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Financial Services Regulatory Update
金融服务监管资讯

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New UK Premium Listing Category for Sovereign-Controlled Companies

On June 8, 2018, the UK Financial Conduct Authority (FCA) has finalized rules to create a new category within its premium listing regime to cater to commercial companies that are controlled by a sovereign country (sovereign controlled companies). The new rules follow an FCA consultation in July 2017 to create a new premium listing category for sovereign controlled companies (new category).

In response to the feedback received, the FCA has agreed that some of the controlling shareholder and related party rules will apply to sovereign controlled companies in order to ensure the regulatory requirements are suitably tailored to achieve the best outcomes for investors and issuers. The FCA is including requirements in the new category in the following areas:-

1. Independent votes on independent directors - this requires the election of independent directors to be subject to separate approval by independent shareholders.

2. Disclosure obligations on related party transactions - this requires timely disclosures on transactions between the sovereign and the issuer.

The sovereign controlled companies will have to comply with all premium listing rules including the requirements to carry on an independent business as its main activity and to disclose information regarding the issuer's compliance with the Corporate Governance Code, proportionate voting rights and adherence to the principles of pre-emption rights, other than the following two requirements:

1. sovereign controlled companies will not be required to enter into a controlling shareholder agreement with the sovereign; and

2. an advance sponsor opinion or prior approval by independent shareholders requirements for related party transactions with the sovereign will not apply. The obligation for disclosure of the transaction on the agreement will remain.

The implementation of new rules, which will be effective on July 1, 2018, recognizes that the relationship between a sovereign controlled company and the state that owns it is likely to be different from the relationship a company would have with a private controlling shareholder.

英国新高级上市类别 - 主权控股公司

英国金融市场行为监管局（监管局）在 2018 年 6 月 8 日最终制定了规则，在其高级上市制度下建立一个新上市类别，为由主权国家控股的商业公司（主权控股公司）提供特设的上市渠道。新规则乃基于 2017 年 7 月监管局的咨询而建立的新的高级上市类别（新类别）。

针对收到的意见，监管局同意将一些控股股东和关联方的规则仍旧应用于主权控股公司，以确保监管要求的调整切合为投资者和发行人实现最佳结果之目的。监管局就新类别的要求包括：-

1. 独立董事委任的独立表决 – 要求独立董事的任命由独立股东单独批准。

2. 关联交易的披露义务 – 要求及时披露主权国家和发行人之间的交易。

主权控股公司必须遵守所有高级上市规则，包括以独立经营业务作为其主要活动并披露有关发行人遵守企业管治守则，按比例的投票权及遵守优先购买权的原则，除了以下两个要求：

1. 主权控股公司将不需要与主权国达成控股股东协议；以及

2. 对于与主权国家的关联交易，事先提出的保荐意见要求及独立股东事先批准的要求将不适用。需披露此等关联交易的协议义务则仍然存在。

将于 2018 年 7 月 1 日生效的新规则确认及体现主权控股公司和拥有它的主权国家之间的关系，与其他上市公司和其私人控股股东的关系是有所不同的。

Source 来源：
https://www.fca.org.uk/news/press-releases/new-premium-listing-category-sovereign-controlled-companies

US Securities and Exchange Commission Charges Merrill Lynch in Two Cases

Failure to Supervise Traders in Residential Mortgage Backed Securities

On June 12, 2018, the US Securities and Exchange Commission (SEC) announced that Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) will pay more than US$15 million to settle charges that its employees misled customers into overpaying for Residential Mortgage Backed Securities (RMBS).

Summary of Facts

The SEC found that Merrill Lynch traders and salespersons of RMBS convinced the bank's customers to overpay for RMBS by deceiving them about the price Merrill Lynch paid to acquire the securities and illegally profited from excessive, undisclosed commissions which in some cases were more than twice the amount the customers should have paid.

SEC's Order

According to the SEC's order, Merrill Lynch traders and salespersons violated antifraud provisions of the federal securities laws in purchasing and selling RMBS and that Merrill Lynch failed to reasonably supervise them.

Without admitting or denying the findings, Merrill Lynch agreed to be censured, pay a penalty of approximately US$5.2 million, and pay disgorgement and interest of more than US$10.5 million to Merrill Lynch customers that were parties to the transactions.

