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机构部
中国证券监督管理委员会
富凯大厦
西城区金融大街19号
北京, 中国 邮编 100033

Department of Fund and Intermediary Supervision
China Securities Regulatory Commission
Focus Place
19 Jinrong Street, Xicheng District
Beijing, China 100033

电邮 Email: jigoubu@csrc.gov.cn

尊敬的先生/女士:

Dear Sir/Madam,

关于《公开募集证券投资基金管理人监督管理办法(征求意见稿)》和《关于实施<公开募集证券投资基金管理人监督管理办法>有关问题的规定(征求意见稿)》
Re: the Measures on the Supervision and Administration of Retail Fund Management Institutions (Draft for Consultation) and the Provisions on Issues in Relation to Implementing the Measures on the Supervision and Administration of Retail Fund Management Institutions (Draft for Consultation)

亚洲证券业与金融市场协会(“ASIFMA”)¹资产管理部(“AAMG”)谨代表我部会员向中国证券监督管理委员会(“中国证监会”)提交我们对中国证监会于2020年7月31日发布的《公开募集证券投资基金管理人监督管理办法(征求意见稿)》(“《办法》”)和《关于实施<公开募集证券投资基金管理人监督管理办法>有关问题的规定(征求意见稿)》(“《实施规定》”)(合称“征求意见稿”)的一些意见和建议。

On behalf of its members, the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association (“ASIFMA”) is pleased to submit our comments and suggestions on the *Measures on the Supervision and Administration of Retail Fund Management Institutions (Draft for Consultation)* (the “Measures”) and the *Provisions on Issues in Relation to Implementing the*

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140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 140 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.

DEVELOPING ASIAN CAPITAL MARKETS

Measures on the Supervision and Administration of Retail Fund Management Institutions (Draft for Consultation) (the “**Implementation Provisions**”) (collectively, the “**Consultation Papers**”) released by the China Securities Regulatory Commission (“**CSRC**”) on 31 July 2020.

我们欢迎征求意见稿对基金管理公司和其他公募基金管理人(合称为“公募基金管理人”)监管规则的统一、对基金管理公司治理结构要求的细化(包括股东的资格条件、对实际控制人的要求以及股东和独立董事的职责等方面)、对基金管理公司子公司差异化和特色化发展的支持、对公募基金管理长效机制建设的强化和对公募基金管理人退出机制的完善,清晰的监管规则和完善的配套规定有助于更好地了解中国证监会对于公募基金行业的监管态度,以及各市场参与主体应满足的资质条件和应履行的持续监管义务。

We welcome the proposals in the Consultation Papers to unify the regulatory rules for fund management companies (“**FMCS**”) and other types of retail fund management companies (“**Other FMCS**”) (collectively referred to as retail fund management companies, “**RFMC**”), detail the requirements on the governance structure of FMCS (including the shareholder eligibility requirements, actual controller requirements and the role of shareholders and independent directors), support the differentiated and distinctive development of subsidiaries of FMCS, strengthen the establishment of a long-term focus for retail fund management, and improve the exit mechanism of RFMCs. Clear regulatory rules and sound supplementary provisions would enable everyone to better understand the regulatory positions of the CSRC on the retail fund industry, as well as the qualification requirements and ongoing regulatory obligations of each type of market participants.

我们及我们的会员感谢有机会可以对征求意见稿提出意见,很希望我们能有更多时间来提供更加详细的反馈。在阐述我们对征求意见稿具体条文的意见和建议之前,为帮助贵会更好地理解我们所提出的具体意见和建议,我们想先说明征求意见稿中对我们的会员而言最重要的一些方面。

We and our members are grateful for the opportunity to comment on the Consultation Papers and only wish that we have more time to provide you with more details on our feedback. Before setting out below our comments and suggestions on specific provisions in the Consultation Papers, we think it would be helpful for us to set out what are the most important aspects of these Consultation Papers to our members, which would explain our more detailed comments and suggestions that follow.

公平的竞争环境

Level playing field

我们的会员很高兴看到四个监管机构于 2018 年 4 月联合发布《关于规范金融机构资产管理业务的指导意见》,统一了对同类资产管理产品的监管标准。我们也很高兴看到征求意见稿中提出以同一部法规监管所有类型的公募基金管理人,无论是基金管理公司、证券公司资管子公司、保险资产管理公司或商业银行理财子公司。

Our members were very pleased when the *Guiding Opinions on Regulating Financial Institutions' Asset Management Businesses* were issued by the four Mainland authorities in April 2018 to standardize the regulatory requirements for the same type of asset management products. We are also very pleased to see the proposal in the Consultation Papers to regulate in one regulation all types of RFMCs, whether they are FMCs, asset or wealth management subsidiaries under a securities company, an insurance company or a commercial bank.

无论一个公募基金管理人是基金管理公司、在基金业协会登记的专门从事非公开募集证券投资基金管理业务的机构、受中国证监会监管的证券公司的资管子公司,或是受中国银行保险监督管理委员会(“中国银保监会”)监管的保险公司或商业银行旗下的资产管理公司或者理财子公司,我们希望看到所适用的监管标准是相同的。我们也希望看到无论公募基金管理人的股东是境内实体或境外实体,所适用的资质条件是相同的。对于我们的会员而言,能够在对市场参与者公平的竞争环境下经营是非常重要的。

Regardless of whether an RFMC is an FMC, an institution registered with the Asset Management Association of China that specializes in private securities investment fund management business, an asset management subsidiary under a CSRC-regulated securities company, or an asset management or wealth management company under a China Banking and Insurance Regulatory Commission (“CBIRC”)-regulated insurance company or commercial bank, we would like to see it treated in the same way from a regulatory perspective. We would also like to see the same treatment applied whether the owner of an RFMC is a domestic entity or an offshore entity. To our members, being able to operate under a level playing field for its market participants is very important.

公司治理

Corporate governance

另一个对我们的会员非常重要的考虑是良好的公司治理架构,其中包括对股东、董事及高级管理层的职责和责任的清晰界定。就此方面我们对征求意见稿提出了最多的意见。这可能是对公司(在这里是基金管理公司)股东及董事会的职责的不同理解或看法所导致的。

Another consideration that is very important to our members is a good corporate governance framework which entails, among other things, clear delineations of the roles and responsibilities of the shareholders, directors and senior management of a company. It is with respect to this aspect that we have the most comments on the Consultation Papers. Perhaps, this is due to a different understanding or views of the role of shareholders and the board of directors of a company and in this case, an FMC.

股东

Shareholders

在我们和我们的会员看来,公司的股东只是公司的所有人或投资者。股东对公司出资并认为其作为股东的责任限于他们的出资。如果公司需要额外的资本,股东将决定是否认缴该等出资。如果股东决定不认缴,公司可以通过引入其他股东等方式获得资本。

For us and our members, the shareholders of a company are merely owners of or investors in a company. They contribute capital to the company and expect that their liability as a shareholder is limited by their capital contribution. If the company requires additional capital, shareholders would then decide whether or not to put in their share of the required capital. And if not, other shareholders may be brought in for example.

董事会

Board of Directors

我们也理解通常公司的董事会对公司的经营负有主要责任,而公司的高级管理层负责公司的日常运作。由于《办法》第三十六条规定基金管理公司的股东、实际控制人不得未经股东(大)会、董事会决议擅自干预基金管理公司的经营活动,我们认为这一原则也适用于基金管理公司。

We also understand that normally it is the Board of Directors of a company that has the primary responsibility over the management of the company while the senior management of the company is responsible for the company's day-to-day operations. We believe this is the case with FMCs as Article 36 of the Measures provide that their shareholders and actual controllers should not interfere with the business operations of the FMC other than through the shareholders meeting or resolutions of the Board of Directors.

