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中国证券监督管理委员会
市场二部
富凯大厦
西城区金融大街 19 号
北京, 中国 邮编 100033

China Securities Regulatory Commission
Market Department (II)
Focus Place
19 Jinrong Street, Xicheng District
Beijing, China 100033

电邮 Email：scerbu@csrc.gov.cn

尊敬的先生/女士:

Dear Sir/Madam,

关于《关于加强私募投资基金监管的若干规定（征求意见稿）》的意见

Re: *Measures for Strengthening the Supervision and Administration of Private Investment Funds (Consultation Paper)*

亚洲证券业与金融市场协会（“**ASIFMA**”）[1]的资产管理部（“**AAMG**”）谨代表我部会员向中国证券监督管理委员会（“**证监会**”）提交我们对证监会于 2020 年 9 月 11 日发布的《关于加强私募投资基金监管的若干规定（征求意见稿）》（“**《私募监管规定》**”）的一些意见和建议。

On behalf of our 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 for Strengthening the Supervision and Administration of Private Investment Funds (Consultation Paper)* (the “**Private Fund Rules**”) released by the China Securities Regulatory Commission (“**CSRC**”) on 11 September 2020.

[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超过 135 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 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.

我们欢迎《私募监管规定》对私募基金行业的规则梳理和监管底线的重申。我们理解《私募监管规定》在一定程度上将中国证券投资基金业协会（“**基金业协会**”）的部分自律规则上升为证监会的部门规章或规范性文件，并对其中的部分规则进行了细化和补充。这在一定程度上改善了目前私募基金法规的法律法规层次不高的状况，同时也有利于加强对违规私募基金活动的打击和整个私募基金行业的持续发展。

We welcome the collation of the rules and the reiteration of the regulatory bottom lines in the Private Fund Rules with respect to the private fund industry. We understand that, to some extent, the Private Fund Rules have upgraded certain self-disciplinary rules of the Asset Management Association of China (“**AMAC**”) to the level of departmental rules or regulatory documents of the CSRC, and have refined and supplemented some of these requirements. This has, to a certain extent, improved the current situation with relatively low level of laws and regulations applicable to private funds, and at the same time is conducive to strengthening the crackdown on non-compliant private fund activities and the sustainable developments of the whole private fund industry.

我们在此列出我会对《私募监管规定》的意见，供您参考。

Set below for your consideration are our comments on the Private Fund Rules.

1. 背景 Background

近年来，全球资产管理机构响应中国金融行业对外开放政策，积极开拓中国金融市场。自 2016 年 6 月 30 日基金业协会发布《私募基金登记备案相关问题解答(十)》，允许符合条件的外商独资企业（“**WFOE**”）申请登记成为私募证券基金管理人以来，已有 30 家 WFOE 先后完成登记，另有许多 WFOE 正在申请登记或准备申请登记为外商独资私募证券投资基金管理人（“**PFM WFOE**”）。自 2012 年上海市发布《关于本市开展合格境内有限合伙人试点工作的实施办法》，试点开展 QDLP 业务以来，上海、北京等地已有多家全球资产管理机构在中国设立的 WFOE 或合资企业（“**QDLP 基金管理人**”）获得 QDLP 业务资格及额度。

In recent years, global asset managers have responded to the opening up policies of China’s financial industry and actively explored China’s financial market. Since AMAC issued the *Q&As on Registration and Filing of Private Funds (No.10)* on 30 June 2016, which allows eligible wholly foreign-owned enterprises (“**WFOEs**”) to apply for the registration as private securities investment fund managers, 30 WFOEs have already successfully completed such registration, and many others are in the process of applying or preparing to apply for registration as a wholly foreign-owned private securities fund manager (“**PFM WFOE**”). Since Shanghai issued in 2012 *the Implementation Measures on the Pilot Work of Qualified Domestic Limited Partnership (QDLP) in the City* and initiated the pilot program to develop the QDLP business, numerous WFOEs and joint ventures (“**QDLP fund managers**”) set up by global asset managers in China have obtained QDLP qualification and quota in Shanghai, Beijing, etc.

