Growing Asia's Markets

14 February 2020

John Berrigan
Acting Director General of DG
Financial Stability, Financial Services and Capital Markets Union
European Commission
1049 Bruxelles/Brussel
Belgium

Dear Mr. Berrigan,

2020 EU-China Economic and Financial Dialogue

The Asia Securities Industry & Financial Markets Association (ASIFMA)[1] and its members strongly support the EU's continued efforts to deepen the EU-China bilateral economic relationship, particularly through ongoing development of cross-border financial services activities.

ASIFMA would like to highlight key market access and market development issues facing the financial services industry in China. We encourage the Commission to advance priority issues described below at the dialogue to reduce barriers to trade and investment between the EU and China and help bolster global economic growth.

In June 2019, ASIFMA launched a paper called "China Capital Markets Paper: The Pace of Change Accelerates". The paper covers the bond, FX and equity markets, as well as the legal and regulatory framework, market infrastructure and market access to China and includes many specific recommendations to address the key developments now needed to continue to develop and open up China's capital markets. We have provided in "Annex A" an updated overview of recommendations based on proposals included in the June 2019 paper. ASIFMA's Asset Management Group (AAMG) also released its paper "Foreign Institutional Investment in China: An Asset Management Perspective" earlier in 2019 which looks into the challenges and issues faced by foreign institutional investors when (a) investing in China's equities and debt markets, (b) operating in China, and (c) raising funds in China for investment overseas, and proposes a set of solutions for these challenges. We hope these reports are a valuable further resource for the EU in its upcoming discussions with the Chinese government.

[1] ASIFMA is an independent, regional trade association with 130+ 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 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.

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China's financial system is dominated by financing through banks, which is similar to the Euro area. Whilst the EU's financial system is more mature than China's, they both stand in contrast to the US which has more developed capital markets and where companies tend to seek direct financing via capital markets instruments. The EU could work closely with Chinese authorities to share its experience of the Capital Markets Union ('CMU') and how it is adapting its regulatory framework to develop deeper and more liquid capital markets in the EU.

Market Access and Level Playing Field

Over the past decade, Chinese capital markets have continued to open up, including significant developments in recent years. One of the latest milestones is foreign firms being permitted to have 51% ownership in their joint ventures (JVs) and 100% ownership, starting from 1 January 2020 for futures companies, 1 April 2020 for fund management companies, and 1 December 2020 for securities firms. For US firms, the 1 December 2020 date has been accelerated further to 1 April 2020, under the terms of the US-China Phase 1 deal, signed on 15 January 2020.

Despite these positive developments, ASIFMA members remain concerned about continuing indirect impediments and hidden barriers that prevent a level playing field between domestic firms and foreign firms competing on the Mainland, even if a foreign firm were to achieve controlling stake. Meanwhile, China's own companies and financial institutions are able to access EU and other deep and liquid global financial markets, supported by developed transparent legal frameworks, with no ownership restrictions nor licence scope restrictions for Chinese firms operating in the EU.

As a starting point in the EU's dialogue with China regarding markets access for financial services, we recommend discussions refer to the commitments made under Phase 1 of the US-China trade agreement (see Annex B where we have highlighted key excerpts). In addition to specific commitments and timetables, we strongly encourage the EU to seek similar commitments to non-discriminatory access for EU, and indeed for all global, institutions in the interest of ensuring a level playing field between all institutions, in line with other international markets.

Ownership and Licensing

The industry acknowledges updated guidance from the CSRC in July 2019 regarding the final *Administrative Measures on Equity Interest in Securities Companies*, lowering requirements on the asset size and operating revenue for the controlling shareholders and major shareholders of a comprehensive securities company. The industry also acknowledges and welcomes the above US-China Phase 1 commitments eliminating foreign equity limits and allowing wholly US-owned financial services firms to participate in the securities, fund management, and futures sectors.

Fund Management Companies

We strongly urge China to remove all existing requirements that apply to foreign shareholders only, particularly for 100% foreign owned fund management companies as they should be treated no differently from domestic owned companies. On the other hand, we think that it is important to urge China to recognise the value of overseas experience of foreign staff and the knowledge and best practices developed by global firms around the world so that these can be applied beneficially in China without insisting on same treatment for foreign and domestic owned firms only when it suits them.

Securities Companies

It is key to ensure that foreign-owned securities companies can operate and compete in China on equal terms as domestic firms, by swiftly approving applications for increases in foreign ownership and for all necessary licences. We also recommend the EU to seek commitment from China that future implementing rules for 100% foreign ownership of financial firms do not add additional administrative requirements from the current ownership rules.

Licensing conditions between existing and new foreign-owned securities firms must also be levelled by allowing existing JVs to receive the same number of licences in one tranche as new JVs. At present, old JVs can apply for two new licences every six months whilst new JVs can apply for four new licences in one tranche. Doing so would allow foreign firms which have applied for majority ownership to more easily raise their ownership stake to 100%, without additional administrative effort. Removing rules that allow only new securities JVs to apply for four licences in one tranche will help ensure fair competition and reward foreign firms' existing securities JVs with long track records onshore.

In addition, existing JVs should be grandfathered into new arrangements as they were reviewed and approved at the time of their establishment as securities JVs, which would be consistent with terms set under Phase 1 of the US trade agreement. The enhanced qualification requirements in the CSRC Administrative Measures of Foreign Invested Securities Companies apply equally to new securities JVs and existing securities JVs.

Further, international banks and financial institutions must be able to acquire bond underwriting licences on a fair and transparent basis. Today on the Mainland, international banks and institutions face difficult, discriminatory processes to acquire underwriting licences. The system of approval requires new entrants to the market to be approved by their competitors, resulting in conflict of interest. China has committed to liberalise this process and has granted licences to selected firms, but we have not yet seen significant, meaningful steps taken in this direction. The EU could encourage China to adopt a transparent, standardised underwriting licence approval process overseen by a regulator with clearly defined requirements – this would be aligned to the UK, EU and US.

Finally, proposed relaxation of the Third-Party Connection rule for Institutional Clients to trade directly via Broker Trading Systems is most welcome, but current draft rules require that securities brokers offering direct market access (DMA) to have an A grade rating or above in the past two out of three years. This requirement may potentially create barriers to entry for existing or new securities firms challenged to meet the profitability level to qualify for an A grade rating. DMA offerings to clients have become a significant contributor to profitability and it may be difficult to achieve such without DMA as a service offering. We are not aware of profitability prerequisites in other markets for expanding the business scope of securities firms. This rating requirement may be a deal-breaker for foreign players wanting to develop their businesses in China as it deters them from injecting further capital into the Chinese markets. This is not advantageous for the promotion of investment interest in China.

Private Fund Management (PFM) Companies
China announced in June 2016 that it would allow wholly foreign owned enterprises (WFOEs) to engage in the private investment fund management (PFM) business in China, which is often the entrée for foreign asset managers into the China market. Since January 2017, the Asset Management Association of China (AMAC) has registered 23 foreign owned private fund management companies (PFM WFOEs), including some EU firms. Many global asset managers have set up or plan to set up investment management WFOEs with the aim of registering them with AMAC as PFM WFOEs.

