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# Financial Services Regulatory Update 金融服务监管资讯

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## 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 regime<sup>1</sup>, 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

scrupulously and objectively with a questioning mind and be alert to information which contradicts or brings into question the reliability of the facts they are seeking to understand. Detailed records of due diligence should be kept to demonstrate compliance with regulatory requirements.

**Third parties' work:** Another issue is over-reliance on third-party professionals such as lawyers and accountants. Sponsors remain ultimately responsible for the quality and substance of the due diligence undertaken by agents they appoint. They must supervise the agents and ensure that they sufficiently understand the depth and scope of the task. They should also be satisfied that the agents may reasonably be relied upon to do the work.

**Oversight of junior staff:** Ineffective or insufficient senior management oversight of junior staff is also a problem. Sponsor firms have a duty to ensure that effective personnel and controls are in place and every aspect of the sponsor function is properly performed. This includes making sure that at least one senior management staff member has the requisite experience, knowledge and skills to closely supervise each engagement at all times.

## Case studies

### I. Design and execution of due diligence plans

A sponsor failed to adhere to the final due diligence plan prepared by its lawyers and did not document the reasons for not completing the work. Moreover, its due diligence focused on the listing applicant's production figures and it failed to adequately verify sales figures.

Sponsors are advised to avoid a "box ticking" approach. They should design a customised due diligence plan for each listing applicant and adhere to it. Any deviations or updates should be properly documented with the reasons provided.

### II. Due diligence on financial information

A listing applicant recorded a significant increase in average customer spending per transaction during the track record period. SFC's repeated enquiries revealed that a number of individuals spent unusually high amounts on certain days. Moreover, revenue fluctuations did not align with the seasonality of the business. The sponsor was unable to provide satisfactory explanations for these anomalies. SFC expressed its concerns about the genuineness of the financial information in the listing application. The applicant did not respond and the application subsequently lapsed.

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<sup>6</sup> 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，并会毫不犹豫地就相关人士的行为对他们追究责任。”

证监会的前置式监管方针包含及早就上市事宜采取监管介入行动和加强对中介人的监管，并同时负责对负责重要把关职能的机构及担任高层职位的人士采取针对性执法行动。

以下为自《证监会监管通讯》截取之主要内容：

#### 上市监管及企业交易

根据《证券及期货(在证券市场上市)规则》，证监会可在上市前阶段对上市申请提出反对，或指示香港联合交易所有限公司(联交所)暂停上市公司的股份买卖。证监会亦可就可疑的企业交易提出疑问或反对，例如在交易似乎并不符合商业原则的情况下。

#### 监管

证监会采纳前置式及以风险为本的方针来对中介人进行监管，并针对公司的财政稳健程度和业务经营方式采取各种监管措施，包括现场主题视察及非现场监察。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。

#### 执法

证监会行使《证券及期货条例》赋予的权力以采取具针对性的执法行动，藉以冻结非法所得的款项，寻求法庭对不负责任的董事发出取消资格令(备注3)，对没有履行职责的保荐人采取纪律处分，及在广泛的投资者利益可能受损的情况下暂停上市公司的股份买卖。

#### 首次公开招股保荐人

保荐人在确保市场质素方面担当独一无二的角色。他们不但协调首次公开招股的过程及向董事提供意见，亦是对上市申请人进行的尽职审查工作的核心参与者。保荐人须确保上市文件载有充足的数据，让投资者能够对申请人的业务达致有根据及合理的意见。

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以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。保荐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。

第三方的工作：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。

监督初级职员：高级管理层对初级职员监督不力或不足亦是问题所在。保荐人公司有责任确保任用有效的人员及设立监控措施，同时亦须妥善履行各方面的保荐人职能，包括确保至少一名高级管理层成员具备必要的经验、知识和技能，以便时刻密切监督所参与的每个项目。

个案研究：

#### i. 设计及执行尽职审查计划

一名保荐人未有依循由其律师编制的最终尽职审查计划，亦没有记录未有完成相关工作的理由。此外，该保荐人的尽职审查侧重上市申请人的生产数据，但却未有充分核实其销售数据。

保荐人应该避免“机械式逐项核查”的处事方针。他们应就每个上市申请人定制尽职审查计划，并依照所定计划进行相关工作。计划如有任何变动或更新，便应连同个中理由妥为记录在案。

