JUN HE BULLETIN

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Capital Market

CSRC Issued Opinions on Promoting the Innovation and Development of the Securities Investment Fund Industry

To implement the requirement of the Opinions of the State Council on Promoting the Healthy Development of the Capital Markets ("**New Nine Directives**"), the China Securities Regulatory Commission ("**CSRC**") recently released the Opinions on Promoting the Innovation and Development of the Securities Investment Fund Industry ("**Opinions**"). The content of the Opinions includes the general principles, main tasks, and specific measures for pushing forward the innovative development of fund industry. The Options will have significant implications to both public and private fund industry.

The Opinions is divided into three main parts, eleven articles in total, which are respectively about (i) the asset management institutions, (ii) the innovation of businesses and products, (iii) the supervision and regulation of the industry. Main provisions of the Opinions are summarized as below:

Main Provisions

1. Asset Management Institution

The Opinions support the differentiated development of asset management firms , such as the coexistence of large and comprehensive institutions and specialized, characteristic, small or medium-sized institutions, the co-development of public and private fund businesses, and coexistence of those various asset management subsidiaries specialized in segregated account management, fund distribution, overseas asset management business, etc. The Opinions expressly encourage the mixed ownership reform of fund management firms and the professionals' equity participation programs.

The Opinions require a steady promotion of a two-way opening up. A two-way opening up means moderately lowering the entry threshold for both domestic and international markets, specifically, (i) relaxing foreign enterprise shareholding limitation when time is appropriate, (ii) promoting mutual recognition of fund products with Hong Kong and other overseas markets, (iii) cross-listing of fund products between domestic and foreign exchanges, and (iv) enlarging the scope and investment quotas of both QFII and QDII. The Opinions also encourage institutions to actively participate in the construction of China (Shanghai) Pilot Free Trade Zone and utilize channels such as the Shanghai-Hong Kong Stock Connect Scheme to expand their scope of services. Moreover, the Opinions specifically mention the broadening of long term capital resource of public fund, and vigorously support fund management firms' involvement in pension fund management business.

The Opinions raise the requirements on how to enhance compliance risk control level of fund management firms from four different aspects, (i) establishing accountability mechanism for material violation compliance risk, (ii) bringing compliance and risk control departments' roles into full play, (iii) promoting the establishment of performance based rewards and punishments measures in relation to compliance risk liability, and (iv) implementing risk control and emergency management plans based on classification of industry risks, and completing monitoring, identification, warning, and disposition mechanism for major risks.

2. Businesses and Products

Vigorous support of business innovation is embodied in the Opinions. Qualified institutions are supported to, according to market demand, develop cross-border or cross-market public fund products, products that cover different assets types, and products featuring diversified investment strategies and differentiated fee charging mechanism. In expanding new businesses, the Opinions encourage businesses to explore innovation on business model of tailor-made account management, Manager of Managers fund (MOM). The Opinions propose to relax investment scope of self-owned capital of fund management companies, expand their financing channels, and support their issuance of corporate bonds, sub-prime bonds, and various bonds to be issued on interbank market.

The Opinions specifically mention that commercial banks, securities companies, and other institutions are supported to issue wealth management products with public fund as the main investment subject. In terms of the cooperation with Internet firms, fund management companies are encouraged to carry out diversified forms of business cooperation, with the aid of new channels and modern technologies to optimize and develop traditional public fund products and explore Internet-based business innovations of fund management companies' subsidiaries.

The Opinions pointed out the need to push pledge-financing of fund units, and to expand the financing tools available in response to the redemption request of open-ended funds. The Opinions also emphasize the importance of the construction of investor protection systems, such as the investor suitability system, information disclosure system for public funds, compensation mechanism for breach of fiduciary duties, etc.

3. Supervision and Regulation

The Opinions introduce the concept of "negative list" to asset management industry, and advocate further streamlining of administrative procedures. The Opinions also mention the need to strengthen the risk monitoring to systematically important institutions and products.

In market access, it is noteworthy that the entry threshold of public fund will be further lowered. On one hand, the Opinions encourage various eligible entities to apply for the public fund management license, to transform pilot program of commercial banks setting up fund management companies into routine practices, and to steadily promote the pilot program of insurance companies setting up fund management companies. On the other hand, the Opinions encourage eligible private fund managers to apply for the qualification for public fund management businesses.

