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市场一部  
中国证监会  
西城区金融大街19号  
北京, 中国 100033

Department of Market Supervision I  
China Securities Regulatory Commission  
19 Jin Rong Street, Xicheng District  
Beijing, China 100033

电邮 Email: shichangyibu@csrc.gov.cn

敬启者,  
Dear Sir or Madam,

## 关于《关于完善特定短线交易监管的若干规定（征求意见稿）》的意见 Comments on CSRC Consultation on Provisions on Improving the Regulation of Covered Short-Swing Transactions

我谨代表亚洲证券业与金融市场协会（“ASIFMA”<sup>1</sup>）的资产管理部（“AAMG”）会员向中国证券监督管理委员会（“证监会”或“贵会”）提交我们对贵会于2023年7月21日发布的《关于完善特定短线交易监管的若干规定（征求意见稿）》（“以下简称《规定》”）的回复。

On behalf of members of the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association<sup>1</sup> (“ASIFMA”), we are pleased to submit our response to the CSRC’s

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<sup>1</sup> 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 170 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](http://www.asifma.org)。

ASIFMA is an independent, regional trade association with over 170 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

consultation on the draft *Provisions on Improving the Regulation of Covered Short-Swing Transactions* (referred to herein as the “**Provisions**”) issued on 21 July 2023.

我们非常欢迎并感谢贵会在制定《规定》时对澄清境外投资者对短线交易的疑问所做的努力，特别是在短线交易监管方面对境内外投资者一视同仁。例如允许符合要求的境外公募基金（像境内公募基金一样）按每只基金/产品计算持有特定证券数量。

We very much welcome and appreciate CSRC’s efforts in drafting the Provisions to clarify the questions that foreign investors have with short swing transactions and especially to treat domestic and foreign investors equally when it comes to the regulation of short swing transactions. For example, allowing the shareholdings of qualified overseas publicly offered funds (like domestic ones) to be calculated on a per fund/product basis.

为了（i）解答境外投资者对《规定》的其他问题，（ii）让投资者和监管机构都能更好的符合和实施《规定》，以及（iii）促进境外投资通过全球资产管理公司进入中国，以下列出我们的意见与建议，供贵会参考：

With the aims of (i) answering the other questions that foreign investors have on the Provisions, (ii) facilitating the compliance and implementation of the Provisions by both investors and the regulator, and (iii) promoting foreign investment into China via global asset managers, set out below for the CSRC’s consideration are our comments and suggestions:

## 1. 不涉及支付对价的交易

### **Transactions without paid consideration**

《规定》第六条列出了一些不被视为特定短线交易的情形。这些豁免情形包括涉及支付对价和不涉及支付对价的交易。

Article 6 of the Provisions sets out certain circumstances that are not considered short swing transactions. These exempt circumstances include both transactions involving the payment of consideration and those that do not.

虽然第五条主要是规定了买卖特定证券的时点，但我们解读其意味着不涉及特定身份投资者支付对价的买卖不会被视为特定短线交易行为。

Although Article 5 deals with the determination of the time of purchase or sale of Covered Securities, we read it to mean that such purchase or sale which involves no payment of consideration by a Covered Investor would not be treated as a short swing transaction.

因此，我们建议将第六条中不涉及支付对价的情形（例如第（六）、（七）、（九）项）移至第五条，因为它们根本不属于《规定》中的买卖行为。这样第六条中的豁免情形仅限于涉及支付对价的情形。我们认为，这样可以更清楚地区分这两种不同类别的情况。Therefore, we suggest that the circumstances in Article 6 that do not involve the payment of consideration (e.g., clauses (vi), (vii) and (ix)) be moved to Article 5 because they do not even fall within purchase and sale activities under the Provisions. This way, the exempt circumstances in Article 6 are limited to those circumstances that involve the payment of consideration. We believe that this would be clearer to distinguish the two different types of circumstances.

