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Financial Services Regulatory Update 金融服务监管资讯

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The Stock Exchange of Hong Kong Limited Issues Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions

On August 7, 2020, The Stock Exchange of Hong Kong Limited Issued a consultation paper in relation to proposed changes in respect of the Exchange's disciplinary regime (the Consultation Paper).

The Consultation Paper follows a wide-ranging review of the Exchange's disciplinary powers and sanctions under Chapter 2A of the Listing Rules, to ensure that the disciplinary regime continues to remain robust and effective.

"The Exchange's disciplinary regime, set out under our Listing Rules, has been in place for some time without major changes. Through this exercise, we hope to take a holistic view of our regime, with the focus on ensuring that it remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practice," said HKEX Head of Listing, Bonnie Y Chan.

"We aim to have at our disposal a broad spectrum of disciplinary sanctions, so that we can protect the integrity of our markets and the investing public, as well as to promote strong corporate governance and deter misconduct," said Ms. Chan.

The Consultation Paper seeks comments on a number of proposals and enhancements, with a particular emphasis on strengthening the Exchange's powers to hold accountable, and impose appropriate sanctions on, individuals responsible for misconduct and breaches of the Listing Rules.

Amongst other things, this includes proposals to augment the range of reputational sanctions available, and to ensure that disciplinary action can be brought against individuals, including members of senior management who are not directors, who cause or knowingly participate in a contravention of the Listing Rules.

The Exchange invites broad market feedback on its proposals. The public comment period ends on Friday, October 9, 2020.

Key Proposals:

- Lowering existing thresholds for public statements regarding individuals;
- Enhancing follow-on actions in relation to public statements regarding individuals;
- Removing existing thresholds for denying the facilities of the market to listed issuers;
- Introducing director unsuitability statements against individuals;
- Enhancing disclosure requirements for directors and senior management members subject to public sanctions;
- Introducing secondary liability for Rule breaches; and
- Expanding the disciplinary regime to new parties such as guarantors of structured products and parties who enter into an agreement or undertaking with the Exchange.

Currently, the Exchange may impose a ban relating to professional advisers, but it is confined to representing a specified party only and hence its deterrent value is limited. The Exchange proposes to extend the ban on professional advisers to cover banning of representation of "any or a specified party" over certain period.

Many of the proposals may have wide implications to the market and professionals. We suggest that enhanced guidelines and safeguards towards due process should be introduced to strengthen the integrity and fairness of relevant disciplinary proceedings.

香港联合交易所有限公司刊发有关检讨纪律处分权力及制裁的咨询文件

2020年8月7日，香港联合交易所有限公司（联交所）就建议修订联交所的纪律机制刊发咨询文件（咨询文件）。

咨询文件对《上市规则》第二 A 章项下联交所的纪律处分权力及制裁措施作出多方面的检讨，以确保有关纪律机制持续稳健及有效。

香港交易所上市主管陈翊庭表示：「联交所根据《上市规则》设立的纪律机制已有一段时间未有作出重大的修改。透过这次咨询，我们希望全面检讨有关机制使其切合所需，继续维持市场质素，符合持份者的期望并与国际最佳常规一致。」

陈翊庭亦表示：「我们的目标是令联交所有权运用一系列的纪律制裁措施，保障投资大众及联交所辖下市场的持正操作，促进良好企业管治，并对失当行为起阻吓作用。」

咨询文件就多项建议及加强措施征询市场意见，当中着重加强联交所对个别人士的失当及违反《上市规则》的行为的追究权力，以及施加适当的制裁，其中包括：建议扩大声誉性制裁的范围，以及确保可对更多个别人士采取纪律处分行动，包括本身并非董事、但属导致违反《上市规则》或在知情的情况下参与违反《上市规则》的高级管理层成员。

欢迎市场及公众就有关建议提交意见。咨询期于 2020 年 10 月 9 日（星期五）结束。

对现行纪律机制的主要建议及加强措施如下：

- 降低现时对个人发出公开声明的门坎；
- 加强对个人发出公开声明后的跟进行动；
- 取消现行禁止上市发行人使用市场设施的门槛；
- 增设针对个别人士的董事不适合性声明；
- 加强受到公开制裁的董事及高级管理层成员的披露规定；
- 引入违反《上市规则》的间接责任；及
- 将纪律机制的覆盖范围扩大，将例如结构性产品的担保人、与联交所签订协议或承诺的有关各方也包括在内。

目前，联交所对专业顾问的禁令仅限于限制其代表指定的一当事方，因此其威慑力是有限的。联交所建议扩大对专业顾问的禁令范围，以涵盖禁止专业顾问在一定期限内作为“任何或指定当事方”的代表权。

联交所的建议可能会对市场及业界产生广泛的影响。我们建议应引入针对正当程序的增强指引和保障措施，以加强相关纪律程序的公诚度和公正性。

Source 来源：

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Consultation-Paper/cp202008.pdf?la=en>

https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Consultation-Paper/cp202008_c.pdf?la=zh-HK

The Stock Exchange of Hong Kong Limited Issues Consultation Conclusions on Review of Chapter 37 (Debt Issues to Professional Investors Only) and Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 (Debt Issues to Professional Investors Only)

On August 21, 2020, The Stock Exchange of Hong Kong Limited published “Consultation Conclusions on Review of Chapter 37 – Debt Issues to Professional Investors Only” (Consultation Conclusions) and “Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt Issues to Professional Investors Only” (Chapter 37 Guidance).

Consultation Conclusions

The market feedback indicated strong support for the proposals in the consultation paper to enhance the listing regime for debt issues to professional investors only (Professional Debt Regime).

Key changes to the related Listing Rules include:

- Raising the existing issuer’s minimum net assets requirement from HK\$100 million to HK\$1 billion;
- Introducing a minimum issuance size of HK\$100 million;
- Requiring issuers to state explicitly in the listing document the intended investor market in Hong Kong are professional investors only;
- Requiring publication of listing documents on the Exchange’s website on the listing date; and
- Introducing other Rules amendments to enhance the regulatory oversight over issuers and guarantors’ in terms of their continuing obligations.

The Rule amendments will be effective on November 1, 2020.

Chapter 37 Guidance

The Chapter 37 Guidance is a new publication which provides guidance on disclosure in listing documents and continuing obligations under the Professional Debt Regime. It is not intended to be exhaustive nor prescriptive as to the level and types of disclosures to be included in a listing document.

The Chapter 37 Guidance consists of:

- General guidance on disclosure that issuers should consider when preparing listing documents;

- Specific guidance on disclosure in relation to particular types of debt securities with specific features; and
- General guidance in relation to the continuing obligations under the Professional Debt Regime.

The Chapter 37 Guidance will be effective on November 1, 2020.

香港联合交易所有限公司刊发《检讨《上市规则》第三十七章 — 仅售予专业投资者的债务证券的咨询总结》及《《上市规则》第三十七章 — 仅售予专业投资者的债务证券下有关上市文件披露及持续责任指引》

2020年8月21日，香港联合交易所有限公司（联交所）刊发《检讨《上市规则》第三十七章 — 仅售予专业投资者的债务证券的咨询总结》（咨询总结）及《《上市规则》第三十七章 — 仅售予专业投资者的债务证券下有关上市文件披露及持续责任指引》（第三十七章指引）。

咨询总结

有关提升仅售予专业投资者的债务证券上市制度（专业债务制度）的咨询建议得到广泛支持。

相关《上市规则》的主要改变包括：

- 发行人最低资产净值的规定由 1 亿港元提高至 10 亿港元；
- 增设最低发行金额 1 亿港元的规定；
- 发行人须在上市文件明确指出其债券在香港的目标投资者市场仅限于专业投资者；
- 发行人须于上市当日在联交所网站刊发其上市文件；及
- 对《上市规则》进行其他修订，提高对发行人及担保人持续责任的监督。

第三十七章指引

第三十七章指引为一份新的文件，就有关专业债务制度下的上市文件披露及持续责任提供指引。第三十七章指引并非详细无遗或规范性地列出上市文件应有披露的水平或种类。

第三十七章指引包含：

- 关于发行人在准备上市文件时须谨记的考虑因素的一般指引；
- 关于若干类型债券特点的特定披露指引；及
- 关于专业债务制度下持续责任的一般指引。

第三十七章指引将于 2020 年 11 月 1 日生效。

Source 来源：

<https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Letters-to-Issuers/2020/20200821.pdf?la=en>

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Letters-to-Issuers/2020/20200821_c.pdf?la=zh-CN

Hong Kong Exchanges and Clearing Limited Launches New Products and Microstructure Enhancements to Its MSCI Index Derivatives Suite

On August 20, 2020, Hong Kong Exchanges and Clearing Limited (HKEX) announced new products and microstructure enhancements to its MSCI index derivatives suite, further supporting global investors in managing risk and optimizing their portfolios, as well as facilitating open interest migration to HKEX.

HKEX's wholly-owned subsidiary, Hong Kong Futures Exchange Limited (HKFE), has expanded its licensing agreement with MSCI Limited to include the broad-based MSCI Taiwan 25/50 Index, and plans to launch US-dollar (USD) denominated MSCI Taiwan 25/50 Index Futures and MSCI Taiwan 25/50 Net Total Return Index Futures (collectively, "MSCI Taiwan 25/50 Index Futures") on September 28, 2020, subject to regulatory approvals.

