

金融法律热点问题

QFII/RQFII 资金管理要求大幅简化

2020年5月7日,中国人民银行(以下简称“央行”)、国家外汇管理局(以下简称“外管局”)发布《境外机构投资者境内证券期货投资资金管理规定》(中国人民银行 国家外汇管理局公告〔2020〕第2号,以下简称“《规定》”),以明确并简化境外机构投资者境内证券期货投资资金管理要求,进一步便利境外投资者参与我国金融市场。同日,央行在其官网发布了《境外机构投资者境内证券期货投资资金管理规定》政策问答(一)(以下简称“《问答一》”)。对部分《规定》实施相关问题进行了解答。《规定》将于2020年6月6日实施,其实施意味着2019年9月10日外管局宣布合格境外机构投资者(QFII)和人民币合格境外机构投资者(RQFII)(以下统称“合格投资者”)投资额度限制取消的决定将得以落实,对合格投资者跨境资金汇入和兑换实行登记管理制。

下面我们简要梳理了《规定》的重要内容,以及《规定》与2019年12月13日发布的《征求意见稿》的变化。

一、简化汇入汇出流程

- 1、《规定》明确规定允许合格投资者自主选择汇入资金的币种和时机。
- 2、《规定》明确托管人可凭合格投资者书面申请或指令,以及合格投资者出具的承诺按照中国境内相关税务法律法规足额缴纳税费的承诺函等,为合格投资者办理相关资金汇出

手续。央行和外管局通过《问答一》进一步明确了该完税承诺函的要素以及托管人在收到完税承诺函为其办理收益汇出时的操作手续。

- 3、就《征求意见稿》强调的合格投资者境内证券投资汇出与汇入的资金币种应保持一致,不得进行跨币种套利,《规定》明确了“不得进行跨币种套利”是指“不得进行人民币和外币间的跨币种套利”,但外币间可根据实际需要进行转换。

二、衍生品交易

- 1、《规定》将合格投资者开展衍生品交易的范围明确为以套期保值为目的的外汇对冲和符合规定的金融衍生品品种,以与《关于实施<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>有关问题的规定要求(征求意见稿)》保持一致。
- 2、《征求意见稿》保留了外汇衍生品交易实需交易原则的要求,但删除了按月根据托管人核算的境内证券投资对应的人民币资产规模情况进行调整外汇衍生品头寸的要求。本次央行和外管局通过《问答一》重申了前述按月调整外汇衍生品头寸的要求,明确合格投资者须在每个自然月初五个工作日内,根据其上月末境内证券投资对应的人民币资产的最新规模,调整其外汇衍生品头寸,以符合

实需交易原则。

《问答一》进一步明确合格投资者有义务告知主报告人其在不同交易对手方的外汇衍生品头寸或总头寸，主报告人应监督该合格投资者在境内的整体衍生品头寸满足实需交易原则。

三、主报告人制度的实施

《规定》取消托管人数量限制，允许单家合格投资者委托多家境内托管人，并实施主报告人制度。《问答一》进一步明确了主报告人制度的实施方式。

四、合格投资者的信息披露和合规义务

相较于《征求意见稿》，《规定》明确合格投资者应委托托管人向央行、外管局报送或申请。《规定》进一步明确合格投资者有义务配合托管人履行

真实性合规性审查及反洗钱、反恐怖融资等义务。

值得注意的是，就征求意见阶段部分外资机构提出的参照境外投资者直接投资银行间债券市场管理模式，对合格投资者账户管理进行改革，并逐步拉平合格投资者和银行间债券市场直接投资（以下简称“CIBM 直接准入”）外汇套期保值交易模式等意见，央行和外管局考虑到合格投资者可投资范围与 CIBM 直接准入存在显著差异，且涉及资金账户全流程改造等问题，暂未予以采纳。但央行和外管局表示，未来将视情况稳妥推进。

此外，随着《规定》的发布，我们预期市场期待已久的 QFII/RQFII 新规亦将很快正式发布。

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

More Simplifications in Requirements for Management of Capital of QFI/RQFIs

On May 7, 2020 the People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) jointly issued the *Administrative Provisions on Domestic Securities and Futures Investment Capital of Foreign Institutional Investors* (PBOC & SAFE Circular [2020] No. 2) ("Administrative Provisions") to clarify and simplify the management requirements for domestic securities and futures investment capital of foreign institutional investors, thereby further facilitating foreign institutional investors' participation in China's financial market. On the same day, the PBOC official website published the *FAQ No. 1 on Administrative Provisions on Domestic Securities and Futures Investment Capital of Foreign Institutional Investors* ("FAQ No.1") to answer some questions related to the implementation of the Administrative Provisions. The official implementation of the Administrative Provisions on June 6, 2020 is meant to carry out the decision announced by SAFE on September 10, 2019, namely, to remove the investment quota restrictions on Qualified Foreign Institutional Investors (QFIIs) and RMB Qualified Foreign Institutional Investors (RQFIIs) (collectively, "Qualified Investors") by implementing a registration-based management system for cross-border capital inward remittances and exchanges by Qualified

Investors.

