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中国证券监督管理委员会  
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尊敬的先生/女士:

Dear Sir/Madam,

关于证监会《证券投资基金投资咨询业务管理办法(征求意见稿)》  
**RE: CSRC Administrative Measures on Securities and Funds Investment  
Advisory Businesses (Consultation Draft)**

亚洲证券业与金融市场协会(“亚证协”)<sup>1</sup>谨代表其会员, 特此向中国证券监督管理委员会(“证监会”或“贵会”)提交我们对贵会于2020年4月17日发布的《证券投资基金投资咨询业务管理办法(征求意见稿)》(“征求意见稿”)的一些意见与建议。

On behalf of its members, Asia Securities Industry & Financial Markets Association ("ASIFMA")<sup>1</sup> is submitting hereby our comments and suggestions on the *Administrative Measures on Securities and Funds Investment Advisory Businesses (Consultation Draft)* (the "**Consultation Draft**") issued by the China Securities Regulatory Commission ("CSRC") on 17 April 2020.

<sup>1</sup> 亚洲证券业与金融市场协会(ASIFMA)是一个独立的区域性行业协会, 会员基础广泛, 由银行、资产管理公司、律师事务所及市场基础设施服务供应商等 130 多家领先机构组成。协会的使命是发掘金融行业的共同利益来推动亚洲资本市场的深度和广度发展, 为区内的经济发展及增长提供基本条件。ASIFMA 致力于通过清晰而有力的行业共同声音来推动业界就关键议题达成共识、提出解决方案和促进变革。我们所牵头的众多举措包括回应监管机构和交易所的咨询、树立统一的行业标准、通过政策论文倡导更优质的市场, 以及为降低亚太区内的业务成本探索可行方案。通过全球金融市场协会(GFMA), ASIFMA 与位于美国的证券业与金融市场协会(SIFMA)以及欧洲的金融市场协会(AFME)形成联盟, 共同提供全球最佳行业实践及标准, 为区域发展作贡献。详情请参阅 [www.asifma.org](http://www.asifma.org)。

ASIFMA is an independent, regional trade association with over 130 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

## DEVELOPING ASIAN CAPITAL MARKETS

亚证协会员对证监会为统一适用于证券和基金投资咨询业务(“**证券基金投资咨询业务**”)的相关规则和规范市场行为所做的努力表示欢迎与赞赏。亚证协会员尤为欣喜地看到,《征求意见稿》提出了各类金融机构从事证券基金投资咨询业务的准入标准,明确了适用范围并强化了持续合规要求。ASIFMA members welcome and appreciate the efforts made by CSRC to unify the relevant rules applicable to securities and funds investment advisory businesses ("**Securities and Funds Investment Advisory Businesses**") and standardize market practices. Our members are particularly glad to see the Consultation Draft proposes access standards for engaging in Securities and Funds Investment Advisory Businesses by all types of Financial Institutions and clarifies the applicable scope and strengthens on-going compliance requirements.

我们坚信,《征求意见稿》一旦确定并生效,将有助于进一步规范证券基金投资咨询业务、保护投资者合法权益。我们注意到,目前仍有一些尚待解决的问题可能需要证监会进一步澄清或解释。我们的问题和意见主要包含以下几个部分:

We strongly believe that the Consultation Draft, once finalized and becoming effective, will help further regulate the Securities and Funds Investment Advisory Businesses and protect the legitimate rights and interests of investors. We notice that there are still some outstanding points which can use some further clarification or explanation by CSRC. Our questions and comments are organised mainly along the following lines:

**第一部分 – 发布研究报告**

**Part 1 – Publishing research reports**

**第二部分 – 准入条件**

**Part 2 – Entry requirements**

**第三部分 – 经营管理**

**Part 3 – Operation and management**

**第四部分 – 程序化咨询**

**Part 4 – Program advisory**

**第五部分 – 跨境活动**

**Part 5 – Cross-border activities**

**第六部分 – 对私募基金管理人的适用性**

**Part 6 – Applicability to PFMs**

**第七部分 – 对商业银行理财子公司的适用性**

**Part 7 – Applicability to Bank Wealth Management Subsidiaries**

**第八部分 – 其他相关意见与建议**

**Part 8 – Other related comments and suggestions**

## 1 发布研究报告

### Publishing research reports

#### 1.1 “证券研究报告”的范围

##### Scope of "securities research reports"

参照《征求意见稿》第三条第(三)项的定义，发布证券研究报告，是指对于证券市场的整体或者部分走势进行分析预测，或者对于股票、债券等证券以及中国证监会认可的其他投资品种的投资价值、价格波动等进行分析，并向客户发布研究报告或者分析意见，直接或者间接获取经济利益的经营性活动。

By reference to the definition in Article 3(3) of the Consultation Draft, publishing securities research reports refers to the business activities of analysing and forecasting the **overall or partial trends of the securities markets**, or analysing the investment value, price fluctuations, etc. of securities such as stocks and bonds and other CSRC-approved investment types, and publishing research reports or analyses to clients to obtain economic benefits whether directly or indirectly.

就此定义而言，我们认为“证券市场的整体或者部分走势”较为宽泛，因为公募基金管理公司(“**基金管理公司**”)和私募基金管理人通常都会编制并向其客户发送关于证券市场走势的报告或评论(如新型冠状病毒肺炎对 A 股市场的影响)。我们希望了解此类报告或评论是否属于“证券研究报告”的定义范围？我们认为有必要区分针对特定或单个证券的研究报告与针对(1)宏观经济和(2)证券市场走势的报告或评论以及提供给客户和公众的报告或评论。因此，我们建议按以上提到的区别澄清“证券研究报告”的定义。

In respect of such definition, we consider "overall or partial trends of the securities markets" to be quite broad because it is very common for public fund management companies ("**FMCS**") and even private fund management companies ("**PFMS**") to prepare and send reports or commentaries to their clients on the trends of the securities market (such as the impact of COVID-19 on the A-share market). We wonder if such reports or commentaries would fall under the definition of "securities research reports". We believe that it is important to distinguish between research reports on specific or individual securities from reports or commentaries on (i) the macro-economy and (ii) trends of the securities market as well as reports or commentaries provided to clients and the public. We would, therefore, suggest that the definition of "securities research reports" be clarified to take into consideration the aforementioned differences.

