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Financial Services Regulatory Update
金融服务监管资讯

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The Stock Exchange of Hong Kong Limited Issues Guidance Letter to Facilitate IPOs of Internet-related Companies

On July 6, 2018, The Stock Exchange of Hong Kong Limited (the Exchange) issued Guidance Letter GL97-18 for listing applicants in the internet technology sector or that have internet-based business models.

We can see that this is yet another significant move by the Exchange to prove that it is prepared to be pragmatic and business-friendly, in the face of challenges of the internet era.

On April 24, 2018, following an extensive consultation on facilitating the listing of companies from emerging and innovative sectors, the Exchange announced the addition of three new chapters to the Main Board Listing Rules to allow the listings of such companies.

In addition to the new chapters, respondents to the consultation urged the Exchange to make the Listing Rules more appropriate to the characteristics of companies in emerging and innovative sectors. In particular, they asked the Exchange to accommodate:

• The high degree of reliance that internet technology companies often have on the internet platforms operated by their parent companies (or other connected persons) or major suppliers;

• The heightened need of internet technology companies to attract and retain staff through share option schemes (or other share incentive schemes); and

• The difficulties internet technology companies have in demonstrating that they are compliant with relevant laws and regulations when they may yet to be fully established in their industry.

The guidance the Exchange is publishing today reflects the results of a review it conducted of its rules and guidance on these areas of concern. The Exchange's guidance states the following:

• An applicant may be able to list with a high degree of reliance on a parent company/ connected person/ major suppliers/ major customers if it demonstrates that it meets certain conditions (e.g. that it is an industry norm for businesses like its business to rely on the dominant internet-based platform operated by its parent).

• Waivers may be granted to listing applicants on a case by case basis to allow annual caps on continuing connected transactions to be set as a formula instead of a monetary amount.

• Waivers may be granted to allow (a) a higher percentage cap on outstanding share options to be granted; and (b) a longer than 10 year take-up limit for a share incentive scheme.

• A legal opinion is not required if the relevant laws and regulations applicable to an applicant are still developing and are not expected to be promulgated in the near future. Disclosure of the associated risks in the listing document would be sufficient.

香港联合交易所有限公司发布指引信以促进及利便互联网相关公司的首次公开募股

香港联合交易所有限公司（联交所）于 2018 年 7 月 6 日刊发指引信 GL97-18，为互联网科技行业，或主要以互联网模式营运的上市申请人提供指引。

我们看到这是联交所的另一项重大举措，以证明它在面对互联网时代的挑战时，能够以务实和商业友好的政策应对。

联交所就利便新兴及创新产业公司上市进行广泛谘询后，于 2018 年 4 月 24 日宣布《主板上市规则》新增三个章节，容许该类公司上市。

除上述新增章节外，回应谘询并提交意见的人士亦促请联交所修订《上市规则》，使条文更能反映新兴及创新产业公司的特点，具体要求联交所兼容以下特质：

• 互联网科技公司通常高度依赖母公司（或其他关连人士）或主要供应商营运的互联网平台；

• 互联网科技公司尤其需要藉股份期权或其他奖励计划吸引及挽留员工；及

• 互联网科技公司对业内尚未完全确立的法律及法规难以证明合规遵守。

今天刊发的指引，为联交所就上述事宜而检视其规则及指引后所作的修订。按联交所的指引：

• 若申请人证明到已符合若干条件（例如依赖母公司营运的主导互联网平台是业内常态），则或可能在高度依赖母公司／关连人士／主要供应商／主要客户的情况下，仍会获批上市；

• 可按个别情况向上市申请人授予豁免，让他们改用公式计算持续关连交易的全年上限，而非以固定金额为限；

• 可向上市申请人授予豁免：(i)对他们尚未授出的购股权百分比设定较高的上限；及(ii)容许其股份奖励计划的行使认购期限多于十年；及

• 若适用于申请人的相关法律及法规仍在制定当中，而短期内正式立法的机会不大时，法律意见便毋须涵盖尚未实施的法律及法规。申请人在上市文件中披露有关风险已足够。

Source 来源：

http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/g/l/gl9718.pdf

The Stock Exchange of Hong Kong Limited Seeks Views on Proposed Rule Changes Relating to Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments

On June 29, 2018, The Stock Exchange of Hong Kong Limited (the Exchange) published (a) the consultation paper on backdoor listing, continuing listing criteria and other Rule amendments (consultation paper); and (b) the guidance letter on listed issuer's suitability for continued listing (Guidance Letter).

Consultation paper

The consultation paper seeks market views on proposed amendments to the Listing Rules to address concerns over backdoor listings and "shell" activities that an acquisition (or series of acquisitions) of assets of a listed issuer, with little real business, by unlisted company intending to achieve a listing while circumventing the requirements for Initial Public Offering (IPO) applicants and avoid the IPO vetting process.

While shell activities are limited to a small segment of Hong Kong market, they undermine investors' confidence and overall market quality. The proposed amendments form part of the Exchange's ongoing holistic review of the Listing Rules to tackle problematic corporate behavior with a view to maintaining the quality and reputation of the Hong Kong market.

The Exchange is applying a three-pronged approach in curbing shell activities: first, tightening its suitability review of new applicants to address concerns on shell creation through IPOs; second, enhancing the continuing listing criteria for listed issuers to deter the manufacturing and maintenance of listed shells; and third, tightening the Reverse Takeover (RTO) Rules to prevent backdoor listings particularly those involving shell companies.

A summary of the proposed amendments is set out as follows:

1. Proposals relating to backdoor listing

a. Definition of an RTO transaction

Proposed amendments:

(a) RTO – Principle based test

Retain the principle-based test in the RTO Rules with modifications to two assessment criteria as the following (other criteria including transaction size, target quality, nature and scale of issuer's business and fundamental change in principal business remain unchanged):

- Indicative factors of a change in control/ de facto control:
  - (i) substantial change in board / key management;
  - (ii) change in single largest substantial shareholder; and
  - (iii) issue of restricted convertible securities.
- Series of transactions and/or arrangements: include transactions and/or arrangements that are in reasonable proximity (normally within 36 months) or are otherwise related, and may include changes in control/de facto control, acquisitions, disposals or termination of the original businesses, and in some circumstances, greenfield operations or equity fundraisings related to acquisitions of new lines of businesses. The entire series of transactions and/or arrangements would be treated as if it were one transaction.

(b) RTO – Bright line tests

Retain and modify the bright line tests:

- RTO Rules apply to very substantial acquisition(s) (VSA) from the controlling shareholder within 36 months from a change in control (as defined under the Takeovers Code).

- Disposal restriction applies to restrict any material disposal at the time of or within 36 months after a change in control of the issuer (as defined under the Takeovers Code), unless the remaining business, or any assets acquired after the change in control, can meet either the profit test or the market capitalization/revenue/cash flow test or the market capitalization/revenue test. The Exchange may also apply this disposal restriction to a material disposal proposed at the time of or within 36 months after a change in the single largest substantial shareholder of the issuer.

Backdoor listings through large scale issue of securities

- Codify Guidance on cash company Rules into the Listing Rules to disallow backdoor listings through large scale issue of securities for cash, where the proceeds will be applied to acquire and/or develop new business that is expected to be substantially larger than the issuer's existing principal business.

b. Tightening the compliance requirements for RTOs and extreme transactions

Proposed amendments:

The proposals aim to discourage the use of "shell" companies for backdoor listings and to ensure the acquisition targets that are the subject of new listing under the RTO Rules are suitable for listing.

- The acquisition targets must be suitable for listing and meet the trading record requirements for new applicants, and the enlarged group must meet all the new listing requirements. For issuers that do not comply with sufficiency of operations Rules (normally suspended companies), each of the acquisition targets and the enlarged group must comply with all the new listing requirements.

- Codify the "extreme VSAs" category set out in the Guidance on application of the reverse takeover requirements and rename as "extreme transactions". "Shell companies" are not eligible for this category and accordingly, the issuer must either (i) operate a principal business of substantial size; or (ii) have been under the long-term control of a large business enterprise and the acquisition forms part of a business restructuring with no change in control.

