

## 金融法律热点问题

### 笃行如初，行稳致远：QFII/RQFII 新规实施一周年

一年前，中国证券监督管理委员会(以下简称“证监会”)、中国人民银行(以下简称“央行”)、国家外汇管理局(以下简称“外管局”)联合发布了市场期盼已久的《合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法》以及《关于实施<合格境外机构投资者和人民币合格境外机构投资者境内证券期货投资管理办法>有关问题的规定》(以下统称“新规”),对QFII和RQFII(以下统称“QFI”)制度作出重大改革。新规统一了QFII和RQFII规则、扩大投资品种和范围、大幅简化申请和审批流程,为境外机构投资者投资中国资本市场提供了更多便利。

在过去一年里,新规各类配套规定陆续出台。QFI制度在中国资本市场的开放进程中扮演了重要角色,其与其他开放措施的联动亦给中国资本市场注入活力。在QFI新规实施一周年之际,本文对过去一年QFI制度的发展稍作回顾并展望未来的发展。

#### 一、 申请机构数量显著增加

新规对于QFI准入条件的放松、申请文件的简化以及审核时间的大幅缩短吸引了一大批外资机构申请QFI资质。根据证监会网站的公开信息,自2020年9月新规发布以来,已有超200家海外机构递交QFI申请;而自新规正式实施以来11个月的时间,证监会已核准140家境外机构的QFI资格申请,占已核准QFI总数的五分之一,超过了自2014年11月股

票通机制引入后2015年10月至2020年10月五年的累计核准数量。

从新规实施后获批机构的类型看,除传统的资产管理机构、主权基金等长期机构投资者外,已有不少海外自营机构、对冲基金、私募股权类基金和家族信托获得QFI资质;从新规实施后获批机构所属国家/地区看,在获批的140家机构中,香港机构为78家,超半数;其次为新加坡机构和美国机构,分别为17家和16家;英国机构和开曼群岛机构分别为5家;其余国家或地区(例如阿联酋、科威特、南非、沙特阿拉伯等)的机构共19家。

#### 二、 投资范围稳步开放

投资范围的扩大无疑是QFII/RQFII规则修改中最受市场机构欢迎的部分。其中,海外机构最为关注新规将期货交易场所上市交易的商品期货合约、国债期货、私募投资基金等纳入QFI投资范围,并允许QFI进行债券回购、融资融券和转融通出借交易。

- 就QFI参与转融通而言,在QFI新规实施后的第一个交易日(即2020年11月2日),就有多家券商完成QFI转融通市场交易单。
- 就QFI投资私募基金而言,2020年12月15日,霸菱集团成功通过其QFI投资于其境内外资私募基金管理人霸菱投资管理(上海)有限公司发行的霸菱中国综合债券1号私募证券投资基金,

为全国首单QFI认购外商独资私募证券投资基金管理人(WFOE PFM)基金产品。目前，已有多家QFI成功投资于境内私募基金。

- 就商品期货而言，2021年10月15日，证监会就合格境外投资者(QFI)参与金融衍生品交易有关事项发布公告(以下简称“公告”)。根据公告，自2021年11月1日起，QFI可以交易国务院或证监会批准设立的期货交易所上市交易的商品期货、商品期权、股指期货合约。就金融期货而言，股指期货和股指期货一样，目前限于套期保值目的，体现了监管机构对于外资参与股票相关金融衍生品一贯的严谨态度。

此外，目前实践中QFI暂无法交易ETF期权、国债期货，亦无法参与债券回购。对冲基金和结构性产品发行人的QFI投资人也暂无法参与融券业务。

### 三、 QFI与境内外基金的联动

#### 3.1 在海外设立A股基金

根据公开报道以及我们的观察，境外投资者通过在海外设立中国基金成为其配置中国资产的主流渠道之一<sup>2</sup>，该等中国基金可通过QFI或股票通等渠道投资于中国市场。

#### 3.2 投资于境内私募基金

QFI可以投资于其境内关联方发起设立的私募基金，也可以投资于非关联境内私募基金管理人所管理的基金。QFI投资于关联WFOE PFM所发行的私募证券投资基金将有效缓解WFOE PFM在设立之初由于缺少业绩记录而导致的募资困难，有利于WFOE PFM利用集团提供的资金测试其策略在中国市场的有效性并获得相应的业绩记录。

同时，有不少QFI正在考虑或已经投资于境内非关联私募基金管理人发行的私募基金。新规明确规定，QFI所投资的境内私募基金的投资范围应符合QFI的投资范围，因此，对于境内私募基金管理人而言，