Misleading Customers about Trading Venues

On June 19, 2018, the US Securities and Exchange Commission (SEC) announced that Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) was charged with misleading customers about how it handled their orders.

Summary of facts

The SEC found that Merrill Lynch falsely told customers that it executed more than 15 million "child" orders (portions of larger orders), comprising more than five billion shares, that actually WAS executed at third-party broker-dealers and entailed reprogramming its systems to falsely reported execution venues, altering records and reports, and providing misleading responses to customer inquiries.

SEC's order

The SEC's order censures Merrill Lynch, admits wrongdoing, and requires it to pay a US$42 million civil penalty.

美国证券交易委员会指控美林证券的两个案件

未能对住宅抵押贷款支持证券的交易员进行监管

2018 年 6 月 12 日，美国证券交易委员会（证交会）宣布，美林·皮尔斯·芬纳·史密斯公司（美林证券）将缴付超过 1500 万美元的费用，以应对其员工误导顾客过多支付住宅按揭支持证券（RMBS）的费用的指控。

事实摘要

证交会发现美林证券的贷款证券交易员和销售人员谎报美林证券收购 RMBS 的价格，说服银行的客户超额支付 RMBS，并从过度和未披露的佣金中非法获利；在某些情况下，客户支付两倍以上的应支付的金额。

证交会的命令

根据证交会的命令，美林证券的交易员和销售人员违反了联邦证券法中有关购买和出售贷款证券的反欺诈条款而美林未能对其员工进行合理监管。

在没有承认或否认调查结果的情况下，美林证券同意受到谴责，并向相关的交易客户偿还款项和利息超过 1050 万美元及支付大约 520 万美元的罚金。

误导客户有关交易场所

2018 年 6 月 19 日，美林证券被控告在执行订单过程中误导客户 。

事实摘要

证交会发现美林证券对客户谎称其执行了超过 1500 万个"子指令"订单（较大订单的小部分），包括超过 50 亿股实际上是由第三方经纪交易商执行的且其系统被重新编程为报告虚假的执行场所并同时更改记录和报告以及对客户询问提供误导性答复的股票。

证交会的命令

美国证券交易委员会的命令谴责美林，承认不当行为，并要求其支付 4200 万美元的民事罚款。

Source 来源：
https://www.sec.gov/news/press-release/2018-105;
https://www.sec.gov/news/press-release/2018-108

US Securities and Exchange Commission Comments on Digital Assets as Securities

On June 14, 2018, William Hinman (Hinman), Director of the Division of Corporation Finance of the US Securities and Exchange Commission (SEC), delivered a speech at the Yahoo Finance All Markets Summit, in which he provided observations and comments on the nature of digital assets and digital asset transactions.

Hinman said that neither bitcoin nor ethereum is securities and that the offers and sales of these cryptocurrencies are not securities transactions. He also indicated that even though the initial issuance of a digital asset may have represented a securities offering, once the asset is no longer controlled by a central authority or used primarily to purchase goods or services on a functioning network, it may not make sense to regulate the digital asset as a security.

Hinman emphasized "investment contract" test as established in SEC v. Howey that the test requires an investment of money in a common enterprise with an expectation of profit derived from the efforts of others. Hinman also referred to Gary Plastic v. Merrill Lynch, that an instrument can be part of an investment contract subject to securities regulations depending on how and why it is sold. Hinman added that the digital assets may not represent an investment contract if a cryptocurrency network is sufficiently decentralized and purchasers would no longer reasonably expect a third party to carry out essential managerial efforts purchasers.

When assessing whether a particular digital asset transaction is offered as an investment contract and is thus a security, it should be focused on the consideration of whether a third party drives the expectation of profit. A summary of the non-exhaustive list of factors stated by Hinman is at the following:

1. Is there a person or group whose efforts play a significant role in the development and maintenance of the digital asset and its potential increase in value?

2. Has this person or group retained a stake or other interest in the digital asset such that it would be motivated to expend efforts to cause an increase in value in the digital asset? Would purchasers reasonably believe such efforts will be undertaken and may result in a return on their investment in the digital asset?

3. Has the promoter raised an amount of funds in excess of what may be needed to establish a functional network, and, if so, has it indicated how those funds may be used to support the value of the tokens or to increase the value of the enterprise?

4. Are purchasers "investing", that is seeking a return? Is the instrument marketed and sold to the general public instead of to potential users of the network for a price that reasonably correlates with the market value of the good or service in the network?

