

HONG KONG

CAPITAL MARKETS

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EDITOR'S NOTE

We have seen some significant developments in the Hong Kong capital markets since the end of the first quarter of 2013.

In this issue, we highlight the key developments, including:

- Stock Exchange consultations on overhauling the connected transactions rules;
- SFC consultation on changes to the regime for intermediaries' dealings with professional investors, especially tougher rules for individuals;
- a bumper crop of listing decisions, on matters ranging from waivers to reasons for returning listing applications;
- guidance letters on prospectus simplification (summary and highlights; risk factors) and introductions;
- Stock Exchange FAQs on prospectus disclosure of stub-period profit data, and rule changes concerning statutory backing of disclosure rules; and
- landmark developments in the SFC's enforcement actions against Tiger Asia.

We hope you find the articles interesting and helpful. In a further key development shortly before our publication date, the Exchange published its Listing Rule changes to reflect the SFC's revisions to the sponsor regime. We will be issuing an update shortly that will focus on those changes.

编者按

香港资本市场自2013年第一季度期末至今有很重大的发展。

在本期报告中，我们为您强调了下列几个关键的进展：

- 联交所关于修订关连交易规则的咨询文件；
- 证监会关于修订中介人与专业投资者交易的制度的咨询文件，特别加强了中介人为个人专业投资者服务时的监管；
- 众多新刊发的上市决策，涉及事项从豁免到退回上市申请的理由；
- 关于简化招股书有关章节（“概要与摘要”以及“风险因素”）的指引信和介绍；
- 联交所关于新申请人在上市文件中披露汇报期末段纯利的常见问题诠释及有关披露规则在法律和法规的修订；及
- 证监会在Tiger Asia案中具有里程碑意义的执法行动。

希望这些内容令您感兴趣，并对您有所裨益。在我们刊发本期报告不久之前，又有一个关键的进展，联交所就证监会对保荐人制度的修订，发布了对《上市规则》的相应修改。我们不久将针对这些修订刊发通讯。

CONSULTATIONS

Exchange's Consultations on Review of Connected Transaction Rules and Definitions

In April, the Exchange issued two consultation papers regarding connected transactions:

- The main paper reviews the current model for regulating connected transactions by listed issuers, and proposes changes to simplify the Listing Rules and address anomalies.
- The second paper reviews the different definitions of “connected person” and “associate” in Chapters 1 and 14A of the Listing Rules (GEM Chapters 1 and 20) and proposes to align the definitions in certain parts of the Rules with those used in Chapter 14A, while renaming the definitions in Chapter 1 to distinguish them from those in Chapter 14A.

The two papers are reviewed in turn below.

Exchange's Consultation on Review of Connected Transaction Rules

The new proposals in this consultation paper are in summary as follows:

Plain language simplification

- simplify the language of the connected transaction rules by replacing Chapter 14A with the Exchange's illustrated “Guide on Connected Transaction Rules” issued in April 2012.

Scope of connected persons

- introduce further exemptions for persons connected only at the subsidiary level:
 - exempt all transactions between the issuer group and persons connected only at the subsidiary level, other than transactions between a subsidiary (or its own subsidiary) and the person connected with that subsidiary; and/or
 - exempt transactions with persons connected only at the subsidiary level from the shareholder approval requirements (but require disclosure, and approval by the disinterested directors);
- clarify that the deeming provision will include a shadow director or de facto controlling shareholder of the issuer, and a person who is accustomed to acting in accordance with a connected person's directions or instructions; and
- exclude from the definition of “connected person” certain persons who are unlikely to control or exert significant influence over the issuer.

Scope of connected transactions

- exclude from the connected transaction rules certain transactions involving the issuer group buying or selling interests in target companies from or to third parties where the risk of abuse by the controllers is limited.

Continuing connected transactions (CCTs)

- allow issuers to seek a mandate from their shareholders for CCTs over a period of time (up to three years) instead of a framework agreement, subject to conditions, if requiring such an agreement would be unduly onerous;
- allow the annual cap to be expressed as a percentage of the issuer's annual revenue or other financial items in its published accounts (as an alternative to the current requirement for a monetary cap) for CCTs of a revenue nature (other than financial assistance provided outside the ordinary and usual course of business); and
- remove inconsistencies with Practice Note 740 (Auditor's Letter on Continuing Connected Transactions under the Hong Kong Listing Rules) issued by the Hong Kong Institute of Certified Public Accountants.

Option and IBC requirements

- revise the requirements for transfer, non-exercise or termination of options, including provisions to:
 - introduce alternative classification rules for the transfer or non-exercise of an option granted by a connected person (currently, it is a connected transaction, classified as if the option is exercised);
 - align the requirements for the termination of an option with those applicable to the transfer or non-exercise of the option; and
- clarify the scope of requirements regarding the independent board committee's opinion on connected transactions.

Exemptions

- remove the 1% cap on transaction value, which is a condition of the exemption for provision or receipt of consumer goods or services;
- codify an exemption for issuers' provision to directors of indemnities or insurance against liabilities incurred in the course of performing their duties; and
- amend the monetary caps for full exemption and exemption from shareholders' approval.

For a copy of the consultation paper, please follow this link:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201304.pdf>

咨询文件

联交所审查关联交易相关规则和定义的咨询文件

2013年4月，联交所刊发了两项关于关联交易的咨询文件：

- 主要咨询文件审查了当前对上市发行人关联交易的监管，提出了简化《上市规则》相关部分并统一不规范之处。
- 第二项咨询文件审查了主板《上市规则》第一章和第十四A章（创业板规则第一章和第二章）对于“关连人士”及“联系人”的不同定义，建议在上市规则下相关部分将他们统一起来，并变更了第一章的定义，以区别于第十四A章所使用的定义。

下面我们分别为您解读这两份咨询文件。

审查关联交易相关规则的咨询文件

该项咨询文件的主要建议为您总结如下：

简化文字

- 以2012年4月刊发的《有关关联交易规则的指引》取代现行《上市规则》的第十四A章。

关连人士的范畴

- 进一步豁免仅属于发行人的附属公司层面的关连人士：
 - 豁免发行人集团与其附属公司层面关连人士之间的所有交易，附属公司（或该附属公司旗下的任何附属公司）与该附属公司的关连人士之间的交易除外；及/或
 - 与仅属附属公司层面的关连人士进行的交易可获得对股东批准要求的豁免。
- 阐明“视作关连条款”将会涵盖发行人的影子董事或其实际控股股东以及惯常听取关连人士指令或指示行事的人士；及/或
- 删除若干不大可能会控制发行人或对发行人有重大影响的人士。

关联交易的范畴

- 关联交易不再涵盖若干涉及发行人向第三方购买或出售目标公司权益的交易，该等交易中有关控制人滥用权力的风险很有限。

持续关联交易

- 如发行人有很大困难签定有关书面协议，容许发行人就其在一段期间内（最多三年）进行的持续关联交易寻求股东的授权，以取代签订框架协议；
- 就收益性质的持续关联交易（并非在发行人日常业务之外提供财务资助的交易）而言，容许发行人在设定年度交易上限时可以基于发行人年度收入或已刊发账目中其他财务项目而设定的某百分比（当前规定须以币值来表示交易上限）；及
- 修订关于核数师为持续关联交易发出确认函的规定，以消除《上市规则》与香港会计师公会发出的《实务说明》第740号（关于根据香港《上市规则》出具持续关联交易的核数师函件）之间不一致的地方。

选择权和对独立董事委员会的要求

- 修订有关转让、不行使或终止选择权的规定：
 - 就转让或不行使由关连人士给予的选择权而引入了一项可选择分类规则（当前是将其归类为一项关联交易，如同选择权已获行使一样）；
 - 修订终止选择权的规定，使之与转让或不行使选择权的规定一致；及
- 阐明有关独立董事委员会就关联交易发表意见的所涵盖范围的要求。

关联交易豁免

- 删除以交易金额不得超过1%的上限以作为提供或收取消费品或消费服务而获得关联交易规则豁免的条件；
- 增设豁免条文，发行人就董事履行职责时而产生的赔偿责任向董事提供赔偿或保险；及
- 修订完全豁免及股东批准豁免所需的金额上限。

请参阅咨询文件的链接：

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201304.pdf>

Exchange's Consultation on Aligning the Definitions of "Connected Person" and "Associate" in the Listing Rules

The Exchange's proposals in this consultation paper, published in April, are subject to adoption of the proposals in the accompanying paper (described above) to re-write Chapter 14A in simpler language.

They are in summary to:

- widen the meanings of "connected person" and "associate", from those currently in Chapter 1 to the extended meanings in Chapter 14A, for the purposes of various provisions that aim to protect independent/minority shareholders when issuers propose transactions or other corporate actions, or in other circumstances where there may be a conflict of interest (see further details below);
- add self-contained definitions of "connected person" and "associate" in Chapter 14A; and
- rename the existing narrower definitions of those terms, which are contained in Chapter 1, as "restricted connected person" and "close associate" to distinguish them from the definitions in Chapter 14A.

The provisions where the (widened) terms are proposed to be retained include provisions on transactions (such as reverse takeovers, backdoor listings and property acquisitions), issues or repurchases of securities, share options, voting at board or general meetings, disclosures in issuers' documents, and selection of independent non-executive directors, independent financial advisers and sponsors.

