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Financial Services Regulatory Update
金融服务监管资讯

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Hong Kong Court Reiterates Bases to Assist PRC Liquidators in Dealing with Hong Kong Assets - *Re Shenzhen Everich Supply Chain Co, Ltd [2020] HKCFI 965*

Recently, a Hong Kong court made an order in aid of PRC liquidators purporting to deal with Hong Kong assets, in an application in relation to Shenzhen Everich Supply Chain Co, Ltd (Company). The Company was incorporated in the mainland China and was ordered by the Shenzhen Intermediate People's Court of the Guangdong Province (Shenzhen Court) to be wound up on the ground of insolvency on December 19, 2019. The Shenzhen Court appointed an administrator (Liquidator), whose role was basically equivalent to a liquidator under Hong Kong law, and issued a letter of request to the Hong Kong court, asking for recognition and assistance of the Liquidator for the purpose of, among other things, managing and collecting significant external trade receivables of the Company's two Hong Kong subsidiaries.

The court in this case reiterated the two criteria set out in its recent judgment in *Re CEFC Shanghai International Group Ltd* for granting recognition and assistance:

(a) the foreign insolvency proceedings are collective insolvency proceedings; and
(b) the foreign insolvency proceedings are opened in the company's country of incorporation.

Further, the power of assistance is limited by the following principles:

(a) the power of assistance cannot be used to enable foreign liquidators to do something which they could not do even under the law by which they were appointed;
(b) the power of assistance is available only when it is necessary for the performance of the foreign liquidators' functions;
(c) an order granting assistance must be consistent with the substantive law and public policy of assisting court.

In this case, the judge was satisfied that the two criteria for granting recognition and assistance were fulfilled. The order was granted accordingly. The published judgment appended the order so that future applications may track the form of orders that could be issued within the ambit of Hong Kong courts, with a view to promoting mutual judicial assistance between the two places.

This is the second case that the Hong Kong court recognized and assisted mainland China liquidators. It demonstrates the willingness of Hong Kong courts to offer assistance in cross-border insolvency matters and may encourage mainland China courts to give reciprocal assistance in appropriate cases.

香港法院重申协助中国清盘人处理香港资产的依据 – *深圳市年富供应链有限公司 [2020] HKCFI 965*

香港法院近日就与深圳市年富供应链有限公司(该公司)有关的一项申请作出决定，协助该公司的中国内地清盘人处理位于香港的资产。该公司于内地注册成立，并由广东省深圳市中级人民法院（深圳法院）于 2019 年 12 月 19 日以破产为由清盘。深圳法院委任一名管理人（清盘人）(其职责与根据香港法律下的清盘人的职责相若)，并向香港法院发出请求信，要求香港法院承认和协助清盘人，以管理和收取公司两家香港子公司的大量对外应收账款。

此案中法院重申了其最近在上海华信国际集团有限公司一案 (Re CEFC Shanghai International Group Ltd) 判决中提出此等承认和协助需满足的两个条件：

(a) 此外地破产程序是整体破产程序；和
(b) 此外地程序在有关破产公司注册成立的国家启动。

此外，法庭给予此等承认和协助的权力受到以下原则的限制：

(a) 外国清盘人不能被赋予去做他根据其任命国家的法律无法做的事情的权力；
(b) 法庭只有在有必要履行外国清盘人的职能时才有提供协助的权力；
(c) 协助法院给予协助令时必须符合协助法院的实体法和法定公共政策。

在此案中，法官认为两个必要条件均被满足，因而颁下承认和协助清盘人的命令。公開的判决书附有该命令，以便将来的申请可以参考可在香港法院职能范围内发布的命令的形式，促进两地司法互助。

这是该香港法院承认并协助内地清盘人的第二起案件。它显示了香港法院愿意在跨境破产问题上提供司法互助，亦鼓励内地法院给予香港清盘人同样的帮助。

Source 来源:
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=128463&QS=%24%28shenzhen%7CEverich%29&TP=JU

Hong Kong Securities and Futures Commission Issues Policy Statement Relating to National Security Law

On July 19, 2020, the Hong Kong Securities and Futures Commission (SFC) issues a Policy Statement as a result of conversations the SFC has been having with globally active financial institutions (firms) operating in local markets. These conversations have centered on concerns expressed by firms about the potential ambit and effect of the new National Security Law (NSL) on the way they currently do business in Hong Kong. The SFC has communicated firms' observations to the Hong Kong SAR Government and welcomes the views of the Financial Secretary as set out in his blog. The SFC is the independent statutory regulator of Hong Kong's capital markets, and in that capacity would like to give its own perspective as set out below.

A fundamental attribute of Hong Kong's status as a leading international financial center is the provision of, access to and free flow of all the multiple categories of information that are essential to preserving market integrity and fairness, ensuring the robustness of the price formation process and maintaining the reliability of fund flows.

For example, the Securities and Futures Ordinance and other legislation administered by the SFC set out clear standards for information disclosure by, as well as the level of diligence expected of, a range of market participants. These standards include the financial statements and other disclosure required to be made by listed companies, the due diligence expected of IPO sponsors and the quality of investment research to be published by analysts.

The SFC would like to clarify that it is not aware of any aspect of the NSL which would affect or alter the existing ways in which firms and listed companies originate, access, disseminate and transmit financial market and related business information under the regulatory regime it administers. For example, the principles applicable to, and methodologies used by, analysts in terms of the sources of information and data they use and the manner in which their views and opinions are expressed in their reports should remain unaltered.

Equally, the rules and accepted practices governing market trading activities, including in exchange traded and over-the-counter derivative markets, the use of hedging strategies and activities under Hong Kong's short selling regime, also remain unaltered; all related regulations will be administered by the SFC in the same manner as before the advent of the NSL.

Since the enactment of the NSL, the stock and derivatives markets in Hong Kong have operated in an orderly manner, and trading in the Hong Kong stock market has been very active. In the first half of July average daily trading increased substantially, with the participation of a range of local and international investors, as well as Mainland investors through Stock Connect. Northbound trading through Stock Connect by international investors doubled, confirming Hong Kong's role as the principal conduit for global savings to access Mainland China's capital markets.

The SFC will continue to regulate Hong Kong's markets as it has done so before the NSL was enacted and in line with this Statement.

香港证券及期货事务监察委员会发表与《国家安全法》相关的政策声明

2020 年 7 月 19 日，香港证券及期货事务监察委员会（证监会）经与在本地市场营运并活跃于国际间的金融机构（下称〝机构〞）进行对话后，发表了一份政策声明。有关对话的内容主要围绕各机构对新订立的《国家安全法》（下称《国安法》）的潜在适用范围，及其对它们目前在香港经营业务的方式带来的影响所表达的关注。证监会已与香港特区政府就机构的关注沟通，并欢迎香港财政司司长在其网志上发表的看法。证监会是香港资本市场的独立法定监管机构，并以此身分发表以下看法。

香港作为国际金融中心的一个基本特点是能够提供和让市场取览所有各式各样的资讯，并让这些资讯自由流通。这对于维护市场廉洁稳健和公平，确保定价过程完善健全和维持资金流动稳当可靠而言，至关重要。

举例来说，由证监会执行的《香港证券及期货条例》和其他法例已就各类市场参与者所须作出的资讯披露以及他们应达到的勤勉尽责程度，订明了清晰的标准。这些标准包括上市公司须公布的财务报表及其他披露，首次公开招股的保荐人应符合的尽职审查要求，以及分析员所发表的投资研究的质素。

证监会谨此阐明，证监会并未有察觉到《国安法》在任何层面上会影响或改变机构及上市公司现时在本会执行的监管机制下产生、存取、发放及传达金融市场和相关商业资讯的方式。举例来说，就分析师所使用的资料和数据的来源，以及他们在报告中发表见解及意见而言，所适用的原则及采用的方法都应维持不变。

同样地，规管市场交易行为（包括在交易所买卖及场外衍生工具市场，使用对冲策略及根据香港卖空制度进行的活动）的规则及公认的做法亦会维持不变，而证监会将以与《国安法》颁布前的同一方式执行所有有关规则。

自《国安法》颁布以来，香港的股票及衍生品市场一直保持有秩序地运作，而香港股市的交投仍然非常活跃。在各类本地和国际投资者的参与下，以及内地投资者透过股票市场交易互联互通机制进行交易下，7 月上旬的平均每日成交额大幅上升，国际投资者经沪股通及深股通的交易更是翻倍，印证了香港作为环球资金进入中国内地资本市场的重要枢纽。

证监会将按照其声明所述，如《国安法》颁布前一样，继续监管香港市场。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR68

https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR68

Hong Kong Exchanges and Clearing Limited Launches Master Special Segregated Account Service

On July 10, 2020, Hong Kong Exchanges and Clearing Limited (HKEX) launches the Master Special Segregated Account (Master SPSA) service, as part of its latest service enhancement to support Stock Connect, HKEX's landmark mutual market access program with the Shanghai and Shenzhen stock exchanges.

The new optional service will facilitate more efficient pre-trade checking of Northbound sell orders and average pricing execution at the fund manager level.

"As a service enhancement to support Stock Connect, Master SPSA aims to address the market demand for more efficient pre-trading checking and provide added benefit and convenience for institutional investors and market participants," said HKEX's Head of Markets Wilfred Yiu.

"HKEX is committed to investing in the further development of Stock Connect and related services, as we make our markets even more attractive and competitive for our global clients," he said.

Under Stock Connect, China A shares must be available for pre-trade checking before they can be sold. Accordingly, HKEX has built a robust pre-trade checking mechanism for Northbound trading.

The original SPSA service was set up in 2015 for institutional investors to satisfy this requirement, removing the need to transfer shares they control to executing brokers prior to a sale.

The Master SPSA service is an enhancement to the existing SPSA service to allow pre-trade checking to be conducted at a fund manager, or aggregate level, to help increase their operational efficiencies while maintaining the same post-trade settlement processes at the individual SPSA level for consistency.

Details of the Master SPSA service are available on the HKEX website.

香港交易及结算所有限公司推出特别独立户口集中管理服务

2020 年 7 月 10 日，香港交易及结算所有限公司（香港交易所）推出特别独立户口(SPSA)集中管理（Master SPSA）服务，作为进一步服务沪深港通的新措施。

SPSA 集中管理服务为全新可选服务，将方便基金经理提升沪深港通北向卖单的交易前端监控效率，以及从基金经理层面计算平均价格。

香港交易所市场主管姚嘉仁表示：「作为进一步服务沪深港通的新措施，SPSA 集中管理服务旨在满足市场需求，进一步提升沪深港通北向通交易前端监控效率，并为机构投资者和市场参与者提供更多便利。香港交易所将继续致力于优化沪深港通及相关服务，不断提升我们市场的全球竞争力及吸引力。」

在沪深港通机制下，投资者在卖出 A 股前必须先经过交易前端监控，确保有充足的可出售股份结余。香港交易所因此针对北向交易建立了严格的交易前端监控机制。

香港交易所于 2015 年向机构投资者推出特别独立户口（SPSA）服务，方便机构投资者满足交易前端监控要求。机构投资者在出售 A 股时，毋需提前将持有的 A 股从托管机构交付给执行券商。

香港交易所现将 SPSA 服务升级为 SPSA 集中管理服务，以便利基金经理从整体层面，对可出售股份进行交易前端监控，同时保持与原有单个基金层面的 SPSA 一致的交易后结算过程。

更多信息请参阅香港交易所网站的 SPSA 集中管理服务专页。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2020/200709news?sc_lang=en

https://www.hkex.com.hk/news/news-release/2020/200709news?sc_lang=zh-hk

OTC Clearing Hong Kong Limited Launches Clearing Services for HONIA-Based Interest Rate Products

On July 9, 2020, Hong Kong Exchanges and Clearing Limited (HKEX) announces that its central counterparty (CCP) subsidiary, OTC Clearing Hong Kong Limited (OTC Clear), has become the first clearing house to offer clearing services of Hong Kong Dollar Interest Rate Swap (IRS) contracts benchmarked to the Hong Kong Dollar Overnight Index Average (HONIA) reference rate.