Since the last EU-China EFD, there have been further developments for PFM WFOEs, with eight PFM WFOEs allowed by AMAC to provide investment advisory service to non-affiliated entities and PFM WFOEs now allowed to invest in H shares through Shanghai/Shenzhen-Hong Kong Stock Connect (Stock Connect) which domestic PFMs had been able to do. We urge the EU to continue to advocate for equal treatment of all PFMs in terms of what they are allowed to do. For example, while domestic PFMs are also allowed to invest in offshore securities through QDLP and QDII products, PFM WFOEs are not.

Short Swing Profit Rule for Fund Managers
For large fund managers, China's short swing profit rule, which requires a 5% or more shareholder or investor to disgorge the profit it makes from any purchase and sale of a security within a six-month period, is particularly troubling because the shareholdings in a listed company of funds and client portfolios managed by a foreign fund manager are apparently required to be aggregated, which means that the 5% threshold can be easily reached in the case of a large foreign fund manager. However, for a domestic fund management company, the shareholding in a listed company of each fund managed by such domestic company is treated separately and does not need to be aggregated. Therefore, we would like to have the 5% threshold under the short swing profit rule on a per fund basis, and not on a fund manager basis, regardless of whether the fund manager is a domestic or foreign owned entity.

The revised PRC Securities Law, issued on 28 December 2019, introduces an exception for securities companies holding more than 5% of the shares due to underwriting of the remaining shares after sale and other circumstances, as well as other exceptions as the PRC securities regulator may prescribe. We would ask that the CSRC clarify the aforementioned application of the 5% threshold to funds and client mandates managed by a fund manager, regardless of whether it is foreign or domestic owned.

Investment Channels

China presently offers a multitude of access channels to its markets, but their differing requirements can be confusing for foreign investors. Not only does this make it challenging for market participants to build efficient implementation processes, but it also limits the flexibility to use the various programs in a complementary way and increases the risks to the market arising from operational errors. Additionally, as China develops new and less restrictive channels, this often creates unintended perverse consequence of putting earlier investors using older channels at a disadvantage. China should attempt to harmonise and align the various access channels and, rather than offering additional new channels, it should consolidate, evolve, and liberalise those already in place.

If creating a new access channel is necessary, China should provide for seamless and costless transfer of asset positions/holdings from old to new channels, or at least provide for a forward-looking transitional mechanism for investors to transition from old to new channels. We welcomed the "*Notice on Issues Related to Further Making It Easier for Foreign Institutional Investors to Invest in China Interbank Market (CIBM)"* issued by PBOC and SAFE in October 2019 that permits a foreign institutional investor to do a non-trade transfer of its CIBM bond holdings under the QFII/RQFII to CIBM Direct or *vice versa*. We hope that such on-trade transfers can be extended between other access channels, such as QFII/RQFII and Stock Connect and CIBM Direct and Bond Connect.

QFII/RQFII Channel

After multiple increases of Qualified Foreign Institutional Investors (QFIIs) and RMB Qualified Foreign Institutional Investors (RQFIIs) quotas since these schemes were launched, the QFII and RQFII quotas were fully removed on 10 September 2019. This is most welcomed and supported by foreign investors.

We also acknowledge efforts of the Mainland authorities to align and consolidate the requirements for QFIIs and RQFIIs which were set out in the draft CSRC unified QFII/RQFII regulations issued on 31 January 2019 and the draft PBOC and SAFE capital management regulations for QFII/RQFII issued on 13 December 2019.

We welcome the proposal in the draft CSRC unified QFII/RQFII regulations to expand the investment scope of QFII/RQFIIs to include National Equities Exchange and Quotations (NEEQ) stock, private investment funds, bond repos, financial futures, commodity futures and options. As foreign investors are allowed to invest in new types of assets in China (e.g. commodities), QFIIs/RQFIIs, which are the earliest foreign investors in China's public markets, should also have their investment scope expanded accordingly, with the inclusion of hedging instruments and other transactions that foreign investors under other investment channels are allowed to engage in.

Whilst most if not all the proposed amendments in the aforementioned consultations are welcomed, there are still some areas requiring improvement. For example, QFII/RQFII licences and quotas are currently granted to a single entity and cannot be transferred. We suggest that the new measures explicitly allow quotas under the QFII and RQFII regimes for the different jurisdictions to be used interchangeably by entities within the same corporate group and/or quotas to be transferred across jurisdictions. This would simplify QFII/RQFII processes for many global investment managers and encourage them to bring more long-term investment into China's capital markets.

Additionally, the draft guidelines require that DMA brokers obtain information from clients on trading system structure, functional design, product structure, product management model and risk management control and for such information to be submitted by the broker to CSRC. We note that such information is currently already readily accessible by CSRC upon request to QFIIs; hence, concerns have been raised about sharing such confidential information which is considered intellectual property with the local broker. While securities brokers onshore are responsible for upholding the integrity of the market and for monitoring the exchange trading activities of their QFII clients, the due diligence focus should be on the QFII clients' risk management controls rather than on verifying their QFII clients' product offering, etc.

Finally, Chinese regulators should also be encouraged to make amendments to QFII/RQFII disclosure of interest requirements for qualified investors so that they are to include only the investments they control. The process for repatriation of funds should also be accelerated by removing the requirement for a tax certificate or audit reports.

Stock Connect Expansion

To allow for more robust, greater trading activity to take place through Stock Connect, we recommend the EU to encourage inclusion of Hong Kong Exchange Traded Funds (ETFs) and IPOs for southbound trading, and for the addition of block trades for institutional investors. Shanghai Stock Exchange Science and Technology Innovation Board (STAR) Board shares should also be included in the northbound trading. In addition, for northbound trading, we recommend that more derivatives (including A-share futures) and share borrowing and lending (SBL) should be added. Given that products such as block trades, derivatives, and SBL are standard in all major exchanges, such additions will create greater business opportunities for market participants, allowing firms to better hedge trades, manage trading costs, and execute more complex trading strategies. This is dealt with in more detail below.

CIBM Direct

In general, market access programs for China's onshore fixed income markets should be streamlined and simplified with clarification of China inter-bank bond market (CIBM) rules on quota limitations, with on-going dialogue and consultation including both domestic and international market participants, in order that on-the-ground issues can be identified, discussed and solved efficiently.

The EU should also seek clarity on the criteria for determining whether a foreign investor is a medium- or long-term investor for the purposes of qualifying for CIBM Direct. Chinese regulators should clarify rules around foreign investors' offshore products and operations linked to their onshore bond holdings including whether investors can issue offshore products linked to CIBM bonds, and whether offshore CIBM-linked products can be used for onshore hedging purposes.

Bond Connect

Overseas investors and market participants have particularly welcomed this additional access channel, which exists in addition to existing access channels such as QFII/RQFII, CIBM Direct access, and a dedicated access channel for global central banks, sovereign wealth funds and multilateral institutions.

