君合研究简讯

JUNHE

2020 年 9 月 2 日

金融法律热点问题

基金销售新规正式发布

2020 年 8 月 28 日，中国证券监督管理委员会（以下简称“**证监会**”）正式发布了《公开募集证券投资基金销售机构监督管理办法》（以下简称“**《管理办法》**”）、《关于实施<公开募集证券投资基金销售机构监督管理办法>的规定》（以下简称“**《实施规定》**”）、《公开募集证券投资基金宣传推介材料管理暂行规定》（以下简称“《宣传推介材料规定》”）（以下合称“**销售新规**”）以及《<公开募集证券投资基金销售机构监督管理办法>及配套规则修订说明》（以下简称“**《修订说明》**”），销售新规将于 2020 年 10 月 1 日正式实施。

相比 2019 年 2 月 22 日发布的征求意见稿（以下简称“**征求意见稿**”），销售新规有不少变化。我们对销售新规的关键要点进行如下梳理。

一、明确相关定义

1、 基金

《管理办法》明确了“基金”的定义。根据《管理办法》第六十一条第（八）项，除明确表述为“私募基金”、“私募证券投资基金”外，《管理办法》中的基金均为“公开募集证券投资基金”的简称。需要注意的是，《管理办法》所指的私募基金既包括私募基金管理人设立的非公开募集基金，也包括证券期货经营机构设立的私募资产管理计划。同时，《管理办法》新增“私募证券投资基金”的定义，即依据《证券投资基金法》设立的、仅投资于标准化证券资产的私募基金。

由前述“基金”的定义可见，《管理办法》已涵盖了证监会监管的管理人所发行的所有产品类型。

2、 基金销售

《管理办法》完善了“基金销售”的内涵，根据《管理办法》第二条，“基金销售”是指为投资人开立基金交易账户，宣传推介基金，办理基金份额发售、申购、赎回及提供基金交易账户信息查询等活动。相较于现有规定，《管理办法》将“开立基金交易账户”和“提供基金交易账户信息查询”明确规定为基金销售活动。

3、 基金销售机构与基金服务机构

未经注册，任何单位或者个人不得从事基金销售业务。根据《管理办法》，销售基金的第三方机构包括取得基金销售业务资格并领取《经营证券期货业务许可证》（以下简称“**许可证**”）的商业银行、证券公司、期货公司、保险公司等金融机构，保险经纪公司、保险代理公司、证券投资咨询机构以及独立基金销售机构。与征求意见稿不同，《管理办法》明确了从事基金销售业务的保险经纪公司、保险代理公司和证券投资咨询机构不属于“独立基金销售机构”的范畴。《管理办法》第六十二条还明确基金管理人、证券期货经营机构销售其所管理的产品的业务规范、内部控制和风险管理亦适用《管理办法》。

“基金服务机构”是指从事与基金销售相关的支付、份额登记、信息技术系统等服务的机构。

在此基础上，《管理办法》明确了基金销售机构及基金服务机构的履职规范。

二、基金销售机构的准入、退出和牌照续展

1、 “先批后筹”

《管理办法》和《实施规定》调整优化了基金销售机构的资格注册程序，实行“先批后筹”，申请程序如下：

(1) 相关机构如需申请注册基金销售业务资格，应当先按证监会的规定提交申请资料；

(2) 通过注册后，在六个月内完成基金销售业务的筹备工作，并完成相关工商登记变更手续(如需)；

(3) 向证监会派出机构申请验收；

(4) 通过现场检查验收后，向证监会申领许可证。

申请机构仅在取得许可证后方可开展基金销售业务。

各类申请机构(包括独立基金销售机构)均应向住所地所在证监会派出机构申请注册并向证监会申领许可证。

2、 注册条件

一方面，《管理办法》明确了所有基金销售机构的注册条件门槛，统一了金融机构从事基金销售业务需要符合的条件；另一方面，《管理办法》区分了金融机构和独立基金销售机构从事基金销售业务的不同条件。

(1) 相较于现行规定，《管理办法》提高了基金销售机构的注册条件门槛，但相较于征求意见稿仍有适当程度的降低，例如，要求申请机构最近一年未因相近业务被采取重大行政监管措施；没有因重大违法违规行为处于整改期间，或者因涉嫌重大违法违规行为正在被监管机构调查；其取得基金从业资格的人员不少于二十人。

