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Financial Services Regulatory Update
金融服务监管资讯

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Hong Kong Securities and Futures Commission Consults on Amendments to Anti-money Laundering and Counter-terrorist Financing Guidelines

On July 5, 2018, Hong Kong Securities and Futures Commission (SFC) launched a consultation on proposals to amend the Guideline on Anti-Money Laundering and Counter-Terrorist Financing to keep it in line with international anti-money laundering and counter-financing of terrorism (AML/CFT) standards and make it more useful and relevant. The key proposals are summarised at the following:

Key proposed amendments to keep in line with the latest Financial Action Task Force standards

The SFC proposes amending the AML/CFT Guideline to bring it up to date and in line with the latest Financial Action Task Force (FATF) standards. Our key proposals to achieve this aim are to:

(a) expand the types of Politically Exposed Persons (PEPs) to include persons who have been entrusted with a prominent function by an international organization, and extend the special requirements for foreign PEPs to high risk business relationships with domestic PEPs and international organization PEPs;

(b) require licensed corporations (LCs) incorporated in Hong Kong to implement group-wide AML/CFT systems in all of their overseas branches and subsidiary undertakings that carry on the same business as financial institutions, including information sharing and the provision of information to group-level functions subject to adequate safeguards;

(c) require LCs to identify and assess money laundering and terrorist financing (ML/TF) risks that may arise from the use of new and developing technologies for both new and pre-existing products prior to the use of these technologies;

(d) allow LCs to stop pursuing the customer due diligence (CDD) process if they reasonably believe that performing the process will tip-off the customer, and require the LCs to file a suspicious transaction report to the Joint Financial Intelligence Unit in these circumstances; and

(m) require LCs to keep all records obtained throughout the CDD and ongoing monitoring processes, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions).

Key proposed amendments to facilitate compliance

These proposed amendments fall into two categories:

(a) those to provide increased flexibility under the risk-based approach.

Having reviewed the latest FATF standards and the prevailing practices of other jurisdictions, the SFC proposes amending the following key areas of the AML/CFT Guideline:

(i) LCs are allowed to adopt reasonable risk-based measures and determine whether to verify other identification information of a natural person customer so long as the principal aspects of the customer's identity are verified;

(ii) LCs are allowed to verify the name, legal form and existence of a legal person customer, and powers that regulate and bind the customer, by obtaining one or a combination of documents provided by a reliable and independent source, and obtaining a company search report will no longer be mandated as the only means to verify the existence of a customer which is a locally incorporated company; and

(iii) the general rule to include persons authorized to give instructions for the movement of funds or assets as persons purporting to act on behalf of the customer (PPTA) which are required to be identified and verified by LCs is removed, and LCs are

provided with increased flexibility to determine who is a PPTA.

(b) those to provide additional guidance on existing requirements.

Having reviewed the latest FATF standards and the prevailing practices of other jurisdictions, the SFC proposes to provide additional guidance on the following subjects:

(i) additional types of supplementary measures that LCs may take to mitigate the risks associated with customers who are not physically present for identification purposes or similar situations;

(ii) examples of possible simplified or enhanced measures for CDD and ongoing monitoring of customers assessed under a risk-based approach to be of lower or higher ML/TF risks;

(iii) examples of risk factors for determining whether a domestic PEP or an international organization PEP should continue to be treated as a domestic PEP 8 or an international organization PEP if the person is no longer entrusted with a prominent public function or prominent function;

(iv) identification and verification of the beneficial owners of a legal person customer where no natural person ultimately owns or controls the customer;

(v) areas which should be covered in regular review of AML/CFT systems by an audit function to ensure their effectiveness; and

(vi) handling of requests from law enforcement agencies.

<u>Consistency with the requirements for other financial sectors covered by the Anti-Money Laundering and Counter-Terrorist Financing Ordinance</u>

The SFC has been working closely with fellow AMLO regulators, who are also reviewing and revising their AML/CFT guidelines, to develop a common standard for compliance. In general, the SFC's proposed revised AML/CFT Guideline is intended to be consistent with the revised guidelines of the fellow Anti-Money Laundering and Counter-Terrorist Financing Ordinance regulators except for the following differences:

(a) the fellow regulators have revamped their guidelines to provide additional guidance to financial institutions on how to identify ML/TF risks through their own individual risk assessments, and to implement policies and procedures to mitigate those risks under a risk-based approach. A majority of these amendments have been made with reference to the risk-based approach guidance papers published by the FATF or other standard setters for their specific sectors. As the FATF risk-based approach guidance for the securities sector has not yet been released, the SFC does not propose to make major amendments to those parts of the AML/CFT Guideline at this stage, but will keep in view any relevant FATF developments and the need for any subsequent amendments to the AML/CFT Guideline;

(b) lists of illustrative, non-exhaustive examples and non-mandatory guidance which SFC considers to be useful references to assist LCs in complying with some AML/CFT requirements are retained in the SFC's proposed revised AML/CFT Guideline whereas some of the fellow regulators have removed those examples or guidance from their guidelines; and

(c) the SFC has not adopted some textual amendments and reordering of sentences or paragraphs made by fellow regulators to their guidelines which do not alter the substance of their existing requirements.

SFC invites interested parties to submit their comments on or before August 9, 2018. The SFC expects to conclude this consultation and finalize the amendments by early October 2018. Considering that the nature of the proposed amendments to the AML/CFT Guideline does not require substantial adjustments to the LCs' existing AML/CFT systems, the revised AML/CFT Guideline will become effective on November 1, 2018.

In formulating the proposed amendments, the SEC said to adopt a balanced regulatory approach to give firms flexibility while ensuring their requirements are effective to prevent ML/TF

香港证券及期货事务监察委员会就修订有关打击洗钱及恐怖分子资金筹集的指引进行咨询

2018 年 7 月 5 日，香港证券及期货事务监察委员会（证监会）就建议修订《打击洗钱及恐怖分子资金筹集指引》(打击洗钱指引) 展开咨询。有关建议旨在确保该指引紧贴国际打击洗钱及恐怖分子资金筹集标准，并提高该指引的效用及适切性。主要建議摘要如下：

<u>为紧贴最新的特别组织标准而建议作出的主要修订</u>

证监会建议修订《打击洗钱指引》，使该指引紧

贴现况及最新的特别组织标准。为达致此目的，证监会提出以下主要建议：

(a) 扩大政治人物的类别，以包括在国际组织担任重要职位的人士；以及将适用于外地政治人物的特别规定延伸至与本地政治人物及国际组织政治人物之间的高风险业务关系；

(b) 要求在香港成立的持牌法团对其所有在外地经营与金融机构相同业务的分行或附属企业实施适用于整个集团的打击洗钱/恐怖分子资金筹集制度，包括在设有足够保障措施的情况下分享资料及向集团层面的职能提供资料；

(c) 要求持牌法团在采用新科技及发展中科技前，识别及评估在为新产品及现有产品采用这些科技的情况下可能出现的打击洗钱/恐怖分子资金筹集风险；

(d) 容许持牌法团在合理地相信进行客户尽职审查程序将会造成向客户通风报讯的情况下停止进行该程序，并要求持牌法团在该情况下向联合财富情报组呈交可疑交易报告；及

(e) 要求持牌法团保存在整个客户尽职审查及持续监察过程中取得的所有纪录，包括所进行的任何分析的结果（例如为确立复杂，异常大额交易的背景及目的而作出的查询）。

<u>为促进合规而建议作出的主要修订</u>

这些建议修订分为两类：

(a) 为在风险为本的方法下提供更大灵活性而建议的修订。

经审视最新的特别组织标准及其他司法管辖区的现行做法后，证监会建议对《打击洗钱指引》的下列主要范畴作出修订：

(i) 只要有关自然人客户身分的主要方面已获核实，便容许持牌法团采纳合理的风险为本措施，及厘定是否核实该客户的其他识别身分资料；

(ii) 容许持牌法团可借取得由可靠及独立的来源提供的一份或多份文件，来核实法人客户的名称，法律形式及是否存在，以及规管及约束该客户的权力；而假如客户是一家本地注册公司，不会再强制规定以取得公司查册报告作为核实该客户是否存在的唯一方法；及

(iii) 把要求持牌法团将获授权指令调动资金或资产的人列为看似是代表客户行事的人，并须识别及核实此类人士的身分的一般规则删除；以及给予持牌法团更大灵活性，让其厘定何人属于看似是代表客户行事的人。

(b) 为就现行规定提供额外指引而建议的修订。

经审视最新的特别组织标准及其他司法管辖区的现行做法后，证监会建议就下列事宜提供额外指引；

(i) 在客户不曾为身分识别的目的而现身或类似的情况下，持牌法团可采取哪些种类的增补措施来减去此类客户所涉及的相关风险；

(ii) 在进行客户尽职审查及持续监察时，可对根据风险为本的方法被评估为具有较低或较高洗钱/恐怖分子资金筹集风险的客户采取的简化或更严格的措施之例子；

(iii) 在本地政治人物或国际组织政治人物不再担任重要公职或重要职位的情况下，在厘定有关人士应否继续被视为本地政治人物或国际组织政治人物所须考虑的风险因素之例子；

(iv) 在法人客户并非由自然人最终拥有或控制的情况下，识别及核实该客户的最终实益拥有人的身分；

(v) 审核职能为确保打击洗钱/恐怖分子资金筹集制度的成效而进行定期覆核时，应涵盖哪些范畴；及

(vi) 处理执法机构的要求。

<u>与《打击洗钱及恐怖分子资金筹集条例》涵盖的其他金融业界须遵守的规定贯彻一致</u>

证监会一直与负责执行《打击洗钱条例》的相关监管机构（它们亦正在检讨及修改各自的打击洗钱/恐怖分子资金筹集指引）紧密合作，就合规方面制订一套通用标准。整体来说，除下列差异外，证监会建议修改的《打击洗钱指引》旨在与负责执行《打击洗钱条例》的相关监管机构所修改的指引贯彻一致：

(a) 相关监管机构已革新了各自的指引，以就金融机构如何透过其本身的风险评估识别洗钱/恐怖分子资金筹集风险，以及如何根据风险为本的方法实施政策和程序来减低有关风险，向金融机构提供更多指引。有关修订大部分是以特别组织或其他标准厘定

组织为相关特定行业所发表，关于风险为本方法的指引文件为参考依据。鉴于特别组织尚未发出适用于证券业的风险为本方法指引，证监会不建议在现阶段对《打击洗钱指引》的相关部分作出重大修订，但会继续注视特别组织的任何相关进展，以及留意日后是否需要对《打击洗钱指引》作出任何修订；

(b) 证监会建议修改的《打击洗钱指引》中保留了多个列表，当中列明证监会认为具有实用参考价值，且有助于持牌法团遵守某些打击洗钱/恐怖分子资金筹集规定的非详尽无遗说明例子及非强制指引；而这些例子或指引已从部分相关监管机构的指引中删除；及

(c) 部分相关监管机构对它们的指引作出了一些文本修订和重新编排了段落或句子次序，由于这些修订未有改变相关现行规定的实质内容，故证监会并无加以采纳。

证监会欢迎相关人士于 2018 年 8 月 9 日或之前向证监会提交意见。证监会预计于 2018 年 10 月初或之前为是次咨询作出总结，并为有关修订作最后定稿。考虑到建议对《打击洗钱指引》作出修订的性质并不需要持牌法团对其现有打击洗钱/恐怖分子资金筹集制度作出重大调整，经修改的 《打击洗钱指引》将于 2018 年 11 月 1 日生效。

在拟定建议的修订时，证监会表示采取了平衡的监管方针，在给予机构灵活性的同时，亦确保证监会的规定有效防止洗钱及恐怖分子资金筹集活动。

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Hong Kong Securities and Futures Commission Reprimands and Fines CCB International Capital Limited HK$24 Million for Sponsor Failures

On July 9, 2018, Hong Kong Securities and Futures Commission (SFC) has reprimanded and fined CCB International Capital Limited (CCBIC) HK$24 million for failing to discharge its duties as the sole sponsor in the listing application of Fujian Dongya Aquatic Products Co., Ltd (Fujian Dongya) in 2013 and 2014.