#### ii. 对财务资料的尽职审查

一名上市申请人于业绩纪录期内每宗交易的平均顾客消费额录得显著增幅。证监会经连番查询后发现，该上市申请人于若干日子录得多名人士异常地高的消费额。此外，收入的波幅与相关的业务周期并不吻合。保荐人未能就上述异常情况提供令人信纳的解释。证监会对上市申请文件所载财务资料的真实性表示关注，但申请人没有作出响应，而有关申请其后亦告失效。

保荐人务必彻底了解上市申请人的业务模式、行业环境及相关风险，同时亦应核实主要业务资产(包括资产是否确实存在及有关的法定权益)，并在必要时向可靠的合资格专家寻求协助。

#### iii. 客户尽职审查

在不少个案中，保荐人与客户进行尽职审查访谈的手法未如理想。一名保荐人因上市申请人施压而更改访谈计划。另有其他访谈则由申请人代为安排，或者在申请人代表在场时进行。在部分个案中，保荐人未有独立核实客户身分或针对交易及销售等重要范畴作出查询，亦未有跟进数据不一致的情况。

保荐人应独立地安排不受干预的尽职审查访谈。访谈应在受访者的营业处所进行，而受访者的身分及权限必须透过多项证明文件核实。保荐人亦有责任在访谈中提出明确的问题，并保留完整且准确的纪录。

#### iv. 依赖专家

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货商的原因。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，在证监会的几次查询下才作出披露。

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一宗上市申请中以“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向进行客户访谈的交易小组初级成员提供任何指引。交易小组似乎由一名董事总经理监督，该名人员不是保荐人的主要人员，但却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。

保荐人若过往曾经有上市申请遭退回或拒绝或出现严重缺失及不合规情况，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分的方式转移控股权的计划的一部分。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不当用途的安排，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。

证监会在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，该公司改为建议只收购目标公司的少数权益，并将估值大幅降低。尽管如此，证监会仍然发出第三封关注函，当中指出新的估值看似是随意订定及毫无根据可言。该公司其后终止收购。

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致的结论。证监会怀疑他们有无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成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，该公司公布终止交易。

在另一宗个案中，某公司建议收购一家录得亏损的目标公司的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经披露的关系或安排，证监会向该公司提出关注。

在证监会发出函件后，该公司公布将会改为收购目标公司19%而非40.02%的权益，而收购资金则全数由该公司的内部现金资源支付。由于有关交易已重组，证监会没有进一步采取行动。

#### 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。该公司没有任何债务，看来也没有迫切的资金需要，而有关配售所筹集的金额偏低，配售价较该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。

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**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**

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

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:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR15&appendix=0>

**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员的牌照**

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员邓颖芝（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，其后在一连串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状及仍属相关；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指定名单进行筛查。

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。

有关纪律行动声明载于证监会网站：

(<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/openAppendix?refNo=20PR15&appendix=0>)

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### **Hong Kong Securities and Futures Commission Reprimands and Fines Capital Global Management Limited HK\$1.5 million**

On February 14, 2020, the Hong Kong Securities and Futures Commission (SFC) has reprimanded and fined Capital Global Management Limited (CGML) \$1.5 million for its failures to ensure compliance with applicable laws and regulations in distributing investment funds and offering investment advice in Taiwan, and to adequately supervise the business activities of its representatives to ensure such compliance (Note 1).

In August 2015, the Prosecution Office of the Taipei District Court fined the former owners of CGML for distribution of offshore investment funds and offer of investment advice in Taiwan from 2005 to 2014 without obtaining prior approval, in contravention of Taiwan's Securities Investment Trust and Consulting Act (Note 2).

The SFC's investigation found that CGML's licensed representatives operated and performed sales functions and distributed investment products to clients in Taiwan between July 2014 and April 2015.

CGML's failures to ensure compliance with applicable laws and regulations in Taiwan and to adequately supervise its representatives have raised the SFC's concern over its fitness and properness as a licensed corporation (Note 3).

In coming to the decision to take disciplinary action against CGML, the SFC has taken into account that CGML has no previous disciplinary record with the SFC.

The SFC issued a circular to intermediaries in January 2014 to remind them about their obligations when conducting cross-border business, including the importance of ensuring compliance with all relevant laws and regulations (Note 4). The SFC considers that compliance with applicable laws and regulations is fundamental to the reliability of an intermediary in carrying on its business in regulated activities.

