

## 资本市场法律热点问题

### 中国证监会公开首起行政和解案例

近日，中国证券监督管理委员会(以下简称“证监会”)与高盛(亚洲)有限责任公司(以下简称“高盛亚洲”)、北京高华证券有限责任公司(以下简称“高华证券”)以及前述两家机构的相关工作人员等9名行政和解申请人(以下简称“申请人”)达成行政和解协议，此为资本市场首起公开的行政和解案例。

证监会网站发布的2019年第11号公告(以下简称“公告”)对本次行政和解的背景、涉及事项及和解协议主要内容进行了披露。从公告内容看，具有以下特点：

第一，证监会未对申请人行为属于合法或违法作出明确的认定结论。公告非常简要地概述了前述两家机构从事证券期货交易的客观事实“2013年10月8日至2015年7月3日期间，高盛亚洲自营交易员通过在高华证券开立的高盛经纪业务账户进行交易，同时向高华证券自营交易员提供业务指导。双方于2015年5月至7月期间的4个交易日的部分交易时段，从事了其他相关股票及股指期货合约交易”，但未认定其中是否存在违反证券期货法律法规的行为。

第二，公告仅披露了申请人中相关机构的名称，而隐去了申请人中相关个人的姓名，降低了对

相关个人的声誉影响。

第三，公告明确披露了和解金额为1.5亿元，同时称申请人已采取必要措施加强公司的内控管理，并在完成后向证监会提交书面整改报告。由此推测，尽管公告未明确指出申请人存在何种不当行为，但其在内控管理方面仍存在需改进和完善的问题，因此需整改消除不良影响。

依据2015年生效实施的《行政和解试点实施办法》(证监会令第114号)，达成和解协议后，证监会将终止对申请人有关行为的调查、审理程序。这意味着相关申请人将不会再因上述行为受到行政处罚，相关个人也不会被采取市场禁入措施，亦不会留下证券期货市场不良诚信记录。这对申请人后续的业务开展、从业及任职资格维持、声誉保护等均有积极作用，同时也将降低被移送司法机关追究刑事责任的风险。

行政执法具有“效率优先、兼顾公平”的特点。对证监会而言，在一些查处难度大、执法成本高的疑难复杂案件中，通过试点行政和解机制，不仅有助于提高执法效率、节约和优化行政资源，也有助于降低行政争议，是除行政处罚执法方式之外的一种有益尝试。

（此页无正文）

谢 青	电话：86 21 2208 6238	邮箱地址：xieq@junhe.com
吴 曼	电话：86 755 2587 0866	邮箱地址：wum@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“[www.junhe.com](http://www.junhe.com)”或君合微信公众号“君合法律评论”/微信号“JUNHE\_LegalUpdates”。



## Financial

### CSRC Announces its First Case of Administrative Reconciliation

Recently, in the first recorded case of administrative reconciliation in China's capital markets, the China Securities Regulatory Commission (CSRC) reached an administrative reconciliation agreement with nine applicants ("applicants"), which included Goldman Sachs (Asia), Beijing Gao Hua Securities, and various personnel related to the aforesaid two institutions.

The CSRC subsequently published its Announcement No.11 (2019) (the "Announcement") on its website, providing details of the background, subject matter and other key information relating to the reconciliation agreement.

- (1) The CSRC does not draw any conclusion on the determination of legality of the applicants' activities. The Announcement briefly reports on the facts, namely: (i) during the period from October 8, 2013 to July 3, 2015, the proprietary traders of Goldman Sachs (Asia) conducted trading through its brokerage account opened with Beijing Gao Hua Securities, and simultaneously provided business guidance to the proprietary traders of Beijing Gao Hua Securities; (ii) Goldman Sachs and Beijing Gao Hua Securities engaged in relevant stocks and stock index futures trading in certain trading hours of four specific trading days from May to July 2015.

The Announcement remains silent on whether these activities violated any applicable laws for securities and futures.

- (2) The Announcement refers by name only to the institutions, while does not disclose the identities of the individuals who were involved, thereby minimizing any potential reputational impact to those individuals.
- (3) The Announcement reports that the reconciliation amount is RMB 150 million and that the applicants have taken the necessary measures to improve their internal controls and will submit written reports to the CSRC on completion of rectification.

While the Announcement does not provide details on any improper behavior of the applicants, it does mention that there have been internal management control issues which therefore need to be rectified.

Pursuant to the *Implementation Measures for the Pilot Program of Administrative Reconciliation* (Order No. 114 of the CSRC, effective as of 2015), once a reconciliation agreement has been reached, the CSRC shall terminate its investigation into the suspicious activities of the applicants, and bring the proceedings against them to an end. The relevant institutions and

individuals involved will no longer be held administratively liable or subject to market bans, nor will their record in the securities and futures markets be adversely affected.

For applicants, the opportunity to reach a reconciliation agreement provides significant advantages. It means they will be able to continue their business operations, keep any relevant qualifications, and protect their reputations, and it mitigates the risk of the CSRC transferring the case for criminal investigation.

The mindset of administrative enforcement in China can be characterized as “Efficient and Fair.” When faced with complicated cases with potentially high investigative and enforcement costs, administrative reconciliation offers the CSRC an alternative to administrative penalty, and provides the opportunity to optimize the use of limited administrative resources, to enforce the law more effectively, and to avoid any dispute arising from an administrative penalty.

Natasha XIE	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Man WU	Tel: 86 755 2587 2866	Email: wum@junhe.com

---

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at [www.junhe.com](http://www.junhe.com) or our WeChat public account “君合法律评论”/WeChat account “JUNHE\_LegalUpdates

