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

Financial Services Regulatory Update
金融服务监管资讯

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Consultation on Tightening Provisions regarding Offers of Investments, Section 213 Enforcement and Insider Dealing under the Securities and Futures Ordinance of Hong Kong

On June 10, 2022, the Securities and Futures Commission of Hong Kong (SFC) issued an announcement that it launched a two-month consultation on proposed enforcement-related amendments to the Securities and Futures Ordinance (SFO) to boost SFC's enforcement power.

A significant proposed amendment seeks to clarify an exemption in section 103(3)(k) of the SFO such that, unauthorized advertisements of investment products which are intended to be sold only to professional investors may only be issued to professional investors (PIs) who have been identified in advance as such by an intermediary through its know-your-client and related procedures.

Other amendments would broaden the scope of some SFO provisions to expand the basis for the SFC to apply for remedial and other orders against a regulated person under section 213, including an order to restore the position of parties to a transaction to that before the transaction was entered into. They would also enable the SFC to address insider dealing perpetrated in Hong Kong involving overseas-listed securities and insider dealing involving Hong Kong-listed securities perpetrated elsewhere (also applicable to derivatives of these securities).

Summary of the Proposed Amendments

<u>Amend the exemption to section 103(3) of the SFO (Offence to issue advertisements, invitations or documents relating to investments in certain cases)</u>

The SFC proposes that the exemption to section 103(1) of the SFO (Offence to issue advertisements, invitations or documents relating to investments in certain cases) set out in section 103(3)(k) be amended so that the ambit of the exemption would accord with its original intended purposes, and that consequential amendments be made to section 103(3)(j).

Section 103(1) of the SFO prohibits the issue of advertisements and other documents containing prescribed content unless the issue has been authorized by the SFC under section 105 of the SFO. Section 103(1) is subject to a number of exemptions as provided for in subsections (2), (3) and (5) to (9).

PI Exemption

Section 103(3) provides that section 103(1) does not apply to the issue, or the possession for the purposes of issue: *"(k) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, **that are or are intended to be** disposed of only to professional investors."*

The Court of Final Appeal (CFA) has given a wider construction to one of the exemptions to section 103(1), namely the PI exemption under section 103(3)(k), than was originally intended by the underlying policy.

In the case of *SFC v (1) Pacific Sun Advisors Limited and (2) Mantel, Andrew Pieter, FACC 11 of 2014*, the CFA held that the PI exemption applies to any advertisement having some connection or relation to investment products that are "or are intended" to be disposed of only to PIs. The CFA considered that the words "that are or are intended to be disposed of" in section 103(3)(k) would be sufficient to provide the substance of the PI exemption in respect of advertising investment products even if the advertisements might be received by retail investors.

Following the CFA's judgment above, the position is that unauthorized advertisements of investment products which may not be suitable for retail investors may be issued to the general public if the products are intended for sale only to PIs. As a result, retail investors may be exposed to unauthorized offers or solicitations to invest in risky or complex products which are unsuitable for them; this is a situation which the statutory regime was designed to safeguard against.

In addition, although liability under section 103(1) would crystallize at the time when an advertisement is issued, in practical terms, enforcement action needs to wait until

the sale of a product has taken place in order to determine to whom it has been sold and whether the section 103(3)(k) exemption applies. Currently, a mere intention to sell investment products only to PIs would suffice for an exemption from the authorization regime under section 103(1). This makes the regime extremely difficult, if not impossible, to enforce, and contradicts the purposes of Part IV and section 103(1) of the SFO.

Proposal

The SFC therefore proposes to amend the exemption in section 103(3)(k) of the SFO such that, unless authorized by the SFC, advertisements of investment products which are intended to be sold only to PIs may only be issued to PIs who have been identified in advance as such by an intermediary through its know-your-client and related procedures, regardless of whether or not such an intention has been stated on the advertisements. To better protect the interests of the investing public, advertisements of investment products which are or are intended to be sold only to PIs should not be issued to the general public without the SFC's authorization. The loophole needs to be plugged.

Provide additional cause of action to SFC under section 213 (injunctions and other orders)

The SFC proposes that section 213 of the SFO (injunctions and other orders) be amended to provide a cause of action to enable the SFC to apply to the Court of First Instance (CFI) for injunctions and other orders under section 213 of the SFO (section 213 orders) after having exercised any of its powers under section 194 or 196 of the SFO against a regulated person.

Limitations of section 213

Under the current provision of section 213 of the SFO, the SFC cannot apply for the section 213 orders when a regulated person has been found guilty of misconduct or not to be a fit and proper person to remain a regulated person under section 194 or 196, respectively, *unless* the conduct which gave rise to the finding also constituted a contravention of one of the relevant provisions, requirements or conditions described in section 213(1). This means that a breach of the SFC's codes and guidelines (e.g. the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission) by a regulated person, however serious, cannot currently give rise to a cause of action under section 213 if it does not fall within any of the circumstances outlined in section 213(1).

Furthermore, whilst the SFC has a range of disciplinary powers under sections 194 and 196 of the SFO against a regulated person who is guilty of misconduct, or the SFC is of the opinion that the person is not fit and proper to be or to remain a regulated person, sections 194 and 196 do not give the SFC any statutory powers to directly require the regulated person to take any steps to restore, compensate or otherwise protect the interests of investors or clients who may have been adversely affected by the regulated person's conduct.

