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中国证券监督管理委员会
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China Securities Regulatory Commission
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尊敬的先生/女士:
Dear Sir/Madam,

关于证监会《证券投资基金托管业务管理办法》(征求意见稿) RE: CSRC Administrative Measures on Securities Investment Funds Custody Businesses (Consultation Draft)

亚洲证券业与金融市场协会(ASIFMA)¹在此谨代表其会员机构递交关于中国证券监督管理委员会(“证监会”)2020年5月8日发布的《证券投资基金托管业务管理办法》(征求意见稿)(“《征求意见稿》”)及起草说明(“《起草说明》”)的意见。

On behalf of its members, the Asia Securities Industry & Financial Markets Association ("ASIFMA")² would like to thank the China Securities Regulatory Commission ("CSRC") for the opportunity to submit the comments of its members on the *Administrative Measures on Securities Investment Funds Custody Businesses* ("**Consultation Draft**") (《证券投资基金托管业务管理办法(征求意见稿)》) and

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、专业咨询机构及市场基础设施服务供应商等超过135家来自买卖双方的领先金融机构组成。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。ASIFMA提倡稳定、创新、竞争和高效的亚洲资本市场,从而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。

² ASIFMA is an independent, regional trade association with over 135 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

the corresponding draft statement (“**Draft Statement**”) issued by the CSRC on 8 May 2020 to solicit public comments.

ASIFMA 会员机构热切欢迎并赞赏证监会为支持外国银行在华分行 (以下简称“**外资分行**”) 申请证券投资基金托管业务资格所作出的努力。ASIFMA 会员也很欣喜地注意到《征求意见稿》统一了商业银行和其他金融机构开展基金托管业务的要求，并完善了基金托管业务的监管要求。ASIFMA members welcome and appreciate the efforts made by the CSRC to facilitate the application for securities investment funds custody business qualification by local branches of foreign banks (“**foreign banks’ branches**”). ASIFMA members are also pleased to see that the Consultation Draft has unified the requirements for commercial banks and other financial institutions carrying out funds custody business, thereby improving the regulatory framework.

我们相信《征求意见稿》一旦发布，可以有效支持外资分行在中国境内开展证券投资基金托管业务并将境外的最佳实践带入中国，同时，可以更好地规范基金托管业务。然而，我们注意到仍有一些尚未明确的问题亟待证监会的进一步澄清。我们的疑问和建议主要涉及以下内容：

We believe that the proposals in the Consultation Draft, once finalised, can effectively support the branches of foreign banks to carry out securities investment funds custody businesses in China, and can eventually bring global best practices to China. However, we notice that there are still some outstanding issues or points, on which we would request further clarification from the CSRC. Our questions and comments are organised along the following lines:

- 1 – 净资产要求/Requirements on Net Assets
- 2 – 境外总行对境内外资分行的流动性支持机制/Liquidity Support Provided by Overseas Parent Banks to Local Branches
- 3 – 券商结算模式/Settlement via Securities Brokers
- 4 – 跨境数据交换/Cross border Data Transfer
- 5 – 基金业务数据及投资者信息提供/Provision of Fund Business Related Data and Investor Information
- 6 – 外国银行在境内多家分行同时开展基金托管业务/Multiple Local Branches Carrying out Funds Custody Businesses
- 7 – 监管合作谅解备忘录/MOU on Regulatory Cooperation
- 8 – QDII 托管业务/QDII Custody Businesses

1 净资产要求

Requirements on Net Assets

1.1 建议允许外国银行境内子行在申请基金托管业务资质时其净资产也可按境外总行计算 To allow a foreign bank's branch to refer to the parent bank's net assets when applying for the funds custody business qualification

《征求意见稿》第八条第(一)款规定了申请基金托管资格的商业银行及其他金融机构的净资产不低于 200 亿元人民币。第九条进一步规定，外资分行的净资产等财务指标可按境外总行的指标计算。

Article 8, paragraph 1 of the Consultation Draft provides that the net assets of a commercial bank or other type of financial institution applying for funds custody business qualification shall not be less than RMB 20 billion. Article 9 further stipulates that foreign bank's branches may refer to the parent banks' financial thresholds, such as net assets, when applying for the funds custody business qualification.