然而,《办法》的相关条文规定了公司的主要股东或实际控制人确保基金管理公司适当经营的责任(例如《办法》第二十六条)以及就主要股东对公司的行为负责任(例如《办法》第二十九条),这似乎与前述的原则相冲突。我们认为《办法》和《实施规定》明确股东与公司董事会及高级管理层的职责之间的区别是非常重要的。

However, there are provisions in the Measures that place the responsibility for ensuring the proper management of a FMC on the primary shareholder or actual controller of the company (e.g. Article 26), and the responsibility for the actions of the primary shareholder on the Company (e.g. Article 29), which seem to conflict with the aforementioned understanding. We believe it is critical that the Measures and Implementing Provisions clearly respect the distinctions between the role of the shareholders and that of the company, i.e. its Board of Directors and senior management.

股东肯定希望确保其所拥有的公司(在这里是基金管理公司)得到适当的运作和管理。由于董事会是对公司经营承担最终责任,股东通常通过他们在公司董事会任命的代表来确保公司得到适当的运作和管理。Shareholders clearly have an interest in ensuring that the company (in this case, the FMC) they own is operated and managed properly. The way shareholders typically do this is through the representatives that they appoint to the Board of Directors of the company as it is the Board of Directors which is ultimately responsible for the management of the company.

独立董事

Independent Directors

独立董事的职责通常是保护少数股东的利益并向通常被多数股东或主要股东任命的董事所控制的公司董事会提供独立和不同的观点。

The role of independent directors typically is to protect the interests of minority shareholders and to provide an independent and different perspective to the Board of Directors of a company which is usually controlled by the directors appointed by the majority or primary shareholder.

虽然在公司董事会,特别是上市公司和受监管机构的董事会,设置独立董事有明显的好处,并且是许多司法管辖区的实践趋势,但是独立董事在董事会的席位不会达到《办法》第三十条所规定的 50%。这是因为独立董事毕竟不代表股东——他们在公司中没有经济利益、没有对公司业务和目标的愿景、在与确保公司成功之间也没有密切的利害关系。

While the benefits of having independent directors on the Board of a company, particularly listed and regulated companies, are clear, and such practice is the trend in many jurisdictions, their representation on the Board would not be as high as 50% as set out in Article 30 of the Measures. This is because independent directors, after all, are not representatives of the shareholders who have a financial stake in the company, a vision of what they want the company to do or become, and a keen interest in ensuring the success of the company.

在很多方面,《办法》似乎规定股东(特别是主要股东)和实际控制人应对基金管理公司的管理和运作负责。但是,良好的公司治理意味着股东应通过其在公司董事会任命的董事履行其对基金管理公司的管理和运作的责任,因此董事会不能由独立董事主导。

In many ways, the Measures seem to take the view that the shareholders (especially the primary shareholder) and actual controller should be responsible for the management and operation of an FMC. But, good corporate governance means that they would do so through the directors that they appoint to the Board of Directors of the company, which cannot be dominated by independent directors.

基于前述的原则和理解,以下是我们关于征求意见稿的一些具体意见和建议,谨供参考。

It is with the aforementioned principles and understandings in mind that we set forth below some specific comments and suggestions on the Consultation Papers that we would like to submit for your consideration.

一、 关于理财孙公司申请公募基金管理资格

I. Application for Retail Fund Management License by WM Grandson Companies

《办法》第二条规定,公募基金管理人包括取得公募基金管理资格的其他资产管理机构。其他资产管理机构涵盖境内设立的从事资产管理业务的证券公司资管子公司、保险资产管理公司、商业银行理财子公司等金融机构。但该条款并未明确境外资产管理机构与中资银行或保险公司的

子公司合资设立的、由外方控股的理财公司(“**理财孙公司**”)是否为“其他资产管理机构”的一类机构。我们认为其他资产管理机构也包括这些理财孙公司,建议《办法》对此进行明确。

Pursuant to Article 2 of the Measures, RFMCs include non-FMC asset management institutions that have obtained the retail fund management license ("Other FMC"). Other FMCs include, among others, such financial institutions as asset management subsidiaries of securities companies, insurance asset management companies, wealth management subsidiaries of commercial banks incorporated within the territory of the PRC that engage in asset management business. However, this Article does not clearly specify whether the foreign-controlled wealth management companies co-established by offshore asset management institutions and subsidiaries of Chinese banks or insurance companies ("**WM Grandson Companies**") are considered as Other FMCs. We think that WM Grandson Companies would also be included and suggest that the Measures so clarify.

这是因为在 2019 年 7 月,国务院金融稳定发展委员会宣布了 11 条金融业进一步对外开放的政策措施,其中包括允许境外资产管理机构与中资银行或保险公司的子公司合资设立由外方控股的理财公司。此外,2019 年 12 月 20 日,中国银保监会宣布批准法国东方汇理资产管理公司(Amundi)联合中银理财在上海合资筹建理财公司。据悉,这家暂定名为“汇华理财”的公司中,Amundi 则持股 55%,中银理财持股 45%。我们认为“汇华理财”取得公募基金管理资格后应属于《办法》第二条所述的公募基金管理人,并建议第二条的表述包含这一可能性。

This is because in July 2019 the Office of Financial Stability and Development Committee under the State Council announced 11 measures to promote the further opening of the financial sector, including allowing offshore asset management institutions to co-establish foreign-controlled wealth management companies with subsidiaries of Chinese banks or insurance companies. In addition, on 20 December 2019, the CBIRC announced that it has approved Amundi and BOC Wealth Management Co., Ltd. ("**BOC Wealth Management**") to co-establish a wealth management company whose proposed name is “汇华理财”. It was reported that Amundi would hold 55% equity interest in this wealth management company, and BOC Wealth Management would hold 45% equity interest. We assume that “汇华理财” is an “RFMC” under Article 2 of the Measures after obtaining the retail fund management license and suggest that the wording in Article 2 include this possibility.

二、 建议进一步明确有关股东条件的表述

II. **Suggestions to Further Clarify Wordings in Relation to FMC Shareholders**

《办法》将基金公司股东分为三类:5%以下股东、5%以上非主要股东以及 5%以上且持股比例最高的股东(即主要股东)。三类基金管理公司股东不同的资格要求逐层递进,境外股东不仅必须满足对所有股东的基本资格条件,如其是 5%以上非主要股东以及最大股东,还必须分别满足额外的资格条件,并同时满足境外股东的条件。相较于现行的《证券投资基金管理公司管理办法》(“《**2012 基金公司管理办法**”)”,《办法》显著增加了对基金管理公司境外股东的资格条件。

The Measures divide shareholder(s) of an FMC into three categories, shareholder(s) holding less than 5% equity interest in the FMC, non-primary shareholder(s) holding more than 5% equity interest in the FMC, and the largest shareholder holding more than 5% equity interest in the FMC (i.e., the primary shareholder). They also set up a progressive multi-level regulatory framework for the different qualification requirements for these three categories of FMC shareholders. A foreign shareholder must satisfy not only the basic qualification requirements for all shareholders but also the additional qualification requirements if it is a non-primary shareholder holding more than 5% equity interest and if it is the largest shareholder as well as the qualification requirements for foreign shareholders. Compared with the current *Administrative Measures for Securities Investment Fund Management Companies* (“**2012 FMC Measures**”), the Measures significantly increase the qualification requirements for foreign shareholders of a FMC.

