

资本市场法律热点问题

监管拟大幅简化 便利 QFII/RQFII 资金汇入汇出流程

2019年12月13日,中国人民银行(以下简称“央行”)、国家外汇管理局(以下简称“外汇局”)发布《境外机构投资者境内证券投资资金管理规定(征求意见稿)》(以下简称“《征求意见稿》”)。《征求意见稿》整合并修订了《合格境外机构投资者境内证券投资外汇管理规定》(国家外汇管理局公告2018年第1号)和《中国人民银行、国家外汇管理局关于人民币合格境外机构投资者境内证券投资有关问题的通知》(银发[2018]157号)(合称“现行规定”),旨在落实今年九月取消合格境外机构投资者(QFII)及人民币合格境外机构投资者(RQFII)投资额度限制后对 QFII/RQFII 境内证券投资进行资金管理和风险防范的相关要求。《征求意见稿》一旦出台将替代现行规定以及《国家外汇管理局关于调整合格机构投资者数据报送方式的通知》(汇发[2015]45号)。

相比现行规定,《征求意见稿》主要有以下几点变化:

一、统一 QFII/RQFII 资金管理

根据《征求意见稿》,其所指“境外机构投资者”包括 QFII 和 RQFII(统称“合格投资者”)。现行 QFII 和 RQFII 资金管理规定的差异在 QFII/RQFII 投资额度计算等,但在额度限制取消后,该等差异已不明显,因此,可以实现 QFII/RQFII 的资金管理规则统一。

根据《征求意见稿》,QFII/RQFII 可根据汇入币种需要开立相应账户,具体而言:(i)仅汇入外币资金的,需开立外汇账户及与外汇账户相对应的人民币专用存款账户;(ii)仅汇入人民币资金的,需开立人民币专用存款账户;(iii)同时汇入人民币和外币资金的,需分别开立人民币专用存款账户和外汇账户及与外汇账户相对应的人民币专用存款账户。《征求意见稿》附件二提供了境内账户操作指引,明确了各个账户的开户、资金划转和资金使用限制等。

二、登记管理制

由于 QFII/RQFII 投资额度限制已经取消,外汇局将对 QFII/RQFII 实行登记管理制。根据《征求意见稿》第五条及第六条,QFII/RQFII 取得证监会经营证券期货业务许可证后,应委托主托管人到外汇局办理登记,登记资料十分精简,即:(i)《合格投资者登记表》;和(ii)经营证券期货业务许可证复印件。值得注意的是,《合格投资者登记表》内容也进行了大幅简化。《征求意见稿》还明确在其正式发布前已办理相关业务登记的 QFII/RQFII 在《征求意见稿》正式发布后无需重复办理登记。

三、简化汇入汇出流程

现行规定要求 QFII 应根据投资计划等,在实际投资前 30 个工作日内通知托管人直接将投资所需外汇资金结汇并划入相关人民币账户。《征求意

见稿》取消了“实际投资前 30 个工作日”的时间要求，改为 QFII 应及时通知托管人进行资金划转，在一定程度上提供了操作灵活性。

自 2018 年 6 月起，外汇局已取消了 QFII 每月累计净汇出资金(本金及收益)不得超过其上一年度境内总资产的 20% 的资金汇出比例要求。《征求意见稿》在此基础上进一步简化了资金汇出手续。《征求意见稿》还取消了要求 QFII/RQFII 在汇出投资收益时需提供中国注册会计师出具的投资收益专项审计报告、完税或税务备案证明的要求，改为“完税承诺函”。我们认为，该等收益汇出申请资料的精简可大幅缩短 QFII/RQFII 投资收益汇出所需时间，从而解决境外投资者对于投资收益汇出的担忧。

值得注意的是，《征求意见稿》强调了 QFII/RQFII 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。

四、衍生品交易

与现行规定一致，《征求意见稿》要求 QFII/RQFII 在境内开展衍生品交易应以套期保值为目的，衍生品敞口与作为交易基础的境内证券投资项下投资风险敞口应具有合理的相关度，并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。

五、托管人审查义务

《征求意见稿》强化了托管人对于 QFII/RQFII 资金登记申请资料、资金来源的审查义务，例如强调主托管人对 QFII/RQFII 资金登记申请材料的真实性的审核义务；要求境内托管人在为 QFII/RQFII 办理资金汇出入时对相应的资金收付进行真实性与合规性审查，切实履行反洗钱和反恐怖融资义务等。

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 Propose to Simplify QFII/RQFII Capital Inward Remittance and Repatriation Process

On December 13, 2019 the People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) jointly issued the *Administrative Provisions on Domestic Securities Investment Capital of Foreign Institutional Investors (Consultation Paper)* ("Consultation Paper"). The Consultation Paper has combined and amended the *Administrative Provisions on Foreign Exchange Control for Securities Investments in China by Qualified Foreign Institutional Investors (QFII)* (SAFE Announcement [2018] No. 1) and the *Circular of the PBOC and the SAFE on Issues Concerning Administration of Securities Investments in China by RMB Qualified Foreign Institutional Investors (RQFII)* (*Yin Fa* [2018] No. 157) (Collectively, "Current Provisions"), with the aim to implement the relevant requirements for capital management and risk prevention in QFII/RQFII's domestic securities investments upon the removal of investment quota restrictions on QFII/RQFIIs in this September. Once officially promulgated, the Consultation Paper will replace both the Current Provisions and the *SAFE Circular on Adjusting the Method for Submitting Qualified Institutional Investor Data* (SAFE Circular [2015] No. 45).

