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Financial Services Regulatory Update
金融服务监管资讯

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Australian Securities and Investments Commission Clarifies Requirements on Declaration of Dividends Pending Schemes of Arrangement – Comparison with Hong Kong Requirements – Tightening Loose Regulation in Hong Kong

In June 2021, the Australian Securities and Investments Commission (ASIC) clarified requirements on declaration of dividends as consideration in schemes of arrangement.

A scheme of arrangement is a statutory process through which a court can sanction proposed arrangements between a company and its shareholders, typically to cancel all the shares in the target (except those owned by the bidder) in return for cash or non-cash consideration from the bidder. Schemes of arrangement may include a dividend as part of the scheme consideration offered to members. ASIC expects scheme proponents to make a decision on whether to declare the dividend early in the scheme timetable, and at the latest before the second hearing. Where the decision will not be made until after members have voted on the scheme, ASIC expects the scheme booklet to include clear disclosure of the circumstances where the dividend may not be declared.

ASIC recently intervened in a scheme of arrangement where it was proposed that the decision on whether to declare a special dividend that formed part of the consideration would not be made until after the second court hearing. There were commercial reasons as to why the decision could not be made before the scheme meeting. ASIC ensured that members were given disclosure of the circumstances where the dividend would not be declared before voting on the scheme and that a decision on whether to declare the dividend was made and announced before the second court hearing, rather than after it. This timing meant that ASIC and any other interested parties could make submissions on this issue at the second hearing if necessary.

Privatization schemes and dividend distribution in Hong Kong

A privatization may be effected by, among others, a general offer or a scheme of arrangement proposed by the listed issuer. Where a privatization is effected by a scheme of arrangement, consideration may take various forms, such as cash or other assets (e.g. shares in the offeror) subject to certain restrictions under the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (Takeovers Codes).

As part of the terms of a takeover offer, an offeror may propose to provide a conditional "special" dividend distribution by the offeree to participating offeree shareholders to sweeten the deal, with an aim to securing the requisite shareholders' approval. For instance, in the privatization of Allied Properties (H.K.) Limited (a previous listed company on The Stock Exchange of Hong Kong Limited (SEHK) with stock code 56), a conditional special cash dividend that was subject to the scheme having been approved by independent shareholders was proposed.

An interim dividend may often be declared with a record date before the court meeting. In many cases, the scheme consideration would not be adjusted by any dividend to be declared before the scheme effective date. An example would be the privatization of HKC (Holdings) Limited (a previous listed company on SEHK with stock code 190), in which the interim dividend was not conditional on the privatization proposal having become effective and would not be deducted from the cancellation price.

Scheme consideration in a privatization may also be structured in a way to be subject to potential adjustment by any dividend to be declared after the announcement (Rule 3.5 announcement) of a firm intention to make an offer under Rule 3.5 of the Takeovers Codes. For example, in the privatization of Wheelock and Company Limited (a previous listed company on SEHK with stock code 20), the proposal comprised, among others, the scheme consideration of HK$12.00 per scheme share less a possible dividend adjustment, which is an amount that the offeror has reserved the right to deduct from the scheme consideration by an equivalent amount of any dividend or distribution made or paid in respect of each scheme share after the Rule 3.5 announcement date.

There were also cases that the target company would not declare any dividend and an express statement that

the company has no intention to declare any future dividend or make other distributions was included in the scheme document, as in the privatizations of I.T. Limited (a previous listed company on SEHK with stock code 999) and China Baofeng (International) Limited (previous stock code: 3966).

Treatments of dividends in privatization cases involving schemes of arrangement in 2020 and 2021

A summary of the treatments of dividends in privatization cases involving schemes of arrangement in Hong Kong in 2020 and 2021 (up to May) is set out below:

Treatment of Dividends	2020	2021 (to May)
	Number of cases	
Cum dividends (cancellation or offer price subject to reserved dividend adjustment, if any)	7	3
Ex dividends (including special dividends) (cancellation or offer price not subject to adjustments)	23*	6
Express no intention statement to distribute dividends	23	9
No indication of intention as to distribution of any dividends	7	0

* including majority of cases where the position was left silent in the scheme document, in which case the cancellation or offer price would likely be ex dividends per Takeovers Panel's decision (the Panel Decision) concerning deduction of dividend from offer price, reported in Takeovers Bulletin Issue No.51 (December 2019) of the Hong Kong Securities and Futures Commission (SFC).

Remarks

The analysis in the table above demonstrates that, most companies opted for providing an express no intention statement to distribute dividends in Hong Kong, and most deals tend to opt for a simpler structure that the cancellation or offer price would not be subject to any dividend adjustment.

According to paragraph 6 under Schedule I to the Takeovers Codes, precise particulars of the securities in respect of which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared are required. However, most scheme documents issued from January 2020 to May 2021 did not strictly comply with paragraph 6.

During such period, in cases where the scheme document expressly reserves the offeror's right to make dividend adjustment for any dividend to be declared prior to the effective date of the scheme, the offeree company would usually state that it has no intention to declare further dividends. However, no disclosure was found to have been made as to the proposed arrangements in case further dividends would be declared (for instance as regards any time limits for making such declaration and whether shareholders' approval would be required).

Under the Takeovers Codes, there is no mandatory requirement for the offeree company to make a statement in the scheme document as to whether it intends to declare dividend prior to the effective date of the scheme.

We believe that the ASIC has rightly recognized the importance of proper disclosure of pricing implications and other arrangements relating to possible future declaration of dividends after the date of the scheme document. Such disclosure is a crucial part of the commercial consideration as regards what a scheme shareholder could obtain out of the scheme. Without a proper or clear disclosure, the scheme shareholders would not be able to consider thoroughly his position as a member of the class concerned and act in respect of his interest to assess as an intelligent and honest person whether the scheme should be approved.

The disclosure of arrangements relating to dividends during an offer should be strengthened in Hong Kong. For instance, the following changes to the Takeovers Code may be considered:

- The offeree company should disclose in the relevant offeree document its intention as to whether any dividends or similar distributions may be declared following the issue of the document and during the offer period
- Codification of the Panel Decision
- If the offeree company has indicated that it has no intention to declare further dividends or similar distributions, any change of such intention must be subject to, in addition to other requirements under the Takeovers Codes, the approval by at least 75% of the votes attaching to the disinterested shares that are cast either in

person or by proxy at a duly convened meeting of the holders of the disinterested shares

Listed companies which intend to carry out a scheme of arrangement are reminded of the significance of proper disclosure and the consideration of right timing of declaration of dividends (which may or may not affect the cancellation or offer price), and of making early arrangements in the scheme timetable, as necessary.

澳大利亚证券与投资委员会厘清关于重组安排计划下宣布分配股息的要求—与香港的要求比较—规管香港在这方面的松散管治

2021 年 6 月，澳大利亚证券与投资委员会 (ASIC) 厘清了在重组安排计划中宣布股息作为对价的要求。

重组安排计划是一种法定程序，通过该程序，法院可以批准公司与其股东之间的拟议安排，通常是取消目标公司的所有股份（要约人拥有的股份除外），以从要约人处换取现金或非现金对价。重组安排计划可包括股息，作为向成员提供的计划对价的一部分。 ASIC 期望计划提出者在计划时间表的早期，最迟在第二次听证会之前就是否宣布股息做出决定。如果在成员对该计划进行投票之后才会做出决定，ASIC 期望计划手册将明确披露可能不宣布股息的情况。

ASIC 最近介入了一项安排计划，其中提议在第二次法庭听证会之后才决定是否宣布作为对价的一部分的特别股息。至于为何不能在计划会议之前作出决定，有商业原因。 ASIC 确保在对该计划进行投票之前，向成员披露不宣布股息的情况，并确保在第二次法庭听证会之前而非之后作出和宣布是否宣布股息的决定。这个时间意味着如果有必要，ASIC 和任何其他利益相关方可以在第二次听证会上就这个问题提交意见。

香港私有化安排计划及股息分派

私有化可通过上市发行人提出的全面要约或重组安排计划来实现。于重组安排计划下，代价可以采取多种形式，例如现金或其他资产（即要约人的股份），但须遵守香港《公司收购、合并及股份回购守则》（收购守则）的某些限制。

作为收购要约条款的一部分，要约人可以提议由受要约人向参与的受要约人股东提供有条件的“特别”股息分配，以促进交易，确保获得必要的股东批准。例如，在聯合地產（香港）有限公司（前香港联合交易所有限公司（联交所）上市公司，股份代号 56）的私有化中，建议有条件特别现金股息或提出并受限于独立股东批准安排计划。

中期除息也可在法院会议之前的记录日期宣布，并且安排计划对价不会因计划生效日期之前宣布的任何股息而调整。一个例子是香港建設(控股)有限公司（前联交所上市公司，股份代号 190）的私有化，其中，中期股息不以私有化建议生效为条件，也不会从注销价中扣除。

私有化中的计划对价也可能按照收购守则第 3.5 条规定提出要约的确定意向公告（第 3.5 条公告）后宣派的任何股息进行潜在调整。例如，在会德丰有限公司（前香港联交所上市公司，股份代号 20）的私有化中，该提议包括（其中包括）每股计划股份 12.00 港元的计划对价减去股息调整，该金额为要约人保留在第 3.5 条公告日期后就每份计划股份作出或支付的任何股息或分派等值金额减少计划对价的权利。

也有目标公司不宣派任何股息的情况，并且公开披露中包含了无意宣派任何未来股息或进行其他分配的声明，例如 I.T. Limited 的私有化（前香港联交所上市公司，股份代号 999）及中国宝丰（国际）有限公司（前股份代号：3966）。

涉及 2020 年和 2021 年安排计划的私有化案例中的股息处理

2020 年及 2021 年（截至 5 月）在香港涉及安排计划的私有化案件的股息处理摘要如下：

股息处理	2020	2021 (至 5 月)
	案件数量	
要约价附带股息（如有进一步派息，取消或要约价可能会有所调整）	7	3
要约价除息（含特别股息）（取消价格或要约价格不作股息的调整）	23*	6
明确表示无意分红的声明	23	9
没有表示可能派发股息的意向	7	0

*包括在计划文件中对该立场保持沉默的大多数情况；在这种情况下，根据香港证券及期货事务监察委员会（证监会）收购通讯第 51 期（2019 年 12 月）中刊载的收购委

员会就从要约价扣除股息一事作出的决定，取消或要约价格一般应为除息（《收购委员会决定》）。

评论

根据上表的分析，大多数公司选择提供明确的无意分配股息的声明，使得大多数交易的结构较为简单，取消或要约价格不会受到任何调整。

根据《收购守则》附表 I 第 6 段，有关受要约证券的明确资料，連同一项声明，說明取得该等证券时，会否連同或除去已宣布或可能宣布的股息或其他的分派。然而，大部分于 2020 年 1 月至 2021 年 5 月期间发出的计划文件没有严格遵守第 6 段。

在上述期间，如计划文件明确保留要约人有权对计划生效日期之前宣派的任何股息进行要约价调整，受要约公司通常会声明其无意进一步宣派股息。然而，有关计划文件并没有披露任何有关安排或宣派进一步股息的可能情况（例如有关作出该等宣派的任何时间限制以及是否需要股东批准）。

根据收购守则，受要约公司并没有被要求在计划文件中声明其是否有意于计划生效日期前宣派股息。

我们认为，ASIC 正确地认识到适当地披露股息分派对定价的影响和其他相关安排的重要性，特别是与计划文件日期之后可能的未来股息宣派有关的情况。就计划股东可从计划中获得的利益而言，此类披露是商业考虑的关键部分。如果没有适当或明确的披露，计划股东将无法彻底考虑其作为有关类别成员的地位，并就其利益采取行动，以理智和诚实的人的身份评估计划是否应获得批准。

香港应加强有关要约期间股息安排的披露。例如，可以考虑对《收购守则》进行以下更改：

- 受要约公司应在相关受要约文件中披露其在文件发出后和要约期间是否会宣派任何股息或类似分配的意图

- 编入《收购委员会决定》的相关准则

- 如果受要约公司已表示无意宣派进一步股息或类似分派，则该意图的任何更改，除须遵守《收购守则》的其他要求外，还须在适当地召开的无利害关系股份的持有人的会议上，获得亲身或委派代表出席的股东附于该等无利害关系股份的投票权至少 75%的票数投票批准

有意进行安排计划的上市公司应注意适当披露的重要性，以及考虑宣派股息的时间会如何影响取消或要约价格，并尽早调整安排计划的时间表（如需要）。

Source 来源:
https://asic.gov.au/about-asic/corporate-publications/newsletters/asic-corporate-finance-update/corporate-finance-update-issue-5/#declaring-dividends-as-consideration-in-schemes-of-arrangement
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https://www1.hkexnews.hk/listedco/listconews/sehk/2021/0321/2021032100039.pdf

The Stock Exchange of Hong Kong Limited Implements Disciplinary Action against Dongyue Group Limited (Stock Code: 189) and Ten Directors

The Stock Exchange of Hong Kong Limited (the Exchange) announced on May 27, 2021 that it has issued the statement of disciplinary action in relation to the disciplinary action against Dongyue Group Limited (Stock Code: 189) and its ten directors.

Sanctions

The Listing Committee of the Exchange (Listing Committee):

CENSURES

(1) Mr. Zhang Jianhong (Mr. Zhang), an executive director (ED) of Dongyue Group Limited (the Company, together with its subsidiaries, the Group); and

CRITICISES:

(2) Mr. Liu Chuanqi (Mr. Liu), a former ED of the Company;

for failing to perform their directors' duties as required in breach of Rule 3.08(f) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Exchange Listing Rules) and their obligations under the Declaration and undertaking (Undertaking) given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules to comply to the best of their abilities with the Exchange Listing Rules;

And the Listing (Disciplinary Review) Committee (Review Committee) on review

CRITICISES:

(3) Mr. Liu Yi (Mr. LiuY), a former independent non-executive director (INED) of the Company,

for failing to perform their directors' duties as required in breach of Rule 3.08(f) of the Exchange Listing Rules and their obligations under the Undertaking to comply to the best of their abilities with the Exchange Listing Rules;

And the Listing Appeals Committee on review

CENSURES:

(4) Mr. Cui Tongzheng (Mr. Cui), a former ED of the Company; and

CRITICISES:

(5) Mr. Fu Kwan (Mr. Fu), an ED of the Company;
(6) Mr. Zhang Jian (Mr. ZhangJ), an ED of the Company;
(7) Mr. Wu Tao (Mr. Wu), a former ED of the Company;
(8) Mr. Ting Leung Huel Stephen (Mr. Ting), an INED of the Company;
(9) Mr. Yang Xiaoyong (Mr. Yang), an INED of the Company; and
(10) Mr. Yue Run Dong (Mr. Yue), a former INED of the Company;

((1) to (10) collectively Relevant Directors),

for failing to perform their directors' duties as required in breach of Rule 3.08(f) of the Exchange Listing Rules and their obligations under the Undertaking to comply to the best of their abilities with the Exchange Listing Rules.

The Listing Appeals Committee further CENSURES Mr. Wu for breaching his obligations under the Undertaking to cooperate in the investigation of the Listing Division (Division).

The Listing Appeals Committee further CRITICISES:

(11) DONGYUE GROUP LIMITED (Stock Code: 189) for failing to comply with various rules in Chapter 13 of the Exchange Listing Rules for the delayed publication of three sets of financial results and reports in 2015 and 2016.

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

Summary of Facts

During an internal audit (Internal Audit) in September 2015, some suspected misappropriations by the Company's financial controller (Financial Controller) came to light. The Company delayed the publication and despatch of three sets of financial results and reports (Late Accounts) for the year ended December 31, 2015, 6 months ended June 30, 2016 and the year ended December 31, 2016. The Financial Controller was responsible for the Company's wealth management business (Wealth Management Business). The Company appointed a professional forensic accountant to conduct a forensic review in relation to a suspected misappropriation incident arising from certain alleged financial transactions (Problematic Transactions). From the forensic review, problematic transactions involving loans/deposits worth nearly RMB 1.5 billion entered into over a period of about 1.5 years were identified. The entire amount remains unrepaid or has been forfeited.

The Company also appointed another professional firm (IC Firm) to undertake an internal control review. It was found to have significant internal control deficiencies in relation to its Wealth Management Business. For example, no limit was set on payment by cheque or via online banking of bank accounts and there was no explicit requirement for recording the use and borrowing of seals; nor was there any record of use or borrowing of seals in practice.

The directors had failed to implement effective risk management and internal control procedures to supervise the Financial Controller or safeguard the Company's assets.

Listing Rule Requirements

The Exchange Listing Rule requirements in relation to financial reporting are as follows:

(a) Rule 13.46(2)(a) – Distribution of annual report not more than 4 months after the corresponding financial year end;
(b) Rule 13.48(1) – Distribution of interim report no later than 3 months after the corresponding period end;
(c) Rule 13.49(1) – Publication of annual results no later than 3 months after the corresponding financial year end; and
(d) Rule 13.49(6) – Publication of interim results no later than 2 months after the corresponding period end.

Under Rule 3.08, the board of directors of an issuer is collectively responsible for its management and operations, and the directors are collectively and individually responsible for ensuring its compliance with the Exchange Listing Rules. Rule 3.08(f) further requires every director must, in the performance of his duties as a director, apply such degree of skill, care and diligence

as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer.

A director of a listed issuer is under obligations, pursuant to his Undertaking, to comply to the best of his ability with the Exchange Listing Rules and to cooperate with the Division's investigation.

Listing Committee's Findings of Breach at First Instance

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

Breach by the Company
The Committee found that by reason of the delays in the publication of the Late Accounts, the Company breached Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6) of the Exchange Listing Rules.

