

Hong Kong Accounting and Financial Reporting Council Investigation Report Shows Auditors' Inadequate Response to Increasing Incidence of Fraud in Financial Statements

On September 4, 2023, the Hong Kong Accounting and Financial Reporting Council (AFRC) issued its 2023 Annual Investigation and Compliance Report (Annual I&C Report), covering the 12 months from April 1, 2022 to March 31, 2023.

In 2022/23, AFRC, as the independent regulator of the accounting profession in Hong Kong, processed 253 pursuable complaints and handled 154 investigations and 33 enquiries. It also selected 130 sets of financial statements for proactive review, from which eight investigations/enquiries were initiated.

From the investigations and enquiries handled regarding listed entity financial statements, AFRC identified the following common areas of potential misconduct and financial reporting non-compliance:

Top 5 areas of potential misconduct by public interest entity (PIE) auditors

- i) obtaining sufficient appropriate audit evidence (87%)
- ii) performing engagement quality control review (71%)
- iii) exercising professional skepticism and professional judgment (63%)
- iv) performing audit work on accounting estimates (48%)
- v) meeting their responsibilities relating to fraud in their audit of the financial statements (30%)

Top 5 areas of potential financial reporting non-compliance

- i) impairment assessment and fair value measurement (34%)
- ii) recognition and measurement of financial instruments (25%)
- iii) fraudulent financial reporting or misappropriation of assets (20%)

- iv) going concern assessment and reporting (16%)
- v) revenue recognition (15%)

From the investigations in relation to professional persons (i.e. Certified Public Accountants (CPAs) and practice units), AFRC identified the following common areas of misconduct:

Top 4 areas of potential misconduct by professional persons

- i) maintaining integrity and proper professional conduct (59%)
- ii) complying with the auditing and assurance standards (42%)
- iii) exercising professional competence and due care (17%)
- iv) maintaining independence and complying with other ethical requirements (17%)

AFRC stated that under the current volatile economic environment, the financial markets are more prone to financial reporting risks including risks due to fraud. AFRC will continue applying its risk-focused approach to identify and enquire into cases of auditing misconduct and accounting non-compliance. We will resolutely take swift and robust regulatory actions to uphold the quality of audit and financial reporting, thereby protecting the public interest."

Remarks

The AFRC report highlights the need for auditors to exercise greater professional skepticism when conducting audits, particularly when assessing estimates and identifying fraud risks. During periods of economic turbulence, there is an increased risk of false recording and improper accounting treatment in financial statements. It is imperative that auditors uphold audit quality through sufficient evidence gathering and robust quality control. The accounting profession should continue working closely with regulators to detect misconduct early and take disciplinary actions when warranted. Protecting public interests hinges upon the integrity of auditors and the quality of financial reporting.

香港会计及财务汇报局调查报告发现核数师未有充分应对财务报表中日益增加之欺诈行为

于 2023 年 9 月 4 日，香港会计及财务汇报局（会财局）发布 2023 年度调查报告，涵盖由 2022 年 4 月 1 日至 2023 年 3 月 31 日止年度。

会财局为香港会计专业的独立监管机构。在 2022/23 年，会财局共处理 253 宗可跟进投诉、154 宗调查及 33 宗查讯。会财局亦主动筛选了 130 份财务报表进行审阅，并从中展开 8 宗调查/查讯。

在所处理的有关上市实体财务报表的调查及查讯中，会财局识别到以下常见潜在失当行为及财务汇报不遵从事宜：

五大公众利益实体核数师常犯潜在失当行为

- i) 未能获取充分、适当的审计证据 (87%)
- ii) 未能进行充分的项目质素监控复核 (71%)
- iii) 未能运用足够的专业怀疑态度和专业判断 (63%)
- iv) 未能对会计估计进行充足的审计工作 (48%)
- v) 未能就财务报表审计中与欺诈相关的行为履行核数师职责 (30%)

五大常见的财务汇报不遵从事宜

- i) 减值评估及公平值计量 (34%)
- ii) 金融工具的确认及计量 (25%)
- iii) 欺诈性财务汇报或挪用公司资产 (20%)
- iv) 持续经营评估及汇报 (16%)
- v) 收入确认 (15%)

从有关专业人士（即注册会计师及执业单位）的调查中，会财局识别出以下常见失当行为：

四大专业人士潜在失当行为

- i) 未能恪守诚信，避免专业失当行为 (59%)
- ii) 未能遵守审计和核证准则 (42%)
- iii) 未能发挥专业能力及应尽注意 (17%)
- iv) 未能坚守独立性和其他道德要求 (17%)

会财局表示在当前动荡的经济环境下，金融市场更容易出现财务汇报风险，包括由欺诈及舞弊构成的风险。会财局将继续采取风险为本的方式，识别和调查审计失当行为及会计不遵从事宜。会财局将坚决采取迅速有力的监管行动，维护审计和财务汇报质素，从而保障公众利益。

结语

会财局的报告强调核数师进行审计时，特别是评估会计估计和识别欺诈风险时，需运用更高的专业怀疑态度。在经济动荡时期，财务报表存在虚假记载、不当会计处理的风险加大。核数师通过收集充足证据和坚固的质量控制来维持审计质素尤为重要。会计界必须继续与监管机构保持紧密合作，及早发现失当行为并在有需要时采取纪律行动。维护公众利益有赖于核数师的诚信和财务汇报的质素。

Source 来源:

<https://www.afrc.org.hk/en-hk/news-centre/news/afrc-investigation-report-shows-auditors-inadequate-response-to-increasing-incidence-of-fraud-in-financial-statements/>
https://www.afrc.org.hk/media/nqrmjxww/afrc_press-release_annual-investigation-and-compliance-report-2023_en_clean.pdf

Hong Kong Securities and Futures Commission Issues Warning Statement on Unregulated Virtual Asset Trading Platform

On September 13, 2023, the Hong Kong Securities and Futures Commission (SFC) announced that it was aware that a virtual asset trading platform (VATP) known as “JPEX” has been actively promoting its products and services to the Hong Kong public through social media influencers and key opinion leaders (KOLs) as well as over-the-counter virtual asset money changers (OTC Shops).

