

资本市场法律热点问题

监管机构就统一境外机构投资者债券市场规则征求意见

2020年9月2日,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(以下简称“**外管局**”)联合发布《关于境外机构投资者投资中国债券市场有关事宜的公告(征求意见稿)》(以下简称“**《征求意见稿》**”)。

国内债券市场分为银行间市场和交易所市场。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,并通过QFII/RQFII投资交易所债券市场。

目前由于不同的债券市场由不同部门分别监管,导致我国债券市场对外开放步伐不一致,监管机构此次联合下发《征求意见稿》,旨在明确中国债券市场对外开放的整体性制度安排,按照“同一套标准、同一套规则的一个中国债券市场”原则,统一准入标准,优化入市流程,以鼓励境外投资者通过投资我国债券市场进行人民币债券资产配置。

本文将针对境外机构投资者关注的以下几方面对《征求意见稿》内容进行简要梳理。

一、境外机构入市标准

《征求意见稿》规定的合格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) 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**”)

该准入标准与《中国人民银行公告(2016)第3号》列举的境外机构投资者的范围,以及证监会于2019年1月31日发布的《合格境外机构投资者及人民币合格境外机构投资者境内证券期货投资管理办法(征求意见稿)》定义的境外机构投资者基本保持一致。

二、境外机构入市流程

目前,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。境外投资者以非法人产品(如基金或信托计划产品)进行投资的,需就每只产品分别备案。不同于CIBM直接准入或QFII/RQFII,在债券通项下,是由CMU会员通过中国外汇交易中心(以下简称“**交易中心**”)与香港交易所成立的合资公司债券通有限公司代境外投资者向人民银行上海总部完成备案。

《征求意见稿》简化了现行结算代理模式入市流程。境外商业类机构可通过电子化方式向人民银行上海总部提交申请。人民银行上海总部不再要求境外投资者提交结算代理协议。此外,境外机构无

需以产品名义提交申请，即无需逐只产品入市。取消同一机构非法人产品的逐只备案，并不影响境外机构在开立相关账户时沿用目前“投资管理人名称+产品名称”的命名方式，以区别于投资管理人的自营账户，从而从账户名称角度确认基金产品作为投资人的实益所有人身份。

三、 投资方式

《征求意见稿》明确，通过 CIBM 直接准入或债券通进入银行间债券市场的境外机构无需重复申请，可直接或通过互联互通投资交易所债券市场，这呼应了今年 7 月人民银行与证监会关于银行间债券市场与交易所债券市场基础设施机构互联互通安排的联合公告。

此外，交易中心于 2020 年 9 月 1 日起开始试运行 CIBM 直接准入下的直接交易服务(以下简称“**CIBM Direct 直接交易服务**”)，支持境外机构投资者使用其惯用的交易平台，向境内做市机构发送报价请求(RFQ)并达成现券交易。目前，Tradeweb 和彭博已与交易中心达成合作，向境外投资者提供 CIBM Direct 直接交易服务，境外投资者还可使用交易分仓、一揽子交易等便利性功能。CIBM 直接准入的境外投资者、QFII/RQFII 在向交易中心提交承诺函，并通过结算代理人向交易中心提交开通交易服务开通申请表后均可参与。CIBM Direct 直接交易服务可以改善目前 CIBM 直接准入的境外投资者仅能委托境内结算代理人发起债券交易或进行询价交易的现状，有利于进一步提升境外投资者投资交易中国债券的效率。

四、 投资范围

《征求意见稿》允许境外投资者在中国债券市场开展债券现券、相关衍生产品、债券基金(含 ETF)以及其他人民银行、证监会许可的交易。境外投资者目前可投资品种及投资范围并无变化，也即，已入市的境外机构可开展现券交易，并可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。债券通投资者是否可以像其他渠

道入市的境外机构一样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，仍有待监管机构进一步明确。

此外，我们注意到人民银行与外管局于 2019 年 5 月 10 日下发的《关于进一步便利境外机构投资者投资银行间债券市场有关问题的通知(征求意见稿)》中，仅允许同一投资者将 QFII/RQFII 项下和 CIBM 直接准入项下的债券和资金双向划转。根据《征求意见稿》，同一境外机构投资者可以根据自身投资管理需要将其在 QFII/RQFII 项下的债券和账户内资金与根据《征求意见稿》中所投资的债券和所开立账户内资金进行双向非交易过户与划转。上述规定是否可以解释为同一机构的 QFII/RQFII、CIBM 直接准入和债券通的相关账户项下的债券和资金均可互换划转，仍需要监管机构在相关实施细则中予以明确。

