

2019年8月26日
26 August 2019

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通过电子邮件
By Email

ASIFMA 关于证监会所发布的《证券经纪业务管理办法（征求意见稿）》的反馈意见
ASIFMA's Response to the CSRC's Consultation on Administrative Measures for Securities Brokerage Businesses

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, 在此向贵会就所发布的《证券经纪业务管理办法 (征求意见稿)》(后称“办法”)提供反馈的机会表示欢迎。由于拟议的办法大致上是贵会先前发布的措施和通知的合集, ASIFMA 大致上支持该办法。

The Asia Securities Industry and Financial Markets Association (“ASIFMA”)¹ and our members welcome the opportunity to respond to the CSRC’s consultation regarding its draft *Administrative Measures for Securities Brokerage Businesses* (the “Measures”). As the Measures seem to be largely an amalgamation of previously issued measures and notices, ASIFMA is largely supportive of it.

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

然而，我们注意到办法第二十四条提到选择“符合相关要求的商业银行”存管投资者资金。我们希望贵会能进一步澄清对上述商业银行的有关要求。此外，我们注意到办法第二十五条规定，办理与投资者之间资金、证券的清算交收应当符合中国证券登记结算有限责任公司（“中国结算”）的清算结果。

However, we note that Article 24 of the Measures refers to the selection of a “commercial bank that meets the relevant requirements” to deposit investor funds. We would appreciate clarification on what are the relevant requirements for such bank. In addition, we note that Article 25 of the Measures provides that the clearing and settlement of funds and securities with the investors shall be in accordance with the clearing results from China Securities Depository and Clearing Co., Ltd. (“CSDC”)

根据 ASIFMA 的理解，中国结算一直在提倡券商结算模式，即投资者的证券交易资金将在交易前存入券商指定的第三方存管银行。然而，目前 QFII / RQFII 投资者使用的结算模式是托管行结算模式。也就是说，QFII / RQFII 投资者进行证券交易的资金存于投资者自己的托管行，并在其购买的证券转让或交付时直接同中国结算交收。

ASIFMA understands that CSDC has been promoting a Broker Settlement Model where investors’ funds for a securities trade are to be placed with the broker’s designated third-party depository bank before the trade. However, the current settlement model for QFII/RQFII investors is a Custodian Bank Settlement Model, where the funds for a securities trade by such investors are maintained with their custodian bank and settled directly with CSDC upon transfer or delivery of the purchased securities to the QFII/RQFII investors.

从沪深港通所获取的经验可以得知，许多外国机构投资者，特别是 UCITS 基金，必须通过托管行或一个在其托管网络中的公司持有其资产（证券和资金）。托管行对这些资产具有严格的保障责任。例如，托管行必须确保这些基金的资产只能在券货对付（DvP）的结算模式上进行证券交易，即资金付款与证券交付同时进行。在 UCITS 监管机构（如卢森堡金融管理局和爱尔兰中央银行）允许 UCITS 基金通过沪深港通进行投资之前，香港交易所和业界都花了很多时间和精力去满足上述的要求。

As was the experience with the Shanghai/Shenzhen-Hong Kong Stock Connect (the “Stock Connect”), many foreign institutional investors, particularly UCITS funds, are required to hold their assets (securities and monies) through a custodian bank or an entity within its custodial network which has strict liability to safeguard such assets. For example, the custodians of such funds have to ensure that payment for securities being purchased by such funds can only be made on a delivery against payment (DvP) basis, i.e. at the same time as the securities are delivered. It took a lot of time and work by the Hong Kong Stock Exchange and market participants to satisfy the aforementioned requirements before regulators of UCITS funds, such as the CSSF in Luxembourg and CBI in Ireland, allow those funds to invest through the Stock Connect.

