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Financial Services Regulatory Update
金融服务监管资讯

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Duties of an Investment Adviser of a Fund – Implications of the Decision of the Hong Kong Securities and Futures Appeals Tribunal in the Cardinalasia Consulting Limited Case

On January 30, 2023, the Hong Kong Securities and Futures Appeals Tribunal (SFAT) affirms the disciplinary action of the Securities and Futures Commission (SFC) to reprimand and fine Cardinalasia Consulting Limited (CCL) HK$1.5 million over its failures in acting as a principal investment adviser to five private funds between August 2014 and October 2017, and imposes a heavier suspension on its responsible officer (RO), Lee Shiu Lun (Lee).

During its investigation, the SFC found that seven loan agreements totaling HK$203.9 million were entered into amongst the five CCL-advised private funds for the sole purpose of addressing the borrowing funds' liquidity needs (such as meeting margin calls), with little regard to the lending funds' interests. Specifically:

- the loans were not backed by any collateral or guarantee, and offered limited protection to the lending funds in the event of default or late repayment;
- one of the loans was granted free of interest, and the interest rates for the other loans were far below the rates offered by other execution brokers for margin loans; and
- it is apparent that one of the lending funds did not have sufficient liquidity when granting the loans. In one case, the lending fund had to borrow from another fund due to liquidity issues just one day after it had granted two loans to a third fund.

The SFC is of the view that CCL and its RO had failed to ensure that five of the seven loans that they advised and/or recommended the funds to enter into were fair and in their best interests. As for the other two loans which CCL and its RO allegedly had no knowledge of until after they had been entered into, CCL and its RO did not raise any concerns with the funds' investment advisers after becoming aware of them even though they were not in the best interest of the lending funds.

The SFC's investigation also found that the investment advisers of the five CCL-advised funds effected a total of 14 pairs of cross-trades amongst the funds by way of bought and sold notes at a significant discount (ranging from 14% to 31%) to the stocks' previous close on three trading days in November 2015. In this connection, CCL and its RO had failed to properly assess the basis for each of the trades and ensure that they were executed on the best available terms for, and in the best interests of, both the buying and selling funds before signing the relevant settlement instruction forms for the trades.

The duties of investment advisers and ROs

CCL and Lee are licensed under the Securities and Futures Ordinance (SFO) to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities. The investment adviser and ROs, being licensed persons, would be required to comply with all applicable laws, regulations, guidelines, and codes issued by the SFC such as the Fund Manager Code of Conduct, the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) and Guideline on Anti-Money Laundering and Counter-Financing of Terrorism.

Honesty and fairness (General Principle (GP) 1 of the Code of Conduct) and Responsibility of Senior Management (GP9 of the Code of Conduct)

Among other requirements which are of equal importance, a senior management (including ROs), should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm (GP9 of the Code of conduct). Licensed persons must also act honestly, fairly and in the best interests of their clients and in accordance with the integrity of the market pursuant to GP1 of the Code of Conduct.

As a licensed person under the SFO, the RO should further note the heightened and broader responsibilities that he is subject to. With the superior education and/or experience required for a licensed person, the RO

should ensure that he comprehended and understood the true nature and extent of the transactional agreements to be entered or entered into along with the underlying obligations, such that the client's positions in the market or asset held are adequately safeguarded, and that he would take reasonable and professional steps to discharge his fiduciary duties owed to clients and relevant investors.

Conflicts of interest (GP6 of the Code of Conduct)

Pursuant to the Code of Conduct, licensed persons must also seek to avoid conflicts of interest of direct relevance in the transaction, or ensure fair treatment to their clients if such conflicts cannot be avoided. The Fund Manager Code of Conduct also provides that a fund manager should maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor any actual or potential conflicts of interest, including conducting all transactions in good faith at arm's length and in the best interests of the fund on normal commercial terms. Where an actual or potential conflict arises, the conflict should be managed and minimized by appropriate safeguards and measures to ensure fair treatment of fund investors, and any material interest or conflict should properly be disclosed to fund investors.

By extracting fund from the financially more viable funds to assist the financially weakest funds, the *Cardinalasia* case has given an example of failure of an investment adviser in avoiding the conflict or seeking fair and adequate protection for all clients, and it is, again, a blatant disregard for the duties to act in best interest of the clients of the investment advisers.

Instead of benefitting the weakest funds at the expense of the strongest, the SFAT has illustrated clearly that an alternative way meeting the liquidity problems of the relevant funds should be first considered, or otherwise the licensed persons should ensure that the terms and conditions of all loan agreements contained fair and adequate protection for the relevant funds obliged to make the loans. For instance, granting loans free of interest or at unreasonably low interest than the prevailing market rate should not be acceptable.

Proper record keeping

Under the Fund Manager Code of Conduct, investment advisers also should be aware of requirement of proper record keeping, which include maintaining an audit trail of all transactions effected, keeping all transaction records such as accounting/securities ledgers, contract notes from third-party brokers, etc. They should also ensure that their internal controls and written compliance procedures are updated and satisfactory, addressing all applicable legal and regulatory requirements.

Remarks

The SFAT and the SFC reiterated the point that investment advisers and ROs should have high standards of conduct and ensure the best interests of investors in the CCL's misconduct case. In addition, the role of investment advisers is a role of real substance. They are appointed to act in an independent way, even if acting under delegated powers, they should employ their knowledge and understanding of financial matters in order to ensure the best interests of investors under the context of compliance with the rules on conflicts of interest.

This case as a timely reminder to remind fund managers and advisers of the high standards of conduct the SFC expects of them. Substandard practices of fund managers would not only expose fund investors to potentially significant financial losses but also threaten the integrity of the market and Hong Kong's role as an international asset management center. The SFC appears determined to crack down on asset management misconduct and would impose harsher penalties going forward to deter such misconduct to protect the interests of the investing public, maintain the integrity of the financial market and further reinforce Hong Kong's status as a leading wealth management center.

基金投资顾问的职责——香港证券及期货上诉审裁处在珈迪璐亚洲私人基金案中的裁决的影响

于 2023 年 1 月 30 日，香港证券及期货事务上诉审裁处（上诉审裁处）就证券及期货事务监察委员会（证监会）对珈迪璐亚洲有限公司（珈迪璐）于 2014 年 8 月至 2017 年 10 月期间担任五只私人基金的主要投资顾问时犯有缺失，遂对其作出谴责及罚款 150 万港元采取的纪律行动予以维持， 并对其负责人员李兆麟（李）施加更重的暂时吊销牌照罚则。

证监会在调查期间发现，该五只私人基金之间订立了七份总额为 2.039 亿港元的贷款协议，而目的纯粹是应付借方基金的流动资金需求（例如按追缴通知缴付保证金），并没有顾及贷方基金的利益。具体而言：

- 有关贷款并没有以任何抵押品或担保作为保证，一旦发生违约事件或逾期还款，对贷方基金的保障有限；
- 其中一笔贷款是免息的，而其他贷款的利率则远低于其他执行经纪所作的保证金贷款的利率；及
- 其中一个贷方基金在授出贷款时显然并无足够的流动资金。有一次，该贷方基金在向某基金授出两笔贷款后仅一日，便因流动资金问题而须向另一基金借款。

证监会认为有关基金订立的七笔贷款中，虽然珈迪璐及其负责人员曾就五笔提供意见及／或建议，但他们却没有确保有关贷款属公平且符合有关基金的最佳利益。至于其余两笔贷款，珈迪璐及其负责人员声称他们在订立前并不知情，即使有关贷款并不符合贷方基金的最佳利益，但他们在知悉有关贷款后仍没有向有关基金的投资顾问提出异议。

调查亦发现，在 2015 年 11 月的三个交易日，该五只基金的投资顾问透过买卖单据，以明显低于有关股票前一个收市价的价格（折让率介乎 14%至 31%），互相进行了共 14 组交叉盘买卖。就此，珈迪璐及其负责人员不但没有妥善地评估每项买卖的理据，而且在签署买卖的相关交收指示表格前，没有确保交易是按照买方及卖方基金可取得的最佳条件来执行和符合双方的最佳利益。

