

## Financial

### China To Further Open the Bond Market - PBOC Releases a Consultation Paper on Swap Connect

Following the implementation of Stock Connect, Bond Connect and Wealth Management Connect, the People's Bank of China (PBOC), the Hong Kong Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) issued a joint announcement ("Joint Announcement") on July 4, 2022 and agreed that the relevant infrastructure institutions shall collaborate with each other to allow mutual access between Hong Kong and the Mainland interest rate swap markets ("Swap Connect"). This indicates that the interconnection between both financial markets will expand further from stocks, bonds, funds and wealth management products to that of financial derivatives. Detailed rules regarding Swap Connect have been keenly anticipated by the market. On February 17, 2023, the PBOC issued a circular to solicit public comments on the *Interim Administrative Measures for the Mutual Access between the Mainland and Hong Kong Interest Rate Swap Markets (Draft for Comments)* ("Draft Measures").

The Draft Measures comprise of 23 articles and provide rules on the investment scope, eligibility requirements for domestic and overseas investors, mechanisms for relevant infrastructure institutions in respect to trading and clearing, the duties and powers of the responsible parties,

foreign exchange administration, regulatory rules and administrative penalties. In this briefing, we provide our interpretation of the Draft Measures and our outlook on Swap Connect.

#### I. What is Swap Connect and the Permissible Investment Scope?

According to the Draft Measures, Swap Connect refers to an arrangement which will enable both domestic and overseas investors to participate in the financial derivatives markets in Hong Kong and interbank financial derivatives markets in China's mainland through a connection between the infrastructure institutions in both locations. Notably, the Draft Measures only apply to Northbound Swap Connect, which, consistent with the Joint Announcement, allows investors from Hong Kong and other countries and regions to participate in the mainland interbank financial derivatives market through mutual access between Hong Kong and mainland infrastructure institutions in respect to trading, clearing and settlement. The southbound trading rules will be separately formulated in due course.

The Draft Measures specify that interest rate

swaps will be eligible initially under Northbound Swap Connect. The currency used for the price quotation, trading and settlement is renminbi and Northbound Swap Connect will be subject to quota restrictions which may be adjusted in due course, depending on market conditions.

## **II. Which investors are eligible for Northbound Swap Connect?**

The Draft Measures set out the eligibility requirements for investors. Foreign institutional investors who satisfy the requirements of the PBOC and have completed filing with the PBOC for access to the interbank bond market are eligible to participate in the Mainland interbank financial derivatives market through Northbound Swap Connect. Currently, foreign investors eligible to file with the PBOC for access to the interbank bond market include: (1) qualified foreign institutional investors (i.e., QFII and RQFII); and (2) foreign investors that satisfy the requirements provided by the *Circular on Matters Concerning Further Facilitating Foreign Institutional Investors to Invest in China's Bond Market*, who are currently able to access the interbank bond market through (a) direct investment in the interbank bond market ("CIBM Direct") and/or (b) Bond Connect. We note that domestic investors are required to file with the relevant authorities, including the National Association of Financial Market Institutional Investors (NAFMII), the China Foreign Exchange Trading Centre (CFETS) and the Shanghai Clearing House, prior to trading interest rate swaps through the CFETS system. Further clarification by the regulators is needed as to whether foreign investors who have already completed filing with the PBOC for access to the interbank bond market are also required to complete the relevant filing procedures, or whether

they need to meet other requirements of the PBOC.

According to the Draft Measures, domestic investors who participate in Northbound Swap Connect shall be financial institutions that have a strong capacity for pricing, quotation and risk management, have a good international reputation, and have business systems and professionals supporting Northbound Swap Connect. Prior to participating in Northbound Swap Connect, domestic investors shall sign an agreement with a PBOC-recognized domestic electronic trading platform (i.e., CFETS).

## **III. Master Agreements Usable by Domestic and Overseas Investors**

The Draft Measures require domestic and overseas investors to enter into a master agreement or other agreement recognized by the PBOC with their Northbound Swap Connect counterparties. According to the *Circular of the People's Bank of China on Matters Concerning the Provision of Renminbi Interest Rate Swap Business*, market participants trading interest rate swaps shall sign the *Master Agreement on Financial Derivatives Transactions in the Chinese Interbank Market*, which was formulated and issued by NAFMII with the authorization of the PBOC. We noted that NAFMII has issued the *Master Agreement on Financial Derivatives Transactions in the Chinese Interbank Market (Cross-border – 2022 Version)* in 2022, as a preparatory work for overseas investors to enter the OTC derivatives market in China through Northbound Swap Connect.

