



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

2022.08.26

Hong Kong-listed ETFs Poised to Ride the Trend of Thematic ETF Growth Related to the Greater China Region

Under the global megatrends such as sustainable energy, electric vehicles and biotechnology, thematic investing is becoming more popular and that drives the growth of thematic exchange traded funds (ETFs) in Asia. As one of the leading international financial centers, Hong Kong is certainly a prime location for the development of thematic ETF investing.

With the launch of the ETF Connect, the growing interest in sustainable finance and thematic investment as well as the new initiative to facilitate ETFs' development introduced by regulators in Hong Kong, Hong Kong has further demonstrated its ability to capture opportunities generated by this trend in the region.

Rising Trends in Thematic ETFs Investment in the World

Spurred by innovation and growing investor awareness, there has been a boom in the adoption of thematic ETFs globally and the industry has been expanding steadily. Five years ago, there were fewer than 200 so-called thematic ETFs globally. Now there are over 700, covering a much broader range of themes for investors to consider, from electric vehicles batteries to gender diversity.

Numerous thematic funds have given access to emerging investment themes. A recent survey by Brown Brothers Harriman says "84% of global ETF investors plan to increase their ETF allocations, a 12% from 2021 findings," and "38% of the respondents plan to allocate 11-20% of their portfolio to thematic ETFs over the next five years." Global X Green Building ETF, an ETF focusing on green building materials is an example of new thematic ETF which may ride on the increasing trend of the global green building materials market, which is expected to reach US\$635 billion by 2030, representing a compound annual growth rate of over 10%.

The Growth of Thematic ETFs in Hong Kong

Hong Kong has also seen a significant ramp-up in thematic ETF adoption. In 2020, HK\$15 billion (US\$1.9 billion) worth of investments flowed into thematic ETFs. In 2021, the growth has only accelerated with the previous year's figure being nearly matched in the first quarter of 2021 alone. As of October 2021, thematic ETFs in Hong Kong surpassed HK\$50 billion (US\$6.4 billion) in assets under management (AUM), representing around 12% of the market's total ETF AUM. Large-scale ETF issuer such as Mirae Asset Global Investments has also announced its intention to broaden its Hong Kong-listed ETF range with new asset classes and investment strategies.

Launch of ETF Connect

On July 4, 2022, the trading of ETFs in the Stock Connect has been launched. Upon the launch of the ETF Connect, international investors are now able to trade 83 ETFs listed in Shanghai and Shenzhen via Hong Kong. These include products that track broad market indices, as well as products that follow specific industries.

The addition of ETFs to Stock Connect is significant, as it will help satisfy strong regional demand for these securities. In the five years ending 2021, the assets held in Asia Pacific ETFs surged to US\$560 billion, from US\$126 billion at the end of 2016. Hong Kong's market is particularly diverse: the city has 130 ETFs listed locally, with an average daily turnover of HK\$6.4 billion (US\$820 million). By increasing the investor base, ETF Connect will support the growth of this asset class in both Hong Kong and Mainland China.

Growing Interest in Sustainable Finance

In the recently released market analysis of 2021 of Climate Bonds Initiative (CBI), the CBI highlights that Hong Kong's green-labelled debt market grew to US\$19 billion in 2021, growing 6.5 times on 2020. This represents the largest increase, in both absolute and percentage terms, since 2016, when the CBI data starts.

In terms of issuers, CBI noted that the Hong Kong SAR Government was particularly active, raising more than US\$6 billion with six deals in 2021. Corporates, both financial and non-financial, raised an additional US\$3.5 billion. Out of the 12 issuers that issued green debt or borrowed via green loans, nine were new to market – such as Hongkong Land and China Development Bank (Hong Kong Branch), which both issued their inaugural green bonds.

One notable deal in sustainable debt market in Hong Kong over the year may be a Chinese offshore green bond issued by the Municipality of Shenzhen. This RMB-denominated bond not only marked the first time that a municipal government in Mainland China issued an offshore green bond, but is also a good example of Hong Kong and Shenzhen working together to realize the vision of the Greater Bay Area. The bond's proceeds will be used to fund new high schools, water treatment plants and subway projects.

In May 2022, Hong Kong's first green bond for retail investors raised HK\$20 billion (US\$2.6 billion). This was the largest retail-focused green bond globally, and the popular deal was oversubscribed, suggesting high levels of interest among Hong Kong's individual investors for sustainable investments.

Away from green bonds and loans, there was activity in other thematic debt instruments. Seaspan Corporation for example, the world's largest independent owner of containerships, issued a US\$750 million blue bond – a new kind of debt security where the proceeds are directed towards the oceans and the economies that depend on them.

With the aforementioned successful funding of a range of sustainable projects, Hong Kong's green debt market is getting deeper and broader, and that showcased how Hong Kong has responded and gained experience swiftly in thematic investing.