此外，据我们了解，目前有部分市场参与者正在向其它实体(例如一些从事于基金投资顾问业务的实体)提供基金研究报告。关于提供基金研究报告这一行为是属于发布证券研究报告业务(第三条第(三)项)，还是属于基金投资顾问业务(第三条第(二)项)，《征求意见稿》尚不明确。我们建议贵会对《征求意见稿》的内容进行相应调整，以阐明如何处理提供基金研究报告的业务，以及哪些公司有资格从事此类业务。

In addition, we understand that some market participants are providing fund research reports to other entities such as entities that conduct fund investment advisory business. The Consultation Draft is unclear on whether the provision of fund research reports fall under the publishing of securities research report business (Article 3(3)) or under the fund investment

advisory business (Article 3(2)). We suggest that the CSRC amend the Consultation Draft to clarify how the business of providing fund research reports are dealt with and which companies are eligible to engage in this business.

## 1.2 “直接或者间接获取经济利益”

### "Directly or indirectly obtain economic benefits"

我们也注意到，发布证券研究报告业务，是指将证券研究报告提供给客户以“直接或者间接获取经济利益”。我们想与贵会确认，这是否可以理解为，如果证券研究报告提供对象非客户或没有获取经济利益，则此类活动将不构成发布证券研究报告业务。

We notice also that the definition of publishing securities research reports refers to the provision of such reports to clients to "**directly or indirectly obtain economic benefits**". This can be read to mean that if securities research reports are provided to non-clients or for no economic benefit, then they will not constitute the business of publishing securities research reports.

由于全球性的资产管理公司通常在其内部(即在集团中的不同实体之间)、并和其客户和合作伙伴共享研究报告，我们能否理解，这种“共享”将与“发布”活动将被区别对待，其原因包括(1)通常此类报告共享是一对一的，而不是面向公众发布的；以及(2)此类报告的共享将不会收取任何费用，因此资产管理公司不会从此类报告共享中获得任何经济利益(至少没有直接的经济利益)。我们的资产管理公司会员希望此类共享研究报告的行为不会构成一种需要持有业务牌照的商业活动，特别是根据《征求意见稿》，它们是没有资格申请这些业务牌照的。因此，我们希望贵会能够对《征求意见稿》进行相应修改，以进行澄清。

As it is common for global asset managers to share research reports internally (i.e. within different entities in the group) as well as with clients and partners, may we assume that such "sharing" will be treated differently from the activity of "publishing" as (i) usually, such report sharing is conducted on a one-on-one basis instead of a public distribution; and (ii) no fees will be charged for such sharing so no economic benefits (at least no direct economic benefits) would be obtained from such report sharing. Our asset manager members hope that such sharing of research reports will not constitute a business activity that would require a license that they are not even eligible for under the Consultation Draft. Therefore, we would like CSRC to amend the Consultation Draft to so clarify.

## 1.3 投资建议与研究报告之间的差异

### Difference between investment advice and research reports

根据《征求意见稿》第三条对主要业务类型的定义：

According to the definitions of major business types under Article 3 of the Consultation Draft:

- (i) 证券投资顾问业务，是指接受客户委托，按照合同约定向客户提供证券及其衍生品以及中国证监会认可的其他投资品种的投资建议，辅助客户作出投资决策的经营性活动；  
及  
securities investment advisory business refers to the business activities of accepting client appointments, **providing clients with investment advice** on securities, derivatives, and

other CSRC-approved investment types in accordance with agreements, and assisting clients in making investment decisions; and

- (ii) 发布证券研究报告业务，是指对于证券市场的整体或者部分走势进行分析预测，或者对于股票、债券等证券以及中国证监会认可的其他投资品种的投资价值、价格波动等进行分析，并向客户发布研究报告或者分析意见，直接或者间接获取经济利益的经营性活动。

publishing securities research reports business refers to the business activities of **analysing and forecasting the overall or partial trends of the securities markets, or analysing the investment value, price fluctuations, etc. of securities such as stocks and bonds and other CSRC-approved investment types**, and publishing research reports or **analyses** to clients to obtain economic benefits whether directly or indirectly.

因为“向客户提供证券投资建议”的业务似乎与“对证券的投资价值和价格波动进行分析，并向客户发布分析意见”存在重叠。在向客户提供上述第(i)项的投资建议的过程中，投资顾问很可能向客户提供包括上述第(ii)项分析意见的报告。我们理解上述二者的核心区别应当在于本条第(ii)项报告的“发布”。因此，我们希望《征求意见稿》能够对此进行明确说明并澄清“发布”的含义。

The business of "providing clients with investment advice on securities" appears to overlap with "analysing the investment value and price fluctuations of securities and publishing analyses to clients". In the course of providing clients with investment advice in (i) above, the investment advisor may as well be providing clients with reports containing the analyses mentioned in (ii) above. It seems that the main difference between the two lies in the "publication" of reports in (ii) above. Therefore, we would like the Consultation Draft makes this clear and clarify what is meant by "publication".

#### 1.4 符合条件的业务牌照持有人 Eligible license holders

根据《征求意见稿》第六条的规定，从事发布证券研究报告业务的机构，应当是依法取得证券投资咨询业务资格的证券公司或者证券公司依法设立的专门从事证券投资咨询业务的子公司。

According to Article 6 of the Consultation Draft, institutions engaged in publishing securities research reports shall be a securities company, or a subsidiary of a securities company that has been legally established to specially engage in securities investment advisory services, which has obtained a securities investment advisory business license in accordance with law.

