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

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## U.S. Securities and Exchange Commission Awards Over US\$28 Million to a Whistleblower – Outline of the U.S. Whistleblower Program

On November 3, 2020, the Securities and Exchange Commission (SEC) of the United States (U.S.) announced an award of over US\$28 million to a whistleblower who provided significant information that aided the SEC in bringing a successful enforcement action. The SEC has been awarding whistleblowers with a significant amount for their contributions to the SEC to detect wrongdoing and protect investors and the marketplace. For instance, the SEC has awarded four whistleblowers over US\$150 million in October 2020 alone and approximately US\$715 million to 110 individuals since issuing its first award in 2012. Earlier on October 22, 2020, the SEC announced a record award of over US\$114 million to a whistleblower. The SEC's Office of the Whistleblower (OWB) expressed its intention to continue to incentivize whistleblowers to report fraud or other wrongdoing through monetary awards.

### Approach of OWB in processing whistleblower award claims

The OWB's whistleblower program was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of the U.S., with emphasis that the SEC would protect the whistleblowers' confidentiality and identities. The two phases of claims processing for OWB are set forth below.

#### (1) Initial triage and prioritization of claims for substantive analysis

OWB will first make an initial assessment of whether a claim is likely to result in an award by reviewing matters such as the information in the claimant's application, any whistleblower tips submitted by the claimant that are related to the claim, etc. After the initial triage, OWB will generally initiate substantive analysis of the claim to consider whether it is likely meritorious or likely non-meritorious on a first in, first out basis. The following is a non-exhaustive list of factors that may cause OWB to consider the claim earlier or later:

- in order to increase efficiencies and conserve resources, OWB may group together for consideration claims that appear frivolous or that are straightforward denials;
- whether collection of money sanctions is involved in the underlying action; without money collections, OWB may defer consideration of such claim;
- whether there are overlapping facts with an earlier-filed claim such that it will be viewed as likely meritorious; and
- where the claimant faces serious health concerns or life-threatening situation.

#### (2) Substantive analysis and claim recommendation

After initial triage, OWB's general practice is to initiate the substantive analysis of award claims. The time taken to process the assessment would depend on, among others, the following factors:

- whether the enforcement action involves multiple claimants, such that a longer time would be required to complete the analysis and processing of the claims;
- whether any claimant, after receipt of a preliminary determination of recommendation, requests reconsideration of the recommendation such that OWB has to address new factual and/or legal issues;
- whether a claim presents any complex legal issue that requires consultation with other SEC offices; and
- whether an award claim may require information and/or input from others, such as the claimant or other government agencies.

#### Determination of award amount

The U.S. Congress has authorized the SEC to make monetary awards to whistleblowers who provide high-quality, original information that leads to a SEC enforcement action involving over US\$1 million in ordered sanctions. Whistleblower awards range from 10% to 30% of the money collected in the enforcement

action. Rule 21F-6(a) of the Securities Exchange Act of 1934 sets out the factors that may increase the amount of a whistleblower's award, including significance of the information provided by the whistleblower, assistance provided by the whistleblower, the perceived law enforcement interest and the whistleblower's participation in internal compliance systems. On the other hand, if there are negative factors set out under Rule 21F-6(b) of the Securities Exchange Act of 1934, such as unreasonable reporting delay, culpability of the whistleblower, harm caused to investors and interference with internal compliance and reporting systems, the award amount may be reduced.

### Whistleblowing practice in Hong Kong

While the whistleblower program in the U.S. has proven to be a valuable tool to the SEC's efficient enforcement in saving staff time and resources, whistleblowing in Hong Kong is not as common as in the U.S. due to reasons such as lesser legal protection and incentives for whistleblowers. In particular, sizeable awards to whistleblowers are made possible by intimidating pecuniary sanctions in the U.S.. Recently, regulators in Hong Kong are seen to be more prepared to impose or seek heavy fines on wrongdoers, in a manner commensurate with standards of sophisticated international markets. Perhaps it is high time to reform the whistleblowing system in Hong Kong in order to improve the effectiveness and efficiency of law enforcement for safeguarding the integrity of the securities markets.

### 美国证券交易委员会给予举报人逾 2800 万美元奖励 - 美国举报人计划简述

美国证券交易委员会于 2020 年 11 月 3 日宣布，向提供重要信息协助其成功实施执法行动的举报人给予逾 2800 万美元的奖励。美国证券交易委员会一直在奖励那些为美国证券交易委员会作出贡献的举报人，以发现违法行为，保护投资者和市场。例如，美国证券交易委员会仅在 2020 年 10 月就给予四名举报人逾 1.5 亿美元的奖励，并且自 2012 年首次奖励以来，已向 110 名举报人授予约 7.15 亿美元。在 2020 年 10 月 22 日，美国证券交易委员会宣布向一举报人授予超过 1.14 亿美元的创纪录奖励。美国证券交易委员会的举报人办公室（OWB）表示，他们打算继续通过奖金激励举报人举报欺诈或其他不当行为。

### OWB 处理举报人奖励主张的方法

OWB 举报人计划是根据《多德-弗兰克华尔街改革和消费者保护法》建立的，美国证券交易委员会将保护举报人的机密和身份。下文阐述了 OWB 处理举报人奖励主张的两个阶段。

### (1) 为进行实质性分析而对奖金申领进行初步分类和排序

OWB 将首先通过审核申请人在申请中提到的信息、申请人提交的与该等奖励申领相关的任何举报人提供的资料等事项对该奖励申领作出初步评估。在最初分类后，OWB 通常会启动对奖励申领的实质性分析，基于先进先出原则考虑其可能有功绩可能无功绩。可能导致 OWB 考虑给予奖励的因素的非详尽清单如下：

- 为了提高效率并节省资源，OWB 可能将看起来很琐碎或被直接否认的案件分开处理；
- 执法行动中是否涉及收取金钱的制裁；若不涉及，则 OWB 可以推迟考虑该等奖励申领；
- 与其他人提出的奖励申领是否有重叠事实以致 OWB 较容易判断该举报的可靠性；及
- 申请人面临严重的健康问题或危及生命的情况。

### (2) 实质性分析和主张建议

在初步分类后，OWB 一般会启动对申领奖励进行实质性分析。OWB 处理奖励申请所需的时间将取决于以下因素，其中包括：

- 执法行动是否涉及多名奖励申请人，如此则需要较长时间来完成对主张的分析和处理；
- 申请人获知初步结果后是否要求重新考虑该申请，如此则 OWB 必须处理新的事实和/或法律问题；
- 申请是否涉及复杂的法律问题需要与其他美国证券交易委员会的办事处进行协商；及
- 奖励申请是否可能会要求其他人（例如其他申请人或其他政府机构）提供信息和/或参与。

### 确定奖励金额

美国国会已授权美国证券交易委员会向举报人提供金钱奖励，以奖励通过提供高质量原始信息协助美国证券交易委员会采取制裁执法行动（涉及金额超过 100 万美元）的举报人。对举报人的奖励范围从执法行动中所获资金的 10% 至 30% 不等。美国 1934 年《证券交易法》第 21F-6 (a) 条规定了可能会增加举报人的奖励金额的因素，包括举报人提供的信息的重要性，举报人提供的帮助，对执法人员确认的执法利益以及举报人参与内部合规系统的程度。另一方面，如果存在 1934 年《证券交易法》第 21F-6 (b) 条所规定的不利因素，例如不合理的报告延迟，举报人的任何罪责，对投资者的伤害以及对内部合规和报告系统的干扰，奖励金额可能会减少。

### 香港在案件举报方面的实践

尽管美国的举报人计划已被认定是美国证券交易委员会有效执法的宝贵工具，可以节省工作人员的时间和资源，但由于诸如法律保护 and 激励措施较少等原因，举报在香港并不如在美国那样普遍。在美国，通过巨额的经济处罚，举报人往往可以获得大额的奖励。最近，香港的监管机构可被视为更愿意以符合国际成熟市场标准的方式对不法行为者处以大额的罚款。也许这是时候改革香港的案件举报制度，以提高执法效率和效率，及维护证券市场的正当性及完整性。

Source 来源:

<https://www.sec.gov/news/press-release/2020-275>

[https://www.sec.gov/files/OWB%20Guidance%20for%20WB%20Award%20Determinations\\_0.pdf](https://www.sec.gov/files/OWB%20Guidance%20for%20WB%20Award%20Determinations_0.pdf)

<https://www.sec.gov/files/OWB%20Approach%20to%20Processing%20Award%20Claims.pdf>

### **The Stock Exchange of Hong Kong Limited Announces the Cancellation of Listing of Tenwow International Holdings Limited (In Provisional Liquidation) (Stock Code: 1219)**

The Stock Exchange of Hong Kong Limited (the Exchange) announced on November 11, 2020 that with effect from 9:00 am on November 13, 2020, the listing of the shares of Tenwow International Holdings Limited (in provisional liquidation) (Tenwow) will be cancelled under Rule 6.01A.

Trading in the Tenwow's shares has been suspended since August 13, 2018. Under Rule 6.01A, the Exchange may delist Tenwow if trading does not resume by February 12, 2020.

Tenwow failed to fulfil all the resumption guidance set by the Exchange and resume trading in its shares by February 12, 2020. On May 8, 2020, the Listing Committee decided to cancel the listing of Tenwow's shares on the Exchange under Rule 6.01A.

On May 15, 2020, Tenwow sought a review of the Listing Committee's decision by the Listing Review Committee. On November 2, 2020, the Listing Review Committee upheld the decision of the Listing Committee to cancel Tenwow's listing. Accordingly, the Exchange will cancel Tenwow's listing with effect from 9:00 am on November 13, 2020.

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

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

香港联合交易所有限公司宣布取消天喔国际控股有限公司（临时清盘中）（股份代号：1219）的上市地位

于2020年11月11日，香港联合交易所有限公司（联交所）宣布，由2020年11月13日上午9时起，天喔国际控股有限公司（临时清盘中）（天喔）的上市地位将根据《上市规则》第6.01A条予以取消。

天喔的股份自2018年8月13日起已暂停买卖。根据《上市规则》第6.01A条，若天喔未能于2020年2月12日或之前复牌，联交所可将天喔除牌。

天喔未能于2020年2月12日或之前履行联交所订下的所有复牌指引而复牌。于2020年5月8日，上市委员会决定根据《上市规则》第6.01A条取消天喔股份在联交所的上市地位。

天喔于2020年5月15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11月2日决定维持上市委员会取消天喔上市地位的决定。按此，联交所将于2020年11月13日上午9时起取消天喔的上市地位。

联交所已要求天喔刊发公告，交代其上市地位被取消一事。

联交所建议，天喔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-](https://www.hkex.com.hk/News/Regulatory-Announcements/2020/2011113news?sc_lang=en)

[Announcements/2020/2011113news?sc\\_lang=en](https://www.hkex.com.hk/News/Regulatory-Announcements/2020/2011113news?sc_lang=en)

### **Hong Kong Exchanges and Clearing Limited to Introduce Futures and Options on Hang Seng TECH Index**

On November 5, 2020, Hong Kong Exchanges and Clearing Limited (HKEX) announced that it will introduce futures and options contracts based on the Hang Seng TECH Index on November 23, 2020 and January 18, 2021 respectively, subject to regulatory approval and market readiness.

The Hang Seng TECH Index Futures and Options will be the first exchange-traded derivatives contracts to track the index, complementing HKEX's flagship Hang Seng Index and Hang Seng China Enterprise Index products.

Wilfred Yiu, Head of Markets, HKEX, said: "Tech and innovation is a major pillar of our securities market ecosystem, and the Hang Seng TECH Index has already become an essential measure of tech sector performance. We are delighted to be providing investors with even more options with the launch of these futures and options contracts tracking the Hang Seng TECH Index."



“These new Hang Seng TECH Index products will further enrich the Hong Kong technology investment landscape and help to attract more high quality technology companies from all over the world to our markets,” said Mr Yiu.

Anita Mo, Chief Executive Officer, Hang Seng Indexes Company, said: “The Hang Seng TECH Index aims to reflect the performance of main players in technology sector listed in Hong Kong, and to facilitate the development of various index-linked products, including derivatives and ETFs. We are pleased to see the launch of the linked futures and options tracking Hang Seng TECH Index and it significantly advances our aim of establishing the Hang Seng TECH Index as our third flagship index.”

The Hang Seng TECH Index was launched in July 2020, and tracks the 30 largest technology companies listed in Hong Kong. According to back-testing data, the Hang Seng TECH Index has provided a 36 per cent return for 2019 and a 60 per cent return for 2020, as at the end of October. The introduction of the proposed contracts will bring new exposure management tools to the market, giving greater product coverage of the technology sector in Hong Kong.

The proposed futures and options will further enhance HKEX’s product offering on the Hang Seng TECH Index, and are in addition to the four Hang Seng TECH Index ETFs already trading on HKEX’s markets.

Key features of Hang Seng Tech Index Futures and Options (subject to regulatory approval) are as follows:

Underlying Index	Hang Seng TECH Index
Trading Currency	Hong Kong Dollar
Contract Multiplier	HK\$50 per index point
Minimum Fluctuation	1 index point
Contract Months	Spot, next calendar month and the following two quarterly months
Pre-Opening	Hang Seng TECH Index Futures: 8:45 am – 9:15 am; 12:30 pm – 1:00 pm (No pre-opening for Hang Seng TECH Index Options)
Trading Hours	9:15 am – 12:00 noon (Morning Trading Session); 1:00 pm - 4:30 pm (Afternoon Trading Session); 5:15 pm – 3:00 am (After-hours Trading Session)

	(No After-hours Trading Session for Hang Seng Tech Index Options at launch)
Last Trading Day	The business day immediately preceding the last business day of the Contract Month
Final Settlement Price / Official Settlement Price	The average of the underlying index values taken at (i) 5 minute intervals from 5 minutes after the start of, and up to 5 minutes before the end of, the Continuous Trading Session of SEHK; and (ii) the close of trading on SEHK on the Last Trading Day, rounded down to the nearest whole number.

The Commission Levy will be exempted and a market-wide trading fee discount will be introduced for the first six months of trading of the new contracts. Margin rates will be announced in due course. Additional information of the Hang Seng TECH Index Futures and Options is available in a circular issued on November 5, 2020: [https://www.hkex.com.hk/-/media/HKEX-Market/Services/Circulars-and-Notices/Participant-and-Members-Circulars/HKFE/2020/MKS\\_EQD\\_32\\_20\\_e.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Services/Circulars-and-Notices/Participant-and-Members-Circulars/HKFE/2020/MKS_EQD_32_20_e.pdf?la=en).

## 香港交易及结算所有限公司计划推出恒生科技指数期货及期权

于 2020 年 11 月 5 日，香港交易及结算所有限公司（香港交易所）宣布，将分别于 2020 年 11 月 23 日及 2021 年 1 月 18 日推出恒生科技指数期货及期权合约。有关计划将待监管机构及市场准备情况而定。

恒生科技指数期货及期权分别是相关指数首只在交易所上市的衍生产品，并与香港交易所旗舰的恒生指数及恒生中国企业指数产品互补。

香港交易所市场主管姚嘉仁表示：「创新科技是我们证券市场中重要的组成部分，而恒生科技指数已成为科技股在市场表现的重要指标。我们乐于为投资者提供更多选择，推出新的恒生科技指数期货及期权。我相信恒生科技指数相关产品有助丰富科技板块的投资机会，并吸引世界各地更多高素质的科技公司参与我们的市场。」

恒生指数公司行政总裁巫婉雯表示：「恒生科技指数旨在反映香港上市龙头科技企业之表现及协助市场开发不同指数挂钩产品，包括衍生投资工具及交易所买卖基金。我们很高兴市场上将推出追踪恒生科技指数的期货及期权，并进一步巩固了恒生科技指数作为我们第三项旗舰指数的地位。」

恒生科技指数于 2020 年 7 月推出，追踪香港市场 30 只最大型的科技股。按历史数据显示，该指数在 2019 年全年的增长达 36%、截至今年 10 月底的增长达 60%，是次计划推出的产品可为香港科技板块提供可行有效的风险管理工具。

香港交易所目前已有 4 只与恒生科技指数相关的 ETF 上市，是次推出的期货及期权将丰富其恒生科技指数的产品组合。

恒生科技指数期货及期权的主要细则（待监管机构批准）如下：

相关指数	恒生科技指数
交易货币	港元
合约乘数	每指数点 50 元
最低价格波幅	1 个指数点
合约月份	即月、下一个曆月及其后两个季月
开市前交易时段	恒生科技指数期货：上午 8 时 45 分至上午 9 时 15 分；下午 12 时 30 分至下午 1 时正（恒生科技指数期权不设开市前交易时段）
交易时间	上午 9 时 15 分至中午 12 时正（上午交易时段）、下午 1 时正至下午 4 时 30 分（下午交易时段）；下午 5 时 15 分至翌日凌晨 3 时正（收市后交易时段）（恒生科技指数期权在推出初期不设收市后交易时段）
最后交易日	合约月份最后营业日之前一个营业日
最后结算价 / 正式结算价	最后交易日当天下列时间所报指数点的平均数（下调至最接近整数）：(i) 联交所持续交易时段开始后 5 分钟至持续交易时段完结前的 5 分钟止，期间每隔 5 分钟所报的指数点；与(ii) 联交所收市时所报的指数点。

新产品首六个月的证监会征费将可获豁免，香港交易所亦会提供交易费折扣。相关的按金率会适时公布。其他有关恒生科技指数期货及期权的资料可参阅于 2020 年 11 月 5 日刊发的通告：[https://www.hkex.com.hk/-/media/HKEX-Market/Services/Circulars-and-Notices/Participant-and-Members-Circulars/HKFE/2020/MKS\\_EQD\\_32\\_20\\_c.pdf?la=zh-CN](https://www.hkex.com.hk/-/media/HKEX-Market/Services/Circulars-and-Notices/Participant-and-Members-Circulars/HKFE/2020/MKS_EQD_32_20_c.pdf?la=zh-CN)。

Source 来源:

[https://www.hkex.com.hk/news/news-release/2020/201105news?sc\\_lang=en](https://www.hkex.com.hk/news/news-release/2020/201105news?sc_lang=en)

### The Stock Exchange of Hong Kong Limited Publishes Consultation Conclusions on Corporate WVR

On October 30, 2020, The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published conclusions to its consultation on the Corporate WVR beneficiaries (Consultation Conclusions)<sup>1</sup>.

