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Financial Services Regulatory Update
金融服务监管资讯

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Monetary Authority of Singapore Proposes to Simplify Rules to Improve Business Flexibility for Market Operators

The Monetary Authority of Singapore (MAS) issued on May 22, 2018 two consultation papers to improve market operators' business flexibility when establishing new centralized trading facilities and speed to market when launching new products. The proposals are part of MAS' broader objectives to facilitate innovation in financial services by recognizing emerging new business models while safeguarding investors' interest.

Through the proposed multi-tier regime for market operators, MAS proposes to expand the existing Recognized Market Operators (RMO) regime from a single tier to three separate tiers (namely RMO Tier 1, RMO Tier 2 and RMO Tier 3) to better match regulatory requirements to the risks posed by different types of market operators. A multi-tier RMO regime with gradated requirements can better accommodate the emergence of new business models such as blockchain-based or peer-to-peer trading facilities, and lower the cost of entry for start-up operators.

RMO Tiers	Key proposals
Tier 3	• targeted at market operators that have a significantly smaller scale of business • required to meet the baseline regulatory requirements including the obligation to operate fair, orderly and transparent markets • required to meet base capital requirement of S$50,000 and ongoing capital requirement at 3 months of working expenses • required to self-certify their compliance against a checklist of requirements prepared by MAS and comply with fit and proper requirements that are imposed on its directors and key personnel • expected to perform the necessary know-your-customer checks and meet MAS' requirements on anti-money laundering and countering the financing of terrorism • prohibited to provide direct access to any individuals • individual persons who are accredited investors or expert investors may trade through a capital markets service license • required to transit to be a RMO Tier 2 after the limit of any of the maximum volume of business being reached: either (a) cap of S$10 million in revenue per annum; or (b) S$10 billion in securities traded by value annually; or (c) 10 million derivative contracts traded annually
Tier 2	• targeted at market operators that qualify under the current RMO regime for non-retail investors • Meet RMO Tier 3 requirements • required to have fair and objective criteria for participation, maintain and enforce compliance with its business rules, and have governance arrangements that are adequate for it to be operated in a fair, orderly and transparent manner • required to meet base capital requirement of S$500,000 and the ongoing capital requirement setting at 6 months of operating expenses

Tier 1	• targeted at market operators to serve a limited number of Singapore based retail investors • Meet RMO Tier 2 requirements • required to conduct product governance assessments to ensure the product is appropriate for retail investors • prohibited from collecting or holding retail investors' cash or collateral • required to perform client suitability assessment in place of the financial intermediaries and comply with prospectus requirements and disclosures requirements • the level of participation be capped to limit the impact in the event of failure: (a) no more than 200 retail investors per listed issuer; (b) no more than S$20,000 of investment per retail investor on a single Tier 1 RMO; and (c) no more than 10,000 retail investor accounts as a result to limit a maximum of S$4 million of investment that can be raised by an issuer and a maximum of S$200 million of investment that can be from across all issuers from retail investors

MAS proposes to allow RMO Tier 3 applicants to self-certify their compliance against a checklist of requirements in their application to MAS, given their smaller business scale and more sophisticated investor base. As MAS will place primary reliance on the self-certification by such applicants, MAS expects to complete processing applications within four weeks of submission. All applicants will be required to meet the full set of fit and proper requirements that are imposed on existing RMOs.

There will also be a shift to a product notification regime. To operationalize the new regime, MAS proposes for market operators to self-certify that the derivatives products to be traded comply with MAS' requirements, and notify MAS no less than one week prior to the product launch announcement. There will be no need to seek MAS' approval and market operators will be better able to plan their launch timelines.

As part of the self-certification process, market operators are required to identify and mitigate risks associated with the product launch. MAS will supervise market operators to check that they have appropriate internal controls and governance procedures to be able to assess and monitor the relevant product risks and mitigating measures.

The proposals are expected to benefit the industry as market operators will have greater flexibility to choose between different business models with regulatory requirements and compliance costs that are commensurate with their investor reach. They will also be able to launch their products more quickly in response to market demand. These changes are in line with MAS' risk-based supervisory approach.

