

Futures and Derivatives Regulatory Newsletter

期货和衍生品行业监管动态

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主办：  中国期货业协会
China Futures Association

合作：  中衍律师事务所
ZHONGYAN LAW OFFICE



中国期货业协会依法履行期货行业自律管理职能，将定期发布《期货和衍生品行业监管动态》，为关注、参与期货和衍生品交易的主体提供境内外监管法规、政策等信息，积极推动期货和衍生品行业规范发展。

China Futures Association performs the self-regulatory function of the futures industry according to law, and will regularly release the Futures and Derivatives Regulatory Newsletter to provide domestic and overseas regulatory updates for persons who follow and participate in the trading of futures and derivatives, and actively promote the compliance of the futures and derivatives industry.

本期资讯概述

本期监管动态包含 7 条境外资讯以及 23 条境内资讯。境外资讯涵盖了美国、欧盟、英国等境外金融监管当局发布的重要信息，包括美国商品期货交易委员会指控某违规人员通过实施操纵和欺骗计划挪用资金，美国证券交易委员会就防止销售存在重大利益冲突的资产支持证券提出规则草案，欧盟监管机构聚焦于网络安全、骗局和欺诈发布关于国家数字化金融教育方案的专题报告，欧盟证券与市场管理局公布欧盟法规中引入市场修正机制后的初步数据报告并和英国金融行为监管局达成关于认可英国基准管理人的谅解备忘录，英国金融行为监管局更新关于商品衍生品交易适用附属活动豁免条件、指控内幕交易和洗钱行为等。

境内资讯内容主要包括中国证监会就《股票期权交易管理办法（征求意见稿）》《期货市场持仓管理暂行规定（征求意见稿）》公开征求意见、修订《证券期货经营机构私募资产管理业务管理办法》及其配套规则以及确定菜籽油、菜籽粕、花生期货和期权为境内特定品种，大连商品交易所修改《大连商品交易所风险管理办法》《大连商品交易所标准仓单交易管理办法（试行）》、发布关于三类期货品种期货协议交收有关事项的通知、新增境外客户保证金存管银行，郑州商品交易所发布关于菜籽油、菜籽粕、花生期货和期权实施引入境外交易者业务有关事项及业务规则修订案的公告，上海国际能源交易

中心就修订《上海国际能源交易中心交易细则》公开征求意见，上海期货交易所发布有关期货合约及实施细则修订版，中国期货业协会发布期货行业服务实体经济数据概览、关于《期货风险管理公司风险控制指标管理办法（试行）》第二年过渡期有关问题的提示并更新基差价差风险系数表等。

由于我们资讯整理经验和翻译研究水平有限，不足之处在所难免，欢迎读者批评、斧正，提出完善建议，我们将积极改进，更好助力期货和衍生品市场的建设和发展。

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境外资讯——美国

1. 美国商品期货交易委员会指控 Avraham Eisenberg 通过实施操纵和欺骗计划从数字资产交易所 Mango Markets 挪用超过 1.1 亿美元资金

美国商品期货交易委员会首例关于“去中心化交易所”预言机（价格）操纵案件（2023 年 1 月 9 日）

美国商品期货交易委员会（CFTC）向纽约南区联邦地方法院提起民事执法诉讼，指控 Avraham Eisenberg 实施欺诈和操纵计划，从一家所谓的去中心化数字资产交易所非法取得超过 1.1 亿美元的数字资产。这是 CFTC 首次涉及去中心化数字资产平台上交易欺诈或操纵计划的执法行动，也是首次涉及“预言机操纵”（oracle manipulation）的计划。

在后续诉讼中，如诉状所称，CFTC 寻求对被告处以民事罚款、没收违法所得、赔偿损失、永久禁止交易和注册、以及永久禁止其进一步违反《美国商品交易法》（CEA）的行为等救济措施。

CFTC 代理执法主任 Gretchen Lowe 对此表示：“CFTC 将使用所有可用的执法工具积极追查欺诈和操纵行为，不论其使用何种技术。无论是在经注册的互换执行设施还是在基于区块链的去中心化交易平台上，《美国商品交易法》都禁止欺诈和互换操纵行为。”

案件背景

诉状称，2022 年 10 月 11 日，Avraham Eisenberg 通过“预言机操纵”，从所谓的去中心化数字资产交易所 Mango Markets 非法挪用了超过 1.1 亿美元的数字资产。为完成其计划，Avraham Eisenberg 在 Mango Markets 创建了两个匿名账户，其用这些账户采用杠杆交易方式建立了挂钩 MNGO（Mango Markets 的“原生”代币）和 USDC（一种稳定币）相关价格的大量互换合约头寸。随后，Avraham Eisenberg 通过在三家数字资产交易所迅速买入了大量的 MNGO，人为推高了 MNGO 的价格。Mango Markets 从这三家数字资产交易所获得“预言机”或 Feed 数据流的输入数据，并以此来确定 Avraham Eisenberg 互换头寸的价值。

