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中国证券监督管理委员会
市场二部
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China Securities Regulatory Commission
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敬启者，
Dear Sir or Madam,

关于《私募投资基金监督管理办法（征求意见稿）》的意见
ASIFMA AMG Comments on *Measures on the Supervision and Administration of Private Investment Funds (Draft for Consultation)*

我谨代表亚洲证券业与金融市场协会（“**ASIFMA**”）的资产管理部 (“**AAMG**”)[1] 的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12月8日发布的《*私募投资基金监督管理办法（征求意见稿）*》（“**《私募办法》**”）的一些意见和建议。
On behalf of members of the Asset Management Group (“**AAMG**”)[1] of Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)[2], I am pleased to submit our comments and suggestions

[1] AAMG 是 ASIFMA 下的一个独立部门，代表着 43 个资产管理公司会员，其中大多数是全球最大的资产管理公司。AAMG 的会员在全球范围内共计管理着超过 54 万亿美元的资产，以及数千个投资基金以及众多的客户投资委托。
AAMG is a separate division under ASIFMA which represents 43 asset manager members, most of which are among the largest global asset managers in the world. AAMG members manage collectively over USD 54 trillion in AUM globally and thousands of investment funds as well as numerous client mandates.

2 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发展的深度和广度，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

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on the *Measures on the Supervision and Administration of Private Investment Funds (Draft Revisions for Consultation)* (the "**Private Fund Measures**") released by the China Securities Regulatory Commission ("**CSRC**") on 8 December 2023.

以下是我们会员对《私募办法》的具体意见和建议，主要是关于私募基金管理人的证券投资顾问服务、私募基金销售要求、特定结构的基金（如单一投资者基金、单一标的基金、母基金等）、以及对私募基金管理人的资质和其他要求。
Set out below are some comments and suggestions from our members on the Private Fund Measures. They mainly focus on securities investment advisory services for private fund managers (PFMs), private fund distribution requirements, specific structures (such as single investor funds, single target funds, parent funds, etc.), as well as the qualifications and other requirements for PFMs.

1. 私募基金管理人的资质要求
Eligibility requirements for Private Fund Managers (PFM)

《私募办法》第七条第一款第（五）项要求私募基金管理人应当持续符合"有符合规定数量、专业任职条件和诚信记录的高级管理人员和其他从业人员"。
Article 7, Paragraph 1 (5) of the Private Fund Measures requires that PFMs shall meet the ongoing qualification requirements of "having senior management personnel and other fund practitioners meeting the required number, competence requirements and integrity record".

对于投向境外基金的QDLP基金管理人而言，如要求其设置专职的、具备投资管理从业经验的负责投资管理的高级管理人员，存在一定的实施难度。因QDLP基金的主基金-联接基金结构，在QDLP基金层面几乎不需要进行主动的投资管理。因此，符合条件的专业且资深的投资管理人是否愿意作为投资负责人专职服务QDLP基金存疑。我们希望知道这些要求是否适用于QDLP基金。
For QDLP fund managers who invest in offshore funds, it is difficult for them to appoint full-time senior management personnel in charge of investment management who could meet the requirements of investment management experience. Due to the master-feeder structure of QDLP funds, there is almost no active management at the QDLP fund level. Therefore, will experienced professionals be willing to serve QDLP funds on a full-time basis as the senior management personnel in charge of investment management. We hope to understand if these requirements are applicable to QDLP funds.

我们希望了解，此处的"符合规定数量"如何理解？此前中国证券投资基金业协会（"**基金业协会**"） 发布的《私募投资基金登记备案办法》中设置了私募基金集团化管理人的例外情形，是否可以认为集团化管理人属于第七条第一款第（五）项要求适用的例外？
We would like CSRC to clarify the definition of "required number" of senior management personnel and other fund practitioners. The *Measures for Registration and Filing of Private Investment Funds* (the "Registration and Filing Measures") previously issued by the Asset Management Association of China ("**AMAC**") has a special carve-out for the PFMs under the same controlling shareholder or actual controller. Would such a carve-out also be extended to Paragraph 1 (5) of Article 7 of the Private Fund Measures?

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.

对以母子股权结构成立的QDLP基金管理人（即QDLP为外商独资私募基金管理人的全资子公司的），设立时经本地金融局与基金业协会的同意，外商独资私募基金管理人和QDLP可共享注册地址、人员和办公空间。在此人员共享的安排下，我们希望QDLP “符合规定数量” 的高级管理人员和其他从业人员的要求可以与外商独资私募基金管理人合并计算。此外，《私募办法》第七条第一款第（二）项要求“财务状况良好，最低实缴货币出资应与管理资产规模相适应，其中初始实缴货币出资不低于1000 万元。”以母子股权结构成立的QDLP基金管理人是否实缴资本也必须不低于1000万元？

For QDLP fund managers established under a parent-child equity structure (i.e., QDLP as a wholly owned subsidiary of WFOE PFM), WFOE PFM and QDLP may share the same registered address, personnel and office space with the blessing of the local financial bureau and AMAC. Under this staff-sharing arrangement, we would like to see that the “required number” of senior management personnel and other fund practitioners for QDLP can be considered together with the WFOE PFM. In addition, Article 7, Paragraph 1 (2) of the Private Fund Measures requires that "the financial position be good, and the minimum paid-in monetary contribution shall be commensurate with the scale of assets under management, of which the initial paid-in monetary contribution shall not be less than RMB 10 million." Does the QDLP fund manager established under a parent-child equity structure also have to meet the minimum paid-in capital of RMB 10 million?

