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Financial Services Regulatory Update 金融服务监管资讯

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Hong Kong Securities and Futures Commission Obtains Court Order to Disqualify Former Independent Non-Executive Director of a Listed Company for Three Years

On December 12, 2023, the Hong Kong Securities and Futures Commission (SFC) announced that it obtained a disqualification order in the Court of First Instance against a former independent non-executive director of China Candy Holdings Limited (China Candy), Mr Nicholas Chiu Sai Chuen.

China Candy was listed on the Growth Enterprise Market (which has since been re-named as GEM) of The Stock Exchange of Hong Kong Limited (SEHK) on November 11, 2015 until its listing status was cancelled by SEHK with effect from December 31, 2019. Chiu was an independent non-executive director of China Candy from October 26, 2015 to December 31, 2019. The legal proceedings were commenced under section 214 of the Securities and Futures Ordinance (Cap. 571) to seek disqualification orders against seven former directors of China Candy and China Candy's former chief financial controller.

Chiu was disqualified from being a director and being involved in the management of any listed or unlisted corporation in Hong Kong, without the leave of the court, for a period of three years. He was also ordered to pay the SFC's costs in the proceedings.

The SFC's investigation found that China Candy's financial strength was falsely and misleadingly portrayed in the company's interim and annual reports for 2016. In particular, the company's cash and bank balances were overstated by 87% and 97% as of June 30, 2016 and December 31, 2016 respectively.

The SFC alleged that China Candy's former Chairman, Chief Executive Officer and Chief Financial Officer were involved in and/or had knowledge of the fabrication of bank and accounting records to cover up the overstatements, whereas other directors including Chiu had acted negligently in the matter.

The disqualification order was made after Chiu admitted that he failed to uncover the overstatements and acted negligently in discharging his duties as director. He also admitted that he did not pay attention to potential red flags in China Candy's treasury, cash management and financial reporting functions identified by an internal control consultant engaged by the company. He also accepted that as an independent non-executive director and audit committee member, he ought to be in a position but failed to monitor, inquire into and/or verify the financial position of the company.

Although Chiu was not involved in running China Candy's day-to-day business, his negligence caused substantial harm and prejudice to shareholders and denied their access to information as to the company's true financial position. The duration of Chiu's disqualification was to reflect the gravity of his misconduct.

The SFC's proceedings against other former senior management of China Candy are ongoing.

Remarks

Independent non-executive directors play a key oversight role in corporate governance and have important duties to apply independent judgement and expertise to review and comment objectively on the internal controls and procedures for major matters such as financial reporting (see the latest publication "A Snapshot of INEDs' Roles and Responsibilities" issued by SEHK). In this case, the SFC revoked the qualification of an independent non-executive director, demonstrating the stringent expectations of regulatory bodies regarding the fulfilment of oversight duties by independent non-executive directors.

In general, independent non-executive directors have the responsibility to proactively inquire about various aspects of company operations and provide professional opinions on major initiatives. Directors must discharge their responsibilities proactively rather than remaining passive when faced with red flags. They are obligated to ask questions, scrutinize important matters and confirm the accuracy of financial and other disclosures. Immediate remedial actions should be

taken if any lapses or deficiencies are identified. Failing to perform ongoing oversight duties or disregarding major risks flagged by internal functions and external advisors may be viewed as dereliction of duties.

This case conveys an important message that independent non-executive directors will face serious sanctions if they fail to properly fulfil oversight obligations as required by law, or ignore significant risk warnings. It also reminds the management of listed issuers of important governance principles and encourages them to more rigorously discharge their duties to ensure fairness and transparency in the market.

香港证券及期货事务监察委员会取得法庭命令取消一间上市公司前独立非执行董事担任董事的资格三年

2023 年 12 月 12 日，香港证券及期货事务监察委员会（证监会）宣布它在原讼法庭取得针对中国糖果控股有限公司（中国糖果）前独立非执行董事赵世存的取消资格令。

中国糖果在 2015 年 11 月 11 日于香港联合交易所有限公司（联交所）创业板（现时被称为 GEM）上市，直至其上市地位自 2019 年 12 月 31 日起被联交所取消为止。赵于 2015 年 10 月 26 日至 2019 年 12 月 31 日期间担任中国糖果的独立非执行董事。是次法律程序乃根据第 571 章《证券及期货条例》第 214 条展开，以寻求对中国糖果的七名前董事及中国糖果的前财务总监作出取消资格令。

未经法庭许可，赵不得担任香港任何上市或非上市法团的董事，亦不得参与该等法团的管理，为期三年。他亦被命令缴付证监会在有关法律程序中的讼费。

证监会的调查发现，中国糖果的《2016 中期报告》及《2016 年报》对该公司的财政能力作出虚假及具误导性的描述。具体而言，该公司截至 2016 年 6 月 30 日及 2016 年 12 月 31 日的现金及银行结余分别被夸大 87% 及 97%。

证监会指，中国糖果的前主席、行政总裁及财务总监参与及 / 或知道该公司曾伪造银行及会计纪录来掩饰财政能力被夸大一事，而包括赵在内的其他董事则在此事上曾疏忽职守。

法庭是在赵承认他未能发现财政能力被夸大和在履行其作为董事的职责时疏忽职守后，作出了上述取消资格令。他同时承认，他没有注意到中国糖果委聘的内部监控顾问在该公司的库务、现金管理及财务汇报职能方面所识别的潜在预警迹象。他亦承认，作为独立非执行董事及审核委员会成员，他理应能够但却没有监察、查讯及 / 或核实该公司的财务状况。

虽然赵没有参与中国糖果的日常业务营运，但他的疏忽对股东造成重大的伤害及损害，并令他们无法得知有关该公司真实财务状况的资料。赵被取消资格的期限反映了其失当行为的严重性。

证监会针对其他中国糖果前高级管理层的法律程序仍在进行中。

结语

独立非执行董事在公司治理中担任着关键的监控角色，并负有运用独立判断和专业对财务报告等重大事项的内部控制和程序进行客观审查和评论的重要职责（参见香港联交所最新刊物《独立非执行董事：角色和职责简介》）。在这案件中，证监会取消了一名独立非执行董事的资格，这表明监管机构对独立非执行董事履行监督职责的要求非常严格。

一般而言，独立非执行董事有责任主动查询公司的各项运作，并对重大举措提出专业意见。董事都必须主动履行责任，而不是在面对暗示性信号时保持被动态度。他们有责任主动提问、审查重要事项，并确认财务及其他信息披露的准确性。一旦出现疏忽或不足之处，应及时采取补救措施。如果长期不履行监督职责，或者忽视公司内部监控和外部受聘机构提出的重大风险，都可能被视为职责失当。

这个案传达了一个重要讯息，即独立非执行董事未能按法律规定妥善履行监督责任，或忽视重大风险警号，都可能面临严厉的处分。这次的判决也提醒了上市公司高管重要的治理原则，并促使他们更加严谨地履行职责，以确保市场的公平和透明。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR149>
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Corporate-Governance-Practices/INEDs_guidance.pdf

The Stock Exchange of Hong Kong Limited Publishes Consultation Conclusions on GEM Listing Reforms

On December 15, 2023, The Stock Exchange of Hong Kong Limited (SEHK) published its Consultation Conclusions on GEM Listing Reforms, adopting the rule changes as set out in the Consultation Paper of September 26, 2023 broadly as proposed:

(a) introducing a new alternative GEM eligibility test targeting high growth enterprises that are heavily engaged in R&D;

(b) removing mandatory quarterly reporting and the alignment of GEM's other ongoing obligations with those of the Main Board; and

(c) introducing a new streamlined transfer mechanism for eligible GEM companies to transfer to the Main Board without the need to appoint a sponsor to carry out due diligence and produce a "prospectus-standard" listing document.

The key proposals to be adopted are specifically summarized in the table set out in the Consultation Conclusions and compared to existing requirements.

The relevant GEM rule amendments will come into effect on Monday, January 1, 2024.

香港联合交易所有限公司发表创业板上市改革咨询总结

2023 年 12 月 15 日，香港联合交易所有限公司（联交所）发表《创业板上市改革咨询总结》，大致采纳了 2023 年 9 月 26 日咨询文件中所载的规则变更建议：

(a) 针对大量从事研发的高成长企业推出新的替代创业板资格测试；

(b) 取消强制性季度报告，并使创业板的其他持续义务与主板的义务保持一致；和

(c) 引入新的简化转板机制，让合格的创业板公司转板至主板，而无需委任保荐人进行尽职调查及编制“招股章程标准”上市文件。

咨询总结中的表格具体总结了拟采纳的主要建议，并与现有要求进行了比较。

有关的创业板规则修订将于 2024 年 1 月 1 日星期一生效。

Source 来源:

https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/September-2023-GEM-Listing-Reforms?sc_lang=en
https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/September-2023-GEM-Listing-Reforms?sc_lang=zh-HK

Hong Kong Monetary Authority Welcomes Enhancements to the Code of Banking Practice

On December 7, 2023, the Hong Kong Monetary Authority (HKMA) welcomed the launch of the revised Code of Banking Practice (the Code) by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA). The Code is jointly issued by HKAB and the DTCA with endorsement by the HKMA.

In recent years, the Hong Kong banking industry has been actively enhancing the quality of products and services in multiple aspects, including more extensive adoption of technology and introduction of innovative modes of services, with a view to enhancing customer experience and at the same time striving to further promote good banking practices. With the sustained development of banking services and the convenience brought about by new products and services, customers also expect more flexibility in controlling and managing their banking matters with a view to fulfilling their needs under different situations as well as receiving enhanced consumer protection at the same time.

The revised Code has been effective from December 7, 2023. Authorized institutions are expected to achieve full compliance with the new provisions as quickly as possible within 6 months of the effective date, with an extension of up to 12 months for provisions requiring more extensive system enhancements. For provisions involving complex system changes, the implementation is extended for up to 18 months.

