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

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## The Stock Exchange of Hong Kong Limited Invites Feedback on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display

On July 24, 2020, the Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published (i) a consultation paper seeking public feedback on proposals to introduce a paperless listing and subscription regime, online display of documents and a reduction of the types of documents on display (Consultation); and (ii) updated Guidance Letter HKEX-GL86-16 for IPO applicants (IPO Guidance).

### The Consultation

The Rules Governing the Listing of Securities on the Main Board of the Stock Exchange (the Listing Rule currently require all issuers of equities, debt securities and collective investment schemes (CIS) to issue listing documents in physical printed form. Under the law, an application form must be issued with or accompanied by the listing document. This has led to the issue of application forms in the same medium, i.e. in physical printed form.

Issuers are also required to place various printed documents on display, such as material contracts, directors' service contracts, experts' consents and statements of adjustments, for physical inspection.

Bonnie Y Chan, HKEX's Head of Listing, said: "The Listing Rule requirements for printed form physical listing documents and the physical display of documents are out-of-step with modern practices. The widespread availability and use of the Internet, and our support for sustainable and environmentally friendly practices, coupled with our ongoing commitment to lower costs and improve efficiencies, have prompted these proposals. In addition, particularly in respect of IPOs, market statistics<sup>1</sup> have shown that the electronic submission of applications is preferred." In 2019, only 0.42% of the applications for 162 IPOs handled by a major share registrar in Hong Kong were made through

paper white application forms and only 0.18% of them were made through paper yellow application forms.

"Hong Kong is home to Asia's most progressive capital markets, and our proposals are part of our ongoing commitment to further modernize and enhance the competitiveness of our listing regime. We expect our proposals to have a positive impact on issuers and potential issuers, given they already publish listing documents online and are required to display other documents electronically by other regulators. We also believe this approach, far better reflects our focus on sustainable practices at HKEX," Ms Chan added.

### The Exchange's proposals

The Exchange's proposals include:

- Requiring (i) all listing documents in a new listing to be published solely in an electronic format; and (ii) new listing subscriptions, where applicable, to be made through online electronic channels only;
- Replacing the requirement for certain documents to be physically displayed with a requirement for those documents to be published online (on the HKEX website and on the issuer's website); and
- With respect to notifiable transactions and connected transactions, reducing the types of documents that are mandatory for an issuer to display.

The impact of the Exchange's proposals is summarized as follows:

	Existing Requirements	Proposed Requirements
<b>Fully paperless listing and subscription regime</b>		
<b>New Listings</b>	Listing documents, except for an MMO, must be available in both a printed format for collection at designated	To require online publication only of listing documents in a New Listing.

	locations in Hong Kong and in an electronic format on HKEX website and the issuer's website.	
	For equity (including stapled securities and depositary receipts) / CIS public offerings, issuers must ensure public subscriptions can be made by filling in paper application form, unless a waiver is granted.	For equity (including stapled securities and depositary receipts) / CIS public offerings (except for MMOs), to require public subscriptions be made through online electronic channels only.  No change to the existing subscription channels for preferential offerings, debt securities and structured products.
<b>Documents to be displayed online</b>		
<b>New Listings</b>	To display certain documents (including, where applicable, constitutional documents, material contracts, directors' service contracts, valuation and expert reports and audited accounts) in a printed format for physical inspection by the public at a specified location for a set period of time.	To display these documents online only on both the HKEX website and the issuer's website for the same period of time as currently required under the Listing Rules for physical inspection.
	For debt issuance program, to display: (a) listing documents for physical inspection by the public for as long	To display these documents online only on both the HKEX website and the issuer's website for the same period of

	as issues are made under the program; and (b) certain documents (including constitutional documents, valuation and expert reports, audited accounts etc.) for physical inspection by the public throughout the life of program.	time as currently required under the Listing Rules for physical inspection.
<b>Listed issuers</b> (for equity securities) - on an ongoing and continuous basis	To display certain documents (including constitutional documents, audited financial information and previous transaction circulars) on both the HKEX website and the issuer's website on an ongoing and continuous basis.	No change to the current requirement.
- in the case of an application for listing of equity securities where a listing document is required (e.g. rights issue or open offer)	To display certain documents (including, where applicable, constitutional documents, material contracts, directors' service contracts, valuation and expert reports, audited accounts and previously published transaction circulars) in a printed format for physical inspection by the public at a specified location for a set period of time.	To display these documents online on both the HKEX website and the issuer's website for the same period of time as currently required under the Listing Rules for physical inspection (except constitutional documents, audited accounts and previously published transaction circulars that are covered by the issuers' continuing obligations as mentioned above).

- for certain notifiable transactions	To display certain documents (including, where applicable, constitutional documents, material contracts, valuation and expert reports, audited accounts and previous transaction circulars) in a printed format for physical inspection by the public at a specified location for a set period of time.	In addition to the continuous disclosure proposed above, to display those contracts pertaining to the transaction and where applicable, valuation and expert reports, on both the HKEX website and the issuer's website for the same period of time as currently required under the Listing Rules for physical inspection.
- for certain connected transactions	To display all contracts referred to in the circular and directors' service contracts in a printed format for physical inspection by the public at a specified location for a set period of time.	To display those contracts pertaining to the transaction on both the HKEX website and the issuer's website for the same period of time as currently required under the Listing Rules for physical inspection.
Listings of structured products	To display certain documents (including valuation reports, expert reports, letters or documents extracted or referred to in the listing documents and current and future base listing documents) physically or online for so long as any structured products issued under a listing document is listed on the Exchange.	To only display these documents online on both the HKEX website and the issuer's website for so long as any structured products issued under a listing document is listed on the Exchange.
	(On an ongoing and continuous basis) To display certain financial	To only display these documents online on both the HKEX website

	information related documents physically or online for so long as any structured products issued are listed on the Exchange. In addition, these documents are required to be published on the HKEX website as a mandatory requirement.	and the issuer's website for so long as any structured products issued are listed on the Exchange.
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The proposal will not change the prospectus registration requirement, that is, issuers are still required to present a hard copy of the prospectus and other required documents for registration by the Registrar of Companies under section 38D and section 342C of the C(WUMPO).

### **Other Paperless Initiatives**

The consultation paper also provides details of the Exchange's other paperless initiatives, including that the Exchange plans to introduce e-Forms with the following aims: (a) to standardize the presentation of routine information and allow for easier comparison by investors between issuers; (b) to reduce the risk of manual input error through the use of data validation in e-Form fields; (c) to reduce the preparation time in announcements containing routine information; and (d) to assist the Exchange in collecting and analyzing data more efficiently.

The Exchange plans to introduce two types of e-Forms: (a) Announcement Forms; and (b) GM e-Forms. The number of fields that an issuer is required to complete in an e-Form will be limited to those of material importance to the investors, depending on the type of announcement and the issuer's circumstances.

#### **(a) Announcement Forms**

Announcement Forms would replace the following three types of routine announcements required to be made by issuers under the Listing Rules, initially: (a) a cash or scrip dividend; (b) a bonus issue of shares or warrants; and (c) a date of a board meeting.

The Exchange will take a phased approach for rolling out the Announcement Forms. In the first phase, the Exchange proposes to include the announcements set out in the paragraph immediately above. The Exchange will then, over time, expand the types of announcements

that are covered by Announcement Forms and update the market accordingly.

An Announcement Form would contain fields for issuers to provide the necessary information required by the Listing Rules for a particular announcement type. An Announcement Form would also include an "Other Information" field for issuers to provide additional "free text" information should the issuers consider necessary to supplement information to those already set out in the Announcement Form. Issuers will be able to submit a supplemental document for publication at the same time as they upload the Announcement Form, which can be referenced in the "free text" field.

Announcements Forms would replace certain routine announcements required to be made by issuers under the Listing Rules.

The Announcement Forms would be published on the HKEX website under the Listing Rules and would operate similarly to monthly returns and next day disclosure returns as required under the Listing Rules and be disseminated automatically on the HKEX website after issuer's submission. The existing requirements on timing for publication, publication windows and language, as stipulated in the Listing Rules, would remain unchanged.

#### (b) GM e-Forms

In addition to the existing requirement that issuers must serve a GM notice and proxy forms to its shareholders, the Exchange will introduce a GM e-Form that issuers will submit through EPS. Submission of the GM e-Form will be an eligibility requirement for acceptance of Eligible Securities in CCASS. A GM e-Form will not be published on the HKEX website.

The deadline for responding to the consultation paper is September 24, 2020.

The **consultation paper** and the **questionnaire** on the proposals to introduce a paperless listing and subscription regime, online display of documents and reduction of the types of documents on display can be downloaded from the HKEX website. Interested parties are encouraged to respond to the consultation paper by completing and submitting the questionnaire.

#### IPO Guidance

In addition, as part of its wider responsibility to set environmental compliance standards for issuers, the Exchange also published an updated IPO Guidance, which highlights the importance to an IPO applicant's Board of ensuring that the necessary corporate governance (CG) and environmental, social and governance (ESG) mechanisms are built into the listing

processes; it also requires additional disclosures in the prospectus on the following areas:

- Compliance culture of the IPO applicant; and
- Appointment of an independent non-executive director who will be holding their seventh (or more) listed company directorships, if applicable.

Katherine Ng, Chief Operating Officer, Listing, said: "The promotion of sustainability, good corporate governance, and diversity are key focuses for the Exchange, as we seek to further enhance the quality of our listed issuers and of our market. Compliance with CG and ESG matters must start on day one as a listed company, and we believe the updated IPO Guidance will be a useful reference tool for new issuers. We are conducting a review of our CG framework this year with a view for public consultation."