## 2. 豁免情形和按产品/组合单独计算持有特定证券的数量

### **Exempt Circumstances and Per Product/Portfolio Calculation of Covered Securities**

《规定》第六条除了列出了不被视为特定短线交易行为的一些情形，也列出了某些机构投资者可以按产品/组合单独计算持有特定证券数量的情况。因为后者不是豁免的交易情形，我们建议后者，即第六条第二部分，另行成为一条。

Beside setting out the circumstances that are not considered as short swing transactions, Article 6 of the Provisions also provides that certain institutional investors may calculate their Covered Securities on a per product/portfolio basis. Since the latter are not exempted circumstances, we suggest that the latter, i.e., the second part of Article 6, be put in a separate article.

## 3. 对境内外机构投资者一视同仁

### **Consistent treatment for domestic and foreign institutional investors**

《规定》第六条的第二部分规定下列机构投资者按产品或者组合单独计算持有特定证券数量：The second part of Article 6 of the Provisions provides that the following institutional investors shall calculate separately their shareholdings of Covered Securities based on each product or portfolio:

- (i) 全国社会保障基金、基本养老保险基金、年金基金（以下统称“**养老基金**”）；  
the national social security fund, the basic endowment insurance fund and the annuity fund (referred to herein as “**Pension funds**”); and
- (ii) 依照《基金法》等法律法规设立的公开募集证券投资基金（以下统称“**公募基金**”）。  
publicly offered securities investment funds (referred to herein as “**Public funds**”)  
established in accordance with the PRC Funds Law and other laws and regulations.

基于“内外一致”的原则，我们认为上述机构投资者应该包括境外的机构投资者。同样的，类似那些得以按单个产品计算持有特定证券数量的境内私募资管产品（以下简称“**私募产品**”）的境外私募资管产品也应可以按单个产品计算。

Based on the principle of treating domestic and foreign equally, we believe that the foregoing institutional investors should include those foreign ones. Similarly, foreign asset management products similar to those domestic privately offered asset management products (referred to herein as “**Private products**”) that are allowed to calculate their holdings of Covered Securities on a per product basis should also be allowed to do the same.

这也是因为我们觉得《规定》第六条的第二部分的重点不应在机构投资者而应该是在哪些情况下可以按产品或者组合单独计算持有特定证券的数量。第六条第二部分所列出的情况意味着对于 (i) 有着大量受益人的养老基金或退休金类产品和 (ii) 有着大量投资者的公募基金，可以按产品或者组合单独计算持有特定证券数量，因为它们参与内幕交易的可能性和风险是极低的。我们建议符合这些特性的机构投资者（无论是境内还是境外）都应该可以在在产品/组合层面单独计算持有特定证券数量。

This is also because we feel that the focus of the second part of Article 6 should not be on institutional investors but on the situations under which holdings in Covered Securities can be separately calculated on a per product or portfolio basis. The situations listed in the second part of Article 6 suggest that those situations where (i) there are numerous beneficiaries in a pension fund or retirement type product, and (ii) there are numerous investors in a publicly offered fund, separate calculation of holdings of Covered Securities on a product or portfolio basis is allowed because the likelihood and risk of them being involved in insider trading is very low. We suggest that institutional investors who meets these characteristics (no matter domestic or foreign) should be allowed to calculate their holdings of Covered Securities on a per product/portfolio basis.

所以我们建议不但将《规定》第六条第二部分单独列为另一条，而且该条还应增加对类似境外基金和私募产品的规定。

Therefore, we suggest not only to move the second part of Article 6 of the Provisions to a separate article, but also to include provisions for similar foreign funds and Private products.

#### 4. 按产品/组合单独计算持有特定证券数量的条件

##### **Conditions for separate calculation on a per product/portfolio basis**

同样的，基于“内外一致”的原则，我们相信无论是境内还是境外的产品或者组合，允许它们按产品/组合单独计算持有特定证券数量的条件应该是相同的。这些条件应当在《规定》中明确。正如本函第 2 部分所述，我们认为适用于按产品/组合单独计算持有特定证券数量有至少有两种不同的考虑（即如有众多投资者或受益人的话，每个投资者或受益人获得一家上市公司超过 5% 权益的可能

性极低并且他们一致行动的可能性也极低）。这两种考虑应该与针对基金管理人的要求区别分开（详见本函第 5 部分）。

Similarly, based on the principle of treating domestic and foreign equally, we believe that the conditions for allowing separate calculation on a per product/portfolio basis should be the same, whether it is a domestic or foreign product or portfolio. These conditions should be clearly set out in the Provisions. As noted in section 2 of this response, we believe that there are at least two different considerations for applying the separate calculation on a product/portfolio level (i.e., if there are numerous investors or beneficiaries, it is highly unlikely that a single investor or beneficiary will acquire more than 5% of the interest of a listed company and also that they will act in concert). These two considerations should be dealt with separately from the requirements for the fund manager (see section 5 below for more details).