就基金管理公司股东的资格条件，我们有如下意见及建议供贵会参考：

We have the following comments and suggestions in relation to qualification requirements of FMC shareholders for your consideration:

1. 5%以下股东的条件

Qualification requirements for shareholder(s) holding less than 5% equity interest

- (1) 关于《办法》第八条第(一)项，“最近3年存在重大违法违规记录或者重大不良诚信记录”，征求意见稿能否明确构成“重大”的标准？中国证监会希望申请机构用何种支持性文件来证明自身已满足这一条件？我们认为排除不会对基金管理公司在中国业务有任何影响的违法违规记录或不良诚信记录较为合适。关于“因涉嫌重大违法违规正在被调查或者处于整改期间”（《办法》第十四条第(二)项也有相同表述），中国证监会能否明确如果股东并非因涉嫌重大违法违规而处于整改期间，该等情形是否属于负面情形？

As for the wording “having record of material violation of laws or regulations or material negative integrity record in the most recent three years” in Article 8(i) of the Measures, could the Consultation Papers clarify the materiality threshold and the specific supporting documents expected to be submitted to prove the satisfaction of this requirement? We think that it would be more appropriate to carve out those violations/negative records that would not have any impact on the FMC’s business in China. As for the wording “being under investigation due to suspected material violation of laws or regulations or during the rectification period” (similar wording is also included in the item (2) of Article 14 of the Measures), could the CSRC clarify if the shareholder is in a rectification period for reasons other than suspected material violation of laws or regulations, whether this would be considered as a negative circumstance?

- (2) 《办法》第八条第(二)项,“影响履行股东权利和义务的情形”、“存在可能严重影响持续经营的担保、诉讼、仲裁或者其他重大事项”含义范围较广,建议在之前添加“重大”或“严重”这样的定语,在“担保、诉讼”前增加“现行/未决”。

The meanings in Article 8(ii) of the Measures, such as “circumstances that may affect the exercise of shareholder’s rights and obligations” and “having any guarantee, litigation, arbitration or other material events that may severely affect the ongoing operations of the FMC”, are too broad. We suggest that a qualifier such as “materially” or “severely” be added before “affect” in the first example and a qualifier such as “pending” be added before “guarantee” in the second example.

- (3) 关于《办法》第八条第(四)项,“社会重大质疑”、“严重社会负面影响”、“经营失败”、“重大责任”的涵义十分模糊,这会导致申请机构难以用支持性文件证明自己满足这一条件,同时,也会给监管部门过大的裁量权,从而不利于稳定外资机构对于中国市场的预期。另外,“社会质疑”和“社会负面影响”并不等于有违法违规行为。作为监管部门,我们建议监管部门应更多地关注申请机构是否有违法违规行为,而不仅仅是市场对申请机构某一行为的质疑。此外,外资资管机构在全球不同国家和地区有很多投资行为,而这些国家和地区发展程度不同、经营环境和法律环境不同,即使是再成功的外资资管机构也不能确保在各个国家和地区的经营都是成功的。从第(四)项的字面含义理解,如果外资资管机构在最近3年中,在某个国家或者地区所拥有的一家子公司经营失败就会导致“对所投资企业经营失败负有重大责任”,从而不符合基金管理公司股东的条件。这样的制度安排并不市场化,因为商业上的不成功乃是“兵家常事”。

As for Article 8(iv) of the Measures, the meanings of “material social doubt”, “seriously negative social impact”, “failure of operation” and “significant responsibilities” are very ambiguous, which make it difficult for the applicants to demonstrate their satisfaction of these requirements with appropriate supporting documents. At the same time, this would also give regulatory authorities too much discretion, which is not conducive to offshore institutions’ forming a stable expectation of the Chinese market. In addition, “social doubt” and “negative social impact” are not equivalent to violations of laws and regulations. We suggest that regulatory authorities pay more attention to violations of laws and regulations by the applicant instead of market doubts about certain acts of the applicant. Besides, an offshore asset management institution may have a lot of investment activities in various countries and regions across the world, and such countries and regions may vary in their level of development, business environment and legal system. Even the most successful offshore asset management institutions are unable to ensure their business in each country or region would be successful. Based on the plain language of item (iv), if any entity owned by an offshore asset management institution in any country or region fails, this will constitute a circumstance where the offshore asset management institution” has significant responsibilities for the

failure of operation of any invested company”, and hence such offshore asset management institution will be unable to satisfy the qualification requirements of a FMC shareholder. Such requirement is not market-oriented as failing is a normal part of doing business.

综上所述, 我们建议删除《办法》第八条第(四)项中的“因不诚信或者不合规行为引发社会重大质疑或者产生严重社会负面影响且影响尚未消除; 对所投资企业经营失败负有重大责任未逾3年”, 仅保留第(四)项中的“挪用客户资产等损害客户利益的行为”。

In conclusion, we suggest that the wording “causing material social doubt or resulting in seriously negative social impact and the impact has not been eliminated due to dishonesty or violation of regulations; having significant responsibilities for the failure of operation of any invested company and there has been no more than three years since such failure” be removed from Article 8(iv) of the Measures and only keep “appropriation of the clients’ assets and other misconducts that would prejudice the clients’ interests” in Article 8(iv).

2. 5%以上非主要股东的条件

Qualification requirements for non-primary shareholder(s) holding more than 5%

根据《办法》第九条第(二)项规定, 持有基金管理公司5%以上股权的非主要股东, 其自身及所控制的机构具有良好的诚信合规记录。

Pursuant to Article 9(ii) of the Measures, a non-primary shareholder holding more than 5% equity interest in the FMC and the institutions controlled by it shall have good integrity and compliance records.

我们认为, “良好的诚信合规记录”含义不清, 且实际执行也会存在困难。如果将第九条第(二)项理解为“5%以上非主要股东及其控制的机构”不得存在任何违法违规情形则过于严格, 会将诸多股东排除在外, 不利于行业多元化发展。如理解为“5%以上非主要股东及其控制的机构”不得存在重大违法违规行为或不良诚信记录, 则与《办法》第八条第(一)项的规定重复。从实践操作来看, 对于国际领先的外资资管机构而言, 其在全球范围内控制的机构数量动辄数十家, 甚至上百家, 要求这些机构均不得存在任何违法违规行为难度较大, 且会使申请设立基金管理公司的流程变得无比繁琐。

We think the meaning of “good integrity and compliance records” is ambiguous and the actual implementation thereof would be difficult. If having “good integrity and compliance records” means that neither the non-primary shareholder holding more than 5% equity interest in the FMC nor the entities controlled by it may have any record of violation of laws and regulations, it would render many institutions ineligible and is not conducive to diversified development of the industry. If having “good integrity and compliance records” means neither the non-primary shareholder holding more than 5% equity interest in the FMC nor the entities controlled by it may have any record of

material violation of laws and regulation or negative integrity record, such requirement is duplicative with the requirements set out in Article 8(i) of the Measures. In the practice, internationally leading offshore asset management institutions usually control dozens of, or even more than a hundred of, institutions across the world. It would be extremely difficult to require all these institutions to have no record of violation of laws and regulations, and such requirement will make the process of applying for establishment of an FMC extremely cumbersome.