其可能需要为QFI定制专门的单一投资者基金。境内私募基金管理人在管理QFI资金时应严格遵守QFI投资范围限制，例如QFI投资股指期货、股指期权等仅限于以套期保值为目的，QFI通过投资于境内私募基金亦不可绕开前述监管限制。此外，境内私募基金管理人应当避免为QFI投资提供通道，也即，QFI投资于境内私募基金应当为一个“真正的”投资行为，QFI所投资的境内私募基金的投资决策权应当始终在相关管理人手中。

#### 3.3 担任关联QFI的投资顾问

新规允许QFI委托其控制或在同一控制下的境内私募投资基金管理人提供投资建议服务。目前已经有WFOE PFM与其关联QFI签署投资顾问协议，为其关联QFI和/或其关联QFI担任管理人或投资顾问的境外基金提供有关境内投资的投资建议服务。这将便利境外投资者进一步利用其境内研究资源以服务全球交易。

### 四、 对境内交易规则以及信息披露义务的关注

随着QFI投资范围不断扩大，涉及越来越多的交易规则和监管要求，境外投资者越来越重视证券期货监管规则，例如不少境外投资者关注到了中国市场交易规则与境外成熟市场交易规则的差异。此外，我们也注意到，持股比例限制、持股合并计算及豁免以及信息披露和报备义务均为境外投资者关注的重点。不少QFI客户要求我们为其提供境内证券期货乃至债券交易规则的培训。

证监会在新规征求意见稿的《起草说明》曾特别提出强化穿透式监管要求。穿透式监管不仅体现在对于信息披露的要求的强化，亦体现在对于结构性产品的关注。在修改后的QFI年报表中，QFI需要就结构性产品申报结构性产品的类别，即P-Notes, SWAP, 期权或其他，QFI的角色(即发行人、做市商或其他)以及交易规模。

#### 我们的观察

<sup>2</sup> 上海证券报：《阿尔法收益诱人 全球量化巨头争设中国

基金》，作者：王彭，2021年10月12日

从新规实施后QFI的申请数量来看，新规对于QFI机制的改革无疑在很大程度上提升了QFI机制的吸引力。而随着中国金融市场的持续开放，我们相信有更多的外资机构申请QFI资格，包括已经通过股票通积极投资内地A股市场的机构投资者，除现有股票通的投资外，亦会布局QFI路径，以便利用不同机制的优势捕捉更多的交易机会。我们也相信，尽管从表面上，QFI和股票通机制之间不可避免地存在竞争和替代关系，但从长远看，QFI机制和股票通机

制会互相促进，共同助力深化中国资本市场的开放和繁荣。

我们将持续关注并及时与我们的客户分享最新的进展。

## 过去两年 QFI 发展重要事件

2019 年 9 月 10 日	外管局宣布合格境外机构投资者(QFII)和人民币合格境外机构投资者(RQFII)投资额度限制取消
2020 年 5 月 7 日	<p>央行、外管局发布《境外机构投资者境内证券期货投资资金管理规定》(已于2020年6月6日实施)</p> <ul style="list-style-type: none"> <li>- 简化汇入汇出流程 <ul style="list-style-type: none"> <li>· 允许合格投资者自主选择汇入资金的币种和时机;</li> <li>· 可凭书面申请或指令, 以及按照中国境内相关税务法律法规足额缴纳税费的承诺函等汇出资金</li> </ul> </li> <li>- 取消托管人数量限制, 允许单家合格投资者委托多家境内托管人, 并指定一家作为主报告人。</li> </ul>
2020 年 9 月 25 日	QFI 新规发布
2020 年 10 月 30 日	<p>上交所、深交所发布合格境外机构投资者和人民币合格境外机构投资者证券交易实施细则</p> <ul style="list-style-type: none"> <li>- 扩大投资范围: 将存托凭证、股票期权、政府支持债券等, 允许参与债券回购、融资融券、转融通证券出借交易纳入投资范围;</li> <li>- 完善持股比例披露及超比例减持安排: 将境外投资者持股初始披露比例进行下调, 即将全部 QFI 及其他境外投资者持有单个上市公司 A 股股份初始披露比例由 26%下调至 24%; 优化外资合计持股超过 30%时的减持安排;</li> <li>- 便利投资运作: 取消合格境外投资者可委托证券公司的数量限制, 明确合格境外投资者协议转让及非交易过户的办理要求。</li> </ul> <p>中国金融期货交易所(以下简称“中金所”)发布《关于合格境外机构投资者和人民币合格境外机构投资者参与股指期货交易有关事项的通知》</p> <ul style="list-style-type: none"> <li>- 明确了 QFI 可参与交易的金融期货品种和交易方式, 即 QFI 参与股指期货交易应当符合中金所套期保值管理的有关规定</li> </ul> <p>中国证券登记结算有限公司(以下简称“CSDC”)发布修订后结算细则</p> <ul style="list-style-type: none"> <li>- 扩大了 QFI 可选择的结算参与人类型, 首次明确了证券公司可以作为 QFI 的结算参与人办理结算业务;</li> <li>- 明确不同证券账户可以选择不同的结算参与人。</li> </ul>
2020 年 11 月 1 日	新规及上海证券交易所、深圳证券交易所、中金所交易细则以及 CSDC 结算细