投资顾问及负责人员的职责

珈迪璐及李根据《证券及期货条例》获发牌进行第 4 类（就证券提供意见）及第 9 类（提供资产管理）受规管活动。投资顾问及负责人员（作为持牌人）须遵守证监会颁布的所有适用法律、法规、指引及守则，例如基金经理行为准则、证监会持牌人或注册人操守准则（操守准则）；打击洗钱及恐怖分子资金筹集指引等。投资顾问还应了解保留交易、会计和其他记录的要求，及确保其有关文件和记录的内部流程和政策与最新的法律和监管要求保持同步。

诚实及公平（操守准则一般原则（GP）1）及高级管理层的责任（操守准则 GP9）

在其他同等重要的要求中，高级管理层（包括负责人员）应承担确保维持适当的操守标准及遵守恰当的程序的首要责任（操守准则 GP9）。持牌人还须跟根据操守准则 GP1 以诚实、公平和维护客户最佳利益的态度行事及确保市场廉洁稳健。

作为《证券及期货条例》项下的持牌人，负责人员应进一步注意他所承担的更高和更广泛的责任。凭借持牌人所需的更优越的教育及/或经验，负责人员应确保他理解和明白将要签订或已签订的交易协议的真实性质和范围以及基本义务，以使客户在市场位置或持有的资产得到充分保障，且其应采取合理和专业的步骤履行对客户和相关投资者的受信责任。

利益冲突（操守准则 GP6）

根据操守准则，持牌人须尽量避免利益冲突，而当无法避免时，应确保其客户得到公平的对待。基金经理行为准则还规定，基金经理应维持并施行有效的组织及行政安排，以便采取专为识别、防止、管理及监察任何实际或潜在利益冲突而设计的一切合理步骤，包括根据一般商业条款并按照公平原则，在符合基金最佳利益及在诚信的情况下进行所有交易。一旦出现实际或潜在利益冲突，便应透过适当的保障设施及措施来管理和尽量减少有关冲突，以确保基金投资者获得公平对待，并且应向基金投资者妥善披露任何重大利益或冲突。

通过从财务上更可行的基金中提取资金来帮助财务上最薄弱的基金，珈迪璐案例展示了投资顾问在避免冲突或为所有客户寻求公平和充分保护方面失败的例子，这亦是一个公然无视要维护投资顾问客户的最佳利益行事的职责。

以牺牲最强的基金为代价让最弱基金受益，上诉审裁处清楚阐述了应首先考虑解决相关基金流动性问题的替代方法，或持牌人应确保所有贷款协议的条款和条件包含对有义务提供贷款的相关基金的公平和充分保护。例如，无息贷款或以低于现行市场利率的不合理低利率提供贷款应是不能接受的。

妥善保存记录

根据基金经理行为准则，投资顾问还应了解适当记录保存的要求，其中包括对保留所有已发生的交易的审核线索、保存所有交易记录，例如会计/证券分类账、第三者经济发出的成交单据等。他们还应确保其内部监控和书面合规程序得到更新并且完善，满足所有适用的法律和法规要求。

评论

上诉审裁处和证监会借着珈迪璐行为失当一案重申投资顾问及负责人员应具备高操守标准及确保投资者的最佳利益。此外，投资顾问作为一个具有实质意义的角色，其获委任以独立的方式行事，即使是根据获转授权力而行事，其应都利用其对金融事宜的知识及理解，以在遵守利益冲突规则的情况下确保投资者的最佳利益。

此个案提醒基金经理和顾问证监会期望他们遵守高标准的操守。基金经理不合标准的做法不仅会使基金投资者面临潜在的重大财务损失，还会威胁到市场的廉洁稳健和香港作为国际资产管理中心的地位。证监会看似决心严厉打击资产管理中介人的失当行为，并会实施更严厉的罚则以遏制此类失当行为，以保障投资大众的利益、维护金融市场的廉洁和进一步巩固香港作为顶级财富管理中心的地位。

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Hong Kong Companies Ordinance Amended to Allow Holding of General Meetings by Using Virtual Meeting Technology

On January 27, 2023, the Companies Registry (CR) of Hong Kong issued a Gazette Notice and an external circular which announce that the Companies (Amendment) Ordinance 2023 (the Amendment Ordinance) will come into operation on April 28, 2023.

The Amendment Ordinance seeks to modernize the Companies Ordinance (Cap. 622) (CO) and the Companies (Model Articles) Notice (Cap. 622H) (Model Articles) in respect of the manner in holding general meetings. The amended CO will allow companies incorporated in Hong Kong to hold general meetings in a fully virtual mode or a hybrid virtual and physical mode. In order to facilitate implementation Amendment Ordinance, the CR has issued the "Guidance Note – Good Practice on Holding Virtual or Hybrid General Meetings" which provided general information and good practices on the holding of fully virtual or hybrid general meetings by locally incorporated companies.

Summary of the changes

Current section 584 of the CO provided that a company may hold a general meeting at 2 or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting, but no express references were made regarding a fully virtual meeting or a meeting in mixed virtual or physical mode.

The major changes introduced under the Amendment Ordinance include:

(a) introducing a new definition of "virtual meeting technology", which means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting (new section 547(1) of the CO);

(b) providing that notice of a general meeting to members or on a website must specify, among other matters, the physical venue of the meeting or the virtual meeting technology to be used for holding the meeting, or both (new sections 573(2) and 576(1) of the CO);

(c) providing that the notice may specify the virtual meeting technology to be used for holding the meeting unless the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology or require a general meeting to be held only at a physical venue (new sections 576(1) and (2A) of the CO);

(d) setting out the mode of holding a general meeting, i.e. either (i) at a physical venue; (ii) by using virtual meeting technology; or (c) both at a physical venue and by using virtual meeting technology (new section 583A of the CO);

(e) clarifying that when a general meeting of a company is held at 2 or more physical venues, the company must use any technology that allows the members of the company who are not together at the same physical venue to listen, speak and vote at the meeting regardless of whether virtual meeting technology is also used for holding the meeting (new section 584(1) of the CO); and

(f) providing that a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present (new section 585(4A) of the CO).

Whether an amendment to the constitutional documents is required

The Amendment Ordinance aims to provide sufficient flexibility for companies to conduct corporate affairs smoothly and effectively having regard to their own circumstances and needs.

If the existing articles of association ("articles") of a company refer to a place or places for conducting a general meeting, the company will still benefit from the flexibility and may be able to hold a fully virtual or hybrid general meeting without conflicting with its articles. However, a company's articles may need to be amended where the articles expressly preclude the holding of a general meeting by using virtual meeting technology, or require a general meeting to be held only at a physical venue.

Companies should choose the most appropriate mode of meeting and will need to consider, in addition to convening a valid meeting in accordance with the law and their articles, whether a physical general meeting

continues to be the most appropriate mode or that holding a fully virtual or hybrid general meeting may promote better engagement with and maximize participation by members.

There is no "one-size fits all" approach to the holding of physical, virtual or hybrid general meetings. Ultimately, in deciding the mode of holding general meetings, companies should aim to promote engagement with members and encourage their participation at meetings and, having considered the best interest of their members, opt for the most appropriate mode of meeting. The mode of meeting should not be a means of managing attendance or limiting the ability of members to participate in meetings and raise questions.

香港公司条例修订后允许使用虚拟会议科技召开股东大会

于 2023 年 1 月 27 日，香港公司注册处发布宪法公告及对外通告，其中公布《2023 年公司(修订)条例》（《修订条例》）将于 2023 年 4 月 28 日实施。

《修订条例》旨在使《公司条例》（第 622 章）（《公司条例》）和《公司（章程细则范本）公告》（第 622H 章）（《章程细则范本公告》）在举行成员大会的方式上更切合时宜。经修订的《公司条例》将容许在香港成立的公司以全虚拟方式或以虚拟和实体的混合方式举行成员大会。为配合《修订条例》的实施，公司注册处已发出《公司举行虚拟或混合式成员大会的良好作业模式指引》，其旨在就本地注册成立的公司举行全虚拟或混合式成员大会，提供一般信息及良好作业模式。

变更摘要

根据现行的《公司条例》第 584 条，公司可使用令该公司身处不同地方的成员能够在成员大会上聆听、发言及表决的任何科技，在 2 个或多于 2 个地方举行 成员大会，惟《公司条例》没有对公司以全虚拟方式，或以虚拟和实体混合模式举行成员大会作出提述。

《修订条例》下引入的主要变更包括:

