

Financial

Circular No.4: Further Facilitating the Participation of Foreign Investors in China's Bond Market

For the past twelve years, since China first allowed investment in the China Interbank Bond Market ("CIBM") by foreign central banks, monetary authorities and RMB clearing banks, etc., China has been making efforts to further open the bond market and facilitate the participation of foreign institutional investors by adopting a series of measures. On May 27, 2022, the People's Bank of China ("PBoC"), the China Securities Regulatory Commission ("CSRC"), and the State Administration of Foreign Exchange ("SAFE") jointly issued the *Circular on Matters Concerning Further Facilitating Foreign Institutional Investors to Invest in China's Bond Market* ("Circular No. 4") to unify the different thresholds and the entry procedures for foreign investment. Circular No. 4 follows the principle of "one set of rules, one integrated bond market", and further facilitates foreign institutional investors' investments in the bond market.

We have summarized below the key points of the circular which concern foreign institutional investors.

Thresholds for Foreign Institutions

Qualified foreign institutional investors under Circular No. 4 include:

(1) Foreign central banks or monetary

authorities, international financial organizations and sovereign wealth funds ("Sovereign-type Institutions");

- (2) Various types of foreign financial institutions legally registered and incorporated overseas, including foreign commercial banks, insurance companies, securities companies, fund management companies, futures companies, trust companies and other asset management institutions; and
- (3) Other medium- and long-term institutional investors including pension funds, charity funds, endowment funds ((2) and (3) collectively "Commercial-type Institutions").

The qualification requirements for the foregoing Commercial-type Institutions to invest in China's bond market under Circular No.4 are in line with that enumerated in *PBoC Circular (2016) No. 3*. The scope of foreign institutional investors is consistent with the "qualified foreign institutional investors" under the *Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors* issued by the CSRC on September 25, 2020.

Procedures and Investment Methods for

Foreign Institutions to Invest in China's Bond Market

At present, a foreign investor can invest in the CIBM via (a) QFII/RQFII, (b) direct investment in the CIBM ("CIBM Direct") and (c) Bond Connect. Via the QFII/RQFII method, a foreign investor can also invest in the exchange bond market ("Exchange Market"). A foreign investor investing in the CIBM through CIBM Direct or via QFII/RQFII is required to enter into a settlement agency agreement with a domestic settlement agent or a domestic custodian bank ("**Settlement via Agency Model**"), and file with the PBoC's Shanghai Head Office via a settlement agent or custodian bank.

Since the further opening-up of the CIBM to admit qualified Commercial-type Institutions in 2016, the entry procedures for foreign institutions have been further simplified. In March 2021, the PBoC simplified the filing requirements for foreign institutions' entry into the CIBM. It clarified that the same foreign investor just needs to apply a new filing form and file it once in its own name if it uses different unincorporated products to invest in the CIBM via different channels. In addition, the PBoC's Shanghai Head Office no longer requires a foreign investor or its settlement agent or custodian bank to submit the settlement agency agreement for filing. Circular No. 4 further provides that foreign Commercial-type Institutions applying for entry to the CIBM may submit documents to the PBoC's Shanghai Head Office electronically, while Sovereign-type Institutions may submit documents directly to the PBoC, which further facilitates foreign institutions' participation in the CIBM.

Pursuant to Article 4 of Circular No. 4, qualified foreign institutions in the CIBM may trade in the

Exchange Market either directly or through the intra-market connect scheme. Foreign institutional investors shall comply with the relevant business rules of the different financial market infrastructures (such as trading and settlement institutions) and the financial institutions concerning account opening, trading, custody, and settlement. This means, other than QFII/RQFIIs that are already permitted to directly trade in both the CIBM and the Exchange Market, qualified foreign institutional investors under CIBM Direct may also invest in the Exchange Market either directly or through the intra-market connect scheme. Detailed rules for account opening, trading, custody and settlement for such foreign institutions investors' directly trading in the Exchange Market are expected to be formulated by the CSRC, the exchanges and the China Securities Depository and Clearing Corporation Limited. If a foreign investor under CIBM Direct trades on the Exchange Market through the intra-market connect scheme, they shall comply with the *Interim Measures for Businesses of Interconnection Scheme between the Interbank Bond Market and the Exchange Bond Market* (which were issued in January this year) to participate in the "Connect to the Exchange Market", and trade bonds with other investors via their agents. It should be noted that under the intra-market connect scheme, only cash bonds are permissible to trade on the Exchange Market. Further clarification is needed from the regulators as to whether foreign investors trading in the CIBM via Bond Connect are permitted to participate in the intra-market connect scheme.

