Update on the Hong Kong Securities and Futures Commission’s Front-loaded Regulatory Approach

On February 7, 2020, the Hong Kong Securities and Futures Commission (SFC) published a special edition of its SFC Regulatory Bulletin to provide an update on its front-loaded approach to address market quality and corporate conduct issues. Case studies illustrate the SFC’s key areas of concern and recent regulatory interventions in initial public offering (IPO) applications and corporate transactions.

In a number of cases, failures on the part of directors, often involving conflicts of interest, played a central role in dubious corporate transactions involving overvalued acquisitions and suspect valuations. Directors are reminded of their obligations to guard shareholders’ interests and remain professional and vigilant when performing their duties.

Other cases highlight the need for IPO sponsors to conduct proper due diligence and exercise professional scepticism when assessing IPO applicants, and stress that sponsors bear responsibility for the due diligence work conducted by third-party professionals.

"Tackling misconduct by listed companies is a high priority," said Mr. Ashley Alder, the SFC’s Chief Executive Officer. "Using our front-loaded approach, we aim to intervene early in situations where market integrity is at serious risk and will not hesitate to hold individuals accountable for their actions."

The SFC’s front-loaded regulatory approach combines early regulatory intervention in listing matters and enhanced supervision of intermediaries which are complemented by focused enforcement actions against firms with important gatekeeping functions and individuals in senior roles.

The following is extracted from the SFC Regulatory Bulletin:

**Listing regulation and corporate transactions**

Under the Securities and Futures (Stock Market Listing) Rules, SFC may raise objections to a listing application in the pre-listing stage or direct the Stock Exchange of Hong Kong Limited (SEHK) to suspend trading in a listed company’s shares. SFC may also query or object to suspicious corporate transactions, for instance, if they do not appear to make commercial sense.

**Supervision**

SFC adopts a front-loaded and risk-based approach to intermediary supervision using a variety of tools, including on-site thematic inspections and offsite monitoring, with a focus on firms’ financial soundness and how they conduct business. SFC places a strong emphasis on senior management accountability under the Manager-In-Charge regime1, introduced in 2017.

**Enforcement**

SFC takes focused enforcement action by exercising its powers under the Securities and Futures Ordinance (SFO) to freeze unlawful proceeds, seek disqualification orders against irresponsible directors, discipline sponsors who have failed to discharge their duties and suspend the share trading of listed companies where broader investor interests are at risk.

**IPO sponsors**

Sponsors play a unique role in ensuring market quality. They coordinate the IPO process, give advice to directors and are centrally involved in the due diligence on a listing applicant. Sponsors have to ensure that the listing document contains sufficient information to enable investors to form a valid and justifiable opinion about the applicant’s business. SFC’s recent thematic review of licensed corporations engaged in sponsor business identified a number of deficiencies in their due diligence practices and internal systems and controls. SFC shares findings and reminded sponsors of their responsibilities and its expected standards.

Due diligence: Recurrent problems in sponsor work include failing to apply professional scepticism and turning a blind eye to obvious red flags uncovered by due diligence. Sponsors should assess the applicant...
It is important to thoroughly understand a listing applicant's business model, industry environment and associated risks. Sponsors should also verify key business assets (including their physical existence and legal entitlements) and seek the assistance of qualified and reliable experts when required.

III. Customer due diligence

In a number of cases, firms’ practices when conducting customer due diligence interviews were unsatisfactory. One sponsor changed its interview plans due to pressure from the listing applicant. Other interviews were arranged by the applicant or conducted in the presence of the applicant’s representatives. In some cases, sponsors failed to independently verify customers’ identities, enquire into key areas such as transactions and sales or follow up on discrepancies.

Sponsors should independently arrange due diligence interviews which are free from interference. Interviews should be conducted at the interviewees’ business premises, and their identities and authority must be verified by multiple items of proof. Sponsors are also responsible for asking unequivocal questions during interviews and keeping complete and accurate notes.

IV. Relying on experts

In one particularly serious case, a sponsor relied on Mainland lawyers to verify certificates of legal title to the listing applicant’s assets on the Mainland and made no attempt to understand the reasonableness of the steps taken to verify actual ownership. The law firm only performed a desktop review of the certificates without independently verifying their authenticity or the actual existence of the assets.

Sponsors should supervise and assess the work of third parties to ensure that the due diligence is reasonable and any concerns have been addressed to their satisfaction.

V. Red flags

One sponsor failed to provide satisfactory explanations for a decrease in the listing applicant’s cost of inventories and increase in its revenue after years of accumulated losses. It also failed to explain the change of two major suppliers. SFC wrote to the applicant to express its concerns and requested an explanation of the sponsor’s independent due diligence. The applicant subsequently terminated the sponsor engagement and did not proceed with the application.

In a separate case, a sponsor failed to conduct reasonable due diligence on short-term loans to customers which were guaranteed by connected persons including its chief executive officer and a
company controlled by its second largest shareholder. The sponsor did not initially disclose these guarantees, and only did so after several queries from SFC.

Another sponsor failed to look into third-party payment arrangements between the listing applicant and its customers despite clear red flags which cast doubt on the authenticity of the signatures on the agreements. Sponsors are advised to review the information collected during the due diligence process with a sense of professional scepticism and thoroughly follow up on any red flags.

VI. Supervision of junior staff

One sponsor principal acted as a “signing responsible officer” for a listing application and was involved neither in the due diligence nor the correspondence with SEHK. Furthermore, the sponsor principal did not provide any guidance to the junior members of the deal team who conducted the customer interviews. The team was apparently supervised by a managing director who was not a sponsor principal but nonetheless was involved in the due diligence on the listing applicant’s assets and operations.

The job of sponsor principals involves onerous duties and demands a high degree of professional judgment and a considerable investment of time. Sponsors need to ensure that each transaction team is properly and adequately supervised by at least one qualified sponsor principal.

Sponsors with a history of returned or rejected listing applications or serious deficiencies and instances of non-compliance may expect more frequent inspection visits and supervisory actions. In addition, these factors may cast doubt on a sponsor’s capability to discharge its responsibilities and indicate potential compliance risk. Future listing applications submitted by these sponsors may be subject to closer scrutiny by the regulators.

Corporate transactions

Tackling misconduct by listed companies remains SFC’s top priority. SFC seeks to address the following misconduct and regulatory concerns using front-loaded, multi-pronged approach, including suspending the trading of a company’s listed securities:

Concealed share ownership and control: Concealed share ownership and control often appears as a component of shell-related activities, networks of companies, shareholders’ vote rigging and “pump and dump” schemes. Some corporate transactions appear to be part of schemes to transfer control without disclosing the identities of the incoming controllers. In some cases, nominee accounts, margin financing, third-party financing arrangements and alternate forms of investment vehicles such as private funds have been used to conceal ownership.

Suspect valuations: Valuation activities are currently unregulated in Hong Kong. Boards are free to appoint any apparently qualified persons as valuers. Listed companies, directors and other professional parties rely on valuation reports and often allow them to override their own professional judgment. SFC issued a statement in 2017 reminding listed company directors of their fiduciary duties in the valuation of corporate transactions along with a circular to remind intermediaries of the duties and standards of care due from financial advisers. Another statement in July 2019 set out common scenarios in corporate transactions involving serious misconduct or lapses by directors or valuers.

Warehousing of shares and nominee arrangements: SFC look carefully at arrangements commonly used for improper purposes including warehousing of shares, where actual control is disguised through the use of nominees and where nominee arrangements are used for vote rigging and market manipulation.

SFC issued a circular in October 2018 reminding intermediaries to be vigilant in identifying potential red flags which may suggest the use of these arrangements for illegitimate purposes, make follow-up enquiries with clients and report suspicious transactions promptly.

Highly dilutive rights issues: In recent years, SFC has seen highly dilutive rights issues and open offers structured or conducted in a manner which appeared to be against the interests of minority shareholders. After discussions with SFC, SEHK introduced a series of measures to address this. Coupled with front-loaded approach, the result was a substantial drop in the number of these transactions. There were also fewer deeply discounted share placements, an area where SFC often directly intervened.

Case studies

I. Overvalued acquisitions

A company proposed to acquire a majority interest in a target with minimal net profit and assets. The vendor would provide a profit guarantee for 2019 which was 20 times higher than the net profit realised in 2017. SFC is concerned that the acquisition might be prejudicial to the interests of shareholders given that the valuation was aggressive and apparently not independently determined. It was also unclear why the company’s directors considered the guaranteed profit to be realistic and achievable.
After SFC issued a letter to the company, it amended the terms of the acquisition but this failed to address the concerns. SFC issued two letters of concern and the company then proposed to acquire only a minority stake in the target at a substantially lower valuation. SFC’s third letter of concern noted that the new valuation seemed arbitrary and without basis. The company subsequently terminated the acquisition.

Another company proposed to acquire a stake in a target which recorded losses for two consecutive years and had net liabilities. The price was determined in accordance with a valuation based on the company directors’ assumptions that the target’s estimated revenue growth rates would exceed 40% and its profit margin would turn positive.

It was unclear how the company’s directors concluded that these assumptions were reasonable or achievable. SFC was concerned whether they had discharged their fiduciary duties as directors and issued a letter of concern to the company. It subsequently announced the termination of the proposed acquisition.

II. Dubious acquisitions

A company proposed to acquire a target from its controlling shareholder by issuing new shares. The target’s principal asset was a Mainland property to be developed into a commercial complex.

SFC raised concerns about the acquisition announcement which disclosed that the Mainland government prohibited the target from developing real estate. The company announced that it had obtained a legal opinion that this would not hinder it from carrying out the development project. After SFC issued a letter of concern to the company, it announced the termination of the transaction.

In another case, a company proposed to acquire a 40.02% stake in a loss-making target with financing from several sources, including Mr A. The company intended to expand its investment property portfolio and develop a new business in the hotel industry, but the target did not appear to have a sizable business in property investment. SFC raised concerns whether there were any undisclosed relationships or arrangements among the company, the target, their respective controlling shareholders and Mr A.

After SFC issued a letter to the company, it announced that it would acquire 19% of the target instead of 40.02%, financed entirely by the company’s internal cash resources. As the transaction was restructured, SFC did not pursue the matter further.

III. Dubious fundraising

A company proposed a placing of new shares to raise money to develop its food and beverage business. The placing price was at steep discounts to net asset value and cash. The company carried no debt. The amount raised from the placing would be small, the company did not appear to have an imminent need for funds and the dilution effect on its shareholders would be significant.

SFC was concerned that the company’s business might be conducted in a manner which is oppressive or unfairly prejudicial to its shareholders. SFC issued an initial letter of concern followed by a letter of mindedness. The company subsequently announced the termination of the transaction.

In another case, SFC suspended the trading of a listed company after it completed two rounds of highly dilutive fundraising and proposed a third round under very suspicious circumstances. SFC discovered undisclosed connections between some of the directors and shareholders who voted in favor of the fundraisings, and some directors also appeared to be connected to the buyers of the company’s shares during the fundraising.

Directors’ duties

Many dubious corporate transactions involve directors’ negligent conduct or failure to avoid conflicts of interest. This is worrying given the important roles directors play in managing the affairs of the company and guarding shareholders’ interests.

Shareholders are highly dependent on company directors having unswerving probity when dealing with conflicts of interest, being professional when deciding on important corporate transactions, and remaining vigilant in promptly and reliably disseminating corporate information.

Directors should ensure that they have first-hand and in-depth knowledge of the business and its prospects and should place themselves in a position where they can fully discharge their duties. Their obligations to investors are embodied in statute, in the common law as well as in non-statutory provisions such as the Listing Rules.

Although independent non-executive directors do not take part in the daily management of listed companies, they nevertheless serve an indispensable role in supervising the corporate management team and protecting shareholders’ interests, and by extension, play an important role in helping to safeguard the overall quality of markets. When they have disagreements with the management team or believe that the interests of shareholders have been compromised, they should openly communicate their views to all shareholders and,
if they choose to resign, disclose to investors substantive reasons for doing so.

