

Haiwen Finance and Asset Management Monthly (July)

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Introduction

To make the finance and asset management industry keep abreast of the latest industry developments, Haiwen prepares the "Haiwen Finance and Asset Management Monthly". This monthly reading aims to introduce and provide brief comments on regulatory development and industry news.

In July of 2023, **for new rules and regulations**, the State Council released the *Regulations on the Supervision and Administration of Private Investment Funds*; the AMAC released the *Measures for the Filing for Private Asset Management Plans of Securities and Futures Operating Institutions*, the *Guidelines for Handling the Disappearance of Private Fund Managers* and the *Self-Regulatory Inspection Rules of the AMAC*; the CSRC issued the *Provisions on Improving the Regulation of Specific Short-term Trading (Draft for Comment)* and the *Interim Provisions on Position Management of Futures Market*; the NAFR issued the *Guidance on Issues Reflected by the Industry Following the Implementation of the Notice on Regulating the Classification of Trust Business of Trust Companies (I)* to the trust industry, and issued the *Implementation Measures for Administrative Licensing of Non-bank Financial Institutions (Draft for Comment)* and the *Administrative Measures for Operational Risk in Banking and Insurance Institutions (Draft for Comment)*; the SAC issued the *Implementation Rules for Integrity Practice of Securities Operators and Their Staffs*; the PBOC released the *Administrative Measures for Data Security in the Business Field of the PBOC (Draft for Comment)*.

For industry news, three financial regulatory authorities (the PBOC, NAFR and CSRC) released "Urge Rectification of Platform Enterprises' Financial Business and Improved Normalized Regulation"; the CSRC answered questions on publicly offered fund fees reform.



I Latest Rules and Regulations

1. Regulations on the Supervision and Administration of Private Investment Funds Were Officially Released

On July 9, 2023, the State Council released the *Regulations on the Supervision and Administration of Private Investment Funds* (the "Regulations"), which shall come into force on September 1, 2023.

The Regulations consolidate and reiterate the existing regulatory requirements of the CSRC, the AMAC and other authorities on private investment funds, and have filled a legislative void at the administrative regulations level for private investment funds and introduced new provisions such as exemption for fund of funds that meets specific conditions from being deemed as an investment tier, the establishment of a private investment fund monitoring mechanism by the CSRC, etc. Furthermore, the supervision and administration authority over private investment funds is hereby unified under the CSRC, the means of oversight during and after events have been enhanced, and the penalties for illegal and irregular behaviors have been intensified.

Haiwen Comments

As the first administrative regulation in the private investment fund industry, the release of the Regulations symbolizes the perfection of the foundational legal system for regulating private investment funds. It also helps unify regulatory standards, promote further revision and improvement of relevant supporting regulations and self-disciplinary rules, and marks a new phase for the high-quality development of the industry, having milestone significance.

For detailed analysis on the Regulations, please refer to related articles on our Wechat Public accounts: "*Haiwen Observation | Analysis of the Private Funds Regulation: Core Content and Far-reaching Impact of a Decade Milestone in Private Funds Supervision (Part I)*"; "*Haiwen Observation | Analysis of the Private Funds Regulation: Core Content and Far-reaching Impact of a Decade Milestone in Private Funds Supervision (Part II)*".

2. AMAC Released the *Measures for the Filing for Private Asset Management Plans of Securities and Futures Operating Institutions*

On July 14, 2023, the AMAC released and implemented the *Measures for the Filing for Private Asset Management Plans of Securities and Futures Operating Institutions* ("New Filing Measures"), as the complementary self-disciplinary rules to the *Administrative Measures for Private Asset Management Business of Securities and Futures Operating Institutions* and the *Administrative Provisions on the Operation of Private Asset Management Plans by Securities and Futures Operating Institutions*. The *Administrative Measures for the Filing for Private Asset Management Plans of Securities and Futures Operating Institutions (Trial)* issued on June 3, 2019, were simultaneously repealed.

