



Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update 金融服务监管资讯

2019.09.27

Autorité des Marchés Financiers Launches a Public Consultation on the Conditions for Implementing Squeeze-outs and Fairness Opinions in the Context of Public Offers

On September 16, 2019, the Autorité des Marchés Financiers (Financial Markets Regulator) (AMF) published a public consultation on the proposals for changes to its regulations regarding the conditions for implementing squeeze-outs and fairness opinions in the context of public offers.

The proposed changes are designed to enhance the protection of minority shareholders and ensure the independence and transparency of fairness opinions more effectively.

The following main regulatory amendments are proposed by AMF:

- appoint an independent appraiser;
- enable the independent appraiser to examine any observations from minority shareholders;
- enhance the transparency of the process for appointment of the independent appraiser;
- provide an analysis and assessment of shareholders' written observations received by the independent appraiser in the independent appraisal report;
- improve information and transparency regarding remuneration of the independent appraiser and review of the quality of their work.

Contributions should be submitted no later than October 15, 2019.

法国金融市场管理局就在公开要约的情况下实施强制收购少数股东股份和公平意见的条件展开公众咨询

2019年9月16日,法国金融市场管理局(AMF)就在公开要约的情况下实施强制排除和公平意见的条件,发出其修订法规建议的公众咨询文件。

建议的修订旨在加强对少数股东的保护,并更有效地确保公平意见的独立性和透明度。

AMF 提出以下主要监管修订:

- 任命独立评估师;
- 使独立评估师能够审查少数股东的任何意见;
- 提高委任独立评估师程序的透明度;
- 使独立评估师对收到的股东书面意见在独立评估报告中作出分析和评估;
- 改进独立评估师薪酬的信息和透明度,并审查其工作质量。

公众应在 2019 年 10 月 15 日之前提交意见。

Source 来源:

amffrance.org/en_US/Actualites/Communiquedepresse/AMF/annee2019?docId=workspace%3A%2F%2FspacesStore%2F22449408-941b-436e-bca5-de8100725c45

Australian Securities and Investments Commission Makes Product Intervention Order Banning Short Term Lending Model to Protect Consumers from Predatory Lending

On September 12, 2019, the Australian Securities and Investments Commission has used its product intervention power to ban a model of lending in the short term credit industry which has been found to cause significant consumer detriment.

The law allows short term credit providers to remain exempt from credit licensing, if the fees charged for a loan of up to 62 days do not exceed 5% of the loan amount and 24% per annum interest.

The order does not seek to modify the existing exemption for short term credit; rather, it ensures that short term credit providers and their associates do not structure their businesses in a manner which allows them to charge fees which exceed the prescribed limits for regulated credit.

There are criminal and civil penalties for breaching the product intervention order, including up to 5 years

imprisonment and fines of up to AUD1.26 million per offence.

澳洲证券及投资监察委员会制定产品干预令禁止短期信贷模式以保护消费者免受掠夺性信贷

2019年9月12日, 澳洲证券及投资监察委员会利用其产品干预权来禁止短期信贷行业的信贷模式, 该行业已被发现会对消费者造成重大损害。

如最长 62 天的信贷收取的费用不超过信贷金额的 5% 和每年 24% 的利息, 法律允许短期信贷提供者继续豁免信贷牌照。

该命令并未寻求修改现有的短期信贷豁免; 相反, 它确保短期信贷提供者及其关联人士不能以某种允许其收取超过信贷限额的规定费用的方式构建其业务。

违反产品干预令导致刑事和民事处罚, 包括最高 5 年监禁和每次犯罪高达 126 万澳元的罚款。

Source 来源:

asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-250mr-asic-makes-product-intervention-order-banning-short-term-lending-model-to-protect-consumers-from-predatory-lending

Canadian Securities Administrators Proposes Eight Initiatives to Reduce Regulatory Burden for Investment Funds

On September 12, 2019, the Canadian Securities Administrators (CSA) published for comment proposed rule amendments aimed at implementing eight initiatives that seek to eliminate duplicative requirements, streamline regulatory processes, codify frequently-granted exemptions from certain rules for investment funds, and eliminate the need for certain regulatory approvals.

Comments should be submitted in writing by December 11, 2019.

The CSA said that it is proposing significant changes that will provide cost and time savings to investment funds and their managers without impacting investor protection and continues to prioritize reducing regulatory burden in all areas of Canada's capital markets.

加拿大证券管理局提出八项举措以减轻投资基金的监管负担

2019年9月12日, 加拿大证券管理局 (CSA) 宣布就建议的规则修订征求意见; 该建议旨在实施八项举措以寻求消

除重叠的要求, 简化监管程序, 编纂经常批予投资基金豁免的某些规则, 并消除某些监管机构批准的必要性。

意见应在 2019 年 12 月 11 日之前以书面形式提交。

CSA 表示: 其正在提出重大变革, 为投资基金及其管理人员节省成本和时间, 同时不影响投资者的保护, 并继续优先减轻加拿大资本市场所有领域的监管负担。

Source 来源:

osc.gov.on.ca/en/NewsEvents_nr_20190912_csa_propose-eight-initiatives-reduce-regulatory-burden.htm

European Union Financial Regulators Highlights the Risks as Potential Sources of Instability

On September 12, 2019, European Supervisory Authorities (ESAs) published a report on "Risks and Vulnerabilities in the EU Financial System".

ESAs' report highlights the following risks as potential sources of instability:

- Uncertainties around the terms of the United Kingdom's withdrawal from the European Union
- Persistently low interest rates put pressure on the profitability and returns of financial institutions, incentivize search-for-yield strategies and increase valuation risks
- Transition to a more sustainable economy and environmental, social and governance (ESG) related risks, leading to possible challenges to the viability of business models with high exposures to climate sensitive sectors.

The ESAs call for the following policy actions by European and national competent authorities as well as financial institutions:

- Contingency planning: Financial institutions and supervisors should continue their work on contingency planning and assurance of business continuity in the case of a no-deal Brexit.
- "Low-for-long" scenario: Low interest rates are an important driver of low bank profitability and remain the main risk for the insurance and pension fund sectors.
- Bank profitability: There is a need to further address unprofitable banks and their business models in order to increase the resilience of institutions to a more challenging economic environment.
- Leveraged lending market: Risks related to the leveraged loan market and Collateralized Loan Obligations in the financial sector should be further explored and identified.