Directors and senior officers who fail to discharge their duties should expect tough enforcement action. In a recent enforcement case involving a network of listed companies and their associated entities, SFC worked jointly with the Independent Commission Against Corruption (ICAC) to crack down on a highly suspicious and sophisticated scheme, allegedly designed to defraud shareholders. The joint operation resulted in four former executive directors of Convoy Global Holdings Limited being charged with conspiracy to defraud by the ICAC.

关于香港证券及期货事务监察委员会的前置式监管方针的最新资讯

证券及期货事务监察委员会（证监会）于 2020年2月7日登载《证监会监管通讯》特刊，以提供证监会为解决市场质素和企业操守问题而采取的前置式监管方针的最新资讯。该通讯内的个案研究阐释了证监会在首次公开招股申请及企业交易方面的主要关注事项，以及近期所采取的监管介入行动。

在众多个案中，公司董事失职经常涉及利益冲突，并且是导致可疑企业交易（当中涉及估值过高的收购和可疑的估值）的主要因素之一。证监会提醒董事注意他们有责任保障股东的利益，以及在履行职责时须坚守专业精神和保持警觉。

其他个案则重点阐述首次公开招股保荐人在评核首次公开招股申请人时，需进行适当的尽职审查及抱着专业的怀疑态度，并强调保荐人应就第三方专业人士进行的尽职审查工作承担责任。

证监会行政总裁欧达礼先生（Mr Ashley Alder）表示：
“对付上市公司失当行为是证监会工作的重中之重。证监会的目标是在当市场的廉洁稳健面对严重风险时，采用前置式方针及早介入。证监会非常注重于2017年引入的核心职能主管制度（备注2）下的高级管理层问责性。”

尽职审查：证监会于近期进行的主题检视中，发现从事保荐人业务的持牌法团在尽职审查手法及内部系统和监控措施方面的多项不足之处。证监会已公布检视结果（备注4），并提醒保荐人注意其须负有的责任及证监会的预期标准。

尽职审查：保荐人工作一再出现的问题包括没有抱着专业的怀疑态度，及对在尽职审查发现的明显的预警迹象视而不见。保荐人应抱着严格查探的心态，审慎而客观地评估申请人，并特别留意一些与他们正寻求了解的事实互相矛盾或令该等事实的可靠性备受质疑的资料。保

得人应保存尽职审查的详细纪录，以证明他们已遵守监管规定。

尽职审查：另一个问题是过度依赖如律师及会计师等的第三方专业人士。保荐人最终仍然须对他们委聘的代理人所进行的尽职审查的质素和内容负责。他们必须监督其代理人，并确保其代理人充分了解有关工作的深入程度及范围。他们亦应信纳其可以合理地依赖代理人进行有关工作。
在某个特别严重的个案中，一名保荐人依赖内地律师核实上市申请人所持内地资产的法定拥有权的证明文件，但却未有尝试了解实际拥有权的核实程序是否合理。该律师事务所仅检视有关资产证明文件，而没有独立地核实其真实性或资产是否确实存在。

保荐人应监督并评估第三方的工作，确保尽职审查程序是合理的，以及对任何关注事项的处理方式均感满意。

v. 预警迹象

一名保荐人未能合理地解释，为何上市申请人连年累积亏损，但却出现存货成本下跌及收入增加的情况。该保荐人亦无法解释更换两名主要供应商的原因。证监会致函申请人并对此表示关注，同时要求就保荐人的独立尽职审查作出解说。申请人其后解雇该名保荐人，并终止上市申请。

在另一个案中，保荐人未有就客户获得的短期贷款进行合理尽职审查，而该等贷款乃由多名关连人士（包括其行政总裁及一家由第二大股东控制的公司）提供担保。该保荐人起初没有披露上述担保数据，在证监会的几次查问下才作出披露。

另一名保荐人尽管面对明显的预警迹象，但并没有调查上市申请人与其客户之间的第三方付款安排，令人对多份协议上签名的真伪感到怀疑。保荐人应该抱着专业的怀疑态度，审阅在尽职审查过程中所收集的数据，以及彻底地跟进任何预警迹象。

vi. 监督初级职员

一名保荐人主要人员在执行上市申请中以"签署负责人员"身分行事，但却没有参与尽职审查及与联交所通讯的工作。此外，该保荐人主要人员并没有在进行客户访谈的交易小组主要成员提供任何指引。交易小组似乎由一名董事总经理监督，该名成员不是保荐人的主要人员，但参与对上市申请人资产及业务的尽职审查工作。

保荐人主要人员肩负繁重的职责，需要具备高水平的专业判断能力，并须投入相当大量的时间履行职务。保荐人需要确保每个交易小组都由至少一名合资格保荐人主要人员进行妥善及充分的监督。

保荐人若过去曾经有上市申请被退回或拒绝或出现严重缺失及不合规定情况，预期可能会受到更频繁的视察及监管行动。此外，这些因素可能令保荐人履行其责任的能力备受质疑，并反映潜在的合规风险。这些保荐人日后呈交的上市申请亦可能会受到较严格的监管审查。

企业交易
打击上市公司的失当行为仍然是证监会的首要工作。证监会采取前置式及多管齐下的方针（包括暂停公司上市证券的交易），务求应对以下的失当行为和监管关注事项：

被隐瞒的股份拥有权及控股权：在壳股活动、相互联系的公司网络、股东的“种票”和“炒高抛售”的计划中，股份拥有权及控股权经常被隐瞒。一些企业交易似乎是以不披露新控权人身份的方式转移控股权计划的一部分。

在某些个案中，代名人帐户、保证金融资、第三方融资安排以及另类形式的投资工具（例如私人基金）都曾被用来隐瞒拥有权。

可疑估值：目前，估值活动在香港不受监管。董事会可自行委任看似符合资格的人士担任估值师。上市公司、董事及其他专业人士依赖估值报告，并且经常容许这些报告凌驾于自己的专业判断之上。证监会曾于2017年发表一份声明（备注5），提醒上市公司董事在企业交易估值中负有受信责任，并同时藉一份通函提醒中介人注意财务顾问在审慎行事方面的职责及应达到的标准。证监会于2019年7月发表另一份声明（备注6），列出企业交易中涉及董事或估值师的严重失当行为或失职的常见情况。

以他人名义代持股份及代名人安排：证监会会仔细审查通常被用作无当用途的安排，包括“以他人名义代持股份”的安排，当中涉及利用代名人掩饰实际控股权，以及利用有关安排进行“种票”和市场操纵。

证监会于2018年10月发出了一份通函（备注6），提醒中介人应保持警觉，留意那些可能意味着为不合法目的使用上述安排的潜在预警迹象，并向客户作出跟进查询及迅速举报可疑交易。

具高度摊薄效应的供股：近年来，证监会注意到具高度摊薄效应的供股及股份公开发售以可能不利于小股东的结构或方式进行。联交所在与证监会磋商后，引入了一系列措施以应对有关问题，再加上证监会所采取的前置式监管方针，有关交易的数目因而大幅减少。由于证监会一般会直接介入涉及股份以重大折让的价格进行配售的个案，故有关个案的数目亦有所下降。

个案研究：

i. 估值过高的收购

某公司建议收购一家目标公司的多数权益，而该目标公司只有极少的纯利及资产。卖方所提供的2019年利润保证，较2017年所得的纯利高出20倍。证监会关注到，由于这宗收购估值进取而且显然不是经由独立方式厘定，股东利益可能会受到损害。该目公司未有清楚解说为何其董事认为所保证的利润是切实及可达致的。

在证监会致函该目标公司后，该公司修订了收购条款，但此举并不能解决证监会所关注的问题。在证监会发出两封关注函后，该收购建议被撤回。

另一家公司建议收购一家目标公司的权益，而该目标公司已连续两年录得亏损，并具有净负债。用以厘定收购价的估值，是建基于该目标公司董事认为目标公司的估计收入增长率会超过40%及其会转亏为盈的假设。

该公司未有清楚解说其董事如何得出该等假设是合理或可达成的结论。证监会怀疑他们有否履行其作为董事的受信责任，并向该公司发出关注函。该公司其后公布终止该宗建议收购。

ii. 可疑的收购

某公司建议透过发行新股，向一家目标公司的控股股东收购该目标公司。目标公司的主要资产是一项将会发展为商业综合项目的内地物业。

证监会留意到有关收购公告披露内地政府禁止目标公司从事房地产开发，遂就此向该公司提出关注。该公司其后公布，它所取得的法律意见指这项禁令不会妨碍其进行该发展项目。然而，在证监会再次发出关注函后，该公司亦公布终止交易。

在另一宗个案中，某公司建议收购一家目标公司的40.02%权益，而用作收购的资金则来自多个来源（包括A先生），该公司拟扩大其投资物业组合及在酒店业发展新业务，但目标公司的物业投资业务看起来规模不大。对于该公司、目标公司、其各自的控股股东及A先生之间是否存在任何未披露的关系或安排，证监会向该公司提出关注。

在证监会发出函件后，该公司公布将会收购目标公司的19%而非40.02%的权益。在有关交易已重启，证监会进一步采取行动。

iii. 可疑的资金筹集

某公司建议配售新股，以筹集资金来发展其食品及饮料业务。该公司的资产净值及现金流有大幅折让，配售价则低于公司的资产净值及现金有大幅折让，且会对该公司股东造成重大的摊薄效应。
证监会关注到，该公司的业务可能以压迫或不公平地损害其股东的方式进行。证监会向该公司发出初步关注函，随后再发出反对意向书。该公司其后公布终止交易。

在另一宗个案中，某上市公司完成了两轮具高度摊薄效应的资金筹集，并在非常可疑的情况下建议进行第三轮资金筹集，证监会遂暂停该公司的股份买卖。证监会发现，部分董事与投票赞成筹集资金的股东之间有未经披露的关系，而某些董事亦看似与在上述资金筹集期间买入该公司股份的人有关连。

董事的责任

许多可疑的企业交易都涉及董事行事疏忽或没有避免利益冲突。由于董事在管理公司事务及保障股东利益方面担当重要角色，这个情况令人忧虑。

股东非常依赖公司董事在处理利益冲突时保持廉洁持正，在作出重要的企业交易决定时坚守专业精神，并保持警觉，务求迅速和可靠地公布企业信息。

董事应确保他们就公司业务及前景具有第一手和深入的知识，及应使自己能够全面履行责任。董事对投资者的责任载录于法例条文、普通法及《上市规则》等非法定条文内。

虽然独立非执行董事不参与上市公司的日常管理，但他们责任在监督企业管理团队及保障股东利益方面担当不可或缺的角色，并在协助捍卫本港市场的整体质素方面发挥重要作用。当独立非执行董事与管理团队意见相左或认为股东利益受损时，独立非执行董事应向全体股东公开传达其意见，而他们如果选择请辞，便应向投资者披露这样做的实质原因。

董事及高级人员如没有履行其责任，可能会面临严厉的执法行动。在最近一宗涉及上市公司及其有联系公司的网络的执法个案中，证监会与廉政公署合作瓦解了一个涉嫌旨在欺诈股东且非常可疑及精密的计划。证监会的联合行动导致康宏环球控股有限公司四名前执行董事被廉政公署控以串谋欺诈罪。

The Hong Kong Securities and Futures Commission (SFC) has reprimanded and fined BMI Securities Limited (BMISL) HK$3.7 million for failures in complying with anti-money laundering (AML) and counter-terrorist financing (CFT) regulatory requirements (Note 1).

The SFC has also suspended BMISL’s responsible officer, Ms Maggie Tang Wing Chi, for five and a half months from February 11, 2020 to July 25, 2020 (Note 2).

In 2016, a number of BMISL’s clients subscribed for the placing shares of two Hong Kong-listed companies and subsequently transferred most or all of these shares to third parties using bought and sold notes in a series of off-exchange transactions.

The off-exchange transactions, whose consideration ranged from HK$4.4 million to HK$855.9 million apiece, displayed various suspicious features including (Note 3):

• the subscription amount for the placing shares was incommensurate with the clients’ financial profile; and
• the clients did not conduct any other transactions in their BMISL accounts apart from acquiring and disposing of the placing shares.