5. Does application of the US securities laws protections make sense? Do informational asymmetries exist between the promoters and potential purchasers/investors in the digital asset?

6. Do persons or entities other than the promoter exercise governance rights or meaningful influence?

While there are contractual or technical ways to structure digital assets so that they function more like a consumer item and less like a security, Hinman suggested to look to the economic substance of the transaction. A non-exhaustive list to consider whether a token is not being offered as a security is at the following:

1. Is token creation commensurate with meeting the needs of users or, rather, with feeding speculation?

2. Are independent actors setting the price or is the promoter supporting the secondary market for the asset or otherwise influencing trading?

3. Is it clear that the primary motivation for purchasing the digital asset is for personal use or consumption, as compared to investment?

4. Are the tokens distributed in ways to meet users' needs?

5. Is the digital asset marketed and distributed to potential users or the general public?

6. Are the digital assets dispersed across a diverse user base or concentrated in the hands of a few that can exert influence over the application?

7. Is the application fully functioning or in early stages of development?

The digital assets that are offered via an initial coin offering or a token sale will probably be out of the purview of the US securities laws. However, cryptocurrency markets will still face with uncertainty on how regulation would apply to ownership transfers and markets.

美国证券交易委员会对数码资产作为证券的评论

美国证券交易委员会（证交会）企业融资部门主管威廉·辛曼（William Hinman，辛曼），在雅虎金融全球市场峰会上发表讲话，就数码资产和数码资产交易提供意见和评论。

辛曼说，比特币和以太币都不是证券，这些加密货币的提供和销售并不是证券交易。他还表示，尽管数码资产的初始发行可能代表了证券发行，但一旦资产不再受中央管理机构控制或主要用于功能网络上购买商品或服务，将数码资产作为证券进行管理可能没有意义。

辛曼强调"证交会与 Howey"一案所确定的"投资合同"测试，即测试需要在共同实体中投入的资金并期望从他人的努力中获得的利润。辛曼还提到"Gary Plastic 与美林证券"一案，根据证券法的规定，一个证券是否可以成为投资合同的一部分，具体取决于销售的方式和原因。辛曼补充说，如果加密电子货币网络足够分散，而且购买者也不再合理地期望第三方进行必要的管理工作，那么数码资产可能不代表或被视为投资合同。

在评估特定的数码资产交易是否视为投资合同并因此是证券时，应该重点考虑第三方是否会有推动利润的预期。辛曼提出的考虑因素清单部分摘要如下：

1. 是否有任何个人或团体推动数码资产的开发和维护及潜在价值的增值中发挥重要作用？

2. 该个人或团体是否保留了数码资产的股份或其他利益，以促使其增加数码资产的价值？购买者是否会合理地相信作出努力，并可能导致他们在数码资产上的投资获得回报？

3. 发起人筹集的资金是否超过建立功能网络可能需要的资金数额；果是，它是否已经表明如何使用这些资金来支持代币的价值或增加企业的价值?

4. 购买者是否在"投资"即寻求回报？该数码资产是否以网络的合理价格向公众而不是网络的潜在用户销售？

5. 美国证券法保护的适用是否合理？ 数码资产中的发起人和潜在购买者/投资者之间是否存在信息不对称？

6. 除发起人之外的个人或团队是否行使管治权利或发挥有意义的影响力？

尽管有合同或技术方式来构建数码资产，使其更像消费品而不是证券，辛曼还是建议考虑交易的经济实质。用于考虑代币是否不作为证券的部分因素如下：

1. 代币创建是否与满足用户的需求或者提供投机机会？

2. 独立行为者是否设定价格或促进资产的二级市场或以其他方式影响交易的推动者？

3. 与投资相比，购买数码资产的主要动机是供个人用途或消费？

4. 代币是否以满足用户需求的方式分发？

5. 该数码资产是面向潜在用户或公众进行销售和发行的吗?

