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Financial Services Regulatory Update
金融服务监管资讯

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European Securities and Markets Authority's Focus on New International Financial Reporting Standards and Non-financial Information in Issuers' 2018 Annual Reports

On October 26, 2018, the European Securities and Markets Authority (ESMA) published the priorities that the European enforcers will particularly consider when examining 2018 financial statements of listed companies. These priorities are set out in the annual Public Statement on European Common Enforcement Priorities (Statement), which promotes the consistent application of the International Financial Reporting Standards (IFRS) and other financial and non-financial reporting requirements.

The enforcement priorities for IFRS financial statements in 2018 include:

- Specific issues relating to the application of IFRS 15 Revenue from Contracts with Customers and IFRS 9 Financial Instruments: Issuers should in particular focus on identification and satisfaction of performance obligations, disaggregation of revenue and the disclosure of significant judgments related to recognition of revenue. For credit institutions, ESMA highlights the application of the new expected credit loss model (ECL) and, in particular, careful consideration and disclosure of significant inputs used in the assessment of a significant increase of credit risk and in the determination of ECL;

- Disclosure of the expected impact of the implementation of IFRS 16 Leases: The publication of financial statements will happen after the entry into effect of IFRS 16 and all issuers should be in a position to disclose the expected impact. Issuers that will be significantly impacted are also encouraged to consider what information would enable analysts and other users to update their models.

In addition to these common enforcement priorities, ESMA highlights specific requirements relating to the sections of the annual financial report other than the financial statements (such as management reports and non-financial statements). These include specific requirements on:

- the disclosures of non-financial information, and notably those related to environmental and climate change-related matters; and

- the application of the ESMA Guidelines on Alternative Performance Measures.

Finally, ESMA highlights the importance of disclosures analyzing the possible impacts of the decision of the United Kingdom to leave the European Union.

ESMA and European national enforcers will monitor and supervise the application of the IFRS requirements as well as any other relevant provisions outlined in the Statement, with national authorities incorporating them into their reviews and taking corrective actions where appropriate. ESMA will collect data on how European listed entities have applied the priorities and ESMA will report on findings regarding these priorities in its Report on the 2019 enforcement activities.

欧洲证券和市场管理局关注上市发行人在2018年度报告中执行新的国际财务报告准则和非财务信息

2018年10月26日，欧洲证券和市场管理局（ESMA）公布了欧洲执法者在审查2018年上市公司财务报表时将特别考虑的优先事项。这些优先事项载于欧洲共同执行优先事项年度公开声明(声明)，推动 了《国际财务报告准则》(IFRS) 的一致应用以及其他财务和非财务报告要求。

2018年 IFRS 财务报表的监管关注点包括：

- 具体问题与 IFRS 15号(客户合同收入)和 IFRS 9号(金融工具的应用)有关：上市发行人应特别注重鉴定和满足履行的责任，收入的分类以及与确认收入相关的重大判断的披露。对于信贷机构，ESMA 强调应用新的预期信贷亏损模式(ECL)，及

特别是仔细考虑和披露用于评估显着增加的信贷风险和确定符合 ECL 的重要投放;

- 披露实施 IFRS 16号租赁的预期影响：若财务报表在 IFRS 16号生效后发布, 所有上市发行人均应能够披露预期的影响。还鼓励受到重大影响的上市发行人考虑哪些信息可以使分析师和其他用户更新他们的模式。

除了这些共同的监管关注事项外, ESMA 还强调与财务报表(如管理报告和非财务报表)之外的年度财务报告中各部分相关的具体要求。 这些具体要求包括：

- 非财务信息的披露, 特别是与环境和气候变化有关的事项; 及

- ESMA 关于"替代绩效衡量的指引"的应用。

最后, ESMA 强调披露分析英国决定脱离欧盟可能产生影响的重要性。

ESMA 和欧洲国家执法人员将监察和监督 IFRS 要求的应用以及声明中概述的任何其他相关规定, 各国有关当局将其纳入审核范围并在适当情况下采取纠正措施。ESMA 将收集有关欧洲上市实体如何应用优先事项的数据, 而 ESMA 将在其2019年执行活动报告中公布有关这些优先事项的调查结果。

Source 來源:
https://www.esma.europa.eu/sites/default/files/library/esma71-99-1052_press_release_on_2018_enforcement_priorities.pdf

Financial Conduct Authority of United Kingdom Fines Liberty Mutual Insurance Europe SE £5.2 Million for Failures in its Oversight of Mobile Phone Insurance Claims and Complaints Handling

On October 30, 2018, the Financial Conduct Authority of United Kingdom (FCA) has fined Liberty Mutual Insurance Europe SE (Liberty) £5,280,800 for failures between July 5, 2010 and June 7, 2015 in its oversight of its mobile phone insurance claims and complaints handling processes administered through a third party.

Liberty is a large UK insurer who entered into a relationship in the UK with a third party to enable them to provide mobile phone insurance to retail customers. The third party undertook all administrative functions associated with the mobile phone insurance on Liberty's behalf including all claims and complaints handling functions. Liberty retained regulatory responsibility for ensuring that claims and complaints made by customers were handled fairly, and ought to have ensured that it had in place adequate systems and controls to oversee the activities of the third party throughout. It did not.

Liberty's customers were exposed to the possibility that their claims and complaints would not be handled fairly. During the relevant period some claims were unfairly declined or not investigated adequately. Some customers who complained about this had the original decision overturned which created a de facto two-stage claims process and others had complaints dismissed without a proper investigation having been undertaken.

Prior to the commencement of the Enforcement investigation, a voluntary redress and remediation exercise was undertaken by the third party in conjunction to Liberty in relation to claims which may have been unfairly rejected. The total amount of redress offered to customers who may have suffered detriment was nearly £4 million. This has been taken into account in calculating the financial penalty.

Liberty settled at an early stage of the investigation and therefore qualified for a 30% discount. Without the discount, the financial penalty would have been £7,544,000.

The FCA said that fair, effective, and prompt settlement of claims is a fundamental requirement of mobile phone insurance, and customers should expect that any claim they make, or any subsequent complaint they lodge, will be dealt with fairly. Insurers must put in place adequate measures to make sure that claims and complaints and handled fairly, especially where those functions are outsourced.

英国金融行为监管局就 Liberty Mutual Insurance Europe SE 监管移动电话保险索赔和处理投诉不当处以罚款520万英镑

2018年10月30日, 英国金融行为监管局 (英国金管局) 就 Liberty Mutual Insurance Europe SE（Liberty）在2010年7月5日至2015年6月7日期间, 不当监管移动电话保险索赔和通过第三方处理投诉程序, 处以罚款5,280,800英镑。

Liberty 是一家英国大型保险公司, 它与第三方在英国建立合作关系, 使其能向零售客户提供移动电话保险。第三方代表 Liberty 执行与移动电话保险相关的所有行政职能, 包括所有索赔和投诉处理职能。 Liberty 保留监管责任, 确保客户提出的索赔和投诉得到公平处理, 并且应该确保其拥有适当的系统和控制措施来监督整个第三方的活动。但 Liberty 并没有履行有关的职能。

Liberty 的客户面临索赔和投诉可能得不到公平处理。在相关期间, 一些索赔遭到不公平地拒绝或没有得到充分调查。一些投诉的客户原先的决定虽被推翻, 但这导致了事

实上的两阶段索赔程序, 而其他客户则在没有进行适当调查的情况下被驳回了投诉。

在执法调查开始之前, 第三方与 Liberty 联手就可能遭到不公平拒绝的索赔进行了自愿补偿和补救措施。向可能遭受损失的客户提供的补偿总额近400万英镑。英国金管局在计算经济处罚时已考虑到相关的补偿措施。

Liberty 在调查的早期阶段就达成和解, 因此有资格获得30％的折扣。若没有折扣, 罚款将为7,544,000英镑。

英国金管局表示: 公平, 有效和迅速解决索赔是移动电话保险的基本要求, 客户应该期望他们提出的任何索赔或其后提出的任何投诉都得到公平处理。保险公司必须采取适当措施, 确保索赔和投诉得到公平处理, 特别是已将有关的职能外判。

Source 來源:
https://www.fca.org.uk/news/press-releases/liberty-mutual-insurance-europe-se-fined

Hong Kong Monetary Authority and Monetary Authority of Macao Jointly Promote the Enhanced Competency Framework for Banking Practitioners in Macao

The Hong Kong Monetary Authority (HKMA) and the Monetary Authority of Macao (AMCM) signed a Memorandum of Understanding (Memorandum) on October 26, 2018 to jointly promote mutually recognized professional training and certifications under the Enhanced Competency Framework for Banking Practitioners (ECF). This would support talent development and facilitate mobility of talent for the banking industry in Hong Kong and Macao.

Developed by the HKMA in collaboration with the banking industry, the Hong Kong Institute of Bankers (HKIB) and other relevant professional bodies, the ECF provides a set of common competency standards for the industry. According to the Memorandum, the HKMA and the AMCM have designated the HKIB and the Macau Institute of Financial Services (MIFS) to join hands in providing related professional training and implementing the mutual recognition of professional certifications under the ECF. The HKIB and the MIFS will also offer a bridging course on relevant laws and regulations of Hong Kong and Macao for banking practitioners in the respective jurisdictions.

The AMCM said that the signing of the Memorandum between the AMCM and the HKMA on the introduction of the ECF will help strengthen the professional competence training for financial practitioners of Macao. AMCM believes that this will help enhance the competence level of banking practitioners in Macao and achieve mutual recognition of certifications in both jurisdictions so as to provide higher standards of professional services to the residents of Macao and help promote Macao's status in international financial services.

The HKMA said that the cooperation between the HKMA and the AMCM to promote the ECF in Macao is a major milestone, signifying that they have entered a new stage in promoting talent development and facilitating the mobility of talent for the banking industry in Hong Kong and Macao. Whilst the ECF is not a mandatory licensing regime, HKMA hopes that through the ECF, banking practitioners will be encouraged to enhance their core competence and conduct. Banking practitioners could also gain a better understanding of the risks associated with their relevant professional areas. The HKMA believes that their cooperation will help expand the pool of banking talent in Hong Kong and Macao and support the continued development of the banking industry in both jurisdictions.

香港金融管理局与澳门金融管理局合作于澳门推行银行专业资历架构

香港金融管理局 (香港金管局) 与澳门金融管理局 (澳门金管局) 于2018年10月26日签署合作备忘录(备忘录), 共同推行银行专业资历架构的专业培训及资格互认, 以加强两地的银行业人才发展及流通。

银行专业资历架构为业界提供共用的专业能力标准, 是香港金管局与香港银行业界、香港银行学会及其他相关专业团体合作的成果。根据备忘录, 香港金管局与澳门金管局已经委托香港银行学会及澳门金融学会合作执行相关的专业培训和资格互认, 同时为于两地流动的银行从业员分别提供香港和澳门的相关法规衔接课程。

澳门金管局表示：澳门金管局与香港金管局签署关于引入银行专业资历架构的备忘录, 将有助加强澳门金融从业人员的专业能力培训。澳门金管局相信, 随着合作备忘录的签署, 将有助澳门银行从业人员水平的提升,实现两地人才区域认证, 为澳门居民提供更专业的服务, 并有助提升澳门在金融服务领域上的国际地位。

香港金管局表示：香港金管局与澳门金管局携手, 一同于澳门推行银行专业资历架构, 是一个重要的里程碑, 标志着双方推广银行业的人才发展及协助人才于两地流通的新阶段。虽然银行专业资历架构并非一项发牌制度, 香港金管局希望藉此鼓励从业员提升专业能力和操守, 同时亦可以加强他们对相关运作范畴风险的了解。香港金管局有信心, 双方的合作会为香港及澳门的银行业扩大人才库, 从而支持业界的发展。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181030-5.shtml

Hong Kong Monetary Authority's Launch of eTradeConnect and the Collaboration with we.trade

On October 31, 2018, the Hong Kong Monetary Authority (HKMA) announced the official launch of eTradeConnect, a blockchain-based trade finance platform developed by a consortium of twelve major banks in Hong Kong. Formerly known as the Hong Kong Trade Finance Platform, eTradeConnect aims to improve trade efficiency, build better trust among trade participants, reduce risks and facilitate trade counterparties to obtain financing by digitizing trade documents, automating trade finance processes and leveraging the features of blockchain technology.