- Sustainable finance and ESG risks: Supervisory authorities and financial institutions should continue their work on identifying exposures to climate related risks and facilitate access of investors to sustainable assets.

歐洲聯盟金融監管機構強調潛在不穩定根源的風險

2019年9月12日，歐洲監管機構(ESAs)发布一份关于《歐洲聯盟金融体系中的各种风险及不明朗因素》的报告。

ESAs的报告强调了以下风险是潜在的不稳定因素：

- 围绕英国无协议脱离欧洲联盟的不确定性
- 持续低利率对金融机构的盈利能力和回报构成压力，激励求取回报策略并增加评估风险
- 过渡到更可持续的经济和环境，社会和治理(ESG)相关的风险，导致对气候敏感领域高风险的商业模式的可行性带来可能的挑战。

ESAs要求欧洲和国家主管当局以及金融机构采取以下政策行动：

- 应急计划：在英国无协议脱离欧洲联盟的情况下，金融机构和监管机构应继续开展应急计划和确保业务连续性的工作。
- “长期利率偏低”的情况：低利率导致银行低盈利能力，并是保险和养老基金行业的主要风险。
- 银行盈利能力：有必要进一步解决无利可图的银行及其业务模式，以提高机构抵御更具挑战性的经济环境的能力。
- 杠杆贷款市场：应进一步探索和识别与杠杆贷款市场和金融行业的抵押贷款证券相关的风险。
- 可持续融资和ESG风险：监管机构和金融机构应继续开展工作，确定与气候相关带来的风险，并促进投资者获得可持续资产。

Source 来源：

esma.europa.eu/press-news/esma-news/eu-financial-regulators-highlight-risks-no-deal-brex-it-and-search-yield

Financial Conduct Authority of the United Kingdom Steps up Efforts to Ensure Firms are Getting Ready for a No-Deal Brexit

On September 11, 2019, the Financial Conduct Authority (FCA) of the United Kingdom (UK) is stepping up its efforts to ensure firms are aware of what they need to do to prepare for the potential of a no-deal Brexit. The FCA is urging all firms to consider the implications of a no-deal exit and finalize their preparations.

This is particularly relevant for firms that:

- are a UK business which does any business in the European Economic Area (EEA);
- passport into the UK and have not notified the FCA for entry into the Temporary Permissions Regime;
- have consumers in the EEA;
- transfer personal data from the EEA.

英国金融行为监管局加大力度确保企业为无协议脱离欧洲联盟做好准备

2019年9月11日，英国金融行为监管局(英国金管局)正在加紧努力，确保企业了解其需要为潜在无协议脱离欧洲联盟需要做哪些准备。英国金管局敦促所有企业考虑无协议脱离欧洲联盟的影响，并完成其最终准备工作。

对于以下企业尤为重要：

- 一家英国企业，在欧洲经济区从事任何业务；
- 持有许可进入英国并且没有通知英国金管局加入临时许可制度；
- 其的消费者在欧洲经济区；
- 从欧洲经济区转移个人数据。

Source 来源：

fca.org.uk/news/press-releases/fca-steps-efforts-ensure-firms-are-getting-ready-no-deal-brex-it

Swiss Financial Market Supervisory Authority Publishes 'Stable Coin' Guidelines

On September 11, 2019, the Swiss Financial Market Supervisory Authority (FINMA) published a supplement to its Initial Coin Offerings guidelines outlining how it treats 'stable coins' under Swiss supervisory law.

FINMA will follow the principle of 'same risks, same rules' as well as the specific features of each case. As 'Stable coins' can vary greatly, the requirements under supervisory law may differ depending on which assets (e.g. currencies, commodities, real estate or securities) the 'stable coin' is backed by and the legal rights of its holders. Money laundering, securities trading, banking, fund management and financial infrastructure regulation can all be of relevance.

FINMA also said that planned Libra project as it is presently envisaged would require a payment system license from it.

瑞士金融市场监督管理局公布“稳定币”指引

2019年9月11日，瑞士金融市场监管局(FINMA)公布其初始代币发行指引的补充说明，概述如何根据瑞士监管法处理“稳定币”。

FINMA 将遵循“相同风险，相同规则”的原则以及因应个案的具体情况。由于“稳定币”可能存在很大差异，监管法律的要求可能会有所不同，具体取决于支持“稳定币”的资产（例如货币，商品，房地产或证券）以及其持有人的合法权利。洗钱，证券交易，银行，基金管理和金融基础设施监管都具有相关性。

FINMA 还表示，现时构思的 Libra 计划项目需要获得支付系统许可证。

Source 来源：
finma.ch/en/news/2019/09/20190911-mm-stable-coins

Insurance Authority of Hong Kong Starts Direct Regulation of Insurance Intermediaries

On September 23, 2019, the Insurance Authority (IA) of Hong Kong will take over from the three Self-Regulatory Organizations the responsibility for direct regulation of some 110,000 insurance intermediaries.

Under the new regulatory regime, the IA has introduced changes in areas such as basic academic qualifications, annual Continuing Professional Development training, codes of conduct, and minimum capital and net asset requirements for broker companies. The IA is also responsible for handling complaints related to the conduct of insurance intermediaries, conducting investigation into alleged cases of non-compliance, and taking enforcement action in accordance with the law and established regulations, codes and guidelines.

香港保险业监管局开始直接规管保险中介人

2019 年 9 月 23 日，香港保险业监管局（保监局）接替三个自律规管机构，负责直接规管全香港约 11 万名保险中介人。

在新规管制度下，保监局修订了多方面的要求，例如基本学历、每年持续专业培训、操守守则及经纪公司最低股本和净资产要求等。另外，保监局亦会负责处理与保险中介人操守有关的投诉、调查怀疑违规个案，以及根据法例和既定规例、守则和指引，进行执法行动。

Source 来源：
ia.org.hk/en/infocenter/press_releases/20190923.html

East Asia-Pacific Central Banks Publishes Report “Study on the Implications of Financial Benchmark Reforms”

On September 24, 2019, East Asia-Pacific Central Banks (EMEAP) announced the publication of its Working Group on Financial Markets (WGFM) report “Study on the Implications of Financial Benchmark Reforms” (Report). The study focuses on: (A) LIBOR

discontinuation; (B) EU Benchmarks Regulation; and (C) Reform of local benchmarks, in the EMEAP region.