6. 数码资产是否分散在不同的用户群中，还是集中在少数对应用可以施加影响的人手中？

7. 应用程序是否完全发挥作用还是处于开发的早期阶段？

数码资产通过首次代币发行或代币销售或许不在美国证券法的范围之内，然而，加密货币市场在监管如何适用于所有权转让和销售方面仍将面临不确定性。

Source 来源：
https://www.sec.gov/news/speech/speech-hinman-061418

Hong Kong Securities and Futures Commission Proposes Margin Requirements for Non-centrally Cleared Over-the-counter Derivatives

On June 19, 2018, Hong Kong Securities and Futures Commission (SFC) launched the two-month consultation proposals to impose margin requirements for non-centrally cleared over-the-counter (OTC) derivatives.

The proposals are part of comprehensive reforms to implement international standards and enhance Hong Kong's regulatory regime for OTC derivatives. Under the proposals, a licensed corporation which is a contracting party to a non-centrally cleared OTC derivative transaction entered into with an authorized institution, a licensed corporation or another defined entity would be required to exchange margin with the counterparty.

The key proposals set out in the Consulation Paper are at the following:-

1. The proposed initial margin (IM) requirements will apply to a licensed corporation if the average aggregate notional amount of non-centrally cleared OTC derivatives on a group basis exceeds HK$60 billion.

2. The proposed variation margin (VM) requirements will apply to a licensed corporation when the licensed corporation itself or the group to which it belongs has an average aggregate notional amount of non- centrally cleared OTC derivatives exceeding HK$15 billion.

3. IM should be called at the earliest time possible after either execution of a transaction or upon changes in measured potential future exposure. The IM amount for a given counterparty has to be recalculated at least every ten business days.

4. VM should be calculated at least on a daily basis and be called at the earliest time possible after the trade date and from time to time thereafter.

5. A licensed corporation may agree with its counterparty not to exchange margin if the amount of margin due is equal to or lower than a specified minimum transfer amount not exceeding HK$3.75 million.

6. IM and VM should be collected as soon as practicable within the standard settlement cycle for the relevant collateral type.

7. The proposed margin requirements will apply to all derivative transactions not cleared by a central counterparty; except (a) physically settled foreign exchange (FX) forwards and FX swaps, and the "FX transaction" embedded in cross-currency swaps associated with the exchange of principal, be exempt from IM requirements; and (b) these instruments also be exempt from VM requirements, except when the covered entity is an authorized institutions, a licensed corporation or an entity that carries on a business outside Hong Kong engaged in banking, securities, derivatives or asset management.

8. As margin for both IM and VM, the eligible collateral instruments, subject to appropriate haircuts in order to address their potential volatility, include (a) cash in any currency; (b) marketable debt securities issued or fully guaranteed by a sovereign or a relevant international organization; (c) marketable debt securities issued or fully guaranteed by a multilateral development bank; (d) marketable debt securities issued or fully guaranteed by a public sector entity; (e) other marketable debt securities; (f) gold; and (g) listed shares which are subject to a haircut percentage of 15%.

9. Haircuts should be applied to the market value of eligible collateral for margin purposes. A licensed corporation should apply risk-sensitive haircuts as set out in a standardized haircut schedule. Whenever the eligible collateral posted (as either IM or VM) is denominated in a currency other than the designated currency, an additive haircut of 8% is applied to the market value of any IM collateral (cash and non-cash) and non-cash VM collateral.

10. Intragroup transactions will be exempt from the proposed margin requirements, subject to the conditions that: (a) the licensed corporation and the affiliates are accounted for on a full basis in the group consolidated financial statements; and (b) the risk evaluation, measurement and control procedures applicable to the licensed corporation and the affiliates are centrally overseen and managed within the group of companies to which they belong.

The effective date of the IM requirements should be phased in starting from September 1, 2019, and that the VM requirements take effect from September 1, 2019.

香港证券及期货事务监察委员会建议就非中央结算场外衍生工具制订保证金规定

香港证券及期货事务监察委员会（证监会）在 2018 年 6 月 19 日就有关对非中央结算场外衍生工具施加保证金规定的建议，展开了为期两个月的咨询。

这些建议是一整套全面改革方案的一部分，改革的目标是落实国际标准及改善香港的场外衍生工具活动监管制度。根据有关建议，持牌法团如属与认可机构、另一持牌法团或另一经界定的机构进行非中央结算场外衍生工具交易的订约方，且这些机构的未完成非中央结算场外衍生工具的名义数额超过指明门槛，它们便须与对手方交换保证金。