The disciplinary action followed the SFC's investigation which found that CCBIC had failed to:

1. conduct all reasonable due diligence on Fujian Dongya before submitting the listing application:

   Around 90% of Fujian Dongya's turnover during the track record period (i.e. the years ended December 31, 2011, 2012 and 2013) was derived from sales to its overseas customers, and around 90% of such sales was paid by the overseas customers through third party payers (TPP Arrangement).

   As part of the verification of the genuineness of Fujian Dongya's sales, CCBIC instructed its lawyers to devise a due diligence plan on the TPP Arrangement.

   The plan required CCBIC to, among other things, (i) arrange Fujian Dongya's overseas customers and their third-party payers to sign a letter of confirmation; (ii) arrange overseas customers which could not terminate the TPP Arrangement to sign an indemnity agreement (Indemnity Agreement); and (iii) interview the third-party payers before submitting Fujian Dongya's listing application to The Stock Exchange of Hong Kong Limited (SEHK).

   CCBIC, however, did not complete the due diligence plan prepared by its lawyers. For instance, it did not obtain from Fujian Dongya a list of customers which could not terminate the TPP Arrangement and select some of these customers for interview. It also did not interview any third-party payers.

   In the course of conducting the due diligence, CCBIC also discovered a number of red flags concerning the TPP Arrangement but there was no evidence that it had made further enquiries with the relevant customers or third-party payers, nor records of its justifications for not doing so. The red flags included that:

   - a number of Fujian Dongya's customers relied on multiple third party payers from different countries to pay Fujian Dongya;
   - some customers of Fujian Dongya acted as the third party payers of other Fujian Dongya's customers when they also relied on third party payers to make payments to Fujian Dongya; and
   - Fujian Dongya informed CCBIC that it was impossible or very costly for its customers in Taiwan to make direct payments to Fujian Dongya but our investigation revealed that various third party payers in Taiwan had made payments to Fujian Dongya on behalf of its customers.

   The SFC's investigation also revealed that one of the members of CCBIC's transaction team had raised concerns about the genuineness of the signatures on the Indemnity Agreements.

After reviewing the Indemnity Agreements, the SFC found that:

- some of the Indemnity Agreements appeared to have been signed by the same person on behalf of different customers; and
- some of the Indemnity Agreements were apparently signed by the same person in different countries on behalf of different customers on the same day.

2. conduct proper customer due diligence:

While CCBIC planned to conduct face-to-face interviews with Fujian Dongya's customers in the absence of Fujian Dongya representatives and had made it clear to Fujian Dongya that telephone interviews would only be conducted with a small number of customers who could provide reasonable explanations as to why they could not attend face-to-face interviews, the SFC's investigation found that:

- Of the 22 overseas customers interviewed by CCBIC, only 12 of them were interviewed in face-to-face meetings and 11 of these 12 interviews were conducted in the presence of one or two Fujian Dongya representatives;
- 8 of these 12 interviews were not conducted in the customers' premises; and
- 10 customers were interviewed by telephone but there is no record as to why these customers could not attend face-to-face interviews.

Moreover, there is no evidence to show that CCBIC had taken steps to verify that the interviewees had the appropriate authority and knowledge to attend the interviews.

3. keep a proper audit trail or written record of its due diligence work:

The SFC's investigation also found that CCBIC did not keep a proper audit trail or written record of its due diligence work. For example, CCBIC did not maintain records that could explain its decision of not completing the above-mentioned due diligence plan.

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

- the SFC found no evidence that the breaches and deficiencies identified above were deliberate, intentional or reckless;
- CCBIC cooperated with the SFC in accepting the disciplinary action and did not dispute the SFC's findings and regulatory concerns;
- there is no evidence that suggests that there is a systemic failure in CCBIC's policies, procedures and practices in respect of its sponsor work;
- CCBIC has on its own initiative enhanced its internal controls and systems in respect of its sponsor work since Fujian Dongya's listing application and it agreed to engage an independent reviewer to review its enhanced policies, procedures and practices in relation to its sponsor work, particularly, in performing due diligence on listing applicants and preparing listing application documents;
- Fujian Dongya's listing application had lapsed; and
- CCBIC has an otherwise clean disciplinary record.

The SFC would like to remind sponsors that before submitting a listing application to the SEHK, they should have performed all reasonable due diligence in order to gain a thorough knowledge and understanding of the listing applicant's business and satisfy itself that all information concerning the listing applicant in respect of the application was fully, fairly and accurately presented.

A sponsor must also plan and execute its due diligence inquiries on information proposed to be disclosed in the initial public offering (IPO) prospectus with professional skepticism and critically assess the information or documents provided by the listing applicant, recognizing that it is possible for information or statements proposed to be disclosed in the IPO prospectus to be materially misstated due to error or fraud.

The SFC will continue to take action against sponsors who fail to fulfil these requirements.

建银国际金融有限公司因保荐人缺失遭香港证券及期货事务监察委员会谴责及罚款 2,400 万港元

2018 年 7 月 9 日，香港证券及期货事务监察委员会（证监会）因建银国际金融有限公司（建银国际金融）在 2013 年及 2014 年担任福建东亚水产股份有限公司（福建东亚）上市申请的独家保荐人期间未有履行其职责，对其作出谴责及罚款 2,400 万港元。

证监会经调查后采取上述纪律处分行动。有关调查发现，建银国际金融未能：

(a) 在呈交上市申请前，对福建东亚进行所有合理的尽职审查：

福建东亚在往绩纪录期间（即截至 2011 年、2012 年及 2013 年 12 月 31 日止年度）约 90%的营业额是来自其向海外客户的销售额，而约 90%的有关销售额是由海外客户透过第三方付款方所支付（第三方付款安排)。

作为核实福建东亚销售额的真确性的工作之一，建银国际金融指示其律师就第三方付款安排制订一项尽职审查计划。

该计划包括要求建银国际金融在向香港联合交易所有限公司（联交所）呈交福建东亚的上市申请前，须(i)安排福建东亚的海外客户及其第三方付款方签署确认函；(ii)安排无法终止第三方付款安排的海外客户签署弥偿协议；及(iii)会见第三方付款方。

然而，建银国际金融没有完成其律师拟订的尽职审查计划。举例来说，它没有向福建东亚取得无法终止第三方付款安排的客户的名单及没有拣选部分有关客户进行会见，同时也没有会见任何第三方付款方。

建银国际金融在进行尽职审查的过程中，亦发现数个与第三方付款安排有关的预警迹象，但没有证据显示建银国际金融曾向相关客户或第三方付款方作出进一步查询，亦无纪录载明其不作进一步查询的理据。该等预警迹象包括：

- 多名福建东亚客户依赖多个来自不同国家的第三方付款方向福建东亚支付款项；
- 部分福建东亚客户在依赖第三方付款方向福建东亚支付款项的同时，亦是其他福建东亚客户的第三方付款方；及
- 福建东亚告知建银国际金融，由其台湾客户直接向福建东亚支付款项乃属不可能或非常昂贵之举，但我们的调查显示，台湾有多个第三方付款方代表其客户向福建东亚支付款项。

证监会的调查亦显示，建银国际金融交易小组的其中一名成员曾经对弥偿协议上的签名的真确性表示关注。

证监会在检视弥偿协议后发现：

- 有些弥偿协议看来是由同一人代表不同客户签署的；及
- 有些弥偿协议看来是由同一人在同一天，于不同国家代表不同客户签署的。

(b) 进行妥善的客户尽职审查：

虽然建银国际金融计划在福建东亚代表不在场的情况下与福建东亚客户进行面对面的会见，并曾向福建东亚清楚表明，只会与少数能够合理地解释为何无法出席面对面会见的客户进行电话访谈，但证监会的调查发现：

- 在建银国际金融会见或访谈的 22 名海外客户中，只有 12 名客户是以面对面会议的方式接会，而在这 12 次会见中，有 11 次是在一名或两名福建东亚代表在场的情况下进行的；
- 在这 12 次会见中，有八次并非在客户的处所进行；及
- 有 10 名客户接受电话访谈，但并无关于这些客户为何无法出席面对面会见的纪录。

此外，没有证据显示建银国际金融曾经采取任何步骤，去核实接受会见或访谈的人士是否具有适当的权限和知识去接受会见或访谈。

(c) 就其尽职审查工作备存妥善的审计线索或书面纪录：

证监会的调查亦发现，建银国际金融没有就其尽职审查工作备存妥善的审计线索或书面纪录。举例来说，建银国际金融没有备存可解释其为何决定不去完成上述尽职审查计划的纪录。

证监会在决定上述纪律处分时，已考虑到：

- 证监会并无发现有证据显示，上文中所识别的违规事项及缺失是因故意、蓄意或罔顾后果而导致的；
- 建银国际金融接受证监会的纪律处分，且并无就证监会的发现及监管关注事项提出争议，表现合作；
- 并无证据显示建银国际金融与保荐人工作有关的政策、程序及常规存在系统性缺失；
- 建银国际金融自福建东亚的上市申请之后，已主动优化其为保荐人工作而设立的内部监控措施及系统，并同意委聘独立的检讨机构以检讨其与保荐人工作有关的经优化的政策、程序及

常规，尤其是就上市申请人进行尽职审查及编制上市申请文件方面；

- 福建东亚的上市申请已失效；及
- 建银国际金融以往并无遭受纪律处分的纪录。

证监会提醒保荐人，在向联交所呈交上市申请前，保荐人应已进行所有合理尽职审查，藉以透彻地认识及了解上市申请人的业务，并使其本身信纳就该项申请而言，有关上市申请人的所有资料都是完整、公平及准确地呈示。

保荐人亦必须抱着专业的怀疑态度，就拟在首次公开招股章程中披露的资料规划和执行其尽职审查查询，及严谨地评估上市申请人所提供的资料或文件，原因是保荐人理应明白拟在首次公开招股章程中披露的资料或声明可能因谬误或欺诈而存在重大的错误陈述。

证监会将继续对没有履行这些规定的保荐人采取行动。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR77

Hong Kong Securities and Futures Commission Reprimands and Fines Citigroup Global Markets Asia Limited HK$4 Million for Alternative Liquidity Pool Failures

On July 10, 2018, Hong Kong Securities and Futures Commission (SFC) has reprimanded and fined Citigroup Global Markets Asia Limited (CGMAL) HK$4 million over CGMAL's regulatory breaches in relation to the operations of its alternative liquidity pool (ALP).

