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Financial Services Regulatory Update
金融服务监管资讯

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SEC Enforcement Division Report: Achievement of Its Long-pursued Mission on Main Street Investor Protection

In its ongoing efforts to protect main street investors, the Securities and Exchange Commission (SEC)'s Enforcement Division issued a report on November 16, 2017, highlighting its priorities for the coming year as well as a review of enforcement actions that took place during FY 2017.

In the report, in addition to a statement of their overall enforcement approach that "vigorous enforcement of the federal securities laws is critical to combat wrongdoing, compensate harmed investors, and maintain confidence in the integrity and fairness of our markets", Co-Directors Stephanie Avakian and Steven Peikin stated five core principles that will guide their enforcement decision-making: focus on the main street investor; focus on individual accountability; keep pace with technological change; impose sanctions that most effectively further enforcement goals; and constantly assess the allocation of resources.

With its focus on starting and ending "with the long-term interests of the main street investor", SEC commits to its ongoing mission to address the kinds of misconduct that traditionally have affected retail investors: accounting fraud, sales of unsuitable products and the pursuit of unsuitable trading strategies, and Ponzi schemes, to name just a few, whilst at the same time to "vigorously pursue cases against such financial institutions and intermediaries as Wall Street Firms".

Furthermore, as a manifestation of its "keep pace with technological change" principle, SEC purposively consolidates its substantial cyber-related expertise so as to address the fact that the technology, which makes possible market evolution, has been taken advantage of by nefarious actors, with the vicious view to engaging in cyber-related misconduct, including market manipulation scheme (which is achieved by way of hacking into the electronic accounts of others and then forcing trades to pump up a stock price) and the brokering of stolen inside information on the so-called "dark web".

According to the report, fiscal year 2017 was a successful and impactful year for the Enforcement Division. The Commission brought a diverse mix of 754 enforcement actions, including 446 standalone actions and returned a record US$1.07 billion to harmed investors. A significant number of the Commission's 446 standalone cases concerned investment advisory issues, securities offerings, and issuer reporting/accounting and auditing, each comprising approximately 20 percent of the overall number of standalone actions. The Commission also continued to bring actions relating to market manipulation, insider trading, and broker-dealers, with each comprising approximately 10 percent of the overall number of standalone actions, as well as other areas.

美国证券交易委员会执行局报告：长期追求保护普通投资者任务的成效

美国证券交易委员会(美国证委会)于其 2017 年 11 月 16 日发布的报告回顾了 2017 财年内秉承一直以来以致力保护大众投资者利益为宗旨的执行案件，并强调来年的工作重心。

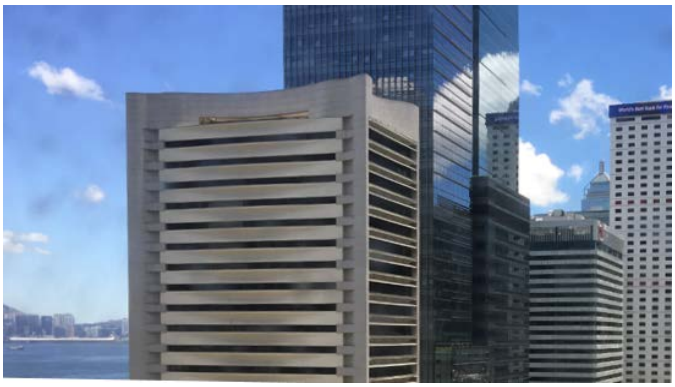
报告中，除了说明美国证委会的一般执行方针："打击市场不端行为，追讨投资者的受损利益，以及维护廉洁公平市场的声誉少不了严格有力地执行联邦证券法律"。联合董事 Stephanie Avakian 与 Steven Peikin 提出了五项核心原则，以指导他们做出执行决策。五项核心原则为：关注大众投资者利益；强调市场不端行为的个人责任；紧随技术变革的步伐；实施制裁以有效促进执行目标的实现；定期评估资源分配问题。

美国证委会长期关注"大众投资者的长远利益"，致力于纠正长期困扰零售投资者的市场不端行为，包括财务造假、销售不合格产品、采用不当贸易策略、庞氏骗局等。另外，美国证委会还积极地对涉及包括华尔街企业在内的金融机构与及营销中介的案件进行彻底追查。关于"紧随技术变革步伐"的原则，虽然科技发展一方面推动金融市场革新，但叵测居心之人利用先进技术以实施网络犯罪行为，如市场操控（通过侵入他人电子账户并促使股价攀升），或在"黑网"中以窃取的内幕信息进行交易。

对此，证委会有针对性地加强网络技术相关领域的发展。

报告指出：执行局 2017 财年成果丰硕，影响深远。证委会提起各类执行案件共 754 起，包括 446 起独立案件，为投资者讨回 10 亿 7 百万美元损失。在 446 起案件中，绝大多数涉及投资咨询，证券发行以及发行人会计及审计报告问题；上述 3 类问题各占独立案件总数的 20%左右。另外，其他案件涉及市场操纵，内幕交易以及经纪交易；每类各占独立案件总数的 10%左右。剩余案件涉及其他问题。

Source 来源:
https://www.sec.gov/news/press-release/2017-210
https://www.sec.gov/files/enforcement-annual-report-2017.pdf



SZSE's Seminar on Quality Practice of Accounting and Auditing: High Quality Information Disclosure for Investors' Rights and Interests

The 2017 Accounting and Auditing Seminar was held by Shenzhen Stock Exchange (SZSE), Shenzhen Regulatory Bureau of China Securities and Regulatory Commission (CSRC Shenzhen), and Shenzhen Institute of Certified Public Accountants (SZICPA) recently, attracting over 130 participants from SZSE, CSRC Shenzhen, SZICPA, relevantinstitutes and accounting firms with qualification to participate in securities business.

