

17 September 2024

2024 年 9 月 17 日

National Financial Regulatory Administration

Legal Department

Jia No. 15, Financial Street, Xicheng District

Beijing, China

100033

国家金融监督管理总局

法规司

北京市西城区金融大街甲 15 号

邮编：100033

To the Legal Department of National Financial Regulatory Administration

致：国家金融监督管理总局法规司

ASIFMA's Response to the Consultation Draft of the Measures for the Compliance Management of Financial Institutions

《金融机构合规管理办法（征求意见稿）》反馈意见

On behalf of its members, the Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)¹ (“**we**”, “**our**” or “**us**”) are pleased to submit to the Legal Department of National Financial Regulatory Administration (“**NFRA**”) our comments and suggestions on the Consultation Paper of the Measures

¹ 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.

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、律师事务所和市场基建服务供应商等 160 多家来自买方和卖方市场的领先金融机构和专业机构组成。我们在金融行业拥有共同的利益，即促进在亚洲建立发展一个流动性强并具有深度和广度的资本市场。ASIFMA 认为拥有一个稳定、创新、竞争和高效的亚洲资本市场对于支持亚洲地区的经济增长是十分关键的。我们通过汇聚集体力量和统一行业发声，围绕关键问题推动形成共识、提出解决方案建议并促成变革。我们采取的努力包括与监管机构和交易所进行磋商、制定统一的行业标准、通过政策文件推动改善市场，并降低在地区内开展业务的成本。ASIFMA 通过[全球金融市场协会（GFMA）](#)与美国的[证券业与金融市场协会（SIFMA）](#)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。

for the Compliance Management of Financial Institutions (the “**Consultation Paper**”) of the People’s Republic of China (“**PRC**” or “**China**”) released on the NFRA’s website².

亚洲证券业与金融市场协会 (“**ASIFMA**”) ¹ (“**协会**”或“**我们**”) 谨代表协会全体成员表示，很荣幸有机会就国家金融监督管理总局 (“**金融监管总局**”) 网站发布的中华人民共和国 (“**中国**”) 《金融机构合规管理办法 (征求意见稿)》 (“**《征求意见稿》**”) 向金融监管总局提出意见和建议。²

This letter sets out the views of ASIFMA’s members on the Consultation Paper, the practical difficulties financial institutions may face in applying the measures and our recommendations for further clarification of certain provisions of the Consultation Paper.

本函件载列协会会员关于《征求意见稿》的意见，金融机构在适用该规定时可能面临的实际困难以及我们对《征求意见稿》若干条文进一步明晰化的建议。

We understand the need to formulate unified compliance management measures for financial institutions regulated by NFRA and to further improve the financial regulatory system. We also share the same view that the compliance officers and compliance departments are pivotal to the compliance management of our members. The Consultation Paper, once finalised and implemented, will be a measure to enhance compliance management of financial institutions in China.

我们理解金融监管总局为其监管的金融机构制定统一合规管理办法并进一步完善金融监管体系的必要性。我们也同样认为，合规官和合规部门对我们会员的合规管理至关重要。《征求意见稿》最终定稿并实施后，必将有助于提升中国金融机构的合规管理水平。

Overarching comments 总体意见

While we appreciate NFRA’s efforts to improve the financial regulatory system, we would like to draw your attention to certain areas, which we believe need further consideration:

我们非常赞赏金融监管总局对完善金融监管体系作出的努力，同时希望提请金融监管总局注意我们认为需要进一步考虑的以下若干领域：

1. Differentiation between compliance and legal departments 区分合规部门与法律部门

We notice that the Consultation Paper reflects the common practice among PRC domestic financial institutions of combining the management of legal and compliance functions. Consequently, it standardises the roles and responsibilities of compliance personnel and the compliance department by incorporating legal risk management and legal documentation review into compliance risk management.

² Available at: <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1174974&itemId=925> (Chinese only).
可于以下网址查阅：<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1174974&itemId=925>。

我们注意到，《征求意见稿》反映了境内中资金融机构将法律职能与合规职能合并管理的普遍实践。尤其是在对合规管理人员和合规部门的角色和职责进行规范时，《征求意见稿》将法律风险管理和法律文件审阅纳入合规风险管理的范畴。

From a risk management perspective, we acknowledge that there are some overlaps between legal risks and compliance risks. However, from a compliance risk management perspective, we believe that it is unnecessary to combine these two types of risks under compliance risk management.

从风险管理角度看，我们承认法律风险与合规风险之间存在重叠。但若从合规风险管理的角度看，我们认为没有必要将这两类风险统一纳入合规风险管理。

As is common practice in international financial markets, financial institutions usually establish separate legal and compliance departments, each managing different aspects of institutional risks. Legal risk management and legal documentation review are primarily the functions of the legal department. Conversely, the compliance department focuses on broader aspects of compliance management beyond legal compliance.

从国际金融市场普遍实践来看，金融机构通常设立独立的法律部门和合规部门，从不同角度分别管理机构运营的风险。法律风险管理和法律文件审阅主要是法律部门的职能；相反，合规部门则更侧重于法律合规之外更广泛的合规管理。

In light of international best practices and to ensure a clear distinction of responsibilities within financial institutions, we recommend that the Consultation Paper align itself with these standards. We propose that the functions of legal risk management and legal documentation review be removed from the remit of the compliance department. For detailed feedback, please refer to our comments on specific provisions in the attached appendix, particularly regarding Articles 3, 14, 15, 25, and 35.

为确保金融机构内部职责的明确分工，我们建议《征求意见稿》与国际普遍实践保持一致，将法律风险管理和法律文件审阅的职能从合规部门的职责范围中移除。详细的反馈意见请参阅附录中我们对部分具体条款（特别是对第 3 条、第 14 条、第 15 条、第 25 条和第 35 条）的意见。

2. Differentiation of compliance responsibilities among three lines of defence 区分三道防线的合规职责

We appreciate that Article 32 of the Consultation Paper reiterates the framework of three lines of defence and allocates compliance management responsibilities accordingly. This is aligned with common international practices.

我们赞赏《征求意见稿》第 32 条重申三道防线的合规管理框架并对合规管理职责作出相应分工。这与国际通行做法一致。

However, the articles relating to the duties and functions of compliance officers and the compliance department (such as Article 18) are drafted broadly, seemingly requiring them to take responsibility of all compliance work of relevant matters. This does not fully align with the responsibility allocation within the three lines of defence as outlined in Article 32.

然而，有关合规官和合规部门职责与职能的条款（如第 18 条）撰写得较为宽泛，似乎要求前述人员和部门负责相关事项的所有合规工作。这与第 32 条所述的三道防线职责分工并不完全一致。

Therefore, we recommend that NFRA clarify that the duties of compliance officers and the compliance department are limited to conducting compliance work from the perspective of the second line of defences in the relevant articles.

因此，我们建议金融监管总局在相关条款中明确，合规官和合规部门的职责仅限于从第二道防线的角度开展合规工作。

3. Independence and conflict of interests 合规独立性及利益冲突

The Consultation Paper mandates that the compliance department and compliance personnel perform their duties independently. However, some provisions related to compliance personnel may create conflicts of interest and compromise their independence. We would welcome further explanation and clarification on how potential conflicts of interest will be avoided, particularly regarding the following points:

《征求意见稿》规定，合规部门和合规管理人员应独立履行职责。然而，《征求意见稿》中与合规管理人员相关的一些规定可能引发利益冲突并削弱其独立性。我们希望金融监管总局能进一步解释说明如何避免潜在的利益冲突，特别是：

- (i) Dual-hatting arrangement: The chief compliance officer and the compliance officers at the branch level can be concurrently served by the general manager or the branch manager. It is not clear how conflict of interests can be avoided under such arrangement (*Article 12*);

兼任安排：首席合规官、合规官可以由金融机构负责人、省级（计划单列市）分支机构或者一级分支机构负责人兼任。此种安排下如何避免利益冲突尚不清楚（第 12 条）；

- (ii) Departments conflicting with compliance function: The chief compliance officer and compliance officers are prohibited from managing business, finance, fund utilisation, internal audit and other departments that may have a conflict of interests with the compliance function. It is to be clarified whether departments not listed above would also be considered as having conflicts of interest with the compliance function (*Article 13*);

与合规职能存在冲突的部门：首席合规官及合规官不得负责管理前台业务、财务、资金运用、内部审计等可能与合规管理存在职责冲突的部门。未在上述列表中的部门是否也被视为与合规部门存在职责冲突尚待明确（第 13 条）；

- (iii) Appointment of compliance personnel in other departments: The Consultation Paper requires each department and their subordinate bodies to appoint compliance personnel. Placing compliance personnel within other departments subjects them to the management of those respective departments, potentially compromising their independence (*Article 36*).

在其他部门配备合规管理人员：《征求意见稿》要求各部门及其下属各机构配备合规管理人员。在其他部门中安排合规管理人员意味着该等合规管理人员须接受各自部门的管理，这可能会削弱合规管理人员的独立性（第36条）。

Detailed comments 具体意见

Our detailed comments are provided in the **Appendix** for your consideration.

我们的具体意见已在**附录**中提供，供贵局参考。

We would be grateful if NFRA may consider and accommodate the above comments and recommendations in the Consultation Paper prior to its finalisation.

如果金融监管总局能在《征求意见稿》最终定稿前考虑并酌情采纳我们的意见和建议，我们将深表感谢。

Next steps 下一步行动

As we understand the importance of such regulation for financial institution's compliance management, we would appreciate opportunities to engage in further discussions with NFRA. ASIFMA and our members stand ready to provide further details and to engage in constructive dialogue on possible ways of implementation and further development of the proposed legal framework. Should you have any questions in relation to this submission or like to obtain further input from us, please contact Patrick Pang, Head of Compliance and Tax of Asia Securities Industry & Financial Markets Association at PPang@asifma.org.

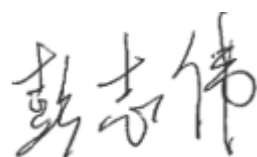
考虑到此类法规对金融机构合规管理的重要性，我们希望能有机会与金融监管总局进一步交流探讨相关事宜。协会及会员随时准备就拟议法律框架实施及后续制定的可能方式提供更多详情并参与建设性对话。如贵局对本次提交的意见有任何疑问或需要我们提供更多信息，请联系亚洲证券业与金融市场协会法规事务及税收部主管董事总经理彭志伟，电邮：ppang@asifma.org

This submission was prepared with the assistance of the law firm Linklaters Zhao Sheng (FTZ) Joint Operations Office, based on feedback from the wider ASIFMA membership.