新加坡金融管理局建议简化规则以提高市场经营者的业务灵活性

货币认证新加坡金融管理局（金管局）于 2018 年 5 月 22 日发布了两份咨询文件，旨在提高市场运营商在建立新的集中交易设施时的业务灵活性，并在推出新产品时加快速度。 这些建议是金融管理局通过在保护投资者利益的同时识别新兴商业模式来促进金融服务创新的更广泛目标的一部分。

通过针对市场运营商的多层次体系，金管局建议将现有的认可市场运营商（RMO）体系从单一层级扩展到三个不同的层级（即 RMO 一级，RMO 二级和 RMO 三级），以更好地监管对不同类型市场经营者所构成风险的要求。具有分级要求的多层 RMO 制度可以更好地适应新业务模式（如基于区块链或对等交易设施）的出现，并降低初创运营商的入门成本。

RMO 层级	主要建议
三级	•针对业务规模小的市场运营商 •需要满足基准监管要求，包括经营公平，有序和透明市场的义务 •需要满足5万新元的基本资本要求和3个月的工作费用的持续资本要求 •需要自行确认其符合金管局要求的清单并遵守对其董事和关键人员施加的适当要求 •预计将执行必要的了解您的客户检查，并满足金管局对反洗钱和反恐融资的要求 •禁止直接访问任何个人 •经认证的投资者或专业投资者的个人可通过资本市场服务许可进行交易 •在达到任何最大业务量限制之后，需要过境为 RMO 二级：（a）每年收入1000万新元的上限;或（b）每年按价值交易的证券100亿新元;或（c）每年交易1,000万份衍生工具合约

二级	•针对目前 RMO 制度下符合资格的市场经营者，为非散户投资者提供服务 •满足 RMO 三级要求 •要求公平和客观的参与标准，维护和执行其业务规则的遵守情况，并制定足以使其以公平，有序和透明的方式运作的治理安排 •需要达到50万新元的基本资本要求和6个月运营支出的持续资本要求
一级	•针对市场经营者为有限数量的新加坡散户投资者提供服务 •符合 RMO 二级要求 •需要进行产品管理评估以确保产品适合散户投资者 •禁止收集或持有散户投资者的现金或抵押品 •需要执行客户适当性评估以取代金融中介机构，并遵守招股说明书要求和披露要求 •限制参与水平以控制失败时的影响：（a）每个上市发行人不超过200名散户投资者；（b）每个散户投资者在单个 RMO 一级上的投资不超过2万新元；（c）不超过10,000个散户投资者账户，因此限制发行人可筹集的最多400万新元投资，以及来自散户投资者的所有发行人可获得的最高2亿新加坡元投资

鉴于其较小的业务规模和更复杂的投资者基础，金管局建议允许 RMO Tier 3 申请人根据金管局向其申请的要求清单自行认证其合规性。 由于金管局将主要依赖这些申请人的自我认证，因此金管局希望在提交后的四周内完成处理申请。 所有申请人将被要求满足对现有 RMO 所施加的全套适合和适当的要求。

也将转向产品通知制度。 为实施新制度，金管局建议市场经营者自我证明要交易的衍生产品符合金管局的要求，并在产品发布公告前一周通知金管局。 没有必要寻求金管局的批准，市场经营者将能够更好地计划他们的发布时间表。

作为自我认证过程的一部分，市场运营商需要识别和减轻与产品推出相关的风险。 金管局将监督市场经营者，检查他们是否有适当的内部控制和治理程序，以评估和监控相关产品风险和减轻措施。

由于市场运营商将有更大的灵活性在不同的商业模式中进行选择，监管要求和合规成本与其投资者覆盖范围相称，预计这些提议将有利于行业。 他们也将能够根据市场需求更快地推出他们的产品。 这些变化与金管局基于风险的监管方法一致。

Source 来源：
http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-to-simplify-rules-to-improve-business-flexibility-for-market-operators.aspx

Hong Kong Stock Exchange Reviews Listed Issuers' Implementation of ESG Reporting Guide

The Stock Exchange of Hong Kong Limited (the Exchange) published the findings of its review of listed issuers' Environmental, Social and Governance (ESG) reports on May 18, 2018. The 400 randomly selected issuers are with financial year-end dates of December 31, 2016, March 31, 2017 and June 30, 2017 (Sample Issuers).