- Where an RTO or an extreme transaction involves a series of transactions and/or arrangements, issuers are required to include in the listing document or circular the pro forma income statement of all acquisition targets and any new business developed that are part of the series.

2. Proposals relating to continuing listing criteria

Proposed amendments:

(a) The proposed amendments to the continuing listing criteria aim to address specific concerns about some issuers that attempt to maintain the listing status by holding significant assets or investments, rather than operating businesses that have substance and are viable and sustainable in the longer term:

Amend Listing Rules relating to sufficiency of operations

- Requires a listed issuer to carry out a business with a sufficient level of operations and assets of sufficient value to warrant its continued listing (and not sufficient operations or assets set out in the current Listing Rules). This excludes any securities trading and/or investment activities. A listed issuer would not meet sufficiency of operations Rules if it does not operate a business that has substance and/or is viable and sustainable.

Amend Listing Rules relating to cash companies

- Amend the definition of "short-dated securities" in the cash company Rules to include investments that are easily convertible into cash (e.g. investments in listed securities). The exemption for securities brokerage companies will only apply to clients' assets

Proposed transitional arrangements

- A 12-month transitional period applies for issuers not meeting the continuing listing criteria as amended. No transitional period for the proposed amendments to the RTO Rules, however, if issuers conduct transactions with a view to re-comply with the new Listing Rules, the Exchange would take this into account with the objective of facilitating their re-compliance.

c. Other proposed Rule amendments

The Exchange also proposes to enhance the Listing Rules requirements in the following areas:

- Securities transactions
  - confine the revenue exemption from the notifiable transaction requirements to purchases and sales of securities only if they are conducted by members of the issuer

group that are subject to the supervision of prudential regulators (i.e. banking companies, insurance companies, or securities houses); and

- o add a specific requirement for issuers to disclose in their annual reports details of each securities investment that represents 5 per cent or more of their total assets.

- Significant distribution in specie of unlisted assets
  - o impose additional requirements on distribution in specie that is equivalent in size to a very substantial disposal, comparable to requirements for a withdrawal of listing.

- Other matters relating to notifiable or connected transactions
  - o require (i) disclosure on the outcome of any guarantee on the financial performance of an acquisition target that is subject to the notifiable or connected transaction requirements (irrespective of whether the guaranteed financial performance is met) in the next annual report; and (ii) disclosure by way of an announcement if (a) there is any subsequent change to the guarantee; or (b) the actual financial performance of the target acquired fails to meet the guarantee (currently required for a connected transaction only);
  - o require (i) disclosure on the identities of the parties to a transaction in the announcements of notifiable transactions; and (ii) disclosure on the identities and activities of the parties to the transaction and of their ultimate beneficial owners in the announcements of connected transactions; and
  - o amend the Listing Rules to make it clear that where any calculation of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a notifiable transaction or a connected transaction.

The deadline for the market feedback on the proposals contained in the consultation paper is August 31, 2018.

<u>Guidance Letter</u>

The Exchange issued Guidance Letter on listed issuer's suitability for continued listing (effective on June 29, 2018).

Suitability is a broad and flexible concept that applies in a wide range of circumstances. The suitability criterion provides the Exchange with discretion to meet its regulatory objectives and its obligations to act in the best interest of the market as a whole and in the public interest. The Exchange's assessment on the suitability for continued listing of a listed issuer is on an individual basis and in light of all pertinent facts whenever it deems appropriate. The Guidance Letter sets out examples of situations where the Exchange may question an issuer's suitability for continued listing. A list of the general approach relating to the Exchange's assessment of the suitability is summarized at the following:

1. Issuers with "shell" characteristics: the Guidance Letter raised concerns about the suitability for listing of those applicants whose size and prospects do not appear to justify the cost or purpose associated with a public listing and the issuers may be carrying on activities for the purpose of maintaining a listing status rather than genuinely operating and developing the new business.

2. Prolonged suspension: the Listing Rules require the duration of any trading suspension to be for the shortest possible period. This ensures the proper functioning of the market and prevents shareholders and other investors from being denied reasonable access to the market. When the issuer fails to demonstrate a reasonable prospect of remedying the issues and resume trading within a reasonable period of time, or its directors become uncontactable by the Exchange or otherwise fail or refuse to respond to the Exchange's enquiry as to the resumption plan or its progress. This will not prejudice the Exchange's right to consider an issuer no longer suitable for listing on the basis of the underlying issues causing the trading suspension themselves or other reasons as it considers appropriate.

3. Other instances of non-suitability:
   a. Suitability issues concerning directors or persons with substantial influence;
   b. Material breach of the Listing Rules;
   c. Inability to disclose material information;
   d. Non-compliance with laws and regulations;
   e. Trade or economic sanctions;
   f. Business structure;

g. Gambling;

h. Excessive reliance on key customer/supplier or controlling/ substantial shareholder;

i. Fraud;

j. Material internal control failures; and

k. Failure to provide information to the Exchange.

The Exchange may cancel a listing where the suitability issues are fundamental to the general principles for listing and are beyond remedy, or the listed issuer fails to demonstrate a reasonable prospect of addressing the issues and resuming trading within a reasonable period of time.

The Securities and Futures Commission (SFC) issued a statement supporting the Exchange proposal, saying these proposals are part of a series of initiatives to address concerns about problematic corporate and market conduct and represent an intensified effort on the part of the SFC and the Exchange to maintain the quality and the integrity of the Hong Kong market.

In view that the Exchange's proposals are targeted at shell activities and seek to address specific identified issues in order to ensure that there will be both sufficient operations and significant assets after a change of control and the main asset/business will not change abruptly, we suggest and hope that the new rules should provide sufficient flexibility so as not to stifle proper growth opportunities of Hong Kong's listed companies via significant acquisitions to achieve business expansions especially international ones.

香港联合交易所有限公司建议修订《上市规则》有关借壳上市，持续上市准则条文并征询市场意见

香港联合交易所有限公司（联交所）于 2018 年 6 月 29 日刊发（i）有关借壳上市，持续上市准则及其他《上市规则》条文修订的咨询文件（咨询文件），以及（ii）有关上市发行人是否适合持续上市的指引信（指引信）。

咨询文件

咨询文件征询市场对《上市规则》修订建议的意见，以解决市场关注有关非上市公司收购（或一系列收购）并无实际业务的上市发行人的资产以期实现上市，同时规避首次上市申请人的要求，及避免首次上市审查处理的借壳上市及"壳股"活动问题。

虽然壳股活动只是香港市场的局部现象，但是会削弱投资者信心及损害市场整体质素。这些修订建议是联交所针对企业的问题行为而持续全面检讨《上市规则》，维持香港市场质素及声誉的其中一项举措。

联交所正三管齐下打击壳股活动。首先是更严格地审批上市申请人是否适合上市，杜绝申请人透过首次公开招股「造壳」;第二是提高上市发行人适用的持续上市准则，遏止「造壳」及「养壳」活动;最后就是收紧反收购规则，防止借壳上市（尤其是涉及壳股公司的）现象。

修订建议摘要载列如下：

1. 有关借壳上市的建议

建议的修订：

a. 反收购交易的定义

(a) 反收购行动 — 原则为本测试

保留反收購規則的原則為本測試，并修改其中两项评估准则如下 (其它包括交易规模、目标资产或业务的质量、发行人业务的性质及规模和主要业务出现根本改变的评估准则，保持不变）：

- 实际控制权转变的指标因素：
  - (i) 董事会及主要管理层有否重大变动；
  - (ii) 其单一最大股东有否变动；及
  - (iii) 有否发行受限制可换股证券。
- 一连串交易及/或安排包括在合理接近的时间内（通常在 36 个月内）进行又或互有关连的交易或安排。这些交易及/或安排可包括控制权或实际控制权变动、收购事项、出售或终止原有业务，以及在某些情况下有关新收购业务的业务开拓或股权融资。一连串的交易及/或安排会被视作一项交易看待。

