

## 金融法律热点问题

### 银保监会发布理财子公司办法

2018年12月2日,经过一个月公开征求意见,中国银行保险监督管理委员会(以下简称“**银保监会**”)正式发布了《商业银行理财子公司管理办法》(以下简称“**《理财子公司办法》**”),作为银保监会2018年9月28日发布的《商业银行理财业务监督管理办法》(以下简称“**《理财办法》**”)的配套性文件。至此,银行理财子公司正式加入大资管市场的竞争版图。《理财子公司办法》的发布也意味着《资管新规》主要配套细则全部出台,大资管行业格局调整雏形初现。

相比银保监会于2018年10月19日发布的征求意见稿(以下简称“**征求意见稿**”),正式发布的《理财子公司办法》的实质性改动不大<sup>1</sup>,但仍有几点值得关注:

#### 一、明确理财产品的基础法律关系为信托关系

尽管《理财办法》与征求意见稿均明确了理财产品财产独立于管理人和托管人的自有资产,但前述规定均未明确理财产品的法律基础。而在与《理财子公司办法》同日发布的答记者问中,银保监会首次明确了商业银行和理财子公司发行的理财产品的法律基础为信托关系,商业银行和商业银行理财子公司应诚实守信,勤勉尽责地履行受人之托、代人理财的职责。这表明银保监会与证监会在资管产品基础法律关系的认定问题上保持一致。

#### 二、放宽自有资金使用范围

征求意见稿与《理财办法》保持一致,禁止理财子公司以自有资金购买自身发行的理财产品,而《理财子公司办法》参照同类资管机构监管制度,放松了自有资金的使用要求。《理财子公司办法》允许理财子公司在遵循相关风险管理要求的前提下,以自有资金投资于本公司发行的理财产品,该等风险管理要求包括但不限于:(i)该等投资不得超过其自有资金的20%;(ii)不得超过单只理财产品净资产的10%;(iii)自有资金也不得投资于分级理财产品的劣后级份额。

#### 三、参照同类资管机构细化投资与交易的规定

《理财子公司办法》主要参照了证券投资基金管理公司(以下简称“**公募基金公司**”)的相关规定,细化了银行理财子公司投资与交易方面的要求,包括:(i)要求理财子公司实行集中交易制度,将投资管理与交易执行职能分离;(ii)要求理财子公司建立公平交易制度和异常交易监控机制,对投资交易进行监督;(iii)要求理财子公司对不同理财产品之间的同向和反向交易进行监控等。同时,《理财子公司办法》要求银行理财子公司的董监高及从业人员进行证券投资申报。我们理解,由于理财子公司发行的公募理财产品可以直接投资股票,最终稿加入上述交易管控层面的要求将加强理财子公司的投资运作的合规性并有助于保护投资者的利益。

值得注意的是,答记者问中提及银保监会正在

<sup>1</sup> 就《理财子公司办法》的相关重要规定可参考我们于2018年10月8日发布的 Client Briefing 《银保监会就理财子公司办法征求意见》。

制定银行理财子公司净资本和流动性管理等配套监管制度，我们预计该等制度也将与公募基金公司的规定基本保持一致。

#### 四、我们的观察

如我们于 10 月 8 日的 client briefing 中所分析，《理财子公司办法》侧重于建立一套看齐“其他同类金融机构”（例如公募基金公司）的架构，同时在具体业务规则上对《理财办法》进行了一定的突破，以鼓励银行将理财业务剥离至子公司，而本次《理财子公司办法》相较于征求意见稿的修订也体现了上述内容，进一步为理财子公司加入大资管市场的

竞争作了制度上的铺垫。

截至 2018 年 11 月底，已有 20 家商业银行宣布拟设立银行理财子公司，其中包括国有四大行（中行、农行、工行和建行）。以下我们整理了已宣布设立理财子公司的境内商业银行以及相关银行（是否）下设合资公募基金公司的清单。

预计 2019 年理财子公司牌照将正式发放，我们将持续关注并与您分享动态。

No.	银行名称	合资基金公司
1	招商银行	招商基金
2	华夏银行	
3	北京银行	中加基金
4	宁波银行	永赢基金
5	交通银行	交银施罗德
6	光大银行	光大保德信
7	平安银行	
8	南京银行	鑫元基金
9	民生银行	民生加银基金
10	广发银行	
11	兴业银行	兴业基金
12	上海浦发银行	浦银安盛基金
13	杭州银行	
14	徽商银行	
15	中国银行	中银基金
16	中国农业银行	农银汇理
17	中国建设银行	建信基金
18	中国工商银行	工银瑞信
19	中信银行	
20	江苏银行	

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## Financial

### CBIRC Issues Administrative Measures on Wealth Management Subsidiaries

On December 2, 2018, following a one month period for public comment, the China Banking and Insurance Regulatory Commission (CBIRC) issued its Administrative Measures on the Wealth Management Subsidiaries of Commercial Banks (“WMS Measures”) as an ancillary regulation to the Measures for Supervision and Administration of Wealth Management Business of Commercial Banks (“Wealth Management Measures”) that it had issued on September 28, 2018. In doing so, the CBIRC has for the first time detailed the means by which the wealth management subsidiaries of banks (“WMSs”) are able to compete in the wealth management market. The issuing of the WMS Measures also provides a benchmark for the reform of the asset management industry. All main ancillary asset management regulations have now been released, and the framework to regulate asset management industry has become apparent.

