong) Co. Limited in respect of its proposed acquisition of a 44% stake in CFSG, purchased a total of 2,112,000 CFSG shares.

Leung, who allegedly purchased the CFSG shares whilst in possession of CFSG-specific, non-public and price sensitive information, disposed of all his CFSG shares and made a profit of HK\$45,300 after the announcement of the proposed corporate acquisition on January 12, 2015.

No plea was taken and the hearing was adjourned to May 9, 2019.

### 香港证券及期货事务监察委员会对法律顾问展开内幕交易检控

2019年4月11日,香港证券及期货事务监察委员会(证监会)在东区裁判法院对执业律师梁柏强(梁)展开刑事法律程序。梁涉嫌就时富金融服务集团有限公司(时富金融)股份进行内幕交易。

证监会指梁于2014年12月18日至2015年1月2日期间合共买入2,112,000股时富金融股份。他当时担任泛海控股(香港)有限公司的法律顾问,负责该公司就时富金融44%的股权提出的收购行动。

梁被指在掌握关乎时富金融的非公开且价格敏感资料期间买入时富金融股份,并在该公司于2015年1月12日公布有关收购行动后,悉数出售其持有的时富金融股份,赚取了约45,300港元的利润。

被告暂时不作出答辩,案件押后至2019年5月9日。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR30](http://sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR30)

## Hong Kong Securities and Futures Commission Publishes Guidance on Enhanced Disclosures for

## Green or Environmental, Social and Governance Funds

On April 11, 2019, the Hong Kong Securities and Futures Commission (SFC) issued a circular to provide guidance to management companies of SFC-authorized unit trusts and mutual funds on enhanced disclosures for SFC-authorized green or environmental, social and governance (ESG) funds.

The circular is available on the SFC's website: [sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18](http://sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18)

The guidance is one of the regulatory initiatives of the SFC's Strategic Framework for Green Finance which includes, among others, providing disclosure guidance to facilitate disclosure and reporting of green-related investment products.

The SFC has evaluated the quality of disclosure of SFC-authorized funds with investment focus on climate, green, environmental or sustainable development and found that a majority of them do not specifically disclose how investment managers integrate ESG factors into the criteria used in their investment selection process.

To enhance disclosure comparability between similar types of SFC-authorized green or ESG funds and their transparency and visibility, the circular sets out the SFC's expectation on how the existing Code on Unit Trusts and Mutual Funds and disclosure requirements apply for SFC-authorized green or ESG funds and provides guidance to narrow the disclosure gap among these funds.

Given the evolving nature of green or ESG investment landscape, the SFC will keep in view local and international market and regulatory developments and may provide further guidance or impose additional requirements for green or ESG funds, where appropriate.

The SFC will also create a central database of SFC-authorized green or ESG funds on its website to enhance the visibility of these funds.

The SFC said that the guidance drives home the important message to asset managers that they are expected to do more than simply make the claim that they take ESG factors into account, without making clear to investors how they do this. It also underscores the SFC's commitment to develop Hong Kong as an international green finance center.

香港证券及期货事务监察委员会就加强绿色基金或环境、社会及管治基金的披露发出指引

2019年4月11日，香港证券及期货事务监察委员会（证监会）发出一份通函（只备有英文版），就加强证监会认可绿色基金或环境、社会及管治（ESG）基金的披露，向证监会认可单位信托及互惠基金的管理公司提供指引。

通函载于证监会网站：  
[sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18](https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18)。

该指引是证监会绿色金融策略框架之下的其中一项监管举措。有关策略框架的内容包括（除其他事项外）提供披露指引，以便基金管理公司就与环保相关的投资产品作出披露和申报。

证监会就以气候、环保、环境或可持续发展作为投资重点的证监会认可基金的披露质素作出评估后，发现大部分基金并没有具体地披露基金经理在拣选投资的过程中如何将ESG因素与拣选准则结合。

通函阐述证监会认为应如何将现行的《单位信托及互惠基金守则》和披露规定应用于证监会认可绿色或ESG基金，并提供指引以收窄这些基金的披露之间的差异，藉以提高种类相近的证监会认可绿色或ESG基金披露的可比较性及基金的透明度和可取览度。

鉴于绿色或ESG的投资环境持续演变，证监会将会留意本地和国际市场及监管发展，并可能会在适当时候就绿色或ESG基金提供进一步指引或施加额外规定。

证监会亦将在网站建立一个证监会认可绿色或ESG基金的中央数据库，从而令公众更容易识别这些基金。

证监会表示：指引向资产管理公司传达了一个重要讯息，即资产管理公司不应只是宣称会考虑ESG因素，但却不向投资者表明如何付诸实行。指引亦同时突显证监会致力发展香港成为国际绿色金融中心。

Source 来源：  
[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR28](https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR28)

### **Hong Kong Securities and Futures Commission Publicly Criticizes Kwok Tse Wah for Breaches of Code on Takeovers and Mergers**

On April 10, 2019, the Hong Kong Securities and Futures Commission (SFC) has publicly criticized Kwok Tse Wah (Kwok) for breaching the dealing restrictions and dealing disclosure obligations under the Code on Takeovers and Mergers (Takeovers Code).

On December 5, 2018, Hopewell Holdings Limited (Hopewell) and the offeror made a joint announcement about the possible privatization of Hopewell. Kwok is the father of an individual who is a director and one of the ultimate beneficial owners of the offeror. He is therefore a party acting in concert with the offeror in the proposed privatization.

On December 6, 2018, Kwok sold 40,000 shares in Hopewell. The sale and the failure to disclose it publicly within the applicable time limit constituted breaches of Rule 21.2 and Rule 22 of the Takeovers Code.

Kwok has accepted that he breached the Takeovers Code and has agreed to the disciplinary action taken against him.

The SFC wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

### **香港证券及期货事务监察委员会公开批评郭子华违反《收购守则》**

2019年4月10日，香港证券及期货事务监察委员会（证监会）公开批评郭子华（郭）违反《公司收购及合并守则》（收购守则）下的交易限制及交易披露责任。

合和实业有限公司（合和）与要约人在2018年12月5日就可能将合和私有化一事发表联合公告。郭是要约人的一名董事的父亲，而该名董事亦是要约人的其中一名最终实益拥有人，故在私有化建议中，郭是与要约人一致行动的人。

郭在2018年12月6日出售40,000股合和股份。由于他出售这些股份及没有在适用时限内公开披露此事，故违反了《收购守则》规则21.2及规则22。

郭已承认他违反了《收购守则》，及已同意对他采取的纪律行动。

证监会希望藉此机会提醒香港证券市场的从业员及有意利用香港证券市场的人士，在进行有关收购、合并及股份回购的事宜时，应根据两份守则遵守适当的操守标准。如对《收购守则》的适用范围有任何疑问，应尽早咨询执行人员的意见。

Source 来源：

sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR29

## International Finance Corporation and Hong Kong Monetary Authority Strengthen Commitment to Green and Sustainable Finance Through Groundbreaking Agreements

On April 12, 2019, the Hong Kong Monetary Authority (HKMA) signed a Memorandum of Understanding with the International Finance Corporation (IFC), a member of the World Bank Group, in Washington DC, to co-organize IFC's Sixth Annual Climate Business Forum, which will be held in Hong Kong in early 2020.

The HKMA said that like IFC, the HKMA is dedicated to supporting responsible investment and green finance. The HKMA has incorporated environmental, social, and governance (ESG) principles into the investment processes of the Exchange Fund. The ESG principles of unveiling the long-term sustainable value of investments for investors are well in line with the established principle of the Exchange Fund in pursuing a long-term stable return.

In addition, the Hong Kong Mortgage Corporation Limited and IFC recently entered into a Master Cooperation Agreement (MCA) to promote infrastructure financing. The MCA serves to streamline the steps taken when both sides co-finance infrastructure projects by standardizing the investment process and documentation.

### 国际金融公司与香港金融管理局达成突破性协议加强对绿色及可持续金融的承诺

2019年4月12日,香港金融管理局(金管局)与世界银行集团成员国际金融公司(IFC)于美国华盛顿签署《谅解备忘录》,确认于2020年初在香港合办IFC第六届「气候商业论坛」。

金管局表示:与IFC一样,其致力支持负责任投资及绿色金融。金管局管理的外汇基金一直应用环境、社会及管治(ESG)原则。ESG原则着重为投资带来长远可持续价值,与外汇基金追求长期稳定回报的原则非常一致。

此外,香港按揭证券有限公司与IFC最近达成《框架合作协议》,促进基建融资。《框架合作协议》致力透过规范投资程序与文件,简化双方参与基建项目共同融资的程序。

Source 來源:

hkma.gov.hk/eng/key-information/press-releases/2019/20190412-3.shtml

## Hong Kong Monetary Authority Announces to Launch Enhanced Competency Framework on Credit Risk Management

On March 29, 2019, the Hong Kong Monetary Authority (HKMA) announced to launch of the Enhanced Competency Framework on Credit Risk Management (ECF-CRM).

The ECF-CRM is a collaborative effort of the HKMA, the Hong Kong Institute of Bankers (HKIB) and the banking sector in establishing a set of common and transparent competency standards for raising and maintaining the professional competence of relevant practitioners of the credit risk management function in authorized institutions (AIs). This framework enables talent development and facilitates the enhancement of professional competencies and capabilities of those staff engaged in the credit risk management function.

AIs are encouraged to adopt the ECF-CRM as a benchmark for enhancing the level of professional competence of credit risk management practitioners. Apart from supporting their staff to attend trainings and examinations that meet the ECF certification, AIs are also advised to keep records of the relevant training and qualification of their staff and to provide them with necessary assistance in relation to applications for grandfathering and certification, and fulfillment of continuing professional development (CPD) training under the ECF-CRM.

The HKMA will take into account the progress of implementation of the ECF-CRM by AIs and AIs' effort in enhancing staff competence and on-going development during its supervisory process. The HKIB is the administrator of the ECF-CRM, whose major role in this respect includes handling certification and grandfathering applications, administering the examinations and CPD requirements and maintaining a public register of qualified certification holders.

### 香港金融管理局宣布推出「银行专业资历架构-信用风险管理」

2019年3月29日,香港金融管理局(金管局)宣布推出「银行专业资历架构-信用风险管理」(ECF-CRM)。

ECF-CRM是金管局,香港银行学会(银行学会)和银行业的共同努力下,建立一套共同和透明的能力标准,以提高及维持认可机构信贷风险管理职能的相关从业员的专业能力。该框架可实现人才发展,并有助于提高从事信用风险管理职能的员工的專業能力和競爭力。

金管局鼓励认可机构采用ECF-CRM作为提升信贷风险管理从业员专业能力水平的基准。除了支持其员工参加符

合银行专业资历架构认证的培训和考试外,亦建议认可机构保存有关员工的相关培训及资格的记录,并为他们提供与豁免和认证申请有关所需的协助,并在 ECF-CRM 下完成持续专业发展培训。

金管局重视认可机构实施 ECF-CRM 的进度及认可机构在监督过程中提高员工能力和持续发展作出的努力。银行学会是 ECF-CRM 的管理人,其在这方面的主要作用包括处理认证和豁免申请,管理考试和持续专业发展要求以及维护合资格认证持有者的公众登记册。

Source 来源:

[hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190329e1.pdf](http://hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190329e1.pdf)

### **Hong Kong Monetary Authority Issues Circular on Qualifying Deferred Annuity Policy**

On April 2, 2019, the Hong Kong Monetary Authority (HKMA) issued circular to draw attention of Authorized Institutions (AIs) to the Guideline on Qualifying Deferred Annuity Policy recently issued by the Insurance Authority which sets out, among others, requirements in respect of the promotion, advising and arranging of qualifying deferred annuity policies (QDAPs).

AIs selling QDAPs are reminded that they should adequately disclose and explain the nature, key features and risks of QDAPs to customers during the selling process.

AIs should also put in place adequate policies and procedures as well as controls and monitoring, and provide sufficient staff training to ensure the compliance with all applicable regulatory requirements in the selling of QDAPs.

### **香港金融管理局就《合资格延期年金保单指引》发出通函**

2019 年 4 月 2 日,香港金融管理局(金管局)发出通函,提请认可机构注意最近由香港保险业监管局发出的《合资格延期年金保单指引》,其中包括有关推广,建议和安排合资格延期年金政策(QDAPs)的规定。

金管局提醒销售 QDAPs 的人员应在销售过程中向客户充分披露和解释 QDAPs 的性质,主要特征和风险。

认可机构亦应制定适当的政策和程序,以及控制和监察,并提供足够的员工培训,以确保在销售 QDAPs 时遵守所有适用的监管规定。

Source 来源:

[hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190402e1.pdf](http://hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190402e1.pdf)

### **Hong Kong Monetary Authority Grants the 4<sup>th</sup> Virtual Banking License**

On April 10, 2019, the Hong Kong Monetary Authority (HKMA) announced that the Monetary Authority has granted a banking license under the Banking Ordinance to Welab Digital Limited (WDL) for it to operate in the form of a virtual bank. The granting of the banking license takes immediate effect.

This is the 4<sup>th</sup> virtual banking license granted by the HKMA. The introduction of virtual banks in Hong Kong is a key pillar supporting Hong Kong's entry into the Smart Banking Era. It is a major milestone in reinforcing Hong Kong's position as a premier international financial center. Virtual banks will not only help drive FinTech and innovation, but also bring about brand new customer experiences and further promote financial inclusion in Hong Kong.

According to its business plan, WDL intends to launch its services within 6 to 9 months.

The HKMA is making good progress in the processing of the remaining 4 shortlisted virtual bank applications.

### **香港金融管理局发出第 4 个虚拟银行牌照**

2019 年 4 月 10 日,香港金融管理局(金管局)宣布,金融管理专员已根据《银行业条例》向 Welab Digital Limited (WDL) 授予银行牌照以经营虚拟银行。牌照即日生效。

这是金管局发出的第 4 个虚拟银行牌照。引入虚拟银行是香港迈向智慧银行新纪元的关键举措,亦是提升香港作为国际金融中心的优势的一个里程碑。虚拟银行除了能推动香港金融科技发展和创新,更可以为客户带来更好的体验和促进普及金融。

根据 WDL 的业务计划,它的服务预期可于 6 至 9 个月内正式推出。

金管局仍在处理余下 4 份被甄选的牌照申请,进展良好。

Source 来源:

[hkma.gov.hk/eng/key-information/press-releases/2019/20190410-4.shtml](http://hkma.gov.hk/eng/key-information/press-releases/2019/20190410-4.shtml)

### **Insurance Authority of Hong Kong Publishes List of Deferred Annuity Products Qualified for Tax Deduction**

On April 1, 2019, the Insurance Authority (IA) of Hong

Kong published a list of Qualifying Deferred Annuity Policies (QDAPs) eligible for tax deduction.

The Hong Kong Government announced in the 2018-19 Budget tax incentive of up to \$60,000 per year for deferred annuity policies. To allow flexibility for couples to benefit from the entitlement, they could enjoy a combined limit of \$120,000 per year.

The IA has promulgated a new guideline (GL19) elucidating the standard features of QDAP that include minimum total premium of \$180,000, minimum payment period of five years, minimum annuity period of 10 years, annuitization at the age of 50 or above, disclosure requirements on the Internal Rate of Return, guaranteed and variable payments, as well as separation of riders that are not eligible for tax deduction. The GL19 is available on the IA's website: [www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190402e1.pdf](http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190402e1.pdf).

All product brochures have to carry the QDAP logo for easy identification, and members of the public can verify the status of a specific product by referring to the IA's website ([ia.org.hk/en/qualifying\\_deferred\\_annuity\\_policy/Online\\_register\\_of\\_QDAP.html](http://ia.org.hk/en/qualifying_deferred_annuity_policy/Online_register_of_QDAP.html)).

#### 香港保险业监管局刊登符合扣税资格的延期年金产品名单

2019年4月1日, 香港保险业监管局(保监局)刊登符合扣税条件的合资格延期年金保单(QDAP)名单。

香港政府于2018-19年度《财政预算案》提出就延期年金保单提供最多每年6万元的扣税优惠。为加强扣税安排的灵活性, 让夫妇更易于受惠, 夫妇之间可享有每年合共12万元的扣税上限。

保监局已发出《合资格延期年金保单指引》(指引19)解释QDAP的基本特点, 包括最低保费总额为18万元、供款期最短五年、年金领取期不少于10年, 以及领取年龄为50岁或以上。产品亦须披露其内部回报率、保证和浮动年金额, 并分开列明不可扣税的附加保障保费。指引19载于保监局的网站: [www.ia.org.hk/sc/legislative\\_framework/files/GL19\\_Chi.pdf](http://www.ia.org.hk/sc/legislative_framework/files/GL19_Chi.pdf)

QDAP的产品销售说明书上须印有QDAP标志以资识别, 公众亦可查阅保监局网站的名单以确认某产品是否QDAP产品 ([ia.org.hk/sc/qualifying\\_deferred\\_annuity\\_policy/Online\\_register\\_of\\_QDAP.html](http://ia.org.hk/sc/qualifying_deferred_annuity_policy/Online_register_of_QDAP.html))。

Source 来源:

[www.ia.org.hk/en/infocenter/press\\_releases/20190401.html](http://www.ia.org.hk/en/infocenter/press_releases/20190401.html)

#### Highlights of the Speech by Hong Kong Privacy Commissioner for Personal Data on Use of Personal Data in Digital Era

In a speech at the seminar co-organized by the Hong Kong Monetary Authority and the Hong Kong Association of Bank held on April 1, 2019, the Privacy Commissioner for Personal Data, Hong Kong (Privacy Commissioner), Mr. Stephen Kai-yi Wong addressed the banking industry on "Use of Personal Data in the Digital Era". The key issues of the speech are summarized as follows:

Privacy Commissioner highlighted the proliferation of Fintech, with its applications enabling innovation in financial services and transforming the operations of the financial industry. Privacy Commissioner also acknowledged that Fintech is penetrating into many aspects of public's daily lives. As a note of advice, Privacy Commissioner addressed some of the privacy risks brought about by Fintech, such as virtual banking, open application programming interface, etc.:

#### Collection and use of personal data without notice or meaningful consent of the users

- The personal data collected or generated with the use of Fintech, with or without a user's notice, may be used or disclosed by the providers/operators of Fintech beyond the users' reasonable expectations, or without the users' meaningful consent.