Internal controls
The Company's internal controls were deficient during the period from around the 4th quarter of 2013 to around the 1st quarter of 2015 (Relevant Period) in respect of the Wealth Management Business, giving rise to the Problematic Transactions which have been non-recoverable. The related internal controls were inadequate and ineffective in terms of governing the prior approval, execution, reporting and monitoring of and accounting for the transactions in relation to the Wealth Management Business (which included the Problematic Transactions) during the Relevant Period.

Breach by the Relevant Directors

The Committee agreed with the submissions of the Division and made the findings that: (a) Each of Mr. Zhang, Mr. Cui, Mr. Wu, Mr. Liu, Mr. Fu, Mr. ZhangJ, Mr. Ting, Mr. Yue, Mr. Yang and Mr. LiuY breached Rule 3.08(f) and the Undertaking to comply to the best of their abilities with the Exchange Listing Rules by failing to (i) ensure the Company had adequate internal controls in place; and (ii) properly perform their monitoring duties in respect of the Wealth Management Business. (b) As Mr. Zhang and Mr. Cui were more directly responsible for the failings in supervision of the Wealth Management Business, their breaches of Rule 3.08(f) and the Undertaking referred to at (a) above were more serious than those of the other Relevant Directors. (c) Mr. Wu also breached the Undertaking to cooperate with the Division in its investigation.

Relevant Directors' breach of Rule 3.08(f) – Internal control deficiencies and failure in monitoring duties

The Relevant Directors breached Rule 3.08(f) by failing to ensure the Company had adequate and effective internal controls and perform their monitoring duties in relation to the Wealth Management Business.

Breach of Rule 3.08(f) by Mr. Zhang and Mr. Cui – more serious
Mr. Zhang (as an ED, Chairman and Chief Executive Officer of the Company) failed to take an active role or implement any measures or procedures to ensure that both Mr. Cui and the Financial Controller had taken adequate steps in executing and monitoring the Wealth Management Business, despite Mr. Zhang's signing of two wealth management framework agreements in April 2013 and January 2014 and his director role in the Two Subsidiaries.
As CFO, Mr. Cui failed in his supervision of the Financial Controller and failed in ensuring that there were any systems in place for the control or monitoring of the Wealth Management Business or how it should be accounted for in the Company's accounts. Further, his passive response and failure to make further enquiries when the Financial Controller informed him of the RMB500 million deposit with a bank clearly fell short of the standard required of Mr. Cui as an ED and the CFO of the Company.

Relevant Directors' breach of the Undertaking
By reason of their respective breaches of Rule 3.08(f), the Relevant Directors also breached their respective Undertaking.

Mr. Wu – breach of Undertaking to cooperate

Mr. Wu was a former ED of the Company from March 21, 2013 to March 16, 2015 and also a director of the Two Subsidiaries during the Relevant Period. In his Undertaking he undertook to the Exchange to cooperate in the investigation of the Division. However, Mr. Wu failed to respond to the Division's enquiry letter issued to his address of record notwithstanding various reminders from the Division.
Mr. Wu breached his Undertaking to cooperate in the Division's investigation.

Regulatory Concern
The Committee, the Review Committee (with respect to Mr. LiuY), and the Listing Appeals Committee (LAC) (with respect to Mr. Fu, Mr. ZhangJ, Mr. Ting, Mr. Yue, Mr. Yang, Mr. Cui and Mr. Wu and the Company), viewed the breaches in this case to be serious:

(a) The Late Accounts contributed towards the period of trading suspension of 14 months.

(b) The misappropriated amounts are substantial (a total of RMB1,478.2 million) and have not been recovered (with the whole amount already been written off in the annual results for the year ended December 31, 2015 Results published in 2017).

(c) The Problematic Transactions had taken place for a prolonged period (during the Relevant Period, namely around the 4th quarter of 2013 to around the 1st quarter of 2015) and were only uncovered by the Internal Audit in around September 2015.

(d) The case reveals the Company's significant internal control deficiencies in relation to the Wealth Management Business during the Relevant Period.

(e) The case demonstrates the Relevant Directors' failure to implement proper and adequate internal controls to safeguard the Company's assets.

Conclusion

The Exchange views the due performance of directors' duties seriously. Compliance with directors' duties is a focus of the Exchange's enforcement activities.

Directors of a listed issuer have clear duties to safeguard assets of the listed issuer (including its subsidiaries). They must ensure that proper and adequate internal controls are established and maintained. Failure to do so exposes the listed issuer to risks including possible misappropriation of assets by its staff, who might take advantage of the internal control deficiencies of the listed issuer.

Placing trust in senior members of staff is not a substitute to implementing proper and adequate internal controls which directors are obliged to establish and maintain within the listed issuer.

香港联合交易所有限公司对东岳集团有限公司（股份代号：189）和十位董事作出纪律行动

于 2021 年 5 月 27 日，香港联合交易所有限公司（联交所）对东岳集团有限公司（股份代号：189）和其十位董事作出纪律行动的纪律行动声明。

制裁

联交所上市委员会（上市委员会）：

谴责：

(1) 东岳集团有限公司（该公司，连同其附属公司统称该集团）执行董事张建宏先生；及

批评：

(2) 该公司前执行董事刘传奇先生；

未有履行其董事责任，违反《香港聯合交易所有限公司证券上市规则》（《上市规则》）第 3.08(f)条的规定，且因未有尽力遵守《上市规则》，违反他们以《上市规则》附录五 B 所载表格形式向联交所作出的《董事声明及承诺》（《承诺》）所载的责任；

及上市（纪律复核）委员会（复核委员会）经复核后

批评：

(3) 该公司前独立非执行董事刘亿先生未有履行其董事责任，违反《上市规则》第 3.08(f)条的规定，且因未有尽力遵守《上市规则》，违反其《承诺》所载的责任；

谴责：

(4) 该公司前执行董事崔同政先生（崔先生）；及

批评：

(5) 该公司执行董事傅军先生（傅先生）；
(6) 该公司执行董事张建先生；
(7) 该公司前执行董事吴涛先生（吴先生）；
(8) 该公司独立非执行董事丁良辉先生（丁先生）；
(9) 该公司独立非执行董事杨晓勇先生（杨先生）；及
(10)该公司前独立非执行董事岳润栋先生（岳先生）；

（(1)至(10)统称为相关董事）

未有履行其董事责任，违反《上市规则》第 3.08(f)条的规定，且因未有尽力遵守《上市规则》，违反其《承诺》所载的责任。

上市上诉委员会进一步谴责吴先生未有配合上市科的调查，违反其《承诺》所载的责任。

上市上诉委员会进一步批评：

(11) 东岳集团有限公司（股份代号：189）于 2015 年及 2016 年延迟刊发三套财务业绩及报告，违反《上市规则》第十三章的若干规定。

为免引起疑问，联交所确认纪律行动声明所述的制裁及指令仅适用于上文所指的相关董事，而不适用于该公司任何其他过往或现任董事会成员。

实况概要

于 2015 年 9 月的内部审计（内部审计）中，该公司发现其财务总监（财务总监）涉嫌挪用公司资产。该公司延迟刊载及派发的截至 2015 年 12 月 31 日止年度、截至 2016 年 6 月 30 日止六个月及截至 2016 年 12 月 31 日止年度三套财务业绩及报告（延迟账目）。该财务总监负责该公司的财富管理业务（财富管理业务）。该公司委任专业事务所（法证会计师）对若干受指控的财务交易（有问题交易）中怀疑的挪用公款案（挪用公款案）进行法证审阅，发现在约一年半期间内所订立涉及贷款/存款的交易价值将近人民币 15 亿元。全部款项尚未清还或已无法取回。

该公司亦委聘了另一家专业事务所（内部监控事务所）进行内部控制审阅。内部监控事务所于 2017 年 4 月完成内部监控检讨。有关结果发现了不同范围（包括现金和资金管理）的不足之处，例如：未设定支票及银行账户网银支付限额及制度未明确要求对所有用印及借章活动进行记录，且实务上亦未登记所有用印或借章记录。

该公司被裁定其财富管理业务中有着重大的内部监控缺陷。董事们亦未有实行有效的风险管理及内部监控程序来监管财务总监或保障该公司的资产。

《上市规则》的规定

就财务报告而言，《上市规则》有以下规定：

(i) 第 13.46(2)(a)条 – 于相关财政年度结束后四个月内发布年报；
(ii) 第 13.48(1)条 – 于相关期间结束后三个月内发布中期报告；
(iii) 第 13.49(1)条 – 于相关财政年度结束后三个月内发布年度业绩；及
(iv) 第 13.49(6)条 – 于相关期间结束后两个月内发布中期业绩。

根据《上市规则》第 3.08 条，发行人的董事会须共同负责管理与经营业务，而董事须共同与个别地确保发行人遵守《上市规则》。第 3.08(f)条进一步规定每名董事在履行其董事职务时，须以应有的技能、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。

根据其《承诺》，上市发行人董事有责任尽力遵守《上市规则》，并配合上市科的调查。

上市委员会首次聆讯裁定的违规事项

上市委员会考虑过上市科、该公司及相关董事的书面及／或口头陈述后，得出以下结论：

该公司的违规事项

上市委员会裁定该公司违反《上市规则》第 13.46(2)(a)、13.48(1)、13.49(1)及 13.49(6) 条，原因为其延迟刊发延迟账目（如上文列表所示）。

内部监控

该公司于有关期间对理财业务的内部监控存在缺陷，因而造成有问题交易，交易金额无法 收回。有关期间内监管理财业务（包括有问题交易）的事先批准、执行、汇报及监控以及 有关理财业务之交易账目方面的相关内部监控不足且无效。

有关执行董事的违规事项

上市委员会同意上市科的陈述，裁定：

(i) 张建宏先生、崔先生、吴先生、刘传奇先生、傅先生、张建先生、丁先生、岳先生、 杨先生及刘亿先生各自未有(i)确保该公司有足够的内部监控措施；及(ii)就理财业务 妥善履行其监督责任，违反《上市规则》第 3.08(f)条以及其会尽力遵守《上市规则》 的《承诺》。

(ii) 由于张建宏先生及崔先生在未有监管理财业务方面有较直接的责任，二人就上文(a) 所述违反《上市规则》第 3.08(f)条及《承诺》的情况较其他相关董事严重。

(iii) 吴先生亦因未有配合上市科的调查而违反其《承诺》。

相关董事违反《上市规则》第 3.08(f)条 – 内部监控不足及未有履行监督责任

相关董事未有确保该公司有足够的内部监控措施及就理财业务履行其监督责任，违反《上市规则》第 3.08(f)条。

张建宏先生及崔先生违反《上市规则》第 3.08(f)条——更加严重

张建宏先生（作为该公司执行董事、主席及行政总裁）未有积极进行或实施任何措施或程 序，以确保崔先生及财务总监采取了足够的行动去执行及监管理财业务（尽管张建宏先生 于 2013 年 4 月及 2014 年 1 月签署了两份理财框架协议以及担任该两家附属公司的董事）。

崔先生

崔先生作为首席财务官，未有监督财务总监，亦未有确保该公司有任何制度去控制或监管 理财业务或有关业务该如何计入该公司账目。此外，财务总监告知他该公司在一家银行有 人民币 5 亿元的存款时，他并未积极响应，亦未有作出进一步查询，明显未达其作为该公 司执行董事及首席财务官应有的标准。

相关董事违反《承诺》

由于相关董事各自违反了《上市规则》第 3.08(f)条，其亦违反了其各自的《承诺》。

吴先生 – 未有配合调查而违反《承诺》

吴先生为该公司的前执行董事（2013 年 3 月 21 日至 2015 年 3 月 16 日），在有关期间内 亦为该两家附属公司的董事。根据其《承诺》，其向联交所承诺会配合上市科的调查。然而，即使上市科已多次提醒，吴先生并未回应上市科向其登记地址（有关地址）发出的查询函。

吴先生未有配合上市科的调查，违反其《承诺》。

监管上关注事项

上市委员会、复核委员会（就刘亿先生而言）及上诉委员会（就上诉委员会上诉人而言） 认为此个案的违规情况事态严重：

(i) 延迟账目导致该公司停牌 14 个月。
(ii) 遭挪用的金额庞大（共人民币 14.782 亿元）且并未收回（2017 年刊发的 2015 年 度业绩中全数撇销）。
(iii) 有问题交易维持了一段长时间（有关期间内，即由 2013 年第四季左右至 2015 年第 一季左右），但直至 2015 年 9 月左右才于内部审计中被发现。
(iv) 本个案反映该公司于有关期间内有关理财业务的内部监控措施严重不足。
(v) 本个案显示相关董事未有实施妥善及适当的内部监控措施保障该公司的资产。

结论

联交所非常重视董事尽力履行其职责，在执行《上市规则》时，董事有否履行其职责是重点考虑。

上市发行人董事有明确的责任要保障上市发行人（包括旗下附属公司）的资产。董事须确保发行人设有亦维持妥善且充足的内部监控措施。董事若未能履行有关责任或会令上市发 行人面临风险，包括遭雇员利用上市发行人内部监控的缺陷来挪用资产。

董事有责任于上市发行人内部设立并维持妥善而充足的内部监控措施，对公司高层职员寄以信任并不能取替相关措施。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210527news?sc_lang=en
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/210527_SoDA.pdf?la=en

The Stock Exchange of Hong Kong Limited Implements Disciplinary Action against Baytacare Pharmaceutical Co., Ltd. (Delisted, Previous Stock Code: 8197), 12 Directors and four Supervisors

The Stock Exchange of Hong Kong Limited (the Exchange) announced on June 8, 2021 that it has issued the statement of disciplinary action in relation to the disciplinary action against Baytacare Pharmaceutical Co., Ltd. (Delisted, Previous Stock Code: 8197), its 12 directors and four supervisors.

Sanctions

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

CENSURES:

(1) Baytacare Pharmaceutical Co., Ltd. (Company) (previous stock code: 8197) (the listing of the Company's shares on the Exchange was cancelled with effect from 18 March 2020 under Rule 9.14A of the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (GEM Listing Rules), for breaching Rules 17.15, 17.22, 17.101(3), 19.34, 19.38, 19.40, 19.41, 20.33, 20.34 and 20.44 of the GEM Listing Rules principally by failing to comply with the procedural requirements in relation to a number of transactions;

FURTHER CENSURES:

(2) Mr. Wang Shao Yan (Mr. Wang), former executive director (ED) of the Company for breaching Rules 5.01(1) to (6) of the GEM Listing Rules and his obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 6B to the GEM Listing Rules (Director's Undertaking) by failing to comply to the best of his ability, and use his best endeavors to procure the Company's compliance, with the GEM Listing Rules;

AND STATES in the Exchange's opinion, by reason of Mr. Wang's failure to discharge his responsibilities under the GEM Listing Rules, had Mr. Wang remained on the board of directors of the Company (Board), his retention of office would have been prejudicial to the interests of investors.

The GEM Listing Committee also CENSURES:

(3) Ms. Cui Bing Yan (Ms. Cui), ED of the Company;
(4) Mr. Guo Ai Qun (Mr. Guo), ED (formerly non-executive director (NED) of the Company;
(5) Mr. Cao Yang (Mr. Cao), NED of the Company;
(6) Mr. Chen You Fang (Mr. Chen), independent non-executive director (INED) of the Company;
(7) Mr. Shi Peng (Mr. Shi), former NED of the Company;
(8) Ms. Hui Lai Yam (Ms. Hui), former INED of the Company;
(9) Mr. Yang Yu Lin (Mr. Yang), former INED of the Company, for breaching Rule 5.01(6) of the GEM Listing Rules, and the Director's Undertaking by failing to comply to the best of their ability, and use their best endeavors to procure the Company's compliance, with the GEM Listing Rules;

AND CENSURES:

(10) Mr. Qin Hai Bo (Mr. Qin), former ED of the Company;
(11) Mr. Jiang Xiao Bin (Mr. Jiang), former ED of the Company;
(12) Mr. Zhao Zhen Xing (Mr. Zhao), former INED of the Company;

for breaching Rule 5.01(6) of the GEM Listing Rules, and the Director's Undertaking by failing to comply to the best of their ability, and use their best endeavors to procure the Company's compliance, with the GEM Listing Rules, and to cooperate in the investigation conducted by the Listing Division (Division);

AND STATES that the conduct of Mr. Qin, Mr. Jiang and Mr. Zhao in this matter will be taken into account in assessing his suitability to be a director of a company listed on the Exchange.

(The directors identified at (2) to (12) above together with (17) Mr. Gao below are collectively referred to as the Relevant Directors.)

FURTHER CENSURES:

(13) Ms. Lin Xia Rong (Ms. Lin), supervisor of the Company;
(14) Ms. Han Xue (Ms. Han), former supervisor of the Company;
(15) Ms. Yang Li Xue (Ms. Yang), former supervisor of the Company; and
(16) Ms. Meng Shu Hua (Ms. Meng), former supervisor of the Company

for breaching their obligations under their Declaration and undertaking and acknowledgement in respect of an issuer incorporated in the People's Republic of China given to the Exchange in the form set out in Appendix 6C to the GEM Listing Rules (Supervisor's Undertaking) by (a) failing to comply to the best of their ability with, and use their best endeavors to procure the Company and the Relevant Directors and Mr. Gao to act at all times in accordance with, the articles of association of the Company (Articles); and (b) use their best endeavors to procure the Company and the Relevant Directors / Mr. Gao to comply with the GEM Listing Rules.

(The supervisors identified at (13) to (16) above are collectively referred to as the Supervisors.)

And the Listing Review Committee (LRC) on review CENSURES:

(17) Mr. Gao Zhi Kai (Mr. Gao), former INED of the Company;

AND DIRECTS:

All the above directors (except Mr. Wang) to undergo training on GEM Listing Rule compliance.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this Statement of Disciplinary Action apply only to the Company, the Relevant Directors and Supervisors, and not to any other past or present directors or supervisors of the Company.