	则正式实施
2020 年 11 月 2 日	中信证券、国泰君安证券、国信证券、中金公司、瑞银证券等多家券商成功完成 QFI 转融通市场交易单
2020 年 12 月 15 日	霸菱集团成功通过其 QFI 投资于其境内外资私募基金管理人霸菱投资管理(上海)有限公司发行的霸菱中国综合债券 1 号私募证券投资基金，为全国首单 QFI 认购 WFOE PFM 基金产品
2021 年 10 月 15 日	证监会就合格境外投资者(QFI)参与金融衍生品交易有关事项发布公告，自 2021 年 11 月 1 日起，QFI 可以交易国务院或证监会批准设立的期货交易所上市交易的商品期货、商品期权、股指期货合约

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## Financial

### Client Briefing: Marking the First Anniversary of QFI Reform

Just one year ago, the China Securities Regulatory Commission (CSRC), the People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) jointly issued the long-awaited rules on QFI reform, i.e. the *Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors* and the *Provisions on Issues Concerning the Implementation of the Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors* (collectively, "Rules on QFI Reform"), proposing significant amendments to the current QFII/RQFII (collectively, "QFI") regime, including the unification of QFII/RQFII rules, the expansion of permissible investment scope, as well as the streamlined procedures for approval of applications, overall offering a more convenient process for QFI investments in China's capital market.

Over the past year, ancillary documents of the Rules on QFI Reform were issued in an orderly fashion on top of the unwavering opening-up of the Chinese financial market. The regime for QFI itself also plays an important role in the further opening-up of the Chinese financial market, and together with other opening-up measures, is

invigorating the Chinese capital market. At the first anniversary of the implementation of the Rules on QFI Reform, this briefing aims to revisit the development of the QFI regime over the past year and offer our clients expectations for the future.

#### 1. Significant Increase in the Number of Applicants

Key amendments in the Rules on QFI Reform, including the relaxation of eligibility requirements for applicants, the simplification of application materials, and the significant shortening of the approval timeline, attracted a large number of QFI applications from foreign institutions. According to public information on the CSRC website, since the Rules on QFI Reform were issued, a total of more than 200 foreign institutions have submitted QFI applications; and in just 11 months since the Rules on QFI Reform were officially implemented, the CSRC has granted QFI licenses to 140 foreign institutions in total, accounting for about one-fifth of the total number of institutions approved, and more than the total number of institutions approved from October 2015 to October 2020, after the Stock Connect, which competes with the QFI regime, was introduced in November 2014.

In terms of the types of QFI applicants, in addition to asset management institutions, sovereign funds, and other long-term institutional investors, many foreign proprietary institutions, hedge funds,

private equity funds, as well as family trusts have obtained QFI licenses since the implementation of the Rules on QFI Reform. In terms of the jurisdictions of the institutions approved since the implementation of the Rules on QFI Reform, there are 78 institutions located in Hong Kong, accounting for more than half of the 140 institutions approved, followed by Singapore and the United States, with 17 institutions and 16 institutions respectively, and five British institutions and five Cayman Islands institutions, while the remaining 19 institutions are from other jurisdictions, including the UAE, Kuwait, South Africa, and Saudi Arabia.

## 2. Scope of Investment Steadily Expands

The expansion of the scope of investment, among other amendments proposed under the Rules on QFI Reform, is undoubtedly the most impactful for market participants. Particularly, the Rules on QFI Reform add exchange-listed commodity futures, exchange-listed treasury bond futures, and private investment funds into the permissible investment scope of QFIs, as well as allow QFIs to participate in the bond repo, margin financing and securities lending, and securities refinancing, all of which are of great interest to foreign institutional investors.

