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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 Publishes e-Learning Presentation on Notifiable Transaction Rules Reiterating Guidance on Disclosure of Ultimate Beneficial Owners

On October 12, 2020, The Stock Exchange of Hong Kong (Exchange) published an e-learning presentation on notifiable transaction rules (Presentation). The Presentation reiterates, among other things, guidance on disclosure of ultimate beneficial owners by providing examples of when a listed issuer should disclose the identity of counterparty's ultimate beneficial owner.

Under Main Board Rules 14.58(3) and 14.63(3) / GEM Rules 19.58(4) and 19.63(3), a listed issuer is required to include a confirmation in the announcement and/or the circular in relation to a notifiable transaction that the counterparty and its ultimate beneficial owner are independent of the listed group and the connected persons of the listed issuer. Nonetheless, in FAQ Series 7 No. 17, the Exchange emphasizes that a listed issuer should observe the general principle for disclosure under Main Board Rule 2.13 / GEM Rule 17.56 and disclose information (including the identity of the counterparty's ultimate beneficial owner) that enables shareholders and investors to make an informed assessment of the transaction.

In the Presentation, the Exchange reiterates the overarching principles as set out in Main Board Rule 2.13 / GEM Rule 17.56. The Presentation also recites examples where the disclosure of counterparty's ultimate beneficial owner would likely be material information for investors as previously provided in Listed Issuer Regulation Newsletter (November 2019):

- Where there are continuing relationships with the counterparty, for example, the counterparty may continue to hold an equity interest in the acquisition target or is a joint venture partner;

In the Presentation, the Exchange reiterates the overarching principles as set out in Main Board Rule 2.13 / GEM Rule 17.56. The Presentation also recites examples where the disclosure of counterparty's ultimate beneficial owner would likely be material

information for investors as previously provided in Listed Issuer Regulation Newsletter (November 2019):

- Where as part of the disposal, the listed issuer may take a promissory note from the counterparty;
- Where the counterparty was the founder or key management, and played a meaningful role in the historical financial performance of the acquisition target; or
- Where the subscriber of securities (including convertible securities) would hold a material interest in the listed issuer, for example, where the subscription triggers disclosure of interests requirements under Part XV of the Securities and Futures Ordinance, or where the subscriber would play a strategic role in the listed issuer.

The examples are not an exhaustive list of situations where a listed issuer should disclose the identity of a counterparty's ultimate beneficial owner but they provide helpful guidance to the listed issuers to better navigate the standard of disclosure required by the Exchange under the "informed-basis investment principle" principle. Listed issuers are reminded that regulatory compliance is not a box-ticking exercise and that the information contained in any document required pursuant to the Exchange Listing Rules must be accurate and complete in all material respects and not be misleading or deceptive.

香港联合交易所有限公司发布包括最终实益拥有人披露指引的须予公布的交易规则的网上培训简报

2020年10月12日，香港联合交易所有限公司（联交所）发布了有关须予公布的交易规则的网上培训简报（该简报）。该简报提供（其中包括）上市发行人应披露对手方最终实益拥有人身份的示例，以提供有关披露最终实益拥有人的指引。

根据主板上市规则第 14.58 (3) 和 14.63 (3) 条/ GEM 上市规则第 19.58 (4) 和 19.63 (3) 条，上市发行人必

须在有关须予公布的交易的公告和/或通函中确认对手方及其最终实益拥有人均是上市发行人及上市发行人的关连人士以外的独立第三者。不过，联交所在常问问题系列七编号 17 中强调，上市发行人应遵守主板上市规则第 2.13 条/ GEM 上市规则第 17.56 条所述的一般披露原则，并披露能使股东及投资者获得足够资料以对交易作出评估的信息（包括对手方的最终实益拥有人的身份）。

联交所在简报中主板上市规则第 2.13 条/ GEM 上市规则第 17.56 条所载的首要原则。简报亦重述了《上市发行人监管通讯》（2019 年 11 月）中提供的对手方最终实益拥有人披露可能对投资者而言是重要的信息的示例：

- 与对手方有持续关系，例如其可能继续持有收购目标的股权，又或为合营企业的伙伴；
- 作为出售的一部分，上市发行人可以从对手方处获得承兑期票；
- 对手方为收购目标的创办人或主要管理人员，并对收购目标过往财务业绩有重大贡献；或
- 证券（包括可换股证券）认购人将于上市发行人中拥有重大权益，例如有关认购触发《证券和期货条例》第 XV 部内有关的权益披露的规定，或认购人将在上市发行人中担当策略性的角色。

这些例子并非旨在详尽列出所有上市发行人应披露对方的最终实益拥有人的身份的情况，但它们为上市发行人提供了有益的指导，以便他们更好地了解联交所根据“知情基础投资原则”所要求的披露标准。上市发行人应注意监管合规并非只是循例在清单格子裏打勾，上市发行人应确保联交所上市规则要求提供的任何文件中的信息，在所有重要方面均必须准确及完整，并且不得具有误导性或欺骗性。

Source 来源：

[https://www.hkexi.org/ejai/Notifiable%20Transactions%20eCourse%20\(EN\)/story.html](https://www.hkexi.org/ejai/Notifiable%20Transactions%20eCourse%20(EN)/story.html)

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance-Contingency/Frequently-Asked-Questions/FAQ_7.pdf?la=en

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_201911.pdf?la=en

The Stock Exchange of Hong Kong Limited announces the Cancellation of Listing of Brightoil Petroleum (Holdings) Limited

The Stock Exchange of Hong Kong Limited (the Exchange) announced that with effect from 9:00 am on October 20, 2020, the listing of the shares of Brightoil Petroleum (Holdings) Limited (Brightoil) will be cancelled under Main Board Listing Rule 6.01A.

Trading in the Brightoil's shares has been suspended since October 3, 2017. Under Main Board Listing Rule 6.01A, the Exchange may delist the Company if trading does not resume by January 31, 2020.

Brightoil failed to fulfil all the resumption conditions/guidance set by the Exchange and resume trading in its shares by January 31, 2020. On February 28, 2020, the listing committee of the Exchange (Listing Committee) decided to cancel the listing of the Brightoil's shares on the Exchange under Main Board Listing Rule 6.01A.

On March 9, 2020, Brightoil sought a review of the Listing Committee's decision by the listing review committee of the Exchange (Listing Review Committee). On 7 October 2020, the Listing Review Committee upheld the decision of the Listing Committee to cancel Brightoil's listing. Accordingly, the Exchange will cancel Brightoil's listing with effect from 9:00 a.m. on October 20, 2020.

The Exchange has requested Brightoil to publish an announcement on the cancellation of its listing.

The Exchange advises shareholders of Brightoil who have any queries about the implications of the delisting to obtain appropriate professional advice.

香港联合交易所有限公司（联交所）宣布取消光滙石油（控股）有限公司的上市地位

香港联合交易所有限公司（联交所）宣布，由 2020 年 10 月 20 日上午 9 时起，光滙石油（控股）有限公司（光滙）的上市地位将根据主板《上市规则》第 6.01A 条予以取消。

光滙的股份自 2017 年 10 月 3 日起已暂停买卖。根据主板《上市规则》第 6.01A 条，若光滙未能于 2020 年 1 月 31 日或之前复牌，联交所可将光滙除牌。

光滙未能于 2020 年 1 月 31 日或之前履行联交所订下的所有复牌指引而复牌。于 2020 年 2 月 28 日，上市委员会决定根据主板《上市规则》第 6.01A 条取消该公司股份在联交所的上市地位。

光滙于2020年3月9日向上市复核委员会申请复核上市委员会的决定。上市复核委员会于2020年10月7日决定维持上市委员会取消光滙上市地位的决定。按此，联交所将于2020年10月20日上午9时起取消光滙的上市地位。

联交所已要求光滙刊发公告，交代其上市地位被取消一事。

联交所建议，光滙股东如对除牌的影响有任何疑问，应征询适当的专业意见。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201016news?sc_lang=en
https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201016news?sc_lang=zh-HK

The Stock Exchange of Hong Kong Limited announces the Cancellation of Listing of China Yu Tian Holdings Limited

The Stock Exchange of Hong Kong Limited (the Exchange) announced that with effect from 9:00 am on October 29, 2020, the listing of the shares of China Yu Tian Holdings Limited (China Yu Tian) will be cancelled under GEM Rule 9.14A.

Trading in China Yu Tian's shares has been suspended since March 29, 2019. Under GEM Rule 9.14A, the Exchange may delist China Yu Tian if trading does not resume by March 28, 2020.

China Yu Tian failed to fulfil all the resumption guidance set by the Exchange and resume trading in its shares by March 28, 2020. On May 8, 2020, the GEM Listing Committee decided to cancel the listing of China Yu Tian's shares on the Exchange under GEM Rule 9.14A.

On May 25, 2020, China Yu Tian sought a review of the GEM Listing Committee's decision by the GEM Listing Review Committee. On October 15, 2020, the GEM Listing Review Committee upheld the decision of the GEM Listing Committee to cancel the China Yu Tian's listing. Accordingly, the Exchange will cancel China Yu Tian's listing with effect from 9:00 am on October 29, 2020.

The Exchange has requested China Yu Tian to publish an announcement on the cancellation of its listing.

The Exchange advises shareholders of China Yu Tian who have any queries about the implications of the delisting to obtain appropriate professional advice.

香港联合交易所有限公司（联交所）宣布取消中國宇天控股有限公司的上市地位

香港聯合交易所有限公司（聯交所）宣布，由2020年10月29日上午9時起，中國宇天控股有限公司（中國宇天）的上市地位將根據《GEM 規則》第9.14A條予以取消。

中國宇天的股份自2019年3月29日起已暫停買賣。根據《GEM 規則》第9.14A條，若中國宇天未能於2020年3月28日或之前復牌，聯交所可將中國宇天除牌。

中國宇天未能於2020年3月28日或之前履行聯交所訂下的所有復牌指引而復牌。於2020年5月8日，GEM上市委員會決定根據《GEM 規則》第9.14A條取消中國宇天股份在聯交所的上市地位。

中國宇天於2020年5月25日向GEM上市覆核委員會申請覆核GEM上市委員會的決定。GEM上市覆核委員會於2020年10月15日決定維持GEM上市委員會取消中國宇天上市地位的決定。按此，聯交所將於2020年10月29日上午9時起取消中國宇天的上市地位。

聯交所已要求中國宇天刊發公告，交代其上市地位被取消一事。

聯交所建議，中國宇天股東如對除牌的影響有任何疑問，應徵詢適當的專業意見。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201027news?sc_lang=zh-HK
https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201027news?sc_lang=en

Hong Kong Securities and Futures Commission Reprimands and Fines Goldman Sachs (Asia) L.L.C. US\$350 million for Serious Regulatory Failures over 1Malaysia Development Berhad's Bond Offerings

On October 22, 2020, The Securities and Futures Commission (SFC) has reprimanded and fined Goldman Sachs (Asia) L.L.C. (Goldman Sachs Asia) US\$350 million (HK\$2.71 billion) for serious lapses and deficiencies in its management supervisory, risk, compliance and anti-money laundering controls that contributed to the misappropriation of US\$2.6 billion from US\$6.5 billion that 1Malaysia Development Berhad (1MDB) raised in three bond offerings in 2012 and 2013.

The 1MDB bond offerings were arranged and underwritten by Goldman Sachs International, but the actual work was conducted by deal team members in multiple jurisdictions, and revenue generated from the

transactions was shared among Goldman Sachs entities in different jurisdictions.

In particular, Goldman Sachs Asia, the compliance and control hub of Goldman Sachs in Asia and based in Hong Kong, had significant involvement in the origination, approval, execution and sales process of the three 1MDB bond offerings. Ultimately, Goldman Sachs Asia received 37% of the total revenue of US\$567 million generated from the bond offerings, in the sum of US\$210 million, the largest share among the various Goldman Sachs entities.

The SFC considers that Goldman Sachs Asia lacked adequate controls in place to monitor staff and detect misconduct in its day-to-day operation, and allowed the 1MDB bond offerings to proceed when numerous red flags surrounding the offerings had not been properly scrutinised and satisfactory answers to such red flags had not been obtained.

The 1MDB bond deals were obtained for Goldman Sachs by Mr Tim Leissner, a responsible officer of Goldman Sachs Asia and a participating managing director of the investment banking division at the material time. In August 2018, Leissner pleaded guilty to criminal charges brought by the United States Department of Justice (US DOJ) against him for conspiring to commit money laundering and to violate the Foreign Corrupt Practices Act. Leissner admitted that he had conspired with a Malaysian financier, Mr Low Taek Jho, also known as Jho Low, and others to pay bribes and kickbacks to Malaysian and Abu Dhabi officials to obtain and retain the business from 1MDB for Goldman Sachs, including the bond offerings.

The SFC's investigation found that Leissner was essentially given a free rein in the execution of the 1MDB bond offerings, enabling him to provide misleading information to – or conceal information from – Goldman Sachs without being adequately challenged.

In particular, despite:

- evidence pointing to the involvement of Low in bringing about the first bond offering;
- Goldman Sachs's knowledge that Low and Leissner were acquaintances and Low was very close to 1MDB and government officials in Malaysia and Abu Dhabi; and
- Low having been twice rejected as a private wealth management client as his source of wealth could not be verified, resulting in a potential money laundering risk,

Goldman Sachs's regional and firm-wide committees that vetted the bond offerings accepted Leissner's false assertions that Low had no roles in the bond offerings without making further inquiries.

There were also numerous red flags which raised questions as to the commercial rationale of the bond offerings and serious money laundering and bribery risks, but they were not critically examined by various regional and firm-wide committees of Goldman Sachs, thus enabling Leissner and his conspirators to escape scrutiny. These included the following:

- Despite being in a weak financial position with questionable ability to service existing debts, 1MDB raised US\$6.5 billion within a short period of 10 months but the amounts raised far exceeded the actual needs of 1MDB. Less than 50% of the funds raised in the first two bond offerings were intended to be used for the acquisition of power assets that had been identified. In just four months after the second offering, 1MDB raised another US\$3 billion to finance a joint venture that did not yet have concrete investment plans. At that time, over US\$1.6 billion of the proceeds from the first two transactions were still not utilised.
- Goldman Sachs received around US\$581.5 million in fees from 1MDB, about 9% of the funds raised in these offerings. The revenue Goldman Sachs earned from these three offerings alone was more than double the total revenue it generated from acting as an arranger and/or underwriter in 213 other Asia ex-Japan bond offerings in the five years between 2011 and 2015.
- 1MDB's willingness to pay such high fees to Goldman Sachs as sole arranger and underwriter, and the engagement of Goldman Sachs for all three offerings without going through a competitive process should have raised questions about how the business was obtained from 1MDB, the reasonableness of the mandates, and whether the circumstances leading to such business raised any suspicions of bribery or other illicit conduct.
- 1MDB's repeated emphasis on confidentiality and speed of execution, and its use of foreign private banks rather than Malaysian commercial banks to deposit the bond proceeds are other red flags present in all three bond offerings.
- In the course of reviewing the bond offerings, Goldman Sachs Asia had found plenty of negative media reports which indicated high corruption risks associated with 1MDB and which raised questions about the integrity of 1MDB and the transactions it had entered into.

The SFC's investigation also found that although the deal team and control functions took note of many of the red flags and appeared to have taken some steps to discuss and address them, Goldman Sachs adopted a piecemeal approach in resolving the issues and had not properly considered the wider and "bigger picture" concerns about the commercial rationale of the bond offerings and satisfied itself that such concerns have been satisfactorily addressed.

The SFC considers that Goldman Sachs Asia had failed to:

- supervise diligently its senior personnel who were involved in the execution of the bond offerings and to ensure that they maintained appropriate standards of conduct;
- identify and adequately address money laundering and bribery concerns when there were numerous red flags;
- exercise due skill, care and diligence, and act in the best interest of its clients and the integrity of the market when vetting and approving the bond offerings; and
- put in place adequate and effective internal control procedures to protect its clients from financial losses arising from frauds and other dishonest acts or professional misconduct.

