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Financial Services Regulatory Update 金融服务监管资讯

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China Insurance Regulatory Commission's Consultation Papers on Prevention of Insurance Fraud and Qualifications Requirements on Senior Personnel of Insurance Companies

In order to enhance the specific comprehensive risk management ability of the insurance industry and prevent and defuse the risk of insurance fraud, the China Insurance Regulatory Commission (CIRC) issued its Guidance on Anti-Insurance Fraud (Guidance). Detailed guidelines have been proposed in respect of the anti-fraud system and organization structure, internal control and information system, identification of fraud risks, assessment and examination, publicity, education and reporting, supervision and management and industry collaboration in the insurance industry. The draft focuses on the board of directors of the insurance institution which will be assumed to take ultimate responsibility for fraud risk management.

Specifically, Chapter Two of the Guidance explicitly states that insurance institutions should establish their fraud risk management systems and clarify the roles and responsibilities of the board of directors and its special committees, board of supervisors (supervisors), management and relevant departments in fraud risk management and reporting, standardize operational procedures, and implement a strict examination and accountability system.

Article 9 provides that for any occurrence of fraud, the board of directors of the insurance institution would bear the ultimate responsibility. The main duties of the board of directors include: to determine the strategic plans and overall policy of fraud risk management and to review the basic systems of fraud risk management.

Article 12 provides that the insurance institution shall designate a person-in-charge of fraud risk management and notify the CIRC of the designation in writing. Duties of the person-in-charge include: allocating the responsibilities of fraud risk management, clarifying the chain of responsibility for risks, and organizing the implementation of risk management measures and internal control measures.

To strengthen and standardize the management of directors, supervisors and senior management of insurance companies and promote the firm and strong operation of insurance companies, the CIRC is revising the Regulations on Qualifications of Directors, Supervisors and Senior Management of Insurance Companies and has released the Draft for Comment (Draft). The key point of the draft is that the CIRC has the intention of excluding those who have had poor qualities or experiences or records from being a senior management personnel of insurance companies.

Article 10 clearly states that all senior management personnel of the insurance institutions must have a bachelor's degree or above. However, the qualifications required for the senior management personnel of the provincial branches of insurance institutions and their sub-branches below may be relaxed to university specialties subject to the relevant conditions.

Article 24 focuses on raising the threshold for the insurance regulatory authority to reject qualifications. For example, qualifications will be rejected if the proposed director, supervisor or senior management personnel of an insurance institution is barred from entering the market by the financial regulatory authority for not more than five years or if they have been penalized with administrative penalties resulting from warnings or fines by the CIRC within the two years prior to the application.

Article 23 of the draft explicitly prohibits the directors and senior management personnel of insurance companies from concurrently serving several positions. They are (1) not allowed to concurrently serve as the chairman of two insurance companies, except where insurance company belongs to either an insurance group company or where the chairman of the insurance group company serve as the chairman of a subsidiary; (2) not allowed to concurrently serve as Chairman and general manager of the same insurance company; and (3) not allowed to concurrently hold more than three senior management positions in the same insurance institution.

中国保险监督管理委员会(1)反保险欺诈及(2)保险公司高级管理人员资格规定征求意见稿

为提升特别针对保险业的全面风险管理能力，防范和化解保险欺诈风险，中国保险监督管理委员会(保监会)发出《反保险欺诈指引(征求意见稿)》(征求意见稿)，从保险业反欺诈制度体系与组织架构、内部控制与信息系统、欺诈风险识别、评估与考核、宣传教育及举报、监督管理与行业协作等方面作出详细规定，整份意见稿集中检视了保险机构董事会将承担欺诈风险管理的最终责任。

具体来看，征求意见稿的第二章明确要求，保险机构应制定欺诈风险管理制度，明确董事会及其专门委员会、监事会(监事)、管理层、相关部门在欺诈风险管理中的作用、职责及报告路径，规范操作流程，严格考核、问责制度执行。

当中第九条表示，对于欺诈风险发生，保险机构董事会将承担最终责任。董事会的主要职责包括：确定欺诈风险管理战略规划和总体政策，审定欺诈风险管理的基本制度。

第十二条显示，保险机构应当指定欺诈风险管理负责人，并以书面形式告知保监会。负责人职责包括：分解欺诈风险管理责任，明晰风险责任链条；组织落实风险管理措施与内控建设措施等。