The disciplinary action followed an SFC investigation on CGMAL, which found that the operations of Citi Match, the ALP of CGMAL, failed to comply with the relevant requirements from December 2015 to August 2016 as set out in the Code of Conduct for Persons Licensed by or Registered with the SFC.

CGMAL was expected to operate Citi Match with due skill, care and diligence, and required to:

- provide the ALP Guidelines to users to ensure that they are fully informed on how the ALP operates; and
- ensure that only qualified investors are permitted to be users of the ALP.

However, due to an incorrect system setting of client profiles, over 130 clients had accessed Citi Match without being assessed whether they were qualified investors. CGMAL also failed to provide the clients with the ALP Guidelines prior to routing their first orders to Citi Match.

In reaching the resolution, the SFC took into account all relevant circumstances, including that CGMAL:

- took remedial actions to rectify the situation shortly after identifying the incorrect system setting and subsequently implemented enhanced measures to ensure compliance; and
- took the initiative to bring this matter to a conclusion by cooperating with the SFC to resolve the regulatory concerns.

花旗环球金融亚洲有限公司因另类交易平台的缺失而遭香港证券及期货事务监察委员谴责及罚款 400 万港元

2018 年 7 月 10 日，香港证券及期货事务监察委员会（证监会）因花旗环球金融亚洲有限公司（花旗环球）在经营其另类交易平台方面违反监管规定，对花旗环球作出谴责及罚款 400 万港元。

证监会在完成对花旗环球的调查后，采取上述纪律处分行动。有关调查发现花旗环球由 2015 年 12 月至 2016 年 8 月期间，在经营另类交易平台 Citi Match 时没有遵守《证券及期货事务监察委员会持牌人或注册人操守准则》所载的相关规定。

花旗环球应以适当的技能、小心审慎和勤勉尽责的态度经营 Citi Match，并须：

- 向用户提供另类交易平台指引，确保他们充分知悉另类交易平台的运作方式；及
- 确保只有合资格投资者获准为另类交易平台的用户。然而，由于客户资料的系统设定出错，超过 130 名客户曾在未被评估是否属合资格投资者的情况下进入 Citi Match。花旗环球亦没有在将客户的首个买卖指示转发至 Citi Match 前，向有关客户提供另类交易平台指引。

证监会在达致上述解决方案时，已考虑到所有相关情况，包括花旗环球：

- 在识别系统设定出错后已于短时间内采取补救行动纠正有关情况，并于其后采取改善措施，以确保规定得以遵守；及

- 主动就监管方面的关注事项与证监会合作，令事件得以早日完结。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR78

Hong Kong Securities and Futures Commission Reprimands and Fines HSBC Broking Securities (Asia) Limited HK$9.6 Million for Regulatory Breaches Over Bond Sale

On July 19, 2018, the Securities and Futures Commission (SFC) has reprimanded and fined HSBC Broking Securities (Asia) Limited (HSBCBS) HK$9.6 million for systemic deficiencies in its bond selling practices.

The SFC found that between April 2015 and March 2016, HSBCBS executed 378 transactions of bonds listed under Chapter 37 of the Main Board Listing Rules (Chapter 37 Bonds), 153 of which involved recommendations or solicitations made to clients.

In selling these Chapter 37 Bonds to its clients, HSBCBS failed to:

- conduct proper and adequate product due diligence on individual bonds before making recommendations or solicitations to its clients;
- have an effective system in place to assess its clients' risk profile and to ensure that the recommendations or solicitations made to its clients in relation to bonds were suitable for and reasonable in all the circumstances;
- provide adequate product information to its sales staff to ensure that they fully understood the features and the risks involved so that they could provide adequate disclosure and explanation to the clients during the sale process; and
- maintain proper documentary records of the investment advice or recommendations given to its clients.

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

- HSBCBS failed to put in place an effective system to ensure suitability of bonds recommended and/or solicited to clients despite the SFC's repeated reminders to licensed corporations on the importance of compliance with their suitability obligations, and specific guidance regarding the selling of fixed income products, complex and high-yield bonds;
- a strong message has to be sent to the market to deter similar misconduct;
- HSBCBS has taken remedial measures to enhance its suitability framework;
- there is currently no evidence suggesting any client has complained about HSBCBS's selling practices or suffered losses; and
- HSBCBS cooperated with the SFC in resolving its concerns.

汇丰金融证券（亚洲）有限公司因违反与销售债券有关的监管规定遭香港证券及期货事务监察委员谴责及罚款960万港元

2018 年 7 月 10 日，证券及期货事务监察委员会（证监会）因汇丰金融证券（亚洲）有限公司（汇丰证券亚洲）的债券销售手法出现系统性缺失，对其作出谴责并罚款 960 万港元。

证监会发现，汇丰证券亚洲在 2015 年 4 月至 2016 年 3 月期间，就根据《主板上市规则》第三十七章上市的债券（第三十七章债券）执行了 378 项交易，其中 153 项交易涉及向客户作出建议或招揽行为。

汇丰证券亚洲向客户销售上述第三十七章债券时，并无：

- 在向其客户作出建议或招揽行为前，就个别债券进行妥善而充分的产品尽职审查；
- 设立有效的系统，以评估其客户的风险状况，及确保向其客户作出有关债券的建议或招揽行为在所有情况下都是合适和合理的；
- 向其销售人员提供充分的产品资料，以确保他们充分了解产品特点和所涉及的风险，以便他们在销售过程中能够向客户作出充分的披露及说明；及
- 就向其客户提供的投资意见或建议备存妥善的文件纪录。

证监会在决定上述纪律处分时，已考虑到：

- 尽管证监会已多次提醒持牌法团有关遵守为客户提供合理适当建议的责任的重要性，并就销售定息产品、复杂类别债券及高息债券提供了具体指引，但汇丰证券亚洲却未有设立有效的系统，以确保其向客户建议及／或招揽客户买入的债券的合适性；
- 有必要向市场传达强烈的阻吓讯息，防止再有类似的失当行为；

- 汇丰证券亚洲已采取补救措施，加强其合适性框架；
- 目前并无证据显示有任何客户就汇丰证券亚洲的销售手法作出投诉或蒙受损失；及
- 汇丰证券亚洲与证监会合作解决其提出的关注事项。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR86

Hong Kong Securities and Futures Commission Amends the Codes on Takeovers and Mergers and Share Buy-backs

On July 13, 2018, Hong Kong Securities and Futures Commission (SFC) released consultation conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (Codes). The amended Codes will apply with immediate effect.

Respondents were generally supportive of the proposals, the majority of which were adopted with some modifications taking into account the responses received during the consultation process. The key conclusions are summarized at the following:

1. Dealings with the Takeovers Executive (Executive), Takeovers and Mergers Panel (Panel) and Takeovers Appeal Committee

   The parties must provide the Executive, the Panel and the Takeovers Appeal Committee with all relevant information which they are aware of, and correct or update the information if it changes to facilitate informed decision-making. The SFC has decided that obligation to provide true, accurate and complete information should be subject to a reasonable care test. Parties should be open and co-operative in all dealings with the Executive as this helps to ensure the smooth administration of the Codes.

2. Compliance rulings

   In line with the SFC's front-loaded approach, the Executive or the Panel has power to issue compliance rulings as a pre-emptive measure to prevent breaches and to protect shareholders and the market. The SFC does not share the concern that the explicit power of Chairman of the hearing to issue a compliance ruling if it relates to a preliminary or procedural direction might compromise the fairness of Panel hearings.

3. Compensation rulings

   The Panel is provided with the explicit power to require a person found to be in breach of certain provisions of the Codes to pay compensation to shareholders. The purpose of a compensation ruling would be to provide financial redress to shareholders or former shareholders who have suffered as a result of a breach of the Codes. The SFC is satisfied that the exercise of the power to issue a compensation order by the Panel is consistent with Article 80 of the Basic Law.

4. Disciplinary proceedings and remedial/compliance rulings

   In the circumstances and in the interests of facilitating remedial rulings in disciplinary cases, the Panel has power to impose remedial measures as well as sanctions in disciplinary matters.

5. Definition and use of the term of "associate"

   The definition of associate has been amended to eliminate overlap and potential inconsistences that arise from the similarities between the definition of associate and the definition of acting in concert. Given the market conditions and size of Hong Kong, the SFC does not consider it to be appropriate to delete the definition of associate in its entirety. The SFC proposed to retain the revised classes of associate as SFC considers disclosure of dealings by those persons to be relevant information in the context of an offer due to their close connection with the offeror or offeree company.

6. Voting threshold for whitewash waivers

   The SFC will raise the voting approval threshold for whitewash waivers and underlying transactions from a simple majority of independent votes to 75%. The SFC believes that a higher approval threshold is merited in order to enhance protection of minority shareholders.

7. Approval of delistings by independent shareholders

   In order to enhance shareholder protection and to align the treatment of all companies that are subject to the Codes, a delisting cannot become effective until an offeror is able to exercise, and exercises its right of compulsory acquisition (which arises in respect of Hong Kong incorporated companies when the offeror receives acceptances amounting to 90% of the disinterested shares). As there is concern that it easier for companies incorporated in jurisdictions without compulsory acquisition rights (such as the Mainland) to delist through a general offer

as they will be able to do so with less than 90% acceptances, the SFC believes that the 90% acceptance condition should normally apply to all such cases as well.

8. Disclosure of number of, holdings of and dealings in, relevant securities

   When an offer period begins, the offeree company must announce, as soon as possible, details of all classes of relevant securities issued by the offeree company, together with the numbers of such securities in issue. An offeror or potential named offeror must also announce the same details relating to its relevant securities (including securities of a company the securities of which are to be offered as consideration for the offer). The main purpose of dealing disclosure during an offer period is to ensure that dealing activities of parties that are sufficiently interested in the outcome of the offer are publicly disclosed.

9. The SFC has also made various miscellaneous amendments to the Codes to codify existing practice and to effect a number of "housekeeping" amendments incldluing the disclosure requirement of the number of shareholders voting for and against a resolution in a scheme of arrangement to privatise a company that is incorporated in a jurisdiction that applies the Headcount Test (namely, a scheme that is subject to approval by "a majority in number" representing 75% in value of the shareholders present and voting).

SFC said that the changes to the Codes aim to protect shareholders and ensure a fair and informed market and are also in line with our front-loaded approach to prevent breaches before they occur.

The Executive should be consulted where there is any doubt about the application of the revised Codes, particularly where the timing may produce major difficulties for transactions which have already been announced.

