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Financial Services Regulatory Update 金融服务监管资讯

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A. HONG KONG REGULATORS 香港监管机构

SFC issued statement on initial coin offerings

The SFC has noticed an increase in the use of initial coin offerings (ICOs) to raise funds in Hong Kong and elsewhere and issued a statement on September 5, 2017 to clarify that digital tokens that are offered or sold may be “securities” as defined in the Securities and Futures Ordinance (SFO), and subject to the securities laws of Hong Kong.

ICOs typically involve the issuance of digital tokens, created and disseminated using distributed ledger or block chain technology. Proceeds of an ICO may be used to fund development of a digital platform or software which the token holders can subsequently access. Digital tokens may also be used to represent indirectly equity or ownership interests in a corporate, and may be regarded as “shares”. Tokens can also represent debentures and interest in a “collective investment scheme”.

Where the digital tokens involved in an ICO represent “securities”, dealing in these digital tokens or managing a fund investing in such tokens may constitute a “regulated activity”. Parties engaging in a “regulated activity” are required to be licensed by or registered with the SFC. Registration or authorization requirements may be triggered unless there is an applicable exemption. Certain requirements relating to automated trading services and recognized exchange companies may be applicable to the business activities of cryptocurrency exchanges.

Investors should remain vigilant of the risks involved in ICOs and digital tokens. As the transactions of digital tokens are done on an anonymous basis, there are particularly high risks of money laundering and terrorist financing. Investors should take all reasonable measures to ensure there are proper safeguards and should fully understand the details of the products or projects they are investing in.



证监会就首次代币发行发表声明

证监会留意到，香港及其他地方有愈来愈多以首次代币发行 (initial coin offering, 简称 ICO) 来募集资金的活动。证监会于 2017 年 9 月 5 日发出声明，阐明视乎个别 ICO 的事实及情况，当中所发售或销售的数码代币可能属于《证券及期货条例》(证券条例) 所界定的证券，并受到香港证券法例的规管。

ICO 一般涉及发行采用分布式分类账或区块链技术所创造和分发的数码代币。ICO 的所得收益或将用作开发代币持有人可于日后使用的数码平台或相关软件。在 ICO 中发售的数码代币如代表一家公司的间接股权或拥有权权益，便有可能被视为股份。数码代币也可能被视为债权证及集体投资计划的权益。

如 ICO 所涉及的数码代币符合证券的定义，就该类数码代币提供交易服务或提供意见，或者管理或推广投资数码代币的基金，均可能构成受规管活动。从事受规管活动的人士或机构，便须获证监会发牌或向证监会注册。除非获得豁免，否则从事受规管活动的人士或机构可能须根据法例

获得注册或认可。此外，与自动化交易服务和认可交易所有关的若干规定，或适用于加密货币交易所的业务活动。

投资者亦应注意 ICO 以及与数码代币有关的投资安排所涉及的潜在风险。鉴于 ICO 涉及的数码代币是以匿名方式持有或进行交易，它们本质上构成重大的洗钱及恐怖分子资金筹集风险。投资者应充分了解其有意投资的任何产品或业务项目的特点。

SFC publicly censures Chen Chi-Te and Kenneth C.M. Lo for breaches of the Takeovers Code

On September 7, 2017, the Securities and Futures Commission (SFC) publicly censured Chen Chi-Te and Kenneth C.M. Lo for breaching the dealing provisions under the Takeovers Code.

As directors of Taiwan Cement Corporation (TCC), both Chen and Lo are parties acting in concert with TCC in a proposed privatization of TCC International Holdings Limited by way of a scheme of arrangement whereby shareholders would be entitled to receive either a cash payment or TCC shares.

Chen held shares in TCC International through related trusts which sold all his shares between April 25 and June 28, 2017. These dealings and the failure to make public disclosures of them constituted breaches of Rule 21.2 and Rule 22 of the Takeovers Code. Lo, together with his close relatives, controls four investment companies which acquired a total of four million shares in TCC in July 2017. These purchases and the failure to disclose them constituted breaches of Rule 21.3 and Rule 22 of the Takeovers Code.

Under the relevant rules, during an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company without the prior consent of the SFC. Where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities or conduct any on-market buy-back of such securities during the offer period. Dealings in relevant securities by an offeror or the offeree company, and by any associates, for their own account during an offer period must be publicly disclosed in prescribed format.

