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**ASIFMA 关于中证登所发布的《合格境外机构投资者及人民币合格境外机构投资者境内证券投资登记结算业务实施细则(征求意见稿)》的反馈意见**

**ASIFMA's Response to the CSDC's Consultation on the Detailed Implementing Rules on the Registration and Settlement Businesses for Domestic Securities Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)**

敬启者:

Dear Sir / Madam,

亚洲证券业与金融市场协会(ASIFMA)<sup>1</sup> 谨代表其会员, 在此向贵司提交我们对贵司于 2019 年 9 月 6 日所发布的《合格境外机构投资者及人民币合格境外机构投资者境内证券投资登记结算业务实施细则(征求意见稿)》(以下简称“《实施细则》”)的一些意见与建议。

The Asia Securities Industry and Financial Markets Association ("ASIFMA")<sup>1</sup> and our members hereby respectfully submit our comments and suggestions on the consultation draft *Detailed Implementing Rules on the Registration and*

<sup>1</sup> 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。

<sup>1</sup> 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

*Settlement Businesses for Domestic Securities Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* (the "Implementing Rules") issued by China Securities Depository and Clearing Corporation Limited ("CSDC") on 6 September 2019.

中国证监会于 2019 年 1 月 31 日对 QFII 和 RQFII 制度进行修订合并，并就相应规则征求意见。ASIFMA 的会员对贵司为配合证监会合并 QFII 和 RQFII 制度并允许 QFII 和 RQFII 参与融资融券交易而对贵司规则所做的修订表示欢迎与赞赏。我们坚信，《实施细则》将使 QFII/RQFII 制度在进入中国市场的现有各个渠道 (例如沪深港通、债券通等)中更具竞争力。

The China Securities Regulatory Commission ("CSRC") amended and combined the QFII and RQFII regimes and solicited comments on 31 January 2019. ASIFMA members welcome and appreciate the efforts made by CSDC to amend its rules to be consistent with CSRC's combination of the QFII and RQFII regimes and allowing QFII/RQFII to participate in the margin trading and securities lending business. We strongly believe that the Implementing Rules will make the QFII/RQFII regime more competitive among the available China market access channels (such as Stock Connect, Bond Connect, etc.).

我们对《实施细则》的意见与建议主要包含以下几个方面：

Our comments and suggestions on the Implementing Rules are organized along the following lines:

- 第一部分 – 证券账户业务
- 第二部分 – 证券资金结算业务
- 第三部分 – 风险管理
- 第四部分 – 其他意见与建议

- Part I – Securities Account Business
- Part II – Securities Fund Settlement Business
- Part III – Risk Management
- Part IV – Other Comments and Suggestions

## 1. 证券账户业务

### Securities Account Business

### 1.1. 托管人资质

#### Qualifications of a custodian

我们理解目前实践中 QFII/RQFII 的关联方不得担任其托管人，但没有明确的规则对此限制加以澄清。如果《实施细则》能对此限制及其例外(如有)做进一步的澄清，我们将不胜感激。

We understand it is currently a general practice that a connecting party of QFII/RQFII may not be appointed as its custodian, but there is no such explicit rule clarifying this limitation. We would appreciate it if more clarifications and exceptions (if any) on this limitation could be provided in the Implementing Rules.

此外，我们听闻贵司已停止接受新的商业银行申请成为结算成员，我们希望与贵司确认此消息是否属实；若属实此次暂停是否仅为临时措施，预计何时解除可以解除。

In addition, we have heard that CSDC has stopped accepting applications from commercial banks to become settlement members. We would like to clarify with CSDC whether this is true and if so, whether the suspension is a temporary restriction and when it might be lifted.

## 1.2. 申请开立证券账户

### Application for opening a securities account

鉴于实践中对于利用 QFII/RQFII 牌照为基金申请开立证券账户的申请人有不同解释，我们建议在《实施细则》中明确以下哪一主体可作为该情况下的适格申请人：(1) 资产管理公司；(2) 其投资顾问/投资管理人；或(3) 对基金拥有投资决策权的子投资顾问/投资管理人。

Considering in practice there have been different interpretations of who can make use of its QFII/RQFII license to open the investment account for a fund, we would suggest to clarify in the Implementing Rules which of the following can be an eligible applicant under this circumstance: (i) the management company; (ii) its investment advisor/manager; or (iii) sub-investment advisor / manager who has the discretionary investment power for the fund.