The commercialization of the trade finance project was first announced in Oct 2017 arising from the fruitful results of an earlier proof-of-concept (PoC) trial facilitated by the HKMA. The project was initially led by seven major banks and later joined by five additional banks, adding up to a consortium of twelve member banks. eTradeConnect is the first large-scale multi-bank blockchain project in Hong Kong.

In order to facilitate cross-border trades, the HKMA has been proactively looking for opportunities to connect eTradeConnect with trade platforms in other regions. The HKMA witnessed the signing of a Memorandum of Understanding between the operators of eTradeConnect and the we.trade to conduct a POC on connecting the two platforms.

The HKMA said that it is a remarkable moment to witness the birth of the first blockchain-based trade finance platform built by key industry players in Hong Kong. It demonstrates the willingness of the financial industry to adopt new technology in the new era of smart banking. The next key milestone is to link eTradeConnect with platforms from other regions in order to enable cross-border trade financing. The connection between eTradeConnect and we.trade platform paves the way for the digitization of cross-border trades in the Asia and Europe trade corridor, and will serve as a good reference for the future connection of eTradeConnect to other trade finance platforms.

香港金融管理局的「贸易联动」启动仪式及与欧洲贸易融资平台展开合作

香港金融管理局（金管局）在2018年10月31日宣布「贸易联动」的正式启动。这是一个建基于区块链、由香港十二间主要银行组成的联盟共同开发的贸易融资平台。「贸易联动」前称为「香港贸易融资平台」。通过数码化贸易文件，自动化贸易融资流程和利用区块链技术的功能，「贸易联动」能提高贸易效率，增加贸易参与者之间的信任，降低贸易风险和促进贸易流程中获得融资的机会。

建立贸易融资系统的项目于2017年10月首次公布，该项目源于金管局推动的贸易融资概念验证(PoC)。由于结果正面，香港七间主要银行决定组成一个联盟，把 PoC 构建成一个商业平台。其后再有五间银行加入,总成员增至十二间银行。「贸易联动」是香港首个大型的跨银行区块链项目。

为促进跨境贸易，金管局一直积极寻找机会把「贸易联动」与其他地区的贸易平台联系起来。金管局今日见证了由「贸易联动」与欧洲 we.trade 两个平台的营运商签署合作谅解备忘录，以展开一个新的概念验证，把两个平台对接。

金管局表示：能够见证首个建基于区块链并由香港主要业界构建的贸易融资平台的诞生，是一个值得纪念的时刻。这表明了金融业在智慧银行新纪元中采用新技术的意愿。下一个重要的里程碑是将『贸易联动』与其他地区的平台联系起来，以促进跨境贸易融资。『贸易联动』与 we.trade 的合作为亚洲和欧洲之间的跨境贸易走廊数码化铺路，同时亦为两个大型区块链平台之间的对接建立了规范。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181031-4.shtml

Hong Kong Monetary Authority Promotes in Tokyo Hong Kong's Leading Platform as an International Financial Center and Gateway of China

Mr. Norman Chan, Chief Executive of the Hong Kong Monetary Authority (HKMA), was in Tokyo on November 1, 2018 to promote Hong Kong's leading platform as an international financial center and gateway of China.

The seminar, led by Mr. Norman Chan on "China Growth Story: What's Next and Where the Opportunities are", attracted an audience of over 200 attendees from Japanese financial institutions and corporates.

The seminar featured a panel discussion joined by senior representatives from financial institutions and the professional services sector from Hong Kong and Japan to discuss the intermediation role and various advantages of Hong Kong in serving Japanese corporates and investors that are developing their markets in Mainland China and the region.

The seminar was part of the "Think Global, Think Hong Kong" promotion programme organized by the Hong

Kong Trade Development Council in Tokyo.

Mr. Norman Chan said that Hong Kong has all along been an intermediation hub for trade and financial flows between Mainland China and the rest of the world. There are abundant opportunities as China's reform and opening-up further progress. Besides, as China's economy is transitioning from high speed growth to a more sustainable and consumption-driven model, it presents tremendous opportunities to Japan, home to a range of high quality goods and services. With its strategic positioning and all-rounded international financial center platform, Hong Kong can serve as the bridgehead for Japanese corporates and investors as they seek to tap the opportunities in China and other parts of Asia.

香港金融管理局在东京推广香港作爲国际金融中心和中国门户的重要角色

香港金融管理局 (金管局) 总裁陈德霖先生在2018年11月1日在日本东京推广香港作为国际金融中心及中国门户的重要角色。

由陈德霖先生主持题为「中国发展带来的机遇」的研讨会, 吸引了超过200位来自日本金融机构及企业的代表出席。

是次研讨会包括一个小组讨论环节, 有来自香港和日本金融机构及专业服务领域的高层代表参加, 讨论了香港作为日本企业和投资者发展亚洲包括中国内地市场的中介角色及竞争优势。

是次研讨会是香港贸易发展局在东京举行的「迈向全球首选香港」推广活动的一部分。

陈德霖先生表示：香港一直是中国内地与世界其他地区之间贸易及资金流动的中介枢纽。中国改革开放继续推进, 商机处处。中国经济由高速增长转型为更可持续、以内需为主导的发展模式, 为日本的优质商品和服务带来庞大机遇。凭借香港的战略定位及其作为全方位国际金融中心的优势, 香港可以继续成为日本企业及投资者在中国及亚洲其它地区发展的桥头堡。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181101-4.shtml

Hong Kong Monetary Authority Strengthening the Verification Requirements for Electronic Wallets Setting Up Direct Debit Authorizations

On October 26, 2018, the Hong Kong Monetary Authority (HKMA) announced that it has completed its review on the process of electronic wallets users setting up direct debit authorization (eDDA) through the Faster Payment System (FPS). The HKMA has requested stored value facility operators and banks to adopt the following refined process to enhance user protection:

(i) the user will receive an SMS notification from his bank to confirm the setting-up of eDDA；or

(ii) he will need to make a one-time credit transfer from the relevant bank account to his electronic wallet, so as to confirm the wallet user is the same as the bank account owner; or

(iii) Bank's Two-factor Authentication.

In order to provide more comprehensive protection to users, the above refined process will apply to direct debit services conducted through both FPS and non-FPS channels. To implement the refined process, direct debit services through both channels have been temporarily suspended, but the resumption of services using the above refined process is expected to begin incrementally.

香港金融管理局加强设立电子钱包直接扣帐授权服务的认证要求

香港金融管理局 (金管局) 于2018年10月26日公布就电子钱包用户开设透过「转数快」系统进行的直接扣帐授权服务 (eDDA) 流程的检视已完成。金管局要求储值支付工具营运商和银行采纳以下优化流程提升用户保障：

(i) 用户会收到银行发出的电话短讯以确认开设 eDDA；或

(ii) 用户需要从有关银行户口作一次转帐到自己的电子钱包, 以确认电子钱包用户是银行户口持有人；或

(iii) 银行双重认证

为了提供更全面的保障, 这些优化流程除了会应用在经「转数快」系统进行的直接扣帐服务外, 亦会应用在其他不经「转数快」系统进行的直接扣帐服务。为配合优化流程, 这两类直接扣帐服务已被暂停, 但可望陆续恢复, 但均要以上述优化流程去启动。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181026-6.shtml

GEM Listing Committee of The Stock Exchange of Hong Kong Limited Censures Sino Splendid Holdings Limited for Breaching the GEM Listing Rules and Censures or Criticizes a Number of its Current Directors for Breaching the Director's Undertaking

On October 30, 2018, the GEM Listing Committee (Committee) of The Stock Exchange of Hong Kong Limited (Exchange) censured Sino Splendid Holdings Limited (the Company) for breaching the Rules Governing the Listing of Securities on the GEM of the Exchange (GLR) and censured or criticized a number of its current directors including three executive directors (Eds), namely Mr Chow Chi Wa (Mr Chow), Mr Wang Tao (Mr Wang) and Mr Yang Xingan (Mr Yang) and three independent non-executive directors (INEDs), namely Ms Yang Shuyan (Ms Yang), Mr Zhang Xiaoguang (Mr Zhang) and Ms Lee Yim Wah (Ms Lee) (Eds and INEDs are collectively referred to as the Relevant Directors) for breaching their obligations under the Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 6A to the GLR (Undertakings).

On August 30, 2018, the Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the GLR and the Undertakings.

KEY FACTS

On August 12, 2016 (after trading hours), the Company announced its interim results announcement for the six months ended June 30, 2016 (1H2016 Results) reporting, among other items, financial assets at fair value through profit and loss of $87,812,000 and a net loss of $7,462,000 (Original Results). The financial assets in question comprised equities securities listed in Hong Kong. On August 15, 2016, (a) the closing price of the Company's shares rose by 3.6 per cent and (b) 1,633,750 shares were traded which represented 112 per cent increase compared to the 10-day average to August 12, 2016.

On September 8, 2016 (after trading hours), the Company published a clarification announcement disclosing that "adjustments have been made to the financial statements due to an inadvertent error made on the recognition of investments on listed securities". The major adjustments were:

(a) financial assets at fair value through profit and loss increased from $87.8m to $129.7m, up by $41.9m (Error); and

(b) with other less significant adjustments, the Company reported a $26m net profit instead of a $7.4m net loss.

On September 9, 2016, the closing price of the Company's shares rose by 6.2 per cent and 1,490,000 shares were traded which represented nearly 300 per cent increase compared with the 10-day average to September 8, 2016.

During the 19 trading days between August 15 and September 8, 2016, 8,448,750 shares were traded on inaccurate information before the clarification announcement was published.

At the relevant time, Mr. Chow, a certified public accountant was responsible for the financial reporting function of the Company. Mr. Chow was assisted by another accountant (Accountant) who joined the Group in January 2016 with eight years' accounting experience but "limited working experience with the listing rules and accounting treatment of financial assets investment". Mr. Chow was to provide guidance and on-the-job training to the Accountant who prepared the Company's monthly management accounts (Monthly Management Accounts) as well as draft quarterly, interim and annual results (Draft Results) for Mr. Chow's review. The other Directors of the Company were not supplied with the Monthly Management Accounts. They only received the Draft Results circulated to them to review.

Mr. Chow became seriously ill in 2014 and needed medical attention every two to three months. The Board (a) first learnt of Mr. Chow's health issues in early 2015; and (b) assessed his ability and considered that Mr. Chow was capable of discharging his financial reporting duties.