我部此次对《私募监管规定》所提的意见，主要出于促使 PFM WFOE 及 QDLP 基金管理人在中国能够更好地展业之目的。

AAMG's comments on the Private Fund Rules are mainly aimed at enabling PFM WFOE and QDLP fund managers to better develop their businesses in China.

2. PFM WFOE 及 QDLP 基金管理人的名称及经营范围

Name and Business Scope of PFM WFOEs and QDLP Fund Managers

《私募监管规定》第三条第二款规定，私募基金管理人应当在名称和经营范围中标明"私募基金"、"私募基金管理"等体现受托管理私募基金特点的字样。我们理解，该条规定的主要意图在于规范私募基金管理人的名称和经营范围，从而将私募基金管理作为其主营业务，并与其他投资管理业务相区分。

The second paragraph of Article 3 of the Private Fund Rules requires private fund managers to specify the words such as "private fund" and "private fund management" in their name and business scope to reflect the characteristics of entrusted management of private funds. We understand such requirement is mainly intended to standardize the name and business scope of private fund managers so as to make private fund management their primary business and to distinguish private fund management from other asset management businesses.

《私募基金管理人登记须知（2018 年 12 月）》第四条第一款规定，私募基金管理人的名称和经营范围中应当包含"基金管理"、"投资管理"、"资产管理"、"股权投资"、"创业投资"等相关字样。目前已经登记的私募基金管理人（包括 PFM WFOE 及 QDLP 基金管理人）均根据基金业协会的上述规定进行名称和经营范围登记。

The first paragraph of Article 4 in the *Instructions on Registration of Private Fund Managers (December 2018)* prescribes that the name and business scope of a private fund manager shall include words such as "fund management", "investment management", "asset management", "equity investment", "venture capital" or similar words. Private fund managers having registered with AMAC (including PFM WFOE and QDLP fund managers) have followed such rules issued by AMAC to register their name and business scope.

由于《私募监管规定》第三条第二款所要求加入的"私募基金"和"私募基金管理"的字样比上述基金业协会的规定所要求的范围要窄，我们想要了解这将如何影响已经在基金业协会登记的私募基金管理人。我们的会员希望已登记的私募基金管理人可被豁免或者至少在他们下次需要修改其经营范围之前被豁免遵守该名称和经营范围修改的规定。

As the terms "private fund" and "private fund management" required under the second paragraph of Article 3 of the Private Fund Rules are narrower than that required under the aforementioned AMAC instructions, we wonder how this would affect private fund managers already registered with AMAC. Our members would prefer that existing private fund managers

be exempted from complying with the second paragraph of Article 3 of the Private Fund Rules, at least until when they need to next amend their business scope.

但是，我们理解《私募监管规定》第十四条第一款要求已经注册的私募基金管理人也必须遵守新规则。考虑到已有大量私募基金管理人的存在，并且通常需要很长的时间来更改公司名称和经营范围，如果证监会最终决定不豁免现有私募基金管理人遵守前述名称和经营范围修改的规定，那么我们谨此要求为他们提供足够长的时间（例如一到两年）来执行其名称和经营范围的变更。

However, we understand that the first paragraph of Article 14 of the Private Fund Rules requires private fund managers already registered to comply with the new Rules as well. If CSRC finally decides not to exempt the existing private fund managers from complying with the requirements on change of name and business scope, we respectfully request that they should be provided a sufficiently long period of time (e.g. one to two years) to effect their name and business scope changes given the large number of existing private fund managers and the typically lengthy process to effect name and business scope changes.

