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Financial Services Regulatory Update
金融服务监管资讯

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Hong Kong Securities and Futures Commission Publishes Takeovers Bulletin Issue No.53

In June 2020, the Hong Kong Securities and Futures Commission (SFC) published Takeovers Bulletin Issue No.53. Highlights of this issue include:

Application of Rule 35.4 on EPTs
Rule 35.4 of the Takeovers Code provides that "[s]ecurities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted in the context of an offer."

The Executive recognizes that there are circumstances in which the Executive may, on a case-by-case basis, regard Rule 35.4 as not applicable to the voting rights held by a connected EPT where: (1) the connected EPT holds the shares (the Relevant Shares) as a simple custodian for and on behalf of non-discretionary clients; and (2) there are contractual arrangements in place between the connected EPT and its clients that strictly prohibit the EPT from exercising any voting discretion over the Relevant Shares. All voting instructions shall originate from the client only, and if no instructions are given, then no votes shall be cast for the Relevant Shares held by the connected EPT.

In situations described above but subject to the caveat below, the Executive would normally consider that Rule 35.4 would not apply to the Relevant Shares.

In a privatization case, the connected EPT in question held Relevant Shares as a simple custodian for and on behalf of nondiscretionary clients and over which that EPT did not have any voting discretion. During the course of consultation with the Executive, that EPT failed to disclose that some of its underlying clients were in fact concert parties of the offeror and were not entitled to vote on certain resolutions (as the shares attributable to the concert parties of the offeror would not be counted as disinterested shares under Rule 2.10 of the Takeovers Code). The concert party relationships of those underlying clients were only identified and disclosed after further enquiries by the Executive.

Going forward, in cases where a connected EPT acts as a simple custodian for and on behalf of non-discretionary clients and that EPT considers that Rule 35.4 does not apply to shares held for and on behalf of such non-discretionary clients, the Executive will require the connected EPT to provide a written confirmation to the Executive of the matters set out in points (1) and (2) above and whether the underlying clients are entitled to vote in the context of the offer. The EPT should also confirm in the results announcement published after the relevant meeting that the connected EPT did not exercise the voting rights attached to the shares owned by them (other than those shares held by such EPT as a simple custodian for and on behalf of non-discretionary clients who are entitled to vote in the context of the offer and over which such EPT has no voting discretion) in the context of the offer.

Preservation of confidentiality and Rule 3.7 announcements
Rule 1.4 of the Takeovers Code sets out the confidentiality obligation of parties to a transaction. The parties (including advisers) must take all necessary steps to ensure there is no leakage of information prior to the announcement of a firm intention to make an offer. As long as all parties keep matters confidential and that all applicable regulatory requirements are met, there should not be a need to issue a "talks" announcement under Rule 3.7 of the Takeovers Code. It would be undesirable to commence an offer period for an offeree company when discussions are only preliminary – parties will also be subject to the restrictions and compliance obligations under the Takeovers Code that take effect upon commencement of an offer period. The market price of the offeree company's securities may also be affected by the publication of a talks announcement. Similarly, the execution of a non-legally binding memorandum of understanding, in itself, does not justify the publication of an announcement under Rule 3.7 of the Takeovers Code.

In a recent decision by the Market Misconduct Tribunal (MMT) on Magic Holdings International Limited, the MMT considered whether there was a breach of the requirements under Part XIVA of the Securities and Futures Ordinance arising from L'Oreal S.A.'s proposed acquisition of Magic in 2013. The MMT examined the

conduct of Magic's officers as well as Magic's internal systems and policies against the SFC's Guidelines on Disclosure of Inside Information. For example, whether Magic had any established controls to identify potential inside information, audit trails of meetings and discussions concerning the assessment of inside information, training for employees in the corporation's policies and procedures, disclosure duties and obligations, etc.

However, if the obligation to make an announcement under Rule 3.7 of the Takeovers Code does arise, the SFC would normally expect such announcement to be relatively short and to disclose no more than the fact that talks are taking place. Parties should note that trading halts and the issuance of a Rule 3.7 announcement should not be used to mitigate the risk of a leakage or as a matter of convenience, especially when there has been no leakage in the first place. The Executive may in appropriate cases conduct an investigation or take disciplinary action where there is a leakage of information.

Public censure of Fu Kwan for breaches of dealing restrictions (see our previous update of June 12, 2020)

Public criticism of CICC Financial Trading Limited and China International Capital Corporation Limited for dealing disclosure breaches (see our previous update of June 26, 2020)

New online DoD submission platform
Currently, documents required to be put on display (DoD) under Note 1 to Rule 8 of the Takeovers Code are submitted to the Executive in electronic form using a recordable CD or DVD. The Executive will then arrange for publication on the SFC's website. To streamline the DoD submission process and increase efficiency, the SFC will be moving it to the SFC's WINGS (Web-based INteGrated Service) portal. The procedure to prepare all documents in PDF format and the preparation of the DoD Submission Form remain largely the same, but these documents are no longer required to be copied to a CD or DVD for submission. These documents will be submitted online via WINGS instead. The SFC targets to commence the new procedure in August 2020.

香港证券及期货事务监察委员会发布第 53 期《收购通讯》

2020 年 6 月，香港证券及期货事务监察委员会（证监会）发布第 53 期《收购通讯》，其内容要点包括：

规则 35.4 对获豁免自营买卖商的适用情况
《收购守则》 规则 35.4 规定，“与要约人或有关受要约公司有关连的获豁免自营买卖商不得就 其拥有的证券，就要约事宜进行投票。 ”

执行人员确认，在下列情况下，执行人员可按个别情况将规则 35.4 视为不适用于某关连的获豁免自营买卖商所持有的投票权：(1) 关连的获豁免自营买卖商以普通保管人的身分代表非全权委托客户持有股份（有关股份）；及(2) 关连的获豁免自营买卖商与其客户订立了合约安排，严禁该获豁免自营买卖商就有关股份行使任何酌情投票权。所有投票指示只可由客户提出，而若客户并无发出任何指示，关连的获豁免自营买卖商不得就其持有的有关股份投票。

在上述情况下（除以下个案外），执行人员通常会认为规则 35.4 并不适用于有关股份。

在一私有化个案中，关连的获豁免自营买卖商以普通保管人的身分代表非全权委托客户持有有关股份，以及并不享有当中附带的任何酌情投票权。在咨询执行人员的过程中，该获豁免自营买卖商没有披露其相关客户中事实上有部分是与要约人一致行动的人，及不可就某些决议投票（ 原因是与要约人一致行动的人应占的股份不会被当作 《收购守则》 规则 2.10 所指的无利害关系股份计算 ）。 该等相关客户作为一致行动人士的关系，是在执行人员进一步查询后才获得识别和披露。

日后，若某关连的获豁免自营买卖商以普通保管人的身分代表非全权委托客户行事，而该获豁免自营买卖商认为规则 35.4 并不适用于代表该等非全权委托客户持有的股份，执行人员将会要求该关连的获豁免自营买卖商就上文(1)及(2)所列的事宜及该等相关客户是否有权就要约投票，向执行人员提供书面确认。该获豁免自营买卖商亦应在有关会议后刊发的要约结果公告中确认，关连的获豁免自营买卖商没有就要约行使其拥有的股份（该获豁免自营买卖商以普通保管人的身分代表有权就要约投票的非全权委托客户持有，但并不享有当中附带的酌情投票权的股份除外）所附带的投票权。

保密及规则 3.7 公告
《收购守则》 规则 1.4 载有交易的当事人的保密责任。当事人（包括顾问）须采取一切必要的措施，以确保在公布作出要约的确实意图之前不会泄露消息。这在当事人仍在进行磋商及有关交易可能会或可能不会落实的情况下，尤其重要。因此，只要所有当事人将有关事宜保密及所有适用的监管规定都获得遵守，便应该无需根据《 收购守则 》 规则 3.7 就进行洽商发出公告。当讨论仍处于初步阶段时便开始对受要约公司的要约期的做法并不可取 – 当事人亦将须根据 《 收购守则 》 遵从由要约期起开始生效的限制和合规责任。受要约公司的证券的市价亦可能会受刊发有关进行洽商的公告所影响。同样地，签立不具法律约束力谅解备忘录的本身不能成为根据 《收购守则》 规则 3.7 刊发公告的理由。

市场失当行为审裁处(“ 审裁处 ”)在近期有关美即控股国际有限公司的决定中， 曾考虑 L’Oréal S.A.于 2013 年对美即控股的建议收购是否违反了 《 证券及期货条例 》第 XIVA 部的规定。审裁处在审查美即控股的人员的操守及美即控股的内部系统和政策时，参阅了证监会的《 内幕消息披露指引 》。 例如， 美即控股是否有任何既定的监控措施以识别潜在内幕消息，有关评估内幕消息的会议和讨论的审计线索，关于企业的政策和程序、披露职责和责任等的雇员培训。

然而， 如出现根据 《 收购守则 》 规则 3.7 作出公告的责任，证监会一般预期有关公告会较为简短，且只会就洽商正在进行中此一事实作出披露。当事人应注意，不应藉短暂停牌及根据规则3.7发出公告来纾减泄露消息的风险， 或为方便而短暂停牌或发出该公告，特别是在根本没有出现消息被泄露的情况下。如出现泄露消息的情况，执行人员可能会在适当时进行调查及采取纪律行动。

就傅军违反交易限制作出公开谴责（见本监管信息 2020 年 6 月 12 日号）

就 CICC Financial Trading Limited 及中国国际金融股份有限公司违反交易披露规定作出公开批评（见本监管信息 2020 年 6 月 26 日号）

新的网上平台以供呈交展示文件

现时，根据《收购守则》 规则 8 注释 1 必须展示的文件（ 展示文件 ）是使用可录制光盘(CD)或数码影像光盘(DVD)以电子形式向执行人员呈交。然后，执行人员便会安排将文件刊载于证监会网站。为了简化呈交展示文件的过程和提高效率，证监会会将该流程迁移至证监会的 WINGS（Webbased INteGrated Service，意即网上综合服务）网站。以 PDF 格式拟备所有文件的程序及展示文件呈交表格的拟备方法大致维持不变，但这些文件已无须再复制至 CD 或 DVD 以便呈交， 及将能透过 WINGS 于网上呈交。 证监会的目标是在 2020 年 8 月开始使用新程序。

Source 来源:
https://www.
https://www.sfc.hk/web/EN/files/CF/pdf/Takeovers%20Bulletin/20200630-SFC%20Takeover%20Bulletin(e).pdf

https://www.sfc.hk/web/TC/files/CF/pdf/Takeovers%20Bulletin/20200630-SFC%20Takeover%20Bulletin(c).pdf

Hong Kong Securities and Futures Commission Commences False Trading Prosecution Against Retail Investor

On July 2, 2020, the Hong Kong Securities and Futures Commission (SFC) commences criminal proceedings at the Eastern Magistrates’ Court against Mr Ke Wen Hua (Ke) for alleged false trading in the shares of Carry Wealth Holdings Limited on September 4, 2012. The alleged false trading constituted an offence contrary to section 295 of the Securities and Futures Ordinance. Carry Wealth Holdings Limited was listed on the Main Board of The Stock Exchange of Hong Kong Limited in 2000.

The Court adjourned the case to August 27, 2020 for plea-taking after Ke asked for more time to obtain legal advice at the hearing dated July 2, 2020.

香港证券及期货事务监察委员会对散户投资者展开虚假交易检控

2020 年 7 月 2 日，香港证券及期货事务监察委员会（证监会）在东区裁判法院对柯文华（柯）展开刑事法律程序，指他涉嫌在 2012 年 9 月 4 日就恒富控股有限公司的股份进行虚假交易。有关涉嫌的虚假交易构成违反《证券及期货条例》第 295 条的罪行。恒富控股有限公司于 2000 年在香港联合交易所有限公司主板上市。

柯在 2020 年 7 月 2 日的聆讯中要求有更多时间以取得法律意见，法院遂将该案件押后至 2020 年 8 月 27 日进行答辩。

Source 来源:
https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=20PR62

https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/enforcement-news/doc?refNo=20PR62

Hong Kong Securities and Futures Commission Bans Lai Wing Fat for 20 Months for Breaches of the Code of Conduct

On July 2, 2020, the Hong Kong Securities and Futures Commission (SFC) banned Mr Lai Wing Fat (Lai), a former licensed representative of Black Marble Securities Limited, from re-entering the industry for 20 months from July 5, 2020 to March 4, 2022 for breaches of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct).

Lai was licensed under the Hong Kong Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity and accredited to Black Marble Securities Limited from April 22, 2016 to October 9, 2017. Lai is currently not licensed by the SFC.

General Principle 2 of the Code of Conduct provides that a licensed person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market in conducting its business activities.

Paragraph 7.1(a)(ii) of the Code of Conduct requires a licensed person to obtain a written authorization from a client before effecting transactions for a client without the client's specific authorization. Paragraph 7.1(c) of the Code of Conduct requires a licensed person who has received an authority described under paragraph 7.1(a)(ii) to designate such accounts as "discretionary accounts". Paragraph 7.1(d) of the Code of Conduct requires the senior management to approve the opening of discretionary accounts.

Paragraph 6.1 of the Code of Conduct requires a licensed or registered person to enter into a written agreement (Client Agreement) with each client before services are provided to the client. The Client Agreement should be in Chinese or English according to the language preference of the client, as should any other agreement, authority, risk disclosure or supporting document. Licensed or registered persons should provide a copy of these documents to the client and draw to the client's attention the relevant risks.

The disciplinary action follows an SFC investigation which found that between August 2016 and June 2017, Lai effected transactions in a client's account on a discretionary basis without obtaining the client's prior written authorization. Lai also effected discretionary transactions in the accounts of three other clients without their prior written authorizations.

The SFC also found that Lai had failed to explain the Chinese account opening documents and risk disclosure statements to the client to ensure the client understood the content and relevant risks before signing the documents, even though Lai was aware that the client had difficulty understanding the Chinese documents.

The SFC considers that Lai had failed to act with due skill, care and diligence and in the best interests of the clients. The absence of written authorizations for discretionary transactions was prejudicial to clients' interests as Lai's employer was prevented from monitoring and supervising the operation of the accounts and the clients were deprived of protection against the risk of unauthorized trades carried out in their accounts.

In deciding the sanction, the SFC took into account all relevant circumstances, including Lai's otherwise clean disciplinary record.

香港证券及期货事务监察委员会就违反《操守准则》禁止黎永发重投业界 20 个月

2020 年 7 月 2 日，香港证券及期货事务监察委员会（证监会）因贝格隆证券有限公司前持牌代表黎永发（黎）违反《证券及期货事务监察委员会持牌人或注册人操守准则》（《操守准则》）而禁止他重投业界，为期 20 个月，由 2020 年 7 月 5 日起至 2022 年 3 月 4 日止。

黎根据《证券及期货条例》获发牌进行第 1 类（证券交易）受规管活动，并在 2016 年 4 月 22 日至 2017 年 10 月 9 日期间隶属贝格隆证券有限公司。黎现时并非证监会持牌人。

《操守准则》第 2 项一般原则规定，持牌人在经营业务时，应以适当的技能、小心审慎和勤勉尽责的态度行事，以维护客户的最佳利益及确保市场廉洁稳健。

《操守准则》第 7.1(a)(ii)段规定，在未有客户特定授权的情况下，持牌人须获得该客户的书面授权，方可为其进行交易。《操守准则》第 7.1(c)段规定，持牌人如已获得第 7.1(a)(ii)段所述的授权，便应指明该等帐户为"委托帐户"。《操守准则》第 7.1(d)段规定，委托帐户的开立应由高级管理层审批。

《操守准则》第 6.1 段规定，持牌人或注册人须在向客户提供服务之前，与每名客户订立书面协议（客户协议）。客户协议应根据客户的选择而以中文或英文编印，任何其他的协议、授权书、风险披露或有关文件亦应如此。持牌人或注册人应向客户提供这些文件的副本，及使客户注意到有关的风险。

证监会经调查后采取上述纪律行动。调查发现，黎于 2016 年 8 月至 2017 年 6 月期间，在没有事先取得一名客户的书面授权的情况下，以委托形式于该客户的帐户进行交易。黎亦在未有事先取得另外三名客户的书面授权的情况下，在他们的帐户内进行委托交易。

证监会亦发现，虽然黎知道该客户难以理解中文文件，但他没有向该客户解释中文的开户文件及风险披露声明，以确保该客户在签署那些文件前明白有关内容及相关风险。

证监会认为，黎没有以适当的技能、小心审慎和勤勉尽责的态度行事，以维护客户的最佳利益。黎没有就委托交易取得书面授权，令其雇主无法对有关帐户的操作进行监察及监管，亦剥夺了对客户的保障，使其承受在其帐户内进行未经授权交易的风险，客户的利益因而受到损害。

证监会在决定上述处分时，已考虑到所有相关情况，包括黎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/enforcement-news/doc?refNo=20PR65

https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/enforcement-news/doc?refNo=20PR65

Hong Kong Securities and Futures Commission Publishes Review of The Stock Exchange of Hong Kong Limited's Performance in Regulating Listing Matters

On July 2, 2020, the Hong Kong Securities and Futures Commission (SFC) releases a report on its review of The Stock Exchange of Hong Kong Limited's (SEHK) performance in its regulation of listing matters.

The report summarizes the findings and recommendations of the SFC's review which covered 2018.

Summary of SFC's Findings and Recommendations

HKEX's management of potential conflicts of interest: Interactions between the Listing Department and HKEX business units in pre-IPO enquiries

In 2018, the HKEX business side referred 10 pre-IPO enquiries to the Listing Department. As to the Interactions between the Listing Department and HKEX business units in pre-IPO enquiries, the SFC's recommendations are:

i. Listing Department personnel should not attend introductory meetings with prospective listing applicants alongside HKEX business executives which may give an impression that the Listing Department is assisting the HKEX business side to win business or to service issuers and applicants. It is inadvisable for the HKEX Chief Executive and the HKEX business side to invite the Head of Listing and other Listing Department executives to join business meetings with prospective listing applicants;

ii. internal procedures should be reviewed to ensure that HKEX business executives do not and are not seen to pressurize the Listing Department to respond more swiftly to particular applicants (for example, by repeatedly referring to the desirability of those applicants or by copying the Chief Executive to whom the Head of Listing reports on an e-mail). HKEX should consider ways to further promote and reinforce compliance amongst its business executives with the "Chinese Wall";

iii. the HKEX business side should avoid responding to specific questions raised by prospective listing applicants on the Listing Rules and other regulatory-related questions even on a general, non-committal basis.

The Exchange's response: the HKEX business side would make it clear to potential applicants that issues requiring Rule interpretation should be directed to Listing.

The SFC recommends that the Exchange tighten the protocols regarding the following areas to enhance the independence of the regulatory function:

i. the Listing Department sharing non-case specific information that is not public with the HKEX business side;

ii. the Listing Department relying primarily on market data and research provided by the HKEX business side to develop listing policies that affect the commercial interests of HKEX (it is the SFC's recommendation that the Department should, as a general rule, either conduct its own research and data gathering, or obtain information from an independent source, to ensure the objectivity and independence of the data and research used and reach a balanced view (taking into account business input as well as the regulatory (e.g. investor protection) perspective);

iii. while the HKEX business side should be consulted on the development of listing rules and policies that have both regulatory and commercial implications, the Exchange must ensure that listing policy development by the regulatory function remains independent; views and comments provided by the HKEX business side should be considered and assessed independently and objectively by the regulatory function, taking into account section 21 of the SFO; HKEX business executives should not be directly involved in drafting a listing rule or guidance;

iv. HKEX's business staff providing input in the performance review of any Listing Department staff even where the HKEX business executive has worked closely with the Department executive on listing policy development or other matters.

