

## 资本市场法律热点问题

### 债券市场新篇章——简评银行间和交易所债券市场互联互通

2020年7月19日，中国人民银行(以下简称“**人民银行**”)和中国证券监督管理委员会(以下简称“**证监会**”)联合发布公告(以下简称“**《公告》**”)，同意银行间债券市场与交易所债券市场相关基础设施机构开展互联互通合作(以下简称“**互联互通**”)。互联互通是指银行间债券市场与交易所债券市场的合格投资者通过两个市场相关基础设施机构连接，买卖两个市场交易流通债券的机制安排。银行间债券市场和交易所债券市场债券登记托管结算机构等基础设施可联合为发行人、投资者提供债券发行、登记托管、清算结算、付息兑付等服务。本文将从以下几方面对《公告》内容进行简要梳理。

#### 一、交易平台互联互通

银行间债券市场和交易所债券市场基础设施互联互通具体可以分为交易平台的连接和登记结算机构的连接两部分。根据《公告》，交易的连接是指银行间债券市场和交易所债券市场电子交易平台可联合为投资者提供债券交易等服务，即由外汇交易中心和沪深证券交易所建立系统连接，为投资者提供交易服务。我们预计，监管者将制定细则以明确单一市场的合格投资者：(1)如何通过现有交易平台交易另一个交易平台的债券；(2)如何在不同交易平台和登记托管机构开户；以及(3)是否允许交易另一个市场债券现券以外的交易品种等。

#### 二、投资者准入

就投资者准入方面，《公告》明确指出，互联互通应遵循投资者适当性等人民银行、证监会监管规定。我们理解，只要符合相关市场对于合格投资者的准入要求，投资者即可以通过互联互通在另一个债券市场交易。值得注意的是，对于境外投资者而言，目前仅有 QFII/RQFII 可以同时交易银行间和交易所的债券市场。我们期待下一步明确允许通过直接准入或债券通机制进入银行间债券市场的境外机构投资者可以通过互联互通交易沪深证券交易所上市的债券。

#### 三、基础设施机构互开名义持有人账户

为实现互联互通，《公告》提及银行间债券市场债券登记托管结算机构之间、银行间债券市场和交易所债券市场债券登记托管结算机构之间应相互开立名义持有人账户，用于记载全部名义持有债券的余额。债券名义持有人出具的债券持有记录，是投资者享有该债券权益的合法证明。

名义持有人在证监会 2009 年颁布的《证券登记结算管理办法》<sup>2</sup>中即有规定，指受他人指定并代表他人持有证券的机构。在证券交易所上市的债券可以记录在证券持有人本人的证券账户内，也可以记录在名义持有人的账户内。实践中，交易所市场的中国证券登记结算有限公司(以下简称“**中证**

<sup>2</sup> 最新修订于 2018 年 9 月 15 日生效。

登”)已经在银行间市场的中央国债登记结算有限责任公司(以下简称“中央结算”)开立名义持有人账户,作为在中央结算的二级托管机构,负责国债、地方政府债券和企业债券的分托管。

名义持有人的概念也存在于银行间债券市场。尽管相关法律法规中并未就名义持有人制度做明确规定,人民银行在《内地与香港债券市场互联互通合作管理暂行办法》发布时的答记者问中提到境外托管机构应在境内托管机构开立名义持有人账户,用于记载名义持有的全部债券余额,明确了“北向通”下境外投资者应通过香港金管局债务工具中央结算系统(以下简称“CMU”)持有债券,并依法享有通过“北向通”买入的债券的权益。CMU作为境外投资者的名义持有人,登记为债券的持有人,可以行使相关债权人权利、提起诉讼。境外投资者也可以依据香港关于名义持有人的相关法律规定作为债券实际权益拥有人行使债权人权利。

鉴于两个市场的基础设施机构都已拥有与香港市场互联互通的经验,交易所市场的中证登与银行间市场的中央结算和上海清算所可以参考沪港通、债券通的实践做法,互相开立债券账户,通过二级托管和分级结算的模式实现互联互通。当然在实践中,由于两个市场登记、托管和结算制度仍存在一定的差异,仍有待监管部门的统一协调。