为进一步加强和规范对保险公司董事、监事和高级管理人员的管理，促进保险公司稳健经营，中国保险监督管理委员会正在对《保险公司董事、监事和高级管理人员任职资格管理规定》进行修改，形成了征求意见稿。整份意见稿重点在于中国保险监督管理委员会有意屏除经验、素质不好或纪录不良的人士成为保险公司的高级管理层。

对于保险机构高级管理人员的学历，第十条明确表示，必需具有大学本科或以上学历。但对于保险机构省级分公司及其以下分支机构拟任高级管理人员的学历要求，则可在符合相关条件的情况下，放宽至大学专科。

第二十四条的重点落在提高保险监督管理机构不予核准其任职资格的门坎，比如，保险机构拟任董事、监事或者高级管理人员存在被金融监管部门禁止进入市场，期满未逾5年、申请前2年内受到保险监督管理机构警告或者罚款的行政处罚等。

意见稿的第二十三条明确严禁保险机构董事和高级管理人员身兼数职。(一)不允许同时担任两家保险公司董事长，除兼任的保险公司同属一家保险集团公司或者保险集团公司董事长兼任子公司董事长外；(二)不允许同时担任同一家保险公司的董事长和总经理；及(三)不允许同时担任同一家保险机构内三个以上高级管理人员职务。

Source 来源:

<http://www.circ.gov.cn/web/site0/tab5168/info4091927.htm>
<http://www.circ.gov.cn/web/site0/tab5168/info4091929.htm>

Hong Kong Securities and Futures Commission Issued “Frequently Asked Questions on Advisory Work on Valuations in Corporate Transactions”

The SFC issued a circular to financial advisers in relation to their advisory work on valuations in corporate transactions (Circular). The Circular makes clear that where financial advisers are appointed by a listed company for advice on valuations in corporate transactions, they should comply with all applicable requirements under the Corporate Finance Adviser Code of Conduct (CFA Code).

Financial advisers should not rely solely on representations made by the directors, their delegates or other third parties. Financial advisers should conduct their own assessment and undertake reasonableness checks as appropriate on the forecasts, assumptions, qualifications and methodologies of the valuation and the directors' decision on whether or not to appoint a professional valuer. In certain circumstances, it may be appropriate for several valuation methodologies to be utilized in arriving at the final valuation result.

Having regard to paragraph 15 of the guidance note on directors' duties in the context of valuations in corporate transactions involving listed companies dated May 15, 2017 issued by the SFC (Guidance Note) and paragraph 5.5 of the CFA Code, in cases where the directors have decided not to appoint a valuer, financial advisers should advise the directors on the appropriateness of not appointing a valuer.

If financial advisers cannot be satisfied that the valuation methodology is reasonable and that the valuation has been made by the directors after due and careful enquiry, they should use all reasonable efforts to ensure that the directors understand the relevant regulatory requirements (including the Guidance Note) and their implications and provide advice. Depending on the circumstances, financial advisers might also need to consider the need to cease to act for the directors concerned.

香港证券及期货事务监察委员会发表《关于公司交易估值咨询工作的常见问题》

香港证券及期货事务监察委员会发表(证监会)发表一份致财务顾问关于其企业交易估值方面的顾问服务工作的通函(该通函)。该通函清楚阐明，获上市公司委任在企业交易估值方面提供顾问服务的财务顾问应遵从《企业融资顾问操守准则》的所有适用规定。

财务顾问不应纯粹依赖于董事、其代表或其他第三方作出的陈述。财务顾问应对估值的预测、假设、保留意见及方法，以及董事是否委任专业估值师的决定，自行作出评估，并进行适当的合理性审查。在若干情况下，可能适宜运用多种估值方法来得出最后的估值结果。

如董事决定不委任估值师，财务顾问应在考虑证监会于2017年5月27日刊登的指引（该指引）第15段及《企业融资顾问操守准则》第5.5段后，就不委任估值师是否合适向董事提供意见。

如财务顾问未能信纳估值方法为合理，以及估值是经由董事作出适当及审慎查询后而得出，他们应尽一切合理努力确保董事了解相关的监管规定（包括该指引）及其影响并提供意见。取决于具体情况，财务顾问亦可能需考虑是否要向有关董事请辞。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=17EC80>
<http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/intermediaries/supervision/doc?refNo=17EC80>



Salient Features of Revision of Fit and Proper Person Guidelines of Hong Kong Insurance Authority

The Guidance on Fit and Proper Criteria Under the Insurance Ordinance (Cap 41) (GL4) has been amended by the Insurance Authority of Hong Kong (IA) earlier this year. The amendments were made to incorporate the newly amended Insurance Ordinance on factors considered by IA when determining whether a person is fit or proper, and to incorporate the revised Insurance Core Principle 5 on Suitability of Persons promulgated by the International Association of Insurance Supervisors.