As of January 2020, over 1600 investors participated in Bond Connect, from across 31 jurisdictions.[2] Since the last EU-China EFD, there have been many positive developments, including real time delivery against payment (DVP) settlement on China Central Depository Clearing & Co (CCDC), the launch of block trading allocations on Bond Connect, the State Council announcement around the temporary 3-year exemption of withholding tax and VAT on bond interest derived by foreign institutional investors, and allowing T+3 settlement of bond trading for foreign institutional investors.

[2] "Bond connect participants", *Chinabondconnect*, January 2020. https://www.chinabondconnect.com/en/index.html

However, more can be done to make this channel more attractive. This includes streamlining the application process, reducing trading costs by allowing alternative trading platforms to operate and flexibility for HKMA Central Moneymarkets Unit (CMU) custodians to appoint multiple foreign exchange settlement banks to expand their choice of counterparties, and by adding additional hedging tools including onshore repo, interest rate swaps and futures.

Importantly, the PBOC should allow more EU financial institutions to serve as offshore market makers. This would aid the PBOC in fulfilling its goals of growing Bond Connect and in so doing, diversify sources of funding and further reform China's capital markets in line with international best practices. Offshore entities of financial firms should be allowed to participate in Bond Connect as market-makers, including those in the EU. Currently, there are 47 Bond Connect market makers, including 11 China entities of foreign firms.[3] Allowing offshore market-makers would help China align with practices of major global exchanges, where foreign market makers are generally permitted with specific regulatory / supervisory requirements. This is highly likely to allow EU-regulated firms to more easily tap their global networks and bring more high-quality foreign investors.

Finally, to make the Bond Connect channel attractive to foreign investors, it would be helpful if the trading fees and charges are not charged to asset managers which are used to having such fees and charges absorbed by the market dealers and built into the bid/offer spread quoted to them by such dealers elsewhere in the world. The fee billing structure under Bond Connect has been a major deterrent for many foreign asset managers wishing to invest through this channel.

Capital Market Development

As China's domestic economy matures, it will likely experience a slowing in the significant pace of growth it has experienced during the last two decades. In this environment, efficient, stable, well-designed capital markets become more critical to support the broader economy. For example, we were pleased to see MSCI complete the final phase of the 20% partial inclusion of China A shares in MSCI indices but also agree that, for further inclusion of China A shares in MSCI[4], regulators must consider expanding access to hedging and derivatives tools for onshore equity markets. These and other changes are needed to further develop China's capital markets, as detailed below.

Bond Market

Foreign firms should be allowed to directly purchase non-performing loans (NPLs) from commercial banks in China. This will allow foreign firms to fully participate in the market and better help China deleverage and manage risks in the domestic market. The current regulatory structure only permits foreign firms to purchase NPL packages through the four Chinese asset management companies (AMCs).

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[3] China Bond Connect. https://www.chinabondconnect.com/en/index.htm

[4] "MSCI completes the successful implementation of final phase of the 20% partial inclusion of China A shares in MSCI Indexes", *MSCI,* 21 November 21, 2019. https://www.msci.com/documents/10199/3cbe13d0-71f7-7318-664d-17c7586c74c4

In terms of the tax treatment of bond interest, we very much welcome a recent State Council announcement around the temporary 3-year exemption of withholding tax and VAT on bond interest derived by foreign institutional investors. However, ASIFMA members would also like the EU to seek clarification on whether the exemptions will apply to all approved debt instruments, all channels, and all types of trades (including cash, repo, bond ending and bond derivatives trades). In addition, our members would like to see confirmed that the three-year exemption period will apply prospectively from the date of the State Council announcement. Lastly, the three-year exemption should ideally be renewed at least six months prior to the end of the three-year cycle. If there is no renewal of the exemption, six months advance notice should be given to foreign investors. This will provide certainty for investors and encourage foreign capital inflows to the China bond market.

PBOC Liquidity Facility
Foreign banks play a vital role in the Chinese economy. Allowing more foreign banks to access the PBOC liquidity facility will in turn increase a foreign bank's ability to lend to onshore customers, participate more deeply in the real economy, also to increase liquidity in lending prime rate (LPR) related hedging markets.

Repo Market
The transfer of legal title to collateral from the seller to the buyer is a standard practice in the US and the EU. China should allow repo via Bond Connect and direct CIBM, along with the bilateral offshore-to-offshore trading of repo between two registered Bond Connect foreign investors.

Onshore Hedging
International institutional investors require liquid onshore and offshore index futures and options contracts to expand their allocation to China and manage their increased exposure. Enabling foreign investors to access these risk management tools is key to attracting more inflows to China's capital markets and in helping to mature onshore equity markets. On the equity side, professional fund managers face challenges investing in the A-share market, owing to the lack of sufficient hedging tools currently available.

The stock borrowing and lending (SBL) mechanism has been structured poorly, resulting in extremely limited supply and at high prices. The lack of reasonably priced high precision hedging tools forces institutional investors to short the futures index as the only available blunt instrument, which is neither optimal for institutional investors, nor helpful to the market, as can be seen by the downward pressure on the A-share market in 2015 owing to the massive use of index futures as the only hedging instrument available.

As portfolios grow in size over time and with additional weighting increases, investors will need securities lending and short selling to better hedge their market exposures. High precision hedging tools, such as securities lending, will also help improve corporate governance of listed companies through a higher degree of accountability to their investors. There has been positive momentum for SBL, which was included as a pilot program with the launch of the new Science and Technology Board.

The recent December 2019 CSRC QFII/RQFII consultation also looks promising on this front with proposed expansion of QFII business scope to include securities lending. We strongly recommend the EU to encourage China to make progress on these important developments. Likewise, plans to launch the STAR Market 50 Component Index and the development of a set of futures products linked to this and other indices is welcome, the latter of which will be key to providing a wider range of hedging products for investors. Indeed, our members would like to see the STAR Market's trading eligibility expanded to additional market channels such as Stock Connect, to supplement existing arrangements via QFII.

Close-out Netting

Close-out netting should be incorporated clearly and unambiguously in statute or alternately by clarification of its enforceability by Supreme Court opinion, reflecting internationally accepted practices. In addition, while netting between banks should be a priority, authorities should also work on netting between capital markets participants more generally which could be addressed by amendments to the Enterprise Bankruptcy Law and/or Supreme Court opinion.

Securing international recognition for Chinese legislation on this issue would have the added benefit of extending the risk management and cost advantages of close-out netting to Chinese counterparties when dealing with global financial firms in cross-border transactions.

Chinese regulators would benefit from working with regulators in the US and EU who are experienced in netting-related laws and regulations.

Capital Controls

Capital controls in general remain a key concern for the industry, due to firms' constrained ability to reduce positions and repatriate funds outside of China when this is required by their end (retail) clients. The ongoing restrictions on capital outflow create the unintended effect of limiting the desired deployment of foreign capital into China. Chinese regulators should consider reform measures that permit private investors to move money in and out of China in a more flexible and predictable way.

Entry Restriction on New Settlement Members

Another concern that the EU may wish to consider in its discussions with China relates to restrictions on new settlement members. We understand the China Securities Depository and Clearing Corporation Limited (CSDC) has stopped accepting applications from commercial banks to become settlement members. Such a restriction would not only negatively impact the efficient functioning of the market, but also creates an unlevel playing field for new banks setting up in China.