The Report provides a brief overview of the three areas of financial benchmark reforms, summarizes the results of the WGFM survey and the discussion among EMEAP members and private financial institutions, as well as identifies risk scenarios and proposes some policy recommendations for EMEAP members’ consideration. The purpose of the Report is to raise awareness of market participants, as well as to further enhance the market’s readiness for financial benchmark reforms. It is important for all market participants including banks and corporations to keep updated of latest developments, conduct risk assessments, formulate action plans and work closely with counterparties to develop the necessary arrangements in light of ongoing financial benchmark reforms.

「东亚及太平洋地区中央银行会议」发表研究报告《金融基准改革的影响》

2019 年 9 月 24 日，东亚及太平洋地区中央银行会议 (EMEAP) 宣布其金融市场工作小组 (WGFM) 发布有关《金融基准改革的影响》的研究报告 (报告)。研究重点包括：(A) LIBOR 的终止；(B) 欧盟基准规章；以及 (C) EMEAP 各地区的基准改革。

报告概述了上述三个金融基准改革领域，总结了 WGFM 调查结果以及 EMEAP 成员和私人金融机构之间的讨论，并评定了风险情景和提出一些政策建议供 EMEAP 成员考虑。报告的目的是提高市场参与者的意识，并进一步加强市场对金融基准改革的准备。包括银行和企业在内的所有市场参与者需要及时了解最新动态、进行风险评估、制定行动方案并与交易对手密切合作，以制定针对金融基准改革的必要安排。

Source 来源：
hkma.gov.hk/eng/newsandmedia/pressreleases/2019/09/20190924-4

Hong Kong Monetary Authority and Bank for International Settlements Sign Operational Agreement on the BIS Innovation Hub Centre in Hong Kong SAR

On September 18, 2019, the Bank for International Settlements (BIS) and the Hong Kong Monetary Authority signed an Operational Agreement on the BIS Innovation Hub Centre (Hub) in Hong Kong SAR.

The Hub will identify and develop in-depth insights into critical trends in technology affecting central banking; develop public goods in the technology space geared towards improving the functioning of the global financial system; and serve as a focal point for a network of

central bank experts on innovation. Hub Centers will be set up in Hong Kong, Singapore and Basel, Switzerland, in the initial phase.

香港金融管理局与国际结算银行签订「国际结算银行创新枢纽」辖下香港中心的运作协议

2019年9月18日, 国际结算银行与香港金融管理局签订「国际结算银行创新枢纽」(创新枢纽) 辖下香港中心的运作协议。

创新枢纽将识别及深入探讨对中央银行运作会有深远影响的科技趋势; 开发科技领域的公共产品, 以改善全球金融体系的运作; 以及作为汇聚中央银行创新专家的平台。创新枢纽中心首阶段将于香港、新加坡及瑞士塞尔开设。

Source 来源:

hkma.gov.hk/eng/newsandmedia/pressreleases/2019/09/20190918-4

The Listing Committee of The Stock Exchange of Hong Kong Limited Censures Mr Xiang Liang, Former Executive Director of China Environmental Energy Investment Limited for Breaching the Settlement Agreement and the Committee's Direction

On September 20, 2019, Listing Committee of The Stock Exchange of Hong Kong Limited (Committee)

CENSURES:

Mr Xiang Liang (Mr Xiang), former executive director of China Environmental Energy Investment Limited (Company) (Stock Code: 986)

for a breach of a settlement agreement dated July 31, 2017 (Settlement Agreement), under which he agreed to a direction made by the Committee to attend 24 hours of training on Exchange Listing Rules compliance and director's duties (including 4 hours of training on notifiable and connected transactions) within 90 days after the Exchange's announcement on the Settlement Agreement (Committee's Direction),

AND STATES THAT:

in the Exchange's opinion, Mr Xiang does not satisfy the suitability requirements under Rule 3.09 to act as a director of any issuer listed, or to be listed, on the Exchange.

REGULATORY CONCERN

The Committee regards Mr Xiang's breaches of the Settlement Agreement and the Committee's Direction as egregious and a clear message must be conveyed to the

market that such conduct will not be tolerated and that there are consequences following such breaches.

香港联合交易所有限公司上市委员会谴责中国环保能源投资有限公司前执行董事项亮先生违反和解协议及上市委员会指令

2019年9月20日, 香港联合交易所有限公司上市委员会(上市委员会)

谴责:

中国环保能源投资有限公司(该公司)(股份代号: 986)前执行董事项亮先生(项先生)

违反于2017年7月31日订立的和解协议(和解协议)。根据该和解协议, 项先生接受上市委员会作出的指令, 同意于有关和解协议于联交所公布后90日内, 完成有关《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)(培训)(上市委员会指令),

并声明:

联交所认为, 项先生未能符合《上市规则》第3.09条的合适性规定, 不适合出任联交所上市或将上市发行人的董事。

监管上关注事项

上市委员会认为项先生违反和解协议及上市委员会指令是相当恶劣的行径, 联交所须向市场清晰表明绝不姑息, 并定必追究到底。

Source 来源:

hkex.com.hk/News/NewsRelease/2019/190920news?sclang=en

The Stock Exchange of Hong Kong Limited Issues Announcement in Relation to the Matter of Pacific Andes International Holdings Limited Cancellation of Listing

On September 23, 2019, The Stock Exchange of Hong Kong Limited (the Exchange) announced that with effect from 9:00 am on September 26, 2019, the listing of the shares of Pacific Andes International Holdings Limited (Company) (Stock Code: 1174) will be cancelled under Rule 6.01A of the Listing Rules.

Trading in the Company's securities has been suspended since November 26, 2015. Under Rule 6.01A, the Exchange may delist the Company if trading does not resume by July 31, 2019.