The main amendments are as below:

- Insurers incorporated outside Hong Kong are now required to submit an application for the IA's approval for their appointment of managing directors by showing that they are not responsible for the conduct of the insurance business carried by the insurer elsewhere and have a subordinate who is responsible for the whole insurance business carried within Hong Kong (Clause 2.4);
- Insurers must notify IA where there are any changes in the controllers (Clause 2.10);
- When the controller is a shareholder controller, the IA requires that he should possess integrity and demonstrates commitment to the development of the authorized insurer and IA will consider whether he has financial integrity and sufficient financial resources to acquire or support the operations of the insurer and whether the insurer's business plan is realistic and viable (Clause 4.4).

香港保险监督管理委员会适格人选准则修改的突出特点

保险业管理局（保监局）本年修改了《保险业条例》（第41章）有关适当人选的准则指引（准则指引）。有关修订是为了配合新修订的《保险业条例》，同时考虑了国际保险监督联合会颁布的《保险核心原则、标准、指引和评估办法》的第5条，主要修订内容集中于保监局评定授权保险人的某些人士是否适合履行其职责的标准。

本次准则指引修改的主要内容如下：

- 要求在香港以外地方成立为法团的或授权保险人在委任常务董事之前需取得保监局的认可，同时确保委任的常务董事不会同时负责处理其在他方经营的保险业务，以及该常任董事有负责该保险人在香港经营的整项保险业务的专职下属（第2.4条）；
- 如其他控权人有任何变更，授权保险人需根据第十四条通知保监局该变更（第2.10条）；
- 在考虑获授权保险人的股东控权人时，除对控权人的一般要求外，保监局期望股东控权人为人诚信，且能对其控权的或授权保险人的发展负责。保监局会重点考虑股东控权人是否具备财务诚信，并有充足的财力以收购或支持该保险人的业务，以及保险人拟定的业务计划是否切实可行（第4.4条）。

Source 来源:

https://www.ia.org.hk/en/legislative_framework/circulars/reg_matters/files/GL4Marked-up.pdf

China Securities Regulatory Commission Working on Fourth Phase of Specific Enforcement Project: Fighting Irregularities Regarding Private Equity Funds

With the development of the private equity funds industry, there are activities that have been identified as incompliant with laws and regulations, which include for example, using false filing information, illegally fund-raising, embezzling the fund assets and other mismanagement problems, as well as manipulating the market, benefit transferring, and dealing in with undisclosed information and other illegal activities. Such activities are increasing and causing disorder of the Market and damage to the legitimate rights and interests of investors.

To effectively deal with the situation, China Securities Regulatory Commission (CSRC) has recently deployed enforcement regarding the fourth phase cases to strictly crack down on the private equity funds incompliant to laws or regulations. The relevant investigation is currently being conducted in full swing.

The main features of the fourth phase cases are as follows:

- Huge amounts of illegal capital, causing serious harms to society;
- New illegal activities, some of which include manipulating the market by acting as an investment adviser or devising a traffic channel, using Shanghai-Hong Kong Stock Connect, manipulating stock prices through cross-border transactions, or making profits via arbitrage trading activities involving stock index futures.
- Weak compliance awareness of privacy agencies causing a high rate of illegal operations and high risks, such as false disclosure of product information, selling fund products to unqualified investors, mixing of the propriety assets and fund assets, and the misappropriation of funds and other assets.
- Increasingly concealed illegal activities in the wake of express prohibitions; some individual private equity fund managers are abusing the management of undisclosed information in respect of the managed products to seek high returns through personal funds account, and some individual private equity funds and their employees are involved in market manipulations giving rise to huge illegal profits on individual cases.