Proposal

To give the SFC more effective means to protect investors and the interests of clients of regulated persons, and to close the gap as explained, it is proposed that section 213(1) be amended to introduce an additional ground under a new paragraph (c) for the SFC to apply for section 213 orders where it has exercised any of its powers under section 194(1), 194(2), 196(1) or 196(2) against a regulated person.

It is also proposed that section 213(2) be amended to introduce an additional order that may be made by the CFI to restore the parties to any transaction to the position in which they were before the transaction was entered into, where the SFC has exercised any of its powers under section 194 or 196 in respect of the regulated person.

Furthermore, in line with previous revisions to section 213 to ensure that the grounds for seeking additional orders in respect of open-ended fund companies (OFC) were consistent with those set out in section 213(1), the SFC also propose to make a consequential amendment to section 213(3A) to add an additional ground to enable the SFC to apply for orders under section 213 where it has exercised any of its powers under section 194(1), 194(2), 196(1) or 196(2) against a regulated person who is a director, investment manager, custodian or a sub-custodian of an OFC.

Broaden the scope of the insider dealing provisions

The SFO has established parallel and mirroring civil and criminal regimes in respect of insider dealing under Division 4 of Part XIII and Division 2 of Part XIV, respectively. Both regimes apply to insider dealing with respect to: (a) securities listed on a recognized stock market or their derivatives (Hong Kong-listed securities or their derivatives) and; (b) securities dually-listed in Hong Kong and another jurisdiction or their derivatives.

The current civil and criminal regimes do not apply to market misconduct or the offence of insider dealing perpetrated in Hong Kong with respect to securities listed on overseas stock markets or their derivatives (overseas-listed securities or their derivatives), nor do they expressly apply to any acts constituting insider dealing perpetrated outside Hong Kong in respect of Hong Kong-listed securities or their derivatives.

Limitations of current provisions

The following problems have been identified by the SFC in respect of current provisions:

i. Inability to tackle insider dealing in Hong Kong in respect of overseas-listed securities or their derivatives

   The current provisions (i.e. section 270 (civil liability) and section 291 (criminal liability) prohibit insider dealing with respect to the “listed securities” of a listed corporation or their derivatives, where “listed” is defined to mean **listed on a recognized stock market**, i.e. a stock market operated by The Stock Exchange of Hong Kong Limited).

   While the scopes of the market misconduct of insider dealing in section 270(1) and of the insider dealing offence in section 291 are extended by section 270(2) and section 291(7), respectively, to cover **securities dually-listed in Hong Kong and another jurisdiction** or their derivatives, these provisions do not apply to insider dealing with respect to overseas-listed securities or their derivatives, even where the acts set out in section 270(1) or 291 have taken place in Hong Kong.

   There was a case in the past where the SFC was unable to take enforcement action against a Hong Kong licensed intermediary who dealt in the securities of an overseas-listed entity ahead of the announcement of a placing exercise when he was in possession of inside information released to him by another licensed intermediary based in Hong Kong. In this case, the SFC could not apply section 270 or 291 for the defendant’s insider dealing behavior as the case involved overseas-listed securities, nor could it address the mischief of insider dealing in overseas-listed securities or their derivatives through section 300 that requires the proof of fraud and/or deception.

   As a result, the limited coverage of the current provisions is at odds with the global trend of market convergence and fails to recognize that insider dealing perpetrated in Hong Kong with respect to overseas-listed securities or their derivatives would eventually damage the reputation of Hong Kong's financial markets and its status as an international financial center.

ii. Lack of express provisions to cover acts relating to insider dealing in Hong Kong-listed securities or their derivatives which take place outside Hong Kong

   The current insider dealing provisions of the SFO also do not expressly cover insider dealing with respect to Hong Kong-listed securities or their derivatives where the acts which give rise to a contravention of section 270 or 291 have taken place *outside* Hong Kong. In the absence of express provisions specifying the territorial scope of the existing insider dealing regimes, the SFC has to apply the common law test to determine the territorial jurisdiction in each case (i.e. whether a substantial measure of the activities of the crime have taken place within Hong Kong).

iii. Comparison with other major common law jurisdictions

   By contrast, insider dealing laws in other major common law jurisdictions govern overseas conduct relating to securities of local issuers as well as local conduct relating to securities of overseas issuers. For example, Australia’s insider trading provisions under the Corporations Act, section 213 of the Securities and Futures Act of Singapore and the insider dealing offences under the UK Criminal Justice Act 1993 that with a similar territorial scope.

Proposal

In order to enable the SFC to take action against securities crimes and market misconduct perpetrated locally, even though such crimes and market misconduct may only directly affect markets outside of Hong Kong, the SFC therefore proposes that the scope of the insider dealing provisions of the SFO be broadened to cover:

(i) insider dealing perpetrated in Hong Kong with respect to securities listed on overseas stock markets or their derivatives; and

(ii) insider dealing perpetrated outside of Hong Kong, if it involves any securities listed on a recognized stock market, i.e. a stock market operated by The Stock Exchange of Hong Kong Limited, or their derivatives.