The Code of Banking Practice Committee, comprising representatives of the HKAB, the DTCA and the HKMA, has further reviewed the Code and formulated further enhancement measures following the revision of the Code in 2021. The latest enhancements, apart from ensuring corresponding protection of customers in digital banking services, also empower customers to have more control over their financial matters and ensure proper safeguards to customers under innovative service arrangements. Major enhancements to the Code will:

- further enhance consumer protection in digital banking services, including that banks should effectively enable customers to obtain the relevant important information when applying for banking services and conducting transactions on Internet banking platforms; banks should also provide security advice to customers in respect of new technologies adopted in banking services, and enhance the customers' understanding of the relevant risks and protection measures of digital banking services; and bank should properly retain records of marketing and promotional materials used in digital channels so as to facilitate the handling of potential customer inquiries or disputes subsequently;
- further empower customers on financial management, for example, customers will receive enriched information on the risk and potential repayment obligations of loan products from the revised Key Facts Statements, and can

use the loan calculators on the Internet banking platforms to assess the cost of borrowing and their own repayment ability before making borrowing decisions. Banks should also increase the credit limit of credit cards only after obtaining the agreement of customers. In addition, banks should inform customers at least 60 days before making any significant changes to the terms and conditions of loan products so as to allow customers more time to take appropriate preparatory actions; and also timely advise customers with potential financial difficulties of possible options to avoid further worsening of their financial situation.

- ensure fair treatment of customers, which includes increased transparency of opening, maintenance and closure of bank accounts and provision of channels for customers to request banks to review the relevant decisions to ensure reasonable access to basic banking services; provision of more comprehensive protection and support by banks to customers having disputes on products and services; and provision of proper protection to customers during banks' loan recovery process; and
- introduce the recent updates of the G20/OECD High-Level Principles on Financial Consumer Protection to the general principles for banks to observe when providing products and services to customers, thereby continuing the promotion of international good banking practice in Hong Kong and the provision of high-quality and accessible financial products and services.

HKMA stated that banking services have always been an integral part of the daily life of the members of the public. In order for the banking industry to have healthy and sustained development, there must be corresponding consumer protection as the foundation so as to strengthen public confidence in banking services. HKMA is pleased that HKAB and DTCA have further enhanced the Code. Under this, apart from better protection for consumers using digital banking services, customers are also further empowered to manage their banking matters thus enabling them to make better use of banking products and services according to their own circumstances. It also ensures fair treatment of customers by banks and comprehensive protection of consumer interests.

香港金融管理局欢迎《银行营运守则》优化措施

2023 年 12 月 7 日，香港金融管理局（金管局）欢迎香港银行公会及存款公司公会（业界公会）推出新修订的《银行营运守则》（《守则》）。《守则》是由业界公会联合发布，并获金管局认可。

近年，香港银行业积极于多方位改善产品及服务素质，包括更广泛应用科技，并推出崭新的服务模式，以提升客户体验，同时也希望进一步推动良好的银行经营手法。随着银行服务的持续发展，客户在享受新产品和服务带来的便利的同时，也期望可以更灵活掌握并管理其银行事务，以更能符合在不同情况下的需要，并获得更佳的消费者保障。

新修订《守则》于 2023 年 12 月 7 日起生效。认可机构应在生效日起六个月内尽快符合新规定的要求，个别需要较大规模系统提升的规定可延长至最多十二个月实施，如果牵涉复杂系统改动的规订则可延长至最多十八个月实施。

业界公会和金管局代表组成的「银行营运守则委员会」继 2021 年就《守则》作出修订后作出进一步检讨，并制定是次优化措施，确保客户除了在数码化银行服务上获得相应的保障，也可以更自主地掌控自己的财务安排，以及在崭新的服务安排下也能获得保障。《守则》的主要优化措施将会：

- 进一步优化数码银行服务的消费者保障，包括银行须让客户在网上银行平台申请银行服务和进行交易时，能够有效地获得相关重要资讯；银行也要就银行服务应用的新数码技术向客户提供安全建议，并让客户更了解数码化银行服务的相关风险及保护措施；以及银行在以数码化媒体进行市场推广时须妥善保存相关资料，以便处理其后可能出现的客户查询或争议；
- 提升客户财务管理的自主性，例如客户可以在更新的贷款产品资料概要获得风险及潜在还款责任方面更清晰的资料，也能在贷款前使用银行网上提供的贷款计算机，预先评估贷款成本及自身还款能力才作出贷款决定；银行须在获得客户同意后才可以提高信用卡信用额度。此外，银行须在贷款产品的章则及条款有重大变更前至少 60 日前通知客户，让客户有更多时间作出相应部署，而且银行也要适时向有财务困难的客户提供可考虑方案，避免财务状况进一步恶化；
- 确保银行公平待客，包括增加开立、维护及结束银行户口的透明度，并提供渠道让客户要求银行复核有关的决定，确保客户能够合理地获得基本银行服务；银行在客户对产品及服务有争议时提供更全面的支援和保障；以及让客户在银行追讨贷款的过程中得到更适切的保护；及

- 把近期《二十国集团 / 经济合作暨发展组织的保障金融消费者的高层次原则》的更新原则引入银行在向客户提供产品及服务时须要奉行的一般原则，持续在香港推动国际上良好的银行经营手法，提供优质和普及的金融产品和服务。

金管局表示银行服务一直都是市民日常生活不可或缺的一环。银行业要持续健康发展，必须以相应的消费者保障作为基础，才能强化市民对银行服务的信心。金管局很高兴香港银行公会及存款公司公会再进一步优化《守则》，除了为使用数码化银行服务的消费者提供最佳的保障，也提升客户在银行事务方面的自主性，使他们能够因应自身情况善用银行产品及服务，并且确保银行公平待客，让消费者利益得到全面的保障。

Source 来源:

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/12/20231207-5/>

The Stock Exchange of Hong Kong Limited Implements IPO “Double Dipping” Reforms

On November 21, 2023, The Stock Exchange of Hong Kong Limited (Exchange) published a revised Guidance Letter HKEX-GL85-16 (Guidance) allowing the existing shareholders (including pre-IPO investors) and cornerstone investors of a new applicant to subscribe for or purchase further securities in an IPO (i.e. to double dip) under certain specified conditions.

“Double dipping” refers to a subscription for, or purchase of further securities by, an existing shareholder or a cornerstone investor of a listing applicant in its IPO. A “cornerstone investor” generally refers to an investor who is allocated IPO shares under the placing tranche on an assured basis and who usually agrees to restrictions on share disposal. Under this exemption, an existing shareholder of a listing applicant and/or its close associate may also be a placee or a cornerstone investor in an IPO whereas a cornerstone investor of the listing applicant may subscribe for or purchase further securities as a placee in the IPO.

The objective of the new exemption is to provide more flexibility to independent investors. Greater IPO participation by independent investors of a listing applicant should help ensure that the IPO price discovery process is robust and results in a final offer price that reflects market opinion. The new exemption arrangement has come into effect.

The “double dipping” will be permitted if it can be demonstrated that an IPO meets the new size exemption conditions, namely that:

- the offer has a total value of at least HK\$1 billion;
- the allocation to all existing shareholders and their close associates (whether as cornerstone investors and/or as placees) as permitted under the exemption does not exceed 30 per cent of the total number of securities offered; and
- each director, chief executive, controlling shareholder and, for Chinese issuers, supervisor, of the listing applicant have confirmed that the listing applicant's offer securities are not allocated to them or their close associates under the exemption.

Hong Kong Exchanges and Clearing Limited stated that they were committed to reviewing and elevating their listing proposition. They believed this new arrangement would be beneficial to the book building and share allocation process and was designed to maintain the optimum balance between market facilitation and investor protection.

香港联合交易所有限公司实施首次公开招股「双重参与」改革

2023 年 11 月 21 日，香港联合交易所有限公司（联交所）刊发经修订的指引信 HKEX-GL85-16（指引），容许新申请人的现有股东（包括首次公开招股前投资者）及基础投资者在若干特定条件下于首次公开招股中进一步认购或购买股份（即「双重参与」）。

「双重参与」指上市申请人的现有股东或基础投资者在其首次公开招股中进一步认购或购买证券。「基础投资者」一般指首次公开招股的配售部分中确保获分配股份的投资者，其通常会同意受若干禁售限制。根据此项豁免，上市申请人的现有股东及 / 或其紧密联系人也可以是首次公开招股的承配人或基础投资者，而上市申请人的基础投资者可以首次公开招股的承配人身份进一步认购或购买证券。

引入新豁免安排的目的是为独立投资者提供更多灵活性。上市发行人在首次公开招股时获得更多独立投资者参与，将有助促进整个首次公开招股的定价流程，令发行价更贴近市场价格。新豁免安排已经生效。

首次公开招股如符合下列新的规模豁免条件便可进行「双重参与」：

- 发售总额至少为 10 亿港元；

- 按此项豁免所允许的所有现有股东及其紧密联系人（无论是作为基础投资者及 / 或承配人）的配股不超过所发行证券总数的 30%；及
- 上市申请人的每名董事、行政总裁、控股股东及监事（仅适用于在中国内地正式注册成立为股份有限公司的发行人）必须确认，他们或其紧密联系人未有根据本项豁免获分配上市申请人的发售证券。

香港交易及结算所有限公司表示其一直致力审视及提升其上市制度。他们相信这项新安排有利于整个建簿及股份分配过程，同时在兼顾便利市场运作及保障投资者之间取得平衡。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2023/2311212news?sc_lang=en

Ex-Listed Company Chairman and Two Others Charged by Hong Kong Independent Commission Against Corruption Jailed for Conspiracy to Defraud Over Acquisition of New Zealand Farms at Second Retrial

The Independent Commission Against Corruption (ICAC) of Hong Kong investigated corruption and uncovered that a former listed company chairman and two others had conspired to deceive The Stock Exchange of Hong Kong (Exchange) and the listed company by concealing their interests in the acquisition of dairy farms in New Zealand worth NZ\$500 million and falsely representing the gross profits of the dairy farms.

The three defendants were charged by ICAC in late 2011 and early 2012. At the original trial at the Court of First Instance of the High Court, they were found guilty by the jury and sentenced in June 2016 to jail terms ranging from five to eight years and three months. The trio appealed and the court quashed their convictions and ordered a retrial. In June 2021, the jury at the retrial was discharged and a second retrial was scheduled for July 2023. Following a conviction at the second retrial, on December 5, 2023 they were sentenced to prison terms ranging from four years and nine months to seven years and nine months.

The individuals involved included Chen Keen, former chairman of Natural Dairy (NZ) Holdings Limited (Natural Dairy); Hao May, owner and operator of UBNZ Trustee Limited; and Yee Wenjye, former vice president of Natural Dairy. They were uncovered to have concealed personal interests and falsely reported the profit performance of the acquired dairy farms.