《私募办法》第七条第一款第（三）项要求出资架构简明清晰稳定，控股股东、普通合伙人、实际控制人财务状况和诚信记录良好，并应当具有从事投资、资产管理业务等相关工作经验。

Article 7, Paragraph 1 (3) of the Private Fund Measures requires that the capital contribution structure be concise, clear and stable, that the controlling shareholder, general partner and actual controller have a good financial status and integrity record, and that they should have relevant work experience in investment and asset management business.

由于集团股权架构统一规划、税务筹划等目的，有一些QDLP管理人以及外商独资私募基金管理人的控股股东可能是持股公司(Holdco)，而不一定是实际经营投资、资产管理业务的实体，但其所属集团是具有丰富投资、资产管理经验的。对于此类QDLP和外商独资私募基金管理人，可否豁免其控股股东必须具有从事投资、资产管理业务经验的要求?

Due to unified planning of group shareholding structure and tax arrangement considerations, the controlling shareholder of some QDLP managers and WFOE PFMs may be holding companies (Holdco) rather than entities that are actually operating an investment and asset management business. But the group of which it is a part has rich experience in investment and asset management. Is it possible to exempt the requirements of asset management experience of the controlling shareholder of these types of QDLP managers and WFOE PFMs?

2. 提供证券投资顾问服务
Provision of securities investment advisory services

向私募证券投资基金提供证券投资顾问服务
Provision of securities investment advisory services to private securities investment funds

第十三条第（二）项明确私募基金管理人可以为《私募办法》第四十二条第（二）项规定的由接受国务院金融监管机构监管的机构依法发行的资产管理产品提供证券投资顾问服务。但是，其中并未提及现行规定允许的为其他私募基金提供投资顾问服务。

Item (2) of Article 13 provides clearly that PFMs can provide securities investment advisory services to asset management products launched by licensed financial institutions pursuant to

Item (2) of Article 42 of the Private Fund Measures. However, it did not mention providing investment advisory services to other private funds allowed under existing regulations.

根据国务院2023年9月1日施行的《*私募投资基金监督管理条例*》（《**私募基金条例**》），私募基金管理人可以委托《*证券投资基金法*》规定的基金投资顾问机构为私募基金提供证券投资建议服务。另外，依据证监会2016年7月18日生效的《*证券期货经营机构私募资产管理业务运作管理暂行规定*》（《**私募资管业务暂行规定**》），私募证券投资基金可以委托符合条件的私募证券投资基金管理人提供投资顾问服务。相比于这些规定，《私募办法》似乎缩小了可以委托私募基金管理人提供证券投资顾问服务的主体范围。我们希望了解该项变化是否符合贵会的本意。如果不是的话，希望《私募办法》能够明确私募基金管理人可以为其他私募基金提供证券投资顾问服务。

According to State Council's *Regulations on Supervision and Administration of Private Investment Funds* ("**Private Fund Regulations**") which came into effect on 1 September 2023, PFMs can appoint fund investment advisors specified in the *Securities Investment Funds Law* to provide securities investment advisory services for their private funds. In addition, according to CSRC's *Interim Regulations on the Administration of Operation of Private Asset Management Business of Securities and Futures Business Institutions* ("**Interim Regulations on Private Asset Management Businesses**") that came into effect on 18 July 2016, private securities investment funds can entrust qualified private securities investment fund managers to provide investment advisory services to them. Compared to these regulations, the Private Fund Measures seem to have narrowed the scope of the subjects that can receive securities investment advisory services from PFMs. We would like to know if this change is in line with CSRC's intention, and if not, hope that the Private Fund Measures can clarify that PFMs can provide securities investment advisory services to other private funds.

<u>向境外资产管理产品提供证券投资顾问服务</u>
<u>Provision of securities investment advisory services to foreign asset management products</u>

《私募办法》目前只提到了私募基金管理人可以向境内持牌金融机构设立的资产管理产品提供投资顾问服务。我们也希望私募基金管理人（包括外商独资私募基金管理人）可以向投资中国市场的境外资产管理产品提供该服务。这有助于境外投资者更好的了解中国市场及其上市公司，从而吸引更多投资进入中国。

The Private Fund Measures mentioned only that PFMs can provide investment advisory services to asset management products established by domestic licensed financial institutions. We also hope that PFMs (including WFOE PFMs) are allowed to provide such services to overseas asset management products investing in the China market. This would help overseas investors to better understand the China market and its listed companies, thereby attracting more investments into China.