##### (a) 全国社会保障基金、基本养老保险基金、年金基金

##### National social security fund, pension fund and annuity fund

我们相信允许境内全国社会保障基金、基本养老保险基金、年金基金按产品或组合单独计算持有特定证券数量的理由也同样适用于在境外设立的类似的基金。因此，我们认为只要境外资产管理公司能够向贵会证明其所管理的这些基金是根据被认可的司法管辖区法律或法规为退休保障而设立的，这些境外基金或组合应被允许按产品或组合单独计算其持有特定证券数量。

We believe the reasons for allowing domestic national social security fund, basic endowment insurance fund and annuity fund to calculate holdings of Covered Securities on a per product or portfolio basis also apply to similar types of funds established overseas. Therefore, we believe that as long as a foreign asset manager can demonstrate to the CSRC that these funds managed by it are established for retirement savings in accordance with the law or regulations of a recognized jurisdiction, these foreign funds or portfolios should be allowed to calculate their holdings of Covered Securities on a per product or portfolio basis.

由于这些类型的境外基金通常是长期投资者，无意获取任何上市公司的控股权，所以按每个基金或组合计算其在上市公司的持股，而不是将其持股与其他由同一资产/基金管理人管理的基金和组合的持股合并计算是符合中国的利益的。

As these types of foreign funds are typically long-term investors with no interest in acquiring a controlling interest in any listed company, it is in China's interest to calculate their shareholdings in a listed company on a per fund or portfolio level rather than have their shareholdings aggregated with the shareholdings of other funds and portfolios that happen to be managed by the same asset/fund manager.

#### (b) 公募基金

##### Public funds

同样，我们相信允许境内公募基金按每个产品或组合单独计算持有特定证券数量的原因是因为此类基金通常 (i) 受到严格监管，(ii) 拥有众多投资者，(iii) 对基金持有上市公司超过一定比例（例如 10%）有限制，(iv) 通过众多机构（如银行、券商）销售，所以其投资者是非常分散的，和 (v) 其接触内幕消息和参与内幕交易的机会极低。前述理由同样适用于境外公募基金。所以境内外公募基金应当同样被允许按每个产品或组合单独计算持有特定证券数量，或者为此目的应当符合同样的条件（如有）。

Similarly, we believe that the reasons for allowing domestic Public funds to calculate holdings of Covered Securities separately on a per product or portfolio basis is because such funds typically (i) are highly regulated, (ii) have numerous investors, (iii) have restrictions on the fund owning more than a certain percentage (e.g., 10%) of a listed company, (iv) have many distributors (e.g., banks and securities companies) distributing their fund so its investors are very dispersed, and (v) are unlikely to have access to inside information and engage in insider trading. The foregoing reasons apply equally to foreign Public funds. Therefore, domestic and foreign Public funds should be equally allowed to calculate holdings of Covered Securities separately on a per product/portfolio basis, or be subject to the same conditions (if any) for such purpose.

#### (c) 私募产品/基金

##### Private products/funds

《规定》第九条规定境内组织的持股应合并计算，同时第二款规定“证券投资基金经营机构管理的集合私募资管产品”按产品单独计算持股，以及中国证券投资基金业协会（“**基金业协会**”）批准的“内部控制规范、治理结构完善、投资管理模式与公募基金管理人基本一致的”的私募证券投资基金管理人管理的产品（以下简称“**私募基金**”）也可以按产品计算持股。

Article 9 of the Provisions provides for the calculation of shareholding of a domestic institution on an aggregate level while the second paragraph thereof provides for calculation on a separate product basis for “collectively privately offered asset management products managed by securities and fund operators” and products (referred to herein collectively as “**Private funds**”) managed by a privately offered securities fund manager that has “standardized internal control, sound governance structure and basically the same investment management mode as that of a publicly offered fund manager” approved by the Asset Management Association of AMAC (“**AMAC**”).