The three were originally charged by ICAC and subsequently convicted following a retrial at the High

Court. Chen Keen and Hao May received sentences of 7 years 3 months and 7 years 9 months respectively for masterminding the fraud scheme. Yee Wenjye was jailed for 4 years 9 months. All three were also barred from serving as company directors for 6 to 9 years.

Justice Anna Lai Yuen-kee said Chen Keen and Hao May were the masterminds of the fraudulent conduct, which severely impacted the public and stock market. While Yee Wenjye played a lesser role, he too participated in the illegal acts.

Previously, the jury found Chen Keen and Hao May guilty of two counts of conspiracy to defraud, and Yee Wenjye guilty of one count.

An ICAC spokesperson emphasized that ICAC has zero tolerance for any corruption or related offences, and remains committed to relentlessly pursuing the corrupt to uphold Hong Kong's status as a clean international financial center.

收购新西兰牧场串谋诈骗案中遭香港廉政公署起诉前上市公司主席等三人再重审判囚四年九个月至七年九个月

香港廉政公署（廉署）调查贪污时，揭发前上市公司主席等三人在一项涉及五亿新西兰元的新西兰牧场收购中，隐瞒利益关系及讹称牧场毛利，串谋诈骗香港联合交易所（联交所）及该上市公司。

三名被告分别于 2011 年底及 2012 年初被廉署落案起诉，原审时在高等法院原讼法庭被陪审团裁定罪名成立，于 2016 年 6 月分别被判入狱五年至八年三个月不等。三人其后提出上诉，获法庭撤销定罪及命令重审案件。2021 年 6 月案件重审期间，法庭命令解散陪审团，其后安排于 2023 年 7 月再重审案件。在高等法院再度重审被陪审团裁定罪名成立后。2023 年 12 月 5 日被判囚四年零九个月至七年零九个月。

涉案人士包括：陈克恩，前天然乳品(纽西兰)控股有限公司（天然乳品）主席；Hao May，UBNZ Trustee Limited 东主兼营运人；以及 Yee Wenjye，前天然乳品副总裁。他们被揭发隐瞒个人利益关系，并虚报收购牧场的利润表现。

三人起初由廉政公署起诉，其后在高等法院再次重审后被裁定罪名成立。陈克恩及 Hao May 因策划诈骗案分别被判 7 年 3 个月及 7 年 9 个月。Yee Wenjye 则被判 4 年 9 个月。三人亦同时被取缔担任公司董事的资格 6 至 9 年。

法官黎婉姬指出，陈克恩和 Hao May 是诈骗行为的主谋，而该行为严重影响公众和股市。虽然 Yee Wenjye 所作作用较轻，但他亦有参与非法行为。

此前,陪审团曾裁定陈克恩和 Hao May 两项串谋欺诈罪成立; Yee Wenjye 则被裁定一项串谋欺诈罪成立。

廉署强调廉署绝不姑息任何贪污或相关的违法行为, 一直锲而不舍追击贪腐分子, 以维护香港的廉洁国际金融中心地位。

Source 来源:

https://www.icac.org.hk/en/press/index_id_1775.html

The Stock Exchange of Hong Kong Limited Publishes Guidelines for New Listing Applicants, Effective on January 1, 2024

In November 2023, The Stock Exchange of Hong Kong (Exchange) published the Guide for New Listing Applicants ("Guide"), which consolidated and enhanced all currently effective guidance letters and listing decisions related to new listing. While there were no major changes to existing new listing guidance, there were certain updates. The update included latest regulatory practice and updated guidance on disclosures in listing documents.

Going forward, the Exchange will issue new guidance by way of updating the Guide instead of publishing separate/ standalone guidance letters and listing decisions. The Guide will be effective on January 1, 2024, it has consolidated and enhanced all currently effective guidance letters and listing decisions relating to new listing, and provides updated guidance to reflect the latest regulatory practice and expected disclosures in listing documents. To assist the market in adapting to the Guide, the Exchange published a mapping schedule which sets out the corresponding guidance letters and listing decisions references for each sub-section of the Guide.

The Guide has been divided into six main sections and an annex:

1. Eligibility and suitability for listing;
2. Special listing regimes;
3. Disclosure in a listing document generally applicable to all New Listing applicants;
4. Specific topics relating to a New Listing application;
5. Other listing structures;
6. Other matters; and
7. Annex – streamlined listing decisions.

The Exchange aimed to assist applicants and their advisors to better understand the Exchange's interpretation of certain Rules Governing the Listing of Securities on the Exchange and related requirements, as well as the Exchange's expectations regarding the standards and quality of listing document disclosure, which are crucial to enable investors to make a properly informed assessment of an applicant.

香港联合交易所有限公司刊发新上市申请人指南于 2024 年 1 月 1 日生效

2023 年 11 月, 香港联合交易所有限公司 (联交所) 刊发《新上市申请人指南》(指南), 整合并优化所有现行有效及有关新上市的指引信及上市决策。联交所并无对现行的新上市指引作出重大改动, 仅就部分指引进行更新。更新包括最新监管实践与操作和上市文件披露内容的更新指引。

联交所未来将通过更新指南提供新指引, 不再另行刊发指引信及上市决策。指南将于 2024 年 1 月 1 日生效, 整合并优化所有现行有效及有关新上市的指引信及上市决策, 并根据最新监管实践与操作及上市文件的预期披露提供了更新指引。为协助市场适应指南, 联交所亦发布一份对照索引, 其中载列指南中每个子部分对应的指引信及上市决策。

指南内容共分为六个主要部分及一个附件:

1. 上市资格及上市合适性;
2. 特别上市制度;
3. 上市新申请人普遍适用的上市文件披露;
4. 有关个别上市申请的特定主题;
5. 其他上市架构;
6. 其他事宜; 及
7. 附件 – 精简版上市决策。

联交所希望藉此协助申请人及其顾问更加了解联交所对若干联交所证券上市规则及相关规定的诠释, 以及其对上市文件披露标准和质素的预期, 这些都有助投资者能够对申请人作出适切而全面的评估。

Source 来源:

<https://en-rules.hkex.com.hk/rulebook/guide-new-listing-applicants-be-effective-1-january-2024-0>

[https://en-rules.hkex.com.hk/sites/default/files/net_file_store/Updated_guidance_in_the_Guide_for_New_Listing_Applicants_\(November_2023\)\(E\).pdf](https://en-rules.hkex.com.hk/sites/default/files/net_file_store/Updated_guidance_in_the_Guide_for_New_Listing_Applicants_(November_2023)(E).pdf)

Hong Kong Exchanges and Clearing Limited Welcomes APAC's First Saudi Arabian Exchange Traded Fund

On November 29, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) welcomed the listing of Asia Pacific's first exchange traded fund (ETF) to track Saudi Arabian equities – the CSOP Saudi Arabia ETF (Stock code: 2830 / 82830).

The CSOP Saudi Arabia ETF, which tracks the FTSE Saudi Arabia Index, provides investors with a new

opportunity to invest in Saudi Arabia's capital markets through a Hong Kong-listed ETF, further enhancing the global connectivity of Hong Kong's ETF market. The new ETF complements a huge array of thematic and country specific ETFs listed in Hong Kong and will be the world's biggest Saudi-focused ETF.

As one of the fastest-growing segments in HKEX's markets, the market capitalization of Hong Kong's Exchange Traded Products (ETPs), including ETFs and Leveraged and Inverse Products (L&I Products), has grown 20 per cent in the year to October 2023, totaling HK\$355.43 billion.

The inclusion of ETFs in Stock Connect and the first listings of crypto asset ETFs in Hong Kong have further boosted the strong growth momentum and product diversity of Hong Kong's ETP market since their introduction in 2022. The average daily turnover of ETPs for the first ten months of 2023 jumped over 20 per cent year on year, reaching HK\$14 billion. As at October 31, 2023, 175 ETPs were listed on HKEX, with one third of ETP issuers on HKEX having introduced new products in the Hong Kong market during the year.

HKEX stated that they are delighted to be the first exchange in Asia Pacific to provide investors with direct access to Saudi Arabia's capital market opportunities through an ETF. This reflects HKEX's ongoing commitment to connecting capital with opportunities, and to diversifying its range of products and investment opportunities on its markets. As the leading ETF marketplace in Asia, HKEX is committed to further driving the attractiveness of the market, and looks forward to welcoming further new products in the future, strengthening Hong Kong's ETF ecosystem, and reinforcing the city's role as a vital International Financial Center.

香港交易及结算所有限公司欢迎亚太区首只沙特阿拉伯交易所买卖基金上市

2023 年 11 月 29 日，香港交易及结算所有限公司（香港交易所）欢迎亚太区首只追踪沙特阿拉伯股票的交易所买卖基金（ETF）——南方东英沙特阿拉伯 ETF（股份代号：2830 / 82830）上市。

南方东英沙特阿拉伯 ETF 追踪富时沙特阿拉伯指数，为投资者提供透过香港上市 ETF 连接沙特阿拉伯资本市场的投资新机遇，进一步加强香港 ETF 市场的全球连系性。作为全球最大的沙特阿拉伯 ETF，这只新 ETF 将令现时拥有丰富的主题式和特定市场产品的香港 ETF 市场更臻完善。

ETF 是香港交易所旗下市场增长最快的业务之一，香港交易所买卖产品（ETP，包括 ETF 和杠杆及反向产品）

于今年首十个月的市值达 3,554.3 亿港元，按年上升约 20%。

在 2022 年，ETF 获纳入沪深港通以及首批加密资产 ETF 在香港上市，进一步推动了香港 ETP 市场的强劲增长和产品多元化。今年首十个月，ETP 的日均成交额达 140 亿港元，较去年同期增长超过 20%。截至 2023 年 10 月 31 日，于香港交易所上市的 ETP 共有 175 只；此外，约三分之一的 ETP 发行商已于年内在香港市场推出新产品。

香港交易所表示他们很高兴成为亚太区首家透过 ETF 为投资者提供沙特阿拉伯资本市场相关投资机遇的交易所，反映香港交易所致力『连接资本与机遇』、推动产品和投资机遇多元发展的承诺。作为亚洲领先的 ETF 市场，香港交易所将继续进一步提升市场吸引力，并期待不久的将来迎来更多新产品，加强香港 ETF 生态圈的发展，巩固香港作为国际金融中心的重要地位。

Source 来源:

https://www.hkex.com.hk/News/News-Release/2023/231129news?sc_lang=en

Hong Kong Securities and Futures Commission Highlights Key Regulatory Work and Market Data in Quarterly Report

On December 7, 2023, the Hong Kong Securities and Futures Commission (SFC) published its latest quarterly report to provide operational and financial highlights for the quarter from July to September 2023.