While the final version of the WMS Measures contains no significant changes compared with the earlier CBIRC’s Consultation Paper of October 19, 2018 (“Consultation Paper”)<sup>1</sup>, there are a few points worth noting:

<sup>1</sup> Our earlier Bulletin, *CBIRC Solicits Comments on Administrative Measures for Wealth Management Subsidiaries of Commercial Banks*, published on October 8, 2018 provides details of the key provisions of the WMS Measures.

#### **I. Determination of the underlying trust relationship for wealth management products**

The Wealth Management Measures and the Consultation Paper both clarify that the property of wealth management products (“WMPs”) shall be independent from the proprietary assets of any manager or custodian, though neither of them explicitly stipulates the underlying legal status of WMPs. However, in the Media Q&A accompanying the release of the WMS Measures, the CBIRC indicates that the legal basis for wealth management activities is a trust relationship, and it further elaborates that commercial banks and their WMSs shall take on their clients’ entrustment and shall perform their wealth management functions diligently, in good faith and in an honest and trustworthy manner. In so defining the underlying legal relationship of WMPs, the CBIRC moves into alignment with the China Security Regulatory Commission (CSRC).

#### **II. Relax restrictions on investing using proprietary funds**

In the Consultation Paper, in line with the Wealth Management Measures, WMSs were prohibited from purchasing their own WMPs with their own

funds. In the WMS Measures, the requirements have been somewhat loosened, with WMSs permitted to invest proprietary capital in their own WMPs, under the presumption that there is compliance with relevant risk management requirements. These include, but are not limited to: (i) The total amount of the investment in a WMS's own WMPs shall not exceed 20% of its proprietary capital; (ii) The investment in a single WMP using proprietary capital shall not exceed 10% of net assets of such single WMP; and (iii) Proprietary capital shall not be invested in any junior class of structured WMPs.

### **III. Adopt the same investment and trading regulations as other asset managers**

The WMS Measures provide further details of the investment and trading requirements for WMSs, taking as their primary reference the relevant regulations on securities investment fund management companies ("FMCs"). These include requiring WMSs to (i) Implement a centralized trading system, and to keep separate the functions of investment management and trading activities; (ii) Keep track of investment and trading activities through a fair trading system and a mechanism to identify any abnormal trading; (iii) Monitor transactions among WMPs in both the same and opposite directions. The WMS Measures additionally require all directors, supervisors, senior managers and employees of WMSs to provide reports on the status of their investments in securities. Given that publicly-raised WMPs issued by WMSs are permitted to directly invest in stocks, we are of the view that by including the above-mentioned requirements in the final version, the WMS Measures will serve to strengthen the compliance of WMSs in their investment operations and thereby help protect the interests and rights of investors.

Of note, the Media Q&A mentions that the CBIRC is currently developing net capital and liquidity management regulatory rules for WMSs. We anticipate that such rules are likely to be very much in line with those that already apply to FMCs.

### **IV. Our Observation**

As we observed in our Client Briefing of October 8, 2018, the WMS Measures aim to establish a set of regulations in line with those of other authorities that govern "other similar financial institutions", such as the FMCs overseen by the CSRC. Compared with the current Wealth Management Measures, the greater detail in the WMS Measures aims to encourage banks to spin off their wealth management businesses to their subsidiaries. This objective is reflected in the amendments that have been made to the Consultation Paper, which further pave the way for WMSs to compete in the asset management market.

As of the end of November 2018, a total of 20 commercial banks had already announced their intention to establish WMSs. The full list, which includes the 'Big Four' - Bank of China, Agricultural Bank of China, Industrial and Commercial Bank of China and China Construction Bank - is provided below, along with details of banks' joint venture FMCs where they have been identified.

The first WMS license is expected to be issued in 2019. We will continue to closely watch any related developments and look forward to sharing them with our valued clients.

<b>No.</b>	<b>Bank</b>	<b>JV FMC</b>
1	China Merchants Bank	China Merchants Fund
2	Hua Xia Bank	
3	Bank of Beijing	Bank of Beijing Scotiabank Asset Management
4	Bank of Ningbo	Maxwealth Fund
5	Bank of Communications	Bank of Communications Schroder Fund Management
6	China Everbright Bank	Everbright Pramerica Fund Management
7	Ping An Bank	
8	Bank of Nanjing	Xinyuan Asset Management
9	China Minsheng Bank	Minsheng Royal Fund Management
10	China Guangfa Bank	
11	Industrial Bank	CIB Fund Management
12	Shanghai Pudong Development Bank	AXA SPDB Investment Managers
13	Bank of Hangzhou	
14	Huishang Bank	
15	Bank of China	Bank of China Investment Management
16	Agricultural Bank of China	ABC-CA Fund Management
17	China Construction Bank	CCB Principal Asset Management
18	Industrial and Commercial Bank of China	ICBC Credit Suisse Asset Management
19	China Citic Bank	
20	Bank of Jiangsu	

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