The SFC made it clear that no entity in the JPEX group is licensed by the SFC or has applied to the SFC for a licence to operate a VATP in Hong Kong.

The SFC has also observed a number of suspicious features about the practices of JPEX and those actively promoting it to the Hong Kong public:

- (a) JPEX states on its website that it is “a licensed and recognised platform to facilitate the trading of digital asset and virtual currency”. It claims on its website and local advertorials to have obtained licences from certain overseas regulators to operate VATP, which is in fact not true.
- (b) JPEX offers very high returns for some of its products. For example, as at September 12, 2023, JPEX’s savings product offered 21% annual percentage yield (the rate of interest/return earned in one year) for ETH, 20% for BTC and 19% for USDT according to its website at jp-ex.io.
- (c) The SFC has received complaints from, and notes that there have been media reports of, retail investors who were unable to withdraw virtual assets from their accounts maintained

with JPEX, or had found their account balances having been reduced and altered.

- (d) Some of the products offered by JPEX appear to be arrangements involving virtual assets such as virtual asset “deposits”, “savings” or “earnings” which are not allowed under the SFC’s regulatory regime for VATPs .
- (e) JPEX publicised on its website and local advertorials that it had entered into a business cooperation with and received investment from a Hong Kong listed company, when, in fact, the cooperation has already been terminated and no investments were actually made by the listed company.
- (f) KOLs and OTC Shops have made false or misleading statements on social media to suggest that JPEX has applied for a VATP licence in Hong Kong, either independently or in partnership with a Hong Kong listed company, when in fact no entity in the JPEX group has submitted any VATP licence application to the SFC.

The SFC has notified the relevant KOLs and OTC Shops of the SFC’s suspicions and concerns and requested them to cease promoting JPEX and its related services and products.

Under section 53ZRF of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), a person commits an offence if the person, directly or indirectly, in a transaction involving any virtual assets: (i) employs any device, scheme or artifice with intent to defraud or deceive, or (ii) engages in any act, practice or course of business that is fraudulent or deceptive, or would operate as a fraud or deception. A person who commits this offence is liable: (i) on conviction on indictment, to a fine of HK\$10,000,000 and to imprisonment for 10 years; or (ii) on summary conviction, to a fine of HK\$1,000,000 and to imprisonment for three years.

Under section 53ZRG of the AMLO, a person commits an offence if the person makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite any virtual assets. A person who commits this offence is liable: (i) on conviction on indictment, to a fine of HK\$1,000,000 and to imprisonment for seven years; or (ii) on summary conviction, to a fine at level 6 and to imprisonment for six months.

The SFC is also empowered by section 53ZTH to take action against any persons who are knowingly or unknowingly involved in contravention-related conduct under the AMLO.

The SFC will not hesitate to take enforcement action against individuals and entities who fail to abide by the VATP regime administered by the SFC, including those who are involved in such violations.

The SFC warned investors to be cautious about investment opportunities that seem too good to be true. Investors should be sceptical of investment advice posted on social media platforms and instant messengers by KOLs who are often paid promoters but not investment professionals.

The SFC also warned investors to be wary of the risks of trading virtual assets on an unregulated VATP. Investors may risk losing their entire investment held on the VATP if it ceases operation, collapses, is hacked or otherwise suffers from any misappropriation of assets. Seeking recourse against platforms that do not have a nexus with Hong Kong is likely to be difficult and legal remedies may not be available.

Remarks

The SFC's stern warning on the unlicensed and potentially fraudulent platform JPEX highlights the importance of integrity and non-corruptibility amongst market participants for sustaining the growth of the virtual asset market. As we mentioned in the cover story of our last FSR update, and as regulators worldwide have cautioned, the integrity of the market infrastructure and ecosystem is crucial for mainstream adoption and maturity of this nascent asset class. The SFC's enforcement actions aim to root out corrupt players in the market and are an important part of fostering an ecosystem where innovation can thrive responsibly. As virtual assets continue their march towards integration with the traditional financial system, maintaining high standards of conduct will enable sustainable growth and realization of the promise that attracted so much excitement in the first place. The regulators' vigilance on integrity, as exemplified by SFC's warning on JPEX, helps maintain the health of the market in the long run.

香港证券及期货事务监察委员会发表有关不受规管的虚拟资产交易平台的警告声明

于 2023 年 9 月 13 日，香港证券及期货事务监察委员会（证监会）留意到一家名为“JPEX”的虚拟资产交易平台，透过社交媒体网红（网红）及场外虚拟资产货币兑换商（场外找换店）积极地向香港公众推广该平台的服务和产品。

证监会阐明，JPEX 集团旗下的实体一概没有获证监会发牌，且并无向证监会申领在香港经营虚拟资产交易平台的牌照。

证监会亦观察到，JPEX 及那些向香港公众积极推广 JPEX 的人士和找换店所使用的手法存在众多可疑之处：

- (a) JPEX 在其网站声明，它是“一间持牌，并受认可的数字资产、虚拟货币平台”。它在其网站及本地社论式广告中声称已向若干海外监管机构取得经营虚拟资产交易平台的牌照，而这实际上与事实不符。
- (b) JPEX 为其部分产品提供极高回报。举例而言，于 2023 年 9 月 12 日，据 JPEX 的网站 (jp-ex.io) 所述，JPEX 的活期理财产品就 ETH、BTC 及 USDT 提供的年收益率（即一年内赚取的利息 / 回报的比率）分别为 21%、20% 及 19%。
- (c) 证监会接获散户投资者的投诉，并注意媒体报道，指有散户投资者未能从在 JPEX 开设的帐户中提取虚拟资产，或发现他们的帐户结余被减少及更改。
- (d) JPEX 提供的部分产品似乎是涉及虚拟资产的安排，例如在证监会的虚拟资产交易平台监管制度下不被允许的虚拟资产“存款”、“储蓄”或“收益”。
- (e) JPEX 在其网站及本地社论式广告中宣扬它已与一家香港上市公司订立业务合作，并获该公司投资，而事实上该项合作已经终止，且该上市公司实际上并无作出任何投资。
- (f) 网红及场外找换店在社交媒体上作出了虚假或具误导性的陈述，指 JPEX 已独立地或联同一家香港上市公司在香港申领虚拟资产交易平台的牌照，而事实上 JPEX 集团旗下实体一概未曾向证监会提交任何虚拟资产交易平台的牌照申请。

