

## 金融法律热点问题

### 证监会启动基金信息技术服务机构备案

2020年10月23日，中国证券监督管理委员会（以下简称“**证监会**”）发布了《监管规则适用指引——科技监管类第1号》（以下简称“**《指引》**”）。该《指引》对证监会2020年7月24日发布的《证券服务机构从事证券服务业务备案管理规定》（以下简称“**《备案规定》**”）有关证券服务机构备案的规定作了进一步明确。

值得注意的是，根据《指引》第五项，基金信息技术服务机构（定义见下）按照证监会2018年12月发布、2019年6月1日正式实施的《证券投资基金经营机构信息技术管理办法》（以下简称“**《管理办法》**”）进行备案时，应比照《指引》有关备案路径、材料等要求按规定开展备案工作。由此可见，基金信息技术服务机构开展备案工作的法律依据为《管理办法》，而此次发布的《指引》则对《管理办法》中的备案要求进行了细化。

下文将对《管理办法》中有关基金信息技术服务机构的备案要求进行简要总结。

#### 一、备案主体

根据《管理办法》第3条，基金信息技术服务机构指为公募基金管理公司（以下简称“**基金管理公司**”）的证券基金业务活动提供信息技术服务的机构。信息技术服务的范围包括：(1)重要信息系统的开发、测试、集成及测评；(2)重要信息系统的运维及日常安全管理；(3)中国证监会规定的其他情形。

根据《管理办法》第六十三条，上文所述的“重要信息系统”指支持基金管理公司和基金专项业务服务机构关键业务功能、如出现异常将对证券期货市场和投资者产生重大影响的信息系统。包括集中交易系统、投资交易系统、金融产品销售系统、估值核算系统、投资监督系统、份额登记系统、第三方存管系统、融资融券业务系统、网上交易系统、电话委托系统、移动终端交易系统、法人清算系统、具备开户交易或者客户资料修改功能的门户网站、承载投资咨询业务的系统、存放承销保荐业务工作底稿相关数据的系统、专业即时通信软件以及与上述信息系统具备类似功能的信息系统。

#### 二、备案类型

根据《管理办法》和《指引》，基金信息技术服务机构备案类型包括首次备案、重大事项备案和年度备案。

##### 1、首次备案

根据《管理办法》第四十七条，基金信息技术服务机构进行首次备案时应满足以下资质条件：(1)近三年未因从事非法金融活动、违反金融监管部门有关规定展业、为非法金融活动提供信息发布服务等情形受到监管部门行政处罚或重大监管措施；(2)信息技术服务机构及其控股股东、实际控制人、实际控制人控制的其他信息技术服务机构最近一年内不存在证券期货重大违法违规记录；(3)具备安全、稳定的信息技术服务能力；(4)具备及时、高效

的应急响应能力；(5)熟悉相关证券基金业务，具备持续评估信息技术产品及服务是否符合监管要求的能力；(6)中国证监会规定的其他情形。

同时，《指引》第二项明确，基金信息技术服务机构进行首次备案时，应通过证监会开发的信息技术系统服务机构备案信息采集系统（以下简称“**备案信息采集系统**”）报送以下材料：(1)信息技术系统服务机构备案表；(2)信息技术系统服务机构营业执照、在行业主管部门取得的执业许可或者备案文件；(3)信息技术系统服务机构及其依照《备案规定》备案的从业人员因执业行为涉嫌违法违规被立案调查，或者被司法机关立案侦查，以及近三年因执业行为受到刑事处罚、行政处罚、监督管理措施、自律监管措施和纪律处分的情况；(4)控股股东、实际控制人和从业人员情况；(5)商业计划书；(6)合规管理制度；(7)产品和服务情况；(8)产品类客户情况和服务类客户情况；及(9)上一年度财务报表审计报告。

## 2、 重大事项备案

根据《管理办法》第四十八条和《指引》第二项，基金信息技术服务机构在以下备案内容发生变更时，应当及时通过备案信息采集系统更新并报送相关材料：(1)名称变更；(2)住所变更；(3)法定代表人或主要负责人变更；(4)质量控制负责人变更；(5)风险控制负责人变更；(6)持有基金信息技术服务机构百分之五以上股份的股东、实际控制人变更，及基金信息技术服务机构的董事、监事或者高级管理人员、合伙人变更；(7)与基金服务业务有关的质量控制制度、风险控制制度等内部管理制度发生重大变更；(8)基金信息技术服务机构及其已备案的从业人员因执业行为涉嫌违法违规被立案调查，或者被司法机关立案侦查，以及因执业行为受到刑事处罚、行政处罚、监督管理措施、自律监管措施和纪律处分；(9)基金信息技术服务机构及其已备案的从业人员因执业行为与委托人、投资者发生民事纠纷，进行诉讼或者仲裁；及(10)基金信息技术服务

