

资本市场法律热点问题

CSDC 就 QFII/RQFII 证券投资登记结算业务细则征求意见

2019年9月6日,中国证券登记结算有限责任公司(简称“CSDC”)发布了《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投资登记结算业务实施细则(征求意见稿)》(以下简称“《实施细则》”)以及“关于《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投资登记结算业务实施细则(征求意见稿)》的说明”(以下简称“起草说明”),作为2019年1月31日颁布的《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)》以及《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(征求意见稿)》(以下统称“QFII/RQFII 新规”)的配套文件。《实施细则》一旦发布,将取代2002年12月CSDC发布的《合格境外机构投资者境内证券投资登记结算业务实施细则》(以下简称“原细则”)和《关于基金管理公司、证券公司人民币合格境外机构投资者境内证券投资登记结算业务有关事项的通知》(以下简称“原通知”)。

一、修订思路

根据起草说明,《实施细则》对原细则和原通知进行了修订合并。整体而言,《实施细则》对证券账户、登记、资金结算业务、风险管理等四大方面对证券结算业务作出了原则性规定,就具体业务细节和操作流程,将适用CSDC的现有相关规则或

留待CSDC通过后续发布相关规定和指南予以明确。

二、引入券商结算模式

《实施细则》首次明确了证券公司可以作为QFII/RQFII的结算参与者办理结算业务。

根据起草说明,引入券商结算模式是考虑到QFII/RQFII新规拟将期权和融资融券纳入QFII/RQFII的投资范围,而上述业务需由证券公司承担日间实时盯市、投资者开仓额度前端控制、追保、对违约投资者进行强行平仓等职责,宜采用券商结算模式。《实施细则》还为未来QFII/RQFII委托期货公司等其他机构办理结算业务留下了空间。

我们注意到,此次引入券商结算模式并非完全取代银行结算模式,也即对于除期权交易、融资融券之外的产品交易,QFII/RQFII仍然可以采用原有的银行结算模式。

《实施细则》第十二条分别就商业银行、证券公司等机构作为结算参与人对CSDC承担交收责任进行了明确。从《实施细则》第十二条的字面意思来看,QFII/RQFII投资股票、债券、证券投资基金等证券交易的,可以选择商业银行或证券公司作为结算参与者,而投资股票期权、融资融券的,仅可选择证券公司作为结算参与者。这意味着在《实施细则》出台后,现有的QFII/RQFII如需投资融资融券、期权的,必须变更或新增结算参与者。

三、强调结算参与人对 CSDC 的交收责任

《实施细则》强调了结算参与人对于 CSDC 的交收责任,明确结算参与人不得因 QFII/RQFII 合格投资者无法或未及时履行交收责任而拒绝履行对 CSDC 的交收责任,且结算参与人与 QFII/RQFII 或其托管人之间的任何纠纷,不影响 CSDC 按照业务规则正在进行或已经完成的证券资金清算交收及交收违约处理。

我们的观察

我们认为引入券商结算模式是为扩大 QFII/RQFII 可投资范围所作的一项准备,同时也体现了监管机构加强交易监控的原则。然而,由于目前 CSDC 尚未颁布具体的券商结算模式业务细则,我们认为券商结算模式的业务规则和细节还有待进一步明确,而境外投资人普遍担心的因券商结算模式而引起的资金划拨和使用效率的下降该如何

解决,亦有待进一步明确。此外,一家 QFII/RQFII 可否委托托管行和证券公司作为其结算参与人负责其不同证券账户的结算亦有待进一步澄清。

我们也注意到,2019 年 9 月 11 日,国家外管局宣布取消 QFII/RQFII 投资额度限制,并将立即修订相关规则明确不再对单家合格境外投资者的投资额度进行备案和审批。同时,外管局亦宣布取消 RQFII 试点国家和地区限制,这意味着符合条件的全球各地境外机构均可使用境外人民币开展境内证券投资。

我们认为《实施细则》的发布、QFII/RQFII 投资额度限制的取消以及 RQFII 试点国家和地区限制的取消均为 QFII/RQFII 新规出台了进一步铺垫。我们期待 QFII/RQFII 新规将很快发布。

我们将持续关注并及时与我们的客户分享最新的进展。

谢 青 合伙人 电话: 86 21 2208 6238 邮箱地址: xieq@junhe.com
秦天宇 律师 电话: 86 21 2208 6140 邮箱地址: qinty@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

CSDC Solicits Comments on QFII/RQFII Securities Investment Registration and Settlement Business Rules

On September 6, 2019, China Securities Depository and Clearing Corporation Limited (CSDC) issued the *Detailed Implementation Rules on the Registration and Settlement Business for Domestic Securities Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* (“Detailed Implementation Rules”) and the *Explanation on the Detailed Implementing Rules on the Registration and Settlement Businesses for Domestic Securities Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* (“Explanation”). These documents constitute the ancillary documents to the *Administrative Measures for Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* and 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 (Consultation Paper)* (hereinafter collectively referred to as “QFII/RQFII New Rules”) promulgated on January 31, 2019. Once officially enacted, the Detailed Implementation Rules will replace the *Detailed*

Implementation Rules on the Registration and Settlement Businesses for Domestic Securities Investment by Qualified Foreign Institutional Investors (“Original Rules”) promulgated by the CSDC in December 2002 and the *Circular on Matters Concerning the Registration and Settlement Businesses for Domestic Securities Investment by Fund Management Company or Securities Company Type RMB Qualified Foreign Institutional Investors* (“Original Circular”).