The SFC believes the Listing Department's Chinese Wall Protocol contains numerous ambiguities, does not fully address key aspects of the Chinese Wall and may be difficult for Department staff to interpret and follow, the SFC recommends that the Exchange promptly

conduct a thorough and comprehensive study to clarify and develop written rules, practices, policies, guidelines and procedures that are necessary and appropriate to give effect to the Chinese Wall, and adopt procedural enhancements.

The oversight of the Listing Department and the Listing Committee's supervisory role

Administration and interpretation of the Listing Rules

The Listing Committee should explore further avenues in addition to its review function and the existing oversight processes to ensure that the Listing Department is exercising the delegated powers and carrying out the delegated functions as specified in the Listing Rules given that the proportion of the Department's decisions for which a review is sought in any given year is very small.

To reduce the extent of the Listing Committee's reliance on the Department (its supervisee) to identify matters that are relevant to the discharge of its oversight function, the SFC recommend that the Listing Department, after consulting the Listing Committee, expand its regular reporting of matters and decisions handled and made by the Department during the period to include, amongst others, notable waiver approvals and rejections; reasons for notable decisions not to take disciplinary or other further action against an issuer or director; and notable complaints received against listed issuers. The SFC recommend that these reports be made at least on a monthly (if not a weekly) basis. To manage potential conflicts of interest on the part of Committee members, the report on waiver and other applications by listed companies can be limited to completed matters. The reports should contain sufficient information for Committee members to understand the issues and raise necessary or appropriate enquiries, and Listing Committee members should be given an opportunity to raise questions regarding these reports and these discussions should be properly recorded.

Pre-IPO Enquiry Cases

In the SFC's review of pre-IPO enquiry cases, which were primarily cases under the Chapter 18A (biotech) listing regime, which was new at the time, the SFC noted that extensive discussions of certain policy and interpretation issues, which were arguably novel, sensitive or difficult, took place between potential applicants and the Listing Department during the preliminary oral consultation stage without the involvement of the Listing Committee (see Cases 1 to 5 of Appendix A). The pre-IPO enquiries were presented to the Listing Committee for endorsement only after an informal consensus position was reached with the potential applicant. The Listing Committee should review the decision-making process for pre-IPO consultations and consider whether it is necessary to provide clearer guidelines for the Department and/or to the market as to when pre-IPO enquiries should be referred to the Committee.

The Exchange's response: the purpose of pre-IPO enquiries is to allow prospective applicants to obtain a certain level of comfort on specific novel elements or policy considerations regarding the potential listing before committing significant resources in the listing preparation. Where a pre-IPO enquiry is straightforward and does not involve any novel issues, the Listing Department may give a view on its own. In cases where novel issues or threshold issues (e.g. suitability) are involved, the Listing Department may ask for more information from the enquirer and after assessment, may decide to escalate to the Listing Committee for its guidance. For cases where the enquirer requests to receive the Listing Committee's guidance, the Listing Department will seek the Listing Committee's guidance depending on the complexity and circumstances of the enquiry. When the Listing Department presents the enquiry to the Listing Committee, its analysis is also presented and the Listing Committee will have an opportunity to review the decision-making process. The letters to the enquirer on the pre-IPO guidance will also state that the Listing Department's views are based on the information provided, and may be altered during handling the application if there is additional information or any change in information, and that such views may also be endorsed, modified or varied by the Listing Committee.

The Exchange's handling of share option schemes under Chapter 17

The Listing Department discussed a review of its policy relating to share option schemes with the Listing Committee in late 2019 following a study on the grant of share options by listed issuers. The SFC understands that the Exchange will seek preliminary views from stakeholders on the issues and the proposals with a view to conducting a formal consultation in due course.

The Exchange's handling of complaints relating to listing applicants and listed issuers

In handling complaints against listing applicants, the Listing Department should amend its protocol that no further regulatory action is required when the relevant listing application has been withdrawn or terminated.

The Exchange's response: for complaints relating to a listing application that has been withdrawn or lapsed, there is practical difficulty for the IPO Vetting team to proceed further with the sponsor/applicant given the application has been withdrawn/lapsed. Going forward, the IPO Vetting team will consider whether to refer such complaints to the SFC on a case-by-case basis.

In the cases where the Listing Department found that no breach of the Listing Rules had occurred, the Exchange's standard reply to complainants stated that, "the complaint appears unrelated to serious breaches of the Listing Rules…". There have been complaints from the public that this reply suggests that the Exchange accepts rule breaches that are not considered "serious". The SFC recommend that the Exchange revise its replies to complainants to accurately reflect its findings and to avoid misunderstanding.

The Exchange should continue to promote staff compliance with the complaint handling policy and procedures through training, supervision, management's reinforcement of the importance of this work and technology (such as automatic reminders to staff of impending deadlines).

For complaints received against a listing applicant after the Listing Committee hearing, the SFC recommend that all decisions by the Department not to report the complaint back to the Listing Committee be properly recorded along with the reasons for the decision, that the IPO Vetting team's staff manual be updated to include this requirement, and that the Committee be regularly provided with an overview or summary of the complaints that were not reported to the Committee when they were received.

Follow up from 2018 review

From the SFC's review of 2018 IPO cases, the SFC noted a few instances where the Listing Department did not address or identify material suitability or eligibility issues in its report to the Listing Committee. There were also instances where the discussions by the Listing Committee, Listing (Review) Committee and the GEM Listing Approval Group (GLAG), as reflected in the relevant minutes, did not address, analyze or otherwise respond to the "suitability" issues raised by the Listing Department. The SFC recommend that the Listing Department continue to take steps to enhance the analysis of "suitability" issues included in its reports to the Listing Committee and its recording of the related discussions at Listing Committee meetings (including through the provision of appropriate staff guidelines and training). Minutes of Listing Committee meetings should fully, accurately and fairly reflect the discussions; if any material issue, fact or observation is not discussed, the reasons for not considering it should be recorded.

In one case referred by the Listed Issuer Regulation (LIR) team to Listing Enforcement, the SFC noted that the Enforcement team rejected the referral notwithstanding the issuer's own submission that the due diligence conducted was limited and its non-executive directors and independent non-executive directors had not been given relevant information for their assessment or prior approval of the relevant transaction. The reason recorded on file for the Enforcement team's decision was inadequate to explain the decision. The SFC recommends that the Exchange review how this particular case referral was handled and consider whether any changes are required to avoid a recurrence.

Review of the operations of the Listing Department in 2018

The SFC noted that in one complaint handled by the Listing Department, some of the issues raised by the complainant and subsequent possible regulatory action in that incident could have been avoided if there had been better communication within the Department. The Listing Department should review its processes and procedures for information sharing to avoid a recurrence in the future.

The Exchange's response: the procedures have been revised to inform the LIR team when a listed issuer is a cornerstone investor/pre-IPO investor.

The report has been published on the SFC website.

香港证券及期货事务监察委员会发表有关香港联合交易所有限公司规管上市事宜表现的检讨报告

2020 年 7 月 2 日，香港证券及期货事务监察委员会（证监会）就香港联合交易所有限公司（联交所）规管上市事宜的表现，发表检讨报告。

证监会的检讨涵盖 2018 年，而该报告撮述了检讨结果及有关建议。

证监会的检讨结果及建议撮要

港交所对潜在利益冲突的管理：上市部与港交所各业务单位之间在首次公开招股前查询方面的沟通往来

2018 年，港交所各业务相关部门将十宗首次公开招股前查询的个案转介予上市部处理。上市部与港交所各业务单位之间在首次公开招股前查询方面的沟通往来，证监会的建议撮要如下:

i. 上市部人员不应联同港交所业务行政人员出席与准上市申请人举行的简介会议，因为此举可能会令人产生上市部正协助港交所各业务相关部门赢取生意或为发行人及申请人服务的印象。港交所行政总裁和港交所各业务相关部门不宜邀请上市主管及上市部门其他行政人员参加与准上市申请人举 行的业务会议;

ii. 应检讨内部程序，以确保港交所业务行政人员没有和不会被认为向上市部 施压，务求更快给予特定申请人回复（例如重复提及有关申请人的可取性或将电邮抄送行政总裁（即上市主管的汇报上级））；港交所应研究采取可进一步促进及加强其业务行政人员之间遵从"职能分隔"规定的方法；

iii. 港交所各业务相关部门应避免就准上市申请人提出关于《上市规则》的具体问题和其他监管相关的问题作出响应，即使在不作出任何承诺的基础上 笼统地作出响应亦须加以回避。

证监会建议交易所收紧有关以下范畴的做法以加强监管职能的独立性：

i. 上市部与港交所各业务相关部门分享非公开、非个别个案的数据；

ii. 上市部主要依赖港交所各业务相关部门提供的市场数据和研究，来制定各项影响港交所商业利益的上市政策（证监会建议，一般而言，上市部应自行作出研究和收集数据，或从独立来源获取资料，以确保所用的数据和研究客观、独立，并（在考虑各业务相关部门的意见和监管方面（例如投资者 保障）的观点后）达致持平的看法）；

iii. 虽然在制定同时带来监管和商业方面的影响的上市规则和政策时，应咨询港交所各业务相关部门的意见，但交易所必须确保监管职能在制定上市政策时保持独立；交易所应在考虑《证券及期货条例》第 21 条后，独立而客观地审议及评估港交所各业务相关部门提供的看法和意见；港交所业务部门的行政人员不应直接牵涉某项上市规则或指引的草拟工作；

iv. 港交所业务部门的员工就任何上市部员工的表现检讨提供意见，即使港交所各业务部门的行政人员曾与上市部行政人员在制定上市政策或其他事宜方面紧密合作。

证监会认为上市部的职能分隔政策不但存在多处不清晰的地方，而且未能完全解决职能分隔在多个主要方面的问题，因而可能令上市部职员难以诠释和遵循有关政策。建议港交所厘清并制定各项就落实职能分隔而言乃属必需和适当的书面规则、做法、政策、指引和程序，包括就部分事宜制定条文，采纳程序优化措施。

对上市部的监察工作及上市委员会的监督角色

《上市规则》的执行及诠释

由于不论在哪一个年度，只有极低比例的上市部决定会被要求复核，故上市委员会除了运用其审核职能和现行监察程序外，同时亦应探讨更多其他途径，以确保上市部妥为行使及执行《上市规则》所指明其获转授的职权及职务。

为使上市委员会减少倚赖上市部（受其监察一方）来鉴别在其履行监察职能方面的相关事宜，证监会建议上市部在咨询上市委员会后，扩大其在有关期间处理及作 出的事宜和决定的定期报告范畴，并在当中纳入（除其他事项外）重大豁免批准及拒批决定，不对个别发行人或董事采取纪律处分或其他进一步行动的重大决定的理由，以及就上市发行人接获的重大投诉。证监会建议至少每月（甚至每周）编制一份报告。为了管理上市委员会成员的潜在利益冲突，在报告上市公司的豁免及其他申请时，可以限于已结案的个案。报告应载有充足资料，让上市委员会成员得以了解有关问题并提出必要或适当的查询，而上市委员会成员应获给予机会 就有关报告提问，另外亦应就有关讨论妥为备存纪录。

首次公开招股前查询个案

证监会在检视首次公开招股前查询个案（主要是关乎当时新推出的第十八 A 章（生物科技）上市机制的个案）时注意到，有意申请人与上市部曾在初步口头咨询阶 段就若干算是罕见、敏感或难于处理的政策及诠释问题展开广泛讨论，但上市委员会未见参与其中。在上市部与有意申请人达成非正式 的共识后，首次公开招股前查询个案才被呈交予上市委员会以作批示。上市委员会应检讨有关首次公开招股前咨询的决策流程，并考虑是否须就应何时将首次公开招股前查询个案转介予上市委员会，向上市部及 / 或市场人士提供更清晰的指引。

交易所的响应：首次公开招股前查询旨在让准申请人在投放大量资源筹备上市前，释除其对与潜在上市有关的特定罕见问题或政策考虑因素的某些疑虑。如首次公开招股前查询内容简单直接，并无牵涉任何罕见问题，则上市部可自行就此发表意见。若个案牵涉罕见问题或关乎上市门坎的问题（例如是否适合上市），上市部可向查询者索取更多数据，并在评估后决定是否需要上报上市委员会以寻求指引。如查询者要求上市委员会提供指引，上市部便会视乎有关查询的复杂程度和状况，向上市委员会寻求指引。当上市部向上市委员会呈报查询个案时，亦会一并呈交上市部的分析，届时上市委员会便可检讨有关决策流程。上市部会向查询者致函以叙述首次公开招股前指引，当中亦会注明上市部的意见是基于所获提供的资料，但若有补充数据或数据如有改动，上

市部便可能在处理申请过程中更改意见，而上市委员会亦可能会批示、修改或更改有关意见。

交易所对第十七章下的股份期权计划的处理方法

上市部在对上市发行人授出股份期权的情况进行研究后，于 2019 年底就检讨股 份期权计划的相关政策，与上市委员会进行讨论。据证监会了解，交易所将会就有关事宜及方案征询持份者的初步意见，务求在适当时候进行正式咨询。

交易所对涉及上市申请人及上市发行人的投诉的处理方法

上市部应更改其在处理针对上市申请人的投诉时的做法。根据现时的做法，当有关上市申请被撤回或终止时，便无须采取进一步行动。

交易所的响应：如投诉关乎被撤回或已失效的上市申请，首次公开招股审核组实际上难以向有关保荐人／申请人继续跟进有关情况，原因是有关申请已被撤回或失效。日后，首次公开招股审核组会因应每宗个案的情况，考虑是否将有关投诉转介予证监会。

(o) 如上市部并无在个案中发现有违反《上市规则》的情况，交易所会在向投诉人的 标准回复中注明：“投诉看来与严重违反《上市规则》的情况无关……”。曾有公众投诉指，这回复暗示交易所会接受不算“严重”的违规情况。证监会建议交易所修改其向投诉人作出的回复，以准确地反映其查询结果和避免误会。

(p) 交易所应继续透过培训、监督、由管理层重申投诉处理工作的重要性，以及科技 （例如自动向职员发出期限将至的提示），促进职员遵守投诉处理政策及程序。

(q) 对于在上市委员会聆讯后接获的针对某上市申请人的投诉，证监会有以下建议：应将所有由上市部作出不再向上市委员会进行汇报的决定连同有关决定的理由，妥善记录在案；首次公开招股审核组的职员手册应予更新，以包含此规定；以及应定期向上市委员会提供该等在接获时未有汇报至该委员会的投诉的概览或撮要。

2018 年检讨后的跟进行动

证监会在检视 2018 年的首次公开招股个案时注意到，上市部有几次在其向上市委 员会提交的报告中，没有处理或识别出申请人是否适合上市或符合上市资格的重大问题。另外，在某些个案中，据相关会议纪录所显示，上市委员会、上市复核 委员会及 GEM 上市审批小组在进行讨论时未有处理、分析或以其他方式响应上 市部提出的申请人是否“适合上市 ” 的问题。证监会建议上市部应继续采取步骤，藉以加强其在向上市委员会提交的报告中有关对申请人是否“适合上市 ” 的问题所作的分析，及加强对上市委员会会议上的相关讨论内容的记录（包括透过提供 适当的职员指引及培训）。上市委员会的会议纪录应完整、准确且公正地反映讨论 内容；如有任何重大问题、事实或观察所得未经讨论，便应记录没有审议有关问题、事实或观察所得的原因。

在一宗由上市发行人监管组转介至上市规则执行组的个案中，证监会留意到，尽管发行人在本身呈交的文件中指出所进行的尽职审查范围有限，以及其非执行董事及独立非执行董事均在作出评估或在批准相关交易前未获提供相关数据，但上市规则执行组仍然拒纳该个案转介。记录在案的理据未能充分解释上市规则执行组 的决定。证监会建议交易所检讨上述个案转介的处理手法，及考虑是否需作出任何更改，以避免再发生同样情况。

检视上市部于 2018 年的营运情况

证监会在某宗获上市部处理的投诉中注意到，如部门内部能加强沟通，投诉人提出的某些问题及其后可能就该事故采取的监管行动便可避免。上市部应检讨有关分享信息的流程与程序，以免日后再发生同样情况。

交易所的响应：已对有关程序作出修订；按照经修订的程序，如上市发行人是基础投资者／首次公开招股前的投资者，便须知会上市发行人监管组。

有关报告已登载于证监会网站。

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https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR63

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https://www.sfc.hk/web/TC/files/ER/PDF/26-2019_review_report_TC.pdf

Hong Kong Securities and Futures Commission Publishes Annual Report 2019-20

On June 24, 2020, the Hong Kong Securities and Futures Commission (SFC) publishes its Annual Report 2019-20 which sets out its priorities to ensure the integrity and overall soundness of Hong Kong's securities and futures markets in the face of unprecedented challenges, particularly stemming from the COVID-19 outbreak.

The report recaps the SFC's efforts to promote regulatory compliance and ensure markets operate efficiently and fairly amidst increased volatility and a challenging business environment. These include stepping up its supervisory work and regular stress tests to monitor firms' financial resilience as well as conducting special inspections to ensure compliance with the SFC's requirements.

"It is more crucial than ever to deliver world-class regulation which upholds market integrity and supports Hong Kong's vital role connecting mainland China with the world," said Mr Tim Lui, the SFC's Chairman. "Ensuring financial markets are healthy and sustainable is key to reinforcing Hong Kong's status as a leading international financial center."

"Our unwavering commitment to competence, independence, impartiality and public accountability is the foundation of the SFC's work," said Mr Ashley Alder, the SFC's Chief Executive Officer. "In the years ahead, concerted global action on the part of regulators and the industry will be essential to address the formidable challenges we face."

The report also reviews the progress of the SFC's front-loaded approach which over the past few years has helped it address misconduct and market irregularities through pre-emptive, timely regulatory intervention.

Other highlights during the year include the introduction of a regulatory framework for licensing virtual asset trading platforms and a proposed new type of regulated activity for trustees and custodians of SFC-authorized collective investment schemes. Together with Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars, the SFC concluded a joint consultation on a proposed operational model for an uncertificated, or paperless, securities market.

The report also features the SFC's initiatives to develop Hong Kong as a hub for green and sustainable finance, including a survey report on integrating environmental, social and governance factors and climate risks in asset management.

Key statistics for the year include the following:

- The number of licensees and registrants increased to 47,167, of which the number of licensed corporations rose to 3,109
- The SFC authorized 126 collective investment schemes and 146 unlisted structured products for public offering
- It authorized the world's first iron ore futures exchange-traded fund (ETF) and the first authorized ETF structured as a public open-ended fund company (OFC) was listed and two private OFCs were registered
- It reviewed 303 listing applications and supervised 359 takeovers-related transactions and applications
- It directly intervened in 35 initial public offering applications and 12 post-listing cases using its regulatory powers under the Securities and Futures (Stock Market Listing) Rules
- It conducted 317 risk-based on-site inspections of intermediaries and noted 1,489 incidents of breaches of the SFC's rules
- It made 8,767 requests for trading and account records from intermediaries as a result of market surveillance
- It disciplined 20 firms and 24 individuals and imposed fines totaling HK$479 million for intermediary misconduct

Summary of SFC 2019 Enforcement

IPO sponsor failure

During 2019, the SFC took enforcement action against an initial public offering (IPO) sponsor for deficiencies in its work. The SFC reprimanded and fined China Merchants Securities (HK) Co., Limited HK$27 million in May 2019 for failing to conduct adequate due diligence on a listing applicant's largest customer, enquire into the genuineness of transactions and verify the identities of the applicant's supplier and customer representatives when conducting interviews.