For a copy of the consultation paper, please follow this link:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2013042.pdf>

SFC's Consultation Paper on Amendments to Professional Investor Regime and Client Agreement Rules

In May, the Securities and Futures Commission (SFC) published proposals to amend the professional investor (PI) regime and the client agreement requirements. The main focus of the proposals is to introduce additional protection for PIs who qualify as such based solely on having wealth above a monetary threshold, and to limit exemptions under the SFC's Code of Conduct for licensed or registered persons (the "Code") to cases where intermediaries are dealing with sufficiently sophisticated investors. The proposals would be implemented via amendments to the Code and do not include any change to the law. The public consultation period closes on August 14, 2013.

Professional Investor Regime

The Code provides exemptions from certain of its requirements for intermediaries when serving PIs. The exemptions relate to information about or for the client, client agreements and discretionary accounts, and include exemption from the duty to ensure the suitability of each recommendation or solicitation for the client is reasonable in all the circumstances (the "Suitability Requirement"). For PIs other than Institutional PIs (as referred to below), the exemptions only apply if the intermediary is reasonably satisfied that the PI meets stated knowledge and experience criteria.

However, the proposals would create three categories of PIs (individual, corporate, and institutional), and distinguish between them as follows:

- Individual PIs – i.e., individuals who (alone or with their spouse or child on a joint account) have a portfolio of HK\$8 million or more, and corporate investment vehicles wholly owned by them and their family trusts.

The consultation paper's main proposal is to disapply the Code's exemptions where intermediaries are serving Individual PIs, irrespective of whether they satisfy any knowledge and expertise criteria. This would evidently increase intermediaries' clearance procedures for dealings with Individual PIs.

- Corporate PIs – i.e., any corporation or partnership with a portfolio of HK\$8 million or more, or total assets of HK\$40 million or more (including any trust corporation that has been entrusted with total assets of HK\$40 million or more), but excluding corporate investment vehicles included above as Individual PIs.

Intermediaries will still have access to the same Code exemptions when serving Corporate PIs, but the required assessment of the PI's knowledge and experience will be changed from the current bright-line tests (such as trading not less than 40 transactions per annum and being active in the relevant market for at least 2 years). A principles-based assessment will apply instead, based on criteria including the Corporate PI's structure and investment process/controls, and its decision makers' relevant experience and training and awareness of the relevant risks.

- Institutional PIs – i.e., all PIs except those designated by subsidiary legislation made under the SFO, namely those who qualify as PIs only by having wealth above a specified level. Intermediaries serving Institutional PIs already benefit automatically from the Code exemptions mentioned above, and the SFC is not proposing any change to this.

联交所关于统一《上市规则中》“关连人士”和“联系人”定义的咨询文件

联交所在4月刊发的这份咨询文件中建议基于对以上所提文件中的建议的采纳，以简洁的语言重写第十四A章。

- 拓宽当前第一章中“关连人士”及“联系人”的定义，与第十四A章中延伸的定义一致，其目的是当发行人拟开展某项交易或有其他企业行为、或在其他可能产生利益冲突的情况下给予独立股东/小股东各项规定下的保护（详见下文）；
- 在第十四A章内加入独立于《上市规则》其他章节的“关连人士”及“联系人”的定义；及
- 将第一章“关连人士”及“联系人”的定义分别变更为“受限制的关连人士”及“紧密联系人”，以跟第十四A章所采用的定义区分开来。

联交所建议在下列条文中使用新定义（包括拓展的定义）：有关交易的条文（如反向收购，借壳上市，收购物业），证券发行或回购，股权，在董事会或股东大会进行表决，发行人文件中所做的披露，选择独立非执行董事、独立财务顾问及保荐人。

请参阅咨询文件的链接：

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2013042.pdf>

证监会“建议修订专业投资者制度及有关客户协议规定的咨询文件”

5月，证券及期货事务监察委员会（证监会）刊发了建议修订专业投资者（专业投资者）制度及有关客户协议规定的咨询文件（“咨询文件”）。咨询文件主要是为了对仅以其财产高于一定的资金额而满足条件的专业投资者的利益提供进一步的保护，并将《证券及期货事务监察委员会持牌人或注册人操守准则》（操守准则）项下中介人的豁免仅限于向成熟投资者的服务。该建议将通过修订操守准则而实施，因而不会对法律进行变更。公众咨询期限将于2013年8月14日截止。

专业投资者制度

操守准则规定中介人向专业投资者提供服务时可获得若干豁免。豁免涉及有关客户、客户协议以及全权代

客买卖账户等或为此等提供的信息，包括豁免确保向客户就投资产品作出的建议或招揽行为在所有情况下均为合理的要求（合适性要求）。对于除机构专业投资者（见下文论述）之外的专业投资者，只有在中介人能够合理地相信专业投资者已达到规定的知识和经验要求时才能获得豁免。

但是，咨询文件将专业投资者分为三类：个人专业投资者，法团专业投资者和机构专业投资者并按照以下进行区别：

- 个人专业投资者指（单独或连同在某共有帐户下其配偶及子女）所拥有的投资组合不少于800万港元的任何个人以及由个人和家族信托全资拥有的作为投资工具的任何法团。

咨询文件的主要建议是无论个人专业投资者是否满足任何关于认识和经验方面的要求，中介人与所有个人专业投资者进行交易时均不享有豁免，而须遵守操守准则的所有规定。这显然将提高中介人在与个人专业投资者交易时需通过的审批标准。

- 法团专业投资者指投资组合不少于800万港元、或总资产不少于4,000万港元的任何法团或合伙组织（包括获托付的总资产不少于4,000万港元的任何信托法团），但不包括上述作为个人专业投资者的投资工具的法团。

中介人与该等法团专业投资者提供服务时继续享有相同的操守准则豁免，现在采用的对专业投资者的认识及投资经验的评估测试（例如投资者每年应进行不少于40宗交易及在相关市场上活跃地进行交易至少两年）应被以原则为基础而做的评估所取代，依据标准包括法团专业投资者的结构和投资过程及风险控制，其决策者的相关经验和培训、以及风险意识。

- 机构专业投资者指除了在证监会制定的附属法规中所指定的（即为仅以其所拥有资产高于一定的资金额为满足要求的专业投资者）的所有其他专业投资者。中介人对机构专业投资者提供服务时，会自动享有若干操守准则规定的豁免。证监会对适用于机构专业投资者的豁免不建议作任何变更。

Client Agreement Rules

The SFC is proposing to require client agreements to incorporate the Suitability Requirement as a contractual term, not to contain terms which are inconsistent with the Code, and to set out accurately in clear terms the actual services to be provided to the client. The SFC notes that, while breaches of the Suitability Requirement can lead to disciplinary action being taken by the SFC against an intermediary, the aggrieved clients cannot currently obtain compensation.

For a copy of the consultation paper, please follow this link:

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=13CP1>

NEW LISTING DECISIONS

Waivers for Company Secretaries of PRC Issuers

In April, the Exchange updated its listing decision LD35-1, which provided for waivers permitting company secretaries of PRC issuers to remain in office, for a period of three years, upon their listing in Hong Kong despite not having the relevant professional qualifications or experience, if assisted by a suitably qualified person. The update highlighted a number of subsequent cases where the Exchange had accepted an initial period, if assisted a suitably qualified person, of one year from the date of listing.

The Exchange set out the factors it normally takes into consideration when determining whether to grant a waiver for a one-year or a three-year period:

- (i) the individual's experience in handling company secretarial matters (e.g., through acting as the secretary of the issuer's board of directors while the issuer is listed on an overseas exchange), relevant professional qualifications and/or academic background – see further below;
- (ii) whether the issuer has established measures and systems to facilitate the individual's discharge of his duties as company secretary; and
- (iii) the issuer's regulatory compliance and/or weaknesses in internal controls during the track record period, and the sponsor's confirmation under Listing Rule 3A.15(5) that the issuer has established procedures, systems and controls which are adequate and sufficient.

Regarding item (i) above, in considering these particular cases, the Exchange took into consideration the fact that the relevant company secretaries variously:

- (i) had been involved in company secretarial matters for more than one year;
- (ii) had more than ten years of work experience in the finance field or corporate management;

(iii) had academic qualifications in accounting, law, business management and/or economics; and/or

(iv) had professional qualifications in law.

For a copy of the updated Listing Decision LD35-1, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld35-1.pdf>

Waivers in Reverse Takeover Cases

In April, the Exchange published three listing decisions in relation to whether the Exchange should waive Listing Rule 14.06 so that a company's proposed acquisition would be classified as a very substantial acquisition instead of a reverse takeover. These listing decisions are summarized below.

Waiver Granted for an Acquisition Related to a Company's Principal Business

Company A, engaged in the development and sale of electronic gaming systems, proposed to acquire a number of patents in an overseas market from Mr. X, its executive director and substantial shareholder. As the acquisition was a very substantial acquisition and Mr. X would become a controlling shareholder as a result of the acquisition, the acquisition would be a reverse takeover under Listing Rule 14.06(6)(a).

The Exchange granted a waiver to Company A and classified the acquisition as a "very substantial and connected transaction" as the patents to be acquired were related to Company A's existing principal business, and would enable the business to expand in an overseas market. Circumvention of the new listing requirements was not a material concern in this case.

For a copy of Listing Decision LD59-2013, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld59-2013.pdf>

Waiver Denied for a Suspended Shell to Achieve Listing of New Business

Company A was a long suspended company under delisting procedures. It proposed to acquire the target company (the "Target") from a vendor. The Target's principal business was similar to that of Company A before its trading suspension. As the acquisition was a very substantial acquisition and the vendor would become a controlling shareholder of Company A, the acquisition would be a reverse takeover under Listing Rule 14.06(6)(a). Company A requested a waiver from Listing Rule 14.06(6)(a) because it believed that the Target would be able to meet the trading requirements for new listing applicants under Listing Rule 8.05.