#### Use of personal data in unfair or discriminatory ways

- As an example, credit scoring algorithms make assessment on individuals' creditworthiness by mixing and analyzing sheer volume of public, private and personal data collected from multiple sources. Together with the personal data generated during the interaction between the individual and the lender or may be inferred by data analytics, there is a risk that the data inputted into the assessment is inaccurate, biased, irrelevant or outdated.

#### Lack of effective means to erase or rectify obsolete or inaccurate personal data

- Regarding Blockchain, a "block" cannot be deleted or amended even if the data stored in it is obsolete or inaccurate. Service providers/operators of Fintech may lack an effective mechanism to erase or rectify the inaccurate, irrelevant or obsolete data in a timely manner.

**Data security risks**

- Electronic payments and open APIs involve transmitting personal data electronically among different organizations and end-users, which increases the risk of data leakage or interception during transmission.

**Obscurity of the identities of data users and data processors**

- The evolving Fintech development would see multiple parties involved in the processing and storage of personal data.

Privacy Commissioner recommended some good practices for providers/operators of Fintech:

**Transparency**

- Be transparent about their privacy policies and practices.
- Adopt plain and user-friendly languages to explain types of personal data to be collected, identify all intended uses of personal data, identify all possible transferees of personal data, explain users' rights and the security measures adopted.

**Minimum personal data collection and retention**

- Collect and retain minimum amount of personal data.
- Obsolete personal data should be deleted or de-identified in a timely manner.

**Clear and genuine options**

- For those personal data that is "good to have" rather than necessary for the operation of the Fintech, customers should be provided with clear and genuine options to withhold.
- For those uses or disclosures of personal data that are not necessary for or directly related to the operation of the Fintech, customers should be provided with clear and genuine options to opt in or opt out.

**Accuracy of data and reliability of algorithms**

- Fintech providers/operators should ensure that the personal data to be used is accurate and impartial.
- Clarification should be sought from the individuals concerned when accuracy of the personal data is in doubt.
- Algorithms of Fintech should be tested for reliability and fairness.

**Security of data**

- Both administrative (e.g. policies and procedures) and technical (e.g. logical access control and encryption) security measures

should be in place to provide adequate safeguards to personal data in transit and storage. Procedures in relation to handling of data breach incidents should be developed.

**Monitor data processors**

- Adopt contractual and/or other means (e.g. field audit) to govern the data processors.
- Fintech providers/operators should be clear about the locations where their data processors store and/or process the personal data.

**Privacy Impact Assessment (PIA) and Privacy by Design**

- At or before the development stage of a Fintech, the providers/operators should conduct a PIA to identify and properly address all potential privacy risks in the entire data processing life cycle of the Fintech.
- Adopt privacy friendly design and at the outset, default settings.

Privacy Commissioner reiterated that accountability and data ethics are, in addition to fair enforcement of the law, essential solutions to tackle the privacy challenges. In view of the business model and technological development vis-a-vis legislation and regulatory reform, and increasing public expectation, data ethics can effectively be the bridge between the two.

Privacy Commissioner stated that the Ethical Accountability Framework and the concept of data ethics and stewardship in the development are beneficial to Fintech applications. The Data Stewardship Values recommended for organizations when carrying out advanced data processing activities, namely respectful, beneficial and fair, can effectively help Fintech providers/operators address the privacy concerns and enhance customer trust.

In the presentation, the Privacy Commissioner also stressed that the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) will continue to strengthen its roles as Enforcer, Educator and Facilitator. While upholding the principle of fair enforcement, the PCPD would also engage and incentivise organizations by educating and assisting businesses to set up accountability programs within their organizations and providing guidance to businesses to cultivate a privacy-friendly culture.

The PCPD has recently issued an information leaflet on Fintech, aiming to introduce some common applications of Fintech with privacy implications, explain the privacy risks involved and provide tips to consumers for protecting their personal data privacy when using Fintech, and at the same time recommend good practices to operators of Fintech for addressing the said



privacy risks. The information leaflet is available on the PCPD's website: [pcpd.org.hk/english/resources\\_centre/publications/files/fintech.pdf](http://pcpd.org.hk/english/resources_centre/publications/files/fintech.pdf)

### 香港个人资料私隐专员发表题为「在数码世代使用个人资料」的演讲重点

香港个人资料私隐专员(私隐专员)黄继儿于2019年4月1日在香港金融管理局和香港银行公会合办研讨会上向银行界发表题为「在数码世代使用个人资料」的演讲。演讲的要点摘要如下:

私隐专员提及金融科技的迅速发展,其应用既促进金融服务的创新,亦改变了金融业界的营运。私隐专员认同金融科技正渗透到大众日常生活的多个范畴。同时,私隐专员亦提醒,金融科技(例如虚拟银行业务、开放应用程序介面等)亦带来私隐风险,并列举其中部分:

#### 没有通知用户或取得真正的同意下收集和使用其个人资料

- 利用金融科技所收集或衍生的个人资料,无论用户是否已获通知,有可能在超出用户的合理期望,又或未取得用户真正的同意下,被金融科技供应商/营运商使用或披露。

#### 以不公平或歧视的方式使用个人资料

- 举例来说,信贷评分演算是透过结集及分析大量来自不同来源(包括公营部门、私营机构以至个人)的资料来评估个别人士的信贷能力。这些结合个人与信贷提供者的互动所衍生的资料,又或透过数据分析所推测的资料,利用在评估时作为输入的数据有可能潜在不准确、偏颇、不相干或过时的风险。

#### 缺乏有效删除、纠正过时或不准确个人资料的途径

- 在区块链中,即使所储存数据属过时或不准确,当中的「区块」是不能删除或修改。金融科技的服务供应商/营运商可能缺乏有效的机制以适时删除或纠正不准确、不相干或过时的数据。

#### 数据安全的风险

- 电子支付和开放应用程序介面涉及不同机构和最终用户之间以电子方式传输个人资料,在传输过程中会增加资料外洩或数据被截取的风险。

#### 资料使用者及资料处理者身份模糊不清

- 正在发展进程中的金融科技于处理及储存个人资料时,会涉及不同机构及人士。

私隐专员建议金融科技供应商/营运商采用良好的行事方式:

#### 透明度

- 私隐政策和措施应具透明度。
- 应以浅白易懂的语言,解释所收集的个人资料种类、拟将个人资料用于甚么用途、可能将个人资料转移予的人士、使用者就其个人资料可享有的权利以及所采取的保安措施。

#### 收集及保留最少的个人资料

- 应收集和保留最少数量的个人资料。
- 适时删除过时的个人资料或将个人资料去识别化。

#### 清晰及真正的选择

- 就聊胜于无但并非操作金融科技所必需的个人资料而言,顾客应获清晰及真正的选择权,自行决定是否拒绝提供该些资料。
- 就无需要或与操作金融科技无直接关系的个人资料使用或披露而言,顾客应获清晰及真正的选择,自行决定是否接受或拒绝提供该些资料。

#### 数据准确度和算法可靠度

- 金融科技的供应商应确保所用的个人资料准确及公正。
- 如对个人资料的准确性有怀疑,应与有关人士澄清。
- 对金融科技的算法的可靠及公平程度应进行测试。

#### 资料安全

- 应制定行政性(例如政策及程序)及技术性(例如逻辑存取控制及加密)保安措施,为传输及储存中的个人资料提供足够的保障。同时应就资料外洩事故订立处理程序。

#### 资料处理者

- 采取合约及/或以其他方式(例如实地审核)以管理资料处理者。
- 金融科技的供应商/营运者应清楚知道其资料处理者储存/或处理个人资料的地点。

#### 私隐影响评估及「贯彻私隐的设计」

- 在金融科技的开发期间或之前,供应商/营运商应进行私隐影响评估,以识别及妥善处理在整个资料处理流程中的潜在私隐风险
- 采取尊重私隐的设计及预设设定

私隐专员重申, 除公平执法外, 问责与数据伦理道德是应对私隐挑战的重要解决方案。面对商业模式及科技发展与相关的立法和监管改革, 以及公众对私隐与日俱增的期望, 数据伦理道德能有效成为两者之间的桥樑。

私隐专员表示, 道德问责框架、数据伦理道德和数据管理的概念有利于金融科技的应用。在进行高阶数据处理活动时, 机构采用数据管理价值(即尊重、互惠和公平), 能有效帮助金融科技的供应商/营运商解决当中引起的私隐关注并增强客户信任。

在演讲中, 私隐专员亦强调个人资料私隐专员公署(公署)将继续加强其作为执法者、教育者及促进者的角色。公署坚持公平执法之余, 亦会透过教育及提供协助的方式, 推动及鼓励机构建立自己一套具问责性的系统, 并向机构提供指引, 协助他们培育尊重私隐的文化。

公署最近发出了金融科技的资料单张, 旨在介绍一些较常用并对个人私隐有影响的金融科技、解释相关金融科技的私隐风险、为消费者提供实用的提示, 让他们在使用金融科技时可保护自己的个人资料私隐, 及向金融科技供应商/营运者建议良好的行事方式, 以应对金融科技带来的私隐风险。有关资料单张载于公署网站: [pcpd.org.hk/sc\\_chi/resources\\_centre/publications/files/fintech.pdf](http://pcpd.org.hk/sc_chi/resources_centre/publications/files/fintech.pdf).

Source 來源:

[pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20190407a.html](http://pcpd.org.hk/english/news_events/media_statements/press_20190407a.html)

### **An Insurance Agent Convicted of Using Personal Data in Direct Marketing without Consent Stemming from a Complaint Received by the Office of the Privacy Commissioner for Personal Data, Hong Kong**

On April 3, 2019, an insurance agent (the defendant) was convicted of two charges under the Personal Data (Privacy) Ordinance (the Ordinance) at the Tuen Mun Magistrates' Court.

The case stemmed from a complaint received by the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) in May 2017. The complainant received a WhatsApp message on her mobile number, addressing her by her surname, from the defendant for promoting a saving plan of the insurance company that the defendant worked for. The complainant said that she did not know the defendant and questioned how he obtained her surname and telephone number. The defendant failed to provide a satisfactory reply. The complainant then complained to the PCPD. Having examined the complaint, the Privacy Commissioner for Personal Data (Privacy Commissioner) was of the view

that the defendant had misused the complainant's personal data and referred this case to the Police for criminal investigation.

The first charge relates to the offense of using the personal data of a data subject in direct marketing without taking specified actions and obtaining her consent, in contravention of section 35C of the Ordinance.

Another charge relates to the offense of failing to inform the data subject, when using her personal data in direct marketing for the first time, of her right to request not to use her personal data in direct marketing without charge, in contravention of section 35F of the Ordinance.

The defendant pleaded guilty to both charges and was fined HK\$8,000 in total (HK\$4,000 in respect of each charge).

The Privacy Commissioner said that with all the different ways of direct marketing available nowadays, the Ordinance provides clear guidance for data users to conduct direct marketing properly for effectively promoting businesses. Data users should also adopt the three data ethics values (i.e. respectful, beneficial and fair) in using customers' data so as to meet their expectations alongside the requirements of laws and regulations.

**源于香港个人资料私隐专员公署接获的投诉保险代理人未得同意下使用个人资料作直接促销罪名成立**

2019年4月3日, 一名保险代理人于屯门裁判法院被裁定违反两项《个人资料(私隐)条例》(私隐条例)的罪名成立。

个案源于香港个人资料私隐专员公署(公署)于2017年5月接获的一宗投诉。投诉人的手提电话收到该名保险代理人发出的一则WhatsApp讯息, 推广其任职的保险公司的储蓄计划, 讯息中有提及投诉人的姓氏。投诉人表示她并不认识被告, 并曾查询被告从何得悉其姓氏及电话号码, 但被告未能提供满意的答复, 投诉人遂向公署作出投诉。经审研该宗投诉后, 香港个人资料私隐专员(私隐专员)认为该名保险代理人有滥用投诉人的个人资料, 遂将个案转介警方作刑事调查。

第一项控罪指被告在使用他人的个人资料作直接促销前, 未有采取指明行动通知资料当事人及取得其同意, 违反了《私隐条例》第35C条。

第二项控罪指被告在首次使用他人的个人资料作直接促销时, 未有告知对方有权要求被告在不向其收费的情况下, 停止使用他的个人资料, 违反了《私隐条例》第35F条。

该名保险代理人承认上述两项控罪，每项控罪分别被判罚款 4,000 元，共被判罚款 8,000 元。

私隐专员表示：现今直销方式种类繁多，《私隐条例》为资料使用者提供清晰指引，掌握如何在有效推广业务之余能直销有道。资料使用者亦应以尊重、互惠和公平的数据道德价值使用客户的个人资料，以符合客户的期望及相关法例和监管的要求，达至双赢局面。

Source 來源:

[pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20190403.html](http://pcpd.org.hk/english/news_events/media_statements/press_20190403.html)

## dfs

On March 29, 2019, the U.S. Securities and Exchange Commission (SEC) the Securities and Exchange Commission and Financial Conduct Authority (FCA) of the United Kingdom (UK) have reaffirmed their commitment to continue close cooperation and information sharing in the event of the UK's withdrawal from the European Union (EU).

The SEC and the FCA signed two updated Memoranda of Understanding (MOUs) to ensure the continued ability to cooperate and consult with each other regarding the effective and efficient oversight of regulated entities across national borders.

The first MOU, originally signed in 2006, is a comprehensive supervisory arrangement covering regulated entities that operate across the national borders. The MOU was updated to, among other things, expand the scope of covered firms under the MOU to include firms that conduct derivatives, credit rating and derivatives trade repository businesses to reflect (i) post-financial crisis reforms related to derivatives and (ii) the FCA's assumption of responsibility from the European Securities and Markets Authority for overseeing credit rating agencies and trade repositories in the event of the UK's withdrawal from the EU.

The second MOU, which is required under the UK Alternative Investment Fund Managers Regulations, was originally signed in 2013. The MOU provides a framework for supervisory cooperation and exchange of information relating to the supervision of covered entities in the alternative investment fund industry. The updated MOU ensures that investment advisers, fund managers, private funds and other covered entities in the alternative investment fund industry that are regulated by the SEC and the FCA will be able to continue to operate on a cross-border basis without interruption, regardless of the outcome of the UK's withdrawal from the EU.

These MOUs will come into force on the date EU legislation ceases to have direct effect in the United Kingdom.

## 美国证券交易委员会和英国金融行为监管局签署更新的监管合作安排

2019 年 3 月 29 日，美国证券交易委员会（美国证监会）和英国金融行为监管局（英国金管局）重申英国在脱离欧洲联盟（欧盟）之后，双方承诺继续密切合作和信息共享。

美国证监会和英国金管局签署了两份更新的谅解备忘录，以确保双方在跨国界监管实体更具效力和效率方面继续保持合作和协商的能力。

第一份谅解备忘录最初于 2006 年签署，是一项全面的监管安排，涵盖跨国界营运的受监管实体。这份谅解备忘录进行更新（其中包括）扩大谅解备忘录下涵盖公司的范围，包括从事衍生产品、信贷评级及衍生产品交易资料储存库业务的公司，以反映 (i) 与衍生产品有关的金融危机后改革；及 (ii) 在英国脱离欧盟的情况下，英国金管局承担了欧洲证券和市场管理局对监管信用评级机构和交易存储库的责任。

根据《英国另类投资基金经理条例》的要求，第二份谅解备忘录最初于 2013 年签署。有关涉及投资基金行业所涵盖的实体监管，该谅解备忘录为监管合作和信息交流提供了一个框架。更新后的谅解备忘录确保受到美国证监会和英国金管局监管的投资顾问，基金经理，私人基金和另类投资基金行业所涵盖的其它实体能够不间断地继续跨境营运，无论英国脱离欧盟的结果如何。

两份谅解备忘录将在欧盟法律不再对英国产生直接效力之日起生效。

Source 來源:

[sec.gov/news/press-release/2018-47-0](http://sec.gov/news/press-release/2018-47-0)

## U.S. Securities and Exchange Commission Charges Fresenius Medical Care AG & Co KGaA With Foreign Corrupt Practices Act Violations

On March 29, 2019, the U.S. Securities and Exchange Commission (SEC) announced that Fresenius Medical Care AG & Co KGaA (FMC) has agreed to pay more than US\$231 million to resolve parallel SEC and U.S. Department of Justice investigations related to its violations of the Foreign Corrupt Practices Act (FCPA) across multiple countries for nearly a decade.