目前，私募基金管理人可以向其关联的合格境外投资者提供投资建议，因此我们建议至少允许外商独资私募基金管理人向其投资中国市场的境外关联机构（例如沪深港通）和其产品提供投资顾问服务。允许外资私募基金管理人向境外产品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。

Currently, PFMs can provide investment advice to their affiliated QFIs. Therefore, we suggest also allowing WFOE PFMs to provide investment advisory services to their affiliated overseas entities (e.g. under the Mainland-Hong Kong Stock Connect) and their products that invest in the China

market. Allowing foreign-owned PFMs to provide such services to overseas products will help foreign asset managers fully utilize their professional knowledge and resources within China to service their overseas affiliates and the investment portfolios and funds managed by such affiliates. Such services will enable foreign asset managers to hire more employees in China, thereby promoting the development of China's asset management talents and the industry as a whole.

提供证券投资顾问服务的资质
Qualifications to provide of securities investment advisory services

《私募办法》第十四条规定提供证券投资顾问服务的私募基金管理人应当已在基金业协会登记满三年，并具备符合规定数量和投资业绩且无不良从业记录的投资管理人员。如果可以明确“符合规定数量和投资业绩”的投资管理人员是否为《私募资管业务暂行规定》中要求的“具备 3 年以上连续可追溯证券、期货投资管理业绩的投资管理人员不少于 3 人”，将有所帮助。
Article 14 of the Private Fund Measures stipulates that PFMs which provide securities investment advisory services shall have been registered with AMAC for at least three years and have investment management personnel meeting the required number and investment performance, with no bad record. It would be helpful if the Measures can clarify whether the "required number and investment performance" for investment management personnel refers to "no less than 3 investment management personnel with continuous traceable securities and futures investment management performance for more than 3 years" as required in the *Interim Regulations on Private Asset Management Businesses.*

3. 私募基金销售
Distribution of private investment funds

《私募办法》第四十四条第（二）项规定私募基金管理人不得委托或者变相委托与私募基金管理人及其股东、合伙人、实际控制人、从业人员存在关联关系的私募基金销售机构。这比现行规定的私募基金管理人和基金销售机构存在关联关系时要通过风险揭示书向投资者进行特别提示的要求要严格。
Article 44 (2) of the Private Fund Measures prohibits PFMs from engaging, directly or in a disguised form, a distributor that is affiliated with the PFM or any of its shareholders, partners, actual controller or fund practitioners. This is stricter than the current regulations that require PFMs to give special alert to the investors in the Risk Disclosure Letter if the PFM's fund distribution institution is affiliated with the PFM.

我们理解第四十四条第（二）项的目的是防范关联方之间不当利益输送的风险，以保护投资者权益。对该等风险的控制，我们建议可以针对不同类型的关联销售机构进行区别化管理，例如至少豁免受到严格监管要求的拥有基金销售牌照的金融机构。
We understand that Article 44 (2) is aimed at preventing risk arising from improper transfer of interests between the affiliated parties in order to protect investors' interests. With regard to such risk preventions, we would propose that CSRC allow for differentiated treatment to different types of affiliated distribution institutions, such as at least exempt financial institutions with a fund distribution license, which are subject to higher regulatory requirements.

依据证监会2020年10月1日生效的《*公开募集证券投资基金销售机构监督管理办法*》（《**基金销售办法**》）规定，拥有基金销售牌照的销售机构应该具备健全高效的业务管理和风险管理制度，符合证监会规定的内控制度，并应该有利益冲突识别、评估和防范能力。

该办法第四十八条也规定“基金销售机构应当对存在关联关系的私募基金管理人及私募基金履行严格的利益冲突评估机制，经评估无法有效防范利益冲突的，不得销售相关产品；经评估确定可以销售的，应当以书面形式向投资人充分披露，并在销售行为发生时由投资人签字确认”。鉴于本条规定，取得基金销售牌照的金融机构如果决定销售其有关联关系的私募基金管理人的基金，则说明其可以按规定严格防范利益冲突，并会在销售时向投资者充分披露。因此，从维持法规一致性的角度，我们建议《私募办法》可以对取得基金销售牌照的金融机构予以豁免，使其在满足监管要求的情况下可以销售其关联私募基金管理人的基金。

CSRC's *Measures for the Supervision and Administration of Agencies Engaged in the Sales of Publicly Offered Securities Investment Funds* ("**Fund Distribution Measures**") which came into effect on 1 October 2020 stipulates that the fund distribution institutions with fund distribution license are required to have strong and efficient business administration and risk management systems, internal control systems in accordance with CSRC's requirements and the capabilities to identify, assess and prevent conflicts of interest. In addition, Article 48 of the Fund Distribution Measures stipulates that "fund distribution institutions shall implement strict conflicts of interest assessment mechanism for the PFM and private funds affiliated with it if it is assessed that conflicts of interest cannot be prevented, the institution shall not be distribute the relevant products; and if the products can be distributed after the assessment, the distribution institution shall make full written disclosure to the investor, who should signed such disclosure when the sale occurs". Based on this Article, if a financial institution with a fund distribution license has determined to distribute the fund of its affiliated PFM, it means that the distribution institution is able to strictly prevent conflicts of interest in accordance with the regulations and will make full disclosure to the investors at the time of sale. Therefore, from the perspective of maintaining regulatory consistency, we suggest that the Private Fund Measures exempt financial institutions with fund distribution licenses so that they can distribute funds of their affiliated PFM while complying with the regulatory requirements.