The SFC found that, during the period from May 1, 2016 to November 30, 2017, BMISL failed to:

• implement adequate internal controls to mitigate the risk of money laundering and terrorist financing associated with suspicious transactions conducted through bought and sold notes;
• identify, and conduct proper enquiries and sufficient scrutiny on, suspicious transactions and consider reporting them to the Joint Financial Intelligence Unit where appropriate;
• perform appropriate customer due diligence and keep customer information up-to-date and relevant; and
• put in place adequate and effective procedures for the identification of politically exposed persons and the screening of terrorist and sanction designations.

The SFC is of the view that BMISL’s conduct was in breach of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML Guideline) (Note 4).

The SFC further found that BMISL’s breaches were attributable to Tang’s failure to discharge her duties as a responsible officer and a member of BMISL’s senior management. In particular, Tang failed to identify and conduct appropriate enquiries on the suspicious transactions and to ensure that BMISL had established and implemented adequate and effective AML/CFT controls.


Hong Kong Securities and Futures Commission Reprimands and Fines BMI Securities Limited HK$3.7 million and Suspends its Responsible Officer for Breaches of Anti-money Laundering Regulatory Requirements
systems to mitigate the risks of money laundering and terrorist financing.

In deciding the sanctions against BMISL, the SFC took into account that:

• a clear and deterrent message needs to be sent to the market that AML/CFT failures will not be tolerated;
• the cooperation of BMISL and Tang with the SFC in resolving the SFC’s concerns;
• BMISL has taken remedial actions to enhance its AML/CFT systems and controls;
• BMISL has undertaken to provide the SFC with a report prepared by an independent reviewer within twelve months to confirm that all the identified concerns are satisfactorily rectified;
• BMISL and Tang have otherwise clean disciplinary records with the SFC; and
• BMISL’s financial situation.

Notes:

1. BMISL is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities) regulated activity.

2. Tang is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity on behalf of BMISL and Type 9 (asset management) regulated activity on behalf of BMI Funds Management Limited. Tang has been a responsible officer of BMISL since February 17, 2016.

3. The SFC has reported the suspicious activities to the Joint Financial Intelligence Unit. The SFC’s investigation focused on the adequacy and effectiveness of BMISL’s AML/CFT systems and controls.

4. Section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline (issued in April 2015) require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing, including implementation of appropriate internal AML/CFT policies, procedures and controls to ensure compliance with relevant legal and regulatory requirements.

A copy of the Statement of Disciplinary Action is available at:


香港证券及期货事务监察委员会因邦盟汇骏证券有限公司违反打击洗钱的监管规定而对其作出谴责和罚款 370万港元并暂时吊销其负责人牌照

邦盟汇骏证券有限公司（邦盟汇骏）因没有遵从有关打击洗钱及恐怖分子资金筹集的监管规定，遭香港证券及期货事务监察委员会（证监会）谴责及罚款 370万港元（注 1）。

证监会亦暂时吊销邦盟汇骏的负责人邓颖芝（女）的牌照，为期五个半月，由 2020 年 2 月 11 日起至 2020年 7 月 25 日止（注 2）。

邦盟汇骏的数名客户曾在 2016 年认购两家香港上市公司的配售股份，其后在一系列场外交易中以买卖票据的方式，将大部分或所有有关股份转让给第三方。

这些价值介乎 440 万港元至 8.559 亿港元的场外交易具有多项可疑的特点，包括（注 3）：

• 配售股份的认购款额与有关客户的财务状况不相符；及
• 除了买卖配售股份外，有关客户没有在其邦盟汇骏的帐户进行任何其他交易。

证监会发现，在 2016 年 5 月 1 日至 2017 年 11 月 30日期间，邦盟汇骏没有：

• 实施足够的内部监控措施，以减低与透过买卖票据进行的可疑交易有关的洗钱及恐怖分子资金筹集风险；
• 识别可疑交易，并就此进行恰当的查询及足够的审查，以及在适当情况下考虑将有关交易向联合财富情报组汇报；
• 进行适当的客户尽职审查，以及确保客户资料反映现况及仍属相关；及
• 制定足够及有效的程序，以识别政治人物和根据恐怖分子及制裁名单进行筛选。

证监会认为，邦盟汇骏的行为违反了《打击洗钱及恐怖分子资金筹集条例》（《打击洗钱条例》）及《打击洗钱及恐怖分子资金筹集指引》（《打击洗钱指引》）（注 4）。
证监会进一步发现，邦盟汇骏的违规行为是邓没有履行其作为负责人员及邦盟汇骏的高级管理人员的职责所致。特别是，邓没有识别可疑交易及就此进行适当的查询，亦没有确保邦盟汇骏已设立及执行足够和有效的打击洗钱及恐怖分子资金筹集制度，以减低洗钱及恐怖分子资金筹集风险。

证监会在决定对邦盟汇骏的处分时，已考虑到以下情况：

- 有必要向市场传递清晰及具阻吓力的讯息，表明我们不会容忍有关打击洗钱及恐怖分子资金筹集的缺失；
- 邦盟汇骏及邓与证监会合作解决证监会的关注事项；
- 邦盟汇骏采取了补救行动，以加强其打击洗钱及恐怖分子资金筹集制度及监控措施；
- 邦盟汇骏承诺在 12 个月内向证监会提供一份由独立检讨机构编撰的报告，以确认所有已识别的关注事项均获得圆满解决；
- 邦盟汇骏及邓过往并无遭受证监会纪律处分的纪录；及
- 邦盟汇骏的财务状况。

注：

1. 邦盟汇骏根据《证券及期货条例》获发牌进行第 1 类（证券交易）受规管活动。
2. 邓根据《证券及期货条例》获发牌代表邦盟汇骏进行第 1 类（证券交易）受规管活动及代表邦盟汇骏基金管理有限公司进行第 9 类（提供资产管理）受规管活动。邓自 2016 年 2 月 17 日起担任邦盟汇骏的负责人员。
3. 证监会已向联合财富情报组报告这些可疑活动。本会的调查聚焦于邦盟汇骏是否有充足和有效的打击洗钱及恐怖分子资金筹集的系统及监控措施。
4. 《打击洗钱条例》附表 2 第 23 条及《打击洗钱指引》（于 2015 年 4 月发出）第 2.1 段规定，持牌法团必须采取一切合理措施，确保设有合适的保障措施，以减低洗钱及恐怖分子资金筹集的风险，当中包括执行适当的内部打击洗钱及恐怖分子资金筹集政策、程序及监控措施，以确保遵从相关的法律及监管规定。
CGML is licensed under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities. CGML was acquired by First Financial Holdings Limited in November 2016.

Article 16 of the Securities Investment Trust and Consulting Act of Taiwan provides, among other things, that “No person may, itself or as an agent, engage within the Republic of China in the public offer, sale, or investment consultancy of offshore funds without first obtaining approval from the Competent Authority or effective registration upon filing with the Competent Authority.” The Competent Authority is the Financial Supervisory Commission R.O.C. (Taiwan).

General Principle 7 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) require a licensed corporation to comply with, and implement and maintain measures appropriate to ensuring compliance with, the law and applicable regulatory requirements. Paragraph 4.2 of the Code of Conduct requires a licensed corporation to supervise diligently persons employed to conduct its business.

Please see the circular titled “Regulatory Compliance regarding Cross-border Business Activities” dated 28 January 2014.


瑞兴全球的持牌代表于 2014 年 7 月至 2015 年 4 月期间曾在台湾营运和执行销售职能，及向客户分销投资产品。瑞兴全球不但没有确保其遵守台湾的适用法律及规例，亦没有充分监督其代表，使证监会关注到其是否为持牌法团的适当人选（注 3）。

证监会于 2014 年 1 月向中介人发出一份通函，提醒他们在经营跨境业务时须负有的责任，包括确保所有相关法律及规例获得遵守的重要性（注 4）。证监会认为，中介人在经营受规管活动业务时的可靠性，建基于他们有否遵守适用的法律及规例。

注：

1. 瑞兴全球根据《证券及期货条例》获发牌经营第 1 类（证券交易）、第 4 类（就证券提供意见）及第 9 类（提供资产管理）受规管活动的业务。瑞兴全球于 2016 年 11 月被第一金融控股有限公司收购。

2. 台湾的《证券投资信托及顾问法》第 16 条规定（除其他事项外）“任何人非经主管机关核准或向主管机关申报生效后，不得在中华民国境内从事或代理募集、销售、投资顾问境外基金。”文中所指的主管机关是台湾金融监督管理委员会。

3. 《证券及期货事务监察委员会持牌人或注册人操守准则》（简称《操守准则》）第 7 项一般原则及第 12.1 段规定，持牌法团必须遵守法例及适用监管规定，并须实施及维持适当措施以确保合规守法。《操守准则》第 4.2 段规定，持牌法团必须勤勉尽责地监督其雇用以代表其经营业务的人士。

4. 请参阅 2014 年 1 月 28 日题为“有关跨境业务活动的法规遵守事宜”的通函。
Hong Kong Court of First Instance Dismisses Challenge to Hong Kong Securities and Futures Commission’s Investigative Powers

On February 18, 2020, the Hong Kong Court of First Instance has dismissed judicial review applications against the Securities and Futures Commission (SFC) in connection with a search operation it conducted for ongoing investigations into suspected breaches of the Securities and Futures Ordinance (SFO) (Note 1).

The judicial review applications were brought separately and concurrently by Mr Cyril Cheung Ka Ho, Mr To Hang Ming, Mr To Lung Sang, Mr Jacky To Man Choy and Mr Wan Wai Lun. They sought to challenge search warrants issued by two Magistrates in July 2018 on the basis that they were unlawful or invalid for want of specificity.

They also alleged that seizures of the digital devices pursuant to the search warrants, the SFC’s continued retention of the devices and notices issued by the SFC under the SFO for the production of emails or passwords for the devices or email accounts were unlawful, and interfered with their right to privacy under the Basic Law and the Hong Kong Bill of Rights.

The Hon Mr Justice Anderson Chow rejected their applications and held in his judgment that:

- the search warrants plainly authorised digital devices to be seized by the SFC. The words “document” or “record” in the SFO should not be narrowly construed, having regard to the manner in which information and data are nowadays being created, transmitted and stored in digital devices;
- the right to privacy is not absolute. The seizures and retention of the digital devices were rationally connected to a legitimate aim. They were no more than reasonably necessary in the circumstances of the cases and they did not result in an unacceptably harsh burden on the five applicants on the facts of the present cases; and
- the SFC is empowered, under the SFO, to require the applicants to provide means of access to email accounts and digital devices which contain, or are likely to contain, information relevant to its investigations even though the email accounts and digital devices would likely also contain other personal or private materials which are not relevant to the SFC’s investigations.

The applicants were ordered to pay the SFC’s legal costs.

The SFC’s investigations are ongoing.

Note:

1. The judgment is available on the Judiciary’s website (Court Reference: HCAL 2132, 2133, 2134, 2136 & 2137/2018).

香港原讼法庭驳回就香港证券及期货事务监察委员会的调查权力提出的反对

2020年2月18日，香港原讼法庭驳回针对证券及期货事务监察委员会（证监会）就与多项仍在进行的调查有关的搜查行动所提出的司法复核申请。有关调查涉及在《证券及期货条例》下的涉嫌违规行为（注1）。

上述司法复核申请由张家豪（男）、陶恒明（男）、陶龙生（男）、杜文财（男）及温伟麟（男）单独及同时提出。他们就两名裁判官在2018年7月发出的搜查令提出反对，理由是有关搜查令因欠缺具体性而属不合法或无效。

他们亦指称，证监会依据有关搜查令检取数码装置，持续扣押这些装置，及根据《证券及期货条例》发出通知以要求交出电邮或这些装置或电邮帐户的密码，也属不合法，并侵扰了他们在《基本法》及《香港人权法案》下的私隐权。

周家明法官驳回他们的申请，并在判决书中表示：

- 搜查令清楚地授权证监会检取数码装置。考虑到今日今日资料及数据产生、传送及储存于数码装置的方式，《证券及期货条例》中“文件”或“纪录”的字眼不应作狭义的解释。
- 私隐权并不是绝对的。检取及扣押数码装置是与合法目的有关连的合理行动，在有关个案的情况下并没有超过合理地必要的范围，就现时个案的事实而言也没有对五名申请人造成不可接受的严苛负担；
- 证监会根据《证券及期货条例》获赋权，可要求申请人就载有或相当可能载有与证监会调查有关的资料的电邮帐户及数码装置提供接达途径，即使有关电邮帐户及数码装置相当可能亦载有与证监会调查无关的其他个人或私人材料亦然。

有关申请人被命令缴付证监会的法律费用。

证监会的调查仍在进行中。

注：
On October 15, 2018, the Listing (Review) Committee upheld the Listing Committee’s decision to cancel the Company’s listing. The Company then requested for a further review by the Listing Appeals Committee on this decision. On June 14, 2019, the Listing Appeals Committee upheld the Listing (Review) Committee’s decision.