In particular, the SFC proposes that:

(a) the definition of “listed” as defined in sections 245(2) (civil regime) and 285(2) (criminal regime) of the SFO be amended to include overseas-listed securities or their derivatives; and

(b) a new section be added to Part XIII and Part XIV of the SFO to expand the territorial scope of the insider dealing regimes to include: (i) any acts of insider dealing involving Hong Kong-listed securities or their derivatives regardless of where they occur; and (ii) any acts of insider dealing involving overseas-

listed securities or their derivatives if any one or more of such acts occur in Hong Kong.

The SFC also proposes that a new subsection be added to section 282 (civil regime) and section 306 (criminal regime) to the effect that, in respect of the proposed expansion of the insider dealing regimes to include overseas-listed securities or their derivatives, a person suspected of perpetrating in Hong Kong insider dealing in respect of overseas-listed securities or their derivatives shall not be regarded as having engaged in insider dealing, unless his conduct would have also been unlawful had it been carried out in the relevant overseas jurisdiction. This is in line with the legal position for false trading, price rigging and stock market manipulation as stipulated in sections 282(3) and 306(3).

Furthermore, the SFC believes that, where appropriate, the defences available under the SFO for insider dealing should also be available for insider dealing involving overseas-listed securities or their derivatives. Accordingly, the SFC proposes that amendments be made to section 271(5) to extend the "off-market transaction" exemption to insider dealing in respect of overseas-listed securities or their derivatives where transaction counterparties have information symmetry.

Remarks

As a financial regulator of an international financial center, the SFC has taken timely action in actively promoting discussion among the industry and necessary amendments to the regulations for more effective enforcement. Such consultation processes enable the SFC to understand the needs and views of the market while facilitating more effective regulation and enforcement action.

The proposed amendments of section 213 and the exemption to section 103(3) of the SFO would expand the SFC's toolkit to carry out its enforcement action more effectively and prevent offenders from evading liabilities. Retail investors should not be exposed to unauthorized offers or solicitations to invest in risky or complex products which are unsuitable for them; this loophole should be plugged to safeguard the integrity of the securities regime of Hong Kong.

The expansion of the scope of insider dealing provisions, in addition to allowing the regulations in Hong Kong to keep pace with that of other major common law jurisdictions, also ensures that the SFC has the powers to tackle cross-border securities crimes and misconduct. This is important given the increasing interconnectivity of global and regional financial markets, as evinced by trading regimes like the Stock Connect. The SFC's regulatory powers need to be more effectively authorized to curb improper investment advertisements, insider dealing and other forms of market misconduct in Hong Kong. Moreover, given Hong Kong's market reality, certain enforcement powers need to extend to the regulation of Hong Kong originated activities involving, for instance, A-shares listed in mainland China.

The proposed amendments of the SFO are timely patches to Hong Kong's regime to enable the SFC to better protect the interests of the investing public and uphold the integrity and reputation of Hong Kong's financial markets. The regulatory upgrade, while imposing a greater deterrent effect on market misconduct and other activities prejudicial to the investing public, would help to promote the fairness, transparency and orderliness of the securities market of Hong Kong.

关于收紧香港证券及期货条例下有关投资要约、第 213 条的执行及内幕交易的条文的谘询

2022 年 6 月 10 日，香港证券及期货事务监察委员会（证监会）发布公告，内容有关其就《证券及期货条例》内与执法相关的建议修订，展开为期两个月的谘询。有关修订使证监会能够采取更有效的执法行动。

其中一项建议修订厘清《证券及期货条例》第 103(3)(k)条的豁免，使拟只出售予专业投资者的投资产品的广告，在未经证监会认可的情况下，仅可向事先已获中介人透过其认识你的客户及相关程序识别为专业投资者的专业投资者发出。

其他修订将扩阔《证券及期货条例》的某些条文的涵盖范围，以扩大证监会可根据第 213 条针对受规管人士而申请作出补救及其他命令的基础。这些修订亦使证监会能够处理在香港作出涉及境外上市证券的内幕交易，及在其他地方作出涉及香港上市证券的内幕交易（亦适用于有关证券的衍生工具）。

<u>建议修订摘要</u>

专业投资者豁免

第 103(3)条规定，第 103(1)条不适用于发出或为发出而管有："*(k) 就证券或结构性产品或就集体投资计划的权益而作出的任何广告、邀请或文件，而该等证券、产品或权益是**只转让予或拟只转让**予专业投资者。*"

终审法院就其中一项对第 103(1)条的豁免（即第 103(3)(k)条下的专业投资者豁免）作出了较基本政策原

拟定的更为广泛的诠释。因此，在执行这项条文以保障散户投资者时，可能会引起各种潜在问题。

于 *SFC v (1) Pacific Sun Advisors Limited and (2) Mantel, Andrew Pieter*（終院刑事上訴 2014 年第 11 號）一案中，终审法院裁定专业投资者豁免适用于任何与只转让予或拟只转让予专业投资者有某些关连或关系的广告。终审法院认为，在第 103(3)(k)条中的“只转让予或拟只转让予”的这些字眼，成为了该项豁免的最重要部分，尽管有关广告可能被散户投资者接触到。

在终审法院作出该裁决后，现时的情况是，即使投资产品不适合散户投资者及只打算出售予专业投资者，但这些产品的未经认可广告仍然可以向公众发出。因此，散户投资者可能会接触到未经认可的要约或招揽，邀请他们投资不适合他们的高风险或复杂产品；证监会设立这个法定制度，正正是为了确保不会出现这种情况。

