

## 金融法律热点问题

### 证监会就修订《证券公司股权管理规定》公开征求意见

2020年6月12日，中国证券监督管理委员会（以下简称“证监会”）发布了《关于修改〈证券公司股权管理规定〉的决定（征求意见稿）》（以下简称“《征求意见稿》”）。在2020年3月1日施行的《中华人民共和国证券法》（“新《证券法》”）的监管框架及参考境内外金融机构的监管实践，《征求意见稿》拟对证监会2019年7月5日发布的《证券公司股权管理规定》（以下简称“《股权规定》”）进行修订，以进一步完善证券公司准入和监管的相关要求。

根据证监会所作的修改说明，此次调整主要涉及以下几个方面：(i)主要股东定义；(ii)主要股东资质要求；(iii)证券公司股权相关审批事项；及(iv)其他监管要求。下文将对上述修改内容逐一进行介绍。

#### 一、主要股东定义

根据修改说明，参考国内外金融机构的监管实践及考虑到证券公司股权日渐分散的趋势，《征求意见稿》修改了主要股东的定义，将证券公司主要股东定义由“持有25%以上股权的股东或者持有5%以上股权的第一大股东”修改为“持有证券公司5%以上股权的股东”。主要股东定义调整后，证券公司股东类别由四类改为三类，即(1)控股股东(持有证券公司50%以上股权的股东或者虽然持股比例不足50%，但其所享有的表决权足以对证券公司股

东会的决议产生重大影响的股东)；(2)主要股东；以及(3)持有证券公司5%以下股权的股东。

#### 二、主要股东资质要求

与《股权规定》相比，《征求意见稿》第八条适度降低了证券公司主要股东的资质要求：(i)将主要股东净资产从不低于2亿元调整为不低于5000万元人民币；(ii)取消主要股东具有持续盈利能力的要求；(iii)不再要求主要股东具备与证券公司业务范围相匹配的金融业务经验；以及(iv)不再要求主要股东制定合理有效的风险处置预案以应对证券公司因发生风险事件而无法经营的情况。《征求意见稿》降低了企业参股证券公司的门槛，有利于证券公司引进社会资本。

在主要股东资质要求的基础上，《征求意见稿》第九条进一步规定了证券公司的第一大股东或控股股东还需要满足额外条件，即(i)开展金融相关业务的经验与证券公司业务范围相匹配；(ii)入股证券公司与其长期战略协调一致，有利于服务其主营业务发展；(iii)对完善证券公司治理结构、推动证券公司长期发展有切实可行的计划安排；(iv)对保持证券公司经营管理的独立性和防范风险传递和不当利益输送，有明确的自我约束机制；(v)对证券公司可能发生风险导致无法正常经营的情况，制定合理有效的风险处置预案；及(vi)证监会基于审慎监管原则规定的其他条件。值得注意的是，前述第(i)

项与第(v)项为本次《征求意见稿》取消的《股权规定》中对主要股东的资质要求，而第(ii)-(iv)项为《股权规定》第十条对控股股东的资质要求。

我们理解，相较于《股权规定》，《征求意见稿》整体上降低了对主要股东的资质要求，但提高了对第一大股东的资质要求，并将对第一大股东的资质要求与控股股东保持一致。如果主要股东同时为证券公司第一大股东，在《征求意见稿》正式生效后，其需满足比《股权规定》中更高的资质要求。由此可见，证监会虽然总体放宽了企业参股证券公司的要求，但并未明显降低对证券公司核心股东(即第一大股东、控股股东)的资质审核标准。

### 三、证券公司股权相关审批事项

《征求意见稿》缩减了需要证监会审批的事项范围。与《股权规定》相比，《征求意见稿》第六条仅要求证券公司变更主要股东或实际控制人时报证监会审批。《股权规定》中要求证监会审批的其他事项，即证券公司(i)增加注册资本且股权结构发生重大调整，(ii)减少注册资本，及(iii)变更持有5%以上股权的股东、实际控制人在《征求意见稿》中已调整为备案事项。

这一修改与新《证券法》中的修订保持一致。根据新《证券法》第一百二十二条，证券公司仅在变更主要股东或者实际控制人时需报证监会批准。证监会2020年3月3日发布的《关于取消或调整证券公司部分行政审批项目等事项的公告》亦明确，自2020年3月1日起，证监会不再受理新《证券法》项下已取消的行政审批事项。