本次提交的意见是在昭胜年利达（上海自由贸易试验区）联营办公室协助下，根据协会广大成员的反馈意见起草准备的。

Yours faithfully

敬颂业祺



彭志伟
董事总经理，法规事务及税收部主管
亚洲证券业与金融市场协

Appendix – Detailed comments

附录 – 具体意见

We summarise in the table below our comments and recommendations with respect to relevant article in the Consultation Paper.³

我们在下表中列出了我们对《征求意见稿》相关条款的意见和建议。³

For the “Recommendations” column, fonts in **blue** are proposed supplements to, and fonts in **red** are proposed removal from, the original articles in the Consultation Paper.

下表“建议”栏中**蓝色**字体为对《征求意见稿》原条款的建议补充内容，**红色**字体则为建议删除内容。

Article 条款	Comments 意见	Recommendations 建议
Compliance Management of Financial Institutions (Draft for Solicitation of Comments) 《金融机构合规管理办法（征求意见稿）》		
Article 3 The term "compliance" as used in these Measures refers to the fact that the operation and management of financial institutions and the performance of duties by their employees shall comply with compliance norms. The term "compliance norms" as used in these Measures includes laws, administrative regulations, departmental rules and normative documents,	Differentiation between legal and compliance departments In many banks (such as most foreign-invested banks), the legal and compliance departments are entrusted with different functions and responsibilities with respect to the institution's compliance work. Among others, usually the legal department is responsible for interpretation of and implementation of laws and administrative regulations.	We recommend that NFRA clarify the allocation of responsibilities between the legal department and the compliance department with respect to “compliance norms” in this Article 3.

³ The English version of the articles of the Consultation Paper is machine translated and is provided here for reference only. 本附录中列出的《征求意见稿》条款英文版本为机器翻译，仅供参考。

Article 条款	Comments 意见	Recommendations 建议
<p>industry self-discipline norms, and internal norms of financial institutions.</p> <p>The term "compliance management" as used in these Measures refers to organized and planned management activities carried out by financial institutions, including the establishment of compliance systems, the improvement of operational mechanisms, the cultivation of compliance culture, and the strengthening of supervision and accountability, for the purpose of ensuring compliance with compliance norms and effectively preventing and controlling compliance risks, guided by improving the level of compliance operation and management in accordance with laws and regulations, and with the performance of duties by employees as the object.</p> <p>The term "compliance risk" as used in these Measures refers to the possibility that the financial institution or its employees will bear criminal, administrative and civil legal liabilities, be subject to administrative measures, property losses, reputational losses and other negative impacts due to the financial institution's operation and management conduct or the employee's performance of duties in violation of compliance norms.</p>	<p>The current Article 3 broadly extends the coverage of "compliance norms" to, among others, laws, administrative regulations, which do not seem to distinguish the functions between the legal and compliance departments.</p>	

Article 条款	Comments 意见	Recommendations 建议
<p>"Compliance management departments" as used in these Measures refers to internal departments established by financial institutions that take the lead in undertaking compliance management duties. Where financial institutions set up multiple departments with non-conflicting responsibilities to jointly undertake compliance management duties, they shall clarify the lead department for compliance management duties.</p>		
<p>第三条</p> <p>本办法所称合规，是指金融机构经营管理行为及其员工履职行为应当符合合规规范。</p> <p>本办法所称合规规范，包括法律、行政法规、部门规章及规范性文件、行业自律规范，以及金融机构内部规范。</p> <p>本办法所称合规管理，是指金融机构以确保遵循合规规范、有效防控合规风险为目的，以提升依法合规经营管理水平为导向，以经营管理行为和员工履职行为为对象，开展的包括建立合规制度、完善运行机制、培育合规文化、强化监督问责等有组织、有计划的管理活动。</p> <p>本办法所称合规风险，是指因金融机构经营管理行为或者员工履职行为违反合规规范，造成金融机构或者其员工承担刑事、行政、民事法</p>	<p>区分法律部门与合规部门</p> <p>许多银行（如大多数外资银行）的法律部门与合规部门在机构合规工作方面承担着不同的职能分工。其中，法律部门通常负责法律和行政法规的解读和落实。</p> <p>《征求意见稿》第三条规定“合规规范”的范围广泛涵盖法律、行政法规等，似乎并未区分法律部门和合规部门的职能。</p>	<p>我们建议金融监管总局在本第三条“合规规范”处进一步明确区分法律部门和合规部门的分工。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>律责任，被采取行政措施，财产损失、声誉损失以及其他负面影响的可能性。</p> <p>本办法所称合规管理部门，是指金融机构设立的、牵头承担合规管理职责的内设部门。金融机构设置多个职责不相冲突的部门共同承担合规管理职责的，应当明确合规管理职责的牵头部门。</p>		
<p>Article 8</p> <p>The board of directors of a financial institution (including the executive director without a board of directors) shall bear the ultimate responsibility for the effectiveness of compliance management and perform the following compliance management duties:</p> <p>(1) Review and approve the basic compliance management system and annual compliance management report;</p> <p>(2) Approve and dismiss senior managers who bear primary responsibility or leadership responsibility for the occurrence of major violations of laws and regulations or major compliance risks;</p> <p>(3) Review and approve the establishment of compliance management departments;</p>	<p>a) Dismissal of senior management personnel</p> <p>Paragraph (2) and the last paragraph of Article 8 regulate the process of dismissing senior management personnel due to significant violations.</p> <p>Most financial institutions have established HR management system based on their own circumstances. We would suggest leaving the dismissal arrangement to the articles of association and the internal procedures of each financial institution, instead of making the dismissal a mandatory power of the board.</p> <p>b) Communication mechanism through meetings</p> <p>Paragraph 4 of Article 8 requires establishment of a direct communication mechanism between the chief compliance officer and the board of directors. The last paragraph provides that the</p>	<p>We recommend that NFRA:</p> <p>a) defer the senior management dismissal process to the articles of association or internal procedures of financial institutions, or add an exception under of paragraph (2) of Article 8 to read “[a]pprove and dismiss senior managers who bear primary responsibility or leadership responsibility for the occurrence of major violations of laws and regulations or major compliance risks, <i>unless as otherwise stipulated in the financial institution's articles of association or internal policies</i>”;</p> <p>b) clarify that the specialised committees can be authorised by the board to implement the communication mechanism with the</p>

Article 条款	Comments 意见	Recommendations 建议
<p>(4) Approve the appointment and dismissal of the chief compliance officer, and establish a direct communication mechanism with the chief compliance officer;</p> <p>(5) Assess the effectiveness of compliance management and the level of compliance culture construction, and supervise the resolution of major problems in compliance management and compliance culture construction;</p> <p>(6) Other compliance management duties provided for by laws, regulations, and the company's articles of association.</p> <p>The Board of Directors may establish a Compliance Committee or other special committees under the Board of Directors to perform duties related to compliance management, be responsible for day-to-day supervision of compliance management, and recommend the removal of directors and senior managers who bear primary responsibility or leadership responsibility for the occurrence of major compliance risks.</p>	<p>compliance committee or other specialised committees under the board of directors may perform duties related to compliance management.</p> <p>Based on the above, we understand that these specialised committees may be authorised to implement the communication mechanism with the chief compliance officer by way of meetings.</p> <p>We would be grateful if NFRA could confirm our understanding.</p> <p>c) Exemption to the foreign bank branches in China</p> <p>We understand that the Consultation Paper will be applied to foreign bank branches in China by reference.</p> <p>Due to their size limit, foreign bank branches in China normally only set up a management committee to carry out the functions of the board of directors.</p> <p>In addition, the management and setting of the compliance department, as well as the appointment and dismissal of the compliance officers, are subject to the vertical compliance management mechanisms formulated by the head office of the foreign bank. The management</p>	<p>chief compliance officer by way of meetings; and</p> <p>c) exempt foreign bank branches in China from compliance with this Article 8.</p>

Article 条款	Comments 意见	Recommendations 建议
	committee of the foreign bank's local branches would not normally assume the primary responsibility for the management of the compliance department.	
<p>第八条</p> <p>金融机构董事会（含不设董事会的执行董事）对合规管理的有效性承担最终责任，履行下列合规管理职责：</p> <p>（一）审议批准合规管理基本制度和年度合规管理报告；</p> <p>（二）审定解聘对发生重大违法违规行为、重大合规风险负有主要责任或者领导责任的高级管理人员；</p> <p>（三）审定合规管理部门的设置；</p> <p>（四）审定聘任、解聘首席合规官，建立与首席合规官的直接沟通机制；</p> <p>（五）评估合规管理有效性和合规文化建设水平，督促解决合规管理和合规文化建设中存在的重大问题；</p> <p>（六）法律法规、公司章程规定的其他合规管理职责。</p>	<p>a) 解聘高级管理人员</p> <p>第八条第（二）款以及第八条最后一款规定了因重大违规行为解聘高级管理人员的程序。</p> <p>考虑到大多数金融机构已根据自身情况设置了各自的人事管理制度，我们建议按照各金融机构的章程和内部制度办理相关解聘流程，不强制要求由董事会进行解聘审定。</p> <p>b) 会议沟通机制</p> <p>第八条第（四）款要求在首席合规官与董事会之间建立直接沟通机制，最后一款规定董事会可下设合规委员会或其他专门委员会履行合规管理相关职责。</p> <p>按照上述规定，我们理解董事会可以授权下设的专门委员会通过会议的形式来落实与首席合规官的沟通机制。</p> <p>谨请金融监管总局确认我们的理解是否正确。</p> <p>c) 外国银行分行豁免</p>	<p>我们建议金融监管总局：</p> <p>a) 高级管理人员的解聘程序按照各金融机构的章程和内部制度办理，或在第八条第（二）款项下增加一条例外规定，即“<i>审定解聘对发生重大违法违规行为、重大合规风险负有主要责任或者领导责任的高级管理人员，金融机构的章程或内部制度另有规定的除外</i>”；</p> <p>b) 明确董事会可授权专门委员会通过会议的形式来落实与首席合规官的沟通机制；及</p> <p>c) 对外国银行境内分行就本第八条的要求进行豁免。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>董事会可以下设合规委员会或者由董事会下设的其他专门委员会履行合规管理相关职责，负责对合规管理进行日常监督，对发生重大合规风险负有主要责任或者领导责任的董事、高级管理人员提出罢免建议。</p>	<p>我们理解《征求意见稿》将参照适用于外国银行境内分行。</p> <p>外国银行分行由于规模限制，一般只设管理委员会，行使董事会职能。</p> <p>此外，外国银行分行合规部门的管理设置、合规负责人的任免等均受外国银行总部垂直合规管理机制约束，其管理委员会不对合规部门的管理承担主要责任。</p>	
<p>Article 11</p> <p>A financial institution shall appoint a chief compliance officer at the headquarters of the institution, who is a senior management officer who is under the direct leadership of the chairman of the board of directors and the president (general manager) of the institution, and is responsible to the board of directors.</p> <p>Financial institutions shall set up compliance officers at the provincial level (cities specifically designated in the state plan) or first-level branches established by them, and the compliance officers are the senior management personnel of the institutions at the same level and accept the direct leadership of the principal responsible persons of the institutions at the same level.</p>	<p>a) Accountability</p> <p>Paragraph 1 of Article 11 states that the chief compliance officer is under direct leadership of the chairman of the board of directors and the president (general manager) of the financial institutions, and is accountable to the board of directors.</p> <p>We are of the view that such contemplated accountability mechanism confounds the administrative management and the risk management.</p> <p>b) Conflicts in reporting lines</p> <p>Paragraph 2 of Article 11 provides that the compliance officer is under the direct leadership</p>	<p>We recommend that NFRA:</p> <p>a) revise paragraph 1 of Article 11 to read “[a] financial institution shall appoint a chief compliance officer at the headquarters of the institution, who is a senior management officer who is under the direct leadership of the chairman of the board of directors and the president (general manager) <u>or regional or global compliance head (where appropriate)</u> of the institution, and is responsible to report to the board of directors <u>or the committees thereunder.</u>” so as to distinguish the administrative management and the risk management reporting lines;</p>