此外，尽管根据第 103(1)条，法律责任会于发出广告时产生，但实际上却需待产品已获出 售，以厘定该产品向谁出售及第 103(3)(k)条豁免是否适用，才可采取执法行动。另外，单单是只向专业投资者出售投资产品的意图，便足以获豁免而不受第 103(1)条下的认可制度所规限。这令有关制度极难，甚至无法执行，亦与第 IV 部及第 103(1)条的目的有所抵触。

建议

有鉴于此，证监会现建议对第 103(3)(k)条豁免作出修订，即除非经证监会授权，只出售予及拟只出售予专业投资者的投资产品的广告，仅可向事先已获中介人透过其认识你的客户及相关程序识别为专业投资者的专业投资者发出，不论有关意图是否已在广告中列明。为了更佳地保障投资大众的利益，只出售予及拟只出售予专业投资者的投资产品的广告在未经证监会认可的情况下，不应向公众发出。 这漏洞需要堵上。

<u>提供第 213 条（强制令及其他命令）下的诉讼因由予证监会</u>

证监会建议修订《证券及期货条例》第 213 条（强制令及其他命令），以提供一个诉讼因由，使证监会在根据《证券及期货条例》第 194 或 196 条对某受规管人员行使任何权利后，能够向原讼法庭申请作出《证券及期货条例》第 213 条所指的强制令及其他命令。

第 213 条的限制

根据现行《证券及期货条例》 第 213 条的条款，当某受管人员分别按照第 194 条或第 196 条被裁断行为或不留任受管人员的适当人选时，*除非*引致有关裁断结果的行为亦构成违反第 213(1)条所述的其中一项有关条文、规定或条件，否则证监会无法申请作出《证券及期货条例》第 213 条所指的命令。这意味着，如某受规管人士违反证监会的守则及指引（例如《证券及期货事务监察委员会持牌人或注册人操守准则》），这些行为（不论严重程度）若不属第 213(1)条所概述的任何情况，目前不会合成第 213 条所指的影响由。

此外，如受规管人士犯失当行为，或按证监会的意见，某受规管人士并非担任或留任受规管人士的适当人选，虽然证监会可根据《证券及期货条例》第 194 条及第 196 条对该人行使一系列纪律惩处权，但第 194 条及第 196 条并不赋予证监会任何法定权力以直接要求该受规管人士采取任何步骤，从而使可能因该受规管人士的行为而受到不利影响的投资者或客户回复原状，或向有关投资者或客户作出补偿，或以其他方式保障有关投资者或客户的利益。

建议

为使证监会能以更有效的方式保障投资者和受规管人士的客户的利益，以及堵塞所述的漏洞，证监会建议对第 213(1)条作出修订，让证监会在根据第 194(1)、194(2)、196(1)或 196(2)条对某受规管人士行使任何权力后，能根据新增的第 213(1)条(c)段有额外理据申请作出第 213 条所指的命令。

另外，证监会建议对第 213(2)条作出修订，以引入多一项原讼法庭可作出的命令，以致当证监会根据第 194 或 196 条对某受规管人士行使任何权力后，原讼法庭可使交易各方回复他们订立交易之前的状况。

此外，证监会亦建议对第 213(3A)条作出相应修订，让证监会在根据第 194(1)、194(2)、196(1)或 196(2)条对属开放式基金型公司的董事、投资经理、保管人或次保管人的受规管人士行使任何权力后，能有额外理据申请作出第 213 条所指的命令；这与过往修订第 213 条以确保就开放式基金型公司寻求法庭作出额外命令的理据与第 213(1)条所载者一致的做法相符。

<u>对《证券及期货条例》第 103 (3)条（在某些情况下发出关于投资的广告、邀请或文件的罪行）内的豁免作出修订</u>

证监会建议修订《证券及期货条例》第 103(3)(k)条所载对第 103(1) 条（在某些情况下发出关于投资的广告、邀请或文件的罪行）的豁免，务求使有关豁免的涵盖范围

符合最初的拟定目的，并建议对第 103(3)(j)条作出相应修订。

《证券及期货条例》第 103(1)条禁止任何人发出载有订明内容的广告及其他文件，但如该项发出获证监会根据《证券及期货条例》第 105 条认可，则属例外。第 103(1)条在按照第 (2)、(3)及(5)至(9)款所列明的多个情况下可获豁免。

扩大内幕交易条文的范围

《证券及期货条例》分别在第 XIII 部第 4 分部及第 XIV 部第 2 分部下，就内幕交易设立了并行且相对照的民事及刑事制度。该两套制度适用于就：(a)在认可证券市场上市的证券或 其衍生工具（香港上市证券或其衍生工具）；及(b)在香港及另一司法管辖区两地上市的证券或其衍生工具进行的内幕交易。

现行的民事及刑事制度并不适用于就于境外证券市场上市的证券或其衍生工具（境外上市证券或其衍生工具）而在香港干犯属内幕交易的市场失当行为或罪行，亦没有明文订明适用于就香港上市证券或其衍生工具而在香港以外地方干犯构成内幕交易的任何作为。