The Company failed to resume trading in its securities

by July 31, 2019. On August 9, 2019, the Listing Committee decided to cancel the listing of the Company's shares on the Exchange under Rule 6.01A (Decision). On August 14, 2019, the Company applied for a review of the Decision. On September 18, 2019, the Company withdrew the review application. Accordingly, the Exchange will cancel the Company's listing with effect from 9:00 am on September 26, 2019.

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

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

香港联合交易所有限公司发布关于太平洋恩利国际控股有限公司取消上市地位的通告

2019年9月23日,香港联合交易所有限公司(联交所)宣布,由2019年9月26日上午9时起,太平洋恩利国际控股有限公司(该公司)(股份代号:1174)的上市地位将根据《上市规则》第6.01A条予以取消。

该公司的股份自2015年11月26日起暂停买卖。根据《上市规则》第6.01A条,若该公司未能于2019年7月31日或之前复牌,联交所会取消其上市地位。

该公司未能于2019年7月31日或之前复牌。上市委员会于2019年8月9日决定根据《上市规则》第6.01A条取消该公司上市地位(该决定)。该公司于2019年8月14日申请复核该决定。该公司于2019年9月18日撤销复核申请。因此,联交所将于2019年9月26日上午9时起取消该公司的上市地位。

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。

聯交所建议,该公司股东如对该公司除牌的影响有任何疑问,应征询适当的专业意见。

Source 来源:

hkex.com.hk/News/NewsRelease/2019/190923news?sclang=en

SmarTone Mobile Communications Limited is Convicted of Direct Marketing Offense Stemming from a Complaint Received by the Office of the Privacy Commissioner for Personal Data, Hong Kong

On September 12, 2019, SmarTone Mobile Communications Limited (SmarTone) faced 23 charges under the Personal Data (Privacy) Ordinance (the Ordinance) at the Kwun Tong Magistrates' Courts. All

charges related to the offence of failing to comply with the requirement from the data subject to cease to use her personal data in direct marketing, contrary to section 35G(3) of the Ordinance. The Company pleaded guilty to 14 charges and was fined HK\$84,000 in total (HK\$6,000 in respect of each charge).

The case stemmed from a complaint received by the office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) in 2017. The complainant received 23 direct marketing text messages or emails from SmarTone between August and December 2017 (in four months' time).

The complainant was a customer of SmarTone which provided mobile telecommunications service to her. In July 2017, she made her opt-out request to SmarTone relating to cessation of using her personal data in direct marketing by phone. However, the complainant still received a direct marketing email from SmarTone in August 2017 and hence complained to PCPD. During the period when PCPD was handling her complaint, the complainant continued receiving direct marketing text messages and emails from SmarTone. The Privacy Commissioner for Personal Data, Hong Kong (Privacy Commissioner) was of the view that SmarTone failed to comply with the opt-out request of the complainant.

The Privacy Commissioner said that this conviction has conveyed a clear and serious message to the public: organizations should not ignore customers' "opt-out" requests. Organizations should develop and implement relevant privacy policies, procedures and guidelines to ensure that employees having access to and using customers' personal data are trained in data handling and protection. They must also communicate effectively to their customers the intended use or provision of their personal data for use in direct marketing and respect the customer's right over such use of their personal data.

The Privacy Commissioner also reminded consumers that if they still receive direct marketing messages after making an opt-out request, they should make a record and gather as many details of the direct marketing messages as possible so as to enable themselves to formulate a valid complaint to the PCPD.

源于香港个人资料私隐专员公署接获的投诉数码通电讯有限公司违法直接促销罪名成立

2019年9月12日,数码通电讯有限公司(数码通)于观塘裁判法院被控违反23项《个人资料(私隐)条例》(私隐条例)的罪行。所有23项控罪均指被告没有依从资料当事人的拒收直销讯息要求,而继续使用其个人资料作直接促销,违反了《私隐条例》第35G(3)条。该公司承认14项控罪,每项控罪分别被判罚款六千港元,合共被判罚款八万四千港元。

个案源于香港个人资料私隐专员公署(公署)在2017年所接获的一宗投诉。投诉人在2017年8月至12月期间(四个月内)收到数码通发出的23个直销讯息或电邮。

投诉人是数码通流动电话服务的客户。2017年7月,投诉人曾透过电话向该公司提出拒收直销讯息要求,但其后仍于2017年8月收到推广该公司的直销电邮。投诉人遂向公署作出投诉。在公署处理个案期间,投诉人仍收到数码通的直销讯息及电邮。公署对投诉作初步处理后,香港个人资料私隐专员(私隐专员)认为数码通未有遵从投诉人拒收直销讯息的要求。

私隐专员表示:这次的定罪个案向公众传递了一个清晰而严肃的讯息,就是机构绝对不应漠视顾客拒收直销讯息的要求。机构应制定及落实相关的私隐政策、程序及指引,确保能查阅及使用客户个人资料的雇员得到相关资料处理及保障的培训。机构亦必须向客户传达拟使用或提供其个人资料作直销的规定,尊重客户对使用其个人资料的决定权。

私隐专员同时提醒消费者,若作出拒收要求后,仍然收到直销讯息,应作出记录,并尽量掌握有关直销的详情作为证据,以便向公署作出投诉。

Source 来源:

pcpd.org.hk/english/news_events/media_statements/press20190912.html

U.S. Securities and Exchange Commission Charges Prudential Subsidiaries for Misleading Funds Generating Tens of Millions in Tax Benefits for Prudential Financial Inc.

On September 16, 2019, the U.S. Securities and Exchange Commission (SEC) charged two subsidiaries of Prudential Financial Inc. (Prudential) with failing to disclose conflicts of interest and making misleading disclosures to the boards for 94 funds they advised.

According to the SEC's order, Prudential subsidiaries AST Investment Services Inc. (AST) and PGIM Investments LLC (PI) served as investment advisers to 94 insurance-dedicated mutual funds. The order finds that in 2006, the funds were reorganized so that Prudential could receive certain tax benefits. Those benefits to Prudential, however, came with negative consequences to the funds.