Article 条款	Comments 意见	Recommendations 建议
<p>The chief compliance officer and compliance officer of a financial institution shall obtain a qualification permit.</p> <p>The provisions of paragraph 3 of this article shall not apply to a financial holding company, and its chief compliance officer shall meet the requirements for appointment as stipulated in these Measures and file with the State Administration of Financial Supervision and Administration.</p>	<p>of the relevant <u>responsible person</u> at the same level. Meanwhile, Articles 27 and 37 provide that the compliance officer must <i>primarily</i> report to the <u>chief compliance officer</u>, while also reporting to the relevant responsible person.</p> <p>We are of the view that there is a conflict between the two constructs as to whether it is the responsible person or the chief compliance officer who takes the leadership regarding the management of the compliance officer.</p> <p>c) Applicability to foreign bank branches in China</p> <p>We are of the view that it is not clear whether the compliance responsible person for the foreign bank branches in China should be considered as the chief compliance officer or the compliance officer.</p>	<p>b) revise paragraph 2 of Article 11 to clarify that the compliance officer is directly led by the chief compliance officer and report to the relevant senior management at the branch level. This will help strengthen the independence of the compliance officer; and</p> <p>c) clarify whether the compliance responsible person for the foreign bank branches in China should be considered the chief compliance officer or the compliance officer.</p>
<p>第十一条</p> <p>金融机构应当在机构总部设立首席合规官，首席合规官是高级管理人员，接受机构董事长和行长（总经理）直接领导，向董事会负责。</p> <p>金融机构应当在所设省级（计划单列市）分支机构或者一级分支机构设立合规官，合规官是</p>	<p>a) 负责机制</p> <p>第十一条第一款规定首席合规官接受金融机构董事长和行长（总经理）直接领导，向董事会负责。</p> <p>我们认为这种负责机制可能会混淆行政管理和风险管理。</p> <p>b) 汇报路线矛盾</p>	<p>我们建议金融监管总局：</p> <p>a) 将第十一条第一款修改为“金融机构应当在机构总部设立首席合规官，首席合规官是高级管理人员，接受机构董事长和行长（总经理）或者地区或全球合规负责人（如适用）直接领导，并向董事会负责或董事会下设委员会汇报工作”，以</p>

Article 条款	Comments 意见	Recommendations 建议
<p>本级机构高级管理人员，接受本级机构主要负责人直接领导。</p> <p>金融机构的首席合规官及合规官应当取得任职资格许可。</p> <p>金融控股公司不适用本条第三款的规定，其首席合规官应当符合本办法规定的任职条件，并向国家金融监督管理总局备案。</p>	<p>第十一条第二款规定合规官接受本级机构<u>主要负责人</u>直接领导，而第二十七条和第三十七条规定合规官以向<u>首席合规官</u>汇报为主，并向本级机构主要负责人汇报。</p> <p>我们认为，对于合规官是由主要负责人还是由首席合规官领导，前述规定的解释会产生矛盾。</p> <p>c) 外国银行分行适用性</p> <p>我们认为，本条下外国银行境内分行的合规负责人应为首席合规官还是合规官尚不明确。</p>	<p>区分行政管理汇报路线和风险管理汇报路线；</p> <p>b) 修改第十一条第二款以明确合规官接受首席合规官的直接领导，并向本级机构高级管理人员汇报工作，从而加强合规官的独立性；以及</p> <p>c) 明确外国银行境内分行的合规负责人为首席合规官还是合规官。</p>
<p>Article 12</p> <p>Financial institutions may independently appoint chief compliance officers and compliance officers based on their own business conditions, and may also be concurrently served by the person in charge of the financial institution, a provincial-level (city specifically designated in the state plan) branch, or a first-level branch. If the president or general manager of a financial institution is concurrently concurrent, he is not subject to the restrictions on the position of the chief compliance officer or compliance officer as stipulated in these Measures, and does not need to separately obtain a</p>	<p>Conflicts of interest</p> <p>Considering that the responsible person of a financial institution usually belongs to the first line and the compliance officer belongs to the second line, it is not clear as to how conflicts of interests can be avoided if the compliance officer is concurrently serving as the person in charge of the financial institution.</p>	<p>We recommend that NFRA clarify how conflicts of interest can be avoided when the chief compliance officers are concurrently served by the responsible person of the financial institution.</p> <p>One possible revision is to revise this Article 12 to read “[f]inancial institutions must may independently appoint chief compliance officers and compliance officers based on their own business conditions, and may also be concurrently served by the person in charge of the financial institution, a provincial-level (city specifically designated in the state plan)”</p>

Article 条款	Comments 意见	Recommendations 建议
<p>qualification license from the State Administration of Financial Supervision or its dispatched agencies.</p> <p>Financial institutions are encouraged to set up separate chief compliance officers and compliance officers.</p>		<p>branch, or a first-level branch. If the president or general manager of a financial institution is concurrently concurrent, he is not subject to the restrictions on the position of the chief compliance officer or compliance officer as stipulated in these Measures, and does not need to separately obtain a qualification license from the State Administration of Financial Supervision or its dispatched agencies. Financial institutions must are encouraged to set up separate chief compliance officers and compliance officers.”</p>
<p>第十二条</p> <p>金融机构可以根据自身经营情况单独设立首席合规官、合规官，也可以由金融机构负责人、省级（计划单列市）分支机构或者一级分支机构负责人兼任。由金融机构行长或者总经理兼任的，不受本办法规定的首席合规官或者合规官的任职条件限制，不需要另行取得国家金融监督管理总局或者其派出机构的任职资格许可。</p> <p>鼓励金融机构单独设立首席合规官和合规官。</p>	<p>利益冲突</p> <p>考虑到金融机构负责人通常属于第一道防线，合规官属于第二道防线，目前尚不清楚如果金融机构负责人同时兼任合规官，应如何避免利益冲突。</p>	<p>我们建议金融监管总局澄清当首席合规官由金融机构负责人兼任时，如何避免利益冲突。</p> <p>一个可能的解决方式是将第 12 条作如下修改：“金融机构可以根据自身”经营情况单独设立首席合规官、合规官，也可以由金融机构负责人、省级（计划单列市）分支机构或者一级分支机构负责人兼任。由金融机构行长或者总经理兼任的，不受本办法规定的首席合规官或者合规官的任职条件限制，不需要另行取得国家金融监督管理总局或者其派出</p>

Article 条款	Comments 意见	Recommendations 建议
		机构的任职资格许可。鼓励 金融机构应单独设立首席合规官和合规官。”
<p>Article 13</p> <p>The Chief compliance officer and the Compliance officer shall not be responsible for managing the front-office business, finance, fund utilization, internal audit and other departments of the financial institution that may have a conflict of duties with compliance management. Except where the president or general manager of a financial institution concurrently serves as the chief compliance officer, or the president or general manager of a provincial-level (city with separate state plan) branch or first-level branch concurrently serves as a compliance officer.</p>	<p>Departments with conflict of duties</p> <p>As compliance serves as the second line of defence for financial institutions, they have inherent conflict of interests with the first line of defence.</p> <p>That said, Article 28 only lists business, finance, fund utilisation and internal audit as the departments that may have conflict of interests. It is unclear as to whether other departments would be deemed as embodying conflicts of interests with the compliance department.</p>	<p>We recommend that NFRA clarify:</p> <ul style="list-style-type: none"> • what departments are deemed as having conflicts of interests with the compliance department; and • except for the dual-hatting arrangement expressly permitted in this article, whether the chief compliance officer and the compliance officer can concurrently serve any other positions which do not have conflicts of interests with the compliance department.
<p>第十三条</p> <p>首席合规官及合规官不得负责管理金融机构的前台业务、财务、资金运用、内部审计等可能与合规管理存在职责冲突的部门。金融机构行长或者总经理兼任首席合规官、省级（计划单列市）分支机构或者一级分支机构行长或者总经理兼任合规官的除外。</p>	<p>职责冲突部门</p> <p>合规属于第二道防线，同第一道防线部门存在天然职责或利益冲突。</p> <p>但是第二十八条仅列举了前台业务、财务、资金运用、内部审计为与合规管理职责相冲突的部门。目前尚不清楚其他部门是否会被视为与合规部门存在职责冲突。</p>	<p>我们建议金融监管总局澄清：</p> <ul style="list-style-type: none"> • 哪些部门被视为与合规部门存在职责冲突；以及 • 除本条明确允许的兼任安排外，首席合规官和合规官是否可兼任与合规部门没有职责冲突的任何其他职位。
<p>Article 14</p>	<p>a) Challenges in meeting qualification requirements</p>	<p>We recommend that NFRA:</p>

