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Financial Services Regulatory Update 金融服务监管资讯

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China to Step Up Oversight Over the Banking Industry

The China Banking Regulatory Commission (CBRC) issued notice on January 13, 2018 indicating a step up of the crackdown on malpractice in the banking industry. The CBRC will focus on the following regulatory issues in 2018:

1. Poor corporate governance in respect of shareholders' influence, performance evaluation and professional qualifications
2. Violation of macro-control policies, including credit policies and the real estate policies
3. Shadow banking and cross-holdings of risky financial products
4. Infringing the rights and interests of financial consumers
5. Transferring benefits to shareholders and related parties
6. Illegal operation of business
7. Insufficient internal control, insufficient staff management and internal surveillance
8. Lack of integrity, failures in operations and information management and performance supervision

In particular, there will be stricter punishments for violations of rules on corporate governance, property loans, and disposal of non-performing assets, the CBRC said, adding that it will strengthen risk control in interbank activities, financial products and off-balance sheet business.

中国银监会发报《关于进一步深化整治银行业市场乱象的通知》

中国银监会 1 月 13 日发报《关于进一步深化整治银行业市场乱象的通知》，组织开展整治银行业市场乱象。《通知》将同业业务、表外业务、影子银行和交叉金融产品、违规展业、违反宏观政策执行等作为 2018 年整治重点。

2018 年整治重点：

一是公司治理不健全，包括股东与股权、履职与考评、从业资质等三个方面。

二是违反宏观调控政策，包括违反信贷政策和违反房地产行业政策。

三是影子银行和交叉金融产品风险，包括违规开展同业业务、理财业务、表外业务、合作业务等四个要点

四是侵害金融消费者权益，主要是与金融消费者权益直接相关的不当销售和不当收费。

五是利益输送，包括向股东输送利益、向关系人员输送利益。

六是违法违规展业，包括未经审批设立机构并展业、违规开展存贷业务、违规开展票据业务、违规掩盖或处置不良资产等四个要点。

七是案件与操作风险，主要是列举了一些案件高发多发的薄弱环节和存在的突出问题，包括员工管理不到位、内控管理不到位、案件查处不到位。

八是行业廉洁风险，包括业务经营和信息管理两个方面。此外，还单独列举了监管履职方面的负面清单。

Source 来源：

http://www.cbrc.gov.cn/chinese/home/docDOC_ReadView/84BF855655F54ECDA63CBB0048F6C15.html

Singapore Corporate Governance Council Launches Public Consultation to Strengthen Corporate Governance

The Singapore Corporate Governance Council has released a consultation paper on its recommendations to revise the Singapore Code of Corporate Governance (Code). The recommendations aim to support sustained corporate performance and innovation, and strengthen investor confidence in capital markets.

The key focus of the Code revisions is to reinforce board competencies through encouraging board renewal, strengthening director independence and enhancing board diversity. Other proposed Code revisions include greater emphasis on disclosures of the relationship between remuneration and value creation, and the need for companies to consider and balance the needs of all stakeholders. In particular, independent directors are proposed to make up a majority (currently "at least half") of the board where, for instance, the chairman and CEO are the same person. Similar to Hong Kong's recent proposal, a listed company should have and

communicate its dividend policy to shareholders. The Council is also recommending the establishment of an industry-led Corporate Governance Advisory Committee to promote good governance practices leveraging a supportive eco-system.

新加坡金管局就公司治理守则修改展开公众咨询

新加坡金融管理局公司治理理事会就现有的《公司治理守则》提出多项修改建议，即日起征询公众意见。建议旨在支持持续性的企业绩效和创新发展，并加强投资者对资本市场的信心。

理事会建议将现有的 12 项守则修改为挂牌条例，同时新增多项新的守则。重点是加强董事会成员更替活化，加强独立性和多元化以加强董事会的能力，强化独立董事的功能及在董事会的比例，规定公司需制定及向股东披露股息政策，以及平衡所有利益相关者的需求。

Source 来源：

<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/Corporate-Governance-Council-launches-public-consultation-to-strengthen-corporate-governance.aspx>

CSRC to Deepen Reform of Local and Overseas Listing Systems and Bond Market this Year

Jiang Yang, vice chairman of China Securities Regulatory Commission (CSRC), said at the Asian Financial Forum in Hong Kong that the CSRC will deepen the reform of the overseas listing system and crack down speculation in the market to safeguard the steady operation of the capital market.