证监会公开谴责陈启德及骆锦明违反《收购守则》

於 2017 年 9 月 7 日，证券及期货事务监察委员会（证监会）公开谴责陈启德及骆锦明，指两人违反了《收购守则》

下的交易条文。

陈及骆作为台湾水泥股份有限公司（台湾水泥）董事，两人在一项私有化建议中均为与台湾水泥一致行动的人。有关建议拟以协议计划方式私有化台泥国际集团有限公司，而其股东将有权收取现金款项或台湾水泥股份。

陈透过其有关系信托持有台泥国际股份，而有关信托在 2017 年 4 月 25 日至 6 月 28 日期间出售了他的所有股份。进行有关交易及没有就此作出公开披露，构成违反《收购守则》规则 21.2 及规则 22。骆连同其近亲控制四家投资公司，而有关公司在 2017 年 7 月取得合共 400 万股台湾水泥股份。买入有关股份及没有就此作出公开披露，构成违反《收购守则》规则 21.3 及规则 22。

根据有关规则，在要约期内，要约人及与其一致行动的人未得证监会事先同意，不得出售任何受要约公司证券。如要约的代价包括要约人或与其一致行动的人的证券，则除非执行人员给予同意，否则不论要约人或任何与其一致行动的人，均不可以有关要约期内进行有关证券的交易或进行有关证券的场内股份回购。要约人或受要约公司，及任何联系人在要约期内为本身进行的有关证券的交易，必须根据规定方式作出公开披露。

SFC commences insider dealing prosecution in China CBM shares

On September 7, 2017, the SFC commenced criminal proceedings in the Eastern Magistrates' Court against Mr Au-Yeung Siu Pang over alleged insider dealing in the shares of China CBM Group Company Limited (China CBM). The SFC alleged that between 28 and March 29, 2012, Au-Yeung, at the time an employee of China CBM, sold, and counselled or procured another person to sell China CBM shares after obtaining information on the unaudited annual results of China CBM and its subsidiaries (the Group) before the results announcement that the Group had suffered a loss of about RMB52 million for the year ended December 31, 2011.

证监会就中国煤层气股份进行内幕交易展开刑事法律程序

于 2017 年 9 月 7 日，证监会就欧阳少鹏涉嫌就中国煤层气集团有限公司（中国煤层气）股份进行内幕交易一事，在东区裁判法院对其展开刑事法律程序。

证监会指称欧阳（当时为中国煤层气的雇员）在 2012 年 3 月 28 日至 29 日期间，于中国煤层气及其附属公司（该集团）的业绩公布前，取得未经审核全年业绩的资料，得知该集团截至 2011 年 12 月 31 日止年度有大约人民币

5,200 万元亏损，并在其后出售及怂使或促致另一人出售中国煤层气股份。

SFC obtains disqualification and court orders against former chairman and current directors of Hanergy Thin Film Power Group Limited

On September 4, 2017, the SFC obtained disqualification orders in the Court of First Instance against the former chairman, Mr Li Hejun, and four current independent non-executive directors, Ms Zhao Lan, Mr Wang Tongbo, Mr Xu Zheng and Mr Wang Wenjing, of Hanergy Thin Film Power Group Limited.

Li was disqualified from being a director or being involved in the management of any listed or unlisted corporation in Hong Kong for eight years. He was also ordered to procure Hanergy's parent company, Hanergy Holding Group Limited (Hanergy Holding) and/or its affiliates to pay all outstanding receivables due to Hanergy under various sales contracts.

The Court held that Li's breaches were not the result of incompetence or negligence only, as there was a clear conflict of interests situation and Li plainly preferred the interests of Hanergy Holding and affiliates to that of Hanergy. He also failed to exercise reasonable care and diligence in connection with an undisclosed loan of RMB900 million provided by a Mainland subsidiary of Hanergy to Hanergy Holding in March 2014. Hanergy failed to disclose the loan to its shareholders and to seek their approval in accordance with the Listing Rules.

The Court agreed that, on the basis of their admissions, Zhao, Wang Tongbo, Xu and Wang Wenjing were not only incompetent but they also exhibited a marked indifference to their responsibilities as directors, in particular they:

- failed to make appropriate disclosure about the viability of Hanergy's business model which a reasonable director should have questioned;
- failed to properly assess the financial positions of the connected parties and hence the recoverability of the receivables due from them as a result of these connected transactions; and
- failed to take proper steps to recover these receivables, and so did not act in Hanergy's best interest.