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

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

The Company’s shares will be delisted from the Stock Exchange of Hong Kong Limited (HKSE) on 9:00 am on February 14, 2020.

The Company was put into the third delisting stage under Practice Note 17 to the Listing Rules on January 13, 2017. Before expiry of the third delisting stage on July 24, 2017, the Company submitted a resumption proposal. On August 24, 2017, the Listing Committee considered the resumption proposal not viable and therefore decided to cancel the Company’s listing.

On September 5, 2017, the Company sought a review by the Listing (Review) Committee on the delisting decision. On December 12, 2017, the Listing (Review) Committee decided to set aside the cancellation of the Company’s listing status and allowed the Company to implement the resumption proposal subject to its compliance with certain conditions, details of which are set out in the Company’s announcement dated December 13, 2017.

On July 3, 2018, the Listing Committee was not satisfied that the Company has fully met the aforesaid conditions and therefore decided to cancel the listing of the Company’s shares on HKSE. On July 11, 2018, the Company sought a review by the Listing (Review) Committee on the Listing Committee’s decision.

On February 12, 2020, The Stock Exchange of Hong Kong Limited (HKSE) announces that with effect from 9:00 am on 14 February 2020, the listing of the shares of Nickel Resources International Holdings Company Limited (the Company) will be cancelled in accordance with the delisting procedures under Practice Note 17 to the Listing Rules (the Delisting Procedures).

HKSE announces that the listing of the Company’s shares will be cancelled with effect from 9:00 am on February 14, 2020 in accordance with the Delisting Procedures. Practice Note 17 to the Listing Rules formalises the procedures to be adopted to delist long-suspended companies.

Trading in the Company’s shares has been suspended since April 1, 2015.

On February 12, 2020, The Stock Exchange of Hong Kong Limited (HKSE) announces that with effect from 9:00 am on 14 February 2020, the listing of the shares of Nickel Resources International Holdings Company Limited (the Company) will be cancelled in accordance with the delisting procedures under Practice Note 17 to the Listing Rules (the Delisting Procedures).

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On October 15, 2018, the Listing (Review) Committee upheld the Listing Committee's decision to cancel the Company's listing. The Company then requested for a further review by the Listing Appeals Committee on this decision. On June 14, 2019, the Listing Appeals Committee upheld the Listing (Review) Committee's decision.

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

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

The Stock Exchange of Hong Kong Limited Announces Cancellation of Listing of Nickel Resources International Holdings Company Limited (Incorporated in the Cayman Islands with Limited Liability) (Stock Code: 2889)

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On July 3, 2018, the Listing Committee was not satisfied that the Company has fully met the aforesaid conditions and therefore decided to cancel the listing of the Company’s shares on HKSE. On July 11, 2018, the Company sought a review by the Listing (Review) Committee on the Listing Committee’s decision.

On October 15, 2018, the Listing (Review) Committee upheld the Listing Committee's decision to cancel the Company's listing. The Company then requested for a further review by the Listing Appeals Committee on this decision. On June 14, 2019, the Listing Appeals Committee upheld the Listing (Review) Committee's decision.

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

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

The Stock Exchange of Hong Kong Limited Announces Cancellation of Listing of Nickel Resources International Holdings Company Limited (Incorporated in the Cayman Islands with Limited Liability) (Stock Code: 2889)

On February 12, 2020, The Stock Exchange of Hong Kong Limited (HKSE) announces that with effect from 9:00 am on 14 February 2020, the listing of the shares of Nickel Resources International Holdings Company Limited (the Company) will be cancelled in accordance with the delisting procedures under Practice Note 17 to the Listing Rules (the Delisting Procedures).

HKSE announces that the listing of the Company’s shares will be cancelled with effect from 9:00 am on February 14, 2020 in accordance with the Delisting Procedures. Practice Note 17 to the Listing Rules formalises the procedures to be adopted to delist long-suspended companies.

Trading in the Company’s shares has been suspended since April 1, 2015.

The Company was put into the third delisting stage under Practice Note 17 to the Listing Rules on January 13, 2017. Before expiry of the third delisting stage on July 24, 2017, the Company submitted a resumption proposal. On August 24, 2017, the Listing Committee considered the resumption proposal not viable and therefore decided to cancel the Company’s listing.

On September 5, 2017, the Company sought a review by the Listing (Review) Committee on the delisting decision. On December 12, 2017, the Listing (Review) Committee decided to set aside the cancellation of the Company’s listing status and allowed the Company to implement the resumption proposal subject to its compliance with certain conditions, details of which are set out in the Company’s announcement dated December 13, 2017.

On July 3, 2018, the Listing Committee was not satisfied that the Company has fully met the aforesaid conditions and therefore decided to cancel the listing of the Company’s shares on HKSE. On July 11, 2018, the Company sought a review by the Listing (Review) Committee on the Listing Committee’s decision.
On February 11, 2020, the U.S. Securities and Exchange Commission (SEC) filed charges against an Ohio-based businessman who allegedly orchestrated a digital asset scheme that defrauded approximately 150 investors, including many physicians.

The SEC alleges that Michael W. Ackerman, along with two business partners, raised at least US$33 million by claiming to investors that he had developed a proprietary algorithm that allowed him to generate extraordinary profits while trading in cryptocurrencies. According to the SEC’s complaint, physicians in particular made investments in two entities, Q3 Trading Club and Q3 I LP, when they were introduced to the digital currency investment opportunity by one of the business partners who also is a physician. The SEC’s complaint alleges that Ackerman misled investors about the performance of his digital currency trading, his use of investor funds, and the safety of investor funds in the Q3 trading account. The complaint further alleges that Ackerman doctored computer screenshots taken of Q3’s trading account to create the illusion that Q3 was highly invested in cryptocurrencies and was extraordinarily profitable, holding assets of as much as US$310 million. In reality, as alleged, at no time did Q3’s trading account hold more than US$6 million and Ackerman was personally enriching himself by using US$7.5 million of investor funds to purchase and renovate a house, purchase high end jewelry, multiple cars, and pay for personal security services.

“As alleged in our complaint, Ackerman lured investors, many in the medical profession, into falsely believing that he generated extraordinary profits from his algorithmic trading strategy,” said Eric I. Bustillo, Director of the SEC’s Miami Regional Office. “Ackerman exploited popular interest in digital assets as a means to obtain millions of dollars for his personal use.”

Many fraudsters take advantage of the trust that having something in common creates, such as a common profession. The SEC’s Office of Investor Education and Advocacy and the Division of Enforcement’s Retail Strategy Task Force have issued an Investor Alert with tips on how investors should avoid investment decisions based solely on common ties with someone recommending or selling the investment.

The SEC’s complaint, filed in federal court in New York, charges Ackerman with violations of the antifraud provisions of the federal securities laws. The SEC seeks a permanent injunction, disgorgement plus prejudgment interest, and a civil penalty. In parallel actions, the U.S. Attorney’s Office for the Southern District of New York and the Commodity Futures Trading Commission filed charges against Ackerman arising from similar conduct.

U.S. Securities and Exchange Commission Charges Orchestrator of Cryptocurrency Scheme Ensnaring Physicians

2020年2月11日，美国证券交易委员会（美国证监会）对总部位于俄亥俄州的一名商人提起诉讼。该商人涉嫌策划了一项数字货币计划，该计划欺骗了大约150名投资者，包括许多医生。

美国证券交易委员会指控加密货币计划策划者诱骗医生投资者

美国证监会指控迈克尔·W·阿克曼（Michael W. Ackerman）以及两个商业伙伴声称他已开发出一种专有算法，使他能够在交易加密货币时产生非凡的利润，借此他们筹集了超过3300万美元的资金。根据投诉，两个商业伙伴之一为医生，其向投资者介绍数字货币投资机会，医生主要对Q3 Trading Club和Q3 I LP这两个实体进行了投资。美国证监会投诉称，阿克曼在数字货币交易的表现，投资者资金的使用以及第三季度交易账户中投资者资金的安全性方面误导了投资者。投诉还称，阿克曼篡改了第三季度交易账户的计算机屏幕截图，从而使投资者产生了这样的错觉：第三季度对加密货币进行了高度投资，并且获利异常丰厚，拥有多达3.1亿美元的资产。实际上，据投诉，第三季度的交易账户从未持有超过600万美元的资金，而阿克曼则将资金用于个人用途，包括：750万美元的投资者资金来购房和翻新房屋，购买高档珠宝，购买多辆汽车，用于个人安全服务。

美国证监会迈阿密地区办事处主任埃里克·布斯蒂略（Eric I. Bustillo）在解释该计划时说：“正如我们在投诉中所称的，阿克曼诱使许多医学专业的投资者误以为他从算法交易策略中获得了非凡的利润。阿克曼利用投资者对数字资产的普遍兴趣获取了数百万美元的个人用途。”

许多欺诈者利用共同点来创设信任，例同样的职业。美国证监会投资者教育与宣传办公室和执法部门的零售策略工作组发布了《投资者警示》，其中提示了投资者应避免仅基于与推荐人或发行人的共同点而做出的投资决定。
U.S. Securities and Exchange Commission Proposes to Modernize Key Market Infrastructure Responsible for Collecting, Consolidating, and Disseminating Securities Market Data

On February 14, 2020, the U.S. Securities and Exchange Commission (SEC) proposed to modernize the infrastructure for the collection, consolidation, and dissemination of market data for exchange-listed national market system (NMS) stocks. The proposal would update and expand the content of NMS market data to better meet the diverse needs of investors in equity markets. SEC has not significantly updated the rules that govern the content and dissemination of NMS market data since their initial implementation in the late 1970s. The proposal would also seek to introduce competitive forces into this core component of the national market system for the first time. The introduction of and competition among these new data consolidators could, in turn, allow all market participants, including investors, to access and benefit from the expanded content of NMS market data.

“This proposal is part of our larger initiative to modernize our equity market regulatory structure to address significant changes in our trading markets. In particular, today’s proposals are designed to improve data quality and data access for all market participants,” said Chairman Jay Clayton. “Both the content of NMS market data and the technologies used to collect, consolidate, and disseminate that data have lagged meaningfully behind proprietary data products and systems offered by the exchanges. By expanding the content of this data and introducing competitive forces into the market, the proposals would enhance transparency and ensure that improved NMS market data is available on terms that are accessible to a wide variety of participants in today’s markets.”

In 1975, one of U.S. Congress’s principal objectives for the national market system was to assure the availability of information with respect to quotations and transactions in securities. Currently, the national securities exchanges and the Financial Industry Regulatory Authority (collectively, the SROs) act jointly under three NMS plans (the Equity Data Plans) to collect, consolidate and disseminate information for NMS stocks. For each NMS stock, the SROs are required to provide specified market data (the NMS market data) to exclusive securities information processors (SIPs). The SIPs then consolidate that information and make it available to the public. This proposal is designed to improve the NMS market data infrastructure by reducing the current disparity in content and latency between NMS market data and the proprietary data products that some of the individual exchanges sell directly to market participants. The proposal would replace the “exclusive SIP” model with a decentralized model of “competing consolidators.”

