J M L
Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update
金融服务监管资讯

2021.04.02

Additional Disclosure Required by Hong Kong Securities and Futures Commission of Future Intentions for Unlisted Securities When Offered as Consideration of Offer

Hong Kong Securities and Futures Commission (SFC) has noted an increasing trend for offerors to propose offering unlisted securities as consideration for the shares of an offeree company, particularly when a privatisation proposal is involved. The nature of the consideration offered is one of the key factors for shareholders in deciding whether or not to accept a general offer or to vote for or against a privatisation proposal. In a securities exchange offer (including those offering part payment in cash and part payment by securities), the Hong Kong Code on Takeovers and Mergers (the Code) requires additional disclosures on the securities being offered, regardless of whether they are the offeror's own securities or another company's, so as to allow shareholders to make an informed decision. Where unlisted securities are offered, the disclosure of such information is even more vital for shareholders due to their illiquid nature. Schedule I to the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (the Codes) prescribes the additional matters to be disclosed, such as information relating to the value of the offeror's securities, business operations and latest financial position.

General Principle 5 of the Codes provide, among other things, that shareholders should be given sufficient information, advice and time to reach an informed decision on an offer, and that no relevant information should be withheld. In line with this spirit, going forward, in all offers, including privatisation proposals, where unlisted securities are offered as consideration, in addition to the disclosures required under Schedule I to the Codes, the SFC will require the offeror to state whether it intends to seek a listing of the unlisted securities (or the business of the offeree company in question) on a stock exchange, whether locally or in another jurisdiction.

Note 7 to Rule 24 of the Code provides that: an offer where the consideration consists of securities for which an immediate listing is not to be sought will not be regarded as satisfying any obligation incurred under Rule 24 (as regards purchases resulting in an obligation to offer a minimum level of consideration).

Paragraph 30 of Schedule I to the Codes requires the disclosure in the offer document of the following: "When the offer involves the issue of unlisted securities, an estimate of the value of such securities by an appropriate adviser, together with the assumptions and methodology used in arriving at the value".

In a privatization proposal involving a securities exchange offer (including one offering part payment in cash and part payment by unlisted securities), the new requirement for an offeror to state whether it intends to seek a listing of the unlisted securities offered (or the business of the offeree company in question) on a stock exchange, whether locally or in another jurisdiction, would enhance clarity as to the nature and prospect of the consideration offered. If there is any plan for listing, basic details of the plan should be provided, subject to restrictions under the relevant exchange's listing rules. For instance, under Rule 9.08 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (SEHK), no publicity material on an issue of securities by a new applicant can be released in Hong Kong by a new applicant or its agents unless and until the exchange has reviewed it and confirmed to the applicant that it has no comments. If the plan is for listing of the consideration securities on SEHK, SEHK may review and confirm the disclosure in the offer document. If the plan is for listing of the consideration securities on another exchange, the rules of that exchange should be checked in advance for compliance. If there is no plan for listing the consideration securities, presumably no specific steps (such as the appointment of relevant advisors for the listing) should have taken place at the time of bulk printing of the offer document.

Additional disclosure about the intention surrounding unlisted securities offered as consideration might also extend to enhanced details of any offeror consortium or rollover (and special deal) arrangements.

Under Rule 9.1 of the Code, each document issued or statement made in relation to an offer or possible offer or during an offer period must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented.

香港证券及期货事务监察委员会要求要约人在提供非上市证券作为要约代价时就该等证券的未来意向作出额外披露

香港证券及期货事务监察委员会（证监会）注意到一个趋势，就是愈来愈多要约人建议提供非上市证券作为取得受要约公司股份的代价，特别是在涉及私有化建议时。所提供的代价的性质是股东决定是否接纳某项全面要约或投票赞成与反对私有化建议的其中一个主要因素。在证券交换要约（包括提出部分以现金、部分以证券支付代价的要约）中，香港公司收购及合并守则（守则）要求对所提供的证券（不论是要约人本身的证券还是另一家公司的证券）作出额外披露，以便让股东作出有根据的决定。在提供非上市证券的情况下，鉴于该等证券的非流通性，披露有关资料对股东而言更为重要。香港公司收购、合并及股份回购守则（两份守则）附表I订明须予披露的额外事项，例如关乎要约人的证券的价值、业务运作及最新财政状况的资料。

两份守则下的一般原则 5 规定（除其他事项外），股东应当获得充足资料、意见及时间，让他们对要约作出有根据的决定。任何有关资料不应加以隐瞒。遵循此精神，日后在所有提供非上市证券作为代价的要约（包括私有化建议）中，除了两份守则附表I所规定的披露外，证监会还会要求要约人述明其是否有意寻求将非上市证券（或有关受要约公司的业务）在证券交易所（不论是在本地还是在其他司法管辖区）上市。

守则第 24 条（导致有责任提出最低代价的购买）的注释 7 规定：要约的代价如包括不打算立即寻求上市的证券，将不会视为已履行根据本规则 24 所引起的责任。

两份守则附表 I 第 30 段规定：如要约涉及非上市证券的发行，便应在要约文件披露由合适的顾问评估该等证券的价值，并须提供达致有关价值所使用的假设及计算方法。

在涉及证券交换要约的私有化建议中（包括提出部分以现金、部分以证券支付代价的要约），要约人述明其是否有意寻求将非上市证券（或有关受要约公司的业务）在证券交易所（不论是在本地还是在其他司法管辖区）上市可以提高股东及投资者对要约代价证券的性质和前景的了解。如果有任何关于要约代价证券上市的计划，要约人在遵守相关交易所的上市规则的前提下，应尽量提供该上市计划的基本详细信息。例如，根据香港联合交易所有限公司（联交所）的证券上市规则第 9.08 条的规定，新申请人或其代理人不得在香港发布任何有关新申请人发行证券的宣传材料，除非并直到交易所进行了审查，并向申请人确认对有关披露没有任何意见。如果要约代价证券计划在联交所上市，联交所可以审查并确认要约文件中的有关披露。如果要约代价证券计划在其他交易所上市，则应事先了解及遵守有关交易所的相关规则。如果要约文件披露要约代价证券没有任何上市计划，这意味着要约文件付印时要约人应该未有就要约代价证券进行任何具体的上市步骤（例如委任与上市相关的顾问）。

有关未上市证券作为要约代价的未来意向之披露也可能会涉及任何要约人财团安排或存续安排（和特别交易）的详细信息披露。

守则第 9.1 条规定，跟招股章程一样，就要约或可能要约或在要约期内发出的每份文件或作出的每份声明，必须达到最高的准确程度，而所提供的资料必须充分且公允地表达。

Source 来源:
https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-Bulletin/20210331SFCTakeover-Bulletine.pdf
https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-Bulletin/20210331SFC-Takeover-Bulletinc.pdf

The Stock Exchange of Hong Kong Limited Seeks Views on Reforms to Enhance Listing Regime for Overseas Issuers

The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published on March 31, 2021 a consultation paper seeking public feedback on proposals to enhance and streamline the listing regime for overseas issuers.

In its consultation, the Exchange is seeking views on: streamlining requirements for overseas issuers, whilst continuing to ensure robust shareholder protection

standards remain; expanding its secondary listing regime to welcome overseas-listed Greater China companies in traditional sectors to its markets; allow eligible issuers to dual-primary list while keeping their existing weighted voting right structures and variable interest entity structures.

“One of the initiatives in HKEX’s strategic plan is to continue to develop Hong Kong as a listing and capital raising hub for major global and regional companies, looking to fund their growth through either a primary or secondary basis,” said HKEX Head of Listing, Bonnie Y Chan.

“Our listing reforms in 2018 have already achieved tremendous success in adding vibrancy and diversity to Hong Kong’s listed company ecosystem. We believe our latest proposals to streamline requirements and enhance our listing regime will attract more international and Mainland companies looking to benefit from Hong Kong’s liquid financial markets, whilst ensuring that Hong Kong maintains the quality of the market and that the high standards of shareholder protection that Hong Kong is known for are maintained,” said Ms Chan.

The key proposals in the consultation are set out below:

Streamlined Requirements with a Single Set of Shareholder Protection Standards to Ensure the Consistent Protection is Provided to All Investors

All issuers (including secondary listed issuers) would be required to demonstrate how they comply with one common set of core shareholder protection standards (Core Standards). These Core Standards include requirements that the issuer must:

- hold an ordinary general meeting annually and provide shareholders with the right to convene an extraordinary general meeting;

- enable shareholders to remove directors with a simple majority vote; and

- obtain a super-majority shareholder vote to approve: a change to class rights; a change to its constitutional documents; and its winding-up.

These Core Standards would ensure that all Hong Kong shareholders are afforded the same consistent protection irrespective of the place of incorporation of a listed issuer or the nature (primary or secondary) of the issuer’s listing.

Amendment of Secondary Listing Requirements for Greater China Issuers without Weighted Voting Rights

Under the proposals, Greater China Issuers without a weighted voting right structure could secondary list on the Exchange:

- without demonstrating that they were an “innovative company” – this would be required only of issuers with weighted voting right structures; and

- by demonstrating a lower minimum market capitalisation at listing than currently required (but still higher than that required for primary listing).

The Exchange would have the power to find such applicants unsuitable for listing in Hong Kong, if it believed that their application was an attempt to circumvent the Listing Rules applicable to a primary listing, by applying, for example, the test set out in the Listing Rules on whether a transaction or a series of transactions constitute a reverse takeover of the applicant.

Greater Flexibility for Issuers to Dual-Primary List with their Existing Weighted Voting Right Structures and Variable Interest Entity Structures

Grandfathered Greater China Issuers and Non-Greater China Issuers that seek to dual-primary list on the Exchange would be able to retain their existing weighted voting rights, and variable interest entity, structures without changing them to meet the full requirements of the Exchange’s Listing Rules and guidance.

These issuers would need to have a track record of good regulatory compliance, of at least two full financial years on a Qualifying Exchange, and meet the higher minimum market capitalisation requirements applicable to an applicant with weighted voting rights.

They would also be required to meet all other initial and ongoing requirements applicable to a primary listing (eg Listing Rule requirements regarding notifiable and connected transactions) as well as complying with the requirements that they are already subject to, under the laws and rules of their overseas primary listing jurisdiction.

Currently, if Grandfathered Greater China Issuers secondary list in Hong Kong, and later see the majority of trading of their securities migrates to the Exchange’s markets on a permanent basis, they will be regarded as

dual-primary listed in Hong Kong and have to fully comply with the Listing Rules, but are allowed to retain their existing weighted voting right or variable interest entity structures. Non-Greater China Issuers are not subject to this trading migration requirement.

Other Proposals

The consultation paper published by the Exchange also contains several other proposals to enhance, codify and streamline existing requirements for overseas issuers, including:
- the consolidation of requirements for overseas issuers into Chapter 19 (for primary listing) and Chapter 19C (for secondary listing), with one guidance letter;

- the codification of some conditional common waivers for dual-primary listings and secondary listings; and

- guidance on the application of waivers following a de-listing from an overseas exchange of primary listing.

The Exchange invites market feedback on the proposals. The deadline for responding to the Consultation Paper is May 31, 2021.

The Consultation Paper is available on *HKEX website*.

香港交易及结算所有限公司就优化海外发行人上市制度的改革谘询市场意见

香港交易及结算所有限公司（香港交易所）全资附属公司香港联合交易所有限公司（联交所）于 2021 年 3 月 31 日刊发谘询文件，建议优化和简化海外发行人来港上市的制度。

联交所就以下范畴谘询市场意见：简化海外发行人的规定，并确保股东保障水平维持严格；扩阔第二上市制度，欢迎在海外上市而经营传统行业的大中华公司来港上市；允许符合条件的发行人在保留既有不同投票权架构及可变利益实体架构下可作双重主要上市。

香港交易所上市主管陈翊庭说：「我们将继续推进香港交易所的战略规划，致力发展香港的资本市场，吸引区内以至全球大型企业来港作主要上市或第二上市，为其增长融资。」

她表示：「香港交易所在 2018 年进行的上市改革非常成功，令香港资本市场注入活力和更多元的选择。我们相信，这次提出简化相关规定及优化上市制度的建议，将吸引更多希望从香港的高流动性金融市场受益的国际与中国内地公司，同时确保维持香港市场的质素和高水平的股东保障制度。」

谘询的主要建议如下：

简化规定，统一股东保障标准，确保所有投资者得到一致的保障

- 所有发行人（包括第二上市发行人）须证明他们如何符合同一套的核心股东保障水平（核心水平）。发行人必须遵守核心水平的规定，包括以下各项：

- 须每年举行普通股东大会，并给予股东召开股东特别大会的权利；

- 须容许股东以简单多数票罢免董事；及

须取得股东绝大多数票，方可批准以下事宜：类别股份权利的修订；组织章程文件的修订；及发行人清盘。

这些核心水平将可确保香港的上市发行人不论是在何地注册成立又或其上市的性质（主要上市或第二上市），其香港股东同样享有一致的保障。

对没有采用不同投票权架构的大中华发行人作第二上市的规定作出修订

- 根据建议，没有采用不同投票权架构的大中华发行人可申请在联交所作第二上市的条件将修改如下：

- 毋须证明其属「创新产业公司」——采用不同投票权的发行人才须证明；及

- 上市时最低市值将低于现行规定（但仍高于申请作主要上市的要求）。

若联交所认为申请人是试图规避适用于主要上市的《上市规则》规定，有权判定有关申请人为不适合在香港上市（例如应用《上市规则》有关评估一项或一连串交易可会构成申请人反收购的测试）。

给予双重主要上市的发行人更大灵活性，可沿用既有的不同投票权架构及可变利益实体架构

拟在联交所作双重主要上市的「获豁免的大中华发行人」及「非大中华发行人」，将可保留既有的不同投票权及可变利益实体架构，毋须为了完全符合联交所的《上市规则》及指引而改变该等架构。

这些发行人需在合资格交易所有至少两个完整会计年度的良好监管合规纪录，并符合适用于采用不同投票权的申请人的较高最低市值要求。

有关发行人须继续遵守其主要上市的海外司法权区的法律及规定之外，亦须符合香港所有其他适用于主要上市的初始及持续规定（例如《上市规则》有关须予公布及关连交易的规定）。

现时，获豁免的大中华发行人若来港第二上市，而及后其大部分的证券交易永久转移到联交所市场时，则会被视为在香港作双重主要上市，并须全面遵守《上市规则》，但可保留既有不同投票权或可变利益实体架构。非大中华发行人毋须遵守这项交易转移规定。

其他建议

联交所刊发的谘询文件亦载有多项其他建议，将海外发行人的现行规定优化、简化并编纳成规，包括:

- 将对海外发行人的规定整合至《上市规则》第十九章（主要上市）及第十九 C 章（第二上市）以及一封指引信;

- 将双重主要上市及第二上市的部分有条件常见豁免编纳成规；及

- 就发行人从主要上市的海外交易所除牌后的豁免应用提供指引。

联交所邀请市场对各项建议发表意见。对谘询文件提交回应意见的截止日期为 2021 年 5 月 31 日。

谘询文件登载于香港交易所网站。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210331news?sc_lang=en
https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/news/regulatory-announcements/2021/210331news?sc_lang=zh-cn

The Stock Exchange of Hong Kong Limited Announces the Cancellation of Listing of Harmonicare Medical Holdings Limited (Stock Code: 1509)

The Stock Exchange of Hong Kong Limited (the Exchange) announced on March 23, 2021 that the listing of the shares of Harmonicare Medical Holdings Limited (Harmonicare) will be cancelled with effect from 9:00 am on March 25, 2021 under Rule 6.01A of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules).