Misconduct involving IPO sponsors remained one of the SFC'S top enforcement priorities. Sponsors play a crucial role in ensuring the quality of Hong Kong's securities market. They coordinate the IPO process, give advice to directors and are centrally involved in the due diligence on a listing applicant.

Time and again, the SFC has found deficiencies in sponsors' work and serious instances of noncompliance with regulatory requirements. The SFC enforcement actions aim to improve sponsors' due diligence standards and ensure they perform their gatekeeping role diligently, free from interference and in a professional manner. Since the launch of the new sponsor regime in October 2013, the SFC has taken disciplinary actions against 11 sponsor firms resulting in fines totaling HK$922.5 million.

This includes the record HK$375 million the SFC fined UBS AG and UBS Securities Hong Kong Limited in March 2019 for failing to verify a listing applicant's major assets and other failures. UBS Securities was also suspended from acting as an IPO sponsor. In the same month, Morgan Stanley Asia Limited and Merrill Lynch Far East Limited were reprimanded and fined for failing to address red flags in due diligence interviews and verify the identities of listing applicants' customers.

The SFC has reminded sponsors to apply professional skepticism and address obvious red flags when discharging their gatekeeping functions. Future listing applications submitted by sponsors with a history of returned or rejected listing applications, serious deficiencies or instances of non-compliance may be subject to closer regulatory scrutiny.

Corporate fraud and misbehavior

Director misconduct

The SFC obtained disqualification and compensation orders under section 2143 of the SFO in the Court of First Instance against the following company directors:

- Chin Jong Hwa, former chairman and executive director of Minth Group Limited, was ordered to pay RMB20.3 million as compensation for a subsidiary's loss due to his misconduct. Chin and three other former executive directors4 were disqualified for three to six years.

- Michelle Kwok Choi Ha, former executive director of Tack Fat Group International Limited, was disqualified for six years for failing to exercise reasonable care and diligence in managing the company and to act in good faith and in the best interests of the company.

- Wong Yuen Yee, former chairman and executive director of Inno-Tech Holdings Limited, and three other former executive directors were disqualified for three years for failing to exercise reasonable care and diligence in the company's acquisitions of three hotels.

The SFC commenced civil proceedings under section 214 to:

- seek disqualification and compensation orders against Cheng Wai Tak, chairman and executive director of Perfect Optronics Limited, and five other directors7 for alleged breach of fiduciary duties.

- seek a disqualification order against Au Yeung Ho Yin, former executive director, chief financial officer and company secretary of Fujian Nuoqi Co., Ltd., for allegedly failing to properly enquire into and alert the board about improper withdrawals of the proceeds from the company's IPO and ensure the accurate disclosure of information about their use.

The Eastern Magistrates' Courts convicted and fined Chan Wai Chuen, former chief financial officer, company secretary and an executive director of DBA Telecommunication (Asia) Holdings Limited, for his role in a false or misleading statement in the company's results announcement.

Failure to disclose inside information

The MMT found that the following listed companies and senior executives failed to make timely disclosures of inside information:

- Health and Happiness (H&H) International Holdings Ltd and its chairman and executive director Luo Fei were fined HK$1.6 million each.

- Fujikon Industrial Holdings Limited, its chairman and chief executive officer Yeung Chi Hung, and its chief financial officer and company secretary Chow Lai Fung were fined a total of HK$1.5 million.

- Magic Holdings International Limited and five of its directors8 were culpable of the company's failure to disclose information about L'Oréal S.A.'s proposed acquisition of Magic on a timely basis.

The SFC commenced MMT proceedings against China Medical & HealthCare Group Limited for allegedly failing to disclose information about significant gains in securities trading and profit figures as soon as reasonably practicable, and six former directors for reckless or negligent conduct.

Insider dealing and market manipulation

- The SFC commenced legal proceedings under section 213 of the SFO against a group of local and overseas individuals and corporate entities for suspected manipulation of the shares of Ching Lee Holdings Limited and obtained interim injunctions in the Court of First Instance to freeze assets of up to HK$124.9 million held by 15 local and overseas entities.

- The SFC commenced MMT proceedings against Tom Tang Chung Yen, former chairman and an executive director of Meadville Holdings Limited, and Li Yik Shuen, for alleged insider dealing in the company's shares in 2009.

- The SFC commenced criminal proceedings against Leung Pak Keung, a practicing solicitor, for alleged

insider dealing in the shares of CASH Financial Services Group Limited.

- The SFC suspended the license of Oei Hong Eng, chairperson and a responsible officer of Gransing Securities Co., Limited, for eight months for attempting to create a false or misleading appearance of active trading in securities.

- The SFC decided to commence proceedings for suspected market manipulation in the shares of China Ding Yi Feng Holdings Limited against a number of individuals including officers of the company. The SFC also lifted the trading suspension of the company's shares directed by us on March 8, 2019. Trading resumed on January 23, 2020.

- The Court of Final Appeal dismissed the application of Cheng Chak Ngok, former executive director, chief financial officer and company secretary of ENN Energy Holdings Limited, for leave to appeal against the judgment of the Court of Appeal which ordered a retrial of Cheng's alleged insider dealing in the shares of China Gas Holdings Limited by the MMT.

The Eastern Magistrates' Courts convicted and fined:

- Ken Yiu Ka Lun, former senior regulatory affairs manager of Hong Kong Television Network Limited, who was sentenced to two and a half months of imprisonment and ordered to pay a fine of HK$165,000 for insider dealing in the company's shares.

- Tsoi Wan, for manipulating the calculated opening price of Hang Seng Index futures contracts.

Intermediary misconduct

During 2019, the SFC disciplined 20 corporations, nine responsible officers and 15 licensed representatives, resulting in total fines of HK$479 million. Key disciplinary actions included:

Conflicts of interest

The SFC reprimanded and fined UBS AG HK$400 million for overcharging its clients over a 10-year period through post-trade spread increases and excess charges and for related internal control failures.

The SFC reprimanded and fined RHB Securities Hong Kong Limited HK$6.4 million for failing to comply with regulatory requirements for managing conflicts of interest and supervising account executives.

Anti-money laundering related breaches

The SFC reprimanded and fined BMI Securities Limited HK$3.7 million for failing to comply with anti-money laundering and counter-terrorist financing (AML/ CFT) regulatory requirements. The SFC also suspended the license of its responsible officer, Maggie Tang Wing Chi, for five and a half months for failing to discharge her duties.

The SFC banned Tim Leissner, a former responsible officer of Goldman Sachs (Asia) L.L.C., from reentering the industry for life following his conviction for conspiring to commit money laundering and violate the US Foreign Corrupt Practices Act.

The SFC banned Su Xiqiang, former head of retail brokerage and responsible officer of Guosen Securities (HK) Brokerage Company, Limited, from re-entering the industry for 10 months for failing to ensure the company's compliance with AML/CFT regulatory requirements when handling third-party fund deposits.

Window-dressing liquid capital

The SFC banned Ang Wing Fung, former chairman of W. Falcon Asset Management (Asia) Limited, and Chan Kam Wah, former chief financial officer and company secretary, from re-entering the industry for life and three years respectively, in connection with their roles in window-dressing Falcon's liquid capital. Falcon's license was revoked in February 2019.

Other disciplinary actions

Reprimanded and fined for internal control failures

Company	Breaches	Fine
China Rise Securities Asset Management Company Limited	Internal control failures and regulatory breaches in short selling orders, cross trades and record keeping	HK$6.3 million
The Hongkong and Shanghai Banking Corporation Limited	Ineffective internal control procedures to ensure compliance with the telephone recording requirements	HK$2.1 million
Sincere Securities Limited	Deficiencies in business operations, internal controls and procedures	HK$5 million
Glory Sun Securities Limited	Failure to diligently supervise account executives and implement effective controls to comply	HK$1.2 million

	with short selling requirements	
Lee's Securities Company Limited	Internal control failures in the segregation of duties and handling of client securities	HK$520,000
Celestial Commodities Limited	Regulatory breaches and internal control failings relating to mishandling client money	HK$4.9 million
	Regulatory breaches and internal control failings relating to mishandling client money	HK$1.4 million
China Merchants Securities (HK) Co., Limited	Regulatory breaches and internal control failings relating to mishandling client money	HK$5 million

Disciplined for conviction of bribery or theft

Name	Breaches	Action
Mo Shau Wah	Stealing and selling clients' shares worth over HK$110 million	Banned from re-entering the industry for life
Ma Sin Chi	Accepting bribes of around HK$6.4 million from a client	Banned from re-entering the industry for life
Ye Feng	Soliciting illegal commission payments of more than HK$900,000 from a client	Banned from re-entering the industry for life
Tu Bing	Soliciting and accepting illegal commission payments of approximately HK$1.4 million from a client	Banned from re-entering the industry for life

Reprimanded and fined for other regulatory breaches

Company	Breaches	Fine
Capital Global Management Limited	Failing to comply with laws and regulations in distributing investment funds and offering investment advice in Taiwan, and to adequately supervise its representatives' business activities	HK$1.5 million
FIL Investment Management (Hong Kong) Limited	Unlicensed dealing in futures contracts, delay in reporting the breach to the SFC and submitting incorrect information in a new fund authorization application	HK$3.5 million
Adamas Asset Management (HK) Limited	Failing to implement adequate measures to ensure proper disclosure of notifiable interests in the shares of Hong Kong-listed companies held in client portfolios	HK$2.5 million
SEAVI Advent Ocean Private Equity Limited	Allowing unlicensed employees to perform regulated activities	HK$1 million
FT Securities Limited	Regulatory breaches and internal control failures in the preparation and publication of research reports	HK$3.5 million
Credit Suisse (Hong Kong) Limited and Credit Suisse AG	Failing to comply with disclosure requirements for publishing research reports	HK$2.8 million
Nine Masts Capital Limited	Naked short selling of the shares of Yuzhou Properties Company Limited	HK$1.2 million

Other notable cases

- The Court of First Instance dismissed judicial review applications against the SFC in connection with a search operation it conducted for ongoing investigations. In the applications, Cyril Cheung Ka Ho, To Hang Ming, To Lung Sang, Jacky To Man Choy and Wan Wai Lun sought to challenge search warrants issued by two Magistrates in July 2018 on the basis that they were unlawful or invalid for want of specificity.

- The Court of Appeal dismissed the application of Andrew Left of Citron Research for leave to appeal to the Court of Final Appeal against the determinations of the MMT. On August 26, 2016, the MMT found Andrew Left culpable of disclosing false or misleading information inducing transactions in a report on Evergrande Real Estate Group Limited published in June 2012.

- The Eastern Magistrates' Courts convicted Yau Ka Fai for holding himself out as carrying on a business in asset management without an SFC license.

- The SFC commenced criminal proceedings against Brilliance Capital Management Limited and its sole director Law Sai Hung for holding out as carrying on a business in advising on corporate finance without an SFC license.

The Annual Report is available on the SFC website.

香港证券及期货事务监察委员会发表《2019-20 年报》

2020 年 6 月 24 日，香港证券及期货事务监察委员会（证监会）发表《2019-20 年报》，当中载列证监会在面对 2019 新冠病毒疫情等前所未见的挑战时重点处理的工作，旨在确保香港证券及期货市场整体的廉洁稳健。

年报概述了证监会如何致力促使业界遵守监管规定，及确保市场在波动加剧和营商环境艰巨的情况下仍能有效率及公平地运作。有关工作包括加强证监会为监察持牌机构在财政上承受冲击的能力而进行的监督工作和定期压力测试，以及进行特别视察，以确保证监会的规定获得遵守。

证监会主席雷添良先生表示："实施世界级的监管制度，维护市场的廉洁稳健，并支持香港担当连接内地与全球市场的桥梁角色，比以往更形重要。确保金融市场的持续健康发展，对巩固香港作为领先国际金融中心的地位至为关键。"

证监会行政总裁欧达礼先生（Mr Ashley Alder）表示："我们坚定不移地紧守岗位，保持独立，不偏不倚，及接受公众问责，是证监会工作的基本原则。今后，全球各地的监管机构与业界必须携手合作，以应付严峻的挑战。"

年报亦检视证监会执行前置式监管方针的进展。此方针在过去数年有助证监会采取预防性行动和适时介入，以处理失当行为和市场违规活动。

年内的其他工作重点包括引入适用于虚拟资产交易平台的监管框架，及建议设立新的受规管活动类别，以规管证监会认可集体投资计划的受托人和保管人。证监会联同香港交易及结算所有限公司与证券登记公司总会有限公司，就无纸证券市场的建议运作模式，发表了联合咨询总结。

年报亦载述证监会为将香港发展成为绿色和可持续金融枢纽而采取的措施，包括发表有关在资产管理中纳入环境、社会及管治因素和气候风险的调查报告。

年内的主要数据包括：

- 持牌机构及人士和注册机构的数目增至 47,167，其中持牌机构的数目上升至 3,109 家
- 认可了 126 项集体投资计划及 146 项公开发售的非上市结构性产品
- 认可了全球首只铁矿石期货交易所买卖基金（exchange-traded fund，简称 ETF），首只采用公众开放式基金型公司结构的认可 ETF 上市，以及两家私人开放式基金型公司获证监会注册
- 审阅了 303 宗上市申请，及监督 359 宗与收购有关的交易和申请
- 运用证监会在《证券及期货（在证券市场上市）规则》下的监管权力，直接介入了 35 宗首次公开招股申请及 12 宗上市后个案
- 对中介机构进行了 317 次以风险为本的现场视察，从中发现了 1,489 宗违反证监会规则的个案
- 对市场进行监察活动，继而向中介机构作出 8,767 项索取交易及帐户纪录的要求
- 就中介人失当行为对 20 家公司和 24 名人士作出纪律处分，并处以罚款合共 4.79 亿港元

证监会 2019 年度执法行动摘要：

首次公开招股保荐人的缺失

2019 年，证监会对一家在工作上犯有缺失的首次公开招股保荐人采取执法行动。证监会在 2019 年 5 月对招商证券（香港）有限公司作出谴责，并处以罚款 2,700 万港元，因该公司没有就某上市申请人的最大客户进行充分的尽职审查及就交易是否属实作出查询，也没有在进行访谈时核实申请人的供货商及客户代表的身分。

打击涉及首次公开招股保荐人的失当行为是证监会执法工作的首要重点之一。保荐人在确保香港证券市场的质素方面担当关键角色。它们协调首次公开招股的程序，向董事提供意见，及主力负责对上市申请人进行尽职审查。

证监会再三发现保荐人在工作上的缺失及严重违反监管规定的情况。证监会的执法行动旨在改善保荐人的尽职审查标准，及确保它们以勤勉尽责、不受干扰及专业的态度履行其把关角色。自新的保荐人制度 在 2013 年 10 月推出以来，证监会已对 11 家保荐人公司采取纪律行动，涉及罚款额共 9.225 亿港元。

上述纪律行动包括证监会在 2019 年 3 月对 UBS AG 及 UBS Securities Hong Kong Limited 处以破纪录的 3.75 亿港元罚款，原因是这两家公司没有核实某上市申请人的主要资产 ，及犯有其他缺失 。UBS Securities 亦被暂时吊销出任首次公开招股保荐人的牌照。同月，摩根士丹

利亚洲有限公司及 Merrill Lynch Far East Limited 被谴责及罚款，原因是这两家公司没有处理尽职审查访谈中出现的预警迹象，也没有核实上市申请人的客户的身分。

证监会已提醒保荐人在履行其把关职能时，要抱着专业的怀疑态度，及处理明显的预警迹象。保荐人若过往曾经有上市申请遭发回或拒绝，犯有严重缺失或出现不合规的情况，日后所呈交的上市申请可能会受到较严格的监管审查。

企业欺诈及不当行为

董事的失当行为

证监会根据《证券及期货条例》第 214 条 3 在原讼法庭取得 针对以下公司董事的取消资格令及赔偿令：

- 敏实集团有限公司前主席兼执行董事秦荣华被饬令支付人民币 2,030 万元，作为对一家附属公司因其失当行为而蒙受损失的赔偿。秦荣华及另外三名前执行董事被取消董事资格，为期三至六年。

- 德发集团国际有限公司前执行董事郭彩霞被取消董事资格，为期六年，原因是她没有以合理的谨慎和勤勉尽责的态度管理该公司，也没有以该公司的最佳利益为前提真诚地行事。

- 汇创控股有限公司前主席兼执行董事黄婉儿及另外三名前执行董事6被取消董事资格，为期三年，原因是他们没有在该公司收购三家酒店的过程中以合理的谨慎和勤勉尽责的态度行事。

证监会根据第 214 条展开民事法律程序，以：

- 寻求法庭对圆美光电有限公司的主席兼执行董事郑伟德和另外五名董事发出取消资格令及赔偿令，原因是他们涉嫌违反了受信责任。

- 寻求法庭对福建诺奇股份有限公司前执行董事、首席财务官兼公司秘书欧阳浩然发出取消资格令，原因是他涉嫌没有就该公司首次公开招股的所得款项被不当地提取进行适当查询和向董事会发出警示，也没有确保准确披露有关这些款项的用途的资料。

东区裁判法院裁定 DBA 电讯（亚洲）控股有限公司前 首席财务官、公司秘书兼执行董事陈伟铨，参与在该公司的业绩公告中作出虚假或具误导性陈述的罪名成立，并对他处以罚款。

没有披露内幕消息

香港市场失当行为审裁处裁定，以下上市公司及高级行政人员没有及时披露内幕消息：

- 健合（H&H）国际控股有限公司及其主席兼执行董事罗飞分别被罚款 160 万港元。

- 富士高实业控股有限公司、其主席兼行政总裁杨志雄及首席财务总监兼公司秘书周丽凤被罚款合共 150 万港元。

- 美即控股国际有限公司及其五名董事被裁定须为该公司没有及时披露有关 L'Oréal S.A.建议收购美即控股的消息，负上罪责。

证监会在市场失当行为审裁处对中国医疗网络有限公司及其六名前董事展开研讯程序，指该公司涉嫌没有在合理地切实可行的范围内，尽快披露在证券交易中取得重大收益的消息及盈利数字，而该六名前董事则涉嫌作出罔顾后果或疏忽的行为。

内幕交易及市场操纵

- 证监会根据《证券及期货条例》第 213 条对一组本地及海外人士和公司展开法律程序，怀疑他们操纵正利控股有限公司的股份。证监会取得原讼法庭颁布的临时强制令，以冻结由 15 家本地及海外公司持有的不多于 1.249 亿港元的资产。

- 证监会在市场失当行为审裁处对美维控股有限公司前主席兼执行董事唐庆年及李奕璇展开研讯程序，指二人涉嫌于 2009 年就该公司股份进行内幕交易。证监会对执业律师梁柏强展开刑事法律程序，指他涉嫌就时富金融服务集团有限公司股份进行内幕交易。

- 鼎成证券有限公司主席兼负责人员黄凤英因试图营造证券交投活跃的虚假或具误导性的表象，遭证监会暂时吊销牌照，为期八个月。

- 证监会就中国鼎益丰控股有限公司股份的涉嫌市场操控活动，决定对多名人士（包括该公司人员）展开法律程序。证监会亦已撤销在 2019 年 3 月 8 日作出有关暂停该公司股份买卖的指示。该公司的股份在 2020 年 1 月 23 日恢复买卖。