证监会取得针对汉能薄膜发电集团有限公司前主席和现任董事的取消资格令和法庭命令

于 2017 年 9 月 4 日，证监会在原讼法庭取得针对汉能薄膜发电集团有限公司（汉能）前主席李河君（男）和四名现任独立非执行董事赵岚、王同渤、徐征及王文静的取消资格令。

李不得担任香港任何上市或非上市法团的董事或参与法团管理工作，为期八年，亦被饬令促致汉能的母公司汉能控股集团有限公司（汉能控股）及 / 或其附属公司就多份销售合同支付拖欠汉能的所有未偿付应收款项。

法庭认为，李的违规行为并非只是由于不胜任或疏忽所致，因为当中涉及明显的利益冲突，而李显然较侧重于汉能控股及附属公司的利益，而不是汉能的利益。李亦没有以合理的谨慎和勤勉尽责的态度，处理汉能一家内地附属公司在 2014 年 3 月提供予汉能控股的一笔人民币 9 亿元的未披露贷款。汉能没有根据《上市规则》向其股东披露有关贷款及寻求他们的批准。

基于赵、王同渤、徐及王文静承认失职，法庭同意他们不但没有胜任董事的能力，而且显然对他们作为董事的责任视若无睹；尤其是，他们：

- 没有对汉能的业务模式的可行性作出适当披露，而合理的董事理应对此提出质疑；
- 没有适当地评估关连方的财务状况以至它们因进行关连交易而结欠的应收款项的可回收性；及
- 没有采取恰当措施，以追讨该等应收款项，及因而没有以汉能的最佳利益行事。



B. MAINLAND REGULATORS 内地监管机构

China banned initial coin offerings

In an announcement on September 4, 2017, the People's Bank of China (PBOC) banned initial coin offerings, ruling that such unregulated sales violated Chinese law and must stop immediately.

Digital coin platforms are likely to shift their focus to markets which are not banning ICOs, but rather trying to put in place higher standards and regulatory supervision - such as the United States, Canada and Singapore.

中国禁止首次代币发行

于 2017 年 9 月 4 日的公告中，中国人民银行明确禁止首次代币发行，表示这类未经监管的销售违反中国法律，必须立即停止。

相关电子代币平台可能会将其发展转至有严格监管但不禁止此类发行的市场，例如美国、加拿大及新加坡。

Notice on Promoting Sound Development of Poverty Alleviation Micro-credit

The China Banking Regulatory Commission, Ministry of Finance, People's Bank of China, China Insurance Regulatory Commission and the State Council Leading Group Office of Poverty Alleviation and Development have issued the Notice on Promoting Sound Development of Poverty Alleviation Micro-credit in August 2017 to further improve the poverty alleviation micro-credit management, standardize the work on poverty alleviation micro-credit at all government levels, and better play its role in targeted poverty alleviation.

The Notice specifies the key points of the poverty alleviation micro-credit policies, and requires that governments *at all levels* should stick to the path of targeted poverty alleviation and keep developing productivity during the process of poverty alleviation, thus to provide more internal dynamics for low-income households to shake off poverty.

Under the framework of the Notice, relevant parties should take their own responsibilities earnestly, strengthen the incentive-constraint mechanism and control the loan risks. The Notice also clarifies certain aspects of the differential supervision of poverty alleviation micro-credit and due diligence system. It emphasizes that all relevant parties

should intensify statistical monitoring and personnel assessment, understand relevant policies correctly and make sure that the low-income households comprehend the meaning of terms such as "guarantee and mortgage exemption, base rate lending and fiscal discount".

关于促进扶贫小额信贷健康发展的通知

旨在助力精准扶贫、精准脱贫的“扶贫小额信贷”迎来进一步政策规范。8月17日，中国银监会、财政部、中国人民银行、中国保监会、国务院扶贫办联合对外发布《关于促进扶贫小额信贷健康发展的通知》。

该通知明确澄清促进扶贫小额信贷的重点，并要求各级政府继针对扶贫，在扶贫的过程发展生产力，从而为低收入的家庭提供更多的途径以减少贫困。在通知的框架下，有关方应认真履行自己的责任，加强激励约束机制，控制贷款风险。

该通知还澄清扶贫小额信贷的差异监管及尽职调查制度。该通知强调所有有关方应加强统计监测及人员考核，正确理解有关政策，确保一般低收入家庭理解“免担保免抵押、基准利率放贷、财政贴息”等条款的意思。

CBRC Issues the Administrative Measures for Trust Registration

With the sustained and rapid development of China's economy and the steady improvement of income, the society's demand for asset management and wealth management is rising. As at the end of June 2017, the total amount of the assets entrusted with asset management of the country's 68 trust companies has exceeded 23 trillion yuan.