Key Facts

Between 2016 and 2017, Mr. Wang procured the entry into or payments under a range of transactions which resulted in over RMB90 million of provisions or impairments. This included transactions with companies controlled by him and/or his father, and which did not confer any commercial benefit on the Company, but instead exposed the Company to significant potential liability. Transactions were concealed from the board, and were not notified to or approved by shareholders as required under the GEM Listing Rules.

There were clear deficiencies in the Company's internal controls for which all of the directors, both executive and non-executive, were responsible. The directors and the supervisors failed to carry out their supervisory duties, and ensure appropriate checks and balances were put in place.

GEM Listing Rule Requirements

(a) Rule 17.15 provides that where the relevant advance to an entity from the issuer or any of its subsidiaries exceeds 8 per cent under the assets ratio defined under Rule 19.07(1), the issuer must

announce the required information about the advance.

(b) Rule 17.22 requires the Company to include information about the advance in the half-year, quarterly or annual report as applicable if the circumstances giving rise to a disclosure obligation under Rule 17.15 continue to exist at the Company's half yearly or quarterly period end or annual financial year end.

(c) Rule 19.34 provides that the Company shall inform the Division and submit an announcement to the Exchange for publication after the terms of, inter alia, a discloseable transaction and major transaction are agreed.

(d) Under Rules 19.38, 19.40 and 19.41, the Company is required to seek its shareholders' approval and issue a circular for any major transaction.

(e) Rules 20.33, 20.34 and 20.44 provides that any connected transaction is subject to announcement, shareholders' approval and circular requirements.

(f) Paragraph C.1.2 of the CG Code requires the management to provide all members of the Board with monthly updates giving a balanced and understandable assessment of the Company's performance, position and prospects in sufficient detail to enable the Board as a whole and each director to discharge their duties under Rule 5.01 and Chapter 17 of the GEM Listing Rules.

(g) According to Rule 17.101(3), the Company must give considered reasons for any deviation from the CG Code in its half-year and annual reports.

(h) Rule 5.01 provides that the Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Specifically Rule 5.01(1) imposes a duty to "act honestly and in good faith in the interests of the company as a whole"; and Rule 5.01(6) imposes a duty to "apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer".

(i) Under the Director's Undertaking, the Relevant Directors are under an obligation to comply to the best of their ability, and to use their best endeavors to procure the Company's compliance, with the GEM Listing Rules. They also undertake to cooperate in any investigation conducted by the Division, including answering promptly and openly any questions addressed to them.

(j) The Supervisor's Undertaking requires the Supervisors to, among other things, comply to the best of their ability with, and use their best endeavors to procure the Company and the Relevant Directors to act at all times in accordance with, the Articles, and use their best endeavors to procure the Company and the Relevant Directors to comply with the GEM Listing Rules.

Regulatory Concern

The GEM Listing Committee regarded the breaches in this matter as serious:

(i) Directors owe a fiduciary duty to the company. It is therefore of paramount importance that each director acts honestly and in good faith in the interests of the company.

(ii) This case reveals a serious concern over Mr. Wang's integrity as a director of a listed issuer. The transactions under the Loan Agreement/Advancement and the Settlement Agreement were prejudicial to the best interests of the Company and its investors. Mr. Wang was in a conflicted position when he decided to enter into those transactions.

(iii) The evidence also suggested that Mr. Wang intentionally breached the internal policies of the Company. He circumvented the payment procedures of the Company and failed to obtain approval from the Board / the Company's shareholders before arranging and approving the payments. He also failed to observe the prohibitions against the provision by the Company of loans to and loan guarantees for the Company's directors or their connected persons set out in the Articles. The circumstances surrounding the breaches demonstrated his complete lack of regard to GEM Listing Rule compliance.

(iv) There were also serious corporate governance issues in this case. Apart from reviewing the draft financial results/reports and attending formal meetings in which they were considered, none of the other Relevant Directors took any substantive steps to ensure the Company's affairs would be monitored properly. They placed heavy, if not total, reliance on Mr. Wang in respect of monitoring the Company's affairs, which was not justified or warranted in the circumstances. The evidence also suggested that none of the Relevant Directors took steps to ensure the Company's internal controls in respect of payment approval or GEM Listing Rule compliance were adequate and properly implemented.

(v) Directors also have an obligation to ensure the company's affairs are properly and adequately supervised. They must take an active interest in the issuer's affairs and follow up anything untoward that comes to their attention. A director does not satisfy the required levels of skill, care and diligence if he pays attention to the issuer's affairs only at formal meetings.

(vi) The transactions caused substantial losses to the Company and significantly disrupted its operations.

(vii) It is of utmost importance that a director cooperates with the Division's investigation to enable the Exchange to discharge its function to maintain and regulate an orderly market. Failure to respond to the Division's enquiries in connection with an investigation of possible GEM Listing Rule breaches without reasonable excuse is viewed in a very serious light.

Conclusion

Directors owe a fiduciary duty to the company. They must act in the best interests of the company and its shareholders. In particular, they must dispel any conflict or perception of conflict in respect of transactions entered into by the Company. Any wilful withholding of material information required to be disclosed under the GEM Listing Rules is unacceptable and prejudicial to the interests of shareholders.

Directors of a listed issuer must meet the required standard of skill, care and diligence under the GEM Listing Rules. They must take an active interest in the affairs of the company. They are also responsible for ensuring that the company establishes and maintains appropriate and effective internal control systems.

A director must comply with his Undertaking to cooperate with an investigation by the Exchange. Failure to cooperate without reasonable excuse is an extremely serious matter.

Supervisors of a listed issuer play an important role in procuring the company to comply with the GEM Listing Rules. They must use their best endeavors to procure such compliance by the company and its directors as they have undertaken to the Exchange to do so.

香港联合交易所有限公司对北斗嘉药业股份有限公司（已除牌，前股份代号：8197）、其十二名董事及四名监事作出纪律行动

于 2021 年 6 月 8 日，香港联合交易所有限公司（联交所）对北斗嘉药业股份有限公司（已除牌，前股份代号8197）、其十二名董事及四名监事作出纪律行动的纪律行动声明。

制裁

香港联合交易所有限公司 GEM 上市委员会（GEM 上市委员会）

谴责：

(1) 北斗嘉药业股份有限公司（该公司）（前股份代号：8197）（该公司股份自 2020 年 3 月 18 日起根据《香港联合交易所有限公司 GEM 证券上市规则》（《GEM 上市规则》）第 9.14A 条被取消于联交所上市） 主要因未有就多项交易遵守程序规定， 违反《GEM 上市规则》第 17.15、17.22、17.101(3)、19.34、19.38、19.40、 19.41、20.33、20.34 及 20.44 条；

进一步谴责：

(2) 该公司前执行董事王少岩先生（王先生）违反《GEM 上市规则》第 5.01(1)至(6)条， 及因为他未有尽力遵守，及尽力促使该公司遵守《GEM 上市规则》，而违反以 《GEM 上市规则》附录六 B 表格所载形式，向联交所作出的《董事声明及承诺》（《董事承诺》）中的责任；

并声明联交所认为，由于王先生未有根据《GEM 上市规则》履行其责任，若他仍继续于该 公司董事会（董事会）留任，将损害投资者的利益。

GEM 上市委员会亦谴责：

(3) 该公司执行董事崔冰岩女士（崔女士）；

(4) 该公司执行董事（及前非执行董事）郭爱群先生（郭先生）；

(5) 该公司非执行董事曹阳先生（曹先生）；

(6) 该公司独立非执行董事陈有方先生（陈先生）；

(7) 该公司前非执行董事师鹏先生（师先生）；

(8) 该公司前独立非执行董事许丽钦女士（许女士）；

(9) 该公司前独立非执行董事杨育林先生（杨先生），违反《GEM 上市规则》第 5.01(6)条，及因未有尽力遵

守及尽力促使该公司遵守《GEM 上 市规则》而违反《董事承诺》；

并谴责：

(10) 该公司前执行董事秦海波先生（秦先生）；

(11) 该公司前执行董事姜晓斌先生（姜先生）；

(12) 该公司前独立非执行董事赵振兴先生（赵先生）；

违反《GEM 上市规则》第 5.01(6)条，及因未有尽力遵守及尽力促使该公司遵守《GEM 上 市规则》，且未在上市科的调查中与上市科合作，违反《董事承诺》；

并声明联交所评估秦先生、姜先生及赵先生是否适合出任于联交所上市的公司的董事时， 会将今次事件列入考虑因素。

（上文(2)至(12)所述董事与下文(17)的高先生统称为相关董事。）

进一步谴责：

(13) 该公司监事林夏容女士（林女士）；

(14) 该公司前监事韩雪女士（韩女士）；

(15) 该公司前监事杨漓雪女士（杨女士）；及

(16) 该公司前监事孟淑华女士（孟女士），

(i)未有尽力遵守该公司的公司章程（章程）的规定，并尽力促使该公司以及相关董事及高 先生任何时候均按照章程行事；及(ii)尽力促使该公司及相关董事 / 高先生遵守《GEM 上市 规则》，因而违反他们以《GEM 上市规则》附录六 C 所载形式，向联交所作出的《监事的 声明、承诺及确认（适用于在中华人民共和国（「中国」）注册成立的发行人）》（《监 事承诺》）中的责任。

（上文(13)至(16)所述监事统称为监事）。

及上市复核委员会经复核后谴责：

(17)该公司前独立非执行董事高志凯先生（高先生）；

并指令所有上述董事（王少岩先生除外）均须接受有关《GEM 上市规则》合规事宜的培训。

为免引起疑问，联交所确认本纪律行动声明所载制裁及指令仅适用于该公司、相关董事及监事，而不涉及该公司任何其他前任或现任董事或监事。

主要实况

在 2016 至 2017 年间，王少岩先生促使该公司及其附属公司进行一系列的交易及付款，结果令该公司作出超过 9,000 万元人民币的拨备或减值亏损。有关交易包括一些与由王少岩先生及/或其父亲控制的公司进行的交易，而该些交易并没有为该公司带来任何商业利益，更令该公司蒙受重大的潜在负债。王少岩先生向该公司董事会隐瞒有关交易，亦未有按照《GEM 上市规则》规定通知股东及获取股东批准。

该公司当时的内部控制措施有明显的缺失。该公司的所有董事，包括执行及非执行董事，均须对此负上责任。董事及监事未有履行他们监督的职责，及确保公司有适当的权力制衡措施。

《GEM 上市规则》的规定

(i) 第 17.15 条规定，如果发行人或其任何附属公司向实体借出的有关贷款按《GEM 上市规则》第 19.07(1)条所界定的资产比率计算超逾 8%，发行人必须公布有关贷款的 所须数据。
(ii) 按第 17.22 条规定，如果引致须根据《GEM 上市规则》第 17.15 条作出披露的情况，于该公司半年或季度结束或每年财政年度结束时仍继续存在，则该公司须于半年报 告、季度报告或年报中载列有关贷款的资料。
(iii) 按第 19.34 条规定，协议（其中包括）须予披露的交易及主要交易的条款后，该公 司即须将公告呈交予联交所以便发放。
(iv) 根据第 19.38、19.40 及 19.41 条，该公司须就任何主要交易取得股东批准并刊发通函。
(v) 第 20.33、20.34 及 20.44 条规定，任何关连交易均须遵守有关公告、股东批准及通函的规定。
(vi) 《企业管治守则》第 C.1.2 段规定，管理层应每月向董事会成员提供更新数据，载 列有关该公司的表现、财务状况及前景的公正及易于理解的评估，内容足以让董事 履行《GEM 上市规则》第 5.01 条及第十七章所规定的职责。
(vii) 根据第 17.101(3)条，该公司须于半年报告及年报中就每项偏离《企业管治守则》的行为提供经过审慎考虑的理由。
(viii) 第 5.01 条规定，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。具体而言，第 5.01(1)条施加了「诚实

及善意地以公司的整体利益为前提行事」的责任，第 5.01(6)条则施加了「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」的责任。

(ix) 根据《董事承诺》，相关董事有责任尽力遵守，并尽力促使该公司遵守《GEM 上市规则》。其亦承诺在上市科进行的任何调查中与其合作，包括迅速及公开地响应上市科提出的任何问题。

(x) 《监事承诺》规定监事须尽力遵守该公司章程的规定，并尽力促使该公司及相关董 事在任何时候均按照其章程而行事。他们同时亦须尽力促使该公司及相关董事遵守 《GEM 上市规则》。

监管上关注事项

监管上关注事项 GEM 上市委员会认为此个案的违规情况事态严重:

(i) 董事须向公司履行诚信责任。因此，每名董事均必须诚实及善意地以公司的利益为前提行事。

(ii) 本个案反映王先生作为上市发行人董事的诚信有严重问题。贷款协议 / 借款及和解 协议项下的交易有损该公司及其投资者的最佳利益。王先生决定进行有关交易构成利益衝突。

(iii) 有关证据亦显示王先生蓄意违反该公司的内部政策。他规避了该公司的付款程序，且未有在安排及批准付款前，取得董事会 / 该公司股东的批准。他亦没有遵守章程 中有关禁止该公司向该公司董事及其关连人士提供贷款及贷款担保的规定。有关违规事项反映他完全漠视《GEM 上市规则》的规定。

(iv) 本个案亦涉及严重企业管治问题。除审阅财务业绩 / 报告初稿及出席审议有关初稿 的正式会议外，其他相关董事均未有采取任何实质行动，确保该公司事务得到妥善 监管。他们很大程度（或完全）地依赖王先生监管该公司事务。有关的依赖并不合 理，亦不恰当。相关证据亦显示没有任何相关董事采取行动，确保该公司在批准付 款或遵守《GEM 上市规则》方面的内部监控措施属足够及获妥善实施。

(v) 董事亦有责任确保该公司事务获妥善及充分监管。董事须积极关注发行人事务，并跟进任何欠妥事宜。若董事只靠出席正式会议了解发行人事务，便不符合应有的技能、谨慎和勤勉水平。

(vi) 有关交易使该公司蒙受重大亏损，并严重阻碍其业务运作。

(vii) 董事必须在上市科的调查中与上市科合作，以让联交所履行其维护及监管市场秩序的职能。董事在无合理理由的情况下，未有响应上市科有关违反《GEM 上市规则》 的调查所作出的查询，属严重事宜。

结论

董事对公司负有受信责任。他们必须以公司及股东的最佳利益行事。就公司订立的交易，董事必须确保不会构成任何形式的利益冲突。任何蓄意隐瞒须根据《GEM 上市规则》披露的重要信息的行为概不可接受，并会损害股东利益。

上市发行人的董事须符合《GEM 上市规则》规定的技能、谨慎和勤勉水平。他们须积极关心公司事务，并负责确保公司设有并维持适当且有效的内部监控系统。

董事必须遵守《承诺》，配合联交所的调查工作。在没有合理解释的情况下，未有在调查中合作属非常严重的事件。

上市发行人的监事在确保公司遵守《GEM 上市规则》事宜上扮演重要角色。他们必须履行向联交所作出的承诺，尽力促使公司及其董事遵守《GEM 上市规则》。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/2106082news?sc_lang=en
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/210608_SoDA.pdf?la=en

The Stock Exchange of Hong Kong Limited Implements Disciplinary Action against Mr. Yu Jian Qiu, Executive Director and Chairman of China Metal Resources Utilization Limited (Stock Code: 1636)

The Stock Exchange of Hong Kong Limited (the Exchange) announced on June 10, 2021 that it has issued the statement of disciplinary action in relation to the disciplinary action against Mr. Yu Jian Qiu, Executive Director and Chairman of China Metal Resources Utilization Limited (Stock Code: 1636).

Sanctions

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

CRITICISES:

Mr. Yu Jian Qiu (Mr. Yu), executive director and Chairman of China Metal Resources Utilization Limited (Stock Code: 1636) (Company);

AND DIRECTS:

Mr. Yu to attend three hours of training on each of directors' duties, the Model Code (defined below) and the Corporate Governance Code (respectively Appendices 10 and 14 to the Listing Rules).

Summary of Facts

On March 31, 2020, Mr. Yu, through a company wholly-owned by him, disposed of 261,008,000 shares (approximately 9.93 per cent) of the Company by way of an off-market transaction (Disposal).

The Disposal took place during the black-out period for directors' securities dealings in respect of the Company's results for the financial year ended December 31, 2019 (2019 Annual Results), which was from January 30, to August 21, 2020.

Mr. Yu did not notify the designated director or the board of the Company, and obtain the designated director's approval, before undertaking the Disposal.

Mr. Yu admitted his breaches and accepted the sanction and direction imposed upon him by the Listing Committee as set out below.

Listing Rule Requirements

Under paragraph A.3(a)(i) of the Model Code for Securities Transactions by Directors of Listed Issuers (Model Code), a director must not deal in any securities of the listed issuer on any day on which its financial results are published and during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results.

According to the joint statement issued by the SFC and the Exchange and the Frequently Asked Questions (FAQ) on February 4 and 28,2020, where an issuer could only publish a preliminary results announcement without auditors' agreement by March 31, 2020, the relevant black-out period for director's securities dealings would only end upon the release of the audited financial results.

Under paragraph B.8 of the Model Code, the chairman of a listed issuer must not deal in any securities of the issuer without first notifying the board at a board meeting, or alternatively notifying the designated director and receiving a dated written acknowledgement before any dealing.

The Director's Undertaking (in the form of Appendix 5B to the Listing Rules) requires a director to comply with the Listing Rules to the best of his/her ability.

Listing Committee's Findings of Breach

The Listing Committee found as follows:

(1) Mr. Yu breached paragraphs A.3(a)(i) and B.8 of the Model Code.