Notes:

1. 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.
2. 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).
3. 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.
4. Please see the circular titled "Regulatory Compliance regarding Cross-border Business Activities" dated 28 January 2014.

A copy of the Statement of Disciplinary Action is available at:  
<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR16&appendix=0>

#### 香港证券及期货事务监察委员会对瑞兴全球财富管理有限公司作出谴责及罚款 150 万港元

2020年2月14日，香港证券及期货事务监察委员会（证监会）对瑞兴全球财富管理有限公司（瑞兴全球）作出谴责及罚款 150 万元，原因是它在台湾分销投资基金及提供投资建议时，没有确保其遵守适用的法律及规例，及没有充分监督其代表所进行的业务活动以确保该等法律及规例获得遵守（注 1）。

台北地方法院检察署于 2015 年 8 月就瑞兴全球于 2005 年至 2014 年期间，在没有取得事先核准的情况下于台湾分销境外投资基金及提供投资建议，违反了台湾的《证券投资信託及顾问法》，对其前拥有人处以罚款（注 2）。

证监会的调查发现，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）。

证监会在决定对瑞兴全球采取纪律行动时，已考虑到瑞兴全球过往并无遭受证监会纪律处分的纪录。

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，建基于他们与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《证券投资信託及顾问法》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获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。

有关纪律行动声明载于证监会网站：

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/openAppendix?refNo=20PR16&appendix=0>

Source 来源：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR16>

## Hong Kong Court of First Instance Dismisses Challenge to Hong Kong Securities and Futures Commission's Investigative Powers

On February 18, 2020, the court 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：

1. 判决书载于司法机构网站（法院参考编号：高院宪法及行政诉讼 2018 年第 2132、2133、2134、2136 及 2137 号）。

Source 来源：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR17>

**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 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.

**香港联合交易所有限公司宣布取消镍资源国际控股有限公司（于开曼群岛注册成立的有限责任公司）上市地位（股份代号：2889）**

2020年2月12日，香港联合交易所有限公司（联交所）宣布，由2020年2月14日上午9时起，镍资源国际控股有限公司（该公司）的上市地位将根据《上市规则》第17项应用指引下的除牌程序（除牌程序）予以取消。

联交所宣布，由2020年2月14日上午9时起，该公司的上市地位将根据除牌程序予以取消。《上市规则》第17项应用指引订明长期停牌公司的除牌程序。

该公司的股份自2015年4月1日起暂停买卖。

联交所于2017年1月13日根据《上市规则》第17项应用指引，将该公司置于除牌程序的第三阶段。在除牌程序第三阶段于2017年7月24日结束前，该公司向联交所递交了复牌建议。上市委员会于2017年8月24日认为复牌建议并不可行，决定取消该公司的上市地位。

该公司于2017年9月5日向上市（复核）委员会申请复核除牌决定。上市（复核）委员会于2017年12月12日搁置取消该公司上市地位的决定，并容许该公司在须符合若干条件下执行其复牌建议，详情载于该公司于2017年12月13日刊发的公告。

上市委员会于2018年7月3日不信纳公司已悉数达成上述条件，因此决定取消该公司股份的上市地位。该公司于2018年7月11日向上市（复核）委员会申请复核上市委员会的决定。

上市（复核）委员会于2018年10月15日维持上市委员会取消该公司的上市地位的决定。该公司随后向上市上诉委员会申请进一步复核这项决定。上市上诉委员会于2019年6月14日维持上市（复核）委员会的决定。

上交所已要求该公司刊发公告交代其上市地位被取消一事。

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

Source 来源：

[https://www.hkex.com.hk/News/News-Release/2020/200212news?sc\\_lang=en](https://www.hkex.com.hk/News/News-Release/2020/200212news?sc_lang=en)

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

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 pre-judgment 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.

### 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

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资产计划，该计划欺骗了大约150名投资者，包括许多医生。

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经开发了一种专有算法，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，例如同样的职业。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如何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。

美国证监会在纽约联邦法院提起申诉，指控阿克曼违反了联邦证券法的反欺诈条款，寻求永久禁制令，非法所得加判决前利息，以及民事处罚。与此同时，美国纽约州南区检察官办公室和商品期货交易委员会亦对阿克曼提出了类似行为的指控。