General Policymaking and Consultation

China's opening-up policies for the financial services industry are still dominated by a "positive list" approach, although there has been welcome momentum towards a "negative list" approach. While a "positive list" lays out services and sectors covered by the market access rules, the "negative list", on the other hand, outlines all the sectors where national standards do not apply to foreign investors. A "negative list" can therefore provide more corporate freedom. In this context, the Commission should encourage Chinese authorities to adopt a "negative list" approach for supervision of foreign investment market entry – to be in line with other domestically owned financial institutions in the name of "national treatment".

More generally, in order to receive the best reform possible, increased regulatory transparency and consistency through open consultation is key for securities market reforms to be successful. It is crucial to ensure that foreign businesses have an equal voice in the development process of policies and regulations as domestic firms, by maintaining a clear and transparent consultation process – ideally with consultation papers also provided in English - with sufficiently long consultation periods that accounts for all firms' inputs. All firms' should have the opportunity for their inputs to be taken into account by onshore authorities, with sufficient time before release of the final rule/regulation.

New and Emerging Issues

Fintech

There remain a number of challenges confronting the development of Fintech, including cybersecurity risks, difficulties of scale for Fintech companies who have to navigate differing regulatory landscapes, and regulatory uncertainty. Data localisation requirements (such as those in China's cybersecurity law) and uncoordinated data privacy regimes threaten to upend the potential of Fintech innovations in the region. In October 2018, ASIFMA released a paper on this very issue titled "Implications of Data Privacy Regulations for Financial Technology in Asia".[5] Fintech transcends jurisdictional borders, and therefore cross-border cooperation amongst regulators in the EU, China and elsewhere is critical. As there are no overall international standards, best practices should be shared so regulators can learn from others. Recognition agreements can also allow Fintech firms to more easily cross borders to pursue opportunities. International harmonisation of laws and regulatory requirements would be ideal where possible. We consider that any new policies aimed at Fintech innovation should be harmonised with policies in other jurisdictions to mitigate the risk of regulatory arbitrage and/or conflicting rules that stifle the development of innovative products and services. We believe China and the EU can take a leading role in this process.

Cyber and Data

Data localisation and cybersecurity policies present numerous challenges for foreign financial institutions in China and are among the main barriers for market entry. Existing financial sector requirements and additional cybersecurity requirements include data localisation and data transfer restrictions, intrusive inspection and testing, and other prescriptive cybersecurity requirements.

China previously endorsed the importance of an open and transparent approach to the formulation of cyber security-related policies and standards. In practice, however, it has established a national cybersecurity regime that is out of step with other markets including the EU. ASIFMA encourages Chinese regulators to clearly state that data are allowed to transferred cross-border as long as high-level security measures are demonstrated, and the rules allow international firms to be able to comply with international requirements, such as AML safeguards which necessitate international financial institutions to transfer and aggregate information across affiliates and jurisdictions for investigation.

[5] "Implications of Data Privacy for Financial Technology in Asia", *ASIFMA*, October 2018. https://www.asifma.org/research/implications-of-data-privacy-for-financial-technology-in-asia/

GFMA's recently published International Principles to Improve Data Security and Mobility are summarised in Annex C. They offer a framework for approaching the protection of consumer and investor privacy in an international context, recognising that movement of information across borders is a necessary part of a secure, efficient, and well-functioning international financial services sector. We put forward the principles as a point of reference for discussion on this critical issue.

Sustainable Finance

The emergence of sustainable finance is an important development to the EU, just as it is for China, as policymakers pursue ways to realise the United Nations (UN) 2030 Agenda for Sustainable Development Goals (SDGs), and limit carbon emissions and meet voluntary commitment agreements under the 2016 UN Paris Climate Agreement. With growing attention from global stakeholders, issues and challenges affecting the development of sustainable finance have become particularly relevant for both developed and emerging markets equally. Various markets, particularly those in the EU and Asia, have seen a proliferation of sustainability-related initiatives and financial products, which has resulted in the proposals and implementation of a wide range of taxonomy standards, disclosure frameworks, risk management frameworks, incentive structures, data collection methods, and external assessments. In this context, it has become increasingly crucial that policymakers and regulators across jurisdictions coordinate on making approaches and standards more consistent across regions and with international standards. As both the EU and China continue to develop sustainable finance in their capital markets, ASIFMA and its member firms strongly encourage the two to continue efforts to grow green financial markets whilst pursuing harmonised approaches to policy making, regulation, and taxonomy standards. This will boost investor confidence in the "greenness" of investments in China and, as importantly, avoid unnecessary fragmentation and unreasonable implementation burden for market players in global financial markets.

ASIFMA appreciates the continued support of the EU in each of its members' Embassies and Consulates throughout Asia and the relationship we have developed with you and your colleagues in the region. We look forward to future engagement on these important issues. If you have any questions regarding these topics please feel free to contact myself or Matthew Chan, ASIFMA's Head of Public Policy (mchan@asifma.org or +852 2531 6560).

Sincerely,

Mark Austen
Chief Executive Officer
Asia Securities Industry & Financial Markets Association

cc:

Ionut RADULETU
Counsellor
Delegation of the European Union to China

Giovanni GARCEA
Head of Economic & Finance Section
Delegation of the European Union to China

Eva Valle LAGARES
First Counsellor, Head of Trade Section
European Union Office to Hong Kong and Macao

Almoro RUBIN DE CERVIN
Acting Director
European Union International Affairs (FISMA.A.4)

ANNEX A: An Updated Summary of Recommendations from ASIFMA's 2019 Paper "China Capital Markets Paper: The Pace of Change Accelerates"

Recommendations for Equities (Market Structure)

Developing the Chinese Equity Markets – General Recommendations

1. **Publicly announce market structure changes (e.g. via circular), ideally accompanied by an English translation.**
2. **Provide the industry with sufficient lead time for market structure changes, which should also avoid rebalance dates:** To ensure the smooth implementation of market structure reforms, market participants should be afforded more time to facilitate builds and testing (1 to 2 weeks after announcement is generally too soon) and implementation dates should generally avoid the week before, week of, and the week after index rebalance events.
3. **Calculate Short Swing Profit Rule on an Individual Client/Fund basis**, rather than at the Fund Manager level, given the large number of funds and clients that many Fund Managers often invest on behalf of (funds currently aggregated as deemed to be "acting in concert"). Large fund managers run the risk of triggering the 5% threshold, which may cap their ability to further grow the size of their managed portfolios in China, especially as the weighting increases.
4. **Enhance the Closing Auction Session:** Volumes in both the SSE's and SZSE's CAS have improved thanks to informal guidance from Market Surveillance on how Brokers may or may not trade during the CAS. However, such can still be improved – in particular, publishing clear guidelines on how Brokers may or may not trade during the CAS, allowing for order cancellations during the CAS, increasing the duration to at least 10 minutes, introducing a random close, and permitting more order types (e.g. Market on Close "MOC") will help encourage increased broker participation in the CAS. Securities lending and borrowing can also help facilitate increased participation during the close, where large sell and buy orders can be better matched against each other whilst minimizing price impact.
5. **Publish tick by tick quote and trade data in real-time**: While the SSE now publishes trade data in real-time (previously subject to a 3 second delay), tick by tick quote data continues to be published on a 3 second delay. In contrast, the SZSE publishes both tick by tick quote data and trade data in real-time. As more sophisticated players are able to construct an order book based on real-time trade data, the lack of exchange disseminated real-time tick by tick quote data disadvantages less sophisticated players and creates an unlevel playing field.
6. **Develop an efficient Stock Borrow Loan (SBL) environment:** As portfolios grow in size over time and with additional weighting increases, investors will need securities lending and short selling to better hedge their market exposure. An effective SBL mechanism can also help support failed settlement coverage and GVWAP for best execution.
7. **Reduce restrictions on trading derivatives:** Futures contracts and other derivatives are crucial tools for investors to hedge their positions.
8. **Adopt the international settlement cycle where cash and stock settle simultaneously:** Given a global client base and the operational challenges of the current T+0/T+1 settlement cycle, allowing DVP to better protect investors, as well as a move to T+2 to better harmonize with global practice can help to reduce settlement risk and improve operational efficiencies. We recognize this may be a longer term solution but note that securities lending and borrowing