Investment Scope

We set forth below the permissible investment products that foreign investors can trade in the CIBM via the three channels.

CIBM Direct	Bond Connect	QFII/RQFII
<u>Sovereign-type Institutions:</u> Cash bonds, bond repos, bond lending, bond forwards, forward rate agreements, interest rate swaps, etc. <u>Commercial-type Institutions:</u> <ul style="list-style-type: none"> ◆ Cash bonds ◆ Bond lending, bond forwards, forward rate agreements and interest rate swaps traded for hedging purposes 	Cash bonds only	<ul style="list-style-type: none"> ◆ Cash bonds ◆ Bond lending, bond forwards, forward rate agreements and interest rate swaps traded for hedging purposes

Circular No. 4 allows foreign institutional investors to trade cash bonds, bond lending, related derivatives for risk management purposes, open-end bond-index securities investment funds, and other products recognized by the PBoC and the CSRC in the bond market. Our observation is that there is no change in the permissible investment products for foreign investors in the CIBM. In other words, foreign investors are still only allowed to trade bond lending, bond forwards, forward rate agreements and interest rate swaps for hedging purposes. In recent years, foreign institutions have shifted more asset allocation to RMB bond assets. With the rapid increase in their investment size in China's bond market, their needs for managing the interest rate risk increases accordingly, bringing a growing demand for trading treasury bond futures and other related interest rate derivatives. At present, the China Financial Futures Exchange ("CFFEX") has listed 2-year, 5-year and 10-year CGB futures, which could be used to manage short-term, medium-term and long-term interest rate risks respectively. It remains to be seen whether Circular No. 4 paves the way for foreign investors to trade bond treasury futures by allowing foreign

investors to trade related derivative products for risk management purposes. We also note that the CSRC has provided in the *Provisions on Issues Concerning the Implementation of the Administrative Measures for Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors* that qualified foreign investors may invest in the financial futures contracts listed and traded in the CFFEX. However, it remains unknown when such a provision will be implemented.

Custody and Settlement Arrangements

Pursuant to Circular No. 4, in addition to the current Settlement via Agency Model (i.e., directly opening bond accounts at bond registration and settlement institutions), a foreign investor may, directly or via its global custodian bank, entrust a qualified local custodian bank to exercise custody over its bonds. The bonds purchased by a foreign institutional investor in the CIBM via its local custodian bank will be registered in the name of this custodian bank and the foreign investor will have the interests in the securities according to laws. Circular No. 4 introduces a multi-layered custody arrangement, whereby

the nominee holder mechanism adopted by such arrangement is not new to foreign investors. Currently, the financial infrastructure institutions of both the CIBM and the Exchange Market adopt the nominee holder mechanism to conduct cross-border custody and settlement with the Hong Kong market, to achieve the interconnection of stock and bond trading between the Hong Kong market and the Exchange Market or the CIBM, and so does the intra-market connect between the CIBM and the Exchange Market. Circular No. 4 adopts a globally followed model of “Global Custodian Bank + Local Custodian Bank”, so that foreign investors can invest in the CIBM without needing to adjust their trading customs. Despite the lack of explicit provisions on the nominee holder mechanism, we believe the current legal framework and judicial practice in China can provide protection for the legitimate rights and interests of foreign beneficial owners under a multi-layered custody arrangement.

The multi-layered custody arrangement in Circular No. 4 also imposes requirements on local custodian banks. Circular No. 4 requires local custodian banks to establish and optimize the relevant mechanisms to strictly segregate the assets of foreign institutional investors from its proprietary assets and other assets under custody and effectively implement the requirement of independent custody. Under the model of a “Global Custodian Bank + Local Custodian Bank,” the local custodian bank shall enter into an agreement with the global custodian bank to clarify their respective responsibilities. In addition, both local and global custodian banks shall record the trading, custody and settlement information of foreign institutional investors in a timely, accurate and complete

manner, and report the same to the regulators on a regular basis pursuant to the relevant reporting requirements.

Outlook

In recent years, China’s regulators have issued a number of policies to facilitate the participation of foreign institutions in China’s bond market. The promulgation of Circular No. 4 further deepens and broadens the opening-up of China’s bond markets. In October 2021, the Executive Meeting of the State Council extended the terms of a policy for an exemption of enterprise income tax and value-added tax derived by foreign institutional investors’ investing in China’s bond markets until the end of 2025, which consolidates the confidence of foreign institutions in investing in the CIBM. In addition to Circular No. 4 which allows foreign investors to trade domestic bond ETFs, on May 27, 2022, the CSRC and the Hong Kong Securities and Futures Commission jointly issued an announcement to include in principle qualified ETFs by mainland and Hong Kong exchanges in the Stock Connect, thereby allowing mainland and Hong Kong investors to trade eligible stocks and ETFs listed on the other exchange. At present, domestic stock exchanges are soliciting comments on the relevant implementation measures for the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect to clarify the investor qualification requirements, permissible investment products, investment methods and other rules related to the inclusion of ETFs under Stock Connect.