On the seminar, opinions were exchanged on the challenges and proposed measures regarding the regulation of accounting and auditing business in capital markets, relevant punishments and sanctions, and goodwill accounting. It was announced at the conference that regulatory supervision of accounting and auditing business in the capital markets will be stringently carried out in accordance with laws. Besides, there were also in-depth discussions on building a governing mechanism based on practice quality enhancement, strengthening of integrated quality control of head and branch auditing offices, risk management and internal control, improving practice quality of accounting firms with qualification to participate in securities business, reinforcing regulation of auditing and evaluation institutions and strengthening of financial disclosure regulation. The seminar was the first of its kind held by SZSE, CSRC Shenzhen, and SZICPA, and had achieved, amongst other things, an improved communication and cooperation between the three parties in the field of auditing and accounting regulation.

It was pointed out that, high-quality information disclosure is a key factor to market stability and protection of investor's rights and interests. Financial information is a crucial constituent in information disclosure, and an important basis for investor decision-making. Going forward, SZSE shall continue to impose strict regulation in compliance with laws, further enhance daily regulation of accounting and auditing, and urge auditing and evaluation institutions to duly perform their roles with diligence and to properly carry out the 2017 annual auditing work. Moreover, SZSE shall strengthen the regulation measures against end-of-year profits improperly generated by listed companies, improve the quality of accounting information of the capital markets, and protect the legitimate rights and interests of investors, especially those of small and medium investors.

深交所会及审计专业研讨会：提高信息披露质量，保护投资者权益

日前，深圳证券交易所（深交所）联合中国证券监督管理委员会深圳监管局（深圳证监局)、深圳注册会计师协会（深圳注协）举办了 2017 年度会计审计专业研讨会。吸引来自深交所、深圳证监局、深圳注协、资本市场学院和证券资格会计师事务所共计 130 余人参会。

研讨会上，与会代表就资本市场审计业务监管和处分处罚、商誉审计面临的挑战及应对等内容进行了交流。会议通报了依法全面从严监管资本市场会计审计业务的相关工作，就证券资格会计师事务所建立以执业质量为核心的治理机制、强化总分所一体化的质量控制体系、加强风险管控、提高执业质量，监管机构加强审计评估机构监管、强化财务信息披露监管等方面进行了深入研讨。本次研讨会是深交所、深圳证监局和深圳注协首次联合举办的会计审计专业研讨会，强化了三方在会计审计监管领域的沟通合作。

该会高质量的信息披露是维护市场稳定、保护投资者权益的关键因素。财务信息是信息披露的重要内容，是投资者决策的核心依据。下一步，深交所将继续深入贯彻依法全面从严监管，进一步加大会计审计日常监管力度，督促审计、评估机构归位尽责、勤勉执业、切实做好上市公司 2017 年年报审计各项工作，强化针对上市公司年末突击创利的监管手段，提升资本市场会计信息质量，保护投资者尤其是中小投资者的合法权益。

Source 来源:

http://www.szse.cn/main/en/AboutSZSE/SZSENews/SZSENews/39775706.shtml;
http://www.szse.cn/main/aboutus/bsyw/39775631.shtml

Press Conference on November 10, 2017: CSRC's Purposive Regulatory Approach Against Irregular End-Of-Year Profits of Listed Companies

Q: What is the China Securities Regulatory Commission (CSRC)'s take on the situation where some listed companies, when the year is ending, irregularly conduct significant transactions or make accounting adjustments to avoid being suspended or de-listed on the ground of it suffering consecutive loss?

A: The above situation has attracted our attention. Corporate valuation can be accurately assessed if listed companies conduct transactions in accordance with laws and regulations, and make disclosures that satisfy accounting standards. However, as a result of some irregular end-of-year profits adjustments, financial statements may fall short of full and frank disclosure as regards the company's financial situation, business performance and cash flow in the relevant period. The investors' interests, notably those of main street investors, would severely be prejudiced if a listed company records profits by way of such transactions as sale of assets without substance or irregular debt restructuring, or manipulates profits through irrational alteration of accounting policies or accounting appraisals, or artificial adjustment of asset valuation, which may be aggravated by speculative transactions in the secondary market. This will additionally disrupt the normal pricing mechanism in the capital market and its function of "survival of the fittest", and further pose threat to the stable and sound development of the capital market in the long-term. For these reasons, such activities must be stringently regulated.

Accordingly, CSRC will strengthen its regulatory measures against the afore-mentioned activities. Stock exchanges nationwide will focus on irregular profit adjustments. Listed companies will be put under closer scrutiny, and their relevant transactions will also be subjected to enhanced supervision together with closer monitoring of relevant transactions in the secondary market. The local branches of CSRC may, on a case by case basis, conduct field investigation and impose administrative sanctions where alleged conducts are found to be contrary to relevant laws and regulations.

It should be emphasized that listed companies entail fundamental value underlying the capital market. Financial information disclosed on a full and frank basis is key to investors' decision-making. Listed companies are required to be fully aware of the importance of disclosing financial information in accordance to the laws and regulations, and of the quality of financial reports. Furthermore, they are obliged to (1) disclose financial information pursuant to the laws and regulations; (2) be in strict compliance with corporate accounting standards and relevant provisions under disclosure rules; and (3) establish and improve internal control systems so as to ensure that the company's financial report will provide a genuine and complete account of its financial state, business performance and cash-flow during the relevant period. Material transactions, risk factors, accounting policies and accounting appraisal variations are the matters that shall be under close examination. Regard shall also be had to whether accounting adjustments and disclosure are conducted in accordance with relevant rules. Corporate annual review agencies shall, in accordance with the China Certified Public Accountants Auditing Standards and the CSRC's Reminder on Accounting Regulatory Risks, act in a responsible and independent manner to devise effective auditing procedure, and to provide prudent auditing opinion based on sufficient evidence appropriately obtained.