The Exchange stipulated that the overall level of compliance with the ESG Guide was high although the quality of reporting varied. The findings include that all Sample Issuers had their ESG reports published within three months of publication of their annual reports; over 80 percent of Sample Issuers complied with the disclosure requirements in nine or more of the 11 Aspects, covered by the ESG Guide and 94% complied with seven Aspects or more; and among all the Aspects, *Use of Resources* had the highest compliance rate, at 98 per cent, whilst *Product Responsibility* had the lowest, at 73%.

The Exchange took the view that as it was the first year issuers were required to report on their ESG performance on a "Comply or Explain" basis, the level of compliance of the issuers was satisfactory. The Exchange further suggested that to further improve the quality of their ESG reports, and for issuers to benefit from the process of ESG reporting, issuers would do well to include the following key information:

- The issuer's or the board's commitment to ESG, management's approach to ESG and how they relate to the issuer's business;
- the board's evaluation and determination of ESG risks and how it ensures that appropriate and effective ESG risk management and internal control systems are in place; and
- the process for stakeholder engagement, which is central to materiality assessment and enables the company and its directors to communicate with their stakeholders.

香港联合交易所审阅上市发行人遵守《环境、社会及管治报告指引》的情况

香港联合交易所有限公司（联交所）于 2018 年 5 月 18 日刊发报告，详述其审阅上市发行人的环境、社会及管

治报告的结果。该批随机抽取被审阅的 400 名发行人的财政年度年结日为 2016 年 12 月 31 日、2017 年 3 月 31 日及 2017 年 6 月 30 日（抽样发行人）。

联交所指出抽样发行人高度遵守《环境、社会及管治报告指引》（《指引》），但报告质素参差不齐。其中，所有发行人均于刊发年报后三个月内发布环境、社会及管制报告；《指引》中要求披露的 11 个层面中，超过八成的抽样发行人遵守了 9 个或以上层面的披露要求，94%的抽样发行人遵守了 7 个或以上；在所有披露层面中，资源使用的遵守比例最高（98%），产品责任最低（73%）。

联交所认为考虑到今年是发行人首年须按"不遵守就解释"的准则汇报其环境、社会及管制表现，发行人的合规水平令人满意，并建议为进一步提升环境、社会及管治报告的质素，并让发行人从环境、社会及管治汇报中受益，发行人可考虑在报告中包含下列重要资料：

- 发行人或董事会对环境、社会及管治的承担和有关环境、社会及管治的管理方针，及它们与发行人业务之间的关连；
- 董事会对环境、社会及管治风险的评估及厘定，以及董事会如何确保设有适当及有效的环境、社会及管治风险管理及内部监控系统；及
- 权益人的参与过程，这是重要性评估至关重要的一环，能鼓励公司及董事与权益人保持沟通。

Source 来源：
https://www.hkex.com.hk/News/News-Release/2018/180518news?sc_lang=en

Hong Kong's Securities and Futures Commission Concludes Consultation on Prescribing Professional Investors

On May 18, 2018, Hong Kong's Securities and Futures Commission (SFC) released consultation conclusions on proposed amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) to standardise the rules for prescribing professional investors and to incorporate modifications the SFC has previously granted under section 134 of the Securities and Futures Ordinance (SFO).

The amendments to the PI Rules (Revised PI Rules) pertain to the following:

(a) allowing portfolios held in joint accounts with persons other than associates and investment corporations owned by individuals to be counted to ascertain whether individuals meet the monetary threshold to qualify as professional investors;

(b) expanding the definition of corporations as professional investors, where the categories of professional investors will include corporations which have investment holding as their principal business and are wholly-owned by one or more professional investors, as well as corporations which wholly own another corporation which is a qualified professional investor; and

(c) allowing alternative forms of evidence demonstrating qualification as professional investors.

It is of the view of the SFC that the changes to the rules for prescribing professional investors are in the best interest of the industry to ensure a level-playing field and consistent application of the regulations. It is submitted that they will introduce consistency and flexibility and this will better serve the interests of both firms and their clients.

The proposed amendments, as gazetted, will be submitted to the Legislative Council for negative vetting. Subject to the legislative process, the SFC expects the amended rules to come into effect on July 13, 2018.