我们建议贵会在《规定》中明确境内外私募基金/产品可按每个产品单独计算持有特定证券数量的条件（如有）。

We suggest that CSRC sets out the conditions (if any) in the Provisions under which both domestic and foreign Private funds/products can calculate their holdings in Covered Securities on a per product basis.

#### (d) 银行理财产品及其他类似产品

##### Bank wealth management products and other similar products

我们注意到银行理财产品（以前由银保监会监管，现在由国家金融监督管理总局监管）和其他类似产品并未在《规定》中被提及。我们认为该些产品和公募基金、私募基金一样可以按单个产品计算持有特定证券数量。我们建议《规定》包含银行理财产品和其他类似产品。

We notice that bank wealth management products (which are regulated formerly by the CBIRC and now NFRA) and other similar products are not mentioned in the Provisions. We believe that like Public funds and Private funds, these products should be allowed to calculate their holdings in Covered Securities on a per product basis. Therefore, we suggest that the Provisions include bank wealth management products and other similar products.

## 5. 申请流程及详情

### **Application process and details**

我们理解，贵会可能不熟知境外公募和私募基金的监管方式，因为每个司法管辖区都不一样。我们相信这就是为什么贵会要求境外公募基金向证监会申请（以及境内私募基金向基金业协会申请）按基金或产品单独计算其持有特定证券数量。为便于境外资产管理公司的申请和证监会的批准，在《规定》里列出相关的条件将会有所帮助。

We understand that CSRC may not be familiar with how foreign Public funds and Private funds are regulated as each jurisdiction is different. We think this is why CSRC is requiring foreign Public funds to apply to CSRC (and domestic Private funds to apply to AMAC) if they want to calculate their holdings in Covered Securities on a per fund or product basis. For ease of application by foreign asset managers and approval by CSRC, setting out the conditions therefor in the Provisions would be very helpful.

由于我们的许多会员都是全球资产管理公司，管理着大量基金的投资，其中包括母基金和子基金，如果贵会能够考虑简化同一资产管理集团下的基金的申请和审批流程（例如一个资产管理公司或集团的申请和审批可以涵盖其管理的所有基金），而不必为每个其管理的基金或子基金单独申请，将会有所帮助。

As many of our members are global asset managers that manage the investments of a large number of funds, including umbrella funds and their sub-funds, it would be helpful if the CSRC can consider simplifying the application and approval process for funds under an asset management group (e.g., a single application and approval for an asset manager/group which would cover all the funds and accounts it manages) instead of separate application for each individual fund or sub-fund managed by it.

#### (a) 基金的条件

##### Fund conditions

我们已在前文中建议，《规定》应明确列出允许某些基金、产品或组合按每只基金/产品/组合单独计算持有特定证券数量的条件，并且这些条件应当同等适用于境内和境外的基金、产品或组合。我们认为是否可以按每个基金/产品/组合计算应主要看基金/产品/组合本身的性质，而基金管理公司是次要的。

We already suggested in the previous sections that the conditions for allowing certain funds, products or portfolios to calculate separately their holdings of Covered Securities on a per fund/product/portfolio basis be set out clearly in the Provisions and that such conditions apply equally to both domestic and foreign ones. We believe that the calculation on a per fund/product/portfolio basis should focus mostly on the nature of the fund/product/portfolio itself and less so on the fund manager.

