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By Email
通过电子邮件

ASIFMA 关于证券公司交易信息系统外部接入管理暂行规定的征求意见稿的反馈意见

ASIFMA's Feedback to the CSRC's Consultation on the Administration of Securities Brokers' Electronic Connections with Clients' External Trading Systems (Direct Market Access)

尊敬的先生/女士：
Dear Sir/Madam,

亚洲证券业与金融市场协会(ASIFMA)¹谨代表其会员，在此向贵会提交我们对中国证券监督管理委员会(“证监会”或“贵会”)于2019年2月1日发布的《证券公司交易信息系统外部接入管理暂行规定(征求意见稿)》(以下简称“《征求意见稿》”)的一些意见与建议。由于农历新年前后新规频出征求意见，且大多与境外市场参与者切身利益密切相关，我们对未能在向公众征求意见截止日期之前及时向贵会提供反馈意见深表歉意，并感谢贵会在此听取我们的意见和建议。

¹ 亚洲证券业与金融市场协会(ASIFMA)是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、律师事务所及市场基础设施服务供应商等100多家领先机构组成。协会的使命是发掘金融行业的共同利益来推动亚洲资本市场的深度和广度发展，为区内的经济发展及增长提供基本条件。ASIFMA致力于通过清晰而有力的行业共同声音来推动业界就关键议题达成共识、提出解决方案和促进变革。我们所牵头的众多举措包括回应监管机构和交易所的咨询、树立统一的行业标准、通过政策论文倡导更优质的市场，以及为降低亚太区内的业务成本探索可行方案。通过全球金融市场协会(GFMA)，ASIFMA与位于美国的证券业与金融市场协会(SIFMA)以及欧洲的金融市场协会(AFME)形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。

¹ ASIFMA is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

DEVELOPING ASIAN CAPITAL MARKETS

On behalf of its members, Asia Securities Industry & Financial Markets Association ("ASIFMA")¹ hereby submits its comments and suggestions on the Consultation Drafts of *the Administration of Securities Brokers' Electronic Connections with Clients' External Trading Systems* (《证券公司交易信息系统外部接入管理暂行规定(征求意见稿)》) ("Consultation Paper") released by the China Securities Regulatory Commission ("CSRC") on 1 February 2019. We sincerely apologize for the late submission of our comments on the Consultation Paper as many various draft regulations closely related to the core interests of overseas investors were released for public comments around the Chinese Lunar Year. We greatly appreciate CSRC's willingness to consider our comments submitted after the deadline.

ASIFMA的会员认为允许专业投资者接入证券公司的交易信息系统，并借此下单至交易所 (i.e. Direct Market Access or "DMA") 有益于为中国资本市场注入健康的流动性，使其更好的与境外成熟资本市场接轨。因此，我们对于证监会允许证券公司在安全、合规的前提下，向机构投资者提供DMA表示热烈欢迎。如贵会起草说明中所指出，机构投资者的确存在借助DMA系统实现分仓管理、统一风控以及交易策略执行等需求。目前众多海外机构投资者（即QFII和RQFII）和已批准的外资私募证券投资基金管理人具有使用外DMA的需求，并希望利用外资券商所提供的该类服务。外资券商亦可凭借其国际经验将DMA的最佳实践做法引入中国，有利于中国资本市场的发展。因此，我们提出如下意见与建议，相信会更好的促进广大境外机构投资者和外资券商机构开展业务，并推动中国市场的稳健发展。

ASIFMA members believe that allowing professional investors to connect with securities brokers' systems to send orders directly through to the exchange (i.e. Direct Market Access or "DMA") will inject healthy liquidity into the local Chinese market and will further align Chinese market structure with mature international market standards. Therefore, we warmly welcome the CSRC's proposal to allow securities brokers to provide such DMA services to investors, should the provision of such services prove to be safe and in full compliance with the relevant laws and regulations. As acknowledged in the Consultation Paper, institutional investors do have the need to connect to Brokers' systems and the exchange for the purposes of, for example, allocating trades among different portfolios, applying risk control measures universally, and/or directly executing certain trading strategies. A large number of overseas institutional investors (i.e. QFIIs and RQFIIs) and foreign-invested private securities investment fund managers have similar such needs and may want to leverage the DMA services offered by foreign-invested securities brokers, who bring to the Chinese market their best practices for providing DMA based on their global experiences, which would significantly contribute to the growth of China's capital markets. Therefore, we offer the following comments and suggestions, which we believe will better facilitate overseas institutional investors and foreign-invested securities brokers and improve the robustness of the Chinese market.

