

Hong Kong Capital Markets

香港资本市场业务季刊 Quarterly News

Editor's Note

Happy New Year!

In this issue, we look at some of the highlights of the Hong Kong capital markets in the fourth quarter of 2012, including:

- implications of the Securities and Futures Commission's (SFC) consultation conclusions on the regulation of Hong Kong IPO sponsors;
- guidance on pre-IPO investments in equity and convertible instruments;
- consultation conclusions on board diversity and consequential Listing Rule amendments; and
- reasons for the Stock Exchange of Hong Kong Limited (the Exchange) rejecting listing applications.

We have also recently published the following Guides, which we hope readers will find useful:

- Guide to Hong Kong IPOs
- Guide to U.S. Privatizations

Both Guides are available for download here:

<http://www.mofo.com/hk-capital-markets/>

We wish our readers all the best in 2013.

编者按

新年快乐!

在本期通讯中, 我们主要讨论香港资本市场2012年第四季度的一些重要事宜, 包括如下内容:

- 香港证监会香港首次公开招股保荐人监管咨询总结的含义;
- 首次公开招股前对股权和可转换票据的投资指南; 以及
- 有关董事会成员多样化及随之进行的上市规则修订的咨询总结。
- 联交所拒绝上市申请的原因

此外, 日前我们还发布了以下指南, 希望对您有用:

- 香港首次公开招股指南
- 美国上市公司私有化指南

您可点击以下链接下载上述两份指南:

<http://www.mofo.com/hk-capital-markets/>

恭祝您在2013年万事如意。

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SFC'S Consultation Conclusions on Regulation of Hong Kong IPO Sponsors

In December 2012, the SFC published its highly anticipated consultation conclusions concerning the regulation of IPO sponsors, which as noted in our client alert "The Top Five Things You Need to Know" (<http://www.mofo.com/files/uploads/images/121213-regulation-of-hong-kong-ipo-sponsors.pdf>) will lead to increased responsibilities being placed on IPO sponsors.

We set out below the practical implications of the key provisions.

Summary of Proposal	Practical Implications
<p>Prospectus Liability</p> <p>The SFC will recommend to the Hong Kong Government that the Companies Ordinance provisions on civil liability (Section 40) and criminal liability (Sections 40A and 342F) for prospectuses be amended to provide that sponsor firms are among the persons who authorize the issue of a prospectus, so they are subject to the statutory civil and criminal liability for untrue statements in the prospectus.</p>	<p>This proposal will, as the SFC intended, focus renewed sponsor attention on due diligence and prospectus disclosure, and by extension on client selection.</p> <p>The SFC has stated that the proposal applies to sponsor firms and not individual bankers, although where there is collusion in the making of an untrue statement in a prospectus, it would be possible for individuals acting intentionally or recklessly to be prosecuted for aiding and abetting under general criminal law.</p> <p>A minor mitigating feature of the proposals, from sponsor firms' perspective, is that following their representations, the burden of proof will shift towards the prosecution, which will need to prove that:</p> <ul style="list-style-type: none"> (a) a prospectus contains an untrue statement (including a misleading statement or an omission); (b) a sponsor firm authorizing the issue of the prospectus knew, or was reckless as to whether the statement was untrue; and (c) the untrue statement (including a misleading statement or an omission) was materially adverse from an investor's perspective. <p>The SFC will review the existing penalties as part of an overall review of the prospectus regime and will seek to align them with penalties for similar Securities and Futures Ordinance (SFO) offences.</p>
<p>Publication of A1 Proof Online</p> <p>The advanced draft prospectus submitted with each listing application will be published on the Exchange's website.</p>	<p>This dovetails with the sponsor's obligations to perform all reasonable due diligence prior to A1 submission (except for matters that by their nature can only be dealt with at a later date) and to ensure that all material information has been included in the listing application. The SFC may question whether a sponsor has exercised due skill and care in the performance of its duties if it failed to submit a listing application up to the required standard.</p> <p>The Exchange will more readily reject draft listing applications that fail to meet the required standard and may impose a "cooling-off period". While these measures will shorten the time between the listing application and the actual listing, they will lengthen the pre-application phase, with pre-A1 submissions likely to become the norm, and professional advisers' fee milestones likely to be adjusted accordingly.</p> <p>Sponsors will need to ensure that there is a strong trail of due diligence to record deliberation and analysis on material issues and enquiries made of relevant parties.</p>

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香港证监会关于香港首次公开招股保荐人监管咨询总结

2012年12月，香港证监会公布了备受瞩目的与首次公开招股保荐人监管有关的咨询总结，如我们曾在本所法律快讯“您需了解的五件大事”一文中所述，该咨询总结表明，首次公开招股保荐人承担的职责将会增强。

下文为我们对其主要规定的实际含义的解释。

建议摘要	实际含义
<p>对招股章程的责任</p> <p>香港证监会将建议香港政府修订公司条例中有关招股章程涉及的民事责任（第40条）及刑事责任（第40A和342F条）的相关条款，规定保荐人机构是授权发布招股章程的机构之一，因此对招股章程中的不实陈述承担法定的民事和刑事责任。</p>	<p>证监会意图通过这一提议再次强调保荐人需专注于尽职调查和招股章程披露，并将保荐人注意事宜进一步延伸对其客户的选择。</p> <p>尽管在保荐人机构和银行家共谋在招股章程中做出不实陈述时，可能根据一般刑事法律以共谋犯罪起诉个人银行家，香港证监会表示建议仅适用于保荐人不适用于银行家个人。</p> <p>从保荐人机构的角度，该建议小范围减轻了保荐人的责任，即在保荐人作出其陈述后，举证责任将转向控方律师，其将需要证明以下事项：</p> <ul style="list-style-type: none"> (a) 招股章程含有不实陈述（包括误导性陈述或遗漏）； (b) 授权发布招股章程的保荐人机构知道存在不实陈述，或对是否有不实陈述持轻率态度；以及 (c) 从投资者角度而言，该等不实陈述（包括误导性陈述或遗漏）属于严重不利行为。 <p>作为全面审核招股章程规定的一部分，香港证监会将审核现有的处罚措施，并将寻求把该等处罚措施与类似的违反证券条例的行为受到的处罚措施一致化。</p>
<p>网上公布A1清样</p> <p>与每次上市申请一并提交的预交招股章程草案将在香港联交所网站上予以公布。</p>	<p>这与保荐人须在提交A1文件前履行所有合理的尽职调查（根据其性质仅可在随后的某个日子进行处理的事件除外）以及确保上市申请中包括所有重要信息的义务相符。因此，如保荐人未能按照规定标准提交上市申请，证监会可以质疑保荐人履行职责时是否使用了适当的技能和审慎度。</p> <p>联交所将会更加倾向于驳回未达到规定标准的上市申请草案，并可能强制要求“冷静期”。尽管上述措施将缩短上市申请和实际上市之间的期限，但会延长申请之前的预备时间，并且提交A1预申请表可能会成为惯例，而专业顾问的费用里程碑计划则可能要相应调整。</p> <p>保荐人需要确保加强跟进尽职调查，以记录对重要事宜的审议和分析，以及对相关方做出的询问。</p>

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Summary of Proposal	Practical Implications
<p>Enhanced Support For Sponsor's Role</p> <ol style="list-style-type: none"> 1. A listing applicant must formally appoint its sponsor(s) at least two months before submission of its listing application. 2. A sponsor must notify the regulators (a) in a timely manner if it becomes aware of any material information concerning non-compliance with relevant legal or regulatory requirements; and (b) with the reasons, if it ceases to act for a listing applicant. 3. A listing applicant must commit that it and all professional advisers involved in the IPO will fully cooperate with the sponsor in discharging the sponsor's duties. 4. A financial adviser appointed to advise a listing applicant must fully cooperate with the sponsor, and not adversely affect it, in discharging its duties. 5. Sponsor fees, including the basis, payment structure and timing, must be specified in a sponsor's terms of engagement and must be based solely on its role as sponsor. 	<p>These provisions are intended to provide adequate authority and support to sponsors so they can proactively perform their responsibilities.</p> <p>Although these measures strengthen sponsors' position as against various third parties, the sub-text is to underpin sponsors' responsibility for controlling the listing process and marshalling the other parties involved.</p> <p>Mandate letters for sponsors and other professional advisers should be amended to reflect the new obligations of cooperation and, in the case of sponsors, their disclosure obligations.</p>
<p>Reliance on Experts and Provision of Meaningful Management Discussion and Analysis (MD&A)</p> <p>A sponsor should (a) ensure that the scope of an expert's work adequately covers reviewing the reliability of the information provided to the expert and (b) assess any expert report critically against its whole knowledge of the company and its industry sector, to ensure that overall disclosure to the public is coherent and consistent.</p> <p>The Code of Conduct will be revised to provide guidance on the preparation of the MD&A section in the prospectus, and sponsors will need to work closely with company management and other advisers to produce a relevant, adequate and comprehensible MD&A section.</p>	<p>Sponsors will need to be able to show they have actively overseen any experts' reports. Sponsors may now expect the Listing Division to adopt a probing approach on experts' reports, as recommended by the SFC (especially where the subject matter is new or less familiar to the Hong Kong market. See "SFC Review of the Exchange's 2011 Performance" below). Therefore sponsors will wish to pay particular attention to whether:</p> <ol style="list-style-type: none"> (i) there is sufficient clarity in the work done and the conclusions reached; (ii) the bases and assumptions adopted in reaching the conclusions are reasonable; (iii) there are any material omissions or inaccuracies; and (iv) sufficient information on the experts' reports has been disclosed in the prospectus, including the bases and assumptions adopted. <p>As regards the MD&A section, the emphasis of the rule changes is on specific analysis of salient factors, so generic or superficial descriptions will be discouraged. Moves are afoot to reverse the decline in the role of the reporting accountants in the MD&A section's preparation.</p>

Statutory Obligation to Disclose Inside Information Now Effective

As we reported in a previous client alert (see <http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies.pdf>), with effect from January 1, 2013, Hong Kong-listed companies have a statutory obligation under new Part XIVA of the SFO to disclose price-sensitive information (defined as "inside information") to the public, as soon

as reasonably practicable after the inside information has come to their knowledge. Breaches of the statutory disclosure requirement are subject to civil sanctions, including a regulatory fine up to HK\$8 million on the listed company and/or each of the directors, and potential civil liability to those who suffer pecuniary loss as a result.

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建议摘要

实际含义

加强对保荐人职责的支持

1. 上市申请人必须在距提交上市申请至少两个月前正式任命保荐人。
2. 保荐人必须告知监管机构以下事宜(a)如其知晓的法律上或监管方面的任何严重不合规情况,需及时报告;和(b)停止担任上市申请人保荐人以及相应的理由。
3. 上市申请人必须承诺其自身及首次公开招股涉及的所有专业顾问将在保荐人履行其职责时给予全力配合。
4. 被指定为上市申请人提供建议的金融顾问必须全力配合保荐人履行其职责,而不是给保荐人履行其职责带来不利影响。
5. 保荐人费用(包括费用依据、付款结构及时间安排)必须在保荐人聘用协议条款中明确规定,并仅应以保荐人职务为基础。

这些规定旨在为保荐人主动履行其职责提供足够的权限和支持。尽管这些措施加强了保荐人相对于其他各第三方的地位,其潜台词是强化保荐人控制上市过程并协调其他各参与方的责任。需要修改对于保荐人和其他专业顾问的授权函以反映各方合作义务,以及就保荐人而言,其披露责任。

依靠专家及提供有意义的管理层讨论与分析(MD&A)

保荐人应当(a) 确保专家工作范围充分包含审核向专家提供的信息的可靠性,且(b) 必须根据其对公司和行业的整体了解对专家报告进行严格评估,以确保对公众做出的全面披露始终一致。

将对操守准则进行修订,以对准备招股章程中的管理层讨论分析章节条款提供指南,且保荐人将需要与公司管理层及其他顾问密切合作,以准备相关、充分及易懂的管理层讨论分析章节条款。

保荐人需要能够证明对专家报告实施了充分监督。保荐人可能会预计联交所上市科对专家报告采取了寻根究底的处理方法(尤其是涉及对香港市场而言属于新鲜或不太常见的事宜,如同证监会所建议的(见“证监会审查联交所2011年表现”部分)),并需要特别注意:

- (i) 完成的工作和得出的结论阐述得足够清晰;
- (ii) 得出结论时所采用的依据和假设是合理的;
- (iii) 是否有重大遗漏或不准确; 以及
- (iv) 招股章程充分披露了与专家报告有关的信息,包括采用的依据和假设。

就管理层讨论与分析章节,法规变更的重点是具体分析重要的因素,因此将不鼓励普通的或表面的分析将不受鼓励。正采取措施扭转在MD&A的准备过程中报告会计师的作用下降的趋势。

关于内幕消息的法定披露义务现已生效

正如我们在上一期法律快讯(见

<http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies.pdf>) 中已经向您提示过的,根据《证券及期货条例》(SFO)新增加的第XIVA部分规定,香港上市公司自2013年1月1日起有在其知道内幕消息后尽快以合理的方式向公众披露股价敏感资料

(被定义为“内幕消息”)的法定义务。违反法定披露规定会受到民事制裁,包括向上市公司和/或每位董事处以最高800万港元的规管性罚款,以及可能对因此遭受经济损失的人承担民事责任。

随后作出的《上市规则》修订也已

Consequential Listing Rule amendments have also been in effect since January 1, 2013. Please note that disclosure obligations under the Listing Rules identify specific circumstances in which the Exchange requires issuers to disclose information to the public and are not alternatives to the disclosure obligations under the new statutory regime. For details of the consequential listing rule amendments, see "Consultation Conclusions" below. To help listed

companies understand the new disclosure obligation, the SFC launched a consultation service in December 2012 and published its Guidelines on Disclosure of Inside Information in June 2012. For a copy of the Guidelines, please follow this link: http://en-rules.sfc.hk/net_file_store/new_rulebooks/hk/HKSFC3527_4262_VER10.pdf

Consequential Listing Rule Amendments

In December 2012, the Exchange published

its consultation conclusions in relation to Listing Rule changes as a consequence of the new statutory regime on disclosure of inside information. The revised Listing Rules came into effect on January 1, 2013.