(2) Mr. Yu also breached his Undertaking to comply with the Listing Rules to the best of his ability: (a) The Company clearly informed Mr. Yu of the commencement and end dates of the black-out period in respect of the Company's 2019 Annual Results, and the extension of that period as per the FAQ. (b) However, without any justification, Mr. Yu: (i) undertook the Disposal, in breach of the dealing restriction; and (ii) also failed to notify the board or the designated director, and obtain the designated director's approval, before undertaking the Dealing.

Conclusion

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

Directors are restricted from dealing in securities during black-out periods to remove or mitigate any suspicion of abuse by directors of listed issuers. They must notify, and obtain approval from, the designated director before their securities dealings. Directors' strict compliance is of fundamental importance to the integrity and confidence in the governance of listed issuers and the securities market in Hong Kong.

For the avoidance of doubt, the Exchange confirms that the above sanction and direction apply only to Mr. Yu, and not to the Company and 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中国金属资源利用有限公司（股份代号：1636）执行董事及主席俞建秋先生作出纪律行动

于 2021 年 6 月 10 日，香港联合交易所有限公司（联交所）对中国金属资源利用有限公司（股份代号：1636）

执行董事及主席俞建秋先生作出纪律行动的纪律行动声明。

制裁

香港联合交易所有限公司上市委员会

批评：

中国金属资源利用有限公司（股份代号：1636)（该公司）的执行董事及主席俞建秋先生（俞先生）；

及指令：

俞先生参加有关董事职责、《标准守则》（定义见下文）及《企业管治守则》（分别为《上市规则》附录十及十四）各 3 小时的培训。

实况概要

2020 年 3 月 31 日，俞先生透过其全资拥有的一家公司，以场外交易方式出售了 261,008,000 股该公司股份（约 9.93%）（出售事项）。

出售事项发生时，适值该公司截至 2019 年 12 月 31 日止财政年度业绩（2019 年度业绩） 所涉及的董事禁止买卖证券期（2020 年 1 月 30 日至 2020 年 8 月 21 日）。

俞先生在进行出售事项前，并没有通知指定的董事或该公司董事会，亦没有获得指定董事 的批准。

俞先生承认其违规行为，并接受上市委员会对其施加的下列制裁及指令。

《上市规则》的规定

根据《上市发行人董事进行证券交易的标准守则》（《标准守则》）第 A.3(a)(i)段，在上 市发行人刊发财务业绩当天以及年度业绩刊发日期之前 60 日内，或（若较短）有关财政年 度结束之日起至业绩刊发之日止期间，其董事不得买卖其所属上市发行人的任何证券。

根据证监会与联交所于 2020 年 2 月 4 日及 28 日刊发的联合声明及常问问题（《常问问题》），若发行人只能在 2020 年 3 月 31 日 或之前刊发未经核数师同意的初步业绩公告， 则董事禁止买卖证券期要待发行人刊发经审核财务业绩后才结束。

根据《标准守则》第 B.8 段，上市发行人的主席若拟买卖发行人证券，必须在交易之前先 在董事会会议上通知董事会，又或通知指定的董事，并须接获注明日期的确认书后才能进行有关的买卖。

按照董事以《上市规则》附录五 B 表格形式作出的《承诺》，董事必须尽力遵守《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) 俞先生违反了《标准守则》第 A.3(a)(i)及 B.8 段。

(2) 俞先生亦违反了其尽力遵守《上市规则》的《承诺》：(I) 该公司已明确告知俞先生关于该公司 2019 年度业绩的禁止买卖期的开始及结束 日期，以及其后再按《常问问题》予以延长。 (II) 然而，俞先生在没有任何理由的情况下： (i) 进行了出售事项，违反交易禁限；及 (ii) 进行出售事项前亦没有通知董事会或指定的董事及获得指定董事的批准。

结论

上市委员会决定施加纪律行动声明所载的制裁及指令。

董事不得在禁售期内进行证券交易，以消除或减轻上市发行人董事滥用职权之嫌。若要进行证券交易，董事必须通知指定董事并获得其批准。董事恪守此条，对上市发行人的管治以至香港证券市场的持正操作及维持市场信心至关重要。

为免引起疑问，联交所确认上述制裁及指令仅适用于俞先生，而不涉及该公司及该公司董 事会其他前任或现任成员。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210610news?sc_lang=en
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/210610_SoDA.pdf?la=en

Significant Guidances and Regulatory Initiatives of The Stock Exchange of Hong Kong Limited During the Period from May 28, 2021 to June 11, 2021

The Stock Exchange of Hong Kong Limited (the Exchange) announced the following guidances and regulatory initiatives during the period from May 21, 2021 to June 11, 2021:

- Frequently asked questions on the notifiable and connected transaction requirements relating to loan transactions and acquisitions of wealth management products

https://en-rules.hkex.com.hk/sites/default/files/net_file_store/FAQ_073-074-2021.pdf

- Listed Issuer Regulation Newsletter Issue 4

  Highlights
  • Issuers meeting financial reporting obligations amid the Covid-19 pandemic
  • Guidance on lending transactions
  • Confirmation on material loan arrangements of counterparties with connected persons when vetting notifiable transactions
  • Highlights of listed issuers' spin-off activities

  https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202105.pdf?la=en

- The Stock Exchange of Hong Kong Limited and the Financial Reporting Council signed a new Memorandum of Understanding to further strengthen collaboration between the two organizations, in ensuring the upholding of quality financial reporting by listed entities and their auditors

  https://www.hkex.com.hk/News/News-Release/2021/210608news?sc_lang=en

  https://www.hkex.com.hk/-/media/HKEX-Market/Services/Rules-and-Forms-and-Fees/Rules/Overview/Other-Documents-Related-to-the-Regulatory-Framework/mou_FRC_20210608.pdf?la=en

香港联合交易所有限公司于 2021 年 5 月 28 日至 2021 年 6 月 11 日期间的重要指引及监管措施

- 与贷款交易及理财产品收购相关的须予公布及关连交易要求的常问问题

  https://en-rules.hkex.com.hk/sites/default/files/net_file_store/FAQ_073-074-2021.pdf

- 上市發行人監管通訊 第 4 期

  重点
  • 疫情下发行人履行财务汇报责任
  • 有关借贷交易的指引
  • 审批须予公布的交易时，或要发行人确认交易对手方与关连人士之间是否有重大贷款安排
  • 上市发行人分拆活动概要

  https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202105_c.pdf?la=zh-HK

- 香港交易及结算所有限公司与财务汇报局签署新的谅解备忘录，进一步加强双方合作，以确保上市实体的财务汇报及其核数师的质素

  https://www.hkex.com.hk/News/News-Release/2021/210608news?sc_lang=zh-HK

  https://www.hkex.com.hk/-/media/HKEX-Market/Services/Rules-and-Forms-and-Fees/Rules/Overview/Other-Documents-Related-to-the-Regulatory-Framework/mou_FRC_20210608.pdf?la=en

Hong Kong Securities and Futures Commission Reprimands and Fines Ewarton Securities Limited HK$1.5 million for Internal Control Failings and Breaches of the Code of Conduct

On May 27, 2021, the Securities and Futures Commission of Hong Kong (SFC) announced that it has reprimanded and fined Ewarton Securities Limited (Ewarton) HK$1.5 million for internal control failings and breaches of the SFC's C Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission. Ewarton is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity.

The disciplinary action follows the SFC's sanctions against Mr. Mung Wai Sun (Mung), a former licensed representative of Ewarton, for effecting transactions in a client's account on a discretionary basis without obtaining the client's prior written authorization and failing to ensure transactions undertaken on behalf of the client were given priority over orders for his own account between May 2017 and March 2018. Mung was suspended for nine months by the SFC as announced in the SFC's press release dated September 21, 2020.

The SFC's investigation found that Ewarton's failure to diligently supervise Mung and to put in place adequate and effective internal controls during the material time resulted in its failure to detect and prevent his unauthorized or improper activities and to ensure that orders of clients were given priorities over orders of its employees.

In deciding the sanction, the SFC took into account all relevant circumstances, including the duration of Ewarton's failures and the need to send a deterrent message to the industry that such internal control failures will not be tolerated.

香港证券及期货事务监察委员会因内部监控缺失及违反操守准则谴责及罚款颖翔证券有限公司 150 万港元

于 2021 年 5 月 27 日，香港证券及期货事务监察委员会（证监会）对颖翔证券有限公司（颖翔）作出谴责并处以罚款 150 万港元，原因是颖翔犯有内部监控缺失及违反证监会的《证券及期货事务监察委员会持牌人或注册人操守准则》。颖翔根据《证券及期货条例》获发牌进行第 1 类（证券交易）受规管活动。

证监会在采取上述纪律行动前已处分颖翔的前持牌代表蒙炜燊先生（蒙），原因是他于 2017 年 5 月至 2018 年 3 月期间，在未事先取得一名客户书面授权的情况下，以委托形式在该客户的帐户内进行交易，并且没有确保代该客户进行的交易较为其本身的帐户作出的交易指示获得优先处理。蒙据证监会 2020 年 9 月 21 日的新闻稿被证监会暂时吊销牌照九个月。

证监会的调查发现，颖翔在上述期间没有勤勉尽责地监督蒙和设立充足且有效的内部监控措施，导致其未能侦查及防止蒙未经授权或不当的活动，以及确保客户的交易指示较其雇员的交易指示获得优先处理。

证监会在决定上述处分时，已考虑到所有相关情况，包括颖翔的缺失所持续的时间，以及有需要向业界传递具阻吓力的讯息，表明该等内部监控缺失不容姑息。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR53

The Court of First Instance of Hong Kong Orders Boiler Room Fraudsters to Compensate Investors

On June 3, 2021, the Court of First Instance of Hong Kong has granted orders sought by the Securities and Futures Commission (SFC) against boiler room fraudsters to compensate 75 investors who fell victim to the scams following legal proceedings under section 213 of the Securities and Futures Ordinance (SFO). A “boiler room” is a securities fraud in which fraudsters purport to operate as a licensed securities or futures broker and offer to trade shares or futures that are fictitious (in the sense that the securities contracts for which they have paid for have not been executed on any stock exchange) to people whom they cold-call. The judgments are available on the Judiciary’s website (Court Reference: HCA 2511, 2512, 2513/2014).

The boiler room scams involved three unlicensed entities purportedly based in and operating from Hong Kong. They are: (i) Broadspan Securities (Broadspan) using the website www.broadspansecurities.com; (ii) Shepherds Hill Partners, Hong Kong (Shepherds Hill) using the website www.shepherdshillhk.com; and (iii) Rich Futures (HK) Limited (Rich Futures) using the website www.richfutureshk.com.

The three unlicensed entities solicited investors through cold calls to open trading accounts via their websites and to invest in securities and/or futures in 2014. They also asked investors to deposit funds purportedly for their investments into six bank accounts in Hong Kong. The bank accounts were held by six entities: Timeprime Limited (Timeprime); Lynwin Limited (Lynwin); Resmart Limited (Resmart); Fieldmark Corporation Limited (Company No. 2010793) (Fieldmark); DH Corporation Limited (DH); SMD Partnership Limited (SMD).

It emerged that none of the investments in securities and/or futures products agreed with the investors were ever executed on any recognised exchange, nor have these investors been able to recover any of their monies. Some of the investors had been induced by other unlicensed entitles to invest in securities and/or futures products and instructed to deposit funds into bank accounts mentioned in Note (3). These entitles were purportedly based in and operated from various places, including but not limited to Beijing, New York, London and Tokyo.

In December 2014, the SFC obtained interim injunctions to freeze the monies in the six bank accounts holding the proceeds of boiler room or unlicensed activities allegedly carried out by Broadspan, Shepherds Hill and Rich Futures. The SFC also obtained orders restraining them from carrying on unlicensed activities and to suspend their websites in January 2015.

The Court has appointed administrators to receive and distribute the proceeds of the boiler rooms frauds remaining in the six bank accounts – approximately a sum of HK$4.3 million – for the benefit of the investors on a pro rata basis. The administrators are Mr. Cliff Tsui and Mr. Leonard Chan of Ernst & Young Transactions Limited.

On May 12, 2021, the Court granted judgments in default of defence against the defendants and made declarations that Broadspan, Shepherds Hill and Rich Futures had contravened sections 109, 114 and 300 of the SFO for (i) issuing advertisements in which they held themselves out as being prepared to carry on the specified regulated activities, whilst unlicensed and unregistered; (ii) holding themselves out as carrying on business in regulated activities whilst unlicensed and unauthorised; and (iii) employing a device, scheme or artifice with intent to defraud or deceive and/or engaged in an act, practice or course of business which was fraudulent or deceptive or would operate as a fraud or deception.

The Court also made declarations that by receiving the funds from the investors, Timeprime, Lynwin, Resmart, Fieldmark, DH and SMD had aided, abetted or otherwise assisted, counselled or procured or conspired with Broadspan, Shepherds Hill and Rich Futures in their

contraventions, or alternatively, directly or indirectly have been in any way knowingly involved in the 1st Defendants' contraventions of the SFO.

香港原讼法庭命令锅炉室骗徒向投资者作出赔偿

于 2021 年 6 月 3 日，继证券及期货事务监察委员会（证监会）先前提起的法律程序后，香港原讼法庭应证监会根据《证券及期货条例》第 213 条的申请对锅炉室骗徒作出命令，饬令他们向 75 名受骗投资者作出赔偿。"锅炉室 " 是一种证券诈骗手法，骗徒藉此宣称以持牌证券或期货经纪的身分经营业务，并向他们自荐造访的人士提出买卖虚假股份或期货（即这些人士付款买入的证券合约从未在任何证券交易所上执行）的要约。判决书载于司法机构网站（法院参考编号：高院民事诉讼 2014 年第 2511、2512 及 2513 号）。

这宗锅炉室骗案涉及三家据称总部设于香港并在香港营运的无牌实体。它们是：(i) Broadspan Securities（Broadspan），其使用的网站为 www.broadspansecurities.com；(ii) Shepherds Hill Partners, Hong Kong（Shepherds Hill），其使用的网站为 www.shepherdshillhk.com；及(iii) Rich Futures (HK) Limited（Rich Futures），其使用的网站为 www.richfutureshk.com。

这三家无牌实体于 2014 年以电话自荐造访方式，招揽投资者透过它们的网站开设交易帐户和投资证券及／或期货。它们亦要求投资者将据称是用作投资的款项存入六个香港银行帐户。这些银行帐户由六家实体持有：都鑫有限公司（都鑫）；历汇有限公司（历汇）；研彩有限公司（研彩）；公司注册编号 2010793 有限公司；DH Corporation Limited（DH）；SMD Partnership Limited（SMD）。

资料显示，与该等投资者所协定的证券及期货产品投资从未在任何认可交易所上执行，而这些投资者亦未能取回属于他们的任何款项。部分投资者曾经遭其他无牌实体诱使投资证券及／或期货产品，及被指示将款项存入注(3)所述的银行帐户。这些实体据称总部设于不同地方并在当地营运，包括但不限于北京、纽约、伦敦及东京。

2014 年 12 月，证监会取得临时强制令，将用来存放 Broadspan、Shepherds Hill 及 Rich Futures 涉嫌进行锅炉室或无牌活动所得收益的六个银行帐户内的款项冻结。证监会亦于 2015 年 1 月取得法庭命令，制止该三家公司进行无牌活动并暂停它们的网站运作。

法庭已委任管理人接管仍然存放在该六个银行帐户中的锅炉室诈骗活动约 430 万港元的所得收益，并将该等所得收益按比例归还予投资者。该等管理人为安永企业财务服务有限公司的徐子超先生及陈景伟先生。

2021 年 5 月 12 日，法庭因被告人欠缺抗辩书而判其败诉，并作出声明指 Broadspan、Shepherds Hill 及 Rich Futures 已违反该条例第 109、114 及 300 条，原因是三家公司(i)在没有获发牌或获注册的情况下，发出显示自己准备进行指明受规管活动的广告；(ii) 在没有获发牌或获注册的情况下，显示自己经营受规管活动的业务；及(iii)意图欺诈或欺骗而使用手段、计划或计谋，及／或从事具欺诈或欺骗性质或会产生欺诈或欺骗效果的作为、做法或业务。

法庭亦作出声明，指都鑫、历汇、研彩、公司注册编号 2010793 有限公司、DH 及 SMD 因从投资者收取有关款项，故曾协助、教唆，或以其他方式辅助、怂使或促致或串谋 Broadspan、Shepherds Hill 及 Rich Futures 违反该条例，或明知而直接或间接以任何方式牵涉入第一被告人违反该条例的行为。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR56

The Securities and Futures Appeals Tribunal of Hong Kong Allows Review for Mr. Cai Hongping against the Decision to Ban Him from Re-entering the Industry for Five Years

On June 4, 2021, the Securities and Futures Appeals Tribunal of Hong Kong (SFAT) allowed the application for review by Mr. Cai Hongping, former Executive Officer and Managing Director of UBS AG, against the decision of the Securities and Futures Commission (SFC) to ban him from re-entering the industry for five years. Mr. Cai was approved to act as an executive officer and a sponsor principal of UBS AG during the period from March 28, 2007 to July 2, 2010 and from April 16, 2007 to July 2, 2010 respectively.

The SFC's decision followed its earlier disciplinary actions against UBS AG and China Merchants Securities (HK) Co., Limited (CMS) for failing to discharge their obligations as joint sponsors in the listing application of China Metal Recycling Holdings Limited (China Metal). UBS AG and UBS Securities Hong Kong Limited were reprimanded, suspended and fined HK$375 million by the SFC for sponsor failures in relation to three listing applications, including China Metal's listing application as announced in the SFC's press release dated March 14, 2019. CMS was reprimanded and fined HK$27 million by the SFC as announced in the SFC's press release dated May 27, 2019. Disciplinary action was also taken against CMS's

sponsor principal as announced in the SFC's press release dated February 27, 2019.

