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证券投资基金机构监管部
中国证监会
西城区金融大街19号
北京, 中国 100033

Securities and Fund Institution Supervision Department
China Securities Regulatory Commission
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敬启者,
Dear Sir or Madam,

关于《公开募集证券投资基金投资顾问业务管理规定（征求意见稿）》的意见

ASIFMA AMG Comments on CSRC Consultation on Administrative Provisions for Public-Offered Securities Investment Funds' Investment Advisory

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”）会员向中国证券监督管理委员会（“中国证监会”或“贵会”）提交我们对贵会于2023年6月9日发布的《公开募集证券投资基金投资顾问业务管理规定（征求意见稿）》（“《规定》”）的一些意见和建议。

On behalf of members of the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association¹ (“ASIFMA”), we are pleased to submit our comments and suggestions

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](http://www.gfma.org) alliance with [SIFMA](http://www.sifma.org) in the United States and [AFME](http://www.afme.eu) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

DEVELOPING ASIAN CAPITAL MARKETS

in response to the CSRC's consultation on the draft *Administrative Provisions for Public-Offered Securities Investment Funds' Investment Advisory Businesses* (the "**Draft Provisions**") issued on 9 June 2023.

1. 整体意见

General

我们与我们的会员支持贵会致力于让基金投资顾问成为一项长期、规范、健康的业务。同时，我们也很高兴看到贵会于 2020 年 4 月公开征求意见的《证券投资基金投资咨询业务管理办法》（“《管理办法》”）成为贵会 2023 年立法计划中力争出台的重点项目之一。我们注意到，《规定》涉及的业务只是《管理办法》中的一部分，我们期待看到贵会关于《管理办法》其他部分的草案或进一步的征求意见稿。

We and our members are supportive of CSRC's aim to make fund investment advisory a long-term, standardized and healthy business. We are also very glad to see that promulgating the *Administrative Measures on Securities and Funds Investment Advisory Businesses* ("**Administrative Measures**"), on which CSRC issued a consultation draft in April 2020, is among the key projects on CSRC's 2023 Legislative Plans. We note that the Draft Provisions are just a part of what the Administrative Measures provide so we look forward to seeing CSRC's drafts or further consultations on the other parts of the Administrative Measures.

对于已在中国设立或正在设立外商独资基金管理公司或私募证券投资基金管理公司（“私募基金管理人”）的境外资产管理公司来说，能够向第三方提供基金投资顾问服务可以与其已有业务互补，这将使它们能够充分利用其在中国境内的资源。

For foreign asset managers that have established or are in the process of establishing wholly foreign-owned fund management companies ("**FMCs**") or private securities investment fund management companies ("**PFMs**") in China, being able to provide fund investment advisory services to third parties are complementary to what they already do and will enable them to make the most use of their resources onshore in China.

我们理解，虽然私募基金管理人目前可以向其关联的合格境外投资者提供证券和基金投资建议，但外商独资基金管理公司是否也能够这样做尚不明确。在贵会基金监管部于 2006 年发布、后来被废止的《关于基金管理公司向特定对象提供投资咨询服务有关问题的通知》的规定中，基金管理公司曾被允许向包括合格境外投资者在内的一些第三方对象提供投资建议。此外，我们理解，私募基金管理人在满足相应条件的情况下，也可以向某些类型的第三方客户提供投资建议。例如，于 2023 年 1 月修订的《证券期货经营机构私募资产管理计划运作管理规定》第三十六条规定，证券期货经营机构的私募资产管理计划可以选择符合条件的私募基金管理人担任其投资顾问。根据银保监会²2018 年 12 月发布的《商业银行理财子公司管理办法》第三十二条，银行理财子公司也可以委托符合条件的私募基金管理人提供投资顾问服务。We understand that while PFMs are currently allowed to provide securities and fund investment advice to affiliated QFIs, it is unclear currently if FMCs are able to do the same. Under CSRC Fund

² 银保监会于 2023 年 5 月 18 日被国家金融监督管理总局替代。

CBIRC is replaced by National Financial Regulatory Administration (NFRA) since 18 May 2023.