For a copy of the consultation conclusions, please follow this link: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208cc.pdf>

The highlights of the Listing Rule amendments are as follows:

New Defined Terms	Meaning
Trading Halt	An interruption of trading of a listed issuer's securities for no more than two trading days. A trading halt automatically becomes a trading suspension if it exceeds two trading days.
Inside Information	This term has the same meaning as in the SFO (see our previous client alert at http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies.pdf)
Revised Listing Rules	Description and Comments
13.05 Express Statements Regarding SFC's and Exchange's Roles and Responsibilities	The SFC has sole jurisdiction over the enforcement of the new statutory regime. An issuer will not face enforcement action by the SFC and the Exchange in respect of the same set of facts. If the SFC decides not to pursue the matter under the SFO, the Exchange may do so under the Listing Rules.
13.09 General Obligation of Disclosure	<p>Inside Information must be announced when the new statutory regime requires disclosure, i.e., as soon as reasonably practicable after it has come to the issuer's knowledge.</p> <p>If in the Exchange's view there is (or is likely to be) a false market, the issuer must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market.</p> <p><i>Note: if an issuer believes that there is likely to be a false market, it must contact the Exchange.</i></p>
13.10 Response to Enquiries	<p>Upon enquiries by the Exchange, an issuer must (broadly), if requested, promptly either (a) provide and announce information that clarifies the matter or (b) confirm in a standard announcement that, having made "such enquiry with respect to the company as is reasonable in the circumstances", it is not aware of:</p> <ul style="list-style-type: none"> • any reasons for price/volume movements; • any information requiring announcement to avoid a false market; and • any Inside Information that needs to be disclosed under the new statutory regime. <p>If such an announcement cannot be made promptly, the Exchange may impose a Trading Halt.</p> <p><i>Note: an issuer will not be required to disclose information which is exempted from disclosure under the new statutory regime.</i></p>

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于2013年1月1日起生效。请注意，《上市规则》项下的披露义务确认了联交所要求发行人必须向公众进行披露的具体情况，其并不是新法定制度项下法定披露义务的替代。欲知随后修订的《上市规则》的修订内容，请参见下文载述的“咨询总结”。

为帮助上市公司理解新的披露义务，香港证监会2012年12月推出了咨询服务，并于2012年6月发布了

《内幕信息披露指引》。请用以下连接下载该指引：

http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_4262_VER10.pdf

随后作出的《上市规则》修订

鉴于披露内幕消息（见上文“关于内幕消息的法定披露义务现已生效”部分）的新法规的要求，2012

年12月联交所刊发了《上市规则》下有关变更内容的咨询结论。经修订的《上市规则》于2013年1月1日起生效。

欲获得咨询总结，请点击以下链接：<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208cc.pdf>

上市规则主要修订内容为：

新定义的词汇	含义
短暂停牌	上市发行人其证券交易中中断不得超过2个交易日的时间。如果短暂停牌超过2个交易日，则其自动变成停牌。
内幕消息	该词汇的定义同《证券及期货条例》中的定义（请参阅我们在以下衔接的上一期法律快讯 http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies.pdf ）

经修订的《上市规则》	解释和建议
13.05 关于香港证监会和联交所职位和责任的明确陈述	香港证监会对的新法定制度拥有绝对管辖权。 发行人不会就相同事实情况面临证监会及联交所的执法行动。如果香港证监会决定不予追究《证券及期货条例》项下的事宜，联交所可以根据《上市规则》采取行动。
13.09 一般披露责任	在新法规要求披露的情况下，内幕消息必须以公告形式披露，即发行人知悉内幕消息后必须在合理切实可行的情况下尽快公布内幕消息。 若联交所认为存在（或者很可能存在）虚假市场，发行人在咨询联交所后必须在合理切实可行的情况下给公告披露必要的消息以避免出现虚假市场。 <i>注释：如果发行人认为很可能存在虚假市场，其必须联系联交所。</i>
13.10 对查询的回应	当联交所发出查询要求，发行人必须（从广义上说）按要求及时(a) 就澄清有关事项提供和公告相关信息，或(b) 在标准公告中确认，通过“在各种情况下针对公司而言是合理的查询”，发行人不知道： <ul style="list-style-type: none"> • 价格/交易量波动的原因 • 为避免虚假市场而需要刊发公告的信息；以及 • 需根据新法定制度予以披露的任何内幕消息 如果没有及时进行公告，联交所可以强制执行短暂停牌。 <i>注释：发行人无需披露在新法定制度下可豁免披露的信息。</i>

New Listing Rules	Description and Comments
13.06A Confidentiality	<p>An issuer and its directors must take all reasonable steps to maintain strict confidentiality of inside information until it is announced (i.e., regardless of whether an exemption from disclosure applies under the SFO).</p> <p>Note that this obligation is qualified by reasonableness, and the SFO does not contain such an obligation.</p>
13.06B Selective Disclosure	<p>An issuer must not divulge information in a way that places any person (or a selected class or category of persons) in a privileged dealing position.</p>
13.10A Trading Halt or Trading Suspension	<p>An issuer must apply for a Trading Halt or trading suspension as soon as reasonably practicable in any of the following circumstances where an announcement cannot be made promptly:</p> <p>(1) it has information which must be disclosed under Rule 13.09;</p> <p>(2) it reasonably believes that there is Inside Information which must be disclosed under the new statutory regime; or</p> <p><i>Note: The obligation is on the issuer to form a reasoned view as to whether the information is Inside Information.</i></p> <p>(3) circumstances exist where it reasonably believes or it is reasonably likely that confidentiality may have been lost in respect of Inside Information (which was exempt, or the subject of a waiver application, under the new statutory regime).</p>
3.10B Information Disclosed to Other Stock Exchanges	<p>Issuers must simultaneously announce on the Exchange any information released to other stock exchanges.</p> <p>An issuer will also need to announce overseas regulatory information released by its overseas listed subsidiary if the information is discloseable under other Listing Rules (e.g., notifiable transaction rules).</p>
13.24B Material Matters Affecting Profit Forecasts	<p>An issuer must promptly announce any event which occurs during a profit forecast period and would, if known beforehand, have caused any of the assumptions upon which the profit forecast was based to be materially different and must indicate its view of the likely impact of that event on the profit forecast.</p> <p>In addition, if an issuer becomes aware it is likely that some activity outside the issuer's ordinary and usual course of business, and not disclosed in the profit forecast, will materially contribute to or reduce the profits for the forecast period, the issuer must at once announce this information, including an indication of the level of the contribution/reduction.</p>

SFC Review of the Exchange's 2011 Performance

In November 2012, the SFC published its annual report on the Exchange's performance in its regulation of listing matters during the previous calendar year.

Highlights of the recommendations in the report are as follows:

- The Listing Division should highlight and discuss all important issues in its reports to the Listing Committee to provide Listing Committee members with a more nuanced analysis and recommendation, with appropriate weight given to the various issues considered.
- The Listing Division should adopt a probing approach when dealing with experts' reports, especially those dealing with matters that are new or less familiar to the Hong Kong market, and should pay particular attention to:
 - achieving sufficient clarity regarding the work done and the conclusions reached;
 - reasonableness of the bases and assumptions;
 - sufficiency of disclosure in the prospectus; and
 - bringing new or novel types of expert reports to the attention of the Listing Committee.
- The Exchange should require the sponsors of a listing applicant to attend the Listing Committee hearing to answer questions (this change has been made).

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新《上市规则》	解释和建议
13.06A 保密	<p>发行人及其董事必须采取所有合理的措施严格维持内幕消息的保密性，直至内幕消息被公告（即：无论是否能够依据《证券及期货条例》下的某项披露豁免）。</p> <p>注释：适用这项义务时要考虑合理性的问题，并且《证券及期货条例》并不包含这一义务。</p>
13.06B 选择性披露	<p>发行人不得向任何人士（或选定级别或类别的人士）泄漏信息以使其获得交易中的优先的地位。</p>
13.10A 短暂停牌或停牌	<p>若出现下列情况致使未能及时刊发公告，发行人必须在合理切实可行的情况下尽快申请短暂停牌或停牌：</p> <p>(1) 其拥有根据《上市规则》第13.09 条规定必须披露的信息；</p> <p>(2) 其合理地相信有根据新法定制度必须披露的内幕消息；或</p> <p>注释：发行人有意义对其消息是否是内幕消息有合理观点。</p> <p>(3) 存在致使其合理相信有机密的内幕消息的可能已泄露或该等有机密性的内幕消息相当可能已被泄露的情况（这种情况在新法规下可予豁免，或可通过申请豁免）。</p>
13.10B 向其他证券交易所披露的信息	<p>发行人必须向其他证券交易所发布任何信息的同时在联交所发布该信息。</p> <p>发行人还需宣布其海外上市子公司发布的海外监管信息，但前提是该等信息根据其他上市规则（如：予以披露交易规则）是需要披露的。</p>
13.24B 影响盈利预测的重大事宜	<p>一旦在盈利预测期内发生任何事件，如果发行人事先已对其有所知晓并且其事件足以使发行人赖以作出其盈利预测的任何假设发生重大改变，发行人必须及时公告该等事件，并就该等事件对其盈利预测可能产生的影响发表意见。</p> <p>此外，没有在发行人盈利预测中披露的、不属于其正常和普通业务过程中的某些活动，如果其可能实质性地增加或减少盈利预测期的利润，发行人必须立即公告该等信息，包括对增加/减少的程度的预示意见。</p>

香港证监会审查联交所2011年表现

2012年11月，香港证监会公布了其针对联交所上一年度规管上市事宜的表现作出的年度报告。

该报告中的建议的重要部分列在下面：

- 联交所上市科应在内向上市委员会的其报告强调及讨论所有重要事项，并向上市委员会委员作出更为详尽的分析及推荐，包括适当地说明曾经考虑过的多个问题；以及
- 上市科在处理专家报告时，尤其是内容涉及对香港市场来说属于新事物或不太熟悉的事宜的报告，应采取寻根究底的处理方法。上市科应特别注意以下情况：
 - 对所进行的工作及所得出的结论应有足够清楚的阐述；
 - 所依赖的基础及假设的合理性；
 - 招股章程中披露的充分性；以及
 - 提请上市委员会注意有崭新的或类型新颖的专家报告。

For a copy of the report, please follow this link: http://www.sfc.hk/web/EN/files/ER/2012_report_publication%20version%20English.pdf

Consultation Conclusions of the Exchange

Board Diversity

In December 2012, the Exchange released its consultation conclusions on board diversity. The new measures which will be effective from September 1, 2013, will be added to the Corporate Governance Code (Appendix 14 to the Listing Rules). The main provisions are as follows:

- A new Code Provision A5.6 (“comply or explain”) has been adopted that the nomination committee (or board) should have a policy concerning board diversity, and each issuer should assess its own needs and disclose the rationale for the factors it uses (a note under A5.6 clarifies that board diversity for different issuers will be based on different factors, including without limitation age, background, experience and gender); and
- If an issuer has a diversity policy, it must disclose or summarize the policy in its Corporate Governance Report, including any measurable objectives set and progress made.

For a copy of the consultation conclusions, please follow this link: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209cc.pdf>

New Listing Decisions

Exchange Gives Reasons for Rejecting Listing Applications

In January 2013, the Exchange published a listing decision providing guidance on why it considered certain listing applications (both Main Board and GEM) were not in “advanced form” and accordingly rejected them.