Initiative to Facilitate Development of Fixed Income ETFs in Hong Kong

On May 31, 2021, Hong Kong Exchanges and Clearing Limited (HKEX) announced the introduction of two new fee waivers for Hong Kong-listed fixed income ETFs and money market ETFs. The new initiative is part of HKEX's ongoing commitment to develop Hong Kong into Asia's ETF marketplace through offering greater choice and broadening product diversity.

Commencing on May 31, 2021, the following fees were waived for transactions of fixed income ETFs and money market ETFs:

- The trading tariff of HK\$0.50

- The minimum stock settlement fee payable by each Clearing Participant or Clearing Agency Participant for each Exchange Trade or crossed Exchange Trade cleared and settled through CCASS

As of May 28, 2021, there were 29 fixed income and money market ETF trading counters eligible for the fee waivers.

The new fee waivers were expected to help investors reduce costs for fixed income ETFs and money market ETF transactions, and were HKEX's latest initiative to enhance its ETF market structure and drive liquidity to Hong Kong-listed ETFs. It was also believed that the fee waivers were introduced at an opportune time as there has been a strong increase in investor demand for China fixed income products in recent years.

Remarks

ETFs in Hong Kong are expected to experience significant growth due to the development potential of the Greater Bay Area, growing interest among global investors and the new cross-border trading scheme such as the ETF Connect. As a city experienced in facilitating investment flows going in and out of Mainland China, Hong Kong also has a key strength of its human capital. This expertise is evident across the entire spectrum of Hong Kong's financial services industry – from investment banking to asset management, as well as legal and custodian services.

Given the solid business and human infrastructure, high degree of internationalization, support of the government and regulators and established engagement with nearby regions and countries, especially the unique connection to Mainland China's financial markets, Hong Kong is well-positioned to strengthen its role as an international green and sustainable financial hub.

香港上市 ETF 有望顺应大中华区主题 ETF 增长趋势

在可持续能源、电动汽车和生物技术等全球大趋势下，主题投资越来越受欢迎，这推动了亚洲主题交易所交易基金 (ETF) 的增长。香港作为领先的国际金融中心之一，无疑是发展主题投资交易所交易基金的黄金地段。

随着 ETF 互联互通的推出、对可持续金融及主题投资的兴趣日益浓厚，以及香港监管机构推出促进 ETF 发展的新举措，香港进一步展示了其抓住该地区这一趋势所带来的机遇的能力。

全球主题 ETF 投资的上升趋势

在创新和投资者意识增强的推动下，全球衍生采用主题 ETF 的热潮，而行业亦一直在稳步扩张。五年前，全球只有不到 200 只所谓的主题 ETF。现在有 700 多个，涵盖范围更广的主题如从电动汽车电池到性别多样性的 ETF 供投资者考虑。

众多主题基金为新兴投资主题提供了机会。Brown Brothers Harriman 最近的一项调查称，“84% 的全球 ETF 投资者计划增加其 ETF 配置，比 2021 年的调查结果增加 12%”，“38% 的受访者计划将其投资组合的 11-20% 分配给主题 ETF 在接下来的五年里。” Global X Green Building ETF 是一只专注于绿色建材的 ETF，是新的主题 ETF 的一个例子，它可能会顺应全球绿色建材市场的增长趋势，预计到 2030 年将达到 6350 亿美元，年复合增长率超过 10%。

香港主题 ETF 的增长

香港的主题 ETF 采用率也显著增加。2020 年，价值 150 亿港元（19 亿美元）的投资流入主题 ETF。2021 年，仅在 2021 年第一季度，增长才加速，去年的数字几乎与去年的数字相当。截至 2021 年 10 月，香港主题 ETF 的管理资产 (AUM) 超过 500 亿港元（64 亿美元），约占市场 ETF 总资产管理规模的 12%。Mirae Asset Global Investments 等大型 ETF 发行人也宣布有意通过新的资产类别和投资策略扩大其在中国香港上市的 ETF 范围。

ETF 互联互通的推出

2022 年 7 月 4 日，沪深港通 ETF 交易正式上线。ETF 互联互通推出后，国际投资者现在可以通过香港，针对在上海和深圳上市的 83 只 ETF 进行交易。其中包括追踪市场指数的产品，以及追踪特定行业的产品。

将 ETF 纳入沪深港通意义重大，将有助于满足亚太区对这些证券的强劲需求。在截至 2021 年的五年中，亚太区 ETF 持有的资产从 2016 年底的 1,260 亿美元飙升至 5,600 亿美元。香港市场尤其多元化：在香港有 130 只 ETF 在本地上市，日均成交额达 64 亿港元（8.2 亿美元）。通过扩大投资者群体，ETF 互联互通将促进该类资产在香港和中国内地的增长。

对可持续金融的兴趣日益浓厚

气候债券倡议组织 (CBI) 在其最近发布的 2021 年市场分析中强调，香港的绿色债券市场去年增长至 190 亿美元，是上一年的 6.5 倍。无论是绝对值还是百分比，这都是自 2016 年气候债券倡议组织开始公布数据以来的最大增幅。