#### 香港联合交易所有限公司就建议推行无纸化上市及认购机制、网上展示文件及减少须展示文件类别咨询市场意见

2020年7月24日，香港交易及结算所有限公司（香港交易所）全资附属公司香港联合交易所有限公司（联交所）刊发 (i) 咨询文件，建议推行无纸化上市及认购机制、网上展示文件及减少须展示文件的类别，并就此征询公众意见（咨询）；以及(ii) 修订有关首次公开招股申请人的指引信 – HKEX-GL86-16（首次公开招股指引信）。

#### 咨询

按《香港联合交易所有限公司证券上市规则》（《上市规则》）现行规定，股份、债务证券及集体投资计划的发行人须以实体印刷形式刊发上市文件。法例亦规定申请表格须与上市文件一并发出或提供。因此，申请表格亦须以同一媒介（即实体印刷形式）刊发。

发行人亦须展示多类型文件的实体印刷版本以备查阅，例如重大合约、董事服务合约、专家同意函及账目调整表等。

香港交易所上市主管陈翊庭表示：「《上市规则》有关以印刷形式刊发上市文件及展示实体文件的规定已经不合时宜。互联网的普及度和使用率的不断上升，以及香港交易所的可持续和绿色倡议，再加上我们对致力降低成本和提升效益的承诺，推动我们提出改革建议。特别在首次公开招股方面，市场统计数据显示，近年投资者都倾向以电子方式递交认购申请。」香港一家主要股份过户登记处于2019年处理的162宗首次公开招股当中，透过白色纸本申请表格递交的申请仅占0.42%，透过黄色纸本申请表格递交的申请仅占0.18%。

陈翊庭补充：「香港是亚洲最先进的资本市场，有关建议是我们持续优化香港上市机制的工作之一，令市场更现代化和更具竞争力。我们预期，各项咨询建议将对现有和潜在发行人带来好处，他们现时须于网上刊发上市文件，亦须按其他监管机构的规定以电子方式展示其他文件。建议是进一步体现香港交易所对实践可持续发展的决心。」

## 联交所的建议

联交所的建议包括：

- 要求(i) 新上市的所有上市文件全部仅以电子形式刊发；及(ii) 新上市的认购（如适用）仅可透过电子渠道申请；
- 将若干文件须展示实体版本的规定以于网上刊发的规定取代；及
- 减少发行人须就须予公布的交易及关连交易展示的文件种类。

联交所各项建议的影响概述如下：

	现有规定	建议规定
<b>全面无纸化上市及认购机制</b>		
<b>新上市</b>	除混合媒介要约外，发行人须于香港指定地点提供上市文件的印刷版本供公众取阅，并于香港交易所网站及发行人的网站以电子形式刊发有关文件。	要求新上市的上市文件必须仅以网上电子形式刊发。
	对于股票（包括合订证券及预托证券）/集体投资计划的公开发售，发行人须确保公开认购可透过纸本申请表提交（除非获得豁免）。	对于股票（包括合订证券及预托证券）/集体投资计划的公开发售（混合媒介要约除外），公开认购仅可透过网上电子渠道申请。  优先发售、债务证券及结构性产品的现有认购渠道不变。
<b>于网上展示的文件</b>		
<b>新上市</b>	须于某段时间内在特定地点展示若干文件（包括（如适	仅须于香港交易所网站及发行人的网站展示有关文件，

	用) 公司组织章程文件、重要合约、董事服务合约、估值及专家报告及经审核账目) 的印刷本供公众查阅。	展示时间与现时《上市规则》规定展示实体文件备查的时间相同。
	如为债务证券发行计划，(a) 须于根据计划进行发行期间展示上市文件供公众查阅；及(b) 在计划期内，须展示若干文件（包括公司组织章程文件、估值及专家报告、经审核账目等等）供公众查阅。	仅须于香港交易所网站及发行人的网站展示有关文件，展示时间与现时《上市规则》规定展示实体文件备查的时间相同。
<b>上市发行人</b> (股本证券) - 须持续履行	须持续于香港交易所网站及发行人的网站展示若干文件（包括公司组织章程文件、经审核财务资料及过往的交易通函）。	现行规定并无变动。
- 须提供上市文件的股本证券上市申请（例如供股或公开招股）	须于某段时间内在特定地点展示若干文件（包括（如适用）公司组织章程文件、重大合约、董事服务合约、估值及专家报告、经审核账目及过往曾刊发的交易通函）的印刷本供公众查阅。	须于香港交易所网站及发行人的网站展示有关文件（属上文发行人持续披露责任范围内的公司组织章程文件、经审核账目及过往曾刊发的交易通函除外），展示时间与现时《上市规则》规定展示实体文件备查的时间相同。
- 若干须予公布交易	须于某段时间内在特定地点展示若干文件（包括（如适用）公司组织章程文件、重大合约、估值及专家报告、经审核账目及过往的交易通函）的印刷本供公众查阅。	除上文建议的持续披露外，须于香港交易所网站及发行人的网站展示与交易有关的合约以及估值及专家报告，展示时间与现时《上市规则》规定展示实体文件备查的时间相同。

若干 关连交 易	须于某段时间内在特定地点展示通函内所提述的所有合约及董事服务合约的印刷本供公众查阅。	须于香港交易所网站及发行人的网站展示与交易有关的合约，展示时间与现时《上市规则》规定展示实体文件备查的时间相同。
结构 性产 品上 市	任何根据上市文件发行的结构性产品于联交所上市期间，须以实体形式或于网上展示若干文件（包括上市文件所节录或提述的估值报告、专家报告、信函或文件，以及现有及将来的基础上市文件）。	仅须在任何根据上市文件发行的结构性产品于联交所上市期间，于香港交易所网站及发行人的网站展示该等文件。
	（须持续履行）在任何所发行结构性产品于联交所上市期间，须以实体形式或于网上展示若干与财务资料相关的文件。而且，该等文件亦须在香港交易所网站以电子形式发布。	仅须在任何所发行结构性产品于联交所上市期间，于香港交易所网站及发行人的网站展示该等文件。

联交所的建议不会改变新上市申请人的招股章程登记规定。发行人仍须出示招股章程及其他所需文件的实体版本给公司注册处根据《公司（清盘及杂项条文）条例》第 38D 条及第 342C 条进行登记。

### 其他无纸化措施

咨询文件亦载有联交所其他无纸化措施的详情，包括联交所计划推出电子表格，目的如下：(a) 将例行数据的呈现方式划一，方便投资者比较不同发行人；(b) 透过电子表格字段的数据验证功能，减低人手输入错误的风险；(c) 缩短包含例行数据的公告的编备时间；及 (d) 协助联交所提高数据收集及分析的效率。

联交所计划推出两种电子表格：(a) 公告表格；及 (b) 股东大会电子表格。发行人须于电子表格内填写的字段仅限于对投资者重要的数据（视乎公告类型及发行人情况而定）。

#### (a) 公告表格

公告表格会取代发行人原本须根据《上市规则》作出的三种例行公告：(a) 现金股息或以股代息；(b) 发行红股或红利认股权证；及 (c) 董事会议日期。

联交所会分阶段推出公告表格。第一阶段建议包括上一段所述的公告，然后再逐步扩大公告表格涵盖的公告类型，并适时向市场公布。

发行人可于公告表格的字段内填写《上市规则》就特定公告类型规定提供的数据。若发行人认为须就公告表格所载的数据提供补充数据，可于公告表格的「其他数据」字段提供额外「纯文本」数据。发行人可在上载公告表格的同时提交补充文件供公众阅览，并可于「纯文本」字段提及有关文件。

公告表格会取代《上市规则》下发行人须作出的若干例行公告。

公告表格会按《上市规则》的规定于香港交易所网站登载，实际操作与《上市规则》所规定的月报表及翌日披露报表做法类似，在发行人提交后于香港交易所网站自动发布。《上市规则》有关登载时间、登载时段及语言的规定将维持不变。

#### (b) 股东大会电子表格

除现时发行人须向股东发出股东大会通告及代表委任表格的规定外，联交所将推出股东大会电子表格，发行人将须透过电子登载系统提交有关表格。提交股东大会电子表格是中央结算系统接纳合资格证券的资格要求。股东大会电子表格不会于香港交易所网站登载。

提交响应意见的截止日期为 2020 年 9 月 24 日。

有关建议推行无纸化上市及认购机制、网上展示文件及减少须展示文件类别的咨询文件及问卷可于香港交易所网站下载。有意响应咨询文件的人士请填写妥及交回问卷。

#### 首次公开招股指引信

此外，由于联交所有责任为发行人制订环境合规标准，今天修订的指引信强调首次公开招股申请人的董事会须在上市的过程中确保建立企业管治以及 ESG 机制；及须在招股章程中额外披露下列事宜：

- 首次公开招股申请人的合规文化；及
- 委任将出任第七家（或以上）上市公司的董事的人士为独立非执行董事（如适用）。

香港交易所上市科首席营运总监伍洁旋说：「促进可持续发展、良好企业管治及多元化是联交所进一步提升上

市发行人和市场质量的工作重点。建立企业管治及 ESG 合规文化应属上市公司的首要任务，修订后的首次公开招股指引信将可为新发行人提供有价值的参考。我们今年将会检讨企业管治框架，并咨询市场意见。」

Source 来源:

[https://www.hkex.com.hk/News/Regulatory-Announcements/2020/200724news?sc\\_lang=en](https://www.hkex.com.hk/News/Regulatory-Announcements/2020/200724news?sc_lang=en)

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### **Hong Kong Eastern Magistrates' Court Convicts and Fines Brilliance Capital Management Limited and Its Director for Unlicensed Activities**

On July 24, 2020, Hong Kong Eastern Magistrates' Court (Court) convicts Brilliance Capital Management Limited (BCM) and its director Mr Law Sai Hung (Law) in a prosecution brought by the Hong Kong Securities and Futures Commission (SFC) for holding out as carrying on a business in advising on corporate finance without an SFC license.

Under Schedule 5 of the Hong Kong Securities and Futures Ordinance (SFO), "advising on corporate finance" is a type of regulated activity under the SFO. Under section 114(1)(b) of the SFO, it is an offence to hold out as carrying on a business in a regulated activity without a license from the SFC.

They were fined a total of HK\$30,000 and ordered to pay the SFC's investigation costs.

The Court found on or around January 8, 2013 BCM held itself out to a company as carrying on a business in advising on corporate finance, namely advising on listing application, by entering into an Advisor Engagement Agreement whilst unlicensed.

The Court also found Law, in his capacity as an officer of BCM, aided, abetted, counselled, procured, induced BCM to hold itself out to a company as carrying on a business in advising on corporate finance or that the offence by BCM was committed with the consent, connivance of or was attributable to the recklessness of Law.

Under section 390 of the SFO, where the commission of an offence under the SFO by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC's website ([www.sfc.hk](http://www.sfc.hk)) to ensure that people who provide advice on regulated activities are properly licensed.

### **香港东区裁判法院裁定百年资本有限公司及其董事进行无牌活动罪成并处以罚款**

2020年7月24日，香港东区裁判法院（法院）今天在一宗由香港证券及期货事务监察委员会（证监会）提起的检控个案中，裁定百年资本管理有限公司（百年资本）及其董事罗世鸿（罗）未领有证监会牌照而显示自己经营就机构融资提供意见的业务罪名成立。

根据香港《证券及期货条例》附表5，“就机构融资提供意见”是该条例下的其中一类受规管活动。根据该条例第114(1)(b)条，凡未领有证监会发出的牌照而显示自己经营某类受规管活动的业务，即属犯罪。

他们被判罚款合共30,000港元，及被命令支付证监会的调查费用。

法院裁定，百年资本在或大约在2013年1月8日透过订立一份顾问委聘协议，于未领有牌照的情况下向一家公司显示自己经营就机构融资提供意见的业务，即就上市申请提供意见。

法院亦裁定，罗曾以百年资本高级人员的身分协助、教唆、怂使、促致或诱使该公司显示其经营就机构融资提供意见的业务，或百年资本的罪行是在他的同意或纵容下干犯的，或是可归因于他罔顾实情或罔顾后果。

根据《证券及期货条例》第390条，凡任何法团所犯在该条例下所订的罪行，经证明是在该法团的任何高级人员或看来是以该身分行事的人协助、教唆、怂使、促致或诱使下犯的，或是在该人的同意或纵容下犯的，或是可归因于该人罔顾实情或罔顾后果的，则该人与该法团均属犯该罪行，并可据此予以起诉和处罚。

证监会提醒投资者务必查阅证监会网站（[www.sfc.hk](http://www.sfc.hk)）内的〈持牌人及注册机构的公众纪录册〉，以确保就受规管活动提供意见的人士领有适当的牌照。

Source 来源:

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR69>

<https://sc.sfc.hk/gb/www.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR69>

## U.S. Commodity Futures Trading Commission Charges NYMEX and Two Former Employees for Disclosing Material Non-Public Information

On August 04, 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced the U.S. District Court for the Southern District of New York entered a consent order resolving the CFTC charges against the New York Mercantile Exchange (NYMEX) and former employees William Byrnes and Christopher Curtin for the employees' repeated disclosure of material non-public information in violation of the Commodity Exchange Act (CEA) and CFTC regulations. The CFTC's enforcement action against NYMEX and the individual defendants is the first time the CFTC has charged an exchange with violations of the CEA and CFTC regulations' proscriptions against disclosures of material non-public information by exchange employees.