This first centrally cleared HONIA IRS contract was between Bank of China (Hong Kong) Limited (BOCHK) and the Hongkong and Shanghai Banking Corp. HONIA is the alternative reference rate to the Hong Kong Interbank Offered Rate (HIBOR).

Calvin Tai, Co-President and Chief Operating Officer, HKEX, said: "We are very excited to be providing clearing services to the Hong Kong dollar risk-free rate swap, as we support the development of the HONIA-based derivatives market and promote HONIA's adoption in the financial industry. OTC Clear will continue its work on providing a paced transition to new risk-free reference rates for clearing members."

Tony Wang, General Manager, Global Markets, BOCHK, said: "As one of the major international financial centers, Hong Kong is carrying forward the IBOR reform with other major financial centers. The launch of HONIA further enhances the reliability of interest rate benchmarks. BOCHK is very pleased to have participated in the first Hong Kong Dollar HONIA IRS transaction settled by OTC Clear, and looks forward to the introduction of more HONIA-based products in the market to promote the development of the financial markets in Hong Kong."

Justin Chan, Head of Greater China, Asia Pacific, Global Markets, HSBC, said: "HSBC welcomes the launch of clearing services for HONIA-based interest rate products by OTC Clear, which represents a major development of Hong Kong's derivatives market. As a key industry player in the city, HSBC will continue to actively support the gradual market adoption of HONIA and enrich the suite of HONIA products for other market participants."

The Treasury Markets Association last year identified HONIA as the alternative reference rate to HIBOR, as part of an interest rate benchmark reform. The Hong Kong Monetary Authority has been encouraging more HONIA-based products be introduced in the market. There is, however, no current plans for HIBOR to be decommissioned. To support the development of the HONIA market, OTC Clear has developed a proxy methodology that simulates a HONIA curve, helping to provide greater transparency to market participants. Such services will be available to the market in late July.

With the key US dollar interest rate benchmark, the London Interbank Offered Rates (LIBOR), set to be decommissioned after end-2021, regulators globally have been working to adopt new interest rate benchmarks. OTC Clear has introduced clearing services for swaps linked to the euro short-term rate and the secured overnight financing rate, to help facilitate clearing members in their transition to alternative reference rates.

OTC Clear provides clearing and settlement services for over-the-counter derivative transactions. The launch of HONIA-based products enriches OTC Clear's Hong Kong dollar IRS product suite, as well as to facilitate the adoption of HONIA swaps in the derivative markets.

For further details on OTC Clear's IRS products, please refer to the HKEX website.

香港场外结算有限公司推出基于港元隔夜平均指数定价利率产品结算服务

2020 年 7 月 9 日，香港交易及结算所有限公司（香港交易所）宣布，旗下中央结算对手附属公司香港场外结算有限公司（场外结算公司）为以港元隔夜平均指数（HONIA）参考利率为基准的港元利率掉期合约提供结算服务，成为首家提供有关服务的结算所。

这次首笔中央结算的 HONIA 利率掉期合约，其交易方为中国银行（香港）有限公司（中银香港）与香港上海汇丰银行。HONIA 是香港银行同业拆息（HIBOR）的备用参考利率。

香港交易所联席总裁及首席营运总监戴志坚说：「我们很高兴为此港元利率掉期提供结算服务，支持基于 HONIA 定价衍生产品市场的发展，推动金融业更多采用 HONIA。场外结算公司将继续协助结算会员循序过渡，以适应转换至新的无风险参考利率。」

中银香港全球市场总经理王彤表示：「作为主要的国际金融中心之一，香港与其他主要金融中心一起推进银行同业拆息改革。HONIA 的推出有助进一步加强利率基准

的可靠性。中银香港很高兴参与首笔经场外结算公司结算的港币 HONIA 利率掉期交易，亦期待市场会陆续推出更多基于 HONIA 定价的产品，推动香港金融市场的发展。」

汇丰资本市场大中华区业务主管陈绍宗表示：「汇丰欢迎场外结算公司推出基于 HONIA 定价的利率产品结算服务，进一步推动香港衍生产品市场的发展。汇丰作为业界主要的参与者，将继续积极支持市场逐步采用基于 HONIA 定价的产品，并为其他市场参与者提供更丰富的 HONIA 产品组合。」

香港财资市场公会去年推动银行同业拆息改革时，建议基于 HONIA 作为 HIBOR 的备用参考利率，同时保留了 HIBOR。香港金管局鼓励市场推出更多基于 HONIA 定价的产品。为支持 HONIA 市场的发展，场外结算公司已研发出一种近似计算方法来仿真 HONIA 曲线，希望提高对市场参与者的透明度。有关服务将于 7 月底推出市场。

随着最主要的美元利率基准伦敦银行同业拆息（LIBOR）预定于 2021 年底后停用，全球监管当局都着手采用新的利率基准。场外结算公司已推出挂钩欧罗短期利率及担保隔夜融资利率的掉期产品结算服务，以方便结算会员过渡至备用参考利率。

场外结算公司为场外衍生产品交易提供结算及交收服务。推出基于 HONIA 定价的产品除可推动衍生产品市场更多采用 HONIA 掉期外，亦可丰富场外结算公司港元利率掉期的产品组合。

有关场外结算公司的利率掉期产品详情，请浏览香港交易所网站。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2020/2007092news?sc_lang=en

https://www.hkex.com.hk/news/news-release/2020/2007092news?sc_lang=zh-hk

The Government of Hong Kong Special Administrative Region Welcomes Passage of Limited Partnership Fund Bill

The Secretary for Financial Services and the Treasury, Mr. Christopher Hui, welcomed the passage of the Limited Partnership Fund Bill by the Legislative Council on July 9.

The new Ordinance establishes a limited partnership fund regime which enables funds to be registered in the form of limited partnerships in Hong Kong. The new Ordinance will come into operation on August 31, 2020.

Mr. Hui said that as Hong Kong strives to develop into an international asset and wealth management center, the new Ordinance made impressive strides on this front in attracting investment funds (including private equity and venture capital funds) to set up and operate in Hong Kong. This would further promote Hong Kong's private equity market and drive demand for local related professional services, and in turn strengthen Hong Kong's position as an international financial center.

The limited partnership fund regime is an opt-in registration scheme administered by the Companies Registry. Limited partnership is a common constitution form for private funds such as private equity funds. In a limited partnership, the general partner (i.e. operating person) with unlimited liability in respect of the debts and liabilities of the fund and the limited partner(s), who are essentially investors, with limited liability will have freedom of contract in respect of the operation of the partnership.

香港特别行政区政府欢迎立法会通过《有限合伙基金条例草案》

财经事务及库务局局长许正宇欢迎立法会在七月九日通过《有限合伙基金条例草案》。

新条例建立有限合伙基金制度，让基金可在香港以有限责任合伙的形式注册。新条例将于二〇二〇年八月三十一日起实施。

许正宇指，香港锐意发展成为国际资产及财富管理中心，新条例在这方面的政策上迈进一大步，有助吸引投资基金（包括私募基金及创投基金）在香港成立和营运，进一步发展香港的私募基金市场，带动对本地相关专业服务的需求，巩固香港国际金融中心的地位。

有限合伙基金制度是一个由公司注册处负责、属选择性参与的注册计划。有限责任合伙是私人基金（例如私募基金）常见的组成形式。在一个有限责任合伙中，普通合伙人（即营办者）须就基金的债项和义务承担无限法律责任，而本质上是投资者的有限责任合伙人的法律责任则是有限的，他们两者之间就有关合伙的营运事宜有订立合约的自由。

Source 来源:
https://www.cr.gov.hk/en/publications/news-press/press/20200709.htm

Financial Conduct Authority of the United Kingdom Seeks Views on Extending the Implementation Deadlines for the Certification Regime and Conduct Rules

The Financial Conduct Authority (FCA) of the United Kingdom has published a consultation paper on making

changes to its rules following the extension to the deadline by which FCA solo-regulated firms need to have implemented the Certification Regime.

In June, the Treasury agreed to delay the deadline by which firms must have first assessed the fitness and propriety of their Certified Staff until March 31, 2021. This delay will give firms, who have been significantly affected by the coronavirus pandemic (Covid-19), time to make the changes they need.

To ensure other Senior Managers and Certification Regime (SM&CR) deadlines remain consistent and to provide extra time for firms that need it, the FCA is consulting on extending the deadline for the following requirements from December 9, 2020 to March 31, 2021:

- the date the Conduct Rules come into force
- the deadline for submission of information about Directory Persons to the FS Register
- changing references in the rules to the deadline for assessing Certified Persons as fit and proper (which has been agreed by the Treasury)

If firms are able to certify staff and submit information about Directory Persons to the FS Register earlier than March 2021 they should do so. The FCA will still publish details of certified employees of solo firms starting from December 9, 2020 on the FS Register as the FCA expects that this published information will be of immediate benefit to consumers and firms.

Jonathan Davidson, FCA Executive Director of Supervision, Retail and Authorizations, said: "These proposed changes recognize the exceptional stress placed on financial services firms by the Covid-19 pandemic and the importance for firms to fully and properly implement the Certification Regime and to train staff effectively in the Conduct Rules. We continue to place great importance on the Certification Regime and the Conduct Rules and see this as an opportunity to raise the bar permanently around conduct, competence and culture in the financial services industry. We expect firms to use this extra time, if they need it, to implement Certification and Conduct Rules training to the highest standards."

The FCA are consulting alongside the parliamentary process to give regulated firms certainty and finalize policy as soon as possible.

The FCA expects accountable Senior Managers to ensure that all Certified Persons are fit and proper. Firms should not wait to remove staff who are not fit and proper from certified roles. Similarly, accountable Senior Managers must ensure that Conduct Rules training is effective, so that staff are aware of the Conduct Rules and understand how they apply to them in their jobs. These programs will require planning, time and effort to deliver effectively.

As the Certification Regime and reporting of Directory Persons do not apply to benchmark administrators, the FCA does not intend to consult to move the deadline for benchmark administrators. Benchmark administrators have until December 2021 to train non-Senior Manager staff in the Conduct Rules.

The FCA is asking for comments on the consultation by August 14, 2020.