Article 条款	Comments 意见	Recommendations 建议
<p>The chief compliance officer shall be familiar with the relevant compliance norms, be honest and trustworthy, be familiar with financial business, have the professional knowledge and skills required to be competent in compliance management, and shall also meet the following requirements on the premise of meeting the basic requirements of the State Administration of Financial Supervision and Administration for the qualifications of senior management personnel of the corresponding institutions:</p> <p>(1) Have a full-time bachelor's degree or above.</p> <p>(2) Engaged in financial work for more than eight years and engaged in legal compliance work for more than three years; or have been engaged in legal compliance work for more than eight years and have been engaged in financial work for more than three years; or have been engaged in financial work for more than eight years and have obtained a legal professional qualification certificate.</p> <p>(3) Have the independence required to hold the proposed position.</p> <p>(4) Other conditions stipulated by the State Administration of Financial Supervision and Administration.</p>	<ul style="list-style-type: none"> There are numerous laws, administrative regulations, departmental regulations, normative documents, and industry self-regulatory norms in China. It would be difficult to meet the requirement of “familiar” (通晓). The requirement of “a <u>full-time</u> bachelor's degree or above” is inconsistent with the qualification requirements for other senior management personnel in other industry rules, such as the <i>Administrative Provisions on the Qualification for Directors, Supervisors and Senior Management of Insurance Companies</i>. <p>b) Qualification on work experience</p> <ul style="list-style-type: none"> The requirement that the chief compliance officer or compliance officer must have legal <i>and</i> compliance working experience seems to confuse the distinct functions of “compliance” and “legal”. Compliance management involves various aspects of a financial institution’s operation. The professional and experiential requirements for compliance personnel 	<p>a) revise this Article to read “[t]he chief compliance officer shall be familiar with the relevant compliance norms, be honest and trustworthy, be familiar with financial business, have the professional knowledge and skills required to be competent in compliance management, and shall also meet the following requirements on the premise of meeting the basic requirements of the State Administration of Financial Supervision and Administration for the qualifications of senior management personnel of the corresponding institutions: (1) Have a full-time bachelor's degree or above”; and</p> <p>b) change the practising experience requirement of legal and compliance work to legal or compliance work, so as to read “[e]ngaged in financial work for more than eight years and engaged in legal or compliance work for more than three years; or have been engaged in legal or compliance work for more than eight years and have been engaged in financial work</p>

Article 条款	Comments 意见	Recommendations 建议
<p>Article 15</p> <p>Compliance officers shall be familiar with relevant compliance norms, be honest and trustworthy, be familiar with financial business, have the professional knowledge and skills required to be competent in compliance management, and shall also meet the following requirements on the premise of meeting the basic requirements of the State Administration of Financial Supervision and Administration on the qualifications of senior management personnel of corresponding institutions:</p> <p>(1) Have a full-time bachelor's degree or above.</p> <p>(2) Have been engaged in financial work for more than six years and have been engaged in legal compliance work for more than three years; or have been engaged in legal compliance work for more than six years and have been engaged in financial work for more than three years; or have been engaged in financial work for more than six years and have obtained a legal professional qualification certificate.</p> <p>(3) Have the independence required to hold the proposed position.</p>	<p>should be diversified, rather than limited to laws or finance.</p>	<p><i>for more than three years; or have been engaged in financial work for more than eight years and have obtained a legal professional qualification certificate” and “[h]ave been engaged in financial work for more than six years and have been engaged in legal or compliance work for more than three years; or have been engaged in legal or compliance work for more than six years and have been engaged in financial work for more than three years; or have been engaged in financial work for more than six years and have obtained a legal professional qualification certificate.”</i></p>

Article 条款	Comments 意见	Recommendations 建议
(4) Other conditions stipulated by the State Administration of Financial Supervision and Administration.		
<p>第十四条</p> <p>首席合规官应当通晓相关合规规范，诚实守信，熟悉金融业务，具有胜任合规管理工作需要的专业知识和技能，在符合国家金融监督管理总局关于相应机构高级管理人员任职资格基本条件的前提下，还应当具备下列条件：</p> <p>（一）具备全日制本科以上学历。</p> <p>（二）从事金融工作八年以上且从事法律合规工作三年以上；或者从事法律合规工作八年以上且从事金融工作三年以上；或者从事金融工作八年以上且取得法律职业资格证书。</p> <p>（三）具有担任拟任职务所需的独立性。</p> <p>（四）国家金融监督管理总局规定的其他条件。</p> <p>第十五条</p> <p>合规官应当通晓相关合规规范，诚实守信，熟悉金融业务，具有胜任合规管理工作需要的专业知识和技能，在符合国家金融监督管理总局</p>	<p>a) 难以满足资格要求</p> <ul style="list-style-type: none"> 我国存在极大量的法律、行政法规、部门规章及规范性文件、行业自律规范，如采用“通晓”的描述，很难达到监管要求。 要求“具备全日制本科以上学历”与《保险公司董事、监事和高级管理人员任职资格管理规定》等其他行业相关法规中对高级管理人员的任职要求表述不一致。 <p>b) 工作经验要求</p> <ul style="list-style-type: none"> 首席合规官或合规官必须具备法律合规工作经验的要求似乎混淆了“合规”和“法律”的不同职能。 合规管理涵盖金融机构运营中的方方面面。因此，合规管理人员的职业背景和经验要求应当多元化，而不仅限于法律或金融。 	<p>我们建议金融监管总局：</p> <p>a) 修改本条为：“首席合规官应当通晓相关合规规范，诚实守信，熟悉金融业务，具有胜任合规管理工作需要的专业知识和技能，在符合国家金融监督管理总局关于相应机构高级管理人员任职资格基本条件的前提下，还应当具备下列条件： （一）具备全日制本科以上学历.....”；以及</p> <p>b) 将工作经验要求从“从事法律和合规工作”修改为“从事法律或合规工作”，即将本条修改为：“从事金融工作八年以上且从事法律或合规工作三年以上；或者从事法律或合规工作八年以上且从事金融工作三年以上；或者从事金融工作八年以上且取得法律职业资格证书”，以及“从事金融工作六年以上且从事法律或合规工作三年以上；或者从事法律或合规工作六年以上且从事金融工作三年以上；或者从事金融工</p>

Article 条款	Comments 意见	Recommendations 建议
<p>关于相应机构高级管理人员任职资格基本条件的前提下，还应当具备下列条件：</p> <p>（一）具备全日制本科以上学历。</p> <p>（二）从事金融工作六年以上且从事法律合规工作三年以上；或者从事法律合规工作六年以上且从事金融工作三年以上；或者从事金融工作六年以上且取得法律职业资格证书。</p> <p>（三）具有担任拟任职务所需的独立性。</p> <p>（四）国家金融监督管理总局规定的其他条件。</p>		<p>作六年以上且取得法律职业资格证书。”</p>
<p>Article 16</p> <p>The chief compliance officer has special leadership responsibility for the compliance management of the institution and its employees, and shall adhere to the principles of professionalism and dedication, guide, supervise, and inspect the compliance of the institution's business management conduct and employees' performance of duties, and perform the following compliance management duties:</p> <p>(1) Be fully responsible for the institution's compliance management efforts, organize and promote the establishment of a compliance management system, oversee the compliance</p>	<p>Potential conflicts with Article 9</p> <p>Article 16 states that the chief compliance officer assumes specific leadership responsibility for the compliance management of the financial institution and its employees.</p> <p>However, Article 9 states that the senior management of the financial institution is responsible for implementing compliance management objectives and assumes leadership responsibility for the compliance of business they are in charge of.</p>	<p>We recommend that NFRA revise the lead paragraph of this Article 16 to read “[t]he chief compliance officer has special leadership responsibility for the compliance management of the institution and its employees, and shall adhere to the principles of professionalism and dedication, guide, supervise, and inspect the compliance of the institution's business management conduct and employees' performance of duties, and perform the following compliance management duties”, so as to avoid conflict with Article 9.</p>

Article 条款	Comments 意见	Recommendations 建议
<p>management departments' performance of their duties, and organize and promote the strict implementation and effective implementation of compliance norms within the institution;</p> <p>(2) Organize and promote the establishment of compliance management systems, compliance reviews, compliance inspections and evaluations, handling of major compliance incidents, compliance reports, compliance assessments, problem rectification, and team building, to ensure the orderly operation of compliance management work;</p> <p>(3) Communicate and report to regulatory agencies on a regular basis as required;</p> <p>(4) Other compliance management duties as provided by laws and regulations, the articles of association, or determined by the board of directors.</p>	<p>There is a potential conflict between the two articles in respect of the responsibility allocation.</p>	
<p>第十六条</p> <p>首席合规官对本机构及其员工的合规管理负专门领导责任，应当坚持专业、专注的工作原则，对本机构经营管理行为和员工履职行为的合规性进行指导、监督和检查，履行下列合规管理职责：</p>	<p>与第九条的潜在冲突</p> <p>第十六条规定，首席合规官对本机构及其员工的合规管理负专门领导责任。</p> <p>而第九条规定金融机构的高级管理人员负责落实合规管理目标，对主管或者分管领域业务合规性承担领导责任。</p>	<p>我们建议金融监管总局将第十六条第一款修改为“首席合规官对本机构及其员工的合规管理负专门领导责任，应当坚持专业、专注的工作原则，对本机构经营管理行为和员工履职行为的合规性进行指导、监督和检查，履行下列合规管理职责……”，避免造成与第九条的冲突。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>(一) 全面负责本机构的合规管理工作，组织推动合规管理体系建设，并监督合规管理部门履职情况，组织推动合规规范在机构内严格执行与有效落实；</p> <p>(二) 组织推动合规管理的制度建设、合规审查、合规检查与评价、重大合规事件处理、合规报告、合规考核、问题整改及队伍建设等，确保合规管理工作有序运转；</p> <p>(三) 按照要求定期向监管机构沟通、汇报；</p> <p>(四) 法律法规、公司章程规定或者董事会确定的其他合规管理职责。</p>	<p>在责任分配方面，这两条规定可能存在冲突。</p>	
<p>Article 17</p> <p>Where there are major changes in laws, administrative regulations, departmental rules, or normative documents, the chief compliance officer shall promptly recommend the board of directors or other senior management personnel and organize and supervise relevant departments, assess the impact of the changes on compliance management, put forward recommendations for revising and improving the organization's internal norms, and urge the relevant departments to promptly revise them.</p>	<p>Please refer to our comments on Article 3.</p>	<p>We recommend that NFRA revise the article to read “<i>the chief compliance officer, together with the head of the legal department, shall promptly recommend the board of directors or other senior management personnel and organize and supervise relevant departments, assess the impact of the changes on compliance management, put forward recommendations for revising and improving the organization's internal norms, and urge the relevant departments to promptly revise them.</i>”</p>