## 1.3. 证券账户的注销

### Cancellation of a securities account

根据《实施细则》第七条第四款的规定，贵司有权注销或限制账户的使用。我们建议将该款由“本公司有权注销...”修改为“本公司有权冻结...”。

Pursuant to paragraph 4 in Article 7 of the Implementing Rules, CSDC is entitled to cancel the account or limit its use. We respectfully suggest amending the language from "the Company is entitled to cancel the account..." to "the Company is entitled to freeze the account...".

## 2. 证券资金结算业务

### **Securities Fund Management Business**

### 2.1. 银行结算模式与证券公司结算模式的关系

#### The relationship between bank settlement model and broker settlement model

根据我们的理解，QFII/RQFII 只能在银行结算模式与证券公司结算模式二者中选其一，且可以在任何时候变更结算参与人。我们希望与贵司进一步澄清：

We understand that QFII/RQFII is only allowed to choose either the bank settlement model or the broker settlement model and that it may change its settlement agent at any time. We would like to further clarify with CSDC the following:

- (i) QFII/RQFII 可否为其不同的基金/证券账户选择不同的结算模式/结算参与人；

Whether QFII/RQFII can choose different models/settlement agents for different funds/securities accounts;

- (ii) 如果 QFII/RQFII 希望参与更大范围的证券交易(如融资融券)，QFII/RQFII 是否必须整体转换为证券公司结算模式，抑或是允许 QFII/RQFII 根据其不同产品同时选用两种结算模式；

If QFII/RQFII wishes to participate in the expanded scope of securities trading (e.g. margin trading, securities borrowing and lending), whether it is mandatory for the whole QFII/RQFII to migrate to the broker settlement model, or whether it is possible to operate both models in parallel for its different products;

- (iii) 是否会为托管人及 QFII/RQFII 出台关于变更结算参与人的详细指引。

Whether there will be any specific guidelines for custodians and QFII/RQFIIs to follow for the change of settlement agent.

## 2.2. 银行结算模式的澄清

### The clarification of bank settlement model

在银行结算模式下，《实施细则》第十三条要求结算参与人在贵司的结算银行开立结算资金专用存款账户，我们希望贵司澄清该账户的出资方式，即该账户应由结算参与者自有账户出资还是从资产所有人的账户借记；如果该账户通过借记资产所有人账户实现出资，是否有方式确保该账户存款不会与结算参与人的存款混同。

Under the bank settlement model, Article 13 of the Implementing Rules requires the settlement agent to open a settlement fund special deposit account in the settlement bank of CSDC. We would like to clarify with CSDC how the special deposit account is expected to be funded; will it be funded by the settlement agent's own account or is it expected to be debited from the asset owner; if it is debited from the asset owner, will there be a way to ensure that the deposit is not commingled.

## 2.3. 证券公司结算模式的澄清

### The clarification of broker settlement model

在证券公司结算模式下，我们理解托管人担任的更多是行政管理的角色，负责 QFII/RQFII 账户的开立/注销以及管理结算参与者等(在《实施细则》下，管理结算参与者是指当 QFII/RQFII 选择不同的结算模式或更换结算参与者时，托管人需向贵司进行备案)。鉴于此，ASIFMA 提请贵司澄清以下问题：

Under the broker settlement model, we understand that the custodian adopts more of an administrative role, performing the account opening/closure for the QFII/RQFII and managing the settlement agent, etc. (by managing the settlement agent, as per the Implementing Rules, it means the custodian is required to do the filing with CSDC when QFII/RQFII chooses a different settlement model and changes its settlement agent). Thus, ASIFMA would like to clarify with CSDC the following points:

- (i) QFII/RQFII 的证券账户是否会与结算参与者关联(在原银行结算模式下，证券账户与作为结算参与人的托管人关联)；托管人是否还会从贵司收到结算数据；是否由证券公司(作为结算参与者)通知托管人/QFII/RQFII/全球托管行支付和收取相应资金进行结算。

Whether the QFII's/RQFII's securities accounts will be linked to the settlement agent (it was previously linked to custodian who is the settlement agent), whether the custodian will still receive settlement data from CSDC; and whether it is the role of securities companies (acting as settlement agents) to inform the custodian/QFII/RQFII/global custodian to pay and receive funds for settlement.