- 新奥能源控股有限公司前执行董事、首席财务官兼公司秘书郑则锷就上诉法庭将他涉嫌就中国燃气控

股有限公司的股份进行内幕交易一案发还市场失当行为审裁处重审的判决提出上诉许可申请，但有关申请已遭终审法院驳回。《证券及期货条例》第 213 条赋权证监会，可在指明情况下向原讼法庭申请强制令及其他命令。

东区裁判法院裁定以下人士罪名成立，并处以罚款：

- 香港电视网络有限公司前高级规管事务经理姚家伦，因就该公司股份进行内幕交易，被判处监禁两个半月及被饬令支付 165,000 港元罚款。

- 蔡云，原因是他操纵恒生指数期货合约的拟定开市价。

中介人失当行为

2019 年，证监会对 20 家公司、九名负责人员及 15 名持牌代表进行了纪律处分，当中涉及的罚款合共为 4.79 亿港元。主要的纪律行动包括：

利益冲突

UBS AG 因在长达十年的期间内透过在买卖后增加 利润幅度和向客户多收款项以收取过高的费用，及干犯相关的内部监控缺失，遭证监会谴责并罚款 4 亿港元。

兴业金融证券有限公司因违反有关管理利益冲突及监督客户主任的监管规定，遭证监会谴责及罚款 640 万港元。

与打击洗钱有关的违规事项

邦盟汇骏证券有限公司因没有遵从有关打击洗钱及恐怖分子资金筹集的监管规定，遭证监会谴责及罚款 370 万港元。证监会亦因该公司的负责人员邓颖芝没有履行其职责而暂时吊销她的牌照，为期五个半月。

高盛（亚洲）有限责任公司前负责人员 Tim Leissner 被裁定串谋洗钱及违反美国《反海外腐败法》的罪名成立后，遭证监会终身禁止重投业界。

证监会禁止国信证券（香港）经纪有限公司前零售经纪业务主管兼负责人员苏细强重投业界，为期十个月，原因是他没有确保该公司在处理第三者存款时遵从打击洗钱及恐怖分子资金筹集的监管规定。

粉饰速动资金

证监会因年兴行资产管理（亚洲）有限公司前主席洪荣锋及前首席财务官兼公司秘书陈锦华涉及粉饰年兴行的速动资金，分别规定二人终身和三年内不得重投业界。年兴行的牌照已于 2019 年 2 月被撤销。

其他纪律行动

就内部监控缺失遭谴责及罚款

公司	违规事项	罚款
华晋证券资产管理有限公司	在卖空、交叉盘买卖及备存纪录方面犯有内部监控缺失及违反监管规定	630 万港元
香港上海汇丰银行有限公司	没有设立有效的内部监控程序，以确保遵从电话录音规定	210 万港元
讯汇证券有限公司	在业务运作、内部监控措施及程序方面存在缺失	500 万港元
宝新证券有限公司	没有勤勉尽责地监督客户主任及实施有效的监控措施，以遵守卖空规定	120 万港元
李氏证券有限公司	在划分职责及处理客户证券方面犯有内部监控缺失	520,000 港元
时富商品有限公司	与不当处理客户款项相关的监管违规行为及内部监控缺失	490 万港元
	与不当处理客户款项相关的监管违规行为及内部监控缺失	140 万港元
招商证券（香港）有限公司	与不当处理客户款项相关的监管违规行为及内部监控缺失	500 万港元

因贿赂或盗窃罪成而遭纪律处分

人士	违规事项	行动
巫秀华	盗取及出售价值超过 1.1 亿港元的客户股份	终身禁止重投业界
马善智	接受一名客户约 640 万港元的贿款	终身禁止重投业界
叶锋	向一名客户索取超过 900,000 港元的非法佣金	终身禁止重投业界
涂冰	向一名客户索取及接受约140 万港元的非法佣金	终身禁止重投业界

因违反其他监管规定而遭谴责及罚款

公司	违规事项	罚款
瑞兴全球财富管理有限公司	在台湾分销投资基金及提供投资建议时没有遵从法律及	150 万港元

	规例，及没有充分监督其代表所进行的业务活动	
富达基金（香港）有限公司	无牌进行期货合约交易，延迟向证监会汇报违规事项，及就一只新基金申请认可时呈交不正确的数据	350 万港元
安德思资产管理（香港）有限公司	没有落实足够的措施，以确保妥为披露客户的投资组合内所持有的香港上市公司股票的须具报权益	250 万港元
SEAVI Advent Ocean Private Equity Limited	容许未获发牌的雇员进行受规管活动	100 万港元
富通证券有限公司	在编制及刊发研究报告方面违反监管规定及犯有内部监控缺失	350 万港元
Credit Suisse (Hong Kong) Limited 及 Credit Suisse AG	没有遵从适用于发表研究报告的披露规定	280 万港元
天元资本有限公司	无抵押卖空禹洲地产股份有限公司的股份	120 万港元

其他重大个案

- 原讼法庭驳回就与多项仍在进行的调查有关的搜查行动而针对证监会所提出的司法复核申请。在有关申请中，张家豪、陶恒明、陶龙生、杜文财及温伟麟就两名裁判官在 2018 年 7 月发出的搜查令提出反对，理由是有关搜查令因欠缺具体性而属不合法或无效。

- 上诉法庭拒绝 Citron Research 的 Andrew Left 针对市场失当行为审裁处的裁定，而向上诉法庭提出有关上诉至终审法院的许可申请。市场失当行为审裁处在 2016 年 8 月 26 日裁定，Andrew Left 于 2012 年 6 月在发表有关恒大地产集团有限公司的报告一事上，犯有披露虚假或具误导性的数据以诱使他人进行交易的罪行。

- 东区裁判法院裁定，邱嘉辉未获证监会发牌而显示自己经营资产管理业务的罪名成立。

- 证监会对百年资本管理有限公司及其唯一董事罗世鸿展开刑事法律程序，指他们在未领有证监会牌照的情况下，显示自己经营一项就机构融资提供意见的业务。

年报已上载至证监会网站。

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Hong Kong Eastern Magistrates' Court Convicts and Fines Former Officer of Wonderful Wealth Group Limited for Unlicensed Activities

On July 9, 2020, the Hong Kong Eastern Magistrates' Court convicts Mr Simon Chan Ying Ming (Chan), former officer of Wonderful Wealth Group Limited (WWGL), of holding out as carrying on a business of dealing in futures contracts and asset management without a license in a criminal prosecution brought by the Hong Kong Securities and Futures Commission (SFC).

Chan, who pleaded guilty to all four charges, was fined HK$20,000 and ordered to pay the SFC's investigation costs.

The SFC alleged that between July and September 2012, Chan had represented to two investors that WWGL operated a business of trading in futures contracts and options, and solicited them to invest in a WWGL-operated investment scheme which guaranteed a monthly rate of return of 5% in three months' time.

Chan told them WWGL would use their funds to trade futures contracts and options in WWGL's trading accounts. The two investors invested a total sum of HK$850,000 in the investment scheme and they suffered losses of around HK$710,000.

The SFC also alleged that Chan had aided, abetted, counselled, procured, induced WWGL to hold itself out to the investors as carrying on a business of dealing in futures contracts and asset management or that the offence by WWGL was committed with the consent, connivance of or was attributable to recklessness of Chan.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC website (www.sfc.hk) before investing to ensure that the people who provide dealing services in futures contracts and asset management are properly licensed.

香港东区裁判法院裁定兆容创富有限公司前高级人员进行无牌活动罪成并处以罚款

2020 年 7 月 9 日，香港东区裁判法院在一宗由香港证券及期货事务监察委员会（证监会）提起的刑事检控个案中，裁定兆容创富有限公司（兆容创富）前高级人员陈英鸣（陈）未领有牌照而显示自己经营期货合约交易及提供资产管理业务的罪名成立。

陈承认全部四项控罪，被判处罚款 20,000 港元，并被命令支付证监会的调查费用。

证监会指称，陈在 2012 年 7 月至 9 月期间，向两名投资者声称兆容创富经营期货合约和期权买卖的业务，及招揽他们投资一项由兆容创富营运且在三个月内保证每月回报率为 5%的投资计划。

陈向这些投资者表示，兆容创富会运用他们的资金在该公司的交易帐户内买卖期货合约和期权。该两名投资者在该投资计划上投资了共 85 万港元，结果损失约 71 万港元。

证监会亦指称，陈曾协助、教唆、怂使、促致或诱使兆容创富向这些投资者显示自己经营期货合约交易及提供资产管理的业务，或兆容创富的罪行是在他的同意或纵容下干犯，或是可归因于他罔顾实情或罔顾后果。

证监会提醒投资者在投资前务必查阅证监会网站（www.sfc.hk）内的〈持牌人及注册机构的公众纪录册〉，以确保提供期货合约交易服务及资产管理的人士领有适当的牌照。

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Court of Final Appeal of Hong Kong Dismisses Leave Application of Andrew Left

On July 8, 2020, the Appeal Committee of the Court of Final Appeal (CFA) of Hong Kong dismisses the application of Mr Andrew Left (Left) of Citron Research for leave to further appeal to the CFA against the February 2019 judgment of the Court of Appeal (CA) that ruled against him.

The Appeal Committee will hand down its reasons later.

Case Summary

Left is the head of Citron Research, a US-based publisher of research reports on listed companies. Left lives in the U.S. The Securities and Futures Commission (SFC) alleges that on June 21, 2012, Left published a report (report) on Citron Research's website (www.citronresearch.com) that contained false and misleading information about Evergrande Real Estate Group Limited (Evergrande). The report stated, among other things, that Evergrande was insolvent and had consistently presented fraudulent information to the investing public. The share price of Evergrande fell sharply on the same day following the publication of the report. On June 21, 2012, the share price of Evergrande reached a high of HK$4.52 in the morning but then declined sharply to a day low of HK$3.6, down 19.6% from the previous day's close of HK$4.48. The stock closed at HK$3.97 which was 11.4% down from the previous day's closing price. By comparison, the Hang Seng Index declined 1.3% on the same day. The SFC also alleges that shortly before publishing the report, Left short sold 4.1 million shares of Evergrande which he subsequently bought back, making a notional profit of over HK$2.8 million. Left made a total realized profit of approximately HK$1.7 million.

In December 2014, the SFC commenced proceedings in the Market Misconduct Tribunal (MMT) against Left alleging that the report he published on June 21, 2012 on Citron Research's website contained false or misleading information about Evergrande. The report stated, among other things, that Evergrande was insolvent and had consistently presented fraudulent information to the investing public.

In November 2015, the MMT dismissed the application by Left for an order for the production of documents relating to the financial position of Evergrande, or for a stay of the MMT proceedings commenced by the SFC in relation to the report. Left argued that to determine whether the report contained false or misleading information, the MMT had to enquire into Evergrande's financial position which required a review of its records and documents. Left made an application to the MMT on September 17, 2015 for an order for production of documents, or for a stay of proceedings. In dismissing the application, Chairman of the MMT, the Honorable Mr Justice Hartmann, agreed with the SFC's view that at the time when Left compiled the report, the only information available to him was information in the public domain. The Chairman noted that the SFC is therefore obliged to present its case on the basis of that information just as Left is obliged to do so.

In August 2016, the MMT has found that Left disclosed false or misleading information inducing transactions and so engaged in market misconduct under the Securities and Futures Ordinance (SFO) following proceedings brought by the SFC. The MMT found that Left used sensationalist language in his report that Evergrande was insolvent and engaged in accounting fraud. It found these allegations were false and misleading and likely to alarm ordinary investors. Left had made these allegations recklessly or negligently with no understanding of the Hong Kong accounting standards that applied and without checking them with an accounting expert or seeking comment from Evergrande.

In October 2016, the MMT has ordered that Left be banned from trading securities in Hong Kong for the maximum period of five years without the leave of the court. Under section 257(1)(b) of the SFO, a cold shoulder order is an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding five years) specified in the order. The MMT has also issued a cease and desist order against Left. Under section 257(1)(c) of the SFO, a cease and desist order is an order that the person shall not again perpetrate the market misconduct specified in the order.

In January 2017, the CA has dismissed Left's application for leave to appeal against the determination of the MMT on questions of fact. The CA said that Left's application was made out of time, and that, even if the application were within time, it had no reasonable prospects of success and was wholly without merit. The CA rejected Left's contention that there was no evidential basis for the MMT to find that Left was aware of the risk that the allegations in the research report were false or misleading as to material facts and that the risk was of such substance it was unreasonable to ignore it. It also rejected the contention that the MMT erred in finding that Left must have been aware that his analysis and logic required expertise in accountancy regulation and standards.

In February 2019, the CA has dismissed the appeal by Left against the determination of the MMT on points of law under the SFO. In the judgment, the CA said: Left's argument that the MMT did not have the jurisdiction to hear the case has no merits, not to mention that he did not raise this argument during the MMT proceedings; Left's submission that the test of recklessness formulated by the MMT was wrong was untenable, and on the contrary, the MMT applied the correct test of recklessness in criminal law as stated in a previous case Sin Kam Wah, nor did the MMT deviate from this case; there was no error in law and in reaching the conclusion that the standard of care which Left owed to the market when compiling and publishing the research report should be one that was comparable to a market commentator or analyst; section 277(1) of the SFO creates a duty of care on any and all persons who choose to disseminate information that is likely to have market impact to make sure it is not materially false or misleading, otherwise its protective purpose in the context of the speed and fluidity of financial market will be fundamentally defeated or undermined.

In May 2019, the CA dismissed the application by Left for leave to appeal to the CFA against the determinations of the MMT. The CA said that they are not persuaded that this is an appropriate case to grant leave to appeal and ordered Left to pay the SFC's costs. The ruling arose from Left's March 2019 application for leave to appeal to the CFA on the ground that the appeal involves questions of great general or public importance.

香港终审法院驳回 Andrew Left 的上诉许可申请

2020 年 7 月 8 日，香港终审法院上诉委员会驳回 Citron Research 的 Andrew Left（Left）就香港上诉法庭于 2019 年 2 月判他败诉的裁决而向终审法院进一步提出上诉的许可申请。

上诉委员会将于稍后公布驳回申请的理由。

案情简介

Left 为一家发表上市公司研究报告的美国公司 Citron Research 的主管，现居于美国。香港证券及期货事务监察委员会（证监会）指 Left 于 2012 年 6 月 21 日在 Citron Research 的网站（www.citronresearch.com）发表一份报告，当中载有关于恒大地产集团有限公司（恒大）的虚假及具误导性数据，包括指恒大无力偿债，并持续向投资大众呈报有欺诈成分的资料。同日，恒大股价在该报告发表后急挫。2012 年 6 月 21 日，恒大的股价于上午升至 4.52 港元的高位，但之后便急挫至当日的低位 3.6 港元，较上一日的收市价 4.48 港元下跌 19.6%。该股份以 3.97 港元收市，较上一日的收市价下跌 11.4%。相比之下，恒生指数于同日下跌了 1.3%。证监会亦指 Left 于报告发表前不久沽空了 410 万股恒大股份，然后购回，获取逾 280 万港元的名义利润。Left 合共赚取了约 170 万港元的实际利润。

2014 年 12 月，证监会在市场失当行为审裁处（审裁处）展开针对 Left 的研讯程序，指其于 2012 年 6 月在发表有

关恒大的报告一事上犯有失当行为，指他所发表的报告内载有关于恒大的虚假或具误导性资料，包括指恒大无力偿债，并持续向投资大众呈报有欺诈成分的资料。

2015 年 11 月，审裁处驳回 Left 就取得出示有关恒大财政状况的文件的命令，或搁置证监会就他被指在 2012 年就有关恒大的研究报告犯有市场失当行为而对其展开的审裁处研讯程序而提出的申请。审裁处亦命令 Left 支付证监会就此项申请所涉及的费用。Left 指，要断定该份报告是否载有虚假或具误导性数据，审裁处必须核查恒大的财政状况，所以有必要翻查其纪录及文件。Left 于 2015 年 9 月 17 日向审裁处提出申请，请求该处作出出示文件令或搁置审裁处研讯程序。在驳回申请时，审裁处主席夏正民法官（The Honourable Mr Justice Hartmann）同意证监会的观点，指 Left 在编制该报告时，他有的资料就只是公众所知的数据。审裁处主席指出，证监会及 Left 均只能够根据该等资料提出其理据。

2016 年 8 月，审裁处在进行由证监会提起的研讯程序后，裁定 Left 披露虚假或具误导性的数据诱使他人进行交易，因而从事《证券及期货条例》所指的市场失当行为。审裁处裁定 Left 于 2012 年 6 月在发表有关恒大的报告一事上犯有市场失当行为。审裁处裁定，Left 在他的报告中使用夸张的言辞，指恒大无力偿债和作出会计方面的欺诈行为。审裁处裁定，这些指称属虚假及具误导性，并有可能会引起一般投资者的恐慌。Left 在完全不了解所应用的香港会计准则、未经与会计专家查证这些指称或寻求恒大意见的情况下，罔顾后果或疏忽地作出这些指称。

2016 年 10 月，审裁处颁令，未经法院许可， Left 不得在香港买卖证券，为期五年（此乃有关命令可规定的最长期限）。根据香港《证券及期货条例》第 257(1)(b)条，冷淡对待令是命令他在该命令指明的不超过五年的期间内，未经原讼法庭许可，不得在香港直接或间接取得、处置或以任何其他方式处理任何证券、期货合约、杠杆式外汇交易合约，或任何证券、期货合约、杠杆式外汇交易合约或集体投资计划的权益。审裁处亦向 Left 发出终止及停止令。根据《证券及期货条例》第 257(1)(c)条，终止及停止令是命令他不得再作出该命令所指明的市场失当行为。Left 被命令交出其沽空恒大股份而获得的 1,596,240 港元利润，及支付证监会的调查及法律费用。

2017 年 1 月，Left 针对审裁处就事实问题所作的裁定而提出的上诉许可申请遭上诉法庭驳回。上诉法庭指，Left 的申请逾期提出，但即使该申请是在期限内提出，也没有合理的成功机会，并且毫无理据。审裁处早前裁定 Left 知悉研究报告内的指控具有在重大事实陈述方面属虚假或具误导性的风险，而如此重大的风险被忽略是不合理的。上诉法庭拒绝接纳 Left 指有关裁定没有证据基础的说法。Left 又指审裁处在裁定他定必知悉其分析和逻辑是需要会计规例和准则的专业知识时犯了错误，但上诉法庭同样拒绝接纳其说法。

2019 年 2 月，上诉法庭在驳回 Left 针对审裁处就法律论点所作的裁定而提出的上诉。上诉法庭在判词中表示：Left 指审裁处没有司法管辖权就此案进行聆讯这个论点缺乏充分理据，更遑论他在审裁处研讯程序期间并没有提出这论点；Left 在陈词中指审裁处以罔顾后果作为标准的验证有误的说法毫无理据；相反，审裁处不但应用了正确的验证方法，以证明 Left 是否犯有刑事法中的罔顾后果（如早前的冼锦华案所呈述），而且亦没有偏离此案；Left 在编制及刊发研究报告时，对市场负有的谨慎责任所要求的标准，应与市场评论员或分析员应有的标准相若，而这在法律上及达致有关结论方面均没有错误；《证券及期货条例》第 277(1)条的法律原意是，令任何及所有选择散发可能对市场有影响的数据的人士负有谨慎责任，确保有关资料在要项上不会属虚假或具误导性，否则该条文在急速多变的金融市场内的保障作用，将会从根本上受到损害或影响。

2019 年 5 月，Left 向上诉法庭提出的有关上诉至终审法院的许可申请亦在遭驳回。上诉法庭表示未能信服这是一宗适宜获批准上诉许可申请的个案，并命令 Left 支付证监会的讼费。其裁决源于 Left 于 2019 年 3 月以上诉所涉及的问题具有重大广泛或关乎公众的重要性为由，向上诉法庭提出的有关上诉至终审法院的许可申请。

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The Listing Committee of The Stock Exchange of Hong Kong Limited Censures State Energy Group International Assets Holdings Limited (Stock Code: 918) and Mr Zhou Xin Yu for breaching the Listing Rules and/or the Director's Undertaking

On July 8, 2020, the Listing Committee (the Listing Committee) of The Stock Exchange of Hong Kong Limited (the Exchange)

CENSURES:

State Energy Group International Assets Holdings Limited (Company) (Stock Code: 918)

for breaching Rule 2.12A of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) by failing to provide the Exchange with information relevant and required by the Exchange to verify the Company's compliance with the Exchange Listing Rules;

AND CENSURES:

Mr Zhou Xin Yu, former executive director (ED) and CEO of the Company (Mr Zhou)

for breaching (i) Rule 3.08(f), (ii) his obligation under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the Undertaking) for failing to comply with the Exchange Listing Rules to the best of his ability, and (iii) his Undertaking to use his best endeavors to procure the Company's compliance with the Exchange Listing Rules.

