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Asset Management Law

Comment on Proposed Amendments to Qualified Foreign Institutional Investors Rules

James WANG | Chu LIU

On June 20, 2012, China Securities Regulatory Commission ("CSRC") promulgated the Regulation of China Securities Regulatory Commission on the Implementation of the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors ("QFII") (Draft) (the "Regulation"), aiming to amend the Notice of China Securities Regulatory Commission on the Implementation of the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors (the "Notice") issued on August 24, 2006. CSRC, People's Bank of China and State Administration of Foreign Exchange jointly issued on August 24, 2006 the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors (the "Measures"), amending the relevant rules regarding the QFII program for the first time since its initiation in 2002. The Draft Regulation aims to further open up the capital market and attract more long term investment from abroad. More specifically, the Draft Regulation would simplify the approval process for QFII, lower the requirements, loosen the restriction on opening securities trading accounts, expand the investable scope, facilitate the investment and operation, improve the supervision system of the investment by QFII, and ensure that relevant risks are under control.

The main points of the Draft Regulation, as compared to the Notice and other relevant laws and regulations on the QFII program, are as follows:

Article	Change	The Notice (2006)	The Regulation (2012)
1	Lower the QFII qualification requirements for "fund management institutions" (under the Notice)/"asset management institutions" (under the Draft Regulation)	The applicant shall have at least five years' experience in the asset management business, and the securities assets under management by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have at least two years' experience in the asset management business, and the securities assets under management by the applicant in the most recent accounting year shall not be less than USD500 million.
	Lower the QFII qualification requirements for insurance companies.	The applicant shall have been established for five or more years, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have been established for two or more years, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD500 million.
	Lower the QFII qualification requirements for securities companies.	The applicant shall have at least 30 years' experience in the securities business, its actual paid-in capital shall be no less than USD1 billion, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD10 billion.	The applicant shall have at least five years' experience in the securities business, its net asset shall be no less than USD500 million, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD5 billion.
	Lower the QFII qualification requirements for commercial banks.	The applicant's total assets for the latest accounting year shall rank among top 100 in the world, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD10 billion.	The applicant shall have at least 10 years' experience in the banking business, with a total of USD300 million Tier 1 Capital, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD5 billion.
	Lower the QFII qualification requirements for other institutional investors (such as pension funds, charity foundations, endowment funds,	The applicant shall have been established for five years or more, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have been established for two years or more, and the securities assets held by the applicant in the most recent accounting year shall be no less than USD500 million.

Article	Change	The Notice (2006)	The Regulation (2012)
	trust companies, and governmental investment management companies).		
2	Simplify the application and approval process	In applying for the QFII qualification, the applicant shall submit the application documents (in one original and one duplicate) to China Securities Regulatory Commission[1].	In applying for the QFII qualification, the applicant shall submit the application document in electronic manner through the website of China Securities Regulatory Commission, together with a copy to China Securities Regulatory Commission. Should any of the significant events stipulated in Article 30 of the Administrative Measures occurs, the QFII shall file for record with China Securities Regulatory Commission electronically through its website.
6	Allow multiple securities accounts, satisfy the need for QFIIs to choose multiple securities companies, and facilitate the investment of QFII	A QFII shall entrust a custodian to apply to China Securities Depository and Clearing Corporation Limited for opening more than one securities account. The securities accounts under such application shall correspond to the special Renminbi accounts approved by the SAFE on a one-on-one basis.	The Regulation eliminates the expression of "one on one" in the Notice and thus allows the QFII to open multiple securities accounts with different securities companies with one single special Renminbi account.
7 and 8/7	Allow QFIIs to open separate accounts for different clients,	Article 7：QFIIs shall apply to open securities accounts in their own names, and shall, in the case of providing clients	The Regulation combines Articles 7 and 8 in the Notice into one, which stipulates that QFIIs shall open separate

[1] Such documents mainly include: (a) application form; (b) basic information on the primary responsible person; (c) investment plan; (d) description of the source of fund; (e) explanation on whether or not the applicant has been subject to any severe penalty by regulatory authorities in the recent three years; (f) business license (in photocopy) issued by the applicant's country or region of origin; (g) financial business permit (in photocopy) issued by the regulatory authority of the applicant's country or region of origin; (h) articles of association (in photocopy); (i) draft of the custody agreement entered into with the custodian; (j) audited financial statements for the latest three years; (k) other documents requested by CSRC; and (l) the relevant power of attorney, written notarization and Chinese translation.

