

金融法律热点问题

中国证监会拟修订沪深港通规则限制内地投资者交易

2021年12月17日，中国证监会发布消息，拟对《内地与香港股票市场交易互联互通机制若干规定》（以下简称“《规定》”）第13条进行修改，规定沪深股通投资者不包括内地投资者。同日，沪深交易所分别发布《上海证券交易所沪港通业务实施办法（2021年第二次修订）（征求意见稿）》、《深圳证券交易所深港通业务实施办法（2021年12月修订征求意见稿）》（以下合称“《征求意见稿》”），对“内地投资者”适用范围作出具体规定。

1、 修订背景

中国证监会在《规定》的修订说明中明确指出，在沪深港通交易机制实施过程中，存在内地投资者在香港开立证券账户及北向交易权限，通过沪深股通交易A股的情形（以下简称“北向交易”）。中国证监会认为，内地投资者北向交易的总体规模和交易金额占比不大，但前述投资者已开立内地证券账户可以直接参与A股交易，且“两种途径交易有发生跨境违规活动的风险”，同时“给市场造成了北向交易中存在‘假外资’的印象”，“不利于沪深港通的平稳运行和长远发展”。

因此，出于“统筹金融开放和安全”和“加强对跨境证券活动监管”，以及保护内地投资者合法权益、维护沪深港通平稳运行的目的，中国证监会决定对《规定》进行修改，“规范内地投资者返程交易行为”，以及对“假外资”从严监管。

2、 “内地投资者”适用范围

本次修订将《规定》第13条第1款修订为“投资者依法享有通过内地与香港股票市场交易互联互通机制买入的股票的权利。沪深股通投资者不包括内地投资者”，即不再允许内地投资者通过沪深股通安排进行北向交易。

沪深交易所在《征求意见稿》中对“内地投资者”的适用范围作出了规定，具体如下：

（1）对于自然人投资者：指持有中国内地身份证明文件的公民，但不包括取得境外永久居留身份证明文件的公民。境外永久居留身份证明文件包括但不限于境外国家和地区颁发的永久居民卡、永久居民签证等。

（2）对于机构投资者：指在中国内地注册的法人及非法人组织，但内地注册法人和非法人组织在境外设立的分支机构或子公司可使用在境外取得的身份证明文件（如商业登记证等）开通沪深股通交易权限。

3、 实施安排

根据《征求意见稿》规定，自新规施行之日起，香港经纪商不得再为内地投资者开通沪深股通交易权限。对于新规施行前，已开通沪深股通权限的内地投资者（以下简称“存量内地投资者”）设置一年过渡期进行清理：

（1）过渡期内，存量内地投资者可继续通过沪深股通买卖沪深股通股票；

（2）过渡期结束后，存量内地投资者可以卖

出所持有的沪深股通股票，但不得再通过沪深股通主动买入沪深股通股票，因公司行为(如以股票形式分派股息、配股等方式)被动取得沪深股通股票的情形除外。无持股的存量内地投资者的交易权限由香港经纪商注销。

我们的观察

本次修订是中国证监会规范沪深港通交易机制，特别是北向交易的一次重要尝试。鉴于早在2016年至2018年期间，中国证监会连续查处两起内地投资者通过北向交易操纵A股上市公司股价的案件，中国证监会对沪深港通交易机制，特别是

北向交易安排中可能被不当利用的监管漏洞已有所关注。

同时，我们认为，针对此次修订沪深港通交易机制对其他可供境外投资者使用的北向交易安排(如QFII swap, 沪深港通 swap)的影响不宜过度解读。据我们观察，在资本市场持续对外开放、维护市场稳定、投资者保护之间达到平衡仍是监管机构关注的重点。除非存在对市场影响深远的极端事件，对于资本市场对外开放过程中的问题，监管机构更倾向于以“温和”、“循序渐进”的方式逐步解决。

谢青 合伙人 电话：86 21 2208 6238
肖娴 律师 电话：86 21 2208 8288
罗丹晨 律师 电话：86 21 2283 8320

邮箱地址：xieq@junhe.com
邮箱地址：xiaoxian@junhe.com
邮箱地址：luodch@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。



Financial

CSRC Proposes to Restrict Mainland China Investors' Northbound Trading through Stock Connect

On December 17, 2021, the China Securities Regulatory Commission (CSRC) announced that it proposes to amend Article 13 of the Certain Provisions on Stock Connect between Mainland China and Hong Kong Stock Markets ("Provisions") to exclude mainland China investors outside the scope of investors under Stock Connect. On the same day, the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) respectively released the Implementation Measures of the Shanghai Stock Exchange for Shanghai-Hong Kong Stock Connect (Second Amendment in 2021) (Consultation Paper) and the Implementation Measures of the Shenzhen Stock Exchange for Shenzhen-Hong Kong Stock Connect (Amended in December 2021)(Consultation Paper) (collectively, the "Consultation Paper"), proposing detailed rules regarding the scope of "mainland China investors".