For the avoidance of doubt, the Exchange confirms that the sanctions in this news release apply only to the Company and Mr Zhou, and not to any other past or present members of the board of directors (Board) of the Company.

HEARING

On May 19, 2020, the Listing Committee conducted a hearing into the conduct of the Company and Mr Zhou in relation to their obligations under the Exchange Listing Rules and the Undertaking.

FACTS

In August 2017, the Company wrote to the Listing Division to seek confirmation that its proposed acquisition of a hotel in the Czech Republic (Proposed Acquisition) would not constitute a reverse takeover (RTO) for the Company under the Exchange Listing Rules (RTO Enquiry). Over 96 per cent of the Company's turnover for the three years prior to the RTO Enquiry was attributable to the sourcing and subcontracting of garments and sportswear products in the PRC, which were then exported to the USA (Export Business). The Company also held six investment properties in the PRC and one investment property in Hong Kong for generating rental income.

In considering the RTO Enquiry, the Listing Division was concerned about whether the Company's existing businesses were viable and sustainable, and whether the existing businesses would become immaterial after the Proposed Acquisition. The Company assured the Listing Division that, amongst others, its existing businesses were viable and sustainable, and that the Proposed Acquisition would not cause a fundamental change to the Company's existing business or result in the existing business of the Company becoming immaterial.

On November 10, 2017, the Listing Division informed the Company of its decision that the Proposed Acquisition would not constitute an RTO under Rule 14.06(6) (RTO Decision).

On November 28, 2017, the Company announced its results for the six months ended September 30, 2017 (2017 Interim Results), which showed that the revenue derived from the Export Business decreased by 99.6 per cent when compared to the corresponding period for 2016.

On December 27, 2017, after making further enquiries with the Company, the Listing Division retracted the RTO Decision.

Following a change in the Company's control on August 22, 2018, the entire Board was replaced. The members of the current Board were all appointed in or after September 2018.

Exchange Listing Rule Requirements

Rule 2.12A provides that an issuer must provide the Exchange with (a) any information that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market, and (b) any other information or explanation that the Exchange may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the Exchange Listing Rules.

The Exchange's Guidance Letter (HKEX-GL78-14) provides guidance on the application of the RTO requirements under Rule 14.06(6) (Guidance Letter).

Rule 3.08 provides that the Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These duties include a duty to apply such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer (Rule 3.08(f)).

Mr Zhou was under an obligation, pursuant to his Undertaking, to:

(a) comply to the best of his ability with the Exchange Listing Rules;

(b) use his best endeavours to procure the Company's compliance with the Exchange Listing Rules; and

(c) provide to the Exchange any information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Exchange Listing Rules.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee considered the written and/or oral submissions of the Listing Division, the Company, and Mr Zhou and concluded as follows:

Company's breach

The RTO Enquiry was in essence an application by the Company that it did not have to comply with the additional requirements under Chapter 14 of the Exchange Listing Rules which relate to RTOs, when proceeding with the Proposed Acquisition. As the Listing Division was asked to verify the Company's compliance with the Exchange Listing Rules, Rule 2.12A is applicable.

Pursuant to Rule 2.12A, the Company has to provide information or explanation that the Listing Division reasonably requires for the verification exercise. In the context of the RTO Enquiry, this would include complete, accurate and up-to-date information concerning the Proposed Acquisition, and information relevant to the determination of whether Chapter 14 was applicable.

The evidence suggested that the Company was or should have been aware of the significant drop in the performance of the Export Business after 31 March 2017. Indeed, a 99.6 per cent drop in the Export Business meant that if the Proposed Acquisition were to take place, the Export Business would become immaterial to the Company. By reference to the Guidance Letter, it should have been apparent to the Company that such a substantial drop was likely to affect the outcome of the RTO Decision. As such, the Listing Committee found that the Company had breached Rule 2.12A by failing to disclose information about the material change in the Export Business when the Exchange was considering the RTO Enquiry.

Mr Zhou's breaches

As the ED and CEO of the Company, Mr Zhou was responsible for and led the Proposed Acquisition. He was the only director who approved the Company's submissions to the Listing Division in respect of the RTO Enquiry. The Listing Committee concluded that Mr Zhou:

(a) breached his obligation under the Undertaking to provide complete, accurate and up-todate information to the Listing Division for the purpose of verifying compliance with the Exchange Listing Rules;
(b) breached his obligation under the Undertaking to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules; and
(c) breached Rule 3.08(f) by failing to exercise sufficient skill, care and diligence in respect of the submissions made to the Listing Division in the furtherance of the Company's RTO Enquiry.

REGULATORY CONCERN

Listed issuers are expected to provide the Listing Division with complete, accurate and up-to-date information when they are making enquiries with or responding to requests for information or explanation from the Listing Division. Directors of a listed issuer are under a similar obligation by way of their Undertaking. This essential obligation enables the proper function of the Exchange, which is to provide a fair, orderly and

efficient market for the trading of securities. Failure to provide complete, accurate and up-to-date information, which may necessitate the retraction or withdrawal of a decision made by the Listing Division, is likely to result in disciplinary action against the listed issuer and its directors.

SANCTIONS

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

(1) censure the Company for its breach of Rule 2.12A; and

(2) censure Mr Zhou for his breach of Rule 3.08(f) and his Undertaking.

香港联合交易所有限公司谴责国能集团国际资产控股有限公司（股份代号：918）及周新宇先生违反《上市规则》及/或《董事承诺》

2020 年 7 月 8 日，香港联合交易所有限公司（联交所）上市委员会（「**上市委员会**」）

谴责：

国能集团国际资产控股有限公司 （「**该公司**」）（股份代号：918）未能向联交所提供核实该公司有否遵守《香港联合交易所有限公司证券上市规则》（《上市规则》）所需的有关数据，违反《上市规则》第 2.12A 条；

及谴责：

该公司前执行董事及行政总裁周新宇先生（「**周先生**」），

(i) 违反《上市规则》第 3.08(f)条；

(ii) 违反有关董事以《上市规则》附录五 B 表格所载形式向联交所作出的《董事声明及承诺》（「《承诺》」）所载的责任，未有尽力遵守《上市规则》；及

(iii) 违反其《承诺》，未有尽力促使该公司遵守《上市规则》。

为免引起疑问，联交所确认本新闻稿所载的制裁仅适用于该公司及周先生，而不涉及该公司董事会的其他前任或现任董事。

聆讯

上市委员会于 2020 年 5 月 19 日就该公司及周先生的行为及其在《上市规则》及《承诺》下的有关责任进行聆讯。

实况

该公司于 2017 年 8 月致函上市科，要求确认其建议收购捷克共和国一家酒店的事宜（「**建议收购**」）不会构成《上市规则》下的反收购（「**反收购查询**」）。在反收购查询前的三年间，该公司 96%以上的营业额源自将在中国采购及分包的服装及运动服饰产品出口至美国（「出口业务」）。该公司亦在中国持有六项投资物业及在香港持有一项投资物业，用以赚取租金收入。

在考虑有关反收购查询时，上市科关注的是该公司的现有业务是否可行及可持续发展，以及在完成建议收购后会否变得无关重要。该公司向上市科保证（当中包括）其现有业务是可行及可持续发展，以及建议收购不会令该公司的现有业务出现根本性的转变，亦不会令该公司的现有业务变得无关重要。

2017 年 11 月 10 日，上市科通知该公司其裁定建议收购不构成《上市规则》第 14.06(6)条下的反收购（「**反收购裁决**」）。

2017 年 11 月 28 日，该公司公布了截至 2017 年 9 月 30 日止六个月业绩（「**2017 年中期业绩**」），当中显示，出口业务的收入较 2016 年同期下降了 99.6%。

2017 年 12 月 27 日，上市科对该公司作出进一步查询后撤回了上述反收购裁决。

2018 年 8 月 22 日，该公司在其控制权变更后，撤换了全体董事。现任董事全于 2018 年 9 月或之后任命。

《上市规则》规定

根据第 2.12A 条，发行人必须向联交所提供(i) 联交所合理认为可保障投资者或确保市场运作畅顺所需的任何适当数据；及(ii) 联交所为了调查涉嫌违反《上市规则》的事项或其在核实发行人是否符合《上市规则》的规定而合理要求的任何其他数据或解释。

联交所指引信（HKEX-GL78-14）就第 14.06(6) 条规则下反收购规定的应用提供指引。

根据第 3.08 条，联交所要求董事共同及个别履行诚信责任及以应有技能、谨慎和勤勉行事的责任，而履行上述责任时，至少须符合香港法例所确立的标准。该等职责包括以应有的技能、谨慎和勤勉行事，程度相当于别人

合理地预期一名具备相同知识及经验，并担任发行人董事职务的人士所应有的程度（第 3.08(f)条）。

根据周先生作出的《承诺》，其有责任:

(i) 尽力遵守《上市规则》;

(ii) 尽力促使该公司遵守《上市规则》；及

(iii) 向联交所提供在核实该公司是否符合《上市规则》时合理要求的任何资料或解释。

上市委员会裁定的违规事项

上市委员会经考虑上市科、该公司及周先生的书面及/或口头陈述后，作出以下裁定:

该公司的违规

反收购查询实质上是该公司提出的申请，目的是希望进行建议收购时可毋须遵守《上市规则》第十四章有关反收购的额外规定。由于上市科被要求核实该公司是否遵守《上市规则》，因此《上市规则》第 2.12A 条适用。

根据第 2.12A 条，该公司必须提供上市科为核实合规与否而合理要求的数据或解释。就反收购查询而言，当中将包括有关建议收购的完整、准确及最新资料，以及确定第十四章是否适用的数据。

有关证据显示，该公司当时已经或应该知悉在 2017 年 3 月 31 日之后其出口业务表现大幅下滑。 事实上，出口业务收入大降 99.6%，意味着如果建议收购如计划般进行，出口业务对该公司而言将变得无关重要。参照指引信，该公司应该明白业绩这般大幅下滑将很可能影响反收购裁决的结果。 因此，上市委员会认为，该公司违反了第 2.12A 条，未有在联交所考虑反收购查询时披露有关出口业务重大变动的资料。

周先生的违规

作为该公司的执行董事兼行政总裁，周先生负责及领导建议收购。他是批准该公司就反收购查询向上市科提交陈述的唯一一名董事。上市委员会裁定周先生:

(i) 违反其在《承诺》下的责任，未有向上市科提供用以核实该公司是否符合《上市规则》规定所需的完整、准确及最新资料;

(ii) 违反其在《承诺》下的责任，未有尽力促使该公司遵守《上市规则》；及

(iii) 违反《上市规则》第 3.08(f)条，就上市科跟进该公司的反收购查询而提供的陈述，未有以充分的技能、谨慎和勤勉行事。

监管上关注事项

上市发行人在向上市科作出查询，又或响应上市科提供数据或解释的要求时，应向上市科提供完整、 准确及最新的数据。上市发行人的董事基于其所作《承诺》亦有类似责任。此重要责任令联交所得以妥善执行其职能，提供一个公平、有序及高效的证券交易市场。若上市发行人或其董事未能提供完整、准确及最新的数据，而可能导致上市科要撤销或撤回所作的裁决，有关上市发行人及其董事 就可能要遭受纪律行动。

制裁

经裁定上述违规事项后，上市委员会决定:

(1) 谴责该公司违反《上市规则》第 2.12A 条；及

(2) 谴责周先生违反《上市规则》第 3.08(f)条及其《承诺》。

Source 来源:
https://www.hkex.com.hk/-/media/HKEX-Market/News/News-Release/2020/200708news/e_censure-State-Energy-Group_LD.pdf

https://www.hkex.com.hk/-/media/HKEX-Market/News/News-Release/2020/200708news/c_censure-State-Energy-Group_LD.pdf

The People's Bank of China, the Hong Kong Monetary Authority, and the Monetary Authority of Macao Issued Joint Announcement on the Launch of the Cross-boundary Wealth Management Connect Pilot Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area

On June 29, 2020, to facilitate cross-boundary investment by individual residents in the Guangdong-Hong Kong-Macao Greater Bay Area (the Greater Bay Area), the People's Bank of China, the Hong Kong Monetary Authority, and the Monetary Authority of Macao issued announcement on the implementation of the cross-boundary wealth management connect pilot scheme (Wealth Management Connect) in the Greater Bay Area.

Wealth Management Connect refers to the arrangement under which individual residents in the Greater Bay Area carry out cross-boundary investment in wealth management products distributed by banks in the

Greater Bay Area. The scheme has a southbound and a northbound components, depending on the residency of the investors. Under Southbound Wealth Management Connect, residents of the Mainland cities in the Greater Bay Area can invest in eligible investment products distributed by banks in Hong Kong and Macao by opening designated investment accounts with these banks; under Northbound Wealth Management Connect, residents of Hong Kong and Macao can invest in eligible wealth management products distributed by Mainland banks in the Greater Bay Area by opening designated investment accounts with these banks.

Wealth Management Connect is an important measure by the nation in support of the Greater Bay Area development and closer financial cooperation between the Mainland, and Hong Kong and Macao. It is conducive to the creation of a quality living environment within the Greater Bay Area. It facilitates cross-boundary investment by individual residents in the Greater Bay Area and promotes the opening-up of the Mainland's financial markets as well as the mutual social and economic development of the Mainland, and Hong Kong and Macao.

Wealth Management Connect will be governed by the respective laws and regulations on retail wealth management products applicable in the three places with due regard to international norms and practices. The People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, the State Administration of Foreign Exchange, the Hong Kong Monetary Authority, the Hong Kong Securities and Futures Commission, and the Monetary Authority of Macao will discuss and agree on the implementation details including investor eligibility, mode of investment, scope of eligible investment products, investor protection, handling of disputes, etc. under the Northbound and Southbound Wealth Management Connect. Cross-boundary remittance under the scheme will be conducted and managed in a closed-loop through the bundling of designated remittance and investment accounts to ensure that the relevant funds will only be used to invest in eligible investment products. Cross-boundary remittances will be carried out in renminbi, with currency conversion conducted in the offshore markets. Cross-boundary fund flows under Northbound and Southbound Wealth Management Connect will be subject to aggregate and individual investor quota management. The aggregate quota will be adjusted through a macro-prudential coefficient.

Relevant regulators in the Mainland, Hong Kong and Macao will each take necessary measures to establish effective mechanisms under Wealth Management Connect to tackle, based on the principle of territorial administration, any illicit activities in a timely manner, with a view to protecting the interest of investors.

Relevant regulators in the Mainland, Hong Kong and Macao will enter into memoranda of understanding on supervisory cooperation to establish robust supervisory cooperation arrangement and liaison mechanism in order to protect investors' interest and maintain orderly and fair trading.

The Mainland financial infrastructure institutions should actively take forward preparations for Wealth Management Connect in an orderly manner and with prudent risk management. The Wealth Management Connect pilot scheme will be formally launched once relevant rules and systems are in place.

The date of formal launch of Wealth Management Connect and implementation details will be separately specified.

中国人民银行、香港金融管理局、澳门金融管理局发布关于在粤港澳大湾区开展「跨境理财通」业务试点的联合公告

2020 年 6 月 29 日，为促进粤港澳大湾区居民个人跨境投资便利化，中国人民银行、香港金融管理局、澳门金融管理局发布关于在粤港澳大湾区开展「跨境理财通」业务试点（以下简称「跨境理财通」）的公告。

「跨境理财通」指粤港澳大湾区居民个人跨境投资粤港澳大湾区银行销售的理财产品，按照购买主体身份可分为「南向通」和「北向通」。「南向通」指粤港澳大湾区内地居民通过在港澳银行开立投资专户，购买港澳地区银行销售的合资格投资产品；「北向通」指港澳地区居民通过在粤港澳大湾区内地银行（以下简称内地银行）开立投资专户，购买内地银行销售的合资格理财产品。

「跨境理财通」是国家支持粤港澳大湾区建设、推进内地与香港澳门金融合作的重要举措，有利于打造粤港澳优质生活圈，有利于促进粤港澳大湾区居民个人跨境投资便利化，有利于促进我国金融市场对外开放，促进内地与港澳社会经济共同发展。

「跨境理财通」遵循三地个人理财产品管理的相关法律法规，同时尊重国际惯例做法。「北向通」和「南向通」投资者资格条件、投资方式、投资产品范围、投资者权益保护和纠纷处理等由人民银行、银保监会、证监会、外汇局、香港金管局、香港证监会、澳门金管局商议确定。「北向通」和「南向通」业务资金通过账户一一绑定实现闭环汇划和封闭管理，使用范围仅限于购买合资格的投资产品。资金汇划使用人民币跨境结算，资金兑换在离岸市场完成。对「北向通」和「南向通」跨境资金流动实行总额度和单个投资者额度管理，总额度通过宏观审慎系数动态调节。

港澳与内地相关监管机构将各自采取所有必要措施，确保双方以保障投资者利益为目的，在「跨境理财通」下建立有效机制，按属地管理原则及时应对出现的违法违规行为。港澳与内地相关监管机构将签订监管合作备忘录，建立健全监管合作安排和联络协商机制，保护投资者利益和建立公平交易秩序。

内地基础设施机构应当按照稳妥有序、风险可控的原则，积极推进「跨境理财通」的各项准备工作，在完成相关规则和系统建设后，正式启动「跨境理财通」试点业务。

「跨境理财通」正式启动时间和实施细则将另行规定。

Source 来源:
https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/06/20200629-4/

https://www.hkma.gov.hk/gb_chi/news-and-media/press-releases/2020/06/20200629-4/

Hong Kong Competition Commission Publishes Policy on Recommended Pecuniary Penalties for Anti-Competitive Conduct

On June 22, 2020, the Hong Kong Competition Commission (Commission) publishes a policy on recommended pecuniary penalties (Policy) for anti-competitive conduct. The Policy outlines the general principles and methodology the Commission adopts when making recommendations to the Competition Tribunal (Tribunal) on the level of fines for businesses that have contravened, or have been involved in the contravention of the First Conduct Rule or the Second Conduct Rule of the Competition Ordinance (Ordinance).