从市场实践而言，同一金融集团内部各机构的协作性较强，为客户提供全平台的产品服务也是金融集团的优势之一。如公募基金管理人通常委托其具备基金销售资质的股东代销基金产品一样，持有基金销售牌照的金融机构（如证券公司等）为集团内私募基金管理人代销私募基金的实践广泛存在。因此，我们建议可以允许这一销售模式继续使用。

From a market practice perspective, different entities within the same financial group are highly collaborative and the capacity of providing customers/clients with one-stop services and products is also an advantage of financial groups. Just as public fund managers often appoint their shareholders with fund distribution qualifications to sell their public fund products, it is also a common practice for financial institutions (e.g. securities companies) that have a fund distribution license to distribute private funds for the PFMs under the same group. Therefore, we recommend that this distribution model continue to be allowed.

综上，我们建议明确拥有基金销售牌照的金融机构不适用第四十四条第（二）项的规定。为解决监管机构对于相关风险的担忧，可以参照《基金销售管理办法》前述规定，要求对利益冲突进行严格防范并对关联关系进行充分披露。

In summary, we suggest exempting financial institutions with a fund distribution license from the provision of Article 44 (2). In order to address the regulator's concerns over relevant risks, the Private Fund Measures can include similar measures in the Fund Distribution Measures to require strict prevention of conflicts of interest and full disclosure of the affiliation.

此外，如果《私募办法》可以明确本条中“变相委托”的具体形式，将对实践中的明确性和可操作性有所帮助。
Separately, if the Private Fund Measures can clarify the forms of “engaging in a disguised form” in this article, it would be helpful for clarity and operating in practice when implementing this requirement.

向投资者解释基金合同
Explanation of fund contract to investors

《私募办法》第三十二条规定私募基金管理人和投资者签订基金合同并由私募基金管理人、私募基金销售机构向投资者全面、充分解释基金合同。私募基金投资者根据法规要求应当满足合格投资者的要求，这些投资者往往具有一定投资经验并会寻求专业法律人员的帮助审阅和协商基金合同条款。要求私募基金管理人和销售机构“全面”“充分”解释基金合同的内容可能对这些投资者过于繁琐，这些投资者可能也更希望了解基金投资的目的及其相关的风险。
Article 32 of the Private Fund Measures requires PFMs to sign a fund contract with the investors and also the PFM and private fund distributors provide thorough and adequate explanation thereof to the investors. Private fund investors are supposed to meet eligibility requirements under the regulations and often have a certain amount of investment experience and would seek the help of legal professionals to review and negotiate the terms of the fund contract. The requirement of “*thorough* and *adequate* explanation” of the fund contract by the PFM and fund distributors may be overly detailed for these investors which may prefer to understand the investment objective of the fund and its related risks.

所以我们建议该条修改为“私募基金管理人应当根据有关规定对投资者进行充分风险揭示。 私募基金管理人或销售机构有义务就投资者对具体基金合同条款提出疑问时提供必要解释。”
Therefore, we suggest amending this article to “*PFMs shall fully disclose relevant risks to investors according to relevant rules and regulations. Private fund managers or distributors shall provide a necessary explanation when investors query about specific fund contract terms*”.

对底层投资者的穿透核查要求
Look-through requirement for the identification of underlying investors

《私募办法》第四十二条第二款的后半句提出持牌金融机构发行的资产管理产品、私募基金，不合并计算投资者人数，但私募基金管理人或基金销售机构应当有效识别私募基金的实际投资者与最终资金来源。
The second half of Paragraph 2 of Article 42 of the Private Fund Measures proposes that asset management products and private funds issued by licensed financial institutions do not need to calculate the number of investors on an aggregated basis, but PFMs or fund distributors should effectively identify the underlying actual investors of the private fund and the ultimate source of their capital.

我们提请贵会考虑进一步明确此处要求的“有效识别”的颗粒度。当投资者为资产管理产品或私募基金时，因底层客户信息通常为该等产品的募集机构的重要商业资源，并被视作

商业秘密进行保管。在产品的募集机构已经完成合格投资者核查的情况下，如私募基金管理人要求其提供过多、过细的底层客户信息，可会存在一定实施难度、从而阻碍业务开展。
We respectfully request the CSRC to further clarify the level required for the "effective identification" stipulated in Article 42. When the investor is an asset management product or a private fund, the underlying customer information is usually considered as an important business resource of the fundraising institution of such products and is kept as a trade secret. In the case where the fundraising institution of the product has completed the verification for qualified investors, there may be certain implementation difficulties for the PFM to ask from them too much and too detailed underlying customer information. This may hinder the development of business.

另外，就由受监管的金融机构发行的资产管理产品而言，其发行金融机构已经受到严格的客户核查要求。私募基金管理人无需重复进行核查，金融机构也可能因私募基金管理人也需要履行相关义务从而放松了对最终投资者的核查（在实际操作中，金融机构很可能将责任推给私募基金管理人，因其"资方"的主导地位），最终导致出现纠纷的概率增大，纠纷出现后无法很好的确认权责归属等问题。从而可能导致金融机构更难与私募基金管理人进行合作，大大打击私募基金行业的积极性。
In addition, for asset management products issued by regulated financial institutions, their issuing financial institutions are already subject to very strict customer verification requirements. While there is no need for PFM to repeat such exercise, these financial institutions may relax their scrutiny of end investors verification if PFMs also need to fulfill relevant obligations (in practice, financial institutions are likely to shift the responsibility to PFMs due to their dominant position as "source of capital"), ultimately leading to an increased probability of disputes and difficulties in confirming the ownership of rights and responsibilities after disputes arise. This may make it more difficult for financial institutions to cooperate with PFMs, greatly dampening the enthusiasm of the private fund industry.

