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Financial Services Regulatory Update
金融服务监管资讯

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Hong Kong Securities and Futures Commission Issues Phasal Consultation Conclusion on Licensing Depositaries of SFC-Authorized Collective Investment Schemes (under New Regulated Activity 13)

On February 22, 2022, the Securities and Futures Commission of Hong Kong (SFC) released consultation conclusions and began a further consultation on a proposal to regulate depositaries (i.e., top-level trustees and custodians) of SFC-authorized collective investment schemes (CIS) under section 104 of the Securities and Futures Ordinance (SFO) (relevant CIS).

In 2019, the SFC launched a consultation proposing to introduce a new regulated activity, Type 13 regulated activity or RA 13 (providing depository services for a relevant CIS), to put depositaries of SFC-authorized CIS under the SFC's direct supervision. Respondents were generally supportive of the proposal, with some seeking clarification of the proposed licensing scope and conduct requirements. The SFC is now consulting the public on proposed amendments to subsidiary legislation and SFC codes and guidelines to implement the regime.

"The RA 13 regime will enhance the regulation of public funds in Hong Kong by regulating how depositaries safeguard scheme assets and oversee scheme operations," said Mr. Ashley Alder, the SFC's Chief Executive Officer. "The new regulatory framework is in line with those in other leading international markets and is an important part of the SFC's efforts to develop Hong Kong as an international, full-service asset management center."

The Proposals

The key proposals that have been adopted and to be included in the newly amended rules are as follows.

Proposed scope

The SFC proposed to introduce a new type of regulated activity (Type 13) under Schedule 5 to the SFO, providing depository services for a relevant CIS. This will be RA 13. The SFC's policy intent is to capture only top-level trustees or custodians (i.e., depositaries) which carry on a business in RA 13 in Hong Kong. A depositary's delegates (such as its sub-custodians) will not fall within the proposed scope of RA 13, regardless of whether such delegates operate within or outside Hong Kong.

Exemptions

A relevant CIS would be one which is authorized by the SFC under section 104 of the SFO, i.e., unit trusts, mutual fund companies, real estate investment trusts, pooled retirement funds authorized under the SFO and open-ended fund companies registered and authorized under the SFO, but excluding MPF products.

Given that MPF-approved trustees are already subject to the MPFA's regulation and supervision, to minimize regulatory duplication, the SFC proposed to exclude them from the scope of RA 13 insofar as the trustee services relate only to MPF products. However, the carve-out will not include approved pooled investment funds (APIFs) which may be offered to both MPF schemes and directly to retail investors (Retail APIFs) as these funds should be distinguished from pure MPF products.

Licensing and conduct requirements

Licensing requirements for individuals

RA 13 will be defined as an activity of "providing depositary services for a relevant CIS" with reference to two core functions of a depositary, being (a) custody and safekeeping of scheme property and (b) oversight of the operation of the relevant CIS to ensure that it is operated in accordance with its constitutive documents. The licensing scope applicable to individuals will be aligned with the two core functions as follows:

With respect to the custody and safekeeping of scheme property:

(a) where a depositary delegates this function to another entity (e.g. a sub-custodian), staff of the

depositary responsible for monitoring the performance of the delegate will need to be licensed or registered for RA 13; and

(b) where a depositary performs part or all of this function within the firm, staff of the depositary who are empowered to approve instructions or transactions for custody-related purposes (eg, approving payments or asset transfers, signing-off cash reconciliation) in respect of a relevant CIS and those who assume oversight duties over the performance of this function will need to be licensed or registered for RA 13; whereas staff who are engaged in custody operations without such approving powers or oversight duties will generally not be subject to the licensing obligations under the RA 13 regime.

With respect to the oversight of scheme operations, staff of a depositary responsible for performing the duties of this function in respect of a relevant CIS should be licensed or registered for RA 13. Broadly speaking, oversight duties encompass the monitoring of various operations of the CIS including, amongst others, compliance with investment and borrowing restrictions, cash flow, fund accounting and valuation, as well as the issue, repurchase, redemption and cancellation of the units or shares of the CIS. Nevertheless, where a depositary also acts as the fund administrator, transfer agent or registrar for a relevant CIS, staff of the depositary who are engaged to provide such services are generally not required to be licensed or registered for RA 13, unless they also have an oversight responsibility in respect of these operations based on the particular business model and governance structure adopted by the depositary.

MICs of the overall management oversight function and MICs of key business lines of a licensed corporation (LC) should be ROs. The MICs of other core functions are generally not required to be licensed. In view of the revised approach for defining RA 13, the marketing of a depositary's services by itself does not fall within the scope of "providing depositary services for a relevant CIS". Therefore, individuals who solely perform marketing activities for a depositary will not be subject to the licensing obligation under the RA 13 regime. The SFC will provide a grandfathering arrangement (i.e., attending training courses in lieu of passing local regulatory examinations) for practitioners when implementing the RA 13 regime. In addition, an individual may apply for an exemption from the recognized industry qualification and the local regulatory framework paper requirements if he or she satisfies the exemption criteria set out in the Guidelines on Competence.

Financial Resources Requirements

In line with other types of regulated activity, RA 13 licensed corporations must maintain adequate financial resources under the Securities and Futures (Financial Resources) Rules (Financial Resources Rules). The SFC proposed:

(a) a minimum paid-up share capital of HK$10,000,000 which is similar to the current requirement under the Product Codes; and

(b) a minimum liquid capital of HK$3,000,000.

The minimum liquid capital required may increase as a consequence of an increase in the size of the corporation's operations and liabilities.

Professional indemnity insurance requirement

The SFC proposed to impose a non-statutory requirement for RA 13 depositaries to maintain a professional indemnity insurance policy which provides adequate coverage for claims for liability arising from breaches of duty in the course of carrying on its RA 13 business. This proposal is in line with a similar requirement for licensed or registered fund managers under the Fund Manager Code of Conduct (FMCC).