中国证监会部署专项执法行动第四批案件 严厉打击私募基金领域违法违规

随着私募基金行业快速发展，相关违法违规行为也逐渐增多，包括虚假备案信息、违规募集资金、挪用基金财产等管理失范问题，以及操纵市场、利益输送、利用未公开信息交易等违法行为，扰乱市场秩序，损害投资者合法权益。

为有效遏制私募基金领域违法违规多发态势，近日，中国证监会(证监会)专门部署 2017 年专项执法行动第四批案件，严厉打击私募基金领域违法违规行为。目前，相关调查工作已经全面展开。

第四批案件的主要特点如下：

- 违法资金数额巨大，社会危害大。
- 新型违法活动，例如以担任投资顾问、设计信道业务等方式，实施操纵市场；或者利用沪港通账户，跨境操纵多只股票价格；或者利用股指期货套利机制进行利益输送。
- 私募机构合规意识薄弱，违规经营多发高发。例如涉及产品备案虚假披露、违规向不合格投资者兜售基金产品、混同固有财产与基金财产、挪用基金财产等多种行为，风险隐患集中。
- 隐蔽的违法行在明文禁止下有上升的趋势。个别私募管理人员利用所管理产品的未公开信息，使用个人配资账户，牟取“跟仓”高额收益。个别私募机构及人员涉及多起操纵市场案件且单次操纵获利巨大，行为恶劣。

Source 来源:

http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201712/t20171208_328548.html



United Kingdom Financial Conduct Authority Fines Bluefin £4 Million for Misleading Customers

The Financial Conduct Authority (FCA) fined Bluefin Insurance Services Limited (Bluefin) £4,023,800 on December 6, 2017 for having inadequate systems and controls and failing to provide information to its customers about Bluefin's independence in a way that was clear, fair and not misleading.

Between March 9, 2011 and December 31, 2014, Bluefin, a large insurance broker which was wholly owned by the insurer AXA UK Plc during such period, held itself out to be “truly independent” in the advice it provided and the insurers it recommended to customers.

However, Bluefin failed to implement adequate systems and controls to manage the conflicts that arose from Bluefin’s ownership. Bluefin’s independence was compromised by its culture which promoted business strategies, including a policy which focused on increasing the business placed with its parent company, over treating customers fairly.

Bluefin brokers did not disclose this policy, so customers risked being misled into believing they were dealing with a broker who would conduct an unbiased search of the market.

Bluefin agreed to settle at an early stage of the investigation and received a 30% reduction in their overall fine. Without this discount the fine would have been £5,748,200.

Bluefin 因误导客户，被英国 Financial Conduct Authority 处罚四百万英镑

英国金融行为监管局* (Financial Conduct Authority (FCA))于 2017 年 12 月 6 日对蓝鳍保险服务有限公司* (Bluefin Insurance Services Limited (Bluefin)) 责罚 £4,023,800 英镑。原因是其系统和控制不足，未能以明确、公平和不误导的方式向客户提供有关 Bluefin 的独立性的信息。

从 2011 年 3 月 9 日至 2014 年 12 月 31 日，由保险公司 AXA UK Plc 全资拥有的大型保险经纪商 Bluefin，自称其在提供建议以及向客户推荐保险公司方面为「真实独立」。

但是，Bluefin 未能实施适当的系统和控制措施来管理与 Bluefin 的拥有权有关的冲突。Bluefin 的独立性受到其促进商业战略的文化的影 响（包括一项旨在增加与母公司的业务的政策），更甚于公平对待客户。

Bluefin 的保险经纪人并没有透露这个政策，所以客户有可能被误导，认为他们正在和一个能够公正地搜寻市场的经纪人打交道。

Bluefin 在调查的早期阶段同意进行调解，并将整体罚款减少了 30%。如果没有这个折扣，罚款将达到 £5,748,200 英镑。

* 仅供识别

Source 来源:

<https://www.fca.org.uk/news/press-releases/fca-fines-bluefin-4m-misleading-customers>

Hong Kong Stock Exchange Publishes GEM Consultation Conclusions and Changes to GEM and Main Board Listing Rules

The Hong Kong Stock Exchange (HKEX) published its consultation conclusions on the Consultation Paper on the Review of the Growth Enterprise Market (GEM) and the Main Board Listing Rules. Following the evaluation of the responses received on the consultation, HKEX has opted to implement substantially all the proposals in the Consultation Paper.