Jiang Yang pointed out that CSRC will significantly ease industry access restrictions and will develop direct financing to encourage and support mergers and acquisitions based on reorganization, actively promote diversity in bond market products, and increase support to high-tech enterprises, new economy, new industry that align with the national development strategy.

Jiang Yang also said that the CSRC has plans to launch crude oil futures which will be open for investment to domestic and foreign investors.

CSRC Chairman Assistant Zhang Shenfeng said at the same forum that CSRC will actively promote the reform of the issuance, listing, trading and settlement of the bond market and will establish and improve the mechanism for handling the default risk of bonds and strengthen the risk prevention and control in the bond market.

中证监：今年深化海外及境内上市机制，以及积极推动交易所债市改革

中国证监会(中证监)副主席姜洋在香港出席亚洲金融论坛上表示，中证监将继续支持及巩固香港的国际金融中心地位，会深化境外上市制度改革，及严厉打击市场投机炒作行为，维护资本市场稳健运行。

姜洋指出，中证监将大幅度放宽行业准入限制，并将发展直接融资，鼓励支持基于产业整合的并购重组，积极推进债券市场品种创新，加大对符合国家发展战略、具核心竞争力的高新技术企业及新经济、新产业的支持力度。

姜洋表示，大陆将推出原油期货，欢迎境内外投资者参与，但未透露推出时间。

中证监主席助理张慎峰在同一个论坛上表示，中证监 2018 年将积极推动交易所债券市场发行、上市、交易、结算等方面的制度改革，并将建立健全债券违约风险处置机制，加强交易所债券市场流动性风险防控。

Source 来源：

http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201801/t20180115_332538.html

China's PBOC to Give Abject Poverty Areas Priority in New Financial Capital and Services

People's Bank of China (PBOC) and the banking, securities and insurance regulatory commissions have issued a statement to give preference to new financial capital and services to abject poverty areas in China.

Financial institutions should increase credit support for poverty relief through re-lending, in which the central bank would extend loans to commercial banks on the condition that they lend to businesses in required sectors.

Institutions need to broaden channels of direct finance, including quick IPO approvals, in areas of abject poverty. Non-performing loan ratios in abject poverty areas are allowed to be 2 percentage points higher than the financial institution's annual average target.

By the end of 2020, it is expected that annual credit growth in areas of abject poverty should be higher than the provincial average.

中国人民银行等四部门联合印发《关于金融支持深度贫困地区脱贫攻坚的意见》

人民银行等四部门近日联合印发《关于金融支持深度贫困地区脱贫攻坚的意见》（以下简称《意见》）。《意见》要求，金融部门新增金融资金优先满足深度贫困地区、新增金融服务优先布设深度贫困地区，力争 2020 年

以前深度贫困地区贷款增速每年高于所在省（区、市）贷款平均增速，为深度贫困地区打赢脱贫攻坚战提供重要支撑。

《意见》强调，要拓宽深度贫困地区直接融资渠道。对深度贫困地区符合条件的企业首次公开发行股票，加快审核进度，适用“即报即审、审过即发”政策。支持深度贫困地区符合条件的企业在全国中小企业股份转让系统挂牌，实行“专人对接、专项审核”，适用“即报即审，审过即挂”政策，减免挂牌初费。对深度贫困地区符合条件的企业发行公司债、资产支持证券的，实行“专人对接、专项审核”，适用“即报即审”政策。支持深度贫困地区符合条件的企业通过发行短期融资券、中期票据、扶贫票据、社会效应债券等债务融资工具筹集资金，实行会费减半的优惠。

Source 来源：

<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3462547/index.html>

Hong Kong SFC Reprimands and Fines EFG Bank AG HK\$2 Million

The Securities and Futures Commission (SFC) of Hong Kong has reprimanded and fined EFG Bank AG (EFG Bank) HK\$2 million for dealing in futures contracts without the required registration.

The SFC found that between April 1, 2003 and November 22, 2016, EFG Bank executed 139 transactions in offshore listed index options for 11 clients without the required registration to deal in futures contracts.