#### (b) 基金管理人的要求

##### Fund manager requirements

但我们也理解应该对这些基金、产品和组合的基金管理人有一些要求。《规定》第十一条规定了境外公募基金管理机构向证监会申请按产品计算持有特定证券的数量。由于第九条规定，内部控制规范、治理结构完善、投资管理模式与公募基金管理人基本一致的私募证券投资基金管理人也可以向基金业协会申请按产品计算持有特定证券的数量，我们建议公募基金和私募基金申请按基金/产品/组合计算持有特定证券数量时，对其基金管理人的要求应是一致的，且这些要求应在《规定》中明确。

However, we understand that there should also be some requirements on the fund manager of these funds, products and portfolios. Article 11 of the Provisions sets out the requirements for a foreign Public fund management institution to apply to the CSRC for the calculation of shareholdings in Covered Securities on a per product basis. Since Article 9 provides that Private fund managers with standardized internal control, sound governance structure, and investment management mode basically consistent with those of Public fund managers may also apply to AMAC for calculation of holdings of Covered Securities on a per product level, we suggest that the requirements for the fund manager for both Public funds and Private funds seeking to calculate their holdings of Covered Securities on a per fund/product/portfolio basis be the same and clearly set out in the Provisions.

由于境外基金管理机构的监管和运营方式往往与境内基金管理机构不完全相同，因此对基金管理人的要求应该更为笼统。例如，全球资产管理公司往往管理大量基金（例如数百到数千只基金），不可能（如第十一条第（三）项所要求的）为其管理的每只基金设立单独的投资组合经理或不同的投资决策机构。事实上，具有类似策略（例如，聚焦新兴市场或中国）的基金通常会拥有相同的投资专业团队（例如研究分析师和投资组合经理），他们之间会分享研究和投资观点。但每个基金的投资组合经理会依据该基金的投资目标和策略做出不同的决策。这也是通常其他司法管辖区没有要求基金管理机构在不同基金的投资组合经理或者不同基金的投资决策机构之间建立隔离机制的原因之一。

The fund manager requirements should be more general in nature as foreign fund management institutions often are not regulated nor operated in exactly the same manner as domestic fund management institutions. For example, global asset managers tend to manage a large number (e.g., hundreds to thousands) of funds and cannot possibly have a separate portfolio manager or a different investment decision-making body for each fund that they manage (which Article 11(iii) seems to require). In fact, quite often funds with similar strategies (e.g., emerging markets or China focused) would have the same team of investment professionals (e.g., research analysts and portfolio managers) sharing research and investment views. But the portfolio manager of each fund will make his independent decision based on the investment objective and strategy of each fund. This is one of the reasons why generally there is no requirement in other jurisdictions for the fund management institution to establish an isolation mechanism among the portfolio managers of different funds or the investment decision-making body of different funds.

同样的，全球资产管理公司通常受到监管并被授权管理基金和/或第三方资产，并需拥有完善的治理结构，但这不包括拥有隔离它们和其关联机构之间的业务和客户关键信息的制度（如第十一条第（一）项所要求的）。事实上，就大多数全球金融机构而言，内部控制和风险管理通常在集团层面实施，母公司或集团公司一般都监督同一集团内所有公司遵守全球相关法律法规，并对集团内全球的公司活动进行监督和监控。例如，就权益披露的义务，集团可能会汇总集团内所有公司以及它们管理的基金和投资组合在一家上市公司的持股。如果集团中没有一家公司能够了解集团每个公司的业务和/或客户信息，则在上市公司的持股报告只能在每个公司层面进行，而不能按照要求在集团层面进行。

Similarly, global asset managers are usually regulated and specifically authorized to manage funds and/or third-party assets. They are required to have a sound governance structure but that usually does not include having a system that isolate the business and clients' key information between them and their affiliates (which Article 11(i) seems to require). In fact, in the case of most global financial institutions, internal controls and risk management are usually implemented on a group level where the parent or a group entity would oversee the compliance by all entities within the same group with relevant laws and regulations globally, and conduct surveillance and monitoring of the activities of group entities worldwide. For example, for disclosure of interest obligation, the group may aggregate the shareholdings in a listed company by all members of the group and the funds and portfolios that they manage. If no entity in a group has visibility on the business and/or client information of each of the group's entities, the reporting of shareholdings in a listed company can only be done on an entity level and not on a group level.