Source 来源：<https://www.sec.gov/news/press-release/2020-32>

### **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）股票的市场数据的基础设施进行现代化改造。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，美国证监会美国证监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 股票的信息。对于每个 NMS 股票，SRO 必须向专用证券信息处理器（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专有数据产品之间的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拟议命令，旨在解决 NMS 计划治理中的利益冲突，并扩大投资者和其他非 SRO 机构参与 NMS 计划治理的机会。是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命令。

## 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 NMS 以来，由于各种因素，美国股票市场是动态变化的。特别是，技术进步与定单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

美国证监会初步认为，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，经纪交易商和其他市场参与者的需求。是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 拟议的规定 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。

Source 来源：<https://www.sec.gov/news/press-release/2020-34>

#### **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

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封），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，并向投资者支付房地产投资产生的 8-10% 的年利率。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，以诱使包括老年个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，并定位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监会的紧急执法请求，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管人。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人的背景，以迅速确定其是否是注册专业人士。

Source 来源：

<https://www.sec.gov/news/press-release/2020-35>

#### 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.

#### 美国证券交易委员会指控国际酒精生产商披露不当

2020年2月19日，美国证券交易委员会（美国证监会）宣布对酒精生产商帝亚吉欧（Diageo plc）提出指控，指其未就所需的北美子公司向分销商运送不需要的产品的已知趋势进行必要披露。帝亚吉欧已同意支付 500 万美元和解该诉讼。

根据美国证券交易委员会的指令，帝亚吉欧规模最大，盈利最多的子公司帝亚吉欧北美公司（DNA）的员工向分销商施加压力，要求他们购买超出需求量的产品，以便在市场形势下滑的情况下达到内部销售目标。随之而来的出货量增加使帝亚吉欧达到了绩效目标，并报告了关键绩效指标的更高增长，受到投资者和分析师的密切关注。帝亚吉欧并未透露运输产品供不应求的趋势，超额出货对销售和利润的积极影响以及库存不必要的增加对未来增长的不利影响。指令进一步发现，投资者对帝亚吉欧和 DNA 产生错误认知，即通过正常客户对帝亚吉欧产品的需求，帝亚吉欧和 DNA 能够在某些关键绩效指标上实现增长。

美国证监会执行部门副主任梅利莎·霍奇曼（Melissa R. Hodgman）说：“投资者依靠上市公司进行完整、准确的披露，从而据其做出投资决策。帝亚吉欧向分销商施

加压力，要求他们购买比所需更多的产品，这对于公司的财务业绩及其达到关键绩效指标的能力造成了误导。”

美国证监会的指令认为帝亚吉欧违反了 1933 年《证券法》第 17(a)(2)和(3)节的反欺诈规定，以及联邦证券法的一定报告规定。帝亚吉欧既不承认也不否认有不当行为，但同意停止进一步违规行为，并支付 500 万美元的罚款。

Source 来源：

<https://www.sec.gov/news/press-release/2020-36>

#### 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.

"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.

初始代币发行人向美国证券交易委员会支付，同意返还资金并将代币注册为证券

美国证券交易委员会（美国证监会）于 2020 年 2 月 19 日声明指出，初始代币项目（ICO）发行人区块链技术初创公司 Enigma MPC 曾于 2017 年涉及销售「未经注册的证券发行」。总部位于旧金山的 Enigma 已同意通过索赔程序将资金返还给受损的投资者，将其代币注册为证券，向美国证监会提交定期报告并支付 500,000 美元的罚款。

根据美国证监会的指令，Enigma 在 2017 年通过出售其数字资产（ENG 代币）筹集了大约 4,500 万美元。美国证监会的指令认定 ENG 代币是证券，并且 Enigma 没有根据联邦政府证券法将其 ICO 注册为证券发行，其 ICO 没有资格获得注册要求的豁免。

美国证券交易委员会波士顿地区办事处执行副总监约翰·T·杜根（John T. Dugan）说：“所有投资者都有权从发行人那里获得与证券发行有关的某些信息，无论其涉及的是传统资产还是新型资产。今天的指令中的补救措施为 ICO 投资者提供了获得赔偿的机会，并为投资者提供了他们在做出投资决定时有权获得的信息。”

美国证监会的指令要求 Enigma 停止并制止其实施或引起任何违反联邦证券法注册规定的行为，并处以 500,000 美元的罚款。Enigma 同意了一项索赔程序，该程序将导致向在 ICO 中购买代币的投资者返还资金。该公司还将把其 ENG 代币注册为证券，并向美国证监会提交定期报告。Enigma 同意该指令，不承认或否认其调查结果。

Source 来源：

<https://www.sec.gov/news/press-release/2020-37>

### **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

throughout the country to provide market players with flexible and considerate front-line supervision and market services. In addition, SZSE will fully support enterprises in resuming production and operation as soon as possible, help them overcome the epidemic impact and make positive contributions to winning the battle against the NCCP.