香港证券及期货事务监察委员会修订《公司收购、合并及股份回购守则》

2018 年 7 月 13 日，香港证券及期货事务监察委员会（证监会）就《公司收购、合并及股份回购守则》（简称两份守则）的建议修订发表资讯总结。经修订的两份守则已即时生效。

回应者普遍支持有关建议，故证监会在考虑谘询过程中收到的意见并作出了一些修改后，采纳了大部分建议。主要的结论摘要如下：

1. 与收购执行人员 (执行人员)、检讨及咨询收购及合并委员会 (委员会) 及收购上诉委员会的交涉

   当事人必须向执行人员，委员会及收购上诉委员会提供他们知悉的所有相关资料，以及在有关资料出现变动时作出改正或更新，以利便作出有根据的决定。证监会决定，提供真实，准确和完整的资料的责任进行合理谨慎测试。当事人在与执行人员的所有交涉中均应以坦诚及合作的态度行事，这有助确保两份守则得以顺利执行。

2. 合规裁定

   执行人员及委员会有权作出合规裁定，作为预防性行动以防出现违规的情况并保障股东及市场，这与证监会的前置式监管方针一致。证监会不同意主席有权力发出与初步或程序指示有关的合规裁定，会损害到委员会聆讯的公平性。

3. 赔偿裁定

   委员会有明确权力规定被裁定违反两份守则若干条文的人向股东支付赔偿。赔偿裁定的目的，是向因有人违反了两份守则而蒙受损失的股东或前股东提供赔偿。证监会信纳，委员会行使发出赔偿令的权力符合《基本法》第八十条。

4. 纪律研讯及补救/合规裁定

   鉴于有关情况及为了利便在纪律个案中达致补救裁定，委员会有权能在纪律事件中施加补救措施及制裁。

5. "联系人"一词的定义与使用

   对联系人一词的定义进行了修订，以删除由于联系人的定义及一致行动的定义相若而有所重叠及可能出现不一致之处。鉴于香港的市况及面积大小，证监会不认为删除整个联系人的定义是适当的做法。证监会建议保留经修订的联系人类别，原因是这些人士与要约人或受要约公司的关系密切，故证监会视他们的交易披露为涉及要约的相关资料。

6. 清洗交易的宽免的投票门槛

   证监会将清洗交易的宽免及相关交易的投票批准门槛，由独立股东的简单大多数提高至 75%。证监 会认为需设立一个较高的批准门槛以加强对小股东的保障。

7. 独立股东批准公司取消上市地位

为了加强对股东的保障及统一对受两份守则规限的公司的处理方法，特别是对无订明强制取得证券权利的司法管辖区（例如内地）注册成立的公司的关注，取消上市不能在要约人可行使及行使其强制取得证券的权利（这在要约人于香港注册成立的公司获得90%的无利害关系股份的接纳时发生）前生效。由于关注到在没有强制取得证券的权利的司法管辖区（如内地）注册成立的公司能在少于90%的接纳下较轻透过全面要约取消上市，证监会认为在一般情况下，90%的接纳条件在所有这类个案亦应适用。

8. 披露有关证券的数目，持股状况及就有关证券所进行的交易

要约期开始后，受要约公司必须尽快公布由该受要约公司发行的各类有关证券的详情，以及已发行的有关证券的数目。此外，要约人或具名的有意要约人亦须在识别其为要约人或有意要约人的任何公布发出后，公布涉及其有关证券 (包括将作为要约的对价提供证券的公司的证券)。要约期内的交易披露的主要目的，是确保要约结果会充分地关系到其利益的当事人的交易活动都已获公开披露。

9. 证监会亦对两份守则作出多项杂项修订，以将现有的作业常规编纂为守则条文，及作出数项属于"整理性质"的修订包括规定凡属对在施行人数验证的司法管辖区注册成立的公司进行私有化的协议安排(即须经75%的"大多数"出席会议并表决的股东通过的协议安排)，均须披露投票赞成与反对决议的股东数目。

证监会表示，两份守则的修订旨在保障股东及确保市场公平和资讯流通及有关修订亦与本会的前置式监管方针互相呼应，以便在违规行为发生前加以防范。

若对经修订的两份守则的适用范围有任何疑问，尤其是在有关时限可能对已公布的交易构成重大困难时，便应咨询收购执行人员的意见。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR83

Hong Kong Exchanges and Clearing Limited and Mainland Exchanges Agree on Adjusting Inclusion Arrangements For Eligible Securities Under Stock Connect's Southbound Trading

On July 18, 2018, Hong Kong Exchanges and Clearing Limited announced that its wholly-owned subsidiary, the Stock Exchange of Hong Kong, reached a consensus with the Shanghai and Shenzhen stock exchanges on July 17, 2018 on adjusting the inclusion arrangements for eligible securities for Stock Connect's Southbound trading. This followed a productive meeting of the three exchanges.

The agreement is comprised of three points:

1. The three exchanges share the objective of enhancing and improving Stock Connect, with the intention to continue to grow and develop the scheme in a stable manner over time.

2. The meeting acknowledged that as Mainland investors are not yet familiar with weighted voting rights (WVR) companies, there is a need to consider the maturity and regulatory practices of the two markets when including WVR companies in the list of eligible securities for Southbound trading under Stock Connect. An initial Special Stability Trading Period will be required for Hong Kong-listed WVR companies, following which the WVR shares will be included in Southbound trading under Stock Connect if such shares are otherwise eligible for inclusion under the current Stock Connect rules.

3. The three exchanges have agreed to set up a joint working group to formulate the specific programs and supplementary rules for the inclusion of WVR companies in Stock Connect trading as soon as possible.

As China's capital market continues to open up, the underlying stocks for Stock Connect will continue to improve and expand healthily and steadily.

香港交易及结算所有限公司与上海及深圳交易所就港股通合资格证券的调整达成共识

2018 年 7 月 18 日，香港交易及结算所有限公司宣布其全资附属公司，香港联合交易所，在 2018 年 7 月 17 日与上海及深圳交易所就港股通合资格证券的调整安排进行了卓有成效的会谈，并在以下三方面达成了共识：

1. 互联互通的进一步优化和完善是双方共同认可和努力的大方向，会继续健康稳定地发展。

2. 会议认为内地投资者对不同投票权架构（WVR）公司还缺乏了解，WVR 公司纳入港股通合资格证券需要充分考虑两地市场的发展水准和监管实践。因此，三所将在沪深港通合资格证券现有纳入制度基础上加入一个稳定交易期机制。

3. 三所已商定成立联合工作组，将尽快研究WVR公司纳入港股通合资格证券的新补充机制具体方案和细则。

随着中国资本市场继续开放，港股通的合资格证券的基础将继续改善和健康稳定扩展。

Source 来源：

http://www.hkex.com.hk/news/news-release/2018/180718news?sc_lang=en

The Stock Exchange of Hong Kong Limited Updates and Streamlines Some of Its Guidance Materials Relating to Guidance Letters and Frequently Asked Questions

On July 13, 2018, the Stock Exchange of Hong Kong Limited (the Exchange) updated and streamlined some of its Guidance Materials – Guidance Letters, Listing Decisions and Frequently Asked Questions (FAQ) – to provide greater clarity to the market.

The Exchange publishes Guidance Materials from time to time to provide the market with guidance and clarity on the application of certain Listing Rules and practices. The Exchange noted its Guidance Materials had increased significantly over the years, and a number of professional advisers commented that the Guidance Materials should be streamlined.

Details of the changes, which has been implemented with immediate effect, to the Exchange's Guidance Materials are listed below. They do not affect policy direction which remains the same.

- Two new Guidance Letters –

  (i) HKEX-GL98-18 (Guidance on disclosure in listing documents)

  This Guidance Letter provides guidance on disclosure of various matters in a listing document: (a) appropriateness of listing applicants' names; (b) statistics and data quoted; (c) listing document covers; (d) non-disclosure of confidential information; and (e) material changes in financial, operational and/or trading positions after trading record period.

  (ii) HKEX-GL99-18 (Guidance on the assessment of a sponsor's independence)

  This Guidance Letter provides factors that a sponsor and an applicant should consider when determining whether the requirements of a sponsor's independence are satisfied include, but are not limited to: (a) the nature of the relationship among the parties involved; (b) when the business relationship in question commenced; (c) whether the parties in question were involved, directly or indirectly, in sourcing the engagement; and (d) the nature and materiality of other relevant business relationships.

- Four updated Guidance Letters – HKEX-GL18-10 (Guidance on publicity materials and e-IPO advertisements); HKEX-GL55-13 (Guidance on Documentary Requirements and Administrative Matters for New Listing Application (Equity)); HKEX-GL56-13 (Guidance on disclosure requirements for substantially complete Application Proofs and publication of Application Proofs and Post Hearing Information Packs on the Exchange's website); and HKEX-GL81-15 (Guidance on Mixed Media Offer).

- One updated FAQ series – FAQ Series 24 (Listing Rule changes to complement the Securities and Futures Commission's New Sponsor Regulation).

- Twenty withdrawn Guidance Materials – 12 Guidance Letters, five Listing Decisions, two FAQ series and one FAQ. The withdrawn materials were either outdated or incorporated into the new or updated Guidance Materials above.

The Exchange will continue to review and streamline its Guidance Materials as appropriate.

香港联合交易所有限公司更新及精简部分上市指引材料

香港联合交易所有限公司（联交所）于2018年7月13日更新并精简了部分指引材料（指引信、上市决策及常问问题），使有关内容更清晰，市场更易理解。

联交所不时就《上市规则》条文以至常规的应用向市场提供指引及说明。近年，联交所注意到指引材料数目大幅增加，部分专业顾问亦建议精简有关指引。

有关变动并不影响原有政策方向，并已即时生效。联交所指引材料的变动详情如下：

- 新增两份指引信 —

  (i) HKEX-GL98-18「有关上市文件披露的指引」

  这指引信就上市文件内披露多项资料/事宜提供指引：（a）上市申请人的名称是否合适；（b）上市文件中引述的统计数字及数据；（c）上市文件封面；（d）不披露机密资料；及（e）营业纪录期后后在财务，营运及/或经营状况的重大转变。

(ii) HKEX-GL99-18「评估保荐人独立性的指引」

这指引信提供在研究保荐人及申请人是否符合保荐人独立性的规定时所应考虑的因素，包括但不限于下列各项：（a）各方之间的关系的性质;（b）涉及的业务关系何时开始；（c）所涉各方有否直接或间接参与保荐人获得这宗保荐工作之事宜；及（d）其他相关业务关系的性质及重要性。

- 更新四份指引信 —HKEX-GL18-10「有关宣传资料及电子首次公开招股广告的指引」；HKEX-GL55-13「有关新上市申请（股本证券）提交文件的规定及行 政事宜的指引」；HKEX-GL56-13「有关提交的大致完备申请版本的披露要求以及申请版本及聆讯后资料集在联交所网站的登载的指引」；以及HKEX-GL81-15「关于混合媒介要约的指引」。

- 更新一个常问问题系列 — 常问问题系列 24「配合证监会保荐人新监管规定的《上市规则》修订」。

- 撤回二十份材料——12 份指引信、五项上市决策、两个常问问题系列以及一项常问问题。是次撤回的内容均为不再适用、又或已纳入上述新增或更新指引材料。

联交所会继续因应需要检讨及精简其指引材料。

Source 来源：

https://www.hkex.com.hk/News/News-Release/2018/1807132news?sc_lang=en

The Stock Exchange of Hong Kong Limited Publishes Guide on Listing New Structed Products

On July 13, 2018, the Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published the Guide on Product Review and Approval Process for Listed Structured Products (the Guide).