《证券公司股权管理规定》关于股东资格也有类似的要求。相关规定为“证券公司的股东应当自身及所控制的机构信誉良好”。基于此,我们建议参照《证券公司股权管理规定》的该条规定,将《办法》第九条第(二)项中“自身及所控制的机构具有良好的诚信合规记录”修改为“自身及所控制的机构信誉良好”。

The *Administrative Provisions on Equities of Securities Companies* provide similar requirements on qualification requirements of shareholders. The relevant requirement is that a shareholder of a securities company and the institutions controlled by it shall be creditworthy. As such, we suggest to revise the wording “a non-primary shareholder holding more than 5% equity interest in the FMC and the institutions controlled thereby shall have good integrity and compliance records” in Article 9(ii) of the Measures to “a non-primary shareholder holding more than 5% equity interest in the FMC and the institutions controlled thereby shall be creditworthy” according to such requirement of the *Administrative Provisions on Equities of Securities Companies*.

3. 主要股东的条件

Qualification requirements for primary shareholder

(1) 第(二)项要求基金管理公司主要股东“应当为具有金融资产管理经验的金融机构或者管理金融机构的机构”。此外,《办法》第十三条第(一)项规定,境外股东应当为具有金融资产管理经验的金融机构。由于根据《办法》第十条第(二)项基金管理公司的主要股东可以是管理金融机构的机构,我们建议第十条第(二)项也适用于境外股东,否则将无法明确如何将以下情形纳入到《办法》的监管体系之中。

Article 10(ii) of the Measures requires that the primary shareholder of an FMC shall be a financial institution with financial asset management experience or an institution that manages financial institution(s). In addition, Article 13(i) of the Measures also requires that a foreign shareholder of an FMC shall be a financial institution with financial asset management experience. Since according to Article 10(ii) of the Measures the primary shareholder of an FMC may be “an institution that manages financial institution(s), we suggest that Article 10(ii) of the Measures also applies to foreign shareholders. Otherwise, it is unclear how the following circumstances could fit into the regulatory framework proposed by the Measures.

例如,我们注意到,目前存续的合资基金管理公司中(例如摩根士丹利华鑫基金管理有限公司)存在境外股东属于控制金融机构的机构而非金融机构的情形。为保证此类安排的合规性以及出于股东资格条件对内外资公平性考虑,我们建议此处明确“管理金融机构的机构”也符合境外股东规定条件。在此前提下,我们进一步建议《办法》第十三条第(三)项所要求的“近3年金融资产管理业务规模、收入、利润、市场占有率等指标居于国际前列”在该等情形下应适用于该等股东管理的金融机构,而不是股东本身。For example, we notice that the foreign shareholder of existing joint venture FMCs (e.g. Morgan Stanley Huaxin Fund Management Co., Ltd.) is an institution that manages financial institution(s) rather than a financial institution. To ensure the compliance of such arrangement and having regard to fairness in applying the shareholder qualification requirements to domestic and foreign institutions, we suggest to clarify here that an “institution that manages any financial institution(s)” also meets the qualification requirements for a foreign shareholder of an FMC. Based on the foregoing, we further suggest that the requirement that “indicators such as AUM, revenue, profits, market share of the foreign shareholder’s financial asset management business shall be at the forefront globally in the preceding three years” as set out in Article 13(iii) of the Measures should be applicable to the financial institution(s) managed by such shareholder and not the shareholder itself in such cases.

另外,我们建议第十三条第(一)项及第(三)项的要求不应适用于目前存续的基金管理公司的股东(包括境外股东)。

In addition, we suggest that the requirements of Articles 13(i) and 13(iii) should not apply to the shareholders (including foreign shareholders) of existing FMCs.

- (2) 由于《办法》第十条第(二)项中对主要股东净资产的要求也适用于属于境外实体的主要股东,我们建议将第十条第(二)项有关净资产的表述调整为“净资产不低于2亿人民币或等值可兑换货币”。

As the net assets requirement for the primary shareholder in Article 10(ii) of the Measures also applies if the primary shareholder is a foreign entity, we suggest that the wording in relation to net assets in Article 10(ii) be amended to “the net assets of the shareholder shall not be less than RMB200 million or its equivalent in any convertible currency”.

- (3) 《办法》第十条第(二)项中“资产负债和杠杆水平适度”的涵义不明确。由于对于何种水平属于适度没有认定指引,基金管理公司申请机构难以准备恰当的支持性文件证明自己满足这一条件。考虑到境外股东已经需要根据《办法》第九条以及《实施规定》的相关规定满足“净资产不低于实收资本50%、或有负债大于净资产的50%”等要求,我们建议删除《办法》第十条第(二)项中“资产负债和杠杆水平适度”的表述。

It is unclear what is considered an “appropriate level of assets, liabilities and leverage” in Article 10(ii) of the Measures. Since there is no guidance for determining what kind of level is appropriate, it may be difficult for an FMC applicant to prepare the right supporting documents to demonstrate its satisfaction of this requirement. Given that foreign shareholders have to satisfy the requirement that its “net assets shall not be less than 50% of the paid-in capital and its contingent liabilities shall not reach 50% of its net assets” under Article 9 of the Measures and the relevant requirements of the Implementation Provisions, we suggest to delete the reference to “appropriate level of assets, liabilities and leverage” from Article 10(ii) of the Measures.

- (4) 《办法》第十条第(四)项要求股东应当“具备与基金管理公司经营业务相匹配的持续资本补充能力”。结合基金行业发生的风险事件,我们注意到,在发生极端市场风险的时候,一些基金管理公司股东为基金管理公司提供了财务支持或资本补充。但是,我们的会员和境外股东普遍高度关注法规对主要股东施加的持续出资的强制性义务,因为该等规定意味着他们对基金管理公司的责任是无限的,而这对于任何经营、治理良好的机构都是不可接受的:

Article 10(iv) of the Measures requires that the primary shareholder shall “have the ability to make ongoing capital injection that is commensurate with the FMC’s business”. Based on the past risk events in the fund industry, we note that, upon the occurrence of extreme market risk events, some FMC shareholders have provided financial support or capital injection to the FMC. However, our members and foreign shareholders, in general, will have serious concerns with any mandatory obligation imposed by regulation on the primary shareholder to continuously inject capital as there would be no limit to their liability to the FMC which is unacceptable to any well run and well governed institution.

我们认为《办法》第十条第(四)项所指的仅仅是主要股东提供持续资本支持的能力,而不是对主要股东提供持续资本支持的要求。我们强烈建议在《实施规定》中明确这一点,特别是在《实施规定》第三条第(四)项最后一段中。

We believe that Article 10(iv) of the Measures merely refers to the capability of the primary shareholder to provide continuous capital support but is not intended to be a requirement to do so. We strongly suggest that this intention be clarified in the Implementing Provisions, particularly, in the last paragraph of Article 3(4) thereof.

我们认为我们的意见与《中华人民共和国公司法》第三条的规定一致,即有限责任公司的股东以其认缴的出资额为限对公司承担责任。该股东有限责任制度是支撑公司制度的基本原则之一。我们认为没有理由或依据以不同于中国任何其他类型公司的方式对待基金管理公司。

We believe our view is consistent with Article 3 of the *PRC Company Law* which provides that the liability of a shareholder for a company is limited to the capital contribution subscribed by it. Such principle of limited liability of shareholders is one of the fundamental principles of a company structure. We see no reason or basis for FMCs being treated any differently from any other types of companies in China.