1. Background

According to the Statement on the Amendments to the Provisions, the CSRC has noted that in the implementation of the Stock Connect scheme, some mainland China investors open securities accounts in Hong Kong and trade A shares through Stock Connect ("Northbound Trading"). According to the CSRC, though the overall scale

and trading volume of Northbound Trading by mainland investors is not significant, it is noteworthy that such investors have already opened securities accounts to directly trade A shares within mainland China, and therefore the CSRC believes that "it may give rise to concerns of violations if trading through two channels concurrently", and at the same time "it gives an impression of 'fake foreign capital' in Northbound Trading", "which is not conducive to the stable operation and future development of Stock Connect". The CSRC decided to amend the Provisions to regulate the "round-trip" securities trading activities carried out by mainland China investors and strengthen the regulation of "fake foreign capital". The amendments also aim to strengthen the regulation of cross-border securities trading, balance the needs for opening up and the security of the financial sector, protect the legitimate rights and interests of mainland China investors and maintain the stable operation of the Stock Connect scheme.

2. The Scope of "Mainland China Investors"

According to Article 13 of the Provisions, investors have the right to buy shares through Stock Connect in accordance with the law. Based on this, the CSRC proposes to add a clause specifying that investors who are eligible for Stock

Connect shall not include mainland China investors, thereby mainland China investors will not be allowed to trade through Northbound Trading under Stock Connect anymore.

The SSE/SZSE further defines the scope of “mainland China investors” in their Consultation Paper as follows:

(1) For individual investors, this refers to Chinese citizens who hold mainland China (PRC) identification certificates, excluding PRC citizens who have obtained a non-PRC permanent residence permit. Non-PRC permanent residence permits include permanent resident cards, permanent resident visas, and other certificates issued by a non-PRC country or region.

(2) Institutional investors refer to legal persons and unincorporated organizations duly incorporated in mainland China. Non-PRC branches or subsidiaries of these mainland China incorporated legal persons and unincorporated organizations are still allowed to trade through the Stock Connect scheme by virtue of their non-PRC identification certificates such as a business certificate of incorporation obtained overseas.

3. Implementation Plan

Pursuant to the Consultation Paper, after the implementation of the Provisions, Hong Kong brokers shall not offer access for mainland China investors to trade through Stock Connect. Meanwhile, it allows a one-year transition period for mainland China Investors who have already accessed trading through Stock Connect (“Existing Mainland China Investors”).

(1) During the transition period, existing

mainland China investors may continue to buy and sell A-shares through Stock Connect.

(2) After the transition period, existing mainland China investors may only sell A-shares through Stock Connect. They are no longer allowed to buy A-shares through Stock Connect, except if they acquire A-shares passively due to corporate actions such as dividend distribution and the allotment of shares. Hong Kong brokers will cancel the trading access of existing mainland China investors that don't hold A-shares.

Our Observations

Amending the Provisions is a remarkable attempt by the CSRC to regulate Stock Connect, particularly Northbound Trading. In 2016 and 2018, the CSRC investigated and penalized two cases where mainland China investors manipulated the A-share markets through Northbound Trading. The CSRC had already noted weaknesses in the regulation of Stock Connect, especially the potential risk of abusing Northbound Trading.

Nevertheless, from our point of view, we should avoid over-interpreting the impact of the amendment to the Stock Connect scheme on other channels (such as QFII swap or Stock Connect swap) used by foreign investors to trade A-shares. Based on our observations, the regulator has always strived to achieve a balance between opening up, market stability and the protection of investors. Unless extreme events occur that have a far-reaching adverse impact on the market, we believe that the regulator will adopt a moderate “step-by-step” approach to resolve any problems arising in the opening up of the capital market..

Natasha XIE Partner	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Xian Xiao Associate	Tel: 86 21 2208 8288	Email: xiaoxian@junhe.com
Danchen Luo Associate	Tel: 86 21 2283 8320	Email: luodch@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”.