In deciding the disciplinary sanctions, the SFC took into account all relevant circumstances, including:

- Goldman Sachs Asia had extensive involvement in the 1MDB bond offerings and received more than one third of the total revenue generated from the three bond offerings;
- there were serious lapses and deficiencies in Goldman Sachs Asia's risk, compliance and anti-money laundering controls and management oversight which allowed Leissner's bribery of foreign government officials to completely escape scrutiny;
- Goldman Sachs Asia allowed the bond offerings to proceed when numerous red flags suggesting money laundering and/or bribery had not been properly addressed;
- Goldman Sachs has settled criminal proceedings with the Malaysian government for US\$2.5 billion plus a US\$1.4 billion guarantee;
- since the securities industry is of fundamental importance to Hong Kong's role as an international financial centre, it is essential to maintain among members of the investing public a well-founded confidence in the securities industry as well as in the integrity and professional competence of those who are employed in the industry;
- a strong message needs to be sent to the market to deter other market participants from allowing similar failures to occur;
- Goldman Sachs Asia's acceptance of the SFC's findings and disciplinary action facilitated an early resolution of the matter; and
- Goldman Sachs Asia undertook to provide the SFC with annual reports prepared by its internal audit function for three consecutive years confirming, among others, that effective remedial measures have been implemented to address the regulatory concerns identified by the SFC in this matter.

香港证券及期货事务监察委员会谴责高盛（亚洲）有限责任公司在 1Malaysia Development Berhad 债券发售犯有严重监管缺失并罚款 3.5 亿美元

于 2020 年 10 月 22 日，香港证券及期货事务监察委员会（证监会）谴责高盛（亚洲）有限责任公司（高盛亚洲）因在管理层监督、风险、合规及打击洗钱等监控方面犯有严重失误和缺失，令 1Malaysia Development Berhad（1MDB）于 2012 年及 2013 年透过三次债券发售筹得的 65 亿美元中有 26 亿美元被挪用，并对其罚款 3.5 亿美元。

上述 1MDB 的债券发售由 Goldman Sachs International 安排及包销，但实际工作是由身处多个司法管辖区的交易团队成员进行，而有关交易所产生的收入由高盛位于不同司法管辖区的实体分享。

值得注意的是，以香港为基地的高盛亚洲作为高盛在亚洲的合规及监控中心，于该三宗 1MDB 的债券发售的发起、批准、执行及销售过程中的参与程度非常高。高盛亚洲最终自有相关债券发售所产生的 5.67 亿美元总收入中获得 37%（金额为 2.1 亿美元），在高盛各个实体中占最大的份额。

证监会认为，高盛亚洲欠缺充分的监控措施，以在其日常运作中监察职员和侦测失当行为，并在与 1MDB 债券发售有关的多项预警迹象未获适当审查，及尚未就有关预警迹象得到令人满意的答案时，便容许该等发售继续进行。

有关 1MDB 的债券交易是由在关键时间担任高盛亚洲的负责人员兼投资银行部合伙董事总经理的 Tim Leissner 为高盛所取得的。Leissner 于 2018 年 8 月承认美国司法部所提出、针对他串谋洗钱及违反《反海外腐败法》的刑事控罪。Leissner 承认，他曾与马来西亚籍金融家刘特佐（Low Taek Jho，又名 Jho Low）（刘）及其他人士串谋，向马来西亚及阿布札比的官员支付贿款和回扣，为高盛取得及保持来自 1MDB 的业务，包括该等债券发售。

证监会的调查发现，Leissner 实质上可自由掌控该等 1MDB 债券发售的执行，因而令他得以在未经充分质询的情况下，向高盛提供具误导性的资料或向其隐瞒资料。具体而言，尽管：

- 证据指向刘曾参与推动首次债券发售；
- 高盛知悉刘与 Leissner 互相认识，且刘与 1MDB 及马来西亚和阿布札比的政府官员关系非常密切；及
- 刘曾两度被拒绝成为私人财富管理客户，原因是他的财富来源无法被核实，故将带来潜在的洗钱风险。

但负责审议该等债券发售的高盛的地区性以至集团层面的委员会在没有进一步查问的情况下，接纳了 Leissner 指刘在该等债券发售中没有任何角色的虚假说法。

此外，有多项预警迹象引起了对该等债券发售的商业理据和严重的洗钱及贿赂风险的质疑，但高盛的各个地区性以至集团层面的委员会却没有对这些预警迹象进行严格审查，让 Leissner 及其同谋者得以避开监察。该等预警迹象包括以下各项：

- 尽管 1MDB 的财政状况疲弱，其偿还现有债务的能力令人置疑，但 1MDB 在短短 10 个月内便筹集了 65 亿美元，而所筹得的金额亦远超其实际所需。在首两次债券发售所筹得的资金中，有不足 50% 的资金拟用于收购已物色的电力资产。在第二次发售后仅四个月内，1MDB 再筹得 30 亿美元，为一家仍没有具体投资计划的合资公司提供资金。当时，在首两次交易的所得款项中有逾 16 亿美元仍未被动用。
- 高盛向 1MDB 所收取的费用约为 5.815 亿美元，相等于在该等发售中筹得的资金约 9%。高盛单单从该三次发售所赚取的收入，较其在 2011 年至 2015 年止五年内从担任 213 个其他亚洲区（日本除外）债券发售项目的安排人及 / 或包销商所获取的总收入高出一倍有多。
- 1MDB 愿意向高盛支付如此高昂的费用，作为其担任独家安排人及包销商的报酬，及高盛未经竞逐程序而获委聘安排这三次发售，理应令人质疑其如何从 1MDB 获取该等业务、有关委托是否合理，以及促成该等业务的情况有没有令人怀疑当中涉及任何贿赂或其他不法行为。
- 1MDB 一再强调保密及执行速度，并采用了境外私人银行而非马来西亚的商业银行，以存放债券的所得款项，这些都是在全部三次的债券发售中出现的其他预警迹象。
- 在检视该等债券发售的过程中，高盛亚洲发现大量的负面媒体报道，当中显示 1MDB 涉及高度的贪污风险，并令人对 1MDB 的诚信及其所订立的交易有所质疑。

证监会的调查亦发现，虽然交易团队及监控部门留意到许多预警迹象，并看来采取了某些行动以商讨及处理有关事宜，但高盛在解决相关问题方面采取了零碎的解决方法，未能从更宏观和“综观全局”的角度充分地考虑与债券发售的商业理据有关的关注事项，以及无法令自身信纳有关问题已获适当处理。

证监会认为高盛亚洲：

- 没有勤勉尽责地监督参与执行有关债券发售的高级管理人员，亦无确保他们秉持适当的操守标准；

- 在有多项预警迹象的情况下，没有识别及充分地处理有关洗钱及贿赂的关注事项；
- 在审核及批准有关债券发售时，没有以适当的技能、小心审慎和勤勉尽责的态度行事，及维护客户的最佳利益和确保市场廉洁稳健；及
- 没有实施充足且有效的内部监控程序，以免客户因欺诈及其他不诚实的行为或专业上的失当行为而蒙受财政损失。

证监会在决定上述纪律处分时，已考虑到所有相关情况，包括：

- 高盛亚洲广泛地参与 1MDB 的债券发售，并收取了该三次债券发售所产生的总收入当中逾三分一金额；
- 高盛亚洲在风险、合规及反洗钱监控措施和管理层监督工作方面犯有严重失误及缺失，令 Leissner 得以在完全避开监察的情况下贿赂外国政府官员；
- 高盛亚洲在未有妥善处理多项显示有洗钱及 / 或贿赂行为的预警迹象的情况下，容许有关债券发售继续进行；
- 高盛以支付 25 亿美元加上归还 14 亿美元资产的保证，就有关刑事法律程序与马来西亚政府达成和解；
- 证券业对香港作为国际金融中心而言至关重要，故有需要确保投资大众对证券业，以至行内从业人士的诚信和专业胜任能力保持充分的信心；
- 证监会需要向市场传达强而有力的讯息，以免其他市场参与者容许同类缺失发生；
- 高盛亚洲接受证监会的调查结果和纪律行动，有助于及早解决相关事宜；及
- 高盛亚洲承诺连续三年向证监会提供由其内部审计部门编制的年度报告，藉以确认（其中包括）已落实有效的补救措施，以解决证监会在事件中所识别出的监管关注事项。

Source 来源：

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR103>

<https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR103>

Hong Kong Securities and Futures Commission suspends Sandra Cheung Wing Yi for 12 months

On October 29, 2020, the Securities and Futures Commission (SFC) has suspended the licence of Ms Sandra Cheung Wing Yi, former licensed representative of Mason Securities Limited (MSL), for 12 months from October 28, 2020 to October 27, 2021.

The disciplinary action follows an SFC investigation which found that between November 2014 and July 2017, Cheung failed to obtain approval to maintain a securities trading account with an external brokerage

firm and conducted 66 personal trades in the aforesaid account, in breach of MSL's internal control policies.

She also provided false and misleading declarations to MSL by declaring on multiple occasions that she did not have any personal trading accounts with other licensed corporations.

In doing so, Cheung breached MSL's internal control policies and her conduct deprived MSL the opportunity to effectively and actively monitor and review employee trading activities in order to protect the integrity of the market.

The SFC considers that Cheung's conduct, which was wilful and dishonest, calls into question her fitness and propriety to be a licensed person.

In determining the sanction against Cheung, the SFC took into account all relevant circumstances, including her remorse and cooperation in resolving the SFC's concerns, and her otherwise clean disciplinary record.

香港证券及期货事务监察委员会暂时吊销张咏仪的牌照 12 个月

于 2020 年 10 月 29 日，香港证券及期货事务监察委员会（证监会）暂时吊销茂宸证券有限公司（茂宸证券）前持牌代表张咏仪的牌照，为期 12 个月，由 2020 年 10 月 28 日起至 2021 年 10 月 27 日止。

证监会经调查后采取上述纪律行动。调查发现在 2014 年 11 月至 2017 年 7 月期间，张未获批准而在另一家经纪行持有证券交易帐户，并在该帐户内进行了 66 宗个人交易，违反了茂宸证券的内部监控政策。

她亦向茂宸证券作出虚假及具误导性的声明，多次宣称她在其他持牌法团并无拥有任何个人交易帐户。

张的行为违反了茂宸证券的内部监控政策，令茂宸证券无法有效及积极地监察和审查雇员交易活动，以保障市场的廉洁稳健。

证监会认为，张的行为属故意和不诚实，令她作为持牌人的适当人选资格受到质疑。

证监会决定对张的处分时，已考虑到所有相关情况，包括她已表示悔意并与证监会合作解决证监会的关注事项，以及她过往并无遭受纪律处分的纪录。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR105>

<https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR105>

Hong Kong Securities and Futures Commission consults on climate-related risks in funds

On October 29, 2020, the Securities and Futures Commission (SFC) launched a consultation on proposed requirements for fund managers to take climate-related risks into consideration in their investment and risk management processes. Climate-related risks may represent physical risks which stem from the direct impact of extreme weather events and progressive, longer-term shifts in climate patterns or transition risks associated with the move to a low-carbon economy. Liability risks may also be triggered by the responsibility to compensate financial losses related to physical or transition risks. Although the proposed requirements focus on climate-related risks, fund managers are welcome to consider a broader spectrum of sustainability risks.

Also, fund managers are expected to make appropriate disclosures to meet investors' growing demands for climate risk information and combat greenwashing. For example, asset managers should not market themselves as "green" or "sustainable" when they do not fully integrate these factors into the investment process.

Under the proposals, the Fund Manager Code of Conduct would be amended and the SFC will set out expected baseline requirements and standards to facilitate fund managers' compliance. The SFC has engaged with the asset management industry to develop expected standards and industry practices for integrating climate-related risks into fund management processes.

"Addressing the threat of climate change and the associated risks is becoming a major priority on the global regulatory agenda," said Mr Ashley Alder, the SFC's Chief Executive Officer. "The proposed requirements will help ensure that fund managers properly handle climate-related risks and promote clear, comparable and high-quality disclosures to help investors make more informed decisions."

Market participants and other interested parties are invited to submit their comments to the SFC on or before January 15, 2021 via the SFC website, by email, by post or by fax.

香港证券及期货事务监察委员会就应对基金所涉及的气候相关风险展开咨询

香港证券及期货事务监察委员会（证监会）于 2020 年 10 月 29 日就建议对基金经理施加的规定展开咨询。有关建议旨在要求基金经理在投资及风险管理流程中考虑气候

相关风险。气候相关风险可指由极端天气事件和气候模式在较长时间的逐步变化所带来的直接影响而造成的实体风险，以及与转型至低碳经济体系有关的转型风险。若须就实体或转型风险所涉及的财务损失承担赔偿责任，亦可能触发责任风险。虽然建议的规定聚焦于气候相关风险，但基金经理亦可考虑范围更广泛的可持续性风险。

同时，基金经理须作出适当的披露，藉此满足投资者对于气候风险资讯愈见殷切的需求，以及打击“漂绿”行为。例如，资产管理公司不应向市场标榜自己形象为“绿色”或“可持续”，但却没有将这些因素完全纳入其投资流程内。

根据有关建议，《基金经理操守准则》将予修订，而证监会将会列明预期的基本规定及标准，以便基金经理遵从有关规定。证监会已与资产管理业合作制订将气候相关风险纳入基金管理流程方面的预期标准和业界实务运作方式。

证监会行政总裁欧达礼先生表示：“应对气候变化的威胁及相关风险，日渐成为全球监管议程上的首要工作。建议的规定有助确保基金经理妥善处理气候相关风险，并可促进明确、可比较和高质素的披露，让投资者在掌握更充分资料的情况下作出决定。”

市场参与者及其他相关人士可于 2021 年 1 月 15 日或之前，透过证监会网站或以电邮、邮寄或传真方式提交意见。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR104>
<https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=20PR104>

U.S. Commodity Futures Trading Commission Enforcement Division Issues Staff Guidance on Recognition of Self-Reporting, Cooperation, and Remediation

On October 29, 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced the Division of Enforcement (DOE) issued new guidance for enforcement staff when recommending the recognition of a respondent's cooperation, self-reporting, or remediation in CFTC enforcement orders. The guidance, which will be published in the agency's Enforcement Manual, follows recent updates of the manual's civil monetary penalty guidance and compliance program evaluation guidance.

The guidance describes potential scenarios where the staff may recommend the recognition of a respondent's

self-reporting, cooperation or remediation by the Commission in an enforcement action: (i) no self-reporting, cooperation, or remediation; (ii) no self-reporting, but cognizable cooperation and/or remediation that warrant recognition but not a recommended reduction in penalty; (iii) no self-reporting, but substantial cooperation and/or recognition resulting in a reduced penalty; and (v) self-reporting, substantial cooperation, and remediation resulting in a substantially reduced penalty.

This staff guidance does not change DOE's existing practice regarding how it will evaluate self-reporting, cooperation, or remediation, or how enforcement staff will consider reductions in penalties in connection with self-reporting, cooperation or remediation in accordance with the self-reporting and cooperation advisories issued in 2017. Rather, it clarifies how that recognition will be reflected in CFTC enforcement orders.

美国商品期货交易委员会执法部门发布有关认可自我举报、进行合作和补救的工作人员指引

于 2020 年 10 月 29 日，美国商品期货交易委员会（CFTC）宣布，执法部门（DOE）为执法人员发布了新指引，建议在 CFTC 执法命令中认可答辩人的合作、自我举报或补救措施。该指引将发布在该机构的《执法手册》中，该指引包括手册的民事罚款指引和合规计划评估指引的最新更新。

该指引描述了工作人员可能建议认可答辩人的自我举报、合作或委员会于执法行动中的补救可能发生的情况：(i) 不进行自我举报、合作或补救措施；(ii) 不进行自我举报，但进行可认可的合作及/或保证认可的补救措施，但不建议减少处罚；(iii) 不进行自我举报，但进行重大合作及/或认可，从而减轻处罚；(vi) 自我举报，进行重大合作及补救措施，以大大减轻处罚。

该工作人员指引不会改变 DOE 有关如何评估自我举报、进行合作或补救措施的现有做法，或执法人员将根据于 2017 年发布有关自我举报及合作的建议就自我举报、进行合作和补救减轻处罚的考虑。相反，该指引阐明了 CFTC 执行命令中将如何体现这种认可。

Source 来源:

<https://www.cftc.gov/PressRoom/PressReleases/8297-20>

U.S. Commodity Futures Trading Commission and the Bank of England Sign New Memorandum of Understanding for Supervision of Cross-Border Clearing Organizations

On October 20, 2020, the U.S. Commodity Futures Trading Commission (CFTC) and the Bank of England (BoE) have announced that they have signed an updated Memorandum of Understanding (MOU) regarding cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in the United States and in the United Kingdom. CFTC Chairman Heath P. Tarbert and BoE Deputy Governor for Financial Stability Jon Cunliffe published a joint op-ed for Risk.net outlining the agreement.