Key amendments include:

- The name “Growth Enterprise Market” and “创业板” will be simplified to “GEM”, in order to reflect the new role of GEM as a market for small and mid-sized companies;
- The removal of the streamlined process for GEM transfers to the Main Board;
- The introduction of a mandatory sponsor requirement for transfer of listing from GEM to the Main Board, and a sponsor must be appointed at least two months before the submission of a listing application;
- An increase in the minimum expected market capitalization of GEM applicants at the time of listing from \$100 million to \$150 million and a corresponding increase in the minimum public float value of GEM companies at the time of listing from \$30 million to \$45 million;
- An increase in the minimum expected market capitalization of Main Board applicants at the time of listing from \$200 million to \$500 million and a corresponding increase in the minimum public float value of Main Board companies at the time of listing from \$50 million to \$125 million;
- An increase in the minimum cash flow requirement for GEM applicants from \$20 million to \$30 million;
- The introduction of a mandatory public offering requirement of at least 10% of the total offer size for all GEM IPOs; and
- An extension of the post-IPO lock-up requirement on controlling shareholders from one year to two years for GEM while there will be no change to the post-IPO lock-up requirement for the Main Board.

For new listing applicants that have applied for GEM or Main Board listing before the Rule Amendment Effective Date (February 15, 2018), the current relevant Listing Rules shall apply. All GEM transfer applications submitted before the Rule Amendment Effective Date will be subject to the current streamlined process and their eligibility on the Main Board will be assessed in accordance with the current Main Board Listing Rules. To minimize the impact of the reform on issuers who have listed on GEM as a stepping stone to the Main Board, eligible issuers are entitled to transitional arrangements which provide for less stringent GEM transfer requirements for a grace period of three years from the Rule Amendment Effective Date.

香港交易所发表创业板咨询总结 修订创业板及主板上市规则

香港联合交易所刊发有关检讨创业板及修订创业板规则及主板规则的咨询文件的咨询总结。在对咨询所收到的答复进行评估之后，联交所决定落实《创业板咨询文件》中的绝大部分建议。

主要修订如下：

- 「Growth Enterprise Market」及「创业板」均统一改称「GEM」，反映创业板专为中小企而设的新定位。；
- 取消 GEM 发行人转往主板上市的简化转板申请程序；
- 由 GEM 转往主板上市的申请人必须委任保荐人，并须于递交上市申请的最少两个月前委任；
- 将 GEM 上市申请人于上市时的预期最低市值由 1 亿元增至 1.5 亿元，并将 GEM 公司于上市时的最低公众持股价值由 3,000 万元增至 4,500 万元；
- 将主板上市申请人于上市时的预期最低市值由 2 亿元增至 5 亿元，并将主板公司于上市时的最低公众持股价值由 5,000 万元增至 1.25 亿元；
- 将 GEM 上市申请人的现金流规定由最少 2,000 万元提高至最少 3,000 万元；
- 规定所有 GEM 新股上市时，其公开发售部分不少于总发行量的 10%；及
- 将 GEM 公司控股股东的上市后禁售期由一年延长至两年，而主板公司的上市后禁售期规定则维持不变。

新上市申请人若是于规则修订生效日期（2018 年 2 月 15 日）之前提交主板或 GEM 上市申请，现行《上市规则》下的上市资格及要求仍然适用。所有于规则修订生效日期前提交的 GEM 转板申请，一概继续根据现行简化程序处理，其主板上市资格将按照现行《主板规则》进行评估。为尽量减低改革对于有意利用现行简易程序转主板的已在 GEM 上市的发行人的影响，合资格发行人有权享有过渡性安排，该等安排于有效规则修订生效后三年的宽限期内提供较宽松的 GEM 转板要求。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2017/1712152news?sc_lang=en
www.hkex.com.hk/news/news-release/2017/1712152news?sc_lang=zh-cn

Hong Kong Stock Exchange to Expand Hong Kong's Listing Regime to Allow Listing of Qualified WVR and Biotech Issuers

The Hong Kong Stock Exchange (HKEX) has announced the conclusions to the New Board Concept Paper. The general consensus amongst the public is that Hong Kong's listing regime should be expanded to facilitate listings of companies from emerging and innovative sectors. The Concept Paper identified gaps and limitations in Hong Kong's listing regime that have affected the competitiveness of the Hong Kong market by reducing its attractiveness in the eyes of prospective issuers, particularly those in emerging and innovative sectors.

