



Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update 金融服务监管资讯

2023.06.23

Hong Kong Accounting and Financial Reporting Council Sets out Its Position on Documentation of an Auditor's Work on "Other Information" Included in the Annual Report of a Listed Entity

On April 28, 2023, in a recently completed investigation referred from The Stock Exchange of Hong Kong Limited, the Accounting and Financial Reporting Council (AFRC) identified an improper practice regarding audit documentation relating to the work carried out by the auditor (the Auditor) of a listed entity (the Listed Entity) on "other information" included in the Listed Entity's annual report. Other information represents financial or non-financial information (other than financial statements and the auditor's report thereon) included in an entity's annual report.

The Accounting and Financial Reporting Council (AFRC) is an independent regulator of accounting profession established under the Accounting and Financial Reporting Council Ordinance of Hong Kong. AFRC spearheads and leads the accounting profession to constantly raise the level of quality of professional accountants, and thus protects the public interest.

Requirements on obtaining and considering other information and related documentation

For listed entities, the Hong Kong Standard on Auditing (HKSA) 720 requires auditors to: obtain the final version of the annual report documents related to the audit before the completion of the audit report if possible and read other information provided by management and consider any differences with the financial statements. The auditors must also include a section in the report that explains the other information obtained and expected to be obtained. They must also perform the procedures required by HKSA 720 and document them in the audit files, including any material inconsistencies declared in the other information that do not require reporting. The final version of the other information on which the auditor has performed the required procedures must be included in the audit documentation.

There is nothing in the requirements of HKSA 720 that mandates or suggests that the only item of documentation required is the final version of the other information or that it is appropriate to remove earlier versions that comprise contemporaneous evidence of the work done at the time it was done. Furthermore, HKSA 200 explicitly requires that, in order to meet the overall objectives of the auditor, the auditor must comply with each relevant requirement in a relevant HKSA and perform any additional procedures necessary to pursue the objective in a relevant HKSA.

The practice adopted by the Auditor

The Auditor had obtained from management a version of documents containing other information before the date of the auditor's report and performed the procedures on the other information. That version of the documents was subsequently removed from the audit file upon the Auditor obtaining from management, after the date of the auditor's report, a later version of documents containing the other information. In doing so, the Auditor copied marks noted in the earlier version indicating audit work performed on the other information to the final version.

The AFRC's position

According to AFRC, auditors should ensure that the audit documentation always meets both the requirements and objectives of the HKSAs. In complying with the documentation requirement in HKSA 720, in order to meet the objective of documentation to enable the conduct of external inspections, the auditor should include in the audit file all versions of the documents containing other information, which the auditor has obtained from management before or after the date of the auditor's report and should not remove previous documentation that evidences work done before the date of the auditor's report. Furthermore, the documentation should clearly indicate the date of receipt of the final version.

The purposes of the documentation requirements in the HKSAs include evidencing that the audit was performed in accordance with and met the objectives of the auditor

under the HKSAs and to enable the conduct of external inspections in accordance with applicable requirements.

Including the final version of the other information in the audit documentation enables an external inspector to evaluate whether the auditor had in fact obtained the other information as later published prior to the date of the auditor's report by comparing the version included in the audit documentation with the published version of the other information. If the auditor had not in fact obtained the other information as later published, the auditor might not have performed the procedures required under HKSA 720 on all the material other information provided to investors. Accordingly, a statement included in the "Other Information" section of the auditor's report that the auditor has nothing to report might be misleading to investors reading the auditor's report.

As a result of the auditor removing from the audit documentation the version of the other information they obtained prior to the date of the auditor's report, the auditor impeded the ability of the AFRC to establish whether the auditor had in fact obtained and performed the procedures required under HKSA 720 on the other information as subsequently published, prior to the date of the auditor's report.

Remarks

The investigation conducted by the AFRC into the auditor of a listed entity has revealed certain inappropriate practices in handling audit documentation of other information. The AFRC emphasised that auditors must strictly adhere to the requirements of the HKSA to safeguard public interest. Auditors should obtain the final version of relevant annual report documents before completing the audit report, perform audit procedures on other information provided by management, and include all versions of other information in the audit documentation. Additionally, auditors should not remove any audit documentation to prove that audit work has been carried out in accordance with HKSA requirements. Failure to perform necessary procedures may be misleading to investors reading the auditor's report. Therefore, auditors must ensure compliance with all relevant requirements to protect investors' interests.