Main Board Applications

Company A

Company A provided certain maintenance services. The Exchange noted disclosure deficiencies as follows:

Business model	Financial position	Future plans and business strategies	Others
<p>It was unclear:</p> <p>(i) whether Company A acted as a main contractor or a sub-contractor;</p> <p>(ii) whether Company A obtained service projects through bidding or negotiation;</p> <p>(iii) how Company A carried out its services (e.g., whether approval from the government and special traffic arrangements were required); and</p> <p>(iv) whether Company A participated in tender bidding in the equipment segment of its business.</p>	<p>Lack of meaningful explanation on the reasons for:</p> <p>(i) significant trade and bills receivables, given that it required advanced deposits from new customers and did not generally grant credit to new customers;</p> <p>(ii) increasing impairment of trade receivables during the track record period;</p> <p>(iii) delays in settlement from certain customers; and</p> <p>(iv) the delayed settlement of raw material and subcontracting costs, and a significant increase in trade payables aged over one year.</p>	<p>Insufficient justification for a 100% increase in production capacity and the related expansion plan, given that Company A's current geographic coverage in the relevant country appeared extensive.</p>	<p>The “Summary” section of the prospectus did not follow Guidance Letter GL27-12, or contain sufficient information to provide investors with a concise overview of Company A's operation model and highlights of significant matters.</p>

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联交所应要求上市申请人的保荐人出席上市委员会的聆讯并回答问题（这一变更已经实施）。

欲获得该报告，请点击以下链接：http://www.sfc.hk/web/EN/files/ER/2012_report_publication%20version%20English.pdf

联交所咨询总结

董事会成员多元化

2012年12月，联交所公布了关于董事会成员多元化的咨询总结。

关于董事会成员多元化的新措施将纳入《企业管治守则》（《上市规则》附录14）新措施将于2013年9月1日起生效，其主要条文如下：

- 新增守则条文A5.6条（“不遵守就必须解释”）规定提名委员会（或者董事会）应就董事会成员多元化制定政策，每个发行人应该评估自己的需要情况并披露其采用该等考虑因素的理由（第A5.6条项下的一个附注明确了不同发行人其董事会成员多元化应基于不同的考虑因素（包括但不限于年龄、背景、经验和性别）；以及
- 如果发行人制定有多元化政策，必须在其《企业管治报告》中披露或概述其政策主要内容，包括制定的衡量目标以及取得的进步。

欲获得咨询总结，请点击以下链接：

<http://www.hkex.com.hk/eng/>

newsconsul/mktconsul/Documents/cp201209cc.pdf

新上市决定

联交所刊发发回上市申请的理由

2013年1月，联交所刊发了上市决定，就为什么有些上市申请（主板和创业板）不符合较“完备版本”并因而被发回陈述了其理由。

主板上市申请

A公司

A公司提供若干维修保养工作。联交所指出其披露内容有若干不足之处：

业务模式	财政状况	未来计划和业务策略	其他
<p>对A公司不清楚以下几处：</p> <p>(i) 其身份是主要承包商还是分包商；</p> <p>(ii) 是透过竞标还是商业磋商而取得服务项目；</p> <p>(iii) 如何提供其服务（例如，是否需取得政府特别批准及如需要时，特别交通安排等）；和</p> <p>(iv) 就其设备业务部分是否参与投标。</p>	<p>对以下情况没有给出有意义的解释：</p> <p>(i) 在要求新客户支付预付款定金且一般不会给予新客户信贷期情况下累积了大量应收货款及票据；</p> <p>(ii) 应收货款减值金额在业务纪录期内不断增加；</p> <p>(iii) 若干客户延迟付款；和</p> <p>(iv) 延迟支付若干原材料款项及分包费用，以及一年以上账龄的应付货款大幅增加。</p>	<p>A公司目前在有关国家的地理覆盖范围似乎甚广，提出100%增产及扩张计划理由不充分。</p>	<p>招股章程“概要”一节没有按照指引信GL27-12作有关披露，或提供足够信息使投资者对公司的运作模式和重大事宜的要点有清晰的了解。</p>

Company B

Company B submitted its listing application in August 2012, and the audited financial information included in the prospectus covered only the three financial years ended December 31, 2011. The Exchange noted that the sponsor did not provide the confirmation required under paragraph 4.6 of Guidance Letter GL6-09 for the Exchange to accept a filing of a draft prospectus that did not comply with Listing Rule 8.06¹.

In addition, the People's Republic of China (PRC) legal opinion revealed that Company B's controlling shareholder and executive director was implicated in two bribery convictions, which might have implications for his suitability as a director. These concerns were not brought to the Exchange's attention in the listing application, and there was no submission from the sponsor on the suitability issues.

Company C

Company C was engaged in the production of a certain metal. The Exchange noted disclosure deficiencies as follows:

- (i) the Company did not follow Guidance Letter GL27-12 for the disclosure in the "Summary" section of the prospectus;
- (ii) given the strong metal price fluctuations during the track record period, the prospectus should have included a sensitivity analysis on how the price movements affected the Company's profits during the track record period, including disclosure of the supporting basis for the profit forecast; and
- (iii) more information was needed with respect to an allegation that appeared in the press that a company with a

1. Listing Rule 8.06 requires the latest financial period to have ended no more than six months before the prospectus date. In order for the Exchange to accept an early filing of A1, the applicant must submit a sponsor's confirmation that, *inter alia*, it considers beyond a reasonable doubt that the applicant will satisfy Listing Rule 8.05.

similar name to Company C's operating subsidiary was accused of emitting hazardous gas and discharging waste water into a drinking water protection area and causing lead-related pollution.

Company D

Company D, a Chapter 18 mining company operating in a country subject to sanctions from the United Nations and the European Union, sought a waiver from the minimum profits requirement.

In response to pre-IPO enquiries raised by the sponsors on behalf of Company D, the Exchange requested the sponsors and Company D to assess critically the issues of (i) suitability for listing and (ii) competition with its controlling shareholder before submitting a listing application.

Company D subsequently submitted the listing application. The Exchange noted disclosure deficiencies as follows:

- (i) in relation to sanctions, the brief directors' confirmation did not state the basis of the directors' view, nor did the sponsors provide a view;
- (ii) in relation to competition, the disclosures did not fully comply with the requirements under Listing Rule 8.10(1) (a), including reasons for the exclusion of the excluded business, the size of such business and how such business may compete with Company D's business;
- (iii) lack of details on how new customers were to be procured, given that Company D did not have any customers and had not entered into any legally-binding sales or off-take agreements;
- (iv) there was no industry outlook or forecast information in the "Industry Overview" section regarding the countries in which Company D operated;
- (v) based on their biographies, the directors and senior management appeared to lack experience in operating mining

businesses in overseas countries, and there was insufficient information for investors to appraise the future outlook and sustainability of Company D; and

- (vi) there was a lack of information on Company D's future business model after commencing commercial production.

In addition, certain aspects of Company D's operation were unclear, including:

- details of the outstanding permits, approvals and licenses for commercial production;
- which activities were to be carried out by Company D or contractors; and
- if any functions were to be outsourced, details of these functions and experience of the contractors.

Company E

Company E was a property development company whose listing application was previously accepted.

The Exchange issued a letter to the sponsor stating its intention to reject the listing application as Company E had not demonstrated its working capital sufficiency and ability to meet its profit forecast. Upon the lapse of the application, the Exchange notified the sponsor that unless the issues stated in the letter were resolved to the Exchange's satisfaction and updated accounts were provided, the Exchange would not accept a renewed listing application.

Company E resubmitted a new listing application. However, the Exchange considered that the sponsor had not provided sufficient information to address fully the concerns raised in its previous letter. In particular, Company E had not provided an updated profit forecast and working capital forecast memorandum and the audited accounts had not been updated.

Company F

Company F was engaged in the property business, and its accountants' report covered the three financial years ended

B公司

B公司于2012年8月提交上市申请，招股章程所载的经审计财务资料涵盖截至2011年12月31日止的三个财政年度。联交所注意到保荐人没有按指引信GL6-09第4.6段作出有关的确认以使联交所接纳其未按上市规则第8.06条准备的招股章程草稿)¹。

另据有关的中国法律意见透露，B公司的控股股东兼执行董事涉嫌两宗贪污案，可能会影响其是否适合出任董事。然而上市申请文件中并未就此提起联交所注意，保荐人亦无提交任何资料说明该股东是否适合出任董事。

C公司

C公司从事生产某种金属的业务。联交所指出其披露内容有若干不足之处：

- (i) 公司没有按照指引信GL27-12的要求在其招股章程“概述”一节中作有关披露；
- (ii) 由于相关金属价格在业务纪录期内大幅波动，招股章程应就价格变动对业务纪录期内公司的盈利影响作敏感度分析，并提供及披露支持盈利预测的基础；和
- (iii) 媒体报道说与公司的运营子公司名称类似的一家企业被控排放有害气体，以及向饮用水源保护地排放废水，引发铅污

染，对此指控应有更详细的信息。

D公司

D公司属《上市规则》第十八章所述的矿业公司，在受联合国及欧盟制裁的国家运营，寻求豁免遵守最低盈利的规定。

在回应D公司保荐人的首次公开招聘前查询时，联交所要求保荐人及D公司在提交上市申请前审慎评估以下事宜：(i) D公司是否适合上市；及(ii) 与其控股股东的竞争。

D公司其后提交上市申请。联交所注意到披露存在下列不足之处：

- (i) 关于制裁事宜，董事的简短确认没有说明该看法的依据，保荐人亦无给予任何意见；
- (ii) 关于竞争方面，披露不完全符合《主板规则》第8.10(1)(a)条的规定，有不包括除外业务的理由、该业务规模及该业务如何与D公司业务竞争等；
- (iii) 由于D公司并无任何客户，亦无签订任何具法律约束力的销售或承购协议，对于会如何物色新客户缺乏详细数据；
- (iv) “行业概览”一节没有提供该行业于D公司营运所在若干国家的前景或预测资料；
- (v) 从董事及高级管理人员的履历来看，他们似乎缺乏在海外经营矿业业务的经验，招股章程亦无提供充足数据让投资者评估D公司的未来前景以及D公司业务是否可持续发展；以及

(vi) 缺乏D公司日后开始商业投产后的业务模式的数据。

D公司营运的若干方面也不清晰，包括：

- 商业投产所需但尚未取得的批文、批准及执照详情；
- 哪些活动由D公司还是承包商进行；以及
- 若有关工作外包，该等工作的详情及承包商的经验。

E公司

E公司为物业发展商，联交所曾接纳审批其上市申请。

联交所向保荐人发出函件表示拟否决该申请，因为E公司并无证明其有充足的营运资金及符合盈利预测的能力。联所在其申请失效时曾致函保荐人，表明除非保荐人能解决函件所列的事宜以使联交所满意，并提供最新账目，否则联交所不会接纳E公司重新提出上市申请。

E公司再次提交上市申请。联交所认为保荐人并无提供充足资料去全面处理先前函件提出的问题，尤其是E公司并无提供最新的盈利预测及营运资金预测备忘录，经审计账目亦未更新。

F公司

F公司从事地产业务，F公司的会计师报告涵盖截至2011年12月31日止的三个财政年度及截至2012年6月30日止的六个月。虽然F公司在2009年至2011年财政年度报告了股东应占纯利，但其截至2012年6月30日止的六个月却报告为净亏损。

1. 上市规则第8.06条要求最后一个会计期间的结算日期距上市文件刊发日期不得超过6个月。为了使联交所接受提前备案A1申请表，申请人必须提交保荐人出具的确认意见，即保荐人没有合理理由怀疑申请人将会满足上市规则第8.05条的要求。

December 31, 2011 and the six months ended June 30, 2012. Whilst Company F reported net profits attributable to shareholders for financial years 2009 to 2011, it incurred a net loss for the six months ended June 30, 2012.

Company F applied for a waiver from the requirement of Rule 4.04(1) such that it would not be required to update its accountants' report to cover the year ended December 31, 2012. The Exchange was doubtful whether Company F could meet the minimum profits requirement for the latest financial year (i.e., 2012) given the net loss incurred in the first half of 2012, hence the Exchange considered it inappropriate to recommend the requested waiver.

The Exchange noted disclosure deficiencies as follows:

- (i) the "Summary" section did not follow the guidance in Guidance Letter GL27-12 and lacked certain disclosures;
- (ii) lack of details on the Company's business model and future plans, including:
 - details of owned properties;
 - in respect of the land/properties acquired by Company F, details of the tendering and decision making process, and the measures/ policies to monitor its leasing business, occupancy rates, rental yield and liquidity and financial positions;
 - how its development plan would affect its business risk profile (including disclosure of the associated risks and impact in the "Summary" and "Risk Factors" sections); and
 - how its strategy of developing residential projects aligned with its policy, the commercial rationale for this strategy and how it planned to achieve the relevant strategy;
- (iii) insufficient and vague disclosure on incidents of non-compliance, including rectification measures, internal controls and maximum penalties and liabilities;
- (iv) lack of a "Regulatory Overview" section

in the prospectus; and

(v) lack of a meaningful discussion on Company F's tight liquidity position and how the Group would improve its liquidity position and finance its purchase of land/properties.

GEM Applications

Company G

The Exchange noted disclosure deficiencies as follows:

- (i) inadequate disclosure on Company G's principal businesses and the delineation between different segments, such as when and how Company G derived and recognized revenue for each business segment, whether the agent customers served as the Group's distributors or end-customers, how Company G priced its products and/or services and the renewal status of Company G's operating license;
- (ii) the "Summary" section did not follow the guidance in Guidance Letter GL27-12; and
- (iii) inadequate disclosure on potential tax liabilities due to non-compliance with the relevant laws and regulations, the causes of non-compliance and potential penalties. The sponsor also did not provide its view on these incidents of non-compliance and how they might affect Company G, and whether its directors have the character and competency to run a listed company.

Company H

Company H did not submit, together with the listing application form, the anticipated final draft of the sponsor's letter on working capital sufficiency as required under GEM Rule 12.22(13).

Company I

Company I was a distributor of certain products. The Exchange noted disclosure deficiencies as follows:

- (i) the "Summary" section did not follow the guidance in Guidance Letter GL27-12,

lacking sufficient information to provide investors with a concise overview of Company I's operation model and highlights of significant matters;

- (ii) insufficient disclosure to demonstrate:
 - how the distribution businesses of Company I and its controlling shareholder could be delineated; and
 - adequate and effective corporate governance measures to manage conflicts of interest and competition between them;
- (iii) insufficient disclosure on the relationship (such as degree of control, avoidance of cannibalization, competition) between the different types of distributor customers and measures to address the potential conflict of interests;
- (iv) lack of information to address the issue of independence of distributors according to Guidance Letter GL36-12 and to explain what value-added services Company I provided to its distributor customers to sustain its level of gross profit margin, which was particularly high when compared to its peers;
- (v) lack of information about price control regulations, detailed analysis of the extent to which Company I was affected by changes in controlled prices, the measures taken to mitigate the adverse impact of price reductions and an update on relevant laws and regulations; and
- (vi) insufficient disclosure on Company I's plan to expand its distribution network by obtaining new exclusive distribution rights for new products, and reasons why Company I needed to enhance the development of products through alliance or partnership, given that Company I was only engaged in distribution, but not research and development.