The order finds that on numerous occasions between 2008 and 2010, Byrnes and Curtin, while acting in the scope of their employment as NYMEX employees, wilfully and knowingly disclosed material non-public information obtained through special access. Byrnes and Curtin improperly disclosed to commodities broker and defendant Ron Eibschutz the identities of counterparties to crude oil options and natural gas futures trades, trade details such as price and volume, and other confidential information.

Byrnes and Curtin were found directly liable for their improper disclosures and NYMEX was found vicariously liable for the misconduct of its former employees. In addition, Byrnes and Curtin are permanently banned from trading commodity interests and registering with the CFTC and are enjoined from future violations of the CEA and CFTC regulations, as charged. The order also enjoins NYMEX to the extent the CEA and CFTC regulations apply under the vicarious liability provision of the CEA. In addition, the order imposes a US\$4 million civil monetary penalty jointly and severally on NYMEX, Byrnes, and Curtin, with the liability of Byrnes and Curtin capped, respectively, at US\$300,000 and US\$200,000.

### 美国商品期货交易委员会控告 NYMEX 和两名前雇员泄露重要非公开信息

2020年7月24日，美国商品期货交易委员会（CFTC）宣布美国纽约南区联邦地区法院签署了一项同意令，以解决 CFTC 对纽约商品期货交易所（NYMEX）以及其前雇员 William Byrnes 和 Christopher Curtin 的控告。控告指该雇员再三泄露了重要非公开信息，违反《商品交易法案》（CEA）和 CFTC 的规定。该次针对 NYMEX 和个别被告的执法行动是 CFTC 首次就交易所雇员泄露重要非公开信息控告交易所违反 CEA 和 CFTC 规定。

该判令发现，在 2008 年至 2010 年期间，Byrnes 和 Curtin 在其 NYMEX 雇员工作范围内行事时，曾多次故意并有意泄露他们通过特殊渠道获得的重要非公开信息。Byrnes 和 Curtin 不当地向商品经纪及被告 Ron Eibschutz 泄露了原油期货和天然气期货的交易对手身份、价格及数量等交易详细信息以及其他机密资讯。

Byrnes 和 Curtin 因不当泄露非公开信息被认定有直接责任，NYMEX 被认定要为其前雇员的不当行为负上替代责任。此外，Byrnes 和 Curtin 被永久禁止买卖商品期货和期权及在 CFTC 进行注册，并且被命令将来不得再违反 CEA 和 CFTC 的规定。判令亦禁止 NYMEX 于将来违反 CEA 的替代责任条款适用范围内 CEA 和 CFTC 的规定。此外，该判令对 NYMEX、Byrnes 和 Curtin 共同及个别地处以 400 万美元的民事罚款，当中，Byrnes 和 Curtin 的责任上限分别为 30 万美元和 20 万美元

Source 来源:

<https://cftc.gov/PressRoom/PressReleases/8216-20>

## U.S. Securities and Exchange Commission Charges Affiliated Advisers for Misrepresentations About Payment for Order Flow Arrangements

On August 5, 2020, the U.S. Securities and Exchange Commission (SEC) filed settled charges against affiliated registered investment advisers WBI Investments Inc. and Millington Securities Inc. for making material misrepresentations to clients about compensation Millington received in an institutional payment for order flow arrangement for routing client orders to certain brokerage firms for execution. As part of the settlement, WBI and Millington agreed to pay a combined total of US\$1 million in penalties.

According to the SEC's order, WBI and Millington served as advisers to a series of mutual funds and a series of exchange-traded funds (ETFs). Millington, which also served as WBI's primary introducing broker, agreed to route WBI's client orders to certain brokerage firms that agreed to pay Millington amounts they characterized as "payments for order flow." According to the order, the payments to Millington were US\$0.0125 to US\$0.0150 per share. The order further finds that, in general and over time, the brokerage firms executing WBI's client trades adjusted the execution prices by US\$0.02 to US\$0.03 per share higher for client buy orders and lower for client sell orders. Millington and the brokerage firms mutually understood that the adjusted execution prices allowed the brokerage firms to recoup their payments to Millington and generate profits. However, that on at least three occasions, WBI and Millington falsely assured the boards of the mutual funds and the ETFs that these institutional payment for order flow arrangements did not adversely affect the funds' execution prices.

The SEC's order finds that WBI and Millington violated Section 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder. Without admitting or denying the findings, WBI and Millington consented to the entry of a cease-and-desist order and censures. Under the order, WBI will pay a penalty of US\$750,000, and Millington will pay a penalty of US\$250,000.

### 美国证券交易委员就委托单流量费用的失实陈述指控联属顾问

2020年8月5日，美国证券交易委员会（美国证交会）针对联属注册投资顾问 WBI Investments Inc.和 Millington Securities Inc.提起控告，指控其向客户就有关 Millington 从委托单流量安排机构在将客户委托单发送给某些经纪公司执行时获得的补偿作出重大失实陈述。作为和解的一部分，WBI 和 Millington 同意合计支付 100 万美元的罚款。

根据美国证交会的判令，WBI 和 Millington 担任一系列共同基金和一系列交易所买卖基金（ETFs）的顾问。Millington（亦是 WBI 的主要介绍经纪人）同意将 WBI 的客户委托单传送给某些经纪公司，这些经纪公司同意向 Millington 支付一笔他们称之为「委托单流费用」的金额。根据判令，支付给 Millington 的费用为每股 0.0125 美元至 0.0150 美元。该判令还发现，随着时间的推移，执行 WBI 客户交易的经纪公司客户买入价格每股提高了 0.02 美元至 0.03 美元，并将客户卖出价格降低了。Millington 和经纪公司相互明了，调整后的交易价格使经纪公司可以收回向 Millington 支付的费用并产生利润。但是，WBI 和 Millington 至少有 3 次错误地向共同基金和交易所买卖基金董事会保证，这些委托单流量费用不会对基金的交易价格产生负面影响。

美国证交会的判令指 WBI 和 Millington 违反了 1940 年《投资顾问法》第 206 (2) 和 206 (4) 条以及随后的第 206 (4) -7 条。WBI 和 Millington 均未有承认或否认调查结果，但同意接受终止令和谴责。根据该判令，WBI 将支付 750,000 美元的罚款，Millington 将支付 250,000 美元的罚款。

Source 来源:

<https://www.sec.gov/news/press-release/2020-175>

### Pharmaceutical Company and Former Executives Charged with Misleading Financial Disclosures

On July 31, 2020, the U.S. Securities and Exchange Commission (SEC) announced that Bausch Health, formerly Quebec, Canada-based Valeant Pharmaceuticals, agreed to pay a US\$45 million penalty

to settle charges of improper revenue recognition and misleading disclosures in SEC filings and earnings presentations. Three former executives, the chief executive officer, chief financial officer, and controller, also agreed to pay penalties to settle charges against them.

According to the SEC's orders, when announcing certain GAAP and non-GAAP financial measures, Valeant misstated revenue transactions and included erroneous revenue allocations. For instance, the order finds that, for five consecutive quarters, Valeant, former CEO J. Michael Pearson, former CFO Howard B. Schiller, and former controller Tanya R. Carro, touted double-digit same store organic growth, a non-GAAP financial measure that represented growth rates for businesses owned for one year or more. Much of that growth came from sales to Philidor, a mail order pharmacy Valeant helped establish, fund and subsidize. The orders find that Valeant improperly recognized revenue relating to Philidor sales and did not disclose its unique relationship with or risks related to Philidor in SEC filings and earnings and investor presentations. Valeant ended its relationship to Philidor in October 2015 and restated its 2014 financial statements in April 2016, reducing the revenue that was improperly recognized.

The SEC orders also find that Valeant failed to disclose the material impact of certain revenue it received from drug wholesalers following a 500% increase of the price of a single drug that Valeant acquired in April 2015. Valeant erroneously attributed the resulting revenue to more than 100 unrelated products and did not record any as attributable to that drug. Additionally, in its SEC filings and earnings presentations for the second and third quarters of 2015 and its 2015 year-end report, Valeant failed to disclose the impact of that allocation on its GAAP and non-GAAP financial measures.

The SEC pointed out that public companies and their senior executives have a duty to be truthful to investors and when public companies and their senior executives tout strong financial measures, they must provide investors with all of the information needed to make fully informed investment decisions.

Without admitting or denying the SEC's findings, all respondents consented to orders finding that they violated antifraud provisions of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and, with the exception of Schiller, Rule 100(b) of Regulation G. Valeant also consented to an order that finds reporting, books and records, and internal accounting controls violations, and the individual respondents consented to orders finding that they caused some or all of these violations. Pearson and Schiller agreed to pay civil penalties of US\$250,000 and US\$100,000 respectively, and to reimburse Valeant US\$450,000 and US\$110,000 respectively, representing a portion of their incentive

compensation, pursuant to Section 304 of the Sarbanes-Oxley Act. Carro agreed to pay a US\$75,000 penalty and to be suspended from appearing and practicing before the SEC as an accountant, which includes not participating in the financial reporting or audits of public companies. The SEC's order permits Carro to apply for reinstatement after one year.