### 深圳证券交易所快速通过湖北企业发债申请 — 首单支持防疫创新品种公司债券发行获批

2020年2月4日，武汉车都四水共治项目管理有限公司（以下简称武汉四水）绿色项目收益公司债券获深圳证券交易所（深交所）无异议函。这是新型冠状病毒感染肺炎疫情发生后，湖北省首单获批的创新品种公司债券项目。

武汉四水主要从事武汉经济技术开发区四水共治项目的投资、建设、运营和维护。该项目募集资金10亿元，将用于武汉经济技术开发区防洪水、排涝水、治污水、保供水及信息化平台建设，对提高武汉城市卫生水平、促进生态环境保护和优化具有重要意义。武汉四水与其主承销商长江证券所在地武汉受疫情影响严重，发行人与项目组克服困难、加班加点准备封卷材料并在春节后首个交易日提交，深交所通过“绿色通道”加快加急处理，于次日出具无异议函。

为积极推进落实五部委《关于进一步强化金融支持防控新型冠状病毒感染肺炎疫情的通知》、证监会《关于延长公司债券许可批复时限 支持防控新型冠状病毒感染肺炎疫情的通知》以及深交所《关于全力支持上市公司等市场主体坚决打赢防控新型冠状病毒感染肺炎疫情阻击战的通知》要求，深交所按照一切有利于疫情防控工作、一切有利于促进深市平稳运行的原则，针对特殊时期固定收益市场主体的实际需求作出具体安排，特事特办、急事急办，设立业务咨询专项服务通道，对募集资金主要用于疫情防控以及疫情较重地区企业发行的固定收益产品建立审核及发行“绿色通道”并暂缓计算相关业务时限，放宽受疫情影响严重企业的信息披露时限，采取非现场业务办理等措施，全力加大金融支持力度，切实做好疫情防控工作。

本单公司债的快速获批是深交所充分发挥资本市场机制功能，帮助企业战胜疫情灾害影响的积极举措。深交所将在固定收益产品发行上市一站式服务基础上，继续支持并协助已取得批文的疫情较重地区发行人，以及募集资金或基础资产涉及疫情防控物资生产、采购和运输等的发行人和原始权益人快速启动发行，优化融资安排。目前已取得批文的疫情较重地区发行人包括长江证券、启迪环境等。

下一步，深交所将继续坚决贯彻落实党中央国务院决策部署，按照中国证监会部署要求，充分发挥资本市场融资功能，加强与金融系统各部门工作协同，与全国各条战线齐心协力，为市场主体提供有弹性、有温度的一线监管和市场服务，全力支持企业尽快恢复生产经营，帮助企业克服疫情灾害影响，为打赢疫情防控阻击战积极贡献力量。

Source 来源：

[http://www.szse.cn/English/about/news/szse/t20200210\\_574067.html](http://www.szse.cn/English/about/news/szse/t20200210_574067.html)

### 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

to support all market players to win the anti-epidemic fight.

### 急市场所需，深圳证券交易所升级远程培训

为积极响应防疫应急期间市场培训需求，深圳证券交易所（深交所）推出首期升级版远程培训公开课，改进市场服务方式，强化业务支持和服务保障。远程培训围绕新《证券法》实施以及资本市场全面深化改革，为市场参与者提供安全便利的专业化服务。

深交所远程培训服务在前期在线课程基础上做了优化升级，重在支持受疫情影响严重地区企业和防疫应急相关重点行业企业，面向上市公司、拟上市公司以及有关市场主体提供资本市场融资品牌课程。接下来，深交所将进一步充实制作适应市场急需的系列培训课程，尽快推出上市公司独立董事、上市公司董事会秘书、新上市公司、董事长及实控人改制上市、拟上市公司财务总监等定向人群的在线培训，并针对新《证券法》、并购重组、股权激励、新会计准则、规范运作等专题开展在线培训。

2020年春节以来，深交所多措并举、协作联动，认真贯彻落实党中央国务院各项决策部署，按照证监会党委相关部署要求，想市场所想、急市场所需、解市场所难，充分发挥多个信息化、智能化、移动化公益技术平台优势，持续提升专业服务、精准服务、智慧服务能力水平，全力服务支持各市场主体坚决打赢疫情防控阻击战。