我们尚不确定《征求意见稿》只允许证券公司发布证券研究报告而不允许基金管理公司发布的原因。如果依照前述建议将《征求意见稿》中“证券研究报告”的定义缩小，仅指针对特定证券(而不是发布关于宏观经济或者证券市场走势)的研究报告，和/或向公众(而非个别客户)发布研究报告不需要取得业务牌照；或者如果贵会能在《征求意见稿》中进一步明确“发布”的定义，那么将发行证券研究报告业务牌照仅授予证券公司的要求将不会对基金管理公司带来很大的影响。



We are not sure why only securities firms are allowed to publish securities research reports but not FMCs. Perhaps, if the definition of "securities research reports" are narrowed to refer to research reports on specific securities (and not research reports on trends of the macro economy or securities market) as suggested above and/or no license is required for research reports published to the public (and not individual clients); or if the definition of "publishing" is further clarified, then limiting the publishing securities research report license to securities companies would be less problematic for FMCs.

至少，我们希望《征求意见稿》能够明确，基金管理公司、私募基金管理人可以为其客户和集团公司提供或发布有关总体宏观经济和证券市场走势的研究报告。

At a minimum, we hope the Consultation Draft can clarify that FMCs and PFMs may issue or publish research reports on general macro-economic and securities market trends for their clients and group companies.

对许多全球性的资产管理公司来说，更重要的是其境内关联基金管理公司和/或私募基金管理人能够向其提供可靠的境内证券以及证券市场走势的研究报告，以辅助他们在华投资决策。因此，我们希望《征求意见稿》能够明确，当基金管理公司或者私募基金管理人向其在中国境内外的集团关联方，例如合格境外机构投资者(包含 QFII 和 RQFII)或其他境外集团实体提供证券研究报告时，该发布证券研究报告的活动将被豁免业务牌照要求。能向集团关联方提供此类研究报告具有非常重要的意义，这将有助于国际化集团充分利用其在华的资源，并可为提供此服务的在华关联方提供额外的收入来源和支持。

More important to many global asset managers is the ability of their onshore FMC and/or PFM affiliates to provide them with reliable research reports on onshore securities as well as securities market trends that they need to make their decisions investing into China. Therefore, we would like the Consultation Draft to expressly include an exemption from the license requirement for publishing securities research reports when such reports are provided by an FMC or PFM to its group affiliates, whether in or outside China (e.g. QFII/RQFII or other offshore group entities). The provision of such research to group affiliates is particularly important and helpful because it allows global groups to leverage off their onshore China resources and also provides an additional source of revenue and support for the onshore China affiliate providing such services.

我们建议，在《征求意见稿》第六条第三款中，增加如下部分：

We would like to suggest the addition of the below highlighted sentence to the third paragraph of Article 6 of the Consultation Draft:

*“从事发布证券研究报告业务的机构，应当是依法取得证券投资咨询业务资格的证券公司或者证券公司依法设立的专门从事证券投资咨询业务的子公司。基金管理公司、私募基金管理人及其他外资控股机构向其集团关联方提供证券研究报告不受限于本条所述的业务许可或资质要求。法律、行政法规和中国证监会另有规定的，从其规定。”*

*"Institutions engaged in publishing securities research reports shall be a securities company, or a subsidiary of a securities company that has been legally established to specially engage in securities investment advisory business, which has obtained a*

*securities investment advisory business license in accordance with law. **Securities research reports provided by FMCs, PFMs and other foreign owned institutions to their group affiliates will not be subject to such licensing or eligibility requirement.** Where laws, administrative regulations and CSRC provide otherwise, such provisions shall prevail."*

## 2 准入条件

### Entry requirements

#### 2.1 “一参一控”原则

##### "One Control One Participation" principle

《征求意见稿》第十条对金融机构提出了“一参一控”的原则，具体规定为“证券投资基金投资咨询机构股东以及股东的控股股东、实际控制人参股证券投资基金投资咨询机构的数量不得超过 2 家，其中控制证券投资基金投资咨询机构的数量不得超过 1 家。中国证监会另有规定的情形除外。”

Article 10 of the Consultation Draft proposes "one control one participation" principle for financial institutions, stipulating that "the shareholders of a securities and funds investment advisory institution, and the controlling shareholder and de facto controller of those shareholders may take equity stakes in no more than two (2) securities and funds investment advisory institutions and may control only one (1) of those institutions, unless otherwise provided by CSRC."

但是，《征求意见稿》第二条对“证券投资基金投资咨询机构”的定义是“依法经中国证监会核准或者注册，从事证券投资基金投资咨询业务的机构”。

However, "securities and funds investment advisory institutions" are defined in Article 2 of the Consultation Draft as "institutions that have been approved by or registered with CSRC to engage in Securities and Funds Investment Advisory Businesses in accordance with law".

根据该定义，拥有其它牌照(如证券公司、商业银行、基金管理公司等)但同时也从事上述业务的金融机构可被视为“证券投资基金投资咨询机构”，因此也将受到“一参一控”的限制。如果我们的以上理解无误的话，某些金融集团将受到重大影响。例如，某些机构作为股东在已获得证券投资咨询业务牌照的证券公司、商业银行和/或基金管理公司中持股，根据《征求意见稿》，这些股东将被限制设立专门的证券或基金投资咨询机构。

Under such definition, a financial institution having other licenses (such as a securities company, a commercial bank or an FMC) but also engaging in the aforementioned business may be viewed as a "securities and funds investment advisory institution", and therefore subject to the "one control one participation" restriction. If our understanding is correct, some financial groups will be significantly impacted. For example, some shareholders with an interest in a securities company, a commercial bank and/or an FMC that already holds a securities investment advisory license will be restricted from setting up a specialized securities or fund investment advisory institution.

我们想了解以上可能造成的影响是否与《征求意见稿》的本意相一致，或者“一参一控”的原则应当分别适用于三种不同的证券投资基金投资咨询业务，或应当分别适用于证券投资咨询机

机构和基金投资咨询机构。我们建议贵会根据上述意见澄清《征求意见稿》第十条。

We wonder if this is the intent of the Consultation Draft or whether the "one control one participation" principle should apply to each of the three different Securities and Funds Investment Advisory Businesses separately or to securities investment advisory institutions and funds investment advisory institutions separately. We suggest that CSRC clarify Article 10 of the Consultation as per the above.