在发行人方面，CBI 指出，香港特别行政区政府特别活跃，2021 年其通过六笔交易募集了超过 60 亿美元的资金。金融和非金融企业募集了 35 亿美元。在发行绿色债券或通过绿色贷款借款的 12 家发行人中，有 9 家是首次发行，例如香港置地和国家开发银行（香港分行），他们都发行了首只绿色债券。

过去一年中最引人注目的可持续债券交易，或许是深圳市政府发行的中国离岸绿色债券。此笔人民币计价债券不仅标志着中国大陆市政府首次发行离岸绿色债券，也是香港深圳携手实现大湾区愿景的典范。本次债券募集的资金将用于资助新建中学、污水处理厂和地铁项目。

2022 年 5 月，香港首只面向散户投资者的绿色债券募集了 200 亿港元（26 亿美元）。这是全球最大的一只聚焦散户的绿色债券，大受欢迎，被超额认购，说明香港个人投资者对可持续投资的兴趣很高。

除绿色债券和贷款外，其他主题债务工具也很活跃。例如，全球最大的集装箱船上市租赁公司-西斯班公司 (Seaspan Corporation) 发行了 7.5 亿美元的蓝色债券——一种新型债务证券，收益将用于海洋和依赖海洋的经济体。

随着上述一系列可持续项目的成功融资，香港的绿色债券市场越来越深、越来越广，体现了香港在主题投资方面的迅速反应和积累经验。

新措施促进固定收益交易所买卖基金在港发展

于 2021 年 5 月 31 日，香港交易及结算所有限公司（香港交易所）宣布，就香港上市的固定收益 ETF 及货币市场 ETF 推出两项新的费用宽免，以拓宽香港 ETF 市场的产品种类，为投资者提供更多选择，发展香港成为亚洲 ETF 中心。

由 2021 年 5 月 31 日起，以下固定收益 ETF 及货币市场 ETF 的交易收费将获宽免：

- 0.5 元的交易系统使用费
- 每一结算参与者及每一结算机构参与者透过中央结算系统结算及交收的联交所买卖，或两边客买卖之应付的最低股份交收费用

截至 2021 年 5 月 28 日，共有 29 只香港上市固定收益 ETF 及货币市场 ETF 合资格获上述费用宽免。

香港交易所一直致力优化香港的 ETF 市场架构，提升香港上市 ETF 的流动性，新费用宽免措施预期可助投资者减少在买卖固定收益 ETF 及货币市场 ETF 时的交易成本。鉴于投资者近年对中国固定收益产品的需求增长强劲，香港交易所相信现在是推出费用宽免的好时机。

结语

由于大湾区的发展潜力、全球投资者日益增长的兴趣以及新的跨境交易计划（例如 ETF 互联互通），预计香港的 ETF 将出现显著增长。作为一个在促进投资流入和流出中国内地方面经验丰富的城市，香港也拥有其人力资本的主要优势。这种专业知识在香港金融服务业的从投资银行到资产管理，以及法律和托管服务整个领域都显而易见。

凭借坚实的商业及人力基础设施、高度的国际化、政府和监管机构的支持以及与周边地区和国家建立的广泛联系，尤其是与中国内地金融市场的独特联系，香港正不断加强其作为绿色和可持续金融国际中心的作用。

Source 来源:

<https://www.fsd.org.hk/en/media/deepening-connections-hong-kong-s-new-links-with-mainland-china-s-financial-markets>

<https://www.fsd.org.hk/en/media/hong-kong-making-progress-in-sustainable-debt>

https://www.hkex.com.hk/-/media/HKEX-Market/Products/Securities/Exchange-Traded-Products/Launch/Whitepaper_Transformative-forces-in-ETF-investment.pdf

https://www.hkex.com.hk/News/Market-Communications/2021/210531news?sc_lang=en

The Stock Exchange of Hong Kong Limited Publishes Conclusions on Proposed Amendments to Listing Rules Relating to Share Schemes of Listed Issuers

On July 29, 2022, the Stock Exchange of Hong Kong Limited (the Exchange) published conclusions to its consultation on Proposed Amendments to Listing Rules relating to Share Schemes of Listed Issuers (Consultation Conclusions).

Respondents were supportive of the Exchange's initiatives to provide a consistent regulatory framework to govern both share option schemes and share award schemes. Comments on specific proposals were primarily related to the operational aspects of the proposals and the nature and level of disclosure proposed.

The Exchange will adopt the consultation proposals with modifications to reflect respondents' comments where appropriate. These modifications mainly relate to the role of the remuneration committee, vesting period for share awards and options, and share schemes of subsidiaries.