#### Consultation Conclusions

The Exchange received 65 responses to its Consultation Paper on Corporate WVR Beneficiaries (Consultation Paper) from a broad range of respondents that were representatives of all stakeholders in the Hong Kong market<sup>2</sup>. While a majority of respondents agreed, in principle, that corporate WVR beneficiaries should be permitted, there were very diverse views and expectations as to how the proposed regime would operate in practice and whether (and if so what) modifications were required for it to operate as intended.

“After carefully considering the feedback from respondents, we have decided to give more time for the market to develop a better understanding of Hong Kong’s regulatory approach towards regulating listed companies with WVR structures and their controllers, and for regulators to monitor that the existing Listing Rule Chapter 8A regime operates as intended,” said Bonnie Y Chan, HKEX’s Head of Listing.

#### Way Forward

As a way forward, the Exchange will treat Greater China Issuers<sup>3</sup> that are (a) controlled by corporate WVR beneficiaries<sup>4</sup> (as at October 30, 2020); and (b) primary listed on a Qualifying Exchange<sup>5</sup> (on or before October 30, 2020) (Qualifying Corporate WVR Issuers) in the same manner as current Grandfathered Greater China Issuers<sup>6</sup> for the purposes of Chapter 19C of the Main Board Listing Rules.

“To secondary list here in Hong Kong, these Greater China issuers must demonstrate that they have been able to safeguard the interests of public investors through good regulatory compliance with their existing regulatory regimes. The insight and understanding that we, and the market gain from this approach, will help inform any future amendments that we make to our WVR regime,” said Ms Chan.

Strong existing investor protection safeguards will apply to Qualifying Corporate WVR Issuers seeking to secondary list in Hong Kong. These issuers must:

- (a) meet a very high minimum market capitalization threshold of at least HK\$40 billion, or at least HK\$10 billion with at least HK\$1 billion of revenue for its most recent audited financial year<sup>7</sup>;
- (b) be an “innovative company” as part of the demonstration of their suitability for listing<sup>8</sup>; and
- (c) demonstrate that the domestic laws, rules and regulations to which they are subject and their constitutional documents, in combination, provide certain shareholder protection standards (including that it will hold an annual general meeting each year and provide members holding 10% of the voting rights or more, on a one vote per share basis, with the right to convene an extraordinary general meeting)<sup>9</sup>.

Like other secondary issuers listed under Chapter 19C of the Main Board Listing Rules, Qualifying Corporate WVR Issuers would be exempt from certain Listing Rules (eg notifiable transaction and connected transaction Listing Rules)<sup>10</sup>. However, if trading in their shares migrates to the Exchange’s markets on a permanent basis, these exemptions would fall away. The Exchange would then treat the issuer as having a dual-primary listing and it would be required to comply with the Listing Rules that apply to such issuers after a grace period of one year<sup>11</sup>. The Exchange would allow these issuers to retain their existing Corporate WVR structures at that time, as already permitted for all Grandfathered Greater China Issuers<sup>12</sup>.

The Consultation Conclusions ([https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-\(Oct-2020\)/cp202001cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-(Oct-2020)/cp202001cc.pdf?la=en)) and respondents’ submissions ([https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses\\_Oct\\_2020?sc\\_lang=en](https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_Oct_2020?sc_lang=en)) are available on the HKEX website.

#### Notes:

1. The Consultation Paper was published on 31 January 2020. The consultation period ended on 31 May 2020 after being extended to give more time to all those who wanted to respond to the consultation to do so following the significant changes to working arrangements that occurred due to outbreak of COVID-19.
2. Three responses were considered to be duplicates of other responses.

3. An issuer with its center of gravity in Greater China as defined by Chapter 19C of the Main Board Listing Rules.
4. “Controlled by corporate WVR beneficiaries” means that a single corporate WVR beneficiary (or a group of corporate beneficiaries acting in concert) holds the largest share of the voting power in the listed issuer, which must amount to at least 30% of shareholders’ votes carried by the issuer’s share capital, as at October 30, 2020.
5. The following are “Qualifying Exchanges”: The New York Stock Exchange LLC, Nasdaq Stock Market and the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment).
6. The existing grandfathering arrangement allows Grandfathered Greater China Issuers (Greater China Issuers that primary listed on a Qualifying Exchange on or before December 15, 2017) that meet the eligibility and suitability requirements under Chapter 19C of the Main Board Listing Rules to secondary list in Hong Kong without having to amend their existing WVR structures (including Corporate WVR structures) to meet the Exchange’s own requirements.
7. Main Board Listing Rule 19C.05. The expected market capitalization threshold for an issuer without a WVR structure listing under the profit test of Main Board Listing Rule 8.05(1) (the most common listing route) is only HK\$500 million.
8. Section 3 of Guidance Letter HKEX-GL94-18 (April 2018).
9. Main Board Listing Rules 19C.06 to 19C.10.
10. Main Board Listing Rule 19C.11.
11. Main Board Listing Rule 19C.13.
12. Main Board Listing Rule 19C.12.

#### 香港联合交易所有限公司刊发有关法团实体不同投票权的咨询总结

于2020年10月30日，香港交易及结算所有限公司（香港交易所）旗下全资附属公司香港联合交易所有限公司（联交所）刊发有关法团身份的不同投票权受益人的咨询总结<sup>1</sup>。

#### 咨询总结

联交所有关法团身份的不同投票权受益人的咨询文件，共接获65份来自广泛界别的回应意见，回应人士均属香港市场所有持份者的代表<sup>2</sup>。大部分回应人士在原则上均同意应允许法团受益人享有不同投票权，但对于应如何在依照联交所的初衷下切实推行其建议机制，以及是

否需要作出修订（如需要，应作出哪些修订），则各有不同的看法及期望。

香港交易所上市主管陈翊庭说：「我们仔细考虑回应人士的意见后，决定给予市场更多时间深入了解香港对于采用不同投票权架构的上市公司及其控权人方面的监管方式，同时亦给予监管机构更多时间去监察现行《上市规则》第 8A 章下的制度是否如预期般运作。」

## 落实方向

联交所会将符合以下两项条件的大中华发行人，视为目前就《主板上市规则》第十九 C 章而言获豁免的大中华发行人<sup>3</sup> — (i) 由法团身份的不同投票权受益人控制<sup>4</sup>（截至 2020 年 10 月 30 日为止）及 (ii) 于 2020 年 10 月 30 日或之前于合资格交易所<sup>5</sup> 作第一上市的大中华发行人<sup>6</sup>（合资格法团不同投票权发行人）。

陈翊庭说：「如在香港作第二上市，这些大中华发行人必须证明其已在现有监管制度下拥有良好的合规表现，以保障公众投资者的利益。我们及市场从这方案获得的经验和理解，有助我们日后就不同投票权制度作出任何修订提供参考。」

现行有效的投资者保障措施规定，将适用于在香港申请第二上市的合资格法团不同投票权发行人。这些发行人必须符合以下条件：

1. 其市值符合至少 400 亿港元（或至少 100 亿港元，但其最近一次经审计会计年度的收益为至少 10 亿港元）的极高门槛<sup>7</sup>；
2. 必须为「创新产业公司」，以证明适合上市<sup>8</sup>；及
3. 必须能证明发行人监管地的法律、规则及规例，以及其组织章程文件，整体符合若干的股东保障水平（包括指明每年将举行股东周年大会，并按每股一票的基础，赋予持有 10%或以上投票权的股东召开股东特别大会的权利）<sup>9</sup>。

正如其他根据《主板上市规则》第十九 C 章作出第二上市的发行人，合资格法团不同投票权发行人将获豁免遵守《上市规则》部份条文（例如有关须予公布的交易及关连交易的条文）<sup>10</sup>。然而，日后若其股份交易永久转移到联交所的市场，有关豁免即告失效。届时，联交所将会视有关发行人为双重第一上市，发行人将须于一年的宽限期后达致符合其所适用的《上市规则》条文<sup>11</sup>。联交所将会容许这些发行人保留其当时既有的法团不同投票权架构，正如所有获豁免的大中华发行人般可保留有关架构<sup>12</sup>。

可于香港交易所网站阅览《咨询总结》：  
[https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-\(Oct-2020\)/cp202001cc\\_c.pdf?la=zh-CN](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-(Oct-2020)/cp202001cc_c.pdf?la=zh-CN) 及回应人士意见：  
[https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/News/Market-Consultations/2016-to-Present/January-2020-Corporate-WVR/Responses\\_Oct\\_2020?sc\\_lang=zh-CN](https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/News/Market-Consultations/2016-to-Present/January-2020-Corporate-WVR/Responses_Oct_2020?sc_lang=zh-CN)

注：

1. 《咨询文件》于 2020 年 1 月 31 日刊发。后因 2019 新型冠状病毒爆发令工作安排有重大变化，联交所将咨询截止日期延长至 2020 年 5 月 31 日，以便有意回应咨询的人士有更多时间作出回应。
2. 有三份回应意见被视作重复意见。
3. 在现行的豁免安排下，获豁免的大中华发行人（即于 2017 年 12 月 15 日或之前于合资格交易所第一上市的大中华发行人）若符合《主板上市规则》第十九 C 章项下的资格及适合性规定，其可毋须因应联交所规定更改其原有的不同投票权架构（包括法团不同投票权架构）而在香港作第二上市。
4. 「由法团身份的不同投票权受益人控制」指单一的法团身份不同投票权受益人（或多名一致行动的法团身份受益人）持有上市发行人最大多数投票权，即截止 2020 年 10 月 30 日，其必须持有发行人股本附带的股东投票权至少 30%。
5. 以下为「合资格交易所」：纽约证券交易所、纳斯达克证券市场及伦敦证券交易所主市场（并属于英国金融市场行为监管局「高级上市」分类）。
6. 如《主板上市规则》第十九 C 章所界定，指业务以大中华为重心的发行人。
7. 《主板上市规则》第 19C.05 条。没有不同投票权架构的发行人根据《主板上市规则》第 8.05(1)条的盈利测试上市（最普遍的上市途径），预期市值方面的规定仅为 5 亿港元。
8. 指引信 HKEX-GL94-18（2018 年 4 月）第 3 节。
9. 《主板上市规则》第 19C.06 至 19C.10 条。
10. 《主板上市规则》第 19C.11 条。
11. 《主板上市规则》第 19C.13 条。
12. 《主板上市规则》第 19C.12 条。

Source 来源：

[https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201030news?sc\\_lang=en](https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201030news?sc_lang=en)

**The Stock Exchange of Hong Kong Limited  
Announces the Cancellation of Listing of Boshiwa**



## **International Holding Limited (Provisional Liquidators Appointed) (Stock Code: 1698)**

The Stock Exchange of Hong Kong Limited (the Exchange) announced on October 30, 2020 that with effect from 9:00 am on November 3, 2020, the listing of the shares of Boshiwa International Holding Limited (Boshiwa) will be cancelled in accordance with the delisting procedures under Practice Note 17 to the Listing Rules.

Trading of Boshiwa's shares was suspended on March 15, 2012 due to its failure to publish the annual results for the year ended December 31, 2011. Subsequently, Boshiwa was insolvent and did not have sufficient level of operation and assets under Rule 13.24. The Exchange placed Boshiwa into the first, second and third delisting stage under Practice Note 17 to the Listing Rules on January 27, 2016, July 28, 2016 and February 10, 2017, respectively.

Before expiry of the third delisting stage on August 21, 2017, Boshiwa submitted a resumption proposal to the Exchange. On September 27, 2019, the Listing Committee considered the resumption proposal is no longer viable and therefore decided to cancel Boshiwa's listing under Practice Note 17 to the Listing Rules.

On December 30, 2019, the Listing (Review) Committee upheld the Listing Committee's decision to cancel the listing of Boshiwa's shares on the Exchange. On January 9, 2020, Boshiwa sought a review of the delisting decision by the Listing Appeals Committee. On October 20, 2020, the Listing Appeals Committee upheld the Listing (Review) Committee's decision to cancel the listing of Boshiwa's shares on the Exchange. Accordingly, the Exchange will cancel Boshiwa's listing with effect from 9:00 am on November 3, 2020.

The Exchange has requested Boshiwa to publish an announcement on the cancellation of Boshiwa's listing.

The Exchange advises Boshiwa's shareholders who have queries about the implications of the delisting to obtain appropriate professional advice.

**香港联合交易所有限公司宣布取消博士蛙国际控股有限公司（已委任临时清盘人）（股份代号：1698）的上市地位**

于2020年10月30日，香港联合交易所有限公司（联交所）宣布，由2020年11月3日上午9时起，博士蛙国际控股有限公司（博士蛙）的上市地位将根据《上市规则》第17项应用指引下的除牌程序予以取消。

由于博士蛙未能刊发截至2011年12月31日止年度全年业绩，其股份自2012年3月15日起已暂停买卖。其后，博士蛙资不抵债，未能符合《上市规则》第13.24条的规定拥有足够的业务运作或资产。联交所先后于2016年1月27日、2016年7月28日及2017年2月10日根据《上市规则》第17项应用指引将博士蛙置于除牌程序的第一、第二及第三阶段。

博士蛙于2017年8月21日除牌程序第三阶段届满之前向联交所提交复牌建议。于2019年9月27日，上市委员会认为该复牌建议不再可行，因此决定根据《上市规则》第17项应用指引取消博士蛙股份的上市地位。

上市（复核）委员会于2019年12月30日决定维持上市委员会取消博士蛙上市地位的决定。博士蛙于2020年1月9日向上市上诉委员会申请复核除牌决定。上市上诉委员会于2020年10月20日决定维持上市（复核）委员会取消博士蛙上市地位的决定。按此，联交所将于2020年11月3日上午9时起取消博士蛙的上市地位。

联交所已要求博士蛙刊发公告，交代其上市地位被取消一事。

联交所建议，博士蛙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/2020/2010302news?sc\\_lang=en](https://www.hkex.com.hk/News/Regulatory-Announcements/2020/2010302news?sc_lang=en)

## **Hong Kong Securities and Futures Commission Issues Statement on United States Sanctions**

On November 12, 2020, Hong Kong Securities and Futures Commission (SFC) issued the statement in response to enquiries following the latest announcement by the United States government on the imposition of sanctions against additional individuals in Hong Kong and Mainland China.

The SFC reiterates that in considering the implications of the sanctions, intermediaries are expected to carefully assess any legal, business and commercial risks that they may be exposed to. Any response to the sanctions should be necessary, fair, and having regard to the best interests of their clients and the integrity of the market. The SFC will continue to monitor closely the impact that the sanctions may have on the operation of intermediaries, the interests of investors and financial stability and orderliness of the markets in Hong Kong.

**香港证券及期货事务监察委员会就美国制裁发表声明**



于2020年11月12日，香港证券及期货事务监察委员会（证监会）就其在美国政府于近日公布对另外多名香港及中国内地人士实施制裁后所接获的查询，发表以下声明。

证监会重申，中介人在考虑有关制裁的影响时，应谨慎地评估其可能面对的任何法律、业务及商业风险。任何应对制裁的措施，都应具必要性和能秉持公平的原则，并以维护客户的最佳利益和确保市场廉洁稳健为依归。

证监会将继续密切监察有关制裁对中介人的运作、投资者的利益，及香港金融市场的稳定性和秩序可能带来的影响。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR111>

### **Zeng Lingxi Pleads Not Guilty to Charges of Obstructing the Hong Kong Securities and Futures Commission's Search Operation**

On November 11, 2020, Ms Zeng Lingxi pleaded not guilty at the Eastern Magistrates' Court to two charges laid against her for obstructing employees of the Hong Kong Securities and Futures Commission (SFC) in the execution of a search warrant in May 2020 at an office premises related to an investigation of possible market manipulation of the shares of a Hong Kong-listed company (Note 1).

A two-day trial will commence on February 1, 2021. Zeng was granted cash bail of HK\$100,000. In addition, she will have to notify the SFC at least 24 hours in advance of departing Hong Kong and provide the SFC with details of her travel arrangements together with the address where she will be staying during her travel as well as her contact details, and inform the SFC within 48 hours of any changes to the address and contact details.  
Note:

1. Please see the SFC's press release dated August 20, 2020:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=20PR77>

### **曾冷樾否认妨碍香港证券及期货事务监察委员会搜查行动的控罪**

于2020年11月11日，曾冷樾（女）今天在东区裁判法院否认两项妨碍香港证券及期货事务监察委员会（证监会）的雇员执行搜查令的控罪。证监会雇员于2020年5月在某办事处执行该搜查令，以调查一宗有关某香港上市公司的股份可能涉及市场操纵行为的案件（注1）。

审讯将于2021年2月1日展开，为期两天。

曾获准以100,000元保释外出。此外，她须在离港前至少24小时事先通知证监会及向其提供详细行程连同外游期间下榻处的地址，并须在有关地址及联络资料更改后48小时内知会证监会。

备注:

1. 请参阅证监会2020年8月20日的新闻稿：  
<https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/enforcement-news/doc?refNo=20PR77>

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR110>

### **Hong Kong Securities and Futures Commission Reprimands and Fines Credit Suisse Securities (Hong Kong) Limited HK\$2.1 million over Breaches of Electronic Trading Requirements**

On November 9, 2020, Hong Kong Securities and Futures Commission (SFC) announced that it has reprimanded Credit Suisse Securities (Hong Kong) Limited (CSSHK) and fined it HK\$2.1 million for regulatory breaches related to failures in its electronic trading systems (Note 1).