机构设立或撤销分所或者分支机构。

## 3、 年度备案

根据《管理办法》第五十三条和《指引》第二项，基金信息技术服务机构应当在报送年度报告的同时报送年度信息技术管理专项报告。具体而言，基金信息技术服务机构应当于每年4月30日前通过备案信息采集系统报送以下材料：(1)基金信息技术服务机构基本情况和经营情况；(2)依照《备案规定》备案的从业人员的变动情况；及(3)内部管理制度的执行情况和变动情况。

## 三、 法定义务

除以上备案要求外，《管理办法》还对基金信息技术服务机构的内控治理及业务活动提出了进一步的要求。

### 1、 内控治理

根据《管理办法》第五十条，基金信息技术服务机构应当健全内部质量控制机制，定期监测相关产品或服务，在提供服务过程中出现明显质量问题的，应当立即核实有关情况，采取必要的处理措施，明确修复完成时限，及时完成修复工作。

### 2、 业务活动中的禁止性行为

根据《管理办法》第51条，基金信息技术服务机构为基金管理公司提供相关服务时不得有以下行为：(1)参与证券基金经营机构向客户提供业务服务的任何环节或向投资者、社会公众等发布可能引发其从事证券基金业务误解的信息；(2)截取、存储、转发和使用证券基金业务活动相关经营数据和客户信息；(3)在服务对象不知情的情况下，转委托第三方提供信息技术服务；(4)提供的产品或服务相关功能、操作流程、系统权限及参数配置违反现行法律法规；(5)无正当理由关闭系统接口或设置技术壁垒；(6)向社会公开发布信息安全漏洞、信息系统压力测试结果等网络安全信息或泄露未公开信息；(7)法律法规及中国证监会禁止的其他行为。

我们建议为基金管理公司提供相关服务的基金信息技术服务机构尽快按照《指引》的要求完成

备案。我们将持续关注有关备案的实践发展并与客户及时分享。

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## Financial

### CSRC Accepts Filings by Fund IT Service Providers

On October 23, 2020, the China Securities Regulatory Commission (CSRC) issued the *Guidelines for the Application of Regulatory Rules – Technology Related Supervision No. 1* (“Guidelines”). The Guidelines provide further clarification on the *Administrative Provisions on the Filing of Securities Service Institutions Providing Securities Related Services* (“Filing Provisions”) promulgated by the CSRC on July 24, 2020 with respect to the filing of securities service providers.

It is worth noting that, pursuant to Item 5 of the Guidelines, “fund IT service providers” (as defined below) shall refer to the relevant provisions of the Guidelines regarding filing methods and materials when filing in accordance with the *Administrative Measures on Information Technology of Securities and Fund Operating Institutions* (“Administrative Measures”), which was issued by the CSRC in December, 2018 and officially came into force on June 1, 2019. It can be ascertained that the legal basis for fund IT service providers to complete filing procedures is the Administrative Measures, while the subsequent promulgation of the Guidelines elaborates detailed filing requirements under the Administrative Measures.

We have briefly summarized below the filing requirements for fund IT service providers under the Administrative Measures.

#### I. Filing Applicants

Pursuant to Article 3 of the Administrative Measures, “fund IT service providers” refer to the institutions that provide information technology (IT) services for the securities and fund business activities of public fund management companies (“FMCs”). The scope of IT services includes: (i) development, testing, integration and evaluation of important information systems; (ii) operation and daily security management of important information systems; (iii) other circumstances stipulated by the CSRC.

In accordance with Article 63 of the Administrative Measures, the aforementioned “important information systems” refer to information systems that support the key business functions of FMCs and service providers for specialized fund businesses, any abnormality of which will cast a significant impact on the securities and futures markets and investors, including centralized trading systems, investment trading systems, financial product distribution systems, valuation and accounting systems, investment monitoring systems, fund unit registration systems, third party depository systems, business systems for margin trading and securities lending, online trading systems, telephone commissioning systems, mobile terminal trading systems, corporate clearing systems, portals for account

opening or client information modification, systems for carrying out investment advisory businesses, systems for storing data related to documents of underwriting sponsorship business, professional instant messaging software and other information systems with similar functions to the foregoing information systems.

## **II. Types of Filing**

Pursuant to the Administrative Measures and the Guidelines, the types of filing for fund IT service providers include first filing, filing of major changes and annual filing.

### **1 First Filing**

Article 47 of the Administrative Measures provides that a fund IT service provider shall satisfy the following conditions when making the first filing: (i) for the preceding three years, having not been subject to any administrative penalty or major regulatory measure imposed or taken by regulatory authorities for engaging in illegal financial activities, operating businesses in violation of relevant rules stipulated by financial regulatory authorities or providing information publishing services for illegal financial activities, etc.; (ii) for the preceding 12 months, no record of any major violation of securities and futures laws and regulations by the fund IT service provider and its controlling shareholder, de facto controller as well as other IT service providers controlled by such de facto controller; (iii) having secure and stable IT service capacity; (iv) having timely and efficient emergency response capacity; (v) being familiar with relevant securities and funds businesses, as well as being capable of constantly evaluating whether IT products and services are in compliance with relevant regulatory requirements; (vi) other conditions stipulated by the CSRC.