Company J

Company J did not highlight matters which might have a significant adverse impact on its operation and financial position in the

(Continued on Page 16)

F公司申请豁免遵守上市规则第4.04(1)条的规定，要求其会计师报告可无需更新至涵盖截至2012年12月31日止的年度。鉴于2012年上半年为净亏损，联交所对F公司能否就最新财政年度（即2012年）符合最低盈利要求表示怀疑，因此联交所认为建议所要求的豁免不合适。

联交所还指出披露内容有下列若干不足之处：

- (i) “概述”一节的内容没有遵循指引信GL27-12的要求，并缺少某些披露内容；
- (ii) 缺乏对公司业务模式及未来计划的详情，包括：
 - F公司持有的物业详情；
 - 就F公司购入的土地/物业而言，招标程序、决策过程、监控F公司租赁业务、出租率、租金收益以及流动资金及财务状况的措施/政策详情；
 - F公司的发展计划如何影响其业务风险概况，以及在“概要”和“风险因素”两节重点说明相关的风险和影响；以及
 - F公司发展住宅项目的策略如何配合其政策、此策略的商业依据及F公司如何计划达成有关策略；
- (iii) 对不合规事件披露不清楚和不够充分，包括修正措施，内部控制以及有关最高惩罚及责任；
- (iv) 招股章程中缺少“监管概览”一节；以及
- (v) 没有对F公司流动性紧张以及

集团如何改善流动性、为其购地/物业提供所需资金做出有意义的讨论。

创业板上市申请

G公司

联交所指出其披露内容有若干不足之处：

- (i) 没有充分披露公司的以下情况：主要业务，不同业务的划分，何时及如何从每个业务取得及确认收入，代理客户是集团的分销商还是最终客户，公司的产品及/或服务定价方法，公司经营执照的续牌情况；
- (ii) “概要”一节没有依循指引信GL27-12的指引；以及
- (iii) 没有充分披露因未遵守相关法规及规则而可能产生的潜在税务负债以及不合规的原因和潜在处罚。保荐人对不合规的事件、如何对G公司有影响、董事的品格能力是否胜任经营一家上市公司亦无出具意见。

H公司

公司没有按《创业板规则》第12.22(13)条的规定连同上市申请表一并提交保荐人就营运资金充裕程度发出的最后草稿的确认函。

I公司

公司为若干产品的分销商。披露内容有若干不足之处：

- (i) 招股章程“概要”一节没有遵循指引信GL27-12的要求，未能为投资者提供充足数据使其对公司的运作模式及重大事宜的要点有准确的了解；

- (ii) 没有进行充分披露以证明：
 - 公司与控股股东的分销业务的划分方法；以及
 - 具备充足及有效的企业管治措施，以处理他们之间的利益冲突及竞争；
- (iii) 没有充分披露不同类别的分销商客户之间的关系（例如，监控程度、避免蚕食、竞争）以及处理潜在利益冲突的措施；
- (iv) 没有根据指引信GL36-12说明如何处理分销商独立性事宜，以及阐释公司向其分销商客户提供哪些增值服务从而维持其远高于同业的毛利率；
- (v) 没有说明价格管制规例的数据，详细分析公司受价格管制的影响程度、为减轻减价的不利影响所采取的措施、更新公司所适用的有关法律及规则的最新数据；
- (vi) 没有充分披露公司通过取得新产品的独家分销权而扩大分销网络的计划，为什么公司从事分销业务、不牵涉研究和开发，却需要通过联盟或合伙提高产品发展。

J公司

公司没有按指引信GL27-12的规定在“概要”及其他有关章节中重点说明在可预见的未来可能对其营运及财务状况构成重大不利影响的事宜。

例如：对于公司五大客户之一近期进行重组及大规模裁员计划可能会导致公司的收入大幅减少，以及预期纯利会大幅下挫等均无任何讨论。此外，没有充分披露公司与主要客

foreseeable future, in the “Summary” and other relevant sections, as required under Guidance Letter GL27-12.

For example, there was no discussion regarding the potential significant decrease in revenue resulting from the recent reorganization and massive layoff plan of one of Company J’s top five customers, and the anticipated substantial decline in net profit.

In addition, there was insufficient disclosure of the key terms of agreements with major customers, and certain information requested in the Exchange’s pre-IPO guidance letter had not been adequately disclosed.

Company K

The Exchange noted disclosure deficiencies as follows:

- (i) no disclosure on the reason for the absence of title certificates for Company K’s production facilities, the estimated impact in case of forced eviction, the legality of the lease agreement in respect of collectively-owned land and analysis on the adequacy and sufficiency of contingency measures;
- (ii) inadequate disclosure of risks associated with Company K’s business in countries that were subject to international trading sanctions;
- (iii) inadequate disclosure on Company K’s arrangements with subcontractors;
- (iv) inadequate disclosure on Company K’s business rationale for raising significant bank borrowings to acquire numerous properties from the controlling shareholders shortly before submitting the listing application; and
- (v) vague commentary on the year-on-year fluctuation of financial statement items and financial ratios.

There were also concerns on whether adequate and sufficient audit work and due diligence had been performed by the reporting accountants and the sponsor

on the financial information, as Company K submitted the listing application shortly after the end of the latest audited financial period.

For a copy of the listing decision, LD48-2013, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld48-2013.pdf>

Disclosure of NPV of Mineral Companies

In January 2013, the Exchange published a new listing decision in relation to the disclosure by mineral companies of net present values (NPV) of various levels of reserves and resources.

A Canada-incorporated company, engaged in the development and production of oil sands, sought a primary listing on the Main Board of the Exchange.

The company proposed to disclose in the prospectus and on an ongoing basis the NPVs attributable to its (i) Proved Reserves, (ii) Proved plus Probable Reserves, (iii) Proved plus Probable plus Possible Reserves and Contingent Resources, on both a pre-tax and post-tax basis, in accordance with NI 51-101 (a disclosure standard implemented by the Canadian Securities Administrators, which provides rules for reserves disclosure by relevant oil and gas companies in Canada).

Listing Rules

Rule 18.33(2) requires that if the NPVs attributable to Proved Reserves and Proved plus Probable Reserves are disclosed, they are presented on a post-tax basis at varying discount rates or a fixed discount rate of 10%.

Rule 18.33(6) prohibits economic values being attached to Possible Reserves, Contingent Resources or Prospective Resources.

Exchange’s Decision

The Exchange was of the view that disclosure of NPVs on both pre-tax and post-tax bases in the prospectus and on

an ongoing basis would be acceptable under Rule 18.33(2) and agreed to waive the requirement under Rule 18.33(6), based on the following specific facts and circumstances:

- proposed disclosure of NPVs on both pre-tax and post-tax bases is in accordance with the requirements of NI 51-101, provides additional information to investors and is in line with disclosure made by comparable companies listed in Canada;
- the company’s competent person and the Exchange’s independent mineral consultant both opined that the existence or recoverability of oil sand resources is less uncertain than oil and gas resources because certainty on the location and quantum of bitumen volumes is generally very high in Canada, hence the company’s Contingent Resources are largely dependent upon its commitment to develop the resources (such as filing of a regulatory application seeking approval to proceed with a development project) rather than uncertainty in recoverability. Upon filing of an application, the estimated volumes of Contingent Resources can be reclassified as Probable or Possible Resources; and
- the proposed disclosure of Possible Reserves and Contingent Resources for oil sands (including the basis upon which the Contingent Resources are economically viable and the discount rate applied) is in accordance with the requirements of NI 51-101 (a widely adopted standard in Canada and well known internationally in the mineral and oil industry) and in line with disclosure made by comparable companies listed in Canada.

For a copy of the listing decision, LD49-2013, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld49-2013.pdf>

户签订的协议的主要条款，没有充分披露联交所首次公开招股前发出的指引信中要求提供的若干数据。

K公司

联交所认为披露内容有若干不足之处：

- (i) 没有披露公司生产设施缺乏所有权证明书的原因，动迁对公司的影响估计，集体土地租约的合法性，以及紧急应变措施的妥善及充足程度的分析；
- (ii) 没有充分披露公司在遭国际制裁的国家经营业务时涉及的风险；
- (iii) 没有充分披露公司与分包商的安排；
- (iv) 没有充分披露公司在临近呈交上市申请前筹措庞大银行借款向控股股东收购多项物业；以及
- (v) 关于财务报表项目及财务比率的同比变动的评论概括过于空泛。

公司在最近经审核财政期间结束后不久就呈交上市申请。在时间如此短促的情况下，申报会计师及保荐人对财务资料的审计工作及尽职审查是否充足及足够令人关注。

请参阅指引信LD48-2013的链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld48-2013.pdf>

矿业公司披露净现值 (NPV)

2013年1月，联交所发布了关于矿业公司披露各个水平矿产资源储量和资源量净现值 (NPV) 的新的上

市决策。

某加拿大公司主要从事开发及生产油砂，拟在联交所主板作主要上市。

公司拟根据NI 51-101 (NI 51-101为加拿大证券管理局制定的披露标准，提供了有关加拿大相关油气公司储量披露的综合规则)的基准，在招股章程中披露并持续披露其税前及税后的(i)证实储量，(ii)证实储量加概略储量，(iii)证实储量加概略储量加可能储量的净现值。

上市规则

上市规则第18.33(2)条规定，若披露证实储量及证实加概略储量的净现值，应按税后基准以不同折现率或固定折现率10%呈列。

上市规则第18.33(6)条规定，矿业公司须确保可能储量、后备资源量或推测资源量没有附以经济价值

联交所的决议

联交所认为在招股章程中以及持续按税前及税后基准披露相关的净现值符合上市规则第18.33(2)条的规定，鉴于以下具体事实和情况，同意豁免公司遵守上市规则第18.33(6)条的规定：

- 按税前及税后基准披露净现值符合NI 51-101的规定，为投资者提供额外资料，与在加拿大上市的同性质公司的披露看齐；
- 公司合资格人士及联交所的独立矿业顾问认为，由于沥青在加拿大的分布与规模通常极大，油砂资源的存在或可采性跟油气资源相比有较高的确定性。公司的

后备资源量很大程度上取决于其开采资源的承诺（如按监管规定提交申请以寻求批准进行开采项目），而非可开采的不确定性。在提交申请时，后备资源量的估算储藏量可重新分为概略或可能资源量；以及

- 公司建议披露的油砂可能储量及后备资源量（其中包括后备资源量在经济可行并已采用折现率的基础上）是根据NI 51-101（为加拿大普遍采纳的准则并获国际油矿业公认）的规定而作出，亦与在加拿大上市的同性质公司所作之披露看齐。

请参阅指引信 LD49-2013的链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld49-2013.pdf>

Qualifications of Company Secretary

In January 2013, the Exchange released two listing decisions affirming the suitability of particular company secretaries on the basis of their experience rather than their qualifications:

Listing Decision	Summary of Listing Decision
<p>LD46-2013</p>	<p>Although Mr. X did not have the academic or professional qualifications set out in Note 1 to Rule 3.28, the Exchange accepted that he had the relevant experience (as required by that Rule) to show he was capable of discharging the functions of company secretary because:</p> <ul style="list-style-type: none"> • he was a member of a reputable overseas professional body of accountants; • prior to joining the listed company, he was the CFO of another listed issuer, responsible for financial management and reporting matters, as well as the preparation of the company's regulatory announcements and circulars; and • he had regularly attended training courses relating to corporate governance, accounting and financial reporting, the Listing Rules and company law. <p>Please follow this link for a copy of the listing decision, LD46-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld46-2013.pdf</p>
<p>LD47-2013</p>	<p>Mr. X had previously received a three year waiver from the Exchange enabling him to be a company secretary despite not meeting the criteria in Listing Rule 3.8, provided that he would be assisted by a specified duly qualified company secretary. On reviewing the position before expiry of the waiver, the Exchange accepted that Mr. X was now capable of discharging the functions of company secretary as required by Listing Rule 3.28, taking into account the following relevant experience:</p> <ul style="list-style-type: none"> • his work experience at Company A (including participating in fundraising exercises and connected transactions); • his role in handling the company's secretarial and Listing Rule compliance matters; and • the relevant training taken by him during the waiver period. <p>The Exchange also noted that Company A had not committed any material breach of the Rules during the waiver period.</p> <p>Please follow this link for a copy of the listing decision, LD47-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld47-2013.pdf</p>

Compliance Requirements for Mineral Companies

In January 2013, the Exchange released a series of listing decisions in relation to the compliance requirements for Mineral Companies under Chapter 18 of the Listing Rules.