The SFC found that between 09:39 and 09:47 on February 28, 2019, CSSHK submitted 16,935 erroneous market making quotes to the market, resulting in the execution of 8,042 stock options trades at prices that deviated from the then prevailing market prices.

The incident was caused by a logic error in the symbol mapping programme used by CSSHK, in its capacity as a stock options market maker, in generating market making quotes.

The SFC is of the view that CSSHK's internal controls and regular tests in place at the time failed to prevent or promptly detect the incident, and these failures constitute breaches of electronic trading requirements under the Code of Conduct (Notes 2 & 3).

In deciding the sanction, the SFC took into account all relevant circumstances, including the prompt remedial actions taken by CSSHK following the incident and CSSHK's cooperation with the SFC in resolving the SFC's concerns.

Notes:

1. CSSHK is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities),

Type 4 (advising on securities) and Type 7 (providing automated trading services) regulated activities.

2. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
3. Please refer to the Statement of Disciplinary Action for the relevant provisions of the Code of Conduct.

A copy of the Statement of Disciplinary Action is available on the SFC website: <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR109&appendix=0>

### 香港证券及期货事务监察委员会谴责瑞士信贷证券（香港）有限公司违反电子交易规定并罚款 210 万港元

于 2020 年 11 月 9 日，香港证券及期货事务监察委员会（证监会）公布瑞士信贷证券（香港）有限公司（瑞信证券）因电子交易系统存有缺失而违反监管规定，遭证监会作出谴责，并罚款 210 万元（注 1）。

证监会发现，瑞信证券在 2019 年 2 月 28 日上午 9 时 39 分至 9 时 47 分期间向市场发送了 16,935 项错误的庄家报价，导致以偏离当时市价的价格执行了 8,042 项股票期权买卖。

该事故源于作为股票期权庄家的瑞信证券，在产生庄家报价时所使用的符号配对程式出现逻辑错误所致。

证监会认为，瑞信证券当时设有的内部监控措施及定期测试未能防止或迅速地侦测出有关事故，以及有关缺失违反《操守准则》下的电子交易规定（注 2 及 3）。

证监会在决定上述制裁时，已考虑到所有相关情况，包括瑞信证券在该事故发生后迅速采取补救行动，及与证监会合作解决其关注事项。

备注：

1. 瑞信证券根据《证券及期货条例》获发牌进行第 1 类（证券交易）、第 4 类（就证券提供意见）及第 7 类（提供自动化交易服务）受规管活动。
2. 《证券及期货事务监察委员会持牌人或注册人操守准则》。
3. 有关《操守准则》的相关条文，请参阅《纪律行动声明》。

有关纪律行动声明载于证监会网站：<https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gat>

[eway/TC/news-and-announcements/news/openAppendix?refNo=20PR109&appendix=0](https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR109&appendix=0)

Source 来源：

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR109>

### Hong Kong Securities and Futures Commission Publicly Censures Ngai Lai Ha and Imposes a Cold-shoulder Order for Breach of the Takeovers Code's Mandatory General Offer Obligation

On November 2, 2020, Hong Kong Securities and Futures Commission (SFC) announced that it has publicly censured and imposed an 18-month cold-shoulder order (Note 1) against Ms Ngai Lai Ha for breaching the mandatory general offer obligation of the Takeovers Code (Note 2).

Ngai was the chairperson and executive director of International Housewares Retail Company Limited when the breaches took place. On March 6, 2019, Ngai purchased 170,000 of the company's shares at HK\$2.01 per share. As a result, the shareholding of Ngai and her concert parties (Concert Group) in the company reached 50.50%, representing an increase of more than 2% from the Concert Group's lowest collective percentage interest of 48.48% in the preceding 12 months.

Subsequently, Ngai made 12 additional dealings in the company's shares during the period from March to May 2019, crossing the 2% creeper each time.

Ngai submitted to the Executive (Note 3) that she misunderstood the operation of the 2% creeper provisions under Note 17 to Rule 26.1 of the Takeovers Code which resulted in the breaches. She accepted that she has breached the Takeovers Code and deprived the company's shareholders of the right to receive a general offer for their shares. Ngai agreed to the current disciplinary action against her.

Parties who wish to take advantage of the securities markets in Hong Kong should conduct themselves in accordance with the Takeovers Code in matters relating to takeovers, mergers and share buy-backs. Although the breach was caused by Ngai's misunderstanding of Note 17, her conduct merits the current disciplinary action.

The Executive Statement can be found in the "Regulatory functions – Corporates – Takeovers and mergers – Decisions and statements – Executive decisions and statements" section of the SFC website.

Notes:

1. Ngai will be denied direct or indirect access to the Hong Kong securities market for a period of 18 months commencing on November 2, 2020 to May 1, 2022.
2. The Code on Takeovers and Mergers.
3. The Executive Director of the SFC's Corporate Finance Division or his delegate.

### 香港证券及期货事务监察委员会公开谴责魏丽霞违反《收购守则》下的强制全面要约责任并对其施加冷淡对待令

于2020年11月2日，香港证券及期货事务监察委员会（证监会）公开谴责魏丽霞女士违反《收购守则》（注1）下的强制全面要约责任，并对其施加为期18个月的冷淡对待令（注2）。

魏在违规情况发生时是国际家居零售有限公司的主席兼执行董事。于2019年3月6日，魏以每股2.01元买入170,000股该公司股份，使她及与其一致行动的人士（一致行动集团）于该公司的持股量达到50.50%，以一致行动集团在之前12个月期间合共所持权益的最低百分比48.48%计算，增加了超过2%。

其后，魏于2019年3月至5月期间就该公司股份另外进行了12次交易，而每次交易均令一致行动集团的持股量增幅超过2%的自由增购率。

魏向执行人员（注3）表示，她对《收购守则》规则26.1的注释17所载2%的自由增购率规定的施行原则有所误解，才造成了上述违规情况。她承认违反了《收购守则》，令该公司股东失去了就他们的股份接获全面要约的权利。魏同意接受现时对其采取的纪律行动。

有意利用香港证券市场的人士在进行有关收购、合并及股份回购的事宜时，应根据《收购守则》行事。虽然魏违规一事乃因其误解了注释17所致，但她的行为足以使本会对其采取是次纪律处分。

执行人员的声明可于证监会网站的“〈监管职能〉—〈企业活动〉—〈收购合并事宜〉—〈收购及合并委员会、收购上诉委员会及收购执行人员的决定/声明〉—〈执行人员的决定及声明〉”一栏取览。

备注：

1. 《公司收购及合并守则》。
2. 魏将被禁止直接或间接使用香港证券市场设施，为期18个月，由2020年11月2日起至2022年5月1日止。

3. 证监会企业融资部执行董事或获其转授权力的人士。

Source 来源：

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR107>

### U.S. Commodity Futures Trading Commission Exempts Additional Singapore Recognized Market Operators from Swap Execution Facility Registration Requirements

On November 2, 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced that it unanimously approved an amended order that exempts eight Recognized Market Operators (RMOs) authorized within Singapore from CFTC swap execution facility (SEF) registration requirements. The exempted RMOs are BGC Partners (Singapore) Ltd., Euronext Markets Singapore Pte Ltd., GFI Group Pte Ltd., ICAP (Singapore) Pte Ltd., Nittan Capital Singapore Pte Ltd., Refinitiv Transaction Services Pte Ltd., TFS Currencies Pte Ltd., and Tullett Prebon (Singapore) Limited.

Section 5h(g) of the Commodity Exchange Act (CEA) provides that the CFTC may grant such an exemption if it finds that a foreign SEF is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the facility's home country. The CFTC may likewise revoke exempt status when a facility is no longer authorized and/or in good standing in its home country.

On March 13, 2019, the CFTC issued an order determining that the Monetary Authority of Singapore (MAS) regulatory framework for Approved Exchanges (AEs) and RMOs satisfies the standard in CEA section 5h(g) to exempt a SEF from registration with the CFTC. Under the order, MAS is empowered, on an ongoing basis, to request such exemption for facilities meeting certain legal requirements within Singapore. MAS also agreed to notify the CFTC when an AE or RMO no longer satisfies those requirements, and to request the non-compliant facility be removed from exempt status.

This amendment brings the total number of exempted AEs and RMOs to 13.

### 美国商品期货交易委员会豁免其他新加坡认可市场运营商遵守掉期执行平台注册要求

2020年11月2日，美国商品期货交易委员会（CFTC）宣布，其一致通过了一项修订命令，该命令豁免了在新加坡授权的八家认可市场运营商遵守CFTC掉期执行平台的注册要求。获豁免的认可市场运营商是BGC Partners



(Singapore) Ltd.、Euronext Markets Singapore Pte Ltd.、GFI Group Pte Ltd.、ICAP (Singapore) Pte Ltd.、Nittan Capital Singapore Pte Ltd.、Refinitiv Transaction Services Pte Ltd.、TFS Currencies Pte Ltd. 及 Tullett Prebon (Singapore) Limited。

《商品交易法》第 5h (g) 条规定，如果 CFTC 认定外国掉期执行平台受到该平台的国家相应政府机构的相若及全面的监督和监管，则 CFTC 可以给予这种豁免。当某平台不再获得授权和/或不再在其国家信誉良好时，CFTC 也可以撤销其受豁免地位。

2019 年 3 月 13 日，CFTC 发出命令，确定新加坡金融管理局（新加坡金管局）核准交易所和认可市场运营商的监管框架符合《商品交易法》第 5h (g) 条中豁免掉期执行平台在 CFTC 中注册的标准。根据该命令，新加坡金管局有权不断要求对新加坡境内符合某些法律要求的平台进行此类豁免。新加坡金管局还同意在核准交易所和认可市场运营商不再满足这些要求时通知 CFTC，并要求将不符合规定的平台从豁免中移除。

Source 来源：  
<https://cftc.gov/PressRoom/PressReleases/8301-20>

### **U.S. Commodity Futures Trading Commission Expands its Part 30 Exemptive Program to Improve Global Market Access for U.S. Customers**

On November 2, 2020, the U.S. Commodity Futures Trading Commission (CFTC) issued multiple orders as part of its longstanding Part 30 exemptive program of international cooperation and regulatory deference. Orders have been issued to the Bombay Stock Exchange (BSE), the National Stock Exchange International Financial Service Centre Limited (NSE IFC), the Montreal Exchange (MX), NZX Limited (NZX), and UBS AG (UBS).

For more than three decades since its inception, the CFTC's Part 30 exemptive program has provided U.S. customers with increased access to foreign futures and options markets where foreign intermediaries are subject to comparable customer protection standards in their home jurisdiction.

The orders, through CFTC Regulation 30.10, permit these foreign intermediaries to accept U.S. customer funds directly for the purpose of trading in futures and options contracts in foreign jurisdictions without the intermediaries having to register with the CFTC as a futures commission merchant. The orders issued to BSE,

NSE IFC, and NZX grant exemptive relief on behalf of their respective members. The order issued to MX amends and consolidates prior exemptive relief granted on behalf of its members to reflect regulatory improvements with respect to the protection of U.S. customer funds. UBS, a Swiss bank, is the first recipient of an order not issued to either a foreign self-regulatory organization or regulator.

The orders will be published in the Federal Register and the relief granted to each firm will be effective upon the filing of certain representations with the National Futures Association.

### **美国商品期货交易委员会扩展其 Part 30 豁免令以改善美国客户的全球市场准入**

2020 年 11 月 2 日，美国商品期货交易委员会（CFTC）发布了多项命令，作为长期国际合作和监管要求豁免的 Part 30 豁免令 (Part 30 exemptive program) 一部分。命令已向孟买证券交易所（BSE）、National Stock Exchange International Financial Service Centre Limited（NSE IFC）、蒙特利尔证券交易所（MX）、NZX Limited (NZX) 和瑞银集团（UBS）发出。

自成立以来的三十多年来，CFTC 的 Part 30 豁免令为美国客户提供了进入外国(而中介机构在其这些国家管辖范围内受到相若的客户保护标准的约束) 期货和期权市场的更多机会。

根据命令(透过 CFTC 第 30.10 条的规定)，这些外国中介机构可以直接接受美国客户资金，用于在外国司法管辖区进行期货和期权合约的交易，而无需中介机构向 CFTC 注册为期货佣金商人。向 BSE、NSE IFC 和 NZX 发出的命令代表其成员授予豁免。发给 MX 的命令修改并合并了先前代表其成员授予的豁免，以反映出监管在保护美国客户资金方面的改进。UBS (一家瑞士银行) 是第一位接收向外国非自我监管组织或监管机构发出的命令。

这些命令将在《联邦公报》上公布，给予每家公司的豁免将在向美国全国期货协会提交陈述后生效。

Source 来源：  
<https://cftc.gov/PressRoom/PressReleases/8300-20>

### **U.S. Federal Court Orders a Company and its Principal to Pay Over US\$900,000 for Digital Asset and Forex Ponzi Scheme**

On November 2, 2020, the U.S. Commodity Futures Trading Commission (CFTC) announced that the U.S. District Court for the District of Colorado entered a judgment against defendants Venture Capital Investments LLC (VCI) and its principal and manager Breonna Clark d/b/a Eliot Clark d/b/a Alexander Pak (Clark) for fraudulently soliciting and misappropriating funds from clients in a digital asset and forex Ponzi scheme.

The order stemmed from a complaint filed on February 14, 2020. The court ruled that the defendants fraudulently solicited more than 72 clients to invest in commodity pools that purportedly trade in forex and digital assets, including bitcoin, only to then misappropriate the money. Further, the court found that the defendants lured their clients primarily by using social media, touting the ability of their purported “master team of traders” to provide consistent trading profits. The court found that the defendants misappropriated their clients’ money to acquire, among other things, a luxury automobile. The defendants also used their clients’ money to make Ponzi-type payments to others to maintain the scheme. In total, the defendants fraudulently solicited and misappropriated US\$450,302.

The order required VCI and Clark to pay US\$450,302 in restitution to defrauded clients, a civil monetary penalty of US\$450,302 and the CFTC’s costs. Additionally, the defendants are permanently enjoined from engaging in conduct that violates the Commodity Exchange Act and CFTC regulations, as well as banned from registering with the CFTC and trading in any CFTC-regulated markets.

#### 美国联邦法院命令一家公司及其负责人数字资产和外汇庞氏骗局支付超过 90 万美元

2020 年 11 月 2 日，美国商品期货交易委员会（CFTC）宣布美国科罗拉多州地方法院就以欺诈手段从数字资产和外汇庞氏骗局中向客户索取和挪用资金对被告 Venture Capital Investments LLC（VCI）及其负责人兼经理 Breonna Clark（商业名称为 Eliot Clark 或 Alexander Pak）（Clark）作出判决。

该命令源于 2020 年 2 月 14 日提起的申诉。法院裁定，被告欺骗性地诱使多于 72 个客户投资于声称进行外汇和数字资产（包括比特币）交易的商品基金，以挪用投资资金。此外，法院发现，被告主要通过使用社交媒体来诱骗客户，吹捧他们声称的“交易员大师团队”提供稳定

交易利润的能力。法院发现，被告挪用了客户的资金来购买豪华汽车等。被告还使用其客户的资金向他人支付庞氏式付款，以维持该骗局。总计，被告以欺诈手段招徕和挪用了 450,302 美元。

该命令要求 VCI 和 Clark 向被欺诈的客户归还 450,302 美元及支付 450,302 美元的民事罚款和 CFTC 的费用。此外，被告被永久禁止参与违反《商品交易法》和 CFTC 规定的行为，并禁止其在 CFTC 进行注册和在 CFTC 监管的任何市场进行交易。

Source 来源：

<https://cftc.gov/PressRoom/PressReleases/8301-20>

#### U.S. Securities and Exchange Commission Harmonizes and Improves “Patchwork” Exempt Offering Framework

On November 2, 2020, the U.S. Securities and Exchange Commission (SEC) voted to amend its rules in order to harmonize, simplify, and improve the multilayer and overly complex exempt offering framework. These amendments will promote capital formation and expand investment opportunities while preserving or improving important investor protections.

When issuers use various private offering exemptions in parallel or in close time proximity, questions can arise as to the need to view the offerings as “integrated” for purposes of analyzing compliance. This need results from the fact that many exemptions have differing limitations and conditions on their use, including whether the general solicitation of investors is permitted. If exempt offerings with different requirements are structured separately but analyzed as one “integrated” offering, it is possible that the integrated offering will fail to meet all the applicable conditions and limitations.

#### Integration Framework.

The amendments establish a new integration framework that provides a general principle that looks to the particular facts and circumstances of two or more offerings, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

The amendments additionally provide four non-exclusive safe harbors from integration providing that:

- any offering made more than 30 calendar days before the commencement of any other offering,

or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering(s); provided that:

- in the case where an exempt offering for which general solicitation is prohibited follows by 30 calendar days or more an offering that allows general solicitation, the issuer has a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) either did not solicit such purchaser through the use of general solicitation or established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation;
- offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S will not be integrated with other offerings;
- an offering for which a Securities Act registration statement has been filed will not be integrated if it is made subsequent to:
  - a terminated or completed offering for which general solicitation is not permitted,
  - a terminated or completed offering for which general solicitation is permitted that was made only to qualified institutional buyers and institutional accredited investors, or
  - an offering for which general solicitation is permitted that terminated or was completed more than 30 calendar days prior to the commencement of the registered offering; and
- offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any terminated or completed offering.