Below we briefly summarize some key provisions of the Administrative Provisions, as well as highlight the differences between the Administrative Provisions and the consultation Paper released on December 13, 2019 ("Consultation Paper").

I. Simplified Capital Inward Remittance and Repatriation Process

1. The Administrative Provisions explicitly allows Qualified Investors to choose the currency and timing of capital inward remittances.
2. The Administrative Provisions stipulates that a custodian may handle the capital repatriation process for a Qualified Investor with written application or instructions as well as a commitment letter issued by the Qualified Investor provided that the Qualified Investor has fully paid relevant taxes in accordance with applicable tax laws and regulations in China. In the FAQ No. 1, the PBOC and SAFE further specify the elements of the aforesaid commitment letter and the relevant procedures for handling capital repatriation when a custodian

receives a commitment letter.

3. In the Consultation Paper, it is emphasized that the inward remittance and repatriation made by a Qualified Investor for its domestic securities investments shall be in the same currency and no cross-currency arbitrage shall be allowed. The Administrative Provisions further clarifies that the prohibition on cross-currency arbitrage is to prevent the cross-currency arbitrage between RMB and foreign currencies and Qualified Investors are allowed to convert between different foreign currencies according to their actual needs.

II. Trading Derivatives

1. The Administrative Provisions limits the trading of derivatives by Qualified Investors to trading of foreign exchange (forex) derivatives and trading of financial derivatives in accordance with certain provisions, both for purpose of hedging, which is in line with the *Provisions on Issues Concerning the Implementation of the Administrative Measures on Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)*.
2. The Consultation Paper preserves the requirement that trading forex derivatives shall be based on genuine needs, but strikes the requirement that forex derivative positions shall be adjusted on a monthly basis in accordance with the scale of RMB assets corresponding to the domestic securities investments as calculated by the custodian. In the FAQ No. 1, the PBOC and SAFE reiterate the aforementioned requirement to adjust forex derivative positions on a monthly basis, specifying that

Qualified Investors shall, within five working days at the beginning of each calendar month, adjust their forex derivative positions in accordance with the scale of RMB assets, corresponding to the domestic securities investments in the preceding month, so as to ensure compliance with the principle of genuine needs.

The FAQ No. 1 further provide that a Qualified Investor is obliged to inform the main reporter of its forex derivative positions or total positions in different trading counterparties. The main reporter shall supervise the qualified investor's overall domestic derivative positions to ensure its compliance with the principle of genuine needs.

III. Implementation of the Main Reporter System

The Administrative Provisions remove the limitation on the number of custodians and allow each Qualified Investor to entrust multiple domestic custodians, while simultaneously implementing a main reporter system, the implementing measures on which are further stipulated in the FAQ No. 1.

IV. Information Disclosure and Compliance Obligations of Qualified Investors

In contrast to the Consultation Paper, the Administrative Provisions specifies that Qualified Investors shall entrust their custodians to complete relevant reporting formalities or submit relevant applications to the PBOC and SAFE. The Administrative Provisions further require Qualified Investors to cooperate with their custodians in fulfilling obligations regarding review of authenticity and compliance, anti-money laundering, anti-terrorist financing, etc.

Notably, with respect to the suggestions made by some foreign institutions on the Consultation

Paper, such as reforming the account management system for Qualified Investors in reference to the account management system for foreign investors directly investing in the interbank bond market ("CIBM Direct") and gradually unifying the hedging-based trading mode for forex derivatives by both Qualified Investors and foreign investors gaining access through CIBM Direct, the PBOC and SAFE have not yet adopted such suggestions in consideration of the significant difference between the investment scope for Qualified Investors and that for CIBM Direct, and the

difficulty with reforming the entire process related to capital accounts if adopting the suggestions. However, the PBOC and SAFE mentioned that they would steadily seek relevant reforms in the future as appropriate.

Additionally, with the issuance of the Administrative Provisions, we also expect the long-awaited QFII/RQFII new regulations will be officially released soon.

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

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