## 2.2 净资产要求

### Net assets requirements

我们注意到，《征求意见稿》第八条要求申请从事证券基金投资咨询业务的机构，净资产不得低于1亿元人民币。我们认为上述的净资本要求非常高，尤其是对于新成立的金融机构(如基金管理公司)，因为在其经营范围中增加证券基金投资咨询业务将对这些公司特别有利。我们希望能够在《征求意见稿》第三十四条第一款所列条款中增加“第八条”，使其与第九条一样，不适用于该条款所列的金融机构。

We noticed that Article 8 of the Consultation Draft requires those institutions applying to engage in Securities and Funds Investment Advisory Businesses to have net assets of not less than RMB 100 million. We are of the view that the above net assets requirement is very high, particularly for newly-established financial institutions (e.g., FMCs), which may benefit from having Securities and Funds Investment Advisory Businesses in their business scope. We would like to request that Article 8 be added to the first paragraph of Article 34 of the Consultation Draft so that like Article 9, it is not applicable to the financial institutions listed therein.

我们也希望贵会能明确净资产要求是否将作为持续要求。如果确实作为持续要求，我们建议在净资产未达到最低人民币1亿元的情况下提供公司一段时间加以整改。

We hope if CSRC can clarify whether the net assets requirement is an ongoing one. If so, to provide the company a certain period to rectify if the net assets drop below the minimum RMB 100 million.

## 2.3 人员资质要求

### Personnel qualification requirements

我们注意到，《征求意见稿》中对高级管理人员的资质要求与基金管理公司的规定有所不同。此外，在证监会近期推出的公募基金投资顾问业务试点计划(“**试点业务**”)中，试点业务应与可能与其存在利益冲突的其它业务(如基金管理业务)进行分离。就此而言，如果一家基金管理公司计划在将来申请试点业务许可，是否需要确保其指定的高级管理人员既能满足《征求意见稿》又能满足基金管理公司相关规定的高级管理人员的资质要求才能负责试点业务？如果《征求意见稿》第八条第三项能明确上述要点，那将会对我们非常有帮助。

We noticed that the qualification requirements of senior management personnel under this Consultation Draft are different from those under the regulations for FMCs. In addition, under the pilot program of fund investment advisory ("**FIA**") business introduced by CSRC recently, FIA is required to be segregated from other businesses that may have a conflict of interest with FIA (e.g., fund management business). In this connection, if an FMC is planning to apply for an FIA



license in the future, does it need to designate a senior management personnel who can satisfy both the qualification requirements of senior management personnel under this Consultation Draft and under the FMC regulations in order to be responsible for the FIA business? It would be helpful if Article 8(3) of the Consultation Draft can clarify the foregoing.

我们还注意到《征求意见稿》第十四条规定，“证券基金投资咨询机构从事业务推广，客户招揽，合同签订，投资建议或者研究报告的形成与提供，设计、运营、维护与投资建议有关的算法和模型，客户回访，投诉处理等各业务环节的人员，应当按照规定进行执业登记或者注册。”

We also noticed that Article 14 of the Consultation Draft stipulates that "the personnel of securities and funds investment advisory institutions engaging in a line of business such as business promotion, client solicitation, contract execution, formulation and provision of investment advice and research reports, design, operation and maintenance of algorithms and models related to investment advice, client review and complaint handling, etc., shall register as practitioners in accordance with the regulations".

但在第十四条中并没有明确这些不同人员应注册哪一类业务以及每一类业务的何种具体从业资格。根据我们的了解，目前有基金从业资格、证券从业资格和证券投资顾问资格。上述人员满足这三个资格之一是否足够，或是否还存在其他资格条件？如果《征求意见稿》能够具体说明或贵会能够进一步以书面形式明确，将会对我们很有帮助。

However, Article 14 does not specify which practice these different personnel should register for and what are the qualifications for each such practice. We understand that currently there are fund practitioner qualification, securities practitioner qualification and securities investment consultant qualification. Is it sufficient for the aforementioned personnel to meet one of these three qualifications or are there other qualifications? It would be helpful if the Consultation Draft can specify or if CSRC can further clarify in writing.

#### 2.4 按合并口径适用第八条和第九条

##### Consolidation for Articles 8 and 9 purposes

《征求意见稿》第三十四条第二款规定，“证券公司、基金管理公司、期货公司、商业银行、保险公司以及中国证监会认可的其他机构通过其全资下设机构申请从事证券基金投资咨询业务的，可以按照合并口径适用本办法第八条、第九条的规定。”

The second paragraph of Article 34 of the Consultation Draft stipulates that "where securities companies, FMCs, futures companies, commercial banks, insurance companies, and **any other institutions recognized by CSRC** use their wholly-funded subsidiaries to apply to engage in Securities and Funds Investment Advisory Businesses, consolidation approach may be applied to Articles 8 and Article 9 of these Measures."

我们希望贵会明确，“中国证监会认可的其他机构”是否包括外国公司，因为一些外国公司正在中国设立基金管理公司和证券公司。鉴于外国公司可能在中国设立实体以从事证券基金投资咨询业务，我们希望外国公司可以从《征求意见稿》第 34 条规定的合并口径中受益。

We would like to clarify with CSRC if "any other institutions recognized by CSRC" include foreign companies since some are setting up FMCs and securities companies in China. We see no reason why foreign companies should not be able to benefit from the consolidation approach in Article 34 as they may be setting up an entity in China to engage in Securities and Funds Investment Advisory Businesses.

此外，我们注意到，《征求意见稿》第九条不适用于第三十四条第一款所规定的证券投资基金投资咨询机构，但却适用于第三十四条第二款所规定的从事证券投资基金投资咨询业务的金融机构全资下设机构。因此，《征求意见稿》中若能明确合并口径如何操作(特别是对于第九条的适用方式)，这将对我们非常有帮助。

In addition, it would be helpful if the Consultation Draft can clarify how would the consolidated approach operate, especially for the application of Article 9 since it does not apply to a securities and funds investment advisory institution under the first paragraph of Article 34 but Article 9 applies to wholly owned subsidiaries of financial institutions that engage in the Securities and Funds Investment Advisory Businesses under the second paragraph of Article 34.