考虑到部分外国银行希望通过其境内子行申请基金托管业务资质，但该等境内子行的净资产要求可能不足 200 亿元人民币，我们建议修改《征求意见稿》第九条，以允许满足适当条件(类似于依赖总行支持的外国银行境内分行所需满足的条件)的外国银行境内子行在申请基金托管业务资质时其净资产亦可按境外总行计算，由其境外总行向其提供流动性支持。由境外总行向其境内子行提供流动性支持有利于境内子行向其客户提供更加稳定的服务，也将进一步支持外国银行子行在中国境内开展业务和中国市场的进一步开放。

Some foreign banks propose to apply for the funds custody business qualification via their domestic subsidiaries, but the net assets of such domestic subsidiaries may be less than RMB 20 billion. Thus, we recommend to amend Article 9 to allow foreign banks' local incorporated subsidiaries to refer to their parent banks' net assets as well as the liquidity support provided by their overseas parent banks when applying for the funds custody business qualification, under appropriate conditions similar to those imposed on foreign banks' branches relying on parent banks' support. Parent banks' liquidity support would help the domestic subsidiaries in providing more robust services to their customers, which may facilitate the business development of foreign banks in China and the further opening up of China's financial markets.

1.2 建议统一基金托管业务资格和托管业务结算资格净资产要求 To unify the requirements on net assets for the funds custody business qualification and the custody business settlement qualification

根据《中国证券登记结算有限责任公司结算参与人管理工作指引(2017 年修订版)》，商业银行就其托管的基金等产品(不含 QFII 和 RQFII)，根据自身需要拟直接参与多边净额担保结算等业务的，应向中国证券登记结算有限责任公司(CSDC)申请结算参与人资格，商

业银行申请托管业务结算资格的，应满足最近 3 个会计年度的年末净资产不低于人民币 400 亿元的要求。

Pursuant to the *Guidelines on the Management of Settlement Participants in China Securities Depository and Clearing Corporation Limited (CSDC - 2017 Revision)*, commercial banks, which intend to directly participate in the business of multilateral secured net settlement, as per their actual needs for funds and other products (excluding QFIIs and RQFIIs) under their custody, shall apply to the CSDC for settlement participant qualification. Commercial banks applying for custody business settlement qualification shall meet the requirement that their year-end net assets, of the past three fiscal years, are not less than RMB 40 billion.

根据《起草说明》，提高该等净资产要求的原因之一是已获得托管资格的机构通常需要同时取得结算资格，以满足基金托管完整业务链条要求。我们也认为获得 CSDC 的结算参与人资格是商业银行向其托管客户提供交易所市场投资的结算服务，更好地安全保管客户资产、提高结算效率和确保基金托管业务完整性的重要组成部分。

As pointed out in the Draft Statement, one of the reasons for raising the threshold for net assets is that the institutions with custody qualification usually need to obtain a settlement qualification, required for carrying out the fund custody business. We agree that securing a settlement participant qualification is a requisite for custodian banks to provide settlement services for their clients to trade in the exchange market, to better safekeep client assets, to improve settlement efficiency, and to ensure the integrity of the custody business.

然而目前《征求意见稿》对于申请基金托管业务资格净资产要求是人民币 200 亿元，而 CSDC 规则对于托管业务结算资格净资产要求为人民币 400 亿元，两者存在差异。我们建议中国证监会和 CSDC 考虑将两个净资产标准统一为人民币 200 亿元。

However, the current Consultation Draft requires an applicant for fund custody business qualification to have minimum net assets of RMB 20 billion, while the rules of CSDC require an applicant for custody business settlement qualification to have minimum net assets of RMB 40 billion. Given such difference, we recommend the CSRC and the CSDC to consider unifying the two thresholds imposed on net assets, preferably to RMB 20 billion.

2 境外总行对境内外资分行的流动性支持机制

Liquidity Support Provided by Overseas Parent Banks to Local Branches

《征求意见稿》第十七条明确规定外资分行境外总行应当根据分行的托管规模，建立相应的流动性支持机制。《征求意见稿》第十二条亦要求申请基金托管业务资质的应在申请资料中提交对分行开展基金托管业务建立相应流动性支持机制的说明。我们希望证监会可以进一步明确外资分行开展基金托管业务的流动性要求，以及对于境外总行向其境内分行提供流动性支持的具体要求。

Article 17 of the Consultation Draft expressly provides that the parent bank of a foreign bank's branch shall establish a liquidity support mechanism as per the size of assets under the local branch's custody. Article 12 requires an applicant for the fund custody business qualification to

provide a description of the proposed liquidity support mechanism for its branches that are carrying out fund custody business. We would request the CSRC to further clarify the liquidity requirements for foreign bank's branches that are carrying out fund custody business, and the specific requirements for overseas parent banks that are providing liquidity support to their branches in mainland China.

