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

2020.04.03

## Hong Kong Market Misconduct Tribunal Finds Magic Holdings International Limited and Its Directors Culpable of Late Disclosure of Inside Information

On March 25, 2020, Hong Kong Market Misconduct Tribunal (MMT) finds that Magic Holdings International Limited (Magic) and five of its directors culpable of the company's failure to disclose in a timely manner inside information on L'Oréal S.A.'s (L'Oréal) proposed acquisition of Magic in 2013, as required under the corporate disclosure requirements of the Securities and Futures Ordinance (SFO).

The five Magic's directors are: chairman, Mr. Stephen Tang Siu Kun (Tang); executive directors, Mr. She Yu Yuan (She), Mr. Luo Yao Wen (Luo) and Mr. Cheng Wing Hong (Cheng), who was also the company secretary at the material time; and non-executive director, Mr. Sun Yan (collectively, the five directors). Tang, She and Luo were co-founders of Magic (collectively, the founders).

The MMT was told that Magic and L'Oréal, a French cosmetics group, had discussions relating to the latter's acquisition proposal since early March 2013. In a meeting held on April 27, 2013, L'Oréal and Magic's founders agreed that an offer price of not less than HK\$5.5 per share would be put before Magic's board of directors for their consideration.

Magic's founders indicated to L'Oréal that they would contact Magic's institutional investors to gauge their interest in the acquisition proposal and they would also support L'Oréal's request to Magic's board of directors to carry out due diligence.

However, Magic did not disclose the information relating to L'Oréal's acquisition proposal to the public until August 2013.

The MMT considers that there was a commercial reality to the negotiations between Magic and L'Oréal and such negotiations had gone beyond testing the waters and

that Magic had failed to disclose inside information to the public as soon as reasonably practicable.

In the MMT's view, Magic's breach of the disclosure requirements was due to the fact that its directors were not informed in a timely manner of all information relevant to the determination of whether it was necessary to make disclosure about the potential acquisition by L'Oréal to the public.

The MMT hence found that Tang and Cheng had failed to carry out their functions as the company's chairman and company secretary which resulted in Magic's breach of the corporate disclosure requirements. It also found that the five directors had failed to take all reasonable measures to ensure that proper safeguards existed within Magic to prevent it from breaching its disclosure obligation.

The MMT will hold a hearing on the making of the consequential orders on April 25, 2020.

## 香港市场失当行为审裁处裁定美即控股国际有限公司及其董事未有及时披露内幕消息

2020年3月25日，香港市场失当行为审裁处（审裁处）裁定，美即控股国际有限公司（美即控股）及其五名董事须为该公司没有按照香港《证券及期货条例》的企业披露规定所要求，及时披露有关 L'Oréal S.A. (L'Oréal) 于 2013 年就收购美即控股的提议的内幕消息，负上罪责。

该五名美即控股董事为：主席邓绍坤（邓）；执行董事余雨原（余）、骆耀文（骆）和郑永康（郑）；及非执行董事孙焱（统称该五名董事）。郑永康于关键时间同时为公司秘书。邓、余及骆均为美即控股的共同创办人（统称创办人）。

审裁处获悉，美即控股与法国化妆品集团 L'Oréal 自 2013 年 3 月初便已就后者提出的收购建议进行商议。在 2013 年 4 月 27 日举行的会议上，L'Oréal 与美即控股的创办人

协定，将会向美即控股的董事会提出不低于每股 5.5 港元的要约价，以供其考虑。

美即控股的创办人向 L'Oréal 表示，他们会接触美即控股的机构投资者，以打探它们对于收购建议的兴趣，并且会支持 L'Oréal 向美即控股董事会提出进行尽职审查的要求。

然而，美即控股直至 2013 年 8 月才向公众披露有关 L'Oréal 收购建议的消息。

审裁处认为，美即控股与 L'Oréal 之间的磋商已反映商业实况并且已超出纯属试探性质，而美即控股没有在合理地切实可行的范围内尽快向公众披露内幕消息。

审裁处认为，美即控股违反了披露规定是因为其董事没有及时获悉所有与厘定是否需要向公众披露 L'Oréal 的潜在收购行动有关的资料。

审裁处因此裁定，邓及郑没有履行他们分别作为公司主席及公司秘书的职能，导致美即控股违反了企业披露规定。审裁处亦裁定该五名董事没有采取一切合理措施，以确保美即控股内部设有妥善的预防措施防止公司违反其披露责任。

审裁处将会在 2020 年 4 月 25 日就作出相应命令举行聆讯。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR24>

### **Hong Kong Securities and Futures Commission Issues Guidance to Fund Industry Amidst COVID-19 Outbreak**

On March 27, 2020, The Securities and Futures Commission (SFC) reminds fund industry participants and intermediaries of their obligations to look after the interests of clients, in view of the volatility in local and international markets related to the COVID-19 outbreak.

In a circular to managers, trustees and custodians of SFC-authorized funds, the SFC reiterated their obligations to properly manage the liquidity of funds and ensure fair treatment of investors in light of the current market situation. The SFC has stepped up its monitoring of SFC-authorized funds and should be given early warning of any material issues affecting them, the circular emphasized.

A separate circular reminded intermediaries of their obligation to ensure suitability when they make a solicitation or recommendation. This includes performing due diligence having regard to an investment product's liquidity and credit quality as well as taking the client's current circumstances into account. Intermediaries were also reminded to disseminate notices and other communications about investment products in a timely manner where they hold them directly or indirectly on behalf of their clients.

"Under current market conditions, industry participants should exercise due care when recommending products which may be highly volatile or less liquid," said Mr. Ashley Alder, the SFC's Chief Executive Officer. "This is a period of unprecedented volatility across asset classes and the SFC remains laser focused on ensuring Hong Kong markets stay open and continue to function in a fair and orderly manner."

The SFC is closely monitoring the operational and financial resilience of industry participants and market infrastructure, and will provide further guidance to the industry as needed.

### **香港证券及期货事务监察委员会因应 2019 冠状病毒疫情向基金业发表指引**

2020 年 3 月 27 日，鉴于香港本地及国际市场因 2019 冠状病毒疫情而出现波动，香港证券及期货事务监察委员会（证监会）提醒基金业参与者及中介人它们有责任顾及客户的利益。

在一份致证监会认可基金的管理公司、受托人及保管人的通函中，证监会重申，这些公司在现时的市况下，有责任妥善地管理基金的流通性及确保客户得到公平对待。该通函强调，证监会已加强了对证监会认可基金的监察，而有关基金应及早就任何对其造成影响的重大事宜向证监会发出提示。

证监会在另一份通函内提醒中介人在作出招揽或建议行为时，有责任确保为客户提供合理适当建议，包括进行尽职审查，而过程中须顾及投资产品的流通性及信贷素质，并须考虑客户当前的情况。此外，如中介人为客户直接或间接持有投资产品，应谨记及时发放有关投资产品的通告及其他通讯。

证监会行政总裁欧达礼先生（Mr. Ashley Alder）表示：“面对当前的市况，业界在推介可能大幅波动或流通性较

低的产品时，应以适当的审慎态度行事。各类资产现正面对前所未有的波动，证监会仍会专注于确保香港市场持续开放，并继续以公平和有序的方式运作。”

证监会正密切监察业界和市场基础设施在营运及财政方面承受冲击的能力，并会在有需要时向业界提供进一步指引。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR25>

### Hong Kong Securities and Futures Commission Extends Three Deadlines for Implementation of Regulatory Expectations and Issues Reminder of Order Recording Requirements under COVID-19 Pandemic

On March 31, 2020, the Securities and Futures Commission (SFC) issued a circular to inform the securities industry that the SFC has decided to extend the deadlines of three regulatory expectations that are due for implementation in 2020 by six months in light of the COVID-19 pandemic and the disruptions it causes. It also reminds intermediaries of the alternative order recording options under the existing regulatory framework that may be adopted during the pandemic. The SFC also issued [FAQs](#) to address a number of administrative and licensing related matters arising from firms reconfiguring staffing arrangements during the pandemic.

#### Extension of Three Deadlines for Implementation of Regulatory Expectations:

Use of external electronic data storage provider (EDSP) – Where a data center of an EDSP used by a licensed corporation has been approved under section 130 of the SFO before October 31, 2019, the licensed corporation's provision of the documents to the SFC's Licensing Department set out in paragraph 25 of the relevant <a href="#">Circular</a>	Implementation deadline extended from June 30, 2020 to December 31, 2020
<a href="#">New measure</a> to protect client assets – Where	Implementation deadline extended

intermediaries are required to have the countersigned acknowledgement letters from relevant banks in place before depositing any client money or securities into any new client asset accounts	from July 31, 2020 to January 31, 2021
<a href="#">Data standards</a> for order life cycles – Where in-scope brokers are expected to implement system changes and make other arrangements needed for compliance with the data standards	Implementation deadline extended from October 31, 2020 to April 30, 2021

#### 香港证券及期货事务监察委员会延长实施三项监管预期的期限，并发出 COVID-19 大流行下订单记录要求的提醒

2020年3月31日，香港证券及期货事务监察委员会（证监会）发出通知，告知证券业，鉴于 COVID-19 大流行和其对市场的干扰，证监会已决定将三项原于 2020 年到期实施的监管预期的截止日期延长六个月。证监会同时提醒中介机构于大流行期间在现行的监管框架下就记录交易指示可选用的替代方案。证监会还发布了[常见问题解答](#)，以解答于大流行期间因机构重新调配职员的工作安排而产生与行政及牌照相关事务的一系列问题。

#### 延长实施三项监管预期的期限:

外间电子数据储存的使用——当中要求持牌法团若采用的电子数据储存供应商的数据中心已于 2019 年 10 月 31 日前根据《证券及期货条例》第 130 条获得批准，便应向证监会发牌科提供 <a href="#">有关通函</a> 第 25 段所述的文件	实施期限从 2020 年 6 月 30 日延长至 2020 年 12 月 31 日
保障客户资产的 <a href="#">新措施</a> ——当中要求中介机构将任何客户款项或证券存入新开设的客户资产帐户前，必须备妥已由相关银行加签的确认函	实施期限 2020 年 7 月 31 日延长至 2021 年 1 月 31 日

适用于买卖盘生命周期的数据标准——当中要求该范围内的经纪行应更改系统及作出其他所需的安排，以遵循数据标准	实施期限从 2020 年 10 月 31 日延长至 2021 年 4 月 30 日
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Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openFile?refNo=20EC26>  
<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/circular/intermediaries/supervision/doc?refNo=20EC26>

### The Hong Kong Monetary Authority and Hong Kong Securities and Futures Commission Issue Consultation on Annual Update to the List of Financial Services Providers under the OTC Derivatives Regulatory Regime

On March 27, 2020, The Hong Kong Monetary Authority (HKMA) and The Securities and Futures Commission (SFC) issues a joint consultation on the annual update to the list of Financial Services Providers under the over-the-counter (OTC) derivatives clearing regime. Eight additional entities are proposed to be included on the list.

The list of Financial Services Providers under the OTC derivatives clearing regime includes entities that meet the following two criteria:

- They belong to a group of companies appearing on the list of global systemically important banks published by the Financial Stability Board, or on the list of dealer groups which undertook to the OTC Derivatives Supervisors Group to work collaboratively with central counterparties, infrastructure providers and global supervisors to continue to make structural improvements to the global OTC derivatives markets; and
- They are members of the largest central counterparties offering clearing for interest rate swaps in the US, Europe, Japan and Hong Kong.

The current clearing regime covers transactions between major dealers where at least one of them is a prescribed person (i.e., an authorized institution, an approved money broker or a licensed corporation). Transactions in certain standardized interest rate swaps in G4 currencies (i.e., US dollar, Euro, British pound and Japanese yen) and Hong Kong dollar between a prescribed person which has reached the prescribed clearing threshold and another major dealer which is not

a prescribed person also have to be centrally cleared. To that end, the concept of Financial Services Providers was introduced to identify such major dealers outside of Hong Kong.

Interested parties are invited to submit comments to the HKMA or the SFC by April 28, 2020.

The joint consultation paper can be downloaded from the websites of the HKMA or the SFC.

### 香港金融管理局与香港证券及期货事务监察委员会发表关于对场外衍生工具监管制度下的金融服务提供者的名单进行年度更新的谘询

2020 年 3 月 27 日，香港金融管理局（金管局）与证券及期货事务监察委员会（证监会）就场外衍生工具结算制度下的金融服务提供者的名单的年度更新，发表联合谘询文件，建议在该名单内加入多八家机构。

场外衍生工具结算制度下的金融服务提供者的名单上的机构须符合以下两项准则：

- 属于在金融稳定委员会刊发的全球具系统重要性银行名单上的集团，或属于在交易商集团名单上的集团，而后者曾向场外衍生工具监事组织（OTC Derivatives Supervisors Group）承诺会与中央对手方、基础设施建设提供者及全球监事合作，继续在全球场外衍生工具市场的结构方面作出改善；及
- 是在美国、欧洲、日本及香港为掉期息率提供结算服务的最大规模中央对手方的成员。

现行结算制度涵盖至少其中一方为订明人士（即认可机构、核准货币经纪或持牌法团）的主要交易商之间的交易。达到订明结算门槛的订明人士与另一名并非订明人士的主要交易商之间以四大工业国货币（即美元、欧元、英镑及日圆）和港元计价的标准化掉期息率交易，亦必须进行中央结算。为此，金管局与证监会引入了金融服务提供者的概念，以识别那些在香港以外地方的主要交易商。

金管局与证监会欢迎相关人士在 2020 年 4 月 28 日或之前向金管局或证监会提交意见。

联合谘询文件可从金管局或证监会的网站下载。

Source 来源:

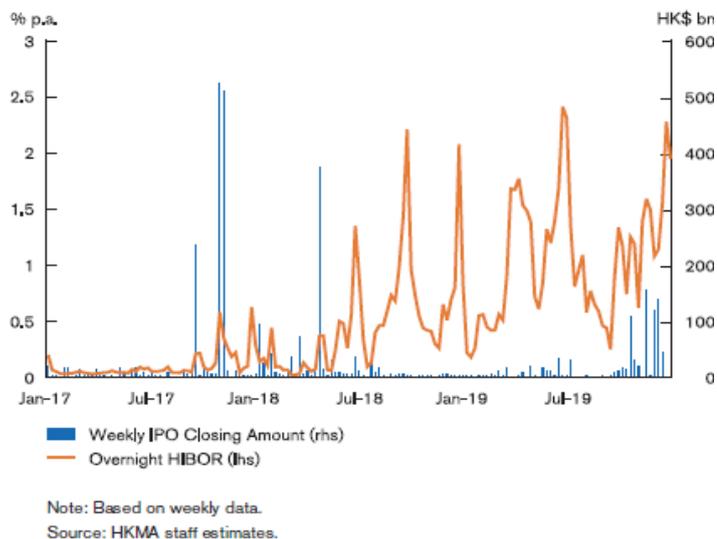
<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR26>

## The Hong Kong Monetary Authority Publishes A Study of the Impact of Future Initial Public Offerings on the Hong Kong Inter-bank Offered Rate

### Introduction

As a leading financial center with a highly developed infrastructure and a global network, Hong Kong is a hub for major offshore fundraising, especially for IPOs. It is well-known that sizeable IPO subscriptions exert significant pressure on short-term HIBORs, especially near the closing date of subscription. Chart B4.1 shows that some spikes in overnight HIBOR typically coincide with the closing of mega IPOs. What is less known, however, is the extent to which future IPOs – such as those that are at an early application stage – affect longer tenor interest rates. This box investigates this question against the backdrop of several blockbuster IPOs in recent years that garnered plenty of market attention well before their subscription periods.

**Chart B4.1**  
IPO closing amount and overnight HIBOR



### Measuring market attention on future IPOs

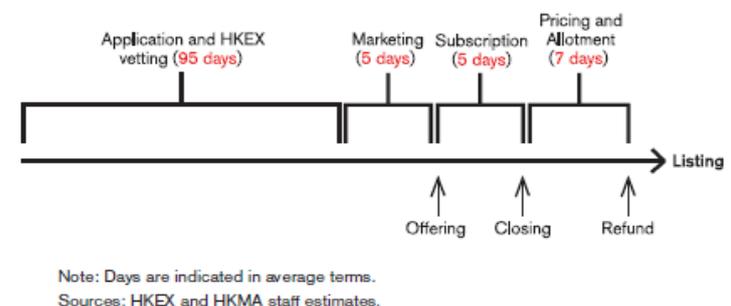
Future IPOs could affect longer-term HIBORs because market participants may pre-position themselves in anticipation of future large IPO closings by borrowing over the medium term. For example, if banks anticipate a blockbuster IPO in two-and-a-half months' time, they may prudently secure funds with repayment in three months' time, instead of borrowing just before the closing date. Taking into consideration banks'

anticipated funding needs and their expectation of future interest rates, it is therefore not uncommon to observe that longer-term HIBORs could rise well before the IPO subscription period.

To measure the market attention on future IPOs, a proxy of "Future IPO News" is constructed using textual analysis by counting some specific keywords appearing in local Chinese news before IPO subscription periods. If a particular IPO receives extensive media coverage and intense attention, it is conceivable that this is a forward looking sign representing a high demand for investing in the company, prompting market participants to prepare funds earlier and driving up longer-term HIBORs.

In determining the most relevant keywords for gauging market attention, the keyword "listing application" is chosen to mirror IPO subscriptions over the medium term. The rationale is largely based on the timeline of an ordinary listing process as shown in Chart B4.2. As a regular practice, after a company submits its listing application to the Hong Kong Stock Exchange, the application proof will be uploaded to the HKEX's website, which will be picked up easily by the local media, with the keyword "listing application" reported in the news. If the application is successful, the closing date of an IPO subscription is, on average, about 100 calendar days after the publication of the application proof.