### 制药公司和前高管被指控作出误导性财务信息

2020年7月31日，美国证券交易委员会（美国证监会）宣布，Bausch Health（其前身为总部位于加拿大魁北克的威朗制药公司（Valeant Pharmaceuticals））同意支付4,500万美元的罚款，以解决针对其于美国证监会申报和盈利报告中的不当收入确认和误导性披露的指控。三名前高管、首席执行官、首席财务官和控制人亦同意支付罚款，以解决对他们的指控。

根据美国证监会的判令，当宣布某些公认会计原则（GAAP）和非公认会计原则（non-GAAP）财务指标时，威朗错误陈述收入交易，并将错误的收入分配纳入其中。例如，该判令发现，威朗、其前首席执行官 J. Michael Pearson、前首席财务官 Howard B. Schiller 和前控制人 Tanya R. Carro 连续五个季度都夸大同店有机增长为两位数，这是非公认会计原则的财务指标中代表一年或一年以上业务的增长率。增长的大部分来自对 Philidor（一家威朗帮助建立、资助和补贴的邮购药房）的销售。该判令发现，威朗不正确地认了与 Philidor 销售相关的收入，并且没有在美国证监会申报和盈利及投资者报告中披露其与 Philidor 的独特关系或相关风险。威朗于 2015 年 10 月终止了与 Philidor 的关系，并于 2016 年 4 月重述了其 2014 年的财务报表，减少了不当确认的收入。

美国证监会的判令还指出，威朗于 2015 年 4 月收购的一种药品的价格上涨 500%，而威朗没有披露此事对其从药品批发商获得的收入的重大影响。威朗错误地将由此事产生的收入归因于 100 种不相关的产品，也没有记录任何归因于该价格上涨的药物的信息。此外，威朗在其 2015 年第二季度和第三季度的美国证监会申报和盈利报告，以及 2015 年末报告中，均没有披露该事件对其公认会计原则和非公认会计原则财务指标的影响。

美国证监会指出，上市公司及其高管有责任对投资者保持诚实，当上市公司及其高级管理人员吹捧其强大的财务措施时，他们必须向投资者提供做出充分知情的投资决策所需的所有信息。

在不承认或否认美国证监会的调查结果的情况下，所有答辩人都同意判令，判令判定他们违反了 1933 年《证券法》第 17 (a) (2) 和 17 (a) (3) 条的反欺诈规定及（除 Schiller 以外）第 100 (b) 条的规例 G。威朗亦同

意其报告、账簿和记录以及内部会计控制的违规，而个别的答辩人也同意他们造成了部分或全部的这些违规行为。Pearson 和 Schiller 同意分别根据《萨班斯·奥克斯利法案（Sarbanes-Oxley Act）第 304 条支付 250,000 美元和 100,000 美元的民事罚款，并分别偿还威朗他们部分的奖励性薪酬，分别为 450,000 美元和 110,000 美元。Carro 同意支付 75,000 美元的罚款，并被禁止在美国证监会相关的事宜中担任会计师和执业，包括不参与上市公司的财务报告或审计。美国证监会的判令允许 Carro 在一年后申请恢复其执业。

Source 来源:

<https://www.sec.gov/news/press-release/2020-169>

### U.S. Securities and Exchange Commission Charges VALIC Financial Advisors with Failing to Disclose Payments to Promote Services to Florida Educators

On July 28, 2020, the U.S. Securities and Exchange Commission (SEC) charged VALIC Financial Advisors Inc. (VFA), a financial services vendor in nearly every school district in Florida, in a pair of actions for its failure to disclose to teachers and other investors practices that generated millions of dollars in fees and other financial benefits for VFA.

#### *Failure to Disclose Payments Made in Exchange for Referral of Teachers*

According to the SEC's order, VFA's parent company, the Variable Annuity Life Insurance Company (VALIC), for 13 years made payments to an entity owned by the Florida teachers' unions (the Entity) in exchange for the Entity's exclusive endorsement of VFA as its preferred financial services partner and the Entity's agreement to not promote or endorse VFA's competitors. VALIC also provided the Entity three full-time employees to serve as "member benefit coordinators." These coordinators, who deceptively presented themselves as employees of the entity, promoted VALIC and VFA to Florida K-12 teachers and referred teachers to VFA for investment recommendations. The order finds that the member benefit coordinators increased VFA's access to K-12 teachers in Florida, and that VFA did not disclose that the for-profit entity was paid to make VFA its preferred financial services provider.

VFA (together with VALIC) earned more than US\$30 million on the products it sold to Florida K-12 teachers during the period covered by the SEC's order. The SEC pointed out that, like all investors, teachers were entitled to receive all of the information when they were making decisions about their financial futures and by failing to disclose to the payments received, VFA took advantage of the trust teachers placed in the Entity.

### Failure to Disclose Millions of Dollars in Financial Benefits It Received for Investing Clients in Certain Funds

The SEC separately charged VFA for making false and misleading statements about, or failing to disclose, conflicts relating to its receipt of millions of dollars of financial benefits from client mutual fund investments.

According to the SEC's order, VFA's wrap agreements with its clients provided that the advisory fee the client paid to VFA included the costs to execute securities transactions. The order finds that VFA either directly invested or instructed its primary sub-adviser to select new mutual fund investments for clients that were part of VFA's clearing broker's no-transaction fee program (NTF Program), and thus would not incur a transaction fee VFA would be responsible for paying. The NTF Program mutual funds were generally more expensive than other mutual funds available to VFA clients, including instances when a less expensive mutual fund share class for the same fund was available outside the NTF Program.

The order finds that VFA's participation in the NTF Program generated three key financial benefits to VFA, and that VFA not only failed to provide disclosures regarding these conflicts, but also provided false and misleading disclosures concerning the conflicts. VFA received both 12b-1 fees and revenue sharing from the clearing broker for client investment in mutual funds within the NTF Program. In addition, for clients with wrap agreements in which VFA was responsible for client execution costs, VFA financially benefited by not having to pay any transaction fees for mutual funds in the NTF Program. Despite being eligible to do so, VFA did not self-report its receipt of undisclosed 12b-1 fees as part of the Division of Enforcement's Share Class Selection Disclosure Initiative announced in February 2018.

The SEC pointed out that investment advisers must disclose conflicts between their financial interests and those of their clients and VFA misled clients by telling them that their advisory fee would cover execution costs without also telling them that VFA would put them in more expensive mutual fund share classes and thus avoid paying those costs. By not disclosing these practices as well as the other financial benefits VFA received, the firm deprived its clients of essential information about their relationship with their adviser and violated core fiduciary obligations.

### Settlement

Without admitting or denying the SEC's findings, VFA has consented to a cease-and desist order, a censure, disgorgement and prejudgment interest and civil penalty.

VFA also agreed to pay approximately US\$40 million to settle the charges in these two actions.

### **美国证券交易委员会指控 VALIC Financial Advisors 未能向佛罗里达州的教育者披露就推广服务所付出的款项**

2020年7月28日，美国证券交易委员会（美国证交会）控告了 VALIC Financial Advisors Inc. (VFA)（一家几乎向佛罗里达州每个学区提供服务的金融服务供应商），提起了两次诉讼，理由为该公司未能向教师和其他投资者披露为其带来了数百万美元的收入和其他财务收益的执业惯例。

### 未能透露就转介老师所付出的费用

根据美国证交会的判令，VFA 的母公司 Variable Annuity Life Insurance Company (VALIC) 在 13 年间向佛罗里达州教师工会拥有的实体付款，以换取该实体认可 VFA 为其独家首选金融服务合作伙伴和不得宣传或认可 VFA 的竞争对手的协议。VALIC 还为该实体提供了三名全职员工，以作为「会员利益协调员」。这些协调员欺诈性地表示自己为该实体的员工，将 VALIC 和 VFA 推荐给佛罗里达 K-12 老师，并将老师转介给 VFA 以得到投资建议。该指控发现这些「会员利益协调员」增加了 VFA 与佛罗里达州 K-12 教师的联系，而 VFA 并未透露该营利性的实体是为了使 VFA 成为其首选的金融服务提供商而获得酬劳的。

在美国证交会判令涵盖的期间内，VFA（与 VALIC）向佛罗里达 K-12 老师出售的产品获得了超过 3000 万美元的收入。美国证交会指出，与所有投资者一样，教师在决定其财务期货时有权获得所有信息。由于未有披露所收到的款项，VFA 利用了该实体中的信托教师获得了利益。

### 未能披露因投资基金而获得的数百万美元的财务收益

根据美国证交会的判令，VFA 与客户的协议规定，客户向 VFA 支付的顾问费包括执行证券交易的费用。该判令发现 VFA 直接投资或指示其主要子顾问为客户选择属于 VFA 结算经纪人的无交易费计划 (NTF 计划) 的新共同投资基金，因此不会产生协议所称的交易费。NTF 计划的共同基金一般比可供 VFA 客户参与的其他共同基金贵，亦有同一基金的股份类别在 NTF 计划之外参与时较便宜的情况。

该判令发现 VFA 参与 NTF 计划为其带来了三项主要的财务利益，而且 VFA 不仅未能披露有关利益冲突，还提供了有关冲突的虚假和误导性资讯。VFA 就其客户在 NTF 计划的共同基金的投资从结算经纪商收到了 12b-1 费用和收益分成。此外，对于 VFA 协议负责支付交易费用的

客户，VFA 由于不必为 NTF 计划中的共同基金支付任何交易费用，从而从财务上受益。尽管 VFA 可以这样做，但其并未于 2018 年 2 月宣布的《股份类别选择披露倡议》中自行报告其收取的未公开的 12b-1 费用。

美国证交会指出，投资顾问必须披露其财务利益与客户利益之间的冲突。VFA 告诉其客户顾问费用将包含交易费用，同时又不告诉他们 VFA 将他们置于更昂贵的共同基金股份类别中以避免支付交易费用，误导了其客户。由于 VFA 不披露这些做法以及所获得的其他财务利益，该公司使客户不能得到有关 VFA 与其顾问的关系的必要信息，并违反了核心受信责任。

### 和解

在不承认或否认美国证交会的调查结果的情况下，VFA 同意接受终止令、谴责、罚没所得和判决前利息及民事罚款。VFA 亦同意支付约 4000 万美元以偿付诉讼中的费用。

Source 来源:

<https://www.sec.gov/news/press-release/2020-164>

### **U.S. Securities and Exchange Commission Charges Trustify Inc. and Founder in US\$18.5 Million Offering Fraud**

On July 24, 2020, the U.S. Securities and Exchange Commission (SEC) charged Trustify Inc., an online marketplace purportedly designed to connect customers to a network of private investigators, and its founder CEO Daniel Boice with fraudulently offering and selling securities of over US\$18.5 million to more than 90 corporate and individual investors.

The SEC's complaint alleges that, between 2015 and 2018, Trustify and Boice falsely represented Trustify as a thriving technology start-up with lucrative corporate clients, thousands of investigators in its network and growing revenues, while in fact Trustify's number of investigators and revenue were far lower than that represented. Trustify was unable to pay its employees and vendors and effectively ceased operations. Furthermore, the complaint alleges Boice misappropriated at least US\$8 million of investor funds to pay for personal expenses for himself and his then-wife who was also a Trustify executive. Boice also allegedly diverted hundreds of thousands of dollars to his purported consulting company GoLean DC LLC.

The complaint charges Trustify and Boice with violating the antifraud provisions of the federal securities laws and seeks permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties. The SEC also named GoLean and the former Trustify executive Jennifer Mellon as relief defendants, seeking the return

of proceeds of fraud to which they had no legitimate claim. In a parallel action, the U.S. Attorney's Office for the Eastern District of Virginia and the Fraud Section of the U.S. Department of Justice filed criminal charges against Boice for wire fraud, securities fraud, and money laundering.