3 券商结算模式

Settlement via Securities Brokers

我们理解，目前公募基金的结算模式可采用券商结算模式或托管行结算模式。2019年初，证监会亦下发了《关于新设公募基金管理人证券交易模式转换有关事项的通知》要求新设公募基金管理人采用券商结算模式。根据《起草说明》，将申请机构净资产要求从人民币 20 亿元提升至人民币 200 亿元的原因之一是已获得托管资格的机构通常需同时取得结算资格。如外资分行无意向取得结算资格，而意向采取券商结算模式，则应无需满足 CSDC 对于结算参与人的资质要求。

We understand that currently the public securities investment funds may conduct settlement via either securities brokers or via custodian banks. At the beginning of 2019, the CSRC also issued the *Circular on Matters Concerning the Switch between Different Securities Trading Modes of Newly Established Public Fund Management Companies*, which requires newly established public fund management companies to settle via securities brokers. Pursuant to the Draft Statement, one of the reasons for increasing the amount of net assets required for applicants from RMB 2 billion to RMB 20 billion is that the institutions with fund custody qualification usually need to simultaneously obtain settlement qualification as well. If a foreign bank's branch does not propose to obtain the settlement qualification, but instead intends to settle via securities brokers, it should not be required to meet the qualification requirements for settlement participants prescribed by the CSDC.

3.1 建议明确符合条件的外资商业银行应当申请 CSDC 结算参与人资格

To allow qualified local foreign commercial banks to apply for the CSDC clearing participant qualification

我们理解，国内市场上绝大部分公募基金和托管银行仍采用托管行结算模式而目前，证监会正在推广券商结算模式。从海外实践来看，证券交易的结算是托管银行的主要职责之一，大多数全球托管银行都是当地市场的结算参与者。我们期待商业银行能够灵活地基于商业和效率方面的考虑，自行决定结算模式。对于符合结算参与者资格的外资商业银行(包括外国银行境内子行和外资分行，下同)，允许其申请并获得 CSDC 结算参与者资格，能够在市场上创造“内外资相一致”的公平竞争环境。

We understand that most public securities investment funds and custodian banks in the domestic market still settle via custodian banks, and we understand that the CSRC is currently promoting the broker settlement model. According to overseas practices, the settlement of securities transactions is one of the main responsibilities of custodian banks, and most global

custodian banks are also the clearing participants in local markets. We would like commercial banks to be given flexibility to decide their own settlement model based on commercial and efficiency considerations. For those qualified local foreign commercial banks (including locally incorporated foreign banks and foreign bank's branches, same below), allowing them to apply for and obtain the CSDC clearing participant qualification could create a fair and equal competitive environment for both domestic and foreign institutions.

如前所述，CSDC 结算参与者资格是托管银行向其托管客户提供交易所市场投资的结算服务、更好地安全保管客户资产、提高结算效率和确保基金托管业务完整性的重要组成部分。建议在法规中明确，符合条件的外资托管银行应当申请 CSDC 结算参与者资格。如果外资商业银行未满足 CSDC 对于结算参与者资格的净资产要求，则应允许其净资产按境外总行计算。

As mentioned above, the CSDC clearing participant qualification is an important part for custodian banks to provide settlement services for their clients to trade in the exchange market, to better safekeep clients' assets, to improve the settlement efficiency, and to ensure the integrity of the custody business. We request the CSRC to make it clear in the relevant regulations that qualified local foreign commercial banks could apply for the CSDC clearing participant qualification. In case where a locally incorporated foreign bank or a foreign branch does not reach that threshold to qualify as a CSDC's settlement member, it should be allowed to refer to its parent banks' net assets.

3.2 建议明确允许符合条件的外资商业银行申请第三方存管银行资格

To allow qualified foreign commercial banks to apply for the third party depository bank qualification

在券商结算模式下，需要通过第三方存管银行进行托管银行和券商之间的资金划转。目前，第三方存管银行均为中资托管银行。对于境内外资托管银行而言，在公募基金采用券商结算模式之下，账户架构和业务操作流程更为复杂，存在潜在的操作风险。境内外资托管银行取得第三方存管银行资格，可以优化操作流程，提高资金使用效率，降低操作风险，同时也能够在市场上创造“内外资相一致”的公平竞争环境。

Settlement via securities brokers requires a third party depository bank to facilitate the fund transfer between the custodian bank and the securities broker. Currently, all third party depository banks are Chinese custodian banks. If public securities investment funds settle via securities brokers, the relevant account structure and business operation process are more complicated, which would expose local foreign custodian banks to potential operational risks. Obtaining the third party depository bank qualification could assist local foreign custodian banks to optimize their operational processes, improve capital efficiency, lower operational risks and create a fair and equal competitive environment for domestic and foreign institutions.