In September 2015, three EDs Mr. Chow, Mr. Yang and Mr. Wang approved a strategy that the Company invest in securities listed in Hong Kong (Investments). The Investments began in October 2015 and were conducted through Sino Impact Group Limited (Sino Impact), a wholly owned subsidiary of the Company. Around November 2015, Mr. Yang and Mr. Zhang were informed of the Investments. Mr. Chow and Mr. Wang discussed and approved the acquisition and disposal of individual listed securities. Only Mr. Chow monitored the Investments.

Sino Impact maintained securities accounts with two securities brokerage firms (Brokers) for the Investments. Monthly Statements in respect of the securities accounts (Monthly Statements) were issued by the Brokers at the end of each month. At all material times, the Company and Sino Impact shared the same office address to which hard copies of the Monthly Statements were sent, reviewed by Mr. Chow and filed by the Accountant. Softcopies were emailed to Mr. Yip, the sole director of Sino Impact who worked from home. No monthly update of the Investments was provided to any other Directors of the Company.

In January 2016, the Company (and Sino Impact) moved office from Wanchai to Sheung Wan. No change of address was notified to the Brokers which continued to send the hardcopy Monthly Statements to the old address in Wanchai.

The Company's Administrative Manager resigned on March 31 2016. Since then and during the relevant time, Mr. Chow and the Accountant took up most of her duties whilst a suitable replacement was being found.

In or around May 2016, Mr. Chow noted that the Monthly Statements for January to April 2016 had not been received. He obtained copies from Mr. Yip, reviewed them and passed them to the Accountant for filing.

On July 28, 2016, Mr. Chow was admitted to hospital for medical treatment in Hong Kong. He expected to be discharged from hospital on the same day. However, he remained hospitalized until August 4 2016. Mr. Chow did not inform the other Directors of his hospitalization or his absence from work. He just informed the Accountant and the Company Receptionist (with the latter being informed in accordance with the Company's practice).

Mr. Chow returned to office on August 5, 2016. He selected August 15, 2016 for the Board meeting and Audit Committee (AC) meeting to approve the 1H2016 Results and the results publication. On August 11, 2016, after the Exchange's request to publish the results by August 14 (the deadline under the GLR), Mr. Chow rescheduled the meetings for August 12 when most Board members and AC members were available. On the same day, he emailed the draft Original Results to the other Directors.

The figure of $87,812,000 for "Financial Assets at fair value through profit and loss" in the Original Results was brought forward from the Company's FY2015 Results without further assessment. Mr. Chow and the Accountant were not aware that the May and June 2016 Monthly Statements had not been received. They "inadvertently forgot any change in value of the financial assets", and thought the value remained unchanged since December 31, 2015.

Mr. Wang and Ms. Yang were unable to attend the Board and AC meetings on August 12, 2016. They had telephone discussion about the Original Results with Mr. Chow which focused on revenue, performance change and disclosure requirements. All other Directors attended the meetings when they reviewed the Original Results with the same focus; and approved the Original Results. None of the Relevant Directors noted the Error.

In September 2016, the Listing Department of the Exchange (Department) requested the Company to provide further information disclosed in the Original Results. Mr. Chow asked the Accountant for a breakdown of the financial assets, and was told about the "missing" Monthly Statements for May and June 2016. Mr. Chow obtained copies from Mr. Yip and discovered the Error.

COMMITTEE'S FINDINGS OF BREACH

The Committee considered the written and oral submissions of the Department, the Company and the Relevant Directors, and concluded as follows:

Company's breach

The Committee found that, due to the Error, there were material discrepancies between the Original Results and the restated 1H2016 Results as disclosed in the clarification announcement including, in particular, the financial assets at fair value through profit and loss and that the 1H2016 Results turned from a loss of approximately $7.4m to a profit of $26m.

The Committee concluded that the market reaction to the clarification announcement supported the view that the discrepancies were material information for the Company's shareholders and the investing public. They had been deprived of information which should have been accurate and complete in all material respects and not be misleading for making informed investment decisions in respect of the trading of the Company's securities during the period from August 15 to September 8, 2016.

The Committee therefore further concluded that the Company breached GLR17.56(2) in that the Original Results were not accurate and complete in all material respects and were misleading.

Internal controls

The Committee noted that the Company's internal controls did not prevent or detect the Error. The Committee concluded that the Company did not have adequate internal controls in place at the relevant time to ensure its GLR compliance, including compliance with GLR17.56(2) in relation to its financial results:

(1) lack of guidelines or policy governing the Investments and associated risk management assessment;

(2) inadequate system and procedures for the Board's regular monitoring of (a) the Investments and (b) more broadly, the Company's business and financial performance;

(3) lack of written procedures or policy governing financial reporting; and

(4) lack of policy and procedures governing

(a) the notification of an ED's absence from office for health reasons to all other EDs of the Company (if not also the INEDs) and

(b) back-up arrangements during the period of the ED's absence from office.

Directors' breaches

Under GLR5.01 and GLR5.03, the Board is collectively responsible for the Company's management and operations, and the Directors are collectively and individually responsible for ensuring the Company's full compliance with the GLR.

Mr. Chow's breach of GLR5.01(6)

The Committee concluded that Mr. Chow breached GLR5.01(6) by failing to

(1) keep the other Board members regularly informed and updated about the Investments which were significant assets of the Company as their fair value, reported at $87,812,000, represented 37 per cent of the Company's current assets of $239 million; and 31 per cent of the total assets of $280 million as of June 30, 2016 as reported in the Original Results. At the same time, the Company reported revenue of only $47.7 million and a net loss of $7.4 million for 1H2016;

(2) provide the other Board members with regular or monthly updates on the Company's business and financial performance;

(3) ensure that reasonable steps were taken to minimize the risk of loss or non-receipt of mail (including the Monthly Statements) resulting from the Company's office move, eg notifying the Brokers of the change of address, subscribing for the service provided by Hongkong Post to re-direct mail to the new address; and requiring Mr. Yip to forward copy Monthly Statements to Mr. Chow and the Accountant;

(4) monitor the Company's (a) receipt of the hardcopies of the Monthly Statements; and in turn (b) the Investments;

(5) ensure accurate financial reporting in the 1H2016 Results; and

(6) ensure the Company had adequate internal controls in place.

Breach of GLR5.01(6) by two EDs Mr. Yang and Mr. Wang

The Committee noted that Mr. Yang was appointed an ED of the Company in January 2015 whilst Mr. Wang was appointed an ED in September 2015. The Committee concluded that both Mr. Yang and Mr. Wang breached GLR5.01(6) by failing to:

(1) monitor the Investments on a regular basis;

(2) regularly monitor the Company's business and financial performance;

(3) ensure that the Company had adequate internal controls in place; and

(4) review the Original Results with care, skill and diligence:

(a) Mr. Wang and Mr. Yang were reasonably required to (i) review carefully the line item "financial assets at fair value through profit or loss" which financial assets were significant assets of the Company; and (ii) make inquiries to gain a proper understanding of the Investments in particular when they had not been supplied with regular updates referred to at (1) and (2) above and received only limited information from the Draft Results. There was no evidence of Mr. Wang and Mr. Yang making any inquiries.

(b) According to Mr. Yang and Mr. Wang, they both were not aware that the figure of $87,812,000 for "financial assets at fair value through profits and loss' in the Original Results was identical to the figure reported in the FY2015 Results. This was notwithstanding that (i) the two (same) figures were presented side by side in the Original Results; and (ii) it did not require accounting expertise for one to note it. Further, the FY2015 Report had disclosed the basis for the determination of the fair value of the Investments in footnote 19 to the Company's 2015 financial statements.

(c) Mr. Yang and Mr. Wang were in office when the FY2015 Report was published on March 30, 2016. They were or must be deemed to be aware of the Disclosure. As such, the inquiries reasonably required of Mr. Yang and Mr. Wang in compliance with GLR5.01(6) extended to inquiring into why the fair value of the Investments was stated to be the same as that six months earlier. However, there was no evidence that they did so.

(d) Had Mr. Yang and Mr. Wang made inquiries with this knowledge, they might/could have alerted Mr. Chow and the Board to look closer and discovered the Error and could have avoided the breach of GLR17.56(2). However, they did not.

INEDs' breach of GLR5.01(6)

Ms. Yang and Mr. Zhang

Ms. Yang and Mr. Zhang were appointed INEDs on May 29 2015. Apart from being Board members, they also served on the AC with Ms. Yang (who had an accounting background) being the Chairperson and Mr. Zhang being a member. The Terms of Reference of the AC included, among other terms:

(a) Review of financial information including "monitor integrity of the financial statements and annual, interim and quarterly results and reports of the Company".

(b) Review the financial controls, internal controls and risk management systems; and discuss internal control system with management to ensure management has performed its duty to have an effective internal control system.

The Committee concluded that the two INEDs Ms. Yang and Mr. Zhang also breached GLR5.01(6) for the following reasons:

(1) As members of the Board of the Directors, these two INEDs were subject to GLR compliance, including GLR5.01. Under GLR5.03, the Directors were collectively and individually responsible for ensuring the Company's GLR compliance.

(2) These two INEDs had knowledge of the existence of the Investments in November 2015. They were in office when the Company's 2015 Report was published and therefore were aware or ought to have been aware of the basis of the determination of the fair value of the Investments.

(3) In the circumstances, exercise of care, skill and diligence in compliance with GLR5.01(6) required that these two INEDs also take the actions required of Mr. Yang and Mr. Wang as set out above. However, they had failed to do so. Their failure to act thus was also clearly inconsistent with their proper fulfillment of their duties as AC members
.
(4) The Committee therefore found that Ms. Yang and Mr. Zhang breached GLR5.01(6).

Ms. Lee

The Committee found that Ms. Lee also breached GLR5.01(6) for the following reasons:

(1) Ms. Lee was appointed an INED and an AC member on March 31, 2016. Ms. Lee was subject to (a) the same directors' duties including that under GLR5.01 and (b) compliance with the AC duties as the other two INEDs, Ms. Yang and Mr. Zhang.

(2) What distinguished Ms. Lee's position was that:

(a) Ms. Lee had not been appointed when the 2015 Report was published on March 30, 2016. She was appointed a day later on March 31, 2016.

(b) Ms. Lee had been in office for about four and a half months when she participated in approving the 1H2016 Results on August 12, 2016 whilst the other two INEDs had been in office for 15 months.

(3) Notwithstanding (2) above, the Committee agreed with the Department's submission that, as of August 12, 2016, Ms. Lee was aware or ought to have been aware of the existence of the Investments and the basis of the determination of the fair value of the Investments for the following reasons:

(a) After being appointed an INED, Ms. Lee should have received an induction from the Company (as required by Code Provision A.6.1 of the Corporate Governance Code, Appendix 15 of the GLR) to enable her to be familiarized with, among other things, the Company's business activities, investment activities, and assets type held. In any event, Ms. Lee was expected and required to take an active interest in the issuer's affairs and obtain a general understanding of its business.

(b) Given the requirements at (a) above and the Company's 2015 Report, the latest set of the Company's published financial results available on Ms. Lee's appointment, were published just one day before, it was reasonable to expect that (i) the Company provided Ms. Lee a copy of the 2015 Report with a briefing on them as a part of the induction for Ms. Lee; and (ii) Ms. Lee had perused the document shortly after her appointment as an INED.

