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

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## Hong Kong Court of Appeal Dismisses Application of Andrew Left for Leave to Appeal to the Court of Final Appeal against the Determinations of the Market Misconduct Tribunal

On May 24, 2019, the Hong Kong Securities and Futures Commission (SFC) published a news release that the Court of Appeal dismissed the application by Mr Andrew Left of Citron Research for leave to appeal to the Court of Final Appeal (CFA) against the determinations of the Market Misconduct Tribunal (MMT) concerning market misconduct within the meaning of section 277 of the Securities and Futures Ordinance. Section 277 creates a duty of care on any person who chooses to disseminate information that is likely to have market impact to make sure it is not materially false or misleading, otherwise its protective purpose in the context of the speed and fluidity of financial market will be fundamentally defeated or undermined. Counsel for Mr Andrew Left submitted that freedom of speech is at the core of this appeal, and technology brings this in even sharper focus.

The Court of Appeal said that they are not persuaded that this is an appropriate case to grant leave to appeal and ordered Left to pay the SFC's costs.

The Court of Appeal held that the well-established concepts of recklessness and negligence in the context would not require amplification or clarification in this instance.

The ruling arose from Left's March 2019 application for leave to appeal to the CFA on the ground that the appeal involves questions of great general or public importance after the Court of Appeal dismissed his appeal against the determination of the MMT on points of law under the Securities and Futures Ordinance.

The judgment (Court Reference: CACV 228/2016) is available on the Judiciary website : [legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=122057&currpage=T](http://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=122057&currpage=T).

## 香港上诉法庭驳回 Andrew Left 针对市场失当行为审裁处的上诉至终审庭之许可申请

2019年5月24日,香港证券及期货事务监察委员会(证监会)表示,上诉法庭拒绝 Citron Research 的 Andrew Left (Left) 针对市场失当行为审裁处(审裁处)就《证券及期货条例》第 277 条的裁定而向上诉法庭提出上诉至终审法院的许可申请。第 277 条的法律原意应是,令任何选择散发可能对市场有影响的资料的人士负有谨慎责任,确保有关资料在要项上不会属虚假或具误导性,否则该条文在急速多变的金融市场内的保障作用,将会从根本上受到损害或影响。Left 的代表律师提出,言论自由是这上诉的核心问题,而科技使这一点更加突出。

上诉法庭表示未能信服这是一宗适宜获批准上诉许可申请的个案,并命令 Left 支付证监会的讼费。

上诉法庭认为,在这案件的情况下,相关之鲁莽和疏忽的既定概念不需要再申述或澄清。

该裁决源于 Left 于 2019 年 3 月以上诉所涉及的问题具有重大广泛或关乎公众的重要性为由,向上诉法庭提出的有关上诉至终审法院的许可申请。此前,他被上诉法庭驳回其针对审裁处就《证券及期货条例》下的法律观点作出的裁定而提出的上诉。

有关判案书(法院参考编号: CACV 228/2016)载于司法机构的网站:

[legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=122057&currpage=T](http://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=122057&currpage=T).

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## Hong Kong Securities and Futures Commission Reprimands and Fines China Merchants Securities (HK) Co., Limited HK\$27 million for Sponsor Failures

On May 27, 2019, the Hong Kong Securities and Futures

Commission (SFC) has reprimanded and fined China Merchants Securities (HK) Co., Limited (CMS) HK\$27 million for failing to discharge its obligations as a joint sponsor in relation to the listing application of China Metal Recycling (Holdings) Limited (China Metal).

The disciplinary action followed the SFC's earlier sanction against the other joint sponsor – UBS AG and UBS Securities Hong Kong Limited (collectively UBS) – for their failures in relation to the listing application of China Metal and two other companies.

The SFC's investigation revealed that CMS and UBS had respectively failed in their due diligence as joint sponsors to address a number of unusual facts and findings on China Metal and its customers during the listing process.

#### **Inadequate due diligence with respect to a deregistered customer**

Prior to the filing of the first listing application of China Metal on June 2, 2008, UBS discovered that one of the largest Mainland customers of China Metal, Company A, had been deregistered since March 2007 but it continued to enter into sales contracts with China Metal or its subsidiary thereafter.

Despite the following red flags raised in its due diligence, UBS accepted China Metal's explanation that Company B, whose beneficial owner was the same as Company A, had entered into contracts with China Metal in the name of Company A since its deregistration, and Company B was eventually described as one of China Metal's largest customers in documents submitted to the Stock Exchange of Hong Kong (SEHK) and in China Metal's prospectus dated June 10, 2009.

Although CMS only became a joint sponsor of China Metal in or around November 2008, and was not involved in the due diligence conducted prior to November 2008 on this issue, it had an independent duty to conduct due diligence in order to have a thorough knowledge and understanding of China Metal and to satisfy itself in relation to the information disclosed in the prospectus.

The SFC considers that if CMS had reviewed the due diligence documents provided by UBS and other professional parties with professional skepticism, it would have discovered that there were conflicting propositions on which entity or entities were contracting with China Metal at the material time, which raised a number of red flags about the genuineness of the transactions between China Metal and Company A and/or Company B. The SFC considers that the evidence suggests that CMS had not taken any steps to conduct follow up due diligence on this issue.

#### **Inadequate due diligence on third party payments**

In September 2008, when UBS was still a sole sponsor for China Metal, the reporting accountant of China Metal sent certain information to China Metal (copying UBS) regarding six of its customers who made payments by cashier orders and/or remittance arranged by third party payers.

In one case, a customer who paid China Metal through a third party, also made payments on behalf of three other customers of China Metal. There is no evidence that UBS had followed up with China Metal or any of the customers as to the relationship between the customers and reasons for them to enter into the payment arrangements.

UBS instead relied on its Mainland Chinese lawyers to look into the payment arrangements between one of the six customers and China Metal. UBS was advised by the Mainland Chinese lawyers to obtain various documents concerning the transactions, including the payment records from the customer to its third party payer, and customs documents showing the import/export of concerned goods, to verify the genuineness of the transactions and completion of customs procedures.

However, UBS did not obtain the requested documents but instructed the lawyers to provide their legal opinion on the assumption that the transactions in question were genuine.

#### **Inadequate due diligence on China Metal's suppliers and customers**

UBS and CMS conducted some of the interviews with China Metal's customers face-to-face and others over the telephone. The SFC's investigation revealed that:

- none of the interview records indicates where the face-to-face interviews took place and whether UBS and/or CMS had taken any steps to verify whether the premises in which the interviews took place were the relevant customers' premises; and
- there is also no evidence that UBS and/or CMS had taken any steps to verify the identity of any of the customer representatives they interviewed, so as to satisfy themselves that they had the appropriate authority for the interviews.

#### **Sanction**

In deciding on the appropriate sanction against CMS, the SFC has taken into account:

- CMS failed to exercise the important function of making a critical assessment with a questioning

mind and being alert to red flags that contradict or bring into question the reliability of the information provided by China Metal and its joint sponsor;

- CMS failed to discharge its independent duty to carry out proper due diligence inquiries and/or critically examine the documents and information provided by China Metal and its joint sponsor that contradicted or brought into question the reliability of the information provided by China Metal;
- CMS had assisted the listing of a company that was not suitable for listing;
- CMS cooperated with the SFC in accepting the disciplinary actions and the SFC's regulatory concerns; and
- CMS agreed to engage an independent reviewer to review its policies, procedures and practices in relation to the conduct of its sponsor business.

#### 招商证券(香港)有限公司因保荐人缺失被香港证券及期货事务监察委员会谴责及罚款 2,700 万港元

2019 年 5 月 27 日, 香港证券及期货事务监察委员会 (证监会) 对招商证券(香港)有限公司 (招商证券) 作出谴责, 并处以罚款 2,700 万港元, 原因是其在担任中国金属再生资源(控股)有限公司 (中国金属) 上市申请的联席保荐人时没有履行其应尽的责任。

证监会是继早前因另一位联席保荐人 - UBS AG 及 UBS Securities Hong Kong Limited (统称为 UBS) - 在中国金属及另外两家公司的上市申请中犯有缺失而对其作出处分后采取是次纪律行动。

证监会的调查发现, 招商证券及 UBS 各自在上市过程中没有履行联席保荐人应尽的尽职审查责任, 以处理有关中国金属及其客户的多项不寻常的事实及迹象。

#### 对已撤销注册的客户的尽职审查不足

在中国金属于 2008 年 6 月 2 日首次提交上市申请前, UBS 发现中国金属其中一名最大的内地客户 A 公司虽然已于 2007 年 3 月被撤销注册, 但却继续与中国金属或其附属公司签订销售合约。

尽管在尽职审查中出现了以下预警迹象, 但 UBS 却接受了中国金属的解释, 即 B 公司与 A 公司由同一实拥有人拥有, 而 B 公司自 A 公司被撤销注册后一直以 A 公司的名义与中国金属签订合同, 故 B 公司最终在提交予香港联合交易所 (联交所) 的文件以及中国金属日期为 2009 年 6 月 10 日的招股章程内均被描述为中国金属的其中一名最大客户。

尽管招商证券是在或大约在 2008 年 11 月才成为中国金属的联席保荐人, 并且在 2008 年 11 月之前并无参与就此问题所进行的尽职审查, 但招商证券负有进行尽职审查的独立责任, 以便能彻底掌握和了解中国金属的情况, 并使其本身信纳招股章程内所披露的资料。

证监会认为, 假如招商证券以专业的怀疑态度审阅 UBS 及其他专业人士提供的尽职审查文件, 便发现在哪个或哪些公司在关键时间与中国金属签订了合约一事上, 存在相互矛盾的问题, 而这些问题均就中国金属与 A 公司及/或 B 公司之间的交易的真实性, 引起多个预警迹象。证监会认为, 有关证据显示招商证券并无采取任何步骤, 以就此问题进行跟进尽职审查。

#### 对第三方付款的尽职审查不足

2008 年 9 月, 当 UBS 仍为中国金属的独家保荐人时, 中国金属的申报会计师向中国金属发送了 (并抄送予 UBS) 若干资料, 内容是关于其中六名客户曾透过本票及/或第三方支付人安排的汇款支付款项。

在其中一个个案中, 一名透过第三方向中国金属付款的客户, 亦同时代表另外三名中国金属客户支付款项。没有证据显示, UBS 曾就该等客户之间的关系和他们订立该等付款安排的理由, 向中国金属或任何该等客户作出跟进。

UBS 反而依赖其中国内地律师查究该六名客户中的一名客户与中国金属之间的付款安排。该等中国内地律师建议 UBS 索取与该等交易有关的各份文件, 包括该客户向其第三方支付人付款的纪录及显示相关货物进口/出口的海关文件, 以核实相关交易是否属实和有无办妥海关程序。

然而, UBS 没有索取所要求的文件, 反而指示该等律师在假设相关交易属实的情况下提供法律意见。

#### 对中国金属的供应商及客户的尽职审查不足

UBS 及招商证券曾以面对面的形式与部分中国金属客户进行访谈, 其余则透过电话进行。证监会的调查发现:

- 有关访谈纪录一概没有显示该等面对面访谈在何处进行, 以及 UBS 及/或招商证券有否采取任何步骤, 核实进行访谈的处所是否相关客户的处所; 及
- 同时亦没有证据显示, UBS 及/或招商证券有采取任何步骤, 核实任何受访客户代表的身份, 以使它们信纳受访者具有适当的权限接受访谈。

#### 处分



证监会在决定对招商证券的适当处分时,已考虑到:

- 招商证券没有履行重要的职能,即抱着提问求证的心态,作出批判评论性的评估,并特别留意一些与中国金属及其联席保荐人提供的资料互相矛盾或令该等资料的可信度受质疑的预警迹象;
- 招商证券没有履行其独立职责,进行妥善的尽职审查及/或以批判性态度严格审阅由中国金属及其联席保荐人所提供、并与中国金属所提供的资料互相矛盾或令该等资料的可信度受质疑的文件及资料;
- 招商证券曾协助一家不适合上市的公司上市;
- 招商证券表现合作,接受证监会的纪律行动及监管关注事项;及
- 招商证券同意委聘独立的检讨机构,以检讨与其进行保荐人业务有关的政策、程序及常规。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR44](http://sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR44)

### **Hong Kong Securities and Futures Commission Reprimands and Fines China Merchants Securities (HK) Co., Limited HK\$5 million for Mishandling Client Money**

On May 30, 2019, the Hong Kong Securities and Futures Commission (SFC) has reprimanded China Merchants Securities (HK) Co., Limited (CMS) and fined it HK\$5 million for regulatory breaches and internal control failings related to mishandling of client money.

The SFC found that there were around 800 incidents between October 1, 2011 to September 30, 2014, where CMS transferred funds ranging from HK\$68,000 to HK\$308 million from client trust accounts for purposes other than those specifically allowed by the Securities and Futures (Client Money) Rules (Client Money Rules).

CMS also failed to employ fit and proper staff to conduct its business and have proper internal controls and procedures in place to ensure compliance with the Client Money Rules and safeguard client assets.

Since safe custody of client assets is a fundamental obligation of licensed corporations, any transgression of this obligation, even if clients' funds were subsequently returned to the client trust account on the same day, cannot be tolerated. By doing so over a three-year period, CMS clearly breached this fundamental obligation and failed to comply with the Client Money Rules and the Code of Conduct.

In deciding the penalty, the SFC took into account all relevant circumstances including that CMS:

- self-reported the matter to the SFC;

- conducted a review to examine its operational processes and controls governing the segregation of client money during the relevant period;
- commissioned an independent compliance and control review on its client money handling process during the relevant period; and
- co-operated with the SFC in resolving its concerns and accepting the SFC's findings and disciplinary action, and there is no evidence of client loss as a result of its non-compliance.

### **招商证券(香港)有限公司因错误处理客户款项被香港证券及期货事务监察委员会谴责及罚款 500 万港元**

2019 年 5 月 30 日,香港证券及期货事务监察委员会(证监会)因招商证券(香港)有限公司(招商证券)与错误处理客户款项有关的监管违规事项及内部监控缺失,对其作出谴责及罚款 500 万港元。

证监会发现,在 2011 年 10 月 1 日至 2014 年 9 月 30 日期间,招商证券曾经约 800 次为了《证券及期货(客户款项)规则》(客户款项规则)明确容许的目的以外的目的,将介乎 68,000 港元至 3.08 亿港元的资金由客户信托帐户转出。招商证券亦没有聘用适当的职员来进行其业务,也没有设立妥善的内部监控措施和程序以确保遵从《客户款项规则》及保障客户资产。

由于稳妥保管客户资产是持牌法团的基本责任,故即使客户资金其后在同日便被转回客户信托帐户,任何违反这项责任的行为仍是不能姑息的。招商证券采取有关做法超过三年,显然违反了这项基本责任,及没有遵从《客户款项规则》和《操守准则》。

证监会厘定罚则时已考虑到所有相关情况,当中包括招商证券:

- 自行向证监会报告有关事宜;
- 进行检讨,以审视在有关期间内该公司规管客户款项分隔情况的操作程序及监控措施;
- 就该公司在有关期间内的客户款项处理程序委任进行独立的合规及监控检讨;及
- 与证监会合作解决其提出的关注事项,及接受证监会的调查发现和纪律行动,且并无证据显示招商证券的不合规行为令客户蒙受损失。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR46](http://sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR46)

### **Hong Kong Securities and Futures Commission Bans Wong Ka Hang for nine months**

On May 28, 2019, the Hong Kong Securities and Futures Commission (SFC) has banned Mr Wong Ka Hang (Wong) from re-entering the industry for 9 months from May 28, 2019 to February 27, 2020.

The disciplinary action follows an SFC investigation which found that between January and September 2015, Wong accepted instructions from a third party to trade in a client's futures account without obtaining written authorization from the client.

Wong also used the client's password to access the account online and conduct trades on the client's behalf.

The SFC considers that Wong failed to act with due skill, care and diligence and in the best interests of the client and the lack of written authorization could also expose him and his employer to risks of potential claims by the client. Wong's conduct called into question his fitness and properness to be a licensed person.

In deciding the sanction, the SFC took into account all relevant circumstances, including Wong's otherwise clean disciplinary record.

#### 香港证券及期货事务监察委员会禁止黄家恒重投业界九个月

2019年5月28日,香港证券及期货事务监察委员会(证监会)禁止黄家恒(黄)重投业界九个月,由2019年5月28日起至2020年2月27日止。

证监会经调查后采取上述纪律行动。调查发现黄于2015年1月至9月期间,在未获客户书面授权的情况下,接受第三者的指示在该客户的期货帐户内进行买卖。

黄亦使用该客户的密码在网上登入该帐户并代表他进行买卖。

证监会认为黄没有以适当的技能、小心审慎和勤勉尽责的态度行事,以维护客户的最佳利益,而由于没有第三方书面授权,黄及其雇主亦可能面临遭客户索赔的潜在风险。黄的行为令他作为持牌人的适当人选资格受到质疑。

证监会决定上述处分时,已考虑到所有相关情况,包括黄过往并无遭受纪律处分的纪录。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR45](https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR45)

#### Hong Kong Securities and Futures Commission Issues Circular to Credit Rating Agencies on Credit Rating Model Risk Management

On May 28, 2019, the Hong Kong Securities and Futures Commission (SFC) issued circular (Circular) to credit rating agencies after it has identified a number of potential regulatory concerns as well as good practices during the course of its supervision of licensed corporations engaged in the provision of credit rating services regarding their model risk management.

