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中国证券投资基金业协会
西城区金融大街 20 号
交通银行大厦 B 座 9 层
北京, 中国 100033

Asset Management Association of China
20 Jin Rong Street, Xicheng District
9/F, Tower B, Bank of Communications Tower
Beijing, China 100033

电邮 Email: smgl@amac.org.cn

敬启者,

Dear Sir or Madam,

关于《私募投资基金登记备案办法（征求意见稿）》及配套指引的意见
ASIFMA AMG Comments on AMAC's Measures on Private Investment Funds'
Registration and Filing (Consultation Draft) and the Relevant Guidelines

我谨代表亚洲证券业与金融市场协会（“ASIFMA”¹）的资产管理部（“AAMG”）会员向中国证券投资基金业协会（“基金业协会”或“贵会”）提交我们对贵会于 2022 年 12 月 30 日发布的《私募投资基金登记备案办法（征求意见稿）》（“《办法》”）和其配套指引的一些意见和建议。

On behalf of its members, the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association (“ASIFMA”¹) is pleased to submit our comments and suggestions on the *Measures on Private Investment Funds' Registration and Filing (Consultation Draft)* (the “Measures”) and the Relevant Guidelines released by the Asset Management Association of China (“AMAC”) on 30 December 2022.

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 160 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 160 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

我部的会员多数是大型的境外资产管理公司，它们当中不少已经成立了、正在成立或考虑成立外商独资私募基金管理人和/或合格境内有限合伙人（QDLP）。我们的意见主要与对这些管理人的要求有关。

Many of our members are large foreign asset management companies, which have already established or are in the process of establishing or are considering establishing wholly foreign-owned private fund managers (PFM WFOEs) and/or Qualified Domestic Limited Partners (QDLPs). Our comments are mainly related to the requirements for these entities.

1. 《办法》对已登记的私募基金管理人的适用性

Applicability to registered private fund managers

我们留意到《办法》第十四、二十一条列出了对于私募基金管理人人员稳定性等方面需要“持续符合”的要求。看起来这些要求也会适用于在《办法》正式生效前已经向贵会登记注册的私募基金管理人，但《办法》中并未对此有明确说明。我们希望贵会可以在最终的《办法》中澄清其是否适用于现存的私募基金管理人，以及如果适用的话，相应的过渡期安排。

We noticed that Articles 14 and 21 of the Measures specified some requirements on private fund managers' (PFMs) staff stability which should be "complied with on a continuous basis". It appears that these requirements will also apply to PFMs that have completed registration with AMAC before the Measures come into effect, but this is not clearly stated in the Measures. We hope the final Measures can clarify whether it applies to existing PFMs and, if so, what will be the transitional arrangement for them.

2. QDLP 基金管理人的相关问题

Issues for QDLP managers

我们有很多会员已经成立或在考虑成立 QDLP，它们不少采取母子结构，即其股东是在贵会登记的外商独资私募证券投资基金管理人或未来拟登记的外商独资企业。关于《办法》下，对 QDLP 基金管理人的要求，我们的意见如下：

Many of our members have established or are considering establishing a QDLP which have adopted or will adopt a parent-subsidiary structure, i.e., their shareholder is a PFM WFOE registered or will be registered with AMAC. Our comments on the Measures' requirements on the QDLP manager are as follows:

《办法》对 QDLP 管理人的适用性

Applicability to QDLP managers

《办法》仅仅提及私募基金管理人，对其是否也适用于 QDLP 基金管理人并不清晰。我们认为《办法》需要澄清其是否也适用于 QDLP 基金管理人。

The Measures mention only PFMs and it is unclear if they also apply to QDLP managers. We think it is important that the Measures clarifies its applicability to QDLP managers or not.

人员和办公场所

Staff and workspaces

我们理解，QDLP 的地方试点机制是允许母子结构下的 QDLP 管理人和其外商独资私募基金管理人股东之间可以共享人员以及共用办公场所。这有助于进入大陆市场不久的境外资产管理公司更有效地利用在大陆的资源，更好地服务于大陆的投资者。

We understand that the local pilot mechanisms for QDLPs allows for the sharing of staff and workspaces between the QDLP manager under the parent-subsidiary structure and its PFM WFOE shareholder. This helps foreign asset management companies that are new to the Mainland market to make more effective use of their resources in the Mainland and better serve Mainland investors.

《办法》第十一、十二条规定私募基金管理人的法定代表、高级管理人员等只有在有合理理由的情况下对外兼职，其他人员不得对外兼职，除非是同一控股股东、实际控制人控制两家以上私募基金管理人（“集团化”）。我们希望《办法》能够澄清母子结构的 QDLP 管理人也可以属于上述“集团化”的情况，允许 QDLP 管理人与其外商独资私募基金管理人股东共享人员。

Articles 11 and 12 of the Measures require that the legal representatives and senior management of PFMs can only hold part-time positions outside the company if they have good reasons, while other staff are not allowed at all to hold part-time positions outside the company, unless it is the same controlling shareholder and actual controller that controls two or more PFMs (“group-wise”). We hope that the Measures can clarify that a QDLP manager under a parent-subsidiary structure can also fall under the above "group-wise" scenario so that such QDLP manager is allowed to share staff with its PFM WFOE shareholder.