The SFC is of the opinion that EFG Bank's failure to ensure compliance with a registration requirement under the Securities and Futures Ordinance, amounting to a breach of the Code of Conduct, called into question the fitness and properness of EFG Bank as a regulated person

In deciding the disciplinary sanctions, the SFC took into account that:

1. EFG Bank initiated a review of its offshore listed index options activities and self-reported the unlicensed activities to the SFC;
2. there is no evidence to suggest that the non-compliance was intentional;
3. EFG Bank co-operated with the SFC in resolving the SFC's concerns;
4. EFG Bank has taken remedial measures to strengthen its internal controls to avoid recurrence of similar issues; and
5. EFG Bank has an otherwise clean disciplinary record with the SFC.

瑞士盈丰银行遭香港证监会谴责及罚款 200 万港元

瑞士盈丰银行股份有限公司（盈丰银行）因未获所需注册以进行期货合约交易，遭香港证券及期货事务监察委员会（证监会）谴责及罚款 200 万港元。

证监会发现盈丰银行于 2003 年 4 月 1 日至 2016 年 11 月 22 日期间，在未获所需注册以进行期货合约交易的情况下，为 11 名客户执行了 139 宗离岸上市指数期权交易。证监会认为，盈丰银行没有确保遵守《证券及期货条例》下的注册规定，违反了《操守准则》，使盈丰银行作为受规管人士的适当人选资格受到质疑。

证监会在决定上述纪律处分时，已考虑到：

1. 盈丰银行主动就其离岸上市指数期权活动进行检讨，并自行向证监会汇报其无牌活动；
2. 并无证据显示有关不合规情况是蓄意造成的；
3. 盈丰银行与证监会合作解决证监会提出的关注事项；
4. 盈丰银行已采取补救措施加强其内部监控制度，以避免同类问题再次发生；及
5. 盈丰银行以往并无遭受证监会纪律处分的纪录。

Source 来源：

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR2>

Hong Kong SFC Releases Circular to Licensed Corporations and Associated Entities on Recommendations from JFIU regarding the Quality of Suspicious Transaction Reports (STR)

The circular has been issued by the Securities and Futures Commission (SFC) of Hong Kong drawing the attention of Licensed Corporations (LC) and Associated Entities (AE) to a feedback report recently issued by the Joint Financial Intelligence Unit (JFIU) which stated criteria to guide reporting entities in filing better quality suspicious transaction reports to facilitate the JFIU's assessment and follow-up actions.

LCs and AEs are also encouraged to make reference to the reporting methods and advice available on the JFIU website on fulfilling their statutory obligations to file STRs, as well as to browse from time to time for relevant materials in the STR Quarterly Analysis published in the secure area of the JFIU website.

LCs and AEs who have not already registered for access to the secure area of the JFIU website are strongly advised to apply for a login name and password.

香港证监会就打击洗钱 / 恐怖分子资金筹集可疑交易报告向持牌法团及有联系实体发出通函

香港证监会发出新通函提醒持牌法团及有联系实体注意联合财富情报组（财富情报组）最近就可疑交易报告的质素所发出的报告书。

该报告书列出识别的准则以协助持牌法团及有联系实体呈交较高质素的可疑交易报告。

通函亦鼓励持牌法团及有联系实体参考财富情报组于其网站提供的举报方法及建议，以履行提交可疑交易报告的法定责任，并不时浏览财富情报组于其网站的登入限制区发表的《可疑交易报告季度分析》内所载的相关资料。

证监会强烈建议持牌法团及有联系实体如未登记进入财富情报组的登入限制区，便应填妥申请表格以取得使用者名称及密码。

Source 来源：
<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC1>

Brazil: CVM Forbids Funds from Investing in Bitcoin and Other Crypto-currencies

The Brazilian Securities and Exchange Commission (CVM) barred the country's investment funds from investing in bitcoin or other crypto-currencies because they are not qualified as financial assets.

"As is well known, both in Brazil and in other jurisdictions, the legal and economic nature of these investment modalities has been discussed, with no conclusion on such a conceptualization, especially regarding the domestic market and regulation," affirmed the CVM.

The CVM also noted that fund managers who are keen to structure funds that contain indirect investments in crypto-currencies should wait for a more "conclusive" assessment by the institution.

