

## 金融法律热点问题

### 证监会发布《证券公司交易信息系统外部接入管理暂行规定（征求意见稿）》

农历新年之前，中国证券监督管理委员会（以下简称“中国证监会”）就《证券公司交易信息系统外部接入管理暂行规定（征求意见稿）》（以下简称“《征求意见稿》”）公开征求意见。《征求意见稿》专门规范券商的“交易信息系统外部接入”（以下简称“外部接入”）。在券商经纪业务开展过程中，券商有可能允许客户使用其自有自动化交易系统下单交易，从而使得客户可以运用自己的算法策略，而非依赖券商提供的交易系统。因此，这里的“外部接入”特指证券公司通过提供信息系统接口或其他信息技术手段，接入投资者交易系统并接收投资者交易和查询指令。

回顾证监会对券商外部接入的监管历史可以发现，这一轮监管始于2015年A股异常波动时期。2015年7月，针对当时明显存在的非持牌机构未经批准利用信息系统为客户开立虚拟股票账户而实际上代理客户买卖股票的行为，证监会暂停了证券公司外部接入的增量业务并对存量业务进行清理整顿，并且在证监会针对利用信息系统非法从事证券经纪业务违法行为采取一系列监管行动和处罚之后得以加强。此次《征求意见稿》的出台意味着在三年半的正本清源之后，监管机构对外部接入的监管终于实现了正常化。

客观上，部分专业机构投资者确实存在借助外部接入实现分仓管理、统一风控以及交易策略执行的需求。证监会在《征求意见稿》的起草说明（以下简称“起草说明”）中列举了与外部接入有关的

三类风险：一是业务合规风险。监管机构担心非持牌机构利用外部接入从事需要持牌才能从事的证券经纪业务或其他证券业务；二是信息安全风险。外部系统的信息技术风险可能会传导至证券公司；三是市场风险。这主要是指由于证券公司的风控能力缺失可能导致出现例如“fat finger”这样的风险事件。

总体而言，相比2015年，证监会起草说明中总结的上述三点风险意味着其实际上承认外部接入只是一个工具，而不是一项应禁止的非法活动。在金融市场，防范风险是永恒的主题，通过禁止使用相关工具来防范风险仍属短期措施，并不能实现长期的风险控制目标。我们的观察是，《征求意见稿》的出台反映出上述监管思路的转变，即不再单纯禁止使用技术工具，而是强调券商应承担的监管责任，包括划定投资者使用技术工具应符合的适当性要求。

梳理《征求意见稿》的条文，我们认为重点可以总结为两方面：

第一，证券公司应在安全合规前提下为投资者的合理交易需求提供服务。证券公司应“引导投资者优先使用本机构提供的交易终端”，将交易信息系统外部接入定位在例外情形，作为证券公司标准化服务的合理补充。证券公司仅可以为符合《证券期货投资者适当性管理办法》第八条第一项或第三项规定的且自身存在合理交易需求的专业投资者

提供交易信息系统外部接入服务。在这些专业投资者中，如为私募基金管理人，则该私募基金管理人必须为私募证券投资基金管理人，其最近一年末管理产品规模不低于5亿元，且接入的私募基金产品已获得中国证券投资基金业协会备案。

第二，强化证券公司的监管责任，明确证券公司是外部接入管理的责任主体并承担违反管理责任的法律后果。其中，合规审慎原则、风险可控原则和全程管理原则是证券公司展业三原则。合规审慎原则指证券公司应当评估投资者交易需求的合理性，审慎提供交易信息系统外部接入服务。风险可控原则指证券公司应当识别、监测和防范外部接入的风险隐患。而全程管理原则指证券公司应当对外部接入实施集中统一管理，建立健全明确、清晰的全流程管理机制，包括但不限于尽职调查、事前

审查、交易监测、异常处理、应急处置、退出机制。《征求意见稿》对券商提出了较高的准入门槛，例如近三年分类结果中至少有一年在A级或者以上级别，目前看来几乎所有外资券商都无法满足这一要求。

《征求意见稿》第一次明确了“自动化交易”的定义，即指通过既定程序或特定软件，自动生成或执行交易指令的交易行为，并规定证券公司为投资者从事自动化交易活动提供交易信息系统及相关策略，以及证券公司自营、资管业务从事自动化交易的，参照该规定执行。这意味着该规定确立的各项合规原则应适用于券商的所有股票自动化交易业务。

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

### CSRC Issues Consultation Paper on the Administration of Securities Brokers' Electronic Connections with Clients' External Trading Systems

In the run up to the Chinese Lunar Year, the China Securities Regulatory Commission (“CSRC”) released its *Consultation Paper on the Administration of Securities Brokers' Electronic Connections with Clients' External Trading System* (“**Consultation Paper**”) for public comment.