The Guide provides guidance to structured products issuers (issuers) on obtaining approval to list new structured products under Chapter 15A of the Main Board Listing Rules (Listing Rules), the chapter that sets out the requirements for the listing of structured products.

The Guide reflects its existing practice in reviewing and approving new products. It covers the following areas:

1. New structured products subject to the review and approval process (New Products)

   New Products are:

   (a) new underlying assets that are not listed on the Exchange but within existing type of structured products including overseas stock, index, commodity, currency, futures contract and other assets (new underlying); or

   (b) new product feature(s) (new feature) within existing type of structured products, or completely new type of structured product not previously listed on the Exchange (new product type).

2. Review and approval process for New Products

   Application

   Prior to initiating the product review and approval process, issuers should have assessed the product's risks and features in order to be satisfied with the fairness of the product and the appropriateness for trading on the Exchange.

   The review and approval process commence when issuers submit the application with the supporting information which should contain sufficient details for the Exchange to consider the application. The Exchange will notify the Securities and Futures Commission (SFC) as soon as practicable upon receipt of an application.

   Review and approval process

   The Exchange will review each New Products proposal to assess its business, market and operational feasibility and whether the New Products are suitable for listing and comply with Listing Rules requirements. The Exchange will also seek comments from the SFC on each New Products proposal.

   Approval for New Products will be given in different phases, namely

   (a) approval in principle: Based on information submitted, the Exchange will determine whether to grant the approval in principle for the New Products. For this purpose, the Exchange will assess the viability of New Products proposals from the business, market, operational and Listing Rules perspectives. The Exchange will see comments from the SFC on New Products proposals and would only grant the approval in principle after the SFC has confirmed that it has no further comments on the New Products proposals.

   (b) documentation approval: After obtaining the approval in principle, issuers may proceed to the next phase by submitting the listing

document in final form, together with other information. The Exchange shall grant the documentation approval where it is satisfied with the information submitted and has no further comments on the listing document.

(c) formal approval: After obtaining the documentation approval, issuers may proceed to the next phase by addressing any remaining outstanding issues including those raised by the Exchange and/or the SFC and providing a written confirmation that the information submitted for obtaining approval in principle and documentation approval is still valid and up-to-date. The Exchange shall grant formal approval upon receiving such confirmation and when all outstanding issues have been addressed to its satisfaction.

Issuers will be notified of the approval or refusal in writing in each of the phases. After obtaining the formal approval, issuers may proceed with the launch of New Products upon system and operational readiness of the HKEX and market participants, including issuers and Exchange Participants.

Processing time

The timeframe for the product review and approval process may vary depending on factors such as:-

(a) quality of information provided;

(b) complexity of the New Products (for example, the processing time for new product type will generally be longer than a new underlying); and

(c) the time taken for the issuers to respond to comments to the satisfaction of the Exchange and/or the SFC, as the case may be.

3. Documents required to support the approval application

(a) General information: Supporting information for applying for the approval in principle should include a draft term sheet annotated to confirm compliance with the Listing Rules relating to terms and conditions of the New Products. Where a waiver of compliance with the Listing Rules is required, the basis for applying for such waiver and the potential implications to investors should be submitted.

(b) Specific information: Additional information should also be provided depending on the type of New Products.

Where there is a change in information, issuers should highlight the impact for the Exchange's consideration. Where such change is considered material by the Exchange, the Exchange will assess whether the approval in principle and/or documentation approval are still valid and inform issuers accordingly. In the event of a material change in market circumstances before the launch of New Products, the Exchange may require additional information or impose conditions notwithstanding that formal approval has been given.

4. Factors under consideration in approving New Products

The Exchange would consider the following general factors in the New Products review and approval process:

(a) information on the underlying asset, its performance and/or value and any other attribute of such asset relevant to issuers' obligations, shall be transparent and made available to investors in Hong Kong;

(b) the price, value or performance or any other relevant attributes of the underlying asset should not be controlled or influenced by one party or a group of parties which may undermine the interests of the investing public; and

(c) for New Products with knock out features (such as Callable Bull/Bear Contracts) and underlying assets not listed on the Exchange, issuers must provide feasible operational arrangements to the satisfaction of the Exchange, enabling timely trading suspension of the relevant products upon occurrence of knock out events.

Apart from the above general factors, the Exchange would also consider specific factors for reviewing depending on the type of New Products.

The Guide intends to facilitate an understanding of New Products review and approval framework such that New Products can be introduced to the market more efficiently and within a clear time frame.

香港联合交易所有限公司刊发新结构性产品上市指引

香港交易及结算所有限公司（香港交易所）全资附属公司香港联合交易所有限公司（联交所）于 2018 年 7 月 13 日 刊发《上市结构性产品审批流程指引》（指引）。

指引为结构性产品发行人提供指引，阐释如何根据《主板上市规则》第十五 A 章（该章载有结构性产品上市的规定）(上市规则) 寻求新结构性产品上市批准。

指引以现时审批新产品的一贯做法为基础，涵盖以下范畴：

1. 需通过审批流程的新结构性产品（新产品）

新产品指：

(a) 属于现有结构性产品类别但并非于联交所上市的新相关资产包括海外证券、指数、商品、货币、期货合约和其他资产（新相关资产）；或

(b) 属于现有结构性产品类别的新产品特质(新特质)，或未曾于联交所上市的全新结构性产品类别 (新产品类别)。

2. 新产品审查和批准过程

申请

启动产品审批流程前，发行人应已评估产品风险及特质，以确认产品是否公平和适合于联交所买卖。

决定是否批准的考虑因素、预期处理新产品的所需时间，以及新产品申请上市所需提交的资料。

发行人提交申请（连同附录一所载支持文据资料）后，审批流程随即开始。发行人提交的申请资料应详尽足够以便联交所考量。联交所接获申请后将尽快通知证监会。

审批流程

联交所将审阅每只新产品的计划书、从业务、市场及营运等方面评估是否可行，并确定新产品是否适合上市及符合《主板规则》的规定。此外，联交所亦会就每只新产品的计划书征求证监会意见。

新产品的审批分数个阶段，即：

(a) 原则性批准：联交所会先根据发行人提交的资料决定是否原则性批准新产品申请，就此而言，联交所将从业务，市场，营运及《主板规则》合规方面评估新产品计划书是否可行。联交所会就新产品计划书征求证监会意，只有证监会确认其对新产品计划书没有进一步意见后，联交所方会授出原则性批准。

(b) 文件批准：发行人取得原则性批准后，便可进入下一阶段，提交上市文件的最终定稿。如联交所信纳发行人提交的资料，对上市文件也没有进一步意见，便会授出文件批准。

(c) 正式批准：发行人取得文件批准后，便可再进入下一阶段。这时候，发行人需要解决任何尚未处理的问题 (包括联交所及/或证监会的提问)，以及书面确认先前取得原则性批准和文件批准时所提交的资料仍是最新有效版本。联交所接获上述确认书，再加上所有未解决的问题都 妥善解决后，便会授出正式批准。

发行人会于每个阶段接获批准或拒绝通知书。取得正式批准后，待香港交易所及市场参与者(包括 发行人及联交所参与者) 在系统及运作上准备就绪，发行人即可推出新产品。

处理所需时间

产品审批流程所需时间可以各不相同，视乎以下因素而定：

(a) 所提交资料的质量；

(b) 新产品的复杂程度(例如处理新产品类别一般较处理新相关资产需要更多时间)；及

(c) 发行人回复联交所及/或证监会 (视属何情况而定) 意见的所需时间。

3. 审批申请所需文件

(a) 一般资料：申请原则性批准时，发行人需一并提交相关的支款文据资料，包括新产品的条款书拟稿，并在页边处加以注明，确认新产品的条款及细则符合《主板规则》规定，如要申请豁免遵守个别《上市规则》条文，发行人亦应提交申请豁免的理据及说明对投资者的潜在影响。

(b) 具体资料：除一般资料外，新产品亦须按其所属类别，提交其他额外资料。

资料如有任何更改，发行人应向联交所指出相应影响供其考量。如联交所认为是重大变动，便会评估原则性批准及/或文件批准是否仍然有效，并就此通知发行人。如推出新产品前市况出现重大变动，即使先前已授出正式批准，联交所仍可能要求发行人提供额外资料或施加其他条件。

4. 审批新产品的考虑因素

联交所审批新产品过程中会考虑以下一般因素：

(a) 所有与相关资产，其表现及/或价值以及任何其他与发行人责任有关的相关资产特质的资料，必须具透明度并可供香港投资者查阅；

(b) 相关资产的价格，价值或表现又或任何其他相关特质，概不应受某一方或一组人士控制或影响以致损害投资大众的利益；及

(c) 若是具强制赎回机制的新产品（如牛熊证）和涉及不在联交所上市的相关资产，发行人必须提供令联交所满意且切实可行的运作安排，以便在发生强制赎回事件时能适时停止买卖有关产品。

除上述一般因素外，联交所在审批每类新产品还会考虑个别的具体因素。

指引旨在促进对新产品上市批准流程的理解，令发行人更清楚了解产品审批框架，以便更有效率地将新产品推出市场，时间更清晰明确。

Source 来源：

https://www.hkex.com.hk/News/News-Release/2018/180713news?sc_lang=en

HKMC Annuity Limited Launches Annuity Plan

On July 5, 2018, HKMC Annuity Limited (HKMCA), wholly-owned by The Hong Kong Mortgage Corporation Limited (HKMC), announced the official launch of the life annuity scheme and named the scheme “HKMC Annuity Plan” (the Plan). Hong Kong Permanent Residents aged 65 years or above can register their intent to subscribe for the Plan within the Registration Period which will last for three weeks’ time from July 19 to August 8, 2018.

The Plan is an insurance product. The insured can immediately receive a guaranteed stream of fixed income after paying a single premium. The annuity is payable monthly for the whole of life of the insured.

The HKMCA will try its best to satisfy the demand of the applicants as much as possible under prudent risk management principles. The HKMCA is prepared to double the first tranche quota from currently HK$10 billion to HK$20 billion.

The HKMCA will set an allotment threshold if the total subscription amount exceeds the final issue size. Applicants whose Intended Subscription Amounts are smaller than or equal to the threshold will be fully allotted. Other applicants will only be allotted up to that threshold. However, this only represents the Allotted Amount to the applicant in the first stage because the final premium amount that can be accepted will depend on the results of the financial needs analysis conducted for the applicant within the second stage of the application process.