Conduct and internal controls requirements

Once licensed or registered, RA 13 depositaries and individuals must comply with the applicable legal and regulatory requirements, such as the SFO, and the SFC's codes and guidelines, including the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) and the Management, Supervision, and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission (Internal Control Guidelines). In addition to these requirements, RA 13 depositaries will be expected to continue to meet the existing provisions in the product codes, i.e., the Code on Unit Trusts and Mutual Funds (UT Code), the Code on Real Estate Investment Trusts (REIT Code), the Code on Pooled Retirement Funds (PRF Code) and the Code on Open-Ended Fund Companies (OFC Code) (collectively, Product Codes) which apply to trustees and custodians.

Under the existing UT Code, trustees or custodians of SFC-authorized CIS are required to engage independent auditors to review their internal controls and systems and submit internal control reports reviewed by auditors to the SFC annually, unless a trustee or custodian is prudentially regulated and supervised by an overseas supervisory authority which is acceptable to the SFC.

With the introduction of RA 13, depositaries of relevant CIS will be subject to the SFC's supervision, or in the

case of registered institutions, the HKMA's supervision as the frontline regulator. The requirement to submit the annual internal control reports to the SFC will be removed.

The SFC also proposed to introduce a new schedule 11 to the Code of Conduct (Schedule 11) to set out the updated and detailed guidance on the internal controls depositaries should have in place in Appendix G to the UT Code. It will be the responsibility of the senior management of an RA 13 depositary to exercise professional judgment in designing suitable internal controls and systems and ensure that these are adequately, effectively and properly implemented.

Scope of schedule 11

Under the proposed scope of RA 13, depositaries have oversight obligations over the operation of a CIS. Where a depositary carries out these operational functions itself (eg, by acting as the transfer agent or fund administrator), it would be held primarily responsible for them.

Relevant operators

A core function of a depository is to have oversight of a relevant CIS to ensure that it is operated in accordance with the constitutive documents. Under the UT Code, the oversight obligations of a depositary include, for example, oversight of the issue of units or shares of the relevant CIS. These activities may be carried out by the board of directors of an OFC, the management company or other operators. Hence, the board of directors is a "relevant operator" for the purposes of these requirements. On the other hand, sub-custodians are delegates of the depositaries and are not "relevant operators".

Communication with management company

A Depositary should communicate with the management company in an effective and timely manner in the course of discharging its function(s) and obligation(s) with respect to a relevant CIS. Specifically, the depositary will need to notify the management company of material exceptions to its business continuity plan which may have a material adverse impact on the operation of the CIS or the discharge of the depositary's obligations.

Delegation

Depositaries are required to have oversight of the relevant CIS to ensure that it is operated in accordance with the constitutive documents of the CIS. In order to discharge this oversight function, depositaries are responsible for monitoring the relevant operational activities, whether they are carried out by delegates appointed by the depositary itself, or third parties appointed by other operators (including but not limited to the management company).

Pricing error or exception reporting

Depositary should maintain effective communication with the management company, particularly in relation to pricing errors or exceptions which would need to be reported under the regulatory requirements or may adversely impact the operations of the CIS, the orderliness of the market or investors' interests.

Cash flow monitoring

A depositary must ensure relevant operators have effective controls in place for obtaining all necessary prior written consent from the depositary for connected party transactions. All cash flows which are inconsistent with the operations of the relevant CIS should be identified, even if they are insignificant.

Investment monitoring

A depositary should provide the management company with its reconciled records of relevant CIS property and transactions executed on behalf of the relevant CIS to facilitate the management company's verification of the accuracy of its investment records.

Custody and safekeeping of relevant CIS property

A depository should ensure payments and asset transfers or other dealings of any relevant CIS property on behalf of the relevant CIS are properly authorized in accordance with the constitutive documents of the relevant CIS. Where the relevant payments or asset transfers or other dealings of relevant CIS property need not be authorized by the Depositary under the constitutive documents of the relevant CIS, the Depositary should have proper oversight of the management company to ensure that it the management company has properly authorized or has obtained the relevant authorization.

Custody risks need to be managed and not just monitored in order for the depositary to discharge its obligations. In addition, a depositary should safeguard all assets and not only physical assets.

Key operators

Even though the management company is also regulated by the SFC, a depositary should also have oversight of the relevant CIS to ensure that it is operated (or in the case of a relevant CIS that is a Pooled Retirement Fund, administered) in accordance with the provisions of the constitutive documents of the relevant CIS.

Hong Kong's Approach in Enhancing Regulation vs. US's Approach to Control Regulatory Risks

From the aforementioned proposals of the SFC, Hong Kong regulators adopt the strategy to take the initiative in making statutory and non-statutory amendments to the rules and regulation. On the contrary, the US Securities and Exchange Commission seems to have adopted a relatively indirect approach to improve compliance.

The US Security and Exchange Commission (SEC) considers that the achievement of the expectation as expressed and implemented in the form of clearing agency rulebooks, policies, and procedures, are contingent on a fundamental element: effective governance. Therefore, the SEC has been focusing more on monitoring and examination to oversee compliance with the rules and regulations. Coordination among different regulators and authorities such as the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System is also one of the focuses.

In respect of examination, the Office of Clearance and Settlement of the Office of Compliance Inspections and Examinations (OCIE) (OCIE-OCS) conducts risk-based examination focused on registered clearing agencies' compliance with the laws and regulation. In respect of the regulatory risk, being one of the examination focuses, OCIE-OCS examines clearing agencies' governance structure and reporting, as well as internal audit and legal functions, to assess compliance with the standards.