(2) 《管理办法》第八条整合统一了商业银行、证券公司、期货公司、保险公司、保险经纪公司、保险代理公司、证券投资咨询机构从事基金销售业务需要符合的条件。值得注意的是，《实施规定》明确了公募基金公司专门从事基金销售的子公司亦需符合第八条的规定。由此可见，《管理办法》并未将基金公司专门从事基金销售的子公司纳入独立基金销售机构的范畴。

(3) 《管理办法》进一步提升了独立基金销售机构的注册门槛，例如，将独立销售机构的注册资本不低于人民币两千万元提升为净资产不低于人民币五千万元。同时，《管理办法》明确了对独立基金销售机构 5%以上股东、控股股东以及境外股东的要求。

就 5%以上股东而言，在征求意见稿基础上，《管理办法》调整完善了相关资质要求，具体而言：

(a) 就法人/非法人组织股东的资本实力要求，《管理办法》将征求意见稿规定的净资产不低于人民币一亿元降低为人民币五千万元，但新增了股权结构清晰，可逐层穿透至最终权益持有人的要求；

(b) 就自然人股东的工作经历要求，《管理办法》将征求意见稿规定的担任证券基金部门管理人员十年以上或者担任证券基金行业高级管理人员五年以上工作经历要求分别降低为五年和三年。

就控股股东而言，《管理办法》提高了对控股股东资本实力、工作经历的要求：

(a) 对于法人/非法人组织股东，《管理办法》新增最近三个会计年度连续盈利，净资产不低于两亿元人民币，具有良好的财务状况和资本补充能力，内部控制完善的要求；

(b) 对于自然人股东，《管理办法》要求其个人金融资产不低于人民币三千万元，具备担任证券基金业务部门管理人员十年以上的工作经历或者担任证券基金行业高级管理人员五年以上的工作经历。

值得注意的是，《管理办法》对控股股东提出了三年股权锁定期的要求。《管理办法》第十三条要求独立销售机构取得基金销售业务资格三年内不得发生控股股东、实际控股关系的变更。

除此之外，《管理办法》明确了控股股东治理要

求，要求其制定合理明晰的投资独立基金销售机构的商业计划，对完善独立基金销售机构治理结构、保持独立基金销售机构经营管理的独立性、推动独立基金销售机构长期发展有切实可行的计划安排；对独立基金销售机构可能发生风险导致无法正常经营的情况，制定合理有效的风险处置预案。

我们注意到，以上对控股股东的要求在一定程度上对标了公募基金公司主要股东要求，由此可见证监会对于独立基金销售机构准入的审慎态度。

就境外股东而言，《管理办法》第一次列举了独立基金销售机构的境外股东应当具备的条件，即(1)依所在国家或者地区法律设立、合法存续的具有金融资产管理或者投资顾问经验的金融机构；(2)所在国家或者地区的证券监管机构已与中国证监会或者中国证监会认可的其他机构签订监管合作备忘录，并保持有效的监管合作关系。

3、 退出机制

《管理办法》根据《证券投资基金法》的授权，强化了停止业务、吊销基金销售牌照的制度安排，并明确了基金销售机构在许可证被注销、丧失经营能力等情况下配合基金管理人等妥善办理有关投资人的赎回、转托管转出等业务的义务。

4、 牌照续展

《管理办法》借鉴成熟监管经验，对《管理办法》修订发布后新注册的基金销售机构执行许可证续展安排，并将不予续展主要限定在：不能满足基础展业条件、合规内控严重缺失、未实质开展公募基金销售业务三类情形。根据《管理办法》第五十二条，许可证的有效期为自颁发之日起三年，如许可证到期且不存在前述不予续展情形的，许可证可予以延续，每次延续的有效期为三年。

三、独立基金销售机构

1、 独立销售机构业务范围

《管理办法》调整了征求意见稿规定的独立销售机构展业范围限制，允许独立销售机构在销售公募基金业务外，从事私募证券投资基金销售业务。这意味着，在《管理办法》正式发布后，独立基金销售机构仅可从事公募基金以及私募证券投资基金的销售业务，不可销售除私募证券投资基金外的其他私募产品，如私募股权投资基金，或证券期货经营机构发行的私募资产管理计划。销售产品不符合规定的独立基金销售机构需要进行相应的整改。

2、 “一参一控”