(b) 反收购行动 — 明确测试

保留明确测试并加以修订：

- 收购规则适用于控制权转变起 36 个月内，向控股股东作出的非常重大收购事项。
- 出售限制的应用在于限制发行人控制权转变（定义见《收购守则》）时，或 36 个月内进行任何重大出售，除非余下业务或控制权转变后收购的任何资产可符合「盈利测試」，或「市值／收益／現金流量

测试」，或「市值／收益测试」的规定。联交所亦可能对发行人单一最大主要股东变动时，或 36 个月内进行的重大出售施加这项出售限制。

透过大规模发行证券进行借壳上市

- 将有关现金资产公司规则的指引纳编为《上市规则》条文，禁止发行人通过以下方式进行借壳上市：大规模发行证券换取现金，将所得款项用于收购及/或开展远较现有主营业务庞大的新业务。

b. 收紧反收购行动及极端交易的合规规定

建议的修订：

有关建议旨在打击市场利用「壳股」公司借壳上市的行为，以及确保收购目标（反收购规则中所指新上市实体）适合上市。

- 收购目标必须适合上市，必须符合适用于新申请人的业绩记录规定；而经扩大后的集团须符合所有新上市规定。对于不符合有足夠的業務運作的发行人（通常为停牌公司）而言，收购目标以及经扩大后的集团必须各自符合所有新上市规定。

- 将有关「极端非常重大交易」的要求指引正式编纳成《上市规则》条文，并将这类交易改称为「极端交易」。「壳股公司」不符合该类别，因此，发行人须符合以下条件(i) 营运规模庞大的主要业务；或 (ii) 长时间受一家大企业控制，而收购是业务重组的一部分，不牵涉控制权转变。

- 若反收购行动或极端交易涉及一连串交易及/或安排，发行人须在其上市文件或通函中包括所有收购目标，以及同一连串交易或安排中任何新开展业务的备考收益表。

2. 有关持续上市准则的建议

建议的修订：

(a) 持续上市准则的建议修订旨在针对部分发行人的若干特定问题，就是该等发行人仅仅为了维持上市地位而持有大量资产或投资，却未有经营具有实质且长远可行及可持续的业务：

修订《上市规则》有关足够业务运作的规定

- 要求上市发行人须有足够的业务运作并且拥有相当价值的资产支持其继续上市（而非现行《上市规则》所载须有足够的业务运作或资产）。证券买卖及/或投资活动并不包括在内。若上市发行人并非经营具有实质及/或可行及可持续的业务，即不符合足够业务运作的规定。

修订《上市规则》有关现金资产公司的规定

- 修订现金资产公司规则中有关「短期证券」的定义，将容易转换为现金的投资（例如投资上市证券）也包括在内。证券经纪公司的豁免条文只适用于其客户的资产。

建议过渡安排

- 若发行人不符合经修订的持续上市准则，可获 12 个月的过渡期。反收购规则的建议修订则不设过渡安排，但若发行人进行交易的目的是为了重新遵守新的《上市规则》条文，联交所应用反收购规则时会考虑此因素，以便其重新合规。

c. 其他《上市规则》条文修订建议

联交所亦建议就下列方面加强《上市规则》规定：

- 证券交易：
  - 须予公布交易规定中的收益豁免可应用于证券买卖，但只限适用于由监管机构审慎监督及规管的发行人集团成员公司（指从事银行业务的公司、保险公司或证券公司）所进行的证券买卖；及
  - 新增规定，要求发行人在年报内就每一项占其总资产 5%或以上的证券投资作详细披露。
- 重大分派未上市资产
  - 对规模等同非常重大出售的实物分派加添新的规定，与撤销上市地位所须遵守规定相若。
- 其他有关须予公布或关连交易的事宜
  - 规定发行人须(i)在其下一份年报披露其在须予公布交易或关连交易中所收购目标的任何业绩表现保证的结果（不论是否达到所保证的业绩表现）；及(ii)在以下情况下刊发公告：(a)若业绩表现保证条款其后有任何修改；或(b)所收购目标的业绩表现达不到保证水平（此披露规定现时只适用于关连交易）；
  - 规定发行人(i)在须予公布的公告内披露交易对手方的身份；及(ii)在关连交易的公告内披露交易对手方及其最终实益拥有人的身份及主要业务概述；及

- 修订《上市规则》，清楚表明若计算有关百分比时出现异常，或有关计算结果不适合应用在上市发行人的业务范围内，联交所（或发行人）可使用其认为适合的其他规模测试，就《上市规则》有关须予公布的交易或關連交易的规定评定交易对发行人的重要性。

就咨询文件所载的建议提交回应意见的截止日期为 2018 年 8 月 31 日。

指引信

联交所刊发关于上市发行人是否适合持续上市的指引信，已于 2018 年 6 月 29 日生效。

适合上市与否是一个广泛而非固定的概念，适用于多种情况。适合上市与否的准则为联交所提供了酌情权，使其可符合监管目标及履行职责，以市场整体最佳利益及公众利益行事。联交所乃根据个别情况评估上市发行人是否适合继续上市，其决定已顾及所有其认为适当的相关因素。指引信列举多种情景，说明联交所在什么情况下可能质疑发行人不适合继续上市。联交所评估是否适合继续上市的一般做法概述以下：

1. 具有「壳股」特征的发行人：指引信关注那些规模及前景均与其获取上市地位所付出的成本或上市目的不匹配的上市申请人是否适合上市，及发行人进行业务的目的可能是为了维持上市地位多于为了真正营运及开展新业务。

2. 长期停牌：《上市规则》要求停牌的时间必须在可行的情况下尽量缩短。这可确保市场正常运作，及防止股东及其他投资者合理进入市场的机会被剥夺。若发行人未能证明可以在合理预期下补救问题及可在合理期间复牌，或联交所未能与其董事联络又或董事未能或拒绝回应联交所有关复牌计划或进展的查询。这并不影响联交所的权力，因应停牌的根本问题或其他联交所认为适当的原因而认定发行人不再适合上市。

3. 其他不适合上市的例子：

   a. 不适合上市的原因涉及董事或有重大影响力人；

   b. 严重违反《上市規則》；

   c. 未能披露重要资料；

   d. 违反法律及法规；

   e. 贸易或经济制裁；

   f. 业务架构；

   g. 赌博；

   h. 过度依赖关键客户/供应商或控股/主要股东；

   i. 欺诈；

   j. 重大内部监控失当；及

   k. 未能向联交所提供资料。

如不适合上市的原因涉及上市基本原则，且相关问题无法补救，又或上市发行人未能证明日后有合理可能性能解决问题及可在合理期间复牌，联交所可取消该发行人的上市地位。

香港证券及期货事务监察委员会(证监会)发表支持联交所提案的声明，称有关建议是为针对企业及市场行为问题所引起的关注而推出的一系列措施之一，并且标志着证监会与联交所进一步作出努力以维护香港市场的质素。

我们看到联交所各项建议针对的是壳股活动，目的主要是确保在控制权变更后公司将有足够的业务和显着的资产，以及其主要资产/业务不会突然改变。 我们建议及希望，新规则应要有足够的弹性及保障措施，以避免香港上市公司通过并购（特别是国际并购），以实现业务扩张和提高企业效益的正当增长机会受到不必要的扼杀。

Source 来源：

https://www.hkex.com.hk/News/News-Release/2018/180629news?sc_lang=en

The UK Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 Come into Effect

On June 29, 2018, UK published the Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 (Regulations).

The explanatory memorandum to the Regulations states that the Regulations make consequential amendments to the Financial Services and Markets Act 2000 in order to implement part of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 30 June 2017 (Prospectus Regulation) which apply from July 21, 2018.

Two thresholds relating to exemptions from the requirements for public offers under the prospectus regime have been revised:

1. the threshold for offers to the public that are exempt from the obligation to publish a prospectus has been increased from €100,000 to €8,000,000.