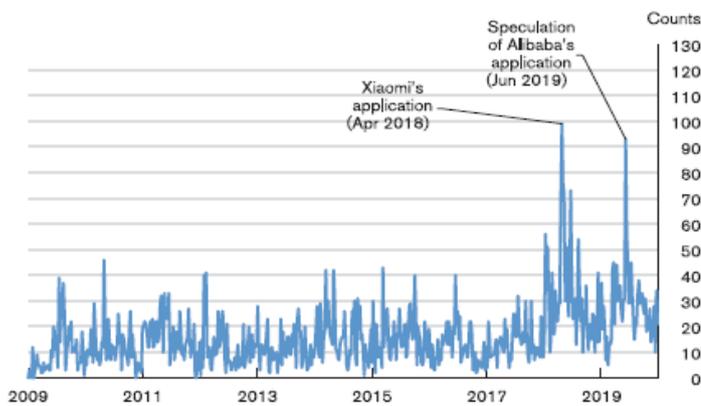
**Chart B4.2**  
Process for listing on Hong Kong Stock Exchange



In each of the weeks from January 2009 to December 2019, the number of news counts is tallied and the resulting weekly time series of "Future IPO News" is presented in Chart B4.3. It shows that the news count for "listing applications" gained two spikes, in April 2018 and June 2019. The spike in April 2018 reflected Xiaomi's listing application following a change in the rules by the HKEX to allow companies with a weighted voting right for listing, while the spike in June 2019

reflected speculation about Alibaba's secondary listing in Hong Kong.

**Chart B4.3**  
**"Future IPO news", based on the news count for "listing application"**



Source: HKMA staff estimates.

### Empirical model

A regression model on weekly frequency is constructed to assess how this news-count proxy affects changes in the three-month HIBOR. The model also takes into account other factors that also affect the behavior of HIBORs, with the major ones discussed below.

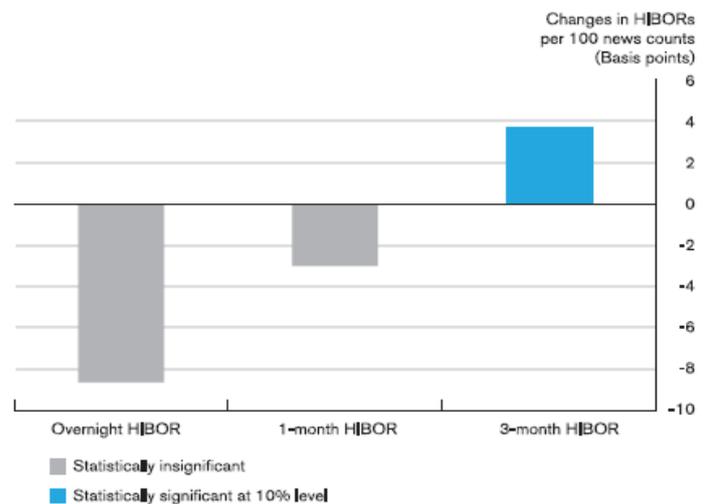
- **US interest rate:** This is proxied by LIBORs with the same maturity of HIBORs. Under the LERS, Hong Kong's interest rates should broadly follow their US counterparts. As such, it is expected the US interest rate should have a positive effect on HIBORs.
- **The Aggregate Balance (AB):** This is used to proxy for the interbank liquidity. When interbank liquidity is scarce, there will be upward pressure on HIBORs. As such, the AB is expected to have a negative impact on Hong Kong dollar interest rates.
- **Quarter-end effect:** It is also well known that the quarter-end effect exerts funding pressure on HIBORs. As market participants are likely to prepare funds well ahead of the end of the quarter, leads of the quarter-end dummy variables are included in the model.
- **"Future IPO news":** This is the news-count proxy for the market attention on future IPOs as discussed above. If market participants pre-position themselves ahead of mega IPOs by borrowing well in advance of the actual listing, this is expected to have a positive effect on HIBORs on the longer end, but not on the shorter end (which is influenced by other shorter-term liquidity demand).

### Empirical results and illustrations

To examine the effect of market attention of future IPO news on HIBORs, Chart B4.4 shows the estimated changes in HIBORs of different maturities in response to 100 news counts for "listing application". It shows that the three-month HIBOR is the most responsive to future IPO news. Specifically, if the IPO is covered by the media 100 times, the model predicts that the three-month HIBOR will be increased by 3.7 basis points. On the other hand, "Future IPO News" does not appear to have an effect on other shorter-term HIBORs as the impact on those are statistically insignificant. These results are consistent with the timeline of a typical IPO process as outlined in Chart B4.2.

Given the significant effect of "Future IPO news" on the three-month HIBOR, it is evidence that market participants have pre-positioned themselves in anticipation of future large IPOs closing by borrowing over the medium term. To illustrate how the model can be used to track interest rate movements before and after the IPO activities, two recent blockbuster IPOs (Xiaomi and Alibaba) are used to carry out the attribution analysis on the changes in the three-month HIBOR.

**Chart B4.4**  
**Estimated impact of "Future IPO news" on HIBORs**

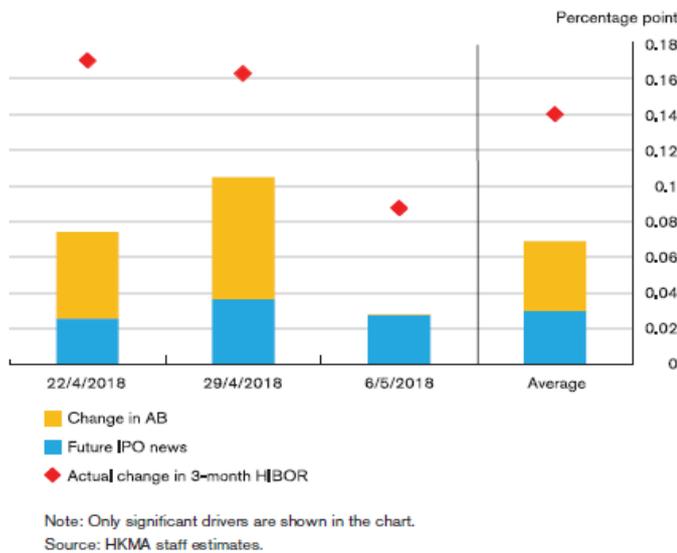


Source: HKMA staff estimates.

**The case of Xiaomi:** In April 2018, Xiaomi submitted its listing application to the HKEX following HKEX's change of rules to allow companies with weighted voting right for listing. As the first such company to list in Hong Kong after the rule change, Xiaomi received strong market and media attention. This can be seen by the spike in

“Future IPO News” shown in Chart B4.3. Compared with the long-run average of around 10 news counts per week, “Future IPO News” apparently surged in April 2018, with most of the news related to Xiaomi’s listing. Indeed, the attribution analysis shown in Chart B4.5 suggests that “Future IPO News” (the blue bar) was one of the major drivers for the rise in the three-month HIBOR during that period. It should be noted that other market factors also played a role on the rise. In particular, a reduction in the AB arising from the triggering of the weak-side CU in April 2018 (the orange bar) also exerted upward pressure on HIBORs.

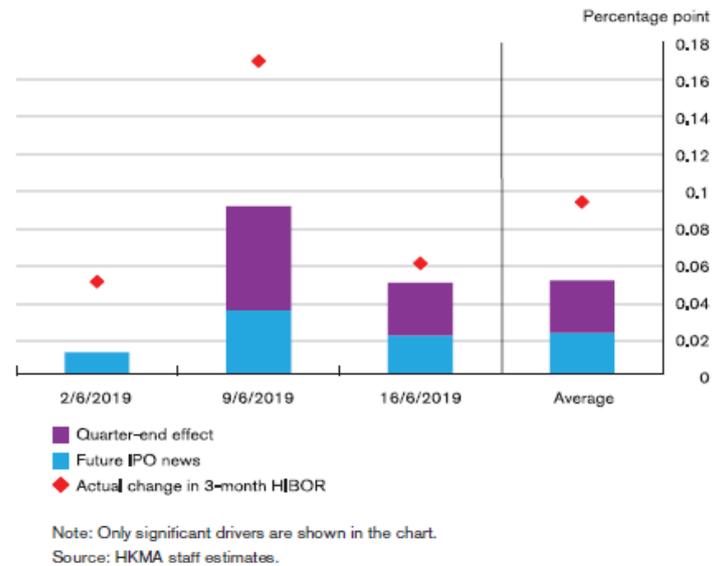
**Chart B4.5**  
**Contribution to the change in the three-month HIBOR around the period of Xiaomi’s listing application in April 2018**



*The case of Alibaba:* In June 2019, Alibaba reportedly submitted its application for secondary listing in Hong Kong, and was expected to be listed in the second half of 2019. Reflecting its reputation and size as a leading conglomerate in the Mainland technology sector, the market and the media focused on its return to China and anticipated its listing in Hong Kong. Correspondingly, “Future IPO News” as shown in Chart B4.3 also started its upward trend well before the listing rumor in June. The significant effect of “Future IPO News” on the three-month HIBOR can again be observed in attribution analysis in Chart B4.6. It shows that the news covering Alibaba’s potential listing in Hong Kong was one of the major drivers for the rise in the three-month HIBOR (blue bar). As the rumor of Alibaba’s listing emerged near the end of June, Chart B4.6 also shows that the half-year end funding demand was another major contributor

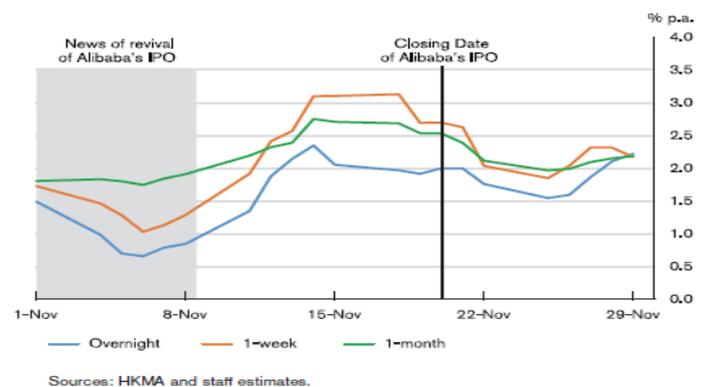
(purple bar), as banks needed to prepare funds straddling the half-year end.

**Chart B4.6**  
**Contribution to change in three-month HIBOR with market anticipating Alibaba’s listing in June 2019**



Although this box focuses on how market attention on future IPO news affects the medium term HIBOR, it is important to reiterate that sizeable IPOs do significantly affect short-term HIBORs. As Alibaba swiftly relaunched its IPO in November, market participants may not have been so well-prepared in advance as the news of its IPO revival only surfaced during the first week of November. With the IPO closing date on November 20 approaching, demand for short term funding increased sharply, which led to notable rises in shorter-term HIBORs (Chart B4.7).

**Chart B4.7**  
**Overnight, one-week and one-month HIBORs in November 2019**



## Concluding remarks

This box constructs a news-count proxy to gauge market attention on future IPOs. Using two recent IPOs as case studies, the empirical model further shows that, in addition to other factors that affect interbank markets, “Future IPO News” also explains a portion of the changes in the three-month HIBOR. This suggests that market participants are proactive in their preparation ahead of future large IPOs. As a result, this box provides some insights into factors affecting medium-term interest rates and how the liquidity management of market participants is evolving.

## 香港金融管理局发表未来首次公开招股对香港银行同业拆息的影响研究报告

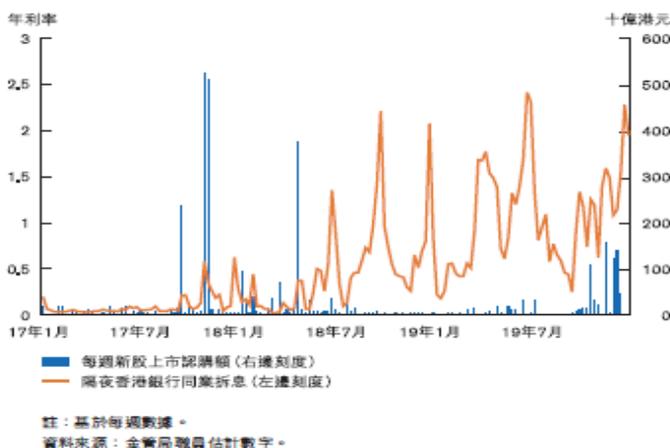
### 引言

香港作为领先的国际金融中心，具备完善的金融基建及国际网络，因此能成为主要的离岸集资中心，尤其是首次公开招股方面的集资。

众所周知，大型新股上市认购会对短期香港银行同业拆息造成显著压力，尤以截止认购日期前后为甚。图 B4.1 显示，部分隔夜香港银行同业拆息的抽升与大型新股上市的截止认购日期吻合。

然而，未来的首次公开招股（例如仍处于早期申请阶段的新股）对较长期利率的影响则较少谈及。本专题以近年在认购期开始之前已广受市场关注的大型新股为例，探讨这一问题。

**圖 B4.1**  
首次公開招股的認購額（於截止日期）與隔夜香港銀行同業拆息

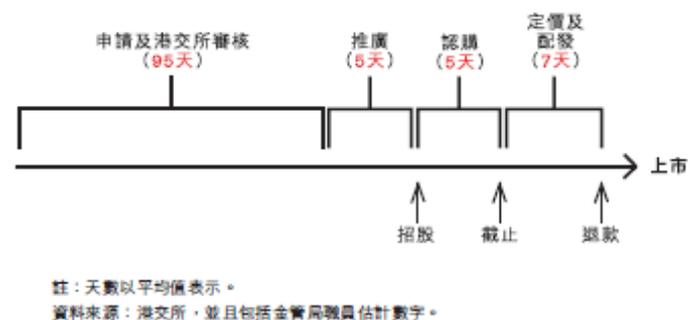


## 衡量市场对未来首次公开招股的关注度

市场参与者可能预先估计未来大型新股上市的截止认购日期，透过中期借贷作提前部署，因此，未来的新股上市可能会影响较长期的香港银行同业拆息。举例而言，若银行预计在两个半月内有大型新股上市，银行可为审慎起见以 3 个月期融资较早获取资金，而非在临近截止认购日期之前才进行融资。因此，在考虑到银行预期资金的需求及其对未来利率的预期，较长期的香港银行同业拆息在首次公开招股认购期之前上升的情况并不少见。为了衡量市场对未来首次公开招股的关注度，金管局点算新股上市认购期开始之前，特定关键词在本地中文媒体出现的次数，透过文本分析构建「未来首次公开招股新闻」的代理指针。如果某宗新股上市消息受到传媒广泛报导及关注，可以想象这是一个前瞻性的信号，表示投资者对该公司趋之若鹜，促使市场参与者提前准备资金，从而推高较长期的香港银行同业拆息。在决定用于衡量市场关注度而最为适切的关键词时，金管局选用「上市申请」这一关键词以反映中期而言首次公开招股认购情况。其基本原理主要基于图 B4.2 中所示的一般上市过程时间表。正常情况下，当一间公司向香港联合交易所（联交所）呈交其上市申请后，会将申请版本上传至香港交易及结算有限公司（港交所）网站。本地传媒很快会加以报导，有关新闻则会出现「上市申请」的关键词。

若申请成功，首次公开招股认购的截止日期平均为登载申请版本之后约 100 个公历日。

**圖 B4.2**  
在香港聯交所上市的过程



从 2009 年 1 月至 2019 年 12 月期间的新闻中，金管局点算并汇总每星期新闻关键词次数，并得出图 B4.3 所示「未来首次公开招股新闻」按周计的时间序列。如图所示，包含「上市申请」的新闻数量在 2018 年 4 月及 2019 年 6 月两度急升。2018 年 4 月出现的急升，反映

小米在港交所修订上市规则，容许公司以同股不同权方式上市之后呈交上市申请，而 2019 年 6 月出现的急升则反映市场猜测阿里巴巴可能在香港二次上市。

**圖 B4.3**  
「未來首次公開招股新聞」，基於包含「上市申請」關鍵詞的新聞數量



### 实证模式

金管局构建以周作频次的回归模型，以评估这一个以新闻数量计算的代理指针如何对 3 个月香港银行同业拆息变动构成影响。

这个模型亦考虑影响香港银行同

业拆息变动的其他因素，包括以下提及的主要因素。

- **美国利率**：这采用与香港银行同业拆息相同期限的伦敦银行美元同业拆息。在联系汇率制度下，香港的利率应大致追随美国相应的利率。因此，预期美国利率将对香港银行同业拆息构成正相关影响。
- **总结余**：用于表示银行业流动性的代理指针。当银行业流动性短缺时，香港银行同业拆息会面临上行压力。因此，预期总结余对港元利率会构成负相关影响。
- **季结效应**：众所周知，季结使香港银行同业拆息面临资金压力。由于市场参与者可能在季结前一段时间早已准备资金，因此这个模型包含了几个领先的季结虚拟变量。
- **「未来首次公开招股新闻」**：如上所述，这是用于表示未来首次公开招股市场关注度的新闻数量代理指针。若市场参与者早在大型新股实际上市之前提前融资部署资金，这会对较长期的香港银行同业拆息构成正相

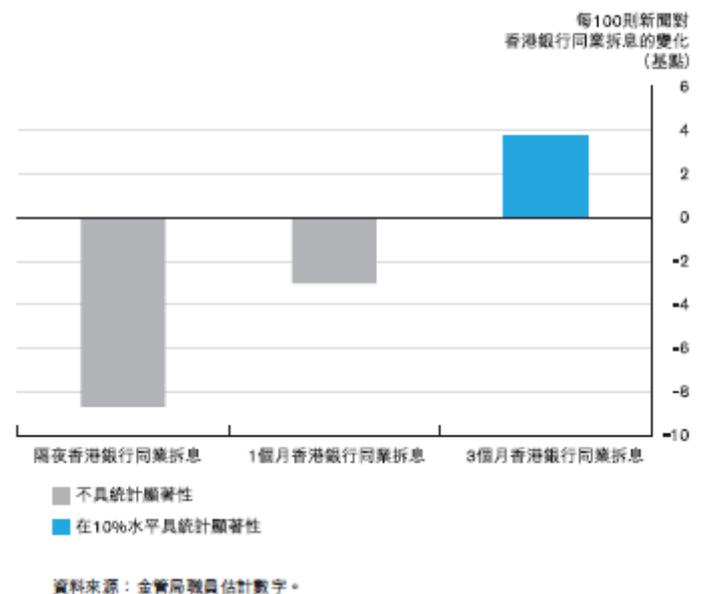
关影响，而短期拆息则无甚影响（但会受其他短期流动性需求影响）。

### 实证结果及展示

为检验未来首次公开招股的市场关注度对香港银行同业拆息的影响，图 B4.4 显示不同期限的香港银行同业拆息，对每 100 则含有「上市申请」的新闻所构成的变动。如图所示，3 个月香港银行同业拆息对未来首次公开招股新闻的反应最大。具体而言，如果某宗首次公开招股被传媒报导 100 次，该模型预测 3 个月香港银行同业拆息将上升 3.7 个基点。另一方面，这个「未来首次公开招股新闻」的指标似乎对其他短期香港银行同业拆息无甚影响，这是由于其影响在统计上不显著。研究结果与图 B4.2 概述的典型首次公开招股过程时间表一致。