### **美国证券交易委员会控告 Trustify Inc. 及其创始人欺诈**

2020 年 7 月 24 日，美国证券交易委员会（美国证交会）控告 Trustify Inc.（一家声称旨在将客户与私家侦探网络连接的网上市场）及其创始人兼首席执行官 Daniel Boice 以欺诈方式向 90 多家公司和个人投资者发行及出售了超过 18.5 百万美元。

美国证交会控告称，在 2015 年至 2018 年之间，Trustify 和 Boice 谎称 Trustify 为一家发展蓬勃的科技初创公司，拥有可观的企业客户，其网络有上千私家侦探，而且收入不断增长。但事实上 Trustify 私家侦探人数和收入却远低于他们所声称的水平。Trustify 无法支付其员工薪金和供应商的费用，并已停止运营。此外，该控告称，Boice 挪用了至少 8 百万美元的投资者资金，以支付自己和当时的妻子（其亦为 Trustify 高级管理人员）。该控告亦称，Boice 将数百万美元转至他所聘请的顾问公司 GoLean DC LLC。

美国证交会的申诉指控 Trustify 和 Boice 违反了联邦证券法的反欺诈条款，并寻求永久性禁令，罚没所得及判决前利息和民事惩罚。美国证交会还指定 GoLean 和前 Trustify 高级管理人员 Jennifer Mellon 为禁令被告，以收回他们不能合法拥有的的欺诈收益。与此同时，美国弗吉尼亚州东区检察官办公室和美国司法部欺诈部门对 Boice 提起了刑事诉讼，控告其电信欺诈，证券欺诈和洗钱。

Source 来源:

<https://www.sec.gov/news/press-release/2020-162>

### **U.S. Securities and Exchange Commission Charges Former Georgia State Legislator with Defrauding Investors in Ponzi Scheme**

On July 30, 2020, the U.S. Securities and Exchange Commission (SEC) charged former Georgia state legislator and former member of the Georgia Board of Regents Clarence Dean Alford with defrauding at least 100 investors in his now-bankrupt energy development company, Allied Energy Services LLC.

According to the SEC's complaint, from 2017 to 2019, Alford fraudulently raised at least US\$23 million by selling promissory notes to investors, primarily Indian-American professionals, that he guaranteed would provide high annual rates of return. According to the complaint, Alford presented Allied as a successful

business when in fact it was struggling, and claimed that investors' funds would finance energy projects while using most of the funds to make interest payments to earlier investors and for personal expenses, including building a multimillion-dollar home. In 2019, Alford's alleged scheme collapsed when he failed to make promised interest payments to several investors and then failed to repay the investors' principal.

Without admitting or denying the allegations, Alford consented to entry of a judgment finding that he violated the antifraud provisions of the federal securities laws and ordering permanent and conduct-based injunctions. Alford also agreed that the amounts of civil penalties, disgorgement, and prejudgment interest.

### 美国证券交易委员会指控前佐治亚州议员在庞氏骗局中诈骗投资者

2020年7月30日，美国证券交易委员会（美国证监会）指控前佐治亚州议员和前佐治亚州督导委员会成员 Clarence Dean Alford 欺诈其目前已破产的能源开发公司 Allied Energy Services LLC 的至少 100 名投资者。

根据美国证监会的指控，从 2017 年到 2019 年，Alford 通过向投资者（主要是印度裔的美国专业人士）出售承付票，并保证将提供很高的年度回报率，欺诈性地筹集了至少 2300 万美元。根据指控，Alford 称 Allied 为是一家成功企业，但实际上 Allied 却处于困境中。他亦声称投资者的资金将为能源项目提供资金，但同时将大部分资金用于支付早期投资者的利息和个人开支，包括建立数百万美元的房屋。在 2019 年，Alford 未能向几位投资者支付承诺的利息，又没有偿还投资者的本金，他便声称计划失败了。

在不承认或否认指控的情况下，Alford 同意一项判决。判决判定他违反了联邦证券法的反欺诈规定，并下达了永久性禁令和强制令。Alford 亦同意接受民事罚款、罚没所得和判决前利息。

Source 来源:

<https://www.sec.gov/news/press-release/2020-168>

### U.S. Securities and Exchange Commission Charges CEO and Company with Investors Out of Millions

On July 30, 2020, the U.S. Securities and Exchange Commission (SEC) announced charges against a San Antonio-area businessman, Victor Lee Farias, and his company, Integrity Aviation & Leasing (IAL), for running a multimillion-dollar fraudulent scheme that victimized numerous investors, many of them retired San Antonio police officers.

The SEC's complaint alleges that Farias and IAL raised US\$14 million from investors, promising that they would use the funds to purchase engines and other aircraft parts for leasing to major airlines. As alleged, Farias and IAL falsely touted Farias's supposed investment experience and IAL's purported competitive advantages, such as an algorithm that supposedly identified profitable leasing opportunities, and represented that all investments would be secured by IAL's assets. According to the complaint, many of the investors were retirees who, in order to invest their retirement funds, had to withdraw the funds from their retirement accounts and deposit them in newly created self-directed individual retirement accounts. The complaint alleges that IAL never purchased any engines and spent only a small portion of investor funds on aircraft parts. Farias and IAL allegedly diverted more than US\$11.6 million for unauthorized purposes, such as making US\$6.5 million in Ponzi-like payments to investors and investing US\$2.7 million to fund a friend's business. Farias also allegedly misappropriated US\$2.4 million for personal expenses and continued to mislead investors after he learned of the SEC's investigation, including by using the letterhead from the SEC's investigative subpoena as "proof" for investors that he was working with the SEC to take IAL public.

The SEC's complaint charges Farias and IAL with violating antifraud and securities registration provisions of the federal securities laws. The complaint seeks injunctive relief, disgorgement plus prejudgment interest, and civil penalties.

### 美国证券交易委员会控告令投资者损失数百万的首席执行官和公司

2020年7月30日，美国证券交易委员会（美国证监会）宣布控告圣安东尼奥地区商人 Victor Lee Farias 及其公司 Integrity Aviation & Leasing (IAL)。Farias 及 IAL 实施一项数百万美元的诈骗计划，令众多投资者（其中许多为圣安东尼奥退休警察）受害。

美国证监会的指控称，Farias 和 IAL 从投资者筹集了 1400 万美元，并承诺他们将利用这笔资金购买发动机和其他飞机零件，以出租给主要航空公司。指控称，Farias 和 IAL 吹捧 Farias 所谓的投资经验和 IAL 声称的竞争优势，例如一个声称可以找出可获利的租赁机会的演算法，并表示所有投资将以 IAL 的资产担保。根据指控，许多投资者为退休人士，为了用退休金进行投资，他们不得不从退休金帐户中提取资金，并将其存入新创建的自管个人退休金帐户中。指控称，IAL 从未购买任何发动机，而仅将一小部分投资者资金用于购买飞机零件。据称，Farias 和 IAL 将超过 1160 万美元用于未经授权的目的，例如向投资者支付 650 万美元（类似庞氏骗局），以及向朋友的生意投资 270 万美元。据称，Farias 还挪用了

240 万美元作为个人支出，并在得知美国证交会的调查后继续误导投资者，包括将美国证交会调查传票的信笺作为他正与美国证交会合作将 IAL 上市的「证明」。

美国证交会指控 Farias 和 IAL 违反了联邦证券法中的反欺诈和证券注册规定。指控寻求对他们作出禁令、罚没所得和判决前利息和民事罚款。

Source 来源:

<https://www.sec.gov/news/press-release/2020-167>

### **U.S. Securities and Exchange Commission Adopts Final Rule on the Orderly Liquidation of Covered Broker-Dealers under Title II of the Dodd-Frank Act**

On July 24, 2020, the U.S. Securities and Exchange Commission (SEC) and the U.S. Federal Deposit Insurance Corporation (FDIC) have adopted a final rule required by the Dodd-Frank Act clarifying and implementing provisions pertaining to the orderly liquidation of certain brokers or dealers (covering broker-dealers) in the event the FDIC is appointed receiver under Title II of the Dodd-Frank Act. The FDIC and SEC developed the final rule in consultation with the Securities Investor Protection Corporation (SIPC).

By statute, the orderly liquidation of a covered broker-dealer must be accomplished in a manner that ensures that customers of the covered broker-dealer receive payments or property at least as beneficial to them as would have been the case had the covered broker-dealer been liquidated under the Securities Investor Protection Act of 1970 (SIPA). The final rule clarifies, among other things, how the relevant provisions of SIPA would be incorporated into a Title II proceeding. Upon the appointment of the FDIC as receiver, the FDIC would appoint SIPC to act as trustee for the broker-dealer. SIPC, as trustee, would determine and satisfy customer claims in the same manner as it would in a proceeding under SIPA. The treatment of the covered broker-dealer's qualified financial contracts would be governed in accordance with Title II.

The final rule also describes the claims process applicable to customers and other creditors of a covered broker-dealer and clarifies the FDIC's powers as receiver regarding to the transfer of assets of a covered broker-dealer to a bridge broker-dealer.

The final rule is substantively identical to the proposed rule published in the Federal Register in 2016. It will be effective 60 days after publication in the Federal Register.

美国证券交易委员会制定《多德-弗兰克法案》第二章中有序清算指定范围的经纪交易商的最终规则

2020年7月24日，美国证券交易委员会（美国证交会）和美国联邦存款保险公司（FDIC）通过了《多德-弗兰克法案》（Dodd-Frank Act）中要求的最终规则，该规则阐明并实施了与（FDIC 根据《多德-弗兰克法案》第二章被任命为接管人的情况下）特定的经纪人或交易商（包括经纪交易商）有序清算有关的条例。在咨询证券投资者保护公司（SIPC）后，FDIC 和美国证交会制定了最终规则。

根据法规，指定范围的经纪交易商的有序清算必须确保该经纪交易商的客户获得的款项或财产至少与该经纪交易商所根据 1970 年《证券投资者保护法案》（SIPA）清算下所获得的款项或财产一样多。最终规则阐明了如何将 SIPA 的相关条例纳入第二章的清算程序。FDIC 被任命为接管人后，FDIC 将任命 SIPC 担任有关经纪交易商的受托人。作为受托人，SIPC 将以与 SIPA 程序相同的方式裁定和满足客户的申索。该经纪交易商的于衍生性商品及其他证券相关金融契约将按照第二章的规定处理。

最终规则亦描述了适用于指定范围的经纪交易商的客户和其他债权人的申索流程，并合并了 FDIC（作为接管人）将指定范围的经纪交易商的资产转移给过渡经纪交易商的权力。

最终规则决议与 2016 年在《联邦公报》中发布的拟议规则相同。该规则将在《联邦公报》上发布 60 天后生效。

Source 来源:

<https://www.sec.gov/news/press-release/2020-163>

### **The Supreme People's Court of the People's Republic of China issues the Provisions on Several Issues Concerning Representative Litigation in Securities Disputes**

On July 31, 2020, the Supreme People's Court of the People's Republic of China (Supreme People's Court) officially issued the Provisions on Several Issues Concerning Representative Litigation in Securities Disputes (the Interpretation) and it will take effect on the day of announcement. The promulgation of the Interpretation is conducive to putting the representative litigation system for securities disputes into practice, facilitating investors to initiate and participate in litigation, reducing the cost of rights protection, protecting the legitimate rights and interests of investors, and effectively punishing the illegal acts in the capital market.