This proposal is the latest initiative in SEC’s ongoing efforts to modernize the national market system to better fit the needs of investors—both retail and institutional—and other market participants, including exchange listed, public companies. For example, in October 2019, SEC published a proposal designed to improve the procedure for public comment and Commission review of proposed fee changes by NMS plans. In January 2020, SEC published a proposed order designed to address conflicts of interest in the governance of the NMS plans and to expand the opportunity of investors and other non-SROs to participate in NMS plan governance. This proposal would build upon and complement SEC’s proposed governance order by seeking to modernize NMS market data from both a content and access perspective, including by introducing competitive forces to key components of the system for the first time.

FACT SHEET
Market Data Infrastructure
February 14, 2020

Current Regulatory Framework

Regulation NMS addresses both the content of, and the means by which, NMS stock quotation and transaction information is collected, consolidated and disseminated. Current rules establish a centralized consolidation model in which the SROs act jointly under the Equity Data Plans to provide specified NMS market data for each NMS stock to exclusive SIPs. The exclusive SIPs then consolidate that information and disseminate a national best bid and national best offer (NBBO) and last sale information. While SEC has been monitoring the effectiveness of its NMS rules and has revised certain rules, SEC has not significantly updated the rules that govern the content and dissemination of NMS market data since their initial implementation in the late 1970s even though the data used in trading has changed dramatically.

Market Developments
The U.S. equity markets are dynamic and, as a result of a variety of factors, have changed dramatically since the initial adoption of the national market system in the 1970s. In particular, the combination of technological advances and order routing and trading strategies have greatly increased the speed and automation of markets, making trading more market data dependent, in terms of content, access and processing speed. In response, exchanges have developed enhanced proprietary data and connectivity products that in various circumstances are viewed as superior to the data and access provided by the exclusive SIPs. These content and latency differentials between SIP data and the proprietary market data products disseminated directly by the exchanges have become increasingly material.

Proposal

SEC preliminarily believes that the content of NMS market data and the model for collecting, consolidating and disseminating NMS market data have not kept pace with technological and market developments. As a result, SEC is concerned that current NMS market data may no longer satisfy the needs of many investors, broker-dealers and other market participants. The proposal seeks to address this concern in two fundamental ways.

First, the proposal would update and expand the content of NMS market data to include: (1) information about orders in share amounts smaller than the current round lot size (e.g., 100 shares) for higher priced stocks; (2) information about certain orders that are outside of an exchange’s best bid and best offer (i.e., certain depth of book data); and (3) information about orders that are participating in opening, closing and other auctions.

Second, the proposal would introduce a decentralized consolidation model under which competing consolidators, rather than the existing exclusive SIPs, would collect, consolidate, and disseminate certain NMS information. To support this decentralized model, the proposal would require each SRO to make available all of its data that is necessary to generate NMS market data to two new categories of entities: (1) competing consolidators, which would be responsible for collecting, consolidating and disseminating consolidated market data to the public; and (2) self-aggregators, which would be brokers or dealers that elect to collect and consolidate market data solely for their internal use.

SROs, as currently registered, and non-SROs could operate as competing consolidators. SRO competing consolidators would not be required to register separately with SEC. Non-SRO competing consolidators would be required to register with SEC under proposed new Rule 614 of Regulation NMS. All competing consolidators would be subject to certain standards with respect to the promptness, accuracy, reliability and fairness of their operations, including Regulation SCI. Self-aggregators would be registered broker-dealers subject to the full broker-dealer regulatory regime and would not be required to register with SEC in a separate capacity.

What’s Next?

The proposal will be published on SEC.gov and in the Federal Register. There will be a 60-day comment period following publication in the Federal Register.

美国证券交易委员会提议对负责收集、合并和发布证券交易市场数据的关键市场基础设施进行现代化改造

2020年2月14日，美国证券交易委员会（美国证监会）提议就收集、合并和发布美国证券交易所（美交所）上市的国家市场系统（NMS）股票的市场数据的内容进行现代化改造。是次提案将更新和扩展NMS市场数据的内容，以更好地满足股票市场投资者的多样化需求。自1970年代末NMS开始实施以来，美国证监会美国证券监事会尚未对市场数据的内容和发布规则进行重大更新。是次提案还将寻求首次将竞争力引入NMS的这一核心组成部分。这些新的数据合并器的引入和竞争可使所有市场参与者（包括投资者）都可以访问NMS市场数据，并从中受益。

“这项提议是我们更大的计划的一部分，该计划旨在使我们的股票市场监管结构现代化，以应对交易市场的重大变化。尤其是，今天的提议旨在改善所有市场参与者的数据质量和数据访问权限。”主席Jay Clayton说。NMS市场数据的内容以及用于收集、整合和传播数据的技术都远远落后于美交所提供的专有数据产品和系统。通过扩大这些数据的内容并在市场中引入竞争力量，这些提案将提高透明度，并确保可以以当今市场上各种参与者都能使用的方式获得改进的NMS市场数据。”

1975年，美国国会对于NMS的主要目标之一是确保与证券报价和交易有关的信息的可得性。当前，国家证券美交所和金融业监管局（合称SRO）根据三个NMS计划（股票数据计划）共同采取行动，以收集、合并和传播NMS股票的价格。对于每个NMS股票，SRO必须向专用证券交易处理器（SIP）提供指定的市场数据（NMS市场数据）。然后，SIP会合并该信息并向公众公开。是次提案旨在通过减少NMS市场数据与某些单独美交所直接出售给市场参与者的信息内容差异和延迟来改善NMS市场数据基础结构。是次提案将用“竞争合并者”的分散模型代替“专有SIP”模型。

是次提案是美国证监会为使NMS现代化而不断努力的最新举措，以更好地满足投资者（包括零售和机构投资者）以及其他市场参与者（包括在美交所上市的上市公司）
的需求。例如，在 2019 年 10 月，美国证监会公布了一项提案，旨在改善 NMS 计划的公众意见征询程序和美国证监会对拟议费用变更的审查。2020 年 1 月，美国证监会发布了一项建议指令，旨在解决 NMS 计划管理中的利益冲突，并扩大投资者和其他非 SRO 机构参与 NMS 计划管理的机会。次提案将通过寻求从内容和数据获取角度实现 NMS 市场数据现代化的方式，包括首次向 NMS的关键组件引入竞争力量，从而建立并补充美国证监会提出的治理指令。

资料表

市场数据基础架构

2020年2月14日

当前的监管框架

NMS 法规既解决了 NMS 股票报价和交易信息的内容，又收集、合并和发布了信息。当前的规则建立了一个集中的合并模型，在该模型中，SRO 在股票数据计划下共同行动，以将每个 NMS 股票的指定 NMS 市场数据提供给专有 SIP。然后，专有的 SIP 会合并该信息，并传播全国最佳出价和全国最佳报价（NBBO）以及最后销售信息。尽管美国证监会一直在监视其 NMS 规则的有效性并修订了某些规则，但是 NMS 自 1970 年代末首次实施以来，美国证监会并未对其市场数据的内容和传播规则进行重大更新，即使交易中使用的数据已经变化很大。

市场发展

自 1970 年代首次采用 NMS 以来，由于各种因素，美国股票市场是动态变化的。特别是，技术进步与定制发送和交易策略的结合极大地提高了市场的速度和自动化程度，使交易在内容、访问和处理速度方面更加依赖于市场数据。作为回应，美交所开发了增强的专有数据和连接产品，在各种情况下，这些产品和功能都被视为优于专有 SIP 提供的数据和访问。SIP 数据与美交所直接分发的专有市场数据产品之间的这些内容和延迟差异变得越来越显著。

提案

美国证监会最初认为，NMS 市场数据的内容以及用于收集、合并和传播 NMS 市场数据的模型并未跟上技术和市场发展的步伐。因此，美国证监会担心当前的 NMS 市场数据可能不再满足许多投资者、经纪商和其他市场参与者的需要。次提案试图以两种根本方式解决这一问题。首先，是次提案将更新和扩展 NMS 市场数据的内容，以包括：（1）有关份额数量小于当前整手数量（例，100 股）的高价股票的订单信息；（2）有关某些不在美交所的最佳出价和最佳报价范围内的订单信息（即记录深度）；（3）有关参与开盘、平仓和其他拍卖的订单信息。第二，是次提案将引入分散式合并模型，在该模型下，竞争性合并者，而非现有的专有 SIP，将收集、合并和分发某些 NMS 信息。为了支持这种去中心化模型，是次提案将要求每个 SRO 将其生成 NMS 市场数据所需的所有数据提供给两个新类别的实体：（1）竞争性合并者，负责收集、合并和向公众传播汇总市场数据；（2）自集成商，选择仅出于内部使用目的收集和合并市场数据的经纪人或交易商。当前注册的 SRO 和非 SRO 可以作为竞争合并者。SRO 竞争合并者不需要在美国证监会单独注册。根据 NMS 拟议的规则 614，非 SRO 竞争合并者需在美国证监会进行注册。所有竞争合并者的操作的及时性、准确性、可靠性和公平性均应遵守一定标准，包括 SCI 规定。自集成商将是注册的经纪交易商，服从完整的经纪交易商监管制度，并且无需以单独身份在美国证监会注册。

后续

是次提案将在 SEC.gov 和《联邦公报》上发布。在《联邦公报》上发布后，将有 60 天的评论期。


U.S. Securities and Exchange Commission Charges Real Estate Company and Executives with Defrauding Retail Investors, Obtains Emergency Relief

On February 18, 2020, the U.S. Securities and Exchange Commission (SEC) announced an emergency enforcement action and a temporary restraining order and asset freeze against Florida-based private real estate firm EquiAlt LLC, its CEO Brian Davison, and its Managing Director Barry Rybicki, in connection with an allegedly fraudulent unregistered securities offering that raised more than US$170 million from at least 1,100 investors, a number of whom invested their retirement funds.

According to the SEC’s complaint, unsealed February 14, 2020, in the U.S. District Court for the Middle District of Florida, EquiAlt, Davison, Rybicki, and the entities they control, fraudulently raised millions of dollars by making material misrepresentations to investors about their financial and investment opportunities.
EquiAlt's investment strategy, the financial condition of the investments, and the uses of investor proceeds. The defendants allegedly told investors they would pool investor funds and use approximately 90% of the money to purchase undervalued real estate, rent or flip the properties, and pay investors 8-10% annual interest generated from the real estate investments. In reality, the complaint alleges, a large portion of investor money went to support Davison's and Rybicki's lavish personal spending, and less than 50% of the funds raised were used to invest in properties. In addition, money from one investment fund controlled by EquiAlt was allegedly used to make Ponzi-like payments to investors in another fund.

“We allege that Davison and Rybicki made ‘too good to be true’ promises about nearly every material aspect of EquiAlt’s business to induce retail investors, including elderly individuals, to invest with them,” said Eric I. Bustillo, Director of the SEC’s Miami Regional Office. “The SEC’s emergency action seeks to prevent further harm to these retail investors and locate and preserve as many assets as possible.”

On February 14, 2020, a federal judge granted the SEC’s request for emergency relief, including a temporary restraining order, an asset freeze, an order against the destruction of documents, and an accounting against EquiAlt, Davison, Rybicki and a number of companies charged by the SEC as relief defendants. The court also granted the SEC’s request to appoint a receiver over the corporate defendants and the relief defendants. The SEC’s complaint charges EquiAlt, Davison, and Rybicki with violations of the antifraud and securities registration provisions and aiding and abetting violations of the broker-dealer registration provisions of the federal securities laws. The SEC seeks disgorgement of allegedly ill-gotten gains, and financial penalties against the defendants.

The SEC encourages investors to check the backgrounds of people selling investments by using the SEC’s investor.gov website to quickly identify whether they are registered professionals.