我们理解变更管理人的名称和经营范围将包括但不限于以下程序：私募基金管理人 (i)向基金业协会报告；(ii)向当地的金融办或者相关机构提交申请；(iii)向市场监督管理局办理变更登记手续；(iv)向商务主管部门报送外商投资信息报告的变更；(v) 通知其基金的投资者或客户和/或获得他们的同意; (vi) 对基金合同和投资者或客户协议进行变更。该等冗长的变更流程会给已经按照基金业协会要求进行登记的 PFM WFOE 及 QDLP 基金管理人造成不必要的负担。

We understand that the procedures required for the change of name and business scope will include but are not limited to the following by the private fund managers: (i) reporting to AMAC; (ii) filing applications with the local financial regulators or relevant authorities; (iii) completing the formalities for change of registration with the market regulation authorities; (iv) submitting the change of foreign investment information report to the competent commerce authorities; (v) notifying the investors of their funds or clients and/or obtaining their consent; (vi) amending the fund contracts and agreements with investors or clients. Such lengthy procedures required for the change will impose unnecessary burdens on the PFM WFOEs and QDLP fund managers that have already registered in accordance with applicable requirements of AMAC.

假设证监会最终决定不豁免现有私募基金管理人遵守前述名称和经营范围修改的规定，那么如果证监会能采取下列措施，将产生很大的助益：（i）自行及/或协调其他政府部门向地方当局发布指导或指示要求迅速处理（例如在收到私募基金管理人的申请后的 20-30 天内）现有私募基金管理人的名称和经营范围变更；以及（ii）向私募基金投资者发出通知，说明证监会仅要求私募基金管理人在其名称和经营范围内添加“私募基金”和“私募基金管理”等字样，并不对他们在私募投资基金中的投资条款和条件构成任何变化。

If CSRC finally decides not to exempt the existing private fund managers from complying with the requirements on change of name and business scope, it would be very helpful if the CSRC can (i) issue and/or request other competent government authorities to issue a guidance or direction to the local authorities to process expeditiously (e.g. within 20-30 days after receipt of application from a private fund manager) the name and business scope changes of existing private fund managers and (ii) issue a notice to private fund investors that the mere adding of "private fund" and "private fund management" to the name and business scope of private fund managers is required by the CSRC and does not constitute a change to the terms and conditions of their investment in the private investment funds of private fund managers.

3. 集团化私募基金管理人的管理

Regulations on Group Private Fund Managers

《私募监管规定》第五条规定，"同一单位、个人控股或者实际控制两家及以上私募基金管理人的，应当具有设立多个私募基金管理人的合理性与必要性，全面、及时、准确披露各私募基金管理人业务分工，建立完善的合规风控制度。"

Article 5 of the Private Fund Rules provides that "where the same entity or individual is the majority shareholder or *de facto* controller of two or more private fund managers, it shall have the reasoning and necessity of establishing more than one private fund managers, disclose completely, timely and accurately the business separation of each private fund manager, and establish a well-developed compliance and risk control system".

(1) 删除实操困难的要求

To delete requirements that are difficult to implement

目前而言，我们理解在实践中并没有披露现有私募基金管理人业务分工的途径，且"全面、及时、准确"之规则标准极高却缺乏量化标准。此外，在某些大型的全球性金融机构或资产管理机构中，由于种种原因（例如，一家资产管理机构完成了对另一家资产管理机构的收购），不同条线的资产管理机构之间信息沟通的渠道极为有限，实操中很难以"全面、及时、准确"之标准实施相关信息披露。

Currently, we understand that there is no mechanism for registered private fund managers to disclose their business separation, and the standard of "completeness, timeliness and accuracy" is extremely high and lacks quantitative indicators. In addition, for many global financial institutions or asset managers, due to various reasons (e.g., one asset management manager completed the acquisition of another one), it is difficult for two entities within the same group but with two separate reporting lines to exchange relevant information. That is to say, in practice, it is hard to disclose relevant information in complete, timely and accurate manners.

