

## Capital Market

### Bond Market Enforcement to be Unified under the CSRC

On December 3, 2018, the People's Bank of China (the "PBOC"), the China Securities Regulatory Commission (the "CSRC") and the National Development and Reform Commission (the "NDRC"), were authorized by the State Council to jointly issue their *Opinions Concerning the Relevant Issues on Further Strengthening Law Enforcement in Bond Market* (the "Opinions"). The issuing of the Opinions takes place within the current environment of "Strong Regulation" and is an indication of the State Council's intention to build a coherent law enforcement framework for the bond markets by strengthening cooperation among the financial regulatory authorities.

China has long had two separate and differentiated bond markets – the interbank bond market and the exchange bond market – each regulated by various regulatory bodies. While not intending to alter any existing administrative and self-regulatory powers and responsibilities, the Opinions stipulate that the CSRC should be responsible for the enforcement of any illegal activities that might occur in both markets. The CSRC has previously investigated various one-off instances of violations within the bond markets. The issuing of the Opinions signifies the intention to establish a more systematic and long-term approach, thereby providing a stronger guarantee

of law enforcement in the interbank bond market.

The Opinions include various important provisions, as follows:

#### I. Clarifying the Scope of Law Enforcement and Punishment Measures

The CSRC's newly-unified law enforcement framework will cover all categories of bonds traded in the interbank and exchange bond markets, including corporate bonds, enterprise bonds, financial bonds and debt financing instruments issued by non-financial enterprises. The *Securities Law* will be the applicable law for defining violations of laws and regulations and any pertinent penalties for information disclosure, insider trading or market manipulation. It is our observation that the Opinions may imply that the definition of "Securities" within the *Securities Law* should be expanded to include all instruments issued in the interbank bond market.

The Opinions stipulate that any illegal activity on the part of commercial banks or securities companies in their underwriting of the various categories of bonds shall be punished in accordance with Article 191 of the *Securities Law*. It is noteworthy that Article 191 of the *Securities Law* indicates that the penalties are applicable to securities companies, but does not refer to

commercial banks per se. Since the *Legislation Law* and the *Administrative Penalty Law* provide limitations on the extent to which administrative regulations can be used to impose administrative punishment and on the type and strength of such administrative punishment, it remains to be seen whether and how the CSRC will implement Article 191 of the *Securities Law* to punish commercial banks for any violations in underwriting of bonds.

In addition, the Opinions also provide that should the CSRC discover that a serious violation has been committed, it may impose a securities market ban on the relevant person for a given period, up to a lifetime ban. Violators could be prohibited from working in the securities business for any employer, current or future, and serving as a director, supervisor or senior executive with an employer or any other listed companies or non-listed public companies. Should the CSRC suspect that a crime has been committed, the relevant information will be provided to the public security agencies for further investigation, who if necessary will impose the applicable criminal punishment.

## **II. Elements to Facilitate Unified Law Enforcement by CSRC**

The Opinions expressly stipulate three key elements to facilitate the CSRC's unified enforcement power over the bond markets:

Firstly, for the purpose of law enforcement for the bond markets, the CSRC shall have the powers to implement the measures listed in Article 180 of the *Securities Law*, including conducting onsite inspections, investigating and collecting evidence, making inquiries of entities and individuals related to any matters under investigation, checking and duplicating all relevant documents and materials, freezing or seizing properties or important evidence that is concerned, and restricting the purchase and sales of securities.

Secondly, the CSRC shall have the power to acquire trading records, registration,

custodianship and settlement documents and information disclosure or other evidencing documentation from bond market self-disciplinary organizations, exchanges, trading platforms, registration, custodian and settlement institutions and other institutions participating in the market. If necessary, the CSRC may acquire the personal credit reports, social insurance, customs and tax payment records, AIC registration documents, correspondence records or other information about entities and individuals involved in the matter under investigations from the relevant authorities or institutions in accordance with the law.

Thirdly, any entities or individuals under investigation are obliged to provide assistance with such investigations. Should they fail to provide the required assistance, the CSRC may propose that the relevant financial regulatory authority or competent department should order the entity or organization to which such individual belongs to impose a disciplinary punishment, or propose to cancel the individual's post-holding qualification or even ban the person from working in the finance industry.

## **III. Setting out the Regulators' Collaboration Mechanism**

The Opinions set out a clear requirement to build a collaboration mechanism, under which the PBOC and the NDRC shall collaborate with the CSRC to strengthen the CSRC's law enforcement in the bond markets, including establishing mechanisms to be able to jointly discuss cases, issuing written opinions to the CSRC on case-related technical issues and assisting in handling the work involved in administrative reconciliation and litigation. The Opinions also require the PBOC and the NDRC to promptly convey relevant evidence on any bond violations to the CSRC.

According to the *CSRC's Bulletin on Law Enforcement in Bond Market* issued on December 3, during 2018 the CSRC investigated

six bond market violation cases, including those relating to fraud issuance, false statement and market manipulation. We anticipate that having issued the Opinions, and with the regulators' collaborative mechanisms in place, the bond markets will henceforth face a more severe enforcement environment. The CSRC is expected

to further strengthen their investigations and to take additional efforts to uncover any violations in both the interbank and exchange bond markets.

We will continue to monitor any developments related to the law enforcement of bond markets and look forward to sharing them with our valued clients.

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