香港会计及财务汇报局就核数师在一家上市实体年报中有关「其他信息」的审计工作记录阐明立场

于2023年4月28日，香港会计及财务汇报局（会财局）完成一宗由香港联合交易所有限公司转介的调查，发现一家上市实体的核数师就「其他信息」的审计工作记录存在不当处理手法。其他信息是指实体年报中包含的财务或非财务信息（财务报表和审计报告除外）。

会财局是根据《会计及财务汇报局条例》成立的独立机构，是会计专业独立监管机构，致力于引领香港会计行业，通过有效监管，持续提升专业素质，从而有效地保障公众利益。

取得及考量其他信息及相关记录的要求

就上市实体而言，香港审计标准HKSA 720要求审计师：尽量在审计报告完成前获取年度报告相关文档最终版本，阅读管理层提供的其他信息考量与财报差异；报告部分说明获取和预期获取的其他信息；执行HKSA 720要求的程序记录在审计文件；拥有其他信息声明无需报告的重大矛盾；并纳入已按HKSA 720进行审计的其他信息版本。HKSA 720 没有要求或提议其他信息的最终版本是唯一需要的文件，或删除包含当时所做工作的同期证据的早期版本是适当的做法；此外，HKSA 200 明确规定，为实现核数师的总体目标，核数师必须遵守从相关 HKSA 中的每项相关要求，并执行任何必要的额外程序，以实现相关 HKSA 中的目标。

核数师采用的手法

核数师在核数师报告日期前已从管理层取得包含其他信息的文件版本，并就其他信息进行审计程序。核数师在审计报告日期之后，从管理层获得包含其他信息的文件的后期版本，并将早期版本的文件从审计文件中删除。在这样做时，核数师将早期版本中的标记复制到最终版本中，以标示就其他信息执行了审计工作。

会财局的立场

核数师应确保审计文件符合HKSAs的要求和目标。为遵从 HKSA 720 的文件记录要求，达到文件可予进行外部查察的目标，核数师应在审计文件中包括其从管理层取得有关其他信息的所有版本（无论在审计报告日期之前或之后取得），同时核数师不应删除证明在审计报告日期之前完成的工作的文件。此外，文件应清楚地表明取得最终版本的日期。

HKSAs 中文件记录要求的目的是证明审计乃按照 HKSAs 要求的目标进行，并可予进行外部查察。

核数师在审计文件中保留包括其他信息的最终版本，可让外部查察员能够通过比较审计文件中包含的版本与所发布版本的其他信息，评估核数师于核数师报告日期前是否已取得其他信息。如果核数师实际上没有取得后来公布的其他信息，核数师可能没有按照HKSA 720 规定的程序向给投资者提供的所有重要其他信息。因此，审计报告「其他信息」部分中包含的关于核数师无须报告的声明可能会误导阅读审计报告的投资者。

由于核数师从审计文件中删除了他们在审计报告日期之前获得的其他信息的版本，核数师妨碍了会财局判断核数师是否于核数师报告日期前已获取并执行了HKSA 720 就所公报其他信息所需的程序。

结语

会财局针对一家上市实体核数师的调查显示，核数师在处理其他信息的审计工作记录方面存在不当手法。会财局再次强调了核数师必须严格遵守HKSA的要求，从而保障公众利益。审计师应该在审计报告完成前获取年度报告相关文档的最终版本，对管理层提供的其他信息进行审计程序，并在审计文件中纳入所有其他信息的版本。此外，核数师不应删除任何审计工作记录，以证明审计工作已按照HKSA的要求执行。如果核数师未执行必要程序，可能会对投资者造成误导；因此，核数师必须确保遵守所有相关要求，以保护投资者的权益。

Source 来源:

https://www.afrc.org.hk/media/zfq1zh4/press-release_documentation-of-an-auditor-s-work_en.pdf

Hong Kong Exchanges and Clearing Limited Publishes Regulation Newsletter for Listed Issuers: Disclosure of Business Valuations in Transactions

In June 2023, Hong Kong Exchanges and Clearing Limited (HKEX) published its June 2023 Regulation Newsletter for Listed Issuers. The newsletter aims to keep issuers updated on issuer-related regulatory developments and support issuers on their compliance journey. It covers topics including auditing, financial reporting and related internal control matters; Compliance with new Rules on share schemes; Disclosure of business valuations in transactions; and HKEX's ongoing journey in application of technology.

Disclosure of business valuations in transactions

Among other things, the HKEX has provided further clarification on the disclosure of business valuations in transactions. In a notifiable transaction, the Main Board Listing Rule 14.58(5) and GEM Listing Rule 19.58(6) require issuers to disclose the basis for the consideration and the terms of the transaction. While the Rules do not generally require an independent business valuation to support the consideration agreed by the issuer, HKEX's Frequently Asked Question Series 7 No. 21 requires that, where the valuation of a target company is a primary factor in forming the basis for the consideration or other material terms of a notifiable transaction, disclosure of the valuation would need to be made in the relevant announcement and circular. Further, the general standard for disclosure requires that information contained in issuers' documents must be

accurate and complete in all material respects and not be misleading or deceptive.

In HKEX's vetting of issuers' transaction announcements, they are particularly focused on transactions where they are concerned whether the terms of the transaction (including the consideration) are fair and reasonable to the issuer and its shareholders as a whole. In HKEX's observation, the disclosure in these issuers' documents were overly general and simplistic. While the basis for the consideration for these transactions was primarily based on independent valuations, the disclosure about the valuation fell short of information that was necessary for investors to understand the underlying valuation methods and assumptions, bases for adopting them, and how the valued amount was derived.