根据《管理办法》第十二条，独立基金销售机构股东以及股东的控股股东、实际控制人参股独立基金销售机构的数量不得超过两家，其中控股独立基金销售机构的数量不得超过一家。

3、 对独立销售机构的特别监管要求

《管理办法》第四章第二节从风控、分支机构管理、展业范围、自有资金运作等方面对独立销售机构的内部控制与风险管理提出了针对性的要求，体现了对独立销售机构的严格监管态度。

四、基金销售业务规范要点

1、 合规风控

《管理办法》增设了“内部控制与风险管理”专章，要求各类基金销售机构按照审慎经营的原则，建立健全并有效执行基金销售业务的内部控制与风险管理制度。同时，要求基金销售机构指定专门合规风控人员对基金销售业务的经营运作情况、内部制度、基金宣传推介材料和新销售产品、新业务方案等进行审查；保障合规风控人员履职的独立性和有效性，合规风控人员不得兼任与合规职责相冲突的职务。

2、 私募基金销售

《管理办法》设专章从投资者调查、产品尽职调查、风险揭示、利益冲突等方面加强了对私募基金销售的风险管控。值得注意的是，相较于征求意

见稿，《管理办法》新增要求基金销售机构针对私募基金销售业务建立专门的利益冲突识别、评估和防范机制。基金销售机构应对存在关联关系的私募基金管理人及私募基金履行严格的利益冲突评估机制，经评估无法有效防范利益冲突的，不得销售相关产品。

目前，市场上部分基金销售机构通过销售关联私募基金管理人的基金为投资者提供资产配置服务。上述限制可能对前述业务模式产生一定的影响，基金销售机构必须通过建立完善的利益冲突防范机制等说明其可以有效防范利益冲突，从而对销售机构的内控提出了较高要求。

3、 利用互联网平台展业限制

就实践中基金管理人、基金销售机构通过与非持牌第三方网络平台合作引流的情形，《实施规定》厘清了基金销售机构与第三方网络平台合作的业务边界和底线要求。

根据《实施规定》，“第三方网络平台”是指投资人、基金管理人或基金销售机构之外的第三方机构运营管理的门户网站、应用程序等网络服务平台。《实施规定》支持基金管理人、基金销售机构通过第三方网络平台开展业务，但应满足如下要求：

(1) 应向投资者明确揭示基金销售服务的主体，即基金管理人或基金销售机构本身；

(2) 第三方机构仅可提供信息技术服务，不得介入基金销售业务的任何环节；

(3) 第三方机构不得收集、传输、留存投资人的任何基金交易信息；

(4) 基金管理人、基金销售机构是向投资人提供基金销售服务的责任主体。

《实施规定》要求第三方机构按照《证券投资基金法》以及《证券基金经营机构信息技术管理办法》向证监会备案，同时明确了基金管理人、基金销售机构聘请第三方机构的备案要求。

4、 客户维护费收取上限

《实施规定》首次对客户维护费提出了上限要求，即对于向个人投资者销售所形成的保有量，客户维护费占基金管理费的约定比率不得超过 50%；对于向非个人投资者销售所形成的保有量，客户维护费占基金管理费的约定比率不得超过 30%。

“客户维护费”即“尾随佣金”，是一种销售激励措施。现行实践中，由于基金销售仍主要依靠销售渠道，根据销售渠道的能力，尾随佣金比例不等，而部分销售渠道(诸如银行)的尾随佣金可能高达管理费的 70%-80%，给中小基金公司带来不少压力。我们认为，此次对于尾随佣金上限的设置，可能有助于缓解因尾随佣金过高给基金公司带来的压力。

5、 基金宣传推介

《管理办法》取消宣传推介材料事前备案要求，改为基金销售机构内部审查并存档备查。与《管理办法》同时发布的《宣传推介材料规定》还从登载业绩、股东信息、特殊品种宣传材料制作等方面细化了对于基金宣传材料的规定。值得注意的是，《宣传推介材料规定》第十五条要求基金宣传推介材料不得使用广告法、反不正当竞争法、反垄断法禁止的内容，这意味着，如果基金宣传推介材料违反前述规则，除有关部门可采取相应监管措施外，证监会及其派出机构亦可采取相应行政监管措施。由此可见，新规在一定程度上减轻了基金销售机构的报批负担，但对基金宣传推介材料作出了更为严格的规定，基金管理人和基金销售机构应当严格审查宣传材料，避免与此有关的合规风险。