Source 来源：

[http://www.szse.cn/English/about/news/szse/t20200211\\_574092.html](http://www.szse.cn/English/about/news/szse/t20200211_574092.html)

### 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 DDMC 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.

### 上海证券交易所构筑“人民战疫”金融防线

新冠肺炎疫情发生以来，上海证券交易所（上交所）坚决贯彻中国党中央和国务院决策部署，积极推进落实五部委《关于进一步强化金融支持防控新型冠状病毒感染肺炎疫情的通知》和中国证监会疫情防控工作有关要求，及时发布《关于全力支持防控新型冠状病毒感染肺炎疫情相关监管业务安排的通知》，就疫情防控特殊时期相关业务实施做出调整和衔接安排，优化自律监管与服务方式，提供专门服务通道和在线业务操作便利，降低重点地区市场机构运行成本，保障各项业务稳妥有序开展，全力做好疫情防控工作。

### 优化自律监管 保障市场有序运行

针对上市公司在信息披露、企业融资和并购重组等方面面临一些新的挑战，上交所全面落实五部委通知和证监会工作要求，特殊时期做出特别监管安排，尊重市场规律，体现监管弹性，让自律监管更有温度、更暖人心。

优化科创板审核工作。放宽审核时限，自 2020 年 2 月 3 日起科创板首次公开上市审核、上市公司重大资产重组

审核及其他相关审核中发行人回复时限等规则规定的审核时限，以及发行人更新财务报告的时限，予以中止计算。正常推进受理和审核，支持鼓励与疫情防控相关的科技创新企业在科创板上市，相关企业申请材料齐备的即报即受理，组织熟悉生物医药行业的专业审核人员集中攻关、快速审核。通过审核系统在线办理业务咨询并简化咨询流程，响应时间不超过 2 个工作日。

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。研究创新服务方式，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，免收 2020 年湖北省新上市公司上市初费和上市年费。目前，共完成新股申购 9 家，其中科创板申购 7 家，主板申购 2 家。

优化信披监管和服务。做好上市公司股东大会召开、限售股份上市、债券付息兑回等相关公告及业务梳理，对 130 余家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，已稳妥安排了 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、企业生产和投资受到较大影响，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“疫情防控债”，积极配合做好疫情防控期间地方政府债券发行服务工作。

快速办理基金审核。为支持湖北省的交通、通讯、教育、医院、污水处理系统等公共设施的建设，上交所助力招商基金于 2020 年 2 月 10 日上报了全市场首只定向助力湖北的“抗疫债基”——招商湖北省地方债 ETF，并通过“绿色通道”加快加急处理，2 个工作日内出具了无异议函。

### 摸排潜在风险 守住市场防控之门

上交所加强对上市公司、债券市场、交易运行等方面的风险摸排，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，及时做出应对安排，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捐赠资金 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。

Source 来源：

<http://english.sse.com.cn/news/newsrelease/c/4997887.shtml>

**Hong Kong Monetary Authority Convenes Special Teleconference of the Banking Sector SME Lending Coordination Mechanism to Discuss Ways for**

## **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业贷款协调机制特别电话会议商讨业界协助中小企业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业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业客户。

与会银行认为疫情的出现无疑为中小企业带来另一波冲击，增加了中小企业现金流压力。受影响的中小企业众多，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，其他包括进出口和运输行业的中小企业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业的措施，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。

为减轻中小企业现金流压力，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业应急，增加中小企业的现金流，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。进出口行业方面，银行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暂缓偿还本金、减免信用卡借款费用等。就住宅按揭贷款暂缓偿还本金的安排，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业和个人客户的影响。

「中小企业融资担保计划」方面，因应银行容许贷款展期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「还息不还本」或贷款展期的安排，按证保险公司表示亦会灵活处理，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业客户。

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。

Source 来源：

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/02/20200213-4/>

#### Hong Kong Monetary Authority Issues a Tentative Issuance Schedule for Exchange Fund Bills and Notes for the Coming Quarter of April to June 2020

The Hong Kong Monetary Authority (HKMA) issued a tentative issuance schedule for Exchange Fund Bills and Notes (EFBNs) for the coming quarter of April to June 2020 on February 14, 2020 (Friday). The schedule contains information on the tentative tender dates, tender sizes and issue dates of individual issues, representing rollover of maturing issues and taking into account planned adjustments to the maturity spectrum of the EFBNs portfolio.