Given this, HKEX highlighted some general principles for disclosure of valuation:

- A. Selection of valuation methods
 1. Issuers should describe the selected valuation models and explain why they are selected, in particular why the methods were appropriate for the transactions or the target companies. For example:
 - When applying the discounted cash flows (DCF) method to value a start-up target company, issuers should explain how the use of the DCF method was appropriate in the absence of a historical track record to substantiate the forecasts.
 - When applying the market approach to value a target company engaging in a novel or innovative industry, issuers should explain how the use of the market approach is appropriate in the absence of similar or comparable companies.

Where more than one valuation method is used, issuers should disclose the process in analysing the values derived from different valuation methods and how they contributed to the appraised value.

- B. Valuation assumptions and inputs
 1. Issuers should explain, with detail and in specific terms, their assumptions and adopted valuation inputs.
 2. Where the valuation assumptions and/or inputs are significantly different from the historical information of target company/industry or the parameters of comparable companies, issuers should further substantiate the fairness and reasonableness for using the assumptions and/or inputs.

For example:

- In a DCF valuation where the projected revenue is premised on a significant growth over the historical trend of the target company and/or the projected profit margin is significantly higher than that of the target company's industry peers, the issuer should disclose details of the basis of projections and explain why such projections are fair and reasonable for the transaction or the target company.
- In a market approach valuation, the issuer should disclose the criteria and process for selecting comparable companies, and explain why the selected market comparables are appropriate in the circumstances. Where the multiples of comparable companies span across a wide range, the issuer should further explain the rationale for including or excluding any potential outliers, and the basis of deriving the multiple for the valuation (instead of, for instance, simply taking an average of the widely dispersed multiples of "comparable companies" with questionable comparability).

The issuer is responsible for providing comprehensive disclosure of relevant valuation information in announcements and circulars to enable investors to make an informed judgment about whether the transaction price is fair and reasonable. However, after reviewing some issuers' documents, the Hong Kong Stock Exchange (HKEX) pointed out that the disclosure of valuation was too brief to allow investors to understand the valuation methods, assumptions, and the process leading to the results.

To improve the situation and promote market transparency, the HKEX has set out detailed guidelines on valuation disclosure. The HKEX expects issuers to follow these guidelines, clearly explaining the valuation methods and models used in the documents, explaining the rationale for their selection, and providing detailed disclosure of relevant assumptions, input parameters, and their basis. When certain assumptions or parameters differ significantly from the historical trends of the target company or the industry, the issuer needs to further explain the reasonableness of adopting them.

In conclusion, by improving the disclosure of business valuation in transactions, issuers can help investors to fully understand the transaction terms, especially whether the transaction price is fair and reasonable and thereby enhancing market transparency and investor protection. Issuers should follow the HKEX's guidelines and provide comprehensive disclosure in documents to promote the healthy development of the market.

香港交易及结算所有限公司刊发上市发行人监管通讯： 关于交易中业务估值的披露指引

于2023年6月，香港交易及结算所有限公司（港交所）刊发了2023年6月的上市发行人监管通讯。监管通讯旨在提供最新的发行人监管资讯，帮助发行人维持合规经营。当中涵盖审计、财务汇报及相关内部监控事宜；有关股份计划的《上市规则》修订后的合规情况；在交易中业务估值的披露及；交易所继续应用科技支援上市监察工作事宜。

在交易中业务估值的披露

当中，港交所对在交易中业务估值的披露作出了更多的阐述。在须予公布的交易中，《上市规则》（《主板规则》第14.58(5)条和GEM规则》第19.58(6)条要求发行人披露代价的基准及交易的条款。尽管《上市规则》一般并无要求这些交易须提供独立的业务估值以支持发行人协定的代价，惟港交所的常问问题系列七第21题要求，若目标公司的估值是达成须予公布的交易代价或其他重要条款的基础之主要因素，则须于相关公告及通函内披露该等估值。此外，按照该等披露的一般标准，发行人必须确保其文件所载资料在所有重大方面均为准确及完整，且并无误导或欺诈成分。

港交所在审阅发行人的交易公告时，特别关注交易条款（包括代价）对发行人及其股东整体是否公平合理的交易。港交所表示根据他们的观察，该等发行人文件里的披露过于笼统简单。尽管计算交易代价的基准主要基于独立估值，但有关估值的披露资料不足以让投资者了解相关估值的方法及假设、采纳该等方法的基准以及如何得出估值金额。

为此，港交所列出一些估值披露的一般原则：

A. 估值方法的选择

1. 发行人应说明所选估值模型，并解释选用的原因，特别是为何该估值模型适合于有关交易或目标公司。例如：
 - 在应用贴现现金流量(DCF)法对初创目标公司进行估值时，发行人应解释，在缺乏历史业务纪录支持预测的情况下，为何采用DCF方法属适当。
 - 在应用市场法对从事新型或创新行业的目标公司进行估值时，发行人应解释，在缺乏类似或可资比较的公司的情况下，为何使用市场法属适当做法。