由于 Avraham Eisenberg 的操纵性交易，预言机报告的 MNGO 价格在 30 分钟内跳升了 13 倍以上，导致 Avraham Eisenberg 的互换头寸价值暂时性地人为飙升。随后，Avraham Eisenberg 利用人为抬高的互换交易价值作为抵押，从 Mango Markets 提取了超过 1.1 亿美元的数字资产，从而抽走了平台其他用户存入的大部分资产，将其非法利润套现。之后，为了逃避责任，Avraham Eisenberg 同意归还部分被挪用的数字资产，条件是 Mango Markets 同意“不进行任何刑事调查或冻结资金”等要求。Avraham Eisenberg 最终向 Mango Markets 归还了约 6700 万美元，同时保留了价值约 4700 万美元的各类数字资产。

平行诉讼

在 2022 年 12 月 27 日公布的刑事起诉书中，美国纽约南区检察官办公室指控 Avraham Eisenberg 犯有商品欺诈和商品操纵罪。该刑事案件已移送至美国纽约南区联邦地区法院。

CFTC Charges Avraham Eisenberg with Manipulative and Deceptive Scheme to Misappropriate Over \$110 Million from Mango Markets, a Digital Asset Exchange

First CFTC Oracle Manipulation Case on “Decentralized Exchange” (2023/1/9)

The Commodity Futures Trading Commission today filed a civil enforcement action in the U.S. District Court for the Southern District of New York charging Avraham Eisenberg with a fraudulent and manipulative scheme to unlawfully obtain over \$110 million in digital assets from a purported decentralized digital asset exchange. This is the CFTC’s first enforcement action for a fraudulent or manipulative scheme involving trading on a supposed decentralized digital asset platform, and its first involving a scheme that is sometimes called “oracle manipulation.”

In its continuing litigation, the CFTC seeks, among other relief, civil monetary penalties, disgorgement of any ill-gotten gains, restitution, permanent trading and registration bans, and a permanent injunction against further violations of the Commodity Exchange Act (CEA), as charged.

“ The CFTC will use all available enforcement tools to aggressively pursue fraud and manipulation regardless of the technology that is utilized,” said Acting Director of Enforcement Gretchen Lowe. “The CEA prohibits deception and swap manipulation, whether on a registered swap execution facility or on a decentralized blockchain-based trading platform.”

Case Background

The complaint alleges that on October 11, 2022, Eisenberg unlawfully misappropriated over \$110 million in digital assets from Mango Markets, a purported decentralized digital asset exchange, through “oracle manipulation.” To accomplish his scheme, Eisenberg created two anonymous accounts on Mango Markets, which he used to establish large leveraged positions in a swap contract whose value was based upon the relative price of MNGO, the “native” token of Mango Markets, and USDC, a stablecoin. Eisenberg then artificially pumped up the price of MNGO by rapidly purchasing substantial quantities of MNGO on three digital asset exchanges that were the inputs for the “oracle,” or data feed, that Mango Markets used to determine the value of Eisenberg’s swap positions.

As a result of Eisenberg’s manipulative trading, the price of MNGO as reported by the oracle, jumped over 13-fold during a 30-minute span, resulting in a temporary, artificial spike in the value of Eisenberg’s swap positions. Eisenberg then cashed out his illicit profits by using the artificially inflated value of his swaps as collateral to withdraw over \$110 million in digital assets from Mango Markets, thereby draining the platform of most of the assets that had been deposited by other users. Subsequently, in an attempt to evade liability, Eisenberg agreed to return a portion of the misappropriated digital assets on the condition that Mango Markets agreed, among other things, to “not pursue any criminal investigations or freezing of funds.” Eisenberg ultimately returned approximately \$67 million to Mango Markets, while retaining approximately \$47 million worth of various digital assets.

Parallel Action

In a criminal complaint unsealed on December 27, 2022, the U.S. Attorney's Office for the Southern District of New York charged Eisenberg with commodities fraud and commodities manipulation. The criminal case was filed in the U.S. District Court for the Southern District of New York.

<https://www.cftc.gov/PressRoom/PressReleases/8647-23>

2. 美国证券交易委员会提议制定规则以禁止某些证券化活动中的利益冲突 (2023年1月25日)

美国证券交易委员会提出了一项规则草案，以实施《1933年证券法》第27B条的规定，这是《多德-弗兰克法案》第621条增加的条款。该规则草案旨在防止销售存在重大利益冲突的资产支持证券（ABS）。具体而言，该规则草案将禁止证券化活动参与者从事某些交易，这些交易可能驱使证券化活动参与者将其利益置于ABS投资者利益之上的方式来构建ABS。

如果该草案能够通过，新的《证券法》规则192将禁止承销商、配售代理商（placement agent）、初始购买者或保荐人，包括这些实体的关联公司或子公司，直接或间接参与任何可能涉及或导致证券化参与者和ABS投资者之间重大利益冲突的交易。根据规则草案，这类交易将被视为“冲突交易”。例如，卖空ABS或购买信用违约互换或其他信用衍生品，使证券化活动参与者有权在ABS的特定信用事件发生时获得付款。

规则草案将为缓释风险的套期保值活动、真实的做市活动以及证券化活动参与者为相关ABS提供流动性的承诺提供了某些豁免。拟议的豁免将着重区分前述活动与投机交易的本质不同，还将尽量避免干扰当前的流动性承诺、做市和资产负债表管理活动。

SEC Proposes Rule to Prohibit Conflicts of Interest in Certain Securitizations (2023/1/25)

The Securities and Exchange Commission today proposed a rule to implement Section 27B of the Securities Act of 1933, a provision added by Section 621 of the

Dodd-Frank Act. The rule is intended to prevent the sale of asset-backed securities (ABS) that are tainted by material conflicts of interest. Specifically, the rule would prohibit securitization participants from engaging in certain transactions that could incentivize a securitization participant to structure an ABS in a way that would put the securitization participant's interests ahead of those of ABS investors.