### **3 经营管理**

#### **Operation and management**

#### **3.1 集中统一管理**

##### Centralized and unified management

《征求意见稿》第十三条规定，“证券投资基金投资咨询机构应当对其开展证券投资基金投资咨询业务的从业人员、分支机构的业务活动进行集中统一管理”。我们希望向贵会了解“集中统一管理”的具体标准，以及这一标准是否会影响到目前基金管理公司需要将其基金投资顾问业务(针对第三方或者资产管理产品)与基金管理业务互相分离的要求。

Article 13 of the Consultation Draft stipulates that "securities and funds investment advisory institutions shall conduct centralized and unified management of the business activities of its practitioners and branches that carry out Securities and Funds Investment Advisory Businesses". We would like to understand what are the CSRC standards for such "centralized and unified management" and how these standards affect FMCs which currently are required to keep their fund investment advisory business (to third parties or for asset management products ("AMPs")) separate from their fund management business.

第十三条第二款进一步规定了“证券投资基金投资咨询机构向客户提供的投资建议、研究报告等，应当经公司内部集中统一的决策程序生成和调整，从业人员仅负责相关信息的传递和讲解，不得自行生成或者调整，中国证监会另有规定的除外”。我们希望贵会能够对上述要求做出进一步细化解释。

The second paragraph of Article 13 further stipulates that "the investment advice and research reports provided by a securities and funds investment advisory institution to clients shall be generated and adjusted through internal centralized and unified decision-making procedures and the practitioners of securities and funds investment advisory institutions are only responsible for the transmission and explanation of relevant information and shall not generate

or adjust such information by themselves, unless otherwise provided for by CSRC". We would like to request further clarification on the details of the above requirement.

我们理解，对于基金投资顾问业务，投资建议可能由投资委员会产生，但对于其他投资顾问业务，如为资产管理产品或第三方提供咨询服务等，公司可不设投资委员会，投资建议由公司从业人员提出。

We understand that for fund investment advisory business, the investment advice may be generated by an investment committee, but for other investment advisory business, such as providing advisory for AMPs or to third parties, there may not be any investment committee and investment advice is given by the practitioners who work for the company.

### 3.2 客户利益优先

#### Priority on client's interests

我们赞同《征求意见稿》第十七条的规定，即要求证券投资基金投资咨询机构及其从业人员应遵循“客户利益优先”的原则，这在大多数发达市场都是如此。我们的问题在于，第十七条要求有“充分证据”证明相关投资咨询服务有利于客户，且如不提供此类建议可能损害客户利益。我们理解提供该等证据可能比较困难，特别是证明“如不提供相关建议可能损害客户利益”。我们建议，是否可以沿用证监会《关于做好公开募集证券投资基金投资顾问业务试点工作的通知》的规定，免除关于“充分证据”的要求，证券投资基金投资咨询机构做到向客户事先披露任何关联关系并取得了客户书面同意即可从事相关关联交易。

We agree with Article 17 of the Consultation Draft which requires securities and fund investment advisory institutions and their practitioners to follow the principle of "priority on client's interests", which is the case in most developed markets. Our question or issue is with the requirement in Article 17 for there to be "sufficient evidence" to prove that the relevant investment advisory services are beneficial to the clients and failure to provide such advice may damage the clients' interests. Providing such evidence may be difficult, especially for proving that "failure to provide such advice may damage the clients' interest". We suggest following the provisions under *Circular on Strengthening the Pilot Program on the Investment Consulting Business for Public Offering Securities Investment Fund* and removing the requirement of "sufficient evidence", i.e., the securities and fund investment advisory institutions may conduct related party transaction once they disclose any related party relationship in advance and get prior written consent of the client.

### 3.3 适当性管理义务

#### Suitability management obligations

我们赞同《征求意见稿》第十八条关于证券投资基金投资咨询机构承担适当性管理义务的规定，这在大多数发达市场是常见的。但是，如果证券投资基金投资咨询机构发布针对公众而非特定客户的证券研究报告是否仍应适用此类义务，我们对此仍有疑问。我们建议《征求意见稿》第十八条能够明确这一区别。

We agree with the suitability management obligations to be undertaken by securities and funds investment advisory institutions under Article 18 of the Consultation Draft, which is common in

most developed markets. However, we question whether such obligations should apply if a securities and funds investment advisory institution publishes securities research reports which are for a large audience and not for a specific client. We suggest that Article 18 clarifies this distinction.

### 3.4 独立研究部门和第三方支持

#### Independent research department and third party support

《征求意见稿》第十九条第(二)项规定，投资建议应当由生成投资建议的部门以外的独立研究部门出具可行性研究意见，并有其他证券投资基金投资咨询机构的研究报告或者分析意见的支持。我们想与贵会确认这一规定只适用于从事发布证券研究报告业务的机构，而不适用于其他投资咨询业务。否则，这项要求将会非常繁重，并影响到证券投资基金投资咨询机构及时提供给客户和资产管理产品的投资建议。

Article 19(2) of the Consultation Draft provides that an independent research department other than the department generating the investment advice should issue the feasibility research opinions which are supported by the research reports or analytical opinions of other securities and funds investment advisory institutions. We would like to clarify with the CSRC that this provision applies to those institutions that are engaged in the publishing securities research reports and not the other investment advisory businesses. Otherwise, this requirement will be very burdensome and slow down investment advice being provided by securities and funds investment advisory institutions to clients and AMPs.