(a) 加入"虚拟会议科技"的定义，即涵义如下：凡某项科技容许任何人在没有在场出席会议的情况下，仍可在该会议上聆听、发言及表决，该项科技即属虚拟会议科技（新《公司条例》第 547(1)条）；

(b) 订明向成员发出的或在网站上公布的成员大会通知，须指明（ 不限于）举行该大会的实体场地或用以举行该大会的虚拟会议科技，或上述两者（新《公司条例》第 573(2)及第 576(1)条）；

(c) 订明除非该公司的章程细则明文阻止使用虚拟会议科技举行成员大会，或规定成员大会仅可在实体场地举行，否则成员大会的通知可指明用以举行该成员大会的虚拟会议科技（新《公司条例》第 576(1)及(2A)条）；

(d) 列出举行成员大会的方式，即(a) 在实体场地举行成员大会； (b) 使用虚拟会议科技举行成员大会；或 (c) 同时在实体场地及使用虚拟会议科技，举行成员大会（新《公司条例》第 583A 条）；

(e) 厘清当公司的成员大会是在 2 个或多于 2 个实体场地举行时，不论该成员大会是否亦使用虚拟会议科技举行，该公司须使用任何 科技，以容许该公司身处不同实体场地的成员，可在该成员大会 上聆听、发言及表决（新《公司条例》第 584(1)条）； 及

(f) 订明使用成员大会的通知所指明的虚拟会议科技出席该成员大会的人，须视为在席（新《公司条例》第 585(4A)条）。

是否需要修改章程文件

《修订条例》旨在给予公司足够弹性，因应本身的情况和需要，畅顺而有效地处理公司事务。

即使某公司现时的章程细则提述成员大会的一个或多个举行地点，只要公司的章程细则没有明文阻止使用虚拟会议科技举行成员大会，或规定成员大会仅可在实体场地举行，一般来说该公司将能够举行完全虚拟或混合式成员大会而无须修改其章程细则。

公司应选择最适当的成员大会举行方式，除须根据法例及公司本身的章程细则的规定召开有效的会议之外，亦须考虑实体会议是否仍是最适当的方式，抑或是举行全虚拟或混合式成员大会，更能促进与成员的沟通和尽量提高成员的参与程度。

不论是以实体、虚拟或混合方式举行成员大会，均没有一个可完全符合所有公司需要的方式。归根究底，公司在决定举行成员大会的方式时，应旨在促进与成员的沟通、鼓励他们参与成员大会，并且在已考虑成员的最大利益的情况下，选择以最合适的方式举行成员大会。公司不应利用举行成员大会的方式作为手段，来管理出席情况或限制成员参与成员大会和提问。

Source 来源:
https://www.cr.gov.hk/en/publications/docs/ec1-2023-e.pdf
https://www.cr.gov.hk/en/companies_ordinance/docs/Guide_GoodPracticeonHoldingVirtualorHybridGM-e.pdf

Hong Kong Securities and Futures Commission Consults on Proposals to Regulate Virtual Asset Trading Platforms

On February 20, 2023, the Securities and Futures Commission (SFC) of Hong Kong launched a consultation on the proposed requirements for operators of virtual asset trading platforms (VATP).

In the new licensing regime to be introduced under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the laws of Hong Kong) which would take effect on June 1, 2023 (the AMLO VASP regime), all centralized VATPs carrying on business in Hong Kong or actively marketing to Hong Kong investors will need to be licensed and regulated by the SFC, irrespective of whether they provide trading services in security tokens or not.

The SFC's proposed regulatory requirements for VATPs are based on the regulatory requirements of the existing regime under the Securities and Futures Ordinance and are comparable to those for licensed securities brokers and automated trading venues. The requirements cover key areas such as safe custody of assets, know-your-client, conflicts of interest, cybersecurity, accounting and auditing, risk management, anti-money laundering/counter-financing of terrorism and prevention of market misconduct. The SFC has also taken the opportunity to propose modifications to some requirements of the existing regime.

As part of the consultation, the SFC is seeking views particularly on whether to allow licensed platform operators to serve retail investors, and if so, the measures to be implemented in addition to the proposed range of robust investor protection measures, which include ensuring suitability in onboarding clients and token admission. In addition to ensuring suitability in onboarding clients and token admission, the other key proposals relate to token due diligence, governance and disclosures.

Key proposed regulatory requirements for licensed VATPs

Upon the commencement of the AMLO VASP regime, licensed VA trading platforms are proposed to be subject to the compliance with the Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines).

The proposed VATP Guidelines are based on the existing regulatory requirements applicable to SFO-licensed platform operators, which cover areas including: safe custody of assets, Know-Your-Client, anti-money laundering and counter-financing of terrorism (AML/CFT), conflicts of interests, admission of virtual assets (VAs) for trading, prevention of market manipulative and abusive activities, accounting and auditing and risk management. The SFC now seeks the public's views on proposed additions or variations to the current regulatory requirements.

Allow retail access to licensed VA trading platform

In light of the recent collapse of many unregulated VA trading platforms which result in substantial loss of investors, and having balanced the importance of offering investor protection for retail investors, the SFC proposes to allow all types of investors, including retail investors, to access trading services provided by licensed VA trading platform operators, provided that the platforms comply with a range of robust investor protection measures.

Such investor protection measures include (i) onboarding requirements; (ii) governance; (iii) token admission criteria; (iv) token due diligence; and (v) disclosure obligations.

(i) Onboarding requirements

The SFC proposes that during the onboarding of investors, a licensed platform operator should ensure that the provision of its services is suitable for that client (excluding institutional professional investors and qualified corporate professional investors) by taking the following steps:

(a) assess a client's risk tolerance level and risk profile, accordingly determine the client's risk profile and assess whether it is suitable for the client to participate in the trading of VAs.

(b) set a limit for each client to ensure that the client's exposure to VAs is reasonable, as determined by the platform operator, with reference to the client's financial situation and personal circumstances. Such a limit should be reviewed regularly to ensure that it remains appropriate.

(ii) Governance

It is proposed that a licensed platform operator should set up a token admission and review committee, which should be responsible for, among others, (a) establishing, implementing and enforcing the criteria for a VA to be admitted for trading, (b) making the final decision as to whether to admit, halt, suspend and withdraw a VA for trading and (c) reviewing regularly the criteria and rules to ensure they remain appropriate, and that the VAs admitted remain to satisfy the token admission criteria.

The token admission and review committee should also at least comprise senior management who are principally responsible for managing the key business

line, compliance, risk management and information technology, and the committee should report to the board of directors monthly at the minimum.

(iii) Token admission criteria

While the SFC has not vetted nor reviewed VAs offering and marketing materials, the SFC aims to adopt a more prudent approach by introducing a set of objective criteria for licensed platform operators to follow when determining whether to make a specific VA available to retail clients.

General token admission criteria

Platform operators should consider the general non-exhaustive factors below when admitting VAs for trading:

(a) the background of the management or development team of a VA;

(b) the regulatory status of a VA in different jurisdiction and whether its regulatory status would also affect the regulatory obligations of the platform operator;

(c) the supply, demand, maturity and liquidity of a VA, including its market capitalisation, average daily trading volume, etc.;

(d) the technical aspects of a VA, including the security infrastructure of its blockchain protocol, the size of the blockchain and network, etc.;

(e) the marketing materials for a VA, which should be accurate and not misleading;

(f) the development of a VA including the outcomes of any projects associated with it as set out in its Whitepaper (if any) and any previous major incidents associated with its history and development;

(g) the market risks of a VA, including concentrations of VA holdings or control by a small number of individuals or entities, price manipulation, and fraud, and the impact of the VA's wider or narrower adoption on market risks;

(h) the legal risks associated with the VA, including any pending or potential civil, regulatory, criminal, or enforcement action relating to its issuance, distribution or use; and

(i) whether the utility offered, the novel use cases facilitated, or technical, structural or cryptoeconomic innovation exhibited by the VA appears to be fraudulent or scandalous.

Apart from the general token admission criteria, a licensed platform operator should also ensure the selected VAs available to retail clients will satisfy the specific token admission criteria as an eligible large-cap VA. An "eligible large-cap VAs" refer to VAs which are included in at least two "acceptable indices" issued by at least two independent index providers.

(iv) Token due diligence

In addition to the general and specific admission criteria, a licensed platform operator should also perform reasonable due diligence in the following areas before admitting any VA for trading. In particular, it should:

(a) ensure that its own internal controls, systems, technology and infrastructure could support and manage any risk specific to that VA.