Article 条款	Comments 意见	Recommendations 建议
<p>第十七条</p> <p>法律、行政法规、部门规章及规范性文件发生重大变动的，首席合规官应当及时建议董事会或者其他高级管理人员并组织督导有关部门，评估变动对合规管理的影响，提出修订、完善机构内部规范的建议，督促推动相关部门及时修订。</p>	<p>请参见我们对第三条的意见。</p>	<p>我们建议金融监管总局将本条修改为“……首席合规官协同法律部负责人应当及时建议董事会或者其他高级管理人员并组织督导有关部门，评估变动对合规管理的影响，提出修订、完善机构内部规范的建议，督促推动相关部门及时修订”。</p>
<p>Article 18</p> <p>The chief compliance officer shall organize the compliance management department to conduct a compliance review of the financial institution's development strategy, important internal norms, new products and business plans, and major decision-making matters, and issue a written compliance review opinion.</p> <p>Where the State Administration of Financial Supervision and Administration, its dispatched agencies, or self-regulatory organizations require the chief compliance officer to conduct a compliance review of the application materials or reports submitted by the financial institution, the chief compliance officer shall organize the review and sign the compliance review opinion on the application materials or reports. Other relevant senior management personnel shall be responsible</p>	<p>Opinions from the perspective of second line of defence</p> <p>As prescribed under Article 32, the compliance department will be in charge of the compliance work from the perspective of second line of defence. Accordingly, for the institution's development strategy, important internal norms, new products and business plans, and major decision-making matters, the relevant department of first line of defence should conduct initial compliance work, while the chief compliance officer and the compliance management department should only issue compliance opinions from the perspective of the second line of defence.</p>	<p>We recommend that NFRA revise the first paragraph of Article 18 to read “[t]he chief compliance officer shall organize the compliance management department to conduct a compliance review of the financial institution's development strategy, important internal norms, new products and business plans, and major decision-making matters, and issue a written compliance review opinion”.</p> <p>To the extent that such revision were not accepted, we suggest that the NFRA revise the first paragraph of Article 18 to read “[t]he chief compliance officer shall organize the compliance management department to conduct compliance reviews on the financial institution's development strategies, important internal regulations, new products and new business plans, and major decision-</p>

Article 条款	Comments 意见	Recommendations 建议
<p>for the authenticity, accuracy and completeness of the basic facts and business data in the application materials or reports.</p> <p>If the compliance review opinion of the chief compliance officer is not adopted, the financial institution shall submit the relevant matters to the board of directors (or to the executive directors if there is no board of directors) for examination and approval, and report to the regulator on a regular basis, and report major matters to the regulator in a timely manner.</p>		<p><i>making matters, from the perspective of the second line of defence, and issue written compliance review opinions.”</i></p>
<p>第十八条</p> <p>首席合规官应当组织合规管理部门对金融机构发展战略、重要内部规范、新产品和新业务方案、重大决策事项进行合规审查，并出具书面合规审查意见。</p> <p>国家金融监督管理总局及其派出机构、自律组织要求首席合规官对金融机构报送的申请材料或者报告进行合规审查的，首席合规官应当组织审查，并在该申请材料或者报告上签署合规审查意见。其他相关高级管理人员等，应当对申请材料或者报告中基本事实和业务数据的真实性、准确性及完整性负责。</p>	<p>从第二道防线的角度出具意见</p> <p>按照第三十二条的规定，合规管理部门履行合规管理的第二道防线职责。因此，对于机构的发展战略、重要内部规范、新产品和新业务方案、重大决策事项等，应由第一道防线的相关部门开展合规初审工作，而首席合规官和合规管理部门仅从第二道防线的角度出具合规审查意见。</p>	<p>我们建议金融监管总局将第十八条第一款修改为“首席合规官应当组织合规管理部门对金融机构发展战略、重要内部规范、新产品和新业务方案、重大决策事项进行合规审查，并出具书面合规审查意见”。</p> <p>若金融监管总局不接受以上修改，我们建议金融监管总局将第十八条第一款修改为“首席合规官应当组织合规管理部门从第二道防线的角度对金融机构的发展战略、重要内部制度、新产品和新业务方案、重大决策事项进行合规审查，并出具书面合规审查意见”。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>首席合规官的合规审查意见未被采纳的，金融机构应当将有关事项提交董事会（不设董事会的提交执行董事）审定，并定期向监管机构报告，重大事项应当及时向监管机构报告。</p>		
<p>Article 20</p> <p>Where the chief compliance officer discovers that a financial institution and its employees have major violations of laws or regulations or major compliance risks, he or she shall promptly report to the board of directors and the chairman of the board of directors, put forward opinions on how to deal with them, and urge rectification. If the chief compliance officer discovers that a financial institution and its employees have other violations of laws and regulations or hidden compliance risks, they shall organize and urge the institution to report, handle and rectify in a timely manner in accordance with the institution's internal compliance management procedures.</p> <p>If a financial institution has a major violation of laws or regulations or a major compliance risk, it shall promptly report to the State Administration of Financial Supervision or its dispatched agency. Where the chief compliance officer discovers that the institution has not reported as required, he shall urge the institution to report in a timely manner. If</p>	<p>a) Reporting standards</p> <ul style="list-style-type: none"> For financial institutions, legal dispute cases are relatively frequent. No clear threshold for reporting may result in excessively frequent reporting activities. We note “major reputational losses” are deemed as one kind of “compliance risk events” that need to be reported. However, there is no clarification of how to define “major reputational losses”. <p>b) Protection mechanisms on the chief compliance officer</p> <p>Paragraph 2 of Article 20 requires the chief compliance officers to report in their own capacity in case of failure to report by the financial institutions.</p> <p>Given the personal risk exposure on the chief compliance officers under this requirement, we suggest that some specific protection mechanism be built in for the benefit of the chief compliance</p>	<p>We recommend that NFRA:</p> <ol style="list-style-type: none"> refine and set detailed standards for "legal dispute cases" to be reported under this Article; define and quantify “major reputational losses” (e.g. issuance of detailed standards); and introduce a specific protection mechanism for chief compliance officer corresponding to their responsibility of reporting in their personal capability (e.g. explicit prohibition on unfair treatment to the chief compliance officer due to their performance of duties under this Article 20).

Article 条款	Comments 意见	Recommendations 建议
<p>the institution fails to report, the chief compliance officer shall report directly to the State Administration of Financial Supervision or Administration or its dispatched agency in his or her own capacity.</p> <p>Major violations of laws and regulations or major compliance risks include, but are not limited to: a relatively large amount of fines or confiscation of a large amount of illegal gains; Compliance risk events such as major property losses or major reputational losses caused or likely to cause significant property losses or reputational losses of the organization, legal dispute cases, criminal cases, and sanctions by international organizations.</p> <p>The standard for a relatively large amount of fines or confiscation of a relatively large amount of unlawful gains as mentioned in the third paragraph of this article shall be implemented in accordance with the relevant administrative punishment provisions of the State Administration of Financial Supervision and Administration. The criterion for significant property loss refers to the estimated loss exceeding 5% of the net capital at the end of the previous year; or the amount of the loss exceeds 1% of the net capital at the end of the previous year.</p> <p>Financial institutions shall formulate detailed internal standards for major violations of laws and</p>	<p>officer, in addition to the general protection mechanism set out in Chapter 3 of the Consultation Paper.</p>	