有关客户协议的规定

证监会建议将以上所提的合适性要求作为合约条款纳入客户协议之内，客户协议不应包括与操守准则相抵触的条款，而应以明确的条款准确列明实际向客户提供的服务。证监会指出，尽管证监会可以对违反合适性要求的行为进行处罚，但目前客户不能因这些违反而获得赔偿。

咨询文件链接如下：

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=13CP1>

新刊发的上市决策

关于中国发行人公司秘书资格的豁免

4月，联交所对LD35-1号上市决策进行了更新。具有适当资质的人士暂不满足上市规则有关专业资格或经验的要求，上市决策允许该人士在中国发行人在香港上市之日后三年留任公司秘书。新的上市决策列举了刊发新决策后的数个案例，其中联交所授予自上市之日起最初为期一年的豁免。

在确定是否授予一年期或三年期豁免时，联交所一般会考虑以下各项：

- (i) 个别人士在处理公司秘书事务的经验（例如在发行人于海外交易所上市时已担任发行人的董事会秘书）、相关专业资格及/或学术背景（详见下文）；
- (ii) 发行人是否已建立措施和制度为个别人士履行其公司秘书的职责提供便利；及
- (iii) 发行人在业务纪录期内的合规情况及/或内部监控的不足，以及保荐人遵照上市规则第3A.15(5)条的规定确认发行人已确立适当及充分的程序、制度及监控措施。

对于上述(i)项，在考虑向该等案例授予豁免时，联交所已考虑到相关的公司秘书是否：

- (i) 已参与公司秘书事务超过一年；
- (ii) 已在金融界或企业管理方面有超过10年工作经验；
- (iii) 拥有会计、法律、商业管理及/或经济方面的学历；及/或
- (iv) 拥有法律专业资格。

更新后的上市决策LD35-1链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld35-1.pdf>

反向收购的豁免

4月，联交所刊发了三项上市决策，就是否豁免遵守上市规则第14.06条从而公司拟进行的交易可被归为非常重大的收购事项而不是反向收购作出了规定。现总结如下。

就涉及公司主要业务的收购而授予的豁免

甲公司主要从事开发及销售电子博彩系统。甲公司拟向其执行董事和主要股东X先生收购在若干海外市场的专利权。由于该收购属一项非常重大的收购事项，同时X先生将会透过这项收购成为甲公司的控股股东，因此该收购属上市规则第14.06(6)(a) 条项下的反向收购。

联交所同意授予甲公司豁免，并将该收购事项界定为一项“非常重大的收购事项及关连交易”，联交所认同该专利权与甲公司现有主要业务有关连，并能促使拓展其在海外的业务。规避新上市规定不是本案主要考虑因素之一。

上市决策LD59-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld59-2013.pdf>

联交所拒绝就停牌壳公司拟将收购的新业务上市而授予有关豁免

甲公司是一家在除牌过程中长时间停牌的公司。甲公司将收购主营业务与甲公司停牌前的业务类似的某目标公司（“目标公司”）。由于该收购属一项非常重大的收购事项，卖方又将会成为甲公司的控股股东，因此该项收购属上市规则第14.06(6)(a)条所述的反向收购。甲公司要求豁免上市规则第14.06(6)条的规定，理由是甲公司认为目标公司可符合上市规则第8.05条中有关新上市申请人营业纪录的要求。

The Exchange refused to grant the waiver for the following reasons:

- (i) Listing Rule 14.06(6) seeks to prevent circumvention of the new listing requirements. Its introductory paragraph defines “reverse takeover” as an acquisition or a series of acquisitions which represent an attempt to list the assets to be acquired and circumvent the new listing requirements;
- (ii) Company A had ceased operation and was a listed shell. The acquisition was an attempt by the vendor, the new controlling shareholder of Company A, to achieve a listing of its business (i.e., the Target) by injecting it into Company A.

The Exchange concluded that the acquisition was a reverse takeover and Company A must submit a new listing application for its proposal.

For a copy of Listing Decision LD58-2013, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld58-2013.pdf>

Waiver Denied for Acquisition of Unlistable Larger Target

Company A proposed to acquire 50% of the issued share capital (the “Target Shares”) of a target (the “Target”). Upon completion, Company A would account for these shares as “an interest in an associated company” or “an investment” in its financial statements. The Target was in a different principal business from Company A and was also significantly larger.

The Exchange concluded that the acquisition should be classified as a reverse takeover for the following reasons:

- (i) this would be a very substantial acquisition, and would be significant to Company A in terms of size. Upon completion, Company A’s existing businesses and assets would be relatively immaterial to the enlarged group, hence the acquisition was a means to achieve the listing of the Target Shares;
- (ii) neither the assets to be acquired nor the enlarged group would be able to meet the listing requirements under Listing Rule 8.05.

For a copy of Listing Decision LD57-2013, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld57-2013.pdf>

Alternative Revenue Ratio Accepted for Classifying Certain Continuing Connected Transactions

In a decision published in April, the Exchange accepted an alternative revenue ratio proposed by Company A for classifying certain continuing connected transactions with

Company B.

Company A had completed the acquisition of a target company (the “Target”) and accounted for it as a subsidiary. As Company B was the substantial shareholder of certain subsidiaries of the Target, it became a connected person of Company A. After the acquisition, the Target and its subsidiaries (the “Target Group”) would continue to conduct certain transactions with Company B.

Company A considered that the revenue ratio was anomalous as its group had been substantially enlarged as a result of the acquisition but the revenue ratio was calculated using the revenue shown in its latest published audited consolidated accounts and did not take into account the Target’s results. Company A proposed an alternative revenue ratio using the enlarged group’s revenue shown in the pro forma consolidated income statement published in the acquisition circular.

In accepting the alternative proposal, the Exchange noted that:

- as the transactions were conducted by the Target Group in the ordinary and usual course of business and constituted continuing connected transactions for Company A as a result of the acquisition, it would be reasonable to take into account the Target Group’s results when assessing the materiality of the transactions;
- the pro forma financial information of the enlarged group was prepared in respect of the most recently completed financial year and published in the acquisition circular in accordance with the Listing Rules.

For a copy of Listing Decision LD60-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld60-2013.pdf>

Alternative Revenue Ratio Accepted Including Revenue of JCEs

In April, the Exchange published a decision on accepting an alternative revenue ratio for a jointly controlled entity (JCE) structure which was accounted for using the equity method of accounting.

A listed company manufactured and sold automobiles in the Mainland through various JCEs. In the last completed financial year, the company had changed its accounting policy and accounted for the JCEs using the equity method of accounting instead of the proportionate consolidation method. As a result, the revenue shown in the company’s latest published consolidated accounts (“Published Revenue”) no longer included its share of the JCEs’ revenue. The company felt that using the Published Revenue as the denominator for calculating the revenue ratio would produce anomalous results and would not properly reflect the materiality of a transaction to the company.

联交所拒绝授予豁免，因为：

- (i) 上市规则第14.06(6)条旨在防止规避新上市规定。该条文的序言段落已界定“反向收购行动”为一项或一系列收购事项，该等收购的意图是将所收购的资产上市以规避新上市规定；及
- (ii) 甲公司已停止其运营，属上市空壳公司。收购事项实为卖方（甲公司的新控股股东）试图通过将其业务（即目标公司）注入甲公司以将其上市。

联交所认为该收购事项属一项反向收购行动，甲公司必须就其建议提交新的上市申请。

上市决策LD58-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld58-2013.pdf>

联交所拒绝就收购不适宜上市的大型目标公司授予有关豁免

甲公司建议收购目标公司已发行股本中50%的股份（“目标股份”）。收购完成后，甲公司财务报表中目标股份将被列为一项“联营公司的权益”或“投资”。目标公司的主营业务与甲公司不同，而且规模比甲公司大很多。

联交所认为收购事项属于反向收购行动，因为：

- (i) 该收购属于一项非常重大的收购事项且对甲公司而言属重大事项。收购完成后，甲公司的现有业务及资产相对经扩大后的集团而言，规模比较小。该收购事项是实现将目标股份上市的一种途径；及
- (ii) 拟收购的资产或经扩大后的集团均未能符合上市规则第8.05条的规定。

上市决策LD57-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld57-2013.pdf>

在持续关连交易中接纳公司建议的替代收益比率

在4月刊发的一项上市决策中，联交所接纳了甲公司建议采用的替代收益比率，以将其与乙公司进行的若干持续关连交易进行分类。

甲公司最近完成收购目标公司（“收购事项”），并

将其作为附属公司。由于乙公司是目标公司旗下若干附属公司的主要股东，因此其亦成为了甲公司的关连人士。收购完成后，目标公司与其附属公司（“目标集团”）将继续与乙公司的某些交易。

甲公司指出，其集团经过收购事项后规模显著扩大；然而，收益比率是采用甲公司最近刊发的经审核综合财务账目所显示的收益来计算，并没有计入目标公司的业绩。甲公司建议采用一项替代收益比率，使用经扩大集团在收购事项通函中所列的备考综合收益表中的总收益来进行计算。

联交所接纳了甲公司采用替代收益比率的建议，因为：

- 与甲公司进行的交易是目标集团在其日常业务中进行的，属甲公司的持续关连交易。在评估收购的重要性时，甲公司考虑到目标集团的业绩是合理的；及
- 经扩大后集团的备考财务资料是就最近完结的财政年度编备的，并按上市规则的规定在收购事项通函中作了刊发。

上市决策LD60-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld60-2013.pdf>

就与共同控制实体的交易采用替代收益比率包括共同控制实体的收益

4月，联交所刊发了一项上市决策，接纳对使用权益会计法的共同控制实体结构采用替代收益比率。

某上市公司透过多家共同控制实体在内地制造及销售汽车。在上一个完整财政年度，该公司更改其会计政策，转用以权益会计法取代按比例合并法将共同控制实体入账。由于会计政策的调整，公司最新刊发的综合账目所示的收益（“已刊发收益”）不再计入其分占共同控制实体的收益。公司指出，采用已刊发收益作为计算收益比率的分母会产生异常结果，不能正确反映该项交易对公司的重要性。

公司因此建议采用一项替代收益比率将有关交易分类，该替代收益比率的分母是已刊发收益与其分占共同控制实体收益之总和，并调整去除共同控制实体与公司（或其附属公司）之间交易所得的收益。这样集

The company proposed to adopt an alternative revenue ratio for classifying its transactions where the denominator would be the sum of the Published Revenue and its share of the JCEs' revenue, with adjustments to eliminate the revenue arising from transactions between the JCEs and the company (or its subsidiaries). This would assimilate the group's revenue as if the JCEs were still accounted for using the proportionate consolidation method.