因此，我们建议删除上述要求，并将《私募监管规定》的第五条修改为"同一单位、个人控股或者实际控制两家及以上私募基金管理人的，应当向基金业协会说明设立多个私募基金管理人的合理性与必要性，并建立完善的合规风控制度"。

Therefore, we suggest deleting the aforementioned requirement and revise Article 5 of the Private Fund Rules as "where the same entity or individual is the majority shareholder or *de facto* controller of two or more private fund managers, it shall elaborate on the reasoning and necessity of establishing more than one private fund managers to AMAC and shall establish well-developed compliance and risk control policies".

(2) 同时存在 PFM WFOE 及 QDLP 基金管理人的豁免

Exemptions of having both PFM WFOEs and QDLP fund managers

目前而言，同一集团内部可能同时存在 PFM WFOE 及 QDLP 基金管理人。PFM WFOE 及 QDLP 基金管理人的业务存在非常大的差异，包括投资方向、业务模式、基金结构等，因此，我们理解集团内部存在上述不同的业务安排非常正常，不会造成任何的利益冲突，具有足够的"合理性与必要性"，不会违反《私募监管规定》第五条的规定。所以我们建议证监会考虑将同一集团同时存在不同类型的私募基金管理人(例如 PFM WFOE 及 QDLP 基金管理人)作为一项豁免。

Currently, a PFM WFOE and a QDLP fund manager may exist simultaneously within the same group company. Huge differences exist between the business of PFM WFOEs and QDLP fund managers, including investment direction, business model, fund structure, etc. Therefore, we understand that it is quite normal to have the aforementioned two businesses simultaneously in one group company without causing any conflict of interests. It should be considered as having sufficient "reasoning and necessity" and will not violate Article 5 of the Private Fund Rules. Therefore, we suggest that the CSRC consider exempting a group from having different types of private fund managers (such as a PFM WFOE and a QDLP fund manager).

4. 交易结构披露

Disclosure of Fund Structures

《私募监管规定》第六条第六款规定，禁止"宣传推介材料有虚假记载、误导性陈述或者重大遗漏，包括未真实、准确、完整披露私募基金交易结构、各方主要权利义务、收益分配、费用安排、关联交易、委托第三方机构以及私募基金管理人的出资人、实际控制人、关联方等情况"。

The sixth paragraph of Article 6 of the Private Fund Rules prohibit "marketing materials to contain false information, misleading statements or major omissions, including, among others, not disclosing truthfully, accurately and completely the transaction structure of the private funds, the main rights and obligations of each party, income distribution, expense arrangements, related-

party transactions, entrusted third-party institutions, and the shareholders, *de facto* controllers and related parties of the private fund managers".

在 QDLP 业务中，根据上海市地方金融监督管理局、北京市地方金融监督管理局等的要求和行业实践，QDLP 基金通常以"联接基金-主基金"的模式投资于 QDLP 基金管理人的境外关联方管理的境外基金（"**标的基金**"）中，标的基金的投资运作则按照境外监管规定及交易习惯进行。我们理解，QDLP 基金管理人有义务对标的基金进行尽职调查，作出审慎投资决策，但是海外基金的交易结构与境内基金可能差别较大，某些投资标的与投资策略等可能仅为境外特有，这种情况下 QDLP 基金管理人难以完全满足《私募监管规定》第六条第六款的要求（例如，向 QDLP 基金的投资者进一步"真实、准确、完整"地披露标的基金的投资细节）。

According to the regulatory requirements of Shanghai Municipal Financial Regulatory Bureau and Beijing Local Financial Supervision and Administration, and industry practices, QDLP funds normally invest in the offshore funds managed by the offshore related-party of the QDLP fund managers (the "**Target Funds**") under the structure of "feeder fund – master fund" and the investments and operations of the Target Funds are conducted in accordance with overseas regulatory rules and trading practice. We understand that QDLP fund managers are obligated to conduct due diligence on the Target Funds and make prudent investment decisions. However, the transaction structure of offshore funds may vastly differ from that of onshore funds and some investment targets and investment strategies may only exist overseas. Under such circumstance, it is difficult for QDLP fund managers to fully comply with the sixth paragraph of Article 6 of the Private Fund Rules (e.g., further disclosing relevant investment details of the Target Funds to QDLP fund investors "truthfully, accurately and completely").