英国金融行为监管局就延长认证制度及行为准则的实施期限征询意见

英国金融行为监管局发布了一份咨询文件，内容涉及在金融行为监管局单独监管的公司需要实行认证制度的截止日期延长后对其行为准则进行修改。

今年六月，财政部同意将公司必须首先评估其认证员工的资格及适当性的截止日期延长至 2021 年 3 月 31 日。这一延长将为受新型冠状病毒大流行严重影响的公司进行必要整改预留时间。

为确保其他高级管理人员及认证制度的截止日期保持一致并为有需要的公司争取额外时间，金融行为监管局正在协商将以下要求的截止日期从 2020 年 12 月 9 日延长至 2021 年 3 月 31 日：

- 行为准则生效日期
- 向 FS 登记册提交有关目录人员信息的截止日期
- 将准则中的参考更改为评估认证人员资格及适当性的截止日期（财政部已通过）

如果公司能够在 2021 年 3 月之前认证职员并向 FS 登记册提交有关目录人员信息，则应依此行事。金融行为监管局仍将自 2020 年 12 月 9 日起在 FS 登记册上发布金融行为监管局单独监管的公司认证雇员的详细信息，因为金融行为监管局希望该公开信息能够立即使消费者及公司受益。

金融行为监管局监督、零售及授权执行总监 Jonathan Davidson 表示："之所以作出提议是由于意识到新型冠状病毒大流行给金融服务公司带来了巨大压力以及对于公司充分地、适当地实施认证制度并有效地对员工进行行为准则培训是非常重要的。我们将继续关注认证制度及行为准则，并将其视为可以永久性提高金融服务行业行为、竞争力及文化门槛的机会。我们希望公司在需要时可以利用这些额外时间来实施最高标准的认证和行为准则培训。"

金融行为监管局正在与议会进程一同进行磋商，以给予受监管公司确定性并尽快确定政策。

金融行为监管局期望相关负责高级管理人员确保所有认证人员都具有适当性。 公司不应等待将不适合任职的人员从认证职位上撤职。 同样，相关负责的高级管理人员必须确保行为准则培训的有效性，以便员工了解行为准则及其在工作中的适用方式。 这些规划需要计划、时间和精力才能有效进行。

由于认证制度和目录人员报告不适用于基准管理机构，因此金融行为监管局并无打算就基准管理机构的截止日期进行磋商和更改。 基准管理机构必须在 2021 年 12 月之前完成对行为准则下非高级管理人员的培训。

金融行为监管局在 2020 年 8 月 14 日之前就此次磋商寻求意见。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-seeks-views-extending-implementation-deadlines-certification-regime-conduct-rules

Monetary Authority of Singapore Proposes New Powers to Enhance Effectiveness in Addressing Financial Sector-Wide Risks

The Monetary Authority of Singapore (MAS) issued a consultation paper proposing enhanced powers to deal with risks that can undermine the financial sector. The proposed new Act for financial services and markets will consolidate similar provisions for various classes of financial institutions in the MAS Act into a single legislation. In addition, the new Act will include additional powers to prohibit unsuitable individuals from working in the financial industry, expand the scope of anti-money laundering and countering the financing of terrorism (AML/CFT) requirements to persons in Singapore who provide digital token services overseas, strengthen the framework for technology risk management, and enhance the effectiveness of dispute resolution.

The details of the proposed new provisions are as follows:

(a) To preserve trust and deter misconduct in Singapore's financial sector, MAS proposes to expand its power to issue prohibition orders (POs). This proposal will broaden the categories of persons who may be subject to POs, rationalize the grounds for issuing POs (from a list of specific criteria into a single fit and proper test) and widen the scope of prohibition.

The new powers will enable MAS to holistically assess whether a person's misconduct renders him unsuitable to perform one or more roles or activities within the financial sector and the appropriate action that should be taken under the PO powers. In exercising this power, MAS will adopt a risk-proportionate approach, taking into account the nature, severity and impact of the misconduct.

(b) MAS also proposes to license and regulate, for AML/CFT purposes, any person in Singapore who provides digital token services overseas. The provisions in the new Act will expand the scope of existing legislation, which already regulates most of the digital token services provided in Singapore. The provisions will align Singapore's regulatory regime with the enhanced standards adopted by the Financial Action Task Force (FATF) for virtual asset service providers.

(c) Recognizing the pervasive use of technology and the growing sophistication of cyber threats, MAS proposes to harmonize and expand its existing powers to impose requirements pertaining to technology risk management, including cyber security risks and data protection, on all regulated financial institutions. MAS also proposes to increase the maximum penalty to S$1 million for any contravention of these requirements.

(d) MAS also proposes to provide statutory protection to persons performing the duties of an approved dispute resolution scheme operator (e.g. mediators, adjudicators and employees of the Financial Industry Disputes Resolution Centre). This will strengthen their confidence to act independently in resolving consumers' disputes with financial institutions.

新加坡金融管理局提议增强权力以提高应对金融业整体风险的有效性

新加坡金融管理局发布了一份咨询文件提议增强应对可能损害金融部门的风险的权力。针对金融服务和市场拟议的新法案将把《新加坡金融管理局法案》中针对各类金融机构的类似规定整合成为一项单独立法。此外，新法案还将包括禁止不适格人员在金融行业工作，扩大反洗钱范围并打击向在新加坡境内向海外提供电子支付服务的恐怖主义要求，加强技术风险管理框架，以及提高争端解决的有效性。

拟议的新规定细节如下：

(a) 为了维护新加坡金融业的信誉并制止不当行为，新加坡金融管理局建议扩大其发布禁止令的权力。该提案将拓宽可能受制于禁止令的人员类别，合理化发布禁止令的理由（从一系列特定标准到一个适当的测试）并扩大禁令的范围。

新权力将使新加坡金融管理局能够全面评估一个人的不当行为是否使其不适合在金融部门中从事一个或多个角

色或活动以及在禁止令权力下应采取的适当行动。在行使这种权力时，新加坡金融管理局将采取与风险成比例的方法，同时考虑不当行为的性质、严重性及其影响。

(b) 为了反洗钱/打击资助恐怖主义活动，新加坡金融管理局还建议许可和监管任何在新加坡境内向海外提供电子支付服务的人。新法案的规定将扩大现有法规的范围，现有法规已经规范了大部分在新加坡境内提供电子支付服务的人。这些规定将使新加坡的监管制度与金融行动工作组针对虚拟资产服务提供商采用增强后的标准趋于一致。

(c) 认识到技术的广泛使用和网络威胁的日趋复杂，新加坡金融管理局建议协调并扩展其现有权力，对所有受监管的金融机构施行与技术风险管理有关的要求，包括网络安全风险和数据保护。对于任何违反这些要求的行为，新加坡金融管理局还建议将最高罚款提高到 100 万新元。

(d) 新加坡金融管理局还建议为履行经批准争议解决方案运营商的人员（例如，金融业争议解决中心的调解员、裁决人和雇员）提供法律保护。这将增强他们采取独立行动解决消费者与金融机构之间纠纷的信心。

Source 来源:
https://www.mas.gov.sg/news/media-releases/2020/mas-proposes-new-powers-to-enhance-effectiveness-in-addressing-financial-sector-wide-risks

The European Securities and Markets Authority Promotes Consistent Application of Prospectus Disclosure Requirements

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has published its final Guidelines on disclosure requirements under the Prospectus Regulation.
The Guidelines provide guidance to financial market participants regarding the disclosure of financial and non-financial information in the prospectus. The aim of the Guidelines is to ensure that market participants have a uniform understanding of the relevant disclosure required in the various annexes included in the Commission Delegated Regulation (EU) 2019/980. The Guidelines will help those responsible for the prospectus to assess which disclosure is required and to promote consistency across the EU in how the annexes to the Delegated Regulation are applied.

The Guidelines aim to support competent authorities in properly assessing the completeness, comprehensibility and consistency of information in prospectuses. The Guidelines cover a variety of financial and non-financial topics, including:

- Pro Forma information;
- Working capital statements;
- Capitalization and indebtedness;
- Profit forecasts and estimates;
- Historical financial information;
- Operating and financial review;
- Options agreements; and
- Collective investment undertakings.

Steven Maijoor, Chair, said: "These Guidelines are essential to facilitating a clear and consistent EU wide understanding of some of the more detailed and complex disclosure requirements in the prospectus sphere. They are key for both financial market participants and national competent authorities, and their publication will contribute to consistency and convergence in the prospectus area and ultimately investor protection."

欧洲证券及市场管理局促进招股说明书披露要求的一致适用

作为欧盟证券市场的监管机构，欧洲证券及市场管理局发布了招股说明书规定中有关披露要求的最终指南。

该指南为金融市场参与者在招股说明书中披露财务信息及非财务信息提供了指引。该指南的目的在于，确保市场参与者对委员会委托条例 (EU) 2019/980 所包含的各个附件中有关披露要求拥有统一理解。该指南将帮助招股说明书的相关负责人评估对何种信息的披露是必需的，并在整个欧盟范围内推进在实行委员会委托条例附件方面的一致性。

该指南旨在协助主管当局正确评估招股说明书中信息的完整性、可理解性和一致性。该准则涵盖了各种财务话题及非财务话题，其中包括：

- 模拟财务信息；
- 营运资金报表；
- 资本与负债；
- 利润预测及估计；
- 历史财务信息；
- 经营和财务审查；
- 期权协议；以及
- 集体投资承诺。

主席 Steven Maijoor 表示："这些指南对于促进欧盟对招股说明书中一些更详细复杂的披露要求拥有清晰一致的理解至关重要。这些指南对金融市场参与者以及国家主管部门同样非常重要，其公布将有助于招股说明书领域的一致和趋同并最终保护投资者。"

Source 来源:

https://www.esma.europa.eu/press-news/press-releases/ESMA promotes consistent application of prospectus disclosure requirements

Singapore Exchange Regulation and Nasdaq Announce Regulatory Cooperation to Help Companies Access Capital in Both Jurisdictions

Singapore Exchange Regulation (SGX RegCo) and Nasdaq have extended their partnership by entering an agreement to cooperate on regulatory matters, building on an existing collaboration to help companies access capital markets funding in both jurisdictions.

The latest cooperation agreement will facilitate the regulatory exchange of information on issuers which are dual listed on both exchanges, including a streamlined framework for issuers seeking a secondary listing on SGX. This streamlined framework allows secondary listing documents required for the SGX listing to be based on information contained in the US listing and subsequent filing documents to the US Securities and Exchange Commission and/or Nasdaq, together with additional disclosure in compliance with Singapore prospectus disclosure requirements.

“Protecting investors’ interests is important to both SGX and Nasdaq. This Memorandum of Understanding (MOU) which SGX RegCo is entering into with Nasdaq will enhance the oversight of dual listed issuers and streamline the relevant processes between both exchanges. Investors with interests in companies that have a profile in both markets will benefit from this regulatory cooperation,” said Tan Boon Gin, CEO of SGX RegCo.

“This MOU builds upon Nasdaq’s partnership with SGX to improve the regulatory cooperation between our exchanges,” said Nelson Griggs, President, Nasdaq Stock Exchange. “This agreement is reflective of our commitment to streamlining access to capital for issuers and protecting investors.”

The regulatory cooperation will further enable the monitoring and assessment of issuers, and the enforcement of regulatory actions, including referrals of cases to the authorities of the respective jurisdictions.

新交所监管公司与纳斯达克宣布开展监管合作助力企业在两大司法管辖区实现融资

新交所监管公司与纳斯达克就监管事宜达成合作协议，在现有基础上扩大合作关系，助力企业在两大司法管辖区实现资本市场融资。

最新的合作协议将有助于监管机构就在两大交易所双重上市的发行人交换信息，包括为寻求在新交所第二上市的发行人提供简化的上市流程。这一简化框架允许新交所第二上市所需的文件以美国上市和后续提交给美国证券交易委员会和/或纳斯达克的文件中包含的信息为基础，并根据新加坡招股说明书的披露要求进行附加披露。

新交所监管公司首席执行官 Tan Boon Gin 表示：“保护投资者利益对新交所和纳斯达克都至关重要。新交所监管公司与纳斯达克签署的谅解备忘录将更全面的监管双重上市发行人，并简化两大交易所之间的相关流程。对在这两大市场均占有一席之地的企业感兴趣的投资者将从这一监管合作中获益。”

纳斯达克证券交易所总裁 Nelson Griggs 表示：“本次谅解备忘录的签署建立在纳斯达克与新交所的原有合作基础之上，旨在进一步加强我们两大交易所之间的监管合作。这项协议体现了双方致力于简化发行人融资流程以及保护投资者的承诺。”

本次监管合作将进一步推动对发行人的监督与评估，以及监管行动的执行，包括将案件移交给各自司法管辖区的监管机构。

Source 来源:
https://www.sgx.com/media-centre/20200721-sgx-regco-and-nasdaq-announce-regulatory-cooperation-help-companies-access

The Supreme People's Court of China Issues the "Minutes of the Forum on the Trial of Bond Disputes by Courts"

On July 15, 2020, the Supreme People's Court of China officially issued the " Minutes of the Forum on the Trial of Bond Disputes by Courts" (hereinafter referred to as "Minutes").