In accepting the alternative revenue ratio, the Exchange noted that:

- the substantial decrease in revenue shown in the company's consolidated accounts was due to the change in accounting policy, and there was no change in its principal business or operating model; and
- when assessing the materiality of a transaction using the revenue ratio, it would be reasonable to take into account the group's share of the JCEs' revenue.

For a copy of Listing Decision LD61-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld61-2013.pdf>

Placing Postponement is a Material Change to Acquisition

In April, the Exchange considered whether postponement of a placing is a material change to the underlying acquisition that is being funded, and should be made conditional on shareholders' approval in a general meeting.

Under the listed company's acquisition agreement, completion of the acquisition was conditional on the completion of the placing. The pro forma financial information on the enlarged group reflected the impact of the acquisition and the placing. However, the company proposed to postpone the placing until after completion of the acquisition in light of deteriorating market conditions.

The Exchange considered the proposed postponement to be a material change to the terms of the acquisition agreement because:

- the financing arrangements were material information for the shareholders in deciding how to vote on the acquisition – the shareholders had already been informed that the acquisition was conditional on the completion of the placing, and the cash consideration and a substantial part of the working capital required for the target's new business would be funded by the placing. The circular also disclosed how the acquisition, together with the placing, would affect the financial position of the listed company; and

- the proposed postponement would remove the condition in the acquisition agreement so that the company could complete the acquisition without the placing, i.e., changing the financing arrangement previously presented in the circular. Shareholders should have the right to reconsider whether it was in the interests of the company and its shareholders as a whole to complete the acquisition before raising sufficient funds to finance it.

For a copy of Listing Decision LD62-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld62-2013.pdf>

Waiving the Annual Review and Reporting Requirements for CCT

In April, the Exchange considered whether to waive the annual review and reporting requirements for a continuing connected transaction between Companies A and B.

The listed Company A proposed to enter into a three-year supply of goods contract with Company B. Company B was an associate of X, an independent non-executive director of Company A.

In granting the waiver, the Exchange took into account the following factors:

- X was only an independent non-executive director (INED);
- the transaction met all of the conditions set out in Listing Rule 14A.42(1) for waivers involving INED interests;
- it was unlikely that X could exert undue influence over Company A to benefit from the transaction; and
- the size of the transaction was immaterial.

For a copy of Listing Decision LD63-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld63-2013.pdf>

Labuan is an Acceptable Jurisdiction

In April, the Exchange decided in a listing application that Labuan was an acceptable jurisdiction for an issuer's incorporation, on the basis that:

- (i) a Labuan applicant must address any shareholder protection deficiency based on its individual circumstances, by amending its articles or, if not feasible, through other methods of shareholder protection acceptable to the Exchange;
- (ii) a Labuan applicant must provide in its prospectus specific disclosures in respect of each shareholder protection topic by reference to its articles and the laws of Labuan,

团的收益整合将犹如仍然使用比例合并法将共同控制实体入账一样。

联交所接纳了公司采用替代收益比率，因为：

- 公司综合账目所示的收益大幅下跌是由于会计政策变更所致，其主营业务或经营模式并没有发生变化；及
- 采用收益比率去评估一宗交易的重要性时，考虑到公司分占的共同控制实体之收益是合理的。

上市决策LD61-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld61-2013.pdf>

配售延迟构成对收购的重大变化事项

4月，联交所研究了配售延迟是否对拟提供融资的收购构成重大变化事项以及是否需要股东在股东大会上批准。

根据上市公司的收购协议，配售完成是该收购完成的条件。经扩大后集团的备考财务资料反映了收购及配售的影响。因市况逆转公司建议将配售推迟到收购完成之后。

联交所认为配售延迟构成对收购协议条款的重大变化事项，因为：

- 融资安排对股东而言属重要信息，足以影响他们决定如何就收购进行表决。股东已被告知该收购须待配售完成后方才完成，而现金对价及目标公司新业务所需的营运资金主要部分将来自配售所筹集的款项。此外，有关通函亦披露了该项收购和配售对上市公司财务状况将会产生的影响。
- 推迟配售的建议将删除配售完成的条件，公司因此完成收购而不再进行配售，即更改之前在通函内所述的收购融资安排。股东应有权重新考虑在并未筹集足够资金以支付所需对价前而完成该项收购是否符合公司及其股东的整体利益。

上市决策LD62-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld62-2013.pdf>

豁免持续性关连交易有关年度审核及申报的要求

4月，联交所研究了是否就甲公司与乙公司之间的持续性关连交易豁免年度审核及申报的要求。

上市的甲公司拟与乙公司订立一项为期三年的供货协议。乙公司是甲公司的独立非执行董事X先生的联系人。

联交所向甲公司授予豁免时考虑了以下因素：

- X先生只是一名独立非执行董事；
- 该项交易满足上市规则第14A.42(1)条所规定的涉及独立非执行董事利益时的全部豁免条件；
- X先生不大可能会向甲公司施加不适当的影响力，从而透过交易获取利益；及
- 交易规模不算重大。

上市决策LD63-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld63-2013.pdf>

接受马来西亚纳闽地区为认可司法权区

4月，联交所在一项上市申请中接纳马来西亚纳闽为发行人注册成立的认可司法权区，理由如下：

- (i) 申请在联交所上市的纳闽申请人必须根据自身情况解决股东保障不足的地方，或者修订其公司章程直至符合股东保障规定，如无法做到，提供其他为联交所所接纳的股东保障方法；
- (ii) 纳闽申请人须参照自身公司章程及其注册成立所在司法权区纳闽地区法律在招股书中按保护股东各主题进行是项披露，并指出其中与香港规定的主要差异以及相应的处理安排（所设想的问题和解决方案见联交所上市决策）；
- (iii) 若纳闽法律及法规今后有任何重大变化以致纳闽的股东保障水平与香港比较严重恶化，申请在联交所上市的纳闽申请人须通知联交所；联交所会考虑增加其他条件，或重新考虑是否接受纳闽申请人的上市申请；
- (iv) 没有任何特定情况致使纳闽不适当作为发行人注册成立的认可司法权区；
- (v) 申请在联交所上市的纳闽申请人须向联交所证明其业务与纳闽有合理联系；

and highlight the major differences from the Hong Kong requirements and the arrangements to address them (the envisaged issues and solutions are itemized in the Exchange's listing decision);

- (iii) a Labuan company must inform the Exchange if there are any subsequent major changes in Labuan laws and regulations that significantly worsen shareholder protection standards in Labuan compared to those in Hong Kong, and the Exchange would then consider imposing further conditions or reconsider accepting any future listing applications from Labuan companies;
- (iv) there are no specific circumstances that make it inappropriate to accept Labuan as an issuer's jurisdiction of incorporation;
- (v) a Labuan applicant must demonstrate to the Exchange that there is a reasonable nexus between its operations and Labuan;
- (vi) customary confirmations are required from the sponsor and legal advisers; and
- (vii) a Labuan company must comply with the Listing Rules upon listing (subject to any waivers).

For a copy of Listing Decision LD64-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld64-2013.pdf>

Mineral Company: Waiver of CPR and Valuation Report for Proposed Acquisition

In May, the Exchange granted a waiver of the requirement for a listed issuer to produce a competent person's report (CPR) and a valuation report (VR) for its proposed acquisition of an overseas listed global oil and gas exploration and development company (the "Target").

The acquisition was a major transaction for the listed issuer, and the Target would become its wholly owned subsidiary. The following factors were relevant:

- (i) the Target was listed on a recognized overseas exchange, and its oil and gas reserves information was subject to supervision by regulatory authorities;
- (ii) its reserves information was prepared and reported on by technical experts with relevant qualifications and experience;
- (iii) the Canadian NI 51-101 standard was an acceptable reporting standard for the Target's reserves estimates; and
- (iv) the listed issuer would provide a 'no material change' statement for the latest reserves information in the acquisition circular.

In waiving the requirement to produce a CPR, the Exchange agreed that it would be unduly burdensome. The proposed alternative disclosure would provide relevant and reliable information on the Target's oil and gas reserves comparable to that required under Chapter 18 of the Rules.

In waiving the requirement to produce a VR, the Exchange noted that the Target's share price and market capitalization would represent its fair value, and the consideration for the acquisition was not based on a valuation of the Target's assets. Hence, granting a waiver from the VR requirements would be unlikely to result in undue risks to the shareholders.