我们建议中国证监会考虑世界其他主要基金管理中心是如何处理公募基金的流动性风险管理的。例如,中国证监会可以考虑允许基金进行借款以满足预期之外的赎回申请,并允许基金管理公司采用更多的流动性风险管理工具,如摆动定价、赎回费、赎回限额及暂停赎回。很明显的,管理公募基金流动风险的责任属于基金管理公司而不是其股东。

We suggest that the CSRC considers how liquidity risk management for retail funds is dealt with in other major fund management centres in the world. For example, the CSRC may consider allowing funds to borrow to meet unexpected redemptions and FMCs to broaden their liquidity risk management tools such as the use of swing pricing, charges for redemptions, redemption gates and temporary suspension of redemptions. It is clear that the responsibility for managing the liquidity risk of the retail funds rests with the FMC and not its shareholder(s).

- (5) 《办法》第十条第(五)项要求股东应当“对保持基金管理公司经营管理的独立性、防范风险传递及不当利益输送等,有明确的自我约束机制”。我们认为,本处“独立性”涵义不够明确,对于独立性要求,是否意味着要独立于股东的所有其他业务条线?还是独立于其他资产管理业务(如私募基金)?

Article 10(v) of the Measures requires that the primary shareholder shall “establish a clear self-discipline mechanism to ensure the independence of the FMC’s business management, prevent risk contagion and tunnelling, etc.”. We think that the meaning of “independence” is not clear enough. To comply with such independence requirement, is the FMC required to be independent from all other business lines of the primary shareholder, or from other asset management business (i.e., private funds) of the primary shareholder?

4. 境外股东的条件

Qualification Requirements for Foreign Shareholders

- (1) 《办法》第十三条第(一)项中的“近3年各项指标符合所在国家或者地区法律的规定和监管机构的要求”是较为宽泛的要求。对于基金管理公司境外股东而言,各地的法律法规和监管要求不尽相同,且境外监管部门近几年均加强了对金融机构的监管,即使国际领先的资产管理机构也很难保持3年之内100%符合当地的所有监管指标。现有的《外商投资证券公司管理办法》对证券公司境外股东的类似要求是“近3年各项

财务指标符合所在国家或者地区法律的规定和监管机构的要求”。基于此,我们认为,对基金公司境外股东,仅要求“财务指标”而非“各项指标”符合所在国家或地区的法律和要求应更为务实。

The requirement in Article 13(i) of the Measures that “a foreign shareholder shall meet each indicator prescribed by the laws and the regulators of the country or region where it is domiciled in the preceding three years” is too broad. To the foreign shareholders of an FMC, the laws and regulations and regulatory requirements in each country or region will vary, and offshore regulators have enhanced the regulation of financial institutions in recent years. Even for the internationally leading asset management institutions, it is difficult for them to comply 100% with all local requirements of regulatory indicators in the preceding three years. The similar requirement for foreign shareholder(s) of a securities company as set out in the current *Administrative Measures for Foreign-invested Securities Companies* is that “a foreign shareholder shall meet each financial indicator prescribed by the laws and the regulators of the country or region where it is domiciled in the preceding three years”. As such, we think that it is more practical to require the foreign shareholders of an FMC meet “financial indicators” and not “each indicator” prescribed by the laws and the regulators of the country or region where they are domiciled.

- (2) 关于《办法》第十三条第(三)项中的“近3年金融资产管理业务规模、收入、利润、市场占有率等指标居于国际前列”的要求,建议考虑更为灵活的方式。即并非以股东单独的数据作为评判标准,而是将境外股东所在集团作为一个整体进行衡量。

As for the requirement in Article 13(iii) of the Measures that “indicators such as AUM, revenue, profits, market share of the foreign shareholder’s financial asset management business shall be at the forefront globally in the preceding three years”, we suggest a more flexible approach to be considered, i.e. the evaluation shall be based on the information of the group to which the foreign shareholder belongs instead of the information of the foreign shareholder alone.

- (3) 《办法》第十三条第(三)项中要求境外股东“近3年长期信用均保持高水平”但是“高水平”的衡量标准不明确。考虑到境外股东可能没有信用评级或无法获得信用评级,他们如何能满足此项要求?此外,如果境外股东隶属于某一集团,是否可以依赖集团/母公司的信用评级来满足此项要求?

Article 13(iii) of the Measures provides that the “long-term credit of the foreign shareholder shall remain at a high level in the recent three years” but it is unclear what “high level” means. Considering that foreign shareholders may not have a credit rating or may not be able to obtain one, how would they be able to meet this requirement? Separately, if a foreign shareholder belongs to a group, is it

permissible to use the credit rating of the group/its parent to satisfy this requirement?

- (4) 关于《办法》第十三条第(三)项中“居于国际前列”的要求，是否刻意排除区域性领先的资产管理公司，例如在澳大利亚、日本或韩国领先的公司？

As for the requirement in Article 13(iii) of the Measures to be “at the forefront globally”, is it the intention to exclude regional leading asset management companies, such as those leading companies in Australia, Japan or Korea?

5. 自然人股东的条件

Qualification requirements for individual shareholders

我们注意到《办法》第九条及第十条所列对自然人股东的资产要求显著低于对法人或者其他组织作为股东的资产要求。由于自然人股东不具备公司实体的治理结构等原因，我们认为自然人作为股东的固有风险更高，特别是对于基金管理公司而言。因此，对于自然人股东的资产要求应当更高，除非该等自然人股东持有基金管理公司非常少的股权，例如通过员工持股计划持有基金管理公司股权的员工。

We note that the asset requirements for individual shareholders set out in Articles 9 and 10 of the Measures are significantly lower than that for shareholders that are legal persons or other entities. We would have thought that individual shareholders are inherently riskier because there is no governance structure in place as there would be with a corporate entity for example, especially for an FMC. Therefore, the asset requirements for individual shareholders should be higher unless such individual shareholders hold a very minor interest in the FMC, such as employees who own equity interest in the FMC via employee ownership plan.

三、 有关实际控制人的资质条件的建议

III. **Suggestions in Relation to Qualification Requirements for Actual Controller**

征求意见稿对实际控制人的资质条件作了大幅修订。根据《办法》第十一条规定，基金管理公司的实际控制人应当符合《办法》第八条第一项、第十条第(四)至(六)项的规定，同时不得存在净资产低于实收资本的50%，或者或有负债达到净资产的50%，或者不能清偿到期债务等情形。

The Consultation Papers significantly revise the qualification requirements for actual controller. According to Article 11 of the Measures, the actual controller of an FMC shall satisfy the requirements provided in Article 8(i) and Article 10(iv)-(vi) of the Measures. At the same time, shall not be subject to any of the following conditions: its net assets are less than 50% of the paid-in capital, or its contingent liabilities reach 50% of the net assets, or it is unable to repay all the debts when due, etc.

上述关于股东的资质要求的意见同样适用于实际控制人的情形,尤其是持续资本补充能力和流动性支持提供方案这两项条件。此外,我们注意到,证券公司新设的相关法律法规中并未要求实际控制人具备与经营业务相匹配的持续资本补充能力。

Our comments above regarding shareholder qualification requirements also apply to those for the actual controller, especially our comments on the requirements regarding the ability to make ongoing capital injection and plan to provide liquidity support. In addition, we notice that the laws and regulation in relation to establishment of new securities companies do not require the actual controller to have the ability to make ongoing capital injection that is commensurate with the business of the securities company.