1 证券公司资质要求

1. Qualification Requirements for Securities Brokers

我们注意到，《征求意见稿》要求从事DMA活动的证券公司应符合近三年分类结果中至少有两年在A级或者以上级别。这意味着目前几乎所有合资证券公司以及未来拟设立的外商独资证券公司（以下合称“外资券商”）都无法满足这一要求。我们担心，符合该分类评级要求对于拟提供DMA的外资券商而言会是巨大的挑战。鉴于为客户提供DMA已是证券公司重要的盈利模式之一，如外资券商无法向其机构投资者客户提供DMA，则会使其难以符合A级分类结果对于盈利能力的相应要求。另外，新设的外资券商需要开展业务满两年才能有资格提供DMA。据我们所知，全球其他市场通常不会对证券公司的盈利能力有类似要求。由此我们担心该分类级别要求可能会成为境外投资者寻求在中国投资设立证券公司并开展有竞争力业务的极大障碍。

We note that the Consultation Paper sets out the requirement that securities brokers seeking to offer DMA must have an A-class rating or higher for at least two years within the past three years. However, this requirement would mean that almost all the joint venture securities brokers or the WFOE securities brokers to be incorporated in future (collectively "Foreign-invested Securities Brokers") would fail to meet such requirements. We are therefore concerned that the grade rating requirements will be a substantial challenge for any Foreign-invested Securities Broker seeking to provide DMA for their investors. Given that providing DMA services to clients has been a significant contributor to brokers' profitability, it will be very difficult for Foreign-invested Securities Brokers to achieve the profitability required for an A grade rating if they are not eligible to offer DMA services. In addition, any newly-incorporated Foreign-invested

Securities Broker would only be eligible to provide such services after it has been in operation for more than two years. We are not aware of similar profitability prerequisites for securities brokers in other markets and as such, we are concerned that this grade rating requirement will be a substantial obstacle for foreigners seeking to establish their securities brokerage subsidiaries and develop the relevant competitive businesses in China.

我们恳切希望贵会可以在《征求意见稿》第五条中放宽对于外资券商的要求，比如加入对外资券商境外股东的要求，或者单独列明对于外资券商的要求，以替代其需符合近三年分类结果中至少有两年在A级或者以上级别的要求，以允许外资券商提供DMA并为市场带来更多健康的流动性。

We sincerely hope that the CSRC will ease the qualification requirements on Foreign-invested Securities Brokers as stipulated in Article 5 of the Consultation Paper. For example, replacing the requirement to have an A-class rating or higher for at least two years of the past three years with relevant requirements on Brokers' overseas shareholders or separate requirements on the Foreign-invested Securities Brokers would allow Foreign-invested Securities Brokers to offer DMA and bring further healthy liquidity into the market.

2 投资者尽职调查

2. Due Diligence on Investors

《征求意见稿》要求证券公司应当对交易信息系统外部接入实施集中统一管理，遵循“了解你的客户”原则对投资者开展大量尽职调查，包括核实投资者产品管理模式、账户信息、产品结构、权限分配、风险控制情况。我们也注意到根据《征求意见稿》要求证券公司的尽职调查还包括投资者交易系统的架构、功能设计、交易数据处理流程、数据留存机制、网络拓扑、系统部署物理位置以及交易终端信息等。我们充分理解监管者希望加强证券公司的尽职调查责任，以确保市场的公平有序。鉴于国内的证券公司已经在配合境内交易所监督投资者（包括QFII和RQFII）的交易行为，我们认为证券公司对于投资者开展的尽职调查应优先关注投资者的内部风险控制措施，如投资者系统风控能力的缺失是否可能会导致出现例如“乌龙指”类似的风险事件，而非核实投资者（包括QFII和RQFII）产品的情况。

Per the Consultation Paper, securities brokers must consolidate and manage their clients' DMA connections by conducting extensive due diligence on investors in accordance with "Know Your Clients" principles, including the verification of their product management models, account information, product structure, permission assignment and risk controls. We also note that according to the Consultation Paper, the scope of brokers' due diligence requirements includes the structure of investors' trading systems, functional design, trading data processing procedures, data recording systems, network topology, physical location of system deployment and trading terminal information. While we fully understand the regulator's intentions to strengthen the due diligence obligations of securities brokers to ensure a fair and orderly market, we believe brokers' due diligence should be focused on the **investors' internal risk management controls**, (e.g. whether market risks such as "fat finger-errors" may arise due to inadequate risk controls in the investors' systems) rather than on verifying their clients' product offerings, especially since brokers already cooperate with domestic exchanges to monitor the trading activities of their investors (including QFIIs and RQFIIs).

我会会员同时注意到要求投资者提供的大部分信息（比如算法策略）属于投资者的专有保密信息，投资者因此不会愿意分享该信息给经纪商或服务商。我们需要着重说明的是由于投资者的算法策略主要为交易执行之目的，与券商分享该等信息并无助于券商有效评估客户对错单的内部控制。我会会员担心如要求券商对客户的专有信息或知识产权进行尽职调查，可能会导致投资者对于使用DMA意兴阑珊。我们恳请贵会考虑上述要求的现实可行性，并允许券商合理要求投资者提供的信息范围以评估其内部风控，而非迫使其与券商分享专有信息。

Our members also note that the majority of the information required from investors (such as algorithmic strategies) is proprietary and confidential information and investors will consequently be unwilling to share such information with brokers or service providers. We emphasize that such information is neither helpful nor required for brokers to effectively assess their clients' internal controls for error trades, especially given that algorithmic strategies are mainly tools for execution. Our members are therefore concerned that should securities brokers be required to perform such

due diligence on clients' proprietary information or intellectual property, investors will be deterred from using brokers' DMA services. Therefore, we respectfully ask the CSRC to consider the practical feasibility of the above requirement and instead allow securities brokers to set out the reasonable scope of information required from investors to assess the investors' internal risk controls, rather than mandatorily requiring investors to share their proprietary information with brokers.