- As for securities refinancing, just on the first trading day following the implementation of the Rules on QFI Reform (i.e., November 2, 2020), several securities companies made the first securities refinancing deal for QFIs.
- As for private investment funds, on December 15, 2020, Barings invested in the Barings China Aggregate Bond Private Securities Investment Fund No. 1, a private securities investment fund launched by its onshore WOFE PFM - Barings Overseas Investment Fund Management (Shanghai) Limited, which was the first transaction that QFI subscribed for PFM product launched by its affiliated

WOFE PFM. And up to now, many QFIs have successfully invested in onshore private investment funds.

- As for commodity futures, the CSRC released the *Announcement on Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors Participating in Financial Derivative Trading ([2021] No.24)* on October 15, 2021, allowing QFIs to trade commodity futures, commodity options, and stock index options listed and traded on futures exchanges approved by the State Council or the CSRC starting November 1, 2021.
- As for financial futures, QFIs are permitted to trade stock index options for hedging purposes only and are subject to the same restrictions as stock index futures, reflecting regulatory authorities' consistent prudential regulatory attitude toward foreign participation of trading of stock-related financial derivatives.

Currently, QFIs are not allowed to trade ETF options, treasury bond futures, or participate in bond repo transactions in practice. In addition, certain types of QFI investors like hedge fund managers or securities institutions offering structured products are still not eligible for entering into securities borrowing and lending transactions at current stage.

## 3. Interactions Between QFIs and Onshore/Offshore Funds

### 3.1 Establish offshore A-share funds

According to news releases and our observations of actual practices, establishing offshore China funds has become one of the main channels for foreign investors to allocate to the Chinese underlying products.<sup>1</sup> Such offshore China funds

<sup>1</sup> Please refer to the Shanghai Securities News: *Enticing Alpha Gains - Global Quantitative Giants Compete for Establishing*

*China Funds*, released on October 12, 2021, written by WANG Peng.



may invest in the Chinese market through QFI and/or Stock Connect.

### 3.2 Invest in onshore private funds

QFIs may invest in private funds launched by their onshore affiliates, or in funds managed by onshore non-affiliated private fund managers (PFMs). Their investments in the private securities investment fund launched by their affiliated onshore WFOE PFMs will effectively ease the pressure of raising funds due to the lack of performance records of WFOE PFMs at the initial stage. It is also beneficial for the WFOE PFM to test its strategies in the Chinese market and accumulate a track record with seeding capital provided by its group.

In the meantime, many QFIs are meant to or have invested in private funds launched by onshore non-affiliated PFMs. The Rules on QFI Reform explicitly stipulate that the investment scope of onshore PFM funds invested by QFIs shall conform to the permissible investment scope of a QFI. Hence, onshore PFMs may need to tailor-make a fund with a single investor, i.e. a QFI. Furthermore, onshore PFMs shall strictly comply with the investment scope of QFIs when managing their assets. Specifically, stock index futures or stock index options trading shall be conducted for hedging purposes only. QFIs shall not circumvent the aforesaid regulatory requirements by investing in onshore private funds. Additionally, onshore PFMs shall refrain from providing “channel services” for QFIs. In other words, the investments of QFIs in onshore private funds must be “genuine”, with the investment decision-making power exercised solely by the PFM rather than the QFI investor.

### 3.3 Act as an investment advisor to affiliated QFI

The Rules on QFI Reform allow a QFI to appoint an onshore PFM controlled by it or under the same control, to provide investment advisory services. Some WFOE PFMs entered into investment

advisory service agreements with their affiliated QFIs and provided investment advisory services for QFIs and/or the offshore funds to which its affiliated QFI acting as an investment manager or advisor in connection with their domestic investments. This may facilitate global asset managers to further leverage onshore research resources to support their global trading activities.

## 4. Special Attention to PRC Trading Rules and Information Disclosure Requirements

With the continuous expansion of QFI investment scope, QFIs’ onshore investment activities involve more sophisticated trading rules and regulatory requirements, thereby attracting special attention from foreign investors in PRC securities and futures laws and regulatory rules. Many foreign investors have acknowledged the gap between the trading rules in China’s market and those in mature western markets. We also noted that requirements on shareholding restrictions, shareholding aggregation and exemption, and information disclosure and reporting obligations have become key areas of concern for foreign investors. Many of our QFI clients have requested us to provide them with compliance training on PRC trading rules in terms of securities, bonds and futures trading.

In a drafting statement to the consultation paper of the Rules on QFI Reform, the CSRC specifically highlighted reinforcing the “look-through” regulation, which not only implies a strengthening of information disclosure requirements but also reflects the regulator’s focus on structured products. In the latest QFI annual report form released by the CSRC, QFIs are required to report specific types of structured products such as P-Notes, SWAP, options, QFI role in such product transaction (i.e., the issuer, market maker, or others), as well as trading volume.