2. the threshold for an offer of securities to the public that is exempt from the regime has been reduced from €5,000,000 to €1,000,000.

英国《2000 年金融服务与市场法 2000 年金融服务与市场法(金融工具的招股章程和市场) 2018 年条例》已生效

2018 年 6 月 29 日, 英国公布了《 2000 年金融服务与市场法(金融工具的招股章程和市场)2018 年条例》(条例）。

条例附有的摘要说明，条例对《 2000 年金融服务与市场法》作出相应的修订，以实施部分欧洲议会及理事会已于 2017 年 6 月 30 日颁布关于招股章程规则的（欧盟）第 2017/1129 号条例, 并自 2018 年 7 月 21 日起适用。

有关豁免要求招股章程制度下公开要约的两个门槛如下：

1. 豁免向公众人士提出要约的发布招股章程责任门槛从 100,000 欧元增加到 8,000,000 欧元。

2. 豁免在招股章程制度下, 向公众人士提出证券要约的门槛从 5,000,000 欧元减少到 1,000,000 欧元。

Source 来源：

http://www.legislation.gov.uk/uksi/2018/786/made

US Securities and Exchange Commission Modernizes the Delivery of Fund Reports and Seeks Public Feedback on Improving Fund Disclosure

On June 4, 2018, The US Securities and Exchange Commission (SEC) voted to improve the experience of investors who invest in mutual funds, exchange traded funds and other investment funds. In three related releases, SEC:-

1. provided a new, optional “notice and access” method for delivering fund shareholder reports;

2. invited investors and others to share their views on improving fund disclosure; and

3. sought feedback on the fees that intermediaries charge for delivering fund reports.

These actions are part of a long-term project, led by the Division of Investment Management, to explore modernization of the design, delivery and content of fund disclosures for the benefit of investors.

SEC adopted new rule 30e-3 (new rule) which is under the Investment Company Act to:

1. create an optional “notice and access” method for delivering shareholder reports;

2. allow a fund to deliver its shareholder reports by making them publicly accessible on a website, free of charge, and sending investors a paper notice of each report’s availability by mail; and

3. provide an option that investors may choose to receive the full reports in paper free of charge at any time.

The conditions of new rule include:

1. Report accessibility - the shareholder report and the fund’s most recent prior report must be publicly accessible, free of charge, at a specified website.

2. Availability of quarterly holdings - quarterly holdings for the last fiscal year must also be publicly accessible at the website.

3. Format - funds must satisfy conditions designed to ensure accessibility of reports for shareholders, including format and location.

4. Notice - investors will receive a notice of the availability of each report that includes a website address where the shareholder report and other required information is posted and instructions for requesting a free paper copy or electing paper transmission in the future.

5. 5Print upon request - funds must send a free paper copy of any of these materials upon request.

6. Investor elections to receive reports in paper - at any time, an investor may elect to receive all future reports in paper by calling a toll-free telephone number or otherwise notifying the fund or intermediary.

7. Extended transition period - The earliest that notices may be transmitted to investors in lieu of paper reports is January 1, 2021.

SEC is also seeking public comment on additional ways to modernize fund information; and the framework for certain processing fees that broker-dealers and other intermediaries charge funds for delivering fund shareholder reports and other materials to investors.

The feedback will help SEC on how to modernize the design, delivery and content of fund information, including how to make better use of the modern technology to provide more interactive and personalized disclosure. SEC requests that commenters provide feedback on the requests by October 31, 2018.

美国证券交易委员会更新提供基金报告的要求并寻求改善基金信息披露的公众意见

美国证券交易委员会（证交会）于 2018 年 6 月 4 日投票决定改善投资互惠基金，交易所买卖基金，和其他投资基金的投资者的体验。在三个相关的新闻稿中，证交会：

1. 提供了一种新的任选 "通知和获取" 方法，用于提供基金股东报告；

2. 邀请投资者和其他人士分享他们对改善基金信息披露的意见；和

3. 寻求中介机构对收取基金报告费用的意见。

这些行动是由投资管理部牵头的长期项目的一部分，为投资者的利益，探索基金信息披露的设计，提供和内容的更新。

证交会根据 《投资公司法》，采用了新规则 30e-3（新规则）包括：

1. 为提供股东报告建立任选的 "通知和获取" 方法；

2. 允许基金通过大众可免费接达的网页，提供股东报告；并通过邮件发送每份报告的纸质通函，通知投资者可在网上读取文件；

3. 提供投资者可以随时选择免费收到报告全文印刷版选项。

新规则适用的情况包括：

1. 获取报告的便利程度 – 股东报告和基金最新以往的报告必须上载于公众可免费接达的指定网站。

2. 提供季度持股信息 – 上一财政年度的季度持股信息也必须上载于公众可接达的网站。

3. 格式 – 基金必须符合专门制定的条件，以确保股东可获取报告，包括格式和地点。

4. 通函 – 当发布每份报告时，投资者将收到通函通知；其中包括发布股东报告和其他所需信息的网站地址，及将来可要求免费提供报告的印刷版或文件传输的选择。

5. 提出要求印刷版 - 基金必须应要求发送任何这些报告的免费印刷版副本。

6. 投资者选择以印刷版形式收取报告 – 投资者可随时选择通过拨打免费电话或以其他方式通知基金或中介机构，以印刷版形式收取所有未来的报告。

7. 延长的过渡期限 – 最早可以通函替代印刷版报告发送给投资者的日期是 2021 年 1 月 1 日。

证交会还寻求公众对基金信息更新的其他方式，以及经纪/交易商和其他中介机构向投资者提供基金股东报告和其他报告收取若干处理费框架的意见。

有关的意见将有助证交会如何更新基金信息的设计，提供和内容；包括如何更好地利用现代科技来提供更具互动性和个性化的信息披露。证交会要求提意见者就相关提案，在 2018 年 10 月 31 日前提供意见。

Source 来源：

https://www.sec.gov/news/press-release/2018-103

US Securities and Exchange Commission's Chief Accountant Remarks on "Advancing the Purpose and Promise of Those Involved in Financial Reporting"

On June 19, 2018, Wesley Bricker (Bricker), Chief Accountant at the US Securities and Exchange Commission, told attendees at the Institute of Management Accountants' annual conference about the vital role played by those involved in financial reporting. The key points of Bricker's speech are summarized as the following:

<u>Obligations of those involved in financial reporting</u>

Bricker encouraged those involved in the overall structure to consider how to use information to identify ways on an ongoing basis to prevent financial reporting failures (whether due to errors or fraud) and add value for investors, including by asking the following questions:

1. How can we bolster coordination and collaboration among the organizations involved in financial reporting?

2. What can we learn from previous financial reporting failures to evaluate whether and how each participant in the financial reporting process could more effectively contribute to the prevention of financial reporting failures?

3. What more could be done to understand and coordinate technological issues within and across each phase of the financial reporting structure?

4. What information should be provided in the financial statements to meet the needs of investors, lenders, and other creditors, even as the context of demographics, technology, and market structures change?

5. Can more be done to help identify expectations and minimize expectation gaps, both globally and variations within particular markets?

The collective goal of all participants in the financial reporting architecture must be for the information to be complete, accurate, and reliable.

Management Accountants

The work of management accountants is vital to the financial reporting process to safeguard a company's integrity. Management accountants are expert historians. In addition to maintaining books and records, management is also required to design and implement internal accounting controls in accordance with the federal securities laws. The work of management accountants contributes to public companies being well-run. These companies have effective internal controls not just because internal controls are the first line of defense against preventing or detecting material errors or fraud in financial reporting, but also because strong internal controls contribute to better internal accountability and information flows, among many other attributes of good businesses.