The Circular:

- specifies the regulatory concerns related to model risk management identified by the SFC during its supervision of credit rating agencies (CRAs);
- provides guidance to CRAs on the expected standards for the management of risks emanating from the application of credit rating models when providing credit rating services; and
- provides examples of good model risk management practices observed by the SFC.

#### 香港证券及期货事务监察委员会向信贷评级机构发出有关信贷评级模式的风险管理的通函

2019年5月28日,香港证券及期货事务监察委员(证监会)在监察从事提供信贷评级服务的持牌法团的过程中,识别出一些与它们的模式风险管理有关并可能会引起监管关注的事项和一些良好作业手法后,向信贷评级机构发出通函。

该通函:

- 阐明证监会在监察信贷评级机构期间所识别出与模式风险管理有关的监管关注事项;
- 向信贷评级机构提供指引,说明它们在提供信贷评级服务期间,因采用信贷评级模式而产生的风险时应达到的管理标准;及
- 列举证监会观察所得的良好模式风险管理手法的例子。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC38](https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC38)

#### Hong Kong Securities and Futures Commission Issues Circular on Third-party Deposits and Payments

On May 31, 2019, the Hong Kong Securities and Futures Commission (SFC) issued a circular to reiterate the importance of mitigating the risks associated with third-party payments to or from accounts maintained by

clients with licensed corporations (LCs) and associated entities (AEs). LCs and AEs are reminded to enforce appropriate and effective control measures which are capable of addressing these risks and meeting the requirements set out in the relevant guidelines and circulars.

Third-party deposits and payments may be used to facilitate the misappropriation of client assets, money laundering and other misconduct. When a client uses a third party to pay for or receive the proceeds of investment transactions, there is a risk that the arrangement may be used to disguise the true beneficial owner or the source of funds.

### Expected standards

In several recent enforcement cases, the policies, procedures and controls put in place by LCs for handling third party deposits and payments were found to fall short of the expected standards or were not properly enforced by the managers and staff members responsible.

LCs and AEs should critically assess the risk that they could be inadvertently exposed to financial crime as well as legal and compliance risks and give serious consideration to refusing third-party deposits and payments.

Where LCs and AEs consider that there are exceptional and legitimate circumstances under which clients may be permitted to make third-party payment arrangements, they should only accept such arrangements when adequate control measures are properly implemented to mitigate the associated risks, and the arrangements otherwise satisfy all the applicable legal and regulatory requirements. In any event, LCs and AEs should accept only those third-party deposits or payments which are reasonably in line with the client's profile and normal commercial practices.

A Manager-In-Charge (MIC) of Anti-money Laundering and Counter-Terrorist Financing (AML/CFT) should be designated to oversee the proper design and implementation of the policies and procedures for handling third-party deposits and payments<sup>5</sup> as well as the ongoing monitoring of client accounts involving such deposits or payments. The acceptance of a third-party deposit or payment should be approved by the MIC of AML/CFT or Money Laundering Reporting Officer. Where it involves a third-party payor or payee who might pose higher risks, it should be subject to a dual approval process<sup>6</sup>.

LCs and AEs are also reminded to step up their ongoing monitoring of client accounts involving third-party deposits and payments, make prompt follow-up inquiries and report any suspicious transactions to the Joint

Financial Intelligence Unit and other relevant authorities (such as the SFC and the Police) to discharge their compliance obligations.

Senior management of LCs, including the MIC of AML/CFT, bear the primary responsibility for ensuring their firms maintain appropriate standards and adhere to proper procedures. Where appropriate, the SFC will take action against firms and their senior management who are responsible for failures to put in place appropriate and effective policies, procedures and controls for handling third-party deposits and payments.

Key control measures and examples of effective practices are available on the SFC website: [sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC39&appendix=0](https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC39&appendix=0).

### 香港证券及期货事务监察委员会发出关于第三者存款及付款的通函

2019年5月31日, 香港证券及期货事务监察委员(证监会)发出通函, 重申业界必须减低客户在透过与持牌法团及有联系实体开立的帐户从第三者收取或向第三者支付款项时所涉及的风险。持牌法团及有联系实体务必执行能应付上述风险和符合相关指引及通函所载的规定的适当而有效的监控措施。

第三者存款及付款可能会被用来利便进行客户资产挪用、洗钱和其他失当行为。当客户利用第三者支付或收取投资交易的收益时, 该安排可能存在被用作隐藏真正实益拥有人或资金来源的风险。

### 应达到的标准

在近期的数宗执法个案中, 持牌法团为处理第三者存款及付款而制定的政策、程序及监控措施被发现并未符合应达到的标准, 或负责的管理人员及职员未有妥善执行有关政策、程序及监控措施。

持牌法团及有联系实体应严格地评估它们可能会在无意间牵涉金融罪行的风险, 以及法律和合规风险, 并慎重考虑是否应拒绝第三者存款及付款。

假如持牌法团及有联系实体认为有任何可容许客户作出第三者付款安排的特别及合法情况, 它们应只在已妥善实施充足的监控措施以减低所涉及的风险, 并且有关安排已符合所有适用的法例及监管规定的前提下, 接纳有关安排。在任何情况下, 持牌法团及有联系实体应只接纳合理地符合客户的概况和一般商业作业手法的第三者存款或付款。



持牌法团及有联系实体应指派负责打击洗钱及恐怖分子资金筹集的核心职能主管，监督有否就处理第三者存款及付款妥善设计和实施政策及程序，以及持续监察有关存款及付款所涉及的客户帐户。第三者存款或付款应在得到负责打击洗钱及恐怖分子资金筹集的核心职能主管或洗钱报告主任批准后，才可获接纳。当存款或付款涉及可能具有较高风险的第三者付款人或收款人时，有关存款或付款便应通过双重审批程序。

证监会亦提醒持牌法团及有联系实体务必加强对涉及第三者存款和付款的客户帐户的持续监察，迅速作出跟进查询，以及向联合财富情报组和其他有关当局（例如证监会及警方）汇报任何可疑交易，以履行合规责任。

持牌法团的高级管理层（包括负责打击洗钱及恐怖分子资金筹集的核心职能主管）对于确保公司维持适当的标准及遵守恰当的程序负有首要责任。任何公司如没有为处理第三者存款及付款制定适当和有效的政策、程序及监控措施，证监会便会在适当情况下对有关公司和须就此缺失负责的高级管理层采取行动。

關鍵監控措施及有效作業手法的例子载于证监会网站：[sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/intermediaries/supervision/openAppendix?refNo=19EC39&appendix=0](http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/intermediaries/supervision/openAppendix?refNo=19EC39&appendix=0)。

Source 来源:

[www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC13](http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC13)

### **Hong Kong Securities and Futures Commission Seeks Disqualification Order against Former Chief Financial Officer of Fujian Nuoqi Co., Ltd.**

On June 4, 2019, the Hong Kong Securities and Futures Commission (SFC) has commenced legal proceedings in the Court of First Instance to seek a court order to disqualify the former chief financial officer, company secretary and executive director of Fujian Nuoqi Co., Ltd. (Nuoqi), Mr Au Yeung Ho Yin (Au Yeung).

The SFC's action follows an investigation into certain withdrawals amounting to a substantial portion of the net proceeds of approximately RMB236.52 million from Nuoqi's global offering of its shares shortly after the company was listed on the Stock Exchange of Hong Kong Limited in January 2014. The withdrawals were made without proper approval from Nuoqi's board of directors, nor did they serve any genuine commercial purpose.

The SFC alleges that despite Au Yeung's knowledge of red flags regarding the withdrawals, he failed to discharge his duties as the chief financial officer and

later as an executive director of Nuoqi in that he did not properly inquire into the basis for those withdrawals, alert and advise Nuoqi's board of directors about them, and ensure that the disclosure of information about the use of the global equity offering proceeds in Fujian Nuoqi's 2013 annual report was accurate.

### **香港证券及期货事务监察委员会寻求对福建诺奇股份有限公司前首席财务官作出取消资格令**

2019年6月4日，香港证券及期货事务监察委员会（证监会）在原讼法庭展开法律程序，寻求法庭对福建诺奇股份有限公司（诺奇）前首席财务官、公司秘书兼执行董事欧阳浩然（欧阳）作出取消资格令。

证监会的行动源于对诺奇的一项调查：诺奇于2014年1月在香港联合交易所有限公司上市后不久，有一大部分由该公司从全球股份发售所得的款项净额（约人民币2.3652亿元）被人分数次提走。有关款项是在未经诺奇董事会适当批准的情况下被提走的，而且并非用于任何真正的商业用途。

证监会指，尽管欧阳知悉有关上述提款的预警迹象，但他没有履行作为诺奇首席财务官和其后作为诺奇执行董事的职责，原因是他没有就该等提款的理据进行适当查询、就该等提款向诺奇董事会发出提示并提供建议，以及确保诺奇在2013年的年报内所披露有关该公司全球股份发售所得款项用途的资料是准确的。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR47](http://sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR47)

### **Hong Kong Securities and Futures Commission Issues Announcement in Respect of High Concentration of Shareholding in Best Mart 360 Holdings Limited**

On June 5, 2019, the Hong Kong Securities and Futures Commission (SFC) issued an announcement in respect of the concentration of the shareholding of Best Mart 360 Holdings Limited (the Company) (Stock Code: 02360) in the hands of a limited number of shareholders as at May 23, 2019.

The SFC's findings suggested that as at May 23, 2019, 19 shareholders held an aggregate of 207,686,000 Shares, representing 20.77% of the issued Shares. Such shareholding, together with 750,000,000 Shares (representing 75.00% of the issued Shares) held by the controlling shareholder, represented 95.77% of the issued Shares as at May 23, 2019. Therefore only 42,314,000 Shares (representing 4.23% of the issued Shares) were held by other shareholders.

The SFC said that in view of the high concentration of shareholding in a small number of shareholders, shareholders and prospective investors should be aware that the price of the shares of the Company (Shares) could fluctuate substantially even with a small number of shares traded, and should exercise extreme caution when dealing in the Shares.

#### 香港证券及期货事务监察委员会发出有关优品 360 控股有限公司股权高度集中的公布

2019年6月5日,香港证券及期货事务监察委员会(证监会)就优品360控股有限公司(该公司)(股份代号:02360)之股权于二零一九年五月二十三日集中于极少数股东一事发出公布。

证监会查讯结果显示该公司于二零一九年五月二十三日,有十九名股东合共持有 207,686,000 股该公司股份,相当于该公司已发行股本之 20.77%。有关股权连同由该公司一名控股股东持有之 750,000,000 股(占已发行股份 75.00%),相当于该公司于二零一九年五月二十三日已发行股份总额之 95.77%。因此,该公司只有 42,314,000 股(占已发行股份 4.23%)由其他股东持有。

证监会表示:鉴于股权高度集中于数目不多之股东,即使少量股份成交,该公司之股份价格亦可能大幅波动,股东及有意投资者于买卖该公司股份时务请审慎行事。

Source 来源:

[sfc.hk/web/EN/files/ENF/HighCon/e02360190605.pdf](http://sfc.hk/web/EN/files/ENF/HighCon/e02360190605.pdf)

#### Hong Kong Monetary Authority Issues E-banking Alert: Beware of Unauthorized Small-value Payment Transactions

On May 24, 2019, the Hong Kong Monetary Authority (HKMA) said that it has received reports from banks regarding eight cases of unauthorized small-value payment transactions over the past three weeks. These unauthorized transactions involve three banks and a total value of HKD 70,000. Based on the latest information, it is possible that the fraudsters have stolen the customers' Internet banking login passwords to perform small-value payment transactions.

In accordance with the HKMA's regulatory requirements, banks should notify a customer immediately after the customer initiates a small-value payment transaction. The said unauthorized transactions were detected after the customers contacted the banks upon receiving the notifications. The affected banks and customers have reported these cases to the Police. In accordance with the Code of Banking Practice, a customer should not be held responsible for any direct loss suffered by him or her as a result of unauthorized e-banking transactions

unless he or she acts fraudulently or with gross negligence. Following this requirement, the banks have already compensated some of the customers, while the remaining cases are being processed.

The HKMA wishes to remind the public of the need to take suitable precautionary measures when using e-banking services in order to prevent these fraud cases from happening. These precautionary measures include:

- Setting e-banking passwords that are difficult to guess and different from the ones for other internet services, and regularly changing these passwords;
- Installing and promptly updating security software to protect their computers and mobile phones;
- Refraining from using public computers or public Wi-Fi to access e-banking accounts; and
- Checking their e-banking accounts from time to time and reviewing alert messages and statements issued by banks in a timely manner.

#### 香港金融管理局发出电子银行服务提示:留意未经授权小额转帐交易

2019年5月24日,香港金融管理局(金管局)称其在过去三星期收到八宗有关未经授权小额转帐交易的通报,这些个案共涉及三家银行,总额为港币七万元。根据现有资料,不法之徒可能是透过盗用客户的网上银行密码,进行小额转帐交易。

按照金管局的规定,银行为客户完成小额转帐交易后,须向客户发出即时的交易提示,这些个案亦是客户收到交易提示后通知银行而揭发的。受影响银行和客户已向警方报案。根据《银行营运守则》,除非客户作出欺诈或严重疏忽行为,否则客户毋须对因未经授权交易而蒙受的直接损失负责。因应这要求,银行已经向部分客户作出赔偿,其他个案也在处理当中。

金管局希望提醒公众在使用电子银行服务时,须采取适当的防范措施,避免发生同类骗案。这些防范措施包括:

- 设定难以猜破及与其他网上服务不同的网上银行密码,并定期更新;
- 安装并及时更新保安软件,以保护电脑及手提电话;
- 避免透过公用电脑或公共无线网络登入电子银行帐户;以及
- 不时查核电子银行帐户,并及时查阅银行发出的提示讯息及结单。

Source 来源:

[hkma.gov.hk/eng/key-information/press-releases/2019/20190524-4.shtml](http://hkma.gov.hk/eng/key-information/press-releases/2019/20190524-4.shtml)



## Hong Kong Monetary Authority Issues Circular Regarding Frequently Asked Questions Published by Securities and Futures Commission on Disclosure of Investigations Commenced by Licensed Corporations in the Notifications of Cessation of Accreditation

On May 31, 2019, the Hong Kong Monetary Authority issued circular to draw attention to the Frequently Asked Questions issued by the Securities and Futures Commission (SFC) on disclosure of investigations commenced by licensed corporations in the notifications of cessation of accreditation (FAQ).

The FAQ provides guidance on the disclosure requirement for a licensed corporation. Under this requirement, a licensed corporation should provide the SFC with information about whether a licensed individual who ceases to be accredited to it was under any investigation commenced by the licensed corporation within six months preceding his/her cessation of accreditation, when the licensed corporation notifies the SFC of his/her cessation of accreditation. If the internal investigation commences subsequent to the notification of cessation of accreditation, the licensed corporation should also notify the SFC as soon as practicable. The FAQ also sets out other details of the disclosure requirement.

The FAQ is available on the SFC website: [sfc.hk/web/EN/faqs/intermediaries/licensing/disclosure-of-investigations-commenced-by-licensed-corporations.html#9](http://sfc.hk/web/EN/faqs/intermediaries/licensing/disclosure-of-investigations-commenced-by-licensed-corporations.html#9)

### 香港金融管理局就有关证券及期货事务监察委员会发布「在终止隶属关系通知书内披露持牌法团所展开的调查」的常见问题发出通函

2019年5月3日, 香港金融管理局发出通函, 提请注意证券及期货事务监察委员会(证监会)发布有关「在终止隶属关系通知书内披露持牌法团所展开的调查」的常见问题(常见问题)。

常见问题向持牌法团提供有关披露规定的指引。根据这项规定, 持牌法团在通知证监会有关其终止与某持牌人士的隶属关系的事宜时, 应同时向证监会提供资料, 说明该持牌人士在终止隶属关系之前的六个月内是否曾接受持牌法团的任何调查。如果内部调查是在提交终止隶属关系通知书之后才展开的, 持牌法团也应在切实可行的范围内尽快通知证监会。常见问题解答还列出了披露要求的其他细节。

常见问题载于证监会网站: [sc.sfc.hk/qb/www.sfc.hk/web/TC/faqs/intemediaries/licen](http://sc.sfc.hk/qb/www.sfc.hk/web/TC/faqs/intemediaries/licen)

[sing/disclosure-of-investigations-commenced-by-licensed-corporations.html#1](http://sing/disclosure-of-investigations-commenced-by-licensed-corporations.html#1)。

Source 来源:

[hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190531e1a1.pdf](http://hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2019/20190531e1a1.pdf)

## The Stock Exchange of Hong Kong Limited Publishes Latest Guidance Letter on Long Suspension and Delisting

Following the Stock Exchange of Hong Kong Limited (the Exchange) published conclusions on its consultation paper on the proposed suspension requirements for listed issuers with disclaimer or adverse audit opinion on their financial statements, the Exchange issued an updated [Guidance Letter on Long Suspension and Delisting](#) (effective on September 1, 2019), which provides further guidance relating to the suspension requirement and circumstances in which the Exchange may consider allowing a longer remedial period.

