

资本市场法律热点问题

进一步扩大资本市场开放 - 可预期的稳步推进

上周四召开的陆家嘴论坛上，多位政府金融高官集体同台发表讲话，并于同日宣布正式推出科创板，这些讲话点明了资本市场的工作重点，介绍了具体的开放举措，稳定了市场对进一步开放的预期。

国务院副总理刘鹤在陆家嘴论坛提及的资本市场几项重点工作特别值得关注，从中可以一窥金融监管者关于改革开放的基本思路。这五项工作分别是：1、加快推进股票发行上市、退市等基础制度改革；2、以加强公司治理和信息披露为重点，提高上市公司质量；3、以更加市场化、便利化为导向推进交易制度改革；4、加快提升中介机构能力；5、稳步扩大各类机构投资者队伍。同时，证监会易会满主席在讲话中指出，监管者要“坚定推进资本市场对外开放”，同时坚持“放得开、看得清、管得住”，“持续提升风险防范和跨境监管能力”，体现了金融监管者对“促开放”与“防风险”两大战略方向的平衡和把握。

继证监会易会满主席在周四的陆家嘴论坛上宣布进一步扩大资本市场对外开放的九项具体政策措施后，证监会周五晚在其官网上详细阐述了九项措施出台的背景和内容，大致可分成如下七个方面：

第一，首先排在第一位的是对 QFII/RQFII 规则的修订，修订的内容体现在四方面，一是统一

QFII/RQFII 准入的标准，二是扩大投资范围，三是提升投资运作的便利性，四是加强持续监管。可以推测，QFII/RQFII 新规已经箭在弦上，相信很快会推出。与此同时，央行副行长潘功胜在陆家嘴论坛提出研究适度放宽甚至取消 QFII/RQFII 额度。可以预期，此轮 QFII/RQFII 制度的改革将很大程度上满足市场对于 QFII/RQFII 制度改革的积极预期。

第二，按照内外资一致的原则，将一参一控原则同时适用于内外资股东，即允许一家外资股东可以持股两家券商（或基金公司），其中可以控股一家。同时，会适当降低之前征求意见稿规定的证券公司控股股东必须满足的净资产和主营业务收入人民币“双千亿”的要求。从以上表态可以看出，“内外资一致”仍是一项基本原则。在市场准入方面，监管者鼓励境外优质证券和基金经营机构来华展业，但仍需满足对内外资统一设定的资质标准和要求。

第三，放宽对外资银行从事证券投资基金托管业务的准入限制；允许外资银行申请人单独申请证券投资基金托管资格，而不是把符合结算参与人资质要求作为从事托管业务的前提。除目前已经获得托管资格的渣打银行外，相信国内多家外资银行都会启动申请托管业务资格。

第四，将全面推开 H 股“全流通”试点，即允许 H 股公司的未上市外资股可以全部流通。这一改

变或许意味着取消境内 A 股的外资股比限制也将指日可待。

第五，扩大期货特定品种开放的范围。可以预期直接向外资开放的特定期货品种的范围将稳步增加，但目前的开放品种似乎仍仅限于商品期货和商品期权。

第六，允许外资私募产品参与“港股通”，这意味着取消了目前外资私募产品不得投资“港股通”的政策限制。

第七，就交易所债券市场的开放，证监会分别提出要参考银行间债券市场开放的经验，研究扩展除通过 QFII/RQFII 交易交易所债券市场之外的其他渠道，以及研究制定交易所熊猫债的管理办法。

我们认为，陆家嘴论坛传递的上述“促开放”的清晰政策信号有助于稳定境外投资者对于金融市场开放的预期，同时，所谓的“放得开、看得清、管得住”原则也体现了监管者稳健务实的监管态度。

谢 青 合伙人 电话：86 21 2208 6238 邮箱地址：xieq@junhe.com

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Financial

Market Opening – Predictable and Steady Progress

China's most senior financial officers recently gathered in Shanghai at last week's 11th Lujiazui Forum. In addition to delivering speeches, a new science and technology innovation board ("SSE STAR") was launched.

These speeches focused on the capital markets and introduced some specific measures for market opening, thereby reassuring and encouraging the market's expectations on the opening up of China's financial markets.