Trading in Harmonicare's securities has been suspended since April 1, 2019. Under Rule 6.01A, the Exchange may delist Harmonicare if trading does not resume by September 30, 2020.

Harmonicare failed to fulfill all resumption guidance set by the Exchange and resume trading in its securities by September 30, 2020. On November 27, 2020, the Listing Committee decided to cancel the listing of Harmonicare's shares on the Exchange under Rule 6.01A.

On December 4, 2020, Harmonicare sought a review of the Listing Committee's decision by the Listing Review Committee. On March 12, 2021, the Listing Review Committee upheld the decision of the Listing Committee to cancel Harmonicare's listing. Accordingly, the Exchange will cancel Harmonicare's listing with effect from 9:00 am on March 25, 2021.

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

The Exchange advises shareholders of Harmonicare 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和美医疗控股有限公司 （股份代号：1509）的上市地位

于 2021 年 3 月 23 日，香港联合交易所有限公司（联交所）宣布，由 2021 年 3 月 25 日上午 9 时起，和美医疗控股有限公司（和美医疗）的上市地位将根据香港联合交易所有限公司证券上市规则(《上市规则》)第 6.01A 条予以取消。

和美医疗的股份自 2019 年 4 月 1 日起已暂停买卖。根据《上市规则》第 6.01A 条，若和美医疗未能于 2020 年 9 月 30 日或之前复牌，联交所可将和美医疗除牌。

和美医疗未能于 2020 年 9 月 30 日或之前履行联交所订下的所有复牌指引而复牌。于 2020 年 11 月 27 日，上市委员会决定根据《上市规则》第 6.01A 条取消和美医疗股份在联交所的上市地位。

于 2020 年 12 月 4 日，和美医疗寻求由上市复核委员会复核上市委员会的裁决。于 2021 年 3 月 12 日，上市复核委员会维持上市委员会取消和美医疗上市地位的决定。按此，联交所将于 2021 年 3 月 25 日上午 9 时起取消和美医疗的上市地位。

联交所已要求和美医疗刊发公告，交代其上市地位被取消一事。

联交所建议，和美医疗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/2021/210323news?sc_lang=en

The Stock Exchange of Hong Kong Limited Implements Disciplinary Action against Coslight Technology International Group Limited (Stock Code: 1043) and its 10 Directors

The Stock Exchange of Hong Kong Limited (the Exchange) issued on March 29, 2021 the statement of disciplinary action against Coslight Technology International Group Limited (Stock Code: 1043) (Company, together with its subsidiaries, Group) and its 10 directors.

Sanctions and Directions

The Listing Committee of the Exchange (Listing Committee)

CENSURES:

(1) Coslight Technology International Group Limited (Stock Code: 1043);
(2) Mr. Song Dian Quan, executive director (Mr. Song);
(3) Ms. Luo Ming Hua, executive director (Ms. Luo);
(4) Mr. Li Ke Xue, executive director (Mr. Li KX);
(5) Mr. Xing Kai, executive director (Mr. Xing); and
(6) Mr. Liu Xing Quan, executive director (Mr. Liu).

AND CRITICISES:

(7) Mr. Zhang Li Ming, executive director (Mr. Zhang);
(8) Dr. Gao Yun Zhi, independent non-executive director (Dr. Gao);
(9) Mr. Li Zeng Lin, independent non-executive director (Mr. Li ZL);
(10) Ms. Zhu Yan Ling, independent non-executive director (Ms. Zhu); and
(11) Mr. Xiao Jian Min, former independent non-executive director (Mr. Xiao).

(The directors identified in (2) to (11) above are collectively referred to as Relevant Directors.)

In addition to the sanctions stated above, the Company has been directed both to appoint an independent professional adviser for the purpose of an internal control review and to retain an independent compliance adviser. The directors have been directed to attend training.

Summary of Facts

The directors failed to take adequate steps to ensure the Company's compliance with the Exchange Listing Rules. They also failed to discharge their duties in respect of the Company's internal controls.

During the period from July 2017 to September 2019, the Group carried out a number of transactions which involved (a) the sale of equity interests in three non-wholly owned subsidiaries of the Company to independent third parties; and (b) the acquisition of an equity interest in a company from a connected person of the Company (HCG). These transactions were notifiable and/or connected, and so subject to requirements under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules). However, the Company failed to comply with all applicable requirements under the Exchange Listing Rules and did not announce the transactions and/or obtain requisite approval from the shareholders. The directors failed to take adequate steps to ensure the Company's compliance with the Exchange Listing Rules. They also failed to discharge their duties in respect of the Company's internal controls.

Disposal of subsidiaries

On July 4, 2017, an indirect non-wholly owned subsidiary of the Company (HCP) disposed of 58 per cent of its equity interest in a company (ZCB) for around RMB726 million (1st Disposal). The 1st Disposal constituted a major transaction, and the completion took place on August 21, 2017.

After the said disposal, between December 8, 2017 and May 2, 2018, HCP further disposed of its remaining 42 per cent equity interest in ZCB for around RMB530 million (2nd Disposal). The 2nd Disposal constituted a major transaction on its own, and a very substantial disposal when aggregated with the 1st Disposal. The Company announced the 2nd Disposal on September 3, 2018. It admitted that it had failed to comply with the reporting, announcement and shareholders' approval requirements.

On September 18, 2018, the Group sold another indirect non-wholly owned subsidiary of the Company to ZCB for around RMB236 million (3rd Disposal). The 3rd Disposal constituted a major transaction on a standalone basis. When aggregated with the 1st and 2nd Disposals, it constituted a very substantial disposal. The 3rd Disposal was announced on September 18, 2018, but the completion took place before complying with the circular and shareholders' approval requirements.

On November 30, 2018, HCP sold its equity interest in another company for RMB1.5 million (4th Disposal, together with the 2nd and 3rd Disposals, Disposals). The 4th Disposal constituted a discloseable transaction, but it was not announced until March 8, 2019.

In the Company's announcement dated March 8, 2019, the Company admitted to breaching the relevant procedural requirements in respect of the 3rd and 4th Disposals.

The Acquisition

On September 16, 2019, the Group acquired 20 per cent equity interest in a company from HCG for RMB20 million (Acquisition). At the time, the majority of the interest in HCG was owned by the son of Mr. Song. Some of the Relevant Directors were also shareholders of HCG. HCG was therefore a connected person of the Company, and the Acquisition constituted a connected transaction which was subject to the reporting and announcement requirements. It was exempted from independent shareholders' approval.

The Acquisition was announced on January 17, 2020. The Company admitted that it had failed to timely comply with the Exchange Listing Rule requirements.

Exchange Listing Rules Requirements

Rule 14.22 provides that the Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12-month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the transaction when aggregated. Rule 14.23 sets out factors which the Exchange may take into consideration when determining whether transactions will be aggregated.

Under Rule 14.34, the Company is required to inform the Division and publish an announcement after the terms of, inter alia, a discloseable transaction and a very substantial disposal have been agreed.

Rules 14.48, 14.49 and 14.51 require the Company to seek its shareholders' approval and issue a circular for a very substantial disposal.

Rule 14A.35 requires the Company to publish an announcement as soon as practicable after the terms of a connected transaction have been agreed.

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

Each of the Relevant Directors has given the Director's Undertaking, which provides, among other things, that he/she undertakes to:
(1) comply to the best of his/her ability with the Exchange Listing Rules; and
(2) use his/her best endeavors to cause the Company to comply with the Exchange Listing Rules.

Listing Committee's Findings of Breach

The Listing Committee found as follows:

(1) The Company breached Rules 14.34, 14.48, 14.49, 14.51 and 14A.35.
(2) Mr. Song breached (a) Rule 3.08(f) and (b) his Director's Undertaking to comply with the Exchange Listing Rules to the best of his ability, and use his best endeavors to procure the Company to comply with the Exchange Listing Rules
(3) Ms. Luo, Mr. Li KX, Mr. Xing and Mr. Liu breached their Director's Undertakings to use their best endeavors to procure the Company to comply with the Exchange Listing Rules:
(4) Mr. Zhang, Mr. Li ZL, Dr. Gao, Ms. Zhu and Mr. Xiao also breached their Director's Undertakings to use their best endeavors to procure the Company to comply with the Exchange Listing Rules:

Conclusion

The Listing Committee decided to impose the sanctions and directions set out in the Statement of Disciplinary Action.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and the Relevant Directors, and not to any other past or present members of the board of directors of the Company.

香港联合交易所有限公司对光宇国际集团科技有限公司（股份代号：1043）及其十名董事执行纪律行动

于 2021 年 3 月 29 日，香港联合交易所有限公司（联交所）发布其对光宇国际集团科技有限公司（股份代号：1043）（该公司，连同其附属公司统称该集团）及其十名董事的纪律行动声明。

制裁及指令

联交所上市委员会（上市委员会）

谴责:

(1) 光宇国际集团科技有限公司（股份代号：1043）；
(2) 该公司执行董事及主席宋殿权先生（宋先生）；
(3) 执行董事罗明花女士（罗女士）；
(4) 执行董事李克学先生；
(5) 执行董事邢凯先生（邢先生）；及
(6) 执行董事刘兴权先生（刘先生）。

并批评:

(7) 执行董事张立明先生（张先生）；
(8) 独立非执行董事高云智博士（高博士）；
(9) 独立非执行董事李增林先生；
(10) 独立非执行董事朱艳玲女士（朱女士）；及
(11) 前独立非执行董事肖建敏先生（肖先生）。

（上文(2)至(11)所指董事统称相关董事。）

除上述的制裁外，该公司亦被指令委聘独立专业顾问，以检讨内部监控措施；及委任独立合规顾问。有关董事亦被指令参加培训。

实况概要

2017 年 7 月至 2019 年 9 月期间，该集团进行了多宗交易，当中涉及：(i) 将该公司三家非全资附属公司的股权售予独立第三方；及(ii) 向该公司一名关连人士（光宇集团）收购一家公司的股权。这些交易属于须予公布及/或关连交易，受香港联合交易所有限公司证券上市规则（《上市规则》）约束。但是，该公司没有遵守所有适用的《上市规则》规定，就这些交易刊发公告，及/或取得所须的股东批准。有关董事没有采取足够行动，确保该公司遵守《上市规则》。他们亦未能履行有关该公司内部监控的职责。

出售附属公司

2017 年 7 月 4 日，由该公司间接持有的一家非全资附属公司（光宇电源）出售其于一家公 司（光宇电池）58%的股权，代价约为人民币 7.26 亿元（第一次出售）。第一次出售构成 主要交易，并于 2017 年 8 月 21 日完成。

该次出售后，于 2017 年 12 月 8 日至 2018 年 5 月 2 日期间，光宇电源进一步出售其于光 宇电池的其余 42%股权，代价约为人民币 5.3 亿元（第二次出售）。第二次出售本身构成 主要交易。与第一次出售合并计算，则构成非常重大的出售事项。该公司于 2018 年 9 月 3 日公布第二次出售。该公司承认没有遵守汇报、公告及获取股东批准的规定。

2018 年 9 月 18 日，该集团将另一家由该公司间接持有的非全资附属公司，以约人民币 2.36 亿元售予光宇电池（第三次出售）。第三次出售本身构成主要交易，连同第一次及第 二次出售合并计算，则构成非常重大的出售事项。该公司于 2018 年 9 月 18 日公布第三次 出售，但在尚未遵守通函及股东批准两项规定前完成交易。

2018 年 11 月 30 日，光宇电源以人民币 150 万元出售其于另一家公司的股权（第四次出 售，连同第二及第三次出售统称出售事项）。第四次出售构成须予披露交易，但该公司在 2019 年 3 月 8 日才公布该交易。

该公司在 2019 年 3 月 8 日的公告中，承认第三及第四次出售违反了相关程序规定。

收购事项

2019 年 9 月 16 日，该集团以人民币 2,000 万元向光宇集团收购一家公司 20%的股权（收购事项）。当时光宇集团的大部分股权由宋先生的儿子拥有，部分相关董事亦是光宇集团 的股东。因此，光宇集团为该公司的关连人士，收购事项亦构成关连交易。

该公司须遵守汇报及公告规定，但获豁免寻求独立股东批准。 该公司于 2020 年 1 月 17 日才公布收购事项。该公司承认其未能及时遵守《上市规则》的规定。

《上市规则》的规定

第 14.22 条规定，如一连串交易全部均于 12 个月内完成或属彼此相关者，联交所可要求上 市发行人将该等交易合并计算，作为一项事务处理。在这些情况下，上市发行人须遵守 该项合计后的交易所属类别之有关规定。第 14.23 条载列了联交所决定应否将交易合并计 算时会考虑的因素。