To facilitate price discovery of the existing MSCI Taiwan (USD) Index Futures and MSCI Taiwan Net Total Return (USD) Index Futures, a pre-open trading session for these contracts will be introduced starting at 8:30 am Hong Kong time and the opening of the trading session will be advanced to 8:45 am starting on September 28, 2020, subject to regulatory approvals.

The 100% trading fee waiver for the MSCI Taiwan (USD) Index Futures and MSCI Taiwan Net Total Return (USD) Index Futures, effective on August 17, 2020, as well as the new opening hours, will also apply to the MSCI Taiwan 25/50 Index Futures after the contracts are launched.

In addition, HKFE is working with the Securities and Futures Commission to enhance its Capital-Based Position Limit (CBPL) framework, targeting late August 2020, subject to regulatory approvals. The enhancements will ensure the risk exposures of Clearing Participants are commensurate with their financial strength whilst providing more capacity for activities such as migrating their book of MSCI index derivatives to Hong Kong.

In May 2020, HKFE signed a licensing agreement with MSCI to license a suite of MSCI indexes in Asia and Emerging Markets for the launch of 37 futures and

options contracts in Hong Kong. So far, 33 of these contracts have launched on HKEX. HKEX is adding two more products to allow investors to migrate open interest to HKEX ahead of February 2021, as part of the expansion of the number of MSCI-linked derivatives listed on HKEX.

HKEX expects the MSCI Taiwan 25/50 Index Futures to be eligible for Commodity Futures Trading Commission (CFTC) certification in the US, and to be offered to US persons shortly after launch.

Subject to the CFTC certifications, US persons including Regulated Investment Companies (RIC) in the US may trade the new futures contracts on HKEX. The MSCI Taiwan 25/50 Index takes into account certain investment limits that are imposed on RICs under the current US Internal Revenue Code. The new futures products will enable investors around the world to gain exposure to roughly 85 per cent of Taiwan's listed companies by free float market capitalization.

HKEX plans to complete the listing of all MSCI futures contracts in the current phase on September 28, 2020. It expects the three non-USD futures products, namely the MSCI Singapore Free (SGD) Index Futures, MSCI Japan (JPY) Index Futures, and MSCI Japan Net Total Return (JPY) Index Futures to launch on 28 September, subject to regulatory approvals.

香港交易及结算所有限公司计划推出 MSCI 指数衍生品期货系列新产品及微结构优化措施

2020年8月20日，香港交易及结算所有限公司（香港交易所）宣布，针对 MSCI 指数衍生品系列推出新产品和优化措施，进一步帮助全球投资者管理风险及优化投资组合，并且方便投资者可将未平仓合约转往香港交易所买卖。

香港交易所全资附属公司香港期货交易所有限公司（期交所）已扩大其与 MSCI 签订之授权协议的授权产品范围，加入具备广泛基础的 MSCI 台湾 25/50 指数，并计划于 2020 年 9 月 28 日推出以美元计价的 MSCI 台湾 25/50 指数期货以及 MSCI 台湾 25/50 净总收益指数期货（以下统称「MSCI 台湾 25/50 指数期货」），有待监管机构批准。

为便利现有 MSCI 台湾（美元）指数期货及 MSCI 台湾净总收益（美元）指数期货的价格发现，有关产品将引入于香港时间上午 8 时 30 分开始的开市前交易时段，而其交易时段将于 2020 年 9 月 28 日起提早至香港时间上午 8 时 45 分开始，有待监管机构批准。

上述新开市时间，以及 2020 年 8 月 17 日生效的对于 MSCI 台湾（美元）指数期货及 MSCI 台湾净总收益（美

元）指数期货的全部交易费用豁免，亦将同样适用于 MSCI 台湾 25/50 指数期货。

此外，期交所正与证券及期货事务监察委员会合作，计划在 2020 年 8 月底提高按资本额厘定的持仓限额，尚待监管机构批准。提高按资本额厘定的持仓限额措施，有助确保结算参与者的风险承受能力与其资本实力相符，也可以方便其将 MSCI 指数衍生品的持仓转移到香港交易所。

期交所于 2020 年 5 月与 MSCI 签订了授权协议，可在香港推出一系列 MSCI 亚洲及新兴市场指数、合共 37 只期货及期权合约。香港交易所至今已推出其中 33 只合约。香港交易所现新增两只合约，让投资者可在 2021 年 2 月前转往香港交易所买卖其未平仓合约，以扩大在香港交易所上市的 MSCI 指数衍生产品数目。

香港交易所预期，MSCI 台湾 25/50 指数期货符合美国商品期货交易委的认证资格，可在推出后不久向美国投资者发售。

根据美国商品期货交易委认证，包括美国受规管投资公司在内的美国人士可以在香港交易所交易这些新的期货合约。MSCI 台湾 25/50 指数已考虑到现行《美国国内税法》对于美国受规管投资公司施加的某些投资限额。全球投资者将可透过这些新期货产品涉足台湾股市，投资于占当地台湾股票市场约 85% 流通市值的上市公司。

香港交易所计划于 2020 年 9 月 28 日完成推出现阶段所有的 MSCI 期货合约，预计三只非美元计价的期货产品，即 MSCI 新加坡自由（新加坡元）指数期货、MSCI 日本（日元）指数期货和 MSCI 日本净总收益（日元）指数期货将于 9 月 28 日推出，有待监管机构批准。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2020/200820news?sc_lang=en

Hong Kong Securities and Futures Commission Issues Quarterly Report

The Securities and Futures Commission (SFC) published its latest Quarterly Report which summarizes key developments from April to June 2020 on August 20, 2020.

To ensure that Hong Kong's international financial markets function efficiently during the COVID-19 outbreak, the SFC stepped up its supervisory work and stress tests and allowed a measure of flexibility for some regulatory requirements. It also issued a joint statement with The Stock Exchange of Hong Kong Limited (SEHK) to provide guidance to listed companies on holding

general meetings for shareholders when social distancing requirements are in effect.

During the quarter, the SFC consulted on changes to the Code on Real Estate Investment Trusts (REITs) to give Hong Kong REITs more flexibility in making investments. It concluded consultations on a proposed operational model for a paperless securities market and on enhancements to the over-the-counter derivatives licensing regime. Reports on the SFC's annual review of the performance of SEHK and its expected regulatory standards for brokers offering leveraged foreign exchange trading were also published during the quarter.

Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group, co-chaired by the SFC and the Hong Kong Monetary Authority, was established in May to coordinate the management of climate and environmental risks to the financial sector.

Key figures for the quarter include:

- The number of licensees and registrants totaled 46,824, of which 3,109 were licensed corporations.
- The SFC conducted 74 on-site inspections of licensed corporations to review their compliance with regulatory requirements.
- The SFC authorized 41 unit trusts and mutual funds, including 28 funds domiciled in Hong Kong, and 24 unlisted structured investment products for public offering.
- Eighty-two new listing applications were vetted, including three from pre-profit biotech companies.
- The SFC issued section 179 directions to gather additional information in 18 cases and wrote to detail its concerns in one transaction as part of its review of corporate disclosures.
- Eight licensed corporations and two individuals were disciplined, resulting in total fines of HK\$67.5 million.
- The SFC obtained disqualification orders in the Court of First Instance against eight individuals for breaches of their duties as listed company directors.
- It made 2,366 requests for trading and account records triggered by untoward price and turnover movements.

The report is available on the SFC website.

香港证券及期货事务监察委员会发表季度报告

香港证券及期货事务监察委员会（证监会）于 2020 年 8 月 20 日发表最新的《季度报告》，概述 2020 年 4 月至 6 月期间的重要发展。

为了确保香港的国际金融市场在 2019 新型冠状病毒爆发期间能够有效率地运作，证监会加强了监督工作及压力

测试，并容许以弹性手法处理某些监管规定的遵守情况。证监会亦与香港联合交易所有限公司（联交所）发表联合声明，就股东大会在减少社交接触的规定下的召开安排，向上市公司提供指引。

季内，证监会就修订《房地产投资信托基金守则》展开谘询，旨在为香港的房地产基金在进行投资时提供更大灵活性。我们亦就无纸证券市场的建议运作模式及优化场外衍生工具发牌制度，发表谘询总结。本会亦于季内就其对联交所表现作出的年度检讨，及预期杠杆式外汇交易经纪行应达到的监管标准，发表报告。

由证监会及香港金融管理局担任联席主席的香港绿色和可持续金融跨机构督导小组于 5 月成立，以便协调金融业的气候和环境风险的管理措施。

本季的主要数字包括：

- 持牌机构及人士和注册机构的总数为 46,824，其中持牌机构的数目为 3,109 家。
- 本会对持牌机构进行了 74 次现场视察，以查核它们遵守相关监管规定的情况。
- 本会认可了公开发售的 41 只单位信托及互惠基金（包括 28 只在香港注册成立的基金）和 24 项非上市结构性投资产品。
- 本会审阅了 82 宗新上市申请，其中包括三宗来自尚未有盈利的生物科技公司的申请。
- 本会在检视各上市公司的披露情况时，根据第 179 条（注 2）就 18 宗个案发出指示以收集更多资料，及就一宗交易以书面形式阐述本会所关注的事项。
- 本会对八家持牌机构及两名人士采取了纪律处分，涉及的罚款总额达 6,750 万港元。
- 本会在原讼法庭取得针对八名人士的取消资格令，原因是他们违反了作为上市公司董事的职责。
- 本会因应股价及成交量的异动，提出了 2,366 项索取交易及账户纪录的要求。

《季度报告》已上载至证监会网站。

Source 来源：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR76>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR76>

Hong Kong Securities and Futures Commission Statement on Sanctions Imposed by the U.S. Government

On August 7, 2020, the US government announced the imposition of sanctions against individuals in Hong Kong and Mainland China. The Securities and Futures Commission (SFC) is monitoring closely the impact that the sanctions may have on the operation of intermediaries, the interests of investors and financial stability and orderliness of the markets in Hong Kong.