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may help to address some of these operational challenges in the interim (especially for fails settlement).

9. **Allow Off Market Trading to facilitate Best Execution:** including alternatives to exchanges such as Multilateral Trading Facilities (“MTFs”) and Alternative Trading Systems (“ATSs”).
10. **Allow access channel fungibility and harmonization:** Offer investors the ability to easily switch from one access channel to another for the same beneficial owner without having to liquidate and repatriate investments, with a view towards eventual future consolidation and/or alignment of such channels to improve efficiencies.

Stock Connect Recommendations

11. **Grant Stock Connect participants access to the onshore Block Trading Window:** Brokers need access to block trading to better source liquidity to match large trades and to limit the market impact of such trades, especially during rebalance days. Although a Block Trading Window is currently available for onshore and QFII/RQFII investors, such a facility is currently unavailable for Stock Connect participants and as a result has limited available liquidity. Allowing Stock Connect participants access to the onshore Block Trading Window would help improve the window’s liquidity while also allowing brokers to match client demand with minimal market impact.
12. **Enhance the onshore Block Trading Window:** Although the previously manual block trading window has now been improved with host to host connectivity via API, issues remain such as the availability and duration of the window (30 minutes between 3pm – 3:30pm) and the limited liquidity within such, owing to the limited number of eligible participants (many institutional investors do not yet have QFII/RQFII licences and the window is currently not accessible by Stock Connect participants). The window and the ability to report and match block trades should be extended to the entire trading day (similar to the STAR board) and access to the Block Trading Window should be granted to Stock Connect participants.
13. **Expand or remove the Stock Connect Daily Quota**: Although the current daily quota is sufficient for a 4x increase, the Daily Quota should eventually be removed or expanded to ultimately facilitate a 100% inclusion factor.
14. **Enhance the China Connect Test Environment**: The restrictions within the existing test environment, such as the insufficient number of throttles in the QA environment, the limited per symbol selling quota per SPSA in UAT (5,000 shares), and the limited availability of the test environments (Shanghai 09:15 – 11:45; Shenzhen 09:15 – 14:00) limit the effectiveness of participants’ testing.

QFII/RQFII

15. **Allow Omnibus Trading:** The ability to trade at the omnibus level remains a key characteristic of mature markets. Omnibus Trading at the Fund Manager Level would further improve trading efficiencies and better facilitate Best Execution for clients. Such capability would also help facilitate MOC per mention above.
16. **Enhance the Block Trading Window:** Although the previously manual block trading window has now been improved with host to host connectivity via API, issues remain such as the availability and duration of the window (30 minutes between 3pm – 3:30pm) and the limited liquidity within such, owing to the limited number of eligible participants (many institutional investors do not yet have QFII/RQFII licences and the window is currently not accessible by Stock

Connect participants). The window and the ability to report and match block trades should be extended to the entire trading day (similar to the STAR board) and access to the Block Trading Window should be granted to Stock Connect participants.

17. **Remove the prefunding requirement:** prefunding (i.e. having cash available before a buy trade) is onerous, especially for onshore investors – a potential solution might be to not require prefunding if funding is secured by end of day prior to settlement.
18. **Remove the requirement for brokers to perform a position check for sell orders**, which could help allow investors to use multiple brokers on each exchange.
19. **Remove the restriction to only sell through the same broker through which the shares were originally purchased.** The lack of choice which investors enjoy in HK through SC has the potential of impairing best execution via FII.
20. **Remove minimum settlement reserve funds to mitigate settlement risks:** Currently QFII/RQFII are obliged to contribute reserve funds to the central depositories in Shenzhen and Shanghai. The contribution is based on prescribed percentages of the investment quota. The funds cannot be used for trading nor repatriation. This should be replaced by an intra-day facility in line with international practice.

Recommendations for Fixed Income

Developing China's Primary Markets

1. **Adoption of international best practices with respect to issues such as information disclosure**, which could actually be simplified for institutional investors, who do not need the same level of detail provided to retail investors, both in the prospectus/issuing document at the time of the new issue and on a continuing basis
2. **Strengthening the due diligence process**, in particular the key areas of financial (pertaining to the issuer's financial accounts), legal (issues pertaining to the incorporation of the issuer) and business (pertaining to the present and future outlook/prospects for the issuer's business activities) due diligence
3. **Streamline the book building process** to provide more flexibility in terms of price determination through an iterative process of communication between the issuer/underwriter(s)/bookrunner on the one hand and investors on the other hand, similar to the process used in international offerings
4. **Arrangements should be made to facilitate the registration of SPVs** for foreign investment channels such as Bond Connect, to facilitate ABS origination and distribution to foreign investors.

Developing Secondary Markets, Classic Repo Markets, Bond Futures, Fixed-Income Derivatives

5. **Auction /Market supply and market liquidity:** Actions to increase the issuance size and providing encouragement to market makers to provide pricing transparency are all important steps to developing a strong China benchmark yield curve. Re-opening of outstanding issues where viable is highly advisable. Buybacks for off-the-run issues (to be replaced by tapping more liquid current issues) is also an option worthy of consideration. Any regulatory action that might encourage more active trading participation/bond turnover from large domestic banks is

also desirable. The Buy and hold-to-maturity strategy employed by many domestic banks has clearly inhibited market liquidity to at least some degree. Allowing banks and foreign investors to trade futures would also increase the aggregate level of market liquidity.