「未来首次公开招股新闻」对 3 个月香港银行同业拆息构成显著影响，这显示市场参与者预先估计未来大型新股上市的截止认购日期，透过中期借贷作提前部署。为展示如何应用该模型追踪新股上市活动前后的利率变动，金管局以近年两宗大型新股上市（小米和阿里巴巴）为例，对 3 个月香港银行同业拆息进行归因分析。

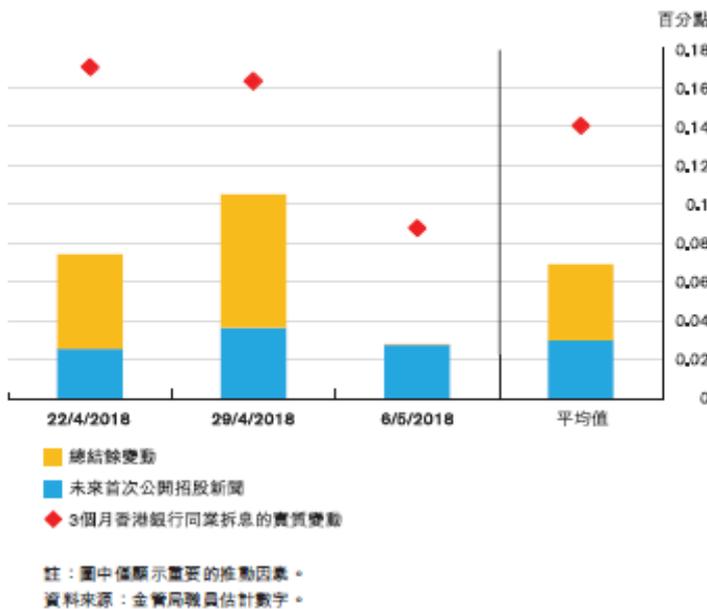
**圖 B4.4**  
「未來首次公開招股新聞」對香港銀行同業拆息的估計影響



于 2018 年 4 月，港交所修订上市规则，容许公司以同股不同权方式上市。其后小米向港交所呈交上市申请。小米是首家在香港以同股不同权方式上市的公司，其上

市受到市场及传媒的极大关注，这可从图 B4.3 中「未来首次公开招股新闻」急升看到。与每周约 10 则新闻的长期平均水平相比，「未来首次公开招股新闻」的数量在 2018 年 4 月显著地飙升，其中大多数与小米上市有关。事实上，图 B4.5 的归因分析表明，「未来首次公开招股新闻」（蓝色柱）在此期间是推高 3 个月香港银行同业拆息的主要因素之一。须注意的是，其他市场因素亦起到推动作用。尤其是于 2018 年 4 月港元触发弱方兑换保证（橙色柱）以致总结余减少，亦为香港银行同业拆息构成上行压力。

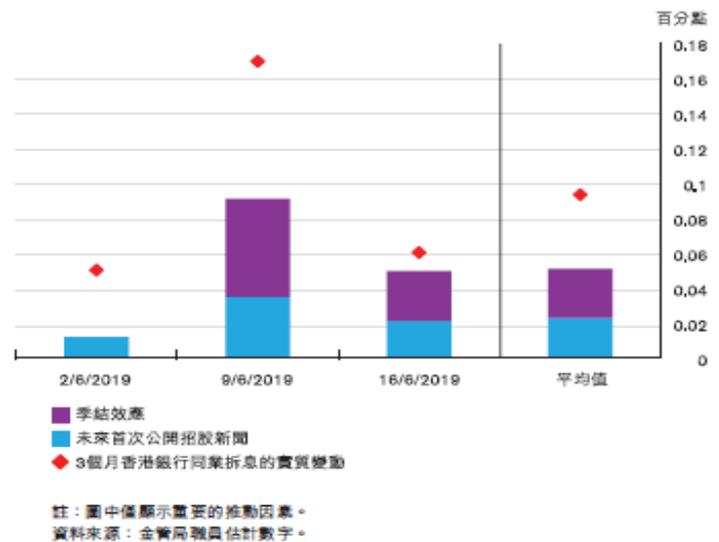
**圖 B4.5**  
於 2018 年 4 月小米申請上市期間，導致 3 個月香港銀行同業拆息變動的因素



**阿里巴巴的个案：** 阿里巴巴据报于 2019 年 6 月呈交在香港二次上市的申请，当时预计将于 2019 年下半年上市。阿里巴巴是中国科技领域领先的企业集团，由于阿里巴巴名气甚高且规模庞大，因此市场及传媒关注阿里巴巴回归中国，并预期其将在香港上市。相应而言，图 B4.3 所示的「未来首次公开招股新闻」数量亦在 6 月传出上市消息之前就开始增多。在图 B4.6 的归因分析中，亦能观察到「未来首次公开招股新闻」对 3 个月香港银行同业拆息有显著的影响，显示有关阿里巴巴可能在香港上市的消息是推高 3 个月香港银行同业拆息（蓝色柱）的主要因素之一。由于阿里巴巴上市的传闻是接近 6 月底，所以图 B4.6 亦反映半年结的资金需求为另一个重要

推动因素（紫色柱），这是因为银行需要准备横跨半年结的资金。

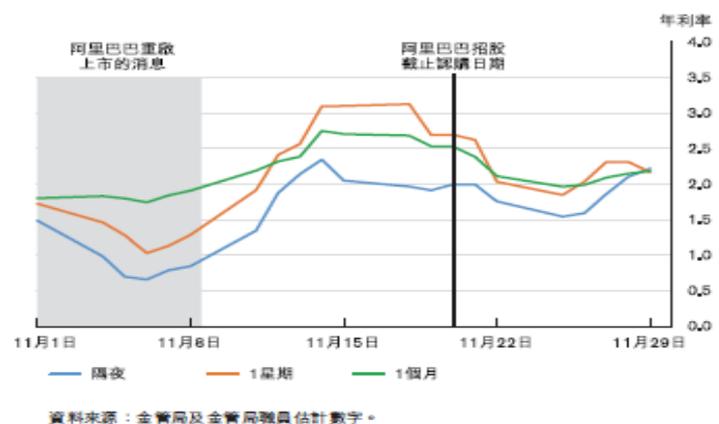
**圖 B4.6**  
2019 年 6 月市場預期阿里巴巴上市，導致 3 個月香港銀行同業拆息變動的因素



尽管本专题着重分析未来首次公开招股新闻的市场关注度对中期银行同业拆息有何影响，但必须再次指出，大型首次公开招股的确会显著地影响短期香港银行同业拆息。阿里巴巴在 11 月份迅速重启其首次公开招股，但由于相关消息在 11 月第一个星期才作披露，市场参与者事先或未能作充分准备。

随着 11 月 20 日首次公开招股截止日期临近，短期资金的需求显著增加，导致较短期限香港银行同业拆息明显上升（图 B4.7）。

**圖 B4.7**  
2019 年 11 月隔夜、1 星期及 1 個月香港銀行同業拆息



## 结语

本专题构建了一个建基于新闻数量的代理指针，以评估市场对未来首次公开招股的关注度。以近年两宗首次公开招股为例，实证模型进一步表明，除了影响银行同业拆借市场的其他因素外，「未来首次公开招股新闻」亦能部分解释 3 个月香港银行同业拆息的变动。这显示市场参与者会在未来大型首次公开招股之前积极准备资金。因此，本专题有助深入了解影响中期利率的因素以及市场参与者的流动性管理方式。

Source 来源:

[https://www.hkma.gov.hk/media/eng/publication-and-research/quarterly-bulletin/qb202003/E\\_Half-yearly\\_202003.pdf](https://www.hkma.gov.hk/media/eng/publication-and-research/quarterly-bulletin/qb202003/E_Half-yearly_202003.pdf)

### **Hong Kong Securities and Futures Commission Sanctions China Rise Securities Asset Management Company Limited's Former Responsible Officers**

On March 31, 2020, The Securities and Futures Commission (SFC) bans Mr. Sammy Shiu Kin Keung (Shiu), former chief executive officer and responsible officer (RO) of China Rise Securities Asset Management Company Limited (China Rise), from re-entering the industry for 28 months from March 30, 2020 to July 29, 2022.

Mr. Wat Hin Pong (Wat), a former RO and ex-head of dealing of China Rise, has also been suspended for seven months from March 30, 2020 to October 29, 2020.

The SFC's disciplinary action against Shiu follows his criminal conviction in 2017 for illegal short selling and the SFC's sanction against China Rise over its internal control failures and regulatory breaches related to short selling and cross trades between January and May 2014.

The SFC's investigation revealed that Shiu placed 199 illegal short selling orders involving 21 listed securities through his personal account and the discretionary account of a client during the material time but concealed them from China Rise and the client.

Shiu also took advantage of the discretionary power granted to him by the client and conducted nine pairs of cross trades in eight listed securities between his personal account and the client's account without the client's knowledge. Eight out of the nine pairs of cross trades were executed at a price to Shiu's advantage but to the client's detriment when compared with the nominal price of the relevant shares.

The SFC further found that Shiu had failed to:

- obtain proper approval for his personal dealings, short sales and cross trades as required by China Rise's internal policies;
- avoid conflict of interest and take steps to ensure fair treatment of the client in operating the client's discretionary account; and
- report cross trades to The Stock Exchange of Hong Kong Limited on four occasions as required by the Rules of the Exchange.

Wat, responsible for monitoring employee dealings and supervising the operation of discretionary accounts at the material time, routinely approved Shiu's transactions without making any inquiries nor checking whether there were any irregularities.

Although Wat issued a warning letter to Shiu on behalf of China Rise in early April 2014 following enquiries by the Hong Kong Exchanges and Clearing Limited on some of Shiu's short sales, he continued to rubber-stamp Shiu's personal dealings. As a result, Shiu was able to continue to conduct illegal short selling in April and May 2014.

The SFC found that Wat was derelict in his duties. Specifically, he had failed to:

- detect and prevent illegal short selling in relation to Shiu by approving his orders without realizing they were uncovered;
- take any steps to ascertain whether Shiu had disclosed his interest to and obtained consent from the client as required by China Rise's internal policy before approving Shiu's cross trades; and
- review the trading activities in Shiu's account and the client's account properly.

The SFC considers that Shiu and Wat had failed to discharge their duties as members of China Rise's senior management, and their failures contributed to the breakdown in China Rise's internal controls in relation to the monitoring of employee dealings, supervision of discretionary accounts, and avoidance of conflicts of interest, jeopardizing China Rise's ability to act in the best interest of its clients and market integrity.

In deciding the sanction, the SFC took into account all relevant circumstances of the case, including:

- Shiu's exploitation of China Rise's lax internal controls for his own benefit and abuse of the trust that his client placed upon him;
- Shiu's conduct was dishonest, contrary to the best interest of the client and market integrity;
- Shiu's guilty plea to illegal short selling and the court's fine against him;
- the cooperation of Shiu and Wat with the SFC in accepting the disciplinary action and their otherwise clean disciplinary record.

#### 香港证券及期货事务监察委员会对华晋证券资产管理有限公司前负责人员施加制裁

2020年3月31日，香港证券及期货事务监察委员会（证监会）禁止华晋证券资产管理有限公司（华晋）前行政总裁及负责人员萧健强（萧）重投业界，为期28个月，由2020年3月30日起至2022年7月29日止。

华晋前负责人员及交易主管屈显邦（屈）亦被暂时吊销牌照，为期七个月，由2020年3月30日起至2020年10月29日止。

证监会对萧采取的纪律行动源于他在2017年因进行非法卖空而被判刑事罪名成立，以及证监会因华晋在2014年1月至5月期间在卖空及交叉盘买卖方面犯有内部监控缺失及违反监管规定而对该公司作出处分。

证监会的调查发现，萧在关键时间内透过其个人帐户及一名客户的委托帐户就21只上市证券发出199项非法卖空指令，但他向华晋及该客户隐瞒有关事宜。

萧亦利用该客户授予的全权委托权，在该客户不知情的情况下，透过其个人帐户及该客户的帐户就八只上市证券进行九宗交叉盘买卖，当中有八宗的执行价与有关股份的按盘价相比对萧有利而对该客户不利。

证监会进一步发现萧：

- 没有按照华晋的内部政策就其个人交易、卖空交易及交叉盘买卖取得适当的批准；
- 没有在操作该客户的委托帐户时，避免利益冲突及采取措施以确保该客户得到公平的对待；及
- 曾四次没有按照《交易所规则》的规定向香港联合交易所有限公司申报交叉盘买卖。

屈在关键时间负责监察雇员交易及监督委托帐户的操作，但他在未有作出任何查询或检查是否有任何违规事项的情况下，便例行地批准萧的交易。

在香港交易及结算所有限公司对萧所进行的部分卖空交易作出查询后，屈于2014年4月初代表华晋向萧发出警告信，但他继续在不经审查的情况下批准萧的个人交易，令萧在2014年4月及5月得以继续进行非法卖空交易。

证监会发现屈疏忽职守。具体而言，他：

- 没有发现及防止与萧有关的非法卖空交易，原因是他在未有注意到它们属于无担保的卖空指令的情况下批准了萧的交易指令；
- 在批准萧的交叉盘买卖前，没有采取任何措施，以确定萧已根据华晋的内部政策，向客户披露其利益及取得客户的同意；及
- 没有妥为检视萧及该客户的帐户的交易活动。

证监会认为，萧及屈没有履行其作为华晋的高级管理人员的职责，以及他们的缺失导致华晋在监察雇员交易、监督委托帐户及避免利益冲突方面的内部监控措施失效，影响了华晋以客户最佳利益的态度行事及确保市场廉洁稳健的能力。

证监会在决定有关处分时，已考虑了本个案的所有相关情况，包括：

- 萧利用华晋宽松的内部控制措施来谋取个人利益及滥用客户对他的信任；
- 萧的不诚实行为，与维护客户最佳利益及确保市场廉洁稳健的原则背道而驰；
- 萧承认非法卖空罪及遭法院处以罚款；
- 萧及屈在接受证监会纪律行动一事上表现合作，以及他们过往并无遭受纪律处分的纪录。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR27>

## Hong Kong Securities and Futures Commission Bans Mo Shau Wah for Life

On March 23, 2020, The Securities and Futures Commission (SFC) bans Ms. Mo Shau Wah, a former account executive of China Pacific Securities Limited (China Pacific), from re-entering the industry for life following her criminal conviction.

In December 2018, the Court of First Instance found Mo guilty of stealing approximately HK\$110.2 million worth of shares from China Pacific's clients between January 2005 and October 2012.

Mo also made unauthorized sales of the stolen shares in the open market through nominee client accounts held at China Pacific in the names of her relatives. The sale proceeds were subsequently paid into the relatives' bank accounts controlled by Mo.

Mo further conspired with Ms. Hui Fong Ting (Hui), a former settlement clerk of China Pacific, to cover up the theft through false entries that Hui created in China Pacific's computer system and client statements.

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

## 香港证券及期货事务监察委员会终身禁止巫秀华重投业界

2020年3月23日，中华太平洋证券有限公司（中华太平洋）前客户主任巫秀华（巫）被香港证券及期货事务监察委员会（证监会）终身禁止其重投业界。巫早前被判刑事罪名成立。

原讼法庭于2018年12月裁定巫在2005年1月至2012年10月期间盗取中华太平洋客户价值约1.102亿港元的股份罪成。

巫亦透过以其亲属名义于中华太平洋持有的代名人客户帐户，在未经授权下于公开市场将被盗取的股份出售，所得款项最终存入由巫控制并属于其亲属的银行帐户内。

巫更串谋中华太平洋前结算文员许芳婷（许），藉着许在中华太平洋的电脑系统和客户结单上制造虚假的记项，以掩饰其盗窃行为。

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

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR23>

## Hong Kong Exchanges and Clearing Limited Welcomes Its First Listing of Iron Ore Futures ETF

On March 27, 2020, Hong Kong Exchanges and Clearing Limited (HKEX) welcome its first iron ore futures Exchange Traded Fund (ETF) – SSIF DCE Iron Ore Futures Index ETF (stock code: 3047 / 9047) to trading on HKEX. This new ETF will offer investors more choice in capturing opportunities in the commodities space, at a relatively low cost.

The new iron ore ETF will track the performance of iron ore by investing directly in iron ore futures contracts. The newly listed ETF, is the first ETF launched by Shanxi Securities International Financial Holdings Limited (SSIF) in Hong Kong and will enable investors optimize their asset allocation, diversifying their investment risks.

“We are excited to see the first listing of an iron ore ETF at HKEX, another important step forward in our commitment to build a vibrant and comprehensive ETF market in Hong Kong,” said Brian Roberts, HKEX's Head of Exchange Traded Products.

The introduction of an iron ore ETF at HKEX follows the first-time listings of two-time Inverse Products and Active ETFs last year – both new product categories have already become a significant part of the Hong Kong ETF market.

“With a continuously expanding portfolio of products, Hong Kong is fast-becoming Asia's ETF hub, where investors can gain access to targeted exposure and complete their portfolio construction in one place,” added Roberts.

The average daily turnover of Exchange Traded Products (ETPs), including ETFs and Leveraged and Inverse Products (L&I Products), from January 2, 2020 to March 25, 2020 rose to HK\$7.9 billion from HK\$4.6 billion in the same period last year, signifying growing market interest in the product. L&I Products maintained strong momentum with one-day turnover reaching record high on March 19, 2020, at HK\$3.99 billion.

Further information about Hong Kong-listed ETFs is available in HKEX website.

