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Financial Services Regulatory Update
金融服务监管资讯

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The Stock Exchange of Hong Kong Limited Issues FAQ on Treatment of Leases as Impacted by HKFRS / IFRS 16

December 7, 2018, the Stock Exchange of Hong Kong (Exchange) has updated the Frequently Asked Questions (FAQ) on modified treatment of leases including connected transaction leases as impacted by HKFRS / IFRS 16.

In particular, **FAQ 046A-2018** provides as follows:

Query

An issuer will enter into a lease transaction as a lessee (e.g. lease of retail outlets for operating its retail business). Under the agreement, the annual lease payment will include: i) a fixed dollar amount (fixed lease payments); and ii) a variable amount determined as a percentage of the issuer's annual sales generated from the leased properties (variable lease payments).

According to HKFRS/IFRS 16, the issuer will recognize a right-of-use asset taking into account the fixed lease payments. The actual variable lease payments linked to sales will be recognized as expenses in the issuer's profit or loss accounts in the periods in which they are incurred.

(a) How should the issuer calculate the percentage ratios for the lease under Chapter 14 of the Main Board Rules?

(b) If the lessor is a connected person, how should the issuer classify the lease under Chapter 14A of the Main Board Rules?

Response

(a) The recognition of a right-of-use asset in relation to the fixed lease payments will be regarded as an acquisition of asset under the definition of transaction set out in Main Board Rule 14.04(1)(a). The issuer is required to compute the assets and consideration ratios by using the value of the right-of-use asset as the numerator. (see FAQ045-2018(a) and (c)).

The variable lease payments linked to sales will be expenses incurred by the issuer in its ordinary and usual course of business. They are revenue in nature and are not subject to Chapter 14.

(b) Where the lessor is a connected person:

(i) The recognition of a right-of-use asset will constitute a one-off connected acquisition. The issuer is required to compute the assets and consideration ratios by using the value of the right-of-use asset as the numerator (see FAQ045-2018(d))

(ii) The variable lease payments linked to sales will be recorded as expenses by the issue over the term of the lease. They will be treated as a continuing connected transaction under Main Board Rule 14A.31. The issuer is required to set annual caps on the variable lease payments to be made each year under the agreement, and calculate the revenue, assets and consideration ratios.

The lease will be classified under Chapter 14A by reference to the largest percentage ratio.

Note: There are other types of variable lease payments (e.g. variable lease payments depending on an index or rate) that are included in the initial measurement of right-of-use asset under HKFRS / IFRS 16. The treatment would be the same as fixed lease payments for the purpose of Chapters 14 and 14A.

香港联合交易所发布受香港财务报告准则/国际财务报告准则 16 影响有关租赁的合规处理的常问问题

2018 年 12 月 7 日，香港联合交易所更新经修订的租赁处理的常问问题；包括受香港财务报告准则第 16 号/国际财务报告准则第 16 号 (HKFRS / IFRS 16) 影响的关连租赁交易。

尤其是常问问题 046A-2018 规定如下：

问题

发行人将以承租人的身份订立租赁交易, 例如租用零售店铺经营其零售业务。根据协议, 每年租金将包括：i) - 固定金额(定额租金); 及 ii) - 按发行人租赁物业所产生年度销售额的某个百分比所厘定的可变金额(变动租金)。

根据 HKFRS / IFRS 16, 发行人将就定额租金确认入账为一项使用权资产。至于与销售额挂钩的实际变动租金则于产生期间在发行人的损益账中确认为开支。

(a) 发行人应如何按《主板规则》第十四章计算租赁交易的百分比率？

(b) 若出租人为关连人士, 则发行人应如何按《主板规则》第十四 A 章为其租赁交易分类？

回答

(a) 就定额租金确认入账的使用权资产, 按《主板规则》第 14.04(1) 的 (a) 条对交易的定义, 这 将视作收购资产。发行人须以使用权资产的价值为分子来计算资产比率及代价比率(见常问问 题 045-2018 的(a)及(C))。与销售额挂钩的变动租金将会是发行人在其一般日常业务过程 中产生的开支, 属于收益性质, 因此毋须遵守第十四章的规定。

(b) 若出租人为关连人士：

(i) 确认入账使用权资产将构成一次性的关连收购事项行人须以使用权资产的价值为分子来计算资产比率及代价比率(见常问问题 045-2018(d))

(ii) 发行人会将与销售额挂钩的变动租金在租赁期间入账为开支。根据《主板规则》第 14A.31 条, 这将视为持续关连交易。发行人须就协议项下每年须支付的变动租金设定全年上限, 并计算收益比率, 资产比率及代价比率。

租赁将根据最大的一个百分比率在《主板规则》第十四 A 章分类。

注: 根据 HKFRS / IFRS 16, 使用权资产的初次认列会将某些其它种类的变动租金(例如基于指数或利率的变动租金)计算在内, 就"主板规则"第十四章及第十四 A 章而言, 这些变动租金的处理会与定额租金相同。

Source 来源:
http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/f/a/FAQ_045-2018_to_052-2018.pdf

The Stock Exchange of Hong Kong Limited Introduces E-training for Listed Companies' Directors

On December 18, 2018, The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), introduced e-training for directors of companies listed on the Exchange.

The e-training is part of the Exchange's ongoing commitment to promote and maintain good corporate governance standards and practices amongst issuers.

The e-training comes as new amendments to the Listing Rules on corporate governance will take effect on January 1, 2019, following the Exchange's publication of its "Consultation Conclusions on Review of the Corporate Governance Code and Related Listing Rules".

The first e-training course covers six topics that will take around 45 minutes to complete:

- Corporate governance update 2018
- Appointment of independent non-executive directors (INEDs)
- INEDs' role
- Directors' attendance at meetings and dividend policy
- Weighted voting rights issuers' corporate governance requirements
- Key messages and conclusions

HKEX said that the first e-training is designed to help directors of companies listed on the Exchange understand its new corporate governance requirements that take effect on January 1, 2019. Directors should participate in training to develop and refresh their knowledge and skills so as to ensure that their contribution to the board remains informed and relevant. HKEX will continue to look for innovative ways to provide training for directors.

香港联合交易所有限公司推出上市发行人董事网上培训

2018 年 12 月 18 日, 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) 推出上市发行人的董事网上培训。

推出网上培训是联交所致力持续提升及维持发行人良好企业管治水平的其中一项工作。

网上培训内容包括联交所发布《有关检讨《企业管治守则》及相关《上市规则》条文的谘询总结》后, 将于 2019 年 1 月 1 日生效的新修订《上市规则》。

第一辑网上培训涵盖六个课题, 大约需时 45 分钟完成：

- 2018 年企业管治的最新发展
- 委任独立非执行董事
- 独立非执行董事的角色
- 董事出席会议及股息政策
- 不同投票权发行人适用的企业管治规定
- 重要讯息及总结

香港交易所表示：第一辑网上培训旨在让联交所上市发行人的董事了解今年 2019 年 1 月 1 日生效的全新企业管治机制的要求。其建议董事参与培训，温故及增进他们的知识和技能，确保他们在具备全面资讯及切合所需的情况下投入董事会的工作。香港交易所将继续构思创新方法为董事提供培训。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/1812183news?sc_lang=en

Hong Kong Securities and Futures Commission Issues Circular to Intermediaries on Distribution of Complex and High-risk Products

On December 7, 2018, the Hong Kong Securities and Futures Commission (SFC) issued a circular to remind intermediaries to observe the requirements governing selling practices, including the suitability obligations under the Code of Conduct, when they distribute structured products and corporate bonds with complex features or high risks. The SFC noted from its recent survey that sales volumes of these products by licensed corporations have increased.

One example is equity-linked accumulators, which are derivative products with significant investment risks. Investors are bound by contract to take up units of the underlying assets at the strike price when the market moves against them, crystallizing losses. This downside risk is magnified when a “multiplier” condition is included.

Another example is bonds with non-viability loss-absorption features (NVLA Bonds). These may have contingent equity conversions or write-down features which are triggered when the issuers’ regulatory capital ratio drops to a certain level or upon specific government or regulatory action in the event the issuers face financial difficulties. Triggering events are complex and difficult to predict. If one occurs, it could fundamentally alter the nature of the products or pay-out profiles. This could make it difficult for investors to assess the likelihood and amount of potential losses.

In light of the complexity of these types of products, they are considered complex products for the purpose of compliance with the Guidelines on Online Distribution and Advisory Platforms and the new paragraph 5.5 of the Code of Conduct. Under these requirements, with effect from April 6, 2019, intermediaries will be required to ensure that a transaction in a complex product is suitable for the client in all circumstances irrespective of whether a solicitation or recommendation is made. Intermediaries will also be required to provide information and warning statements about the complex products to the client.

The SFC has also noted that high-yield corporate bonds are being distributed to investors. These bonds come with an increased risk of issuer default and are more vulnerable during an economic downturn.

When distributing complex products, intermediaries should:

(a) conduct product due diligence taking into account, amongst other factors, their features, risks and any restrictions on their sale or target customers, and in what aspects they are considered suitable for clients;

(b) ensure that the products’ risk-return profiles match the client’s financial situation, investment objectives, investment experience, risk tolerance and other specific circumstances;

(c) provide clients with sufficient and accurate information about the products, including their features and risks, and always present balanced views and not focus solely on the products’ advantages; and

(d) provide staff with adequate training on the products they distribute and how to appropriately disclose the products’ features and risks to clients.

The SFC uses a range of supervisory tools, including inspections, to monitor compliance and takes regulatory action against licensed corporations found to have breached the requirements.

香港证券及期货事务监察委员会向中介人发出有关复杂及高风险产品分销的通函

2018 年 12 月 7 日，香港证券及期货事务监察委员 (证监会) 发出通函提醒中介人在销售具复杂特点或较高风险的结构性产品及公司债券时，应遵从有关销售手法的规定，包括《操守准则》下合适性的责任。 证监会从其近期的调查中留意到，持牌法团销售这些产品的数量有所上升。

其中一个例子是股票挂钩累计认购期权。此类产品是有重大投资风险的衍生产品。投资者受到合约所约束，在市场走势不利于他们时，须按照行使价买入议定數目的相关

资产，因而蒙受损失。当该合约包含“乘數＂条款时，此亏损风险便会倍增。

另一例子是具有在发行商不可持续营运时用作弥补亏损的特点的债券（弥补亏损债券）。 此类债券具有或然债股转换或撇减的特点。当发行商的监管资本比率跌至某一特定水平时，或当政府或监管机构因发行商面对财务困难而采取特定行动时，上述特点便会被触发。触发事件既复杂又难以预测，而且一旦发生，产品的性质或支付形式可能会发生根本性的改变，从而令投资者难以评估潜在亏损出现的可能性及幅度。

鉴于上述产品种类的复杂性，故就遵守《网上分销及投资谘询平台指引》及《操守准则》新增第 5.5 段的目的而言，这些产品一概被视为复杂产品。根据这些规定，由 2019 年 4 月 6 日起，中介人无论有否对客户进行招揽或提供建议，都须确保复杂产品交易在所有情况下都适合有关客户。中介人亦将须为客户提供该复杂产品的资料及警告声明。

证监会亦留意到，向投资者销售的公司债券包括高息债券。此类债券所涉及的发债机构违责风险往往较高，而且在经济下滑时更容易受到不利影响。

销售复杂产品时，中介人应：

(a) 就产品作出尽职审查，须考虑各种因素，当中包括：有关产品的特点、风险及销售限制或对象，以及有 关产品何以被视为适合客户；

(b) 确保产品的风险回报状况切合客户的财政状况、投资目标、投资经验、风险承受能力及其他相关情 况；

(c) 向客户提供充分及准确的产品资料，包括产品的特点及风险；并时刻给予客户持平的意见，而不应只 着眼于有关产品的好处；及

(d) 向职员提供充足的培训，向他们说明所销售的产品及如何向客户适当地披露有关产品的特点和风险。

证监会将继续采用各种监督措施(包括进行视察)，以监察持牌法团的合规情况。一旦发现有持牌法团违反监管规定，证监会便会对该持牌法团采取监管行动。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC89

Hong Kong Securities and Futures Commission Issues Quarterly Report

On December 7, 2018, the Hong Kong Securities and Futures Commission (SFC) published its Quarterly Report summarizing key developments from July to September 2018.

During the quarter, the SFC released consultation conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs, which came into effect on July 13, 2018. It also launched consultations on proposed guidelines for securities margin financing activities to enhance brokers' risk management and on proposals to amend the Guideline on Anti-Money Laundering and Counter-Terrorist Financing to align with the latest international standards.

In a July circular, the SFC provided guidance for using electronic signatures to onboard individual clients online. It also issued a circular in August to caution that anyone involved in providing securities margin financing in the guise of investments may be liable to prosecution.

The open-ended fund companies regime which introduces a new corporate fund structure in addition to the current unit trust form took effect in July, and the investor identification regime for northbound trading under Mainland-Hong Kong Stock Connect was introduced in September.

The SFC published a strategic framework in September which set out its agenda to contribute to Hong Kong's green finance development as well as to connect green finance flows between the Mainland and the rest of the world.

In enforcement, five licensed corporations and five representatives were disciplined during the quarter, resulting in total fines of HK$40.4 million.

香港证券及期货事务监察委员发表季度报告

2018 年 12 月 7 日，香港证券及期货事务监察委员会（证监会）发表季度报告，总结 2018 年 7 月至 9 月期间的重要发展。

季内，证监会发出有关建议修订《公司收购、合并及股份回购守则》的谘询总结，经修订的守则已于 7 月 13 日生效。证监会亦展开了两项谘询，分别建议发出有关证券保证金融资活动的指引，以加强经纪行的风险管理，及修订《打击洗钱及恐怖分子资金筹集指引》，以紧贴最新的国际标准。

证监会于 7 月发出通函，就透过电子签署方式在网上与个人客户建立业务关系提供指引。证监会亦于 8 月的一份

通函中发出警告，任何机构及人士若参与提供以投资作掩饰的证券保证金融资均可能遭到检控。

开放式基金型公司制度已于 7 月实施，以便在目前的单位信托形式以外，引入新的公司型基金结构。另外,在内地与香港股票市场交易互联互通机制下的沪股通及深股通于 9 月实施了投资者识别码制度。

证监会于 9 月公布策略框架，当中制订了工作议程，以促进香港绿色金融发展，并接通内地与世界各地之间的绿色金融资金流。

在执法方面，证监会在季内对五家持牌机构及五名代表采取了纪律处分，合共罚款 4,040 万港元。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR136

Hong Kong Securities and Futures Commission Issues Circular on Clearing Amendment Rules – Addition of Eight New Calculation Periods

On December 7, 2018, the Hong Kong Securities and Futures Commission (SFC) issued a circular to inform that the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018 (Clearing Amendment Rules) has been gazetted.

Subject to negative vetting by the Legislative Council, the Clearing Amendment Rules will be effective on March 1, 2019.

The Clearing Amendment Rules amend the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) to provide for eight new Calculation Periods, and their corresponding Clearing Thresholds and Prescribed Days. The first new Calculation Period is March 1, 2019 to May 31, 2019.

Licensed persons are reminded that if their average total position in OTC derivatives during a Calculation Period reaches the corresponding Clearing Threshold, relevant OTC derivative transactions they enter into on and after the corresponding Prescribed Day must be centrally cleared in accordance with the Clearing Rules.

香港证券及期货事务监察委员会发出关于《结算修订规则》－增设八个新的计算期间的通函

2018 年 12 月 7 日，香港证券及期货事务监察委员 (证监会) 发出通函，告知《2018 年证券及期货(场外衍生工具交易-结算及备存纪录责任和中央对手方的指定)(修订)规则》(结算修订规则) 刊宪。

待立法会完成先订立后审议的程式后，《结算修订规则》将于 2019 年 3 月 1 日生效。

《结算修订规则》修订《证券及期货(场外衍生工具交易-结算及备存纪录责任和中央对手方的指定)规则 (结算规则)，以订定八个新的计算期间、其相应的结算门槛及订明日期。首个新的计算期间为 2019 年 3 月 1 日至 2019 年 5 月 31 日。

证监会提醒持牌人士，如他们在某计算期间内的场外衍生工具平均总持仓量达到相应的结算门槛，其在相应的订明日期或随后订立的相关场外衍生工具交易必须按照《结算规则》进行中央结算。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC88

Hong Kong Securities and Futures Commission Suspends Chan Ho Wai and Lam Wai Kit for Nine Months for Misconduct in Issuing Research Reports

On December 10, 2018, the Securities and Futures Commission (SFC) has suspended the licences of Ms Chan Ho Wai (Chan) and Mr Lam Wai Kit (Lam), responsible officers of FT Securities Limited (FTSL), for nine months from December 8, 2018 to September 7, 2019.

Chan was responsible for preparing and issuing three equity research reports published on FTSL's website between July 2012 and April 2013, whilst Lam was responsible for approving these research reports.

The SFC found that Chan and Lam had failed to:

- exercise due skill, care and diligence in handling the research reports; and
- ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by FTSL

The SFC's disciplinary actions against Chan and Lam are related to its disciplinary action against FTSL in relation to the preparation and publication of the research reports in question. As FTSL has made an application to the Securities and Futures Appeals Tribunal for a review of the SFC's decision to take disciplinary action against it, the SFC will not disclose the details of its disciplinary action against Chan and Lam until the conclusion of FTSL's review application.

香港证券及期货事务监察委员会暂时吊销陈可惠及林惠杰的牌照九个月

2018 年 12 月 10 日，香港证券及期货事务监察委员会(证监会) 暂时吊销富通证券有限公司 (富通) 的负责人员陈可惠 (陈) 及林惠杰 (林) 的牌照，为期九个月，由 2018 年 12 月 8 日起至 2019 年 9 月 7 日止。

在 2012 年 7 月至 2013 年 4 月期间，陈负责编制及发出在富通网站上刊登的三份股票研究报告，而林则负责批准该等研究报告。

证监会发现，陈及林没有：

- 以适当的技能、小心审慎和勤勉尽责的态度处理有关研究报告；及
- 确保富通维持适当的操守标准及遵从恰当的程序。

就编制及刊发有关研究报告而言，证监会对陈及林作出的纪律处分行动与其对富通作出的纪律处分行动有关。由于富通向证券及期货事务上诉审裁处就证监会对其作出纪律处分行动的决定提出复核申请，故证监会将不会披露其对陈及林作出纪律处分行动的详情，直至富通的复核申请有结论为止。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR139

Hong Kong Securities and Futures Commission Bans Kong Kar Bong for 10 Years for Theft and Forgery

On December 11, 2018, the Securities and Futures Commission (SFC) has banned Mr Kong Kar Bong (Kong), a former account executive of Sanfull Securities Limited (Sanfull), from re-entering the industry for 10 years from December 11, 2018 to December 10, 2028.

The SFC found that in June 2012, Kong received two cheques from a friend for opening a securities account and a futures account at Sanfull. While the securities account of Kong's friend was opened, the futures account was never opened. Instead, Kong deposited the cheque of HK$500,000 that his friend had issued for the futures account into his own securities account at Sanfull.

In September 2012, upon his friend's repeated inquiries about the status of the futures account, Kong misrepresented to his friend that the futures account existed and the HK$500,000 sum was in the futures account by emailing a forged statement to his friend showing a balance of HK$500,000 in an account under his friend's name. Kong's friend only became aware that his futures account did not exist when he requested Sanfull to close the account in 2014.

The SFC considers that Kong's conduct was deliberate and dishonest and called into question his character, reliability, and fitness and properness to be a regulated person. In deciding the sanction, the SFC took into account all relevant circumstances, including Kong's otherwise clean disciplinary record.

香港证券及期货事务监察委员会就盗窃及伪造结单案禁止江嘉邦重投业界十年

2018 年 12 月 11 日，香港证券及期货事务监察委员会(证监会) 禁止新富证券有限公司 (新富) 前客户主任江嘉邦 (江) 重投业界，为期十年，由 2018 年 12 月 11 日至 2028 年 12 月 10 日止。

证监会发现，江于 2012 年 6 月向一名友人收取了两张支票，以供在新富开设一个证券帐户及一个期货帐户。尽管该友人的证券帐户已获开立，但期货帐户却从未开设。江反而将其友人为开设该期货帐户而开出的 500,000 港元支票存入了自己在新富的个人证券帐户内。

及至 2012 年 9 月，江在其友人多番追问该期货帐户的状况后，以电邮向其友人发出一份伪造的结单，当中显示其友人名下的一个帐户内有 500,000 港元的结余，藉以向其友人作出失实陈述，讹称该期货帐户已经存在，且该笔 500,000 港元款项已存入该期货帐户内。当江的友人于 2014 年要求新富结束该期货帐户时，才得悉该帐户并不存在。

证监会认为江的行为属蓄意及有欠诚实，令其品格、可靠程度及作为受规管人士的适当人选资格受到质疑。 证监会在决定上述纪律处分时，已考虑到所有相关情况，包括江过往并无遭受纪律处分的纪录。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR140

Hong Kong Securities and Futures Commission Concludes Consultation on OTC Derivatives and Conduct Risks – Addition of Types 11 and 12 Regulated Activities

On December 12, 2018, the Hong Kong Securities and Futures Commission (SFC) released consultation conclusions on proposals to enhance the over-the-counter (OTC) derivatives regime and to address conduct risks posed by dealings with group affiliates and other connected persons. The consultation conclusions only cover the proposed requirements under the Code of Conduct for Persons Licensed by or Registered with

the Securities and Futures Commission (Code of Conduct). The consultation conclusions on amendments to the Securities and Futures Ordinance and subsidiary legislation with respect to the new Types 11 (dealing in OTC derivative products or advising on OTC derivative products) and 12 (providing client clearing services for OTC derivative transactions) regulated activities will be published separately.

Under the proposals, which the SFC will implement, licensed corporations that are contracting parties to non-centrally cleared OTC derivative transactions or are licensed for Type 9 (asset management) regulated activity will be subject to risk mitigation requirements. Licensed corporations providing client clearing services for OTC derivative transactions will be subject to segregation, portability and disclosure requirements.

In addition, licensed corporations which have dealings with group affiliates and other connected persons will be subject to conduct requirements to ensure that risks are properly managed, they act in clients' best interest and appropriate risk disclosure is provided.

The amendments to the Code of Conduct will be gazetted on December 14, 2018. The risk mitigation requirements will become effective on September 1, 2019, while the client clearing requirements will become effective when the new Types 11 and 12 regulated activities take effect. The conduct requirements to address risks posed by group affiliates and other connected persons will become effective six months after the gazettal of the Code of Conduct amendments.

The SFC said that these requirements enhance Hong Kong's regulatory regime for OTC derivatives activities by protecting investors and strengthening the management of conduct and financial risks in dealings with related parties.

香港证券及期货事务监察委员会就场外衍生工具及操守风险发表谘询总结 - 新增第 11 类及第 12 类受规管活动

2018 年 12 月 12 日, 香港证券及期货事务监察委员会 (证监会) 就加强场外衍生工具制度及处理在与集团联属公司和其他有关连人士进行交易时引致的操守风险的建议, 发表谘询总结。 谘询总结仅涵盖《证券及期货事务监察委员会持牌人或注册人操守准则》(操守准则) 下的建议规定。涉及新增第 11 类 (即场外衍生工具产品交易或就场外衍生工具产品提供意见) 及第 12 类 (即为场外衍生工具交易提供客户结算服务) 受规管活动的《证券及期货条例》及附属条例的修订的谘询总结, 将于适当时候另行发表。

根据证监会将实施的建议, 持牌法团如属于非中央结算场外衍生工具交易的订约方或获发牌进行第 9 类(提供资产管理) 受规管活动, 将须遵守风险纾减规定。就场外衍生工具交易提供客户结算服务的持牌法团, 将须遵守有关分隔、可调动性及披露的规定。

此外, 持牌法团若与集团联属公司及其他有关连人士进行交易, 将须遵守操守规定. 以确保有关风险获妥善管理, 他们以客户的最佳利益行事及已作出适当的风险披露。

《操守准则》的修订将于 2018 年 12 月 14 日刊宪。风险纾减规定将于 2019 年 9 月 1 日生效, 而客户结算规定将于新增的第 11 及 12 类 受规管活动生效时实施。为处理集团联属公司及其他有关连人士引致的风险而设的操守规定将于《操守准则》的修订刊宪的六个月后生效。

证监会表示：这些建议不但保障投资者, 亦加强管理在与关连人士进行交易时的操守及财务风险, 从而改善香港的场外衍生工具活动监管制度。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR141

Hong Kong Securities and Futures Commission Announces Agreement to Enhance the Exchange of Information under Stock Connect

On December 14, 2018, The Securities and Futures Commission (SFC) has entered into an agreement with the China Securities Regulatory Commission (CSRC) to enhance the exchange of information under Mainland-Hong Kong Stock Connect.

The enhancements are part of arrangements for the implementation of the investor identification regime for both northbound and southbound trading under Stock Connect.

An investor identification regime for northbound trading was launched on 26 September 2018 and the investor identification regime for southbound trading is planned to be introduced by the end of the first quarter of 2019. The regime helps enhance market surveillance and combat cross-boundary market misconduct under Stock Connect.

香港证券及期货事务监察委员会宣布协议加强股票市场交易互联互通机制下的信息交换

2018 年 12 月 14 日，证券及期货事务监察委员会（证监会）与中国证券监督管理委员会（中国证监会）签署协议，加强内地与香港股票市场交易互联互通机制下的信息交换。

加强信息交换是就内地与香港股票市场交易互联互通机制下的沪股通、深股通及港股通实施投资者识别码制度安排的一部分。

沪股通及深股通的投资者识别码制度已于2018年9月26日实施，港股通的投资者识别码制度计划于2019年第一季度末之前实施。此制度有助于在股票市场交易互联互通机制下加强市场监察并打击跨境市场失当行为。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR138

Hong Kong Securities and Futures Commission Issues Circular in Relation to the Clearing and Record Keeping Rules for the OTC Derivatives Regime - Changes to the List of Persons Designated as Financial Services Providers

On December 14, 2018, the Hong Kong Securities and Futures Commission (SFC) issued circular to inform that the revised list of persons designated as financial services providers (FSPs) for the purposes of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) is gazetted, and becomes effective on January 1, 2019.

Licensed persons are reminded that if their average total position in OTC derivatives during a Calculation Period reaches the corresponding Clearing Threshold, relevant OTC derivative transactions they enter into on and after the corresponding Prescribed Day, including those with FSPs must be centrally cleared in accordance with the Clearing Rules.

The SFC advises licensed persons to refer to the Clearing Rules, the Clearing Amendment Rules and the Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime for more information.

香港证券及期货事务监察委员会发出关于为场外衍生工具制度而设的结算及备存纪录规则的通函- 对被指定为金融服务提供者的人士的名单的修改

2018年12月14日, 香港证券及期货事务监察委员 (证监会) 发出通函告知为施行《证券及期货(场外衍生工具交易—结算及备存纪录责任和中央对手方的指定)规则》(结算规则) 而被指定为金融服务提供者的人士的经修订名单刊宪, 并将于2019年1月1日生效。

证监会提醒持牌人士, 若他们在某计算期间的场外衍生工具交易平均总持仓量达到相应的结算门槛, 其在相应的订明日期[及随后订立的相关场外衍生工具交易(包括与金融服务提供者订立的交易), 必须按照《结算规则》进行中央结算。

证监会建议参阅《结算规则》、《结算修订规则》及《有关强制性结算制度的推行及操作的常见问题》(只备有英文版) 以获取更多资料 。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC93

Hong Kong Securities and Futures Commission Commences Proceedings in Market Misconduct Tribunal against CMBC Capital Holdings Limited and Its Former Directors for Late Disclosure of Inside Information

December 18, 2018, the Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against CMBC Capital Holdings Limited (CMBC Capital) for failing to disclose inside information as soon as reasonably practicable.

