

资本市场法律热点问题

国家外汇管理局发布 QFII 新规

2016年2月3日，国家外汇管理局（“外管局”）重新发布了《合格境外机构投资者境内证券投资外汇管理规定》（“《新规》”），《新规》自公布之日生效。《新规》在合格境外机构投资者（“QFII”）

的投资额度管理、锁定期和资金汇入汇出方面取消或放宽了原有规定的若干限制，有利于推动QFII进一步参与境内证券市场的投资。以下对照原规定对主要的修改内容做一简要对比。

	QFII 新规	原有规定
投资额度管理	<ul style="list-style-type: none"> ● 按照资产规模计算基础额度并对基础额度实施备案管理；申请基础额度内的投资额度备案的，由托管人负责审核 QFII 提供的相关证明材料及核实额度后报外管局备案并由外管局确认。 ● 基础额度应不高于 50 亿美元，不低于 2000 万美元。 ● 基础额度之外，实施审批管理；申请超过基础额度的投资额度的，通过托管人向外管局提交材料并由外管局批准。 ● 取消单次申请额度的上限和下限。 	<ul style="list-style-type: none"> ● 对投资额度实施审批管理。 ● 单次申请额度应不低于 5000 万美元，累计不高于 10 亿美元(境外主权基金、央行及货币当局等机构不受 10 亿美元的限制)。 ● 前次额度获批后一年内不得再次申请增加额度。
资金汇入	<ul style="list-style-type: none"> ● 未规定投资本金汇入的限期，但投资额度自备案或批准之日起 1 年内未能有效使用的，外管局有权收回全部或部分未使用的投资额度。 ● 外管局对 QFII 投资额度实行余额管理，即 QFII 累计净汇入资金不得超过经备案或批准的投资额度；QFII 可自行决定汇出投资本金及收益，不因本金汇出而被相应调减投资额度。 	<ul style="list-style-type: none"> ● 投资额度获批之日起 6 个月汇入投资本金。 ● 除开放式中国基金之外汇出本金的，需外管局审核批准并相应调减投资额度。 ● 开放式基金出现净赎回的，将根据投资本金和损益的比例计算汇出本金数额并相应调减投资额度。
投资本金锁定期	3 个月，自累计汇入投资本金达到 2000 万美元起算。	一年(或 3 个月，如是开放式基金)，自投资额度获批后六个月起算。
资金汇出	<ul style="list-style-type: none"> ● QFII 每月累计净汇出资金不得超过其上一年度境内总资产的 20%。 ● 开放式基金可按日申购、赎回，但每月累计净汇 	<ul style="list-style-type: none"> ● QFII 每月汇出资金（本金、收益）总额不得超过其上一年度境内总资产的 20%。

	出资金不得超过上年底基金境内总资产的 20%。	● 开放式基金可按照申购或赎回的轧差净额按周办理资金汇入汇出。
账户开立	QFII 可为其管理的客户资金开立多个人民币专用存款账户（证券交易），并与外汇账户存在对应关系。	QFII 只能为其管理的客户资金开立一个外汇账户，开立的人民币专用存款账户不能超过 6 个。

《新规》规定的基础额度的计算公式为：

QFII 或其所属集团的资产或管理的资产主要在中国境外的，计算公式为：1 亿美元+近三年平均资产规模*0.2% - 已获取的人民币合格境外机构投资者（“RQFII”）额度（折合美元计算）；但境外主权基金、央行及货币当局等机构的投资额度不受前述资产规模比例限制。

QFII 或其所属集团的资产或管理的资产主要在中国境内的，计算公式为：等值 50 亿元人民币+上年

度资产规模*80% - 已获取的 RQFII 额度（折合美元计算）。

在《新规》发布之前已经取得投资额度的 QFII 申请增加额度的，同样适用《新规》中有关备案和审批的规定。值得注意的是，《新规》在额度增加和资金汇入期限等方面吸收了《人民币合格境外机构投资者境内证券投资试点办法》（2013 年颁布）若干较宽松的规定，并再次强调 QFII 不得以任何形式转卖、转让投资额度给其他机构和个人使用。

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Capital Markets

Client Alert: SAFE Issued New Regulation on QFII

On February 3, 2016, the State Administration of Foreign Exchange (“SAFE”) reissued *the Provisions on Foreign Exchange Administration of the Domestic Securities Investment by Qualified Foreign Institutional Investors* (“**New Regulation**”), which came into force the same day. The New Regulation loosens certain restrictions of the original provisions in terms of

the administration of the investment quota, lock-up period and capital inflow and outflow of the Qualified Foreign Institutional Investors (“**QFIIs**”) to promote further participation by QFIIs in the domestic securities market. Below is a summary of key amendments compared with the original provisions.