美国证券交易委员会指控房地产公司和高管欺诈散户投资者

2020年2月18日，美国证券交易委员会（美国证监会）就涉嫌欺诈的未经注册证券发行，从至少1,100名投资者那里筹集了1.7亿美元，包括众多退休基金投资的事宜宣布对佛罗里达州的私人房地产公司EquiAlt LLC，其首席执行官布莱恩·戴维森（Brian Davison）及其董事总经理巴里·里比奇（Barry Rybicki）采取紧急执法行动，并发出临时限制令和资产冻结。

根据美国证监会的诉状（于2020年2月14日在美国佛罗里达州中部地区法院开庭），EquiAlt、戴维森、里比奇就其所控制的实体EquiAlt的投资策略、投资财务状况及投资者收益的使用，向投资者进行重大虚假陈述而欺诈性地筹集了数以百万计的美元。据称，被告告诉投资者，他们将汇集投资者资金，并使用大约90%的钱来购买低价房地产，出租或出售物业，并向投资者支付低价房地产投资产生的8-10%的年利息。投诉称，实际上，投资者的大部分资金用于支持戴维森和里比奇的大量个人支出，而募集的资金中只有不到50%用于房地产投资。此外，据称由EquiAlt控制的一个投资基金的资金被用来向另一基金的投资者进行类似庞氏骗局的付款。

美国证监会迈阿密区域办事处总监Eric I. Bustillo表示：“戴维森和里比奇对 EquiAlt 业务的几乎每个实质方面都做出了‘难以置信’的承诺，以诱使包括老年人在内的散户投资者向他们投资。美国证监会的紧急行动旨在防止对这些散户投资者的进一步伤害，并界定及保护其尽可能多的资产。”

2020年2月14日，联邦法官批准了美国证券交易会的紧急执法请求，其中包括临时限制令、资产冻结、禁止销毁文件的命令以及对 EquiAlt、戴维森、里比奇和其他由美国证监会指为名义被告的公司的指控。法院还批准了美国证监会的要求，指定公司被告和名义被告的接掌人。美国证监会的投诉指控 EquiAlt、戴维森和里比奇违反了反欺诈和证券注册规定，并以帮助犯身份违反联邦证券法的经纪人-经销商注册规定。美国证监会寻求对涉嫌不当收益的没收，以及对被告的经济处罚。

美国证监会鼓励投资者使用美国证监会的investor.gov网站来检查出售投资者的背景，以迅速确定其是否是注册专业人士。


U.S. Securities and Exchange Commission Charges Global Alcohol Producer with Disclosure Failures

On February 19, 2020, the U.S. Securities and Exchange Commission (SEC) announced charges against alcohol producer Diageo plc for failing to make required disclosures of known trends relating to the shipments of unneeded products by its North American subsidiary to distributors. Diageo has agreed to pay $5 million to settle the action.

According to the SEC’s order, employees at Diageo North America (DNA), Diageo’s largest and most profitable subsidiary, pressured distributors to buy products in excess of demand in order to meet internal sales targets in the face of declining market conditions.
The resulting increase in shipments enabled Diageo to meet performance targets and to report higher growth in key performance indicators that were closely followed by investors and analysts. The order finds that Diageo failed to disclose the trends that resulted from shipping products in excess of demand, the positive impact the overshipping had on sales and profits, and the negative impact that the unnecessary increase in inventory would have on future growth. The order further finds that investors were instead left with the misleading impression that Diageo and DNA were able to achieve growth in certain key performance indicators through normal customer demand for Diageo's products.

"Investors rely on public companies to make complete and accurate disclosures upon which they can base their investment decisions," said Melissa R. Hodgman, an Associate Director in the SEC's Division of Enforcement. "Diageo pressured distributors to take more products than they needed, creating a misleading picture of the company's financial results and its ability to meet key performance indicators."

The SEC's order finds that Diageo violated the antifraud provisions of Section 17(a)(2) and (3) of the Securities Act of 1933, as well as certain reporting provisions of the federal securities laws. Without admitting or denying the findings in the SEC's order, Diageo agreed to cease and desist from further violations and to pay a $5 million penalty.

"All investors are entitled to receive certain information from issuers in connection with a securities offering, whether it involves more traditional assets or novel ones," said John T. Dugan, Associate Director for Enforcement in the SEC's Boston Regional Office. "The remedies in today's order provide ICO investors with an opportunity to obtain compensation and provide investors with the information to which they are entitled as they make investment decisions."

The SEC’s order requires Enigma to cease and desist from committing or causing any violations of the registration provisions of the federal securities laws and imposes a US$500,000 penalty. Enigma agreed to a claims process that would result in a return of funds to investors who purchased tokens in the ICO. The company also will register its ENG Tokens as securities and file periodic reports with the SEC. Enigma consented to the order without admitting or denying its findings.


Initial Coin Offering Issuer Settles U.S. Securities and Exchange Commission Registration Charges, Agrees to Return Funds and Register Tokens as Securities

On February 19, 2020, the U.S. Securities and Exchange Commission (SEC) announced settled charges against blockchain technology startup Enigma MPC for conducting an unregistered offering of securities in the form of an initial coin offering (ICO). Enigma, based in San Francisco and Israel, has agreed to return funds to harmed investors via a claims process, register its tokens as securities, file periodic reports with the SEC, and pay a US$500,000 penalty.

According to the SEC’s order, Enigma raised approximately US$45 million from sales of its digital assets (called ENG Tokens) in 2017. The SEC’s order finds that ENG Tokens are securities and that Enigma did not register its ICO as securities offering pursuant to the federal securities laws and its ICO did not qualify for an exemption from the registration requirements.

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The Securities and Exchange Commission (SEC) announced on February 19, 2020, that initial coin projects (ICOs) and blockchain technology startup Enigma MPC, which was involved in selling "unregistered securities" in 2017, has agreed to pay $500,000 in fines and return funds to investors through a settlement program.

Enigma is headquartered in San Francisco. The settlement agreement requires Enigma to register its ENG tokens as securities, file periodic reports with the SEC, and pay a $500,000 fine.

In 2017, Enigma sold itsENG tokens, which raised approximately $45 million from investors. The SEC deemed the tokens to be securities and Enigma violated the federal securities laws by not registering its ICO.

According to John T. Dugan, the Director of the SEC’s Boston Regional Office, "providing investors with material information is a fundamental right, whether the asset is traditional or new. Today’s order provides ICO investors with the opportunity to be compensated and provides investors with the information they are entitled to receive before making investment decisions."

The SEC’s order requires Enigma to stop and prevent any violations of federal securities laws related to its ICO, and pay a $500,000 fine. The settlement agreement was reached through a claim procedure, which will lead to the return of funds to ICO investors. Enigma will also register its ENG tokens as securities and file periodic reports with the SEC.

Source:

Shenzhen Stock Exchange Accelerates the Approval for the Bond Issue Applications of Hubei Enterprises under Emergency - the First Innovative Corporate Bond Supporting Anti-Epidemic Given the Green Light to Issue

On February 4, 2020, Wuhan Chedu Sishui Management Co., Ltd. ("Wuhan Sishui") received the letter of no objection from Shenzhen Stock Exchange (SZSE) for its green project income corporate bond. This is the first innovative corporate bond of Hubei Province getting the green light after the novel coronavirus-caused pneumonia (NCCP) outbreak.

Wuhan Sishui mainly provides the services of investment, construction, operation and maintenance of the water-related affairs co-governance project in the Wuhan Economic & Technological Development Zone (WHDZ). The raised fund of CNY1 billion from the project will be used for flood prevention, drainage, sewage control, water supply protection and information platform development in the WHDZ, which is of great significance to improve the urban sanitation of Wuhan and promote the protection and optimization of the ecological environment. Wuhan, where Wuhan Sishui and its lead underwriter Changjiang Securities are based, is seriously stricken by the epidemic. The issuer and the project team overcame obstacles and put in extra hours to prepare sealed materials and submit them on the first trading day after the Spring Festival holiday. SZSE then accelerated the processing through a green channel and issued the letter of no objection the next day.

To further implement the requirements of the Notice on Further Strengthening Financial Support for the Prevention and Control of the Novel Coronavirus-caused Pneumonia of five ministries and commissions, the Notice on Extending the Time Limit for Approval of Corporate Bonds to Support the Prevention and Control of the Novel Coronavirus-caused Pneumonia of CSRC and the Notice on Supporting Listed Companies and Other Market Entities to Combat Novel Coronavirus-caused Pneumonia of SZSE, and according to the principles of “all for the prevention and control of NCCP” and “all for the smooth operation of the SZSE-listed companies”, SZSE has made specific arrangements for the actual needs of fixed income market players in this special time. SZSE has set up special service channels for business consultation, established a green channel for the review and approval of fixed-income products that will be mainly used for NCCP prevention and control or issued by enterprises in regions heavily stricken by the NCCP, and suspended computing the time limit for the relevant business. What’s more, SZSE has extended the time limit for information disclosure of hardest-stricken enterprises, taken measures such as off-site business handling and made every effort to increase financial support to support the anti-epidemic effort.

The rapid approval of the corporate bond issue is a positive measure taken by SZSE to bring out the potential of the capital market and help enterprises overcome the epidemic. On the basis of the one-stop service for the issuance and listing of fixed-income products, SZSE will continue to support and assist issuers in hardest-stricken areas that have received approval, as well as such issuers and originators who raise funds or underlying assets for production, procurement and transportation of anti-epidemic materials to quickly launch and optimize financing arrangements. So far, the issuers from severe NCCP-stricken areas that have obtained approval include Changjiang Securities, Tus-EST, etc.

Next, SZSE will continue to implement the decisions and plans made by the CPC Central Committee and the State Council and act in line with the requirements of CSRC to give full play to the financing function of the capital market. SZSE will strengthen the synergy with all financial sectors and work together with all fronts
Shenzhen Stock Exchange Upgrades Its Distance Training to Meet What the Market Needs

To actively respond to the needs for market training during the anti-epidemic effort, Shenzhen Stock Exchange (SZSE) launched the first session of upgraded open distance training to improve the mode of market services and strengthen business support and services. The distance training focuses on the implementation of the new Securities Law and sweeping reforms of the capital market, and provides safe, convenient and professional services to market players.

SZSE's distance training is upgraded based on the previous online courses. Focusing on supporting enterprises in areas being severely affected by the outbreak and those in key industries related to the epidemic prevention and emergency response, SZSE provides classic capital market financing courses to listed companies, companies planning to go public and relevant market entities. Next, SZSE will enrich and develop a series of training courses to meet the urgent needs of the market, and launch online training for targeted groups such as independent directors and board secretaries of listed companies, newly listed companies, chairmen of the board, and chief finance officers of companies whose de facto controllers went public after restructuring or that are planning to go public. SZSE will also hold online training on the new Securities Law, mergers and acquisitions, equity incentive, new accounting standards, standardized operation and other topics.

Since the Spring Festival of 2020, by implementing the decisions and plans made by the CPC Central Committee and the State Council and acting in accordance with the requirements of CSRC's Party Committee, SZSE have taken multi-pronged measures and forged cooperation to stand in the shoes of the market, meet what the market needs and address the market's concerns. SZSE has also given full play to the advantages of a number of information-based, smart and mobile public technology platforms, improved the capacity of professional, targeted, and intelligent services continuously, and provided all-around services.
Shanghai Stock Exchange Builds Financial Defense Line to Combat Coronavirus Outbreak

Since the outbreak of the novel coronavirus pneumonia, the Shanghai Stock Exchange (SSE) has resolutely implemented the decisions and plans made by the PRC Party Central Committee and the State Council, put into practice the “Notice on Further Strengthening the Financial Support for Prevention and Control of the Outbreak of the Novel Coronavirus Pneumonia” issued by five ministries and commissions and follow the requirements of the China Securities Regulatory Commission (CSRC) for prevention and control of the epidemic, and released the “Notice on the Regulatory Arrangements for Fully Supporting the Prevention and Control of the Outbreak of the Novel Coronavirus Pneumonia”. By releasing the notice, the SSE has made adjustments and linkage arrangements for relevant business in the special period of epidemic prevention and control, improved the self-regulatory and service methods, set up dedicated service channels and provided convenience for online business operation, reduced the operating costs of companies in key regions, ensured the stable and orderly functioning of all business, and made every effort to prevent and control the epidemic.