While Hong Kong has been active in making legislative amendments, the Hong Kong Monetary Authority has emphasized on the significance of close monitoring to address the funds' exposure to liquidity risk by holding a large amount of leveraged loans. It was noted that bridging the data gaps to monitor the holdings of leveraged loans by banks and non-bank financial institutions is important. Policy to strengthen funds' liquidity management such as to lower the dealing frequency and require a higher buffer of liquid assets may also be an effective measure.

Remarks

As suggested by the SEC, robust written rules, policies and regulations are only the first step in achieving compliance, the outcomes in reality should be in most crucial concern and they also manifest the effectiveness of implementation and compliance of rules. In order to prevent the rules and regulations from becoming the "toothless tiger", it would require efforts in reinforcing the monitoring and evaluation, such that the rules could be updated regularly and thoughtfully based on the real-life circumstances. The SFC has been considerate enough to listen to industry participants' opinions through consultation prior to implementing the rules. However, as expanding the reign over depositories is only a beginning, enhancing compliance, examination and coordination is likely to be on spotlight for the future regulatory landscape of Hong Kong as an international asset management center, such that regulatory rules can be imposed promptly and effectively.

香港证券及期货事务监察委员会就证监会授权集体投资计划存管人发牌监管(第 13 类受规管活动)发表阶段咨询总结

2022 年 2 月 22 日，香港证券及期货事务监察委员会（证监会）就建议规管根据《证券及期货条例》（证券及期货条例）第 104 条项下的证监会认可集体投资计划（有关集体投资计划）的存管人（即顶层受托人及保管人），发表咨询总结并就实施细节展开进一步咨询。

证监会于 2019 年展开咨询，建议引入新一类受规管活动（第 13 类受规管活动）（提供有关集体投资计划存管服务）令证监会认可集体投资计划的存管人直接受到证监会监督。回应者普遍支持这项建议，其中一些回应者寻求本会就建议发牌范围及操守规定作出厘清。证监会现正就为落实有关制度而对附属法例以及证监会的守则和指引作出的建议修订，咨询公众意见。

证监会行政总裁欧达礼先生（Mr. Ashley Alder）表示：“第 13 类受规管活动的制度旨在规管存管人在保障集体投资计划的资产及对计划的运作进行监察方面的工作，有助加强本会对香港公众基金的监管。新的监管框架与其他主要国际市场的制度相符，亦是证监会为致力发展香港成为提供全方位服务的国际资产管理中心而采取的重要举措。”

建议

已通过并将纳入新修订规则的主要建议如下。

建议的范围

证监会建议在《证券及期货条例》附表 5 下引入新一类受规管活动（第 13 类），即提供有关集体投资计划存管服务。此类活动将会是第 13 类受规管活动。证监会的政策仅旨在涵盖在香港经营第 13 类受规管活 动的业务的顶层受托人或保管人（即存管人）。获存管人转授职能者（例如其次保管人） 将不属于第 13 类受规管活动的建议范围之内，不论有关获转授职能者是在香港境内或境外运作。

豁免

有关集体投资计划将会是获证监会根据《证券及期货条例》第 104 条认可的集体投资计划， 即根据该条例获认可的单位信托、互惠基金公司、房地产投资信托基金、集资退休基金， 以及根据该条例获注册及认可的开放式基金型公司，但不包括强积金产品。

鉴于强积金核准受托人已受到积金局的规管及监督，为尽量避免重迭规管，证监会建议将受托人服务仅涉及强积金产品的受托人豁除于第 13 类受规管活动的范围外。然而，上述豁免将不会涵盖可向强积金计划销售并同时可直接售予零售投资者的核准汇集 投资基金（零售核准汇集投资基金），原因是这些基金应与纯强积金产品加以区分。

发牌及操守规定

适用于个人的发牌规定

第 13 类受规管活动将会被界定为“提供有关集体投资计划存管服 务”的活动，而这个定义是参照存管人的两项核心职能（即(a)托管及保管计划财产及(b) 监察有关集体投资计划的运作以确保其乃根据组成文件运作）而订。对适用于个人的发牌范围作出调整如下，使之切合上述两项核心职能：

至于托管及保管计划财产方面：

(a) 如存管人向另一家实体（例如次保管人）转授这项职能，负责监察获转授职能者的表现的存管人职员，便须就第 13 类受规管活动申领牌照或注册；及

(b) 如存管人在公司内执行全部或部分有关职能，获赋权就有关集体投资计划审批为 保管相关目的之指示或交易（例如审批付款或资产转移，以及签核现金对帐）的 存管人职员，以及负责监察这项职能的执行情况的人员，将须就第 13 类受规管 活动申领牌照或注册；若参与保管运作的职员没有相关审批权力或并非负责监察 的职务，一般不须就第 13 类受规管活动申领牌照或注册。

至于监察计划的运作方面，存管人的职员如负责就有关集体投资计划执行这项职能的工作，便应就第 13 类受规管活动申领牌照或注册。整体而言，监察工作包括监督集体投 资计划的不同运作范畴，当中包括（除其他事项外）遵守投资和借贷限制、现金流、基金会计和估值，以及发行、回购、赎回及注销集体投资计划的单位或股份的事宜。尽管 如此，若存管人同时担任有关集体投资计划的基金行政管理人、转让代理人或过户处， 获其委聘提供该等服务的职员一般不须就第 13 类受规管活动申领牌照或注册，除非根据存管人所采纳的特定业务模式和管治架构 ， 他们亦须就该等运作承担监察职能，则作别论。

持牌法团内负责整体管理监督职能及主要业务职能的核心职能主管应为负责人员。负责其他核心职能 11 的核心职能主管一般无须申领牌照。在第 22 段所述关于界定第 13 类受规管活动的新订方针下，就存管人的服务进行市场推广，本身并不属于“提供有关集体投资计划存管服务”的范畴。因此，仅为存管人执行 市场推广活动的个人将不须就第 13 类受规管活动申领牌照或注册。证监会在落实第 13 类受规管活动制度时，将为正在从业的人员提供一项豁免安排，即以出席培训课程代替通过本地监管考试。此外，个人如符合《胜任能力的指引》所载豁免准则 ，便可申请豁免遵守认可行业资格及本地监管架构考试的规定。

