

## 金融法律热点问题

### 中国证监会首次对银行间债券市场违规行为作出行政处罚

近期，我们关注到中国证监会首次对银行间债券市场违规行为作出行政处罚。在中国证监会发布的[2021]44号、[2021]56号、[2021]57号和[2021]58号行政处罚决定书中，三家非金融企业债务融资工具（以下简称“**债务融资工具**”）发行人及相关责任人员因发行文件存在虚假信息披露受到中国证监会处罚。这是自2018年11月中国人民银行、国家发改委、中国证监会联合发布《关于进一步加强债券市场执法工作有关问题的意见》（以下简称“**《意见》**”）后，中国证监会首次针对银行间债券市场违规行为作出行政处罚。

我们认为，虽然近期中国证监会对银行间债券市场作出的行政处罚主要集中在发行人财务造假，导致债务融资工具发行文件存在虚假记载和重大遗漏的情形，但《意见》对中国证监会在银行间市场的统一执法工作作出了框架性规定。未来，中国证监会进一步加强或者扩大对银行间债券市场违规行为的调查和处罚时，也将遵循《意见》设立的执法原则展开相关工作。我们将相关要点总结如下：

#### 1、中国证监会**有权调查和处罚的银行间债券市场违规行为**

根据《意见》规定，中国证监会**有权**对银行间市场存在的以下违规行为进行调查，并依据《证券法》相关条款进行处罚：

- **债券发行人违规**：债务融资工具发行人在发行文件以及按照监管要求履行持续信息披

露义务过程中，存在虚假记载、误导性陈述或重大遗漏的情形，依照《证券法》第197条进行处罚。

- **债券承销机构违规**：商业银行、证券公司等承销机构在债务融资工具发行与承销中存在的违规行为，例如发行文件存在虚假记载、误导性陈述或重大遗漏的情形，依照《证券法》第184条进行处罚。
- **债券服务机构及相关人员违规**：为债务融资工具提供服务的信用评级机构、注册会计师、律师等专业机构和人员未勤勉尽责，出具的文件存在虚假记载、误导性陈述或重大遗漏的情形，依照《证券法》213条第3款进行处罚。
- **交易违规**：涉及债务融资工具的内幕交易、操纵市场等违规行为，分别依据《证券法》第191条、第192条处罚。

#### 2、**银行间债券市场违规行为法律责任体系**

根据《意见》确立的原则，银行间债券市场违规行为可能同时触发以下法律责任：

- **中国银行间市场交易商协会**（以下简称“**交易商协会**”）自律处分：根据《银行间债券市场自律处罚规则》规定，交易商协会可以对违规机构和责任人员采取诫勉谈话、通报批评、警告、暂停相关业务、暂停会员权利等多种自律处分措施。根据交易商协会公布

的信息，2021 年上半年，交易商协会总计对 43 起涉嫌违规案件启动自律处分程序，作出 46 家（人）次自律处分，涉及 13 家发行人、6 家主承销商、3 家做市机构、1 家会计师事务所、2 家其他类型金融机构以及 21 名责任人<sup>3</sup>。

- 中国证监会行政处罚：依据《意见》确立的原则，中国证监会有权对发行人、承销机构、专业机构的违规行为，以及涉及债务融资工具的内幕交易、操纵市场行为进行调查和处罚。此外，《意见》还明确中国证监会可以对银行间债券市场违规行为责任人员采取市场禁入措施。
- 刑事责任：根据《意见》规定，中国证监会在案件调查过程中发现涉嫌犯罪的，可以移送公安机关追究刑事责任。
- 债券虚假陈述民事赔偿责任：2020 年 7 月，最高人民法院发布了《全国法院审理债券纠纷案件座谈会纪要》，明确了债券欺诈发行和虚假陈述民事赔偿诉讼案件的受理、管辖、发行人、承销机构、债券服务机构责任认定。目前，首例涉及银行间债券市场的虚假陈述民事赔偿案件已在北京金融法院开庭审理<sup>4</sup>。