CMBC Capital was known as Mission Capital Holdings Limited (Mission Capital) when the alleged breach of the statutory corporate disclosure requirements occurred.

The SFC has also commenced proceedings in the MMT against six former directors of Mission Capital for their reckless or negligent conduct causing the company's alleged breach of the provisions of the corporate disclosure regime and for failing to take all reasonable measures to ensure that proper safeguards exist at the material time to prevent the alleged breach.

The six former directors of Mission Capital at the material time include Mr Philip Suen Yick Lun, former Chief Executive Officer and Company Secretary, Mr Paul Suen Cho Hung, former Chairman, Mr Lau King Hang, former Executive Director, as well as three former Independent Non-Executive Directors, Mr Huang Zhencheng, Mr Weng Yixiang and Mr Wong Kwok Tai (Directors).

The SFC found that on October 13, 2014, the Directors received through email the unaudited consolidated management accounts of Mission Capital for the five months ended August 31, 2014 (August Management Accounts). The August Management Accounts revealed that Mission Capital made a cumulative profit for the five months ended August 31, 2014 of HK$838 million, representing a significant improvement in financial performance against an interim loss of HK$12 million for the six months ended September 30, 2013 and an

annual profit of HK$417 million for the 12 months ended March 31, 2014.

The improvement in financial performance was not made public until November 7, 2014 when Mission Capital issued a profit alert announcement in relation to its financial performance for the six months ended September 30, 2014.

The SFC alleges that the information relating to the financial performance of Mission Capital for the first five months ended August 31, 2014 as contained in the August Management Accounts constituted inside information, and as such, the information should have been disclosed as soon as reasonably practicable after it was available to the Directors on October 13, 2014.

香港证券及期货事务监察委员会就民银资本控股有限公司及其前董事未有及时披露内幕消息在市场失当行为审裁处展开研讯程序

2018 年 12 月 18 日，香港证券及期货事务监察委员会 (证监会) 在市场失当行为审裁处 (审裁处) 对民银资本控股有限公司 (民银资本) 展开研讯程序，指其没有在合理地切实可行的范围内尽快披露内幕消息。

民银资本在涉嫌违反上述法定企业披露规定时名为保兴资本控股有限公司(保兴资本)。

证监会亦在审裁处对保兴资本六名前董事展开研讯程序，指他们罔顾后果或疏忽的行为导致该公司涉嫌违反企业披露制度的条文，并指他们于关键时间均没有采取一切合理措施，以确保设有妥善的预防措施防止有关涉嫌违规的行为。

于关键时间，保兴资本的该六名前董事包括前行政总裁兼公司秘书孙益麟、前主席孙粗洪和前执行董事刘劲恒，以及三名前独立非执行董事黄真诚、翁以翔及黄国泰 (该等董事)。

证监会发现，该等董事于 2014 年 10 月 13 日透过电邮收到保兴资本截至 2014 年 8 月 31 日止五个月期间的未经审核综合管理帐目(8 月份管理帐目)。8 月份管理帐目显示，保兴资本在截至 2014 年 8 月 31 日止五个月期间录得累计溢利 8.38 亿元，即表示相对于在截至 2013 年 9 月 30 日止六个月期间录得的中期亏损 1,200 万港元及在截至 2014 年 3 月 31 日止 12 个月期间录得的年度溢利 4.17 亿港元而言，其财政表现有显著改善。

保兴资本延至 2014 年 11 月 7 日就其截至 2014 年 9 月 30 日止六个月期间的财政表现发出盈利预告的公告时，才向公众公布其财政表现改善的消息。

证监会指，该项载于 8 月份管理帐目中、与保兴资本截至 2014 年 8 月 31 日止首五个月期间的财政表现有关的资料构成内幕消息，因此，该内幕消息理应在该等董事于 2014 年 10 月 13 日获悉后在合理地切实可行的范围内尽快予以披露。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR143

Hong Kong Securities and Futures Commission Issues Circular to Licensed Corporations on Review of Internal Controls for the Protection of Client Assets and Supervision of Account Executives

On December 19, 2018, the Hong Kong Securities and Futures Commission (SFC) issued circular to inform that it has identified a number of cases of misconduct by account executives (AEs) which have jeopardised clients' interests. The more serious cases involved unauthorized trading and misappropriation of client assets. These cases revealed serious internal control deficiencies in key operational areas and inadequate management supervision of AEs by licensed corporations (LCs).

Subsequently, the SFC conducted a high-level review of control measures for protecting client assets and a thematic review of brokers' internal controls, including their supervision of AEs. In the Report on the review of internal controls for the protection of client assets and supervision of account executives (Report), the SFC summarizes the findings of these reviews and shares some good practices for LCs to consider in reviewing their control policies and procedures.

The SFC also published a comprehensive self-assessment checklist to assist securities and futures brokers with their internal control reviews. The checklist covers the key control measures the SFC expects of a broker as well as some good practices identified from the high-level and thematic reviews. LCs should carefully review their internal controls to ensure compliance with the regulatory requirements and, based on the results of their reviews, enhance their policies and procedures.

<u>Overview</u>

The high-level review covered 11 small to medium-sized securities brokers by way of on-site reviews by an accounting firm engaged by the SFC, focusing on the brokers' internal controls for protecting client information, safeguarding client assets and handling trade documents.

Separately, the thematic review covered 35 brokerage groups comprising 66 securities and futures brokers

which provide brokerage services to retail investors mainly through AEs. Each broker was required to complete a questionnaire. This was followed by the SFC's inquiries or meetings with senior management as well as sample reviews of documents. The review focused on five areas: staff-related corporate policies, the handling of client accounts, monitoring of dealing activities, safeguarding of client assets and the handling of trade documents.

Regulatory concerns

The Report sets out the SFC's key regulatory concerns identified in the reviews, which include:

1. Misaligned incentives in remuneration systems – The remuneration of AEs was generally determined by the commission income or turnover they generated, which may lead to an over-emphasis on short-term sales targets at the expense of a good compliance culture and client experience.

2. Insufficient segregation of duties – Some brokers allowed AEs to carry out incompatible duties in some critical processes, such as handling client assets, amending client information and following up on exceptions found in telephone record reviews and on undelivered or returned trade documents, which may expose the firms and their clients to the risks of undetected errors or abuses.

3. Inadequate controls to protect client accounts – The reviews identified various control deficiencies, including failure to establish written policies and procedures or implement maker-checker controls in key operational areas, lax controls over changes to clients' particulars, inadequate reviews to identify clients' suspicious correspondence addresses, a lack of policies to identify and protect dormant accounts as well as insufficient control measures for hold-mail arrangements. Some brokers did not subject their AEs to their staff dealing policies and hence did not monitor trading activities in the AEs' personal or related accounts to ensure clients' interests were not prejudiced.

4. Insufficient compliance checks of client accounts – Most brokers selected client accounts for telephone record reviews and confirmation exercises based solely on random or sequential samplings, which might omit client accounts with a higher risk of error or abuse. Some brokers also failed to properly follow up on identified exceptions.

Expected standards

LCs should implement and enforce internal control policies and procedures which can be reasonably expected to protect their operations and clients from financial loss arising from theft, fraud and other dishonest acts, professional misconduct or omissions. For example:

1. LCs are encouraged to implement a remuneration system for AEs which takes into account both sales and non-sales-related factors to encourage a good compliance culture and client experience. Where appropriate, they should implement policies requiring AEs to take mandatory block leave (ie, taking a number of consecutive calendar days of leave each year) and rotate jobs;

2. LCs should enforce the physical and functional segregation of incompatible duties. In particular, AEs should not be allowed to handle client assets or have access to client databases as well as blank and printed trade documents. They should also encourage clients to submit their non-trade-related instructions directly to the back office and report any issues or irregularities with their accounts to the firms' management or independent staff;

3. LCs should establish and enforce written policies and procedures for key operational areas, communicate them to staff, monitor staff's adherence and keep them updated to reflect changes in risks, operations or other circumstances. Senior management of LCs are reminded of their supervisory obligations over AEs, which include subjecting them to staff dealing policies and monitoring trading activities in their personal and related accounts to ensure that their transactions are not prejudicial to the interests of clients; and

4. LCs should ensure that compliance checks, including reviews of telephone records and confirmation exercises for client account activities and balances, sufficiently cover client accounts and AEs. Independent staff should follow up on any discrepancies identified in compliance checks.

The SFC wishes to emphasize that LCs and their senior management, including Managers-in-Charge, bear the primary responsibility for maintaining appropriate standards of conduct and robust policies and procedures to adequately protect client assets and diligently supervise their staff. Failure to put in place effective supervisory and control systems for these purposes may subject LCs and their senior management to the SFC's regulatory action.

香港证券及期货事务监察委员会向持牌法团发出关于检视有关保障客户资产及监督客户主任的内部监控措施的通函

2018 年 12 月 19 日, 香港证券及期货事务监察委员 (证监会) 发出通函告知其过去发现多宗损害到客户利益的客户主任失当行为个案, 其中较严重的个案涉及未经授权的交易及挪用客户资产。这些个案显示, 持牌法团在主要运作范畴上出现严重的内部监控缺失, 以及管理层对客户主任的监督不足。

证监会其后对为保障客户资产而设的监控措施进行了简要查核, 以及对经纪行的内部监控措施(包括它们对客户主任的监督)进行了主题检视。证监会发表的《有关保障客户资产及监督客户主任的内部监控措施检视报告》(报告)内, 概述了该简要查核及主题检视的结果, 并分享一些良好作业手法, 以供持牌法团在检讨其监控政策及程序时考虑。

证监会亦发出一份全面的自我评估查检表, 以协助证券及期货经纪行进行内部监控检讨。该查检表涵盖证监会预期经纪行应采取的关键监控措施, 以及从上述简要查核及主题检视中所识别出的一些良好作业手法。持牌法团应审慎地检讨其内部监控措施, 以确保符合监管规定, 并根据检讨结果加强它们的政策及程序。该查检表登载于本会网站。

<u>概览</u>

该简要查核涵盖 11 家中小型证券经纪行, 由证监会所委聘的一家会计师行以实地查核方式进行, 当中着眼于这些经纪行在保护客户资料、保障客户资产及处理交易文件方面所实施的内部监控措施。

另外, 该主题检视涵盖 35 个经纪集团, 当中包括 66 家主要透过客户主任向零售投资者提供经纪服务的证券及期货经纪行。每家经纪行均须填写一份问卷。在收回问卷后, 证监会向经纪行的高级管理层作出查询或与他们会面, 以及对相关文件进行抽样检视。该主题检视着眼于以下五个范畴：与职员相关的公司政策、处理客户帐户、监察交易活动、保障客户资产和处理交易文件。

<u>监管关注事项</u>

该报告阐述证监会在该简要查核及主题检视中所识别出的主要监管关注事项, 当中包括：

1. 薪酬制度中的诱因错配 — 客户主任的薪酬一般以他们所产生的佣金收入或成交额来厘定; 此安排或令他们过度侧重于短期销售目标而忽略良好的合规文化及客户体验。

2. 职责划分不足 — 部分经纪行容许客户主任在一些关键程序中执行互不相容的职责, 例如处理客户资 产、修改客户资料, 以及跟进在电话纪录核查中发现的例外情况和无法派递或被退回的交易文件, 这可能令公司及其客户面对错误不被察觉或职责被滥用的风险。

3. 保障客户帐户的监控措施不足 — 该简要查核及主题检视识别出多项监控缺失, 当中包括没有就主要 运作范畴订立书面政策及程序, 或没有实施输入与核对的分工监控措施; 在修改客户资料方面的监控措施松懈; 没有进行充分的查核以识别可疑的客户通讯地址; 没有制定政策以识别及保障不动帐户和对代存邮件安排的监控措施不足。部分经纪行没有规定客户主任须遵守其职员交易政策, 故未有就客户主任的个人或相关帐户中的交易活动进行监察, 以确保客户利益不受损害。

4. 对客户帐户的合规核查不足 — 大部分经纪行仅以随机或顺序抽查方式挑选客户帐户进行电话纪录核 查及客户帐户确认工作, 因而可能会忽略面临较高出错或被滥用风险的客户帐户。部分经纪行亦没有妥善跟进于核查时所识别出的例外情况。

<u>应达到的标准</u>

持牌法团应实施及执行内部监控政策及程序, 而按照合理的预期, 这些政策及程序应足以保障其运作及客户, 以免受偷窃、欺诈或不诚实的行为、专业上的失当行为或遗漏而招致财政损失。举例来说：

1. 证监会鼓励持牌法团为客户主任实施一套兼顾销售及非销售因素的薪酬制度, 藉此提倡良好的合规 文化及客户体验。在适当情况下, 持牌法团应实施政策, 要求客户主任放取强制性连续休假(即每年放取连续多个历日的休假)及轮换工作岗位；

2. 持牌法团应从实质及功能上划分互不相容的职责, 尤其是不应容许客户主任处理客户资产, 或使用客户资料库和取览空白及已列印资料的交易文件。持牌法团亦应鼓励客户直接向后勤部门发出非交 易相关的指示, 以及向公司的管理层或独立职员汇报他们于帐户内发现的问题或不寻常情况；

3. 持牌法团应就主要运作范畴制定和执行书面政策及程序; 将有关政策及程序告知职员; 监察职员遵守有关政策及程序的情况; 以及持续更新有关政策及程序, 以反映风险、运作或其他情况的转变。持牌法团的高级管理层应紧记他们须履行监督客户主任的责任, 当中包括规定客户主任须受职员交易政策所约束, 并监察客户主任的个人及相关帐户中的交易活动, 以确保他们所进行的交易不会损害客户利益；及

4. 持牌法团应确保合规核查(包括电话纪录核查及对客户帐户的活动及结余所进行的确认工作)充分地涵 盖客户帐户及客户主任。独立职员应跟进在合规核查中所识别出的差异。

证监会希望强调, 持牌法团及其高级管理层(包括核心职能主管)对于维持适当的操守水平和完善的政策及程序负有首要责任, 藉此充分保障客户资产及勤勉尽责地监督其职员。如未能为上述目的制定有效的监督及监控制度, 持牌法团及其高级管理层便可能会遭证监会采取监管行动。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC94

Hong Kong Securities and Futures Commission and China Securities Regulatory Commission Hold High-level Meeting on Enforcement Cooperation

On December 18, 2018, the Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) held the seventh regular high-level meeting in Hong Kong recently to discuss a range of matters concerning cross-boundary enforcement cooperation.

The two regulators conducted in-depth discussions on market surveillance workflows and procedures, updated each other on the progress of high-priority cases, and discussed important cross-boundary enforcement policies.

At the meeting, both sides also explored ways to further strengthen cross-boundary enforcement cooperation, including:

- enhancing a coordinated investigation mechanism for emerging types of cross-boundary illegal activity;
- discussing a notification and evidence sharing mechanism for cases involving dual listed companies in both markets; and
- organizing further joint training and case study workshops.

The SFC and the CSRC acknowledged that their long-standing close cooperation and collaboration on enforcement work has played a crucial role in combating cross-boundary market misconduct and maintaining the smooth and orderly operation of the Mainland-Hong Kong mutual market access program.

香港证券及期货事务监察委员与中国证券监督管理委员会举行高层执法合作会议

2018 年 12 月 18 日, 证券及期货事务监察委员会 (证监会) 与中国证券监督管理委员会 (中国证监会) 近期在香港举行了第七次定期高层会议, 讨论一系列有关跨境执法合作的事宜。

两家监管机构就市场监察的工作流程及程序展开深入讨论, 相互通报需优先处理的个案的进展, 并就重要的执法合作政策进行了商讨。

会上, 双方亦探讨了进一步加强跨境执法合作的方法, 包括：

- 加强针对新型跨境非法活动的协作调查机制；
- 讨论就两地双重上市公司的相关个案设立通报和证据共享机制；及
- 举行更多联合培训和个案研讨会。

证监会与中国证监会确认, 双方长期以来就执法工作进行了密切合作及相互配合, 这在打击跨境市场失当行为和维持内地与香港市场互联互通计划的顺利有序运作方面, 发挥了至关重要的作用。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR142

Consensus Reached by Shanghai, Shenzhen and Hong Kong Stock Exchanges on Inclusion of Weighted Voting Rights (WVR) Companies in Southbound Trading of Stock Connect

December 9 , 2018, to further enhance the mutual market access program between Mainland China and Hong Kong and promote the coordinated development of the Mainland and Hong Kong capital markets, the Shanghai Stock Exchange, Shenzhen Stock Exchange and The Stock Exchange of Hong Kong jointly announce that they have reached a consensus on the detailed arrangement for the inclusion of companies with weighted voting rights in Southbound Trading of Stock Connect.

The three exchanges will promptly work on formulating relevant rules, and will announce them to the market

after completing the necessary procedures. It is expected that the new rules will be implemented in mid-2019.

上海证券交易所, 深圳证券交易所和香港联合交易所就不同投票权架构公司纳入港股通股票范围达成共识

2018 年 12 月 9 日, 为进一步优化互联互通机制, 推动内地与香港资本市场协同发展, 上海证券交易所, 深圳证券交易所和香港联合交易所已就不同投票权架构公司纳入港股通股票具体方案达成共识。

下一步, 三所将抓紧制订相关规则, 在完成必要程序后向市场公布, 预计规则将于 2019 年年中生效实施。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/181209news?sc_lang=en

The GEM Listing Committee of The Stock Exchange of Hong Kong Limited Censures L & A International Holdings Limited and a Number of Its Current and Former Directors for Breaching the GEM Listing Rules and/or the Director's Undertaking regarding Improper Grant of Options

On December 11, 2018, the GEM Listing Committee of The Stock Exchange of Hong Kong Limited (Exchange)

CENSURES:
L & A International Holdings Limited (Company) for breaching Rules Governing the Listing of Securities on GEM of the Exchange (GLRs) 23.05, 23.06A, 17.27A, 17.27B, 17.56(2) and 6A.23(1) for (a) granting share options (Options) under its share option scheme (Scheme) during black-out period, (b) failing to timely announce the Options granted, (c) failing to timely disclose the shares issued upon the exercise of the Options by their grantees, (d) failing to ensure the information contained in its announcements and corporate communication was accurate and complete in all material respects and not misleading or deceptive, and (e) failing to timely consult and, if necessary, seek advice from its Compliance Adviser before publishing regulatory announcement;

CENSURES:
(1) Mr Ng Ka Ho (Mr Ng), chairman, executive director (ED) and Compliance Officer of the Company for (a) failing to use his best endeavors to procure the Company's GLR compliance (Best Endeavors Undertaking), breaching his obligation under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 6A to the GLRs (Director's Undertaking), (b) breaching his duties as director and Compliance Officer under GLRs 5.01(1), (2) and (6) and 5.20(1), and (c) failing to comply with the GLRs to his best ability, breaching his obligation under the Director's Undertaking (Best Ability Undertaking);

FURTHER CENSURES:
(2) Mr Wong Chiu Po (Mr Wong), former non-executive director (NED) of the Company;
(3) Mr Ma Chi Ming (Mr Ma), independent non-executive director (INED) of the Company;
(4) Mr Chan Ming Sun Jonathan (Mr Chan), former INED of the Company; and
(5) Mr Kwong Lun Kei (Mr Kwong), former INED of the Company

for (a) failing to use their best endeavors to procure the Company's GLR compliance, breaching their obligations under the Directors' Undertakings, (b) breaching their duties as directors under GLR 5.01(1), (2) and (6), and (c) failing to comply with the GLRs to their best ability, breaching their obligations under the Director's Undertaking.

(The directors identified at (2) to (5) above are collectively referred to as the Relevant Directors.)

GEM LISTING COMMITTEE'S FINDINGS OF BREACH

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

Company's breaches

Breach of GLR 23.05

The title of GLR 23.05 clearly states that the provision concerns "restriction on the time of grant of options". The GEM Listing Committee considered that the use of the words "may not" was restrictive in the rule and in its ordinary meaning and concluded that GLR 23.05 specifically restricted issuers to grant any option during Black-out Period (BOP), and such restriction was not subject to any knowledge of inside information. The BOP in respect of the Company's 2016 first quarterly (1Q2016) results was from July 13, 2016 until August 12, 2016. As the Company granted the Options on July 22, 2016, which was within the BOP, the GEM Listing Committee concluded that the Company breached GLR 23.05.

Breach of GLRs 23.06A, 17.27A, 17.27B, 17.56(2) and 6A.23(1)

The GEM Listing Committee found, and noted that the Company had admitted, that the Company was required, but failed, to comply with the following requirements and

therefore breached the corresponding GLRs. The Company admitted these breaches:

(1) The requirement under GLR 23.06A to announce the granting of 2 billion Options to 10 grantees (Grant) made on July 22, 2016 as soon as possible after it was made. The Company only announced the Grant on August 23, 2016, ie over a month after it was made.

(2) The requirement under GLR 17.27A to publish the Next Day Disclosure Return (Next Day Return) on August 23, 2016 revealing the exercise of the Options by, and the allotment of the 1.6 billion shares issued (Shares Issued) to, the relevant grantees on August 22, 2016. The Company only published the Next Day Return on August 24, 2016, with a delay of one day.

(3) The requirement under GLR 17.56(2) that all the Company's announcements and corporate communications had to be accurate and complete in all material respects, and not misleading or deceptive. The Company failed to comply with GLR 17.56(2) in respect of:

   (i) the Monthly Return of Equity Issuer on Movements in Securities (Monthly Return) published on August 5, 2016; and

   (ii) the Grant Announcement and the inside information Announcement (II Announcement) published on August 23 and 24, 2016 as the Company failed to disclose that 1.6 billion shares had been issued and allotted on August 22, 2016 under the Options (i.e. the Shares Issued); instead, the announcements described the shares under the Options as "to be Issued".

(4) The requirement under GLR 6A.23(1) to consult and seek advice from TC Capital International Limited (formerly known as TC Capital Asia Limited) (TC Capital), the Company's then Compliance Adviser on a timely basis in respect of the Grant and the Grant Announcement before the announcement was published. The Company approved the Grant on July 22, 2016 without consulting or seeking advice from TC Capital, and only circulated the draft Grant Announcement to TC Capital for review on August 22, 2016.

The GEM Listing Committee found the Company also breached the requirements under GLR 17.27B to disclose the 1.8 billion Options and the new shares which might be issued under the Options in the Monthly Return published on August 5, 2016. The Company failed to do so.

Breach of Directors' Duties and Undertakings

<u>Relevant Directors</u>

The GEM Listing Committee noted the Relevant Directors' submissions that they had considered the GLR 23.05 implications at the board meeting on July 22, 2016 before approving the Grant. In particular, Mr Kwong submitted that he inquired with the Company Secretary about the status of the preparation of the 1Q2016 results, and was told that the preparation had yet to commence. They then decided to approve the Grant as (a) it was in the interest of the Company to do so, and (b) as the Company had not yet started preparing the 1Q2016 results at that time, it did not possess any inside information.

According to the Relevant Directors, all their attention, time and effort had been diverted to deal with the voluntary conditional offer to acquire the entire issued share capital of the Company on July 22, 2016 (Purported Offer) after receiving it on the same day the Grant was made. They only became aware on August 18, 2016 that the Company had not announced the Grant when the Board discussed the terms of the Purported Offer announced by the Offeror on that day.

Breach of Undertakings to use best endeavors

<u>The Grant - Breach of GLR 23.05</u>

The GEM Listing Committee noted that, just about a week after the BOP had started on July 13, 2016, the Relevant Directors approved the Grant at the board meeting on July 22, 2016 without consulting the Compliance Adviser or any professional advisers (except with its legal adviser concerning the procedure and the drafting of the relevant documents) in respect of the GLR 23.05 requirements.

The GEM Listing Committee concluded that the Relevant Directors failed to use their best endeavors to procure the Company to comply with GLR 23.05 and the Scheme, which restricted granting of share options during BOP, by approving the Grant without consulting the Compliance Adviser and professional advisers as to whether the Grant had any GLR implications.

<u>Grant Announcement - Breach of GLR 23.06A</u>

The GEM Listing Committee noted that from July 27, to August 8, 2016, the Company received the notices of acceptance of the Grant from the grantees, and from July 25 to August 1, 2016, Mr Ng (ED), Mr Wong (NED) and Mr Ma (INED) approved and signed the board minutes of July 22, 2016. Mr Kwong and Mr Chan (both INEDs) did so on August 18, 2016.

The GEM Listing Committee took the view that Mr Ng should have been aware that the Grant had not been announced under GLR 23.06A at least when he approved and signed the minutes of the board meeting of July 22, 2016 on July 25, 2016, received the notices of acceptance of the Grant by the grantees and was verbally informed of the acceptance of the other grantees on July 27 and 28, and August 8, 2016. The GEM Listing Committee concluded that Mr Ng failed to use his best endeavors to procure the Company to comply with GLR 23.06A in respect of the Grant by taking steps to follow up on the progress of the preparation of the Grant Announcement and to arrange for its publication as soon as possible after the Grant was made on July 22, 2016.

The GEM Listing Committee noted that Mr Wong, Mr Chan, Mr Kwong and Mr Ma, who also submitted that the Company was in urgent and desperate need to make the Grant, did not at least proactively check with Mr Ng, the Company Secretary and/or the senior financial manager (Manager) in charge of GLR compliance about the progress of the Grant shortly after they approved it at the board meeting of July 22, 2016, and failed to ensure that the Company announced the Grant as soon as possible under GLR 23.06A. The GEM Listing Committee therefore concluded that the failure to do so by Mr Wong, Mr Chan, Mr Kwong and Mr Ma demonstrated a lack of proactivity on their part in procuring the Company's compliance with GLR 23.06A, and was inconsistent with the use of best endeavors required under their Director's Undertakings.

The GEM Listing Committee further noted that even though Mr Wong and all INEDs claimed that they were only aware of the non-disclosure of the Grant on August 18, 2016, they did not take active steps to ensure that the Company announced it as soon as possible even thereafter. According to Mr Kwong, on that day he had urged the Company Secretary to announce the Grant. Mr Chan submitted that he had reminded the Company Secretary to deal with the disclosure of the Grant. However, despite the fact that there was already a delay of 27 days in announcing the Grant, both of them had not followed up with the Company Secretary or the Manager until August 22, 2016 when they approved the draft Grant Announcement. As a result, the Grant Announcement was only published on August 23, 2016.

The GEM Listing Committee therefore concluded that the Relevant Directors breached their Undertakings to use their best endeavors to procure the Company to comply with GLR 23.06A.

Next Day Return and Monthly Return - Breach of GLRs 17.27A, 17.27B and 17.56(2)

The GEM Listing Committee noted that Mr Ng was the ED who was responsible for, and approved, the Monthly Return and the Next Day Return before they were published on August 5 and 24, 2016 respectively. In view of Mr Ng's knowledge and involvement in the Grant and the Shares Issued, and in the light of GLR 5.03 and being the responsible ED, the GEM Listing Committee considered that Mr Ng breached his Undertaking to use his best endeavors to procure the Company to comply with:

(1) GLRs 17.27B and 17.56(2) in respect of the Monthly Return which did not disclose the Options granted and the required details; and
(2) GLR 17.27A in respect of the Next Day Return which was only published on August 24, 2016.

The Grant Announcement and the II Announcement on August 23 and 24, 2016 - Breach of GLR 17.56(2)

The GEM Listing Committee concluded that Mr Ng was or should have been aware of the Shares Issued made at 4:37pm on August 22, 2016 after verbally following up with the Company Secretary and reported by the Manager in respect of the progress of the Shares Issued. Accordingly, when the draft Grant Announcement and the draft II Announcement were circulated to them for review at 7:41pm and later that evening on August 22, 2016, Mr Ng should have been aware that 1.6 billion of shares had already been allotted, and that the relevant statements in the draft Grant Announcement and the draft II Announcement which described the shares as "to be issued upon exercise of the Options granted" were inaccurate and misleading. In any event, being an ED, the Chairman and Compliance Officer, he should have taken steps to check and verify with those in charge of the preparation and publication of the Grant Announcement and II Announcement as to whether the shares had been issued, to ensure accuracy and completeness of those two announcements before publication.