财政资源规定

如同从事其他类别的受规管活动，持牌法团若从事第 13 类受规管活动，便必须根据《证 券及期货（财政资源）规则》（《财政资源规则》）维持足够财政资源。证监会建议：

(a) 缴足股本最低数额为 10,000,000 港元，与产品守则下的现行规定相若；及

(b) 所须的速动资金最低数额为 3,000,000 港元。

所须的速动资金最低数额可能会因法团的营运和负债规模扩大而相应地调高。

专业弥偿保险规定

证监会建议施加一项非法定规定，要求从事第 13 类受规管活动的存管人须投购一份专业弥偿保单，而所提供的保险保障范围应足够应付就因其在经营第 13 类受规管活动的业务时失职而遭提出的法律责任申索。这项建议将会成为附录 B 所载适用于从事第 13 类受规管活动的存管人的建议规定的一部分，并与《基金经理操守准则》下适用于持牌或注册基金经理的类似规定一致。

操守及内部监控规定

从事第 13 类受规管活动的存管人及个人一经发牌或注册，便须遵守适用的法例及监管规定，如《证券及期货条例》及证监会的守则和指引，包括《证券及期货事务监察委员会持 牌人或注册人操守准则》（《操守准则》）和《适用于证券及期货事务监察委员会持牌人 或注册人的管理、监督及内部监控指引》（《内部监控指引》）。此外，从事第 13 类受规管活动的存管人将须继续符合《单位信托及互惠基金守则》、《房地产投资信托 基金

守则》、《集资退休基金守则》及《开放式基金型公司守则》（统称产品守则）内适用于受托人及保管人的现有条文规定。

根据现有的《单位信托及互惠基金守则》，除非证监会认可集体投资计划的受托人或保 管人受到证监会所接纳的海外监管机构的审慎规管及监督，否则该受托人或保管人必须委聘独立核数师审核其内部监控措施和制度，及每年将经核数师审核的内部监控报告呈交证监会。

在引入第 13 类受规管活动后，有关集体投资计划的存管人将会受到证监会的监督；或如属注册机构，它们将会受到作为前线监管机构的金管局所监督。须向证监会呈交年度内部监控报告的现行规定将被删除。

证监会亦建议在《操守准则》增订附表 11（附表 11）以列出载于《单位信托及互惠基金守则》附录 G 就存管人应制定的内部监控措施经更新的详细指引。从事第 13 类受规管活动的存管人的高级管理层将有责任运用专业判断来设计合适的内部监控措施及制度，并确保该等措施及制度获充分、有效及适当 地落实。

附表 11 涵盖的范围

根据第 13 类受规管活动的建议范围，存管人就集体投资计划的运作负起监察责任。存管人如自行执行这些运作职能（例如担任转让代理人或基金行政管理人），便须就此承担首要责任。

有关经营者

存管人的其中一项核心职能是监察有关集体 投资计划，确保其乃根据组成文件运作。根据《单位信托守则》，存管人的监察责任包括（举例来说）监察有关集体 投资计划的单位或股份的发行。这些活动可由开放式基金型公司的董事会、管理公司或 其他经营者来进行。因此，董事会就上述规定而言属于“有关经营者”。另一方面，次保管人是获存管人转授职能者，因此并非“有关经营者”。

与管理公司的沟通

存管人在就有关集体投资计划履行其职能及责任的过程中，应有效和及时地与管理公司沟通。特别是，存管人应通知管理公司于定期测试识别到的业务持续运作方案的重大例外情况，而该等情况可能对经营有关集体投资计划或履行存管人的责任造成重大不利影响。

职能授权

存管人须监察有关集体投资计划，确保其乃根据集体投资计划的组成文件运作。为了履行这项监察职能，存管人需要负责监督相关营运活动，不论有关活动是由存管人自行委任的获转授职能者或其他经营者（包括但不限于管理公司）所委任的第三方进行。

汇报定价错误或例外情况

存管人应与管理公司保持有效沟通，尤其是针对定价错误或例外情况而言，因这些事宜可能需要根据监管 规定予以汇报，或可能会对集体投资计划的运作、市场秩序或投资者的利益造成不利影响。

对现金流的监督

存管人必须确保有关经营者已制 订有效的监控措施，以便就关连人士交易事先向存管人索取所有必要书面同意。所有与有关集体投资计划的运作不符的现金流（不论重大与否）都应被识别 出来。

对投资的监督

存管人应向管理公司提供其就有关集体投资计划财产及代有关集体投资计划执行的交易的对帐纪录，以便管理公司核实其投资纪录的准确性。

有关集体投资计划财产的托管及保管

存管人应确保代有关集体投资计划作出的付款及资产转移或涉及任何有关集体投资计划 财产的其他交易均根据有关集体投资计划的组成文件获得妥善授权。若有关付款或资产转移或涉及有关集体投资计划财产的其他交易根据 有关集体投资计划的组成文件无需获存管人授权，存管人应妥善地监察管理公司，以确保其管理公司已妥为授权或已取得相关授权。

保管风险不但需要被监察，更需要被加以管理。此外，存管人应保障所有资产，而不是单单保障实物资产。

主要经营者

尽管管理公司同时受证监会监管，存管人需要负责监督相关营运活动，不论有关活动是由存管人自行委 任的获转授职能者或其他经营者（包括但不限于管理公司）所委任的第三方进行。