(b) conduct a smart contract audit for VAs to review whether the smart contract layer is subject to any security flaws or vulnerabilities unless it demonstrates that relying on a smart contract audit conducted by an independent auditor is reasonable.

(c) except for VAs only made available to professional investors, obtain and submit to the SFC written legal advice in the form of a legal opinion or memorandum confirming that the VA does not fall within the definition of "securities" under the SFO.

(v) Disclosure obligations

A licensed platform operator is expected to disclose sufficient product information to enable clients to appraise the position of their investments, as in the following non-exhaustive list:

(a) Price and trading volume of the VA on the platform, for example, in the last 24 hours;

(b) Background information about the management team or developer of the VA;

(c) Issuance date of the VA;

(d) Brief description of the terms and features of the VA;

(e) Link to the VA's official website (if any);

(f) Link to the smart contract audit report of the VA (if any); and

(g) Where the VA has voting rights, how those voting rights will be handled by the licensed platform operator.

Proposed requirements for insurance / compensation arrangement

The SFC also proposes to modify the existing insurance requirements that, among others, a licensed platform operator should:

(a) maintain an SFC-approved compensation arrangement which provides an appropriate level of coverage for risks associated with the custody of client VAs (e.g. hacking incidents);

(b) monitor the daily total value of client VAs under its custody, and notify the SFC and take remedial measures promptly if it becomes aware that such total value exceeds the covered amount under the compensation arrangement and anticipates that such a situation will persist; and

(c) ensure its own funds or funds of a its associated entity within the same group of companies are segregated and held on trust and designated for a specific purpose to satisfy the requirements only.

The SFC invites comments on how in particular the proposed arrangement of setting aside the funds by the licensed platform operators should be conducted to provide the same level of comfort as third-party insurance, as well as suggestions for technical solutions which could effectively mitigate risks associated with the custody of client VAs, particularly in hot storage.

Trading in VA derivatives

Existing SFO regime does not allow licensed platform operators to offer, trade or deal in VA futures contracts or related derivatives. Nevertheless, the SFC notices the increasing interest in the industry in offering VA derivatives, particularly to institutional investor, and therefore invites opinions on (i) the type of business model to be adopted by licensed platform operators, (ii) type of VA derivatives to offer for trading and (iii) type of investors to be targeted for trading in VA derivatives.

Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers)

The VATP Guidelines generally cover requirements governing the conduct of licensed platform operators. The SFC proposes that licensed platform operators should comply with separate guideline governing the requirements for all AML/CFT matters arising from their business activities.

The SFC has drafted a stand-alone chapter (Chapter 12) in the existing Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (AML Guideline for LCs), which will be renamed as the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML Guideline for LCs and SFC-licensed VASPs).

The Guideline provides some key requirements, which include regulations on transfers of VAs, which provides that licensed platform operators must be abided by the record-keeping requirements and conduct due diligence on the transfer counterparty and apply risk-based AML/CFT measures. They should also obtain and record the required information of the originator or recipient in a transfer. The AML Guideline for LCs and SFC-licensed VASPs will also provide related requirements for the identification of suspicious transactions and sanctions screening of all relevant parties involved in a VA transfer.

Transitional arrangements

Operators of VATPs which plan to apply for a licence, including pre-existing platforms (i.e. those operating in Hong Kong with a meaningful and substantial presence prior to June 1, 2023), should begin to review and revise their systems and controls to prepare for the new regime. Those which do not plan to apply for a licence should start preparing for an orderly closure of their business in Hong Kong. The SFC proposes to provide a 12-month transitional period to pre-existing platforms for compliance with the requirements in relation to existing clients or VAs currently made available by SFO-licensed platform operators.

In light of the recent turmoil and the collapse of some leading crypto trading platforms around the world, there is clear consensus among regulators globally for regulation in the VA space to ensure investors are adequately protected and key risks are effectively managed. Adopting the “same business, same risks, same rules” principle, the SFC’s regulatory regime captures all facets of the public’s interface with VAs via mainstream finance to provide investor protection and address prudential risks for financial institutions. The SFC intends to publish lists on its website to inform the public of the different regulatory statuses of VA trading platforms, and will continue working with the Investor and Financial Education Council to enhance investor education for the Hong Kong public.

Interested parties are invited to submit their comments to the SFC on or before March 31, 2023.

香港证券及期货事务监察委员会就有关监管虚拟资产交易平台的建议展开谘询

于 2023 年 2 月 23 日，香港证券及期货事务监察委员会（证监会）就适用于虚拟资产交易平台营运者的建议规定展开谘询。

根据将于 2023 年 6 月 1 日生效的《打击洗钱及恐怖分子资金筹集条例》（香港法例第 615 章）引入的新发牌制度（打击洗钱持牌虚拟交易平台制度），所有在香港经营业务或向香港投资者积极进行推广的中央虚拟资产交易平台，不论它们有否提供证券型代币交易服务，将需获证监会发牌并受其监管。

证监会就虚拟资产交易平台所建议的监管规定乃建基于《证券及期货条例》下现行制度中的监管规定，并与适用于持牌证券经纪商及自动化交易场所的有关规定相若，有关规定涵盖妥善保管资产、认识你的客户、利益冲突、网络保安、会计及审计、风险管理、打击洗钱／恐怖分子资金筹集，以及预防市场失当行为等范畴。证监会亦藉此机会，建议对现行制度中的某些规定作出修改。

在是次谘询中，证监会特别就以下事项征询市场意见：应否准许持牌平台营运者向零售投资者提供服务；如准许的话，除了所建议一系列妥善的投资者保障措施（包括在与客户建立业务关系时确保合适性和代币纳入的有关规定）外，还应实行哪些措施。除了有关在与客户建立业务关系时确保合适性和代币纳入的规定外，其他的主要建议关乎代币的尽职审查、管治和披露。

适用于持牌虚拟资产交易平台营运者的主要建议监管规定

在打击洗钱持牌虚拟交易平台制度开始后，持牌的虚拟资产交易平台建议应遵守虚拟资产交易平台营运者指引（虚拟资产交易平台指引）。

建议的《虚拟资产交易平台指引》乃根据适用于《证券及期货条例》下的持牌平台营运者的现行监管规定，其包括下列范畴：稳妥保管资产、 认识你的客户、打击洗钱／恐怖分子资金筹集、利益冲突、纳入虚拟资产以供买卖、预防市场操纵及违规活动、会计及审计及风险管理。证监会现就建议增补或修改现行规定征询公众意见。

有关容许零售投资者使用持牌虚拟资产交易平台的建议

鉴于近期多家不受监管的虚拟资产交易平台倒闭事件以致投资者蒙受重大损失，并经权衡为零售投资者提供投资者保障的重要性，证监会建议容许各类投资者（包括零售投资者）使用由持牌虚拟资产交易平台营运者提供的交易服务，但前提是有关平台须遵从一系列妥善投资者保障措施。

该等投资者保障措施包括(i) 与客户建立业务关系的规定；(ii) 管治；(iii) 代币的纳入准则；(iv) 代币的尽职审查；及 (v) 披露责任。

(i) 与客户建立业务关系的规定

证监会建议，持牌平台营运者在与投资者建立业务关系时，应采取下列步骤，以确保所提供的服务适合有关客户（不包括机构专业投资者及合资格的法团专业投资者）：

(a) 评估客户的风险承受水平及风险状况，并据此为客户厘定风险状况，以及评 估客户是否适合参与虚拟资产的交易。

(b) 为每名客户设定上限，以在参照客户的财政状况及个人情况的前提下，确保客户就虚拟资产所承担的风险根据平台营运者的判断是合理的。该上限应予定期检视，以确保其仍属适当。

(ii) 管治

证监会建议，持牌平台营运者应设立一个代币纳入及检讨委员会，以负责下列事项（其中包括）： (a) 订立、实施及执行有关将虚拟资产纳入以供买卖的准则、(b)就是否纳入虚拟资产以供客户买卖及中止、暂停和撤销虚拟资产的买卖作出最终决定、(c) 定期检讨准则和规则，确保它们仍然适用，及检讨获纳入以供买卖的虚拟资产，确保它们继续符合代币纳入准则。