就私募基金而言，在其募集时私募基金管理人、募集机构均应当根据有关规定履行投资者身份识别以及资金来源等信息的核查。私募基金设立完成后再进行投资时再度要求穿透核查会造成客户信息的重复性核查。如母基金等以投资其他私募基金份额为主要投向的私募基金，每次投资均对母基金投资者重复进行穿透核查，对于管理人和投资者而言进一步增加了较多不必要的负担。
For private funds, fund managers and fund raisers should have already completed investor identification and verification of source of funds during the fund raising according to the relevant requirements. Look-through of underlying investors of private funds after they have been established and make investments will cause duplication of KYC activities. For fund-of-funds (FOF) primarily investing in other private funds, investor look-through each time an investment is made will also place unnecessary heavy burden on both manager and investors.

因此，我们建议《私募办法》第四十二条取消对私募基金投资者的穿透核查要求，或至少停留在募集机构或投资该私募基金的基金/产品层面。
Therefore, we suggest removing the investor look-through requirements for private funds and private fund managers set out in Article 42 of the Private Fund Measures, or at least stop at the level of the fundraising institutions or the funds/products investing in the private fund.

4. 单一投资者的私募基金
Private funds with single investor

依据《私募办法》第三十七条，我们理解，如私募基金管理人系接受单一投资者委托设立基金的，双方可以在基金合同中进行特别约定。此类私募基金的投资者仅限于第四十二条第（一）（四）（五）（六）项规定的投资者（即“受监管的金融机构、养老基金、社会公益基金、合格境外投资者以及政府资金或者符合条件的政府资金参与设立的基金”），且该私募基金实缴规模不得低于1亿元。

We understand from Article 37 of the Private Fund Measures that if the PFM is entrusted by a single investor to establish a fund, the two parties can make special agreements in the fund contract. The investors eligible to set up such a private fund are limited only to those set out in Article 42 (1), (4), (5) and (6), i.e., regulated financial institutions, pension funds, social welfare funds, QFIs and other government funds, and the size of such fund shall be no less than RMB 100 million.

对单一投资者的认定
Determination of “single investor”

在实践中，不仅仅面向单一投资者募集的私募基金，因各种情况有可能导致其在某些时段仅有一名投资者的情形，例如仅募集到一位投资者但后续还将开放申购持续募集、其他投资者赎回仅剩一位投资者、因投资者之间的份额转让导致仅剩一位投资者。我们理解《私募办法》第三十七条的本意并非针对这些情况，所以该投资者无需遵守关于“单一投资者”的范围及实缴规模的限制。如果《私募办法》可以对此予以明确，将有所帮助。

In practice, there are circumstances where a private fund that is not issued to a single investor may only have one investor during some period of time due to various reasons. For example, the fund only received subscription from one investor at the fund launch but there will be continuous fundraising for subsequent subscriptions, only one investor left after redemptions from other investors, or the transfer of shares between investors resulting in only one investor left. We understand that Article 37 of the Private Fund Measures is not intended to target these circumstances, so that investor does not need to comply with the limitations on the investor type and minimum contribution amount required for a “single investor”. It would be helpful if the Private Fund Measures can clarify.

单一投资者的范围
Scope of “single investor”

首先，我们建议将单一投资者委托设立私募基金的投资者范围扩大到第四十二条规定的所有合格投资者，即增加资管产品和私募基金管理人/私募基金。这两种投资者本身也属于合格投资者的范围，不应被排除在外。另外，在实践中，金融机构一般不会使用自有资金大额投资私募基金而是通过设立资管产品方式开展。排除上述两种投资者将使金融机构不得不改变这一做法。

First, we suggest expanding the scope of investors eligible to set up a fund with single investor to all qualified investors set out in Article 42, i.e., adding asset management products and private fund managers/private funds. These two types of investors are also considered within the scope of qualified investors so should not be excluded in the case of single investor. Moreover, in practice, financial institutions usually do not make large investment in a private fund with its own or proprietary funds but would set up asset management products for such investments.

Excluding these two types of investors will cause financial institutions to make changes to their current practice.

其次，我们建议进一步允许符合一定条件的机构投资者设立该等基金。有设立该等私募基金需求的机构投资者一般资金实力雄厚，投资经验丰富，专业度和成熟度高，风险识别和承受能力较强，基金产品风险与投资者风险承受能力的匹配性较强，且第三十七条已经设定了较高的投资准入门槛（1亿元人民币以上）。

Second, we suggest further expanding the eligible investor scope to institutional/corporate investors satisfying certain conditions. Institutional/corporate investors that would want to set up a private fund with a single investor usually have strong financials and rich investment experience, and are professional and sophisticated, with a strong risk identification capability and high-risk tolerance. Funds with a single investor would be a suitable product for such investors. In addition, Article 37 has already set a high minimum investment threshold for such investor (RMB 100 million and above) to participate.