根据第 14.34 条，在包括须予披露的交易及非常重大的出售事项的条款最后确定下来后， 该公司必须知会上市科并刊发公告。

第 14.48、14.49 条及 14.51 条规定该公司须就非常重大的出售事项寻求股东批准及发出通函。

第 14A.35 条规定，该公司须在协议关连交易的条款后尽快刊发公告。

第 3.08 条规定，联交所要求董事须共同及个别履行诚信责任及以应有技能、谨慎和勤勉行事的责任，而履行上述责任时，至少须符合香港法例所确立的标准。该等职责包括以应有的技能、谨慎和勤勉行事，程度相当于别人合理地预期一名具备相同知识及经验，并担任发行人董事职务的人士所应有的程度（第 3.08(f)条）。

各相关董事都曾经作出《董事承诺》，当中包括：(1) 尽力遵守《上市规则》；及 (2) 尽力促使该公司遵守《上市规则》。

上市委员会裁定的违规事项

上市委员会裁定如下：

(1) 该公司违反《上市规则》第 14.34、14.48、14.49、14.51 及 14A.35 条。
(2) 宋先生违反(I)《上市规则》第 3.08(f)条及(II) 其尽力遵守《上市规则》，及尽力促使该公司遵守《上市规则》的《董事承诺》；
(3) 罗女士、李克学先生、邢先生以及刘先生违反了尽力促使该公司遵守《上市规则》的《董事承诺》；
(4) 张先生、李增林先生、高博士、朱女士及肖先生同样也违反了尽力促使该公司遵守《上市规则》的《董事承诺》；

结论

上市委员会决定作出在纪律行动声明中列出的制裁及指令。

为免引起疑问，联交所确认纪律行动声明所载制裁仅适用于该公司及相关董事，而不涉及该公司董事会其他前任或现任董事。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210329news?sc_lang=en
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/210329_SoDA.pdf?la=en

The Stock Exchange of Hong Kong Limited Implements Disciplinary Action against China Yu Tian Holdings Limited (Delisted, Previous Stock Code: 8230) and its Seven Directors

The Stock Exchange of Hong Kong Limited (the Exchange) issued on March 30, 2021 the statement of disciplinary action against China Yu Tian Holdings Limited (Company) (delisted, previous stock code: 8230) and its seven directors.

Sanctions and Directions

The GEM Listing Committee of The Stock Exchange of Hong Kong Limited (GEM Listing Committee)

CENSURES:

(1) China Yu Tian Holdings Limited (Delisted, Previous Stock Code: 8230) for breaching Rules 6A.19, 6A.23, 17.55A, 20.33 and 20.34 of the Rules Governing the Listing of Securities on the GEM of the Exchange (GEM Listing Rules or GLR);

AND CENSURES:

(2) Ms. Wang Xue Mei (Ms. Wang), executive director (ED) of the Company (at the date of delisting); and

(3) Mr. Wang Jin Dong (Mr. Wang), ED of the Company (at the date of delisting), for breaching GLR 5.01(4) to (6) and their obligations under their respective Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 6 to the GEM Listing Rules (Undertaking(s));

AND CENSURES:
(4) Mr. Cheng Bo, independent non-executive director (INED) of the Company (at the date of delisting);
(5) Mr. Wang Zhong Hua, INED of the Company (at the date of delisting);
(6) Mr. Tang Xi Guang (Mr. Tang), former ED of the Company;
(7) Mr. Zhao Hai Bo (Mr. Zhao), former ED of the Company; and
(8) Mr. Huang Zhi Wei, former INED of the Company, for breaching GLR 5.01(6) and their respective Undertakings;

AND FURTHER CENSURES:

(9) Ms. Wang for breaching her obligations under GLR 5.20 as the then compliance officer of the Company;

AND FURTHER STATES that in the Exchange's opinion, by reason of:

(a) Ms. Wang, Mr. Wang, Mr. Cheng Bo and Mr. Wang Zhong Hua's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had the Company remained listed, their retention of office would have been prejudicial to the interests of investors; and

(b) Mr. Tang and Mr. Zhao's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had they remained on the board of directors of the Company (Board), their retention of office would have been prejudicial to the interests of investors.

The GEM Listing Committee further directed:

(1) Mr. Huang Zhi Wei, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, to attend 24 hours of training on Listing Rule compliance (including four hours each on (a) directors' duties and (b) notifiable and connected transactions) (Training), to be provided by training providers approved by the Division. The Training is to be completed, and the Training provider's written certification of full compliance is to be provided to the Division, before the effective date of any such appointment; and

(2) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of the direction set out in paragraph (1) above is to be directed to the Division for consideration and approval. The Division should refer any matters of concern to the GEM Listing Committee for determination.

The directors identified in (2) to (5) above are collectively referred to as the Then-Current Directors. The directors identified in (4) to (8) above are collectively referred to as the Remaining Directors, and Ms. Wang, Mr. Wang and the Remaining Directors are collectively referred to as the Relevant Directors.

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

Hearing

On June 16, 2020 and January 18, 2021, the GEM Listing Committee conducted hearings into the conduct of the Company and the Relevant Directors in relation to their obligations under the GEM Listing Rules and the Undertakings.

Summary of Facts

The Company and its subsidiary granted interest and collateral-free loans of up to US$3,000,000 and RMB7,500,000 respectively to parties connected to two of the executive directors, Ms. Wang Xue Mei and Mr. Wang Jin Dong. The loans were neither announced nor approved by the shareholders. The Company submitted that the loans had been repaid and provided documentation in support of that submission, but when enquiries were made as to whether the documentation was fabricated, there was no response.

Despite their conflict of interest, Ms. Wang Xue Mei and Mr. Wang Jin Dong took an active role in relation to the loans. The other directors approved the loans without proper consideration of the loans, the conflict of interest, or GLR compliance.

GEM Listing Rules Requirements

Company

GLR 20.33 and GLR 20.34 require the issuer respectively, to announce the connected transaction as soon as practicable after its terms have been agreed, and to obtain independent shareholders' approval.

GLR 6A.19 and GLR 6A.23 require the issuer respectively, to appoint a compliance adviser for the Fixed Period (as defined in Chapter 6A of the GEM Listing Rules), and to consult with and, if necessary, seek advice from its compliance adviser during the Fixed Period where a possible notifiable or connected transaction is contemplated.

GLR 17.55A states that an issuer must provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange, any information or explanation that the Exchange may reasonable require for the purpose of investigating a suspected breach of or verifying compliance with the GEM Listing Rules.

Directors

Under GLR 5.01, the board of directors is collectively responsible for the company's management and operations. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These duties include avoiding actual and potential conflicts of interest and duty (GLR 5.01(4)), disclosing fully and fairly their interests in contracts with the issuer (GLR 5.01(5)), and applying such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer (GLR 5.01(6)).

GLR 5.20 requires the compliance officer to, among other things, advise on and assist the Board in implementing procedures to ensure the company's compliance with the GEM Listing Rules.

Directors are under an obligation, pursuant to their respective Undertakings, to comply to the best of their ability with the GEM Listing Rules, to use their best endeavours to procure the company's compliance with the GEM Listing Rules, and to cooperate in any investigation conducted by the Division.

GEM Listing Committee's Findings of Breach

The GEM Listing Committee considered the written and/or oral submissions of the Division, as well as the Company and the Relevant Directors, and concluded as follows:

Company's breaches

The GEM Listing Committee concluded that the Company breached:

(a) GLR 20.33 and 20.34 by failing to comply with the announcement and prior shareholders' approval requirements in respect of the Loans;

(b) GLR 6A.19 and 6A.23 by failing to appoint a compliance adviser for the full Fixed Period, and failing to consult with its compliance adviser when the Loans were contemplated; and

(c) GLR 17.55A by failing to respond to the Division's enquiries.

Ms. Wang's and Mr. Wang's breaches

The GEM Listing Committee found that Ms. Wang and Mr. Wang breached GLR 5.01(4) to (6):

(a) Despite their conflicts of interests, Ms. Wang and Mr. Wang took an active role in the proposal, approval and execution of the Loans.

(b) Ms. Wang and Mr. Wang failed to disclose their interests in, as well as abstain from voting on, the resolution in respect of the Remuneration Adjustment.

(c) By reason of Ms. Wang and Mr. Wang's limited understanding of the GEM Listing Rules, they did not take steps to procure the Company's compliance with GLR 6A.19, 6A.23, 20.33 and 20.34. After discovering the Company's breaches with respect to the Loans, they also failed to take steps to remedy such breaches by publishing an announcement and seeking independent shareholders' ratification.

In addition to the above breaches, the GEM Listing Committee also concluded that Ms. Wang breached GLR 5.20 by failing, among other things, to ensure that a compliance adviser was appointed by the Company in accordance with GLR 6A.19, as well as consulted in respect of the Loans. In particular, she failed to identify the GEM Listing Rule implications of the Loans.

Remaining Directors' breaches

The GEM Listing Committee found that the Remaining Directors breached GLR 5.01(6) by failing to exercise sufficient skill, care and diligence in respect of the Loans and the Remuneration Adjustment:

(a) The Remaining Directors verbally approved the Loans without convening a Board meeting to properly discuss and consider the Loans and relevant documentation, and without reviewing the loan agreements. They also failed to keep proper records documenting such approval.

(b) Prior to their approval of the Loans and the Remuneration Adjustment, the Remaining Directors did not take steps to properly benchmark Ms. Wang and Mr. Wang's remuneration, other than reviewing general remuneration reports that were not appropriate comparables. The Remaining Directors also failed to identify Ms. Wang and Mr. Wang's conflicts of interest in respect of the Remuneration Adjustment.

(c) By reason of the Remaining Directors' limited understanding of the GEM Listing Rules, they did not take steps to procure the Company's compliance with GLR 6A.19, 6A.23, 20.33 and 20.34. After discovering the Company's breaches with respect to the Loans, they also failed to take steps to remedy such breaches by publishing an announcement and seeking independent shareholders' ratification.

In addition to their breaches of GLR 5.01(6), the then members of the Remuneration Committee of the Company (Mr. Cheng Bo, Mr. Huang Zhi Wei and Mr. Wang Zhong Hua) also failed to perform their duties as set out in the terms of reference of the Remuneration Committee, by failing to (a) establish a formal and transparent procedure for developing a remuneration policy, and (b) take steps to ensure that Ms. Wang and Mr. Wang were not involved in deciding their own remuneration.

Relevant Directors' Breach of Undertakings

Given the Company and the Relevant Directors' breaches of the GEM Listing Rules as set out above, the GEM Listing Committee found that the Relevant Directors breached their Undertakings by failing to comply to the best of their ability with the GEM Listing Rules and to use their best endeavors to ensure that the Company complied with the GEM Listing Rules applicable to the Loans and the Remuneration Adjustment.

The GEM Listing Committee also found that the Then-Current Directors, Mr. Tang and Mr. Zhao breached their respective Undertakings by failing to cooperate with the Division in its investigation, which constitutes a breach of the Listing Rules. The Then- Current Directors also failed to use their best endeavors to procure the Company's compliance with GLR 17.55A by failing to respond to the Division's enquiries.

The Then-Current Directors, Mr. Tang and Mr. Zhao's breaches of the Undertaking were serious and their

conduct showed their willful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules. The ability to conduct an efficient and thorough investigation is essential to enable the Exchange to discharge its function to maintain and regulate an orderly market. Their failure to respond to the Division's enquiries hindered the Division's investigation and assessment of the relevant issues involving the Company, and the Relevant Directors' conduct and their compliance with the GEM Listing Rules.

Regulatory Concern

Directors are accountable to the issuer and its shareholders for their conduct. They have an obligation, among others, to avoid any potential or actual conflicts of interests, and to procure the issuer's compliance with the GEM Listing Rules. In respect of connected transactions, this involves, in this case, procuring the Company to publish an announcement and to obtain independent shareholders' approval.

The Exchange expects directors to be familiar with the provisions of the GEM Listing Rules, and, where appropriate, to proactively seek advice and assistance from professional parties, such as compliance advisers, prior to entering into transactions which are governed by the GEM Listing Rules.

The cooperation of listed issuers and directors in the Exchange's investigation into possible GEM Listing Rule breaches underpins the Exchange's ability to regulate issuers and directors, and is therefore of utmost importance in enabling the Exchange to discharge its function to maintain and regulate an orderly market.