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### 四、其他监管要求

除上述修改内容之外，根据监管实践的需要，《征求意见稿》还对其他监管要求进行了进一步明确。

#### (1). 禁止对赌

《征求意见稿》第二十条首次明确证券公司股东不得签订对赌协议。对赌协议包括在未来符合特定条件时，由证券公司向特定股东赎回股权或由特定股东转让、受让证券公司股权的协议，及类似的实质上具有“对赌”性质的股权交易安排。

#### (2). 控股股东、实际控制人变更为持股 100%的股东需备案

《征求意见稿》第六条新增对控股股东、实际控制人变更为持股 100%的股东的备案要求，即证券公司的控股股东、实际控制人实际控制证券公司的股权比例增至 100%的，证券公司应当在公司登记机关办理变更登记后 5 个工作日内向证监会备案。

#### (3). 单个非金融企业实际控制证券公司股权比例不得超过 50%的例外情形

《征求意见稿》第十五条明确了单个非金融企业实际控制证券公司股权比例不得超过 50%的例外情形，即单个非金融企业为处置证券公司风险而实际控制证券公司 50%以上股权的情形不受此条限制。

我们将持续关注并及时与我们的客户分享最新的进展。



## Financial

### CSRC Solicits Public Comments on Proposed Revisions to the Provisions for Administration of Equity Ownership in Securities Companies

On June 12, 2020, the China Securities Regulatory Commission (CSRC) issued the *Decision on Amending the Provisions for Administration of Equity Ownership in Securities Companies* (Consultation Paper) (“Consultation Paper”). In line with the regulatory framework under the newly amended *Securities Law of the People’s Republic of China* (“New Securities Law”), which was officially implemented on March 1, 2020, and in reference to the regulatory practices regarding domestic and foreign financial institutions, the Consultation Paper proposes several amendments to the *Provisions for Administration of Equity Ownership in Securities Companies* (“Provisions”) issued by the CSRC on July 5, 2019 to further clarify the relevant requirements for investors of securities companies as well as the regulation of securities companies.

Pursuant to the drafting notes released by the CSRC (“Drafting Notes”), the proposed amendments involve the following aspects: (i) definition of major shareholder; (ii) qualification requirements for major shareholders; (iii) administrative approvals concerning equity ownership in securities companies; and (iv) other regulatory requirements, each of which will be

further elaborated below.

#### I. Definition of Major Shareholder

According to the Drafting Notes, in reference to the regulatory practices regarding domestic and foreign financial institutions and in consideration of the increasingly diversified equity ownership structure in securities companies, the Consultation Paper proposes to amend the definition of major shareholder. The previous definition of major shareholder, namely, “a shareholder who holds 25% or more equity, or a shareholder who holds more than 5% and less than 25% equity, but is the largest shareholder in a securities company”, has been amended to “a shareholder holding more than 5% equity in a securities company”. By virtue of such amendment, there will be three rather than four classes of shareholders in a securities company, namely, (i) the controlling shareholder (i.e. a shareholder holding 50% or more equity in a securities company, or a shareholder who holds less than 50% equity in a securities company but whose voting rights are capable of exerting a significant impact on the resolutions by the shareholders’ meetings of a securities company); (ii) the major shareholder; and (iii) the

shareholder with less than 5% equity.

## **II. Qualification Requirements for Major Shareholders**

Compared to the Provisions, Article 8 of the Consultation Paper moderately reduces the qualification requirements for a major shareholder of a securities company. Specifically, the Consultation Paper no longer requires a major shareholder to (i) have net assets of not less than RMB 200 million (instead, a major shareholder only needs to have net assets of not less than RMB 50 million); (ii) be capable of making profits continuously; (iii) have experience in financial-related businesses that correlates with the business scope of the securities company; and (iv) formulate a reasonable and effective risk management plan for possible abnormality in business operation of the securities company incurred by any risk incident. By lowering the qualification requirements for the major shareholder of a securities company, the Consultation Paper encourages more investments in securities companies, thereby expediting the capitalization of securities companies.