The SEC's order acknowledges that AST and PI self-reported the conduct to the SEC and voluntarily reimbursed the funds over US\$155 million. The order also censures AST and PI, and requires them to disgorge an additional US\$27.6 million, pay a civil monetary penalty of US\$5 million, and cease and desist

from committing any further violations. AST and PI did not admit or deny the SEC's findings.

美国证券交易委员会指控 Prudential 附属公司误导基金为 Prudential Financial Inc.带来数百万美元的税务优惠

2019年9月16日,美国证券交易委员会(美国证监会)指控 Prudential Financial Inc. (Prudential) 的两家子公司没有披露利益冲突,并且对其建议的94只基金的董事会进行误导性披露。

根据美国证监会的命令, Prudential 的子公司 AST Investment Services Inc. (AST) 和 PGIM Investments LLC (PI) 担任94家保险专用共同基金的投资顾问。该命令发现,在2006年,基金进行了重组,以便 Prudential 可以获得一定的税务优惠。然而, Prudential 获得的这些利益惟给基金带来负面影响。

美国证监会的命令承认 AST 和 PI 向其自行报告该行为并自愿退还超过1.55亿美元的资金。该命令还谴责 AST 和 PI,并要求其额外缴付2760万美元非法所得,支付500万美元的民事罚款,并停止和终止任何进一步的违规行为。AST 和 PI 没有承认或否认美国证监会的调查结果。

Source 来源:

sec.gov/news/press-release/2019-176

Three Raymond James Entities Agrees to Pay US\$15 Million to Settle U.S. Securities and Exchange Commission Charge for Improperly Charging Retail Investors

On September 17, 2019, the U.S. Securities and Exchange Commission (SEC) instituted a settled order against three Raymond James entities for improperly charging advisory fees on inactive retail client accounts and charging excess commissions for brokerage customer investments in certain unit investment trusts (UITs).

The SEC order finds that Raymond James & Associates, Inc., and Raymond James Financial Services Advisors, Inc., failed to consistently perform promised ongoing reviews of advisory accounts that had no trading activity for at least one year.

In addition, the order finds that Raymond James & Associates, Inc., and Raymond James Financial Services, Inc., recommended that their brokerage customers sell UITs before their maturity and buy new UITs without adequately determining whether these recommendations were suitable.

To settle the charges, the three Raymond James entities agreed to be censured and to disgorge approximately

US\$12 million, together with prejudgment interest, and to pay a US\$3 million civil penalty.

三家 Raymond James 公司同意就收取零售投资者不当收费的指控支付 1500 万美元与美国证券交易委员会达成和解

2019 年 9 月 17 日, 美国证券交易委员会 (美国证监会) 就三家 Raymond James 公司不正当地收取非活跃零售客户的咨询费用, 并对投资某些单位投资信托 (UITs) 的经纪客户收取超额佣金; 发出和解命令。

美国证监会的命令指出, Raymond James & Associates, Inc., and Raymond James Financial Services Advisors, Inc. 未能始终如一地对至少一年没有交易活动的咨询客户履行持续审查的承诺。

此外, 该命令还指出, Raymond James & Associates, Inc., and Raymond James Financial Services, Inc. 建议其经纪客户出售未到期的 UITs 并购买新的 UITs; 但没有充分确定这些建议是否适合。

为解决这些指控, 三家 Raymond James 公司同意受到谴责, 并缴付约 1,200 万美元非法所得; 以及判决前的利息, 并支付 300 万美元的民事罚款。

Source 来源:
sec.gov/news/press-release/2019-178

U.S. Securities and Exchange Commission Charges PricewaterhouseCoopers LLP With Violating Auditor Independence Rules and Engaging in Improper Professional Conduct

On September 23, 2019, the U.S. Securities and Exchange Commission (SEC) charged accounting firm PricewaterhouseCoopers LLP (PwC) with improper professional conduct in connection with 19 engagements on behalf of 15 SEC-registered issuers and violating auditor independence rules in connection with engagements for one issuer where the firm performed prohibited non-audit services. The SEC also charged PwC partner Brandon Sprankle (Sprankle) with causing the firm's independence violations. Both PwC and Sprankle have agreed to settle the charges and PwC will pay over US\$7.9 million in monetary relief. The SEC's orders find that PwC and Sprankle violated the auditor independence provisions of the federal securities laws and caused one audit client to violate its obligation to have its financial statements audited by independent public accountants.

美国证券交易委员会指控罗兵咸永道会计师事务所违反审计师独立规则并从事不当专业行为

2019 年 9 月 23 日, 美国证券交易委员会 (美国证监会) 指控会计公司罗兵咸永道会计师事务所 (PwC) 代表 15 家在美国证监会注册的发行人从事 19 项业务涉及不当专业行为, 并违反审计师独立性规则; 即该公司为一家发行人从事禁止非审计服务。美国证监会还指控 PwC 合伙人 Brandon Sprankle (Sprankle) 导致该公司违反独立性的规定。PwC 和 Sprankle 都已同意解决这些指控; PwC 将支付超过 790 万美元的金钱赔偿。

美国证监会的命令指出 PwC 和 Sprankle 违反了联邦证券法的审计师独立性规定, 并导致一名审计客户违反其财务报表必须由独立专业会计师进行审计的责任。

Source 来源:
sec.gov/news/press-release/2019-184

U.S. Securities and Exchange Commission Adopts New Rules and Amendments under Title VII of Dodd-Frank Act

On September 19, 2019, the U.S. Securities and Exchange Commission (SEC) adopted a package of rules and rule amendments under Title VII of the Dodd-Frank Act.

These rules address seven key areas:

- They establish record making requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs).
- They establish record preservation requirements for SBSDs and MSBSPs.
- They establish periodic reporting and annual audit requirements for SBSDs and MSBSPs.
- They establish early warning notification requirements for SBSDs and MSBSPs.
- They establish security count requirements for SBSDs.
- They amend the SEC's existing cross-border rule to provide a means to request substituted compliance with respect to the recordkeeping and reporting requirements for SBSDs and MSBSPs.
- They amend a rule that permits certain SBSDs that are registered as swap dealers and predominantly engage in a swaps business to comply with the Commodity Futures Trading Commission requirements in lieu of SEC's requirements.