In considering the implications of the sanctions, intermediaries are expected to carefully assess any legal, business and commercial risks that they may be exposed to. SFC would expect any response to the sanctions to be necessary, fair, and have regard to the best interests of their clients and the integrity of the market.

香港证券及期货事务监察委员会就美国政府施加的制裁发表声明

美国政府于2020年8月7日，宣布对香港和中国内地的个别人士实施制裁。香港证券及期货事务监察委员会（证监会）正密切注视这些制裁措施对中介人的运作、投资者的利益，以及香港金融市场的稳定和秩序可能带来的影响。

中介人在考虑这些制裁措施的影响时，应谨慎地评估其可能面对的任何法律、业务及商业风险。证监会期望任何应对制裁的措施，都具必要性和能秉持公平的原则，并以维护客户的最佳利益及确保市场廉洁稳健为依归。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR70>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR70>

Hong Kong Securities and Futures Commission Issues Restriction Notices to Two Brokers to Freeze Client Accounts Linked to Suspected Market Manipulation

The Securities and Futures Commission (SFC) has issued restriction notices to Gary Cheng Securities Limited (GCSL) and Zhongcai Securities Limited (ZSL), prohibiting them from dealing with or processing certain assets held in five trading accounts, which are related to suspected market manipulation in late April 2020 in the shares of a company listed on the Stock Exchange of Hong Kong Limited.

The restriction notices prohibit them, without the SFC's prior written consent, from disposing of or dealing with, or assisting, counselling or procuring another person to dispose of or deal with, any assets in any way in the trading accounts including: (i) entering into transactions

in respect of any securities; and/or (ii) processing any withdrawals or transfers of securities and/or cash or any transfers of money arising from the disposal of securities; and/or (iii) disposing of or dealing with any securities and/or cash on the instructions of any authorized person of the accounts or any person acting on their behalf. The brokers are also required to notify the SFC if they receive any of these instructions.

The SFC considers that the issue of the restriction notices is desirable in the interest of the investing public and in the public interest. The SFC's investigation is continuing.

香港证券及期货事务监察委员会向两间经纪行发出限制通知书以冻结与涉嫌市场操控活动有关的客户账户

证券及期货事务监察委员会（证监会）向加多利证券有限公司（加多利证券）及中财证券有限公司（中财证券）发出限制通知书，禁止它们处置或处理其五个客户账户（该等账户）内持有的若干资产。该等资产与2020年4月底针对一间于香港联合交易所上市的公司股份的涉嫌市场操控活动有关。

有关限制通知书禁止该等经纪行在未取得证监会的事先书面同意的情况下，以任何方式处置或处理、或辅助、怂使或促致另一人处置或处理该等账户内的任何资产，包括：(i)就任何证券订立交易；及/或(ii)处理证券及/或现金或因处置证券而产生的金钱的任何提取或转移；及/或(iii)按该等帐户的任何获授权人或任何代其行事的人的指示处置或处理任何证券或现金。若该等经纪行接获任何上述指示，亦须通知证监会。

证监会认为，就维护投资大众及公众利益而言，发出有关限制通知书是可取的做法。证监会的调查仍在进行中。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR71>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR71>

Hong Kong Securities and Futures Commission Issues Statement on Next Digital Limited

The Securities and Futures Commission (SFC) issues statement in response to a large volume of enquiries it has received and the overall level of public interest in relation to the significant recent increases in the price and turnover in the shares of Next Digital Limited.

In view of these exceptional increases, investors are strongly advised to exercise extreme caution when dealing in the shares of Next Digital Limited.

In light of the foregoing the SFC has been monitoring, and will continue to closely monitor, trading activity in relation to the shares of Next Digital Limited. The SFC, working with the Stock Exchange of Hong Kong Limited, will also require Next Digital Limited to promptly disclose to the market all future developments and information concerning its control, financial position and operations which are likely to materially affect the price of Next Digital Limited shares and to avoid a false market in its securities.

香港证券及期货事务监察委员会发布有关壹传媒有限公司的声明

香港证券及期货事务监察委员会（证监会）发表声明，以回应其所接获与壹传媒有限公司股份的价格和成交量最近大幅上升有关的大量查询及公众对此事的整体关注。

鉴于以上所述的异常升幅，投资者在买卖壹传媒有限公司股份时务须格外审慎。

因应上述情况，证监会一直在监察，并将继续密切监察与壹传媒有限公司股份有关的交易活动。证监会亦将与香港联合交易所有限公司合作，要求壹传媒有限公司向市场及时披露所有与其控制权、财务状况和营运有关，且可能对该公司股份造成重大影响的未来发展情况及资料，并避免其证券出现虚假市场。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR72>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR72>

Hong Kong Securities and Futures Commission Commences Criminal Prosecution on Market Manipulation of Shares of Ching Lee Holdings Limited

The Securities and Futures Commission (SFC) has started criminal proceedings against five individuals for conspiring to carry out false trading in the shares of Ching Lee Holdings Limited (Ching Lee). This case, on track for a committal to the Court of First Instance for a trial by jury, will become the first of its kind at the Court of First Instance of a criminal prosecution for an offence under the Securities and Futures Ordinance (SFO).

The SFC alleges that between March 29, 2016 and September 7, 2016, the five defendants – Ms. Sit Yi Ki, Ms. Lam Wing Ki, Mr. Tam Cheuk Hang, Mr. Simon Suen Man and Mr. Ho Ming Hin – conspired to create a false or misleading appearance of active market in

respect of the Ching Lee shares, contrary to sections 295 and 303 of the SFO and section 159A of the Crimes Ordinance.

Three defendants – Sit, Lam and Tam – appeared at the Eastern Magistracy on August 13, 2020. No plea was taken and the case was adjourned to September 24, 2020.

The Court granted each of the three defendants court bail of HK\$10,000. They are not allowed to leave Hong Kong. The SFC has also commenced proceedings under section 213 of the SFO against the defendants and various local and overseas individuals of the alleged market manipulation.

The SFC's Executive Director of Enforcement, Mr. Thomas Atkinson, said: "The SFC is committed to combating market misconduct and has zero tolerance of market manipulation in any shape or form. We will continue to use all available recourse to hold the perpetrators accountable in order to protect the investing public and Hong Kong's reputation as an international financial center."

香港证券及期货事务监察委员会就正利控股有限公司股份的市场操纵活动展开刑事检控

香港证券及期货事务监察委员会（证监会）已对五名人士展开刑事法律程序，指他们串谋就正利控股有限公司（正利）的股份进行虚假交易。案件将在原讼法庭由陪审团作审讯，成为首宗这类就《证券及期货条例》（该条例）所订明罪行而在原讼法庭审理的刑事检控案件。

证监会指称于 2016 年 3 月 29 日至 2016 年 9 月 7 日期间，五名被告薛伊琪（女）、林颖琪（女）、谭焯衡（男）、孙文（男）及何铭轩（男）串谋造成正利股份交投活跃的虚假或具误导性的表象，违反该条例第 295 及第 303 条和《刑事罪行条例》第 159A 条。

薛、林及谭三名被告于 2020 年 8 月 13 日到东区裁判法院应讯。各人暂时无须答辩，案件押后至 2020 年 9 月 24 日。法院批准上述三名被告各人以 10,000 元保释。他们不得离开香港。证监会亦已根据该条例第 213 条对该等被告人及牵涉该项涉嫌市场操纵活动的多名本地及海外人士展开法律程序。

证监会法规执行部执行董事魏建新先生表示：“证监会致力打击市场失当行为，并对任何形式的市场操纵活动采取零容忍的态度。我们将继续运用一切可用的方法向违规者追究责任，藉以保障广大投资者和维护香港作为国际金融中心的声誉。”

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR74>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR74>

Singapore Exchange Significantly Expands All-Asia Waterfront for Equity Derivatives

- Launch of 13 futures in August and September, covering almost 100% of Asia's GDP
- SGX is the leading exchange for Asian derivatives

Singapore Exchange (SGX) is significantly expanding its pan-Asia shelf of benchmark equity derivatives with a comprehensive series of Asia Ex-Japan and Emerging Markets (EM) Asia regional and single country futures. These are based on Net Total Return (NTR) and Price Return indices calculated by FTSE Russell.