The SFC alleged that Cai failed to discharge his supervisory duties as the Principal in relation to China Metal's listing application. While Cai accepted that he was a member of the senior management at UBS AG at the material time, he denied that he had been appointed by UBS AG as the leader of the transaction team – that is, the Principal, in China Metal's listing application. "Principal" means an individual that meets the criteria stipulated under the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers. In respect of a listing assignment, a Principal means an individual appointed by a sponsor to supervise the transaction team to carry out a listing assignment.

Noting that there is no unequivocal documentary material to show that Cai had acknowledged that he had taken up the position as the Principal in charge of the transaction team, the SFAT concluded that there is insufficient evidence to show that he was appointed leader of the transaction team and that he was aware of that fact. Therefore, Cai cannot be held personally responsible for the failings of the transaction team.

香港证券及期货事务上诉审裁处批准蔡洪平先生就禁止他重投业界五年的决定而提出的复核申请

于 2021 年 6 月 4 日，香港证券及期货事务上诉审裁处（上诉审裁处）批准 UBS AG 的前主管人员及董事总经理蔡洪平先生（蔡），就针对香港证券及期货事务监察委员会（证监会）禁止他重投业界五年的决定而提出的复核申请。蔡曾分别在 2007 年 3 月 28 日至 2010 年 7 月 2 日及 2007 年 4 月 16 日至 2010 年 7 月 2 日期间，获核准担任 UBS AG 的主管人员及保荐人主要人员。

证监会继早前因 UBS AG 和招商证券（香港）有限公司（招商证券）在中国金属再生资源（控股）有限公司（中国金属）的上市申请中没有履行它们作为联席保荐人的责任而对两家公司采取纪律行动后，作出上述的决定。据证监会于 2019 年 3 月 14 日的新闻稿公告，UBS AG 及 UBS Securities Hong Kong Limited 因就三宗上市申请（包括中国金属的上市申请）干犯了保荐人缺失，遭证监会谴责、暂时吊销牌照及罚款 3.75 亿港元。据证监会于 2019 年 5 月 27 日的新闻稿公告，招商证券遭证监会谴责及罚款 2,700 万元。据证监会于 2019 年 2 月 27 日的新闻稿公告，招商证券的保荐人主要人员亦遭采取纪律行动。

证监会指称，蔡没有就中国金属的上市申请履行其作为主要人员的监督职责。尽管蔡承认在关键时间他是 UBS AG 的高级管理层成员，但他否认曾获 UBS AG 委任为交易团队的队长，即中国金属的上市申请的主要人员。"主要人员"指符合《适用于申请或继续以保荐人和合规顾问身分行事的法团及认可财务机构的额外适当人选指引》所订明的条件的人士。就上市任务而言，主要人员指由保荐人委任负责监督交易团队执行上市任务的人士。上诉审裁处注意到，由于并无明显的文件数据显示蔡确认他曾出任负责交易团队的主要人员一职，因此裁定没有足够的证据显示他获委任为交易团队的队长并且对这事实知情。因此，无法要求蔡就交易团队的缺失负上个人责任。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR57

Market Misconduct Tribunal of Hong Kong Sanctions Mr. Cheng Chak Ngok for Insider Dealing in China Gas Shares

On June 11, 2021, the Market Misconduct Tribunal of Hong Kong (MMT) has banned Mr. Cheng Chak Ngok (Cheng), former executive director, chief financial officer and company secretary of ENN Energy Holdings Limited, from dealing in securities in Hong Kong for 54 months after finding him culpable of engaging in insider dealing in the shares of China Gas Holdings Limited (China Gas) in 2011 following a retrial. Under section 257(1)(b) of SFO, an order has the effect of prohibiting a person who is the subject of the order from any dealings, directly or indirectly, in the Hong Kong financial market for the length of the order.

Cheng has also been disqualified for a period of 54 months from being a director, or be concerned or take part in the management of a listed corporation. The MMT said in its determination on sanctions that he is "unfit to be a director of any corporation, whether listed or not" and that he "abused his expertise and breached the trust and confidence which he enjoyed". Under section 257(1)(a) of the Securities and Futures Ordinance (SFO), an order prohibiting a person to take part in the management of a listed company without the leave of the Court of First Instance.

Noting Cheng's "misconduct brought Hong Kong into disrepute as a financial center, the MMT made the following additional orders:

- Cheng not to engage in insider dealing again in the future;
- the profit of HK$2,948,030.54 gained by Cheng from his insider dealing in China Gas shares be disgorged;

- Cheng to pay the costs and expenses of the Government and the Securities and Futures Commission (SFC) for the retrial; and
- the MMT reports be referred to the Hong Kong Institute of Certified Public Accountants with a recommendation to take disciplinary action against Cheng (which include an order to prohibit a person who is the subject of the order not to engage in any form of market misconduct in the future (section 257(1)(c) of the SFO), an order that the person shall pay to the Government an amount of any profit gained or loss avoided by the person as a result of the market misconduct in question (section 257(1)(d) of the SFO), orders that a person shall pay costs incurred by the Government and the SFC (sections 257(1)(e) and (f) of the SFO), an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him (section 257(1)(g) of the SFO)).

香港市场失当行为审裁处因郑则锷先生就中国燃气股份进行内幕交易对其作出制裁

于 2021 年 6 月 11 日，市场失当行为审裁处（审裁处）禁止新奥能源控股有限公司前执行董事、首席财务官兼公司秘书郑则锷（男）在香港处理任何证券，为期 54 个月。郑早前经重审后被裁定于 2011 年就中国燃气控股有限公司（中国燃气）股份进行内幕交易罪成。根据《证券及期货条例》第 257(1)(b)条所作出的命令，具有禁止该命令的对象于该命令的指明期间内，在香港金融市场直接或间接进行任何交易的效果。

郑同时被取消担任上市法团董事或关涉或参与该等法团管理的资格，为期 54 个月。审裁处在制裁决定中表示，郑"并不适合担任任何法团（不论是否上市）的董事"，及他"滥用了其专业知识，并违背了他所获得的信任及信赖"。根据《证券及期货条例》第 257(1)(a)条所作出的命令，禁止任何人在未经原讼法庭许可下参与上市公司的管理。

审裁处指郑的"失当行为令香港作为金融中心的声誉受损"，并另外作出了以下命令：

- 郑日后不得再从事内幕交易；
- 郑须交出其从中国燃气股份内幕交易中获取的 2,948,030.54 港元利润；
- 郑须就重审支付政府和证券及期货事务监察委员会（证监会）的讼费和开支；及
- 将审裁处报告转交香港会计师公会，并建议针对郑采取纪律行动（包括禁止该命令的对象日后再进行任何形式的市场失当行为（《证券及期货条例》第 257(1)(c)条）、命令该人须向政府缴付因该失当行为而令他获取的利润或避免的损失的金额(《证券及期货条例》第 257(1)(d)条)、命令某人须缴付由政府及证监会所招致的讼费（《证券及期货条例》第 257(1)(e)及(f)条）、在任何人是某团体的成员而该团体可针对他采取纪律行动的情况下，命令建议该团体针对他采取纪律行动（《证券及期货条例》第 257(1)(g)条）。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR59

Hong Kong Securities and Futures Commission Suspends Mr. Lun Sheung Nim for 7.2 months

On June 10, 2021, the Hong Kong Securities and Futures Commission (SFC) announced that it has suspended the licence of Mr. Lun Sheung Nim (Lun), a responsible officer (RO) of GEO Securities Limited (GEO), for 7.2 months from June 10, 2021 to January 16, 2022. Lun has been licensed under the Securities and Futures Ordinance since November 30, 2004. Lun has been accredited to GEO to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities since July 23, 2013, and has been approved as its RO for Type 1 (dealing in securities) regulated activity since July 23, 2013, Type 4 (advising on securities) regulated activity since May 7, 2014, and Type 9 (asset management) regulated activity since March 21, 2018.

The disciplinary action follows the SFC's sanctions against GEO for breaches of its licensing conditions and failures related to its sale of unlisted bonds between July 1, 2014 and November 16, 2015. GEO was reprimanded and fined HK$6.3 million by the SFC.

The SFC found that GEO's breaches and failures during the material period were attributable to Lun's failure to discharge his duties as an RO and a member of GEO's senior management. General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market. General Principle 9 of the Code of Conduct requires the senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm. Paragraph 14.1 of the Code of Conduct further provides that the senior management of a licensed corporation should properly manage the risks associated with the firm's business.

By allowing GEO to provide discretionary account management services to clients and introduce clients

directly to listed companies to subscribe for their unlisted bonds during the material period, Lun directly contributed to GEO's breach of the conditions on its licence. Lun also showed a fundamental failure to understand and properly manage the risks associated with GEO's business.

In particular, Lun failed to:

- ensure that GEO conducted adequate due diligence on the unlisted bonds before their recommendations to clients;
- establish an effective system at GEO to assess clients' risk tolerance and ensure the recommendations and/or solicitations made to clients in relation to the unlisted bonds were suitable and reasonable for the clients;
- implement policies and procedures at GEO to ensure documentary records of investment advice or recommendations made to clients were maintained and a copy of the written advice was given to clients; and
- ensure GEO disclosed the commission it received from issuers for the successful placement of the unlisted bonds to clients.

The SFC considers Lun's conduct fell short of the standard required of him as an RO for a licensed corporation.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including the seriousness of GEO's regulatory breaches and Lun's cooperation and willingness to resolve the SFC's concerns.

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=21PR60&appendix=0

香港证券及期货事务监察委员会暂时吊销蔺常念先生的牌照 7.2 个月

于 2021 年 6 月 10 日，香港证券及期货事务监察委员会（证监会）暂时吊销智易东方证券有限公司（智易东方）负责人员蔺常念先生（蔺）的牌照 7.2 个月，由 2021 年 6 月 10 日起至 2022 年 1 月 16 日止。蔺自 2004 年 11 月 30 日起，根据《证券及期货条例》获发牌照。蔺自 2013 年 7 月 23 日起，隶属智易东方以进行第 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，并且自 2013 年 7 月 23 日、2014 年 5 月 7 日及 2018 年 3 月 21 日起，分别就第 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）受规管活动获核准担任智易东方的负责人员。

证监会在采取上述纪律行动前，已就智易东方于 2014 年 7 月 1 日至 2015 年 11 月 16 日期间违反发牌条件及在销售非上市债券方面犯有缺失，对其作出处分。智易东方早前遭证监会谴责及罚款 630 万港元。

证监会发现，智易东方在关键期间的违规行为及缺失可归因于蔺没有履行他作为智易东方的负责人员兼高级管理层成员的职责。《证券及期货事务监察委员会持牌人或注册人操守准则》（《操守准则》）第 2 项一般原则规定，持牌人应以适当的技能、小心审慎和勤勉尽责的态度行事，以维护客户的最佳利益及确保市场廉洁稳健。《操守准则》第 9 项一般原则规定，持牌法团的高级管理层应承担的首要责任，是确保商号能够维持适当的操守标准及遵守恰当的程序。《操守准则》第 14.1 段进一步订明，持牌法团的高级管理层应适当地管理与商号的业务有关的风险。

由于蔺在关键期间，容许智易东方向客户提供委托帐户管理服务及直接向上市公司介绍客户认购由这些公司所发行的非上市债券，故他直接导致智易东方违反了其发牌条件。蔺亦表现出他基本上并不了解亦没有妥善管理与智易东方的业务相关的风险。

特别是，蔺没有：确保智易东方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；在智易东方设立有效的系统以评估客户的风险承受能力，并确保就非上市债券而向客户作出的建议及／或招揽行为对该等客户而言，是合适且合理的；在智易东方实施政策和程序，以确保智易东方就其向客户提供的投资意见或建议备存文件纪录，并向客户提供书面意见的副本；及确保智易东方向客户披露其因成功配售非上市债券而从发行人收取的佣金。

证监会认为，蔺的行为未能符合其作为持牌法团负责人员所须达到的标准。

证监会在决定采取上述纪律处分时，已考虑到所有相关情况，包括智易东方违反监管规定的情况严重，以及蔺表现合作及愿意解决证监会的关注事项。

有关纪律行动声明载于证监会网站：https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/openAppendix?refNo=21PR60&appendix=0

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR57

U.S. Commodity Futures Trading Commission Interest Rate Benchmark Reform Subcommittee Recommends July 26 for Transitioning Interdealer Swap Market Trading Conventions from LIBOR to SOFR

On June 8, 2021, the U.S. Commodity Futures Trading Commission's (CFTC) Market Risk Advisory Committee's (MRAC) Interest Rate Benchmark Reform Subcommittee voted to recommend a market best practice for switching interdealer trading conventions from London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR) for U.S. Dollar (USD) linear interest rate swaps. This MRAC Subcommittee initiative, referred to as "SOFR First," is the third recommendation this Subcommittee has referred to the MRAC for consideration in connection with the transition of USD derivatives and related contracts away from LIBOR. Acting Chairman Rostin Behnam is the sponsor of MRAC.

SOFR First, a best practice modeled after the U.K.'s Sterling Over Night Index Average (SONIA) First, represents a prioritization of interdealer trading in SOFR rather than LIBOR. Specifically, the Subcommittee recommends that on July 26, 2021 and thereafter, interdealer brokers replace trading of LIBOR linear swaps with trading of SOFR linear swaps. This step will cause trading activity amongst swap dealers on these platforms, which account for a substantially large share of trading in the interest rate swap markets, to switch from LIBOR to SOFR. The SOFR First best practice recommends keeping interdealer brokers' screens for LIBOR linear swaps available for informational purposes, but not trading activity, until October 22, 2021. After this date, these screens should be turned off altogether. Given most tenors of USD LIBOR will continue to be published until June 30, 2023, the Subcommittee views it as appropriate that the rate remain accessible in the interdealer market as a basis to SOFR for risk management purposes as highlighted in the U.S. banking regulators' supervisory guidance. SOFR First recommendations are focused on the interdealer market only, and therefore do not impact availability of LIBOR linear swaps in dealer-to-client transactions.

"I commend the Interest Rate Benchmark Reform Subcommittee on the development of SOFR First and its forward-thinking approach to increasing overall SOFR derivatives trading in order to facilitate a smooth transition of exposures from LIBOR to SOFR. SOFR First's milestone date of July 26, 2021 is consistent with, and is designed to complement, U.S. banking regulators supervisory guidance that banks should cease entering into new contracts that use USD LIBOR as a reference rate at the end of 2021. Many thanks to the Subcommittee for their hard work on this important contribution to the benchmark reform effort," said Acting Chairman Behnam.

The Subcommittee's recommendations will be submitted to the MRAC for consideration. The views, analyses, and conclusions expressed regarding SOFR First reflect the work of the MRAC Interest Rate Benchmark Reform Subcommittee, and do not necessarily reflect the views of the MRAC, the Commission or its staff, or the U.S. government.

美国商品期货交易委员会利率基准改革小组委员会建议在 7 月 26 日将交易商间掉期市场交易惯例从 LIBOR 过渡到 SOFR

2021 年 6 月 8 日，美国商品期货交易委员会（CFTC）市场风险咨询委员会(Market Risk Advisory Committee) (MRAC) 的利率基准改革小组委员会投票推荐了将美元 (USD) 线性利率掉期的交易商间交易惯例市场最佳做法从伦敦银行同业拆借利率(LIBOR)转换为担保隔夜融资利率(SOFR) 。该 MRAC 小组委员会倡议 (提议被称为 "SOFR 优先") 是该小组委员会提交 MRAC 考虑将美元衍生品和相关合同从 LIBOR 过渡提出的第三项建议。代理主席 Rostin Behnam 是 MRAC 的发起人。

"SOFR 优先"是模仿英国的"英镑隔夜平均指数 (SONIA) 优先"的最佳做法，表现 SOFR 而非 LIBOR 的交易商间交易的优先性。具体而言，小组委员会建议在 2021 年 7 月 26 日及之后，交易商经纪商将 LIBOR 线性掉期交易替换为 SOFR 线性掉期交易。这一步骤将导致这些在利率掉期市场的交易中占很大份额的平台上的掉期交易商之间的交易活动从 LIBOR 转向 SOFR。"SOFR 优先"最佳做法建议在 2021 年 10 月 22 日之前保留交易商间经纪商的 LIBOR 线性掉期屏幕以供参考，但不能用于交易活动。在此日期之后，这些屏幕应完全关闭。鉴于大多数美元 LIBOR 的年期将继续发布至 2023 年 6 月 30 日，小组委员会认为，正如美国银行业监管机构的监管指引所强调的那样，该利率在交易商间市场仍可存取以作为 SOFR 的基础进行风险管理是适当的。 "SOFR 优先"的建议仅针对交易商间市场，因此不会影响交易商和客户间交易中 LIBOR 线性掉期的可用性。

代理主席 Behnam 表示 "我赞扬利率基准改革小组委员会制定"SOFR 优先"及其增加整体 SOFR 衍生品交易的前瞻性方法，以促进敞口从 LIBOR 平稳过渡到 SOFR。"SOFR 优先"的里程碑日期 2021 年 7 月 26 日符合并旨

在补充美国银行业监管机构的监管指引，即银行应在 2021 年底停止签订使用美元 LIBOR 作为参考利率的新合同。非常感谢小组委员会为基准改革工作做出的这一重要贡献的辛勤工作。”

小组委员会的建议将提交给 MRAC 考虑。 关于"SOFR 优先"的观点、分析和结论反映了 MRAC 利率基准改革小组委员会的工作，并不一定反映 MRAC、委员会或其工作人员或美国政府的观点。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8394-21

U.S. Federal Court Orders a Man to Pay More than US$500,000 for Attempting to Fraudulently Profit From COVID-19

On June 3, 2021, the U.S. Commodity Futures Trading Commission (CFTC) announced that the U.S. District Court for the Western District of Texas entered an order granting the CFTC's motion for default judgment against defendant James Frederick Walsh. The order finds that Walsh failed to answer the CFTC's complaint charging him with fraud and failure to register with the CFTC. Walsh's fraudulent solicitations include falsely claiming to generate increased forex trading profits as a result of the COVID-19 pandemic. This was the first enforcement action brought by the CFTC alleging misconduct tied directly to the COVID-19 pandemic.