Examples on how an issuer could provide comfort that a disclaimer or adverse opinion in respect of relevant issues would no longer be required include (a) a full financial year audit or a special interim audit of the issuer's financial statements; or (b) a special engagement of the auditor to perform audit on a single financial statement of the issuer or a specific element, account or item of a financial statement under HKSA805 (Revised).

After considering comments received during the consultation, the Exchange has revised the proposed Rule so that the suspension requirement won't apply where (i) the disclaimer or adverse opinion relates solely to going concern; or (ii) the underlying issue giving rise to the audit modification has been resolved before the issuer publishes the preliminary results announcement.

Also, the Exchange plans to modify the remedial period. Under the Rules, the Exchange may delist a Main Board issuer after a trading suspension of a continuous 18 months (GEM issuer: 12 months). Where the resolution of issues giving rise to the disclaimer or adverse opinion is outside the issuer's control, a longer remedial period may be allowed, with the duration of the period to be determined by the Exchange on a case by case basis.

The Exchange will also provide a transitional arrangement where the remedial period will be extended to 24 months for both Main Board and GEM issuers that are suspended solely due to a disclaimer or adverse opinion on the issuers' financial statements for the financial years commencing between September 1, 2019 and August 31, 2021.

The [amendments to the Main Board Listing Rules](#), and [amendments to the GEM Listing Rules](#), can be downloaded from the HKEX website.

### 香港联合交易所有限公司刊發有关长时间停牌及除牌的最新指引信

香港联合交易所有限公司 (联交所) 就建议对财务报表附有核数师无法表示意见或否定意见的发行人实施特定停牌规定的咨询文件刊发咨询总结的同时, 香港交易所亦发布了有关长时间停牌及除牌的最新指引信 (2019 年 9 月 1 日生效), 就停牌规定及联交所可能会考虑延长补救期的情况提供进一步指引。

发行人保证核数师毋须再就有关问题发出无法表示意见或否定意见的例子包括: (a) 对发行人的财务报表作出完整财政年度审核或特别中期审核; 或 (b) 特别委聘核数师根据香港核数准则第 805 号 (经修订) 对发行人的单一财务报表又或财务报表中的个别元素、账目或项目进行审核。

经考虑咨询过程中收纳的意见后, 联交所已修订了建议《上市规则》, 阐明相关停牌规定不适用于下述情况: (i) 无法表示意见或否定意见只牵涉持续经营问题; 或 (ii) 发行人在刊发初步业绩公告前已解决导致核数师发出非标准意见的相关问题。

此外, 联交所计划修改补救期。按现行《上市规则》, 主板发行人连续停牌 18 个月 (GEM 发行人: 12 个月) 可能会被联交所除牌。若要解决导致核数师发出无法表示意见或否定意见的问题并非发行人所能控制, 补救期或可延长, 延长的期限由联交所根据个别情况而定。

联交所亦设过渡安排: 若主板及 GEM 发行人停牌纯粹是因为核数师对发行人在 2019 年 9 月 1 日至 2021 年 8 月 31 日期间 (首尾两日包括在内) 开始的财政年度的财务报表发出无法表示意见或否定意见, 补救期可延长至 24 个月。

[《主板上市规则》的修訂](#) 及 [《GEM 上市规则》的修訂](#) 均可於香港交易所網站下載。

Source 来源:

[hkex.com.hk/News/News-Release/2019/190524news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/190524news?sc_lang=en)

### The Stock Exchange of Hong Kong Limited Serves Notice on Sanai Health Industry Group Company Limited to Suspend Trading in its Shares

On May 26, 2019, Sanai Health Industry Group Company Limited (Company) (stock code: 1889)

announced that it has received a letter dated May 24, 2019 from the Stock Exchange of Hong Kong Limited (the Exchange), which serves a notice that the Exchange considered that the Company has failed to maintain a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated under Rule 13.24 of the Listing Rules to warrant the continued listing of the Company's shares (Shares). The Exchange has therefore decided to suspend trading in the Shares under Rule 6.01(3) of the Listing Rules and proceed with cancellation of the Company's listing under Rule 6.01A(1) of the Listing Rules (Decision).

Under Rules 2B.06(1) and 2B.08(1) of the Listing Rules, the Company has the right to have the Decision reviewed by the Listing Committee within 7 business days of receipt of the Decision. Therefore, if the Company does not make any review application by June 4, 2019, trading in the Shares will be suspended from 9:00 a.m. on June 5, 2019. Before that, trading in the Shares will continue.

On June 4, 2019, the Company submitted a written request to the Listing Committee of the Exchange for the Decision to be referred to the Listing Committee for review.

### 香港联合交易所有限公司向三爱健康产业集团有限公司送达暂停买卖股份的通知

2019 年 5 月 26 日, 三爱健康产业集团有限公司 (該公司) (股票代码: 1889) 公告其已接獲香港联合交易所有限公司 (联交所) 所作為通知而發出的日期為二零一九年五月二十四日的函件, 當中載述聯交所認為該公司未能維持足夠的營運水平或擁有足夠價值的有形資產及/或證明其擁有上市規則第 13.24 條所指足夠潛在價值的無形資產, 以保證該公司股份 (股份) 得以繼續上市。因此, 聯交所決定根據上市規則第 6.01(3) 條暫停買賣股份, 並根據上市規則第 6.01A(1) 條將該公司進行除牌 (該決定)。

根據上市規則第 2B.06(1) 及 2B.08(1) 條, 該公司有權於自接獲該決定起計七個營業日內要求上市委員會覆核該決定。因此, 倘該公司並無於二零一九年六月四日前作出任何覆核申請, 則股份將自二零一九年六月五日上午九時正起暫停買賣。在此之前, 股份將會繼續買賣。

2019 年 6 月 4 日, 該公司已向联交所上市委员会提交有关将该决定转交上市委员会覆核的书面要求。

Source 来源:

[www3.hkexnews.hk/listedco/listconews/SEHK/2019/0527/LTN20190527051.pdf](http://www3.hkexnews.hk/listedco/listconews/SEHK/2019/0527/LTN20190527051.pdf)

## The Stock Exchange of Hong Kong Limited Publishes Exchange Notice - Suspension of Trading in Relation to Combest Holdings Limited

On May 29, 2019, the Stock Exchange of Hong Kong Limited (the Exchange) announced that Under Rule 8(1) of the Securities and Futures (Stock Market Listing) Rules, the Hong Kong Securities and Futures Commission has directed the Exchange to suspend all dealings in the shares of Combest Holdings Limited (stock code: 8190).

### 香港联合交易所有限公司发布交易所通告 – 关于康佰控股有限公司停牌

2019年5月29日, 香港联合交易所有限公司(联交所)公布, 依据证券及期货(在证券市场上市)规则之条例第8(1)条, 联交所应香港证券及期货事务监察委员会之指令停止康佰控股有限公司(证券代号: 8190)股份之買賣。

Source 来源:

[www3.hkexnews.hk/listedco/listconews/GEM/2019/0529/GLN201905299999.HTM](http://www3.hkexnews.hk/listedco/listconews/GEM/2019/0529/GLN201905299999.HTM)

## Hong Kong Exchanges and Clearing Limited Signs Memorandum with Beijing Antaiko Information

On May 24, 2019, Hong Kong Exchanges and Clearing Limited and Beijing Antaiko Information Co Ltd. signed a Memorandum of Understanding (MoU) in Beijing to establish a deeper strategic partnership.

Based on the existing alumina quotation cooperation, the MoU seeks to further expand the cooperation in the spot market of non-ferrous metal, and two parties jointly promote the internationalization of spot prices of Mainland China's non-ferrous metals.

### 香港交易及结算所有限公司与北京安泰科信息签订合作备忘录

2019年5月24日, 香港交易及结算所有限公司与北京安泰科信息股份有限公司在北京签署合作备忘录, 建立更深层次的合作关系。

以现有氧化铝报价合作为基础, 备忘录进一步拓展双方在有色金属大宗商品现货市场领域的广泛合作, 共同推动中国内地有色金属大宗商品现货价格的国际化进程。

Source 来源:

[hkex.com.hk/News/News-Release/2019/190527news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/190527news?sc_lang=en)

## Hong Kong Exchanges and Clearing Limited Welcomes its First Listing of Two-Time Inverse Product

On May 28, 2019, Hong Kong Exchanges and Clearing Limited (HKEX) welcomed its first listing of a two-time Inverse Product, the CSOP Hang Seng Index Daily (-2x) Inverse Product (stock code: 7500).

An Inverse Product, also known as an Inverse Exchange Traded Fund, is designed to provide daily investment results of up to 200 per cent of the inverse performance of its underlying benchmark, before fees and expenses. The increase in the leverage multiple on Inverse Products to a maximum of negative two times from negative one time will allow investors to potentially capture higher returns during a market decline.

The HKEX said that its emphasis on enriching its product mix aligns with the growth focus in HKEX's latest Strategic Plan – to develop Hong Kong as the hub for Exchange Traded Products in Asia.

### 香港交易及结算所有限公司欢迎首只两倍反向产品上市

2019年5月28日, 香港交易及结算所有限公司(香港交易所)欢迎首只两倍反向产品 – 南方东英恒生指数每日反向(-2x)产品(股票代码: 7500)上市。

反向产品, 或称反向ETF, 目标提供与相关指数相反并放大高达200% (扣取费用及其他开支前) 的每日投资回报。反向产品的杠杆倍数由1倍增至最多2倍后, 投资者有机会在市场回落时获得更高回报。

香港交易所表示: 其致力为市场提供更丰富的产品组合, 贯彻最新战略规划内的发展重点, 发展香港成为亚洲交易所买卖产品中心。

Source 来源: [hkex.com.hk/News/News-Release/2019/1905282news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/1905282news?sc_lang=en)

## Auction Company is Convicted of Direct Marketing Offense Stemming from a Complaint Received by the Office of the Privacy Commissioner for Personal Data, Hong Kong

On May 27, 2019, Artfund International (Hong Kong) Auction Company Limited (Artfund) was convicted of two charges under the Personal Data (Privacy) Ordinance (the Ordinance) at the Eastern Magistrates' Court.

The first charge relates to the failure of Artfund to take specified actions and obtain a data subject's consent before using her personal data in direct marketing, which was in contravention of section 35C of the Ordinance.



The second charge relates to the failure of Artfund 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, which was in contravention of section 35F of the Ordinance.

Artfund pleaded guilty to both charges and was fined HK\$20,000 in total (HK\$10,000 in respect of each charge).

The case stemmed from a complaint received by the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) in November 2017.

In November 2017, the complainant received at her address an auction booklet of Artfund addressed to her full name. She had no previous dealing with Artfund and that was the first time she received direct marketing material from Artfund. No opt-out clause was provided to her on the direct marketing material. She then complained to the PCPD. Having examined the complaint, the Privacy Commissioner for Personal Data (Privacy Commissioner) was of the view that Artfund had misused her personal data and referred this case to the Police for criminal investigation.

The Privacy Commissioner said that organizations should develop and implement relevant privacy policies, procedures and guidelines to ensure that employees having access to and using customers' personal data are trained in data handling and protection. They must also communicate effectively to their customers the intended use or provision of their personal data for use in direct marketing and respect the customer's right over such use of their personal data. The support of the senior management is needed to incorporate the core values of the data ethical accountability into corporate governance for gaining their customers' trust.

#### 源于香港个人资料私隐专员公署接获的投诉拍卖行违法直接促销罪名成立

2019年5月27日,中金国际(香港)拍卖有限公司(中金)于东区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。

第一项控罪指中金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。

第二项控罪指中金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中金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。

中金承认上述两项控罪,每项控罪分别被判罚款一万港元,共被判罚款二万港元。

个案源于香港个人资料私隐专员公署(公署)于2017年11月接获的一宗投诉。

投诉人在2017年11月于其住址收到一份中金具名致她的拍卖小册子。投诉人过去与中金没有往来,这是她首次收到中金的直接促销资料。中金在有关的直销资料中亦没有告知投诉人她有权要求中金停止如此使用有关资料,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)认为中金有滥用投诉人的个人资料,遂将个案转介警方作刑事调查。

私隐专员表示:机构应制定及落实相关的私隐政策、程序及指引,确保能查阅及使用客户个人资料的雇员得到相关资料处理及保障的培训。机构亦必须向客户传达拟使用或提供其个人资料作直销的规定,尊重客户对使用其个人资料的决定权。将数据道德问责的核心价值纳入企业管治内,有赖机构管理层的支持和推动,从而取得客户的信任。

Source 来源:

[pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20190527.html](http://pcpd.org.hk/english/news_events/media_statements/press_20190527.html)

#### Office of the Privacy Commissioner for Personal Data, Hong Kong and Singapore's Personal Data Protection Commission Sign Memorandum of Understanding to Strengthen Cooperation in Personal Data Protection

On May 31, 2019, the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) and Singapore's Personal Data Protection Commission (PDPC) signed a Memorandum of Understanding (MOU) to strengthen cooperation in personal data protection in the two jurisdictions.

Under the MOU, the PCPD and the PDPC will engage in the cross-sharing of experiences, exchange of best practices, joint research projects and information exchange involving potential or ongoing data breach investigations.

#### 香港个人资料私隐专员公署与新加坡个人资料保护委员会签订谅解备忘录以加强合作保障个人资料

2019年5月31日,香港个人资料私隐专员公署与新加坡个人资料保护委员会签订谅解备忘录(备忘录),同心协力,进一步加强两地就个人资料保障方面的合作关系。

根据备忘录, 香港个人资料私隐专员公署与新加坡个人资料保护委员会将在不同范畴加强合作, 包括分享经验、交流良好行事方式、合作进行研究项目, 以及就潜在或进行中的资料外洩事故调查作资讯分享。

Source 来源:

[pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20190531.html](http://pcpd.org.hk/english/news_events/media_statements/press_20190531.html)

### **Hong Kong Privacy Commissioner for Personal Data Publishes Investigation Report on the Data Breach Incident of Cathay Pacific Airways Limited and Hong Kong Dragon Airlines Limited**

On June 6, 2019, the Privacy Commissioner for Personal Data, Hong Kong (Privacy Commissioner) Mr Stephen Kai-yi Wong published an investigation report on the data breach incident of unauthorized access to personal data of approximately 9.4 million passengers of Cathay Pacific Airways Limited and Hong Kong Dragon Airlines Limited (collectively referred to as Cathay).

The Privacy Commissioner found Cathay contravened the data protection principles under the Personal Data (Privacy) Ordinance (Ordinance) relating to personal data security and retention. The Privacy Commissioner served an Enforcement Notice to direct Cathay to remedy and prevent any recurrence of the contraventions.

The Privacy Commissioner said that it is quite clear that contraventions aside, Cathay adopted a lax attitude towards data governance, which fell short of the expectation of its affected passengers and the regulator.

The Privacy Commissioner also pointed out that there being no statutory requirements under the Ordinance for a data breach notification, whether to the Privacy Commissioner or the affected passengers. In response, the Government said it will work closely with the office of Privacy Commissioner for Personal Data (PCPD) and consult stakeholders, including the Legislative Council, along the way ([info.gov.hk/gia/general/201906/06/P2019060600569.htm](http://info.gov.hk/gia/general/201906/06/P2019060600569.htm)).

The report can be downloaded from the PCPD website at:

[pcpd.org.hk/english/enforcement/commissioners\\_findings/investigation\\_reports/files/PCPD\\_Investigation\\_Report\\_R19\\_15281\\_Eng.pdf](http://pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/PCPD_Investigation_Report_R19_15281_Eng.pdf)

香港个人资料私隐专员发表国泰航空公司及港龙航空公司资料外泄事故的调查报告

2019年6月6日, 香港个人资料私隐专员(私隐专员)黄继儿发表国泰航空公司及港龙航空公司(统称: 国泰)约940万名乘客的个人资料遭未获授权取览或查阅的资料外洩事故的调查报告。

私隐专员认为, 国泰违反了《个人资料(私隐)条例》(私隐条例)下有关个人资料保安及资料保留的资料保障原则。私隐专员向国泰送达执行通知, 指示国泰纠正以及防止违规情况再发生。

私隐专员表示: 国泰除了违规之外, 在数据管治上明显地掉以轻心, 未能达到受影响乘客和监管机构的期望。

私隐专员还指出目前《私隐条例》没有规定资料使用者须向私隐专员及资料当事人(就该事件, 即为受影响乘客)通报资料外洩事故。作为回应, 政府表示会与个人资料私隐专员公署(公署)紧密合作, 并在建议修订的过程中咨询包括立法会在内的相关持份者([sc.isd.gov.hk/TuniS/www.info.gov.hk/gia/general/201906/06/P2019060600567.htm?fontSize=1](http://sc.isd.gov.hk/TuniS/www.info.gov.hk/gia/general/201906/06/P2019060600567.htm?fontSize=1))。

报告可于公署网站下载:

[pcpd.org.hk/sc\\_chi/enforcement/commissioners\\_findings/investigation\\_reports/files/PCPD\\_Investigation\\_Report\\_R19\\_15281\\_Chi.pdf](http://pcpd.org.hk/sc_chi/enforcement/commissioners_findings/investigation_reports/files/PCPD_Investigation_Report_R19_15281_Chi.pdf)

Source 来源:

[pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20190606.html](http://pcpd.org.hk/english/news_events/media_statements/press_20190606.html)

### **Hedge Fund Adviser Settles U.S. Securities and Exchange Commission Charges to Pay US\$5 Million for Compliance Failures Related to Valuation of Fund Assets**

On June 4, 2019, the U.S. Securities and Exchange Commission announced that an investment adviser Deer Park Road Management Company LP (Deer Park), in connection with its flagship STS Partners' fund, has agreed to pay a US\$5 million penalty to settle charges stemming from compliance deficiencies that contributed to the firm's failure to ensure that certain securities in its flagship fund were valued properly.