Listing Decisions LD39-2013 to LD45-2013

Subject Matter	Summary of Listing Decision
<p>LD39-2013</p> <p>Requirement for portfolio of Indicated Resources that is meaningful and of sufficient substance to justify a listing – Rule 18.03(2)</p>	<p>Company A proposed to acquire a Target that was engaged in the exploration, exploitation and processing of mineral resources. As the size of the acquisition was very significant to Company A, when assessing whether the acquisition would constitute a reverse takeover, one of the factors that the Exchange considered was whether the Target could meet the new listing requirements.</p> <p>The parties could only demonstrate Indicated Resources of value representing 10% of the consideration, and a substantial part of the Target's portfolio of minerals was not substantiated in the competent person's report.</p> <p>The Exchange decided the portfolio was not meaningful and substantial enough to comply with Rule 18.03(2), and the circumstances of the case indicated that the Target was an early exploration company at the time of the acquisition. The Exchange reaffirmed its stance against listing early exploration companies.</p> <p>Please follow this link for a copy of the listing decision, LD39-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld39-2013.pdf</p>

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公司秘书的任职资格

2013年1月，联交所发布了两项上市决定，确认了某些公司的秘书适合其任职资格可以基于其以往的经验而不是资历。

上市决定	决策摘要
LD46-2013	<p>尽管X先生不拥有上市规则第3.28条附注1要求的学术或专业资历，鉴于下列原因联交所认可了X先生具备了相关经验（上市规则所要求的）证明其能够胜任公司秘书的职责：</p> <ul style="list-style-type: none"> 他是海外著名专业会计师组织的会员； 加入当前上市公司前，X先生曾担任另一上市发行人的财务总监，负责财务管理及汇报事宜，并参与编备公司的监管公告及通函；以及 他定期参加有关公司管治、会计及财务报告、《上市规则》及公司法的培训课程。 <p>请参考上市决定LD46-2013的链接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld46-2013.pdf</p>
LD47-2013	<p>X先生之前得到联交所授予的三年期豁免，尽管不能满足上市规则第3.8条要求的条件，仍然准许其担任公司秘书，但条件是X先生必须由符合特定资历的另一位公司秘书协助。联交所于豁免期结束前进行审查，认为鉴于下列相关经验，X先生符合了上市规则第3.28条的要求，能够履行公司秘书的职责：</p> <ul style="list-style-type: none"> 他在甲公司的工作经历（包括参与公司的集资以及关联交易）； 他作为公司秘书以及处理公司上市规则合规事宜的角色；以及 在豁免期内参加过的相关培训课程。 <p>联交所同时考虑到甲公司在豁免期内不曾有对《上市规则》的严重违反。 请参考上市决定LD47-2013的链接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld47-2013.pdf</p>

矿业公司的合规要求

联交所近于2013年1月就矿业公司遵守《上市规则》第十八章有关合规要求发布了一系列上市决定。

上市决定 LD39-2013 至 LD45-2013

事宜	决策摘要
LD39-2013 要求目标公司需要有意义、并具有充足实质性的资源以证明具备上市资格—上市规则第18.03(2)条	<p>甲公司拟收购主要从事矿产资源勘探、开采及处理的某目标公司。鉴于对甲公司而言该项收购的规模非常重大，在评估该收购是否构成反向收购行动时，联交所考虑的其中一个因素是目标公司是否满足新的上市要求。</p> <p>当事方只能证明参考资源量的价值占收购对价的10%，而合格人士的报告也不能证明目标公司矿产资源组合中的大部分资源量。</p> <p>联交所认为资源组合不满足上市规则第18.03(2)条要求具备的有意义和充足实质性资源的标准，而且情况表明收购时目标公司是一家早期勘探公司。</p> <p>联交所再次确认不支持早期勘探公司上市的立场。</p> <p>请参考上市决定LD39-2013的链接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld39-2013.pdf</p>

(Continued on Page 21)

Subject Matter	Summary of Listing Decision
<p>LD40-2013</p> <p>Waiver of Competent Person and Valuation Reports on target's mining interests – Rule 18.09(2) and (3)</p>	<p>Company A proposed to acquire a Target and sought a waiver from producing competent person's reports (CPRs) and valuation reports on certain mines which were a minor part of the Target's portfolio of mineral resources under the acquisition and were not expected to have any material value.</p> <p>The Exchange agreed that it would be unduly burdensome for Company A to produce CPRs and valuation reports on these particular mines and granting the waiver would not result in an omission of material information in the circular.</p> <p>Please follow this link for a copy of the listing decision, LD40-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld40-2013.pdf</p>
<p>LD41-2013</p> <p>Requirement for portfolio of Indicated Resources that is meaningful and of sufficient substance to justify a listing – Rule 18.03(2)</p>	<p>Company A proposed to acquire a Target which held mining rights of certain iron mines in the PRC but had not yet commenced production.</p> <p>Chinese standards are not yet recognized as acceptable reporting standards for the purpose of the Chapter 18 requirements. The Target could not rely on resources and reserves identified solely under the Chinese Standards to demonstrate that its portfolio of natural resources was meaningful and substantial enough to comply with Listing Rule 18.03(2).</p> <p>Please follow this link for a copy of the listing decision, LD41-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld41-2013.pdf</p>
<p>LD42-2013</p> <p>Waiver of Competent Person's Report on Mineral Resources to be disposed of</p>	<p>Company A proposed to sell its interest in a mining project to a third party, which would be a very substantial disposal. The Listing Rules required Company A to include a competent person's report on the mine in the circular for the disposal. Company A sought a waiver.</p> <p>The mine was acquired by Company A some years previously (before the current Chapter 18 came into effect), and a technical report was prepared using the Chinese Standard and included in the transaction circular.</p> <p>The Exchange noted the technical report was outdated and was prepared under the Chinese Standard, which is not a recognized reporting standard acceptable by the Exchange under the current Chapter 18. The Exchange refused to grant the waiver.</p> <p>Please follow this link for a copy of the listing decision, LD42-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld42-2013.pdf</p>
<p>LD43-2013</p> <p>Clear path to commercial production – Rules 18.04 and 18.07; Guidance Letter GL22-10</p>	<p>Company A proposed to acquire a Target that held the mining licenses of a number of coal mines in the PRC. Since the acquisition was very significant for Company A, it was evaluated as a reverse takeover. However, the Target did not meet the track record requirements in Rule 8.05, and the Exchange was unlikely to waive them unless it demonstrated a clear path to commercial production.</p> <p>There was concern on whether the Target's plan for commercial production could be achieved, in light of the prolonged suspension of operations of the coal mines and the Target not holding all the necessary permits and licenses for coal production.</p> <p>However, the Exchange also considered the special circumstances of the case, which included the Target's acquisition of the relevant mines pursuant to a Chinese government policy, and accepted Company A's submission as demonstrating that the coal mines would be able to commence commercial production within a reasonable period.</p> <p>Please follow this link for a copy of the listing decision, LD43-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld43-2013.pdf</p>
<p>LD44-2013</p> <p>Right to participate actively in the exploration for and/or extraction of Natural Resources – Rule 18.03(1)</p>	<p>Company A proposed to acquire a Target that participated in a gold mining project.</p> <p>Although the Target did not have any interest in the project at the time of the acquisition, it had entered into earn-in agreements, which allowed it to explore for minerals in the project areas using its own resources and to secure an interest in the project by completing the exploration works.</p> <p>The agreements were demonstrated to give the Target rights to exercise significant influence in decisions on the exploration activities of the project. Hence, the Exchange considered that the Target had the right to participate actively in the exploration for natural resources as required under Listing Rule 18.03(1)(b).</p> <p>Please follow this link for a copy of the listing decision, LD44-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld44-2013.pdf</p>

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事宜	决策摘要
<p>LD40-2013</p> <p>豁免就目标公司矿产权益编制合格人士报告和估值报告—上市规则第18.09(2)和(3)条</p>	<p>甲公司拟收购某目标公司，并就在收购的目标公司矿产资源组合中只占较少部分的某些矿场提出申请以豁免为这些矿场提交合格人士报告和估值报告，这些矿场估计不具备任何重要价值。</p> <p>联交所同意，就该特定矿场编制合格人士报告和估值报告对甲公司会构成不适当的负担，而授予相关豁免不会导致通函中出现重大信息的遗漏。</p> <p>请参考上市决定LD40-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld40-2013.pdf</p>
<p>LD41-2013</p> <p>要求目标公司需要有有意义、并具有充足实质性的天然资源组合以证明其上市资格—上市规则第18.03(2)条</p>	<p>甲公司拟收购某目标公司，目标公司拥有中国某些铁矿的开采权，但还没有开始商业生产。</p> <p>就《上市规则》第十八章而言，中国标准还没有被联交所接受为报告标准。目标公司不能仅仅根据中国标准确认的资源量和储量证明其天然资源量组合能满足上市规则第18.03(2)条所要求的有意义和充足实质性资源的规定。</p> <p>请参考上市决定LD41-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld41-2013.pdf</p>
<p>LD42-2013</p> <p>豁免就拟出售的矿产资源编制合格人士报告</p>	<p>甲公司拟向第三方出售其在某矿产项目中的权益，其属于一项非常重大的出售交易。上市规则要求甲公司在对该出售的通函中载有该矿场的合格人士报告。甲公司申请豁免。</p> <p>甲公司于数年前（在《上市规则》第十八章生效之前）收购该矿场，当时根据中国标准编制了一份技术报告，收载在为该交易刊发的通函中。</p> <p>联交所留意到技术报告已经过期，并且是根据中国标准编制的，而就《上市规则》第十八章而言，中国标准还没有被联交所接受为报告标准。联交所拒绝授予豁免。</p> <p>请参考上市决定LD42-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld42-2013.pdf</p>
<p>LD43-2013</p> <p>到达商业生产的清晰路径—上市规则第18.04和18.07条；指引信GL22-10</p>	<p>甲公司拟收购持有中国数个煤矿开采许可的目标公司。由于该收购的规模对甲公司而言非常重大，收购被评定为反向收购行动。但是，目标公司不能证明满足上市规则第8.05条要求的业务经营纪录，联交所不太可能授予豁免，除非公司能证明有一条清晰的达至商业生产路径。</p> <p>由于该煤矿已较长一段时间停止运作，且目标公司也不持有煤炭生产所需的全部必要的执照和许可，因此目标公司商业生产的计划能否实现存在疑问。</p> <p>但是，联交所同时也考虑了该个案的特殊情况，其中包括目标公司根据中国政府的政策收购了一些相关煤矿，以及接受了甲公司提交的证明该煤矿能够在合理期限内开始商业生产。</p> <p>请参考上市决定LD43-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld43-2013.pdf</p>
<p>LD44-2013</p> <p>积极参与勘探和/或开采自然资源的权利—上市规则第18.03(1)条</p>	<p>甲公司拟收购参与某金矿开采项目的目标公司。</p> <p>尽管收购时目标公司不享有项目的任何利益，但目标公司签署了数个分段增持协议允许其使用自有资源勘探项目地区范围的矿藏，并通过完成勘探工作取得项目的权益。</p> <p>所签署的协议证明目标公司有权在该项目的勘探活动决定中实施重大影响。因此，联交所认为目标公司拥有上市规则第18.03(1)(b)要求的积极参与天然资源勘探的权利。</p> <p>请参考上市决定LD44-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld44-2013.pdf</p>

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Subject Matter	Summary of Listing Decision
<p>LD45-2013</p> <p>Deferring publication of the Competent Person's and Valuation Reports – Rules 18.09(2)-(4)</p>	<p>Listing Rule 14.67A addresses issuers' practical difficulties in obtaining for disclosure non-public financial and other information of target companies in hostile takeover situations, by allowing deferred publication in certain circumstances. The Exchange considers that the same principle may also apply to the disclosure requirements under Chapter 18 based on the circumstances of each case.</p> <p>Please follow this link for a copy of the listing decision, LD45-2013: http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld45-2013.pdf</p>

Dispensing with the Filing of Placee Lists for IPO Shares Sold in Public Offers outside Hong Kong

In December 2012, the Exchange updated its listing decision in relation to whether, and under what circumstances, a new listing applicant could dispense with the filing of placee lists with respect to its IPO shares sold in public offers outside Hong Kong.

In a case involving a public offering without listing in Japan, it came to the Exchange's attention that the relevant Japanese regulations, which prohibit members of the Japanese Securities Dealers' Association from disclosing customers' information to any third party, only applied to individual customers but not institutional customers.

Therefore, the waiver was granted to this applicant on condition that each placing broker would be required to submit to the Exchange a list setting out details of all institutional placees and the number of shares taken up by each of them as required under Rule 9.11(35)(b) and paragraph 11 of Appendix 6 to the Listing Rules.

For a copy of the updated listing decision, LD48-4, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD48-4.pdf>

An Update on Structured Contracts

In November and December 2012, the Exchange updated its listing decision in relation to the required disclosures for structured contracts.

It is now mandatory to disclose such contracts as material contracts in the "Statutory and General Information"

section of the prospectus and make them available on the applicant's website. In addition, the applicant must provide details of any insurance purchased to cover the risks relating to structured contracts (or a prominent disclosure that those risks are not covered by any insurance).

For a copy of the updated listing decision, LD43-3, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD43-3.pdf>

Waiver of Interim Report

In October 2012, the Exchange published a listing decision in relation to granting a waiver of strict compliance with the requirement to issue an interim report under Listing Rule 13.48(1).

The applicant had A-shares listed on a stock exchange in the PRC. Its prospectus would include an accountants' report for the three financial years ended December 31 of Year 3 and the three months ended March 31 of Year 4. It intended to list on the Exchange in September of Year 4.

The applicant had published its interim results and report for the six months ended June 30 of Year 4 (prepared under PRC GAAP) on the website of the PRC stock exchange in August of Year 4. It submitted that full compliance with Listing Rule 13.48(1) would not provide any new information to its shareholders or potential investors but would incur unnecessary costs, given that the relevant financial information for the six months ended June 30 of Year 4 in the interim report would be disclosed in its prospectus.

The Exchange agreed with the applicant's

analysis and waived Listing Rule 13.48(1) subject to certain disclosure requirements and compliance conditions.

For a copy of the listing decision, LD38-2012, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld38-2012.pdf>

New Guidance Letters

Prospectus Simplification Series

In January 2013, the Exchange published three new guidance letters on simplification of various prospectus sections. These new guidance letters supplement the earlier simplification series (GL27-12 and GL24-11) in relation to the "Summary and Highlights" section of the prospectus and formal notices, respectively.

Listing applicants are expected to follow this guidance, and a prospectus that does not comply with the guidance may not be considered to be in an "advanced form" as required under Rule 9.03(3). Highlights of the new guidance letters are set out below.