美国证券交易委员会通过《多德-弗兰克法案》第七章的新规则和修订

2019 年 9 月 19 日, 美国证券交易委员会 (美国证监会) 通过《多德-弗兰克法案》第七章的一揽子规则和修订。

这些规则涉及七个关键领域:

- 该规则为基于证券的掉期交易商 (SBSD) 和主要基于证券的掉期参与者 (MSBSP) 建立记录要求。
- 该规则确定 SBSB 和 MSBSP 的记录保存要求。
- 该规则为 SBSB 和 MSBSP 制定定期报告和年度审核要求。
- 该规则为 SBSB 和 MSBSP 制定预警通知要求。
- 该规则建立 SBSB 的安全统计要求。
- 该规则修订美国证监会现有的跨境规则, 就 SBSB 和 MSBSP 对记录保存和报告要求的申请; 提供合规替代的方法。
- 该规则修订了一项规则, 允许某些已注册为掉期交易商且主要从事掉期业务的 SBSB, 可以遵守商品期货交易委员会的要求; 以代替遵守美国证监会的要求。

Source 来源:

sec.gov/news/press-release/2019-182

Stock Exchange of Thailand Signs Memorandum of Understanding with Electricity Generating Authority of Thailand to Foster Wholesale Electricity Market

On September 4, 2019, the Stock Exchange of Thailand (SET) signed a Memorandum of Understanding (MoU) with the state-owned Electricity Generating Authority of Thailand (EGAT) to jointly study product or platform development to prepare for wholesale electricity market, paving the way to become the electricity trading hub of ASEAN.

The cooperation between the SET and the EGAT is the start of energy industry development which uses market mechanism to increase energy management efficiency, ability to compete, and overall economy of the country.

The MoU covers one year period starting on from September 4, 2019 to September 3, 2020.

泰国证券交易所与泰国国家电力局签署谅解备忘录以促进电力批发市场

2019 年 9 月 4 日, 泰国证券交易所与泰国国家电力局签署谅解备忘录, 共同研究产品开发或平台, 为电力批发市场做准备, 使成为东盟的电力交易中心。

泰国证券交易所与泰国国家电力局的合作是能源产业发展的启动, 利用市场机制提高能源管理效率, 竞争能力和泰国整体经济。

谅解备忘录从 2019 年 9 月 4 日到 2020 年 9 月 3 日为一年。

Source 来源:

set.or.th/set/newsdetails.do?newsId=15675537058850&sequence=2019087869&language=en&country=US

Hong Kong Securities and Futures Commission Bans Ye Feng for Life

On September 23, 2019, the Hong Kong Securities and Futures Commission (SFC) has banned Mr Ye Feng (Ye), a former vice president of the Bank of Communications Co., Ltd. (BOCOM), from re-entering the industry for life following his conviction for bribery.

The Eastern Magistrates' Court found Ye, responsible for handling securities transactions for BOCOM's clients at the material time, guilty of soliciting illegal commission payments of approximately HK\$919,120 from a client for profits generated from the client's trades in Hong Kong stocks.

The SFC considers that Ye is not a fit and proper person to be licensed or registered to carry on regulated activities as a result of his criminal conviction.

香港证券及期货事务监察委员会终身禁止叶锋重投业界

2019 年 9 月 23 日, 交通银行股份有限公司 (交通银行) 前副总裁叶锋 (叶) 被裁定贿赂罪成后, 遭香港证券及期货事务监察委员会 (证监会) 终身禁止重投业界。

叶在案发时负责为交通银行的客户处理证券交易。东区裁判法院裁定他就一名客户在交易香港股票中所获的利润, 向该客户索取大约 919,120 港元的非法佣金的罪名成立。

鉴于叶被判刑事罪名成立, 证监会认为他并非获发牌或注册进行受规管活动的适当人选。

Source 来源:

sfc.hk/edistributionWeb/gateway/EN/newsandannouncements/news/doc?refNo=19PR86

Hong Kong Securities and Futures Commission Obtains Disqualification Order against Former Executive Director of Life Healthcare Group Limited

On September 18, 2019, the Hong Kong Securities and Futures Commission (SFC) has obtained a disqualification order in the High Court against Ms Michelle Kwok Choi Ha (Kwok), a former executive director of Tack Fat Group International Limited (Tack Fat), now known as Life Healthcare Group Limited.

Kwok was disqualified from being a director or being involved in the management of any listed or unlisted corporation, without leave of the court, for a period of six years effective from September 17, 2019.

The order was made after Kwok admitted her involvement in the following misconduct at the material time:

- Kwok signed various documents pledging the assets of Tack Fat and its subsidiary to secure six loans totaling HK\$98 million for the company without making independent enquiries. These loans were also undisclosed to the shareholders and she had therefore permitted the company to act in breach of the Listing Rules;
- Kwok was involved in approving the grant of share options to two Tack Fat's employees and signed the board minutes without exercising independent judgement as to their financial ability to pay the subscription price of the shares. The allotment of shares to the two employees was not supported by any payment to Tack Fat;
- A subsidiary of Tack Fat entered into an acquisition agreement to acquire 40% of a Cambodian timber company, which transpired to be a sham transaction involving an undisclosed connected party. Although Kwok knew nothing about the transaction, she signed attendance sheets for two board meetings approving the transaction and the Tack Fat's public announcements; and
- Tack Fat failed to maintain a financial management system.

Kwok also accepted that:

- despite being an executive director of Tack Fat, she did not fully understand the nature, responsibilities or requirements of being a director or an executive director;
- she was not a competent executive director of the company;
- she had little or no experience or expertise in managing financial matters of the company and had relied on the other executive directors at the time to do so; and
- she breached her duties as a director in failing to exercise reasonable care and diligence in the management of the company, to act in good faith and in the best interests of Tack Fat, and to implement a sound and prudent system of financial control so as to minimize the risk of misappropriation of company assets.

The High Court found that whilst Kwok did not personally benefit from the misfeasance or misconduct, her conduct reflected a high degree of incompetence and an irresponsible attitude.