因此，我们建议，QDLP 基金管理人仅需披露其所投资的标的基金及相关安排即可视为满足《私募监管规定》第六条第六款的规定。我们希望证监会能就此澄清。

Therefore, we suggest that QDLP fund managers only have to disclose the Target Funds in which they have invested and the related arrangements, and it shall be deemed as satisfying the requirements of the sixth paragraph of Article 6 of the Private Fund Rules. We hope that the CSRC can so clarify.

5. 私募基金管理人的出资人、实际控制人和关联方的募集宣传推介
Fundraising and Marketing by the Shareholders, *De Factor* Controller and Related Parties of Private Fund Managers

《私募监管规定》第六条最后一款规定，"私募基金管理人的出资人、实际控制人、关联方不得从事私募基金募集宣传推介，不得从事或者变相从事前款所列行为"。但根据《公开募集证券投资基金销售机构监督管理办法》第四十八条，作为私募基金管理人关联方的基金

销售机构在履行了严格的利益冲突评估机制，且确认可以销售后，该等关联方可以进行基金销售。

The last paragraph of Article 6 of the Private Fund Rules provides that "the shareholders, *de facto* controllers and related parties of private fund managers shall not engage in the fundraising and marketing of private funds, and shall not directly or in any disguised form, conduct any of the activities in the foregoing paragraph". However, according to Article 48 of *the Measures on the Supervision and Administration of Public Fund Distribution Institutions*, fund distribution institutions that are the related parties of private fund managers may engage in fund distributions after they have complied with strict conflict of interest assessment policies and confirm that they can sell those funds.

因此，我们理解《私募监管规定》第六条最后一款仅是为了规制未取得相关销售资质的出资人、实际控制人或关联方。所以，我们建议将这一款修改为"私募基金管理人的出资人、实际控制人、关联方不得从事私募基金募集宣传推介（已获得基金销售业务资质的机构除外），不得从事或者变相从事前款所列行为"。

Therefore, we understand that the last paragraph of Article 6 of the Private Fund Rules is only for the purpose of regulating the shareholders, *de facto* controllers and related parties which have not obtained relevant fund distribution licenses. Accordingly, we suggest that this provision be revised as "the shareholders, *de facto* controllers and related parties of private fund managers shall not engage in the fundraising and marketing of private funds (except for the institutions which have obtained fund distribution qualification), and shall not directly or in any disguised form, conduct any business activities in the foregoing paragraph".

6. 关联方费用
Fee Arrangement between Related Parties

《私募监管规定》第九条明确禁止私募基金管理人及其从业人员"利用私募基金财产或者职务之便为自身或者投资者以外的人牟取利益，进行利益输送，包括以咨询费、手续费、财务顾问费等形式向私募基金投资标的及其关联方收取费用等"。

Article 9 of the Private Fund Rules expressly prohibit private fund managers and their fund practitioners from utilizing fund assets of private funds or convenience of their positions to seek benefits or tunnel of interests from underlying investment targets or their related parties, in the form of consulting fees, commission fees, or financial service fees for the benefits of themselves or anyone other than investors.

我们理解，上述条款的目的是为了防止私募基金管理人及其从业人员进行不正当的利益输送，主要针对私募股权投资基金管理人因为参与被投资的标的公司的管理而向其收取顾问费等情形。换言之，上述条款并非禁止私募基金管理人向私募基金投资标的及其关联方收取合理发生的费用。实践中， QDLP 基金通常投向 QDLP 基金管理人的境外关联方管理的

基金，而 QDLP 基金管理人也可能因为与境外关联方之间的咨询服务而支付或者收取相应的费用。我们认为该等费用是合理费用，并不为上述条款禁止。因此，我们希望证监会能够进一步澄清该等条款的意图。