In his speech, LIU He, Vice Premier of the State Council, raised several key items relating to capital markets, which together provide some useful insights as to the financial regulators' mindset towards financial reform and opening up.

The five key tasks, according to Liu, will be to: (1) Accelerate the reforms of various basic systems for stock issuance, listing and delisting; (2) Improve the overall quality of listed companies by focusing on corporate governance and information disclosure; (3) Promote reform of the trading system in order to improve market functioning and facilitate investment; (4) Increase the capabilities of market intermediary institutions; (5) Steadily promote the growth of all types of institutional investors.

YI Huiman, Chairman of the China Securities

Regulatory Commission (CSRC), noted that regulators shall "push for the capital market to continue opening up", while holding firm to the principle of "having confidence in the further opening up of the markets, and ensuring that regulation is 'see-through' and risks are well-managed", and "continually improving risk prevention and cross-border supervision". His comments reflect the financial regulators' attempts to find a balance between their desire to promoting opening up while at the same time minimizing any risks.

After Yi had announced nine specific measures for the opening up of the capital market at the Forum, the CSRC provided further details on its website, the key points of which are summarized below:

(1) Among the more significant measures are the proposed amendments to the QFII/RQFII rules, which will impact in four respects, namely, unifying the qualification requirements for QFIIs and RQFIIs, expanding the permissible investment scope, making investment activities more convenient, and strengthening continuous supervision. It is expected that the proposed new rules will be issued very soon. Meanwhile, in his speech at the Forum, PAN Gongsheng, Deputy Governor of the

People's Bank of China, noted that the regulators are investigating whether to further relax the investment quota of QFII/RQFII or even potentially remove the quota restriction altogether. We anticipate that this round of proposed reforms to the QFII/RQFII system will, to a large extent, meet the positive expectations of the market.

- (2) In line with the principle of equal treatment for domestic and foreign investors, a foreign investor will be permitted to invest in no more than two securities companies, of which just one can be majority-owned by that foreign investor. The same restriction will apply to a foreign investor's investment in mutual fund management companies. There will be lowering of the minimum double RMB 100 billion thresholds for the net asset and principle business income made by a controlling shareholder of a securities company, as prescribed in an earlier consultation paper. These changes indicate that the equal treatment to domestic and foreign investors is being adhered to as a fundamental principle. In terms of market access, regulators will encourage high-quality foreign securities companies and mutual fund management companies to do business in China, provided that they possess the relevant qualifications or meet the relevant requirements established for both domestic and foreign investors.
- (3) The market access restrictions on foreign banks engaging in securities investment fund custodian activities will be further relaxed; a foreign bank will be allowed to independently apply for the custodian qualification for securities investment funds, and possessing the qualification to be a clearing participant is no longer a prerequisite for conducting custodian business. In addition to the Standard Chartered Bank, which has already

obtained the custodian qualification, there are likely to be further foreign banks operating in China that will consider applying for the custodian qualification.

- (4) There will be a rolling out of H-share "full circulation" reform, with all unlisted foreign shares of an H-share company able to be traded in public markets. This change suggests that the foreign ownership limits on single stocks in the A-share market may also be removed in the very near future.
- (5) There will be a further expansion in the scope of the specific types of futures products that can be directly accessed by foreign investors. It is expected there will be a gradual expansion in the range of specific future products available to foreign investors, though currently still limited to commodities futures and options.
- (6) Securities-type investment funds launched by foreign-owned private fund managers will be allowed to trade southbound in the Stock Connect, meaning that the current policy restriction on southbound trading by such private funds will be removed.
- (7) As for the opening up of exchange-traded bond markets, the CSRC has proposed to base this upon a review of the earlier opening up of the interbank bond market, to study to expand the access by foreign institutional investors to the exchange-traded bond market beyond the current QFII/RQFII channel, and to introduce administrative measures for Panda Bonds issuance in the exchange market.

The Forum has delivered a clear message about the regulators' commitment to the promotion of market opening, which should help to reassure any concerns on the part of foreign investors'

towards market opening. At the same time, the references to "having confidence in further opening", "see-through regulation" and "risks

well-managed" are indicative of the regulators' desire to adopt a prudent and practical approach in their supervision of the financial industry.

Natasha XIE Partner Tel: 86 21 2208 6238 Email: xieq@junhe.com

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