咨询文件所载的主要建议如下：

1. 若非集中结算场外衍生品的平均名义金额超过 600 亿港元，则拟备的初始保证金（IM）要求将适用于持牌公司 。

2. 当持牌公司本身或其所属的集团平均非集中结算场外衍生品的名义金额超过 150 亿港元时，拟议的变动幅度（VM）规定将适用于持牌公司 。

3. 在执行事务或可预测未来潜在风险变化之后，应该尽早调用 IM。至少每 10 个工作日必须重新计算交易对手方的即时交易金额。

4. VM 应至少按日计算，并应在交易日期后尽早调用，并在交易日后不时调用。

5. 持牌公司可同意其交易对手方：如到期保证金金额等于或低于不超过不超过 375 万港元的指定最低转让金额，则不得交换保证金。

6. 对于相关的抵押品类型，在标准结算周期内应尽快收集 IM 和 VM。

7. 拟议保证金要求适用于未被中央交易对手清算的所有衍生交易；（a）免除 IM 要求的远期实物结算的外汇和外汇调剂，以及与交换本金相关的换汇换利交易中嵌入的"外汇交易"；及（b）这些证券也不受 VM 要求的限制，除非所涵盖的实体是授权机构、许可公司或在香港以外从事银行、证券、衍生品或资产管理业务的实体。

8. 作为 IM 和 VM 的保证金，符合条件的担保工具包括（a）以任何货币兑现；（b）由主权国家或相关国际组织发行或完全担保的有价证券；（c）多边开发银行发行或完全担保的有价债券；（d）由公共部门实体发行或完全担保的有价债券；（e）其他有价债券；（f）黄金；（g）受减持 15%的上市股票。

9. 减值应适用于符合条件的保证金抵押品的市场价值。一家持牌公司应应按照标准扣减列表订立具备适当风险敏感度的扣减。只要符合条件的抵押品（以 IM 或 VM 表示）以指定货币以外的货币计价，则 8%的附加折扣将适用于任何 IM 抵押品（现金和非现金）和非现金的市场价值的 VM 抵押品。

10. 集团内部交易可获豁免遵循建议的保证金规定，但须符合以下条件：（a）该持牌公司及附属公司在集团综合财务报表内进行全面记帐；及（b）适用于该持牌公司及附属公司的风险评估、计量及监控程序在他们所属公司集团内受到中央监察及管理。

开仓保证金规定应自 2019 年 9 月 1 日起分阶段生效，而变动保证金规定则自 2019 年 9 月 1 日起生效。

Source 来源：
https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=18CP5

The Chairman of Hong Kong Securities and Futures Commission Speaks Out on the Evolving Role of the Independent Non-Executive Director

On June 11, 2018, Mr. Carlson Tong (Mr. Tong), the Chairman of Hong Kong Securities and Futures Commission (SFC), made a speech entitled "The evolving role of the Independent Non-Executive Director (INED)" at the Luncheon Meeting of Hong Kong Institute of Directors'.

Mr. Tong said that nowadays much more is expected of an INED than in the past. The key issues mentioned by Mr. Tong are at the following:

1. Corporate governance

   The Listing Rules require the boards of listed companies to have at least three INEDs, who must make up at least one-third of the board. The role played by INEDs is clearly set out in the Corporate Governance Code. The common theme running through all of the regulatory requirements is that INEDs should challenge management and provide an independent review of management's performance.

   In May 2017, SFC had published an issue of Enforcement Reporter which set out what is expected of an INED including checks and balances, skepticism and independent judgment. Hong Kong Exchanges and Clearing Limited (HKEX) will finalize its conclusion on the consultation paper on changes to its Corporate Governance Code which bear on the role of INEDs (consultation) this Summer.

2. Overboarding

   Among proposals to enhance the corporate governance of listed companies, it covered board diversity, factors affecting INEDs' independence and overboarding which is about the number of boards a person serves on at the same time.

   Currently in Hong Kong, there are about 4,100 listed companies' INEDs, and more than 40 persons hold more than six INED positions. There are two people each hold 15 INED positions.

   The market is concerned that persons who serve as directors of multiple companies at the same time may not have sufficient time to deal with each company's affairs. HKEX's consultation proposes to amend the existing Listing Rules that when a company elects

an INED who holds more than six listed company directorships, it should explain why this person would still be able to devote sufficient time to the board.