The MOU strengthens the relationship between the regulators responsible for the resilience of the largest and most important derivatives markets and central counterparties (CCPs) in the world. The supervision of CCPs that operate in both the United States and the United Kingdom is based upon close cooperation and mutual respect for each regulator's regime and supervisory practices. Through the MOU, the CFTC and the BoE express their willingness to cooperate in the interest of fulfilling their respective regulatory mandates, particularly in preserving the benefits of cross-border clearing activity. The MOU also recognizes the history of cooperation between the CFTC and BoE and encourages supervisory coordination and reliance upon the other authority's supervision and regulatory framework.

The MOU supersedes a 2009 agreement and follows a 2019 joint statement by the CFTC, BoE, and other UK authorities on continuity of derivatives trading and clearing post-Brexit.

美国商品期货交易委员会与英格兰银行签署了监督跨境清算组织的新谅解备忘录

于2020年10月20日，美国商品期货交易委员会（CFTC）和英格兰银行（BoE）宣布，他们已签署了有关在美国和英国跨境运作的结算机构下的监管和监督的合作及信息交换的最新谅解备忘录（MOU）。CFTC主席Heath P. Tarbert和BoE的金融稳定副总裁Jon Cunliffe于Risk.net发布了一份社论对页专栏概述了该协议。

该MOU加强了负责全球最大和最重要的衍生品市场的复原力的监管机构与中央对手方（CCP）之间的关系。在美国和英国运营的CCP的监管基于对每个监管机构的制度和监管实践的紧密合作与互相尊重。通过该MOU，CFTC和英国央行表示愿意合作以履行其各自的监管任务，特别是在保障跨境结算活动的利益方面。该MOU还承认CFTC和BoE之间合作的历史，并鼓励监管协调和依赖其他机构的监管框架。

MoU取代了2009年的协议，并遵循了CFTC、BoE及其他英国当局于2019年发表的关于脱欧后衍生品交易和结算连续性的联合声明。

Source 来源:

<https://www.cftc.gov/PressRoom/PressReleases/8289-20>

U.S. Commodity Futures Trading Commission Staff Issues Advisory on Virtual Currency for Futures Commission Merchants

On October 21, 2020, the Division of Swap Dealer and Intermediary Oversight (DSIO) of the U.S. Commodity Futures Trading Commission (CFTC) issued an advisory to futures commission merchants (FCMs) regarding the holding of virtual currency in segregated accounts. The advisory provides guidance to FCMs on how to hold and report certain deposited virtual currency from customers in connection with physically-delivered futures contracts or swaps. The advisory also provides guidance that FCMs should follow when designing and maintaining risk management programs concerning the acceptance of virtual currencies as customer funds.

“At the CFTC, one of our core values is to provide clarity to market participants,” said DSIO Director Joshua B. Sterling. “As Chairman Tarbert has stated, the CFTC is committed to fostering responsible fintech innovation and improving the regulatory experience of registered firms where doing so is consistent with our rules. This advisory furthers these critical goals and will provide additional certainty on these issues as the Commission works to establish a holistic framework for digital asset derivatives.”

美国商品期货交易委员会为期货佣金商发布虚拟货币建议

于2020年10月21日，美国商品期货交易委员会（CFTC）的掉期交易商和中介监督部（DSIO）向期货佣金商（FCM）发出了关于在独立账户中持有虚拟货币的建议。该建议为FCM提供有关如何持有及报告某些客户存入与实物交割的期货合约或掉期的虚拟货币的指引。该建议亦提供了有关FCM在设计及维护有关接受虚拟货币作为客户资金的风险管理计划时应遵循的指引。

DSIO总监Joshua B. Sterling表示：“在CFTC，我们的核心价值之一就是向市场参与者提供清晰的信息。”“正如主席Tarbert所说，CFTC致力于促进负责任的金融技术创新，并在符合我们规则的前提下改善注册公司的监管经验。该建议进一步推进了这些关键目标，并将在委员会致力于建立数字资产衍生品的整体框架时，提供更多的确定性。”

Source 来源:

<https://www.cftc.gov/PressRoom/PressReleases/8291-20>

At Joint Open Meeting, the U.S. Commodity Futures Trading Commission and U.S. Securities and Exchange Commission Approve Final Rule on Security Futures Margin and Request for Comment on Portfolio Margining

On October 22, 2020, the U.S. Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), at their first joint open meeting to vote on rulemaking initiatives, approved: (1) a joint final rule to harmonize the minimum margin level for security futures held in a futures account with the minimum margin level for security futures held in a securities portfolio margin account, and (2) the issuance of a joint request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps.

The joint final rule and request for comment are two components of the Commissions' ongoing efforts to further harmonize their regulatory regimes to better serve the markets and investors.

"The markets the CFTC and SEC regulate are highly interconnected, so coordination is vital to regulatory effectiveness. The historic joint open meeting of our two agencies reflects our strong commitment to cooperation and harmonizing our efforts where appropriate," said CFTC Chairman Heath P. Tarbert. "Today's final rule represents an important example of our long history of cooperation regarding the joint regulation of security futures. I am pleased that the Commissions will continue this collaboration to examine potential ways to implement the portfolio margining of uncleared swaps and non-cleared security-based swaps."

"Collaboration and coordination between the two Commissions are critical to achieving our shared regulatory objectives," said SEC Chairman Jay Clayton. "I want to express my thanks to my colleagues at both the SEC and CFTC for their hard work, and I look forward to continuing to work together to improve our markets, including exploring potential opportunities for efficiencies in portfolio margining."

Additional information on these rulemakings, including statements of the CFTC Chairman and the Commissioners, can be found at this link: <https://www.cftc.gov/PressRoom/Events/opaeventcftcsecjointopenmeeting102220>.

在联席公开会议上，美国商品期货交易委员会和美国证券交易委员会批准了关于证券期货保证金的最终规则，并要求就证券组合保证金发表评论

于2020年10月22日，美国商品期货交易委员会（CFTC）和美国证券交易委员会（SEC）在第一次联合公开会议上对规则制定计划进行投票，批准：（1）统一最低汇率的联合最终规则。期货账户中持有的证券期货的保证金水平与证券投资组合保证金账户中所持有的证券期货的最低保证金水平；及（2）发表就对未结算掉期及以证券为基础的未结算掉期的保证金投资组合意见征询联合要求。

联合最终规则和征求意见是委员会为进一步协调其监管制度以更好地为市场和投资者服务而不断努力的两个组成部分。

CFTC 主席 Heath P. Tarbert 表示：“CFTC 和 SEC 监管的市场高度相互联系，因此协调对于监管有效性至关重要。我们两个机构历史性的联合公开会议反映了我们对合作并在适当情况下协调努力的坚定承诺。”“今天的最终规则代表了我们在证券期货联合监管方面的长期合作历史的重要例子。我感到高兴的是，委员会将继续开展这种合作，以研究实现未结算掉期及以证券为基础的未结算掉期的保证金投资组合的潜在方法。”

SEC 主席 Jay Clayton 表示：“两个委员会之间的协作与协调对于实现我们共同的监管目标至关重要。”“我要感谢 SEC 及 CFTC 的同事们的辛勤工作，并期待继续合作改善市场，包括探索提高保证金投资组合效率的潜在机会。”有关这些规则制定的其他信息，包括 CFTC 主席和专员的声明，可参阅以下链接：
<https://www.cftc.gov/PressRoom/Events/opaeventcftcsecjointopenmeeting102220>。

Source 来源:

<https://www.cftc.gov/PressRoom/PressReleases/8292-20>

U.S. Commodity Futures Trading Commission and U.S. Securities and Exchange Commission Chairmen Sign Joint Letter Establishing Pilot Program Relating to “Bad Actor Disqualification” Provisions of Regulations A and D

On 23 October 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced that, by a joint letter, Chairman Jay Clayton of the Securities and Exchange Commission (SEC) and Chairman Heath P. Tarbert of the CFTC have established a one-year pilot program to set out and formalize the practice and agreement between the Chairmen relating to CFTC orders that implicate the “bad actor disqualification” provisions of Regulations A and D under the Securities Act of 1933 (SEC’s Disqualification Rules). The letter responds to a request by the CFTC Chairman to create such a pilot program.

At times with notice to the SEC and where appropriate, the CFTC has included in its orders, and may so include in the future, language advising the SEC that disqualification should not arise as a result of a particular CFTC final order. Through this letter, the Chairmen of the SEC and CFTC agree to use their reasonable efforts to formalize and memorialize the coordination of their respective staffs with respect to CFTC orders that implicate the SEC's Disqualification Rules.

A copy of the letter can be found at this link:
<https://www.cftc.gov/PressRoom/Events/opaeventcftcscjointopenmeeting102220>.

美国商品期货交易委员会和美国证券交易委员会主席签署联合函，建立有关“取消不良行为者资格”规定 A 及 D 的规定的试验计划

于 2020 年 10 月 23 日，美国商品期货交易委员会(CFTC)今天宣布，美国证券交易委员会(SEC)主席 Jay Clayton 和 CFTC 主席 Heath P. Tarbert 通过联合函件，建立一个为期一年的试验计划，以制定并正式确定有关与 CFTC 命令有关的惯例及双方主席之间的共识。这些 CFTC 命令隐含了 1933 年《证券法》(SEC 的取消资格规则)中规定 A 和 D 的“取消不良行为者资格”规定。该函件是对 CFTC 主席提出的创建这个试验计划的要求的回应。

在适当的情况下，CFTC 会不时通知 SEC，其已包含并可能将来会在其命令中包含建议 SEC 就 CFTC 的个别最终命令不应导致取消资格的条文。通过该函件，SEC 和 CFTC 的主席同意尽其合理的努力正式化及协调涉及 SEC 取消资格规则的 CFTC 命令的工作人员。

该函件可参阅以下链接：
<https://www.cftc.gov/PressRoom/Events/opaeventcftcscjointopenmeeting102220>。

Source 来源：
<https://www.cftc.gov/PressRoom/PressReleases/8294-20>

U.S. Securities and Exchange Commission Adopts Modernized Regulatory Framework for Derivatives Use by Registered Funds and Business Development Companies

On October 28, 2020, the U.S. Securities and Exchange Commission (SEC) voted to enhance the regulatory framework for derivatives use by registered investment companies, including mutual funds (other than money market funds), exchange-traded funds (ETFs) and closed-end funds, as well as business development companies. The new rule and rule amendments will provide a modernized, comprehensive approach to the regulation of these funds' derivatives use that addresses

investor protection concerns and reflects developments over the past decades.

New Rule 18f-4 under the Investment Company Act

Rule 18f-4 provides certain exemptions from the Act subject to conditions. The conditions and other elements of the rule include the following:

- **Derivatives Risk Management Program.** The new rule generally requires a fund to implement a written derivatives risk management program. The program will institute a standardized risk management framework for funds, while also permitting principles-based tailoring by each fund to the fund's particular risks. The program must include risk guidelines as well as stress testing, backtesting, internal reporting and escalation, and program review elements. A derivatives risk manager approved by the fund's board of directors will administer the program. The fund's derivatives risk manager will have to report to the fund's board on the derivatives risk management program's implementation and effectiveness to facilitate the board's oversight of the fund's derivatives risk management.
- **Limit on Fund Leverage Risk.** A fund relying on the rule generally must comply with an outer limit on fund leverage risk based on value-at-risk (VaR). This outer limit is based on a relative VaR test that compares the fund's VaR to the VaR of a "designated reference portfolio" for that fund. A fund generally can use either an index that meets certain requirements or the fund's own securities portfolio (excluding derivatives transactions) as its designated reference portfolio. If the fund's derivatives risk manager reasonably determines that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test, the fund would be required to comply with an absolute VaR test. The fund's VaR generally is not permitted to exceed 200% of the VaR of the fund's designated reference portfolio under the relative VaR test or 20% of the fund's net assets under the absolute VaR test.
- **Exception for Limited Users of Derivatives.** The rule provides an exception from the program and VaR test requirements provided that the fund adopts and implements written policies and procedures reasonably designed to manage its derivatives risks. A fund may rely on this exception if the fund's derivatives exposure is limited to 10% of its net assets, excluding

certain currency and interest rate hedging transactions.

- **Alternative Requirements for Certain Leveraged /Inverse Funds.** Leveraged/inverse funds will generally be subject to rule 18f-4 like other funds, including the requirement to comply with the VaR-based limit on fund leverage risk. This will effectively limit leveraged or inverse funds' targeted daily return to 200% of the return (or inverse of the return) of the fund's underlying index. The final rule provides an exception from the VaR requirement for leveraged or inverse funds currently in operation that seek an investment return above 200% of the return (or inverse of the return) of the fund's underlying index and satisfy certain conditions.
- **Reverse Repurchase Agreements and Unfunded Commitment Agreements.** The rule permits a fund to enter into reverse repurchase agreements and similar financing transactions, as well as "unfunded commitments" to make certain loans or investments, subject to conditions tailored to these transactions.
- **When-Issued, Forward-Settling, and Non-Standard Settlement Cycle Securities.** The rule permits funds, as well as money market funds, to invest in securities on a when-issued or forward-settling basis, or with a non-standard settlement cycle, subject to conditions.
- **Recordkeeping.** The rule requires that the fund comply with certain recordkeeping requirements.

Amendments to Rule 6c-11

Amendments to Investment Company Act rule 6c-11 permit leveraged or inverse ETFs to rely on rule 6c-11 if they comply with all applicable provisions of rule 18f-4. The SEC has been rescinding the exemptive orders previously issued to the sponsors of leveraged or inverse ETFs in connection with these amendments.

Reporting Requirements

Funds will be required to report confidentially to the SEC on a current basis on Form N-RN if the fund is out of compliance with the VaR-based limit on fund leverage risk for more than five business days. Funds currently required to file reports on Forms N-PORT and N-CEN will be required to provide certain information regarding a fund's derivatives use. This will include information regarding the fund's VaR, as applicable, and information about the fund's derivatives exposure (for funds that rely on the limited derivatives user exception in rule 18f-4).

Relevant Staff Guidance

The SEC has been rescinding the 1979 General Statement of Policy (Release 10666) that provided SEC guidance on how funds may engage in certain trading practices in light of section 18's restrictions. In addition, staff in the Division of Investment Management has reviewed its no-action letters and other guidance addressing funds' use of derivatives and other transactions covered by rule 18f-4. Some of these staff letters and staff guidance will be withdrawn.

Next Step

The new rule, and related rule and form amendments, will be published on the SEC's website and in the Federal Register. All will be effective 60 days after publication in the Federal Register. The SEC is providing a transition period to give funds time to comply with the provisions of rule 18f-4 and the related reporting requirements. The SEC has adopted a compliance date that is eighteen months after the effective date. The rescission of Release 10666 also will be effective eighteen months after the effective date. The withdrawal by the staff of staff letters and staff guidance addressing funds' use of derivatives and other transactions covered by rule 18f-4 will be effective upon the rescission of Release 10666.

The new rule and rule amendments show the SEC's commitment to designing regulatory programs that reflect the ever-broadening product innovation and investor choice available in the current asset management industry, while also taking into account the risks associated with funds' increasingly complex portfolio composition and operations.