Improving the self-regulatory measures to ensure the orderly operation of the market

In response to the new challenges faced by the listed companies in terms of information disclosure, corporate financing, mergers and acquisitions and reorganizations, the SSE has made the self-discipline regulation flexible and people-oriented by fully implementing the notice issued by five ministries and commissions and following the requirements of the CSRC, making specific regulatory arrangements for the special period, respecting the law of the market, and presenting the regulatory flexibility.

Optimizing the review work for the SSE STAR Market. The time limits for the review have been relaxed. Since February 3, 2020, time counting related to the STAR Market has been terminated, including the time limits for the IPO review, the review for the major asset restructuring of listed companies, and the response made by the issuers in other related reviews, as well as the time limit for the issuers to update the financial statements. The SSE has accepted applications and conducted review in the normal manner, and supported the high-tech and innovative enterprises involved in the prevention and control of the epidemic to go public on the SSE STAR Market, which means the application of those companies with complete materials will be accepted immediately upon application, and special reviewers familiar with the biopharmaceutical industry will make intensive efforts and conduct the review proactively. Online business consultation has been offered through the review system with the process simplified, and time for response will not exceed 2 working days.

Optimizing the offering and underwriting services. The schedules for current and incoming offerings have been adjusted, and the off-site road shows through the Internet and telephone are encouraged. The SSE has updated its services by holding listing ceremonies through live or recorded broadcast. In order to bolster the listed companies in Hubei Province, the annual listing fee in 2020 will be waived for those companies, and the Hubei-based companies listed in 2020 will also be exempted from the initial listing fee and the annual listing fee. At present, a total of 9 companies have completed the process of subscription for new shares, with 7 of them on the SSE STAR Market and 2 on the main board.

Optimizing the information disclosure regulation and services. The SSE has analyzed relevant business of listed companies including convening of shareholders'
meetings, listing of shares with limited sales, interest payment and redemption of bonds, and made linkage arrangements for more than 130 companies. As some listed companies found it hard to conduct the auditing due to the epidemic, resulting in the companies’ inability to disclose the 2019 annual report and the report for the first quarter of 2020 on schedule, the SSE has made deferral arrangements for those companies. At present, the SSE has properly arranged for more than 70 companies to change the appointed dates for annual report disclosure. At the same time, the time limits for merger and acquisition and restructuring have been appropriately relaxed: one company (Chongqing Sokon Industry Group Co., Ltd.) has been given extended time in accordance with the rules to provide valid financial data for reorganization.

Providing emergency assistance for the epidemic-stricken regions, and enhancing the direct financing services

In view of the severe impact on some industries, the production of the enterprises and the investment in the areas with the serious epidemic situation such as Hubei Province, the SSE has adhered to the principle of making everything conducive to preventing and controlling the epidemic and promoting the smooth operation of the capital market, prioritizing the areas and enterprises seriously affected by the epidemic in offering efficient and convenient direct financing services.

Establishing the green channel for bonds in epidemic-stricken regions. For the enterprises in Hubei Province and other areas in severe epidemic situation, and the companies raising funds for the purpose of epidemic prevention and control, the SSE has set up a green channel for reviewing the issuance of corporate bonds and asset-backed securities. At present, the SSE has optimized the review process for a number of corporate bonds issued by the Hubei-based companies such as Wuhan DMC Culture Co., Ltd. and Xiangyang City Dongjin District’s Development & Investment Group Co., Ltd., taking the measures of “specific personnel for contact, dedicated review, review upon application, and handling special cases with special methods”. At the same time, the SSE has fully worked with and supported relevant companies in issuing the “epidemic prevention and control bonds”, and vigorously improved the service for the issuance of the local government bonds during the period of epidemic prevention and control.

Speeding up the review for funds in the epidemic-stricken regions. In order to support the construction of the public utilities such as transportation, communications, education, hospitals and sewage treatment systems in Hubei Province, on February 10, 2020, the SSE assisted China Merchants Fund in submitting the application for the issuance of the China Merchants Hubei Province Local Government Bond ETF, the market’s first “bond fund for epidemic prevention and control” targeted at the assistance for Hubei Province. The SSE accelerated the review through the “green channel” with the letter of no objection issued within 2 working days.

Examining potential risks, and firmly guarding the market gate for epidemic prevention and control

Increasing the inspection of the risks in the listed companies, the bond market, the trading operation and other areas, the SSE has thoroughly studied and carefully assessed the extent of the epidemic impact on the market participants, and made corresponding arrangements in a timely manner, so as to ensure safe and sound market operation.

Increasing the examination of the risks of the listed companies. The SSE promptly send staff to find out the listed companies’ resumption of operation and production, identify the impact of the epidemic and learn about the reasons for failing to resume operation and production and the challenges faced by the companies. In light of the situation, the SSE conducted in-depth analysis and put forward targeted solutions to the major difficulties of the listed companies concerning resuming operation logistics and capital flows. At the same time, the SSE paid close attention to the impact of the fluctuations in the secondary market on the listed companies, focused on the risk of the companies on the verge of delisting, closely followed up on the typical problems such as the speculation in the stocks involving epidemic prevention and control, and examined the risks that are likely to affect the overall operation of the market such as the pledge of stocks.

Stepping up the screening of the risks of the bond market. The SSE continue to work on the issuers’ information disclosure and guided the epidemic-stricken issuers in faithfully fulfilling their information disclosure obligations by setting up the special service channel for information disclosure. The SSE has intensified the examination of the risks of the bond issuers in the key industries based in the worst-hit areas, and vigorously urged the entrusted managers to support the issuers that are likely to face the redemption risk, so as to mitigate the liquidity risks by persuading investors out of selling back, reaching renewal agreements, reselling the bonds and other means.

Ensuring smooth and safe market trading. In order to guarantee the smooth opening of the market after the Spring Festival holiday and during the period of epidemic prevention and control, the SSE has made every effort in technical maintenance and support. Before the Spring Festival holiday, the Waigaoqiao Disaster Recovery Center was activated, and corresponding changes were made to 28 systems such as the trading system, the business system and the mid-
end service system, so as to ensure the smooth trading on the first day after the delayed opening of the market. After the opening of the market, based on the situation of market trading, the SSE has rapidly initiated the checks on the capacity of 12 trading systems, including the core trading system and its ends of the floor trading affairs, and intensified the tracking of the production and operation and the risk identification.

The difficulties will be eventually conquered, and the victory is dawning. At present, the epidemic prevention and control has reached the most strenuous phase. In addition to the previous donation of RMB30 million to the Hubei Charity Federation which will be specially used for combating against, preventing and treating the novel coronavirus in Wuhan City and surrounding areas, the SSE Labor Union has recently organized the employees to participate in another round of special donation. In the face of the nationwide “great war against epidemic”, the SSE will, under the leadership of the CSRC, continue to strengthen leadership, diligence and fulfillment of responsibilities, make relentless efforts in the key tasks for epidemic prevention and control, ensure the stable and sound operation of the SSE market with all resources of the exchange at the forefront of the capital market, further deepen and fully support the reform of the SSE STAR Market, determine to win the people’s battle, general battle and blocking battle of epidemic prevention and control, and make more contributions to achieving this year’s targets and tasks for the national economic and social development.

优化发行承销服务。及时调整待发行与发行中企业发行日程，鼓励通过互联网和电话方式开展非现场路演。研究创新服务模式，拟通过线上直播方式举办上市仪式。支援湖北省上市公司，免收湖北省上市公司 2020 年上市年费。对 130 余家上市公司业务事项作了衔接安排。针对受疫情影响部分上市公司审计难以正常开展，导致公司无法按期披露 2019 年年报和 2020 年一季报的情况，及时做出延期披露安排。目前，已妥善安排了 70 余家公司进行年报披露预约日期变更。同时，落实适当放宽并购重组业务相关时限，已对小康股份 1 家公司重组数据有效期按规则进行了延期。

驰援重点一线 强化直接融资服务

针对湖北等疫情较为严重地区的部分行业、企业和经济形势受到较大影响，上交所坚持一切有利于疫情防控和促进资本市场平稳运行的原则，优先为受疫情严重影响的地区、企业提供高效便捷的直接融资服务。

建立债券绿色通道。对于湖北等疫情严重地区的企业，以及募集资金用于疫情防控用途等企业，建立公司债券、资产支持证券发行审核绿色通道。目前，上交所已为武汉当代明诚、襄阳东津国投等多只湖北地区公司债券优化审核流程，实行“专人对接，专项审核，即报即审，特事特办”。同时，全力对接和支持相关企业发行“防疫防控债”，积极配合做好疫情防控期间地方政府债券发行服务工作。
上交所加强对上市公司、债劵市场、交易运行等方面的
风险排摸，对各类市场主体受疫情影响的程度进行深入
排摸和认真研判，及时作出应对安排，切实保障市场安
全稳定运行。

加强上市公司风险排摸。第一时间组织力量摸排上市公
司复工复产情况，了解疫情对上市公司生产经营的影响，
了解未能复工复产的原因和面临的实际困难。根据掌握
的实际情况进行深入分析，针对上市公司主要面临的复
工难、物流不畅、资金流等压力，有针对性地研究提出
相关解决建议方案。同时，严密关注二级市场波动对上
市公司的影响，对濒临退市公司的风险因素予以重点关
注，对疫情防控概念股炒作等类型化问题进行密切跟踪，
对股票质押等可能影响市场整体运行的风险进行排查。

加强债市风险排查力度。持续做好发行人信息披露工作，
通过设立信息披露专项服务通道，引导受疫情影响的发
行人切实履行信息披露义务。加强对重点行业和疫情严
重地区发行人的债券风险排查工作，对于可能存在兑付
风险的，积极督促受托管理人全力协助发行人，通过协
调投资者撤销回售、达成展期协议，以及进行债券转售
等方式缓释流动性风险。

确保市场交易通畅安全。为确保节后顺利开市和疫情防
控期间交易运行安全，上交所全力做好技术运维和保障
工作。春节假期前，便启用了外高桥灾备中心，对交易
系统、业务系统、中台服务等共计 28 个系统作了对应变
更，保障延迟开市后的首日交易平稳。开市后，针对市
场交易情况，迅速启动交易系统容量排查工作，从核心
交易系统及其场务端共计 12 个系统，强化生产运行情况
跟踪和风险识别。

梅傲寒霜香如顾，旭日依旧东方出。当前，疫情防控工
作到了最吃劲的关键阶段。在此前已向湖北省慈善总会
donates 3000 万元专项用于武汉及其周边地区的新冠疫
情抗击及防治的基础上，近期上交所工会又再组织全所
员工开展抗击疫情专项捐款活动。在这场全国“大战疫”
面前，上交所将在中国证监会领导下，继续强化组织领
导、担当作为和责任落实，毫不放松做好疫情防控重点
工作，举全所之力，以资本市场一线战备军的姿态，确
保上交所市场稳定健康运行，进一步深化科创板改革，
全力配合创业板改革，坚决打赢疫情防控的人民战争、
总体战、阻击战，为实现今年全国经济社会发展目标任
务做出贡献。

Banking Industry to Assist Small and Medium-sized
Enterprises (SMEs) in Overcoming the Impact of
Coronavirus Outbreak

In view of the spread of the novel coronavirus, the Hong
Kong Monetary Authority (HKMA) convened a special
teleconference of the Banking Sector SME Lending
Coordination Mechanism on 11 February 2020 to
discuss ways for the industry to extend greater support
to their SME customers in light of the latest
developments.

Participating banks agreed that the outbreak has
resulted in a further wave of difficulties for SMEs, whose
cash-flow pressures have increased significantly. The
impact has been broad and SMEs from different sectors
are affected. In addition to the retail and catering
sectors, which are already suffering as a result of the
economic downturn, other sectors like import and export
and transportation are also affected to varying degrees.
In view of this latest development, eight of the
participating banks have already introduced measures
to support SMEs in response to an earlier call of the
HKMA. The remaining two participating banks will
launch similar measures shortly. The Coordination
Mechanism also noted that some non-participating
banks have responded to the HKMA's call by proposing
various measures to help their customers ride out this
difficult time.