(c) Ms. Lee was in office when the Company's 1Q2016 Results were

published in May 2016. Those results disclosed the Investments and their fair value (as of March 31, 2016) being incorrectly stated as HK$87,812,000.

(d) Three sets of the Company's financial results in a row reported the same fair value of the Investments figure of HK$87,812,000 as at December 31, 2015 (in the 2015 Report), March 31. 2016 (in the 1Q2016 Results); and June 30 2016 (in the Original Results).

(e) In the circumstances, given Ms. Lee's duties and her knowledge or deemed knowledge at (a) to (d) above, exercise of care, skill and diligence in compliance with GLR5.01(6) required that Ms. Lee took the same actions as required of the other two INEDs, Ms. Yang and Mr. Zhang, set out above. Ms. Lee had failed to do so. The Committee therefore also found that Ms. Lee breached GLR5.01(6) and her Undertaking.

The Committee took into account Ms. Lee's shorter period of office at the material times than that of the other two INEDs, when considering the appropriate sanction to impose upon her.

Mr. Chow's breach of GLR5.20

The Committee also concluded that Mr. Chow breached GLR5.20 as there was no evidence that Mr. Chow had given assistance and advice to the Company's Board on the implementation of procedures to ensure the Company's GLR compliance.

Relevant Directors' breach of Undertakings

The Department asserted that, by reason of their respective GLR5.01(6) and GLR5.20 breaches, the Relevant Directors also breached their Undertakings to the Exchange.

REGULATORY CONCERN

The Committee views the breaches in this case serious:

(1) There was over-reliance on Mr. Chow who assumed multiple key management positions to deal with the day-to-day management and financial reporting functions of the Company, with the assistance of an accountant for the latter.

(2) A specific function may be delegated, but not ultimate responsibilities for that function, by Directors. There was no system in place to ensure regular reporting of the function (delegated to Mr. Chow) to the Board to keep all directors informed and updated.

(3) There was a lack of appropriate and effective internal controls to ensure the Company's compliance with financial reporting obligations as well as the integrity and reliability of financial information.

(4) The interest of the Company's shareholders and investing public had been prejudiced in terms of their right to receive accurate and complete and not misleading information to enable them to appraise the Company's position for making informed investment decision. Over 8 million shares of the Company were traded from August 15 to September 8, 2016 on inaccurate information.

(5) The Relevant Directors failed to take active interests in the Company's affairs concerning significant assets held by the Group. They also lacked proper understanding of their duties as directors of a listed issuer.

SANCTIONS

Having made the findings of breach stated above, and having concluded that the breaches are serious, the Committee decides to impose the following sanctions:

(1) a public censure of the Company for its breach of GLR17.56(2);

(2) a public censure of Mr. Chow for his breach of GLR5.01(6), GLR5.20 and the Undertaking to the Exchange;

(3) a public censure of Mr. Yang, Mr. Wang, Ms. Yang and Mr. Zhang for their respective breaches of GLR5.01(6) and the Undertakings; and

(4) a public statement involving criticism against Ms. Lee for her breach of GLR5.01(6) and the Undertaking.

The Committee further directs that:

(1) The Company:

(a) appoint an independent Compliance Adviser satisfactory to the Department on an ongoing basis for consultation on GLR compliance and proper corporate governance for a period of two years to commence within four weeks;

(b) submit the proposed scope of retainer to the Department for comment before appointment of the Compliance Adviser which shall include an express provision that the Compliance Adviser shall be accountable to the AC of the Company;

(c) engage the professional firm (which conducted a review of the Company's internal controls and made the recommendations in its internal control review report) or where appropriate as agreed to by the Department upon the Company's application with reasons, any other professional firm satisfactory to the Department, to conduct a follow-up review of the Company's internal controls to ensure full implementation of the recommendations within six weeks; and

(d) provide a copy of the report on the follow-up review to the Department within two weeks after its receipt by the Company.

(2) Those of the Relevant Directors, who remain current directors of the Company, are to (a) attend 24 hours of training on GLR compliance, director's duties and corporate governance matters to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Department, to be completed within 120 days; and (b) provide the Department with the training provider's written certification of full compliance.

(3) The Company is to publish an announcement to confirm that the respective directions in paragraphs (1)(a), (c), (d) and (2) above has been fully complied with within two weeks after the fulfillment of the direction. The last announcement to be published under this requirement is to include the confirmation that the directions in paragraphs (1)(a), (c), (d) and (2) above have been complied with.

(4) The Company is to submit drafts of the announcements referred to in paragraph (3) above for the Department's comment and may only publish the announcements after the Department has confirmed it has no further comment on them.

(5) Any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (1) to (4) above are to be directed to the Department for consideration and approval. The Department should refer any matters of concern to the Committee for determination.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions apply only to the Company and the Relevant Directors.

香港联合交易所有限公司 GEM 上市委员会谴责中国华泰瑞银控股有限公司违反《GEM 上市规则》并谴责或批评该公司数名现任董事违反《董事承诺》

2018年10月30日，香港联合交易所有限公司（联交所）GEM 上市委员会（上市委员会）谴责中国华泰瑞银控股有限公司（该公司）违反《香港联合交易所有限公司 GEM 证券上市规（《GEM 上市规则》）并谴责或批评该公司数名现任董事包括三名执行董事(执董) 即周志华先生(周先生), 王涛先生(王先生), 杨兴安先生(杨先生) 及三名独立非执行董事(独立非执董)即杨淑颜女士(杨女士), 张晓光先生(张先生)和李艳华女士(李女士) (执董及独立非执董统称：相关董事) 违反其以《GEM 上市规则》附录六 A 所载形式向联交所提交的《董事的声明及承诺》(《承诺》) 规定的董事责任。

上市委员会于 2018 年 8 月 30 日就该公司及相关董事的行为是否符合《GEM 上市规则》及《承诺》所载的责任展开聆讯。

主要实况

该公司于2016年8月12日交易时段结束后公布截至2016年6月30日止六个月的中期业绩公告(2016年上半年业绩)，当中披露公司按公平值计入损益之金融资产为87,812,000元，净亏损为7,462,000元等等（原业绩）。有关的金融资产包括香港上市股本证券。于2016年8月15日，(i) 该公司股份的收市价升3.6%，(ii) 其成交股数为1,633,750股，较截至2016年8月12日的10天平均数增加112%。

该公司于2016年9月8日交易时段结束后刊发澄清公告，披露「因确认一项于上市证券投资的无心之失而已对财务报表作出调整」。主要调整包括：

(i) 按公平值计入损益之金融资产由8,780万元增加4,190万元至1.297亿元（失误）；及
(ii) 连同其他较次要的调整，该公司汇报其录得纯利2,600万元，而非净亏损740万元。

该公司于2016年9月9日的股份收市价升6.2%，成交股数为1,490,000股，较截至2016年9月8日的10天平均数增加近300%。

在2016年8月15日至9月8日的共19个交易日内，该公司共录得8,448,750股成交，都是澄清公告刊发之前根据不正确的信息进行的交易。

周先生是执业会计师，于有关时候负责该公司的财务汇报。在2016年1月，有另一名拥有8年会计经验的会计师

（该会计师）加入集团协助周先生，但其「对上市规则及金融资产投资的会计处理经验不多」。该会计师在周先生从旁指导下接受在职培训，负责编制该公司的月度管理账目（月度管理账目）及季度、中期及年度业绩拟稿（业绩拟稿）供周先生审阅。其他董事未获提供月度管理账目，他们只收到向他们传阅的业绩拟稿。

周先生于2014年罹患重病，每两至三个月便需接受治疗。董事会(i) 于2015年初首次获悉周先生的健康状况；及(ii)评估其能力后认为他有能力履行财务汇报职务。

三名执董周先生、杨先生和王先生于2015年9月批准该公司投资香港上市证券的财务策略（投资计划）。该公司于2015年10月开始透过其全资附属公司 Sino Impact Group Limited (Sino Impact)进行投资计划。杨先生及张先生于2015年11月左右获悉投资计划。周先生及王先生商议后批准购入及出售个别上市证券，而监察投资计划的只有周先生一人。

Sino Impact 于两家证券经纪行（经纪）开设证券户口处理投资计划。经纪每月底发出该等证券户口的月结单（月结单）。于所有关键时候，月结单的印刷本均寄往该公司及 Sino Impact 共用的同一办公地址，经周先生审阅后，再由该会计师存档，其电子版本则发给身为 Sino Impact 唯一董事并于家中工作的叶先生。该公司其他董事均未获提供投资计划的每月最新资料。

该公司（及 Sino Impact）于2016年1月由湾仔迁址上环，但并无通知经纪。经纪继续将月结单印刷本寄往湾仔旧址。

该公司行政经理于2016年3月31日辞职，自有关时候起，其大部分职务由周先生及该会计师兼任，以待该公司物色替代人选。

周先生于2016年5月左右发现仍未收到2016年1月至4月的月结单，便向叶先生索取月结单，并在审阅后交该会计师存档。

周先生于2016年7月28日在香港入院留医，原料即日可出院，但最终要留至2016年8月4日才出院。周先生并无通知其他董事其入院或缺勤一事，只知会了该会计师及按该公司常规通知公司接待处职员。

周先生于2016年8月5日回办公室上班，并选择于2016年8月15日召开董事会会议及审核委员会会议，审核2016年上半年业绩及刊发业绩。由于联交所要求该公司于8月14日或之前（按《GEM 上市规则》规定的最后期限）公布业绩，周先生于2016年8月11日将该等会议改于8月12日举行，因大部分董事会成员及审核委员会成员均可在该日出席会议。同日，他以电邮发送原业绩的拟稿给其他董事。

原业绩中「按公平值计入损益之金融资产」87,812,000元的数字乃从该公司2015财政年度业绩未经进一步评估结转过来。周先生及该会计师均未意识未曾收到2016年5月及6月的月结单，他们「在无意识中忘记了金融资产价值的变化」，以为该价值于2015年12月31日之后一直无变。

王先生及杨女士未能出席2016年8月12日的董事会会议及审核委员会会议，但与周先生透过电话讨论了原业绩，主要讨论营业额、业绩变动及披露要求。其余全部董事均有出席会议及就相同的重点审阅原业绩，并批准了原业绩。相关董事中无人发现失误。

联交所上市部于2016年9月要求该公司就已公布的原业绩提供进一步资料。周先生要求会计师列出各项财务资产时，被告知2016年5月及6月的月结单「不知所踪」。周先生于是向叶先生取得月结单并发现了失误。

上市委员会裁定的违规事项

上市委员会考虑上市部、该公司及相关董事的书面及口头陈述后裁定以下事项：

<u>该公司的违规</u>

上市委员会裁定，基于失误，原业绩与澄清公告所披露的经重计2016年上半年业绩有重大差异，当中包括特别是按公平值计入损益之金融资产价值，及2016年上半年业绩由亏损约740万元变成录得盈利2,600万元。

上市委员会认为，刊发澄清公告后的市场反应证明该等业绩差异属于该公司股东及投资大众的重大信息。公司股东及投资大众本应获提供在各重要方面均准确齐全且没有误导成份的资讯，使他们在2016年8月15日至9月8日期间买卖该公司证券时可作出知情的投资决定，但他们却未获有关资讯。