证监会已将其怀疑及关注的事宜通知相关网红及场外找换店，并要求他们停止推广 JPEX 和其有关的服务及产品。

根据《打击洗钱及恐怖分子资金筹集条例》（《打击洗钱条例》）第 53ZRF 条，任何人在涉及任何虚拟资产的交易中，直接或间接地：(i) 出于欺诈或欺骗意图，而使用任何手段、计划或计谋；或(ii) 从事任何具欺诈或欺骗性质（或会产生欺诈或欺骗效果）的作为、做法或业务，

即属犯罪。任何人干犯有关罪行：(i) 一经循公诉程序定罪，可处罚款 10,000,000 港元及监禁十年；或(ii) 一经循简易程序定罪，可处罚款 1,000,000 港元及监禁三年。

而根据《打击洗钱条例》第 53ZRG 条，任何人为诱使另一人订立（或要约订立）旨在取得、处置、认购或包销任何虚拟资产的协议，而作出任何欺诈的失实陈述或罔顾实情的失实陈述，即属犯罪。任何人干犯有关罪行：(i) 一经循公诉程序定罪，可处罚款 1,000,000 港元及监禁七年；或(ii) 一经循简易程序定罪，可处第 6 级罚款及监禁六个月。

根据第 53ZTH 条，证监会亦获赋权对明知或不知情地牵涉入违反《打击洗钱条例》的行为的任何人采取行动。

任何人士及实体，包括牵涉入该等违反事项的人士及实体，如未有遵守证监会执行的虚拟资产交易平台制度，证监会将毫不犹豫地对他们采取执法行动。

证监会告诫投资者注意那些看来优厚得令人难以置信的投资机会。一些在社交媒体平台及即时通讯软件上分享投资意见的网红通常是收费进行宣传，并非投资专业人士，投资者对其意见应加以提防。

证监会再告诫投资者提防在不受规管的虚拟资产交易平台上买卖虚拟资产的风险。如虚拟资产交易平台终止运作、倒闭、遭黑客入侵或出现任何资产被挪用的情况，投资者或有可能损失在该平台上持有的全部投资。投资者可能难以向与香港并无任何连系的平台提出追索，亦可能无法循法律途径获取赔偿。

结语

证监会对未经许可且潜在欺诈性的平台 JPEX 发出严厉警告，突出了市场参与者的诚信和廉正对维持虚拟资产市场的持续增长的重要性。正如我们在上一期金融服务监管资讯的封面故事中和其他全球监管机构所中强调，市场基础设施和生态系统的完整性对这一新兴资产类别的主流采纳和成熟度至关重要。证监会的执法行动旨在根除市场腐败的参与者，是培育一个能够负责任创新的生态系统的重要环节。随着虚拟资产步入传统金融体系的征程，维持高标准的行为将促进可持续增长，实现当初吸引广大投资者兴奋的承诺。监管机构如证监会对 JPEX 发出的警告所展现出的对诚信的监督，有助于维护市场的健康。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR101>

The Stock Exchange of Hong Kong Limited to Launch FINI on November 22, 2023

On September 27, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) confirmed the launch date for FINI, Hong Kong's new digitalised IPO settlement platform, on 22 November 2023. Relevant FINI related Listing Rules, Hong Kong Securities Clearing Company Limited (HKSCC) Rules and HKSCC Operational Procedures will also take effect from the FINI launch date.

The existing IPO settlement platform using CCASS, will no longer be used to initiate IPOs following market close on November 21. All new listings whose prospectus is published on or after November 22 will be processed on the FINI platform.

HKEX has worked with Hong Kong's IPO market participants to complete several rounds of testing, market practice sessions and rehearsals to prepare for the migration to FINI. HKEX will continue to provide support to market participants leading up to November 22 to ensure their full readiness for FINI.

FINI is a major new initiative that will significantly shorten the time between the pricing of an IPO and the trading of shares from five business days (T+5) to two business days (T+2). FINI will modernise and digitalise Hong Kong's IPO settlement process, driving efficiency and supporting the long term development of Hong Kong as a capital raising centre.

FINI is a cloud-based platform, which will enable different stakeholders such as IPO sponsors, underwriters, legal advisers, banks, Clearing Participants, share registrars and regulators to collaborate and perform their respective roles in an IPO, digitally. A new public offer pre-funding model is also being introduced in FINI, helping to reduce the scale of locked-up funds in over-subscribed IPOs.

HKEX stated that the launch of FINI is a milestone development in the evolution of the city's capital markets. FINI is a major development for Hong Kong's capital markets, bringing greater efficiency and convenience to market participants and issuers, helping them to better manage their risks and costs. The new platform also underpins HKEX's steadfast commitment to further enhancing the competitiveness and attractiveness of their markets, modernising Hong Kong's market infrastructure and promoting collaboration.

香港交易及结算所有限公司首次公开招股结算平台 FINI 于 2023 年 11 月 22 日启用

于 2023 年 9 月 27 日，香港交易及结算所有限公司（香港交易所）宣布，全新的数码化首次公开招股结算平台 FINI 将于 11 月 22 日正式启用，与 FINI 相关的《上市规

则》、香港中央结算有限公司（香港结算）规则及香港结算运作程序修订亦将于 FINI 推出日起生效。

香港交易所已经与新股市场参与者完成多轮测试、模拟实习及市场演习，并将继续为市场参与者提供支援，确保他们能够于 11 月 22 日 FINI 启用时准备就绪。

现行负责处理新股结算的中央结算系统（CCASS）于 11 月 21 日营业时间结束后，将不再启动新的新股上市项目；而 11 月 22 日或以后刊发招股书的新股上市招股及结算流程将透过 FINI 处理。