The GEM Listing Committee therefore concluded that Mr Ng breached his Undertaking to use his best endeavors to procure the Company to comply with GLR 17.56(2) in respect of the Grant Announcement and the II Announcement.

The GEM Listing Committee considered that the grantees' indication in their emails would have alerted the other Relevant Directors that the Shares Issued could have taken place at any time upon the Board's approval of the share allotment on August 21, 2016. In fact, the Shares Issued was made on the following day at 4:37pm.

Accordingly, when the draft Grant Announcement and the II Announcement were circulated to the Relevant Directors for review at 7:41pm and later that evening on August 22, 2016, the Relevant Directors (other than Mr Ng) should have at least asked Mr Ng (the Compliance Officer), the Company Secretary and/or the Manager

involved about the progress of the Shares Issued to ensure that the Grant Announcement and the II Announcement are accurate in all material respects and not misleading. The GEM Listing Committee therefore concluded that they breached their Undertakings to use their best endeavors to procure the Company to comply with GLR 17.56(2) in respect of those announcements.

No consultation with Compliance Adviser - Breach of GLR 6A.23(1)

The GEM Listing Committee noted that the Company did not inform or consult TC Capital in respect of (a) the Grant, (b) the Shares Issued, and (c) the Grant Announcement (until August 22, 2016) because it had already engaged Hastings & Co as its legal adviser and Yu Ming Investment Management Limited, its financial adviser concerning the Purported Offer, and inadvertently neglected to inform or consult TC Capital. The GEM Listing Committee emphasized that consultation with other professional advisers did not absolve the Company from its obligation to consult its Compliance Adviser under GLR 6A.23(1).

The GEM Listing Committee noted that the Relevant Directors had not taken any step to procure the Company to consult the Compliance Adviser in respect of the Grant before they approved it. In particular, given the circumstances surrounding the Grant, the GEM Listing Committee concluded that the Relevant Directors breached their Undertakings to use their best endeavors to procure the Company to comply with GLR 6A.23(1).

Breach of GLR 5.01(1), (2) and (6) by Relevant Directors

In view of the circumstances of the case, and the Relevant Directors' knowledge, experience and position in the Company, the GEM Listing Committee concluded that the Relevant Directors failed to fulfill their duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, in particular, the duties to (a) act in good faith in the interests of the Company as a whole, (b) for proper purpose, and (c) apply a reasonable degree of skill, care and diligence in approving the Grant, which led to, or contributed to, the relevant GLR breaches by the Company, breaching GLR 5.01(1), (2) and (6).

The GEM Listing Committee further concluded that Mr Ng who was ultimately responsible for the publication of the Monthly Return and the Next Day Return, failed to discharge his duty to apply a reasonable degree of skill, care and diligence in ensuring the Company's compliance with GLRs 17.27A, 17.27B and 17.56(2), in breach of GLR 5.01(6).

Breach of GLR 5.20(1) by Mr Ng

The GEM Listing Committee concluded that Mr Ng, being the Company's Compliance Officer, failed to take steps to ensure the Company's compliance with the GLRs and failed to discharge the Compliance Officer's duties as he submitted, and therefore breached GLR 5.20(1).

Breach of Undertakings to comply with the GLRs to the best ability

The GEM Listing Committee therefore concluded that, with the breach of GLR 5.01(1), (2) and (6) by all the Relevant Directors, and GLR 5.20(1) by Mr Ng, the Relevant Directors also breached their Undertaking to comply with the GLRs to their best ability.

REGULATORY CONCERN

The GEM Listing Committee regards the breaches in this matter as serious:

(1) The Company's GLR breaches occurred in a series within a month and stemmed from the approval of the Grant of the Options during the BOP by the Relevant Directors notwithstanding their awareness of the restriction under GLR 23.05 and the Scheme.

(2) The grantees received the Options during the BOP granted by the Company which should not have been granted under GLR 23.05 and the Scheme. Eight of the grantees exercised the Options and sold all the shares on open market to unknown buyers on August 24 and 25, 2016 and might have had made significant gain based on the closing prices of the shares on those two days.

(3) The interest of the Company's shareholders and public investors (including the Offeror) had been prejudiced as they had been deprived of accurate and complete information relating to the Grant, timely information relating to the exercise of the Options on August 22, 2016, and the information relating to the Shares Issued in the Grant Announcement and the II Announcement published on August 23 and 24, 2016 respectively.

(4) Although the Company had a Compliance Adviser at that time as required by the GLRs, it did not consult the Compliance Adviser in respect of GLR implications before the Grant was made, even in the light of the restriction under the Scheme. Consultation with the Compliance Adviser in respect of the Grant Announcement was only made about a month after the Grant was made and shortly before the announcement was issued.

(5) The Company's interpretation of GLR 23.05 set out in its submissions clearly demonstrates that the Company and the Relevant Directors do not have a proper understanding at least of that particular rule.

(6) Directors have an obligation to ensure that the company would not issue share options during BOP in breach of the GLRs and the Scheme, and that its announcements and corporation communications are published in a timely manner, and be accurate and complete in all material respects and not be misleading or deceptive. Failure to do so destroys transparency, trust and confidence in the market.

(7) The Grant involved issue of options to grantees at a nominal consideration, lacked reasonable commercial benefits for the Company, and led to the Shares Issued which have diluted the voting rights of the existing shareholders' investments by 6.25% per cent. The breaches of the Company and the Relevant Directors also raised regulatory concerns regarding the fair treatment of the existing shareholders and an orderly market for securities trading.

(8) The Exchange received three complaints (including from the Offeror) against the Company in respect of the GLR breaches in this matter. The Offeror stated in its announcement of September 2, 2016 that the Company's failure to disclose the Grant within the time required under GLRs prejudiced its position as it had not taken into account the Options and the Shares Issued when it announced the Purported Offer on August 18, 2016.

SANCTIONS

Having made the findings of breaches stated above, and having concluded that the breaches are serious, the GEM Listing Committee decided to:

(1) Censure the Company for its breaches of GLRs 23.05, 23.06A, 17.27A, 17.27B, 17.56(2) and 6A.23(1);

(2) Censure Mr Ng for breach of GLRs 5.01(1), (2) and (6), 5.20(1) and his Director's Undertaking to use his best endeavors to procure the Company to comply with the GLRs and comply with the GLRs by himself to his best ability; and

(3) Censure the other Relevant Directors for breach of GLR 5.01(1),(2)and (6) and their Directors' Undertakings to use their best endeavors to procure the Company to comply with the GLRs and comply with the GLRs by themselves to their best ability.

The GEM Listing Committee further directed:

(1) The Company to appoint an independent Compliance Adviser satisfactory to the Department on an ongoing basis for consultation on GLR compliance for two years. The Compliance Adviser shall be accountable to the audit committee of the Company.

(2) Mr Ng, Mr Ma and Mr Chan (who is currently a director of other listed companies on the Exchange) to each (a) attend 24 hours of training on Listing Rule compliance and director's duties, including four hours of training on the requirements under the GLRs in respect of directors' duties and corporate governance, 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 (Training).

(3) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, Mr Wong and Mr Kwong, who are not currently a director of any other company listed on the Exchange, (a) to attend the Training, to be completed before the effective date of any such appointment; and (b) to provide the Department with the training provider's written certification of full compliance.

(4) The Company is to publish an announcement to confirm that each of the directions in paragraphs (1) and (2) (in respect of Mr Ng and Mr Ma) above has been fully complied with within two weeks after the fulfillment of that direction.

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

(6) 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 (5) above are to be directed to the Department for consideration and approval. The Department should refer any matters of concern to the GEM Listing Committee for determination.

香港联合交易所有限公司 GEM 上市委员会谴责乐亚国际控股有限公司及数名现任及前任董事就不当期权发行违反《GEM 上市规则》及/或《董事承诺》

2018 年 12 月 11 日，香港联合交易所有限公司 (联交所) GEM 上市委员会

谴责：
乐亚国际控股有限公司(该公司)违反《GEM 上市规则》第23.05、23.06A、17.27A、17.27B、17.56(2) 及 6A.23(1) 条，理由有关是其：(i) 在禁止买卖期内根据股份期权计划(该计划)授出股份期权(股份期权)；(ii) 未有及时公布已授出股份期权；(iii) 未有在承授人行使股份期权后及时披露所发行的股份；(iv) 未有确保其公告及公司通讯所载的资料在所有重大方面均准确完整且没有误导或欺骗成分；及(v) 未有在刊发监管公告前谘询合规顾问，及在有需要时向其寻求意见；

谴责：
(1) 该公司主席、执行董事兼监察主任吴家豪先生(吴先生) (i)违反其以《GEM 上市规则》附录六 A 所载的形式向联交所作出的董事声明及承诺（董事承诺）所载责任，未有竭力促使该公司遵守《GEM 上市规则》(竭力承诺）；(ii) 违反其于《GEM 上市规则》第 5.01(1)、(2)及(6)条以及5.20(1)条下作为董事及监察主任的职责；及(iii) 未有尽力遵守《GEM 上市规则》，违反其《董事承诺》中所述责任(尽力承诺);

进一步谴责：
(2) 该公司前非执行董事黄昭堡先生(黄先生)；
(3) 该公司独立非执行董事马志明先生 (马先生)；
(4) 该公司前独立非执行董事陈铭燊先生 (陈先生); 及
(5) 该公司前独立非执行董事邝麟基先生 (邝先生)

(i) 违反他们于《董事承诺》中的责任，未有竭力促使该公司遵守《GEM 上市规则》; (ii) 违反《GEM 上市规则》第 5.01(1)、(2)及(6)条下他们作为董事的职责; 及(iii) 违反他们于《董事承诺》中的责任，未有尽力遵守《GEM 上市规则》。

(上文第(2)至(5)项所指董事统称: 相关董事。)

GEM 上市委员会裁定的违规事项

GEM 上市委员会考虑过上市部、该公司及相关董事的书面及口头陈述后，裁定：

该公司的违规

违反《GEM 上市规则》第 23.05 条

《GEM 上市规则》第 23.05 条的标题清楚表明该条乃有关「授予期权的时间限制」。GEM 上市委员会认为使用「may not」(不可)一词在该条以至日常应用中包含规限性的意思，裁定《GEM 上市规则》第 23.05 条特别限制发行人在禁止买卖期内授出任何股份期权，而不仅限于知悉内幕消息后所作的授予。有关该公司 2016 年首季业绩的禁止买卖期由 2016 年 7 月 13 日至 2016 年 8 月 12 日。鉴于该公司于 2016 年 7 月 22 日(禁止买卖期内)授出股份期权，GEM 上市委员会裁定该公司违反《GEM 上市规则》第 23.05 条。

违反《GEM 上市规则》第 23.06A、17.27A、17.27B、17.56(2) 及 6A.23(1)条

GEM 上市委员会裁定(并知悉该公司已承认)该公司须遵守但未能遵守下列规定，故此违反了相应的《GEM 上市规则》条文。该公司承认违反了下列《GEM 上市规则》条文：

(1) 《GEM 上市规则》第 23.06A 条：按该条规定，该公司应在 2016 年 7 月 22 日向 10 名承授人授出 20 亿股股份期权 (授股) 后尽快公布详情。但该公司在 2016 年 8 月 23 日（即授股逾一个月后）才公布授股。

(2) 《GEM 上市规则》第 17.27A 条：按该条规定，该公司应在 2016 年 8 月 23 日刊发翌日披露报表(翌日报表)，揭露相关承授人已于 2016 年 8 月 22 日行使股份期权并获配发 16 亿股股份(该等新发行股份)。但该公司在 2016 年 8 月 24 日才刊发翌日报表，比规定迟了一天。

(3) 《GEM 上市规则》第 17.56(2)条：按该条规定，所有公司公告及公司通讯在各方面须准确齐全及无误导或欺骗成分。该公司下列文件违反了《GEM 上市规则》第 17.56(2)条：
   (i) 于 2016 年 8 月 5 日刊发的股份发行人证券变动月报表(月报表)；及
   (ii) 分别于 2016 年 8 月 23 日及 24 日刊发的授股公告及内幕消息公告：两份公告当中，该公 司未 有披露 16 亿股股份已于 2016 年 8 月 22 日根据股份期权发行及配发(即该等新发行股份)，反而将股份期权所涉及的股份称之为「将予发行」的股份。

(4) 《GEM 上市规则》第 6A.23(1) 条：按该条规定，该公司应在刊发公告之前及时就授股及授股公告谘询其当时的合规顾问天财资本国际有限公司(前称天财资本亚洲有限公司）(天财资本) 并征询 其意见。该公司没有谘询或征询天财资本的意见便于 2016 年 7 月 22 日批准授股，及至 2016 年 8 月 22 日才将授股公告草拟本送交天财资本审阅。

GEM 上市委员会裁定该公司亦违反了《GEM 上市规则》第 17.27B 条的规定, 因为该公司原应于 2016 年 8 月 5 日刊发的月报表中披露 18 亿股股份期权及可根据股份期权发行的新股, 但该公司并没有这样做。

违反《董事职责》及《承诺》

相关董事

GEM 上市委员会留意到相关董事指他们在批准授股前, 于 2016 年 7 月 22 日董事会会议上已考虑过《GEM 上市规则》第 23.05 条的涵义, 尤其是邝先生指他曾向公司秘书查问 2016 年首季业绩的编备状况, 并得悉编备工作尚未开始。他们那样才决定批准授股, 因为(i) 授股符合该公司的利益; 及(ii) 该公司当时尚未开始编备 2016 年首季业绩, 所以并没有任何内幕消息。

相关董事指他们在作出授股的同一天收到收购该公司全部已发行股本的自愿有条件要约 (声称要约)后, 所有精力及时间都投放于声称要约之上, 直至 2016 年 8 月 18 日董事会商讨要约人当天所公布的声称要约条款时, 才知道该公司未有公布授股。

违反《竭力承诺》

授股 - 违反《GEM 上市规则》第 23.05 条

GEM 上市委员会注意到, 在 2016 年 7 月 13 日开始进入禁止买卖期后一个星期左右, 相关董事于 2016 年 7 月 22 日的董事会会议上批准授股, 过程中没有按《GEM 上市规则》第 23.05 条的规定谘询合规顾问或任何专业顾问(除了向其法律顾问谘询有关程序及草拟相关文件外)。

相关董事未曾向合规顾问及专业顾问谘询授股有否违反《GEM 上市规则》的规定就批准了授股, GEM 上市委员会遂裁定他们未有竭力促使该公司遵守《GEM 上市规则》第 23.05 条及该计划(两者规限该公司不可在禁止买卖期内授出股份期权)。

授股公告 - 违反《GEM 上市规则》第 23.06A 条

GEM 上市委员会注意到, 在 2016 年 7 月 27 日至 8 月 8 日期间, 该公司收到承授人接纳授股的通知, 而于 2016 年 7 月 25 日至 8 月 1 日期间, 吴先生(执行董事)、黄先生(非执行董事)及马先生(独立非执行董事)批准及签立董事会于 2016 年 7 月 22 日的会议纪录, 邝先生及陈先生(均为独立非执行董事)则于 2016 年 8 月 18 日批准及签立该会议纪录。

GEM 上市委员会认为吴先生应该知道该公司没有根据《GEM 上市规则》第 23.06A 条公布授股一事, 当他在 2016 年 7 月 25 日批准及签立 2016 年 7 月 22 日的董事会会议纪录、在 2016 年 7 月 27 日及 28 日及 8 月 8 日收到承授人接纳授股的通知以及被口头告知其他承授人已接纳授股时, 就应该得悉相关事宜。吴先生没有采取行动跟进编备授股公告的进度并安排在 2016 年 7 月 22 日授股后尽快刊发公告, GEM 上市委员会裁定吴先生未有就授股竭力促使该公司遵守《GEM 上市规则》第 23. 06A 条。

GEM 上市委员会注意到黄先生、陈先生、邝先生及马先生(其亦指该公司迫切需要授股)至少没有在 2016 年 7 月 22 日的董事会会议上批准授股后, 迅即主动向吴先生、公司秘书及/或负责《GEM 上市规则》合规事宜的高级财务经理 (经理) 查询授股的进度, 未能确保该公司根据《GEM 上市规则》第 23.06A 条尽快公布授股。GEM 上市委员会因而裁定黄先生、陈先生、邝先生及马先生未有作出所需行动, 证明了他们没有积极促使该公司遵守《GEM 上市规则》第 23.06A 条, 与他们在《董事承诺》中表示会竭力行事的承诺不符。

GEM 上市委员会亦注意到, 即使黄先生及所有独立非执行董事声称自己在 2016 年 8 月 18 日才知道该公司没有披露授股, 他们却没有积极采取行动, 确保该公司(即使是在他们知悉此事后)尽快公布授股。邝先生指他在该日已促请公司秘书公布授股。陈先生指他已提醒公司秘书处理披露授股一事, 但即使公布授股已迟了 27 日, 直至 2016 年 8 月 22 日批准授股公告草拟本时, 二人也没有向公司秘书或经理跟进。结果, 授股公告在 2016 年 8 月 23 日才刊发。

GEM 上市委员会因而裁定相关董事违反了《承诺》, 没有竭力促使该公司遵守《GEM 上市规则》第 23.06A 条。

翌日报表及月报表 - 违反《GEM 上市规则》第 17.27A、17.27B 及 17.56(2)条

GEM 上市委员会注意到吴先生是负责月报表及翌日报表的执行董事, 该公司分别于 2016 年 8 月 5 日及 24 日刊发的月报表及翌日报表均是经他批准。 由于吴先生知道授股及该等新发行股份并牵涉其中, 加上《GEM 上市规则》第 5.03 条的规定, 以及吴先生身为负责执行董事, GEM 上市委员会认为吴先生违反了其《承诺》, 没有竭力促使该公司遵守:

(1) 《GEM 上市规则》第 17.27B 及 17.56(2)条, 没有在月报表中披露获授股份期权及所需提供的详情; 及

(2) 《GEM 上市规则》第 17.27A 条, 在 2016 年 8 月 24 日才刊发翌日报表。

于 2016 年 8 月 23 日及 24 日发布的授股公告及内幕消息公告 - 违反《GEM 上市规则》第 17.56(2)条

GEM 上市委员会裁定吴先生在向公司秘书口头跟进及在经理向其汇报该等新发行股份的进度后，已知悉或应已知悉 2016 年 8 月 22 日下午 4 时 37 分已发行股份一事。因此，在授股公告草拟本及内幕消息公告草拟本于 2016 年 8 月 22 日下午 7 时 41 分及稍后时间送交他们审阅时，吴先生应已知悉 16 亿股股份已获配发，从而知道授股公告草拟本及内幕消息公告草拟本中将有关股份描述为「在行使获授的股份期权后将予发行」的相关声明并不准确且具误导成分。无论如何，吴先生身为执行董事、主席兼监察主任，他理应采取行动，向负责编备及刊发授股公告及内幕消息公告者查询及核实股份是否经已发行，以在两份公告刊发前确保公告内容准确完整。

因此，GEM 上市委员会裁定，吴先生违反了其《承诺》，没有就授股公告及内幕消息公告竭力促使该公司遵守《GEM 上市规则》第 17.56(2)条。

至于其他相关董事，GEM 上市委员会认为，承授人在电邮中的表述当可让他们得知在 2016 年 8 月 21 日董事会通过股份配发之后，该公司或已发行了该等新发行股份。事实上，该等新发行股份正是在之后一日下午 4 时 37 分发行。

因此，当授股公告草拟本及内幕消息公告草拟本于 2016 年 8 月 22 日下午 7 时 41 分及稍后时间送交相关董事审阅时，相关董事(吴先生除外)起码要向吴先生(监察主任)、公司秘书及/或所涉经理询问有关该等新发行股份的进度，以确保授股公告及内幕消息公告在各重大方面均属准确且无误导成分。所以 GEM 上市委员会裁定，他们都违反了其《承诺》，没有就这两份公告竭力促使该公司遵守《GEM 上市规则》第 17.56(2)条。

没有谘询合规顾问 - 违反《GEM 上市规则》第 6A.23(1)条

GEM 上市委员会注意到该公司没有就(i) 授股；(ii) 该等新发行股份；及(iii) 授股公告(直至 2016 年 8 月 22 日)知会或谘询天财资本，因为其已委聘希仕廷律师行为法律顾问及声称要约的财务顾问禹铭，而无意忽略了知会或谘询天财资本。GEM 上市委员会强调，即使该公司谘询其他专业顾问，亦不能免除其按《GEM 上市规则》第 6A.23 条(1)谘询其合规顾问的责任。

GEM 上市委员会注意到相关董事没有在批准授股前，采取任何行动促使该公司先就授股谘询合规顾问。GEM 上市委员会裁定，尤其鉴于有关授股的情况，相关董事违反了其《承诺》，没有竭力促使该公司遵守《GEM 上市规则》第 6A.23(1)条。

相关董事违反《GEM 上市规则》第 5.01(1)、(2)及(6)条

鉴于个案的情况，及相关董事的知识、经验及在该公司的职位，GEM 上市委员会裁定相关董事未有以至少符合香港法例确立的标准去履行其以应有技能、谨慎和勤勉行事的责任，尤其是下列责任：(i) 真诚为发行人整体利益行事；(ii) 为正当目的行事；及(iii) 审批授股时应用合理的技能、谨慎和勤勉行事，结果导致或造成该公司违反了相关《GEM 上市规则》，因此他们违反了《GEM 上市规则》第 5.01(1)、(2)及(6)条。

GEM 上市委员会进一步裁定最终负责刊发月报表及翌日报表的吴先生未有履行其职责，没有以合理的技能、谨慎和勤勉确保该公司遵守《GEM 上市规则》第 17.27A、17.27B 及 17.56(2)条，违反了《GEM 上市规则》第 5.01(6)条。

吴先生违反《GEM 上市规则》第 5.20(1)条

GEM 上市委员会裁定吴先生身为该公司的监察主任，未有采取行动确保该公司遵守《GEM 上市规则》，亦一如其所承认，未有履行监察主任的职责，因此违反了《GEM 上市规则》第 5.20(1)条。

违反尽力遵守《GEM 上市规则》的《承诺》

GEM 上市委员会因而裁定，鉴于所有相关董事都违反了《GEM 上市规则》第 5.01(1)、(2)及(6)条及吴先生违反了《GEM 上市规则》第 5.20(1)条，相关董事亦违反了其尽力遵守《GEM 上市规则》的《承诺》。

监管上关注事项

GEM 上市委员会认为事件中的违规情况严重：

(1) 该公司在一个月内接连违反《GEM 上市规则》，而违规的源头是因为相关董事即使知悉《GEM 上市规则》第 23.05 条及该计划的限制仍在禁止买卖期内批准授出股份期权。

(2) 承授人在禁止买卖期内获该公司授出股份期权(但根据《GEM 上市规则》第 23.05 条及该计划，这些股份期权本不应授出)后，其中八人在 2016 年 8 月 24 日及 25 日行使股份期权并在公开市场向不知名买家出售其全数股份；按该两日的股份收市价计算，他们可能已获巨利。

(3) 该公司股东及公众投资者(包括要约人)未能获得准确完整的授股资料、有关于 2016 年 8 月 22 日行使股份期权的及时资料以及分别于 2016 年 8 月 23 日及 24 日刊发的授股公告及内幕消息公告

中有关该等新发行股份的资料，令他们的利益受损。

(4) 尽管该公司当时已按《GEM 上市规则》的规定聘请合规顾问，也即使该计划有所禁限，该公司并没有在作出授股前就《GEM 上市规则》的影响谘询合规顾问。该公司在授股后约一个月并临近刊发授 股公告前才就该公告谘询合规顾问。

(5) 该公司在其呈述中对《GEM 上市规则》第 23.05 条的诠释清楚显示该公司及相关董事对该条的规 定并无恰当的理解。

(6) 董事有责任确保公司不会在禁止买卖期内发行股份期权以违反《GEM 上市规则》及该计划，以及确保公告及公司通讯及时刊发，并且在所有重大方面准确完整，没有误导或欺骗成分，否则会破坏市 场透明度、信任及信心。

(7) 授股涉及以象征式的代价向承授人发出股份期权，对该公司来说并没有合理商业利益，还因为该等新发行股份而令现有股东所作投资的表决权被摊薄了 6.25%。该公司及相关董事违规亦令监管机构 关注其未有公平对待现有股东及未能维持一个有秩序的证券交易市场。

(8) 联交所就该公司在此事上违反《GEM 上市规则》收到三宗投诉(包括要约人的投诉)。要约人在其 2016 年 9 月 2 日的公告中指，该公司未有在《GEM 上市规则》规定的时间内披露授股损害了要 约人的地位，令其在 2016 年 8 月 18 日公布声称要约时未有考虑到股份期权及该等新发行股份。

制裁

经裁定上述违规事项及裁定违规性质严重后，GEM 上市委员会决定：

(1) 谴责该公司违反《GEM 上市规则》第 23.05、23.06A、17.27A、17.27B、17.56(2)及 6A.23(1)条；

(2) 谴责吴先生违反《GEM 上市规则》第 5.01(1)、(2)及(6)条及第 5.20(1)条，以及其《董事承诺》，没有竭力促使该公司遵守《GEM 上市规则》及自身尽力遵守《GEM 上市规则》；及

(3) 谴责其余相关董事违反《GEM 上市规则》第 5.01(1)、(2)及(6)条以及其《董事承诺》，没有竭力 促使该公司遵守《GEM 上市规则》及自身尽力遵守《GEM 上市规则》。

GEM 上市委员会又作出以下指令：

(1) 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》提供意见。合规顾问须向该公司的审核委员会汇报。

(2) 吴先生、马先生及现为联交所其他上市公司董事的陈先生各自 (i) 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《上市规则》合规事宜及董事职责的 24 小时培训(包括 4 小时有关董事职责及企业管治的《GEM 上市规则》规定的培训)(培训)。

(3) 现时并非任何联交所上市公司董事的黄先生及邝先生二人日后若要出任联交所上市公司董事，先决条件是其必须(i) 于有关委任生效日期之前完成培训；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。

(4) 该公司须于完成上文第(1)段及第(2)段(有关吴先生及马先生)所述指令后两星期内刊发公告，确认 已全面遵守有关指令。

(5) 该公司须呈交上文第(4)段所述公告的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。

(6) 上文第(1)至(5)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。如有任何引起关注的事宜，上市部会转交 GEM 上市委员会再作决定。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/181211news?sc_lang=en

The Listing Committee of The Stock Exchange of Hong Kong Limited Criticizes Chen Xing Development Holdings Limited for Breaching the Listing Rules and Censures a Number of Its Current Directors for Breaching the Director's Undertaking regarding Investment in Wealth Management Products

On December 12, 2018, the Listing Committee of The Stock Exchange of Hong Kong Limited (Exchange)

CRITICISES:

(1) Chen Xing Development Holdings Limited (Company) for breaching Rules 3A.23, 14.34, 14.38A and 14.40 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) for

failing to consult with its compliance adviser where a number of notifiable transactions were contemplated, and for failing to comply with the announcement and/or circular and prior shareholders' approval requirements in relation to 14 notifiable transactions;

AND CENSURES:

(2) Mr Bai Xuan Kui, current executive director (ED) and Chairman of the Company;

(3) Mr Bai Wu Kui, current ED and Chief Executive Officer of the Company;

(4) Mr Bai Guo Hua, current ED of the Company; and

(5) Mr Dong Shi Guang, current ED of the Company

for breaching their respective obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (Undertaking) for failing to use their best endeavors to procure the Company's compliance with the Exchange Listing Rules (the directors identified at (2) to (5) above are collectively referred to as the Relevant Directors).

For the avoidance of doubt, the Exchange confirms that the sanctions and directions apply only to the Company and the Relevant Directors, and not to any other past or present members of the board of directors of the Company.