即使从从事发布证券研究报告业务的机构角度来看，《征求意见稿》第十九条第二款第(二)项的要求也较为繁重。不同机构之间可能会对证券市场或特定证券存在意见分歧，而且这些研究报告的读者也愿意听到不同的观点，进而对不同的机构观点进行对比，所以要求有其他证券投资基金投资咨询机构的研究报告或者分析意见的支持不代表出具的投资建议更可靠或能够更好地保护客户的利益。

Even from the point of view of those institutions that engage in the business of publishing securities research reports, the requirement in Article 19(2) seems very onerous and fails to take into consideration that institutions may have differing views on the securities markets or specific securities, and that readers of such research reports will want to hear different views and compare the views of different institutions. Therefore, requiring support by research reports or analytical opinions of other securities and funds investment advisory institutions does not necessarily mean that the investment advice is more reliable or better protects the interest of the clients.

### 3.5 外包限制

#### Outsourcing Restrictions

我们注意到《征求意见稿》第二十条允许证券投资基金投资咨询机构委托具有相应证券投资基金投资咨询业务资格的机构为其提供研究报告，投资建议，算法和模型的设计、运营、维护等服务。第二十条要求提供外包服务的一方应当具有相应证券投资基金投资咨询业务资格。然而，如果外包服务商是为证券投资基金投资咨询机构开发证券/基金投顾软件的技术公司，则我们认为该技术

公司无需获得相应证券投资基金投资咨询业务资格。我们希望证监会能够确认我们的理解无误，并考虑是否应对第二十条的内容进行进一步调整。

We noticed that Article 20 of the Consultation Draft allows securities and funds investment advisory institutions to appoint institutions with the corresponding securities and funds investment advisory business qualifications to provide it with research reports, investment advice, and design, operation and maintenance of algorithms and models, etc. Article 20 requires that the party providing outsourcing services must be licensed. However, if the outsourcing party is a technology company that will develop a securities/fund investment advisory software for a securities and funds investment advisory institution, we believe there is no need for the technology company to obtain a license. It would be much appreciated if CSRC could confirm on our understanding, and consider if any further amendments should be made to Article 20.

### 3.6 风险准备金

#### Risk reserve funds

《征求意见稿》第二十三条要求投资咨询机构应当计提风险准备金。我们请求贵会对上述要求进行进一步澄清，例如风险准备金如何运作，以及风险准备金需要满足何种门槛要求。

Article 23 of the Consultation Draft provides that the investment advisory institution will be required to keep a Risk Reserve. We request that the CSRC clarify the above requirement. For example, how would the Risk Reserve operate, and what are the thresholds for the Risk Reserve.

## 4 程序化咨询

### **Program advisory**

我们高兴地看到《征求意见稿》第三十五条提及利用算法、模型等信息化技术手段，提供自动化的证券投资基金投资咨询服务。该条同时要求证券投资基金投资咨询机构将有关技术方案、模型参数、投资逻辑等信息和资料向住所地中国证监会派出机构报告。

We are pleased to see that Article 35 of the Consultation Draft mentioned use of algorithms, models, and other information technology means to provide automated securities and funds investment advisory services. Article 35 also requires securities and funds investment advisory institutions to report the relevant technology solutions, model parameters, investment logic and other information and materials to the local CSRC bureau.

关于上述要求，我们希望贵会能进一步澄清需报告的信息和材料内容。此外，鉴于这些信息的专有性以及高度机密性，我们希望更好地了解所需信息的确切范围和详细程度。我们还希望进一步了解贵会如何处理信息和资料，以确保其机密性。为了提供更清晰的指导，我们建议贵会与相关机构开展合作，以提供一份广泛的技术应用、模型和算法清单。这将有助于服务提供商确认他们向客户提供的服务是否属于《征求意见稿》定义的“自动化的证券投资基金投资咨询服务”，并且确保其建立了必要的控制和风险系统。

In connection with the above requirement, we believe it is important that CSRC provide further clarification on what information and materials are to be reported. Further, given the information will be proprietary, and highly confidential, we would like to better understand the



exact scope and depth of the required information. We would also appreciate further visibility on how CSRC will deal with the information and materials to ensure that it remains confidential. With a view to providing clearer guidance, we suggest that CSRC work with institutions to build an extensive list of technological applications, models, and algorithms. This would enable the service provider to confirm whether the services they offer to their customers are within the aforementioned definition and that they have the necessary controls and risk systems in place.

## 5 跨境活动

### Cross-border activities

#### 5.1 具有某些境外要素的投资咨询服务

##### Investment advisory services with certain offshore elements

《征求意见稿》的第三十七条将“证券”定义为境内外发行和上市交易的股票、债券等证券，但是《征求意见稿》没有对“基金”或“证券投资基金”作出具体定义。

Article 37 of the Consultation Draft defines "securities" as stocks, bonds and other securities issued and publicly traded on domestic and overseas exchanges. However, the Consultation Draft does not provide a specific definition for "funds" or "securities investment fund".

鉴于上述情况，我们希望了解以下类型的活动是否受《征求意见稿》的约束。

In light of the foregoing, we would like to understand whether or not the below types of activities are subject to the Consultation Draft.

- (i) 有关境外客户或投资者投资境内证券的证券投资顾问业务；  
securities investment advisory business in respect of offshore clients or investors that invest in domestic securities;
- (ii) 有关境外产品(如通过港股通投资 A 股的基金)投资于境内证券的证券投资顾问业务或投资于境内基金的基金投资顾问业务；  
securities investment advisory business in respect of offshore products that invest in domestic securities (such as funds investing in A-shares under Stock Connect) or fund investment advisory business in respect of offshore products that invest in onshore funds;
- (iii) 为中国的私募基金提供证券投资顾问业务；  
securities investment advisory business in respect of privately offered funds in China;
- (iv) 发布有关境外证券产品的证券研究报告；  
publishing securities research reports in respect of offshore securities products;
- (v) 发布境外基金投资境内证券产品的基金研究报告；及  
publishing fund research reports in respect of offshore funds that invest in onshore securities product; and

- (vi) 在境外向境内主体就境外证券投资（例如通过港股通投资港股）提供投资顾问服务。  
providing investment advisory service to onshore clients in respect of investments in offshore securities (such as investing in Hong Kong shares through Stock Connect).