We understand that overseas investors may be accustomed to the master agreement issued by the International Swaps and Derivatives Association (ISDA) for derivatives transactions. A key concern of

overseas investors is whether they are eligible for Northbound Swap Connect according to the ISDA Master Agreement executed with their counterparties. We have observed a precedent of overseas institutional investors executing the ISDA Master Agreement and completing the filing and implementation work with the Shanghai Clearing House for the centralized clearing of interest rate swap transactions. Since one of the intentions for the Swap Connect mechanism is to provide facilities to domestic and overseas investors to trade in RMB interest rate swaps without having to change their practices, we expect regulators will allow flexibility in using the ISDA Master Agreement, and avoid the time-consuming process of negotiating and executing an additional NAFMII Master Agreement.

#### **IV. Clearing Arrangements for Northbound Swap Connect**

According to the Draft Measures, overseas investors may send trading instructions to the CFETS system through the connection between the overseas electronic trading platforms that are recognized by the PBOC and the CFETS system. A transaction will be concluded through the CFETS system and shall be deemed confirmed upon the conclusion of the transaction.

The clearing organization (as a central counterparty) that is recognized by the PBOC (i.e., Shanghai Clearing House) and the clearing house that is recognized by the SFC (i.e., OTC Clearing Hong Kong Limited) will connect to provide the centralized clearing services. After the completion of the transaction, CFETS shall send the results of the transaction subject to centralized clearing to the domestic and overseas clearing institutions for clearing and settlement in a timely manner. The Shanghai Clearing House and OTC Clearing Hong Kong Limited

will provide the clearing and settlement services to domestic and overseas investors respectively. We understand that OTC Clearing Hong Kong Limited, as the central counterparty, will become the only counterparty for overseas investors holding open positions after the clearing is completed and will bear the potential default risks of the counterparty (if any).

The domestic and overseas clearing institutions interconnected with each other shall jointly manage their netting risks, including preparing special risk reserve resources to cover any potential losses arising from the default of the domestic or overseas clearing institution, and establishing default handling measures to control risk spillover. If one of the clearing institution defaults, the other shall use risk reserve resources to handle such default in accordance with its business rules and the clearing agreement between them. The non-defaulting clearing institution may recover from the defaulting clearing institution its own risk reserve resources or those contributed by the clearing participants that have been used to handle the default.

#### **V. Trade Repository**

The Draft Measures provide for a "Trade Repository" and stipulate that domestic and overseas investors and relevant infrastructure institutions shall report the relevant data of Northbound Swap Connect to the Trade Repository that is recognized by the PBOC, and shall keep all relevant transaction data and information exchange records. Where domestic and overseas investors trade through an onshore electronic trading platform, the onshore electronic trading platform may report to the Trade Repository on behalf of the investors; if the onshore electronic trading platform is the Trade Repository that is recognized by

the PBOC, there is no need to report separately. On such basis, we understand that the CFETS will undertake the trade reporting duties. To date, China has not established a legal or regulatory framework for a Trade Repository, nor has China designated or established an institution as the Trade Repository. CFETS has been clearly deemed as a TR-like Entity in the *Ninth Progress Reports on Implementation of Reforms to the OTC Derivatives Market* published by the Financial Stability Board (SFB). We expect that the regulatory authority will formulate the relevant rules on this new type of infrastructure in accordance with the *Futures and Derivatives Law of the People's Republic of China*.

## VI. Foreign Exchange Administration

The Draft Measures stipulate that overseas investors may use their own RMB or foreign exchange to participate in Northbound Swap Connect and relevant clearing and settlement activities. Overseas investors using foreign exchanges may open an RMB account at a Hong Kong-based clearing bank for the exchange and settlement of funds and shall in principle exchange the funds for foreign currency at the Hong Kong-based clearing bank upon the expiration of the transactions or the cessation of their

participation in Northbound Swap Connect. The exchange of funds shall be subject to the administration of the RMB purchase and sale business.

## VII. Outlook

With the further opening-up of China's bond market, offshore institutions trading in China's interbank bond market have an increased need of hedging RMB interest rate risk. The launch of Northbound Swap Connect is in line with market demand. Furthermore, the release of the Draft Measures marks a significant step in the implementation of Northbound Swap Connect. Northbound Swap Connect will facilitate overseas investors to conduct hedging and effective interest rate risk management following the prevailing international practice, which is of great significance to the opening-up of China's bond and derivatives markets. We expect that the regulatory authorities, and domestic and overseas financial infrastructure institutions will further formulate and promulgate detailed rules with respect to the trading, clearing and settlement mechanisms under Northbound Swap Connect. We will continue to monitor the situation and keep our clients apprised of the latest developments.