香港证券及期货事务监察委员会就订明专业投资者资格的建议规则修订发表咨询总结

香港证券及期货事务监察委员会（证监会）于 2018 年 5 月 18 日发表咨询总结，建议修订"证券及期货（专业投资者）规则"（简称专业投资者规则），将订明专业投资者的规则标准化及把往根据"证券及期货条例"第 134 条作出的修改纳入其中。

"专业投资者规则"的修订（经修订专业投资者规则）涉及以下三方面:

(a) 允许将在与有联系者以外的人士开立的联权共有帐户内及由该人拥有的投资法团持有的投资组合计算在内，以确定个人是否达致符合资格成为专业投资者的总值限额;

(b) 扩阔法团的定义以符合资格成为专业投资者，专业投资者的种类将会涵盖主要业务是投资控股并由一名或多于一名专业投资者全资拥有的法团，以及全资拥有另一家符合资格成为专业投资者的法团的法团;及

(c) 接纳其他形式的证据以证明符合专业投资者资格

证监会认为修改订明专业投资者的规则，符合业界的最佳利益，可确保有公平的营商环境及贯彻一致地应用有关规例。有关修改将提供一致性和灵活性，并且更符合公司与客户双方的利益。

刊宪的建议修订将会提交予立法会进行先订立后审议的程序。视乎立法程序的进度，证监会预期经修订的规则将于 2018 年 7 月 13 日生效。

Source 来源：
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/corporate-news/doc?refNo=18PR54

Hong Kong's Securities and Futures Commission Concludes Consultation on New Securities and Futures (Open-ended Fund Companies) Rules and Code on Open-ended Fund Companies

Hong Kong's Securities and Futures Commission (the SFC) released consultation conclusions on the proposed Securities and Futures (Open-ended Fund Companies) Rules (the OFC Rules) and Code on Open-ended Fund Companies (the OFC Code) which set out detailed legal and regulatory requirements for the new open-ended fund company (the OFC) structure on May 18, 2018. This will enable investment funds to be established in corporate form in Hong Kong, in addition to the current unit trust form.

After considering market feedback, the SFC will implement the proposals set out in the consultation paper including the requirements relating to an OFC's formation, its key operators, ongoing maintenance, termination and winding-up with certain modifications and clarifications. These include streamlining the approval requirements for private OFCs and setting out a one-stop arrangement for the establishment, ongoing corporate filings and termination of OFCs.

According to Mr. Ashley Alder, the SFC's Chief Executive Officer. the introduction of a new corporate fund structure will enrich the choice of investment vehicles and facilitate the distribution of Hong Kong funds internationally. In the meantime, the SFC will continue to enhance market infrastructure to enable Hong Kong's sustained growth as a full-service international asset management center and a preferred fund domicile.

The OFC Rules and the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation, both subsidiary legislation under the Securities and Futures Ordinance, were gazetted on May 18, 2018 and will be submitted to the Legislative Council for negative vetting. Subject to the legislative process, the OFC regime is targeted to come into effect on July 30, 2018. The OFC Code will be gazetted following the completion of the legislative process for the OFC Rules and Securities and Futures (Open-ended Fund Companies) (Fees) Regulation. The SFC will provide guidance to the industry on the implementation of the regime.

香港证券及期货事务监察委员会就新的《证券及期货(开放式基金型公司)规则》及《开放式基金型公司守则》发表咨询总结

香港证券及期货事务监察委员会（证监会）于 2018 年 5 月 18 日就建议的《证券及期货(开放式基金型公司)规则》（该规则）及《开放式基金型公司守则》（该守则）发表咨询总结。该规则及该守则就新的开放式基金型公司结构列明详细的法律及监管规定，并将让投资基金可在目前的单位信托形式以外，以公司形式在香港设立。

经考虑市场回应后，证监会将会落实咨询文件所载的与开放式基金型公司的组成、其主要经营者、持续营运、终止运作及清盘相关规定建议，并将作出某些修改和厘清，包括简化私人开放式基金型公司的审批规定，以及就开放式基金型公司的成立、持续企业文件存档及终止运作订明一站式的安排。、

证监会行政总裁欧达礼先生（Mr. Ashley Alder）表示，引入新的公司型基金结构将会令投资工具的选择更加丰富，并将有助香港的基金行销国际。同时，证监会将会继续提升市场基础建设，让香港持续发展成为提供全方位服务的国际资产管理中心及基金的首选注册地。