The SEC's order finds that FMC, a German-based worldwide provider of products and services for individuals with chronic kidney failure engaged in

misconduct in Saudi Arabia, Morocco, Angola, Turkey, Spain, China, Serbia, Bosnia, Mexico, and eight countries in the West African region against a backdrop where the company failed to have sufficient internal accounting controls. FMC made improper payments through a variety of schemes, including using sham consulting contracts, falsifying documents, and funneling bribes through a system of third party intermediaries. Despite known red flags of corruption since the early 2000s, FMC devoted insufficient resources to compliance. In some jurisdictions, FMC failed to take basic steps such as providing anti-corruption training or performing due diligence on its agents. In many instances, senior management actively engaged in corruption schemes and directed employees to destroy records of the misconduct. All told FMC paid nearly US\$30 million in bribes to government officials and others to procure business.

FMC agreed to pay US\$147 million in disgorgement and interest to the SEC as well as a criminal fine of US\$84.7 million as part of a non-prosecution agreement announced by the U.S. Justice Department. FMC must retain an independent compliance monitor for two years and self-report its FCPA compliance efforts for the year after the monitor expires.

#### 美国证券交易委员会指控 Fresenius Medical Care AG & Co KGaA 违反《反海外腐败法》

2019年3月29日,美国证券交易委员会(美国证监会)宣布, Fresenius Medical Care AG & Co KGaA (FMC) 已同意支付超过 2.31 亿美元,用于解决美国证监会和美国司法部关于其违反近十年来,跨越多个国家的《反海外腐败法》并行的调查。

美国证监会的命令发现, FMC 是一家总部位于德国的全球性慢性肾功能衰竭患者产品和服务提供商,公司在未有足够的内部会计监控的背景下,于沙特阿拉伯,摩洛哥,安哥拉,土耳其,西班牙,中国,塞尔维亚,波斯尼亚,墨西哥和西非地区的 8 个国家从事不当行为。 FMC 通过各种方案进行了不正当的支付,包括使用虚假的咨询合同,伪造文件,以及通过第三方中介机构的系统进行贿赂。尽管自 21 世纪初以来已经出现了腐败的示警红旗, FMC 投入的资源不足以实现合规。在某些司法管辖区, FMC 未能采取基本措施,例如提供反腐败培训或对其代理人进行尽职调查。在许多情况下,高级管理层积极参与腐败计划,并指示员工销毁不当行为的记录。一致称 FMC 向政府官员和其他人支付近 3000 万美元的贿赂以促进业务。

作为美国司法部宣布非起诉协议的一部分, FMC 同意向美国证监会支付 1.47 亿美元的罚款和利息以及 8470 万美元的刑事罚款。 FMC 必须保留一位独立的合规监督员两

年,并在监管到期后的一年内自行报告其为符合《反海外腐败法》规定所作出的努力。

Source 来源:  
sec.gov/news/press-release/2019-48

#### U.S. Securities and Exchange Commission Charges Former CEO of Silicon Valley Startup with Defrauding Investors

On April 2, 2019, the U.S. Securities and Exchange Commission (SEC) charged the founder and former chief executive of a Silicon Valley startup with defrauding investors in Jumio Inc. (Jumio), a private mobile payments company. The former CEO, Daniel Mattes (Mattes), agreed to pay more than US\$17 million to settle the charges.

According to the SEC's complaint, filed in federal court in California, Mattes grossly overstated Jumio's 2013 and 2014 revenues and then sold shares he held personally to investors in the private, secondary market. The complaint alleges that Mattes made approximately US\$14 million by selling his Jumio shares and hid these sales from Jumio's board. Jumio restated its financial results in 2015, wiping out most of its revenue, and the shares became worthless after it filed for bankruptcy in 2016.

The SEC settled a separate proceeding against Jumio's former CFO Chad Starkey (Starkey) for failing to exercise reasonable care concerning Jumio's financial statements and signing stock transfer agreements that falsely implied that Jumio's board of directors had approved Mattes' sales. Starkey entered into a cooperation agreement to assist the SEC. Starkey, who sold some of his own shares in 2014, will pay approximately US\$420,000 in disgorgement and prejudgment interest.

Without admitting or denying the allegations, Mattes, an Austrian citizen who now heads a private Austria-based company, has agreed to be enjoined from future similar violations and barred from being an officer or director of a publicly traded company in the U.S., and will pay more than US\$16 million in disgorgement and prejudgment interest plus a US\$640,000 penalty. The settlement is subject to court approval.

#### 美国证券交易委员会指控硅谷初创公司前首席执行官欺骗投资者

2019年4月2日,美国证券交易委员会(美国证监会)指控一家硅谷创业公司的创始人和前任首席执行官欺骗私人移动支付公司 Jumio Inc. (Jumio) 的投资者。前首席执

行官 Daniel Mattes (Mattes) 同意支付超过 1700 万美元达成对这些指控的和解。

根据美国证监会在加利福尼亚州联邦法院提起的诉讼, Mattes 严重夸大了 Jumio 2013 年和 2014 年的收入, 然后将他个人持有的股票卖给了私人二级市场的投资者。该起诉书称, Mattes 通过出售他的 Jumio 股票赚取了大约 1400 万美元, 并隐瞒 Jumio 董事会有关的销售事宜。Jumio 重新公布其在 2015 年的财务业绩, 注销大部分收入; 并在 2016 年申请清盘后股票变得毫无价值。

美国证监会针对 Jumio 的前首席财务官 Chad Starkey (Starkey) 单独提起诉讼, 因为他没有对 Jumio 的财务报表采取合理谨慎的态度, 并签署虚假的股票转让协议暗示 Jumio 的董事会已批准 Mattes 的出售。Starkey 签订了合作协议协助美国证监会。Starkey 于 2014 年出售其部分股票, 将支付约 420,000 美元的不法所得和判决前利息。

在没有承认或否认这些指控的情况下, 现在担任奥地利私人公司负责人的奥地利公民 Mattes 已经同意终止未来类似的违规行为, 并被禁止成为美国上市公司的高级职员或董事。支付超过 1,600 万美元的不法所得和判决前利息以及 640,000 美元的罚款。该和解协议需经法院批准。

Source 来源:  
[sec.gov/news/press-release/2019-50](https://sec.gov/news/press-release/2019-50)

### **Strategic Hub for Innovation and Financial Technology of U.S. Securities and Exchange Commission Publishes Framework for “Investment Contract” Analysis of Digital Assets**

On April 3, 2019, the Strategic Hub for Innovation and Financial Technology (FinHub) of U.S. Securities and Exchange Commission (SEC) is publishing a framework for analyzing whether a digital asset is offered and sold as an investment contract (Analysis), and, therefore, is a security. The Analysis is available at SEC's website: [sec.gov/files/dlt-framework.pdf](https://sec.gov/files/dlt-framework.pdf).

The framework is not intended to be an exhaustive overview of the law, but rather, an analytical tool to help market participants assess whether the federal securities laws apply to the offer, sale, or resale of a particular digital asset. It is not a rule, regulation, or statement of the SEC, and the SEC has neither approved nor disapproved its content.

As financial technologies, methods of capital formation, and market structures continue to evolve, market participants should be aware that they may be conducting activities that fall within the SEC's jurisdiction. Market participants are encouraged to review all the materials published on FinHub.

### **美国证券交易委员会的创新和金融科技战略中心发布数字资产的“投资合同”分析框架**

2019 年 4 月 3 日, 美国证券交易委员会 (美国证监会) 的创新和金融科技战略中心 (FinHub) 发布了一个框架, 用于分析数字资产是否作为招募和出售投资合同 (该分析); 因而是一种证券。该分析载于美国证监会的网站: [sec.gov/files/dlt-framework.pdf](https://sec.gov/files/dlt-framework.pdf)。

该框架并非旨在对法律进行详尽的概述, 而是一种帮助市场参与者评估联邦证券法是否适用于特定数字资产的招募, 销售或转售的分析工具。它不是美国证监会的规则, 法规或声明; 以及美国证监会既未同意也未否意其内容。

随着金融科技, 资本形成方法和市场结构的不断发展, 市场参与者应该意识到其可能正在开展属于美国证监会管辖范围内的活动。鼓励市场参与者反思 FinHub 上发布的所有材料。

Source 来源:  
[sec.gov/news/public-statement/statement-framework-investment-contract-analysis-digital-assets](https://sec.gov/news/public-statement/statement-framework-investment-contract-analysis-digital-assets)

### **U.S. Securities and Exchange Commission Charges Transportation Company Executives with Accounting Fraud**

On April 3, 2019, the U.S. Securities and Exchange Commission (SEC) charged the former CFO and two former employees of a publicly traded transportation company with fraud for manipulating the company's financial results in order to meet earnings targets and projections.

The SEC alleges that Peter Armbruster (Armbruster), the former CFO of Roadrunner Transportation Systems Inc. (Roadrunner), hid incurred expenses by improperly deferring and spreading them across multiple quarters to minimize their impact on Roadrunner's net earnings. Armbruster then allegedly manipulated certain reductions to liabilities, creating an income “cushion” that could be accessed in future quarters to offset expenses. The SEC further alleges that Armbruster as well as Bret Naggs (Naggs) and Mark Wogsland (Wogsland), former controllers of Roadrunner's Truckload segment, identified and failed to write-off millions of dollars in overvalued assets and overstated receivables at one of Roadrunner's operating companies. According to the SEC's complaint, Armbruster, Naggs, and Wogsland also misled Roadrunner's outside auditor about these misstated accounts, and as a result Roadrunner materially misstated its operating income, net income, and

earnings per share in its annual, quarterly and current reports filed with the SEC.

The SEC's complaint alleges that Armbruster, Naggs, and Wogsland violated the antifraud and other accounting-related provisions of the federal securities laws. The complaint seeks permanent injunctions, penalties, and officer-and-director bars against all defendants, disgorgement plus interest from Wogsland, and clawback bonuses and other incentive-related compensation paid to Armbruster while the alleged fraud was taking place.

#### 美国证券交易委员会指控运输公司管理人员会计欺诈

2019年4月3日,美国证券交易委员会(美国证监会)指控一家上市运输公司的前首席财务官和两名前雇员操纵公司的财务业绩进行欺诈,以满足盈利目标和预测。

美国证监会声称,Roadrunner 运输系统公司(Roadrunner)的前首席财务官 Peter Armbruster (Armbruster) 通过不当地推迟和分散支出到多个季度来隐瞒开支,以尽量减少对 Roadrunner 净收益的影响。据称,Armbruster 创造一个可以在未来几个季度获得的“缓冲”收入以抵消开支,对若干债务的削减进行了操纵。美国证监会进一步声称,Armbruster 以及 Roadrunner 卡车部门的前管理人员 Bret Naggs (Naggs) 和 Mark Wogsland (Wogsland),对 Roadrunner 的一家营运中的公司,发现而没有注销数百万美元的高估资产和夸大的应收账款。根据美国证监会的起诉书,Armbruster, Naggs 和 Wogsland 还误导 Roadrunner 的外部审计师关于这些错误账户,因此 Roadrunner 在其提交的年度、季度和当前报告中错误地记录其营业收入,净收入和每股收益。

美国证监会的起诉书称,Armbruster, Naggs 和 Wogsland 违反了联邦证券法的反欺诈和其他会计相关规定。该起诉书寻求针对所有被告的永久禁制令,罚款和禁止担任高级职员和董事,Wogsland 支付不法所得和利息,以及在涉嫌欺诈行为期间向 Armbruster 支付的回拨奖金和其他与激励相关的奖金。

Source 来源:

[sec.gov/news/press-release/2019-51](https://www.sec.gov/news/press-release/2019-51)

#### U.S. Securities and Exchange Commission Charges Former SeaWorld Associate Inc. General Counsel with Insider Trading

On April 9, 2019, the U.S. Securities and Exchange Commission (SEC) charged a former senior lawyer at SeaWorld Entertainment Inc. (SeaWorld) with insider trading based on nonpublic information that the company's revenue would be better than anticipated for the second quarter of 2018.

The SEC alleges that Paul B. Powers (Powers) had early access to key revenue information as the company's associate general counsel and assistant secretary, and he purchased 18,000 shares of SeaWorld stock the day after he received a confidential draft of the 2018 second quarter earnings release that detailed a strong financial performance by the company after a lengthy period of decline. According to the SEC's complaint, Powers immediately sold his SeaWorld shares for approximately US\$65,000 in illicit profits after the company announced its positive earnings and the company's stock price increased by 17 percent.

The SEC's complaint charges Powers with fraud. Powers has consented to a permanent injunction with the amounts of disgorgement and penalties, if any, to be decided by the court. The settlement is subject to court approval.

In a parallel action, the U.S. Department of Justice announced criminal charges against Powers arising out of the same conduct.

#### 美国证券交易委员会指控前 SeaWorld Associate Inc. 首席法律顾问内幕交易

2019年4月9日,美国证券交易委员会(美国证监会)指控 SeaWorld Entertainment Inc. (SeaWorld) 的前高级律师根据非公开信息;即该公司的收入会比 2018 年第二季度的预期更好,进行内幕交易。

美国证监会声称,Paul B. Powers (Powers) 作为公司的副首席法律顾问和助理秘书提前获得了关键的收入信息,他在收到 2018 年第二季度业绩公布;详述经历长时间的下滑后,该公司的财务表现强劲的机密草稿后的第二天购买了 18,000 股 SeaWorld 股票。根据美国证监会的起诉书,在公司宣布其正面盈利和公司股价上涨 17%后,Powers 立即出售其 SeaWorld 股票获得非法利润约 65,000 美元。

美国证监会的起诉书指控 Powers 欺诈。Powers 已同意永久禁制令并由法院决定的非法所得和罚款(如有)。和解需经法院批准。

在一项平行诉讼中,美国司法部宣布对 Powers 因同一行为提起刑事指控。

Source 来源:

[sec.gov/news/press-release/2019-53](https://www.sec.gov/news/press-release/2019-53)

#### U.S. Securities and Exchange Commission Brings Actions Against Fifteen Unregistered Brokers for Their Participation in an Illegal Offering of Microcap Securities

On April 9, 2019, the U.S. Securities and Exchange Commission (SEC) charged fifteen individuals with acting as unregistered brokers or aiding-and-abetting such activity in connection with Intertech Solutions, Inc.'s fraudulent and unregistered securities offerings.

Without admitting or denying the SEC's allegations, eleven of the defendants have agreed to the entry of final judgments that enjoin them from violating the relevant provisions of the Securities Exchange Act and the Securities Act, enjoin them from future solicitation of the purchase or sale of securities, impose penny stock bars, and order them to pay disgorgement of ill-gotten gains and civil monetary penalties. These settlements are subject to court approval.

#### 美国证券交易委员会对 15 名未注册经纪人参与非法发行微型公司股票提起诉讼

2019 年 4 月 9 日, 美国证券交易委员会 (美国证监会) 指控 15 名人士为未注册的经纪人或协助和教唆与 Intertech Solutions, Inc. 的欺诈和发售未注册证券产品有关的活动。

在不承认或否认美国证监会的指控情况下, 11 名被告同意接受最终判决, 责令他们不得违反《证券交易法》和《证券法》的有关规定, 禁止他们未来招揽购买或出售证券, 施加细价股票禁令, 并命令他们支付非法所得和民事罚款。这些和解协议需经法院批准。

Source 来源:  
[sec.gov/litigation/litreleases/2019/lr24446.htm](http://sec.gov/litigation/litreleases/2019/lr24446.htm)

#### European Commission and Monetary Authority of Singapore Decide to Strengthen Cross-border Derivatives Trading

On April 1, 2019, the European Commission has recognized a number of Singapore trading venues authorized by the Monetary Authority of Singapore (MAS) as eligible for compliance with the European Union (EU) trading obligation for derivatives. This decision will allow EU counterparties, essentially EU investment banks that operate as swap dealers in Asia, to comply with their EU trading obligation under the Markets in Financial Instruments Regulation and in line with the G20 reforms for standardized derivatives when executing derivatives transactions with counterparties in Singapore.

Concurrently, MAS has adopted regulations to exempt certain EU Multilateral Trading Facilities and Organized Trading Facilities from MAS' markets licensing requirements. Singapore participants can trade with EU counterparties on such EU trading venues in compliance with Singapore's derivative trading obligations.

The MAS said that the decisions adopted will strengthen cross-border trading, enabling businesses in the EU and Singapore to access deeper pools of liquidity and hedge risks more efficiently.