If adopted, new Securities Act Rule 192 would prohibit an underwriter, placement agent, initial purchaser, or sponsor of an ABS, including affiliates or subsidiaries of those entities, from engaging, directly or indirectly, in any transaction that would involve or result in any material conflict of interest between the securitization participant and an investor in such ABS. Under the proposed rule, such transactions would be “conflicted transactions.” They include, for example, a short sale of the ABS or the purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events in respect of the ABS.

The proposed rule would provide certain exceptions for risk-mitigating hedging activities, bona fide market-making activities, and certain commitments by a securitization participant to provide liquidity for the relevant ABS. The proposed exceptions would focus on distinguishing the characteristics of such activities from speculative trading. The proposed exceptions would also seek to avoid disrupting current liquidity commitment, market-making, and balance sheet management activities.

<https://www.sec.gov/news/press-release/2023-17>

境外资讯——欧盟

3. 欧盟监管机构确立了关于网络安全、骗局和欺诈的金融教育方案的良好实践 (2023年1月12日)

三家欧盟监管机构（欧盟银行管理局 EBA、欧盟保险和职业养老金管理局 EIOPA 和欧盟证券与市场管理局 ESMA，上述统称为欧盟监管机构 ESAs）联合发布了一份关于国家数字化金融教育方案的专题报告，聚焦于网络安全、骗局和欺诈。该报告确立了各成员国监管机构和其他公共部门在设计和实施其金融教育方案时可以遵循的良好实践。

进入数字渠道及数字基础设施已成为消费者使用金融服务的先决条件，在新冠疫情的影响下，这一趋势更加显著。在此背景下，三家欧盟监管机构强调，缺乏金融知识和不熟悉数字技术将愈发导致消费者的金融脆弱性和金融排斥性。具体而言，如果没有适当的数字金融知识和保障其网络安全的能力，消费者就更有可能会成为骗局和欺诈行为的受害者。

为了解决这一问题，欧盟监管机构确立了 12 种良好实践，以帮助各成员国监管机构（NCAs）和其他公共部门扩大其金融教育倡议的覆盖面、提高有效性，从而帮助消费者提高数字金融素养。欧盟监管机构所确立的良好实践包括但不限于：

- 发布服务提供商失信黑名单，以帮助具备数字知识的消费者正确评估与新技术（如加密资产）相关的金融产品和服务所带来的金融风险；
- 通过数字化和非数字化渠道接触技术厌恶型消费者，并教此类消费者如何使用数字工具来安全地获取金融服务；
- 与教师密切合作，了解其具体教育需求，帮助他们开发和测试适合的教育材料，以便教师成为学生金融教育的传播者；
- 对金融教育活动进行适当优化，例如加入游戏等娱乐性元素，以扩大其覆盖面。此举能够帮助消费者获得相关知识，以及处理金融事务的实践经验，创造出更深入、更具吸引力的学习体验；

- 优化搜索引擎，确保当消费者寻找特定金融主题的信息时，各成员国监管机构的金融教育网站应作为首个搜索结果出现。

背景和法律依据

本报告基于对 2022 年 1 月 31 日发布的欧洲监管当局联合专题资料库中 127 项国家数字化金融教育方案分析，重点关注网络安全、骗局和欺诈。报告还借鉴了 2022 年 2 月 1-2 日欧洲监管当局联合举办的金融教育和扫盲高级别会议以及 2022 年 9 月与各成员国监管机构举办的研讨会中的相关见解。

三家欧盟监管机构根据各自的《设立条例》(Founding Regulations) 第 9(1)(b) 条的规定编写了本报告，该规定要求监管机构“在提高消费者金融产品或服务市场的透明度、简单性和公平性方面发挥主导作用，包括审查和协调主管部门的金融知识普及和教育方案”。

European Supervisory Authorities Identify Good Practices for Financial Education Initiatives on Scams, Fraud and Cyber Security (2023/1/12)

The three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) published today a joint thematic Report on national financial education initiatives on digitalisation, with a focus on cybersecurity, scams, and fraud. The Report identifies good practices that national competent authorities and other public entities can follow when designing and implementing their financial education initiatives.

Access to digital channels and digital infrastructure has become a prerequisite for consumers to make use of financial services, and this trend has intensified in the context of the COVID-19 pandemic. Against this backdrop, the three ESAs highlight the fact that a lack of financial literacy and unfamiliarity with digital technologies can increasingly lead to financial vulnerability and exclusion of consumers. More specifically, without appropriate digital financial skills and the ability to ensure their cybersecurity, consumers are more at risk of becoming victims of scams and fraud.

To address this issue, the ESAs have identified 12 good practices that can help national competent authorities (NCAs) and other public entities increase the reach and

effectiveness of their financial education initiatives and thereby help improve consumers' digital financial literacy. Amongst others, the ESAs consider it good practice to:

- publish a blacklist of fraudulent providers to help digitally literate consumers properly assess the financial risks arising from financial products and services linked to new technologies, such as crypto assets.
- reach technology-averse consumers not only through digital, but also non-digital, channels and teach them how to use digital tools to access financial services safely.
- work closely with teachers to understand their specific educational needs, as well as help them develop and test adequate educational material, so that they can serve as multipliers of students' financial education.
- package financial education initiatives appropriately to increase their reach, for instance by including entertaining elements, such as games. This can help consumers acquire relevant knowledge as well as some practical experience in handling financial matters, thereby creating a deeper and more appealing learning experience.
- apply search engine optimisation to ensure that NCAs' financial education websites appear among the first search results when consumers look for information on specific financial subjects.

