

17 August 2018

Department of Fund and Intermediary Supervision
China Securities Regulatory Commission
Focus Plaza, 19 Jin Rong Street
Xicheng District
Beijing, China 100033

Email: jigoubu@csrc.gov.cn

Dear Sir/Madam,

ASIFMA AMG's Comments on the CSRC Administrative Measures for Securities and Futures Operating Institutions' Privately Offered Asset Management Businesses (Consultation Draft) and the Administrative Regulations on the Operation of Securities and Futures Operating Institutions' Privately Offered Asset Management Schemes (Consultation Draft)

On behalf of the Asset Management Group (**AAMG**) of Asia Securities Industry & Financial Markets Association (**ASIFMA**)¹, we are pleased to submit our comments on the *Administrative Measures for Securities and Futures Operating Institutions' Privately Offered Asset Management Businesses (Consultation Draft)* (the "**Measures**") and the *Administrative Regulations on the Operation of Securities and Futures Operating Institutions' Privately Offered Asset Management Schemes (Consultation Draft)* (the "**Operations Administrative Regulations**", collectively the "**New Private Asset Management Regulations**" with the Measures) issued by the China Securities Regulatory Commission (**CSRC**) on 20 July 2018.

ASIFMA is an independent Asia-wide industry association which focuses on capital markets issues and development. It is part of a global alliance of similar industry associations in the U.S. and Europe. AAMG was launched by ASIFMA in 2014 to represent asset managers and currently has 24 asset

¹ ASIFMA is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, 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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manager members, all of which are global asset managers with headquarter or a presence in Asia. Between them, our members manage over USD 33.5 trillion in assets globally and numerous investment funds as well as separate institutional mandates with allocations to Asia Pacific.

Since all of our members are foreign institutions and most of their staff use English as their working language and translation of the entire New Private Asset Management Regulations will take us a lot of time, the comments submitted below are what our members consider to be the most important. Our members' other comments (if any) on the New Private Asset Management Regulations may be submitted to you in another way.

Set out below for your consideration are our comments on the New Private Asset Management Regulations

1. Background

In recent years, global asset management institutions have responded to China financial industry's outward opening up policies and actively developed China's financial market. Since the Asset Management Association of China (**AMAC**) issued on 30 June 2016 the *Q&As regarding Registration and Filing of Private Funds (No. 10)* allowing eligible wholly foreign owned enterprises (**WFOEs**) to apply for registration as private securities fund managers, 14 WFOEs have successfully obtained such registration and many others are in the process or preparing to apply for registration as wholly foreign owned Private Fund Managers (**PFM WFOE**). Since Shanghai issued in 2012 the *Implementation Measures on the Pilot Work of Qualified Domestic Limited Partnership (QDLP) in the City* and started QDLP business as a pilot, five batches of nearly 40 WFOEs or joint ventures (the "**QDLP fund managers**") have been set up by global asset management institutions in Shanghai, each with QDLP pilot business qualification and quota.

Our comments on the New Private Asset Management Regulations are mainly aimed at enabling PFM WFOE and QDLP fund managers to better develop their businesses in China.

2. Investment Concentration of Collective Asset Management Schemes

Article 14 of the Operations Administrative Regulations provides that funds of a collective asset management scheme investing in the same asset should not exceed 20% of the scheme's net asset value (**NAV**). We understand that this Article's main intention is to diversify investment risks by standardizing the collective asset management scheme's investment concentration.

(1) Clarification of ambiguity

When a collective asset management scheme invests in another asset management product ("**underlying asset management product**"), there are currently different understandings within the industry of "asset" referred in the term "the same asset". Some consider the underlying asset management product to be the "asset", while others think it should be the asset which is ultimately invested into by the underlying asset, in accordance with the look-through principle established in Article 45 of the Measures.

We suggest, therefore, that the final version of the New Private Asset Management Regulations clarify this as it will have a profound impact on QDLP fund managers' design of privately offered fund products in China.

(2) Exemption for QDLP funds as underlying asset management product

Currently, many QDLP fund managers have issued a number of QDLP funds of which the funds raised have been exchanged into foreign currency and invested into foreign financial markets. The QDLP funds also fall into the scope of private funds so they need to comply with not only China's laws and regulations on private fund businesses but also Shanghai's special regulations on QDLP business' administration.