6、 销售协议必备条款

《实施规定》明确，销售协议必备条款除有关基金投资人持续服务以及反洗钱的责任划分的约定外，还应增加基金销售机构与基金管理人之间就信息披露服务以及反恐怖融资及非居民金融账户涉税信息尽职调查义务履行及责任划分的约定，并要求明确约定基金销售机构业务终止时的基金投资人服务安排。

7、 基金风险等级评价结果

《实施规定》明确规定，基金销售机构向投资人推介基金产品时所依据的基金产品风险等级评价结果不得低于基金管理人作出的风险等级评价结果。我们认为，这个将解决基金销售机构和基金管

理人之间对同一产品风险等级不一致所产生的投资者适当性匹配问题。

8、 基金组合销售服务

我们注意到《管理办法》删除了征求意见稿允许基金管理人和基金销售机构向基金投资人提供基金组合销售服务的规定。我们理解，基金组合销售服务的本质等同于目前处于试点阶段的基金投资顾问服务，应适用《证券基金投资咨询业务管理办法(征求意见稿)》的相关规定。

除前述规定外，销售新规突出强调销售行为底线要求，细化销售费用揭示、客户持续服务等投资者保护与服务要求；推动长期考核机制，整体上呈现出从严监管和以保护投资者利益为核心的监管趋势。

五、过渡安排

为保证销售新规平稳落地施行，《实施规定》明确了了部分规范事项的过渡期：

1、 针对(1)独立销售机构的股东不符合《管理办法》的情形；以及(2)独立销售机构从事销售除公募基金、私募基金以外产品业务的情形，给予两年的过渡期。其中，针对前述第(2)种情形，独立销售机构应当在过渡期内有序压降相关产品销售规模，且整改期届满后，仅可为存量相关产品投资人已持有份额提供服务。

2、 针对基金销售机构人员配备、信息技术系统改造或销售文件调整等事项，给予一年的过渡期。

我们将持续关注并及时与客户分享最新进展。

谢 青 合伙人 电话：86 21 2208 6238 邮箱地址：xieq@junhe.com
秦天宇 律师 电话：86 21 2208 6140 邮箱地址：qinty@junhe.com

JUNHE BULLETIN

September 2, 2020

Financial

CSRC Releases New Regulation on Fund Distribution

On August 28, 2020, the China Securities Regulatory Commission (CSRC) issued the *Administrative Measures on the Supervision of Public Securities Investment Fund Distribution Agencies* ("Administrative Measures"), the *Implementation Provisions of the Administrative Measures on the Supervision of Public Securities Investment Fund Distribution Agencies* ("Implementation Provisions"), the *Interim Provisions on the Administration of Marketing and Promotional Materials for Public Securities Investment Funds* ("Provisions on Marketing and Promotional Materials") (collectively referred to as the "New Distribution Regulations") and the *Explanatory Notes on the Administrative Measures on the Supervision of Public Securities Investment Fund Distribution Agencies and Supporting Rules* ("Explanatory Notes"), which will be officially implemented on October 1, 2020.

Compared with the consultation paper issued on February 22, 2019 ("Consultation Paper"), the New Distribution Regulations made a few material changes. Below we have summarized the key points of the New Distribution Regulations.

I. Clarification on Relevant Definitions

1. Fund

According to Article 61, Item 8 of the Administrative Measures, unless explicitly stated as "private funds" or "private securities investment funds", the funds under the Administrative Measures shall refer to public securities investment funds. Notably, the private funds referred to under the Administrative Measures include both non-public funds issued by private fund managers and private asset management plans issued by securities and futures operating institutions. At the same time, the Administrative Measures add a new definition of "private securities investment funds", that is, private funds established in accordance with the *Securities Investment Fund Law* ("Securities Investment Fund Law"), which invest purely in standardized securities-type assets.

Pursuant to the aforementioned definition of "fund", it is evident that the Administrative Measures regulate all types of products issued by relevant institutions under the supervision of the CSRC.

2. Fund Distribution

The Administrative Measures clarify the definition of "fund distribution". Pursuant to Article 2 of the Administrative Measures, "fund

distribution" refers to such activities including opening fund trading accounts for investors, marketing and promoting funds, handling the issuance, subscription and redemption of fund units, and providing inquiry services for fund trading accounts. Compared with the existing regulations, the Administrative Measures explicitly include both "opening fund trading accounts" and "providing inquiry services for fund trading accounts" in the scope of fund distribution activities.