现行规定的限制

证监会就现行条文识别以下问题：

i. 未能打击在香港就境外上市证券或其衍生工具进行的内幕交易

《证券及期货条例》第 270 条（民事法律责任）及第 291 条（刑事法律责任）均禁止就 某上市法团的“上市证券”或其衍生工具进行内幕交易。 “上市”一词被界定为**在认可证券市场**（即由香港联合交易所有限公司营办的证券市场）**上市**。

目前，在第 270(1)条下有关内幕交易市场失当行为的涵盖范围，及在第 291 条下有关内幕交易罪行的涵盖范围，分别藉由第 270(2) 条及第 291(7)条扩展至涵盖**在香港及另一司法管辖区两地上市**的证券或其衍生工具，因此，即使第 270(1)或 291 条列明的作为在香港发生，但上述条文却不适用于就境外上市证券或其衍生工具进行的内幕交易。

过去曾有一例，一名香港持牌中介人掌握了由另一名驻港的持牌中介人向其发行的内幕消息 ，遂在某家境外上市实体的配售活动公布前，就该实体的证券进行了交易，但证监会却无法对该名进行交易的持牌中介人采取执法行动。于该案中，由于该案涉及海外上市证券，证监会无法就疑犯的内幕交易行为应用第 270 或第 291 条，亦无法透过第 300 条（需证明欺诈及/或欺骗）处理就境外上市证券或其衍生工具进行的内幕交易。

因此，如此有限的涵盖范围与全球市场互相融合的趋势相悖， 并且忽略了在香港就境外上市证券或其衍生工具进行的内幕交易，将最终损害到本港金融市场的声誉和香港作为国际金融中心的地位。

ii. 欠缺明订条文以涵盖与在香港以外地方就香港上市证券或其衍生工具进行的内幕交易有关的作为

《证券及期货条例》的现行内幕交易条文并无明文涵盖涉及香港上市证券或其衍生工 具，而导致违反第 270 或 291 条的作为是在香港以外地方发生的内幕交易。鉴于现行内 幕交易制度没有明订条文指明地域涵盖范围，故证监会必须采用普通法准则（该准则是要评定有关罪行的重大程度的活动是否在香港境内发生的）来厘定每宗个案的领域管辖权。

iii. 与其他主要普通法司法管辖区的比较

相比之下，其他主要普通法司法管辖区的内幕交易法例同时规限与当地发行人的证券有关的境外行为，以及与境外发行人的证券有关的当地行为。举例来说，澳洲《2001 年法团法》（Corporations Act 2001）的内幕交易条文、新加坡《证券及期货法》（Securities and Futures Act）第 213 条 及具有类似的地域涵盖范围的英国《1993 年刑事公义法》（Criminal Justice Act 1993）所订的内幕交易罪。

建议

即使在本地干犯的证券罪行及市场失当行为可能只会对香港以外地方的市场带来直接影响，为使证监会有能力针对这些罪行及市场失当行为采取行动，证监会建议将《证券及期货条例》下内幕交易条文的范围扩阔至涵盖：

(i) 在香港就境外上市证券或其衍生工具进行的内幕交易；及

(ii) 在香港以外地方进行的内幕交易（前提是当中涉及任何香港上市证券或其衍生工具）。

具体来说，证监会建议：

(a) 将《证券及期货条例》第 245(2)条（民事制度）及第 285(2)条（刑事制度）所 界定“上市”的定义修订为包含境外上市证券或其衍生工具；及

(b) 在《证券及期货条例》第 XIII 部及第 XIV 部增订新条文，以将内幕交易制度的地 域涵盖范围扩大至包括：(i)涉及香港上市证券或其衍生工具的任何内幕交易作为 （不论在何地发生）；及(ii)涉及境外上市证券或其衍生工具的任何内幕交易作为 （前提是该等作为中有一项或多于一项在香港发生）。

证监会亦建议在第 282 条（民事制度）及第 306 条（刑事制度）新增一款，以规定就建议将内幕交易制度的范围扩大至包含境外上市证券或其衍生工具而言，涉嫌在香港就境外上市证券或其衍生工具进行内幕交易的人，不得被视为曾从事内幕交易，除非其在有关境外司法管辖区作出该行为亦属违法。此规定与第 282(3)及 306(3)条所订明的虚假交易、操控价格及操纵证券市场的法律立场相符。

此外，证监会认为在适当情况下，《证券及期货条例》就内幕交易所提供的免责辩护，亦应适用于涉及境外上市证券或其衍生工具的内幕交易。故此，证监会建议修订第 271(5) 条，以将“场外交易”豁免扩展至在交易对手方掌握对等消息或资料的情况下，就境外上市证券或其衍生工具进行的内幕交易。

评论

作为国际金融中心的主管金融监管机构，证监会在积极推动业界讨论和修订法规以提高执法效率方面做得不错。积极的谘询让证监会了解市场的需要和意见，同时促进更有效的执法行动。

《证券及期货条例》第 213 条的拟议修订及第 103(3) 条的豁免，为证监会提供了更直接的方式，让证监会根据准确的诉讼因由采取执法行动，并防止真正有罪的罪犯逃避责任。在有效监管的市场，散户投资者不应广泛地暴露于未经授权的要约或招揽，诱使他们投资于不适合他们的高风险或复杂产品。香港应堵塞这个漏洞，以维护香港证券制度的完整性。