Article	Change	The Notice (2006)	The Regulation (2012)
	facilitates the investment of QFIIs and enhance transparency	with asset management services, open nominal holders' accounts. Article 8: When a QFII applies to open securities accounts for long-term capital such as publicly offered funds, insurance funds, pension funds, charity foundations, endowment funds, or governmental investment funds, the names of such accounts may be set in the form of "QFII + Fund/Insurance Capital/etc.)".	securities accounts for its proprietary capital and client assets under its management[2]. When a QFII applies to open securities accounts for a client, the names of such accounts may be set in the form of "QFII + the name of the client".
	Satisfy the need of QFIIs to invest in the specific customer product provided by the fund management institutions and facilitate the operation of QFII		The Draft Regulation adds that domestic fund management institutions may provide specific customer asset management services to QFIIs and open accounts for them, while the scope of investment is the same as that of QFIIs
8/9	Expand investment scope	QFIIs may invest in the following Renminbi financial instruments within the approved investment quota: (a) Stocks listed and traded on securities exchanges; (b) Bonds listed and traded on securities exchanges; (c) Securities investment funds; (d) Warrants listed and traded on securities exchanges; and (3) Other financial instruments in which an investment is permitted by CSRC.	Apart from the index option[3], QFIIs are further allowed to invest in the inter-bank bond market.

[2] Also including the open-end China funds, which refers to open-end securities investment funds set up outside of China in the form of public offering that invest at least 70% of their assets in China, according to the Provisions on Foreign Exchange Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors (Announcement of the State Administration of Foreign Exchange [2009] No. 1)

[3] Guidelines for Qualified Overseas Institutional Investors Participating in Stock Index Futures Trading (Announcement [2011] No. 12 of China Securities Regulatory Commission)

Article	Change	The Notice (2006)	The Regulation (2012)
		QFIIs may participate in the offering of new shares, offering of convertible bonds, follow-on offering of shares and subscription of allotted shares.	
	Raise foreign exchange quota for investment		In 2009, the State Administration of Foreign Exchange promulgated the *Provisions on Foreign Exchange Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors,* raising the foreign exchange quota for QFII's investment, facilitating the process for opening capital accounts, and loosening the lock-up of QFII capital and the restriction on the remittance and repatriation of foreign exchange.
10/9	Loosen restriction on share ownership	The securities investment made within China by overseas investors shall be subject to the following share ownership percentage caps: (a) The ownership percentage in a listed company by any single overseas investor through QFII shall not exceed 10% of the total shares of that company; and (b) The aggregate ownership percentage in a single listed company by all overseas investors shall not exceed 20% of the total shares of that listed company.	The share ownership percentage cap for any single overseas investor through QFII remains 10%. The maximum aggregate ownership percentage of all overseas investors in any single listed company is increased to 30% from 20%.

In summary, the amendments are proposed by CSRC for the purpose of loosening relevant restrictions and enhancing its supervision of the QFII program. It is believed that if the proposed amendments are adopted, QFIIs will continue to become a more significant part of the A share market, helping the stable growth and further opening-up of China's capital market, which in turn will attract more and more overseas long term capital to China.

Important Announcement

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If you have any questions regarding this publication, please contact any of the following Han Kun lawyers:

Contact Us

Beijing Office
Tel.: +86-10-8525 5500
Suite 906, Office Tower C1, Oriental Plaza
No. 1 East Chang An Ave.
Beijing 100738, P. R. China

Estella CHEN Attorney-at-law
Tel.: +86-10-8525 5541
Email: estella.chen@hankunlaw.com

Shanghai Office
Tel.: +86-21-6080 0909
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney-at-law
Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Shenzhen Office
Tel.: +86-755-3680 6500
Suite 4709, Excellence Times Plaza, 4068 Yitian Road, Futian District,
Shenzhen 518048, P. R. China

Jason WANG Attorney-at-law
Tel.: +86-755-3680 6518
Email: jason.wang@hankunlaw.com