The Interpretation details the relevant provisions of Article 95 of the latest Securities Law of the People's Republic of China, establishing the principles of efficient, transparent, convenient, and low-cost. It can be divided

into the ordinary representative litigation of the traditional joining system and the special representative litigation of the declaration withdrawal system, which systematically provides for case filing registration, preliminary examination, selection of representatives, confirmation of mediation agreements, litigation trial and judgment, enforcement and assignment and other important contents. In particular, there are special provisions on the centralized jurisdiction, startup procedures, rights registration, parties' declaration and withdrawal, litigation obligations of insurance agencies, litigation costs, and property preservation of special representative litigation that are of general public concern. It helps to solve many practical problems in the proceedings of the special representative litigation and effectively guaranteed the actual implementation of securities collective actions. In addition, the Interpretation also focuses on protecting investors' litigation rights and procedural interests, strengthening the substantive review of the people's courts, and exerting judicial supervision and restriction functions.

At the same time, in order to promptly implement the special representative litigation policy, the China Securities Regulatory Commission (CSRC) has specially promulgated the Circular on Properly Carrying out the Work Relating to the Participation of Investors Protection Institutions in the Litigation of Special Representatives for Securities Disputes, which regulates the participation of insurance agencies, registration and settlement agencies and other entities. The Investor Service Center specially issued the Business Rules for Small and Medium-sized Investor Service Center Participating in Special Representative Litigation in China Securities Market (for Trial Implementation), focusing on the case selection mechanism, the rights and obligations of litigation representatives and other important parts in the litigation activities.

The timely implementation of representative litigation in securities disputes will effectively strengthen the accountability of securities civil liabilities and effectively curb fraudulent issuance and financial fraud. It is an important measure to fully implement the zero tolerance requirements for illegal and criminal acts in the capital market.

#### 中华人民共和国最高人民法院发布《关于证券纠纷代表人诉讼若干问题的规定》

2020年7月31日, 中华人民共和国最高人民法院(下称“最高人民法院”)正式发布《关于证券纠纷代表人诉讼若干问题的规定》(下称“该司法解释”), 该司法解释自公布之日起施行。该司法解释的出台, 有助于推动证券纠纷代表人诉讼制度付诸实践, 便利投资者提起和

参加诉讼, 降低投资者的维权成本, 保护投资者的合法权益, 有效惩治资本市场违法违规行爲。

该司法解释细化了新《证券法》第九十五条的相关规定, 确立了高效、透明、便捷、低成本的审理原则。其可分为传统加入制的普通代表人诉讼和声明退出制的特别代表人诉讼, 系统规定了代表人诉讼中的立案登记、先行审查、代表人选定、调解协议确认、诉讼审理与判决、执行与分配等各项重要内容。其中, 对公众普遍关注的特别代表人诉讼的集中管辖、启动程序、权利登记、当事人声明退出、投保机构诉讼义务、诉讼费用、财产保全等进行了专门规定。其解决了特别代表人诉讼中诸多实践难题, 有力保障了证券集体诉讼的真正落地实施。此外, 该司法解释还注重保护投资者的诉讼权利和程序利益, 强化人民法院的实体审查, 发挥司法监督制约作用。

同时, 为及时推动特别代表人诉讼制度付诸实施, 中国证券监督管理委员会(中国证监会)专门发布《关于做好投资者保护机构参加证券纠纷特别代表人诉讼相关工作的通知》, 对投保机构、登记结算机构等系统单位参加特别代表人诉讼行为进行总体规范。投资者服务中心专门发布《中证中小投资者服务中心特别代表人诉讼业务规则(试行)》, 重点就案件选择机制、诉讼代表人在诉讼中的权利义务等重要内容进行规定。

及时实施证券纠纷代表人诉讼, 将有力强化证券民事责任追究, 有效遏制欺诈发行、财务造假等行为, 是全面落实对资本市场违法犯罪行为“零容忍”要求的重要举措。

Sources 来源:

<http://www.court.gov.cn/fabu-xiangqing-245501.html>

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731\\_380951.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731_380951.html)

#### China Securities Regulatory Commission Issues the Opinions on the Application of Articles 28 and 45 of the Administrative Measures for the Material Assets Reorganization of Listed Companies – No.15 Opinions on the Application of Securities and Futures Laws and Guidelines on the Application of Regulatory Rules - No. 1 Listing Class

On July 31, 2020, in order to fully implement the latest Securities Law of the People's Republic of China (Securities Law) and other higher-level laws, further deepen the reform policies, improve the transparency of supervision, clarify market players and release the vitality of the merger and reorganization market, China Securities Regulatory Commission (CSRC) issued the No.53 Announcement (reference number: CSRC Announcement [2020] No. 53) after sorting out and

integrating the regulatory questions and answers involving the daily regulation and review of mergers and acquisitions and reorganizations of listed companies, stating that Opinions on the Application of Articles 28 and 45 of the Administrative Measures for the Material Assets Reorganization of Listed Companies – No.15 Opinions on the Application of Securities and Futures Laws (Application Opinions) shall come into force as of July 31, 2020. In its news released on the same day, CSRC also indicated that Guidelines on the Application of Regulatory Rules - No. 1 Listing Class (Application Guidelines) shall be re-released, taking effect as of the date of release while the original regulatory questions and answers would be abolished simultaneously.

The main contents of the Application Opinions are as follows:

1. Clearly identify the criteria that constitute a major adjustment to the restructuring plan. According to Article 28 of the Administrative Measures for the Material Assets Reorganization of Listed Companies (Reorganization Measures), it stipulates that the voting procedures of the board of directors and the shareholders' meeting shall be performed again, and announcements shall be made in a timely manner if the reorganization plan undergoes major adjustments after being reviewed by the shareholders' meeting of the listed company. Regarding what kind of adjustment meets the above-mentioned "major adjustment" standard, the Application Opinions clearly stipulates that it will take transaction object, transaction target, and supporting funds into consideration.
2. Clarify the relevant requirements of the issuance price of adjustment plan. According to Paragraph 4 of Article 45 of the Reorganization Measures, it stipulates that the issuance price of adjustment plan should be clear, specific and operable. Furthermore, the Application Opinions clarifies the requirements for specific indexes and procedures, such as the index changes, single and two-way adjustment, base date and others.

After sorting out and integrating the regulatory questions and answers, the CSRC abolishes the content that does not conform to and repeat in the higher-level laws such as the Securities Law at first. And then the questions and answers that clarify the application of relevant regulations are merged and published in the form of application opinions of securities and futures laws, which includes the major adjustments to the restructuring plans and the issuance price of adjustment plans. At last, the various questions and answers related to similar issues are sorted and merged, and they will be modified accordingly if they are not compatible with the market development and regulatory-oriented update.

In the next step, the CSRC will continue to implement the latest Securities Law, improving the capital market rules system, further enhancing the transparency of listed company supervision and mergers and acquisitions review work, better responding to market concerns in a timely manner, and improving its capital market's ability to serve the real economy.

**中国证券监督管理委员会发布《<上市公司重大资产重组管理办法>第二十八条、第四十五条的适用意见——证券期货法律适用意见第15号》与《监管规则适用指引——上市类第1号》**

2020年7月31日，为全面落实新《中华人民共和国证券法》（下称“证券法”）等上位法的规定，进一步深化改革，提高监管透明度，明确市场主体，释放并购重组市场活力，中国证券监督管理委员会（中国证监会）将涉及上市公司日常监管及并购重组审核的监管问答进行梳理、整合后，发布第53号公告（文号：证监会公告[2020]53号），宣布《<上市公司重大资产重组管理办法>第二十八条、第四十五条的适用意见——证券期货法律适用意见第15号》（下称“该法律适用意见”）自2020年7月31日起施行。且其于同日发布新闻，表示《监管规则适用指引——上市类第1号》（下称“该适用指引”）重新发布，该适用指引自发布之日起施行，原监管问答同步废止。

该法律适用意见的主要内容如下：

1. 明确认定构成重组方案重大调整的标准。《上市公司重大资产重组管理办法》（下称“重组办法”）第二十八条规定，重组方案在经过上市公司股东大会审议后进行重大调整的，应再次履行董事会、股东大会表决程序并及时公告。对于何种调整达到上述“重大调整”标准，该法律适用意见从交易对象、交易标的、配套募集资金等方面做了明确。
2. 明确发行价格调整方案的相关要求。重组办法第四十五条第四款规定，发行价格调整方案应当“明确、具体、可操作”。该法律适用意见从指数变动、单双向调整、基准日等具体指标及程序方面明确了要求。

此次梳理、整合，中国证监会首先对不符合证券法等上位法以及重复上位法规定的内容予以废止。其次对明确相关规章适用的问答进行合并，以证券期货法律适用意见的方式发布，包括重组方案重大调整、发行价格调整机制等内容。最后对涉及同类问题的各项问答整理合并，对不适应市场发展、监管导向更新的问答作出相应修改。

下一步，中国证监会将继续做好新《证券法》的贯彻落实工作，完善资本市场规则体系，进一步增强上市公司监管及并购重组审核工作透明度，及时回应市场关切，提高资本市场服务实体经济能力。

Source 来源:

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731\\_380953.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731_380953.html)

[http://www.csrc.gov.cn/pub/zjhpublic/zjh/202007/t20200731\\_380955.htm](http://www.csrc.gov.cn/pub/zjhpublic/zjh/202007/t20200731_380955.htm)

<http://www.csrc.gov.cn/pub/zjhpublic/zjh/202007/P020200731708429697992.pdf>

<http://www.csrc.gov.cn/pub/zjhpublic/zjh/202007/P020200731687517662497.pdf>

### **The Supreme People's Court of the People's Republic of China issues the Provisions on Several Issues Concerning Representative Litigation in Securities Disputes**

On July 31, 2020, the Supreme People's Court of the People's Republic of China (Supreme People's Court) officially issued the Provisions on Several Issues Concerning Representative Litigation in Securities Disputes (the Interpretation) and it will take effect on the day of announcement. The promulgation of the Interpretation is conducive to putting the representative litigation system for securities disputes into practice, facilitating investors to initiate and participate in litigation, reducing the cost of rights protection, protecting the legitimate rights and interests of investors, and effectively punishing the illegal acts in the capital market.

The Interpretation details the relevant provisions of Article 95 of the latest Securities Law of the People's Republic of China, establishing the principles of efficient, transparent, convenient, and low-cost. It can be divided into the ordinary representative litigation of the traditional joining system and the special representative litigation of the declaration withdrawal system, which systematically provides for case filing registration, preliminary examination, selection of representatives, confirmation of mediation agreements, litigation trial and judgment, enforcement and assignment and other important contents. In particular, there are special provisions on the centralized jurisdiction, startup procedures, rights registration, parties' declaration and withdrawal, litigation obligations of insurance agencies, litigation costs, and property preservation of special representative litigation that are of general public concern. It helps to solve many practical problems in the proceedings of the special representative litigation and effectively guaranteed the actual implementation of securities collective actions. In addition, the Interpretation also focuses on protecting investors' litigation rights and procedural interests, strengthening

the substantive review of the people's courts, and exerting judicial supervision and restriction functions.

At the same time, in order to promptly implement the special representative litigation policy, the China Securities Regulatory Commission (CSRC) has specially promulgated the Circular on Properly Carrying out the Work Relating to the Participation of Investors Protection Institutions in the Litigation of Special Representatives for Securities Disputes, which regulates the participation of insurance agencies, registration and settlement agencies and other entities. The Investor Service Center specially issued the Business Rules for Small and Medium-sized Investor Service Center Participating in Special Representative Litigation in China Securities Market (for Trial Implementation), focusing on the case selection mechanism, the rights and obligations of litigation representatives and other important parts in the litigation activities.