### 3、中国证监会对银行间债券市场违规行为的调查方式

根据《意见》规定，中国证监会对银行间债券市场违规行为可以采取以下调查方式：

- 《意见》规定，中国证监会有权采取《证券法》170 条赋予证监会的多项执法措施，例如调查取证权、查封冻结权，以及通知出入境管理机关阻止相关人员出境等。同时，中国证监会有权要求交易商协会、登记托管结算机构和市场参与机构等提供与案件调查有关的交易记录、登记托管结算资料、信息披露文件等证据材料。必要时，中国证监会还可以向有关部门、单位调取被调查事件有关单位和个人的征信记录、社会保险记录、海关记录、纳税记录、公司资料、通讯记录等信息。
- 被调查单位、个人的配合义务：《意见》规定了被调查单位、人员的配合义务。对于不配合调查的责任人员，中国证监会有权建议相关监管机构或业务主管部门责令责任人员所在单位给予纪律处分，或者建议取消其任职资格、禁止其从事有关金融行业工作。
- 与中国人民银行、发改部门的合作机制：《意见》规定，中国人民银行、发改部门配合中国证监会进行案件会商，并对案件涉及的专业问题出具书面意见；在案件相关行政复议和行政诉讼中，配合中国证监会开展答复、应诉工作；向中国证监会及时移送发现的债券违法活动线索。

我们将持续关注并及时与我们的客户分享最新的进展。

<sup>3</sup> 详见银行间市场交易所协会网站：  
[http://www.nafmii.org.cn/zlgl/zwrz/zlcf/202107/t20210709\\_86376.html](http://www.nafmii.org.cn/zlgl/zwrz/zlcf/202107/t20210709_86376.html)

<sup>4</sup> 详见北京金融法院网站报道：  
<https://bjfc.bjcourt.gov.cn/cac/1621989021428.html>

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## Financial

### Client Briefing: CSRC Begins Penalizing Misconduct in the China Interbank Bond Market

Recently, we noted that the China Securities Regulatory Commission (CSRC) has for the first time imposed administrative penalties for misconduct in the China Interbank Bond Market (CIBM). According to four Administrative Sanction Decisions released by the CSRC (i.e., [2021] No. 44, [2021] No. 56, [2021] No. 57, and [2021] No. 58), three issuers of non-financial enterprise debt financing instruments (the "debt financing instruments") and the relevant responsible persons were punished by the CSRC for making false statements in the issuance documents. This was the first time that the CSRC penalized illegal misconduct in the CIBM since November 2018 when the People's Bank of China (PBOC), the National Development and Reform Commission (NDRC), and the CSRC jointly issued the *Opinions on Issues Concerning Further Strengthening Law Enforcement in the Bond Market* (the "Opinions").

We believe that although this first instance of administrative penalties imposed by the CSRC mainly targeted at the issuer's behavior of misstating its financial conditions, resulting in false statements and material omissions in the issuance documents of debt financing instruments, the Opinions have notably set up a framework for the unified law enforcement of the CSRC in the CIBM. We believe that the CSRC

will further strengthen and expand the investigation and punishment of misconduct in the CIBM in accordance with the law enforcement principles proposed by the Opinions, of which the key points are summarized as follows.

#### **I. CIBM Violations that the CSRC Has the Power to Investigate and Punish**

Pursuant to the Opinions, the CSRC may conduct investigations into the following bonds violations in the CIBM and may seek a variety of sanctions in accordance with relevant stipulations in the *Securities Law*.

Violations by the Bond Issuer: If any issuer of debt financing instruments has made false statements, misleading statements or material omissions in the issuance documents or in the process of fulfilling the ongoing information disclosure obligations required by the regulatory rules, the CSRC may seek sanctions against such issuer in accordance with Article 197 of the *Securities Law*.

Violations by the Bond Underwriter: If commercial banks, securities companies and other bond underwriters commit any violations in the course of the issuance and underwriting of debt financing instruments, such as making false statements, misleading statements or material omissions in

the issuance documents, the CSRC may seek sanctions against such bond underwriters in accordance with Article 184 of the *Securities Law*.

Violations by the Bond Service Providers and the Relevant Professions: If professional institutions and professions such as credit rating agencies, certified public accountants and lawyers that provide services in relation to debt financing instruments fail to perform their duties of care and due diligence, and the documents issued contain false statements, misleading statements or material omissions, the CSRC may seek sanctions against such bond service providers and relevant professions in accordance with Paragraph 3, Article 213 of the *Securities Law*.