#### 欧洲委员会和新加坡金融管理局落实加强跨境衍生产品交易

2019 年 4 月 1 日, 欧盟委员会已经认可新加坡金融管理局 (新金局) 授权的若干新加坡交易场所符合欧洲联盟 (欧盟) 衍生产品交易义务资格。该决定将允许欧盟交易对手 (主要是作为亚洲掉期交易商的欧盟投资银行) 遵守《欧盟金融工具市场规例》的欧盟交易义务, 并在与新加坡交易对手进行衍生产品交易时, 符合 20 国集团标准化衍生产品的改革。

同时, 新金局已通过法规, 豁免某些欧盟多边贸易设施和有组织交易设施免受新金局市场许可要求的限制。新加坡参与者可以根据新加坡的衍生产品交易义务在欧盟交易场所与欧盟交易对手进行交易。

新金局表示: 所采取的决策将加强跨境交易, 使欧盟和新加坡的企业能够更有效地获得更深层次的流动性和对冲风险。

Source 来源:  
[mas.gov.sg/News-and-Publications/Media-Releases/2019/Concurrent-adoption-of-equivalence-decision-for-certain-derivatives-trading-venues.aspx](http://mas.gov.sg/News-and-Publications/Media-Releases/2019/Concurrent-adoption-of-equivalence-decision-for-certain-derivatives-trading-venues.aspx)

#### Cambodia and Singapore Strengthen Cooperation in FinTech Innovation

On April 4, 2019, the Monetary Authority of Singapore and the National Bank of Cambodia signed a Memorandum of Understanding (MoU) to strengthen cooperation in FinTech innovation between both countries.

Under the MoU, both countries will share information on emerging market trends and developments in FinTech, as well as regulatory issues pertaining to innovation in financial services. The two authorities will work together to conduct joint training sessions to share expertise to foster cross-border cooperation.

#### 柬埔寨和新加坡加强金融科技创新的合作

2019 年 4 月 4 日, 新加坡金融管理局和柬埔寨国家银行签署了一份谅解备忘录, 以加强两国之间金融科技创新的合作。

根据谅解备忘录, 两国将分享有关新兴市场趋势和金融科技发展的信息, 以及与金融服务创新相关的监管问题。两

个当局将共同开展联合培训课程, 分享专业知识, 促进跨境合作。

Source 来源:

[mas.gov.sg/News-and-Publications/Media-Releases/2019/Cambodia-and-Singapore-strengthen-cooperation-in-FinTech-Innovation.aspx](https://mas.gov.sg/News-and-Publications/Media-Releases/2019/Cambodia-and-Singapore-strengthen-cooperation-in-FinTech-Innovation.aspx)

### **Financial Conduct Authority of the United Kingdom Fines Goldman Sachs International £34.3 million for Transaction Reporting Failures**

On March 28, 2019, Goldman Sachs International (GSI) has been fined £34,344,700 by the Financial Conduct Authority (FCA) of the United Kingdom for failing to provide accurate and timely reporting relating to 220.2 million transaction reports between November 2007 and March 2017.

GSI failed to ensure it provided complete, accurate and timely information in relation to approximately 213.6m reportable transactions. It also erroneously reported 6.6m transactions to the FCA, which were not, in fact, reportable. Altogether, over a period of 9 and a half years, GSI made 220.2m errors in its transaction reporting, breaching FCA rules.

The FCA also found that GSI failed to take reasonable care to organize and control its affairs responsibly and effectively in respect of its transaction reporting. These failings related to aspects of GSI's change management processes, its maintenance of the counterparty reference data used in its reporting and how it tested whether all the transactions it reported to the FCA were accurate and complete.

GSI agreed to resolve the case and so qualified for a 30% discount in the overall penalty. Without this discount, the FCA would have imposed a financial penalty of £49,063,900.

### **英国金融行为监管局对高盛国际的交易报告失误罚款 3430 万英镑**

2019 年 3 月 28 日, 高盛国际 (高盛) 因在 2007 年 11 月至 2017 年 3 月期间未能准确并及时地报告 2.220 亿笔交易而被英国金融行为监管局 (英国金管局) 罚款 34,344,700 英镑。

高盛未能确保其提供有关约 2.136 亿笔应报告交易的完整、准确和及时的信息。它还错误地向英国金管局报告了 660 万笔交易, 事实上这些交易并非需要作出报告。总而言之, 在 9 年半的时间里, 高盛在交易报告中出现了 2.220 亿笔失误, 因而违反了英国金管局规则。

英国金管局还发现, 高盛在处理其交易报告时没有采取合理谨慎的态度, 负责任地和有效地组织和监控其事务。这些失误涉及各个方面; 包括高盛变更管理流程, 其维护报告中使用的交易对手参考数据以及其如何测试提交给英国金管局的所有交易报告是否准确和完整。

高盛同意解决此案件, 因此有资格获得整体罚款 30% 的折扣。如果没有这个折扣, 英国金管局会处以 49,063,900 英镑的罚款。

Source 来源:

[www.fca.org.uk/news/press-releases/fca-fines-goldman-sachs-international-transaction-reporting-failures](https://www.fca.org.uk/news/press-releases/fca-fines-goldman-sachs-international-transaction-reporting-failures)

### **Financial Conduct Authority of the United Kingdom Confirms Final Rules for Firms in the Event of a No-deal Brexit**

On March 29, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) has published its final instruments and guidance that will apply in the event the UK leaves the European Union (EU) without a deal or an implementation period.

The final instruments are largely unchanged from the near-final versions, which were published in February. The most significant change is that the instruments now commence on 'exit day', rather than 11pm on March 29. This change reflects the decision made at the European Council on March 21, as well as the changes made by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019.

The FCA has also published the majority of its final transitional directions and guidance for using the transitional power. The FCA has identified three additional areas where it has made amendments to the near-final directions published in February.

These changes relate to:

- UK managers of European Economic Area (EEA) UCITS funds;
- the application of the Client Assets sourcebook to activities carried on from an EEA branch; and
- the distance marketing provisions.

The FCA will publish information about technical standards under EU legislation on capital requirements, banking resolution and financial conglomerates later once the Prudential Regulation Authority have published similar information.

The FCA has also confirmed it has extended the notification window for firms who wish to enter the Temporary permissions regime until the end of April 11, 2019.



## 英国金融行为监管局确认在没有退出协议脱离欧洲联盟的情况下的公司最终规则

2019年3月29日,英国金融行为监管局(英国金管局)公布了其最终文件和指引,适用于英国在没有退出协议或没有缓冲期的情况下脱离欧洲联盟(欧盟)。

最终的文件与今年2月发布的接近最终版本基本没有差别。最重要的变更是,这些文件现在于“退出日”开始生效,而不是在3月29日晚上11点。这一变化反映了3月21日欧洲理事会的决定以及《2018年欧盟(退出)法案2019年(退出日)(修订)条例》所作出的变更。

英国金管局还公布了其最终过渡指示和使用过渡权力指引的大部分内容。英国金管局对今年2月份发布的接近最终指示进行修改,已提出了额外三个范畴。

这些变更涉及:

- 欧盟经济区可转让证券集合投资计划基金的英国基金经理;
- 客户资产原始资料手册应用于欧洲经济区分支机构开展的活动;及
- 远程营销规定。

一旦英国审慎监管局发布有关的信息,英国金管局将在稍后公布有关资本要求,银行业决议和金融集团的欧盟法律下的技术标准信息。

英国金管局还证实,已经延长了希望进入临时许可制度的公司的通知窗口,直到2019年4月11日结束。

Source 来源:

[www.fca.org.uk/news/press-releases/brexit-fca-confirms-final-rules-firms](http://www.fca.org.uk/news/press-releases/brexit-fca-confirms-final-rules-firms)

## Financial Conduct Authority of United Kingdom Confirms Permanent Ban on the Sale of Binary Options to Retail Consumers

On March 29, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) is confirming all firms acting in or from the UK are prohibited from selling, marketing or distributing binary options to retail consumers.

The FCA's rules are in substance the same as the European Securities and Markets Authority's (ESMA) existing, EU-wide temporary restrictions on binary options. However, the FCA is also applying its rules to so-called "securitized binary options" that were excluded from ESMA's prohibition.

The FCA estimates the permanent ban on binary options could save retail consumers up to £17m per year and may reduce the risk of fraud by unauthorized entities claiming to offer these products.

The FCA's rules are permanent and come into force on April 2, 2019.

## 英国金融行为监管局确认永久禁止向零售消费者销售二元期权

2019年3月29日,英国金融行为监管局(英国金管局)确认所有在英国或来自英国的公司都被禁止向零售消费者销售,营销或分销二元期权。

英国金管局的规则实质上与欧洲证券和市场管理局(ESMA)现行在欧盟范围内对二元期权的临时限制相同。然而,英国金管局也将其规则应用于被排除在ESMA禁令之外的所谓“证券化二元期权”。

英国金管局估计永久禁止二元期权可以每年为零售消费者节省高达1700万英镑,并可以降低声称提供这些产品的未授权实体的欺诈风险。

英国金管局的规则是永久性的,并于2019年4月2日生效。

Source 来源:

[www.fca.org.uk/news/statements/fca-confirms-permanent-ban-sale-binary-options-retail-consumers](http://www.fca.org.uk/news/statements/fca-confirms-permanent-ban-sale-binary-options-retail-consumers)

## Financial Conduct Authority of United Kingdom Begins Regulating Claims Management Companies

On April 1, 2019, the Financial Conduct Authority (FCA) of the United Kingdom begins regulating the claims management industry. All claims management companies (CMCs) in England, Scotland and Wales will now have to demonstrate they meet and maintain minimum standards set by the FCA. All existing and new CMCs will need to apply to the FCA for authorization.

New FCA requirements will benefit consumers by ensuring that CMCs give people the information they need to make informed decisions. The new FCA requirements include:

- due diligence on lead generation and rules to prevent firms encouraging customers to make fraudulent, frivolous or vexatious claims or claims which have no good basis;
- providing clear, upfront information to customers about the fees they charge and the services they will provide;
- giving customers a summary document about

the services they will provide before the customer signs a contract;

- telling customers about free alternatives such as the Financial Ombudsman Service or the Financial Services Compensation Scheme, including in advertising;
- recording and retaining customer telephone calls for a year after their final contact with a customer will reduce the chances of high pressure sales techniques and support robust resolution of customer complaints.

### 英国金融行为监管局开始规管索赔管理公司

2019年4月1日,英国金融行为监管局(英国金管局)开始规管索赔管理行业。英格兰,苏格兰和威尔士的所有索赔管理公司现在都必须证明其符合并维持英国金管局规定的最低标准。所有现有和新的索赔管理公司都需要向英国金管局申请授权。

新的英国金管局要求将确保索赔管理公司为民众提供做出明智决策所需的信息,从而使消费者受益。新的英国金管局规定包括:

- 潜在客户的尽职调查和规则,以防止公司鼓励客户做出欺诈,琐碎无聊或无理缠扰的索赔或没有良好基础的索赔;
- 向客户提供有关其收取的费用及将提供服务的清晰和前期信息;
- 在客户签订合同之前向客户提供有关其将提供的服务的摘要文档;
- 告知客户(包括在广告中)有关免费替代方案,例如金融申诉专员服务计划或金融服务补偿计划;
- 在与客户最终联系之后,记录和保留客户电话沟通信息一年;这将减少高压式的销售手法的可能性并支持更有力解决客户的申诉。

Source 来源:

[www.fca.org.uk/news/press-releases/claims-management-companies-enter-fca-regulation-today](http://www.fca.org.uk/news/press-releases/claims-management-companies-enter-fca-regulation-today)

### Highlights of Speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy at Financial Conduct Authority of United Kingdom at London Stock Exchange on Effective Stewardship

In a speech at the London Stock Exchange held on April 3, 2019 by Edwin Schooling Latter, Director of Markets and Wholesale Policy at the Financial Conduct Authority (FCA) of the United Kingdom outlined the issues of effective stewardship. The key issues of the speech are summarized of the following:

The FCA recently published a joint FCA-Financial Reporting Council (FRC) discussion paper on

stewardship, and a consultation paper on implementing the Revised Shareholder Rights Directive. There seems now to be unprecedented interest in stewardship, perhaps driven in particular by increasing interest in how companies and investment firms manage environmental, social and governance (ESG) risks.

### What the FCA mean by stewardship

Effective stewardship requires asset owners and asset managers to have a clear purpose that has clients' and beneficiaries' interests at its heart.

This purpose should drive investment objectives and investment strategy, and flow through to how institutional investors engage with issuers, exercise oversight and challenge, and hold issuers to account. Investors that take a long-term perspective will have an interest in how non-financial developments will impact financial returns over time. Such investors can seek to influence a company's strategy through engagement and challenge, rather than solely through their buy and sell decisions. There is evidence that investor demand for stewardship is increasing, especially in relation to ESG.

### Why stewardship is important to the FCA

Effective stewardship is important to achieving the FCA's objectives – markets that work well, consumer protection, market integrity and competition that works in the interests of consumers. In their view, long-term thinking and shareholder engagement helps markets function well.

Directing investment towards sustainable value creation should generate higher returns and more positive societal outcomes, benefiting consumers both as investors and as stakeholders in wider society. Over time the FCA hope that a proportionate and balanced regulatory framework, in conjunction with the FRC's Stewardship Code and the right set of incentives, will help to create the conditions for a market for stewardship to develop.

### Why stewardship does not always happen

The overall evidence on whether and how stewardship is happening is mixed. The recent Independent Review of the FRC criticized what it saw as a process-oriented approach to submissions under the Stewardship Code. The review expressed concerns about a lack of evidence of real outcomes and too much "boilerplate reporting". This suggests that current stewardship disclosures may not always be sufficient to distinguish reported stewardship from meaningful stewardship.

### Steps towards effective stewardship in the future

The discussion paper and consultation paper are part of considering what can be done to create the right conditions and incentives for effective stewardship. There are several areas that could be relevant to effective stewardship:

- Meaningful and accessible disclosures on firms' stewardship activities;
- Firms' governance, culture and institutional structures;
- Access to the right information from issuers;
- A supportive regulatory framework.

### 英国金融行为监管局市场及批发政策总监 Edwin Schooling Latter 就有效管治在伦敦证券交易所发表演讲重点

英国金融行为监管局 (英国金管局) 市场及批发政策总监 Edwin Schooling Latter 于 2019 年 4 月 3 日在伦敦证券交易所发表演讲, 概述了有效管治的问题。演讲的重点概要载述如下:

英国金管局最近发布英国金管局-财务报告委员会(FRC)关于管治的联合讨论文件, 以及关于实施经修订的《股东权利指令》的咨询文件。现在似乎对管治产生前所未有的兴趣, 这可能是对公司和投资公司尤其如何管理环境, 社会和治理风险越来越感兴趣所驱动。

#### 英国金管局所认为的管治意义

有效的管治要求资产所有者和资产管理者有明确的目标, 其客户和受益者的利益是其核心。

这一目的应该推动投资目标和投资策略, 并贯穿到机构投资者如何与发行人接触, 进行监督和挑战, 并让发行人承担责任。从长远角度来看, 投资者会关注非金融领域的发展将如何影响财务回报。这些投资者可以通过参与和挑战来寻求影响公司的战略, 而不纯粹是通过其的买卖决策。有证据表明, 投资者对管治的需求正在增加, 特别是在环境, 社会和治理方面。

#### 为什么管治对英国金管局很重要

有效的管治对于实现英国金管局的目标非常重要 – 市场运作良好, 消费者保护, 市场诚信和符合消费者利益的竞争。在其看来, 长远考虑和股东参与有助于市场良好运作。

将投资引向可持续价值创造应产生更高的回报和更积极的社会成果, 惠及消费者作为投资者和更广泛社会的利益相关者。日后, 英国金管局希望建立一个相称且平衡的监管框架, 结合 FRC 的管治守则和正确的激励措施, 将有助管治市场的发展创造条件。

#### 为什么管治并不总是实现

有关管治是否实现以及如何实现的总体证据是参差不齐的。最近的 FRC 独立审查批评按照管治守则中以过程为导向的提交方法。该审查对缺乏实际成果的证据和太多“样板报告”表示担忧。由此可见, 目前的管治披露可能并不总是足以区分报告的管治与有意义的管治。

#### 步向未来的有效管治

讨论文件和咨询文件是考虑如何为有效管治创造适当条件和激励措施的一部分。有几个领域可能与有效的管治有关:

- 公司管治活动作有意义和易于查阅的披露;
- 公司的治理, 文化和制度结构;
- 从发行人处获取正确的信息;
- 需要的配套规管架构。

Source 来源:

[www.fca.org.uk/news/speeches/towards-more-effective-stewardship](http://www.fca.org.uk/news/speeches/towards-more-effective-stewardship)

### Upper Tribunal Publishes Decision on Linear Investments Limited in Relation to Penalty Imposed by Financial Conduct Authority of the United Kingdom

On April 10, 2019, the Upper Tribunal has published its decision on the reference made by Linear Investments Limited (Linear) in relation to the penalty imposed by the Financial Conduct Authority (FCA) of the United Kingdom.