倘使用超过一种估值方法，则发行人应披露分析不同估值方法得出的价值之过程以及如何构成最终估值。

B. 估值假设及输入参数

1. 发行人应详细及具体解释其估值的假设以及所采纳的估值输入参数。
2. 倘有关的估值假设及/或输入参数与目标公司/行业的历史资料又或可资比较公司的参数存在重大差异，发行人应进一步证明何以其使用该等假设及/或输入参数是公平合理的做法。

例如：

- 在贴现现金流量估值中，倘目标公司的预测收益较过往趋势有大幅增长及/或预测利润率远高于同业，则发行人应披露其预测基准的详情，并解释为何有关预测对被评估的交易或目标公司而言属公平合理。
- 在市场法估值中，发行人应披露选择可资比较公司的标准及程序，并解释在有关情况下选定该等市场可资比较公司属适当的原因。倘可资比较公司的倍数范围广泛，发行人应进一步解释包括或排除任何潜在异常值的理据，以及得出估值倍数的基准（而非（举例而言）仅使用可比性存疑的「可资比较公司」的广泛分散倍数的平均值）。

发行人有责任在交易公告及通函中详尽披露相关估值资料，让投资者对交易代价是否公平合理作出推断。然而，港交所审视部分发行人文件后指出，有关估值的披露过于简略，难以让投资者理解估值方法、假设和得出结果的过程。

为改善情况和促进市场透明度，港交所列出估值披露的详尽指引。港交所期望发行人遵循该等指引，在文件中清晰说明所选用的估值方法及模型，解释选择理据，并详细披露相关假设、输入参数及其依据。当某些假设或参数与目标公司的历史趋势或同业有重大差异时，发行人需要进一步阐述采纳该等假设或参数的合理性。

总而言之，透过改善有关交易中的业务估值披露，发行人有助投资者全面了解交易条款，特别是交易代价是否公平合理，从而提高市场透明度及投资者保障。发行人应遵循港交所的指引，在文件中提供详尽的披露，促进市场的健康发展。

Source 来源：

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202306.pdf

Hong Kong Securities and Futures Commission Consults on Revisions to Takeovers and Share Buy-Back Rules

On May 19, 2023, the Hong Kong Securities and Futures Commission (SFC) launched a consultation on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (Codes). The consultation paper introduced some green initiatives and some proposed amendments to the Codes including codification of existing practices of the Executive Director of the SFC's Corporate Finance Division or any delegate of the Executive Director (Executive) clarifications on the Codes and other matters. The major amendment proposals set out in the Consultation Paper include voting, acceptances and concert party issues; chain principle; offer period and timetable; offer requirements and partial offers; and various miscellaneous amendments.

Some key proposed changes are summarised below:

Deduction of dividends from offer price

With reference to the regulations governing the payment of dividends to shareholders of a company that is the target of a takeover offer, the proposed amendment specified that an offeror cannot reduce the amount offered to shareholders by an amount equivalent to any dividend or distribution paid or payable by the target company, unless the offeror has specifically reserved the right to do so in an announcement.

Additionally, if a dividend or other distribution is subject to withholding or other deductions, the offer consideration should be reduced by the gross amount received or receivable by the offeree company shareholders.

Chain principle

The SFC also proposed changes to the Codes' chain principle, which applies when there is a mandatory general offer obligation for a second company after an acquisition of statutory control of a company, where the first company controls the second company. Note 8 to Rule 26.1 sets out the Substantiality Test and the Purpose Test, which determine whether a chain principle offer is required. The SFC identifies issues with the Substantiality Test, including uncertainty regarding asset and profit comparison, and a lack of specified "look-back" periods for financial information.

The proposed changes include adding market capitalisation as a parameter for comparison when determining the Substantiality Test, codifying the Executive's practice of considering at least the three most recent financial periods, and updating Practice Note 19 to provide further guidance on the Executive's approach to the Substantiality Test. No changes are being proposed to the Purpose Test. These changes aim to address the issues identified by the SFC and provide

greater clarity and guidance on the application of the Substantiality Test.

“Put Up or Shut Up” order

The proposed amendments also cover Put Up or Shut Up (PUSU) orders. A PUSU order essentially requires a potential offeror to announce its firm intention to make an offer within a set time period (put up), or to announce that it will no longer proceed with an offer (shut up). The purpose of a PUSU order is to prevent the offeree company from being under siege for an indefinite period, which may have a negative impact on the offeree company's normal business operations. Currently there is no explicit provision in the Codes relating to the PUSU orders, the SFC proposes to codify the existing practice and empower the Executive to impose PUSU orders in exceptional circumstances.

In determining whether to impose a PUSU order, the Executive will consider various factors, including the duration of the offer period, the reason for the delay in the offeror's announcement, the proposed offer timetable, the effect of the offer period on the offeree company, and the conduct of the parties involved in the takeover bid.