Transaction Violations: The CSRC can punish transaction violations such as insider trading, market manipulation, etc. in relation to debt financing instruments pursuant to Articles 191, 192 and other relevant stipulations of the *Securities Law*.

## **II. Legal Liabilities for Bonds Violation in the CIBM**

Based on the principles of the Opinions, bonds violation in the CIBM may lead to one or more of the following legal penalties:

Self-Disciplinary Sanctions by the National Association of Financial Market Institutional Investors (NAFMII): Pursuant to the Rules on Self-Disciplinary Penalties in the Interbank Bond Market, the NAFMII may adopt various self-disciplinary sanctions such as regulatory admonishment talk, circulating a notice of criticism, warnings, suspension of involved business, suspension of members' rights against institutions that commit violations and the responsible persons. Based on public information released by the NAFMII, for the first half of 2021, the NAFMII has initiated investigations into a total

of 43 suspected cases and imposed self-disciplinary sanctions against a total of 46 involved institutions and persons, including 13 issuers, six lead underwriters, three market-making institutions, one accounting firm, two other-type financial institutions and 21 responsible persons.<sup>1</sup>

Administrative Penalties by the CSRC: Based on the principles of the Opinions, the CSRC can initiate investigations and seek penalties for misconduct of the issuer, underwriter, professional institutions, as well as for insider trading, market manipulation, and other types of transaction violations in connection with debt financing instruments. Additionally, the Opinions specify that the CSRC may also impose a ban of market entry on responsible persons for bond violations in the CIBM.

Criminal Liability: Pursuant to the Opinions, the CSRC may refer potential criminal cases arising from their investigations to criminal law enforcement authorities for criminal prosecution.

Civil Compensation Liability for False and Misleading Statements in Connection with Sale of Bonds: In July 2020, the Supreme People's Court issued the Symposium Minutes of the National Courts' Trial of Cases Concerning Bond Disputes, which specify matters concerning civil litigation for fraud, or false and misleading statements made in connection with the sale of bonds, such as the acceptance of a lawsuit, jurisdiction, and determination of the responsibilities of the involved issuer, underwriters, and bond service providers. At present, the first civil compensation trial on the misconduct of false and misleading statements in the CIBM is currently underway at the Beijing Financial Court.<sup>2</sup>

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<sup>1</sup> See NAFMII: [http://www.nafmii.org.cn/zlgl/zwrz/zlcf/202107/t20210709\\_86376.html](http://www.nafmii.org.cn/zlgl/zwrz/zlcf/202107/t20210709_86376.html).

<sup>2</sup> See Beijing Financial Court: <https://bjfc.bjcourt.gov.cn/cac/1621989021428.html>.

### III. The CSRC's Methods for Investigations of Bonds Violation in the CIBM

Pursuant to the Opinions, the CSRC may adopt the following means to investigate potential bonds violation in the CIBM:

Pursuant to the Opinions, the CSRC may take several law enforcement measures authorized under Article 170 of the *Securities Law*, such as the right to investigate and collect evidence, the right to seal up or freeze properties or accounts, and to notify the exit and entry administration authorities to prevent involved persons from leaving the country. Additionally, the CSRC may obtain evidence such as trading record, materials related to registration, depository, and settlement of bonds, and information disclosure documents from the NAFMII, depository and clearing institutions, and other market participants. When necessary, the CSRC may also obtain information from the competent departments and authorities, such as credit records, social insurance records, customs records, tax payment records, company information, and communication records of the involved persons or institutions under the investigation.

Cooperation Obligations of Institutions and

Persons under Investigation: The Opinions provide the cooperation obligations of institutions and persons under investigation. If responsible persons fail to cooperate with the investigation, the CSRC may recommend the relevant regulatory authorities or competent departments to order the employers of such responsible persons to give disciplinary punishments on them, or recommend cancelling their position qualifications, or bar them from working in the financial industry.

Coordination Mechanism with the PBOC and the NDRC: The Opinions stipulate that the PBOC and the NDRC shall coordinate and consult with the CSRC in dealing with relevant bonds violation cases, if necessary, issue written opinions on professional issues involved in the case, cooperate with the CSRC in replying and responding in the administrative reconsideration proceedings and administrative litigations in connection with the case, and forward any potential evidence of misconduct to the CSRC in a timely manner.

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

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