2017 年 11 月 10 日新闻发布会: 中国证监会针对性监管打击上市公司年终的不正常利润

问：每逢年末，一些上市公司便会突击进行重大交易或会计处理调整，借以扭亏摘帽、规避连续亏损戴帽、暂停上市以至退市。请问中国证券监督管理委员会(中国证监会)有什么看法？

答：中国证监会已关注到有媒体集中反映上述问题。上市公司在法律法规框架内恰当安排交易、在会计准则的范围内合理进行专业判断和估计，有利于真实反映企业价值。但是，上市公司年末突击进行利润调节，会导致企业财务报告无法真实、完整地反映公司报告期的财务状况、经营成果和现金流量。如果上市公司利用缺乏商业实质的资产出售、突击性债务重组等特定交易制造利润，通过随意变更会计政策和会计估计、进行人为价值量调整等方式操纵利润，甚至配合二级市场炒作，还会严重损害投资者，尤其是中小投资者的利益，扭曲资本市场正常的定价机制和优胜劣汰的市场功能，不利于资本市场长期稳定健康发展，对此需要从严监管。

下一步，中国证监会将强化对上市公司年末突击进行利润调节行为的监管力度。交易所将聚焦上市公司年末突击进行利润调节行为，加大"刨根问底"式问询力度，强化与二级市场交易核查的监管联动。证监会将视情况开展现场检查，发现违法违规情况，依规采取行政监管措施。

中国证监会重申，上市公司是资本市场投资价值的源泉，真实完整、客观公允的财务信息是投资者投资决策的重要基础。上市公司要充分认识依法合规披露财务信息、提高财务报告质量的重要意义，切实履行依法合规进行财务信息披露的义务，严格执行企业会计准则及资本市场财务信息披露规则的相关规定，建立健全与财务报告相关的内部控制制度，确保财务报告真实、完整地

反映公司报告期的财务状况、经营成果和现金流量。公司年审机构应当对重大非常规交易、其他高风险事项，以及会计政策、会计估计变更等予以重点关注，考虑其是否按照有关规定进行了恰当的会计处理和披露。公司年审机构应当严格遵循中国注册会计师审计准则的相关规定，结合中国证监会发布的《会计监管风险提示》有关内容，勤勉尽责，保持独立性，设计有针对性的审计程序，获取充分、适当的审计证据，发表恰当的审计意见。

Source 来源:
http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwfbh/201711/t20171110_326785.html

HKMA: A Joint Project with Singapore on Cross-border Trade and Trade Finance Platform Heralds Fintech's Emerging Presence

On November 15, 2017, the Hong Kong Monetary Authority (HKMA) and the Monetary Authority of Singapore (MAS) exchanged a Memorandum of Understanding (MoU) in Singapore to jointly develop the Global Trade Connectivity Network (GTCN), a cross-border infrastructure based on distributed ledger technology (DLT), to digitalize trade and trade finance between the two cities and potentially with an aim to expanding the network in the region and globally.

The GTCN is the first strategic joint innovation project arising from the Co-operation Agreement 1 signed by the two authorities last month. The goal of the project is to build an information highway using DLT between the Hong Kong Trade Finance Platform and the National Trade Platform in Singapore, which will make cross-border trade and financing cheaper, safer, and more efficient.

The MoU, signed between heads of the two authorities, was exchanged at the 2017 Singapore FinTech Festival organized by MAS. As part of a workshop held during the FinTech Festival, the two authorities also commenced a joint discussion with major DLT solution providers to develop business and technical models for the GTCN, which is expected to conclude in Q1 2018. The GTCN is expected to go live by early 2019, to tie in with the targeted go-live dates of the Hong Kong Trade Finance Platform and the Trade Finance Modules on the National Trade Platform in Singapore.

From the standpoint of Hong Kong, The GTCN serves as a clear indicator of HKMA's commitment to step up cross border collaboration in Fintech to better prepare Hong Kong to enter into the new Smart Banking Era; whereas Singapore, via the National Trade Platform, is committed to the digitalization of trade, which will transform the industry by streamlining processes and enhancing risk management. This joint project is an excellent showcase of how two leading international financial centers in Asia can drive the transformation of trade and trade finance.

香港金管局: 与新加坡就跨境贸易及贸易融资平台方面的合作为金融科技创未来

香港金融管理局（香港金管局）于 2017 年 11 月 15 日与新加坡金融管理局（新加坡金管局）于新加坡交换谅解备忘录，合作开发「全球贸易连接网络」，运用分布式分类帐技术(DLT)构建跨境基建，推动两地以至区内及全球的贸易及贸易融资业务数码化。

全球贸易连接网络是两地金管局上月签署《合作协议 1》后的首个策略性合作项目，运用 DLT 技术在香港贸易融资平台及新加坡的「全国贸易平台」之间建立资讯交换渠道，降低跨境贸易及贸易融资成本、提高安全性及效率。

两地金管局在新加坡金管局主办的 2017 新加坡金融科技节上，交换由双方负责人签署的谅解备忘录。两地金管局亦会在新加坡金融科技节的工作坊上与各主要 DLT 方案供应商展开讨论，期望于 2018 年第一季内确定全球贸易连接网络的运作模式及技术细则。全球贸易连接网络预计于 2019 年初投入运作，以配合香港贸易融资平台及新加坡全国贸易平台内贸易融资组件的投产日期。