四、 建议优化关于防范业务竞争的表述

IV. Suggestions to Optimize the Wordings in Relation to Preventing Business Competition

根据《办法》第二十六条规定,基金管理公司的主要股东、实际控制人应当采取有效措施,防范基金管理公司与其或者所控制的其他企业间发生业务竞争。

According to Article 26 of the Measures, the primary shareholder and actual controller of an FMC shall take effective measures to prevent business competition between the FMC and other enterprises they control.

然而,由于《办法》允许股东根据第十五条“一参一控一牌”的原则持有超过一家基金管理公司的股权,这些基金管理公司之间的竞争是不可避免的。因此,我们建议修改《办法》第二十六条以考虑前述情形。

However, since the Measures contemplate shareholders owning an equity interest in more than one FMC based on the “one participation, one control, one license” principle under Article 15 of the Measures, it is inevitable that there will be competition among such FMCs. Therefore, we suggest that Article 26 of the Measures be amended to reflect the foregoing.

五、 股权质押规定

V. Provisions in Relation to Pledge of Equity

《办法》第二十八条明确允许股东质押其在基金管理公司的股权的规定是比较少见的,因为质权人必须满足《办法》规定的基金管理公司股东的资格条件才可成为基金管理公司的股东。我们注意到虽然海外主要基金管理司法管辖区没有禁止该等股权质押,但这些司法管辖区也没有在法规中明确规定股权质押相关事项。

It is unusual to see that shareholders are expressly allowed under Article 28 of the Measures to pledge their equity interest in the FMC since the pledgee would have to meet the requirements for FMC shareholders under the Measures to be a shareholder of the FMC.

We note that while there is no prohibition on such equity pledge in major fund management jurisdictions overseas, they are not expressly provided in the regulations.

六、 独立董事

VI. Independent Directors

我们理解独立董事的职责通常是保护少数股东的利益并向通常被多数股东或主要股东任命的董事所控制的公司董事会提供独立和不同的观点。基于此，我们对征求意见稿中有关独立董事的规定有如下意见：

We understand the role of independent directors typically is to protect the interests of minority shareholders and to provide an independent and different perspective to the Board of Directors of a company which is usually controlled by the directors appointed by the majority or primary shareholder, based on which we have the following comments on the requirements in relation to independent directors in the Consultation Papers:

1. 根据《办法》第三十条规定，在基金管理公司只有一个股东的情形下，独立董事的人数不得少于董事会人数的 1/2。根据该等要求，如果董事会的人数为偶数，独立董事与非独立董事的人数可能相同；如果董事会的人数为奇数，则独立董事的人数会大于非独立董事。

Pursuant to Article 30 of the Measures, if an FMC has only one shareholder, no less than 1/2 of the directors shall be independent directors. According to such requirement, if the number of directors is an even number, the number of independent directors and non-independent directors may be the same; if the number of directors is an odd number, the number of independent directors will be greater than the number of non-independent directors.

如果独立董事的人数大于非独立董事，将出现独立董事控制董事会的情形。根据相关法律法规的规定，主要股东需要对基金管理公司的合规运作、风险处置等发挥作用却无法控制董事会，如果独立董事与主要股东无法在公司经营等问题上达成一致，很可能出现董事会僵局和公司经营运作瘫痪，不利于保护基金份额持有人的利益。另外，目前上市公司及其他金融机构治理规则中都没有出现独立董事不少于 50%的先例。

If the number of independent directors is greater than the number of non-independent directors, then the independent directors will control the board of directors. According to the relevant laws and regulations, the primary shareholder is required to play its role in the compliant operations, risk handling and other matters of the FMC, yet it does not have control of the board of directors. If the independent directors and the primary shareholder fail to agree on FMC operations and other issues, it is very likely that the board of director will be deadlocked and the operation of the FMC will become paralyzed, which would not be beneficial to the interests of fund unitholders. In addition, none of the current governance regulations for listed companies and other financial institutions requires that independent directors be at least 50% of the board of directors.

此外,基金管理公司是专业化的金融机构,且高度依赖专业人员的专业经验和专业管理能力。如将基金管理公司重大决策事项的控制权交给可能没有相关工作经验的独立董事,并不利于基金管理公司的专业化发展,也不利于中国公募基金行业的国际竞争力的提升。我们强烈建议修改《办法》第三十条以反映我们的顾虑。

In addition, an FMC is a professional financial institution that highly relies on the expertise and professional management ability of professional personnel. It is not conducive to promoting professional development of the FMC and increasing international competitiveness of China's retail fund industry if the decision-making of material matters of the FMC is left to independent directors, who may not have the relevant working experience. We strongly suggest that Article 30 of the Measures be amended to reflect our concerns.

2. 我们理解第三十四条要求基金管理公司制作的独立董事履职报告的原因是独立董事的职责非常重要,如我们先前所述,该等职责应当由股东任命的董事构成多数的董事会整体行使。我们担心披露独立董事履职报告,特别是表决情况,可能会泄露基金管理公司投研信息、商业秘密、财务信息等未公开信息。基于此,我们建议独立董事履职报告应向中国证监会进行备案,而不是披露给公众。

We understand that the report on independent directors' performance of duties required to be prepared by an FMC under Article 34 is due to the importance placed on their responsibilities, which we indicated earlier should be left to the entire board of directors with a majority of the directors appointed by the shareholders. We are concerned that the disclosure of the report on independent directors' performance of duties, especially the votes, may disclose non-public information of the FMC, such as company's investment and research, business secrets, financial information, etc. As such, we suggest that the report on independent directors' performance of duties shall be filed only with the CSRC and not disclosed to the public.

3. 根据《办法》第三十三条,基金管理公司的董事会审议公司重大创新业务、组织结构重大变化的,应当经过 2/3 以上的独立董事通过。

According to Article 33 of the Measures, significant innovative business of an FMC and material change of the organizational structure of the FMC presented to the board of directors of the FMC shall be approved by at least 2/3 of the independent directors.

就“重大创新业务”而言,我们建议明确这是否是指较宽泛的产品特点,例如产品策略、费用结构等。我们也建议将这一事项列为需独立董事重点关注的事项,而不是需要 2/3 以上的独立董事通过的事项。

In terms of “significant innovative business”, we suggest clarifying whether it refers to a broader range of product features, such as product strategy, fee structure, etc. We also suggest having this matter as one for independent directors to pay special attention instead of requiring approval by at least 2/3 of the independent directors.

就“组织结构重大变化”而言,我们建议删去这一事项。我们理解设置独立董事的原因主要是为了保护投资者的利益,但基金管理公司内部结构的变化似乎不太可能影响到投资者。

In terms of “material change of organizational structure”, we suggest removing this matter. We understand the reason to have independent directors is primarily to protect interests of investors, but it seems unlikely that the change of FMC’s internal structure would affect investors.

七、 基金管理公司的主营业务
VII. Principal Business of an FMC

征求意见稿首次明确要求基金管理公司应当主要从事公募基金管理业务。在此基础上,建议中国证监会能否明确“主要从事”的涵义。例如,这是否意味着申请设立基金管理公司的申请人提交给中国证监会的商业计划书中公募基金的数量需要大于私募资管产品?这是否意味着在基金公司展业的过程中,公募基金的资产规模要总是大于私募资管业务?这是否意味着公募基金的投研人员要多于私募资管业务的投研人员?在含义不清的情况下,为尊重基金管理公司的商业自治,建议删除该条款。

The Consultation Papers explicitly require an FMC to primarily engage in retail fund management business for the first time. We suggest that the CSRC clarify what is meant by “primarily engage in”. For example, does this mean that an FMC applicant needs to have more public mutual funds than private asset management products in its business plan submitted to the CSRC? Does this mean that the AUM of retail funds managed by the FMC shall always be greater than that of its private asset management products? Does this mean that the number of investment and research personnel of retail fund management business shall be greater than that of investment and research personnel of private asset management business? Due to ambiguity of this provision and in deference to the FMC’s business autonomy, we suggest that this provision be deleted.