Consistent with the framework provided in the Ordinance, when formulating a recommendation to the Tribunal on the level of pecuniary penalty in different cases, the Commission will generally take into account the severity of the contravention and the need to achieve effective deterrence. Due credit will be given to those who cooperate with the Commission. While the Commission will recommend an amount of pecuniary penalty it considers appropriate, it is ultimately for the Tribunal to determine the penalty amount to be imposed.

In line with the principles above and the Tribunal's first judgment on pecuniary penalties, the Policy sets out a 4-step approach to the formulation of a recommended pecuniary penalty for businesses and business associations, with key elements as follows:

Step 1 – Determining the base amount

To determine the base amount, the Commission will consider:

- the value of the business's sales related to the contravention in Hong Kong;
- the seriousness of the conduct; and
- the duration of the contravention.

Step 2 – Making adjustments for aggravating, mitigating and other factors

The Commission will consider factors that may lead to an increase or decrease of the base amount. These are:

- aggravating factors, such as a business acted as a leader, or directors were involved in the conduct;
- mitigating factors, such as a business's participation in the contravention was limited;
- whether the company was previously found to have contravened the Ordinance;
- the loss or damage, if any, caused by the conduct;
- the need to achieve deterrence; and
- whether the penalty recommended is just and proportionate in the circumstances of the case.

Step 3 – Applying the statutory cap

Where the amount calculated after carrying out the above two steps exceeds the maximum pecuniary penalty under the Ordinance i.e. 10% of the undertaking's total turnover in Hong Kong for each year of the contravention up to a maximum of 3 years, the Commission will adopt the statutory maximum as the recommendation, subject to any adjustments in Step 4.

Step 4 – Applying cooperation reduction

Where a business cooperates with the Commission, a cooperation reduction will, if applicable, be applied as a final adjustment to the amount calculated.

Mr Brent Snyder, CEO of the Commission, said, "The consequences of engaging in anticompetitive conduct can be serious. This is exemplified by the Tribunal's first judgment on pecuniary penalties in a cartel case, where seven of the ten convicted companies were ordered to pay the maximum fines and all ten companies were made to pay the Commission's costs. We are pleased that, in this case, the Commission's recommended framework for assessing pecuniary penalties was largely accepted by the Tribunal.

By issuing the Policy, the Commission seeks to ensure consistency across cases and provide transparency on the determination process of its pecuniary penalty recommendations. Together with the Commission's leniency and cooperation programs, this policy forms a comprehensive framework for businesses engaged in cartels to assess the benefits of coming forward and cooperating with the Commission, thus strengthening enforcement and enhancing deterrence."

The Policy on Recommended Pecuniary Penalties is available on the Commission's website at www.compcomm.hk.

香港竞争事务委员会发表反竞争行为的建议罚款政策

2020 年 6 月 22 日，香港竞争事务委员会（竞委会）发表反竞争行为的建议罚款政策（政策）。该政策概述了当有企业违反、或牵涉入违反《竞争条例》（《条例》）的第一或第二行为守则时，竞委会在厘定向竞争事务审裁处（审裁处）建议的罚款水平时，所采用的 一般原则及计算方法。

竞委会就不同案件厘定向审裁处建议的罚款水平时，一般会考虑案中违法行为的严重程度及有关罚款额能否发挥阻吓作用，该等原则与《条例》订明的框架一致。此外，竞委会亦会建议向提供合作的企业作适当的罚款宽减。竞委会会向审裁处建议其认为适当的罚款数额，唯最终的罚款额乃由审裁处决定。

依据上述原则及审裁处较早前作出的首宗罚款裁决，该政策列明了竞委会厘定建议罚款的四个步骤，这计算方法适用于违法的企业及行业协会：

第一步：厘定基本款额

在厘定基本款额时，竞委会将考虑以下因素：

- 与该企业在香港的违法行为相关的销售值；
- 行为的严重程度；及
- 违法行为持续的时间。

第二步：按各项加重或减轻罚款的因素及其他因素作出调整

竞委会将考虑以下因素，增加或减少基本款额：

- 加重罚款的因素，例如企业在违法行为中担任领导角色，或有董事牵涉入有关行为；
- 减轻罚款的因素，例如企业只是有限度参与违法行为；
- 该公司过去曾否被裁定违反《条例》；
- 有关行为引致的损失或损害（如有）；
- 能否发挥阻吓作用；及
- 就该个案而言，建议的数额是否公正及合乎比例。

第三步：采用法定罚款上限

按上述两个步骤计算得出的数额如超出《条例》的罚款上限（即业务实体在违法行为发生期间的本地年度营业额的 10%，最长 3 年），竞委会将采用法定上限作为建议罚款额，或以此数额因应第四步作出最后调整。

第四步：因合作而宽减

企业如与竞委会合作，竞委会将从以上计算所得的数额中作出宽减（如适用），作为最后的调整。

竞委会行政总裁冼博仑先生表示：「从事反竞争行为的后果可以相当严重。审裁处较早前就一宗合谋案件作出的首宗罚款裁决，便是有力的例证。该案件十间被裁定违反《条例》的公司中，七间须缴付《条例》的罚款上限，而十间公司均须支付竞委会的讼费。我们对于审裁处在此案中大致采纳了竞委会建议的框架以厘定罚款，感到十分高兴。

竞委会制定及发表此政策，除了寻求在处理不同案件时遵循一致的原则外，亦希望提高其厘定建议罚款过程的透明度。此政策连同竞委会的宽待及合作政策，构成了一个完备的框架，让从事合谋行为的企业能评估向竞委会举报及与其合作将可如何受惠，从而加强执法及增加阻吓作用。」

《建议罚款的政策》已上载于竞委会网站（www.compcomm.hk）。

Source 来源:
https://www.compcomm.hk/en/media/press/files/ENG_PR_RPP_Policy.pdf

https://www.compcomm.hk/sc/media/press/files/SC_PR_RPP_Policy.pdf

Hong Kong Competition Tribunal Hands Down its First Judgment on Pecuniary Penalties Against Ten Construction and Engineering Companies in a Cartel Case

On April 29, 2020, the Hong Kong Competition Tribunal (Tribunal) hands down its first judgment on pecuniary penalties against ten construction and engineering companies in a cartel case. Seven out of the ten companies were ordered to pay the maximum pecuniary penalty allowable under the Competition Ordinance and all of the companies were also ordered to pay the Commission's costs. The Commission is pleased that the Tribunal endorsed its recommended approach to the determination of pecuniary penalties, which should lead to stronger deterrence in future.

The decision follows the conviction of those ten companies for engaging in market sharing and price fixing when providing renovation services at public rental housing On Tat Estate last May. The penalties came as

a warning to businesses that engaging in cartel conduct will be subject to the Commission's action and potentially result in serious consequences.

香港竞争事务审裁处就一宗涉及十间装修工程公司的合谋案件首次作出罚款裁决

2020 年 4 月 29 日，香港竞争事务审裁处（审裁处）就一宗涉及十间装修工程公司的合谋案件，首次作出罚款裁决，当中七间公司须缴付《竞争条例》下可判处的罚款上限，而所有公司均须支付竞委会的讼费。竞委会对于审裁处采纳了其建议的计算方法以厘定罚款，感到十分高兴，并相信判决有助发挥更强的阻吓作用。

审裁处于 2019 年 5 月裁定该十间公司在公共屋邨安达邨提供装修服务时，从事瓜分市场及合谋定价行为。法庭的罚款裁决对企业发出了警号： 但凡从事合谋行为，便须面对竞委会的执法行动，后果可 能相当严重。

Source 来源:
https://www.compcomm.hk/en/media/press/files/ENG_PR_RPP_Policy.pdf

https://www.compcomm.hk/sc/media/press/files/SC_PR_RPP_Policy.pdf

Shenzhen Stock Exchange Publishes Listed Companies Non-compliance Punishment Standards to Promote ChiNext Reform and Pilot Registration-based IPO System

On June 24, 2020, Shenzhen Stock Exchange (SZSE) announced the publication of Implementation Standards for the Disciplinary Actions of Listed Companies (Trial) (the Standards), for purposes of further strengthening the pursuit of accountability for law and regulation violations, urging market players to duly perform their responsibilities, advancing the "transparent exchange" initiative more efficiently and promoting the reform of the ChiNext Board and the pilot project of the registration-based IPO system.

The Standards is set on the basis of the Public Censure Standards for Listed Companies on the Main Board/SME Board/ChiNext Board previously published by the SZSE, aimed at explaining how to identify the accountability for non-compliance and what standards to take for disciplinary actions to the market. **For one thing,** in line with the latest regulatory requirements of the updated Securities Law and serial rules on ChiNext Board reform and registration-based IPO system pilot, SZSE has integrated, broadened and update the disciplinary standards; **for another,** SZSE has followed the practice of "reforming transparently", earnestly addressed market needs and voluntarily made public the regulatory standards and gauges concerned by the market to evade "pocket policies".

SZSE solicited comments from the public on the Standards and received feedback from 12 listed companies and intermediaries. These institutions gave the nod to the main content of the Standards in general and proposed improvement advice on relevant articles. Based on careful study, SZSE drew on 26 reasonable and feasible suggestions in the Standards to meet the needs of the market and self-regulation.

Highlights of the Standards are set forth as below:

1. Different from the Public Censure Standards for Listed Companies which confines to the specific type of punishment, i.e. public censure of a specific group—listed companies, the Standards discloses the disciplinary standards for all types of parties which take primary responsibilities, e.g. listed companies and their directors, supervisors and senior executives, shareholders, de facto controllers and intermediaries.

2. The Standards has further improved the subjective and objective factors to be considered by SZSE when deciding which disciplinary actions to take. It has also defined that the role a person played in non-compliance, his/her functions and powers and duty performance will be the important basis for differentiating his/her primary and secondary liabilities. Actions in grave circumstances such as causing abnormal transactions, affecting stock listing conditions, involving huge amount of money in violations or conducting long-lasting or repeated violations, can be given heavier punishment. For parties who discover their non-compliance through self-check and take remedial actions or violate rules and regulations due to force majeure events, they can be given lesser punishment or be waived from punishment.

3. For the first time, the Standards puts into implementation the standards such as "publicly identifying the party as unsuitable for serving as directors, supervisors or senior executives of listed companies, collecting liquidated damages for punishment, temporarily refusing to accept relevant business documents issued by professional institutions or their employees" to reinforce non-compliance punishment. These three types of punishment are different from "reputation punishment" such as circulation of a notice of criticism and public censure because they are more deterrent and punitive and have a greater impact on the rights and obligations of the parties. They are mainly applicable to financial fraud, parties that are subject to multiple disciplinary actions in a short term, or parties that commit several non-compliance.

4. The Standards presents different types of non-compliance by listed companies and their directors, supervisors and senior executives, controlling shareholders and de facto controllers and corresponding disciplinary standards in different articles. **The first is breach of information disclosure rules.** The Standards supplements information on breach of periodic and extraordinary reporting information disclosure rules such as failure to disclose periodic reports and significant events in time, which should be subject to public censure or circulation of written criticism. **The second is breach of standard operation rules.** The Standards focuses on regulating such typical non-compliance as capital occupancy, illegal guarantee and illegal financial assistance and strengthens the disciplinary actions against a small key group, e.g. controlling shareholders and de facto controllers who order to commit violations. The Standards also harmonizes the quantitative standards for disciplinary actions of the three boards. **The third is breach of securities trading rules.** The Standards makes a distinction between active non-compliance in trading and passive non-compliance in trading and provides for lesser punishment of non-compliance in trading which are caused by such passive factors as forced close of position and judicial enforcement.

5. There is a special chapter on intermediaries in the Standards, which mainly deals with four types of non-compliance of intermediaries and their people, i.e. "responsibility for non-compliance of listed companies, failure to exercise due diligence, false records or material omissions in the documents issued, failure to cooperate with regulators and others". Correspondingly, they are subject to three levels of disciplinary actions by severity, including circulation of written criticism, public censure and halt to acceptance of related business documents issued by professional institutions and their people, in a bid to urge intermediaries and their people to act as the "market gatekeepers" and play the verification role properly.

深圳证券交易所公开上市公司违规处分标准以护航创业板改革并试点注册制

2020 年 6 月 24 日，深圳证券交易所（深交所）发布《上市公司纪律处分实施标准（试行）》（以下简称《实施标准》），进一步压实违法违规责任，督促市场主体归位尽责，更好推进透明交易所建设，护航创业板改革并试点注册制行稳致远。

《实施标准》是深交所在前期已发布的三个板块《上市公司公开谴责标准》基础上制定，旨在向市场阐明违规行为责任认定和纪律处分裁量标准。**一方面，**按照新证券法、创业板改革并试点注册制系列规则等最新监管要求，对纪律处分实施标准予以整合、拓宽与更新；**另一方面，**坚持"透明搞改革"，切实回应市场需求，主动公开市场关心的监管标准和裁量尺度，避免出现"口袋政策"。

深交所就《实施标准》向社会公开征求意见，共收到 12 家上市公司及中介机构提出的反馈意见。各方总体上对《实施标准》的主要内容表示赞同，并提出有关条款的优化建议。经认真研究，《实施标准》吸纳了 26 条合理可行的建议，以适应市场需求和自律监管需要。

以下就《实施标准》主要内容进行总结：

1. 有别于《上市公司公开谴责标准》仅适用于"上市公司"这一特定主体的"公开谴责"特定处分类型，《实施标准》对上市公司及董监高、股东、实际控制人、中介机构等相关责任主体全部种类的纪律处分实施标准均予公开。

2. 《实施标准》进一步完善了深交所在作出纪律处分决定时综合考量的主客观因素，明确当事人在违规事项中所起的作用、职责权限及履职情况等将成为区分当事人主次责任的重要依据。对于造成交易异常、影响股票上市条件、违规金额巨大或违规行为长期持续、屡错屡犯等情节严重情形的，可以从重处分；而对于自查发现、积极补救、不可抗力导致违规的，则可以从轻、减轻或者免除处分。

3. 《实施标准》首次将"公开认定不适合担任上市公司董监高等职务、收取惩罚性违约金、暂不受理专业机构或者其从业人员出具的相关业务文件"等的实施标准予以落地，加大对违法违规行为处分力度。这三类处分不同于通报批评、公开谴责等"声誉罚"，其威慑性和惩戒性质更强、对当事人的权利义务影响较大，主要适用于触及财务造假、短期内多次被纪律处分或者存在数个严重违规等情形。

4. 针对上市公司及董监高、控股股东、实控人等主体的违规行为，《实施标准》分条款列示不同违规类型及对应的处分标准。**一是信息披露违规，**完善针对未按时披露定期报告、重大事项披露等定期报告和临时报告信息披露违规情形，分别规定公开谴责和通报批评的标准；**二是规范运作违规，**重点规范资金占用、违规担保、违规财务资助等典型违规，对指使违规的控股股东、实际控制人等"关键少数"，加大处分力度，并统一三个板块的处分数量标准；**三是证券交易违规，**区分主动交易违规和被动违规，

并规定因强制平仓、司法强制执行等被动因素导致交易违规的，可从轻、减轻处分。

5. 《实施标准》对中介机构处分设专章规定，主要规范中介机构及其从业人员“对上市公司违规负有责任、未能勤勉尽责、出具文件存在虚假记载或重大遗漏等、不配合监管及其他”四类违规情形。同时，按违规行为的轻重程度设置通报批评、公开谴责、暂不受理专业机构或者其从业人员出具的相关业务文件三档纪律处分，督促中介机构及其从业人员发挥出核查把关的“市场看门人”作用。

Source 来源:
http://www.szse.cn/English/about/news/szse/t20200702_579192.html

http://www.szse.cn/aboutus/trends/news/t20200624_578886.html

Shanghai Stock Exchange Releases Relevant Rules for Refinancing on SSE STAR Market

On July 3, 2020, the Shanghai Stock Exchange (SSE) officially released the relevant rules for the refinancing on the SSE STAR Market, as summarized below:

General background of the refinancing rules

The collectively issued rules for refinancing on the SSE STAR Market include the Rules of Shanghai Stock Exchange for the Issuance and Listing Review of the Securities of the Companies Listed on the SSE STAR Market (the Review Rules), the Detailed Implementation Rules of Shanghai Stock Exchange for Issuance and Underwriting of the Securities of the Companies Listed on the SSE STAR Market (the Underwriting Rules) and the Q&A on the Issuance and Listing Review of the Securities of the Companies Listed on the SSE STAR Market (the Review Q&A), which have been formulated in accordance with the rules at higher levels such as the Measures for Administration of Issuance Registration of the Securities of the Companies Listed on the SSE STAR Market (for Trial Implementation) (the SSE STAR Market Refinancing Measures) promulgated by the China Securities Regulatory Commission (CSRC), mainly stipulating the review standards, the review procedures and the business requirements in the issuance underwriting for the refinancing on the SSE STAR Market. The three sets of rules, together with the regulations and regulatory documents issued by the CSRC such as the “SSE STAR Market Refinancing Measures” and the Content and Format Standards for Information Disclosure of the Companies Listed on the SSE STAR Market on Public Offering of Securities, constitute a complete system of rules for securities issuance of the companies listed on the SSE STAR Market.

In addition, the SSE simultaneously issued the Notice of Effectively Conducting Related Work in 2020 for the Simplified Procedures for Refinancing Applying to the Companies Listed on the SSE STAR Market (the “Notice” for short), so as to adjust the requirements for the simplified refinancing procedures to apply to the listed companies on the SSE STAR Market in 2020.

Solicitation of opinions and the market feedback on the Review Rules and the Underwriting Rules

On November 8, 2019, the SSE publicly solicited opinions from the market on the "Review Rules" and the "Underwriting Rules" during a period of one month. After soliciting opinions, the SSE carefully analyzed and studied the opinions and suggestions from the public, and fully absorbed reasonable and feasible opinions and suggestions into the rules and systems. During the period, the newly amended Securities Law formally took effect in March 2020. As the CSRC revised and improved the SSE STAR Market Refinancing Measures, the SSE also made further amendments and improvements to the "Review Rules" and "Underwriting Rules" at the same time.

Compared with the exposure draft released in November 2019, the Review Rules mainly contains the following important adjustments. First of all, the convertible corporate bonds (the Convertible Bonds) have been made a new product for the companies listed on the SSE STAR Market to apply for issuance and listing of securities, including the convertible bonds issued to non-specific targets and specific targets; second, the relevant expressions on securities issuance are adjusted according to the Securities Law and SSE STAR Market Refinancing Measures, as the "public offering" is revised to "offering to non-specific targets", and the "non-public offering" is changed to "offering to specific targets"; third, the requirements for disclosing the application documents are simplified; fourthly, the requirements are improved for the simplified procedures to apply to offering stocks to specific targets.

The Underwriting Rules mainly includes the following important adjustments. First of all, the business arrangement for issuing Convertible Bonds is newly added; second, the pricing arrangement for raising share from non-specific targets is adjusted, and the issuance modes, subscription procedures and requirements for information disclosure are also stipulated; third, the procedures and requirements for offering shares to specific targets are improved; fourthly, the business process of the simplified procedures applying to offering shares to specific targets is confirmed; fifthly, the mechanisms for submission of issuance plans, major event reporting after the review meeting and other matters in the securities issuance are refined, and it is also made clear that the "Underwriting

Rules" and other rules can be referenced and applicable to the auxiliary financing with purchasing assets through issuing securities.