Background and legal basis

The Report is based on an analysis of the Joint ESA's thematic repository of 127 national financial education initiatives on digitalization with a focus on cybersecurity, scams and fraud, that was published on 31 January 2022. It also draws on insights from a joint ESAs high-level conference on financial education and literacy that was held on 1-2 February 2022 and a workshop with NCAs in September 2022.

The three ESAs developed the Report in line with their mandate in Article 9(1)(b) of their respective Founding Regulations, which requires the authorities “to take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by reviewing and coordinating financial literacy and education initiatives by the competent authorities”.

<https://www.esma.europa.eu/press-news/esma-news/european-supervisory-authorities-identify-good-practices-financial-education>

4. 欧盟证券与市场管理局分析市场修正机制（MCM）对欧盟天然气衍生品市场的初步影响（2023年1月23日）

欧盟证券与市场管理局（ESMA，欧盟证券市场的监管者）公布了欧盟法规（EU Regulation）中引入市场修正机制（MCM）后的初步数据报告。

该报告描述了欧盟天然气衍生品市场的结构和主要参与者。报告重点关注用于评估采用市场修正机制所造成的潜在影响的市场指标。从现阶段可用数据来看，ESMA 并未发现采用市场修正机制所带来的显著影响，同时 ESMA 也表示这并不意味着市场修正机制在未来不会对金融市场产生任何影响。

报告分析了市场修正机制对市场参与者交易行为产生的潜在后果，以及市场修正机制对市场参与者有效管理其风险的能力可能产生的影响。在这一方面，报告涵盖了有关中央对手方风险管理的可能风险和对衍生品清算潜在影响的更多定性分析。

背景

2022年12月22日，欧洲理事会通过了建立市场修正机制的欧盟法规2022/2578。根据相应要求，ESMA 和欧盟能源管理合作局（ACER）需在2023年1月23日前公布有关采用市场修正机制的初步数据报告。

ESMA 和 ACER 在编制各自报告时始终密切合作，以确保能够评估金融和能源市场的所有相关、潜在的发展情况，并有效避免双方报告内容产生重叠。ACER 于同日公布了其报告。

下一步

若利益相关方对初步数据报告有任何建议或意见，请随时与 ESMA 联系。

在本次公布后，ESMA 将在 2023 年 3 月 1 日前向欧盟委员会提交一份关于采用市场修正机制的效果评估。该效果评估将包含基于更为细化指标的详尽分析，延长采用市场修正机制后的时间范围，并扩展与采用市场修正机制有关的定性评估。

ESMA Analyses Preliminary Effects of Market Correction Mechanism on EU Natural Gas Derivative Market (2023/1/23)

The European Securities and Markets Authority, the EU's financial markets regulator and supervisor, has today published its preliminary data report following the introduction of the market correction mechanism (MCM) in the EU Regulation.

The report describes the structure and main participants in the EU natural gas derivative market. It focuses on market indicators aimed at assessing the potential effects of the adoption of the MCM. Based on available data at this point in time, ESMA has not identified significant impacts resulting from the adoption of the MCM Regulation but notes that this should not be interpreted as the MCM not having any effects on financial markets in the future.

The report identifies the potential consequences of the MCM on market participants' trading behaviour and the effect it may have on the ability of market participants to effectively manage their risks. In that regard, it includes a more qualitative analysis of the possible risks to CCP risk management and the potential impact on the clearing of derivatives.

Background

On 22 December 2022, the European Council adopted the EU Regulation 2022/2578 establishing an MCM. ESMA and ACER, the Agency for the Cooperation of Energy Regulators, were required to publish a preliminary data report concerning the adoption of the MCM by 23 January 2023.

ESMA and ACER have been closely cooperating when developing their respective reports to ensure that all relevant and potential developments in financial and energy markets were assessed and to limit overlaps. ACER also published their report today.

Next steps

Should stakeholders have any feedback on the preliminary data report, do not hesitate to reach out to ESMA.

Following this publication, ESMA will submit an effects assessment of the adoption of the MCM to the Commission by 1 March 2023. The effects assessment will include a more detailed analysis based on more granular indicators, covering a longer period after the adoption of the MCM, and expand on the qualitative assessment of the adoption of the MCM.

<https://www.esma.europa.eu/press-news/esma-news/esma-analyses-preliminary-effects-market-correction-mechanism-eu-natural-gas>

5. 欧盟证券与市场管理局和英国金融行为监管局达成关于认可英国基准管理人的谅解备忘录（2023年1月25日）

欧盟证券与市场管理局（ESMA，欧盟证券市场的监管者）与英国金融行为监管局（FCA）已就有关英国基准管理人的监管合作和信息交换达成一份新的谅解备忘录（MoU）。该谅解备忘录关于申请成为欧盟认可的基准管理人。

与 FCA 签订的新谅解备忘录使 ESMA 开始认可来自英国的基准管理人员。

背景：根据欧盟基准条例，当申请欧盟认可的非欧盟基准管理人接受其本国司法管辖区监管时，ESMA 必须首先与相关非欧盟主管机构签订谅解备忘录，这是 ESMA 能够向该非欧盟基准管理人授予认可的先决条件。

ESMA and the UK FCA Agree MoU on the Recognition of UK Benchmark Administrators in the EU (2023/1/25)

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, and the UK Financial Conduct Authority (FCA) have agreed a new Memorandum of Understanding (MoU) regarding cooperation and the exchange of information with respect to benchmark administrators based in the UK. The MoU concerns benchmark administrators who seek recognition or are recognised in the EU.