美国证券交易委员会就注册基金和业务发展公司的衍生品使用采用现代化的监管框架

2020年10月28日，美国证券交易委员会（美国证交会）投票通过了加强注册投资公司（包括共同基金（货币市场基金除外）、交易所买卖基金（ETF）、封闭式基金，以及业务开发公司）使用衍生品的监管框架。新的规则和规则修正案将提供一种现代化及全面的方法来监管这些基金的衍生品使用，从而解决投资者保护问题并反映过去几十年的发展。

投资公司法下的新规则 18f-4

规则 18f-4 规定了在某些条件规限下投资公司法的豁免。该些条件和其他规则的元素包括：

- **衍生品风险管理计划。**新规则要求基金实施书面的衍生品风险管理计划。该计划将为基金建立标准化的风险管理框架，同时允许每个基金基于原则对基金的特定风险进行调整。该计划必须包括风险准则以及压力测试、回溯测试、

内部报告及升级行动，以及计划审查要素。由该基金董事会批准的衍生品风险管理人员将负责管理该计划。基金的衍生品风险管理人员将必须向基金董事会报告衍生品风险管理计划的实施情况和有效性，以促进董事会对基金衍生品风险管理的监督。

- 限制资金杠杆风险。依赖规则 18f-4 的基金必须遵守基于风险价值的外部杠杆风险限制。此外外部限制基于相对风险价值测试，该测试将基金的风险价值与该基金“指定参考投资组合”的风险价值进行比较。基金一般可以使用满足特定要求的指数，也可以使用基金本身的证券投资组合（不包括衍生品交易）作为其指定参考投资组合。如果该基金的衍生品风险管理人员合理地确定指定参考投资组合不会为相对风险价值测试提供适当的参考投资组合，则该基金将被要求遵守绝对风险价值测试。在相对风险价值测试下，基金的风险价值一般不能超过基金指定参考投资组合的风险价值的 200%。在绝对风险价值测试下，则不得超过基金净资产的 20%。
- 衍生品的有限用户的例外。规则 18f-4 提供了管理计划和风险价值测试要求的豁免。豁免的条件为该基金采用并实施合理设计以管理其衍生品风险的书面政策和程序。并且，如果该基金的衍生品敞口限于其净资产（不包括某些货币和利率对冲交易）的 10%，则可以依赖此豁免。
- 杠杆/反向基金的替代要求。与其他基金一样，杠杆/反向基金一般也要遵守规则 18f-4，包括遵守风险价值为本的基金杠杆风险限制的要求。这将有效地将杠杆或反向基金的每日收益目标限制为该基金基础指数收益的 200%（或收益的倒数）。最终规则为为当前正在运营，并寻求高于该基金基础指数的收益（或反向收益）的 200% 及满足某些条件的投资收益的杠杆或反向基金提供了风险价值要求的豁免。
- 反向回购协议和无资金承诺的协议。规则 18f-4 允许基金，受限于针对这些交易而设的条件，订立反向回购协议和类似的融资交易，以及“无资金承诺”以进行某些贷款或投资。
- 发行时结算、提前结算和非标准结算周期证券。规则 18f-4 允许基金以及货币市场基金投资在发行时或提前结算的基础上或非标准结算周期（视情况而定）证券。

规则 6c-11 的修订

投资公司法规则 6c-11 的修正案允许杠杆 ETF 或反向 ETF 在遵守规则 18f-4 所有适用规定的情况下可以依赖规则 6c-11。美国证交会正在废除向杠杆或反向 ETF 保荐人发出的与这些修正案相关的豁免令。

报告要求

如果基金在超过五个工作日内未达到基于风险价值的基金杠杆风险限额的要求，则必须按当前的 N-RN 表格向美国证交会秘密报告。当前需要以 N-PORT 和 N-CEN 表格上提交报告的基金必须提供有关基金衍生品用途的某些信息，包括有关该基金的风险价值（如适用）的信息，以及（适用于依赖规则 18f-4 的有限衍生品用户豁免的基金）有关该基金的衍生产品敞口的信息。

相关人员指导

美国证交会正废除《1979 年政策总体声明》（第 10666 版），该声明就在第 18 条限制下基金如何从事某些交易提供了美国证交会的指导。此外，投资管理部的工作人员已审查了其“不采取行动”信函和其他有关规则 18f-4 将涵盖的基金使用衍生品和其他交易问题的指南。一些职员信和职员指导亦将被撤消。

下一步

新规则以及相关规则和表格修正案将在美国证交会网站和《联邦公报》上发布，并全将在《联邦公报》上公布后 60 天生效。美国证交会提供了一个过渡期，使基金有时间遵守规则 18f-4 的规定和相关的报告要求。美国证交会采用的遵守日期为生效日期之后的十八个月。版本 10666 的撤销也将在生效日期后的 18 个月内生效。信函和其他有关规则 18f-4 将涵盖的基金使用衍生品和其他交易问题的职员信和职员指导的撤回将在版本 10666 撤销后生效。

新的规则和规则修正案展示了美国证交会致力于设计监管计划，以反映当前资产管理行业不断发展的产品创新和投资者在现时资产管理行业的选择，并同时还考虑了与基金日益复杂的投资组合构成和运营相关的风险。

Source 来源:

<https://www.sec.gov/news/press-release/2020-269>

U.S. Securities and Exchange Commission Charges Goldman Sachs with FCPA Violations

On October 22, 2020, the U.S. Securities and Exchange Commission (SEC) announced charges against The Goldman Sachs Group Inc. for violations of the Foreign Corrupt Practices Act (FCPA) in connection with the 1Malaysia Development Berhad (1MDB) bribe scheme, and as part of coordinated resolutions, it has agreed to

pay more than US\$2.9 billion, which includes more than US\$1 billion to settle the SEC's charges.

According to the SEC's order, beginning in 2012, former senior employees of Goldman Sachs used a third-party intermediary to bribe high-ranking government officials in Malaysia and the Emirate of Abu Dhabi. The order finds that these bribes enabled Goldman Sachs to obtain lucrative business from 1MDB, a Malaysian government-owned investment fund, including underwriting approximately \$6.5 billion in bond offerings.

The SEC's order finds that Goldman Sachs violated the anti-bribery, internal accounting controls, and books and records provisions of the federal securities laws. Goldman Sachs agreed to a cease-and-desist order and to pay US\$606.3 million in disgorgement and a US\$400 million civil penalty, with the amount of disgorgement satisfied by amounts it paid to the Government of Malaysia and 1MDB in a related settlement.

美国证券交易委员会指控高盛(Goldman Sachs)违反《反海外腐败法》

2020年10月22日,美国证券交易委员会(美国证交会)宣布针对高盛集团公司(Goldman Sachs Group Inc.)(高盛)违反与一个马来西亚发展有限公司(1Malaysia Development Berhad)(1MDB)贿赂计划有关的《反海外腐败法》(FCPA)的指控,作为协调决议的一部分,该公司已同意支付超过29亿美元,其中包括10亿美元以上用于解决美国证交会指控的金额。

根据美国证交会的指控,从2012年开始,高盛的前高级雇员利用第三方中介机构贿赂了马来西亚和阿布扎比酋长国的高级政府官员。该指控指,这些贿赂使高盛得以从马来西亚政府拥有的投资基金1MDB获得丰厚的业务,其中包括承销了约65亿美元的债券发行。

美国证交会的指控指高盛违反了反贿赂、内部会计控制以及联邦证券法中有关账簿和记录的规定。高盛同意终止及停止令,并交回6.063亿美元的非法所得和支付4亿美元的民事罚款,非法所得的金额应由它在相关和解方案中支付给马来西亚政府和1MDB的金额来抵销。

Source 来源:

<https://www.sec.gov/news/press-release/2020-265>

U.S. Securities and Exchange Commission Obtains Final Judgment Against Kik Interactive For Unregistered Offering

On October 21, 2020, the U.S. Securities and Exchange Commission (SEC) announced that a federal district court has entered a final judgment on consent against Kik Interactive Inc. to resolve the SEC's charges that

Kik's unregistered offering of digital "Kin" tokens in 2017 violated the federal securities laws.

The SEC's complaint, filed in the U.S. District Court for the Southern District of New York on June 4, 2019, alleged that Kik sold digital asset securities to U.S. investors without registering their offer and sale as required by the U.S. securities laws. The court granted the SEC's motion for summary judgment on September 30, 2020, finding that undisputed facts established that Kik's sales of "Kin" tokens were sales of investment contracts, and therefore of securities, and that Kik violated the federal securities laws when it conducted an unregistered offering of securities that did not qualify for any exemption from registration requirements. The court further found that Kik's private and public token sales were a single integrated offering.

The final judgment permanently enjoins Kik from violating the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933. Kik is further required, for the next three years, to provide notice to the SEC before engaging in enumerated future issuances, offers, sales, and transfers of digital assets. Kik will also pay a US\$5 million penalty.

美国证券交易委员会获得针对 Kik Interactive 未注册发行的最终判决

2020年10月21日,美国证券交易委员会(美国证交会)宣布联邦地方法院已对 Kik Interactive Inc.作出最终判决,了结美国证交会就 Kik 在 2017 年违反联邦证券法发行未经注册的“Kin”数码代币的指控。

美国证交会于 2019 年 6 月 4 日在纽约南区美国地方法院提起诉讼,指控称 Kik 向美国投资者出售了数字资产证券,但未按照美国证券法的规定登记要约和出售。法院于 2020 年 9 月 30 日批准了美国证交会的简易判决动议,裁定 Kik 的“Kin”代币销售是投资合同的销售,因此是证券的销售,并且 Kik 发行不符合豁免注册要求条件的未注册证券,违反了联邦证券法。法院进一步发现,Kik 的私人 and 公共代币销售是单一的集成的发行。

最终判决永久禁止 Kik 违反《1933 年证券法》第 5 (a) 和 5 (c) 条的注册规定。还要求 Kik 在接下来的三年内,在例如进行未来数字资产的发行、要约、销售和转移前,向美国证交会发出通知。Kik 还将支付 500 万美元的罚款。

Source 来源:

<https://www.sec.gov/news/press-release/2020-262>

Questions & Answers on Guidelines of Shanghai Stock Exchange No. 2 for the Application of Self-Regulation Rules for Listed Companies - Standards

for Implementation of Disciplinary Actions for Listed Companies

On October 16, 2020, the Shanghai Stock Exchange (SSE) officially issued the Guidelines of Shanghai Stock Exchange No. 2 for the Application of Self-Regulation Rules for Listed Companies - Standards for Implementation of Disciplinary Actions for Listed Companies (the Disciplinary Action Standards). Regarding the release of the Disciplinary Action Standards, an SSE official in charge of relevant businesses has answered related questions.

Question 1: It is the first time that the SSE has publicly disclosed specific standards for disciplinary actions. What are the background and considerations for the formulation and disclosure of the standards?

Answers 1: Disciplinary action is a major means for exchanges to perform front-line regulatory duties, as well as an important part of the regulatory system for the capital market. Over the years, the SSE have been working to make the disciplinary actions more standardized. The Disciplinary Action Standards has been issued mainly for the considerations in the following three aspects.

The first consideration is to advance the improvement of the quality of listed companies. Listed companies are the cornerstone of the capital market and improving the quality of the listed companies has become an important goal of regulation at present. On October 9, the State Council issued the Opinions on Further Improving the Quality of Listed Companies, which make clear requirements and comprehensive arrangements for the listed companies to boost the regulated operation, improve the quality of information disclosure, solve noticeable problems and enhance the capacity for sustainable development and overall quality. The abovementioned requirements should also be met in the disciplinary action work by highlighting the key points in regulation and optimizing and adjusting the standards for disciplinary actions. The Disciplinary Action Standards have been issued so as to improve the rules for identifying violations, step up the enforcement of the disciplinary actions, and drive the improvement of the quality of listed companies and supply systems for propelling the stable and healthy development of the capital market from the perspective of the exchange as a front-line regulator.

The second consideration is to implement the requirements of the new securities law and strengthen the targeted regulation. The new securities law incorporates a special chapter of provisions on information disclosure, which significantly tightens the legal liability for illegal activities, attaches more importance to the effectiveness of information disclosure, and puts forward stricter requirements on the

behaviors of directors, supervisors, senior executives and controlling shareholders. Correspondingly, it is necessary for the SSE to carry out effective adaptation and implementation in the self-regulatory and disciplinary actions for the listed companies. In accordance with the objectives of classified regulation and targeted regulation, the SSE will improve the disciplinary actions standards for the listed companies, keep a close eye on the responsibilities of the "critical few", further consolidate the foundation for the self-regulatory system, and make more meticulous efforts in the disciplinary action work.

The third consideration is to further enhance the transparency of regulation and standardize the behaviors in performing the regulatory duties. The openness and transparency of regulation is necessary for improving the level of law-based supervision. It is an important task to improve regulatory transparency and enhance predictability in optimizing the self-regulatory work at present. By disclosing to the market, the specific standards and circumstances for consideration for the disciplinary actions, the Disciplinary Action Standards will result in better operability and more definite market expectations, help the SSE to standardize its behaviors in performing regulatory duties and improve the level of law-based supervision.

Question 2: Since last year, the China Securities Regulatory Commission (CSRC) has repeatedly stressed proper regulation, classified regulation, professional regulation and continuous regulation, as well as the improvement of the regulatory efficiency. Does the Disciplinary Action Standards take this into consideration and reflect it?

Answer 2: The Disciplinary Action Standards has been formulated by following the principle of "building the system, non-interference and zero tolerance", with the goal of more effectively implementing classified regulation and targeted regulation, focusing on detailing the division of responsibilities. Especially against current complex internal and external economic landscape where some listed companies have operating difficulties, the actual conditions and development needs of the listed companies have been taken into full consideration, and efforts have been made in seeking truth from facts to distinguish responsibilities for violations, as the regulatory deterrence will be demonstrated while unnecessary impacts on the listed companies will be avoided.

First, targeted regulation will be implemented with "combining punishment with leniency" as the basic principle for standard setting. The Disciplinary Action Standards take "combining punishment with leniency" as its guiding principle, strive to refine the distinction of responsibilities, and make differentiated arrangements in distinguishing different types of cases, different cases

of the same type, and different responsible parties in the same case, so as to improve the pertinence of self-regulation. At the same time, with the actual conditions and development needs of the listed companies taken into full account, the Disciplinary Action Standards are oriented toward propelling the improvement of the quality of listed companies. In the course of responsibility investigation, room for maneuver is reserved for companies that have made overhauls, or "rebuilt themselves" and have certain operating capabilities so as to help them get out of difficulties or transit business. As a result, the disciplinary actions can achieve the intended effect as a punishment, while reducing the impact on the development of listed companies.

Second, the types of cases will be distinguished, and the substantive violations that are serious in nature and vicious in impact will be dealt with strictly. The Disciplinary Action Standards distinguish different types of violations, and adopt different liability standards and punishment levels, in accordance with the requirement for "achieving effectiveness by streamlining and refining administration". For financial fraud, capital occupation, illegal guarantees, violations in major mergers and acquisitions and restructuring and other substantive violations that are serious in nature and vicious in impact, the work requirement for "zero tolerance" will be implemented strictly, the standards for disciplinary actions such as public condemnation at higher levels will be clarified, and severe penalties will be imposed on the main responsible persons. For the cases where the violation results from purely the flaws in the form of information disclosure or the negligence in daily work in nature, does not cause significant losses to the company, and has little impact on the market, lighter punishments will be adopted, mainly for the purpose of warning and reminding.

Third, the circumstances of individual cases will be distinguished, and differentiated actions will be taken after fully considering the rectification, intention and other factors. The Disciplinary Action Standards provide for different punishments by distinguishing the severity of violations and comprehensively considering the specific subjective and objective circumstances such as amounts and proportions involved in the case, actual losses, market impact, rectification, and subjective fault. The typical circumstances in a violation such as self-examination and self-correction, rapid rectification, recovery of losses and earnest disclosure in accordance with the provisions can be regarded as causes for adoption of light penalties, or mitigation or exemption of punishment; for the "careless mistakes" caused by the obvious negligence of the parties, their subjectivity will be taken as an important circumstance in consideration; the violations involving a huge amount of capital or a high proportion, causing actual losses to the company, or having strong negative impact on the market, or the

violations characterized by deliberate implementation, refusal to make verifications after being discovered, or refusal to carry out corrections and failure in timely disclosure, will be strictly investigated and dealt with according to the rules.

Fourth, the parties with responsibilities will be distinguished, and the responsibilities of the listed company, controlling shareholders, and directors, supervisors, and senior executives will be divided and identified accordingly. Based on the scope of authority, performance of duties, and impact level of those liable, the Disciplinary Action Standards reasonably identify and divide the responsibilities among different parties, so that responsibilities and penalties are well matched. On the one hand, the accuracy will be improved in distinguishing the responsibilities of the listed company from those of controlling shareholders, actual controllers, directors, supervisors and senior executives, as the controlling shareholders and actual controllers should bear the main responsibilities for the violations dominated by them, and for the listed company or the directors, supervisors and senior executives that are indeed unaware, have no obvious faults and are active in taking remedial measures, light, mitigated or no punishments will be imposed. On the other hand, the personal responsibilities of a company's internal directors, supervisors and senior executives are clearly distinguished, including the direct responsibilities of directors, supervisors and senior executives generally, the management responsibilities of the chairman and the general manager, the responsibilities of the internal directors who directly participate in operation and management and the independent directors who do not hold regular positions in the company, and the responsibilities of the secretary of the board of directors responsible for information disclosure and other directors, supervisors and senior executives who directly participate in related violations.