I. Intentions of the Proposed Revisions

According to the Explanation, the Detailed Implementation Rules has amended and combined the Original Rules and the Original Circular. Generally speaking, the Detailed Implementation Rules has provided principles for securities settlement business in four respects: securities account, registration, fund settlement, and risk management. In terms of business particulars and operating procedures, either current CSDC rules apply, or the relevant applicable rules and guidelines will be subsequently promulgated by the CSDC.

II. Introduction of Settlements Brokered through Securities Companies

The Detailed Implementation Rules has specified for the first time that securities companies may handle the settlement business for QFII/RQFII as their settlement participants.

According to the Explanation, the reason why settlement through securities companies is permitted is that the QFII/RQFII New Rules propose including trading of options, margin trading and securities lending in the scope of investment by QFII/RQFII, and the aforementioned businesses require the securities companies to conduct intraday real-time monitoring, take front-end control over the volume of positions opened by investors, make margin calls as well as force the liquidation of positions held by default investors, in which case a mode for settlement conducted through a securities company would be more appropriate. The Detailed Implementation Rules also keep it open for QFII/RQFII to entrust futures companies or other institutions to handle the settlement business in the future.

We note that the mode of settlements through securities companies is not a complete substitute for the mode of settlement through banks. In other words, QFII/RQFII may still engage banks for settlement of trades, except for trading of options, margin trading and securities lending.

Article 12 specifies that commercial banks, securities companies or other institutions, as settlement participants, shall assume the delivery and settlement responsibilities to the CSDC. When interpreted literally, Article 12 of the Detailed Implementation Rules allows a QFII/RQFII investing in stocks, bonds or securities investment funds to entrust a commercial bank or a securities company as its settlement participant, while for a QFII/RQFII investing in stock options or margin trading and securities lending, it may only entrust a securities company as its settlement participant. Therefore,

upon the enactment of the Detailed Implementation Rules, the existing QFII/RQFII must either reestablish their settlement participants or add new settlement participants if they propose to invest in margin trading and securities lending, or options.

III. Emphasis on the Delivery and Settlement Responsibilities Assumed by the Settlement Participants to the CSDC

The Detailed Implementing Rules emphasizes the settlement participants' delivery and settlement responsibilities to the CSDC by specifying that a settlement participant shall not refuse to assume its delivery and settlement responsibilities to the CSDC on the grounds that a QFII/RQFII is unable to or fails to fulfill its delivery and settlement responsibilities in a timely manner, and that any dispute between the settlement participant, the QFII/RQFII or its custodian shall not affect the settlement and delivery of securities and funds that CSDC is conducting or has completed in accordance with its business rules, or the disposal of default in delivery.

Our Observations

We believe that allowing securities companies to engage in settlement business is a preparation for expanding the permissible scope of investment by QFII/RQFII, which is consistent with the regulatory principle for strengthened trading monitoring. However, as the CSDC has not yet formulated any detailed rules on the mode of settlement through securities companies, we believe that the relevant business rules and particulars on the mode of settlement through securities companies await further clarification. Moreover, it remains to be addressed how to prevent the decreased efficiency in fund transfer and usage caused by settlement through securities companies, an issue which generally concerns foreign investors. In addition, it is also

unclear as to whether a QFII/RQFII may entrust a custodian bank and a securities company as its settlement participants for different securities accounts.

We also notice that, on September 11, 2019, the State Administration of Foreign Exchange (SAFE) announced the removal of the QFII/RQFII quota restrictions and proposed to immediately amend the relevant regulations to eliminate the filling and approval requirements for the investment quota of each qualified foreign investor. Meanwhile, the SAFE also announced the removal of the national and regional restrictions on RQFII pilot programs, which means eligible foreign institutions around

the world are now able to use offshore RMB to invest in domestic securities.

We are of the opinion that the issuance of the Detailed Implementation Rules, the removal of the QFII/RQFII quota restrictions as well as the national and regional restrictions on RQFII pilot programs all pave the way for the official implementation of the QFII/RQFII New Rules, which we believe is likely to happen very soon.

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

Natasha XIE	Partner	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Tian yu QIN	Associate	Tel:86 21 2208 6140	Email:qinty@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”.