香港在加强监管方面的做法 vs. 美国控制监管风险的方法

从上述证监会的建议来看，香港监管机构采取了主动对规则和法规进行法定和非法定修订的策略。相反，美国

证券交易委员会似乎采取了一种相对间接的方式来提高合规性。

美国证券交易委员会认为，以清算机构规则手册、政策和程序的形式表达和实施的期望的实现取决于一个基本要素：有效治理。因此，美国证券交易委员会一直更加注重监督和审查，以监督规则和法规的遵守情况。不同监管机构和当局之间的协调，例如商品期货交易委员会和联邦储备系统理事会，亦是重点注意项目。

在审查方面，合规审查和审查办公室（OCIE）清算和结算办公室（OCIE-OCS）针对注册清算机构的法律法规遵守情况进行风险审查。在监管风险方面，作为审查重点之一，OCIE-OCS 审查清算机构的治理结构和报告，以及内部审计和法律职能，以评估是否符合标准。

虽然香港一直积极进行立法修订，但香港金融管理局曾强调密切监控以解决基金持有大量杠杆贷款所面临的流动性风险的重要性。其指出，弥合数据差距以监测银行和非银行金融机构持有的杠杆贷款很重要。加强基金流动性管理的政策，例如降低交易频率和要求更高的流动资产缓冲，也可能是一个有效的措施。

评论

正如美国证券交易委员会所建议的那样，健全的书面规则、政策和法规只是实现合规的第一步，现实中的结果应该是最关键的，它们也体现了规则执行和合规的有效性。为防止规章制度成为“无牙老虎”，需要加强监察和评估，使规章制度能够根据实际情况定期、周到地更新。证监会在设计规则之前，已经足够体贴地听取行业参与者的意见。然而，由于扩大对存管人的控制只是一个开始，加强合规审查和协调可能是香港作为国际资产管理中心未来发展的重点，以便规则能够及时有效地执行。

Source 来源:
https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=19CP3
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR9
https://www.sec.gov/files/regulation-clearing-agencies-100120.pdf
https://www.hkma.gov.hk/media/eng/publication-and-research/research/research-memorandums/2021/RM07-2021.pdf

Hong Kong Securities and Futures Commission Issues Quarterly Report

On February 24, 2022, the Securities and Futures Commission of Hong Kong (SFC) published its latest Quarterly Report which summarises key developments from October to December 2021.

During the quarter, the SFC released consultation conclusions on conduct requirements for capital market transactions in Hong Kong to clarify the roles of intermediaries and set out the standards expected of them in bookbuilding, pricing, allocation and placing activities to enhance their transparency and promote a fair and orderly market. It also concluded a consultation on amendments to the Code on Pooled Retirement Funds to strengthen investor protection and ensure the regulations for these funds are up-to-date and fit for purpose.

The SFC conducted a simultaneous joint operation in December with the Hong Kong Police Force, the Monetary Authority of Singapore and the Singapore Police Force against an active and sophisticated syndicate suspected of operating cross-border ramp-and-dump manipulation schemes in Hong Kong and Singapore. Also in December, the SFC and the China Securities Regulatory Commission held their 12th regular high-level meeting on enforcement cooperation to exchange views and discuss ways to strengthen collaboration.

As part of the SFC's ongoing efforts to promote sustainability and tackle climate change, the Green and Sustainable Finance Cross-Agency Steering Group, co-chaired by the SFC and the Hong Kong Monetary Authority (HKMA), met during the quarter to discuss carbon market development and climate-related disclosure, data and taxonomies. The SFC's Chief Executive Officer, Mr. Ashley Alder, participated in the 26th UN Climate Change Conference of the Parties in Glasgow, Scotland where he spoke about corporate sustainability disclosure and the significance of the new International Sustainability Standards Board.

In November, more than 1,100 industry professionals took part in the fourth SFC Regulatory Forum, where senior regulators and industry leaders shared insights on Hong Kong's future development as China's international financial center and other regulatory and topical issues. Also during the quarter, the SFC published a report which set out regulatory standards and measures for preventing and responding to disruptions and managing the risks of remote working as well as a report on its first joint annual survey with the HKMA on the sale of non-exchange traded investment products.

Key figures for the quarter include:

- The number of licensees and registrants totaled 48,657, of which 3,210 were licensed corporations.
- The SFC vetted 40 new listing applications, including two from companies with weighted voting

rights structures and one from a pre-profit biotech company.

- The SFC authorized 45 unit trusts and mutual funds (including 27 Hong Kong-domiciled funds), four mandatory provident fund pooled investment funds and 48 unlisted structured investment products for public offering in Hong Kong. It registered 21 new open-ended fund companies.

- 61 in-depth inspections of licensed corporations were conducted to review their compliance with regulatory requirements.

- The SFC made 1,284 requests for trading and account records triggered by untoward price and turnover movements.

- It issued section 179 directions to gather additional information in 14 cases and wrote to detail its concerns in one case as part of its review of corporate disclosures.

- Five licensed corporations and nine individuals were disciplined, resulting in total fines of over $23 million.

香港证券及期货事务监察委员会发表季度报告

于 2022 年 2 月 24 日，香港证券及期货事务监察委员会（证监会）发表最新的《季度报告》，概述 2021 年 10 月至 12 月期间的重要发展。

证监会于季内就香港资本市场交易的操守规定发表谘询总结，藉以厘清中介人的角色及订明他们在簿记建档、定价、分配及配售活动中应达到的操守标准，以增加他们的透明度，并促进市场的公平性和秩序。证监会亦发表有关修订《集资退休基金守则》的谘询总结，目的是加强投资者的保障，及确保监管这类基金的规例能够与时并进，及切合其监管目的。

12 月，证监会与香港警务处、新加坡金融管理局及新加坡警察部队对一个组织严密及涉嫌于香港和新加坡进行跨境“唱高散货”市场操纵计划的活跃集团同时采取联合行动。证监会亦在 12 月与中国证券监督管理委员会举行第十二次定期执法合作高层会议，就加强合作交换意见及进行讨论。