扩大内幕交易条文的范围，除了让香港的法规与其他主要普通法司法管辖区的法规保持同步外，也确保了证监会拥有处理跨境证券犯罪和失当行为的权力，鉴于全球金融市场日益互联互通，特别是在内地与香港市场交易香港互联互通开通后，证监会的被赋予监管权力应更有效地行使，以打击于例如涉及国内上市的 A 股及香港活动的内部交易。

总体而言，《证券及期货条例》的拟议修订使证监会能够更好地保障投资大众的利益，维护香港金融市场的诚信和声誉。香港将迎来的新部署和新法规，将对市场失当和违法行为产生更大的震慑作用，也将更好地促进证券市场应有的公平、透明和秩序。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR36
https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=21CP3

The Monetary Authority of Singapore, the International Finance Corporation and the United Nations Development Program Launch a Global Program for MSME Financial Literacy and Empowerment

On June 14, 2022, the Monetary Authority of Singapore (MAS), in partnership with the International Finance Corporation (IFC) and the United Nations Development Program (UNDP), launched an open financial education and action program for micro, small and medium enterprises (MSMEs) in Asia and Africa. Known as the SME Financial Empowerment (SFE), this program aims to help MSMEs build foundational digital financial literacy skills, and gain a good understanding of cross-border financial services relevant to MSMEs, to help them thrive in the post-pandemic digital economy. The SFE was rolled out with market partners in Asia and Africa, starting with Ghana, India, the Philippines, and Singapore, and will benefit more than 400,000 MSMEs across both regions.

SFE is an inclusive and structured program run on a digital portal operated by Proxtera, which provides a global platform to link domestic SME ecosystems and catalyze cross border trade, financing, and digital services. The other key entities supporting the SFE are the United Nations Capital Development Fund (UNCDF), Singapore University of Social Sciences (SUSS) and the Global FinTech Institute (GFI). In 2022, the SFE aims to assist MSMEs in three key areas – Essential Financial Digital Skillset, MSME Financial Services, and Digital Economy Access & Growth. The first tranche of the program will comprise two learning modules focused on essential financial digital skillsets:

(a) **Foundational Financial Literacy** which covers basic financial concepts and financial products essential for MSMEs.

(b) **Global Financial Literacy** which equips MSMEs with knowledge to connect to the digital economy and expand internationally by leveraging networks, financial services, fintech solutions and digital tools.

Further learning modules will be released in future tranches. Upon completion of each module, businesses will receive a digitally verifiable certificate issued by SUSS and GFI, that grants access to financial services tools and knowledge services through a resource hub.

The SFE learning modules incorporate best practices on key financial literacy and financing topics, benefitting from the program sponsors, Ant Group, Digital Pilipinas, Globe Telecom, Validus and Visa as well as from a wider ecosystem of community partners including Bolttech, Coface, Consolidated Bank of Ghana, Development Bank Ghana, and Philippines Department of Trade and Industry Philippine Trade Training Center.

The SFE builds on an earlier MOU between MAS and IFC on the Financial Trust Corridor (FTC) initiative to drive wider financial knowledge sharing, financial trust building and financial inclusion for MSMEs and financial institutions in developing markets. The FTC comprises a multi-party cross-border governance framework and trusted closed loop digital infrastructure, which governments and financial institutions from different countries can utilize to share verified information on foreign business counterparties and their supporting financial institutions. This information will help businesses involved in cross-border trade obtain easier access to financing.

Sopnendu Mohanty, Chief FinTech Officer of MAS, said, “An empowered MSME is essential to an equitable and sustainable digital economy. Such enablement begins with digital economy literacy. The affordable, bite-sized learning program provided by SFE is a collaborative effort involving financial institutions, and public and private sectors. Through the foundational and global financial literacy modules, MSMEs in Asia and Africa will benefit from new skills to leverage networks, financial and digital tools to grow their business internationally.”

Qamar Saleem, Regional Industry Manger, Financial Institutions Group Advisory Services, Asia and Pacific at IFC, shared, “We are delighted to partner with MAS and UNDP for this impactful initiative, which has the potential to improve the livelihoods of thousands of small business owners in emerging markets. Empowering MSMEs with financial literacy and digital skillsets will help to level the playing field for smaller businesses, ultimately helping to address financing gaps and improving financial inclusion. Our team in Singapore will also play a vital role in maximizing the impact of this program through its extensive knowledge and decades of experience in implementing best practice and strengthening the processes and resources of MSMEs in emerging markets around the world. We look forward to leveraging our expertise to build a better future for MSMEs in Asia and Africa.”

Marcos Neto, Director of the Finance Sector Hub at UNDP, highlighted that: “In every country in the world, SMEs play a central part in the economy and society - and they are also the backbone of the global economy. SMEs represent up to 90% of the business segment in many countries - and also up to 80% of employment. But, too often, the potential of SMEs is constrained by gaps in knowledge relating to digital processes and technologies. Helping SMEs to participate in the digital economy, through relevant training and digital financial skills, can unlock productive and sustainable growth opportunities. This knowledge is a real catalyst, and an important reason as to why UNDP is delighted to collaborate with IFC and the Monetary Authority of Singapore in this important initiative. These efforts also align with UNDP’s global work that puts strong emphasis on sustainable SME growth, and aims to mobilise increased and more sustainable finance for SMEs.”