Auditors

Preparers, of course, are not solely responsible for high-quality financial reporting. It also depends on thorough and objective audits performed by independent, knowledgeable, and skeptical public accountants. Auditors are the critical gatekeepers for those reports, protecting shareholders by promptly identifying and addressing issues. Whether or not engaged to report on internal control over financial reporting separately, external auditors are still responsible for considering internal controls in the performance of their audits. In an audit of the financial statements, the audit process includes deciding whether and how much to plan to rely on the company's internal control over financial reporting. By obtaining an understanding of internal control over financial reporting, auditors can better plan their audits and provide management and the audit committee with observations about a company's internal controls.

Audit Committees

The responsibility to maintain internal controls is incumbent upon management, with oversight of the audit committee, regardless of the size of the company. Audit committees of every company must be committed to their oversight of financial reporting. They must be able to adequately review how management is designing and implementing internal controls.

As part of their oversight of the external audit, audit committees can make a positive impact on financial reporting by asking probing questions of external auditors about the auditor's risk assessment and strategy undertaken for the audit, including the following:

1. In an audit of the financial statements, was the external auditor able to rely on a company's internal control over financial reporting?

2. If not, which of the business processes included the internal controls on which the auditor did not (or could not) place reliance? What were the factors that prevented reliance?

3. Were any significant deficiencies or material weaknesses identified (and communicated in writing)?

4. How did management consider that feedback in preparing the financial statements?

A board and audit committee should also understand the external auditor's compliance with the auditor independence rules and the impact on the board and company of noncompliance.

Effects of Innovations

Bricker further pointed out that regarding innovations and emerging issues, a useful way to think about the effects of innovations in technology and commerce on an issuer's financial reporting to investors is to think along the following lines:

1. It is a role of the SEC staff and of the accounting profession to consider the possible effects of innovations in technology and commerce on the financial reporting obligations of issuers of securities to those who invest in the public capital markets.

2. In order for an issuer to appropriately report the financial statement effects of its innovation efforts to investors, the company's management and its auditor, respectively, must understand the nature of the innovations.

3. The very innovations in technology and commerce that the public capital markets help to bring about can prompt questions regarding how management should prepare and how auditors should audit a

company's financial statements in accordance with the respective accounting and auditing standards.

When accountants are dealing with new technologies like blockchain, cryptocurrency and distributed ledger systems, Bricker advised that accounting profession can continue to perform the essential gatekeeper function for issuer compliance with both the financial reporting and auditor independence frameworks.

美国证券交易委员会首席会计师对"推动参与财务报告各方目标和承诺"的意见

美国证券交易委员会(证交会)首席会计师韦斯利·布里克尔(布里克尔)，于 2018 年 6 月 19 日在管理会计师学会年度会议向与会者讲述参与财务报告各方所发挥的重要作用。 布里克尔演讲的要点概括如下：

参与财务报告各方的义务

布里克尔鼓励参与整体结构各方考虑如何使用信息来确定在一个持续的基础上，防止财务报告失误（无论是由于错误还是欺诈）并为投资者增值，包括通过提出以下问题：

1. 如何加强参与财务报告组织之间的协调和协作？
2. 如何从过去的财务报告失误中汲取教训，以评估每个参与者在财务报告流程中是否能够更加有效地防止财务报告失误？
3. 如何了解和协调每个阶段的财务报告结构内和各个财务报告结构之间的技术问题？
4. 即使在人口结构，技术和市场结构发生变化的情况下，应该在财务报告中提供哪些信息以满足投资者，贷款人和其他债权人的需求？
5. 如何开展更多的工作，以帮助识别预期和减少预期的差距，无论是全球和特定市场的变化？

财务报告架构中所有参与者的共同目标必须是使信息完整，准确和可靠。

管理会计师

管理会计师的工作对于财务报告流程至关重要，以确保公司诚信。管理会计师是专业历史学家。除了保持账目和记录正确外，管理层还需要根据联邦证券法设计和实施内部会计控制。管理会计师的工作有助于上市公司良好运作。这些公司具有有效的内部控制，不仅因为内部控制是防范或检测财务报告中的重大失误或欺诈的第一道防线，还因良好企业的许多特征包括强有力的内部控制有助于改善内部问责制和信息流动。

审计师

编制财务报告人员当然不需为高质量的财务报告承担全部责任。它还取决于由独立 、博学 、持审慎怀疑态度的会计师进行的彻底和客观的审计。审计师是这些财务报告的是关键的看门人，可迅速确定和应对问题以保护股东。无论是否受聘在财务报告中撰写单独的内部控制报告，外部审计师在执行其审计工作时；仍然有责任考虑内部控制的情况。在审计财务报表时，审计过程包括决定是否计划信赖公司对财务报告作出的内部控制; 以及计划信赖程度的多少。通过了解财务报告的内部控制，审计师可以更好地规划审计工作，并向管理层和审计委员会提供关于公司内部控制的意见。

审计委员会

无论公司规模如何，管理层都有责任维护内部控制，并受审计委员会的监督。每家公司的审计委员会都必须致力于财务报告的监控。审计委员会必须能够充分审查管理层如何设计和实施内部控制。

作为监督外部审计工作的部分，为对财务报告产生积极影响，审计委员会可以通过向外部审计师提出有关审计师的风险评估和进行审计工作的策略等探讨性问题，包括以下问题：

1. 在审计财务报表时，外部审计师是否能够信赖公司对财务报告作出的内部控制？
2. 如果不能，哪些业务流程包括审计师没有（或不能）信赖内部控制？ 什么因素阻止了有关信赖？
3. 是否确定任何严重缺陷或重大弱点（并以书面形式传达)?
4. 管理层在编制财务报表时如何考虑有关意见?

董事会和审计委员会也应该了解外部审计师遵守审计师独立性规定的情况以及其违规行为对董事会和公司产生的影响。

创新的影响

布里克尔进一步指出，关于创新和新出现的议题，一个有效的方法是按照下述问题思考，考虑技术和商业创新使发行人的财务报告对投资者影响：

1. 证交会工作人员和会计界专业人士的职责，是考虑技术和商业创新可能使证券发行人在财务报告责任方面，对投资公共资本市场人士产生的影响。

2. 为了让发行人适当地向投资者汇报其创新努力对财务报表的影响，公司管理层和审计师必须分别了解创新的性质。

3. 公共资本市场的技术和商业的重要创新，有助于提出关于根据相应会计和审计标准，管理层应如何准备，以及审计师应如何审核公司财务报表的引导问题。

当会计师处理区块链，加密货币和分布式账本系统等新技术时，布里克尔建议会计行业可以继续履行必要的看门人职能，以便发行人遵守财务报告及审计师独立性框架。

Source 来源：

https://www.sec.gov/news/speech/speech-bricker-061918

Hong Kong Securities and Futures Commission Commences Market Misconduct Tribunal Proceedings Against China Forestry's Former Chairman and CEO

Actions against Li Kwok Cheong and Li Han Chun

On June 28 2018, Hong Kong Securities and Futures Commission (SFC) announced that proceedings have been commenced in the Market Misconduct Tribunal (MMT) against Mr. Li Kwok Cheong and Mr. Li Han Chun, former chairman and chief executive officer (CEO) of China Forestry Holdings Company Limited (China Forestry), a delisted company, respectively, for suspected disclosure of false or misleading information in (1) China Forestry's Initial Public Offering (IPO) prospectus, (2) its annual results announcement and annual report for the year ended December 31 2009 (2009 AR) and (3) interim results announcement and interim report for the six months ended June 30 2010 (2010 IR), which induced transactions in the shares of China Forestry.

The SFC alleges that various types of information relating to China Forestry's business operations and financial information as disclosed in its IPO prospectus, the 2009 AR and 2010 IR were materially false or misleading, and both Li Kwok Cheong as the former chairman and Li Han Chun as the former CEO were aware of, or were reckless or negligent, as to whether the disclosed information was materially false or misleading.

The scope of the allegedly false or misleading information as disclosed by China Forestry was extensive, covering the company's turnover generating activities, profit, plantation assets and cash balances, etc. Among these, China Forestry's turnover appeared to have been overstated by at least 92% while its plantation assets, purportedly accounting for over 79% of its net assets, appeared to have been overstated by at least 87%.