一直以来，证监会在促进可持续发展及应对气候变化方面的工作不遗余力。由证监会与香港金融管理局（金管局）共同领导的绿色和可持续金融跨机构督导小组在季内举行了会议，探讨碳市场的发展、气候相关披露、数据及分类目录。证监会行政总裁欧达礼先生（Mr Ashley Alder）参与于苏格兰格拉斯哥举行的第 26 届联合国气候变化大会，并在会上讲述企业的可持续性披露及新成立的国际可持续发展准则理事会的重要性。

证监会在 11 月举办了第四届证监会论坛，让监管机构的高层人员及业界翘楚就香港作为中国的国际金融中心的未来发展以及其他监管及热门议题交流意见，有逾 1,100 名业界专业人士参与。另外，证监会在季内发表报告，列出了为防止和应对业务受干扰，以及管理遥距工作的风险而须遵守的监管标准及措施。证监会亦联同金管局发布了有关销售非交易所买卖投资产品的首次联合年度调查报告。

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 48,657，其中持牌机构的数目为 3,210 家。

- 证监会审阅了 40 宗新上市申请，包括两宗来自不同投票权架构公司及一宗来自尚未有盈利的生物科技公司的申请。

- 证监会认可了在香港公开发售的 45 只单位信托及互惠基金（包括 27 只在香港注册成立的基金）、四只强制性公积金汇集投资基金及 48 项非上市结构性投资产品，并为 21 家新的开放式基金型公司进行注册。

- 证监会对持牌机构进行了 61 次深入视察，以检视它们遵守监管规定的情况。

- 证监会因应股价及成交量的异动，提出了 1,284 项索取交易及帐户纪录的要求。

- 证监会在检视上市公司的披露情况时，根据第 179 条就 14 宗个案发出指示以收集更多资料，及就一宗个案以书面形式阐述本会所关注的事项。

- 证监会对五家持牌机构及九名人士作出了纪律处分，涉及的罚款总额逾 2,300 万元。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR10

Hong Kong Securities and Futures Commission Reprimands and Fines South China Commodities Limited HK$4.8 Million for Regulatory Breaches

On February 14, 2022, the Securities and Futures Commission of Hong Kong (SFC) has reprimanded and fined South China Commodities Limited (SCCL) HK$4.8 million for failures in complying with anti-money laundering and counter-terrorist financing (AML/CFT)

and other regulatory requirements between June 2017 and October 2018.

The SFC's investigation found that SCCL did not conduct any due diligence on the customer supplied systems (CSSs) used by 19 clients for placing orders during the material time. As a result, SCCL was not in a position to properly assess and manage the money laundering and terrorist financing (ML/TF) and other risks associated with the use of such CSSs by its clients.

In addition, the SFC identified that the amounts of deposits made into four client accounts were incommensurate with their declared financial profiles. SCCL claimed that it was not aware of these anomalies. The SFC forms the view that SCCL failed to demonstrate that it had conducted proper enquiries on the deposits and satisfactorily addressed the associated ML/TF risks.

The SFC further found that SCCL's failure to put in place an effective ongoing monitoring system to detect suspicious trading patterns in client accounts resulted in its failure to detect 3,783 self-matched trades in nine client accounts.

The SFC is of the view that SCCL's systems and controls were inadequate and ineffective, and failed to ensure compliance with the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML Guideline) and the Code of Conduct.

In deciding the disciplinary sanctions against SCCL, the SFC took into account that:

- SCCL's failures to diligently monitor its clients' activities and put in place adequate and effective AML/CFT systems and controls are serious as they could undermine public confidence in, and damage the integrity of, the market;
- a strong deterrent message needs to be sent to the market that such failures are not acceptable;
- SCCL has taken remedial measures to enhance its internal systems and controls;
- SCCL cooperated with the SFC in resolving the SFC's concerns; and
- SCCL's otherwise clean disciplinary record.

南华期货有限公司因违反监管规定遭香港证券及期货事务监察委员会谴责和罚款 480 万港元

于 2022 年 2 月 14 日，香港证券及期货事务监察委员会（证监会）谴责南华期货有限公司（南华期货）并处以罚款 480 万港元，原因是该公司在 2017 年 6 月至 2018 年 10 月期间没有遵守打击洗钱及恐怖分子资金筹集规定和其他监管规定。

证监会的调查发现，南华期货在关键时间没有对 19 名客户用以发出交易指示的客户自设系统进行任何尽职审查，以致未能妥善评估并管理客户使用该系统相关的洗钱及恐怖分子资金筹集风险和其他风险。

此外，证监会识别出存入四个客户帐户内的款项与有关客户所声明的财政状况并不相称。南华期货声称并无察觉该等异常情况。证监会认为南华期货未能显示出它曾就有关存款作适当查询，并妥善处理所涉及的洗钱及恐怖分子资金筹集风险。

证监会更发现，南华期货没有设立有效的持续监察系统以侦测客户帐户内的可疑交易模式，导致未能侦测出九个客户帐户内的 3,783 项自我配对交易。

证监会认为，南华期货的系统及监控措施不足及成效不彰，且该公司没有确保《打击洗钱及恐怖分子资金筹集条例》、《打击洗钱及恐怖分子资金筹集指引》和《操守准则》获得遵守。

证监会在决定对南华期货采取上述纪律处分时，已考虑到：

- 南华期货没有勤勉尽责地监察其客户活动，以及设立充足而有效的打击洗钱及恐怖分子资金筹集制度和监控措施，乃属严重缺失，因为这可能会损害公众对市场的信心和破坏市场的廉洁稳健；
- 有需要向市场传递具阻吓力的强烈讯息，以示有关缺失不可接受；
- 南华期货已采取补救措施，以加强其内部系统及监控措施；
- 南华期货在解决证监会提出的关注事项时表现合作；及
- 南华期货过往并无遭受纪律处分的纪录。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR7

The China Securities Regulatory Commission Releases Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect Scheme between Domestic and Overseas Stock Exchanges

To facilitate cross-border investment and financing, promote the global allocation of production resources, and advance the institutional opening-up of the capital markets, the China Securities Regulatory Commission (CSRC) has revised the *Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect between Shanghai Stock Exchange and London Stock Exchange (for trial implementation)* (CSRC Announcement [2018] No.30, hereinafter referred as the "original Provisions"), whose name is now changed to the Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect Scheme between Domestic and Overseas Stock Exchange (hereinafter referred as the "revised Provisions"). The provisions shall enter into force as of the date of promulgation.