代币纳入及检讨委员会至少应由主要负责管理主要业务、合规、风险管理及信息科技的高级管理层成员组成，委员会应至少每月向董事会汇报。

(iii) 代币纳入准则

即使证监会从未审核亦未曾审阅虚拟资产的要约及推广文件，证监会拟采取更审慎的方针，即引入持牌平台营运者在厘定可否向零售客户提供某特定虚拟资产时须遵从的一系列客观准则。

一般的代币纳入准则

平台营运者在纳入虚拟资产以供买卖时应考虑下列非详尽无遗的一般因素：

(a) 虚拟资产的管理层或开发团队的背景；

(b) 虚拟资产在平台营运者各个司法管辖区的监管状况，及其监管状况会否亦影响平台营运者的监管责任；

(c) 虚拟资产的供求、市场成熟程度及流通性，包括其市值，平均每日成交量等；

(d) 虚拟资产的技术层面，包括其区块链规程的安全基础设施，区块链和网络的大小等；

(e) 虚拟资产推广材料的内容应为准确及不具误导性；

(f) 虚拟资产的开发情况，包括其白皮书（如有）所载任何与其有关的项目的结果，及过往与其历史和开发情况有关的任何重大事件；

(g) 虚拟资产的市场风险，包括虚拟资产持仓高度集中或由少数个人或实体所控制、价格操纵和欺诈，及较广泛或较狭窄采纳该虚拟资产对市场风险的影响；

(h) 与虚拟资产相关的法律风险，包括与其发行、分销或使用有关的任何待决或潜在的民事、监管、刑事或执法行动；及

(i) 虚拟资产所提供的效用，所促成的崭新用例，或所展示的技术、结构或加密经济创新是否看来具有欺诈或极为不当的成分。

除一般的代币纳入准则外，持牌平台营运者亦应确保所挑选的向零售客户提供的虚拟资产属于合资格的大型虚拟资产，并符合特定代币纳入准则。“合资格的大型虚拟资产”指获纳入由至少两个独立指数提供者所推出的至少两个“获接纳的指数”中的虚拟资产。

(iv) 代币的尽职调查

在纳入任何虚拟资产以供买卖前，持牌平台营运者除了需要遵守一般及特定的纳入准则之外，亦应针对下列范畴进行合理的尽职审查。具体来说，其应：

(a) 确保其本身的内部监控措施、系统、技术和基础设能够支持及管理有关虚拟资产所涉及的任何特定风险。
(b) 对虚拟资产进行智能合约审计，审视智能合约分层是否存在任何安全缺失或隐忧， 除非其证明其依赖独立核数师进行的智能合约审计是合理的，则作别论。
(c) 就虚拟资产（仅提供予专业投资者的虚拟资产除外）取得并向证监会呈交以法律意见或备忘录的形式出具的法律建议书，并确认有关虚拟资产不属《证券及期货条例》所指的“证券”的定义范围。

(v) 披露责任

持牌平台营运者应披露足够的产品数据（如以下非详尽无遗的清单所列），使客户能够评估其投资的状况：

(a) 虚拟资产在该平台上的价格及成交量，例如过去 24 小时的价格及成交量；
(b) 有关虚拟资产管理团队或开发者的背景资料；
(c) 虚拟资产的发行日期；
(d) 对虚拟资产的条款和特点的扼要描述；
(e) 虚拟资产官方网站的连结（如有）；
(f) 虚拟资产智能合约审计报告的连结（如有）；及
(g) 若虚拟资产设有投票权，持牌平台营运者将如何处理这些投票权。

关于保险／补偿安排的建议规定

证监会亦建议修改现行保险规定，其中包括，持牌平台营运者应：

(a) 维持经证监会核准的补偿安排，其应就与保管客户虚拟资产有关的风险（例如平台遭黑客攻击的事件）提供适当程度的保障；

(b) 监察其所保管的客户虚拟资产的每日总值。如察觉到所保管的客户虚拟资产的总值超过证监会所核准的补偿安排下的保障额并预计该情况会持续，应通知证监会，并尽快采取补救措施；及

(c) 如为遵从有关规定而拨出自身的资金或与其属同一公司集团的有联系实体的资金，确保该等资金分隔，并乃以信托方式持有并指定作有关用途。

证监会就持牌平台营运者如何划拨该等资金以提供与第三者保险相同的保障水平，及能够有效地纾减与保管客户虚拟资产（尤其是以在线储存方式持有虚拟资产）有关的风险的技术方案征求意见。

虚拟资产衍生工具的交易

现行《证券及期货条例》制度不允许持牌平台营运者就虚拟资产期货合约或相关衍生工具进行销售、交易或买卖。然而，证监会注意到，业界对销售虚拟资产衍生工具兴趣渐浓，尤其是希望可向机构投资者销售，因此就虚拟资产衍生工具买卖(i)持牌平台营运者应采纳的业务模式、(ii) 供买卖的虚拟资产衍生工具的类别及(iii)目标投资者类别征求意见。

《打击洗钱及恐怖分子资金筹集指引（适用于持牌法团及获证监会发牌的虚拟资产服务提供商）》

整体来说，《虚拟资产交易平台指引》涵盖所有规管持牌平台营运者操守的规定。证监会建议持牌平台营运者应遵从就规管因持牌平台营运者的业务活动而引致的所有打击洗钱／恐怖分子资金筹集事宜而订明了规定的独立指引。

证监会已就现行的《打击洗钱及恐怖分子资金筹集指引（适用于持牌法团）》（《适用 于持牌法团的打击洗钱指引》）草拟一个独立章节（第 12 章），其将更名为《打击洗钱及恐怖分子资金筹集指引（适用于持牌法团及获证监会发牌的虚拟资产服务提供商）》（《适用于持牌法团及获证监会发牌的虚拟资产服务提供商的打击洗钱指引》）。

指引提供一些关键要求，如关于对虚拟资产转账的规定，其中规定持牌平台运营者必须遵守记录保存要求，并对转让对手方进行尽职调查，并采取基于风险的打击洗钱／恐怖分子资金筹集措施。其还应获取并记录汇款中发起人或收款人的必要信息。《适用于持牌法团及获证监会发牌的虚拟资产服务提供商的打击洗钱指引》亦将对涉及虚拟资产转让的所有相关方的可疑交易识别和制裁筛查提供相关要求。

过渡安排

计划申领牌照的虚拟资产交易平台（包括原有平台（即在 2023 年 6 月 1 日前于香港设有具意义且实质的业务））的营运者应开始检视及修改有关系统及监控措施，为新制度作好准备。至于无意申领牌照的营运者，则应着手预备以有序方式结束其于香港的业务。证监会建议为原有平台提供 12 个月的过渡期，以符合与证监会持牌平台营运者目前提供的现有客户或虚拟资产相关的要求。

鉴于环球虚拟资产市场近期动荡不稳，加上部分主要的加密货币交易平台如 FTX 等相继倒闭，各地监管机构达致了明确共识，认为需要对虚拟资产领域进行监管，以确保充分保障投资者，并有效管理主要风险。证监会依照“相同业务、相同风险、相同规则”的原则，就虚拟资产交易平台监管建议多项妥善的投资者保障措施。证监会拟在其网站上发布数份名单，向公众列出各虚拟资产交易平台的监管状况，并将继续与投资者及理财教育委员会合作，以加强对香港大众的投资者教育工作。

证监会欢迎有意者于 2023 年 3 月 31 日或之前向证监会提交意见。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR5
https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=23CP1

Hong Kong Monetary Authority Takes Disciplinary Action Against Westpac Banking Corporation, Hong Kong Branch for Contraventions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance

On January 31, 2023, the Hong Kong Monetary Authority (HKMA) announced that it had completed an investigation and disciplinary proceedings for Westpac Banking Corporation, Hong Kong Branch (WBCHK) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO). The Monetary Authority (MA) has imposed a pecuniary penalty of HK$4,000,000 against WBCHK for contraventions of the AMLO.

The disciplinary action is taken under section 21 of the AMLO, follows an investigation by the HKMA on WBCHK's systems and controls for compliance with the AMLO. The control lapses identified in the investigation relate to its delay in completing periodic reviews for some of its customers during the period between June 1, 2016 and May 31, 2017. WBCHK also failed to establish and maintain effective procedures for carrying out its duties under the AMLO in relation to periodic reviews for its customers during this period.

The AMLO imposes customer due diligence and record-keeping requirements on specified financial institutions, including Authorized Institutions, and designated non-financial businesses and professions. As regards Authorized Institutions, the MA is the relevant authority under the AMLO.