HKEX has opted to introduce two new chapters to the Main Board Listing Rules to allow the listing of (i) biotech issuers which are pre-profit/pre-revenue; and (ii) issuers from emerging and innovative sectors that have weighted voting rights (WVR) structures, subject to additional disclosure and safeguards. Both types of companies would have to meet requirements relating to minimum expected market capitalizations or higher revenue tests. The new WVR proposal mainly facilitate the listing of new economy companies, with minimum market capitalization of HK\$10 billion upon listing (and with minimum HK\$1 billion revenue in the latest financial year if the market capitalization is less than HK\$40 billion). The proposed minimum market capitalization for listing of qualified biotech issuers is HK\$1.5 billion.

The biotech sector is a focus of HKEX because the activities undertaken by such companies tend to be strictly regulated under a regime that sets external milestones on development progress. Investors will thus be provided with a frame of reference to judge the value of companies that do not have the traditional indicators of performance, such as revenue and profit.

HKEX has also proposed to create a new concessionary secondary listing route to attract issuers from emerging

and innovative sectors that are primary listed on the New York Stock Exchange, Nasdaq or the premium listing segment of the London Stock Exchange's Main Market.

The proposed amendments will be further refined through a formal consultation in the first quarter of 2018.

香港交易所将拓宽香港上市制度，容许合资格的同股不同权公司及生物科技公司上市

香港交易所就 2017 年 6 月所刊发的框架咨询文件发表咨询总结。市民普遍认为香港的上市制度应该扩大，以方便新兴产业和创新的公司上市。框架咨询文件指出香港的上市制度存在若干不足之处，削弱了在潜在的发行者眼中香港市场的竞争力，尤其在吸引新兴产业及创新型公司方面。

香港交易所选择于《主板规则》新增两个章节，容许(i)尚未盈利 / 未有收入的生物科技发行人；及(ii)不同投票权架构的新兴及创新产业发行人，在作出额外披露及制定保障措施后在主板上市。这两种类型的公司必须满足最低预期市值或更高收入测试的要求。最新同股不同权的方案主要惠及新經濟公司，上市時市值最少一百億港元，及過去一财年收入要有 10 億港元(如上市時市值低于四百億港元)。合资格生物科技公司上市时的预期市值需达 15 億港元。

生物科技公司是香港交易所的一个焦点，因为这些公司的业务活动多受严格规管，亦须遵循监管机制所定的特定发展进度。即使没有传统指标，例如收入及盈利，投资者因此被提供一个对公司进行估值的参考框架。

联交所亦建议设立新的第二上市渠道，吸引在纽约证券交易所或纳斯达克、又或在伦敦证券交易所主市场的高级上市分类上市的新兴及创新产业发行人来港。

拟议修正案将透过在 2018 年第一季度正式咨询，以进一步完善。

Source 来源:

http://www.hkex.com.hk/news/news-release/2017/1712152news?sc_lang=en
http://www.hkex.com.hk/news/news-release/2017/171215news?sc_lang=en

New Hong Kong SFC Compliance Bulletin Highlights Conflicts of Interest

The Hong Kong Securities and Futures Commission (SFC) published the first issue of "SFC Compliance Bulletin: Intermediaries" to provide guidance to intermediaries and market practitioners on the SFC's regulatory and supervisory priorities.

The bulletin is part of the SFC's efforts to enhance communication with Managers-In-Charge (MICs) of core functions of licensed corporations. Awareness of the responsibility of MICs to ensure compliance has increased since the SFC introduced the MIC regime late last year.

The inaugural bulletin highlights the importance of managing conflicts of interest in selling practices and asset management using case studies identified in the SFC's recent on-site inspections and off-site monitoring.

The four categories of cases cited in the bulletin show that conflicts of interest can arise in many situations and in different forms when intermediaries stand to benefit at the expense of clients. One instance is the sale of products of other licensed corporations within the group to clients without a rigorous mechanism to compare quotes from external counterparties.