Deer Park's chief investment officer, Scott Burg, agreed to pay a US\$250,000 penalty. Scott Burg oversaw the valuation of certain assets in the flagship fund and approved valuations that the traders flagged as "undervalued".

对冲基金顾问公司就美国证券交易委员会指控与基金资产估值有关的合规失误达成和解支付500万美元

2019年6月4日,美国证券交易委员会(美国证监会)宣布,投资顾问公司Deer Park Road Management Company LP(Deer Park),就其旗舰STS Partners的基金,已同意支付500万美元的罚款以解决因合规缺陷而导致公司未能确保其旗舰基金中的某些证券得到适当估值的指控。

Deer Park的首席投资官Scott Burg同意支付25万美元的罚款。Scott Burg监督旗舰基金中某些资产的估值并批准被交易员称为“被低估”的估值。

Source 来源: [sec.gov/news/press-release/2019-86](https://sec.gov/news/press-release/2019-86)

### **U.S. Securities and Exchange Commission Charges Issuer with Conducting US\$100 Million Unregistered Initial Coin Offering**

On June 4, 2019, the U.S. Securities and Exchange Commission (SEC) sued Kik Interactive Inc. (Kik) for conducting an illegal US\$100 million securities offering of digital tokens known as "Kin".

The SEC charges that Kik sold the "Kin" tokens to U.S. investors in early 2017 without registering their offer and sale as required by the U.S. securities laws.

The SEC seeks a permanent injunction, disgorgement plus interest, and a penalty.

### **美国证券交易委员会指控发行人进行 1 亿美元未注册的初始代币发行**

2019年6月4日,美国证券交易委员会(美国证监会)起诉Kik Interactive Inc.(Kik)进行非法的1亿美元称为“Kin”数字代币的证券发行。

美国证监会指控Kik在2017年初将这些“Kin”代币销售给美国投资者,而没有按照美国证券法的要求登记其的要约和销售。

美国证监会寻求永久禁令,交回非法所得加上利息和罚款。

Source 来源: [sec.gov/news/press-release/2019-87](https://sec.gov/news/press-release/2019-87)

### **U.S. Securities and Exchange Commission Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Financial Professionals**

On June 5, 2019, the U.S. Securities and Exchange Commission (SEC) adopted a package of rulemakings and interpretations designed to enhance the quality and transparency of retail investors' relationships with investment advisers and broker-dealers.

Under Regulation Best Interest, broker-dealers will be required to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.

The Form CRS Relationship Summary will require registered investment advisers and broker-dealers to provide retail investors with simple, easy-to-understand information about the nature of their relationship with their financial professional.

The SEC issued an interpretation to reaffirm and clarify its views of the fiduciary duty that investment advisers owe to their clients under the Advisers Act. The SEC also issued an interpretation to confirm and clarify when a broker-dealer's performance of advisory activities causes it to become an investment adviser within the meaning of the Advisers Act.

Regulation Best Interest and Form CRS will become effective 60 days after they are published in the Federal Register and will include a transition period until June 30, 2020.

### **美国证券交易委员会制定规则和诠释以加强对散户投资者与金融专业人士关系的保护和维持选择**

2019年6月5日,美国证券交易委员会(美国证监会)采纳一揽子规则制定和诠释,旨在提高散户投资者与投资顾问和经纪-交易商关系的质量和透明度。

根据《最佳利益规则》,在向散户投资者推荐涉及证券的任何证券交易或投资策略时,经纪-交易商将被要求以零售客户的最佳利益行事。

表格CRS关系摘要将要求注册投资顾问和经纪-交易商为散户投资者提供关于其与金融专业人士的关系性质的简单易懂信息。

美国证监会发布了一项诠释,以重申并澄清其对投资顾问根据《顾问法》对其客户负上受信责任的观点。美国证监会还发布了一项诠释,以确认并澄清经纪-交易商提供咨询活动时使其成为《顾问法》所指的投资顾问。

《最佳利益规则》和表格CRS将在联邦公报公布60天后生效,并包括直至2020年6月30日的过渡期

Source 来源: [sec.gov/news/press-release/2019-89](https://sec.gov/news/press-release/2019-89)

### **Financial Conduct Authority of the United Kingdom Confirms Extension of The Temporary Permission Regime Deadline**



On May 24, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) has confirmed the deadline for notifications for the temporary permissions regime (TPR) will be extended to the end of October 30, 2019.

TPR would allow European Economic Area (EEA)-based firms passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorization. TPR will also allow EEA-domiciled investment funds that market in the UK under a passport to continue temporarily marketing in the UK.

The deadline for applying to the Trade Repository and Credit Ratings Agencies has also been extended to the same date. For EEA payment services and e-money firms, the notification window for temporary permission is closed, but it will open again under the relevant HM Treasury Regulations on July 31 and end on October 30.

#### 英国金融行为监管局确认延长申请临时许可制度的截止日期

2019年5月24日,英国金融行为监管局(英国金管局)确认,申请临时许可制度的通知截止日期将延长至2019年10月30日。

在寻求英国金管局全面授权的同时,临时许可制度将允许在英国通行的欧洲经济区公司,于限定的时期在其当前的许可范围内继续新的和现有受监管的业务。临时许可制度还将允许根据护照制度在英国营销的欧洲经济区注册的投资基金,可继续在英国进行临时营销。

申请交易资料储存库和信用评级机构的截止日期也已延长至同一日。对于欧洲经济区支付服务和电子货币公司,临时许可的通知窗口已关闭,但将在7月31日至10月30日根据相关的英国财政部条例再次开放。

Source 来源:

[fca.org.uk/news/press-releases/fca-confirms-extension-temporary-permission-regime-deadline](https://www.fca.org.uk/news/press-releases/fca-confirms-extension-temporary-permission-regime-deadline)

#### Financial Conduct Authority of the United Kingdom Publishes Decision Notices Concerning Cathay International Holdings Limited, its CEO and Finance Director

On June 3, 2019, the Financial Conduct Authority (FCA) of the United Kingdom has published Decision Notices concerning Cathay International Holdings Limited (Cathy) and 2 of its directors, Jin-Yi Lee (Lee) and Eric Siu Ka Chi (Siu).

In the FCA's view, there were serious procedures, systems and controls failings within the company which

meant that Cathay did not monitor the full impact of these issues on its expected financial performance for the year ended December 31, 2015 compared to market expectations.

The FCA considers that Cathay breached the Listing Principles and Disclosure Rules and Transparency Rules and has imposed a fine of £411,000. Lee was knowingly concerned in the company's breaches and so has been fined £214,300. Siu was also knowingly concerned in one of the company's breaches and so has been fined £40,200.

The FCA said that market integrity includes responsible directors who faithfully ensure listed companies have adequate procedures, systems and controls for compliance with listing obligations, announce relevant information in a timely manner and are open and co-operative with it.

#### 英国金融行为监管局发布有关国泰国际控股有限公司和其首席执行官及财务总监的决定通知

2019年6月3日,英国金融行为监管局(英国金管局)发布有关国泰国际控股有限公司(国泰)及其董事李晋颐(李)和 Eric Siu Ka Chi (Siu) 的决定通知。

英国金管局认为,公司内部存在严重的程序,系统和监控失误,这表示国泰并未能监控这些问题对其预期截至2015年12月31日年度的财务业绩与市场预期相比的全面影响。

英国金管局认为国泰违反了《上市原则》和《披露规则》及《透明度规则》,并处以411,000英镑的罚款。李明知而参与公司的违规行为,因此被处以214,300英镑的罚款。Siu也明知而参与公司的一项违规行为,因此被罚款40,200英镑。

英国金管局表示:市场诚信包括负有责任的董事,其忠实地确保上市公司有履行上市责任的足够程序,系统和监控措施,及时公布相关信息并与英国金管局坦诚和合作。

Source 来源:

[fca.org.uk/news/press-releases/fca-publishes-decision-notices-concerning-cathay-international-holdings-limited](https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notices-concerning-cathay-international-holdings-limited)

#### Financial Conduct Authority of the United Kingdom Confirms New Rules for P2P Platforms

On June 4, 2019, the Financial Conduct Authority (FCA) of the United Kingdom is introducing rules designed to prevent harm to investors, without stifling innovation in the peer-to-peer (P2P) sector.

The FCA is placing a limit on investments in P2P agreements for retail customers new to the sector of 10 per cent of investable assets. The investment restriction will not apply to new retail customers who have received regulated financial advice.

In addition to these restrictions, the new rules cover:

- More explicit requirements to clarify what governance arrangements, systems and controls platforms need to have in place.
- Strengthening rules on plans for the wind-down of P2P platforms.
- Introducing a requirement that platforms assess investors' knowledge and experience of P2P investments.
- Setting out the minimum information that P2P platforms need to provide to investors.
- Applying the Mortgage and Home Finance Conduct of Business (MCOB) sourcebook to P2P platforms that offer home finance products.

P2P platforms need to implement these changes by December 9, 2019, except for the application of MCOB, which applies with immediate effect.

#### 英国金融行为监管局确认点对点平台的新规则

2019年6月4日,英国金融行为监管局(英国金管局)确认,正在引入旨在防止损害投资者;同时不会扼杀创新的点对点(P2P)平台规则。

对于该领域的新零售客户,英国金管局设定投资于P2P协议的上限为可投资资产的10%。投资限制不适用于已获得监管财务意见的新零售客户。

除了这些限制外,新规则还包括:

- 更明确的要求,以阐明需要具备哪些管治安排,系统和监控平台。
- 加强有关P2P平台倒闭安排的规则。
- 引入平台评估投资者对P2P投资的知识经验的要求。
- 列出P2P平台需要向投资者提供最低限度的信息。
- 按揭贷款和家庭财务业务行为(MCOB)资料手册的要求适用于提供家庭金融产品的P2P平台。

P2P平台需要在2019年12月9日之前实施这些更改,但MCOB的适用除外;该项适用要求立即生效。

Source 来源:

[fca.org.uk/news/press-releases/fca-confirms-new-rules-p2p-platforms](https://www.fca.org.uk/news/press-releases/fca-confirms-new-rules-p2p-platforms)

#### Financial Conduct Authority of the United Kingdom and the Dutch Authority for the Financial Markets Agree on Closer Partnership

On June 3, 2019, the Financial Conduct Authority of the United Kingdom (UK) and the Dutch Authority for the Financial Markets signed a joint agreement agreeing to work more closely together to protect and enhance the integrity and stability of both countries financial systems.

The agreement develops the UK and Dutch authorities' relationship in areas such as FinTech, a pro-active and data-led approach to supervision and encouraging proper behavior within firms.

#### 英国金融行为监管局和荷兰金融市场管理局同意结成更紧密的伙伴关系

2019年6月3日,英国金融行为监管局(英国金管局)和荷兰金融市场管理局签署联合协议;同意更紧密地合作,以保护和加强两国金融体系的完整性和稳定性。

该协议发展英国和荷兰监管机构在诸如金融科技,积极主动和数据主导的监管方式并鼓励企业内部的正当行为等领域的关系。

Source 来源:

[fca.org.uk/news/press-releases/financial-conduct-authority-and-dutch-authority-financial-markets-afm-agree-closer-partnership](https://www.fca.org.uk/news/press-releases/financial-conduct-authority-and-dutch-authority-financial-markets-afm-agree-closer-partnership)

#### Financial Conduct Authority of the United Kingdom Confirms Biggest Shake-up to the Overdraft Market

On June 7, 2019, the Financial Conduct Authority (FCA) of the United Kingdom has confirmed it is introducing reforms to fix a dysfunctional overdraft market. These changes will make overdrafts simpler, fairer, and easier to manage and will protect the millions of consumers that use overdrafts.

The FCA has announced that it is:

- Stopping banks and building societies from charging higher prices for unarranged overdrafts than for arranged overdrafts.
- Banning fixed fees for borrowing through an overdraft.
- Requiring banks and building societies to price overdrafts by a simple annual interest rate.
- Requiring banks and building societies to advertise arranged overdraft prices with an Annualized Percentage Rate to help customers compare them against other products.
- Issuing new guidance to reiterate that refused payment fees should reasonably correspond to the costs of refusing payments.
- Requiring banks and building societies to do

more to identify customers who are showing signs of financial strain or are in financial difficulty and develop and implement a strategy to reduce repeat overdraft use.

The new rules will be in force by April 6, 2020, apart from the guidance on refused payment fees, which will take effect immediately, and the repeat use remedies which will come into force on December 18, 2019.

### 英国金融行为监管局确认对透支市场实行最大的整治

2019年6月7日,英国金融行为监管局(英国金管局)确认,其正在实行改革以修复功能失调的透支市场。这些变更将使透支变得更简单,更公平,更易于管理,并将保护数百万使用透支的消费者。

英国金管局宣布其将:

- 停止银行和房屋建筑协会对未经安排的透支比安排的透支收取较高的价格。
- 禁止对以透支方式获得的贷款收取固定费用。
- 要求银行和房屋建筑协会以简单的年利率作为透支定价。
- 要求银行和房屋建筑协会以实际年利率推销安排的透支价格,以帮助客户将其与其他产品进行比较。
- 发布新指引,重申拒绝支付的费用应该合理地对应拒绝支付的成本。
- 要求银行和房屋建筑协会采取更多措施识别出现财务紧张或财务困难迹象的客户,及制定并实施减少重复使用透支的策略。

新规则将于2020年4月6日生效,除了立即生效的拒绝支付费用的指引以及将于2019年12月18日生效的重复使用的补救措施。

Source 来源:

[fca.org.uk/news/press-releases/fca-confirms-biggest-shake-up-overdraft-market](https://www.fca.org.uk/news/press-releases/fca-confirms-biggest-shake-up-overdraft-market)

### European Securities and Markets Authority Launches Call for Evidence on Position Limits in Commodity Derivatives

On May 24, 2019, the European Securities and Markets Authority has launched a call for evidence on position limits and position management in commodity derivatives.

ESMA's call for evidence is seeking stakeholders' input on the impact of position limits on liquidity, market abuse and orderly pricing and settlement conditions in commodity derivatives markets. Furthermore, stakeholders are invited to share their experience of the

application of the MiFID II position limit and position management provisions.

Stakeholders are invited to provide feedback by July 5, 2019.

### 欧洲证券和市场管理局启动商品衍生品的持仓限额的证据征集

2019年5月24日,欧洲证券和市场管理局(ESMA)启动关于商品衍生品的持仓限额和持仓管理的证据征集。

ESMA 的证据征集是寻求利益相关方就商品衍生品市场的持仓限额对流动性,市场滥用以及有序定价和结算条件的影响提供意见。此外,还邀请利益相关方分享其应用金融工具市场指令 II 中持仓限额和持仓管理规定的经验。

欢迎利益相关者在2019年7月5日之前提供意见。

Source 来源:

[esma.europa.eu/press-news/esma-news/esma-launches-call-evidence-position-limits-in-commodity-derivatives](https://www.esma.europa.eu/press-news/esma-news/esma-launches-call-evidence-position-limits-in-commodity-derivatives)

### European Securities and Markets Authority Adjusts Application of the Trading Obligation for Shares in a No-Deal Brexit

On May 29, 2019, the European Securities and Markets Authority (ESMA) has published a statement on the revised approach of the European Union (EU)'s share trading obligation (STO) under the scenario of the United Kingdom (UK/GB) leaving the EU without a withdrawal agreement.

Under the revised approach, the EU27 STO would not be applied to the 14 shares with GB ISINs.

The response of the Financial Conduct Authority (FCA) of the UK is available on its website: [fca.org.uk/news/statements/fca-update-share-trading-obligations](https://www.fca.org.uk/news/statements/fca-update-share-trading-obligations). The FCA said that the revised approach would mean that EU banks and investment firms will be able to trade all UK shares in the UK. The FCA will set out its approach to the implementation of any STO if it is clear that there will be a no-deal exit.

### 欧洲证券和市场管理局调整英国在没有退出协议脱离欧盟的情况下股票交易责任的应用

2019年5月29日,欧洲证券和市场管理局就关于英国在没有退出协议的情况下脱离欧洲联盟(欧盟);发布修订欧盟的股票交易义务方案的声明。

根据修订的方案,欧盟27国的股票交易义务不适用于在具有英国国际证券号码的14家股票。



英国金融行为监管局 (英国金管局) 的回应载于其网站: [fca.org.uk/news/statements/fca-update-share-trading-obligations](https://www.fca.org.uk/news/statements/fca-update-share-trading-obligations)。英国金管局表示, 修订的方案意味着欧盟银行和投资公司将能够在英国交易所有英国股票。英国金管局在确定没有协议脱离欧盟时, 将阐述其实施任何股票交易义务的方案。

Source 来源:

[esma.europa.eu/press-news/esma-news/esma-adjusts-application-trading-obligation-shares-in-no-deal-brexit](https://esma.europa.eu/press-news/esma-news/esma-adjusts-application-trading-obligation-shares-in-no-deal-brexit)

### **European Union Removes Aruba, Barbados and Bermuda from the List of Non-cooperative Jurisdictions**

On May 17, 2019, Council of the European Union (EU) decided to remove Aruba, Barbados and Bermuda from the EU list of non-cooperative tax jurisdictions.