"In the understanding of our technical team, it is undeniable that ... there are still many other risks associated with the very nature of the crypto-currencies (such as cyber security risks and private custody), or even related to the future legality of its acquisition or trading," the CVM said.

巴西证监会宣布，当地投资基金不得投资于加密货币

巴西证券交易委员会（CVM）向所有负责和管理投资基金的官员发出了一份通知，不允许通过投资基金收购加密货币。CVM 规定，“加密货币不能被视为金融资产，实际上是禁止基金直接投资于比特币等资产。”

此外，有意通过入股外国基金间接投资加密货币的地方基金，应等待监管机构进一步澄清。通知中写道：“我们认为，对于管理者和投资基金来说，等待进一步、更确切地证明这种监督的情况是恰当的以构建对加密货币的间接投资，甚至是寻求这种风险敞口的其他替代形式。”

Source 来源：
<http://www.cvm.gov.br/noticias/arquivos/2018/20180112-1.html>

Amendments to Rules Regarding Stock Pledge and Repo Transactions by SZSE and CSDS

With permission from China Securities Regulatory Commission (CSRC), Shenzhen Stock Exchange (SZSE) and China Securities Depository and Clearing Corporation (CSDS) amended the measures on Stock Pledge and Repo Transactions and Registration and Clearing. The Measures will take effect as of March 12, 2018.

The Measures made clear that the repurchase party (or the borrower) should not be a financial institution or through any product it has issued, and funds borrowed under the repo should be used in production and business activities for the real economy and be managed in a separate account; that the minimum amount of the initial transaction made by the repurchase party should be CNY5 million, and each of its subsequent transactions should be no less than CNY500,000, and funds and bonds will no longer be recognized as initial pledged objects. The second is further strengthening risk management. It is expressly stated that the stock pledge rate is capped at 60 percent, and the proportion of pledged A-shares accepted by a single securities company and in respect of each asset management product should be 30 percent and 15 percent at the maximum respectively, and the proportion of A-shares of a company pledged in the entire market should not exceed 50 percent. The third is further regulating business operations. Qualifications for securities companies to carry out such business are specified, and securities companies are required to establish the mechanism for continuity management of credit risks of repurchase parties and the follow up management of the use of funds.

上交所、中国结算修订股票质押式回购交易业务规则

近日，上海证券交易所、深圳证券交易所分别联合中国证券登记结算有限责任公司发布《股票质押式回购交易及登记结算业务办法（2018年修订）》（下称《办法》），自3月12日起实施。

《办法》修订如下：一是进一步聚焦服务实体经济定位。明确融入方不得为金融机构或其发行的产品，融入资金

应当用于实体经济生产经营并专户管理，融入方首笔初始交易金额不得低于 500 万元，后续每笔不得低于 50 万元，不再认可基金、债券作为初始质押标的。二是进一步强化风险管理。明确股票质押率上限不得超过 60%，单一证券公司、单一资管产品作为融出方接受单只 A 股股票质押比例分别不得超过 30%、15%，单只 A 股股票市场整体质押比例不超过 50%。三是进一步规范业务运作。明确证券公司开展业务的资质条件，要求证券公司建立融入方信用风险持续管理及资金用途跟踪管理机制。

Source 来源:

<http://www.szse.cn/main/en/AboutSZSE/SZSENews/SZSENews/39776681.shtml>

European Securities and Markets Authority (ESMA) Publishes First MiFID II Position Management Controls for Commodity Derivatives

Markets in Financial Instruments Directive II (MiFID II) requires Member States to ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives apply position management controls.

Investment firms or market operators operating trading venues have to inform their national competent authority (NCAs) of the details of position management controls who in turn inform ESMA, which shall publish and maintain on its website a database with summaries of the position management controls.

Such information will be updated by ESMA based on further notifications by NCAs.