综上，我们建议允许接受单一投资者委托设立私募基金的投资者范围扩大到第四十二条规定的合格投资者，以及符合一定条件的机构投资者。我们理解，根据证券法以及证监会投资者适当性相关规定，在资产规模、投资经验等满足一定条件的情况下，这些投资者已经被允许认购复杂程度较高的产品，所以它们作为私募基金的单一投资者应该没有限制。

In summary, we suggest expanding the scope of investors eligible to set up a fund with a single investor to all qualified investors set out in Article 42 as well as institutional/corporate investors satisfying certain conditions. We understand that the PRC Securities Law and other CSRC regulations on investor suitability already allow these investors/products to subscribe for sophisticated/complex products when satisfying certain conditions, so there should be no limit for them to become the single investor of private funds.

如果《私募办法》第三十七条的设立的初衷是，仅允许第四十二条第（一）（四）（五）（六）项规定的投资者与私募基金管理人的合同中灵活约定决策机制等条款，而不是单一投资者只能是类型为（一）（四）（五）（六）项规定的投资者的话，为避免歧义，我们建议予以明确说明。

If the original intention of Article 37 of the Private Fund Measures is to allow only investors under Article 42 (1), (4), (5) and (6) to agree with flexibility on decision-making mechanisms and other provisions in their contracts with PFMs, rather than allowing the single investor only to be of these types, we suggest that this be explicitly stated to avoid any ambiguity.

5. 单一标的私募基金
Private fund with single investment target

《私募办法》第三十八条规定，私募基金管理人将单只私募基金80%以上基金财产投向单一标的的，该基金实缴规模不得低于2000万元，其中有自然人投资者的，单个自然人投资者实缴规模不得低于1000万元。我们理解基金业协会在问答中明确对基金投资“单一标的”的判断应穿透其投资的基金、资管计划等产品看是否投资单一底层标的企业。即现在的做法是，若涉及基金甲仅投资下层单一基金乙，但下层基金乙同时投资多个基金/标的，上层基金甲不视作仅投资了单一标的（即在主基金-联接结构中，联接基金不会被视作仅投资了单一标的）。我们建议在《私募办法》中能够对“单一标的”采用同样处理方式并予以明

确。考虑到QDLP基金的主要是投资境外主基金的联接基金，至少应该对QDLP基金予以豁免。

Article 38 of the Private Fund Measures stipulates that if the private fund invests more than 80% of its assets in a single target, the fund's paid-in capital shall be no less than RMB 20 million, and when it has natural person investors, the paid-in amount of each natural person investor shall be no less than RMB 10 million. We understand that the AMAC specified in its FAQs that whether a fund is investing in "single target" is determined by if it invests in a single underlying company after looking through the funds, asset management schemes and other products it invests in. This is to say that under the current practice, if Fund A invests all in Fund B, but Fund B invests in multiple funds or targets, Fund A will not be regarded as a fund investing in a single target (i.e., in the master-feeder fund structure, the feeder fund will not be considered as investing in a single target). We suggest the same approach be adopted for interpreting "single target" and clarify in the Private Fund Measures, or at least exempt QDLP funds from this requirement given most QDLP funds are feeder funds investing in a foreign master fund.

6. 母基金的定义

Definition of "parent fund"

《私募办法》第二十八条第三款定义"母基金"为将主要基金财产投资于私募股权投资基金份额、私募证券投资基金份额、本办法第四十二条第（二）项规定的由持牌金融机构发行的资产管理产品份额以及符合中国证监会规定的其他投资标的的私募基金。我们理解这里的"母基金"不包括投资于单一主基金的联接基金（例如 QDLP 基金），或在实践中广泛发行的、模式较为成熟的"基金中基金"（FOF）。我们希望《私募办法》可以予以明确。

Article 28, Paragraph 3 of the Private Fund Measures defines the "Parent fund" as a private fund that invests main fund assets into the units of private equity investment funds, private securities investment funds, asset management products issued by licensed financial institutions as set out in Item Article 42(2) of the Private Fund Measures, and other investment targets of private funds meeting CSRC's requirements. We assume that "parent fund" here does not include a feeder fund (e.g. QDLP funds) that invests into a single master fund nor a fund-of-funds (FOF) which is a relatively mature product design and is widely issued in practice. We hope that the Private Fund Measures can clarify this.

另外，我们还希望了解并看到《私募办法》明确以下：

In addition, we also would like to understand and have the Private Fund Measures clarify the following:

a. 此处的"私募股权投资基金份额"、"私募证券投资基金份额"，是否分别包含了私募股权投资类 FOF 基金和私募证券投资类 FOF 基金？
   Do the "units of private equity investment funds" and "units of private securities investment funds" here include units of private equity investment FOFs and private securities investment FOFs?

b. 母基金是否能同时投向私募股权投资基金份额、私募证券投资基金份额以及资管产品份额，从而实现跨类别资产配置的功能？

Can the master fund simultaneously invest in private equity investment funds, private securities investment funds and asset management products, thereby achieving the objective of cross-category asset allocation?