The "Minutes" mainly includes the following contents:

1. It is clarified that issues such as the qualifications of the bond trustee as the subject of litigation, the bondholders' own or joint litigation, etc., which is conducive to improving the efficiency of bondholders' rights protection and saving judicial resources. For example, in the determination of the qualification of the bond trustee as the subject of litigation, when the bond issuer is unable to repay the bond principal and interest as agreed or there is a breach of contract as stipulated in the bond offering documents, the trustee may follow the bond offering documents, bond trustee management agreement or bond holdings. Where someone is authorized by the resolution of the meeting to initiate or participate in civil litigation on behalf of the bondholder in his own name, or to apply for bankruptcy reorganization or bankruptcy liquidation of the issuer, the courts shall accept it

according to the laws.

2. It stipulates the acceptance, jurisdiction and litigation methods of bond dispute cases, and realizes the relative centralization of case jurisdiction and trial. Courts at all levels implement relatively centralized jurisdiction over bond disputes, which is conducive to the timely and orderly resolution of bond disputes and the unification of judgment standards. When bondholders and bond investors initiate litigation on their own, the litigation court must also choose an appropriate joint litigation method to achieve intensive case trials. At the same time, in order to effectively reduce the cost of litigation rights protection, qualified trustees, bond holders and bond investors should be allowed to use their own credit as a guarantee for property preservation.

3. It proposes to give full play to the role of the meeting of bondholders as a discussion platform, respect the effectiveness of the resolutions made by the bondholders' meeting in accordance with laws and regulations, and ensure that the trustee and litigation representatives can perform their participation in litigation, debt restructuring, and bankruptcy, reorganization, settlement, liquidation and other procedures. For voting on the contents of relevant agreements that may reduce or transfer the interests of bondholders, the trustee and litigation representatives must faithfully express the wishes of the bondholders. Support the trustee to carry out the work of exercising security rights on behalf of the bondholders and uniformly accepting the execution money of the case, and effectively protect the legitimate rights and interests of the bondholders.

4. It stipulates the issuer's scope of liability for breaching contracts, the calculation of losses for fraudulent bond issuance and misrepresentation, and the defense of causality, and raises the cost of violations in the bond market in accordance with the law.

5. It stipulates the responsibility of other entities such as trustees, bond underwriters and service institutions, and clarifies that the responsibility shall combine with the degree of fault. If the trustee fails to perform the duties of the trustee diligently and impartially, and damages the legitimate interests of the bondholders, the bondholder could request it to bear the corresponding liability, and the court shall support it.

6. It clarifies the obligations of the bankruptcy administrator to continuously disclose information and confirm creditor's rights in a timely manner. If the bond issuer enters the bankruptcy proceedings, the bond information disclosure obligation of the issuer shall be borne by the bankruptcy administrator, except for the issuer's own management of property and business affairs. The bankruptcy administrator shall perform the obligation of disclosure in a timely and fair manner in accordance with the requirements of the relevant regulatory provisions, and the information disclosed must be true, accurate and complete. If there are false records, misleading statements, or major omissions in the contents disclosed by the bankruptcy administrator on related matters after taking over the bankrupt enterprise, which are sufficient to affect the investor's judgment on the issuer's solvency, the bondholders and bond investors shall be held in accordance with the law, the courts shall support the litigation request to order him to bear civil liability for false statement.

The promulgation of the "Minutes" is conducive to optimizing the bond dispute case trial procedures, unifying the application of law, further unblocking the legalized relief channels, improving the efficiency of judicial relief, and promoting the formation of a governance constraint mechanism with clear responsibilities, equal penalties, and symmetric responsibilities and rights. It is of great significance to protect the legitimate rights and interests of bondholders, ensure the continuous and healthy development of the bond market, smoothly and orderly resolve risks, and maintain national economic and financial security.

中国最高人民法院发布《全国法院审理债券纠纷案件座谈会纪要》

2020 年 7 月 15 日，中国最高人民法院正式发布《全国法院审理债券纠纷案件座谈会纪要》（下称《纪要》）。

《纪要》主要包括以下内容:

1. 其明确了债券受托管理人的诉讼主体资格、债券持有人自行或者共同提起诉讼等问题，有利于提高债券持有人的维权效率，节约司法资源。如在债券受托管理人的诉讼主体资格认定方面，债券发行人不能如约偿付债券本息或者出现债券募集文件约定的违约情形时，受托管理人可根据债券募集文件、债券受托管理协议的约定或者债券持有人会议决议的授权，以自己的名义代表债券持有人提起、参加民事诉讼，或者申请发行人破产重整、破产清算的，人民法院应当依法予以受理。

2. 其规定了债券纠纷案件的受理、管辖与诉讼方式问题，实现案件管辖和审理的相对集中化。各级法院对债券纠纷案件实施相对集中管辖，有利于债券纠纷的及时、有序化解和裁判尺度的统一。在债券持有人、债券投资者自行提起诉讼的情况下，受诉法院也要选择适当

的共同诉讼方式，实现案件审理的集约化。同时，为切实降低诉讼维权成本，应当允许符合条件的受托管理人、债券持有人和债券投资者以自身信用作为财产保全的担保方式。

3. 其提出要充分发挥债券持有人会议的议事平台作用，尊重债券持有人会议依法依规所作出决议的效力，保障受托管理人和诉讼代表人能够履行参与诉讼、债务重组、破产重整、和解、清算等程序。对可能减损、让渡债券持有人利益的相关协议内容的表决，受托管理人和诉讼代表人必须忠实表达债券持有人的意愿。支持受托管理人开展代债券持有人行使担保物权、统一受领案件执行款等工作，切实保护债券持有人的合法权益。

4. 其对发行人的违约责任范围、债券欺诈发行和虚假陈述的损失计算、因果关系抗辩等问题作了规定，依法提高债券市场违法违规成本。

5. 其对受托管理人、债券承销和服务机构等其他主体的责任认定作出规定，明确责任承担与过错程度相结合。如受托管理人未能勤勉尽责公正履行受托管理职责，损害债券持有人合法利益，债券持有人请求其承担相应赔偿责任的，人民法院应当予以支持。

6. 其明确了破产管理人的持续信息披露和及时确认债权等义务。如债券发行人进入破产程序后，发行人的债券信息披露义务由破产管理人承担，但发行人自行管理财产和营业事务的除外。破产管理人应当按照相关监管规定的要求，及时、公平地履行披露义务，所披露的信息必须真实、准确、完整。破产管理人就接管破产企业后的相关事项所披露的内容存在虚假记载、误导性陈述或者重大遗漏，足以影响投资人对发行人偿付能力的判断的，对债券持有人、债券投资者主张依法判令其承担虚假陈述民事责任的诉讼请求，人民法院应当予以支持。

《纪要》的出台，有利于优化债券纠纷案件审理程序、统一法律适用，进一步畅通法治化救济渠道，提升司法救济效率，促进形成责任明晰、过罚相当、责权利对称的治理约束机制，对于更好保护债券持有人合法权益、保障债券市场持续健康发展，平稳有序化解风险、维护国家经济金融安全具有十分重要的意义。

Sources 来源:
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https://www.chinacourt.org/article/detail/2020/07/id/5355423.shtml

China Securities Regulatory Commission issues the "No.5 Guidelines for the Supervision of Non-listed Public Companies—Guidelines for the Continuous Supervision of Selected Listed Companies (Trial)" and Five Listed Company Periodic Report Format Guidelines

On July 22, 2020, in order to deepen the reform of the National Equities Exchange and Quotations System (NEEQ), the China Securities Regulatory Commission (CSRC) issued the " No.5 Guidelines for the Supervision of Non-listed Public Companies-Guidelines for the Continuous Supervision of Selected Listed Companies (Trial)" (hereinafter referred to as the "Supervisory Guidelines") and five regular report format guidelines for listed companies. The "Supervisory Guidelines" will be implemented from the date of issuance.

The main reasons for formulating the "Supervision Guidelines" are as follows:

1. Starting from the actual situation of the NEEQ market, it establishes a continuous supervision system suitable for the characteristics of selected companies.

2. It will strengthen the regulatory requirements of select-level companies in the form of administrative normative documents and lay a system foundation for strengthening the administrative supervision of select-level companies and implementing classified supervision in combination with the market.

3. Drawing on the supervision experience of listed companies, it constructs a "three-point and one-line" working mechanism of the CSRC, dispatched agencies and national equity transfer companies for selected companies to improve the effectiveness of supervision.

In addition, the five listed company periodical report format guidelines include the selection layer annual report, interim report and quarterly report format guidelines, and the innovation layer and basic layer interim report format guidelines. The following principles are adhered to in the formulation process. At first, the disclosure requirements between the selection layer, the innovation layer, and the basic layer were gradually reduced, and the second is to focus on the convergence of internal rules at the levels, which means the disclosure requirements for interim reports is lower than those for annual reports but higher than the quarterly report. Thirdly, based on the existing NEEQ rules, borrowing from the concept of the listed company system, and it fully reflects the characteristics of the listed company.

The implementation of the "Supervisory Guidelines" will help to regulate the relevant parties of selected companies whose shares are listed and publicly

transferred in the selection layer of the NEEQ market to protect the legitimate rights and interests of investors, maintain the order of the securities market and the interests of the public.

中国证券监督管理委员会发布《非上市公众公司监管指引第 5 号—精选层挂牌公司持续监管指引（试行）》及五项挂牌公司定期报告格式准则

2020 年 7 月 22 日，为深化新三板改革工作，中国证券监督管理委员会发布《非上市公众公司监管指引第 5 号—精选层挂牌公司持续监管指引（试行）》（下称《监管指引》）及五项挂牌公司定期报告格式准则，《监管指引》自发布之日起实施。

本次制定《监管指引》的主要原因如下：

1. 从新三板市场实际情况出发，建立适合精选层公司特点的持续监管制度；
2. 以行政规范性文件的形式对精选层公司的监管要求进行强化，为加强精选层公司行政监管，结合市场分层实施分类监管奠定制度基础；
3. 借鉴上市公司监管经验，针对精选层公司构建证监会、派出机构和全国股转公司“三点一线”的工作机制，提高监管效能。

此外，五项挂牌公司定期报告格式准则，包括精选层年报、中报及季报格式准则，创新层、基础层中报格式准则。制定过程中坚持以下原则：一是精选层、创新层、基础层三个层次之间的披露要求呈梯度化，依次降低；二是注重层次内部规则衔接，中期报告披露要求低于年度报告，高于季度报告；三是以现有新三板监管规则为基础，借鉴上市公司制度理念，充分体现挂牌公司特点。

本次《监管指引》的施行将有利于规范股票在新三板市场精选层公司有关各方的行为，保护投资者合法权益，维护证券市场秩序和社会公众利益。

Sources 来源:

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The China Securities Regulatory Commission Takes Over New Times Securities Co., Ltd., Guosheng Securities Co., Ltd., and Guosheng Futures Co., Ltd.