6. **Guidelines on CDS market:** Regulators should issue guidelines for offshore investors and other market participants to use the Chinese domestic Credit Default Swap (CDS) market.
7. **Regulators should formalise the central clearing of CDS:** and the designation of Central Counterparties (CCPs) to mitigate counterparty risk.
8. **Tri-party repos**: PBOC has announced the inauguration of a tri-party repo in the interbank bond market but for now, only depository and settlement agents for interbank bonds can act as third parties. However, this is a significant advance since in the future large banks with corresponding capabilities will also hopefully be able to provide such services. PBOC should consider expanding the range of third parties as soon as possible.
9. **Repo**: Move towards a title transfer (Classic) repo format, facilitating the use of accepted GMRA documentation for foreign investors. Furthermore, Bond Connect can be a powerful channel for growth in foreign investor participation, namely through the use of tri-party repo, initially involving offshore-to-offshore customers. This is discussed is our Market Access section under Bond Connect.
10. **CNY capability and the ability to face multiple FX banks**: Among the most common issues raised by index tracking funds are CNY capability (some GCs are still not able to offer CNY) and the ability to face multiple FX banks for CNY conversion to achieve and verify best execution.
11. **Need for a longer settlement cycle**: Again, a problem raised by investors is the need for longer settlement cycles (not just T+0, T+1, T+2).

Clearing and Settlement Issues

12. **The role of the Type A member can be split between trading and settlement functions**, to allow specialist trading and settlement service providers to independently service the client.
13. **Type A members can be members at CFETS for trading/trade matching purposes**, only if the trade is sourced and executed by such members. They can also provide settlement functions, if they chose to. However, the functions need not be bundled.
14. **Broker dealers, asset managers or investors should be allowed to trade and enter CFETS** for trade matching on behalf of investors.
15. **Custodians should be allowed to provide settlement services** at the depositories using their existing licence, which is allowed in almost every other market globally. They can also be required to do trade reporting for OTC trades at CFETS so CFETS has the entire trade and execution data, if required.
16. **Trade execution or services that can impact the legality of the trade execution** in the market would not be allowed.
17. **Investors should be allowed to enter trade orders in CFETS overseas** either by themselves or through their broker/global custodian/international central securities depository, using the trading ID of the intermediary or their own. Alternatively, they can trade onshore through the onshore settlement agent.
18. **A Central Clearing Counterparty for all OTC trades in the CIBM should be considered** with Clearing Members who participate in the Clearing process to minimise clearing risks (for CCDC settlements).

19. **Type A members and custodian banks should be eligible to become clearing members for bond trading upon application**. This would be on a par with the equities market framework in China and also international best practices.
20. **Investors should settle the trades in the account of the GC or ICSD held with the LC**. The LC would be able to confirm such trade directly with the onshore CSD.

Exemptions from VAT and CIT (November 2018)

21. **The exemptions apply to all approved debt instruments,** all channels and all types of trades (including cash, repo, bond ending and bond derivatives trades).
22. **The 3-year exemption should ideally be renewed at least 6 months prior to the end of the 3-year cycle. I**f there is no renewal of the exemption, 6 months advance notice should be given to foreign investors.

Overall Recommendations

23. **Undertake steps to increase secondary market liquidity, as listed above.**
24. **Encourage greater participation of foreign investors in repo markets by moving towards a title transfer (classic) repo market, adoption of accepted documentation used in other market (GMRA)** and other possible measures, as outlined in the Bond Connect / Market Access section.
25. **Adopt best practices based on global standards in information disclosure,** for the prospectus/issuing document at the time of the new issue and on a continuing basis.
26. **Strengthen the financial, legal and business due diligence process in the primary markets**.
27. **Streamline the book building process** to provide flexibility in price determination similar to the process used in international offerings.
28. **Allow all investor types to participate in the bond futures market.**
29. **Issue guidelines for offshore investors and other market participants** on the Chinese domestic CDS market.
30. **Formalise the central clearing of CDS** and the designation of CCPs to mitigate counterparty risk.
31. **Consider the introduction of ESG and social bonds** as well as bonds tied to the UN sustainability goals.
32. **Harmonise the different securitisation regimes** to create a bigger, deeper and more liquid securitisation market.

Recommendations for FX

1. **Encourage competing platforms to CFETS**: Continue to encourage increased price competition in electronic execution by allowing other platforms to participate to improve efficiency and therefore lower transaction costs.
2. **Continue to identify opportunities to introduce new products** to provide end users with a wider opportunity to hedge their currency exposures at a lower cost.
3. **Clarify whether FX hedge transactions in the interbank FX markets are exempt from VAT**, in line with VAT exemptions in the local currency market.

4. **Minimise the cost of trading FX** in order to encourage market participants to actively hedge their foreign exchange exposures.
5. **Consider digitising the requirement to provide underlying documentation for real economy trades when entering into FX transactions** in order to significantly increase market efficiency and mitigate operational risks and cost.
6. Clarify the FX hedging process for Bond Connect investor.
7. Allow investors via CIBM direct channel to hedge FX not only with onshore agent bank, but also other FX market makers onshore.

Recommendations for Laws and Regulations

1. **Increase regulatory transparency and consistency** by a more open market consultation process, providing sufficient notifications of new rules and allowing public comments.
2. **Improve transparency and reliability of auditing and accounting standards** to increase confidence by international investors in China's corporate governance.
3. **Improve the corporate resolution and bankruptcy process** to allow investors to predict the impact of defaults by, among other things, ensuring the enforceability of all investor's direct security interest, if any, in a fair, transparent and clear manner in a restructuring or bankruptcy.
4. **Implement a resolution and recovery regime** for financial institutions that is consistent with the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions.
5. **Incorporate clearly and unambiguously the enforceability of close-out netting** in statute, reflecting internationally accepted practices.
6. **Amend the Securities Law** to support the exchange of variation margin used in the international markets and reflecting internationally agreed standards.
7. **Anti-money laundering regime.** While the system needs to be robust, it should seek international best practice standards and a risk-based management approach, avoiding unreasonable burdens on market participants.
8. **Cross-entity collaboration:** Enabling various group entities to work closely together to reap efficiency and collaboration gains. Enabling various entities of a group to work closely together would enable efficiency and collaboration gains. Collaboration both within China and across borders, while keeping accountability local, would better reflect today's reality of global matrix organisations. For instance, a management group or committee could run all of a group's businesses in China centrally and across legal entities, while sharing central services through a Business Service Centres. As a reference point, CBIRC has recently approved Allianz Group's plan to establish a fully-owned holding company in Shanghai to carry out insurance, asset management and potentially other financial services under one China group structure.

Corporate governance recommendations

9. **Role of Party organisations:** Policy initiatives beginning in 2010 reinforced the role and importance of internal Party organisations (POs) in enterprises, both POEs and SOEs, with major statements and Article of Association amendments in 2017. More disclosure is needed on the role of the PO, which should produce a disclosure report comparable to the board of directors and supervisory board reports.