The complaint alleged that from at least September 2019 to the July 2020, Walsh fraudulently solicited members of the public for the purported purpose of trading retail foreign currency (forex) on their behalf. Using primarily social-media platforms, Walsh fraudulently marketed himself to the public as a highly successfully forex trader who earned "average monthly returns of 8% - 11%" or "a flat 3% guaranteed profit each month" for his clients. To achieve these fictitious results, Walsh falsely claimed to have access to "legal, inside information" about the direction in which forex markets will move. As alleged, Walsh had no U.S.-based forex trading accounts.

The complaint further alleged that, after he received a cease and desist letter from the Texas State Securities Board related to his fraudulent solicitations, Walsh falsely represented that he was earning even greater trading profits now that the COVID-19 pandemic had impacted the financial markets, claiming that "the returns in forex continue to grow as the rest of the financial world continues to suffer."

The order requires Walsh to pay a civil monetary penalty of US$555,726 and permanently enjoins him from engaging in conduct that violates the Commodity Exchange Act, from registering with the CFTC, and from trading in any CFTC-regulated markets.

美国联邦法院就试图从 COVID-19 中欺诈获利命令一名男子支付超过 500,000 美元

2021 年 6 月 3 日，美国商品期货交易委员会（CFTC）宣布，美国德克萨斯州西区地方法院下达命令，批准 CFTC 对被告 James Frederick Walsh 缺席判决的动议。该命令指 Walsh 未能回答 CFTC 指控他欺诈和未能在 CFTC 注册的投诉。 Walsh 的欺诈性招揽包括错误地声称由于 COVID-19 大流行，外汇交易利润增加。 这是 CFTC 指控与 COVID-19 大流行直接相关的不当行为的第一项执法行动。

投诉称，至少从 2019 年 9 月到 2020 年 7 月，Walsh 欺诈性地招揽公众，以代表他们交易零售外币（外汇）。 Walsh 主要使用社交媒体平台，以欺诈手段向公众推销自己，称自己是一位非常成功的外汇交易员，为客户赚取"平均每月回报率为 8% - 11%"或"每月保证利润为 3%"。为了实现这些虚构的结果，Walsh 讹称可以获取有关外汇市场走向的"合法的内幕信息"。 据称，Walsh 没有美国的外汇交易账户。

投诉进一步声称，在收到德克萨斯州证券委员会关于他的欺诈性招揽的停止和终止函后，Walsh 讹称，由于 COVID-19 大流行已经影响了金融市场，他获得了更大的交易利润， 声称"随着金融世界的其他部分继续遭受损失，外汇的回报继续增长。”

该命令要求 Walsh 支付 555,726 美元的民事罚款，并永久禁止他从事违反商品交易法的行为、在 CFTC 注册以及在任何 CFTC 监管的市场进行交易。

Source 来源:
https://cftc.gov/PressRoom/PressReleases/8393-21

U.S. Securities and Exchange Commission Charges Couple with Insider Trading on Confidential Clinical Trial Data

On June 7, 2021, the U.S. Securities and Exchange Commission (SEC) charged a couple with insider trading in the stock of the pharmaceutical company where one of them worked as a clinical trial project manager. The defendants have agreed to pay more than US$325,000 to settle the charges.

According to the SEC's complaint, Holly Hand was the senior project manager overseeing a clinical drug trial for a company then known as Neuralstem Inc. As alleged, after Hand learned of negative efficacy results from the trial, she tipped Chad Calice, who then sold all of his Neuralstem stock ahead of the public announcement of the negative news. The complaint alleges that while selling his shares, Calice tipped off his uncle, who then also sold his entire Neuralstem position that day. According to the complaint, after the negative news was announced the next morning, the price of Neuralstem stock dropped by approximately 50%. As alleged, by selling their stock in advance of the news, Calice avoided losses of US$103,875 and his uncle avoided losses of US$14,434.

The SEC's complaint, filed in federal district court in Manhattan, charges Calice and Hand with violating the antifraud provisions of the federal securities laws. Without admitting or denying the complaint's allegations, Calice and Hand have consented to the entry of a final judgment that enjoins them from violating the charged provisions and requires each of them to pay a civil penalty. Calice has agreed to pay a US$222,184 penalty, and Hand has agreed to pay a US$103,875 penalty. The proposed settlement is subject to court approval.

美国证券交易委员会指控情侣利用机密临床试验数据进行内幕交易

2021 年 6 月 7 日，美国证券交易委员会（美国证交会）2021 年 6 月 7 日，美国证券交易委员会 (SEC) 指控一对情侣就其中一人担任临床试验项目经理的制药公司的股票进行内幕交易。被告已同意支付超过 325,000 美元以了结指控。

根据美国证交会的诉状，Holly Hand 是当时名为 Neuralstem Inc. 的公司的高级项目经理，负责监督一项临床药物试验。据称，在 Hand 得知试验的负面疗效结果后，她向 Chad Calice 提供了消息，后者随后在负面消息公布之前出售了所有他的 Neuralstem 股票。 诉状称，Calice 在出售其股份时向他的叔叔透露了消息，后者当天也出售了他的整个 Neuralstem 头寸。 诉状称，次日上午负面消息公布后，Neuralstem 股价下跌约 50%。据称，通过在消息公布前出售他们的股票，Calice 避免了 103,875 美元的损失，他的叔叔避免了 14,434 美元的损失。

美国证交会向曼哈顿联邦地方法院提起诉讼，指控 Calice 和 Hand 违反了联邦证券法的反欺诈规定。 在不承认或否认投诉的指控的情况下，Calice 和 Hand 同意作出最终判决，禁止他们违反被指控的规定，并要求他们每个人支付民事罚款。 Calice 同意支付 222,184 美元的罚款，Hand 同意支付 103,875 美元的罚款。 拟议的和解须经法院批准。

Source 来源:
https://www.sec.gov/news/press-release/2021-94

U.S. Securities and Exchange Commission Updates List of Firms Using Inaccurate Information to Solicit Investors

On May 19, 2021, the U.S. Securities and Exchange Commission (SEC) announced that it updated its list of unregistered entities that use misleading information to solicit primarily non-U.S. investors, adding 55 soliciting entities, four (4) impersonators of genuine firms, and five (5) bogus regulators.

The SEC's list of soliciting entities that have been the subject of investor complaints, known as the Public Alert: Unregistered Soliciting Entities (PAUSE) list, enables investors to better inform themselves and avoid being a victim of fraud. The latest additions are firms that SEC staff found were providing inaccurate information about their affiliation, location, or registration. Under U.S. securities laws, firms that solicit investors generally are required to register with the SEC and meet minimum financial standards and disclosure, reporting, and recordkeeping requirements.

In addition to alerting investors to firms falsely claiming to be registered, the PAUSE list flags those impersonating registered securities firms and bogus "regulators" who falsely claim to be government agencies or affiliates. Inclusion on the PAUSE list does not mean the SEC has found violations of U.S. federal securities laws or made a judgment about the merits of any securities being offered.

美国证券交易委员会更新使用不准确信息招揽投资者的公司名单

2021 年 5 月 19 日，美国证券交易委员会（美国证交会）宣布更新了其使用误导性信息招揽主要为非美国投资者的未注册实体清单，增加了 55 个招揽实体、四 (4) 名冒充真正公司的冒充者以及五 (5) 名虚假监管机构。

美国证交会已成为投资者投诉的对象的招揽实体清单，称为公共警报：未注册招揽实体 (Public Alert: Unregistered Soliciting Entities) (PAUSE) 名单，使投资

者能够更好地自行了解并避免成为欺诈的受害者。最新增加的公司为美国证交会工作人员发现其提供了有关其关联人士、地址或注册的不准确信息。根据美国证券法，招揽投资者的公司通常需要在美国证交会注册并满足最低财务标准以及披露、报告和记录保存要求。

除了提醒投资者注意虚假声称已注册的公司外，PAUSE 名单还会标记那些冒充成为注册证券公司和虚假声称是政府机构或附属机构的虚假"监管机构"。列入 PAUSE 名单并不意味着美国证交会发现违反美国联邦证券法的行为或对其提供的证券的价值作出判断。

Source 来源：
https://www.sec.gov/news/press-release/2021-97

Singapore Exchange Welcomes Synergy Futures as Derivatives Trading Member

On June 3, 2021, Singapore Exchange (SGX) welcomed Synergy Futures Limited (Synergy Futures) as a Trading Member of its derivatives market.

Synergy Futures is a Hong Kong-based company that offers trading and risk management services spanning futures, options and securities to domestic and global institutional and professional investors. Synergy Futures is licensed by the Securities and Futures Commission of Hong Kong to deal in securities and futures contracts.

Chew Sutat, Head of Global Sales and Origination at SGX, said, "We are delighted to welcome Synergy Futures as a new member of our growing derivatives marketplace. This extends our strong membership base across Greater China and supports the rising demand for Asian market derivatives. We look forward to working closely with Synergy Futures to meet their clients' risk management and investment needs."

Qin Tian, Executive Director of Synergy Futures, said, "We are pleased to be a member of Singapore Exchange. Singapore Exchange's equity index and iron ore products are attractive to investors and Synergy Futures Limited will use our extensive experience in algorithmic trading to meet all our clients' needs."

With the admission of Synergy Futures, SGX's derivatives market now has 63 Trading Members and 26 Clearing Members.

新加坡交易所欢迎新际期货成为衍生品交易会员

2021 年 6 月 3 日，新加坡交易所（新交所）迎来新际期货有限公司（新际期货）成为新交所衍生品市场交易会员。

新际期货是一家总部位于香港的公司，为国内及全球机构和专业投资者提供涵盖期货、期权和证券的交易和风险管理服务。 新际期货获香港证券及期货事务监察委员会发牌，可买卖证券及期货合约。

新交所全球业务发起和拓展部主管周士达表示："我们很高兴迎来新际期货成为新交所不断发展的衍生品市场的新会员。这拓展了我们在大中华区强大的会员基础，并支持了不断增长的亚洲市场衍生品需求。 我们期待与新际期货密切合作，以满足其客户的风险管理和投资需求。"

新际期货执行董事秦天表示："我们很高兴能成为新交所的衍生品交易会员。新交所的股票指数及铁矿石产品对投资者具有吸引力，新际期货将凭借我们在算法交易方面的丰富经验满足所有客户的需求。"

新际期货加入后，新交所衍生品市场目前共有 63 家交易会员和 26 家清算会员。

Source 来源：
https://www.sgx.com/media-centre/20210603-sgx-welcomes-synergy-futures-derivatives-trading-member

The Financial Conduct Authority of the United Kingdom Confirms Measures to Protect Customers from the Loyalty Penalty in Home and Motor Insurance Markets

On May 28, 2021, the Financial Conduct Authority of the United Kingdom (FCA) has implemented a package of remedies to improve competition and protect home and motor insurance customers from loyalty penalties. This includes new rules so that renewal quotes for home and motor insurance consumers are not more expensive than they would be for new customers. These measures address the issues identified in the FCA's September 2020 market study, which found that millions of home and motor insurance customers lose out if they renew repeatedly with their current providers. In 2018, 6 million loyal policy holders would have saved £1.2 billion had they paid the average price for their actual risk.

Many firms increase prices for existing customers each year at renewal – this is known as price walking. This means that consumers have to shop around and switch every year to avoid paying higher prices for being loyal.

It also distorts the way the market works for everyone. Many firms offer below-cost prices to attract new customers. They also use sophisticated processes to target the best deals at customers who they think will not switch in the future and will therefore pay more.

The FCA's new rules will stop firms price walking. Insurers will be required to offer renewing customers a

price that is no higher than they would pay as a new customer. It is likely that firms will no longer offer unsustainably low-priced deals to some customers. However, the FCA estimates that these measures will save consumers £4.2 billion over 10 years, by removing the loyalty penalty and making the market work better.

In addition to the new rules on pricing for home and motor insurance, the FCA is also bringing in new rules to:

- give most consumers easier methods of cancelling the automatic renewal of their policy,
- require insurance firms to do more to consider how they offer fair value to their customers, and
- require home and motor insurance firms to report data to the FCA so that it can supervise the market more effectively.

Sheldon Mills, Executive Director, Consumers and Competition at the FCA commented on the new rules:

'These measures will put an end to the very high prices paid by many loyal customers. Consumers can still benefit from shopping around or negotiating with their current provider – but won't be charged more at renewal just for being an existing customer.

'We are making the insurance market work better for millions of people. We will be watching closely to see how the market develops in the future and to ensure firms continue to deliver fairer value to consumers.'

The pricing, auto-renewal and data reporting remedies come into effect on 1 January 2022. The rules on systems and controls, product governance and premium finance take effect from the end of September 2021.

Alongside the Policy Statement, the FCA has also published research on how incentives affect consumers' choices, focusing on purchases of motor and home insurance made through price comparison websites. The research was undertaken to inform FCA's approach to the new pricing rules.

The FCA will continue to monitor the market closely to ensure firms are ready to implement the pricing changes on time. The FCA will also review the effects of the remedies over the course of 2022, ahead of a full evaluation in early 2024.

英国金融行为监管局采取措施保护客户在家免受忠诚度惩罚和监管保险市场

这些措施解决了英国金融行为监管局 在 2020 年 9 月的市场研究中发现的问题，该研究发现，如果数百万家庭和汽车保险客户反复与现有供应商续约，他们将蒙受损失。 2018 年，如果 600 万忠诚的保单持有人为实际风险支付平均价格，他们将节省 12 亿英镑。

许多公司每年都会在续约时提高现有客户的价格——这被称为价格行走。这意味着消费者必须每年货比三家，避免支付更高的价格。

它还扭曲了市场为每个人运作的方式。许多公司提供低于成本的价格来吸引新客户。他们还使用复杂的流程将最优惠的价格锁定在他们认为将来不会转换并因此支付更多费用的客户身上。

英国金融行为监管局的新规则将阻止公司的价格走动。保险公司将被要求向续保客户提供不高于他们作为新客户支付的价格。公司很可能不再向某些客户提供不可持续的低价交易。然而，英国金融行为监管局估计，通过取消忠诚度惩罚并改善市场运作，这些措施将在 10 年内为消费者节省 42 亿英镑。

除了家庭和汽车保险定价的新规则外，英国金融行为监管局还引入了新规则：

• 为大多数消费者提供更简单的方法来取消其保单的自动更新，

• 要求保险公司更多地考虑如何向客户提供公允价值，以及

• 要求家庭和汽车保险公司向 FCA 报告数据，以便其更有效地监管市场

英国金融行为监管局消费者与竞争执行董事 Sheldon Mills 评论了新规则：

"这些措施将结束许多忠实客户支付的高价。消费者仍然可以从货比三家或与他们当前的供应商谈判中受益——但不会因为成为现有客户而在续订时收取更多费用。

"我们正在让保险市场更好地为数百万人服务。我们将密切关注未来市场的发展情况，并确保公司继续为消费者提供更公平的价值。"

定价、自动续订和数据报告补救措施于 2022 年 1 月 1 日生效。有关系统和控制、产品治理和保费融资的规则于 2021 年 9 月底生效。

除了政策声明，英国金融行为监管局为告知消费者对新定价规则的处理方法，还发布了关于激励措施如何影响消费者选择的研究，重点关注通过价格比较网站购买的汽车和家庭保险。

英国金融行为监管局将继续密切关注市场，以确保公司准备好按时实施定价变化。在 2024 年初进行全面评估

之前， 英国金融行为监管局还将在 2022 年期间审查补救措施的效果。

Source 来源:
https://www.fca.org.uk/news/press-releases/fca-confirms-measures-protect-customers-loyalty-penalty-home-motor-insurance-markets

Australian Securities and Investments Commission Commences Civil Proceedings against Shipbuilder Austal Limited for Continuous Disclosure Breach

On June 10, 2021, Australian Securities and Investments Commission (ASIC) has commenced proceedings in the Federal Court against Austal Limited (ASX:ASB) (Austal) and its former CEO, David Singleton, for alleged breaches of the Corporations Act (the Act) and ASIC Act.

ASIC's proceedings involve an alleged failure by Austal to immediately disclose to the market a material change in its prior earnings guidance. Austal had represented that it expected its US shipbuilding business would be profitable in FY2016, but subsequently became aware that it would likely generate a significant loss.

On December 10, 2015, Austal provided earnings guidance and represented that it expected its US shipbuilding business to be profitable in FY2016. Austal represented that it expected its US shipbuilding EBIT (Earnings Before Interest and Tax) margin to be in the range of 4.5% - 6.5% in FY2016 and to see margin improvement on its approximately US$3.5 billion US Navy LCS warship program. The US shipbuilding EBIT margin is a measure of operating profit as a percentage of revenue from Austal's US shipbuilding business. The company affirmed its earnings guidance on February 23, 2016.

ASIC alleges that from at least June 4, 2016 (a Saturday), Austal was aware that it was likely that a writeback was required of at least US$90m, which would generate a significant loss to Austal USA and/or Austal in FY2016.

Before market open on July 4, 2016, Austal announced that it would report a US$115m (AU$156m) writeback of work in progress on the LCS program and record a statutory group EBIT loss in the range of AU$(116) – (121) m in FY2016.

ASIC alleges that Austal breached its continuous disclosure obligations under s674(2) of the Act between June 6 and July 4, 2016 by failing to disclose that a writeback of at least US$90m was likely required and that this would generate a significant loss. ASIC also alleges that Austal engaged in misleading or deceptive conduct in breach of s1041H(1) of the Act and/or s12DA of the ASIC Act by failing to correct or withdraw its previous guidance.

