

## **Decree No. 46 of China Securities Regulatory Commission**

No. 46

The Trial Measures for the Administration of Securities Investment Outside the Territory of China by Qualified Domestic Institutional Investors have been deliberated and adopted at the 27th chairmen's executive meeting of China Securities Regulatory Commission on April 30, 2007. They are hereby promulgated and shall enter into force as of July 5, 2007.

Chairman of China Securities Regulatory Commission Shang Fulin  
June 18, 2007

### **Trial Measures for the Administration of Securities investment outside the territory of China by Qualified Domestic Institutional Investors**

#### **Chapter I General Rules**

Article 1 In order to regulate the securities investment outside the territory of China by qualified institutional investors within the territory of China and protect the legitimate rights and interests of investor, the present Measures are formulated in accordance with the Law on Securities Investment Funds, Securities Law and other related laws and administrative regulations.

Article 2 Qualified domestic institutional investors (hereinafter referred to as the QDII) referred to in the present Measures means fund management companies, securities companies and other securities institutions within the territory of China that satisfy the requirements as prescribed in the present Measures, raise funds within the territory of the People's Republic of China upon approval of China Securities Regulatory Commission (hereinafter referred to as the CSRC), and implement securities investment management outside the territory of China in the form of portfolio by way of using part or all of the funds it has raised.

Article 3 Where a QDII engages in the business of securities investment outside the territory of China, it shall entrust a commercial bank within the territory of China to take charge of asset custody, and may entrust a foreign securities service institution as an agent for buying and selling securities.

Article 4 The CSRC and the State Administration of Foreign Exchange (hereinafter referred to as the SAFE) shall implement surveillance on the securities investment outside the territory of China by QDIIs.

#### **Chapter II Qualification Requirements for QDIIs, and Examination and Approval Procedures**

Article 5 When applying for the QDII qualification, applicants shall satisfy the requirements as follows:

1. Having a stable and good status of finance and credit, and its assets scale and operating life, etc. satisfy the requirements as prescribed by the CSRC;
2. Having related qualified staff that has the experiences in investment management outside the territory of China;
3. Having a sound governance structure and a perfect internal control system, as well as normalized business performance;

4. Having not been subject to any major punishment by the surveillant organ for the last three years, and having nothing important being investigated by the judicial organ or the surveillant organ; and

5. Other requirements as prescribed by the CSRC in accordance with the principle of prudent surveillance.

Article 6 The requirement referred to in Article 5 Subparagraph (1) means that:

1. For a fund management company: its net asset shall be no less than RMB 0.2 billion yuan, it has engaged in the business of managing securities investment funds (hereinafter referred to as the fund) for more than two years, and its asset management scale at the end of the latest quarter shall be no less than RMB 20 billion yuan or the foreign exchange assets in an equivalent value;

2. For a securities company: all of its risk control indicators shall be consistent with the prescribed standards, its net capital shall not be less than RMB 0.8 billion yuan; the proportion of its net capital to its net assets shall be no less than 70 percent, it has engaged in the business of asset pool management plans (hereinafter referred to as the pool plan) for at least one year, and its asset management scale at the end of the latest quarter shall be no less than RMB 2 billion yuan of assets or the foreign exchange assets in an equivalent value.

Article 7 The requirement referred to in Article 5 (2) means that: an applicant shall have one or more medium-level manager(s) that have the investment management experiences in the securities market outside the territory of China for at least five years and related qualification, and shall have three or more staff members that have the investment management experiences in the securities market outside the territory of China for at least three years.

Article 8 When applying for the QDII qualification, an applicant shall submit to the CSRC the documents (one original and one duplicate thereof) as follows:

1. an application form;
2. a certification document as prescribed in Article 5 of the present Measures; and
3. other documents as required by the CSRC.

Article 9 The CSRC shall examine such application documents as of the receipt of a complete set of qualification application documents, and make a decision on approval or disapproval. In the case of approval, the CSRC shall issue a licensing document for securities investment business outside the territory of China; and in the case of disapproval, the CSRC shall inform the decision to the applicant in written form.