Key changes to the Rules Governing the Listing of Securities on the Exchange (Listing Rules) include:

- I. Share Schemes funded by issuance of new shares of listed issuers
 - (i) Extend Chapter 17 to govern all share schemes involving grants of share awards and grants of options to acquire new shares of issuers;
 - (ii) Define eligible participants of share option schemes and share award schemes (Share Schemes) to include employee participants, related entity participants and service providers;
 - (iii) Scheme mandate: (i) apply a limit on grant of share awards and/or options (Share Grants) (Scheme Mandate Limit) of not exceeding 10% of an issuer's issued shares to all Share Schemes of the issuer and require the issuer to set a service provider sublimit within the Scheme Mandate Limit and disclose the basis for determining the sublimit; (ii) require independent shareholders' approval for refreshment of scheme mandate within a three year period;
 - (iv) Require approval by shareholders for Share Grants to (i) an individual participant in excess of the 1% individual limit; or (ii) a connected person in excess of the de minimis threshold. All Share Grants to connected persons will require approval by independent non-executive directors;
 - (v) Require a minimum vesting period of 12 months. Share Grants to employee participants may be subject to a shorter vesting period under specific circumstances as set out in the scheme document. Share Grants to directors and senior management with a shorter vesting period must be approved by the remuneration committee;
 - (vi) Require disclosure of details of Share Grants by the issuer to the following participants to be made on an individual basis: (i) a connected person; (ii) a participant with Share Grants in excess of the 1% individual limit; (iii) a related entity participant or service provider with Share Grants in excess of 0.1% of the issuer's issued shares over any 12-month period;
- II. Share Schemes funded by existing shares of listed issuers
 - (vii) Require disclosure in annual reports of (i) a summary of each share scheme; and (ii) information relating to grants of existing shares during the year;
- III. Share Schemes of subsidiaries of listed issuers
 - (viii) Apply Chapter 17 to Share Schemes of a principal subsidiary (a subsidiary whose revenue, profits or

total assets accounted for 75% (or more) of that of the issuer under the percentage ratios in any of the latest three financial years). Share Grants under Share Schemes of other subsidiaries will be subject to Chapters 14 and/or 14A requirements.

The amendments to the Listing Rules relating to share schemes will come into effect on 1 January 2023 for all existing Share Schemes as at the same date. Issuers may make Share Grants only to eligible participants defined under the amended Listing Rules for financial years commencing on or after 1 January 2023. For share option schemes or share award schemes adopted by issuers before the effective date, the issuers may continue to make Share Grants to eligible participants (as defined in the amended Chapter 17) using their existing scheme mandates or advanced specific mandates. Issuers which have adopted share award schemes using general mandate may make Share Grants up to the date of the second annual general meeting after 1 January 2023. The Stock Exchange also issued relevant FAQs on the new rules.

香港联合交易所有限公司刊发建议修订有关上市发行人股份计划的《上市规则》条文的咨询总结

于 2022 年 7 月 29 日，香港联合交易所有限公司（联交所）就建议修订有关上市发行人股份计划的《上市规则》条文的咨询文件刊发咨询总结（咨询总结）。

回应人士均支持联交所统一规管股份期权计划及股份奖励计划监管框架的建议，亦就个别建议的实际操作、披露性质及程度提出意见。

联交所决定采纳咨询文件的建议，并因应回应人士的意见对某些建议作出适当的修改，主要涉及薪酬委员会的角色、股份奖励及期权的归属期以及附属公司的股份计划等。

联交所证券上市规则（上市规则）的主要变动包括：

I. 涉及上市发行人发行新股的股份计划

- (i) 扩大上市规则第十七章的适用范围，使之涵盖所有涉及发行人授出股份奖励及授出可认购其新股的股份期权的股份计划；
- (ii) 界定股份期权计划及股份奖励计划（股份计划）的合资格参与者，包括雇员参与者、关连实体参与者及服务提供者；
- (iii) 计划授权：(i) 对发行人所有股份计划加设授予股份奖励及 / 或股份期权（授予股份）限额（计划授权限额），以不多于发行人已发行股份的 10% 为限，而

发行人须在计划授权限额内另设服务提供者分项限额，并披露其厘定该分项限额的基准；(ii) 若在三年期内更新计划授权，须经独立股东批准；

- (iv) 向以下人士授予股份须经股东批准：(i) 向个别参与者授予股份超过 1% 个人限额；或(ii) 向关连人士授予超过最低豁免门槛的股份。凡向关连人士授予股份均须经独立非执行董事批准；
- (v) 归属期须为至少 12 个月，但在计划文件中规定的特定情况下向雇员参与者授予股份的归属期可以较短。向董事及高级管理层授予归属期较短的股份必须经薪酬委员会批准；
- (vi) 发行人向以下参与者授予股份须个别逐一披露详情：(i) 关连人士；(ii) 获授予股份超过 1% 个人限额的参与者；(iii) 于任何 12 个月期内获授予股份超过发行人已发行股份 0.1% 的关连实体参与者或服务提供者；