事宜	决策摘要
<p>LD45-2013</p> <p>推迟发布合格人士报告和估值报告—上市规则第18.09(2)-(4)条</p>	<p>上市规则第14.67A条针对了恶意收购情况下发行人需获得欲披露的目标公司非公开的财务资料和其他资料时而产生的实际困难，允许在某些情况下推迟发布。联交所认为同样的原则可适用于第十八章项下需披露要求。</p> <p>请参考上市决定LD45-2013的连接： http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/Ld45-2013.pdf</p>

不需呈交于香港境外公开招股中所出售首次公开招股股份的承配人名单

2012年12月，联交所更新了其上市决策，该上市决策有关于联交所应否批准及在什么情况下才应批准新上市申请人不提交其于香港境外公开招股中所出售首次公开招股股份的配售人名单。

在涉及未在日本上市的公开招股案件中，联交所注意到禁止日本证券业协会成员向任何第三方披露客户资料的相关日本规例只针对个人客户而非机构客户。

因此，此项豁免被授予给该申请人，但其前提是每名配售经纪须按《上市规则》第9.11(35)(b)条及附录六第11段所规定，向联交所提交载列所有机构配售人及其所购买股份数目详情的清单。

欲获得更新后的上市决定LD48-4，请点击以下链接：<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD48-4.pdf>

关于结构合同的更新

2012年11月和12月，联交所更新了其关于对结构合同必须进行披露的上市决定。

现在，结构合同作为重大合同需在招股章程“法定及一般信息”部分进行披露并将该合同在申请人网站

上提供是一项强制规定。此外，申请人必须提供所购买的与结构合同有关的任何保险详情（或重点披露任何保险未涵盖的风险）。

欲获得经更新的上市决定LD43-3，请点击以下链接：
<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD43-3.pdf>

豁免中期报告

2012年10月，联交所公布了一项上市决定，该决定有关授予豁免严格遵守《上市规则》第13.48(1)条有关发出中期报告的规定。

申请人拥有在中华人民共和国（“中国”）一家证券交易所上市的A股。其招股章程载有截至第三年12月31日止三个财政年度及截至第四年3月31日止三个月的会计师报告。其拟于第四年9月在联交所上市。

申请人于第四年8月在该中国证券交易所的网站刊发截至第四年6月30日止六个月的中期业绩及报告（按照中国公认会计原则编备）。其表示，由于截至第四年6月30日止六个月中期报告的有关财务资料会于招股章程内披露，全面遵守《上市规则》第13.48(1)条不会为股东或有意投资人士提供任何新数据，但却会产生不必要的成本。

联交所同意在遵守某些披露要求和

合规条件的前提下豁免申请遵守《上市规则》第13.48(1)条。

欲获得经更新的上市决定LD38-2012，请点击以下链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/Ld38-2012.pdf>

新发布的指引信

招股章程简化系列

2013年1月，联交所发布了三项上市指引，对招股章程的有关章节进行了简化。新发布的指引分别是对早先招股章程“概要和要点”章节以及正式通知简化系列（指引信GL27-12和指引信GL24-11）的进一步补充。

上市申请人应遵守这些指引；未能遵从这些指引的招股章程可能被视为不符合上市规则第9.03(3)条规定的“完备版本”的要求。以下是新指引系列的概要：

<p>GL48-13 (January 2013) in relation to the “Industry Overview” section</p>	<p>The “Industry Overview” section of a prospectus should:</p> <ul style="list-style-type: none"> • be as short as possible (generally not more than ten pages long); • explain the linkage between the listing applicant and the information disclosed, while excluding general information that is irrelevant or unlikely to affect the applicant’s business; • disclose upfront the source of information and whether any research report was commissioned; • contain the most up-to-date¹ market information that reflects the current economic situation, together with a directors’ confirmation of no adverse change;² • if providing information on the applicant’s market share and ranking, do so in a fair and balanced way against the up-to-date market information, and not be without overly favorable or misleading; • include information on the competitive landscape of the applicant and its major products, as well as substantiating the applicant’s competitive advantages both quantitatively and qualitatively; and • include the historical prices of the applicant’s major raw materials and final products during the track record period and up to the latest practicable date, (preferably in the form of charts and tables with the same scale covering the same time period and consistent with the time period in other prospectus sections), with commentary on any material fluctuation. <p>Listing applicants may consider including the information in this section as part of the “Business” section (instead of as a standalone section in prospectuses as is the current practice), which may help investors more easily discern the relevance of the commentary on the industry to the applicant’s business.</p>
<p>GL49-13 (January 2013) in relation to the “History and Development” section</p>	<p>Only historical developments that investors will need to know in order to make an informed investment decision should be disclosed in the “History and Development” section of the prospectus.</p> <p>The guidance provides a checklist of suggested specific disclosures covering the following key areas:</p> <ul style="list-style-type: none"> • establishment and development of the listing applicant; • corporate structure and the material steps of reorganization; • acquisitions and disposals; • shareholders, including major shareholding changes and pre-IPO investments; and • listing on other exchanges and details of privatization, if any.
<p>GL50-13 (January 2013) in relation to the “Business” section</p>	<p>The “Business” section should only explain the material components of a listing applicant’s business model. Such disclosure should be specific rather than generic, and should be well-connected with the other prospectus sections.³</p> <p>The guidance sets out a list of key areas⁴ that are generally found in the “Business” section, and provides examples of recommended disclosures. In addition, risk management policies and procedures should also be disclosed, including risk mitigation measures.</p>

For copies of the guidance letters, please follow these links:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl48-13.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl49-13.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl50-13.pdf>

1. As a guide, the market information should be at least updated to the latest financial

year immediately preceding the issue of the prospectus so that investors can compare the market information with the listing applicant’s financial information in the prospectus.

2. The directors should confirm that after taking reasonable care, there is no adverse change in the market information since the date of the commissioned research report(s) which may qualify, contradict or have an impact on the information in the “Industry Overview” section (sic).
3. The HKEx recommends presenting information using tables, charts and diagrams to ensure clear, concise and precise disclosure.

4. Key areas of the “Business” section include business model, strengths, plans and use of proceeds, production, quality control, sales and marketing, customers, properties and non-compliance issues.

Continuing Disclosure Requirements for Mineral Companies

In January 2013, the Exchange published Guidance Letter GL47-13 to highlight areas for improvement by Mineral Companies in discharging their continuing obligations under Chapter 18, as follows:

(Continued on Page 26)

<p>GL48-13 (2013年1月) 关于“行业概览”章节</p>	<p>招股章程“行业概览”章节应：</p> <ul style="list-style-type: none"> • 越短越好（一般应不超过10页）； • 解释所披露的信息与申请人的关系，同时不应包括与申请人业务无关或不大可能影响申请人业务的一般信息； • 一开始即应披露数据来源出处，以及是否委托外界机构撰写任何研究报告； • 包括反映当前经济情况的最新市场资料，¹连同董事对没有任何不利变化的确认；² • 对申请人所占市场份额和排名的披露，应基于最新市场资料以公正合理及公平的方式进行，不得对申请人过于有利或对投资者有所误导； • 提供申请人及其主要产品的竞争格局方面的信息，并提供数量上和质量上的资料支持申请人的竞争优势；以及 • 提供业务纪录期内及截至最后实际可行日期申请人主要原材料及制成品的历史价格（最好是以图表形式且其标注比例所涵盖的时间应与上市文件其他章节一致），期间如有重大波动，需提供有关意见。 <p>申请人可考虑将本节所披露的信息纳入“业务”章节（而非按现行惯例在招股章程中另用一个独立章节），这或有助于投资者更容易辨别行业有关的评论与申请人业务的相关性。</p>
<p>GL49-13 (2013年1月) 关于“历史及发展”章节</p>	<p>申请人在招股章程的“历史及发展”章节中应只披露那些投资者需知道以便作明智投资决定的申请人历史发展资料。</p> <p>指引信列出了具体建议披露事项的清单，包括下列关键方面：</p> <ul style="list-style-type: none"> • 上市申请人的成立和发展； • 公司架构和重大重组步骤； • 收购及出售； • 股东情况，包括重要的股权变动和首次公开招股前投资详情；以及 • 在其他交易所上市以及私有化详情（如适用）。
<p>GL50-13 (2013年1月) 关于“业务”章节</p>	<p>“业务”章节只应解释上市申请人业务模式的重要部分。披露内容应具体而不笼统，并与上市文件其他章节紧扣。³</p> <p>联交所列出了通常需要在“业务”章节披露的主要方面，⁴并给出了建议披露方式的例子。此外，还需要披露风险管理的政策及程序，包括减少风险的措施。</p>

请参阅以下各指引信的链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl48-13.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl49-13.pdf>

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl50-13.pdf>

1. 作为指导，市场资料应至少更新至上市文件刊发前的最近一个财政年度，这样投资者可

将市场资料与申请人于上市文件内的财务数据进行对比。

2. 董事应在此节确认，经合理查询后，有关的市场资料在委托研究报告日期以后并无任何不利变动使本节的数据变得有所限制、抵触或影响本章节的数据（原文如此）。
3. 联交所建议申请人以表格、图表及图解呈列数据，确保披露清晰、精简及准确。
4. “业务”一节的主要方面包括业务模式，市场及竞争，计划及所得款项用途，生产，质量控制，销售及市场推广，客户，知识产权和违规事宜。

矿业公司的持续披露责任

2013年1月，联交所刊发了指引信 GL47-13，强调了矿业公司在履行上市规则下第十八章的持续披露责任时可以改进的某些方面。

<p>Interim and Annual Reports</p>	<p>Exploration, development and mining production activities</p> <p>The Exchange expects that certain prescribed details of exploration, development and mining activities be disclosed and presented on a project basis.</p> <p>Expenditures incurred</p> <p>The summary of expenditures incurred should not be limited to operating expenses, but should also include capital expenditures incurred. Examples include the costs of mining, processing, transportation, financing and royalties or fees payable to government.</p> <p>A Mineral Company should also consider providing a further breakdown of expenses incurred (e.g., separately disclose labor costs incurred for mining activities and processing activities).</p>
<p>Annual Reports</p>	<p>Annual updates on resources and reserves</p> <p>It would be useful for a Mineral Company to include a discussion on the reasons for changes in the resources and reserves estimates. Examples include changes in geological confidence level, additional drilling information becoming available, and the removal of minerals mined during the period.</p>

For a copy of Guidance Letter GL47-13, please follow this link:
<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl47-13.pdf>

Biological Assets – Unrealized Fair Value Gains, Disclosure Requirements and DD

In December 2012, the Exchange provided guidance on (i) unrealized fair value gains arising from valuation of biological assets for the purpose of trading record and profit requirements under Listing Rule 8.05(1) (a); (ii) the disclosure requirements for

IPO applicants with biological assets; and (iii) due diligence work expected to be performed by sponsors and other professional advisers on biological assets.


This guidance applies only to applicants engaging in agricultural activities in view of the nature and inherent risks relating to biological assets and their valuation. The Exchange considers that the risks in biological assets are higher as they are perishable and their valuation is usually subject to higher uncertainty due to the complex and not easily verifiable assumptions adopted.

This guidance is relatively technical in nature, dealing with the valuation, disclosure and due diligence requirements for IPO applicants with biological assets.

For more details and a copy of Guidance Letter GL46-12, please follow this link:
<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl46-12.pdf>

Trading Record Requirements

In November 2012, the Exchange published Guidance Letter GL45-12 in relation to trading record requirements, which can be summarized as follows:

<p>A financial year does not necessarily cover a calendar year or twelve months</p>	<p>Listing Rule 1.01 defines a financial year as the period in respect of which any profit and loss account of a company laid or to be laid before it in a general meeting is made up, whether that period is a year or not.</p> <p>Example:</p>  <p>So if an applicant was incorporated on April 1 with December 31 as its FYE*, those nine months will still be regarded as a full financial year if the applicant's profit and loss account for that period was laid before it in a general meeting. (* <i>Financial Year End</i>)</p>
<p>Whether preparation activities should be counted towards satisfaction of the trading record requirement</p>	<p>Where an applicant is still at the preparatory stage and has not yet commenced generating any revenue, the expenses related to preparation activities or ancillary income or revenue generated outside the ordinary and usual course of business should not be counted towards satisfaction of the required trading record.</p> <p>Therefore, where an applicant did not carry out any trading activity during any part of its financial year, that period would not be taken as part of its trading record.</p> <p>Examples of preparation activities include business planning, construction of factory facilities, procurement of raw materials, preliminary negotiations with potential customers or trial production.</p>

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<p>中期报告和年报</p>	<p>勘探、开发和开采活动</p> <p>联交所希望按项目个别情况披露和提交勘探、开发和开采活动的详情。</p> <p>支出</p> <p>有关支出的概要不应仅限于营运支出，还应披露资本开支。例如，包括开采成本、加工成本、运输开支、财务支出以及付予政府的矿区使用费或其他费用。</p> <p>矿业公司还应考虑进一步提供支出明细（例如分别列出开采活动和加工活动中的劳动力成本）。</p>
<p>年报</p>	<p>资源量和储量的年度更新</p> <p>矿业公司在其年报中载入关于资源量和储量估算发生变化的原因的分析能为投资者提供有用的资料。例如，包括地质学上置信程度的变更、新钻探钻孔数据的可用性、移走期内所开采的矿产资源量等。</p>

欲获得更新的指引信GL47-2013，请点击以下链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl47-13.pdf>

生物资产 — 未变现公允价值收益、披露要求及尽职调查

2012年12月，联交所就下列事项提供了指引：1. 为履行上市规则第8.05(1)(a)条营业纪录及盈利要求所做生物资产估值的未变现公允价值

收益；2. 对拥有生物资产的首次公开招股申请人的披露规定；以及3. 保荐人及其他专业顾问须对生物资产进行的尽职审查。

本指引基于生物资产及其估值的性质及内在风险，仅适用于从事农业活动的申请人。联交所认为生物资产容易腐烂，其估值所基于的假设较复杂及不易核实而通常有较高的不确定性，所以风险较高。

本指引相对来说技术性较高，处理的是资产为生物资产的首次公开发


行申请人的估值、披露和尽职调查要求等事宜。

欲获得指引信GL46-12，请点击以下链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl46-12.pdf>

营业记录规定

2012年11月，联交所就营业记录规定公布了第GL45-12号指引信。指引信概述如下：

<p>一个财政年度不一定需涵盖一个公历年或12个月</p>	<p>《上市规则》第1.01条将财政年度定义为在股东大会提呈或将提呈的公司任何损益表所涵盖的期间，不论是否是完整的一年。</p> <p>例如：</p>  <p>申请人在4月1日注册成立，以12月31日为财政年度截止日。如果申请人该段期间的损益表在股东大会前提呈，这9个月期间仍被视为一个完整财政年度。</p>
<p>准备工作应否算作符合营业纪录规定</p>	<p>如果申请人仍处于准备阶段而且尚未开始产生任何收益，与准备活动有关的费用或者一般日常业务以外产生的附属收益或收入均不应算入以符合需要的营业纪录的规定。</p> <p>因此，若申请人在财政年度某段期间并无进行任何业务活动，该段期间将不计入营业纪录。</p> <p>准备活动的示例包括：</p> <p>业务筹划、兴建厂房设施、采购原材料、与准客户初步洽商或试生产</p>

(Continued on Page 29)

For a copy of Guidance Letter GL45-12, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl45-12.pdf>

Guidance on Pre-IPO Investments

In November 2012, the Exchange consolidated its various listing decisions on pre-IPO investments into a new Guidance Letter, GL43-12. Listing decision series 36, 55 and 59 on pre-IPO investments have been superseded. However, listing decisions LD12-2011 of June 2011 (relating to secondary offerings) and LD15-2011 of July 2011 (relating to exercise of warrants) remain effective.