Question 3: Can you brief us on the main contents of the Disciplinary Action Standards?

Answer 3: The Disciplinary Action Standards include four chapters: "General Principles", "General Provisions", "Specific Provisions" and "Supplementary Provisions". The main contents are as follows.

The basis for formulation is added and detailed in the "General Principles", which also clarifies the parties for application and the types of disciplinary actions that can be imposed. The "General Provisions" stipulates the basic principles, circumstances for consideration, principles of responsibility division and other factors that should be followed and applied in the course of imposing the disciplinary actions, including the common circumstances to be considered for adoption of severe and light penalties and mitigation and exemption of punishment, the responsibility division after the

“thorough transformation” and replacing the actual controller, the distinction of the responsibilities of the listed company and the controlling shareholder, actual controller, directors, supervisors and senior executives, the distinction of personal responsibilities of directors, supervisors and senior executives, and the application of public identification, the punitive liquidated damages and the principle for combined actions, etc. The “Specific Provisions” include five sections to stipulate specific disciplinary action standards, mainly covering three issues: information disclosure, regulated operation, and securities trading and disclosure of changes in equity. It also provides special provisions for the violations of securities service agencies and sets miscellaneous provisions for violations to ensure the completeness and adequacy of the Disciplinary Action Standards. The “Supplementary Provisions” provide supplementary interpretations on the application and implementation of the Disciplinary Action Standards.

Question 4: After the Disciplinary Action Standards are officially released, what further measures will be taken for the implementation in the follow-up?

Answers 4: Under the guidance of the CSRC, the SSE will work with dispatched offices of the CSRC to continue to implement the guideline of “building the system, non-intervention, and zero tolerance”, and urge the listed companies to concentrate on main businesses, improve performance, be honest and comply with regulations, so as to improve the quality of listed companies.

First of all, the SSE will vigorously implement the requirements for “targeted regulation and proper accountability”, give full play to the role of the front-line regulation in timely discovering, curbing and investigating the violations, and effectively implement the Disciplinary Action Standards. The SSE will timely and effectively deal with serious violation cases causing disruption of market order and damage of investors interests and seek truth from facts to hold relevant parties responsible, so as to enhance the credibility of self-regulation.

Secondly, the SSE will actively adapt to the regulatory situation and market reality, continue to sum up the experience in practice, and constantly optimize and improve the categorized disciplinary standards. When the conditions are ripe, the SSE will disclose to the public in a timely manner by means of Question & Answers on regulation, detailed rules for implementation, etc., so as to provide more regulatory interpretations and better meet the demand of the listed companies for systems in the high-quality development.

Thirdly, the SSE will, based on the interpretation and application of the Disciplinary Action Standards, make effective efforts in training and service, and communicating with and explaining to the parties, etc.,

strengthen promotion and guidance, help the market correctly understand the regulatory logic and handling standards of the disciplinary actions, highlight the role of pre-warning and prevention, enhance the regulated operations of the listed companies and the “critical few”, and control and reduce violations at the source.

Fourthly, the SSE will continue to deepen the linkage and coordination between self-regulation and administrative supervision, and effectively intensify the front-line supervision of violations through efficient efforts in disciplinary action according to laws and rules, so as to form the regulatory synergy in the capital market, work together to improve the effectiveness of regulatory law enforcement, and effectually protect the legitimate rights and interests of investors.

上海证券交易所就《上海证券交易所上市公司自律监管规则适用指引第 2 号——纪律处分实施标准》答记者问

2020 年 10 月 16 日，上海证券交易所（下称“上交所”）正式发布《上海证券交易所上市公司自律监管规则适用指引第 2 号——纪律处分实施标准》（以下简称《处分标准》）。就《处分标准》的发布情况，上交所相关负责人回答了记者的提问。

一、这是上交所首次对外公开纪律处分的具体标准，这一标准的制定和公开有怎样的背景和考虑？

纪律处分是交易所履行一线监管职责的重要手段，也是资本市场监管体系的重要组成部分。这些年，上交所一直在着力提升纪律处分的规范化水平。本次公开发布《处分标准》，主要有如下三个方面的考虑。

一是推动提高上市公司质量的组成内容。上市公司是资本市场的基石，提高上市公司质量已成为当前监管的重要目标。10 月 9 日，国务院发布了《关于进一步提高上市公司质量的意见》，对提升上市公司运作规范性、改善信息披露质量，解决突出问题，提高可持续发展能力和整体质量，提出明确要求，作出全面部署。纪律处分工作也应落实上述要求，突出监管重点，优化调整执纪标准。本次发布《处分标准》，旨在完善违规行为认定规则，加大执纪力度，从交易所一线监管的角度，助力提高上市公司质量、促进资本市场平稳健康发展的制度供给。

二是落实新证券法要求，强化精准监管。新证券法专章对信息披露作出规定，大幅强化了违法行为的法律责任，把信息披露的有效性放在更为重要位置，对董监高、控股股东的行为都提出了更严格的要求。相应地，上交所上市公司自律监管纪律处分也需要做好衔接、有效落实。按照分类监管、精准监管的目标，完善上市公司纪律处

分标准，紧盯“关键少数”责任，将进一步夯实自律监管制度基础，提升纪律处分工作的精细化水平。

三是进一步提升监管透明度，规范监管履职行为。监管的公开、透明，是提升依法监管水平的应有之义。提升监管透明度，增强可预期性，也是优化当前自律监管工作的重要任务。《处分标准》通过向市场公开纪律处分的具体标准和考量情节，其操作性更强、市场预期更为明确，有助于规范上交所自身的监管履职行为，提高依法监管水平。

二、去年以来，证监会多次强调科学监管、分类监管、专业监管、持续监管，持续提升监管效能。《处分标准》对此是否有所考虑，有所体现？

本次制定《处分标准》，遵循“建制度、不干预、零容忍”的方针，以更好落实分类监管、精准监管为目标，着力精细责任区分。尤其在当前内外经济环境复杂，部分上市公司出现经营困难的情况下，充分考虑上市公司实际情况和发展需求，实事求是地对违规行为做好责任区分，既体现监管威慑，又尽量避免对上市公司造成不必要的影响。

一是落实精准监管，将“宽严相济”作为标准制定的基本原则。《处分标准》以“宽严相济”作为指导原则，着力精细化责任区分，区分不同案件类型、同类案件不同个案、同案不同责任主体等方面作出差异化安排，提高自律监管的针对性。同时，《处分标准》充分考虑上市公司实际情况和发展需求，以推动提高上市公司质量为导向，责任追究时为全面整改、“脱胎换骨”、有一定经营能力的公司脱困转型留有空间，使纪律处分既能达到惩戒效果，又减少对上市公司发展的影响。

二是区分案件类型，严肃处理性质严重、影响恶劣的实质违规。《处分标准》按照“管少管精才能管好”的要求，区分不同违规类型，在责任标准、处理力度上有所不同。对于财务造假、资金占用、违规担保、重大并购重组违规等性质严重、影响恶劣的实质违规，严格落实“零容忍”的工作要求，明确公开谴责等较高档次的处分标准，对主要责任人严惩不贷。对于违规性质属于单纯的信息披露形式瑕疵、日常工作疏忽，未对公司造成重大损失、市场影响不大的案件，处理力度较轻，主要以警示提醒为目的。

三是区分个案情节，充分考虑整改情况、主观过错等作出差异化处理。《处分标准》区分违规严重程度，综合考虑涉案金额和比例、实际损失、市场影响、整改情况、主观过错等主客观具体情节，作出差异化处理。典型情形如，自查自纠、快速整改、挽回损失并按规定认真披露的违规行为，可作为从轻、减轻或免除情节；对当事人明显疏忽所致的“无心之失”，将其主观状态作为重要

考量情节；但对涉案金额巨大、占比很高、对公司造成实际损失、市场影响恶劣的违规行为，或者故意实施、被发现后拒不核实、拒不整改、不及时对外披露的违规行为，依规严肃查处。

四是区分责任主体，对上市公司与控股股东、董监高责任作出合理分配认定。《处分标准》根据责任人的权限范围、履职情况、作用大小等，合理认定分配不同主体的责任，做到责罚相当。一方面，提高区分上市公司责任与控股股东、实际控制人、董监高责任的精准度，控股股东、实控人主导的违规行为，由其承担主要责任，上市公司或董监高确不知情、没有明显过错，且积极采取补救措施的，可以从轻、减轻或免除处理。另一方面，明确区分公司内部董监高个人责任，包括一般董监高的直接责任与董事长、总经理的管理责任，直接参与经营管理的内部董事与不在公司常规任职的独立董事责任，负责信息披露事务的董事会秘书与直接参与实施相关违规事项的其他董监高责任。

三、能否介绍一下《处分标准》的主要内容？

《处分标准》包括“总则”“一般规定”“分则”“附则”四章，主要内容如下。

总则补充细化了制定依据，明确《处分标准》的适用主体以及可实施的纪律处分种类。一般规定对实施纪律处分过程中遵循适用的基本原则、考量情形、责任区分原则等予以规定，包括一般性从重、从轻、减轻、免除等考量情节，“脱胎换骨”、更换实控人后的责任区分，上市公司与控股股东、实际控制人、董监高责任区分，董监高个人责任区分，公开认定、惩罚性违约金、合并处理原则的适用等。分则分五节规定了具体处分标准，主要涵盖信息披露、规范运作、证券买卖及权益变动披露等三个方面，并对证券服务机构违规专节规定，同时设置违规兜底条款，保证《处分标准》的完整性与周延性。附则对《处分标准》适用实施作出补充解释。

四、《处分标准》正式发布后，后续将有什么进一步落实的措施？

下一步，上交所将在证监会的指导下，协同各地证监局，继续认真落实“建制度、不干预、零容忍”的方针，督促上市公司专注主业、改善经营、诚实守信、规范运作，推动提高上市公司质量。

一是积极落实“精准监管、科学问责”要求，充分发挥一线监管“三及时”特点，执行落实好《处分标准》。及时有效处理扰乱证券市场秩序、损害投资者利益的重大恶性违规案件，实事求是地做好责任区分，增强自律监管的公信力。

二是主动适应监管形势与市场实际，持续总结实践经验，不断优化完善类型化违规处理标准。条件成熟后，以监管问答、实施细则等方式适时对外公开，增加法制供给，更好地满足服务于上市公司高质量发展的制度需求。

三是结合《处分标准》的解释适用，做好培训服务、与当事人沟通解释等工作，加强宣传引导，帮助市场正确理解纪律处分的监管逻辑及处理标准，强化事前警示及预防作用，提升上市公司及“关键少数”规范运作水平，从源头上控制和减少违规。

四是持续深化自律监管与行政监管的衔接配合，通过依法依规做好纪律处分工作，有效加强对违规行为的一线监管，形成资本市场的监管合力，协力提高监管执法效能，切实维护投资者合法权益。

Source 来源:

http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20201016_5234669.shtml

Shenzhen Stock Exchange and China SME Development Fund Co., Ltd Deepen Strategic Cooperation to Jointly Improve the Breadth and Depth of Services for Small and Medium Enterprises

On October 23, 2020, the Shenzhen Stock Exchange (SZSE) and China SME Development Fund Co., Ltd. (“China SME Development Fund”) signed a framework agreement on strategic cooperation. The two parties had in-depth discussions on implementing the national innovation-driven development strategy, boosting the development of innovative technology companies, private companies and growth enterprises, and giving better play to the role of the capital market in serving the real economy.

China SME Development Fund is a corporate fund of funds initiated by 15 shareholder units in June 2020 under the guidance and support of the Ministry of Industry and Information Technology of the People’s Republic of China and the Ministry of Finance of the People’s Republic of China in accordance with the requirements of the Law of the People’s Republic of China on Promotion of Small and Medium-sized Enterprises to conscientiously implement the Guidance on Promoting Healthy Development of Small and Medium-sized Enterprises and the guiding principles of relevant meetings of the State Council. With the objective of facilitating the development of Small and Medium Enterprises (the “SMEs”), China SME Development Fund expands equity investments in SMEs through market-based means, provides diversified financing services to SMEs, fully maintains the stability of the industrial chain, and serves the development of the real economy. So far, China SME Development Fund has set up four direct investment

sub-fund entities, five of its invested enterprises are listed on SZSE.

Centering on serving the real economy and national strategies, SZSE has always been exploring services for growth enterprises, innovative enterprises and startups, expanding financing channels for private companies and supporting the development of SMEs. In this process, SZSE has launched the SME Board, successfully founded the ChiNext Board, first established the V-Next platform and implemented the reform of the ChiNext Board and the pilot project of the registration-based IPO system. SZSE has constantly diversified the financing product system, refined the local service system, actively cultivated a full-lifecycle investment and financing system, and striven to build an innovation capital formation ecosystem. In serving technology companies, private companies and SMEs, SZSE has accumulated rich experience and made remarkable achievements, becoming a model of SME market construction in developing countries.

According to the agreement, SZSE and China SME Development Fund will establish an all-round, multi-level strategic cooperation relationship, give full play to each other’s advantages, enhance collaborative services, strengthen information communication, publicity and promotion, and deepen cooperation in listing cultivation of quality enterprises and investment and financing roadshows and connecting events. The two parties will also work together to build a comprehensive financing service mechanism for SMEs and improve the breadth and depth of services for SMEs to assist them in accessing financing conveniently and efficiently and realizing sustainable and healthy development.

深圳证券交易所与国家中小企业发展基金深化战略合作，共同提升服务中小企业广度和深度

2020年10月23日，深圳证券交易所（下称“深交所”）与国家中小企业发展基金有限公司签署战略合作框架协议，双方就贯彻落实国家创新驱动发展战略，促进科技创新企业、民营企业、成长型企业做大做强，更好发挥资本市场服务实体经济作用等方面进行深入交流。

国家中小企业发展基金有限公司是按照《中小企业促进法》要求，认真落实《关于促进中小企业健康发展的指导意见》和国务院有关会议精神，在中华人民共和国工业和信息化部、财政部的指导和支持下，由15家股东单位共同发起，于2020年6月成立的公司制母基金，以促进中小企业发展为目标，用市场化手段扩大对中小企业的股权投资规模，为中小企业提供多元化融资服务，切实维护产业链稳定，服务实体经济发展。目前，已设立四个直投子基金实体，投资企业中有5家在深交所上市。

深交所立足服务实体经济和国家战略全局，始终深耕成长型创新创业企业服务，拓宽民营企业融资渠道，支持中小企业成长壮大，探索推出中小企业板、成功设立创业板、率先建设深交所创新创业投融资服务平台、顺利实施创业板改革并试点注册制，不断丰富融资产品体系，持续完善在地化服务体系，积极培育全生命周期投融资对接体系，努力建设创新资本形成生态体系，在服务科技企业、民营企业、中小企业发展方面积累了丰富经验，取得了良好成效，成为全球发展中国家中小企业市场建设范例。

根据协议，深交所和国家中小企业发展基金将建立全方位、多层次的战略合作关系，充分发挥各自优势，强化协同服务，加强双方信息沟通、宣传推广，在优质企业上市培育、投融资路演对接等方面深化合作，合力构建中小企业综合融资服务机制，共同提升服务中小企业的广度和深度，助力中小企业便利高效融资、持续健康发展。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201023_582510.html

Shenzhen Stock Exchange Launches Pilot Program of Credit Protection Certificates to Further Support the Real Economy

On October 27, 2020, the Shenzhen Stock Exchange (SZSE) officially issued the Notice on the Pilot Program of Credit Protection Certificates and launched the pilot program of credit protection certificates. This is another important measure taken by SZSE to implement the decisions and plans of the Party Central Committee and the State Council, and play its role as a platform for serving the real economy and support direct financing of private enterprises via market-oriented methods under the leadership of the China Securities Regulatory Commission.