As a result, 12 jurisdictions remain on the list of non-cooperative jurisdictions: American Samoa, Belize, Dominica, Fiji, Guam, Marshall Islands, Oman, Samoa, Trinidad and Tobago, United Arab Emirates, US Virgin Islands and Vanuatu.

### **欧洲联盟从不合作管辖区名单中删除阿鲁巴, 巴巴多斯和百慕达**

2019 年 5 月 17 日, 欧洲联盟 (欧盟) 理事会决定从欧盟不合作税收管辖区名单中删除阿鲁巴, 巴巴多斯和百慕达。

因此, 12 个司法管辖区仍然在不合作管辖区名单上: 美属萨摩亚, 伯利兹, 多米尼加, 斐济, 关岛, 马绍尔群岛, 阿曼, 萨摩亚, 特立尼达和多巴哥, 阿拉伯联合酋长国, 美属维尔京群岛和瓦努阿图。

Source 来源:

[consilium.europa.eu/en/press/press-releases/2019/05/17/taxation-aruba-barbados-and-bermuda-removed-from-the-eu-list-of-non-cooperative-jurisdictions](https://consilium.europa.eu/en/press/press-releases/2019/05/17/taxation-aruba-barbados-and-bermuda-removed-from-the-eu-list-of-non-cooperative-jurisdictions)

### **European Banking Authority, European Insurance and Occupational Pensions Authority and the European Securities Markets Supervisory Authority Launch Consultation on Technical Standards on the Reporting of Intra-group Transactions and Risk Concentration for Financial Conglomerates**

On May 22, 2019, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities Markets Authority launched a consultation on draft Implementing Technical Standards (ITSs) on the reporting of intra-

group transactions and risk concentration for financial conglomerates.

The ITSs aim at offering a single framework of requirements for the reporting of intra-group transactions and risk concentration by financial conglomerates.

The consultation runs until August 15, 2019.

### **欧洲银行管理局, 欧洲保险及职业退休金管理局和欧洲证券市场管理局展开关于金融集团内部交易和风险集中报告技术标准的咨询**

2019 年 5 月 22 日, 欧洲银行管理局, 欧洲保险及职业退休金管理局和欧洲证券市场管理局就金融集团内部交易和风险集中报告实施技术标准 (ITSs) 草案展开咨询。

ITSs 旨在为金融集团报告内部交易和风险集中提供一个单一要求的框架。

咨询期将持续至 2019 年 8 月 15 日。

Source 来源:

[eba.europa.eu/-/esas-launch-consultation-on-technical-standards-on-the-reporting-of-intra-group-transactions-and-risk-concentration-for-financial-conglomerates](https://eba.europa.eu/-/esas-launch-consultation-on-technical-standards-on-the-reporting-of-intra-group-transactions-and-risk-concentration-for-financial-conglomerates)

### **Monetary Authority of Singapore Imposes Civil Penalty of SGD336,000 on Tham Wai Mun Raphael for Insider Trading**

On June 4, 2019, the Monetary Authority of Singapore (MAS) has imposed a civil penalty of SGD336,000 on Tham Wai Mun Raphael (Tham), who was the Non-Executive Vice Chairman of Auhua Clean Energy PLC (ACE), for insider trading.

ACE is a company listed on the Alternative Investment Market of the London Stock Exchange. On June 16, 2015, ACE announced that it was considering a share placement at a substantial price discount to raise approximately £1.5 million. On June 12, 2015, Tham sold 569,745 ACE shares while he was in possession of the non-public and price-sensitive information concerning the share placement. The case was referred to MAS by the Financial Conduct Authority of the United Kingdom.

Tham has admitted to contravening the insider trading prohibition and has also given MAS a voluntary undertaking not to be a company director or be involved in the management of a company for a period of two years with effect from June 5, 2019.

## 新加坡金融管理局对 Tham Wai Mun Raphael 就内幕交易处以 336,000 新元的民事罚款

2019 年 6 月 4 日, 新加坡金融管理局 (新金局) 对曾任 Auhua Clean Energy PLC (ACE) 的非执行副主席 Tham Wai Mun Raphael (Tham) 就内幕交易处以民事罚款 336,000 新元。

ACE 是在伦敦交易所的另类投资市场上市。2015 年 6 月 16 日, ACE 宣布正在考虑以相当大的价格折让进行配股, 以筹集约 150 万英镑。Tham 在 2015 年 6 月 12 日卖出 569,745 股 ACE 股票时他已知道有关配股的非公开和价格敏感的信息。该案件由英国金融行为监管局转介给新金局。

Tham 承认违反内幕交易禁令, 并且还给予新金局一项自愿承诺, 即自 2019 年 6 月 5 日起不担任任何公司董事或参与任何公司管理两年。

Source 来源:

[mas.gov.sg/News-and-Publications/Media-Releases/2019/MAS-Imposes-Civil-Penalty-on-Mr-Tham-Wai-Mun-Raphael-for-Insider-Trading.aspx](https://www.mas.gov.sg/News-and-Publications/Media-Releases/2019/MAS-Imposes-Civil-Penalty-on-Mr-Tham-Wai-Mun-Raphael-for-Insider-Trading.aspx)

## China Securities Regulatory Commission Directs the Launch of Transfer Services for Defaulted Bonds

On May 24, 2019, the China Securities Regulatory Commission directed the Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) to jointly release with China Securities Depository and Clearing Co., Ltd. respectively the Notice on Providing Transfer and Settlement Services for Specific Listed Corporate Bonds (Notice). The Notice provides arrangements regarding the transfer, settlement, investor suitability and information disclosure for specific bonds such as defaulted bonds.

SSE's answers to questions from reporters on the Notice is available on its website: <http://english.sse.com.cn/aboutsse/news/newsrelease/c/4829280.shtml>.

SZSE's answers to questions from reporters on the Notice is available on its website: [szse.cn/English/about/news/szse/t20190528\\_567472.html](http://www.szse.cn/English/about/news/szse/t20190528_567472.html).

## 中国证券监督管理委员会指导推出违约债券转让服务

2019 年 5 月 24 日, 中国证券监督管理委员会指导上海证券交易所 (上交所)、深圳证券交易所 (深交所) 分别联合中国结算发布了《关于为上市期间特定债券提供转让结算服务有关事项的通知》(通知), 对违约债券等特定债券

的转让、结算、投资者适当性、信息披露等事项作出安排。

上交所就《通知》答记者问载于其网站: [sse.com.cn/aboutus/mediacenter/hotandd/c/c\\_20190524\\_4824987.shtml](http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20190524_4824987.shtml)。

深交所就《通知》答记者问载于其网站:

[szse.cn/aboutus/trends/news/t20190524\\_567414.html](http://www.szse.cn/aboutus/trends/news/t20190524_567414.html)。

Source 来源:

[csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201905/t20190524\\_356291.html](http://www.cssrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201905/t20190524_356291.html)

## Shanghai Stock Exchange Takes Disciplinary Action against Sponsoring Representatives of Application Project for Sci-tech Innovation Board

On May 21, 2019, the Shanghai Stock Exchange (SSE) decided to circulate a notice on criticizing sponsoring representatives Wan Jiuqing (Wan) and Mo Peng (Mo). The two sponsoring representatives were appointed by China International Capital Corporation Limited (CICC) to be specifically responsible for the project of Traffic Control Technology Co., Ltd. applying for IPO on the sci-tech innovation board.

It was found that on April 28, 2019, in the "Replies of Traffic Control Technology Co., Ltd. to the Inquiry Letter for the Review of the Application Documents on IPO of A-shares and Listing on the Sci-tech Innovation Board" submitted to the SSE and the revised prospectus filed simultaneously, Wan and Mo, as the specific persons in charge of the sponsoring work, arbitrarily revised the information disclosure data and contents such as business data, operations and technologies and analysis of management teams in several parts of the prospectus, and then made a number of changes to the relevant contents of the prospectus quoted in the questions raised by the SSE in inquiries. The above-mentioned amendments were not in the format of the regular script marked in the bold as required by the SSE, nor were the amendments reported to the SSE. In addition, the amendments were not submitted to CICC's internal audit department for examination and inspection in accordance with the practice norms for the sponsoring business and the internal control system of CICC. After the violation occurred, CICC and its sponsoring representatives Wan and Mo were able to recognize the mistakes in their behaviors and correct them as required.

In the written decision on disciplinary action, the SSE points out that the submitted prospectus and replies to the inquiries for issuance and listing review are important documents in the review of the stock issuance and listing, which the market and investors pay close attention to. Wan and Mo, as the sponsoring

representatives appointed by CICC, should have abided by the business rules and industry norms, been honest and trustworthy as well as diligent and conscientious, earnestly answered the questions in the inquiries as required, and reported the revised contents of the prospectus. Actually, the above-mentioned misconducts violated the relevant provisions of the “Measures for Registration Administration of IPO on the Sci-tech Innovation Board (for Trial Implementation)” and the “SSE Rules for Review of Stock Issuance and Listing on the Sci-tech Innovation Board”, and were also against the practice norms for the sponsoring representatives. Based on the facts ascertained, the sponsoring representatives Wan and Mo are the persons directly responsible for the violations. According to the examination opinions of the disciplinary action committee, the SSE circulated a notice to criticize Wan and Mo. The disciplinary decision will be reported to the China Securities Regulatory Commission and recorded in the file of sponsoring representative’s practice quality evaluation and integrity.

The occurrence of the violations also indicates that CICC, as a sponsoring institution, has loopholes in the management of sponsoring representative business, the internal quality control of the sponsoring business and other areas. In this regard, the SSE has taken a separate regulatory measure of written warning for the company, so as to urge it to further strengthen supervision and management of the sponsoring business and sponsoring representatives in the related projects of applying for issuance and listing on the sci-tech innovation board.

As the issuance and listing review for the sci-tech innovation board is an important part of the pilot registration-based IPO system, it is necessary to adhere to the focus on information disclosure and tighten the responsibility of the intermediaries for controlling the quality of information disclosure. Going forward, the SSE will strictly crack down on the violations found during the process of issuance and listing review in accordance with the rules. It is hoped that all sponsoring institutions, sponsoring representatives and other intermediaries and their related responsible persons could learn from the lessons of the violations and disciplinary actions, earnestly perform their duties, and conduct comprehensive inspection and verification of the information disclosure documents prepared and submitted, so as to jointly advance smooth and orderly implementation of launching the sci-tech innovation board and piloting the registration-based IPO system.

#### 上海证券交易所对科创板申报项目违规保荐代表人予以纪律处分

2019年5月21日,上海证券交易所(上交所)对保荐代表人万久清、莫鹏予以通报批评的决定。这两名保荐代表

人受中国国际金融股份有限公司(中金公司)指派,在交控科技股份有限公司申请首次公开发行股票并在科创板上上市项目中,担任具体负责人。

经查明,2019年4月28日,在向上交所报送的《交控科技股份有限公司首次公开发行A股股票并在科创板上市申请文件审核问询函的回复》(问询回复)及同步报送的更新版招股说明书中,万久清、莫鹏作为保荐工作具体负责人,擅自多处修改了招股说明书中有关经营数据、业务与技术、管理层分析等信息披露数据和内容,并由此同步多处修改了上交所问询问题中引述的招股说明书相关内容。上述修改,未按上交所要求采用楷体加粗格式标明并向上交所报告,也未按照保荐业务执业规范和中金公司内部控制制度的规定报送公司内核部门审核把关。违规行为发生后,中金公司及其保荐代表人万久清、莫鹏能认识到行为的错误,并按照要求予以改正。

上交所在纪律处分决定书指出,招股说明书报送稿以及对发行上市审核问询的回复,是股票发行上市审核中的重要文件,市场和投资者对此高度关注。万久清、莫鹏作为中金公司委派的保荐代表人,应当恪守业务规则和行业规范,诚实守信、勤勉尽责,按照要求认真回复问询问题,报告招股说明书的修改内容。其上述不当行为,违反了《科创板首次公开发行股票注册管理办法(试行)》和《上海证券交易所科创板股票发行上市审核规则》的相关规定,也违反了保荐代表人的执业规范。基于查明的事实,保荐代表人万久清、莫鹏是本次违规行为的直接责任人,上交所按照纪律处分委员会审核意见,对其予以通报批评。该纪律处分决定将通报中国证监会,并记入保荐代表人的执业质量评价和诚信档案。

违规行为发生,同时也说明中金公司作为保荐机构,在保荐代表人业务管理、保荐业务内部控制等方面,存在薄弱环节。就此,上交所已对中金公司另行采取了书面警示的监管措施,督促其在科创板相关发行上市申请项目中,进一步加强保荐业务和保荐代表人监督管理。

科创板发行上市审核是试点注册制的重要组成部分,需要坚持以信息披露为中心,需要压实中介机构对信息披露质量的把关责任。后续,上交所对发行上市审核过程中发现的违规行为,将严格依规予以惩处。希望所有的保荐机构、保荐代表人和其他中介机构及其相关责任人,能够从本起违规行为和纪律处分中汲取经验教训,认真履行职责,对制作和报送的信息披露文件进行全面核查验证,共同推动设立科创板并试点注册制的平稳有序实施。

Source 来源:

[english.sse.com.cn/aboutsse/news/newsrelease/c/4824314.shtml](http://english.sse.com.cn/aboutsse/news/newsrelease/c/4824314.shtml)



## Shanghai Stock Exchange Circulates Notice of Criticism to Corporate Bond Issuers

On May 31, 2019, to continuously strengthen the front-line regulation and urge market participants to take responsibility, the Shanghai Stock Exchange (SSE) circulated a notice of criticism against corporate bond issuers, including Fuguiniao Co., Ltd., Wuxi Wuzhou International Decoration City Co., Ltd., Hongye Chemical Group Co., Ltd., CEFC Shanghai International Group Co., Ltd., Bright Oceans Group Co., Ltd. and Dandong Port Group Co., Ltd.

The 6 issuers being criticized in the notice have not performed their duties in credit risk management to different degrees, such as being slack to fulfill relevant promises favoring the risks defusing, not making and implementing the risk defusing and handling plan according relevant regulations, not making pre-warning against risks or disclosing the progress in risk handling in time, not cooperating with trustees in risk management according to relevant regulations, and not disclosing a periodic report in time. In addition, some senior managers of the issuers have not been diligent and responsible enough to urge the issuers to fulfill their duties or promises and have been slack or refused to cooperate in the normal duty fulfillment or right protection of other institutions and individuals. These behaviors have affected the issuers' progresses in handling credit risks. The SSE also circulates a notice of criticism against the senior managers holding primary liability for these behaviors.

The bond issuers repaying the capital and interest according to relevant regulations and promises, and the issuers and relevant intermediaries earnestly managing credit risks and disclosing relevant information is the prerequisite and foundation for maintaining the integrity of the bond market, protecting investor's legitimate rights and interest, and boosting the sound development of the bond market. Next, the SSE will continue to impose strict punishment on any violations found in the self-regulation, further boost the improvement of the judicial remedy for the bond market, and optimize the transfer system for defaulted bonds, thus promoting the high-quality development of the bond market.

### 上海证券交易所对 6 家公司债券发行人予以通报批评

2019 年 5 月 31 日, 为持续深化一线监管职责、督促市场主体归位尽责, 上海证券交易所(上交所)对富贵鸟股份有限公司、无锡五洲国际装饰城有限公司、洪业化工集团股份有限公司、上海华信国际集团有限公司、亿阳集团股份有限公司和丹东港集团有限公司等公司债券发行人实施了通报批评的纪律处分。

此次被予以通报批评的 6 家发行人, 不同程度存在未按规定履行信用风险管理义务的违规行为, 具体情形包括怠于履行有利于推进化解处置的相关承诺、未按规定制定并实施风险化解和处置预案、未及时进行风险预警或披露风险化解处置进展情况、未按规定配合受托管理人开展风险管理工作、未及时披露定期报告等。另外, 发行人的个别高级管理人员未能勤勉尽责推动发行人履行义务或承诺, 怠于或拒不配合其他机构、个人的正常履职或维权诉求, 影响了发行人信用风险化解处置工作的有效推进。对违规行为负有主要责任的发行人高级管理人员, 上交所也采取了通报批评的纪律处分。

遵守契约精神、各方归位尽责, 债券发行人按规定和约定履行还本付息义务, 发行人及相关中介机构切实履行信用风险管理和信息披露义务, 是维护债券市场诚信环境, 保护投资者合法权益, 推进债券市场健康发展的前提和基础。下一步, 上交所将继续对自律监管过程中发现的违规行为予以坚决惩戒, 进一步推进完善债券司法救济安排, 完善违约债券的转让制度, 推进债券市场高质量发展。

Source 来源:

[english.sse.com.cn/aboutsse/news/newsrelease/c/4834770.shtml](http://english.sse.com.cn/aboutsse/news/newsrelease/c/4834770.shtml)

## Shenzhen Stock Exchange Conducts Censure on Shenzhen Datong Industrial Co., Ltd. for Its Refusal to Cooperate with the China Securities Regulatory Commission's Duty Performing According to Law

On May 23, 2019, Shenzhen Datong Industrial Co., Ltd. (Datong) disclosed the Notice on Receiving the Notice of Investigation of the China Securities Regulatory Commission (CSRC). The Notice says that because Datong and its de facto controller failed to cooperate when the CSRC was performing duties according to law and are suspected of violating relevant securities laws and regulations, the CSRC decided to investigate Datong and its de facto controller according to relevant provisions of the Securities Law of the People's Republic of China.