3. Fund Distribution Agencies and Fund Service Institutions

No institution or individual may engage in fund distribution business without registration. Pursuant to the Administrative Measures, fund distribution agencies include (i) commercial banks, (ii) securities companies, (iii) futures companies, (iv) insurance companies, (v) insurance brokerage companies, (vi) insurance agencies, (vii) securities investment advisory institutions, and (viii) independent fund distribution agencies, all of which shall have obtained the qualifications for fund distribution and the License for Conducting Securities and Futures Business ("License"). Unlike the Consultation Paper, the Administrative Measures do not deem insurance brokerage companies, insurance agencies, and securities investment advisory institutions that engage in fund distribution business as a type of "independent fund distribution agency". Besides, although the fund distribution agencies enumerated above do not include fund managers distributing products managed by themselves, Article 62 of the Administrative Measures specify that fund managers and securities and futures operating institutions distributing products managed by themselves shall also be subject to the Administrative Measures in terms of their business norms, internal control and risk management.

A "fund service institution" refers to an institution that engages in the services of payment, fund unit registration, provision of information technology systems and other services related to fund distribution.

On the foregoing basis, the Administrative Measures clarify the standards for the performance of duties by fund distribution agencies and fund service institutions.

II. Registration, Cancelation, and Renewal of Licenses

1. Preparation-After-Approval

The Administrative Measures and Implementation Provisions adjust and optimize the registration procedures for fund distribution agencies by implementing a "preparation-after-approval" system, and the application procedures are set forth as follows:

(1) If an institution wants to apply for the registration of the fund distribution qualification, it shall first submit application materials in accordance with the rules of the CSRC;

(2) The institution shall complete the preparation work for the fund distribution business within six months after completing the registration, as well as complete relevant company registration formalities (if necessary);

(3) The institution shall apply to the local bureau of the CSRC for onsite inspection and approval;

(4) After passing the onsite inspection and receiving approval, the institution may apply to the CSRC for the License.

An applicant may begin conducting the fund distribution business only after obtaining the License.

All types of applicants (including independent

fund distribution agencies) shall apply to the local bureau of the CSRC in their place of domicile for fund distribution registration and the License.

2. Registration Requirements

For one thing, the Administrative Measures clarify the registration requirements for all fund distribution agencies, and unify the conditions required for financial institutions engaging in fund distribution business. And for another, the Administrative Measures distinguish the requirements between financial institutions and independent fund distribution agencies engaging in fund distribution business.

(1) Compared to the current regulations, the Administrative Measures raise the registration thresholds for fund distribution agencies, but moderately lower the same thresholds as compared with the Consultation Paper. For example, the Administrative Measures require that an applicant (i) has not been subject to major administrative supervisory measures within the past one year for engaging in similar businesses as fund distribution; (ii) is not currently in the rectification period due to major violations of laws or regulations, or being investigated by regulatory authorities due to suspected major violations of laws or regulations; and (iii) has no less than twenty personnel who have obtained fund practitioner qualifications.

(2) Article 8 of the Administrative Measures integrates and unifies the conditions that must be met to engage in fund distribution business for commercial banks, securities companies, futures companies, insurance companies, insurance brokerage companies, insurance agencies, and securities investment advisory institutions. It is worth noting that the Implementation Provisions specify that the subsidiaries of a securities investment fund management company (FMC) that specialize in fund distribution business must also meet the requirements under Article 8, from which it can be inferred that subsidiaries of FMCs that specialize in fund distribution business are not deemed a type of "independent fund distribution agency".

(3) The Administrative Measures further raise the registration thresholds for independent fund distribution agencies. For example, under the Administrative Measures, an independent fund distribution agency is required to have net assets of no less than RMB 50 million rather than have a registered capital of no less than RMB 20 million. Meanwhile, the Administrative Measures clarify the requirements for shareholder holding more than 5% equity, controlling shareholder and foreign shareholder of an independent fund distribution agency.