上市委员会因此进一步裁定该公司违反《GEM 上市规则》第17.56(2)条，以其原业绩在各重要方面均非准确齐全且有误导成份。

<u>内部监控</u>

上市委员会指出该公司的内部监控并未防止失误的发生或查出失误。上市委员会裁定该公司在有关时候未有足够的内部监控可确保公司遵守《GEM 上市规则》的条文，包括有关财务业绩的第17.56(2)条：

(1) 缺乏规管投资计划及相关风险管理评估的指引或政策；
(2) 制度及程序不足以让董事会定期监控(i) 投资计划及 (ii) 更广泛而言该公司的业务及财务表现；
(3) 财务汇报缺乏书面程序或政策；及
(4) 缺乏程序及政策规管以下事项：(i) 就个别执董因健康理由缺勤对公司所有其他执董应作出的通知（就算不通知独立非执董）及(ii) 执董缺勤期间的后备安排。

董事的违规事项

根据《GEM 上市规则》第5.01及5.03条，董事会须共同负责管理与经营该公司的业务，而各董事须共同及个别地负责确保该公司完全遵守《GEM 上市规则》。

周先生违反《GEM 上市规则》第5.01(6)条

上市委员会裁定周先生违反《GEM 上市规则》第5.01(6)条：

(1) 未能定期向其他董事会成员汇报属于该公司重大资产的投资计划的最新情况（投资计划属该公司重大资产：按原业绩所披露，于2016年6月30日，投资计划所汇报的公平值为87,812,000元,占该公司流动资产2.39亿元的37%，占总资产2.8亿元的31%）。同时，该公司披露2016年上半年收益仅4,770万元，净亏损740万元；

(2) 未能定期或每月向董事会其他成员提供有关该公司业务及财务表现的最新资料；

(3) 未能采取合理行动减少该公司因搬迁办公室而引致邮件（包括月结单）寄失或无法传达的风险，譬如通知经纪公司迁址、使用香港邮政的服务将邮件转往新地址及要求叶先生将月结单转发周先生及该会计师等等；

(4) 未能监察该公司(i) 是否收到月结单的印刷本，因而未能监察(ii) 投资计划；

(5) 未能确保2016年上半年业绩的财务汇报准确；及

(6) 未能确保该公司设有足够的内部监控。

两名执董杨先生及王先生违反《GEM 上市规则》第5.01(6)条

上市委员会知道杨先生及王先生先后于2015年1月及9月获委任为该公司执董。上市委员会裁定二人违反《GEM上市规则》第5.01(6)条，理由是他们：

(1) 未能定期监察投资计划；

(2) 未能定期监察该公司的业务及财务表现；

(3) 未能确保该公司设有足够的内部监控；及

(4) 未能在审阅原业绩时以应有的技能、谨慎和勤勉行事：

(i) 按照有关规定，王先生及杨先生理应要(I) 仔细审阅属于该公司重大资产的「按公平值计入损益之金融资产」；及(II) 作出查询以恰当了解投资计划，尤其是他们未获定期提供上文(1)及(2)项所述的最新资料，而只是从业绩拟稿收到有限资料。没有证据显示王先生及杨先生曾作出查询。

(ii) 杨先生及王先生称，他们并无意识到原业绩中「按公平值计入损益之金融资」87,812,000元的数字与2015财政年度业绩的数字相同，尽管(I) 两个（相同的）数字在原业绩中是并排呈列，而且(II)并不需要拥有专业会计知识也可察觉到这点。此外，该公司2015财政年度报告已在2015年财务报表附注19披露投资计划之公平值的厘定基准。

(iii) 2016年3月30日刊发2015财政年度报告时，杨先生及王先生均在任，二人均视作或必须被视作知道有关披露。因此，杨先生及王先生按规定理应要为遵守《GEM 上市规则》第5.01(6)条而作出的查询，还包括查询为何投资计划的公平值呈列出来的数字与六个月前的数字相同，但没有证据显示他们曾作此查询。

(iv) 若杨先生及王先生知道数字的差异并作出查询，他们或已能提示／就可提示周先生及董事会必须更仔细审阅数字，继而发现失误，避免违反《GEM 上市规则》第17.56(2)条，但他们并没有作出查询。

独立非执董违反《GEM 上市规则》第 5.01(6)条

杨女士及张先生

杨女士及张先生于2015年5月29日获委任为独立非执董。除了是董事会成员外，他们亦是审核委员会成员，杨女士（拥有会计背景）更是主席。审核委员会的职权范围包括：

(i) 审阅财务资料，包括「监察本公司的财务报表及本公司年度报告、账目及中期报告及季度报告的完整性」。

(ii) 检讨财务监控、内部监控及风险管理制度；与管理层讨论内部监控系统，确保管理层已履行职务建立

有效的内部监控系统。

上市委员会裁定独立非执董杨女士及张先生二人因下列原因亦违反《GEM 上市规则》第5.01(6)条：

(1) 作为董事会成员，这两名独立非执董须遵守《GEM 上市规则》，包括第5.01条。根据《GEM 市规则》第5.03条，董事须共同及个别地负责确保该公司完全遵守《GEM 上市规则》。

(2) 这两名独立非执董于2015年11月已知悉投资计划的存在。他们在该公司2015年报告刊发时已在任，因此他们知道或应该知道投资计划之公平值的厘定基准。

(3) 在上述情况下，根据《GEM 上市规则》第5.01(6)条董事须以应有的技能、谨慎和勤勉行事的规定,这两名独立非执董亦须采取上述杨先生及王先生须采取的行动，但二人均无这样做，明显与他们作为审核委员会成员须妥善履行有关职责的要求不符。

(4) 上市委员会因此裁定杨女士及张先生违反《GEM 上市规则》第5.01(6)条。

李女士

上市委员会裁定李女士因下列原因亦违反《GEM 上市规则》第5.01(6)条：

(1) 李女士于2016年3月31日委任为独立非执董及审核委员会成员。与另外两名独立非执董杨女士及张先生一样，李女士须 (i) 遵守同样的董事职责，包括《GEM 上市规则》第5.01条所载的职责，及(ii) 履行审核委员会的职责。

(2) 李女士情况有别的地方在于：

(i) 该公司于2016年3月30日刊发2015年报告时，李女士尚未获委任。她是在翌日2016年3月31日获委任。

(ii) 于2016年8月12日参与审批2016年上半年业绩时，李女士在任不过四个半月左右，但另外两名独立非执董已在任15个月。

(3) 尽管有上文第(2)项所述的情况，但上市委员会认同上市部的意见，认为李女士于2016年8月12日时是知道或应该知道投资计划的存在及投资计划之公平值的厘定基准，理由如下：

(i) 李女士获委任为独立非执董后，应已获得该公司提供就任须知（《上市规则》附录十五《企业管治守则》守则条文 A.6.1规定），有能力了解该公司的业务、投资及持有的资产类别以及其他事项。无论如何，其他人都会预期李女士要积极关心发行人的事务，并对发行人的业务有全面理解，按规定李女士亦必须那样做。

(ii) 基于上文(i)项的要求，再加上该公司在委任李女士的前一日刚刊发了2015年报告（李女士获委任后可得的该公司最近期的已刊发财务业绩），可以合理预期 (I) 该公司已向李女士提供2015年报告，并在就任须知中简介了该报告，及 (II) 李女士出任独立非执董后不久即已阅读该报告。

(iii) 该公司于2016年5月刊发2016年首季业绩时，李女士已在任。该首季业绩错误披露投资计划及其于2016年3月31日的公平值为87,812,000元。

(iv) 在该公司连续三套财务业绩内，投资计划的公平值均相同，于2015年12月31日（2015年报告）、2016年3月31日（2016年首季业绩）及2016年6月30日（原业绩）都是87,812,000元。

(v) 因应上述情况，考虑到李女士的职责，及其对上文(i)至(iv)项所知或视作知道的事宜，根据《GEM 上市规则》第5.01(6)条的规定（董事须以应有的技能、谨慎和勤勉行事），李女士亦须采取上述另外两名独立非执董杨先生及张先生所须采取的行动，但李女士并无这样做。上市委员会因此裁定李女士违反《GEM 上市规则》第5.01(6)条及其《承诺》。

上市委员会考虑向李女士施加适当制裁时，已顾及关键时候李女士的在任时间较另外两名独立非执董为短的这一点。

<u>周先生违反《GEM 上市规则》第5.20条</u>

上市委员会亦裁定周先生违反《GEM 上市规则》第5.20条，因该公司无证据证明周先生曾向该公司董事会提供意见及协助，使董事会可执行程序确保该公司遵守《GEM 上市规则》。

<u>相关董事违反《承诺》</u>

上市部指，相关董事各自违反《GEM 上市规则》第5.01(6)及5.20条，因而亦违反了他们向联交所作出的《承诺》。

监管上关注事项

上市委员会认为本个案的违规事项严重：

(1) 该公司过于依赖周先生，周先生一人身兼多个重要管

理职位，既要负责日常管理，亦要在会计师协助下执行财务汇报职能。

(2) 董事可将其个别特定职能委派他人执行，但董事履行该职能的最终责任却无可转移。该公司未设有妥善制度，确保董事会获定期汇报有关（委派给周先生之）职能的履行，让全体董事知悉最新情况。

(3) 该公司缺乏适当及有效的内部监控制度，确保该公司符合财务汇报责任及确保财务资料完整、可靠。

(4) 该公司股东及投资大众有权收取准确、齐全及不含误导成份的资料以评估该公司的状况，从而作出知情的投资决定，但他们却被剥夺了这方面的权利，以致利益受损。2016年8月15日至9月8日期间根据不确信息成交的该公司股份交易涉及股数超过800万股。

(5) 相关董事未能积极关心集团持有该公司重大资产有关的该公司事务。他们对本身作为上市发行人董事的职责亦无正确认识。

制裁

经裁定上述违规情况并确定事态严重后，上市委员会决定施加以下制裁：

(1) 公开谴责该公司违反《GEM 上市规则》第17.56(2)条；

(2) 公开谴责周先生违反《GEM 上市规则》第5.01(6)条、第5.20条及其向联交所作出的《承诺》；

(3) 公开谴责杨先生、王先生、杨女士及张先生各自违反《GEM 上市规则》第5.01(6)条及各人作出的《承诺》；及

(4) 公开批评李女士违反《GEM 上市规则》第5.01(6)条及其《承诺》。

上市委员会亦指令：

(1) 该公司：

(i) 在四星期内，委聘一名上市部满意的独立合规顾问，于往后两年持续就遵守《GEM 上市规则》及良好企业管治提供意见；

(ii) 委聘合规顾问前先向上市部呈交聘约的建议职责范围供其提供意见，该建议职责范围须明确订明合规顾问须向该公司的审核委员会汇报；

(iii) 委聘曾审核该公司内部监控并于内部监控审核报告内提出建议的专业机构，或（如适用）该公司申请委聘（附理由）而上市部满意及认可的其他专业机构，作出跟进，审核该公司的内部监控制度，以确保有关建议在六星期内全面实施；及

(iv) 在收到跟进审核报告的两星期内向上市部提供该报告.