Shenzhen Stock Exchange conducts censure on Datong and relevant personnel for such uncooperative behavior.

### 深圳证券交易所谴责深圳大通实业股份有限公司拒不配合中国证券监督管理委员会依法履职的行为

2019 年 5 月 23 日, 深圳大通实业股份有限公司(深大通或公司)披露《关于收到中国证监会立案调查通知的公告》称, 因公司及实际控制人在中国证券监督管理委员会(中证监)依法履行职责过程中未予配合, 涉嫌违反相关证

券法律、法规, 根据《中华人民共和国证券法》的有关规定, 中证监决定对公司及实际控制人立案调查。

深圳证券交易所谴责深大通及相关人员在中证监依法履行职责过程中未予配合的行为。

Source 来源:

[szse.cn/English/about/news/szse/t20190524\\_567392.html](http://szse.cn/English/about/news/szse/t20190524_567392.html)

### **The 1<sup>st</sup> Special Corporate Bond for Serving the Guangdong-Hong Kong-Macao Greater Bay Area Lands on Shenzhen Stock Exchange**

On May 23, 2019, the special corporate bond of Shenzhen Investment Holding Co., Ltd. for serving the Guangdong-Hong Kong-Macao Greater Bay Area was launched on Shenzhen Stock Exchange (SZSE), which marks the official landing of the first of its kind in serving the bay area.

For such special corporate bonds of serving the Greater Bay Area, SZSE implements the pragmatic measures of examination upon declaration, dedicated personnel handling and special review to improve review efficiency, enhance service quality and let the SZSE bond market play an active role in the Greater Bay Area construction. SZSE will continue to consolidate direct financing abilities, perfect fundamental institutions, enrich fixed-income product systems, and elevate the level of serving technological innovation, thus creating a sound financing environment for supporting the construction of a first-class bay area.

### **服务粤港澳大湾区的专项公司债券在深圳证券交易所发行**

2019年5月23日, 深圳市投资控股有限公司服务粤港澳大湾区的专项公司债券在深圳证券交易所(深交所)发行, 标志着全国首单服务粤港澳大湾区的专项公司债券正式落地。

针对服务粤港澳大湾区的专项公司债券, 深交所实行即报即审、专人对接、专项审核等务实举措, 提高审核效率, 提升服务质量, 发挥交易所债券市场在大湾区建设中的积极作用。深交所将持续提高直接融资能力, 完善基础性制度, 丰富固收产品体系, 提升服务科技创新水平, 为支持一流湾区建设营造良好融资环境。

Source 来源:

[szse.cn/English/about/news/szse/t20190527\\_567440.html](http://szse.cn/English/about/news/szse/t20190527_567440.html)

### **The First 30-Year Municipal Bond Launches on Shenzhen Stock Exchange**

On June 3, 2019, Sichuan Provincial Government issued its 30-year municipal bond on Shenzhen Stock Exchange (SZSE). It is the first super long-term bond of its kind that has hit SZSE and also an active attempt made by SZSE to assist local financial authorities in promoting the innovation in municipal bonds.

To date, municipal bonds available at SZSE have extended reach to 25 Chinese provinces, municipalities and autonomous regions. Their cumulative issue volume has exceeded CNY450 billion since 2019. SZSE will continue leveraging on the functions and advantages of capital market to support the innovation in municipal bonds, streamline the term structure of bonds, and cater to investors' diverse demands. While rendering customized services that cover all aspects and links of bond issuance, it is aimed to boost the high-quality development of the municipal bond market.

### **首只 30 年期地方政府债券在深圳证券交易所发行**

2019年6月3日, 四川省 30 年期地方政府债券在深圳证券交易所(深交所)发行。这是深交所首只 30 年期超长期限地方政府债券, 是深交所配合地方财政部门推进地方政府债券创新的积极尝试。

截至目前, 深交所地方政府债券已覆盖 25 个省、市、自治区, 2019 年以来累计发行 4500 多亿元。深交所将继续发挥资本市场功能和优势, 支持地方政府债券创新, 完善债券期限结构, 满足投资者多元化需求, 做好债券发行全方位、全流程的定制化服务, 促进地方政府债券市场高质量发展。

Source 来源:

[szse.cn/English/about/news/szse/t20190604\\_567624.html](http://szse.cn/English/about/news/szse/t20190604_567624.html)

### **Australian Securities and Investments Commission Updates Information for Businesses on Initial Coin Offerings and Crypto-assets**

On May 30, 2019, the Australian Securities and Investments Commission (ASIC) has updated Information Sheet 225 (INFO 225) to help businesses involved with initial coin offerings (ICOs) and crypto-assets to consider their legal obligations and satisfy themselves they are operating lawfully.

INFO 225 provides information on how the Corporations Act may apply to businesses that are considering raising funds through an ICO and to businesses involved with crypto-assets.

ASIC said that Australian laws will also apply even if the ICO or crypto-asset is promoted or sold to Australians from offshore.

## 澳洲证券及投资监察委员会更新有关初始代币发行和加密资产的企业资讯

2019年5月30日, 澳洲证券及投资监察委员会 (澳洲证监会) 更新《第225号小册子》(INFO 225), 以帮助涉及初始代币发行和加密资产的企业; 考虑其法律义务并确保其是合法经营。

INFO 225 提供有关《公司法》如何适用于正在考虑通过初始代币发行筹集资金的企业以及涉及加密资产的企业提供资讯。

澳洲证监会表示, 澳洲法律适用于在海外推广或出售给澳洲人的初始代币发行或加密资产。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-121mr-asic-updates-information-for-businesses-on-icos-and-crypto-assets](https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-121mr-asic-updates-information-for-businesses-on-icos-and-crypto-assets)

## Australian Securities and Investments Commission Releases Market Integrity Report

On May 31, 2019, the Australian Securities and Investments Commission (ASIC) has released report on market integrity for the period July 1, to December 31, 2018.

The report highlights some of the activities undertaken to safeguard Australia's financial markets, so investors can continue to participate with confidence.

The report looks at ASIC's recent focus on high-frequency trading, changes to reporting requirements, and enhanced supervision and onsite reviews. It also looks at some of key activities such as misleading ICOs and crypto-asset funds.

ASIC's markets team will continue to focus on the following existing and emerging risks.

- Conduct governance
- Technology risk and resilience
- Effective capital markets

## 澳洲证券及投资监察委员会发布市场诚信报告

2019年5月31日, 澳洲证券及投资监察委员会 (澳洲证监会) 发布2018年7月1日至12月31日期间的市场诚信报告。

该报告重点介绍为维护澳洲金融市场而开展的一些活动, 因此投资者可以继续充满信心地参与市场活动。

该报告着眼于澳洲证监会最近关注的高频率交易, 修改报告的要求以及加强监督和实地审查。它还研究了一些关键活动; 例如误导性的初始代币产品和加密资产基金。

澳洲证监会的市场团队将继续关注以下现有和新兴风险。

- 管治行为
- 技术风险和应变能力
- 有效的资本市场

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-122mr-asic-releases-market-integrity-report](https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-122mr-asic-releases-market-integrity-report)

## Macquarie Securities (Australia) Limited Pays AUD300,000 Infringement Notice Given by the Markets Disciplinary Panel of Australia

On June 3, 2019, the Australian Securities and Investments Commission (ASIC) announced that Macquarie Securities (Australia) Limited (Macquarie) has paid a penalty totaling AUD300,000 to comply with an infringement notice given by the Markets Disciplinary Panel (MDP).

Over a four-year period from July 2014 to July 2018, Macquarie transmitted approximately 42 million orders to Australian Securities Exchange (ASX) and Chi-X that included incorrect regulatory data or omitted required regulatory data. Over the same period, Macquarie also submitted approximately 377,000 trade reports to ASX and Chi-X with the same deficiencies.

The MDP emphasized that the provision of accurate regulatory data enhances market transparency and ensures an orderly market. The provision of incorrect or missing regulatory data to market operators impedes informed regulatory decision-making by market operators and by ASIC.

麦格理证券(澳洲)有限公司就澳洲市场纪律审裁委员会发出的违规通知书支付 300,000 澳元

2019年6月3日, 澳洲证券及投资监察委员会 (澳洲证监会) 宣布, 遵照市场纪律审裁委员会 (审裁委员会) 发出的违规通知书, 麦格理证券(澳洲)有限公司 (麦格理) 已支付总额为 300,000 澳元的罚款。

在2014年7月至2018年7月的四年间, 麦格理向澳洲证券交易所 (ASX) 和澳洲 Chi-X 证券交易所 (Chi-X) 发送了大约 4200 万份订单, 其中包括错误的监管数据或遗漏了必要的监管数据。在同一时期, 麦格理还向 ASX 和 Chi-X 提交了大约 377,000 份交易报告, 但也存在相同的缺陷。



審裁委员会强调, 提供准确的监管数据可提高市场透明度并确保有序的市场。向市场营运机构提供不正确或缺失的监管数据妨碍了市场营运机构和澳洲证监会的明智监管决策。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-125mr-macquarie-securities-pays-300-000-infringement-notice](http://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-125mr-macquarie-securities-pays-300-000-infringement-notice)

### **Australian Securities and Investments Commission Consults on Proposals to Maintain Investor Protections by Restricting Retail Offers of ‘Stub-equity’**

On June 4, 2019, the Australian Securities and Investments Commission (ASIC) has issued a consultation paper seeking feedback on proposals to address concerns with offers of ‘stub-equity’ to retail investors.

The proposals seek to restrict certain structures that would result in retail investors not being covered by the normal protections available under Australian law when participating in a broad offer of securities. This can occur when shares in a proprietary company are offered as consideration under a takeover bid or scheme of arrangement. ASIC is concerned offers of consideration of this kind, often known as ‘stub-equity’, deny retail investors important rights.

The consultation is open until July 17, 2019.

### **澳洲证券及投资监察委员会就限制“存根股权”的零售发行以维持投资者保护的建議展开谘詢**

2019年6月4日, 澳洲证券及投资监察委员会(澳洲证监会)发布咨询文件, 就解决向散户投资者发售“存根股权”问题的建議; 征求意见。

该建議旨在限制某些框架, 这些框架将导致散户投资者在参与广泛的证券发行时无法受到澳洲法律的正常保护。在一項收購要約或協議安排提出以私营公司的股票作为代价时, 则可能发生这种情况。澳洲证监会关注此类建議的代价, 通常被称为“存根股权”, 会剥夺散户投资者的重要权利。

咨询将开放至2019年7月17日。

Source 来源:

[asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-127mr-asic-consults-on-proposals-to-maintain-investor-protections-by-restricting-retail-offers-of-stub-equity-in-control-transactions](http://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-127mr-asic-consults-on-proposals-to-maintain-investor-protections-by-restricting-retail-offers-of-stub-equity-in-control-transactions)

### **Securities and Exchange Surveillance Commission of Japan Makes Recommendation for Administrative Monetary Penalty Payment Order for Market Manipulation of 10-Year Japanese Government Bond Futures by Citigroup Global Markets Limited**

On March 26, 2019, the Securities and Exchange Surveillance Commission of Japan made a recommendation to the Commissioner of the Financial Services Agency that an administrative monetary penalty payment order be issued in regard to market manipulation by Citigroup Global Markets Limited (CGML).

CGML allegedly engaged in dealing 10-year Japanese Government Bond Futures (10-year JGB Futures) in 2018 with the purpose of inducing market transactions of derivatives of other market participants without intention to execute. These transactions would mislead other investors into believing that market transactions of derivatives were thriving and would cause fluctuations in the market of 10-year JGB Futures.

The amount of the administrative monetary penalty applicable to the violation is 133,370,000 yen.

### **日本証券交易監督委员会就花旗集团环球市场有限公司操纵10年期日本政府债券期货市场提出行政罰款令的建議**

2019年3月26日, 日本証券交易監督委员会向日本金融厅提出建議, 就花旗集团环球市场有限公司(CGML)的市场操纵行为发出行政罰款令。

CGML被指控于2018年从事有关10年期日本政府债券期货(10年期国债期货)的交易, 其目的是诱导其他市场参与者进行衍生品市场交易但无意执行。这些交易会误导其他投资者相信衍生品市场交易兴旺并会引起10年期国债期货市场的波动。

违规行为的适用行政罰款金额为133,370,000日元。

Source 来源:

[fsa.go.jp/sesc/english/news/reco/20190326-1.htm](http://fsa.go.jp/sesc/english/news/reco/20190326-1.htm)

### **International Organization of Securities Commissions Publishes Consultation Report on Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms**

On May 28, 2019, the International Organization of Securities Commissions has published this Consultation Report on Crypto-Asset Trading Platforms to encourage the public to comment on the identified issues, risks, key considerations and related toolkit.

Comments may be submitted on or before July 29, 2019.

### 国际证券事务监察委员会发布有关加密资产交易平台的 问题, 风险和监管的考虑因素的咨询报告

2019年5月28日, 国际证券事务监察委员会发布关于加密资产交易平台的咨询报告, 以鼓励公众就已确定的问题, 风险, 关键考虑因素和相关工具包发表意见。

公众可在2019年7月29日或之前提交意见。

Source 来源:

[iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf](https://iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf)

### Deutsche Börse's Regulatory Reporting Hub Starts New Securities Financing Transactions Regulation Services

On May 28, 2019, Deutsche Börse's Regulatory Reporting Hub (Hub) is adding a new solution for the Securities Financing Transactions Regulation (SFTR). This solution will help clients manage their SFTR reporting challenges, will improve reporting data quality and reporting efficiency.

The Hub's SFTR solution will cover data collection, validation, enrichment, submission report construction and trade repository integration with REGIS-TR.

The Hub will ensure SFTR compliance for Eurex Clearing's cleared securities lending and repo business.

### 德意志交易所的监管报告中心推出新的证券融资交易 监管服务

2019年5月28日, 德意志交易所的监管报告中心(该中心)正在为其证券融资交易监管(SFTR)增加一套新的解决方案。该解决方案将帮助客户管理其SFTR报告方面的挑战, 提高报告数据质量和报告效率。

该中心的SFTR解决方案将涵盖数据收集, 验证, 充实, 提交报告构建以及与REGIS-TR的交易资料储存库融合。

该中心将确保SFTR遵守欧洲期货交易所结算公司的结算证券借贷和回购业务的要求。

Source 来源:

[deutsche-boerse.com/dbg-en/media/press-releases/Deutsche-B-rse-s-Regulatory-Reporting-Hub-to-start-SFTR-services-1556114](https://deutsche-boerse.com/dbg-en/media/press-releases/Deutsche-B-rse-s-Regulatory-Reporting-Hub-to-start-SFTR-services-1556114)

### Financial Services Commission of Korea Introduces Deregulatory Measures to Boost Korea's Derivatives Market

On May 30, 2019, the Financial Services Commission (FSC) of Korea introduced deregulatory measures to make Korea's derivatives markets more vibrant and competitive. The reforms are intended to strengthen the derivative market's role for risk hedging and price discovery.

#### Main Reform measures

Minimum deposit requirement will be abolished for professional investors and eased for non-professional investors: (i) KRW 10million or more for futures and options trading; and (ii) KRW 20million or more for all derivatives trading.

Currently, institutional investors are required to deposit an extra margin, 10 % of credit risk limit. The extra margin requirement will be abolished.

A trade repository will be introduced in October 2020 as scheduled.

The FSC will also introduce measures to:

- enhance convenience for foreign investors;
- strengthen market-making activities;
- list new derivatives products;
- facilitate developing and listing of new derivatives products
- expand centrally-cleared OTC derivatives.

### 韩国金融服务委员会推出放宽规管措施以促进韩国衍生 品市场

2019年5月30日, 韩国金融服务委员会(FSC)推出放宽规管措施, 以使韩国的衍生品市场更具活力和竞争力。这些改革旨在加强衍生品市场在风险对冲和市场定价方面的作用。

#### 主要改革措施

专业投资者将取消最低门槛要求, 并降低散户投资者最低门槛要求: (i) 期货和期权交易为1000万韩元或以上; (ii) 所有衍生品交易为2千万韩元或以上。

目前, 机构投资者需要存入10%的信用风险限额的额外保证金。该额外保证金要求将被废除。

交易资料储存库将按计划于2020年10月推出。

FSC还将采取措施:

- 增强便利外国投资者;

- 加强市场庄家活动;
- 推出新的衍生品;
- 促进新衍生品的开发和上市;
- 扩大中央结算场外衍生工具。

Source 来源:

[meng.fsc.go.kr/common/pdfs/web/viewer.html?file=/upload/p/ress1/20190603091909\\_341fbd8a.pdf](http://meng.fsc.go.kr/common/pdfs/web/viewer.html?file=/upload/p/ress1/20190603091909_341fbd8a.pdf)

### Financial Supervisory Authority of Finland Announces Virtual Currency Providers to be Covered by Supervision of Anti-money Laundering

On May 15, 2019, the Financial Supervisory Authority of Finland (FIN-FSA) announced that from the beginning of November 2019, only those virtual currency providers that fulfill statutory requirements will be able to practise their activities in Finland. Based on the Act on Virtual Currency Providers, which entered into force on May 1, 2019, virtual currency providers are required to file an application for registration at the FIN-FSA by August 18, 2019.