FINI 是香港交易所的重要倡议，将新股从定价至股份开始交易的时间由五个营业日（T+5）大幅缩短至两个营业日（T+2）。FINI 将对香港首次公开招股的结算流程进行全面现代化和数码化改革，提升效率并推动香港作为全球集资中心的长远发展。

FINI 以云端平台架设，首次公开招股中的保荐人、包销商、法律顾问、银行、结算参与者、股份过户登记处及监管机构等不同持份者将以电子化方式合作，以履行各自在首次公开招股项目的职责。新平台亦会引入全新的公开招股资金预付模式，有助减少超额认购新股所冻结的资金。

香港交易所集团表示 FINI 标志着香港资本市场发展迎来另一重大里程碑，是香港资本市场的一项重要发展，便利市场参与者及发行人，并提升市场效率，协助市场有效管理风险和成本。新平台展现出香港交易所不断提升市场竞争力和吸引力的坚定承诺，推动香港市场基础设施现代化、促进市场合作。

Source 来源:

https://www.hkex.com.hk/news/news-release/2023/230927news?sc_lang=en

The Stock Exchange of Hong Kong Limited Publishes Consultation Paper on GEM Listing Reforms

On September 26, 2023, The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published a consultation paper seeking market feedback on GEM listing reforms (the Consultation Paper). The consultation window is open for a six-week period, concluding on November 6, 2023.

The proposals presented include a new streamlined transfer mechanism for eligible GEM companies to transfer to the Main Board, a new alternative eligibility test for companies in the high-growth segment, and removal of quarterly reporting requirements.

Key Proposals

i. Transfer Mechanism

- A new streamlined transfer mechanism to enable qualified GEM issuers to transfer to the Main Board without the need to: (a) appoint a sponsor to carry out due diligence, or (b) produce a “prospectus-standard” listing document.
- Instead a transfer applicant must:
 - meet all the qualifications for listing on the Main Board;
 - have published financial results for three full financial years as a GEM issuer with ownership continuity and control and no fundamental change in its principal business;
 - meet:
 1. a daily turnover test – a streamlined transfer applicant must have reached a prescribed minimum daily turnover threshold on at least 50% of the trading days over a prescribed reference period of 250 trading days, the reference to “trading days” excludes the number of trading days on which trading of the applicant’s securities was halted or suspended, before the transfer application and until the commencement of dealings on the Main Board (Reference Period);
 2. a volume weighted average market capitalisation test – a streamlined transfer applicant must have a volume weighted average market capitalisation over the Reference Period that could meet the minimum market capitalisation requirement for Main Board listing; and
 3. a clean compliance record requirement over the 12 months preceding the transfer application and until the commencement of dealings on the Main Board.
 - A streamlined transfer applicant must: (a) not have been held to have committed a serious

breach of any Listing Rules in the 12 months preceding the transfer application and until the commencement of dealings in its securities on the Main Board; and (b) not be the subject of any investigation by the Exchange, or any ongoing disciplinary proceedings under Chapter 3 of the GEM Listing Rules, in relation to a serious breach or potentially serious breach of any Listing Rules as at the date of the transfer application and the date when dealing in its securities commences on the Main Board.

- A GEM issuer that cannot meet these eligibility requirements may apply for a transfer under existing requirements.

ii. Initial Listing Requirements

- A new alternative eligibility test that targets high growth enterprises that are heavily engaged in research and development (R&D) activities. A GEM listing applicant using this test must, among other criteria, have R&D expenditure of at least HK\$30 million in aggregate for the two financial years prior to listing, where the R&D expenditure incurred for each financial year must be at least 15% of the total operating expenditure for the same period.

iii. Continuing Obligations

- The removal of mandatory quarterly reporting requirements and the alignment of other ongoing obligations with those of the Main Board. These include (a) the removal of the existing requirement for one of the executive directors of a GEM issuer to assume responsibility for acting as the issuer’s compliance officer, (b) the shortening of engagement period of a GEM issuer’s compliance adviser so that it ends on the date on which the issuer publishes its financial results for the first (instead of the second) full financial year commencing after the date of its initial listing; and (c) the removal of other requirements relating to a compliance adviser’s responsibilities that only apply to GEM issuers.

HKEX stated that the stock exchange is one of a range of options available for SMEs seeking capital to drive growth, sustain innovation and create value. HKEX is fully committed to providing a supportive environment where SMEs across the region can thrive and contribute to the continued prosperity of Hong Kong and the broader community. HKEX looks forward to receiving the market's feedback on the consultation.

香港联合交易所有限公司刊发有关 GEM 上市改革的咨询文件

于 2023 年 9 月 26 日，香港交易及结算所有限公司（香港交易所）全资附属公司香港联合交易所有限公司（联交所）刊发咨询文件，就 GEM 上市改革征询市场意见（咨询文件）。咨询时间为期六周，将于 2023 年 11 月 6 日结束。

提出的建议包括实施新的「简化转板机制」让合格的 GEM 发行人转往主板上市、为高增长的企业增设新的资格测试以及取消季度汇报规定。

主要建议

i. 转板机制

- 引入新的「简化转板机制」，合格的 GEM 发行人转往主板时毋须：(i) 委任保荐人进行尽职审查，或 (ii) 刊发达到「招股章程标准」的上市文件。
- 取而代之的是，转板申请人必须：
 - 符合主板上市的所有资格；
 - 已刊发作为 GEM 发行人的三个完整财政年度的财务业绩，期间拥有权和控制权不变以及主营业务未发生任何根本性变化；
 - 符合：
 1. 每日成交金额测试 – 「简化机制」下的转板申请人在转板申请前的 250 个交易日及直至股份在主板开始买卖为止（参照期），而有关「交易日」的提述不包括申请人被短暂停牌或停牌的交易日，须有至少 50% 的交易日达到最低每日成交金额门槛；
 2. 成交量加权平均市值测试 – 「简化机制」下的转板申请人在参照期的成交量加权平均市值须达到主板上市的最低市值规定，及