The Exchange's 2010 Interim Guidance remains in force, under which—for fairness reasons—pre-IPO investments are required to be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form or (b) 180 clear days before the first day of trading of the applicant's securities ("28/180 Day Requirement"), save in very exceptional circumstances. Pre-IPO investments are still considered completed only when the funds are irrevocably settled and received by the applicant.

This guidance letter clarifies the treatment of investment terms which provide for compensation of the investor if a qualified IPO (i.e., an IPO that satisfies agreed criteria) does not occur within a specified period of time. These are allowed if the compensation amount is set out in the investment agreement, or can be derived from its compensation provisions. Otherwise, setting the amount would be viewed as an amendment or variation to the original terms of the agreement and the 28/180 Day Requirement under the Interim Guidance applies.

The guidance letter also lists common special rights and the Exchange's guidance on whether they are allowed to survive upon listing, which is generally based on whether they are atypical or do not extend to all the shareholders:

Special Rights That Can Not Survive upon Listing

Price Adjustment	These provisions effectively create two different prices for the same securities for pre-IPO investors and other shareholders at the time of listing, potentially creating a disruptive effect at that time. Examples include guaranteed discounts to the IPO price or share price, and adjustments linked to the market capitalization of the shares.
Put or Exit Options	All put or exit options granted to pre-IPO investors, to put back the investments to the applicant or its controlling shareholder, are against the general principle of even treatment of shareholders, as the pre-IPO investors do not bear any investment risk. This is allowed only if the applicant's listing does not take place.
Director Nomination Rights	Any contractual right of a pre-IPO investor to nominate a director should not survive after listing, as such a right is not generally available to other shareholders. However, pre-IPO investors may nominate or appoint a director to the board before the applicant's listing. That director would be subject to the retirement and re-appointment requirements under the applicant's articles of association after listing.
Veto Rights	Any contractual rights to exercise veto power over the applicant's major corporate actions (e.g., winding-up, carrying on a new business, or effecting an amalgamation or merger) should be terminated upon listing.
Anti-dilution Rights	Anti-dilution rights should be extinguished upon listing, to comply with Listing Rule 13.36 on pre-emptive rights. However, exercise of these anti-dilution rights by pre-IPO investors is permissible at the time of the listing when: <ul style="list-style-type: none"> the allocation is necessary to give effect to pre-existing contractual rights of the pre-IPO investors under the relevant investor rights agreement; full disclosure of the preexisting contractual entitlement of the pre-IPO investors, and the number of shares to be subscribed by them, will be made in the prospectus and the allotment results announcement; and the proposed subscription will be conducted at the IPO offer price.
Profit Guarantee	A profit guarantee is disallowed if it is settled by the applicant, or if the compensation is linked to the market price or market capitalization of the shares.

(Continued on Page 30)

欲获得指引信GL45-12, 请点击以下链接:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl45-12.pdf>

首次公开招股前投资指引

2012年11月, 联交所将其关于首次公开招股前投资的各项上市决定合并到了指引信GL43-12中。关于首次公开招股前投资的上市决定系列36、55和59已被取代。但是, 2011年6月的上市决定LD12-2011 (关于二次发行) 和2011年7月的上市决定LD15-2011 (关于认股权证的行使) 仍然有效。

联交所2010年临时指引仍然有效, 根据该指引——为公平起见——首次公开招股前的投资必须在下列时间完成: (a) 首次上市申请表格首次呈交日前至少28天; 或 (b) 申请人证券交易首日前180天 (“28日/180日规定”), 在非常特殊情况下例外。只有在有关的资金已经交付而申请人已经收到并不可撤回, 首次公开招股前投资才被视为已完成。

本指引信澄清了当一个满足议定标准合格的首次公开招股在指定的时间没有完成, 对投资者进行赔偿的投资条款。如果补偿金额载列于投资协议中, 或能从其赔偿规定中导出, 该等条款是允许的。否则, 所设置的补偿金额将被视为修订或更改原来的协议条款, 临时指引下28/180天的要求仍适用。

本指引信列出了常见的特别权利以及联交所对于这些权利在上市后是否继续有效给出的指引, 能否继续有效通常取决于这些特别权利是否是非典型的, 或不延及全体股东:

上市后不能继续生效的特别权利

价格调整	该等条款实际上就同一证券在上市时设定了针对首次公开招股前投资者和其他股东两种不同的价格, 很可能当时造成破坏性的影响。例如, 包括对首次公开招股价格或股价保证给予折让, 以及进行与股份市值挂钩的调整。
沽售或退出选择权	所有给予首次公开招股前投资者的向申请人或其控股股东售回投资的沽售或退出选择权均违反平等对待股东的一般原则, 因为首次公开招股前投资者不承担任何投资风险。这类选择权只有在申请人不进行上市时才能允许。
董事提名权	首次公开招股前投资者提名董事的任何合约权利于上市后均不可延续, 因为其他股东一般并无这类权利。但是, 首次公开招股前投资者可于申请人上市前向董事会提名或委任董事。该名董事须于上市后根据申请人的组织章程细则遵守退任及重新委任的规定。
否决权	可对申请人主要公司行为 (例如停业清盘、开展新业务或实施合并或兼并) 行使否决权的任何合约权下的利应在上市后终止。
反稀释权	反稀释权应于上市时停止, 以符合《上市规则》第 13.36 条有关优先购买权的规定。但是, 在下列情况下, 在上市时是允许首次公开招股前投资者行使该等反稀释权的: <ul style="list-style-type: none"> • 为使首次公开招股前投资者在有关投资者权利协议项下的原有合约权利生效而必须进行有关分配; • 于招股章程及配发结果公告中全面披露首次公开招股前投资者之原有合约权利, 以及首次公开招股前投资者将认购的股份数目; 以及 • 拟进行的认购将按首次公开招股发行价进行。
盈利保证	如果由申请人支付盈利保证, 或如相应的补偿与股份市价或市值挂钩, 则该盈利保证是不允许的。

Special Rights Allowed to Survive upon Listing

Negative Pledges	<p>To survive upon listing, any negative pledges: (a) must be widely accepted provisions in loan agreements; (b) must not be egregious; and (c) must not contravene the fairness principle in the Listing Rules. Widely accepted provisions include:</p> <ul style="list-style-type: none"> • not to create or effect any mortgage, charge, pledge, lien or other security interest on an applicant's assets and revenues; and • not to dispose of any interest in the economic rights or entitlements of a share the controlling shareholder owns or controls to any person. <p>The exchange will review all other negative pledges and may require confirmation from the sponsor that those which will remain after listing are in line with normal terms of debt issues.</p>
Prior Consent for Corporate Actions	<p>The applicant must be able to demonstrate that the relevant terms are not egregious and do not contravene fundamental principles to the disadvantage of other shareholders (as well as not amounting to veto rights falling within the relevant prohibition noted above).</p>
Exclusivity Rights and no More Favorable Terms	<p>These rights prevent an applicant from issuing or offering securities or other rights to a pre-IPO investor's direct competitor, or to other third parties on more favorable terms than those granted to the pre-IPO investor. Such rights can survive after listing if the investment agreement is modified to include an explicit "fiduciary out" clause, which allows directors to ignore the terms if complying with them would constitute a breach of their fiduciary duties. This avoids the directors being prevented from exercising their judgment on whether to undertake corporate actions in the best interest of the applicant.</p>
Information Rights	<p>Information rights can survive after listing only if the pre-IPO investor is entitled to receive only published information or information that is at the same time made available to the general public, so as to avoid unequal dissemination of information. If the issuer provides price-sensitive information to the pre-IPO investor, the issuer needs to comply with the disclosure requirement under Listing Rule 13.09, unless safe harbors in that regime apply. It may be seen that this category is of little effect in practice.</p>
Representation/ Attendance Rights	<p>These contractual rights allow a pre-IPO investor to nominate senior management and committee representatives, but any such appointment is subject to the decision of the board. The board of directors is not contractually obligated to approve a pre-IPO investor's nominations without further review, as the board owes fiduciary duties to all the shareholders.</p>
Right of First Refusal and Tag-along Rights granted by Controlling Shareholder	<p>The Exchange considers that these rights, which are intended to protect the pre-IPO investor's interest in the applicant by limiting the controlling shareholder's freedom to sell its shares to other parties, are acceptable because they are purely contractual rights between two shareholders.</p>

For a copy of Guidance Letter GL43-12, please follow this link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl43-12.pdf>

Guidance on Pre-IPO Investments in Convertible Instruments

In November 2012, the Exchange also published another Guidance Letter GL44-12 setting out its practice in dealing with convertible instruments (i.e., convertible or exchangeable bonds, notes or loans and convertible preference shares) issued to pre-IPO investors:

Conversion Price Linked to IPO Price or Market Capitalization	<p>The conversion price for the CBs should be at a fixed dollar amount or at the IPO price. If the CBs will be converted into shares at a price based on a guaranteed discount to the applicant's IPO price or the conversion is linked to market capitalization, this essentially creates two different prices for the same securities at listing, which is inconsistent with the principles of the Listing Rules.</p> <p>A discount to the applicant's IPO price or any linkage to the market capitalization of shares may also give rise to concerns that the pre-IPO investor does not bear the same investment risk as public investors.</p>
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上市后允许继续存在的特别权利

消极担保	<p>为了在上市后继续有效,任何消极担保:(a) 必须是贷款协议中被广泛接纳的条款;(b) 并非不寻常;而且(c) 没有违反《上市规则》中的公平原则。广泛接纳的条款包括:</p> <ul style="list-style-type: none"> • 不会对申请人的资产及收益设置或作出任何质押、押记、抵押、留置权或其他担保权益;以及 • 控股股东不会向任何人出售所拥有或控制的股份的经济权利或享有权的权益。 <p>联交所会审查所有其他消极担保,而且可能要求保荐人确认上市后仍然生效的相关消极担保条款与一般债务条款相符。</p>
若干公司行动须经事先同意	<p>申请人必须可以证明有关条款并非不寻常而且并未与基本原则相悖而损害其他股东的权益 (以及并不相当于上文所述不被允许的否决权)。</p>
排他权及最优惠条款	<p>该等权利禁止申请人向首次公开招股前投资者的直接竞争对手或以比给予首次公开招股前投资者更优惠的条件向其他第三方,发行或发售证券或授予其他权利。该等权利在上市后可以继续有效,但前提是投资协议已经被修改为包括明确的受信义务(又称诚信义务)除外条款,该等条款允许董事在遵守条款将构成违反受信义务的情况下不用遵守该等条款。这是为了避免妨碍董事对开展某些公司行为是否符合申请人最大利益作出盘对。</p>
信息权	<p>为避免不平等的传播信息,只有在首次公开招股前投资者有权仅获得已刊发信息或信息同时向公众公布的情况下,信息权在上市后方可延续。如果发行人向首次公开招股前投资者提供了价格敏感信息,发行人须遵守《上市规则》第13.09 条项下的披露规定,除非该条规则的安全港规定适用。可以看出来这一类别在实践中受影响不大。</p>
代表权/出席会议权	<p>该等合约权利允许首次公开招股前投资者提名高级管理人员及委员会代表,但任何该等委任须由董事会决定。董事会并无合约下的义务在未作进一步审查的情况下批准首次公开招股前投资者的提名,因为董事须对所有股东负有受信义务。</p>
控股股东授予的优先购买权及随售权	<p>联交所认为该等权利拟通过限制控股股东向其他方自由出售其股份的方式保护首次公开招股前投资者在申请人中的权益。该等权利是两名股东之间的纯粹的合约权利,因而是可以接受的。</p>

欲获得指引信GL43-12, 请点击以下链接:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl43-12.pdf>

关于首次公开招股前投资可转换票据的指引

2012年11月, 联交所还公布了另一份指引信GL44-12, 该份指引信中载述了其处理向首次公开招股前投资者发行可转换票据(如: 可转换或可交换债券、票据或贷款或可转换优先股)的通常做法:

与首次公开招股价或市值挂钩的换股价	<p>可转换债券的换股价应为某固定货币金额或首次公开招股价。如果可转换债券的换股价是在申请人的首次公开招股价的基础上保证加以折让, 或者转换与市值挂钩, 这基本上就使同一证券在上市时出现两个不同价格, 违反了《上市规则》的原则。</p> <p>对申请人的首次公开招股价提供折让价或者与股份市值挂钩也可能导致首次公开招股前投资者承受与公众投资者不同的投资风险。</p>
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Conversion Price Reset	Any conversion price reset mechanisms of the CBs should be removed as they are considered to be contrary to the "fair and equal treatment" principle under Listing Rule 2.03. (Presumably this is not intended to apply to standard adjustments for bonus issues, consolidations etc).
Mandatory or Partial Conversions	Partial conversion of CBs is allowed only if all atypical special rights are terminated after listing. This prevents a pre-IPO investor from converting a significant portion of its CBs into shares and yet still being entitled to special rights by holding a small portion of the CBs.
Redemptions and Early Redemptions	Certain CBs give bondholders an option to redeem the outstanding CBs early at a price that would enable the bondholders to receive a fixed internal rate of return on the principal amount of the CBs being redeemed. This is allowed, but must be distinguished from other cases in which the bondholders do not undertake any risk or the investment money is not yet paid.
Disclosure Requirements	<p>Certain prescribed information must be disclosed in the "Financial Information" and "Risk Factors" sections of the prospectus to explain the impact of the CBs on the applicant, including if the applicant was called upon to redeem the CBs before the maturity date.</p> <p>Certain additional information should also be disclosed in the applicant's interim and annual reports to make investors aware of the dilutive impact on the applicant's shares in the event that all outstanding CBs were converted as at the relevant year end or period end.</p>

For a copy of Guidance Letter GL44-12, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl44-12.pdf>

Enforcement News

SFC Bans Mega Capital Executive Director for Three Years

In November 2012, the SFC banned a former executive director of Mega Capital (Asia) Company Limited (Mega Capital) from re-entering the industry for three years.