The registration obligation will ensure that providers comply with the regulation of anti-money laundering. Regulation will not, however, introduce virtual currencies into the scope of investor protection.

The FIN-FSA urges investors to carefully assess the risks related to virtual currencies before making an investment decision.

### 芬兰金融监管局宣布将虚拟货币供应商纳入反洗钱的监管范围

2019年5月15日,芬兰金融监管局(FIN-FSA)宣布,从2019年11月初开始,只有符合法定要求的虚拟货币供应商才能在芬兰开展业务。根据2019年5月1日生效的《虚拟货币供应商法》,虚拟货币供应商必须在2019年8月18日之前向FIN-FSA提交注册申请。

注册义务将确保供应商遵守反洗钱的监管规定。但是,监管不会将虚拟货币纳入投资者保护范围内。

FIN-FSA 敦促投资者在做出投资决策之前仔细评估与虚拟货币相关的风险。

Source 来源:

[finanssivalvonta.fi/en/publications-and-press-releases/Press-release/2019/Virtual-currency-providers](http://finanssivalvonta.fi/en/publications-and-press-releases/Press-release/2019/Virtual-currency-providers)

### Securities and Exchange Board of India Publishes Report of Working Group on "Foreign Portfolio Investors Regulations" for Public Comments

On May 24, 2019, the Securities and Exchange Board of India published a report of Working Group on "Foreign Portfolio Investors (FPIs) Regulations " for public comments.

Few of the key recommendations proposed by the working group are as follows:

- Ease of access - simplified registration for multiple investment manager structures, entities established in the international financial services centre be deemed to have met the jurisdiction criteria for FPIs, etc.
- Simplification of documentation - removal of "opaque structure" definition, simplified know your client documentation, etc.
- Review of Investment restriction - Liberalized investment cap, reclassification of investment from FPI to foreign direct investment, permitting FPIs for off-market transactions, etc.
- Other aspects - alignment between FPI and alternative investment fund routes, strengthening of offshore derivative instrument framework, etc.

The comments may be submitted on or before June 14, 2019.

### 印度证券交易委员会发布关于工作组的《外国证券投资者规则》报告以征求公众意见

2019年5月24日,印度证券交易委员会发布关于工作组的《外国证券投资者规则》报告以征求公众意见。

工作组提出的部分主要建议如下:

- 便于接触 – 简化多个投资管理机构的注册,在国际金融服务中心设立的实体被视为符合外国证券投资者的管辖标准等。
- 简化文档 – 删除“不清晰结构”的定义,简化认识其客户文档等。
- 检讨投资限制 – 放宽投资上限,将外国证券投资者重新分类为外国直接投资,允许外国证券投资者进行场外交易等。
- 其他方面 - 外国证券投资者与另类投资基金路线的一致性,加强境外衍生工具框架等。

公众可于2019年6月14日或之前提交意见。

Source 来源:



[sebi.gov.in/media/press-releases/may-2019/sebi-publishes-the-report-of-working-group-on-fpi-regulations-for-public-comments\\_43109.html](http://sebi.gov.in/media/press-releases/may-2019/sebi-publishes-the-report-of-working-group-on-fpi-regulations-for-public-comments_43109.html)

### **The Stock Exchange of Hong Kong Limited Issues Announcement in Relation to the Matter of Asia Coal Limited Cancellation of Listing**

On June 13, 2019, the Stock Exchange of Hong Kong Limited (the Exchange) announced that with effect from 9:00am on June 18, 2019, the listing of the shares of Asia Coal Limited (Company) (Stock Code: 835) will be canceled in accordance with the delisting procedures under Practice Note 17 of the Listing Rules.

Trading of the Company's shares was suspended on October 3, 2017 because the Company failed to maintain sufficient operations or assets under Rule 13.24. The Exchange placed the Company into the first, second and third delisting stage under Practice Note 17 of the Listing Rules on October 3, 2017, March 23, 2018 and October 18, 2018, respectively. Before expiry of the third delisting stage on April 17, 2019, the Company submitted a resumption proposal to the Exchange. On May 31, 2019, the Listing Committee considered the resumption proposal not viable and therefore decided to cancel the Company's listing under Practice Note 17 to the Listing Rules.

The Exchange advises shareholders of the Company who have any queries about the implications of the delisting to obtain appropriate professional advice.

### **香港联合交易所有限公司就亚洲煤业有限公司取消上市地位发出通告**

2019年6月13日, 香港联合交易所有限公司(联交所)宣布, 由2019年6月18日上午9时起, 亚洲煤业有限公司(该公司)(股份代号: 835)的上市地位将根据《上市规则》第17项应用指引下的除牌程序予以取消。

由于该公司未能按《上市规则》第13.24条规定维持足够的业务运作或相当价值的资产, 其股份于2017年10月3日起暂停买卖。联交所其后按《上市规则》第17项应用指引, 分别于2017年10月3日、2018年3月23日及2018年10月18日将该公司置于除牌程序的第一、第二及第三阶段。在除牌程序第三阶段届满前, 该公司于2019年4月17日向联交所递交了复牌建议。上市委员会于2019年5月31日认为该复牌建议并不可行, 因此决定根据《上市规则》第17项应用指引取消该公司的上市地位。

聯交所建议该公司股东如对该公司除牌的影响有任何疑问, 应征询适当的专业意见。

Source 来源:

[hkex.com.hk/News/News-Release/2019/190613news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/190613news?sc_lang=en)

### **The Listing Committee of Stock Exchange of Hong Kong Limited Censures Kiu Hung International Holdings Limited and a Number of Its Current and Former Directors for Breaching the Listing Rules and/or the Director's Undertaking**

On June 12, 2019, the Listing Committee of the Stock Exchange of Hong Kong Limited (Exchange)

#### **CENSURES:**

(1) Kiu Hung International Holdings Limited (Company) (Stock Code: 381)

for breaching Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) for failing to:

- obtain the auditor's agreement to the contents of the Company's announcement (2015 Results Announcement) of preliminary results for the year ended 31 December 2015;
- publish the Company's announcement of preliminary results for the year ended 31 December 2016 (2016 Annual Results), which give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows, in a timely manner; and
- dispatch the Company's annual report for the year ended 31 December 2016 (2016 Annual Report) within the time prescribed under the Exchange Listing Rules;

#### **AND CENSURES:**

- (2) Mr Hui Kee Fung, current executive director (ED) and Chairman of the Company;
- (3) Mr Yu Won Kong, Dennis, current ED and Chief Executive Officer of the Company;
- (4) Mr Zhang Qi Jun, current ED of the Company;
- (5) Mr Zhang Yun, current ED of the Company;
- (6) Mr Cheung Man Loon, Michael, current independent non-executive director (INED) of the Company;
- (7) Mr So Chun Pong, Ricky, current INED of the Company;
- (8) Mr Wang Xiao Ning, current INED of the Company;
- (9) Dr Lau Siu Wa, former ED of the Company (Dr Lau); and
- (10) Mr Suen Chun Hung, Benjamin, former INED of the Company (Mr Suen),

for breaching their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (Undertaking) for failing to use their best endeavors to procure the Company's compliance with the Exchange Listing Rules in relation to the publication of the preliminary announcement of its 2016 Annual Results and the dispatch of its 2016 Annual Report (the directors identified at (2) to (10) above are collectively referred to as: Relevant Directors).

## KEY FACTS

On April 1, 2016, the Company published its 2015 Results Announcement which stated that the financial figures contained in the announcement had been agreed by the then auditors, Cheng & Cheng Limited (Cheng & Cheng). On April 22, 2016, the Company published a clarification announcement with revised figures for some of the items disclosed in the 2015 Results Announcement.

On March 1, 2017, the Company announced that Cheng & Cheng resigned as its auditors with effect from March 1, 2017. On March 17, 2017, the Company announced that its shareholders resolved to appoint Zhonghui ANDA CPA Limited (Zhonghui) as its auditors.

The Company published a preliminary announcement of the 2016 Annual Results on 2 April 2017 (First 2016 Results Announcement), which contained Zhonghui's disclaimer of opinion (2016 Disclaimer Opinion). According to the "[e]xtract of the auditor's report", Zhonghui had not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the 15 items (Disclaimed Items).

The First 2016 Results Announcement also stated that "the Company's auditors was newly appointed on 17 March 2017 to fill the casual vacancy following the resignation of [Cheng & Cheng] ... Due to time constraints and the Company's auditor may not have sufficient time to analyze the audit evidence provided by the Company to the auditor, the Board regrets that the Company's auditor did not express an audit opinion on the Group's consolidated financial statements for the year ended 31 December 2016" (Time Constraint Statement).

In view of the 2016 Disclaimer Opinion, the Listing Department required the Company to suspend trading of the Company's shares on April 3, 2017.

On May 30, 2017, the Company published a revised preliminary results announcement (Second 2016 Results Announcement), in which Zhonghui revised its opinion from a disclaimer to a qualified audit opinion relating to four items and the material uncertainty related to going concern.

Trading of the Company's shares resumed on May 31, 2017.

Zhonghui asserted that it disagreed with the Time Constraint Statement and had reviewed all the information then provided by the Company when the First 2016 Results Announcement was published. The Company was able to provide further information to Zhonghui after the publication of the First 2016 Results Announcement for the purposes of the audit of the 2016 Annual Results.

## LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee considered the written and oral submissions of the Listing Department, the Company, and the Relevant Directors and concluded as follows:

### *Company's breaches*

The Listing Committee noted the Company's admission of breaches of Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16 to the Exchange Listing Rules and found that the Company did breach these Rules by:

- failing to obtain Cheng & Cheng's agreement to the contents of the 2015 Results Announcement prior to its publication (in breach of Rule 13.49(2)). It was clear from the materials available that Cheng & Cheng did not agree to some of the contents of the 2015 Results Announcement, by reason of its further comments provided to the Company at 7:49 am on 1 April 2016;
- failing to publish the preliminary announcement of the 2016 Annual Results within three months after 31 December 2016 (in breach of Rule 13.49(1)). Although the Company published the First 2016 Results Announcement in purported compliance with Rule 13.49(1), given the nature and extent of the 2016 Disclaimer Opinion, the contents of the First 2016 Results Announcement did not give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows (in breach of Appendix 16). They were meaningless to the shareholders and investors for their assessment of the Company's financial performance or position. The publication of such purported preliminary results, even if published within the prescribed time limit, did not amount to compliance with the relevant financial reporting obligation under Rule 13.49(1); and
- failing to publish the 2016 Annual Report within four months after December 31, 2016 (in breach of Rule 13.46(2)(a)).

### *Relevant Directors' breaches*

The Listing Committee noted that the Relevant Directors admitted the breach of their respective Undertaking for failing to use their best endeavors to procure the Company's compliance with Rules 13.46(2)(a) and 13.49(1), and Appendix 16, and found that they did breach their respective Undertaking:

- there was a time constraint issue either on the part of the Company or Zhonghui. The evidence available suggested that it was more likely that the Company did not provide all the information requested by Zhonghui by the time the First 2016 Results Announcement was published;
- in any event, given the responsibilities of the directors in preparing the Company's financial statements which must give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows, as at the end of the financial year (as required under the Exchange Listing Rules and the Companies Ordinance), the Relevant Directors failed to use their best endeavors to allow the proper completion of the audit; and
- the Relevant Directors had knowledge of the Disclaimed Items in the First 2016 Results Announcement and they approved the First 2016 Results Announcement at the Board meeting. The contents of the First 2016 Results Announcement were effectively meaningless to the shareholders and investors for their assessment of the Company's financial performance and position. The conduct of the Relevant Directors resulted in the Company's breach of Rules 13.49(1) and 13.46(2)(a) (by way of the consequential delay in its dispatch of the 2016 Annual Report), and Appendix 16.

At the Disciplinary (Review) Hearing, the Review Committee upheld the decision of the Listing Committee at first instance in respect of the sanctions and directions imposed on the Relevant Directors. The Review Committee considered that:

- Notwithstanding that the Company stated that they started to provide information in January 2017, the Relevant Directors were fully aware that Zhonghui was only newly appointed in March 2017 as the Company's auditors in performing the audit of the Company's annual results for the year ended 31 December 2016 (2016 Audit). Given their director's responsibilities in preparing the Company's financial statements which must give a true and fair view of the state of affairs of the Company, the Relevant Directors should have taken more

proactive measures to procure better audit planning of the Company and to ensure timely financial information flow between the Board and Zhonghui to facilitate completion of the 2016 Audit. By failing to do so, the Relevant Directors put themselves into the position where the first draft audit report was only available for review on the weekend before the publication deadline of the First 2016 Results Announcement.

- Despite the Relevant Directors' knowledge of the Disclaimed Items in the First 2016 Results Announcement, they approved the publication of the First 2016 Results Announcement at the Board meeting. The Relevant Directors relied on the confirmation from the Company's management that the contents of the First 2016 Results Announcement reflected a fair view of the Company's financial performance and situation for 2016. They did not take the opportunity to seek legal advice or to discuss with the Exchange. The contents of the First 2016 Results Announcement were effectively meaningless to the shareholders and investors for their assessment of the Company's financial performance and position.
- In relation to the Relevant Directors who were only appointed as directors of the Company in late 2016, they were fully aware of the Company's circumstances in respect of its financial audit since the date they joined the Company. The Review Committee did not consider that their late appointment would absolve them from their director's responsibilities in relation to the Company's financial statements.

### **SANCTIONS**

Having made the findings of breach stated above, the Listing Committee decided to:

- (1) censure the Company for its breach of Rules 13.46(2)(a), 13.49(1) and 13.49(2), and Appendix 16; and
- (2) censure the Relevant Directors for their breach of Undertakings.

The Listing Committee further, among others, directed:

- (1) the Relevant Directors (apart from Dr Lau and Mr Suen) to attend 18 hours of training (Training) on Exchange Listing Rule compliance and director's duties;



(2) As a pre-requisite of any future appointment as a director of any company listed/to be listed on the Exchange, Dr Lau and Mr Suen, former directors of the Company, who are currently not directors of any other company listed on the Exchange to attend the Training to be completed before the effective date of any such appointment.

The Review Committee on review decided to endorse the sanctions and the directions imposed on the Relevant Directors by the Listing Committee at first instance.

## REGULATORY CONCERN

The conduct in question raises concerns over the Company's compliance with, and the attitude of the Relevant Directors about, the Company's financial reporting obligations under the Exchange Listing Rules. The relevant conduct damaged, or had the potential to damage, the integrity of the market.

Disclosure underpins the maintenance of an orderly, informed and fair market for the trading of securities in Hong Kong. Preliminary announcement of results play a key part in a listed issuer's annual financial reporting cycle. It is the issuer's first disclosure of information concerning its full year's performance, which is an important piece of information necessary for the investors to appraise the listed issuer's performance and future prospect, and to make their investment decisions.

A listed issuer's obligation to comply with Rule 13.49(1) should not be taken lightly. In this case, the Company's First 2016 Results Announcement did not give a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows. Publication of purported preliminary results within the time prescribed under Rule 13.49(1), which do not convey any meaningful information about the listed issuer's financial position and performance, does not amount to compliance with that Rule.

The Company and its directors have vital roles to play in the processes leading up to the release of the preliminary announcements of results. The Company's attitude towards compliance with its financial reporting obligations is unacceptable. It purportedly complied with Rule 13.49(1) but disregarded the purpose of the financial reporting obligations under the Exchange Listing Rules. It did not wish to defer publication of the 2015 Results Announcement and the First 2016 Results Announcement, and proceeded to publish those announcements despite knowing that:

- some of the figures in the 2015 Results Announcement were incorrect;
- the audit of the 2016 Annual Results was substantially incomplete; and

- there were 15 Disclaimed Items.

The financial information contained in the First 2016 Results Announcement could not be relied upon and effectively did not give any information on the Company's financial position and performance to the market. The Company's shareholders and investors were deprived of timely, accurate and sufficient information based on which to trade in the Company's shares.

In relation to the First 2016 Results Announcement, the Company asserted that it had to revise the First 2016 Results Announcement to address the Listing Department's concerns. It must be emphasized that it is the primary responsibility of the Company and the Relevant Directors to prepare the accounts and publish the 2016 Annual Results which present a true and fair view of the state of affairs of the Company, and of the results of its operations and its cashflows for the year ended 31 December 2016. Such obligation did not arise only because the Listing Department had concerns over the First 2016 Results Announcement.