《私募基金管理人登记指引第 1 号——基本经营要求》（“《指引 1 号》”）第八条规定私募基金管理人不能与其股东混同办公，且未规定任何例外情况。如果 QDLP 基金管理人也被视为《办法》中的私募基金管理人，我们希望《指引 1 号》第八条能够像其他条款中允许“另有规定的情况除外”，允许母子结构的 QDLP 基金管理人可以继续与其私募基金管理人股东共享办公场所，否则这将严重影响现存的 QDLP 基金管理人在大陆的持续经营，影响它们对中国市场的长期战略。

Article 8 of the *Guidelines for Registration of Private Fund Managers No. 1 - Basic Operation Requirements* (the "**Guidelines No. 1**") provides that a PFM shall not work in the same office with its shareholders, without any exceptions specified in the Article. If a QDLP manager is also regarded as a PFM, then we hope that Article 8 will allow QDLP managers to continue to share workspace with their PFM shareholder by adding an exemption of “unless otherwise stipulated” as in some other Articles. Otherwise, this will largely affect the ongoing operation of existing QDLP managers in the Mainland as well as their long-term strategy in China.

实缴资本

Paid-in capital

《办法》第八条第一项要求私募基金管理人实缴货币资本不低于 1000 万元人民币，这对刚刚进入中国的境外资产管理公司而言是一个新增的且比较高的要求。该要求是否适用于私募基金管理人的 QDLP 子公司并不清晰。虽然我们理解该实缴资本要求是为了提高行业规范，提高对有着良好资质外资私募基金管理人的实缴资本要求可能会妨碍它们带进中国优秀的境外经验。如果第八条第一项适用于 QDLP 基金管理人，我们希望《办法》豁免对它们，或者至少母子结构的 QDLP 资产管理人，的实缴资本要求。Article 8 (1) of the Measures requires the PFM's paid-in capital to be RMB 10 million or more, which is new and relatively high for foreign asset management companies that are just entering China. It is unclear if this requirement also applies to QDLP subsidiary under a PFM shareholder. While we understand that the paid-in capital requirement is intended to improve industry standards, raising the paid-in capital requirement for PFM WFOEs with good qualifications may deter some of them from bringing good overseas experience into China. If QDLP managers are also covered by Article 8 (1), we hope the Measures will exempt them, at least those QDLP managers under the parent-subsidary structure, from this paid-in capital requirement.

基金审慎备案

Prudent fund filing circumstances

《办法》第四十四条第五项规定基金业协会可以对“基金财产主要在境外进行投资”的基金进行审慎备案，即提高相关的要求。QDLP 基金主要在境外投资，所以应属于审慎备案的情形。为了避免 QDLP 基金备案的不确定性，我们建议《办法》明确可能触发审慎备案的情况以及审慎备案下的要求。

Article 44 (5) of the Measures provides that AMAC can conduct prudent filing for funds that have the "fund assets mainly invested overseas", which means higher requirements for such funds' filing. QDLP funds will be mainly invest overseas so they seem to fall under the prudent filing circumstances. To avoid uncertainty over the filing of QDLP funds, we suggest that the Measures specify what are the circumstances that may trigger a prudential filing and what are the requirements of the prudent filing.

3. 关于提请私募基金管理人登记的时间要求

PFM application timing requirement

《指引 1 号》第 2 条要求提请私募基金管理人登记的公司、合伙企业自市场主体工商登记之日起 1 年内提请办理私募基金管理人登记。因为境外资产管理公司对于设立子公司有着详尽的分析与内部决议流程，特别是在其总部可能不太熟悉中国的情况下，可能会需要比较长的时间才能完成该流程。所以，对于那些在《办法》与《指引》生效前完成工商登记的公司，我们希望能从《办法》和《指引》生效日（而非工商登记之日）起计算该 1 年的期限。

Article 2 of Guideline No. 1 requires companies and partnerships applying for a PFM registration to make the application within one year from the date of completing industry and commerce registration. For foreign asset management companies which have detailed analyses and internal decision processes for the establishment of subsidiaries, it may take a long time to complete such process particularly establishing a subsidiary in China which their headquarters may not be familiar with. Therefore, for those companies that completed their business registration before the Measures and Guidelines come into effect, we would suggest the one-year period be counted from the effective date of the Measures and Guidelines and not the business registration date.

我们非常感谢有机会对征求意见稿提出意见，并期待最终发布的《办法》及其配套指引能采纳本函的意见及建议。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）。

We are very grateful for the opportunity to comment on the Consultation Draft and look forward to the issuance of the Measures and the relevant Guidelines that takes into consideration our comments and suggestions made in this letter. If you have any questions regarding any of the foregoing, please contact Eugenie Shen, Head of Asset Management, at eshen@asifma.org or Tel: 2531 6570.

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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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