根据《证券及期货条例》制订的两套附属法例，即《证券及期货(开放式基金型公司)规则》及《证券及期货(开放式基金型公司)(费用)规例》，已于 2018 年 5 月 18 日刊宪，并将提交立法会进行先订立后审议程序。视乎立法程序的进度，开放式基金型公司制度预定于 2018 年 7 月 30 日实施，其中，该守则将会在该规则及《证券及期货(开放式基金型公司)(费用)规例》的立法程序完成后刊宪。证监会将会就有关制度的实施向业界提供进一步指引。

Source 来源：
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/corporate-news/doc?refNo=18PR53

Hong Kong's Securities and Futures Commission Concludes Consultation on Disclosure Requirements for Discretionary Accounts to Make it Easier for Investors to Compare Benefits Which Discretionary Account Managers will Receive from Product Issuers

Hong Kong's Securities and Futures Commission (SFC) released, on May 23, 2018, consultation conclusions on proposed disclosure requirements for intermediaries providing discretionary account management services. New disclosure requirements to make it easier for investors to make better decisions, especially by comparing benefits which discretionary account managers will receive from product issuers, will be

implemented through amending the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, which will be come into effect six months after the gazettal date of May 25, 2018.

香港证券及期货事务监察委员会发表有关适用于委托账户及有助投资者更容易地比较委托帐户经理将从产品发行人取得的收益的披露规定的谘询总结

香港证券及期货事务监察委员会（证监会）于 2018 年 5 月 23 日就适用于提供委托账户管理服务的中介人的建议披露规定，发表谘询总结。

经修订之《证券及期货事务监察委员会持牌人或注册人操守准则》将于刊宪日 2018 年 5 月 25 日之后 6 个月生效; 新的披露规定让投资者可在掌握更充分资料的情况下作出决定，特别是有助投资者更容易地比较委托账户经理将从产品发行人取得的收益。

Source 来源：
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR55

Hong Kong's Securities and Futures Commission Publishes Second Issue of "Regulatory Bulletin: Listed Corporations" on its Real-time Regulation Over Securities Issuances

Hong Kong's Securities and Futures Commission (SFC) published, on May 23, 2018, the second issue of its "SFC Regulatory Bulletin: Listed Corporations" to provide an update on how it exercises its powers under the Securities and Futures (Stock Market Listing) Rules to fulfil its statutory objective of protecting investors, by intervening in serious cases at an early stage to safeguard the interests of investors and suppress illegal, dishonorable and improper market practices involving issuances of securities.

香港证券及期货事务监察委员会证监会刊发第二期《证监会监管通讯：上市公司》阐明其实时监管证券发行的最新资讯

香港证券及期货事务监察委员会（证监会）于 2018 年 5 月 23 日发表第二期《证监会监管通讯：上市公司》，为公众带来最新资讯，阐明证监会如何行使在《证券及期货(在证券市场上市)规则》下的权力，及早介入严重的证券发行个案，藉以保障投资者利益及遏止非法、不诚实和不正当的市场行为，以履行证监会在保障投资者方面的法定目标。

Source 来源：
http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR56

The European Union's General Data Protection Regulation Came into Force on May 25, 2018 – How Would This Affect Businesses Outside the European Union?

The General Data Protection Regulation (GDPR) of the European Union (EU) came into force on May 25, 2018. One of the new developments introduced under the GDPR to the data protection landscape outside the EU is the explicit requirement of compliance by organizations established in non-EU jurisdictions in specified circumstances. As the EU is Hong Kong's second largest trading partner, the new GDPR's extra-territorial effect suggests that as long as Hong Kong enterprises collect and process personal data of EU individuals, they should be prepared to comply with GDPR's requirements (such as obtaining positive consent for processing of personal data).

The GDPR considers not only the location of the data processing, but also the location of the individual whose data is being processed. The GDPR applies to businesses which process personal data in relation to:
1.The offering of goods or services to individuals in the EU (regardless of whether payment is taken); or
2.The monitoring of the behavior of individuals within the EU.