FACTS

This case involves the Company's failure to comply with the Exchange Listing Rules in relation to 14 transactions, being subscriptions of wealth management products (WMPs) by the Company, between August 2016 and July 2017. 12 subscriptions constituted discloseable transactions, and two subscriptions constituted major transactions (together, the Investments). The Company did not comply with the announcement and/or circular and prior shareholders' approval requirements pursuant to Chapter 14 of the Exchange Listing Rules in relation to the Investments.

The Relevant Directors approved the Company's subscription of WMPs. They did not consult the Company's Compliance Adviser in relation to the proposed subscription of WMPs during the fixed period (defined in Rule 3A.19), and did not procure size tests to be prepared.

The Relevant Directors first became aware of the Company's potential breaches of the Exchange Listing Rules in relation to the Investments after the Exchange commenced inquiries on March 29, 2017. However, no action was taken by them. The Company persisted in its breach of the Exchange Listing Rules on July 3 and 12, 2017 when it made two further subscriptions of WMPs.

On October 19, 2017, the Company published an announcement containing details of the Investments, and admitted that it had failed to comply with the applicable reporting, announcement and shareholders' approval requirements under the Exchange Listing Rules. The Company has obtained confirmation from the controlling shareholder of the Company that it has approved, confirmed and ratified the two major transactions.

LISTING COMMITTEE'S FINDINGS OF BREACH

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

<u>The Company's breaches</u>

The Listing Committee noted that the Company admitted that it had breached Rules 3A.23, 14.34, 14.38A and 14.40 and found that the Company did breach these Rules by failing to comply with the announcement and/or circular and prior shareholders' approval requirements in respect of the Investments.

Further, having considered the facts of the case, the Listing Committee was of the view that the Company demonstrated an unacceptable level of corporate governance.

<u>Relevant Directors' breaches</u>

The Listing Committee concluded that the Relevant Directors breached their respective Undertakings for failing to use their best endeavors to procure the Company's compliance with the Exchange Listing Rules:

(a) The Relevant Directors were aware of and approved the Company's subscription of WMPs.

(b) Given that the Company was newly listed and had a Compliance Adviser at the time, it would have been reasonable for the Relevant Directors to consult the Company's Compliance Adviser when contemplating the subscription of WMPs. The Relevant Directors failed to do so, and failed to procure a size test in respect of the Investments, which resulted in the Company's breaches of the Exchange Listing Rules.

(c) When the Relevant Directors became aware of the Company's potential breaches of the Exchange Listing Rules on March 29, 2017, it would have been reasonable to expect the Relevant Directors to have taken immediate steps to ensure that any further subscription of WMPs by the Company must comply with the relevant requirements of the Exchange Listing

Rules. The Relevant Directors, on their own admission, took no remedial action between March 29, 2017 and June 28, 2017. Despite having admitted the Rule breaches in May 2017, the Company persisted in breaching the Exchange Listing Rules even after this date. This demonstrated the Relevant Directors' disregard for compliance with the Exchange Listing Rules and a failure to implement remedial measures on timely basis.

(d) By reason of the conduct of the Relevant Directors, the Company breached Rules 3A.23, 14.34, 14.38A, and 14.40.

REGULATORY CONCERN

This matter gives rise to a number of concerns over the Relevant Directors' ability to procure the Company's compliance with the Exchange Listing Rules:

(1) Chapter 14 imposes clearly defined and unambiguous obligations on issuers, which are designed to safeguard and protect investors, as they rely on information in the public domain to make their investment decisions.

(2) The Company's failure to comply with the announcement and/or circular and shareholders' approval requirements of the Exchange Listing Rules has deprived the Company's investors of their right to the timely receipt of information in relation to the Investments, and for the Company's shareholders, their right to vote on those transactions (where required).

(3) The Company's breaches of the Exchange Listing Rules occurred shortly after it was listed. This demonstrates that the Relevant Directors were unfamiliar with the relevant Chapter 14 requirements for notifiable and major transactions. As a newly listed company, the Exchange expects the Relevant Directors to have taken advantage of the services of the Company's Compliance Adviser, and to proactively seek advice and assistance from the Compliance Adviser. However, they did not do so.

(4) The Company repeatedly failed to comply with Chapter 14 provisions in respect of the Investments, which was attributable to the conduct of the Relevant Directors. The Exchange is concerned about the Relevant Directors' failure to take action to ensure the Company's compliance with the Exchange Listing Rules, particularly after they became aware that the Company's subscription of WMPs had breached the provisions of Chapter 14 of the Exchange Listing Rules. This illustrates a disregard for compliance with the Exchange Listing Rules on the part of the Relevant Directors.

SANCTIONS

Having made the findings of breach stated above, the Listing Committee decides to:

(1) criticize the Company for its breach of Rules 3A.23, 14.34, 14.38A and 14.40; and

(2) censure the Relevant Directors for their respective breaches of the Undertakings.

The Listing Committee further directs:

(3) the Relevant Directors to (a) attend 18 hours of training (Training) on Exchange Listing Rule compliance, director's duties, including four hours of training on notifiable and connected transactions, 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 Listing Department; and (b) provide the Listing Department with the Training provider's written certification of full compliance within two weeks after Training completion.

(4) The Company is to publish an announcement to confirm that the above direction has been fully complied with within two weeks after Training completion.

(5) The Company is to submit a draft announcement referred to above for the Listing Department's comment and may only publish the announcement after the Listing Department has confirmed it has no further comment on it.

(6) Any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (3) to (5) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

香港联合交易所有限公司上市委员会批评辰兴发展控股有限公司就理财产品交易额违反《上市规则》并谴责该公司数名现任董事违反《董事承诺》

2018 年 12 月 12 日，香港联合交易所有限公司 (联交所) 上市委员会

批评：

(1) 辰兴发展控股有限公司 (该公司) 违反《香港联合交易所有限公司证券上市规则》(上市规则) 第 3A.23、14.34、14.38A 及 14.40 条, 未有就拟定若干须予公布交易时谘询其合规顾问的意见, 亦未有就 14 项须予公布交易遵守公告及/或通函以及事先取得股东批准的规定；

并谴责：

(2) 白选奎先生, 该公司现任执行董事兼主席；
(3) 白武魁先生, 该公司现任执行董事兼行政总裁；
(4) 白国华先生, 该公司现任执行董事；及
(5) 董世光先生, 该公司现任执行董事

违反各自以《上市规则》附录五 B 表格向联交所作出的《董事的声明及承诺》(承诺) 所载的责任, 未能尽力促使该公司遵守《上市规则》的条文。上文(2)至(5)项所述的董事统称为「相关董事」。

为免引起疑问, 联交所确认制裁及指令仅适用于该公司及相关董事, 不涉及该公司董事会任何其他前任或现任董事。

实况

本个案涉及该公司在 2016 年 8 月至 2017 年 7 月期间未有就 14 项交易（全部均为认购理财产品）遵守《上市规则》的条文；其中 12 项认购构成须予披露的交易, 余下两项构成主要交易 (统称:有关投资)。 该公司的有关投资并未符合《上市规则》第十四章的公告及/或通函及事先取得股东批准等规定。

相关董事批准了该公司认购理财产品， 但事前未有在《上市规则》第 3A.19 条所界定的指定期间 (指定期间) 内, 就其认购理财产品计划向该公司合规顾问征求意见, 亦未有促使该公司准备规模测试。

相关董事于 2017 年 3 月 29 日联交所开始其查询后首次发现公司的有关投资可能违反了《上市规则》, 却并无采取任何行动。该公司于 2017 年 7 月 3 日及 12 日一再认购理财产品, 继续违反《上市规则》。

2017 年 10 月 19 日, 该公司刊发公告说明有关投资的详情, 并承认其未有遵守《上市规则》项下适用的申报、公告及股东批准的规定。该公司取得控股股东确认其已批准、确认及追认两项主要交易。

上市委员会裁定的违规事项

上市委员会经考虑上市部、该公司及相关董事的书面及口头陈述后，作出以下裁定：

<u>该公司的违规</u>

上市委员会知悉该公司承认违反《上市规则》第 3A.23、14.34、14.38A 及 14.40 条, 并认为该公司因未有就有关投资遵守公告及/或通函及事先取得股东批准的规定, 确实违反了该等条文。

此外, 经考虑个案的上述实况后, 上市委员会认为该公司的企业管治水平不可接受。

<u>相关董事的违规</u>

上市委员会裁定相关董事因未能尽力促使该公司遵守《上市规则》的条文, 违反了各自的《承诺》：

(i) 相关董事均知悉并批准该公司认购理财产品。

(ii) 由于该公司刚上市, 且当时亦聘有合规顾问, 在其拟认购理财产品时, 相关董事理应谘询该公司合规顾 问的意见, 但他们并无采取相关行动, 也没有促使该公司就有关投资进行规模测试, 导致该公司违反了 《上市规则》。

(iii) 相关董事于 2017 年 3 月 29 日知悉该公司可能违反《上市规则》后, 理应立即采取行动, 确保日后认购理财产品的交易须遵守《上市规则》的相关规定。可是, 相关董事承认其在 2017 年 3 月 29 日 至 2017 年 6 月 28 日期间并无采取补救措施。尽管该公司于 2017 年 5 月已承认违反了《上市规 则》, 但期后却继续明知故犯违反《上市规则》, 可见相关董事漠视遵守《上市规则》的规定, 也未 能及时采取补救措施。

(iv) 基于相关董事的上述行为, 该公司违反了《上市规则》第 3A.23、14.34、14.38A 及 14.40 条。

监管上关注事项

事件令人关注相关董事是否有能力促使该公司遵守《上市规则》的条文：

(1) 《上市规则》第十四章清晰订明发行人保障投资者的责任, 因投资者藉着公开资料作出投资决定。

(2) 该公司未有遵守《上市规则》有关公告及/或通函及事先取得股东批准的规定, 剥夺了该公司投资者及 时知悉有关该等投资的权利, 以及股东就该等交易进行表决 (如要) 的权利。

(3) 该公司在上市不久就违反《上市规则》, 反映相关董事并不熟悉《上市规则》第十四章有关须予公布的交易及主要交易的规定。作为新上市公司, 联交所预期其相关董事会善用公司合规顾问所提供的服 务, 主动征求合规顾问的意见及协助, 但他们并无采取相关行动。

(4) 该公司因相关董事的行为失当, 导致其有关投资事项屡次触犯《上市规则》第十四章的条文。联交所非常关注相关董事未能采取行动确保该公司遵守《上市规则》, 尤其是在已经知悉该公司认购理财产品违反了《上市规则》第十四章的条文后, 仍继续明知故犯, 可见相关董事漠视遵守《上市规则》。

制裁

经裁定上述违规事项后, 上市委员会决定:

(1) 批评该公司违反《上市规则》第 3A.23、14.34、14.38A 及 14.40 条; 及

(2) 谴责相关董事违反其各自的《承诺》。

上市委员会又作出以下指令:

(3) 相关董事须 (i)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《上市规则》合规事宜及董事职责的 18 小时培训 (培训), 包括 4 小时有关须予公布的交易及关连交易的培训; 及(ii)在培训完成后两个星期内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。

(4) 该公司须于培训完成后两星期内刊发公告, 确认已全面遵守上述指令。

(5) 该公司须向上市部提交有关上述公告的拟稿供其给予意见, 并仅可在上市部确认再无其他意见后才刊 发公告。

(6) 上文第(3)至(5)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。如有任何引起关注的事宜, 上市部会转交上市委员会作决 定。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/181212news?sc_lang=en

The Listing Committee of Stock Exchange of Hong Kong Limited Censures Shenji Group Kunming Machine Tool Company Limited and a Former Director for Breaching the Listing Rules and/or the Director's Undertaking regarding Improper Disclosure in Announcements

On December 13, 2018, the Listing Committee of The Stock Exchange of Hong Kong Limited (Exchange)

CENSURES:

(1) Shenji Group Kunming Machine Tool Company Limited (Company) for breaching Rule 2.13(2) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) for failing to ensure that the information contained in its announcement published on November 11, 2015 was accurate and complete in all material respects and not misleading;

FURTHER CENSURES:

(2) Mr Wang Xing (Mr Wang), former Chairman and executive director (ED) of the Company for:

(a) failing to apply such degree of skill, care and diligence required and expected of him with respect to the matters referred to herein, breaching Rule 3.08(f) of the Exchange Listing Rules;

(b) failing to comply to the best of his ability with the Exchange Listing Rules (Best Ability Undertaking) and use his best endeavors to procure the Company's Exchange Listing Rule compliance (Best Endeavors Undertaking), and failing to cooperate with the Listing Department's investigation (Undertaking to Cooperate), breaching his obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5H to the Exchange Listing Rules (Director's Undertaking)

AND STATES THAT:

The pattern of behavior exhibited by Mr Wang in failing to cooperate with the Listing Department's investigation is completely inconsistent with the standard of conduct expected by the Exchange of a director of a listed issuer and such failure will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules (and Rule 5.02 of the GEM Listing Rules) in the event that he should wish to become a director of any issuer listed or to be listed on the Exchange in the future.

For the avoidance of doubt, the Exchange confirms that the sanctions apply only to the Company and Mr Wang.

KEY FACTS

On October 9, 2015, the Company announced that Shenyang Machine Tool (Group) Company Limited, its substantial shareholder (Transferor), was identifying a suitable transferee for the sale of its entire 25.08% interest in the Company (Share Transfer). There were two further announcements published by the Company on October 23 and 30 ,2015 concerning the development of the matter.

Announcement disclosing the Agreement for the Share Transfer

On November 11, 2015 at 7:07 am, the Company published an announcement (Announcement) that the Transferor had entered into an agreement (Agreement) for the Share Transfer to Tibet Unis-zhuoyuan Equity Investment Company Limited (Transferee). The conditions to the Share Transfer becoming effective were set out in the Announcement, including obtaining the approval of the State-owned Assets Supervision and Administration Commission (SASAC) of the PRC State Council, but without mentioning any deadline for completion.

Progress Announcement

On February 5, 2016 at 4:16 pm, the Company published an announcement about the progress of the Share Transfer (Progress Announcement). It was disclosed, amongst others, that (a) the approval of the SASAC of PRC State Council had yet to be obtained and that the Share Transfer was subject to a 3-month long stop date which would expire on February 8, 2016 (Long Stop Date); (b) if the effective conditions of the Share Transfer could not be fulfilled by the Long Stop Date, the Agreement would be terminated automatically with neither party bearing any liability; and (c) the parties were then discussing whether the Agreement would be postponed.

Termination Announcement

On February 17, 2016 (8:28 am), the Company published an announcement about the termination of the Agreement (Termination Announcement), disclosing, amongst others, the following:

(1) The conditions of the Share Transfer as set out in the Agreement included, among others, (i) the Transferor should obtain the written document from the Yunnan provincial government supporting the Transferee to become the substantial shareholder of the Company and (ii) Yunnan Industrial Investment Holding Group Co., Ltd., the Company's second largest shareholder, should issue a written document to support and cooperate with the completion of the Share Transfer (collectively, Letters of Support).

(2) If the effective conditions of the Share Transfer could not be fulfilled by the Long Stop Date, the Agreement would be automatically terminated and neither party needs to bear liability.

(The terms of the Agreement referred to in sub-paragraphs (1) and (2) above which were not disclosed in the Announcement are collectively referred to as the Relevant Terms.)

(3) The Agreement had been terminated as the approval of the SASAC of PRC State Council had not been obtained by the Long Stop Date.

(4) The final version of the Agreement was signed in the evening of November 10, 2015, and the term regarding the Long Stop Date was included in the Agreement. Because of the time constraints, after the Company received the final version of the Agreement at 5:51 pm on that day, it uploaded the Announcement (prepared based on previous versions of the Agreement) without review.

(5) On February 4, 2016, the Company became aware that the Transferor and the Transferee might not be able to agree to extend the Long Stop Date set out in the Agreement and was requested by the China Securities Regulatory Commission (CSRC) to announce it.

(6) On February 15, 2016, the Company received inquiries from the CSRC and the Shanghai Stock Exchange (SSE) concerning the termination of the Share Transfer and requested the Company to explain, among other issues, why the Company did not disclose the Long Stop Date in the Announcement, and to verify whether there were other significant omissions in its previous announcements. As a result, the Company found that it had also failed to disclose the Relevant Terms in the Announcement.

Company's explanation for the omissions in the Announcement

According to the Company:

(1) As it was not a party to the Share Transfer, its knowledge about the transaction terms and process was all informed by the Transferor, the Transferee and its adviser. Drafts of the Announcement to disclose the Share Transfer were prepared based on information and/or drafts of the Agreement provided by the Transferee on November 5 and 9, 2015 which

did not mention the Long Stop Date. The Company was never aware during the negotiation process that the parties to the Share Transfer intended to include a Long Stop Date in the Agreement. Those parties themselves also failed to disclose the Long Stop Date in their own filings.

(2) Only Mr Wang and the Board Secretary were involved in preparing and publishing the Announcement. The other Directors had no knowledge before the Announcement was published. The Board Secretary received the executed Agreement by email on November 10, 2015 at 5:51 pm, and reported to Mr Wang by providing a physical copy of the executed Agreement to him for review. After receiving Mr Wang's approval, arrangements to publish the Announcement were made.

(3) February 4, 2016, the CSRC, after reviewing relevant information in the course of monitoring the Company's continuing compliance, requested the Company to verify and disclose relevant terms concerning Long Stop Date by which conditions to the Share Transfer had to be fulfilled. The Board office then checked the executed Agreement and only became aware of the Long Stop Date. The Company therefore disclosed the existence of the Long Stop Date in the Progress Announcement on February 5, 2016.

Company admitted breach of Rule 2.13(2)

The Company admitted that, in failing to disclose the Relevant Terms in the Announcement, it breached Rule 2.13(2) of the Exchange Listing Rules.

No admission or denial of breach of Rule 3.08 or Undertaking by Mr Wang

Mr Wang neither admitted nor denied breach of Rule 3.08 of the Exchange Listing Rules and his Best Ability Undertaking and Best Endeavors Undertaking concerning the Company's compliance with Rule 2.13(2) regarding the Announcement.

Mr Wang failed to respond to the Listing Department's inquiries after he resigned as a director

Mr Wang failed to respond to the Listing Department's written inquiries of August 25, 2017 concerning the Listing Department's investigation on the above matter after he ceased to be a director of the Company with effect from January 19, 2017. On September 13, 2017, a staff member of the Listing Department successfully contacted Mr Wang on the telephone, and was requested to re-send the inquiry letter to another address of Mr Wang which the Listing Department did on the same day. As no response was received, the Listing Department subsequently telephoned Mr Wang again four times on two days but was unable to contact Mr Wang. The Listing Department also issued two follow up letters to Mr Wang but received no response.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Company and Mr Wang did not attend the hearing. The Listing Committee considered the written submissions of the Listing Department, the Company and Mr Wang, and concluded as follows:

Company's breach of Rule 2.13(2)

The Listing Committee concluded that the Relevant Terms were material information concerning the Share Transfer:

(1) Obtaining the Letters of Support was a condition to the Share Transfer and was therefore one of the material terms of the Agreement.

(2) The Share Transfer was subject to the Long Stop Date, ie all conditions to the Share Transfer had to be fulfilled within 3 months from the date of the Agreement, otherwise the Agreement would be terminated automatically. By failing to disclose this, the investing public was misled that there was no time limit for the parties to the Share Transfer to arrange for all conditions to be fulfilled, when in fact this was not the case.

(3) Termination of the Share Transfer (which the investing public had not expected without knowing the Long Stop Date until the Progress Announcement was published on February 5, 2016) did have an adverse impact on the Company's financial situation as stated in the Termination Announcement.

The Listing Committee found that there were significant share trading movements in the Company's H-shares immediately after the Announcement, the Progress Announcement and the Termination Announcement were respectively published.

The Listing Committee further concluded that the significant market reaction to the Announcement, the Progress Announcement and the Termination Announcement supported the view that the Share Transfer and the requirement to fulfill the condition regarding obtaining the approval of the SASAC of the PRC State Council by the Long Stop Date was material information to the Company's shareholders and the investing public who had been deprived of information in respect of the Share Transfer which should have been accurate and complete in all material respects and not

misleading for making informed investment decisions on the trading of the Company's securities during the period from November 19, 2015 to February 16, 2016.

The Listing Committee therefore concluded that the Company breached Rule 2.13(2) of the Exchange Listing Rules in that its failure to disclose the Relevant Terms in the Announcement led to material omissions in the Announcement and rendered it not accurate and complete in all material respects and was misleading.

Mr Wang's breaches of Rule 3.08(f) and Undertaking

Breach of Rule 3.08(f)

In view of Mr Wang's knowledge, experience and position in the Company, the Listing Committee concluded that he failed to fulfill his duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, breaching Rule 3.08(f) of the Exchange Listing Rules.

Breach of Best Ability Undertaking

The Listing Committee concluded that, with his breach of Rule 3.08 of the Exchange Listing Rules as analyzed above, Mr Wang also breached his Best Ability Undertaking.

Breach of Best Endeavors Undertaking

Mr Wang undertook to the Exchange to use his best endeavors to procure the Company's compliance with the Exchange Listing Rules. The Listing Committee took the view that, in the circumstances of this case, best endeavors would have required Mr Wang to, at least, ensure that the executed Agreement be reviewed and the draft Announcement be checked against the Agreement to ensure that it is accurate and complete in all material respects and not be misleading, as required under Rule 2.13(2). The Listing Committee concluded that Mr Wang failed to do so, and breached his Best Endeavors Undertaking to procure the Company's compliance with Rule 2.13(2) in respect of the Announcement.

Breach of Undertaking to Cooperate

Mr Wang's written Undertaking to Cooperate to the Exchange required him to cooperate in any investigation conducted by the Listing Department and/or the Listing Committee, including answering promptly and openly any questions addressed to him.

The Listing Committee accepted the Listing Department's submissions that Mr Wang (a) was taken to have received the Listing Department's inquiry letter of August 25, 2017 and subsequent follow up letters by virtue of the deemed service provision in his Director's Undertaking; (b) was clearly aware of the need for his cooperation in the investigation through the telephone conversation he had with a staff member of the Listing Department on September 13, 2017; (c) failed to respond to the investigation without any reasonable grounds; and (d) therefore failed to comply with his Undertaking to Cooperate in the Listing Department's investigation.

The Listing Committee therefore concluded that Mr Wang failed to cooperate with the Listing Department's investigation and therefore breached his Undertaking to Cooperate.

REGULATORY CONCERN

The Listing Committee regards the breaches in this matter as serious:

(1) The interest of the Company's shareholders 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. There was trading in the Company's shares from November 19, 2015 to February 16, 2016. The Listing Committee noted, in particular, the significant share trading movements after the Announcement, the Progress Announcement and the Termination Announcement were published.

(2) Directors have an obligation to ensure that the company's announcement be accurate and complete in all material respects and not be misleading or deceptive. Failure to do so destroys transparency, trust and confidence in the market.

(3) A director's cooperation with the Listing Department's investigation is of utmost importance in enabling the Exchange to discharge its function to maintain an orderly and fair market. Failure to comply with the Exchange's requests in connection with an investigation of possible Exchange Listing Rule breaches without reasonable excuse is viewed in a very serious light.

SANCTIONS

Having made the findings of breaches stated above, and having concluded that the breaches are serious, the Listing Committee decided to:

(1) Censure the Company for its breach of Rule 2.13(2) of the Exchange Listing Rules; and

(2) Censure Mr Wang for breach of Rule 3.08(f) of the Exchange Listing Rules and the Director's Undertaking.

The Listing Committee further stated that the pattern of behavior exhibited by Mr Wang in failing to cooperate with the Listing Department's investigation is completely inconsistent with the standard of conduct expected by the Exchange of a director of a listed issuer and such failure will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules (and Rule 5.02 of the GEM Listing Rules) in the event that he should wish to become a director of any issuer listed or to be listed on the Exchange in the future.