The proposed new Rule 3.9 would allow the offeree company to request the Executive to impose a time limit on the potential offeror to clarify its intention with regard to the offeree company and empower the Executive to impose such a time limit in exceptional circumstances. The potential offeror must then either announce a firm intention to make an offer or declare that it does not intend to make an offer before the expiry of the time limit. The new Rule will apply to share buy-back transactions and will be included in the list set in Rule 5.1(c) of the Hong Kong Code on Share Buy-backs. Any failure to comply with a PUSU order will amount to a clear breach of the Codes, which may lead to disciplinary action being taken against the relevant parties.

A broader definition of “close relatives”

It is also proposed that the definition of "close relative" in the Codes to be expanded to include more relationships that are presumed to be acting in concert, such as grandparents and grandchildren, a sibling's spouse or de facto spouse and their children, and the parents and siblings of a person's spouse or de facto spouse. The revised definition would also clarify that "children" include natural, adopted, and step-children.

As a result of the proposed expansion of definition, more individuals would be entitled to the benefits of a waiver under Note 6 to Rule 26.1. The SFC will continue to allow applications to rebut the presumption of acting in concert, but arguments based solely on lack of regular contact or absence of a recent relationship are unlikely

to be accepted as grounds to rebut a presumption without corroborative evidence (such as, litigation between family members evidencing a breakdown of relationship).

In conclusion, the proposed amendments to the Codes aim to provide more clarity, structure and codification of existing practices. The changes around dividends, the chain principle, PUSU orders and the definition of "close relatives" seek to address issues identified by the SFC, reduce uncertainty and close potential loopholes. The amendments would strengthen the Codes and help ensure more transparent, fair and orderly takeover activity in Hong Kong's capital markets. The consultation period ended on June 23, 2023.

香港证券及期货事务监察委员会就修订收购及回购规则展开咨询

于 2023 年 5 月 19 日，香港证券及期货事务监察委员会（证监会）就《公司收购、合并及股份回购守则》（守则）的建议修订展开咨询。咨询文件中引入了一些环保措施和对两份守则作出了一些建议修订，包括将证监会企业融资部执行董事或任何获其转授权力的人（执行人员）的现行惯常做法编纂为守则条文。咨询文件中提出的主要修订建议包括投票、接纳及有关一致行动人士的事宜；连锁关系原则；要约期及时间表；部分要约和要约规定；和杂项修订。

以下是一些主要的建议：

从要约价扣除股息

有关规管被收购公司股东收取股息的规例，建议修改规定要约人不得从要约代价中扣除同被收购公司已派付或应派予股东的任何股息或分派的金额，除非要约人已于公告中明确保留此项权利。

此外，若股息或其他分派须扣除预扣税或其他款项，要约代价便应扣除被收购公司股东已收取或应收取的款项总额。

连锁关系原则

证监会亦建议修改守则有关连锁原则，即当一家公司取得另一家公司的法定控制权后，对第二家公司而言存在强制性全面要约责任。规则 26.1 注释 8 载有重大性测试及目的测试，以决定是否必须提出连锁原则要约。证监会指出重大性测试存在一些问题，包括资产及利润比较出现不确定性及财务资料并未设定明确“回顾”期。

建议修改包括在决定重大性测试时加入市值作为其中一项比较参数、将考虑最少三个最近财政期间作行动常规，以及更新应用指引第 19 号以提供更多详情。建议并没有就提出目的测试提出修改。该等修改旨在处理证监会所辨别的问题并为应用重大性测试提供更大的清晰度和指引。

“承担或退出”命令

建议修改亦涵盖“承担或退出”命令。“承担或退出”命令基本上要求有意要约人在规定的时间内公布其作出要约的确实意图（承担），或公布其不再继续进行要约（退出）。“承担或退出”命令旨在防止受要约公司被无限期制肘，从而可能对受要约公司的正常业务运作造成负面影响。目前守则并无有关于“承担或退出”命令的明文规定，证监会建议将的现行惯常做法纳入守则并赋予执行人员在例外情况下发出“承担或退出”命令的权力。

在决定是否实施“承担或退出”命令时，执行人员会考虑多项因素，包括要约期限、要约人公布延迟的原因、建议要约时间表、要约期对被要约公司的影响，以及涉及收购要约的各方行为。

新的规则 3.9 将容许被要约公司要求执行人员向要约人施加厘清其有关被要约公司意向的时限，并赋予执行人员在例外情况下实施有关时限。要约人然后必须在期限届满前，或公布具体要约收购被要约公司的意图，或声明其没有要约收购被要约公司的意图。新规则将适用于股份回购交易，并将纳入香港股份回购守则 5.1(c) 条列出的名单内。不遵守“承担或退出”命令将构成明显违反守则的行为，可能导致有关各方被采取纪律行动。