是次合作项目充分展现香港金管局致力加强金融科技的跨境合作，带领香港迈向智慧银行新纪元。另一方面，新加坡一直推动贸易数码化。全国贸易平台精简业务流程并加强风险管理，将为业界带来变革。此次创新合作项目正好展示了两个亚洲区内的领先国际金融中心如何合作推动贸易及贸易融资业务转型。

Source 来源:
http://www.hkma.gov.hk/eng/key-information/press-releases/2017/20171115-6.shtml

ASEAN Financial Innovation Network to Support Financial Services Innovation and Inclusion

On November 16, 2017, International Finance Corporation (IFC), a member of the World Bank Group, the Monetary Authority of Singapore (MAS) and the ASEAN Bankers Association (ABA) introduced an industry FinTech sandbox for financial institutions and FinTech firms as part of the ASEAN Financial Innovation Network (AFIN), at the sidelines of the 2017 Singapore FinTech Festival. AFIN aims to support financial services innovation and inclusion in less developed markets within the ASEAN region and to provide a platform for collaboration and innovation for financial institutions and FinTech firms.

AFIN will provide an integrated platform for collaboration between ASEAN banks, microfinance institutions, non-banking financial institutions (NBFI) and regional

experimentation of innovative digital financial products and services. It will support an array of financial service functions and solutions such as customer onboarding, credit scoring, merchant payments and compliance solutions amongst others. By providing a structured method for integration and defining relevant standards where necessary to connect the backend systems of banks and FinTechs, AFIN can help banks test out solutions in a quick and seamless manner.

东盟金融创新网络支持金融服务创新和融合

2017 年 11 月 16 日，世界银行集团成员的国际金融公司（IFC），联同新加坡金融管理局（金管局）（MAS）与东盟银行业协会（ABA），在 2017 新加坡金融科技节活动期间，共同向金融机构与金融科技企业推介金融科技砂盒。这是东盟金融创新互通网（AFIN）活动的一部分。该互通网的宗旨在于支持东盟区域内欠发达地区的市场金融服务创新与普惠金融服务，并为金融机构及金融科技企业提供合作创新平台。

东盟金融创新互通网将在东盟国家的银行，微金融机构，非银行业金融机构（NBFI）与区域金融科技企业之间搭建一体化合作平台。该平台将促进创新型数字金融产品与金融服务的发展与试行。同时，该平台支持各类金融服务功能与解决方案，包括客户导引，信用评级，商家支付与合规策略等。东盟金融创新互通网提供一体化的结构性策略，并确定连接银行与金融科技企业后端系统的相关必要标准，为银行快速顺畅地找到解决策略。

Source 来源:

http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/ASEAN-Financial-Innovation-Network-to-support-financial-services-innovation-and-inclusion.aspx

HKEX's Disciplinary Action Against Han Tang International Limited (Company) and its Directors: The Necessity to Be Compliant with Listing Rules and Director's Undertaking and the Importance of Investor's Confidence to the Market

(1) The Company's subsidiary A and an entity (Entity) entered into an agreement (Investment Agreement) in which both parties agreed to inject a total sum of HK$400 million into a target (Target). Subsidiary A did not satisfy a condition precedent (Condition Issue), which constituted a material variation to the Investment Agreement that had previously been disclosed and approved by shareholders.

(2) The Target and the Entity entered into an agreement (Project Transfer Agreement) whereby the Target agreed to purchase plant and equipment from the Entity for HK$460 million. The said agreement was a connected and disclosable transaction, which was classified as a very substantial acquisition.

(3) The Company's subsidiary B entered into an option agreement with two entities (Pacific and KLK), whereby Pacific and KLK were each granted an option to acquire Subsidiary B's shares. The option agreements were connected and disclosable transactions, which were classified as a very substantial disposal.

(4) Subsidiary A and the Entity entered into a supplemental agreement that extended the deadline to complete one of the condition precedents under the Investment Agreement.

(5) The Company issued an announcement which did not disclose the Condition Issue, the Project Transfer Agreement, the option agreements and the supplemental agreement.

(6) Mr. NK Goh, the director of the Company, Subsidiary A and Pacific, and Mr. NY Goh, the brother of Mr. NK Goh, authorized Subsidiary B to effect the transfer of Subsidiary B's shares to Pacific and KLK in discharge of the charge under a loan agreement between (a) Subsidiary B and Pacific; and (b) Subsidiary B and KLK, respectively. The transfer of shares led to the Company's loss of its principal business. They authorized Pacific's option agreement without (a) disclosing the Goh's Interest and (b) the Company's knowledge or approval. Mr. NK Goh and Mr. NY Goh authorized the option agreements whilst Mr. Yeow signed the same without the Company's approval or knowledge.

Based upon the above facts, the Listing Committee concluded:

The Company breached Listing Rules (LR) 2.13(2), 14.34, 14.36, 14.38A, 14.48, 14.49, 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49 for reasons that: (1) it failed to announce and obtain shareholders' approval for the Condition Issue which constituted a material variation to the Investment Agreement as required under LR14.36; (2) the April Announcement was inaccurate, incomplete and misleading, in breach of LR2.13(2); and (3) it failed to comply with the LR14.34, 14.38A, 14.48, 14.49, 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49 in respect of the option agreements and the Project Transfer Agreement.