Compared with the Current Provisions, the Consultation Paper proposes the following

changes:

I. Unified Management of QFII/RQFII Capital

The foreign institutional investors under the Consultation Paper include both QFIIs and RQFIIs (collectively, "Qualified Investors"). The major difference between the current rules on the capital management of QFIIs and those on the RQFIIs is the calculation of QFII/RQFII investment quotas, while after the quota restrictions were lifted, such differences barely exist and thus the rules regarding the capital management of QFIIs/RQFIIs can be unified.

Pursuant to the Consultation Paper, a QFII/RQFII shall open an account corresponding to the currency in which its inward remittance is paid, specifically: (i) for inward remittance in foreign currency only, a foreign exchange ("forex") account as well as a dedicated RMB deposit account shall be opened; (ii) for inward remittance in RMB, a dedicated RMB deposit account shall be opened; (iii) for inward remittance in both RMB and forex, the accounts mentioned in (i) and (ii) shall be separately opened. Appendix II to the Consultation Paper provides guidelines for the operation of domestic accounts, clarifying issues

such as account opening, fund transfer, and fund use restrictions for each type of account.

II. Registration Management System

As the QFII/RQFII investment quota restrictions have been lifted, the SAFE will implement a registration-based management system for QFII/RQFIIs. Pursuant to Articles 5 and 6 of the Consultation Paper, after a QFII/RQFII has obtained the Securities and Futures Business Permit issued by the CSRC, it shall entrust its main custodian to register with SAFE. Only a few materials are required for the registration, namely, (i) Registration Form for Qualified Investors; and (ii) a copy of the Securities and Futures Business Permit. Notably, the Qualified Investor Registration Form has also been significantly simplified. The Consultation Paper also specifies that a QFII/RQFII, which has already registered for its relevant businesses prior to the official release of the Consultation Paper, is not required to complete the registration again after the Consultation Paper is officially issued.

III. Simplification of Inward Remittance and Repatriation Process

The Current Provisions require a QFII, in accordance with its investment plan, to instruct its custodian to settle and transfer the forex funds used for investments directly into the relevant RMB accounts within 30 working days before the actual investments take place. The Consultation Paper has removed this required 30-working-day period; instead, a QFII is only required to promptly instruct the custodian to transfer the funds, which to some extent provides operational flexibility.

Since June 2018, the cumulative net repatriated funds of a QFII has no longer been capped at 20% of its total domestic assets at last year's end and now the Consultation Paper further simplifies

the procedures for repatriation of funds. **It removes the other requirement that a QFII/RQFII shall provide a special audit report on investment proceeds, proof of tax payment or tax filing certificate issued by a Chinese certified public accountant when repatriating investment proceeds, but only requires a QFII/RQFII to provide an Undertaking Letter of Tax Clearance. We believe that the simplification of application materials required for repatriation can substantially speed up repatriating investment proceeds by a QFII/RQFII, thereby alleviating the unease of foreign investors on repatriation.**

It is worth noting that the Consultation Paper emphasizes that the inward remittance and repatriation made by a QFII/ RQFII in regard to its domestic securities investments shall be in the same currency, and no cross-currency arbitrage shall be allowed.

IV. Trading of Derivatives

Consistent with the Current Provisions, the Consultation Paper requires that a QFII/RQFII shall conduct domestic trading of derivatives only for hedging purposes, and derivative exposures and investment risk exposures of the underlying domestic securities investments shall have a reasonable correlation. Moreover, it retains the requirements of the principle that forex derivatives shall only be traded for genuine needs, while no longer requiring that forex derivative position 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.

V. Custodian's Obligation to Review

The Consultation Paper strengthens the custodian's obligation to review the application materials for capital registration submitted by

QFII/RQFIIs and their fund sourcing. For example, the Consultation Paper stresses the main custodian's obligation to verify the authenticity of the application materials for capital registration submitted by a QFII/RQFII; it also requires that in the course of handling the business of fund repatriation for a QFII/RQFII a domestic custodian shall verify the authenticity and compliance of the receipt and payment of relevant

funds by such QFII/RQFII, and duly perform the obligations in regard to anti-money laundering and anti-terrorist financing.

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

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