

金融法律热点问题

国家外管局就进一步放开银行间债券市场境外机构投资者开展外汇衍生品交易征求意见

国家外汇管理局(以下简称“外管局”)于2019年11月14日发布了《国家外汇管理局关于完善银行间债券市场境外机构投资者外汇风险管理有关问题的通知(征求意见稿)》(以下简称“《征求意见稿》”)向社会公众征求意见。

按照《征求意见稿》的规定,符合《中国人民银行公告〔2016〕第3号》规定可以进入银行间债券市场的各类境外机构投资者,可以使用境内人民币对外汇衍生产品(以下简称“外汇衍生品”),按照套期保值原则管理投资银行间债券市场产生的外汇风险敞口。

《征求意见稿》对境外机构投资者开展外汇衍生品交易的渠道进行了明确规定。境外银行类投资者可以选择三种渠道开展外汇衍生品交易:(一)作为客户与境内银行直接交易;(二)申请成为中国外汇交易中心(以下简称“外汇交易中心”)会员直接进入银行间外汇市场交易;(三)申请成为外汇交易中心会员通过主经纪业务进入银行间外汇市场交易。境外非银行类投资者可以选择下列渠道开展外汇衍生品交易:(一)作为客户与境内银行直接交易;(二)申请成为外汇交易中心会员通过主经纪业务进入银行间外汇市场交易。

此外,境外机构投资者选择与境内银行直接交易外汇衍生品的,可以选择与不超过3家境内银

行交易,并将银行名单事先向外汇交易中心备案。调整银行的,也应事先向外汇交易中心备案。

我们的观察

我们注意到,《征求意见稿》沿用了《国家外汇管理局关于银行间债券市场境外机构投资者外汇风险管理有关问题的通知》(以下简称“《汇发〔2017〕5号》”)中一些原则性的规定,比如外汇衍生品敞口应与外汇风险敞口具有合理的相关度。不同于《汇发〔2017〕5号》中要求境外投资者的外汇衍生品交易应确保符合实需交易的原则,《征求意见稿》中仅要求境外机构投资者按照套期保值原则管理其外汇风险敞口,并进一步要求境外投资者向银行或者外汇交易中心提交遵守套期保值原则的书面承诺。相比《汇发〔2017〕5号》规定下境外投资者只能通过结算代理行进行外汇衍生品交易,《征求意见稿》允许境外投资者选择结算代理行以外的银行专门办理外汇衍生交易,将更有利于境外机构通过比价降低进行外汇套期保值的成本,旨在优化境外机构债券投资项下外汇风险管理。《征求意见稿》一经正式出台,也将取代《汇发〔2017〕5号》。

《征求意见稿》也是继今年9月份中国人民银行和外管局联合下发《关于进一步便利境外机构投资者投资银行间债券市场有关事项的通知》后(参

见 JunHe Client Briefing “中国人民银行拟允许 QFII/RQFII 和银行间账户债券双向非交易过户”), 拟为境外机构投资者投资银行间债券市场提供的又一便利举措, 相信也将进一步促进国内债券市场

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。

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Financial

SAFE Solicits Comments on Circular Concerning Forex Derivatives Trading by Interbank Bond Market Foreign Institutional Investors

On November 14, 2019 the State Administration of Foreign Exchange (SAFE) issued the Consultation Paper of the Circular on Improving the Management of Foreign Exchange Risks Regarding Foreign Institutional Investors Trading in the Interbank Bond Market (“Consultation Paper”) to solicit public comments.

Pursuant to the Consultation Paper, all foreign institutional investors that are allowed to trade in the interbank bond market under the Announcement No.3 [2016] issued by the People’s Bank of China (PBOC) may use the domestic RMB/foreign exchange derivatives (“forex derivatives”) to manage their forex risk exposure in the interbank bond market in accordance with the hedging principle.

The Consultation Paper outlines the routes available to foreign bank-type institutions and non-bank-type institutions in trading forex derivatives:

- (i) For bank-type institutions, they may trade via three routes: (a) trading with a domestic bank as its customer; (b) trading in the interbank forex market directly after becoming a member of the China Foreign Exchange Trade System (CFETS); or (c) trading in the interbank forex market through engaging the

prime brokerage services after becoming a member of the CFETS.

- (ii) For non-bank-type institutions, they can only trade through the aforesaid routes (a) and (c).

Additionally, if a foreign institutional investor decides to trade forex derivatives with domestic banks as a bank customer, it may do so with no more than three domestic banks and shall file the list of those banks with the CFETS before commencing trade. In the event that a foreign institutional investor decides to move to any other domestic bank, it shall file the proposed change to the CFETS before commencing trade with the new bank(s).

Our Observations

We note that the Consultation Paper reiterates some basic principles under the Circular on Issues Concerning the Management of Foreign Exchange Risks Regarding Foreign Institutional Investors in Interbank Bond Market issued by the SAFE (“Circular [2017] No.5”). For example, the exposure to forex derivatives shall be reasonably correlated with the forex risk exposure.

Unlike the Circular [2017] No.5 which allows

foreign institutional investors to trade forex derivatives only out of real necessity, the Consultation Paper merely requires the foreign institutional investors to manage their forex risk exposure in accordance with the hedging principle and to submit written undertakings with the domestic banks or the CFETS to document their compliance with the hedging principle before commencing trade.

Moreover, unlike the Circular [2017] No.5, which provides that foreign institutional investors can only trade forex derivatives via their settlement agency banks, the Consultation Paper allows a foreign institutional investor to engage banks other than its settlement agency bank to facilitate its trading of forex derivatives. Under this mechanism, foreign institutional investors may reduce their hedging costs by trading via banks charging lower fees, thereby optimizing the management of forex risks in regard to their bond investments.

Once the Consultation Paper is officially implemented, it will supersede the Circular [2017] No.5.

Following the Circular on Further Facilitating Investments by Foreign Institutional Investors in Interbank Bond Market issued jointly by the SAFE and the PBOC in September 2019 (please refer to JunHe Client Briefing: PBOC Consultation on Allowing Transfer of Bonds and Funds between QFII/RQFII and CIBM Direct Accounts), the Consultation Paper proposes to further facilitate the investments by foreign institutional investors in the interbank bond market, which is expected to be another measure facilitating the further opening up of the domestic interbank bond markets.

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

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