香港联合交易所有限公司对中国宇天控股有限公司（已除牌，前股份代号：8230）及其七名董事执行纪律行动

于 2021 年 3 月 30 日，香港联合交易所有限公司（联交所）发布其对中国宇天控股有限公司（该公司）（已除牌，前股份代号：8230）及其七名董事执行纪律行动及其十名董事的纪律行动声明。

制裁及指令

香港联合交易所有限公司（联交所）GEM 上市委员会（GEM 上市委员会）谴责：
(1) 中国宇天控股有限公司（该公司）（已除牌，原股份代号：8230）违反《GEM 证券上市规则》（GEM 上市规则）第 6A.19、6A.23、17.55A、20.33 及 20.34 条；及

谴责：

(2) 该公司除牌时的执行董事王雪梅女士（王女士）；及

(3) 该公司除牌时的执行董事王进东先生（王先生）违反《GEM 上市规则》第 5.01(4)至(6)条以及其以《GEM 上市规则》附录六所载表 格形式各自向联交所作出的《董事声明及承诺》（《承诺》）下的责任；及谴责：

(4) 该公司除牌时的独立非执行董事程波先生；

(5) 该公司除牌时的独立非执行董事王中华先生；

(6) 该公司前执行董事唐夕广先生（唐先生）；

(7) 该公司前执行董事赵海波先生（赵先生）；及

(8) 该公司前独立非执行董事黄志伟先生 违反《GEM 上市规则》第 5.01(6)条及其各自的《承诺》；及

进一步谴责：

(9) 王女士作为该公司当时的合规顾问，违反了其于《GEM 上市规则》第 5.20 条下的职责；

并进一步声明，联交所认为，基于：

(i) 王女士、王先生、程波先生及王中华先生蓄意及／或持续不履行其于《GEM 上市规则》下的责任，即使该公司未被取消上市资格，他们四人的留任亦会损害投资者利 益；及

(ii) 唐先生及赵先生蓄意及／或持续不履行其于《GEM 上市规则》下的责任，若他们二人继续留任该公司董事，亦会损害投资者利益。

GEM 上市委员会进一步指令：

(1) 黄志伟先生日后若要再获委任为联交所任何上市公司或将上市公司的董事，必须 完成由上市科认可之课程机构提供的 24 小时有关《上市规则》合规事宜的培训（当中必须就以下内容各完成 4 小时培训：(i) 董事职责及 (ii) 须予公布及关连交易 （培训）），且须于委聘生效日期前完成并向上市科提供由培训机构发出的全面合规证书；及

(2) 刊发本新闻稿后，于上文第(1)段所列载指令的管理及运作中可能出现的任何必需变动及任何行政事宜，均须提交上市科考虑及批准。如有任何需要关注的事宜，上市科须转交 GEM 上市委员会作决定。

上述(2)至(5)项所提及的董事统称为时任董事。上述(4)至(8)项所提及的董事统称为其他董事，而王女士、王先生及其他董事统称为相关董事。

为免引起疑问，联交所确认本新闻稿所载制裁仅适用于该公司及相关董事，而不涉及该公司任何其他前任或现任董事会成员。

聆讯 GEM 上市委员会先后于 2020 年 6 月 16 日及 2021 年 1 月 18 日就该公司及相关董事在《GEM 上 市规则》及《承诺》下的责任进行聆讯。

实况概要

该公司及其附属公司向与两名执行董事（王雪梅女士及王进东先生）有关连的人士授出两笔免息且无任何抵押的贷款，分别多达 3,000,000 美元及 7,500,000 元人民币，但没有就该等贷款刊发公告或寻求股东批准。该公司表示该等贷款已全数偿还，并提供文件以作证明。然而，在上市科就文件是否伪造一事作出查询后，并没有收到任何回复。

尽管王雪梅女士及王进东先生存在利益冲突，他们仍在该等贷款中扮演积极的角色。其他董事批准了该等贷款，但没有就该等贷款、利益冲突或上市规则合规事宜作出适当的考虑。

《GEM 上市规则》规定

该公司

《GEM 上市规则》第 20.33 及 20.34 条分别要求发行人必须在协议关连交易的条款后尽快 公布有关交易，以及交易须取得独立股东批准。

《GEM 上市规则》第 6A.19 及 6A.23 条分别要求发行人必须委任一名人士担任其在指定期 间 （定义见《GEM 上市规则》第六 A 章）内的合规顾问，并在其于指定期间内拟进行可 能是须予公布的交易或关连交易时咨询及（如需要）征询合规顾问的意见。

《GEM 上市规则》第 17.55A 条订明，发行人必须尽快或按照联交所订定的时限，向联交 所提供联交所在调查涉嫌违反《GEM 上市规则》的事项或核实发行人是否符合《GEM 上 市规则》的规定时可合理要求的任何数据或解释。

董事

根据《GEM 上市规则》第 5.01 条，董事会须共同负责公司的管理与业务经营。联交所要 求董事须共同及个别地履行诚信责任及以应有技能、谨慎和勤勉行事的责任，而履行上述 责任时，至少须符合香港法例所确立的标准。该等职责包括：避免实际及潜在的利益和职 务冲突（第 5.01(4)条）；全面及公正地披露其与发行人订立的合约中的权益（第 5.01(5) 条）；以及以应有的技能、谨慎和勤勉行事，程度相当于别人合理地预期一名具备相同知识及经验、并担任发行人董事职务的人士所应有的程度（第 5.01(6)条）。

《GEM 上市规则》第 5.20 条规定监察主任的责任包括向发行人的董事会就确保发行人符合《GEM 上市规则》的程序提供意见及协助。

根据董事各自的《承诺》，他们有责任尽力遵守《GEM 上市规则》，并竭力促使该公司遵守《GEM 上市规则》，以及配合上市科展开的所有调查。

GEM 上市委员会裁定的违规事项

GEM 上市委员会在考虑过上市科、该公司及相关董事的书面及/或口头陈述后，裁定以下事项：

该公司的违规行为

GEM 上市委员会裁定该公司违反：

(i) 《GEM 上市规则》第 20.33 及 20.34 条，没有就该等贷款刊发公告及事先取得股 批准。
(ii) 《GEM 上市规则》第 6A.19 及 6A.23 条，没有就整个指定期间委任合规顾问，亦未有就拟进行该等贷款的事宜与合规顾问商议；及
(iii) 《GEM 上市规则》第 17.55A 条，没有回应上市科的查询。

王女士及王先生的违规行为

GEM 上市委员会裁定王女士及王先生违反《GEM 上市规则》第 5.01(4)至(6)条：

(i) 尽管王女士及王先生在该等贷款中存在利益冲突，他们仍主动提出该等贷款的建议 并在其批准与执行中扮演积极的角色。
(ii) 王女士及王先生没有披露其于酬金调整决议案中的利益，亦没有放弃投票。
(iii) 由于王女士及王先生对《GEM 上市规则》的理解有限，他们没有采取措施促使该公司遵守《GEM 上市规则》第 6A.19、6A.23、20.33 及 20.34 条。在发现该公司就该

等贷款的违规之后，二人亦没有采取补救措施去刊发公告并寻求独立股东批准。

除上述违规行为外，GEM 上市委员会亦裁定王女士违反了《GEM 上市规则》第 5.20 条， 因其未能确保该公司根据《GEM 上市规则》第 6A.19 条委任合规顾问并就该等贷款咨询意 见，特别是王女士并未能辨识该等贷款在《GEM 上市规则》下所须符合的规定。

其他董事的违规行为

GEM 上市委员会裁定董事违反《GEM 上市规则》第 5.01(6)条，因他们在该等贷款及酬金调整事宜上未有以应有技能、谨慎和勤勉行事：

(i) 董事仅口头批准了该等贷款，而没有召开董事会会议以适当讨论并审议该等贷款及相关文件，亦没有审阅相关贷款协议。他们亦没有就其口头批准妥为保留记录。

(ii) 在批准该等贷款及酬金调整之前，董事仅看过不适用作比较的一般薪酬报告，而没 有采取措施对王女士及王先生二人酬金作适当的基准对比。董事亦没能发现王女士 及王先生在酬金调整决议案中存在的利益冲突。

(iii) 由于董事对《GEM 上市规则》的理解有限，他们没有采取措施促使该公司遵守 《GEM 上市规则》第 6A.19、6A.23、20.33 及 20.34 条。在发现该公司就该等贷款的违规之后，各人亦没有采取补救措施去刊发公告并寻求独立股东 批准。 除违反《GEM 上市规则》第 5.01(6)条外，该公司当时的薪酬委员会成员（程波先生、黄志伟先生及王中华先生）亦没有履行薪酬委员会职权范围中订明的职责，他们未有：(i) 建立正式并透明的程序以制定薪酬政策，及 (ii) 采取措施以确保王女士及王先生不会参与厘 定他们本人酬金的过程之中。

相关董事违反《承诺》的事项

鉴于上述该公司及相关董事违反《GEM 上市规则》，GEM 上市委员会裁定相关董事违反了其《承诺》，未有尽力遵守《GEM 上市规则》及确保该公司遵守适用于该等贷款及酬金调整的《GEM 上市规则》规定。

GEM 上市委员会亦裁定，时任董事、唐先生及赵先生违反了各自的《承诺》，没有配合上 市科的调查，因而违反了《上市规则》。时任董事由于没有响应上市科的查询，而未有尽力促使该公司遵守《GEM 上市规则》第 17.55A 条。

时任董事、唐先生及赵先生违反其《承诺》属严重违规，其行为显示其蓄意及/或长期不履行《GEM 上市规则》所订明的责任。联交所履行其维护及监管市场秩序的职责时能进行全 面而高效率的调查是极为重要。相关董事没有响应上市科的查询，阻碍了上市科对有关该 公司的事宜以及相关董事行为的调查及评估，以及其有否遵守《GEM 上市规则》。

监管上关注事项

董事须就本身行为操守对发行人及股东问责。他们有责任（其中包括）避免任何实际及潜在的利益冲突，并促使发行人遵守《GEM 上市规则》。就本个案涉及的关连交易而言，董事须促使该公司刊发公告并取得独立股东批准。

联交所预期 GEM 发行人的董事都熟悉《GEM 上市规则》的条文，及在发行人拟进行受 《GEM 上市规则》规管的交易前主动寻求专业人士（例如合规顾问）的意见及协助（如需要）。

在联交所调查是否存在违反《GEM 上市规则》的情况时，上市发行人及董事的配合是联交 所面向发行人及董事的监管基础，因此对联交所履行其维护及监管市场秩序的职能极其重要。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210330news?sc_lang=en
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/210330_SoDA.pdf?la=en

Hong Kong Securities and Futures Commission Obtains Disqualification Orders against Former Senior Executives of Long Success International (Holdings) Limited

On March 22, 2021, the Securities and Futures Commission of Hong Kong (SFC) announced that it has obtained disqualification orders in the Court of First Instance of Hong Kong (Court of First Instance) against the former chief executive officer and executive director of Long Success International (Holdings) Limited (Long Success), Mr. Hu Dongguang (Hu), and former executive director, Mr. Guo Wanda (Guo), in the proceedings commenced by the SFC against 13 former directors of the company.

Long Success was listed on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (SEHK) since August 17, 2000 until its listing status was cancelled by the SEHK with effect from October 19, 2016. The company was principally engaged in paper manufacturing, biodegradable materials manufacturing, gaming and money lending services at the material time. Hu was an executive director and chief executive officer

of Long Success from January 18, 2010 to February 28, 2013. Guo was an executive director from May 1, 2010 to September 27, 2012.

The SFC commenced proceedings under section 214 of the Securities and Futures Ordinance (SFO) against 13 former directors of Long Success in May 2018 seeking orders that these former directors be disqualified from being directors or being involved in the management of any listed or unlisted corporation in Hong Kong. Under section 214 of the SFO, the court may make an order disqualifying a person from being a director or being involved, directly or indirectly, in the management of any corporation for up to 15 years, if the person is found to be wholly or partly responsible for a corporation's business or affairs having been conducted in a manner, among other things, involving defalcation, fraud, misfeasance or other misconduct towards it or its members; resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or unfairly prejudicial to its members or any part of its members.

The SFC previously obtained disqualification orders in the Court of First Instance against five former directors of Long Success in April 2020. The orders were made following the Court's approval that the proceedings be disposed of by way of a summary procedure which involved the submission of agreed statements of facts by the parties.

Hu and Guo were each disqualified from being a director or being involved, directly or indirectly, in the management of any corporation in Hong Kong including Long Success or any of its subsidiaries and affiliates, without the leave of the court, for a period of three years, effective from March 11, 2021.

The orders were made by The Honourable Mr. Justice Coleman after they admitted that they were in breach of their fiduciary duties and common law duties to act in the interest of Long Success and/or to exercise due and reasonable skill, care and diligence in the course of acting as directors of Long Success.

The SFC's investigation found that following Long Success's acquisition of a 51% equity interest in Jining Gangning Paper Co, Ltd for HK$190 million in 2009, the latter failed to achieve the requisite profit amount in 2010 and 2011 under the terms of the acquisition, and as a consequence, the seller owed Long Success payment for the shortfall under the profit guarantee.

Former chairman and executive director of Long Success, Mr. Wong Kam Leong (Wong), on behalf of Long Success, signed three confirmation letters with the seller between March 2011 and March 2012, agreeing, amongst other things, to defer the seller's payment under the profit guarantee.

Wong signed another confirmation letter on behalf of Long Success in June 2012, whereby it was agreed that Long Success would forfeit the profit guarantee amount of about HK$30.1 million owed by the seller. This confirmation letter was not approved by the board of directors of Long Success.

Specifically, Hu and Guo admitted that they had allowed Wong to exercise domination and control of the affairs of the company and its board of directors for his personal advantage or other ulterior purposes, and that they neglected or omitted to exercise their duties as directors of Long Success by:

- approving a confirmation letter in March 2011 without making any or any sufficient enquiries or requesting further information about the confirmation letter which was prejudicial and of no discernible benefit to Long Success; and
- failing to monitor, make enquiries or follow up with the profit guarantee during the period from March 2011 to June 2012.

The SFC's legal proceedings against other former directors of Long Success are ongoing. The judgment is available on the Judiciary's website (Court Reference: HCMP667/2018).