For shareholders holding 5% or more equity of an independent fund distribution agency, the Administrative Measures adjust and refine the requirements from the Consultation Paper. Specifically:

(a) Regarding requirements for the capital strength of legal person shareholders or shareholders in the form of unincorporated organizations, the Administrative Measures reduce the net assets of no less than RMB 100 million, as stipulated under the Consultation Paper, to RMB 50 million, but further require that the shareholding structure of such shareholders shall be clear and describe every level of ownership through to the ultimate beneficial owners;

(b) Regarding work experience requirements for natural person

shareholders, the Administrative Measures are more relaxed than the Consultation Paper, reducing the number of years of experience needed: more than five years (instead of ten years) of experience as management personnel of the securities and fund department or more than three years (instead of five years) experience as a senior executive of the securities and fund industry.

In terms of the controlling shareholders, the Administrative Measures raise the requirements for the capital strength and work experience of controlling shareholders:

(a) For a legal person shareholder or a shareholder in the form of unincorporated organizations, the Administrative Measures add several new requirements, namely, such shareholder shall (i) be consecutively profitable for the most recent three fiscal years, (ii) have net assets of no less than RMB 200 million, and (iii) have a good financial status and capital replenishment capabilities, as well as sound internal control;

(b) For a natural person shareholder, the Administrative Measures require them to have (i) personal financial assets of no less than RMB 30 million; and (ii) more than ten years of work experience as a management personnel of the securities and fund business department, or more than five years of work experience as a senior executive of the securities and fund industry.

Notably, the Administrative Measures impose a three-year lock-up period on controlling shareholders. Article 13 of the Administrative Measures prohibit independent distribution agencies from changing their controlling shareholders or de facto controlling relationships within three years from the date of obtaining the qualifications for fund distribution.

In addition, the Administrative Measures also clarify the governance requirements for a controlling shareholder, namely, a controlling shareholder is required (i) to formulate a reasonable and clear business plan for investing in an independent fund distribution agency, (ii) to have practical plans for improving the governance structure of the independent fund distribution agency, maintaining the independence of the independent fund distribution agency with respect to its operation and management, and promoting the long-term development of the independent fund distribution agency, as well as (iii) to formulate reasonable and effective risk disposal plans for the circumstances where the independent fund distribution agency is likely to be exposed to risks that may prevent it from normal business operation.

We note that the foregoing requirements for controlling shareholders to some extent align with the requirements for major shareholders of FMCs, which demonstrates a prudent attitude of the CSRC over the registration of independent fund distribution agencies.

With respect to foreign shareholders, the Administrative Measures for the first time list out the requirements for the foreign shareholders of an independent fund distribution agency, namely, (i) the foreign shareholder shall be a financial institution established and legally existing in accordance with the laws of the country or region where it is located, with experience in financial asset management or

investment advisory business; and (ii) the securities regulatory authority of the country or region where the foreign shareholder is located has entered into a regulatory cooperation memorandum with the CSRC or other institutions recognized by the CSRC, and maintain an effective regulatory cooperation relationship with the CSRC.

3. Mechanism for Canceling Registration

The Administrative Measures, as authorized by the Securities Investment Fund Law, improve the mechanisms for cessation of fund distribution business and revocation of fund distribution licenses, and specify that fund distribution agencies shall bear the obligation to cooperate with fund managers in properly handling the relevant businesses including investors' redemptions and transfer of custody in case that their fund distribution licenses are cancelled or they have lost the capacity to operate.

4. License Renewal

The Administrative Measures draw on mature regulatory experience and implement license renewal arrangements for fund distribution agencies newly registered after the issuance of the Administrative Measures, while simultaneously providing that fund distribution agencies under any of the following circumstances shall not renew their fund distribution licenses, namely, (i) failure to meet basic conditions required for conducting fund distribution business, (ii) serious lack of compliance and internal control, and (iii) not engaging in public fund distribution business in substance. According to Article 52 of the Administrative Measures, the validity period of the license shall be three years from the date of issuance; if the license expires and the fund distribution agency does not fall under any of the foregoing circumstances prohibited from renewal, the license shall be renewed; the validity period for each renewal shall be three years.

III. Independent Fund Distribution Agency

1. Business Scope of Fund Distribution Agency

Different from the Consultation Paper, the Administrative Measures adjust the restrictions on the business scope of independent fund distribution agencies by allowing fund distribution agencies to distribute private securities investment funds in addition to public funds; meaning that, after the official release of the Administrative Measures, independent fund distribution agencies may only engage in the distribution of public and private securities investment funds, and shall distribute neither other types of private fund than private securities investment funds such as private equity-type investment funds, nor private asset management plans issued by securities and futures operating institutions. Independent fund distribution agencies that currently distribute products in violation of the foregoing requirements shall make rectifications.