欧洲证券和市场管理局 (ESMA) 发布首个 MiFID II 商品衍生工具头寸管理控制条例

欧洲证券和市场管理局 (ESMA) 昨天首次发布了“金融工具市场指令” (MiFID II) 下监管商品衍生工具头寸管理控制的条例。欧盟成员国必须按照 MiFID II 的要求，确保运营商品衍生工具交易的投资公司或市场运营商须遵守头寸管控条例。

投资公司或交易场所的运营者必须向所在国家主管部门 (NCA) 汇报详细情况，然后通知 ESMA，ESMA 应在其网站上公布和维护一个数据库，并提供头寸管理控制摘要。

这些信息将由 ESMA 根据 NCA 的进一步通知进行更新。

Source 来源:

<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-first-mifid-ii-position-management-controls-commodity>

EBA Publishes Final Guidelines on Disclosure Requirements of IFRS 9 Transitional Arrangements

The European Banking Authority (EBA) has published guidelines on disclosure requirements of IFRS 9 or analogous expected credit losses (ECLs) transitional arrangements. The guidelines specify a uniform disclosure template that institutions shall use when disclosing the information on own funds, capital and leverage ratios, with and without the application of transitional arrangements for IFRS 9 or ECLs. The aim of these Guidelines is to ensure consistency and comparability of the data disclosed by institutions during the transition to the full implementation of the new accounting standard and to foster market discipline.

欧洲 EBA 公布关于 IFRS 9 过渡性安排披露要求的最终指引

欧洲银行管理局 (EBA) 发布了关于“国际财务报告准则第 9 号”(IFRS 9)披露要求或类似的预期信用损失 (ECL) 过渡性安排的指引。准则规定了机构在披露自有资金，资本和杠杆比率信息时应使用的统一披露模板，不论是否适用 IFRS 9 或 ECL 的过渡性安排。这些准则的目的是确保各机构在全面实施新会计准则过程中披露的数据的一致性和可比性，并促进市场纪律。

Source 来源:

<http://www.eba.europa.eu/-/eba-publishes-final-guidelines-on-disclosure-requirements-of-ifs-9-transitional-arrangements>

HKMA Launches Consultation on Rules for Loss-absorbing Capacity Requirements for Authorized Institutions under Financial Institutions (Resolution) Ordinance

The Hong Kong Monetary Authority (HKMA) launched a two-month public consultation on a set of proposed rules relating to loss-absorbing capacity requirements for authorized institutions under the Financial Institutions (Resolution) Ordinance (Cap. 628) (the Ordinance).

The Ordinance established a cross-sectoral resolution regime for financial institutions that is fully compliant with international standards. It confers on the Monetary Authority, as the resolution authority for the banking sector, statutory responsibilities and powers to enable it to manage any future failure of an authorized institution in an orderly manner that avoids disruption to financial stability and minimizes the risk to public funds.

One of the key resolution tools under the Ordinance is the ability for the Monetary Authority as resolution authority to ‘bail-in’ certain liabilities of a failing authorized institution. This will allow for the institution to be restored to viability by imposing losses on shareholders and certain creditors, avoiding the need for

any injection of public funds. However, in order to ensure that the bail-in power can be used effectively to support orderly resolution, authorized institutions need to have sufficient loss-absorbing capacity (LAC), i.e. liabilities that can be readily bailed in. In order to achieve this, the proposed rules seek to set out minimum LAC requirements for authorized institutions.

The consultation launched sets out detailed proposals on minimum LAC requirements for authorized institutions. The proposals are designed to be aligned with the international standards on loss-absorbing capacity set by the Financial Stability Board in its Total Loss-absorbing Capacity Term Sheet. In drawing up the proposed rules, the HKMA has taken relevant standards into account, and made reference to the approaches adopted in comparable overseas jurisdictions.

香港金管局就《金融机构（处置机制）条例》下制订适用于认可机构吸收亏损能力规定的规则展开咨询

香港金融管理局（金管局）就《金融机构（处置机制）条例》（第 628 章）（《处置条例》）制订下适用于认可机构吸收亏损能力规定的一套建议规则展开为期两个月的公众咨询。

《处置条例》设立了一个全面符合国际标准的跨界别金融机构处置机制。有关条例赋予金融管理专员作为银行界处置机制当局法定责任及权力，使其能以有秩序方式管理日后一旦有认可机构可能倒闭的情况，从而避免影响金融稳定及减低须动用公帑的风险。