Mr. NK Goh and Mr. NY Goh breached LR3.08 and the Undertaking for reasons that: (1) they failed to comply with the LR in respect of the Option Agreements; (2) they failed to avoid actual and potential conflicts of interest with respect to the Pacific Option Agreement, in breach of LR3.08(d); (3) they failed to exercise skill, care and diligence reasonably required and expected of them by not (i) disclosing the option agreements; (ii) reasonably contemplating the Condition Issue constituted a material variation; and (iii) ensuring the announcement was accurate and complete, in breach of LR3.08(f); and (4) they breached their director's undertaking. Mr. Yeow breached LR3.08 and the director's undertaking for reasons that: (1) he failed to

exercise skill, care and diligence reasonably required and expected of him given his knowledge, experience and position in the Company by not (i) disclosing the option agreements; (ii) reasonably contemplating the Condition Issue constituted a material variation; (iii) ensuring the announcement was accurate and complete; (iv) signed the option agreements without the Company's approval; and (v) informing the Company of the Goh's Interest, in breach of LR3.08(f); and (2) he breached his director's undertaking.

The Committee regards the breaches in this matter serious: (1) The LR is designed to ensure that investors have a continued confidence in the market and they are kept fully informed by the Company. The purpose and intention of LR14.36 is aimed to achieve this purpose, to which, the Company had failed to do by not disclosing the Condition Issue and not allowing shareholders the opportunity to vote on the same; (2) The announcement was incomplete, inaccurate and misleading for it failed to properly disclose the Condition Issue, the supplemental agreement, the Project Transfer Agreement and the option agreements. It is imperative that any announcements required under the LR comply with LR2.13(2) so as to provide transparency to the shareholders and the market. (3) The option agreements were connected transactions and classified as a very substantial disposal under the LR, which carried serious implications to the Company. The company was required to disclose and obtain shareholders' prior approval for the option agreements so as to maintain a fair and orderly market; (4) Mr. NK Goh and Mr. NY Goh abused and took advantage of their interests (i.e. Goh's Interest) in authorizing Pacific's option agreement without the Company's knowledge or approval. Such conduct undermines Mr. NK Goh's and Mr. NY Goh's integrity and duty owed by them to act in the interests of the Company's shareholders. It was imperative that Mr. NK Goh and Mr. NY Goh disclose the Goh's interest and refrain from voting or be counted as part of the quorum with respect to the matter. (5) Mr. Yeow's reason for signing the option agreement without the Company's knowledge or approval is unacceptable. Each director is accountable to the Company and its shareholders for its actions and they must disclose and seek approval from the Board before taking any actions that would affect the interests of the Company and its shareholders. Mr. Yeow was expected to have disclosed to the Company the option agreement as well as its knowledge of the Goh's Interest.

联交所对汉唐国际控股有限公司及其董事的纪律处分：遵守《上市规则》以及《董事承诺》的必要性，以及投资者信心对于市场的重要性

(1) 该公司附属公司 A 与独立实体订立「投资协议，双方同意向目标公司合共注资 4 亿元。附属公司 A 未符合先决条件的要求，此构成对先前披露并经股东批准的投资协议的重要改动。

(2) 目标与实体订立项目转让协议，该协议为关连及须予披露的交易，属于非常重大的收购事项。

(3) 公司附属公司 B 与 Pacific 订立 Pacific 购股权协议及与 KLK 订立购股权协议（统称「购股权协议」），分别向 Pacific 及 KLK 授予购股权，使 Pacific 及 KLK 可收购附属公司 B 的股份。购股权协议为关连及须予披露的交易，属于非常重大的出售事项。

(4) 附属公司 A 与实体订立补充协议，把完成投资协议项下其中一项先决条件的时限延长。

(5) 该公司发出 4 月公告，但未有披露有条件发行、项目转让协议、购股权协议及补充协议。

(6) 吴南华先生（为该公司、附属公司 A 及 Pacific 的董事）及吴南洋先生（为吴南华先生之弟弟，统称「吴氏权益」）授权附属公司 B 的股份转让予 Pacific 及 KLK，以履行(a)附属公司 B 与 Pacific；及(b)附属公司 B 与 KLK 分别订立的贷款协议项下的押记。股份转让令该公司失去其主要业务。两人在(a)未有披露吴氏权益及(b)该公司不知情或未经其批准下授权 Pacific 购股权协议。在未经该公司批准或在公司不知情的情况下，吴南华先生及吴南洋先生授权购股权协议，而杨先生则签订购股权协议。

基于上述事实，上市委员会作出以下裁定：

该公司违反《上市规则》第 2.13(2)、14.34、14.36、14.38A、14.48、14.49、14A.21、14A.45、14A.47、14A.48 及 14A.49 条，原因是：(1) 有条件发行构成对投资协议的重要改动，但该公司未有根据《上市规则》第 14.36 条作出公布及取得股东批准；(2) 4 月公告不准确、不完备及具误导性，违反《上市规则》第 2.13(2)条；及 (3) 该公司未能就购股权协议及项目转让协议遵守《上市规则》第 14.34、14.38A、14.48、14.49、14A.21、14A.45、14A.47、14A.48 及 14A.49 条。

吴南华先生及吴南洋先生违反《上市规则》第 3.08 条及《承诺》，原因是：(1) 他们未有就购股权协议遵守《上市规则》的规定；(2) 他们未能就 Pacific 购股权协议避免实际及潜在利益冲突，违反《上市规则》第 3.08(d)条；(3) 他们未能以须有及应有程度的技能、谨慎和勤勉行事：未有(i)披露购股权协议；(ii)合理地考虑有条件发行或构成重要改动；及(iii)确保 4 月公告准确及完备，违反《上市规则》第 3.08(f)条；及 (4) 他们违反了《承诺》。杨先生违反《上市规则》第 3.08 条及《承诺》，原因是：(1) 他未能以须有及应有程度的技能、