鉴于某一个基金管理人或投资者利用受监管的公募基金或私募基金控制上市公司或获取内幕信息从而通过短线交易获利的可能性极低，我们建议删除《规定》第十一条第（一）项和第（三）项中的隔离要求。否则，大多数全球资产管理公司将无法按产品/基金/组合层面单独计算持有特定证券数量，从而受益。

Given the highly unlikely possibility of a fund manager or an investor using regulated Public funds or Private funds to take control of a listed company or to gain access to insider information so as to profit from short swing transactions, we suggest that the isolation requirements in Article 11(i) and (iii) of the Provisions be deleted. Otherwise, most global asset managers will not be able to benefit from the separate calculation of holdings of Covered Securities on a per product/fund/portfolio level.

我们对《规定》第十一条第（二）项的要求没有意见。我们理解《规定》第十一条第（四）、（五）、（六）项是境外基金管理机构的义务，而非对其资格的要求。如果申请按产品/基金/组合计算持有特定证券数量的基金管理机构的资格和义务可以在《规定》中分开说明会更好。We have no issue with the requirement in Article 11(ii) of the Provisions. We read Article 11(iv), (v) and (vi) of the Provisions as obligations of the foreign fund management institution and not its eligibility requirements. It would be better if the eligibility requirements and obligations of the fund management institution seeking to calculate holdings of Covered Securities on a product/fund/portfolio basis can be separately stated in the Provisions.

鉴于我们上述的意见，我们请求贵会用类似于现行的证监会规定中的对于基金管理人的要求（例如《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》第六条对 QFI 的要求，和《公开募集证券投资基金管理人监督管理办法》第十三条对外商投资基金管理公司的境外股东的要求）来取代《规定》第十一条的要求。

In light of our comments above, we urge CSRC to replace the requirements set out in Article 11 of the Provisions with fund manager requirements that are similar to those set out in existing CSRC regulations such as Article 6 of the *QFI Regulation* for QFIs and Article 13 of the *Measures for the Supervision and Administration of Publicly Offered Securities Investment Fund Managers* for foreign shareholders of foreign-invested FMCs.

例如，这些要求可包括以下内容：基金管理机构 (i) 是根据被认可的司法管辖区的法律或法规设立并合法存续的；(ii) 被授权管理公开和/或私募集合投资计划并具有管理经验；(iii) 具有健全的治理结构、内部控制制度和合规管理制度；和 (iv) 遵守其适用的相关规则、规定，最近三年未受到监管机构的重大处罚。此外，贵会可以考虑要求基金管理机构 (x) 将其管理的所有基金区分、独立地对待；(y) 根据各基金各自的投资目标，分别管理各基金的投资；和 (z) 其管理的每个基金均相互隔离、独立核算并由第三方托管人单独托管。

For example, these requirements could include the following: the fund management institution (i) is established and legally in existence in accordance with the laws or regulations of a recognized jurisdiction; (ii) is authorised to manage and has experience in managing publicly and/or privately offered collective investment schemes; (iii) has sound governance structure, internal control system and compliance management regime; and (iv) is in compliance with relevant rules and regulations applicable to it and has not been subject to any major punishments by regulatory authorities in the past three years. In addition, CSRC may wish to consider requiring the fund management institution (x) to treat all the funds that it manages separately and independently from each other; (y) manages

the investments of each fund separately based on the separate investment objective of such fund; and (z) each of the funds that it manages is segregated from each other, has separate accounting and is held separately by a third party custodian.

如果《规定》能列出公募基金和私募基金的条件和其基金管理人的要求，境外基金和产品的审批流程将更加明确，这将确保与境内基金和产品的待遇保持一致，且流程会更加客观。在《规定》中添加申请证监会和基金业协会批准所需文件的详细信息以及时间表也将非常有帮助。 If the Provisions can set out the fund conditions and the fund manager requirements for both Public funds and Private funds, there will be greater clarity on the approval process for foreign funds and products and ensure consistent treatment with domestic funds and products so that the process will be more objective. Adding the details of the documentation required by and the timeline for CSRC and AMAC approval in the Provisions would also be very helpful.