	New Regulation	Original Provisions
Administration of Investment Quota	<ul style="list-style-type: none"> ● Calculate the basic quota based on the AUM of the applicant and implement a record filing system for basic quota applications; for an application within a basic quota, the custodian bank will examine the relevant materials provided by the applicant, verify the quota and then report to SAFE for filing and confirmation. ● A basic quota will be between USD 20 million and USD 5 billion. ● Implement an approval system for applications in excess of the basic quota; for an application exceeding the basic quota, the relevant materials shall be submitted through the custodian bank to SAFE for approval. ● Cancellation of the upper and lower limits of the investment quota per 	<ul style="list-style-type: none"> ● Implement an approval system for investment quota applications. ● The investment quota per application shall be no less than USD 50 million and no more than USD 1 billion (the investment quotas of foreign sovereign wealth funds, central banks and monetary authorities will not be subject to the USD 1 billion restriction); ● A QFII shall not apply for another increase in investment quota within 1 year of the preceding approval for investment quota.

	application.	
Inbound Remittance	<ul style="list-style-type: none"> No requirement on the time frame for the inbound remittance of QFII's investment principal, however, if the investment quota of a QFII has not been effectively used within 1 year after the date of filing or approval, SAFE may cancel all or part of the unused investment quota. SAFE implements administration of the balance of QFII's investment quota: the accumulated net capital inflow of a QFII shall not exceed the filed or approved quota; a QFII may, at its discretion, make an outbound remittance of its investment principal and returns, and its investment quota will not be reduced in line with outbound remittance of investment principal. 	<ul style="list-style-type: none"> A QFII shall make an inbound remittance of the investment principal within 6 months of approval of each investment quota. A QFII, other than an open-ended Chinese fund, that needs to remit its investment principal abroad shall apply to SAFE, and its investment quota will be reduced in line with outbound remittance of investment principal. In case of net redemption of an open-ended fund, the investment quota of the QFII shall be reduced upon calculation of the principal amount based on the proportion between the investment principal and profit and loss.
Lock-up Period of Investment Principal	3 months, commencing on the day the accumulative total investment principal remitted inbound by QFII reaches USD 20 million.	1 year (or 3 months in case of open-ended funds), commencing 6 months after obtaining the approval of its investment quota.
Outbound Remittance	<ul style="list-style-type: none"> The accumulated monthly net capital outflow remitted by a QFII shall not exceed 20% of its total domestic assets at the end of the preceding year. Subscription and redemption of open-ended funds may be handled on a daily basis, however, the accumulated monthly net capital remitted by a QFII thereunder shall not exceed 20% of the fund's total domestic assets at the end of the preceding year. 	<ul style="list-style-type: none"> The monthly capital outflow (including investment principal and return) remitted by a QFII shall not exceed 20% of its total domestic assets at the end of the preceding year. The custodian bank of an open-ended fund may handle the capital inflow or outflow for the fund on a weekly basis in light of the net balance of netting for fund subscription and redemption.
Account Opening	A QFII may open multiple dedicated RMB deposit accounts (for securities trading) for clients' funds it manages, which shall correspond to the respective foreign exchange accounts.	A QFII shall only open one foreign exchange account for its clients' funds, and shall open no more than six dedicated RMB deposit accounts.

The New Regulation stipulates the formulas of basic quota as follows:

For applicants whose assets owned or managed by it or its corporate group are primarily outside China, the formula is: USD 100 million + the

average asset scale in the last three years * 0.2% - the obtained quota of the RMB Qualified Foreign Institutional Investors (“RQFII”) (after being converted into USD); however, the investment quota for foreign sovereign wealth funds, central banks, monetary authorities and other similar institutions will not be restricted by the above asset scale ratio.

For applicants whose assets owned or managed by it or its corporate group are primarily within China, the formula is: RMB 5 billion + the asset scale of the preceding year * 80% - the obtained quota of RQFII (after being converted into USD).

The filing and approval requirements stipulated in the New Regulation are also applicable to those QFIIs that have obtained the investment quotas before the promulgation of the New Regulation when such QFIIs apply for increase of their investment quotas. It is worth noting that the New Regulation draws on certain more relaxed provisions of the Pilot Measures on the Domestic Securities Investment by RQFIIs (promulgated in 2013) especially in terms of the increase of quota and time frame for inbound remittance as well as reemphasizes that QFIIs shall not sell or transfer their investment quotas to other institutions or individuals in any form.

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