## 香港交易及结算所有限公司欢迎首只铁矿石期货 ETF 上市

2020年3月27日，香港交易及结算所有限公司（香港交易所）欢迎山证国际大商所铁矿石期货指数交易所买卖基金（股票代码：3047 / 9047）上市，为首只在香港上市的铁矿石期货交易所买卖基金（ETF），让投资者以较低成本捕捉大宗商品市场的机遇。

该铁矿石 ETF 是山证国际资产管理有限公司在香港推出的首只 ETF，透过直接投资于铁矿石期货合约追踪铁矿石期货的表现，帮助投资者优化资产配置，及分散投资于不同资产类别、降低组合风险。

香港交易所交易所买卖产品主管罗博仁说：「我们很高兴见证首只铁矿石 ETF 在香港交易所上市，标志着我们在香港 ETF 市场产品多元化方面已取得令人鼓舞的进展。」

香港首只两倍反向产品及主动型 ETF 于 2019 年在香港交易所上市，至今已成为香港 ETF 市场的重要产品种类。罗博仁补充：「香港 ETF 市场的产品选择不断扩展，为香港成为亚洲 ETF 枢纽提供稳固基础，投资者在这里可投资其目标市场及构建投资组合。」

香港交易所买卖产品（ETP，包括 ETF 和杠杆及反向产品）2020年1月2日至2020年3月25日的日均成交额为 79 亿港元，较 2019 年同期的日均成交额 46 亿港元大增 71.7%，反映 ETP 愈来愈受投资者欢迎。杠杆及反向产品的交投亦畅旺，单日成交额在 2020 年 3 月 19 日创下历史新高，达到 39.9 亿港元。

请浏览香港交易所网站了解更多有关香港上市 ETF 产品。

Source 来源:

[https://www.hkex.com.hk/News/News-Release/2020/200327news?sc\\_lang=en](https://www.hkex.com.hk/News/News-Release/2020/200327news?sc_lang=en)

## Survey Conducted by Hong Kong Exchanges and Clearing Limited Finds Significant Growth in Hong Kong Derivatives Market

On March 30, 2020, The Derivatives Market Transaction Survey 2018/19 (2018/19 Survey) conducted by Hong Kong Exchanges and Clearing Limited (HKEX) finds that Hong Kong's derivatives market has grown significantly and continues to attract a wide range of investors.

The survey's target respondents were Exchange Participants. The response rate was 61% by number and 95% by turnover value in the target population.

### Key findings

#### Strong growth in HKEX's derivatives market

- The market turnover volume in 2018/19 Survey increased by 62% to 284 million contracts over the previous survey, largely due to the increase in trading volume of HKEX's flagship Hang Sang Index (HSI) products and a steady increase in the trading of Hang Seng China Enterprises Index (HSCEI) products.

#### Strong International Participation

- Overseas institutional investors had the biggest market share at 26%, followed by local retail investors (15%) and local institutional investors (14%).
- Among overseas investors, US investors remained the largest group, accounting for 33% of total overseas investor trading and 10% of total market volume. Asian investors contributed in aggregate 32% of overseas investor trading and 10% total market volume. European investors contributed in aggregate 23% of overseas investor trading and 7% of total market volume.
- Overseas investors, and mostly overseas institutional investors, were the dominant contributors to the trading of index futures (52%) and USD/CNH futures (57%).

#### Growth in Local Investors

- The contribution from local investors, both retail and institutional, increased to 29% from 21% in 2014/15. In particular, the contribution from local institutional investors jumped to 14% from 6%.

#### Diverse Transaction Purposes

- Pure trading and hedging were the two main transaction purposes in the latest survey, accounting for 43% and 36% of trading turnover respectively.
- There was a significant increase in the contribution of arbitrage trading to the overall derivatives market

to 21% in the 2018/19 Survey from 14% in the previous survey.

For further details, please see the survey results report on the HKEX website.

### 香港交易及结算所有限公司研究调查发现香港衍生产品市场显著增长

2020年3月30日，香港交易及结算所有限公司（香港交易所）的衍生产品市场交易研究调查 2018/19（2018/19 调查）显示，香港的衍生产品市场显著增长，并继续广受投资者欢迎。

调查对象为交易所参与者，整体响应率为 61%，按成交金额计算则达 95%。

#### 主要调查结果

##### 香港交易所的衍生产品市场显著增长

- 2018/19 调查涵盖的研究时间内衍生产品市场成交量较上次调查增加 62%至 2.84 亿张合约，主因是香港交易所的旗舰恒生指数相关衍生产品交投大增，而恒生中国企业指数相关衍生产品的交投亦有稳定增长。

##### 广泛的国际投资者参与

- 来自海外机构投资者的交易占总成交金额最多，为 26%；其次为本地个人投资者（15%）及本地机构投资者（14%）。
- 在所有海外投资者中，美国投资者占最多，为 33%（占市场总成交额约 10%）；其次是亚洲投资者，占 32%（占市场总成交额约 10%）；而欧洲投资者占 23%（占市场总成交额约 7%）。
- 海外投资者（主要为海外机构投资者）是股票指数期货（占整体 52%）及美元兑人民币（香港）期货（占整体 57%）的主要参与者。

##### 本地投资者增长

- 本地的个人及机构投资者占整体市场的比例持续增长，由 2014/15 调查时的 21%增至 29%；当中本地机构投资者更由 6%增至 14%。

##### 广泛交易用途

- 于 2018/19 调查中，纯买卖及风险对冲为两个最主要的交易用途，分别占总成交额的 43%及 36%。
- 套戥占整体衍生产品市场的成交额有显著增长，由上次调查的 14%增至 2018/19 调查的 21%。

有关其他详情，请参阅香港交易所网站上的研究调查结果全文。

Source 来源:

[https://www.hkex.com.hk/News/News-Release/2020/200330news?sc\\_lang=en](https://www.hkex.com.hk/News/News-Release/2020/200330news?sc_lang=en)

### U.S. Commodity Futures Trading Commission Issues Final Interpretive Guidance on Actual Delivery for Digital Assets

On March 24, 2020, the Commodity Futures Trading Commission (CFTC) announced the final interpretive guidance concerning retail commodity transactions involving certain digital assets, which specifically clarifies the CFTC's views regarding the "actual delivery" exception to Section 2(c)(2)(D) of the Commodity Exchange Act in the context of digital assets that serve as a medium of exchange, colloquially known as "virtual currencies."

"Providing clarity to market participants is one of the CFTC's core values," said CFTC Chairman Heath P. Tarbert. "This interpretive guidance not only fulfills that commitment, but it reflects my belief that the U.S. must be a leader in the digital asset space. These efforts are also especially critical when the hard-earned income of everyday Americans is at stake. Under my leadership, the CFTC will continue to do its part to encourage responsible fintech innovation through sound regulation."

The final interpretive guidance discusses two primary factors demonstrating "actual delivery" of retail commodity transactions in virtual currency:

- (1) a customer securing: (i) possession and control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement, and (ii) the ability to use the entire quantity of the commodity freely in commerce (away from any particular execution venue) no later than 28 days from the date of the transaction and at all times thereafter; and

- (2) the offeror and counterparty seller (including any of their respective affiliates or other persons acting in concert with the offeror or counterparty seller on a similar basis) do not retain any interest in, legal right, or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction.

The CFTC's Division of Market Oversight led the development of the final interpretive guidance, which was informed by significant CFTC engagement with the digital asset marketplace. Specifically, the final interpretive guidance reflects extensive insight gained by the agency through public input, advisory committee meetings on the evolution of digital asset and cryptocurrency markets, regulatory oversight of exchanges offering digital asset-based derivatives products, numerous LabCFTC and market interactions, as well as market surveillance in furtherance of the CFTC's enforcement responsibilities.

#### 美国商品期货交易委员会发布关于数字资产实际交付的最终解释性指南

2020年3月24日，美国商品期货交易委员会（CFTC）发布了有关数字资产的实际交付的最终解释性指南，该指南尤其说明了在充当交易媒介的数字资产（即，“虚拟货币”）的情况下，《商品交易法》第2(c)(2)(D)条中的“实际交付”的例外情况。

CFTC主席Heath P. Tarbert表示，“向市场参与者提供明确性是CFTC的核心价值之一。这份解释性指南不仅履行了这一承诺，并且反映了我的信念，即，美国必须成为数字资产领域的领导者。当每一天美国人民辛苦赚来的收入受到威胁时，这些努力至关重要。在我的领导下，CFTC将继续发挥自己的作用，通过健全的法规鼓励负责任的金融科技创新。”

该解释性指南讨论了两个主要因素，解释了以虚拟货币进行的零售商品交易中的“实际交付”。

- (1) 客户方有能力：(i) 掌握和控制全部数量的商品，无论该商品是以保证金、杠杆或任何其他融资形式购买；以及(ii) 在交易之日起28天以及此后任何时间，能够在商业上自由使用全部数量的商品（远离任何特定的执行地点）。
- (2) 要约人和交易对手卖方（包括其各自的关联方或在类似基础上与要约人或交易对手卖方一致行动的其

他人）自交易之日起满28天，不保留对以保证金、杠杆或任何其他融资形式购买的商品的任何权益或控制权。

该指南以CFTC的市场监督部为首进行制定，而CFTC与数字资产市场的合作为该指南提供了依据。具体而言，该指南反映了机构通过公众、关于数字资产和加密货币市场的发展的咨询委员会会议、基于数字资产的衍生产品的交易所的监管意见、其金融科技研究部门LabCFTC和市场互动，以及CFTC的执行职责中获得的广泛见解。

Source 来源：

<https://cftc.gov/PressRoom/PressReleases/8139-20>

#### U.S. Securities and Exchange Commission Charges Unregistered Penny Stock Dealer

On March 24, 2020, U.S. Securities and Exchange Commission (SEC) announced charges against Justin W. Keener doing business as JMJ Financial for failing to register as a securities dealer with the SEC. Keener allegedly bought and sold billions of newly issued shares of penny stock, generating millions of U.S. dollars in profits.

The SEC's complaint, filed in federal court in Miami, alleges that between January 2015 and January 2018, Keener engaged in the business of purchasing convertible notes from penny stock issuers, converting the notes into shares of stock at a large discount from the market price, and selling those newly issued shares into the market at a significant profit. Keener allegedly purchased convertible notes from more than 100 separate issuers and sold more than 17.5 billion shares of newly issued penny stock into the market, generating over US\$21.5 million in profits. As alleged, Keener was not registered as a dealer with the SEC, in violation of the mandatory registration provisions of the federal securities laws.

"The privilege of being a dealer in our securities market comes with important responsibilities and regulatory obligations, including submitting to regulatory inspections and oversight of operations," said Carolyn Welshhans, Associate Director in the Division of Enforcement. "By failing to register with the Commission, Mr. Keener evaded important safeguards that help protect the integrity of our markets."

The SEC's complaint charges Keener with violating the registration provision of the Securities Exchange Act of 1934. The SEC seeks a permanent injunction,

disgorgement of ill-gotten gains plus prejudgment interest, a civil penalty, and a penny stock bar.

### 美国证券交易委员会指控未注册的细价股交易商

2020年3月24日，美国证券交易委员会（美国证交会）宣布对JM Financial的Justin W. Keener就其未能在美国证交会注册为证券交易商的指控。据称，Keener购买和出售了数十亿股新发行的细价股票，由此获得数百万美元的利润。

美国证交会在迈阿密联邦法院提起的申诉称，Keener在2015年1月至2018年1月期间从事从细价股票发行人处购买可转换债券的业务，以远低于市场价格的价格将这些债券转换为股票，并将这些新发行的股票以可观的利润出售给市场。据称，Keener从100多个独立发行人那里购买了可转换债券，并向市场出售了超过175亿股新发行的细价股票，产生了超过2150万美元的利润。据称，Keener未在美国证交会注册为交易商，违反了联邦证券法的强制性注册规定。

执法部副主任Carolyn Welshhans表示：“成为我们证券市场交易商的特权伴随着重要的责任和监管义务，包括服从监管检查和对运营的监督。由于未能在美国证交会注册，Keener先生回避了有助于保护我们市场完整性的重要保障措施。”

美国证交会的起诉书指控Keener违反了1934年《证券交易法》的注册规定。美国证交会寻求对其永久禁制令，非法所得加判决前利息，民事罚款和细价股票禁止令。

Source 来源：<https://www.sec.gov/news/press-release/2020-72>

### U.S. Securities and Exchange Commission Provides Conditional Regulatory Relief for Registered Transfer Agents and Certain Other Persons Affected by the Coronavirus Disease 2019 (COVID-19)

On March 22, 2020, the U.S. Securities and Exchange Commission (SEC) announced that it is providing conditional regulatory relief for registered transfer agents and certain other persons with regulatory obligations under the federal securities laws.

SEC has issued an Order under Section 17A and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Specified Provisions of the Exchange Act and Certain Rules Thereunder (the Order) that, subject to certain conditions, provides registered

transfer agents and certain other persons with exemptive relief for certain regulatory obligations under the federal securities laws through May 30, 2020 (the Relief). Importantly, however, transfer agents at all times continue to be subject to the requirements of Exchange Act Rule 17Ad-12, which requires transfer agents to ensure that they adequately safeguard securities and funds in their possession or custody.

Among other conditions, persons that wish to take advantage of the Relief must provide written notification to SEC that such person is taking advantage of the Relief, a description of the specific regulatory obligations that the person is unable to comply with, and a statement of the reasons the person is unable to comply with such obligations. SEC may extend the time period for the Relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

“The Relief provided by this order reflects the continued focus of the SEC and the Division of Trading and Markets on monitoring the effects of COVID-19 on regulated entities, financial professionals, and other market participants,” said Brett Redfearn, Director of the SEC’s Division of Trading and Markets. “The health and safety of all participants in our markets is of paramount importance. This temporary Relief recognizes that circumstances related to COVID-19 may prevent certain transfer agents and other persons from complying with all requirements within required timeframes.”

The Order can be downloaded at:  
<https://www.sec.gov/rules/exorders/2020/34-88448.pdf>.

### 美国证券交易委员会为受2019冠状病毒疫情影响的注册转让代理人等提供有条件的监管豁免

2020年3月22日，美国证券交易委员会（美国证交会）宣布，根据联邦证券法，为注册的转让代理人和其他某些其他负有监管义务的人提供有条件的豁免。

美国证交会根据1934年《证券交易法》第17A条和第36条授予之权利发布就交易法特定条款及其中某些规则的规定的指令（该指令），2020年5月30日之前，在一定条件下对注册转让代理人和其他某些其他人可以免除联邦证券法规定的某些监管义务（该豁免）。但是值得注意的时，转让代理人仍始终遵守《证券交易法》第17Ad-12条的要求，该规则要求转让代理人确保充分保护自己拥有或保管的证券和资金。

除其他条件外，希望利用该豁免的人必须向美国证交会提供书面通知，告知该人正适用该豁免，该人无法遵守的特定监管义务的说明以及该人无法履行此类义务的原因。美国证交会可以在其认为适当的任何附加条件下延长豁免期限，或在情况允许时提供附加豁免。

“该指令提供的豁免反映了美国证交会和交易与市场部对2019冠状病毒疫情于受监管实体、金融专业人员和其他市场参与者的影响的持续关注，”美国证交会交易与市场部董事 Brett Redfearn 说，“我们市场中所有参与者的健康和安全至关重要。这项临时豁免承认，与2019冠状病毒疫情有关的情况可能会阻碍某些转让代理人和其他人在要求的时限内遵守所有要求。”

该指令可于以下位置下载：

<https://www.sec.gov/rules/exorders/2020/34-88448.pdf>。

Source 来源：

<https://www.sec.gov/news/press-release/2020-68>

#### **U.S. Securities and Exchange Commission Provides Temporary Flexibility to Registered Investment Companies Affected by Coronavirus Disease 2019 (COVID-19) with Permission to Use Additional Funding and Other Tools to Manage Portfolios for the Benefit of Investors**

On March 23, 2020, the U.S. Securities and Exchange Commission (SEC) announced temporary flexibility for registered funds affected by recent market events to borrow funds from certain affiliates and to enter into certain other lending arrangements. This relief is designed to provide funds with additional tools to manage their portfolios for the benefit of all shareholders as investors may seek to rebalance their investments.

“Today’s temporary action will provide an additional tool that funds can use to manage their portfolios for the benefit of their investors in the current market environment,” said Chairman Jay Clayton. “This action provides funds with additional flexibility to navigate volatile markets while meeting their obligations to investors.”

SEC has issued the order as necessary and appropriate in the public interest and consistent with the protection of investors. For an entity seeking to rely on the order, attention is directed to its various conditions. Subject to these conditions, the order provides the following temporary exemptive relief from the Investment Company Act of 1940:

- Relief permitting registered open-end funds and insurance company separate accounts to borrow money from certain affiliates;
- Relief that permits additional flexibility under existing interfund lending arrangements and extends the ability to use interfund lending arrangements to funds that do not currently have exemptive relief; and,
- Relief that permits registered open-end funds to enter into lending arrangements or borrowings that deviate from fundamental policies, subject to prior board approval.

This temporary relief will extend until the date specified in a public notice from the staff stating that the relief will terminate, which date will be at least two weeks from the date of the notice and no earlier than June 30, 2020. SEC may provide additional relief as circumstances warrant.

美国证券交易委员会为受2019冠状病毒疫情影响的投资公司赋予了更多的灵活性并允许使用额外的资金和其他工具来管理投资组合以造福投资者

2020年3月23日，美国证券交易委员会（美国证交会）宣布暂时对受近期市场事件，即2019冠状病毒疫情，影响的注册基金公司提供灵活性，并允许其可以从某些分支机构借款并订立某些其他贷款安排。此措施旨在为基金公司提供额外的工具来管理其投资组合，以使所有股东受益，因为投资者可能会寻求重新平衡其投资。

美国证交会主席 Jay Clayton 说：“是次临时行动将提供一种额外的工具，基金公司可以使用这些工具来管理其投资组合，以使投资者受益。这一行动为基金公司提供了更大的灵活性，使其能够在波动的市场中行进，同时履行对投资者的义务。”

美国证交会出于公共利益并在保护投资者的前提下发布此必要且适当的指令。对于寻求依赖此指令的实体，需注意满足相应条件。在符合这些条件的情况下，该指令就1940年《投资公司法》提供以下临时措施：

- 允许注册开放式基金和保险公司开立账户，从某些分支机构借款；

- 可以在现有的基金间贷款安排下提供更大的灵活性, 并且可以将使用基金间贷款安排的能力扩展到当前没有包含在内的基金; 及,
- 允许注册的开放式基金进行与基本政策有所不同的放款安排, 但须事先获得董事会的批准。

该临时行动将一直持续到工作人员在公告中指定该行动将终止的日期, 该日期应自通知之日起至少两周, 且不得早于 2020 年 6 月 30 日。美国证交会可能会视情况提供额外的措施。

Source 来源 :

<https://www.sec.gov/news/press-release/2020-70>

### **U.S. Securities and Exchange Commission Extends Conditional Exemptions from Reporting and Proxy Delivery Requirements for Public Companies, Funds, and Investment Advisers Affected by Coronavirus Disease 2019 (COVID-19)**

On March 25, 2020, the U.S. Securities and Exchange Commission (SEC) announced that it is extending the filing periods covered by its previously enacted conditional reporting relief for certain public company filing obligations under the federal securities laws, and that it is also extending regulatory relief previously provided to funds and investment advisers whose operations may be affected by COVID-19. In addition, the SEC's Division of Corporation Finance issued its current views regarding disclosure considerations and other securities law matters related to COVID-19.