For a copy of Listing Decision LD65-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld65-2013.pdf>

Waiver of P&L Statement in Acquisition Circular

In May, the Exchange considered granting a waiver of the requirement for a listed company to include a three-year profit and loss statement in its circular regarding the acquisition of a property.

The company proposed to acquire a commercial building in Hong Kong for investment purposes. The acquisition would be a major transaction for the company, and because the target property yielded rental income, the shareholder circular would be required to include a profit and loss statement for the property's net income stream for the previous three years. However, the company was unable to compile such a statement because limited information was available from the vendor.

The Exchange granted the waiver as the company had no access to the information required for compiling the profit and loss statement, and the circular would include a valuation report as well as estimates or summaries of relevant income and expenses. The Exchange considered that the company had taken reasonable steps to provide alternative financial information to its shareholders for assessing the impact of the transaction, and the waiver would not result in an omission of material information from the circular.

For a copy of Listing Decision LD66-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld66-2013.pdf>

- (vi) 需要保荐人及法律顾问就惯例情况出具确认函；
及
- (vii) 纳闽申请人证券一旦获准在联交所上市，公司必须遵守联交所上市规则（除非被授予豁免）。

上市决策LD64-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld64-2013.pdf>

矿业公司：豁免就拟进行的收购提供合格人士报告及估值报告

5月，联交所豁免某上市公司就建议收购海外上市的一家全球油气勘探及开发公司（“目标公司”）须提供合格人士报告及估值报告的要求。

该收购交易为上市发行人的一项主要交易。收购完成后，目标公司将成为其附属公司。联交所豁免理由如下：

- (i) 目标公司在认可的海外交易所上市，其储量资料须受有关监管机构规管；
- (ii) 储量数据由具备相关资历及经验的技术专家编备及汇报；
- (iii) 就目标公司的储量估计数字而言，加拿大NI 51-101标准为被认可的报告准则；
- (iv) 上市发行人会对收购交易通函中列出的储量资料作出无重大变动的声明。

联交所同意编制合格人士报告负担过于繁重，因而授予豁免。建议的替代披露方案提供了目标公司相关及可靠的油气储量的资料，所披露的内容可与上市规则第十八章规定相当。

关于豁免提供估值报告，联交所注意到目标公司的股价及市值可作为评估目标公司公平市值的合理参照，而收购的对价并不是基于目标公司的资产估值。因此豁免上市发行人遵守估值报告规定应不会对股东产生不必要的风险。

上市决策LD65-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld65-2013.pdf>

豁免在收购通函中包括损益表

5月，联交所研究了是否豁免上市公司就收购一项物业而在通函中提供过去三年损益表。

上市公司拟收购一幢位于香港的商业大厦作投资用途。该收购属公司的一项主要交易，由于该物业产生租金收入，股东通函中需包括该物业过去三年有关净收入的损益表。由于所得的数据有限，公司因此无法妥善编制该损益表。

联交所授予了该豁免，因为公司无法取得编制损益表所需的信息，而且通函中将包含一份估值报告以及关于相关收入支出的估算或摘要。联交所认为公司已采取合理行动，提供其他数据给股东以评估交易对公司的影响，授予豁免不会导致通函欠缺重要数据。

上市决策LD66-2013链接如下：<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld66-2013.pdf>

Waiver of Disclosure Requirements for Disclosable Transactions

In May, the Exchange published two listing decisions on whether to waive disclosure requirements for certain disclosable transactions on grounds of commercial sensitivity.

Please see the table below for details of the two decisions.

For a copy of Listing Decisions LD67-2013 and LD68-2013, please follow the relevant links:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld67-2013.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld68-2013.pdf>

Listing Decision	LD67-2013	LD68-2013
Business of Issuer	Financing service provider which operated a pawn loan and money lending business.	Hotel investment and operation.
Transaction	A secured entrusted loan to a borrower independent from the issuer (the “Loan Transaction”) on normal commercial terms.	Acquisitions of units in a Hong Kong building from various vendors.
Waived Information	Identity of the borrower, the interest rate and the amount of interest and service fee receivable from the borrower under the Loan Transaction.	Principal business activities of the corporate vendors, the name and address of the property, the units to be acquired, and the conditions precedent for completion.
Reasons for Granting Waiver	<p>(i) disclosure of the required specific information would harm the competitive position of the issuer and risk causing it to lose the business of publicity-shy customers;</p> <p>(ii) the Loan Transaction was only a disclosable transaction and not significant to the company; and</p> <p>(iii) the Loan Transaction was collateralized, and the proposed alternative disclosure of non-specific information was meaningful and would allow investors to assess the creditworthiness of the borrower and the risks and exposure of the Loan Transaction.</p> <p><i>Note: The Exchange noted that if the Loan Transaction constituted a major transaction, full disclosure and shareholders’ approval would be required. In addition, if the Loan Transaction was unsecured, the company would need to produce to the Exchange a satisfactory credit agency report on the borrower and disclose the borrower’s credit rating in the announcement.</i></p>	<p>(i) prompt disclosure of the required specific information would harm the interests of the company as regards to its continuing negotiations to acquire other units in the same building (but commercially sensitive information should not be shielded from publication if it was material to investors);</p> <p>(ii) the acquisitions constituted a disclosable transaction only, and were not significant to the company; and</p> <p>(iii) the proposed alternative disclosure of non-specific information would allow investors to understand the nature of the acquisitions and the waiver would not result in an omission of material information.</p>

Waiver of Shareholder Circular for Transaction by Departing Subsidiary

In May, the Exchange considered whether to waive the shareholder circular requirement for a major transaction arising from an acquisition by a listed issuer’s subsidiary after the issuer (Company A) had announced its proposed disposal (the “Disposal”) of its interests in the subsidiary (Company B).

The Disposal did not require shareholders’ approval and would be completed when the parties obtained the necessary regulatory approvals. Upon completion, Company B would cease to be a subsidiary of Company A.

After the Disposal had been announced, Company B proposed to acquire a target company from independent third parties (the “Acquisition”), which would be a very substantial acquisition for Company B, and also a major transaction for Company A since Company B was still its subsidiary.

Completion of the Disposal was expected to take place before Company B issued its circular and notice of general meeting for the approval of the Acquisition.

In granting the waiver, the Exchange noted that:

- (i) it would be unduly burdensome to require Company A to issue a circular for the Acquisition if at the material time

豁免须予披露交易的披露要求

5月，联交所刊发了两项上市决策，研究了是否基于商业敏感性而豁免某些须予披露交易的披露要求。

上市决策LD67-2013和LD68-2013链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld67-2013.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld68-2013.pdf>

上市决策	LD67-2013	LD68-2013
发行人的业务	经营典当和贷款业务的融资服务公司。	酒店投资及营运。
交易	按一般商业条款向独立于发行人的借款人提供一项有抵押委托贷款（“贷款交易”）。	从多名卖家收购香港某大厦的多个住宅及商业单位。
豁免披露的信息	贷款交易中的借款人身份、利率、应收取借款人的利息金额及服务费。	卖家的主要业务，目标物业的名称及地址，拟收购的单位，完成收购的先决条件。
豁免理由	<p>(i) 披露特定信息将削弱发行人的市场竞争力，并造成失去不愿对公众透露身份的客户的风险；</p> <p>(ii) 贷款交易只是一项须予披露的交易，对公司而言不算重大；及</p> <p>(iii) 贷款交易有抵押担保，所建议的对其他非特定数据的披露有意义，让投资者可评估借款人的信誉及贷款交易的风险。</p> <p><i>注意：联交所注意到若贷款交易构成一项重大交易，公司应全面披露交易详情，并须遵守股东批准的要求。此外，若贷款并无抵押，公司须向联交所提交令其满意的借款人信贷评级报告，以及在公告内披露借款人的信贷评级。</i></p>	<p>(i) 现阶段披露有关特定资料可能会损害公司的利益，公司正与协商收购该物业的其他单元（但如果商业敏感信息属于对投资者的重大信息，则不能被豁免而予以披露）；</p> <p>(ii) 收购只构成一项须予披露的交易，对公司而言不算重大；及</p> <p>(iii) 按所建议的披露其他非特定资料可让投资者了解收购的性质，而授予豁免也不会导致欠缺重要数据。</p>

豁免就有关将剥离的附属公司所进行的收购遵守股东通函要求

5月，联交所研究了是否就上市发行人（甲公司）宣布出售其持有附属公司（乙公司）的权益（“出售交易”）后的一项乙公司拟进行的重大收购而豁免遵守股东通函的要求。

出售交易毋须经股东批准，且在双方取得所需要的监管批准后即完成。交易完成后，乙公司不再为甲公司的附属公司。

出售交易公布以后，乙公司建议向独立第三方收购一家目标公司（“收购交易”），此交易将属乙公司的一项非常重大收购事项。由于乙公司仍是甲公司的附属公司，因此收购交易亦属甲公司的一项重大交易。

出售交易预期会于乙公司发出通函及有关批准收购交易的股东大会通知前就已经完成。

联交所注意到下列因素而授予豁免：

(i) 若乙公司不再是甲公司的附属公司，要求甲公司就

Company B was no longer its subsidiary. Information about the Acquisition would be irrelevant to Company A and its shareholders; and

- (ii) Company A would not require a general meeting to approve of the Acquisition, as its parent company would provide a written approval under Listing Rule 14.44. Thus, a shareholder circular, if the Exchange required one, would only be for information purposes.

For a copy of Listing Decision LD69-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld69-2013.pdf>

Allocation of Excess Rights Shares

In May, the Exchange considered whether a listed issuer's arrangements to dispose of excess rights shares would comply with Listing Rule 7.21(1), which requires fairness and disclosure.