- (ii) QFII/RQFII 是否还需要在证券公司指定的存管银行处开立资金账户。目前，根据相关法规，QFII/RQFII 在托管人处开立人民币专用账户，如果选择证券公司作为结算参与者，应如何设置结算账户(即采取 TPD 模式或是新模式)；资金应如何划拨(比如是划转至以 QFII/RQFII 名义在证券公司指定的存管银行处开立的资金账户还是以证券公司名义开立的总账)。

Whether the QFII/RQFII needs to open an account in the depository bank designated by securities companies. Per the current rules, the QFII/RQFII opens a special RMB account with the custodian. Under the broker settlement model, how the settlement account will be set up (i.e. in a TPD model or a new structure); how funds will be transferred (e.g. funds transferred to the account opened in the name of QFII/RQFII in the depository bank designated by securities companies, or to the omnibus account in the name of securities companies).

如果 QFII/RQFII 需要在证券公司指定的存管银行开立资金账户，则市场交易截止时间是否将会延长以配合结算过程中新引入一方而所需的额外处理时间。目前，QFII/RQFII 遵守托管人和证券公司规定的交易/现金指令截止时间以使其在市场截止时间前有足够的时间处理相关事宜。如果在证券公司结算模式下市场截止时间没有延长，则在这种模式下的交易将可能面临结算失败的风险。

If the QFII/RQFII needs to open such an account in the securities company designated bank, whether the market cut-off time will be delayed catering for the additional process time needed with the introduction of a new party in the settlement process. Currently, QFII/RQFIIs adhere to trade/cash instruction cut-offs as stipulated by custodians and brokers to allow for time to process before the market cut-off. Without the delay of the market cut-off under this model, trades will be put at risk of settlement failures.

- (iii) 在 QFII/RQFII 有多个证券公司进行交易时，QFII/RQFII 是否需要将这些证券公司均指定为结算参与人。

In cases where the QFII/RQFII has multiple brokers for trading, will the QFII/RQFII need to appoint these multiple brokers as settlement agents.

- (iv) 根据《实施细则》的规定，如证券发行人有任何公司行为(如分红)，贵司将仅通知证券公司。我们希望贵司进一步澄清托管人是否也仍会从贵司处收到对账确认。

Per the Implementing Rules, CSDC will only notify the broker of any corporate actions (e.g. distribution of dividend) of the securities issuers. We would like CSDC to further clarify whether the custodian will still get a reconciliation confirmation from CSDC.

#### 2.4. 证券公司结算模式的风险考虑

##### Risk concerns on broker settlement model

首先，本次将证券公司也纳入 QFII/RQFII 结算参与人范围将引发关于交易对手方风险的顾虑。境外机构投资者和司法管辖区（例如 UCITS）可能由于交易对手方风险不会允许基金委托证券公司从事证券结算。鉴于中国并未实行券款对付，交易对手方风险可能更趋严重。由于证券在 T+0 日结算而现金在 T+1 日结算，因此在卖出证券的情况下，境外投资者需要在次日收到现金之前先将证券交付给证券公司。曾经沪深港通机制下采取这种模式时，引起了境外投资者的大量担忧，直至 2017 年 11 月引入现金最终性机制和实时券款对付结算制度。

The expansion of QFII/RQFII settlement participants to also include securities companies raises concerns on counterparty risk. Foreign institutional investors and jurisdictions (such as UCITS) would probably not allow funds to engage a broker to handle its settlement due to counterparty risks. The counterparty risks are exacerbated in China as it is not a DVP environment. Securities settle on T+0 and cash settles on T+1. Therefore, in a sell situation, foreign investors would deliver securities to the broker before cash is received on the next day. When Stock Connect had this model, it raised a lot of concerns for foreign investors until the regulators introduced the cash finality mechanism and RDVP in November 2017.

其次，对于境外投资者进入各市场而言，全球托管人和当地托管人通常都会签署次托管协议以保护境外投资者的资产。全球托管人对其客户负有受信义务并对次托管人进行严格的尽职调查。但是，如果证券公司被引入结算链条，前述保护措施可能将不适用于 QFII/RQFII 进入中国市场。原因是证券公司无法满足全球托管人对作为市场中次托管人的要求(例如美国 1940 年《投资公司法》中 17F-5 节和 17F-7 节)。对于融资融券交易，QFII/RQFII 可以在证券公司开立交易账户，但在国际模式下仍需要通过次托管人进行结算。我们因此担心境外投资者可能不会希望证券公司来处理他们的现金或保管他们的股票。

For foreign investors to access each market, global custodian and local custodians usually have a sub-custodian agreement which protects the foreign investors with regards to their assets. The global custodian has fiduciary

duties to their clients and they perform stringent due diligence on the sub-custodians. However, if a broker is introduced into the chain, QFII/RQFII may be unable to access the China market. This is because a broker will not meet global custodians' requirements (e.g. rules 17F-5 and 17F-7 under the US *Investment Company Act of 1940*) as a sub-custodian in the market. For margin trading and securities lending, QFII/RQFII can open accounts with brokers for trading but settlement would still have to be done via sub-custodian (in the international model). We are therefore concerned that foreign investors may not want a broker to handle their cash or safekeep their shares.