As a leading international financial center, Hong Kong should also take initiative and participate in appropriate regional and international projects and promote sustainable development, innovation and financial inclusion in the ASEAN region and international cooperation platforms by leveraging Hong Kong’s robust financial infrastructure and established pool of leading financial talents.

新加坡金融管理局、国际金融公司和联合国开发计划署启动一项全球中小微企业金融知识和赋权计划

2022 年 6 月 14 日，新加坡金融管理局 (MAS) 与国际金融公司 (IFC) 和联合国开发计划署 (UNDP) 合作，启动了针对亚洲和非洲的中小微企业（中小微企业）的开放式金融教育和行动计划。该计划被称为中小企业金融赋权 (SME Financial Empowerment, SFE)，旨在帮助中小微企业建立基本的数字金融知识技能，让它们深入了解与中小微企业相关的跨境金融服务，帮助它们在大流行后的数字经济中茁壮成长。 SFE 是与亚洲和非洲的市场合作伙伴一起推出，从加纳、印度、菲律宾和新加坡开始，将使这两个地区的超过 400,000 家中小微企业受益。

SFE 是一个在 Proxtera 运营的数字门户上运行的包容性和结构化程序，它提供了一个连接国内中小企业生态系统和催化跨境贸易、融资和数字服务的全球平台。 支持 SFE 的其他主要实体是联合国资本发展基金 (UNCDF)、新加坡社会科学大学 (SUSS) 和全球金融科技研究所 (GFI)。 到 2022 年，SFE 旨在在三个关键领域为中小微企业提供帮助—基本金融数字技能、中小微企业金融服务和数字经济准入与增长。 该计划的第一部分将包括两个专注于基本金融数字技能的学习模块：

(a) **基础金融知识**，涵盖对中小微企业必不可少的基本金融概念和金融产品。

(b) **全球金融知识**，通过利用网络、金融服务、金融科技解决方案和数字工具，为中小微企业提供连接数字经济和国际扩张的知识。

进一步的学习模块将在未来的计划中发布。 完成每个模块后，企业将收到由 SUSS 和 GFI 颁发的可数字验证的证书，该证书允许通过资源中心访问金融服务工具和知识服务。

SFE 学习模块包含关键金融知识和融资主题的最佳实践，受益于项目赞助商 Ant Group、Digital Pilipinas、Globe Telecom、Validus 和 Visa，以及更广泛的社区合作伙伴生态系统，包括 Bolttech、Coface、Consolidated Bank of Ghana、加纳开发银行、菲律宾贸易和工业部及菲律宾贸易培训中心。

SFE 建立在 MAS 和 IFC 之前就金融信托走廊 (FTC) 倡议签署的谅解备忘录的基础上，旨在为发展中市场的中小微企业和金融机构推动更广泛的金融知识共享、金融信任建设和金融包容性。 FTC 由多方跨境治理框架和可信闭环数字基础设施组成，各国政府和金融机构可以利用这些基础设施共享有关外国商业交易对手及其支持金融机构的经过验证的信息。 这些信息将帮助参与跨境贸易的企业更容易获得融资。

MAS 首席金融科技官 Sopnendu Mohanty 表示：“有能力的中小微企业对于公平和可持续的数字经济至关重要。这种支持始于数字经济知识。 SFE 提供的能负担的小规模学习计划是一项涉及金融机构、公共和私营部门的合作努力。 通过基础和全球金融知识模块，亚洲和非洲的中小微企业将受益于利用网络、金融和数字工具在国际上发展业务的新技能。”

国际金融公司亚太地区金融机构集团咨询服务区域行业经理 Qamar Saleem 分享道：“我们很高兴与 MAS 和 UNDP 合作开展这项具有影响力的举措，该举措有可能改善新兴市场成千上万小企业主的生计。 赋予中小微企业金融知识和数字技能，将有助于为小型企业创造公平的竞争环境，最终有助于解决融资缺口和改善金融包容性。 我们在新加坡的团队还将以其广泛知识和数十年经验，通过在全球新兴市场实施最佳实践和加强中小微企业流程和资源，在最大程度地提高该计划的影响方面发挥重要作用。 我们期待利用我们的专业知识为亚洲和非洲的中小微企业打造更美好的未来。”

联合国开发计划署金融部门中心主任 Marcos Neto 强调：“在世界每个国家，中小企业在经济和社会中都发挥着核心作用—它们也是全球经济的支柱。 在许多国家，中小企业代表了高达 90% 的业务部门 - 以及高达 80% 的就业。 但是，中小企业的潜力常常受到与数字流程和技术相关的知识差距的限制。 通过相关培训和数字金融技能帮助中小企业参与数字经济，可以释放生产性和可持续增长机会。 这方面的知识是真正的催化剂，也是联合国开发计划署乐于与国际金融公司和新加坡金融管理局合作开展这一重要举措的重要原因。 这些努力也与联合国开发计划署的全球工作相一致，该工作高度重视可持续中小企业的增长，旨在为中小企业筹集更多和更可持续的资金。”

香港作为领先的国际金融中心，亦应积极参与更多区域和国际项目，利用其稳健的金融基础设施和庞大的金融人才库，促进東協地区乃至全球的可持续发展、创新和普惠金融。

Source 來源:
https://www.mas.gov.sg/news/media-releases/2022/mas-ifc-and-undp-launch-global-programme-for-msme-financial-literacy-and-empowerment

Hong Kong Securities and Futures Commission Reprimands and Fines China Everbright Securities (HK) Limited HK$3.8 Million for Breaches of Anti-money Laundering Regulatory Requirements

The Securities and Futures Commission of Hong Kong (SFC) has reprimanded and fined China Everbright Securities (HK) Limited (CESL) HK$3.8 million for failures in complying with anti-money laundering and counter-terrorist financing (AML/CFT) regulatory requirements.