The issuer had announced a rights issue and disclosed that the allocation of the excess rights shares would be at its discretion and on a fair and equitable basis under the following principles:

- (i) preference would be given to applications to top-up holdings to a round number of board lots ("Top-up Applications") where it appeared to the directors that the applications were not made with the intention of abusing that mechanism; and
- (ii) any remaining shares would be allocated to other applicants on a sliding scale based on the number of excess shares they applied for.

The issuer noted unusual patterns of excess applications and believed that most of the applications were made to abuse the top-up mechanism, as those shareholders had split their shareholdings into odd lots enabling them to submit multiple Top-up Applications.

The board decided to exercise its discretion to allocate the excess rights shares in full only to the non-abusive Top-up Applications. The remaining excess rights shares would then be allocated as set out in paragraph (ii) above.

The Exchange decided these arrangements complied with Rule 7.21(1) as the issuer had fully disclosed the intended basis of allocation in its announcement and listing document. In addition, the Exchange noted the special circumstances of this case and was satisfied that the issuer had taken reasonable steps to allocate the excess shares on a fair basis that was consistent with the principles disclosed in the company's documents above.

For a copy of Listing Decision LD70-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld70-2013.pdf>

Rights Issues: Trigger for Independent Shareholder Approval

In May, the Exchange considered how to determine whether a proposed rights issue would require independent shareholder approval. The Listing Rules stipulated that such approval would be required for rights issues that would increase the issuer's market capitalization by more than 50%.

The Exchange determined that the assessment should be based on the issuer's market capitalization at the time of the proposed rights issue, and that for this purpose it is generally acceptable to use the closing price on the date when the terms of the rights issue are finalized.

For a copy of Listing Decision LD71-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld71-2013.pdf>

Waiver of Assured Entitlement Requirement in a PRC Spin-off

In May, the Exchange considered whether to waive the assured entitlement requirement for a proposal to spin off a subsidiary for listing on a PRC stock exchange.

Company A proposed to spin off its subsidiary, Company B, for listing on a PRC stock exchange. Company B would offer new A shares in the Mainland and the deemed disposal of interests in Company B would be a discloseable transaction for Company A.

There was a legal bar to Company A providing its shareholders with an assured entitlement to Company B's A shares under the proposed spin-off, as foreign persons cannot invest in the A-share market in the PRC unless they are qualified foreign institutional investors. Company A therefore sought a waiver from the assured entitlement requirement, on the basis that, although the Listing Rules allowed minority shareholders to give a waiver by resolution, the PRC legal restriction could not be overcome even if they refused, so it would be burdensome to require Company A to seek a waiver from shareholders.

In granting the waiver application, the Exchange noted that:

- the proposed spin-off was not a material transaction for Company A and did not require shareholders' approval under the Listing Rules; and
- Company A could not provide its shareholders with an assured entitlement to Company B's A shares due to legal restrictions in the PRC.

For a copy of Listing Decision LD72-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld72-2013.pdf>

收购交易刊发通函，会对甲公司造成不必要的繁重负担。有关收购交易的资料与甲公司及其股东并不相关；及

- (ii) 甲公司不会就批准收购交易召开股东大会，其母公司将根据上市规则第14.44条提供有关书面批准。联交所如有需要，股东通函也只作为参考之用。

上市决策LD69-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld69-2013.pdf>

分配额外供股股份

5月，联交所研究了上市发行人对于额外供股股份的分配安排是否符合上市规则第7.21(1)条关于公平和披露的规定。

发行人公布一项供股计划，并披露按下列公平及合理的原则酌情分配股东申请的额外供股股份：

- (i) 将会优先处理为补足有关未一手股份至完整买卖单位而提交的申请（“补股申请”），而董事会认为该等申请并无滥用此机制的意图；及
- (ii) 按其他申请人申购的额外供股股份数量分配剩余供股股份。

发行人留意到不寻常的额外供股股份申请情况，并相信绝大部份申请可能是意图滥用补股机制。有些股东把其股权拆细至不足一手，以使它们能提交多份补股申请。

董事会决定仅向未滥用机制的补股申请全数配发额外供股股份。其余申购的额外供股股份将会根据上述第(ii)项分配。

联交所认为发行人的安排符合上市规则第7.21(1)条的规定。发行人已经在公告及上市文件内披露拟采用的额外供股股份分配基准。此外，联交所考虑本个案的特别情况，并满意发行人已经采取合理程序以公平分配予股东。联交所认为其分配与上述原则一致。

上市决策LD70-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld70-2013.pdf>

供股发行；触发独立股东批准

5月，联交所研究了如何确定发行人所建议的供股发行是否需要独立股东的批准。根据上市规定，若供股发行会导致发行人的市值增加超过50%，便须获得独立股东批准。

联交所认为评估应参考发行人在所建议的供股发行时的市值，因此，发行人以其股份于供股条款确认当日的收市价作为计算其市值的做法是可以接受的。

上市决策LD71-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld71-2013.pdf>

豁免分拆附属公司上市中对保证股份权益的要求

5月，联交所研究了是否豁免拆分子公司于中国交易所上市中的保证权利要求。

甲公司拟分拆其附属公司，乙公司在中国一家证券交易所上市。此举涉及乙公司在内地发行新A股。这项被视为出售乙公司权益的交易属甲公司一项须予披露的交易。

由于外国人不能投资中国A股市场（除非有关人士为合格境外机构投资者），因此甲公司向股东提供保证分配拟分拆上市的乙公司A股的权益存有法律障碍。甲公司因此申请豁免遵守就有关提供保证的股份分配权益的要求，基于以下理由：尽管上市规则允许少数股东以决议的形式给予豁免，但即便如果使他们拒绝豁免，中国法律的障碍也难以克服，因此要求甲公司取得股东豁免是一项过于繁重的负担。

在授予甲公司豁免时，联交所注意到：

- 所建议的分拆上市对于甲公司并不是一项重大交易，按照上市规则有关交易无须经股东批准；及
- 碍于中国法律的限制，甲公司无法向其股东提供保证的乙公司股份分配权益。

上市决策LD72-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld72-2013.pdf>

Suitability for Listing

In May, the Exchange considered whether a listing applicant's non-compliance incidents, uncertainties over its principal retail stores, and its deteriorating financial performance would render it unsuitable for listing.

The applicant was a retailer and had three principal retail stores (Stores A, B and C), all of which were leased properties. The three stores contributed around 80% of its revenue during the track record period.

The Exchange noted the following material issues in its listing application:

- Store A required rectification of unauthorized building works, and surrender of several floors owing to their use for purposes the occupation permit did not allow. The rectification required approval by the authorities and would involve delay, impaired performance and, if not approved, a move to another location;
- The applicant's financial performance deteriorated significantly subsequent to Year 3 of the track record period, and the revenue and net profit in Year 4 were expected to decrease by over 10% and over 30%, respectively, compared to Year 3;
- Store C's rental cost would increase by 10% to 20% upon a forthcoming lease renewal; and
- The directors' conduct was a factor for consideration. During over 30 years of leasing Store A, the directors had not taken sufficient steps to identify or rectify the breach of building regulations. Professionals were hired to perform inspections in Store A shortly before the listing application, and a full assessment was performed only after the listing application was filed. The applicant submitted the rectification proposal to the relevant authority only toward the end of Year 4, months after the Exchange had raised comments on the breach.

The Exchange considered that the cumulative effect of the various uncertainties would affect the applicant's future performance and could not be adequately addressed by disclosure in the prospectus. The applicant was considered not suitable for listing for the time being.

For a copy of Listing Decision LD73-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld73-2013.pdf>

Exchange's Reasons for Returning Listing Applications

In July, the Exchange published a listing decision providing guidance on its reasons for determining that certain listing applications (some being for GEM) were not in "advanced form" and, accordingly, returning them. The decision lists over a dozen cases and their shortcomings in some detail, providing

the market with insight on matters to pay particular attention to, but also a sense of the point at which the cumulative effect of an application's defects has led the Exchange not to accept the application for vetting (though, of course, the treatment of each case is specific to its own overall facts). This is highly relevant in the context of the new sponsor regime coming into force on October 1, 2013, as the SFC has emphasized the need for an improvement in the quality of listing applications, and in particular for due diligence to be at an advanced stage.