7. 基金底层资产的披露
Disclosure of the underlying assets of the fund

《私募办法》第六十条第二款第（三）项要求私募基金管理人向投资者披露私募基金底层资产情况，通过公募证券投资基金以外的资产管理产品或者其他私募基金投资的，应当穿透披露最终底层资产。
Article 60, Paragraph 2 (3) of the Private Fund Measures requires PFMs to disclose the underlying assets of the private fund to investors. If they invest through asset management products other than public securities investment funds or other private funds, they should disclose the ultimate underlying assets on a look-through basis.

我们提请证监会考虑进一步明确此处要求披露的“底层资产情况”的颗粒度？目前按照基金业协会提供的模板，私募证券投资基金管理人对于底层证券的披露是到资产类别以及行业类别层面的，该等披露颗粒度在《私募办法》推行后是否仍被认可？
We respectfully request CSRC to further clarify the required level of “underlying assets” to be disclosed. Currently, according to the template provided by AMAC, the disclosure of underlying securities by private securities investment fund managers is at the asset class level and industry level. Would this still be acceptable after the implementation of the Private Fund Measures?

另一方面，对于QDLP基金而言，其系通过境外基金进行投资，如需要披露“底层资产状况”，需要同时考虑到：（1）境外基金的披露颗粒度；和 （2）境外基金的披露时效性。境外基金基于公平对待所有投资者的原则，无法向QDLP基金进行高于其境外披露颗粒度、披露时效性的披露。我们希望证监会能够进一步明确，在通过其他资产管理产品或其他私募基金进行投资的情形下，对于底层资产披露的颗粒度及时效性要求。
On the other hand, for QDLP funds, they invest through offshore funds. If they need to disclose the “underlying assets”, further considerations are required on: (1) the granularity of disclosure for offshore funds; and (2) the timeliness of disclosure for offshore funds. Offshore funds, based on the principle of fair treatment for all investors, cannot disclose to QDLP funds at a standard higher than their disclosure to offshore investors in terms of granularity and timeliness. We hope that CSRC can further clarify the requirements for the granularity and timeliness of the disclosure of underlying assets when private funds invest through other asset management products or other private funds.

8. 其他对私募基金管理人的要求
Other requirements on PFMs

<u>法定代表人、高管持股的豁免</u>
<u>Exemption of the shareholding requirements of the legal representative and senior management personnel</u>

《私募办法》第七条第三款，规定金融机构、政府机构、境外金融机构控制的私募基金管理人，可不适用第一款第（四）项的规定。但我们注意到，该第（四）项有前后两部分，前半句要求法定代表人、执行事务合伙人或者委派代表、负责投资管理的高级管理人员应

当具有相关工作经验，后半句要求该等人员合计持有私募基金管理人的股权或者财产份额比例不低于最低初始实缴货币出资的20%。
Article 7, Paragraph 3 of the Private Fund Measures stipulates that PFMs controlled by financial institutions, government institutions and offshore financial institutions are exempted from the requirements of Item (4) of Paragraph 1 thereof. However, we noticed that Item (4) has two parts. The first half requires that the legal representative, executive partner or authorized representative, and the senior management personnel in charge of investment management should have relevant work experience. The second half requires the collective shareholding or asset holdings of such personnel to be not less than 20% of the lowest actual amount of the first paid in capital.

我们提请监管机构考虑进一步明确第三款的豁免是否仅为对第一款第（四）项后半句的豁免。
We respectfully request CSRC to further clarify whether the exemption set out in Paragraph 3 is only for the exemption of the second half of Item (4) of Paragraph 1.

管理人风险计提要求
Requirement of risk provision

《私募办法》第十七条规定关于私募基金管理人管理资产规模达到规定标准的，应当符合中国证监会规定的风险计提等要求。
Article 17 of the Private Fund Measures requires that PFMs whose assets under management (AUM) reach the specified threshold shall comply with the requirements of the CSRC such as provision of risk reserve.

我们希望了解，对于此处的“资产规模达到规定标准”以及“风险计提”要求，是否有现行可参考的规则，如无，监管机构是否会另行出具细则进行指引？
We would like to know, for the ‘specified threshold’ for AUM and the requirement for ‘provision of risk reserve’ in this article, are there any existing rules that can be referred to? If not, will the regulatory authorities issue a separate detailed guidance?

设立分支机构
Establishing branches

《私募办法》第十九条规定私募基金管理人不得出资设立分支机构。为管理私募基金财产必须设立子公司的，私募基金管理人应当将子公司纳入统一合规风控管理，并及时向基金业协会和注册地、设立机构所在地中国证监会派出机构报告。
Article 19 of the Private Fund Measures provides that PFMs shall not contribute to the establishment of branch offices. If it is necessary to establish a subsidiary for the management of private fund assets, the PFM shall include the subsidiary in unified compliance risk control management and timely report to AMAC and the local CSRC agencies of registration and establishment.