In deciding the disciplinary action, the MA took into account all relevant circumstances and factors, including the following:

(a) the seriousness of the investigation findings;
(b) the need to send a clear deterrent message to WBCHK and the industry about the importance of effective controls and procedures to address money laundering and terrorist financing risks;
(c) WBCHK has rectified the deficiencies identified; and
(d) WBCHK has no previous disciplinary record in relation to the AMLO and cooperated with the HKMA during the investigation and enforcement proceedings.

Ms. Carmen Chu, Executive Director (Enforcement and AML) of the HKMA, said, “Timely periodic reviews for customers is a vital part of effective framework for banks to help combat money laundering and financial crime. Banks should maintain up-to-date understanding of risks and deploy adequate resources to detect and deter abuse of accounts, and thus contributing to the ecosystem response to evolving threats and upholding the integrity of banking system. Reference can be made to the HKMA's relevant guidance to ensure systems of controls remain effective and risk-based.”

香港金融管理局对 Westpac Banking Corporation 香港分行违反《打击洗钱及恐怖分子资金筹集条例》采取纪律处分行动

于 2023 年 1 月 31 日，香港金融管理局（香港金管局）宣布已根据《打击洗钱及恐怖分子资金筹集条例》（香港法例第 615 章）（《打击洗钱条例》）完成对 Westpac Banking Corporation 香港分行（WBCHK）的调查及纪律处分程序。金管局对 WBCHK 违反《打击洗钱条例》处以 4,000,000 港元罚款。

是次根据《打击洗钱条例》第 21 条而作出的纪律处分行动是根据金管局对 WBCHK 就《打击洗钱条例》所设立的制度及管控措施的合规情况进行的调查结果而作出。调查发现的管控问题涉及 WBCHK 在 2016 年 6 月 1 日至 2017 年 5 月 31 日期间没有及时完成就某些客户进行的定期复核。在该期间 WBCHK 亦没有设立及维持有效程序以履行《打击洗钱条例》下为客户进行定期复核的责任。

《打击洗钱条例》对指明金融机构（包括认可机构） 及指定非金融企业及行业人士施加客户尽职审查及备存纪录的规定。就认可机构而言，金管局是《打击洗钱条例》下的有关当局。

在决定上述的纪律处分行动时，金管局已考虑所有有关情况及因素，包括以下各项：

(a) 调查结果的严重性；
(b) 需要向 WBCHK 及业界传递明确的阻吓讯息，以表明有效管控措施及程序在应对洗钱及恐怖分子资金筹集风险方面的重要性；
(c) WBCHK 已经采取补救措施；及
(d) WBCHK 过往并无与《打击洗钱条例》相关的纪律处分纪录，并在金管局调查及执法程序中表现合作。

香港金管局助理总裁（法规及打击清洗黑钱）朱立翘女士表示：「及时完成对客户进行定期复核是银行建立有效打击洗钱及金融罪行风险管理框架的重要组成部分。银行须持续了解最新的风险情况，配置足够资源以侦测和防止帐户被滥用，从而协助打击洗钱及恐怖分子资金筹集生态系统的各持份者，共同应对不断出现的风险及维持香港银行体系的稳健。银行可参考金管局所发出的相关指引，以确保其管控系统维持有效并以风险为本的原则操作。」

Source 来源:
https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/01/20230131-11/

Hong Kong Monetary Authority Issues the Consultation Conclusion to the Discussion Paper on Crypto-Assets and Stablecoins

On January 31, 2023, the Hong Kong Monetary Authority (HKMA) issued the consultation conclusion to the discussion paper on crypto-assets and stablecoins (the Consultation Conclusion) followed its consultation on the relevant proposals in the its discussion paper published on January 12, 2022. The Consultation Conclusion summarized the feedback received and the HKMA's response. In the Consultation Conclusion, the HKMA proposes to bring certain activities relating to stablecoins into the regulatory perimeter, and indicates the expected regulatory scope and key regulatory requirements.

Key activities to be regulated

Key activities relating to stablecoins will be subject to a mandatory licensing regime. The HKMA will scope in the stablecoin structures for regulation under a risk-based approach. The HKMA will prioritize in regulating stablecoins that purport to reference to one or more fiat currencies, given the higher and more imminent monetary and financial stability risks that they may pose.

In particular, activities relating to an in-scope stablecoin include:

(a) Governance: establishment and maintenance of the rules governing an in-scope stablecoin arrangement;

(b) Issuance: issuing, creation or destroying of an in-scope stablecoin;

(c) Stabilization: stabilization and reserve management arrangements of an in-scope stablecoin (whether or not such arrangements are provided by the issuer); and

(d) Wallets: provision of services that allow the storage of the users' cryptographic keys which enable access to the users' holdings of an in-scope stablecoin and the management of such stablecoins.

Entities that will require a license from the HKMA

The HKMA concludes that the following entities will require a license:

Entities that:

(a) conduct a regulated activity in Hong Kong;

(b) actively market a regulated activity to the public of Hong Kong;

(c) conduct a regulated activity which concerns a stablecoin that purports to reference to the value of the Hong Kong dollar; or

(d) the authority is of the opinion that should be so regulated, having regard to matters of significant public interest.

Key regulatory principles

Comprehensive regulatory framework: Appropriate regulatory requirements will be developed on areas such as but not limited to ownership, governance and management, financial resources requirements, risk management, anti-money laundering and counter-terrorist financing (AML/CFT), user protection, and regular audits and disclosure requirements.

Full backing and redemption at par: The value of the reserve assets of a stablecoin arrangement should meet the value of the outstanding stablecoins at all times. The reserve assets should be of high quality and high liquidity. Stablecoins that derive their value based on arbitrage or algorithm will not be accepted. Stablecoin holders should be able to redeem the stablecoins into the referenced fiat currency at par within a reasonable period.

Principal business restriction: The regulated entities should not conduct activities that deviate from its principal business as permitted under their relevant licenses. For example, wallet operators should not engage in lending activities. Authorized Institutions (AIs) are exempted from the principal business restriction under the proposed regulatory regime as AIs are already subject to similar or more stringent regulatory requirements with respect to their deposit-taking business.

Target implementation date

The proposed regulatory regime is expected to be implemented by 2023/24 while the HKMA is weighing the pros and cons between introducing a new legislation and amending existing laws for implementation of the regulatory regime.

The HKMA received a total of 58 submissions in response to the discussion paper on crypto-assets and stablecoins from the industry, public bodies, business and professional organizations, and individuals, etc. On the whole, the respondents were supportive of regulating stablecoins with a risk-based and agile approach. The respondents also broadly supported the need to take into account the latest market developments and draw reference from the discussion of international regulatory bodies when developing the relevant regulatory regime.

An appropriate regulatory environment will help address financial stability risks possibly posed by stablecoins, and promote the orderly and sustainable development of the industry.

香港金融管理局发布加密资产和稳定币讨论文件的谘询总结

于 2023 年 1 月 31 日，香港金融管理局（香港金管局）在其于 2022 年 1 月 12 日发布的讨论文件中对相关提案进行了咨询后发布加密资产和稳定币讨论文件的谘询总结（总结）。总结归纳了收集到的意见和金管局的回应。总结中，金管局建议将与稳定币相关的若干活动纳入监管，并在总结文件中阐述预期的监管范围和主要的监管要求。

受监管的主要活动

与稳定币相关的关键活动将受到强制发牌制度的约束。香港金管局将在風險基礎方法下对稳定币结构进行监管。鉴于稳定币可能带来更高、更紧迫的货币和金融稳定风险，金管局将优先监管声称连结一种或多种法定货币的稳定币。

特别是，与范围内的稳定币相关的活动包括:
(a) 治理：建立和维护管理范围内稳定币安排的规则;
(b) 发行：发行、创建或销毁范围内的稳定币;
(c) 稳定：范围内稳定币的稳定和储备管理安排（无论此类安排是否由发行人提供）；及
(d) 钱包：提供允许存储用户加密密钥的服务，从而能够访问用户持有的范围内的稳定币并管理此类稳定币。

需要香港金管局颁发牌照的实体

香港金管局总结，以下实体将需要获取牌照:

符合以下描述的实体:

(a) 在香港进行受规管活动;
(b) 积极向香港公众推销受规管活动;
(c) 进行涉及声称参考港元价值的稳定币的受规管活动；或
(d) 当局考虑到具有重大公共利益的事项，认为应监管的实体。

主要监管原则

全面的监管框架：将再包括但不限于所有权、治理和管理、金融资源要求、风险管理、反洗钱和反恐融资（AML/CFT）、用户保护和定期审计和披露要求等领域发展适当监管要求。

全额支持和平价赎回：稳定币安排的储备资产价值应始终与流通在外的稳定币价值相匹配。储备资产应具有高质量和高流动性。基于套利或算法获得价值的稳定币将

不被接受。稳定币持有者应该能够在合理期限内将稳定币按面值兑换成参考法定货币。

主营业务限制：受监管实体不得从事与其相关牌照允许的主营业务不同的活动。例如，钱包运营商不应从事借贷活动。由于认可机构在其接受存款业务方面已经受到类似或更严格的监管规定，因此认可机构在拟议的监管制度下获豁免主要业务限制。

目标实施日期

拟议的监管制度预计将于 2023/24 年实施，而金管局正在权衡引入新立法和修订现行法律以实施监管制度的利弊。

香港金管局合共收到 58 份就加密资产和稳定币讨论文件的回应，分别来自业界、公营机构、商业和专业团体，以及个人等。总括而言，回应者支持以风险为本和灵活的方式监管稳定币。回应者亦普遍支持在建构有关的监管制度时，应考虑市场的最新发展和参考国际监管组织的讨论。

适当的监管环境将有助应对稳定币可能带来的金融稳定风险，并促进业界有序和持续发展。

Source 来源:
https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/01/20230131-9/

Hong Kong Exchanges and Clearing Limited Issues the Review of Issuers' Annual Reports in 2022

On January 20, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) issued the Review of Issuers' Annual Reports in 2022. The HKEX adopts a thematic approach when conducting the review, selecting specific areas for review based on the results of previous years as well as emerging trends or matters considered to be of higher risks.

Findings and Recommendations

The HKEX had the following material findings and recommendation from their thematic review:

Financial reporting and related controls

Asset valuation remained a major issue in financial reporting, as some issuers were overly optimistic and failed to apply proper assumptions in valuing their assets, or failed to substantiate the fairness of the reported values of their assets with objective evidence and documentation. As a result, there were material adjustments represented changes to initial impairment assessments and valuations of assets. These issues led to delays in the publication of financial results and/or modified opinions expressed by auditors and in more extreme cases, suspension in the trading of securities of the issuers.

Directors are primarily responsible for preparing financial statements in accordance with relevant accounting standards. They should establish and maintain proper risk management and internal controls, and deploy adequate resources to maintain them. The audit committee, as the body in charge to monitor the integrity of financial statements and compliance with accounting standards, should critically assess management's accounting estimates and challenge the reasonableness of the assumptions adopted by the management.

Under the Corporate Governance Code (Appendix 14 to the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (Listing Rules)), issuers should also establish whistleblowing polices for employees and those who deal with them to raise concerns with the audit committees about possible improprieties in any matters related to the issuers.

Material asset impairments (other than loans)

As illustrated above, the HKEX had concerns over issuers' assessment of asset impairments. Some issuers have discussed the circumstances that led to the material impairments in the annual reports and yet disclosed generic reasons for the impairments only. For example, some issuers cited COVID-19 or changes in government policies as reasons for impairment, without elaboration on how those events impacted the values of their assets, and the HKEX required those issuers to make further explanation in supplemental announcements.

Material lending transactions

This year, the HKEX continued to identify cases of material impairments on loan receivables that raised concerns about potential breaches of directors' duties. Further, a number of issuers reviewed did not fully follow last year's recommendation to disclose details of their material loan receivables and for money lenders, their business models, credit assessments and approval policies, and details of their loan portfolios and loan impairment assessments.

In conducting lending transactions, directors should critically assess the commercial rationale for making the loans, whether their terms are fair and reasonable, and whether the use of funds is in the interests of the issuer and its shareholders. For issuers that operate money lending businesses, the directors should also maintain effective risk management and internal control systems to assess and manage credit risk exposure and to monitor the recoverability of loans and adequacy of the

collaterals. Issuers should follow the HKEX's recommendation on the disclosure, in addition to those recommended disclosure for issuers operating money lending businesses, generally, details of loan receivables including major terms, reasons for granting the loans and how they meet the issuers' business strategies and discussion of any material impairments or write-offs of the loan receivables and the basis of impairment assessments should be disclosed.

Newly listed issuers' post-listing activities and compliance with the Rules

The HKEX focused on five areas for issuers listed in 2020 and 2021 respectively, including post-listing developments, changes in the use of IPO proceeds and/or business plans, profit alerts and material changes in financial results, non-compliances with the Rules after listing and fulfilment of undertakings provided before listing.

In particular, the HKEX have spotted cases involving unannounced changes in the use of IPO proceeds that were not disclosed in the prospectuses and were inconsistent with the issuers' business plans, such as investing a material part of the IPO proceeds in private entities associated with the IPO professional parties or using for disproportionate payments for consultancy arrangements. The HKEX considered such arrangements lack commercial rationale and appeared unfavorably to the issuers with substantial losses resulted. The HKEX reminded issuers that adequate and timely disclosure of material changes to the use of IPO proceeds and business plans is necessary to keep investors informed. Directors should also be mindful of the Rule requirements and the adequacy of the issuers' internal controls to safeguard assets.

Financial statement disclosure under accounting standards

The selected issuers' disclosure generally complied with the accounting requirements. The HKEX's review highlighted several key areas where issuers can continue to improve their financial disclosure in the upcoming financial reporting period, including judgments and estimates, material intangible assets and fair value measurements.

In light of the current economic uncertainty and market volatility, it is particularly important for issuers and their audit committees to maintain a close dialogue with auditors on the audit focus areas and other emerging issues identified during the audit, and take prompt actions to address auditors' concerns. Timely assessment and update to reflect issuers' current circumstances are also significant in financial statement disclosure.

The HKEX is generally satisfied with issuers' compliance with annual report disclosure requirements under the Listing Rules. Issuers continued to achieve a high rate of compliance this year. 99% of issuers achieved a compliance rate of 90% or above on all the disclosure items under the Listing Rules, with disclosure on continuing connected transactions having the highest compliance rate of 90% and movement as to share option schemes having the lowest compliance rate of 71%.

Issuers should take note of HKEX's observations and recommendation discussed in this report and follow the guidance in their future annual reports to improve transparency and accountability to investors.

香港交易及结算所有限公司发布 2022 年发行人年报审阅

于 2023 年 1 月 20 日，香港交易及结算所有限公司（港交所）发布 2022 年发行人年报审阅。港交所采用了以主题划分的方法，并根据过往报告的审阅结果以及被视为风险较高的新兴趋势或事宜，挑选数个特定范畴来审阅。

审阅结果及建议

港交所主题审阅的重大结果及建议之重点如下：

财务汇报及相关监控措施

资产估值仍是财务汇报方面的主要问题，部分发行人过于乐观而未能在进行资产估值时采用适当假设，或未能以客观证据及文件纪录印证其所报资产价值的公允性。因此，资产的初始减值评估和估值发生重大调整。这些问题导致财务业绩延迟刊发及／或遭核数师发出非无保留意见，更甚者还导致证券交易停牌。

按照相关会计准则编制财务报表的责任主要在于董事。他们应建立并投放足够的资源以维持适当的风险管理及内部监控措施。审计委员会作为监督财务报表完整性和会计准则合规性的负责机构，应对管理层作出会计估算时采用的假设的合理性作审慎评估并提出质疑。

根据企业管治守则（香港联合交易所有限公司证券上市规则（《上市规则》）附录十四），发行人亦应制定举报政策及系统，让雇员及其他与其有往来者可向审核委员会提出其对任何可能关于发行人的不当事宜的关注。

重大资产减值（贷款除外）

如上所述，港交所对发行人的资产减值评估表示关注。大多数发行人已在年报中讨论了导致重大减值的情况，但仅披露了减值的一般原因。一些经审阅的发行人都在年报中讨论了引致重大减值的情况，然而，其所披露的

资产减值原因十分笼统。举例而言，它们将新冠疫情或政府政策改变列为导致减值的原因，但并没有详细说明这些事件如何影响其资产价值。港交所要求这些发行人刊发补充公告作进一步说明。