Space does not permit inclusion here of full details of all the case studies. However, the deficiencies noted by the Exchange were mainly in the following areas:

- Business information, covering a wide range of aspects where the particular case called for further explanation
- Business model, including where changes had occurred or the industry norm was not clear
- Competition, including sustainability and excluded businesses
- Control measures
- Customers, suppliers and raw materials
- Directors, including independence
- Documents not filed as required
- Financial information, primarily where not included or adequately explained (including management discussion and analysis)
- Future plans, including use of proceeds
- Compliance with the exchange's relevant guidance letters and listing decisions
- Intellectual property
- Litigation
- Regulatory and legal non-compliance
- Reorganization, including disposals made, and effects on future operations
- Structured contracts
- Summary section of the prospectus

For a copy of Listing Decision LD 75-2013, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld75-2013.pdf>

是否适合上市

5月，联交所研究了某上市申请人的不合规情况、主要零售商店的不确定因素以及财务状况恶化的情况，来决定申请人是否不适合上市。

上市申请人为零售商，拥有三家主要零售店（甲、乙及丙店），全部均为租赁物业。三店占申请人业务纪录期内的收入约80%。

联交所留意到上市申请人的上市申请中存在若干重要事宜：

- 甲店需要整改违规建筑物工程，并且，由于违反入住许可的要求而需要交回数层楼面。改建工程方案可能导致延误和对财务表现产生负面影响，若改建方案遭否决，甲店须迁至另一地点；
- 申请人的财务表现在记录期第三年后大幅下降，预计第四年的收入及纯利将较第三年分别减少逾10%及逾30%；
- 丙店的租金将于即将到来的续租时上调10%至20%；及
- 董事的行为也是考虑因素。董事们在甲店超过30年的过往租期内没有采取足够步骤发现或纠正违规事项。甲公司不过是临近提交上市申请前才开始聘请专业人士检查甲店，并在上市申请存档后才开始进行全面评核。申请人于接近第四年结束时即联交所就违规事项提出意见的多个月以后才开始向有关当局提交改建方案。

联交所认为，申请人的未来表现将受到多种不明朗因素的累计效应影响，这些累计效应不能透过在招股章程中的披露充分解决。因此，申请人被视为暂不适合上市。

上市决策LD73-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld73-2013.pdf>

上市申请被联交所退回的原因

联交所于7月刊发了一项上市决策，就一些上市申请（其中一些是创业板）因为不符合联交所认可的“较完备版本”而被退回的原因给出了指导意见。上市决策列举了十多个案例以及他们各自的不足之处详情，提醒市场人士需要特别注意的事项，同时指出申请文件多处不符合联交所的要求令联交所无法接受申请进

行审核（当然具体个案因其总体事实不同而有区别）。鉴于2013年10月1日起将要实施新的保荐人制度，这些信息与市场人士密切相关，并且证监会已强调需要改进上市申请文件的质量，尤其尽职调查工作的开展需进行到较完备的阶段。

限于篇幅，我们无法在这里对这些案例展开充分的讨论。联交所指出的不足之处主要集中在下列方面：

- 业务信息，涵盖多个方面，有些申请被要求作进一步的解释
- 业务模式，包括已发生的变化或行业标准不清晰
- 竞争，包括可持续性和除外业务
- 控制措施
- 客户、供应商和原材料
- 董事，包括董事独立性
- 未按照要求提交文件
- 财务资料，主要是未包含在内或未给予充分解释的内容（包括管理层讨论和分析）
- 未来计划，包括如何使用募集资金
- 对联交所相关指引信和上市决策的遵守情况
- 知识产权
- 诉讼
- 未能符合监管和法律要求
- 重组，包括已进行的处置，以及对未来运营的影响
- 结构性合同
- 招股章程的“概要和摘要”一节

上市决策 LD 75-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld75-2013.pdf>

REGULATORY WATCH

Exchange's FAQ on Disclosure Rule Changes

In April, the Exchange published FAQ series 22 on the "Listing Rule changes consequential on the statutory backing of the obligation on listed corporations to disclose inside information".

For a copy of the FAQ, please follow this link:

http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_22.pdf

See also our related commentary in the previous issue of this newsletter:

<http://www.mofo.com/files/Uploads/Images/130429-Hong-Kong-Capital-Markets-Quarterly.pdf>

Exchange's FAQ on prospectus disclosure of unaudited stub-period profits

In June, the Exchange published FAQ series 23 on disclosure in a new applicant's listing document of its unaudited net profits since the end of its audited track record period.

The FAQ clarify that a listing applicant will be treated as making a profit forecast/estimate if it discloses unaudited net profit or other figures that enable investors to estimate the applicant's profits/losses since the latest audited period (e.g., revenue amount and net profit margin percentage). Any such disclosure should therefore be reviewed and reported on by the reporting accountants and the sponsor, and their reports must be set out in the listing document.

Under the Listing Rules, a profit forecast/estimate appearing in a listing document must cover the same period as the applicant's financial year, or exceptionally its first half (in which case the applicant must undertake that the interim report for that half year will be audited).

Therefore, if an applicant includes a profit forecast/estimate for a different period (e.g., a three-month period), it should either obtain a waiver, or disclose the interim financial statements and notes in the listing document with a management discussion and a review report by an independent auditor.

If the applicant's unaudited financial information after the track record period has already been published in another jurisdiction, it must also be included in the listing document together with a review report by an independent auditor.

For a copy of the FAQ, please follow this link:

http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_23.pdf

NEW GUIDANCE LETTERS

Liquidity Arrangements for Issuers Seeking to List by Introduction

In April, the Exchange provided guidance on liquidity arrangements for issuers seeking to list by introduction where the securities to be listed are already listed on another stock exchange (this does not apply to a PRC company seeking to list H-shares on the Exchange by way of introduction upon converting its B shares into H shares).

An issuer must propose a suitable designated period, typically one to three months commencing from the first day of the introduction, to facilitate liquidity for its securities in the Hong Kong market. An issuer's liquidity measures are to ensure an adequate supply of securities in the Hong Kong market during the designated period.

The guidance covers the following areas:

- Disclosures in the prospectus;
- Contents, timing and method of publication of announcements in the issuer's overseas market and Hong Kong;
- Investor education materials;
- Appointment and functions of designated dealer; and
- Batch and expedited removal services.

For a copy of Guidance Letter GL53-13, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl53-13.pdf>

Simplification of Prospectus 'Risk Factors' Section

In May, the Exchange published guidance on disclosures in the "Risk Factors" section of prospectuses. Listing applicants are expected to follow this guidance letter, and a prospectus that does not follow this guidance may be considered not substantially complete.

The main principles on disclosure of risk factors are as follows:

- (i) risks should be relevant to the listing applicant;
- (ii) there should, if possible, be quantitative disclosure of the likely impact of the risks (not just qualitative disclosure or background information) to allow investors to assess the size and impact of the risks;
- (iii) risks should be identified individually, avoiding repetition and overlaps;
- (iv) risk factor disclosures should relate to risks that applicants are unable to mitigate adequately, and if the occurrence of a particular risk event would have a significant effect on the applicant, the risk should be disclosed even if it has a low probability of occurrence;

监管动向

联交所关于披露规则变更的常见问题诠释

4月，联交所刊发了第22期常问问题，涉及“有关上市法团披露内幕消息的责任的立法支持以及相应的对《上市规则》的修订”事宜。

第22期常问问题链接如下：

http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_22.pdf

联交所关于新申请人在上市文件中披露未经审核汇报期末段的纯利的常见问题诠释

6月，联交所刊发了关于新申请人在上市文件中披露业务纪录期后未经审核纯利的常见问题系列23。

联交所的诠释阐明，若新申请人披露的未经审核纯利或其他财务数字可使投资者计算到申请人最近期经审核财务期间完结以来的预计盈亏水平（譬如收入数字及纯利率百分比），申请人将被视为进行盈利预测/估计。该等披露因此需要申报会计师及保荐人审阅及汇报，有关报告须载于上市文件内。

根据上市规则，上市文件中的盈利预测/估计所包括的期间一般应与新申请人的财政年度一致，或以半年为期（此时新申请人须承诺该半年的中期报告将会被审核）。

因此，如果新申请人刊载的盈利预测/估计涵盖了不同的期间（譬如是一个月期），申请人必须取得豁免，或在上市申请文件中披露管理层讨论和分析的中期财务报表及附注，以及独立核数师编备的审阅报告。

如新申请人业务纪录期后的未经审核财务资料已于香港以外的司法权管辖区刊发，也必须连同独立核数师编备的审阅报告一起纳入上市申请文件中。

第23期常见问题诠释链接如下：

http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_23.pdf

新刊发的指引信

以介绍形式上市的发行人有关证券流通量的安排

4月，联交所刊发了有关证券流通量安排的指引信，适用于拟透过介绍形式上市而拟上市的证券已在另一证券交易所上市的发行人（指引信不适用于拟将其B股转为H股以介绍方式将H股在联交所上市的中国公司）。

发行人必须建议一段合适的指定期间，一般为由介绍上市首日起一至三个月，在该等期间内促进其证券在香港市场的流通量。发行人的流通量措施旨在确保于指定期间内在香港市场有足够的证券供应。

指引信涵盖了下列几方面：

- 于招股书内作出披露；
- 发行人在海外及香港市场发布公告的内容、发布时间及发布方式；
- 投资者教育材料；
- 指定交易商的委任及职能；及
- 批量及特快转移服务。

指引信GL53-13链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl53-13.pdf>

简化招股书风险因素章节

5月，联交所就招股书“风险因素”一节的披露要求刊发了指引信。上市申请人应该遵守指引信的下列披露原则，不符合这些原则的申请文件将被视为非大部份完成。

披露风险因素的若干原则有：

- (i) 风险应与上市申请人有关；
- (ii) 对风险因素可能产生的影响作出量化披露（而不仅是定性披露或背景介绍）以便投资者评估风险的规模 and 影响；
- (iii) 辨识个别风险，避免重复及重叠；
- (iv) 披露的风险因素所牵涉的应是申请人无法充分纾减的风险，若个别风险事件发生会对申请人构成重大影响，则即使发生机会不大申请人亦应披露；
- (v) 相关的风险因素应归纳在一起，并加上适当且有意义的标题及副标题；

- (v) related risk factor disclosures should be grouped together with appropriate and meaningful headings and sub-headings;
- (vi) risk factors should be ordered from most to least important;
- (vii) mitigating facts should not be included in the description of a risk factor;
- (viii) the “Risk Factors” section should be consistent with the information in other sections of the prospectus;
- (ix) risk factors which are outdated and no longer applicable should be removed; and
- (x) disclaimer statements that lack specificity should not be used.

For a copy of Guidance Letter GL54-13, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl54-13.pdf>

Simplification of Prospectus ‘Summary and Highlights’ Section

In June, the Exchange published an update of its guidance letter GL27-12 (originally issued in January 2012) regarding the “Summary and Highlights” section of prospectuses. The only new item of guidance stipulates use of a legible font size (neither too small nor too large). A range of 10pt–12pt is suggested, though the letter notes that different typesets in the same point size may not be equally legible.