In actual business practice, investors of QDLP funds are usually one or several private fund(s) issued by other private fund managers or one or several asset management product(s) issued by securities and futures operating institutions (such as securities companies, fund management subsidiaries). We understand whatever the understanding of "assets" in Article 14 of the Operations Administrative Regulations, it will have a significant impact on the QDLP business

If the QDLP fund which is an underlying asset management product is deemed to be the "asset", it means that: (a) if a securities and futures operating institution's asset management product plans to invest wholly in a QDLP fund, then under this definition these products would have to invest in at least five QDLP funds. Given the pilot nature of the QDLP business where not many private fund managers are conducting QDLP business and the timing of the issuance of QDLP funds are not the same, the likelihood of getting one asset management product to invest in five QDLP funds or fund of funds is low; (b) if any securities and futures operating institution's asset management product invests no more than 20% of its assets in a QDLP fund and no less than 80% of its assets in other asset management products, the likelihood of implementing such asset management product is also very low given that the investment objective, strategy and risk of the QDLP fund and the other asset management products are vastly different.

In summary, considering the pilot nature of the QDLP business, we suggest that investments by the asset management products of securities and futures operating institutions in QDLP funds be exempted from the 20% investment concentration requirement set out in Article 14 of the Operations Administrative Regulations.

(3) Exemption for private funds as underlying asset management product

For public funds, according to the *Guidelines for Review of Fund of Funds (FOF)*, the market value of a fund held by a FOF cannot exceed 20% of the FOF's NAV and FOF cannot hold another FOF. We understand that, unlike public funds, qualified investors of private asset management products have better risk recognition capability and higher risk tolerance. Moreover, the underlying asset management products themselves will have their own risk control measures. Thus, it may not be necessary to set overly strict investment concentration limits for privately offered asset management products.

Therefore, in addition to the exemptions for QDLP funds suggested in section (2) above, we also suggest that investments by the private asset management products of securities and futures operating institutions in other funds (including those issued by PFM WFOEs) be exempted from the 20% investment concentration requirement set out in Article 14 of the Operations Administrative Regulations.

3. Fund Management Companies' Segregated Client Products Indirectly Invest Offshore Through QDLP Funds

[The third paragraph of] Article 16 of the Operations Administrative Regulations provides that fund management companies conducting privately offered asset management businesses shall not expand its investment scope or evade regulatory requirements in any disguised form through investing in asset management products issued by other institutions regulated by State Council's financial supervision and administration institutions. We understand that the main intention of this Article is to prevent the use of product nesting to evade regulations or implement regulatory arbitrage.

Regarding cases where a fund management company or its subsidiary issues a private asset management product (i.e. segregated client product) that invests in QDLP type securities investment funds or where a fund management company's subsidiary issues a segregated client product that invests in overseas QDLP type equities investment funds, we understand that: the purpose of setting up mechanisms such as QDII and QDLP is to provide a legitimate channel for domestic investors to invest offshore. When domestic investors (whether institutional investors, individual investors or other investors) invest offshore, they need to invest indirectly through QDII and QDLP products. Private asset management products that invest offshore also need to invest indirectly through QDLP funds. Therefore, the aforementioned investment by the fund management company or its subsidiary should not be considered as a violation of Article 16 of the Operational Administrative Regulations.

We suggest that CSRC expressly clarify the above in the New Private Asset Management Regulations.

4. Bridging the Gap of the Supervisory Regulations of Private Fund Businesses

Article 15 of the *Interim Administrative Provisions on the Operation of the Privately Offered Asset Management Business of Securities and Futures Business Institutions* issued by CSRC on 14 July 2016 (CSRC Announcement [2016] No. 13; the "**Interim Provisions**") provides that private securities investment fund managers should comply with the Interim Provisions. Since issuance thereof, the Interim Provisions played an important role in standardizing the private securities investment fund management businesses. However, Article 46 of the Operations Administrative Regulations provides that the Interim Provisions shall be abolished from the time when these Regulations are implemented.

Since the New Private Asset Management Regulations do not include private securities investment fund managers in their regulatory scope and the Interim Provisions will be

automatically abolished when the Regulations are implemented, private fund managers are concerned whether CSRC will issue new supervisory rules for private fund businesses to bridge the gap. We suggest that CSRC should also consider the aforementioned issue while soliciting opinions on the New Private Asset Management Regulations and announce to the public as soon as possible the legislative intentions in these areas to alleviate the private fund management industry's anxiety over the uncertainty of the follow-up regulatory policies.

Please feel free to contact me at eshen@asifma.org or Tel: 2531 6570 if you have any questions regarding any of our comments.

Yours sincerely,



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