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.

#### 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（金管局）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。

请注意这些预先公布的发行时间表所刊载的投标日期、发行额及发行日期只属暂定性质。新发行的外汇基金票据详情将于有关投标日期前最少 4 个工作日确定及公布。新发行的外汇基金债券详情将于有关投标日期前 7 个工作日确定及公布。金管局可能会因应市场情况作出修订。

Source 来源：  
<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/02/20200214-5/>

#### Hong Kong Insurance Authority Continues to Provide Limited Public Services in View of the Latest Development Related to the Novel Coronavirus

In view of the latest development related to the novel coronavirus, the Hong Kong Insurance Authority (IA) announced on February 16, 2020 that its office will remain closed to the general public from February 17, 2020 to February 23, 2020 to reduce the risk of virus spreading. IA will provide public services at a limited scale. The enquiry and complaint hotline will operate from 11am to 1pm and 2 to 4pm on weekdays, while handling of email for enquiries and complaints will operate as normal.

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](http://www.ia.org.hk)).

#### 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](http://www.ia.org.hk)) 公布任何更新安排。

Source 来源：  
[https://www.ia.org.hk/en/infocenter/press\\_releases/20200216.html](https://www.ia.org.hk/en/infocenter/press_releases/20200216.html)

#### 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

- extra £1.2 billion in 2018, and the FCA is finalizing remedies following its market study.
- High-risk retail investment products are exposing consumers to more risk than they can absorb – some of the highest risk products are often marketed directly to retail consumers with poor communication of the risks involved and implications that the investments are regulated, when this is not the case.
- Many new payments firms have been able to enter the market and grow quickly, but some of their products don't have protection in place for consumers, for example e-money services advertised as 'current accounts' aren't covered by the Financial Services Compensation Scheme.

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."

**英国金融行为监管局发布行业年度观点以评估消费者在金融服务市场上所面临的风险和潜在危害并着重强调其重点关注领域**

英国金融行为监管局于 2020 年 2 月 18 日发布了行业年度观点，以评估消费者在金融服务市场上所面临的风险和潜在危害。

行业观点着眼于宏观经济发展的影响以及整个金融市场出现新兴变化的驱动因素，亦概述了可能对消费者或金融体系的完整性造成负面影响的领域。报告指出了导致危害的因素以及此类危害随着时间推移的发展情况。

金融行为监管局所关注的危害包括：

- 尽管金融行为监管局目睹了信贷市场上诸多积极调整，但根据《金融生活》的数据，有 740 万英国成年人处于过度负债状态并且视其财务承付为负担。
- 保险定价仍然为忠实客户带来不利影响 – 家庭和汽车保险的“忠实惩罚”使 600 万长期消费者在 2018 年额外花费了 12 亿英镑，而金融行为监管局正在根据其市场研究最终敲定补救措施。
- 高风险的零售投资产品使消费者暴露在超过其承受范围的更大的风险之中 – 一些最高风险产品通常直接销售给个人消费者，这些消费者对其中所涉及的风险和投资受到监管的情况不甚了解。
- 许多新兴支付公司已经进入市场并快速成长，但其某些产品没有为消费者提供保护，例如被作为“经常账户”宣传的电子货币服务不涵盖于金融服务补偿计划之内。

金融行为监管局的战略与竞争执行总监兼临时行政总裁 Christopher Woolard 表示：

"我们致力于减少我们所监管的市场中的危害。我们对市场的分析可确保我们有效地做到这一点，从而帮助我们决定将注意力集中在何处。我们希望公司同样地以预防损害为重点并在可能的情况下为我们提供帮助，我们将继续积极监督所有公司以确保他们实现这一目标。"

"从行业观点可以明显看出，目前看到的许多危害是由我们监管的许多较小型公司或超越我们职权范围的公司所造成的。"

"报告中的发现将有助于我们进一步发布商业计划以及做出对消费者、市场诚信及竞争产生影响的决策。"

Source 来源：

<https://www.fca.org.uk/news/press-releases/fca-highlights-its-areas-concern-financial-services-markets>

**Australian Securities and Investments Commission Starts a Four-week Consultation on Draft Guidance about the New Best Interests Duty to Help Promote Certainty of New Obligations for Mortgage Brokers**

Australian Securities and Investments Commission (ASIC) has started a four-week consultation on draft guidance about the new best interests duty for mortgage brokers from February 20, 2020.