3. 在转板申请之前 12 个月及直至股份在主板开始买卖为止皆有良好合规纪录。

- 「简化机制」下的转板申请人必须：(i) 在提出转板申请前的 12 个月，直至其证券在主板开始买卖为止，未曾被裁定严重违反《上市规则》任何条文；以及 (ii) 在提出转板申请当日以及截至其证券在主板开始买卖之日，并无因严重违反或可能严重违反《上市规则》任何条文而成为任何联交所的调查对象又或成为《GEM 上市规则》第三章下任何进行中的纪律程序的对象。

- 不符合上述资格要求的 GEM 发行人仍可按现有规定申请转板。

ii. 首次上市规定

- 为大量投入研发活动的高增长企业推出新的资格测试。采用此新测试的 GEM 上市申请人，除符合其他条件外，须确保其在上市前两个财政年度的合计研发开支不少于 3,000 万港元，而每个财政年度的研发开支占同期总营运开支达 15% 或以上。

iii. 持续责任

- 取消强制季度汇报规定，GEM 发行人的其他持续责任亦改与主板发行人一致。「简化机制」下的转板申请人必须：(i) 在提出转板申请前的 12 个月，直至其证券在主板开始买卖为止，未曾被裁定严重违反《上市规则》任何条文；以及 (ii) 在提出转板申请当日以及截至其证券在主板开始买卖之日，并无因严重违反或可能严重违反《上市规则》任何条文而成为任何联交所的调查对象又或成为《GEM 上市规则》第三章下任何进行中的纪律程序的对象。

香港交易所表示在股票市场上市是中小企业为了业务发展、持续创新及创造价值而进行融资的其中一种途径。香港交易所致力为区内中小企业提供有利环境、助力他们蓬勃发展，为香港及整个社会的长期繁荣作出贡献。

香港交易所欢迎有意回应的人士于香港交易所网站填写并交回问卷。

Source 来源:

https://www.hkex.com.hk/news/regulatory-announcements/2023/230926news?sc_lang=en
<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2023-GEM-Listing-Reforms/Consultation-Paper/cp202309.pdf>

Hong Kong Securities and Futures Commission Amends the Codes on Takeovers and Mergers and Share Buy-backs

On September 21, 2023, the Hong Kong Securities and Futures Commission (SFC) released consultation conclusions on its proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (Codes). On May 19, 2023, the SFC issued a consultation paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs. The consultation period ended on June 23, 2023. A total of 12 submissions were received. The amended Codes will be gazetted and take effect on September 29, 2023.

In general, respondents to the consultation supported the proposed amendments. All proposals were adopted, whilst some saw minor modifications in view of the responses received during the consultation.

The amendments mainly codify existing practices of the Takeovers Executive and clarify the Codes where necessary. Changes include revising the definitions of important terms, streamlining processes to enhance efficiency, and introducing green initiatives to reduce the carbon footprint of Codes documents.

The major amendments include:

- amending the definition of “close relatives” and “voting rights”, clarifying certain matters relating to acceptances and general meetings and revising the existing framework on the gathering of irrevocable commitments;
- providing guidance on the application of the chain principle;
- enhancements to streamline and improve efficiency during an offer;
- amendments that help to clarify the effects of statements made during an offer;
- clarifying certain procedural matters in partial offers and requirements for comparable offers;
- introducing a number of green initiatives to enhance efficiency and reduce the environmental impact associated with Codes documents;

- proposing various miscellaneous amendments to the Codes to codify existing practice and effect a number of housekeeping amendments.

The detailed amendments are set out in the consultation conclusions. Consequential amendments will be made to a number of Practice Notes to the Codes and will be available on the SFC website when the revised Codes take effect. Market practitioners are encouraged to read the revised Practice Notes and consult the Takeovers Executive in case of any doubts about the application of the revised Codes, particularly if transactions announced before the amendments now face any difficulties.

香港证券及期货事务监察委员会修订《公司收购、合并及股份回购守则》

于 2023 年 9 月 21 日，香港证券及期货事务监察委员会（证监会）就其对《公司收购、合并及股份回购守则》（简称两份守则）的建议修订发表咨询总结。证监会在 2023 年 5 月 19 日就《公司收购、合并及股份回购守则》的建议修订发表了一份咨询文件。咨询期已于 2023 年 6 月 23 日结束。证监会共接获 12 份意见书。经修订的两份守则于 2023 年 9 月 29 日刊宪，随后即时生效。

有关咨询的回应者普遍支持建议修订。所有建议均获接纳，惟其中一些建议因应在咨询期间收到的意见而略有改动。

有关修订主要是将收购执行人员的现行作业常规编纂为守则条文及就两份守则作出厘清，变动包括修改一些重要词语的定义，简化程序以提高效率，及引入环保措施以减少两份守则相关文件的碳排放足迹。

当中主要修订内容包括：

- 修订“近亲”和“投票权”的定义；厘清与接纳和股东大会有关的若干事宜，及修改与不可撤回的承诺有关的现行框架；
- 就连锁关系原则的应用提供指引；
- 简化要约并提高要约期间的效率；
- 提出建议修订，以便厘清在要约期内作出的声明的影响；
- 厘清部分要约的若干程序事宜及同等基础的要约的规定；
- 引入多项环保措施，藉以提高效率，并减少与两份守则下的文件相关的环境影响；和
- 建议对两份守则作出多项杂项修订，以将现行的作业常规编纂为守则条文，及作出数项属于“整理性质”的修订。

具体修订内容载于咨询结论。两份守则的多项应用指引亦会作出相应修订，并将于经修改的两份守则生效后上传到证监会网站。市场从业员应阅读经修改的应用指引，如对经修改的两份守则的应用范围有任何疑问，特别是如果一些交易在有关修订进行前已公布而现时面临困难，便应咨询收购执行人员的意见。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR105>
<https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=23CP5>

Hong Kong Securities and Futures Commission's Takeover Bulletin Clarifies the Effects of Irrevocable Undertakings

In June 2023, the Hong Kong Securities and Futures Commission (SFC) issued its Takeover Bulletin which, among others, clarifies on the effects of irrevocable undertakings.