On asset management, exchange-traded funds (ETF) were a bright spot. Strong net inflows of HK\$16.2 billion to Hong Kong-listed ETFs were recorded, while their average daily turnover (ADT) saw healthy growth (12%) from a quarter ago to HK\$14.8 billion. A total of 175 SFC-authorized ETFs had a market capitalisation of HK\$369.5 billion as at end-September.

Turnover of Mainland-Hong Kong ETF Connect also reported robust growth, as southbound trading recorded ADT of HK\$3.6 billion and accounted for a 15% share of the ADT for eligible Hong Kong ETFs in the quarter. This share of eligible ETFs' ADT doubled on a six-month basis (ie, from the end of March). Apart from strong ETF data, the number of open-ended fund companies (OFCs) saw encouraging growth of 87% year-on-year to 187, as the SFC registered 36 new OFCs in the quarter. Hong Kong-domiciled funds recorded net inflows (HK\$11.7 billion) for another quarter. The growth of SFC-authorized environmental, social, and corporate governance funds also persisted, with their total number and asset under management up 7.2% and 1.8% respectively from the prior quarter.

For the listing market, the SFC processed 39 new listing applications in the quarter, including four from pre-profit biotech companies. To further deepen mutual market access, regulators agreed to enhance Stock Connect by introducing block trading, as well as Wealth Management Connect by expanding the range of products, investors and eligible participants.

To improve Hong Kong market liquidity, the SFC participated in the work of Task Force on Enhancing Stock Market Liquidity during the quarter, which led to the submission of a report to the Financial Secretary in October and implementation of certain measures as announced in the Chief Executive's Policy Address. The SFC will work with Hong Kong Exchanges and Clearing Limited on the medium to long-term issues identified.

Regarding takeovers and mergers activities, the number of offers and transactions processed during the six months ended September 30, 2023 increased 11.3% year-on-year to 160 cases. Proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs took effect on September 29 after public consultation.

Regarding enforcement actions, the SFC disciplined five corporations and five individuals during the quarter, resulting in total fines of HK\$28.9 million. The SFC also published consultation conclusions to broaden the scope of insider dealing provisions under the Securities and Futures Ordinance.

Furthermore, the SFC witnessed growth in the number of licence applications received, up 13% from the quarter before and 6% from a year ago. It also granted 33 corporate licences during the quarter, mainly for asset management (Type 9) and advising on securities (Type 4). To reinforce market resilience, the SFC set out a comprehensive risk management framework for futures brokers after concluding its consultation. The guidelines will become effective on February 25, 2024.

On the virtual assets front, the SFC stepped up information dissemination on virtual asset trading platforms (VATPs) by publishing several VATP lists online, including a list of applicants. In response to suspected fraudulent schemes, the SFC also issued a dedicated list of suspicious VATPs on its website to enhance investors' awareness and help them identify suspicious VATPs doing business in Hong Kong, which currently includes nine names.

The SFC indicated that it would continue to fully perform various regulatory, supervisory and policy work to achieve its mission of maintaining and promoting the stability and integrity of Hong Kong's securities and futures markets.

香港证券及期货事务监察委员会《季度报告》载述监管工作重点及市场数据

2023年12月7日，香港证券及期货事务监察委员会（证监会）发表最新的《季度报告》，载述2023年7月至9月季度的工作及财务摘要。

在资产管理方面，交易所买卖基金（ETF）是一大亮点。香港上市ETF录得162亿港元的强劲净资金流入，其日均成交额按季稳健增长12%至148亿港元。截至9月底，证监会认可ETF共有175只，市值达到3,695亿港元。

沪深港ETF通的成交额亦见蓬勃增长，南向交易的日均成交额录得36亿港元，占季内合资格香港ETF日均成交额的15%，以六个月计（即自3月底），该占比增长了一倍。除了强劲的ETF数据外，季内证监会新注册了36家开放式基金型公司，因此这类公司的数目按年增长87%至187家，增长令人鼓舞。在香港注册成立的基金季内继续录得净资金流入（117亿港元）。证监会认可的社会、环境及管治基金亦持续增长，其总数和管理资产总值分别按季增加7.2%及1.8%。

在上市市场方面，证监会季内处理了39宗新上市申请，包括四宗来自尚未有盈利的生物科技公司。为了进一步深化市场的互联互通，各监管机构同意引入大宗交易以优化沪深港通机制，并借着扩大产品、投资者及合资格参与者的范围来完善跨境理财通计划。

为了提升香港市场的流动性，证监会在季内参与促进股票市场流动性专责小组的工作。小组于10月向财政司司长提交报告，而行政长官在《施政报告》中公布的若干措施亦得以落实。证监会将与香港交易及结算有限公司合作处理已识别的中长期问题。

在收购及股份回购活动方面，证监会本六个月处理160宗有关交易，较去年同期增加11.3%。新订《收购、合并及股份回购守则》于9月29日生效。

在执法方面，证监会对5家机构及5名人士采取纪律行动，罚款总额为2,890万港元。证监会亦就修订《证券及期货条例》相关条文发表咨询总结。

此外，证监会所收到的牌照申请数目有所增长，按季增加13%，亦较去年同期增加6%。季内，本会发出了33个公司牌照，主要属于提供资产管理（第9类）及就证券提供意见（第4类）的受规管活动。为了加强市场的韧度，证监会总结咨询后，公布了适用于期货经纪行的全面风险管理框架，该指引将于2024年2月25日生效。

在虚拟资产方面，为加强相关的信息发布，证监会在网上公布了数份虚拟资产交易平台名单，当中包括一份申

请者名单。因应涉嫌欺诈的计划，证监会亦发出一份可疑虚拟资产交易平台的特设名单，以提高投资者的意识，协助他们识别在香港经营的可疑虚拟资产交易平台。目前名单上有九个字。

证监会表示会继续全面履行各项监管、监察及政策工作，以期实现维护和促进香港证券及期货市场的宗旨。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR146>
<https://www.sfc.hk/-/media/EN/files/COM/QR-Reports/202307-09/0-SFC-Quarterly-Report-Jul-Sep-2023EN.pdf?rev=d335c1b759014dd6996602a4ac486ac3>

Hong Kong Securities and Futures Commission Warns Public of HongKongDAO and BitCuped for Involvement in Suspected Virtual Asset-related Frauds

On December 6, 2023, Hong Kong Securities and Futures Commission (SFC) warned the public of suspected virtual asset-related frauds involving entities operating under the names of “Hong Kong Digital Research Institute” or “HongKongDAO” and “BitCuped”.

Hong Kong Digital Research Institute or HongKongDAO claimed to be a blockchain service platform operating at the website of <https://hkdao.info/>. It was placed on the SFC’s Suspicious Virtual Asset Trading Platforms Alert List on November 24, 2023. BitCuped claimed to provide trading services in virtual assets and stocks and operates at the website of <https://bitcuped.com/>. It was placed on the SFC’s Suspicious Virtual Asset Trading Platforms Alert List on November 10, 2023.

At the SFC’s request, the Hong Kong Police Force has taken steps to block access to the websites of HongKongDAO and BitCuped. The SFC also issued cease and desist letters to relevant website operators requesting such websites to cease offering for purchase a token issued by HongKongDAO.

HongKongDAO

HongKongDAO has issued a token known as “HKD” or “HongKongDAO” (HKD Token), which is available for purchase on HongKongDAO’s website.

The SFC suspected HongKongDAO may be disseminating false and misleading information about itself and its business through online channels. An online article claimed that HongKongDAO:

- applied for licences to conduct regulated activities with the SFC in July 2022;

- obtained Type 4 (advising on securities) and Type 9 (asset management) licences in March 2021, allowing it to engage in such regulated activities from July 31, 2020; and
- was bidding for the “Hong Kong Digital Currency Exchange Licence”, which the article implied to be related to the Hong Kong Government’s regulatory framework for stablecoins.

None of the above claims was true, but they may give a false and misleading impression that HongKongDAO’s services and business were properly licensed and legitimate, inducing others to acquire or subscribe for the HKD Token.

HongKongDAO appeared to operate at least two Telegram groups, one in Chinese with over 10,000 members and the other in English with over 1,700 members. In the Telegram groups, the increase in the purported “market” price and future market value of the HKD token appeared to be touted to lure investors to purchase the HKD token.

BitCuped

The SFC noted that BitCuped claimed on its website that “Laura Cha” and “Nicolas Aguzin” serve as its Chairman and Chief Executive Officer respectively, when in fact none of them has any affiliations with BitCuped.

Mrs Laura Cha is Chairman of Hong Kong Exchanges and Clearing Limited (HKEX). Mr Nicolas Aguzin is an Executive Director and Chief Executive Officer of HKEX.

Online investment scams may involve any type of assets and are perpetrated through multiple channels. Those who fall victim can suffer substantial losses. The SFC warned the public to be cautious about too-good-to-be-true investment opportunities and advice posted on social media platforms and via instant messaging apps, on which they may be lured to invest by individuals who are not investment professionals. Investors should stay vigilant and beware of fraud when making investment decisions.