Article 条款	Comments 意见	Recommendations 建议
regulations or major compliance risks, and report to the State Administration of Financial Supervision or its dispatched agencies.		
<p>第二十条</p> <p>首席合规官发现金融机构及其员工存在重大违法违规行为或者重大合规风险隐患的，应当及时向董事会、董事长报告，提出处理意见，并督促整改。首席合规官发现金融机构及其员工存在其他违法违规行为或者合规风险隐患的，应当按照机构内部合规管理程序，组织督促机构及时报告、处理和整改。</p> <p>金融机构存在重大违法违规行为或者重大合规风险隐患的，应当及时向国家金融监督管理总局或者其派出机构报告。首席合规官发现机构未按要求报告的，应当督促机构及时报告。机构不报告的，首席合规官应当以个人名义，直接向国家金融监督管理总局或者其派出机构报告。</p> <p>重大违法违规行为或者重大合规风险隐患包括但不限于：较大数额的罚款或者没收较大数额的违法所得；造成或者可能造成机构重大财产损失、重大声誉损失的合规风险事件、法律纠纷案件、涉刑案件、被国际组织制裁等合规风险事件等。</p>	<p>a) 报告标准</p> <ul style="list-style-type: none"> 对金融机构而言，法律纠纷案件较为频繁。如不设置一定的报告标准，则对于纠纷的报告可能会过于频繁。 我们注意到“重大声誉损失”被视为一种需要报告的“合规风险事件”，但“重大声誉损失”的定义尚不明确。 <p>b) 关于首席合规官的保护机制</p> <p>第二十条第二款要求首席合规官在金融机构存在重大违法违规行为或者重大合规风险隐患而未报告的情况下以个人名义直接报告。</p> <p>鉴于这一要求会对首席合规官构成个人风险，我们认为除《征求意见稿》第三章规定的一般保护机制外，还应为首席合规官设置特定的保护机制。</p>	<p>我们建议金融监管总局：</p> <p>a) 对根据本条规定需要报告的“法律纠纷案件”进行细化并规定具体标准；</p> <p>b) 确定并量化“重大声誉损失”的定义（例如发布具体的认定标准等等）；以及</p> <p>c) 为首席合规官引入与其以个人名义直接报告重大违法违规行为或者重大合规风险隐患相称的具体保护机制（例如，明确禁止因首席合规官履行本第二十条规定的职责而受到不公平待遇等等）。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>本条第三款所称较大数额的罚款或者没收较大数额的违法所得标准，按照国家金融监督管理总局有关行政处罚规定执行。所称重大财产损失标准，是指预计损失超过上年度末资本净额5%以上；或者损失金额超过上年度末资本净额1%以上。</p> <p>金融机构应当就重大违法违规行为或者重大合规风险隐患制定内部细化标准，向金融监管总局或者其派出机构报备。</p>		
<p>Article 21</p> <p>The compliance officer of a provincial-level branch or a first-level branch is responsible for the compliance management of the institution and its employees at that level, and their specific responsibilities are to be determined by the financial institution with reference to the duties of the chief compliance officer.</p>	<p>Clarification of compliance duties of senior management</p> <p>Article 21 only clarifies the compliance responsibilities of the <u>compliance officer</u> of the financial institution's branches, and remains silent on those of the <u>senior management</u> of the branches.</p> <p>Reference is made to Article 9, which clarifies the compliance functions and responsibilities of all senior management of the financial institution. It is also necessary to clarify the compliance responsibilities of other senior management personnel of the financial institution's <u>branches</u>.</p>	<p>We recommend that NFRA take reference to Article 9 and supplement the compliance responsibilities of senior management personnel of a financial institution's branches.</p>
<p>第二十一条</p>	<p>明确高级管理人员的合规职责</p>	<p>我们建议金融监管总局参照第九条，在此增加分支机构高级管理人员的合规职责。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>省级（计划单列市）分支机构或者一级分支机构合规官对本级机构及其员工的合规管理负责，其具体职责由金融机构参照首席合规官职责确定。</p>	<p>第二十一条仅说明<u>合规官</u>对本级的合规工作负责，未说明分支机构其他<u>高级人员</u>的合规职责。</p> <p>参照第九条明确规定金融机构所有高级管理人员的合规管理职责，此处有必要明确<u>分支机构其他高级人员</u>的合规职责。</p>	
<p>Article 22</p> <p>The Chief compliance officer and the Compliance officer shall promptly organize and handle the compliance management matters required by the State Administration of Financial Supervision and Administration and its dispatched agencies to investigate, pay attention to the inspection and investigation of financial institutions by the State Administration of Financial Supervision and Administration and its dispatched agencies, and follow-up, supervise and evaluate the implementation of regulatory opinions and regulatory requirements.</p>	<p>Compliance implementation responsibilities</p> <p>Reference is made to Article 16. The compliance management responsibilities do not solely rest with the chief compliance officer or the compliance officer. As such, the compliance management responsibilities of the chief compliance officer and the compliance officer for the implementation of regulatory opinions and requirements are to <i>promote</i> their implementation by <i>the financial institution's relevant departments</i>.</p>	<p>We recommend that NFRA refer to Article 16(1) regarding the compliance management responsibilities of the chief compliance officer and the compliance officer, and revise this Article 22 along the line that "[. . .] and <i>must procure relevant internal departments to follow-up, supervise and evaluate the implementation of regulatory opinions and regulatory requirements.</i>"</p>
<p>第二十二條</p> <p>首席合规官及合规官应当及时组织处理国家金融监督管理总局及其派出机构要求调查的合规管理事项，关注国家金融监督管理总局及其派</p>	<p>落实合规责任</p> <p>参照第十六条，合规管理职责并非只由首席合规官或合规官承担。因此，首席合规官及合规官就监管意见和要求的落实的合规管理职责应为组织推动金融机构相关部门落实。</p>	<p>我们建议金融监管总局参照第十六条第（一）款首席合规官及合规官的合规管理职责，将本第二十二條修改为“[.....] <i>组织推动相关内设部门跟踪、督促、评估监管意见和监管要求的落实情况。</i>”</p>

Article 条款	Comments 意见	Recommendations 建议
出机构对金融机构的检查和调查，跟踪、督促、评估监管意见和监管要求的落实情况。		
<p>Article 25</p> <p>The compliance management department of a financial institution is responsible for taking the lead in compliance management and performing the following duties:</p> <p>(1) Draft the institution's basic compliance management system and annual compliance management plan, organize and coordinate the drafting of compliance management systems by all departments and subordinate bodies of the institution, and promote their implementation.</p> <p>(2) Provide legal and compliance support for the operation and management activities of the institution, the development of new products and new businesses, and other matters. Review the important internal norms of the institution, and promptly put forward suggestions for formulating or revising the internal norms of the institution in accordance with changes in laws, administrative regulations, departmental rules and normative documents.</p> <p>(3) Take the lead in organizing and implementing compliance reviews, compliance inspections,</p>	<p>Internal policies formulation</p> <p>Major internal policies of the financial institutions as mentioned in paragraph (2) of Article 25 are to be formulated by relevant departments. We are of the view that the compliance department will be involved for review but the responsibility for formulating and revising these policies should be assumed by the relevant departments.</p> <p>Differentiation of Legal and Compliance</p> <p>We are of the view that the “legal and compliance support” and “criminal offence prevention education” should not be in the scope of the compliance department’s functions.</p>	<p>We recommend that NFRA:</p> <p>a) revise paragraph 2 of this Article to read "[p]rovide legal and compliance support for the operation and management activities of the institution, the development of new products and new businesses, and other matters. <i>Participate in the review of important internal norms of the institution, and promptly put forward suggestions for formulating or revising the internal norms of the institution in accordance with changes in laws, administrative regulations, departmental rules and normative documents</i>"; and</p> <p>b) revise paragraph 5 of this Article to "organize criminal—prevention <i>compliance</i> education".</p>

Article 条款	Comments 意见	Recommendations 建议
<p>assessments and evaluations, compliance risk monitoring, and compliance incident handling, and promote the strict implementation of compliance norms. Write an annual compliance management report.</p> <p>(4) Organizing or participating in the implementation of compliance assessments, and organizing or participating in the accountability of entities that violate internal norms. Maintain daily compliance contact with regulators and provide feedback on relevant opinions and suggestions.</p> <p>(5) Organize and cultivate a compliance culture, carry out compliance training, organize criminal prevention education, provide compliance consultation to employees, and promote all employees to comply with the code of conduct and compliance.</p> <p>(6) Other duties as determined by the Board of Directors.</p> <p>The specific responsibilities of compliance management positions are to be determined by financial institutions with reference to the provisions of the preceding paragraph.</p>		
<p>第二十五条</p>	<p>制定内部规范</p>	<p>我们建议金融监管总局：</p>

Article 条款	Comments 意见	Recommendations 建议
<p>金融机构的合规管理部门牵头负责合规管理工作，履行下列职责：</p> <p>（一）拟定机构的合规管理基本制度和年度合规管理计划，组织协调机构各部门和下属各机构拟定合规管理相关制度，并推动贯彻落实。</p> <p>（二）为机构经营管理活动、新产品和新业务的开发等事项提供法律合规支持。审查机构重要内部规范，并依据法律、行政法规、部门规章及规范性文件的变动，及时提出制订或者修订机构内部规范的建议。</p> <p>（三）牵头组织实施合规审查、合规检查、评估评价、合规风险监测与合规事件处理，推进合规规范得到严格执行。撰写年度合规管理报告。</p> <p>（四）组织或者参与实施合规考核，组织或者参与对违反内部规范主体的问责。保持与监管机构的日常合规工作联系，反馈相关意见和建议。</p> <p>（五）组织培育合规文化，开展合规培训，组织刑事犯罪预防教育，向员工提供合规咨询，推动全体员工遵守行为合规准则。</p> <p>（六）董事会确定的其他职责。</p>	<p>第二十五条第（二）款所述的机构重要内部规范应由各个相关部门制定。我们认为合规管理部门应参与审查，但制定和修订重要内部规范的责任还需明确到相关部门。</p> <p>区别法律与合规</p> <p>我们认为，“法律合规支持”和“刑事犯罪预防教育”不应属于合规部门的职能范围。</p>	<p>a) 将本条第（二）项修改为“为机构经营管理活动、新产品和新业务的开发等事项提供法律合规支持。参与审查机构重要内部规范，并依据法律、行政法规、部门规章及规范性文件的变动，及时提出制订或者修订机构内部规范的建议”；以及</p> <p>b) 将本条第（五）项中修改为“组织刑事犯罪预防合规教育”。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>合规管理岗位的具体职责，由金融机构参照前款规定确定。</p>		
<p>Article 29</p> <p>Financial institutions shall assign full-time or part-time personnel to departments other than the compliance management department to engage in compliance work. Encourage and support financial institutions to establish mechanisms for the above-mentioned personnel to be accountable to the compliance management department at the same level.</p>	<p>Primary compliance responsibility and independence concerns</p> <p>Under the current compliance management framework, the responsible persons of each department assume primary responsibilities for the compliance management in their respective departments.</p> <p>As such, in case that full-time or part-time compliance personnel is placed in other departments, it would be difficult to meet the requirements of independence.</p>	<p>We recommend that NFRA remove this Article 29.</p>
<p>第二十九条</p> <p>金融机构应当为合规管理部门以外的其他部门配备专职或者兼职从事合规工作的人员。鼓励并支持金融机构建立上述人员向同级合规管理部门负责的机制。</p>	<p>首要合规责任和独立性问题</p> <p>在目前的合规管理框架下，各部门负责人应对其部门的合规管理负首要责任。</p> <p>因此，在合规部外的其他部门配备专职或者兼职从事合规工作的人员很难满足独立性的要求。</p>	<p>我们建议金融监管总局删除本第二十九条。</p>
<p>Article 31</p> <p>Financial institutions may implement vertical management of compliance management departments or compliance positions, with the chief compliance officer coordinating matters such as the</p>	<p>Appointment of compliance officers</p> <p>Under a vertical management model, the chief compliance officer should be entitled to “appoint” (instead of only “nominate”) the compliance officer.</p>	<p>We recommend that NFRA revise this Article 31 to read “<i>making recommendations for the nomination the appointment decision for compliance officers</i>”.</p>