(2) 相关董事中现仍任该公司董事者(i) 于120日内，完成由香港特许秘书公会、香港董事学会，或上市部认可的其他课程机构所提供有关《GEM 上市规则》合规事宜、董事职责及企业管治事宜的24小时培训；及(ii) 在培训完成后向上市部提供由培训机构发出其遵守此培训规定的书面证明。

(3) 该公司在完成上文第(1) (i)、(iii)、(iv) 段及第(2) 段所述指令后两星期内刊发公告，确认已全面遵守有关指令。根据此规定刊发的最后一份公告须包括确认已遵守上文第(1) (i)、(iii)、(iv) 段及第(2)段所述指令。

(4) 该公司须呈交上文第(3)段所述的公告拟稿予上市部提供意见，并须待上市部确定没有进一步意见后方可刊发。

(5) 上述第(1)至(4)段所列载的任何指令的管理及运作中可能出现的任何必需变动及行政事宜，均须提交上市部考虑及批准。如有任何值得关注的事宜，上市部须转交上市委员会作决定。为免引起疑问，联交所确认所述制裁及指令仅适用于该公司及相关董事。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2018/181030news?sc_lang=en

Hong Kong Insurance Authority Consults the Public on Proposed Guideline on Pecuniary Penalties for Licensed Insurance Intermediaries

On October 26, 2018, the Hong Kong Insurance Authority (IA) launched a two-month public consultation on the draft Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Regulated Persons under the Insurance Ordinance (Cap. 41) (Guideline).

The consultation forms part of the IA's preparation for the commencement of the new regulatory regime for insurance intermediaries tentatively starting from mid-2019 under which the IA will start direct regulation of insurance intermediaries.

The new section 81 of the Insurance Ordinance will empower the IA to take a number of disciplinary actions in respect of a person who is or was a regulated person in the event that he/ she/ it is guilty of misconduct or is not fit and proper.

One type of disciplinary action that the IA may take is ordering a person to pay a pecuniary penalty not exceeding the amount which is the greater of (i) HK$10 million; or (ii) 3 times the amount of the profit gained or loss avoided by the person.

The IA has decided not to adopt a tariff-based approach (e.g. a list/menu of the types of conduct for which a person may be disciplined and set certain levels of fine for each type of conduct).

The draft Guideline sets out the major considerations that the IA proposes to take into account when determining whether to impose a pecuniary penalty and the amount of the penalty. They include –

a. the principal purposes of imposing a pecuniary penalty;

b. the fact that the IA regards a pecuniary penalty as a more severe sanction than a reprimand, and a public reprimand as more severe than a private reprimand;

c. that as a matter of policy, the IA may publicize its decisions to impose a pecuniary penalty; and

d. that a pecuniary penalty should be effective, proportionate and fair. The more serious the conduct, the greater likelihood that the IA will impose a pecuniary penalty and that the amount of the penalty will be higher.

The IA proposes that when considering whether to impose a pecuniary penalty and the amount of the penalty, it will consider all the circumstances of the particular case and take into account a number of factors where relevant including the following non-exhaustive factors (in respect of which non-exhaustive examples have been given):

a. the nature, seriousness and impact of the conduct;

b. the behavior of the person since the conduct was identified;

c. the previous disciplinary record and compliance history of the person; and

d. other relevant factors.

The financial resources of the regulated person and the results of criminal actions (not just civil actions) taken against a regulated person before imposing a pecuniary penalty are also factors the IA proposes to consider in determining whether to impose pecuniary penalty on the regulated person and the penalty amount.

Whilst always taking into account the need to protect existing and potential policy holders, the IA recognizes the need to take a balanced approach and appreciates the importance of pecuniary penalties being effective, proportionate and fair. Pecuniary penalties will be imposed by the IA following a thorough process of review / investigation and the decision to take disciplinary action will be taken independently and objectively.

The Guideline has been drafted to take into account the fact that regulated persons can be individuals (i.e. natural persons) or firms (i.e. sole proprietors, partnerships or companies). As a result, slightly different factors apply, and this is why the draft Guideline contains subparagraphs that apply solely to individuals or firms.

The Guideline will take effect upon commencement of regulation of insurance intermediaries by the IA. However, all cases of alleged contravention of applicable rules or requirements that occurred before the commencement date will be followed up and considered by the IA according to the applicable rules or requirements prevailing at the time when the contravention occurred. In such cases the range of sanctions (including pecuniary penalties) available to the IA will be the same as those that could have been imposed by the Self-Regulatory Organizations under the current regime.

Members of the public are welcome to submit their comments to the IA on or before December 27, 2018.

香港保险业监管局就向持牌中介人施加罚款的建议指引谘询公众

香港保险业监管局(保监局)于2018年10月26日就草拟的《<保险业条例>（第41章）有关向受规管人士行使施加罚款权力的指引》(《指引》), 展开为期两个月的公众谘询。

保监局预计于2019年中实施新的保险中介人规管制度, 直接规管保险中介人, 是次谘询为相关准备工作的一部分。

《保险业条例 》(第41章)(该条例)新增的第81条将赋权保监局就属或曾属受规管人士的人士犯不当行为或并非适当人选, 对其作出若干纪律行动。

保监局可采取的纪律行动之一, 是命令该人缴付最高数额如下的罚款(以数额较大者为准) - ($) 10,000,000港元; 或(ii) 该人获取的利润或避免的损失的数额的3倍。

保监局已决定不采用定额基础的方法(即以有关人士可能受纪律处分的行为类型订定清单, 并为各类行为设定若干程度的罚款)。

草拟的《指引》载列保监局建议在决定是否施加罚款及罚款金额时考虑的主要因素。该等因素包括：

a. 施加罚款的主要目的；

b. 保监局认为施加罚款是一项较谴责更为严厉的制裁，而公开谴责比非公开谴责更为严厉；

c. 在政策上，保监局可公布其施加罚款的决定；及

d. 罚款应该有效、相称及公平。行为愈严重，保监局就愈有可能施加罚款，而罚款金额也可能愈高。

保监局建议在考虑是否施加罚款和罚款金额时，会考虑有关个案的所有情况，包括下列相关因素，所列因素并非详尽无遗(并就该等因素给出例子，而该等例子并非详尽无遗)：

a. 该行为的性质、严重性及影响；

b. 有关人士自该行为被发现以来的行为；

c. 该人士的过往纪律处分纪录及合规情况；及

d. 其他相关因素。

保监局亦建议将受规管人士的财政资源和对受规管人士提起的刑事诉讼(不只是民事诉讼)的结果，列为考虑是否施加罚款及罚款金额的因素之一。

尽管要顾及保障现有及潜在保单持有人，保监局仍会采取平衡的方法，并意识到罚款应该有效、相称及公平的重要性。保监局只会在彻底审查／调查程序后才会施加罚款，并将独立及客观地作出纪律处分行动的决定。

草拟《指引》时，已考虑到受规管人士可以是个人(即自然人)或商号(即独资经营人、合伙或公司)。由于所适用的因素略有不同，因此草拟的《指引》的某些分段仅适用于个人或公司。

《指引》将于保监局开始规管保险中介人时生效。然而，保监局在跟进和考虑于生效日期前发生的所有涉嫌违反适用规则或规定的个案时，将以有关情况发生时适用的规则或规定为根据。在此等情况下，保监局可用的不同制裁（包括罚款）将与现行制度下自律规管机构可施加者相同。

欢迎公众于2018年12月27日或之前向保监局提交意见。

Source 来源:
https://www.ia.org.hk/en/infocenter/press_releases/20181026.html

Hong Kong Insurance Authority Consults on the Maximum Number of Insurers to be Represented by a Licensed Individual Agent or Agency

On October 31, 2018, the Hong Kong Insurance Authority (IA) launched a two-month public consultation on the draft Insurance (Maximum Number of Authorized Insurers) Rules (Rules), which stipulate a cap on the number of insurers by which a licensed individual insurance agent or insurance agency may be appointed under the new statutory licensing regime for insurance intermediaries. The regime is scheduled for implementation in mid-2019.

The draft Rules largely mirror the existing framework set out in the Code of Practice for the Administration of Insurance Agents issued by The Hong Kong Federation of Insurers. The IA proposes increasing the maximum number of insurers which a licensed individual insurance agent or insurance agency can represent from four to five, while keeping the existing sub-cap on the number of long term insurers (i.e. life insurers) at two. The IA further suggests that there should be no substantive change to the way the number of appointing insurers is counted.

Members of the public are welcome to submit their comments to the IA on or before December 31, 2018.

香港保险业监管局就持牌个人代理或代理机构可代表保险公司数目上限展开谘询

香港保险业监管局 (保监局) 于2018年10月31日就草拟的《保险业（获授权保险人的最高数目）规则》(规则)，展开为期两个月的公众谘询。《规则》订明在新法定中介人发牌制度之下，每个持牌个人保险代理或保险代理机构最多可接受多少间保险公司的委任。有关制度预计于2019年中实施。

草拟的《规则》大致遵循现时香港保险业联会所发布《保险代理管理守则》中订明的框架。保监局建议每个持牌个人保险代理或保险代理机构可代表的保险公司数目总上限，由四间增加至五间，其中长期业务保险公司(即人寿保险公司) 数目上限维持于两间。保监局亦建议计算委任保险公司数目的方法大致维持不变。

欢迎公众于2018年12月31日或之前向保监局提交意见。

Source 来源:
https://www.ia.org.hk/en/infocenter/press_releases/20181031.html

Monetary Authority of Singapore and China Securities Regulatory Enhance Capital Markets Cooperation

On October 31, 2018, the Monetary Authority of Singapore (MAS) announced that it and the China Securities Regulatory Commission (CSRC) affirmed their commitment to strengthen supervisory cooperation and enhance financial connectivity between the capital markets of both countries, at the 3rd MAS-CSRC Supervisory Roundtable held on October 24, 2018.

Building on the discussions at last year's Roundtable, MAS and CSRC have agreed on the substantive areas for cooperation in supervising exchange-traded derivatives with a nexus to each other's capital markets. The agencies will formalize the agreement in a Memorandum of Understanding (MOU) soon. This will enhance cooperation in the supervision of futures markets in both jurisdictions, and foster sound and stable development of the futures markets in Singapore and China.

MAS and CSRC signed a Staff Exchange MOU to facilitate staff exchanges between both agencies. Such regular exchanges will deepen working relationships and mutual understanding.

Other topics discussed during the Roundtable include ways to enhance cross-border supervision of capital markets, application of data analytics in supervision and the role of capital markets in supporting the Belt and Road Initiative.

MAS said that the Roundtable has been an excellent platform for it to work on meaningful initiatives to enhance supervisory cooperation. With increased cross-border capital market activities, MAS and CSRC acknowledge the importance of improving regulatory coordination and ensuring the financial stability of their capital markets.

新加坡金融管理局与中国证券监管机构加强资本市场合作

2018年10月31日，新加坡金融管理局（新金局）宣布它和中国证券监督管理委员会（中证监）在2018年10月24日举行的第三届新金局和中证监监管圆桌会上；确认将强化两国监管合作并加强两国资本市场的金融互联互通。

在去年圆桌会议的讨论基础上，新金局和中证监就双方跨境衍生品监管合作的实质性领域达成一致意见。两个机构将尽快签署谅解备忘录以正式落证实协议。这将加强两国期货市场监管合作，促进新加坡和中国期货市场健康稳定发展。

新金局和中证监还签署了人员交流谅解备忘录，以促进两个机构之间的人员交流合作。这种定期交流将加深工作关系和相互了解。

圆桌会议讨论的其他议题包括如何加强对资本市场的跨境监管，在监管中应用数据分析，以及资本市场在支持"一带一路"倡议中的作用。

新金局表示：圆桌会议是一个很好的平台，可以促进有意义的举措以加强监督合作。 随着跨境资本市场活动的增加，新金局和中证监认同改善监管协调和确保双方资本市场金融稳定的重要性。

Source 来源:

http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-and-CSRC-Enhance-Capital-Markets-Cooperation.aspx

Inaugural Singapore-Chongqing Financial Summit Unlocks Opportunities for Regional Financial and Infrastructure Connectivity

On November 2, 2018, more than 500 government officials, financial sector professionals and corporate leaders from China and Southeast Asia attended the inaugural China (Chongqing)-Singapore Connectivity Initiative Financial Summit (Summit) in Chongqing, China. The Summit presented collaboration opportunities on cross-border financial and infrastructure connectivity between the Western Region of China and Southeast Asia.