香港联合交易所有限公司上市委员会谴责沈机集团昆明机床股份有限公司及一名前任董事就不当公告违反《上市规则》及/或《董事承诺》

2018 年 12 月 13 日, 香港联合交易所有限公司 (联交所) 上市委员会

谴责：

(1) 沈机集团昆明机床股份有限公司 (该公司) 未能确保于 2015 年 11 月 11 日刊发的公告所载的资讯在各重要方面是准确完备及没有误导成份, 违反了《香港联合交易所有限公司证券上市规则》(上市 规则)第 2.13(2)条；

进一步谴责：

(2) 王兴先生(王先生), 该公司前任主席兼执行董事

因为其：

(i) 未能以合理预期董事应有的技能、谨慎和勤勉处理本新闻稿所提及事宜, 违反《上市规则》第 3.08(f)条；

(ii) 未有尽力遵守《上市规则》(尽力承诺), 未有尽力促使该公司遵守《上市规则》(竭尽所能承诺), 以及 未有配合上市部调查 (配合承诺), 违反以《上市规则》附录五 H 表格所载形式向联交所作出的《董 事的声明及承诺》(董事承诺) 所载的责任。

并指出：

王先生未能配合上市部调查的行为表现, 完全不符合联交所预期一名上市发行人董事应有的操守标准, 日后若王先生欲出任任何已于或将于联交所上市的发行人的董事, 联交所在根据《上市规则》第 3.09 条 (或《GEM 上市规则》第 5.02 条) 评估他的合适性时, 会将今次事件列入考虑因素。

为免引起疑问, 联交所确认制裁及指令仅适用于该公司及王先生。

主要实况

2015 年 10 月 9 日, 该公司宣布, 其主要股东沈阳机床(集团)有限责任公司 (转让人) 正物色合适对象, 以出售其于该公司持有的 25.08%全部权益 (股权转让)。其后该公司先后于 2015 年 10 月 23 日及 30 日就事情发展进一步刊发公告。

<u>披露股权转让协议的公告</u>

2015 年 11 月 11 日上午 7 时 07 分, 该公司刊发公告 (公告), 表示转让人已订立协议 (协议), 将股权转让予西藏紫光卓远股权投资有限公司 (受让人)。公告中载有股权转让的生效条件, 包括须取得国务院国有资产监督管理委员会 (国资委) 的批准, 但未有提及完成转让的期限。

<u>进度公告</u>

2016 年 2 月 5 日下午 4 时 16 分, 该公司就股权转让的进展刊发公告 (进度公告), 当中披露(其中包括) (i) 股权转让还未获国务院国资委的批准, 而股权转让的最后完成期限为 3 个月, 于 2016 年 2 月 8 日届满(最后完成期限)； (ii) 若未能在最后完成期限前达成股权转让的生效条件, 协议将自动终止, 双方互不承担任何责任；及 (iii) 协议双方正商讨是否将协议延期。

<u>终止公告</u>

2016 年 2 月 17 日上午 8 时 28 分, 该公司就终止协议刊发公告 (终止公告), 披露 (其中包括) 下列内容：

(1) 协议所载的股权转让条件计有 (其中包括) : (i) 转让人须获云南省有关政府部门支持受让人成为该公 司主要股东的书面文件及 (ii) 该公司第二大股东云南省工业投资控股集团有限责任公司发出的书面文 件, 以示支持并配合完成股权转让事宜 (统称为:支持信)。

(2) 若未能在最后完成期限前达成股权转让的生效条件, 协议将告自动终止, 订约双方概不承担任何责任。

(上文第 (1)及(2)分段所述的协议条款(并未载于公告) 统称为:有关条款）。

(3) 由于最后完成期限前未能获得国务院国资委的批准, 故协议已告终止。

(4) 协议的最终版本于 2015 年 11 月 10 日傍晚签订, 当中载有关于最后完成期限的条款。由于时间紧 迫, 该公司当日下午 5 时 51 分收到最终版本的协议后, 却在未经复核的情况下上传了公告 (根据协议先前的版本编备)。

(5) 2016 年 2 月 4 日, 该公司得悉转让人及受让人未必能同意延长协议所载的最后完成期限, 而中国证 券监督管理委员会 (中国证监会) 要求该公司就此刊发公告。

(6) 2016 年 2 月 15 日, 该公司接获中国证监会及上海证券交易所 (上交所) 有关终止股权转让的查询, 并被要求解释 (其中包括) 公告中为何没有披露最后完成期限, 以及向其查证会否在先前的公告中也 有其他重大遗漏。该公司因而发现其亦未有在公告中披露有关条款。

<u>公司对公告遗漏资料的解释</u>

根据该公司的解释：

(1) 该公司并不是股权转让的交易方, 故其有关交易条款及过程的信息皆来自转让人、受让人及其顾问。该公司是依据受让人于 2015 年 11 月 5 日及 9 日提供的资料及/或协议拟本草拟公告以披露股权转让事宜, 当中并未提及最后完成期限。该公司在协商过程中从未发现股权转让的交易双方有意在协议中加设最后完成期限。交易双方各自所提交的文件中亦没有披露最后完成期限。

(2) 编备及刊发公告的过程仅涉及王先生与董事会秘书。其他董事在公告刊发前对此并不知情。董事会秘书在 2015 年 11 月 10 日下午 5 时 51 分通过电邮收到已签立的协议, 并将打印本交予王先生审阅。经王先生批准后, 便安排刊发公告。

(3) 2016 年 2 月 4 日, 中国证监会在监察该公司持续合规过程中审阅了有关资料后, 要求该公司核实及披露关于须在最后完成期限前达成股权转让条件的有关条款。董事会办公室为此检查已签立的协议时, 才发现最后完成期限的问题。因此, 该公司在 2016 年 2 月 5 日的进度公告中披露有关最后完成期限。

<u>该公司承认违反《上市规则》第 2.13(2)条</u>

该公司承认没有在公告中披露有关条款, 违反了《上市规则》第 2.13(2)条。

<u>王先生没有承认或否认违反《上市规则》第 3.08 条或其承诺</u>

有关该公司在刊发公告时须遵守《上市规则》第 2.13(2)条一事, 王先生没有承认或否认其就此违反《上市规则》第 3.08 条及其尽力承诺与竭尽所能承诺。

<u>王先生辞任董事后未有回应上市部查询</u>

王先生于 2017 年 1 月 19 日辞任该公司董事后, 并无回复上市部于 2017 年 8 月 25 日就上述事宜进行调查所发出的查询函。上市部职员于 2017 年 9 月 13 日成功致电联络上王先生, 王先生要求将查询函寄往其另一个地址。上市部即日已将信件寄出。由于其后仍未收到回复, 上市部曾于两日内四度再致电王先生, 但始终联络不果。上市部亦再两度致函王先生作出跟进, 但均不见回复。

上市委员会裁定的违规事项

该公司及王先生并无出席聆讯。上市委员会经考虑上市部、该公司及王先生的书面陈述后, 作出以下裁定：

<u>该公司违反《上市规则》第 2.13(2)条</u>

上市委员会裁定有关条款是股权转让一事的重要资料：

(1) 取得支持信是实现股权转让的条件, 因此是协议的重要条款之一。

(2) 股权转让须在最后完成期限前完成, 即股权转让的所有条件须在协议日期起计 3 个月内达成, 否则协 议会自动终止。由于该公司未能披露最后完成期限, 投资大众会误以为股权转让双方就达成所有条件 作出的安排并无时限, 但实情并非如此。

(3) 一如终止公告所述, 股权转让的终止 (投资大众直至 2016 年 2 月 5 日进度公告刊发时才知悉关于最 后完成期限的条件, 因此对他们而言是意料之外) 对该公司的财务状况造成不利影响。

上市委员会发现, 在该公司相继刊发公告、进度公告及终止公告后, 其 H 股买卖均随即出现明显波动。

上市委员会又认为, 市场对公告、进度公告及终止公告的反应很大, 说明有关股权转让及需要在最后完成期限前取得国务院国资委批准的规定对该公司股东及投资大众来说是重要资料, 所以该公司的股东及投资大众在 2015 年 11 月 19 日至 2016 年 2 月 16 日期间买卖该公司的股票时, 其实并未获得在所有重要方面均准确、完备及没有误导成份的资料, 以作出知情的投资决定。

因此, 上市委员会以该公司未能在公告中披露有关条款, 导致公告出现重大遗漏且在所有重要方面并不准确、不完备及具有误导成份为由, 裁定该公司违反《上市规则》第 2.13(2)条的规定。

<u>王先生违反第 3.08(f) 条及承诺</u>

违反《上市规则》第 3.08(f)条

上市委员会裁定，就王先生的知识、经验及在该公司的职位而言，王先生未能以至少符合香港法例所确立的标准，履行以应有技能、谨慎和勤勉行事的责任，违反了《上市规则》第 3.08(f)条。

违反尽力承诺

上市委员会亦裁定，王先生如上所述违反《上市规则》第 3.08 条，因而亦违反其尽力承诺。

违反竭尽所能承诺

王先生向联交所承诺，将竭尽所能促使该公司遵守《上市规则》。上市委员会认为，在此情况下，根据竭尽所能承诺的规定，王先生须至少确保已签立的协议获得审阅，并参照协议检查公告草拟本，以确保其按第 2.13(2)条的规定在所有重要方面均为准确及完备，没有误导成份。上市委员会裁定，王先生并没有这样做，且未能促使该公司就公告遵守第 2.13(2)条的规定而违反了其竭尽所能承诺。

违反配合承诺

王先生曾向联交所作出书面承诺，当中要求其须承诺配合上市部及/或上市委员会的调查，包括迅速并坦诚回答对其提出的问题。

上市委员会接受上市部的陈述，认为王先生(i) 按照其《承诺》中有关视为已送达的条文乃当作已收到上市部于 2017 年 8 月 25 日的查询及跟进函件；(ii) 透过与上市部职员在 2017 年 9 月 13 日的电话通话，已清楚知道有需要配合该调查；(iii) 在没有合理理由下不回复该调查；及 (iv) 因此未有遵守其《承诺》以配合联交所调查。

上市委员会因此裁定王先生未能配合上市部的调查，故违反其配合承诺。

监管上关注事项

上市委员会认为事件中的违规情况严重：

(1) 该公司股东因未能获得准确、完备及没有误导成份的资料，以评估该公司的状况及作出有根据的投资决定，其权益已受损。该公司的股份在 2015 年 11 月 19 日至 2016 年 2 月 16 日期间录得成交，上市委员会注意到该等股份的交投特别在公告、进度公告及终止公告公布后出现显著波动。

(2) 董事有责任确保公司的公告在所有重要方面准确及完备，同时没有误导或欺诈成份。董事未能履行这 方面的责任，将有损市场透明度及公众对市场的信任及信心。

(3) 董事配合上市部调查，对联交所履行维护及监管市场秩序的职能极为重要。在没有合理理由下，不遵 守联交所就涉嫌违反《上市规则》事件进行调查所提出的要求，是非常严重的事情。

制裁

经裁定上述违规事项及裁定违规性质极其严重后，上市委员会决定：

(1) 谴责该公司违反《上市规则》第 2.13(2)条；及

(2) 谴责王先生违反《上市规则》第 3.08(f)条及其《董事承诺》。

上市委员会进一步指出，王先生未能配合上市部调查的行为表现，完全不符合联交所预期一名上市发行人董事应有的操守标准。若王先生日后欲出任任何已于或将于联交所上市的发行人的董事，联交所在根据《上市规则》第 3.09 条 (或《GEM 规则》第 5.02 条) 评估其合适性时，会将今次事件列入考虑因素。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/1812132news?sc_lang=en

The Listing Committee of Stock Exchange of Hong Kong Limited Censures Golden Meditech Holdings Limited and Two of Its Directors and The Listing (Disciplinary Review) Committee on Review Criticizes Four of Its Current and Former Directors for Breaching the Listing Rules and/or the Director's Undertaking regarding Notifiable Transactions

On December 18, 2018, the Listing Committee of The Stock Exchange of Hong Kong Limited (Exchange)

CENSURES:
(1) Golden Meditech Holdings Limited (Company) for breaching Rules 2.13, 14.34, 14.36, 14.38A, 14.40, 14.41, 14.48, 14.49, 14.51 and 14.74 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) for failing to comply with the disclosure and shareholders' approval requirements in relation to certain transactions;

FURTHER CENSURES:
(2) Mr Kam Yuen (Mr Kam), current executive director (ED), Chairman and Compliance Officer of the Company;
(3) Mr Kong Kam Yu (Mr Kong), current ED of the Company;

And the Listing (Disciplinary Review) Committee (Review Committee) on review

CRITICISES:
(4) Mr Lu Tian Long (Mr Lu), former ED of the Company;
(5) Ms Zheng Ting (Ms Zheng),former ED and current non-executive director (NED) of the Company;
(6) Professor Gu Qiao (Professor Gu), current independent non-executive director (INED) of the Company; and
(7) Professor Cao Gang (Professor Cao), current INED of the Company

for breaching Rule 3.08(f) of the Exchange Listing Rules, and their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (Undertaking) for failing to comply with the Exchange Listing Rules to the best of their ability and failing to use their best endeavors to procure the Company's Exchange Listing Rule compliance (the directors identified at (2) to (7) above are collectively referred to as the Relevant Directors).

And the Listing Appeals Committee on review determined to uphold the findings of breach and the directions on sanctions made by the Listing Committee as varied by the Review Committee against Ms Zheng, Professor Gu and Mr Lu.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions apply only to the Company and the Relevant Directors, and not to any other past or present members of the board of directors of the Company.

BACKGROUND AND TIMELINE

On January 16, 2018, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

On June 12, 2018, the Review Committee conducted a disciplinary (review) hearing on the applications by Mr Lu, Ms Zheng, Professor Gu and Professor Cao for a review of the decisions of and the sanctions imposed on them by the Listing Committee at first instance (Disciplinary (Review) Hearing).

On November 30, 2018, the Listing Appeals Committee conducted a further disciplinary (review) hearing on the applications by Ms Zheng, Professor Gu and Mr Lu for a review of the decisions of and the sanctions imposed on them by the Listing Committee as varied by the Review Committee.

FACTS

This case involved the Company's failure to comply with the Exchange Listing Rules in relation to a series of transactions/events involving the Company's interest in a company called Funtalk China Holdings Limited (Funtalk). The Company had a 28.9 per cent interest in Funtalk upon the listing of Funtalk on NASDAQ in December 2009. The following events subsequently took place:

(a) In March 2011, Fortress Group Limited (Fortress) was set up for the purposes of the privatization of Funtalk, whereby the Company disposed of its shareholding in Funtalk in exchange for an interest in Fortress. Fortress became the holding company that held 100 per cent of the equity interest in Funtalk after the privatization. Upon completion of the privatization, the Company's effective economic interest in Funtalk increased. No announcements were made and shareholders' approval was not obtained (Issue 1).

(b) On August 25, 2011, a shareholders' agreement was entered into between all the shareholders of Fortress (Shareholders' Agreement). The majority shareholder of Fortress (PAG) was granted a put option, which gave PAG a right to require Fortress to repurchase PAG's interest in the outstanding senior obligations of Fortress, in the event that Fortress was not sold or listed before August 2014 (Put Option). If Fortress failed to do so, the other shareholders of Fortress (including the Company) would be required to repurchase PAG's interest in the outstanding senior obligations of Fortress in proportion to their respective shareholding in Fortress. No announcements were made and no shareholders' approval was obtained (Issue 2), or whether the Company had any basis to conclude that the Put Option was not a notifiable transaction.

(c) On March 25, 2014, the Company announced that it had entered into an agreement to dispose of its interest in Fortress. It was a very substantial disposal for the Company and shareholders' approval was obtained. In the circular published on May 12, 2014 (VSD Circular), there was no reference to the Shareholders' Agreement or the Put Option (Issue 3).

(d) In July 2014, Mr Kam, on behalf of the Company, agreed with the other shareholders of Fortress for Fortress to dispose of Funtalk directly, rather than dispose of their interests in Fortress as announced and approved by shareholders of the Company. No announcement of the termination of the disposal of Fortress was made (Issue 4).

(e) On November 28, 2014, the Company published its interim report for the period ended 30 September 2014 (Interim Report) which provided that the disposal of Fortress had been completed (Issue 5). The Interim Report provided that "the Group completed the disposal of its entire shareholding in Fortress group Limited…

during the reporting period" and "during the reporting period, the Company successfully disposed of its entire shareholding in Fortress".

(f) By agreeing to sell Funtalk instead of Fortress, it meant that PAG could still exercise the Put Option (as Fortress had not been sold or listed), which PAG did on June 28, 2015. On June 29, 2015, the Company announced (contrary to the disclosure in the Interim Report) that the sale of Fortress did not go ahead, and that PAG had exercised the Put Option, as a result of which the Company made an impairment provision in the amount of HK$759,934,000 for the year ended March 31, 2015 (Issue 6).

Mr Kam and Mr Kong were responsible for monitoring of the Company's interest in Fortress, and were aware of Issues 1 to 6 which were part and parcel of a business transaction. Further, Mr Kam was made the Company's sole representative on the board of Fortress. Ms Zheng, Professor Gu and Professor Cao were on the Board at the time of each of Issues 1 to 6. Mr Lu resigned from the Board prior to Issue 6, but was on the Board at the time of each of Issues 1 to 5.

FINDINGS OF BREACH BY THE LISTING COMMITTEE AT FIRST INSTANCE

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

Company's breaches

The Listing Committee noted that the Company admitted that it had breached Rules 14.34, 14.38A, 14.40, 14.41 and 14.74 in respect of Issue 2 and found that the Company did breach these Rules by failing to comply with the announcement, circular and shareholders' approval requirements in respect of the Put Option.

The Listing Committee also found that the Company breached:
(a) Rule 2.13 in relation to the disclosure in the VSD Circular and the Interim Report (Issues 3 and 5);
(b) Rules 14.34, 14.48, 14.49 and 14.51 for its failure to comply with the announcement, circular and shareholders' approval requirements in respect of the privatization of Funtalk (Issue 1); and
(c) Rule 14.36 for its failure to announce the termination of the disposal of Fortress (Issue 4).

Mr Kam and Mr Kong's breaches

The Listing Committee concluded that Mr Kam and Mr Kong breached (i) Rule 3.08(f), (ii) their Undertakings for failing to comply with the Exchange Listing Rules to the best of their ability and (iii) their Undertakings for failing to use their best endeavors to procure the Company's compliance with the Exchange Listing Rules:

(a) In respect of Issues 1 and 2, Mr Kam and Mr Kong were responsible for deciding and identifying whether the relevant transactions were discloseable and/or notifiable transactions. They took the view that Issue 1 was not a notifiable transaction, and relied upon an incorrect size test in respect of Issue 2. This demonstrated Mr Kam's and Mr Kong's lack of knowledge of the Company's Exchange Listing Rule compliance. However, the Listing Committee did note that although Mr Kong was responsible for Issues 1 and 2 as part of his financial role, he was not formally on the Board as an ED at the relevant time.

(b) In respect of Issue 3, Mr Kam and Mr Kong were responsible for taking the view that the Shareholders' Agreement and the Put Option were not required to be disclosed in the VSD Circular, as they believed that the likelihood of PAG exercising the Put Option was extremely low. This demonstrated that Mr Kam and Mr Kong did not consider or recognize the implications of the Put Option, and did not apply such degree of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience holding their office.

(c) In respect of Issue 4, Mr Kam, as the Company's sole representative on the board of Fortress, agreed to the disposal of Funtalk by Fortress without consulting the Board, obtaining professional advice, conducting any due diligence or even reviewing the implications of the change in the nature of the disposal. This demonstrated that Mr Kam did not apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience holding his office. Mr Kong, as one of the two members of the Board (other than Mr Kam) who was responsible for monitoring the Company's interest in Fortress, did not take any steps to inquire about or to investigate the disposal of Funtalk by Fortress upon being informed by Mr Kam about the same. This demonstrated that Mr Kong did not exercise his own independent judgement in respect of the disposal.

(d) In respect of Issue 5, Mr Kam and Mr Kong reported to the Board that the disposal of Fortress by the Company had been completed, as they took the view that the disposal of Funtalk by Fortress was essentially the same as the Company disposing of its interest in Fortress. This was untrue and clearly misleading, and the rest of the Board was thus not given the opportunity to consider whether the statements made in the Interim Report were correct. This demonstrated a severe lack of knowledge of the Company's Exchange Listing Rule compliance on the part of Mr Kam and Mr Kong.

(e) In respect of Issue 6, Mr Kam and Mr Kong, as the directors who were responsible for monitoring the Company's interest in Fortress, did not demonstrate that they took any steps to ensure that the disposal of Funtalk by Fortress, instead of the disposal of the Company's interest in Fortress, was in the best interests of the Company. They did not make any inquiries, did not consult the Board, nor did they take any professional advice. This demonstrated that Mr Kam and Mr Kong failed to apply an appropriate degree of skill, care and diligence, which resulted in the impairment provision.

(f) Mr Kam and Mr Kong failed to ensure the Company's Exchange Listing Rule compliance.

Mr Lu, Ms Zheng, Professor Gu and Professor Cao's breaches

The Listing Committee concluded that Mr Lu, Ms Zheng, Professor Gu and Professor Cao breached (i) Rule 3.08(f), (ii) their Undertakings for failing to comply with the Exchange Listing Rules to the best of their ability and (iii) their Undertakings for failing to use their best endeavors to procure the Company's compliance with the Exchange Listing Rules:

(a) Mr Lu, Ms Zheng, Professor Gu and Professor Cao were aware of Issues 1, 2 and 3. They relied upon the information provided to them by Mr Kam and Mr Kong, and did not apply their own independent judgment on whether Issues 1 and 2 were notifiable transactions. In relation to Issue 3, they did not demonstrate that they had considered the Company's Exchange Listing Rule compliance. There was no evidence that they raised any inquiries with Mr Kam or Mr Kong about Issues 1 or 3, and they failed to notice a large discrepancy in the size test used by the Company in respect of Issue 2.

(b) There was no evidence that Mr Lu, Ms Zheng, Professor Gu and Professor Cao considered, or suggested, it was necessary for the Company to seek advice from professional advisers in respect of Issues 1, 2 and 3 to ensure the Company's Exchange Listing Rule compliance at the relevant time.

(c) Even though Mr Kam and Mr Kong were delegated by the Board with the task of monitoring the Company's interest in Fortress, the Directors were collectively responsible for the Company's management and operations.

(d) Mr Lu, Ms Zheng, Professor Gu and Professor Cao failed to ensure the Company's Exchange Listing Rule compliance.

REGULATORY CONCERN

The Listing Committee regards the breaches in this matter as serious:

(1) This case reveals a serious concern over the Relevant Directors' ability to procure the Company's Exchange Listing Rule compliance. The conduct of the Relevant Directors, in particular that of Mr Kam and Mr Kong, undermined the integrity of the Company, as well as its obligation to keep its shareholders and the public fully informed of important information and developments about the Company, which may affect their assessment of the Company.

(2) Chapter 14 imposes clearly defined and unambiguous obligations on issuers, which are designed to safeguard and protect investors and shareholders, as they rely on information in the public domain to make their investment decisions. The Company's breach of disclosure obligations and shareholders' approval requirements deprived the Company's investors and shareholders of their timely receipt of information, and for shareholders, their right to vote on those transactions as they are entitled to do under the Exchange Listing Rules. As a consequence, the rights and interests of the shareholders of the Company have been prejudiced.

(3) Any breach of the disclosure requirements under the Exchange Listing Rules is a serious matter as they serve to safeguard the interests of shareholders and investors, which in turn contributes to an orderly, informed and fair market for the trading of securities listed on the Exchange.

(4) The Company failed to comply with its obligations under Rule 2.13 and Chapter 14, and did not take any steps to remedy the Exchange Listing Rule breaches, apart from eventually announcing on November 3, 2016, over 16 months after the Company's announcement of the impairment loss on June 29, 2015, that the Company had entered into a proposed settlement agreement in respect of PAG's exercise of the Put Option.

(5) A director has responsibility to inform the Board of important information concerning the affairs of an issuer and the protection of the issuer's investments, particularly where such information triggers Exchange Listing Rule compliance issues.

REVIEW BY THE REVIEW COMMITTEE

Mr Lu, Ms Zheng, Professor Gu and Professor Cao applied for a review to the Review Committee of the decisions of and sanctions imposed on them by the Listing Committee. The Review Committee noted the decisions of the Listing Committee at first instance dated February 6, 2018. The Review Committee also noted that the Company, Mr Kam and Mr Kong had not sought a review of the decisions made by the Listing Committee of February 6, 2018.

At the Disciplinary (Review) Hearing, the Review Committee upheld the findings of breach by the Listing Committee at first instance in respect of Mr Lu, Ms Zheng, Professor Gu and Professor Cao. The Review Committee formed the view that the board of directors of a listed company is collectively responsible for the management and operations of the company. The delegation of responsibility did not absolve them from their responsibilities.

SANCTIONS IMPOSED BY THE LISTING COMMITTEE AND AS VARIED BY THE REVIEW COMMITTEE

Having made the findings of breach stated above, and having concluded that the breaches were serious, the Listing Committee at first instance decided to:
(1) censure the Company for its breach of Rules 2.13, 14.34, 14.36, 14.38A, 14.40, 14.41, 14.48, 14.49, 14.51 and 14.74; and
(2) censure Mr Kam and Mr Kong for breach of Rule 3.08(f) and their Undertakings.

The Review Committee on review decided to:
(3) criticize Mr Lu, Ms Zheng, Professor Gu and Professor Cao for breach of Rule 3.08(f) and their Undertakings.

Further, the Listing Committee at first instance (as varied by the Review Committee) directed:

(1) The Company to appoint an independent compliance adviser satisfactory to the Listing Department on an ongoing basis for consultation regarding compliance with the Exchange Listing Rules for two years.

(2) Mr Kam and Mr Kong to (a) attend 24 hours of training on Exchange Listing Rule compliance, director's duties, including 4 hours of training on notifiable and connected transactions, 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 Listing Department; and (b) provide the Listing Department with the training provider's written certification of full compliance within two weeks after training completion.

(3) Ms Zheng, Professor Gu and Professor Cao to (a) attend 12 hours of training (Training) on Exchange Listing Rule compliance, director's duties, including 4 hours of training on notifiable and connected transactions, 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 Listing Department; and (b) provide the Listing Department with the Training provider's written certification of full compliance within two weeks after Training completion.

(4) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, Mr Lu, a former director of the Company, who is currently not a director of any other company listed on the Exchange, (a) to attend the Training, to be completed before the effective date of any such appointment; and (b) to provide the Listing Department with the training provider's written certification of full compliance.

(5) The Company is to publish an announcement to confirm that the directions in paragraphs (1) to (3) above have been fully complied with within two weeks after the respective fulfilment of each of those directions. The last announcement required to be published under this requirement is to include the confirmation that all directions in paragraphs (1) to (3) have been complied with.

(6) The Company is to submit drafts of the announcements referred to in sub- paragraph (5) above for the Listing Department's comment and may only publish the announcements after the Listing Department has confirmed it has no further comment on them.

(7) 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 (6) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

REVIEW BY THE LISTING APPEALS COMMITTEE

Ms Zheng, Professor Gu and Mr Lu applied for a further review to the Listing Appeals Committee of the decisions of and sanctions imposed on them by the Listing Committee as varied by the Review Committee.

The Listing Appeals Committee noted the decisions of the Listing Committee at first instance dated February 6, 2018 and the Review Committee dated June 28, 2018. The Listing Appeals Committee also noted that Professor Cao has not sought a review of the decision made by the Review Committee of June 28, 2018.

The Listing Appeals Committee, having considered the written and oral submissions made by Ms Zheng, Professor Gu, Mr Lu and the Listing Department, determined to uphold the findings of breach made by the Review Committee against Ms Zheng, Professor Gu and Mr Lu on the basis that the Listing Appeals Committee considered:
(a) each of Ms Zheng, Professor Gu and Mr Lu breached Rule 3.08(f) of the Exchange Listing Rules; and
(b) each of Ms Zheng, Professor Gu and Mr Lu breached the Undertaking for failing to comply with the Exchange Listing Rules to the best of their ability and failing to use

their best endeavors to procure the Company's Exchange Listing Rule compliance.

The Listing Appeals Committee on review determined to endorse the directions for training imposed on Ms Zheng, Professor Gu and Mr Lu by the Listing Committee as varied by the Review Committee.

The Listing Appeals Committee has thoroughly considered all the facts as well as the mitigating factors submitted by the Appellants, including the circumstances in which the Appellants placed (or misplaced) their trust in their fellow directors. The Listing Appeals Committee concluded that the Appellants were not absolved from their responsibilities by delegating a part of their functions to their fellow directors. The Listing Appeals Committee agrees with the Review Committee's reasons set out in the Decision Letter which, in particular, noted that the board of directors of a listed company is collectively responsible for the management and operations of the company.

Directors including INEDs and NEDs have oversight responsibilities which cannot be discharged by delegating to other members of the board or staff of the company. One of the roles of an INED is to provide checks and balance, and to bring an independent judgment to bear on the strategy, affairs and transactions of the company, especially where the powers of the board are concentrated in the hands of only one or two directors, as in this case before the Listing Appeals Committee.