10. **There is a need to clarify the relationship between the PO and board of directors** in Company Law, and enhance board evaluations and committees.
11. **Supervisory boards:** China's dual board structure includes a supervisory board (SB) whose functions overlap with those of the board of directors and audit committee. Both Company Law and official guidelines need to clarify the separation of duties between the SB and board of directors. SBs should be encouraged to use their full powers, and private firms should have a choice whether to include SBs in their governance structure.
12. **Clarification of roles:** The differences in role between board of directors, supervisory boards, and POs need to be clarified since these often overlap in function in practice.
13. **Revise the one-third rule for independent directors:** Nine-person boards with three independent directors are ubiquitous in the China listed ecosystem due to a rule that boards must have at least one-third independent directors. The one-third rules should be revised, and companies should engage in director training and abolish attendance by proxy.
14. **Strengthen audit committees:** While corporate reporting has improved significantly since 2017 in the view of foreign institutional investors, the audit committees should play a stronger role and internal audit committees should report to them. External auditors also need to be given a stronger voice.
15. **Encourage investors to play a role in ESG reporting:** ESG reporting began in 2006, but there is still much confusion about its relevance to investors. Investors need to play a role in guiding listed companies to better compliance by focusing their attention on large caps, prioritising their information needs around key issues, encouraging use of third-party and independent data, and experimenting with a "comply or explain" approach.
16. **Review takeover regulations and Company Law**: After peaking in 2016, the domestic M&A market has fallen off slightly, as deregulation has already worked through major sectors of the economy. SOEs account for most of the value of M&As, and are largely driven by policy concerns. Takeover regulations need review together with Company Law on shareholder meetings and voting.

Recommendations for Market Infrastructure

1. **Create statutory provisions for settlement finality on transactions** with CCPs and transactions across financial infrastructures in the Bankruptcy Law reflecting international standards enumerated in the PFMI.
2. **Allow the clearing member to create a security interest over cash in the margin account** which is recognised by China's Property Law or Securities Law.
3. **Prioritise the application of SHCH to be recognised as an equivalent CCP** under EMIR and as an exempt DCO by the CFTC.
4. **Provide foreign investors the option to use omnibus accounts** to allow them to benefit from cost saving and efficiency they currently enjoy from other developed markets. This would allow a simplification in their operating model and improve time-to-market for new products by avoiding the need to open segregated accounts in the entire chain.
5. **Ensure that the domestic market infrastructure is compatible with international standards**, including the PFMI, in order to expand the use of the RMB as an international currency.

6. **Settlement of the RMB on a PVP basis in central bank money accounts** with multilateral netting would support the continued, stable expansion in the global use of the RMB for trade, investment and as a reserve currency, and meet internationally agreed standards.
7. **Allow third party custodians to hold initial margin** on behalf of the posting counterparty.

Recommendations for Market Access

1. **Channel harmonisation:** Harmonise the requirements of similar access programmes with a view towards future consolidation and/or alignment to improve efficiencies. Where viable, consider the positive impact of fungibility of different investment channels, given the end objective of stimulating great foreign investment into China.
2. **Level playing field:** It is key to ensure that foreign-owned securities JVs can operate and compete in China on equal terms as domestic firms, by swiftly approving applications for 51% foreign ownership and for all necessary licences.
3. **Bond underwriting:** A level playing field should be provided by allowing international banks and financial institutions to acquire bond and ABS underwriting licences on a fair and transparent basis. International banks and institutions face difficult and often discriminatory procedures to acquire underwriting licences. The system of approval includes a panel of existing underwriters that effectively requires new entrants to the market to be approved by their competitors.
4. **Reconsider qualification requirements:** The industry is still awaiting feedback from the CSRC on the *Draft Administrative Measures on Equity Interest in Securities Companies.* Although the Draft Measures would apply to both foreign and domestic players, they introduce new qualification requirements (e.g. RMB100 billion net assets for the controlling JV shareholders) that are difficult to comply with for foreign firms.
5. **Licensing conditions between existing and new foreign-owned securities firms should be equalised** by allowing existing JVs to receive the same number of licences in one tranche as new JVs. At present old JVs can apply for 2 new licences every 6 months while new JVs can only apply for 4 new licences in one trance.
6. **Grandfathering of existing JVs**: The enhanced qualification requirements in the CSRC Administrative Measures of Foreign Invested Securities Companies should apply equally to new securities JVs and existing securities JVs. Existing JVs should be grandfathered into the new requirements as they are already reviewed and approved at the time of the establishment of the securities JV.
7. **Streamline application process for licence applications:** ASIFMA recommends that China establish an equivalent, transparent, and streamlined approval process for foreign financial services companies applying for local operating licences, such as lead bond and ABS underwriting, futures, settlement, and others. In terms of the continuing limits on ownership by foreign financial institutions, ASIFMA members would like to see immediate realisation of 100% ownership as opposed to the phased-in removal of limits over three years.
8. **Quotas:** Remove all repatriation limits (e.g. QFII) and quotas (e.g. daily quota under Stock Connect) across all access programmes.
9. **QFII/RQFII Restrictions:** Allow QFII/RQFII to be able to invest in private funds in China.
10. **Approvals for Northbound funds:** Improve the transparency and efficiency of the Northbound fund approval process under the MRF.

11. **Increase range of issuers:** Increase the range of issuers for panda bonds, facilitate international credit rating agencies to rate panda bonds and allow greater flexibility in accounting rules in line with global standards (particularly for US GAAP).
12. **Improvements to Bond Connect:** Further enhance the Bond Connect scheme, including streamlining the registration process, accelerating the approval of more trading platforms, lowering the costs of onboarding and trading, the introduction of Bond Connect repo scheme (through introduction of tri-party repo, using established global custody providers). Lastly, expanding the range of approved dealers to include regulated offshore parties.
13. **Foreign participation in onshore trust holdings:** Allow foreign investments into an onshore trust holding for securitised assets.
14. **Cyber security Law:** Adopt a regulatory approach that is flexible and risk-based, embracing global standards and best practice.
15. **Investor education:** Promote investor education programmes that teach key principles of investment such as an understanding of risk, the role of diversification, and the importance of building a portfolio with an appropriate investment horizon. Remove the foreign ownership cap for securities, trusts, asset management, and credit ratings entities.
16. **Qualification requirements for controlling shareholders:** We hope that the qualification requirements for controlling shareholders in domestic securities companies can be lowered or that at least the parent/group can be taken into account instead of the immediate parent. We also ask that existing JVs be grandfathered
17. **10% limit on individual foreign investors:** In addition, clarity is needed on how the 10% limit for individual foreign investors should be calculated, especially if the investor is an asset manager acting on behalf of multiple clients or funds.
18. **PRC investor eligibility to trade Stock Connect:** SAFE should revisit the "resident outside PRC for >1 year" requirement for Stock Connect participants.

ANNEX B: US-China Phase 1 Trade Deal Highlights

- China commits that when a qualified subsidiary of a U.S. financial institution provides or seeks to provide securities investment fund custody services, its parent company's overseas assets shall be taken into consideration in order to fulfill applicable asset requirements. Within five months after the date of entry into force of this Agreement, China shall allow branches of U.S. financial institutions to provide securities investment fund custody services, and the parent company's overseas assets shall be taken into consideration in order to fulfill applicable asset requirements. China shall review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis.

- China affirms that U.S. financial institutions applying to serve as Type-A lead underwriters for all types of non-financial debt instruments shall be evaluated and granted licenses based on the revised formula for granting lead underwriting licenses for non-financial enterprise debt instruments, which takes into account U.S. financial institutions' international qualifications in order to fulfill applicable requirements for the entity seeking the license in China.