ASIC alleges Mr. Singleton, Austal's CEO at the time of the alleged misconduct, contravened sections 180(1) and 674(2A) of the Act for his involvement in Austal's continuous disclosure contravention and by failing to exercise reasonable care and diligence as a director of Austal.

ASIC is seeking declarations and pecuniary penalties from the Federal Court.

澳大利亚证券和投资委员对造船 Austal Limited 提起民事诉讼，称其持续违反披露规定

2021 年 6 月 10 日，澳大利亚证券和投资委员会已在联邦法院对 Austal Limited (ASX:ASB) (Austal) 及其前首席执行官 David Singleton 提起诉讼，指控其违反了《公司法》（该法案）和澳大利亚证券和投资委员会法案。

澳大利亚证券和投资委员会的诉讼涉及 Austal 据称未能立即向市场披露其先前收益指引的重大变化。 Austal 曾表示预计其美国造船业务将在 2016 财年实现盈利，但随后意识到可能会产生重大亏损。

2015 年 12 月 10 日，Austal 提供了盈利指引，并表示预计其美国造船业务将在 2016 财年实现盈利。 Austal 表示，预计 2016 年度其美国造船业 EBIT（息税前利润）利润率将在 4.5% - 6.5% 之间，其约 35 亿美元的美国海军 LCS 军舰计划的利润率将有所改善。美国造船业 EBIT 利润率衡量营业利润占 Austal 美国造船业务收入的百分比。公司于 2016 年 2 月 23 日确认了其盈利指引。

澳大利亚证券和投资委员会称，至少从 2016 年 6 月 4 日（星期六）起，Austal 意识到可能需要至少 9,000 万美元的回拨，这将在 2016 财年对 Austal USA 和/或 Austal 造成重大损失。

在 2016 年 7 月 4 日开市前，Austal 宣布将报告 1.15 亿美元（1.56 亿澳元）的 LCS 项目正在进行的工作的回写，并记录法定集团 EBIT 在 2016 财年的损失为 1.16 亿到 1.21 亿澳元。

澳大利亚证券和投资委员会称，Austal 在 2016 年 6 月 6 日至 7 月 4 日期间违反了该法案第 674(2) 条规定的持续披露义务，未能披露可能需要至少 9,000 万美元的回拨，并且这将产生重大损失。 ASIC 还指控 Austal 违反了该法案 s1041H(1) 和/或 ASIC 法案 s12DA 的误导或欺骗行为，未能更正或撤回其先前的指导。

澳大利亚证券和投资委员会指控 Austal 的首席执行官辛格尔顿先生在被指控的不当行为发生时违反了该法案第

180(1) 和 674(2A) 条，因为他参与了 Austal 的持续披露违规行为，并且未能作为董事行使合理的谨慎和勤勉。奥斯塔尔。

澳大利亚证券和投资委员会准备发布声明和寻求联邦法院的罚款。

Source 来源:
https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-128mr-asic-commences-civil-proceedings-against-shipbuilder-austal-limited-for-continuous-disclosure-breach/

Shenzhen Stock Exchange Further Implements Fee Cut Policy to Assist in the High-quality Development of Listed Companies

On May 28, 2021, Shenzhen Stock Exchange (SZSE) issued the Notice on Cutting Stock Listing Fees. After relevant procedures are completed, SZSE will temporarily waive the listing fees for listed companies with a total share capital of not more than CNY800 million starting from June 1, 2021, and extend the preferential policy of waiving the listing fees for Hubei-based listed companies to December 31, 2022.

SZSE's stock listing fees include the initial listing fee and the annual listing fee and are charged at a fixed rate based on the listed company's total share capital. This is the third cut made by SZSE after the reductions in 2012 and 2019 respectively. After the new standard for charging the listing fees is in force, the listing fees for SZSE-listed companies with a total share capital of not more than CNY800 million will be waived. According to statistics, over 65% of SZSE-listed companies will see their listing fees waived with the new standard taking effect.

Relevant official of SZSE said that the fee cut was an important measure of SZSE to actively implement the tax and fee reduction policy of the CPC Central Committee and the State Council, serve the real economy, reduce the burdens of market entities, and further support the high-quality development of listed companies. Since the outbreak of the Covid-19 pandemic, SZSE has issued a number of measures to support Hubei in fighting the pandemic and recovering its economy after the pandemic, and has provided services for Hubei-based companies to make use of the capital market to accelerate their development. Extending the preferential policy of waiving the listing fee of listed companies based in Hubei to the end of 2022 is another practical measure that SZSE adopts to assist in Hubei's post-pandemic economic recovery. Next, SZSE will continue to give play to the role of the capital market as a hub. Adhering to the founding mission of serving the real economy, SZSE will improve the quality and efficiency of services to assist in the high-quality development of listed companies.

深圳证券交易所进一步贯彻落实降费政策 助力上市公司高质量发展

为平稳推进基础设施公募 REITs 试点工作， 2021 年 5 月 28 日，深圳证券交易所（深交所）发布《关于下调股票上市费收费标准的通知》。经履行相关程序，自 2021 年 6 月 1 日起，深交所将暂免收取总股本在人民币 8 亿（含）以下的上市公司上市费，并将免收湖北省上市公司上市费的优惠政策延长至 2022 年 12 月 31 日。

深交所股票上市费包括上市初费和上市年费，依据上市公司总股本定额收取。本次下调股票上市费收费标准，是深交所在 2012 年、2019 年下调股票上市费收费标准的基础上，再次下调股票上市费收费标准。实施新的上市费收费标准后，深市总股本人民币 8 亿（含）以下的上市公司，上市费暂免收取。据统计，本次降费措施实施后，深市超过 65%的上市公司将暂免缴纳上市费。

深交所有关负责人表示，本次进一步下调股票上市费收费标准，是深交所积极贯彻落实党中央国务院有关减税降费政策，服务实体经济，减轻市场主体负担，进一步支持上市公司高质量发展的重要举措。新冠肺炎疫情发生以来，深交所已出台多项措施，支持湖北防控疫情和疫后经济重振，多措并举为湖北企业利用资本市场加快发展提供服务。本次将湖北省上市公司上市费的优惠政策延长至 2022 年底，是深交所助力湖北经济疫后重振的又一务实举措。下一步，深交所将继续发挥资本市场枢纽作用，坚守服务实体经济的初心，优化服务质量和服务效率，助力上市公司高质量发展。

Source 来源:
http://www.szse.cn/English/about/news/szse/t20210531_586204.html
http://www.szse.cn/aboutus/trends/news/t20210528_586185.html

Shenzhen Stock Exchange Decides to Delist *ST Steyr According to Laws

On June 2, 2021, in compliance with the arrangements for the transitional period prescribed by the new delisting rules, and according to the Implementation Measures on Mandatory Delisting of Listed Companies due to Major Violations of Law, Articles 14.4.1 and 14.4.2 of the Rules Governing Share Listing (Revised in November 2018) and the review opinions of the Shenzhen Stock Exchange (SZSE) Listing Committee, SZSE decided to delist Steyr Motors Co., Ltd. ("*ST Steyr" or the "Company") for major violations of law. It is a concrete measure of SZSE to implement according to laws the important decisions and plans of the CPC Central

Committee and the State Council on fighting securities crimes, improve the market- and law-based regular delisting mechanism, strictly perform duties as the principal that carries out delisting, and crack down on malicious circumvention of delisting rules and laws.

According to the Written Decision of Administrative Penalty issued by China Securities Regulatory Commission (CSRC) on March 31, 2021, *ST Steyr have made false financial statements in its annual reports from 2014 to 2016. The facts ascertained and the annual reports of the Company indicate that the net profit attributable to its shareholders (the net profit) in any four consecutive fiscal years from 2015 to 2019 was negative, triggering a mandatory delisting due to major violations of law as described by Articles 2 and 4 of SZSE's Implementation Measures on Mandatory Delisting of Listed Companies due to Major Violations of Law. *ST Steyr has been suspended from listing since July 6, 2020 because its audited net profit was negative for three consecutive fiscal years from 2017 to 2019, and the Company failed to disclose the first annual report following the listing suspension within the statutory period, which is a reason for finance-related delisting pursuant to Article 14.4.1 of Rules Governing Share Listing (Revised in November 2018). *ST Steyr has thus triggered a mandatory delisting both for major violations of laws and financial reasons. The time point for a finance-related delisting is earlier than that of mandatory delisting due to major violations of laws, therefore the procedure that first applies will be initiated, and the Company will be delisted following the finance-related delisting procedure.

As per Article 14.4.23 of Rules Governing Share Listing (Revised in November 2018), *ST Steyr will enter the delisting transitional period and be traded on the risk warning board for 30 trading days beginning on June 10, 2021. The stock abbreviation will be changed to "Steyr Delisting", and the daily price limit is 10%. SZSE will delist *ST Steyr on the next trading day upon the expiry of the delisting transitional period. SZSE advises investors to pay close attention to the transaction risk of the Company's stock, conduct rational analysis, and avoid blindness in investment.

An official of SZSE pointed out that the delisting system for listed companies is an important basic system in the capital market and is of great significance to purifying the market environment, refining the mechanism for the survival of the fittest and improving the quality of listed companies. SZSE will faithfully practice the principles of "system building, non-intervention, and zero tolerance" and the requirements of "standing in awe of the market, rule of law, professionalism and risks and pooling the efforts of all sides to develop the capital market". SZSE will earnestly fulfill frontline regulatory responsibilities, strictly perform the duties as the principal that carries out delisting, and firmly uphold the seriousness and authority of the delisting system. SZSE will ensure timely delisting and unimpeded market exit, and facilitate the formation of a sound market ecosystem, to further maintain the healthy and stable development of the capital market.

深圳证券交易所依法依规对*ST 斯太作出终止上市决定

2021 年 6 月 2 日，按照退市新规过渡期安排，根据《上市公司重大违法强制退市实施办法》和《股票上市规则（2018 年 11 月修订）》第 14.4.1 条、第 14.4.2 条规定以及本所上市委员会审核意见，深圳证券交易所（深交所）决定对斯太尔动力股份有限公司（以下简称*ST 斯太或公司）股票实施重大违法强制退市，公司股票终止上市。这是深交所认真贯彻落实党中央、国务院关于依法从严打击证券违法行为重要决策部署，健全市场化、法治化、常态化退市机制，严格落实退市主体责任，严厉打击恶意规避退市行为的具体举措。

2021 年 3 月 31 日，中国证监会作出《行政处罚决定书》，认定*ST 斯太 2014 年至 2016 年年度报告的财务数据存在虚假记载。根据该认定事实及公司已披露的年度报告，公司 2015 年至 2019 年任意连续四个会计年度归属于上市公司股东的净利润（以下简称净利润）为负值，触及深交所《上市公司重大违法强制退市实施办法》第二条、第四条规定的重大违法强制退市情形。同时，*ST 斯太因 2017 年、2018 年、2019 年三个会计年度经审计的净利润连续为负值，公司股票已自 2020 年 7 月 6 日起暂停上市。公司未能在法定期限内披露暂停上市后的首个年度报告，触及深交所《股票上市规则（2018 年 11 月修订）》第 14.4.1 条规定的财务类终止上市情形。*ST 斯太同时出现重大违法强制退市情形和财务类终止上市情形，因财务类终止上市的时点早于重大违法强制退市时点，按照先触及先适用的原则，公司股票按照财务类终止上市程序终止上市。

根据《股票上市规则（2018 年 11 月修订）》第 14.4.23 条的规定，*ST 斯太股票将于 2021 年 6 月 10 日起进入退市整理期并进入风险警示板交易，交易期限为 30 个交易日，证券简称将变更为"斯太退"，股票价格日涨跌幅限制为 10%，退市整理期届满的次一交易日，深交所将对*ST 斯太股票予以摘牌。深交所提醒投资者充分关注公司股票交易风险，保持理性分析，切莫盲目投资。

深交所相关负责人表示，上市公司退市制度是资本市场重要基础性制度，对于净化市场环境、健全优胜劣汰机制、提高上市公司质量意义重大。深交所将认真践行"建制度、不干预、零容忍"方针和"四个敬畏、一个合力"要求，切实履行一线监管职责，严格落实退市主体责任，坚决维护退市制度的严肃性和权威性，做到"出现一家，

退市一家”，畅通市场出口，促进形成“有进有出”的良性市场生态，进一步维护资本市场健康稳定发展。

Source 来源：
http://www.szse.cn/English/about/news/szse/t20210603_586256.html
http://www.szse.cn/aboutus/trends/news/t20210602_586245.html

Shenzhen Stock Exchange Strengthens Ex Post Regulation of Annual Reports in the Bond Market with a Focus on Enhancing the Fundamental Goal and Guarding Against Risks

In 2020 when the new Securities Law was enforced, the registration-based corporate bond issuance system reform was officially launched and steadily advanced. It's an important milestone in the reform and development course of the exchange-traded bond market. Shenzhen Stock Exchange (SZSE) has conscientiously put in place the requirements of higher-level laws, optimized the basic systems of the bond market, and enriched and innovated in product series. While energizing market entities, SZSE has striven to improve the capability and efficiency to serve the real economy. In 2020, the issue volume of SZSE-listed bonds and asset-backed securities increased by 36% year on year. The proportion of the issue volume of corporate bonds by AAA issuers rose from 51% to 64%, and the issue volume of innovative bond types such as green bonds, innovation & entrepreneurship corporate bonds, renewable bonds, anti-pandemic bonds, house leasing bonds, etc. recorded nearly CNY226.7 billion. The market structure continued to improve and the innovation capability was further enhanced, actively promoting the high-quality development of the bond market.

The 2020 annual report is the first annual report disclosed by bond issuers in accordance with the new Securities Law. As at April 30, 2021, a total of 630 bond issuers and 436 asset-backed special programs on the SZSE market disclosed their 2020 annual reports, more than those in the same period of the previous year. Overall, facing the unexpected pandemic and the complex and ever-changing external situation, SZSE-listed issuers resumed work and production in an orderly manner. They showed good recovery, with performance gradually improving. SZSE earnestly fulfilled frontline regulatory duties, with the review of annual reports as the lever and problems and risks as the orientation. On the one hand, SZSE especially extracted important risk clues found in the review of annual reports. Centering on the four main lines of information disclosure, financial accounting, fund raising and corporate governance, SZSE made a painstaking investigation and screened and predicted the overall risks of annual report disclosing parties in solvency and pooling of cash flows of underlying assets. On the other hand, regarding the violations of laws and regulations found in the oversight of annual reports, SZSE adopted the “zero tolerance” principle in handling, strengthening the foundation for the high-quality development of the bond market. SZSE recently sent a notice of criticism and disciplinary punishment to four bond issuers and relevant principals.

Adopting various measures simultaneously to improve the information disclosure quality of annual reports

To ensure a good job in disclosure of annual reports in 2020, SZSE made early, meticulous arrangements. Through a series of measures including issuing a notice for disclosure of annual reports, holding regular micro-class training, announcing the focuses of review of annual reports and refining the information disclosure reporting system, SZSE helped improve market entities' management level of information disclosure business.

According to the review results of 2020 annual reports, the information disclosure quality of issuers or managers of special programs improved from the previous year on the whole. Annual reports were prepared basically according to the criteria of annual reports or format guide. The disclosed content was more adequate, risk warning clearer, and analysis of operations more comprehensive. The annual reports were more readable and useful. Problems that were seen in previous annual reports reduced substantially, such as inadequate risk warning, disclosure of important matters in periodical reports instead of temporary announcements, failure to disclose difference in market ratings of the same entity, incomplete financial analysis or disclosure for the sake of formality, insufficient disclosure of special articles on innovative products, etc.

SZSE found in the review that most issuers set up a special account for raised funds, used raised funds for specified purposes or changed their purposes of use according to relevant procedures and corporate governance and internal control regulations. On the whole, issuers did well in standard operation. Based on the information disclosed in the annual reports, SZSE will learn more about issuers' actual use of raised funds, corporate governance, standard operation, etc. through the annual report of entrusted management matters, field inspection, etc. SZSE will focus on whether raised funds are on-lent or embezzled and whether approval procedures are implemented and information disclosure obligations are fulfilled in in-house lending of large-sum funds, pledge/mortgage of assets and external guarantee. If any violation of laws and regulations is found, SZSE will promptly adopt regulatory measures.

Forward-looking regulation was enhanced based on bond characteristics

In 2020, most SZSE-traded bond issuers were deeply engaged in their main business. Their asset scale and profitability continued to grow, and debt level was stable on the whole. As at December 31, 2020, SZSE bond issuers' total assets increased by 10% from the prior year-end, and average debt-to-assets ratio was 61%, indicating that the asset-debt structure was at a reasonable level. In 2020, SZSE bond issuers saw a year-on-year growth of over 8% in both the average operating income and the net profit attributable to owners of parent companies. Over sixty percent of issuers recorded a positive growth in income and over fifty percent witnessed a positive growth in net profit. Average net cash inflow from operating activities was basically the same as that in the previous year, average net cash inflow from fund raising activities increased significantly by 74% compared to the same period of the previous year.

In this year's review work of annual reports, SZSE defined priorities and targeted certain subjects based on regulatory practices and credit risk characteristics. SZSE focused more on entities' solvency and cash flows of underlying assets and adopted classified regulation and targeted measures according to overall solvency risk characteristics, thus enhancing forward-looking regulation.

First, SZSE paid attention to the impact of matters involved in non-standard audit opinions on solvency. Among the disclosed 2020 annual reports for bonds, 25 issuers were provided with a non-standard unqualified audit report. According to those non-standard unqualified audit reports, the foregoing issuers were given non-standard audit opinions because of heavy losses, overdue debts, pending actions, recovery of receivables, insufficient audit evidence for provision for impairment of assets or asset acquisition, restricted audit scope, etc. Based on the nature of problems reflected in the audit reports and their scope of influence, SZSE immediately started risk screening, learned through letters of inquiry more about the impact on issuers' sustainable operation ability and solvency, and implemented classified regulation of risks.

