

Capital Markets

SAFE Amended Provisions on Foreign Exchange Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors

On December 7, 2012, the State Administration of Foreign Exchange ("SAFE") issued the Announcement [2012] No. 2 to promulgate the amended Provisions on Foreign Exchange Administration of Securities Investment by Qualified Foreign Institutional Investors which took effect on September 29, 2009 ("New Regulation").

This amendment is part of the efforts to further open the Chinese capital markets and attract more long-term foreign investment. Before this amendment, CSRC, another regulator of QFIIs has promulgated the Regulation Regarding Relevant Issues in the Implementation of the Administrative Measures on Securities Investment by QFIIs on July 27, 2012.

Primary changes in the New Regulation are as follows:

1. Relaxing Investment Quota Limit of Certain QFIIs

Normally the aggregate investment quota of a single QFII shall be no more than the equivalent of USD1 billion, while the upper limit of the investment quotas for sovereign wealth funds, central banks and monetary authorities may exceed the equivalent of USD 1 billion.

2. Changing the Administration System on QFII's RMB Account

In the New Regulation, the mechanism on QFII's foreign exchange accounts remains the same. Namely, a QFII can open one separate foreign exchange capital account for each of the three types of funds i.e., QFII's own capital, the capital of QFII's clients that it manages and open-ended Chinese fund). However, the regulations on QFII's RMB accounts will be changed as bellow:

- ◇ QFII shall open special RMB saving accounts and the account names shall include QFII's name and reflect the nature of the capital (QFII's own capital/the capital of QFII's clients or name of clients/ name of open-ended Chinese fund) as well.
- ◇ The QFII's RMB saving accounts are divided into two types, one is for QFII's investment in domestic securities market and the other for the investment in stock index futures. The two types of RMB saving accounts and the special RMB account opened by QFII before the issuance of New Regulation shall be collectively referred to as RMB Account.
- ◇ The New Regulation deletes the requirement that one RMB Account shall correspond to one foreign currency account. The New Regulation further provides that a QFII may apply

to open no more than six RMB saving accounts for its clients' funds, provided that the initial amount in each RMB saving account shall be no less than the equivalent of USD 20 million. Furthermore, such RMB saving accounts shall correspond to one foreign exchange account which QFII opens for the funds of its clients.

- ◇ Funds transfer among multiple RMB saving accounts opened by QFII for its clients' funds is prohibited.
- ◇ Where a QFII has opened a special RMB account for its clients' funds before the New Regulation, if the QFII needs to open multiple RMB saving accounts to manage the funds separately, it shall apply to SAFE within six months after the issuance of the New Regulation and shall transfer the funds in the special RMB account to the new RMB saving accounts within three months after the application is approved.
- ◇ Where a QFII has opened a special RMB account, if the QFII needs to open RMB saving accounts or change the original special RMB account, it shall cancel the special RMB account first and then open basic saving account and dedicated saving account.

3. New Requirement on QFII's Remittance of Funds

According to the New Regulation, QFII shall be subject to certain restrictions on repatriation of funds out of China. We understand that the restrictions aim to avoid the adverse impact on China's foreign currency system by restricting QFIIs from massive exit of China in the same time. Primary amendments include:

- ◇ After the expiry of the lock-up period, the amount of monthly repatriation of funds (including principal and profits) remitted abroad by a QFII shall not exceed 20% of its total assets in China as at the end of the last year.
 - ◇ An open-ended Chinese fund may make remittance abroad on a weekly basis rather than a monthly basis as under the 2009 regulation.
 - ◇ The net cumulative amount of funds remitted abroad by an open-ended Chinese fund on a monthly basis shall not exceed 20% of the total assets in China of the said fund as at the end of the last year.
- #### 4. Simplifying Procedures on QFII's Remittance of Fund Abroad
- ◇ If an open-ended Chinese fund intends to remit funds abroad, its custodian bank may directly handle relevant

procedures on a weekly basis. No filing or approval from SAFE is required as before.

- ✧ Where a QFII other than an open-end Chinese fund needs to remit abroad the cumulative investment proceeds already realized, its custodian bank may handle the remittance based on the QFII's written application or instruction, and no approval from SAFE is required any more.