We are looking forward to the continual opening-up of China’s capital markets and will keep our clients apprised of any important developments.

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金融法律热点问题

债券市场对外开放进行时——4号公告进一步便利境外投资者入市

自十二年前首次允许境外央行、货币当局和人民币清算行等投资银行间债券市场开始，我国不断深化债券市场的对外开放，出台各项便利措施鼓励境外机构投资者投资债券市场。继2020年9月公开征求意见后，中国人民银行(以下简称“人民银行”)、中国证券监督管理委员会(以下简称“证监会”)和国家外汇管理局于2022年5月27日联合发布《关于进一步便利境外机构投资者投资中国债券市场有关事宜的公告》(以下简称“《4号公告》”)，按照“一套制度规则、一个债券市场”原则，统一准入标准，优化入市流程，进一步便利了境外机构投资者投资我国债券市场。

本文将针对境外机构投资者关注的以下几方面对《4号公告》内容进行简要梳理。

境外机构入市标准

《4号公告》规定的境外机构投资者包括：

- (1) 境外央行或货币当局、国际金融组织、主权财富基金(以下合称“主权类机构”);
- (2) 在中国境外依法注册成立的商业银行、保险公司、证券公司、基金管理公司、期货公司、信托公司及其他资产管理机构等各类金融机构; 以及
- (3) 养老基金、慈善基金、捐赠基金等中长期机构投资者((2)和(3)以下合称“商业类机构”)。

《4号公告》中规定的商业类机构投资中国债券市场应当符合的条件与《中国人民银行公告(2016)第3号》中规定的准入条件保持了一致。境外机构投资者的范围也与证监会于2020年9月25日发布的《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》中定义的合格境外投资者范围基本一致。

境外机构入市流程和投资方式

目前，境外投资者可以通过(a)QFII/RQFII、(b)银行间债券市场直接投资(以下简称“CIBM 直接准入”)和(c)债券通三种渠道投资银行间债券市场，并可以通过QFII/RQFII投资交易所债券市场。境外投资者通过CIBM直接准入或QFII/RQFII投资银行间债券市场需与境内结算代理行或其境内托管行签署结算代理协议(以下简称“**结算代理模式**”)，并通过代理行或托管行向人民银行上海总部进行备案。

众所周知，自2016年银行间债券市场扩大开放，允许符合条件的商业类机构投资银行间债券市场以来，监管机构一直致力于简化境外机构入市流程。2021年3月，人民银行简化境外机构入市备案要求，明确同一境外投资者的不同非法人产品、通过不同入市渠道均只需使用新版备案表以机构名义备案一次。此外，人民银行上海总部也不再要求境外投资者或其结算代理行/托管行提交结算代理协议。《4号公告》进一步明确了境外商业类机构进入银行间债券市场可通过电子化方式向人民银行

上海总部提交材料，主权类机构可以直接向人民银行提交材料，进一步便利了境外机构。

《4号公告》第四条规定，获准进入银行间债券市场的境外机构投资者可以直接或通过互联互通方式投资交易所债券市场。境外机构投资者应当遵循交易、结算等金融基础设施及金融机构关于境外机构投资者开户、交易、托管、结算的相关业务规定。这意味着，除了已经可以直接投资银行间和交易所债券市场的QFII/RQFII，CIBM直接准入的境外投资者也可以直接或通过互联互通方式投资交易所债券市场。我们理解，CIBM直接准入的境外投资者如何直接参与交易所债券市场尚有待证监会、证券交易所和中国证券登记结算有限责任公司就其直接开户、交易、托管、结算做出细则规定；

而CIBM直接准入的境外投资者如通过互联互通机制投资交易所债券市场的，则可以根据今年1月份发布《银行间债券市场与交易所债券市场互联互通业务暂行办法》的规定，根据银行间债券市场相关规则，通过代理人代理申报，与其他投资者达成交易所债券的交易，以参与“通交易所”业务。需要注意的是，该互联互通机制项下，目前可投资品种仅为交易所市场的债券现券。此外，通过债券通进入银行间债券市场的境外投资者是否可以参与上述互联互通机制，仍有待监管机构进一步明确。