SGX serves global investors seeking trusted exposure to Asia's compelling growth engines across a complex continental geography. The new futures offer benchmarks including Indonesia, Malaysia, Philippines, Taiwan, Thailand and Vietnam, meeting our customers' increasing demand for institutional-grade exchange solutions in Asia which offer superior operational and capital efficiency.

In response to the portfolio needs of its international institutional customers, SGX has over the past few years pioneered Asian derivatives which incorporate dividend returns as well as price returns. These newest NTR products seek to extend SGX's strong customer adoption of the MSCI index series to the FTSE Russell index series. There are approximately US\$16 trillion in reported fund assets under management (AUM) tracking FTSE Russell benchmarks.

Michael Syn, Head of Equities at SGX, said, "We are continually delivering innovative solutions to support the growth ambitions of our customers who seek a trusted exchange for access to Asia. The new contracts, derived from FTSE's benchmark Global Equity Index Series (GEIS), are our next step in further developing and advancing SGX's Asia-access waterfront. We look forward to bringing investors even more asset-class opportunities within the pan-Asian capital structure, based on broad strategies, sectors and themes."

Today, SGX has the largest and most liquid FTSE and MSCI equity index derivatives for Asian markets.

The latest contracts* are expected to be certified by the Commodity Futures Trading Commission (CFTC), enabling US investors to trade them directly from within the US. The new contracts are:

SGX FTSE Equity Net Total Return (NTR) Index Futures – to be launched on August 24, 2020

1. SGX FTSE Asia ex-Japan NTR (USD) Index Futures*
2. SGX FTSE Emerging Market Asia NTR (USD) Index Futures*
3. SGX FTSE Malaysia NTR (USD) Index Futures*
4. SGX FTSE Philippines NTR (USD) Index Futures
5. SGX FTSE Taiwan NTR (USD) Index Futures
6. SGX FTSE Thailand NTR (USD) Index Futures*

SGX FTSE Equity Price Return Index Futures (denominated in USD) – subject to final regulatory process for launch in mid-September 2020

1. SGX FTSE Asia ex-Japan Index Futures*
2. SGX FTSE Emerging Market Asia Index Futures*
3. SGX FTSE Indonesia Index Futures
4. SGX FTSE Malaysia Index Futures*
5. SGX FTSE Philippines Index Futures
6. SGX FTSE Thailand Index Futures*
7. SGX FTSE Vietnam 30 Index Futures

新加坡交易所大力拓展泛亚洲股票衍生品市场领域

- 13 只期货于 8 月和 9 月推出，几乎覆盖 100% 的亚洲 GDP
- 新加坡交易所是亚洲衍生品的领先交易所

新加坡交易所（新交所）正在大力拓展泛亚基准股票衍生品架构，并基于富时罗素计算的净总回报和价格回报指数，推出一系列亚洲（日本除外）和新兴市场亚洲区域及单一国家期货。

新交所服务于全球投资者，让他们在亚洲复杂地理环境中寻求亚洲蓬勃增长的敞口。最新推出的期货提供了包括印度尼西亚、马来西亚、菲律宾、中国台湾、泰国和越南在内的基准，满足我们的客户对亚洲机构级交易所解决方案日益增长的需求，并提供了卓越的运营和资本效率。

为满足国际机构客户的资产组合需求，新交所在过去几年中率先推出了亚洲衍生品，囊括股息回报和价格回报。这些最新的净总回报产品旨在将新交所客户对 MSCI 指数系列强大的采纳程度扩展至富时罗素指数系列。追踪富时罗素基准的在管基金资产规模约为 16 万亿美元。

新交所股权部主管冼显明表示：“我们不断提供创新解决方案，以支持我们的客户通过可信赖的交易所进入亚洲市场，实现他们的增长志向。这些基于富时基准全球股票指数系列（GEIS）的新合约，标志着我们正在进一步发展和推进新交所的亚洲市场。我们期待在泛亚资本结

构内，基于广泛的战略、行业和主题，为投资者带来更多的资产类别机遇。”

如今，新交所拥有亚洲市场规模最大、流动性最强的富时和 MSCI 股票指数衍生品。

最新合约*预计将获得美国商品期货交易委员会（CFTC）的认证，使美国投资者能够直接在美国境内进行交易。新合约包括：

新交所富时股票净总回报指数期货——将于 2020 年 8 月 24 日推出

1. 新交所富时亚洲（日本除外）净总回报（美元）指数期货*
2. 新交所富时新兴市场亚洲净总回报（美元）指数期货*
3. 新交所富时马来西亚净总回报（美元）指数期货*
4. 新交所富时菲律宾净总回报（美元）指数期货
5. 新交所富时台湾净总回报（美元）指数期货
6. 新交所富时泰国净总回报（美元）指数期货*

新交所富时股票价格回报指数期货（以美元计价）——视乎监管程序，预计于 2020 年 9 月中旬推出

1. 新交所富时亚洲（日本除外）指数期货*
2. 新交所富时新兴市场亚洲指数期货*
3. 新交所富时印度尼西亚指数期货
4. 新交所富时马来西亚指数期货*
5. 新交所富时菲律宾指数期货
6. 新交所富时泰国指数期货*
7. 新交所富时越南 30 指数期货

Source 来源：

<https://www.sgx.com/media-centre/20200811-sgx-significantly-expands-all-asia-waterfront-equity-derivatives>

U.S. Commodity Futures Trading Commission Unanimously Approves Proposals Amending Margin Requirements for Swap Dealers and Major Swap Participants

On August 14, 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced it has voted unanimously to approve two proposals amending certain margin requirements for swap dealers (SDs) and major swap participants (MSPs). Both proposed rules have a 30-day comment period following publication in the Federal Register.

Amendment to Align with the BCBS/IOSCO Framework and Amendment Concerning the Calculation of Initial Margin

The first proposal would align aspects of the CFTC's uncleared swap margin requirements (CFTC Margin Rule) with the Basel Committee on Banking Supervision and the International Organization of Securities Commissions' margin requirements for non-cleared derivatives (BCBS/IOSCO Framework). The proposal would also allow SDs and MSPs to rely on certain counterparties' calculation of initial margin.

Consistent with the BCBS/IOSCO Framework, this proposal would revise the method for determining whether an entity comes within the scope of the initial margin requirements under the CFTC Margin Rule beginning in the last phase of the phased compliance schedule, which is scheduled to begin on September 1, 2021, and the timing for compliance with the initial margin requirements after the end of the phased compliance schedule.

The proposal would also allow SDs and MSPs that are subject to the CFTC Margin Rule (covered swap entities) to use the risk-based model calculation of initial margin of a counterparty that is a CFTC-registered SD or MSP. In such circumstances, the covered swap entity would be able to rely on the calculation of its counterparty to determine the amount of initial margin to be collected from such counterparty and to determine whether the initial margin threshold amount has been exceeded such that documentation concerning the collection, posting, and custody of initial margin would be required.

Amendments Concerning the Application of Minimum Transfer Amount

The second proposal would amend the CFTC Margin Rule to permit the application of separate minimum transfer amounts for initial and variation margin, and the application of a minimum transfer amount of up to US\$50,000 for separately managed accounts.

美国商品期货交易委员会一致通过有关掉期交易商和掉期交易主要参与者的保证金要求的修改提案

2020 年 8 月 14 日，美国商品期货交易委员会（CFTC）宣布委员会已一致投票表决通过了两项修改掉期交易商和掉期交易主要参与者保证金要求的提案。两项拟议规则在《联邦公报》上发布后均有 30 天的评论期。

使现有要求与 BCBS / IOSCO 框架保持一致以及有关初始保证金计算的修正案

第一项提案将使 CFTC 的未清算掉期保证金要求（CFTC 保证金规则）与巴塞尔银行监管委员会和国际证监会组织的未清算衍生产品的保证金要求（BCBS / IOSCO 框架）一致。该提案亦将允许掉期交易商和掉期交易主要参与者依赖某些交易对手对初始保证金的计算。

为与 BCBS / IOSCO 框架保持一致，该提案将修改判断实体是否在 CFTC 保证金规则规定的初始保证金要求范围内的方法，该方法计划在分阶段合规计划的最后阶段，于 2021 年 9 月 1 日开始实行，而初始保证金要求将在分阶段合规计划结束后开始实行。

该提案还将允许受 CFTC 保证金规则约束的掉期交易商和掉期交易主要参与者（包括的掉期交易实体）使用交易对手（而其为 CFTC 注册的掉期交易商和掉期交易主要参与者）的基于风险制订的初始保证金计算模型。在这种情况下，指定范围内的掉期交易实体将能够依靠其交易对手的计算来决定要从该交易对手收取的初始保证金金额，并决定初始保证金阈值金额是否已被超过，从而决定是否需要就初始保证金的收集、过帐和保管作出纪录。

关于最低转让金额的修改

第二项提案将修订 CFTC 保证金规则，以允许对初始保证金和变动保证金采用单独的最低转让金额，并对单独管理的账户采用不超过 50,000 美元的最低转账金额。

Source 来源:

<https://cftc.gov/PressRoom/PressReleases/8219-20>

U.S. Commodity Futures Trading Commission Orders The Bank of Nova Scotia to Pay US\$127.4 Million for Spoofing, False Statements, Compliance and Supervision Violations

On August 19, 2020, the U.S. Commodity Futures Trading Commission (CFTC) issued three orders filing and settling charges against The Bank of Nova Scotia (BNS), a provisionally registered swap dealer, resolving two separate enforcement actions. The combined orders require BNS to pay US\$127.4 million for spoofing and making false statements, as well as for swap dealer compliance and supervision violations and additional false statements.