The main revisions in the New Filing Measures include: (1) emphasizing the active management responsibilities of the manager and the development of its professional capabilities, and clarifying the principles and specific requirements for engaging investment advisors for asset management plans; (2) refining and improving risk control arrangements, including detailed requirements for control of related transactions, emphasizing the prohibition of directly or indirectly participating in structured bond issuance, etc.; (3) further emphasizing and clarifying prohibitive behaviors, such as guaranteeing principal or returns, and engaging in activities conflicting with asset management; (4) moderately relaxing equity investment operations, optimizing requirements for installment payments, additional fundraising, portfolio investment, SPV nesting layer, expense allocation, and other series of requirements.

Haiwen Comments

The New Filing Measures elevates the filing practical experience and mature filing standards to self-disciplinary rules, achieving a systematic, open, and transparent filing standard. It further responds to the practical needs of the industry (including appropriately improving the relevant requirements for equity investment operations), optimizes the filing verification standards and requirements, and aids in controlling the risks of private asset management business, promoting the standardized development of the industry.

3. CSRC Issued the *Provisions on Improving the Regulation of Specific Short-term Trading (Draft for Comment)*

On July 21, 2023, the CSRC released the *Provisions on Improving the Regulation of Specific Short-term Trading (Draft for Comment)* (the "**Provisions**"). The main contents of the Provisions include:

- (1) **clarifying the applicable subjects scope of specific short-term trading** limited to shareholders holding 5% or more in listed companies or NEEQ (New Third Board) listed companies, and directors, supervisors, and senior executives thereof. Investors who does not qualify at the time of buying but do at the time of selling is still required to comply with the specific short-term trading system;
- (2) **defining the scope of securities applicable to specific short-term trading** including stocks and other securities with equity attributes;
- (3) **clarifying the standards for calculation of securities holdings** specifying that shares held by major shareholders, directors, supervisors, senior executives, and their spouses, children, and parents, as well as shares held by utilizing other people's accounts, should be consolidated, and specific short-term trading should not be calculated across different types of securities;
- (4) **defining the buying and selling behavior of specific short-term trading, and clarifying 11 exemptions**, including preferred stock conversion, exchangeable bonds conversion, and convertible bond conversion;
- (5) **establishing the applicable standards for domestic institutions** The Provisions specifically clarify that securities holdings of social security funds, basic pension insurance funds, annuity funds, publicly offered funds, and collective private asset management products managed by securities and fund operation institutions shall be calculated separately by product (or portfolio); qualified private securities fund managers may calculate positions by product upon application to the AMAC;
- (6) **clarifying the applicable standards for foreign investors** In accordance with the principle of internal and external consistency, allow qualified foreign public fund managers to calculate their positions on a product-by-product basis upon application to the CSRC, and exempt the Hong Kong Securities Clearing Company Limited from the application of the specific short-term trading system under the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect mechanism;

Haiwen Comments

The *Securities Law* sets out the principle provisions on the short-term trading system. On this basis, the Provisions summarize the regulatory practice of short-term trading and explicitly stipulate the applicable scope, exemption situations, position calculation by product in case of specific institutional positions, and foreign investor application standards. It helps standardize the regulation of specific short-term trading, stabilize market expectations, enhance transaction convenience, increase the

attractiveness of the A-share market, and promote the opening up and high-quality development of the capital market.

4. CSRC Released the *Interim Provisions on Position Management of Futures Market*

On July 31, 2023, the CSRC released the *Interim Provisions on Position Management of Futures Market* (“**Interim Provisions**”), the main content of which includes: (1) specifying the principles for formulating or adjusting position limits, the setting methods thereof, and regulating trading behavior; (2) establishing principle regulation of hedging activities, explicitly setting forth the obligations of futures exchanges for approval and management and requiring that hedging position limits should correspond to the scale of traders' risk management activities, market risk tolerance; (3) improving large position reporting system, further enriching the content of reporting and the obligations of reporting party, and specifically authorizing futures exchanges to require traders to submit relevant information regarding their participation in domestic and overseas futures markets, over-the-counter derivative markets, and spot markets; (4) specifying requirements for position consolidation, specifically, requiring futures exchanges to consolidate the positions of the same trader on the same type of trading code with multiple members and those of multiple accounts where a de facto control relationship exists, and establishing principle rules for exemptions related to position consolidation.