#### 四、统一监管

在债券市场的监督执法方面,继《关于进一步加强债券市场执法工作的意见》明确,证监会依法对银行间债券市场、交易所债券市场违法行为开展统一的执法工作,《公告》重申了人民银行、证监会将加强监管合作与协调,共同对通过互联互通开展的债券发行、登记、交易、托管、清算、结算等行为实施监督管理。

人民银行和证监会近年来始终致力于推动两个市场的互联互通。在信用评级方面,监管旨在推动评级市场的统一监管,包括统一两个市场的评级机构资质要求以及资质互认,加强对评级机构的监督信息共享以及对违规行为的联合执法和统一处罚;在债券纠纷审理方面,2020年7月15日最高人民法院印发的《全国法院审理债券纠纷案件座谈会纪要》中明确了,针对不同市场的具有还本付息这一共同属性的公司债券、企业债券、非金融企业债务融资工具将适用相同的法律标准。监管机构大力推动统一两个市场的制度规则,旨在建立同一套标准和规则,以便为投资者提供更好的服务水平和效率,也有利于合力推进我国债券市场统一对外开放。

我们将持续关注并及时与我们的客户分享最新的进展。

谢青 合伙人 电话: 86 21 2208 6238 邮箱地址: xieq@junhe.com  
张弛 律师 电话: 86 21 2208 6177 邮箱地址: zhangchi\_austin@junhe.com

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## Financial

### A New Chapter in the Bond Market – Observations on the Intra-Market Connect Scheme between the Inter-bank Bond Market and the Exchange Bond Market

On July 19, 2020, the People’s Bank of China (PBOC) and China Securities Regulatory Commission (CSRC) issued a joint announcement (“Announcement”), approving the interconnection scheme (“Intra-Market Connect”) between relevant financial market infrastructures (FMIs) of the inter-bank bond market (CIBM) and that of the exchange bond market (“Exchange Market”). The Intra-Market Connect refers to a scheme whereby qualified investors are allowed to buy and sell bonds tradable on both markets through the connected FMIs of the two markets. The FMIs including the bond registration, custodian and settlement institutions (“Clearing Houses”) may jointly provide bond issuers and investors with services related to bond issuance, registration and depository, clearing and settlement, and repayment of principal and interest. A summary of the key points of the Announcement is listed as follows.

#### **i. Connection between Trading Platforms**

The Intra-Market Connect scheme is comprised of the connection between trading platforms and the connection between the Clearing Houses. Pursuant to the Announcement, the connection between trading platforms refers to the electronic

trading platforms of the CIBM and the Exchange Market jointly providing bond trading and other services for investors; that is, the China Foreign Exchange Trading System (CFETS), the Shanghai Stock Exchange (“SSE”) and the Shenzhen Stock Exchange (“SZSE”, collectively, “Exchanges”) will establish a system connection to provide trading services for investors. The regulators will, as we anticipate, work out detailed rules, among which include, (i) how the scheme allows qualified investors trading on one market to trade on the other market; (ii) whether qualified investors will be required to open and maintain accounts with depository and custody institutions to support trades on both trading platforms; and (iii) whether qualified investors trading on one market may trade other types of bond products available in the other market other than cash bonds.

#### **ii. Market Access by Qualified Investors**

With regard to market access, the Announcement clearly pointed out that the Intra-Market Connect scheme shall abide by relevant provisions of the PBOC and the CSRC pertaining to investor suitability. We understand a qualified investor should be allowed to trade the bonds of both

markets through the Intra-Market Connect scheme as long as such investor meets the qualification requirement in either of the markets. Notably, for foreign investors, only QFII/RQFII can currently trade in both the CIBM and Exchange Market. We look forward to detailed rules explicitly allowing foreign institutional investors that enter the CIBM through the CIBM Direct Access or Bond Connect to trade bonds listed on the Exchanges through the Intra-Market Connect scheme.