The revision of the original Provisions includes the following aspects: (1) Expand the programme to cover eligible listed companies on Shenzhen Stock Exchange on the domestic side, and eligible listed companies in Switzerland and Germany on the overseas side. (2) Allow overseas issuers to raise capital in the domestic market through CDR offerings and adopt a market-driven book-building mechanism. (3) Optimize ongoing supervision by making improved and more flexible supervisory arrangement for information disclosure, including annual reports and the disclosure on equity change.

The CSRC publicly solicited comments on the revised Provisions from December 17, 2021 to January 16, 2022, analysed these suggestions and incorporated them into the revised Provisions. Market participants respond positively to the expansion and the optimization of the stock connect scheme. Expanding and optimizing the stock connect scheme between domestic and overseas capital markets is a pragmatic measure to advance the institutional opening-up, which is conducive to broadening channels for two-way cross-border financing, supporting companies to utilize both domestic and international markets and resources in compliance with laws and regulations, improving the ability of Chinese capital market to serve the real economy and international competitiveness, and providing more investment choices for investors domestic and abroad.

In the next step, the CSRC, together with Shanghai Stock Exchange and Shenzhen Stock Exchange, will provide competent supervision and services for the expanded depository receipts businesses under the stock connect scheme between domestic and overseas stock exchanges so as to promote the high-quality development of the real economy through high-level opening up.

中国证券监督管理委员会发布《境内外证券交易所互联互通存托凭证业务监管规定》

为进一步便利跨境投融资、促进要素资源的全球化配置，推进资本市场制度型开放，中国证券监督管理委员会（证监会）对《关于上海证券交易所与伦敦证券交易所互联互通存托凭证业务的监管规定(试行)》(证监会公告〔2018〕30 号)进行修订，修订后名称定为《境内外证券交易所互联互通存托凭证业务监管规定》，自发布之日起施行。

本次修订主要包括以下内容:一是拓展适用范围，境内方面，将深交所符合条件的上市公司纳入，境外方面，拓展到瑞士、德国;二是允许境外基础证券发行人融资，并采用市场化询价机制定价;三是优化持续监管安排，对年报披露内容、权益变动披露义务等持续监管方面作出更为优化和灵活的制度安排。

2021 年 12 月 17 日至 2022 年 1 月 16 日，证监会就《监管规定》向社会公开征求意见，并对收集到的意见进行了认真研究和吸收采纳。从征求意见情况看，市场各方对规则拓展优化总体反应积极正面。拓展优化境内外资本市场互联互通机制，是推进制度型开放的务实举措，有利于拓宽双向融资渠道，支持企业依法依规用好国内国际 "两个市场、两种资源" 融资发展，提高中国资本市场服务实体经济的能力和国际竞争力，为境内外投资者提供更为丰富的投资品种。

下一步，证监会、沪深证券交易所将按照《监管规定》等做好境内外证券交易所互联互通存托凭证业务服务和监管工作，以高水平开放促进实体经济高质量发展。

Source 来源:
http://www.csrc.gov.cn/csrc/c100028/c1885444/content.shtml

Officials from the China Securities Regulatory Commission Answer Reporter Questions Regarding the Depository Receipts Business under the Stock Connect Scheme

I. Reporters: Please introduce the expansion of the depository receipt business under the Stock Connect scheme?

The China Securities Regulatory Commission (CSRC) officials: The revision expanded the scope of the Stock Connect scheme to cover more domestic and overseas stock exchanges. Domestically, the scheme has been extended to cover Shenzhen Stock Exchange, allowing eligible listed companies on Shanghai Stock Exchange or Shenzhen Stock Exchange to apply to issue Global Depository Receipts (GDRs) in overseas markets recognized by the CSRC. On the overseas side, the scheme has been expanded to

include stock markets in Switzerland and Germany. The CSRC is working with counterparts in the UK, Switzerland and Germany to ensure smooth roll-out of the expanded depository receipt business.

II. Reporters: What does the revised rule provide for issuers to raise capital through Chinese Depository Receipts (CDRs)?

CSRC officials: The revision allows overseas issuers to offer CDRs on domestic stock exchanges based on newly issued underlying shares, and determine the offering price through a market-driven book-building mechanism. It also clarifies that in principle the proceeds raised shall be used for main businesses of the issuers, and that the proceeds may be remitted out of or retained for use within the Chinese Mainland.

III. Reporters: Are issuers of underlying overseas securities required to disclose the information on the difference adjustment according to Chinese Accounting Standards for Business Enterprises (hereinafter referred to as the "Chinese accounting standards")?

CSRC officials: Issuers of underlying overseas securities that adopt accounting standards that have been determined by the Chinese Ministry of Finance to be equivalent to the Chinese accounting standards in accordance with the principle of reciprocity (hereinafter referred to as equivalent accounting standards) are not required to disclose the difference adjustment information according to Chinese accounting standards. According to relevant announcements of the Chinese Ministry of Finance ([2012] No. 65, [2020] No. 47 and [2021] No. 31), IFRS applied by listed companies in EU member states at the level of consolidated financial statements has been equivalent to the Chinese accounting standards since January 1, 2012. The IFRS applied by UK listed companies at the level of consolidated financial statements shall be considered as equivalent to the Chinese accounting standards after the end of the Brexit Transition Period. IFRS applied by issuers incorporated in Switzerland has been considered as equivalent to the Chinese accounting standards since September 7, 2021.