香港证券及期货事务监察委员会就 HongKongDAO 及 BitCuped 涉及怀疑虚拟资产相关欺诈行为告诫公众

2023年12月6日，香港证券及期货事务监察委员会（证监会）就怀疑虚拟资产相关欺诈行为告诫公众，涉事的实体分别以“香港数字研究院”或“HongKongDAO”及“BitCuped”的名称运作。

香港数字研究院或 HongKongDAO 声称其为在 <https://hkdao.info/> 网站上营运的区块链服务平台，已于2023年11月24日被列入证监会的可疑虚拟资产交易平台警示名单。BitCuped 声称其提供虚拟资产及股票交易

服务，并在 <https://bitcuped.com/> 网站上营运，已于 2023 年 11 月 10 日被列入证监会的可疑虚拟资产交易平台警示名单。

香港警务处已应证监会的要求，采取行动封锁 HongKongDAO 及 BitCuped 的网站。证监会亦向相关网站营运商发出终止及停止函，要求该等网站停止为 HongKongDAO 所发行的某代币提供购买服务。

HongKongDAO

HongKongDAO 发行了一种名为“HKD”或“HongKongDAO”（HKD 代币）的代币，可在 HongKongDAO 的网站上购买。

证监会怀疑 HongKongDAO 可能透过网上渠道散布有关本身及其业务的虚假及具误导性的资料。一篇网上文章声称 HongKongDAO：

- 于 2022 年 7 月向证监会申请牌照以进行受规管活动；
- 于 2021 年 3 月取得第 4 类（就证券提供意见）及第 9 类（提供资产管理）受规管活动的牌照，因此可自 2020 年 7 月 31 日起从事相关的受规管活动；及
- 正在竞投“香港数字货币交易所牌照”，而该文章暗示此牌照乃与香港政府就稳定币而设的监管框架有关。

上述声称全部皆与事实不符，但却可能造成虚假及具误导性的印象，令人误以为 HongKongDAO 的服务及业务已妥为领有牌照并属合法，藉此诱使他人购买或认购 HKD 代币。

HongKongDAO 似乎营运至少两个 Telegram 群组，包括成员超过 10,000 人的中文群组及成员超过 1,700 人的英文群组。HongKongDAO 在该等 Telegram 群组中，似乎吹捧 HKD 代币据称的“市价”及未来市值会上升，诱使投资者购买 HKD 代币。

BitCuped

证监会注意到，BitCuped 在其网站上声称“Laura Cha”及“Nicolas Aguzin”分别担任 BitCuped 的主席和行政总裁，而两人实际上与 BitCuped 并无关联。

Laura Cha（史美伦女士）为香港交易及结算所有限公司（香港交易所）的主席。Nicolas Aguzin（欧冠升先生）为香港交易所的执行董事兼行政总裁。

证监会表示网上投资骗局可能涉及任何类型的资产和透过多种渠道进行。任何人一旦受骗，可能会蒙受重大损失。证监会告诫公众，提防在社交媒体平台及即时通讯软件上所分享的好得令人难以置信的投资机会及意见，以免可能会被非投资专业人士诱使进行投资。投资者在作出投资决定时应保持警惕和提防欺诈行为。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR145>

Hong Kong Exchanges and Clearing Limited Updates Listed Companies on Regulatory Developments and Compliance Standards in Latest Newsletter

On November 23, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) published its ninth edition of the Listed Issuer Regulation Newsletter. The newsletter is released on a semi-annual basis to update listed companies on regulatory developments and guidance from HKEX. The November issue outlined several key initiatives, reviews, rule changes and new guidance impacting issuers' ongoing obligations and compliance with HKEX listing rules.

Regulatory Updates and Developments

One of the major updates covered the expansion of HKEX's paperless listing regime. Effective from December 31, 2023, issuers will be required to submit most documents to HKEX electronically rather than in hard copy. Certain submission requirements like director declarations will also be codified directly in the listing rules rather than submitted separately.

Issuers must also transition to distributing annual reports and other corporate communications electronically to shareholders. They can rely on implied consent rather than obtaining individual shareholder approval in most cases. However, actionable communications still require individual distribution and printed copies must be provided upon shareholders' request.

HKEX also reported the findings of a thematic review examining issuers with late financial reporting, modified audit opinions or internal control issues. Inadequate internal financial controls and ineffective audit planning were commonly identified as underlying problems. The newsletter provided detailed guidance on establishing robust risk management and oversight of principal risks. It also emphasized the importance of thorough audit coordination and active monitoring.

Compliance Enhancements and Standards

The newsletter announced HKEX had reviewed companies' ongoing compliance with amendments to its Corporate Governance Code. Areas like corporate culture disclosure, board diversity targets, and substantiation of risk reviews were identified for improvement.

New guidelines addressed disclosure gaps on consideration valuation and basis in transactions. Rule amendments removed separate class meeting requirements for Chinese companies following regulatory changes in mainland China.

Common errors delaying placement approvals like inconsistent placee lists and missing information were also highlighted. Issuers were reminded to ensure authorized representatives could be promptly contacted for regulatory queries.

HKEX stated that they had also published additional materials covering topics such as share scheme training, practices for vetting announcements, and a new platform for IPO settlement. Consultation papers sought views on proposed GEM reforms and treatment of treasury shares.

In conclusion, the newsletter communicated a range of regulatory enhancements and compliance standards to listed issuers. It aimed to keep companies informed of developments impacting their listing obligations and ongoing standards of governance, reporting and disclosure on the Hong Kong stock exchange.

香港交易及结算有限公司在最新通讯中向上市公司通报监管发展和合规标准的最新情况

2023 年 11 月 23 日, 香港交易及结算有限公司(港交所)发布了《上市公司监管通讯》的第九期。该通讯每半年发布一次,旨在向上市公司更新监管发展和港交所新规定的指引。11 月期通讯概述了影响上市公司持续履行责任和遵守港交所《上市规则》的几项主要举措、复核工作、规则变更和新指引。

监管更新和发展

通讯重其中一项重大更新涉及了港交所扩大无纸化上市制度的举措。自 2023 年 12 月 31 日起,上市公司必须将大部分文件通过电子方式而非实体文件提交港交所。某些提交要求如董事声明也将直接写入《上市规则》而非单独提交。

上市公司还必须将年报和其他公司通讯通过电子方式发送给股东。在大多数情况下,它们可以依靠默示同意而无需获得每个股东的单独同意。但需要股东采取行动的通讯仍需单独递送,且应股东要求须提供实体版印刷本。

港交所还报告了对延迟发布财务报告、经审计意见修改或者内部控制问题公司进行主题复核的结果。常见问题包括财务报告内控机制不完善和审计计划编制不善。通讯就建立完善的风险管理机制和审计过程监督提供了详细指引。

合规性增强和标准

通讯宣布港交所已对上市公司持续遵守《企业管治守则》新修订内容进行复核。文化披露、董事会多样性目标和风险复核论证能力等问题需作改进。

新指引明确了交易考虑条件评估和依据披露的不足之处。规则因应中国内地监管变化,修改取消了对内地公司单独召开分类会议的要求。

此外,通讯还重点指出了常见导致配股申请审核延误的问题,例如配股对象清单不一致和资料不全,并提醒上市公司确保授权代表能及时回应监管查询。

港交所表示还发布了其他材料,涵盖主题如股权激励计划培训、公告审核实务以及 IPO 结算新平台。咨询文件征求意见,旨在就 GEM 改革和废股处理方法提出建议。

总体来说,该通讯传达了港交所在监管要求、报告标准和信息披露等多个方面持续优化完善合规标准的举措,旨在让上市公司了解影响其履行责任的各项发展。

Source 来源:

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202311.pdf

The Stock Exchange of Hong Kong Limited Releases Analysis of 2022 Corporate Governance Practice Disclosure

In November 2023, The Stock Exchange of Hong Kong Limited (HKEX) issued Analysis of 2022 Corporate Governance Practice Disclosure. Each year, the Exchange conducts in-depth analyses of a sample of issuers' annual disclosures against the Code on Corporate Governance Practices (CG Code) to gain insights and provide guidance to the broader listed community.

Review Scope

This year's review assessed 400 randomly selected issuers, representing approximately 15% of the total listed population, across large, mid and small cap categories. The sample issuers' 2022 corporate governance reports were examined against key focus

areas in the latest CG Code updates which became effective on January 1, 2022.

Areas of specific focus included issuers' adoption of the new provisions around enhancing corporate culture, board independence and diversity. The Exchange also tracked progress on commitments made by some companies to transition away from single gender boards as well as compliance with additional disclosure requirements for long serving independent directors (INEDs).

In addition to the sample review, the HKEX tracked follow-through by newly listed firms with all-male boards. They had promised diverse gender boards within set timelines. Circulars proposing INED re-election were also assessed for quality of explanations on director independence.

Key Observations and Guidance for Continuous Improvement

The HKEX was pleased overall issuers achieved high rates of CG Code compliance. However, its analysis provided useful guidance for further enhancing corporate governance reporting standards in line with international best practice.

On corporate culture, all issuers confirmed adopting the relevant code provision but disclosure quality varied. The most comprehensive discussions clearly linked desired culture with business objectives and implementation across operations. Boilerplate statements focusing narrowly on governance were less informative.

Board diversity progress was positive following new requirements. However, remaining single gender boards should act sooner than the December 2024 deadline to appoint opposite gender directors rather than viewing one as sufficient. Ambitious numeric targets and timelines beyond just the board would demonstrate real commitment to diversity.

New INED appointment provisions led to fewer firms entirely relying on long standing directors. Where such individuals are retained, independence assessments must go beyond basic criteria to rigorously considering objectivity and fresh perspective.

Risk management disclosures achieved full compliance but could be strengthened by specifying principal risks in detail and outlining effectiveness reviews of internal controls implemented to address them. Graphical illustrations help explain risk governance structures and processes.

Continuous Improvement is Key

Listed companies would benefit from reflecting on the Exchange's insights and guidance to enhance their already high compliance levels. While box-ticking the mandatory rules is important, high quality reporting truly differentiates governance approaches and builds stakeholder confidence.

Regular evaluation of reporting against international best practices will future-proof listed firms. The HKEX continues raising corporate governance standards through its own ongoing review of the CG Code framework. It also supports issuers' journeys with robust guidance, training resources and a dedicated online portal.

Sustained efforts to implement both the letter and spirit of evolving principles will reinforce Hong Kong's reputation as a premiere listing venue with robustly governed public companies creating long term value for investors. Ongoing dialogue between the regulator and regulated entities remains crucial to achieving this goal.

In conclusion, HKEX should be commended for its ongoing efforts to strengthen corporate governance practices amongst Hong Kong listed companies. Through its annual review process, the Exchange provides insightful feedback that can help issuers continuously improve their reporting standards. While compliance levels are high, there remain key areas such as board diversity, independence assessments and detailed risk disclosure where enhanced reporting would further differentiate governance approaches. Listed companies would benefit from reflecting thoughtfully on the observations and implementing substantive changes, rather than just minimally meeting requirements. Seeking mechanisms to demonstrate practical application of evolving principles over the long-term will future-proof organizations. Both the HKEX and listed issuers collaborating in this manner reinforce investor confidence in Hong Kong's regulatory framework and corporate reporting landscape. Their collaboration maintains Hong Kong's competitive advantage as an international financial centre with robustly governed public companies.