"Health and safety continue to be our first priority," said SEC Chairman Jay Clayton. "These actions provide temporary, targeted relief to issuers, investment funds and investment advisers affected by COVID-19. At the same time, we encourage public companies to provide current and forward-looking information to their investors and, in these uncertain times, companies are reminded that they can take steps to avail themselves of the safe harbor in Section 21E of the Exchange Act for forward-looking statements."

#### **I. Public Company Relief**

To address potential compliance issues, SEC issued an order that, subject to certain conditions, provides public companies with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and July 1, 2020 (the Order). The Order supersedes and extends SEC's Original Order of March 4, 2020. Among other conditions, companies

must continue to convey through a current report a summary of why the relief is needed in their particular circumstances for each periodic report that is delayed. SEC may provide extensions to the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

SEC has issued the Order as necessary and appropriate in the public interest and consistent with the protection of investors. For those companies seeking to rely upon the Order, attention is directed to the various conditions, including the requirement to furnish a Form 8-K or Form 6-K by the later of March 16 or the original reporting deadline.

In connection with SEC relief issued in the order, SEC staff will take the following positions with respect to certain obligations under the Securities Act and the Exchange Act:

For purposes of eligibility to use Form S-3 or Form F-3 (and for well-known seasoned issuer status, which is based in part on Form S-3 or Form F-3 eligibility), a company relying on the exemptive order will be considered current and timely in its Exchange Act filing requirements if it was current and timely as of the first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report.

For purposes of the Form S-8 eligibility requirements and the current public information eligibility requirements of Rule 144(c), a company relying on the exemptive order will be considered current in its Exchange Act filing requirements if it was current as of the first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report.

Companies that receive an extension on filing Exchange Act annual reports or quarterly reports pursuant to the order will be considered to have a due date 45 days after the filing deadline for the report. As such, those companies will be permitted to rely on Rule 12b-25 if they are unable to file the required reports on or before the extended due date.

#### **II. Disclosure Considerations for All Public Companies**

SEC encourages all companies and other related persons to consider their activities in light of their disclosure obligations under the federal securities laws. For example, where a company has become aware of a risk related to the COVID-19 that would be material to its

investors, it should refrain from engaging in securities transactions with the public and discourage directors and officers (and other corporate insiders who are aware of these matters) from initiating such transactions until investors have been appropriately informed about the risk. To the extent the registrant or insiders are engaged in transactions, or circumstances otherwise warrant it, the registrant should consider what disclosures are required in order to inform the public of its financial condition.

When companies do disclose material information related to the impacts of COVID-19, they are reminded to take the necessary steps to avoid selective disclosures and to disseminate such information broadly. Depending on a company's particular circumstances, it should consider whether it may need to revisit, refresh, or update previous disclosure to the extent that the information becomes materially inaccurate.

Companies providing forward-looking information in an effort to keep investors informed about material developments, including known trends or uncertainties regarding COVID-19, can take steps to avail themselves of the safe harbor in Section 21E of the Exchange Act for this information.

### III. Investment Fund and Adviser Relief

SEC also issued orders that would provide certain investment funds and investment advisers with additional time with respect to holding in-person board meetings and meeting certain filing and delivery requirements, as applicable (the Orders). The Orders supersede and extend the filing periods covered by SEC's Original Orders of March 13, 2020. Among other conditions, entities must notify the Division staff and/or investors, as applicable, of the intent to rely on the relief, but generally no longer need to describe why they are relying on the order or estimate a date by which the required action will occur. SEC may provide extensions to the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

### IV. Public Company Disclosure Guidance

The SEC Division of Corporation Finance issued Disclosure Guidance Topic No. 9, providing the staff's current views regarding disclosure and other securities law obligations that companies should consider with respect to COVID-19 and related business and market disruptions. The guidance encourages timely reporting while recognizing that it may be difficult to assess or

predict with precision the broad effects of COVID-19 on industries or individual companies.

SEC also takes the position, as described in the orders, that it would not provide a basis for a SEC enforcement action if a registered fund does not deliver to investors the current prospectus of the registered fund where the prospectus is not able to be timely delivered because of circumstances related to COVID-19, subject to the conditions described in the orders. SEC's position has been extended to June 30, 2020. Delivery would still need to be made as soon as practicable but no later than 45 days after the date originally required.

### 美国证券交易委员会对受 2019 年冠状病毒疫情影响的上市公司，基金和投资顾问的报告和代理交付要求采取有条件的临时措施

2020 年 3 月 25 日，美国证券交易委员会（美国证交会）宣布，将延长其先前针对联邦证券法规定下的某些上市公司备案义务实施的有条件的报告延期，并且还将延长提供给可能受 2019 年冠状病毒疫情影响的基金和投资顾问的临时措施期限。此外，美国证交会的公司财务部就与 2019 年冠状病毒疫情相关的披露注意事项和其他证券法事项发表了当前看法。

美国证交会主席 Jay Clayton 说：“健康和安​​全仍然是我们的首要任务。这些行动为受到 2019 年冠状病毒疫情影响的发行人、投资基金和投资顾问提供了有针对性的临时措施。同时，我们鼓励上市公司向其投资者提供最新和前瞻性的信息，在这种不确定的时期，提醒公司可以利用《证券交易法》第 21E 节中的安全港于前瞻性陈述。”

#### I. 针对上市公司的临时措施

为了解决潜在的合规性问题，美国证交会发出了一项命令，在一定条件下为上市公司提交某些本应在 2020 年 3 月 1 日至 7 月 1 日之间到期的披露报告提供 45 天的延期（该命令）。该命令取代并延长了美国证交会于 2020 年 3 月 4 日发布的原命令。在其他条件下，公司必须继续通过当前报告提供摘要，说明为何在每种特殊情况下对于每份被延迟的定期报告适用该临时措施。美国证交会可以在认为适当的任何附加条件下延长期限，或在情况允许时提供额外的措施。

美国证交会出于公共利益并在保护投资者的前提下，根据需要发布了该命令。对于那些寻求依赖该命令的公司，

提请注意各条件，包括在 3 月 16 日晚些时候或原报告截止日期之前提供表格 8-K 或表格 6-K。

关于该命令中发布的临时措施，美国证交会工作人员根据《证券法》和《证券交易法》表示：

作为使用表格 S-3 或表格 F-3 的资格（以及众所周知的经验丰富的发行人身份，其部分基于表格 S-3 或表格 F-3 的资格），适用该命令的公司在报告的提交截止日期后的 45 天内提交了在该期限内到期的任何报告，则该公司将被视为具有及时性。

就 S-8 表格的资格要求和规则 144 (c) 的当前公共信息资格要求而言，适用该命令的公司在报告提交期限后的 45 天内归档，则该公司将被视为满足现行的《证券交易法》备案要求。

根据该命令在提交《证券交易法》年度报告或季度报告方面有延期的公司，截止日将延期 45 天。如果这些公司无法在延长的截止日期或之前提交要求的报告，需适用 12b-25 之规定。

## II. 所有上市公司的披露注意事项

美国证交会鼓励所有公司和其他相关人员根据联邦证券法规定的披露义务考虑其活动。例如，当一家公司意识到与 COVID-19 相关的风险对其投资者而言将是重大的，则该公司应避免与公众进行证券交易，并劝阻董事和高级管理人员（以及其他知情的公司内部人士）进行此类交易，直到适当地告知投资者有关风险为止。如果注册人或内部人员从事交易，或在其他情况下需要进行交易，则注册人应考虑需要进行哪些披露才能将其财务状况告知公众。

当公司确实披露与 COVID-19 的影响有关的重大信息时，提请注意采取必要的步骤以避免选择性披露，并广泛传播此类信息。根据公司的特定情况，应考虑是否可能需要重新披露或更新先前的披露，以确保信息准确。

提供前瞻性信息的公司旨在使投资者了解其重大发展，包括有关 COVID-19 的已知趋势或不确定性，就此可以采取《交易法》第 21E 节中的安全港条款。

## III. 针对投资基金和顾问的临时措施

美国证交会还发布了一些命令，这些命令将为某些投资基金和投资顾问就举行面对面的董事会会议以及满足某些适用的归档和交付要求提供延长期限（这些命令）。这些命令取代并延长了美国证交会 2020 年 3 月 13 日原始命令所涵盖的期限。除其他条件外，实体必须（如适用）将依赖这些命令的意图通知部门的工作人员和/或投资者，但通常不再需要描述他们为何适用这些命令或估计所需采取行动的日期。美国证交会可以在认为适当的任何附加条件下延长期限，或在情况允许时提供额外的措施。

## IV. 上市公司披露指南

美国证交会公司财务部发布了第 9 号披露指南，提供了工作人员对公司应考虑的有关 COVID-19 以及相关业务和市场动荡的披露和其他证券法义务的最新观点。该指南鼓励及时报告，同时承认难以精确评估或预测 COVID-19 对行业或单个公司的广泛影响的可能性。

另外，美国证交会按照命令中的描述采取以下立场：在遵守命令条件的情况下，如果注册基金公司由于与 COVID-19 有关的情况不能向投资者及时交付当前招股说明书，美国证交会将不会就此采取执法行动。此立场已延至 2020 年 6 月 30 日。但公司仍需要在切实可行及不迟于原日期后 45 天的范围内尽快交付。

Source 来源：

<https://www.sec.gov/news/press-release/2020-73>

### **U.S. Securities and Exchange Commission Provides Additional Temporary Regulatory Relief in Terms of Filing Obligations to Market Participants Affected by Coronavirus Disease 2019 (COVID-19)**

On March 26, 2020, the U.S. Securities and Exchange Commission (SEC) announced that it is providing additional temporary regulatory relief to market participants in response to the effects of the Coronavirus Disease 2019 (COVID-19). The actions announced involve (1) parties needing to gain access to make filings on the EDGAR system, (2) certain company filing obligations under Regulation A and Regulation Crowdfunding, and (3) a filing requirement for municipal advisors.

#### I. Temporary Relief from Form ID Notarization Requirement

The first set of relief seeks to address potential issues filers may have in securing the notarization required to

gain access to make filings on the EDGAR system. SEC has adopted a temporary final rule that provides relief from the notarization requirement from March 26, 2020 through July 1, 2020, subject to certain conditions. Among those conditions are that the filer indicates on its manually signed Form ID that it could not provide the required notarization due to circumstances relating to COVID-19, and that the filer submits a PDF copy of the notarized manually signed document within 90 days of obtaining an EDGAR account.

## II. Compliance with Regulation A and Regulation Crowdfunding

To address potential compliance issues for Regulation A and Regulation Crowdfunding issuers, SEC adopted temporary final rules that extend the filing deadlines for specified reports and forms that companies must file pursuant to those regulations. The rules provide, subject to certain conditions, affected companies with an additional 45 days to file certain disclosure reports that would otherwise have been due between March 26, 2020 and May 31, 2020. Among other conditions, a company relying on the temporary final rules must promptly disclose to its investors such reliance and when a company files the required report or form, it must disclose that it is relying on the temporary final rules and state the reasons why, in good faith, it could not file such report or form on a timely basis.

## III. Annual Update to Form MA for Municipal Advisors

To address potential compliance issues municipal advisors may have in timely submitting annual update filings (Form MA-A), SEC issued a temporary conditional exemptive order that provides, subject to certain conditions, affected municipal advisors with an additional 45 days to file annual updates to Form MA that would have otherwise been due between March 26, 2020 and June 30, 2020. Among other conditions, the municipal advisor must be unable to meet the filing deadline for its annual update to Form MA due to circumstances related to current or potential effects of COVID-19 and must provide a brief description of the reasons why it could not timely file.

美国证券交易委员会针对受 2019 冠状病毒疫情影响的市场参与者的备案义务提供额外的临时监管措施

2020 年 3 月 26 日，美国证券交易委员会（美国证交会）宣布，将针对 2019 年冠状病毒疫情的影响向市场参与者提供额外的临时监管措施。宣布的行动涉及（1）需要在 EDGAR 系统上进行归档的各方；（2）美国 A 条例和众

筹法案中的某些公司归档义务；以及（3）对市政顾问的归档要求。

### I. 表格 ID 公证要求的临时措施

第一套措施旨在解决申报人在确保获得在 EDGAR 系统上进行申报所需的公证方面可能存在的潜在问题。美国证交会通过了一项临时最终规则，在一定条件下，该规则可从 2020 年 3 月 26 日至 2020 年 7 月 1 日免除公证要求。这些条件包括申报人在其手动签署的表格 ID 中指出，由于与 2019 冠状病毒疫情有关的情况，其无法提供所需的公证，并在获得 EDGAR 帐户后 90 天内提交经公证的手动签署文件的 PDF 副本。

### II. 遵守 A 条例和众筹法案

为了解决 A 条例和众筹法案发行人的潜在合规性问题，美国证交会通过了临时最终规则，延长了特定报告和公告必须根据这些法规提交的表格的提交截止日期。该规则在一定条件下为受影响的公司提供了额外的 45 天时间来提交某些本应在 2020 年 3 月 26 日至 2020 年 5 月 31 日之间到期的披露报告。其中，依赖临时的最终规则公司必须立即向投资者披露该情况，并且当公司提交所需的报告或表格时，必须披露其依赖临时最终规则，并说明出于善意无法及时提交此类报告或表格的原因。

### III. 市政顾问表格的年度更新

为了解决市政顾问可能无法及时提交年度更新文件（表格 MA-A）的合规性问题，美国证交会发出了一项临时的有条件豁免令，在一定条件下，提供给受影响的市政顾问额外 45 天的时间来提交应在 2020 年 3 月 26 日至 2020 年 6 月 30 日之间到期的表格更新。其中，市政顾问必须为受 2019 冠状病毒疫情当前或潜在影响无法及时于年度更新表格截止日期之前提交，且必须提供无法及时归档的原因的简要说明。

Source 来源:

<https://www.sec.gov/news/press-release/2020-74>

## China Securities Regulatory Commission Presents Confidence in the Continuing Reform and Opening-up of Chinese Capital Market

Mr. Li Chao, Vice Chairman of the China Securities Regulatory Commission (CSRC) made a speech in the press conference held by the Chinese State Council

Information Office on March 22, 2020, and introduced the following situations:

- 1) The external environment does not change the long-term trend of market growth and development

Compared with overseas markets, China's A share market remains stable with relatively small fluctuations and investors are more rational in their behavior, showing remarkable resilience and anti-risk capability. The following preemptive measures have been taken to ensure smooth operation of the market:

- Efforts have been made to keep the leverage rate at a lower level. The amount of leveraged capital in the stock market has dropped by 80% compared with its peak in 2015.
- Efforts have been made to mitigate the stock pledge risks by reducing the outstanding pledged stocks while keeping the incremental ones under control. Major risk indicators have reversed and shown a positive trend, with the number of listed companies whose shares are over-pledged decreasing by a third in comparison with the peak period.
- Efforts have been made to increase transparency and strengthen market expectations of regulation, and at the same time, adherence to the reform and opening up of the capital market. In 2019, a series of reforms have been implemented including the establishment of science and technology innovation board and pilot implement of the registration system.

For the first two months of 2020, the total fundraising of the stock and bond market reached 1.3 trillion Yuan. Fundraising through 38 IPOs reached RMB72.4 billion, and RMB90.1 billion was raised through refinancing. RMB1.1 trillion worth of bonds were issued in exchange bond market with a year-on-year increase of 30%.

- 2) Foreign capital flow will not have a fundamental impact on A share market

The fluctuations in global financial markets will inevitably have some impacts on China's financial market. Its direct impact is reflected in two aspects: first, the impact on the psychological level of investors, that is, the impact of overseas panic psychology on the domestic investors; second, the level of capital flow. Investors on A share market experienced short-term fluctuation in their sentiment but remain relatively stable and rational. More than 98% of the listed companies have resumed work in early March, higher than the national average. Financial

markets are reasonably liquid, and stock market valuations are at historically low levels. In General, the impact of the external environment is temporary and will not change the trend of stable and benign progress in China's capital market.

- 3) Reform and opening-up of capital market will not be fundamentally influenced by COVID-19

The reform and opening-up policy have its inherent motivation. In terms of the GEM reform, focus will be put on the main line of the registration system. At the same time, reform arrangements in other aspects, including a series of basic systems such as issuance, listing, information disclosure, trading, and delisting has been arranged. At present, related work is being carried out in an orderly manner. In terms of market opening, relevant rules and regulations are under progress, and CSRC will continue to expand the scope of products eligible for foreign investment. In terms of market access, in 2019, several foreign-controlled securities companies have been licensed. Moreover, application on wholly foreign-owned securities companies and fund companies will be open on April 1, 2020.