香港证券及期货事务监察委员会取得针对百龄国际（控股）有限公司前高层人员的取消资格令

于 2021 年 3 月 22 日，香港证券及期货事务监察委员会（证监会）宣布，其在对百龄国际（控股）有限公司（百龄）的 13 名前董事展开的法律程序中，取得香港原讼法庭（原讼法庭）针对该公司前行政总裁兼执行董事胡东光先生（胡）及前执行董事郭万达先生（郭）的取消资格令。

百龄自 2000 年 8 月 17 日起于香港联合交易所有限公司（联交所）创业板上市，直至其上市地位于 2016 年 10 月 19 日被联交所取消为止。该公司在关键时间主要从事造纸、生物可降解材料制造、游戏及放债业务。胡于 2010 年 1 月 18 日至 2013 年 2 月 28 日担任百龄的执行董事兼行政总裁。郭于 2010 年 5 月 1 日至 2012 年 9 月 27 日担任执行董事。

证监会于 2018 年 5 月根据《证券及期货条例》第 214 条，对百龄的 13 名前董事展开法律程序，以寻求法庭作出命令，饬令该等前董事不得担任香港任何上市或非上市法团的董事，或参与香港任何上市或非上市法团的管理。根据《证券及期货条例》第 214 条，若法庭裁定某法团的业务或事务曾以（其中包括）下述方式经营或处理：

涉及对该法团或其成员作出亏空、欺诈、不当行为或其他失当行为；导致其成员或其任何部分成员未获提供他们可合理期望获得的关于该法团的业务或事务的所有资料；或对其成员或其任何部分成员造成不公平损害，而某人须为此负全部或部分责任的话，则法庭可作出命令，取消该人担任董事的资格，或饬令该人不得直接或间接参与任何法团的管理，最长为期 15 年。

证监会早前在 2020 年 4 月于原讼法庭取得针对百龄的五名前董事的取消资格令。法庭是在批准有关法律程序可透过简易程序处理后作出该等命令。简易程序涉及由各方提交议定事实陈述书。

除非经法庭许可，否则胡及郭各自不得担任香港任何法团（包括百龄或其任何附属公司及联属公司）的董事，或直接或间接参与该等法团的管理，由 2021 年 3 月 11 日起，为期三年。

上述命令由高浩文法官（The Honourable Mr Justice Coleman）颁布。胡及郭承认在担任百龄董事期间没有以符合百龄的利益的方式行事，及／或没有以适当和合理的技巧、小心谨慎和勤勉尽责的态度行事，因而违反了其受信责任和在普通法下的责任。

证监会的调查发现，在百龄于 2009 年以 1.9 亿港元收购济宁港宁纸业有限公司的 51%股权后，后者在 2010 年及 2011 年均未能实现收购条款所订必须达到的溢利金额水平，故卖方须按溢利担保向百龄支付相关差额。

百龄前主席兼执行董事黄锦亮先生（黄）在 2011 年 3 月至 2012 年 3 月期间代表百龄与卖方签订三份确认函，协定（除其他事项外）延迟卖方支付溢利担保款项。

黄在 2012 年 6 月代表百龄签订另一份确认函，藉此协定百龄会放弃卖方所结欠的约 3,010 万港元溢利担保金额。该确认函并未获得百龄董事会批准。

具体而言，胡及郭承认曾容许黄为了个人利益或其他别有用心的目的主导和控制该公司的事务及董事会，及曾因下列行为以致疏忽或忽略履行他们作为百龄的董事的责任：

- 在没有作出任何查询或任何充分的查询，或就确认函索取进一步资料的情况下，在 2011 年 3 月批准了该份有损百龄的利益或对百龄没有明显益处的确认函；及
- 在 2011 年 3 月至 2012 年 6 月期间没有就溢利担保进行监察、查询或跟进。

证监会针对百龄其他前董事的法律程序仍在进行中。判案书载于司法机构网站（法院参考编号：HCMP667/2018）。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR33

Hong Kong Securities and Futures Commission Reprimands and Fines GEO Securities Limited HK$6.3 Million for Regulatory Breaches

On March 23, 2021, the Securities and Futures Commission of Hong Kong (SFC) announced that it has reprimanded and fined GEO Securities Limited (GEO) HK$6.3 million for breaching its licensing conditions and failures related to the sale of unlisted bonds.

GEO Securities Limited is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.

The disciplinary action followed an SFC investigation which found that GEO had:

- provided discretionary account management services to eight clients in return for an annual management fee between July 1, 2014 and June 15, 2015; and
- introduced 36 clients directly to four listed companies to subscribe for their unlisted bonds totalling about HK$108 million between October 28, 2014 and November 16, 2015.

GEO's Type 1 licence was subject to the following conditions between May 3, 2013 and March 22, 2016: (a) GEO shall not hold client assets; and (b) for Type 1 regulated activity, GEO shall not conduct business other than: (i) communicating offers to effect dealings in securities to a corporation that is licensed by or registered with the SFC for Type 1 regulated activity, in the names of the persons from whom those offers are received; and (ii) introducing persons to a corporation that is licensed by or registered with the SFC for Type 1 regulated activity in order that they may effect dealings in securities or make offers to deal in securities.

The SFC also found serious deficiencies in GEO's systems and controls. Specifically, the SFC found that GEO failed to:

- conduct adequate product due diligence on the unlisted bonds before recommending them to clients;
- put in place an effective system to assess its clients' risk tolerance and ensure the recommendations and/or solicitations made to its clients in relation to

the unlisted bonds were suitable for and reasonable for the clients;
- maintain any documentary records of the investment advice or recommendations given to its clients nor provide them with a copy of the written advice; and
- make disclosures to clients of the commission it received for the successful placement of the unlisted bonds.

In deciding the sanction, the SFC took into account that:
- no client appeared to have suffered losses from GEO's distribution of the unlisted bonds;
- GEO cooperated with the SFC to resolve the SFC's regulatory concerns;
- in resolving the SFC's concerns, GEO agreed to engage an independent reviewer to review its internal controls; and
- GEO has an otherwise clean disciplinary record.

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=21PR34&appendix=0d

香港证券及期货事务监察委员会因智易东方证券有限公司违反牌照条件及在销售非上市债券方面犯有缺失谴责及罚款其 630 万港元

于 2021 年 3 月 23 日，香港证券及期货事务监察委员会（证监会）宣布，其对智易东方证券有限公司（智易东方）作出谴责并处以罚款 630 万港元，原因是智易东方违反牌照条件及在销售非上市债券方面犯有缺失。

智易东方证券有限公司根据《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 9 类（提供资产管理）受规管活动。

证监会经调查后采取上述纪律行动。调查发现，智易东方曾：
- 在 2014 年 7 月 1 日至 2015 年 6 月 15 日期间，向八名客户提供委托帐户管理服务，以赚取管理年费；及
- 在 2014 年 10 月 28 日至 2015 年 11 月 16 日期间，直接向四家上市公司介绍 36 名客户认购这些公司合共约 1.08 亿港元的非上市债券。

在 2013 年 5 月 3 日至 2016 年 3 月 22 日期间，智易东方的第 1 类牌照受以下条件规限：(a)智易东方不得持有客户资产；及(b)就第 1 类受规管活动而言，智易东方不得经营下列以外的其他业务：(i)从其他人士接收为达成证券交易而提出的要约，并以该等人士的名义将该等要约传达予就第 1 类受规管活动获证监会发牌或注册的法团；及(ii)向就第 1 类受规管活动获证监会发牌或注册的法团介绍其他人士，使该等人士可达成证券交易，或为进行证券交易而提出要约。

证监会亦发现智易东方的系统和监控措施存在严重缺失。具体而言，证监会发现智易东方没有：
- 在向客户作出建议之前，对非上市债券进行充分的产品尽职审查；
- 设立有效的制度，以评估客户的承受风险能力，及确保就非上市债券向客户作出的建议及／或招揽行为对客户而言是合适和合理的；
- 就向客户提供的投资意见或建议备存任何文件纪录，或向他们提供书面意见的副本；及
- 向客户披露其就成功配售非上市债券所收取的佣金。

证监会在厘定上述处分时，已考虑到：
- 看来没有客户因智易东方分销非上市债券而遭受损失；
- 智易东方与证监会合作解决证监会关注的监管问题；
- 在解决证监会所关注的问题方面，智易东方同意委聘独立检讨机构，对其内部监控措施进行检讨；及
- 智易东方过往并无遭受纪律处分的纪录。

相关监管规定的详情载列于纪律行动声明：https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/openAppendix?refNo=21PR34&appendix=0

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR34

U.S. Federal Court Orders U.K. Man to Pay More Than US$571 Million for Operating Fraudulent Bitcoin Trading Scheme

On March 26, 2021, the U.S. Commodity Futures Trading Commission (CFTC) announced that the U.S. District Court for the Southern District of New York entered a default judgment against Benjamin Reynolds, conducting business as Control-Finance Limited and purportedly of U.K., finding that he operated a fraudulent scheme to solicit bitcoin from members of the public and misappropriated customers' bitcoin.

Between May 2017 and October 2017, Reynolds used a public website, various social media accounts, and email communications to solicit at least 22,190.542 bitcoin, valued at approximately US$143 million at the time, from more than 1,000 customers worldwide, including at least 169 individuals residing in the U.S.

Among other things, Reynolds falsely represented to customers that Control-Finance traded their bitcoin deposits in virtual currency markets and employed specialized virtual currency traders who generated guaranteed trading profits for all customers. He also constructed an elaborate affiliate marketing network that relied on fraudulently promising to pay outsized referral profits, rewards, and bonuses to encourage customers to refer new customers to Control-Finance. In fact, Reynolds made no trades on customers' behalf, earned no trading profits for them, and paid them no referral rewards or bonuses. While Reynolds represented that he would return all bitcoin deposits to customers of Control-Finance by late October 2017, he never did and instead retained the deposits for his own personal use. Customers lost most or all of their bitcoin deposits as a result of the scheme.

The court's March 2, 2021 order requires Reynolds to pay nearly US$143 million in restitution to defrauded customers and a civil monetary penalty of US$429 million. The order also permanently enjoins Reynolds from engaging in conduct that violates the Commodity Exchange Act and CFTC regulations, registering with the CFTC, and trading in any CFTC-regulated markets.

美国联邦法庭就营业比特币交易欺诈计划裁定英国男子需支付超过 5.71 亿美金

2021 年 3 月 26 日，美国商品期货交易委员会（CFTC）宣布纽约南区美国地方法院对据称是来自英国的 Benjamin Reynolds (作为 Control-Finance Limited 开展业务) 作出缺席判决，裁定他实施了欺诈性计划，向公众征集比特币，并挪用了客户的比特币 。

在 2017 年 5 月至 2017 年 10 月之间，Reynolds 通过一个公共网站、各种社交媒体帐户和电子邮件通信从全球超过 1000 多个客户(其中包括至少 169 名美国居民) 中募集了至少 22,190.542 比特币，当时价值约 1.43 亿美元。

其中除其它外，Reynolds 虚假地向客户表示 Control-Finance 在虚拟货币市场上交易了他们的比特币存款，并雇用了专门的虚拟货币交易员，这些交易员为所有客户带来了有保证的交易利润。 他还构建了一个精心设计的会员营销网络，该网络依赖于欺诈性地承诺支付巨额的推荐利润、奖励和奖金，鼓励客户将新客户推荐给 Control-Finance。实际上，Reynolds 并未代表客户进行任何交易，也没有为他们赚取任何交易利润，也没有向他们支付推荐佣金或奖金。 Reynolds 表示他将在 2017 年 10 月下旬之前将所有比特币存款退还给 Control-Finance 的客户，但他从未这样做，而是保留了存款以供个人使用。 由于该计划，客户损失了大部分或全部比特币存款。

法院于 2021 年 3 月 2 日发布的命令要求 Reynolds 向被欺诈的客户支付近 1.43 亿美元的赔偿金，并处以 4.29 亿美元的民事罚款。 该命令还永久禁止 Reynolds 从事违反《商品交易法》和 CFTC 规定的行为，禁止他在 CFTC 进行注册以及在任何 CFTC 监管的市场中进行交易。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8371-21

U.S. Commodity Futures Trading Commission Orders Coinbase Inc. to Pay US$6.5 Million for False, Misleading, or Inaccurate Reporting and Wash Trading

On March 19, 2021, the U.S. Commodity Futures Trading Commission (CFTC) issued an order filing and settling charges against digital asset exchange operator Coinbase Inc. for reckless false, misleading, or inaccurate reporting as well as wash trading by a former employee on Coinbase's GDAX platform.

According to the order, between January 2015 and September 2018, Coinbase recklessly delivered false, misleading, or inaccurate reports concerning transactions in digital assets, including Bitcoin, on the GDAX electronic trading platform it operated. During this period, Coinbase operated two automated trading programs, Hedger and Replicator, which generated orders that at times matched with one another. The GDAX Trading Rules specifically disclosed that Coinbase was trading on GDAX, but failed to disclose that Coinbase was operating more than one trading program and trading through multiple accounts.

In addition, the order finds that while Hedger and Replicator had independent purposes, in practice the programs matched orders with one another in certain trading pairs, resulting in trades between accounts owned by Coinbase. Coinbase included the information for these transactions on its website and provided that

information to reporting services, either directly or through access to its website. Reporting firms such as Crypto Facilities Ltd., which publishes the CME Bitcoin Real Time Index, and CoinMarketCap OpCo, LLC, which posts such transactional information on its website, received access to Coinbase's transactional information via Coinbase's Application Programming Interface, while the NYSE Bitcoin Index, received it directly in transmissions from Coinbase. According to the order, transactional information of this type is used by market participants for price discovery related to trading or owning digital assets, and potentially resulted in a perceived volume and level of liquidity of digital assets, including Bitcoin, that was false, misleading, or inaccurate.

The order also finds that over a six-week period, August through September 2016, a former Coinbase employee used a manipulative or deceptive device by intentionally placing buy and sell orders in the Litecoin/Bitcoin trading pair on GDAX that matched each other as wash trades. This created the misleading appearance of liquidity and trading interest in Litecoin. Coinbase is therefore found to be vicariously liable as a principal for this employee's conduct.

The order requires Coinbase to pay a civil monetary penalty of US$6.5 million and to cease and desist from any further violations of the Commodity Exchange Act or CFTC regulations, as charged.