2. "One Minority, One Control"

Pursuant to Article 12 of the Administrative Measures, the shareholders of independent fund distribution agencies, and the controlling shareholders and de facto controllers of such shareholders shall invest in no more than two independent fund distribution agencies, of which at most one independent fund distribution agency can be controlled by such shareholders and de facto controllers.

3. Special Regulatory Requirements on Independent Fund Distribution Agencies

Part 4, Section 2 of the Administrative Measures puts forward specific requirements on the internal control and risk management of

independent fund distribution agencies in terms of risk control, branch management, business scope, and operation of self-owned funds, reflecting the prudent regulatory attitude towards independent fund distribution agencies.

IV. Key Take-Aways for Regulation of Fund Distribution

1. Compliance and Risk Management

The Administrative Measures introduce a new dedicated section, titled "Internal Control and Risk Management", which requires all fund distribution agencies to establish, improve and effectively implement internal control and risk management systems for fund distribution business in accordance with the principle of prudent operation. The Administrative Measures also require fund distribution agencies to designate specific compliance and risk control personnel to review the operation of the fund distribution business, internal systems, fund marketing and promotional materials, new products, new business plans, etc., to ensure the independence and effectiveness of compliance and risk control personnel in performing their duties, as well as to strictly prohibit compliance and risk control personnel from concurrently holding positions that conflict with their compliance duties.

2. Private Fund Distribution

The Administrative Measures use an entire section to strengthen the management and control of risks with respect to private fund distribution in terms of investor due diligence, product due diligence, risk disclosure, and management of conflicts of interest. It is worth noting that, compared with the Consultation Paper, the Administrative Measures further require a fund distribution agency to establish a special identification, evaluation and prevention mechanism for conflicts of interest in the private fund distribution business. Fund distribution agencies shall implement a strict conflict of interest assessment mechanism for private fund managers and private funds that have related party relationships with the fund distribution agencies; if the assessment indicates that relevant conflicts cannot be effectively prevented, the fund distribution agencies shall not distribute relevant products.

At present, some fund distribution agencies in the market provide investors with asset allocation services by distributing funds managed by affiliated private fund managers. The above restrictions may have certain impact on such business model. Accordingly, fund distribution agencies must demonstrate that they can effectively prevent conflicts of interest by establishing a comprehensive conflict of interest prevention mechanism, which as a consequence places higher requirements on the internal control of fund distribution agencies.

3. Restrictions on Online Fund Distribution

Regarding the practices where fund managers and fund distribution agencies cooperate with third-party online platforms that do not hold financial licenses to distribute fund products, the Implementation Provisions clarify the business boundaries and bottom-line requirements for cooperation between fund distribution agencies and third-party online platforms.

According to the Implementation Provisions, "third-party online platforms" refer to portals, applications and other online service platforms operated and managed by third-party institutions other than investors, fund managers and fund distribution agencies. The Implementation Provisions support fund managers and fund distribution agencies to conduct business through third-party online platforms, subject to the following requirements:

(1) The investors shall be clearly informed of the entity providing the fund distribution services (i.e. the fund manager or the fund distribution agency);

(2) Third-party institutions shall only provide information technology services and shall not intervene in any stage of the fund distribution business;

(3) Third-party institutions shall not collect, transmit or retain any fund trading information of investors;

(4) Fund managers and fund distribution agencies are the parties responsible for the provision of fund distribution services to the investors.

The Implementation Provisions require third-party institutions to file with the CSRC in accordance with the Securities Investment Fund Law and the *Administrative Measures on the Information Technology of Securities and Funds Operating Institutions*, and also clarify the filing requirements for fund managers and fund distribution agencies engaging third-party institutions.

4. Cap on Client Maintenance Fees

The Implementation Provisions for the first time put a cap on client maintenance fees, that is, for the number of fund units distributed to individual investors, the agreed ratio between client maintenance fees and fund management fees shall not exceed 50%; for the amount of fund units distributed to non-individual investors, the agreed ratio between client maintenance fees and fund management fees shall not exceed 30%.