#### 中国证券监督管理委员会对中国资本市场的持续改革开放充满信心

国务院新闻办公室于 2020 年 3 月 22 日（星期日）上午 10 时举行新闻发布会，中国证券监督管理委员会副主席李超出席发布会介绍以下情况：

- 1) 外部环境不会改变市场增长和发展的长期趋势

与境外市场相比，中国的金融市场总体比较平稳，A 股市场展现出了比较强的韧性和抗风险能力，波动幅度相对比较小，投资者的行为更加理性。这种局面的出现，得益于一系列比较积极有效的风险缓释措施：

- 压降市场的杠杆水平，当前股票市场的杠杆资金总量与 2015 年高峰时相比已经下降了 80%;
- 对股票质押风险采取了“降存量”、“控增量”等一系列措施，主要风险指标趋势性好转，高比例质押上市公司数量较高峰时期已经下降了 1/3 优化交易监管;
- 提高透明度，增强市场对监管的明确预期，同时，坚持资本市场的改革开放，如 2019 年设立科创板并试点注册制等一系列改革。

2020 年前两个月，交易所市场股票、债券合计融资约 1.3 万亿元。其中，IPO 完成发行 38 家，募资 724 亿元，再融资 901 亿元；交易所债券市场发行 1.1 万亿元，同比增长 30%。

## 2) 外资流动不会对 A 股市场产生根本影响

在当今经济全球化的情况下，国际金融市场的波动对中国金融市场的影响有其不可避免性。其直接影响体现在两个方面：一是对投资者心理层面的影响，也就是境外的恐慌心理对境内投资者心理的影响。二是资金流动层面的。A 股投资者情绪经历过短期的波动，但从目前来看相对平稳，也比较理性。截至三月底，上市公司复工率已经超过了 98%，高于全国的平均水平。金融市场流动性合理充裕，股市的估值水平处于历史低位。总的看，外部环境的影响是阶段性的，不会改变中国资本市场平稳向好的趋势。

## 3) 资本市场改革开放的工作不会受 2019 冠状病毒疫情的影响

资本市场的改革开放是有其内在原因和动力的。其中，创业板改革会重点抓好注册制这条主线，同时会在其他一些方面，包括发行、上市、信息披露、交易、退市等一系列基础制度方面，作出改革安排。目前，相关工作正在有序推进。在市场开放方面，相应的制度规则正在推进，下一步也会继续稳妥地扩大可投资的范围和品种。在市场准入方面，2019 年，几家外资控股的证券公司已经核准。同时，从 2020 年 4 月 1 日开始，可以申请外资独资证券公司、基金公司。

Source 来源：

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202003/t20200323\\_372534.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202003/t20200323_372534.html)

### **Shanghai Stock Exchange Issues Interim Provisions on Application and Recommendation of Enterprises for Issuance and Listing on STAR Market**

On March 27, 2020, In order to implement the relevant requirements of the China Securities Regulatory Commission (CSRC) for supporting and encouraging the companies that are in line with the attribute of sci-tech innovation to apply for issuance and listing on the Shanghai Stock Exchange (SSE) STAR Market, further define the criteria for grasping the orientation of the SSE STAR Market, guide and regulate the application of the issuers and the recommendation by the sponsor institutions, and promote the sustained and healthy

development of the SSE STAR Market, based on relevant provisions of the "Implementation Opinions on Establishing SSE STAR Market and Piloting Registration-Based IPO System on SSE", the "Measures for Administration of IPO Registration on SSE STAR Market (trial version)", the "Guidelines for Evaluation of Sci-tech Innovation Attribute (trial version)" and the "SSE Rules for Issuance and Listing Review of Stocks on SSE STAR Market", the SSE has formulated the "Interim Provisions on Application and Recommendation of Enterprises for Issuance and Listing on SSE STAR Market", which, with the approval of the CSRC, is released and shall take effect from the date of release. The "SSE Guidelines for Recommendation of Enterprises for Listing on SSE STAR Market" (Shang Zheng Fa [2019] No. 30 Document) shall be abolished at the same time.

Pursuant to the Interim Provisions on Application and Recommendation of Enterprises for Issuance and Listing on SSE STAR Market,

Article 3 - issuers applying for the listing on SSE STAR Market shall belong to industries for (1) the new generation of information technology, including semiconductors and integrated circuits, electronic information, next-generation information networks, artificial intelligence, big data, cloud computing, Software, Internet, Internet of Things and intelligent hardware, etc.; (2) high-end equipment fields, mainly including intelligent manufacturing, aerospace, advanced rail transportation, marine engineering equipment and related services; (3) new materials, mainly including advanced steel materials, advanced non-ferrous metal materials, advanced petrochemical new materials, advanced inorganic non-metal materials, high-performance composite materials, cutting-edge new materials and related services, etc.; (4) new energy fields, mainly including advanced nuclear power, large-scale wind power, high-efficiency photovoltaic light and heat, efficient energy storage and related services; (5) energy conservation and environmental protection, mainly including energy efficient products and equipment, advanced environmental protection technology and equipment, advanced environmental protection products, resource recycling, new energy vehicle vehicles, new energy vehicle key components, power batteries and related services; (6) biomedical field Including biological products, high-end chemical drugs, medical equipment and high-end equipment and related services; (7) other areas as per the positioning taken by SSE.

Article 4 – issuers whose science and technology attributes meet three of the followings are supported and

encouraged to apply for the listing on STAR Market: (1) in the last three years, the cumulative R & D investment accounted for more than 5% of the cumulative operating income, or the cumulative R & D investment exceeded RMB60 million; as for software companies, accumulated R & D investment accounted for more than 10% of the cumulative operating income in the last 3 years; (2) more than five invention patents (including national defense patents) contributed to the main business income, except for software companies; (3) the compound annual growth rate of operating income reached 20% in the last 3 years, or the amount of operating income reached RMB300 million in the most recent year, except for issuers applicable to Article 22(2)(5) of the "SSE Rules for Issuance and Listing Review of Stocks on SSE STAR Market".

Article 5 - issuers with outstanding technological innovation capabilities in one of the following situations are not subject to the restrictions on the attributes of science and technology innovation stipulated in the preceding article, and are supported and encouraged to apply for the issuance and listing on STAR Market: (1) in possession of core technology recognized by the national competent authority as having an international leading or significance role for the national strategy; (2) as the main participating unit, or core technical personnel as the main participating personnel, won the National Natural Science Award, National Science and Technology Progress Award, National Technology Invention Award, and has implemented such related technologies into main business; (3) undertake independently or lead national major science and technology projects related to main business and core technology; (4) major products formed by core technology (services) are key equipment, key products, key components, and key materials encouraged, supported and promoted by the state, and have realized import substitution; (5) more than 50 items of invention patents (including national defense patents) related to core technology and main business income.

#### 上海证券交易所发布科创板企业发行上市申报及推荐暂行规定

2020年3月27日，为了落实中国证券监督管理委员会（中国证监会）支持和鼓励符合科创属性规定的企业申报科创板有关要求，进一步明确科创板定位把握标准，引导和规范发行人申报和保荐机构推荐工作，促进科创板市场持续健康发展，根据《关于在上海证券交易所设立科创板并试点注册制的实施意见》《科创板首次公开发行股票注册管理办法（试行）》《科创属性评价指引

（试行）》和《上海证券交易所科创板股票发行上市审核规则》等有关规定，上海证券交易所制定了《上海证券交易所科创板企业发行上市申报及推荐暂行规定》，经中国证监会批准，予以发布，并自发布之日起施行。《上海证券交易所科创板企业上市推荐指引》（上证发〔2019〕30号）同时废止。

根据《上海证券交易所科创板企业发行上市申报及推荐暂行规定》：

第三条规定，申报科创板发行上市的发行人，应当属于（一）新一代信息技术领域，主要包括半导体和集成电路、电子信息、下一代信息网络、人工智能、大数据、云计算、软件、互联网、物联网和智能硬件等；（二）高端装备领域，主要包括智能制造、航空航天、先进轨道交通、海洋工程装备及相关服务等；（三）新材料领域，主要包括先进钢铁材料、先进有色金属材料、先进石化化工新材料、先进无机非金属材料、高性能复合材料、前沿新材料及相关服务等；（四）新能源领域，主要包括先进核电、大型风电、高效光电光热、高效储能及相关服务等；（五）节能环保领域，主要包括高效节能产品及设备、先进环保技术装备、先进环保产品、资源循环利用、新能源汽车整车、新能源汽车关键零部件、动力电池及相关服务等；（六）生物医药领域，主要包括生物制品、高端化学药、高端医疗设备与器械及相关服务等；（七）符合科创板定位的其他领域。

第四条规定，科创属性同时符合（一）最近3年累计研发投入占最近3年累计营业收入比例5%以上，或者最近3年研发投入金额累计在6000万元以上；其中，软件企业最近3年累计研发投入占最近3年累计营业收入比例10%以上；（二）形成主营业务收入的发明专利（含国防专利）5项以上，软件企业除外；（三）最近3年营业收入复合增长率达到20%，或者最近一年营业收入金额达到3亿元。采用《审核规则》第二十二第二款第（五）项上市标准申报科创板发行上市的发行人除外，其中3项指标的发行人，支持和鼓励其按照规定申报科创板发行上市。

第五条规定，对于具备下列情形之一，科技创新能力突出的发行人，不受前条规定的科创属性指标的限制，支持和鼓励其按照规定申报科创板发行上市：（一）拥有的核心技术经国家主管部门认定具有国际领先、引领作用或者对于国家战略具有重大意义；（二）作为主要参与单位或者核心技术人员作为主要参与人员，获得国家自然科学奖、国家科技进步奖、国家技术发明奖，并将

相关技术运用于主营业务；（三）独立或者牵头承担与主营业务和核心技术相关的“国家重大科技专项”项目；

（四）依靠核心技术形成的主要产品（服务），属于国家鼓励、支持和推动的关键设备、关键产品、关键零部件、关键材料等，并实现了进口替代；（五）形成核心技术和主营业务收入相关的发明专利（含国防专利）合计 50 项以上。

Source 来源：

<http://english.sse.com.cn/news/newsrelease/c/5025437.shtml>

### **Shenzhen Stock Exchange Stresses the Responsibilities of Intermediaries in Sustaining a Favorable Ecosystem of Bond Market**

In order to implement the requirements of “the four awes (to stand in awe of the market, rule of law, professionalism and risks) and one joint force (the capital market’s development needs all the efforts made by all sides)” of the China Securities Regulatory Commission (CSRC), Shenzhen Stock Exchange (SZSE) issued Q&As on Relevant Self-discipline Measures on “Brought into Regulation upon Application” in October 2019, to clarify the specific circumstances where securities companies may trigger measures such as “inspection/self-inspection measures” or “suspension of acceptance or handling of related business” due to their past practices in corporate bond business.

Since the release of the Q&As, SZSE has found the following problems and circumstances in the past practices of some securities companies in the issuance review and duration supervision of SZSE and in the daily regulation of regional CSRC bureaus. First, failure to perform duties diligently in the bond underwriting business: they have not fully verified the authenticity and accuracy of the public offering documents and were investigated by the CSRC and its regional offices for suspected violation of laws and regulations. Second, failure to perform due diligence: they were subject to administrative regulations and administrative penalties because they failed to detect illegal acts such as false records of the issuer’s financial data. Third, they were repeatedly subject to administrative regulations such as warning letters and instructions to rectify because of the failure to prudently verify the professional opinions issued by other intermediaries and the inaccurate disclosure of information in the prospectus. In view of the above circumstances, in order to strengthen the joint force of regulation, SZSE and SSE have cooperated in regulation following the unified arrangement of the CSRC, and adopted self-discipline measures for self-

inspection, suspension of acceptance or handling of related business for relevant securities companies.

After the formal implementation of the new Securities Law, SZSE took the lead in implementing the registration-based system on public offering of corporate bonds. SZSE fully supports enterprises in making efficient use of the bond market of SZSE in accordance with the law, steps up efforts to stress the responsibilities of intermediaries at the same time, and further implements relevant standards and requirements for intermediaries in corporate bond undertaking, application, issuance, duration management and other business in compliance with regulations. Next, SZSE will continue to resolutely implement the bond issuance and listing review system centering on information disclosure, adhere to the principle of “Brought into Regulation upon Application”, and urge securities companies and other intermediaries to fulfill their own responsibilities.

### **深圳证券交易所强调压实市场中介机构责任以建设债券市场良好生态**

为贯彻落实中国证券监督管理委员会（中国证监会）“四个敬畏（即敬畏市场、敬畏法治、敬畏专业、敬畏风险），一个合力（即资本市场改革发展稳定离不开方方面面的支持）”理念要求，深圳证券交易所（深交所）于 2019 年 10 月发布《关于“申报即纳入监管”相关自律监管措施问题解答》（《问答》），明确证券公司开展公司债券业务过程中，因以往执业行为可能触发“检查/自查措施”或“暂停受理或办理相关业务”等措施的具体情形。

自《问答》发布以来，在深交所发行审核、存续期监管和各地证监局日常监管中，出现部分证券公司以往执业过程中存在如下问题及受处理情形：一是在债券承销业务中未勤勉尽责，未充分核查公开发行募集文件的真实性和准确性，涉嫌违法违规被中国证监会及其派出机构立案调查；二是因在尽职调查中未勤勉尽责、未能发现发行人财务数据存在的虚假记载等违法违规行为，被采取行政监管措施、行政处罚；三是因未对其他中介机构出具的专业意见审慎核查、发生募集说明书信息披露不准确等违规行为，被多次采取出具警示函、责令改正等行政监管措施。针对上述情形，为强化监管合力，深沪两所根据中国证监会统一部署开展监管联动，对相关证券公司采取自查、暂停受理或办理相关业务的自律监管措施。

新证券法正式施行后，公开发行公司债券率先实施注册制。深交所全力支持企业依法高效利用交易所债券市场

融资，同时加大力度压实中介机构责任，进一步对中介机构在公司债券承接、申报、发行、存续期管理等业务中的执业行为依规执行相关标准要求。下一步，深交所将继续坚决落实以信息披露为核心的债券发行上市审核制度，坚持“申报即纳入监管”原则，督促证券公司等中介机构归位尽责。

Source 来源：

[http://www.szse.cn/English/about/news/szse/t20200331\\_575595.html](http://www.szse.cn/English/about/news/szse/t20200331_575595.html)

### **The European Commission Prolongs the Validity of Block Exemption for Liner Shipping Consortia to April 25, 2024**

The European Commission has prolonged for another four years the regulation outlining the conditions under which liner shipping consortia can provide joint services without infringing European Union (EU) antitrust rules that prohibit anticompetitive agreements between companies. This regulation known as the “Consortia Block Exemption Regulation” is therefore extended until April 25, 2024. More specifically, liner shipping consortia are agreements between shipping companies to operate joint liner shipping services and engage in certain types of operational cooperation leading to economies of scale and a better utilization of the space on vessels.

EU law generally bans agreements between companies that restrict competition. However, the Consortia Block Exemption Regulation allows, under certain conditions, liner shipping operators with a combined market share of below 30% to enter into cooperation agreements to provide joint liner shipping services (known as "consortia"). These agreements, however, cannot include price-fixing or market-sharing.

The current Consortia Block Exemption Regulation was adopted in 2009 and prolonged in 2014 by five years and was due to expire on April 25, 2020.

#### **The findings of the consultation**

In September 2018, the Commission launched a public consultation and conducted an evaluation of the Consortia Block Exemption Regulation, which included a wide consultation of stakeholders in the maritime liner shipping supply chain. The findings of the evaluation were summarized in a Staff Working Document, which was published in November 2019 on the webpage of the consultation.

The evaluation has shown that despite evolutions in the market, the Consortia Block Exemption Regulation is still fit for purpose, in line with the Commission's "Better Regulation" approach to policy-making, and delivers on its objectives. Moreover, the consortia agreements that meet the conditions set out in the Consortia BER continue to satisfy the conditions laid down in Article 101(3) Treaty on the Functioning of the European Union (TFEU).

More specifically, the Commission has found that the Consortia Block Exemption Regulation results in efficiencies for carriers that can better use vessels' capacity and offer more connections. The exemption only applies to consortia with a market share not exceeding 30% and whose members are free to price independently. In that context, those efficiencies result in lower prices and better quality of service for consumers. Specifically, the evaluation has shown that in recent years both costs for carriers and prices for customers per twenty-foot equivalent unit (TEU) have decreased by approximately 30% and quality of service has remained stable.

The European Commission decided therefore to prolong the validity of the Regulation for four years.

#### **欧盟委员会将班轮运输业集体豁免条例有效期延长至2024年4月25日**

欧盟委员会将《卡特尔集体豁免条例》再次延长了四年，该条例规定了班轮运输业在遵守禁止反竞争的欧盟反托拉斯规则的前提下提供联合服务的条件。因此，此项条例将延期至2024年4月25日。具体来讲，班轮运输联合体是船运公司之间的协议，以运营联合班轮运输服务并从事某些类型的运营合作从而带来规模经济并更好地利用船只空间。

欧盟法律通常禁止公司之间限制竞争的协议。但是，《卡特尔集体豁免条例》允许在某些条件下，市场份额合计低于30%的班轮运输运营商签订合作协议以提供联合班轮运输服务（称为“联合体”）。但是，这些协议不能包含价格固定或市场共享。

当前的《卡特尔集体豁免条例》于2009年通过，并于2014年延长了五年，将于2020年4月25日到期。

#### **问询评估结果**

2018年9月，委员会针对《卡特尔集体豁免条例》启动公众问询及评估，其中包括了对海上班轮运输供应链中利益相关者的广泛问询。问询及评估结果汇总在委员会工作文件中，该文件于2019年11月在问询网页上发布。

评估表明，尽管市场发生了变化，但根据委员会在政策制定方面“更优法规”的原则，《卡特尔集体豁免条例》仍然与其初衷及目标相符。此外，满足《卡特尔集体豁免条例》规定条件的联合体协议继续满足《欧洲联盟运作方式条约》第101(3)条规定。

更具体地说，委员会发现《卡特尔集体豁免条例》提高了承运人的效率，从而可以更好地利用船只容量并提供更多关联。该豁免仅适用于市场份额不超过30%并且其成员可以自由定价的联合体。在这种情况下，这些效率可为消费者带来更优惠的价格和更好的服务质量。具体而言，评估显示近年来运营商的成本和每二十英尺等效单位（TEU）的客户价格均下降了约30%并且服务质量保持稳定。

因此，欧盟委员会决定将该条例的有效期再延长四年。

Source 来源：

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_518](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518)

### **The European Commission Amends Short-term Export-credit Insurance Communication in Light of Economic Impact of Coronavirus Outbreak**

The European Commission has decided to temporarily remove all countries from the list of “marketable risk” countries under the Short-term export-credit insurance Communication. This will make public short-term export credit insurance more widely available in light of the current crisis linked to the coronavirus outbreak. The amendment further expands on the flexibility introduced by the Commission's State aid Temporary Framework with respect to the possibility by State insurers to provide insurance for short-term export-credit.

Executive Vice President Margrethe Vestager, in charge of competition policy, said: “Managing the economic impact of the coronavirus outbreak requires us to act fast. We adopted a comprehensive solution for short-term export-credit insurance. With this amendment, companies affected by the coronavirus outbreak will be able to obtain short-term export-credit insurance from public insurers. We are working with Member States to ensure that national support

measures can be put in place as quickly and effectively as possible, in line with EU rules.”

Export-credits enable foreign buyers of goods and/or services to defer payment. Deferred payment implies credit risk for the seller/exporter, against which they insure themselves, typically with the private insurers (so-called export credit insurance).