Credit protection tools include credit protection contracts and credit protection certificates. The business of credit protection contracts has been running smoothly and orderly since SZSE launched the pilot program in November 2018. 17 institutions have registered as core contract dealers with SZSE. 67 credit protection contracts have been completed with a total value of CNY 3 billion, providing CNY 18 billion financing to entities. Most of protected debts belong to private enterprises. The program has enhanced investors' motivation for subscription, boosted bond issuance for private enterprises, and reduced their financing costs. On that basis, SZSE launched the pilot program of credit protection certificates to encourage more market players to participate in the business of credit protection tools.

Compared with one-to-one, highly personalized credit protection contracts, credit protection certificates have the following features. First, they are tradable and transferable, allowing flexible adjustments for investors as per their risk hedging needs. Second, it is convenient to participate. With relevant terms and conditions specified in the certificate manual, both sides could dispense with a master agreement. Third, the elements are standardized, and there are strict information disclosure requirements for the certificates. Fourth, pricing is market-based with book building and other methods adopted for the issuance to give full play to their price discovery function.

In order to ensure the orderly development of the credit protection certificate business, SZSE has issued the Pilot Measures of Shenzhen Stock Exchange and China Securities Depository and Clearing Corporation Limited for Credit Protection Tool Business and the Guidelines of Shenzhen Stock Exchange for Credit Protection Tool Business. Next, SZSE will actively guide market participants in applying to register as certificate issuing institutions, steadily advance the pilot program of credit protection certificates on the SZSE market, and further enhance support for direct financing of the real economy.

深圳证券交易所启动信用保护凭证试点，进一步加大对实体经济支持力度

2020年10月27日，深圳证券交易所（下称“深交所”）正式发布《关于开展信用保护凭证业务试点的通知》，推出信用保护凭证业务试点。这是深交所贯彻落实党中央、国务院决策部署，在中国证监会领导下，发挥服务实体经济平台枢纽作用，运用市场化方式支持民营企业直接融资的又一重要举措。

交易所信用保护工具包括信用保护合约和信用保护凭证两类产品。深交所自2018年11月推出信用保护合约业务试点以来，业务运行平稳有序，已有17家机构备案成为深交所合约核心交易商，累计达成信用保护合约交易67笔，合约规模30亿元，实际支持实体企业融资规模180亿元。其中，受保护债务主体绝大部分为民营企业，对于提升投资者认购积极性、助力民企债券发行、降低民企融资成本起到了积极作用。在此基础上，深交所推出信用保护凭证业务试点，鼓励更多市场机构参与信用保护工具业务。

与一对一达成、个性化较强的信用保护合约相比，信用保护凭证具有以下特点：一是可流通转让，便于投资者灵活调整其风险对冲需要；二是参与便捷，交易双方无需签署主协议，相关条款均体现在凭证创设说明书中；三是要素较为标准化，且对凭证存续期间有较严格的信

息披露要求；四是定价市场化，凭证创设采用簿记建档等方式，有助于充分发挥价格发现功能。

为保障信用保护凭证业务有序开展，深交所前期已对外发布《深圳证券交易所 中国证券登记结算有限责任公司信用保护工具业务管理试点办法》与《深圳证券交易所信用保护工具业务指引》。接下来，深交所将积极指导市场参与者开展凭证创设机构备案工作，稳步推进深市信用保护凭证业务试点项目落地，进一步提升对实体经济直接融资支持力度。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201027_582684.html

Shenzhen Stock Exchange Releases ChiNext Market Technology and Pharmaceutical Indices to Enrich Index Investing Tools for ChiNext Market

On October 26, 2020, Shenzhen Stock Exchange (SZSE), together with its wholly-owned subsidiary, Shenzhen Securities Information Co., Ltd. (SSIC), released the ChiNext Technology Index (“ChiNext Technology” for short, Index Code: 399276) and ChiNext Pharmaceutical Index (“ChiNext Pharmaceutical” for short, Index Code: 399275), in a bid to further enrich index investing tools for the ChiNext market.

With 11 years of development, the ChiNext Board has become an important market that supports innovation and entrepreneurship around the world. With the steady implementation of the reform of the ChiNext Board and the pilot project of the registration-based IPO system, the ChiNext Board is witnessing the listing of a greater number of high-quality new economy enterprises. Boasting distinctive industry features and significant advantages in information technology, pharmaceutical and health and other sectors, the ChiNext market has developed an agglomeration effect. As at the end of September 2020, the total market cap value of the high-tech firms on the ChiNext Board exceeded RMB5 trillion, and that of the medical companies exceeded RMB2 trillion.

SZSE selected 50 stocks of ChiNext firms with high R&D investment, well-performed fundamentals and sound liquidity as samples of the ChiNext Technology, and 50 pharmaceutical and health stocks with high market cap and good liquidity as samples of the ChiNext Pharmaceutical. The two indices have been operating well. Calculated from the end of 2012 to the end of September 2020, total return of the ChiNext Technology reached 459%, and that of the ChiNext Pharmaceutical hit 495%.

According to an SZSE official, the released ChiNext Technology and Pharmaceutical indices contribute to better reflecting the development results of advantageous industries on the ChiNext Board and provide high-quality investment targets for the sharing of ChiNext Board’s growth dividends. By thoroughly studying and putting into practice the guiding principles of General Secretary Xi Jinping’s important speech made at the gathering to celebrate the 40th anniversary of the establishment of the Shenzhen Special Economic Zone, SZSE will put in place the concept of building Shenzhen into a pilot zone in all the reform and development tasks, and adhere to the ChiNext Board positioning of serving companies of innovative, creativity and originality, and traditional conventional industries that are deeply integrated with new technologies new industries, new business formats, and new models. In addition, SZSE will move faster to improve index preparation and relevant work, enrich the characteristic indices of the ChiNext market, and strengthen the development of the ChiNext index product system. SZSE will also guide medium and long-term fund flows towards high-quality assets, enhance the wealth effect of investment, and promote the high-level circulation of technology, capital and real economy. By doing so, SZSE could better serve the development of the Guangdong-Hong Kong-Macao Greater Bay Area and build Shenzhen into a pilot demonstration zone.

深圳证券交易所发布创科技、创医药指数，丰富创业板市场指数投资工具

2020年10月26日，深圳证券交易所（下称“深交所”）联合全资子公司深圳证券信息有限公司共同发布创业板科技指数（指数简称：创科技，指数代码：399276）和创业板医药卫生指数（指数简称：创医药，指数代码：399275），进一步丰富创业板市场指数化投资工具。

经过11年发展，创业板已成为全球支持创新创业的重要市场，随着创业板改革并试点注册制平稳落地实施，创业板正迎来更多优质新经济企业。创业板市场行业特色鲜明，信息技术、医药卫生等行业优势显著，已形成集聚效应。截至2020年9月底，创业板高科技行业总市值超过5万亿元，医药行业总市值超过2万亿元。

创业板科技指数从科技相关产业中选取50只研发投入高、基本面表现良好、流动性好的创业板股票作为样本。创业板医药卫生指数从医药卫生行业中选取50只市值大、流动性好的创业板股票作为样本。两条指数运行情况良好，自2012年底至2020年9月底，创业板科技指数累计收益459%，创业板医药卫生指数累计收益495%。

深交所相关负责人表示，创业板科技指数和创业板医药卫生指数的发布，有利于更好反映创业板优势行业发展成果，为市场分享创业板发展红利提供优质投资标的。

深交所将深入学习贯彻习近平总书记在深圳经济特区建立 40 周年庆祝大会上的重要讲话精神，把先行示范建设理念和先行先试原则要求贯穿于改革发展各项工作，坚守创业板“三创”“四新”定位，加快推进优化指数编制相关工作，丰富创业板市场特色指数，加强创业板指数产品体系建设，引导中长期资金配置优质资产，增强投资财富效应，促进科技、资本和实体经济高水平循环，更好服务粤港澳大湾区和深圳先行示范区建设。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201026_582602.html

Shenzhen Stock Exchange Strictly Monitors Trading of Convertible Bonds and Warns Investors about Trading Risk

On October 26, 2020, the Shenzhen Stock Exchange (SZSE) issued a news, stating that the convertible bond market was active recently, with drastic price fluctuations. The trading prices of some convertible bonds seriously deviated from their companies' stock prices. By the close of trading on October 23, 2020, four convertible bonds on SZSE recorded a conversion premium of over 150%, among which, Henghe Convertible Bond (123013) had the highest conversion premium, 236.80%. Because convertible bonds have debt, equity and convertible features at the same time, holders can convert bonds into common stocks according to the price and time agreed upon the issuance of convertible bonds. There is a positive correlation between the trading prices of convertible bonds and company stock prices. When there is a substantial deviation in the prices, there will be a big valuation risk for the convertible bonds. Investors should be on high alert and invest with rationality.

SZSE carefully conducted regulation of trading of convertible bonds and strictly prevented trading risk. First, SZSE strengthened real-time intraday monitoring, with a focus on convertible bonds with abnormal ups and downs, and promptly adopted regulatory measures against abnormal transactions. Second, SZSE enhanced verification of trading of convertible bonds and reported suspected violations to China Securities Regulatory Commission (CSRC) in a timely manner. Third, SZSE deepened connection between transaction regulation and information disclosure regulation, actively paid attention and promptly made inquiries, urged listed companies to disclose relevant information and improved market transparency. Fourth, SZSE intensified the efforts to make public the regulatory information, releasing the list of convertible bonds under key monitoring to the market via the weekly monitoring information bulletin.

Next, SZSE will continue to deepen the implementation of the principles of “building systems, no intervention and zero tolerance”, do well in transaction regulation, strengthen joint regulation of transaction and information disclosure, and improve systems for trading of convertible bonds including temporary delisting, to effectively forestall market risks, practically maintain the market transaction order and fully protect investors' legitimate rights and interests. SZSE advises investors to develop risk awareness, conduct trading with rationality and according to laws, and not to participate in speculation blindly so as to mitigate unnecessary losses.

深圳证券交易所严密监控可转债交易，提醒投资者警惕交易风险

2020 年 10 月 23 日，深圳证券交易所（下称“深交所”）发布一则新闻，称近期，可转债市场交易活跃，价格大幅波动，个别可转债交易价格严重偏离公司股价。截至 2020 年 10 月 23 日收盘，深市转股溢价率超过 150% 的可转债有 4 只，其中“横河转债”最高，达 236.80%。可转债兼具债权性、股权性和可转换性等特点，持有人可按照可转债发行时约定的价格与时间将债券转换成公司普通股股票。可转债交易价格与公司股价高度正相关，当价格严重偏离时，可转债存在较大的估值风险，投资者应高度警惕、理性投资。

深交所认真做好可转债交易监管，严密防控交易风险。一是加强盘中实时监控，将涨跌异常可转债纳入重点监控，对异常交易及时采取监管措施。二是强化可转债交易核查，发现涉嫌违法违规及时上报证监会。三是深化交易与信息披露监管联动，主动关注、及时问询，督促上市公司做好信息披露，提高市场透明度。四是加大监管信息公开力度，通过每周监管动态向市场披露重点监控的可转债名单。

下一步，深交所将继续深入贯彻“建制度、不干预、零容忍”九字方针，持续做好交易监管工作，加强交易与信息披露联合监管，研究完善包括临时停牌在内的可转债交易制度，有效防范市场风险，切实维护市场交易秩序，充分保护投资者合法权益。深交所提醒投资者树立风险意识，理性合规参与交易，切忌盲目参与炒作，避免不必要的损失。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201023_582526.html

Shenzhen Stock Exchanges Releases Lists of Regulation and Service Items to Optimize Regulation, Promote Services and Clarify Expectations

On October 26, 2020, Shenzhen Stock Exchanges (SZSE) formulated the List of Self-discipline Regulation Items and the List of Market Service Items and released them to the public. It is another important measure of SZSE to conscientiously carry out the requirements of the new Securities Law, deepen reforms to streamline administration and delegate power, improve regulation, and upgrade services, and improve transparency of regulation and services.

SZSE has always been attaching great importance to and doing things strictly according to laws and regulations and the principle of transparency. Since 2004, SZSE has overhauled and announced review and registration items for five times, which has played an active role in standardizing exercise of powers and improve service convenience. Following the idea of rule of law of promoting the registration-based IPO system across the board, the new Securities Law, which was released this year after revision, has enriched the functions of exchanges in such links as securities issuance and listing review, securities market organization, securities trading and delisting, and raised higher requirements on duty performance of exchanges. In the formulation of the Lists, SZSE, closely following the new situations and the new requirements and sticking to the principle of basing on facts, comprehensively sorted and scientifically categorized the exchange's functional items such as self-discipline regulation and market service, laying a solid foundation for the exchange to improve regulation and optimize services.

The Lists contain 40 items, including 15 self-discipline items in five categories, namely, securities issuance and listing regulation, continuous securities regulation, transaction regulation, member regulation, and self-discipline management and internal relief, and 25 market service items in six categories, namely, securities issuance and listing service, listed company service, transaction service, membership service, option and fund service, and investor service.

Implement the new Securities Law and form a “full-caliber” list of job duties

With the reform to introduce the registration-based IPO system as the main task, the Lists have, according to the new Securities Law, supplemented and improved such functions as review for stock issuance and listing on the ChiNext Board and issuance and underwriting regulation, reflecting the exchange's responsibility positioning under the new situation. In addition to the items that need to be applied by market entities, the Lists have included the exchange's proactive duty performance acts such as continuous information disclosure regulation, transaction regulation and taking regulatory measures, laid down main bases of rules, presented the exchange's job responsibilities

panoramically to eliminate the “pocket policy” and stabilize market expectations. Market entities can check the full Lists in the “Rules” section on the official website of SZSE. Later, SZSE will dynamically update and maintain the content of the Lists according to the progress of major reform tasks and changes in business development.

Highlight “service orientation” and effectively enhance market entities’ sense of gain

Based on market demand, SZSE further played its role as a hub and enriched service items, such as market cultivation service, online voting service and trading information service, and formed a list of diversified services for companies planning to get listed, listed companies, members and investors. In the meantime, SZSE optimized relevant service handling standards and procedures to better serve market entities. Regarding the service item on assisting in law enforcement in the Lists, SZSE issued the Guidelines for Assisting in Law Enforcement simultaneously, which specifies the scope, documentary materials, working process, etc. for assisting in law enforcement. Later, based on the content of the Lists, SZSE will promptly prepare and release an easy-to-operate “one-stop” service guide with unified format and post them all in one special section on the official website of SZSE, so that market entities can find them conveniently and get their things done clearly and quickly.

Improving regulation and services is an ongoing process and we will never stop. SZSE will, taking the deepened implementation of the new Securities Law as the opportunity, put in place the principles of “building systems, no intervention and zero tolerance”, stick to the market-oriented, rule-of-law-based direction, and improve the basic systems for the capital market. We will optimize regulatory concepts, enhance the awareness of active service, make achievements while ensuring “transparency”, and win the trust of market participants with transparent standards. We will also build a predictable market environment with a clean style of work, continue to improve the efficiency of governance of the capital market, strive to build a quality innovation capital center and world-class exchange, and better serve overall economic and social development.