Second, SZSE paid attention to the reasonableness of debt size, structure and maturity and their changes. Based on experiences in day-to-day regulation, SZSE required companies who had debt leverage higher than that of the industry, faster debt growth and greater pressure to repay the debts in the short term or companies who had a small asset size, a debt-to-assets ratio higher than the reasonable level and poor solvency to describe year-on-year changes, types and maturity structure of all interest-bearing liabilities, reasons for debt growth and whether there are overdue debts. In the meantime, SZSE strengthened monitoring and risk judgment of overall debt financing of companies with a large size of bonds, companies with weak qualifications and real estate companies.

Third, SZSE paid attention to the debt repayment risk of issuers whose outstanding deposits and loans both remained at a high level, issuers whose profit relied heavily on non-recurring profits and losses, and issuers who had a weak parent company but strong subsidiaries. Regarding issuers whose deposits and loans both remained at a high level, SZSE required them to state the authenticity of monetary capital and whether there are defects of right, to prevent involvement in watered capital or concealment of fund restrictions. As to issuers whose funds were under centralized management of the group's finance company, SZSE required them to describe the specific arrangements for collection and use of funds, capability to dispose of funds at their own discretion and whether there are restrictions on the scope of use. For issuers whose profitability from core business continued to decline or whose profit relied heavily on non-recurring profits and losses such as assets disposal, changes in fair value or government subsidies, SZSE required them to present countermeasures against decline in profitability from main business, and elaborate on stability and sustainability of non-recurring profits and losses and their impact on solvency. Regarding controlled companies who had a weak parent company but strong subsidiaries, SZSE required them to show the continuity and changes in the subsidiaries' cash dividends, the parent company's profitability in other business and its share pledge ratio in core subsidiaries.

Fourth, SZSE paid attention to such acts as failure to comply with corporate governance standards, failure to fulfill commitments or involvement in escaping and revoking debts. Regarding issuers who frequently lent large-sum money to their controlling shareholders or related parties or provided guarantee for their financing or who had disputes or lawsuits among their shareholders or with subsidiaries, SZSE required them to fully describe whether they violated any provision in their prospectuses, the recoverability of lent money and its impact on issuers' solvency. Regarding commitments specified in the prospectus that may affect solvency including no additional lending of non-operating funds and limit on the leverage ratio, SZSE focused on the fulfillment of such commitments and strengthened investor protection. Regarding pledge and mortgage of large-sum assets, external investments, equity or asset transfer, etc. SZSE paid attention to whether there's violation of information disclosure regulations, malicious asset transfer to escape or revoke debts, etc.

Fifth, SZSE paid attention to the impact of the pandemic on the cash flow of some underlying assets. Affected by the pandemic, the cash flows of some future operating income and immovable property

asset securitization products such as expressway tolls, entrance tickets for scenic spots and hotels decreased to some extent in 2020. And that may affect the regular profit distribution of the special plans. SZSE required managers of the special plans to fully disclose the cash flow of underlying assets and the operation status of specific original rights holders. In the meantime, SZSE paid close attention to the difference between the actual and forecast cash flows of underlying assets during the reporting period, focused on whether cash flow was pooled on time and in full according to the provisions specified in the special plans, and screened and addressed latent risks of the plans.

Strengthening the fundamental goal and risk control to provide a solid foundation for high-quality development

Since 2020, SZSE has adhered to the fundamental goal of serving the real economy and upheld the principle of attaching equal importance to market development and risk control. SZSE has refined the institutional foundation, optimized the market structure and strengthened the bottom line of risk control, laying a solid foundation for the high-quality development of the exchange's bond market.

First, SZSE has comprehensively refined basic systems and advanced the registration-based issuance system reform in depth. Since the implementation of the registration-based corporate bond issuance system, SZSE has actively promoted the development of supporting rules for the new Securities Law. Through the establishment of a system of bond rules with review rules and listing rules as its core, review business guidelines and duration information disclosure and risk management guidelines as its trunk and business handling guides as its supplements that covers the whole regulatory chain, SZSE has strengthened the institutional foundation for advancing the registration-based bond issuance system reform in depth.

Second, SZSE has made early arrangements, adopted targeted measures, and improved the whole-chain risk control system. SZSE has focused on key areas and improved weaknesses, built an "ex ante, in-process and ex post" risk control system for fixed-income products, implemented strict review policy on financing, and strengthened access of issuers with weak qualifications. On the duration regulation side, SZSE has, following the principles of "classified regulation and targeted measures", conducted risk monitoring and screening by linking work at selected spots with that in entire areas. Meanwhile, SZSE intensified investigation and punishment of violations of laws and regulations and cracked down on financial fraud, malicious debt evasion and revocation, etc. On the risk treatment side, SZSE has responded quickly, strengthened synergy in regulation, and guided partial companies to relieve debt pressure and defuse bond risks using market-based bond management instruments such as bond put-back revocation and resell and bond swap.

Third, SZSE has enriched and made innovations in product supply and leveraged the role of bond financing in serving the real economy. SZSE has earnestly carried out the innovation-driven development strategy, accelerating innovation in bond products in various fields concerning economic and social development such as technology R&D, green development and opening up. Recently, SZSE successfully issued Technological Innovation Bonds, Carbon Neutrality Bonds, etc. to support innovation in core technologies in key fields and the construction of green, low-carbon and emission reduction projects. So far, more than CNY 437.1 billion innovative bond products that serve national strategies such as innovation & entrepreneurship corporate bonds and green bonds have been issued on SZSE.

Fourth, SZSE has improved the trading mechanism of the bond market and continuously energized market entities. SZSE has attached great importance to and continuously promoted the building of the bond market system that is featured by complete infrastructure, efficient market operation, excellent price discovery mechanism and efficient regulatory risk control. Based on market demand and the characteristics of bond products, SZSE has launched the reconstruction, optimization and adjustment work of the bond transaction settlement mechanism, transaction organization method and trading system, to improve bond liquidity and market stability.

Next, SZSE will earnestly practice the principles of "system building, non-intervention, and zero tolerance" and the requirements of standing in awe of the market, rule of law, professionalism and risks and pooling the efforts of all sides to develop the capital market. Adhering to the working philosophy of being open-minded, transparent, honest and impartial, SZSE will strengthen the institutional foundation, improve regulatory efficiency, optimize the market structure, and give play to the role of the capital market as a hub, to steadily advance the high-quality development of the bond market. **First, SZSE will stick to positioning and support the financing and development of quality enterprises.** SZSE will continue to adjust structure, refine incremental business and stabilize existing business. SZSE will refine market mechanisms, deepen innovation in bond products, and do a better job in serving the real economy. **Second, SZSE will punish violations of laws and regulations severely to maintain market discipline and order.** SZSE will crack down on gross violations of laws and regulations and acts that damage the market credit basis such as

financial fraud, fraudulent stock issuance and malicious debt evasion and revocation, to ensure healthy and stable development of the bond market. **Third, SZSE will strictly guard against risks and improve working mechanisms along the regulatory chain.** SZSE will guard the pass well, strengthen coordination and synergy between the review side and the regulation side, and enhance duration risk monitoring and screening; continue to refine the joint working mechanism for control of bond risks, urge relevant entities to fulfill their duties, leverage the concerted efforts in regulation, and forestall and defuse risks in a timely fashion. **Fourth, SZSE will optimize services to enhance market participants' sense of gain.** SZSE will continue to simplify handling procedures and improve service quality in such links as financing review, issuance and listing, continuous regulation and risk treatment, to let the registration-based IPO system reform benefit all market participants, thus enhancing their sense of gain from the reform.

深圳证券交易所强化债市年报事后监管 着力固本强基筑牢风控底线

2020 年新证券法实施后，公司债券注册制改革正式启动、平稳运行，这是交易所债券市场改革发展进程的重要里程碑。深圳证券交易所 (深交所) 认真贯彻落实上位法要求，不断优化债市基础制度建设，丰富创新产品序列，激发市场活力，努力提升服务实体经济能力和效率。2020 年，深市债券和资产支持证券发行规模同比增长 36%，公司债券 AAA 主体发行规模占比从 51%提高到 64%，绿色、双创、可续期、疫情防控、住房租赁等创新品种债券发行规模近人民币 2,267 亿元，市场结构不断优化，创新能力持续提升，积极引领推动债市高质量发展。

2020 年年报是债券发行人按照新证券法要求披露的首份年报。截至 2021 年 4 月 30 日，深市共有 630 家债券发行人、436 个资产支持专项计划披露 2020 年年报，披露率同比有所提升。总体来看，面对突如其来的疫情和复杂多变的外部形势，深市发行人有序推进复工复产，业绩逐步回升，复苏态势良好。深交所以年报审核为抓手，以问题和风险为导向，切实履行一线监管职责。一方面，专项梳理年报审核中发现的重要风险线索，重点围绕信息披露、财务核算、募集资金、公司治理四条主线，抽丝剥茧、深查细究，对年报主体偿债能力、基础资产现金流归集等进行整体风险排查和预判。另一方面，针对年报监管中发现的违规行为，以"零容忍"态度严肃查处，夯实债市高质量发展基础。近日，深交所对四家债券发行人及相关主要责任人发出通报批评纪律处分告知书。

多措并举，年报信息披露质量稳步提升

为做好 2020 年年报披露工作，深交所提前部署、周密安排，通过发布年报披露通知、举办常态化微课堂培训、公开年报披露审核要点、优化信披申报系统等系列举措，推动提升市场主体信披业务管理水平。

根据 2020 年年报审核结果，发行人或专项计划管理人信息披露质量总体上较往年有所提升，基本按照年报准则或格式指引要求编制年报，内容披露更充分，风险提示更到位，经营情况分析更全面，年报可读性、有用性进一步增强。以往年报披露存在的重大风险揭示不到位、以定期报告替代临时公告披露重大事项、同一主体不同市场评级差异未披露、财务分析不完整或披露流于形式、创新产品特殊条款披露不充分等情形明显减少。

深交所在审查中发现，大多数发行人募集资金账户实现专户专用、募集资金按约定用途使用或用途变更履行程序合规、公司治理与内部控制符合相关规定，整体上发行人规范运作水平良好。结合本次年报披露信息，深交所后续将通过受托管理事务年度报告、现场检查等途径，进一步了解募集资金实际使用和公司治理规范运作等情况，重点关注募集资金是否存在转借他人或被挪用，大额资金拆借、资产抵质押及对外担保是否履行审批程序和信息披露义务。对于存在违规行为的，深交所将及时采取监管措施。

有的放矢，围绕债券特征提升监管前瞻性

2020 年，深市债券发行人整体深耕主业，资产规模和盈利能力延续增长态势，债务水平总体平稳。截至 2020 年 12 月 31 日，深市债券发行人资产总额较上年末增长 10%，平均资产负债率 61%，资产负债结构总体处于合理水平。2020 年深市债券发行人平均营业收入、归属于母公司所有者的净利润同比增长均超 8%，其中，超六成发行人实现收入正增长，超五成发行人实现利润正增长；平均经营活动现金净流入与上年基本持平，平均筹资活动现金净流入大幅增加，较上年同期增长 74%。

结合监管实践和信用风险特征，今年年报审核工作突出重点、有的放矢，更聚焦于主体偿债能力和基础资产现金流状况，结合整体偿债风险特征分类监管、精准施策，切实提升监管前瞻性。

一是关注非标审计意见涉及事项对偿债能力影响。目前已披露的 2020 年债券年报中，共 25 家发行人被出具非标准无保留意见审计报告。从非标审计报告看，因存在大幅亏损、债务逾期、未决诉讼、应收款项回收、减值计提或资产收购审计证据不充分及审计范围受限等事项，上述发行人年报被出具非标审计意见。根据审计报告反映的问题性质和影响范围，深交所及时启动风险排查，通过问询进一步了解对公司持续经营能力与偿债能力影响，并做好风险分类监管。

二是关注债务规模、结构、期限及其变动的合理性。根据日常监管经验，针对债务杠杆高于同行业、债务增长规模较快且短期偿债压力较大的公司，或者资产规模较小、资产负债率超出合理水平、偿债能力较弱的公司，要求公司针对性说明全口径有息负债同比变动情况、类别、期限结构、债务增长原因及是否存在债务逾期等情况。同时，加强对存续期债券规模较大企业、弱资质企业、房地产企业等类型公司总体债务融资情况监测和风险研判。

三是关注“存贷双高”“盈利高度依赖非经常性损益”“母弱子强”等发行主体偿债风险。对于“存贷双高”发行人，要求说明货币资金真实性及是否存在权利瑕疵，防范涉嫌虚增资金或隐瞒资金受限情况。对于发行人资金由集团财务公司集中归集管理的，要求说明资金归集与支取具体安排、自由支配资金的能力及是否存在使用范围受限情况等。对于发行人核心业务盈利持续下滑，或者盈利高度依赖资产处置、公允价值变动或政府补贴等非经常性损益的，要求说明主业盈利下滑的应对措施、非经常性损益的稳定性与可持续性及对偿债能力的影响。对于“母弱子强”投资控股型企业，要求说明子公司现金分红的持续性和波动情况、母公司其他业务盈利状况及持有核心子公司股权质押比例等。

四是关注公司治理失范、承诺未履行及涉嫌“逃废债”等行为。针对发行人频繁向控股股东或其关联方大额拆借资金或为其融资提供担保，股东之间或公司与子公司之间存在纠纷诉讼等情况，要求充分说明是否违反募集说明书相关约定、拆出资金可回收性及对发行人偿债能力的影响。对于募集说明书中约定的不新增非经营性资金拆借、杠杆率限制等可能影响偿债能力的承诺，重点关注执行情况，强化投资者权益保护。对于存在大额资产抵质押、对外投资、股权或资产转让等情形的，关注是否存在信息披露违规、恶意转移资产“逃废债”等行为。

五是关注疫情对部分基础资产现金流的影响。受疫情影响，2020 年部分高速公路收费、景区门票、酒店等未来经营收入类和不动产类资产证券化产品现金流存在一定程度的下降，可能影响专项计划的正常收益分配。对此，深交所要求计划管理人充分披露基础资产现金流及特定原始权益人经营情况，密切关注报告期内基础资产实际现金流与预测现金流的差异，重点关注现金流是否按照专项计划的约定按时、足额进行归集，排查应对专项计划的潜在风险。

固本强基，以风险防控筑牢高质量发展基础

2020 年以来，深交所坚持服务实体经济的根本目标，秉承市场发展与风险防控并重的原则，完善制度基础，优化市场结构，筑牢风控底线，不断夯实交易所债市高质量发展基础。

一是全面优化基础制度，深入推进注册制改革。公司债券注册制实施以来，深交所积极推进新证券法配套制度建设，打造以审核规则、上市规则及挂牌规则为核心，以审核业务指引、存续期信息披露及风险管理相关指引为主干，以业务办理指南为补充，覆盖监管全链条的债券规则体系，为深入推进债券注册制改革夯实制度基础。

二是提前部署精准施策，完善全链条风险防控体系。着力抓重点、补短板、强弱项，构建“事前、事中、事后”固收产品风险防控体系，融资审核端严格落实审核政策，把好入口关，从严把握弱资质发行人审核标准；存续期监管端按照“分类监管、分类施策”原则，做好点面结合的风险监测排查，加大对违规事件的查处力度，严肃打击财务造假、恶意“逃废债”等违法违规行为；风险处置端快速反应，及时出手，加强监管协同，引导部分企业通过债券回售撤销与转售、债券置换等市场化债务管理工具缓解债务压力、化解债券风险。

三是丰富创新产品供给，发挥债券融资服务实体经济效能。认真贯彻落实创新驱动发展战略，在科技研发、绿色发展、对外开放等经济社会发展多个领域加快债券产品创新。近期，成功发行科技创新债、碳中和专项债等创新产品，支持关键核心领域科技创新和绿色低碳减排项目建设。目前，深市双创债、绿色债等服务国家战略的债券创新产品发行规模超人民币 4,371 亿元。

四是完善债券市场交易机制，持续激发市场活力。深交所高度重视并持续推动建立基础设施完备、市场运行高效、价格发现机制良好、监管风控有效的债券市场体系。结合市场需求与债券产品特征，启动对债券交易结算机制、交易组织方式及交易系统的重构、优化和调整，提升债券流动性和市场稳定性。

接下来，深交所将认真践行“建制度、不干预、零容忍”方针和“四个敬畏、一个合力”要求，坚持“开明、透明、廉明、严明”工作理念，夯实制度基础，提升监管效能，优化市场结构，发挥资本市场枢纽作用，扎实推进债市高质量发展。**一是守好定位，支持优质企业融资发展。**坚持调结构、优增量、稳存量，持续完善市场机制，深化债券产品创新，更好服务实体经济。**二是严惩违规，维护市场纪律和秩序。**坚决打击财务造假、欺诈发行、恶意“逃废债”等严重违法违规和损害市场信用基础的行为，推动债市健康稳定发展。**三是防控风险，健全全链条工作机制。**把好入口关，增强审核端与监管端协同联动，强化存续期风险监测和排查；持续优化债券风险联防联控工作机制，督促相关主体归位尽责，积极发挥监管合力，及时防范化解风险。**四是优化服务，增强市场**

获得感。在融资审核、发行上市、持续监管、风险处置等多环节持续简化办理程序、提升服务质量，让注册制改革惠及市场各方，切实增强改革获得感。

Source 来源:
http://www.szse.cn/English/about/news/szse/t20210609_586307.html
http://www.szse.cn/aboutus/trends/news/t20210604_586271.html

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