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## 金融法律热点问题

### 债券市场对外开放再升级-人民银行就“北向互换通”办法征求意见

继“股票通”、“债券通”、“跨境理财通”机制之后，中国人民银行、香港证券及期货事务监察委员会、香港金融管理局已于2022年7月4日发布联合公告(下称“《联合公告》”)，同意相关机构开展香港与内地利率互换市场互联互通合作(下称“互换通”)，标志着内地与香港金融市场的互联互通即将从股票、债券、基金和理财产品等领域，进一步拓展至金融衍生品市场。自《联合公告》发布以来，市场普遍期待互换通具体机制尽快正式出台。2023年2月17日，中国人民银行发布通知，就《内地与香港利率互换市场互联互通合作管理暂行办法(征求意见稿)》向社会公开征求意见(“《征求意见稿》”)。

《征求意见稿》共23条，主要规定了“互换通”的投资范围、境内外投资者准入要求、相关基础设施交易清算安排、责任主体义务和职能、汇兑管理安排、监管规则和行政处罚等相关内容。以下是我们对《征求意见稿》的解读和对互换通的展望。

#### 一、什么是“互换通”和投资范围？

根据《征求意见稿》，互换通是指境内外投资者通过香港与内地基础设施机构连接，参与香港金融衍生品市场和内地银行间金融衍生品市场的机制安排。需要注意的是，《征求意见稿》仅适用于“北向互换通”，与《联合公告》保持一致，即香港及其他国家和地区的境外投资者经由香港与内地基

础设施机构之间在交易、清算、结算等方面互联互通的机制安排，参与内地银行间金融衍生品市场；而“南向互换通”有关规定将另行规定。

《征求意见稿》明确了“北向互换通”互换通初期可交易标的为利率互换产品。“北向互换通”利率互换的报价、交易及结算币种为人民币。“北向互换通”将实行额度管理，并根据市场情况适时调整。

#### 二、哪些投资者可以通过“北向互换通”投资？

《征求意见稿》规定了参与“北向互换通”投资者的准入要求。境外机构投资者需符合中国人民银行要求并完成银行间债券市场入市备案，可以通过“北向互换通”参与内地银行间金融衍生品市场。目前可以完成银行间债券市场入市备案的境外投资者包括：(1)合格境外机构投资者(QFII和RQFII)；(2)符合《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》规定的境外投资者，该等境外投资者目前可以通过(a)银行间债券市场直接投资(以下简称“CIBM直接准入”)和/或(b)债券通“北向通”进入银行间债券市场。我们注意到，目前境内投资者需要根据中国银行间交易商协会(“交易商协会”)、中国外汇交易中心(“外汇交易中心”)和银行间市场清算所股份有限公司(“上海清算所”)相关要求进行业务备案后，才可以在外汇交易中心系统进行利率互换交易。前述已经完成银行间债券市场入市备案的境外投资者是否也需要完成相关备案

手续，或满足中国人民银行的其它要求，仍有待监管机构进一步明确。

根据《征求意见稿》的规定，参与“北向互换通”的境内投资者应当是具有较强定价、报价和风险管理能力，具备良好国际声誉，具备支持开展“北向互换通”报价交易的业务系统和专业人才队伍的境内金融机构法人。境内投资者开展“北向互换通”业务前，应与中国人民银行认可的境内电子交易平台(即外汇交易中心)签署互换通报价商协议。

### 三、境内外投资者可以使用的衍生品主协议

《征求意见稿》还规定了境内外投资者开展“北向互换通”交易，应当与交易对手签署经人民银行认可的主协议或其他协议。根据《中国人民银行关于开展人民币利率互换业务有关事宜的通知》的规定，市场参与者开展利率互换交易应签署由中国人民银行授权交易商协会制定并发布的《中国银行间市场金融衍生产品交易主协议》。交易商协会已于 2022 年制定并发布了《中国银行间市场金融衍生产品交易主协议(跨境文本-2022 年版)》，为境外投资者通过“北向互换通”进入境内场外衍生品市场做好了准备。