## 6. 其他问题和建议

### Other questions and suggestions

- (a) 第二条“特定身份投资者”的定义 — 我们认为确保这些定义与《上市公司收购管理办法》中关于信息披露及计算投资者持股的规定一致是很重要的。否则，这将大幅加重上市公司和投资者在这方面的合规负担。

Article 2 definition of “Covered Investor” – We believe that it is important to ensure that these definitions are consistent with the provisions on disclosure of interest and calculation of investor’s shareholdings in the *Listed Company Takeover Administrative Measures*. Otherwise, it would significantly increase the compliance burden for listed companies as well as investors when it comes to the foregoing.

- (b) 第三条豁免沪深港通名义持有人 — 我们赞同香港中央结算有限公司不应被视为《规定》中的股东，因为它只是内地与香港股市互联互通机制下众多投资者的名义持有人。

Article 3 exclusion of nominee holder under Stock Connect – We agree with Hong Kong Securities Clearing Company Limited not being considered as a shareholder for purposes of the Provisions as it is only a nominee holder for numerous investors under the Mainland-Hong Kong Stock Connect schemes.

- (c) 第四条特定身份界定 — 虽然第四条明确了投资者买入时不具备特定身份但卖出时具备该身份应当遵守关于特定短线交易行为的规定，但并未说明买入时具备特定身份但卖出时不具备该身份的处理方式。我们建议《规定》对此进行明确。

Article 4 Definition of Covered Investor identity – Even though Article 4 provides that if an investor is not a Covered Investor at the time of purchase but becomes a Covered Investor at the time of sale, it shall comply with the provisions on covered short-swing transactions, it does not mention about the case where an investor is a Covered Investor at the time of purchase but no longer a Covered Investor at the time of sale. We suggest that the Provisions clarify this.

- (d) 第七条 对不同品种证券持有量的区分 — 我们同意第七条中对不同证券品种持有量的分别认定。

Article 7 separate determination for different types of securities holdings – We agree with the separate determination of holdings of different securities categories in Article 7.

- (e) 第十条 合并计算通过不同渠道获得的特定证券数量 — 如果第十条能够澄清“同一法律主体的投资者”的含义，将会有所帮助，因为不清楚它是仅指单一法人实体及其分支机构还是指同一集团公司中全部的控股或全资法人实体。

Article 10 aggregation of shareholdings acquired through different channels – It would be helpful if Article 10 can clarify what is meant by “investor of the same legal entity” as it is unclear if it means just a single legal entity and its branches or majority or wholly owned legal entities of the same group of companies.

- (f) 第十一条第（四）项 QFI 和“QFI+基金名称账户” — 我们理解以 QFI 名义开立的账户与以“QFI+基金名称”名义开立的账户不同，因为“QFI+基金名称账户”中的资产是明确的属于基金而非 QFI。在这种情况下，QFI 通常是投资经理或管理人，与其管理的基金不同。

Article 11(iv) QFIs and QFI + fund name account – Our understanding is that an account opened in the name of a QFI is different from an account opened in the name of QFI + fund name as the assets in the QFI + fund name account clearly belongs to the fund and not the QFI. The QFI in such cases is typically the portfolio or investment manager and is different from the fund that it manages.

如果“QFI+基金名称账户”结构下的 QFI 基金可以符合养老基金、公募基金或私募基金按基金/产品/组合单独计算持股的条件，我们假设关于短线交易的持股计算不再需要在 QFI 层面进行合并，QFI 可以按其每个基金单独计算持有特定证券的数量。否则，QFIs 能投资中国的金额将被大幅限制。我们建议《规定》对上述内容进行明确，但最好与《规定》中申请按基金/产品/组合计算持有特定证券数量的基金管理人资格要求分开。

If a QFI fund under the QFI + fund account structure satisfies the conditions for a Pension fund, Public fund or Private fund to have their shareholdings calculated on a per fund/product/portfolio basis, we assume no aggregation at the QFI level should be required and that the QFI can separately calculate each fund’s holdings of Covered Securities for short swing transaction purposes. Otherwise, the amount that QFIs can invest in China would be greatly reduced. We suggest that the foregoing be clarified in the Provisions but preferably separately from the eligibility requirements of the fund manager applying for calculation of shareholding on a per fund/product/portfolio level for purpose of the Provisions.