谨慎和勤勉行事：他拥有丰富知识及经验、在该公司身居要职，但未有(i)披露购股权协议；(ii)合理地考虑有条件发行或构成重要改动；(iii)确保 4 月公告准确及完备；(iv)在未经该公司批准的情况下签订购股权协议；及(v)知会该公司有关吴氏权益，违反《上市规则》第 3.08(f)条；及（2）他违反了《承诺》。

上市委员会认为事件中的违规情况严重：（1）《上市规则》旨在确保投资者对市场持续具有信心并能全面获悉公司的资讯。《上市规则》第14.36条的目的及用意正在于此，但该公司未有披露有条件发行，亦未有给股东就此进行投票的机会，因此达不到此条规定之目的；（2）4 月公告不完备、不准备，也具误导性，因为当中未有妥善披露有条件发行、补充协议、项目转让协议及购股权协议。任何《上市规则》规定的公告均须符合《上市规则》第 2.13(2)条的规定，以向股东及市场提供透明度；（3）购股权协议是关连交易，根据《上市规则》属于非常重大的出售事项，对该公司构成极大影响。该公司必须就此加以披露并事先取得股东批准，以维持公平有序的市场；（4）吴南华先生及吴南洋先生滥用及利用其权益（即吴氏权益），在该公司不知情或未经其批准下授权 Pacific 购股权协议，损害了二人的诚信及保障该公司股东利益的责任。吴南华先生及吴南洋先生必须披露吴氏权益及放弃就相关事宜表决或计入相关会议的法定人数；（5）杨先生在该公司不知情或未经其批准下签订购股权协议的理由令人难以接受。各董事均须就其行动对公司及股东承担责任，在采取任何或会影响公司及股东利益的行动前，均须先行披露并寻求董事会批准。杨先生应向该公司披露购股权协议以及吴氏权益。

Source 来源:
http://www.hkex.com.hk/News/News Release/2017/1711152news?sc_lang=en

SFC Concludes Consultation on Asset Management Regulation and Point-of-Sale Transparency and Further Consults on Disclosure Requirements for Discretionary Accounts

The Hong Kong Securities and Futures Commission (SFC) on November 16, 2017 released consultation conclusions on proposals to enhance asset management regulation and point-of-sale transparency. The SFC also launched a further consultation on disclosure requirements applicable to discretionary accounts.

The SFC will implement the enhancements to the Fund Manager Code of Conduct (FMCC) with certain modifications and clarifications, where securities lending and repurchase agreements, custody of fund assets, liquidity risk management, and disclosure of leverage by fund managers are concerned. To address conflicts of interest in the sale of investment products, the SFC will also implement the proposed approach to govern the use of the term "independent" by intermediaries and to enhance disclosure of trailer fees, commissions and other monetary benefits. The revised FMCC will become effective 12 months after it is gazette and the amendments to the Code of Conduct will become effective nine months following gazettal.

It is said that these enhancements ensure regulations are properly benchmarked to evolving international standards and strengthen Hong Kong's position as a major asset management center. Additionally, the approach adopted to address conflicts of interests and incentives is calibrated to Hong Kong's current market conditions. Nonetheless, the merits of pay-for-advice models will be actively taken into account in light of local and international market and regulatory developments.

证监会发表有关资产管理业规管及销售时的透明度的谘询总结并就适用于委托帐户的披露规定展开进一步谘询

2017 年 11 月 16 日，香港证券及期货事务监察委员会（证监会）发表有关建议加强资产管理业规管及销售时的透明的谘询总结，并就适用于委托帐户的披露规定展开进一步谘询。

证监会经作出某些修改及厘清相关事项后，将在证券借贷和回购协议、基金资产的托管、流动性风险管理及基金经理就杠杆借贷比率的披露方面落实有关《基金经理操守准则》的加强措施。为处理销售投资产品涉及的利益冲突，证监会亦将落实建议采取的方针，一方面规管中介人使用"独立"一词，另一方面加强后续费用、佣金及其他金钱收益的披露。经修改的《基金经理操守准则》将在刊宪后 12 个月生效；而对《操守准则》的修订将在刊宪后九个月生效。

这些加强措施能确保香港的监管规例适当地紧贴不断演变的国际标准，并可巩固香港作为主要资产管理中心的地位。我们为处理利益冲突及诱因问题所采纳的方针，是因应香港当前的市场状况而制订的。然而，我们会观察本地及国际的市场及监管发展，积极研究为投资意见支付费用模式的可取之处。

Source 来源:
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR136

CSRC's Revised Measures for the Administration of Securities Exchanges

The CSRC has recently released the revised Measures for the Administration of Securities Exchanges(MASE), which will come into effect since Jan 1, 2018.

The MASE currently in force, which was promulgated on Dec 12, 2001, has played an important role over these years. The increasing sophistication in the regulatory practice of Securities Exchanges as a result of securities market development, and the adjustment of relevant laws, however, have made it practically difficult for the MASE currently in effect to operate as a safeguard for the market stability and order, and for the interest of small-and-medium size investors.

The CSRC issued the Consultation Paper on Sep 1, 2017, and the consultation period ended on Sep 30, 2017. 69 submission were received, with some adopted by CSRC after its well consideration.