Mega Capital was the sole sponsor for the listing application of Hontex International Holdings Company Limited (Hontex) on the Exchange. The executive director was one of the two responsible officers and sponsor principals in charge of the supervision of Mega Capital's transaction team on Hontex's listing application. The SFC's investigation found that he failed to discharge both these duties. The SFC's main findings were as follows:

1. he failed to supervise the transaction team properly and adequately, and did not fully assess the quality and adequacy of the due diligence inquiries

performed by the team;

2. he breached the sponsor's undertaking and filed an untrue declaration with the Exchange; and
3. he claim that he only had a secondary role in Hontex's listing as a sponsor principal and a responsible officer was untenable

CIC Investor Services Fined HK\$4 Million over Handling of Professional Investors and Documentation of Advice

In November 2012, the SFC reprimanded CIC Investor Services Limited (CIC) and fined it HK\$4 million for its failures to comply with regulatory requirements in treating clients as professional investors and to keep adequate records of its investment advice to clients.

An SFC investigation revealed that CIC failed to:

- compile evidence that the clients had met the requirements of the Securities and Futures (Professional Investor) Rules;
- assess adequately the investment experience of its clients as required under the Code of Conduct; and
- obtain signed declarations from clients who agreed to be treated as professional

investors as required under the Code of Conduct.

In addition, CIC failed to maintain adequate documentary records of its investment advice given to clients.

In agreeing to resolve the case, CIC agreed to engage an independent reviewer, approved by the SFC, to review its internal controls in relation to identification and treatment of professional investors and the provision of investment advice. CIC also agreed to implement all recommendations to be made by the reviewer.

Former CITIC Pacific Senior Executive Jailed for Insider Dealing

In November 2012, a former assistant director of finance at CITIC Pacific Limited (CITIC Pacific) was fined and sentenced to 15 months' imprisonment following his conviction for insider dealing in the company's shares prior to a profit warning. The amount of the fine effectively disgorged the benefit earned by him from his trading, being a loss avoided of HK\$1.36 million.

Listed Company Chairman Convicted of Market Manipulation Offence

In October 2012, the chairman of VST Holdings Limited (VST) was sentenced to

(Continued on Page 34)

重设换股价	可转换债券的任何换股价重设机制均应被删除，因为其被视为违反《上市规则》第2.03条项下的“公平及平等对待”原则。（假定这一条不适用于派送股份、合并等标准调整。）
强制或部分换股	只有在所有非常态的特别权在股份上市后全部终止的情况下，才允许对可转换债券进行部分换股。这是要避免首次公开招股前投资者一方面将其可转换债券的大部分转为股份，且同时仍可通过持有小部分可转换债券而有权享有特别权利。
赎回及提早赎回	有些可转换债券向持有人赋予了选择权，持有人可提早赎回尚未转换的可转换债券，并就该提早赎回的可转换债券本金额获得相等于某个固定内部回报率回报。该等提前赎回是允许的，但必须与债券持有人不承担风险或投资款项尚未支付的其他情况相区别。
披露规定	在招股章程的“财务信息”及“风险因素”两节中必须披露某些规定的信息，阐释可转换债券对申请人的影响，包括若申请人被要求在到期日前赎回可转换债券的影响。 此外，在申请人的中期及年度业绩报告中还应披露其他信息，以便投资者知悉若尚未转换的可换股债券在有关年度或期间终结时全数转换会对申请人的股份产生什么样的稀释作用。

欲获得指引信GL44-12，请点击以下链接：<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl44-12.pdf>

执法行动新闻

香港证监会禁止兆丰资本执行董事于三年内重投业界

2012年11月，证监会禁止兆丰资本（亚洲）有限公司（兆丰资本）前执行董事于三年内重投业界。

兆丰资本是洪良国际控股有限公司（洪良）于联交所上市申请的唯一保荐人。当时负责监督兆丰资本处理洪良上市申请事宜的交易小组的负责人员及保荐人主要人员共有两名，而执行董事是其中一人。证监会调查发现，他没有履行这些职责。证监会的主要调查结果如下：

1. 他没有妥善及充分监督管理交易小组，而且没有就小组进行尽职审查的查询的质量及充分程度作出全面评估；
2. 他违反保荐人承诺及向联交所申

报不实声明；以及

3. 他所做的声称作为保荐人主要人员及负责人，他在洪良上市一事上只是扮演较次要的角色，声称站不住脚。

法国工商投资服务有限公司因对待专业投资者及投资意见文件事宜被罚款400万港元

2012年11月，香港证监会就法国工商投资服务有限公司（法国工商），未能遵守有关视客户为专业投资者及为提供予客户的投资意见保存充分纪录的监管规定，向法国工商作出谴责并罚款400万港元。

证监会的调查发现法国工商未能：

- 提出证据显示客户符合《证券及期货（专业投资者）规则》下的必要规定；
- 根据《操守准则》的规定充分评估其客户的投资经验；及
- 根据《操守准则》的规定取得同意被视作专业投资者的客户的签署声明。

此外，法国工商未能就其提供予客户的投资意见保存充分的文件纪录。

在同意解决此个案时，法国工商同意委聘证监会同意的独立审查机构，以审查其有关识别和对待专业投资者及提供投资意见方面的内部控制制度。法国工商亦同意实施审查机构拟作出的全部建议。

中信泰富前高层人员因内幕交易被判监禁

2012年11月，中信泰富有限公司（中信泰富）财务部前助理董事因在公司发出盈利警告之前，利用内幕消息就该公司股份进行交易，在宣判有罪后监禁15个月并受罚款处罚。罚款金额足以令其交出从交易中获取的收益，即他藉有关交易避免承受的136万港元的损失。

上市公司主席因操控价格被判监禁

2012年10月，伟仕控股有限公司（伟仕）主席因操控伟仕股价，被判处监禁六个月。法院亦就其没有按照证券及期货条例规定披露

six months' imprisonment for price rigging in VST shares, and fined HK\$240,000 for failing to disclose his interest in shares of VST as required by the SFO.

The chairman was also disqualified from being a director of a listed company for one year. As a result, he will have to relinquish his positions as the chairman and a director of VST.

It was found that the chairman operated three different accounts, one in his own name, another jointly with his wife and a third in his brother's name, through which he bought and sold VST shares in transactions that involved no change in the beneficial ownership of those shares. The Court found that these transactions had the consequence of increasing the price of VST, which allegedly supported both a share placement and the year-end share price performance.

Regulatory Watch

Financial Statements Review Program Report 2012

In January 2013, the Exchange published a report summarizing key observations and findings from its review, on a sample basis, of the periodic financial reports released by listed issuers between May 2011 and September 2012.

The key observations and findings are as follows:

- Issuers should note that in addition to disclosure requirements in accounting standards, the Listing Rules also have disclosure requirements relating to financial information under Appendix 16 to the Listing Rules;
- Issuers should enhance their explanations

of significant events and transactions in their annual and interim reports;

- Issuers should enhance their disclosures relating to goodwill and intangible assets, and management should ensure that the assumptions for growth rates applied in their discounted cash flows are achievable over the period under consideration; and
- When providing non-International Financial Reporting Standards/Hong Kong Financial Reporting Standards financial information, issuers should follow good practices to ensure that such information is clearly distinguished from the financial information prepared in accordance with such accounting standards.

For copy of the report, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/frm-12.pdf>

INEDs to Comprise 1/3 of Board Members

As from December 31, 2012, an issuer must have appointed independent non-executive directors representing at least 1/3 of the board. An issuer must immediately inform the Exchange and publish an announcement with the relevant details and reasons if it fails to do so.

Updated and New Checklists

New Market Comparable Analysis Checklist

As from December 2012, all listing applications are required to submit a prescribed market comparable analysis, comprising key particulars of comparable companies in similar industries, the basis of selection and comparison of the listing applicant's performance with the industry averages and comparable companies, and an analysis of the variations.

For a copy of the new Checklist I.P, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/Documents/cf072m.doc>

New Standard Comments

In January 2013, the Exchange added a new standard comment in relation to working capital sufficiency for mineral companies under Chapter 18 of the Listing Rules.

These listing applicants are required disclose the expected time when a project under development will become self-sufficient in working capital and funding, and the amount of additional funding required to reach that level of self-sufficiency.

For a copy of the new Checklist I.N, please follow this link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/documents/sc001m.doc>

Phase Two Consultation on the New Companies Ordinance's Subsidiary Legislation

In November 2012, the Hong Kong Government launched the second phase of public consultation on subsidiary legislation for the implementation of the new Companies Ordinance, which ended on December 14, 2012.

The second phase consultation exercise covered the following subsidiary legislation:

1. Companies (Trading Disclosures) Regulation;
2. Companies (Revision of Financial Statements and Reports) Regulation;
3. Companies (Disclosure of Information about Benefits of Directors) Regulation;
4. Companies (Residential Addresses and Identification Numbers) Regulation; and
5. Companies (Unfair Prejudice Proceedings) Rules.

For a copy of the consultation document, please follow this link: http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/doc/sub_leg_new_comp_ordinance_ph2_e.pdf

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其拥有伟仕股份的权益，判处罚款240,000港元。

主席亦被取消担任上市公司董事的资格，为期一年。因此，其将不得不放弃出任伟仕主席兼董事的职务。

案情指出，主席通过操作三个分别以其本身名义持有、与其妻子联名持有，及其胞弟名义持有的账户在交易中买卖伟仕股份，进行不涉及股份实益所有权改变的交易。法院裁定上述交易令伟仕的股价上升，并可能为配股及年底的股价表现提供了支持。

监管观察

2012年财务报表审查项目报告

2013年1月，联交所发布了一份报告，总结了对上市申请人于2011年5月至2012年9月期间提交的定期财务报告抽样审查后的主要观察和发现。

联交所的主要观察和发现如下：

- 发行人应注意，除了会计准则提出的披露要求外，上市规则附录16也有关于财务信息的披露要求；
- 发行人应在其年报和中期报告中加强对重大事件和交易的解释；
- 发行人应加强关于商誉和无形资产的披露，管理层应确保折现的现金流量的增长率假设情况在考

察期内是能够实现的；以及

- 在提供非国际财务报告准则/香港财务报告准则财务信息时，发行人应遵循良好的实践规范以确保该信息能明确区别于与根据该等会计准则制备的财务信息。

请参阅报告的链接：

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

董事会三分之一的成员职位由独立非执行董事担任

自2012年12月31日起，发行人必须任命独立非执行董事，使董事会至少三分之一的职位由其担任。如果发行人未能如此行事，其必须立即通知联交所并就有关细节发布公告。

更新的及新的清单

新的市场比较分析清单

自2012年12月起，所有上市申请需提交规定的市场比较分析，包括类似行业可比较公司的关键具体情况，选择依据和上市申请人业绩与行业平均水平和可比较公司进行的对比以及变动分析。

欲获得新的清单I.P，请点击以下链接：<http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/Documents/cf072m.doc>

新标准意见

2013年1月，联交所针对《上市规

则》第18章项下矿业公司运营资本充足性增加了新的标准意见。

上市申请人需披露正在开发项目可拥有自足运营资本和资金的预期时间表，以及达到自足水平所需其他资金的金额。

欲获得新的清单I.N，请点击以下链接：<http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/documents/sc001m.doc>

就新《公司条例》的附属法例展开第二阶段咨询

2012年11月，香港政府就落实新《公司条例》制订的附属法例，展开第二阶段公众咨询，2012年12月14日结束咨询。

第二期咨询文件执行涵盖了以下附属法例：

- (一) 公司（营业披露）规例；
- (二) 公司（修订财务报表及报告）规例；
- (三) 公司（披露董事利益资料）规例；
- (四) 公司（住址及身分识别号码）规例；以及
- (五) 公司（不公平损害呈请）法律程序规则。

欲获得咨询文件，请点击以下链接：

http://www.fstb.gov.hk/fsb/rewrite/eng/pub-press/doc/sub_leg_new_comp_ordinance_ph2_e.pdf

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