Client maintenance fees, i.e. trailing commissions, act as an incentive for fund distribution. In current practices, fund managers heavily rely on third-party agencies for distribution. The proportion of trailing commissions varies according to the capabilities of distribution channels, and the trailing commissions of some distribution channels (e.g., banks) may be as high as 70-80% of the fund management fees, which puts a lot of pressure on small and medium-sized FMCs. We expect that this time by putting a cap on trailing commissions, the pressure on FMCs arising from excessive trailing commissions may likely be eased to some extent.

5. Fund Marketing and Promotion

The Administrative Measures abolish the pre-filing requirements for marketing and promotional materials, and change it to an internal review and archival mechanism implemented by fund distribution agencies. The Provisions on Marketing and Promotional Materials, which were issued along with the Administrative Measures, detail the provisions on fund promotional materials in terms of performance data, shareholder information, and preparation of special promotional materials. It is worth noting that Article 15 of the Provisions on Marketing and Promotional Materials expressly provide that fund marketing and promotional materials shall not use content prohibited by the Advertising Law, the Anti-Unfair Competition Law, and the Anti-Monopoly Law. It follows that if the fund marketing and promotional materials violate the foregoing rules, in addition to the regulatory measures taken by the competent regulatory authorities, the CSRC may also take corresponding administrative regulatory measures.

It is noteworthy that although the new regulation eases the burden to some extent of filing and approval imposed on fund distribution agencies, but imposes more strict regulatory requirements on fund marketing and promotional materials. Fund managers and fund distribution agencies are still advised to strictly review the promotional materials to

avoid relevant compliance risks.

6. Mandatory Provisions for Distribution Agreement

The Implementation Provisions specify the mandatory provisions of a distribution agreement. In addition to the provisions regarding the continuous services for fund investors and the division of responsibilities with respect to anti-money laundering, the Implementation Provisions also insert provisions on the division of obligations and responsibilities between a fund distribution agency and a fund manager with respect to information disclosure services, and performance of due diligence obligations regarding anti-terrorist financing and non-resident financial account tax-related information, and explicitly require the distribution agreement to provide for the continuous service arrangements for fund investors when the business of the fund distribution agency terminates.

7. Fund Risk Level

The Implementation Provisions clearly stipulate that when a fund distribution agency promotes a fund product to investors, the fund risk level referred to by the distribution agency shall not be lower than the fund risk level determined by the fund manager. We believe such requirement will solve the investor suitability problem caused by the inconsistency in the fund risk level of the same product as respectively determined by the distribution agency and the fund manager.

8. Distribution Services for Fund Portfolios

We notice that the Administrative Measures remove the provisions under the Consultation Paper that allow fund managers and fund distribution agencies to provide fund portfolio distribution services to fund investors. We understand that fund portfolio distribution services are by nature the same as the fund investment advisory services which are currently in a piloting stage, and thus shall be subject to the relevant provisions of the *Administrative Measures on Securities and Fund Investment Advisory Services (Consultation Paper)*.

Apart from the foregoing provisions, the Administrative Measures put emphasis on the bottom-line requirements for fund distribution behaviors, refine the requirements for disclosure of fund distribution expenses, continuous service for clients and other investor protection and service requirements, and promote a long-term evaluation mechanism for fund distribution business. The Administrative Measures, as a whole, demonstrate a regulatory trend of strict supervision and prioritization of investor protection.

V. Grace Period

In order to ensure the successful implementation of the New Distribution Regulations, the Implementation Provisions specify the grace period for some regulatory requirements:

1. Two-year grace period granted under either of the following circumstances (1) when shareholders of an independent fund distribution agency do not comply with the Administrative Measures, and (2) when an independent fund distribution agency engages in distribution businesses other than distribution of public funds or private funds. With respect to the latter circumstance, an independent distribution agency shall reduce existing businesses in an orderly manner prior to expiration of the grace period, and once the grace period expires, it is only allowed to continue services with respect to such existing businesses for fund units that have already been acquired by investors.

2. One-year grace period granted for matters such as staffing, information technology

systems or distribution documents that a fund distribution agency shall rectify according to the new regulation.

We will continue to monitor the situation and keep our clients apprised of any important developments.

Natasha XIE	Partner	Tel：86 21 2208 6238	Email：xieq@junhe.com
Jessica Qin	Associate	Tel：86 21 2208 6140	Email：qinty@junhe.com
Hao Fang		Tel：86 21 2283 8357	Email：fangh@junhe.com