Here are some scenarios that Hong Kong businesses may be impacted by GDPR due to use of Internet:
1.Hong Kong company without any EU subsidiaries offering free social media services via a website hosted in US to individuals in the EU – GDPR applies
2.Hong Kong hotel booking business using cookies to track past customers' (including EU-based customers) browsing in order to target specific hotel adverts to them – GDPR applies
3.Hong Kong flower delivery company allowing individuals in the EU to make orders for fulfilment only in Hong Kong. The price for the flower delivery services is denominated in, among others, EU currency – GDPR applies
4.Hong Kong retailer with a website for orders/deliveries. The website is accessible to individuals in the EU in English. The currency is the Hong Kong dollar and the address fields only allow HK addresses – GDPR doesn't apply

The Privacy Commissioner for Personal Data, Hong Kong (Privacy Commissioner) already issued the "European Union General Data Protection Regulation (GDPR) 2016" booklet on April 3, 2018, which aims at raising awareness amongst organizations / businesses in Hong Kong of the possible impact of the new regulatory framework for data protection in the European Union, as well as comparing some of the major requirements with those set out in the Personal Data (Privacy) Ordinance, Laws of Hong Kong (Cap 486).

The above provides an example of how the GDPR may affect businesses outside the EU, which businesses should check their position carefully according to the GDPR.

欧盟《一般资料保护规则》于 2018 年 5 月 25 日实施 – 这将如何影响欧盟以外的企业？

欧盟新的《一般资料保护规则》(GDPR)已于 2018 年 5 月 25 日实施，新规则适用于所有与欧盟公民或机构有往来的机构，将更严格规管个人资料的搜集、处理、储存及传输，以及数据泄露的通报。欧盟为香港第二大贸易伙伴，新例将令香港企业增添合规的压力（例如是获得处理个人资料的正面、非默许的同意）。

除了于欧盟地区设有业务据点的企业须遵守其要求外，各地企业如有向欧盟地区的居民(不论有否收取费用)提供货品或服务，又或有记录及监控欧盟地区居民的活动资料，均受新例规范。

以下是一些香港企业因互联网活动而可能受欧盟规则影响的情况：
1.香港企业没有于欧盟设立据点，但透过位于美国的网站，向全世界提供免费社交媒体服务 – 受规范；
2.香港酒店预约业务，于网上利用 cookies 追踪世界各地客户的浏览活动以提供合适的酒店广告 – 受规范；
3.香港花店可提供网上订花及只限本地的送花服务，网上客户(包括欧盟居民)付款时可以选择欧元作货币 – 受规范；
4.香港零售网站接受网上客户(包括欧盟居民)订购货品，但货币只限港元及送货地点只限香港 – 不受规范

香港个人资料私隐专员于 2018 年 4 月 3 日发出《欧洲联盟通用数据保障条例 2016》小册子，以助香港机构/企业了解欧盟新例可能带来的影响，以及将当中部分主要规定与香港《个人资料 (私隐）条例》作比较，让港企更容易掌握及作好准备。

以上为 GDPR 如何影响欧盟以外企业的一个例子，各地企业应根据 GDPR 的规则细心检视及遵守相关的合规要求。

Source 来源：
https://www.hkcert.org/my_url/en/blog/18040901

Brett Redfearn, U.S. SEC's Director, Division of Trading and Markets, Comments at the FINRA Annual Conference on "How Should a Financial Professional Provide Advice in the Face of Conflicts?"

The U.S. Securities and Exchange Commission (SEC) proposed an important rulemaking package relating to the standards of conduct for investment professionals. As pointed out by Brett Redfearn, SEC's Director, Division of Trading and Markets, Comments at the FINRA Annual Conference on May 22, 2018, the focus will be on enhancing the quality of broker-dealer advice by requiring that recommendations be in the best interest of the retail customer, without placing the financial or other interest of the broker-dealer ahead of the retail customer – known as "Regulation Best Interest".

Most professionals want their clients to do well. That is what drives most of the advice given. But there are always other incentives that can affect the quality of advice provided, regardless of whether one recognizes them as such or not. The incentives and related conflicts are typically tied to how the firm or financial professional makes or loses money. Once one identifies the conflict, he must ask: "How does it affect the investor receiving the advice?" Depending on the type of conflict, a professional's advice may lead the investor to trade too much or not enough; take on too much or too little risk; overpay for the account or for the product in the account; buy the wrong type of product, or one that does not best fit the investor's needs; and so on. The point is the professional's conflict can affect the investor's outcome.