II. 上市发行人现有股份的股份计划

- (vii) 发行人须于年报中披露 (i) 每项股份计划的概要；及 (ii) 有关年内授出现有股份的资料；

III. 上市发行人附属公司的股份计划

- (viii) 对主要附属公司（在最近三个财政年度任何一年，收入、溢利或总资产占发行人集团的比率 75%（或以上）的附属公司）的股份计划采用上市规则第十七章的规定。根据其他附属公司的股份计划授予股份则须符合第十四章及 / 或第十四 A 章的规定。

有关股份计划的上市规则修订将于 2023 年 1 月 1 日生效，适用于当日所有的现有股份计划。由 2023 年 1 月 1 日或之后开始的财政年度，发行人仅可向经修订上市规则条文所界定的合资格参与者授予股份。就上市发行人于生效日期前采纳的股份期权计划及股份奖励计划而言，发行人可继续使用现有计划授权或预先授权而向合资格参与者（定义见经修订的《上市规则》第十七章）授予股份。使用一般授权的股份奖励计划的发行人，在 2023 年 1 月 1 日后的第二个股东周年大会之日及之前仍可授予股份。联交所亦就新规发布相关常见问题。

Source 来源：

https://www.hkex.com.hk/News/Regulatory-Announcements/2022/220729news?sc_lang=en-rules.hkex.com.hk/sites/default/files/net_file_store/FAQ%20083-2022%20to%20101-2022_e.pdf

The Stock Exchange of Hong Kong Limited Publishes Enforcement Bulletin to Reminds of the

Disclosure and Shareholder Approval Requirements of Certain Transactions of Listed Issuers

The Stock Exchange of Hong Kong Limited (the Exchange) published the August 2022 edition of Enforcement Bulletin to highlight and give a summary of 16 enforcement cases of the Rules Governing the Listing of Securities on the Exchange (Listing Rules) in the first half of 2022. A majority of the cases involved transactions which require both disclosure and shareholder approval.

The Listing Rules require that certain transactions (such as acquisitions, disposals, financial assistance, advances to an entity and non-exempt connected transactions) should be disclosed and, depending on their nature and size, approved by (independent) shareholders. Chapter 14 of the Listing Rules sets out how the transactions are classified based on their size and the disclosure and approval requirements of different classes of transactions. Chapter 14A of the Listing Rules set out the requirements for connected transactions.

In many of the enforcement cases, the transactions were only discovered sometime after the event, and ultimately involved significant impairments. In several cases, the listed issuers did not have the right systems to identify transactions subject to requirements of the Listing Rules or to make sure that they were appropriately escalated to the board. As a result, the listed issuers failed to comply with the procedural requirements applicable to notifiable and/or connected transactions. In some cases, the failure in turn led to inaccurate, incomplete and/or misleading disclosure in annual reports.

The Exchange emphasized that the Listing Rule requirements are designed to protect shareholders and the market by ensuring that timely information is provided and the shareholders are given the opportunity to vote. It is critical that listed issuers have adequate and effective systems and internal controls in place to ensure they comply with all the relevant obligations. It is also important for listed issuers to ensure that controls and systems are reviewed and updated regularly, particularly if embarking on a new business segment. Directors must also make sure that all relevant staff have been given proper training, as they can understand and operate effectively within the framework that has been established.

Listed debt securities issuers should also be aware of their continuing obligations under Chapter 37 of the Listing Rules. In January 2022, the Exchange censured a debt issuer and its authorized representative for failure to timely announce a default in payment of interest and apply for a trading suspension. The Exchange reminded issuers and guarantors of listed debt securities that they are subject to disclosure and other obligations under the

Listing Rules and may refer to the recently published Guidance on continuing obligations under Chapter 37 of the Main Board Listing Rules and Chapter 30 of the GEM Rules (Debt Issues to Professional Investors Only).

香港联合交易所有限公司发布上市规则执行简报提醒上市发行人某些交易的披露和股东批准规定

香港联合交易所有限公司（联交所）发布 2022 年 8 月的《上市规则执行简报》，重点总结 2022 年上半年联交所证券上市规则（上市规则）对 16 个执行个案，大部分案件涉及须披露和股东批准的交易。

上市规则规定，某些交易（例如收购、出售、财务资助、给予某实体的贷款和非豁免的关连交易）必须作出披露并（视乎交易的性质和规模）经由（独立）股东批准。上市规则第 14 章规定了交易如何根据规模划分类别以及不同类别交易的披露和批准要求。上市规则第 14A 章规定了关连交易的要求。

许多执行个案中，有关交易都是在事件发生一段时间后才被发现，并最终引致重大减值。在其中几个个案中，上市发行人缺乏适当的系统来识别须遵守《上市规则》规定的交易或确保将此等交易适当上报董事会。最终，上市发行人未能遵守适用于须予公布及/或关连交易的程序规定。在某些情况下，该缺失导致年度报告中的不准确、不完整和/或误导性披露。