3. Cooling-off period

There is currently a one-year cooling-off period for someone nominated to be an INED of a listed company who has been a director, partner, principal or an employee of a professional adviser. Hong Kong Exchanges and Clearing Limited's consultation proposes to extend the cool-off period to three years.

4. New listing regime

Hong Kong has a new listing regime for companies with Weighted Voting Rights (WVR). INEDs will have additional responsibilities under this regime, as these companies will be required to have a corporate governance committee comprised entirely of INEDs. This committee will focus on risks related to the WVR structure, with an emphasis on reviewing and monitoring how conflicts of interest are managed and compliance with requirements for connected transactions. The goal is to prevent the beneficiaries of WVR from doing things which only benefit themselves and harm the interests of investors.

5. Guidelines published by the Hong Kong Monetary Authority (HKMA)

The guidelines of HKMA, target at locally incorporated banks, include that INEDs must have an appropriate background and expertise including professional knowledge of operational, financial and reputational risks. At least one INED should have a background in accounting, banking or the financial industry. There is also a time commitment requirement. INEDs should devote time to meetings with management as well as briefings on industry developments and regulatory requirements. Moreover, banks should consider whether INEDs remain independent if they have served on the board for more than nine years. As for INEDs' remuneration, HKMA recommends a minimum of HK$400,000 a year, with additional payments for membership or chairing of board committees.

6. SFC's front-loaded regulatory approach

The "front-loaded" regulatory approach emphasizes earlier and more targeted intervention, with an aim to deliver a faster response and maximize the impact of SFC's actions. SFC has recently stepped up the front-loaded approach to IPO cases. This means that listing applicants, sponsors and other parties involved in an IPO process can be investigated at the application stage. There will be enforcement consequences if breaches of the relevant rules are identified, even if the listing application is withdrawn.

7. Regulatory action against INEDs

INEDs, non-executive directors, and executive directors all have the same duty of care and fiduciary duties. In 2016, SFC sought disqualification orders in the Court of First Instance against 10 directors including four INEDs and a NED of a fintech company. In May 2018, the SFC started proceedings in the Market Misconduct Tribunal against a delisted company and its nine directors including two NEDs and three INEDs. Regulators including SFC are increasingly holding INEDs responsible for the misconduct of companies. With INEDs playing an increasingly important role in ensuring effective corporate governance, they can also expect to bear more legal responsibility when things go wrong.

8. UK House of Parliament report on the collapse of Carillion plc

The liquidation of Carillion plc, one of the largest house builders in the UK, was sudden and caught everyone by surprise, including the UK Government, as it was a major government contractor. The Parliament's report laid blame on the management, the Board and also the auditors, and this was what it said about the INEDs: "Non-executives are there to scrutinize executive management. They have a particularly vital role in challenging risk management and strategy and should act as a bulwark against reckless executives. Carillion's NEDs were, however, unable to provide any remotely convincing evidence of their effective impact."

9. Factors to consider before assuming an INED role

When accepting an INED appointment, Mr. Tong suggested considering the following: How well do you know the management or controlling shareholder? Do you understand the company's business? Does the company

have qualified audited accounts, or a clean corporate governance or compliance record? Are you prepared to devote a significant time commitment?

As there is much more awareness of the importance of getting corporate governance right, SFC expects that this will give INEDs the courage to exercise their independent judgment to do what is in the interest of the company as a whole.

香港证券及期货事务监察委员会主席就独立非执行董事角色的演变发言

香港证券及期货事务监察委员会(证监会)主席唐家成先生（唐先生）在 2018 年 6 月 11 日在香港董事学会午餐演讲会上发表题为《独立非执行董事的角色演变》的演说 。

唐先生表示现在对独立非执行董事的期望要比过去更多。唐先生提到的主要问题如下：

1. 企业管治

上市规则要求上市公司的董事会至少有三名独立非执行董事而他/她们至少必须代表董事会全体董事三分之一。企业管治守则明确规定了独立非执行董事的作用。贯穿所有监管要求的共同主旨是独立非执行董事应对管理层提出质疑，并对管理层的表现进行独立审查。

2017 年 5 月，证监会发布了执法通讯，其中列出了对独立非执行董事的期望，包括制衡、验证思维以及独立判断。香港交易及结算所有限公司（香港交易所）将于本年夏季就有关独立非执行董事责任的企业管治守则修订咨询文件（咨询）定稿。