香港联合交易所有限公司上市委员会谴责金卫医疗集团有限公司及其两名董事及上市(纪律复核)委员会经复核后批评该公司四名前董事及现任董事就须予披露交易违反《上市规则》及/或《董事承诺》

2018 年 12 月 18 日，香港联合交易所有限公司 (联交所) 上市委员会

谴责：
(1) 金卫医疗集团有限公司 (该公司) 违反《香港联合交易所有限公司证券上市规则》(上市规则) 第 2.13、14.34、14.36、14.38A、14.40、14.41、14.48、14.49、14.51 及 14.74 条，理由 是其未有就若干交易遵守披露及股东批准规定；

进一步谴责：
(2) 该公司现任执行董事、主席兼合规主管甘源先生 (甘先生)；
(3) 该公司现任执行董事江金裕先生 (江先生)；

另外，上市(纪律复核)委员会 (复核委员会) 经复核后
批评：
(4) 该公司前执行董事鲁天龙先生 (鲁先生)；
(5) 该公司前执行董事兼现任非执行董事郑汀女士 (郑女士)；
(6) 该公司现任独立非执行董事顾樵教授 (顾教授)；及
(7) 该公司现任独立非执行董事曹冈教授 (曹教授)
违反《上市规则》第 3.08(f)条及以《上市规则》附录五 B 表格所载形式向联交所作出的《董事的声明及承诺》(承诺) 所载责任，未有尽力遵守《上市规则》，亦未有竭力促使该公司遵守《上市规则》(上文第(2)至(7)项所述的董事统称:相关董事)。

此外，上市上诉委员会经复核后决定维持上市委员会对(并经复核委员会修改)郑女士、顾教授及鲁先生所作的违规裁定及制裁指令。

为免引起疑问，联交所确认制裁及指令仅适用于该公司及相关董事，而不适用于该公司任何其他过往或现任董事会成员。

背景及时间

上市委员会于 2018 年 1 月 16 日就该公司及相关董事的行为是否符合《上市规则》及《承诺》的责任进行聆讯。

复核委员会于 2018 年 6 月 12 日就鲁先生、郑女士、顾教授及曹教授的申请进行纪律(复核)聆讯，复核上市委员会于首次聆讯中对他们施加的决定及制裁 (纪律(复核)聆讯)。

上市上诉委员会于 2018 年 11 月 30 日就郑女士、顾教授及鲁先生的申请进行进一步纪律(复核)聆讯，复核上市委员会对(并经复核委员会修改)有关董事施加的决定及制裁。

实况

本个案牵涉到该公司一连串的交易及事件未有遵守《上市规则》，该等交易及事件涉及该公司于一家名为 Funtalk China Holdings Limited (Funtalk) 的公司之权益。Funtalk 于 2009 年 12 月在纳斯达克上市时，该公司持有其 28.9%的权益。其后发生下列事件：

(i) 2011 年 3 月 Fortress Group Limited (Fortress) 因私有化 Funtalk 的原因而被成立，该公司 将其于 Funtalk 的持股出售而换取 Fortress 的权益。Funtalk 私有化后，Fortress 成为拥有 Funtalk 100%权益的控股公司。私有化完成时，该公司在 Funtalk 的实际经济权益增加。该公司并无就上述事件发出公告，亦无就此取得股东批准 (事宜 1)。

(ii) 2011 年 8 月 25 日, Fortress 全体股东签订了一份股东协议(股东协议)。Fortress 的大股东 PAG (PAG) 获授认沽期权 (认沽期权), 条款是若 Fortress 未能在 2014 年 8 月前出售或上市, PAG 有权要求 Fortress 回购 PAG 于 Fortress 未行使的优先权证的权益。如 Fortress 没有如上行动, Fortress 其余股东(包括该公司)须按各自于 Fortress 的持股比例回购 PAG 于 Fortress 未行使的优先权证的权益。该公司并无就上述事件发出公告, 亦无就此取得股东批准 (事宜 2), 也没有解释其是否有理据最终认为认沽期权不是须予公布交易。

(iii) 2014 年 3 月 25 日, 该公司宣布已签订协议出售其于 Fortress 的权益, 并就这宗非常重大出售事项 取得股东批准。在 2014 年 5 月 12 日刊发的通函 (非常重大出售事项通函) 并没有提及股东协议或 认沽期权 (事宜 3)。

(iv) 2014 年 7 月, 甘先生代表该公司与 Fortress 其余股东协定由 Fortress 直接出售 Funtalk, 而不 是按早前公布及经该公司股东批准之协议出售该公司于 Fortress 的权益。该公司并无就终止出售 Fortress 刊发公告 (事宜 4)。

(v) 2014 年 11 月 28 日, 该公司刊发截至 2014 年 9 月 30 日止期间的中期报告 (中期报告), 当中说明 出售 Fortress 事宜已经完成 (事宜 5)。中期报告表示：「集团于呈报期内……完成出售 Fortress Group Limited 的全部股权」及「呈报期内, 公司成功出售所持有的 Fortress 全部股权」。

(vi) 协定出售 Funtalk 而非 Fortress 意味着 PAG 仍可行使认沽期权(因为 Fortress 尚未出售或上市), 而 PAG 亦于 2015 年 6 月 28 日行使了期权。2015 年 6 月 29 日, 该公司宣布(与中期报告所披露 的内容相反)出售 Fortress 事宜并无继续, 以及 PAG 已行使认沽期权, 该公司并为此在截至 2015 年 3 月 31 日止年度作出减值拨备 759,934,000 港元 (事宜 6)。

甘先生及江先生负责监督该公司于 Fortress 的权益, 对事宜 1 至 6(都是业务交易中少不了的基本元素)亦全部知情。此外, 甘先生是该公司在 Fortress 董事会中的唯一代表。郑女士、顾教授及曹教授在事宜 1 至 6 发生时是董事会成员。鲁先生在事宜 6 发生前已辞任董事会成员, 但在事宜 1 至 5 发生时仍然在任董事会。

上市委员会在首次聆讯中裁定的违规事项

上市委员会考虑过上市部、该公司及相关董事的书面及口头陈述后, 裁定：

<u>该公司违规</u>

上市委员会注意到该公司已就事宜 2 承认违反了《上市规则》第 14.34、14.38A、14.40、14.41 及 14.74 条, 并发现其违反这些规则未有就认沽期权遵守公布、通函及股东批准规定。

上市委员会亦发现该公司：
(i) 就非常重大出售事项通函及中期报告的披露内容(事宜 3 及 5) 违反了第 2.13 条；

(ii) 未有就私有化 Funtalk 遵守公布、通函及股东批准规定(事宜 1)而违反了第 1 4.34、14.48、14.49 及 14.51 条；及

(iii) 未有公布终止出售 Fortress 事宜（事宜 4）而违反了第 14.36 条。

<u>甘先生及江先生违规</u>

上市委员会裁定甘先生及江先生违反了《上市规则》(i)第 3.08(f)条、(ii)其《承诺》, 未有尽力遵守《上市规则》; 及 (iii) 其《承诺》, 未有竭力促使该公司遵守《上市规则》:

(i) 就事宜 1 及 2 而言, 甘先生及江先生负责厘定及辨别相关交易是否须予披露及/或须予公布的交易。 他们认为事宜 1 并非须予公布的交易, 而在事宜 2 中则依赖了不正确的规模测试, 反映二人对该公司 是否已遵守《上市规则》的规定缺乏足够认知。然而, 上市委员会注意到, 尽管江先生因负责处理财 务事宜的角色而需负责事宜 1 及 2, 但在相关时间他并非董事会的正式执行董事。

(ii) 就事宜 3 而言, 甘先生及江先生认为股东协议及认沽期权毋须在非常重大出售事项通函中披露, 因为 相信 PAG 行使认沽期权的机会极微。这反映甘先生及江先生没有考虑或意识到认沽期权的涵义, 亦 没有以相当于别人合理地预期一名具备相同知识及经验并担任董事职务的人士所应有的程度, 以相应 的技能、谨慎和勤勉行事。

(iii) 就事宜 4 而言, 身为该公司在 Fortress 董事会中的唯一代表, 甘先生未经谘询董事会、取得专业意 见、进行任何尽职调查甚或检视出售事项性质转变的涵义前, 便同意 Fortress 出售 Funtalk, 反映 甘先生没有以相当于别人合理地预期一名具备相同知识及经验并担任董事职务的人士所应有的程度, 以相应的技能、谨慎和勤勉行事。身为董事会的两名负责监察该公司于 Fortress 的权益的成员之一（另一名为甘先生), 江先生在甘先生通知他 Fortress 出售 Funtalk 后并没有采取任何行动以作出询 问或调查, 反映江先生没有对出售事项自行作出独立判断。

(iv) 就事宜 5 而言，甘先生及江先生向董事会汇报该公司出售 Fortress 事宜已经完成，因为他们认为 Fortress 出售 Funtalk 与该公司出售其于 Fortress 的权益大致相同。此看法不正确且显然具误导 成份，令董事会其余成员没有机会考虑中期报告所说的内容是否正确。这反映甘先生及江先生对该公 司是否遵守《上市规则》的认知非常不足。

(v) 就事宜 6 而言，身为负责监督该公司在 Fortress 的权益的董事，甘先生及江先生未能证明他们有采 取任何措施确保 Fortress 出售 Funtalk (而非该公司出售其于 Fortress 的权益) 是最符合该公司 最佳利益的决定。他们不曾作出查询、不曾谘询董事会，亦没有取得任何专业意见。这反映甘先生及 江先生未有以应有的技能、谨慎和勤勉行事，导致该公司须作出减值拨备。

(vi) 甘先生及江先生未有确保该公司遵守《上市规则》。

鲁先生、郑女士、顾教授及曹教授违规

上市委员会裁定鲁先生、郑女士、顾教授及曹教授违反了(i)《上市规则》第 3.08(f)条、(ii) 其《承诺》，未有尽力遵守《上市规则》；及 (iii) 其《承诺》，未有竭力促使该公司遵守《上市规则》：

(1) 鲁先生、郑女士、顾教授及曹教授知悉事宜 1、2 及 3。他们依赖甘先生及江先生向他们提供的资料，没有对事宜 1 及 2 是否须予公布的交易自行作出独立判断。就事宜 3 而言，他们未能证明自己有考 虑到该公司是否遵守《上市规则》。并无证据能证明他们曾向甘先生或江先生查问事宜 1 或 3，他们 亦未有注意到该公司就事宜 2 所用的规模测试有很大落差。

(2) 并无证据能证明鲁先生、郑女士、顾教授及曹教授曾考虑或建议该公司必须就事宜 1、2 及 3 征询专 业顾问意见，以确保该公司在相关时间遵守《上市规则》。

(3) 即使董事会已将监督该公司在 Fortress 的权益一事交托了给甘先生及江先生二人，董事对该公司的 管理及营运仍肩负共同责任。

(4) 鲁先生、郑女士、顾教授及曹教授未有确保该公司遵守《上市规则》。

监管上关注事项

上市委员会认为事件中的违规情况严重：

(1) 本个案反映了相关董事是否有能力促使该公司遵守《上市规则》的严重关注。相关董事 (尤其是甘先 生及江先生) 的行为破坏了该公司的诚信，以及须让股东及公众充分知道可能影响其评估该公司的重 要资讯及发展的责任。

(2) 《上市规则》第十四章对发行人施加明确界定且清晰不含糊的责任，旨在保障及保护投资者及股东，因为他们依赖公众渠道取得的资料作出投资决定。该公司违反披露责任及股东批准规定，令该公司的 投资者及股东未能及时获得资料，亦损害了股东按《上市规则》就有关交易投票表决的权利。因此，该公司股东的权利及权益同告受损。

(3) 任何违反《上市规则》披露规定均属严重事宜，因为披露规定的作用为保障股东及投资者的利益，从 而令所有在联交所买卖的证券有一个有秩序、信息灵通和公平的市场。

(4) 该公司未能遵守《上市规则》第 2.13 条及第十四章的责任，亦没有采取任何措施补救其违反《上市 规则》的行为，除了到最后在该公司于 2015 年 6 月 29 日宣布减值亏损后逾 16 个月才于 2016 年 11 月 3 日公布该公司已就 PAG 行使认沽期权签订拟进行的和解协议。

(5) 董事有责任通知董事会与发行人事务及保障发行人的投资有关的重要资料，尤其是会触及《上市规 则》合规问题的事宜。

复核委员会的复核

鲁先生、郑女士、顾教授及曹教授申请复核委员会复核上市委员会对他们所作的裁决及施加的制裁。复核委员会注意到上市委员会在 2018 年 2 月 6 日的首次聆讯所作裁决，亦注意到该公司、甘先生及江先生没有就上市委员会在 2018 年 2 月 6 日所作裁决提出复核。

在纪律(复核)聆讯中，复核委员会维持上市委员会在首次聆讯中对鲁先生、郑女士、顾教授及曹教授的违规裁决。复核委员会认为，上市公司的董事会共同负责公司的管理及营运。即使将责任指派他人，也不能就此免除董事的责任。

上市委员会施加并经审核委员会修改的制裁

经裁定上述违规事项及裁定违规属严重后，上市委员会在首次聆讯中决定：
(1) 谴责该公司违反《上市规则》第 2.13、14.34、14.36、14.38A、14.40、14.41、14.48、14.49、14.51 及 14.74 条；及
(2) 谴责甘先生及江先生违反《上市规则》第 3.08(f)条及其《承诺》。

审核委员会经复核后决定：
(3) 批评鲁先生、郑女士、顾教授及曹教授违反《上市规则》第 3.08(f)条及其《承诺》。

另外，上市委员会在首次聆讯中作出以下 (经审核委员会修改) 的指令：

(1) 该公司委聘一名上市部信纳的独立合规顾问，于往后两年持续就遵守《上市规则》提供谘询意见。

(2) 甘先生及江先生(i) 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《上市规则》合规事宜及董事职责的 24 小时培训 (包括 4 小时有关须予公布及关连交易的培训)； 及(ii) 在培训完成后两星期内向上市部提供由培训机构发出其完全遵守此培训规定的书面证明。

(3) 郑女士、顾教授及曹教授(i) 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《上市规则》合规事宜及董事职责的 12 小时培训（包括 4 小时有关须予公布及关连交易的培训）(培训)；及(ii) 在培训完成后两星期内向上市部提供由培训机构发出其完全遵守此培训规定 的书面证明。

(4) 该公司前董事鲁先生(现时并非任何联交所上市公司董事)日后若要出任联交所上市公司董事，先决条 件是其必须(i) 于有关委任生效日期之前完成培训；及 (ii) 在培训完成后向上市部提供由培训机构发 出其完全遵守此培训规定的书面证明。

(5) 该公司须于每次完成上文第(1)至(3)段所述的每项指令后两星期内刊发公告，确认已全面遵守有关指 令。根据本规定刊发的最后一份公告须确认已履行上文第(1)至(3)段所述的所有指令。

(6) 该公司须呈交上文第(5)段所述公告的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。

(7) 上文第(1)至(6)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。如有任何引起关注的事宜，上市部应转交上市委员会作决定。

上市上诉委员会的复核

郑女士、顾教授及鲁先生申请上市上诉委员会再复核上市委员会对他们所作 (经复核委员会修改) 的裁决及制裁。

上市上诉委员会注意到上市委员会在 2018 年 2 月 6 日的首次聆讯及审核委员会在 2018 年 6 月 28 日所作出的裁决，亦注意到曹教授没有就审核委员会 2018 年 6 月 28 日所作裁决提出复核。

考虑到郑女士、顾教授、鲁先生及上市部的书面及口头陈述后，上市上诉委员会决定维持审核委员会对郑女士、顾教授及鲁先生作出的违规裁决，理由是上市上诉委员会认为：
(i) 郑女士、顾教授及鲁先生各自违反了《上市规则》第 3.08(f)条；及
(ii) 郑女士、顾教授及鲁先生违反了各自的《承诺》，没有尽力遵守《上市规则》，亦没有竭力促使该公 司遵守《上市规则》。

上市上诉委员会在复核后决定通过上市委员会 (经审核委员会修改) 对郑女士、顾教授及鲁先生施加的培训指令。

上市上诉委员会全面考虑了个案的所有事实以及上诉人提出的求情因素，包括促使上诉人信任(或错信)董事会其他成员的情况。上市上诉委员会的结论是，上诉人将本身部分职责委托其他董事并不免除上诉人自己的责任。上市上诉委员会同意复核委员会在决策信所载的理由，尤其注意到上市公司的董事会对公司的管理及营运负有共同责任。

董事(包括独立非执行董事及非执行董事)肩负有监督的责任，并不能转授董事会其他成员或公司职员。独立非执行董事的其中一个角色是提供制衡，以及对公司的策略、事务及交易提供独立判断，尤其是在(就如上市上诉委员会这次所复核的个案)董事会的权力仅集中于一两名董事的情况下。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/181218news?sc_lang=en

The Stock Exchange of Hong Kong Limited Announces Cancellation of Listing of Anxin-China Holdings Limited

On December 18, 2018, The Stock Exchange of Hong Kong Limited (Exchange) announces that with effect from 9:00 am on December 20, 2018, the listing of the shares of Anxin-China Holdings Limited (Company) will be canceled in accordance with the delisting procedures under Practice Note 17 to the Listing Rules.

Trading of the Company's shares was suspended on April 1, 2015 as it has failed to release its annual results for the year ended December 31, 2014.

On November 27, 2015, the Exchange was of the view that the Company did not comply with the requirement to have sufficient operations or assets under Rule 13.24. The Exchange placed the Company into the first, second, and third delisting stages on November 27, 2015, May 31, 2016, and December 21, 2016 respectively. The Company had submitted a resumption proposal, which involved a new listing application, to the Exchange on June 6, 2017. The Company was allowed to submit the new listing application relating to the submitted resumption proposal on or before November 30, 2017, which was subsequently extended to on or before February 28, 2018. However, the Company failed to submit the new listing application by February 28, 2018. Therefore, the Exchange has decided to cancel the Company's listing under Practice Note 17 to the Listing Rules.

On April 9, 2018, the Company sought a review by the Listing (Review) Committee on the delisting decision. On July 11, 2018, the Listing (Review) Committee upheld the Listing Committee's decision. The Company then requested for a further review by the Listing Appeals Committee on the delisting decision. On December 14, 2018, the Listing Appeals Committee upheld the Listing (Review) Committee's decision to cancel the listing of the Company's shares on the Exchange.

The Exchange has requested the Company to publish an announcement on the cancellation of the Company's listing.

The Exchange advises the Company's shareholders who have queries about the implications of the delisting to obtain appropriate professional advice.

香港联合交易所有限公司宣布取消中国安芯控股有限公司的上市地位

2018 年 12 月 18 日, 香港联合交易所有限公司 (联交所) 宣布, 由 2018 年 12 月 20 日上午 9 时起, 中国安芯控股有限公司 (该公司) 的上市地位将根据《上市规则》第 17 项应用指引下的除牌程序予以取消。

该公司因未能刊发截至 2014 年 12 月 31 日止的年度业绩而于 2015 年 4 月 1 日起暂停其股份买卖。

联交所于 2015 年 11 月 27 日认为, 该公司不符合《上市规则》第13.24条关于发行人须有足够业务运作或资产的规定, 并先后于 2015 年 11 月 27 日、2016 年 5 月 31 日及 2016 年 12 月 21 日将该公司置于除牌程序的第一、第二及第三阶段。该公司曾于 2017 年 6 月 6 日向联交所递交涉及新上市申请的复牌建议,并获准在 2017 年 11 月 30 日或之前就该复牌建议递交新上市申请, 及后有关期限亦延长至 2018 年 2 月 28 日或之前。然而, 直到 2018 年 2 月 28 日, 该公司尚未能递交新上市申请, 故联交所决定根据《上市规则》第 17 项应用指引取消该公司的上市地位。

该公司于 2018 年 4 月 9 日向上市(复核)委员会寻求复核取消上市地位的决定。上市(复核)委员会于 2018 年 7 月 11 日维持上市委员会取消该公司上市地位的决定。随后该公司就此裁决再进一步向上市上诉委员会寻求复核。上市上诉委员会于 2018 年 12 月 14 日维持上市(复核)委员会将该公司除牌的决定。

联交所已要求该公司刊发公告交代其上市地位被取消一事。

联交所建议该公司股东如对是次除牌的影响有任何疑问, 应征询适当的专业意见。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2018/1812182news?sc_lang=en

Hong Kong Monetary Authority Issues an Update on the Processing of Virtual Banking Applications

On December 7, 2018, the Hong Kong Monetary Authority (HKMA) provided an update on the processing of virtual banking applications

The HKMA announced earlier that around 30 applications had been received as at the end of August 2018. About one-third of these applicants did not submit sufficient information on certain critical aspects of authorization criteria. Subsequently, the HKMA has informed these applicants that their applications will not be further processed.

As for the remaining applications, the HKMA will shortlist about one-third of them for the next stage of assessment. This batch of applicants should be more promising or better-equipped than others in terms of their business models, technology platforms and financial capability, etc., rendering them better positioned to meet the policy objectives of the HKMA in introducing virtual banking. Such objectives include promoting fintech development, providing new customer experience and promoting financial inclusion. The HKMA will endeavor to start granting virtual banking license(s) in the first quarter of 2019. The HKMA does not set any specific number for virtual banking licenses, and the actual number of licenses to be granted ultimately will be subject to the HKMA's further assessment and due diligence process.

香港金融管理局提供虚拟银行申请事宜最新情况

香港金融管理局 (金管局) 在 2018 年 12 月 7 日就虚拟银行申请的处理提供了进度报告。

金管局较早前公布，在 8 月底前共收到约 30 份申请书，当中约有三分之一未有就发牌准则下的一些关键项目提交足够的资料，金管局已经通知这批申请人，表示不会进一步处理它们的申请。

至于余下的申请，金管局会甄选当中约三分之一进入下轮的审视。这批申请人应具备较其他申请人为理想或优胜的营运模式，科技平台、财务实力等，更具条件去达致金管局引入虚拟银行的政策目标，包括发展金融科技，提供新客户体验和促进普及金融。金管局争取明年首季开始发出虚拟银行牌照。金管局没有对发牌数目定下名额，最终发牌多寡要视乎金管局的进一步审视和尽职审查。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181207-5.shtml

HKMC Annuity Plan Introduces Enhancement Measures and Continuous Sales Model

On December 12, 2018, HKMC Annuity Limited, wholly-owned by The Hong Kong Mortgage Corporation Limited, announced that it will introduce enhancement measures and year-round continuous sales model for the HKMC Annuity Plan (Plan).

The enhancement measures are applicable to both existing and new customers. Details are set out as follows:

100% lump-sum death benefit payment:

In the unfortunate death of the insured, the designated beneficiary can choose to immediately get back all the premium paid in a lump-sum less the cumulative guaranteed monthly annuity payments paid, without extra discount. This means that there will no longer be financial loss in the case of lump-sum death benefit payment, which should enable customers to apply for the Plan with a greater sense of security.

Special withdrawal to meet medical and dental expenses:

The policyowner can apply for special withdrawal for medical and dental expenses in Hong Kong. The withdrawal amount would be the lower of:
(i) 50% of the premium paid; or
(ii) the premium paid less the cumulative guaranteed monthly annuity payments paid.

Special withdrawal is subject to a maximum amount of HK$300,000 and can only be made once. The usage of the withdrawal is not confined to specified critical illnesses, and can be used for surgery, medical treatment or examination considered necessary by doctors. After the special withdrawal, the guaranteed monthly annuity payments will be reduced proportionally without extra discount.

Relaxation of maximum premium amount per person:

The maximum premium amount per person will be increased from HK$1 million to HK$2 million.

In addition, the Plan will from now on adopt a continuous sales model throughout the year and open for eligible persons who are Hong Kong permanent residents aged 65 or above.

香港年金计划推出优化措施和持续销售模式

2018 年 12 月 12 日，香港按揭证券有限公司全资拥有的香港年金有限公司宣布，「香港年金计划」将推出优化措施和全年持续销售模式。

有关优化措施现有及新客户均可受惠，详情如下：

百分百一笔过身故赔偿保障：

当受保人不幸身故时，指定受益人可选择即时一笔过收取已缴保费扣除已派发的累积保证每月年金金额，而不需额外折让，令客户不会有财务损失，可更安心投保。

特别款项提取以应付医疗及牙科治疗开支：

保单持有人可申请特别款项提取，用以支付于香港的医疗及牙科治疗开支，可提取的金额为 (以较低者为准)：
(i) 已缴保费的 50%；或
(ii) 已缴保费扣除已派发的累积保证每月年金金额。

特别款项提取金额上限为 300,000 港元及只可使用一次。提取的款项可用于医生认为有需要的手术、治疗或化验等，并不限于特定的危疾。提取金额后，保证每月年金金额将会按比例减少，而不需额外折让。

放宽个人保费总金额上限：

每人可投保金额上限由 100 万港元提高至 200 万港元。

另外，香港年金计划将会由即时开始采取全年持续销售模式，接受 65 岁或以上的香港永久性居民投保。

Source 来源:
https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20181212-3.shtml

International Monetary Fund Commends Hong Kong's Strong Buffers and Robust Policy Frameworks Despite Increasing Global Risks

An International Monetary Fund (IMF) Staff Mission (Mission) has commended the Hong Kong Special Administrative Region (HKSAR) in its latest assessment, noting that many years of prudent macroeconomic policies have endowed the city with strong buffers to navigate through challenges and ensure continued stability despite increasing risks confronting global growth. The Mission visited Hong Kong from October 29 to November 9, 2018 for the 2018 Article IV Consultation with the HKSAR. It held discussions with government officials, regulators and private sector representatives.

The assessment was made in the Concluding Statement of the IMF Mission published on December 12, 2018.

The Concluding Statement notes that Hong Kong's economy has benefitted from a strong cyclical upswing and the growth momentum continued through the first half of 2018 as a result of the global recovery, continued solid growth in Mainland China, and increased consumer confidence. Hong Kong's real Gross Domestic Product growth is projected to remain robust in 2018. As with the global outlook, risks have shifted to the downside for the economy, and such include risks of escalation in trade tensions, sharper-than-expected tightening of global financial conditions, sharp slowdown in the property market, and sharper-than-expected slowdown in the Mainland economy.

The Mission assesses that many years of prudent macroeconomic policies and robust financial regulation and supervision will help Hong Kong weather possible domestic and external shocks. The strong buffers Hong Kong enjoys include large foreign exchange reserves, a current account surplus, one of the world's largest net international investment positions, large fiscal reserves, and a well-capitalized banking system with high asset quality.

The Mission reaffirms its support for the Linked Exchange Rate System (LERS), acknowledging that it remains the appropriate exchange rate arrangement for Hong Kong. The LERS has served as an anchor of stability, helping to ensure sustained growth, competitiveness, and the smooth functioning of the extensive financial services industry.

The Mission notes that Hong Kong has been considered one of the most competitive economies in the world for many years, and is rightly taking steps to maintain competitiveness. These steps include further development of the bond market, introduction of various green finance initiatives, and development in innovation and technology as attested by the launch of eTradeConnect and the Faster Payment System. The Mission also notes that the development of the Greater Bay Area creates opportunities for Hong Kong over the medium term, given Hong Kong's unique position as the gateway to the Mainland and as a global financial center with renowned professional services.

国际货币基金组织赞扬香港具备充裕的缓冲空间和稳健的政策框架应对逐渐增加的环球风险

国际货币基金组织 (基金组织) 代表团于其最新的评估中赞扬香港特别行政区, 认为尽管全球增长所面临的风险增加, 香港多年来一直奉行的审慎宏观经济政策, 为香港提供了强大的缓冲空间以应对挑战及确保经济持续稳定。基金组织代表团于 2018 年 10 月 29 日至 11 月 9 日到访香港, 就香港特别行政区进行 2018 年第四条磋商讨论, 其间曾会见政府官员、监管机构及私营机构代表。

基金组织代表团于 2018 年 12 月 12 日 发出的初步总结作出上述评估。

代表团总结指出, 受惠于环球经济复苏、内地继续稳健增长及消费者信心增强, 香港经济在 2018 年上半年维持强劲的周期性经济上行及增长动力。代表团预计香港 2018 年的本地生产总值实质增长维持强劲。与全球经济前景一样, 香港经济面对的风险转为下行, 这些风险包括贸易摩擦升温、环球金融状况较预期收紧、楼市急剧放缓及内地经济放缓幅度较预期大。

代表团评估认为, 香港多年来一直奉行审慎的宏观经济政策以及稳健的金融规管及监管, 有助香港抵御内部及外来的可能冲击。充裕的外汇储备、经常帐户盈余、全球其中一个最大国际投资头寸净值、庞大的财政储备、银行体系资本充足和资产质素高等, 均为香港带来强大的缓冲空间。

代表团重申对联汇制度的支持, 认为其仍然是最适合香港的汇率制度。联汇制度一直作为维持稳定的基石, 有助确保经济持续增长和维持竞争力, 以及确保广泛的金融服务业运作畅顺。

代表团指出香港多年来一直被视为全球最具竞争力的经济体系之一, 并采取适当措施维持竞争力, 包括进一步发展债券市场、推出多项推动绿色金融的措施, 以及推动创新科技, 从推出「贸易联动」及「转数快」等均可见一斑。代表团亦认为, 凭借香港作为通往内地门户, 以及具备享负盛名的专业服务的国际金融中心独特地位, 大湾区的发展将可在中期为香港创造机遇。

Source 来源:
https://www.info.gov.hk/gia/general/201812/12/P2018121100662.htm?fontSize=1

Insurance Authority of Hong Kong and Office of Insurance Commission of Thailand Sign Memorandum of Understanding

On December 12, 2018, the Insurance Authority (IA) of Hong Kong announced that it had entered into a Memorandum of Understanding (MoU) with the Office of Insurance Commission (OIC) of Thailand to provide for mutual assistance in insurance regulation.

OIC of Thailand said that with the signing of this MoU, the two sides will strive to pursue a wide range of activities on technical assistance, capacity building, exchange of information and development of InsurTech.

IA said that the memorandum marks an important step in fostering its co-operation with OIC which will serve to enhance the quality and effectiveness of insurance regulation in the two jurisdictions.