Purpose and main content of the Review Q&A

In order to further settle the market expectations and help the market participants better understand and grasp relevant regulatory requirements, the SSE focuses on issuance conditions and information disclosure requirements for the refinancing on the SSE STAR Market to formulate the Review Q&A on the key issues, which mainly includes ten questions and answers on the financing scale and time interval of financing, the investment, use and management of the raised funds, the understanding and grasp of the newly added horizontal competition with significant adverse impacts, apparently unfair related transactions and major violations, and related procedural requirements in review.

Review Q&A focuses on the differentiated issuance conditions and information disclosure requirements of the SSE STAR Market to clarify the corresponding concerns in review. For the general and common issues involved in the review of refinancing issuance, the SSE refers to and applies the "Answers to Several Questions on the Refinancing Business" issued by the CSRC.

Changes made to the procedures and time limit of review for refinancing of listed companies on the SSE STAR Market in comparison with the IPO review

Regarding the review procedures, those for refinancing of the listed companies on the SSE STAR Market are basically the same as IPO review procedures on the board, which means that the SSE conducts issuance and listing review and the CSRC is in charge of the registration. Moreover, in order to further improve the review efficiency and shorten the time limit of review, the refinancing review for the listed companies on the SSE STAR Market distinguishes between issuing securities to non-specific and specific targets, and adopts differentiated review procedures. In the issuance of securities to non-specific targets, the application will be submitted to the listing committee for consideration after the SSE's review body provides the preliminary review opinions; in the issuance of securities to specific targets, it is not necessary to refer the application to the listing committee for deliberation.

With regard to the time limit for review, compared with the IPO review for the SSE STAR Market, the review cycle for refinancing of listed companies on the SSE STAR Market is further shortened. The SSE will issue the review opinion within 2 months from the date of acceptance (excluding the reply time of the listed company); the time for issuing the first round of review inquiries is within 15 working days from the date of acceptance. In addition, the total time for the listed company and its sponsor and securities service agencies to reply to the review inquiries of the SSE shall not exceed 2 months. The CSRC will make the decision on whether or not to approve the registration for the registration application of the listed company within 15 working days.

In addition, simplified procedures have been designed for issuing stocks to specific targets in the refinancing system for the SSE STAR Market. For listed companies on the SSE STAR Market with good track record, the annual general meeting of shareholders can authorize the board of directors in accordance with the company's articles of association to decide to issue to specific targets the shares with a total financing amount less than RMB300 million and not exceeding 20% of the net assets at the end of the most recent year. After accepting application for simplified procedures, the SSE will no longer conduct review inquiries if the sponsor expresses a clear affirmative opinion on the verification, and within 3 working days from the date of acceptance, the review opinion will be issued and submitted to the CSRC for the registration procedure. The CSRC will make decision on whether or not to approve the registration within 3 working days after receiving the review opinion from the SSE. It is worth noting that, considering that the listed companies on the SSE STAR Market have basically completed the convening of the 2019 annual general meetings of shareholders, in order to give full play to the financing function of the simplified procedures, requirements have been adjusted for the applicability of the simplified procedures in 2020, as a listed company may authorize the board of directors to decide to apply for the simplified procedures by convening an extraordinary general meeting.

上海证券交易所发布科创板再融资相关规则

2020 年 7 月 3 日，上海证券交易所（上交所）正式发布了科创板再融资相关规则，情况总结如下

再融资规则的总体情况

是次集中发布的科创板再融资相关规则，包括《上海证券交易所科创板上市公司证券发行上市审核规则》（以下简称《审核规则》）《上海证券交易所科创板上市公司证券发行承销实施细则》（以下简称《承销细则》）《上海证券交易所科创板上市公司证券发行上市审核问答》（以下简称《审核问答》）等 3 项规则，是依据中国证券监督管理委员会（中国证监会）发布实施的《科创板上市公司证券发行注册管理办法（试行）》（以下简称《科创板再融资办法》）等上位规则制定的，主要规定了科创板再融资的审核标准、审核程序和发行承销环节的业务要求。这 3 项规则与中国证监会发布的《科

创板再融资办法》《科创板上市公司公开发行证券信息披露内容与格式准则》等规章和规范性文件一起，构成了科创板上市公司证券发行的完整规则体系。

此外，上交所同步发布了《关于做好 2020 年科创板上市公司适用再融资简易程序相关工作的通知》（以下简称《通知》），调整了科创板上市公司再融资简易程序 2020 年的适用要求。

《审核规则》和《承销细则》征求意见及市场反馈的情况

2019 年 11 月 8 日，上交所就《审核规则》和《承销细则》公开向市场征求意见，征求意见为期 1 个月。征求意见结束后，上交所认真分析研究了社会各界提出的意见和建议，将合理可行的意见和建议充分吸收到了规则和制度中。期间，新修订的《证券法》于 2020 年 3 月正式实施，证监会对《科创板再融资办法》进行了修改和完善，上交所也同步对《审核规则》和《承销细则》进行了进一步修改和完善。

相较于 2019 年 11 月的征求意见稿，《审核规则》主要有以下几方面重要调整：一是将可转换公司债券（以下简称可转债）作为科创板上市公司申请证券发行并上市的新品种，包括向不特定对象发行可转债和向特定对象发行可转债；二是根据《证券法》和《科创板再融资办法》调整证券发行的相关表述，将“公开发行”调整为“向不特定对象发行”，将“非公开发行”调整为“向特定对象发行”；三是简化申请文件的披露要求；四是完善向特定对象发行股票适用简易程序的要求。

《承销细则》主要有以下几方面重要调整：一是新增发行可转债的业务安排；二是调整向不特定对象募集股份定价安排，并规定了发行方式、申购流程和信息披露要求等；三是完善向特定对象发行股票的流程要求；四是明确向特定对象发行股票适用简易程序的业务流程；五是完善证券发行中的发行方案报送和会后重大事项报告等机制，同时明确发行证券购买资产的配套融资参照适用《承销细则》等。

《审核问答》的制定目的和主要内容

为了进一步明确市场预期，便于市场主体更好地理解把握相关监管要求，上交所聚焦科创板再融资的发行条件和信息披露要求，就其中的重点问题制定了《审核问答》，主要包括再融资的融资规模和时间间隔、募集资金的投向使用与管理、新增重大不利影响的同业竞争和显失公平的关联交易以及重大违法行为的理解与把握、相关审核程序性要求等 10 个问答。

是次《审核问答》重点针对科创板差异化发行条件和信息披露要求所对应的审核关注事项予以明确。对于再融资发行审核中涉及的一般性、共性问题，上交所参照适用中国证监会发布的《再融资业务若干问题解答》。

与 IPO 审核相比，科创板上市公司再融资的审核程序与审核时限的变化

关于审核程序，科创板上市公司申请再融资的审核程序与科创板 IPO 审核基本类同，即由交易所进行发行上市审核，证监会注册。同时，为了进一步提高审核效率、缩短审核时限，科创板上市公司再融资审核区分向不特定对象发行证券和向特定对象发行证券，采取差异化的审核程序。向不特定对象发行证券的，上交所审核机构提出初步审核意见后将提交上市委审议；向特定对象发行证券的，则无需提交上市委审议。

关于审核时限，与科创板 IPO 审核相比，科创板上市公司再融资的审核周期进一步缩短，上交所自受理之日起 2 个月内（不包括上市公司的回复时间）出具审核意见；首轮审核问询发出的时间为自受理之日起 15 个工作日内。同时，上市公司及其保荐人、证券服务机构回复上交所审核问询的时间总计不超过 2 个月。中国证监会在 15 个工作日内对上市公司的注册申请作出注册或者不予注册的决定。

此外，是次科创板再融资制度中设计了向特定对象发行股票适用的简易程序，对于运营规范的科创板上市公司，年度股东大会可以根据公司章程的规定，授权董事会决定向特定对象发行融资总额不超过人民币 3 亿元且不超过最近一年末净资产 20%的股票。上交所受理简易程序的申请后，对于保荐人发表明确肯定核查意见的，将不再进行审核问询，自受理之日起 3 个工作日内出具审核意见并报中国证监会注册，中国证监会将自收到交易所审核意见后 3 个工作日内作出予以注册或不予注册的决定。考虑到目前科创板上市公司已基本完成 2019 年年度股东大会的召开，为充分发挥简易程序的融资功能，是次调整了简易程序 2020 年的适用要求，上市公司可以通过召开临时股东大会的方式，授权董事会决定申请简易程序。

Source 来源:
http://english.sse.com.cn/news/newsrelease/c/5151555.shtml

http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20200703_5147858.shtml

Shanghai Stock Exchange Releases Detailed Implementation Rules for Shareholders of Companies Listed on SSE STAR Market to Reduce Shareholding through Inquiry Transfer and Placement to Specific Institutional Investors

On July 3, 2020, Shanghai Stock Exchange (SSE) released the Detailed Implementation Rules for Shareholders of Companies Listed on SSE STAR Market to Reduce Shareholding through Inquiry Transfer and Placement to Specific Institutional Investors (the "Detailed Implementation Rules") to be effected on July 22, 2020.

The SSE has carefully studied the opinions of the market participants and fully absorbed the reasonable and feasible suggestions before adjusting the Detailed Implementation Rules in the following two aspects.

On the one hand, the inquiry transfer system has been improved. First of all, in order to adapt to the new Securities Law, the expression of "non-public transfer" in the consultation draft is adjusted to "inquiry transfer to specific institutional investors" (the inquiry transfer), so as to more accurately reflect the characteristics of the business and facilitate the understanding of market participants. Second, the processes of the inquiry transfer business are simplified, as the process of soliciting intentions of transfer and the corresponding requirement for information disclosure are cancelled, so as to improve the transfer efficiency. Third, the measures for guaranteeing implementation are added, as it is required that the transferors should declare and lock up the volume of the shares to be transferred, and the transferees should not give up the subscription without justified reasons. In addition, institutional space has also been reserved for the mid-and-long-term funds to participate in the transfer.

On the other hand, the placement-based shareholding reduction system has been refined. First of all, the range of placement participants has been set, as the shareholders participating in the placement should make the placement to the shareholders of the companies listed on the SSE STAR Market who are registered on the date of record, which will be disclosed in the announcement on the placement plan. Second, the mode of subscription has been specified, as the placement participants planning to subscribe for the shares should conduct the subscription via the SSE system on the 5th trading day after the date of record. Third, the way to deal with insufficient subscription has been clarified, as the shareholders participating in the placement shall sell in proportions if the shares are not fully subscribed for. Fourthly, the market expectation has been stabilized, as the shareholders participating in the placement shall apply to lock up the volume of the shares to be placed, and promise to have adequate shares available for the placement; in addition, there is an extra requirement for disclosing the proportions of the placement right.

上海证券交易所发布科创板上市公司股东以向特定机构投资者询价转让和配售方式减持股份实施细则

2020 年 7 月 3 日，上海证券交易所（上交所）发布了《上海证券交易所科创板上市公司股东以向特定机构投资者询价转让和配售方式减持股份实施细则》（以下简称《实施细则》），2020 年 7 月 22 日起施行。

对于市场主体提出的制度完善意见，上交所经认真研究论证，充分吸收合理可行的建议，对《实施细则》作出了以下两个方面的调整。

一是优化询价转让制度。其一，做好与新《证券法》的衔接，将征求意见稿中"非公开转让"的表述，调整为"向特定机构投资者询价转让"（以下简称询价转让），以更准确地体现业务特点，便于市场理解。其二，简化询价转让业务环节，取消征集转让意向环节及相应信息披露要求，提高转让效率。其三，增加履约保障措施，要求出让方申报锁定拟转让股份额度，受让方无正当理由不得放弃认购。另外，还为中长期资金参与受让预留了制度空间。

二是细化配售方式减持制度。其一，确定配售对象，参与配售的股东应当以股权登记日登记在册的科创公司股东为配售对象进行配售，股权登记日在配售计划公告中披露。其二，规定申购方式，配售对象拟认购股份的，应当于股权登记日后的第 5 个交易日通过本所系统申购。其三，明确认购不足的处理，配售对象认购不足的，参与配售的股东按比例出售。其四，明确市场预期，参与配售的股东需申请锁定拟配售股份额度，并承诺有足额股份可供配售；同时，增加配售权比例披露要求。

Source 来源:
http://www.sse.com.cn/lawandrules/sserules/tib/listing/c/5147504.shtml

http://english.sse.com.cn/news/newsrelease/c/5150294.shtml

http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20200703_5147525.shtml

U.S. Securities and Exchange Commission Charges Telegram to Return US$1.2 Billion to Investors and Pay US$18.5 Million Penalty

On June 26, 2020, the U.S. Securities and Exchange Commission (SEC) announced that it obtained court approval of settlements with Telegram Group Inc. and its wholly owned subsidiary TON Issuer Inc. to resolve charges that Telegram's unregistered offering of digital tokens called "Grams" violated the federal securities laws. The defendants agreed to return more than

US$1.2 billion to investors and to pay an US$18.5 million civil penalty.

On October 11, 2019, the SEC filed a complaint against Telegram, alleging that the company had raised capital to finance its business by selling approximately 2.9 billion Grams to 171 initial purchasers worldwide. The SEC sought to preliminarily enjoin Telegram from delivering the Grams it sold, which the SEC alleged were securities that had been offered and sold in violation of the registration requirements of the federal securities laws. On March 24, 2020, the U.S. District Court for the Southern District of New York issued a preliminary injunction barring the delivery of Grams and finding that the SEC had shown a substantial likelihood of proving that Telegram's sales were part of a larger scheme to unlawfully distribute the Grams to the secondary public market.

Without admitting or denying the allegations in the SEC's complaint, the defendants consented to entry of a final judgment enjoining them from violating the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933. The judgment orders defendants to disgorge, on a joint and several basis, US$1,224,000,000 in ill-gotten gains from the sale of Grams, with credit for the amounts Telegram pays back to initial purchasers of Grams, and also orders Telegram Group Inc. to pay a civil penalty of US$18,500,000. Telegram is further required, for the next three years, to give notice to the SEC staff before participating in the issuance of any digital assets.

美国证券交易委员会罚令 Telegram 支付 12 亿美元归还予投资者并处以 1,850 万美元罚款

2020 年 6 月 26 日，美国证券交易委员会（美国证交会）与 Telegram Group Inc.及其全资子公司 TON Issuer Inc.就数字令牌“Grams”未经注册发行违反联邦证券法的指控达成和解。被告同意向投资者返还逾 12 亿美元，并支付 1,850 万美元的民事罚款。

2019 年 10 月 11 日，美国证交会对 Telegram 提起诉讼，指控该公司通过向全球 171 个初始购买者出售了大约 29 亿 Grams 产品来筹集资金。美国证交会试图初步禁止 Telegram 交付出售的 Grams，称这是违反联邦证券法注册要求而提供和出售的证券。 2020 年 3 月 24 日，美国纽约南区地方法院发布了一项初步禁令，禁止交付 Grams，并称美国证交会证明了极有可能 Telegram 的销售是一项非法分销 Grams 到二级公开市场的计划的一部分。

在不承认或否认指控的情况下，被告同意最终禁止其违反 1933 年《证券法》第 5(a)和 5(c)条的注册规定的判决。判决要求被告归还出售 Grams 所得的 1,224,000,000 美元的不当收益，并记入 Telegram 偿还给 Grams 最初购买者的金额，并命令 Telegram Group Inc. 支付民事罚款 18,500,000 美元。此后三年内，Telegram 并被要求在参与发行任何数字资产之前通知美国证交会员工。

Source 来源:
https://www.sec.gov/news/press-release/2020-146

U.S. Securities and Exchange Commission Updates Filing Threshold to Rule 17h Reporting Requirements for Broker-Dealers

On June 29, 2020, U.S. Securities and Exchange Commission (SEC) issued an order to update the filing threshold for broker-dealers' Form 17-H filings made pursuant to Exchange Act Rules 17h-1T and Rule 17h-2T. The threshold, which had not been updated in nearly 30 years, will exempt certain smaller broker-dealers from the reporting requirements of the rules while continuing to provide important information to SEC on the financial condition of covered broker-dealers and their affiliates.

In 1992, SEC adopted the 17h Rules, which set forth specified recordkeeping and reporting requirements for certain broker-dealers that are part of a holding company structure, pursuant to the Market Reform Act of 1990. Broker-dealers that do not hold customer funds or securities, owe money or securities to customers, or otherwise carry the accounts of or for customers are exempt from the 17h Rules provided that they maintain capital, including subordinated debt, of less than US$20 million. The order updates this threshold for the first time and provides an exemption from the 17h Rules for broker-dealers with capital between US$20 million to US$50 million so long as the broker-dealer maintains less than US$1 billion in total assets. Firms maintaining US$50 million or more in capital, including subordinated debt, currently account for approximately 98 percent of the total capital of the broker-dealers subject to the 17h Rules; these firms will continue to remain subject to the rules.

The exemptive order is effective immediately.

美国证券交易委员会更新规则 17 经纪交易商报告要求的申报门槛

2020 年 6 月 29 日，美国证券交易委员会（美国证交会）发布命令，更新根据交易法规则 17h-1T 和规则 17h-2T 提交的经纪交易商 17-H 表的申报门槛。 该门槛要求已经近 30 年未有更新，是次更新将豁免某些小型经纪交易商的报告要求，但其仍需向美国证交会提供有关承保经纪交易商及其附属公司财务状况的重要信息。

1992 年，美国证交会通过了规则 17h，根据 1990 年市场改革法，对某些控股公司结构的经纪交易商规定了特定的记录和报告要求。未持有客户资金或证券，亏欠客户的资金或证券，或以其他方式与客户结账记账的经纪交易商，只要其持有的资本（包括次级债务）少于 2,000 万美元，则不受 17h 规则的约束。 是次命令首次更新了此门槛值，资本在 2,000 万美元至 5,000 万美元之间的经纪交易商豁免于 17h 规则，只要该经纪交易商的总资产维持在 10 亿美元以下即可。拥有包括次级债在内的资本在 5000 万美元或以上的公司目前约占根据规则 17h 下经纪交易商总资本的 98%； 这些公司将继续遵守规则。

豁免令立即生效。

Source 来源:
https://www.sec.gov/news/press-release/2020-147

U.S. Securities and Exchange Commission Amends Exemptive Applications Procedures

On July 6, 2020, the U.S. Securities and Exchange Commission (SEC) announced that it has voted to adopt rule amendments to establish an expedited review procedure for exemptive and other applications under the Investment Company Act that are substantially identical to recent precedent, as well as a new informal internal procedure for applications that would not qualify for the new expedited process. These new procedures will be effective 270 days following their publication in the Federal Register.

Amendments to Procedures with Respect to Applications Under the Investment Company Act of 1940

SEC regularly receives applications seeking orders for exemptions or other relief for funds under the Investment Company Act. For example, many funds have historically required an exemption in order to operate, such as exchange-traded funds, and other funds have sought exemptive relief in order to operate in a more efficient and less costly manner. Rule 0-5 under the Act sets forth the procedure for applications seeking such exemptive orders. Granting appropriate exemptions from the Act can provide important economic benefits to funds and their shareholders, foster financial innovation, and increase the diversity of opportunities for investors.

The SEC adopted amendments to rule 0-5 to, among other things, establish an expedited review procedure for certain applications and establish an internal timeframe for review of applications outside of the expedited procedure. The amendments are intended to grant relief as efficiently and quickly as possible, while also ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards.