4 跨境数据交换

Cross border Data Transfer

《征求意见稿》第十二条要求外资分行在提交申请时应提交境外总行与该分行之间系统隔离、访问控制、信息隔离等安全保障制度及措施，以及规范数据跨境流动管理的说明文件。

Article 12 of the Consultation Draft requires a foreign bank's branch, when submitting the application, to provide: (1) procedures and measures that they have in place to ensure the system segregation, access control, data segregation, etc., between the branch and its overseas parent bank; and (2) description on the management of cross border data transfer.

4.1 建议明确是否允许跨境数据传输以及外资分行使用境外总行系统

To clarify whether cross border data transfer and use of offshore systems of parent bank are allowed for a foreign bank's branch

我们理解，《征求意见稿》并未禁止跨境数据传输，亦并未禁止外资分行使用境外总行在海外的系统，但外国银行应当在总行和分行之间建立完善的内部控制流程和措施以保障系统隔离、访问控制和信息隔离。如贵会能确认我们上述理解，我们将不胜感激。

We understand that the Consultation Draft does not prohibit cross border data transfer, nor does it prohibit a foreign bank's branch from leveraging the offshore systems of its overseas parent bank, provided that the foreign bank should have well-established internal control procedures and measures in place to ensure system segregation, access control and data segregation between the parent bank and its local branches. We would request the CSRC to confirm whether our above understanding is correct.

4.2 建议明确可以跨境传输的数据类型

To specify the types of data that can be transferred abroad

在《中华人民共和国网络安全法》及其细则的基础上，我们建议证监会进一步明确何种类型的数据可以传输出境并在境外保存以及何种类型的数据必须储存在中国境内。

In light of the *Cybersecurity Law of the People's Republic of China* and its implementing rules, we request the CSRC to further clarify what types of data can be transferred and stored abroad and what types of data must be stored locally.

5 基金业务数据及投资者信息提供

Provision of Fund Business Related Data and Investor Information

《征求意见稿》第三十一条规定“除法律法规和中国证监会另有规定外，基金托管人不得以任何方式向其他机构、个人提供基金业务数据及投资者信息。”考虑到外资分行根据其总行所在地法律法规的要求可能需要满足其境外母行所在地监管要求，同时境外总行可能向外资分行提供业务或技术支持以使境内分行可以更好地开展基金托管业

务，分行可能需要向其境外总行的监管机构、关联方和境外总行服务提供商提供相关信息，建议证监会进一步明确向境外总行提供相关数据和信息的要求。

Article 31 of the Consultation Draft stipulates that unless otherwise prescribed by laws, regulations, or the CSRC, fund custodians should not provide fund business related data and investor information to other institutions or individuals in any manner. A foreign bank's branch may be required to comply with the regulatory requirements of its home jurisdiction. At the same time, the overseas parent bank may provide business or technical support to the local branches to facilitate their fund custody business. Accordingly, the local branch of a foreign bank may need to provide relevant information to the regulatory authorities, related parties, or offshore service providers of its parent bank. Thus, we request the CSRC to further clarify the requirements for providing relevant data and information to overseas parent banks.

6 外国银行在境内多家分行同时开展基金托管业务

Multiple Local Branches Carrying out Funds Custody Businesses

6.1 建议明确外国银行多家在华分行同时开展基金托管业务的资质要求

To clarify the qualification requirements for multiple branches carrying out fund custody business simultaneously

部分外国银行在中国境内有多家分行并希望通过多家分行同时开展基金托管业务。我们建议证监会明确：(1)在此种情形下，是否每一家外资分行均需分开申请基金托管业务资质或可合并申请基金托管业务资质；(2)在多家外资分行同时开展基金托管业务资质的前提下，《征求意见稿》第八条对员工、营业场所、安全监控系统、业务技术系统等方面的要求，是否每一家开展业务的外资分行均需满足，抑或拟开展业务的外资分行之间可以汇总、分享资源。

Some foreign banks have set up multiple local branches and desire to conduct fund custody business via multiple branches at the same time. We request the CSRC to clarify: (1) in this case, whether each branch needs to apply for the fund custody business qualification separately or whether all the branches may apply for the fund custody business qualification on a consolidated basis; (2) if multiple branches of a foreign bank simultaneously conduct the fund custody business, would every branch need to meet the requirements with respect to employees, business premises, security monitoring systems, business IT systems, etc., in accordance with Article 8 of the Consultation Draft, or would those branches be allowed to aggregate and share their respective resources.