最后，本次《实施细则》引入证券公司结算模式给证券公司提供了不必要且不当的优势。在银行结算模式下，鉴于贵司要求 QFII/RQFII 托管人在贵司的结算银行开立账户，因此没有理由限制商业银行的结算范围。QFII/RQFII 应当能够给托管人发指令以满足保证金要求，并及时与证券公司结算来履行其义务。这也是大部分海外市场已经采取的模式，而并不要求资产所有人将其资产保管在其交易对手处。通常来说，融出方代理人 and 融入方是不同主体，在国际上，托管人通常扮演融出方代理人的角色，保护资产所有人的利益，证券公司则为融入方的利益行事。但在证券公司结算模式下，证券公司则同时扮演了前述的角色。

Finally, the introduction of the broker settlement model in the Implementing Rules offers an unnecessary and unfair advantage to securities companies. Under the bank settlement model, given CSDC requires QFII/RQFII custodians to open accounts with one of the settlement banks of CSDC, there is no reason to limit the settlement scope of a commercial bank. The QFII/RQFII should be able to instruct the custodian to satisfy margin requirements and settle with the securities companies in a timely manner to meet its obligations. This practice has been in place in most overseas markets which do not require the asset owner to custody its asset with the trading counterparty. Usually the agency lender and the borrower are different parties. Internationally, the custodian will usually play the role of the agency lender protecting the interest of the asset owner. Securities companies will act in the interest of the borrower. In this case, both sides would be represented by securities company.

## 2.5. 期货公司结算模式的引入

### The introduction of futures company settlement model

我们注意到贵司在起草说明中提到《实施细则》为未来引入期货公司办理结算业务预留了空间。我们担心期货公司的引入将在整体上进一步加剧银行和证券公司之间的裂痕，且由于全球资产所有人将其资产托管给托管人，并给托管人指令来转移资产满足交易或盯市义务，因此引入期货公司并无太大必要。我们提请贵司进一步考虑将来是否有必要引入期货公司结算模式。

As mentioned in the explanation of the draft Implementing Rules, the current Implementing Rules leaves open the ability to allow futures companies to handle settlement business. We are concerned about whether the introduction of futures companies will create a further rift between banks and securities companies in general, which itself is unnecessary as globally asset owners safekeep their assets with custodians and instruct the custodian to move assets to satisfy trading or mark-to-market obligations. We would ask CSDC to further consider whether it is necessary to introduce a futures company settlement model in the future.

## 2.6. 结算参与人的义务

### The obligations of settlement agent

《实施细则》强调结算参与人(无论是银行或证券公司)始终负有的结算义务，我们希望贵司澄清这是否考虑到了不同主体类型与信贷措施有关的不同法规。

The Implementing Rules reiterates the settlement obligations of the settlement agent at all times (regardless of bank or broker). We would like CSDC to clarify whether this rule has taken into account the different regulations on the different entity types related to credit facilities.

此外，根据《实施细则》第十二条，商业银行(受投资者委托办理证券资金结算业务)作为结算参与人不得因合格投资者无法或未能及时履行交收责任而拒绝履行对贵司的交收责任。但是根据《金融违法行为处罚办法》(国务院令第 260 号)第二十六条的规定，商业银行不得为证券、期货交易资金清算透支或者为新股申购透支或提供融资。这似乎与《实施细则》第十二条规定的商业银行必须要履行交收责任相抵触，希望贵司对此加以澄清。

In addition, per Article 12 of the Implementing Rules, commercial banks (if entrusted by an investor to handle securities fund settlement) will act as the settlement participant and will not refuse to assume their delivery and settlement responsibilities to CSDC on the ground that QFII/RQFII is unable to or fails to fulfill its delivery and settlement responsibility in a timely manner. However, according to Article 26 of the *Measure for Punishment of Illegal Financial Acts* (State Council Directive No. 260), commercial banks shall not provide overdraft/financing for securities and futures trading clearing, and neither shall commercial bank provide overdraft/financing for initial public offerings (IPO), which collides with the compulsory full settlement obligation set out in Article 12 of the Implementing Rules. We would appreciate further clarity on this point.