「近亲关系」的更广泛定义

另建议扩大守则中“近亲”的定义，以包括更多被推定为一致行动的关系，例如祖父母和孙子女及外孙子女、兄弟姐妹的配偶或同居配偶及其子女，以及配偶或同居配偶的父母和兄弟姐妹。修订后的定义还将澄清“子女”包括亲生子女、领养子女和继子女。

由于建议定义的扩展，更多人将有权受惠于守则 26.1 条注释 6 的宽免。证监会会继续考虑为反驳一致行动的推定而提出的反驳申请。与有关人士没有定期联络或已有一段时间没有见面的陈词，在没有其他佐证（例如能显示关系破裂的家庭成员之间的诉讼）的情况下，相当可能不会获证监会接纳为反驳推定的理由。

总括而言，守则的建议修改旨在提供更大清晰度、结构性和纳入现行惯常做法。有关股息、连锁原则、“承担或退出”命令以及「近亲关系」的定义的修改，意在处理证

监会辨别到的问题、并减少不确定性并封锁潜在漏洞。倘若有关建议实施，修订后的守则将得到加强，并有助于确保香港资本市场的收购活动更加透明、公平和有序。咨询期已于 2023 年 6 月 23 日结束。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR52>
<https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=23CP5>
<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=23CP5>

Hong Kong Exchanges and Clearing Limited Launches Hong Kong Dollar - Renminbi Dual Counter Model and Dual Counter Market Making Programme

On June 19, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) launched its new Hong Kong Dollar (HKD) - Renminbi (RMB) Dual Counter Model and the Dual Counter Market Making Programme in its securities market. A total of 24 Hong Kong-listed companies, accounting for 40 per cent of the average daily turnover of the cash equities market, will trade and transact as Dual Counter securities at launch, offering both HKD and RMB counters. In addition, nine Exchange Participants have joined the Dual Counter Market Making programme as market makers.

Under the new Dual Counter Model, designated shares listed in both HKD and RMB counters can be traded and settled in RMB or HKD. Dual Counter Market Makers for eligible shares offer continuous buy and sell quotes for securities in the RMB counter, providing liquidity for HKD-RMB Dual Counter securities trading and minimising any possible price discrepancies between the two counters. The Dual Counter Model provides the groundwork to support the next phase of development to allow investors from Mainland China to trade Hong Kong-listed RMB securities through Southbound Stock Connect.

On the other hand, on June 6, 2023, the Hong Kong Securities and Futures Commission (SFC) published revised guidance on short selling reporting and stock lending record keeping to align with the launch of the Dual Counter Model in the Hong Kong securities market.

The SFC has updated the Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements to cover inter-counter transactions of securities under the Dual Counter Model. Corresponding revisions have also been made to the SFC's Frequently Asked Questions for Short Position Reporting.

The Guidance Note clarifies that as HKD and RMB counters for the same security are of the same class, the following inter-counter transactions fall within the current framework:

- (1) when an investor buys a security at one counter first and sells at another, the sale is considered an ordinary sale, and
- (2) when a Dual Counter Model market maker sells a security at one counter and buys it at another, the inter-counter transaction falls under the current exemption, subject to certain conditions.

HKEX stated that the ongoing internationalisation of the RMB will be one of the defining characteristics of global markets in the next decade, and HKEX is delighted to be taking another step forward in building a liquid and accessible RMB ecosystem. The launch of the Dual Counter initiative is the latest broad suite of RMB products, providing investors with more choice and companies with another channel to tap the Hong Kong offshore RMB pool. HKEX also expressed its gratitude to all market participants, regulators and those involved whose partnership and collaboration have helped to continue to reinforce Hong Kong's role as the preeminent global offshore RMB hub.

The SFC also stated that it supports dual counter trading, which will help promote the RMB's internationalisation and use as an investment currency. An effective and efficient mechanism provided for market makers will help promote liquidity and minimise price differences between the two counters.

香港交易及结算所有限公司推出「港币-人民币双柜台模式」及双柜台庄家机制

于 2023 年 6 月 19 日，香港交易及结算所有限公司（香港交易所）在香港证券市场推出「港币-人民币双柜台模式」（双柜台模式）及双柜台庄家机制。双柜台模式推出初期共有 24 家香港上市公司（占现货股票市场日均成交额约四成）同时提供港币柜台及人民币柜台的证券供投资者交易，另有九名交易所参与者出任双柜台庄家。

在新的双柜台模式下，同时具备港币及人民币柜台的指定证券可以人民币或港元交易及结算。双柜台庄家将为这些合资格证券的人民币柜台提供持续买卖双边报价，为双柜台证券交易提供流动性，并收窄双柜台之间的价格差异。新模式将为后续内地投资者通过港股通买卖香港上市的人民币计价的证券做好前期准备工作。