The disciplinary action was taken in respect of CESL's failure to implement adequate and effective internal AML/CFT systems and controls to guard against and mitigate the risk of money laundering and terrorist financing (ML/TF) associated with third party deposits (TPDs) between January 2015 and February 2017 (Relevant Period). In particular, CESL was found to have failed to effectively identify and monitor the TPDs made through the sub-accounts maintained by it with a local bank (Sub-Accounts) and detect suspicious client fund deposits.

The SFC's investigation, which included a sample review of deposits received by CESL during the Relevant Period, revealed that CESL failed to identify 178 third party deposits amounting to over HK$250 million made through the Sub-Accounts.

CESL was also found to have failed to detect suspicious fund deposits in some of the client accounts and make appropriate enquiries despite the presence of the following red flags:

- 11 clients received five or more deposits from multiple third parties, whose relationships with the clients were unknown;
- the amount of net deposits received by seven clients were not commensurate with their estimated net assets; and
- five clients, who did not appear to have any relationship with each other, received a total of approximately HK$5 million from the same third party within four days, and they used the funds to trade in the same stock.

The SFC was of the view that CESL's conduct was in breach of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the Guideline on Anti-Money Laundering and Counter-Terrorist Financing and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

In deciding the disciplinary sanction, the SFC took into account that:

- a strong deterrent message needs to be sent to the market that AML/CFT failures are not acceptable;
- CESL has taken remedial actions to enhance its AML/CFT internal controls and systems; and
- CESL cooperated with the SFC in resolving the SFC's concerns.

The SFC's "Circular to Licensed Corporations and Associated Entities – Anti-Money Laundering/Counter Financing of Terrorism – Suspicious Transactions Monitoring and Reporting", published by the SFC on December 3, 2013, requires licensed corporations to take reasonable steps to guard against and mitigate the ML/TF risks associated with third party fund transfers.

In the increasingly complex securities market, market participants need to fully understand market regulations and take effective measures to avoid inadvertently falling into the trap of violation.

中国光大证券(香港)有限公司因违反有关打击洗钱的监管规定而遭香港证券及期货事务监察委员会谴责及罚款380 万港元

香港证券及期货事务监察委员会（证监会）谴责中国光大证券（香港）有限公司（光大证券）并处以 380 万港元罚款，原因是光大证券没有遵守有关打击洗钱及恐怖分子资金筹集的监管规定。

证监会采取上述纪律行动，是因为光大证券在 2015 年 1 月至 2017 年 2 月期间（有关期间），没有实施充足及有效的内部打击洗钱及恐怖分子资金筹集制度和管控措施，以防范及减低与第三者存款相关的洗钱及恐怖分子资金筹集风险。特别是，光大证券未能有效地识别及监察透过其在某家本地银行开立的多个子帐户（该等子帐户）作出的第三者存款，也未能侦测可疑的客户存款。

证监会的调查包括对光大证券于有关期间收到的存款进行抽样检视，过程中发现光大证券未能识别 178 笔透过光大证券在某家本地银行开立的多个子帐户作出的第三者存款，金额超过 2.5 亿港元。

此外，尽管出现了以下预警迹象，光大证券未能侦测某些客户帐户内的可疑存款，也没有作出适当的查询：

- 11 名客户从多名与其关系不明的第三者收到五笔或以上的存款；
- 七名客户收到的存款净金额与他们的估计净资产不相称；及
- 五名看来互不相关的客户在四天内收到来自同一名第三者合共约 500 万港元，而该五名客户使用有关资金买卖同一只股票。

证监会认为光大证券的行为违反了《打击洗钱及恐怖分子资金筹集条例》、《打击洗钱及恐怖分子资金筹集指引》和《证券及期货事务监察委员会持牌人或注册人操守准则》。

证监会在决定采取上述纪律处分时，已考虑到：

- 有需要向市场传递具阻吓力的强烈讯息，以示有关打击洗钱及恐怖分子资金筹集的缺失不可接受；
- 光大证券采取了补救行动，以加强其打击洗钱及恐怖分子资金筹集的内部管控措施及制度；及
- 光大证券与证监会合作解决证监会的关注事项。

证监会在 2013 年 12 月 3 日刊发《致持牌法团及有联系实体的通函——打击洗钱 / 恐怖分子资金筹集——监察及举报可疑交易》，当中规定持牌法团须采取合理步骤防范及减低第三者资金转账所带来的洗钱及恐怖分子资金筹集风险。

在日趋复杂的证券金融市场，市场参与者需要充分了解和掌握市场的法规，并采取有效的措施避免误堕违规陷阱。

Source 來源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=22PR37

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