Article 10 After an applicant has obtained the QDII qualification, it may submit the documents for a product raising application to the CSRC.

Article 11 After receiving a complete set of the documents for a product raising application, the CSRC shall examine the application materials, make a decision on approval or disapproval, and inform the applicant of the decision in the written form.

Article 12 A QDII shall apply to the SAFE for the qualification for foreign exchange business in accordance with related provisions.

### **Chapter III Investment Consultant Outside the Territory of China**

Article 13 Investment consultant outside the territory of China (hereinafter referred to as "investment consultants") referred to in the present Measures are those financial institutions outside the territory of China that comply with the requirements as prescribed in the present Measures, and provide suggestions for buying and selling securities or provide the management

service of investment portfolio, etc. concerning the securities investment outside the territory of China to QDIIs in accordance with the contract, and obtain proceeds therefrom.

Article 14 A QDII may entrust an investment consultant that meets the following requirements for the securities investment outside the territory of China:

1. It is established outside the territory of China, and engages in the investment management business upon approval of the surveillant organ of its country or region;
2. The surveillant organ of its country or region has signed a memorandum of understanding on bilateral surveillant cooperation with the CSRC, and keeps an effective surveillant cooperation with each other as well;
3. It has engaged in the investment management business for at least five years, and the securities assets under its management for the latest fiscal year shall be no less than 10 billion USD or the equivalent value in a foreign currency; and
4. It has a sound governance structure, a perfect internal control system, as well as normalized business performance; and it has not been subject to any major punishment by the surveillant organ of its country or region and has no major matter that is being put on files of or investigated by the judicial organ or the surveillant organ for the last five years.

Where a branch that established outside the territory of China by a securities company within the territory of China acts as an investment consultant, it shall not be restricted by Subparagraph 3 of the preceding paragraph.

Article 15 A QDII shall assume the fiduciary responsibility, and perform the obligation of fidelity surveys during the selection or authorization of an investment consultant.

Article 16 An investment consultant shall rigidly observe the laws and regulations of the state, the fund contract or the asset pool management contract, and always put the interests of the fund or pool plan holders at the first place, bring forward suggestions subject to reasonable evidences, seek for the best transactions of the fund or pool plan, treat all clients in a fair and objective manner, always carry out the investment decisions in light of the investment purposes, strategies, policies, guidelines and restrictions of the fund or pool plan, fully reveal all the important facts involving the conflict of interests, and respect the confidentiality of clients' information.

Article 17 Where a QDII entrusts an investment consultant to make investment decisions, it shall specify in the agreement that the investment consultant shall bear the liabilities accordingly for any property loss as caused because of its omission, negligence and failure to perform duties, etc.

#### **Chapter IV Asset Custody**

Article 18 When a QDII engages in the securities investment business outside the territory of China, there shall be a bank with a qualification for securities investment fund custody (hereinafter referred to as the custodian) to take charge of the asset custody.

Article 19 A custodian may entrust an asset custodian outside the territory of China that satisfies the following requirements to be responsible for the asset custody business outside the territory of China:

1. It shall be established in a country or region outside the territory of China, and is subject to the surveillance of the local government, financial or securities surveillant organ;
2. It has at least one billion USD of paid-in capital or the equivalent value in a foreign currency in the latest fiscal year, or its scale of custody assets shall be no less than 100 billion USD or the equivalent value in a foreign currency;

3. It has sufficient full-time staff members that are familiar with the custody business outside the territory of China;

4. It shall be with the conditions for safe keeping the assets;

5. It shall be able to make settlement and delivery safely and high efficiently; and

6. It has not been subject to any major punishment by the surveillant organ and has nothing important being investigated by the judicial organ or the surveillant organ for the last three years.