In order to reduce the cash-flow pressures facing SMEs,
banks continue to proactively offer to delay repayments
or extend loan tenors, and to reduce fees. Some banks
also provide unsecured loan products for SMEs to help
improve their cash flow and made special arrangements
to expedite loan approvals.

Banks have also introduced relief measures targeting
specific sectors. For the import and export sector, banks
have extended the repayment period of trade financing
facilities to align with the prolonged trade cycle as a
result of the outbreak and allowed customers to convert
trade financing lines into temporary overdraft facilities so
that SMEs can manage their cash flow more flexibly. For
the transportation sector, banks have offered repayment
holidays or principal moratoriums to some affected
customers, including taxi and minibus operators, to help
them overcome this difficult period.

The Coordination Mechanism also took the opportunity
to discuss how banks can help their retail customers. All
participating banks have introduced or will shortly
introduce measures to relieve personal financial
difficulties. These include principal moratoriums for
residential mortgages and fee reductions for credit card
borrowing. Regarding principal moratoriums for
residential mortgages, the HKMA stated at the meeting
that while banks should adhere to the supervisory
requirement that mortgage loan tenors should not
exceed 30 years in normal circumstances, banks may exercise flexibility on a case-by-case basis for customers with special needs.

During the meeting, HKMC Insurance Limited (HKMCI) expressed its support for banks in introducing measures to lessen the impact of the outbreak on SME and personal customers. Because banks allowing extension of loan tenors and trade financing repayment schedules may result in changes to guarantee terms, HKMCI has streamlined procedures to speed up processing of bank applications for revision of loan terms. As for personal mortgages, HKMCI has confirmed that with regard to principal moratoriums or extensions of repayment schedules recently introduced by some banks, it stands ready to be flexible and will allow borrowers using the Mortgage Insurance Programme to apply for these measures to help reduce their repayment burden. It will also look into ways to streamline related procedures and shorten vetting and approval time.

The Coordination Mechanism will continue to closely monitor developments and discuss with banks other appropriate measures to support SME customers should the need arise.

The Banking Sector SME Lending Coordination Mechanism was convened by the HKMA. Representatives from the Hong Kong Association of Banks, ten major banks active in SME lending, and the HKMCI attended the teleconference.

香港金融管理局召开银行业中小企贷款协调机制特别电话会议商讨业界协助中小企应对疫情冲击的方法

鉴于新型冠状病毒疫情持续，香港金融管理局（金管局）于 2020 年 2 月 11 日召开了银行业中小企贷款协调机制特别电话会议，商讨业界如何因应最新发展加大力度支援中小企客户。

与会银行认为疫情的出现无疑为中小企带来另一波冲击，增加了中小企现金流压力。受影响的中小企众多，涉及的层面非常广泛，除了零售、餐饮等已经深受经济下行影响的行业外，其他包括出入口和运输行业的中小企也受到不同程度的影响。因应最新情况，八家与会银行均已响应金管局早前的呼吁，推出一系列支援中小企的措施，余下两家与会银行将于短期内推出相关措施。协调机制又留意到有非与会银行响应金管局呼吁，推出不同措施与客户共渡难关。

为减小中小企现金流压力，银行继续主动向不同行业客户提供延迟还款或贷款展期的安排，并进一步宽减各种费用。另外，有银行提供无抵押贷款产品予中小企应急，增加中小企的现金流，并设立特快审批通道处理贷款申请。

银行亦推出针对个别行业的舒缓措施。出入口行业方面，延长贸易融资还款期配合被疫情拖长的贸易周期，并容许客户申请把贸易融资额度暂时转为现金透支额度，让客户可以更灵活调配资金。运输业方面，银行已经向部分受影响客户包括的士和小巴营运商安排还息不还本安排或贷款展期，协助它们渡过目前的困难。

协调机制亦藉此机会讨论了银行如何帮助受疫情影响的个人客户。所有与会银行均已推出或将会于短期内推出舒缓个人财务困难的措施。包括容许住宅按揭贷款展期偿还本金、减免信用卡借款费用等。就住宅按揭贷款展延偿还本金的安排，金管局在会上表明，尽管银行在正常情况下须遵守住宅按揭贷款期不超过三十年上限的监管要求，但如果客户有特殊需要，银行可以根据个别情况弹性处理贷款年期上限。

香港按证保险有限公司（按证保险公司）在会上表示支持银行推出措施减轻疫情对中小企和个人客户的影响。对于「中小企融资担保计划」方面，因应银行容许贷款展延和延长贸易融资还款期可能牵涉担保条款的转变，按证保险公司已致力优化相关程序，务求更快捷处理有关银行变更贷款条款的申请。个人按揭方面，就近日有银行为借款人提供「息还本不还」或贷款展期的安排，按证保险公司表示会灵活处理，容许使用「按揭保险计划」的借款人申请这些措施，协助减轻他们的还款负担，并会研究简化相关程序，缩短审批时间。

协调机制会继续密切监察疫情的发展，适时与银行业商讨合适措施支援中小企客户。

银行业中小企业贷款协调机制由金管局任召集人，与会代表包括香港银行公会、十家活跃于中小企业贷款的主要银行，以及按证保险公司。

The quarterly schedule is issued in the second month of each quarter (i.e. February, May, August and November), covering the EFBNs tenders in the following quarter.

It should be noted that the tender dates, tender sizes and issue dates projected in the advance issuance schedule are tentative. The details of new issues of Exchange Fund Bills are to be confirmed and announced at least 4 business days prior to the respective tender dates. The details of new issues of Exchange Fund Notes are to be confirmed and announced 7 business days prior to their respective tender dates. The HKMA may make changes in the light of prevailing market conditions.

Arrangement has been made for some staff to work from home and for staff returning to office in split teams.

The IA will keep reviewing the situation and announce any updates on the IA website (www.ia.org.hk).

香港金融管理局发出 2020 年 4 至 6 月季度内外汇基金票据及债券的暂定发行时间表

香港金融管理局于 2020 年 2 月 14 日（星期五）发出 2020 年 4 至 6 月季度内外汇基金票据及债券的暂定发行时间表。该发行时间表载有每批外汇基金票据及债券的暂定投标日期、发行额及发行日期。所载数额代表即将到期之票据及债券的续期和计划对外汇基金票据及债券期限作出的调整。

金融管理局于每季的第 2 个月（即 2 月、5 月、8 月和 11 月）发出下一季的发行时间表，提供在下一个季度进行的外汇基金票据及债券投标的资料。

请注意这些预先公布的发行时间表所列载的投标日期、发行额及发行日期只属暂定性质。新发行的外汇基金票据及债券的暂定投标日期、发行额及发行日期。所载数额代表即将到期之票据及债券的续期和计划对外汇基金票据及债券期限作出的调整。

金管局于每季的第 2 个月（即 2 月、5 月、8 月和 11 月）发出下一季的发行时间表，提供在下一个季度进行的外汇基金票据及债券投标的资料。

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香港保险业监管局鉴于新型冠状病毒疫情的最新发展决定继续提供有限度公众服务

鉴于新型冠状病毒疫情的最新发展，香港保险业监管局（保监局）于 2020 年 2 月 16 日宣布，办事处自 2020 年 2 月 17 日至 2020 年 2 月 23 日继续暂停对公众开放，以减低病毒散播的风险。保监局将提供有限度公众服务，电话查询及投诉热线的服务时间为星期一至五早上 11 时至下午 1 时、下午 2 时至 4 时，而以电邮处理查询及投诉的服务则运作如常。

保监局已安排部分职员留在家中工作，或轮流返回办事处工作。

保监局会检视情况，并于网站（www.ia.org.hk）公布任何更新安排。

香港保险业监管局鉴于新型冠状病毒疫情的最新发展

Financial Conduct Authority of the United Kingdom Publishes Annual Sector Views Assessing the Risks and Potential Harm to Consumers in Financial Services Markets and Highlights its Areas of Concern

The Financial Conduct Authority (FCA) has published its annual Sector Views on February 18, 2020, an assessment of the risks and potential harm to consumers across financial services markets.

The Sector Views look at the impact of macroeconomic developments and common drivers of change emerging across financial markets. They also outline areas where there may be a negative impact on consumers or the integrity of the financial system in that sector. The report sets out what factors are driving harm, as well as considering how the harm may develop over time.

The kinds of harms the FCA is concerned about, include:

- Although the FCA has seen a number of positive corrections in the credit market, our Financial Lives data shows that 7.4 million UK adults are over-indebted and find their financial commitment a burden.
- Pricing practices in insurance still penalize loyal customers – the ‘loyalty penalty’ in home and motor insurance cost 6 million longstanding consumers an
Christopher Woolard, Executive Director of Strategy and Competition at the FCA and interim Chief Executive designate, said:

“We are committed to reducing harm in the markets we regulate. Our analysis of markets ensures that we do this effectively, helping us to decide where to focus our attention. We expect firms to be similarly focused on preventing harm and assisting us where they can, and we will continue to actively supervise all firms to ensure they achieve this.”

“What is clearly apparent from the Sector Views, is that many of the harms we are seeing are created by a significant number of smaller firms we regulate or firms beyond our remit.”

“The findings in the report will contribute to our upcoming Business Plan and the decisions we make affecting consumers, market integrity and competition.”
From 1 July, the obligations will require mortgage brokers to act in the best interests of consumers and to prioritize consumers’ interests when providing credit assistance.

Announcing the consultation, ASIC Commissioner Sean Hughes said, “The obligations properly align the interests of mortgage brokers with the interests and expectations of their clients - the borrowers. Consumers should feel confident that their broker is offering the best loan for their circumstances and we expect that consumer outcomes will improve as a result of this reform.”

“We have released this draft guidance for consultation as early as possible, to help promote certainty for mortgage brokers as industry prepares for the new obligations to commence in July.” Mr. Hughes added.

ASIC’s proposed approach to the guidance is outlined in Consultation Paper 327 Implementing the Royal Commission recommendations: Mortgage brokers and the best interests duty (CP 327). Consistent with the legislation, the draft guidance is high-level and principles-based, but also incorporates practical examples. The purpose of the guidance is to explain the obligations introduced by the Government, it does not prescribe conduct or impose additional obligations.

The draft guidance is structured around the key steps common to the credit assistance process of brokers, such as gathering information, considering the product options available and presenting options and a recommendation to the consumer.

ASIC welcomes views from all interested stakeholders on the proposals in CP 327, as well as the draft guidance. This will allow ASIC to understand how the guidance can best assist brokers to meet these new legal obligations. ASIC expects that the new obligations will also improve competition in the home lending market.

ASIC seeks public comment on the draft guidance by 20 March 2020.

ASIC intends to publish final guidance before the obligations commence on 1 July 2020.

The Monetary Authority of Singapore Welcomes Measures by Financial Institutions to Support Customers Facing the Impact of COVID-19

The Monetary Authority of Singapore (MAS) has announced that it welcomes the recent announcements from banks and insurers in Singapore to support their customers who may be facing financial difficulties brought about by the impact of the ongoing 2019 novel coronavirus (COVID-19) outbreak.

The support announced by banks thus far include moratoriums on repayments for affected corporate and individual customers, extension of payment terms for trade finance facilities, and additional financing for working capital. The measures are in line with guidelines on corporate debt restructuring by the Association of Banks in Singapore (ABS).

Insurers in Singapore have clarified that Integrated Shield Plans (IP), IP riders and most other personal and group health insurance policies will cover hospitalization expenses related to COVID-19.

Some insurers have extended additional benefits to life insurance policyholders diagnosed with COVID-19, such as complimentary lump sum payments upon diagnosis, as well as daily cash payment for the duration of hospitalization, according to a press release by MAS.

MAS supports these efforts by financial institutions to work constructively with customers affected by COVID-19 while adhering to prudent risk assessments. The various measures will help corporates and individuals facing short-term cash flow constraints and provide timely insurance coverage for policyholders affected by COVID-19. Taken together, these measures should help to buffer some of the impact on corporates and individuals from the COVID-19 outbreak.


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