全新的香港《证监会合规通讯》重点阐述利益冲突

香港证券及期货事务监察委员会（证监会）刊发第一期《证监会合规通讯：中介人》，藉以就证监会的监管及监察工作重点，为中介机构及市场从业员提供指引。

证监会刊发此通讯，以配合其为加强与持牌法团核心职能主管的沟通而进行的工作。自证监会于去年底引入核心职能主管制度以来，业界对核心职能主管在确保合规方面的责任的认知已有所提高。

第一期的《合规通讯》利用证监会近期在进行现场视察及非现场监察时识别到的案例，重点阐明管理在销售手法及资产管理方面的利益冲突的重要性。

《合规通讯》引用的四类型的案例，显示利益冲突可在许多情况下，以不同的形式出现（即当中介机构以客户的利益为代价而获利），例如销售同一集团内的持牌法团发行的结构性产品，却没有一套严谨机制去比较来自其他公司的报价。

Source 来源:

http://www.sfc.hk/web/EN/files/ER/PDF/SFC%20Compliance%20Bulletin/SFC%20Compliance%20Bulletin_Issue%201_Eng.pdf
http://www.sfc.hk/web/TC/files/ER/PDF/SFC%20Compliance%20Bulletin/SFC%20Compliance%20Bulletin_Issue%201_Chi.pdf

Hong Kong SFC Publicly Censures Zhang Qiang for Breach of the Takeovers Code – Acquisition of Shares at Higher-than-Offer-Price within Six Months After Close of Offer

The Hong Kong Securities and Futures Commission (SFC) has publicly censured Zhang Qiang for acquiring

shares within six months after the close of an offer at above the offer price in breach of Rule 31.3 of the Takeovers Code.

On May 24, 2017, Zhang made an unconditional mandatory general offer in cash for the shares of Feishang Non-metal Materials Technology Limited at \$0.70 per share. The offer closed on June 14, 2017. On July 25, 2017, Zhang made a series of on-market acquisitions of a total of 2,000,000 shares at prices ranging from \$1.47 to \$1.50 per share.

Zhang submitted that the breach was not intentional. He has accepted that he breached Rule 31.3 and agreed to the current disciplinary action taken against him.

香港证监会公开谴责张强违反《收购守则》 - 在完成要约收购后六个月内以高于收购价在市场增持股份

证券及期货事务监察委员会（证监会）公开谴责张强，指他于一项要约结束后六个月内按高于要约价的价格取得股份，违反了《收购守则》规则 31.3。

2017年5月24日，张以每股0.70元提出一项无条件强制性现金全面要约，以取得飞尚非金属材料科技公司的股份。该项要约已于2017年6月14日结束。在2017年7月25日，张作出了一连串场内收购，按介乎每股1.47元至1.50元不等的价格，收购了合共2,000,000股股份。

张提出并非蓄意违规。他承认违反了规则 31.3，并同意现时对他采取的纪律处分行动。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR156>
<http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=17PR156>

Hong Kong SFC Launches Consultation on OTC Derivatives and Conduct Risks

The Hong Kong Securities and Futures Commission (SFC) launched a two-month consultation on proposals to refine the over-the-counter (OTC) derivatives regime and to require licensed corporations to properly manage financial exposures to connected persons.

In response to market comments, the SFC proposes to refine the scope of regulated activities (RAs) to provide more clarity about the OTC derivatives licensing regime, for example, to narrow the scope of certain RAs so that they do not capture corporate treasury activities of non-financial groups and certain portfolio compression services.

The consultation also includes proposals related to risk mitigation, client clearing, record keeping and other conduct requirements for OTC derivatives transactions, as well as licensing fees, insurance, competence and training requirements under the new OTC derivatives licensing regime.

More broadly, the SFC proposes to require licensed corporations to properly manage their financial exposures to group affiliates and other connected persons according to the same risk management standards they would apply to independent third parties.



香港证监会就场外衍生工具及操守风险展开咨询

香港证券及期货事务监察委员会（证监会）展开为期两个月的咨询，就微调场外衍生工具制度及规定持牌法团须妥善管理对有关连人士的财务风险承担的建议征集意见。

因应市场意见，证监会建议微调受规管活动的范围，以进一步厘清场外衍生工具发牌制度，例如收窄某些受规管活动的范围，使其不涵盖非金融集团的企业财资活动及某些投资组合压缩服务。

是次咨询亦包括有关场外衍生工具交易的风险纾减、客户结算、纪录备存和其他操守规定，以及新的场外衍生工具制度下有关牌照费用、保险、胜任能力及培训规定的建议。

在更广泛的层面上，证监会建议规定持牌法团须妥善管理其对集团附属公司及其他有关连人士的财务风险承担，而在管理有关财务风险承担时所采纳的风险管理标准，应与其管理对独立第三方的财务风险承担时所采纳的风险管理标准相同。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR154>

<http://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=17PR154>

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