Expedited Review Procedure for Routine Applications

The amendments to rule 0-5 under the Investment Company Act establish an expedited review procedure for routine applications that are substantially identical to recent precedent.

- Expedited review will be available if the application is substantially identical to two other applications for which an order granting the relief has been issued within three years of the date of the application's initial filing.

- Notice for an application filed under expedited review will be issued no later than 45 days from the date of filing unless the application is not eligible under the rules or additional time is necessary for appropriate staff consideration.

- An application for expedited review will be deemed withdrawn if the applicant does not respond to comments from SEC staff within 30 days.

Procedure for Other Applications

The amendments to rule 0-5 under the Act will deem an application outside of expedited review withdrawn when the applicant does not respond to comments from SEC staff within 120 days.

New rule 17 CFR 202.13 establishes an internal timeframe for staff to take action on applications outside of expedited review within 90 days of the initial filing and each of the first three amendments thereto, and within 60 days of any subsequent amendment.

美国证券交易委员会通过豁免申请程序修正案

2020 年 7 月日，美国证券交易委员会（美国证交会）宣布投票通过修正案，根据投资公司法建立与最近一些先例基本相同的豁免和其他申请的加急审查程序，以及对不符合新加急程序条件采取非正式内部流程。这些程序将在联邦公报发布后 270 天生效。

根据 1940 年投资公司法对申请程序进行修订

美国证交会经常收到根据投资公司法寻求豁免或其他基金宽免的申请。例如，许多基金曾要获得豁免才能运作，如交易所买卖基金，而其他基金则寻求豁免以便更高效更低成本的方式运作。规则 0-5 规定了寻求此类豁免命令的程序。适当的豁免可以为基金及其股东带来重要的经济利益，促进金融创新，并为投资者增加机会多样性。

美国证交会通过了对规则 0-5 的修订，其中，为某些申请建立了加速审查程序，并为内部审查程序设定了内部时间表。这些修订旨在尽可能高效快速地提供豁免，同时确保继续根据相关法定标准对申请进行认真考量。

常规申请的加速审查程序

投资公司法对规则 0-5 的修订为常规申请建立了加速审查程序，该程序与最近先例基本一致。

- 如果申请与初次提交申请之日起三年内已发出授予豁免的命令的其他两个申请基本相同，则可以进行加速审查。

- 除非根据规则不符合申请资格或工作人员审核需要适量额外时间，否则将在不迟于申请之日起 45 天之内发出针对加急审查申请通知。

- 如果申请人在 30 天内未回应美国证交会工作人员的意见，则视为该申请已被撤回。

其他申请程序

- 则根据规则 0-5 的修订，如果申请人在 120 天内未回应美国证交会工作人员的意见，加速审查之外的申请将视为撤回。

- 新规则 17 CFR 202.13 规定了内部时间表，就加速审查之外的申请，规定工作人员在初次提出申请及其前三项修正案的 90 天内，以及随后的任何修正案的 60 天内，采取行动。

Source 来源:
https://www.sec.gov/news/press-release/2020-150

A Joint Investigation into Citadelle and Senjo Launched by Commercial Affairs Department of Singapore Police Force and Monetary Authority of Singapore Following Review of Developments Relating to Wirecard

Markus Braun, the Austrian tech entrepreneur who built Wirecard into one of Germany's biggest companies, has been arrested after a S$2.1 billion hole exploded in its accounts. Munich prosecutors confirmed that Braun, Wirecard's former CEO, was arrested on suspicion of having inflated the digital payment company's balance sheet and sales through fake transactions in order to make it more attractive to investors and customers. Prosecutors said that Braun may have acted in cooperation with other perpetrators.

Wirecard acknowledged that €1.9 billion (S$2.1 billion) in cash included in financial statements — or roughly a quarter of its assets — probably never existed in the first place. The company withdrew its preliminary results for 2019, the first quarter of 2020 and its profit forecast for 2020. The scandal erupted when Wirecard said that its auditor, Ernst & Young, could not locate the funds in trust accounts and refused to sign off on the company's financial results. The fallout is raising questions over how the company's regulators and auditors could have missed accounting irregularities.

The Commercial Affairs Department (CAD) of the Singapore Police Force and the Monetary Authority of Singapore (MAS) have launched a joint investigation into Citadelle Corporate Services Pte Ltd (Citadelle), Senjo Group Pte Ltd and its subsidiaries (Senjo) for suspected falsification of accounts under the Penal Code (Cap 224), as well as carrying on a trust business without a license under the Trust Companies Act (Cap 336).

The investigation follows the announcement on June 29, 2020 that MAS and the Accounting and Corporate Regulatory Authority are collaborating with CAD to scrutinize recent developments relating to Wirecard AG. The review surfaced reasons to suspect that offences may have been committed. As part of the investigation,

CAD and MAS have obtained documents and records from Citadelle and Senjo and have interviewed persons involved in the companies.

MAS is aware of media reports alleging that Citadelle has handled monies for Wirecard in a trustee capacity. The provision of trust services as a business in Singapore is an activity regulated by MAS under the Trust Companies Act. Citadelle is not licensed to provide trust business services in Singapore and is not supervised by MAS. MAS has listed Citadelle on the Investor Alert List on its website.

新加坡警察局商业事务部及新加坡金融管理局紧随 Wirecard 相关审查的发展之后对 Citadelle 及 Senjo 展开联合调查

将 Wirecard 打造成为德国最大企业之一的奥地利科技企业家 Markus Braun，在账户出现 21 亿新元漏洞之后被捕。经慕尼黑检察官证实，Wirecard 前首席执行官 Markus Braun 因涉嫌通过虚假交易夸大电子支付公司的资产负债表及销售额从而提升该公司对投资者及消费者的吸引力而被捕。检察官还说，Markus Braun 可能与其他犯罪者共同作案。

Wirecard 日前已承认，财务报表中包含的约占其资产四分之一的 19 亿欧元（21 亿新元）资金，可能从一开始

就并不存在。该公司撤回了其 2019 年度、2020 年度第一季度的初步业绩以及 2020 年度的利润预测。这一丑闻爆发于 Wirecard 声称其审计机构安永会计师事务所无法在信托账户中找到这笔资金并拒绝签署财务业绩报表。此事的影响就是，令人质疑该公司的监管机构及审计机构是如何遗漏财务违规行为的。

新加坡警察局商业事务部及新加坡金融管理局日前对 Citadelle Corporate Services Pte Ltd，Senjo Group Pte Ltd 及其子公司进行了联合调查，因其涉嫌伪造账户违反《刑法》(第 224 章) 的规定以及未经许可经营信托业务《信托公司法》(第 336 章) 的规定。

此项调查是紧随于 2020 年 6 月 29 日公布的新加坡金融管理局及新加坡会计与企业管理局与新加坡警察局商业事务部合作以审查与 Wirecard AG 有关的最新发展之后进行的。再审提出了怀疑犯罪行为可能已经发生的理由。作为调查的一部分，新加坡警察局商业事务部及新加坡金融管理局已从 Citadelle 和 Senjo 处取得文件和记录并采访了公司有关人员。

新加坡金融管理局得知有媒体报道声称 Citadelle 已经以受托人身份处理 Wirecard 的款项。在新加坡提供信托业务服务，是须遵守《信托公司法》规定并受新加坡金融管理局规管的活动。Citadelle 没有取得在新加坡提供信托业务服务的许可，也不受新加坡金融管理局的监管。新加坡金融管理局已在其网站上的投资者警示列表中列明 Citadelle。

Source 来源:
https://www.mas.gov.sg/news/media-releases/2020/investigation-into-citadelle-and-senjo-following-review-of-developments-relating-to-wirecard

Australian Securities and Investments Commission Issues No-action Position to Allow Right-of-use Lease Assets to Count in Satisfying AFS Licensee Requirements

Australian Securities and Investments Commission (ASIC) issued a temporary no-action position for Australian financial services (AFS) licensees in relation to potential breaches of the financial resource requirements that arise from recent changes to the accounting treatment of lease assets. The no-action position will apply until further notice.

AFS licensees are required to maintain adequate resources, including financial resources, to provide services under the terms of their licenses. ASIC recognizes that some AFS licensees may face difficulty in complying with their financial resource requirements because, following changes to the accounting standards for leases, lessees are required to recognize lease liabilities and a right-of-use asset for all leases. While the lease liabilities are taken into account for the purposes of an AFS licensee's financial resource requirements, the right-of-use assets are now generally treated as intangible assets and do not count towards meeting those requirements.

By issuing the temporary no-action position, ASIC:

- will allow licensees to use right-of-use lease assets to count towards their financial resource requirements; and
- will not take regulatory action against licensees in relation to past breaches of financial resource requirements, when the breach arises from right-of-use lease assets not being able to be counted towards meeting those requirements.

ASIC plans to consult on proposals to change the financial resource requirements to enable an AFS licensee to include a right-of-use lease asset when calculating whether it meets its financial resource requirements.

澳大利亚证券与投资委员会发布不采取行动立场以允许将使用权租赁资产计入满足澳大利亚金融服务牌照被许可人要求

澳大利亚证券与投资委员会针对澳大利亚金融服务的被许可人发布了暂时不采取行动立场，涉及因租赁资产会计处理的最新变更而可能违反财务资源要求的情况。除非另行通知，否则不采取任何行动。

澳大利亚金融服务的被许可人必须保持足够的资源（包括财务资源），以根据其许可条款提供服务。澳大利亚证券与投资委员会意识到，某些澳大利亚金融服务许可持有人可能正面临难以遵守财务资源要求的困境，因为随着租赁会计准则的变更，承租人被要求确认所有租赁负债和使用权资产。虽然租赁负债是为澳大利亚金融服务被许可人的财务资源要求考虑的，但使用权资产现在通常被视为无形资产，不计入满足这些要求的范围。

通过发布临时不采取行动立场，澳大利亚证券与投资委员会：

- 将允许被许可人将使用权租赁资产计入其财务资源需求；及
- 如果违反行为是由于使用权租赁资产无法计入满足这些要求而引起的，则不会对违反财务资源要求的行为采取监管措施。

澳大利亚证券与投资委员会计划就改变财务资源要求的提案进行磋商，以使澳大利亚金融服务被许可人在计算其是否满足财务资源要求时能将使用权租赁资产包含其中。

Source 来源:
https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-158mr-asic-issues-no-action-position-to-allow-right-of-use-lease-assets-to-count-in-satisfying-afs-licensee-requirements/

The Climate Financial Risk Forum Publishes Guide to Help the Financial Industry Address Climate-related Financial Risks

The Climate Financial Risk Forum (CFRF) has published a guide written by industry for industry to help firms approach and address climate-related financial risks. The guide provides practical recommendations to firms of all sizes on disclosure of climate-related financial risks; effective risk management; scenario analysis, and opportunities for innovation in the interest of consumers.

The CFRF was jointly established in March 2019 by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), reflecting the importance of climate change to their respective strategic objectives. Its aim is to build capacity and share best practice across financial regulators and industry to advance the sector's responses to the financial risks from climate change. Membership is drawn from a wide range of industry participants, to ensure the perspective of a broad range of firms is represented.

The objective of the guide is to help firms understand the risks that arise from climate change, and to provide support on how to integrate these risks into their strategy and decision-making processes. Each chapter within the guide provides practical tools, experience, knowledge and case studies, which firms can use as they develop their strategies, processes and approaches. The key areas are:

- **Risk management**: By appropriately embedding climate-related financial risk into its governance and risk management processes, firms can make informed business decisions and improve their resilience.

- **Scenario analysis**: By appropriately modelling and considering a range of possible scenarios, a firm can better understand and manage future risks today, whilst capturing opportunities to support the transition to a net-zero carbon economy.

- **Disclosures**: By making effective climate-related financial disclosures, a firm can improve transparency thereby helping the market appropriately assess the true future value of assets.

- **Innovation**: By developing novel products, services, policies and approaches, a firm can adapt its business to respond to the potential impacts of climate change, benefit consumers and deliver the change required to meet climate goals.

The PRA and the FCA acknowledge that the financial services sector is facing significant challenges as a consequence of the pandemic. While Covid-19 represents a present risk, minimizing the future risks from climate change requires action now. As such, the regulators remain committed to continuing to work together with industry on this important topic.

气候金融风险论坛发布指南以帮助金融业应对气候相关的金融风险

气候金融风险论坛发布了一份由行业撰写的行业指南，以帮助企业应对与气候相关的金融风险。该指南为各种规模的公司提供有关气候相关金融风险披露的实用建议、有效的风险管理、情景分析以及为消费者利益而进行创新的机会。

气候金融风险论坛由审慎监督管理局及金融行为监管局于 2019 年 3 月共同成立，反映了气候变化对其各自战略目标的重要性。其目的为在金融监管机构和整个行业开展能力建设并分享最佳实践，以推动行业应对气候变化带来的金融风险。成员来自广泛的行业参与者，以确保能够代表范围广泛的公司。

该指南的目的是帮助企业了解气候变化带来的风险，并为如何将这些风险纳入其战略和决策流程提供支持。指南中的每一章都提供了实用的工具、经验、知识以及案例研究，企业在制定战略、流程和方法时可以使用这些工具。关键领域在于：

- **风险管理**：通过将与气候相关的金融风险适当地嵌入其治理和风险管理流程中，公司可以制定明智的业务决策并提高其应变能力。

- **情景分析**：通过适当地建模和考虑一系列可能的情景，公司可以更好地了解和管理未来风险，同时抓住机会来支持向零碳经济过渡。

- **披露**：通过进行有效的与气候相关的财务披露，公司可以提高透明度，从而帮助市场适当评估资产的真实未来价值。

- **创新**：通过开发新颖的产品、服务、政策和方法，公司可以调整其业务以应对气候变化的潜在影响，造福于消费者，并为实现气候目标所需进行调整变化。

审慎监督管理局及金融行为监管局承认，由于新型冠状病毒大流行，金融服务业面临着严峻挑战。虽然新型冠状病毒代表当前风险，但要最大程度地减少气候变化带来的未来风险，则需要立即采取行动。因此，监管机构仍致力于在这一重要主题上继续与业界合作。

Source 来源:
https://www.fca.org.uk/news/press-releases/climate-financial-risk-forum-publishes-guide-financial-industry-address-climate-related

Financial Conduct Authority of the United Kingdom Confirms Further Support for Consumer Credit Customers

The Financial Conduct Authority (FCA) of the United Kingdom has confirmed the support users of certain consumer credit products will receive if they are still experiencing temporary payment difficulties due to coronavirus (Covid-19).

The measures outline the options firms will provide credit card and other revolving credit and personal loan customers who are coming to the end of a payment freeze and for customers who have agreed an arranged interest-free overdraft of up to £500. Customers yet to request a payment freeze or an arranged interest-free overdraft of up to £500, will have until October 31, 2020 to apply for one.

The FCA has confirmed:

- If customers can afford to return to regular repayment, or make partial payments, it is in their best interest to do so.

- Firms should contact customers coming to the end of a first payment freeze to find out if they can resume payments – and if so, agree a plan on how the missed payments could be repaid.

- For customers still facing temporary payment difficulties as a result of coronavirus, firms will provide them with support, which could include freezing or reducing payments on their credit card and personal loans to a level they can afford for 3 months.

- Customers who are negatively impacted by coronavirus and who already have an arranged overdraft on their main personal current account can request up to £500 interest-free for a further 3 months. Firms will also provide these customers with further support where it is needed including reducing the cost of borrowing above the interest-free buffer, especially if this cost of borrowing would otherwise increase.

- Customers that have not yet had a payment freeze or an arranged interest-free overdraft of up to £500 and experience temporary financial difficulty, due to coronavirus, would be able to request one up until October 31, 2020.

- Any payment freezes or partial payment freezes offered under this guidance should not have a negative impact on credit files. However, consumers should remember that credit files aren't the only source of information which lenders can use to assess creditworthiness.

When implementing this guidance, firms should be particularly aware of the needs of their vulnerable customers and should consider how they engage with them. Firms should also help customers understand the types of debt help and money guidance that are available and encourage them to access the resources that can help them.

The FCA has confirmed that it will not extend the temporary general expectation in relation to overdraft costs. In April, all firms were asked to temporarily ensure all overdraft customers were no worse off on price when compared to the prices they were charged before the recent overdraft rule changes came into force (those changes benefitted most customers). As was previously the case, firms will be able to set their prices, but overdraft customers who are financially impacted by coronavirus will continue to be able to request support on any additional borrowing in excess of £500. The FCA will continue to monitor overdraft pricing.

This guidance comes into force on July 3, 2020 and only applies to credit cards, personal loans and overdrafts. It does not apply to other consumer credit products, such as motor finance, high-cost short-term credit, rent-to-own, pawnbroking and buy-now pay-later, which are covered by separate guidance which will be updated soon.

英国金融行为监管局确认将继续支持消费信贷产品用户

英国金融行为监管局（英国金管局）日前确认，将继续对某些仍然受新型冠状病毒影响而暂时付款困难的消费信贷产品用户给予支持。

这些措施概述了公司将向即将结束还款冻结期的信用卡和其他循环信贷和个人贷款客户以及同意安排最高可达

500 英镑的无息透支的客户提供的选择。尚未要求冻结还款或安排不超过 500 英镑的无息透支的客户须于 2020 年 10 月 31 日之前提出申请。

英国金管局确认：

- 如果客户能够负担得起定期还款或部分还款的责任，那么这样做最符合他们的利益。
- 公司应当联系即将结束第一次付款冻结期的客户，明确其是否可以恢复还款。若可以恢复还款，则就如何还款达成协议。
- 对于因新型冠状病毒仍面临暂时还款困难的客户，公司将为其提供支持，包括冻结或减少信用卡和个人贷款的还款指标以使其能够负担三个月。
- 受到新型冠状病毒负面影响且已经在其主要个人往来账户上安排了透支的客户，可要求 3 个月至多 500 英镑的免息。公司还将在需要的地方为这些客户提供进一步的支持，包括将借贷成本降低到免息缓冲以上水平，特别是在如果不这样做借贷成本会增加的情况下。
- 尚未要求冻结还款或安排不超过500英镑的无息透支并且由于新型冠状病毒而遇到暂时财务困难的客户，可在 2020 年 10 月 31 日之前提出申请。
- 根据本指南提供的任何还款冻结或部分还款冻结不应对信用档案产生负面影响。但是消费者应记住，信用档案不是贷方可以用来评估信用度的唯一信息来源。

在实施此指南时，公司应当特别关注弱势客户的需求，并应考虑如何与其互动。公司还应当帮助客户了解可获取的债务帮助和财富指导的类型并鼓励其获取对其具有帮助作用的资源。

英国金管局已确认，将不会延长有关透支成本的暂时性一般预期。在 4 月份，所有公司被要求暂时确保所有透支客户在价格方面与最近透支规则的变更（这些变更使大多数客户受益）生效之前被收取的价格相比情况没有进一步恶化。与以往一样，公司可以设定价格，但是受到新型冠状病毒影响的透支客户将能够继续要求获得超过 500 英镑的额外贷款支持。英国金管局将继续监控透支价格。

该指南于 2020 年 7 月 3 日生效，仅适用于信用卡、个人贷款及透支。该指南不适用于其他消费信贷产品，例如汽车金融、高成本短期信贷、先租后买、典当行和现买现付，以上消费信贷产品将会在即将出台的单独指南中进行阐述。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-confirms-further-support-consumer-credit-customers