美国商品期货交易委员会就虚假、误导或不正确的报告和虚假交易命令 Coinbase Inc.支付 650 万美元

2021 年 3 月 19 日，美国商品期货交易委员会（CFTC）针对数字资产交易所运营商 Coinbase Inc.发布了一份控告和解决指控的命令，指控其罔顾后果地作出虚假、误导或不准确的报告，以及其前员工在 Coinbase GDAX 平台上进行的虚假交易。

根据命令，2015 年 1 月至至 2018 年 9 月间，Coinbase 罔顾后果地在其营运的 GDAX 电子交易平台提供虚假、误导或不准确的关于数字资产 (包括比特币交易) 的报告。在此期间，Coinbase 营运两个自动交易程序，Hedger 及 Replicator，其产生的订单有时彼此匹配。 GDAX 交易规则明确披露，Coinbase 在 GDAX 上交易，但没有披露 Coinbase 正在操作一个以上的交易程序，并通过多个账户进行交易。

此外，该命令发现，虽然 Hedger 和 Replicator 具有独立的目的，但实际上，程序在某些交易对中使指令彼此匹配，从而导致 Coinbase 拥有的账户之间进行交易。Coinbase 将这些交易的信息包含在其网站上，并直接或通过访问其网站将其提供予报告服务。报告公司（例如发布 CME 比特币实时指数(CME Bitcoin Real Time Index)的 Crypto Facilities Ltd.和在其网站上发布此类交易信息的 CoinMarketCap OpCo, LLC）通过 Coinbase 的应用程序编程接口访问了 Coinbase 的交易信息，而纽约证券交易所比特币指数直接从 Coinbase 的传输中接收到信息。根据命令，市场参与者会使用这种类型的交易信息来进行与他们交易或拥有数字资产相关的价格发现，并可能导致感知到的数字资产（包括比特币）的交易量和水平是虚假、误导或不准确。

该命令还发现，在 2016 年 8 月至 2016 年 9 月的六周时间内，一名前 Coinbase 员工使用操纵或欺骗手段，故意在 GDAX 上的莱特币/比特币交易对中下了买卖订单，这些交易作为虚假交易相互匹配。这造成了莱特币的交易量和交易兴趣的误导性表象。因此，对于该员工的行为，Coinbase 被认定负有责任。

该命令要求 Coinbase 支付 650 万美元的民事罚款，并停止并终止任何进一步违反《商品交易法》或 CFTC 规定的行为。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8369-21

U.S. Commodity Futures Trading Commission Charges Former Fuel Oil Trader with Manipulating Fuel Oil Benchmark

On March 25, 2021, the U.S. Commodity Futures Trading Commission (CFTC) issued an order filing and settling charges against Emilio José Heredia Collado for engaging in attempted manipulation and manipulation of a U.S. price-assessment benchmark relating to physical fuel oil products. Heredia engaged in this unlawful conduct for more than four years while employed as a fuel oil trader at a commodity trading firm and then at the U.S. affiliate of a multinational commodity trading company that acquired it.

The order finds that from as early as June 2012 through at least August 2016, Heredia and others at the firms where he was employed sought to increase profits from their oil products trading by manipulating a U.S. price-assessment benchmark relating to physical fuel oil products in order to benefit the firms' trading positions. Heredia also engaged in this conduct with the specific intent to manipulate the benchmark, and could and did create artificial prices.

Heredia admits the facts of his manipulation and acknowledges that his conduct violated the Commodity Exchange Act (CEA) and CFTC regulations. The order permanently bans Heredia from trading commodity interests and requires him to comply with undertakings never to engage in other commodity-interest related activities, including applying for registration and acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempt from registration. The order also imposes a US$100,000 civil monetary penalty. In a separate, parallel matter, the Department of Justice's Fraud Section announced a criminal charge against Heredia in the U.S. District Court for the Northern District of California.

美国商品期货交易委员会指控前燃油贸易商操纵燃油基准

2021 年 3 月 25 日，美国商品期货交易委员会（CFTC）针对 EmilioJoséHeredia Collado 发出了控告和解决指控的命令，指控其试图操纵和操纵与实物燃料油产品有关的美国价格评估基准。 Heredia 参与这种非法行为已超过四年，当时他在一家商品贸易公司受雇为燃油贸易商，然后在一家收购该商品的跨国商品贸易公司的美国子公司中受雇。

该命令发现，从 2012 年 6 月至至少 2016 年 8 月，Heredia 和他受雇的其他公司寻求通过操纵与美国实物燃料油产品相关的美国价格评估基准来增加其石油产品贸易的利润。 为了使公司的交易头寸受益。 Heredia 也出于操纵基准的特定意图进行了这种行为，并且可能及确实创造了人为的价格。

Heredia 承认他操纵的事实，并承认他的行为违反了《商品交易法》（CEA）和 CFTC 规定。该命令永久禁止 Heredia 买卖商品利益，并要求 Heredia 遵守不从事其他与商品利益有关的活动的承诺，包括申请注册并作为任何已注册、需要已注册或免于注册人的委托人、代理人、高级职员或雇员。该命令还处以 10 万美元的民事罚款。在另一起平行案件中，司法部欺诈司宣布在加利福尼亚北区美国地方法院对 Heredia 提起刑事诉讼。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8370-21

U.S. Commodity Futures Trading Commission Charges Rancher and Feedyard with US$233 Million Phantom Cattle Fraud Scheme

On March 31, 2021, the U.S. Commodity Futures Trading Commission (CFTC) filed a civil enforcement action in the U.S. District Court for the Eastern District of Washington charging Easterday Ranches, Inc., a cattle feedyard, and Cody Easterday, co-owner and formerly president of Easterday Ranches, for engaging in fraud in connection with the sale of more than 200,000 non-existent head of cattle to a beef processor, making false statements to an exchange, and violating exchange-set position limits.

According to the complaint, Easterday accumulated more than US$200 million in losses over a 10-year period from speculative trading in the cattle futures markets. To meet margin calls, Easterday devised a scheme to defraud one of his biggest business partners, a beef producer. The complaint alleges that, from at least October 2016 to November 2020, Easterday caused Easterday Ranches to submit false invoices and reimbursement requests relating to more than 200,000 head of cattle that Easterday Ranches never actually purchased or raised on the producer's behalf. Through the use of fraudulent invoices and reimbursement requests, Easterday Ranches received from the producer more than US$233 million to which it was not entitled.

In addition, the complaint alleges that Easterday caused Easterday Ranches to report false or misleading information concerning its cattle inventory, purchases, and sales to the Chicago Mercantile Exchange in at least two hedge exemption applications seeking permission to exceed the exchange's position limits. Easterday allegedly made the false statements to the exchange in 2017 and 2018 to avoid disciplinary actions and scrutiny when Easterday Ranches exceeded exchange-based position limits in the live cattle and feeder cattle futures markets. Because they were based on false or misleading information, the hedge exemptions were invalid. As a result, Easterday Ranches violated exchange-set position limit violations on at least two occasions.

The CFTC's complaint seeks restitution, disgorgement, civil monetary penalties, permanent trading and registration bans as to Easterday, and a permanent injunction against further violations of the Commodity Exchange Act and CFTC regulations, as charged.

美国商品期货交易委员会就 2.33 亿美元幽灵牛只欺诈计划指控养牛场

2021 年 3 月 31 日，美国商品期货交易委员会（CFTC）向美国华盛顿特区东区法院提起民事诉讼，指控养牛场

Easterday Ranches, Inc.和 Easterday Ranches 的共同所有人兼前总裁 Cody Easterday 涉嫌向牛肉加工商出售了超过 200,000 头不存在的牛头，对交易所做出虚假陈述，并违反了交易所设定的头寸限制。

根据起诉书，Easterday 在十年内因牛只期货市场的投机交易而蒙受了超过 2 亿美元的损失。为了满足追加保证金的要求，Easterday 设计了一项计划来欺骗作为他最大的商业伙伴之一的牛肉生产商。起诉书称，至少在 2016 年 10 月至 2020 年 11 月，Easterday 使 Easterday Ranches 提交了与超过 200,000 头，Easterday Ranches 从未真正代表生产商购买或饲养过的，牛有关的虚假发票和报销请求。通过使用虚假发票和报销请求，Easterday Ranches 从生产商那里收到了超过 2.33 亿美元该公司无权获得的款项。

此外，起诉书还称，Easterday 使 Easterday Ranches 在至少在两项对冲豁免申请中向芝加哥商品交易所 (Chicago Mercantile Exchange) 报告有关其牲畜存量、购买和销售的虚假或误导性信息，以寻求许可以超过该交易所的头寸限额。 据称，Easterday 在 2017 年和 2018 年，当 Easterday Ranches 超过活牛和饲养牛期货市场基于交易所的头寸限制时，向交易所做出了虚假陈述，以避免纪律处分和审查。 由于对冲豁免是基于虚假或误导性信息，因此无效。 结果，Easterday Ranches 至少两次违反了交易所设定的头寸限制规定。

CFTC 的起诉寻求恢复原状、罚没非法所得、民事罚款、对 Easterday 实行永久贸易和注册禁令，以及针对他进一步违反《商品交易法》和 CFTC 规定的永久禁令。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8372-21

U.S. Securities and Exchange Commission Issues Amendments, Seeks Public Comment on Holding Foreign Companies Accountable Act

On March 24, 2021, the U.S. Securities and Exchange Commission (SEC) has adopted interim final amendments to implement congressionally mandated submission and disclosure requirements of the Holding Foreign Companies Accountable Act (HFCA Act).

The HFCA Act became law on December 18, 2020. Among other things, Section 2 of the HFCA Act amended Section 104 of the Sarbanes-Oxley Act of 2002 to require the SEC to identify each "covered issuer" that has retained a registered public accounting firm to issue an audit report where that firm has a branch or office located in a foreign jurisdiction, and the Public Company Accounting Oversight Board (PCAOB) has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. The interim final amendments adopting release seeks comment on this requirement.

These registrants, identified as "Commission-Identified Issuers," will be required to submit documentation to the SEC on or before the annual report due date that establishes that they are not owned or controlled by a governmental entity in that foreign jurisdiction. The interim final amendments implement a process for this documentation requirement, consistent with the HFCA Act's 90-day deadline. In addition, if the registrant is determined to be a Commission-Identified Issuer for three consecutive years, Section 2 of the HFCA Act directs the SEC to prohibit trading of the registrant's securities. The SEC staff has been assessing how best to implement this requirement, which is not subject to the 90-day deadline.

Section 3 of the HFCA Act provides that Commission-Identified Issuers that are foreign issuers, as defined in Securities Exchange Act of 1934 Rule 3b-4, are subject to these additional specified disclosure requirements:

- During the period covered by the form, the above-referenced registered public accounting firm has prepared an audit report for the issuer;
- The percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;
- Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;
- The name of each official of the Chinese Communist Party who is a member of the board of directors of the issuer or the operating entity with respect to the issuer; and
- Whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

The interim final amendments become effective 30 days after publication in the Federal Register and comments on the amendments are due by the same date. The SEC

has been requesting public comment regarding implementation of the HFCA submission and disclosure requirements, as well as the appropriate mechanics for determining Commission-Identified Issuers. A registrant will not be required to comply with the amendments until the SEC has identified it as having a non-inspection year under a process to be subsequently established by the SEC with appropriate notice. Once identified, a registrant will be required to comply with the amendments in its annual report for each fiscal year in which it is identified. The SEC planned to separately address implementation of the trading prohibitions in Section 2 of the HFCA Act in a future notice and comment process.

美国证券交易委员会发布修正案，就使外国公司问责法案征求公众意见

2021 年 3 月 5 日，美国证券交易委员会（美国证交会）通过了临时最终修正案，以执行国会授权的《外国控股公司责任法案》（Holding Foreign Companies Accountable Act）（HFCA 法案）的提交和披露要求。

HFCA 法案于 2020 年 12 月 18 日成为法律。其中，HFCA 法案第 2 条修改了《2002 年萨班斯-奥克斯利法案》(Sarbanes-Oxley Act of 2002) 第 104 条，要求美国证交会找出保留注册公共会计事务所以发布审计报告，且分支机构或办事处位于外国司法管辖区，并且公开公司会计监督委员会（Public Company Accounting Oversight Board）（PCAOB）已确定由于外国司法管辖区某些机构的取态，该公司无法被完全检查或调查的每个“发现发行人”。采用作发布的临时最终修正案征求对此要求的意见。

这些被称为“委员会指定发行人”的注册人将被要求在年度报告到期日当日或之前向美国证交会提交文件，以证明其不属于该外国司法管辖区的政府实体所有或控制。临时最终修订按照 HFCA 法案的 90 天期限实施了此文档要求的过程。 此外，如果注册人连续三年被确定为委员会指定发行人，则 HFCA 法第 2 条指示美国证交会禁止交易注册人的证券。 美国证交会工作人员一直在评估如何最好地实施此要求，该要求不受 90 天期限的限制。

HFCA 法第 3 条规定，委员会指定发行人为由外国发行人 (定义见《1934 年证券交易法》第 3b-4 条)，并且必须遵守以下附加的特定披露要求：

- 在表格涵盖的期间内，以上提及的注册会计师事务所已为发行人准备了一份审计报告；
- 发行人成立或组织的外国司法管辖区中的政府实体所拥有的发行人股份的百分比；
- 该注册会计师事务所适用的外国司法管辖区中的政府实体相对于发行人是否具有控制性财务利益；
- 发行人或发行人经营实体的董事会成员中的中共中央官员的姓名； 和
- 发行人的公司章程（或等效的组织文件）是否包含中国共产党的章程，包括该章程的文本。

临时最终修正案将在联邦公报上公布后 30 天生效，有关修正案的评论应在同一日期之前提交。美国证交会一直在要求公众对 HFCA 提交和披露要求的执行情况以及确定委员会指定发行人的适当机制进行评论。在美国证交会随后根据确定的程序及发出适当的通知，将注册人确定为具有不能检查年度之前，将不需要注册人遵守这些修订。一旦确定，注册人将被要求在其被确定的每个会计年度的年度报告中的遵守修订。美国证交会计划在将来的通知和评论过程中，分别解决 HFCA 法案第 2 节中贸易禁令的实施问题。

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Keynote Speech by Chairman YI Huiman at the China Securities Regulatory Commission Roundtable of China Development Forum 2021

I. Mission of the capital market in serving high-quality development

The fifth plenary session of the 19th Central Committee of the Communist Party of China and the Central Economic Work Conference enunciated instructions to fully implement a registration-based IPO system, establish a normalized delisting regimes, increase the proportion of direct financing, and maintain a robust and sound capital market. The 14th Five-Year Plan approved by the fourth session of the 13th National People's Congress, outlined several key tasks including advancing registration-based IPO reform, improving the quality of listed companies, expanding the participation of institutional investors, deepening the opening-up of capital market, etc. These specific requirements and priorities, which touch upon a wide range of work, have shown that the CPC Central Committee and the State Council attaches great importance and high expectations to the capital market. After three decades of development, China's capital market has made

substantial progress in market scale, system and structure, quality of development, and opening-up. At the new starting point of a new stage, the key mission of China Securities Regulatory Commission (CSRC) is to ground its efforts in improving the capital market and enable it to better serve China's high-quality economic development while remaining steady and sound.