Apart from the qualification requirements of major shareholders, Article 9 of the Consultation Paper further stipulates that the largest shareholder or controlling shareholder of a securities company needs to meet additional conditions, namely, (i) experience in financial-related businesses that correlate with the business scope of the securities company; (ii) an investment in the securities company is in line with its long-term strategies, and beneficial to the development of its core businesses; (iii) pragmatic and feasible plans and arrangements for improving the securities company's corporate governance and facilitating the securities company's business developments in a long term; (iv) an internal regulation mechanism in place to maintain the independent

operation of the securities company and prevent any risk transmission and interest tunneling; (v) a reasonable and effective risk management plan for possible abnormality in business operation of the securities company incurred by any risk incident; and (vi) any other condition prescribed by the CSRC in accordance with the principle of prudent regulation. Notably, the aforesaid items (i) and (v) are the qualification requirements for major shareholders under the Provisions, which have been abolished by the Consultation Paper, while items (ii) to (iv) are the qualification requirements for controlling shareholders stipulated under Article 10 of the Provisions.

We understand that, compared with the Provisions, the Consultation Paper has generally reduced the qualification requirements for major shareholders. However, it has also increased the qualification requirements for the largest shareholder by aligning the qualification requirements for the largest shareholder with those for the controlling shareholder. Accordingly, if a major shareholder is also the largest shareholder of a securities company, upon the official implementation of the Consultation Paper, such shareholder has more qualification requirements to meet in addition to those stipulated under the Provisions. It follows that although the CSRC has generally relaxed the requirements for enterprises to invest in securities companies, it has not reduced the qualification requirements for core shareholders of a securities companies (i.e., the largest shareholder or the controlling shareholder).

## **III. Administrative Approvals Concerning Equity Ownership in Securities Companies**

The Consultation Paper has narrowed the scope of matters subject to an approval by the CSRC. In comparison to the Provisions, Article 6 of the Consultation Paper only requires securities

companies which propose to change their major shareholders or de facto controllers to obtain an approval from the CSRC. Under the Consultation Paper, the matters required to be filed with the CSRC are (i) an increase in the registered capital resulting in a major change to the equity structure of a securities company, (ii) a decrease in the registered capital of a securities company, and (iii) a change of the shareholder or de facto controller holding 5% or more equity in a securities company, which were originally subject to an approval by the CSRC under the Provisions.

This amendment is consistent with the revision proposed by the New Securities Law. According to Article 122 of the New Securities Law, a securities company shall get an approval from the CSRC only when it changes its major shareholder or de facto controller. Moreover, the *Circular on Cancellation or Adjustment of Some Administrative Approvals Regarding Securities Companies* issued by the CSRC on March 3, 2020 has also made it clear that after March 1, 2020, the CSRC will no longer accept applications for administrative approvals that have already been cancelled under the New Securities Law.

#### **IV. Other Regulatory Requirements**

In addition to the above-mentioned amendments, the Consultation Paper has further clarified some regulatory requirements according to the regulatory practices.

##### **(1) Prohibition on VAM**

Article 20 of the Consultation Paper specifies for the first time that shareholders of securities companies shall not enter into a valuation adjustment mechanism (VAM) with

other parties. VAMs include (i) agreements providing that a securities company shall repurchase equity held by a specific shareholder in the future, or a specific shareholder shall transfer or accept the equity of the securities company, provided that certain conditions are met, or (ii) any other similar equity transactions bearing the feature of VAM.

##### **(2) Controlling shareholder or de facto controller to be filed with the CSRC upon holding 100% equity**

Article 6 of the Consultation Paper provides that the controlling shareholder or de facto controller of a securities company shall file with the CSRC upon holding 100% equity in the securities company. Specifically, the securities company shall file with the CSRC within five (5) working days after completing the relevant registration formalities with the company registration authority in regard to the aforesaid change of equity.

##### **(3) Exception to the requirement that the proportion of equity of a securities company actually controlled by a single non-financial institution shall not exceed 50%**

Article 15 of the Consultation Paper clarifies the exception to the requirement that a single non-financial enterprise shall not actually control more than 50% of the equity of a securities company, that is, the situation that a single non-financial enterprise actually controls more than 50% of the equity of a securities company for the purpose of handling the risk of the securities company is not subject to such requirement.

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