### Offering and Investment Limits

For Regulation A, the amendments:

- raise the maximum offering amount under Tier 2 of Regulation A from US\$50 million to US\$75 million; and

- raise the maximum offering amount for secondary sales under Tier 2 of Regulation A from US\$15 million to US\$22.5 million.

For Regulation Crowdfunding, the amendments:

- raise the offering limit in Regulation Crowdfunding from US\$1.07 million to US\$5 million;
- amend the investment limits for investors in Regulation Crowdfunding offerings by:
  - removing investment limits for accredited investors; and
  - using the greater of their annual income or net worth when calculating the investment limits for non-accredited investors; and
- extend for 18 months the existing temporary relief providing an exemption from certain Regulation Crowdfunding financial statement review requirements for issuers offering US\$250,000 or less of securities in reliance on the exemption within a 12-month period.

For Rule 504 of Regulation D, the amendments:

- raise the maximum offering amount from US\$5 million to US\$10 million.

### "Test-the-Waters" and "Demo Day" Communications

SEC was amending offering communications rules, by:

- permitting an issuer to use generic solicitation of interest materials to "test-the-waters" for an exempt offer of securities prior to determining which exemption it will use for the sale of the securities;
- permitting Regulation Crowdfunding issuers to "test-the-waters" prior to filing an offering document with the SEC in a manner similar to current Regulation A; and
- providing that certain "demo day" communications will not be deemed general solicitation or general advertising.

### Regulation Crowdfunding and Regulation A Eligibility

The amendments establish rules that permit the use of certain special purpose vehicles that function as a conduit for investors to facilitate investing in Regulation Crowdfunding issuers. The amendments additionally impose eligibility restrictions on the use of Regulation A by issuers that are delinquent in their Exchange Act reporting obligations.

### Other Improvements to Specific Exemptions

The amendments also:



- change the financial information that must be provided to non-accredited investors in Rule 506(b) private placements to align with the financial information that issuers must provide to investors in Regulation A offerings;
- add a new item to the non-exclusive list of verification methods in Rule 506(c);
- simplify certain requirements for Regulation A offerings and establish greater consistency between Regulation A and registered offerings; and
- harmonize the bad actor disqualification provisions in Regulation D, Regulation A, and Regulation Crowdfunding.

### Effect of Amendments

The amendments are the next step in the SEC's efforts to improve the exempt offering framework for the benefit of investors, emerging companies, and more seasoned issuers. The amendments follow the SEC's June 2019 concept release and March 2020 proposing release on the harmonization of offering exemptions and benefit from extensive public engagement. The amendments address gaps and complexities in the exempt offering framework that impede access to capital for issuers and access to investment opportunities for investors.

### **美国证券交易委员会协调和改进“拼凑式”豁免发行框架**

2020年11月2日，美国证券交易委员会（美国证交会）投票表决修改其规则，以协调、简化和改进多层且过于复杂的豁免发行框架。这些修订将促进资本形成并扩大投资机会，同时保留或改善重要的投资者保护。

当发行人并行或在相近时间点使用不同非公开发行豁免时，可能会在分析合规性时对发行是否需被视为“综合”产生疑问。产生这种疑问的原因是，许多豁免在使用上有不同的限制和条件，包括是否允许对投资者进行一般性招揽。如果将具有不同要求的豁免发行的架构为分开发行，但将被分析为一种“综合”发行，则“综合”发行可能无法满足所有适用条件和限制。

### 综合框架

修正案建立了一个新的综合框架，该框架提供了一项通用原则，该原则着眼于两项或多项发行的特殊事实和情况，并着重分析发行人是否可以确定每项发行均符合《证券法》的注册要求，或特定发行的注册是否可以被豁免。

修正案还额外提供了四个非排他性的安全港以避免合并分析：

- 在任何其他发行开始前超过 30 个日历日或在任何其他发行终止或完成后超过 30 个日历日进行的任何发行将不与此类其他发行合并；并且：
  - 如果被禁止进行一般性招揽的豁免发行之后 30 个日历日或更长时间进行允许一般性招揽的发行，则发行人需基于事实和情况有合理的信念，每个禁止一般性招揽的豁免发行投资者，均为发行人（或代表发行人任事的任何人）未通过使用一般性招揽来招揽的投资者，或在禁止一般性招揽的豁免发行开始之前未与该投资者建立实质性关系；
- 根据规则 701、员工福利计划或规则 S 进行的发行和销售将不与其他发行合并；
- 如果根据《证券法》注册的发行以下情况后发行，该发行将不被合并：
  - 已终止或完成的禁止进行一般性招揽的发行，
  - 只允许合格机构投资者和机构认可投资者进行的允许全面招标的终止或完成的发行，或
  - 允许进行一般招揽的发行在注册发行开始前 30 个日历日以内终止或完成；和
- 如果在任何终止或完成的发行之后进行发行，则根据豁免允许进行一般招揽的进行的发行和销售将不会被合并。

### 发行和投资限额

对于《A 条例》，修正案：

- 将《A 条例》第 2 级的最高发行额从 5,000 万美元提高至 7,500 万美元；和
- 将《A 条例》第 2 级第二次销售的最高发行额从 1500 万美元提高到 2250 万美元。

对于《众筹条例》，修正案：

- 将《众筹条例》的发行上限从 107 万美元提高到 500 万美元；
- 通过以下方式修改《众筹条例》发行的投资者投资限额：
  - 取消对合格投资者的投资限制；和
  - 计算非合格投资者的投资限额时，使用其年收入或净资产中的较高者；和

- 向在 12 个月内依赖豁免而发行 250,000 美元或以下的证券的发行人延长现有临时豁免 18 个月, 以免除某些《众筹条例》财务报表审阅要求。

对于《D 条例》的 504 条, 修正案如下:

- 将最高发行额从 500 万美元提高到 1000 万美元。

#### “试水”和“演示日”通讯

美国证交会通过以下方式修改发行通信规则:

- 允许发行人在确定发行证券的销售将使用哪种豁免之前, 使用材料来进行一般性兴趣招揽以“试水”;
- 允许《众筹条例》发行人在以类似于当前《A 条例》的方式向《A 条例》注册发行文件之前先进行“试水”; 和
- 规定某些“演示日”通信将不被视为一般性招揽或一般性广告。

#### 《众筹条例》和《A 条例》的资格

修正案建立了规则, 以允许使用某些特殊目的工具作为投资者向《众筹条例》发行人投资的渠道。修正案还限制违反了《交易法》报告义务的发行人使用《A 条例》的资格。

#### 特殊豁免的其他改进

修正案还:

- 更改规则 506 (b) 私募发行中必须提供给非合格投资者的财务信息的要求, 使其与发行人在《A 条例》发行中必须提供给投资者的财务信息一致;
- 将新项目添加到规则 506 (c) 中的非详尽核实方法清单中;
- 简化对《A 条例》发行的某些要求, 并使《A 条例》和注册发行有更大的一致性; 和
- 统一《D 条例》、《A 条例》和《众筹条例》中的“不良行为者”条款。

#### 修正案的效果

这些修正案是美国证交会努力改善豁免发行框架的另一步, 以使投资者、新兴公司和经验丰富的发行人受益。修正案是在美国证交会 2019 年 6 月发布理念发布和 2020 年 3 月提议有关统一发行豁免以及广泛公众讨论之

后发布的。修正案解决了豁免发行框架中阻碍了发行人获得资本和投资者获得投资机会的缺口和复杂性。

Source 来源:

<https://www.sec.gov/news/press-release/2020-273>

#### **U.S. Securities and Exchange Commission Publishes Notice of German Substituted Compliance Application and Proposed Order**

On November 9, 2020, the U.S. Securities and Exchange Commission (SEC) published a notice of a substituted compliance application by Germany's Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) as well as a proposed order that would conditionally provide substituted compliance for German firms that are registered with the SEC as security-based swap dealers and security-based swap participants. These are the latest of a series of actions that the SEC has taken to stand up Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including cross-border regulation.

#### Substituted Compliance Framework

Securities Exchange Act 1934 (Exchange Act) rule 3a71-6 conditionally provides that non-U.S. security-based swap dealers and major security-based swap participants may satisfy certain requirements under Section 15F of the Exchange Act by instead complying with foreign requirements that the SEC has found to be comparable. The SEC's comparability assessment must consider the scope and objectives of the foreign requirements and also the effectiveness of the foreign financial supervisory and enforcement frameworks.

Rule 3a71-6 further conditions substituted compliance on the SEC and the foreign financial regulatory authority entering into a supervisory and enforcement memorandum of understanding and/or other arrangement addressing supervisory and enforcement cooperation and other matters related to substituted compliance. The SEC and BaFin are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance.

Substituted compliance does not constitute exemptive relief, but instead provides an alternative method by which non-U.S. dealers and major participants may comply with applicable U.S. requirements. The SEC would retain the authority to inspect, examine and supervise those firms and take enforcement action as appropriate.

### BaFin's Application

BaFin requested that the SEC grant substituted compliance in connection with requirements under the Exchange Act regarding:

- Risk control – requirements related to risk management systems, trade acknowledgment and verification, portfolio reconciliation, portfolio compression and trading relationship documentation.
- Recordkeeping and reporting – requirements related to record creation, record maintenance, reporting and notices.
- Internal supervision and compliance – requirements related to supervision, conflicts of interest and chief compliance officers, and certain related matters.
- Counterparty protection – requirements related to fair and balanced communications, disclosure of risks, characteristics, incentives or conflicts of interest; daily mark disclosure, “know your counterparty;” suitability; and clearing rights disclosure.

The application did not seek substituted compliance in connection with capital or margin requirements under the Exchange Act.

In support, BaFin's application included analyses that compare German and EU requirements with relevant requirements under the Exchange Act. The application also included information regarding the financial supervisory and enforcement frameworks in Germany.

### Proposed Order

The SEC published for comment a proposed order in connection with BaFin's application. The proposed order reflects the SEC's preliminary assessments regarding the comparability of applicable German and EU requirements, and the effectiveness of the German financial supervisory and enforcement frameworks. The proposed order incorporates certain conditions or other limits including:

- Portfolio reconciliation and dispute reporting – Firms would have to report counterparty valuation disputes directly to the SEC, based on EU timing requirements.
- Trading relationship documentation – Firms could not apply the Markets in Financial Instruments Directive (MiFID) “eligible counterparty” exception in connection with applicable German and EU requirements, and

would not receive substituted compliance in connection with certain disclosure-related provisions.

- Internal supervision and chief compliance officer requirements – Firms' internal supervision and chief compliance officer frameworks must also promote compliance with certain residual U.S. requirements and the conditions to the order.
- Compliance reports – Firms must provide compliance reports directly to the SEC.
- Suitability – The firm's counterparty must be treated as a “per se professional client” under German and EU requirements and must not be a “special entity” as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh-2(d).
- Daily mark disclosure – The firm must be required to reconcile, and in fact reconcile, the portfolio containing the relevant security-based swap on each business day.
- Recordmaking – The firm would need to: (a) preserve the data elements to create certain records required by the SEC's rule and furnish the record in the format (e.g., blotter or ledger) required by that rule; (b) make certain records related to the security-based swap dealer segregation rule if the firm is not exempt from that rule; and (c) make certain records related to business conduct requirements for which substituted compliance is not available.
- Record preservation – The firm would need to: (a) preserve records related to the security-based swap dealer segregation rule if the firm is not exempt from that rule; and (b) preserve certain records related to Regulation SBSR and business conduct requirements for which substituted compliance is not available.
- Financial and Operational Reporting – The firm would need to report financial and operational information in the manner and format specified by SEC order or rule.
- Notification – The firm would need to: (a) simultaneously transmit to the SEC a copy of any notice required to be sent by comparable German and EU laws and include contact



information of a person who can provide further details about the notice; and (b) comply with the requirement in the SEC's rule to provide notice of failure to make a required deposit into the reserve account required by the segregation rule for security-based swap dealers.

Finally, firms would remain subject to Exchange Act requirements to keep books and records open to inspection by the SEC and to furnish promptly to the SEC legible, true, complete, and current copies of those records of the firm that are required to be preserved.

The SEC is requesting comment on each of these proposed determinations and conditions.

### 美国证券交易委员会发布有关德国替代合规申请和拟议命令的公告

2020年11月9日，美国证券交易委员会（美国证交会）发布有关德国联邦金融监管局（BaFin）发出的替代合规申请的公告以及一项拟议的命令，该命令将有条件地为在美国证交会注册为证券掉期交易商和证券掉期交易参与者的德国公司提供替代合规规定。这是美国证交会为捍卫《多德-弗兰克华尔街改革和消费者保护法》第七章（其中包括跨境监管）所采取的一系列行动中的最新行动。

#### 替代合规框架

1934年证券交易法（《交易法》）第3a71-6条有条件地允许，非美国证券掉期交易商和主要证券掉期参与者可以透过遵守美国证交会认为具有可比性的外国要求，以满足《交易法》第15F条的某些要求。美国证交会的可比性评估必须考虑外国要求的范围和目标，以及外国金融监管和执行框架的有效性。

规则3a71-6进一步规定替代合规的其中一个条件为美国证交会和外国金融监管机构订立了监督和执行谅解备忘录和/或其他有关监督和执行合作以及与替代合规相关的其他事项的安排。美国证交会和BaFin正在就一项谅解备忘录进行谈判，以安排与替代合规相关的合作事宜。

替代合规性并不构成豁免，而是提供了一种替代方法供非美国经销商和主要参与者可以通过该替代方法来遵守适用的美国要求。美国证交会将保留巡查、监督和监察这些公司并采取适当行动的权利。

#### BaFin 的申请

BaFin 要求美国证交会授予与《交易法》有关以下方面要求的替代合规：

- 风险控制-与风险管理系统、交易确认和验证、投资组合对账、投资组合整合和交易关系文档相关的要求。
- 记录保存和报告-与记录创建、记录维护、报告和通知有关的要求。
- 内部监督和合规性-与监督、利益冲突和首席合规官以及某些相关事项有关的要求。
- 交易对手保护-与公平和平衡的沟通、风险、特征及利益冲突披露、每日对数披露、“了解交易对手”适用性和清算权披露有关的要求。

该申请未寻求《交易法》中有关资本或保证金要求的替代合规。

作为支持，BaFin 的申请包括德国和欧盟要求与《交易法》中相关要求的比较分析。该申请还包括有关德国财务监督和执行框架的信息。

#### 拟议命令

美国证交会发布与BaFin的申请有关的拟议命令，以征求意见。拟议命令反映了美国证交会对适用的德国和欧盟要求的可比性以及德国财务监督和执行框架的有效性进行的初步评估。拟议命令包含某些条件或其他限制，包括：

- 投资整合和争议报告 - 公司将必须根据欧盟时间要求直接向美国证交会报告交易对手估值争议
- 贸易关系文档 - 公司无法将申请德国和欧盟规则下的金融工具市场指令(MiFID)“合格交易对手”例外，并且不会就某些与披露有关的规定获得替代合规。
- 内部监督和首席合规官要求 - 公司的内部监督和首席合规官框架还必须促进对某些剩余的美国规则和命令条件的遵守。
- 合规报告 - 公司必须直接向美国证交会提供合规报告。
- 适用性 - 根据德国和欧盟的要求，公司的交易对手必须被视为“本身为专业客户”，并且不得是《交易法》第15F(h)(2)(C)条和《交易法》规则15Fh-2(d)中定义的“特殊实体”。

- 每日标记披露 – 必须要求公司在每个工作日对包含相关的证券掉期的投资组合进行 (并实际上进行) 调节。
- 记录制作 - 公司将需要: (a) 保存创建美国证交会规则要求的某些记录的数据, 并以据该规则要求的格式 (例如, 摘要或分类帐) 提供记录; (b) 如果该公司没有被豁免该规则, 则记录某些与证券掉期交易商分隔规则有关的记录; (c) 作出与商业行为相关而不能使用替代合规的规则要求的记录。
- 记录保存 - 公司将需要: (a) 如果公司不被免除基证券掉期交易商分隔规则的要求, 则应保留相关记录; (b) 保留与《SBSR 条例》和商业行为规则而无法使用替代合规的相关记录。
- 财务和运营报告 – 公司将需要按照美国证交会命令或规则规定的方式和格式报告财务和运营信息。
- 通知 - 公司需要: (a) 同时将类似的德国和欧盟法律要求发送的任何通知的副本传送给美国证交会, 并在通知中包括可以提供有关该通知的更多细节的人员的联系信息; (b) 遵守美国证交会规则的要求, 即在未能将分隔保证金要求的存款存入证券掉期交易商分离规则要求的准备金帐户时, 发出通知。

最后, 公司将需继续遵守《交易法》的要求, 以使帐簿和记录可供美国证交会查阅, 并迅速向美国证交会提供需要保存的公司记录的清晰、真实、完整和最新的副本。

美国证交会在寻求就这些提议的每一个决定和条件中的评论。

Source 来源:

<https://www.sec.gov/news/press-release/2020-279>

### **Australian Financial Services Royal Commission's Reforms Postponed for Six Months Due to the Pandemic**

The commencement dates for some Royal Commission reforms have been delayed by six months in recognition of the challenges created by the pandemic. This

includes a six-month reprieve for the commencement of the mortgage brokers' best interests duty.

#### *RG 273 Mortgage Brokers: Best interests duty*

In June 2020, Australian Securities and Investments Commission (ASIC) published new regulatory guidance for mortgage brokers and other relevant Australian credit licensees on the best interests duty. From January 1, 2021, mortgage brokers will be required to act in the best interests of consumers and to prioritize consumers' interests when providing credit assistance. Consistent with this legislation, the guidance is high level and principles-based, but also incorporates practical examples.