To enhance the quality of brokerage advice and preserve the brokerage advice model for investors, SEC needs to act in a way that recognizes the range of services and the various types of advice — one-time, episodic, to more frequent — that a broker-dealer may provide its retail customers. It is important to give firms flexibility and a reasonable compliance path to develop systems to incorporate these new obligations. The proposal also would promote more consistent obligations across both retirement and non-retirement accounts, simplifying firms' compliance.

SEC's proposal begins by setting forth a broad, overarching obligation requiring that when making a recommendation to a retail investor, the broker-dealer must act in the retail customer's best interest and cannot put its financial or other interest ahead of its customer's interest. To provide clarity to investors and firms of what this duty entails, the rule then sets forth what the broker-dealer must do to meet its obligation, namely, comply with specific disclosure, care and conflict of interest obligations.

So, what would the broker-dealer making a recommendation have to do to act in the customer's best interest?

First, the SEC starts with a disclosure obligation to address some of the widely documented investor confusion. Of the three requirements in the rule, this is the most incremental of the new obligations, although it will result in change nonetheless. This disclosure obligation is designed to both foster retail customer

awareness and understanding of the relationship with the broker-dealer, and enhance the disclosure of material conflicts of interest so that investors can better evaluate recommendations received from their broker-dealers.

The broker-dealer would be required to disclose material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts associated with the recommendation, the services provided, whether the firm is acting in a brokerage or advisory capacity, and fees. These disclosures will build upon the customer relationship summary that SEC proposed at the same time. SEC did not propose to mandate the manner that such disclosure would be provided, opting instead to give firms flexibility in how they satisfied this obligation.

Second, a broker-dealer would be required to meet a care obligation that the recommendation is in the best interest of the retail customer. Specifically, a broker-dealer would need to exercise reasonable diligence, care, skill and prudence in making the recommendation. That concept of reasonableness which is found throughout the rule is an important one. Reasonable does not mean perfect advice — a standard that no one can meet. The recommendation also must be in the best interest of the retail customer at the time it is made, rather than being evaluated in hindsight. In other words, the proposal recognizes that there may be circumstances where a broker-dealer's advice does not work out in hindsight, even though it was reasonable at the time when it was given.

To exercise such reasonable diligence, care, skill, and prudence the broker-dealer would be required to do three things when it recommends a securities transaction or investment strategy to a retail customer.

- First, the broker-dealer would need to understand the risks and rewards associated with the security or investment strategy, and have a reasonable basis to believe that it could be in the best interest of at least some retail customers.
- Second, the broker-dealer would be required to match this understanding of the security or strategy to the particular retail customer to form a reasonable belief that the security or strategy is in the retail customer's best interest. The customer's investment profile would be developed using the extensive investment profile information that broker-dealers are required to attempt to gather today pursuant to FINRA rules. SEC thought that the investment profile information that is currently required has worked well, so SEC did not propose to change it.
- Finally, the broker-dealer would be required to have a reasonable basis to believe that a series of recommended transactions is not excessive and is in the retail customer's best interest when taken together in light of the customer's investment profile.

Finally, and probably the biggest change, would be a new requirement for broker-dealers to address conflicts. The proposed conflict obligations would require broker-dealer to establish, maintain, and enforce policies and procedures reasonably designed to identify and address material conflicts of interest. Specifically, conflicts that are financial incentives would be required to be mitigated and disclosed, or eliminated. All other conflicts would have to at a minimum be disclosed.