Irrevocable Undertakings Do Not Override the Codes Requirements

The bulletin explains that offerors commonly obtain irrevocable undertakings (IUs) from shareholders, including undertakings not to accept an offer ("Non-Accepting IUs"). While the SFC pragmatically allows exclusion of shares under Non-Accepting IUs when assessing required financial resources, such IUs do not negate offerors' payment obligations under the Takeover Codes. Offerors must still ensure timely payment to all accepting shareholders.

If a shareholder breaches an IU, this does not absolve offerors of their responsibilities under the Codes on Takeovers and Mergers and Share Buy-backs (the Codes). Offerors obtaining Non-Accepting IUs should understand the risks and be prepared to arrange additional funding if needed to pay accepting shareholders. Non-compliance with payment obligations may lead to disciplinary action.

Overall, the SFC Executive (Executive) expects all accepting shareholders to be paid in a timely manner in accordance with the Takeovers Code requirements. The breach, or potential breach, of the terms of a Non-Accepting IU cannot be used as a reason to withhold payment to shareholders who have tendered their shares to an offer, especially if they acquired their shares on-market with no knowledge that the shares were subject to a Non-Accepting IU.

The Executive wishes to remind all offerors and their advisers that obtaining a Non-Accepting IU will not absolve an offeror of its responsibilities and obligations to fully comply with the Takeovers Code (in particular,

the payment of the offer consideration to accepting shareholders in a timely manner) even if there is a breach, or potential breach, of the IU. An offeror who gathers Non-Accepting IUs must understand the risks involved and be prepared to make all necessary arrangements, which may include obtaining additional funding and regulatory approvals at short notice.

香港证券及期货事务监察委员会《收购通讯》

在2023年6月，香港证券及期货事务监察委员会(证监会)发布了《收购通讯》，其中澄清了不可撤销承诺的作用。

有关不接纳的不可撤回的承诺不会免除要约人在两份守则下的责任

收购通讯解释,要约人在收购中常常会要求股东签署不可撤回承诺,其中可能包括不接纳要约的承诺("不接纳承诺")。虽然证监会在评估要约人财务资源时允许不将不接纳承诺下的股份计入在内,但这些承诺并不意味着要约人可以逃避公司收购、合并及股份回购守则(《收购守则》)下的付款责任。要约人仍必须确保及时向所有接受要约的股东付款。

如果股东违反不可撤回承诺,也不会免除要约人在《收购守则》下的责任。取得不接纳承诺的要约人应了解相关风险,并做好准备提供额外资金以支付所有接受要约的股东。如无法履行付款责任可能面临监管行动。

总括而言,在所有情况下,证监会执行人员(执行人员)预期所有接纳要约的股东均能根据《收购守则》的规定及时获得付款。要约人不得以不接纳承诺的条款遭违反或可能遭违反为由,拒绝向已应约提供其股份的股东付款,特别是该等股东在市场上购入有关股份时,有可能并不知悉涉事股份属不接纳承诺所涉及的股份。

执行人员希望提醒所有要约人及其顾问,在取得不接纳承诺后,即使有关承诺遭违反或可能遭违反,都不会免除要约人在全面遵守《收购守则》(特别是及时向接纳要约的股东支付要约代价的规定)方面的责任和义务。收集不接纳承诺的要约人必须了解当中涉及的风险,并准备好作出一切必要安排,当中可能包括于短时间内取得额外资金和监管批准。

Source 来源:

<https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-Bulletin/20230630SFC-Takeover-Bulletine.pdf?rev=6961e9f9c97c4dbdb721e2e10acb0bf8&hash=DDAF14B7C6023516ED33FFAC14CA9A31>

Hong Kong Securities and Futures Commission Issues Quarterly Report

On August 23, 2023, the Hong Kong Securities and Futures Commission (SFC) issued its latest Quarterly Report which summaries key developments from April to June 2023.

New initiatives to develop Hong Kong as an offshore renminbi and risk management centre were launched during the quarter. Swap Connect, the first Connect programme for financial derivatives products, commenced northbound trading in May. It allows investors of Mainland bonds to hedge interest rate risks from Hong Kong. As of end-June, a total of 540 Mainland interbank interest rate swap contracts were traded under Swap Connect, with a gross notional amount of about RMB129 billion or a daily average of about RMB3.9 billion.

In June 2023, the renminbi (RMB) counters of 24 stocks were launched for trading under the HKD-RMB Dual Counter Model. The dual counter market making programme would enhance liquidity and minimise share price gaps between the two counters. Trading of RMB counters has been smooth and orderly so far with an average daily turnover of RMB193.9 million as of end-June.

Southbound Exchange-traded funds (ETF) trading has maintained strong momentum through the debut year for ETF Connect. Its average daily turnover increased 20 times from HK\$216 million in July 2022 to HK\$4.64 billion in June 2023, which contributed 18.4% of the eligible Hong Kong ETFs' turnover during the month.

To support the development of the Fintech ecosystem in Hong Kong, the SFC launched a new licensing regime under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance for virtual asset trading platform (VATP) operators in June. Two VATPs licensed under the Securities and Futures Ordinance have obtained the SFC's approval to provide services to retail investors. The SFC also published a statement to warn VATPs of the potential legal and regulatory consequences of improper practices and remind investors to be wary of the risks of trading virtual assets on unregulated platforms.

On the enforcement front, charges were pressed against four individuals following a joint operation conducted by the SFC and the Hong Kong Police Force against fraudulent activities in securities transactions and illegal short selling. In a separate case involving a large-scale ramp and dump syndicate, 10 more suspects were charged with criminal offences, including key members and an alleged ringleader.

During the quarter, the SFC announced its commitment to carbon neutrality by 2050, in line with the HKSAR Government's climate strategy, with an interim target to reduce 50% of its total carbon emissions by 2030.