另一方面，香港证券及期货事务监察委员会（证监会）在 2023 年 6 月 6 日刊发经修订的有关申报卖空活动及备存证券借出纪录的指引，以配合双柜台模式的推出。

证监会已经更新《有关申报卖空活动及备存证券借出纪录规定的指引》，以涵盖在双柜台模式下的跨柜台证券交易。证监会亦对《淡仓申报——〈常见问题〉》作出了相应修改。

该指引阐明，由于在港币及人民币柜台买卖相同的证券属同一类别，故下列跨柜台交易均属于现行框架的范围内：

- (1) 当投资者先在其中一个柜台购入某证券，并在另一柜台出售该证券时，该出售被视为普通的出售；及
- (2) 当双柜台模式庄家在其中一个柜台出售某证券，并在另一柜台购入该证券时，在符合若干条件的前提下，现有豁免将适用于该跨柜台交易

香港交易所表示人民币国际化进程在未来十年会在全球市场中扮演更重要的角色。香港交易所很高兴在构建流动性充裕、买卖方便的人民币产品生态圈方面又迈出了进一步。双柜台模式将丰富人民币产品，为投资者提供更多交易选择，也为企业提供了一个利用香港离岸人民币资金池的渠道。香港交易所亦表示感谢所有市场参与者及监管机构对双柜台准备工作的支持和携手巩固香港作为全球最大离岸人民币中心的地位。

证监会表示证监会支持双柜台交易，这将有助推动人民币国际化及其作为投资货币的使用。为庄家提供有效和具效率的机制将有助促进流动性，并收窄双柜台之间的价格差异。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2023/230619news?sc_lang=en
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR59>
<https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidance-note-on-short-selling-reporting-and-st/Guidance-Note-on-short-selling-reporting-and-stock-lending-record-keeping-requirementJun-2023-Eng.pdf?rev=bdaf55ce1f034e22a75d48edc1d6e0d2>

Hong Kong Securities and Futures Commission Concludes Consultation on Regulation of Virtual Asset Trading Platforms

On February 20, 2023, the Hong Kong Securities and Futures Commission (SFC) issued the Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the SFC. The consultation period ended on March 31, 2023. The proposed regulatory requirements cover safe custody of assets, Know-Your-Client processes, anti-money laundering/counter-financing of terrorism (AML/CFT), avoidance of conflicts of interest, criteria for

admitting virtual assets for trading, prevention of market manipulative and abusive activities, accounting and auditing, risk management and cybersecurity.

On May 23, 2023, the SFC released the Consultation Conclusions on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the SFC. Respondents are from industry and professional associations, professional and consultancy firms, market participants, licensed corporations, individuals and other stakeholders. Respondents generally welcomed the proposed requirements, a significant majority of respondents agreed to SFC's proposal to allow licensed trading platform operators to serve retail investors. The SFC will implement a number of robust measures to protect these investors including ensuring suitability in the onboarding process, good governance, enhanced token due diligence, admission criteria and disclosures.

The Guidelines for Virtual Asset Trading Platform Operators gazetted on May 25, 2023 have been effective on June 1, 2023. The Guidelines set out, among others, safe custody of assets, segregation of client assets, avoidance of conflicts of interest and cybersecurity standards and requirements expected of licensed trading platforms. SFC will provide additional guidance on the new regulatory requirements, other implementation details including licence application procedures, as well as more information about the transitional arrangements.

The SFC stated that providing clear regulatory expectations is the key to fostering responsible development. Hong Kong's comprehensive virtual assets regulatory framework follows the principle of 'same business, same risks, same rules' and aims to provide robust investor protection and manage key risks. This will enable the industry to develop sustainably and support innovation. SFC welcomes applications from virtual asset trading platform operators who are prepared to comply with its standards for a license and those who do not plan to do so should proceed to an orderly closure of their business in Hong Kong.

The SFC also stated that they will continue its efforts with the Investor and Financial Education Council to warn investors about the risks of trading on unregulated platforms. In particular, despite the commencement of the regime on June 1, 2023, the SFC has yet to approve any virtual asset trading platform to provide services to retail investors and most virtual asset trading platforms currently accessible by the public are not regulated by the SFC.

香港证券及期货事务监察委员会就虚拟资产交易平台的监管发表咨询总结

于 2023 年 2 月 20 日，证券及期货事务监察委员会（证监会）发表《有关适用于获证券及期货事务监察委员会发牌的虚拟资产交易平台营运者的建议监管规定的咨询文件》。咨询期已于 2023 年 3 月 31 日结束。有关建议监管规定涵盖稳妥保管资产、认识你的客户的程序、打击洗钱 / 恐怖分子资金筹集、避免利益冲突、纳入虚拟资产以供买卖的准则、预防市场操纵及违规活动、会计及审计、风险管理，以及网络安全。

于 2023 年 5 月 23 日，证监会发表《有关适用于获证券及期货事务监察委员会发牌的虚拟资产交易平台营运者的建议监管规定的咨询总结》。咨询的回应者来自业界和专业组织、专业及咨询公司、市场参与者、持牌法团、个人及其他持份者。回应者普遍欢迎有关建议规定，绝大多数回应者同意证监会有关容许持牌交易平台营运者向零售投资者提供服务的建议。证监会将实施一系列妥善的措施来保障该等投资者，包括在与客户建立业务关系的过程中确保合适性、良好管治、加强的代币尽职审查、纳入准则及披露。