Applicants will receive the notices of allotment result in succession starting from mid-September, and will be arranged to attend the sales meetings to complete the application procedures. Financial needs analysis will be conducted during the sales meeting to confirm whether it is appropriate for the applicant to fully purchase the Allotted Amount. The applicant will pay the premium after the sales meeting, and receive the Guaranteed Monthly Annuity Payment commencing from the next month. Due to an expected large number of applicants, the sales period for the Plan this time to complete all of the distribution procedures is expected to last for half a year until March 2019.

The Hong Kong Monetary Authority (HKMA) will lend its full support and collaboration to the Plan. Apart from providing the capital required, the HKMA will invest and manage the premium received by the HKMCA, with a view to obtaining a stable long-term investment return, in order to provide a solid foundation to ensure the financial viability and sustainability of the Plan.

The Plan can offer the public an attractive financial arrangement for retirement and can also foster the development of the Hong Kong annuity market.

香港年金公司推出年金计划

2018 年 7 月 5 日，香港按揭证券有限公司（按揭证券公司）全资拥有的香港年金有限公司（香港年金公司）宣布，正式推出终身年金计划，并命名为「香港年金计划」。65 岁或以上香港永久性居民可在登记期(2018 年月 19 日至 8 月 8 日) 登记认购意向，为期三周。

香港年金计划是一个保险产品。受保人缴付一笔过保费后，可即时享有保证定额的收入，每月支付直至终身。

香港年金公司在风险可控的前提下，会尽量满足申请人的认购需求。香港年金公司已作好准备，把首次发行额度由目前的 100 亿港元提升一倍至 200 亿港元。

假如认购总额超出此批次的最终发行额度，香港年金公司将会订出一个「分配金额上限」，认购少于或等同该上限的申请人将获全额分配，而其他申请人则只会获分配至该分配金额上限，但这只属第一阶段的获分配认购金额，申请人最终可投保金额需根据第二阶段内的财务需要分析结果才能作实。

申请人将于 9 月中开始陆续收到分配结果，并会获安排出席销售会面以办理投保手续。销售会面会为申请人进行财务需要分析，以确定申请人是否适合投保获分配的全部金额。申请人于会面完成后便可缴付保费，并由下一个月份起收取保证每月年金金额。因预期申请人数众

多，要全部处理完毕这次的销售程序，可能需时半年直至2019年3月。

金管局全力支持和配合香港年金计划，除了提供所需资本，亦为香港年金公司收到的保费作投资管理，务求取得稳定的长远投资回报，为香港年金计划的财务可行性和可持续性提供坚实的基础。

香港年金计划除了可为香港市民退休时提供一个吸引的退休财务安排外，亦可以促进香港年金市场的进一步发展。

Source 来源：

http://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180705-5.shtml

Hong Kong Companies Registry Announces Introduction of Open-ended Fund Company Structure

On July 13, 2018, Hong Kong Companies Registry announces that a new form of company called "Open-ended Fund Company" (OFC) will be introduced with effect from July 30, 2018.

Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in a corporate form owing to various restrictions on capital reduction under the Companies Ordinance (CO). The Securities and Futures (Amendment) Ordinance 2016 (the Amendment Ordinance) introduces a new OFC structure in Hong Kong. This will allow investment funds to be set up in the form of a company, but with the flexibility for investors to trade the funds through the creation and cancellation of shares.

Under the OFC regime, the Securities and Futures Commission (SFC), being the principal regulator, is responsible for the registration and regulation of OFCs. The legal and regulatory requirements relating to OFCs are set out in Part IVA of the Securities and Futures Ordinance (SFO) and the Securities and Futures (Open-ended Fund Companies) Rules (OFC Rules).

The Registrar of Companies (the Registrar) oversees the incorporation and statutory corporate filings of OFCs and the Official Receiver the winding-up procedures.

<u>One-stop Establishment Process of OFCs</u>

Under sections 112C and 112D of the SFO, an OFC will be established upon registration with the SFC and obtaining a certificate of incorporation from the Registrar. This is done via a "one-stop approach" whereby an applicant only needs to submit all documents and fees in respect of the application for incorporation and business registration of the OFC as required by the Registrar and the Commissioner of Inland Revenue respectively to the SFC. Registration with the SFC will take effect upon the issue of a certificate of incorporation by the Registrar.

<u>Filing Obligations of OFCs after Incorporation</u>

As OFCs are incorporated under the SFO, they will be subject to the filing obligations under the SFO and the OFC Rules (rather than the CO). However, regarding major changes in company particulars, the filing requirements for OFCs are largely the same as those for conventional companies under the CO. For example, the following changes of OFCs are required to be reported to the Registrar: (i) Change of company name; (ii) Change of address of registered office; (iii) Change of directors (appointment / cessation of appointment / change of particulars); and (iv) Alteration of instrument of incorporation.

Any change of company name and appointment of new director(s) of an OFC will require prior approval from the SFC. The specified forms reporting the change of company name (together with the appropriate fee) and appointment of director(s) will need to be delivered to the SFC first. The SFC will send the relevant forms and fee to the Registrar for registration after approval is given by the SFC to the relevant change.

Unlike conventional companies, however, given their special nature, OFCs are not required to file any annual return, notice of alteration of share capital, return of allotment, return of share redemption or buy-back and notice relating to mortgage and charge, etc. to the Registrar.

<u>Search on OFC Information</u>

The Registrar will maintain an OFC Register which contains: (i) the information in every document registered by the Registrar; (ii) the information in every certificate issued by the Registrar; and (iii) an index of directors of OFCs. The OFC Register will be available for public inspection.

香港公司注册处公布引入开放式基金型公司的结构

2018年7月13日，香港公司注册处公布，名为「开放式基金型公司」的新公司形式将于2018年7月30日推出。

目前，《公司条例》对公司减少股本设有种种规限，因此，根据香港的法例，开放式投资基金只可以单位信托的形式成立，而不得以公司形式成立。《2016年证券及期货（修订）条例》（下称「"修订条例"」）将开放式基金型公司的新结构引入香港。此举让投资基金能以公司形式成立，借着灵活发行和取消股份，供投资者买卖基金。

在开放式基金型公司制度下，证券及期货事务监察委员会（下称「证监会」）担任主要监管机构，负责开放式基金型公司的注册及监管事宜。关于开放式基金型公司的法例和监管规定载列于《证券及期货条例》第 IVA 部及《 证券及期货（开放式基金型公司）规则》（下称「开放式基金型公司规则」）内。

公司注册处处长（下称「处长」）负责开放式基金型公司成立为法团和法定法团文件存档事宜，而破产管理署署长则负责开放式基金型公司的清盘程序。

开放式基金型公司的「一站式」成立程序

根据 《证券及期货条例》第 112C 及 112D 条，开放式基金型公司在获证监会注册及得到处长发出的公司注册证明书后即告成立，这将会透过「一站式」程序进行。在此程序下，申请人只须就申请开放式基金型公司成立为法团及商业登记的事宜，向证监会提交处长及税务局局长要求的所有文件及费用。证监会的注册会在处长发出公司注册证明书时同步生效。

开放式基金型公司成立为法团后交付文件存档的责任

由于开放式基金型公司是根据《证券及期货条例》成立为法团，故须受《证券及期货条例》及 《开放式基金型公司规则》（而非《公司条例》) 所载关于交付文件存档的责任的条文规管。虽然如此，有关公司资料的重大更改，开放式基金型公司须交付文件存档的规定，与 《公司条例》适用于普通公司的规定大致相同。例如，开放式基金型公司须就以下各项更改，向处长申报：(i）公司名称的更改；（ii）注册办事处地址的更改；(iii) 董事（委任/停任/更改详情）的更改；及（iv）法团成立文书的修改。

开放式基金型公司如更改公司名称及委任新董事，均须获得证监会的事先批准。开放式基金型公司须首先将用以申报更改公司名称（连同适当费用）及委任董事的指明表格交付证监会，证监会会在批准有关更改后，将相关表格及费用送交处长登记。

有别于普通公司，开放式基金型公司由于性质特殊无须向处长提交任何周年申报表，更改股本通知书，股份配发申报书，赎回或回购股份申报表，以及与按揭及押记事宜有关的通知等。

开放式基金型公司资料的查册

处长会备存开放式基金型公司登记册，该登记册载有：（i）获处长登记的每份文件的资料；（ii）处长发出的每份证明书的资料；及 （iii）开放式基金型公司的董事索引。开放式基金型公司登记册会提供予公众查阅。

Source 来源：

https://www.cr.gov.hk/en/publications/docs/ec4-2018-e.pdf

US Securities and Exchange Commission Charges Credit Suisse Group AG with Foreign Corrupt Practices Act Violations

On July 5, 2018, the US Securities and Exchange Commission (SEC) announced that Credit Suisse Group AG will pay approximately US$30 million to resolve SEC charges that it obtained investment banking business in the Asia-Pacific region by corruptly influencing foreign officials in violation of Foreign Corrupt Practices Act.

According to the SEC's order, several senior Credit Suisse managers in the Asia-Pacific region sought to win business by hiring and promoting individuals connected to government officials as part of a quid pro quo arrangement. While the practice of hiring client referrals bypassed the firm's normal hiring process, employees in other Credit Suisse subsidiaries and affiliates were aware of it and in some instances approved these "relationship hires" or "referral hires." The SEC's order found that in a six-year period, Credit Suisse offered to hire more than 100 individuals referred by or connected to foreign government officials, resulting in millions of dollars of business revenue.

The SEC's order finds that Credit Suisse violated the anti-bribery and internal accounting controls provisions of the Securities Exchange Act of 1934. Credit Suisse agreed to pay disgorgement of US$24.9 million plus US$4.8 million in interest to settle the SEC's case. Credit Suisse also agreed to pay a US$47 million criminal penalty to the U.S. Department of Justice.

美国证券交易委员会指控瑞士信贷银行有限公司违反《反海外腐败法》

美国证券交易委员会(证交会)于 2018 年 7 月 5 日称，瑞士信贷银行有限公司(瑞士信贷)将支付约 3000 万美元，以了结证交会因其违反《反海外腐败法》行贿海外官员，使其获得在亚太地区银行业务的投资的指控。

根据美国证券交易委员会的命令，作为交换条件安排的一部分，瑞士信贷驻亚太区的一些管理人员以雇用或提拔与政府官员有关联的人，来为赢得亚太地区投资业务。尽管银行雇用政府官员举荐的人绕过了正常招聘程序，但瑞士信贷银行其它子公司和附属公司员工都知道这件事，并且在某些情况下批准了这些"关系雇用"或"推荐雇用"。证交会的命令发现，在 6 年期间内，瑞士信贷通过雇用超过 100 名由外国政府官员转介或与外国政府官员有关的人，从而获得数以百万美元计的营业收益。

证交会的命令裁定瑞士信贷违反了《1934 证券交易法》中反贿赂和内部会计监控规定。瑞士信贷同意支付 2490

万美元的赔偿金以及 480 万美元的利息来了结证交会的案件。同时，瑞士信贷同意向美国司法部支付 4700 万美元刑事罚款。

Source 来源：

https://www.sec.gov/news/press-release/2018-128

US Securities and Exchange Commission Charges Attorney and Law Firm Business Manager with Illegal Sales of UBI Blockchain Internet Stock

On July 2, 2018, the US Securities and Exchange Commission (SEC) charged two men alleged to have profited from illegal sales of stock of a company claiming to have a blockchain-related business.