The purpose of RG 273 is to explain the obligations introduced by the Parliament to give effect to Government policy – it does not prescribe minimum standards of conduct, nor does it impose new or additional obligations from ASIC. RG 273 contains ASIC's interpretative views on how mortgage brokers may comply with their best interests obligations at key stages of the credit assistance process. This includes guidance on:

- the effect of the range of credit providers and products brokers can access
- recommending packages of credit products
- the types of records that may be kept for demonstrating compliance.

#### *RG 78 Breach reporting by Australian Financial Services (AFS) licensees*

The second Royal Commission reform coming down the pipeline is the introduction of breach reporting obligations for credit licensees. The proposed reforms include requirements for third-party licensees to report breaches by individual mortgage brokers and financial adviser representatives of other licensees.

ASIC intends to consult on an updated RG 78 on breach reporting in early 2021. ASIC is also going to consult on an information sheet for new requirements for financial advisers and mortgage brokers to investigate misconduct and notify and remediate affected clients.

#### *Reference checking and information sharing protocol*

The Royal Commission recommended that Credit licensees and AFS licensees should be required to comply with a reference checking and information sharing protocol for mortgage brokers and financial advisers, similar to the ABA's current reference checking and information sharing protocol for financial advisers.

Treasury consulted on draft legislation to implement these recommendations earlier this year. Under the draft legislation, ASIC will have the power to make legislative instruments determining the protocols for reference checking and information sharing about prospective financial adviser and mortgage broker representatives of AFS licensees and credit licensees.

Once final legislation is introduced, ASIC intends to consult with industry to seek feedback on the proposed requirements for licensees under the ASIC protocol. The industry feedback will be taken into account before the ASIC finalizes the protocol in the first half of 2021, as soon as practical ahead of the October 2021 commencement.

### 澳大利亚金融服务业皇家委员会的一些改革措施因疫情关系推迟六个月

考虑到新型冠状病毒大流行所带来的挑战，一些皇家委员会改革的启动日期被推迟六个月，其中包括暂缓六个月启动的抵押贷款经纪人的最大利益义务。

#### RG 273 抵押贷款经纪人：最大利益义务

2020年6月，澳大利亚证券投资委员会针对抵押贷款经纪人和其他相关澳大利亚信贷持牌人发布了有关最大利益义务的最新监管指南。自2021年1月1日起，抵押贷款经纪人将被要求从消费者最大利益出发，在提供信贷援助时优先考虑消费者利益。为与相关立法保持一致，该监管指南是高层次的、基于原则的，同时也包含一些实际示例。

RG 273 的目的在于解释澳大利亚联邦议会为政府政策的实行而提出的义务——既没有规定最低的行为标准，也没有加强澳大利亚证券投资委员会新的或额外的义务。RG 273 包含澳大利亚证券投资委员会关于抵押贷款经纪人如何在信贷援助流程的关键阶段履行最大利益义务的解释性意见，包括以下方面的指导：

- 信贷提供者和信贷产品经纪人可涉猎范围的影响
- 信贷产品的推荐套餐
- 可用来证明合规性的记录类型

#### RG 78 澳大利亚金融服务牌照违规报告义务

皇家委员会即将进行的第二项改革是引入信贷持牌人的违约报告义务。拟议的改革包括要求第三方持牌人报告个人抵押贷款经纪人和其他持牌人的财务顾问代表的违规行为。

澳大利亚证券投资委员会计划在2021年初就有关违规报告的最新 RG 78 进行磋商。澳大利亚证券投资委员会也

将通过一份信息表进行咨询，以寻求有关财务顾问和抵押贷款经纪人调查不当行为以及通知和补救受影响客户的新要求。

#### 参考资料核查和信息共享协议

皇家委员会建议应要求信贷持牌人和澳大利亚金融服务持牌人遵守抵押贷款经纪人和财务顾问的参考资料核查和信息共享协议，类似于澳大利亚银行业协会当前的财务顾问参考资料核查和信息共享协议。

财政部在今年初就实施这些建议的立法草案进行了咨询。根据立法草案，澳大利亚证券投资委员会将有权制定法律文书以确定澳大利亚金融服务持牌人和信贷持牌人的潜在财务顾问和抵押贷款经纪人代表的参考资料核查和信息共享协议。

最终法规一旦引入，澳大利亚证券投资委员会打算与业界进行磋商，以寻求有关澳大利亚证券投资委员会协议下对持牌人拟议要求的反馈。澳大利亚证券投资委员会将在2021年上半年协议最终定稿之前考虑业界的反馈意见，并使其尽快在2021年10月之前生效。

Source 来源:

<https://asic.gov.au/about-asic/news-centre/speeches/regulatory-update/>

### **Australian Securities and Investments Commission to Further Extend Financial Reporting Deadlines for Listed and Unlisted Entities and Amends ‘No Action’ Position for AGMs**

Australian Securities and Investments Commission (ASIC) will extend the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act (the Act) by one month for certain balance dates up to and including January 7, 2021 balance dates.

The extended deadlines for lodgement of financial reports will assist those entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. Where possible, entities should continue to lodge within the normal statutory deadlines, having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

This additional relief announced on November 11, 2020 builds on earlier relief announced for unlisted entities with December 31, 2019 to July 7, 2020 year ends and will extend deadlines for lodging financial reports for all listed and unlisted entities for balance dates to January 7, 2021 where the reporting deadline has not already passed.



Unlisted entities will be able to take one additional month to lodge financial reports for year ends from December 31, 2019 to January 7, 2021. Listed entities will be able to take one additional month to report for full year and half-year financial reports for February 21, 2020 to January 7, 2021 balance dates. (The January 7, 2021 date accommodates entities that use a provision in the Corporations Act that allows their financial year to be changed by plus or minus 7 days each year).

Listed entities will be required to inform the market when they rely on the extended period for lodgement. These entities may also find it desirable to explain the reasons for relying on the extended deadlines.

#### 'No action' position on holding of Annual General Meetings

ASIC has adopted a 'no action' position where public companies do not hold their Annual General Meetings (AGMs) within five months after the end financial years that end from December 31, 2019 to January 7, 2021, but do so up to seven months after year end. ASIC's no action position also allows additional time for distribution of financial reports to members prior to the AGM for those companies that have relied on the extension of time for lodgement of financial reports.

#### Reporting periods ending after January 7, 2021

ASIC will continue to monitor how market conditions and COVID-19 developments are affecting financial reporting and AGM obligations for balance dates after January 7, 2021. At present, there is no indication that further extensions of time will be necessary.

澳大利亚证券投资委员会进一步延长上市和非上市公司的财务报告期限及关于周年股东大会“不采取行动”立场的一些修改

澳大利亚证券投资委员会将把上市实体和非上市公司根据公司法（法案）第 2M 章和第 7 章提交财务报告的期限延长一个月至 2021 年 1 月 7 日（包括在内）。

延长后的财务报告报送期限将有利于那些由于目前远程工作安排、差旅限制和受新型冠状病毒影响而需要更多时间报告的公司。在可能的情况下，公司应当考虑股东、债权人及其他财务报告使用者的信息需求，或履行借款契约或其他义务，在法定的正常时间内持续提供财务报告。

于 2020 年 11 月 11 日公布的额外豁免建立在此前已公布的非上市公司截至 2019 年 12 月 31 日至 2020 年 7 月 7 日止提供财务报告的基础上，将所有已上市公司和非上

市公司在资产负债表日的财务报告报送期限顺延至 2021 年 1 月 7 日。

非上市公司将拥有额外一个月的时间用来提交 2019 年 12 月 31 日至 2021 年 1 月 7 日的年终财务报告。上市公司将拥有额外一个月的时间提交 2020 年 2 月 21 日至 2021 年 1 月 7 日的年度和半年度财务报告。（2021 年 1 月 7 日这个日期适用于使用公司法中有关允许财政年度每年增减七天的条款的公司。）

上市公司将被要求在需要延长提交财务报告的期限时向市场公开，也可能有必要解释其依赖延长期限的原因。

#### 关于召开年度股东大会的“不采取行动”立场

澳大利亚证券投资委员会对上市公司在 2019 年 12 月 31 日至 2021 年 1 月 7 日的财政年度结束后五个月内不召开周年股东大会但在年度结束后七个月内召开的情况发表“不采取行动”立场。澳大利亚证券投资委员会的“不采取行动”立场还使那些推迟提交财务报告的公司有在周年股东大会召开之前有更多的时间向其成员分发财务报告。

#### 报告期于 2021 年 1 月 7 日截止后

澳大利亚证券投资委员会将继续监控市场状况及新型冠状病毒大流行对 2021 年 1 月 7 日以后的财务报告和周年股东大会义务的影响。目前，没有迹象表明需要进一步延长截止日期。

Source 来源:

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-276mr-asic-to-further-extend-financial-reporting-deadlines-for-listed-and-unlisted-entities-and-amends-no-action-position-for-agms/>

#### **Financial Conduct Authority of the United Kingdom Announces Changes to Open Banking Identification Requirements**

The Financial Conduct Authority (FCA) of the United Kingdom (UK) has announced changes to limit the risk of disruption to open banking services after Brexit. The FCA's changes will permit UK-based third-party providers (TPPs) to use an alternative to eIDAS certificates to access customer account information from account providers, or initiate payments, after Brexit. Firms must act to ensure they can continue to provide open banking services.

eIDAS certificates are required for TPPs to identify themselves to account providers and allow firms to interact and share customer account information online in a trusted and secure way. Under the Strong Customer Authentication Regulatory Technical Standards (SCA-RTS), they are the only accepted identification standard

permitted between providers of open banking services in the European Union (EU).

However, in July 2020 the European Banking Authority (EBA) announced that eIDAS certificates of UK TPPs would be revoked when the transition period ends on December 31, 2020. The near final instrument, published by the FCA, allows TPPs to rely on an alternative certificate.

The changes will mean:

- UK-based TPPs will likely need to obtain a new certificate to be able to continue to provide open banking services in the UK, post-Brexit
- Account providers (e.g. banks) will likely need to make technical changes to their systems to enable TPPs to continue accessing customer account information, by accepting an alternative certificate and informing TPPs as soon as possible which certificate(s) they will accept

Firms must review the changes immediately and implement any necessary changes as soon as possible. Acknowledging the challenges faced by the industry, the FCA will provide a transition period until the end of June 2021 for complying with the FCA's rules.

#### 英国金融行为监管局宣布有关开放银行识别要求的一些变更

英国金融行为监管局（英国金管局）宣布了一些变化，以制约英国脱欧后开放银行服务可能出现的中断风险。英国金管局宣布的变化将允许英国的第三方提供商在英国脱欧后使用 eIDAS 电子证书的替代方案以从账户提供者处获取客户账户信息或启动付款。各公司必须采取行动确保其能够继续提供开放银行服务。

第三方提供商需要 eIDAS 电子证书才能向账户提供者标识自己并允许公司以可靠和安全的方式在线交互和共享客户的账户信息。根据强大的客户认证监管技术标准，这是欧盟的开放银行服务提供商之间唯一允许使用的识别标准。

但是，在 2020 年 7 月，欧洲银行业管理局宣布，英国第三方提供商的 eIDAS 电子证书将于过渡期于 2020 年 12 月 31 日结束时被吊销。根据英国金管局的最新发布，将允许英国第三方提供商依 eIDAS 电子证书的替代证书。

这些变更意味着：

- 英国脱欧后，第三方提供商可能需要获得新证书才能继续在英国提供开放银行服务

- 账户提供者（例如银行）可能需要对其系统进行技术改进，接受替代证书并尽快通知第三方提供商，以使第三方提供商能够继续获取客户账户信息

各公司必须立即检查更改并尽快实施必要措施。基于行业所面临的挑战，英国金管局将为各公司遵守规则提供一个直至 2021 年 6 月为止的过渡期。

Source 来源:

<https://www.fca.org.uk/news/statements/fca-announces-changes-open-banking-identification-requirements>

#### Financial Conduct Authority of the United Kingdom Bans Three Individuals from Working in the Financial Services Industry for Non-Financial Misconduct

The Financial Conduct Authority (FCA) of the United Kingdom (UK) has prohibited Russell David Jameson, Mark Horsey and Frank Cochran from working in the financial services industry following findings that they are not fit and proper. Each of them had been convicted of serious non-financial indictable offences while working in the financial services industry.

Mark Steward, Executive Director of Enforcement and Market Oversight, said: "The FCA expects high standards of character, probity and fitness and properness from those who operate in the financial services industry and will take action to ensure these standards are maintained."

#### Russell David Jameson

Jameson was a financial adviser at an authorized firm and was approved by the FCA to hold various significant influence and customer facing functions at the firm.

In July 2018, Jameson was convicted of serious criminal offences involving the making, possession and distribution of indecent images of children. Between January 2013 and August 2017, Jameson made thousands of indecent photographs of children and had thousands of such images in his possession, including films and images of the utmost severity. These offences were committed whilst Jameson was an approved person.

Jameson was sentenced to five years' imprisonment, ordered to sign the sex offenders register indefinitely, and included in the list of individuals barred from working with children or vulnerable adults.

#### Mark Horsey

Horsey was the sole director and shareholder of an authorized financial advice firm with permission to conduct designated investment business (including

advising on and arranging deals in investments) and insurance distribution.

In September 2018, Horsey was convicted of voyeurism, contrary to the Sexual Offences Act 2003. Horsey had surreptitiously observed and video recorded his tenant having a shower without their consent. He committed the offence whilst he was an approved person.

Horsey was sentenced to nine months' imprisonment suspended for 18 months, required to complete 100 hours of unpaid work and 25 days of rehabilitation activity, and required to sign the sex offenders register.

#### Frank Cochran

Cochran was a director and shareholder of an authorized financial advice firm with permission to advise on pensions, mortgages and investments.

In April 2018, Cochran was convicted of sexual assault, engaging in controlling and coercive behavior and an offence contrary to the Protection from Harassment Act 1997. These offences were committed whilst he was an approved person.

Cochran was sentenced to seven years' imprisonment and required to sign the sex offenders register.

#### **英国金融行为监管局因非金融不当行为禁止三人从事金融服务行业工作**

英国金融行为监管局（英国金管局）在认定 Russell David Jameson, Mark Horsey 和 Frank Cochran 不适合和不当在金融服务行业工作以后，禁止其从事金融服务行业的工作。这三个人在金融服务行业工作期间均被判决犯有严重的非金融可公诉罪行。

执法和市场监督执行总监 Mark Steward 表示：“英国金管局期望金融服务行业的从业人具备较高品格，符合正直、适格以及正当的标准并始终采取行动维持这些标准。”

#### Russell David Jameson

Jameson 曾在一家经授权公司担任财务顾问并被英国金管局批准可在该公司担任各种具有重大影响力和面向客户的职能。

2018 年 7 月，Jameson 因制作、存储和传播儿童不雅图像而被判犯有严重刑事罪行。2013 年 1 月至 2017 年 8 月间，Jameson 拍摄并存储了数千张儿童不雅照片，其中包括造成极其严重影响电影和图像。以上罪行是在 Jameson 获得批准从事金融服务工作后实施的。

Jameson 被判处五年徒刑，无限期地在性犯罪者登记册上署名，并被列入禁止与儿童或弱势成年人共事的个人名单。

#### Mark Horsey

Horsey 是一家经授权的金融咨询公司的独立董事和股东，该公司获准从事指定的投资业务（包括就投资交易提供咨询和安排）和保险分配。

2018 年 9 月，Horsey 违反了《2003 年性罪刑法令》，在未经同意的情况下偷窥并记录房客洗浴。以上罪行是在其获得批准从事金融服务工作后实施的。

Horsey 被判处有期徒刑 9 个月，缓刑 18 个月，必须完成 100 个小时的无薪工作和 25 天的康复活动，并必须签署性犯罪者登记册。

#### **Frank Cochran**

Cochran 是一家经授权的金融咨询公司的董事和股东，该公司获准就养老金、抵押和投资提供咨询。

2018 年 4 月，Cochran 被判性侵犯、参与控制和胁迫行为，并触犯了《1997 年保护免受骚扰法》。以上罪行是在其获得批准从事金融服务工作后实施的。

Cochran 被判处七年徒刑，并被要求在性犯罪者登记册上署名。

Source 来源:

<https://www.fca.org.uk/news/press-releases/fca-bans-three-individuals-working-financial-services-industry-non-financial-misconduct>

#### **Monetary Authority of Singapore Steps Up Enforcement Actions Against Market Abuse and Financial Misconduct**

The Monetary Authority of Singapore (MAS) has taken several strong actions against financial institutions (FIs) and individuals for market abuse, financial misconduct, and control breaches related to money laundering. In its Enforcement Report published on November 4, 2020, covering the period January 2019 to June 2020, MAS detailed various enforcement actions taken for breaches of MAS regulations and requirements.

MAS imposed S\$11.7 million in civil penalties and, together with the Attorney-General's Chambers, successfully secured the criminal convictions of nine individuals for market misconduct or related offences. MAS imposed S\$3.3 million in composition penalties for money laundering-related control breaches and issued 25 prohibition orders against unfit representatives.



The average time taken by MAS for completing its reviews and investigations has decreased. It has come down from 33 months to 24 months in criminal cases, and from 30 months to 26 months in civil penalty cases, compared against the previous reporting period.

MAS has stepped up its focus on early detection of market misconduct, working closely with various stakeholders. MAS and the Accounting and Corporate Regulatory Authority established a joint forum to facilitate the review and enforcement of accounting-related and disclosure issues. MAS and the Singapore Exchange jointly published a trade surveillance practice guide to help brokers implement good practices in their trade surveillance operations.

MAS will continue to strengthen its enforcement regime, as the nature of financial misconduct grows in sophistication and complexity. MAS will continually refine its processes and increasingly leverage technology to heighten effectiveness and efficiency in investigation.