香港交易及结算所有限公司发布 2022 年发行人披露企业管治常规情况的报告

在 2023 年 11 月，香港交易及结算所有限公司(港交所)公布了《2022 年公司治理实务披露审核报告》。每年，港交所均会对一批发行人的年度披露进行深入分析，以了解其是否符合《公司治理守则》(《守则》)，并提供指导意见。

审核范围

今年审核涵盖了 400 家随机抽取的发行人,约占全体上市公司总数的 15%。样本公司来自不同规模,包括大、中、小市值类别。港交所主要检查这些样本公司 2022 年公司治理报告是否符合 2022 年 1 月 1 日生效的《守则》最新修订要点。

特别关注领域包括:发行人是否采纳了加强公司文化、优化董事局独立性和多元化等新规定。港交所还跟踪部分公司执行消除单一性别董事会和确保董事会成员多元化承诺的进度与情况。以及长期独立董事须作出的额外信息披露规定执行情况。

除了样本审核外,港交所还跟踪新上市公司内部原本仅设有单一性别的董事会,查看其执行确保董事会成员多元化的承诺情况。同时也评估重新聘请独立董事时,解读董事独立性水平的解释的质素。

主要观察结果与持续改进指导

港交所对整体发行人在《守则》合规程度上表现已越来越高表示赞赏。但报告分析也提供有价值指导,旨在进一步提升公司治理报告标准达至国际最佳水平。

在公司文化层面,所有发行人表示已经执行有关规定,但披露质量参差不齐。阐述文化如何贯穿业务目标和全面运营的论述质量最佳。

董事会多元化进度在新规定下有正面进展。但剩余单一性别董事会应优先于 2024 年 12 月限期任聘不同性别董事,而非将一名视为足够。设置明确目标和时间表,延伸至整体工作人员,才能真正展示多元化承诺。

新的独立非执行董事任命条款导致完全依赖长期董事的公司减少。如果保留这些人,独立性评估必须超越基本标准,严格以新的视角考虑客观性。

风险管理披露符合要求,但可加强重要风险详细说明,并对内控执行与成效检讨情况给予更清晰阐述,辅之以结构流程图可助说明。

持续改进至为重要

上市公司应深入思考港交所观点建议,在高合规基础上持续优化。虽然符合强制要求重要,但高质报告能真正区分治理方式,增强各方信心。

定期就国际最佳实践评估报告,有助上市公司迎接未来。港交所将通过不断完善《守则》框架持续提升公司治理标准,并通过丰富指引、培训资源和专业网站支持上市公司改进进程。

持之以恒推进原则的实质性贯彻,将有助巩固香港作为国际一流上市地的地位,并确保其上市公司能长远为投资者创造价值。监管机构与被监管企业持续对话与合作也是实现该目标的必由之路。

总体而言,港交所于近年来不断加强香港上市公司治理实践的举措是应得表扬的。通过年度审阅工作,其提供的思考启发有助各上市企业不断完善信息披露标准。尽管目前的合规水平高,但在董事会多元化、独立判断能力评估、风险信息详细披露等重要领域,进一步完善报告能有助于更明确展示各自的治理取向。上市企业若能认真借鉴监管意见并纳入长远行动计划,必将比单纯达标获益更多。树立机制展现不断发展的原则在长远实施中的应用,有利未来应变。港交所与上市企业共同合作,将有助增强投资者对香港监管框架与公司信息披露的信心。双方紧密配合有利香港保持国际金融中心地位,构建以优秀管治见长的上市公司群。

Source 来源:

https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Exchanges-Review-of-Issuers-Annual-Disclosure/Review-of-Implementation-of-Code-on-Corporate-Governance-Practices/CG_Practices_2022_e.pdf

Hong Kong Government Welcomes Passage of Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023

On December 6, 2023, the Hong Kong Government welcomes the passage of the Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023 (Bill) by the Legislative Council. The Bill gives effect to the Tax Certainty Enhancement Scheme proposed in the 2023-24 Budget Speech to provide greater certainty of non-taxation of onshore gains on disposal of equity interests (the gains) that are of capital nature.

Currently, the Hong Kong Inland Revenue Department (IRD) adopts a "badges of trade" approach, where considerations are given to the relevant facts and circumstances of the case, to determine the nature of the gains and whether the gains are subject to tax. Under the Tax Certainty Enhancement Scheme, the gains made by an investor entity will be treated as capital in nature and not chargeable to tax if the investor entity has held certain equity interests in the investee entity throughout the continuous period of 24 months immediately before the date of disposal and those equity interests having been held amount to at least 15 per cent of the total equity interests in the investee entity, subject to certain conditions imposed to uphold the integrity of Hong Kong's tax system. This obviates the need for assessing the taxability of such gains based on the "badges of trade" approach.

The Tax Certainty Enhancement Scheme introduced by Hong Kong stands out from similar schemes in other tax jurisdictions in terms of tax competitiveness by offering broader coverage for businesses and equity interests, along with a lower equity holding threshold. It also provides greater flexibility by allowing the minimum equity holding percentage of 15 per cent to be met by aggregating the equity interests held by the investor entity and its closely related entity/entities, and permitting the disposal of equity interests in tranches, subject to certain restrictions. There is no specified expiry date for the Tax Certainty Enhancement Scheme.

The Bill as passed was gazetted on December 15, 2023. The scheme will be applicable to the gains where the disposal occurs on or after January 1, 2024, and the gains accrued in the basis period for a year of assessment beginning on or after April 1, 2023.

The Secretary for Financial Services and the Treasury stated that Hong Kong is committed to improving the business environment so as to attract more enterprises to Hong Kong and drive economic growth. The Tax Certainty Enhancement Scheme provides businesses with upfront certainty of the non-taxation of onshore gains on disposal of equity interests that are of capital nature through the application of simple and clear rules. This will also expedite tax determination and reduce the compliance cost. All these serve to facilitate business expansion and restructuring as well as the development of Hong Kong as a premier platform for international investment and business activities.

香港政府欢迎香港立法会通过《2023 年税务（修订）（合资格股权权益持有人的处置收益）条例草案》

2023 年 12 月 6 日，香港政府欢迎立法会通过《2023 年税务（修订）（合资格股权权益持有人的处置收益）条例草案》（《条例草案》），落实 2023 至 24 年度《财政预算案》建议的税务明确性优化计划，提高属资本性质的股权权益的本地处置收益无须课税安排的明确性。

现时香港税务局采用「营业标记」的方法，即考虑个案的相关事实和情况，以审核有关收益的性质，判断是否需要课税。在税务明确性优化计划下，若投资者实体在处置某项股权权益的日期前的连续 24 个月期间一直持有获投资实体的若干股权权益，而该期间内一直持有的股权权益占获投资实体全部股权权益的至少 15%，并符合某些为维护本港税制而订立的条件，则投资者实体的收益会被视为资本性质而无须课税。这可使投资者实体无须根据「营业标记」的方法，评估有关收益是否需要课税。

相比起其他税务管辖区类似的计划，香港推出的税务明确性优化计划更具税务竞争力，提供更广泛的企业和股权权益覆盖范围，以及更低的股权持有门槛。计划亦提供更大的灵活性，允许投资者实体及其密切相关实体持有的股权权益合并计算，以满足 15% 的最低股权持有百分比，并涵盖分批处置的股权权益（但须符合特定限制）。税务明确性优化计划没有订明届满日期。

获通过的《条例草案》于 2023 年 12 月 15 日刊宪。税务明确性计划将适用于在 2023 年 4 月 1 日或之后的课税年度的评税基期内累算、并在 2024 年 1 月 1 日或之后处置股权权益所得的有关收益。

财经事务及库务局表示香港致力优化营商环境，以吸引更多企业来港，促进经济增长。税务明确性优化计划通过实施简明的准则，为企业及早明确属资本性质的股权权益的本地处置收益无须课税。计划亦将加快厘定税项、减低合规成本。这些都有助企业进行扩展或重组业务，并促进香港发展成为国际投资及商业活动的首选平台。

Source 来源:

<https://www.info.gov.hk/gia/general/202312/06/P2023120600312.htm?fontSize=1>

Hong Kong Securities and Futures Commission Commences Legal Proceedings Against AMTD Global Markets Limited and its Former Executives for Non-Compliance in IPO-Related Investigations

On November 23, 2023, Hong Kong Securities and Futures Commission (SFC) has commenced legal proceedings asking the Court of First Instance to inquire into the circumstances of non-compliance by AMTD Global Markets Limited (AMTD, currently known as orientiert XYZ Securities Limited) and its former executives with the SFC's notices in initial public offerings (IPOs)-related investigations.

Under section 183 of the Securities and Futures Ordinance (SFO) (Cap. 571), the SFC can require a person under investigation or a person who is believed to have in his possession any record or document relevant to an SFC investigation to (amongst other things) produce the specified records, and attend an interview. If a person fails to comply with such a requirement without a reasonable excuse, the SFC can bring proceedings under section 185 of the SFO which empowers the Court of First Instance to inquire into the circumstances of non-compliance. The Court can order the person to comply with the requirement and can punish them as if they had been guilty of contempt of court if it is satisfied that the person does not have any reasonable excuse for not complying.

AMTD is licensed under the SFO to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities.

The SFC's investigations related to suspected employment of fraudulent or deceptive schemes and/or disclosure of false or misleading information in the IPOs of certain listed companies where AMTD was involved as bookrunner, lead manager and underwriter.

The former executives of AMTD Global Limited (AMTD) include: Lo Chi Hang, former Responsible Officer (RO) of AMTD; Philip Yau Wai Man, former director of AMTD and former manager-in-charge of core functions; See Hiu Lun, former emergency contact person and complaints officer of AMTD. Lo was responsible for AMTD's Type 1, Type 4 and Type 9 regulated activities between April 7, 2016 and April 6, 2023. Yau served as manager-in-charge of multiple core functions between July 17, 2017 and February 6, 2023, and was also a director of AMTD between December 19, 2016 and December 31, 2019. See was the emergency contact person and complaints officer of AMTD between April 16, 2021 and February 9, 2023, and had previously served as the licensed representative of the company, although is not currently a licensed by the SFC.