Issuers of underlying overseas securities whose disclosed financial reports are not prepared with equivalent accounting standards shall disclose the difference adjustment information according to the Chinese accounting standards in accordance with Article 7 of the *Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect Scheme between Domestic and Overseas Stock Exchange*.

IV. Reporters: What improvements have been made in the information disclosure and ongoing supervision requirements for issuers of underlying overseas securities?

CSRC officials: The information disclosure and ongoing supervision requirements for issuers of underlying overseas securities are generally the same with those for overseas-listed red chip companies in the Pilot Program for Innovative Companies. In terms of annual report disclosure, issuers of underlying overseas securities are allowed to disclose their overseas annual reports in the domestic market and, in doing so, they shall disclose the main differences in their overseas annual reports compared with requirements of the *Standards Concerning the Contents and Formats of Information Disclosure by Companies Offering Securities to the Public No.2—Format and Content of the Annual Report* and whether such differences exert a material impact on investors' investment decisions and engage a law firm to issue legal opinions on such differences. In terms of accounting standards, issuers of underlying overseas securities adopting equivalent accounting standards are allowed to calculate financial indicators based on the financial data compiled according to equivalent accounting standards. In terms of the obligation to disclose information related to changes in shareholding and acquisition, overseas investors holding CDRs shall fulfil such obligation according to relevant domestic laws and regulations.

V. Reporters: Are there any changes to the maximum quota of cross-border capital flow under the Stock Connect scheme?

CSRC officials: Given that there are still sufficient quotas under both eastbound and westbound businesses, the current maximum quota of cross-border capital flow under the Stock Connect scheme, which includes an eastbound aggregate quota of RMB 250 billion and a westbound aggregate quota of RMB 300 billion, remains unchanged. Securities institutions conducting cross-border conversion can hold cash and other specific classes of assets with the amount of no more than RMB 500 million in relevant markets for the purpose of shortening the conversion cycle and hedging market risk. The quotas and upper limit on the balance of the assets in relevant markets could be adjusted having regard to the operation of the Stock Connect scheme and the demands of the market.

中国证券监督管理委员会有关部门负责人就互联互通存托凭证业务答记者问

1、问: 请介绍下此次互联互通存托凭证业务拓展情况?

答:此次修订拓展了参与互联互通存托凭证业务境内外证券交易所的范围。境内方面，从上海证券交易所拓展至

深圳证券交易所，符合条件的沪深交易所上市公司可申请到证监会认可的境外市场发行全球存托凭证。境外方面，从英国拓展至瑞士、德国市场。中国证监会目前正与英国、瑞士、德国证券监管机构加强沟通合作，以确保存托凭证业务顺利开展。

2、问: 新增哪些关于融资型中国存托凭证的制度安排?

答:此次修订允许境外基础证券发行人以新增股票为基础证券在境内公开发行上市中国存托凭证，允许境外基础证券发行人采用市场化询价机制确定发行价格。明确募集资金原则上应当用于主业，发行人可根据募集资金用途将资金汇出境外或留存境内使用。

3、问: 境外基础证券发行人在境内发行存托凭证，披露财务报告时是否需要一并披露按照中国企业会计准则调整的差异调节信息?

答:境外基础证券发行人财务报告根据财政部按照互惠原则认定与中国企业会计准则实行等效的会计准则(以下简称等效会计准则)进行编制的，不需要披露按照中国企业会计准则调整的差异调节信息。根据财政部公告(2012 年第 65 号、2020 年第 47 号、2021 年第 31 号)，自 2012 年 1 月 1 日起认定欧盟成员国上市公司在合并财务报表层面所采用的国际财务报告准则与中国企业会计准则等效; 自英国脱欧过渡期结束后，英国上市公司在合并财务报表层面所采用的国际财务报告准则与中国企业会计准则等效; 自 2021 年 9 月 7 日起，瑞士境内注册发行人采用的国际财务报告准则与中国企业会计准则等效。境外基础证券发行人未采用等效会计准则编制所披露的财务报告的，应当根据《监管规定》第七条的要求披露按照中国企业会计准则调整的差异调节信息。

4、问: 在境外基础证券发行人信息披露和持续监管方面，做了哪些修改完善?

答: 境外基础证券发行人信息披露和持续监管要求，总体上实行与创新企业试点中境外已上市红筹企业相同的标准。在年报披露方面，允许境外基础证券发行人沿用境外现行年报在境内披露，同时说明境外现行年报与《公开发行证券的公司信息披露内容与格式准则第 2 号——年度报告的内容与格式》的主要差异及对投资者投资决策的影响，并聘请律师事务所就上述主要差异出具法律意见。在会计准则方面，对采用等效会计准则的境外基础证券发行人，允许其采用根据等效会计准则编制的财务数据计算相关财务指标。在权益变动及收购的信息披露义务等方面，按照境外投资者是否持有中国存托凭证进行区分，持有中国存托凭证的应按照境内法律法规规定履行相关义务。

5、问: 互联互通存托凭证业务跨境资金总额度是否变化?

答: 考虑到目前东向业务和西向业务仍有充足额度，维持现有互联互通存托凭证业务跨境资金总额度不变，东向业务总额度为 2500 亿元人民币;西向业务总额度为 3000 亿元人民币。开展跨境转换业务的证券经营机构可在相关市场持有不超过等值 5 亿元人民币的现金和特定投资品种，以缩短跨境转换周期、对冲市场风险。后续视互联互通存托凭证业务运行情况和市场需求，对总额度和上述资产余额进行调整。

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