We understand that the purpose of the above provision is to prevent private fund managers and their fund practitioners from tunnelling of interests, which cannot be justified. In particular, it is applicable to such scenarios where private equity investment fund managers collecting advisory fees from target companies invested by their private equity funds because they have participated in the management of such target companies. In other words, such provision is not aimed at forbidding private fund managers from collecting reasonable fees from underlying investment targets or their related parties. In practice, on the one hand, QDLP funds are usually invested in offshore funds managed by related parties of QDLP fund managers; on the other hand, QDLP fund managers may pay or receive advisory fees to/from such offshore related parties. We understand that it is not forbidden as it is commercial arrangement that could be justified. In this regard, we would like to seek further clarification by CSRC.

7. 关联交易的表决程序

Decision-making Mechanism of Related-Party Transactions

《私募监管规定》第十一条规定，“使用基金财产与关联方进行交易的，私募基金管理人应当遵守法律、行政法规、证监会的规定和私募基金合同约定，防范利益冲突，投资前应当取得全体投资者或者投资者认可的决策机制决策同意，投资后应当及时向投资者充分披露信息并向基金业协会报告”。

Article 11 of the Private Fund Rules provides that “when private fund managers enter into transactions with their related parties using fund assets, they shall comply with laws, regulations, CSRC’s rules and the terms of fund contracts, avoid conflict of interests, and before investing, obtain the agreement of all the investors or their approval of decision-making mechanism, and after investment, fully disclose in a timely manner such information to investors and report to AMAC”.

我们理解证监会希望规范私募基金的关联交易，并更多地引入投资者对该等关联交易的决策权。我们支持证监会规范关联交易，但现实中，如果需要全体投资者同意前述关联交易的，可能会降低投资决策的效率，而且很有可能因为旷日持久的决策程序而最终损害投资者的利益。所以，我们建议，如果投资者预先同意私募基金管理人设置的一个涉及私募基金关联交易的决策机制，例如基金合同中约定的防范利益冲突的评估机制和该等关联交易的充分披露机制，就可以满足本条的要求。

We understand that the CSRC wants to regulate related-party transactions of private funds and give investors more decision-making power over such related-party transactions. We support CSRC’s regulation of related-party transactions. However, in reality, if such related-party transactions must be approved by all investors, it may reduce the efficiency of investment

decisions and eventually hurt the interests of investors due to long-drawn-out decision-making process. Therefore, we suggest that it be sufficient that investors of a private fund approve upfront a decision-making mechanism by which related-party transactions involving private funds are to be approved by the private fund manager, such as a conflict of interests assessment process and full disclosure of such related-party transactions provided in the fund contract.

此外，关联交易有重大关联交易与非重大关联交易之分，对所有关联交易均须履行及时的信息披露义务会加重管理人义务，因此建议仅就重大关联交易进行事后的及时信息披露。如果证监会担心私募基金管理人滥用此项规定，可以考虑对重大关联交易进行定义。
In addition, related-party transactions can be material and immaterial related-party transactions. It will increase the burden of fund managers if all related-party transactions are required to be disclosed immediately. Therefore, we suggest to only disclose material related-party transactions promptly after such transactions. If the CSRC is worried that private fund managers may abuse such provision, it may wish to consider defining material related-party transactions.

进一步，关联交易中有一类是在产品设计时就设计为投资于关联方或是本机构自己管理的产品（例如绝大多数 QDLP 基金以及某些 FOF 等）。对于这样的产品类型，在基金合同中，一方面会有明确的投资对象描述，另一方面会有明确的风险揭示和信息披露。故建议豁免该类产品重大关联交易的事后披露与报告要求，以做到与其他类型产品的区分。
Further, one type of related-party transactions is designed to invest in products of related parties or the manager itself (e.g., most QDLP funds, some FOF, etc.). For this type of product, there is supposed to be clear and explicit (i) provisions on investment targets and (ii) risk disclosure and information disclosure in the fund contract. Therefore, it is recommended to exempt the requirements of post information disclosure and reporting of material related party transactions to distinguish them with other types of products.