The SFC has previously obtained similar orders against two other former executive directors of Tack Fat.

香港证券及期货事务监察委员会取得针对莲和医疗健康集团有限公司前执行董事的取消资格令

2019年9月18日, 香港证券及期货事务监察委员会(证监会)已在高等法院取得针对德发集团国际有限公司(德

发, 现称莲和医疗健康集团有限公司)前执行董事郭彩霞(郭)的取消资格令。

除非经法庭许可, 否则郭不得担任任何上市或非上市法团董事或参与管理任何上市或非上市法团, 为期六年, 由2019年9月17日起生效。

上述命令是在郭承认她在关键时间涉及以下失当行为后颁布的:

- 郭没有进行独立查询便签署多份文件, 将德发及其附属公司的资产抵押, 以为该公司取得六笔合共约9,800万港元的贷款。同时, 该公司亦没有向股东披露这些贷款, 故她曾经容许该公司以违反《上市规则》的方式行事;
- 郭参与批准向德发的两名雇员授出购股权, 且没有就他们在财政上是否有能力支付股份认购价进行独立判断, 便签署董事会会议纪录。该两名雇员在未向德发支付任何款项的情况下获配发股份;
- 德发的一家附属公司订立了一份收购协议, 以收购一家柬埔寨木材公司的40%权益, 但这宗交易被发现是一个骗局, 当中涉及一名没被披露的关连人士。虽然郭对有关交易一无所知, 但她签署了批准有关交易和德发公告的两次董事会会议的出席表; 及
- 德发没有维持财务管理制度。

郭亦承认:

- 虽然她身为德发的执行董事, 但并不完全了解有关作为董事或执行董事的性质、责任或要求;
- 她并不胜任担当该公司的执行董事;
- 她在管理该公司的财务事宜方面拥有很少甚或缺乏经验或专业知识, 并曾经依赖当时的其他执行董事来进行有关工作; 及
- 她违反其董事职责, 没有以合理的谨慎和勤勉尽责的态度管理该公司、真诚地并以符合德发的最佳利益为前提而行事及执行稳健审慎的财务监控制度, 从而将公司资产遭挪用的风险减至最低。

高等法院表示, 虽然郭没有因上述不当行为或失当行为而获得个人利益, 但她的行为反映高度的不胜任及不负责任的态度。

证监会早前已取得针对德发另外两名前执行董事的类似命令。

Source 来源:

[sfc.hk/edistributionWeb/gateway/EN/newsandannouncements/news/doc?refNo=19PR85](https://www.sfc.hk/edistributionWeb/gateway/EN/newsandannouncements/news/doc?refNo=19PR85)

Hong Kong Securities and Futures Commission Commences Market Misconduct Tribunal Proceedings over Alleged Insider Dealing in Meadville Holdings Limited Shares

On September 16, 2019, the Hong Kong Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal against Mr Tom Tang Chung Yen (Tang), the former chairman and an executive director of Meadville Holdings Limited (Meadville), and Ms Li Yik Shuen (Li), for alleged insider dealing in Meadville shares in 2009 .

The SFC alleges that Tang had tipped off Li about a proposed sale of Meadville's principal businesses and Li went on to purchase Meadville shares before Meadville issued an announcement on November 16, 2009 regarding the sale of its core printed circuit board and laminate businesses as well as the distribution of a special dividend.

Li bought a total of over two million Meadville shares over three consecutive trading days and disposed of her entire shareholding in Meadville when trading of its shares resumed on November 17, 2009 and rose more than 40 per cent.

The SFC seeks, among other things, orders for Li to disgorge HK\$546,817, which was the profit she made from disposing of the Meadville shares.

香港证券及期货事务监察委员会在市场失当行为审裁处就涉嫌对美维控股有限公司股份进行的内幕交易展开研讯程序

2019年9月16日,香港证券及期货事务监察委员会在市场失当行为审裁处(审裁处)对美维控股有限公司(美维)前主席兼执行董事唐庆年先生(唐)及李奕璇女士(李)展开研讯程序,指二人涉嫌于2009年就美维股份进行内幕交易。

证监会指唐曾向李泄露美维拟出售其主要业务的消息。李遂在美维于2009年11月16日公布将会出售其核心印刷线路板和面板业务并派发特别股息之前购入美维股份。

李在连续三个交易日合共买入超过200万股美维股份,并在该公司股份于2009年11月17日恢复买卖且股价上升超过40%时,将其在美维持有的全部股权卖出。

证监会寻求审裁处作出裁定,包括颁令要求李交出她因出售美维股份而获得的546,817港元的利润。

Source 来源:
sfc.hk/edistributionWeb/gateway/EN/newsandannouncements/news/doc?refNo=19PR84

Hong Kong Securities and Futures Commission's New Guidelines for Securities Margin Financing Activities Will Take Effect on October 4, 2019

On April 4, 2019, the Hong Kong Securities and Futures Commission released consultation conclusions on proposed Guidelines for Securities Margin Financing Activities (Guidelines).

Under the Guidelines, the maximum total margin loans-to-capital multiple brokers can adopt is five times to avoid excessive leverage. They should also control the concentration risks posed by holding individual or connected securities as collateral and by significant exposure to margin clients. In addition, brokers are required to set prudent triggers for margin calls and strictly enforce margin call policies. Guidance is provided to help brokers set prudent haircut percentages for securities acceptable as collateral and conduct stress testing to assess the financial impact of their securities margin financing activities.

The Guidelines will take effect on October 4, 2019.

香港证券及期货事务监察委员会的新《证券保证金融资活动指引》将于2019年10月4日生效

2019年4月4日,香港证券及期货事务监察委员会就建议的《证券保证金融资活动指引》(该指引)发表咨询总结。

根据该指引,经纪行可采用的最高保证金贷款总额相对于资本的倍数将会设定为五倍,以免杠杆过高。它们亦应控制因持有作为抵押品的个别或关联证券,以及因对保证金客户的重大风险承担而招致的集中风险。此外,经纪行须就发出追缴保证金通知设定审慎的触发水平,并严格执行追缴保证金通知政策。证监会亦提供指引,协助经纪行就可接纳为抵押品的证券设定审慎的扣减百分率,和进行压力测试以评估其证券保证金融资活动带来的财务影响。

该指引将于2019年10月4日生效。

Source 来源:
www.sfc.hk/edistributionWeb/gateway/EN/newsandannouncements/news/doc?refNo=19PR26

Shenzhen Stock Exchange and Budapest Stock Exchange Sign a Memorandum of Understanding on Cooperation

On September 5, 2019, Shenzhen Stock Exchange (SZSE) and Budapest Stock Exchange signed a Memorandum of Understanding (MOU) on cooperation.