MAS' enforcement priorities looking ahead include the following:

- pursue serious and complex cases of disclosure breaches;
- deepen capability to proactively detect potential mis-selling of financial products;
- continue to focus on FIs which lack rigorous systems and processes for combatting money laundering and countering terrorism financing;
- update enforcement-related powers to better detect, investigate, and take action against misconduct; and
- enhance focus on senior management accountability for breaches by their FIs or subordinates.

Ms. Peggy Pao, Executive Director (Enforcement), MAS said "Rigorous investigation and tough enforcement are necessary to deter financial misconduct, protect consumers, and maintain investor confidence. In the four years since we established a centralized Enforcement Department, MAS has deepened our enforcement capability and expertise. As our financial sector grows in scale and sophistication, a robust enforcement regime will be critical in sustaining Singapore's reputation as a trusted financial center."

#### 新加坡金融管理局加强针对市场滥用和金融不当行为的执法行动

新加坡金融管理局（新加坡金管局）已就与洗钱有关的金融市场滥用、不当、违规行为对金融机构和个人采取了多项有力的执法行动。在 2020 年 11 月 4 日发布的

2019 年 1 月至 2020 年 6 月的执法报告中，新加坡金管局详细介绍了针对违反金管局法规和要求的各种执法行动。

2019 年 1 月到 2020 年 6 月期间，新加坡金管局共收取了 1170 万美元民事罚款，与总检察长分庭一起成功将 9 名犯下市场不当行为或相关罪行的个人定下刑事罪，就与洗钱有关的违规行为收取了 330 万美元罚款，对存在不当行为的行业代表下达了 25 项禁令。

新加坡金管局完成审查和调查所需的平均时间也有所减少。与上一次报告统计的数据相比，刑事案件的处理时间从 33 个月减少到了 24 个月，民事案件从 30 个月减少到了 26 个月。

新加坡金管局已与各利益相关方密切合作，更多地关注到了如何在早期发现市场不当行为。新加坡金管局还与会计和公司监管局建立了联合论坛，以便审查和执行与会计有关的信息披露问题；与新加坡交易所联合发布了交易监督实践指南，帮助经纪商更好地履行交易监督义务。

随着金融不当行为的复杂程度日益增加，新加坡金管局将继续加强执法制度，不断完善流程，更多地利用技术来提高调查的有效性和效率。

新加坡金管局未来的 6 个执法重点包括：

- 查处严重、复杂的信息披露违规案件；
- 增强主动发现金融产品潜在误售可能性的能力；
- 继续密切关注严重缺乏反洗钱、反恐怖主义融资制度和流程的金融机构；
- 更新相关执法权力，更好地探测、调查、采取执法行动打击不当行为；
- 加强追究对金融机构或下属违规行为负有责任的高管人员。

新加坡金管局执行董事 Peggy Pao 女士表示：“严格的调查和执法对于阻止金融不当行为、保护投资者、维护投资者信心来说是必不可少的。在成立中央执法部门之后的 4 年间，金管局提高了执法能力和专业知识。随着金融行业规模的扩大和复杂程度的提升，强有力的执法制度对于维护新加坡金融中心的声誉至关重要。”

Source 来源:

<https://www.mas.gov.sg/news/media-releases/2020/mas-steps-up-enforcement-actions-against-market-abuse-and-financial-misconduct>

#### Bank Indonesia and Monetary Authority of Singapore Extend Bilateral Financial Arrangement



On November 5, 2020, Bank Indonesia (BI) and the Monetary Authority of Singapore (MAS) announced the extension of the USD10 billion bilateral financial arrangement for another year. This extension has been endorsed by Indonesian President Joko Widodo and Singapore Prime Minister Lee Hsien Loong and will support monetary and financial stability in both countries amid the COVID-19 pandemic.

The arrangement comprises two agreements:

- A local currency bilateral swap agreement that allows for the exchange of local currencies between the two central banks of up to SGD9.5 billion or IDR100 trillion (about USD7 billion equivalent); and
- A bilateral repo agreement of USD3 billion that allows for repurchase transactions between the two central banks to obtain USD cash using G3 Government Bonds as collateral.

The bilateral financing arrangement was established in November 2018, following the Singapore-Indonesia Leaders' Retreat, where the leaders asked BI and MAS to establish the arrangement to build confidence in each other's economies. The arrangement was extended for a year in November 2019.

#### 新加坡金融管理局与印尼银行扩大双边金融合作

新加坡金融管理局（新加坡金管局）于 2020 年 11 月 5 日发布公告称，将与印度尼西亚银行的 100 亿美元双边金融合作的期限延长一年。此次延期已得到印度尼西亚总统 Joko Widodo 和新加坡总理 Lee Hsien Loong 的批准认可。当局认为，此次决定将在新型冠状病毒大流行期间为稳定两国货币和金融发挥一定作用。

合作包括两项协议：

- 本币双边互换协议，该协议允许两国中央银行之间进行高达 95 亿新元或 100 万亿印尼盾（约合 70 亿美元）的本币兑换；及
- 30 亿美元的双边回购协议，该协议允许两国中央银行之间进行回购交易，以 G3 政府债券作为抵押品获得美元现金。

双边金融合作是于 2018 年 11 月建立的，紧随新加坡-印度尼西亚双边领导人非正式峰会之后，领导人在峰会上要求印度尼西亚银行和新加坡金管局建立合作安排以建立彼此的经济信心。该合作安排已于 2019 年 11 月延长一年期限。

Source 来源:

<https://www.mas.gov.sg/news/media-releases/2020/bank-indonesia-and-monetary-authority-of-singapore-extend-bilateral-financial-arrangement>

#### Monetary Authority of Singapore Launches Productivity Solutions Grant to Help Small Financial Institutions Adopt Digital Solutions for Data Reporting

On November 9, 2020, the Monetary Authority of Singapore (MAS) announced the launch of a S\$35 million Productivity Solutions Grant (PSG) for the financial services sector to help smaller financial institutions adopt digital solutions for more streamlined data reporting to MAS. The grant is currently applicable to banks and will be subsequently expanded to include insurers and capital market intermediaries.

The PSG provides funding support for smaller financial institutions to adopt regulatory reporting solutions from pre-approved managed service providers. These technologies will facilitate more efficient processes for the preparation and submission of data, in line with regulatory requirements. Please refer to the Annex for the list of pre-approved managed service provider solutions.

The PSG will co-fund up to 30% of qualifying expenses for the adoption of digital solutions from the pre-approved managed service solution providers, capped at S\$250,000 per project for banks. Eligible banks can now apply for funding via the Business Grants Portal.

This grant is part of MAS' recent initiatives to support smaller financial institutions in their efforts to improve productivity. Smaller financial institutions that wish to adopt digital solutions outside of regulatory reporting can consider the Digital Acceleration Grant (DAG). Please refer to the MAS website for more information about the DAG.

Mr. Sopnendu Mohanty, Chief FinTech Officer, MAS, said, "The co-funding support for the adoption of regulatory reporting solutions will help smaller financial institutions leverage technology to better meet regulatory obligations. There are now a range of grant schemes specific to smaller financial institutions. Together, these schemes provide strong support for these financial institutions to adopt solutions that improve their operational capabilities in various domains."

#### 新加坡金融管理局推出生产力解决方案补助金计划以帮助小型金融机构采用数字化数据报告

2020 年 11 月 9 日，新加坡金融管理局（新加坡金管局）宣布推出 3500 万新元的金融服务行业生产力解决方案补助金计划（PSG），帮助较小的金融机构采用更加便捷

的数字化方式向新加坡金管局报告数据。该项拨款目前适用于银行，随后将扩大到保险公司和资本市场中介机构。

PSG 为规模较小的金融机构提供资金支持，帮助它们采用预先批准的管理服务提供商提供的监管报告解决方案。这些技术将有助于提高编制和提交数据的效率，以符合监管要求。

PSG 将为预批准的托管服务解决方案提供商采用数字解决方案提供最多 30% 的合格费用共同资助，银行每个项目的最高费用为 25 万新元。符合条件的银行现在可以通过商业资助门户网站申请资金。

这项补助金是新加坡金管局最近支持小型金融机构努力提高生产力的举措之一。希望在监管报告之外采用数字解决方案的小型金融机构可以考虑数字加速拨款。有关 DAG 的更多信息，请查阅新加坡金管局网站。

新加坡金管局首席金融科技官 Sopnendu Mohanty 先生表示：“为采用监管报告解决方案提供联合资助，将帮助小型金融机构利用技术更好地履行监管义务。现在有一系列专门针对小型金融机构的资助计划。这些计划共同为这些金融机构采用提高各领域运营能力的解决方案提供了有力支持。”

Source 来源:

<https://www.mas.gov.sg/news/media-releases/2020/35-million-grant-to-help-small-fis-adopt-digital-solutions-for-data-reporting>

### **Singapore Exchange Expands Clearing Relationship with CME Group, Adding Pan-Asia Benchmark Equity Derivatives to Mutual Offset Link**

- SGX further broadens shelf of pan-Asia benchmark equity derivatives
- SGX and CME Group will offer FTSE Emerging Market and FTSE China H50 futures on their Mutual Offset System

Singapore Exchange (SGX) is expanding the scope of its unique Mutual Offset System (MOS) with CME Group, offering global investors unmatched, round-the-clock access to trade and clear on the leading derivatives marketplaces in Asia and the United States. SGX on November 23, 2020 will launch five new regional and single-country futures contracts based on Net Total Return and Price Return indices calculated by FTSE Russell, further broadening its shelf of pan-Asia benchmark equity derivatives.

Of these, the SGX FTSE Emerging Market and SGX FTSE China H50 Price Return futures are planned to be available for MOS from the first half of 2021. The

effective date will be announced in due course upon fulfilment of the necessary rule amendment procedures. CME Group and SGX will align the contract specifications on each exchange, enabling international customers to transfer positions from one venue to the other for maximum flexibility and efficiency in managing portfolio risk.

Singapore International Monetary Exchange or SIMEX, which became part of SGX, pioneered the revolutionary MOS alongside the Chicago Mercantile Exchange in 1984. The landmark clearing link has grown to become one of the world's most successful and longest-running derivatives collaborations between global exchanges.

Michael Syn, Senior Managing Director and Head of Equities at SGX, said, “We are delighted to be standing together with CME Group at the forefront of serving international investors with true round-the-clock trading and clearing. This Mutual Offset System continues to be a unique link offering unrivalled access to our participants. At the same time, the introduction of new products with FTSE Russell further enhances our total Asian waterfront of risk-management solutions.”

Tim McCourt, Global Head of Equity Index and Alternative Investment Products at CME Group, said, “We are pleased to further strengthen our relationship with SGX through the expansion of this Mutual Offset System. This will enhance our offering in terms of providing our mutual customers the platform to manage their overnight risks in an effective and timely manner and giving them greater access to the combined liquidity of both SGX and CME Group in a single marketplace.”

Waqas Samad, CEO FTSE Russell and Group Director, Information Services, LSEG, said, “This collaboration will enhance global access for investors wishing to the trade and clear Asian equity derivatives outside of the region and bolster liquidity across products. Working closely with SGX, the addition of five new index futures contracts reflects our joint commitment to meeting investor demand for equity derivative and options trading as well as ETFs across Asia Pacific. As highly liquid multi-asset derivatives exchanges, both SGX and CME Group continue to play an important role in the creation of global risk management products centered on FTSE Russell index futures.”

SGX FTSE Equity Net Total Return (NTR) Index Futures launching on November 23, 2020:

- SGX FTSE Emerging Market NTR (USD) Index Futures
- SGX FTSE Japan NTR (USD) Index Futures
- SGX FTSE New Zealand NTR (USD) Index Futures

SGX FTSE Equity Price Return Index Futures launching on November 23, 2020, targeted to be made available for MOS from the first half of 2021:

- SGX FTSE Emerging Market (USD) Index Futures
- SGX FTSE China H50 (USD) Index Futures

**新加坡交易所与芝加哥商品交易所集团扩大清算关系，将泛亚基准股票衍生品纳入相互冲销结算系统**

- 新交所进一步拓展泛亚基准股票衍生品架构
- 新交所和芝加哥商品交易所集团将富时新兴市场和富时中国 H50 期货纳入双方的相互冲销结算系统

新加坡交易所（新交所）正与芝加哥商品交易所集团（芝商所）扩大双方特有的相互冲销结算系统的范围，为全球投资者提供独特且全天候的连接，以交易和清算亚洲和美国主要衍生品市场。

新交所将于 2020 年 11 月 23 日推出 5 份全新基于富时罗素计算的净总收益和价格回报指数的区域和单一国家期货合约，进一步拓展泛亚基准股票衍生品架构。

其中，新交所富时新兴市场和富时中国 H50 价格回报期货计划在 2021 年上半年可以被纳入相互冲销结算系统。生效日期将在履行必要的规则修正程序后适时公布。芝商所和新交所将调整双方的合约规范，使国际客户能够将头寸从一家交易所转移至另一家交易所，以最大限度地提高资产组合风险管理的灵活性和效率。

新加坡国际金融交易所（已成为新交所的一部分）于 1984 年与芝商所一起开创了革命性的相互冲销结算系统。这一里程碑式的清算系统已发展成为全球交易所之间最为成功、持续时间最长的衍生品合作之一。

新交所股权部主管 Michael Syn 表示：“我们十分荣幸能与芝商所一起站在行业前沿，为国际投资者提供真正全天候的交易和清算服务。这种相互冲销结算系统作为一个特有的纽带，持续为我们的参与者提供市场独有的渠道。此外，新交所与富时罗素共同推出的新产品进一步提升了我们在整个亚洲地区的风险管理解决方案。”

芝商所股票指数和另类投资产品全球主管 Tim McCourt 表示：“我们十分高兴通过扩充相互冲销结算系统，进一步加强我们与新交所的合作伙伴关系。这将进一步提升我们的服务水平，为我们的共同客户提供及时、有效的隔夜风险管理平台，并使他们能够在单一市场获得新交所和芝商所的双重流动性。”

伦敦证券交易所集团信息服务集团董事暨富时罗素首席执行官 Waqas Samad 表示：“这一合作将为希望在亚洲以外地区交易和清算亚洲股票衍生品的投资者提供增强

的全球连接，并增强产品流动性。我们与新交所密切合作，新增了五只指数期货合约，这反映了我们致力于满足亚太地区投资者对股票衍生品和期权交易以及交易所买卖基金（ETFs）的需求。作为高流动性的多元资产衍生品交易所，新交所和芝商所将在以富时罗素指数期货为核心的全球风险管理产品开发中继续发挥重要作用。”

2020 年 11 月 23 日即将推出的新交所富时股票净总收益指数期货：

- 新交所富时新兴市场净总收益（美元）指数期货
- 新交所富时日本净总收益（美元）指数期货
- 新交所富时新西兰净总收益（美元）指数期货

新交所富时股票价格回报指数期货将于 2020 年 11 月 23 日推出，计划从 2021 年上半年起纳入相互冲销结算系统：

- 新交所富时新兴市场（美元）指数期货
- 新交所富时中国 H50（美元）指数期货

Source 来源：

<https://www.sgx.com/media-centre/20201109-sgx-expands-clearing-relationship-cme-group-adding-pan-asia-benchmark-equity>

### **Ant Group Co., Ltd. Decides to Suspend its Listing on the Science and Technology Innovation Board**

On August 25, 2020, the application filed by Ant Group Technology Co., Ltd. (the "Ant Group") for an initial public offering was accepted by the Science and Technology Innovation Board (the "STAR Market"), reviewed and approved by the Listing Committee of the STAR Market on September 18, 2020 and registered with the China Securities Regulatory Commission (the "CSRC") on September 23, 2020. According to its initial public offering plan, the Ant Group applied for listing on the STAR Market of the Shanghai Stock Exchange (the "SSE") on November 5, 2020.

However, on November 2, 2020, the actual controller (Jack Ma), the executive Chairman (Eric Xiandong JING), and the Chief Executive Officer (Simon Xiaoming Hu) of the Ant Group were summoned to a joint regulatory interview by the relevant regulators, the People's Bank of China, the China Banking and Insurance Regulatory Commission, the CSRC and the State Administration of Foreign Exchange. On November 3, 2020, the SSE issued the "Decision to Suspend the Listing of Ant Group Co., Ltd. on the STAR Market" to suspend the listing of Ant Group. Subsequently, on November 3, 2020, the Ant Group and its lead underwriters jointly announced that they decided to suspend the issuance of stocks to be listed on the STAR Market of the SSE, and announced the suspension of listing on the Stock Exchange of Hong



Kong Limited on the same day. Furthermore, the Ant Group and its lead underwriters have therefore reached consensus to refund IPO subscription funds to all online, offline and strategic investors, with the process starting from Friday, November 6, 2020.

On November 4, 2020, the spokesperson of the CSRC made the following answers in response to the questions of the Ant Group's suspension of listing, which are "the SSE's decision to suspend the Ant Group's listing on the STAR Market was made in accordance with applicable laws and regulations. The recent regulatory interview with the Ant Group by relevant regulators and changes in the regulatory environment of fintech businesses may have a material impact on the Ant Group's business structure and profit model, which constitutes material issues at pre-listing stage. Sticking to the principles of protecting the legitimate rights of investors, ensuring comprehensive, transparent, and accurate information disclosure, and safeguarding the integrity of the market, the SSE decided to suspend the listing pursuant to relevant regulations for the registration-based IPO regime. The CSRC supports this decision made by the SSE according to laws and regulations. In the meantime, we have been communicating and collaborating with the Securities and Futures Commission of Hong Kong and securities regulators in major overseas markets to jointly handle the follow-up work in a proper manner. Avoiding a hasty listing against significant change in regulatory environment is in line with the responsibilities of market regulators towards investors and markets and demonstrates respect for the market and the rule of law. It is our belief that, in the long run, this decision will certainly enhance sound development of China's capital markets and build stronger trust and confidence of domestic and overseas investors in them."