The new MOU with the UK FCA enables ESMA to start recognising benchmarks administrators from the UK.

Background: Under the Benchmark Regulation, when a non-EU benchmarks administrator applying for recognition in the EU is subject to supervision in its home jurisdiction, ESMA must first establish an MOU with the relevant non-EU authority as a prerequisite for ESMA to be able to grant recognition to that non-EU administrator.

<https://www.esma.europa.eu/press-news/esma-news/esma-and-uk-fca-agree-mou-recognition-uk-benchmark-administrators-eu>

境外资讯——英国

6. 英国金融行为监管局关于商品衍生品交易适用附属活动豁免的进一步更新（2023年1月24日）

2022年3月，英国金融行为监管局（FCA）发布了一份声明，提供了关于英国《欧盟金融工具市场指引》监管技术标准 20（MiFID RTS 20）第2条规定的市场份额测试（market share test）的最新进展，该测试关系到从事商品衍生品、排放配额和排放配额衍生品交易的公司以附属业务活动为由豁免申请批准成为一家 MiFID 规制的投资公司。

FCA 表示，公司不需要进行市场份额测试以确定其是否有 2022-2023 年度附属业务活动豁免资格。

在 FCA 手册第 99 号公告中，FCA 表示，公司可以使用与 2018 年、2019 年和 2020 年有关的数字作为其计算分子，以进行其余主营业务的测算。此外，公司也可以使用与 2019 年、2020 年和 2021 年有关的相应数字。为免生疑问，只要使用 2018-2020 年的数据，分子和分母所采用数据期间应当保持一致。

如果能够满足主营业务测试，公司可以在 2022 年继续援引附属活动豁免，但必须满足《审查报告》（PERG）第 13 页第 44 条规定的其他豁免条件。

英国财政部发布了一项制定法文件（Statutory Instrument），将对附属活动测试进行修改，取消当前测试中对数量方面的要求。上述修改将在今年年底前生效。

因此，FCA 将继续采用其手册第 99 号公告中描述的方法，使公司能够在未来一年（2023 年-2024 年）继续援引附属活动豁免，即公司能够依据 2022 年-2023 年的豁免，以上一次公布的 2018 年至 2020 年信息有关的交易为基础，并使公司可以更灵活地考察其在过去三年（2020 年-2022 年）的日常交易活动，以继续援引附属活动豁免。

**Further Update to Ancillary Activities Exemption for Commodity Derivatives
(2023/01/24)**

In March 2022 we published a statement which provided an update on the ‘market share test’ as set out under Article 2 of UK MiFID RTS 20 relating to the ancillary activities exemption from authorisation as a MiFID investment firm for firms trading commodity derivatives, emission allowances and emission allowance derivatives.

We said that firms do not need to perform the market share test as part of determining their eligibility to use the ancillary activities exemption for 2022-2023.

In Handbook Notice No 99, we also said that a firm could use figures relating to 2018, 2019 and 2020 as their numerator for the purposes of its remaining main business test calculations. We also said that firms could use corresponding figures relating to 2019, 2020 and 2021. For the avoidance of doubt, provided data from 2018-2020 were used, the data period was the same for both the numerator and denominator.

If it could meet the main business test, a firm could continue to rely on the ancillary exemption in 2022, provided it met the other conditions of the exemption as set out in PERG 13 Q44.

The Treasury has proposed a Statutory Instrument that will make changes to the ancillary activities test removing the current quantitative aspects of the test. These changes will not take effect until the end of this year.

Therefore, we will continue to apply the approach described in Handbook Notice No 99 enabling firms to continue using the ancillary activities exemption for the year ahead (2023-2024) where they were able to rely on the exemption for 2022-2023 based on trading relating to the last previous published information (2018 to 2020) and maintain the additional flexibility enabling firms alternatively to have regard to their daily trading activity of the previous 3 years (2020-2022) for the purposes of continuing to rely on the ancillary exemption.