## Our Observations

From the increase in QFI applications after the implementation of the Rules on QFI Reform, it can be seen that the Rules on QFI Reform have stimulated the interest of foreign investors in the QFI regime. With the continuous opening-up of China's financial markets, we expect that more foreign investors will likely apply for a QFI license. Those Stock Connect investors already invested in the China A-share market are likely to apply for their QFI qualification as well, in order to better capture trading opportunities and utilize the different advantages of these two regimes. Although there seems to be an inevitable competition and a level of interchangeability

between the QFI regime and Stock Connect regime, we believe that in the long run, the two regimes may promote each other and in effect deepen participation in a more opened and prosperous China capital market.

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

### A Review of Important Events of the Last Two Years of QFI Regime

September 10, 2019	SAFE announces removal of investment quota restrictions on QFII/RQFIIs
May 7, 2020	<p>PBOC and SAFE jointly issue the <i>Administrative Provisions on Domestic Securities and Futures Investment Capital of Foreign Institutional Investors</i> (officially implemented on June 6, 2020)</p> <ul style="list-style-type: none"> <li>- Simplifies capital inward remittance and repatriation process <ul style="list-style-type: none"> <li>▪ Allows qualified investors to choose the currency and timing of capital inward remittances</li> <li>▪ A qualified investor may repatriate capital with written application or instructions as well as a commitment letter that it has fully paid relevant taxes in accordance with applicable PRC tax laws and regulations</li> </ul> </li> <li>- Removes limitations on the number of custodians and permits each qualified investor to entrust multiple domestic custodians, while designating a main reporter</li> </ul>
September 25, 2020	Rules on QFI Reform were released
October 30, 2020	<p>The Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) released the detailed implementation rules on securities trading activities of QFIs respectively</p> <ul style="list-style-type: none"> <li>- Expands investment scope, adding depositary receipts, stock options, government-backed bonds, margin financing, securities lending, securities refinancing as well as bond repos to the permissible investment scope of QFIs</li> <li>- Improves requirements for information disclosure and statutory shareholding reduction: (1) lowers the shareholding percentage of foreign investors in a single listed company which triggers the initial information</li> </ul>



	<p>disclosure obligation, namely, lowering the aggregate shareholding percentage of all QFIs and other foreign investors in a single exchange-listed company which triggers the initial information disclosure obligation from 26% to 24%; (2) improves statutory shareholding reduction requirements when the aggregate shareholding percentage of all QFIs and other foreign investors in a single exchange-listed company exceeds 30%</p> <ul style="list-style-type: none"> <li>- Facilitates investment activities: (1) removes limits on the number of securities companies that QFIs may entrust; (2) specifies the requirements for handling transfers by agreements or non-trade transfers by QFIs</li> </ul>
	<p>China Financial Futures Exchange (CFFEX) released the <i>Circular on Matters Concerning Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors Engaging in the Trading of Stock Index Futures</i></p> <ul style="list-style-type: none"> <li>- Clarifies the varieties and trading methods for QFIIs/RQFIIs to engage in financial futures trading, namely, QFIIs/RQFIIs may trade stock index futures in compliance with relevant administrative rules of the CFFEX on hedging</li> </ul>
	<p>China Securities Depository and Clearing Corporation Limited (CSDC) issued the amended detail rules on securities clearing</p> <ul style="list-style-type: none"> <li>- (1) Enriches the types of clearing participants that QFIs may select; (2) Clarifies for the first time that securities companies may carry out clearing business for QFIs as clearing participants.</li> <li>- Specify that different securities accounts may choose different clearing participants</li> </ul>
November 1, 2020	The Rules on QFI Reform, the Shanghai Stock Exchange/Shenzhen Stock Exchange detailed rules on securities trading activities of QFIs, the CFFEX detailed rules, and the CSDC detailed clearing rules were officially implemented.
November 2, 2020	Several securities companies such as the CITIC Securities, Guotai Junan Securities, Guosen Securities, CICC, UBS Securities completed securities refinancing transactions for QFIs.
December 15, 2020	Barings invested in the Barings China Aggregate Bond Private Securities Investment Fund No. 1, a private securities investment fund launched by its affiliated WOFE PFM - Barings Overseas Investment Fund Management (Shanghai) Limited, which was the first transaction that a QFI subscribes to a PFM fund product launched by affiliated WOFE PFM.
October 15, 2021	CSRC released the <i>Announcement on Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors Participating in Financial Derivative Trading ([2021] No.24)</i> , allowing QFIs to trade commodity futures, commodity options, and stock index options listed and traded on futures exchanges approved by the State Council or the CSRC from November 1,

	2021.
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