In June 2018, the FCA issued a Decision Notice in relation to Linear's failure to take reasonable care to organize and control its affairs responsibly and effectively to ensure potential instances of market abuse could be detected and reported. The breaches occurred from January 14, 2013 to August 9, 2015.

Linear agreed the matters of fact and liability set out in the Decision Notice. However, it disputed the penalty of £409,300 and appealed the amount to the Upper Tribunal. In its decision, the Upper Tribunal agreed that the appropriate action for the FCA to take was to impose a penalty of £409,300. The Upper Tribunal recognized that Linear's lack of effective monitoring measures was a serious matter and the FCA's penalty was therefore appropriate.

The period within which Linear can apply for permission to appeal the Upper Tribunal's decision expires on April 23, 2019.

## 上级审裁处发布有关英国金融行为监管局处罚 Linear Investments Limited 的裁决

2019 年 4 月 10 日，上级审裁处公布其就 Linear Investments Limited (Linear) 提交与英国金融行为监管局 (英国金管局) 的处罚有关的裁决。

2018 年 6 月，英国金管局发布关于 Linear 未能合理谨慎地组织和负责任地监控其事务并有效地确保可以检测和报告潜在的市场滥用情况的决定通知。违规事件发生在 2013 年 1 月 14 日至 2015 年 8 月 9 日之间。

Linear 同意决定通知中规定的事实和责任事项。但是，其对 409,300 英镑的罚款提出异议，并向上级审裁处提出上诉。上级审裁处在其裁决中同意英国金管局采取处以 409,300 英镑的罚款是适当的行动。上级审裁处认为，Linear 缺乏有效的监督措施是一个严重的问题，而英国金管局的处罚因此是恰当的。

Linear 可就上级审裁处的裁决申请上诉许可的期限将于 2019 年 4 月 23 日到期。

Source 来源:

[fca.org.uk/news/press-releases/upper-tribunal-publishes-decision-on-linear-investments-limited-in-relation-to-penalty-imposed-by-fca](https://www.fca.org.uk/news/press-releases/upper-tribunal-publishes-decision-on-linear-investments-limited-in-relation-to-penalty-imposed-by-fca)

## Financial Conduct Authority of the United Kingdom Publishes Instructions for Accessing and Downloading Its Financial Instruments Transparency System Files

The Financial Conduct Authority (FCA) of the United Kingdom (UK) has built FCA FITRS (Financial Instruments Transparency System) to replace ESMA FITRS in the UK. On April 5, 2019, the FCA published FCA FITRS - Instructions on access and download of full and delta transparency files to enable firms to further their preparations. The Instructions is available on the FCA's website: [fca.org.uk/publication/systems-information/fca-fitrs-instructions.pdf](https://www.fca.org.uk/publication/systems-information/fca-fitrs-instructions.pdf).

FCA FITRS is not yet open to firms for testing; the FCA shall make an announcement when it is.

## 英国金融行为监管局发布访问和下载其金融工具透明度系统文档的说明

英国金融行为监管局(英国金管局)已经建立金融工具透明度系统(FCA FITRS)，以取代英国的ESMA FITRS。英国金管局于2019年4月5日发布FCA FITRS – 关于访问和下载完整和差分透明文档的说明，使企业能够进一步做好准备。相关说明载于英国金管局网站：

[fca.org.uk/publication/systems-information/fca-fitrs-instructions.pdf](https://www.fca.org.uk/publication/systems-information/fca-fitrs-instructions.pdf)。

FCA FITRS 尚未对企业开放测试；英国金管局将在合适时候作出公布。

Source 来源:

[fca.org.uk/news/news-stories/fca-publishes-instructions-accessing-and-downloading-fca-fitrs-files](https://www.fca.org.uk/news/news-stories/fca-publishes-instructions-accessing-and-downloading-fca-fitrs-files)

## Financial Conduct Authority of United Kingdom Warns General Insurance Firms Failing to Consider Value of the Products and Services Provided to Consumers

On April 10, 2019, the Financial Conduct Authority (FCA) of the United Kingdom is warning General Insurance firms about manufacturing, sales and distribution approaches that can lead to customers purchasing inappropriate products, paying excessive prices or receiving poor service.

The FCA is warning the industry that it will not hesitate to intervene with both firms and their senior managers on these bases where it sees a failure to have appropriate regard to the value their ultimate customers receive.

The report setting out the key findings from the FCA's thematic work on the general insurance distribution chain, its expectations of firms and next steps is available on the FCA's website: [fca.org.uk/publication/thematic-reviews/tr19-02.pdf](https://www.fca.org.uk/publication/thematic-reviews/tr19-02.pdf).

The proposed guidance for insurance product manufacturers and distributors is available on the FCA's website: [fca.org.uk/publication/guidance-consultation/gc19-02.pdf](https://www.fca.org.uk/publication/guidance-consultation/gc19-02.pdf).

The FCA expects all firms to review the findings and the expectations set out in the report and accompanying proposed guidance to identify any issues applicable to them, and to act immediately to address these.

## 英国金融行为监管局警告一般保险公司未能考虑向消费者提供的产品和服务的价值

2019 年 4 月 10 日，英国金融行为监管局 (英国金管局) 警告一般保险公司研制，销售和分销方法，可能导致客户购买不适当的产品，支付过高的价格或接受差劣的服务。

英国金管局警告业界，当认为他们未能适当考虑其最终客户所获得的价值，会毫不犹豫地在此基础上干预公司及其高级管理人员。

有关列出英国金管局关于一般保险分销链的主题工作, 其对公司的期望和后续步骤的主要结论的报告载于英国金管局网站: [fca.org.uk/publication/thematic-reviews/tr19-02.pdf](https://www.fca.org.uk/publication/thematic-reviews/tr19-02.pdf)。

有关保险产品研制商和分销商的建议指引载于英国金管局网站: [fca.org.uk/publication/guidance-consultation/gc19-02.pdf](https://www.fca.org.uk/publication/guidance-consultation/gc19-02.pdf)。

英国金管局希望所有公司反思报告中提出的调查结果和期望以及随附的建议指引, 以确定适用于其的任何问题, 并立即采取行动解决这些问题。

Source 来源:

[fca.org.uk/news/press-releases/insurance-firms-failing-consider-value-products-and-services-provided-consumers](https://www.fca.org.uk/news/press-releases/insurance-firms-failing-consider-value-products-and-services-provided-consumers)

### **Financial Conduct Authority of the United Kingdom Fines Standard Chartered Bank £102.2 million for Poor Anti-Money Laundering Controls**

On April 9, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) has fined Standard Chartered Bank (Standard Chartered) £102,163,200 for Anti-Money Laundering breaches in two higher risk areas of its business.

The FCA found significant shortcomings in Standard Chartered's own internal assessments of the adequacy of its AML controls, its approach towards identifying and mitigating material money laundering risks and its escalation of money laundering risks. These failings exposed Standard Chartered to the risk of breaching sanctions and increased the risk of Standard Chartered receiving and/or laundering the proceeds of crime.

Standard Chartered's failings occurred in its UK Correspondent Banking business during the period from November 2010 to July 2013 and in its United Arab Emirates branches during the period from November 2009 to December 2014.

US authorities have also taken action against the Standard Chartered group for significant violations of US sanctions laws and regulations.

Standard Chartered did not dispute the FCA's findings and exercised its right, under the FCA's partly contested case process, to ask the FCA's Regulatory Decisions Committee to assess the appropriate level of sanction. Standard Chartered's agreement to accept the FCA's findings meant it qualified for a 30% discount. Otherwise, the FCA would have imposed a financial penalty of £145,947,500.

### **英国金融行为监管局对渣打银行因反洗钱监控不力罚款 1.022 亿英镑**

2019 年 4 月 9 日, 英国金融行为监管局 (英国金管局) 就渣打银行在其业务的两个较高风险领域违反了反洗钱规定; 处以罚款 102,163,200 英镑。

英国金管局发现渣打银行本身对其反洗钱的监控措施的充足性, 其识别和减轻重大洗钱风险的方法以及其洗钱的升级风险的内部评估存在重大缺陷。这些失误使渣打银行面对违反制裁的风险, 并增加了渣打银行接收和/或洗钱犯罪得益的风险。

渣打银行的失误发生在 2010 年 11 月至 2013 年 7 月期间的英国代理银行业务以及 2009 年 11 月至 2014 年 12 月期间在阿拉伯联合酋长国的分支机构业务。

美国当局还对渣打银行集团严重违反美国的制裁, 法律和法规的行为提起诉讼。

渣打银行没有对英国金管局的调查结果提出异议, 并根据英国金管局部分争议的案件程序行使其权利, 要求英国金管局的监管决策委员会评估适当的处罚水平。渣打银行同意接受英国金管局的调查结果意味着它有资格获得 30% 的罚款减免。否则, 英国金管局会处以罚款 145,947,500 英镑。

Source 来源:

[fca.org.uk/news/press-releases/fca-fines-ubs-ag-276-million-transaction-reporting-failures](https://www.fca.org.uk/news/press-releases/fca-fines-ubs-ag-276-million-transaction-reporting-failures)

### **Shenzhen Stock Exchange Answers Questions from Reporters on the Notice on Adjustment to Transaction Methods for Listed Bonds**

On March 29, 2019, the Shenzhen Stock Exchange (SZSE) released the Notice on Adjustment of Transaction Methods for Listed Bonds (Notice). SZSE spokesman took questions of concern in the market from reporters.

### **The background against which the Notice was published**

Last year, SZSE issued the SZSE Corporate Bond Listing Rules (revised in 2018), specifying that SZSE may adjust the trading mechanism for a listed bond, depending on market conditions and credit status of the bond. The Notice formulated and issued this time further improves the bond risk management system, promotes the stable and sound development of the SZSE bond market, and protects the legitimate rights and interest of investors. For bonds whose credit rating is lower than AA, SZSE will adjust the trading mechanism while they

are listed, allowing Negotiated Block Trading Mechanism only. Adjustment of the trading mechanism of listed bonds corresponds to the risk characteristics of bonds. It shall benefit the market mechanism, protect market liquidity and prevent and resolve bond credit risks

### **The types of bonds that the Notice apply to**

The Notice applies to corporate bonds (including exchangeable corporate bonds) and enterprise bonds that are listed in SZSE market, and that are traded both via centralized bidding and block trading. The Notice is not applicable to convertible corporate bonds issued by listed companies.

### **The differences in transaction methods that will be available to investors after the adjustment of transaction mechanism is triggered**

When an adjustment is triggered, the trading method will be changed from the dual channels of centralized bidding trades and block trades to the single channel of block trades by agreement. Investors may choose declaration by intention, by given prices or by closed deals. The declared bond price range will be 30% higher or lower than the weighted average price of all the closed deal volumes of the previous trading day and the amount or volume of a single trade shall satisfy the minimum volume threshold of block trades set forth by SZSE. Moreover, in consideration of the circumstance that under the original centralized bidding trading, the amount and volume of bonds held by investors may be shorter than the said minimum volume threshold, the Notice introduces a one-off selling mechanism that allows such investors to sell the bonds held all at once.

Furthermore, since the bond credit rating has been adjusted to lower than AA (ex AA), according to the Measures on Investor Suitability Management in the Bond Market of SZSE and other relevant rules, only qualified institutional investors may buy such bonds after the trading mechanism adjustment and other types of investors holding such bonds may choose to sell or continue to hold the bonds.

### **The specific arrangements that are available for implementing the bond trading method adjustment after the Notice is launched**

The Notice was released on March 29, 2019 and will be implemented from this April 4, 2019. The first batch of bonds having their trading mechanism adjusted will be under trading suspension since this April 8, 2019 and will be traded under the method of block trades by agreement since their day of trading resumption. Bond issuers, entrusted managers or other institutions having equal duties shall perform information disclosure and other work according to the Notice. All members and

relevant units shall take measures such as technical system front end control and strictly implement the rules on declaration method, declaration quantity and declaration price stated in the Notice to enhance the management over trading declaration behaviors like independent operation, brokerage and asset management and do well in rule interpretation and education for investors.

### **深圳证券交易所就发布《关于调整债券上市期间交易方式有关事项的通知》答记者问**

2019年3月29日,深圳证券交易所(深交所)正式发布《关于调整债券上市期间交易方式有关事项的通知》(通知)。深交所新闻发言人就市场关心的问题,回答了记者的提问。

#### **《通知》发布的主要背景**

去年底,深交所发布《深圳证券交易所公司债券上市规则(2018年修订)》,明确根据市场情况和债券资信状况的变化,深交所可在债券上市期间动态调整其交易机制。制定并发布《通知》,进一步完善了债券风险管理制度,推进交易所债券市场健康稳定发展,保护投资者合法权益。针对上市债券出现债券信用评级调整为AA级(不含)以下的情形,应调整其上市期间的交易方式,仅允许其采取协议大宗交易方式进行交易。上市债券交易方式调整符合其风险特征,有利于更好发挥市场机制,维护市场流动性,防范化解债券信用风险。

#### **《通知》适用的债券类型**

在深交所上市,且同时采取集中竞价交易和大宗交易方式的公司债券(含可交换公司债券)和企业债券均适用《通知》规定。上市公司发行的可转换公司债券不适用《通知》规定。

#### **债券触发交易机制调整情形后,投资者交易方式将发生的变化**

债券触发交易机制调整情形后,交易方式将由原同时采取集中竞价交易和大宗交易方式,调整为仅采取协议大宗交易方式。投资者可以采用意向申报、定价申报和成交申报方式,债券申报价格范围为前一交易日所有交易的成交量加权平均价的上下30%,且单笔交易数量或交易金额应当符合深交所规定的大宗交易最低限额。同时,考虑到原集中竞价交易方式下,投资者可能持有的债券数量和债券金额低于大宗交易最低限额,《通知》安排了一次性卖出机制,该类投资者可以一次性卖出其所持有的全部债券。

此外,由于债券信用评级已调整为AA级(不含)以下,根据

《深圳证券交易所债券市场投资者适当性管理办法》等规定，债券调整交易机制后仅限合格机构投资者买入，持有该债券的其他类型投资者可以选择卖出或者继续持有。

#### 《通知》发布后，实施债券交易方式调整的具体工作安排

《通知》于2019年3月29日发布，并将于2019年4月4日起实施。首批调整交易方式的债券将于2019年4月8日起停牌，并于复牌之日起调整为仅采取协议大宗交易方式。债券发行人、受托管理人或者具有同等职责的机构应当根据《通知》规定，做好信息披露等相关工作。各会员及相关单位应当采取技术系统前端控制等措施，严格执行《通知》关于申报方式、申报数量和申报价格等规定，加强对自营、经纪、资管等交易申报行为管理，并对投资者做好规则解读和教育工作。

Source 来源:

[szse.cn/English/about/news/szse/t20190401\\_565990.html](http://szse.cn/English/about/news/szse/t20190401_565990.html)

#### Shenzhen Stock Exchange Answers Questions from Reporters on the Business Guidelines for Credit Protection Instruments and Credit Protection Contracts

On April 4, 2019, the Shenzhen Stock Exchange (SZSE) officially issued the Guidelines for Credit Protection Instruments of Shenzhen Stock Exchange (Guidelines) and the Business Guide No. 1 - Credit Protection Contracts of Shenzhen Stock Exchange (Guide). SZSE spokesperson answered questions from reporters on issues of market concern.

#### What is the main content of the Guidelines and the Guide?

In January, SZSE and China Securities Depository and Clearing Corporation Limited jointly published the Pilot Measures on Credit Protection Instruments Management of Shenzhen Stock Exchange and China Securities Depository and Clearing Corporation Limited (Pilot Measures). The Guidelines and the Guide newly issued are supporting rules of the Pilot Measures.

The Guidelines includes the following content. First, for participant management, it clarifies the requirements for contract core traders and receipt creation institutions, the requirements for filing documents, and the filing process. Second, for the contract business, it explains the contract reporting elements, and standard protection rates etc. Third, for the receipt business, it further defines the content requirements of the receipt creation manual, receipt transfer reporting methods and elements, and the relevant arrangements for suspending and resuming the transfer. Fourth, for the settlement arrangement after credit events, it further clarifies determination method of the credit event

decision date, settlement time scheduling, content requirements for the settlement notice, and determination methods for the physical settlement amount and cash settlement amount. Fifth, for information disclosure, it further defines the disclosure arrangements, disclosure requirements on receipt creation, content requirements on the annual reports from receipt creation institutions, and disclosure requirements on major receipt and contract issues. Sixth, for risk control, it explains SZSE's related arrangements for risk control and the supervision and management for market participants.

At the outset of this pilot project, only the credit protection contract business has been launched. The Guide further clarifies the operational procedures of the credit protection contract business from the operational level, including pre-business preparation, business processes, and settlement arrangements and information disclosure after credit events. Besides, a trading confirmation template and reference templates for the credit event notice, public information notice and settlement notice are included. The relevant guidelines for the credit protection receipt business will be released separately according to the time of the business launch.