<https://www.fca.org.uk/news/statements/further-update-ancillary-activities-exemption-commodity-derivatives>

7. 五名个人面临共谋实施内幕交易和洗钱的指控

英国金融行为监管局已就共谋实施内幕交易和洗钱行为对五人提起刑事诉讼（2023年1月25日）

英国金融行为监管局（FCA）指控 Redinel Korfuzi、Oerta Korfuzi、Iva Spahiu、Rogerio de Aquino 和 Dema Almeziad 五人在 2019 年 12 月 17 日至 2021 年 3 月 25 日期间共谋实施内幕交易。具体而言，FCA 指控 Korfuzi 利用其此前在 Janus Henderson 担任分析师期间所掌握的内部保密信息，通过其共谋者所持有的账户适时对 49 家公司进行了获利交易。

在每一起案件中，被告都使用了一种与每家公司有关的名为“差价合约”（Contracts for Difference）的衍生品，打赌公司股票价值会在内幕信息公告后下跌。通过这种方式，被告实现了约 150 万英镑的利润。

这五名个人还被控犯有洗钱罪，涉及 170 多笔现金存款，总金额约为 200,000 英镑。

2021 年 3 月，FCA 在伦敦警察厅的协助下开展了一次多地点的搜查和逮捕行动，其中四名被告获得警方保释（police bail），直至在威斯敏斯特地方法院出庭。

该案被正式提交至南华克刑事法院（Southwark Crown Court），被告将于 2023 年 2 月 22 日在该法院出席申辩和案件管理听证会。所有被告均表示将不认罪。

Janus Henderson 公司已全力配合 FCA 的调查。

FCA 目前不能提供任何进一步的评论。

编者按

1. Redinel Korfuzi 出生于 1987 年 5 月 20 日，Oerta Korfuzi 出生于 1988 年 9 月 10 日，Iva Spahiu 出生于 1988 年 2 月 6 日，Rogerio de Aquino 出生于 1961 年 11 月 4 日，Dema Almeziad 出生于 1985 年 1 月 30 日。

2. Janus Henderson 公司受 FCA 监管。

3. 对于被指控犯罪期间发生的行为，内幕交易罪可被处以罚款和/或最高 7 年监禁。对于在 2021 年 11 月 1 日或之后发生的行为，内幕交易罪的最高刑罚是罚款和/或最高 10 年监禁。
4. 洗钱罪可被处以罚款和/或最高 14 年监禁。
5. 若要向 FCA 报告市场滥用行为或希望进行面谈，请参见 FCA 市场滥用主页。

Five Individuals Face Conspiracy to Insider Deal and Money Laundering Charges

The FCA Has Started Criminal Proceedings against Five Individuals for Conspiracy to Commit Insider Dealing and Money Laundering (2023/1/25)

The FCA alleges that Redinel Korfuzi, Oerta Korfuzi, Iva Spahiu, Rogerio de Aquino and Dema Almeziad conspired to commit offences of insider dealing between 17 December 2019 and 25 March 2021. Specifically, the FCA alleges that Mr Korfuzi used confidential inside information he accessed as an Analyst in his former role at Janus Henderson to enable timely and profitable trading in 49 companies through accounts held by his co-conspirators.

In each case, the defendants used a derivative product called Contracts for Difference in relation to each of these companies, betting that the value of shares would go down after the announcements. In doing so, they were able to realise profits of approximately £1.5 million.

All five are also charged with money laundering offences relating to over 170 cash deposits totalling approximately £200,000.

In March 2021 a multi-site search and arrest operation was conducted by the FCA with the assistance the Metropolitan Police, and four of the defendants were on police bail until they appeared before Westminster Magistrates' Court today.

The case was formally sent to Southwark Crown Court, where the defendants will appear on 22 February 2023 for a Plea and Case Management Hearing. All the defendants have indicated Not Guilty pleas.

Janus Henderson has co-operated fully with the FCA's investigation.

The FCA cannot provide any further comment at this time.

Notes to editors

1.Redinel Korfuzi's date of birth is 20 May 1987, Oerta Korfuzi's date of birth is 10 September 1988, Iva Spahiu's date of birth is 6 February 1988, Rogerio de Aquino's date of birth is 4 November 1961, Dema Almeziad's date of birth is 30 January 1985.

2.Janus Henderson is regulated by the FCA.

3.Insider dealing is punishable by a fine and/or up to 7 years' imprisonment for offences that occurred during the period of these alleged offences. For offences committed on or after, 1 November 2021, the maximum sentence for insider dealing is a fine and/or up to 10 years' imprisonment.

4.Money Laundering is punishable by a fine and/or up to 14 years' imprisonment.

5.To report market abuse to us or to speak to someone about it, see our market abuse page.

<https://www.fca.org.uk/news/press-releases/five-individuals-conspiracy-insider-deal-money-laundering-charges>

境内资讯

➤ 法律与监管 **Laws and Regulations**

1. 证监会就《股票期权交易管理办法（征求意见稿）》公开征求意见（2022年12月30日）

为贯彻落实《中华人民共和国期货和衍生品法》（以下简称《期货和衍生品法》）要求，证监会对《股票期权交易试点管理办法》作了配套修订，形成《股票期权交易管理办法（征求意见稿）》，现向社会公开征求意见。意见反馈截止时间为2023年1月29日。

China Securities Regulatory Commission Solicits Public Comments on the Measures for the Administration of Stock Options Trading (Draft for Comments) (2022/12/30)

To enforce the *Futures and Derivatives Law of the People's Republic of China*, CSRC amended the *Measures for the Administration of Pilot Stock Options Trading* and formulated the *Measures for the Administration of Stock Options Trading (Draft for Public Comments)*, which is now open for public comments. The deadline for feedback submission is January 29, 2023.