The timely implementation of representative litigation in securities disputes will effectively strengthen the accountability of securities civil liabilities and effectively curb fraudulent issuance and financial fraud. It is an important measure to fully implement the zero tolerance requirements for illegal and criminal acts in the capital market.

### **中华人民共和国最高人民法院发布《关于证券纠纷代表人诉讼若干问题的规定》**

2020年7月31日，中华人民共和国最高人民法院（下称“最高人民法院”）正式发布《关于证券纠纷代表人诉讼若干问题的规定》（下称“该司法解释”），该司法解释自公布之日起施行。该司法解释的出台，有助于推动证券纠纷代表人诉讼制度付诸实践，便利投资者提起和参加诉讼，降低投资者的维权成本，保护投资者的合法权益，有效惩治资本市场违法违规行。

该司法解释细化了新《证券法》第九十五条的相关规定，确立了高效、透明、便捷、低成本的审理原则。其可分为传统加入制的普通代表人诉讼和声明退出制的特别代表人诉讼，系统规定了代表人诉讼中的立案登记、先行审查、代表人选定、调解协议确认、诉讼审理与判决、执行与分配等各项重要内容。其中，对公众普遍关注的特别代表人诉讼的集中管辖、启动程序、权利登记、当事人声明退出、投保机构诉讼义务、诉讼费用、财产保全等进行了专门规定。其解决了特别代表人诉讼中诸多实践难题，有力保障了证券集体诉讼的真正落地实施。此外，该司法解释还注重保护投资者的诉讼权利和程序利益，强化人民法院的实体审查，发挥司法监督制约作用。

同时，为及时推动特别代表人诉讼制度付诸实施，中国证券监督管理委员会(中国证监会)专门发布《关于做好投资者保护机构参加证券纠纷特别代表人诉讼相关工作的通知》，对投保机构、登记结算机构等系统单位参加特别代表人诉讼行为进行总体规范。投资者服务中心专门发布《中证中小投资者服务中心特别代表人诉讼业务规则（试行）》，重点就案件选择机制、诉讼代表人在诉讼中的权利义务等重要内容进行规定。

及时实施证券纠纷代表人诉讼，将有力强化证券民事责任追究，有效遏制欺诈发行、财务造假等行为，是全面落实对资本市场违法犯罪行为“零容忍”要求的重要举措。

Sources 来源:

<http://www.court.gov.cn/fabu-xiangqing-245501.html>

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731\\_380951.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202007/t20200731_380951.html)

### **Shenzhen Stock Exchange Releases the Notice on Corporate Bond Swap Business to Promote the Building of a Market-oriented, Rule-of-law-based Debt Management System**

On July 30, 2020, under the unified deployment of China Securities Regulatory Commission (CSRC), Shenzhen Stock Exchange (SZSE) released the Notice of SZSE on Conducting Corporate Bond Swap Business (the "Notice") to diversify risk management tools on and maintain the reasonable order of the bond market. The Notice standardizes the business content, operating principles, information disclosure and others of bond swap business according to current laws and regulations.

The main contents of the Notice are as follows:

Defining the connotation of bond swap and adhering to the market-oriented, law-based swap principle. The Notice defines bond swap as that an issuer issues corporate bonds ("swapped bonds") to swap corporate bonds ("underlying bonds") listed on the exchange according to the Measures for Issuing and Trading Corporate Bonds and relevant rules. Such a bond swap can be conducted only in the form of an offer, and the swap is targeted at all holders of the underlying bonds. The bond swap shall follow the market-oriented, rule-of-law-based principle and be conducted between the issuer and the bond holder through independent consultation on a voluntary and equal basis. The swap process shall not harm holders' legitimate rights and interests.

Standardizing bond swap procedures to ensure orderly business operation. Because the bond swap process involves issuance of swapped bonds, cancellation or

delisting of underlying bonds after swap, etc., the Notice, considering the prior pilot practices, requires the share of the underlying bonds involved in the swap not be restricted by pledge or freezing. It emphasizes that regarding the underlying bonds that have not been accepted, the issuer shall continue to fulfill its payment obligation according to the prospectus of the underlying bonds and relevant agreements, and that the underlying bonds that have been accepted shall be promptly cancelled.

Laying down stricter information disclosure standard to protect investors' legitimate rights and interests. The Notice puts forward clear requirements on information disclosure arrangements of bond swap business, including that the issuer shall disclose detailed plans for the bond swap before the starting date of the swap offer, and disclose the results of the bond swap after the expiry of the offer in a timely manner. The trustee of the underlying bonds shall pay sustained attention to matters relating to the swap, disclose interim reports on entrusted matters timely, and warn holders of underlying bonds about relevant risks.

So far, SZSE has issued relevant notices on bond repurchase and bond swap business and gradually improved the market-oriented, rule-of-law-based debt management system. Issuers now may employ a variety of debt management tools to actively manage term bonds, improve the debt maturity structure, reduce financial cost and mitigate credit risk. Moreover, SZSE has launched a number of services including bond put-back revocation, put-back-and-resale, etc., offering more choices for bond market players in their risk management. Next, SZSE will continue to follow the deployment and requirements of the CSRC, improve the basic rules and regulations for the bond market, forestall and defuse bond credit risk, protect investors' legitimate rights and interests, and further facilitate the healthy, stable development of the bond market.

### **深圳证券交易所发布公司债券置换业务通知以推动构建市场化法治化债务管理体系**

7月30日，为丰富债券市场风险管理工具，维护债券市场合理秩序，深圳证券交易所（下称“深交所”）在中国证券监督管理委员会的统一部署下，发布《深圳证券交易所关于开展公司债券置换业务有关事项的通知》（下称“《通知》”）。《通知》依据现有法律法规，从业务内容、操作原则、信息披露等方面对债券置换业务进行规范。

其主要内容如下：

明确债券置换内涵，坚持市场化、法治化置换原则。《通知》明确债券置换是指发行人依照《公司债券发行

与交易管理办法》及相关规则发行公司债券（下称“置换债券”）置换交易所上市或挂牌公司债券（下称“标的债券”），仅可采用要约方式进行，要约对象应涵盖标的债券全部持有人。债券置换应当遵循市场化、法治化原则，在发行人与债券持有人自愿、平等基础上自主协商开展，置换过程不得侵害持有人合法权益。

严格信息披露标准，保护投资者合法权益。《通知》对债券置换业务的信息披露安排提出明确要求，包括发行人应当在置换要约起始日前披露债券置换详细方案，在要约期限届满后及时披露置换结果；标的债券受托管理人应当持续关注置换事宜，及时披露受托管理事务临时报告，并向标的债券持有人提示相关风险。

规范债券置换程序，保证业务有序进行。由于债券置换过程涉及置换债券发行、标的债券被置换后注销或摘牌等事宜，在结合市场前期试点实践基础上，《通知》要求参与置换的标的债券份额不得存在质押或冻结等权利受限情形；重点强调对未接受要约的标的债券，发行人仍应继续按照标的债券募集说明书等相关约定履行偿付义务；对接受要约的标的债券，应及时注销等。

截至目前，深交所已先后发布债券购回和债券置换相关业务通知，逐步完善构建市场化法治化债务管理体系，发行人可运用多种债务管理工具对存续债券进行主动管理，优化债务期限结构、降低财务成本、缓释信用风险。此外，深交所已推出债券回售撤销、回售转售等多项业务，为债券市场参与主体开展风险管理工作提供多样化选择。下一步，深交所将继续按照证监会部署要求，健全完善债券市场基础规则制度，防范化解债券信用风险，保障投资者合法权益，进一步促进交易所债券市场健康发展。

Sources 来源:

[http://www.szse.cn/English/about/news/szse/t20200803\\_580201.html](http://www.szse.cn/English/about/news/szse/t20200803_580201.html)

[http://www.szse.cn/aboutus/trends/news/t20200730\\_580145.html](http://www.szse.cn/aboutus/trends/news/t20200730_580145.html)

### **Financial Conduct Authority of the United Kingdom Launches Enhanced Financial Services Register to Protect Consumers**

The Financial Conduct Authority (FCA) of the United Kingdom launched its updated Financial Services (FS) Register, including a simpler design and clearer language. The redesign aims to help consumers protect themselves from harm and will provide a better experience for the Register's users. The Register – which had more than 7 million unique users in the past year – is a vital service for anyone that wants to see firms and approved individuals that are involved with

regulated activities. It can help consumers avoid scams and enables firms to cross-check references and make their key staff known to customers. The enhanced Register has been tested with consumers and other users to ensure it is easier to use and understand.

Key enhancements include:

- a clearer navigation and design
- simpler language
- more information on the Register's purpose, how to use it and how to avoid scams
- important information being made more prominent, including past actions against individuals and firms, and consumer protections
- optimization for some mobile devices

The FCA will review and improve the FS Register on an ongoing basis, to ensure it meets the needs of users.

Jonathan Davidson, Executive Director of Supervision, Retail and Authorizations, said: "The Financial Services Register is an important tool for both the consumers and firms who use it. These changes will make it easier for users to navigate and understand the Register, and in doing so, help them avoid financial harm such as scams by unauthorized firms and individuals."

Under the Senior Managers and Certification Regime (SM&CR), the FCA had announced its commitment to publishing and maintaining a directory of certified and assessed persons on the Financial Services Register. Having already announced a delay to this, the FCA now intends to publish it later this year.

The FCA is also currently proposing to extend the previous deadline of December 9, 2020 for solo-regulated firms to submit information about Directory Persons to the Register to March 31, 2021.

### **英国金融行为监管局启动升级的金融服务登记簿以保护消费者**

英国金融行为监管局推出了最新的金融服务登记簿，其中包含了更简单的设计以及更清晰的语言。此次重新设计旨在帮助消费者保护自己免受伤害，并将为注册用户提供更好的体验。

该登记簿（过去一年中拥有超过 700 万注册用户），对于任何想要了解公司及获批准个人参与受监管活动的人来说，都提供着至关重要的服务。它可以帮助消费者避免诈骗，使公司能够反复检查参考资料，并让客户了解他们的关键员工。升级的登记簿已经由消费者和其他用户进行测试以确保其更易于使用和理解。

主要升级的功能包括：

- 更加清晰的导航和设计
- 更加简洁的语言
- 更多有关登记簿目的、使用方法以及如何避免欺诈的信息
- 更加突出重要信息，包括过去针对个人和公司所采取的措施以及消费者保护
- 对一些移动设备进行了优化

英国行为监管局将持续检查并改进金融服务登记簿，以确保其满足用户的需求。

监督、零售及授权执行总监 Jonathan Davidson 表示：“金融服务登记簿无论对于使用它的消费者还是公司而言都是重要工具。此次升级将使用户更容易浏览和理解登记簿，并在此过程中帮助其避免经济损失，例如未经授权的公司及个人实施的诈骗。”

先前英国金融行为监管局曾宣布其承诺根据高级管理人员及认证制度在金融服务登记簿上发布并维持认证及评估人员目录。目前已经宣布推迟，并打算在今年晚些时候发布。

英国金融行为监管局目前还提议将先前确定的仅受英国金融行为监管局监管的公司提交有关名录人员信息至登记簿的截止日期由 2020 年 12 月 9 日延长至 2021 年 3 月 31 日。

Sources 来源：

<https://www.fca.org.uk/news/press-releases/fca-launches-enhanced-financial-services-register-protect-consumers>

### **Financial Conduct Authority of the United Kingdom Consults on New Rules to Improve Open-ended Property Fund Structures**

The Financial Conduct Authority (FCA) of the United Kingdom is consulting on proposals to reduce the potential for harm to investors from the liquidity mismatch in open-ended property funds. The new rules as proposed would require investors to give notice – potentially of up to 180 days - before their investment is redeemed.