On July 17, 2020, the China Securities Regulatory Commission (CSRC) issued Announcement No. 45 (No. [2020] No. 45), stating that New Times Securities Co., Ltd. (hereinafter referred to as New Times Securities, 新时代证券股份有限公司), Guosheng Securities Co., Ltd. (hereinafter referred to as Guosheng Securities, 国盛证券有限责任公司) and Guosheng Futures Co., Ltd. (hereinafter referred to as Guosheng Futures, 国盛期货有限责任公司) conceal the actual controller or shareholding ratio, and the corporate governance is unbalanced. In order to protect the legitimate rights and interests of investors and maintain the order of the securities market, according to the relevant provisions of Article 143 of the Securities Law (《证券法》第一百四十三条), Articles 8 and 62 of the Regulations on Risk Disposal of Securities Companies (《证券公司风险处置条例》第八条和第六十二条), and Article 56 of the Regulations on the Administration of Futures Trading (《期货交易管理条例》第五十六条), the CSRC decides that from July 17, 2020 to 2021 On July 16, 2015, New Times Securities, Guosheng Securities, and Guosheng Futures are taken over in accordance with the law. If it is necessary to continue the takeover after the expiration of the time limit, it may be decided to extend the takeover period.

According to the relevant regulations, the CSRC has organized and established corresponding company takeover groups to exercise the management rights of the company being taken over from the date of takeover. At the same time, the CSRC has entrusted CSC Financial Co., Ltd. (中信建投证券股份有限公司), AVIC Securities Co., Ltd. (中航证券有限公司) and China Merchants Securities Co., Ltd. (招商证券股份有限公司) and Guotai Junan Futures Co., Ltd. (国泰君安期货有限公司) to established the corresponding company custody group, and the custody group will carry out work in accordance with the custody agreement under the guidance of the takeover group. For example, from the date of takeover, the takeover group exercises the management power of the company being taken over, and the takeover group leader exercises the powers of the legal representative of the company. The shareholders meeting, board of directors, board of supervisors and managers of New Times Securities, Guosheng Securities, Guosheng Futures will cease to

perform their duties. During the takeover, the takeover group and the custody group will take effective measures to maintain the safety of customer funds, continue to maintain the company's business stability, and standardize the company's equity and governance structure. New Times Securities, the brokerage business, asset management business, investment banking business, financing business, bond repurchase, inter-bank business and other businesses of Guosheng Securities, as well as the futures brokerage businesses of Guosheng futures continue to operate as usual. Client securities transactions and futures transactions will not be affected, the transfer of client funds in and out will proceed normally; various business contracts between the company and clients will continue to be performed, and the application and redemption of asset management products will proceed normally.

The takeover of New Times Securities, Guosheng Securities, and Guosheng Futures is a case of risk disposal due to concealment of the actual controller or shareholding ratio, and corporate governance imbalance. The takeover is to regulate the equity and governance structure of related companies and prevent risk spillovers , which is more conducive to the healthy and stable development of the securities and futures industry.

中国证券监督管理委员会依法对新时代证券股份有限公司、国盛证券有限责任公司、国盛期货有限责任公司实行接管

2020 年 7 月 17 日，中国证券监督管理委员会发布第 45 号公告（公告编号：〔2020〕45 号），称鉴于新时代证券股份有限公司（下称新时代证券）、国盛证券有限责任公司（下称国盛证券）、国盛期货有限责任公司（下称国盛期货）隐瞒实际控制人或持股比例，公司治理失衡，为保护投资者合法权益，维护证券市场秩序，根据《证券法》第一百四十三条、《证券公司风险处置条例》第八条和第六十二条、《期货交易管理条例》第五十六条有关规定，中国证监会决定自 2020 年 7 月 17 日起至 2021 年 7 月 16 日，对新时代证券、国盛证券、国盛期货依法实行接管，期限届满确需继续接管的，可依法决定延长接管期限。

根据法规规定，证监会分别组织成立了相应公司接管组，自接管之日起行使被接管公司的经营管理权，同时证监会分别委托中信建投证券股份有限公司、中航证券有限公司及招商证券股份有限公司、国泰君安期货有限公司成立相应公司托管组，托管组在接管组指导下按照托管协议开展工作。如自接管之日起，接管组行使被接管公司的经营管理权，接管组组长行使公司法定代表人职权。新时代证券、国盛证券、国盛期货的股东大会或股东会、董事会、监事会及经理层停止履行职责。接管期间，接管组及托管组将采取有效措施维护客户资金安全，继续保持公司经营稳定，规范公司股权和治理结构。新时代证券、国盛证券经纪业务、资产管理业务、投资银行业务、融资类业务、债券回购、同业业务等各类业务以及国盛期货期货经纪等业务照常经营。客户证券交易、期货交易不受影响，客户资金转入转出正常进行；公司与客户之间的各类业务合同继续履行，资管产品的申赎正常进行。

本次新时代证券、国盛证券、国盛期货被接管属于因隐瞒实际控制人或持股比例、公司治理失衡被实施风险处置的个案，对其接管是为了规范相关公司股权和治理结构，防范风险外溢，更有利于证券期货行业的健康稳定发展。

Sources 来源:
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http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200717_380266.html

http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200717_380267.html

China Securities Regulatory Commission Issues the Guidelines on the Side Pocket Mechanism for Publicly Offered Securities Investment Funds (Trial) to Further Enhance the Risk Prevention and Control Capabilities of Publicly Offered Funds

On July 10, 2020, in order to further enhance the risk prevention and control capabilities of public funds, and better protect the legitimate rights and interests of investors, the China Securities Regulatory Commission (CSRC) issued the "Guidelines for the Side Pocket Mechanism of Publicly Offered Securities Investment Funds (Trial)" (the Guide), the Guide will be formally implemented on August 1, 2020.

There are 17 articles in the Guide, the main contents of which are summarized as follows:

1. It is clarified that the side pocket mechanism is a mechanism that separates risky assets that are difficult to be reasonably valued from the fund portfolio assets for disposal and liquidation under statutory conditions to ensure the normal operation of remaining fund assets. The side pocket mechanism is a liquidity risk management tool, which is different from daily risk control measures. In daily investment operations, fund managers shall, in accordance with laws and regulations and the provisions of the CSRC, manage and control fund liquidity risks professionally, prudently and diligently, so as to promote the stable operation of

the fund and fair valuation of unit net value.

2. Operating conditions, implementation procedures and operational requirements of the main implementation procedures of the side pocket mechanism have been specified. For example, when the fund holds specific assets and there will be potential large redemption applications, the fund manager shall follow the principle of protecting the interests of fund holders to the greatest extent, and after consulting with the custodian and get the opinions of the accounting firm, activate side pocket mechanism in accordance with laws, regulations and fund contracts. The aforementioned specific assets include: (1) assets with no reference active market prices and the use of valuation techniques still leads to significant uncertainty in their fair value; (2) assets measured at amortized cost and provision for asset impairment still results in significant uncertainty in value; (3) other assets with significant uncertainty in value.

3. The responsibilities of the fund managers, custodian and accounting firm have been clarified, and a mechanism combining internal constraints of fund managers with public supervision has been . For example, in terms of the main responsibility of risk management and control, the fund manager should formulate a clear internal system and a clear division of authorization based on the implementation conditions of the side pocket mechanism, initiating departments, decision-making procedures, and business processes, update the corresponding system settings, establish a communication mechanism with external institutions such as fund custodians, and take effective measures to ensure the timely, orderly, transparent and fair implementation of the side pocket mechanism, In terms of fee collection, fund managers are allowed to disburse the side pocket account-related fees from the side pocket account assets in accordance with laws and regulations and the fund contract, but only after the specific assets are realized, and they shall not charge for management fees and performance compensation.

The introduction of the side pocket mechanism is conducive to further enriching the liquidity risk management tools of public funds, alleviating the potential systemic risks caused by fund redemption under certain circumstances, and preventing behaviors such as first redemption and preemption, and protecting the legitimate rights and interests of investors.

中国证券监督管理委员会发布《公开募集证券投资基金侧袋机制指引（试行）》以进一步提升公募基金风险防控能力

2020 年 7 月 10 日，为进一步提升公募基金风险防控能力，更好地保护投资者合法权益，中国证券监督管理委员会（中国证监会）发布《公开募集证券投资基金侧袋机制指引（试行）》（下称《指引》），《指引》将于 2020 年 8 月 1 日起正式施行。

《指引》共十七条，其主要内容如下：

1. 明确侧袋机制是在符合法定条件下将难以合理估值的风险资产从基金组合资产中分离出来进行处置清算，确保剩余基金资产正常运作的机制。侧袋机制属于流动性风险管理工具，区别于日常风控措施。基金管理人在日常投资运作中，应当依据法律法规和中国证监会的规定，专业审慎、勤勉尽责地管控基金流动性风险，促使基金稳健运作、份额净值公允计价。

2. 规定了侧袋机制的启用条件、实施程序和主要实施环节的操作要求。如当基金持有特定资产且存在或潜在大额赎回申请时，基金管理人应按照最大限度保护基金份额持有人利益的原则，经与托管人协商一致、咨询会计师事务所意见后，可以依照法律法规及基金合同的约定启用侧袋机制。前述特定资产包括：(1)无可参考的活跃市场价格且采用估值技术仍导致公允价值存在重大不确定性的资产；(2)按摊余成本计量且计提资产减值准备仍导致资产价值存在重大不确定性的资产；(3)其他资产价值存在重大不确定性的资产。

3. 压实基金管理人主体责任，着力规范费用收取、信息披露等投资运作环节及相关内部控制，并明确托管人和会计师事务所职责，形成管理人内部约束与公众监督的机制。如在风险管控主体责任方面，基金管理人应当针对侧袋机制的实施条件、发起部门、决策程序、业务流程等事项，制定清晰的内部制度与明确的授权分工，更新相应系统设置，建立与基金托管人人等外部机构的沟通机制，采取有效措施确保侧袋机制实施的及时、有序、透明及公平。而在费用收取方面，允许基金管理人依照法律法规和基金合同约定，将与侧袋账户有关的费用从侧袋账户资产中列支，但应待特定资产变现后方可列支，且不得收取管理费及业绩报酬。

侧袋机制的推出，有利于进一步丰富公募基金的流动性风险管理工具，缓解特定情形下因基金赎回引发的潜在系统性风险，也可防范先赎占优等行为，保障投资者合法权益。

Source 来源：

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Commodity Futures Trading Commission Invalidates Commodity Pool Operator Registration Exemptions for 17 Foreign Entities

On July 10, 2020, the Commodity Futures Trading Commission (CFTC) announced it has issued an order deeming the commodity pool operator (CPO) exemptions of 17 entities to be ineffective following a special call by the Division of Swap Dealer and Intermediary Oversight (DSIO). The order was approved by the CFTC on July 7, 2020 and is effective immediately.

Each of the entities, purportedly based abroad, had claimed an exemption from CPO registration in accordance with Commission Regulation 4.13(a)(2), which provides that a person is not required to register as a CPO if:

1. none of the pools it operates has more than 15 participants at any time; and

2. the total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed US$400,000.

The special call was initiated in accordance with Commission Regulation 4.13(c)(1)(iii), which requires persons claiming an exemption to submit to such special calls as the CFTC may make to demonstrate eligibility for and compliance with the applicable criteria for exemption.

Each of the entities named in the order failed to comply with its obligation to respond to the special call, which led the CFTC to deem their claimed exemptions ineffective.