重大借贷交易

今年港交所继续发现应收贷款重大减值的个案，当中或涉及董事违反职责。此外，多名经审阅的发行人未有完全按照我们去年的建议披露其重大应收贷款的详情，而从事放债业务的发行人也未有披露其业务模式、信贷评估及审批政策，以及贷款组合及贷款减值评估的详情。

在进行贷款交易时，董事应对贷款的商业理由作审慎评估，研究贷款条款是否公平合理， 资金用途又是否符合发行人及其股东的利益。如发行人经营放债业务，其董事应维持有效的风险管理及内部监控系统，以评估及管理信贷风险，并监察贷款能否偿还及抵押品是否充足。发行人应按港交所的建议披露，除了为经营放债业务的发行人所建议的披露外，一般而言，发行人应披露应收贷款的详细资料，包括主要条款、发放贷款的原因及其如何切合发行人的业务策略，并披露对应收贷款的任何重大减值或撤销的讨论以及减值评估的基准。

新上市发行人上市后的活动及《上市规则》方面的合规情况

港交所重点关注 2020 年和 2021 年上市发行人的五个方面，包括上市后的发展、首次公开招股集资用途及／或业务计划的变动、盈警及财务业绩的重大变动、上市后违反《上市规则》及履行上市前作出的承诺。

特别是，港交所发现了招股章程中未披露且与发行人业务计划不一致的首次公开招股募集资金用途未经宣布变更的案例，例如将首次公开招股所得款项的一大部分投资于与协助其首次上市的专业人士或其联系人有关的私人企业或就支付不成比例而定顾问安排款项。联交所认为该等安排缺乏商业理据且显然对发行人不利，最后导致重大亏损。港交所提醒发行人如首次公开招股所得款项用途及业务计划有重大变动，必须及时作充分披露，投资者方可了解这方面的最新情况。董事亦应留意《上市规则》的规定，以及发行人的内部监控是否足以保障其资产。

按照会计准则编制的财务报表披露

被挑选发行人的披露普遍遵守会计规定。港交所的审阅指出数个主要财务披露方面，发行人可以在即将到来的财务报告期继续改进，包括判断和估计、重大无形资产及公允价值计量。

鉴于当前经济不明朗及市场波动，就审计重点范围及在审计过程中发现的其他问题，发行人及其审核委员会与核数师保持密切沟通尤其重要，并应迅速采取行动处理核数师提出的关注事项。及时评估及更新以反映发行人当前情况亦对财务报表披露尤其重要。

港交所对发行人遵守《上市规则》的年报披露规定的合规情况大致满意。发行人本年度的合规率继续处于高水平。99%的发行人均在遵守所有年报披露规定方面达到90%或以上的合规率，当中就持续关连交易的披露的合规率为最高，达 90%，而有关股份期权计划的变动的披露的合规率最低，为 71%。

发行人宜注意本报告所讨论的审阅结果及建议，并于日后编备年报时遵循有关指引，以提升透明度及对投资者的问责。

Source 来源:
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Exchanges-Review-of-Issuers-Annual-Disclosure/rdiar_2022.pdf

Hong Kong Securities and Futures Commission Reprimands and Fines Jinrui Futures (Hong Kong) Limited HK$4.8 Million and Sanctions its Responsible Officers for Regulatory Breaches

On February 7, 2023, the Securities and Futures Commission (SFC) of Hong Kong announced that it has reprimanded and fined Jinrui Futures (Hong Kong) Limited (Jinrui Futures, licensed under the Securities and Futures Ordinance (SFO) to carry on Type 2 (dealing in futures contracts) regulated activity) HK$4.8 million for failures in complying with anti-money laundering and counter-terrorist financing (AML/CFT) and other regulatory requirements between April 2015 and June 2018.

The SFC has also banned Mr. Shen Chun (Shen), a former executive director and responsible officer of Jinrui Futures, from re-entering the industry for six months from February 6, 2023 to August 5, 2023.

Ms. Jiang Xiaoqing (Jiang), another responsible officer of Jinrui Futures, has been suspended for five months from February 6, 2023 to July 5, 2023.

The SFC's investigation found that Jinrui Futures, which permitted 258 clients to use customer supplied systems (CSSs) for placing orders during the material time, had failed to conduct adequate due diligence on the CSSs. As a result, Jinrui Futures was not in a position to properly assess and manage the money laundering and terrorist financing and other risks associated with the use of such CSSs by its clients. In addition, the SFC

identified that some of the deposits made into four clients' accounts were unusual and/or suspicious and inconsistent with the clients' declared net worth. Although Jinrui Futures performed certain enquiries on these clients, they were inadequate and did not satisfactorily explain the suspicious transactions.

The SFC further found that Jinrui Futures failed to comply with its account opening procedures which require its staff to conduct AML investigations on its clients before account opening, including identifying whether the clients were politically exposed persons or under existing terrorist and sanction lists.

The SFC is of the view that Jinrui Futures' 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.

The SFC considers that Jinrui Futures' failures were partly attributable to the failures of Shen and Jiang in discharging their duties as the firm's responsible officers and senior management.

In deciding the disciplinary sanctions against Jinrui Futures, Shen and Jiang, the SFC took into account that:

- Jinrui Futures' failures to diligently monitor its clients' activities and put in place adequate and effective AML/CFT systems and controls are serious as they could undermine public confidence in, and damage the integrity of, the market;
- a strong deterrent message needs to be sent to the market that such failures are not acceptable;
- Jinrui Futures, Shen and Jiang cooperated with the SFC in resolving the SFC's concerns; and
- Jinrui Futures, Shen and Jiang have otherwise clean disciplinary records with the SFC.

香港证券及期货事务监察委员会谴责金瑞期货（香港）有限公司违反监管规定并处以罚款 480 万港元和制裁其负责人员

于 2023 年 2 月 7 日，香港证券及期货事务监察委员会（证监会）宣布其谴责金瑞期货（香港）有限公司（金瑞期货，根据《证券及期货条例》获发牌进行第 2 类（期货合约交易）受规管活动）并处以罚款 480 万元，原因是该公司在 2015 年 4 月至 2018 年 6 月期间没有遵守打击洗钱及恐怖分子资金筹集（打击洗钱 / 恐怖分子资金筹集）规定和其他监管规定。

证监会亦禁止金瑞期货的前执行董事兼负责人员沈纯先生（沈）重投业界六个月，由 2023 年 2 月 6 日起至 2023 年 8 月 5 日止。

金瑞期货的另一名负责人员蒋晓晴女士（蒋）被暂时吊销牌照，为期五个月，由 2023 年 2 月 6 日起至 2023 年 7 月 5 日止。

证监会的调查发现，金瑞期货在关键时间容许 258 名客户使用客户自设系统发出交易指示，但却没有对该等客户自设系统进行充分的尽职审查。因此，金瑞期货未能妥善评估并管理与其客户使用该等客户自设系统相关的洗钱及恐怖分子资金筹集风险和其他风险。此外，证监会识别到存入四名客户的帐户内的部分存款属异乎寻常及 / 或可疑且与客户申报的资产净值不符。虽然金瑞期货对该等客户进行了若干查询，但有关查询并不足够，未能圆满解释该等可疑交易。

证监会进一步发现，金瑞期货没有遵从其开户程序，当中规定其职员须在开户前对客户进行打击洗钱调查，包括识别客户是否政治人物或名列现有的恐怖分子及制裁名单。

证监会认为，金瑞期货的行为违反了《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》及《证券及期货事务监察委员会持牌人或注册人操守准则》的规定。

证监会认为，金瑞期货的缺失部分可归因于沈及蒋没有履行他们作为该公司的负责人员及高级管理层的职责。

证监会在决定对金瑞期货、沈及蒋采取上述纪律处分时，已考虑到：

- 金瑞期货没有勤勉尽责地监察其客户的活动，以及没有设立充足而有效的打击洗钱 / 恐怖分子资金筹集制度和监控措施，乃属严重缺失，因为这可能会损害公众对市场的信心和破坏市场的廉洁稳健；
- 有需要向市场传递具阻吓力的强烈讯息，以示有关缺失不可接受；
- 金瑞期货、沈及蒋与证监会合作解决其提出的关注事项；及
- 金瑞期货、沈及蒋过往并无遭受证监会纪律处分的纪录。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR3

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