

Legal Commentary

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NFRA to Unify Compliance Regulation for Financial Institutions

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Background

On 16 August 2024, the National Financial Regulatory Administration (**NFRA**) issued a consultation draft of the *Measures for Compliance Management of Financial Institutions* (金融机构合规管理办法) (**Draft Measures**). The public comment period is open until 17 September 2024.

Developing unified compliance management measures for relevant financial institutions can be traced back to the 2022 legislative agenda put forth by the China Banking and Insurance Regulatory Commission (**CBIRC**). This objective remained a key focus in the legislative work plans for both 2023 and 2024, even after CBIRC transitioned to NFRA. Following this, the Draft Measures have been released for public comments, which comprise five chapters: general provisions, compliance management responsibilities, compliance management assurance, supervision and liability, and supplementary provisions.

Insights

The Draft Measures summarize and reiterate compliance practices developed over the years for Covered Financial Institutions (defined below). We believe most Covered Financial Institutions have generally implemented the compliance management mechanisms which the Draft Measures stipulate.

The Draft Measures further underscore the significance of the chief compliance officer (**CCO**) and compliance officer roles and systematically delineate the responsibilities of the compliance department. The Draft Measures signal that the financial regulatory authority will further strengthen compliance supervision over Covered Financial Institutions going forward.

Highlights of the Draft Measures

The Draft Measures provide the following:

I. Covered Financial Institutions

Article 2 of the Draft Compliance Measure outlines the scope of covered financial institutions (**Covered Financial Institutions**), which includes banking, insurance, and other institutions under the supervision of NFRA.

The Draft Measures are not intended to apply to institutions regulated by the China Securities Regulatory Commission (**CSRC**), such as fund management companies, securities firms, and futures companies. In the future, CSRC may introduce similar compliance measures for the financial institutions it regulates.

II. Compliance rules

Article 3 of the Draft Measures outlines the rules with which Covered Financial Institutions would have to comply. In addition to the laws, regulations, and administrative normative documents promulgated by regulators, the Draft Measures stipulate that Covered Financial Institutions must also observe industry self-discipline norms and internal regulations.

III. Responsibilities of the board

Article 8 of the Draft Measures provides that the board of directors of Covered Financial Institutions shall appoint the CCO and ultimately oversee and be responsible for compliance management.

IV. Appointment of CCOs and compliance officers

Article 11 of the Draft Measures would require each Covered Financial Institution to appoint a CCO at their head office and designate compliance officers at provincial-level or first-tier branches. The CCO and compliance officers would need to satisfy the qualifications specified in Articles 14 and 15 of the Draft Measures respectively, and not be permitted to assume additional roles that potentially conflict with compliance management. However, these qualification requirements would not apply to the institution's or branch's president or general manager, should they be appointed to concurrently serve as either the CCO or compliance officer.

V. CCO responsibilities

Articles 16 to 23 of the Draft Measures provide for the responsibilities of the CCO role. In summary, the CCO is to be accountable for the comprehensively managing compliance of the Covered Financial Institution and its employees. This includes guiding, supervising, and inspecting operational management and employee performance from a compliance perspective, as well as ensuring the establishment and implementation of the compliance management system. Furthermore, the CCO would be required to prepare regulatory reports, organize compliance reviews, handle major compliance incidents, and promptly report and advocate for corrective actions in the event of significant violations or compliance risks.

VI. Role of the compliance department

Section 3 to Chapter 2 of the Draft Measures establishes the role of the compliance department. According to Section 3, a Covered Financial Institution would generally be required to establish an independent compliance department tasked with offering compliance support, executing compliance reviews, and delivering compliance training. To ensure effective functioning, the compliance department would be required to operate independently of other business departments with potential

conflict of duties. Overseas branches would be required to adhere to local regulations and establish local compliance departments. The compliance department would report to the CCO, with branch-level compliance departments reporting to the compliance officer of that branch.

VII. Compliance assurance

Chapter 3 of the Draft Measures provides an assurance mechanism for effective compliance management. Covered Financial Institutions would have to provide sufficient support to the CCO and the compliance department to ensure their independence and access to information. Each Covered Financial Institution would be expected to employ enough compliance staff to uphold these standards and the CCO would have the authority to participate in meetings, review relevant documents, and issue warnings for compliance risks. Furthermore, Covered Financial Institutions would need to establish appropriate assessment and compensation standards for compliance staff to reinforce the overall effectiveness of compliance management. Additionally, the Draft Measures would make it essential to enhance internal compliance training and implement a transparent internal reporting mechanism.

VIII. NFRA supervision

Chapter 4 of the Draft Measures designates NFRA as the authority to be responsible for supervising the compliance management of Covered Financial Institutions. The CCO and other compliance officers could be investigated and subject to severe administrative penalties from NFRA, or even criminal charges, if they violate the Draft Measures, leading to significant compliance violations or risks for the Covered Financial Institution. However, the CCO and other compliance officers would ordinarily not be held personally liable if they were diligent in performing their duties.

IX. Miscellaneous

The Draft Measures are intended to enter into force on 1 March 2025. From this date, the Draft Measures would replace the existing rules¹ and take precedence over the regulations and rules concerning the qualifications and responsibilities of directors, supervisors, and managers², as outlined in Article 65 of the Draft Measures. Covered Financial Institutions would then be granted a one-year transition period from the effective date to comply with the finalized measures.

Our observation

After the Draft Measures are finalized, we suggest the Covered Financial Institutions review and revisit their existing compliance system (including policies, departments, personnel, etc.) against the Draft Measures for a gap analysis and take further actions as required to ensure compliance staff are adequately

¹ Including: 《商业银行合规风险管理指引》《保险公司合规管理办法》and 《中国保监会关于进一步加强保险公司合规管理工作有关问题的通知》.

² Including: 《中资商业银行行政许可事项实施办法》《农村中小银行机构行政许可事项实施办法》《外资银行行政许可事项实施办法》《银行业金融机构董事（理事）和高级管理人员任职资格管理办法》《保险公司董事、监事和高级管理人员任职资格管理规定》《非银行金融机构行政许可事项实施办法》and 《中国银监会关于银行业金融机构法律顾问工作的指导意见》.

deployed, compliance department is effectively organized, compliance duties and responsibilities are clearly allocated, and compliance support mechanisms are properly established during the transition period.

Going forward, we recommend that Covered Financial Institutions develop and upgrade their internal compliance training system to provide necessary and high-standard education to all relevant stakeholders to build an enhanced compliance culture.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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