香港联合交易所有限公司上市委员会谴责侨雄国际控股有限公司及数名现任及前任董事违反《上市规则》及/或《董事承诺》

2019年6月12日, 香港联合交易所有限公司(联交所)上市委员会

谴责:

(1) 侨雄国际控股有限公司(该公司)(股份代号: 381)

违反《香港联合交易所有限公司证券上市规则》(上市规则)第13.46(2)(a)、13.49(1)及13.49(2)条及附录十六, 未能:

- 就该公司截至2015年12月31日止年度的初步业绩公告(2015年业绩公告)的内容取得核数师的同意;
- 及时就其截至2016年12月31日止年度的初步业绩(2016年全年业绩)发布公告, 当中资料应真实及公平地反映该公司事务状况、其营运业绩及现金流情况; 及
- 于《上市规则》规定的时限内发送该公司截至2016年12月31日止年度的年度报告(2016年年报);

并谴责:

- (2) 许奇锋先生, 该公司现任执行董事兼主席;
- (3) 余允抗先生, 该公司现任执行董事兼行政总裁;
- (4) 张启军先生, 该公司现任执行董事;
- (5) 张云先生, 该公司现任执行董事;
- (6) 张文龙先生, 该公司现任独立非执行董事;
- (7) 苏振邦先生, 该公司现任独立非执行董事;
- (8) 王小宁先生, 该公司现任独立非执行董事;
- (9) 刘兆桦博士, 该公司前任执行董事 (刘博士);及
- (10) 孙振鸿先生, 该公司前任独立非执行董事 (孙先生),

违反其各自以《上市规则》附录五 B 表格向联交所作出《董事声明及承诺》(承诺) 中所载的责任, 未有尽力促使该公司按《上市规则》的规定发布其有关 2016 年全年业绩的初步公告及发送其 2016 年年报 (以上第(2)至(10)项所指的董事合称: 相关董事)。

### 主要实况

该公司于 2016 年 4 月 1 日发布其 2015 年业绩公告, 当中表示公告所载的财务数据已获当时的核数师郑郑会计师事务所有限公司 (郑郑会计师) 同意。于 2016 年 4 月 22 日, 该公司发布澄清公告, 修订 2015 年业绩公告中所披露的部分数据。

于 2017 年 3 月 1 日, 该公司宣布郑郑会计师辞任其核数师, 自当日起生效。于 2017 年 3 月 17 日, 该公司宣布其股东决议委任中汇安达会计师事务所有限公司 (中汇) 为其核数师。

该公司于 2017 年 4 月 2 日发布 2016 年全年业绩的初步公告 (首份 2016 年业绩公告), 其中载有中汇的不发表意见声明 (2016 年不发表意见声明)。根据「核数师报告摘要」, 中汇未能取得充分及恰当之审核凭证就 15 个事项发表审核意见 (不获发表意见事项)。

首份 2016 年业绩公告中亦表示「中汇安达会计师事务所有限公司已于 2017 年 3 月 17 日获新委任为本公司之核数师, 以填补[郑郑会计师]辞任后产生之临时空缺 … 由于时间所限, 以及本公司核数师可能并无充足时间分析由本公司提供予核数师之审核凭证, 故此本公司核数师对本集团截至 2016 年 12 月 31 日止年度之综合财务报表不发表审核意见, 董事会对此表示遗憾」(时间所限声明)。

鉴于中汇发出 2016 年不发表意见声明, 上市部于 2017 年 4 月 3 日要求该公司暂停股份买卖。

于 2017 年 5 月 30 日, 该公司发布经修订的初步业绩公告 (第二份 2016 年业绩公告), 其中, 中汇的审核意见由不发表意见改为对四个事项及有关持续经营之重大不明朗性

发出有保留的审核意见。同日, 该公司发送其 2016 年年报。

该公司股份于 2017 年 5 月 31 日恢复买卖。

中汇指其不同意时间所限声明, 且其于首份 2016 年业绩公告发布时已审阅该公司提供的所有资料。该公司于发布首份 2016 年业绩公告后亦能向中汇提供进一步资料, 以审核 2016 年全年业绩。

### 上市委员会裁定的违规事项

上市委员会考虑过上市部、该公司及相关董事的书面及口头陈述后, 裁定以下事项:

#### 该公司的违规事项

上市委员会知悉该公司承认违反《上市规则》第 13.46(2)(a)、13.49(1)及 13.49(2)条及附录十六, 裁定该公司确实违反该等条文, 原因如下:

- 未能于发布 2015 年业绩公告前就其内容取得郑郑会计师的同意 (违反《上市规则》第 13.49(2)条)。所得资料清晰显示郑郑会计师并不同意 2015 年业绩公告的部分内容, 从其在 2016 年 4 月 1 日上午 7 时 49 分提出的进一步意见中亦可见得;
- 未能于 2016 年 12 月 31 日起计三个月内发布 2016 年全年业绩的初步公告 (违反《上市规则》第 13.49(1)条)。尽管该公司发布了首份 2016 年业绩公告似已符合《上市规则》第 13.49(1)条规定, 但根据 2016 年不发表意见声明的性质及范围, 首份 2016 年业绩公告的内容并未真实及公平地反映该公司的事务状况及其营运业绩及现金流情况 (违反附录十六)。有关内容对股东及投资者评估该公司财务表现或状况而言没有参考意义。该等所谓的初步业绩尽管是在规定的时限内发布, 亦不算符合《上市规则》第 13.49(1)条项下的财务汇报责任; 及
- 未能于 2016 年 12 月 31 日起计四个月内发布 2016 年年报 (违反《上市规则》第 13.46(2)(a)条)。

#### 相关董事的违规事项

上市委员会知悉相关董事承认其未有尽力促使该公司遵守《上市规则》第 13.46(2)(a)及 13.49(1)条以及附录十六而违反其各自的《承诺》, 裁定相关董事确实违反其各自的《承诺》, 具体如下:

- 该公司或中汇可能存在时间紧绌的问题。按所

得证据显示,似乎倾向是在首份 2016 年业绩公告发布前,该公司未能向中汇提供所有其要求提供的资料;

- 无论如何,基于董事有责任拟备财务报表(按《上市规则》及《公司条例》规定),以真实及公平地反映该公司于财政年度结束时的事务状况及其营运业绩及现金流情况,相关董事未有尽力使审核妥善完成;及
- 相关董事知道首份 2016 年业绩公告中存有不获发表意见事项,但仍于董事会议中批准通过首份 2016 年业绩公告。首份 2016 年业绩公告的内容对股东及投资者评估该公司财务表现及状况而言并无实际参考意义。相关董事的行为导致该公司违反《上市规则》第 13.49(1)及 13.46(2)(a)条(因连带延迟了寄发 2016 年年报)以及附录十六。

于纪律(复核)聆讯中,就向相关董事施加的制裁及指令,复核委员会维持上市委员会在首次聆讯中的裁决。复核委员会认为:

- 尽管该公司表示其于 2017 年 1 月已开始提供资料,相关董事完全知悉中汇于 2017 年 3 月才获委任为该公司的新核数师,负责审核该公司截至 2016 年 12 月 31 日止年度的全年业绩(2016 年审核)。基于董事有责任拟备能真实及公平地反映该公司事务状况的财务报表,相关董事原应采取更多积极措施以促使该公司有更完备的审核计划,并确保董事会与中汇之间能适时传达财务资料,使 2016 年审核顺利完成。由于相关董事未有采取以上措施,以致其在首份 2016 年业绩公告发布最后限期前的周末才能审阅有关审核报告的初稿。
- 尽管相关董事知道首份 2016 年业绩公告中存有不获发表意见事项,但他们仍于董事会议中批准通过首份 2016 年业绩公告。相关董事信赖该公司管理层确认首份 2016 年业绩公告的内容已公平地反映了该公司 2016 年的财务表现及状况。他们并未把握机会寻求法律意见或与联交所商讨。首份 2016 年业绩公告的内容对股东及投资者评估该公司的财务表现及状况而言并无实际参考意义。
- 至于相关董事中在 2016 年末才获委任为该公司董事者,他们加入该公司时已完全知悉该公司财务审核的情况。复核委员会不认为该等董事因在较后时间获委任,便毋须承担有关该公司财务

报表的董事责任。

## 制裁

经裁定上述违规情况后,上市委员会决定:

(1) 谴责该公司违反《上市规则》第 13.46(2)(a)、13.49(1)及 13.49(2)条以及附录十六;及

(2) 谴责相关董事违反其各自的《承诺》。

上市委员会又作出以下指令(其中包括):

(1) 相关董事(刘博士及孙先生除外)参加由香港特许秘书公会、香港董事学会或上市部认可的其他课程机构所提供有关遵守《上市规则》及董事责任的 18 小时培训(培训);

(2) 现时非任何其他联交所上市公司董事的该公司前任董事刘博士及孙先生,日后若要再获委任为已于/将于联交所上市的公司的董事,先决条件是参加并于有关委任生效日期前完成培训。

复核委员会在复核后决定维持上市委员会在首次聆讯中对相关董事施加的制裁及指令。

## 监管上关注事项

上述行为令人关注该公司遵守《上市规则》项下的财务汇报责任以及相关董事在履行有关责任时的态度。相关行为损害了(或有可能损害)市场的持正操作。

发行人充足的资料披露,可确保维持香港证券交易市场公平有序及信息灵通。在上市发行人年度财务申报周期中,初步业绩公告是其中一个关键环节,是发行人首次就其全年表现披露资料,亦是投资者评估上市发行人表现及公司前景并作出投资决策时不可缺少的重要资料。

上市发行人对于遵守《上市规则》第 13.49(1)条的责任不应掉以轻心。在这个案中,该公司的首份 2016 年业绩公告并未真实及公平地反映该公司的事务状况及其营运业绩及现金流情况。单单于《上市规则》第 13.49(1)条规定的时限内发布所谓的初步业绩,但若内容完全未能就上市发行人的财务状况及表现提供任何具参考性的资料,绝不等于符合了《上市规则》。

该公司及其董事在该公司发布初步业绩公告的过程中有着重要角色。该公司对于遵守其财务汇报责任的态度不可接受。该公司表面上遵守了《上市规则》第 13.49(1)条,实际上却无视《上市规则》项下财务汇报责任的用意。



其不欲延迟发布 2015 年业绩公告及首份 2016 年业绩公告，故明知以下事实亦坚持发布该两份公告：

- 2015 年业绩公告中部分数据有误；
- 2016 年全年业绩的审核大部分均未完成；及
- 共有 15 个核数师不发表意见事项。

首份 2016 年业绩公告所载的财务资料不可信赖，实际上亦完全没有向市场提供任何有关该公司财务状况及表现的资料。该公司的股东及投资者未能就买卖该公司股份取得及时、准确而充足的资料。

就首份 2016 年业绩公告而言，该公司指其当时必须修订首份 2016 年业绩公告以应对上市部所关注的问题。必须强调的是，编制账目并发布 2016 年全年业绩，以真实及公平地反映该公司截至 2016 年 12 月 31 日止年度的事务状况及其营运业绩及现金流情况，本属该公司及相关董事的首要责任。有关职责并非因上市部对首份 2016 年业绩公告有疑问或关注事项才衍生。

Source 来源:

[hkex.com.hk/News/News-Release/2019/190612news?sc\\_lang=en](http://hkex.com.hk/News/News-Release/2019/190612news?sc_lang=en)

### **Hong Kong Securities and Futures Commission Issues Circular to Intermediaries on Prime Services and Related Equity Derivatives Activities**

On June 10, 2019, the Hong Kong Securities and Futures Commission (SFC) issues a circular to set out the expected standards of conduct and internal controls of prime brokers (PBs), ie, financial institutions providing prime services and conducting related equity derivatives activities in Hong Kong.

In particular, the SFC would like to highlight the regulatory obligations of PBs in light of the remote booking and operating models and roles of Hong Kong entities when they provide prime services. Given that the operating models for prime services are fragmented by nature with multiple legal entities of a financial institution involved in different aspects of a client relationship, PBs are reminded that if clients are serviced in Hong Kong or if PBs are carrying out their prime services in Hong Kong, PBs are expected to comply with the applicable rules and regulations in Hong Kong regardless of where the risk positions are booked.

Details about the expected standards of conduct and internal controls are available on the SFC website: [sfc.hk/edistributionWeb/gateway/EN/circular/openAppendix?refNo=19EC41&appendix=1](http://sfc.hk/edistributionWeb/gateway/EN/circular/openAppendix?refNo=19EC41&appendix=1).

More detailed guidance is set out in a report which provides an overview of the prime services industry landscape in Hong Kong and shares observations and good industry practices noted from the SFC's recent

thematic review of the internal controls and risk management processes of selected Pbs.

The report on the thematic review of prime services is available on the SFC website: [sfc.hk/edistributionWeb/gateway/EN/circular/openAppendix?refNo=19EC41&appendix=0](http://sfc.hk/edistributionWeb/gateway/EN/circular/openAppendix?refNo=19EC41&appendix=0).

### **香港证券及期货事务监察委员会就主要经纪服务及相关股票衍生工具活动发出致中介人的通函**

2019 年 6 月 10 日，香港证券及期货事务监察委员（证监会）发出通函，述明期望主要经纪商应达到的操守及内部监控标准。主要经纪商是指在香港提供主要经纪服务及进行相关股票衍生工具活动的金融机构。

证监会尤其希望就主要经纪商的香港实体所采用的离岸入帐和营运模式及其在提供主要经纪服务时所担当的角色，重点阐述主要经纪商的监管责任。鉴于主要经纪服务的营运模式具分散的本质，一家金融机构辖下的多个法律实体可能涉及客户关系的不同范畴，证监会提醒主要经纪商，若客户在香港接受服务，或若主要经纪商在香港从事主要经纪服务，不论风险持仓入帐至哪个簿册内，主要经纪商都应遵守在香港适用的规则及法例。

有关期望应达到的操守及内部监控标准的详情载于证监会网站:

[sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/openAppendix?refNo=19EC41&appendix=1](http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/openAppendix?refNo=19EC41&appendix=1)。

证监会亦在发表的报告内载述更详细的指引。该报告概述了香港主要经纪服务的行业状况，并分享证监会在近期对选定主要经纪商的内部监控措施及风险管理程序进行的主题检视中的观察所得和留意到的良好业界作业手法。

有关主要经纪服务的主题检视报告载于证监会网站:

[sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/openAppendix?refNo=19EC41&appendix=0](http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/openAppendix?refNo=19EC41&appendix=0)。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=19EC41](http://sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=19EC41)

### **Hong Kong Securities and Futures Commission Issues Circular to Intermediaries - Implementation of Regulatory Requirements for Online and Offline Sale of Complex Products**

On June 13, 2019, the Hong Kong Securities and Futures Commission (SFC) issues a circular to inform intermediaries that the SFC has provided further guidance by way of the Frequently Asked Questions

(FAQs) on the regulatory requirements for online and offline sale of complex products (the Requirements).

The newly added FAQs seek to:

- Clarify that paragraph 5.5 of the Code of Conduct is applicable only when a client purchases a complex product on an unsolicited basis (i.e. no solicitation or recommendation has been made by an intermediary);
- Clarify that the provision of a loan to facilitate a client to purchase a non-complex product would not convert the product into a complex product given that the loan does not alter the terms, features and risks of the product itself;
- Provide guidance on the implementation of the Requirements in the case where an execution broker executes orders placed by an investment adviser or asset manager on behalf of a client; and
- Clarify our expectation on the disclosure of product information for solicited or recommended repeat purchases generally and for compliance with paragraph 5.5 of the Code of Conduct for repeat purchases of the same complex product or complex products of the same product category.

The full set of FAQs on the Guidelines is also available on the SFC website at [www.sfc.hk](http://www.sfc.hk) under the section "Regulatory functions – Intermediaries – Supervision – FAQs – Guidelines on Online Distribution and Advisory Platforms and Paragraph 5.5 of the Code of Conduct".

#### 香港证券及期货事务监察委员会就网上及非网上销售复杂产品发出致中介人的通函

2019年6月13日, 香港证券及期货事务监察委员(证监会)发出通函, 旨在通知中介人, 证监会已透过《常见问题》的形式, 就网上及非网上销售复杂产品的监管规定(有关规定)提供进一步指引。

新增的《常见问题》旨在:

- 厘清《操守准则》第 5.5 段仅在客户于非招揽情况下(即中介人并无作出招揽或建议行为)购买复杂产品时适用;
- 厘清为利便客户购买非复杂产品而提供贷款的做法不会令该产品转变为复杂产品, 原因是贷款不会改变产品本身的条款、特点和风险;
- 提供指引, 解释执行买卖盘的经纪在执行由投资顾问或资产管理公司代表客户发出的买卖盘时,

应如何实施有关规定; 及

- 厘清本会对于中介人一般在招揽或建议客户重复购买投资产品时披露产品资料方面的期望, 以及对于它们在客户重复购买相同复杂产品或同一种类的复杂产品时遵从《操守准则》第 5.5 段方面的期望。

与《指引》有关的全部《常见问题》亦可在证监会网站([www.sfc.hk](http://www.sfc.hk))的〈监管职能 – 中介人 – 监管事宜 – 常见问题 – 网上分销及投资咨询平台指引及《操守准则》第 5.5 段〉一栏取览。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/circular/suitability/doc?refNo=19EC42](http://www.sfc.hk/edistributionWeb/gateway/EN/circular/suitability/doc?refNo=19EC42)

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