## 5.2 针对外国投资者的投资咨询 Investment advisory for foreign investors

我们注意到，《征求意见稿》第三十四条提到，私募基金管理人可以为资产管理产品及关联的合格境外投资者提供证券投资基金投资咨询服务，证监会对私募基金管理人还可能另有规定。但是，除了私募基金管理人以外，基金管理公司也可以向境外投资者提供证券投资基金投资咨询服务，这些境外投资者可以不限于传统的合格境外机构投资者，也可以是境外机构或其他类型的境外投资者(例如投资于中国境内的境外基金)，这些境外投资者可通过内地与香港股票市场交易互联互通机制、债券通机制和/或直接投资银行间债券市场，投资于中国证券和债券市场，且可能与证券投资基金投资咨询机构存在或不存在关联关系。我们希望，为鼓励外国投资进入中国，贵会能够鼓励境内证券投资基金投资咨询机构为上述所有的外国投资者提供投资咨询服务。因此，我们建议《征求意见稿》可对上述内容加以明确。

We noticed that Article 34 of the Consultation Draft mentions that PFMs may be providing securities and funds investment advisory services for AMPs and to affiliated qualified foreign investors and that there may be separate regulations from CSRC for PFMs. However, besides PFMs, FMCs may also provide securities and funds investment advisory services to foreign investors, which may not be limited to QFII/RQFII but also foreign institutions or other types of foreign investors (such as overseas funds that invest in China) which may be investing in the China securities and bond markets through Mainland-Hong Kong Stock Connects, Bond Connect and/or CIBM Direct, and which may or may not be affiliated with the securities and funds investment advisory institutions. We assume that, to encourage foreign investments into China, CSRC would want domestic securities and funds investment advisory institutions to provide all of the aforementioned foreign investors with their investment advisory services. Therefore, we suggest that the Consultation Draft clarify the foregoing.

## 6 **对私募基金管理人的适用性** **Applicability to PFMs**

我们注意到，《征求意见稿》第三十四条规定，“私募基金管理人为资产管理产品提供证券投资基金投资咨询服务，为存在实际控制关系或者受同一控制人控制的合格境外投资者提供证券投资基金投资咨询服务，中国证监会另有规定的，从其规定”。

We noticed that Article 34 of the Consultation Draft stipulates that "where a private fund manager provides securities and funds investment advisory services for AMPs or provides securities and funds investment advisory services to qualified foreign investors having an actual controlling relationship or under common control of the same controller and CSRC has other regulations therefor, such other regulations shall prevail."

根据我们的了解，贵会于2018年10月22日发布了《证券期货经营机构私募资产管理计划运作管理规定》(“《**私募资管规定**》”)，中国证券投资基金业协会(“**基金业协会**”)于2016年

10月21日发布了《证券期货经营机构私募资产管理计划备案管理规范第2号-委托第三方机构提供投资建议服务》(“《**私募资管备案规范**》”)。根据上述规定,外商独资的私募基金管理人可以为证券期货经营机构的资产管理产品提供投资咨询服务。

We understand that CSRC promulgated the *Administrative Provisions on the Operation of Private Asset Management Plans by Securities and Futures Business Institutions* (the "**Private AMP Provisions**") on 22 October 2018 and the Asset Management Association of China issued the *Filing Standards for Private Asset Management Plans by Securities and Futures Business Institutions No. 2 - Appointing Third Party Institutions to Provide Investment Advisory Services* (the "**Private AMP Filing Standards**") on 21 October 2016. According to the aforementioned rules, a PFM WFOE is allowed to provide investment advisory services in relation to the AMPs of securities and futures business institutions.

根据《征求意见稿》第三十四条第三款,我们理解,《私募资管规定》和《私募资管备案规范》仍将适用于私募基金管理人(含外商独资的私募基金管理人)。但是,对于《征求意见稿》中未被《私募资管规定》和《私募资管备案规范》涵盖的其他条款,是否适用于私募基金管理人尚未明确。例如,私募基金管理人是否只能根据《私募资管规定》和《私募资管备案规范》的规定,向证券期货经营机构的资产管理产品及与之存在关联关系的合格境外投资者提供投资咨询服务,还是可以按照《征求意见稿》的规定从事证券投资基金投资咨询业务,而不仅限于资产管理产品或者其关联合格境外机构投资者?如果贵会能够更清楚地明确《征求意见稿》中哪些条款适用于私募基金管理人,这将会对我们很有帮助。

Based on the third paragraph of Article 34 of the Consultation Draft, we understand that the Private AMP Provisions and the Private AMP Filing Standards would continue to apply to PFMs (including PFM WFOEs). However, it is unclear if the other provisions in the Consultation Draft which are not covered in the aforementioned Private AMP Provisions and the Private AMP Filing Standards apply to PFMs. For example, are PFMs only able to provide investment advisory services to AMPs of securities and futures business institutions and affiliated qualified foreign investors based on the Private AMP Provisions and the Private AMP Filing Standards, or can they engage in the Securities and Funds Investment Advisory Businesses under the Consultation Draft which is not limited to AMPs or affiliated QFIIs/RQFIIs? It would be helpful if CSRC can clarify which provisions of the Consultation Draft apply to PFMs.

另外,我们理解目前保险资金不能投资于私募证券基金,但并未限制私募基金管理人为保险公司提供投资咨询服务,但《征求意见稿》仅提及“私募基金管理人为资产管理产品提供证券投资基金投资咨询服务”似乎将为保险公司的内部投资组合提供证券或基金投资咨询服务排除在外。我们建议删去“为资产管理产品”以保持更大的灵活性。

While we understand that currently insurance funds cannot invest in private securities funds, there is no restriction on PFMs providing investment advisory service to insurance companies. However, the Consultation Draft only mentions "provide securities and funds investment advisory services for AMPs" which seems to rule out providing securities or funds investment advisory services to insurance companies. We suggest deleting "for AMP" in Article 34 to maintain flexibility.