八、 托管人流动性支持
VIII. Liquidity Support by the Custodian

为防范基金的流动性风险,征求意见稿新增了托管人流动性支持要求。根据《办法》第四十五条规定,基金管理公司可以依法与基金托管人签订协议,约定当相关产品出现巨额赎回时,基金托管人可以在一定授信额度内向该产品提供短期融资支持以支付投资者赎回款项。该短期融资支持产生的利息等费用由基金管理公司承担。基金管理公司应当在该融资支持行为发生当日向中国证监会及其派出机构报告。

To prevent liquidity risk of funds, the Consultation Papers added a new liquidity support requirement on the custodian. According to Article 45 of the Measures, an FMC may legally enter into an agreement with a fund custodian to stipulate that in the event of a large redemption of a relevant product, the fund custodian may provide short-term financing support for such product within certain credit line to pay redemption amounts. The interest

and other expenses arising from such short-term financing support shall be borne by the FMC. The FMC shall report to the CSRC and the local branch thereof on the day when such financing support occurs.

如果中国证监会希望基金管理公司利用授信额度的安排来确保基金能够满足在市场出现流动性风险时的大额赎回请求，我们认为，如果基金管理公司需要自己承担所有借款成本，这反而抑制了基金管理公司去采取此类授信额度安排。因为基金是此类短期授信额度安排的最终受益人，我们认为应当由基金来承担相应的成本。

If the CSRC wants FMCs to utilize credit line arrangement to ensure the funds can meet large redemption requests in the case of liquidity risk in the market, we think that the requirement that the FMC shall bear all financing costs would instead prevent the FMC from adopting such credit line arrangement. Since the funds are the ultimate beneficiaries of such short-term credit line arrangement, we think that it should be the funds that bear the relevant costs.

根据境外实践，UCITS 规则和《1940 年美国投资公司法》规定基金可以借款以满足赎回要求，但相关的做法也是由基金承担借款成本，而不是由基金管理人承担。希望中国证监会借鉴美国、欧洲的实践，对因授信发生的成本应当由基金承担，而非基金管理人承担。

According to offshore market practice, both UCITS rules and the U.S. Investment Company Act of 1940 provide that funds may borrow money to meet redemption requests and it is the funds, and not the fund manager, that bear the borrowing costs. We hope that the CSRC will consider the practices in the United States and Europe and change its position to require the funds, and not the FMCs, to bear the cost arising from the credit line arrangement.

九、基金管理公司接管程序

IX. Procedure for Regulatory Takeover of an FMC

我们注意到，中国证监会可以根据《办法》第四十九条责令公募基金管理人停业整顿、或者取消公募基金管理资格。虽然我们理解，中国证监会出于担心公募基金管理人的内控失败而接管其业务，但中国证监会能否确认“接管部门”的人员都拥有实际的行业经验以在接管期间妥善运营公司？否则，我们认为更常见的做法是暂停公募基金管理人的业务，并允许基金托管人指定新的公募基金管理人来管理基金，而不是由监管机构来管理业务。

We notice that the CSRC may order the RFMC to suspend its business and make rectification or cancel its retail fund management license according to Article 49 of the Measures.

Although we understand that the CSRC may take over the business of the RFMC out of concern over the internal control failure of the RFMC, can the CSRC confirm that all of the members of the “takeover group” possess actual industry experience for them to properly manage the RFMC’s operations during the takeover period? If no, we understand that the more common practice would be to suspend the business of the RFMC and allow the fund custodian to appoint a new RFMC to manage the fund, rather than to have the regulator to take over the business of the RFMC.

十、 股东重大报告时限要求

X. Time Limit for Reporting Material Events by FMC Shareholders

同《2012 公司管理办法》规定,《办法》第六十二条规定,基金管理公司股东发生重大事项的,应当在 5 日内向中国证监会派出机构报告。我们认为,对于境外股东而言,由于时区差异、语言翻译问题,5 日的时限要求显得局促,建议适当延长通知时限。

Same as the requirements of the 2012 FMC Measures, Article 62 of the Measures provides that if a material event happens to a shareholder of an FMC, the shareholder shall report to the local branch of the CSRC within five days. We think that considering the foreign shareholder's time zone difference, time for arranging translation of such report, the five-day time limit is tight. We suggest that the CSRC extend the time limit accordingly.

十一、 股东的报告义务

XI. Reporting Obligations of Shareholders

征求意见稿新增了股东的报告义务。根据《实施规定》相关规定,基金管理公司股东应当自年度结束之日起 3 个月内向基金管理公司报告下列信息: (i)履行股东权利和义务情况; (ii)履行承诺、落实法律法规和监管规定情况; (iii)股东的资质条件及其变化情况; (iv)股东的实际控制人资质条件及其变化情况; (v)所持基金管理公司股权被采取财产保全措施或者被强制执行情况; (vi)所持基金管理公司股权被质押或者解押情况; (vii)其他可能影响股东及其控制人资质条件变化或者导致所持基金管理公司股权发生变化的情况。

The Consultation Papers impose new reporting obligations on FMC shareholders. According to relevant requirements of the Implementation Measures, an FMC shareholder shall report the following information to the FMC within three months from the end of each year: (i) exercise of the shareholder's rights and performance of the shareholder's obligations; (ii) fulfilment of commitments and compliance with laws and regulations and regulatory requirements; (iii) qualifications of the shareholder and any change thereof; (iv) qualifications of the actual controller of the shareholder and any change thereof; (v) property preservation measures imposed on or judicial enforcement against the equity interest in the FMC held by the shareholder; (vi) pledge of or release of the pledge of the equity interest in the FMC held by the shareholder; (vii) other conditions that may affect the qualifications of the shareholder and its actual controller or result in any change of the equity interest in the FMC held by the shareholder.

我们认为,对于境外股东而言,完成上述报告义务的难度较大,尤其是股东的资质条件及其变化情况等内容。我们注意到,目前存续的合资基金管理公司有 44 家,这些合资基金管理公司的境外股东中不少可能达不到《办法》第二章规定的股东资质条件,例如“近 3 年金融资产管理业务规模、收入、利润、市场占有率等指标居于国际前列”等,因此这些存续的合资基金管理公司是否会面临《中华人民共和国证券投资基金法》第二十三条规定的被责令限期改正的风险?

行业对这条的担忧较大。结合我们的前文意见所述，我们希望删去该等条款，或者明确该等条款应不适用于目前存续的基金管理公司的股东（包括境外股东）。

We understand it would be very difficult for a foreign shareholder to fulfil the above-mentioned reporting obligations, especially the information such as the qualifications of the shareholder and any change thereof. We notice many foreign shareholders of the existing 44 joint venture FMCs may not meet the qualification requirements set out in Chapter 2 of the Measures, e.g. “the indicators such as AUM, revenue, profits, market share of the foreign shareholder’s financial asset management business shall be at the forefront globally in the preceding three years”. As such, would these existing joint venture FMCs face the risk of being ordered to rectify within the specified time limit based on Article 23 of the PRC Securities Investment Funds Law? The industry is very concerned about this requirement. As mentioned in our comments above, we would like to see these provisions deleted, and if not, we suggest making it clear that shareholders (including foreign shareholders) of existing FMCs are exempt from these provisions.