对于境外客户而言，其更习惯通过签署国际掉期与衍生工具协会(“ISDA”)发布的 ISDA 主协议开展衍生品交易。符合“北向互换通”准入要求的境外投资者是否可以依据与其交易对手签署的 ISDA 主协议入市以开展利率互换交易，成为境外客户重点关注的问题。实践中，已有境外机构投资者签署 ISDA 协议并在上海清算所完成利率互换集中清算业务备案及上线工作的先例<sup>1</sup>。鉴于互换通机制的设计初衷之一是使境内外投资者能够在不改变交易习惯前提下可以便捷地完成人民币利率互换的交易，我们期待监管机构可以灵活地接受境外投资者使用其更为熟悉的 ISDA 主协议，以避免耗费时间再就交易商协会主协议进行谈判和签署。

### 四、“北向互换通”的交易清算安排

根据《征求意见稿》的规定，境外投资者可通过中国人民银行认可的境外电子交易平台与外汇

交易中心的连接，向外汇交易中心发送交易指令。“北向互换通”交易在外汇交易中心达成，交易一经达成即视为交易已完成确认。

在清算端，符合中国人民银行认可的中央对手方清算机构(即上海清算所)和香港证券及期货事务监察委员会(以下简称香港证监会)认可的结算所(即香港场外结算公司)将通过清算机构互联互通，共同提供集中清算服务。具体而言，交易完成后，外汇交易中心应及时将适用集中清算的交易结果发送至境内外清算机构进行清算结算，其中上海清算所服务境内投资者，香港场外结算公司服务境外客户，向境内外投资者提供清算、结算服务。我们理解一旦完成清算，香港场外结算公司作为中央对手方将成为持有敞口头寸的境外投资者的唯一交易对手方，并承担对手方由此产生的潜在违约风险(如有)。

建立中央对手方清算机构互联的境内外清算机构应共同管理相互之间的净额风险，包括建立特殊风险准备资源覆盖境内外任一清算机构违约场景下的潜在损失，建立相应违约处置安排控制溢出风险。如任一清算机构违约的，另一清算机构应按照业务规则及双方之间的清算协议动用风险准备资源完成对违约清算机构的违约处置。守约清算机构可就使用的自有及由其清算参与者出资的风险准备资源向违约清算机构进行追偿。

### 五、交易报告库

《征求意见稿》首次提到了“交易报告库”，并规定境内外投资者和相关金融市场基础设施应当向中国人民银行认可的交易报告库报告“北向互换通”交易相关数据，并妥善保存所有交易相关数据、交流信息记录等。境内外投资者通过境内电子交易平台达成交易，可由境内电子交易平台代为报告。境内电子交易平台为中国人民银行认可的交易报告库的，无需另行报告。根据该等规定，报告义务将由外汇交易中心承担。目前，我国尚未建立交易报告库的法律或监管框架，也未指定或成立专门的机构作为交易报告库。在金融稳定理事会发布的《场外衍生品市场改革第九次进展情况报告》中，中国外汇交易中心被视为类交易报告库(TR-like

<sup>1</sup>[https://www.shclearing.com.cn/gwym/xwdt/202012/t20201211\\_786970.html](https://www.shclearing.com.cn/gwym/xwdt/202012/t20201211_786970.html)

Entity)。我们期待监管机构会根据《期货和衍生品法》的规定对“交易报告库”这种新型的基础设施做出相关规定。

## 六、汇兑管理安排

对于汇兑安排，《征求意见稿》明确规定，境外投资者可使用自有人民币或外汇参与“北向互换通”交易和清算。使用外汇参与“北向互换通”交易清算的境外投资者，可在一家香港结算行<sup>2</sup>开立人民币资金账户，用于办理资金汇兑和结算业务。使用外汇参与交易的，其交易到期或不再继续参与的，原则上应通过香港结算行兑换回外汇。相关资金兑换纳入人民币购售业务管理。

## 七、展望

近年来，我国债券市场对外开放程度不断加深，越来越多进入中国银行间债券市场的境外机构对人民币利率风险管理的需求日益突出，“北向互换通”的推出可以顺应市场需求。随着《征求意见稿》的出台，“北向互换通”的落地再向前迈出关键一步，该机制便利了境外投资者按照境外通行交易习惯进行套期保值和有效利率风险管理，对我国债券和衍生品市场高水平对外开放具有重要意义。我们期待监管机构、境内外金融基础设施会进一步制定并发布“北向互换通”交易清算相关机制的细则。我们也将密切关注后续进展，并及时与我们的客户分享。

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<sup>2</sup> 即香港人民币业务清算行及香港地区经批准可进入境内银行间外汇市场进行交易的境外人民币业务参加行。

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