3 现场回访要求

3. Requirement of On-site Visit

我会会员对于《征求意见稿》第九条要求证券公司应当至少每六个月对投资者尽职调查情况进行一次现场回访，回访记录应当书面留存的规定有所顾虑。考虑到证券公司还有很多位于境外的QFII和RQFII客户，要求证券公司每六个月对该类客户进行一次现场回访的义务非常繁重、可行性也不高。

Our members have also shared their concerns on Article 9 of the Consultation Paper, which requires securities brokers to conduct at least one on-site client visit every 6 months and that the records of such on-site visits must be recorded in a written form. Given that securities brokers may also have a large number of QFII and RQFII clients located outside of China, the obligation for local securities brokers to conduct one on-site visit on such clients every 6 months may be onerous and infeasible in practice.

我们恳请《征求意见稿》第九条修改为：证券公司应当至少每十二个月对投资者尽职调查情况进行一次现场回访，或针对境外QFII和RQFII投资者，可以通过电子邮件、电话或其他远程接入的方式满足前述回访要求。

We respectfully suggest that Article 9 of the Consultation Paper should be amended to: securities brokers shall conduct an on-site client visit on investors for the purpose of verifying due diligence information at least once every 12 months, and for QFII and RQFII investors, other methods of communication may be acceptable, e.g. email, phone or other remote methods.

4 投资者适当性的要求

4. The Eligibility Requirements on Investors

《征求意见稿》规定证券公司仅可以为符合《证券期货投资者适当性管理办法》第八条第一项或第三项规定的且自身存在合理交易需求的专业投资者提供DMA。在这些专业投资者中，如为私募基金管理人，则该私募基金管理人必须为私募证券投资基金管理人，其最近一年末管理产品规模不低于5亿元，且接入的私募基金产品已获得中国证券投资基金业协会备案。

Pursuant to the Consultation Paper, securities brokers shall only provide DMA services to professional investors that meet the requirements set out in Item 1 or Item 3 of Article 8 of the *Measures for the Eligibility Management of Securities and Futures Investors* (in Chinese: 《证券期货投资者适当性管理办法》) and have reasonable trading needs. For these professional investors, if they are private fund managers, then such shall be private fund managers of securities investment. Their assets under management (AUM) over the last year shall not be less than RMB 500,000,000 and the private fund products with external connections shall be filed with the Asset Management Association of China.

我们认为，私募基金管理人（比如外资私募证券投资基金管理人）的合理交易需求以及其合规和风控能力与其管理产品规模并无直接关联。目前没有一家外资私募证券投资基金管理人的管理产品规模可以达到人民币5亿元，但这些机构旨在引入其境外集团公司的合规和风险控制的最佳实践，以符合集团的全球合规和风控要求。因此，我们建议监管机构更多考虑将专业投资者的合理交易需求以及其内部合规和风控能力作为衡量该投资者是否可以使用DMA的标准，并建议豁免对外资私募证券投资基金管理人的最近一年末管理产品规模的最低要求。

We believe the reasonable trading needs of private fund managers (such as wholly foreign-owned private securities investment fund managers (“WFOE PFMs”)) and their compliance and risk control capacities are not relevant to their AUM. Currently, none of the WFOE PFMs have an AUM over RMB 500,000,000. However, they aim to adopt compliance and risk control best practices to conform to global standards. Therefore, we suggest the regulatory authorities consider the reasonable trading needs of professional investors and their internal compliance and risk control capacities when determining the criteria for whether such investors may be eligible to use brokers’ DMA services and to consider excluding WFOE PFMs from the aforementioned minimum AUM requirements.

5 创新试点申请

5. Application for Innovation Pilot Program

《征求意见稿》规定除上述专业投资者外的其他投资者确有合理接入需求的情况下可以申请创新试点。我们期待证监会就如何向贵会提交创新试点申请，申请的标准、流程以及相关申请文件予以明确。

The Consultation Paper also stipulates that investors (other than the professional investors as defined above) who have the actual need to use DMA may apply to participate in an innovation pilot program with the CSRC. It would be helpful if the CSRC could further clarify the criteria, procedure and required documents for participating in the innovation pilot program.

对于上述顾虑和建议，若监管机构能够予以考虑，我们将不胜感激。本协会非常乐意适时更详细地讨论这些问题。如果您有任何疑问，请联系赵荫人先生（电邮 Ichao@asifma.org 电话+852 2531 6550）。

ASIFMA greatly appreciates the CSRC’s consideration of our suggestions and would be pleased to discuss such with the CSRC in greater detail should you find it appropriate. If you have any questions, please contact Lyndon Chao at Ichao@asifma.org or Tel: +852 2531 6550.

Sincerely,



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