《处置条例》下的其中一项主要处置工具是，金融管理专员作为处置机制当局，可对濒临倒闭认可机构的某些负债进行「内部财务重整」。透过令股东及某些债权人承担亏损，此举可使该机构回复至可持续经营的状况，而避免需要对其注入任何公帑。然而，为确保能有效运用内部财务重整权力以支持有秩序地进行处置，认可机构需要有充足的吸收亏损能力，即可被迅速用作进行内部财务重整的负债。为达到这个目的，建议规则旨在定出适用于认可机构的最低吸收亏损能力规定。

咨询刊载适用于认可机构最低吸收亏损能力规定的详细建议。有关建议旨在符合金融稳定理事会在其《总吸收亏损能力原则及细则清单》内刊载的吸收亏损能力国际标准。金管局在拟备建议规则时，已考虑该等标准，并参考了相若海外司法管辖区所采取的做法。

Source 来源:

<http://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180117-4.shtml>

Hong Kong SFC Releases Research Paper on Hong Kong ETF Market and Topical Issues in the ETF Space

Since their introduction to the financial market over two decades ago, exchange traded funds (ETFs) have experienced exponential growth globally and become an important subset of the investment product universe. Not only have ETFs captured a substantial slice of the investment assets, but they have also evolved significantly in terms of their product features, asset classes and investment objectives. Apart from the traditional physical replication strategy, derivatives and futures have now been utilized to replicate the underlying indices tracked by ETFs. ETF asset classes have also expanded substantially from equities to fixed income and commodities. New ETF product types have also proliferated in recent years, such as leverage and inverse products, smart beta ETFs and active ETFs, with an aim to address specific needs of investors economically.

The research paper has been prepared which examines the Hong Kong ETF market and some topical issues in the ETF space as well as their implications in the Hong Kong context. The discussions in this research paper are reflective of, and have taken into account, recent local and international developments of ETFs and are intended to set the scene in anticipation for more concrete policy discussions on the regulation of ETFs at the local and international level going forward.

香港证监会发布香港交易所买卖基金市场及相关课题的研究论文

自二十多年前金融市场推出以来，交易所交易基金（ETFs）在全球范围内呈指数级增长，并成为投资产品领域的重要子集。

ETF 不仅获得了大量的投资资产，而且在产品特点，资产类别和投资目标方面也有了显著的变化。除了传统的实物复制战略，衍生品和期货现在已经被用来复制 ETF 跟踪的基本指数。ETF 资产类别也从股票大幅扩大到固定收益和商品。近年来新的 ETF 产品类型也在激增，例如杠杆产品和逆向产品，智慧型测试型 ETF 和活跃型 ETF，旨在经济地满足投资者的特定需求。

证监会编写了这份研究报告，研究香港 ETF 市场和 ETF 领域的一些热门话题，以及它们在香港的影响。本研究报告中的讨论反映并考虑了近期 ETF 的本地和国际发展情况，旨在为今后在本地和国际层面上对 ETF 的监管进行更具体的政策讨论做准备。

Source 来源:

http://www.sfc.hk/web/EN/files/PCIP/Research/Research_Paper_20180116.pdf

CBRC Forbids Use of Entrusted Loans for Investment and Related Purposes

The China Banking Regulatory Commission (CBRC) has released a notice forbidding the use of entrusted loans for a range of investment purposes.

According to the notice, entrusted loan funds cannot be used for investment in bonds, futures, financial derivatives and asset management products, or be used as registered capital or capital verification, for production, operation or investment in relation to business in industries prohibited by the state, or for equity investment or capital increase.

The notice stipulates that the entrusted loan business is the principal-agency business of commercial banks. Banks, as trustees, shall not participate in the decision-making of the use of entrusted loans, selection of counterparties or provision of various forms of guarantee.

Commercial banks are required to strengthen their risk management and internal control systems in respect of entrusted loan business.