According to the MOU, the two sides will further enhance personnel exchanges and experience sharing, promote the market resources connection and information display, and boost innovative cooperation on cross-border index development and other aspects. The two sides will build a China-Hungary investment and

financing platform for scientific and technological innovation based on SZSE's investment and financing service platform for innovation and startup (V-Next platform), so as to build an ecosystem for connecting innovative SMEs with capital in both countries and promote broader cooperation between the two innovation economies through the capital link, thus better serving the real economy progress in both countries.

深圳证券交易所与匈牙利布达佩斯交易所签署合作谅解备忘录

2019年9月5日,深圳证券交易所(深交所)与匈牙利布达佩斯证券交易所签署合作谅解备忘录,标志着两所合作迈入新的阶段。这是深交所推动资本市场服务“一带一路”建设、深化拓展跨境资本市场务实合作新领域的又一积极进展。

根据备忘录内容,双方将进一步加强人员交流和经验互鉴,促进市场资源对接和信息展示,推进跨境指数开发等创新合作。双方将在深交所创新创业投融资服务平台(V-Next平台)基础上,合作建设中匈科技创新投融资服务平台,为两国创新型中小企业与资本对接搭建生态体系,促进双边创新经济通过资本纽带开展更广泛合作对接,更好服务两国实体经济发展。

Source 来源:

szse.cn/English/about/news/szse/t20190909_570530.html

Shenzhen Stock Exchange Bond Market Steadily Promotes the Securitization of Intellectual Property Rights

On September 11, 2019, Shenzhen Stock Exchange launched another intellectual property rights (IPR) securitization product, “Xingye Yuanrong-Guangzhou Development Zone Patent License ABS” (Guangzhou Patent License ABS).

Securities issued under the “Guangzhou Patent License ABS” registered RMB301 million with an interest of 4% for the priority class. The underlying assets are the creditor's rights of underlying sponsors under the patent licensing contracts of 11 technological SMEs in Guangzhou development zone. The underlying patents include patent for invention and patent for utility models. Specifically, the patentee has his/her exclusive patent licensed to the underlying sponsor who then re-license it to the patentee. In this way, the patentee obtains the patent licensing fee in one time, achieving the purpose of financing. Issuing IPR securitization products is conducive to meeting financing demands of scientific and technological enterprises with asset-light operation, accelerating the trading and application of corporate IPR

and opening up the business chain of “financing, trading and operating” in creating IPR.

深圳证券交易所稳步推进知识产权证券化

2019年9月11日,深圳证券交易所推出又一知识产权类证券化产品,“兴业圆融-广州开发区专利许可资产支持专项计划”(广州专利许可专项计划)。

这次“广州专利许可专项计划”发行规模 3.01 亿元人民币,优先级利率4%,基础资产为原始权益人所享有的广州开发区内 11 家科技型中小企业专利许可合同债权,底层专利类型包含发明专利与实用新型专利,具体模式为专利权人以独占许可专利的方式,将其持有的特定专利授权予原始权益人后反授权给专利权人,专利权人一次性获得专利许可使用费实现融资。发行知识产权证券化产品,有助于有效满足轻资产运营科技企业融资需求,促进企业知识产权的交易及运用,打通知识产权创造过程中的“融资、交易、运营”业务链条。

Source 来源:

szse.cn/English/about/news/szse/t20190912_570606.html

World Federation of Exchanges Highlights Competitive Issues to European Securities and Markets Authority Regarding Market Data & Consolidated Tape

On September 9, 2019, the World Federation of Exchanges (WFE) has published a letter in response to the European Securities and Markets Authority's consultation paper on prices for pre- and post-trade data and the consolidated tape for equity instruments.

The WFE's letter details its concern about how the ESMA proposals may in practice give rise to a loss of competitiveness of EU stock markets, and work against the EU's goal of increasing levels of stock-market financing. Exchanges must retain their ability to commercialize their data; to do otherwise would be draconian compared to other major markets, and severely limit the ability of the EU exchanges and trading venues to innovate and compete on global markets. The buy-side may be able to benefit from a consolidated tape of record which allows such institutions to easily examine the execution quality with a comprehensive overview of on- and off-venue liquidity. Such a consolidated tape in the EU should increase transparency; not merely reproduce what is already provided by data vendors.

国际证券交易所联合会公开回应欧洲证券和市场管理局就市场数据收费和泛欧综合交易记录带的咨询文件并强调竞争的问题

2019年9月9日, 国际证券交易所联合会 (WFE) 发布了一封信函, 回应欧洲证券和市场管理局 (ESMA) 关于权益工具的交易前和交易后数据及泛欧综合记录带费用的咨询文件。

WFE 的信函中详细说明其对 ESMA 建议如何在实践中引起欧盟股票市场竞争力的丧失以及违背欧盟提高股市融资水平的目标的担忧。各欧盟交易所必须保持其对市场数据商业化的能力; 否则对比其他市场这将是独裁的做法, 并严重限制了欧盟交易场所在全球市场上进行创新和竞争的能力。买方可能会受益于合并的泛欧交易记录磁带, 这使他们可以通过对场内和场外流动性的全面了解轻易检查交易执行的质量。在欧盟, 这种统一的交易记录磁带应着重增加透明度, 而不只是复制数据供应商已经提供的内容。

Source 来源:

www.world-exchanges.org/news/articles/world-federation-exchanges-highlights-competitive-issues-esma-regarding-market-data-consolidated-tape

Information in this update is for general reference only and should not be relied on as legal advice.

本资讯内容仅供参考及不应被依据作为法律意见。