The SFC had requested AMTD to provide records relating to its initial public offerings, but the company did not fully comply. The former executives of the company also failed to attend interviews after receiving notices. If upon inquiry the Court is satisfied that AMTD and its former executives did not have justification for non-compliance with the SFC notices, it can order the company to produce records, require the former executives to attend interviews, and punish them as if they had been guilty of contempt of court.

香港证券及期货事务监察委员会就尚乘环球市场有限公司及其前行政人员在首次公开招股相关调查中不遵从通知一事展开法律程序

2023 年 11 月 23 日，香港证券及期货事务监察委员会（证监会）已展开法律程序，要求原讼法庭对尚乘环球市场有限公司（尚乘环球，现称 orientiert XYZ Securities Limited）及其前行政人员在涉及首次公开招股的调查中不遵从证监会通知的情况，进行查讯。

根据第 571 章《证券及期货条例》第 183 条，证监会可要求受调查人或相信是管有与证监会调查有关的任何纪录或文件的人（其中包括）交出指明纪录及出席会见。如任何人无合理辩解而没有遵从有关要求，则证监会可根据该条例第 185 条提起法律程序，而该条文赋权原讼法庭查讯不遵从有关要求的情况。如法庭信纳该人不遵

从有关要求是无任何合理辩解的，则可命令该人遵从有关要求，并可对他们施加惩罚，犹如他们干犯了藐视法庭罪一样。

尚乘环球根据《证券及期货条例》获发牌进行第 1 类（证券交易）、第 2 类（期货合约交易）、第 4 类（就证券提供意见）、第 6 类（就机构融资提供意见）和第 9 类（提供资产管理）受规管活动。

证监会的调查与若干上市公司在首次公开招股期间，怀疑可能曾采取欺诈或欺骗做法及 / 或披露虚假或具误导性的资料有关，而尚乘环球当时以账簿管理人、牵头经办人及包销商的身分参与其中。

该等尚乘环球前行政人员包括：前负责人员卢致恒；前董事兼核心职能主管邱伟文；及前紧急联络人兼投诉主任施晓纶。卢在 2016 年 4 月 7 日至 2023 年 4 月 6 日间负责尚乘环球的第 1 类、第 4 类和第 9 类受规管活动。邱在 2017 年 7 月 17 日至 2023 年 2 月 6 日间担任多个核心职能主管，并曾在 2016 年 12 月 19 日至 2019 年 12 月 31 日间为尚乘环球的董事。施在 2021 年 4 月 16 日至 2023 年 2 月 9 日间为尚乘环球的紧急联络人兼投诉主任，并曾担任该公司的持牌代表，但现时并非证监会持牌人。

证监会曾要求尚乘环球提供与首次公开招股有关的纪录，但该公司未完全遵从。该公司的前行政人员在收到会见通知后也未出席。法庭在查讯后，如果确认尚乘环球及其前行政人员无理由违反证监会通知，可以命令该公司交出纪录并要求前行政人员出席会见，并对其施加惩罚，犹如他们干犯了藐视法庭罪一样。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR141>

Hong Kong Securities and Futures Commission Issues Regulatory Guidelines and Clearing Amendment Rules for Digital Securities

On October 27 and November 2, 2023, Hong Kong Securities and Futures Commission (SFC) issued two circulars outlining regulatory guidelines for intermediaries engaging in tokenised securities-related activities and introducing The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2023 (Clearing Amendment Rules). These guidelines aim to ensure the secure and compliant operation of tokenised securities and provide clarity on clearing obligations for specific financial transactions.

Circular on intermediaries engaging in tokenised securities-related activities

The circular on intermediaries engaging in tokenised securities-related activities introduces several factors that intermediaries should consider when participating in this emerging sector. Firstly, intermediaries are advised to evaluate the experience and track record of third-party vendors and service providers involved in tokenisation arrangements. This includes assessing technology developers, platform providers, wallet service providers/custodians, and anti-money laundering solutions. By selecting reputable and reliable vendors, intermediaries can enhance the security and integrity of tokenised securities.

Secondly, the circular emphasizes the importance of evaluating the technical aspects of tokenised securities. Intermediaries need to assess the robustness of the underlying distributed ledger technology (DLT) network and the functionality of smart contracts. Conducting technology audits and ensuring the security infrastructure of the blockchain protocol are crucial steps in mitigating risks associated with tokenised securities.

Interoperability is another critical consideration outlined in the circular. Intermediaries must address interoperability challenges between different DLT networks and the back-end systems of product issuers and other involved parties. This ensures seamless integration and efficient operations within the tokenised securities ecosystem.

Effective risk management is essential for intermediaries engaging in tokenised securities-related activities. The circular highlights the need for robust policies, procedures, systems, and controls to safeguard against theft, fraud, errors and omissions, and cybersecurity risks. Protecting private keys, implementing comprehensive security measures, and conducting regular risk assessments are vital for maintaining the integrity and security of tokenised securities.

Legal and regulatory considerations are also emphasized in the circular. Intermediaries should assess the legal and regulatory status of tokenised securities, including settlement finality, enforceability of security interests, and regulatory approval requirements in Hong Kong. Complying with relevant laws and regulations is essential to ensure the legitimacy and compliance of tokenised securities offerings.

Furthermore, the circular advises intermediaries to have business continuity plans in place, particularly for events related to DLT. These plans should address potential disruptions and provide solutions for migrating records to different blockchains if necessary.

Lastly, the circular highlights the importance of addressing data privacy risks associated with public

blockchains and implementing measures to mitigate money laundering and terrorist financing risks related to tokenised securities. Intermediaries must prioritize data privacy and ensure compliance with anti-money laundering regulations to maintain the integrity of the financial system.

Circular on Clearing Amendment Rules

In addition to the circular on tokenised securities, the Clearing Amendment Rules made important adjustments to the clearing requirements for over-the-counter derivatives transactions. According to the announcement, subject to negative vetting by the Legislative Council, the Clearing Amendment Rules will take effect on July 1, 2024. The Clearing Amendment Rules clarify that under specified conditions, interest rate swap transactions referencing alternative reference rates shall be subject to central clearing. This adapts to changing trends in financial market interest rates. At the same time, the document stipulates that interest rate swap transactions referencing interbank offered rates that are no longer or will no longer be published would no longer be subject to central clearing. Moreover, if the average total position in over-the-counter derivatives of licensed corporations during a calculation period reaches the prescribed level of USD 200 billion, they shall also complete central settlement for relevant transactions in accordance with the Clearing Rules.

The SFC's regulatory guidelines for intermediaries engaging in tokenised securities-related activities and the Clearing Amendment Rules are significant steps towards fostering a transparent, secure, and regulated environment for digital securities. By considering the factors outlined in the circular, intermediaries can ensure the secure and compliant operation of tokenised securities, contributing to market stability and investor confidence.

The Clearing Amendment Rules provide clarity on clearing obligations for interest rate swap transactions, adapting to the evolving financial landscape and enhancing market stability. These guidelines reflect the SFC's commitment to promoting a robust and regulated ecosystem for emerging technologies in the financial industry. As the financial industry embraces technological advancements, these guidelines offer a framework for intermediaries to navigate the complexities of the digital securities landscape, instilling confidence in investors and contributing to the growth and development of the digital securities ecosystem.

香港证券及期货事务监察委员会发布了规管数字证券相关活动的指引和结算修订规则

2023年10月27日和11月2日, 香港证券及期货事务监察委员会(证监会)分别发布了两份通函, 阐述了中介人从

事代币化证券相关活动的监管指引,并推出了《2023 年证券及期货(场外衍生工具交易—结算及备存纪录责任和中央对手方的指定)(修订)规则》(《结算修订规则》)。这些指引旨在确保代币化证券的安全合规运营,并为某些金融交易的结算义务提供明晰的指引。

有关中介人从事代币化证券相关活动的通函

中介人从事代币化证券相关活动指引中,概述了中介人应在涉足这个新兴领域时考虑的几个因素。首先,中介人应评估代币化安排中涉及的第三方供应商和服务提供商的经验和往绩记录,包括技术开发商、平台供应商、钱包服务提供商/保管机构以及反洗钱解决方案提供商。选择声誉可靠的供应商有助提升代币化证券的安全性和完整性。

此外,通函强调评估代币化证券的技术细节的重要性。中介人需要评估分布式分类账技术(DLT)网络的可靠性,以及智能合约的功能性。开展技术审计,确保区块链协议的安全基础设施,是减轻代币化证券风险的关键步骤。

互操作能力也是通函中重点认可的考虑因素之一。中介人必须妥善解决不同 DLT 网络与产品发行机构及其他协作方后端系统间的互操作问题,以确保代币化证券生态系统内各项业务的流畅连接。

有效的风险管理对中介人涉足代币化证券行业至关重要。通函强调需要建立健全的政策、流程、系统和控制措施,以防范钱包被盗、欺诈行为以及网络安全威胁,保护代币化证券的安全,并定期进行风险评估。

法律和监管考量也是通函重点强调的内容。中介人需要评估代币化证券在香港的法律地位和监管情况,包括结算最终性、转移相关法定权益的可执行性,以及是否需要监管机构批准等。遵守相关法律法规是确保代币化证券发行合规的前提。

此外,通函呼吁中介人准备好网络相关事件的业务恢复计划,包括将区块链记录迁移到其他链的重新部署方案。同时也强调需要妥善应对链上公开数据可能带来的隐私风险,并设立监控措施防止代币化证券用于洗钱和资助恐怖活动。

最后,该通函强调了应对与公有区块链相关的数据隐私风险,以及采取措施降低与代币化证券相关的洗钱与恐怖分子资金筹集风险的重要性。中介机构必须将数据隐私放在首要位置,并确保符合反洗钱条例,以维护金融体系的完整性。

关于《结算修订规则》的通函

除了代币化证券通函外,《结算修订规则》对场外衍生品交易的结算规定进行了重要调整。根据公告,待立法会完成先订立后审议的程序后,《结算修订规则》将于 2024 年 7 月 1 日生效。《结算修订规则》明确了在特定条件下,参考替代利率的掉期交易须接受中央结算。此举适应金融市场利率变化趋势。同时,文件亦规定不再或将不再公布的银行同业拆息作为参考指数的掉期,无须再进行中央结算。此外,持牌机构若某计算期内其场外衍生品平均总持仓量达到 200 亿美元的规定水平,亦须按《结算规则》为相关交易完成中央交收。

证监会针对从事代币化证券相关活动的中介机构的监管指引和《结算修订规则》,标志着重要一步,旨在营造一个透明、安全和受监管的数字证券环境。通过参考通函中的因素,中介机构可以确保代币化证券的安全合规运营,促进市场稳定并提高投资者信心。

《结算修订规则》明确了利率掉期交易的结算责任,适应金融环境变化并强化市场稳定。这些建议体现了证监会在新科技进入金融领域时提供一个成熟可靠的发展环境的决心。随着金融行业采纳技术进步,这些建议提供了一个框架,帮助中介机构在数字证券领域航行,增强投资者信心,并促进该领域的持续健康发展。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=23EC52>
<https://apps.sfc.hk/edistributionWeb/api/circular/openAppendix?lang=EN&refNo=23EC52&appendix=0>
<https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=23EC50>

Hong Kong Securities and Futures Commission Publishes Circular on Tokenisation of Authorised Investment Products

On November 2, 2023, the Hong Kong Securities and Futures Commission (SFC) published a circular outlining its regulatory stance on tokenizing investment products authorized under the SFC's purview in Hong Kong (Circular). The Circular provides clarity on requirements to conduct primary dealings of tokenized investment products and signals the regulator's aim to foster innovation while maintaining adequate investor protections as the digital asset space continues evolving.