美国商品期货交易委员会宣布取消 17 个美国境外实体商品池运营商注册豁免资格

2020 年 7 月 10 日，美国商品期货交易委员会（CFTC）宣布，在掉期交易商和中介监督部（DSIO）的特定传唤后，取消 17 个实体的商品池运营商（CPO）豁免资格，该项决定于 2020 年 2020 年 7 月 7 日获得 CFTC 的批准并立即生效。

每个据称位于美国境外实体均已根据 CFTC 条例 4.13(a)(2)要求豁免 CPO 注册，该条例规定，在以下情况下，无需注册为 CPO：

1. 其经营的商品池在任何时候都没有超过 15 名参与者；和

2. 其参与运营或打算运营的所有商品池中的参与单位所获得的总出资额不超过 400,000 美元。

特定传唤是根据 CFTC 条例 4.13(c)(1)(iii)发起的，该条例要求获得豁免的人必须接受 CFTC 可能做出任何特殊召唤，以证明其适用并符合相关豁免标准 。

每个上述实体均未履行其对特别召集作出回应的义务，因而 CFTC 认为其所主张的豁免无效。

Source 来源：
https://www.cftc.gov/PressRoom/PressReleases/8199-20

Commodity Futures Trading Commission Sanctions Two Firms Offering Digital Asset-Based Swaps for Illegal Off-Exchange Trading and Registration Violations

On July 13, 2020, the U.S. Commodity Futures Trading Commission (CFTC) issued an order filing and settling charges against respondents Plutus Financial, Inc. d/b/a Abra of California, and Plutus Technologies Philippines Corp. d/b/a Abra International of the Philippines for entering into illegal off-exchange swaps in digital assets and foreign currency with U.S. and overseas customers and registration violations.

The CFTC's order finds that from approximately December 2017 to October 2019, the respondents accepted orders for and entered into thousands of digital asset and foreign currency-based contracts via a mobile phone application. These contracts, which constituted swaps under the Commodity Exchange Act (CEA), enabled customers to enter into financial transactions, with the respondents acting as the counterparty, to gain exposure to price movements of over seventy-five digital assets. By entering into these contracts via their app, respondents violated Section 2(e) of the CEA, which makes it unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market. Additionally, in soliciting and accepting orders for these contracts, the respondents illegally operated as an unregistered futures commission merchant.

The order requires the respondents to pay a US$150,000 civil monetary penalty and to cease and desist from further violations of the CEA, as charged.

美国商品期货交易委员会处罚两家违法进行数字资产和外币交易所外交易的公司

2020 年 7 月 13 日，美国商品期货交易委员会（CFTC）发布针对被告 Plutus Financial, Inc. d/b/a Abra（加利福尼亚州）和被告 Plutus Technologies Philippines Corp. d/b/a Abra（菲律宾）的指控和和解命令，就其与美国和境外客户进行数字资产和外币的非法场外掉期交易，并违反注册规定。

CFTC 命令指出，从 2017 年 12 月到 2019 年 10 月，被告通过手机应用程序签订了数千份基于数字资产和外币的合同。 这些合同构成了商品交易法规定的掉期合同，使客户能够与被告作为对手方进行金融交易，从而获得超过 75 种数字资产。 通过使用应用程序签订这些合同，被告违反了商品交易法第 2(e)条，其中规定，除合格合同参与者以外的任何人进行掉期交易都是非法的，除非掉期交易是在指定为合同市场的交易委员会上订立或受其管辖。此外，在招揽和接受这些合同订单时，被告是未注册的期货经济商。

命令要求被告支付 15 万美元的民事罚款，并制止进一步违反商品交易法规定。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8201-20

Commodity Futures Trading Commission Approves Final Swap Dealer Capital Rule at July 22 Open Meeting and Completes All Required Rulemakings Under Section 731 of the Dodd-Frank Act

On July 22, 2020, the Commodity Futures Trading Commission (CFTC) at its open meeting approved a final rule regarding new capital and financial reporting requirements for swap dealers (SDs) and major swap participants (MSPs). Adoption of this rule marks the completion of the CFTC's required rulemakings under Section 731 of the Dodd-Frank Act, which was enacted 10 years ago.

Final Rule: Capital Requirements of Swap Dealers and Major Swap Participants

On a 3-2 vote, CFTC approved a final rule imposing new capital requirements on SDs and MSPs that are not subject to supervision by a banking regulator, and imposing financial reporting requirements for SDs and MSPs generally. The final rule provides SDs with the option to elect one of three alternative methods to establish and meet minimum capital requirements, depending on the characteristics of their business:

- a net liquid assets method, which is based primarily on existing capital requirements for futures commission merchants (FCMs), and on the capital requirements adopted by the Securities and Exchange Commission for security-based swap dealers and major security-based swap participants;
- a bank-based method, which is based primarily on existing capital requirements for bank holding companies under the supervision of the Federal Reserve Board; and
- a tangible net worth method, designed specifically for SDs which are part of a larger commercial enterprise.

MSPs are required to maintain positive tangible net worth.

The final rule also makes several amendments to existing capital requirements for FCMs to impose specific requirements for swaps and security-based swaps.

In addition, the final rule includes: (1) a comprehensive model approval process; (2) accompanying financial reporting, recordkeeping, and notification requirements; and (3) a substituted compliance determination process for those SDs which may already be required to maintain capital in accordance with a foreign regulator.

This final rule is effective 60 days after publication in the Federal Register. Market participants must be compliant by October 6, 2021.

美国商品期货交易委员会批准最终掉期交易商资本规则并就此完成多德-弗兰克法案第 731 条所有必要的规则制定

2020 年 7 月 22 日，美国商品期货交易委员会（CFTC）在其公开会议上批准了关于掉期交易商和主要掉期参与者的新资本和财务报告要求的最终规则。最终规则的采用标志着 CFTC 根据 10 年前颁布的《多德-弗兰克法案》第 731 条所要求的规则的制定工作已经全部完成。

最终规则：掉期交易商和主要掉期参与者的资本要求

CFTC 以 3 票对 2 票通过了一项最终规则，对不受银行监管机构监管的掉期交易商和主要掉期参与者提出了新的资本要求，并对掉期交易商和主要掉期参与者提出了财务报告要求。最终规则使掉期交易商可以选择以下三种方法之一来建立和满足最低资本要求，具体取决于其业务特点：

- 流动资产净额方法，主要基于期货交易商的现有资本要求，以及美国证券交易委员会对基于证券的掉期交易商和基于证券的主要掉期参与者所采用的资本要求；

- 基于银行的方法，主要基于在联邦储备委员会的监督下银行控股公司的现有资本要求；和

- 有形净资产方法，专门为属于大型商业企业的掉期交易商所适用。

主要掉期参与者必须保持正有形净资产。

最终规则还对期货交易商的现有资本要求进行了一些修改，以对掉期和基于证券的掉期施加特定的要求。

此外，最终规则包括：（1）全面的模范批准流程；（2）随附财务报告，记录保存和通知要求；（3）根据外国监管机构要求维持资本的交易商的替代合规性确定过程。

最终规则将在联邦公报上公布后 60 天生效。市场参与者必须在 2021 年 10 月 6 日之前合规。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8210-20

U.S. Securities and Exchange Commission Adopts Rule Amendments to Provide Investors Using Proxy Voting Advice More Transparent, Accurate and Complete Information

On July 22, 2020, the U.S. Securities and Exchange Commission (SEC) voted to adopt amendments to its rules governing proxy solicitations designed to ensure that clients of proxy voting advice businesses have reasonable and timely access to more transparent, accurate and complete information on which to make voting decisions. The amendments aim to facilitate the ability of those who use proxy voting advice—investors and others who vote on investors' behalf—to make informed voting decisions without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice.

Highlights

SEC is amending the definition of the terms "solicit" and "solicitation" in Rule 14a-1(l) to codify that proxy voting advice generally constitutes a solicitation within the meaning of Section 14(a) of the Exchange Act. New paragraph (A) to Rule 14a-1(l)(1)(iii) specifies the circumstances in which a person who furnishes proxy voting advice will be deemed to be engaged in a solicitation subject to the proxy rules. In addition, new paragraph (v) to Rule 14a-1(l)(2) codifies SEC's view that proxy voting advice provided by a person who furnishes such advice only in response to an unprompted request shall not be deemed to be a solicitation.

The amendments revise Rules 14a-2(b)(1) and (b)(3), which provide exemptions from the information and filing requirements of the proxy rules. Under the amendments, in order for proxy voting advice businesses to rely on these exemptions, they must satisfy the following conditions of new Rule 14a-2(b)(9):

- They must provide specified conflicts of interest disclosure in their proxy voting advice or in an electronic medium used to deliver the proxy voting advice [Rule 14a-2(b)(9)(i)]; and

- They must have adopted and publicly disclosed written policies and procedures reasonably designed to ensure that:

- Registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the proxy voting advice business's clients [Rule 14a-2(b)(9)(ii)(A)]; and

- The proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner before the security holder meeting [Rule 14a-2(b)(9)(ii)(B)].

To give assurance to a proxy voting advice business that its written policies and procedures satisfy the above principles-based requirements, the new rules include the following non-exclusive safe harbors:

- A proxy voting advice business will be deemed to satisfy the requirements of Rule 14a-2(b)(9)(ii)(A) if its written policies and procedures are reasonably designed to provide registrants with a copy of its proxy voting advice, at no charge, no later than the time it is disseminated to the business's clients. The safe harbor also specifies that such policies and procedures may include conditions requiring registrants to (i) file their definitive proxy statement at least 40 calendar days before the security holder meeting and (ii) expressly acknowledge that they will only use the proxy voting advice for their internal purposes and/or in connection with the solicitation and will not publish or otherwise share the proxy voting advice except with the registrant's employees or advisers.

- A proxy voting advice business will be deemed to satisfy the requirements of Rule 14a-2(b)(9)(ii)(B) if its written policies and procedures are reasonably designed to provide notice on its electronic client platform or through email or other electronic means that the registrant has filed, or has informed the

proxy voting advice business that it intends to file, additional soliciting materials setting forth the registrant's statement regarding the advice (and include an active hyperlink to those materials on EDGAR when available).

The amendments modify Rule 14a-9 to include examples of when the failure to disclose certain material information in proxy voting advice could, depending upon the particular facts and circumstances, be considered misleading within the meaning of the rule. These examples include material information about the proxy voting advice business's methodology, sources of information, or conflicts of interest.

The amendments will be effective 60 days after publication in the Federal Register, but affected proxy voting advice businesses subject to the final rules are not required to comply with the Rule 14a-2(b)(9) amendments until December 1, 2021.

Supplemental Guidance Regarding Proxy Voting Responsibilities of Investment Advisers

SEC has also supplemented prior guidance issued to investment advisers regarding their proxy voting responsibilities. The prior guidance discussed how the fiduciary duty and rule 206(4)-6 under the Investment Advisers Act of 1940 relate to an investment adviser's exercise of voting authority on behalf of its clients. This supplemental guidance will assist investment advisers in fulfilling their proxy voting responsibilities in light of these amendments to the solicitation rules under the Exchange Act.

The supplemental guidance assists investment advisers in assessing how to consider issuer responses to recommendations by proxy advisory firms that may become more readily available to investment advisers as a result of the amendments to the solicitation rules under the Exchange Act. This includes circumstances in which the investment adviser utilizes a proxy advisory firm's electronic vote management system that "pre-populates" the adviser's ballots with suggested voting recommendations or for voting execution services.