The Short-term export-credit insurance Communication, which is in force since 2013, provides that trade within 27 EU Member States and nine OECD countries listed in its Annex, with a maximum risk period of up to two years, entails marketable risks and should, in principle, not be insured by the State or State supported insurers.

On March 23, 2020, following the indication by some Member States that they expect a global contraction of the private insurance market for exports to all countries due to the coronavirus outbreak, the Commission launched an urgent public consultation.

The public consultation aimed at assessing the availability of private short-term export-credit insurance capacity for exports to all countries listed as “marketable risk countries” in the Short-term export-credit Communication, with a view to possibly amend the list of “marketable risk countries” as a temporary measure.

The public consultation pointed to an imminent insufficiency of private insurance capacity for exports to all countries. At the same time, demand for insurance is expected to significantly rise as a result of the current crisis.

Based on the result of the public consultation and on the relevant economic indicators, the Commission has decided to consider all countries listed in the Annex as temporarily non-marketable and to remove all countries from the list of “marketable” countries until December 31, 2020. Before that date to give legal certainty, the Commission will re-assess the situation and give clarity on “marketable risk countries” beyond December 31, 2020.

The State aid Temporary Framework to support the economy in the context of the COVID-19 outbreak adopted on March 19, 2020 had already introduced additional flexibility on how to demonstrate that certain countries were not-marketable, thereby enabling short-term export credit insurance to be provided by the State where needed. The amendment

to the Annex to the Short-term export-credit insurance Communication further expands this flexibility.

Following the amendment, State insurers will in principle be able to step in and provide insurance for short-term export-credit risk for all countries, without the need for the Member State in question to demonstrate that the respective country is temporarily “non marketable”.

### 欧盟委员会鉴于新型冠状病毒爆发对经济的影响修改了短期出口信用保险通讯

欧盟委员会已决定根据短期出口信用保险通讯，暂时将所有国家从“有市场风险的国家”中删除，这将使公共短期出口信用保险在目前的危机中得到更为广泛的应用。该修改进一步扩大了委员会国家援助临时框架下国家保险人为短期出口信用提供保险方面的灵活性。

负责竞争政策的执行副总裁 Margrethe Vestager 表示：“管控新型冠状病毒爆发对经济的影响要求我们迅速采取行动。我们为短期出口信用保险采用了全面的解决方案。通过此次修改，受新型冠状病毒爆发影响的公司将能够从公共保险人处获得短期出口信用保险。我们正在与成员国合作，以确保能够按照欧盟法规尽快有效地实施国家支持措施。”

出口信用使购买商品和/或服务的外国买家可以延期付款。延期付款意味着卖方/出口商的信用风险，通常由私人保险公司为其提供保险（所谓的出口信用保险）。

《短期出口信用保险通讯》自 2013 年起生效，规定在其附件所列的 27 个欧盟成员国和 9 个经合组织国家范围内进行贸易，最大风险期为两年，产生市场风险的，原则上不应由国家或国家支持的保险人保险。

2020 年 3 月 23 日，当一些成员国表示他们预计全球范围内对所有国家出口信用的私人保险市场将由于新型冠状病毒的爆发而收缩之后，委员会启动了紧急公众问询。公众问询旨在评估向短期出口信用通讯中被列为“有市场风险国家”的所有国家/地区出口的私人短期出口信用保险能力，以期可能修改“有市场风险国家”作为临时举措。公众问询指出，供给所有国家出口的私人保险能力严重不足。同时，由于当前的危机，预计保险需求将大大增加。

根据公众问询的结果和相关的经济指标，委员会决定将附件中列出的所有国家视为“暂时不可进行市场交易的国

家”，并将所有国家从“可进行市场交易的国家”中删除直至 2020 年 12 月 31 日。为了提供法律确定性，在此日期之前，委员会将重新评估情况，并在 2020 年 12 月 31 日之后明确“具有市场风险的国家”。

在新型冠状病毒疫情背景下，2020 年 3 月 19 日通过了国家援助临时框架以支持经济，已经在如何证明某些国家不适合进行市场交易方面引入了额外的灵活性，从而使由国家在需要时提供的短期出口信用保险得以实现。短期出口信用保险通讯附件的修订进一步扩大了这种灵活性。

修订后，国家保险人原则上将能够为所有国家提供短期出口信用风险保险，而无需有关成员国证明各自国家暂时“不具有市场交易性”。

Source 来源:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_542](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_542)

### Australian Securities and Investments Commission Facilitating Capital Raisings to Assist Companies Need to Raise Funds from Investors Urgently during COVID-19 Period

Australian Securities and Investments Commission is committed to refocusing its regulatory efforts on challenges created by the COVID-19 pandemic.

In line with this approach, ASIC is helping listed companies raise capital quickly by giving temporary relief to enable certain ‘low doc’ offers (including rights offers, placements and share purchase plans) to be made to investors, even if they do not meet all the normal requirements. This will assist companies that need to raise funds from investors urgently because of the impact of COVID-19.

Without this relief, some listed companies may be prevented from utilizing a ‘low doc’ offer because they have been suspended for a long period while assessing the impact of COVID-19 on their business and preparing for a capital raising.

The ‘low doc’ capital raising regime is not available if a company has been suspended for a total of more than five days in the previous 12 months. Companies that have been suspended for more than five days would instead need to prepare a prospectus or apply to ASIC for individual relief. Those options can be costly and involve delay.

ASIC has therefore provided temporary relief to allow 'low doc' placements, rights issues and share purchase plans (SPP) where a listed company has been suspended for a total of up to 10 days in the previous 12-month period. Companies can rely on ASIC Corporations (Trading Suspension Relief) Instrument 2020/289 and ASIC Corporations (Amendment) Instrument 2020/290 without making an individual application.

Commissioner John Price said: "We want to give companies more fundraising flexibility in these circumstances. Many will need to seek a trading suspension to understand how COVID-19 will affect them and to put a capital raising in place. However, the usual rules still apply. Directors need to ensure the capital raising is in the best interests of the company and companies need to make sure they are keeping the market informed via continuous disclosure announcements, even when they are in suspension."

#### 澳大利亚证券与投资委员会促进资金募集以协助公司在新型冠状病毒疫情期间紧急的资金筹集需求

澳大利亚证券与投资委员会致力于将其监管工作重点转移到新型冠状病毒大流行带来的挑战上。

在此情况下，澳大利亚证券与投资委员会通过临时救济使某些“低档”要约（包括供股、配售和股票购买计划）能够满足投资者的要求，以帮助上市公司快速筹集资金，即使它们没有满足所有正常条件。这将有助于那些受到新型冠状病毒影响的需要紧急筹集资金的公司。

如果没有这种救济，一些上市公司可能会被禁止使用“低档”报价，因其在评估新型冠状病毒对其业务的影响并准备筹集资金时已经停滞了很长一段时间。

如果公司在过去 12 个月中被停牌总计超过 5 天，则无法使用“低档”筹集资金机制。被停牌超过五天的公司将需要准备招股说明书或向澳大利亚证券与投资委员会申请个人救济。此类选择可能代价高昂并且涉及延迟。

因此，澳大利亚证券与投资委员会对一家上市公司提供了临时救济允许“低档”配售、配股和股票购买，该上市公司在过去 12 个月中总共被停牌 10 天之久。公司可以将澳大利亚证券与投资委员会的公司（停牌救济）2020/289 和公司（修订）2020/290 作为依据而无需再作单独申请。

专员 John Price 说：“在这种情况下，我们希望为公司提供更多的筹资灵活性。许多人将需要中止交易以了解新型冠状病毒将如何影响其融资。然而，通常规则仍然适用。董事们需要确保筹集资金符合公司的最大利益，公司也需要确保通过不间断的披露公告（即使处于停工状态）随时向市场通报情况。”

Source 来源:

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-075mr-facilitating-capital-raising-during-covid-19-period/>

#### Comments by Monetary Authority of Singapore on Covid-19 (Temporary Measures) Bill

In response to media queries about the implications of the COVID-19 (Temporary Measures) Bill on the financial sector, the Monetary Authority of Singapore (MAS) said that the proposed Bill will provide needed temporary protection for SMEs while being carefully scoped to avoid impairing the interests of banks and Singapore's role in international financial transactions.

The proposed Bill covers only SME loans with specific security located in Singapore, namely commercial or industrial property in Singapore, or plant, machinery or fixed assets in Singapore that are used for business purposes. As part of the package of relief measures announced by MAS on March 31, 2020, banks have already undertaken to defer principal payments on secured loans to SMEs until the end of the year, subject to assessment of the quality of the security. The proposed Bill provides legal protection for the specific security and hence complements banks' relief measures for SMEs.

The contractual rights of banks are not affected, other than the right to commence legal action for a default on a loan covered under the proposed Bill. Banks' contractual right to charge fees and interest for non-payment or late payment of loan obligations due is unaffected.

SMEs seeking the protection of the proposed Bill for their security should therefore bear in mind that they may incur late charges and higher interest, and end up paying more in the future. SMEs who face cash flow difficulties should actively engage their banks to explore the options available under the package of relief measures announced by MAS, which include the deferment of principal repayment, with a corresponding waiver of late charges.

Apart from the secured SME loans specified above, the proposed Bill has no implications for banks on any of their other facilities, transactions, or contracts, or for Singapore's role as an international financial center.

### 新加坡金融管理局对新型冠状病毒（临时措施）草案的评论

在回应媒体关于《新型冠状病毒（临时措施）草案》对金融业的影响的质疑时，新加坡金融管理局表示，拟议法案将为中小型企业提供其所需的临时保护，同时将明确划分范围以免减损银行的利益以及新加坡在国际金融交易中的作用。

拟议法案仅涵盖位于新加坡的具有特定担保的中小企业贷款，即新加坡的商业或工业产权或新加坡用于商业目的的厂房、机械或固定资产。作为金管局在 2020 年 3 月 31 日宣布的一揽子救济措施的一部分，银行已承诺将对中小企业的有抵押贷款的本金付款推迟至年底，但要对其证券质量进行评估。拟议法案为特定证券提供了法律保护从而补充了银行对中小企业的救济措施。

银行的合约权利不受影响，针对拟议法案所涵盖的贷款违约行为提起法律诉讼的权利除外。银行对未付或逾期未付的贷款义务收取费用和利息的合约权利不受影响。

因此，出于安全考虑而寻求拟议法案保护的中小型企业应该了解，滞纳金和高额利息可能由此产生并最终在将来付出更多。面临现金流困难的中小型企业应积极与银行合作，探讨金管局宣布的一揽子减免措施中的可用方案，其中包括推迟偿还本金以及相应滞纳金。

除了上述指定的有抵押中小企业贷款外，拟议法案对银行的其他任何设施、交易或合同没有影响，也不会影响新加坡作为国际金融中心的作用。

Source 来源:

<https://www.mas.gov.sg/news/media-releases/2020/comments-by-mas-on-covid-19-temporary-measures-bill>

### The Competition Commission of Hong Kong takes Textbook cartel case to the Hong Kong Competition Tribunal

On March 20, 2020, the Competition Commission of Hong Kong (the Commission), commenced proceedings in the Hong Kong Competition Tribunal (the Tribunal) against three companies, namely T.H. Lee Book Company Limited, Commercial Press (Hong Kong)

Limited and Sino United Publishing (Holdings) Limited ("Companies"); and an individual Mr. Hui Chiu Ming (Mr. Hui), the General Manager of T.H. Lee Book Company Limited.

The Commission alleges that the Companies have contravened the First Conduct Rule of the Competition Ordinance (the Ordinance) by engaging in price-fixing, market-sharing, and/or bid-rigging in relation to the sale of textbooks to students attending primary and secondary schools in Hong Kong (Cartel Arrangements). Although the Cartel Arrangements were arrived at prior to the full implementation of the Ordinance, the Companies had continued to give effect to the Cartel Arrangements and/or had engaged in them after the Ordinance came into full effect. As for Mr. Hui, the Commission alleges that he is a person involved in the Cartel Arrangements within the meaning of section 91 of the Ordinance.

The Commission is seeking orders including:

- a declaration that the Companies have contravened the First Conduct Rule and Mr. Hui is a person involved in the contravention;
- an order for pecuniary penalties to be imposed on the Companies and Mr. Hui; and
- a director disqualification order against Mr. Hui.

Mr. Brent Snyder, CEO of the Commission, said, "This case highlights the risks to businesses that reach cartel agreements, even those that continue in cartels which began before the Ordinance came into full effect. To be clear, the Commission will investigate and take action against any such agreements that began or continued after the Ordinance came into full effect.

The Commission calls for market participants including trade associations in all sectors to thoroughly review their practices and desist from any cartel conduct or arrangements, including those that have been established before the full implementation of the Ordinance. Businesses already involved in such conduct should approach the Commission for leniency or cooperation."

### The First Conduct Rule

Under the First Conduct Rule in section 6(1) of the Ordinance, undertakings are prohibited from making or giving effect to an agreement, or engaging in a concerted practice, if the object or effect of the agreement or concerted practice is to prevent, restrict or distort competition in Hong Kong. Cartel conduct, which includes price fixing, market sharing and bid-rigging, is generally regarded as a particularly harmful form of anti-competitive agreement or concerted practice.

## **Persons Involved in Contravention**

Under section 91 of the Ordinance, a person involved in a contravention of a competition rule is a person who: attempts to contravene the rule; aids, abets, counsels or procures any other person to contravene the rule; induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule; is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or conspires with any other person to contravene the rule.

### **香港竞争事务委员会就教科书销售合谋案件入禀香港竞争事务审裁处**

2020年3月20日，香港竞争事务委员会（竞委会）在香港竞争事务审裁处（审裁处）向以下三间公司及一名个别人士展开法律程序：天利行书局有限公司、商务印书馆（香港）有限公司、联合出版（集团）有限公司（公司），及天利行书局有限公司总经理许超明先生（许先生）。

竞委会指称，上述公司在向香港中小学学生销售教科书期间，涉嫌合谋定价、瓜分市场及/或围标（合谋安排），违反了《竞争条例》（《条例》）下的「第一行为守则」。虽然有关合谋安排是在《条例》全面生效前所订立，唯上述公司于《条例》全面生效后仍然继续执行及/或参与有关安排。竞委会亦指称许先生为《条例》第91条所指牵涉入该合谋安排的人士。

竞委会现正向审裁处作出申请，包括：

- 宣布上述公司违反了「第一行为守则」，及许先生牵涉入违反该守则；
- 对上述公司及许先生施加罚款；及
- 向许先生发出取消董事资格令。

竞委会行政总裁冼博仑先生表示：「本案件突显了企业参与合谋安排所面对的风险，即使他们只是继续执行在《条例》全面生效前所订立的合谋协议，仍有可能违法。竞委会会调查任何于《条例》全面实施后开始或仍然继续的合谋行为，并采取执法行动。」

竞委会呼吁所有行业的市场参与者，包括各行业协会，全面检讨其营商手法，并停止任何合谋行为或安排，包括在《条例》全面生效前所定下的做法；而已牵涉入该等行为的 企业，则应联络竞委会申请宽待或提供合作。」

### **第一行为守则**

根据《条例》第6(1)条「第一行为守则」，如某协议或经协调做法的目的或效果，是妨碍、限制或扭曲在香港的竞争，则任何业务实体不得订立或执行该协议，亦不得从事该经协调做法。包括合谋定价、瓜分市场及围标在内的合谋行为，是公认为尤其会导致严重损害的反竞争协议或经协调做法。

### **牵涉入违反竞争守则的人**

根据《条例》第91条，牵涉入违反竞争守则的人，是指：企图违反该守则的人；协助、教唆、怂使或促致其他人违反该守则的人；不论是以威胁、许诺或其他方式，诱使任何其他人违反该守则，或企图如此行事的人；直接或间接以任何方式，明知而关涉违反该守则，或成为违反该守则的一分子的人；与任何其他人串谋违反该守则的人。

Source 来源:

[https://www.compcomm.hk/en/media/press/files/20200320\\_Compensation\\_Commission\\_takes\\_Textbook\\_cartel\\_case\\_to\\_Compensation\\_Tribunal\\_EN.pdf](https://www.compcomm.hk/en/media/press/files/20200320_Compensation_Commission_takes_Textbook_cartel_case_to_Compensation_Tribunal_EN.pdf)

### **The Competition Commission of Hong Kong Issues Statement Regarding the COVID-19 Outbreak**

On March 27, 2020, the Competition Commission of Hong Kong (the Commission) acknowledges the ongoing challenges which the outbreak of COVID-19 poses to business operations and the supply of critical goods and services in Hong Kong.

Businesses and consumers may have questions about the work of the Commission or concerns about the application of the Competition Ordinance of Hong Kong (Cap. 619) (the Ordinance) during this period.

The Commission issues the present statement to address such questions and concerns.

### **Application of the Ordinance during the COVID-19 outbreak**

The Commission continues its operations to enforce the Ordinance, which remains in effect during the COVID-19 outbreak. It nonetheless recognizes that there could be a need for additional cooperation between businesses in certain industries on a temporary basis, particularly to maintain the supply of essential goods and services to consumers. The Commission intends to take a pragmatic approach in its enforcement and advisory functions in respect of measures which are genuinely necessitated by the COVID-19 outbreak and in the interests of Hong Kong consumers and society. Further guidance in this respect is provided below.

As the Ordinance continues to apply in full, however, the Commission will remain vigilant to protect consumers from anti-competitive conduct by businesses seeking to take advantage of the outbreak or using the outbreak to justify improper collusion or other anti-competitive conduct. Such conduct will be subject to the full force of the law. Consumers or businesses which are aware of such conduct taking place should lodge a complaint to the Commission, while businesses already involved in such conduct should approach the Commission for leniency or cooperation. Further details of these processes are available on the Commission's website ([www.compcomm.hk](http://www.compcomm.hk)).

### Cooperation genuinely necessitated by the COVID-19 outbreak

#### Guidance on potentially relevant arrangements

The Commission's Guideline on the First Conduct Rule (the Guideline) (available at: [https://www.compcomm.hk/en/legislation\\_guidance/guidance/first\\_conduct\\_rule/files/Guideline\\_The\\_First\\_Conduct\\_Rule\\_Eng.pdf](https://www.compcomm.hk/en/legislation_guidance/guidance/first_conduct_rule/files/Guideline_The_First_Conduct_Rule_Eng.pdf)) contains detailed guidance on the application of the Ordinance to the types of cooperative arrangements which businesses may be contemplating in response to the COVID-19 outbreak.