- Article 4.7: Securities, Fund Management, Futures Services 1. Each Party shall, on a non-discriminatory basis, review and approve a qualified application of a financial institution of the other Party for a securities, fund management, or futures license. The Parties affirm that licensed financial institutions of the other Party are entitled to supply the same full scope of services in these sectors as licensed financial institutions of the Party.
  No later than April 1, 2020, China shall eliminate foreign equity limits and allow wholly U.S.-owned services suppliers to participate in the securities, fund management, and futures sectors.

- China affirms that it substantially reduced the high net asset value requirement on majority shareholders of securities services suppliers on July 5, 2019.

- China affirms that existing U.S.-invested securities joint ventures are allowed to retain their existing licenses when they become U.S.-controlled, U.S. majority-owned, or wholly U.S.-owned securities companies.

- The Parties shall ensure there are no discriminatory restrictions for private fund managers of the other Party. China shall ensure that there is no prohibition on U.S.-owned private fund managers investing in H shares (i.e., shares of mainland Chinese companies listed on the Hong Kong stock exchange) and that qualified U.S.-owned private fund managers may be approved to provide investment advisory services on a case-by-case basis.

- The Parties affirm that there are no discriminatory restrictions for institutions of the other Party in futures products, including by allowing the institutions of the other Party to invest in the full scope of futures products in which domestic institutions can invest (including financial, interest-rate, and exchange-rate futures).

ANNEX C: GFMA Data Mobility Principles

International Principles to Improve Data Privacy, Security and Mobility

The financial services industry supports global regulatory authorities' legitimate concerns to protect the privacy of consumers and investors and the integrity of financial data. We encourage global regulators to consider the following principles and adopt best practices to improve data protection and mobility—which we believe are mutually reinforcing—while continuing to foster data privacy.

- 21 March 2019 -

1. ***Recognise that the ability to transmit data across national boundaries and store data in different jurisdictions, with adequate protections, is fundamental to supporting a secure, innovative, and prosperous global financial system, as well as fostering global economic growth.*** *Policymakers have a significant interest in reducing barriers to safe and efficient data flow to create an enabling environment to grow the digital economy. Regulations and legal requirements on data protection can function as non-tariff barriers to trade and restrict economic activity when they are not aligned with international standards and best practices. By recognising the impact that privacy and data protection policies have on international trade and investment, policymakers can tailor their approach to meet their objectives to protect individuals' rights to privacy while also bolstering the fight against financial crime and enabling economic growth. Policymakers should support common frameworks that multinational financial institutions can implement in a global operating environment. Cooperative agreements between governments on cross-border enforcement, supervision and data sharing can be put in place to support access to data, while addressing financial market integrity and sovereign risks. Developing interoperability between the privacy laws and regulations of different jurisdictions, such as APEC has done through the Cross-Border Privacy Rule, enables safe and efficient cross-border data flow to improve international trade, catalyse investment, and bolster the uptake of digital channels for trade. For example, as Brexit approaches it is essential that there is clarity as to the ability of business to continue to transfer personal data between the EU and UK.*

2. ***Engage with industry to align regulatory requirements and encourage adoption of international best practice in data security and mobility.*** *We encourage governments to consult financial services institutions to better understand standards and best practices used to protect data as it is stored and transferred across borders. Eliciting private sector input prior to formulating regulations for privacy and data protection could avoid unintended consequences for trade, investment and economic growth. We also encourage policymakers to reference existing frameworks for managing cybersecurity risk. ISO 27103, the NIST CSF and the Financial Services Sector Profile represent aligned risk management frameworks at the international, national and sector specific levels. We also encourage further adoption of the "International Principles for Cybersecurity, Data and Technology."16 The path forward in an increasingly digital and technology advanced world includes cooperative agreements between governments to address cross-border resilience, privacy and security, and of markets keen to develop and/or mature their digital-related frameworks and capacity, instead of data localisation requirements." Generally speaking, regulators should develop alternative approaches to data localisation policies.*

3. ***Recognise that, with adequate control and supervision, cross-border data mobility supports data protection and system resilience.*** *Well-intentioned, overly restrictive data localisation rules may in fact undermine the resilience of the global financial system and individual institutions. Privacy cannot be protected without effective security, which depends on how data is shared and stored, not where. Processing and sharing appropriate consumer data across borders is critical to preventing abuse, particularly in the context of cybersecurity and sanctions/anti-money laundering enforcement. Undue limitations on cross-border data access inhibit firms' ability to effectively set and enforce technology controls, monitor threats to company networks and infrastructure, and share information with partners and law enforcement agencies to mitigate broader systemic risks. In addition, requirements to store data in fragmented or disparate facilities can create additional points of entry for bad actors to infiltrate networks. Outsourced or consolidate regional data centres or information technology (IT) hubs enable firms to dedicate resources to data and technology security, and ensure there are robust resilience capabilities, such as for data back-ups. In that way, data localisation adversely affects firms' business continuity and disaster recovery plans.*

4. ***Enable targeted cross-border information sharing.*** *Financial institutions must provide appropriate, timely data to regulators to fulfil their regulatory obligations in different jurisdictions. Restrictions on cross-border data flow can introduce compliance risk for firms, as privacy laws and blocking statutes introduce conflicts of law for multinational firms subject to multiple regulatory reporting regimes. Accordingly, data localisation policies can prevent financial regulators from having the data necessary to do their jobs effectively, as well as undermine firms' efforts to comply with regulatory requirements. For instance, financial institutions need to share information with their affiliates across borders to obtain information necessary to file suspicious activity reports (SARs) under relevant AML regulations applicable worldwide. We call on policymakers to be mindful of the impact that data localisation policies have on firms' abilities to continue to carry out important investor protection protocols, including AML, KYC, or financial crime investigations. We encourage data protection authorities to coordinate with other financial crime and cyber authorities when defining parameters for the use of data to allow targeted cross-border data transfer necessary to fulfil regulatory obligations and enhance investor protection.*

5. ***Enable adequately secure outsourcing arrangements that improve the efficiency and competitiveness of financial services providers.*** *Outsourcing arrangements are critical to improving the efficiency of the financial services industry, enabling firms to provide superior customer service, maintain competitiveness internationally, and reduce operational costs to boost investments in other areas that deepen local capital markets. Multinational financial institutions often outsource operationally-intensive functions to other affiliates within their group to leverage in-house capabilities in a competitive, efficient, and effective manner. Doing so improves efficiency by enabling financial institutions to maximise use of existing infrastructure, and in turn, increase investments in more productive ways. However, policies that restrict outsourcing arrangements in the financial services sector often result in the de facto localisation of data onshore, which deters firms from entering or expanding in a market, undermining economic growth and disadvantaging local consumers. Subject to other overarching regulatory requirements, policies governing outsourcing should be principles-based, technology and entity neutral, and impartial to geographic location, to allow financial institutions to utilise outsourcing arrangements according to their own business models and risks whereas the relevant authorities should not look to introduce new requirements or restrictions beyond existing outsourcing regulations.*

Available online at http://www.gfma.org/correspondence/item.aspx?id=1064