At present investors in these funds can buy and sell units on a frequent – often daily – basis. But the underlying property in which these funds invest cannot be bought and sold at the same frequency. This creates a liquidity mismatch. When too many investors simultaneously redeem their investments, a fund manager may need to suspend dealings in the units of the fund because of the

liquidity mismatch between the fund units and the underlying property assets.

The illiquid nature of property also means that a reliable price is not always readily available, and in some market conditions the fund units cannot be priced with confidence. This can also lead to a need to suspend dealings in fund units.

Property fund suspensions have occurred with increasing frequency in recent years, including following Brexit and in the current coronavirus pandemic. Fund suspensions exist to protect investors in exceptional circumstances. However, the FCA has seen repeated suspensions of these funds over recent years for liquidity reasons, which suggests that there may be wider problems. The FCA is concerned that the current structure could disadvantage some investors because it incentivizes investors to be the first to exit at times of stress. This can potentially harm those who remain if the fund suspends or assets are sold rapidly due to liquidity demands.

The proposed notice period would allow the manager to plan sales of property assets so that it could better meet redemptions that are requested. It would also enable greater efficiency within these products as fund managers would be able to allocate more of the fund to property and less to cash for unanticipated redemptions.

Christopher Woolard, Interim Chief Executive of the FCA, said: “We think that our proposals will help further our consumer protection objective by reducing the number of fund suspensions, preventing unsuitable purchases of funds, and by increasing product efficiency for fund managers. We want open-ended funds to provide a structure through which investors can safely invest in less liquid assets which offer attractive expected returns and at the same time supports investment that benefits the wider economy. We hope the proposed new rules will directly address the liquidity mismatch of these funds making them more resilient during periods of stress and allowing them to operate in a way that all investors are treated equally.”

The FCA will publish a Policy Statement with final rules as soon as possible in 2021. The consultation remains open to responses until November 3, 2020. The FCA also continues to engage with other stakeholders on considering new initiatives within the regulatory framework that would facilitate investments in long-term assets.

英国金融行为监管局就改善开放式不动产基金结构的新规则进行磋商

英国金融行为监管局正在就减少开放式不动产基金流动性不匹配对投资者造成伤害的可能性的建议进行咨询。拟议的新规则将要求投资者在赎回其投资之前发出通知（最多可能提前 180 天）。

目前，这些基金的投资者可以经常（通常为每天）交易单位，但是这些资金投资的基础财产不能以相同的频率买卖，这就造成流动性不匹配。当过多投资者同时赎回其投资时，基金经理可能需要暂停基金单位的交易，因为基金单位和相关房地产资产之间的流动性不匹配。

财产的流动性不足也意味着始终无法获得可靠的价格，并且在某些市场条件下，无法对基金单位进行有把握的定价。这也可能导致需要暂停基金单位的交易。

近年来，随着英国脱欧以及当前新型冠状病毒大流行，不动产基金停牌越来越频繁。基金停牌是为了在特殊情况下保护投资者。然而，英国金融行为监管局发现，由于流动性原因近年来屡屡发生基金停牌，这表明可能有更广泛的问题存在。英国金融行为监管局担心当前的结构可能会使某些投资者处于不利地位，因为它促使投资者在压力大时率先退出。如果因流动性需求基金停牌或资产被迅速出售，则可能会对留下的人产生潜在危害。

拟议的通知期将使经理人可以计划出售不动产资产，以便更好地满足赎回要求。这还将提高这些产品的效率，因为基金经理将能够将更多的资金配置在不动产，而更少地分配资金用于应对意外赎回。

英国金融行为监管局临时首席执行官 Christopher Woolard 表示：“我们认为，提案将通过减少基金停牌的次数，防止不合适的基金购买以及提高基金经理的产品效率来帮助实现对消费者的保护。我们希望开放式基金提供一种结构，使投资者可以通过该结构安全地投资于流动性较小的资产，这些资产可提供诱人的预期回报，同时支持有利于整个经济的投资。我们希望拟议的新规则将直接解决这些资金流动性不匹配问题，使其在压力时期更具弹性，并使其运作方式使所有投资者被平等对待。”

英国金融行为监管局将于 2021 年发布包含最终规则的政策声明。此次磋商直至 2020 年 11 月 3 日止。英国金融行为监管局还将继续与其他利益相关方合作，在监管框架内考虑新举措以促进对长期资产的投资。

Sources 来源：

<https://www.fca.org.uk/news/press-releases/fca-consults-new-rules-improve-open-ended-property-fund-structures>

## Singapore Exchange Pioneers Asia's First International REIT Futures

- Meets investor demand to gain greater exposure to the liquid and fast-growing Asia ex-Japan REIT market
- Solidifies Singapore's position as the most international REIT hub in the world

Singapore Exchange (SGX) is pioneering Asia's first international real estate investment trust (REIT) futures based on indices tracking diverse REITs listed in Singapore, Hong Kong, Malaysia and Thailand, on the back of rising global investor demand for real estate related investment products and trading solutions.

SGX – Asia's most diversified and international hub for REITs – on 24 August will launch SGX FTSE EPRA Nareit Asia ex-Japan Index Futures and SGX iEdge S-REIT Leaders Index Futures. The FTSE EPRA Nareit Global Real Estate Index series is a widely followed global benchmark, with an estimated US\$340 billion of assets under management actively benchmarked or passively tracking the indices. The iEdge S-REIT Leaders Index is the most liquid index-basket representation of the Singapore REIT (SREIT) market and one of the most widely referenced in SGX's suite of indices. Both futures are designed in accordance with Commodity Futures Trading Commission guidelines, which would allow broad distribution to US and global institutional investors.

The listing of the SGX FTSE EPRA Nareit Asia ex-Japan Index Futures and the SGX iEdge S-REIT Leaders Index Futures builds on the forte of the Singapore stock market, following the launch of Singapore Single Stock Futures in June this year.

Michael Syn, Head of Equities at SGX, said, “We continue to broaden our Singapore franchise with innovative products that capitalize on the strengths of our cash equities and equity derivatives businesses. Singapore is the REITs growth capital of Asia, attracting global institutional investors looking for defensive returns, particularly in today's volatile markets and low interest rate environment. Over the past 18 years since the first REIT listing on SGX, we have established a strong REIT ecosystem with increasing investor interest, deep liquidity and active issuer participation. SGX offers a comprehensive product suite, ranging from stocks, REIT ETFs – and now REIT futures – to meet increasing customer demand.”

Recent years have seen alignment in REIT performances globally, buoyed by rising investor interest. With Singapore's emergence as the newest global international REIT hub, SGX plays a role in round-

the-clock price discovery, in addition to facilitating significant rotation of institutional flows.

Singapore is the largest REIT market in Asia ex-Japan, with 44 REITs and property trusts which have a combined market capitalization of S\$98 billion. The market capitalization of SREITs and property trusts has grown at a compounded annual growth rate of 15% in the last 10 years. Compared to other asset classes, they offer one of the highest dividend yields and lower volatility, with average dividend yield of 7.1%.

In 2019, close to 45% of REIT IPOs worldwide debuted on SGX, surpassing the largest REIT markets of US, Australia and Japan. Singapore is one of the largest global REIT hubs in the world, where over 80% of the REITs hold overseas assets, spread across geographies and sub-sectors.

#### 新加坡交易所率先推出亚洲首只国际房地产投资信托期货

- 满足投资者需求，以流动性强且增长迅速的亚洲（除日本外）房地产投资信托市场获得更多敞口
- 巩固新加坡作为全球最国际化房地产投资信托中心的地位

在全球投资者对房地产相关投资产品和交易解决方案需求日益上升的背景下，新加坡交易所率先推出亚洲第一只国际房地产投资信托(REIT)期货，追踪新加坡、中国香港、马来西亚和泰国上市的各项 REITs 指数。

作为亚洲最多元化和国际化的房地产投资信托中心，新加坡交易所将于 8 月 24 日推出新加坡交易所富时 EPRA Nareit 亚洲（除日本外）指数期货和新加坡交易所 iEdge S-REIT 领先指数期货。富时 EPRA Nareit 全球房地产指数系列是一个广受认可的全球基准，约有 3400 亿美元的在管资产主动或被动地追踪这些指数。iEdge S-REIT 领先指数是新加坡房地产投资信托市场中流动性最强的指数，也是新加坡交易所一系列指数中引用最广泛的指数之一。这两只期货均根据美国商品期货交易委员会的指导原则设计，可向美国和全球机构投资者广泛发行。

这是新加坡交易所继今年 6 月推出新加坡单一股票期货后，依托新加坡股市的强劲表现，推出这两只期货。

新加坡交易所股权部主管 Michael Syn 表示，“我们将继续扩大我们在新加坡的专营权，凭借股票现货和股票衍生品业务的优势推出创新产品。新加坡是亚洲房地产投资信托的成长之都，吸引着寻求防御性回报的全球机构投资者，尤其是在当今动荡的市场和低利率环境下。在过去的 18 年里，我们已经建立了一个强大的房地产投资信托生态系统，拥有不断增长的投资者的兴趣、深度的

流动性和发行人的积极参与。新加坡交易所提供了一套全面的产品组合，包括股票、REIT ETF 和现在的 REIT 期货，以满足客户不断增长的需求。”

近年来，受投资者兴趣持续攀升的提振，全球房地产投资信托的表现趋于一致。鉴于新加坡已成为新晋国际房地产投资信托中心，新加坡交易所不仅能为机构资金的大幅流动提供便利，还能在全天候的价格发现方面发挥作用。

新加坡是亚洲最大的房地产投资信托市场（除日本外），现有 44 只房地产投资信托和财产信托，总市值达 980 亿新元。在过去 10 年里，新加坡房托和财产信托的市值以每年 15% 的复合增长率保持增长。与其他资产类别相比，其股息收益率较高且波动性较低，平均股息收益率为 7.1%。

2019 年，全球近 45% 的房地产投资信托在新加坡交易所完成首次上市，超过了美国、澳大利亚及日本等几大房托市场。新加坡是全球最大的房地产投资信托中心之一，超过 80% 的房地产投资信托持有海外资产，分布在不同的地区和行业。

Sources 来源:

<https://www.sgx.com/media-centre/20200804-sgx-pioneers-asias-first-international-reit-futures>

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