CSRC understands that the mission of capital market in the new development stage stands on two pillars. First, better resource allocation function. With investment and financing activities, M&A and reorganization, and other market mechanisms through equity and debt vehicles, CSRC will give full play to the decisive role of the market in resources allocation, capital formation, and clustering of production factors in the most promising industries, so as to improve the quality of production factors and the efficiency of allocation. Second, efficient incentive and constraint mechanism. In addition to capital support, technological innovation leans more on individual passion and creativity. Sharing of risks and benefits, a unique feature of capital market, is an effective solution and an accelerator to capital formation, conducive to circulation of technology, capital, and production, and the upgrading of the industrial base and the modernization of the industrial chain.

II. Promoting structural improvement of capital market through comprehensively deepening reform

Centering on the overall goal of building a capital market that is well-regulated, transparent, open, vigorous, and resilient, and under the overall arrangements made by the Financial Stability and Development Committee, CSRC has implemented a new round of comprehensively deepening reform of capital market. The reform efforts have effectively improved and stabilized market expectations and brought about profound structural changes in the capital market. Looking back on CSRC's work in the past two years, CSRC has upheld the spirit of "system building, no interference, and zero tolerance", which is embodied in four keywords.

Institutions. Robust institutions provide for fundamental strength and long-term outcomes. As capital market is strongly market-oriented by nature and must be established upon sound rules and regulations, the steady and sustained development can only be ensured by a system that is transparent, consistent, coherent, and predictable. In this round of reform, CSRC has been taking fundamental system improvement as the overarching principle. On one hand, to improve the legal system for capital market with two main achievements. One was the revision of the Securities Law, which provides fundamental basis for the registration-based securities issuance reform, significant increases in the ceiling fines imposed on violations, and enhanced investor protection. The other one was the introduction of the Amendment XI to the Criminal Law, in which fraudulent issuance, misrepresentations, fake documents falsified by intermediaries, and market manipulation will face much heavier penalties. On the other hand, CSRC is promoting a series of institutional innovations led by the registration reform, in areas such as secondary offerings, M&A and reorganization, trading and settlement, and shareholding reductions, and introduced new delisting rules to significantly enhance the adaptability and inclusiveness of the system. CSRC will continue to make progress while ensuring stability with unremitting efforts in building a more well-founded and established system and improving its capacity in the governance of the capital market.

Structure. Restructuring is critical to the transformation from quantitative to qualitative growth. The most salient bottlenecks in the high quality development of the capital market are structural ones, which exist in many aspects such as financing, listed companies, intermediaries, investors, the volume and maturity of funding, etc. Faced with structural conundrums, CSRC has always followed a systematic and dialectical working philosophy and focused on seeking reformative perspectives and solutions, with the aim to build sustainable structures for sustainable development. Practice has shown that tackling structural issues can resolve essential problems. Take market leverage for example, market fluctuations are natural phenomena as long as there is no excess leverage. The key is a sound funding structure. In the past few years, CSRC has reflected on the lessons learned from previous abnormal fluctuations, and paid equal attention to participants in both exchange-traded and OTC markets, both domestic and overseas markets. To ensure transparent, see-through, and effective regulation, CSRC has taken a series of measures to keep the scale of leveraged funding at a sound status. At present, leverage risks in the A-share market are generally within control. Another example is expanding the share of professional investment. Public funds, regulated private funds, and asset management business of securities companies have been growing rapidly in the past two years, with the number of investors purchasing funds rising quickly, which indicates promising trends. However, whether the asset management sector can rise up to this emerging trend and new demands still warrant judicious consideration. We must try to solve the imbalances, narrow the quality gap between supply and demand, and avoid repeating old mistakes. Given the national conditions in China, key tasks at the current stage are to urge the industry to form a sound cultural environment, increase professional capabilities, improve performance assessment, and optimize business structures. By doing so, the industry may build up differentiated advantages, gain the trust of investors, achieve meaningful growth for both investors and the industry itself, and contribute to a better investor structure.

Ecosystem. Capital market resembles a complex ecosystem. Only a healthy market environment can derive trust and confidence, and facilitate asset allocation, wealth management, and direct financing. In my opinion, it is the mission of regulators to build a sound ecological environment and maintain an open, fair, and just market that generates sustained appeal to all types of participants. One important aspect is strengthening the deterrence of a "zero-tolerance" stance and making wrong doers pay heavily for their behaviors. CSRC has been sparing no efforts in improving the enforcement and judicial frameworks for securities misconducts, and in building a multi-dimensional accountability system of regulatory enforcement, civil reclamation, and criminal punishment. For example, the ceiling fine for information disclosure related violations has been lifted from RMB 600,000 to RMB 10 million; the maximum sentence for fraudulent issuance has been increased from 5 years to 15 years; and channels for investors to protect their rights have been further expanded with the establishment of a special "opt-out" representative litigation mechanism for securities related disputes. CSRC is also taking more actions to hold intermediaries accountable by carrying out investigations on both issuers and intermediaries, and imposing financial punishment along with qualification restrictions. The second important aspect is promoting all stakeholders to duly fulfill their roles and responsibilities. Following the regulatory philosophy of forming synergy with reverence for the market, the rule of law, professionalism, and risks, CSRC is guiding listed companies to operate with honesty and pursue innovation while remaining committed to core business. CSRC is promoting an industry culture that features compliance, integrity, professionalism, and robustness. CSRC is also advocating rational, long term, and value-based investment. In a nutshell, all parties are contributing to and benefiting from a jointly built development pattern.

Composure. Capital market faces a complex and ever evolving external environment. Market participants have various purposes and goals; markets rise or fall from time to time; and regulators are often tasked with multiple goals and facing difficult choices. We must have sufficient patience and composure, maintain judicious thinking and independence, and make analysis and decisions from a comprehensive, dialectical, professional, and objective perspective. We must respect and follow the rules of the market, avoid changing policies easily under the influence of external opinions or opting for a seemingly right but intrinsically wrong path. Regardless of the remarkable difficulty in practicing those philosophies, in the past two years, CSRC has remained committed to the principle of "system building, no interference, and zero tolerance", focused on delivering concrete results with regard to priorities for the capital market, and kept a determined stance. First, CSRC has adopted the right regulatory philosophy. CSRC has remained true to the original mission of regulation, fulfilled its statutory mandates, strictly prevented regulatory vacuum, and brought all financial activities under regulation. CSRC strove to be meticulous and strict in regulation, has the courage to confront difficult tasks, and not be disturbed by external noises. Second, CSRC has been practicing the philosophy of "no interference". With an aim to balance the roles of the government and the market, and effectively coordinate liberalization and regulation with a determined stance, CSRC remained committed to market-oriented and law-based regulation and refrained from unwarranted administrative interference. Third, CSRC has been improving regulatory transparency and predictability. CSRC has maintained policy consistency and continuity and will not be swayed by temporary market fluctuations. CSRC took steady steps in the right direction and kept moving forward toward the final destination. CSRC has been promoting "regulation in the sunshine" by ensuring regular public access to information with fewer exceptions, conscientiously subjecting itself to public supervision, exercising power with cleaner hands, and eliminating abuse of discretion. Fourth, CSRC has continued to enhance regulatory capacity. While adhering to scientific, risk-based, professional, and continuous regulation, CSRC strove to find the underlying logic beneath the evolving markets, identify commonality from individuality, and understand universal rules from a dialectical perspective. CSRC has stayed true to its core missions, remained committed to professionalism, designed regulatory targets that emphasize on substance over form, and pursued relentlessly for better regulation.

III. Steadily advancing the registration-based IPO reform

The registration-based IPO reform is the key reform initiative in this round of comprehensive reforms of China's capital market. During the reform course, CSRC has been upholding three core principles, namely respect for the essence of a registration-based system, alignment with international best practices, and suitability with the characteristics and development stage of China's market. Initiating from the Shanghai STAR Market pilot and further expanding to the Shenzhen ChiNext Market covering both new and existing IPO applications, the IPO reform has made substantial breakthroughs. The newly established registration system has stood the test of market and is running up to expectations. The two markets are operating with sustained stability and new vitality. While implementing such a new reform, CSRC has been paying close attention to the feedback from market participants with an attitude of listening to the market and learning from the market for continuous improvement. CSRC has also realized that more in-depth discussions and consultation is needed to dispel the myths, strengthen the consensus, form a better

understanding of the essence and implications of a registration system, and ensure that the reform progresses with steady steps.

Do we need to review IPO applications under a registration system? As public share offerings entail extensive public interest, major markets in the world all have put in place rigorous rules and procedures for the review and registration of IPOs. The US securities regulator has a large professional team to review IPO filings by industries. The HKEX and Hong Kong SFC adopt a dual filing regime, where both parities review listing applications with different focuses. Applying a registration system is all but relaxing review requirements. Both Shanghai and Shenzhen stock exchanges are obligated to strictly fulfill their vetting responsibilities for the STAR Market and ChiNext Market before referring the applications to CSRC for registration. The CSRC shall examine the vetting by the exchanges, and exercise supervision over material issues concerning listing eligibility and information disclosure. Practice has approved that these arrangements are both effective and necessary.

Does adequate information disclosure alone qualify an IPO for listing? A registration system centers around information disclosure and institutes more streamlined and inclusive listing requirements. Matters that can be left to the judgement of investors are reflected in the rigorous, comprehensive, in-depth, and targeted information disclosure requirements instead of being incorporated into listing criteria, which used to be the case under a verification system. But the compliance with information disclosure formalities alone is not enough for China's capital market. We have 180 million retail investors, a reality not seen in any other country in the world. This is a unique feature of China's markets that must be taken into consideration in any policy-making. It means CSRC has to pay vigorous attention to the quality and adequacy of information disclosure in its review process to ensure its truthfulness, accuracy, and completeness. CSRC believes these are necessary and pragmatic actions for the current stage.

Are the market intermediaries ready for the new system? Market intermediaries, including sponsors and auditors, are experiencing a major shift in role during the transformation of a verification system to a registration system. In the past, their first and foremost goal is to improve issuers' worthiness of an approval; whereas now, their goal is to increase the issuers' worthiness as an investment, which is practically more demanding for their role as market gatekeepers. During a recent on-site inspection, a large percentage of IPO applicants withdrew their listing applications. Based on the information CSRC has at hand, one of the key common reasons is the incompetence of their sponsors. The current situation shows that many intermediaries have not aligned their mindset, business structure, and capacity with the registration system. They are walking down the old lane wearing new shoes. CSRC is looking further into this issue and will take targeted measures where necessary. For companies that attempted to force their way to IPO in a sick shape, CSRC will take vigorous actions against any misconducts, and will not allow them to get away with it by simply withdrawing applications. All in all, CSRC will further strengthen the role of market intermediaries and urge them to better fulfill their respective duties. Meanwhile, it is also necessary for the market regulator to improve the regulatory framework and perfect the fundamental institutions of the market.

How to maintain a balanced development of the primary and secondary markets? Recently, the queuing of IPO registrations has drawn wide market attention. Some argues that since we are opting for a registration system, there should be no restrictions on the pace of share offerings. According to CSRC's analysis, the current IPO line-up is attributable to multiple factors. It generally reflects both the growing vitality in China's real economy and the appeal of China's capital market to issuers, and is quite different from what used to be a backlog of IPO reviews several years ago. Back then, the suspension of IPOs from time to time had caused a lot of uncertainties in market expectation and some issuers had to queue for two to three years. After the registration-based IPO system was effected, the review cycle for an IPO registration has been significantly shortened and brought closely in line with that of overseas mature markets. To achieve sustainable development of the capital market, full considerations shall be given to maintain a dynamic and positive equilibrium between financing and investment activities. Only when both the primary and secondary markets are operating in an orderly and stable way, can an enabling ecosystem for new share offerings gradually take form. Currently, CSRC is focusing on improving working methods to provide better services for market participants while stepping up regulation to be more targeted and enhancing accountability of issuers and intermediaries. CSRC aims to set a normalized pace of IPOs that meets market expectations by fully leveraging market-based measures under the rule of law.

The 2021 Government Work Report has set the goal to "steadily advance the reform to establish a registration-based IPO system". CSRC will continue to make progress while ensuring stability in a systematic manner. CSRC will conduct a full assessment of the registration-based IPO system piloted on the STAR Market and the ChiNext Market, and improve the regulatory framework that brings every link of the registration system under regulatory oversight. To pave the way for implementing the registration system across the whole market, CSRC will balance the IPO reform with other six key tasks, which are improving the quality of listed companies, strengthening accountability of financial intermediaries, safeguarding market order, defining the role of stock

exchanges in stock offering reviews, transforming the role of CSRC in stock offering regulation, and forestalling abuse of power. The reform to establish a registration-based IPO system is a far-reaching and highly sensitive reform initiative that entails complicated interests and concerns of all stakeholders. Joint efforts and support from all participants is required to establish an even more solid foundation for the steady landing of this major reform.

IV. Orderly promoting institutional opening-up of the capital market

At the Lujiazui Forum in 2019, the CSRC announced nine measures to further open up China's capital market. CSRC is delighted to see that the policies were implemented on the point and yielded positive effects. These measures, which aim to build market and product connectivity, remove restrictions on foreign ownership and scope of business in financial service providers, and facilitate cross-border financing and investment, are all in line with the requirements of the pre-establishment national treatment and negative list system. By the end of 2020, foreign capital had registered net inflow for the third consecutive year and A-share assets held by overseas investors surpassed RMB 3 trillion. This reflects the fact that China's capital market has a strong appeal to international investors and has generated good returns for their investments, and there remains great potential for further growth. Recently, however, CSRC has noticed an interesting phenomenon in the market. Certain scholars and analysts have been giving greater weight to external factors than domestic ones in making judgement. For example, they are paying more attention to US treasury yields than LPR, Shibor, and China's treasury yields, and more to inflation expectations in foreign economies than China's CPI. CSRC would like to encourage you to give it further considerations against the backdrop of China's new development pattern.