Spoofing and False Statements Enforcement Action

The first two orders require BNS to pay a total of US\$77.4 million to settle a CFTC enforcement action arising from manipulative and deceptive conduct that spanned more than eight years and involved thousands of occasions of attempted manipulation and spoofing in gold and silver futures contracts. BNS was originally penalized US\$800,000 in 2018 for spoofing in the gold and silver futures markets, but multiple statements the company made to CFTC staff during the course of that investigation—on which the CFTC predicated its findings and sanctions—were later proven to be false. The charges resolved address those false statements

(False Statements Order) and the true scope and nature of BNS's wrongdoing that those false statements concealed (Spoofing Order). This includes a record-setting US\$17 million penalty for making false and misleading statements to CFTC staff during the CFTC's initial spoofing investigation and a record-setting penalty of US\$42 million for spoofing and attempted manipulation. BNS is also required to pay US\$6,622,190 in restitution and US\$11,828,912 in disgorgement, and to retain an independent monitor.

Swap Dealer Compliance, Supervision, and False Statements Enforcement Action

The third order requires BNS to pay a US\$50 million civil monetary penalty to settle a separate enforcement action for swap dealer business conduct, compliance, and supervision failures, and making false or misleading statements (Compliance and Supervision Order). The order finds that for tens of thousands of swaps, BNS: (i) failed to provide timely and accurate pre-trade mid-market marks, which had the effect of concealing BNS's full markup from counterparties; (ii) violated various requirements relating to BNS's counterparty onboarding process, recordkeeping, chief compliance officer reporting, and supervision; and (iii) made false or misleading statements to CFTC staff concerning its audio retention and supervision. The order finds that these violations occurred over a seven-year period.

The order requires BNS to retain an independent monitor. As set out in the order, BNS acknowledges that the findings of the order provide the Commission sufficient grounds to commence proceedings to suspend or revoke BNS's registration status, but the Commission defers commencing such proceedings on the condition that BNS fulfills its obligations relating to registration, remediation, and the monitor.

美国商品期货交易委员会命令加拿大丰业银行就幌骗、虚假陈述及违反监管规定支付 1.274 亿美元

2020 年 8 月 19 日，美国商品期货交易委员会（CFTC）向临时注册的掉期交易商加拿大丰业银行（BNS）发出了三份命令，以了结两项独立的执法行动。命令合共要求 BNS 为其幌骗、做出虚假陈述、违反掉期交易商合规规定和监管规定，以及做出其他虚假陈述支付 1.274 亿美元。

就幌骗和虚假陈述作出的的执法行动

前两份命令要求 BNS 支付总计 7,740 万美元，以了结 CFTC 的执法行动，该执法行动涉及超过八年的操纵和欺骗行为，涉及数千次于黄金和白银期货合约中的试图操纵和幌骗。BNS 最初在 2018 年因在黄金和白银期货市场幌骗而被罚款 80 万美元，但该公司在调查过程中向

CFTC 员工作出的多次声明（CFTC 以此为依据作出调查结果和制裁）后来被证明是错误的。这次命令就那些虚假陈述（虚假陈述令）以及那些虚假陈述掩盖了的 BNS 违法行为的真实范围和性质（欺骗令）作出了结。其中包括就其在 CFTC 最初的调查期间向 CFTC 职员做出虚假和误导性陈述的创纪录 1700 万美元的罚款，以及就幌骗和试图操纵的创纪录 4200 万美元罚款。BNS 还必须支付 6,622,190 美元的赔偿金和 11,828,912 美元的非法所得，并保留一名独立监察员继续监察。

就掉期交易商合规性、监管和虚假陈述作出的执法行动

第三项命令要求 BNS 支付 5,000 万美元的民事罚款，以了结针对掉期交易商业行为、合规性和监管的失败以及做出虚假或误导性陈述的独立执法行动（合规性和监管令）。该命令发现，于不少的掉期交易中，BNS：(i) 无法提供及时及准确的交易前中期市场标记，从而对交易对手隐瞒了 BNS 的全部标记；(ii) 违反了有关 BNS 交易对手的上线流程、记录保存及首席合规官报告和监管的各种要求；(iii) 就 CFTC 的音频保留和监管问题向 CFTC 职员作出虚假或误导性陈述。该命令发现这些违法行为长达七年。

该命令要求 BNS 保留一个独立的监视器。根据该命令中的规定，BNS 承认该命令的调查结果委员会提供了充分的理由来启动中止或撤销 BNS 注册的程序，但委员会在 BNS 履行其与注册有关的义务、作出补救和监控的前提下推迟此类程序的开始。

Source 来源：

<https://cftc.gov/PressRoom/PressReleases/8220-20>

U.S. Commodity Futures Trading Commission Orders Interactive Brokers LLC to Pay More Than US\$12 Million for Anti-Money Laundering and Supervision Violations

On August 10, 2020, the U.S. Commodity Futures Trading Commission (CFTC) filed and simultaneously settled charges against Interactive Brokers LLC, a registered futures commission merchant (FCM), for failing to diligently supervise its officers', employees', and agents' handling of several commodity trading accounts and failing to adequately implement procedures to detect and report suspicious transactions as required under federal anti-money laundering (AML) laws and regulations. Brought in connection with the Division of Enforcement's Bank Secrecy Act Task Force, this case marks the first CFTC enforcement action charging a violation of Regulation 42.2, which requires registrants to comply with the Bank Secrecy Act.

The order requires Interactive Brokers to pay a civil monetary penalty of US\$11.5 million and disgorge

US\$706,214 earned in part from its role as the FCM carrying the accounts of Haena Park and her companies, which were the subject of a 2018 CFTC enforcement action. In that case, a federal court ordered Park and her companies to pay more than US\$23 million in penalties and restitution for committing fraud and misappropriating investor funds. As Park's FCM, Interactive Brokers failed to properly monitor her account activity. The order also requires Interactive Brokers to comply with certain undertakings, including the hiring of a third party compliance consultant to review and report on the AML and supervisory issues raised in the order.

According to the order, from June 2014 through November 2018, Interactive Brokers failed to ensure that its employees followed established policies and procedures with respect to supervision of customer accounts. Interactive Brokers also lacked a reasonably designed process for conducting investigations of account activity and making suspicious activity report (SAR) determinations. These failings contributed to its inability to maintain an adequate AML program. As a result, Interactive Brokers employees failed to adequately investigate and identify certain signs of suspicious activity in accounts that, according to its own compliance procedures, should have prompted the filing of SARs with appropriate authorities.

While Interactive Brokers maintained basic written policies, it failed to commit adequate resources to ensure that its AML program was reasonably equipped to monitor, detect, escalate, and report suspicious activity in practice. Interactive Brokers also had no mechanism to combine information generated by various reports to identify patterns and trends over time. Given the size and nature of Interactive Brokers' business, the lack of these procedures limited the ability of its analysts to recognize the full scope of an individual customer's activity. This resulted in the company overlooking red flags that indicated potentially suspicious activity. Additionally, Interactive Brokers did not put any procedures in place that required compliance personnel to document steps taken and decisions made during the investigative and SAR consideration process. As a result of all of these deficiencies, Interactive Brokers failed in its duty to detect and report instances of suspicious activity.

The order states that Interactive Brokers represented in its settlement offer that it has since engaged in substantial remedial measures, including the engagement of outside consultants to conduct various assessments, independent testing of its AML program, and the development and ongoing implementation of a new case management system. Interactive Brokers has also continued to retain an independent consultant to report on the status of its implementation of previously-made recommendations and to make any additional

proposals for improvements in internal controls, policies, procedures, systems, and training.