联交所强调，上市规则的规定旨在通过确保及时提供信息和给予股东投票表决机会，达到保护股东及市场的目的。上市发行人必须具备充足及有效的系统及内部监控，以确保其能遵守所有相关责任。对于上市发行人来说，确保定期检讨和更新监控及系统亦非常重要，尤其是在开展新业务时。董事亦必须确保所有相关员工都接受过适当培训，能够理解公司建立的框架并在框架内有效运作。

债务证券发行人亦应知悉其在上市规则第 37 章下的持续责任。2022 年 1 月，联交所就未及时公告拖欠利息并及申请停牌对某债务发行人及其授权代表进行了谴责。联交所提醒上市债务证券的发行人及担保人须遵守上市规则的披露及其他责任，并可参阅近期刊发的《主板规则》第三十七章及《GEM 规则》第三十章（仅售予专业投资者的债务证券）下有关持续责任的指引。

Source 来源:

<https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Enforcement-Newsletter/newsletter202208.pdf>

Hong Kong Takeovers Bulletin Reminds of Ancillary Documents Requirements and Compliance with Rule 19.1 for Closing Announcements Involving

Trading Suspensions Due to Insufficient Public Float

In the Takeovers Bulletin (Issue No. 61), the Securities and Futures Commission of Hong Kong (SFC) reminded parties to an offer and their advisers the requirements applicable to ancillary documents and compliance with Rule 19.1 of the Code on Takeovers and Mergers (Takeovers Code, together with the Code on Share Buy-backs, the Codes) for closing announcements involving trading suspensions due to insufficient public float.

Reminder of ancillary documents requirements

The SFC noted that there has been an increasing number of instances where parties to an offer or their shareholders released or published ancillary documents in connection with an offer without confirming to the SFC that the ancillary documents did not contain any material new information with Code implications or consulting the SFC prior to the release or publication recently. The parties and their advisers were not aware of these requirements and only confirmed to the SFC that the ancillary documents did not contain any material new information with Code implications after the SFC made enquiries with them.

Rule 12.1 requires that all documents subject to the Codes (other than those on the post-vet list) must be filed with the Executive of the SFC for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments.

The SFC recognize that parties to an offer may have to issue ancillary documents other than documents issued under the Codes for the purpose of complying with other regulatory requirements. Ancillary documents should not include any new information relating to the Code transaction that has not already been published in accordance with the Codes. Given this, a pragmatic approach towards ancillary documents was provided as follows:

- (i) If the relevant parties confirm to the Executive that the ancillary documents do not contain any material new information with Code implications, the Executive will not require such documents to be submitted for comment in accordance with Rule 12.1. In these circumstances, the Executive will not normally require a responsibility statement under Rule 9.3 of the Takeovers Code to be included in these ancillary documents;
- (ii) If, however, the ancillary documents contain material new information with Code implications, the parties should highlight the relevant pages that contain the new information and submit them to the Executive for its comment. If the new information is

sufficiently material, the Executive may consider it necessary to comment on the entire document. The Executive may also require a responsibility statement under Rule 9.3 of the Takeovers Code to be included in the relevant ancillary document.

The SFC also gave further guidance on the “no material new information” confirmations for ancillary documents to be provided to the Executive:

- (i) the confirmation should normally be given by the financial adviser to the relevant party issuing the ancillary document; and
- (ii) the confirmation should be made in writing and submitted to the Executive by not later than the close of business on the business day following the release or publication of the ancillary document.

Compliance with Rule 19.1 for closing announcements involving trading suspensions due to insufficient public float

Where the public float of an offeree company falls below the prescribed percentage of public float under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules) when the offer closes and as a result a trading suspension is required, it is a common practice for the parties to disclose this information in closing announcements made under Rule 19.1 of the Takeovers Code. However, the SFC has noted an increasing number of instances where these closing announcements were published after the 7:00 p.m. deadline required under Rule 19.1. The delay was often due to the additional time required to prepare the disclosure relating to the trading suspension.

Rule 19.1 of the Takeovers Code provides that the offeror must publish an announcement in accordance with the requirements of the Listing Rules by 7:00 p.m. on the closing date stating whether the offer has been revised or extended, has expired or has become or been declared unconditional. Rule 19.2 further provides that the Executive should be consulted if an offeror is unable to comply with any of the requirements of Rule 19. The Executive may require that acceptors be granted a right of withdrawal, on terms acceptable to the Executive, until the requirements of Rule 19 can be met.

The SFC emphasized that it is important that the relevant timings under the Codes are observed to ensure an orderly market is maintained during a Code-related transaction, as well as when it is about to complete. The market has long adapted to the timing requirements under the Codes, and parties and practitioners are able to comply without difficulty.

The SFC reminded that if parties encounter or anticipate any difficulties in meeting the 7:00 p.m. publication deadline for closing announcements as a result of also being required to announce a trading suspension of the offeree company's shares after the close of an offer, they should consider splitting the results of the offer and the trading suspension into two separate announcements so that the offeror would be in a better position to meet its obligations under Rule 19.1.