Supervision Department's *Notice on Relevant Issues Related to Fund Management Companies Providing Investment Advisory Service to Specific Targets*, which was issued in 2006 and later abolished, FMCs were allowed to provide investment advice to certain types of third parties including QFIs. Further, we understand that if PFM's satisfy relevant conditions, they are also allowed to provide investment advice to certain types of third-party clients. For example, securities and futures operating institutions' private asset management schemes are allowed to appoint qualified PFM's as investment advisors, as provided under Article 36 of CSRC's *Administrative Provisions for the Operation of Securities and Futures Operating Institutions' Private Asset Management Schemes* which was last revised in January 2023. Bank wealth management subsidiaries are also allowed to appoint qualified PFM's to provide investment advisory services under Article 32 of CBIRC's² *Administrative Measures for Commercial Banks' Wealth Management Subsidiaries* issued in December 2018.

我们注意到，向第三方客户提供投资顾问服务在美国、英国、日本以及香港特别行政区等许多司法管辖区很常见。如果《规定》（或一些其他的法规或文件）能就以上进行澄清，并且明确允许私募基金管理人和基金管理公司向投资于中国市场的第三方客户及产品（无论是境内还是境外、或通过不同的准入渠道）提供证券和基金投资建议，将有所帮助。允许基金管理公司和私募基金管理人提供投资顾问服务将有助于外资资产管理公司充分利用其在中国境内的专业知识和资源，为其海外关联公司以及这些公司管理的在中国投资的投资组合和基金提供服务。这些服务有助于外资资产管理公司在中国雇用更多员工，从而促进中国资产管理人才和整个行业的发展。

We note that providing investment advisory services to third-party clients is common in many jurisdictions such as the United States, United Kingdom, Japan, and Hong Kong SAR. It would be helpful if the Draft Provisions (or some other regulation or document) can clarify the foregoing and explicitly permit both FMCs and PFM's to provide both securities and fund investment advice to third-party clients and products that invest in China's market, whether onshore or offshore or through the various investment access channels. Allowing FMCs and PFM's to provide such investment advisory services will enable foreign-owned asset managers to utilize fully their expertise and resources onshore in China to service their overseas affiliates and the portfolios and funds managed by such affiliates that invest into China. Such additional services will likely lead to the hiring of additional staff in China by foreign owned asset managers which will facilitate the development of asset management talent and the industry as a whole in China.

因此，我们建议允许基金管理公司和私募基金管理人向所有已经投资中国境内市场的离岸投资者及产品（例如合格境外投资者和沪深港通北上投资者）提供投资建议。

Therefore, we suggest that FMCs and PFM's be allowed to provide investment advice to all offshore investors/products (such as QFIs and northbound Stock Connect investors) that are already investing in the China onshore market.

2. 资质要求

Qualification criteria

《规定》并未对基金投资咨询机构的资质要求作出规定。我们假设《管理办法》是《规定》的上位规则，因此，证券和/或基金投资咨询机构的资质要求可能遵从《管理办法》的规定。如

果是这样，《管理办法》应当在《规定》最终定稿和发布之前发布。否则，《规定》应当对于能够提供基金投资咨询服务的机构的资质要求做出规定。此资质要求应涵盖所有要求，包括对基金投资顾问人员的任何要求。

The Draft Provisions did not set out any qualification criteria for firms that would like to become a fund investment advisory entity. We assume that the Administrative Measures are the higher-level rules governing the Draft Provisions, and therefore, the qualification requirements for being a securities and/or fund investment advisory entity may be set out in the Administrative Measures. If this is the case, then it is important that the Administrative Measures be issued before the Draft Provisions are finalized and released. Otherwise, it is important that the Draft Provisions set out the qualification criteria for those that can provide fund investment advisory services. The qualification criteria should include all requirements, including any for the fund investment advisory staff.

3. 可以接受基金投顾服务的客户

Recipient of fund investment advice

《规定》并未明确可以接受基金投资顾问服务的对象（机构或个人），我们假设应涵盖所有可以投资公募基金的投资者，即除了机构投资者以外，也包括养老金和基金的个人投资者。我们希望贵会能够对以上进行确认或在最终发布的《规定》予以明确。

The Draft Provisions do not specify who (institutions or individuals) can receive fund investment advisory services. We assume that it should include all investors that can invest in public funds, i.e., not only institutional investors but also pensions and individual fund investors. We hope CSRC can confirm the above or clarify this in the final Provisions.