美国商品期货交易委员会责令盈透证券有限责任公司就违反打击洗钱和监管规定支付超过 1200 万美元

2020 年 8 月 10 日，美国商品期货交易委员会（CFTC）提起并同时了结针对注册期货佣金商盈透证券有限责任公司（盈透证券）的诉讼，诉讼指盈透证券未能认真监督其高级职员、员工和代理商对商品交易帐户的处理，并且未充分执行联邦打击洗钱法律和法规要求的程序来检测和报告可疑交易。此案中，CFTC 与银行保密法执法部门工作组合作，并标志着 CFTC 第一项就违反第 42.2 条规例（该规定要求注册者遵守《银行保密法》）的执法行动。

该命令要求盈透证券支付 1150 万美元的民事罚款。该命令亦罚没盈透证券 706,214 美元，该部分是由于其作为 Haena Park 及其公司帐户的期货佣金商所获得的。Haena Park 及其公司为 CFTC 2018 年执法行动的对象。在该案中，联邦法院下令 Park 及其公司为欺诈及挪用了投资者资金支付超过 2300 万美元的罚款和赔偿。作为 Park 的期货佣金商，盈透证券未能恰当地监控她的帐户活动。该命令还要求盈透证券遵守某些承诺，包括雇用第三方合规顾问来审查和报告命令中提出的打击洗钱和监管问题。

根据该命令，在 2014 年 6 月至 2018 年 11 月期间，盈透证券未能确保其员工遵守有关客户账户监管的既定政策和程序。盈透证券亦缺乏合理设计的流程，以进行帐户活动调查和作出可疑活动报告。这些失败导致其无法维持适当的打击洗钱规划。因而，盈透证券员工未能充分调查和识别帐户中的某些可疑活动迹象，这些迹象根据其自身的合规程序应促使其向相关主管部门提交可疑活动报告。

虽然盈透证券维持基本的书面政策，但却未能投入足够的资源来确保其打击洗钱规划在实际中能合理地作出监控、检测、升级和报告可疑活动。盈透证券也没有机制来组合各种报告生成的信息，以识别一段时间内的模式和趋势。考虑到盈透证券业务的规模和性质，缺少这些程序会限制其分析师识别个别客户活动的全部范围的能力。这导致该公司忽视了表明可能存在可疑活动的危险信号。此外，盈透证券没有制定任何程序要求合规人员记录在调查可疑活动与作出评估报告过程中采取的步骤和做出的决定。由于所有这些缺陷，盈透证券未能履行其发现和报告可疑活动的职责。

该命令指出，盈透证券在其和解提议中表示，自该案，该公司一直在采取实质性的补救措施，包括聘请外部顾

问进行各种评估，对其打击洗钱计划进行独立测试以及新案件管理系统的开发和实施。盈透证券还继续聘用了一名独立顾问，以报告其先前提出的建议的实施状况，并提出任何其他建议以改进内部控制、政策、程序、系统和培训。

Source 来源:

<https://cftc.gov/PressRoom/PressReleases/8218-20>

U.S. Securities and Exchange Commission Charges Issuer and CEO With Misrepresenting Platform Technology in Fraudulent ICO

On August 13, 2020, the U.S. Securities and Exchange Commission (SEC) announced charges against Virginia-based Boon.Tech and its chief executive officer Rajesh Pavithran for fraud and registration violations in connection with a US\$5 million initial coin offering (ICO) of digital asset securities.

According to the SEC's order, from November 2017 to January 2018, Boon.Tech and Pavithran raised approximately US\$5 million by selling Boon Coins to more than 1,500 investors in the U.S. and worldwide to raise funding to develop and market a platform to connect employers posting jobs with freelancers seeking work. The order finds that the Boon Coins were offered and sold as investment contracts and were therefore securities, and that Boon.Tech and Pavithran failed to register the offering. Further, the order finds that Pavithran and Boon.Tech made false and misleading statements, including claims that Boon Coins were stable and secure because Boon.Tech's platform eliminated volatility inherent in the digital asset markets by using patent-pending technology to hedge Boon Coins against the U.S. dollar, when in fact Boon.Tech had no such patent-pending technology. The order also finds that Boon.Tech and Pavithran misrepresented to investors that Boon.Tech's platform was faster and more scalable than its competitors because it was built on Boon.Tech's own blockchain, when in reality the platform was being developed on the same public blockchain as its competitors.

The SEC's order finds that Boon.Tech and Pavithran violated the antifraud and registration provisions of the federal securities laws. Without admitting or denying the SEC's findings, Boon.Tech and Pavithran agreed to settle the charges by consenting to the issuance of the order, which requires Boon.Tech to disgorge the US\$5 million raised in the ICO plus prejudgment interest of US\$600,334. The order further requires Boon.Tech and Pavithran to destroy all Boon Coins in their possession, issue requests to remove Boon Coins from any further trading on all third-party digital asset trading platforms, and refrain from participating in any future offerings of digital asset securities. Further, the order requires

Pavithran to pay a penalty of US\$150,000 and bars him from serving as an officer or director of a public company.

美国证券交易委员会指控发行人和首席执行官在欺诈性首次代币发行中就平台技术作虚假陈述

2020年8月13日，美国证券交易委员会（美国证交会）宣布对总部位于弗吉尼亚州的 Boon.Tech 及其首席执行官 Rajesh Pavithran 进行指控，指控其于数码资产证券的 500 万美元首次代币发欺诈和违法注册规定。

根据美国证交会的命令，在 2017 年 11 月至 2018 年 1 月期间，Boon.Tech 和 Pavithran 通过向美国 and 全球超过 1,500 名投资者出售 Boon Coins 筹集了约 500 万美元，以开发和营销一个连接发布工作空缺的雇主与寻求工作的自由职业者的平台。该命令发现，Boon Coins 是作为投资合同发行和出售的，因此为证券。而 Boon.Tech 和 Pavithran 未能注册该发行。此外，该命令还发现 Pavithran 和 Boon.Tech 做出了虚假和误导性陈述，包括声称 Boon.Tech 的平台通过使用正在申请专利的技术将 Boon Coins 与美元对冲，来消除数字资产市场固有的波动性，因而 Boon Coins 稳定且安全。而实际上 Boon.Tech 没有这种正在申请专利的技术。该命令还发现，Boon.Tech 和 Pavithran 向投资者声称 Boon.Tech 的平台建立在 Boon.Tech 自己的区块链上，比其竞争对手更快、更具可扩展性，而实际上该平台是在其竞争对手所在的同一公共区块链上开发。

美国证交会的命令指 Boon.Tech 和 Pavithran 违反了联邦证券法的反欺诈和注册规定。Boon.Tech 和 Pavithran 在不承认或否认美国证交会的调查结果的情况下，同意通过发布该命令来了结这些指控。命令要求 Boon.Tech 罚没在首次代币发行中筹集的 500 万美元以及 600,334 美元的判决前利息。该命令进一步要求 Boon.Tech 和 Pavithran 销毁其拥有的所有 Boon Coins，发出要求以将 Boon Coins 从所有第三方数字资产交易平台上的交易中删除，并不可以参与任何未来的数字资产证券发行。此外，该命令还要求 Pavithran 支付 15 万美元的罚款，并禁止他担任上市公司的高级管理人员或董事。

Source 来源:

<https://www.sec.gov/news/press-release/2020-181>

U.S. Securities and Exchange Commission Charges Hertz's Former CEO With Aiding and Abetting Company's Financial Reporting and Disclosure Violations

On August 13, 2020, the U.S. Securities and Exchange Commission (SEC) charged former Hertz CEO and Chairman Mark Frissora with aiding and abetting the company in its filing of inaccurate financial statements and disclosures. Frissora has agreed to settle the

charges and repay Hertz nearly US\$2 million in incentive-based compensation.

The SEC's complaint alleges that as Hertz's financial results fell short of its forecasts throughout 2013, Frissora pressured subordinates to "find money," principally by re-analyzing reserve accounts, causing Hertz's staff to make accounting changes that rendered the company's financial reports materially inaccurate. According to the complaint, Frissora also led Hertz to hold rental cars in its fleet for longer periods and thus lower its depreciation expenses, without properly disclosing the change – and the risks of relying on older vehicles – to investors. In addition, the complaint alleges that Frissora approved Hertz's reaffirming its earnings guidance in November 2013, despite Hertz's internal calculations that projected lower earnings per share figures. Hertz revised its financial results in 2014 and restated them in July 2015, reducing its previously reported pretax income by US\$235 million.

The SEC's complaint, filed in federal district court in New Jersey, charges Frissora with aiding and abetting Hertz's reporting and books and records violations and with violating Section 304 of the Sarbanes-Oxley Act by failing to reimburse Hertz for the requisite amount of incentive-based compensation he received. Without admitting or denying the allegations, Frissora consented to a judgment permanently enjoining him from aiding and abetting any future violations of the applicable federal securities laws, requiring him to reimburse Hertz for US\$1,982,654 in bonus and other incentive-based compensation and requiring him to pay a US\$200,000 civil penalty. The settlement is subject to court approval.