另外，“QFI+基金名称账户”结构下的 QFI 基金可能有多个子基金，每个子基金可能有自己的投资目标或策略。若这些子基金可以符合《规定》中的要求，这些子基金也应可以按子基金单独计算持有特定证券数量。我们希望《规定》能就此予以明确。

Separately, a QFI fund under the QFI + fund account structure may have many sub-funds, each of which may have its own investment objective(s) or strategy. If these sub-funds can satisfy the requirements in the Provisions, they should also be allowed to calculate their holdings in Covered Securities on a per sub-fund basis. We hope the Provisions can so clarify.

- (g) 第十一条第（五）项通过不同渠道获取的股份的合并披露 — 第十一条第（五）项的第一部分似乎与第十条类似，但它似乎涉及第（六）项中涵盖的披露内容。《规定》似乎无意改变第（六）项规定的现行《中华人民共和国证券法》及相关法规规定的权益披露义务。  
Article 11(v) aggregation of disclosures of shares acquired through different channels – This first part of clause (v) of Article 11 appears to be similar to Article 10 except it seems to relate to disclosure which is covered in clause (vi). It appears that it is not the intention of the Provisions to change the existing disclosure of interest obligations under the PRC Securities Laws and related regulations as provided in clause (vi).

因此，我们建议删除整个第（五）项，因为其第一句已在第十条中谈及，而第二句要求的公募基金不存在单一投资者持有份额超过总份额 50%的情形则与披露无关。请参阅本函第 4(b)部分。

Hence, we suggest deleting the entire clause (v) since the first sentence is already dealt with in Article 10 and the second sentence requiring that there is no circumstance where a single investor holds more than 50% of the total units of such publicly offered fund is not related to disclosure. See section 4(b) of this response.

我们还建议将第（六）项放在单独的一条中，而不是在第十一条，因为后者主要涉及基金管理人的资格要求，与基金管理人的持续义务不同。请参阅本回复的第 5(b) 节。

We suggest also that clause (vi) should be put under a separate Article instead of Article 11 as the latter deals primarily with the fund manager's eligibility requirements which are different from the fund manager's ongoing obligations. See section 5(b) of this response.

- (h) 基金业协会与交易所规则的一致性 — 基金业协会和交易所关于短线交易持有特定证券数量计算以及权益披露的规则必须与《规定》和证监会信息披露的相关规定保持一致，这是非常重要的。

Alignment of AMAC and stock exchange rules – It is important that the rules of AMAC and the stock exchanges with respect to calculations of shareholdings for short swing transaction purposes as well as disclosure of interest purposes be aligned with the final Provisions and CSRC's relevant provisions on disclosure of interest.

我们向贵会提供了很多意见供贵会考虑，因为《规定》对我们的会员非常重要。如果它们无法按每个基金/产品/组合计算其管理的基金/产品/组合的持股，则可能很容易触发特定短线交易的 5% 持股门槛，这将严重限制它们所管理的基金和/或客户投资组合可以投资中国证券市场的金额。

We have provided you with a lot of comments to consider as the Provisions are very important to our members. If they are not able to calculate the shareholdings of the funds/products/portfolios that they manage on a per fund/product/portfolio basis, the 5% shareholding threshold for a short swing transaction may be easily triggered, this would substantially limit the amount that their funds and/or client portfolios can invest in China's securities market.

我们很高兴能就贵会《规定》的征求意见稿提出意见，期待有机会向贵会更详细地解释我们的意见并解答贵会的任何问题。请联系 ASIFMA 资产管理主管 沈玉琪女士（电子邮件：[eshen@asifma.org](mailto:eshen@asifma.org) 或电话：+852 2531 6570）。

We are very happy to be able to comment on the CSRC's consultation on the draft Provisions and look forward to having the opportunity to explain in more detail our comments and answer any questions that you may have. Please contact Eugenie Shen, Head of ASIFMA's Asset Management, at [eshen@asifma.org](mailto:eshen@asifma.org) or Tel: +852 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

亚洲证券业与金融市场协会 Asia Securities Industry & Financial Markets Association