4. 不同类型的投顾

Different types of investment advisory

《规定》中提及管理型基金投资顾问，可以在客户授权范围内，代理客户作出基金品种、数量、买卖时机决策，还可以接受客户委托办理基金申购、赎回、转换等操作申请。这似乎是全权委托的基金投资管理，因为是由基金或投资经理做出决策。如果最终发布的《规定》能够明确不同类型投资顾问的区别以及哪些机构可以提供管理型投资顾问服务，将会有所帮助。

The Draft Provisions refer to management-type fund investment advisory, which may make decisions, within the scope of the client's authorization, on fund type, quantity, and buying and selling opportunities on behalf of the client, as well as accept client instructions to handle fund subscription, redemption, conversion and other operational applications. This seems to be investment management with discretion as decisions are made by the fund/investment manager. It would be helpful if the final Provisions can clarify what are the differences between the different types of investment advisory and who can provide management-type investment advisory services.

5. 兼任

Dual hatting

《规定》第十二条规定：“策略经理不得担任除基金中基金、管理人中管理人产品以外的其他基金产品的基金经理或者投资经理。策略经理同时担任基金中基金、管理人中管理人产品的基

金经理或者投资经理的，基金投资顾问机构应当采取必要措施，做好业务隔离，防范利益冲突，公平对待相关基金产品的投资者和基金投资顾问业务的客户。”

Article 12 of the Draft Provisions states that “Strategy managers shall not serve as the fund manager or investment manager of fund products other than Fund of Funds (FOF) and Manager of Managers (MOM). If a strategy manager also serves as a fund manager or investment manager of a FOF/MOM product, the fund investment advisory entity shall take necessary measures to conduct good business segregation, prevent conflicts of interest, and ensure the investors of the relevant fund products as well as the customers of the fund investment advisory business are fairly treated.”

对于有策略经理兼任基金中基金、管理人中管理人产品基金经理或投资经理的基金管理公司来说，公司可能无法将基金中基金、管理人中管理人产品的顾问业务与投资业务分开。由于第十二条的主要用意似乎是避免基金投资顾问业务与其他基金管理业务（基金中基金、管理人中管理人除外）之间的利益冲突，我们建议将该条中“做好业务隔离”改为“做好必要的业务隔离”。

For FMCs that have a strategy manager which dual hats as the fund/investment manager of a FOF/MOM product, it may not be possible for the fund investment advisory entity to segregate the fund investment advisory and the fund/investment management of the FOF/MOM product. As the key intention of Article 12 seems to be to avoid conflict of interest between the fund investment advisory business and other fund investment businesses (except for FOF/MOM), we suggest replacing the wording of “conduct good business segregation” with “have in place good business segregation that are necessary”.

另外，外资资产管理公司的全球做法通常包括严格的内部控制，所有交易和投资建议都经过公平交易审查及检查，所有建议在被发送给客户之前已经确保不存在利益冲突和相反的交易方向。因此，我们建议贵会考虑在《规定》中允许公募基金经理及专户投资经理在适当的防止利益冲突的控制下兼任投资顾问及策略经理。

Separately, foreign asset managers’ global practices normally include strict internal controls where all trades and investment advice would run through fair trading review and checks to ensure that there is no conflict of interest or no opposite trades are done before the advice is sent to the client. Therefore, we would suggest that CSRC consider allowing in the Draft Provisions public fund managers and segregated account investment managers to dual hat as investment advisor/strategy manager under proper controls to prevent conflict of interest.

我们还希望《规定》明确不担任基金经理和投资经理的策略经理是否可以在与客户不存在利益冲突的情况下担任其他职务。

We would also like the Draft Provisions to clarify whether strategy managers who are not fund/investment managers may take on other roles as long as there is no conflict of interests with clients.

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《规定》及《管理办法》能采纳本函的意见和建议。如果您对以上内容有任何疑问，请联系我会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 CSRC consultation on the Draft Provisions, and we look forward to the issuance of the final Provisions and Administrative Measures

that takes into consideration our comments and suggestions in this letter. If you have any questions regarding any of the foregoing, please contact Eugenie Shen, Head of ASIFMA's Asset Management, at eshen@asifma.org or Tel: 2531 6570.

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Yours sincerely,

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