7 监管合作谅解备忘录

MOU on Regulatory Cooperation

《征求意见稿》第九条规定外资分行申请托管牌照的，其境外总行所在国家或者地区的相关金融监管机构已与中国证监会或者中国证监会认可的机构签定证券监管合作谅解备忘录，并保持着有效的监管合作关系。在某些司法管辖区，托管服务的提供不受

证券监管机构的监管，而仅受银行监管机构的监管。因此，我们建议证监会认可美国相关金融监管机构与证监会认可的机构之间的任何形式的监管合作谅解备忘录和其他信息共享机制。对于银行监管合作而言，我们理解，中国银行保险监督管理委员会已与诸多司法管辖区的银行监管机构签订了跨境银行监管合作谅解备忘录。对于证券监管合作而言，我们注意到证监会和大多数证券监管机构虽然没有签订双边谅解备忘录，但均已签署国际证监会组织的多边谅解备忘录。我们建议将证监会的《征求意见稿》修订如下：

Article 9 of the Consultation Draft stipulates that if a foreign bank's branch applies for the fund custody qualification, the relevant financial regulatory authority of its home jurisdiction should have entered into a memorandum of understanding (MOU) on securities regulatory cooperation with the CSRC or other institution recognized by the CSRC, and should have maintained an effective regulatory cooperative relationship. For some jurisdictions, the provision of custody services does not come under the supervision of the securities regulators, but only the banking regulators. As such, we recommend that CSRC recognizes any form of regulatory cooperation MOU and other information sharing mechanism between relevant US financial regulator and an authority recognized by the CSRC. For banking regulatory cooperation, we understand that CBIRC has entered into MOUs with banking authorities in many jurisdictions for cross-border banking cooperation. For securities regulatory cooperation, we note that CSRC and most security regulators are already signatories to the IOSCO multilateral MOU, even in the absence of any bilateral MOU. We recommend that the CSRC Consultation Draft be amended as follows:

“所在国家或者地区具有完善的金融法律和监管制度，相关金融监管机构已与中国证监会或者中国证监会认可的机构签定监管合作谅解备忘录，并保持着有效的监管合作关系。”

“the sound financial laws and regulatory systems have been established in the country or region where it is located; relevant financial regulator has concluded the memorandum of understanding with the CSRC or an authority recognized by the CSRC, and maintains an effective relationship of regulation cooperation.”

8 QDII 托管业务

QDII Custody Business

《征求意见稿》第二十九条规定“基金托管人应当加强对基金托管相关准入管理、业务活动、信息系统和人员考核等方面的集中统一管理，不得以授权、承包、合作等方式开展基金托管业务。”根据《合格境内机构投资者境外证券投资管理试行办法》第二十一条：“对基金、集合计划的境外财产，托管人可授权境外托管人代为履行其承担的受托人职责。”我们理解《征求意见稿》第二十九条的规定并不影响 QDII 业务项下托管人授权境外托管人就基金境外资产承担职责。我们期待贵会能就此问题加以澄清。

Article 29 of the Consultation Draft provides that a fund custodian shall strengthen its centralized and unified management of fund custody related matters, such as client on-

boarding, business activities, IT systems and personnel assessment, and shall not conduct fund custody business through a form of delegation, outsourcing or cooperation with third party. According to Article 21 of the *Administrative Measures on Foreign Securities Investments by Qualified Domestic Institutional Investors (for Trial Implementation)*, a fund custodian may delegate a foreign custodian to perform the custodian duties in relation to offshore assets of investment funds or collective schemes on its behalf. We understand that Article 29 of the Consultation Draft does not affect the delegation of responsibility in relation to the offshore assets of funds under the QDII business. We would request the CSRC to provide further clarification on this issue.

ASIFMA 由衷感谢证监会对本信函中提及的建议和问题予以考虑，并非常乐意适时与证监会进行更为详细的讨论。如果您有任何疑问，请联系[lchao@asifma.org]或致电[+852 2531 6550]。本信函由 ASIFMA 会员机构君合律师事务所根据 ASIFMA 众多会员机构的反馈而准备。

ASIFMA deeply appreciates CSRC's consideration of the points and questions raised in this submission and we look forward to further engagement on these important issues in greater detail. Should you have any questions, please do not hesitate to contact me via email (lchao@asifma.org) or via telephone (+852 2531 6550). This submission was prepared by PRC law firm JunHe LLP, an ASIFMA member, based on feedback from the wider ASIFMA membership.

Sincerely,



Lyndon Chao
Managing Director, Head of Equities, Post Trade and China Capital Markets Committee
Asia Securities Industry and Financial Markets Association