优监管、促服务、明预期，深圳证券交易所公布监管服务事项清单

2020年10月23日，深圳证券交易所（下称“深交所”）梳理编制了《自律监管事项清单》和《市场服务事项清单》，并对外公布。这是深交所认真贯彻新《证券法》要求，深化“放管服”改革，提高监管服务透明度的又一重要举措。

深交所一直高度重视并严格依规办事、透明办事。自2004年起先后五次对审核登记事项进行清理和公示，为规范权力运行、增进办事便利发挥积极作用。今年新修订的《证券法》遵循全面推行注册制的法治理念，重点围绕证券发行上市审核、证券市场组织、证券交易和退市等环节充实了交易所职能，也对交易所履职尽责提出更高要求。本次《清单》编制工作紧扣新形势新要求，坚持实事求是原则，对交易所自律监管、市场服务等职能事项进行全面盘点、科学划分，为改进监管、优化服务夯实基础保障。

《清单》共40项，其中自律监管事项15项，包括证券发行上市监管、证券持续监管、交易监管、会员监管、自律管理与内部救济5大类；市场服务事项25项，包括证券发行上市服务、上市公司服务、交易服务、会员服务、期权与基金服务、投资者服务6大类。

贯彻落实新证券法，打造“全口径”职责清单

《清单》逐项对照新《证券法》，以注册制改革为主线，针对性补充完善创业板发行上市审核、发行承销监管等职能，体现新形势下交易所职责定位。除需市场主体申请的事项外，《清单》还将持续信息披露监管、交易监管、采取监管措施等交易所主动履职行为纳入，列明主要规则依据，全景式呈现职责清单，杜绝“口袋政策”，稳定市场预期。市场主体可通过深交所官网“法律规则”栏目查询完整《清单》。后续，深交所将根据重点改革任务推进情况和业务发展变化，对《清单》内容进行动态更新维护。

突出“服务为本”，切实增强市场主体获得感

深交所以市场需求为导向，进一步发挥枢纽作用，丰富充实服务事项，如提供市场培育服务、网络投票服务、交易信息服务等，形成涵盖拟上市企业、上市公司、会员、投资者等主体的多元化服务清单。同时，深交所梳理优化了相关业务办理标准和流程，更好服务市场主体。本次还针对《清单》中协助执法事项，同步发布《协助执法办理指引》，就协助执法办理范围、文件材料、工作流程等作出明确规范。后续，深交所将结合《清单》内容，及时编制并推出格式统一、易于操作的“一站式”办理指南，在官网专门栏目集中发布，让市场主体找得到、看得明，清楚、便捷地把事办成办好。

提升监管服务水平只有进行时，没有完成时。深交所将以深入实施新《证券法》为契机，把“建制度、不干预、零容忍”九字方针落到实处，坚持市场化、法治化方向，推动完善资本市场基础制度，优化监管理念，增强主动服务意识，做到“明”而有力，以透明的标准赢得市场各方信任，以廉明的作风营造可预期市场环境，不断提升

资本市场治理效能，努力建设优质创新资本中心和世界一流交易所，更好服务经济社会发展全局。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201023_582509.html

Shenzhen-Hong Kong ETF Connect Successfully Opened, Enhancing the Integration of Financial Markets in the Guangdong-Hong Kong-Macao Greater Bay Area

On October 23, 2020, Shenzhen-Hong Kong ETF Connect was officially opened. Shenzhen Stock Exchange (SZSE) and the Hong Kong Exchanges and Clearing Limited (HKEX) held the ceremony separately in strict accordance with the requirements on regular pandemic prevention and control.

Shenzhen-Hong Kong ETF Connect is an important measure of the two capital markets to conscientiously carry out major decisions and arrangements of the CPC Central Committee and the State Council, continue to deepen pragmatic cooperation, actively promote high-level two-way opening-up and better serve the construction of the Guangdong-Hong Kong-Macao Greater Bay Area and the Shenzhen demonstration area for socialism with Chinese characteristics. Among the first batch of Shenzhen-Hong Kong ETF Connect products, Harvest Hang Seng China Corporate ETF and Yinhua ICBC CSOP S&P China New Economic Industry ETF were listed on SZSE and Hang Seng Harvest CSI 300 ETF and CSOP Yinhua CS 5G Communications Theme ETF were listed on the HKEX.

Since November 2019, according to the unified arrangements of CSRC, with the great support of the SFC, SZSE has intensified communication and cooperation with the HKEX, followed market-oriented principles, organized a number of seminars, formulated the ETF Connect plan, and signed relevant memorandum of cooperation. Asset management institutions in the two cities have selected subject products of cooperation through full consultation and communication. The Connect will further facilitate long-term, deep cooperation between the exchanges and asset management institutions in the two cities, refine the interconnection mechanism, expand innovation and interconnection channels, enhance the integration of financial markets in the Guangdong-Hong Kong-Macao Greater Bay Area, and provide more diversified cross-border investment choices for investors in the two cities.

This year marks the 40th anniversary of the establishment of the Shenzhen Special Economic Zone and the 30th anniversary of the founding of the capital market. SZSE will earnestly implement the guiding principles of General Secretary Xi Jinping's important

speeches and practice the principles of “building systems, no intervention and zero tolerance”. SZSE will resolutely take on the responsibility as a trailblazer in the capital market, and advance in depth the major task of deepening the reform of the capital market on all sides and the list of first batch of authorized items for the pilot demonstration area. SZSE will continue to diversify the financial derivative product system and improve the types of cross-border investment and financing products. SZSE will learn from best international practices to promote the establishment of a system of rules and regulations that is in line with international standards, deepen cooperation and development of the Guangdong-Hong Kong-Macao Greater Bay Area through connection of rules, and promote reform and opening up from a higher starting point to a higher level with a higher goal. SZSE will go all out to build itself into a quality innovation capital center and world-class exchange and make contributions to building the Greater Bay Area into a world-class bay area and Shenzhen into a model city of a modern socialist country.

深港 ETF 互通成功开通，助力提升粤港澳大湾区金融市场一体化水平

2020年10月23日，深港ETF互通正式开通。深圳证券交易所（下称“深交所”）和香港交易及结算有限公司（下称“港交所”）严格落实常态化疫情防控要求，分别举行仪式。

深港ETF互通是两地资本市场认真贯彻落实党中央、国务院重大决策部署，持续深化务实合作，积极推进高水平双向开放，更好服务粤港澳大湾区和深圳先行示范区建设的重要举措。首批互通产品中，嘉实恒生中国企业ETF、银华工银南方东英标普中国新经济行业ETF在深交所挂牌上市，恒生嘉实沪深300指数ETF、南方东英银华中证5G通信主题ETF在港交所挂牌上市。

自2019年11月以来，按照中国证监会统一部署，在香港证监会大力支持下，深交所密切加强与港交所沟通协作，遵循市场化原则，组织多场研讨会，制定ETF互通方案，签署合作备忘录；两地资管机构充分磋商交流，选定合作产品标的。本次互通将进一步促进两地交易所和资管机构长期深度合作，优化完善互联互通机制，拓展创新互联互通渠道，提升粤港澳大湾区金融市场一体化水平，为两地投资者跨境投资提供更多元化选择。

今年是深圳经济特区建立40周年，也是资本市场建立30周年。深交所将认真贯彻落实习近平总书记重要讲话精神，践行“建制度、不干预、零容忍”九字方针，坚决扛起资本市场建设先行先试的责任，深入推进落实全面深化资本市场改革重点任务和先行示范区首批授权事项清单，不断丰富金融衍生产品体系，完善跨境投融资产品

种类，借鉴国际最佳实践，推动构建与国际接轨的制度规则体系，以规则衔接深化粤港澳大湾区合作发展，在更高起点、更高层次、更高目标上推进改革开放，全力建设优质创新资本中心和世界一流交易所，为粤港澳大湾区建设国际一流湾区和深圳创建社会主义现代化强国城市范例积极贡献力量。

Source 来源:

http://www.szse.cn/aboutus/trends/news/t20201023_582494.html

Financial Conduct Authority of the United Kingdom Welcomes the Financial Services Bill

The Financial Services Bill was introduced as a first step in shaping a regulatory framework for the United Kingdom (UK) 's financial services sector outside of the European Union (EU). Measures in the bill, which is currently going through the Parliamentary process, will help to maintain high standards and provide greater clarity to firms.

The bill clarifies and extends the Financial Conduct Authority's (FCA's) powers to ensure the orderly wind-down of the critical LIBOR benchmark. FCA urges market participants to maintain their focus on the transition away from LIBOR by the end of 2021.

The Bill also includes a number of areas of interest to the FCA, including:

- the prudential regulation of investment firms (measures relating to the Investment Firms Prudential Review)
- a new route for overseas funds to market to retail investors through the introduction of a new Overseas Funds Regime
- a new framework for regulatory relationship with Gibraltar

The measure will extend the transitional period for third-country benchmarks from end-2022 to end-2025, avoiding financial stability risks and economic repercussions for UK users should they lose access.

In order to promote openness between the UK and international markets, the bill will introduce new equivalence regimes for retail investment funds and money market funds, which will simplify the process for investment funds that are domiciled overseas to market to UK consumers.

There is a Ministerial commitment to provide long-term access between the UK and Gibraltar for financial services firms on the basis of alignment and

cooperation, now that the UK and Gibraltar have left the EU.

In addition, the bill includes a number of smaller measures to maintain an effective financial services regulatory framework and sound capital markets. These include measures to improve the functioning of the Packaged Retail and Insurance-based Investment Products Regulation, and increased penalties for market abuse.

英国金融行为监管局欢迎《金融服务法案》

《金融服务法案》的提出是为欧盟以外的英国金融业制定监管框架的第一步。该法案中的措施目前正在议会审议程序中，旨在协助维持高标准并为公司提供更高的透明度。

该法案阐明并扩大了英国金融行为监管局（英国金管局）的权力，以确保有序地从伦敦银行间同业拆借利率过渡。英国金管局敦促市场参与者在 2021 年底前继续关注从伦敦银行间同业拆借利率转移的问题。

该法案还涉及与英国金管局利益相关的多个领域，其中包括：

- 投资公司的审慎监管（与投资公司的审慎审查有关的措施）
- 通过引入新的海外基金制度，为海外基金向散户投资者营销提供新途径
- 与直布罗陀的监管关系新框架

该措施将把第三国基准的过渡期从 2022 年末延长至 2025 年末，以避免一旦英国用户无法使用伦敦银行间同业拆借利率而将面临的金融稳定风险和经济影响。

为了促进英国与国际市场之间的开放，该法案将为零售投资基金和货币市场基金引入新的对等机制，这将简化在海外注册的投资基金向英国消费者营销的流程。

由于英国和直布罗陀已经脱离欧盟，部长级会议承诺在一致与合作的基础上为金融服务公司提供英国和直布罗陀之间的长期通道。

此外，该法案还包括一些小措施以维持有效的金融服务监管框架和健全的资本市场。这些措施包括改善包装式零售和基于保险的投资产品监管的措施，以及对市场滥用行为加重处罚的措施。

Source 来源：

<https://www.fca.org.uk/news/statements/fca-welcomes-financial-services-bill>

The Financial Conduct Authority and the Prudential Regulation Authority of the United Kingdom Fine Goldman Sachs International £96.6m for Risk Management Failures in Connection with 1Malaysia Development Berhad

The Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) of the United Kingdom have fined Goldman Sachs International (GSI) a total of £96.6 million (US\$126 million) for risk management failures connected to 1Malaysia Development Berhad (1MDB) and its role in three fund raising transactions for 1MDB. The FCA and PRA fines are part of a US\$2.9 billion globally coordinated resolution reached with the Goldman Sachs Group Inc. (GSG) and its subsidiaries.

1MDB is a Malaysian state-owned development company that has been at the center of billion-dollar embezzlement allegations. GSI underwrote, purchased and arranged three bond transactions for 1MDB in 2012 and 2013 that raised a total of US\$6.5 billion for 1MDB. The 1MDB transactions were approved by global GSG committees that GSI participated in and were booked to GSI.

The 1MDB transactions involved clients and counterparties in jurisdictions with higher financial crime risk. GSI was also aware of the risk of involvement of a third party that GSI had serious concerns about. GSI failed to assess and manage risk to the standard that was required given the high risk profile of the 1MDB transactions, and failed to assess risk factors on a sufficiently holistic basis. GSI also failed to address allegations of bribery in 2013 and failed to manage allegations of misconduct in connection with 1MDB in 2015.

The investigation found that GSI breached a number of FCA and PRA principles and rules. Specifically, GSI failed to:

- assess with due skill, care and diligence the risk factors that arose in each of the 1MDB bond transactions on a sufficiently holistic basis
- assess and manage the risk of the involvement in the 1MDB bond transactions of a third party that GSI had serious concerns about
- exercise due skill, care and diligence when managing allegations of bribery and misconduct in connection with 1MDB and the third 1MDB bond transaction

- record in sufficient detail the assessment and management of risk associated with the 1MDB bond transactions

The US\$2.9 billion global resolution included, in addition to the FCA and PRA, the US Department of Justice, the US Securities and Exchange Commission, the US Federal Reserve Board of Governors, the New York Department of Financial Services, the Monetary Authority of Singapore, the Attorney-General's Chambers Office, Singapore, and the Commercial Affairs Department of the Singapore Police Force. The global resolution is separate to the US\$3.9 billion settlement reached between GSG and the Government of Malaysia in August 2020. The FCA and PRA took this settlement into account in determining their financial penalties.

GSI agreed to resolve this case with the FCA and PRA, qualifying it for a 30% discount in the overall penalty imposed by both regulators. Without this discount, the FCA and PRA would have imposed a financial penalty of £69,012,000 (US\$90,000,000) each on GSI.

英国金融行为监管局及审慎监管局就与 1Malaysia Development Berhad 相关的风险管理不到位而对高盛国际处以 9,660 万英镑罚款

英国金融行为监管局（英国金管局）及英国审慎监管局就与 1Malaysia Development Berhad (1MDB) 相关的风险管理不到位及其在 1MDB 的三笔融资交易中的作用而对高盛国际处以总计 9,660 万英镑（1.26 亿美元）罚款。英国金管局和审慎监管局的罚款构成与高盛集团及其子公司达成的 29 亿美元全球协调决议的一部分。

1MDB 是一家马来西亚国有开发公司，一直处于数十亿美元挪用公款指控的中心。高盛国际在 2012 年和 2013 年为 1MDB 承销、购买和安排了三笔债券交易，为 1MDB 融资共 65 亿美元。这些 1MDB 交易由高盛国际参与的全球高盛集团委员会批准，并已预订给高盛国际。

1MDB 的债券交易涉及金融犯罪风险较高的司法辖区的客户和交易对手。高盛国际还意识到其已经非常关注的第三方介入风险。面对 1MDB 债券交易的高风险状况，高盛国际未能按照所需标准评估和管理风险，亦未能充分全面地评估风险因素。高盛国际未能解决 2013 年的贿赂指控，2015 年也未能处理与 1MDB 交易有关的不当行为指控。

调查发现，高盛国际违反了许多英国金管局及审慎监管局的原则和规则。具体而言，高盛国际未能：

- 具备适当的技巧、谨慎与勤勉充分全面地评估 1MDB 每项债券交易中产生的风险因素

- 评估和管理高盛国际非常关注的第三方介入 1MDB 债券交易的风险

- 具备适当的技巧、谨慎与勤勉地处理与 1MDB 及第三次 1MDB 债券交易相关的贿赂和不当行为的指控

- 充分详细记录与 1MDB 债券交易相关的风险评估和管理

除英国金管局和英国审慎监管局外，29 亿美元的全球协调决议还包括美国司法部、美国证券交易委员会、美国联邦储备理事会、纽约金融服务部，新加坡金融管理局、新加坡总检察长办公室和新加坡警察局商务部。全球协调协议与高盛集团和马来西亚政府于 2020 年 8 月达成的 39 亿美元和解协议不同。英国金管局和英国审慎监管局在确定其财务处罚时考虑了这一和解。

高盛国际同意与英国金管局和英国审慎监管局一起解决这个问题，使其有资格在两家监管机构施加的总罚款中获得 30% 的减免。若无此减免，英国金管局和英国审慎监管局将对高盛国际分别处以 69,012,000 英镑（90,000,000 美元）的罚款。

Source 来源：

<https://www.fca.org.uk/news/press-releases/fca-pra-fine-goldman-sachs-international-risk-management-failures-1mdb>

Financial Conduct Authority of the United Kingdom Censures Aviva Plc for Listing and Transparency Rules Breach

On October 26, 2020, the Financial Conduct Authority (FCA) of the United Kingdom (UK) publicly censured Aviva plc for making an announcement that had the potential to mislead the market. The announcement on March 8, 2018 (the Announcement) concerned Aviva's preliminary year-end results. The FCA's investigation into breaches of the Listing Rules and Transparency Rules found that the Announcement was reasonably capable of giving the impression that Aviva intended to take action to cancel at par value certain preference shares (which had been described at the time of issue in the early 1990s as "irredeemable").

At the time, the preference shares were trading above their par value and so the statement caused concern that holders would incur losses on cancellation. At the close of market on that day the market price for Aviva's preference shares fell between 20% and 26% as holders took action to sell at the above par market price. Retail investors made up a significant proportion of the preference shareholders affected.

