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金融市场司
中国人民银行
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北京, 中国 100800

Financial Markets Department
The People's Bank of China
32 Chengfang Street, Xicheng District
Beijing, China 100800

电邮 Email : faxingchu@pbc.gov.cn

尊敬的先生/女士:

Dear Sir or Madam,

关于中国人民银行、发展改革委和证监会《关于公司信用类债券违约处置有关事宜的通知》的征求意见稿

RE: PBOC, NDRC and CSRC's Consultation Draft of the Notice on Matters Related to Handling Corporate Credit Bond Defaults

亚洲证券业与金融市场协会 (“ASIFMA”¹) 资产管理部 (“AAMG”) 谨代表我部会员向您提交我们对中国人民银行 (“人民银行”)、国家发展和改革委员会 (“发展改革委”) 和中国证券监督管理委员会 (“证监会”) 于 2019 年 12 月 27 日发布的《关于公司信用类债券违约 (“债券违约”) 处置有关事宜的通知 (征求意见稿)》 (“《通知》”) 的一些意见。

On behalf of its members, the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association (“ASIFMA”) is pleased to submit our comments on the Consultation Draft of *the Notice on Matters Related to Handling Corporate Credit Bond Defaults (“bond defaults”)* issued by the People's Bank of China (“PBOC”), National Development and Reform Commission (“NDRC”) and China Securities Regulatory Commission (“CSRC”) on 27 December 2019 (“the Notice”).

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 120 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。详情请参阅 www.asifma.org。

ASIFMA is an independent, regional trade association with over 120 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law 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](http://www.gfma.org) alliance with [SIFMA](http://www.sifma.org) in the United States and [AFME](http://www.afme.eu) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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我们对人民银行、发展改革委和证监会在完善债券违约处理的机制以及促进中国公司信用类债券市场健康发展上所做的努力表示欢迎与支持。我们观察到《通知》看起来是制定了有关处理债券违约的原则，而不是制定具体的规定。

We welcome and support the effort of PBOC, NDRC and CSRC to improve the mechanism of handling bond defaults and promote the healthy development of the corporate credit bond market in China. We observe that the Notice appears to set out the general principles rather than propose specific regulations in respect of dealing with bond defaults.

我部和我们的会员，主要是全球的资产管理公司，赞赏《通知》制定的方向，但是希望可以看到在出台的相关法规或由相关机关将如何处理债券违约的细节，以便有确定性。确定性是外国机构投资者在考虑是否投资某一特定市场发行的债券时的一个重要的因素。

We and our members, being mostly global asset managers, appreciate the direction of the Notice but would like to see the details of how bond defaults will actually be dealt with under the relevant regulations or by the relevant authorities so that there would be certainty, which is one of the more important factors when foreign institutional investors consider whether to invest in bonds issued in a particular market.

例如，《通知》第二项建议建立受托管理人制度，但其只规定债券发行人有责任设立代表债券持有人的受托管理人，而未说明哪一方有权力变更受托管理人。尽管中国证券业协会（“**证券业协会**”）于2015年6月5日发布的《公司债券受托管理人执业行为准则》（“**《准则》**”）给了债券持有人会议变更受托管理人的权力，但作为一个自律性的协会，证券业协会对《准则》的执行能力有限。鉴于违约情况下债券发行人与债券持有人之间存在明显的利益冲突，我们建议人民银行、发展改革委和证监会明确规定债券持有人有权变更受托管理人以及受托管理人的职责、权利和义务，而不是将这些重要事项留在由债券发行人或为债券发行人编制的相关发行文件中处理。

Paragraph two of the Notice, for example, proposes to establish a trustee system, but it only provides that the bond issuer has the responsibility of setting up a trustee, which is supposed to represent bondholders, while not being clear on which party has the power to change the trustee. Even though the Code of Professional Conduct of Bond Trustees (the “**Code**”) issued by the Securities Association of China (“**SAC**”) on 5 June 2015 gives the bondholders’ meeting the power of replacing the trustee that is unable to meet its responsibilities, the SAC, as a self-regulatory body, has limited authority to enforce the Code. Given the obvious conflict of interest between a bond issuer and a bondholder in the event of default, we suggest that there be clear regulations issued by PBOC, NDRC and CSRC on that bondholders have the right to change the trustee as well as the responsibility, rights and obligations of the trustee rather than leave these important matters to be dealt with in the relevant bond issuing document that is prepared by or for the bond issuer.

另一个我们关注的领域是处理债券违约的司法管辖区或地点。《通知》没有提到这一重要问题。尽管在某些市场中，在债券发行人所在的司法管辖区内对其提起诉讼可能是正常的，但我们担心，该司法管辖区可能会理所当然地偏袒债券发行人。更重要的是，我们担心并非所有地方法院都具备必要的知识、专业能力和经验来处理可能涉及来自多个司法管辖区（包括海外司法管

辖区) 的投资者的债券违约。为了吸引更多外商投资者投资中国公司债券, 我们建议贵行和贵会考虑明确规定, 与债券违约相关的诉讼应在中国境内公认的金融中心起诉。

Another area of interest is the jurisdiction or venue where bond defaults would be handled. The Notice did not mention this important point. While it may be normal in some markets to file a lawsuit against a bond issuer in the jurisdiction where the bond issuer is domiciled, we are concerned that such jurisdiction may naturally favour the bond issuer. More important, we are concerned that not all local courts have the necessary knowledge, expertise and experience to deal with bond defaults that may involve investors from multiple jurisdictions (including overseas jurisdictions). To attract more foreign investment in China corporate bonds, we suggest that you consider specifying that lawsuits related to bond defaults be filed in one of the recognized financial centers within China.

此外, 《通知》或相关规定如果能明确如何在国内执行中国公司在海外发行债券违约的判决, 将会有所帮助。

In addition, it would also be helpful if the Notice or relevant regulation can specify how judgments on defaults of Chinese companies' bonds issued overseas can be enforced in China.

以上例子是一些我们觉得应在比《通知》更详细的规定中涵盖或处理的事项。

The foregoing are a few examples of the matters that we think should be covered or addressed in more detailed regulations than just the Notice.

我们非常感谢有机会对征求意见稿提出意见, 并期待在最终发布的《通知》和/或后续发布的更详细的规定中涵盖本函提出的事项。

We are grateful for the opportunity to comment on the Consultation Draft and look forward to the issuance of the Notice addressing the matters mentioned in this letter and/or more detailed regulations to be issued later.

若您有任何问题或意见, 请随时与我联系 (电邮 eshen@asifma.org 或电话+852 2531 6570)。

Please feel free to contact me at Email: eshen@asifma.org or Tel: +852 2531 6570 if you have any questions or comments.

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Yours sincerely,

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董事总经理 Managing Director

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亚洲证券业与金融市场协会 Asia Securities Industry & Financial Markets Association