The Consultation Paper focuses on the regulation of electronic connections between securities brokers and their external clients' trading systems (“**external connections**”). It is not unusual for securities brokers to allow their clients to use client-owned proprietary automatic trading systems to place orders in order that the clients may implement their own algorithm strategies, rather than relying on trading systems provided by their securities brokers. In this context, “external connections” can be taken to mean the information system interfaces or other information technology methods used by securities brokers to connect with their clients' trading systems in order to receive trading and enquiry instructions from such clients.

The evolution of the CSRC's regulation of external connections used by securities brokers started following the 2015 A-share abnormal

fluctuations. In July 2015, as it became apparent that non-licensed institutions had been using information systems to open virtual stock accounts for their clients and to trade stocks on behalf of these clients, the CSRC ordered brokers to call a halt on the opening of any new business that involved external connections, and to clean up their existing business. There was subsequently further strengthening, with the CSRC taking a series of regulatory actions and imposing penalties for activities that used information systems to illegally engage in the securities brokerage business.

The release of the 2019 Consultation Paper on external connections marks the end of three and half years of radical clearing-out by the CSRC, and a return to a more stable approach.

The Draft Statement of the CSRC on the Consultation Paper (“Draft Statement”) acknowledges that some professional institutional investors do actually need to use external connections for the purposes, for example, of allocating trades among different portfolios, applying risk control measures universally, and/or executing certain trading strategies.

In its Draft Statement, the CSRC lists three major risks or concerns associated with such external connections:

- (i) compliance risk: where unlicensed institutions use external connections to engage in securities brokerage or other types of securities activities that are only allowed to be conducted by licensed financial institutions;
- (ii) information security risk: those risks associated with information technology of external systems that could be spread to securities brokers; and
- (iii) market risk: primarily refers to issues that arise in securities companies due to inadequate risk control, such as “fat finger-errors.”

Generally speaking, when compared with the response in 2015, the three major risks identified in the Draft Statement suggest that the CSRC recognizes that external connections are just a tool rather than an illegal activity that should be banned, and that forbidding their use is a short-term measure that may not support the CSRC’s longer-term goal of preventing risk in financial markets. With the release of the Consultation Paper, it appears that the focus of regulation is shifting from banning technical tools, and is instead moving towards increasing the supervisory requirements on securities brokers themselves, including defining the requirements of investor suitability before they use the tools.

Our reading of the Consultation Paper identifies two key strands.

Firstly, securities brokers shall provide services according to the reasonable business needs of the investors on the condition that provision of such services proves to be safe and should be in full compliance with the relevant laws and

regulations. Securities brokers shall direct investors to use, in the first instance, the trading terminals provided by such securities broker. Use of external connections is allowed only in exceptional circumstances, and in order to provide a reasonable supplementary service to the standard services provided by securities brokers.

Securities brokers can only provide external connection services to those professional investors prescribed in Item 1 or Item 3 of Article 8 of the *Measures for the Eligibility Management of Securities and Futures Investors* and who have reasonable needs. Among professional investors, in order to qualify, a private fund manager of securities investment fund is required to have assets under management (AUM) over the last year no less than RMB 500,000,000, and the relevant private fund shall have been filed with the Asset Management Association of China.

Secondly, there has been a strengthening of the supervisory obligations of securities brokers. It is expressly indicated that securities brokers shall bear primary responsibility for the management of external connection activities, and shall be held liable for violations of such management responsibilities.

There are three key principles with which securities brokers should comply when they engage in relevant activities: compliance and prudence, risk control and whole process management.

The compliance and prudence principle means that securities brokers should evaluate whether the trading needs of investors are reasonable, and provide their external connection services prudently.

The risk control principle refers to the need for securities brokers to identify, monitor and prevent

any potential risks arising from their external connection activities.

The whole process management principle means that securities brokers shall conduct coordinated management of their external connection activities, and establish clearly articulated management mechanisms to address the full process, including but not limited to due diligence, pre-review, trading monitoring, abnormal event handling, emergency response, and exit mechanism.

The Consultation Paper sets out a higher entry threshold for qualified securities brokers, such as having an A-class rating or higher for at least one year within the past three years. This requirement means that almost all foreign brokers are currently excluded from qualifying.

It is significant that, for the first time, the Consultation Paper provides a definition of “automatic trading”, that is trading activity in which trading orders are automatically generated and executed through established programs or specific software, and stipulates that securities brokers providing trading information systems or relevant strategies to investors for the purpose of engaging in automatic trading activities or who engage in automatic trading in their proprietary business or assets management business shall be governed by reference to the Consultation Paper. This means that the compliance principles established in the Consultation Paper shall effectively apply to all automatic stock trading activities undertaken by securities brokers.

We will continue to pay close attention and will share the latest developments with our clients.

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