The SFC also alleges that China Forestry's purported supporting documents such as bank statements, forestry right certificates, and insurance contracts were falsified.

The SFC's case is that China Forestry maintained a separate set of accounting records which was different from the set of accounting records provided to its then auditors KPMG for auditing purposes but appeared to reflect its true state of affairs. This separate set of accounting records revealed a much smaller scale of operation compared to what had been disclosed in the company's IPO prospectus, 2009 AR and 2010 IR. The SFC alleges that China Forestry, in its true state of affairs, was not suitable to be listed on the Stock Exchange of Hong Kong.

The SFC will also seek court orders in the proceedings in the Court of First Instance under section 213 of the Securities and Futures Ordinance requiring the former chairman and CEO to take steps to restore China Forestry's independent minority shareholders who traded in China Forestry shares as a result of their misconduct to the positions they were in before the transactions.

Actions against Li Han Chun and his investment vehicle

The SFC has also commenced proceedings in the MMT against Li Han Chun and his investment vehicle Top Wisdom Overseas Holdings Limited (Top Wisdom) for suspected insider dealing in the shares of China Forestry in 2011.

The SFC alleges that at the material times, Li Han Chun knew that the information disclosed by China Forestry was materially false or misleading and that KPMG had already identified various audit issues and irregularities which could reveal other false and misleading disclosures that had been made by China Forestry. With this knowledge, Li Han Chun procured Top Wisdom to execute a placement of 119,000,000 China Forestry shares to avoid a loss.

香港证券及期货事务监察委员对中国森林前主席和行政总裁展开市场失当行为审裁处的法律程序

针对李国昌和李寒春的行动

2018年6月28日，香港证券及期货事务监察委员会（证监会）宣布，在市场失当行为审裁处（审裁处）对一家

已被除牌的公司，中国森林控股有限公司（中国森林）前主席李国昌（男）及前行政总裁李寒春（男）展开研讯程序，指二人涉嫌于 (1) 中国森林的首次公开招股章程；(2) 中国森林截至 2009 年 12 月 31 日止年度的全年业绩公告及年报（2009 年年报）；及 (3) 中国森林截至 2010 年 6 月 30 日止六个月的中期业绩公告及中期报告（2010 年中期报告）内，披露虚假或具误导性的资料，借以诱使他人就中国森林股份进行交易。

证监会指，中国森林在首次公开招股章程、2009 年年报及 2010 年中期报告内，披露有关中国森林业务经营的各项资料及财务资料，在要项上属虚假或具误导性，而李国昌及李寒春分别作为中国森林前主席及行政总,对于该等经披露的资料是否在要项上属虚假或具误导性均是知情、罔顾事实或有所疏忽的。

中国森林所披露的涉嫌属虚假或具误导性的资料范围广泛，涵盖该公司的产生营业额的活动、盈利、人工林资产及现金结余等。其中，中国森林的营业额疑似被夸大了至少 92%，而据称占其资产净值超过 79%的人工林资产亦疑似被夸大了至少 87%。

证监会亦指，中国森林所宣称的证明文件，如银行结单、林权证及保单等均属伪造。

证监会的案由是，中国森林除了提供予其当时的核数师毕马威会计师事务所（毕马威）作审计之用的会计纪录外，还备存了另一套内容不同，但似乎反映了该公司真实事务状况的会计纪录。这套另行备存的会计纪录显示，该公司的经营规模远较其在首次公开招股章程、2009 年年报及 2010 年中期报告内披露的规模为小。证监会指，以中国森林的真实事务状况，该公司并不适合在香港联合交易所有限公司（联交所）上市。

证监会亦将会在根据《证券及期货条例》第 213 条于原讼法庭提起的法律程序中寻求法庭颁令，要求中国森林前主席及行政总裁采取步骤，使该等曾因二人的失当行为而买卖中国森林股份的中国森林独立少数股东回复至他们在进行有关交易之前的状况。

针对李寒春和其名下的投资公司的行动

证监会亦已就李寒春及其名下的投资公司 Top Wisdom Overseas Holdings Limited（Top Wisdom）涉及于 2011 年就中国森林股份进行内幕交易一事，在审裁处对李寒春及该公司展开研讯程序。

证监会指，于关键时间，李寒春知道中国森林所披露的资料在要项上属虚假或具误导性，亦知悉毕马威当时已识别到多项审计问题及不合规情况，而有关问题及情况可能揭露中国森林曾作出其他 虚假及具误导性的披露。李寒春知道上述情况后，便促使 Top Wisdom 配售 119,000,000 股中国森林股份以避免损失。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR72

DBA Telecommunication (Asia) Holdings Limited Convicted for Making False or Misleading Statement in Results Announcement upon Prosecution Brought by Hong Kong Securities and Futures Commission under Section 384 of the Securities and Futures Ordinance

On June 28, 2018, the Eastern Magistrates' Court convicted DBA Telecommunication (Asia) Holdings Limited (DBA), a company listed on the Main Board of The Stock Exchange of Hong Kong Limited. Hong Kong Stock Exchange (SEHK), after it pleaded guilty to making a false or misleading statement in a prosecution brought by the Hong Kong Securities and Futures Commission (SFC) under section 384 of the Securities and Futures Ordinance.

On March 28, 2013, DBA published results announcement for the year ended December 31, 2012 on SEHK's website. The SFC alleged that the financial statements had not been agreed by the auditors as required under the Rules Governing the Listing of Securities on the SEHK (the Listing Rules). DBA's statement in the results announcement that the financial statements had complied with the applicable disclosure provisions of the Listing Rules was therefore false and misleading in a material particular.

DBA was fined $20,000 and ordered to pay the SFC's investigation costs.

The SFC also prosecuted DBA's former director Mr. Chan Wai Chuen for making a false or misleading statement for his alleged involvement in the offence. The case was adjourned until August 9, 2018 when plea will be taken.

This case demonstrates that Hong Kong's listed companies and their management and advisers should pay attention to the requirements of section 384 to ensure that the contents of announcements have been properly verified.

DBA 电讯（亚洲）控股有限公司被香港证券及期货事务监察委员会根据《证券及期货条例》第 384 条提出检控并被裁定在业绩公告作出虚假或具误导性的陈述

香港证券及期货事务监察委员会（证监会）根据《证券及期货条例》第 384 条对在香港联合交易所有限公司（联交所）主板上市的 DBA 电讯（亚洲）控股有限公司

（DBA）提出检控，指其 曾作出虚假或具误误性陈述，DBA 承认有关控罪，在 2018 年 6 月 28 日 被东区裁判法院裁定罪名成立。

在 2013 年 3 月 28 日，DBA 在联交所网站上刊发截至 2012 年 12 月 31 日止年度的业绩公告。证监会指，有关的财务报表并未按照《联交所证券上市规则》（《上市规则》）的规定获得核数师同意。因此，DBA 在业绩公告内指该财务报表已符合《上市规则》的适用披露规定的声，在要项上属虚假及具误导性。

DBA 被判处罚款 20,000 元，及被命令缴付证监会的调查费。

DBA 前董事陈伟铨因涉嫌曾参与有关罪行，亦被证监会以作出虚假或具误导性声明的罪名提出检控。该案件被押后至 2018 年 8 月 9 日进行答辩。

这案例反映香港上市公司及其管理人员及顾问在发出公告时务必确保公告的内容已被充分核实以遵守第 384 条的规定。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR73

Hong Kong Monetary Authority and Securities and Futures Commission Conclude Consultation on Further Enhancements to the OTC Derivatives Regulatory Regime

On June 27, 2018, the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) issued conclusions to a joint consultation on further enhancements to the over-the-counter (OTC) derivatives regulatory regime in Hong Kong.