The theme of the Summit was Open-Innovative-Connected-Mutual – Strengthen Financial Connectivity to support services along the Belt and Road.

Ten Memoranda of Understanding (MOUs) were signed during the Summit, including the following:

- The Singapore FinTech Association will form an alliance with the Chongqing authorities to develop the FinTech industry in Chongqing;

- OCBC Bank, Xiaomi Inc and Hanhua Financial Holding Co will explore fintech collaboration in the areas of retail and institutional financial services in China. This collaboration will enable more than 300 million Xiaomi retail customers and business partners to have access to innovative financial services;

- Lu International and other Singapore institutional investors will collaborate with Chongqing Financial Assets Exchange to help microfinance companies issue debt overseas.

Other MOUs signed during the Summit include enhancing support for the development of the Southern Transport Corridor and in inclusive finance in the Western Region of China.

The Monetary Authority of Singapore said that the Summit has helped to rekindle interest in connectivity between the Western Region of China and Southeast Asia, two key economic regions in Asia that have links going back centuries.

首届新加坡-重庆金融峰会为区域金融和基础设施互联互通开拓机会

2018年11月2日，来自中国和东南亚的500多名政府官员，金融业专业人士和企业领导人参加了在中国重庆举行的首届中国(重庆)-新加坡互联互通示范项目金融峰会(金融峰会)。此次金融峰会为中国西部地区与东南亚地区的跨境金融和基础设施互联互通提供了合作机会。

金融峰会的主题是<开放 创新 互联 共享 – 加强互联互通，全力服务"一带一路">。

金融峰会期间签署了十份谅解备忘录(备忘录)，其中包括：

- 新加坡金融科技协会将与重庆主管机关联盟，在重庆发展金融科技产业；

- 华侨银行，小米公司和汉华金融控股有限公司将在中国的零售和机构金融服务领域开展金融科技合作。
  此次合作将使超过3亿的小米零售客户和业务合作伙伴能够获得创新的金融服务；

- 陆金所国际和其他新加坡机构投资者将与重庆金融资产交易所合作，帮助小额金融信贷机构向海外发行债券。

金融峰会期间签署的其他谅解备忘录包括加强对南方运输走廊发展的支持以及中国西部地区的包容性融资。

新加坡金融管理局表示：此次金融峰会有助于重新激发对中国西部地区与东南亚之间互联互通的兴趣，这两个经济地区的联系可以追溯到几个世纪以前。

Source 来源:

http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/Inaugural-Singapore-Chongqing-Financial-Summit.aspx

Hong Kong Privacy Commissioner for Personal Data Expresses Serious Concern on Cathay Pacific Airways Data Breach Incident

On October 25 2018, the Privacy Commissioner for Personal Data, Hong Kong, Mr. Stephen Kai-yi Wong (Privacy Commissioner), expressed serious concern over the Cathay Pacific Airways (airline) data breach incident, noting that the incident might involve a vast amount of personal data (such as name, date of birth, passport number, Hong Kong Identity Card number, credit card number, etc) of local and foreign citizens.

The Privacy Commissioner said that organizations must take effective security measures to protect the personal data of its clients. If an external service provider is engaged as a data processor, the organization must adopt contractual or other means to safeguard personal data from unauthorized or accidental access, processing or use.

The Privacy Commissioner reminded members of the public that if they find any abnormalities with their personal accounts of the airline concerned or credit card accounts, they should contact the airline and the related financial institutions. They should also change the account passwords and enable two-factor authentication to protect their personal data.

The Privacy Commissioner stated that while reporting of data breach is voluntary, any organization concerned is encouraged to notify the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD). By doing so, the PCPD can work together with the organization to minimize the potential damage to clients.

The Privacy Commissioner stressed that organizations in general that amass and derive benefits from personal data should ditch the mindset of conducting their operations to meet the minimum regulatory requirements only. They should instead be held to a higher ethical standard that meets the stakeholders' expectations alongside the requirements of laws and regulations. Data ethics can therefore bridge the gap between legal requirements and the stakeholders' expectations. This is in fact the "Data Stewardship Values" advocated in the research report recently issued by the PCPD: respectful, beneficial and fair.

香港个人资料私隐专员非常关注国泰航空公司外洩客户个人资料事件

2018年10月25日，香港个人资料私隐专员黄继儿 (私隐专员) 就有关国泰航空公司(航空公司)外洩客户个人资料事件，表示非常关注，尤其当中可能涉及大量本港市民的个人资料(如姓名、出生日期、护照号码、身份证号码、信用咭号码等)。

私隐专员表示, 机构必须采取有效的保安措施妥善保障客户的个人资料。若聘用外判服务供应商(作为资料处理者), 机构仍须采取合约规范方法或其他方法, 以防止个人资料未获准许或意外地被查阅、处理或使用。

私隐专员亦提醒市民若发现航空公司个人帐户或信用咭帐户有不寻常的活动纪录, 应主动联络航空公司及相关财务机构以作跟进；同时应尽快更改帐户密码及启动双重认证功能, 以保障自己的个人资料。

私隐专员指出, 现时香港资料外洩事故通报只属自愿性质, 但他鼓励肇事机构通知香港个人资料私隐专员公署(公署), 此举有利于公署与相关机构携手, 减低因事件对所涉客户可能构成的潜在损害, 并寻求改善方案有效防止事件再次发生。
私隐专员强调：机构可从个人资料获取利益, 在营运上便不应抱有只依从最低监管要求的想法, 而应恪守更高的道德标准, 以符合客户的期望及相关法例和监管的要求。相信数据道德可弥合法例要求和客户期望两者之间的落差。这正是公署刚发表的研究报告所倡议的"数据道德管理价值", 包括尊重、互惠和公平。

Source 来源:
https://www.pcpd.org.hk/english/news_events/media_statements/press_20181025.html

Hong Kong Privacy Commissioner for Personal Data Releases Research Report to Advocate Respect and Beneficial and Fair Data Ethics Stewardship Management Value and Models

On October 23, 2018, the Privacy Commissioner for Personal Data, Hong Kong, Mr. Stephen Kai-yi Wong (Privacy Commissioner), released the "Report of the Legitimacy of Data Processing Project" at the 40th International Conference of Data Protection and Privacy Commissioners in Brussels, Belgium. The Privacy Commissioner gave a brief introduction on the research findings and their application to the business operations.

Key findings of the research project are as follows:

Data Stewardship Accountability Elements

The research project outlined the Ethical Data Stewardship Accountability Elements that call for organizations to:

1. Define data stewardship values, develop them into guiding principles and then translate them into organizational policies and processes for ethical data processing.

2. Use an "ethics by design" process to translate their data stewardship values into their data analytics and data use design processes so that society, groups of individuals, or individuals themselves, and not just the organization, gain value from the data processing activities.

3. Require Ethical Data Impact Assessments (EDIAs) when advanced data analytics may be impactful on people in a significant manner and/or when data-enabled decisions are being made solely by machines automatically.

4. Use an internal review process that assesses whether Data Stewardship Accountability Elements and EDIAs have been properly conducted.

5. Be transparent about processes; ensure thorough communications on managing the advanced data processing activities and the rationale behind the decisions; address and document all societal and individual concerns and design individual accountability systems that provide appropriate opportunities for feedback, relevant explanations and appeal options for impacted individuals.

6. Stand ready to demonstrate the soundness of internal processes to the regulatory agencies when data processing is or may be impactful on people in a significant manner.

Data Stewardship Values

Three Values are recommended for Hong Kong organizations when carrying out advanced data processing activities: respectful, beneficial and fair.

Respectful	• All parties that have interests in the data should be taken into consideration. • Organizations are accountable for conducting advanced data processing activities so that the expectations of the individuals to whom the data relate and/or the individuals who are impacted by the data use are considered. • Decisions made about an individual and the decision-making process should be explainable and reasonable. • Individuals should be provided with appropriate and meaningful engagement and control over advanced data processing activities that impact them. • Individuals should always be able to make inquiries, to obtain relevant explanations and, if necessary, to appeal decisions regarding the advanced data processing

	activities that impact them.
Bene-ficial	• Where advanced data-processing activities have a potential impact on individuals, the benefits and potential risks of the advanced data processing activity should be defined, identified and assessed. • Once all risks are identified, appropriate ways to mitigate those risks and to balance the interests of different parties should be implemented.
Fair	• Advanced data-processing activities must avoid actions that seem inappropriate or might be considered offensive or causing distress. Unequal treatment or discrimination should also be prohibited. • The accuracy and relevancy of algorithms and models used in decision-making should be regularly reviewed to reduce errors and uncertainty, and should be evaluated for any bias and discrimination. • Advanced data-processing activities should be consistent with the ethical values of the organization.

Assessment Models

In order to help implement the Data Stewardship Accountability Elements and the Values, two models are recommended.

- Model Ethical Data Impact Assessment:

It is adopted for assessing the impact to all stakeholders' interests on the data collection, use and disclosure in data-driven activities.

- Process Oversight Model:

It looks at how an organization translates organizational ethical values into principles and policies and into an "ethics by design" program. It also considers how the internal review processes, such as conducting EDIAs and establishing effective individual accountability systems, are implemented.

The Privacy Commissioner said that the research project deliverables will assist organizations in Hong Kong and beyond to implement data ethics in their daily operations, and to fully reap the benefits of the data-driven economy while protecting and respecting the fundamental rights (including the right to privacy), interests and freedoms of individuals.