Background and Market Developments

According to the Circular, some market participants in Hong Kong have started exploring tokenization of securities and investment products. Tokenization involves creating blockchain-based digital tokens to represent ownership of the underlying investment. Proponents claim benefits like increased efficiency, lower costs by reducing intermediaries, and accessing

new end-investor channels. In response to market interest, the SFC has assessed various tokenization proposals, including for primary subscription/redemption dealings and secondary trading on licensed virtual asset trading platforms.

The SFC noted that secondary trading required more careful consideration to ensure investor protections remain substantially similar to non-tokenized products. Ensuring proper instant token ownership records, platform infrastructure readiness to support liquidity, and fair token pricing all need addressing. As such, the SFC expressed that it would continue engaging stakeholders on secondary trading measures before further guidance. However, the SFC's see-through approach means it will allow primary dealings if products meet authorization requirements and new risks are mitigated.

Requirements for Primary Dealings of Tokenized Products

The Circular outlines baseline requirements for primary dealings of tokenized SFC-authorized investment products. Product providers must ensure the underlying product complies with all existing rules and requirements. A non-exhaustive list of additional requirements addresses ongoing responsibilities, risk management, disclosures, and competence.

Product providers remain responsible for sound tokenization arrangements and ownership records, even if outsourced. Appropriate cybersecurity, privacy, business continuity and system recovery measures are mandated. Public blockchains require additional controls. Providers must demonstrate management of arrangements, ownership records and smart contract integrity to the SFC on request. Third-party audits may also be required.

Offering documents must clearly explain the tokenization model and ownership representations, along with associated risks like technology flaws, cybersecurity, and evolving regulations. Distribution can only be via regulated intermediaries satisfying client onboarding and suitability assessment rules. Providers must ensure relevant expertise to handle ownership and technological risks.

Consultation and Approval

For new tokenized products seeking authorization, prior consultation is mandated. Tokenizing existing SFC-authorized products requires prior approval, excluding adding further tokenized share classes if arrangements remain substantially similar. The rapidly innovating space means the SFC may issue further guidance as needed to facilitate progress while reinforcing adequate investor protections.

The Circular represents Hong Kong regulators progressive move to allow tokenized primary dealings of vetted investment products. Strict conditions balance facilitating market developments with sufficiently addressing new risks in this emerging digital landscape. The SFC sustains its cautious approach until workable solutions ensure tokenized secondary trading upholds investor interest safeguards on par with traditional offerings. Ongoing engagement aims positioning Hong Kong at the forefront while safeguarding the quality of its regulated digital asset market.

香港证券及期货事务监察委员会发布有关授权投资产品代币化的通函

2023 年 11 月 2 日, 香港证券及期货事务监察委员会(证监会)发布了一份通函, 阐明了其对在香港根据证监会监管权限下的认可投资产品进行代币化的监管立场。该通函明确阐述了开展代币化投资产品主要交易的要求, 表明监管机构旨在促进创新, 同时保持充足的投资者保护, 随着数字资产领域不断发展。

背景和市场发展

根据通函, 部分香港市场参与者已开始探索证券和投资产品的代币化。代币化涉及通过区块链技术为投资标的创建数字代币以代表其所有权。支持者声称代币化带来的好处包括提高效率、通过减少中介降低成本以及访问新的最终投资者渠道。为响应市场兴趣, 证监会评估了各种代币化方案, 包括主要认购/赎回交易和在持牌虚拟资产交易平台进行二级市场交易。

证监会指出, 二级市场交易需要更仔细考虑, 以确保投资者保护措施与非代币化产品保持基本一致。确保实时持有人所有权记录的准确性、平台基础设施就绪支持流动性以及公平的代币价格定价都需要解决。因此, 证监会表示将继续与利益相关者就二级市场交易措施进行磋商, 在出台进一步指引前。然而, 从本质上看, 证监会将允许满足认可要求并减轻新风险的产品进行主要交易。

代币化投资产品的主要交易要求

本通知概述了对证监会认可的代币化投资产品开展主要交易的基本要求。产品发行人必须确保底层产品符合所有现行规则规定。通知列出的额外要求包含持续责任、风险管理、信息披露和授权等内容。

产品发行人须对代币化安排和持有人数据负责, 即使有委外安排。要求采取适当的网络安全、隐私保护、业务连续性和系统恢复措施。公有区块链需要额外控制。发行人必须根据证监会要求展示代币化安排、持有人资料 and 智能合约完整性的管理。还可能需第三方审计。

招股说明书必须明确解释代币化模式和所有权表述,以及技术缺陷、网络安全和法规演变等相关风险。只能由符合客户知情同意和适当性评估规则的受监管中介机构进行分销。发行人须确保拥有管理所有权和技术风险的专业能力。

咨询和批准

对于新申请授权的代币化产品,事前咨询具有强制性。如果已获证监会认可的现有产品将进行代币化,则须事先获得批准,但如安排大致相同,则无需额外就新增代币化股份类别进行申请。随着金融创新步伐加快,证监会或视情况需求发布补充指引,促进进一步发展的同时加强投资者保护水平。

这份通函代表香港监管机构在允许经过审查的投资产品进行代币化的初次交易方面的积极举措。严格的条件在促进市场发展的同时,足够解决新兴数字领域中的风险。证监会将保持谨慎态度,直到可行的解决方案确保代币化的二级交易能够与传统交易一样维护投资者的利益保障。持续的合作旨在使香港处于前沿地位,同时保护其受监管的数字资产市场的质量。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=23EC53>
<https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=23EC53>

Hong Kong Accounting and Financial Reporting Council Expects Active Cooperation and Full Compliance by PIE Auditors with the Accounting and Financial Reporting Council Ordinance and Their Self-Reporting of Critical Incidents in a Timely Manner

On December 7, 2023, the Hong Kong Accounting and Financial Reporting Council (AFRC), as the independent regulator of the accounting profession in Hong Kong, reiterated that it expected all public interest entity (PIE) auditors and registered responsible persons to fully comply with the Accounting and Financial Reporting Council Ordinance (AFRCO) and report to the AFRC in a timely manner any critical incidents in relation to audit quality and the firms' systems of quality management.

The AFRC stressed that it expected full and active cooperation from all firms to facilitate the efficient and effective discharge of its statutory functions, including registration, inspection, investigation, discipline and the promotion of the sustainable development of the accounting profession.

The AFRC would not hesitate to hold them accountable by taking robust enforcement actions against those who

delayed in the self-reporting of critical incidents and were subsequently found to have committed any misconduct or violation of the AFRCO, irrespective of whether those firms or persons have been disciplined by other local, Mainland or overseas regulators. By so doing, the AFRC ensures financial reporting and audit quality and the integrity of those involved, thereby promoting investor confidence, protecting the public interest and safeguarding Hong Kong's position as a leading international financial centre.

The AFRC cautioned that compliance is a must, not an option. It is a commitment that must be ingrained in the firm's culture and embraced by all individuals of the firm, from leadership to front-line employees. Compliance is not just a legal obligation but a fundamental pillar of responsible and sustainable practice. AFRC is confident that a compliance culture is conducive to better control and high quality for firms and their engagements respectively.

香港会计及财务汇报局期望公众利益实体核数师积极配合、严格遵守会财局条例并及时主动向局方汇报重大关键事件

2023 年 12 月 7 日,香港会计及财务汇报局(会财局)重申,作为香港会计专业的独立监管机构,局方期望所有公众利益实体核数师及注册负责人严格遵守《会计及财务报告局条例》(会财局条例),并及时主动向局方报告与审计质素及会计师事务所质素管理制度相关的任何重大关键事件。

会财局强调,期望所有会计师事务所充分及主动与局方合作,使局方能高效和有效地履行其法定职能,包括注册、查察、调查、纪律处分及推动会计业界持续发展。

对于延迟主动报告重大关键事件,而随后被发现触犯失当行为或违反会财局条例的会计师事务所或核数师,不论他们是否已被其他本地、内地或海外监管机构作出纪律处分,会财局将毫不犹豫严格执法,彻底追究责任。会财局致力确保财务汇报和审计质素以及负责财务汇报工作人士的诚信,从而增强投资者信心,保障公众利益,以维护香港作为主要国际金融中心的地位。

会财局提醒法规必须遵守,并无选择。这是一种根植于会计师事务所文化中的承诺,并从领导层贯彻到前线员工。遵守法规不仅是法律义务,亦是审计行业应有的责任和业界赖以持续发展的基石。会财局深信恪守法规的文化对巩固会计师事务所监控及提升项目质素均有莫大裨益。

Source 来源:

<https://www.afrc.org.hk/en-hk/news-centre/news/afrc-expects-active-cooperation-and-full-compliance-by-pie->

auditors-with-the-afrc-ordinance-and-their-self-reporting-of-critical-incidents-in-a-timely-manner/

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