In order to establish a unified trust registration system to promote the sustainable and healthy development of the trust industry and to protect the legitimate rights and interests of the parties, the CBRC has issued the "Administrative Measures for Trust Registration" (the "Measures").

The Measures will have a positive significance on the development and supervision of the trust industry, and can further promote the standardization of trust businesses, improve information disclosure standards, and enhance supervision.

The Measures can reduce the risk of such trust products being used improperly, and help to reduce financial chaos and regulate the financial order. In addition, the Measures would help to improve the trust industry's credibility,

protect the legitimate rights and interests of the trust parties, and promote the development of the trust market. Registered trust products would obtain a unique product encoding, which would constitute a complete business chain from the establishment, information disclosure, process management to dissolution and so on.

This would further standardize the trust businesses, enhance market transparency, strengthen market discipline, enhance the validity and scope of supervision, and act as a safeguard against the risks of the trust industry. Furthermore, the Measures would also contribute to further improve the trust issuance and trading system, and to promote the development of the capabilities of trust services of the economy.

With regard to existing trust products, considering the volume of work, timeliness and other factors, products that will expire on or before June 30, 2018 do not have to register retroactively, while products that will expire after July 1, 2018 have to arrange for retroactive trust registration according to the Measures.

银监会发布《信托登记管理办法》

随着中国经济持续快速发展和人民收入水平稳步提高，社会对信托公司资产管理和财富管理的需求不断上升。截至 2017 年 6 月底，全国 68 家信托公司受托管理信托资产规模已突破 23 万亿元。

为构建全国统一的信托登记制度，促进信托业持续健康发展，保护信托当事人合法权益，银监会发布了《信托登记管理办法》（简称《办法》）。《办法》对信托业发展和监管具有积极意义，能够促进信托业务更加规范开展，完善行业信息披露，提升监管力度。

《办法》发布能降低信托产品被“冒用”等风险，有助于减少金融乱象，规范金融秩序。此外，《办法》有助于提高信托业公信力，保护信托当事人的合法权益，推动信托市场深化发展。经登记的信托产品，取得唯一合法产品编码，从成立、信息公示到过程管理、清算等构成完整业务链，进一步规范信托业务运营流程，提高市场透明度，加强市场约束和市场纪律，也有利于提升监管的前瞻性和有效性，切实防范信托业风险。此外，《办法》还有助于未来完善信托发行和交易流转制度，推动信托市场深化发展，提升信托服务实体经济的能力。

对于存续信托产品，考虑到录入信息的工作量和时效性等因素，规定 2018 年 6 月 30 日（含）前到期的可不补办信

托登记，2018 年 7 月 1 日仍存续的需按《办法》要求补办信托登记。



C. OTHER REGULATORS 其他监管机构

State Street Paying Penalties to Settle Fraud Charges and Disclosure Failures

The Securities and Exchange Commission (SEC) of USA announced on September 7, 2017 that State Street has agreed to pay more than \$35 million to settle charges that it fraudulently charged secret markups for transition management services and separately omitted material information about the operation of its platform for trading U.S. Treasury securities.

An SEC order finds that State Street's scheme to overcharge transition management customers generated approximately \$20 million in improper revenue for the firm. State Street used false trading statements, pre-trade estimates, and post-trade reports to misrepresent its compensation on various transactions, especially purchases and sales of bonds and other securities that trade outside large transparent markets. When one customer detected some hidden markups and confronted State Street employees, they falsely called it a "fat finger error" and "inadvertent omissions" in order to conceal the scheme.

State Street 支付罚款就欺诈指控及隐瞒披露达成和解

美国证券交易委员会(美证会)于 2017 年 9 月 7 日公布了 State Street 同意支付逾 3500 万美元的罚款，以就指控其以欺诈手段就过渡管理服务设置隐藏增费，并另外对其美国国库证券交易平台隐瞒重要的运作信息达成和解。

美证会发现 State Street 的向过渡管理服务客人过度收费的计划令其获得了约 2000 万美元的不正当收入。State Street 使用虚假交易声明, 交易前估算及交易后报告歪曲了各种交易的赔偿, 特别在大型透明市场之外交易的债券和其他证券的购买和销售。当一位客户发现了隐藏加价幅并与 State Street 的雇员对质时, 他们错误地解释为“胖手指失误”及“疏忽遗漏”以掩盖该计划。

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