## 2.7. 清算数据异议

### Objection to the clearing data

《实施细则》第十五条的规定可能与每日定价机制存在冲突。QFII/RQFII 不能在明知某交易需要更正的情况下仍对该交易予以结算，我们希望贵司进一步澄清是否可以推迟结算时间或者以正确的数额进行结算而非以错误的的数据结算后再行更正。

Daily priced vehicle would have problem with Article 15 of the Implementing Rules. QFII/RQFII cannot settle a trade knowing that there is an error to be corrected. We would like CSDC to further clarify whether it would be possible to delay settlement or settle the right amount instead of settling the wrong amount and correcting it later.

## 2.8. 结算备付金的计算

### Calculation of settlement reserve fund

目前 QFII/RQFII 的结算备付金按照获批 QFII/RQFII 额度的一定百分比计算，鉴于国家外汇管理局于 2019 年 9 月 10 日已发布通知取消 QFII/RQFII 额度，请澄清结算备付金将如何计算。如果采取证券公司结算模式或同时采取银行结算模式与证券公司结算模式，结算备付金将如何处理。

Currently the QFII/RQFII reserve fund is calculated as a percentage of the approved QFII/RQFII quota. Given the removal of the QFII/RQFII quota as per the announcement of State Administration of Foreign Exchange ("SAFE") on 10 September 2019, please clarify how the reserve fund level will be calculated. Please also clarify what will happen to the settlement reserve fund if the broker settlement model or both the bank settlement model and the broker settlement model is adopted.

## 3. 风险管理

### **Risk Management**

### 3.1. 内部风险管理和控制制度

#### Internal risk management and control system

商业银行与证券公司由不同监管机构监管。我们想进一步了解《实施细则》第十七条的规定是否意味着任意内部风险管理和控制制度均视为满足贵司的要求，抑或是贵司有共同适用的监管标准。

Banks and securities companies are governed by different regulators. We would like to understand whether any internal risk management and control system would be sufficient or are there expectations for some common level of oversight and threshold.

### 3.2. 违约处置措施

#### Default disposal measures

《实施细则》第二十条规定结算参与人出现交收违约的，贵司有权按照中国证监会相关规定采取违约处置和风险管理等措施。我们希望贵司澄清本条所指的适用于商业银行的证监会相关规定。

Article 20 of the Implementing Rules provides that if a settlement agent defaults in delivery and settlement, CSDC is entitled to take default disposal and risk management measures in accordance with the relevant provisions of CSRC. We would like to clarify with CSDC the relevant CSRC provisions applicable to a commercial bank as referred to in this Article.

### 4. 其他意见与建议

#### **Other Comments and Suggestions**

目前托管人无需报告 QFII/RQFII 的交易数据。希望贵司可以澄清将来托管人是否需要在既有的向证监会/交易所/贵司/中国证券投资者保护基金有限责任公司递交的报告中包含 QFII/RQFII 的交易数据，以及是否也需要直接向国家外汇管理局报告 QFII/RQFII 的交易数据。

Currently custodians do not need to report any transactional data for QFII/RQFII. We would like CSDC to clarify going forward whether custodians have to incorporate QFII/RQFII's transactional data to their existing reports to CSRC/Exchange/CSDC/China Securities Investor Protection Fund Corporation Limited, and whether they need to report QFII/RQFII's transactional data directly to SAFE as well.

我们借此机会向贵司提出上述问题，共同推进 QFII/RQFII 制度的发展与完善。我们理解中国市场基础设施的复杂性，并希望与贵司持续交流。

We would like to take advantage of this opportunity to highlight the aforementioned issues to CSDC to jointly promote the development and improvement of QFII/RQFI regimes. We appreciate the complexity of China's market infrastructure and welcome continued discussions with you.

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](mailto:lchao@asifma.org))或电话(+852 2531 6550)与赵荫人先生联络。本函由汉坤律师事务所以及本协会会员在广泛征求本协会会员意见后撰写。

Thank you for considering our feedback. Should you have any questions, please do not hesitate to contact Lyndon Chao via email ([lchao@asifma.org](mailto:lchao@asifma.org)) or by telephone (+852 2531 6550). This submission was prepared by ASIFMA member and PRC law firm Han Kun Law Offices, based on feedback from the wider ASIFMA membership.

顺颂

商祺

Sincerely,



赵荫人

董事总经理，证券部主管

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Lyndon Chao

Managing Director, Head of Equities and Post Trade

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