综上，建议调整以上提到的第十一条要求为：“使用基金财产与关联方进行交易的，私募基金管理人应当在基金合同中约定防范利益冲突的评估机制和该等关联交易的充分披露机制，遵守法律、行政法规、证监会的规定和私募基金合同约定，防范利益冲突。投资后应当按照有关法律法规的规定和基金合同的约定及时向投资者进行重大关联交易的信息披露并向基金业协会报告，除非基金合同中已就具体的重大关联交易进行充分说明与风险揭示。”
Considering the foregoing, we suggest that the aforementioned Article 11 requirement be revised as “when private fund managers make transactions with their related parties by using fund assets, they shall provide in the fund contract a decision-making mechanism by which related-party transactions involving private funds are to be approved by the private fund manager and relevant information disclosure mechanism, obey laws, regulations, CSRC’s rules and fund contracts and avoid conflict of interests. Material related-party transactions shall be disclosed to investors and reported to the AMAC promptly after the investment in accordance with laws, regulations and

fund contracts unless any specific material related-party transaction as well as risk disclosure has been well provided in the fund contract".

8. 股东及实际控制人的配合义务
Cooperation Obligation of Shareholders and *De Facto* Controllers

《私募监管规定》第十二条第二段规定，私募基金管理人及其出资人和实际控制人、私募基金托管人、私募基金销售机构和其他私募基金服务机构及其从业人员应当配合证监会及其派出机构依法履行职责，如实提供有关文件和材料，不得拒绝、阻碍和隐瞒。
The second paragraph of Article 12 of the Private Fund Rules provides that "private fund managers and its shareholders, *de facto* controllers, private fund custodians, private fund distribution institutions and other private fund service providers and their practitioners shall cooperate with the CSRC and its local counterparts to perform their duties in accordance with laws, shall provide relevant documents and materials truthfully, and shall not refuse, hinder or conceal them.

证监会拟通过此项规定要求私募基金管理人的股东和实际控制人提供必要的配合，我们对此理解并尊重。但是，考虑到股东和实际控制人位于海外，受海外监管机构监管且并非直接受证监会监管，我们认为，在实践中股东和实际控制人将通过其 PFM WFOE 及 QDLP 基金管理人遵守本条项下的要求。因此，我们建议将前述意思明确写进上述条款。
CSRC intends to require the shareholders and de facto controllers of private fund managers to provide necessary cooperation by this provision, and we fully understand and respect such requirement. However, considering that the shareholders and *de facto* controllers are based overseas, regulated by overseas regulatory authorities and not directly regulated by the CSRC, we believe that, in practice, they will be complying with the requirements in this Article through their PFM WFOEs or QDLP fund managers. Therefore, we suggest that this can be clarified in the aforementioned Article.

9. 过渡期安排
Arrangements of Grace Period

目前《私募监管规定》第十四条虽然提及不符合《私募监管规定》要求的私募基金管理人应当按规定整改，但是并未明确列明整改的时间要求。因此，我们建议增设相关的过渡期安排，以便 PFM WFOE 及 QDLP 基金管理人可按规定整改。
Currently, Article 14 of the Private Fund Rules provides that private fund managers not complying with the requirements of the new Rules shall make rectifications in accordance with such Rules. However, it does not expressly stipulate the specific time limit for the rectification. Therefore, we suggest adding a transition period for PFM WFOEs and QDLP fund managers to rectify in accordance with the Private Fund Rules.

若您对我们的意见有任何疑问，请联系沈玉琪女士(电邮 eshen@asifma.org 电话+852 2531 6570)。
Please feel free to contact me at eshen@asifma.org or Tel: +852 2531 6570 if you have any questions regarding any of our comments.

本函由我会会员竞天公诚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 Jingtian & Gongcheng based on the comments from the broad AAMG membership.

顺颂
时祺

Yours sincerely,

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董事总经理 Managing Director
资产管理部主管 Head of Asset Management Group
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