#### What is the progress of SZSE's credit protection instrument business and the role it has played?

Since last year, SZSE actively promote the credit protection instrument business pilot and issue support tools for private enterprises' bond financing in accordance with the China Securities Regulatory Commission (CSRC)'s arrangements in the Implementation Plan for Support Tools of Private Enterprises' Bond Financing in the Exchange Markets. In the early state of the pilot, the form of credit protection contracts is adopted, with all the reference entities being private enterprises. The contracts and the reference entities' debts are issued simultaneously, which has improved investor activeness in subscription, lowered the financing cost of private enterprises, and delivered positive results. By far, there are 16 closed deals of credit protect contracts in the SZSE market, with the contract scale totaling CNY180 million, which activates a debt financing scale of CNY2.2 billion for private enterprises.

Recently, SZSE introduced the first credit protection contract based on asset-backed securities. On March 15, 2019, JD.com launched on SZSE the "JDD - CITIC Securities No. 7 JD Baitiao Accounts Receivable Creditors' Rights Asset-backed Special Plan" whose issuing scale amounts to CNY1.5 billion (of which the intergrade scales CNY60 million). By selling credit protection contracts to some intergrade investors, CITIC Securities has enhanced such investors' subscription confidence, which boosts the successful launch of the asset-backed special plan.

### Which investors are entitled to participate in the SZSE credit protection contracts?

SZSE applies the investor suitability management measures to the contracting market players and implements layered management. The standard of investor suitability of both contracting trading parties is the same as that of investors of protected debts of entities provided for in the SZSE Bond Market Investor Suitability Management Measures.

As per the layered management standard, contracting market players are categorized as key dealers and other market players. Key dealers could enter into contract with all investors, while other market players could only contract with key dealers. A market player needs to satisfy certain conditions and file an application at SZSE before becoming a key dealer. For securities companies with derivatives business qualifications authorized by CSRC, SZSE shall directly approve their application provided that their application documents are complete.

### What are the issues to pay attention to if a market player wants to participate in the credit protection contracts?

First, a market player needs to conduct the business in accordance with laws and regulations, use a standard agreement template, and comply with the requirements on risk control. Both contracting counterparties may make a supplementary agreement to the transaction confirmation letter and make additional statement and explanation in the supplementary terms, subject to laws and administrative regulations, departmental regulations, standardization provisions, and SZSE business rules. Changes directly made to the transaction confirmation letter are not allowed.

Second, a market player needs to file for record to the SZSE as required in different stages. At the initial stage, the transaction is conducted off-line. After both parties sign a transaction confirmation letter off-line, the key dealer should tender the confirmation letter to SZSE prior to 12:00 on the next trading day after the letter is agreed upon. Besides, in case of early termination of the contract, any credit events, major events or defaults, the contracting market player also need to file for record as required.

Third, a market player needs to comply with the requirements on player management. A market player should meet relevant requirements on investor suitability management and tender an application to SZSE before becoming a key dealer. Registered key dealers who no longer satisfy relevant conditions shall stop relevant business as a key dealer and inform SZSE of the same. A market player who no longer meet the requirements on investor suitability are prohibited from conducting

new transactions but is allowed to perform relevant obligations under existing contracts.

### 深圳证券交易所就发布信用保护工具业务指引和合约业务指南答记者问

2019年4月4日,深圳证券交易所(深交所)正式发布《深圳证券交易所信用保护工具业务指引》(指引)和《深圳证券交易所信用保护工具业务指南第1号-信用保护合约》(指南)。深交所新闻发言人就市场关心的问题,回答了记者的提问。

#### 发布的《指引》和《指南》的主要内容是什么?

深交所前期已联合中国结算发布《深圳证券交易所 中国证券登记结算有限责任公司信用保护工具业务管理试点办法》(试点办法),发布的《指引》和《指南》作为《试点办法》的配套规则。

《指引》具体包括以下内容:一是参与者管理方面,明确了合约核心交易商和凭证创设机构需符合的条件、备案文件要求以及备案流程;二是合约业务方面,细化合约申报要素、标准保护费率等内容;三是凭证业务方面,进一步细化凭证创设说明书内容要求、凭证转让申报方式和申报要素、暂停和恢复转让相关安排等内容;四是信用事件发生后结算安排方面,进一步明确信用事件决定日的确定方式、结算时间安排、结算通知书内容要求、实物结算金额和现金结算金额的确定方式等内容;五是信息披露方面,进一步细化交易所信息披露安排、凭证创设信息披露要求、创设机构年度报告内容要求、凭证及合约重大事项披露要求等内容;六是风险控制方面,进一步细化交易所风险控制和对市场参与者监督管理的相关安排。

试点初期仅推出信用保护合约业务,发布的《指南》从操作层面进一步明确信用保护合约业务各环节操作流程,包括业务开展前准备、业务流程、信用事件发生后结算安排、信息披露等,并附有交易确认书模板、信用事件通知书、公共信息通知书和结算通知书参考模版等。信用保护凭证业务相关指南将根据业务推出时间另行发布。

#### 深交所信用保护工具业务开展情况?发挥了哪些作用?

去年以来,深交所按照中国证监会关于《交易所市场民营企业债券融资支持工具实施方案》的工作部署,积极推进信用保护工具业务试点及民营企业债券融资支持工具落地。前期试点均采用信用保护合约形式,参考实体均为民营企业,合约与参考实体债务同步发行,有效提升了投资者认购的积极性,降低了民营企业融资成本,取得积极效果。截至目前,深市已达成信用保护合约交易16笔,合约



规模合计人民币 1.8 亿元,撬动民营企业债务融资规模合计人民币 22 亿元。

近期,深交所推出深市首单基于资产支持证券的信用保护合约。2019 年 3 月 15 日,京东在深交所发行“京东数科-中信证券 7 号京东白条应收账款债权资产支持专项计划”,发行规模合计人民币 15 亿元,其中中间级发行规模人民币 6000 万元。中信证券通过向部分中间级投资者出售信用保护合约,有效增强中间级投资者认购信心,推动该资产支持专项计划成功发行。

### 哪些投资者可以参与深交所信用保护合约业务?

深交所对合约的市场参与者实行投资者适当性管理制度,并实行分层管理。合约交易双方的投资者适当性与《深圳证券交易所债券市场投资者适当性管理办法》规定的参考实体受保护债务的投资者适当性标准保持一致。

根据分类管理标准,合约市场参与者分为核心交易商和其他市场参与者。核心交易商可以与所有投资者签订合约,其他市场参与者只能与核心交易商签订合约。拟成为核心交易商的市场参与者需符合一定条件并向深交所备案。对于已取得中国证监会信用衍生品业务资格的证券公司,在备案文件齐备的前提下,深交所将直接予以备案。

### 市场参与者开展信用保护合约业务有哪些需要特别关注的事项?

一是依法合规开展业务,使用标准化协议文本,遵守相关风控指标要求。合约交易双方需对于交易确认书内容做出补充约定的,可在“补充条款”中进行说明,但不得违反法律、行政法规、部门规章、规范性文件以及深交所业务规则,也不得直接修改交易确认书模板。

二是做好各业务环节的报备工作。初期合约业务通过线下开展,交易双方通过线下订立交易确认书,核心交易商应在合约达成后的次一交易日 12:00 前将交易确认书报备深交所。合约提前终止、发生信用事件、发生重大事项或出现违约等异常情形的,市场参与者也应按照相关要求做好报备工作。

三是严格遵守参与者管理的各项要求。市场参与者需满足相应的投资者适当性要求,拟成为核心交易商的市场参与者需事前向深交所进行备案。此外,已备案成为核心交易商的市场参与者可能不再符合备案条件的,应当立即停止从事核心交易商相关业务,并同时报告深交所。市场参与者不再符合投资者适当性要求的,不得新增合约交易,但仍应继续履行未到期合约的相关义务。

Source 来源:

[szse.cn/English/about/news/szse/t20190408\\_566089.html](http://szse.cn/English/about/news/szse/t20190408_566089.html)

### Greater Bay Area Indexes Are Launched to Boost High Quality Development of Greater Bay Area

On April 9, 2019, the Shenzhen Stock Exchange's wholly-owned subsidiary Shenzhen Securities Information Co., Ltd. (SSIC) launched the Greater Bay Area (GBA) Innovation 100 Index (GBA Innovation 100, code: 980001) jointly with the CCID Research Institute of the Ministry of Industry and Information Technology on the ceremony of the 7<sup>th</sup> China Information Technology Expo, marking the official launch of GBA indexes. As a measure to implement the requirements of the GBA Development Plan, this index is designed to release the potential of capital markets in serving the real economy and ultimately promote high quality development of the GBA.

On the same day, the GBA Composite Index (GBA Composite, code: 980003) was also launched. SSIC and the CCID Research Institute will continue their work on GBA indexes to further enrich the index portfolio with more theme indexes.

### 粤港澳大湾区系列指数发布助力大湾区高质量发展

2019 年 4 月 9 日,深圳证券交易所全资子公司深圳证券信息有限公司联合工信部(工信部)下属单位赛迪研究院在第七届中国电子信息博览会开幕式上,发布粤港澳大湾区创新 100 指数(湾创 100,代码:980001),标志着粤港澳大湾区系列指数正式发布。为落实《粤港澳大湾区发展规划纲要》要求,该指数发挥资本市场服务实体经济作用,助力大湾区高质量发展。

同日,粤港澳大湾区综合指数(大湾区综指,代码:980003)也对外发布。后续,工信部和赛迪研究院将继续合作研发粤港澳大湾区系列指数,推出相关特色主题指数,丰富指数种类。

Source 来源:

[szse.cn/English/about/news/szse/t20190410\\_566151.html](http://szse.cn/English/about/news/szse/t20190410_566151.html)

### Shanghai Stock Exchange Answers Questions on Acceptance of Companies' Applications for Listing on Science and Technology Innovation Board

On March 27, 2019, the Shanghai Stock Exchange (SSE) answered questions from reporters on accepting companies' application for listing on the Science and Technology Innovation Board (Sci-Tech Innovation Board).

### The SSE's arrangements for the follow-up acceptance after the second batch of companies

### **whose applications for listing on the Sci-Tech Innovation Board have been accepted**

With the application of the issuers gradually normalized, the SSE will adopt the approach of “disclosure on acceptance” to promptly announce the progress after the centralized acceptance for the second batch of enterprises. The notice on acceptance and publicity for the companies will be disclosed on the official website of the SSE after the market closing on the day of acceptance.

### **The differences between the processes of acceptance and review for the companies**

The SSE's review for the IPO and listing of the companies on the Sci-Tech Innovation Board mainly includes two processes: acceptance and inquiry for review.

In the acceptance process, only factors such as the completeness of a company's application documents and the qualification of the intermediary organization are verified. It is equivalent to the applicant's obtaining the “exam attendance docket”, which gives them the right to take the exam but does not ensure they will definitely pass the exam or get good results.

In the second process of inquiry for review, the substantial issues such as whether a company is an enterprise of sci-tech innovation in nature, whether it meets the requirements for the issuance and listing on the Sci-Tech Innovation Board, and whether there is any financial flaw will be settled. The Sci-Tech Innovation Advisory Committee will also provide professional opinions during this process. Special attention will also be paid to the circumstances such as the nature of sci-tech innovation enterprises that the market participants are highly concerned about.

With the information disclosure as the core, the inquiry for review is the “soul” of the reform in piloting the Registration-Based IPO System on the Sci-Tech Innovation Board. The review process is an interaction process where the questions will be raised and answered to enrich and improve the contents of information disclosure; it is also a supervision process which will deter the fraudulent issuance and conduce to the investors' making investment decisions with sufficient information. The key elements of the entire inquiry process will be open to the whole market. Through the entire inquiry process, investors will have a more thorough understanding of an applying company and offer a price at which he or she is willing to “buy” the company. This is where the “joint efforts” of public supervision lies.

### **The SSE's opinion on the market discussion about the contents of sci-tech innovation of companies**

### **whose applications for listing on the Sci-Tech Innovation Board have been accepted**

The SSE has already noticed that since the release of the first batch of acceptance letters, the market participants have conducted in-depth discussions and analysis on the contents of sci-tech innovation in those accepted enterprises.

The SSE believes that the discussions will help to form a market environment in which all participants perform their duties diligently in accordance with the law and will also facilitate the SSE's follow-up review. It should be pointed out that the SSE will conduct many rounds of inquiries on the issues such as the representativeness of sci-tech innovation, technical capabilities, and company quality that are widely concerned in the market during the inquiry for review, so as to form the market-based constraints on the pricing, issuance and listing of the companies through sufficient information disclosure. The issuers shall disclose the information in a true, accurate and complete manner, and the sponsoring institutions shall fully demonstrate whether the issuers conform to the positioning of the Sci-Tech Innovation Board.

The SSE will adhere to the direction of market oriented and law-based reform, strictly follow the prescribed conditions and procedures, make effective efforts in all the processes such as application acceptance, inquiry for review and the deliberation of the listing committee, tighten the responsibilities of the intermediaries, and especially require the sponsors to accurately grasp the positioning of the Sci-Tech Innovation Board. The SSE will make persistent efforts and live up to expectations.

### **上海证券交易所关于科创板企业受理情况的答记者问**

2019年3月27日,上海证券交易所(上交所)就受理科创板企业发行上市申请回答了记者的提问。

### **上交所发布第二批集中受理的科创企业名单的后续受理安排**

随着发行人的申报逐渐进入常态化,在第二批集中受理后,上交所将采取“受理即披露”的方式,及时公布企业受理情况。企业的受理通知、公示,将均在受理当日收市后,于上交所官方网站统一进行披露。

### **企业的受理和审核环节的区别**

上交所对科创板企业的发行上市审核包括受理和审核问询两个主要环节。

在受理环节, 仅是对企业申请文件齐备性、中介机构资质等的核对, 相当于申报企业获得了“准考证”, 可以进入考场考试, 并不表示一定能够考试通过或获得好成绩。

至于企业是否符合科创属性、是否符合科创板发行上市条件、在财务上是否有瑕疵等实质性问题, 将通过第二环节的审核问询来实现, 在审核问询过程中, 科技创新咨询委员会也会给出专业咨询意见。对于目前市场各方较为关注的科创企业属性等情况, 也将会在审核问询中予以重点关注。

以信息披露为核心的审核问询, 是在科创板试行注册制改革的“灵魂”。这样的审核过程, 是一个提出问题、回答问题, 相应地不断丰富完善信息披露内容的互动过程; 是震慑欺诈发行、便利投资者在信息充分的情况下做出投资决策的监管过程。整个问询的关键环节均向全市场公开。投资者通过整个问询过程, 对申报企业有了更透彻的了解, 给出其愿意“买”这家企业的价格, 给企业定价。这就是公众监督的“合力”所在。

#### 上交所对市场关于申报企业的科创含量讨论的评价

上交所已经关注到, 在首批受理函发布后, 市场各方对受理企业的科创含量等进行了深入讨论和剖析。

上交所认为这些讨论有助于形成市场各方依法履职尽责的市场环境, 有助于其做好后续审核工作。需要指出的是, 上交所将在审核问询中, 针对市场广泛关注的科创代表性、技术能力、企业质量等问题进行多轮问询, 通过充分的信息披露, 对企业的定价、发行和上市形成市场化制约。发行人应真实、准确、完整地披露信息, 保荐机构应对发行人是否符合科创板定位进行充分论证。

上交所将坚持市场化、法治化的改革方向, 严格按照规定条件和程序, 扎实做好申请受理、审核问询和上市委审议等各环节工作, 压实中介机构责任, 特别是要求保荐人准确把握科创板定位, 久久为功, 不负众望。

Source 来源:

[english.sse.com.cn/aboutsse/news/newsrelease/c/4758363.shtml](http://english.sse.com.cn/aboutsse/news/newsrelease/c/4758363.shtml)

#### European Securities and Markets Authority Focus on New International Financial Reporting Standards and Non-financial Information

On March 27, 2019, the European Securities and Markets Authority (ESMA) published its 2018 Annual Report on the enforcement and regulatory activities of accounting enforcers within the European Union.

In 2018 ESMA's efforts to deepen convergence in the enforcement of financial information particularly focused on the harmonization of the application and enforcement of new International Financial Reporting Standards (IFRS) IFRS 15 Revenue from Contracts with Customers and IFRS 9 Financial Instruments (new standards).

During 2018 European enforcers expanded for the first time their supervisory activities to nonfinancial information on environmental, social and governance matters.

In 2019, ESMA and European enforcers will continue to focus on consistency in the application and enforcement of the new standards which came into force in 2018 and on the disclosure of the expected impact of implementation of IFRS 16 Leases. ESMA will also continue to actively contribute to the development of high-quality accounting standards by providing input to consultations conducted by the International Accounting Standards Board and European Financial Reporting Advisory Group and will closely monitor and contribute to the endorsement process of the IFRS 17 – Insurance Contracts.

When it comes to non-financial information, enforcers will focus on strengthening the harmonization and enforcement of the disclosures of non-financial information, notably those related to environmental and climate change-related matters, as well as on the application of the ESMA Guidelines on Alternative Performance Measures.