香港保险业监管局与泰国保险监管局签订谅解备忘录

2018 年 12 月 12 日, 香港保险业监管局 (保监局) 宣布, 与泰国保险监管局签订了谅解备忘录, 就保险监管方面提供相互协助。

泰国保险监管局表示：签署这份谅解备忘录后, 双方会致力开展一系列包括技术支援、能力建设、资讯交换和保险科技发展等的活动。

保监局表示：这份谅解备忘录就促进我们与泰国保险监管局的合作上标志着重要的一步, 对提升两地保险监管的质素和成效大有帮助。

Source:
https://www.ia.org.hk/en/infocenter/press_releases/20181212_1.html

U.S. Securities and Exchange Commission Halts Alleged Insider Trading Ring Spanning Three Countries

On December 6, 2018, the U.S. Securities and Exchange Commission (SEC) has filed insider trading charges against an IT contractor and two others he illegally tipped with confidential client information he stole while working in the Singapore branch of an investment bank.

The SEC obtained a court-ordered freeze of assets in three U.S. brokerage accounts and one U.S. bank account connected to the alleged trading. The SEC's complaint alleges that Rajeshwar Gannamaneni (Gannamaneni) provided nonpublic information about impending mergers, acquisitions, and tender offers to his wife, Deepthi Gandra, and his father, Linga Rao Gannamaneni, who lives in India. Gannamaneni also allegedly traded in an account that he controlled that was opened in the name of a family member, who was living in the U.S. at the time. According to the allegations in the SEC's complaint, the three collectively reaped approximately US$600,000 in profits by trading while in possession of inside information in advance of at least 40 corporate events.

The SEC's complaint charges the defendants with fraud and seeks disgorgement of allegedly ill-gotten gains, pre-judgment interest, penalties, and injunctive relief.

SEC said that its continued use of innovative analytical tools to find suspicious trading patterns and expose misconduct demonstrates its resolve to catch insider traders who seek to take illegal advantage of the U.S. markets for personal gain.

美国证券交易委员会制止涉及跨越三国的内幕交易圈

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 6 日宣布已经向信息科技承包商和另外两人提出了内幕交易指控, 就他非法泄露从其在新加坡投资银行分行工作时窃取的机密客户信息。

美国证监会获得法院下令冻结三个美国经纪账户和一个与声称有关的美国银行账户。美国证监会的起诉书称, Rajeshwar Gannamaneni (Gannamaneni)向其居住在印度的妻子 Deepthi Gandra 和他的父亲 Linga Rao Gannamaneni 提供了关于即将进行的合并, 收购和要约收购的非公开信息。据称 Gannamaneni 还在一个他控制的账户中进行交易, 该账户是以当时居住在美国的家庭成员的名义开设的。根据美国证监会起诉书的指控, 在至少 40 次公司活动之前掌握内幕信息, 三人共同通过交易获得了大约 600,000 美元的利润。

美国证监会的起诉书指各控被告欺诈, 并寻求交回涉嫌非法所得以及判决前利息, 罚款和禁制令救济。

美国证监会表示: 继续使用创新的分析工具来发现可疑的交易模式并揭露不当行为, 这表明其决心抓住那些寻求非法利用美国市场谋取私利的内幕交易者。

Source 来源:
https://www.sec.gov/news/press-release/2018-273

Highlights of Speech by Steven Peikin, Co-Director, Division of Enforcement, U.S. Securities and Exchange Commission on the Salutary Effects of International Cooperation on Enforcement

In a speech at the IOSCO/PIFS-Harvard Law School Global Certificate Program for Regulators of Securities

Markets held on December 3, 2018, Steven Peikin, Co-Director, Division of Enforcement, U.S. Securities and Exchange Commission (SFC) outlined the international cooperation on SEC's enforcement. The key issues of the speech are summarized as follows:

Cryptoassets and initial coin offerings (ICOs)

In 2016, ICOs raised less than US$100 million. So far in this year alone, that figure has grown to more than US$22 billion – an increase of some 22,000 percent. And, the money is being raised from a broad base of investors both inside and outside the U.S. And some of the offerings can be simply outright frauds.

The SEC generally see two separate types of securities law violations in the ICO space. First, they see ICOs that meet the definition of a security, but are being sold, brokered, or traded to U.S. investors without complying with the registration requirements of the federal securities laws. Second, they see ICOs that appear to be simply outright frauds – where the issuers are using excitement around the cryptoasset space to simply rip off money from investors. The sponsors of ICOs are, in many instances, located outside the United States, and international cooperation is critical to their ability to investigate and, where appropriate, recommend that the SEC bring enforcement action.

Foreign Corrupt Practices Act (FCPA)

As global markets become more interconnected and complex, no one country or agency can effectively fight bribery and corruption by itself. Anti-corruption enforcement is a team effort. The level of cooperation and coordination among regulators and law enforcement worldwide is on a sharply upward trajectory, particularly in matters involving corruption. In the past two fiscal years alone, the SEC has publicly acknowledged assistance from more than 25 different jurisdictions in FCPA matters. These sorts of global coordinated resolutions send strong messages of deterrence to companies and individuals, as they know they will face potential sanctions from the U.S., as well as other places they do significant business.

Microcap Fraud

The fraudulent pattern of a “pump and dump” is all too familiar: fraudsters inflate – pump – the volume and price of a stock artificially by using misleading promotions to induce investors to purchase shares, then sell – dump – their own shares at the artificially inflated price. Increasingly, the internet and social media are being used to carry out these fraudulent microcap schemes, which give the fraudsters the means of reaching and defrauding even more of their less sophisticated, retail investors. These frauds are global.

International cooperation has been vital to pursuing these cases, and a recent example demonstrates how important international cooperation is in policing the microcap space. In October, the SEC filed an emergency action and obtained an asset freeze against two individuals and their companies in an alleged scheme that generated more than US$165 million of illegal sales of stock in at least 50 microcap companies. The SEC unraveled the multi-year scheme with the assistance of more than a dozen international regulators and sophisticated analysis of nearly 400 bank and brokerage accounts.

Other Matters

International cooperation is not a one-way street. In fiscal year 2018, the SEC staff responded to more than 650 requests for assistance from their international partners. The SEC are committed to being a strong partner to all of their fellow regulators in their enforcement matters.

The Future of International Cooperation

Despite the upward trajectory in international cooperation on enforcement matters, information reasonably necessary for their shared goals of investor protection and the protection of market integrity does not always flow freely to the U.S. regulators from foreign jurisdictions. Barriers to information may come in various forms, including data protection, privacy, confidentiality, bank secrecy, state secrecy, or national security laws.

The SEC need to address the impact of the European Union’s new General Data Protection Regulation (GDPR) on international cooperation. The implementation of the GDPR in Europe has the potential to curtail certain aspects of the cooperative regime that exists between the SEC and European securities regulators and law enforcement on securities-related matters. The SEC are working with their European counterparts and International Organization of Securities Commissions to overcome these challenges and develop frameworks that allow them to continue to receive valuable overseas evidence while respecting the European Union data protection regime.

The SEC and their international counterparts face simply boils down to human ingenuity and its application to wrongdoing. One area where they have seen this is in schemes to obtain material, nonpublic information by hacking into computer networks and then trading based on the stolen information.

In one such case, the SEC charged dozens of defendants - located in the U.S. and abroad - including two Ukrainian men who allegedly hacked into U.S. newswire services and sold material nonpublic information to traders in Russia, Ukraine, Malta, Cyprus,

France, and the U.S. In another case, the SEC charged three Chinese traders with fraudulently trading on hacked nonpublic market-moving information stolen from two prominent New York-based law firms. These schemes threaten the integrity of worldwide markets. Investigating and prosecuting them must be a shared priority among the SEC and its international partners.

美国证券交易委员会法规執行部联席主管 Steven Peikin 就国际合作对执法的作用发表演说的重点

美国证券交易委员会 (美国证监会) 法规執行部联席主管 Steven Peikin 于 2018 年 12 月 3 日在 IOSCO/ PIFS-哈佛法学院为证券市场监管机构举办国际金融系统项目上就国际合作对其执法的作用发表演说。演说的要点摘要如下：

加密资产和初始代币产品

2016 年，初始代币产品募集资金不到 1 亿美元。 仅在今年到目前为止，这一数字已增长到 220 多亿美元 - 增长了约 22,000%。 而且，这些资金来自美国境内外广泛的投资者，而有些产品可能只是彻头彻尾的欺诈行为。

美国证监会通常会在初始代币产品领域看到两种不同类型的证券违法行为。 首先，其发现初始代币产品符合证券的定义，但在不遵守联邦证券法的注册要求的情况下被销销，代理或交易给美国投资者。 其次，其认为初始代币产品似乎只是彻头彻尾的欺诈行为 - 发行人利用对加密资产概念的追捧，轻易地榨取投资者的金钱。 在许多情况下，初始代币产品的保荐人位于美国境外，国际合作对其调查能力至关重要，并在适当情况下建议美国证监会采取执法行动。

反海外腐败法

随着全球市场变得更加相互联系和复杂化，任何一个国家或机构都无法有效地打击贿赂和腐败。反腐败执法是团队的努力。全球监管机构和执法部门之间的合作与协调水平显示出在急剧上升趋势，特别是在涉及腐败的问题上。仅在过去的两个财政年度，美国证监会就反海外腐败法事宜公开承认得到来自超过 25 个不同司法管辖区的协助。这些国际协调方案向公司和个人发出了强烈的阻吓信息，因为他们知道将面临美国以及他们从事重大业务的其他所在地的潜在制裁。

微市值公司的欺诈

“哄抬股价”的欺诈模式是再熟悉不过了：欺诈者通过使用误导性促销去人为地抬高 - 推高股票的数量和价格来诱导投资者购买股票，然后以人为的哄抬价格出售 – 倾销 - 他们自己的股票。越来越多的互联网和社交媒体被用来实施这些欺诈性的微市值公司计划，这使欺诈者能够接触和欺骗更多不太成熟的散户投资者。这些欺诈是全球性的。

国际合作对于追究这些案件至关重要，最近的一个例子表明国际合作在监管微市值公司范畴的重要性。 10 月时，美国证监会提起了一项紧急行动，并在一项涉嫌计划中对两名人士及其公司进行了资产冻结，该计划非法销售至少 50 家微市值公司超过 1.65 亿美元的股票。美国证监会在十几个国际监管机构的协助下，对近 400 家银行和经纪账户进行了复杂的分析，揭开了存在多年的计划。

其他事项

国际合作不是单向的。在 2018 财政年度，美国证监会的员工回应了其国际合作伙伴提出的 650 多项协助请求。美国证监会致力于成为所有相关的监管机构在执法事宜上强有力的合作伙伴。

未来的国际合作

尽管在执法问题上的国际合作有上升的趋势，但为保护投资者和市场诚信的共同目标的合理必要信息并不总是在外国司法管辖区与美国监管机构间自由流动。信息障碍可能有多种形式，包括数据保护，隐私，机密性，银行保密，国家保密或国家安全法。

美国证监会需要解决欧盟新的通用数据保护条例 (GDPR) 对国际合作的影响。在欧洲实施 GDPR 有可能限制美国证监会与欧洲证券监管机构以及证券相关事务执法部门之间存在的合作制度的某些机制。美国证监会正在与欧洲的同业和国际证券事务监察委员会合作，克服这些挑战并制定框架，使其能够在尊重欧盟数据保护制度的同时继续获得有价值的海外证据。

美国证监会及其国际同业面临的问题可以简单地归结为人的聪明才智应用在不当行为上。其看到一个领域是通过入侵计算机网络来获取重要的非公开信息然后根据被盗信息进行交易的计划。

在一个案件中，美国证监会指控数十名被告 - 分别位于美国和海外 - 包括两名乌克兰男子，他们涉嫌入侵美国通讯社服务，并向俄罗斯，乌克兰，马耳他，塞浦路斯，法国和美国的贸易商出售重要非公开的信息。在另一个案件中，美国证监会指控三名中国商人以欺诈手段交易从两家着名的纽约律师事务所窃取的非公开市场信息。这些计划威胁到全球市场的健全性。调查和起诉他们一定是美国证监会及其国际合作伙伴共同关心的优先事项。

Source 来源:
https://www.sec.gov/news/speech/speech-peikin-120318

Three Broker-Dealers to Pay More Than US$6 Million in Penalties to U.S. Securities and Exchange Commission for Providing Deficient Blue Sheet Data

On December 10, 2018, the Securities and Exchange Commission (SEC) announced that three broker-dealers have agreed to pay more than US$6 million to settle charges for providing the SEC with incomplete and inaccurate securities trading information in required SEC productions known as "blue sheet data," which the SEC uses to carry out its enforcement and regulatory obligations, including the investigation of insider trading and other fraudulent activity.

According to the SEC's orders, over a period of several years, Citadel Securities LLC (Citadel) , Natixis Securities Americas LLC (Natixis), and MUFG Securities Americas Inc. (MUFG) each made numerous deficient blue sheet submissions containing inaccurate or missing data; incorrect order execution times that failed to adjust for time zone changes; and incorrect or missing exchange codes, transaction type identifiers, opposing broker number and contra-party identifiers. Citadel submitted incorrect data for nearly 80 million trades while Natixis and MUFG submitted incorrect data for approximately 150,000 trades and 650,000 trades, respectively. None of the firms had adequate processes designed to validate the accuracy of its submissions.

The orders further found that each of the firms has engaged in remedial efforts to address the causes for its deficient submissions, including the retention of an outside consultant and the adoption of new policies and procedures for processing blue sheet requests.

The SEC's orders also found that Citadel, Natixis, and MUFG willfully violated the broker-dealer books and records and reporting provisions. The firms admitted the findings in the SEC's cease and desist orders and agreed to be censured and to pay penalties of US$3.5 million for Citadel, US$1.25 million for Natixis, and US$1.4 million for MUFG.

SEC said that firms must be diligent and take seriously their obligations to provide accurate and complete data in response to their requests.

三家经纪-交易商因提供不足的蓝单数据向美国证券交易委员会支付超过 600 万美元的罚款

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 10 日宣布，三家经纪-交易商已同意支付超过 600 万美元的罚款，以解决他们在美国证监会要求的文件中；称为"蓝单数据"，提供不完整和不准确的证券交易信息的指控，美国证监会将该等数据用于履行其执法和监管责任，包括调查内幕交易和其他欺诈活动。

根据美国证监会的命令，在过去多年来，Citadel Securities LLC (Citadel), Natixis Securities Americas LLC (Natixis) 和 MUFG Securities Americas Inc. (MUFG) 各自提交了许多包含不准确或缺失数据的蓝单；无法根据时区切换进行调整以致不正确的订单执行时间；和不正确或丢失的交易代码，交易类型标识符；对手经纪商编号以及对手的标识符。Citadel 提交了近 8000 万笔交易的错误数据，而 Natixis 和 MUFG 分别提交了大约 150,000 笔交易和 650,000 笔交易的错误数据。没有一家公司有足够的流程来验证其提交的准确性。

该命令进一步发现，每家公司都在进行补救工作，以解决其提交不足的原因，包括保留外部顾问以及采用新的政策和程序来处理蓝单要求。

美国证监会的命令还发现，Citadel, Natixis 和 MUFG 故意违反了经纪-交易商的账簿和记录以及报告规定。这些公司承认美国证监会的终止及停止令中的调查结果，并同意受到谴责及支付罚款；Citadel 支付 350 万美元，Natixis 支付 125 万美元，MUFG 支付 140 万美元。

美国证监会表示：公司必须勤勉尽责，并认真履行责任，根据要求提供准确完整的数据。

Source 来源:
https://www.sec.gov/news/press-release/2018-275

U.S. Securities and Exchange Commission Charges Agria Corporation and Executive Chairman With Fraud

December 10, 2018, the U.S. Securities and Exchange Commission (SEC) announced that multinational agricultural company has agreed to pay US$3 million to settle charges that it concealed substantial losses from investors through fraudulent accounting in connection with its divestiture of its primary operating entity. In a related action, the company's executive chairman Lai Guanglin (aka Alan Lai) (Lai) settled charges that he manipulated the company's share price.

As described in the SEC's order, Agria Corporation (Agria) sold its Chinese operating company in return for stock and land use rights to 13,500 acres of undeveloped land in a remote, mountainous area of China's Shanxi Province. The SEC order found that Agria overstated the value of the stock it received by US$17 million and assigned a value of nearly US$60 million to the effectively worthless land use rights. A separate SEC order found that in March 2013, Lai used nominee brokerage accounts to engage in manipulative

trading in Agria's American Depository Shares in order to inflate their price above US$1 and prevent the securities from being delisted by the New York Stock Exchange.

The SEC's order found that Agria violated antifraud, reporting, books and records and internal accounting control provisions of the federal securities laws. Without admitting or denying the findings, Agria agreed to pay a US$3 million penalty and cooperate with the Commission's staff in future investigations. The SEC's order as to Lai found that he violated antifraud provisions of the federal securities laws. Without admitting or denying the findings, Lai agreed to pay a US$400,000 penalty and be barred for a period of five years from acting as an officer or director of any public company.

The SEC said that disclosure of accurate information is vital to the integrity of their markets, and both Agria and Lai have been appropriately held to account for their deceptive misconduct.

美国证券交易委员会指控 Agria Corporation 和执行主席欺诈

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 10 日宣布, 跨国农业公司已同意支付 300 万美元以解决就其通过与其主要经营实体剥离而隐瞒投资者其巨额亏损以进行欺诈性会计的指控。在一项相关诉讼中, 该公司的执行主席 Lai Guanglin (又名 Alan Lai) (Lai 先生) 解决了对他操纵公司股价的指控。

按照美国证监会的命令所述, Agria Corporation (Agria) 出售其中国营运公司, 以换取中国山西省偏远山区 13,500 英亩未开发土地的股票和土地使用权。美国证监会的命令发现, Agria 夸大其收到的股票价值 1700 万美元, 并为实质上一文不值的土地使用权赋予近 6000 万美元的价值。另一项美国证监会命令发现, 在 2013 年 3 月, Lai 先生使用非实名经纪账户操纵 Agria 的美国存托股票的交易, 以便将其价格提高至 1 美元以上, 并防止该证券被纽约证券交易所除牌。

美国证监会的命令发现, Agria 违反了反欺诈, 报告, 账簿和记录以及联邦证券法的内部会计监控规定。在不承认或否认调查结果的情况下, Agria 同意支付 300 万美元的罚款, 并在未来的调查中与美国证监会的工作人员合作。美国证监会对 Lai 先生的命令发现他违反了联邦证券法的反欺诈规定。在不承认或否认调查结果的情况下, Lai 先生同意支付 400,000 美元的罚款, 并被禁止担任任何上市公司的高级职员或董事五年。

美国证监会表示: 披露准确的信息对于美国市场的健全性至关重要而 Agria 和 Lai 先生都被恰当地追究其欺诈性的不当行为。

Source 来源:
https://www.sec.gov/news/press-release/2018-276

U.S. Securities and Exchange Commission Charges The Hain Celestial Group with Internal Controls Failures

On December 11, 2018, the U.S. Securities and Exchange Commission (SEC) announced settled charges against a natural and organic food company stemming from weaknesses in the company's internal controls related to end-of-quarter sales practices that were designed to help the company meet its internal sales targets. Based upon its extensive cooperation with the SEC's investigation, which included self-reporting and remediation efforts, the SEC did not impose a monetary penalty on the company.

According to the SEC's order, between 2014 and 2016, sales personnel for The Hain Celestial Group, Inc. (Hain) offered the company's two largest distributors incentives at the end of fiscal quarters to encourage the purchase of sufficient inventory for Hain to meet quarterly internal sales targets. The incentives offered by Hain included rights of return for products that spoiled or expired before they were sold to retailers, as well as cash incentives of up to US$500,000, substantial discounts, and extended payment terms. According to the SEC's order, some of the incentives were agreed to orally and not documented, and others were documented only in email exchanges with the distributors. The SEC's order found that the company lacked sufficient policies and procedures to ensure the incentives were properly documented and accounted for and that Hain's finance department was not aware of the quarterly incentive practices until May 2016.

After its finance department discovered the existence of the sales incentive practices, Hain undertook an internal investigation, and in August 2016, the company self-reported to the SEC its discovery of the sales incentives and announced it was delaying its financial reporting for 2016. Ten months later, Hain reported that financial restatements were not required and simultaneously disclosed material weaknesses in its internal control of financial reporting. As reflected the SEC's order, Hain has since made organizational changes, including the retention of staff in compliance positions, and has implemented changes to its revenue recognition practices.

The SEC's order finds that Hain violated books and records and accounting controls provisions of the federal securities laws, and orders Hain to cease and desist

from further violations. Hain consented to the SEC's order without admitting or denying the findings.

美国证券交易委员会指控 The Hain Celestial Group 的内部监控缺失

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 11 日宣布与一家天然和有机食品公司就对其内部监控缺失与其季末销售手法以实现其内部目标有关的指控达成和解。基于与美国证监会调查的广泛合作，其中包括自行申报和补救措施，美国证监会并未对该公司实施罚款。

根据美国证监会的命令，在 2014 年至 2016 年期间，The Hain Celestial Group, Inc. (Hain) 的销售人员在财政季度结束时向其两家最大的分销商提供了激励措施，以鼓励购买足够的库存使 Hain 达到内部季度销售目标。Hain 提供的激励措施包括在销售给零售商之前损坏或过期的产品的退货权利，以及高达 500,000 美元的现金奖励，大幅折扣和延期付款条款。根据美国证监会的命令，一些激励措施是经过口头协议而未记录在案，其他激励措施仅在与经销商的来往电子邮件中记录。美国证监会的命令发现该公司缺乏足够的政策和程序来确保激励措施备有适当的文件和账目，并且 Hain 的财务部门直到 2016 年 5 月才知悉季度激励措施。

在其财务部门发现销售激励措施的存在后，Hain 进行了内部调查，并在 2016 年 8 月，该公司向美国证监会自行申报透露其的销售激励措施，并宣布推迟 2016 年的财务报告。十个月后，Hain 报告称不需要财务重编，同时也在财务报告中披露了内部监控的重大缺失。正如美国证监会的命令所反映，Hain 此后进行了组织调整，包括保留员工在合规状况，并对其收入确认做法进行了变革。

美国证监会的命令发现 Hain 因违反了联邦证券法的账簿和记录以及会计监控条款，并命令 Hain 终止及停止进一步的违规行为。Hain 同意美国证监会的命令但不承认或否认调查结果。

Source 来源:
https://www.sec.gov/news/press-release/2018-277

Three Developers Settle U.S. Securities and Exchange Commission Charges of Fraudulent EB-5 Offering

On December 12, 2018, the U.S. Securities and Exchange Commission (SEC) announced that three Houston-area developers have agreed to settle charges that they misused investor funds raised from 90 Chinese investors under the EB-5 Immigrant Investor Program on unrelated projects.

The three developers - America Modern Green Senior (Houston) LLC, America Modern Green Community (Houston) LLC, and America Modern Green Residential (Houston) LLC - have repaid the US$49.5 million that they raised from the Chinese investors.

According to the SEC's order, the developers told investors that their funds would be used exclusively for a large mixed-use real estate development EB-5 project. Instead, the SEC found that the developers improperly transferred US$20.5 million of investor funds for various undisclosed and improper purposes, including funding purchases with respect to two unrelated real estate projects. In addition, the SEC found that the developers' offering materials improperly described the titles and roles of two real estate experts.

The order finds that the developers violated the antifraud provisions of Section 17(a)(2) and Section 17(a)(3) of the Securities Act of 1933. Without admitting or denying the SEC's findings, the developers collectively agreed to pay disgorgement of US$49.5 million plus US$1,144,135 in interest, and a US$800,000 penalty. The order deems the disgorgement satisfied by payments to the Chinese investors made by the developers before the settlement, and also provides that the interest will be distributed to the investors. The order also imposes a cease-and-desist order on the developers.

三家发展商就欺诈性 EB-5 发行的指控与美国证券交易委员会达成和解

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 12 日宣布，三家休斯顿地区的发展商已同意解决对其将 EB-5 移民投资者计划的 90 名中国投资者所筹集的投资者资金挪用在不相关项目的指控。

三家发展商 - America Modern Green Senior (Houston) LLC, America Modern Green Community (Houston) LLC 和 America Modern Green Residential (Houston) LLC - 已经偿还其从中国投资者筹集的 4950 万美元。

根据美国证监会的命令，发展商告诉投资者，其的资金将专门用于大型混合用途房地产开发 EB-5 项目。相反,美国证监会发现发展商不正当地转移了 2050 万美元的投资者资金用于各种未公开和不正当的目的，包括购买两个不相关的房地产项目的资金。此外，美国证监会发现发展商的要约资料不恰当地描述了两位房地产专家的名衔和角色。

该命令发现发展商违反了 1933 年《美国证券法》第 17(a)(2)条和第 17(a)(3)条的反欺诈条款。在不承认或否认美国证监会的调查结果的情况下，发展商共同同意交出 4950 万美元的款项加上 1,144,135 美元的利息和 80 万美

元的罚款。该命令认为交出的款项可满足在结算前由发展商支付给中国投资者的款项，并且还规定将利息派发给投资者。该命令还对发展商施加了终止及停止的命令。

Source 来源:
https://www.sec.gov/news/press-release/2018-279

Executives Settle U.S. Securities and Exchange Commission Charges on Initial Coin Offering Scam

On December 12, 2018, the U.S. Securities and Exchange Commission (SEC) announced that two former executives behind an allegedly fraudulent initial coin offering (ICO) that was stopped by it earlier this year have been ordered in federal court to pay nearly US$2.7 million and prohibited from serving as officers or directors of public companies or participating in future offerings of digital securities.

AriseBank's then-CEO Jared Rice Sr. (Rice) and then-COO Stanley Ford (Ford) were accused of offering and selling unregistered investments in their purported "AriseCoin" cryptocurrency by depicting AriseBank as a first-of-its-kind decentralized bank offering a variety of services to retail investors.

To settle the SEC's charges, Rice and Ford agreed to be held jointly and severally liable for US$2,259,543 in disgorgement plus US$68,423 in prejudgment interest, and each must pay a US$184,767 penalty. They also agreed to lifetime bars from serving as officers and directors of public companies and participating in digital securities offerings, and permanent prohibitions against violating the antifraud and registration provisions of the federal securities laws. Rice and Ford agreed to the settlements without admitting or denying the allegations in the SEC's complaint.

November 28, 2018, the U.S. Attorney's Office for the Northern District of Texas announced parallel criminal charges against Rice.

主管人员就初始代币发售诈骗的指控与美国证券交易委员会达成和解

2018 年 12 月 12 日，美国证券交易委员会 (美国证监会) 宣布在今年较早时候被其制止的涉嫌欺诈性初始代币发行 (ICO) 的幕后两位前主管人员已被联邦法院命令支付近 270 万美元和禁止担任上市公司的高级职员或董事或参与未来的数字证券发行。

AriseBank 当时的首席执行官 Jared Rice (Rice) 和当时的首席营运官 Stanley Ford (Ford) 被指控通过将 AriseBank 描绘为首个向散户投资者提供各种服务的分散式银行，发行和销售未注册的投资；其声称的"AriseCoin"加密货币。

为解决美国证监会的指控，Rice 和 Ford 同意共同承担 2,259,543 美元的赔偿责任以及 68,423 美元的判决前利息，并且每人必须支付 184,767 美元的罚款。他们还同意终身禁止担任上市公司的高级职员和董事及参与数字证券发行，并永久禁止违反联邦证券法的反欺诈和登记规定。Rice 和 Ford 同意这些和解协议，但没有承认或否认美国证监会起诉书中的指控。

在 2018 年 11 月 28 日，德克萨斯州北部地区的美国检察官办公室宣布对 Rice 提起平行刑事指控。

Source 来源:
https://www.sec.gov/news/press-release/2018-280

U.S. Securities and Exchange Commission Charges Former New York Investment Advisor and Daughter with Conducting a Ponzi Scheme

On December 13, 2018, the U.S. Securities and Exchange Commission (SEC) charged a former Rockland County, New York-based investment adviser and his daughter with conducting a multi-million dollar Ponzi scheme that defrauded local community members as well as members of their family and close friends.