The revised Measures for the Administration of Securities Exchanges consists of nine chapters and ninety articles. Key improvements were made in respect of internal governance structure and facilitation of Securities Exchanges' performance of its regulatory responsibility on the one hand, and promotion of self-administration of Securities Exchanges on the other. Major modifications were made as follows: (1) enhancement of Securities Exchanges' regulatory responsibility for securities transaction activities, and further clarification as to Securities Exchange's disciplinary actions against such misconduct as irregular transaction and illegal reduction; (2) enhancement of Securities Exchanges' regulatory function for its members, establishment and further improvement of members-centric transaction conduct supervisory regime, and further clarification as regards members' rights and obligations; (3) enhancement of Securities Exchanges' regulatory responsibility for listed companies. It is imperative for Securities Exchanges' to discharge their supervisory responsibilities in respect of information disclosure, suspension and resumption of trading, etc.; and (4) further improvement as to Securities Exchanges' measures for market risk management, including real-time supervision, restriction on trading, field investigation and penalties, etc.

As one of the keystone regulations of capital market, the revised MASE is not made possible without the experience learned from the stock market turbulence in 2015, and from the sophisticated practice of overseas securities exchanges. With its focus on such area as improvement of internal governance structure, and enhancement of supervisory function, the revised MASE will (1) assist Securities Exchanges in better performing its function on organization, supervision and administration of securities transaction activities, and optimizing the allocation of market resources to boost real economy; (2) enable Securities Exchanges to keep abreast of the changing market circumstance, organize and regulate securities transaction, prevent market risk and safeguard the interest of investors; and (3) facilitate the establishment of an globally-renowned securities exchange with its peculiar character.

中国证监会发布修订后的《证券交易所管理办法》

近日，中国证监会发布修订后的《证券交易所管理办法》，自 2018 年 1 月 1 日起施行。

现行《证券交易所管理办法》公布于 2001 年 12 月 12 日，在证券交易所的发展过程中起到了重要作用。但随着我国证券市场的不断发展，证券交易所监管实践的逐步成熟，相关法律的进一步调整、完善，现行《证券交易所管理办法》已滞后于市场发展实践，难以完全适应证券交易所发挥一线监管职能、规范市场秩序、防范化解市场风险和保障广大中小投资者合法权益的需要。

《证券交易所管理办法》征求意见稿自 2017 年 9 月 1 日起向社会公开征求意见，截至 9 月 30 日公开征求意见结束，中国证监会共收到 69 条反馈意见。经综合考虑，中国证监会采纳了其中针对《证券交易所管理办法》具体规范内容的合理意见。

修订后的《证券交易所管理办法》共九章，九十条，主要从完善证券交易所内部治理结构和促进证券交易所进一步履行一线监管职责，充分发挥自律管理作用两方面予以修改完善。修订的主要内容包括：强化交易所对证券交易活动的一线监管职责，明确交易所对于异常交易行为、违规减持行为等的自律管理措施；强化交易所对会员的一线监管职责，建立健全证券交易所以监管会员为中心的交易行为监管制度，进一步明确会员的权利义务；强化证券交易所对证券上市交易公司的一线监管职责，要求证券交易所对证券上市公司的信息披露、停复牌等履行自律管理职责；进一步完善证券交易所在履行一线监管职责、防范市场风险中的手段措施，包括实时监控、限制交易、现场检查、收取惩罚性违约金等。
《证券交易所管理办法》是资本市场的重要规章制度，此次修订，借鉴境外证券交易所的成熟经验，认真吸取 2015 年股市异常波动的深刻教训，围绕优化交易所内部治理结构，强化交易所履行一线监管职责作了系列制度调整。有利于交易所回归本位，切实发挥好对证券交易活动组织、监督、管理和服务的功能，优化市场资源配置，服务实体经济；有利于交易所进一步积极应对市场形势变化，组织和监督证券交易，防范市场风险，保护

投资者合法权益；有利于促进交易所建设成为具有自身特色的、一流的、国际化的证券交易所。

Source 来源:
http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201711/t20171117_327203.html;
http://www.csrc.gov.cn/pub/zjhpublic/zjh/201711/P020171117605793167576.pdf

SFC's HK$400 Million Sanction Against HSBC's Systemic Failures in Selling Derivative Products

HSBC Private Bank (Suisse) SA, the Hong Kong branch of the Switzerland-based private banking business of HSBC Group, has been fined a record sum of HK$400 million after the Securities and Futures Appeals Tribunal (SFAT) upheld the SFC's disciplinary action against the bank for material systemic failures in relation to the sale of derivative products – namely, Lehman Brothers-related Notes (LB-Notes) and Leveraged Forward Accumulators (FAs) – in the run-up to the global financial crisis in 2008.

Between January 2003 and December 2008, HSBC Private Bank (Suisse) SA's internal processes were found to be materially flawed in: (1) understanding each client's true risk profile; (2) ensuring the suitability of products for each client; and (3) supervising and monitoring sales processes in order to detect and avoid risk mismatch. It was concluded that the bank was culpable of material systemic failings in its marketing and sale of derivative products by falling short of the standards set out in the SFC Code of Conduct and ancillary guidelines. The SFAT is of the view that a fine of HK$400 million is appropriate and recognises that "it is also exemplary in that for the greater protection of the integrity of Hong Kong's financial markets, it provides a stern warning that principles of professional conduct must be adhered to".

The underlying message from SFAT's substantial sanctions imposed upon the bank's significant failure to maintain its systems and controls for selling structured products up to the standards expected is that: the relevant standards are designed to protect all investors including clients of retail or private banks. When breaches of these standards occur, the SFC will take action to enforce them and strive to achieve outcomes that are in the interest of the investing public.