香港收购通讯提醒有关附带文件的规定及遵守规则 19.1 有关因公众持股量不足而须就暂时停止股份买卖发出截止公布的规定

在收购通讯（第 61 期）中，香港证券及期货事务监察委员会（证监会）提醒要约各方及其顾问注意适用于附带文件的规定，以及遵守《收购及合并守则》（收购守则），连同《股份回购守则》，简称守则）第 19.1 条有关因公众持股量不足而须就暂时停止股份买卖发出截止公布的规定。

提醒注意有关附带文件的规定

证监会注意到近来愈来愈多要约的当事人或其股东没有在发放或发布有关要约的附带文件前向证监会确认这些附带文件并没含有任何重大且会在守则下产生影响的最新资讯，或就有关资讯向证监会作出咨询。这些当事人或其顾问并不知道这些规定，仅在证监会向他们查询后才向证监会确认相关附带文件并没含有任何重大且会在守则下产生影响的最新资讯。

规则 12.1 规定，所有受守则规限的文件（事后审阅清单内刊载者除外）在发出或发表之前，均必须呈交证监会执行人员，咨询其意见，以及在执行人员确定不会作出进一步意见之前，不可发出或发表该文件。

证监会认同除了根据守则发出的文件外，要约的当事人可能亦需要发出附带文件，以便符合其他监管规定。附带文件不应包括任何有关该守则交易但却未曾根据守则刊出的最新资讯。有见及此，证监会曾就附带文件提供以下务实的做法：

- (i) 如果当事人向执行人员确认，附带文件并没含有任何重大且会在守则下产生影响的最新资讯，执行人员不会要求当事人根据规则 12.1 向其呈交这些文件以咨询其意见。在上述情况下，执行人员通常不会规定当事人根据收购守则规则 9.3 在这些附带文件内加入责任声明。
- (ii) 不过，如果附带文件含有重大且会在守则下产生影响的最新资讯，当事人应重点指出那些含有最新资讯的页数，并将有关资料呈交执行人员，以咨询其意见。

如果新的资料相当重要，执行人员或会认为有需要就整份文件给予意见，亦可能会要求当事人根据收购守则规则 9.3 在相关附带文件内加入责任声明。

证监会亦就须提供予执行人员的附属文件的「无重大新资料」确认书提供进一步指引：

- (i) 有关确认通常应由发出附带文件的相关当事人的财务顾问作出；及
- (ii) 有关确认应在紧接发放或发布附带文件当日之后的营业日的办公时间内以书面形式向执行人员作出。

遵守规则 19.1 有关因公众持股量不足而须就暂时停止股份买卖发出截止公布的规定

倘受要约公司的公众持股量在要约结束时低于《香港联合交易所有限公司证券上市规则》（上市规则）指定的公众持股量百分比，并因此需要暂时停止股份买卖，则当事人通常会在按照收购守则规则 19.1 发出的截止公布内披露这项资讯。然而，证监会注意到，愈来愈多这些截止公布是在规则 19.1 规定的截止时间下午 7 时正之后发布。有关延误很多时是因为需要额外时间草拟有关暂时停止股份买卖的披露所致。

收购守则规则 19.1 规定要约人必须根据上市规则的规定，在截止日期当日下午 7 时正或之前刊登公布，声明其要约是否已作修订或延期、期满或已成为或已宣布为无条件。规则 19.2 进一步规定要约人如果未能遵守规则 19 的任何规定，应咨询执行人员的意见。执行人员可以按照其可以接纳的条款，要求接纳者获授予撤回接纳的权利，直至要约人符合规则 19 的规定为止。

证监会强调为确保在与守则相关的交易期间及交易即将完成时能维持有秩序的市场，遵守守则规定的相关时间至为重要。市场长期下来已经适应了守则在时间方面的规定，而当事人及从业员均能毫无困难地加以遵守。

证监会提醒，如当事人因为同时需在要约结束后，就暂时停止受要约公司股份买卖发出公布而难以或预期将难以在截止时间下午 7 时正或之前发出截止公布，他们应考虑将要约结果和暂时停止股份买卖分开两份独立的公布，以便要约人能够更好地履行其在规则 19.1 下的义务。

Source 来源:

<https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-Bulletin/20220630SFC-Takeover-Bulletine.pdf>

Hong Kong Securities and Futures Commission Sets Out the Way Forward for Green and Sustainable Finance

On August 2, 2022, the Hong Kong Securities and Futures Commission (SFC) published its Agenda for Green and Sustainable Finance to set out further steps to support Hong Kong's role as a regional green finance center, having achieved the goals set out in its Strategic Framework for Green Finance issued in September 2018.

Hong Kong as being a regional and international green finance center has a critical role in various cross-border issues such as Climate change and sustainability. The SFC by improving the quality of information available, ensuring that domestic policies and international standards are aligned, increases transparency and build trust for investors

The SFC's work will focus on three main areas below, continue supporting the development of green and sustainable finance in Hong Kong and the transition to a greener economy.