The SEC alleges that Hector May (May), an investment adviser representative and the president and chief compliance officer of the now-defunct Executive Compensation Planners Inc. (ECP), and his daughter Vania Bell (Bell), who served as ECP's controller and senior compliance administrator, misappropriated more than US$7.9 million in a Ponzi scheme involving bonds.

According to the SEC's complaint, with Bell's help, May lied to investors by promising to invest their money in bonds when they actually used the money to pay for personal and business expenses, as well as extravagant items, such as jewelry, furs, vacations, and a limousine driver. To conceal the fraudulent scheme, they sent bogus account statements to clients referencing the bonds that had never been purchased.

The SEC's complaint charges May and Bell with violating the antifraud provisions of the securities laws. May has agreed to the entry of a partial judgment against him in which he consents to injunctive relief with monetary and other relief to be decided in the future. The SEC seeks the return of ill-gotten gains, with interest, as well as financial penalties.

In a parallel action, the U.S. Attorney's Office for the Southern District of New York announced criminal charges against May, and he has pleaded guilty to those charges.

The SEC issued an Investor Alert discussing the classic warning signs of a Ponzi scheme targeting retail investors, including seniors.

美国证券交易委员会指控前纽约投资顾问和其女儿进行庞氏骗局

美国证券交易委员会 (美国证监会) 于 2018 年 12 月 14 日指控一位前总部位于纽约罗克兰县的投资顾问和他的女儿进行数百万美元的庞氏骗局, 欺骗当地社区成员以及他们的家人和亲密朋友。

美国证监会声称, Hector May (May) 是一名投资顾问代表及现已解散的 Executive Compensation Planners Inc. (ECP) 的总裁兼首席合规官, 以及他的女儿 Vania Bell (Bell) 担任 ECP 的总监和高级合规人员, 在涉及债券的庞氏骗局中挪用超过 790 万美元。

根据美国证监会的起诉书, 在 Bell 的协助下, May 向投资者撒谎, 承诺将金钱投资于债券; 而实际上使用这些金钱支付其个人和商业开支以及珠宝, 皮草, 旅游和雇用豪华轿车司机等奢侈品。为了隐瞒欺诈计划, 他们向客户发送引用从未购买过的债券的虚假账户报表。

美国证监会的起诉书指控 May 和 Bell 违反了证券法的反欺诈规定。May 已经同意对他提出部分判决, 他同意禁制令但损害赔偿和其他救济稍后判决。美国证监会寻求交回非法所得, 利息以及经济处罚。

在一项平行诉讼中, 纽约南区的美国检察官办公室宣布对 May 提出刑事指控, 他并对这些指控表示认罪。

美国证监会印发了一份投资者警示, 探讨针对散户投资者(包括长者)的庞氏骗局的典型警示信号。

Source 来源:
https://www.sec.gov/news/press-release/2018-283

Shenzhen Stock Exchange Improves Corporate Bond Regulations to Boost Sound Development of Bond Market

On December 7, 2018, Shenzhen Stock Exchange (SZSE) released the revised Rules Governing Corporate Bond Listing and Rules Governing Private Placement Corporate Bond Transfer by Listing under the unified deployment of China Securities Regulatory Commission. Compliant with the new Measures on Administration of Securities Exchanges, such revision is a major means for SZSE to enhance the capability of capital market to serve the real economy. It can boost the sound development of the bond market by further normalizing and improving corporate bond listing and transfer by listing, increasing the quality of information disclosure in the corporate bond market, and protecting the legal interests of bond investors.

The revision took into consideration the advice from all sectors of society and mainly includes the following amendments:

First, enhancing the regulatory function of stock exchanges at the front line in strict compliance with relevant requirements of the Measures on Administration of Securities Exchanges, expanding the self-discipline scope to cover securities institutions, investors and their related persons; and improving the self-discipline system by introducing more regulatory means and measures such as on-site inspection and levying default penalties.

Second, earnestly implementing the principle of inclusion upon declaration to tighten issuance access control. A new chapter is added to specify the requirements on pre-listing audit of corporate bonds and eligibility review of private placement corporate bond transfer, which lays a solid foundation for self-discipline regulation on the access end and enhanced risk control at the source.

Third, improving information disclosure regulation by setting higher requirements of subjective, responsibility and compliance awareness, making it clear that the directors and senior executives of the issuer shall bear the duty of disclosure, emphasizing the duty of periodic report disclosure of private placement corporate bonds, specifying the time of periodic reports and removing the terms of delayed periodic report disclosure. Meanwhile, the circumstances for provisional reports are further complemented based on regulatory practice.

Fourth, optimizing investor protection mechanism by further stressing the credit risk management duty of issuers, trustees and related parties, particularly the trustee' duty to monitor, control and report risks and the related parties' obligation to cooperate with the trustees who are performing their duties. A new provision is added that SZSE may require issuers to employ accountants to carry out special audits on funds raised from time to time in line with the fund raising regulatory requirements. At the same time, bond holders meeting provisions are amended based on market needs to improve meeting efficiency.

深圳证券交易所完善公司债规则体系促进债券市场高质量发展

2018 年 12 月 7 日, 深圳证券交易所 (深交所) 根据中国证监会统一部署, 深交所修订并发布《公司债券上市规则》(上市规则) 及《非公开发行公司债券挂牌转让规则》(挂

牌规则)。本次修订是深交所落实新《证券交易所管理办法》相关要求、增强资本市场服务实体经济能力的重要举措，有利于进一步规范并完善公司债券上市交易及挂牌转让业务，提高公司债券市场信息披露质量，保护债券投资者合法权益，促进交易所债券市场高质量发展。

深交所此前已就《上市规则》及《挂牌规则》广泛征求社会各界意见，并结合相关建议和意见对规则进行完善。本次规则修订的主要内容包括：

一是强化交易所一线监管职能，贯彻落实《证券交易所管理办法》关于强化交易所一线监管自律属性要求，扩大自律监管范畴，将证券经营机构、投资者及其相关人员均纳入监管对象范畴；充实监管手段和措施，新增现场检查等监管职能和收取惩罚性违约金等纪律处分形式，完善了自律监管体系。

二是贯彻申报即纳入监管原则，强化发行准入端监管。专设章节明确公司债券上市预审核和非公开发行公司债券转让条件确认业务要求，进一步夯实了准入端自律监管基础，加强源头风险防控。

三是完善信息披露监管，对信息披露主体意识、责任意识和合规意识提出更高要求，明确应当由发行人的董事、高级管理人员担任信息披露事务负责人，强调非公开发行公司债券定期报告披露义务，严格定期报告时间并删除延期披露定期报告条款。同时，结合监管实践对临时报告情形进一步完善。

四是健全投资者保护机制，进一步强调发行人、受托管理人等相关方的信用风险管理职责，特别是受托管理人的风险监测、处置和报告义务以及其他相关方对受托管理人履职的配合义务。新增深交所可要求发行人聘请会计师对募集资金开展不定期专项审计的规定，切实落实募集资金监管要求。同时，为提高债券持有人会议效率，结合市场需求，调整完善债券持有人会议相关规定。

Source 来源:
http://www.szse.cn/English/about/news/szse/t20181211_563479.html

Bank of New York Mellon to Pay More Than US$54 Million to Settle U.S. Securities and Exchange Commission's Charges for Improper Handling of American Depositary Receipts

On December 17, 2018, the U.S. Securities and Exchange Commission (SEC) announced that Bank of New York Mellon (BNY Mellon) will pay more than US$54 million to settle charges of improper handling of “pre-released” American Depositary Receipts (ADRs).

The SEC’s order found that BNY Mellon 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.

Without admitting or denying the SEC’s findings, BNY Mellon agreed to disgorge more than US$29.3 million in alleged ill-gotten gains plus pay US$4.2 million in prejudgment interest and a US$20.5 million penalty for total monetary relief of more than US$54 million. The SEC’s order acknowledges BNY Mellon’s cooperation in the investigation and remedial acts.

The SEC said that BNY Mellon is the seventh bank or broker being held accountable for improper practices that allowed banks and brokerage firms to profit handsomely while market participants were unaware of how the market was being abused.

纽约梅隆银行就不当处理美国预托凭证的指控支付超过5400 万美元与美国证券交易委员会达成和解

美国证券交易委员会(美国证监会)于 2018 年 12 月 17 日宣布纽约梅隆银行将支付超过 5400 万美元就不当处理“预发行”美国预托凭证(ADRs)的指控与美国证监会达成和解 。

美国证监会的命令发现，当经纪商及其客户都没有支持这些新的 ADRs 所需的外国股票时，纽约梅隆银行仍在数千次预发行交易中不正当地向经纪商提供了 ADRs。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。

在不承认或否认美国证监会的调查结果的情况下，纽约梅隆银行同意交出超过 2930 万美元所谓的非法收益，加上支付 420 万美元的判决前利息和 2050 万美元的罚款，金钱赔偿总额超过 5400 万美元。 美国证监会的命令认同纽约梅隆银行在调查和补救措施方面作出的合作。

美国证监会表示：纽约梅隆银行是第七家对不正当行为负责的银行或经纪商，这些行为让银行和经纪公司获得丰厚的利润，但市场参与者并不知道市场如何被滥用。

Source 来源:
https://www.sec.gov/news/press-release/2018-285

U.S. Securities and Exchange Commission Charges Charges Former Panasonic Executives for Breaching Federal Securities Law

On December 18, 2018, the U.S. Securities and Exchange Commission (SEC) charged two former senior executives of the U.S. subsidiary of Panasonic Corp. with knowingly violating the books and records and internal accounting controls provisions of the federal securities laws and causing similar violations by the parent company.

According to the SEC's order against Paul A. Margis (Margis), then-CEO and president of Panasonic Avionics Corp. (Panasonic Avionics), Margis used a third party to pay over US$1.76 million to several consultants, including a government official who was offered a lucrative consulting position to assist Panasonic Avionics in obtaining and retaining business from a state-owned airline. Panasonic Avionics falsely recorded these payments, and Margis circumvented company procedures for engaging the consultants, who provided few, if any services. Margis also made materially false or misleading statements to Panasonic Avionics' auditor regarding the adequacy of Panasonic Avionics' internal accounting controls and accuracy of the company's books and records.

According to the SEC's order against Takeshi "Tyrone" Uonaga (Uonaga), then-CFO of Panasonic Avionics, Uonaga caused Panasonic Corp. to improperly record US$82 million in revenue based on a backdated contract and made false representations to Panasonic Avionics' auditor regarding financial statements, internal accounting controls, and books and records.

The SEC's orders require Margis and Uonaga to pay penalties of US$75,000 and US$50,000, respectively. The order against Uonaga also suspends him from appearing or practicing before the SEC as an accountant, which includes not participating in the financial reporting or audits of public companies. The order permits Uonaga to apply for reinstatement after five years. Margis and Uonaga consented to the entry of their orders without admitting or denying the findings.

In April of this year, the SEC instituted a related settled cease-and-desist proceeding against Panasonic Corp. finding that it violated the anti-bribery, anti-fraud, books and records, internal accounting controls, and reporting provisions of the federal securities laws.

The SEC said that holding individuals accountable, particularly senior executives, is critical. Compliance starts at the top and senior executives who fail in their duty to comply with the federal securities laws will be held responsible.

美国证券交易委员会指控前松下高级管理人员违反联邦证券法

美国证券交易委员会(美国证监会)于2018年12月18日指控指控松下公司美国子公司的两名前高级管理人员故意违反联邦证券法的账簿和记录以及内部会计监控规定,并导致母公司发生类似的违规行为。

根据美国证监会对 Panasonic Avionics Corp. (Panasonic Avionics)当时首席执行官兼总裁 Paul A. Margis (Margis)的命令,Margis 通过第三方向几位顾问支付超过 176 万美元,其中包括一名政府官员;他获得了丰厚的咨询职位以协助 Panasonic Avionics 从一家国有航空公司获取或保留生意。Panasonic Avionics 虚假地记录了这些款项,而 Margis 规避了公司聘请顾问的程序,其提供很少的服务(如有)。对于 Panasonic Avionics 内部会计监控的充分性以及公司账簿和记录的准确性,Margis 还向 Panasonic Avionics 的审计员作出重大虚假或误导性陈述。

根据美国证监会对 Panasonic Avionics 当时首席财务官 Takeshi "Tyrone" Uonaga(Uonaga)的命令,Uonaga 导致松下公司不恰当地基于回溯合同记录了 8200 万美元的收入,并就财务报表,内部会计监控以及账簿和记录,向 Panasonic Avionics 的审计师作出虚假陈述。

美国证监会的命令要求 Margis 和 Uonaga 分别支付 75,000 美元和 50,000 美元的罚款。针对 Uonaga 的命令还暂停了他作为会计师在美国证监会前出席或执业,其中包括不参与上市公司的财务报告或审计。该命令允许 Uonaga 在五年后申请复职。 Margis 和 Uonaga 在不承认或否认调查结果的情况下同意针对他们的命令。

今年 4 月,美国证监会针对松下公司提起相关的停止及制止诉讼程序,发现其违反了反贿赂,反欺诈,账簿和记录,内部会计监控以及联邦证券法的报告规定。

美国证监会表示:追究个人责任,特别是高级管理人员,至关重要。合规始于最高层和高级管理人员,其为没有履行联邦证券法的职责将承担责任。

Source 来源:
https://www.sec.gov/news/press-release/2018-290

Financial Conduct Authority of the United Kingdom Proposes Permanent Measures for Retail Contracts for Difference and Binary Options

On December 7, 2018, Financial Conduct Authority (FCA) of the United Kingdom (UK) announced that it is proposing rules to address harm to retail consumers from the sale of certain complex derivative products (rules) with the publication of two consultation papers.

The rules would apply to firms acting in or from the UK and:

1. ban the sale, marketing and distribution of binary options to retail consumers
2. restrict the sale, marketing and distribution of contracts for difference (CFDs) and similar products to retail customers

The FCA's proposed interventions are the same in substance as the European Securities and Markets Authority's existing, EU-wide temporary restrictions on these products.

For CFDs sold to retail clients, the FCA is proposing to require firms to:

- limit leverage to between 30:1 and 2:1 by collecting minimum margin as a percentage of the overall exposure that the CFD provides
- close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions on their CFD account
- provide protections that guarantee a client cannot lose more than the total funds in their CFD account
- stop offering monetary and non-monetary inducements to encourage trading
- provide a standardized risk warning, which requires firms to tell potential customers the percentage of their retail client accounts that make losses

The FCA estimates that the proposals for CFDs could reduce annual losses for retail consumers of UK firms by between £267.4m to £450.7m. A permanent ban on binary options could save retail consumers up to £17m per year, and may reduce the risk of fraud by unauthorized entities claiming to offer these products.

The FCA's CFD consultation also seeks feedback on whether other complex derivative products, such as futures or similar over-the-counter products, may pose similar risks of harm to retail consumers and could benefit from similar rules, or if this would have unintended effects.

The binary options Consultation Paper is open until February 7, 2019. The CFD Consultation Paper is open until February 7, 2019 for feedback on the proposed measures and March 7, 2019 for feedback on the discussion of other complex derivative products.

The FCA will consult separately in early 2019 on a potential ban on the sale of derivative products referencing cryptocurrencies, including CFDs, to retail consumers. This follows the commitment made in the UK Cryptoasset Taskforce Final Report published in October 2018.

英国金融行为监管局建议对零售差价合约和二元期权的永久性措施

2018 年 12 月 7 日, 英国金融行为监管局 (英国金管局) 宣布其正通过发表两份咨询文件, 建议制定规则以应对销售某些复杂衍生产品 (规则) 对零售客户做成的损害。

该规则适用于在英国境内或从英国境内活动的公司, 同时规定：

1. 禁止向零售客户销售, 推广和分销二元期权
2. 限制将差价合约和类似产品向零售客户销售, 推广和分销

英国金管局建议的干预措施与欧洲证券和市场管理局; 针对欧盟范围内的现有这些产品施实的临时限制措施实质上相同。

对于销售给零售客户的差价合约, 英国金管局建议要求公司：

- 根据最低保证金占限制差价合约提供的总体风险的百分比, 将交易杠杆限制在 30:1 和 2:1 之间
- 当客户的资金降至维持限制差价合约账户未平仓头寸所需保证金的 50%时, 关闭客户的头寸
- 提供保护, 保证客户不会损失超过其差价合约账户中的总资金
- 禁止提供货币和非货币诱导以鼓励客户交易
- 提供标准化的风险警告, 公司必须告知客户其零售客户账户中亏损的的百分比

英国金管局估计差价合约的建议可以将英国公司零售客户的年度亏损减少 2.674 亿至 4.5 亿英镑之间。永久禁止二元期权可以为零售客户每年节省高达 1700 万英镑, 并可以降低声称提供这些产品的未授权实体的欺诈风险。

英国金管局的差价合约咨询还寻求对其他复杂衍生产品 (如期货或类似场外交易产品) 的意见; 是否可能对零售客户构成类似风险并可能受益于类似规则, 或这是否会做成意想不到的影响。

二元期权咨询文件开放至 2019 年 2 月 7 日。差价合约咨询文件开放至 2019 年 2 月 7 日, 以获得对有关建议措施的意见, 以及 2019 年 3 月 7 日对其他复杂衍生产品讨论的意见。

英国金管局将在 2019 年初单独咨询可能禁止向零售客户销售引用加密货币(包括差价合约) 的衍生产品。这符合 2018 年 10 月英国加密资产专责小组最终报告中的承诺。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-proposes-permanent-measures-retail-cfds-and-binary-options

Financial Conduct Authority of the United Kingdom Proposes Changes to Facilitate Investment in Patient Capital

On December 12, 2018, Financial Conduct Authority (FCA) of the United Kingdom (UK) has proposed changes to further enable retail investors to invest in patient capital through unit-linked funds. The FCA is also exploring how UK authorized funds can be used to invest in patient capital.

These proposals follow the 2018 Budget when the Chancellor announced a package of measures designed to increase investment in patient capital, a term for a broad range of alternative investment assets intended to deliver long-term returns; for example, infrastructure, real estate, private equity/debt, and venture capital.

The proposed changes in the consultation paper (Consultation Paper) are intended to enable retail investors to invest in a broader range of long-term assets through unit-linked funds, while continuing to maintain an appropriate level of protection. The proposed measures aim to address potential barriers to investment by retail investors in patient capital, and will be beneficial to consumers by allowing funds to choose investment opportunities that match the needs of consumers more effectively.

Alongside this, a discussion paper (Discussion Paper) explores how UK authorized funds can be used to invest in patient capital. It sets out the relevant authorized funds rules, and outlines the existing opportunities to invest in patient capital. It invites feedback to help identify the barriers to investment in patient capital through authorized funds and how such barriers can be overcome. The Discussion Paper does not propose any changes to the authorized fund rules. Instead, the FCA will consider responses and consult more widely with industry stakeholders to come to an informed view on whether any rule changes are necessary.

Responses to the Consultation Paper and Discussion Paper can be submitted until February 28, 2019.

英国金融行为监管局建议提出改变以促进耐心资本投资

2018 年 12 月 12 日，英国金融行为监管局 (英国金管局) 建议进行修改，以进一步使散户投资者通过单位挂钩基金投资耐心资本。 英国金管局还在探索英国认可基金如何用于投资耐心资本。

这些建议遵循 2018 年财政预算案，当时财政大臣宣布了一系列旨在增加对耐心资本投资的措施，“耐心资本”是指一系列旨在提供长期回报的广泛另类投资资产；例如，基础设施，房地产，私募股权/债务和风险投资。

谘询文件的建议修订旨在让散户投资者透过与单位挂钩的基金投资更广泛的长期资产，同时继续维持适当的保障水平。建议的措施旨在解决散户投资者投资耐心资本时可能面对的困难，并使基金能更有效地选择符合消费者需求的投资机会，将有利于消费者。

与此同时，一份讨论文件探讨了英国认可基金如何用于投资耐心资本。它提出了相关的认可基金规则，并概述了投资耐心资本的现有机会。英国金管局征求意见，以帮助确定通过认可基金投资耐心资本的障碍，以及如何克服这些障碍。 讨论文件不建议对认可基金规则进行任何更改。相反，英国金管局将考虑回应并与行业利益相关者进行更广泛的磋商，以便就是否有必要修改规则达致知情意见。

对咨询文件和讨论文件的回应可于 2019 年 2 月 28 日前提交。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-proposes-changes-facilitate-investment-patient-capital

Financial Conduct Authority of the United Kingdom Publishes New Rules for Claims Management Companies to Boost Consumer Protection and Professionalism

On December 17, 2018, Financial Conduct Authority (FCA) of the United Kingdom (UK) published new rules and fees that will apply to all claims management companies (CMCs) from April 1, 2019.

From next April, all CMCs set up or serving customers in England, Scotland and Wales will have to be authorized by the FCA to continue operating legally. To be authorized by the FCA they must demonstrate they meet minimum standards to operate. Any firm that isn't authorized will have to stop handling claims.

The FCA focuses on three main areas:

- Customers – wanting customers to be empowered and confident in choosing a value-for-money service which is appropriate for their needs.
- CMCs – wanting CMCs to help customers get redress in a way that complies with FCA rules and requiring them to meet a common set of standards.
- Regulatory – regulating in a way that prioritises high standards of conduct, protects consumers

and improves public confidence in claims management services.

In addition, all firms have to record and retain customer telephone calls for a year after their final contact with a customer.

The next major milestone for firms starts in January. That's when CMCs can apply for a 'temporary permission' to operate. This will allow them to continue operating until they are fully FCA-authorized during one of two waves running from April until the end of July.

The FCA said that the new rules will ensure firms are transparent about their estimated fees before the customer signs on the dotted line, and notify customers of free statutory ombudsmen or compensation schemes.

英国金融行为监管局公布索赔管理公司新规则以提高消费者保护和专业水平

2018 年 12 月 17 日，英国金融行为监管局 (英国金管局) 公布自 2019 年 4 月 1 日起适用于所有索赔管理公司的新规则和费用。

从明年 4 月开始，所有在英格兰，苏格兰和威尔士设立或服务客户的索赔管理公司都必须得到英国金管局的授权才能继续合法营运。要获得英国金管局的授权，必须证明其符合最低营运标准。任何未经授权的公司都必须停止处理索赔事宜。

英国金管局主要关注三方面：

- 客户 – 希望客户有权并有信心选择适合其需求的物有所值的服务。
- 索赔管理公司 – 期望索赔管理公司能够以符合英国金管局规则并达到一套共同标准的要求；协助客户获得赔偿。
- 监管 – 优先考虑以崇高的行为规则进行监管，保护消费者并提高公众对索赔管理服务的信心。

此外，所有公司必须在与客户最终联系后的一年内记录及保留客户电话。

公司的下一个重要里程碑始于 1 月份。那时索赔管理公司就可以申请“临时许可”来运作。这将使其能够继续运作，直到其在 4 月至 7 月底的两个阶段之一完全获得英国金管局授权。

英国金管局表示：新规则将确保公司在客户在签署正式文件前对其预计费用更具透明度，并告知客户免费的调解监察员或补偿计划。

Source 来源:
https://www.fca.org.uk/news/press-releases/new-rules-claims-management-companies-boost-consumer-protection-and-professionalism

Financial Conduct Authority of the United Kingdom Publishes Findings on Long-term Mortgage Arrears

On December 6, 2018, the Financial Conduct Authority (FCA) of the United Kingdom published findings on how mortgage lenders treat customers who have long-term mortgage arrears and provide forbearance to affected customers.

The FCA had previously identified that there was a trend of increasing long-term arrears cases, whilst the number of homes being repossessed had been falling. As a result of this widening trend, the FCA set out in its Business Plan 2017/18 to examine whether customers with long-term mortgage arrears were experiencing harm from extended forbearance.

Overall, the FCA did not identify widespread harm to customers from extended forbearance. However, it did see some inconsistencies in firms' arrears management practices. Firms offering or administering mortgages should read these findings and where necessary make improvements.

This work was undertaken against a backdrop of low interest rates where the interest on arrears balances was relatively low. It's important that customers who are already in long term arrears, and mortgage customers who might go into arrears with an increase in interest rates, or a change to their personal circumstances are aware of what actions they should be taking.

The FCA encourages customers with arrears to engage with their mortgage provider about mortgage arrears and the options that are available to them. The FCA has also provided the feedback to firms in the sample and is considering where in some cases further regulatory action in necessary. Under the FCA's rules, firms may only consider repossession as a last resort.

英国金融行为监管局发布有关长期拖欠房屋抵押贷款的调查结果

2018 年 12 月 6 日，英国金融行为监管局 (英国金管局) 公布了抵押贷款机构如何对待长期抵押贷款拖欠的客户并向受影响客户提供延期还款的措施。

英国金管局之前已发现，长期拖欠案件有增加的趋势，而被收回房屋的数量一直在下降。由于这种不断扩大的趋势，英国金管局在其 2017/18 业务计划中提出，着手调查长期拖欠抵押贷款的客户是否因延期还款而受到损害。

总体而言，英国金管局并未发现长期拖欠对客户造成的广泛损害。但是，其确实发现公司欠款管理方法中的一些不一致之处。提供或管理抵押贷款的公司应阅读该调查结果并在必要时作出改进。

这项工作是在低利率的背景下进行的，其中欠款余额的利息相对较低。重要的是，那些已经长期拖欠的客户，以及那些可能因利率上升或个人情况改变而拖欠的抵押贷款客户，应该知道其可采取什么行动。

英国金管局鼓励欠款的客户与其的抵押贷款提供商就拖欠抵押贷款以及可用的选项进行沟通。 英国金管局还向样本中的公司提供意见，并正在考虑在某些情况下采取必要的进一步监管行动。根据英国金管局的规定，公司只能把收回房屋视为最后的手段。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-proposes-introduction-price-cap-rent-own-firms-protect-vulnerable-consumers-high-costs

Australian Securities and Investments Commission Consults on Measures to Restrict Offers to Retail Investors of Stub-equity in Proprietary Companies

On December 13, 2018, the Australian Securities and Investments Commission (ASIC) is concerned about recent control transactions where part or all of the consideration includes stub-equity in Australian proprietary companies. These offers of stub-equity have been made to a large and diverse group of target shareholders, including retail investors.

Proprietary companies are required to be closely held and are prohibited from making broad public offers of their shares. By structuring control transactions to avoid these restrictions, retail investors who accept scrip consideration miss out on the disclosure and governance protections that apply to public companies, but from which proprietary companies are exempt.

The ASIC intends to issue a consultation paper in early 2019 seeking views on a proposed legislative instrument to prevent these kinds of offers in control transactions.

The ASIC may also consider making individual instruments to prevent these offers where the control transaction is announced after the date of its media release but prior to the conclusion of its consultation.

澳洲证券及投资监察委员会就限制私有公司将存量股票销售给散户投资者的措施进行咨询

2018 年 12 月 13 日，澳大利亚证券和投资委员会 (澳洲证监会) 关注最近的控制交易， 部分或全部代价包括澳大利亚私有公司的存量股票。这些存量股票被销售给大量不特定的目标股东，包括散户投资者。

私有公司必须时刻注意不得公开发行股票。通过构建控制交易以回避这些限制，导致接受购股代价的散户投资者不受适用于上市公司的信息披露和管治保护，而私有公司豁免有关的规定。

澳洲证监会打算在 2019 年初发出谘询文件，寻求对有关建议的立法文件的意见，旨在禁止该类控制交易销售。

澳洲证监会或将考虑制定单独的规定，以禁止在其新闻发布之日后但在咨询结束之前的该类控制交易销售。

Source 来源:
https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-376mr-asic-to-consult-on-measures-to-restrict-offers-to-retail-investors-of-stub-equity-in-proprietary-companies

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