In this respect, the following statements from the Guideline may be of note:

- *Joint buying.* In general, joint buying is unlikely to give rise to concerns under the First Conduct Rule if the parties do not have market power in the relevant downstream markets. See further Guideline, paragraphs 6.31-6.37.
- *Joint production agreements.* Where a joint production agreement allows parties to produce a product that they would not, objectively, be able to produce alone, the agreement will not likely run afoul of the Ordinance. See further Guideline, paragraphs 6.95-6.100.
- *Sales-related joint ventures.* Businesses often agree to jointly sell, distribute or market particular products (together, "sales-related joint ventures"). A sales-related joint venture does not give rise to competition concerns where the joint venture is objectively necessary for a party to enter a market it could not have entered on its own or with a smaller number of parties than those actually involved in the collaboration. See further Guideline, paragraphs 6.107-6.114.
- *Exchange of information:* Businesses may share information on matters such as best practices or

publicly available information without risks under the First Conduct Rule. Concerns will generally arise where information is 'competitively sensitive information'. See further Guideline, paragraphs 6.38-6.49.

For the avoidance of doubt, the above statements should be read alongside the full text of the Guideline in relation to these arrangements.

#### Informal engagement with the Commission

Where businesses propose temporary cooperative measures which are genuinely necessitated by the COVID-19 outbreak and in the interests of Hong Kong consumers and society ("**proposed measures**"), they or their relevant industry bodies are welcome to contact the Commission. The purpose of such engagement would be to discuss how the Commission considers the Ordinance to apply to the proposed measures.

The Commission will aim to handle such engagement on an expedited basis. In relation to proposed measures, it will endeavor to provide initial views on an informal basis within five working days of receiving all necessary information on the measures, subject to exceptional resource constraints.

#### Contacting the Commission

Parties contacting the Commission are requested to provide all available details of the proposed measures and an explanation of why they are necessary in light of the COVID-19 outbreak.

Parties should contact the Commission by email at [enquiry@compcomm.hk](mailto:enquiry@compcomm.hk) or by using the Online Enquiry Form ([https://www.compcomm.hk/en/applications/enquiry/make\\_enquiry.php](https://www.compcomm.hk/en/applications/enquiry/make_enquiry.php)) on the Commission's website. The term "COVID-19" should be included in the subject line of any contacts with the Commission.

#### 香港竞争事务委员会公告有关新型冠状病毒疫情期间施行《竞争条例》的事宜

2020年3月27日, 香港竞争事务委员会(竞委会)留意到新型冠状病毒疫情对香港企业的营运及重要物资及服务的供应, 均带来了不同的挑战。

企业及消费者对竞委会在这段期间的工作及香港《竞争条例》(第619章)(《条例》)的施行, 或会有不同的问题及关注。

竞委会今日发布公告, 以响应有关疑问及关注。

#### 于疫情期间施行《竞争条例》

在疫情期间，《条例》如常生效，竞委会亦继续运作，执行《条例》。然而，竞委会明白到，某些行业的企业，在这段期间或有需要短暂地加强彼此间的合作，尤其是为了向消费者持续供应必需的货品及服务。对于这些短暂的安排，若是切实为应对疫情，并符合香港社会及消费者的利益，竞委会在履行其执法及提供意见的职能时，将会以务实的手法处理。下文将就提供进一步指引。

《条例》在这段期间如常全面生效，竞委会将继续保持警觉，防止企业利用疫情、或以疫情为借口从事不当的合谋行为或其他反竞争行为，以保障消费者。该等行为将面对法律的制裁。消费者或企业如发现有关行为，应尽快向竞委会举报；而已牵涉入这些行为的企业，则应联络竞委会申请宽待或提供合作，详情可浏览竞委会网站 [www.compcomm.hk](http://www.compcomm.hk)。

## 企业之间因新型冠状病毒疫情而必须进行的合作

### 就可能进行的安排之指引

就企业面对疫情而可能进行的各类合作安排，竞委会在其《第一行为守则指引》（可在 [https://www.compcomm.hk/sc/legislation\\_guidance/guidance/first\\_conduct\\_rule/files/Guideline\\_The\\_First\\_Conduct\\_Rule\\_Chi](https://www.compcomm.hk/sc/legislation_guidance/guidance/first_conduct_rule/files/Guideline_The_First_Conduct_Rule_Chi) 获得）（《指引》）中，已详述了《条例》会如何应用于这些安排。

《指引》中的相关内容摘录如下，以供参考：

- 联合采购：一般来说，如果参与联合采购的有关各方在相关产品或服务的下游市场没有市场权势，则其联合采购的行为一般不会引起「第一行为守则」下的竞争疑虑。详情可参阅《指引》第 6.31 至 6.37 段。
- 联合生产协议：若联合生产协议有助参与协议的各方能生产凭各自的客观条件均不能独力生产的产品，则该协议不大可能违反《条例》。详情可参阅《指引》第 6.95 至 6.100 段。
- 与销售相关的联营：企业之间可以透过不同的联营方式来协议共同销售、分销或于市场推广特定产品（统称「销售相关联营」）。假如销售相关联营（包括当中参与方的数量）对某参与方能进入其无法独力进入的市场来说，在客观上是必需的，则该联营一般不会引起竞争上的问题。详情可参阅《指引》第 6.107 至 6.114 段。
- 交换数据：在「第一行为守则」下，企业可就各事宜共享数据而无损竞争，例如互相交流最佳做法、或交换公开可得的数据。一般来说，交换「影响竞争的敏

感数据」则可能会引起竞争上的问题。详情可参阅《指引》第 6.38 至 6.49 段。

为免生疑问，以上的节录，应与《指引》内描述该等安排的全部章节一并解读。

### 与竞委会作非正式咨询

企业之间若有意进行短暂的合作安排（建议安排），而有关安排是切实为应对疫情，并符合香港社会及消费者的利益，他们或其行业协会可主动联络竞委会，商讨《条例》如何应用于其建议的安排上。

竞委会将快速处理有关咨询。在资源许可的情况下，竞委会将尽量于收到所有数据后的五个工作日内，以非正式形式就建议安排提供初步意见。

### 与竞委会联络

有意联络竞委会的人士，须就其建议的安排提供详细数据，并阐释为何该等安排乃因应新型冠状病毒疫情而必须作出的安排。相关人士可以电邮（[enquiry@compcomm.hk](mailto:enquiry@compcomm.hk)）联络竞委会，或使用竞委会网站内的网上查询表格（[https://www.compcomm.hk/tc/applications/enquiry/make\\_enquiry.php](https://www.compcomm.hk/tc/applications/enquiry/make_enquiry.php)）。每次与竞委会联络时，需于标题一栏注明「新型冠状病毒疫情事宜」。

Source 来源:

[https://www.compcomm.hk/en/about/public\\_notices/files/2020\\_0327\\_Statement\\_by\\_CC\\_regarding\\_the\\_COVID19\\_outbreak\\_Eng.pdf](https://www.compcomm.hk/en/about/public_notices/files/2020_0327_Statement_by_CC_regarding_the_COVID19_outbreak_Eng.pdf)

### The Privacy Commissioner of Hong Kong issues COVID-19 Pandemic Guidelines for Employers and Employees

On March 30, 2020, the Privacy Commissioner for Personal Data of Hong Kong (Privacy Commissioner), Mr Stephen Kai-yi WONG said, "The public health and safety of the community in times of the pandemic remains our primary concern. We should be mindful of the compelling public interests in the current public health emergency when considering compliance with data protection laws, which should not be seen as hindering the measures taken in fighting or combating the pandemic especially when the collection and use of personal data is in the public interest and/or in the interest of public health."

The Privacy Commissioner also stressed, "While we acknowledge that there is legitimate basis for employers

to collect additional data of their employees to help control the spread of the disease, the collection and processing of employees' personal data should be specifically related to and used for the purposes in relation to public health and should be limited in both duration and scope as required in the particular situation. Additional data to be collected must still adhere to the usual principles such as minimization, purpose specification and use limitation. It must be necessary, appropriate and proportionate to the purpose to be achieved."

### **Can an employer collect temperature measurements or other health data from his employees?**

Employers have legal and corporate responsibilities to protect the health of their employees and visitors. In times of COVID-19, it is generally justifiable for employers to collect temperature measurements or limited medical symptoms of COVID-19 information of employees and visitors solely for the purposes of protecting the health of those individuals.

### **What kind of personal data may employers collect, and how can this be done properly?**

Employers must follow the general rule that the measures taken to collect data should be **necessary, appropriate** and **proportionate**. They should seek to process the relevant data in an anonymized or de-identified way. Least privacy intrusive measures should be preferred.

Generally speaking, a self-reporting system is preferred to an across-the-board mandatory system where health data is collected indiscriminately. Employers should spell out to their employees how the data collected will be handled. If the collection of such data is not covered by the existing privacy notices, a fresh Personal Information Collection Statement (PICS) must be provided when or before the data collection to inform employees of the data collected and the purposes (e.g. protection of public health), and the classes of persons (e.g. public health authorities) to whom their data may be transferred. It is also a good and ethical practice to inform the employees in the PICS how long the data will be retained by the employer.

### **How about travel history? Can employers ask for travel data of their employees?**

The Personal Data (Privacy) Ordinance (PDPO) does not prohibit any organization from collecting ones' travel data. Given the escalating number of confirmed cases of COVID-19 locally and globally, and the legal and corporate responsibilities of employers to provide a safe working environment, it is justifiable for employers to ask for travel data from employees who have returned from overseas, especially from those high-risk areas. Similar to health data, the collection of travel data should be purpose-specific, and minimal data should be collected. A self-reporting system is preferred to an across-the-board mandatory system.

### **Can the personal data collected be disclosed to other parties, or used for other purposes?**

Personal data collected by employers for fighting or combatting COVID-19 must not be used or disclosed for other unrelated purposes, unless express and voluntary consent is obtained from the individuals concerned or exemptions under the PDPO apply.

For the purposes of protecting public health, it will not be considered as a contravention of the use principle under the PDPO (i.e. DPP3) for employers to disclose the identity, health and location data of individuals to the Government or health authorities solely for the purposes of tracking down and treating the infected, and tracing their close contacts when pressing needs arise.

If an employee unfortunately contracts COVID-19, the employer may notify other employees, visitors and the property management office etc. without disclosing personally identifiable information of the infected. For example, it is generally sufficient for the employer just to issue a notice with information that it has staff infected. Under most circumstances, disclosure of the name and other personal particulars of an infected employee in the notice will not be considered as necessary or proportionate.

### **How long can the personal data collected be retained?**

Employers shall permanently destroy the personal data collected for the purposes of fighting or combatting COVID-19 when the purpose of collection is fulfilled, such as when there is no evidence suggesting that any employees have contracted COVID-19 or have close contacts with the infected after a reasonable period of time.

### Compelling public health interests

- The outbreak of COVID-19 was declared a Public Health Emergency of International Concern by the World Health Organization on 30 January 2020, and characterized as a pandemic on 11 March 2020. There is now a pressing need for the local and international communities to contain the spread of the virus. The compelling interests of public health and safety should be the primary concern for all, including data users.
- Data protection principles should not hinder measures taken to fight or combat COVID-19. However, organizations should not derogate their responsibilities in handling personal data.

### Exemptions provided in the PDPO in relation to public health emergency

- Section 59(1) of the PDPO provides for situations where the use of personal data relating to the health of the data subjects may be exempted from the application of Data Protection Principle (DPP) 3 (use of data) of Schedule 1 to the PDPO if the application of such rule would cause serious harm to the health of the data subjects or any other individuals. In other words, any breach of the general rule on the use of data without consent may be defended by demonstrating that the use of the data is for protecting the health of individuals and public health at large. In particular, section 59(2) of the PDPO states that in circumstances where the application of the restrictions on the use of data would be likely to cause serious harm to the physical or mental health of the data subject or any other individual, personal data relating to the identity or location of the data subject may be disclosed to a third party without the consent of the data subject.

### Balancing privacy and public health needs

- Personal data privacy right is not an absolute right. What it practically means is that it may be subject to other competing rights or interests, such as the absolute right to life and the interests of the public, including public health.
- “Right to life” of individuals under (i) Article 2 of Part II of the Hong Kong Bill of Rights Ordinance and (ii) Article 6 of the International Covenant on Civil and Political Rights means that every human being has

the inherent right to life. The Human Rights Committee of United Nations also stated in November 2018 that “The right to life is the prerequisite for the enjoyment of all other human rights” and defined the “right to life” as “the supreme right”. This right is absolute and precedes other countervailing interests, including privacy right. The right to life refers not only to the right of life of the data subject, such as the potential carrier of COVID-19, but also that of others in society.

### 香港个人资料私隐专员对抗 2019 冠状病毒病大流行疫情给雇主和雇员的指引。

2020 年 3 月 30 日，香港个人资料私隐专员（私隐专员）黄继儿说：「于大流行疫情期间，小区的公共卫生及安全仍然是我们的首要关注。在遵从资料保障法律时，我们应该注意当前突发公共卫生事件下的重大公共利益，尤其是当收集及使用个人资料是出于公共利益和/或公共卫生利益的考虑，不应该阻碍打击大流行疫情的措施。」

私隐专员亦强调：「当我们理解雇主有合理依据收集雇员的额外资料以控制疾病传播，雇员个人资料的收集及处理应该只与公共卫生相关并用于该目的，且应根据特定情况的需要在收集时间和范围上有所限制。额外收集的数据仍须遵从保障数据原则的规定，如不超乎适度、目的明确及使用上的限制。收集的数据必须是必要、适当及与达到的目的相称。」

### 雇主可以收集雇员的体温测量或其他健康数据吗？

雇主有法律及企业责任去保障雇员及访客的健康。在 2019 冠状病毒病下，为了保障雇员及访客的健康，雇主收集他们的体温测量数据或属 2019 冠状病毒病医学症状的有限信息，一般而言属合理的做法。

### 雇主可收集哪类个人资料，及如何正确地收集？

雇主在收集数据时必须遵守的一般规定是，收集的数据应该是必要、适当及与达到的目的相称。他们应先以匿名或删除可识别数据的方式处理相关数据，以侵犯最少私隐的措施为首选。

一般而言，自我申报机制较无差别地收集健康数据的全面强制机制更为可取。雇主应向雇员说明如何处理收集到的数据。如现有的私隐声明中未涵盖该类数据的收集，则必须在收集数据时或之前向雇员提供一个新的《收集个人资料声明》，以告知雇员所收集的数据及其目的（例如保障公共卫生）及数据可能会转移给哪类人士

(例如公共卫生机关)。作为良好的道德规范，在《收集个人资料声明》中应告知雇员有关资料将被雇主保留多久。

#### 外游纪录如何？雇主可要求雇员提供外游数据吗？

香港《个人资料(私隐)条例》(《私隐条例》)没有禁止任何机构收集他人的外游资料。鉴于本地及全球的2019冠状病毒病确诊个案不断上升，以及雇主提供安全工作环境的法律及企业责任，雇主向从海外(特别是高风险地区)回港的雇员收集外游资料实属合理。一如健康数据，外游数据的收集应针对特定的目的，并应收集最少的资料，而自我申报机制亦比全面强制申报机制更可取。

#### 可以把收集的個人資料向其他人披露、或用作其他目的吗？

除非得到相关人士自愿给予的明示同意，或《私隐条例》下的豁免适用，否则雇主不得将为对抗2019冠状病毒病而收集的個人資料披露或使用作其他无关的目的。

为了保障公共卫生，如雇主仅为了追踪和治疗感染者，及因有迫切需要追踪其紧密接触者，向政府或卫生机构披露他人的身份、健康状况及位置信息，是不会被视为违反《私隐条例》(即保障资料第3原则)。

如雇员不幸感染2019冠状病毒病，雇主可在不透露感染者的个人身份信息下通知其他员工、访客及物业管理处，例如发出告示说明有员工受感染已足够。在大多数情况下，于告示中披露受感染雇员的名字及其个人资料会被视为不必要或不相称。

#### 收集的個人資料可以被保留多长时间？

在已达致收集目的后，如经过一段合理时间亦没有证据说明雇员感染2019冠状病毒病，或与感染者有密切接触，雇主应永久销毁为对抗2019冠状病毒病而收集的個人資料。

#### 背景资料

##### 重大公共卫生利益

- 世界卫生组织于2020年1月30日宣布2019冠状病毒病爆发为国际关注的突发公共卫生事件，并于2020年3月11日定性为「全球大流行疫情」。现时本地

及全球均有迫切需要控制病毒的传播，重大公共卫生及安全利益，应属所有人包括数据用户的首要关注。

- 保障资料的原则不应阻碍对抗2019冠状病毒病的措施，但机构亦不应轻视其在处理个人资料时的责任。

#### 《私隐条例》中与突发公共卫生事件有关的豁免

- 根据《私隐条例》第59(1)条，当个人资料的使用与保障数据当事人或任何其他人的健康有关，而若遵从《私隐条例》附表一的保障数据第3原则(数据的使用)的管限会对数据当事人或任何其他人的健康造成严重损害，该个人资料的使用可能获豁免而不受此管限。换句话说，如能展示使用数据是出于保障个人及整体公共卫生，即使因未经同意而使用相关数据而出现违规的情况，亦可能得以免责。而《私隐条例》第59(2)条更指出，在相当可能会对资料当事人或任何其他人的身体或精神健康造成严重损害的情况下，数据用户可毋须得到数据当事人的同意而向第三者披露关乎某数据当事人的身份或位置的個人資料。

#### 平衡私隐与公共卫生需要

- 个人资料私隐权并非绝对的权利。事实上，它可能会受到其他与其有冲突的权利或利益所约束，例如属绝对权利的个人生存权和公众利益(包括公共卫生)。
- 根据(i)《香港人权法案条例》第II部第二条，和(ii)《公民权利和政治权利国际公约》第6条，「生存权」是指人人皆有天赋之生存的权利。联合国人权事务委员会在2018年11月亦指出，「生存权是享有所有其他人权的前提」，并将「生存权」定义为「最高等权利」。此权利属绝对性，并凌驾于其他可能与其有冲突的基本人权，包括私隐权。生存权不仅指数据当事人的生存权，例如2019冠状病毒病的潜在带病毒者，亦包括社会上的其他人。

Source 来源:

[https://www.pcpd.org.hk/english/media/media\\_statements/press\\_20200330.html](https://www.pcpd.org.hk/english/media/media_statements/press_20200330.html)

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