<http://www.csrc.gov.cn/csrc/c101981/c6939563/content.shtml>

2. 证监会就《期货市场持仓管理暂行规定（征求意见稿）》公开征求意见（2022年12月30日）

为切实做好《中华人民共和国期货和衍生品法》（以下简称《期货和衍生品法》）贯彻落实工作，证监会起草了《期货市场持仓管理暂行规定（征求意见稿）》（以下简称《暂行规定》），现向社会公开征求意见。

《期货和衍生品法》规定，持仓限额、套期保值的办法由国务院期货监督管理机构制定。为落实法律要求，更好与现行制度体系相衔接，证监会总结监

管实践经验，结合当前期货市场发展现状和监管工作需要，起草了《暂行规定》。

《暂行规定》重点对期货市场运行多年的成熟做法经验进行总结梳理，对持仓限额、套期保值、大户持仓报告、持仓合并等基础性制度的内涵、制定或调整原则、适用情形、参与各方义务等作出规定，以增强持仓管理的系统性和针对性，提升期货市场监管效能。意见反馈截止时间为 2023 年 1 月 29 日。

China Securities Regulatory Commission Solicits Public Comments on the *Interim Provisions on the Administration of Positions in Futures Market (Draft for Comments)* (2022/12/30)

To enforce the Futures and Derivatives Law of the *People's Republic of China* (hereinafter referred to as the *FDL*), CSRC has drafted the *Interim Provisions on the Administration of Positions in Futures Market (Draft for Comments)* (hereinafter referred to as the *Interim Provisions*), which is now open for public comments.

The *FDL* stipulates that the measures for the management of position limits and hedging shall be formulated by the futures regulatory authority under the State Council. In order to implement the legal requirements and better fit for the existing regime, CSRC summarized the practical experience of supervision and drafted the *Interim Provisions*, taking into account the current development of the futures market and the needs of supervision. The *Interim Provisions* focus on summarizing and sorting out the prevailing practices and experience of the futures market in the past years, and provide for the definitions, formulation or adjustment of regulatory principles, applicability, and obligations of all parties involved in the basic systems of position limits, hedging, large position reporting, and position consolidation, in order to enhance the systematic and targeted management of positions and improve the regulatory effectiveness of the futures market. The deadline for feedback submission is January 29, 2023.

<http://www.csrc.gov.cn/csrc/c101981/c6939676/content.shtml>

3. 证监会确定菜籽油、菜籽粕、花生期货和期权为境内特定品种（2023年1月6日）

根据《境外交易者和境外经纪机构从事境内特定品种期货交易管理暂行办法》（证监会令第116号）的有关规定，日前，证监会确定郑州商品交易所的菜籽油、菜籽粕、花生期货和期权为境内特定品种。上述品种于2023年1月12日引入境外交易者参与交易。

China Securities Regulatory Commission Designated Rapeseed Oil, Rapeseed Meal, Peanut Kernel Futures and Options as Specified Domestic Products (2023/1/6)

Pursuant to the *Interim Measures for the Administration of Overseas Traders 'and Overseas Brokers' Engagement in the Trading of Specified Domestic Futures Products* (CSRC Decree No.116), CSRC recently designated Rapeseed Oil, Rapeseed Meal, Peanut Kernel Futures and Options developed by Zhengzhou Commodity Exchange as specified domestic products. The aforesaid products will be open to overseas traders for trading on January 12, 2023.

<http://www.csrc.gov.cn/csrc/c100028/c6963228/content.shtml>

4. 证监会修订《证券期货经营机构私募资产管理业务管理办法》及其配套规则（2023年1月13日）

China Securities Regulatory Commission Amends the *Measures for the Administration of Private Equity Asset Management Business of Securities and Futures Business Institutions* and Supporting Rules (2023/1/13)

<http://www.csrc.gov.cn/csrc/c100028/c6987996/content.shtml>

➤ 交易所 Exchange

5. 大连商品交易所关于修改《大连商品交易所标准仓单交易管理办法（试行）》的公告（2022年12月26日）

Announcement of Dalian Commodity Exchange on Amending the Measures for the Administration of Standard Warehouse Receipt Transaction of Dalian Commodity Exchange (for Trial Implementation) (2022/12/26)

<http://www.dce.com.cn/dalianshangpin/ywfw/jystz/ywtz/8526494/index.html>

6. 大连商品交易所关于铁矿石、焦煤、聚氯乙烯期货协议交收有关事项的通知（2022年12月29日）

Notice of Dalian Commodity Exchange on Matters Concerning the Delivery Agreement on Iron Ore, Coking Coal, and PVC Futures (2022/12/29)

<http://www.dce.com.cn/dalianshangpin/ywfw/jystz/ywtz/8527094/index.html>

7. 大连商品交易所关于2022年12月异常和违规交易行为查处情况的通告（2023年1月4日）

Announcement of Dalian Commodity Exchange on the Investigation and Penalties of Abnormal Trading Behaviors and Violations for December 2022 (2023/1/4)

<http://www.dce.com.cn/dalianshangpin/fgfz/zljg/6110258/8527514/index.html>

8. 郑州商品交易所发布2022年12月自律监管统计信息（2023年1月4日）

Zhengzhou Commodity Exchange Issues Self-regulatory Statistics for December 2022 (2023/1/4)

<http://www.czce.com.cn/cn/flfg/tjsj/webinfo/2023/01/1655832439873585.htm>

9. 上海期货交易所关于 2022 年 12 月查处违法违规行为的公告（2023 年 1 月 5 日）

Announcement of the Shanghai Futures Exchange on Handling Violations for December 2022 (2023/1/5)