#### 欧洲证券和市场管理局关注新的《国际财务报告准则》和非财务信息

2019年3月27日, 欧洲证券和市场管理局 (ESMA) 发布其 2018 年关于欧洲联盟 (欧盟) 内会计执法者执法和监管活动的年度报告。

2018 年, ESMA 努力深化财务信息执法的融合, 特别注重协调新《国际财务报告准则》(IFRS) 的应用和执行 IFRS 第 15 号客户合同收入和 IFRS 第 9 号金融工具 (新准则)。

在 2018 年期间, 欧洲执法者首次将其监督活动扩展到环境, 社会和治理问题的非财务信息。

2019 年, ESMA 和欧洲执法机构将继续关注 2018 年生效的新准则的应用和执行的一致性以及关于实施 IFRS 第 16 号租赁的预期影响披露。ESMA 还将继续积极参与高质量会计准则的制定, 向国际会计准则委员会和欧洲财务报告咨询小组进行的磋商提供意见, 并将密切关注并为 IFRS 第 17 号 – 保险合同的认可程序作出贡献。

在涉及非财务信息时，执法人员将侧重于加强非财务信息披露的统一和执行，特别是与环境 and 气候变化相关的事项以及 ESMA 替代绩效评估指引的应用。

Source 来源:

[esma.europa.eu/sites/default/files/library/esma71-99-1128\\_press\\_release\\_2018\\_enforcement\\_report.pdf](https://esma.europa.eu/sites/default/files/library/esma71-99-1128_press_release_2018_enforcement_report.pdf)

### **European Securities and Markets Authority Publishes Translations for Guidelines on Central Counterparty Conflict of Interest Management**

On April 5, 2019, the European Securities and Markets Authority (ESMA) has issued the official translations of its Guidelines on Central Counterparty conflict of interest management. The official translations are available on ESMA's [website: esma.europa.eu/document/guidelines-ccp-conflict-interest-management](https://esma.europa.eu/document/guidelines-ccp-conflict-interest-management).

National Competent Authorities to which these Guidelines apply must notify ESMA whether they comply or intend to comply with the Guidelines, within two months of the date of publication by ESMA of the Guidelines in all European Union official languages.

### **欧洲证券和市场管理局发布关于中央交易对手利益冲突管理指引的翻译文本**

2019 年 4 月 5 日，欧洲证券和市场管理局 (ESMA) 发布《中央交易对手利益冲突管理指引》(指引) 的官方译文。官方翻译文本载于 ESMA 的网站：[esma.europa.eu/document/guidelines-ccp-conflict-interest-management](https://esma.europa.eu/document/guidelines-ccp-conflict-interest-management)。

《指引》适用的国家主管部门必须在 ESMA 以所有欧盟官方语言发布指引之日起两个月内通知 ESMA 是否遵守或打算遵守《指引》。

Source 来源:

[esma.europa.eu/press-news/esma-news/esma-publishes-translations-guidelines-ccp-conflict-interest-management](https://esma.europa.eu/press-news/esma-news/esma-publishes-translations-guidelines-ccp-conflict-interest-management)

### **European Securities and Markets Authority Updates Questions and Answers on Market in Financial Instruments Regulation Data Reporting**

On April 9, 2019 the European Securities and Markets Authority (ESMA) has updated its Questions and Answers (Q&As) on data reporting under the Market in Financial Instruments Regulation (MiFIR).

The Q&As provide clarifications in relation to the requirements for submission of reference data under MiFIR. In particular, the Q&As relate to reporting

obligations for trading venues operating on the basis of a specified list of instruments.

The Q&As is available on the ESMA's website: [esma.europa.eu/sites/default/files/library/esma70-1861941480-56\\_qas\\_mifir\\_data\\_reporting.pdf](https://esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf).

### **欧洲证券和市场管理局更新关于金融工具市场法规数据报告的问答**

2019 年 4 月 9 日，欧洲证券和市场管理局 (ESMA) 更新有关根据金融工具市场法规 (MiFIR) 数据报告的问答。

该问答提供了有关根据 MiFIR 提交参考数据要求的阐明。该问答特别涉及根据特定工具清单营运的交易场所的报告责任。

该问答载于 ESMA 网站:

[esma.europa.eu/sites/default/files/library/esma70-1861941480-56\\_qas\\_mifir\\_data\\_reporting.pdf](https://esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf)。

Source 来源:

[esma.europa.eu/press-news/esma-news/esma-updates-qa-mifir-data-reporting-5](https://esma.europa.eu/press-news/esma-news/esma-updates-qa-mifir-data-reporting-5)

### **Australian Securities and Investments Commission Publishes Report on Consumers Confusing Different Types of Financial Advice**

On March 28, 2019, the Australian Securities and Investments Commission (ASIC) released new research "Financial advice: Mind the gap" revealing many consumers confuse "general" and "personal" advice exposing them to greater risk of poor financial decisions.

The report highlights the importance of consumer awareness and understanding of the distinction between personal and general advice with the Future of Financial Advice protections only applying when personal advice is provided. These include obligations for advisers to act in their client's best interests, to provide advice that is appropriate to their client's personal circumstances and to prioritize their client's interests. These obligations do not apply when general advice is provided.

The survey also revealed that the responsibilities of financial advisers, when providing general advice, is not well understood. Nearly 40 per cent of those surveyed were unaware that advisers were not required by law to act in their clients' best interests.

ASIC is seeing increased sales of complex financial products under general advice models leaving many consumers, especially retirees, exposed to the potential risk of financial loss.

ASIC anticipates the need for financial advice to grow, reflecting an aging population and many financial products, especially retirement products, becoming more complex. ASIC reports that much of the advice is likely to be general advice, and while appropriate in some circumstances, it is inevitably of limited use.

Additional research by ASIC will get underway in 2019 to identify a more appropriate label for general advice and consumer - test the effectiveness of different versions of the general advice warning.

### 澳洲证券及投资监察委员会发布关于消费者混淆不同类型财务建议的报告

2019年3月28日, 澳洲证券及投资监察委员会 (澳洲证监会) 发布了一项新研究报告《财务建议: 注意区别》, 揭示了许多消费者混淆了“一般建议”和“个人建议”, 使他们面临更大的财务决策风险。

报告强调消费者意识和理解区别个人建议和一般建议的重要性, 以及只有提供个人建议时, 将来的财务建议保护才会适用。这些保护包括: 顾问有义务以客户的最佳利益行事, 提供适合其客户个人情况的建议, 并优先考虑客户的利益。当提供一般性建议时, 这些义务并不适用。

调查还显示, 对财务顾问在提供一般性建议时的责任理解不深。接近40%的受访者并未意识到法律并未要求顾问在提供一般建议时以客户的最佳利益行事。

澳洲证监会发现, 在一般建议模式下的复杂金融产品销售有所增加, 这显示多消费者, 特别是退休人士面临潜在的经济损失风险。

澳洲证监会预计, 随着人口老龄化和许多金融产品 (尤其是退休产品) 变得更加复杂; 财务建议的需求将会增长, 澳洲证监会报告说, 许多建议很可能是一般性的, 尽管在某些情况下是适当的, 但毕竟会有局限性。

澳洲证监会将在2019年开始进一步研究, 测试不同版本的一般建议警告的有效性, 为一般建议和消费者确定更合适的名称。

Source 来源:  
asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-069mr-mind-the-gap-consumers-confusing-different-types-of-financial-advice

**Australian Prudential Regulation Authority and Australian Securities and Investments Commission Publish World-leading Life Insurance Data**

On March 29, 2019, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) have released a series of publications and an online tool allowing policyholders – for the first time – to compare life insurers’ performance in handling claims and disputes.

The joint project is the culmination of more than two years of work aimed at collecting and publishing higher-quality, more consistent and transparent data about the life insurance industry. It enables the community to review an individual life insurer’s claims and disputes outcomes and compare them with other providers. The data release signifies a new level of transparency and accountability which the regulators see as essential to improving trust in financial services.

The publications reflect the agencies’ different roles, with APRA focused on protecting policyholders by ensuring the soundness and stability of institutions, and ASIC responsible for regulating conduct, disclosure and consumer outcomes.

The online tool compares insurers on four metrics – the percentage of claims accepted, the length of time taken to pay claims, the number of disputes and the policy cancellation rates. This data will be collected on an ongoing basis, and the resources will be updated twice yearly.

### 澳大利亚审慎监管局和澳洲证券及投资监察委员会发布全球领先的人寿保险数据

2019年3月29日, 澳洲审慎监管局 (澳洲审监局) 和澳洲证券及投资监察委员会 (澳洲证监会) 发布了一系列出版物和在线工具, 首次允许投保人比较人寿保险公司在处理索赔和纠纷方面的表现。

该联合项目是两年多的工作结晶, 旨在收集和发布关于人寿保险业的更高质量, 更一致和透明的数据。它使社会能够检阅个人人寿保险公司的索赔和争议结果, 并与其他提供商进行比较。数据发布标志着透明度和问责制的新水平, 监管机构认为这对提高金融服务的信任至关重要。

这些出版刊物反映了各机构的不同角色, 澳洲审监局的重点是通过确保机构的健全性和稳定性来保护投保人, 以及澳洲证监会负责监管行为, 披露和消费者权益。

在线工具将保险公司就四个指标进行比较 - 接受的索赔百分比, 支付索赔所需的时间, 争议数量和保险单取消比率。这些数据将持续收集, 资料将每年更新两次。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-070mr-apra-and-asic-publish-world-leading-life-insurance-data](http://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-070mr-apra-and-asic-publish-world-leading-life-insurance-data)

### **Australian Securities and Investments Commission Re-issues Practical Guidance for Foreign Financial Services Providers**

On April 3, 2019, the Australian Securities and Investments Commission (ASIC) has re-issued practical guidance (INFO 157) for foreign financial services providers (FFSPs) seeking to provide financial services only to wholesale clients in Australia.

FFSPs regulated by certain overseas regulators who wish to provide financial services to wholesale clients in Australia can rely on 'class' relief, provided certain conditions are met. To do so, they need to notify the ASIC that they wish to rely on this relief. The 'class' relief available under ASIC instruments is currently due to expire on September 30, 2019.

Specifically, INFO 157 explains:

- the relief available for FFSPs under ASIC instruments;
- how to apply for registration as a foreign company;
- the documents and fees required to apply to rely on relief;
- notifications required under the relief;
- how to apply for individual relief;
- how to lodge forms and documents.

### **澳洲证券及投资监察委员会重新发布外国金融服务提供者的实用指引**

2019年4月3日, 澳洲证券及投资监察委员会(澳洲证监会)为寻求仅为澳大利亚的批发客户提供金融服务的外国金融服务提供商(FFSPs), 重新发布实用指引(INFO 157)。

若符合若干条件, 某些希望为澳大利亚批发客户提供金融服务的受海外监管机构监管的FFSPs可以依赖“类别”豁免。为此, 其需要通知澳洲证监会他们希望依靠这方面的豁免。澳洲证监会的工具提供的“类别”豁免目前将于2019年9月30日到期。

具体来说, INFO 157 说明:

- 澳洲证监会的工具赋予FFSPs的豁免;
- 如何申请注册为外国公司;
- 申请依赖豁免所需提交的文件和费用;
- 豁免所需的通知;
- 如何申请个别豁免;
- 如何提交表格和文件。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-076mr-asic-re-issues-practical-guidance-for-foreign-financial-services-providers-information-sheet-157](http://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-076mr-asic-re-issues-practical-guidance-for-foreign-financial-services-providers-information-sheet-157)

### **Australian Securities and Investments Commission Welcomes Approval of New Laws to Protect Financial Service Consumers**

On April 4, 2019, the Australian Securities and Investments Commission (ASIC) has welcomed the passage of key financial services reforms contained in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) legislation introducing:

- a design and distribution obligations regime for financial services firms; and
- a product intervention power for ASIC

The design and distribution obligations will bring accountability for issuers and distributors to design, market and distribute financial and credit products that meet consumer needs. Phased in over two years, this will require issuers to identify in advance the consumers for whom their products are appropriate, and direct distribution to that target market.

The product intervention power will strengthen ASIC's consumer protection toolkit by equipping it with the power to intervene where there is a risk of significant consumer detriment.

### **澳洲证券及投资监察委员会对批准新法律以保护金融服务消费者表示欢迎**

2019年4月4日, 澳洲证券及投资监察委员会(澳洲证监会)对通过载于《财政法修正案(设计和分销责任和干预权力)》的关键金融服务改革表示欢迎; 法律引入以下内容:

- 金融服务公司的设计和分销责任制度; 和
- 澳洲证监会对产品的干预权力

设计和分销责任将为发行人和分销商带来问责; 金融和信贷产品应按照消费者需求进行设计, 营销和分销。于未来两年分阶段, 要求发行人事先确定其产品适合的消费者, 并直接分销到该目标市场。

在出现重大消费者损害风险的情况下, 产品干预权力将通过提供干预措施来加强澳洲证监会的消费者保护工具包。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-079mr-asic-welcomes-approval-of-new-laws-to-protect-financial-service-consumers](http://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-079mr-asic-welcomes-approval-of-new-laws-to-protect-financial-service-consumers)

## Financial Conduct Authority of the United Kingdom and Australian Securities and Investments Commission Agree to Strengthen Cooperation Post-Brexit

On April 8, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) and the Australian Securities and Investments Commission (ASIC) announced they have agreed two Memoranda of Understanding (MoUs) to ensure there is continuity once the UK leaves the European Union (EU). The MoUs cover trade repositories and alternative investment funds.

These MoUs will provide reassurance by ensuring arrangements are in place for cross-border cooperation between the FCA and ASIC. The FCA and ASIC also support the continuity of existing equivalence decisions to provide certainty to businesses post-Brexit.

These MoUs will enter into force on the date EU legislation ceases to have direct effect in the UK.

### 英国金融行为监管局和澳洲证券及投资监察委员会同意加强英国在脱欧后的合作

2019年4月8日,英国金融行为监管局(英国金管局)和澳洲证券及投资监察委员会(澳洲证监会)宣布其已经达成了两份谅解备忘录(备忘录),以确保英国一旦脱离欧洲联盟(欧盟),从而实现连续性。备忘录涵盖交易资料储存库和另类投资基金。

这些备忘录将确保英国金管局和澳洲证监会之间的跨境合作安排得到保证。英国金管局和澳洲证监会还支持现有等同性决策的连续性,以便为英国脱离欧盟后的企业提供确定性。

这些备忘录将在欧盟法律停止在英国直接生效之日起生效。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-080mr-uk-financial-conduct-authority-and-australian-securities-and-investments-commission-agree-to-strengthen-cooperation-post-brexit](https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-080mr-uk-financial-conduct-authority-and-australian-securities-and-investments-commission-agree-to-strengthen-cooperation-post-brexit)

## International Organization of Securities Commissions Publishes Report on Behavioral Insights Seeking to Enhance Retail Investor Protection

On April 2, 2019, the International Organization of Securities Commissions (IOSCO) published a report on behavioral insights that seeks to help its members improve the effectiveness of retail investor protection.

The report, *The Application of Behavioral Insights to Retail Investor Protection* ([iosco.org/library/pubdocs/pdf/IOSCOPD626.pdf](https://iosco.org/library/pubdocs/pdf/IOSCOPD626.pdf)), provides guidance to help regulators better understand the behavior of retail investors in making financial investment decisions.

The report finds that individuals tend to make different decisions when interacting with an online interface as opposed to interacting with a human or relying on print materials.

The report acknowledges that while measures using behavioral insights have the potential to promote informed decision-making, they may not be sufficient to protect retail investors adequately. Accordingly, it is important that regulators continue to impose standards of conduct on investment professionals and regulate the sale of investment products to promote retail investor protection further.

### 国际证券事务监察委员会发布行为观察报告旨在加强保护散户投资者

2019年4月2日,国际证券事务监察委员会(IOSCO)发布一份关于行为观察报告,旨在帮助其成员提高散户投资者保护的有效性。

该报告《行为观察对零售投资者保护的应用》([iosco.org/library/pubdocs/pdf/IOSCOPD626.pdf](https://iosco.org/library/pubdocs/pdf/IOSCOPD626.pdf))提供了指引,帮助监管机构更好地了解散户投资者做出金融投资决策的行为。

该报告发现,相对于与人互动或依赖印刷材料,人们使用在线界面进行互动时,往往倾向做出不同的决定。

该报告承认,尽管使用行为观察的措施有可能促进作出知情决策,但它们可能不足以充分保护散户投资者。因此,监管机构必须继续对专业投资人士施加行为标准是很重要的,并规范投资产品的销售,以进一步促进散户投资者的保护。

Source 来源:

[iosco.org/news/pdf/IOSCONEWS529.pdf](https://iosco.org/news/pdf/IOSCONEWS529.pdf)

## Cyprus Securities and Exchange Commission Issues Circular on Compliance Officers' Annual Reports and Internal Audit Reports

On March 28, 2019, the Cyprus Securities and Exchange Commission issued a circular to remind the Regulated Entities that they are obliged to submit Compliance Officers' Annual Reports (Annual Reports) by end of March 2019 and the Internal Audit Reports on the prevention of money laundering and terrorist

financing (Internal Audit Reports) by end of April 2019 to CySEC for the previous calendar year.