Article 条款	Comments 意见	Recommendations 建议
selection and hiring of compliance personnel, business guidance, work reporting, and evaluation management, and making recommendations for the nomination of compliance officers.		
<p>第三十一条</p> <p>金融机构可以对合规管理部门或者合规岗位实行垂直管理，由首席合规官统筹合规人员选聘、业务指导、工作汇报、考核管理等事项，并对合规官提名提出推荐建议。</p>	<p>任命合规官</p> <p>在垂直管理模式下，对合规官的提名、任命（而不仅仅是“提名”）均应由首席合规官决定。</p>	<p>我们建议金融监管总局将本条修改为“对合规官提名提出推荐建议作出任命决定。”</p>
<p>Article 35</p> <p>Financial institutions shall provide compliance management departments with sufficient compliance management personnel with professional knowledge and skills appropriate to the performance of compliance management duties.</p> <p>The compliance management department shall be primarily composed of personnel with a background in law or economics and finance. Among them, those who are engaged in the legal review of important business decisions, rules and regulations, and contracts of institutions for the first time, as well as those who provide legal opinions on major matters such as institutional restructuring and reorganization, mergers and acquisitions, listing,</p>	<p>Differentiation of Legal and Compliance</p> <p>In many financial institutions (such as foreign financial institutions), the legal department and the compliance department are entrusted with different functions and responsibilities. Conducting legal review and providing legal opinions are the functions of the legal department.</p> <p>Compliance involves various aspects of the financial institution’s operation, and the backgrounds of the compliance personnel should be diversified.</p>	<p>We recommend that NFRA:</p> <p>a) remove the requirement of legal backgrounds and functions as provided under this Article 35, so as to read “[t]he compliance management department shall be primarily composed of personnel with a background in law or economics and finance. Among them, those who are engaged in the legal review of important business decisions, rules and regulations, and contracts of institutions for the first time, as well as those who provide legal opinions on major matters such as institutional restructuring and reorganization, mergers and</p>

Article 条款	Comments 意见	Recommendations 建议
<p>property rights transfer, bankruptcy reorganization, reconciliation and liquidation, shall have a legal professional background or have passed the legal professional qualification examination.</p>		<p>acquisitions, listing, property rights transfer, bankruptcy reorganization, reconciliation and liquidation, shall have a legal professional background or have passed the legal professional qualification examination."; and</p> <p>b) revise the first sentence of the second paragraph of this Article to read "[t]he compliance management department shall be composed of personnel with a background in law, economics, finance and other relevant backgrounds", or "[t]he compliance management department shall be is encouraged to be primarily composed of personnel with a background in law, economics, finance".</p>
<p>第三十五条</p> <p>金融机构应当为合规管理部门配备充足的、具备与履行合规管理职责相适应专业知识和技能的合规管理人员。</p> <p>合规管理部门应当主要由具有法律或者经济金融专业学历背景的人员组成。其中，初次从事对机构重要经营决策、规章制度、合同进行法律审核的人员，以及为机构改制重组、并购上</p>	<p>区别法律与合规</p> <p>在许多金融机构（如外国金融机构）中，法律部门与合规部门是职能与分工不同的两个部门。进行法律审核、提出法律意见是法律部的职能。</p> <p>合规管理涉及金融机构运营的各个方面，合规人员应具备多元化的专业背景。</p>	<p>我们建议金融监管总局：</p> <p>a) 删除第三十五条中规定的法律背景和职能要求，将第三十五条改为“合规管理部门应当主要由具有法律或者经济金融专业学历背景的人员组成。其中，初次从事对机构重要经营决策、规章制度、合同进行法律审核的人员，以及为机构改制</p>

Article 条款	Comments 意见	Recommendations 建议
<p>市、产权转让、破产重整、和解及清算等重大事项提出法律意见的人员应当具有法律专业背景或者通过法律职业资格考试。</p>		<p>重组、并购上市、产权转让、破产重整、和解及清算等重大事项提出法律意见的人员应当具有法律专业背景或者通过法律职业资格考试”；以及</p> <p>b) 将本条第二款第一句修改为“合规管理部门应当主要由具有法律或者经济金融和其他相关背景的人员组成”或者“鼓励合规管理部门应当主要由具有法律或者经济金融背景的人员组成”。</p>
<p>Article 36</p> <p>Each department and subordinate institution of a financial institution shall appoint compliance management personnel commensurate with the scale of its operations.</p> <p>Compliance managers may concurrently hold positions that do not conflict with their compliance management duties. Departments and subordinate bodies where compliance risk management and control are more difficult shall appoint full-time compliance management personnel.</p> <p>Overseas financial branches and overseas financial subsidiaries shall be equipped with compliance management personnel who are familiar with the</p>	<p>Obfuscation of the first and second line of defence</p> <p>Article 36 requires each department and their subordinate bodies to appoint compliance management personnel. We are of the view that the reporting lines of the compliance management personnel in those departments and subordinate bodies would be unclear.</p> <p>Each department and their subordinate bodies generally serve as the first line of defence, while compliance management department is the second line of defence. If the compliance management personnel placed in each department and their subordinate bodies reported to the responsible person of the respective department, their independence</p>	<p>We recommend that NFRA:</p> <p>a) revise the first paragraph of this Article 36 to read “[e]ach department and subordinate institution of a financial institution shall appoint compliance management personnel commensurate with the scale of its operations.—the allocation of compliance management personnel should be commensurate with the scale of the operations and the risk level of a financial institution.”</p> <p>b) revise the second paragraph of this Article 36 to read “[d]epartments and</p>

Article 条款	Comments 意见	Recommendations 建议
<p>laws and regulations of the jurisdiction where they are located and the relevant banking and insurance business. Key countries and regions with higher compliance risks shall, based on actual conditions, employ methods such as increasing the number of full-time compliance management personnel to effectively prevent and respond to compliance risks.</p>	<p>would be compromised; if they reported to the compliance management department, there seemed to be no need to appoint them under departments other than the compliance department.</p>	<p><i>subordinate bodies where compliance risk management and control are more difficult shall appoint full-time compliance management personnel to perform the compliance management responsibilities of the first line of defence, and the compliance department shall appoint full-time compliance management personnel to manage related compliance risks."</i></p>
<p>第三十六条</p> <p>金融机构各部门、下属各机构应当配备与业务规模相匹配的合规管理人员。</p> <p>合规管理人员可以兼任与合规管理职责不相冲突的职务。合规风险管控难度较大的部门、下属各机构应当配备专职合规管理人员。</p> <p>境外金融分支机构及境外金融子公司，应当配备熟悉所在司法辖区法律法规和相关银行保险业务的合规管理人员。合规风险较高的重点国家和地区，应当根据实际情况采取增加专职合规管理人员等方式，有效防范应对合规风险。</p>	<p>混淆第一和第二道防线</p> <p>第三十六条要求各部门、下属各机构配备合规管理人员。我们认为，这些部门及下属机构的合规管理人员的隶属关系并不明确。</p> <p>各部门及其下属机构一般为第一道防线，合规管理部门是第二道防线。如果各部门及其下属机构的合规管理人员向各自的部门负责人汇报工作，其独立性就会受到影响；如果他们向合规管理部门汇报工作，似乎就没有必要在合规部门以外的其他部门设置合规管理人员。</p>	<p>我们建议金融监管总局：</p> <p>a) 将第三十六条第一款修改为“金融机构各部门、下属各机构应当配备与业务规模相匹配的合规管理人员。合规管理人员的配备应与金融机构的业务规模和风险水平相适应。”</p> <p>b) 将第三十六条第二款修改为“合规风险管控难度较大的部门、下属各机构应当配备专职合规管理人员履行第一道防线的合规管理职责；合规部门应配备专职合规管理人员管理相关的合规风险。”</p>

Article 条款	Comments 意见	Recommendations 建议
<p>Article 41</p> <p>As needed to perform their duties, chief compliance officers and compliance officers have the right to make recommendations to the board of directors, senior management, relevant internal departments, and subordinate bodies on handling and accountability for major violations of laws and regulations or major compliance risks, including recommendations for compensation deductions, post adjustments, demotions, and so forth, for relevant responsible personnel, and have the right to urge the responsible institutions and responsible personnel to promptly implement rectification of problems.</p>	<p>Potential conflict with PRC labour laws</p> <p>To hold individual accountable for taking risks inconsistent with the financial institution’s risk appetite, there are policies and procedures that enable it to take timely and proportional actions with respect to accountable individuals, including but not limited to reduce or even eliminate the annual incentive compensation.</p> <p>However, we would also like to note that any reduction in the contractual fixed pay requires consent from employees under PRC labour laws and regulations. If employees refuse to provide the requisite consent and the financial institution unilaterally reduces their contractual fixed pay, the financial institution is legally exposed to claims by employees for breach of employment contract and would likely be ordered by the labour tribunal and court to repay the reduced portion of fixed pay in case of labour arbitration and litigation.</p> <p>As such, we are of the view that the financial institution should be granted with the flexibility in reducing employees’ discretionary compensation, instead of their contractual fixed pay.</p>	<p>We recommend that NFRA consider revising this Article 41 to read “[a]s needed to perform their duties, chief compliance officers and compliance officers have the right to make recommendations to the board of directors, senior management, relevant internal departments, and subordinate bodies on handling and accountability for major violations of laws and regulations or major compliance risks, including recommendations for incentive compensation deductions, post adjustments, demotions, and so forth, for relevant responsible personnel, and have the right to urge the responsible institutions and responsible personnel to promptly implement rectification of problems.</p>
<p>第四十一条</p>	<p>同中国劳动法的潜在冲突</p>	<p>我们建议金融监管总局对本条款做如下修改：“首席合规官、合规官根据履行</p>