### **iii. Mutual Opening of Nominee Holder Accounts by FMI**

For the purpose of interconnection, the Announcement required nominee accounts to be opened with each other between the two Clearing Houses in the CIBM, as well as among the Clearing Houses respectively in the CIBM and the Exchange Market, to record the balance of bonds held under their names as nominal holders. The bond holding record provided by the aforesaid nominal holders shall be the legal proof that an investor enjoys the rights and interests of the bond.

The *Administrative Measures for the Securities Registration and Settlement* issued by the CSRC dating back to 2009<sup>1</sup> stipulate that nominal holders shall mean institutions that are designated by others and hold the securities on behalf thereof. Bonds listed on the Exchanges may be recorded in the securities holders' own securities accounts or in the accounts of nominal holders. In practice, China Securities Depository and Clearing Corporation Limited ("CSDC"), as the Clearing House of the Exchange Market, has opened a nominee account with China Central Depository & Clearing Co., Ltd. ("CCDC") of the CIBM, so as to serve as the secondary custodian institution being responsible for the sub-custody

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<sup>1</sup> The latest amendment took effect on September 15, 2018.

of treasury bonds, local government bonds and corporate bonds.

The concept of nominal holders also applies to the CIBM. Although the CIBM-related laws and regulations do not explicitly elaborate on a nominee holder protocol, in a press conference held by the PBOC to answer questions regarding the *Interim Measures for the Administration of Mutual Bond Market Access between Mainland China and Hong Kong SAR*, officials of the PBOC stated that a foreign custody institution shall open a nominee holder account at a domestic custody institution to record the balance of all bonds held nominally, which means that foreign investors under the Northbound Trading Link shall hold bonds through HKMA Central Moneymarkets Unit (CMU) and enjoy the rights and interests of bonds purchased through the Northbound Trading Link. The CMU, as the nominal holder of foreign investors, is registered as a bond holder and thus can exercise the relevant creditors' rights and initiate litigations. Foreign investors, as actual beneficial owners of the relevant bonds, shall exercise creditors' rights in accordance with the relevant Hong Kong laws and regulations in regard to nominal holders.

In view of the fact that the FMIs of the two markets have already had experience in establishing a connect scheme with the Hong Kong market, the CSDC of the Exchange Market and the CCDC and the Shanghai Clearing House of the CIBM may, following the practice of the Stock Connect and the Bond Connect, open nominee holder accounts for each other and achieve interconnection through a secondary custody and multi-layered settlement mode. Certainly, in practice, as there are still some differences between the two markets in terms of the bond registration, custody and settlement systems, we envisaged more regulatory coordination among the regulators.

#### iv. Unified Administration

In terms of administration and law enforcement in the bond markets, following the *Opinions on Further Strengthening the Law Enforcement in the Bond Market* specifying that the CSRC should exercise a unified law enforcement power over both the CIBM and the Exchange Market, the Announcement reiterated that the PBOC and the CSRC shall strengthen regulatory cooperation and coordination and jointly supervise and administer the activities relating to bond issuance, registration, trading, custody, clearing, and settlement under the Intra-Market Connect scheme.

In our observation, the PBOC and the CSRC have been closely working together to promote the interconnection between the two bond markets in recent years. With respect to credit rating, regulators aim to promote a unified regulation of the rating market, including unifying the market entry thresholds and mutual recognition of qualification of rating agencies in

the two markets, strengthening sharing of supervisory information on rating agencies and joint law enforcement actions over violations. In terms of dispute resolution, the *Meeting Minutes of National Courts' Trial of Cases Concerning Bond Disputes* issued by the Supreme People's Court on July 15, 2020 have made it clear that disputes involving corporate bonds, enterprise bonds and debt financing instruments of non-financial enterprises with the common nature of repaying the principal and interest, though issued and traded in different markets, shall be resolved based on the same legal standards. The regulatory authorities vigorously promote the unification of the policies and rules of the two markets with a view to establish a unified set of standards and rules aiming better quality and efficiency of services, which may also promote the further opening up of China's bond market.

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
Austin ZHANG	Associate	Tel: 86 21 2208 6177	Email: zhangchi_austin@junhe.com

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