十二、 中国证监会的延伸检查

XII. Expanded Inspection by the CSRC

征求意见稿新增了中国证监会延伸检查的措施。根据《办法》第六十五条规定，中国证监会及其派出机构可以对公募基金管理人的股东、实际控制人、基金服务机构进行延伸检查。关于此项措施，建议中国证监会明确对不在中国境内的基金管理公司股东的延伸检查方式。与中国证监会现行做法相比，此条规定的对股东、实际控制人、基金服务机构的“延伸检查”的范围是什么以及检查的方式是什么？

The Consultation Papers added expanded inspection measures that the CSRC may adopt. According to Article 65 of the Measures, the CSRC and the branches thereof may conduct an expanded inspection on the shareholder(s), actual controller and fund service providers of the RFMCs. We suggest that the CSRC clarify how it would conduct such expanded inspection on a shareholder that is not based in China. Compared with the existing approach of the CSRC, what is the scope and manner of such expanded inspection on the shareholder(s), actual controller and fund service providers?

十三、 涉外事项

XIII. Foreign-related Matters

我们注意到与 2020 年 3 月 1 日生效的《证券法》的规定类似，《办法》第六十七条规定，未经中国证监会和国务院有关主管部门同意，任何单位和个人不得擅自向境外提供与证券业务活动有关的文件和资料。

We notice that similar to the requirements of the *PRC Securities Law* that came into effect on 1 March 2020, Article 67 of the Measures provides that without consent of the CSRC and

relevant competent authority under the State Council, no entity and individual may provide documents and materials in relation to securities business activities outside of China.

但是，我们也注意到本次征求意见稿的立法目的包括加强建设行业道德行为、提高风险意识以及鼓励建立世界级的资产管理机构。我们认为，允许与其他市场进行关于证券市场实践的信息沟通，可以促进经验交流，有助于实现征求意见稿的目的。我们认为第六十七条的表述过于严格，可被理解为不允许基金管理公司向其境外股东提供其有权提供的关于其业务的信息，并且会使基金管理公司的境外股东无法遵守其自身的监管规定。

However, we observe that the legislative purposes of the Consultation Papers include enhancing the cultivation of ethics in the industry, increasing risk awareness and encouraging the establishment of world-class asset management institutions. We believe that permitting communications with other markets on securities market practices can promote the exchange of experience and be helpful to the realization of the purposes of the Consultation Papers. We think that Article 67 is worded too strongly as it may be viewed as preventing the FMC from providing information about its business to its foreign shareholder which such shareholder is entitled to, and preventing the FMC's foreign shareholder from complying with its own regulatory requirements.

我们强烈建议中国证监会考虑修改第六十七条，并至少解决前述的顾虑，包括允许基金管理公司：
We strongly urge the CSRC to consider amending Article 67 to at least address the concerns mentioned in the foregoing, such as by allowing an FMC:

- (1) 为了集团内部控制、合规及风险管理的目的向其境外股东提供信息；
To provide information to its foreign shareholder for group internal control, compliance and risk management purposes;
- (2) 基于适当订立的研究服务水平协议，与其境外股东及/或关联方共享投资研究内容；以及
To share investment research information with its foreign shareholder and/or affiliates based on research service agreements entered into properly between the FMC and such parties; and
- (3) 根据适当订立的投资咨询协议向境外关联方或境外客户提供非全权投资咨询。
To provide non-discretionary investment advisory service to offshore affiliates or offshore clients based on investment advisory agreements entered into properly between the FMC and such parties.

十四、 一般行政监管措施

XIV. General Administrative Regulatory Measures

《办法》第六十九条规定，公募基金管理人及其股东、股东的实际控制人、基金托管人、基金服务机构违反法律、行政法规、本办法及中国证监会其他规定的，中国证监会及其派出机构可以对其采取监管谈话、出具警示函等一般行政监管措施。我们理解中国证监会对境外股东和实际控制人没有管辖权，请明确针对境外股东和实际控制人是否也将实施一般的行政监管措施。

Article 69 of the Measures provides that if an RFMC, its shareholder(s) or the actual controller of the shareholder(s), fund custodians or fund service providers violate laws, administrative regulations, the Measures and other requirements of the CSRC, the CSRC and the local branches thereof may impose general administrative regulatory measures such as ordering to attend a meeting with the regulator, issuance of a warning letter, etc. Please clarify whether such general administrative regulatory measures are also applicable to foreign shareholders and actual controller as we understand that the CSRC have no jurisdiction over the foreign shareholder and actual controller.

十五、 申报材料和申请流程

XV. Application Materials and Application Process

根据征求意见稿规定，审核期间申请材料涉及的事项发生重大变化的，申请人应当自变化发生之日起5个工作日内向中国证监会提交更新材料。此处未说明“重大变化”的标准，建议中国证监会予以明确。

According to relevant requirement of the Consultation Papers, in the case of material change of matters involved in the application materials while the application materials are under review, the applicant shall submit updated materials to the CSRC within five working days from the occurrence of such change. This requirement is silent on the materiality threshold. We suggest that the CSRC clarify this point.

此外，征求意见稿首次对筹建期时限作了明文规定，即基金管理公司设立申请获批后，发起人应当向公司登记机关申请设立登记，领取营业执照，并在6个月内依法完成筹建工作。我们注意到，根据《商业银行理财子公司管理办法》规定，商业银行理财子公司的筹建期为6个月，且可在筹建期限届满前1个月申请延期一次，延长期限不超过3个月。据此，我们建议参照商业银行理财子公司的规定，在筹建期6个月的基础上，规定基金管理公司可申请延长一次，延长期限不超过3个月。

In addition, the Consultation Papers impose explicit requirement on the preparatory period of the FMC for the first time, i.e., the promoter shall apply to the company registration agency for registration of the FMC, obtain the business license and complete the preparation for opening of the FMC within six months from the date of approval of the application for establishment of the FMC. We notice that, according to the *Administrative Measures for Wealth Management Subsidiaries of Commercial Banks*, the preparatory period of a wealth

management subsidiary of a commercial bank is six months, which may be extended upon application submitted one month before expiry of the preparatory period and the extended period of time shall not be more than three months. As such, we suggest that the CSRC follow the requirements of *Administrative Measures for Wealth Management Subsidiaries of Commercial Banks* and provide that the preparatory period of the FMC may be extended once upon application, and the extended period of time shall not be more than three months.

本协会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《办法》及《实施规定》中采纳本函的意见及建议。

ASIFMA is grateful for the opportunity to comment on the Consultation Draft and look forward to the issuance of the Measures and the Implementation Provisions that takes into consideration our comments and suggestions made in this letter.

如果您对以上内容有任何疑问，请联系本会的资产管理部主管沈玉琪女士(电邮 eshen@asifma.org 电话 +852 2531 6570)。

If you have any questions regarding any of the foregoing, please contact Eugenie Shen, Head of Asset Management Group of ASIFMA, at eshen@asifma.org or Tel: 2531 6570.

本函由我会会员通力律师事务所在广泛征求我会资产管理会员意见后撰写。

This letter is prepared by ASIFMA member Links Law Offices based on the comments from the broad AAMG membership.

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Yours sincerely,

沈玉琪

沈玉琪 Eugenie Shen

董事总经理 Managing Director

资产管理部主管 Head of Asset Management Group

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