In fund services, the Opinions propose a diversified fund distribution covering both exchange trading and OTC trading, both direct distribution and indirect agency distribution, as well as both on-line and off-line distribution. As to advisory services of fund investment, the Opinions support the establishments of professional investment advisory institutions.

Our Observation

We consider that the Opinions, which serve as a high-level guidance, will guide the development of fund industry for a relatively long period of time in the foreseeable future. We look forward to the releasing of specific implementation measures of the Opinions.

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资本市场法律热点问题

证监会发布关于证券投资基金行业创新发展的指导意见

为贯彻国务院《关于进一步促进资本市场健康发展的若干意见》的要求，中国证监会近日发布《关于大力推进证券投资基金行业创新发展的意见》（以下简称"《意见》"）。《意见》的内容十分全面，包含基金行业创新发展的总体原则、主要任务和具体举措，其从监管角度指明了基金业在今后一段时期的发展方向，对公募和私募基金行业都具有十分重要的意义。《意见》全文分为三大部分，共十一条，分别涉及机构、业务和产品、监管三个方面。

主要内容

（一） 关于资产管理机构

《意见》支持资产管理机构的差异化发展，差异化包括大机构与专业化、特色化中小机构并存，公募业务与私募业务共同发展，以及支持基金管理公司设立专户管理、基金销售、境外资产管理等专业子公司。《意见》支持基金管理公司混合所有制改革，支持专业人员持股。

《意见》提出要稳步推动双向开放。双向开放意味着对内对外市场准入的门槛都会适度降低，具体内容包括，适时放宽外资持股基金管理公司比例限制，推动与香港等境外市场的基金产品互认、境内外交易所交叉挂牌基金产品，扩大QFII和QDII的范围和投资额度。《意见》还提到了鼓励机构积极参与上海自贸区建设，利用沪港通试点等渠道，拓展为境内外个人与机构提供资产管理服务的渠道。《意见》还特别提到了拓宽公募基金的长期资金来源，大力支持基金管理公司参与养老金管理。

《意见》就基金公司如何提升合规风控水平在四个方面提出要求：一是建立重大违规风险事件问责机制；二是充分发挥合规及风控部门的作用；三是推动建立合规风险责任与考核奖惩挂钩机制；四是建立行业分级风险应急预案，完善重大风险监测、识别、预警与处置机制。

（二） 关于业务和产品

《意见》体现了对业务创新的大力支持。在产品设计方面，有条件的机构可以根据市场需求自主开发跨境跨市场、覆盖不同资产类别、多元化投资策略、差异化收费结构与收费水平的公募基金产品。在新业务拓展方面，《意见》鼓励探索定制账户管理、多元经理管理（MOM）模式创新。《意见》提出放宽基金管理公司固有资金投资范围，拓展其融资渠道，支持其发行公司债、次级债以及进入银行间市场发行各类债券。

《意见》还特别提出支持商业银行、证券公司等机构发售以公募基金为投资标的的理财产品。在互联网合作方面，《意见》鼓励基金管理公司与互联网企业开展多种形式的业务合作，包括支持公募基金利用移动互联网等现代技术和新型渠道改进

传统业务以及探索基金管理公司子公司基于互联网平台的业务创新。

《意见》指出要推动基金份额质押融资服务，拓展开放式基金应对赎回的融资方式。《意见》还强调了投资者适当性制度、公募基金信息披露制度、受托人违规赔偿机制等投资者保护制度建设。

（三） 关于监管

《意见》提出了资产管理业务“负面清单”的概念，主张进一步简化行政程序。《意见》还提出要加强对系统重要性机构及产品的风险监测。

在市场准入方面，值得注意的是，公募基金的准入门槛将进一步降低。《意见》一方面鼓励各类合格的市场主体申请公募牌照，包括支持民营资本、专业人士设立基金公司，推动商业银行设立基金管理公司由试点转常规，稳步推进保险公司设立基金管理公司试点；另一方面也支持私募基金管理人开展公募业务。

在基金服务方面，对于基金销售，《意见》指出要推动建立场内与场外、直销与代销、网上与网下相结合的多元化基金销售渠道。对于基金投资顾问服务，《意见》还提出要支持设立专业的投资顾问机构。

我们的观察

我们认为，《意见》作为一份纲领性的文件，将在今后相当长的一段时期内指导基金行业的发展。我们期待贯彻《意见》的各项具体措施的出台。

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