For example, the supplemental guidance states that an investment adviser should consider whether its policies and procedures address circumstances where the investment adviser has become aware that an issuer intends to file or has filed additional soliciting materials with SEC after the investment adviser has received the proxy advisory firm's voting recommendation but before the submission deadline. The supplemental guidance also addresses disclosure obligations and client consent when investment advisers use automated services for voting.

The guidance will be effective upon publication in the Federal Register.

美国证券交易委员会通过规则修正案为使用代理投票建议的投资者提供更透明准确和完整信息

2020 年 7 月 22 日，美国证券交易委员会（美国证交会）表决通过旨在管理代理咨询业务的规则修订，以确保代理投票建议的客户的合理及时地获得透明，准确，完整的信息以做出投票决定。修订内容旨在促进使用代理投票建议的人(投资者和代表投资者投票的其他人)做出明智的投票决定的能力，而不会产生不适当的成本或延迟对及时提供代理投票建议产生不利影响。

要点

美国证交会修正规则 14A-1(l)，规定代理投票建议通常构成交易法第 14(a)中的招标的含义。规则 14a-1(l)(l)(iii)的新(A)款规定了在何种情况下，提供代理投票建议的人将被视为参加了根据代理人规则进行的招标。此外，规则 14a-1(l)(2)的新(v)款加入新规定，即仅回应无提示的请求而提供此类建议的人所提供的代理投票建议不应被视为是招标。

规则 14a-2(b)(1)和(b)(3)进行了修订，豁免代理规则的信息和归档要求。根据修正案，若代理投票咨询业务要适用这些豁免，其必须满足新规则 14a-2(b)(9)的以下条件:

- 他们必须在其代理投票建议或用于提供代理投票建议的电子媒体中提供特定的利益冲突披露[规则 14A-2(b)(9)(i)]；且
- 他们必须已采取并公开披露书面政策和程序以确保:
- 代理投票建议所针对的注册人应在向代理投票咨询业务的客户分发此类建议时或之前向他们提供此类建议。[规则 14A-2(b)(9)(ii)(A)]；及
- 代理投票咨询业务为客户提供了一种机制，以合理期望客户在担保人召开会议之前及时了解作为其建议对象的注册人有关其代理投票咨询的任何书面声明。[规则 14A-2(b)(9)(ii)(B)]。

为了保证代理投票咨询公司的书面政策和程序满足上述原则要求，新规则包括（但不限于）以下安全港:

- 代理投票咨询业务将被视为符合规则 14A-2(b)(9)(ii)(A)，若该公司的书面政策和程序经过合理设计，可在不迟于向企业客户发布时向注册人免费提供其代理投票建议的副本。安全港还规定此类政策和程序的一些条件，要求注册人（i）至少在债券

持有人会议召开 40 个历日之前提交最终代理声明，并且（ii）明确声明他们将仅出于内部目的使用代理投票建议和/或与招标有关的内容，不会向注册人的雇员或顾问以外的人士发布或以其他方式共享代理投票建议。

- 代理书面咨询业务将被视为满足规则 14a-2(b)(9)(ii)(B)的要求，如果其书面政策和程序合理，可以在电子客户平台或通过电子邮件或其他注册商注明的电子方式发出通知，额外的征询材料需阐明注册商关于建议的声明（并在 EDGAR 上提供指向这些材料的有效超链接）。

对规则 14a-9 进行了修改，以含括一些示例说明，根据特定的事实和情况，在代理投票建议中未能披露某些重要信息在何时会被认定为于该规则的含义内具有误导性。这些示例包括有关代理投票咨询业务方法的重要信息，信息来源或利益冲突。

是次修订将在联邦公报上公布后 60 天生效，但在 2021 年 12 月 1 日之前，受最终版规则影响的代理投票咨询公司无需遵守第 14a-2(b)(9)条修正案。

有关投资顾问代理投票责任的补充指南

美国证交会还补充发出有关其代理投票责任投资顾问之前公布的指引。先前的指南讨论了 1940 年投资顾问法所规定的信托义务和第 206(4)-6 条与投资顾问代表其客户行使表决权有关的规定。根据交易法对招标规则的修订，补充指南将帮助投资顾问履行其代理投票的职责。

补充指南可帮助投资顾问评估如何考虑发行人对代理咨询公司的建议的反应，这些建议可能由于交易法对招标规则的修改而更容易为投资顾问所用，包括投资顾问使用代理咨询公司的电子投票管理系统的情况，该系统可以“预先”填写具有建议投票建议的顾问选票，或用于投票执行服务。

例如，补充指南指出，投资顾问应该考虑其政策和程序是否能够应对投资顾问知悉一名发行人在投资顾问已经收到代理投资公司的投票建议但在提交截止日期之前打算或已经向美国证交会提交额外招标材料的情况。补充指南还涉及投资顾问使用自动化服务进行投票时的披露义务和客户同意要求。

补充指南将在联邦公报上发布后生效。

Source 来源:
https://www.sec.gov/news/press-release/2020-161

U.S. Securities and Exchange Commission Charges Wind Turbine Company and Individuals with Defrauding Investors

On July 14, 2020, the U.S. Securities and Exchange Commission (SEC) announced charges against Thunderbird Power Corp., an Arizona-based company claiming to be developing a wind turbine technology, and three individuals for defrauding investors out of more than US$1.9 million in the unregistered offer and sale of Thunderbird stock.

According to the SEC's complaint, Thunderbird's CEO Richard Hinds (of Arizona), former Thunderbird president Anthony Goldstein (of Canada), and consultant John Alexander "Lex" van Arem (of Canada) orchestrated the fraudulent offering and were responsible for numerous false and misleading statements in offering materials, press releases, and a YouTube video regarding the status of the wind turbine technology, purported validation of the technology by a nationally known firm, and Thunderbird's use of investor proceeds. The complaint further alleges that Goldstein and van Arem retained a national network of sales agents to email and cold call prospective investors using the false claims. According to the complaint, Hinds, Goldstein, and van Arem misappropriated nearly US$850,000, representing more than 40 percent of investor funds, to enrich themselves and pay the sales agents to seek out more unsuspecting investors.

"Investors should be wary of unsolicited offers of investment and carefully research a company's business and products before investing." said Eric I Bustillo, Director of the SEC's Miami Regional Office.

The SEC's complaint, filed in federal court in the Southern District of Florida, charges Thunderbird, Hinds, Goldstein, and van Arem with violating the securities registration, broker-dealer registration, and antifraud provisions of the federal securities laws. The SEC seeks permanent injunctive relief, disgorgement with prejudgment interest, civil penalties, and penny stock bars, and also seeks officer and director bars against Hinds and Goldstein.

美国证券交易委员会指控风力涡轮机公司及个人欺诈投资者

2020 年 7 月 14 日，美国证券交易委员会 (美国证交会) 宣布指控亚利桑那州的 Thunderbird Power Corp.，该公司声称正在开发风力涡轮机技术，并指控三名个人未经注册发销 Thunderbird 股票并骗取投资者逾 190 万美元。

根据美国证交会的指控，Thunderbird 的首席执行官 Richard Hinds (亚利桑那州籍)，前 Thunderbird 总裁 Anthony Goldstein (加拿大籍) 和顾问 John Alexander "Lex

" van Arem (加拿大籍) 策划了欺诈性发行，在提供有关风力涡轮机技术现状的材料，新闻稿和 YouTube 视频中就一家全国知名公司对该技术进行了验证的描述以及 Thunderbird 募集资金用途存在虚假和误导性的声明。据称由以及 Thunderbird 使用投资者收益的声明。此外，Goldstein 和 van Arem 保留了一个全国性的销售代理商网络，以使用虚假声明向潜在投资者发送电子邮件和打进电话。据称，Hinds，Goldstein 和 van Arem 挪用了近 85 万美元，占投资者资金的 40％以上，据为己有并向销售代理商付款，以寻找更多毫无戒心的投资者。

美国证交会迈阿密地区办公室主任 Eric I Bustillo 提请投资者警惕主动提供的投资，并在投资前仔细研究公司的业务和产品

美国证交会的投诉已提交佛罗里达南区的联邦法院，指控 Thunderbird，Hinds，Goldstein 和 van Arem 违反了联邦证券法的证券注册，经纪人-经销商注册和反欺诈规定。美国证交会寻求永久禁令，罚没违法所得及判决前利息，民事罚款和仙股禁令，另寻求针对 Hinds 和 Goldstein 的任职和董事禁令。

Source 来源:
https://www.sec.gov/news/press-release/2020-154

U.S. Securities and Exchange Commission Files Fraud Charges Against Co-Founder of IIG

On July 17, 2020, the U.S. Securities and Exchange Commission (SEC) charged David Hu, the co-founder and chief investment officer of International Investment Group LLC (IIG), a former registered investment adviser, with fraud for his role in a US$60 million Ponzi-like scheme.

The SEC's complaint, filed in federal district court in Manhattan, alleges that, from October 2013, Hu orchestrated multiple frauds on IIG's investment advisory clients. According to the complaint, Hu grossly overvalued the assets in IIG's flagship hedge fund, resulting in the fund paying inflated fees to IIG. In addition, through IIG, Hu allegedly sold at least US$60 million in fake trade finance loans to other investors and used the proceeds to pay the redemption requests of earlier investors and other liabilities. The complaint alleges that Hu deceived IIG clients into purchasing these loans by directing others at IIG to create and provide to the clients fake loan documentation to substantiate the non-existent loans, including fake promissory notes and a forged credit agreement.

"As alleged, Hu's deception caused substantial losses to a retail mutual fund, and other funds IIG advised," said Sanjay Wadhwa, Senior Associate Director of the SEC's New York Regional Office. "The SEC remains committed to holding accountable individual wrongdoers who seek to take advantage of investors for personal gain, including when they employ elaborate means to cover up their fraud."

The complaint charges Hu with violating the antifraud provisions of the federal securities laws and seeks permanent injunctive relief, disgorgement, and civil penalties.

In a parallel action, the U.S. Attorney's Office for the Southern District of New York announced criminal charges against Hu.

The SEC previously charged IIG with fraud on November 21, 2019, and revoked IIG's registration as an investment adviser on November 26, 2019. On March 30, 2020, the SEC obtained a final judgment on consent that enjoins IIG from violating the antifraud provisions of the federal securities laws and requires IIG to pay more than US$35 million in disgorgement and prejudgment interest.

美国证券交易委员会对 IIG 联合创始人提出欺诈指控

2020 年 7 月 17 日，美国证券交易委员会（美国证交会）指控前注册投资顾问，International Investment Group LLC（IIG）的联合创始人兼首席投资官，David Hu，称其涉嫌金额 6,000 万美元的庞氏骗局。

美国证交会在曼哈顿联邦地方法院提起的指控称，从 2013 年 10 月起，Hu 向 IIG 的投资咨询客户进行了了多次欺诈。据称，Hu 严重高估 IIG 旗舰对冲基金的资产，导致该基金向 IIG 支付了虚高费用。此外，Hu 通过 IIG 向其他投资者出售了至少 6000 万美元的虚假贸易融资贷款，并将所得款项用于支付早期投资者的赎回要求和其他债务。据称，Hu 通过指示 IIG 的其他人为 IIG 客户创建并提供虚假贷款文件，以证明不存在的贷款，包括虚假的期票和伪造的信贷协议，来欺骗 IIG 客户购买这些贷款。

美国证交会纽约地区办事处高级副主任桑杰·瓦德瓦说：“如指控所称，Hu 的欺骗给零售共同基金及其他 IIG 的基金客户造成了重大损失，美国证交会将会持续致力于追究企图利用投资者谋取私利，包括利用复杂手段掩盖其欺诈行为的个人不法行为者的责任。”

指控称 Hu 违反了联邦证券法的反欺诈规定，并寻求永久性禁令，罚没非法所得及民事处罚。

与此同时，美国纽约南区检察官办公室宣布了对 Hu 的刑事指控。

美国证交会先前于 2019 年 11 月 21 日对 IIG 进行欺诈指控，并于 2019 年 11 月 26 日撤销了 IIG 的投资顾问注册。

2020 年 3 月 30 日，美国证交会获得对 IIG 的最终判决，该判决禁止 IIG 违反联邦证券法反欺诈条款的规定，并要求 IIG 支付罚款和判决前利息逾 3500 万美元。

Source 来源:
https://www.sec.gov/news/press-release/2020-157

U.S. Securities and Exchange Commission Charges Financial Advisor with Fraud for Stealing Millions from Investors

On July 20, 2020, the U.S. Securities and Exchange Commission (SEC) charged former registered representative and investment adviser Michael Barry Carter with fraud for stealing from brokerage customers and an elderly advisory client.