很多大型私募基金管理人设立分支机构的主要目的为异地办公（尤其为北上深）的员工在当地缴纳社保，而非扩展私募基金业务为目的。若私募基金管理人仅能通过设立子公司的方式为异地办公员工缴纳社保，则可能导致管理人运营成本极大提高，且本应属于私募基金管理人的异地办公员工劳动关系则将不再属于该私募基金管理人，因为子公司与母公司为独立法人主体。子公司也不一定适合再寻求私募基金管理人牌照，子公司员工不能计入

母公司的员工下，甚至无法从事私募基金管理活动。而分支机构没有独立法人主体，隶属于私募基金管理人，从而可以使得异地办公的员工仍能以私募基金管理人的员工身份进行从业，极大提高私募基金管理人吸引人才的便利性。

The main purpose of many large PFMs setting up branch offices is to pay social security locally for employees working in different locations (especially in Beijing, Shanghai, and Shenzhen) rather than expanding its private fund business. If a private fund manager can only pay social security for employees working in different locations by establishing a subsidiary, it may lead to a significant increase in the manager's operating costs. In addition, the labor relationship of employees working in different locations, which should belong to the PFM, will no longer belong to it, as the subsidiary and parent company are independent legal entities. It may not be suitable for the subsidiary to also obtain a PFM license and employees of the subsidiary cannot be included as staff of the parent company and cannot even engage in private fund management activities. Branch offices are not independent legal entities and are subordinate to the PFM, which allows employees working in different locations to still work as staff of the PFM, greatly improving the convenience of attracting talent for the PFMs.

因此我们建议将删除“私募基金管理人不得出资设立分支机构”的规定。如有必要的话，本条可限定分支机构可做的事情，例如可以采用证监会2020年12月30日发布的《关于加强私募投资基金监管的若干规定》的方式，禁止“以从事资金募集活动为目的设立或者变相设立分支机构”。

Therefore, we suggest that the prohibition of establishment of branch offices by PFMs be removed. If necessary, this article can limit the activities of the branch offices. For example, it can adopt the approach in the *Several Provisions on Strengthening the Regulation of Private Investment Funds* issued by CSRC on 30 December 2020, forbidding “establishing or establishing in a disguised form a branch office for the purpose of engaging in fundraising activities”.

<u>重大事项及风险事件的报告时限</u>

<u>Timeline for material issue/incident reporting</u>

《私募办法》第六十条和第六十二条提出，私募基金管理人在出现重大事项及重大风险事件时应当在2个工作日内向投资者披露，并向中国证监会派出机构、基金业协会报告的要求。

Articles 60 and 62 of the Private Fund Measures provide that in case of any material issues or material risk events, PFMs should disclose to investors and report to CSRC’s local bureau and AMAC within 2 business days after occurrence of the matter.

2个工作日的时限要求相对较短，对于私募基金管理人完成事件影响分析、各类披露和报告文件编制以及内部审核流程等的难度较大，不利于充分保障披露和报送信息的真实、准确和完整性。

The 2-business-day timeline is relatively short for PFMs to complete their impact analysis, prepare for the different disclosures and reporting materials, and complete internal review and approval, which may adversely impact the authenticity, accuracy and completeness of the disclosure/reporting.

参考证监会的其他规定，对类似事项的披露和报送要求时限一般为5个工作日内。建议征求意见稿将重大事项和风险事件的报告时限延长为5个工作日，以实现信息披露的时效性和质量之间的平衡。

Using similar CSRC regulations as reference, we suggest extending the material issue reporting/disclosure timeline to 5 business days in order to achieve a balance between the timeliness and quality of information disclosure.

“境外开展私募基金业务活动”的范围
Scope of conducting private fund business activities overseas

我们建议《私募办法》第八十条明确“境外开展私募基金业务活动”的范围，例如是否可以包括自身以海外机构身份在境外监管部门直接注册或者设立境外子公司在境外监管部门注册。 为免生歧义，QDLP、QFLP等另有规定的业务应当排除在外。
We suggest clarifying the scope of “conducting private fund business activities overseas” in Article 80 of the Private Fund Measures. For example, can it include the PFM registering itself with offshore regulators or setting up offshore registered subsidiaries. For avoidance of doubt, businesses such as QDLP and QFLP that are regulated separately should be excluded.

QDLP 的适用性
Applicability to QDLPs

如前文提到的，QDLP产品在结构方面有特殊性。加上各地方试点对于QDLP产品和管理人有不同的要求。我们希望证监会可以考虑到QDLP这些特殊性，在《私募办法》明确QDLP管理人和产品应遵循其专项规定要求。
As mentioned earlier, QDLP products have special structural features. In addition, the various local pilot QDLP regions have different requirements for QDLP products and managers. We hope that the CSRC can take into account these special characteristics of QDLPs and specify in the Private Fund Measures that QDLPs and their products should comply with the specific QDLP regulations.

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《私募办法》能采纳本函的意见及建议。如果您对以上内容有任何疑问, 请随时联系我（电邮 eshen@asifma.org 或 电话 +852 2531 6570）。
Thank you again for the opportunity to comment on the Private Fund Measures. We look forward to seeing our comments and suggestions reflected in the final amendments. If you have any questions regarding any of the foregoing, please feel free to contact me at eshen@asifma.org or Tel: 2531 6570.

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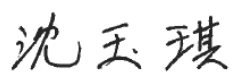
Yours sincerely,



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