香港个人资料私隐专员公布研究报告提倡尊重和互惠及公平的数据道德管理价值和模式

2018年10月23日，香港个人资料私隐专员黄继儿 (私隐专员) 于比利时布鲁塞尔举行的第四十届国际资料保障及私隐专员会议的活动上发布「处理数据的正当性」研究报告，简介研究成果及如何应用于机构实际运作上。

研究项目的主要结果包括：

数据管理问责要素

研究报告定出有道德的数据管理问责要素，要求机构：

1. 界定数据管理价值，再发展成各项指引原则，继而转化成机构的道德数据处理政策和流程。

2. 采用「贯切道德的设计」流程，将机构的数据管理价值融入数据分析和数据使用设计流程，使机构、社会、群体或至个人均可从高阶数据处理活动中获取价值。

3. 当高阶数据分析可能对人构成显着的影响，或涉及纯机器的自动决策，便须进行数据影响的道德评估。

4. 制定内部审核流程以确保数据管理问责要素和数据影响的道德评估被正当地执行。

5. 流程须具透明度；就管理高阶数据处理活动及其所得出的决策理据作充份沟通；回应并记录所有社会和个人所提出的问题，并设计个人问责制度，借以为受影响的人士提供合适的机会作出回应、澄清及复核。

6. 机构须随时准备好一旦数据处理对人构成显着影响时，须向相关的监管机构解释其内部流程的合理性。

数据管理价值

研究报告中就香港机构进行高阶数据处理活动建议的三大数据管理价值包括**尊重**、**互惠**和**公平**：

尊重	• 须将所有数据持份者纳入考虑当中； • 机构须就其开展的高阶数据处理活动负责，要顾及与数据相关及／或受数据使用影响人士的期望； • 针对个别人士所作出的决定及其决策过程须属合理并能作出清晰交代； • 若个别人士受高阶数据处理的活动影响，须向他们提供适当且具意义的参与和控制权；

	• 任何人士可随时提出查询和取得有关阐释资料，若有需要，他们可就高阶数据处理活动对其影响提出复核。
互惠	• 若所开展的高阶数据处理活动对个别人士有潜在影响，须确定和衡量数据处理所得的好处和潜在的风险； • 确定所有风险后，须作出适当的措施以减低相关风险，及平衡各方利益。
公平	• 高阶数据处理活动不应采取不恰当、具侵犯性或引起忧虑的行为，并防止产生不平等待遇或歧视； • 应定期检讨决策时所使用的数据运算法和模式的准确性和关联性，以减少错误和不确定的因素，并评估运算法有否存在偏见或歧视； • 高阶数据处理活动须与机构的道德价值一致。

<u>评估模式</u>

为协助机构实施道德数据管理要素和落实数据管理价值，研究报告建议使用以下两个评估模式：

- 道德数据影响评估模式：

用于评估在数据处理活动中的数据收集、使用和披露对所有持份者权益的影响。

- 流程监督模式：

用于监督机构如何将道德价值观转化为各项原则、政策和其「贯切道德的设计」计划，并检讨现行的内部审核流程(如数据影响的道德评估是否有确实执行，和有效的个人问责制度是否确立)。

私隐专员表示：是次研究结果能协助香港以至其他地区的机构在日常营运中实施数据道德，并在保障和尊重个人基本权利(包括私隐权)、利益和自由的同时，亦能充分享受数据经济带来的好处。

Source 来源:
https://www.pcpd.org.hk/english/news_events/media_statements/press_20181024.html

U.S. Securities and Exchange Commission Charges Family Friend of Former Investment Banker with Insider Trading

On November 2, 2018, the U.S. Securities and Exchange Commission (SEC) charged an IT professional in Texas who allegedly participated in an insider trading scheme perpetrated by a former Wall Street investment banking analyst.

The SEC's complaint alleges that Hamed Ettu (Ettu), a family friend of the analyst Damilare Sonoiki (Sonoiki), received illegal tips about nonpublic impending mergers as the two communicated in text messages using a Nigerian dialect to carry out their illicit trading. The SEC previously charged Sonoiki and a professional football player, Mychal Kendricks (Kendricks), in the scheme.

Using allegedly misappropriated information, Ettu and Sonoiki made approximately $93,000 in illegal profits by using Ettu's brokerage account to purchase the call options of companies that were about to be acquired and then selling these positions after the deals were announced. In one instance, they generated returns of more than 318 percent in less than one month.

The SEC's complaint, filed in federal district court in Philadelphia, charges Ettu with fraud and is seeking the return of his ill-gotten trading profits plus interest and penalties.

The U.S. Attorney's Office for the Eastern District of Pennsylvania announced parallel criminal charges against Ettu. Sonoiki and Kendricks have pled guilty to criminal charges.

美国证券交易委员会指控前投资银行家的家庭朋友内幕交易

美国证券交易委员会 (证交会) 于2018年11月2日指控德克萨斯州的一名信息科技专业人员涉嫌参与由前华尔街投资银行分析师策划的内幕交易计划。

证交会的起诉书声称，分析师 Damilare Sonoiki (Sonoiki) 的一名家人朋友 Hamed Ettu (Ettu) 收到了关于非公开即将进行合并的非法提示，两人通过使用尼日利亚方言短讯进行非法交易。证交会先前曾指控 Sonoiki 和一名职业足球运动员 Mychal Kendricks (Kendricks) 参与该计划。

使用声称被盗用的信息，Ettu 和 Sonoiki 通过使用 Ettu 的经纪账户购买即将被收购的公司的认购期权，然后在交易宣布后出售这些持仓股份，赚取了大约93,000美元的非法利润。 在一个例子中，他们在不到一个月的时间内赚取了超过318％的回报。

证交会在费城联邦地方法院提起诉讼，指控 Ettu 欺诈，并寻求他归还非法所得以及利息和罚款。

美国宾夕法尼亚州东区检察官办公室宣布对 Ettu 提起平行刑事指控。 Sonoiki 和 Kendricks 已经承认对其的犯罪指控。

Source 来源:
https://www.sec.gov/news/press-release/2018-251

U.S. Securities and Exchange Commission Charges Investment Adviser with Running US$3.9 Million Fraud

On November 2, 2018, the U.S. Securities and Exchange Commission (SEC) charged a former registered representative and investment adviser in Pennsylvania with operating a long-running offering fraud.

The SEC's complaint alleges that Douglas P. Simanski (Simanski) raised over US$3.9 million from approximately 27 of his brokerage customers and investment advisory clients, many of them retired or elderly, by telling them that he would invest their money in either a "tax free" fixed rate investment, a rental car company, or one of two coal mining companies in which Simanski claimed to have an ownership interest. He allegedly told the investors to write checks payable to personal bank and brokerage accounts he opened in his wife's name. The complaint alleges that instead of investing the money as he promised, Simanski largely used the money to repay other investors and for his personal use. According to the complaint, Simanski's scheme collapsed when one of his clients contacted the Financial Industry Regulatory Authority (FINRA) and Simanski admitted his scheme to his employer.

In a parallel action, the U.S. Attorney's Office for the Western District of Pennsylvania announced that Simanski pleaded guilty to criminal charges.

The SEC's complaint charges Simanski with violating antifraud provisions of the federal securities laws. Simanski has agreed to settle the charges against him. The settlement, which is subject to court approval, orders injunctive relief and disgorgement of ill-gotten gains plus interest.

Simanski also agreed to the entry of an SEC order that, when entered, will bar him from the securities industry for the rest of his life.

The SEC said that this matter highlights the need for retail investors – and retirees and elderly individuals in particular – to remain skeptical of investments that sound too good to be true and confirm that investments recommended by brokers and investment advisers are approved for sale by their respective brokerage or advisory firms before transferring funds.

美国证券交易委员会指控投资顾问操作390万美元的欺诈行为

美国证券交易委员会 (证交会) 于2018年11月2日指控一名宾夕法尼亚州的前注册代表和投资顾问长期操作欺诈行为。

证交会的起诉书声称 Douglas P. Simanski (Simanski) 向他的大约27名经纪业务客户和投资咨询客户(其中许多是退休人士或老年人士)讹称将他们的钱投资于"免税"固定息率投资, 汽车租赁公司或 Simanski 声称拥有所有权权益的两家煤矿公司之一, 共筹集了超过390万美元。 Simanski 声称告诉投资者将支票存入其以妻子名义开立的经纪账户和其的个人银行账户。该起诉书声称, Simanski 并没有像其所承诺的那样投入资金, 而是将大部分的款项用来偿还其他投资者和其个人用途。根据起诉书, Simanski 的计划因他的一位客户联系金融业监管局(FINRA)而瓦解, 其后 Simanski 向他的雇主承认有关的计划。

在一项平行诉讼中, 美国宾夕法尼亚州西区检察官办公室宣布 Simanski 已经承认对其的刑事指控。

证交会的起诉书指控 Simanski 违反了联邦证券法的反欺诈规定。Simanski 已同意就对他的指控达成和解协议 。待法院批准的和解协议要求寻求禁制令和交回涉嫌非法所得以及利息。

Simanski 亦同意证交会寻求的一项命令, 若被接纳, 他将被终身禁止参与证券业。

证交会表示: 此事件凸显了零售投资者 - 特别是退休人士和老年人士 – 应对那些听起来好得令人难以置信的投资持怀疑态度, 并在转移资金之前; 确认由经纪和投资顾问推荐的投资已被各自的经纪公司或投资顾问公司批准出售。

Source 来源:
https://www.sec.gov/news/press-release/2018-252

Citibank N.A. Pays More Than US$38 Million to Settle U.S. Securities and Exchange Commission's Charges of Improper Handling of "Pre-released" American Depositary Receipts

On November 7, 2018, the US Securities and Exchange Commission (SEC) announced that Citibank N.A. (Citibank) has agreed to pay $38.7 million to settle charges of improper handling of "pre-released" American Depositary Receipts (ADRs).

ADRs – U.S. securities that represent foreign shares of a foreign company – require a corresponding number of foreign shares to be held in custody at a depositary bank. The practice of "pre-release" allows ADRs to be issued

without the deposit of foreign shares provided brokers receiving them have an agreement with a depositary bank and the broker or its customer owns the number of foreign shares that corresponds to the number of shares the ADR represents.

The SEC found that Citibank improperly provided ADRs to brokers in thousands of pre-release transactions when neither the broker nor its customers had the foreign shares needed to support those new ADRs. Such practices resulted in inflating the total number of a foreign issuer's tradeable securities, which resulted in abusive practices like inappropriate short selling and dividend arbitrage that should not have been occurring.

This is the second action against a depositary bank and sixth action against a bank or broker resulting from the SEC's ongoing investigation into abusive ADR pre-release practices.

Without admitting or denying the SEC's findings, Citibank agreed to pay more than US$20.9 million in disgorgement of ill-gotten gains plus US$4.2 million in prejudgment interest and a US$13.5 million penalty for a total of more than US$38.7 million. The SEC's order acknowledges Citibank's remedial acts and cooperation in the investigation.

The SEC said that its investigation into these practices has revealed that banks and brokerage firms profited while ADR holders were unaware of how the market was being abused.

花旗银行就"预发行"美国预托凭证的不当处理指控与美国证券交易委员会达成和解支付超过 3800 万美元

2018 年 11 月 7 日,美国证券交易委员会 (证交会) 宣布, 花旗银行就证交会对其提出"预发行"美国预托凭证(ADRs)的不当处理指控同意支付 3870 万美元以达成和解。

ADRs 代表可在美国交易的国外公司的外国股票而要求相应数量的外国股票在存托银行保管。"预发行"的做法允许在没有存入外国股票的情况下发行 ADRs, 前提是得到该等外国股票的经纪商与存托银行达成协议, 及经纪商或其客户拥有的外国股票数量与 ADR 所代表的股票数量相对应。

证交会发现, 当经纪商及其客户都没有支持这些新ADR所需的外国股票时,花旗银行仍在数千次预发行交易中不正当地向经纪人提供了 ADR。这种做法导致外国上市发行人的可交易证券总数膨胀, 导致发生不应存在的滥用行为如不恰当的卖空和股息套利之类。

证交会正对滥用 ADR 预发行的做法进行调查, 这是针对存托银行的第二次行动, 也是针对银行或经纪商采取的第六次行动。

在不承认或否认证交会的调查结果的情况下, 花旗银行同意支付超过2090万美元的非法收益, 加上420万美元的判决前利息和1350万美元的罚款, 总额超过3870万美元。证交会的命令关注花旗银行在调查中作出的补救措施和合作。

证交会指出, 对这些做法的调查显示银行和经纪公司因而获利而但 ADR 持有人并未意识到市场如何被滥用。

Source 来源:
https://www.sec.gov/news/press-release/2018-255