HKMA and SFC have concluded that the proposed adjustments should be implemented, after taking consideration of market feedback to the joint consultation embarked in March 2018. A summary of the key conclusions is at the following:

Mandating the use of Legal Entity Identifiers (LEIs) for reporting obligation

1. Scope of entities: the first phase only applies to parties on the reporting entity's side of a transaction. Reporting entities are not required to verify whether their counterparty to a transaction falls under the list of entities to which the first phase applies.

2. Scope of transaction reports: the mandatory use of LEIs in trade reporting will only apply to new trades and daily valuation information only. This gives reporting entities more flexibility to deal with existing entity identifiers for outstanding trades.

3. Implementation timeline: the implementation for the first phase of mandating the use of LEIs will be commencing from April 1, 2019.

Expanding the clearing obligation

1. Expansion of product scope: the clearing obligation will only be expanded to include specified standardized interest rate swaps denominated in Australian Dollars (AUD IRS) and the revised list of Financial Services Providers will be published for implementation on January 1, 2019.

2. Implementation timeline: the mandatory clearing of AUD IRS would not be commenced before Quarter 4 2019.

3. Scope of Prescribed Person: the current scope of Prescribed Person is maintained.

Adoption of trading determination process for introducing a platform trading obligation

1. Trading determination process and criteria: the trading determination process and criteria proposed in the joint consultation paper are adopted and are being used in the process to determine which products may be appropriate for Hong Kong to introduce a platform trading obligation.

   The process and criteria should take into account of the following factors:

   (a) whether the product is suitable standardized for platform trading;

   (b) the nature, depth and liquidity of the market for the product;

   (c) the availability of trading venues that may be designated for trading that product;

   (d) whether the product is already subject to the central clearing obligation in Hong Kong;

   (e) whether regulators in other jurisdictions consider such a product to be suitable for platform trading; and

   (f) the impact on the market and market participants of imposing a platform trading obligation for the product.

2. Implementation timeline: after completing analysis and formulating appropriate proposals, further

consultation will be conducted on the feasibility, scope and timing for implementing a platform trading obligation in Hong Kong.

HKMA and SFC will work with the government on drafting the necessary legislative amendments to the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) to implement the relevant changes.

香港金融管理局与证券及期货事务监察委员会就进一步改善场外衍生工具监管制度发表咨询总结

香港金融管理局（金管局）与证券及期货事务监察委员会（证监会）于 2018 年 6 月 27 日就进一步改善香港的场外衍生工具监管制度的联合咨询发表总结文件。

在考虑到市场对 2018 年 3 月开始进行咨询的意见，金管局与证监会的结论是应该实施建议的修订。主要的结论摘要如下：

<u>就汇报责任强制使用法律实体识别编码（识别编码)</u>

1. 实体范围：第一阶段仅适用于属某宗交易的汇报实体一边的各方。汇报实体无须核实其交易对手方是否在第一阶段所适用的实体名单范围内。

2. 交易报告范围：在汇报新交易及每日估值资料时才须使用识别编码。此举使汇报实体在处理未完结交易的现有实体识别编码时拥有更大的灵活性。

3. 实施时间表: 第一阶段强制使用识别编码的实施将从 2019 年 4 月 1 日开始。

<u>扩大结算责任</u>

1. 扩大产品范围：结算责任将只延伸至包括至若干以澳元计值的标准化掉期息率（澳元掉期息率)，而金融服务提供者名单亦将予以修订并于 2019 1 月 1 日公布施行。

2. 实施时间表：就澳元掉期息率进行强制结算的规定将不会在 2019 年第四季前实施。

3. 订明人士的范围：现行订明人士的范围将会保留。

<u>为引入平台交易责任而采用交易确定程序</u>

1. 交易确定程序及准则: 将采用在联合咨询文件中所建议的交易确定程序及准则，而有关的程序及准则正在被用于决定香港适合就哪些产品引入平台交易责任的过程。

   有关的程序及准则应考虑以下因素：

   (a) 产品的标准化程度是否足够可进行平台交易；

   (b) 产品市场的性质、深度及流动性；

   (c) 是否具备可获指定就有关产品进行交易的交易场所；

   (d) 是否已须就有关产品在香港履行中央结算任；

   (e) 其他司法管辖区的监管机构是否认为有关产品适合进行平台交易；及

   (f) 就产品实施平台交易责任对市场及市场参与者的影响。

2. 实施时间表：在完成分析及制订适当的建议后将就在香港实施平台交易责任的可行性，范围及时间进行进一步咨询。

金管局和证监会将与政府着手起草《证券及期货（场外衍生工具交易一结算及备存纪录责任和中央对手方的指定）规则》的必要法例修订，以落实相关变更。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR70

Singapore Exchange Launches Rules for the Listing of Companies with Dual Class Shares

On June 26, 2018, Singapore Exchange (SGX) introduced new listing rules that make possible the listing of companies with dual-class shares (DCS) structures on its main board with immediate effect.

The rules follow two rounds of public consultations with the second consultation closing on April 27, 2018. SGX will allow companies with an expected market capitalization of S$300 million to list with DCS structures. Factors that SGX may take into account in assessing whether an issuer is suitable for listing with a DCS structure include:

1. the business model of the company, for example, that the company has a conceptualized long-term plan that contemplates ramping up growth at a fast pace;

2. track record, including operating track record, of the company, group or business;

3. the role and contribution of intended multiple voting (MV) shareholders to the success of the company or business. In the case of a group of persons or an entity (permitted holder group), its relevance to the company or business;

4. participation by sophisticated investors;

5. if the permitted holder group is a trust or corporate vehicle, the suitability of the arrangement, including an assessment of whether sunset features or other safeguards are in place to govern the holding structure; and

6. other features of the company or business that require a DCS structure.

SGX set out various rules to address specific risks associated with DCS structures to safeguard investors including:

1. Requiring an enhanced voting process where all shares carry one vote each regardless of class, for the appointment and removal of independent directors and/or auditors, variation of rights attached to any class of shares, a reverse takeover, winding-up or delisting.

2. Requiring the majority of the audit committee, the nominating committee and the remuneration committee, and each of their respective chairman, to be independent directors.

3. Capping each MV share at 10 votes a share and limiting the holders of MV shares to named individuals, or permitted holder groups whose scope must be specified at Initial Public Offering (IPO).

4. Requiring sunset clauses where MV shares will auto-convert to ordinary voting (OV) shares under circumstances the company must stipulate at the time of the IPO.

5. Imposing a moratorium on the transfer or disposal of their entire shareholdings in the issuer for a period of 12 months in respect of MV shareholders' interests in both MV and OV shares in respect of DCS structures.

6. Requiring an issuer with a DCS structure to disclose the following additional information:

   (a) The issuer must disclose its DCS structure, holders of MV shares and their respective shareholding and voting percentage both at the point of listing and thereafter, on a continuing basis, in its annual report.

   (b) The shareholders' circular must contain information on the voting rights of each class of shares.

   (c) The issuer must, in its prospectus, disclose the risks of DCS structures, rationale for adoption of its DCS structure, matters subject to the Enhanced Voting Process including implications to holders of OV shares, and key provisions in the Articles of Association or other constituent documents relating to DCS structures in a prominent manner.

   (d) The issuer must include a prominent statement on the cover page of its prospectus, and on a continuing basis, in its announcements (including financial statement announcements), circulars and annual reports, highlighting that the issuer is a company with a DCS structure.

After the implementation of the new rules, SGX joins global exchanges in Canada, Europe and the US where companies led by founder-entrepreneurs who require funding for a rapid ramp-up of the business while retaining the ability to execute on a long-term strategy, are able to list. SGX expected investors who understand and agree with the business model and management of DCS companies will also have more choice.