投资范围

目前境外投资者通过以下三种渠道投资银行间债券市场的可投资品种如下表所示：

CIBM 直接准入	债券通	QFII/RQFII
主权类机构： 债券现券、债券回购、债券借贷、债券远期、远期利率协议、利率互换等交易。 商业类机构： <ul style="list-style-type: none"> ◆ 债券现券 ◆ 基于套期保值需求开展的债券借贷、债券远期、远期利率协议、利率互换等交易。 	债券现券	<ul style="list-style-type: none"> ◆ 债券现券 ◆ 基于套期保值需求开展的债券借贷、债券远期、远期利率协议、利率互换等交易。

《4号公告》允许境外机构投资者在中国债券市场开展债券现券、债券借贷、以风险管理为目的的相关衍生产品、开放式债券指数证券投资基金以及其他中国人民银行、中国证监会认可的交易。我们理解，对于已经进入银行间债券市场的境外投资者而言，目前可投资品种及投资范围并无变化，仍然只能基于套期保值需求开展债券借贷、债券远期、远期利率协议、利率互换等交易。近年来，境外机构更多地参与人民币债券资产配置，随着持有国内债券的市场规模快速增加，其管理相关利率风险需求也相应增加。因此，境外机构对于参与国债期货等相关利率衍生品的呼声也日益增大。目前中国金融期货交易所(以下简称“中金所”)已经上市2年

期、5年期和10年期三个国债期货品种，可以覆盖短、中、长期的利率风险。《4号公告》中允许境外投资者开展以风险管理为目的相关衍生品的规定是否为允许境外投资者参与国债期货的交易埋下伏笔，仍有待观察。我们注意到，证监会出台的《关于实施《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》有关问题的规定》中也有类似表述，即规定合格境外投资者可以投资于在中金所上市交易的金融期货合约，但何时落地尚无眉目。

托管结算安排

根据《4号公告》，境外投资者在现行的结算代理

模式(即在债券登记结算机构直接开立债券账户)之外,还可以直接或通过其境外托管银行,委托符合条件的境内托管银行进行债券托管。银行间债券市场的境外机构投资者通过境内托管银行买入的债券应当登记在境内托管银行名下,并依法享有证券权益。《4号公告》引入多级托管的制度安排,其所适用的名义持有人制度对于境外投资者也已不陌生。银行间和交易所市场的基础设施机构目前均采用名义持有人制度与香港市场安排跨境托管结算以实现两个市场股票和债券交易的互联互通,银行间和交易所市场之间的互联互通也采用了该等制度。《4号公告》采用了境外市场通行的“全球托管行+本地托管行”的模式,以便境外投资者无需改变其业务习惯而参与中国银行间债券市场。我们认为,即使缺乏对名义持有人制度的明确规定,我国现行法律制度框架和司法实践仍可实现对多级托管制度下境外实益所有人合法权益的保护。

《4号公告》拟建立的多级托管的制度安排也给境内托管银行提出了实践要求。《4号公告》要求境内托管银行应建立健全相关机制安排,将所托管的境外机构投资者财产,与境内托管银行固有财产及受托管理的各类财产严格分开保管,切实履行实质性独立托管职责。在全球托管行+本地托管行的模式下,境内托管银行应与境外托管银行签订协议,明确各方面的职责。此外,境内外托管银行均

应当及时、准确、完整地记录境外机构投资者的交易、托管、结算等数据,并按照交易报告制度有关要求,定期将境外机构投资者相关明细数据报送至监管机构。

展望

近年来,我国监管机构陆续推出一批开放政策,便利境外投资者参与我国债券市场。《4号公告》的发布进一步提升了我国债券市场对外开放的深度和广度。此外,2021年10月,国务院常务会议决定延长境外机构投资者投资境内债券市场免征企业所得税和增值税政策至2025年末,也将更好地鼓励境外投资者参与银行间债券市场。除了《4号公告》允许境外投资参与境内债券ETF交易外,证监会于2022年5月27日和香港证监发布公告称,原则同意两地交易所将符合条件的ETF纳入互联互通。ETF纳入互联互通后,内地和香港投资者可买卖规定范围内的对方交易所上市的股票和ETF基金份额。境内证券交易所正在就沪港通、深港通相关业务实施办法征求意见,以尽快落地ETF纳入互联互通相关的投资者资质、投资标的和投资方式等方面的制度安排。

我们期待中国资本市场对外开放的持续深化,并将持续与我们的客户分享最新进展。

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