汇丰私人银行（瑞士）有限公司因在销售衍生产品时涉及系统性缺失遭罚款 4 亿港元

汇丰集团旗下瑞士私人银行的香港分行——汇丰私人银行（瑞士）有限公司——在 2008 年全球金融危机前夕销售衍生工具产品（即雷曼兄弟相关的票据（雷曼票据）及杠杆式累算远期投资计划（FA））时，因涉及严重的系统性缺失，遭证券及期货事务监察委员会（证监会）采取纪律行动。证券及期货事务上诉审裁处（上诉审裁处）维持有关纪律行动，该行被处以历来最高的 4 亿港元罚款。

汇丰私人银行（瑞士）有限公司的内部程序在 2003 年 1 月至 2008 年 12 月期间在以下方面出现严重缺陷：
（1）了解各客户的真正风险状况；
（2）确保产品适合各客户；及
（3）监督及监察销售过程，以侦测及避免风险错配。

由此上诉审裁处裁定该行在推广及销售衍生工具产品时犯有严重的系统性缺失，未能达到证监会《操守准则》及附属指引所订明的标准。上诉审裁处认为，罚款 4 亿港元是适当金额，并表示"该罚款亦具有警戒作用，藉此发出严厉警告，告诫各界务必遵循专业操守原则，从而为香港金融市场的廉洁稳健提供更大保障"。

汇丰私人银行（瑞士）有限公司销售结构性产品时所采用的系统和监控措施远逊于应有标准。对此证监会认为有需要施加重大处分。从此传递讯息非常明确：证监会所制订的标准是为了保障所有投资者，包括零售或私人银行的客户。有关标准一经违反，证监会定会行动，执行相关法规，务求达致符合投资大众利益的结果。

Source 来源:
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR138

SFC Issued Frequently Asked Questions (FAQ) on Exchange Traded Funds and Listed Funds

The FAQ is prepared by the Investment Products Division of the SFC and aims to provide basic information to market practitioners in respect of exchange traded funds (ETFs) and listed funds, which are subject to the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (Handbook), including the Code on Unit Trusts and Mutual Funds (UT Code). Applicants are encouraged to contact the relevant case team in the Investment Products Division of the SFC if in doubt on any specific issues arising from the application/interpretation of the Handbook or the FAQ. Each application for authorization is considered on a case-by-case basis.
The information set out below is not meant to be exhaustive. The FAQ may be updated and revised from time to time. The FAQ is only for general reference. Compliance with all the requirements in the FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

证监会发布有关交易所交易基金及上市基金的常见问题

《常见问题清单》（清单）由证监会投资产品部门所提供。《清单》旨在为市场实务人士提供交易所交易基金

（ETF）以及上市基金的基本参考信息，但具体要求应参见《证监会关于单位信托基金，互惠基金，投资相关的保险计划以及非上市结构性投资产品的手册》（手册），以及《关于单位信托基金的守则》。对于因《手册》以及《清单》的适用或解释而产生的具体问题存有疑问的，建议申请者联系证监会投资产品分部的相关案件团队。需要注意：证监会依据个案情况批准授权申请。

《清单》所列举的问题并未穷竭，并会不定期进行更新与修正。《清单》仅适用于一般性参考。遵守《清单》的要求并不代表申请必然得到受理或授权。证监会保留行使一切法定权力。

Source 来源:
http://www.sfc.hk/web/EN/files/PCIP/FAQ-PDFS/08_FAQs%20on%20the%20Exchange%20Traded%20Funds%20and%20Listed%20Funds_22%20Dec%202016.pdf

Redemption Claw Back Claims Allowed by Privy Council

The Privy Council in DD Growth Premium 2X Fund (In Official Liquidation) (Appellant) v RMF Market Neutral Strategies (Master) Limited (Respondent) (Cayman Islands) overturned the decisions of the Cayman Islands Court of Appeal and the Chief Justice of the Cayman Islands at first instance, and declared that redemption payments made at a time when an investment fund was unable to pay its debts as they fell due were unlawful.

RMF sought to cash in its investments in DD Growth Premium 2X Fund Company in late 2008, by exercising its right to have its shares in the open-ended investment company redeemed. The company paid US$23 million to RMF before running out of money and being wound up. The company was insolvent at the time of the payments, as subsequently determined during the winding-up. The liquidator of the company sought to claw back the payments made to RMF.

The Privy Council, in a split 3/2 decision, after examining the relevant legislation, held that the redemption payments were an illegal return of capital which failed the solvency test. The matter was remitted by the Privy Council to the Grand Court to determine whether the recipient investor is accountable for those payments as a constructive trustee.

英国枢密院司法委员会判决准许基金清算人对赎回款项的"追回"请求

在 DD Growth Premium 2X Fund (In Official Liquidation) (上诉人) v RMF Market Neutral Strategies (Master) Limited (被上诉人)一案中，英国枢密院司法委员会推翻开曼群岛一审法院与上诉法院的判决，判定一家开曼群岛设立的开放式投资基金公司（上诉人），在其债务到期却无法偿还时，仍向 RMF（被上诉人）支付股权回赎款的行为违反相关的法律规定。

RMF 于 2008 年末行使其对 DD Growth Premium 2X 基金公司的股份回赎权，要求公司返还前者对于后者的投资。在向 RMF 支付 2300 万美元之后，公司清盘。在清盘过程中，得知公司在向 RMF 付款时已经破产。公司的清算人随即提起诉讼，要求追回公司向 RMF 支付的回赎款额。

英国枢密院司法委员会在详细审阅相关的法规后，以 3:2 的多数判定公司向 RMF 支付的赎回款额构成公司资本非法返还。对于收受款额的投资者是否作为推定信托人而须返还所得款额，该问题英国枢密院退回开曼群岛一审法院进行决定。

Source 来源:
https://www.jcpc.uk/cases/docs/jcpc-2016-0050-judgment.pdf