Article 条款	Comments 意见	Recommendations 建议
<p>首席合规官、合规官根据履行职责需要，针对重大违法违规行为或者重大合规风险隐患，有权向董事会、高级管理层、相关内设部门及下属各机构提出处理和问责建议，包括对相关责任人员的薪酬扣减建议、岗位调整建议、降级建议等，并有权督促责任机构及责任人员及时落实问题整改。</p>	<p>为追究采取与金融机构风险偏好不符的行为的个人责任，金融机构会制定相关政策程序，以便及时对责任人采取相应行动，包括但不限于减少甚至取消年度绩效薪酬福利。</p> <p>但我们想指出的是，根据中国劳动法律法规，任何减少合同固定薪酬的行为都需要员工同意。如果员工拒绝提供必要同意而金融机构单方面减少其合同固定薪酬，金融机构可能被员工要求就其违反劳动合同进行索赔，并可能在劳动仲裁或劳动诉讼中被仲裁庭和法庭要求退还减少的固定薪酬。</p> <p>因此，我们认为，公司应该被赋予减少员工酌情薪酬或补偿（而非合同固定薪酬）的灵活性。</p>	<p>职责需要，针对重大违法违规行为或者重大合规风险隐患，有权向董事会、高级管理层、相关内设部门及下属各机构提出处理和问责建议，包括对相关责任人员的绩效薪酬扣减建议、岗位调整建议、降级建议等，并有权督促责任机构及责任人员及时落实问题整改。”</p>
<p>Article 44</p> <p>Financial institutions shall establish a mechanism for managing the remuneration of chief compliance officers, compliance officers, and compliance management personnel. If the chief compliance officer is competent, his or her total annual remuneration income shall not be lower than the average level of senior management personnel with the same qualifications (same rank and evaluation results) in principle. Where compliance officers and compliance management personnel are competent, their total annual remuneration income shall not be lower than the average level of personnel with the</p>	<p>Remuneration Mechanisms</p> <p>We appreciate that remuneration is critical in attracting and retaining compliance talents. However, many factors may affect the remuneration, e.g. performance, experience, market payment levels, the unique situations of each financial institution, and the scope, complexity, responsibility and growth of the position.</p> <p>As such, we are of the view that the remuneration level should be determined by each financial institution itself based on its internal policies and commercial considerations.</p>	<p>We recommend that NFRA remove this Article 44 in its entirety.</p>

Article 条款	Comments 意见	Recommendations 建议
<p>same qualifications (the same job type, the same rank, and the same assessment results) of the organization where they work. Where the state has other provisions on the remuneration standards of state-owned financial enterprises, follow those provisions.</p> <p>Financial institutions shall formulate an evaluation and management system for the chief compliance officer, compliance officer, compliance management department, and full-time compliance management personnel, and shall not adopt evaluation methods that are not conducive to compliance independence, such as the evaluation of senior management personnel who are not in charge of the compliance management department, the evaluation of other departments, or the evaluation based on the business performance of the business department, except for the principal person in charge of the institution; Compliance work that requires the joint efforts of all departments must not be used as a separate evaluation indicator for compliance management departments.</p>		
<p>第四十四条</p> <p>金融机构应当建立首席合规官、合规官、合规管理人员薪酬管理机制。首席合规官工作称职的，其年度薪酬收入总额原则上不低于同等条</p>	<p>薪酬机制</p> <p>我们同意薪酬对于吸引和留住合规人才至关重要。然而，许多因素都可能影响薪酬，例如绩效、经</p>	<p>我们建议金融监管总局删除第 44 条。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>件（同职级、同考核结果）高级管理人员的平均水平。合规官及合规管理人员工作称职的，其年度薪酬收入总额原则上不低于所在机构同等条件（同岗位类型、同职级、同考核结果）人员的平均水平。国家对国有金融企业薪酬标准另有规定的，从其规定。</p> <p>金融机构应当制定首席合规官、合规官、合规管理部门及专职合规管理人员的考核管理制度，除机构主要负责人外，不得采取非分管合规管理部门的高级管理人员评价、其他部门评价、以业务部门的经营业绩为依据等不利于合规独立性的考核方式；不得将需要各部门合力完成的合规工作单独作为合规管理部门的考核指标。</p>	<p>验、市场薪酬水平、每家金融机构的特殊情况以及职位的范围、复杂性、责任要求和成长性。</p> <p>因此，我们认为薪酬水平应由每家金融机构根据其内部制度和商业考虑自行确定。</p>	
<p>Article 45</p> <p>Financial institutions shall establish a compliance work evaluation system, including the quality and effectiveness of compliance management of internal departments and subordinate institutions in their evaluations, and including compliance management in the annual comprehensive evaluation of the responsible persons of each subordinate institution. Financial institutions are encouraged to establish a vertical management mechanism for compliance assessments.</p>	<p>Articles reorganisation</p> <p>We believe that the evaluation and management system stipulated in paragraph 2 of Article 44 and the compliance work evaluation system stipulated in paragraph 1 of this Article 45 can be merged.</p>	<p>We recommend that NFRA:</p> <ul style="list-style-type: none"> a) merge paragraph 2 of Article 44 and paragraph 1 of this Article 45; b) clarify the relationship between the evaluation and management system stipulated in paragraph 2 of this Article 44 and the compliance work evaluation system stipulated in paragraph 1 of this Article 45.

Article 条款	Comments 意见	Recommendations 建议
<p>Financial institutions should strengthen the use of evaluation results, and make the performance of compliance duties an important basis for internal departments, subordinate institutions, employee evaluations, personnel appointments, and evaluations.</p>		
<p>第四十五条</p> <p>金融机构应当建立合规工作考核制度，将内设部门、下属各机构合规管理质效纳入考核，并将合规管理情况纳入对下属各机构负责人的年度综合考核。鼓励金融机构建立合规考核垂直管理机制。</p> <p>金融机构应当强化考核结果运用，将合规职责履行情况作为对内设部门、下属各机构、员工考核、人员任用及评优评先等工作的重要依据。</p>	<p>条款整合</p> <p>我们认为，第四十四条第二款规定的考核管理制度与第四十五条第一款规定的合规工作考核制度可以合并。</p>	<p>我们建议金融监管总局：</p> <ul style="list-style-type: none"> a) 将第四十四条第二款合并至本第四十五条第一款； b) 明确第四十四条第二款规定的考核管理制度与本第四十五条第一款规定的合规工作考核制度的从属关系。
<p>Article 51</p> <p>A financial institution shall submit a compliance management report for the previous year to the State Administration of Financial Supervision or its dispatched agency before April 30 of each year. The board of directors and chief compliance officer of a financial institution are responsible for the</p>	<p>Content of the annual report</p> <p>Article 51 requires that financial institutions submit an annual compliance management report for the previous year to the NFRA or its local offices before 30 April of each year. We would appreciate more guidance on the content that should be included in the annual compliance management report.</p>	<p>We recommend that NFRA provide more guidance on the content of the annual compliance management report.</p>

Article 条款	Comments 意见	Recommendations 建议
truthfulness, accuracy and completeness of the report.		
<p>第五十一条</p> <p>金融机构应当于每年 4 月 30 日前向国家金融监督管理总局或者其派出机构报送上一年度合规管理报告。金融机构的董事会和首席合规官对报告的真实性、准确性、完整性负责。</p>	<p>年度报告的内容</p> <p>第五十一条要求金融机构于每年 4 月 30 日前向金融监管总局或者其派出机构报送上一年度合规管理报告。我们希望能就年度合规管理报告应包含的内容得到更多指导。</p>	<p>我们建议金融监管总局就年度合规管理报告的内容提供更多指导。</p>
<p>Article 65</p> <p>Before the implementation of these Measures, the chief compliance officer, chief compliance officer, compliance officer, and general counsel of senior management that have been set up by a financial institution may perform the duties of the chief compliance officer as provided for in these Measures. Before the above-mentioned personnel are transferred, they are not subject to the restrictions of the conditions of employment stipulated in these measures, and do not need to re-obtain the qualifications approved by the State Administration of Financial Supervision and Administration or its dispatched agencies.</p> <p>Implementation Measures for Administrative Licensing Items of Chinese-funded Commercial Banks, Implementation Measures for Administrative Licensing Items of Rural Small and</p>	<p>Qualification approval</p> <p>a) We are of the view that the compliance officer of the financial institution branches that has been previously approved by NFRA does not need to re-obtain qualification approvals from the NFRA either, unless the financial institution is in the view that the compliance officer is unable to perform his or her duties.</p> <p>b) The duty of the general counsel as senior management is to manage legal risks under the current regime (e.g. in accordance with the <i>Guiding Opinions of China Banking Regulatory Commission on Legal Counsel Work of Banking Financial Institutions</i>), rather than managing compliance risks. As such, we believe that the general counsel as senior management should not fall within the scope of this Article 65.</p>	<p>We recommend that NFRA:</p> <p>a) capture the “<i>compliance responsible persons of the financial institution branches who have been approved by the NFRA</i>” in the first paragraph of this Article 65, so that their continuous performance of duties would not be subject to qualification approvals under these measures.</p> <p>b) remove “<i>the general counsel as senior management</i>” from the first paragraph of this Article 65.</p>

Article 条款	Comments 意见	Recommendations 建议
<p>Medium-sized Banking Institutions, Implementation Measures for Administrative Licensing Items of Foreign-funded Banks, Measures for the Administration of the Qualifications of Directors (Directors) and Senior Managers of Banking Financial Institutions, Regulations on the Administration of the Qualifications of Directors, Supervisors and Senior Managers of Insurance Companies, Implementation Measures for Administrative Licensing Items of Non-bank Financial Institutions, Guiding Opinions of the China Banking Regulatory Commission on the Legal Counsel Work of Banking Financial Institutions If these provisions are inconsistent with these Measures, these Measures shall prevail.</p>		
<p>第六十五条</p> <p>本办法施行前，金融机构已设置的首席合规官、合规总监、合规负责人、作为高级管理人员的总法律顾问，可以履行本办法规定的首席合规官各项职责。上述人员工作调动前，不受本办法规定的任职条件限制，不需要重新取得国家金融监督管理总局或者其派出机构核准的任职资格。</p> <p>《中资商业银行行政许可事项实施办法》《农村中小银行机构行政许可事项实施办法》《外资银行行政许可事项实施办法》《银行业金融</p>	<p>资格核准</p> <p>a) 我们认为，分支机构之前已经获批的合规负责人无需再次核准，除非金融机构认为其不能履职。</p> <p>b) 按照现行机制（如《中国银监会关于银行业金融机构法律顾问工作的指导意见》），作为高级管理人员的总法律顾问的职责是管理法律风险，而非合规风险。因此，我们认为作为高级管理人员的总法律顾问不应属于第六十五条的管辖范围。</p>	<p>我们建议金融监管总局：</p> <p>a) 在第六十五条第一款中加入“<i>已获核准的分支机构合规负责人</i>”，以便其持续履行职责不需要根据本办法取得资格核准。</p> <p>b) 删除第六十五条第一款中的“<i>作为高级管理人员的总法律顾问</i>”。</p>

Article 条款	Comments 意见	Recommendations 建议
<p>机构董事（理事）和高级管理人员任职资格管理办法》《保险公司董事、监事和高级管理人员任职资格管理规定》《非银行金融机构行政许可事项实施办法》《中国银监会关于银行业金融机构法律顾问工作的指导意见》等规定与本办法不一致的，以本办法为准。</p>		