Looking at foreign participation in China's capital market, their holdings of A-shares and related market share account for less than 5%, not a high percentage compared with that in mature markets. Moving forward, CSRC will continue to open up the capital market, and hold an open and supportive attitude to foreign participants setting up branches, growing businesses, and offering products in the domestic market. In the meantime, CSCR will also carefully coordinate opening-up with risk prevention, which borders on two aspects at present. First, to prevent massive cross-border flows of foreign capital. Normal cross-border capital flows are welcomed, but massive inflows and outflows of hot money, which are by nature detrimental to market soundness, are strictly regulated in any market. CSRC shall step up preemptive risk monitoring and analysis, and shore up regulatory regimes to avoid falling into a passive position. Second, to properly resolve risks related to Chinese companies listed overseas. CSRC has been trying to engage its counterparts in the US to effectively cooperate on this issue and proposed multiple solutions, but still have not received full and positive feedback. It is in CSRC's firm belief that cooperation brings win-win results, and that only by sitting down and consulting each other can problems be solved and differences resolved.

中国证券监督管理委员会主席易会满在 2021 年中国发展高层论坛圆桌会上的主旨演讲

一、资本市场在推动高质量发展中的使命担当

党的十九届五中全会和中央经济工作会议明确提出，要全面实行股票发行注册制，建立常态化退市机制，提高直接融资比重，促进资本市场健康发展。刚刚闭幕的全国人大四次会议审议通过的“十四五”规划纲要，对注册制改革、提高上市公司质量、大力发展机构投资者、深化资本市场对外开放等重点任务进一步作出部署。我们体会，党中央、国务院对资本市场高度重视，要求非常具体，重点也很明确，涉及方方面面的内容，期望非常高。中国资本市场经过三十年的发展，在市场规模、体系结构、发展质量和开放水平等方面取得了长足进步。在新阶段、新起点上，我们认为，核心是要扎扎实实办好资本市场自己的事，在自身稳健发展的同时，更好服务实体经济高质量发展。

我理解，资本市场在新发展阶段主要的使命担当表现在两个方面：一是市场化的资源配置功能。通过股权债权投资融资、并购重组等各种市场化机制安排，充分发挥市场在资源配置中的决定性作用，把各类资金精准高效转化为资本，促进要素向最有潜力的领域协同集聚，提高要素质量和配置效率。二是激励约束机制。科技创新除了需要资本支持，更重要的是要充分激发人的积极性创造性。资本市场特有的风险共担、利益共享机制能够有效地解决这个问题，从而加快创新资本形成，促进科技、资本和产业高水平循环，推动产业基础高级化、产业链现代化。

二、以全面深化改革推动资本市场实现结构性改善

围绕打造一个规范、透明、开放、有活力、有韧性的资本市场总目标，我们在国务院金融委的统一部署下，实施了新一轮全面深化资本市场改革，有效改善和稳定市场预期，资本市场正在发生深刻的结构性变化。回顾两年多来的实践，主要是推进了“建制度、不干预、零容忍”九字方针的落地，我们体会，集中体现在四个关键词。

（一）制度。制度是管根本、管长远的。资本市场的市场属性极强，规范要求极高，必须要有一套公开透明、连续稳定、可预期的制度体系，这样才能行稳致远。我

们在这一轮改革中，始终把完善基础制度作为总纲，一方面大力推动健全法治体系，有两大成果：推动完成证券法修订，在证券发行注册制、显著提升证券违法违规成本、加强投资者保护等方面作出基本制度规范；推动刑法修正案（十一）出台，对欺诈发行、信息披露造假、中介机构提供虚假证明文件和操纵市场行为大幅提高惩戒力度。另一方面以注册制改革为牵引，推动一系列关键制度创新，包括调整再融资和并购重组政策、优化交易结算和减持制度、发布实施退市新规，制度的适应性、包容性明显提升。我们将继续坚持稳中求进、久久为功，加快构建更加成熟更加定型的基础制度体系，持续提升资本市场治理能力。

（二）结构。结构转变是从量变到质变、从规模扩张到质量提升的关键一环。制约当前资本市场高质量发展的因素很多，我认为最突出的还是结构性问题，这里面主要包括融资结构、上市公司结构、中介机构结构、投资者结构、资金总量和期限结构，等等。我们始终坚持系统论、辩证法，注重用改革的思路和手段去破解结构性难题，以结构的可持续实现发展的可持续。实践证明，抓住了结构，就抓住了根本。比如，市场杠杆问题。市场波动很正常，我认为，只要没有过度杠杆，就不会出大事，关键是要有一个合理的资金结构。这几年，我们深刻汲取股市异常波动的教训，关注场内场外、境内境外、各类市场主体，坚持看得清、可穿透、管得住，通过一系列措施控制好杠杆资金规模和水平。目前，A 股市场杠杆风险总体可控。再比如，提升专业投资的占比问题。这两年公募基金、阳光私募、券商资管发展比较迅速，投资者购买基金的比例在快速提升，这是很好的趋势性变化。但资管行业能否适应财富管理的新趋势新要求，需要我们认真评判，尽量解决不平衡，缩小供需质量缺口，不能反复走弯路。今后重点是要立足中国国情，促进行业端正文化理念、提升专业能力、改善业绩考核、优化业务结构，体现差异化发展路径，真正取得投资者信任，做到自身价值和投资者价值共成长，为投资者结构改善作出更大贡献。

（三）生态。资本市场是一个复杂的生态系统。生态好了，大家才会对这个市场有信任有信心，资源配置、财富管理、提高直接融资比重等功能才能有效发挥。我认为，监管就是要创造良好生态，维护公开公平公正的市场环境，让各方都愿意来、留得住。一方面强化“零容忍”的震慑，让做坏事的人付出惨痛代价。我们一直致力于推动完善证券执法司法体制机制，构建行政执法、民事追偿、刑事惩戒的立体追责体系。比如，信披违法罚款上限从 60 万元提高到 1000 万元；欺诈发行最高刑期从 5 年提高到 15 年；建立了“明示退出、默示加入”的证券纠纷特别代表人诉讼机制，进一步畅通了投资者依法维权渠道。再如，对发行人和中介机构“一案双查”，实施中介机构资金罚和资格罚并重，加大中介机构追责力度。另一方面加快推动市场各方归位尽责。坚持“敬畏市场、敬畏法治、敬畏专业、敬畏风险，发挥各方合力”的监管理念，引导上市公司诚信经营、守正创新，大力弘扬“合规、诚信、专业、稳健”的行业文化，积极倡导理性投资、长期投资、价值投资的理念，各方共建共治共享的发展格局正在逐步形成。

（四）定力。资本市场外部环境复杂多变、参与主体诉求多样、市场行情有涨有跌，监管者往往面临着多元目标、两难甚至多难选择。我们必须保持足够耐心和定力，保持平常心、独立性，要坚持全面、辩证、专业、客观地看问题、做决策，尊重市场规律，按规律办事，不能人云亦云、似是而非。当然，要做到这一点难度很大，这两年我们坚持“九字方针”，扎扎实实办好自己的事，保持住了定力。一是树立正确的监管观。坚持监管姓监，坚定履行好法定职责，坚决防止监管真空，要让所有的金融活动都纳入监管。要精于监管、严于监管，敢于动真碰硬，不为噪音杂音所扰。二是贯彻“不干预”的理念。科学把握政府与市场、放和管的关系，把该放的放到位，把该管的坚决管住。要毫不动摇坚持市场化法治化方向，避免不必要的行政干预。三是提高监管透明度和可预期性。保持政策的连续性稳定性，对看准的事不因市场一时的变化而左右摇摆，坚持一步一个脚印，积小胜为大胜。坚持阳光用权，坚持“公开为常态、不公开为例外”，自觉接受监督，做到廉洁用权，减少自由裁量。四是持续提升监管专业能力。坚持科学监管、分类监管、专业监管、持续监管，透过现象看本质，通过个性找共性，辩证把握事物规律。坚守初心使命，倡导专业精神，按照实质重于形式的原则把握监管目标，实现最优效果。

三、稳步推进股票发行注册制改革

注册制改革是这一轮全面深化资本市场改革的“牛鼻子”工程。我们坚持尊重注册制基本内涵、借鉴国际最佳实践、体现中国特色和发展阶段特征的三原则，从科创板试点注册制起步，再到创业板实施“存量+增量”改革，注册制改革已经取得突破性进展。总的看，注册制的相关制度安排经受住了市场的检验，市场运行保持平稳，市场活力进一步激发，达到了预期的效果，各方总体是满意的。注册制改革作为新事物，我们一直非常关注市场的反映，始终保持向市场学习的态度，认真倾听、持续完善。我们也感到，关于注册制的内涵和外延还需要市场各方进一步深入讨论，去伪存真、增进共识，确保改革行稳致远。这里我想就几个问题再谈些看法。

注册制要不要审？由于股票公开发行涉及公众利益，全球主要市场都有比较严格的发行审核及注册的制度机制和流程安排。美国监管机构有庞大的专业团队分行业开展审核工作。香港交易所和证监会实行双重存档制度，均有审核，只是侧重点不同。因此，注册制绝不意味着

放松审核要求。现在科创板、创业板发行上市，交易所都要严格履行审核把关职责。证监会注册环节对交易所审核质量及发行条件、信息披露的重要方面进行把关并监督。从实践情况看，这些安排行之有效，也很有必要。

只要信息披露就可以上市吗？注册制强调以信息披露为核心，发行条件更加精简优化、更具包容性，总体上是将核准制下发行条件中可以由投资者判断事项转化为更严格、更全面深入精准的信息披露要求。但中国的市场实际决定了，仅仅靠形式上的充分披露信息还不够，中国股市有 1.8 亿个人投资者，这是哪个国家都没有的，我们必须从这个最大的国情市情出发来考虑问题。我们始终强调信息披露的真实准确完整，在审核中对信息披露质量严格把关。同时，我们还要考虑板块定位问题、是否符合产业政策等等。我们认为，这是当前阶段的必要务实之举。

中介机构已经适应了吗？从核准制到注册制，保荐机构、会计师事务所等中介机构的角色发生了很大变化，以前的首要目标是提高发行人上市的“可批性”，也就是要获得审核通过；现在应该是要保证发行人的“可投性”，也就是能为投资者提供更有价值的标的，这对“看门人”的要求实际上更高了。最近，在 IPO 现场检查中出现了高比例撤回申报材料的现象，据初步掌握的情况看，并不是说这些企业问题有多大，更不是因为做假账撤回，其中一个重要原因是不少保荐机构执业质量不高。从目前情况看，不少中介机构尚未真正具备与注册制相匹配的理念、组织和能力，还在“穿新鞋走老路”。对此，我们正在做进一步分析，对发现的问题将采取针对性措施。对“带病闯关”的，将严肃处理，决不允许一撤了之。总的要进一步强化中介把关责任，督促其提升履职尽责能力。监管部门也需要进一步加强基础制度建设，加快完善相关办法、规定。

如何保持一二级市场的平衡协调发展？近期，市场对 IPO 排队现象比较关注。有观点认为，既然实行了注册制，发行就应该完全放开，有多少发多少。我们认为，排队现象是多重因素造成的，总体上反映了中国实体经济的发展活力和资本市场的吸引力在逐步增强。这与历史上的“堰塞湖”是有区别的，以前 IPO 停停开开，预期不明朗，有的排队要两三年；注册制改革后，注册审核周期已经大幅缩短，接近成熟市场。要实现资本市场可持续发展，需要充分考虑投融资的动态积极平衡。只有一二级市场都保持了有序稳定，才能逐步形成一个良好的新股发行生态。当前，我们正按照优化服务、加强监管、去粗取精、压实责任的思路，充分运用市场化法治化手段，积极创造符合市场预期的 IPO 常态化。

这次政府工作报告提出，要稳步推进注册制改革。我们将坚定注册制改革方向不动摇，继续坚持稳中求进，坚持系统观念，扎实做好科创板、创业板注册制试点评估，完善注册制全流程全链条的监管监督机制。重点是把握好实行注册制与提高上市公司质量、压实中介机构责任、保持市场平稳运行、明确交易所审核职能定位、加快证监会发行监管转型、强化廉洁风险防范等 6 个方面的关系，为全市场注册制改革积极创造条件。注册制改革涉及利益复杂、影响深远、敏感性强，各方面都高度关注，需要各参与方共同努力，支持改革、呵护改革，把改革条件准备得更充分一些，推动这项重大改革平稳落地。

四、有序推动资本市场制度型对外开放

在 2019 年陆家嘴论坛上，我们宣布了中国资本市场进一步扩大对外开放的 9 条措施。从落地情况看，政策是到位的，效果是好的。无论是市场、产品的互联互通，全面放开行业机构股比和业务范围，还是便利跨境投融资的制度安排，全面落实了准入前国民待遇加负面清单管理要求。截至 2020 年底，外资持续 3 年保持净流入，境外投资者持有 A 股资产突破 3 万亿元。中国资本市场的吸引力是强的，外资也获得了良好的回报，而且潜力还很大。当前，市场上也出现了一些有趣的现象。比如，部分学者、分析师关注外部因素远远超过国内因素，对美债收益率的关注超过 LPR、Shibor 和中国国债收益率，对境外通胀预期的关注超过国内 CPI。对这种现象我不作评价，但对照新发展格局，建议大家做些思考。

从中国资本市场目前外资参与情况看，持股市值和业务占比均不到5%，这个比例在成熟市场中并不高。下一步，我们将坚持资本市场对外开放，对机构设置，开办业务、产品持开放支持的态度。但同时，我们也要注重统筹开放与防范风险的关系，当前要注意两方面情况。一是防范外资大进大出。对于资本正常的跨境流动，我们乐见其成，但热钱大进大出对任何市场的健康发展都是一种伤害，都是要严格管控的。在这方面，我们应该加强研判，完善制度，避免被动。二是妥善处置中概股问题。对于这个问题，我们一直在寻求与美方相关监管机构加强合作，多次提出解决方案，但始终未得到全面的积极的回应。我们坚信，合作是共赢的选择，要想解决问题必须坐下来，分歧只能通过协商来解决，别无他路。

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