Aviva clarified the statement and provided a payment scheme for those shareholders affected. The FCA has found Aviva's breach to be serious but not intentional. Aviva made the Announcement when it had, in fact, formed no intention to cancel the preference shares in question. The impression given by the Announcement was not accurate. Aviva clarified its intentions in a further regulatory announcement on 23 March 2018 which expressly stated Aviva had decided to take no action to cancel the preference shares.

A week later, Aviva also established a payment scheme for preference shareholders who sold their shares in the period between the Announcement and 22 March 2018 (inclusive) at a share price that was lower than the price to which the preference shares returned following 23 March 2018. This scheme was intended to put those shareholders in the same financial position they would have been in, had they sold their preference shares during this period.

The FCA found that Aviva failed to consider properly its obligations under the rules to take reasonable care to ensure the announcement was not misleading. In particular, Aviva failed to consider adequately how the announcement might be interpreted by the market, especially the holders of the preference shares. Aviva knew that a significant proportion of the preference shareholders were retail investors, but it did not make clear that it had made no decision to cancel the preference shares, and it did not clarify that there were other options available to Aviva for retiring the preference shares, including the use of compensatory measures, that would enable holders of the preference shares to receive more than par value.

Accordingly, the FCA found that it should have been obvious that the Announcement had the potential to mislead preference shareholders into believing Aviva intended to cancel its preference shares at par. The FCA considers Aviva's breach was serious but not intentional. The FCA also recognizes that Aviva acted to clarify the Announcement and provided a payment scheme for affected preference shareholders. Accordingly, it is appropriate to issue a public censure.

英国金融行为监管局谴责 Aviva Plc 违反《上市规则》

2020年10月26日，英国金融行为监管局（英国金管局）公开谴责 Aviva plc (Aviva) 发布的公告存在误导市场的可能性。2018年3月8日发布的公告（该公告）有关于 Aviva 的初步年终业绩。英国金管局对违反《上市规则》和《透明性规则》的调查发现，该公告有充分的能力给人一种印象，即 Aviva 打算采取行动以票面价值取消某些优先股（早在二十世纪九十年代发行时就被描述为“不可赎回”）。

当时，这些优先股的交易价格高于其票面价值，因此该声明引起关注，即如果取消这些优先股，那么持有人可能会蒙受损失。即持有人在取消时会蒙受损失。当日收盘时，Aviva 优先股的市场价格下跌 20% 至 26%，这是由于持有人采取行动以高于票面价格的市场价格出售优先股。在受影响的优先股股东中，散户投资者占很大比例。

Aviva 澄清了该声明并为受影响的股东提供了一项支付方案。英国金管局发现，Aviva 的违反行为虽然很严重但并不是故意的。实际上，Aviva 并没有取消相关优先股的打算。该公告给人的印象并不准确。Aviva 在 2018 年 3 月 23 日的进一步监管公告中阐明了其意图，该公告明确表示 Aviva 已决定不采取任何行动取消优先股。

一周后，Aviva 还为在该公告日期至 2018 年 3 月 22 日（含）之间以低于 2018 年 3 月 23 日后优先股回报价格出售其股份的股东制定了一项支付计划。该支付计划的目的是使那些在此期间出售了优先股的股东拥有与出售股份前相同的财务状况。

英国金管局发现，Aviva 没有适当考虑其在规则下的义务，未能采取合理措施确保公告不会引发误导，尤其是 Aviva 没有充分考虑市场如何解读该公告，特别是优先股持有人。Aviva 清楚优先股股东中有很大一部分是散户投资者，但 Aviva 未明确表示其并未作决定取消优先股，也未澄清是否还有其他回购优先股的选择，包括使优先股持有人获得超过票面价值的收益的补偿性措施的使用。

相应地，英国金管局发现，该公告明显有可能误导优先股股东，使其认为 Aviva 打算以票面价值取消优先股。英国金管局认为 Aviva 的违约是严重的但并不是故意的。英国金管局还承认 Aviva 对公告进行了澄清，并为受影响的优先股股东提供了支付方案。据此，公开发布谴责是适当的。

Source 来源:

<https://www.fca.org.uk/news/press-releases/fca-censures-aviva-plc-listing-and-transparency-rules-breach>

Australian Securities and Investments Commission Released Updated Regulatory Guidance for Share Transfers Using s444GA of the Corporations Act

On October 22, 2020, Australian Securities and Investments Commission (ASIC) released updated regulatory guidance to formalize its policy on when ASIC will give Chapter 6 relief for share transfers under s444GA of the Corporations Act. This follows ASIC's review of submissions received in response to CP 326 Chapter 6 relief for share transfers using s444GA of the Corporations Act.

Section 444GA allows shares of a company in administration to be transferred by an administrator as part of a deed of company arrangement.

ASIC's updated guidance is set out in:

- Regulatory Guide 6 (RG 6) Takeovers: Exceptions to the general prohibition; and
- Regulatory Guide 111 (RG 111) Content of Expert Reports.

The guidance explains that before ASIC will give Chapter 6 relief for share transfers under s444GA ASIC will generally require:

- explanatory materials to be provided to shareholders, including an Independent Expert Report (IER) prepared on a non-going concern basis in accordance with RG 111 Content of Expert Reports demonstrating that shareholders have no residual equity in the company; and
- the IER to be prepared by an independent expert (other than the administrator) in accordance with RG 112 Independence of experts.

Background

Since 2014, ASIC has received more than 15 applications for Chapter 6 relief in matters involving s444GA share transfers via a deed of company arrangement (DOCA). As these transfers involve expropriation of shares from shareholders, often for no consideration, many of these have resulted in shareholders exerting their rights to object in Court.

Updated guidance will provide further clarity to stakeholders about when ASIC will give Chapter 6 relief and will assist them when preparing for s444GA transactions.

In January 2020, ASIC released CP 326 seeking comments on proposals to update regulatory guidance to reflect ASIC's informal policy regarding s444GA share transfers via a DOCA. ASIC received one confidential and 14 non-confidential responses to CP 326 from a range of stakeholders, including professional bodies, law firms, professional services firms, experts and administrators.

澳大利亚证券投资委员会发布了关于使用《公司法》第 444GA 条为股份转让提供豁免的最新监管指南

2020 年 10 月 22 日，澳大利亚证券投资委员会发布了最新的监管指南，以正式确定其何时根据《公司法》第 444GA 条给予股权转让第 6 章豁免的有关政策。在此之前，澳大利亚证券投资委员会审阅了收到的有关

《咨询文件 326 关于使用公司法第 444GA 条为股权转让提供第 6 章豁免》的意见书。

《公司法》第 444GA 条规定允许破产管理人将在破产管理中的公司的股份作为公司安排契约的一部分转让。

澳大利亚证券投资委员会的最新监管指南列于：

- 《监管指南 6 收购：一般禁止的例外》；及
- 《监管指南 111 专家报告内容》

该监管指南阐明，澳大利亚证券投资委员会根据第 444GA 条规定为股权转让提供第 6 章豁免之前，通常要求：

- 已提供给股东的说明材料，包括一份根据《监管指南 111 专家报告内容》编制的独立专家报告，表明股东在公司中没有剩余权益；及
- 独立专家报告应由独立专家（破产管理人以外）根据《监管指南 112 专家独立性》进行准备

背景

自 2014 年以来，澳大利亚证券投资委员会已经收到超过 15 份关于根据第 444GA 条通过公司契约安排转让股权的第 6 章豁免申请。由于这些转让涉及从股东手中没收股份，通常无须考虑，因此许多转让导致股东行使其在法院提出异议的权利。

最新的监管指南将使利益相关者更加清楚地了解澳大利亚证券投资委员会将在何时给予第 6 章豁免并在其准备第 444GA 条规定相关交易时为其提供帮助。

2020 年 1 月，澳大利亚证券投资委员会发布了咨询文件 326，以征询对更新监管指南这一提案的意见，以反映澳大利亚证券投资委员会有关第 444GA 条通过公司安排契约进行股权转让的非正式政策。澳大利亚证券投资委员会从包括专业团体、律师事务所、专业服务公司、专家和管理人员在内的众多利益相关者处收到了针对咨询文件 326 的一份机密回复以及 14 份非机密回复。

Source 来源:

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-253mr-updated-regulatory-guidance-for-share-transfers-using-s444ga-of-the-corporations-act/>

Australian Securities and Investments Commission Restricts Smiles Inclusive Ltd from Issuing a Reduced-content Prospectus

Australian Securities and Investments Commission (ASIC) has restricted Smiles Inclusive Limited (Smiles)

from eligibility to issue a reduced-content prospectus until October 19, 2021. The decision means Smiles will not be able to rely on reduced-disclosure rules and instead must issue a full prospectus if it wishes to raise funds from retail investors.

ASIC's decision was based on Smiles' failure to lodge a financial report, directors' report and auditor's report for the half-year of the company, ended 31 December 2019, within 75 days, as required under the Corporations Act 2001.

ASIC considers the ability to use a reduced-disclosure prospectus a privilege, dependent on compliance with other aspects of the law, including that companies meet their on-going disclosure obligations. Where a company fails to comply with its periodic disclosure obligations in a full, accurate and timely manner, ASIC will intervene to ensure that retail investors are protected. In such circumstances, subsequent fundraisings should occur only with the benefit of a full prospectus so that there is adequate disclosure of a company's prospects and financial position.

Smiles has the right to appeal to the Administrative Appeals Tribunal for review of ASIC's decision.

Background

A listed company is allowed to offer securities using a reduced-content prospectus containing information relating only to the particular offer itself. ASIC has the power to prevent a company from relying on these rules if the company breaches its continuous disclosure or financial reporting obligations.

Smiles' half-year financial report, directors' report and auditor's report were required to be lodged with ASIC by March 15, 2020. On this basis ASIC made a determination under section 713(6) of the Corporations Act 2001, excluding Smiles from relying on section 713 of the Act for 12 months, until October 19, 2021.

Smiles' securities are currently suspended from being traded on the Australian Securities Exchange.

澳大利亚证券投资委员会限制 Smiles Inclusive Ltd 发布减少披露的招股说明书

澳大利亚证券投资委员会限制 Smiles Inclusive Limited (Smiles) 不得在 2021 年 10 月 19 日之前发行内容减少的招股说明书。该决定意味着 Smiles 如果希望从散户投资者处筹集资金，其将无法依靠减少披露规则而必须发行完整的招股说明书。

澳大利亚证券投资委员会的决定基于 Smiles 截至 2019 年 12 月 31 日未能按照 2001 年《公司法》的要求在 75 天内提交公司的半年财务报告、董事报告及审计报告。

澳大利亚证券投资委员会认为，使用减少披露的招股说明书是一种特权，视乎公司是否遵守法律的其他方面（包括公司是否履行了持续的披露义务）而定。如果公司未能完全、准确和及时地履行其定期披露义务，澳大利亚证券投资委员会将进行干预以确保散户投资者受到保护。在这种情况下，只有在获得完整招股说明书的情况下，才能进行后续募资，以便充分披露公司的前景和财务状况。

Smiles 有权向行政上诉法庭提出上诉，以复审澳大利亚证券投资委员会的决定。

背景

上市公司可以使用内容缩减的招股说明书发售证券，该招股说明书只包含与特定发行本身有关的信息。如果公司违反其持续披露或财务报告义务，澳大利亚证券投资委员会有权阻止公司依赖此类规则。

Smiles 的半年度财务报告、董事报告及审计报告必须在 2020 年 3 月 15 日之前提交给澳大利亚证券投资委员会。在此基础上，澳大利亚证券投资委员会根据 2001 年《公司法》第 713 条第 (6) 款作出决定，将 Smiles 排除适用该法第 713 条为期 12 个月，直至 2021 年 10 月 19 日。

Smiles 的证券目前已暂停在澳大利亚证券交易所的交易。

Source 来源:

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-251mr-asic-restricts-smiles-inclusive-ltd-from-issuing-a-reduced-content-prospectus/>

Singapore Exchange Welcomes GSUM-Titanland as Accredited Issue Manager

Singapore Exchange (SGX) welcomes GSUM-Titanland Capital Pte Ltd (GSUM-Titanland) as a newly accredited Issue Manager for SGX Mainboard listings. GSUM-Titanland is a corporate finance advisory firm and an associate company of GSUM Fund Management. The company helps clients to raise funds globally through capital market solutions including REIT and Business Trust listings, company IPOs, pre-IPO investments, M&As and secondary fundraisings. As an accredited Issue Manager, GSUM-Titanland is qualified to advise companies seeking to list on the SGX Mainboard.

Mohamed Nasser Ismail, Head of Equity Capital Markets, SGX, said, "We are delighted to have GSUM-Titanland come onboard as an accredited Issue

Manager. Their expertise in REITs and Business Trusts, coupled with their wide network in China, will especially benefit listing aspirants from China. We continue to see strong interest in Singapore's capital markets and look forward to welcoming more domestic and regional players to strengthen our capital market ecosystem."

Wong Ee Kean, CEO, GSUM-Titanland, said, "We are pleased to become an accredited Issue Manager with SGX. This marks a major milestone for us and GSUM Fund Management. GSUM-Titanland sees tremendous opportunities and potential in Singapore as a regional REIT hub and is committed to connecting more real estate players, both in China and globally, with international investors to raise capital through innovative and efficient solutions while tapping on Singapore's dynamic capital markets. We look forward to working together with SGX and the wider industry to help propel and fortify SGX's position as a global REIT listing hub."

He Liangyu, CEO, GSUM Fund Management, said, "Through our overseas development via our associate company, GSUM-Titanland, we can harness our Group's unparalleled expertise and strong capabilities developed in the China real estate market to introduce high quality assets backed by strong and credible sponsors onto the global stage, leveraging on SGX's well-established REIT platform. As the leading real estate financial group specializing in quasi-REITs and real estate securitization products in China, we hope to continue providing more comprehensive and complementary international capital markets services to real estate owners in China through GSUM-Titanland."

SGX has a total of 42 accredited Issue Managers, including 16 Catalist Full Sponsors. There are also 4 Continuing Sponsors.

新加坡交易所欢迎中联盛地成为认证发行经理

新加坡交易所（新交所）迎来中联盛地资本有限公司（中联盛地）成为新交所主板上市新增的认证发行经理。中联盛地是一家为企业提供金融咨询服务的公司，也是中联基金（GSUM Fund Management）的附属公司。该公司通过房地产投资信托和商业信托上市、首次公开募股（IPO）、IPO 前投资、并购和二次融资在内的资本市场解决方案帮助企业在全球范围内筹集资金。作为认证发行经理，中联盛地能够为寻求在新交所主板上市的企业提供建议。

新交所股权资本市场主管 Mohamed Nasser Ismail 表示：“我们非常高兴中联盛地能够成为我们的认证发行经理。他们在房地产投资信托和商业信托方面的专业知识，以及在中国的广泛网络，将特别为来自中国的上市申请者受益。我们看到外界对新加坡资本市场一直保持着浓厚

的兴趣。我们期待着更多境内和区域市场参与者的到来，以加强我们的资本市场生态系统。”

中联盛地首席执行官 Wong Ee Kean 表示：“我们很高兴能成为新交所的认证发行经理。这对于我们和中联基金都是一个极其重要的里程碑。中联盛地看重新加坡作为区域房地产投资信托中心的巨大机遇和潜力，并致力于将更多的中国和全球的房地产公司与国际投资者联系起来，利用新加坡蓬勃的资本市场，通过创新和高效的解决方案募集资金。我们期待与新交所以及更广泛的业界合作，助力推动和巩固新交所作为全球房地产投资信托上市中心的地位。”

中联基金首席执行官 He Liangyu 表示：“通过我们的附属公司中联盛地在境外的业务延展，我们可以充分利用本集团在中国房地产市场中发展起来的无可比拟的专业知识和强大的执行力，将依托于实力强劲且诚信的发行企业支持的优质中国资产，通过新交所成熟的 S-REITs 平台，推上全球舞台。作为中国领先的专注于 REITs 和其他房地产证券化产品的房地产金融集团，我们希望通过中联盛地持续为中国房地产业主提供更加全面和具有互补性的国际资本市场服务。”

新交所共有 42 名认证发行经理，其中包括 16 名凯利板全面保荐人以及 4 名持续保荐人。

Source 来源:

<https://www.sgx.com/media-centre/20201021-sgx-welcomes-gsum-titanland-accredited-issue-manager>

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

本资讯内容仅供参考及不应被依据作为法律意见。