证监会于 2023 年 5 月 25 日在宪报刊登的《适用于虚拟资产交易平台营运者的指引》已于 2023 年 6 月 1 日生效。该指引订明多项适用于持牌交易平台的标准和规定，其中包括稳妥保管资产、分隔客户资产、避免利益冲突及网络安全。证监会将就新监管规定提供额外指引、其他实施细节（包括牌照申请程序），以及过渡安排的详情。

证监会表示提供清晰的监管期望方能促进负责任的发展。香港全面的虚拟资产监管框架依循‘相同业务、相同风险、相同规则’的原则，旨在提供妥善的投资者保障并管控主要风险，从而推动业界可持续地发展和支持创新。而证监会欢迎已准备好遵守证监会标准的虚拟资产交易平台营运者申领牌照。至于无意申领牌照的营运者，则应着手以有序方式结束其于香港的业务。

证监会并表示将与投资者及理财教育委员会继续合作，提醒投资者有关在不受规管的平台上投资的风险。特别是，尽管有关制度已于 2023 年 6 月 1 日生效，但证监会尚未批准任何虚拟资产交易平台向零售投资者提供服务，且现有大部分公众可接触的虚拟资产交易平台均不受证监会监管。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR53>
<https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=23CP1>
<https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=23CP1>

Hong Kong Securities and Futures Commission Concludes Consultation on the Position Limit Regime

On November 22, 2022, the Hong Kong Securities and Futures Commission (SFC) published the Consultation Conclusions and Further Consultation on proposed changes to the Securities and Futures (Contracts Limits and Reportable Positions) Rules and the Guidance Note on Position Limits and Large Open Position Reporting Requirements. The SFC concluded some of the proposals including:

- (1) expanding the list of “specified contracts” for granting excess position limits;
- (2) prescribing position limits and reporting levels for some new contracts;
- (3) increasing the position limit for renminbi currency contracts;
- (4) imposing large open position reporting requirements for holiday trading contracts;
- (5) clarifying the circumstances under which a clearing participant is not regarded as having discretion over its clients’ positions; and
- (6) introducing an excess position limit regime for clearing participants.

On June 5, 2023, the SFC published conclusions to its further consultation on proposed changes to the position limit regime for the derivatives market. These include imposing obligations on asset managers who manage funds or sub-funds of umbrella funds and amending the Securities and Futures (Contracts Limits and Reportable Positions) Rules in response to HKEX’s proposed enhancements to its position limit regime. The obligations relate to the application of position limits and reporting requirements to funds. Other changes include revising the statutory position limits for stock options and stock futures contracts and removing the additional position limits for mini stock index futures and options contracts.

After considering market feedback, the SFC will implement the proposed changes to give more clarity on regulatory requirements in relation to funds to facilitate compliance and provide more flexibility to the market by increasing position limits for certain products. Subject to the legislative process, the SFC plans for the law changes to come into effect in December 2023.

香港证券及期货事务监察委员会发表有关持仓限额制度的咨询总结

在 2022 年 11 月 22 日，香港证券及期货事务监察委员会（证监会）发表了《有关建议修订〈证券及期货（合约限量及须申报的持仓量）规则〉及〈持仓限额及大额未

平仓合约的申报规定指引〉的咨询总结和进一步咨询》。当中，证监会就部分建议作出了总结，该等建议包括：

- (1) 扩大有关超逾上限持仓量许可的“指明合约”的名单；
- (2) 就某些新合约订明持仓限额及须申报水平；
- (3) 调高人民币货币合约的持仓限额；
- (4) 就在假期交易的合约施加大额未平仓合约申报规定；
- (5) 厘清结算所参与者在哪些情况下不被视为对其客户的持仓具酌情决定权；及
- (6) 就结算所参与者引入超逾上限持仓量许可制度。

于 2023 年 6 月 5 日，证监会就对衍生工具市场持仓限额制度的建议修订的进一步咨询发表咨询总结。这包括对管理基金或伞子基金的子基金的资产管理人施加责任，以及因应香港交易所对其持仓限额制度的改进建议而修订《证券及期货（合约限量及须申报的持仓量）规则》。有关的责任涉及持仓限额及申报规定对基金的应用。其他修订包括修订股票期权及股票期货合约的法定持仓限额，以及移除小型股票指数期货及期权合约的额外持仓限额。

证监会在考虑市场意见后，将落实有关的建议修订以便更明确地厘清与基金有关的监管规定和利便业界合规，以及提高若干产品的持仓限额藉此为市场提供更大的灵活性。视乎立法程序的进度，证监会计划于 2023 年 12 月实施有关法例修订。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR58>
<https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=22CP5>

Information in this update is for general reference only and should not be relied on as legal advice.

本资讯内容仅供参考及不应被依据作为法律意见。

© 2023 JCHM Limited. All rights reserved.