For a copy of the updated Guidance Letter GL27-12, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl27-12.pdf>

ENFORCEMENT NEWS

Public Censure for Failing to Disclose Price-Sensitive Development

In May, Ausnutria Dairy Corporation Limited (the “Company”) was censured for failing to disclose price-sensitive information relating to the business and financial performance of the Company, and repurchasing shares without making such disclosure. An executive director was also censured for failing to use his best endeavors to procure compliance by the Company with the Listing Rules.

The Company was found to have breached previous Listing Rules 13.09 and 10.06(2)(e) as:

- the significant deterioration in the Company’s performance in the second half of 2010 was not in the public domain, nor within market expectations, and was price-sensitive information disclosable by the Company under previous

Listing Rule 13.09(1);

- the Company’s obligation to publish an announcement disclosing the performance deterioration arose in September 2010, when the CEO (who was also an executive director) received the August monthly accounts reporting a 35% revenue and 77% profit drop compared to the corresponding period in 2009; and
- the Company’s publication of a profit warning announcement in February 2011 was not a disclosure made “as soon as reasonably practicable” or “without delay” as required by the Listing Rules.

As a result, investors and shareholders who traded in the Company’s shares during the relevant period (including selling shares to the Company in its repurchases) did so on an uninformed basis and were harmed.

Tiger Asia: SFC’s Powers under Section 213 Upheld in Landmark Appeal

In April, the Court of Appeal handed down a landmark decision that bolstered the reach of the Securities and Futures Commission (SFC) in insider trading cases. The Court affirmed the SFC’s authority to seek remedial orders and injunctive relief under Section 213 of the Securities and Futures Ordinance (SFO) without the need for criminal proceedings, or civil proceedings before the Market Misconduct Tribunal (MMT).

Tiger Asia Management LLC (Tiger Asia), a New York-based asset management company with no physical presence in Hong Kong, was accused of short-selling China Construction Bank Corporation Limited (CCB) and Bank of China Limited (BOC) shares based on inside information in 2008 and 2009. Four years ago, the SFC began an investigation of Tiger Asia and sought to freeze its assets and restrain it from trading on the Exchange under Section 213 of the SFO.

Tiger Asia had previously argued that the Court did not have jurisdiction to make the declarations sought by the SFC before any finding by the MMT or a criminal court. The Court of Appeal dismissed the argument, by stating that:

- it “simply does not follow” from the creation of criminal and MMT procedures for dealing with market misconduct that such procedures are exhaustive for determining whether there has been a contravention;
- the remedies under Section 213 of the SFO serve a different purpose from the penalties that can be imposed under the criminal and MMT processes;
- in proceedings under Section 213, the SFC acts “not as a prosecutor... but as protector of the collective interests of the persons dealing in the market who have been injured by market misconduct”; and

- (vi) 按重要程度由高至低排列风险因素；
- (vii) 有助减轻风险的事实不应与风险因素同时描述；
- (viii) “风险因素”一节所载的风险应与上市文件其他章节的数据贯彻一致；
- (ix) 删去过时而不适用风险因素；及
- (x) 免责声明应避免缺乏具体的警告。

指引信GL54-13链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl54-13.pdf>

招股书“概要及摘要”一节简化系列

6月，联交所对关于招股书“概要及摘要”一节的指引信GL27-12（最初于2012年1月刊发）进行了更新。指引信唯一的新要求是字体大小要清楚易读（不要过大或过小），建议使用10-12号字体，但指引信同时也指出不同的字体即使是同一字号也会不易认读。

指引信GL27-12的更新版链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl27-12.pdf>

执法新闻

未披露股价敏感资料而受公开制裁

5月，澳优乳业股份有限公司（“公司”）受联交所检控，因其未予披露涉及公司业务和财务表现的股价敏感信息，且在出现价格敏感变化的情况下回购公司股份。公司一名执行董事亦因没有尽其最大努力确保公司遵守上市规则而受联交所制裁。

公司被控违反上市规则第13.09条和第10.06(2)(e)条：

- 公司于2010年下半年表现大幅倒退属于应根据上市规则前第13.09(1)条须予披露的股价敏感资料，但这一情况不为公众知悉，且在市场预期之外；
- 公司有义务于2010年9月公告披露公司业绩倒退的情况，当时公司首席执行官（也是公司执行董事）获悉8月份账目，与2009年同期相比收益和利润分别下跌35%和77%；及
- 公司2011年2月盈利预警公告的公布，没有遵守上市规则下“合理切实可行的情况下尽快公布”或“不得有误”的披露规定。

因此，于有关期间交易公司股票的投资者和股东（包括在公司回购时卖购给公司）没有得到相应的信息并因此受到损害。

Tiger Asia案：证监会第213条项下的权力在有里程碑意义的上诉中获得法院支持

4月，终审法院作出了一项具有里程碑意义的裁决，加强了证券及期货事务监察委员会（证监会）就内幕交易展开法律程序的权利。终审法院确认，证监会有权根据《证券及期货条例》（条例）第213条寻求补救令及禁制令救济，当事人无需已被刑事定罪或市场失当行为审裁处（审裁处）已对此作出裁定。

Tiger Asia Management LLC (Tiger Asia) 是一家在纽约经营的资产管理公司，在香港并无实质业务运作。Tiger Asia涉嫌在2008及2009年期间根据内幕消息沽空中国银行股份有限公司（中银）和中国建设银行股份有限公司（建设银行）的股份。四年前，证监会开始对Tiger Asia开展调查，寻求冻结其资产，并依据条例第213条禁止其在联交所的交易活动。

Tiger Asia此前辩称，除非审裁处已作出任何认定或Tiger Asia被刑事定罪，否则法庭没有司法管辖权就证监会的诉求作出裁决。法庭驳回了这一主张，认为：

- 为了处理市场失当行为而设立刑事程序及市场失当行为审裁处程序，“根本并不表示”该等程序便是为决定是否在违规行为而制订的全部程序；
- 《证券及期货条例》第213条之下的补救办法，与根据刑事程序及市场失当行为审裁处程序可施加的惩罚，有着不同的目的；
- 在根据第213条进行的法律程序中，证监会的角色“并非作为检控官……而是要捍卫因市场失当行为而蒙受损害的市场交易人士的集体利益”；及
- 某人是否已触犯刑事罪行这个问题，仍完全属于刑事法庭的范畴，而并非在根据第213条进行的属纯民事性质的法律程序中决定的事宜。

- the question of whether a person has committed a criminal offense remains entirely a matter for the criminal court and is not a matter that is determined in proceedings under Section 213 which are plainly civil proceedings.

Tiger Asia: SFC Commences Action in MMT

Following the Court of Appeal's decision described above, the SFC in July has launched proceedings in the MMT against Tiger Asia and three of its officers, alleging that they are guilty of market misconduct in relation to dealings in the securities of CCB and BOC during 2008 and 2009.

This is the first time the SFC has instituted proceedings in the MMT directly. The grounds of the SFC's proceedings are based on insider dealing and market manipulation. If the MMT, chaired by a judge or former judge of the High Court who sits with two other members, finds there has been market misconduct, it is empowered to make a range of orders, including banning a person from dealing in securities, futures contracts or leveraged foreign exchange contracts in Hong Kong without leave of the Court for a period of up to five years.

The SFC has not commenced any criminal proceedings against Tiger Asia and the three officers, as criminal proceedings have already been initiated in the US against Tiger Asia (which pleaded guilty to criminal offenses under US law) and two of the officers have been charged with civil offenses by the US Securities and Exchange Commission. The SFC has received advice that both of these actions would likely be classified as criminal proceedings under Hong Kong law, which could bar criminal proceedings in Hong Kong for the same conduct on the basis of double jeopardy.

Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. The views expressed herein shall not be attributed to Morrison & Foerster, its attorneys or its clients. If you wish to obtain a free subscription to our Hong Kong Capital Markets Quarterly News, please send an email to info@mofo.com.

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Tiger Asia案：证监会开始在市场失当行为审裁处采取行动

继终审法院作出上述裁决之后，证监会于7月在市场失当行为审裁处（审裁处）对Tiger Asia和三名管理人员开展法律程序，指控他们于2008至2009年期间涉嫌有关交易中国银行（中银）及中国建设银行股份有限公司（建设银行）股份的不正当市场行为。

这是证监会首次直接在市场失当行为审裁处提起研讯程序。证监会提起程序的依据是内幕交易以及市场操纵。审裁处由高等法院法官或前法官出任主席，并包含另外两名成员。如果审裁处认定存在市场失当行为，其将有权作出一系列的命令，包括颁令禁止某人未经法院许可，不得在香港交易证券、期货合约或杠杆式外汇合约，最多为期五年。

Tiger Asia及其三名人员已在美国的法律程序遭到刑事检控（其表示对美国法律下刑事犯罪的检控表示服罪），其中两人被美国证券交易委员会指控民事犯罪，因此，证监会尚未向Tiger Asia有关方面提出刑事检控。证监会获知这两起案件都可能根据香港法律被视为刑事性质的法律程序，基于禁止双重提控的原则，在香港提出的刑事检控将面临被禁制的风险。

本信息更新提供的是一般性的信息，不适用于所有的情况，在没有对特定情况提供特定的法律意见的情况下，不应根据该等信息行事。如果您希望收到本所以电邮传送的法律快讯，敬请通过电子邮件（info@mof.com）与我们联系。

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