中国银监会关于印发商业银行委托贷款管理办法的通知，明确委托贷款不得用以从事债券、期货、金融衍生品、资产管理产品等投资

中国银监会近日发布的《商业银行委托贷款管理办法》明确委托贷款资金不得从事债券、期货、金融衍生品、资产管理产品等投资，不得作为注册资本金、注册验资，不得用于生产、经营或投资国家禁止的领域和用途，亦不得用于股本权益性投资或增资扩股等。《办法》的出台填补了委托贷款监管制度空白，为商业银行办理委托贷款业务提供了制度依据。

《办法》分为五章、三十三条。重点规范了以下方面：一是明确委托贷款的业务定位和各方当事人职责。《办法》明确委托贷款业务是商业银行的委托代理业务，商业银行作为受托人，按照权责利匹配原则提供服务，不得代委托人确定借款人，不得参与贷款决策，不得提供各种形式担保等。

二是规范委托贷款的资金来源。《办法》对委托贷款资金来源提出合法合规性要求，商业银行不得接受受托管理的他人资金、银行的授信资金、具有特定用途的各类专项基金、其他债务性资金和无法证明来源的资金等发放委托贷款。

三是规范委托贷款的资金用途，明确规定委托资金用途应符合法律法规、国家宏观调控和产业政策，资金不得用于生产、经营或投资国家禁止的领域和用途等。

四是要求商业银行加强委托贷款风险管理，要求商业银行将委托贷款业务与自营业务严格区分，加强风险隔离和业务管理等。五是加强委托贷款业务的监管，明确商业银行违规办理委托贷款业务的，由银监会或其派出机构责令限期改正。逾期未改正，或者其行为严重危及商业银行的稳健运行、损害客户合法权益的，银监会或其派出机构将对违规办理委托贷款业务的商业银行依法采取相应监管措施或实施处罚。

Source 来源:

<http://www.cbrc.gov.cn/chinese/home/docView/D34DF8260C5E45CD871420EA413E3128.html>

Hong Kong SFC's Consultation Paper Proposes to Increase Voting Approval Thresholds to 75% for Whitewash Transactions and to Enhance Supervision and Enforcement Regarding Takeovers

The Securities and Futures Commission (SFC) of Hong Kong has issued a consultation paper proposing the following changes to the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (Codes):

1. Require whitewash waiver and the underlying transaction(s) to be separately approved by at least 75% of the independent vote at a shareholders' meeting;
2. Step up enforcement powers under the Codes, including requiring persons dealing with the SFC to provide prompt cooperation and assistance and empowering the Takeovers Panel to require compensation to be paid to shareholders who have suffered as a result of a breach of certain provisions of the Codes;
3. Amend the definition of associate to eliminate overlap and potential inconsistencies that arise out of the similarities between the definition of associate and the definition of acting in concert;
4. Require appropriate measures to be put in place to protect minority shareholders and to provide them with more time to sell their shares upon delisting of H- shares, in view that China does not have a compulsory acquisition regime for such delisting;
5. Clarify the scope of disclosure of holdings and dealings in relevant securities, in particular where the offeror is offering securities of another company as consideration in an offer. It is also proposed to relax some requirements including the timing of dealing disclosures; and
6. Make miscellaneous amendments to the Codes to codify existing practice and to effect a number of "housekeeping" amendments.

香港证监会发出咨询文件建议提高清洗交易的宽免的投票批准门槛至 75%及加强并购交易的监管与执法

香港证监会就修改《公司收购、合并及股份回购守则》（守则）发出咨询文件，提出以下建议：

1. 建议将清洗交易的宽免的投票批准门槛，由独立股东的简单大多数提高至 75%，并引入一项明确要求，规定相关交易及清洗交易宽免的决议须分开提交予独立股东表决（批准门槛都是 75%）；
2. 建议加强守则下的执行安排，包括要求相关当事人向香港证监会提供从速合作及协助，及赋权收购委员会可规定违反守则内某些条文的人向因此蒙受损失的股东支付赔偿；
3. 建议修订守则中联系人一词的定义，以删除由于联系人的定义及一致行动的定义相若而有所重叠及可能出现不一致之处；
4. 建议制定适当措施，以保障在公司退市时的 H 股小股东，包括容许他们较长的时间出售股份（鉴于内地公司没有在公司退市时大股东有权强制收购剩余小股东股份的安排）；
5. 建议厘清就有关证券的持股状况及就有关证券所进行的交易作出披露的范围，尤其是在要约人以另一家公司的证券作为代价的情况。咨询文件亦建议放宽一些规定，当中包括呈交交易披露的时间性；及
6. 建议对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。

Source 来源:

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=18CP1>

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