Article 20 A custodian shall perform the duties for the trustee as follows in accordance with the related laws and regulations:

1. Protecting the holders' interests, performing surveillance over the daily investment as well as the outward and inward remittance of capital for a fund or pool plan in accordance with related provisions, and in the case of any illegal or irregular investment directive, outward or inward remittance of capital, it shall report to the CSRC and the SAFE in a timely manner;

2. Safely protecting the property of a fund or pool plan, punctually notifying the information on the company's behaviors to the QDII, and ensuring that proper incomes could be obtained for the fund or pool plan in a timely manner;

3. Ensuring that the fund or pool plan is managed in accordance with related laws, regulations, as well as the investment targets and restrictions as stipulated in the fund contract or the asset pool management contract;

4. Implementing the directives of the QDII or the investment consultant, and making settlement and delivery in time in accordance with related laws, regulations as well as the fund contract or the asset pool management contract;

5. Ensuring that the net value of the fund or pool plan units is calculated in light of the methods as prescribed in related laws, regulations, as well as the fund contract or the asset pool management contract;

6. Ensuring that the fund or pool plan is applied for, subscribed or redeemed, etc. in accordance with related laws, regulations, as well as the fund contract or the asset pool management contract;

7. Ensuring that the proceeds distribution scheme for a fund or pool plan is determined and implemented in accordance with related laws, regulations, as well as the fund contract or the asset pool management contract;

8. Registering the assets in the name of the custodian or the designated agent in accordance with related laws, regulations, as well as the fund contract or the asset pool management contract;

9. Reporting the conditions relating to the investment outside the territory of China by the QDII to the CSRC and the SAFE within 7 workdays after conclusion of each month, and declaring the balance of payments in accordance with related provisions; and

10. Other responsibilities as prescribed by the CSRC or the SAFE in light of the principle of prudent surveillance.

Article 21 With respect to the assets outside the territory of China of a fund or pool plan, a custodian may entrust a custodian outside the territory of China to perform the duty for the trustee on its behalf. Where the custodian outside the territory of China leads to any loss to the assets of a fund or pool plan because of its fault or negligence, etc. during the process of performing duties, the custodian shall bear the liabilities accordingly.

Article 22 A custodian shall perform the following custody responsibilities in accordance with related laws and regulations:

1. Safely keeping the assets of a fund and pool plan, and opening a capital account and a

securities account;

2. Handling the settlement, sales, collection and payment of foreign exchange as well as the Renminbi settlement business for the QDII;

3. Keeping the related materials concerning outward remittance, inward remittance, conversion of capital, the collection and payment of foreign exchange, capital flows, authorization and transaction records of the QDII for no less than 20 years; and

4. Other responsibilities as prescribed by the CSRC or the SAFE according to the principle of prudent surveillance.

Article 23 A custodian or a custodian outside the territory of China shall severely separate its own assets from the assets under the management of the QDII.

### **Chapter V Capital Raising, Investment Operation and Information Disclosure**

Article 24 A fund management company that has obtained the QDII qualification may raise the capital by publicly selling fund units in accordance with related laws and regulations, and invest fund assets in the securities market outside the territory of China. Where a fund management company applies for raising a fund, it shall submit the application materials in accordance with related laws and regulations.

Article 25 A securities company that has obtained the QDII qualification may raise the capital by establishing a pool plan, etc., and invest the capital it raised in the securities market outside the territory of China. In the case of the establishment of a pool plan, a securities company shall submit the application materials, raise the capital and make the investment in accordance with related provisions.

Article 26 Related benchmarks for the comparison of investment performance shall be selected for a fund for which a raising application is filed as required.

Article 27 A fund or pool plan shall be used to invest in the financial products or tools as prescribed by the CSRC.

Article 28 A fund or pool plan shall follow the provisions on the proportion of investment.

Article 29 Where a QDII or investment consultant selects or entrusts a securities service institution outside the territory of China for buying and selling securities, it shall severely perform the fiduciary responsibility, and manage the procedures of investment transactions, the information disclosure and the records keeping in accordance with related provisions.