<https://www.shfe.com.cn/news/notice/911402356.html>

10. 上海国际能源交易中心关于 2022 年 12 月查处违法违规行为的公告（2023 年 1 月 5 日）

Announcement of the Shanghai International Energy Exchange on Handling Violations for December 2022 (2023/1/5)

<https://www.ine.cn/news/notice/6633.html>

11. 郑州商品交易所关于动力煤期货 2401 合约有关事项的公告（2023 年 1 月 6 日）

Announcement of Zhengzhou Commodity Exchange on the Matters Regarding the Thermal Coal Futures 2410 Contract (2023/1/6)

<http://www.czce.com.cn/cn/gyjys/jysdt/ggytz/webinfo/2023/01/1655832605651601.htm>

12. 中国金融期货交易所关于 2022 年 12 月采取自律监管措施情况的公告（2023 年 1 月 6 日）

Announcement of China Financial Futures Exchange on Self-Regulatory Cases for December 2022 (2023/1/6)

<http://www.cffex.com.cn/zljggzdt/20230106/31162.html>

13. 郑州商品交易所关于菜籽油、菜籽粕、花生期货和期权实施引入境外交易者业务有关事项的公告（2023年1月9日）

Announcement of Zhengzhou Commodity Exchange on Matters Concerning the Introduction of Overseas Traders in Rapeseed Oil, Rapeseed Meal, Peanut Kernel Futures and Options (2023/1/9)

<http://www.czce.com.cn/cn/gyjys/jysdt/ggytz/webinfo/2023/01/1655832874189016.htm>

14. 郑州商品交易所关于发布菜籽油、菜籽粕、花生期货和期权引入境外交易者业务规则修订案的公告（2023年1月9日）

Announcement of Zhengzhou Commodity Exchange on the Amendments to the Relevant Rules on the Introduction of Overseas Traders in Rapeseed Oil, Rapeseed Meal and Peanut Kernel Futures and Options (2023/1/9)

<http://www.czce.com.cn/cn/gyjys/jysdt/ggytz/webinfo/2023/01/1655832874394933.htm>

15. 上海国际能源交易中心关于就修订《上海国际能源交易中心交易细则》公开征求意见的公告（2023年1月10日）

Announcement on Requesting Public Comments on the Revised *Trading Rules of the Shanghai International Energy Exchange* (2023/1/10)

<https://www.ine.cn/news/notice/6652.html>

16. 大连商品交易所关于修改《大连商品交易所风险管理办法》等规则的公告

(2023 年 1 月 12 日)

Announcement on the Amendments to the Measures for Risk Management of Dalian Commodity Exchange and Other Rules (2022/1/12)

<http://www.dce.com.cn/dalianshangpin/ywfw/jystz/ywtz/8528943/index.html>

17. 郑州商品交易所 2022 年自律管理工作报告 (2023 年 1 月 13 日)

2022 Work Report on Self-Regulation of Zhengzhou Commodity Exchange (2023/1/13)

<http://www.czce.com.cn/cn/gyjys/jysdt/ggytz/webinfo/2023/01/1655833212056071.htm>

18. 上海期货交易所关于发布有关期货合约及实施细则修订版的公告 (2023 年 1 月 17 日)

Circular of Shanghai Futures Exchange on Releasing the Revised Futures Contract Specifications and Related Implementing Rules (2023/1/16)

<https://www.shfe.com.cn/news/notice/911402427.html>

19. 大连商品交易所关于新增境外客户保证金存管银行的公告 (2023 年 1 月 19 日)

Notice of Dalian Commodity Exchange on Adding Futures Margins Designated Depository Bank for Overseas Clients (2023/1/19)

<http://www.dce.com.cn/dalianshangpin/ywfw/jystz/ywtz/8530032/index.html>

➤ 行业协会 Association

20. 中国期货业协会关于《期货风险管理公司风险控制指标管理办法（试行）》第二年过渡期有关问题的提示 (2022 年 12 月 26 日)

Notifications of China Futures Association on Questions Relating to the Second Year Transition Period of the *Measures for Risk Control Indicators Management of Futures Risk Management Company (for Trial Implementation)* (2022/12/26)

http://www.cfachina.org/aboutassociation/associationannouncement/202212/t20221226_33954.html

21. 中国期货业协会关于更新《期货风险管理公司风险控制指标管理办法（试行）》基差价差风险系数表的通知 (2022 年 12 月 26 日)

Notice of China Futures Association on Updating the Coefficient Chart of Basis and Spread Risk under the *Measures for Risk Control Indicators Management of Futures Risk Management Company (for Trial Implementation)* (2022/12/26)

http://www.cfachina.org/aboutassociation/associationannouncement/202212/t20221226_33991.html

22. 中国期货业协会发布 2022 年 12 月全国期货市场交易情况简报 (2022 年 12 月 30 日)

China Futures Association Releases the Brief on National Futures Markets Tradings for December 2022 (2022/12/30)

<http://www.cfachina.org/aboutassociation/associationannouncement/202212/U020221231015455626725.pdf>

23. 中国期货业协会发布期货行业服务实体经济数据概览(2022 年 12 月)(2023

年 1 月 20 日)

**China Futures Association Releases the Overview of the Industry Data on
Futures Servicing Real Economy (December 2022) (2023/1/20)**

<http://www.cfachina.org/aboutassociation/associationannouncement/202301/P020230120349597812942.pdf>

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