因此，任何对现行的 QFII / RQFII 证券结算模式的改变，使其从托管行结算模式转变到券商结算模式的，都将促使外国机构投资者将其在中国的投资从 QFII/RQFII 转移到沪深港通。

Therefore, any change in the existing securities settlement model for QFIIs/RQFIIs from a Custodian Settlement Model to a Broker Settlement Model will encourage foreign institutional investors to shift their investment in China from QFII/RQFII to the Stock Connect.

除此之外，实施券商结算模式需要投资者在其券商指定的第三方存管银行开立额外的现金账户，由此引起了境外投资者的下述担忧：

- 投资者将承担由托管行以外的第三方银行存托资产的额外风险。
 - 托管行将失去控制权，因此无法在没有额外对账的情况下确认仓位。

- 托管行与第三方银行之间需要进行额外的现金转移，业务运营将变得更为复杂。
- 此模式将要求投资者承担与以下事项相关的成本和人工：
 - 对第三方存管银行实施额外管治；
 - 管理与不同的券商的第三方银行开立的多个账户（最多可能六个账户：沪、深交易所各三个券商指定的第三方银行），以履行最佳执行的义务，这将增加其对这些银行的尽职调查义务的复杂性；
 - 增加使用第三方存管银行所需的其他法律框架。
- 除了与券商在市场上执行交易以及与中国结算进行结算相关的运营风险之外，该模式还会增加 QFII/RQFII 和券商的交易对手风险。
- 券商结算模式并不解决当前托管行结算模式下在结算前缺乏投资者结算指令与已执行交易订单之间的预先对账的问题。因此，券商的操作失误将只能继续通过免付款交收（FOP）于 T + 1 解决，从而导致投资者面临一天的风险敞口。

In addition, implementing the Broker Settlement Model would require additional cash accounts to be opened with the broker's designated third-party safekeeping banks, which would raise the following concerns for international investors:

- Extra risk exposure for investors to have assets held by a third-party bank other than their custodian bank.
 - Custodian banks lose control and are therefore unable to confirm positions without further reconciliation.
- Operationally becomes more complex given the additional cash transfer between the custodian and the third-party bank.
- This model will require investors to bear the costs and manpower associated with:
 - Implementing additional governance over the third-party depository bank;
 - Managing multiple accounts with the third-party bank of different brokers (up to six accounts; for the third-party banks designated by each of the three brokers per exchange) in order to comply with best execution obligations, which further complicates their Know Your Customer obligations towards such banks;
 - Additional legal framework required for the third-party depository bank to be included.
- In addition to the operational risks associated with the broker executing trades on the market and CSDC performing settlement, this model also creates counterparty risks both for QFII/RQFII with the brokers.
- The Broker Settlement Model does not resolve for the current Custodian Settlement Model's lack of pre-reconciliation between investors' settlement instructions and executed trade orders prior to settlement. Thus, broker mistakes will continue to only be resolved on T+1 via Free of Payment (FOP), resulting in one-day risk exposures for investors.

考虑到以上担忧以及沪深港通所获的经验，我们借此机会向贵会提出上述的问题。

Given these concerns and the previous experience with Stock Connect, we would like to take advantage of this opportunity to highlight this issue to you.

我们理解中国市场基础设施的复杂性。因此，我们也在积极探索有效的中国结算模式，以解决中国结算以及境外投资的不同担忧。我们希望能与贵会和中国结算持续交流、分享。

We appreciate the complexity of China's market infrastructure and as such, we are actively exploring an effective China settlement model to resolve the different concerns of CSDC and foreign investors. We hope that we can engage in continued discussion with you as well as CSDC.

感谢您考虑我们的反馈。如果您有任何疑问，请随时通过电子邮件 (lchao@asifma.org) 或电话 (+852 2531 6550) 与赵荫人先生联络。

Thank you for considering our feedback. Should you have any questions, please do not hesitate to contact Lyndon Chao via email (lchao@asifma.org) or by telephone (+852 2531 6550).

顺颂

商祺

Sincerely,



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