The SEC's complaint alleges that Carter, a financial advisor in the McLean, Virginia office of a large financial institution, falsified internal documents in order to effect dozens of unauthorized wire transfers, totaling millions of dollars, from the accounts of brokerage customers to his personal bank account. According to the complaint, to generate some of the funds that he misappropriated, Carter sold securities without customer authorization. As alleged, Carter employed various methods to conceal his misconduct from his brokerage customers, including diverting account statements to addresses he controlled. The complaint further alleges that Carter made almost US$1.5 million in unauthorized transfers from the accounts of an elderly advisory client, sending nearly US$1 million to himself, and using some of the remainder to repay funds he had taken from a brokerage customer. Carter also allegedly misappropriated funds from the client that originated from 529-plan college savings accounts held at another financial institution for the benefit of her grandchildren. The complaint alleges that Carter used the funds he misappropriated from his customers and client to support his lavish lifestyle.

The SEC's complaint, filed in the U.S. District Court for the District of Maryland, charges Carter with violations of the antifraud provisions of the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. The SEC is seeking injunctive relief, the return of allegedly ill-gotten gains plus prejudgment interest, and a civil penalty.

In a parallel action, the U.S. Attorney's Office for the District of Maryland announced criminal charges against Carter. Carter has pled guilty to those charges.

The Office of Investor Education and Advocacy and Division of Enforcement's Retail Strategy Task Force encourage senior investors to learn more at Investor.gov and report any suspicious investment-related activity or schemes using the SEC's online tips, complaints, and referrals (TCR) system.

美国证券交易委员会指控财务顾问欺诈窃取投资者百万资金

2020 年 7 月 20 日，美国证券交易委员会（美国证交会）指控前注册代表和投资顾问 Michael Barry Carter 欺诈并从经纪客户和长者咨询客户处窃取资金。

美国证交会的投诉称，在弗吉尼亚州麦克莱恩办事处的大型金融机构财务顾问 Carter 伪造内部文件，进行数十次未经授权的电汇，从经纪客户的账户转至其个人银行的总额达数百万美元。据称，为得到他挪用的一些资金，Carter 未经客户授权出售了证券。Carter 采取了各种方法对其经纪客户掩盖不当行为，包括将帐户对帐单转移到他控制的地址。此外，Carter 从一位年老的咨询客户的账户中未经授权转出近 150 万美元，向自己汇款近 100 万美元，并使用其中的一部分偿还了他从经纪客户那里收取的资金。据称，Carter 还挪用了来自于另一家金融机构持有的 529 计划的大学储蓄账户为供其子孙受益而设的资金。Carter 自客户处挪用资金来支持其自己的奢侈生活。

美国证交会的申诉已提交至美国马里兰州地方法院，指控 Carter 违反 1934 年证券交易法和 1940 年投资顾问法的反欺诈规定。美国证交会寻求禁令，指称归还非法所得加判决前的利息，以及民事处罚。

同时，美国马里兰州检察官办公室亦宣布了对 Carter 的刑事指控。Carter 已就这些指控认罪。

投资者教育与倡导办公室和执法部零售战略专责小组鼓励投资者在 Investor.gov 网站上了解更多信息，并使用美国证交会的在线提示、投诉和举报系统（TCR 系统），举报任何可疑的投资相关活动或计划。

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UBS to Pay US$10 Million for Violating Rules Which Give Priority to Retail Investors in Municipal Offerings

On July 20, 2020, the U.S. Securities and Exchange Commission (SEC) announced that UBS Financial Services Inc. has agreed to pay more than US$10 million to resolve charges that it circumvented the priority given to retail investors in certain municipal bond offerings.

According to the SEC's order, over a four-year period, UBS improperly allocated bonds intended for retail customers to parties known in the industry as "flippers," who then immediately resold or "flipped" the bonds to other broker-dealers at a profit. The order finds that UBS

registered representatives knew or should have known that flippers were not eligible for retail priority. In addition, the order finds that UBS registered representatives facilitated over 2,000 trades with flippers, which allowed UBS to obtain bonds for its own inventory, thereby circumventing the priority of orders set by the issuers and improperly obtaining a higher priority in the bond allocation process.

The SEC previously brought charges of municipal bond offering "flipping" and retail order period abuses in August 2018, in December 2018, in September 2019, and in April 2020.

Without admitting or denying the findings, UBS consented to a cease-and-desist order that finds it violated the disclosure, fair dealing, and supervisory provisions of Municipal Securities Rulemaking Board Rules G-11(k), G-17, and G-27, and also failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The order imposes a US$1.75 million penalty, US$6.74 million in disgorgement of ill-gotten gains plus over US$1.5 million in prejudgment interest, and a censure.

In related actions, the SEC instituted settled proceedings against UBS registered representatives William S. Costas and John J. Marvin. The SEC's order finds that Costas and Marvin negligently submitted retail orders for municipal bonds on behalf of their flipper customers and that Costas also helped UBS bond traders improperly obtain bonds for UBS's own inventory through his flipper customer. Costas and Marvin agreed to settle the charges without admitting or denying the SEC's findings, and consented to orders finding they violated MSRB Rules G-11(k) and G-17. Costas agreed to pay disgorgement and prejudgment interest totaling US$16,585 and a civil penalty of US$25,000, and Marvin agreed to pay disgorgement and prejudgment interest totaling US$27,966 and a civil penalty of US$25,000. Both consented to a 12-month limitation on trading negotiated new issue municipal securities. The SEC previously settled charges against Jerry E. Orellana, a former UBS Executive Director, for submitting retail orders to the underwriting syndicate from certain UBS customers who were flippers.

瑞银因违反市政债券散户投资者优先规则被罚款 1000 万美元

2020 年 7 月 20 日，美国证券交易委员会（美国证交会）宣布瑞银金融服务公司（UBS Financial Services）已同意就其未能遵守市政债券发行散户投资者优先的规则而支付逾 1000 万美元罚款。

根据美国证交会指控，在四年的时间里，瑞银不适当地将面向散户投资者的债券分配给了业内所谓的"炒家"（转售投资者），后者随后立即将这些债券转售或倾销给其他经纪交易商以获利。指控称，瑞银注册代表知悉或应该知悉炒家并无资格获得零售优先权。 此外，瑞银注册代表通过炒家促进了 2,000 笔交易，这使瑞银能够为其自身的存货获取债券，从而规避了发行人设定的交易优先级，并在债券分配过程中不当获得了更高的优先级。

美国证交会先前曾于 2018 年 8 月，2018 年 12 月，2019 年 9 月和 2020 年 4 月提出对市政债券转售和零售订单期滥用的指控。

在不承认或否认调查结果的情况下，瑞银同意一项终止令，该命令认为其违反了市政证券规则制定委员会规则 G-11(k)，G-17 和 G-27 条，并且未能合理遵守 1934 年证券交易法第 15(b)(4)(E)条的规定。该命令处以 175 万美元的罚款，674 万美元的不当所得收益及超过 150 万美元的判决前利息，并谴责其行为。

此外，美国证交会对瑞银注册代表 William S. Costas 和 John J. Marvin 采取和解程序。 美国证交会称，Costas 和 Marvin 代表其转售客户疏忽地提交了市政债券的零售订单，并且 Costas 还帮助瑞银债券交易商通过其炒家客户不当地获取了瑞银自身库存的债券。 Costas 和 Marvin 同意在不承认或否认美国证交会的调查结果的情况下和解指控，并同意裁定其违反了 MSRB 规则 G-11(k)和 G-17 规定。 Costas 同意支付总计 16,585 美元的罚金和判决前利息及 25,000 美元的民事罚款，Marvin 同意支付总计 27,966 美元的罚金和判决前利息和 25,000 美元的民事罚款。双方都同意新发行市政证券交易的 12 个月限令。美国证交会此前曾对前瑞银执行董事 Jerry E. Orellana 提出和解指控，因其从部分炒家客户处获得零售订单并提交给承销团。

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U.S. Securities and Exchange Commission Charges Silicon Valley Start-Up and CEO With Defrauding Investors

On July 20, 2020, the U.S. Securities and Exchange Commission (SEC) charged a Mountain View, California-based technology start-up and its chief executive officer with defrauding investors by making false and misleading statements about the company's finances and sources of revenue.

The SEC's complaint alleges that from 2018 to 2019, Shaukat Shamim, the founder and CEO of YouPlus, a private company that purported to have developed a machine-learning tool to analyze videos on the internet, raised funds from investors while repeatedly misrepresenting the company's financial condition. According to the complaint, Shamim falsely told

investors that YouPlus earned millions of U.S. dollars in annual revenue and had more than 100 customers, including Fortune 500 companies. When one investor pressed Shamim for information substantiating those claims, Shamim allegedly provided the investor with falsified bank statements in an effort to conceal the fraud. The scheme allegedly unraveled in late 2019 when Shamim confessed to certain investors that YouPlus had in fact earned less than US$500,000 and obtained only four paying customers from the company's inception in 2013.

The SEC's complaint, filed in the U.S. District Court for the Northern District of California, charges YouPlus and Shamim with violating the antifraud provisions of the federal securities laws and seeks permanent injunctions, civil money penalties, disgorgement with prejudgment interest, and an officer-and-director bar against Shamim.

美国证券交易委员会指控硅谷初创公司和首席执行官欺诈投资者

2020 年 7 月 20 日，美国证券交易委员会（美国证交会）指控总部位于加利福尼亚州山景城的科技初创公司及其首席执行官公司财务和收入来源的虚假误导性陈述欺骗投资者。

指控称，从 2018 年到 2019 年，YouPlus（一家声称已开发了一种用于分析互联网视频的机器学习工具的公司）的创始人兼首席执行官 Shaukat Shamim 从投资者处筹集了资金，但一再歪曲公司的财务状况。据称，Shamim 误导投资者 YouPlus 年收入达数百万美元，拥有包括世界 500 强公司在内的 100 多个客户。当一名投资者向 Shamim 要求提供证实这些主张的信息时，Shamim 涉嫌向投资者提供了伪造的银行对帐单，以掩盖欺诈行为。据称，该计划于 2019 年底被揭露，当时 Shamim 向某些投资者承认，YouPlus 实际上赚了不到 500,000 美元，并且在 2013 年成立之初仅获得了四个付费客户。

美国证交会的申诉已提交给加利福尼亚北区美国地方法院，指控 YouPlus 和 Shamim 违反了联邦证券法的反欺诈条款，并寻求永久性禁令，民事罚款，罚没所得及判决前利息，以及官员和董事禁令。

Source 来源:
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