According to the SEC's complaint, attorney T.J. Jesky (Jesky) and his law firm's business affairs manager, Mark F. DeStefano (DeStefano), made approximately US$1.4 million by selling shares in UBI Blockchain Internet Ltd. (UBI Blockchain) over a 10-day period from December 26, 2017 to January 5, 2018. The sales stopped when the SEC temporarily suspended trading in UBI Blockchain stock earlier this year due to concerns about the accuracy of assertions in its SEC filings and unusual and unexplained market activity.

The SEC's complaint alleges that Jesky, and DeStefano, both residents of Nevada, received 72,000 restricted shares of UBI Blockchain stock in October 2017 and were permitted to sell the shares at a fixed price of US$3.70 per share under the registration statement. Instead, the complaint alleges that Jesky and DeStefano unlawfully sold the shares at much higher market prices – ranging from US$21.12 to US$48.40 – when UBI Blockchain's stock experienced an unusual price spike.

The SEC's complaint, filed in federal court in New York, charges Jesky and DeStefano with violating the registration provisions of the federal securities laws. Without admitting or denying the allegations in the SEC's complaint, Jesky and DeStefano agreed to return approximately US$1.4 million of allegedly ill-gotten gains, pay US$188,682 in penalties, and be subject to permanent injunctions. The settlement is subject to the court's approval.

The SEC has added that this case is a prime example of why it has warned retail investors to be cautious before buying stock in companies that suddenly claim to have a blockchain business.

美国证券交易委员会指控负责非法销售 UBI 区块链互联网股票的律师和律师事务所业务经理

2018 年 7 月 2 日，美国证券交易委员会（证交会）指控两名男子涉嫌，从非法销售一家声称拥有区块链相关业务的公司股票中获利。

根据证交会的指控，律师 T.J. Jesky（Jesky）及其律师事务所商务事务经理 Mark F.DeStefano（DeStefano）在 2017 年 12 月 26 日至 2018 年 1 月 5 日的 10 天期间通过出售 UBI 区块链网络有限责任公司(UBI 区块链) 的股份赚取约 140 万美元。由于担忧 UBI 区块链存档的声称事宜的准确性以及不寻常和无法解释的市场活动，证交会今年早些时候暂停了 UBI 区块链股票交易而令销售终止。

证交会的投诉称，Jesky 和 DeStefano 均为内华达州居民，于 2017 年 10 月收到 72,000 股 UBI 区块链股票限制性股票，并获准按照登记协议以每股 3.70 美元的固定价格出售股票。与此相反，该诉讼指控 Jesky 和 DeStefano 当 UBI 区块链的股票出现异常的价格飙升时，以高得多的市场价格，从 21.12 美元到 48.40 美元非法出售股票。

证交会在纽约联邦法院提起的诉讼指控 Jesky 和 DeStefano 违反了联邦证券法的相关登记规定。在没有承认或否认证交会投诉中的指控情况下，Jesky 和 DeStefano 同意返还大约 140 万美元的涉嫌非法所得，支付 188,682 美元的罚款，并受到永久禁令的约束。有关的和解须经法院批准。

证交会补充说，此案是证交会警告散户投资者在购买突然声称拥有区块链业务的公司股票之前要小心谨慎的一个最好的例子。

Source 来源：

https://www.sec.gov/news/press-release/2018-126

The Bank of England, Prudential Regulation Authority and Financial Conduct Authority Publish Discussion Paper on Building the Financial Sector's Operational Resilience

On July 5, 2018, the Bank of England, Prudential Regulation Authority and Financial Conduct Authority (collectively known as supervisory authorities) have published a joint discussion paper (DP) on an approach to improve the operational resilience of financial services firms (firms) and financial market infrastructures (FMIs).

The key areas covered by the DP are summarised at the following:

Purposes of the DP

Th DP is part of Financial Conduct Authority's ongoing collaboration and coordinated approach with the Prudential Regulation Authority and Bank of England

aimed at strengthening operational resilience of firms and FMIs.

The DP reminds firms and FMIs of existing requirements and introduces new ideas:

- planning for disruptive events as well as seeking to prevent them
- focusing on the wider impact of disruptive events, not just on restoring systems and processes
- mapping products and services to underlying systems and processes
- identifying the likely impact on customers and market participants and on their own viability
- developing a more standardized and consistent approach to setting tolerance levels for disruption to key products and services (impact tolerance)

The importance of operational resilience

An operational disruption such as one caused by a cyber-attack, failed outsourcing or technological change could impact financial stability by posing a risk to the supply of vital services on which the real economy depends, threaten the viability of individual firms and FMIs, and cause harm to consumers and other market participants in the financial system.

The supervisory authorities said that challenges for operational resilience have become even more demanding given a hostile cyber-environment and large scale technological changes. The operational resilience of firms and FMIs is a priority for the supervisory authorities and is viewed as no less important than financial resilience.

Important concepts in the supervisory authorities' approach to operational resilience

The DP discusses a number of important concepts which are relevant to all firms and FMIs:

- The supervisory authorities consider that the continuity of business services is an essential component of operational resilience. Avoiding disruption to a particular system supporting a business service is a contributing factor to operational resilience. The supervisory authorities envisage that boards and senior management should assume that individual systems and processes that support business services will be disrupted, and increase the focus on back-up plans, responses and recovery options.
- Setting impact tolerances which quantify the amount of disruption that could be tolerated in the event of an incident may be an efficient way for boards and senior management to set their own standards for operational resilience, prioritize and take investment decisions.
- Firms and FMIs manage their response to operational disruption is critical to maintaining confidence in the business services they provide. The speed and effectiveness of communications with those affected, including customers, is an important part of their overall response and could help to manage the expectations of those affected and maintain or restore confidence in the firm's business services.
- Operational resilience is already a responsibility of firms and FMIs, and an outcome supported by the existing regulatory framework. The supervisory authorities are considering the extent to which they might supplement existing policies to improve the resilience of the system as a whole, and to increase the focus on this area within individual firms and FMIs.
- The supervisory authorities are also reviewing their approach to the assessment of operational resilience matters, which may include an increased focus on firms' and FMIs' non-financial resources. Gaining assurance that appropriate impact tolerances are set, monitored and tested is likely to be a key component of future supervisory approaches.

Operational resilience of business services

The supervisory authorities consider that managing operational resilience is most effectively addressed by focusing on business services, rather than on systems and processes. The DP explains that firms and FMIs are more likely to be operationally resilient if they design and manage their operations on the assumption that disruptions will occur to their underlying systems and processes.

Operational resilience and the Financial Protection Committee

The Financial Protection Committee (FPC) is establishing its tolerance for the length of any period of disruption to the delivery of vital services the financial system provides to the economy in the context of cyber, as set out in its June 2018 Financial Stability Report. The supervisory authorities consider that the approach to operational resilience set out in the DP, in particular the focus on continuity of business services and the need for firms and FMIs to have their own impact tolerances, is consistent with the FPC's approach, complementary to the FPC's activities and supports its agenda.

Operational resilience of firms and FMIs

The DP suggests that the boards and senior management of firms and FMIs would set impact tolerances for the operational disruption of business services, on the assumption that some or all supporting systems and processes will fail. In setting impact tolerances, the supervisory authorities suggest that a firm's or FMI's board or senior management might prioritise those business services which, if disrupted, have the potential to: (a) threaten the firm's or FMI's ongoing viability; (b) cause harm to consumers and market participants; or undermine financial stability. The DP also highlights relevant existing regulatory standards related to operational resilience that firms and FMIs are already expected to meet.

Clear outcomes for operational resilience

The DP expands the idea that firms and FMIs would develop impact tolerances for important business services. These would provide clear metrics indicating when an operational disruption would represent a threat to a firm's or FMI's viability, to consumers and market participants or to financial stability. The DP also discusses what impact tolerances are and their purpose. The supervisory authorities are particularly interested in what types of metrics firms and FMIs currently use and which have proved most useful.

Supervisory assessment of operational resilience

The DP suggests that a future supervisory approach could cover four broad areas, taking into account the specificities of the relevant regulatory regimes for firms and FMIs:

- sector-wide work, including any potential stress testing developed by the Bank of England and Prudential Regulation Authority with input from the FPC;

- supervisory assessment of how firms and FMIs set and use impact tolerances;
- analysis of systems and processes that support business services; and

- assurance that firms and FMIs have the capabilities to deliver operational resilience and are in compliance with existing rules, principles, expectations and guidance.

Conclusion

The DP suggests an approach for potential supervisory expectations and assessment:

- Preparation: firms and FMIs identify and focus on the continuity of their most important business services as a means of prioritising their own analysis, work and investment in operational resilience. They set impact tolerances for their important business services and are able to demonstrate substitutability or the capability to adapt processes during disruption.

- Recovery: firms and FMIs assume disruptions will occur, and develop the means by which they can adapt their business processes and practices in the event of shocks in order to preserve continuity of service.

- Communications: firms and FMIs have strategies for communicating with their internal and external stakeholders, including the supervisory authorities and consumers. This should include how to handle the situation to minimise the consequences of disruption.

- Governance: firms' and FMIs' boards and senior management are crucial in setting the business and operational strategies and overseeing their execution in order to ensure operational resilience.

Responses to questions posed in the DP are encouraged from all types of firms and FMIs, trade associations, consumer bodies, individuals and businesses as users of financial services, and especially those who have suffered harm from disruptive events. The discussion period ends on October 5, 2018.