#### 蚂蚁集团科技股份有限公司决定暂缓在科创板的发行上市

2020年8月25日，蚂蚁集团科技股份有限公司（下称“蚂蚁集团”）申请首次公开募股获得科创板受理，9月18日获得科创板股票上市委员会审核通过，并于9月23日获得中国证券监督管理委员会（下称“中国证监会”）注册。依据首次公开募股计划，蚂蚁集团申请于2020年11月5日在上海证券交易所（下称“上交所”）科创板上市。

但于2020年11月2日，中国人民银行、中国银行保险监督管理委员会、中国证监会、国家外汇管理局等四部门联合对蚂蚁集团实际控制人马云、董事长井贤栋、总裁胡晓明进行了监管约谈。随后于2020年11月3日，上交所发布《关于暂缓蚂蚁科技集团股份有限公司科创板上市的决定》，决定暂缓蚂蚁集团暂缓上市。2020年11月3日，蚂蚁集团及其联席主承销商联合公告，决定暂缓发行拟在上交所科创板上市交易的股票，并于同日

宣布暂缓在香港联合交易所有限公司上市。且其拟于2020年11月6日启动退回A股网上、网下申购资金及战略投资者缴纳的认购资金等款项。

2020年11月4日，中国证监会新闻发言人就蚂蚁集团暂缓上市答记者问中作出以下回答，“蚂蚁集团暂缓科创板上市是上交所依法依规做出的决定。金融监管部门的监管约谈和近期金融科技监管环境的变化，可能对蚂蚁集团业务结构和盈利模式产生重大影响，属于上市前发生的重大事项。本着保护投资者合法权益，充分透明准确披露信息，切实维护市场公平公正的原则，上交所依据科创板注册管理办法相关规定作出了暂缓蚂蚁集团上市的决定。中国证监会支持上海证券交易所依法依规做出的决定，同时，与香港证券及期货事务监察委员会和一些境外主要市场的证券监管机构保持沟通协作，共同稳妥做好后续工作。避免蚂蚁集团在监管政策环境发生重大变化的情况下仓促上市，是对投资者和市场负责任的做法，体现了敬畏市场、敬畏法治的精神。相信这一决定将有利于资本市场长远发展，有利于增强境内外投资者的信任和信心。”

Sources 来源:

[http://www.sse.com.cn/home/apprelated/news/c/c\\_20201103\\_5253315.shtml](http://www.sse.com.cn/home/apprelated/news/c/c_20201103_5253315.shtml)

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202011/t20201104\\_385641.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202011/t20201104_385641.html)

#### Jiangsu Yabaite Technologies Co., Ltd. Commits the Crime of Illegal Disclosure of Important Information

##### Background

From 2015 to September 2016, Jiangsu Yabaite Technology Co., Ltd. ("Jiangsu Yabaite") inflated its financial performance and implemented financial fraud by fabricating overseas engineering construction projects, construction material export trade, domestic construction material trade and other means. In order to achieve the purpose of fictitious performance, Jiangsu Yabaite adopted the measures of forging project schedules, labor cost calculation sheets, material costs and other related materials, creating false appearances of importing and exporting materials and goods, concluding purchase and sales contracts without real demands, forging relevant vouchers and arranging the funds transfer to form circulation. During the period involved in this case, Jiangsu Yabaite inflated business revenue of approximately CNY580 million and profit of approximately CNY260 million in total, with false records in relevant periodic reports.

##### Processing results



During the hearing of this case, the party concerned, Jiangsu Yabaite, claimed that the existing evidence was insufficient to prove that the relevant business of it was false, and relevant responsible persons requested no punishment or mitigated punishment on the grounds that they were not involved, unaware, did not take charge of the affairs or could not find the violation even though they diligently performed their duties. After reviewing the case, the China Securities Regulatory Commission (the "CSRC") held that the materials provided by the relevant regulatory authorities for assistance in the investigation, the evidence of relevant fund transfers and the records of relevant personnel have formed a chain of evidence that is sufficient to prove the existence of the illegal facts. According to the "Securities Law of the People's Republic of China" revised in 2005 (the "2005 Securities Law"), the directors, supervisors and senior managers of listed companies shall ensure that the information disclosed by the listed company is true, accurate and complete. Directors, supervisors and senior managers of listed companies shall take the initiative to act faithfully and diligently towards the company. Once there is any false record in the relevant periodic report, the party concerned shall prove that he/she has performed his/her duties diligently, and shall not be exempted from liability only on the ground of no participation, no knowledge, no responsibility in charge and etc. In December 2017, the CSRC made the decision of administrative penalty and the decision of denying market access, identifying that the above mentioned acts of Jiangsu Yabaite violated the provisions of Articles 63 and 68 of the 2005 Securities Law and constituting the acts set forth in Paragraph 1 of Article 193 of the 2005 Securities Law. The CSRC decided to order Jiangsu Yabaite to make corrections, send a warning, and impose a fine of CNY600,000. Moreover, Mr. Lu, the chairman and the general manager of Jiangsu Yabaite was given a warning and imposed a fine of CNY300,000 while other responsible persons were given a warning and imposed a fine of CNY30,000 to CNY300,000 respectively. At the same time, Mr. Lu was subject to a lifelong ban on entry into the securities market and a ban on entry into the securities market for three to five years respectively for other persons.

The CSRC transferred the clues of the suspected crimes of Mr. Lu and Mr./ Mrs. Li to the public security organizations. In April 2019, the People's Procuratorate of Yancheng City, Jiangsu Province commenced a public prosecution at the court with regard to Mr. Lu and Mr./ Mrs. Li that were suspected of committing the crime of illegal disclosure of important information.

In August 2019, the Intermediate People's Court of Yancheng City, Jiangsu Province rendered a judgment and sentenced Mr. Lu to 9 months' imprisonment, suspended for 1-year and fined CNY 150,000 for committing the crime of illegal disclosure of important information while Mr./ Mrs. Li was sentenced to six

months' imprisonment, suspended for 1-year and fined CNY 100,000 for the same reason.

#### Educational significance of the case

1. The international enforcement coordination mechanism plays an active role in investigating and punishing cross-border illegal cases on the capital market. Under the international enforcement coordination mechanism, evidence provided by an overseas agency with law enforcement power is essentially a form of realization of the enforcement power of administrative law. Its authenticity and legality can be directly confirmed, which could be served as the basis for the CSRC to impose penalties. This case is a typical cross-border financial fraud case with complicated and concealed methods, making it difficult to investigate and deal with. The CSRC obtained relevant evidences through securities regulatory agencies in the United States, Pakistan, and Hong Kong, which provided important support for the investigation and handling of the case. The investigation and handling of this case shows that no matter where it is listed or how its business is carried out, a listed company should strictly abide by the laws and regulations of the relevant market and fulfill its information disclosure obligations truthfully, accurately and completely. At the same time, the CSRC will, as always, strengthen the supervision of information disclosure of listed companies and consolidate the foundation of honesty in the capital market.
2. The multi-dimensional accountability for administrative, criminal and civil violations increases the costs of violations in the capital market. After issuing the administrative penalty, the CSRC transferred the suspected criminal subject to the public security organs, and the persons involved in the case, Mr. Lu and Mr./ Mrs. Li, was investigated for criminal responsibility in accordance with the law. At the same time, Jiangsu Yabaite also assumed a huge amount of civil compensation for the damaged investors. The Securities Law revised in 2019 (the New Securities Law) further increased penalties and optimized the civil compensation litigation mechanism, which greatly increased the cost of violations of the capital market, which is conducive to supervising and urging listed companies to operate in accordance with the law and to perform information disclosure obligations conscientiously to strengthen the cornerstone of the capital market.
3. Investigate the responsibility of agencies in accordance with laws and urge them to return to their positions and perform their duties. With the continuous deepening of the reform of the registration-based IPO system in China's capital

market, strengthening the supervision of agencies and urging them to return to their positions are essential for the formation of a good self-discipline mechanism in the capital market. While investigating and punishing the information disclosure-related offenses involved in the case, the CSRC actively performed the duty of "dual investigation for one case", and legally punished the financial consultancy institutions which are responsible for ongoing supervision and the accounting firms which perform the duty of auditing annual reports for their failure to perform their duties diligently. It warns that the relevant agencies shall carry out the relevant work comprehensively and prudently in accordance with the requirements of the laws and regulations and shall assume the corresponding legal liability if the documents issued by them contain false records.

## 江苏雅百特科技股份有限公司信息披露违法案

### 基本案情

2015年至2016年9月，江苏雅百特科技股份有限公司（下称“江苏雅百特”）通过虚构境外工程建设项目、虚构建材出口贸易、以及虚构国内建材贸易业务等方式虚增业绩，实施财务造假。为实现虚构业绩的目的，江苏雅百特采取了伪造工程进度单、人工成本计算单、材料成本等相关资料，制造材料和货物进出口假象，签订无真实需求的购销合同并伪造有关凭证，安排公司转账形成资金循环。涉案期间，江苏雅百特共虚增营业收入约5.8亿元，虚增利润约2.6亿元，相关定期报告存在虚假记载。

### 处理结果

本案听证期间，当事人江苏雅百特主张，现有证据不足以证明公司相关业务虚假；有关责任人员提出未参与、不知情、不分管或已勤勉尽责仍不能发现违法等理由，请求不予处罚或减轻处罚。中国证券监督管理委员会（下称“证监会”）复核认为：相关监管机关协查提供材料、有关资金往来、有关人员笔录等已形成证据链，足以证明违法事实成立。依据2005年修订的《中华人民共和国证券法》（下称2005年《证券法》），上市公司董事、监事和高级管理人员应当保证上市公司所披露的信息真实、准确、完整。对公司忠实、勤勉是上市公司董事、监事、高级管理人员应当主动作为的积极义务，一旦有关定期报告存在虚假记载，有关人员应当证明其已勤勉尽责，不能仅凭未参与、不知情、不分管等理由免除责任。2017年12月，证监会作出行政处罚决定和市场禁入决定，认定江苏雅百特的上述行为违反2005年《证券法》第六十三条、第六十八条的规定，构成2005年《证券法》第一百九十三条第一款所述行为。证监会决定，对江苏雅百特责令改正，给予警告，并处以60万

元罚款；对时任董事长、总经理陆某给予警告，并处以30万元罚款；对其他责任人员给予警告，并分别处以3万元至30万元的罚款。同时，对陆某采取终身证券市场禁入措施；对其他部分责任人员分别采取3年至5年证券市场禁入措施。

证监会将陆某、李某涉嫌犯罪线索移送公安机关。2019年4月，江苏省盐城市人民检察院以陆某、李某松涉嫌违规披露重要信息罪向法院提起公诉。2019年8月，江苏盐城市中级人民法院作出判决，判决陆某犯违规披露重要信息罪，判处有期徒刑9个月，缓刑1年，并处罚金15万元；李某犯违规披露重要信息罪，判处有期徒刑6个月，缓刑1年，并处罚金10万元。

### 典型意义

1. 国际执法协作机制在查处资本市场跨境违法案件中发挥着积极作用。在国际执法协作机制下，由境外具有执法权的机构所提供的证据，本质是行政执法权的一种实现形式，其真实性和合法性可以直接确认，可以作为证监会作出处罚的依据。本案是一起典型的跨境财务造假案件，手段复杂隐蔽，查处难度较大。证监会通过美国、巴基斯坦、香港等证券监管机构获取了有关证据，为案件查处提供了重要支持。本案的查处表明，上市公司不管在何地上市，不管业务如何开展，都应当严格遵守相关市场的法律和规则，真实准确完整地履行信息披露义务。同时，证监会也将一如既往强化上市公司信息披露监管，夯实资本市场诚信基础。
2. 行政、刑事、民事立体追责，提高资本市场违法成本。本案行政处罚作出后，证监会将涉嫌犯罪主体移送公安机关，涉案人员陆某和李某被依法追究刑事责任。同时，江苏雅百特也承担了对受损投资者的巨额民事赔偿。2019年修订的《证券法》（下称新《证券法》）通过进一步加重处罚力度，优化民事赔偿诉讼机制，大幅提高了资本市场违法违规成本，有利于督促上市公司依法规范运作，认真履行信息披露义务，不断夯实资本市场基石。
3. 依法追究中介机构责任，督促资本市场“看门人”归位尽责。随着中国资本市场发行注册制改革的不断深化，加强对中介机构的监管，督促其归位尽责，对于形成资本市场良好的自我约束机制至关重要。证监会对本案信息披露违法行为进行查处的同时，积极履行“一案双查”职责，对负有持续督导责任的财务顾问机构和履行年报审计职责的会计师事务所未勤勉尽责行为依法进行了处罚。警示有关中介机构应当按照法律法规的要求，全面、审慎开展相关工作，若出具的文件存在虚假记载，则需承担相应的法律责任。

Source 来源:

[http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202011/t20201106\\_385807.html](http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/202011/t20201106_385807.html)

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### **Shanghai Stock Exchange Responds to Questions from the Press on Guidelines No.1 on the Application of Securities Trading Rules of the Shanghai Stock Exchange for Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors**

On 30 October 2020, under the approval of the China Securities Regulatory Commission (CSRC), the Shanghai Stock Exchange (SSE) officially published the Guidelines No.1 on the Application of Securities Trading Rules of the Shanghai Stock Exchange for Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (the QFII and RQFII Guidelines for short), which will take effect on November 1st, 2020. The Shanghai Stock Exchange (the "SSE") responded to questions from the press on the publication.

Question 1 : What is the background to this revision of rules?

Answers 1: The Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) schemes were implemented in 2002 and 2011 respectively. These two schemes have played a positive role in introducing long-term investment funds from overseas, improving investor structure, and promoting sound development of the domestic capital market.

In recent years, China's capital market has been steadily opening up both ways, and institutional and international participation in A share investment has been continuously improving. In order to achieve higher level of openness of the capital market and to further improve the QFII and RQFII schemes, the CSRC revised and integrated the Measures for the Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors, the Measures for the Pilot Program of Domestic Securities Investment by RMB Qualified Foreign Institutional Investors and associated rules, leading to the publication of the Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors and the Provisions on Issues Concerning the Implementation of the Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors.

Thus, the SSE made revisions to relevant business rules accordingly, and published the QFII and RQFII Guidelines in order to align with the revision of higher-level regulations by the CSRC. These revisions will contribute positively to improving the openness of the domestic capital market, satisfying market needs, and promoting coordinated development of different channels of opening up.

Question 2: What are the major changes in the QFII and RQFII Guidelines published by the SSE?

Answers 2: The major changes in the QFII and RQFII Guidelines include these six aspects:

The first is to expand the scope of investment. In addition to the products already available, qualified foreign investors can invest in depository receipts, stock options, government-backed bonds, etc. At the same time, qualified foreign investors are allowed to participate in margin trading, securities borrowing and lending, and bond repurchase.

The second is to modify the information reporting requirements. In order to further reduce the burden of information reporting for market entities, the requirements for information reporting have been revised, the basic reporting obligations of relevant entities have been stipulated, and business guidelines have been formulated accordingly.

The third is to adjust the initial notification threshold of shareholding by foreign investors. When the proportion of the total A-share stocks of a single listed company held by all foreign investors collectively reaches or exceeds a certain percentage, the SSE will announce the total number and percentage of stocks of the company held by foreign investors. The initial notification threshold will be lowered from 26% to 24%.

The fourth is to optimize matters related to holding and closing positions. This revision improves the related handling methods in case the collective shareholding of foreign investors passively exceeds 30% of all stocks of a listed company, adjusts the order in which positions are closed when the total shareholding of foreign investors exceeds the limit, and clarifies the circumstances under which foreign investors can apply to continue to hold relevant shares after being notified to reduce their shareholding.

The fifth is to improve the relevant rules for non-trade transfers. It is clarified that qualified foreign investors shall conduct negotiated transfer of shares of listed companies according to relevant business rules. Newly added qualified foreign investors may conduct non-trade transfers of securities in accordance with the relevant rules of securities depository and clearing institutions.



The sixth is to strengthen continuous supervision. The revision clarifies the information disclosure obligations of qualified foreign investors and foreign investors under their names and specifies the requirements for information disclosure. It also strengthens the obligations for commissioned securities and futures companies to manage the trading conduct of qualified foreign investors and their clients.

**Question 3:** After the revision, the initial notification threshold of shareholding by foreign investors is lowered to 24% from the previous 26%. What are the major considerations for this adjustment?

**Answers 3:** According to relevant regulations, the total shareholding by foreign investors of the A shares or domestic shares of a single listed company may not exceed 30% of the total shares of that company. As a reminder that foreign shareholding is close to the limit, the SSE has set up the initial notification threshold.

In recent years, with the inclusion of A shares into MSCI, FTSE Russell and other major international indices, foreign investors are more enthusiastic about and confident in investing in A shares. Through SSE's communications, many foreign investors and financial institutions expressed the hope to keep up with the level of foreign shareholding in listed companies, so as to have sufficient time to make adjustments.

With the guidance from the CSRC, the SSE conducted feasibility studies in this regard. As a measure to facilitate trading, the initial notification threshold of foreign shareholding is lowered from 26% to 24%, i.e. when all foreign investors collectively hold 24% or more of the total A-share stocks of a single listed company, the SSE will, before the market open of the next trading day, announce on its website the total number and percentage of stocks of the company held by foreign investors.

During the course of opening-up of China's capital market, the SSE will, with the guidance from the CSRC, continue to pay attention to the demand of foreign investors, upgrade SSE's investor services, improve the capital market system and rules, and facilitate the participation of foreign investors in the A share market.