Haiwen Comments

Position management is the core regulatory means and method in the futures market. Based on regulatory practice experience, the Interim Provisions implement the management requirements related to position limits and hedging under the *Futures and Derivatives Law*, enhance the precision of position management, contributing to regulating futures market position behavior, and promoting the stable operation of the futures market.

5. NAFR Issued the *Guidance on Issues Reflected by the Industry Following the Implementation of the Notice on Regulating the Classification of Trust Business of Trust Companies (I) to the Trust Industry*

In July 2023, the NAFR issued the *Guidance on Issues Reflected by the Industry Following the Implementation of the Notice on Regulating the Classification of Trust Business of Trust Companies (I)* (the “Guidance”) to the trust industry.

The Guidance focuses on providing further direction for three main aspects: asset management trusts, asset service trusts, and other related issues. The matters that have attracted significant market attention include: (1) clarifying that trust companies may prudently carry out non-standard debt and unlisted enterprise equity investment business; (2) permitting standard trust products to conduct bond repurchase business in the open market according to the proportion stipulated in the *Guiding Opinions on Regulating Asset Management Business of Financial Institutions* (the “**New Asset Management Regulations**”); (3) clarifying the number and qualifications of investors in asset management trusts shall be implemented in accordance with the provisions of the New Asset Management Regulations; (4) specifying that asset service trusts may “conditionally carry out” trust loan business.

Haiwen Comments

The Guidance timely responds to certain issues faced by trust companies in the implementation of the *Notice on Regulating the Classification of Trust Business of Trust Companies*, further clarifies certain standards, logic, and elements of trust business classification, differentiates the boundaries of similar trust businesses, and specifies certain investment/raising requirements for some trust businesses, thereby facilitating the standardized development of trust business classification.

6. PBOC Released the *Administrative Measures for Data Security in the Business Field of the PBOC (Draft for Comment)*

On July 24, 2023, the PBOC issued the *Administrative Measures for Data Security in the Business Field of the PBOC (Draft for Comment)* (the "**Administrative Measures**"). The scope of application of the Administrative Measures is the data processing activities related to various types of businesses conducted within China that the PBOC undertakes to supervise and manage. The main content of the Administrative Measures includes: (1) standardizing requirements for data classification and grading, specifying that data is divided into three levels: general data, important data, and core data; (2) proposing overall requirements for data security protection; (3) specifying the baseline requirements of security compliance for the full process of data processing activities; (4) detailing compliance requirements for risk monitoring, assessment and audit, and incident handling measures, etc.; (5) clarifying the PBOC's regulatory measures and the legal responsibilities of data processors in cases of violation. Additionally, it is worth noting that the draft explanation of the Administrative Measures points out that clauses such as "important data shall be stored within the territory of PRC" and "declaring security assessments for cross-border transfer of data under prescribed circumstances" are reiterations of legal obligations expressly provided by the promulgated higher-level laws, and without imposing additional compliance requirements.

Haiwen Comments

The Administrative Measures fully articulate related laws and regulations such as the Data Security Law, detailing and clarifying the baseline requirements for data security compliance in the PBOC's business field. They are important supplements to the data security management system in the financial industry, providing a regulatory basis for data security management by data processors in banking industry within the PRC. Furthermore, according to the Administrative Measures and its drafting explanation, the PBOC may issue other detailed regulations on matters related to the protection of personal information in the business field of the PBOC in the future.