美国证券交易委员会指控赫兹租車的前首席执行官协助和教唆公司作出财务报告和披露的违规行为

2020年8月13日，美国证券交易委员会（美国证交会）指控赫兹租車（Hertz）前首席执行官兼董事长 Mark Frissora 协助和教唆公司提交不准确的财务报表和披露。Frissora 已同意和解并向 Hertz 偿还近 200 万美元的奖励性薪酬。

美国证交会指称，由于 Hertz 整个 2013 年的财务业绩均未达到其预期，Frissora 迫使下属「寻找资金」（主要是通过重新分析储备金帐户），导致 Hertz 的员工进行会计变更，使公司的财务报告出现重大错误。根据指控，Frissora 还带领 Hertz 在其车队中长期持有租車，从而降低了折旧开支，却没有向投资者适当披露这一变化以及依赖旧车的风险。此外，该指控称，尽管 Hertz 的内部计算预计每股收益数字会降低，但 Frissora 在 2013 年 11 月批准了赫兹重申其收益指引。Hertz 在 2014 年修改了财务业绩，并于 2015 年 7 月重述了财务业绩，使之前报告的税前收入减少了 2.35 亿美元。

美国证交会的指控已提交新泽西州联邦地方法院，以控告 Frissora 协助和教唆 Hertz 作出报告和记录违规行为，并控告 Frissora 未向 Hertz 赔偿他收到的奖励性薪酬，违反了《萨班斯-奥克斯利法案》(Sarbanes-Oxley Act) 第 304 条的规定。在不承认或否认指控的情况下，Frissora 同意判决，该判决永久禁止他将来协助和教唆任何人违反联邦证券法例，要求他偿还 Hertz 1,982,654 美元的奖金和其他奖励性薪酬，并要求他支付 200,000 美元罚款。该和解方案尚待法院批准。

Source 来源:

<https://www.sec.gov/news/press-release/2020-183>

U.S. Securities and Exchange Commission Adopts Requirements to Ensure Public Notice, Comment, and Approval Prior to Effectiveness of NMS Plan Fees

On August 19, 2020, the U.S. Securities and Exchange Commission (SEC) voted to rescind a rule exception that allowed a proposed national market system (NMS) plan fee amendment to become effective upon filing, prior to review and comment by investors and other market participants. The new procedures require public notice of any proposed NMS plan fee amendment, an opportunity for public comment, and Commission approval by order before a new or changed fee can be charged. The Commission also modified the procedures for review of all proposed NMS plans and plan amendments, including fee amendments, to specify timelines for Commission action for each step of the process, adding certainty to the process for NMS plan participants.

The fee exception contained in Rule 608(b)(3)(i) allowed a fee amendment to become effective immediately upon filing with the Commission, and an NMS plan could begin charging the new fee prior to an opportunity for public comment and without Commission action. Rescinding this provision provides investors and other market participants an opportunity to voice their views before they are charged a new or changed fee. In addition, Rule 608 did not include specific timelines for public notice and Commission action on NMS plan proposals that are filed with the Commission. The modified procedures adopted specify timelines for Commission action and will provide greater clarity to NMS plan participants and the public on when Commission action can be expected. These procedures are patterned on the statutory framework for rule filings by self-regulatory organizations under Section 19 of the Securities Exchange Act of 1934. The amended procedures also require email filing of NMS plans and

plan amendments.

NMS plan fees affect a wide variety of investors and market participants. This rulemaking will enhance the efficiency and transparency of the process for assessing new NMS plan fees by ensuring that these fees benefit from review and public comment by interested parties, and evaluation by the SEC, before they can be charged.

美国证券交易委员会通过 NMS 计划费用生效之前需进行公告、评论和批准的要求

2020 年 8 月 19 日，美国证券交易委员会（美国证交会）投票决定撤销一项例外规定，该例外规定允许拟议的国家市场体系（NMS）计划费用修改在提交时及在投资者和其他市场参与者进行审查和评论之前生效。新程序要求对任何拟议的 NMS 计划费用修改进行公告，征询公众意见，并由美国证交会通过，才能收取新的或更改的费用。美国证交会还修改了所有提议的 NMS 计划和计划修订（包括费用修订）的审查程序，以指定该过程每个步骤美国证交会的行动时间表，为 NMS 计划参与者增加了确定性。

第 608(b)(3)(i) 条的规定允许费用修改在向美国证交会提交后立即生效，NMS 计划可以在征询公众意见之前开始收取新费用。取消该规定可使投资者和其他市场参与者得以在 NMS 计划向他们收取新的或更改的费用之前发表自己的看法。此外，第 608 条没有制定公告和美国证交会就已提交的 NMS 计划提案的具体的时间表。现采用的修订程序规定了美国证交会采取行动的时间表，并将使 NMS 计划参与者和公众更加清楚美国证交会何时采取行动。这些程序是根据 1934 年《证券交易法》第 19 节（有关自我监管组织提交规则）的法定框架规定。修订程序还要求将 NMS 计划和计划修订通过电子邮件案归档。

NMS 计划费用影响各种各样的投资者和市场参与者。这项规则将确保在收取费用之前，这些费用由相关方审查，由公众提出意见以及由美国证交会评估，从而提高了评估新 NMS 计划费用过程的效率和透明度。

Source 来源:

<https://www.sec.gov/news/press-release/2020-188>

Australian Securities and Investments Commission Manages Transition to New Regulatory Regime for Litigation Funding Schemes

Australian Securities and Investments Commission (ASIC) has made ASIC Corporations (Litigation Funding

Schemes) Instrument 2020/787 (Instrument) to manage the transition to the new regulatory regime for litigation funding.

On May 22, 2020, the Government announced that it would regulate litigation funders under the Corporations Act. Following the commencement of the *Corporations Amendment (Litigation Funding) Regulations 2020* (Regulations), from August 22, 2020, operators of litigation funding schemes will be required to hold an Australian financial services (AFS) license and litigation funding schemes will generally be subject to the managed investment scheme (MIS) regime in Chapter 5C of the Corporations Act.

The Instrument, which commences on August 22, 2020, includes relief from:

- the obligation to give a Product Disclosure Statement (PDS) to ‘passive’ members of open litigation funding schemes – on the condition the PDS is available on the scheme operator’s website and referred to in advertising material;
- the obligation to regularly value scheme property;
- the statutory withdrawal procedures for members who withdraw from a class action under court rules;
- the requirement to disclose detailed fees and costs information and information about labor standards or environmental, social or ethical considerations.

ASIC has also issued a no-action position in relation to the obligation under Chapter 2C of the Corporations Act to set up and maintain a register of members of a registered litigation funding scheme. ASIC will also consider applications for relief on a case-by-case basis, acknowledging the varying nature of litigation funding schemes in the market that may require a more bespoke regulatory response for some schemes. Applications for relief must be in writing and should address the requirements set out in Regulatory Guide 51 *Applications for relief* and any other regulatory guides relevant to the application.

In order to ensure a smooth transition to the new regime, for the initial three months ASIC invites operators of litigation funding schemes to discuss their PDSs with ASIC before they issue them to consumers, and their scheme constitutions and compliance plans before lodging them with ASIC.

澳大利亚证券投资委员会协调诉讼资助计划向新监管制度过渡

澳大利亚证券投资委员会已制定澳大利亚证券投资委员会企业（诉讼资助计划）文书 2020/787（文书），以协调诉讼资助计划向新监管制度过渡。

2020年5月22日，政府宣布将根据《企业法》对诉讼出资人进行监管。在《企业修正案（诉讼资助）条例2020》（条例）开始实施之后，从2020年8月22日起，诉讼资助计划的运营者将被要求持有澳大利亚金融服务许可证，并且诉讼资助计划将通常受制于《企业法》第5C章中的管理投资计划制度。

该文书于2020年8月22日开始生效，包括以下救济：

- 向公开诉讼筹资计划的“被动”成员提供产品披露声明的义务 – 条件是该披露声明可以在计划运营者的网站上获得，并可在宣传材料中引用；
- 定期评估计划财产的义务；
- 根据法院规则退出集体诉讼的成员的法定退出程序；
- 要求披露详细的费用和成本信息以及有关劳工标准或环境、社会或道德考虑的信息。

澳大利亚证券投资委员会对《企业法》第2C章规定的建立和维护注册诉讼资助计划成员登记册的义务发布了不采取行动的立场。澳大利亚证券投资委员会还将逐案考虑减免申请，并承认市场上诉讼资金计划的性质各不相同可能导致某些计划需要更为定制的监管回应。减免申请必须以书面方式提出，并应满足监管指南 51《救济申请》和与该申请相关的任何其他监管指南中规定的要求。

为了确保向新制度的平稳过渡，在最初的三个月，澳大利亚证券投资委员会倡导诉讼资金计划的运营者在向消费者发布之前先与澳大利亚证券投资委员会讨论其产品披露声明，并在提交其计划构成和合规计划前与澳大利亚证券投资委员会进行讨论。

Source 来源：

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-192mr-asic-manages-transition-to-new-regulatory-regime-for-litigation-funding-schemes/>

The Supreme People's Court of the People's Republic of China issues the Opinions on Providing Judicial Safeguard to the Reform of the ChiNext Board and the Pilot Project of the Registration-based IPO System

On August 18, 2020, the Supreme People's Court of the People's Republic of China (Supreme People's Court) issued the Opinions on Providing Judicial Safeguard to the Reform of the ChiNext Board and the Pilot Project of the Registration-based IPO System (Announcement Number: Fa Fa [2020] No. 28, the Opinions). The

Opinions is another systematic and comprehensive judicial document specially formulated by the Supreme People's Court for the basic institutional reform arrangements of the capital market after the judicial safeguard opinions on the establishment of the Science and Technology Innovation Board (Sci-tech Innovation Board) and the pilot project of the registration-based IPO system reform. The Opinions is of great significance for giving full play to the role of the people's courts in adjudication, advancing the reform of the ChiNext Board and the smooth progress of the pilot project of the registration-based IPO system and protecting the lawful rights and interests of investors.