**上海证券交易所就《上海证券交易所证券交易规则适用指引第 1 号——合格境外机构投资者和人民币合格境外机构投资者》答记者问**

2020 年 10 月 30 日，经中国证监会批准，上海证券交易所（下称“上交所”）正式发布《上海证券交易所证券交易规则适用指引第 1 号——合格境外机构投资者和人民币合格境外机构投资者》（以下简称《QFII、RQFII 指

引》），自 11 月 1 日起施行。就《QFII、RQFII 指引》的发布情况，上交所相关负责人回答了记者的提问。

一、请介绍一下本次规则修订的主要背景？

合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII）制度分别于 2002 年和 2011 年落地实施。这两项制度在引入境外长期资金、优化投资者结构、促进资本市场健康发展等方面发挥了积极作用。

近年来，中国资本市场双向开放不断扩大，A 股投资者机构化及国际化水平不断提升。为实施资本市场更高水平对外开放，进一步优化完善 QFII、RQFII 制度，中国证监会对《合格境外机构投资者境内证券投资管理暂行办法》及其配套规则、《人民币合格境外机构投资者境内证券投资试点办法》及其配套规则进行了修订整合，形成了《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理暂行办法》和《关于实施〈合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理暂行办法〉有关问题的规定》。

在此背景下，上交所对相关业务规则进行了相应的修订，发布了《QFII、RQFII 指引》，以衔接中国证监会上位规章修订。本次修订对提高资本市场对外开放水平，满足市场需求，促进不同开放渠道协调发展具有积极意义。

二、请介绍一下上交所发布《QFII、RQFII 指引》的主要修订内容？

《QFII、RQFII 指引》主要修订内容包括以下六方面：

一是扩大投资范围。除原有品种外，合格境外投资者可投资于存托凭证、股票期权、政府支持债券等；同时，允许合格境外投资者参与融资融券交易、转融通证券出借交易以及债券回购交易。

二是修改信息报送要求。为进一步减轻市场主体信息报送负担，对信息报送要求作了修改，规定了相关主体的基本报送义务，并同时制定了配套指南。

三是调整外资持股初始披露比例。全部境外投资者合计持有同一上市公司 A 股股份达到或超过一定比例时，上交所将公布其已持有该公司股份的总数及占公司股份总数的比例。初始披露比例由 26% 下调至 24%。

四是优化持仓与平仓相关事项。本次修订进一步完善了境外投资者合计持股比例被动超过 30% 情形的相关处理方式，优化了境外投资者合计持股超过限定比例时的平仓顺序，明确了被通知减持后可申请继续持有相关股份的情形。



五是完善非交易过户相关规定。明确合格境外投资者按照上市公司股份协议转让相关业务规则，办理协议转让所持上市公司股份；新增合格境外投资者可以按照证券登记结算机构的有关规定，办理证券非交易过户相关情形。

六是加强持续监管。明确合格境外投资者及其名下的境外投资者的信息披露相关职责，完善信息披露具体要求；强化受托证券期货经营机构对合格境外投资者的客户交易行为管理职责。

三、在本次修订后，外资持股初始披露比例从 26% 下调至 24%。请介绍一下该项调整主要出于什么考虑？

根据相关规定，所有境外投资者持有单个上市公司 A 股或境内挂牌股份的总和，不得超过该公司股份总数的 30%。为提示境外投资者持有单个上市公司股份的比例即将达到上限，上交所设置了外资持股初始披露比例。

近年来，随着 A 股纳入 MSCI、富时罗素等国际重要指数，境外投资者投资 A 股的热情和信心不断增强。在与境外投资者和金融机构交流的过程中，不少投资者和机构提出，希望可以及时了解外资对上市公司整体持股水平，以便有更充分的时间做出反应。

上交所在中国证监会的指导下，对相关意见建议进行了可行性研究。作为提升交易便利性的一项举措，现将外资持股初始披露比例由 26% 调整至 24%，即当全部境外投资者持有单个上市公司 A 股股份合计达到或超过该公司股份总数的 24% 时，上交所将于次一交易日开市前通过上交所官网公布其持股总数及占公司股份总数的比例。

在中国资本市场持续对外开放的过程中，上交所将在中国证监会的指导下继续关注境外投资者需求，不断提升投资者服务，持续完善资本市场制度规则，提升外资参与 A 股市场的便利程度。

Source 来源：

[http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c\\_20201030\\_5250820.shtml](http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20201030_5250820.shtml)

### **Shenzhen Stock Exchange Revises and Releases Implementation Rules for QFIIs and RQFIIs to Further Promote High-level Opening-up of the Capital Market**

On October 30, 2020, with the approval of China Securities Regulatory Commission (“CSRC”), Shenzhen Stock Exchange (SZSE) released the new revised edition of the Implementation Rules on Securities Trading of Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors on the

Shenzhen Stock Exchange (the “Implementation Rules”), effective from November 1, 2020.

The rules for qualified foreign institutional investors (QFIIs) and RMB qualified foreign institutional investors (RQFIIs) (collectively called “qualified foreign investors”) were put in place in 2002 and 2011 respectively. The two rules have played a positive role in introducing overseas long-term funds, optimizing the investor structure and promoting healthy development of the Chinese capital market. To better meet foreign investors’ demands and promote coordinated development of different open channels, SZSE has conscientiously implemented the requirements specified in the new revised edition of the Measures for the Administration of Domestic Securities and Futures Investment by QFIIs and RQFIIs and the Provisions on Matters Concerning the Implementation of the Measures for the Administration of Domestic Securities and Futures Investment by QFIIs and RQFIIs, and promptly revised the Implementation Rules accordingly.

The revision mainly includes: first, expanding investment scope. SZSE has added that qualified foreign investors are allowed to invest in depositary receipts, stock options, government-backed bonds, etc. and participate in bond repo, securities margin trading and refinancing securities lending transactions, to enrich qualified foreign investors’ toolkit for asset allocation and risk management. Second, improving shareholding ratio disclosure and excess shareholding reduction arrangements. With A-shares being included in internationally important indexes such as MSCI and FTSE Russell, foreign investors’ enthusiasm for and confidence in investing in A-shares have enhanced. To make it easy for relevant institutions to learn foreign shareholding ratios as early as possible so that they can have more time to react, SZSE has adjusted the disclosure indicator for foreign shareholding ratio from 26% to 24%, and optimized the shareholding reduction arrangements when total foreign shareholding ratio exceeds 30%. Third, facilitating investment operation. SZSE has removed the limit on the quantity of securities companies that foreign investors are allowed to commission and specified the requirements for handling of transfer by agreement and non-deal name transfer of qualified foreign investors. SZSE has made full use of the internal information sharing mechanism of regulatory authorities and canceled the requirements for reporting of repetitive information to relevant institutions by qualified foreign investors and custodians, trusted securities companies, etc., to reduce the burden of market entities. Fourth, strengthening compliance requirements. SZSE has laid down the requirements for management of qualified foreign investors’ transaction behaviors and reporting of transactions suspected of violating laws and regulations by trusted securities companies and trusted futures companies, required qualified foreign investors to urge foreign investors

under their names to fulfill information disclosure obligations, and added that the inspector shall fulfill the duty of supervision of qualified foreign investors.

Relevant official of SZSE said that SZSE would continue to facilitate the improvement of systems and mechanisms for high-level two-way opening up of the Chinese capital market according to the overall plan of CSRC, actively adapt to foreign investors' demands, and constantly improve service capability and efficiency. SZSE will attract more medium- and long-term funds to the market, better energize market entities, go all out to build a quality innovation capital center and world-class exchange, and assist in the building of a higher-level open modern economic system.

### 深圳证券交易所修订发布 QFII、RQFII 实施细则，进一步推动资本市场高水平开放

2020 年 10 月 30 日，经中国证监会批准，深圳证券交易所（下称“深交所”）发布新修订的《深圳证券交易所合格境外机构投资者和人民币合格境外机构投资者证券交易实施细则》（下称《实施细则》），自 11 月 1 日起施行。

合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII）（以下统称“合格境外投资者”）制度分别于 2002 年和 2011 年落地实施。这两项制度在引入境外长期资金、优化投资者结构、促进中国资本市场健康发展等方面发挥了积极作用。为更好满足境外投资者需求，促进不同开放渠道协调发展，深交所认真落实新修订的《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》和《关于实施〈合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法〉有关问题的规定》要求，及时对《实施细则》进行相应修订。

本次修订主要包括：一是扩大投资范围。新增允许合格境外投资者投资存托凭证、股票期权、政府支持债券等，允许参与债券回购、融资融券、转融通证券出借交易，丰富合格境外投资者资产配置和风险管理手段。二是完善持股比例披露及超比例减持安排。随着 A 股近年来纳入 MSCI、富时罗素等国际重要指数，境外投资者投资 A 股的热情和信心不断增强，为便于相关机构尽早了解外资持股情况，有更充分的时间作出反应，将外资持股比例披露指标由 26% 调整至 24%；优化外资合计持股超过 30% 时的减持安排等。三是便利投资运作。取消合格境外投资者可委托证券公司的数量限制，明确合格境外投资者协议转让及非交易过户的办理要求；充分利用监管部门内部信息共享机制，取消合格境外投资者及托管人、受托证券公司等相关机构重复信息的报送要求，减轻市场主体负担。四是强化合规要求。明确受托证券公司、

受托期货公司对合格境外投资者交易行为管理和涉嫌违法违规交易报告要求；明确合格境外投资者督促其名下境外投资者履行信息披露义务要求；新增督察员对合格境外投资者的监督职责等。

深交所有关负责人表示，深交所将按照中国证监会的统一部署，持续推动完善中国资本市场高水平双向开放的体制机制，积极适应境外投资者需求，不断提升服务能力和效率，吸引更多中长期资金入市，更好激发市场主体活力，全力建设优质创新资本中心和世界一流交易所，助力构建更高水平开放型现代化经济体系。

Source 来源：

[http://www.szse.cn/aboutus/trends/news/t20201030\\_582827.html](http://www.szse.cn/aboutus/trends/news/t20201030_582827.html)

### The Shanghai Stock Exchange formulates the Three-year Action Plan for Improving the Quality of Companies Listed on the Shanghai Stock Exchange

On November 3, 2020, the Shanghai Stock Exchange (the "SSE") formulated the Three-year Action Plan for Improving the Quality of Companies Listed on the Shanghai Stock Exchange (the "Plan"), specifying the specific timetable and roadmap of its work. Under the leadership of the China Securities Regulatory Commission (the "CSRC"), the SSE will strengthen the construction and reform of the capital market, and strive to form a large group of listed companies that reflect the requirements of high-quality development in the SSE within three years.

Based on the orientation function of SSE as a market organizer, manager and service provider, there are 39 specific work arrangements in the Plan in respect of corporate governance, information disclosure, system construction, optimization of supervision, and in-depth services in respect of issuance and listing, corporate regulation, bond market and etc. Among the Plan, 16 key promotion tasks and 23 normal implementation tasks are included. The following set forth the five main areas of work of the Plan.

- Standardizes corporate governance. Focuses on the behaviors of "critical minority" and enhances the sense of integrity and responsibility of actual controllers, directors, supervisors and senior management of the listed companies. Furthermore, the SSE shall effectively implement the special corporate governance actions of the CSRC. Standardizes the operation of board of shareholders, board of directors and board of supervisors of the listed companies, gives full play to the role of general meeting of shareholders and strengthen the internal control mechanism of the listed companies. In addition, the SSE shall promote the improvement of equity incentives and employee stock ownership

systems, cultivate and form market-oriented incentive and restraint mechanisms, and stimulate the internal motivation of the listed companies to focus on their operations and then improve their performance.

- Improve the quality of information disclosure. The SSE shall revise and improve the self-discipline rules system for information disclosure with the Rules Governing the Listing of Stocks on Shanghai Stock Exchange (the "Listing Rules") as the core. The SSE shall promote the enactment, revision, abolishment and combination of the Listing Rules in accordance with the objectives of "clearly structured, clear style, easy to understand and easy to use". Furthermore, it shall optimize the guidelines for industrial information disclosure and the guidelines for formats of interim announcements, highlighting the effectiveness of information disclosure and reducing information disclosure costs. Then it shall direct the listed companies to actively release useful information for investors' decision-making and reduce redundant information. Moreover, the SSE shall support the listed companies to fully communicate with investors, especially small and medium investors, through multiple channels to convey the company's intrinsic value.
- Do a good job in system building. The SSE shall deeply promote the construction of the Science and Technology Innovation Board and the reform of the registration-based IPO system. In accordance with the deployment of the Financial Stability and Development Commission of the State Council and the CSRC, the SSE shall promote the full implementation of the registration-based IPO system for stock issuance to ensure the quality of the listed companies from the source. Furthermore, it shall strictly supervise the delisting of the listed companies, continue to reform the delisting system and optimize the risk warning board. Moreover, the SSE shall support the listed companies in making good use of market tools such as mergers and acquisitions, refinancing, corporate bonds, convertible bonds, preferred stocks, REITs, and ETFs. Much important, the SSE shall actively explore system innovation on the Science and Technology Innovation Board to provide impetus for technologically innovative enterprises and form an experience that can be promoted and reproduced.
- Focus on the supervision work. The SSE shall implement the requirement of "managing less and managing fines to manage well", carry out classified supervision and formulate classified supervision rules. The SSE shall focus on risky companies and key matters, and strictly deal with major violations such as financial fraud, fund occupation and illegal

guarantees. Moreover, it shall persist in classified disposal, continue to promote the resolution of listed company pledge risks, and maintain the bottom line of systemic risks. Then it shall deepen the scientific and technological supervision to provide strong support for risk identification and routine supervision.

- Deepen the services for the listed companies. The SSE will work with all parties to actively cultivate and support qualified companies to list on the Science and Technology Innovation Board and the Main Board. Furthermore, it will continue to carry out special actions to improve the qualities of companies in key areas, and actively assist the reform of state-owned enterprises and the relief of private enterprises. And then the SSE will highlight the concerted efforts of various parties and the construction of ecological environment, actively strengthen the information sharing with local Party committees and governments and strengthen the communication and collaboration with the relevant competent departments. More importantly, the SSE will vigorously promote the performance presentation meetings, regularly hold symposiums for the listed companies in the same industry, direct the exertion of the functions of market agencies, optimize the market ecology and converge the concerted efforts of all parties.

Next, the SSE will continue to implement the policy of "system building, non-intervention and zero tolerance", pay close attention to the implementation of the Plan in accordance with the deployment of the CSRC, and vigorously promote the high-quality development of the companies in the SSE so as to provide strong support for the sustainable and healthy development of the capital market and the national economy.

#### 上海证券交易所制定《推动提高沪市上市公司质量三年行动计划》

2020年11月3日，上海证券交易所（下称“上交所”）制定了《推动提高沪市上市公司质量三年行动计划》（下称“三年行动计划”），明确了其开展工作的具体时间表、路线图。上交所将在中国证券监督管理委员会（下称“证监会”）的领导下，加强资本市场建设和改革，力争通过三年左右时间，在沪市形成一大批体现高质量发展要求的上市公司群体。

三年行动计划主要立足上交所作为市场组织者、管理者和服务者的功能定位，围绕发行上市、公司监管和债券市场等方面，从公司治理、信息披露、制度建设、优化监管、做深服务五个方面制定了39项具体工作安排，其中重点推进工作16项，常态实施工作23项。三年行动计划主要有五个方面工作：



一是规范公司治理。抓住“关键少数”行为，增强公司实际控制人、董监高诚信和责任意识。切实落实好证监会公司治理专项行动。规范上市公司“三会”运行，充分发挥股东大会作用，强化公司内控机制。推动完善股权激励、员工持股制度，培育形成市场化的激励约束机制，激发上市公司专注经营、提高绩效的内在动力。

二是提高信息披露质量。修订完善以《股票上市规则》为核心的信息披露自律规则体系，按照“层次分明、体例清晰、易懂好用”的目标，推进规则立改废并。优化行业信息披露指引、临时公告格式指引，突出信息披露有效性，降低信披成本。引导上市公司主动发布投资者决策有用信息，减少冗余信息。支持上市公司多渠道与投资者尤其中小投资者充分沟通，传递公司内在价值。

三是抓好制度建设。深入推进科创板建设和注册制改革，按照国务院金融稳定发展委员会和证监会部署，推动全面实行股票发行注册制，从源头把好上市公司质量关。严格退市监管，持续推进退市制度改革，优化风险警示板。支持公司用好用足并购重组、再融资、公司债券、可转债、优先股、REITs、ETF 等市场工具。在科创板积极探索制度创新，为科技创新企业提供动力，形成可推广可复制的经验。

四是落实监管工作。落实“管少管精才能管好”要求，开展分类监管，制定分类监管业务规则。盯住风险公司、重点事项，严肃处理财务造假、资金占用、违规担保等重大违规。坚持分类处置，持续推进上市公司质押风险化解，守住不发生系统性风险底线。深化科技监管，为风险识别和日常监管提供有力支撑。

五是深化公司服务。会同各方，积极培育、支持符合条件的企业在科创板、主板上市。继续做好重点地区提高公司质量专项行动，积极助力国企改革和民企纾困。突出多方合力和生态建设，主动加强与地方党委政府的信息共享，加强与相关主管部门沟通协作。大力推广业绩说明会，定期召开同行业公司座谈会，引导发挥市场机构作用，优化市场生态，凝聚各方合力。

下一步，上交所将继续贯彻落实“建制度、不干预、零容忍”的方针，按照证监会部署，抓好三年行动计划的落地实施，大力推动沪市公司高质量发展，为资本市场和国民经济持续健康发展提供有力支持。

Source 来源:

[http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c\\_20201103\\_5253179.shtml](http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20201103_5253179.shtml)

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