7. NAFR Issued the *Implementation Measures for Administrative Licensing of Non-Bank Financial Institutions (Draft for Comment)*

On July 21, 2023, the NAFR formulated and revised the *Implementation Measures for Administrative Licensing of Non-Bank Financial Institutions (Draft for Comment)* (the "**Implementation Measures**"). The revisions involved focus on the following three aspects:

(1) **adjustment of certain administrative licensing conditions** in conjunction with the recent revisions to the Administrative Measures for Corporate Group Finance Companies and the Administrative Measures for Automobile Finance Companies, synchronizing the adjustment of entry standards for institution establishment and business qualification approvals; and pursuant to the Guiding Opinions on Strengthening the Supervision of Non-financial Enterprises Investing in Financial Institutions, moderately increasing the net asset ratio requirements for non-financial enterprises acting as controlling shareholders of non-bank institutions, and implementing it in accordance with the principle of the old-versus-new divide;

(2) **implementation of expanded foreign opening deployment** abolishing the restriction that overseas non-financial institutions cannot be shareholders of financial asset management companies; cancelling the total asset requirements for overseas financial institutions acting as shareholders of financial asset management companies; cancelling the total asset requirements for overseas financial institutions to invest in finance companies as strategic investors, and allowing multinational groups to directly initiate the establishment of foreign-funded finance companies; cancelling the total asset requirements for

domestic and foreign non-financial institutions acting as shareholders of automobile finance companies, and adjusting such requirements to the relevant prudential conditions;

(3) **advancement of simplifying administration and delegating power**abolishing the administrative approval of non-bank institutions issuing non-capital bonds, replacing it with a reporting process; and establishing the shelf issuance mechanism for capital bonds.

Haiwen Comments

The Implementation Measures align with newly introduced regulatory systems and policy orientation requirements in recent years, aiming to further strengthen regulatory policy guidance, enhance the quality and efficiency of entry regulation, implement the simplification of administration and the delegation of power, and fulfill the deployment for opening up, which will help to fully stimulate the market vitality of non-bank institutions.

8. SAC Issued the *Implementation Rules for Integrity Practice of Securities Operators and Their Staffs*

On July 21, 2023, the SAC modified the *Implementation Rules for Integrity Practice of Securities Operators and Their Staffs* implemented in 2020, and released the revised version (“**New Implementation Rules**”).

The main content of the New Implementation Rules includes: (1) further clarifying and improving internal control mechanisms, emphasizing that securities operators should establish and improve the leadership mechanism and basic institutional arrangements for management of integrity practice at the company level, and requiring that the related working papers for the prevention and control of risks in integrity practice be retained by securities operators for no less than 10 years; (2) introducing more specific and detailed regulations for integrity practice in key risk areas for securities operators and their staffs while carrying out securities business activities; (3) strengthening self-discipline management, explicitly incorporating the situation of integrity practice into the scope of business inspection, improving management measures, and enhancing the enforceability of the rules.

Haiwen Comments

The introduction of the New Implementation Rules helps to enhance the implementation of the integrity system, promote the implementation of the requirements for building an integrity ecosystem within the securities industry institutions, and continuously foster the culture of integrity in the securities industry.

9.NAFR Released the *Administrative Measures for Operational Risk in Banking and Insurance Institutions (Draft for Comment)*

On July 28, 2023, the NAFR issued the *Administrative Measures for Operational Risk in Banking and Insurance Institutions (Draft for Comment)*, the main content of which includes: (1) clarifying risk governance and management responsibilities, such as defining the specific scope and responsibilities of the three lines of defense in operational risk management, emphasizing that the three lines of defense, as well as within each line of defense, should establish and improve the mechanisms for sharing risk data and information; (2) setting basic requirements for risk management, specifying that banking and insurance institutions should establish basic operational risk management systems, preferences and transmission mechanisms for operational risk, build robust management information systems, and foster a positive management culture; (3) detailing management processes and tools, including explicitly making data security management one of the risk

management processes and methods; (4) improving the supervisory and management responsibilities of the NAFR and industry associations.