Article 30 Where a QDII, an investment consultant carries out the securities trading and the research service arrangement with a securities service institution outside the territory of China, it shall observe the principles as follows:

1. The trading commissions shall be the property of the holders of a fund or pool plan; and
2. The QDII and the investment consultant has the responsibility of ensuring the trading quality on behalf of holders, and such responsibilities shall include, but not limited to:
  - (a) seeking for the best implementation of trading;
  - (b) seeking the minimized trading costs; and
  - (c) using the trading commissions of holders for the benefits thereof.

Article 31 Where a QDII carries out the securities investment outside the territory of China, it shall follow the related laws and regulations as prescribed by the local surveillant organ and the local stock exchange.

Article 32 Such people with the obligation to make information disclosure as the QDII, and the

custodian shall reveal the information in strict accordance with related laws and regulations.

### **Chapter VI Quota and Capital Management**

Article 33 A QDII shall set reasonable upper limits of the quota and the scale in the raising plan in light of the market conditions and the characteristics of the product, report them to the SAFE for archival purpose, and shall handle related procedures at the SAFE in accordance with related provisions. The administration on quota or scale within the extension of a fund or pool plan shall be performed in accordance with related provisions.

Article 34 A QDII shall open a custody account at the custodian for the custody of all the assets of a fund or pool plan.

Article 35 A custodian shall open a settlement account and a securities custody account for a fund or pool plan, which shall be used for the capital settlement business and the securities custody business with the securities depository and clearing institution, etc.

Article 36 As for the incomes and expenses of a custody account, settlement account or securities custody account, it shall be consistent with related provisions, and the capital in such accounts shall not be lent to anyone else or be used for security purposes.

Article 37 A QDII shall report to the SAFE the use of its quota as well as the outward and inward remittance of capital in a regular manner.

### **Chapter VII Surveillance and Administration**

Article 38 The CSRC and the SAFE may request the QDII and the custodian to submit the related materials relating to the overseas investment activities of QDIIs; and may perform spot inspections if necessary.

Article 39 In case of any of the following circumstances occurs to a QDII, it shall give a report to the CSRC for archival purpose and make an announcement within 5 workdays as of the occurrence of such a circumstance:

1. alteration of the custodian or custodian outside the territory of China;
2. alteration of the investment consultant;
3. involving in a lawsuit or any other major event outside the territory of China; or
4. any other circumstance as prescribed by the CSRC.

If there is any alteration in the custodian or custodian outside the territory of China, a QDII shall also make a report to the SAFE for archival purpose.

Article 40 In the case of any of the following circumstances occurs to a QDII, it shall apply for the qualification of securities investment business outside the territory of China again within 60 workdays as of the occurrence of such a circumstance, and apply to the SAFE for the foreign exchange business qualification again and handle the procedure for archival purpose of the investment quota:

1. alteration of its name;
2. takeover by any other institution; or
3. any other circumstance as prescribed by the CSRC or the SAFE.

Article 41 Where a QDII makes the securities investment by using the property of a fund or pool plan, if any major illegal or irregular act is committed, the CSRC may adopt the measure of restricting its trading, and the SAFE may adopt the measure of restricting its outward remittance and inward remittance of capital, etc in accordance with related laws.

Article 42 In the case of any serious illegal or irregular act committed by a custodian, the CSRC may render a decision of restricting its custody business.

Article 43 In the case of any violation of the present Measures by a QDII or custodian, it may be imposed on administrative sanction accordingly by the CSRC or the SAFE.

#### **Chapter VIII Supplementary Rules**

Article 44 The investment in financial products or instruments of the Hong Kong Special Administrative Region or Macao Special Administrative Region by QDIIs shall be governed with reference to the present Measures.

Article 45 The targeted raising of capital or the acceptance of targeted objects' asset authorization for the investment in the securities market outside the territory of China by a fund management company that has obtained the QDII qualification shall be governed with reference to the present Measures.

Article 46 The directional asset management, specialized asset management business or the capital investment in the securities market outside the territory of China by a securities company that has obtained the QDII qualification shall be governed with reference to the present Measures.

Article 47 The present Measures shall enter into force as of July 5, 2007.

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