The DP signals to shift the focus from data protection-based cybersecurity to the assurance of the continuity of business services provided by banks and other financial services providers

英格兰银行、审慎监管局和金融行为监管局发表关于建立金融业营运适应力的讨论文件

英格兰银行、审慎监管局 和 金融行为监管局（统称监管机构）在 2018 年 7 月 5 日 发布了一份关于提高金融服务公司（金融公司）和金融市场基础设施机构（基础设施机构）营运适应力模式的联合讨论文件（讨论文件）。

讨论文件涵盖的主要范围摘要如下：

讨论文件的目的

讨论文件是金融行为监管局与审慎监管局和英格兰银行持续合作和协调方法的一部分，以加强金融公司和基础设施机构的营运适应力。

讨论文件提醒金融公司和基础设施机构有关现有的要求并引入新的思路：

- 规划应对干扰事件及力图防止干扰事件的发生

- 专注于干扰事件的更广泛影响，而不只是恢复系统和流程
- 将产品和服务与基本系统和流程相匹配
- 确定对客户和市场参与者以及对它们自身持续性的可能影响
- 制定更加标准化和一致的方法，为主要产品和服务受干扰设定容许水平 (受影响的容许程度)

营运适应力的重要性

由于网络攻击，外判工作失败或技术变革导致营运受到干扰，可能会对实体经济所依赖的重要服务供应构成风险，从而威胁到个别金融公司和基础设施机构的稳健营运及影响金融稳定性，并导致对金融系统中的消费者和其他市场参与者造成伤害。

监管机构表示，鉴于充满敌意的网络环境和大规模的技术变革，令营运适应力的挑战变得更加苛刻。金融公司和基础设施机构的营运适应力是监管机构的优先处理事项，并且被视为与金融的稳健性同样重要。

监管当局处理营运适应力模式的重要概念

讨论文件讨论了与所有金融公司和基础设施机构相关的一些重要概念

- 监管当局认为，商业服务的连续性是营运适应力的重要组成部分。避免对支援商业服务的特定系统造成干扰，是营运适应力的一个重要因素。监管机构预期董事会和高级管理层应假设支援商业服务的各个系统和流程将受干扰，并将重点放在备份计划，应对措施和恢复方案的选项上。
- 制定受影响的容许程度，以量化发生事故时，可以容忍受干扰的程度，使董事会和高级管理层可以设定自身的营运适应力标准，厘定优先次序并做出投资决策的有效方式。
- 金融公司和基础设施机构处理其对营运受干扰的应对时，维持对它们所提供商业服务的信心至关重要。与受影响者(包括客户) 沟通的速度和有效性是它们整体应对的重要部分，可以帮助处理受影响者的期望，并维持或恢复对公司商业服务的信心。
- 营运适应力已经是金融公司和基础设施机构的责任，也是现有监管框架支持的结果。监管机构正在考虑它们可以在多大程度上补充现有政策以提高整个系统的适应力，并对个别金融公司和基础设施机构在这方面加强关注。
- 监管机构也正在审查其评估营运适应力问题的方法，其中可能包括更加关注金融公司和基础设施机构的非财务资源。确保设置，监控和测试适当的受影响的容许程度，可能是未来监管模式的重要组成部分 。

商业服务的营运适应力

监管机构认为，通过关注商业服务而不是系统和流程，可以最有效地解决管理营运适应力的问题。讨论文件解释，如果金融公司和基础设施机构在假设其基础系统和流程发生受干扰的情况下设计和管理其营运，则可能使营运更具适应力。

营运适应力和金融保护委员会

正如 2018 年 6 月金融稳定报告所述，金融保护委员会正在对金融系统在网络环境下，为经济提供重要服务受任何干扰期间的长度，确定其容许程度。监管机构认为，讨论文件中提出的营运适应力模式，特别是对商业服务连续性的关注以及金融公司和基础设施机构需要订立自身受影响的容许程度，这与金融保护委员的方法一致，是对金融保护委员活动的补充，并支持其议程。

金融公司和基础设施机构的营运适应力

讨论文件建议金融公司和基础设施机构的董事会和高级管理层，在假设某些或所有支持系统和流程都将告失败，对商业服务的营运受干扰设置受影响的容许程度。在设定受影响的容许程度时，监管机构建议金融公司和基础设施机构的董事会或高级管理层可优先考虑，那些商业服务如果受到干扰，则有可能：（a）威胁到金融公司和基础设施机构的持续可行性；（b）对消费者和市场参与者造成伤害; 或破坏金融稳定。讨论文件还强调金融公司和基础设施机构已预计要满足与营运适应力相关的现行监管标准。

营运适应力的明确作用

讨论文件扩展了金融公司和基础设施机构对建立重要商业服务受影响的容许程度的想法。这些将提供明确的指标，表明运营受干扰时会对金融公司和基础设施机构的持续性，对消费者和市场参与者或金融稳定构成的威胁。讨论文件还讨论了受影响的容许程度的性质及目的。监管机构特别关注金融公司和基础设施机构目前使用哪些类型的指标以及哪些指标最有效用。

对营运适应力的监管评估

讨论文件建议未来的监管模式可以涵盖四个广泛的领域，同时考虑到金融公司和基础设施机构相关监管制度的具体情况：

- 全行业工作，包括英格兰银行和审慎监管局根据金融政策委员会的意见制定的任何潜在压力测试；
- 监督评估金融公司和基础设施机构如何设定和应用受影响的容许程度；
- 分析支援商业服务的系统和流程；和
- 确保金融公司和基础设施机构具备提供营运适应力的能力，并遵守现有规则、原则、期望和指引。

结论

讨论文件提出了一个可能监管的期望和评估模式：

- 准备工作：金融公司和基础设施机构确定并关注其最重要的商业服务的连续性，以此作为其在营运适应力的自身分析，工作和投资的优先次序准则。它们为其重要的商业服务设定了受影响的容许程度，并且能够证明在受干扰的期间，有关的替代程度或适应流程的能力。
- 恢复方案：金融公司和基础设施机构假设将发生干扰，并制订可以在发生干扰时调整其业务流程和实践的方法，以保持服务的连续性。
- 信息通报：金融公司和基础设施机构有与内部和外部持份者（包括监管机构和消费者）沟通的策略。这应该包括如何处理相关的的情况，以尽量减少干扰的后果。
- 公司管治：金融公司和基础设施机构的董事会和高级管理层在制定业务和营运策略以及监督策略的执行方面至关重要，以确保营运的适应力。

监管机构鼓励所有类型的金融公司和基础设施机构，行业协会，消费者团体，个人和企业作为金融服务的用户，特别是那些遭受干扰事件伤害的人，对讨论文件中提出的问题表达意见。讨论期于 2018 年 10 月 5 日结束。

讨论文件显然表示将重点从基于数据保护的网络安全转移到银行和其他金融服务提供者提供商业服务连续性的保证。

Source 来源：

https://www.fca.org.uk/news/press-releases/building-uk-financial-sector%E2%80%99s-operational-resilience-discussion-paper

Singapore Exchange Proposes to Recalibrate Financial and Capital Requirements of Bank and Remote Members

On July 5, 2018, Singapore Exchange (SGX) is seeking feedback on proposed recalibrations of the financial and capital requirements of Remote Clearing Members, Remote Trading Members, Bank Clearing Members and Bank Trading Members.

The amendments take into account global regulatory developments and are aimed at reflecting the levels of risk the members pose. The proposed amendments are to the Clearing Rules of SGX-Derivatives Clearing and the Central Depository, the Trading Rules of SGX-Securities Trading and the Futures Trading Rules.

The proposed changes include:

- The removal of SGX-imposed risk-based capital requirements on Bank Members and Remote Members, and reliance on the respective home regulator's financial and capital requirements.
- The redefinition of base capital for Bank and Remote Members.
- The removal of net liquid capital requirements for Remote Trading Members.

The public can submit feedback on the proposed amendments till July 27, 2018.

SGX expects that if their proposals are accepted, Singapore markets and the financial industry will benefit from increased relevance and competitiveness.

新加坡交易所建议重定银行会员和场外会员的财务和资本要求

新加坡交易所（新交所）在 2018 年 7 月 5 日正在寻求对场外清算会员、场外交易会员、银行结算会员和银行交易会员的财务和资本要求的重定建议的意见。

修订建议已考虑了全球监管的发展和旨在反映成员提出的风险水平。建议修订是針對新交所衍生工具结算及中央托管的结算规则、新交所证券交易的交易规则及期货交易规则而作出的。

建议的修订包括：

- 取消新交所对银行会员和场外会员的风险为本的资本要求，并依赖各自的所属地监管机构的财务和资本要求。
- 为银行会员和场外会员的资本基础金额重新定义。
- 取消场外交易会员的净流动资本要求。

公众可以对有关修订建议，提交意见直至 2018 年 7 月 27 日。

新交所期望，如果有关的修订被接纳，新加坡市场和金融业将受益于针对性和竞争力的提高。

Source 来源：

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

SIX Swiss Exchange Launches Full End-to-end and Fully Integrated Digital Asset Trading, Settlement and Custody Service

On July 6, 2018, Switzerland's stock exchange - owned and managed by SIX Swiss Exchange (SIX) - announced that it is building a fully integrated trading, settlement and custody infrastructure for digital assets. SIX is fully regulated as an operator of Financial Market Infrastructure by Swiss Authorities, Swiss Financial Market Supervisory Authority and the Swiss National Bank, and intends that the planned "digital asset ecosystem" - SIX Digital Exchange (SDX) - will enjoy the same standard of oversight and regulation.

SIX said that the digital space currently faces a number of key challenges which include the absence of regulation that ensures official safety, security, stability, transparency and accountability – all of which contribute to a lack of trust.

SIX believes to be in a unique position to contribute to the digital space in that it runs the entire securities and payments value chain for Switzerland already, and is ideally positioned to create the digital ecosystem for the future, allowing existing and new market participants to develop their business models for the opportunities available in this new environment.

SDX will be the first market infrastructure in the world to offer a fully integrated end to end trading, settlement and custody service for digital assets. The service will provide a safe environment for issuing and trading digital assets, and enable the tokenization of existing securities and non-bankable assets to make previously untradeable assets tradeable. Following an agile approach to meet the needs of today's dynamic environment, the first services will be rolled out in mid-2019.

The service will be mainly based on Distributed Ledger Technology. The implementation approach will provide a bridge for clients from the traditional to the new world, in a timeframe which allows clients to choose for themselves how and when to avail themselves of the new opportunities the new ecosystem provides.

The establishment of SDX is the beginning of a new era for capital markets infrastructures to bridge the gap between traditional financial services and digital communities which is a major milestone for Bitcoin and cryptocurrencies.

瑞士证券交易所推出全面的端到端和数字资产的交易、结算和托管一体化服务

2018 年 7 月 6 日，瑞士证券交易所母公司 SIX Swiss Exchange (瑞交所）宣布，它正在为数字资产建立一个全面的交易、结算和托管一体化服务的基础设施。作为金融市场基础设施的运营商，瑞交所由瑞士金融市场监管局和瑞士国家银行作全面监管，而有意计划推出的 "数字資產生態系統" - SIX 数字交易所(数字交易所) 将受同样的监督和监管标准。

瑞交所表示，数字空间目前面临着许多关键挑战。其中包括缺乏确保官方安全、保障，稳定性、透明度和问责制的监管 – 所有这些都导致缺乏信任。

瑞交所相信其处于一个独特的位置，可以为数字空间作出贡献，因为它已经为瑞士运行整个证券和支付价值链，并且理想地定位于为未来创建数字生态系统，允许现有和新的市场参与者在这个新环境所提供的机会，开发他们的商业模式 。

数字交易所将成为全球首个为数字资产提供全面的端到端交易，结算和托管一体化服务的市场基础设施。该服务将为发行和交易数字资产提供安全的环境，并使现有证券和非银行资产的代币化能够使以前无法交易的资产可进行交易。采用灵活方法满足当今动态环境的需求，首批服务将于 2019 年中期推出。

有关的服务将主要基于分布式分类帐技术。实施方法将为客户提供从传统世界到新世界的桥梁，在一个时间框架内，客户可以自行选择如何以及何时利用新生态系统提供的新机会。

数字交易所的建立是资本市场基础设施新时代的开始，以弥合传统金融服务与数字社区之间的差距，这是比特币和加密货币的一个重要里程碑。

Source 来源：

https://www.six-group.com/en/home/media/releases/2018/20180706-six-digitalexchange.html