In conclusion, key figures for the quarter include:

- There were 48,165 licensees and registrants, including 3,245 licensed corporations. Among the licensed corporations approved during the quarter, Type 9 (asset management) regulated activity (RA) accounted for 51% and Type 4 (advising on securities) for 37%.
- The SFC processed 50 new listing applications, including five from pre-profit biotech companies and one from a specialist technology company.
- The SFC authorised 28-unit trusts and mutual funds (including 12 Hong Kong-domiciled funds) and 47 unlisted structured investment products for public offering in Hong Kong. It registered 21 new open-ended fund companies (OFC).
- It conducted in-depth inspections of 51 licensed corporations to review their compliance with regulatory requirements.
- The SFC made 1,227 requests for trading and account records triggered by untoward price and turnover movements.
- It issued section 179 directions to request information in 16 cases, as part of its ongoing review of corporate disclosures. Section 179 of the Securities and Futures Ordinance gives the SFC the power to compel the production of records and documents from persons related to a listed company.
- Three corporations and two individuals were disciplined, which resulted in total fines of HK\$9.2 million.

香港证券及期货事务监察委员会发表季度报告

于 2023 年 8 月 23 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 2023 年 4 月至 6 月期间的工作重点。

多项新举措已在季内推出，以发展香港作为离岸人民币和风险管理中心。互换通是首个为金融衍生产品而设的市场互联互通机制，当中的“北向互换通”已在 5 月启动，让投资者可透过香港对冲内地债券市场的利率风险。截至 6 月底，在互换通下进行交易的内地银行间利率互换合约共有 540 份，名义总金额约为人民币 1,290 亿元，而每日平均金额约为人民币 39 亿元。

此外，在 6 月有 24 只股票根据港币－人民币双柜台模式推出人民币交易柜台，而双柜台庄家机制将提升流动性，并收窄两个柜台之间的股价差异。迄今为止，人民币柜台的交易一直顺畅有序地进行，截至 6 月底的平均每日成交额为人民币 1.939 亿元。

在交易所买卖基金（ETF）通启动首年，南向 ETF 交易维持强劲增长，2023 年 6 月的平均每日成交额达 46.4 亿

港元，较 2022 年 7 月的 2.16 亿港元增长 20 倍，占当月合格香港 ETF 成交额的 18.4%。

为了支持香港金融科技生态系统的发展，证监会根据《打击洗钱及恐怖分子资金筹集条例》，于 6 月就虚拟资产交易平台营运者实施新的发牌制度。两家根据《证券及期货条例》获发牌的虚拟资产交易平台亦已获证监会批准，以向零售投资者提供服务。证监会亦发布了一项声明，告诫虚拟资产交易平台注意不正当行为会带来的潜在法律及监管后果，并提醒投资者提防在不受规管的平台上买卖虚拟资产的风险。

执法方面，证监会与香港警务处对证券交易的欺诈活动及非法卖空活动采取联合行动，有四名人士遭到检控。在另一宗涉及大型“唱高散货”集团的案件中，再有十名嫌疑人被刑事检控，当中包括骨干成员及一名怀疑主脑。

季内，证监会公布了在 2050 年前达成碳中和的承诺，与香港特区政府的气候策略一致。证监会亦订下在 2030 年将碳排放总量减少 50% 的中期目标。

总括而言，这季的主要数据包括：

- 持牌机构及人士和注册机构的总数为 48,165，其中包括 3,245 家持牌机构。就季内获批的持牌机构而言，第 9 类（提供资产管理）受规管活动及第 4 类（就证券提供意见）受规管活动分别占 51% 及 37%。
- 证监会处理了 50 宗新上市申请，其中五宗来自未有盈利的生物科技公司，一宗来自特专科技公司。
- 证监会认可了 28 只单位信托及互惠基金（包括 12 只在香港注册成立的基金）及 47 项非上市结构性投资产品，以供在香港公开发售，并为 21 家新的开放式基金型公司进行注册。
- 证监会对 51 家持牌机构进行深入视察，以查核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 1,227 项索取交易及帐户纪录的要求。
- 证监会在持续检视各上市公司的披露情况时，根据第 179 条就 16 宗个案发出指示以索取资料。《证券及期货条例》第 179 条赋权证监会，强制任何人交出与某上市公司有关的纪录及文件。
- 三家机构及两名人士遭纪律处分，涉及的罚款总额达 920 万港元。

Source 来源：

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR94>

Hong Kong Monetary Authority Publishes Joint Report on Project Sela

On September 12, 2023, the Hong Kong Monetary Authority (HKMA), together with the Bank of Israel (BOI) and the Bank for International Settlements Innovation Hub (BISIH) Hong Kong Centre published a joint report, titled “Project Sela – An accessible and secure retail CBDC ecosystem”, at a report launch conference hosted by the BOI in Tel Aviv.

As the first collaborative project between the two central banks on the fintech front, Project Sela demonstrated the technical feasibility of a retail central bank digital currency (CBDC) architecture that can promote competition and innovation in digital payments by allowing non-bank payment intermediaries to connect directly to the CBDC ledger of the central bank. Leveraging distributed ledger technology (DLT), a proof-of-concept prototype was developed to showcase how the technical implementation of the proposed architecture can incorporate strict cybersecurity, legal and policy requirements.

The HKMA stated that they are pleased to have successfully completed this project with the BOI and BISIH Hong Kong Centre. This project provided valuable practical insights into the cybersecurity, technical and policy aspects of a retail CBDC implementation. While the HKMA has not yet made a firm decision on whether and when to introduce an e-HKD in Hong Kong, the outcomes of Project Sela will inform their on-going exploration. They hope that Project Sela will also benefit other central banks in their own evaluations of different retail CBDC architectures.

The Bank of Israel also stated that competition and innovation require a flourishing and open ecosystem with many different types of service providers. This was their initial goal in Project Sela as a proof-of-concept, and the project proved the feasibility of the model they had in mind. If central bank money is to go digital, cybersecurity is key, and the project provided an opportunity to discuss and study cybersecurity elements of CBDC with their partners. The Bank of Israel is honoured to collaborate with institutions that stand at the frontier of CBDC explorations.

BIS Innovation Hub Hong Kong Centre stated that Project Sela explored the feasibility of a CBDC system where the central bank operates the retail ledger and a new type of intermediary, called an Access Enabler, provides broader access to the CBDC, promoting competition and innovation. It showed that this can be achieved without compromising cybersecurity or the privacy of end users from the central bank.