Focusing on the relevant provisions of the new Securities Law of the People's Republic of China (Securities Law) on the registration-based IPO system for securities issuance, on the basis of fully learning from the judicial safeguard opinions of the Sci-tech Innovation Board, and combining the relevant achievements of the ChiNext reform, the Opinions puts forward 10 measures from four aspects, which includes enhancing the consciousness of providing judicial safeguard for the reform of the ChiNext Board and the pilot project of the registration-based IPO system, guarantying the smooth progress of the reform of the ChiNext Board and the pilot project of the registration-based IPO system in accordance with the law, increasing the cost of market entities in violation of laws and regulations, and effectively protecting the lawful rights and interests of investors in accordance with the law.

The followings are the main contents of the Opinion. In terms of centralized jurisdiction, it proposes that civil and commercial cases of first instance involving companies listed on the ChiNext under the registration-based IPO system shall be subject to the pilot centralized jurisdiction of the Shenzhen Intermediate People's Court in Guangdong Province. In terms of increasing the cost of violations of laws and regulations, it fully implements the zero tolerance requirements for illegal and criminal acts in the capital market, intensify the crackdown on securities illegal and criminal acts, severely punish criminal acts in applications for issuance and registration, clarifying the responsibility boundaries of different entities for information disclosure and strictly implementing the responsibilities of relevant entities. In terms of strengthening the protection of investors, it proposes specific judicial measures and requirements for the implementation of the collective action system for securities, and stresses that efforts shall be made to continuously deepen the construction of a diversified dispute settlement mechanism and timely resolve securities disputes. Regarding the connection between the new and the old systems, it points out that the people's courts shall accurately grasp the relationship between stock and increment when handling relevant disputes, respect the rules of both the new and old systems, carefully evaluate and handle them in

accordance with the law. In addition, it also stipulates the principle of cross application. Where there is no provision in the Opinions for a people's court to hear a case involving a listed company on the ChiNext Board, judicial safeguard opinions on the Sci-tech Innovation Board shall be referred to. In hearing cases involving listed companies on the ChiNext Board, where there is no provision in the judicial safeguard opinions on the Sci-tech Innovation Board, the provisions of this Opinions shall be referred to.

The promulgation and implementation of the Opinions will effectively guarantee the smooth progress of the ChiNext Board and pilot project of the registration-based IPO system, promote the implementation of major reform measures for the capital market to be stable and far-reaching, facilitate the construction of a standardized, transparent, open, dynamic and resilient capital market, and improve the basic system of the capital market.

中华人民共和国最高人民法院发布《关于为创业板改革并试点注册制提供司法保障的若干意见》

2020年8月18日, 中华人民共和国最高人民法院(最高人民法院)发布《关于为创业板改革并试点注册制提供司法保障的若干意见》(法发〔2020〕28号, 下称《意见》)。《意见》是最高人民法院继出台设立科创板并试点注册制改革的司法保障意见后, 为资本市场基础性制度改革安排而再次专门制定的又一部系统性、综合性司法文件。《意见》对于充分发挥人民法院审判职能作用, 推进创业板改革并试点注册制顺利进行, 保护投资者合法权益, 具有十分重要的意义。

《意见》围绕新《证券法》关于证券发行注册制的相关规定, 在充分借鉴科创板司法保障意见的基础上, 结合创业板改革相关成果, 从增强为创业板改革并试点注册制提供司法保障的自觉性、依法保障创业板改革并试点注册制顺利推进、依法提高市场主体违法违规成本、依法有效保护投资者合法权益等四个方面提出了10条举措。

从主要内容来看, 在集中管辖方面, 《意见》提出, 对实行注册制创业板上市公司所涉有关第一审证券民事商事案件, 由广东省深圳市中级人民法院试点集中管辖。在提高违法违规成本方面, 《意见》全面落实对资本市场违法犯罪行为“零容忍”要求, 加大证券违法犯罪打击力度, 对申请发行、注册等环节的犯罪行为从严惩治, 同时要求厘清不同责任主体对信息披露的责任边界, 严格落实相关主体责任。在强化投资者保护方面, 《意见》对落实证券集体诉讼制度提出了具体的司法措施要求, 并强调持续深化纠纷多元化解机制建设, 及时化解证券纠纷。在新旧制度衔接方面, 《意见》指出, 人民法院在处理相关纠纷时, 要准确把握存量与增量的关系, 尊重新旧制度规则, 审慎评估、依法处理。此外, 《意见》

还规定了“互相适用”原则，人民法院在审理涉创业板上市公司相关案件时，《意见》未规定的，参照适用科创板司法保障意见；在审理涉科创板上市公司相关案件时，科创板司法保障意见未规定的，参照适用《意见》规定。

《意见》的发布实施，将有效保障创业板改革并试点注册制顺利推进，促进资本市场重大改革措施行稳致远，有助于建设一个规范、透明、开放、有活力、有韧性的资本市场，完善资本市场基础性制度。

Sources 来源:

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<http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/index.html>

Officials from Relevant Departments of the China Securities Regulatory Commission Answered Reporter Questions regarding the “Report on Protecting United States Investors from Significant Risks from Chinese Companies” by the U.S. President’s Working Group on Financial Markets

On 8 August, 2020, regarding the U.S. Department of the Treasury recently released a “Report on Protecting United States Investors from Significant Risks from Chinese Companies” (PWG report) prepared by the U.S. President’s Working Group on Financial Markets, which stated that for jurisdictions including China where the U.S. Public Company Accounting Oversight Board (PCAOB) has insufficient access to work papers and practices of relevant auditors for U.S. listed companies, the report suggests that the listing standards for companies from these jurisdictions be raised, and various disclosure requirements be imposed and the report also requires currently listed companies in the U.S. satisfying PCAOB’s inspection rules by January 1, 2022, the China Securities Regulatory Commission (CSRC) commented as following:

The CSRC belief that, strengthening supervision over information disclosure of listed companies and improving the professional ethics and practice quality of auditors are extremely important to protect lawful rights and interests of investors. This is a shared responsibility of securities regulators around the globe, which can only be discharged via effective cross-border cooperation in today’s highly globalized capital markets. To address these common interests, an open and cooperative approach is the right choice for both Chinese and the U.S. regulators to resolve the remaining issues in audit supervision cooperation.

As a matter of fact, both sides have always maintained good communications and interactions. Since 2019, the Chinese regulatory authorities have been actively

communicating with the US Securities and Exchange Commission (SEC) and the PCAOB, proposing on many occasions protocols for joint inspections over accounting firms, showing full sincerity of cooperation. Not long ago on August 4, 2020, the Chinese regulatory authorities sent another updated proposal to the PCAOB addressing the most recent concerns raised by the US side. China’s securities regulators believe the only way to resolve the issues of common concerns and achieve win-win results is to have open and candid dialogue, and only by doing so can regulators together create a sound environment for the healthy and orderly functioning of the global capital market

It should be noted that the Chinese side has never prohibited or prevented relevant accounting firms from providing audit working papers to overseas regulators. As mentioned in the PWG report, China’s securities regulators have so far provided U.S. securities regulators with audit working papers of a number of Chinese companies listed in the U.S. market. China’s securities regulators believe the essence of relevant Chinese laws and regulations is that the exchange of information such as audit working papers should be conducted through regulatory cooperation channels, which is consistent with international norms and common practice.

中国证券监督管理委员会有关部门负责人就美国总统金融市场工作组发布《关于保护美国投资者防范中国公司重大风险的报告》事宜答记者问

2020年8月8日，中国证券监督管理委员会（中国证监会）有关部门负责人就近期美国财政部在其官网发布总统金融市场工作组《关于保护美国投资者防范中国公司重大风险的报告》，其针对包括中国在内的美国公众公司会计监督委员会无法实施检查的辖区，建议对来自这些辖区的公司提高上市门槛，加强信息披露要求，强化投资风险提示，并要求已在美上市公司最迟于2022年1月1日前满足美国公众公司会计监督委员会开展检查的相关要求，评论道：

中国证监会始终认为在资本市场高度全球化的今天，加强上市公司信息披露监管，提升审计师专业操守和执业质量，是保护投资者合法权益的重要手段，也是全球证券监管机构的共同责任，必须通过加强跨境监管合作加以落实。因此，从双方这些共同利益出发，开诚布公地开展对话与合作，才是解决问题的正道。

事实上，双方一直保持着沟通和互动。自2019年以来，中方监管部门多次就会计师事务所联合检查方案与美国证监会和美国公众公司会计监督委员会进行沟通，展示了充分的合作诚意。最近2020年8月4日，中方监管部门根据美方的最新需求和想法向美国公众公司会计监督

委员会发送了更新的方案建议。中方监管部门认为，通过对话解决共同关心的问题是实现双方共赢的唯一途径，只有这样，才能为全球资本市场健康有序运行创造良好的环境。

应当说明，中方从未禁止或阻止相关会计师事务所向境外监管机构提供审计工作底稿。正如美方报告中提及的，中国证券监管机构迄今已向美国证券监管机构提供了多家在美上市中国公司的审计工作底稿。中方监管部门认为，中国法律法规要求的实质是，审计工作底稿等信息交换应通过监管合作渠道进行，这是符合国际惯例的通行做法。

Sources 来源:

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http://www.csrc.gov.cn/pub/csrc_en/newsfacts/release/202008/t20200808_381340.html

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