In carrying out these assessments, CySEC found an overall improvement in the content of the Reports. In most cases, the findings were in line with the relevant legal requirements. From the review of the Annual Reports, CySEC has identified common and recurring weaknesses and/or deficiencies. As regards to the assessed Internal Audit Reports, CySEC occasionally found that no or limited reference was made to prior years' findings and recommendations.

CySEC expects that all Regulated Entities take into account its findings when preparing the Reports for the year 2018 and onwards, in order to ensure full compliance with the Law and the Directive. It is stressed that the Law provides strict administrative sanctions in case of non-compliance with the requirements of the Law and the Directive, which CySEC will not hesitate to use.

#### 塞浦路斯证券交易委员会就合规人员年度报告和内部审计报告发布通函

2019年3月28日,塞浦路斯证券交易委员会(CySEC)发布通函,提醒受监管实体其有义务在2019年3月底前提交合规人员年度报告(年度报告),以及在2019年4月底前提交上一个自然年关于防止洗钱和恐怖主义融资的内部审计报告(内部审计报告)。

在进行评估时,CySEC发现报告的内容整体上有改进。在大多数情况下,调查结果显示符合相关法律要求。通过对年度报告的审查,CySEC确定了常见且反复出现的弱点和/或缺陷。关于内部审计报告的评估,CySEC偶尔发现没有或有限地参考前几年的调查结果和建议。

CySEC希望所有受监管实体在编制2018年及以后的报告时考虑其调查结果,以确保完全符合《法律和指令》。需要强调的是,如果不遵守《法律和指令》的要求,CySEC将毫不犹豫地执行法律规定的严格行政处罚。

Source 来源:

[www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=132c9b31-1922-4d41-be91-0660100080f5](http://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=132c9b31-1922-4d41-be91-0660100080f5)

#### Cyprus Securities and Exchange Commission Outlines the Main Priorities and Supervisory Activities for 2019

On March 29, 2019, the Cyprus Securities and Exchange Commission has outlined the main priorities and supervisory activities for 2019.

To strengthen its supervisory objectives and to support regulated firms in complying with their regulatory obligations, CySEC has developed the following priority areas for action for 2019:

1. Proactive supervision: Continuous monitoring of high risk and medium-high risk Cyprus Investment Firms (CIFS) with their regulatory obligations under the European legislation, MiFID II/MiFIR, EMIR and the prudential framework.
2. Event-driven, reactive supervision: Monitoring the compliance of medium-to-low and low risk CIFs, focusing on areas that entails significant risks to investors or market stability.
3. Issues and products supervision: Analyzing current events for each sector as a whole and investigating potential drivers of poor outcomes for investors and market stability.

In 2019, this thematic work will be focused on the following:

- product governance requirements;
- obligations to provide certain information to clients or potential clients;
- appropriateness assessment obligations;
- transaction reporting requirements;
- transparency requirements;
- inducements and remuneration requirements;
- information on cost and charges requirements.

CySEC has identified the below key areas of priority for its actions and activities when monitoring the compliance of managers of collective investment undertakings in 2019:

1. organizational requirements;
2. delegation arrangements;
3. requirements for the valuation/monitoring of assets under management; and,
4. liquidity requirements.

#### 塞浦路斯证券交易委员会概述2019年的主要优先事项和监督活动

2019年3月29日,塞浦路斯证券交易委员会(CySEC)概述了2019年的主要优先事项和监督活动。

为加强监管目标,并支持受监管公司遵守管治责任,CySEC为2019年制定了以下优先行动范畴:



1. 主动监督：持续监控高风险和中高风险塞浦路斯投资公司, 根据欧洲法律, 金融工具市场 法规 II/ 金融工具市场(修订)法规, 欧洲市场基础设施监管法规和审慎框架规定其管治要求。
2. 事件驱动, 反应性监督：监控中低风险和低风险塞浦路斯投资公司的合规性, 重点关注对投资者或市场稳定带来重大风险的领域。
3. 问题和产品监督：作为一个整体, 分析每个界别的最新活动, 并调查导致投资者和市场稳定性不良结果的潜在促成因素。

在 2019 年, 这一主题工作将集中在以下方面：

- 产品管治要求;
- 向客户或潜在客户提供某些信息;
- 适当性评估责任;
- 交易报告要求;
- 透明度要求;
- 利益和佣金要求;
- 成本和费用规定的信息。

在监测 2019 年集体投资企业管理人的合规情况时, CySEC 已确定其以下行动和活动的关键优先范畴：

1. 组织要求
2. 授权安排;
3. 管理资产的估值/监测规定; 和,
4. 流动性要求。

Source 来源:

[cysec.gov.cy/CMSPages/GetFile.aspx?guid=e9805dcf-0da7-466a-98ff-a11464eeb833](http://cysec.gov.cy/CMSPages/GetFile.aspx?guid=e9805dcf-0da7-466a-98ff-a11464eeb833)

### **Italian Companies and Exchange Commission Publishes Communication on the Protection of Investors of United Kingdom Financial Intermediaries Operating in Italy After the withdrawal of the United Kingdom from the European Union**

On March 29, 2019, Italian Companies and Exchange Commission published a Communication to inform that after the date of withdrawal the branches of United Kingdom (UK) banks and investment firms which operate in Italy shall adhere by law to the Italian investor compensation scheme (ICS).

Also, on the date of withdrawal, the UK banks and investment firms that operate under the freedom to provide services shall adhere by law to the ICS unless they submit to it a statement from the UK ICS certifying that their investors shall continue to be protected by the latter.

Within thirty days of the date of withdrawal both categories of UK intermediaries shall contact the Italian ICS to carry out the required operational and administrative formalities, including the obligation to pay contributions.

In order to ensure that investors are aware of which ICS protects them, both categories of UK intermediaries shall inform their investors as soon as possible and in any case within forty days of the date of entry into force of Decree Law n.22/2019. The disclosure provided to investors should be clear and in plain language.

### **意大利金融市场监管局发布关于英国在脱离欧洲联盟后保护在意大利经营的英国中介机构投资者的通函**

2019 年 3 月 29 日, 意大利金融市场监管局发布通函, 称英国在脱离欧洲联盟之日 (脱欧日) 后, 在意大利经营的英国银行和投资公司的分支机构应依法遵守意大利投资者的赔偿计划 (赔偿计划)。

同样在脱欧日后, 在自由提供服务的情况下经营的英国银行和投资公司应依法遵守赔偿计划, 除非其可提交英国赔偿计划声明, 证明其投资者将继续受到后者的保护。

在脱欧日起三十天内, 两类英国中介机构应与意大利赔偿计划, 以完成所需的营运和行政手续包括缴纳会费的义务。

为了确保投资者了解哪个赔偿计划保护他们, 两类英国中介机构应尽快并在任何情况下在第 22/2199 号法令生效之日起四十天内通知其投资者。向投资者提供的披露应以清晰及简明用语撰写。

Source 来源:

[www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c20190329\\_8\\_en.htm](http://www.consob.it/web/consob-and-its-activities/bullettin/documenti/english/resolutions/c20190329_8_en.htm)

### **United Arab Emirates Abu Dhabi Global Market Forms Strategic Cooperation with China Hainan Provincial Government on Financial Development and Growth of Hainan Free Trade Zone**

On March 28, 2019, United Arab Emirates (UAE) Abu Dhabi Global Market (ADGM) China Hainan Provincial Government and Abu Dhabi Global Market (ADGM) signed a Memorandum of Understanding (MoU) to further boost the economic and financial collaboration between China and the UAE via Hainan Free Trade Zone and ADGM's international financial center and financial free zone. This is the first such financial and economic cooperation between Hainan Provincial Government and the Middle East region.

The MoU establishes a formal platform for both Authorities to work closely in key aspects including, the opening up and development of the financial sector within the Hainan Free Trade Zone, the development of the financial and commercial regulatory infrastructure and framework in the free trade zone, joint investment and financing initiatives between the two countries in support of the Belt and Road Initiative, legislative and dispute resolution support from ADGM, development of exchanges in the free trade zone and enable cross-listing of financial products, facilitate greater business opportunities and set-up between Hainan and the UAE.

### 阿拉伯联合酋长国阿布扎比全球市场与中国海南省政府就海南自由贸易区金融发展与增长达成战略合作

2019年3月28日,阿拉伯联合酋长国(阿联酋)阿布扎比全球市场(ADGM)与中国海南省政府签署谅解备忘录,将通过海南自由贸易区和ADGM的国际金融中心和金融自由区,进一步促进中国与阿联酋之间的经济和金融合作。这是海南省政府与中东地区首次开展此类金融和经济合作。

谅解备忘录建立了一个正式的平台,为双方主管机构在主要方面密切合作,包括:在海南自由贸易区内的金融业的开放和发展,自由贸易区的金融和商业监管基础设施和框架的发展等关键方面密切合作,两国支持“一带一路”倡议的共同投资和融资举措,ADGM提供法律立法和争议调解支援,自由贸易区内交易所的发展,促进金融产品交叉上市,促进海南和阿联酋的更多商机和建设。

Source 来源:

[adgm.com/mediacentre/press-releases/abu-dhabi-global-market-forms-strategic-cooperation-with-hainan-provincial-government-on-financial-development-and-growth-of-hainan-free-trade-zone](http://adgm.com/mediacentre/press-releases/abu-dhabi-global-market-forms-strategic-cooperation-with-hainan-provincial-government-on-financial-development-and-growth-of-hainan-free-trade-zone)

### Securities and Exchange Board of India Clarifies Transfer of Securities Held in Physical Mode

On March 28, 2018, the Securities and Exchange Board of India (SEBI) decided that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in dematerialized form with a depository. This measure shall come into effect from April 1, 2019.

The SEBI further clarified that:

1. The above decision does not prohibit the investor from holding the shares in physical form; investor has the option of holding shares in physical form even after April 1, 2019.

2. Any investor who is desirous of transferring shares (which are held in physical form) after April 1, 2019 can do so only after the shares are dematerialized.
3. The transfer deed(s) once lodged prior to deadline and returned due to deficiency in the document may be re-lodged for transfer even after the deadline of April 1, 2019.

### 印度证券交易委员会澄清以实物方式持有证券的转让

2019年3月28日,印度证券交易委员会(SEBI)决定,除证券的转换或转外,除非证券以非实物形式存放在存管处,作出转让证券的请求将不予处理。该措施自2019年4月1日起生效。

SEBI 进一步澄清:

1. 上述决定并未禁止投资者以实物形式持有股票;即使在2019年4月1日之后,投资者也可以选择以实物形式持有股票。
2. 任何希望在2019年4月1日之后转让股份(以实物形式持有)的投资者,只有在股票非实物化之后才可进行。
3. 由于文件不足而在截止日期之前提交的转让契约,即使在2019年4月1日截止日期之后,也可以重新提交转让契约。

Source 来源:

[sebi.gov.in/media/press-releases/mar-2019/transfer-of-securities-held-in-physical-mode-clarification\\_42503.html](http://sebi.gov.in/media/press-releases/mar-2019/transfer-of-securities-held-in-physical-mode-clarification_42503.html)

### China Securities Regulatory Commission Signs Memorandum of Understanding Regarding Cooperation on Innovation in the Financial Sector with the Autorité des Marchés Financiers

On April 2, 2019, the China Securities Regulatory Commission has signed a Memorandum of Understanding (MoU) regarding cooperation on innovation in the financial sector with the Autorité des Marchés Financiers. Both sides agreed to share information on development dynamics of fin-tech and its related regulation policies as well.

The signing of the MoU will be of great significance for both sides to exchange information on the development of fin-tech and its regulation issues, as well as to strengthen bilateral regulatory cooperation in a timely manner. Besides, both sides also reached a common consensus for enhancing mutual cooperation on green

financing and promoting bilateral capital markets connectivity.

### 中国证券监督管理委员会与法国金融市场管理局签署《金融领域创新合作谅解备忘录》

2019年4月2日, 中国证券监督管理委员会与法国金融市场管理局签署了《金融领域创新合作谅解备忘录》(备忘录), 双方约定就金融科技领域的发展动态及相应的监管政策共享信息, 加强合作。

备忘录的签署对于中法双方及时就金融科技的发展和监管问题交换信息、加强监管合作具有重要意义。此外, 中法双方证券监管机构还就加强绿色金融领域务实合作和探索推进两国资本市场互联互通建设达成共识。

Source 来源:

[csrc.gov.cn/pub/csrc\\_en/newsfacts/release/201904/t20190402\\_353697.html](http://csrc.gov.cn/pub/csrc_en/newsfacts/release/201904/t20190402_353697.html)

### European Banking Federation Supports the Fight against Financial Fraud & Crime

On March 27, 2019, the European Banking Federation (EBF) took note of the European Parliament's Report on financial crimes, tax evasion and tax avoidance (Report). On this occasion, the EBF would like to reiterate its full support to the fight against tax fraud and financial crime.

Transparency of taxpayers and investors is a pivotal theme in the Report. Banks play a key role in this field; by reporting information on account holders to tax authorities and by providing Financial Intelligence Units with suspicious transaction reports.

In the area of anti-money laundering the EBF strongly supports better cooperation between authorities and financial institutions, both domestically and cross-border.

The EBF strongly supports alignment with international standards. Earlier this March, the EBF and Association for Financial Markets in Europe published joint recommendations which could help improve the implementation of Directive on Administrative Cooperation by financial institutions.

### 欧洲银行联合会支持打击金融诈骗和犯罪

2019年3月27日, 欧洲银行联合会(银行联合会)注意到欧洲议会关于金融犯罪, 逃税和避税的报告(报告)。在这种情况下, 银行联合会希望重申全力支持打击税务欺诈和金融犯罪。

纳税人和投资者的透明度是报告中的一个关键主题。银行业在这一领域发挥着关键作用; 向税务机关报告账户持有人的信息, 并向金融情报单位提供可疑的交易报告。

在反洗钱领域, 银行联合会大力支持当局和金融机构之间在国内和跨境的更好合作。

银行联合会强烈支持与国际标准保持一致。今年3月初, 银行联合会和欧洲金融市场协会发布了联合建议, 有助改善金融机构对《行政合作指令》的实施。

Source 来源:

[ebf.eu/tax-compliance/banks-support-fight-against-financial-fraud-crime](http://ebf.eu/tax-compliance/banks-support-fight-against-financial-fraud-crime)

### Hong Kong Exchanges and Clearing Limited Signs Memorandum of Understanding with Hebei Provincial Government

On April 9, 2019, Hong Kong Exchanges and Clearing Limited (HKEX) and the People's Government of Hebei Province signed a Memorandum of Understanding (MOU) in Hong Kong to strengthen mutual communication and capital market cooperation, as well as to seek more Hebei-based companies to list in Hong Kong and support the real economy of Hebei province.

As of the end of March, a total of 36 Hebei companies have listed on HKEX, raising HK\$74 billion, and with a total market value of HK\$335 billion. With the signing of the MOU, HKEX and Hebei Province will further strengthen cooperation to facilitate initial public offerings, debt financing and mergers and acquisitions of Hebei companies.

### 香港交易及结算所有限公司与河北省签订合作备忘录

2019年4月9日, 香港交易及结算所有限公司(香港交易所)与河北省人民政府在香港签署合作备忘录, 以加强长效沟通合作机制, 加快河北企业赴港上市融资步伐, 通过国际资本市场支持河北经济转型升级。

截止2019年3月底, 共有36家注册地为河北及主要业务在河北的企业在港上市, 累计融资约743亿港元, 总市值约3,353亿港元。通过此次签订合作备忘录, 双方将进一步加深了解, 加强合作, 共同促进河北企业赴港上市融资、债券融资及并购重组。

Source 来源:

[hkex.com.hk/News/News-Release/2019/190409news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/190409news?sc_lang=en)

## Singapore Exchange Pioneers Interest Rate Derivatives on Japan Repo

On April 8, 2019, Singapore Exchange (SGX) is launching Asia's first Total Return Futures (TRF), based on the Nikkei 225 Index, as it continues to pivot towards futurised derivatives.

The SGX Nikkei 225 Index TRF will be introduced on May 13, 2019.

SGX is driving futurisation in derivatives in response to client demand to mitigate pressures on capital, collateral and balance sheets, following Basel III and bilateral margining rules for uncleared over-the-counter contracts. The TRF will spur greater transparency and capital efficiency, while offering new customers an opportunity to trade and hedge repo.

### 新加坡交易所率先推出日本回购利率衍生产品

2019年4月8日,新加坡交易所(新交所)推出亚洲第一个基于日经225指数的总回报期货(TRF),其继续将衍生产品转向为期货。

新交所日经225指数TRF将于2019年5月13日推出。

根据巴塞尔协议III和未清算的场外交易合同的双边保证金规则,新交所正在推动衍生产品的期货化,以响应客户要求去缓解资本,抵押品和资产负债表的压力。TRF将提高透明度和资本效率,同时为新客户提供交易和对冲回购的机会。

Source 来源:

[sgx.com/media-centre/20190408-sgx-pioneers-interest-rate-derivatives-japan-repo](https://www.sgx.com/media-centre/20190408-sgx-pioneers-interest-rate-derivatives-japan-repo)

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