五、 托管结算安排

在现行的结算代理模式之外，《征求意见稿》引入了“全球托管行+本地托管行”的模式，即投资银行间债券市场的境外投资者可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资产托管，这就意味着境外托管行只需与境内托管行一次性签署次托管协议，节省了境外机构与境内托管行在客户开户以及协议谈判方面花费的时间。

六、 统一资金管理

目前境外投资者通过 QFII/RQFII、CIBM 直接准入和债券通各渠道投资境内债券市场均不受任何资金汇出入额度要求或锁定限制。《征求意见稿》再次明确会统一境外机构投资中国债券市场资金收付、汇兑、外汇风险管理等，进一步优化和便利投资资金汇出入。

我们将持续关注并及时与我们的客户分享最新的进展。

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Financial

Regulators Solicit Comments on Unifying the Rules on Foreign Institutions Investing in China Bond Markets

On September 2, 2020, 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 Foreign Institutional Investors' Investments in China's Bond Market (Consultation Paper)* ("Consultation Paper").

China has two separate and differentiated bond markets – the interbank bond market (i.e. CIBM) and the exchange bond market. Foreign investors may invest in the interbank bond market via any of the following three channels, namely, (a) QFII/RQFII, (b) direct investment in the interbank bond market ("CIBM Direct") and (c) Bond Connect. They may also invest in the exchange bond market via QFII/RQFII.

Since bond markets are separately regulated by different authorities, they do not always concur in terms of market opening up to foreign investors. In such context, the regulators jointly announced the Consultation Paper to clarify the overall policy designing for the opening up of China's bond markets. The Consultation Paper, in line with the principle of "one set of standards and one set of rules applicable to one China's bond market", aims to unify the qualification requirements for foreign investors to invest in China's bond market as well as optimize relevant procedures, so as to encourage foreign investors to invest in China's bond market to achieve

RMB asset allocation.

This article will briefly summarize the following notable points of the Consultation Paper for foreign institutional investors.

Qualification Requirements for Foreign Institutions to Invest in China's Bond Markets

The qualified foreign institutional investors under the Consultation Paper include:

- (1) Foreign central banks or monetary authorities, international financial organizations, sovereign wealth funds (collectively as "Sovereign-type Institutions");
- (2) Various types of foreign financial institutions legally registered and incorporated, 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 as "Commercial-type Institutions").

The foregoing qualification requirements are substantially in line with the scope of qualified foreign

institutional investors enumerated in the PBOC Circular (2016) No. 3, and the definition of 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 (Consultation Paper)* issued by the CSRC on January 31, 2019.

Procedures for Foreign Institutions to Invest in China's Bond Markets

At present, a foreign investor investing in the interbank bond market through CIBM Direct or via QFII/RQFII is required to enter into a settlement agency agreement with its settlement agency or domestic custodian bank ("Settlement via Agency Model"), and file with the Shanghai Head Office of the PBOC via its settlement agency or custodian bank. If a foreign investor uses products (such as funds or trust plan products which do not have the status of a legal person) to invest in the interbank bond market, it is required to file for each product separately. Unlike CIBM Direct or QFII/RQFII, under Bond Connect, a member of the Central Money Markets Unit (CMU) will file with the Shanghai Head Office of the PBOC on behalf of the foreign investor via the Bond Connect Company Limited, a joint venture established by the China Foreign Exchange Trade System (CFETS) and the Hong Kong Exchanges and Clearing Market.

The Consultation Paper simplifies the current procedures required for the Settlement via Agency Model. Foreign Commercial-type Institutions may submit applications to the Shanghai Head Office of the PBOC electronically, and the Shanghai Head Office of the PBOC no longer requires foreign investors to submit a settlement agency agreement. In addition, foreign institutions do not need to submit applications in the name of the products, that is, they do not need to submit an application for each product. Notably, the cancellation of the individual filing of products managed by the same institution should not affect the current naming method adopted by foreign institutions when opening relevant bank or bond trading accounts, namely, "investment manager

name + product name". This naming method distinguishes relevant accounts under the name of product from the investment manager's proprietary account, thereby confirming the beneficial owner identity of the fund product as the investor.