- i. Enhancing corporate sustainability disclosures;
- ii. Monitoring the implementation of and enhancing existing measures relating to Environmental, Social and Governance (ESG) funds and expectations for fund managers; and
- iii. Identifying an appropriate regulatory framework for any proposed carbon markets.

The SFC has been at the forefront of local and global efforts to develop an effective regulatory framework for green and sustainable finance for Hong Kong and the globe. The key initiative includes: (i) Initiating the establishment of the Green and Sustainable Finance Cross-Agency Steering Group in May 2020 to accelerate the growth of green and sustainable finance in Hong Kong and support the Government's climate strategies, and (ii) Actively participating in international initiatives relating to sustainable finance, including the International Organization of Securities Commissions, the Network of Central Banks and Supervisors for Greening the Financial System and the Climate Disclosure Advisory Group of the United Nations Sustainable Stock Exchanges Initiative. The SFC is also a supporter of the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations and a member of the International Platform on Sustainable Finance.

香港证券及期货事务监察委员会发表有关绿色和可持续金融的未来路向

2022年8月2日，香港证券及期货事务监察委员会（证监会）发表了《绿色和可持续金融议程》，当中列明证监会继达成载于2018年9月发表的之《绿色金融策略框架》的目标后，为巩固香港作为区域绿色金融中心的地位而采取的进一步行动。

香港作为区域及国际的绿色金融中心，在气候变化和可持续性全球性议题方面担当重要的角色。证监会透过改善信息的质素，确保香港的监管政策与国际标准一致，增加透明度及建立投资者的信心。

证监会的工作将会聚焦于以下三大领先范畴，支持香港的绿色和可持续金融发展以及推动经济体系的进一步绿化。

- i. 提升企业可持续性披露；
- ii. 监察有关环境、社会及管治（Environmental, Social and Governance, 简称 ESG）基金和对基金经理的要求方面的现行措施的落实情况，并优化相关措施；及
- iii. 就有关的碳市场，探讨合适的监管框架。

证监会一直致力为香港及全球制定有效的绿色和可持续金融监管框架。当中主要措施包括：(i) 在2020年5月发起成立绿色和可持续金融跨机构督导小组，以加快香港绿色和可持续金融的发展，并支持政府的气候策略。(ii) 积极参与国际间的可持续金融相关倡议，包括国际证券事务监察委员会组织、央行与监管机构绿色金融网络及联合国可持续交易所倡议辖下的气候披露咨询小组。证监会除了是气候相关财务披露工作小组 (TCFD) 建议的支持者，亦是国际可持续金融平台的成员。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR59>

Hong Kong Securities and Futures Commission and the China Securities Regulatory Commission Enhance Stock Connect Trading Calendar

On August 12, 2022, the Hong Kong Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) issued a joint announcement for their in-principle approval for changes to the Stock Connect trading calendar. The changes would apply to both northbound and southbound trading.

Because different public holidays are observed in the Mainland and Hong Kong, investors currently cannot trade through Stock Connect on certain days. For northbound trading, Stock Connect is now closed on a Mainland market trading day when the corresponding settlement day (i.e., T+1) is a public holiday in Hong Kong because banking services are not available to support payment of transactions. Similarly, southbound Stock Connect trading is currently not open on a trading day in Hong Kong when the settlement day falls on a Mainland public holiday.

The proposed changes enable Stock Connect trading on any day when both the Mainland and Hong Kong markets are open, even when the corresponding settlement day falls on a public holiday. These enhancements will allow investors to better manage their portfolios through Stock Connect and support the further expansion of the program.

The implementation of the enhancements to the trading calendar will take six months to prepare and is subject to regulatory approvals and market readiness. The launch date will be announced in due course.

香港证券及期货事务监察委员会和中国证券监督管理委员会拟优化沪深港通交易日历

2022年8月12日，香港证券及期货事务监察委员会（证监会）和中国证券监督管理委员会（中国证监会）发表联合公告，宣布同意对沪深港通交易日历进行优化。有关优化安排将适用于沪股通、深股通及港股通。

由于内地和香港公众假期的差异，投资者现时在某些日子不能经沪深港通进行交易。如果内地股票市场的某一交易日的相应结算日（即 T+1）为香港的公众假期，由于香港的银行在该结算日并不支持付款服务，现时该交易日并未能提供沪深股通。同样地，当某香港交易日对应的结算日为内地公众假期，现时该交易日并未能提供港股通。

而建议的优化安排，令沪深港通交易在香港和内地股票市场均为交易日的日子（即使在相应的结算日为公众假期的情况下）都可以进行。优化安排可令投资者通过沪深港通更好地管理其投资，并将支持互联互通机制的进一步发展。

这项优化安排需要六个月的准备时间，待取得监管批准、市场准备就绪后实施。实施日期将会适时公布。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR61>

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

本资讯内容仅供参考及不应被依据作为法律意见。

© 2022 JCHM Limited. All rights reserved.