5. Shortening Period for Custodian to Submit Statements on QFII

Within five rather than eight working days as previously required after the end of each month, the custodian shall submit Monthly Forms on Domestic Securities Investment by QFIIs to SAFE.

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资本市场法律热点问题

国家外汇管理局修订《合格境外机构投资者境内证券投资外汇管理规定》

2012年12月7日，国家外汇管理局发布“[2012]2号”公告，对2009年9月29日起施行的《合格境外机构投资者境内证券投资外汇管理规定》进行修改，并发布了新修订的《合格境外机构投资者境内证券投资外汇管理规定(2012修改)》(“修订稿”)。

本次修订是中国监管机构进一步放开资本市场，吸引境外长期资金投资的努力的一部分。在本次修订前，同为QFII监管部门的中国证监会已于2012年7月27日发布“[2012]17号”公告，颁布施行《关于实施〈合格境外机构投资者境内证券投资管理办法〉有关问题的规定》。

本次修订的主要内容如下：

1、 放宽部分QFII的投资额度上限

一般单个QFII的累计投资额度上限为等值10亿美元，但主权基金、央行及货币当局等机构投资额度上限可超过等值10亿美元。

2、 变更QFII人民币账户管理制度

QFII的外汇账户管理制度无变化，仍然规定QFII只能为三类资金(包括自有资金、客户资金、开放式中国基金)各开立一个外汇账户，但修订稿对QFII的人民币账户管理制度做了以下修订：

- ◇ QFII应开立人民币专用存款账户，账户名称为合格机构投资者名称，并应体现资金性质(自有资金/客户资金或客户名称/开放式基金名称等)。
- ◇ 人民币专用存款账户分为两类：一为用于投资境内证券市场的专用存款账户(“专用存款账户<证券交易>”)，一为用于投资境内股指期货的专用存款账户(“专用存款账户<期货交易>”)。该等人民币专用存款账户与QFII在修订稿实施前已开立的人民币特殊账户合称“人民币账户”。
- ◇ 修订稿删去人民币账户与外汇账户一一对应的要求。QFII可根据实际需要，申请为其管理的客户资金开立不超过6个专用存款账户<证券交易>，但每个账户起始开户金额不得低于等值2000万美元。同时，该等多个专用存款账户<证券交易>与QFII的客户资金外汇账户(一个)存在对应关系。
- ◇ QFII为客户资金开立的多个专用存款账户之间的资金不得相互划

转。

- ◇ QFII已为客户资金开立人民币特殊账户的，如需对该人民币特殊账户进行分账管理，开立多个专用存款账户的，应在修订稿发布之日起6个月内向国家外汇局提出申请，并在获批后3个月内将需要划转的资金从原来的人民币特殊账户，一次性全额划转至新开立的专用存款账户。
- ◇ QFII已开立人民币特殊账户的，如需开立新的专用存款账户，或变更原有人民币特殊账户等，应撤销原人民币特殊账户后，开立基本存款账户和专用存款账户。

3、 增加QFII资金汇出的时间及比例要求

修订稿规定QFII汇出资金需遵守一定的时间及比例要求，按照该规定，QFII大约需要5个月才能实现资金完全退出。我们理解，此举旨在确保外资退出的有序性，以防止QFII短时间内集中购汇退出对我国外汇管理制度造成冲击。修订要点包括：

- ◇ 在投资本金锁定期结束后，QFII每月汇出资金(本金、收益)总额不得超过其上一年度境内总资产的20%。
- ◇ 开放式中国基金根据申购或赎回的轧差净额办理资金汇入汇出时，办理期限由原来的每月改为每周。
- ◇ 开放式中国基金每月累计净汇出资金也不得超过上年度基金境内总资产的20%。

4、 简化QFII资金汇出的手续

- ◇ 开放式中国基金汇出时，由托管行按周办理。不再要求按资金金额的大小向地方外汇局分别办理备案或者核准手续(5000万美元以上需核准，以下需办理备案)。
- ◇ 开放式中国基金外的其他QFII汇出收益时，不再要求报经地方外汇局审核同意，而由托管人直接办理。

5、 缩短托管人报送QFII相关报表的期限

每月结束后5个(而不是原来的8个)工作日内，托管人应报送关于QFII境内证券投资情况的《合格境外机构投资者境内证券投资月报表》。

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