Investment Method

The Consultation Paper specifies that foreign institutions that invest in the interbank bond market through CIBM Direct or under Bond Connect are not required to additionally apply for the qualification to invest in the exchange bond market. Instead, they may invest in the exchange bond market either directly or under the domestic intra-market connect scheme. This echoes the joint announcement issued by the PBOC and the CSRC in July 2020 regarding the domestic intra-market connect scheme between the infrastructure institutions in the exchange bond market and that of the interbank bond market.

Additionally, the CFETS started a trial operation of the direct trading service under the CIBM Direct ("CIBM Direct Trading Service") beginning September 1, 2020, which supports foreign institutional investors to use their usual trading platform to solicit cash bond trading with domestic market makers by requesting for quotation (RFQ) and confirm the trade based on the quote from market makers in the CFETS system. At present, Tradeweb and Bloomberg have cooperated with the CFETS to provide foreign investors with the CIBM Direct Trading Service, and foreign investors may also use convenient functions such as conducting compartment and package transactions. Foreign investors investing in the interbank bond market through CIBM Direct and QFII/RQFII may participate in this arrangement after submitting a letter of commitment and an application form requesting for direct trading service to the CFETS through its settlement agency. The CIBM Direct Trading Service helps improve the current situation where foreign investors using CIBM Direct may only entrust their domestic settlement agents to initiate bond transactions or make inquiry trading, thereby further increasing the efficiency of foreign investors' investment and trading of Chinese bonds.

Investment Scope

The Consultation Paper allows foreign investors to conduct bond spot trading, to trade related derivative products and bond funds (including ETFs), as well as to conduct other transactions permitted by the PBOC and the CSRC on the China's bond markets. There is no change in the permitted investment products and investment scope for foreign investors, namely, foreign investors qualified to invest in the bond markets may carry out spot trading of bonds, and may also conduct bond lending, bond forwards, interest rate forwards, and interest rate swaps based on hedging needs. It remains to be stipulated by the regulatory authorities whether investors under the Bond Connect may conduct the foregoing trading including bond lending, bond forwards, interest rate forwards, interest rate swaps based on hedging needs.

Additionally, we note that the *Circular on Further Facilitating Foreign Institutional Investors' Investment in the Interbank Bond Market (Consultation Paper)* issued by the PBOC and the SAFE on May 10, 2019 only allows a two-way transfer of bonds and funds under QFII/RQFII and CIBM Direct for the same investor. Pursuant to the Consultation Paper, the same investor may, according to its own investment management needs, make a two-way non-transaction-type transfer between its bonds and funds under QFII/RQFII and the bonds invested and funds under accounts opened in accordance with the Consultation Paper. It remains to be stipulated in the relevant detailed implementation rules whether the foregoing arrangement can be interpreted as allowing the

transfer of bonds and funds under all related accounts of QFII/RQFII, CIBM Direct and Bond Connect with respect to the same institution.

Custody and Settlement Arrangement

In addition to the current Settlement via Agency Model, the Consultation Paper introduces a model of "Global Custodian Bank + Local Custodian Bank", that is, a foreign investor that invests in the interbank bond market may, directly or via its global custodian bank, entrust a qualified local custodian bank to exercise custody over its assets, meaning that the global custodian bank only needs to sign a one-off sub-custody agreement with the local custodian bank, thereby saving the time spent by the foreign investor and the domestic custodian bank in the process of onboarding new clients and negotiating new agreements.

Unified Management of Funds

Currently, there are neither quota requirements nor lock-up restrictions regarding capital remittance for foreign investors investing in China's bond markets through QFII/RQFII, CIBM Direct or Bond Connect. The Consultation Paper reaffirms that the regulators will unify the regulatory requirements for funds receipt and payment, exchange, and foreign exchange risk management of foreign institutions investing in China's bond markets, and further optimize and facilitate the inward and outward remittance of investment funds.

We will continue to monitor the situation and keep our clients apprised of any important developments.

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