2. 多任命独立非执行董事

在加强上市公司管治结构的建议中，包括董事会多元化，影响独立非执行董事独立性的因素以及多任命独立非执行董事。

香港目前，约有 4,100 家上市公司的独立非执行董事，超过 40 人担任超过六个独立非执行董事职。有两个人分别担任 15 个独立非执行董事职位。

市场关注个别人士同时出任多家公司董事，或未能投放足够时间处理各上市公司的事务。香港交易所的咨询建议修订现有守则条文，规定上市公司须解释为何认为候任独立非执行董事将出任超过六家上市公司董事，仍可在董事会投放足够时间。

3. 冷静期

对于被建议委任为独立非执行董事的人士，若该等人士曾是董事、合伙人或主事人，又或是专业顾问的雇员，目前要遵守一年的冷静期。香港交易所的咨询建议将冷静期延长至三年。

4. 新上市制度

香港对拥有不同投票权（不同投票权）的公司实行新的上市制度。独立非执行董事将在此制度下承担额外责任，因为这些公司将被要求设立一个完全由独立非执行董事组成的公司管治委员会。该委员会将重点关注与不同投票权结构有关的风险，重点是审查和监测利益冲突的管治方式以及遵守有关香港交易及结算所有限公司的要求。目标是防止不同投票权的受益者做只会使自己受益并损害投资者利益的事情。

5. 香港金融管理局（金管局）发表的指引

针对本地注册银行的金管局指引包括独立非执行董事必须具备适当背景及包括操作，务及声誉风险方面的专业知识。至少有一名独立非执行董事应具备会计，银行或金融行业的背景。还有一个时间承诺的要求.独立非执行董事应投放时间与管理层会面并了解行业发展情况和监管要求。此外，如果在董事会服务超过九年，行应考虑独立非执行董事是否仍保持独立。至于独立非执行董事的酬金,金管局建议每年最少 400,000 港元并额外支付担任委员会成员或主席的酬金。

6. 证监会的前置式监管方针

“前置式”监管方针强调早期和更有针对性的干预,旨在提供更快的反应并最大限度地发挥证监会行动的影响。证监会最近加大了对新股发行个案的前置式方针。这意味着证监会可以在申请阶段对上市申请人,保荐人和参与新股发行程序的其他各方进行调查。即使上市申请被撤回，如果发现违反相关规则,将会有执法的后果。

7. 针对独立非执行董事的监管行动

独立非执行董事,非执行董事和执行董事均有相同的谨慎义务和受托责任。证监会于 2016 年向原讼法庭申请取消一家金融科技公司的

10 位董事的资格,包括 4 名独立非执行董事及 1 名公司非执行董事。证监会于 2018 年 5 月在市场失当行为审裁处对一家除牌公司及其 9 名董事包括 2 名非执行董事及 3 名独立非执行董事）展开行动。包括证监会在内的监管机构越来越多地要求独立非执行董事对公司的不当行为负责。随着独立非执行董事在确保有效的公司管治方面发挥越来越重要的作用，他/她们也可以预期在事情出错时要承担更多的法律责任。

8. 英国国会对卡利莲(Carillion)建筑公司倒闭的调查报告

英国最大的房屋建筑商之一卡利莲建筑公司的破产事件突然而至，所有人都大吃一惊，包括英国政府，为它是政府的主要承包商。英国国会的报告把责任归咎于管理层，董事会和审计师，对独立非执行董事的意见是："非执行董事应要监管管理层。他们在挑战风险管理和战略方面发挥着特别重要的作用并且应该成为防范鲁莽管理层的屏障。然而，卡利莲的非执行董事无法提供任何一些令人信服的证据显示其发挥有效影响"。

9. 接受独立非执行董事职位之前的考虑因素

在接受独立非执行董事职位时，唐先生建议考虑以下事项：对管理层或控股股东的了解程度如何？了解公司的业务吗？公司是否拥有合格的审计账目或清晰的公司管治或合规记录？个人可以作出投放足够时间的承诺吗？

随着市场对公司管治重要性的意识日益增强，证监会期望这有助于独立非执行董事勇敢地作出独立判断，以维护公司的整体利益。

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http://www.sfc.hk/web/EN/files/ER/PDF/Speeches/HKIOD%20LUNCHEON%20JUNE%202018_web%20posting_final.pdf