新加坡交易所发布双重股权结构公司上市准则

新加坡交易所（新交所）在 2018 年 6 月 26 推出了一系列规则，允许双重股权结构的公司可以在其主板上市并立即生效。

上市规则经过了两轮公众咨询而第二轮公众咨询于 2018 年 4 月 27 日结束。新交所将允许预计市值 3 亿新加坡元的公司以双重股权结构上市。新交所在评估发行人是否适合以双重股权结构上市时可能考虑的因素包括：

1. 该公司的商业模式，例如该公司有一个概念化的长期计划而该计划可预期快速推动增长。

2. 业绩记录，包括公司、集团或企业的营运业绩记录。

3. 准备成为多重投票权的股东对公司或业务成功的作用和贡献。

4. 对于一个集团或一个实体（允许持有人组织）而言，其与公司或企业的关系。

5. 如果允许持有人组织是信托或企业形式，则该安排的适用性；包括评估日落特点或其他保障措施是否可施行于管理该控股结构; 和

6. 双重股权结构公司或企业所需要的其他功能。

针对双重股权结构相关风险，新交所制定了各种保障投资者的措施包括：

1. 对于选举和罢免独立董事和/或审计师，任何类别股份附带的权利，反收购，清盘或撤销上市的投票，要求 一个加强的投票程序，即所有股东不论股票类别每股均只享有一票。

2. 要求大部分审核委员会，提名委员会和薪酬委员会成员及其各自的主席为独立董事。

3. 享有多重投票权的股份每股最多 10 票。限制多重投票权的股份持有人为指定人员，或允许持有人组织（其范围必须在上市时确定）。

4. 在公司上市时必须规定日落条款，即在特定情形下多重投票权的股份将自动转换为普通投票股份。

5. 在多重投票权结构下，对于多重投票权股东拥有多重投票权和普通投票股份的权益，其在发行人的全部股权转让或出售将设 12 个月禁售期 。

6. 要求多重投票权结构的发行人披露以下附加信息：

   (a) 发行人必须在上市时以及此后持续的年度报告中，披露其多重投票权的构成，持有多重投票权股份股东及其各自的持股数量及投票比率。

   (b) 股东通告必须包括每个股票类别投票权的信息。

   (c) 发行人必须在招股书中披露多重投票权结构的风险，其采纳多重投票权结构的理由，受加强的投票程序约束的事项，包括对普通投票股份股东的影响以及在公司章程或其他章程文件中明确列明与多重投票权结构相关的主要条款。

   (d) 发行人必须在其招股书的封面页上，以及在持续的基础上，在其公告（包括财务报表公告)、通告和年度报告中，强调发行人是双重股权结构的公司。

在新规则实施后，新交所加入加拿大、欧洲和美国等国际交易所的行列，允许这样的公司在新交所上市。新交所期望了解并同意双重股权公司商业和管理模式的投资者也会有更多选择。

Source 来源：

https://www.sgx.com/wps/wcm/connect/sgx_en/home/higlights/news_releases/sgx_launches_rules_for_listing_of_dual_class_shares_companies

China Shenzhen Stock Exchange Pays Heightened Attention to the Risk of Stock Pledges of Shenzhen-listed Companies

The recent market has some concerns about the possible impact of defaulting on stock pledge transactions in China. The Shanghai Stock Exchange, Shenzhen Stock Exchange (SZSE), the Securities Association of China and the China Banking Association jointly issued announcement on June 26, 2018 addressing to the current risk of stock pledges.

SZSE pays great attention to the risk of stock pledges of Shenzhen-listed companies, and makes full use of scientific and technological supervision measures to build a platform for monitoring the risk of stock pledges, timely grasp the situation of shareholder stock pledges, and urge relevant shareholders to duly disclose information and forecast and resolve risks to effectively maintain the stable operation of the market.

SZSE has comprehensively sort out, screened and prevented relevant risks. Statistics show that the risk of liquidating pledged stocks of Shenzhen-listed companies is generally controllable. As of now, the average performance guarantee ratio of pledged securities in the Shenzhen market (weighted average of the pledged market capitalization) is 223%. The market value of stock pledges below the closing line accounts for less than 2% of the total market capitalization in the Shenzhen. Considering factors such as judicial freezes, restrictions on stock sales and reduction of holdings, the proportion of the stocks pledged which can be directly closed out in the secondary market is even lower.

SZSE said that judging from individual stocks, a small number of listed company shareholders have insufficient assessment of their own capital strength, with a lack of awareness of risk prevention and a high proportion of shares pledged. These listed companies have relatively prominent risks. With the increase of market volatility, the above-mentioned shareholders have limited ability to cover their positions. For such contracts, the financial lenders will gradually resolve the risks within a certain period of time mainly through negotiation with the borrowers and through various methods such as contract extension and supplementary guarantees. In the event that there is indeed a need for actions against a breach of contract, the amount of direct reduction from the secondary market will be relatively limited due to factors such as the share reduction requirements. According to statistics, the cumulative amount of defaults in the secondary market in the SZSE in 2017 was approximately CNY700 million. The balance of the daily default treatment was approximately one ten-thousandth of the balance of the financing that triggered the default.

For the risk of stock pledges exposed recently, SZSE will further standardize the information disclosure of high

stock pledges and strengthen the regulation of stockholders' pledge of shares as the following:

1. SZSE shall improve the differentiated disclosure requirements at different categories and levels, and strengthen the risk disclosure of high proportion pledges of shareholders;

2. SZSE shall strengthen the daily supervision of the behavior of stock pledges, pay close attention to the high proportion of pledges of controlling shareholders or the largest shareholder of listed companies, strengthen transparent disclosure, and urge them to conduct risk disclosure and pre-research;

3. SZSE shall continue to urge securities companies and other financing parties to increase coordination with pledgers, to make risk preplans in advance, and provide necessary extensions and other support to the normally operating parties in temporary financial difficulties.

The multiple measures conducted by SZSE will prevent and defuse relevant risks of stock pledges to ensure the smooth and sound operation of the stock market.

中国深圳证券交易所高度关注深圳市上市公司股票质押风险

近期市场对中国股票质押交易违约可能带来的影响表示担忧。就股票质押风险，上海证券交易所、深圳证券交易所（深交所），中国证券业协会和中国银行业协会于 2018 年 6 月 26 日发布联合声明。

深交所高度关注深圳市（深市）上市公司股票质押风险，充分运用科技监管手段，建设股票质押风险监测平台，及时掌握股东质押情况，督促相关股东及时做好信息披露和风险预警、化解工作，切实维护市场的稳定运行。

深交所已全面梳理排查、防范风险。从统计数据看，深市质押平仓风险总体可控。截至目前，深市股票质押平均（按质押市值加权平均）履约保障比例为 223%。低于平仓线的股票质押市值占深市总市值的比例不到 2%，考虑到司法冻结、股份限售、减持限制等因素，在二级市场可直接平仓处置的比例则更低。

深交所表示，从个股看，少部分上市公司股东对自身资金实力评估不充分，风险防范意识不足，股票质押比例较高、风险相对突出。随着市场波动加剧，上述部分股东补仓能力有限。对于此类合约，实践中资金融出方主要通过与融入方协商，通过合同延期、补充担保等多种方式进行处理，在一定时间内逐步化解风险。最终确实需要进行违约处置的，受股份减持规定等因素影响，直接从二级市场减持的金额较为有限。经统计，2017 年全年深市二级市场累计违约处置金额约 7 亿元，日均违约处置金额约为已触发违约风险融资余额的万分之一。

针对近期暴露出的股票质押风险等情况，深交所将进一步规范股东高比例质押的信息披露，强化对股东股票质押行为的监管，具体如下：

1. 完善分类分层次的差异化披露要求，强化对股东高比例质押的风险揭示；

2. 加强对股票质押行为的日常监管，密切关注上市公司控股股东或第一大股东高比例质押风险，强化穿透式披露，做好风险揭示和预研预判；

3. 继续督促证券公司等资金融出方加大与质押人的协调力度，提前做好风险预案，对经营正常但有临时性资金困难的融资人，提供必要的展期等支持。

深交所实施的多项措施将防止和缓解股票质押的相关风险，以确保股票市场平稳健康运作。

Source 来源：

http://www.szse.cn/main/en/AboutSZSE/SZSENews/SZSENews/39780210.shtml