At the same time, Item 2 of the Guidelines

clarifies that a fund IT service provider shall submit the following documents through the IT Service Providers Filing Information Collecting System ("Filing Information Collecting System") developed by the CSRC when making its first filing, namely, (i) the Filing Form for fund IT Service Provider; (ii) the business license of the fund IT service provider, or relevant approval or filing documents issued by the competent regulators to the fund IT service provider for conducting relevant business activities; (iii) information for the preceding three years regarding cases where the fund IT service provider or its employees filed in accordance with the Filing Provisions were under investigation by the competent regulators or investigated by judicial authorities due to their business activities suspected of violating laws and regulations, as well as information regarding all criminal penalties, administrative penalties, supervisory and regulatory measures, self-disciplinary measures and disciplinary sanctions that have ever been imposed on or taken against the fund IT service provider or its employees due to their business activities; (iv) information about the controlling shareholder, de facto controller and employees of the fund IT service provider; (v) the business plan; (vi) compliance management systems; (vii) information about products and services; (viii) information about clients purchasing products and clients purchasing services from the fund IT service provider; (ix) audit report for financial statements of the preceding year.

### **2 Filing of Major Changes**

Pursuant to Article 48 of the Administrative Measures and Item 2 of the Guidelines, a fund IT service provider shall update and submit relevant documents through the Filing Information Collecting System in a timely manner upon the occurrence of any of the following, namely: (i) change of name; (ii) change of address; (iii) change of legal representative or principal person

in charge; (iv) change of the head of quality control; (v) change of the head of risk control; (vi) change of the shareholder holding more than 5% shares in the fund IT service provider, or change of the de facto controller, directors, supervisors, senior executives or partners of the fund IT service provider; (vii) major change in quality control system, risk control system and other internal management systems that are in connection with fund services; (viii) the fund IT service provider or its employees filed in accordance with the Filing Provisions become the subject of investigation by the competent regulators or investigated by judicial authorities due to their business activities suspected of violating laws and regulations, or become subject to criminal penalties, administrative penalties, supervisory and regulatory measures, self-disciplinary measures and disciplinary sanctions due to their business activities; (ix) the fund IT service provider and its employees filed in accordance with the Filing Provisions become involved in any ongoing litigation or arbitration arising from civil disputes with any of its clients or investors due to their business activities; and (x) the fund IT service provider establishes or closes any subsidiaries or branches.

### **3 Annual Filing**

According to Article 53 of the Administrative Measures and Item 2 of the Guidelines, a fund IT service provider, while submitting its annual report, shall also submit its annual specialized report on IT management, specifically, the fund IT service provider shall submit the following documents through the Filing Information Collecting System prior to April 30 of each year: (i) basic information and operation status of the fund IT system service provider; (ii) any change of employees filed in accordance with the Filing Provisions; and (iii) implementation and change of the internal management systems.

## **III. Statutory Obligations**

Apart from the aforementioned filing requirements, the Administrative Measures provide for additional requirements for the internal governance and business activities of fund IT service providers.

### **1 Internal Governance**

Article 50 of the Administrative Measures stipulates that a fund IT service provider shall improve its internal quality control mechanism and periodically monitor relevant products or services. Upon discovering any obvious quality defect in the course of servicing, the fund IT service provider shall immediately investigate the relevant situation, take necessary measures, specify the time limit for repairing the defects as well as complete such repairing work in a timely manner.

### **2 Prohibited Behaviors in Business Activities**

Pursuant to Article 51 of the Administrative Measures, fund IT service providers are prohibited from conducting the following activities while providing relevant services for FMCs: (i) participating in any part of the business services provided by securities and fund operating institutions to their clients, or releasing information to the investors or the public that may mislead them to believe that such fund IT service provider is engaging in any securities and fund businesses; (ii) intercepting, storing, forwarding or using operation data and client information related to securities and fund business activities; (iii) re-entrusting a third party to provide IT services without informing the parties receiving such services; (iv) Violating existing laws and regulations for relevant functions, operating processes, system authorizations or parameter configuration of the products or services provided;

(v) shutting down system interfaces or setting up technical barriers without justifiable reasons; (vi) releasing information regarding information security breaches, information system stress test results or any other cybersecurity information to the public or divulging such non-public information; (vii) other activities prohibited by laws, regulations or the CSRC.

We suggest fund IT service providers offering services for FMCs to complete relevant filing procedures in accordance with the Guidelines as soon as possible.

We will continue to monitor the development of the filing practice and keep our clients informed.

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