美国证券交易委员会交易和市场部主任 Brett Redfearn 在 FINRA 年会上评论"金融专业人员应该如何在面对潜在冲突时向客户提供合适的建议"

美国证券交易委员会（SEC）提出了与投资专业人员行为标准有关的重要规则制定方案。美国证券交易委员会交易和市场部主任 Brett Redfearn 于 2018 年 5 月 22 日在 FINRA 年会上的发言指出，SEC 的重点将放在提高经纪交易商之建议的质量上，要求建议符合零售客户的最佳利益，而不会将经纪交易商的经济利益或其他利益置于零售客户之前 —— 这称为"规管要求最佳利益"。

大多数专业人员会希望他们客户的投资做得好; 这就是驱动大部分建议的原因。但是，总会有其他诱因影响所提供建议的素质，无论专业人员是否意识到这些诱因。诱因和相关冲突通常与企业或金融专业人员如何赚钱或亏钱有关。一旦发现冲突，专业人员必须问："它如何影响接受建议的投资者？"根据冲突的类型，专业人员的建议可能会导致投资者的交易量过多或过少，承担过多或过少的风险，为账户或账户中的产品多付费用，购买错误类型的产品或者不适合投资者需求的产品等等。关键是专业人员的利益冲突可能会影响投资者的投资结果。

为了提高经纪咨询的素质并维护投资者获得经纪咨询的有效模式，SEC 需要就不同服务和各种类型的建议 (一次性，偶发性或更频繁的) 有效监管经纪交易商向其零售客户提供的建议。为企业提供灵活性和合理的合规路径来开发系统以纳入这些新的义务是非常重要的。该提案还将促进退休和非退休人士账户处理的一致化，简化企业的合规工作。

SEC 的建议首先提出了一项广泛而全面的义务，要求向零售投资者提出建议时，经纪交易商必须以零售客户的最佳利益行事，不能将其财务或其他利益置于客户利益之前。为了让投资者和企业明确这项义务的含义，基本规则规定了经纪交易商为履行其义务所必须做的事情，即(1)遵守具体的披露，(2)关顾和(3)避免利益冲突义务。

那么，提出推荐的经纪交易商必须做什么来实现客户的最佳利益？

首先，SEC 从披露义务开始解决一些广为报道的投资者误区。在基本规则中的三项要求中，这代表着新增义务下最渐进的环节，尽管它仍会导致改变。此披露义务旨在促进零售客户对交易要项的觉醒，及与经纪交易商的关系的认识和理解，并加强重大利益冲突的披露，以便投资者能更好地评估从其经纪交易商获得的建议。

经纪交易商必须披露与零售客户关系的范围和条款有关的重要事实，包括与该建议相关的所有重大冲突，所提供的服务，该企业是以经纪或咨询顾问身份行事，和费用。这些披露将建立在 SEC 同时提出的客户关系总结上。SEC 并不打算强制提供这种披露的方式，而是选择赋予企业灵活性以履行这一义务。

其次，经纪交易商必须履行关顾义务，务求其推荐符合零售客户的最佳利益。具体而言，经纪交易商需要在提出建议时采取合理的勤勉、关顾、技巧和谨慎。贯切基本规则的合理性是一个重要的概念。合理并不意味着完美的建议 —— 这是一个无人能及的标准。该建议必须符合零售客户的最佳利益，而不是事后评估。换句话说，SEC 在提出基本规则的提案时已认识到，可能会出现一些情况，即经纪交易商的建议事后看来不靠普，但在提供时是合理的。

在向零售客户推荐证券交易或投资策略时，为了履行这种合理的勤勉、关顾、技巧和谨慎，经纪交易商应该做三件事：

- 首先，经纪交易商需要了解与证券或投资策略相关的风险和回报，并且要有合理的理由相信这会符合至少一些零售客户的最佳利益。

- 第二，经纪交易商必须将这种对证券或投资策略的理解与特定的零售客户相匹配，以形成合理的结论，即该证券或投资策略符合有关零售客户的最佳利益。根据 FINRA 规则，客户的投资风险承受概况将需通过经纪交易商使用多方面的规定方式收集的信息来厘定。SEC 认为目前的投资风险承受概况信息收集系统运行良好，因此 SEC 不打算改变它。

- 第三，经纪交易商必须具备合理的基础，相信推荐的一系列交易不会是过度的，并且根据客户的投资风险承受概况符合零售客户的最佳利益。

最后，也许是最大的变化，将是经纪交易商解决冲突的新要求。建议的避免冲突的义务将要求经纪交易商建立，维护和执行合理设计的政策和程序，以确定和解决重大利益冲突。具体而言，涉及财务激励的冲突将需要减轻和披露，甚或消除。所有其他冲突必须至少披露。

Source 来源：
https://www.sec.gov/news/speech/redfearn-remarks-finra-annual-conference-052218