Haiwen Comments

Operational risk is one of the main risks faced by banking and insurance institutions in their business management. The *Administrative Measures for Operational Risk in Banking and Insurance Institutions (Draft for Comment)* unify the requirements for operational risk management across various types of banking and insurance institutions, retaining existing good rules and practices, and also introducing more comprehensive and specific requirements in response to issues exposed in practice, and the "matching principle" proposed therein also reflects the overall idea of differentiated supervision.

10. AMAC Released the *Guidelines for Handling the Disappearance of Private Fund Managers*

On July 14, 2023, the AMAC released the *Guidelines for Handling the Disappearance of Private Fund Managers* (the "**Guidelines**"), to sort out, standardize, and optimize the process for handling the disappearance of fund managers, the main content thereof includes, among others, (1) shortening the period for public announcement of disappearance (from 3 months to 1 month); (2) adjusting the current practice of suspected disappearance announcements to requiring relevant institutions to promptly report the situation to the AMAC, reasonably reducing market impact; (3) strengthening the punishment measures against fund managers disappeared, etc.

Haiwen Comments

The Guidelines further standardize the handling process of the disappearance of fund managers and are conducive to protecting the rights and interests of investors. Meanwhile, we also advise fund managers to promptly update the contact information on record with the AMAC, and regularly pay attention to various communication information to avoid missing feedback.

11. AMAC Released the *Self-Regulatory Inspection Rules of the AMAC*

On July 14, 2023, the AMAC released the *Self-Regulatory Inspection Rules of the AMAC* ("**Inspection Rules**"), which revised the "*Self-Regulatory Inspection Rules of the AMAC (Trial)*" and detailed the specific requirements for the implementation of on-site and off-site inspections by the AMAC on private fund managers and their practitioners and other self-regulatory targets.

Haiwen Comments

The Inspection Rules further improve the self-regulatory management mechanism of the AMAC, helping to combat illegal and irregular behaviors within the industry and maintain good industry order.



II Industry News

1. Three Financial Regulatory Authorities Released "*Urge Rectification of Platform Enterprises' Financial Business and Improved Normalized Regulation*"

On July 7, 2023, the PBOC, the NAFR, and the CSRC published an article titled "*Urge Rectification of Platform Enterprises' Financial Business and Improved Normalized Regulation*" on their respective official websites. The article stated that most of the prominent issues existing in the

platform enterprises' financial business have been rectified, and the priority of the financial regulatory authorities will shift from centralized rectification to normalized regulation. In the next step, the financial regulatory authorities will step up efforts to upgrade normalized regulation, all types of financial activities will be subject to regulation in accordance with the law, and the same regulatory rules will be applied to the same type of businesses so as to achieve fair regulation; and will implement financial policies and measures to promote the healthy development of the platform economy, to further strengthen their inclusive financial services, to boost technological and financial innovation and to enhance their international competitiveness so as to better support development of the real economy and to meet the needs of the people's livelihood.

2. CSRC Answered Questions on Publicly Offered Fund Fees Reform

On July 8, 2023, the first batch of 19 major public fund management companies, including E Funds, China Asset Management, Zhong Ou AMC, Harvest Fund, and BOCOM Schroders, announced that they would reduce the fees and custody rates for some of their equity funds. On the same day, the head of the relevant department of the CSRC also clarified on the Q&A session re publicly offered fund fees reform that the CSRC has formulated a work plan for publicly offered fund industry fees reform. The CSRC will further comprehensively optimize the publicly offered fund fees model, steadily reduce the overall fee level of the industry, and gradually establish and improve a mechanism suitable for China's national and market conditions, and in line with the development stage of China's publicly offered fund industry, to promote the healthy development of the industry and make it more consistent with the interests of investors.

Following the implementation of fee reductions of the above 19 major public fund management companies, a number of other fund management companies also taken steps towards similar fee reduction actions.

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