## 7 对商业银行理财子公司的适用性

### Applicability to Bank Wealth Management Subsidiaries

国务院金融稳定发展委员会办公室于 2019 年 7 月 20 日发布了十一条金融业对外开放措施(1) 鼓励境外金融机构参与设立、投资入股商业银行理财子公司(“**银行理财业务**”)(第二条举措); 以及(2)允许境外资产管理机构与中资银行的子公司合资设立由外方控股的理财公司(“**理财子公司**”)(第三条举措)。

The 11 Measures for Further Opening Up Financial Sectors issued by the Office of Financial Stability and Development Committee of the State Council on 20 July 2019 (a) encourage foreign financial institutions to participate in the establishment of or investment in the asset management subsidiaries of commercial banks ("**Bank Wealth Management Business**") (Measure No. 2) and (b) allow foreign asset management institutions to partner with the subsidiaries of Chinese banks to set up wealth management companies ("**Wealth Management Subsidiaries**") with the majority stake being held by the foreign party (Measure No. 3).

对此我们理解, 银行理财业务和理财子公司主要受中国银行保险监督管理委员会监管。银行理财业务和理财子公司可能会就其本身或其他金融机构发行的资产管理产品向客户提供投资咨询服务。

Our understanding is that the Bank Wealth Management Business and Wealth Management Subsidiaries are primarily regulated by the China Banking and Insurance Regulatory Commission. We further understand that a Bank Wealth Management Business or Wealth Management Subsidiaries may provide investment advisory services to clients with respect to the asset management products issued by them or by other financial institutions.

我们希望贵会能够澄清《征求意见稿》的规定是否适用于银行理财业务和理财子公司, 例如: 为了在中国开展证券投资基金投资咨询业务, 银行理财业务和理财子公司是否需要获得《征求意见稿》中规定的业务牌照。

We hope that the CSRC can clarify whether the requirements of the Consultation Draft would apply to the Bank Wealth Management Business and Wealth Management Subsidiaries. For example, whether the business licence stipulated in the Consultation Draft is required to be obtained by such Business or Wealth Management Subsidiaries so as to conduct Securities and Funds Investment Advisory Businesses in China.

## 8 其他相关意见与建议

### Other related queries and suggestions

#### 8.1 商品期货投资咨询

##### Investment advisory for commodities futures

参照《征求意见稿》第三条第(一)项规定的范围, 证券投资顾问业务, 是指接受客户委托, 按照合同约定向客户提供证券及其衍生品以及中国证监会认可的其他投资品种的投资建议, 辅助客户作出投资决策的经营性活动。我们想了解针对商品期货的投资建议是否包括在《征求意见稿》的适用范围内, 如果不包括, 鉴于贵会于 1997 年发布的《证券、期货投资咨询管

理暂行办法》同时涵盖了期货类与证券类投资咨询业务，我们想要进一步了解针对商品期货的投资建议是否将另作规定。

By reference to the defined scope under Article 3(1) of the Consultation Draft, securities investment advisory business refers to the business activities of accepting client appointments, providing clients with investment advice on securities and their derivatives as well as other CSRC-approved investment types, and assisting clients with making investment decisions in accordance with their contractual agreement. We would like to know whether investment advice on commodities futures is covered in the applicable scope of the Consultation Draft and if not, whether it will be dealt with separately, considering that the *Interim Measures for Administration of Securities and Futures Investment Advisory Services* issued by CSRC in 1997 cover both futures and securities investment advisory services.

## 8.2 针对零售基金的权益部分的子顾问服务

### Sub-advisory services to an equity sleeve of a retail fund

鉴于《征求意见稿》第三条第(一)项提及“中国证监会认可的其他投资品种”，我们希望贵会可以明确，基金管理公司是否可委任证券投资咨询机构就其零售基金的权益部分提供子顾问服务，或管理其零售基金的权益部分，代表基金管理公司作出及执行投资决定。

Article 3(1) of the Consultation Draft mentions "other CSRC-approved investment types". We would like CSRC to clarify whether a FMC can appoint a securities investment advisory institution to sub-advise an equity sleeve of its retail fund or manage the equity sleeve of its retail fund by making and executing investment decisions on behalf of the FMC.

## 8.3 业务牌照要求的豁免

### Exemption to license requirement

根据《征求意见稿》第三十三条第二款规定，依法从事资产管理业务的证券期货经营机构，为资产管理产品提供证券基金投资咨询服务的，不受《征求意见稿》第六条的限制，但应当遵守本办法和中国证监会的其他规定。鉴于我们了解一些证券公司和基金管理公司向第三方投资者(而不仅仅是资产管理产品)提供证券基金投资咨询服务，我们建议将第三十三条规定的豁免范围扩大到这类投资者。

The second paragraph of Article 33 of the Consultation Draft exempts from the license requirement in Article 6 securities and futures institutions that engage in the asset management business in accordance with law and those institutions that provide securities and funds investment advisory services for AMPs provided that they comply with the Consultation Draft and other CSRC requirements. Since we understand that some securities companies and FMCs provide securities and funds investment advisory services to third party investors (and not just AMPs), we suggest that the exemption provided in Article 33 should be expanded to cover such investors.

亚证协非常感谢贵会考虑本文提出的要点和问题，并很乐意适时更详细地与证监会讨论这些问题。如果您有任何疑问，请联系沈玉琪女士(电邮 [eshen@asifma.org](mailto:eshen@asifma.org) 或 电话+852 2531 6570)。本函由我会会员汉坤律师事务所在广泛征求本协会会员意见后撰写。



ASIFMA deeply appreciates CSRC's consideration of the points and questions raised in this submission and would be pleased to discuss them in greater detail with CSRC if deemed appropriate. Please feel free to contact Eugenie Shen at [eshen@asifma.org](mailto:eshen@asifma.org) or Tel: 2531 6570 if you have any questions. This submission was prepared by PRC law firm Han Kun Law Offices, an ASIFMA member, based on feedback from the wider ASIFMA membership.

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Yours sincerely,



Mark Austen

Chief Executive Officer 首席执行官

Asia Securities Industry & Financial Markets Association 亚洲证券业与金融市场协会