香港金融管理局发表 Project Sela 项目联合报告

于 2023 年 9 月 12 日，香港金融管理局（金管局）联同以色列银行及国际结算银行创新枢纽（BISIH）辖下香港中心发表题为《Project Sela 项目——可供广泛使用及安全的零售层面央行数码货币生态系统》的报告，并参与了由以色列银行在特拉维夫主办的发布会。

Project Sela 项目是金管局与以色列银行首个金融科技合作项目。Project Sela 项目透过零售层面央行数码货币的设计结构，展示了非银行支付中介机构直接连接中央银行央行数码货币帐本的技术可行性，从而促进数码支付领域的竞争和创新。项目以分布式分类账技术（DLT）建立了概念验证原型，证明该设计结构在技术执行上能符合严格的网络安全、法律和政策要求。

金管局表示很高兴成功与以色列银行和 BISIH 辖下香港中心完成了 Project Sela 项目。项目在网络安全、技术和政策方面，都对落实零售层面央行数码货币提供了宝贵而实用的意见。虽然金管局未决定是否或何时在香港推出『数码港元』，但 Project Sela 项目的成果，对金管局持续进行的研究具有参考价值。金管局希望项目也能协助其他央行评估不同的零售层面央行数码货币设计结构。

以色列银行表示竞争和创新需要一个充满活力、开放且有不同类型服务提供商参与的生态系统，这是 Project Sela 项目进行概念验证的初衷，而项目亦验证了其设计结构的技术可行性。网络安全是发展央行数码货币的关键。Project Sela 项目让央行有机会与业界共同探讨和研究与央行数码货币网络安全相关的议题。以色列银行很荣幸能与在央行数码货币领域领先的机构合作。

而 BISIH 辖下香港中心表示 Project Sela 项目探索了一种央行数码货币设计结构的技术可行性。在该设计结构下，中央银行负责运营账本，而一种名为『访问推动者』的新型中介机构，则可以让市场更容易接触央行数码货币，从而促进竞争和创新。项目亦展示了相关结构可在确保网络安全或保护用户隐私的情况下实现。

Source 来源:

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/09/20230912-3/>

<https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2023/20230912e3a1.pdf>

<https://www.hkma.gov.hk/eng/news-and-media/speeches/2023/09/20230912-1/>

Hong Kong Exchanges and Clearing Limited Celebrates Opening of London Office

On September 7, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) celebrated the opening of its new office in London. The London and New York offices complement HKEX's existing international reach from its offices in Beijing, Shanghai and Singapore.

The new London office will consolidate HKEX's presence in the UK, and connect European clients with Asia's most international, diverse and liquid capital markets. It will provide on-the-ground support to customers in the region, helping them to access Hong Kong's broad and diverse product ecosystem, and capture the opportunities arising from some of the major megatrends that define Asia's growth story.

HKEX stated that the opening of their London office marks another significant development in their continued commitment to their customers around the world. Together with the recent successful launch of their New York office, their new HKEX London office will bring greater access, opportunity and insight to their global clients. Now, with a presence in the three major world time zones, they are very well placed to connect capital with opportunities and enhance international connectivity, further strengthening Hong Kong's role as a global superconnector. HKEX already has strong ties with the financial community in London, through its subsidiary, the London Metal Exchange, and this new office will broaden and deepen their support for their growing customer base in Europe. They look forward to working with investors, companies and risk managers in the region, supporting them as together they drive their shared sustainable success.

The new London office will focus on promoting the attractiveness of HKEX's international equities franchise, its exclusive connectivity with Mainland China's capital markets and its rapidly expanding derivatives product suite. It will also provide the Group's European clients with on-the-ground expertise and insight on Hong Kong's capital market opportunities and innovations.

HKEX also stated that London is one of the world's top financial centres and is home to Europe's largest capital pool. Well known for its extensive network of international professionals, and its commitment to innovation, London is also one of the premier hubs for hedge funds, private equity and fintech companies. By establishing a presence in The City, they can better connect with their European clients and partners, gain insights into their needs, and support them as they seek to capture Asia's growth opportunities.

香港交易及结算所有限公司庆祝伦敦办事处开幕

于2023年9月7日，香港交易及结算所有限公司（香港交易所）庆祝其伦敦办事处正式开幕。香港交易所新设的伦敦及纽约办事处将与北京、上海和新加坡的现有办事处互补，进一步拓展集团的国际网络。

新设的伦敦办事处将巩固香港交易所在英国的业务基础，并将欧洲客户与亚洲最国际化、多元化和流动性充裕的资本市场连接起来。香港交易所将提供实地支持，帮助客户了解香港广泛且多元的资本市场及金融产品，并把握亚洲增长趋势所带来的庞大发展机遇。

香港交易所表示香港交易所伦敦办事处的开业是集团的另一个重要发展里程碑，反映了他们支持全球客户的持续承诺。新开幕的伦敦办事处将连同他们近期开业的纽约办事处一起为全球客户带来更便利的投资渠道、更多投资机遇和更独到的见解。现在，凭借他们在世界三大主要时区的业务，香港交易所能更有效地连接资本与机遇，加强全球互联互通，进一步巩固香港作为全球超级联系人的角色。香港交易所透过营运旗下的伦敦金属交易所，与伦敦的金融业界素有紧密联系，新办事处的开幕将会为他们在欧洲不断增长的客户提供更好的支持。他们期待与当地投资者、企业及风险管理人合作，共同实现长远发展。

新办事处负责推广香港交易所旗下国际股本证券业务、连接香港与中国内地市场之间的互联互通机制，以及增长迅速的衍生产品组合。该办事处也会为集团的欧洲客户提供服务，并介绍香港资本市场的机遇和创新发展。

香港交易所亦表示伦敦是世界其中一个顶尖的金融中心，拥有欧洲最庞大的资金池，亦以其广泛的国际专业人才网络和勇于创新而闻名，汇聚了来自世界各地的对冲基金、私募股权和金融科技公司。落户于这座城市有助他们与欧洲客户和合作伙伴加深联系，更贴近他们的需求，帮助他们捕捉亚洲的增长机遇。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2023/230907news?sc_lang=en

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