The new obligations were legislated by the Parliament in response to Recommendation 1.2 of the Royal

Commission. 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.

澳大利亚证券与投资委员会已就抵押贷款经纪人最大利益义务最新指导草案展开为期四周的意见征求以帮助抵押贷款经纪人提高其对新义务的确定性

澳大利亚证券与投资委员会自 2020 年 2 月 20 日起开始为期四周的关于抵押贷款经纪人最大利益义务最新指导草案的意见征求。

新义务是由议会根据皇家委员会的建议 1.2 而通过立法加以规定的。自 7 月 1 日起, 这些义务将要求抵押贷款经纪人在提供信贷援助时为消费者的最大利益行事并优先考虑消费者的利益。

在宣布意见征求开始时, 澳大利亚证券与投资委员会专员 Sean Hughes 表示, "这些义务使抵押贷款经纪人的利益与他们的客户(借款人)的利益和期望适当地保持一致。消费者应当对自己的经纪人正在为自己提供适合其自身情况的最佳信贷有信心, 并且我们希望消费者的收益由于这项改革会有所改善。"

Hughes 进一步补充说, "我们已经尽早发布了这份指导草案以征求意见, 目的就在于帮助抵押贷款经纪人提高确定性, 因为全行业正在为 7 月份开始实行新义务做准备。"

澳大利亚证券与投资委员会在征求意见文件 327 *贯彻落实皇家委员会意见: 抵押贷款经纪人及最大利益义务* (CP 327) 中概述了指导方法。与立法一致, 指导草案是高阶的并以原则为基础的, 但同时也包含了实际示例。该指导草案的目的在于解释政府所推行的义务, 并没有规定行为或施加其他义务。

指导草案围绕经纪人信贷援助流程中常见的关键步骤进行规定, 例如收集信息、考虑产品选择以及向消费者提供选项和建议。

澳大利亚证券与投资委员会欢迎所有感兴趣的利益相关者对 CP 327 中的提案以及指导草案提出意见, 这将使澳大利亚证券与投资委员会了解指导草案如何最好地帮助经纪人履行这些新的法律义务。澳大利亚证券与投资委员会期望新义务也将改善房屋贷款市场的竞争。

澳大利亚证券与投资委员会在 2020 年 3 月 20 日之前征求对指导草案的公开意见。

澳大利亚证券与投资委员会计划在 2020 年 7 月 1 日新义务开始实行之前公开发布最终指导。

Source 来源:

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-040mr-asic-consults-on-draft-guidance-on-the-new-best-interests-duty-for-mortgage-brokers/>

## 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.

### 新加坡金融管理局欢迎金融机构采取措施支持正在面对新型冠状病毒 COVID-19 冲击的客户

新加坡金融管理局宣布，欢迎新加坡的银行和保险公司表明立场支持其正在遭受 2019 年新型冠状病毒 (COVID-19) 持续爆发的不利影响而面临财务困难的客户。

目前为止，银行宣布的支持措施包括遭受影响的公司和个人客户暂缓还款，延长贸易融资设施的支付期限以及提供额外营运资金。这些措施符合新加坡银行协会 (ABS) 有关公司债务重组的准则。

新加坡的保险公司已明确表示，综合健保计划 (IP)，IP 附加险以及其他大多数个人和团体的健康保险政策将涵盖与新型冠状病毒 COVID-19 相关的住院治疗费用。

根据新加坡金融管理局的新闻发布，一些保险公司向被诊断为新型冠状病毒 COVID-19 的寿险保单持有人提供了额外的福利，例如在诊断后免费提供一次性付款以及住院治疗期间的每日现金付款。

新加坡金融管理局支持金融机构的此类努力，以与受新型冠状病毒 COVID-19 影响的客户进行建设性合作，同时坚持审慎的风险评估。各种措施都将帮助公司和个人面对短期现金流限制，并为受新型冠状病毒 COVID-19 影响的保单持有人及时提供保险。综上所述，这些措施应有助于减轻新型冠状病毒 COVID-19 爆发对公司和个人产生的影响。

Source 来源：

<https://www.mas.gov.sg/news/media-releases/2020/mas-welcomes-measures-by-financial-institutions-to-support-customers-facing-the-impact-of-covid-19>

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

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