

金融法律热点问题

银保监会就《商业银行理财子公司管理办法》征求意见

继2018年9月28日中国银行保险监督管理委员会(以下简称“**银保监会**”)发布《商业银行理财业务监督管理办法》(以下简称“**《理财新规》**”)后,银保监会于2018年10月19日发布了《商业银行理财子公司管理办法》征求意见稿(以下简称“**《办法》**”),旨在规范银行专门为理财业务成立的资管子公司(以下简称“**银行资管子公司**”)的设立和经营。

如我们在本月早前的 Client Briefing 所分析,《办法》侧重于建立一套看齐“其他同类金融机构”(例如中国证券监督管理委员会(以下简称“**证监会**”)监管的公募基金管理公司)的监管规定,为银行资管子公司正式加入大资管市场的竞争版图做好制度上的准备。银保监会在就《办法》答记者问时进一步阐明了鼓励银行设立理财子公司并整合现有理财业务的立场:首先,银保监会认为商业银行通过设立理财子公司开展理财业务的时机基本成熟;大部分商业银行已经完成理财事业部改革,在独立运作方面为设立子公司奠定了基础。其次,从法律适用上看,理财子公司应同时遵守《关于规范金融机构资产管理业务的指导意见》(以下简称“**《指导意见》**”)、《理财新规》和《办法》。《办法》具体列举了应当适用或除外适用《理财新规》的条款。银保监会称,下一步商业银行可以根据自身情况选择新设理财子公司或者将理财业务整合到已开展资管业务的其他附属机构,并要求商业银行在通过子公司展业后其自身不应再开展理财业务(继续处置存

量理财产品除外)。

如下为《办法》的若干重要内容总结。

1、**机构性质和业务范围**。理财子公司的机构性质为非银行金融机构,受银保监会的监管。《办法》规定理财子公司可以申请以下全部或部分业务范围:

- (1) 面向不特定社会公众公开发行理财产品,对受托的投资者财产进行投资和管理(即公募理财业务);
- (2) 面向合格投资者非公开发行理财产品,对受托的投资者财产进行投资和管理(即私募理财业务);
- (3) 理财顾问和咨询服务;
- (4) 经银保监会批准的其他业务。

2、**股权结构**。理财子公司必须由商业银行控股发起设立,境内外金融机构或境内非金融企业可参股。《办法》规定了发起股东以及入股股东的资质条件并以负面清单的形式列举了禁止成为理财子公司股东的情形。银保监会鼓励商业银行吸引境外成熟、优秀的金融机构投资入股。值得注意的是,《办法》规定同一投资人及其关联方、一致行动人参股银行理财子公司的数量不得超过2家,或者控股银行理财子公司的数量不得超过1家。我们注意到,上述数量限制并未适用银行已经参股的证券投资基金管理公司。

3、**注册资本和其他准入条件。**理财子公司的最低注册资本为10亿元人民币，并需要遵守公司治理、风险管理、内部控制、从业人员和管理信息系统等其他准入条件。

4、**业务规则。**《办法》在以下方面有别于《理财新规》的规定，以使理财子公司的监管标准与其他类型的资管机构总体保持一致：

- (1) 允许子公司发行的公募理财产品直接投资股票；
- (2) 不设置理财产品销售起点金额；
- (3) 允许子公司理财产品可以通过银行业金融机构代销，也可以通过银保监会认可的其他机构代销；
- (4) 不强制要求个人投资者首次购买理财产品进行面签；
- (5) 仅要求非标债权类资产投资余额不得超过理财产品净资产的35%；
- (6) 允许子公司发行分级理财产品；
- (7) 要求理财子公司按照理财产品管理费收入10%计提风险准备金，并遵守净资本相关要求。

同时，《办法》要求理财子公司与其股东和其他关联方之间建立有效的风险隔离机制。此外，理财子公司还需遵守杠杆水平、流动性、集中度管理等方面的定性和定量监管标准。

5、**理财投资合作机构。**理财投资合作机构主要有

三种类型，即：

- (1) 理财产品所投资资管产品的发行机构；
- (2) 根据合同约定从事理财产品受托投资的机构；
- (3) 与理财产品投资管理相关的投资顾问。

《办法》作出了有别于《理财新规》的规定，区别不同的情形规定合作机构是否必须是持牌金融机构，即担任公募理财产品的发行机构或受托投资机构的，必须是具有专业资质并受金融监督管理部门依法监管的持牌金融机构；而担任公募理财产品的投资顾问或者担任私募理财产品的发行机构、受托投资机构或投资顾问的，则不必是持牌金融机构，只需要是具有专业资质，符合法律、行政法规、《指导意见》和金融监督管理部门相关监管规定并受金融监督管理部门依法监管的机构。

《办法》明确规定了银行理财子公司可以选择符合以下条件的私募投资基金管理人担任理财投资合作机构：(i) 在中国证券投资基金业协会登记满一年、无重大违法违规记录的会员；(ii) 金融监督管理部门规定的其他条件；(iii) 担任银行理财子公司投资顾问的，应当为私募证券投资基金管理人，其具备三年以上连续可追溯证券、期货投资管理业绩且无不良从业记录的投资管理人员应当不少于三人。

《办法》进一步规定，理财子公司聘请的投资顾问及其关联方不得以其自有资金或者募集资金投资于该理财子公司发行的分级理财产品的劣后级份额。

谢青 合伙人 电话：86 21 2208 6238 邮箱地址：xieq@junhe.com
秦天宇 律师 电话：86 21 2208 6140 邮箱地址：qinty@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。



Financial

CBIRC Solicits Comments on Administrative Measures for Wealth Management Subsidiaries of Commercial Banks

Following the September 28, 2018 promulgation of the *Measures for Supervision and Administration of Wealth Management Business of Commercial Banks* (“**Wealth Management Regulations**”), on October 19, 2018 the China Banking and Insurance Regulatory Commission (**CBIRC**) released the *Administrative Measures on the Wealth Management Subsidiaries of Commercial Banks* (Consultation Paper) (“**Measures**”), which aim to regulate commercial bank subsidiaries specifically established to undertake wealth management activities (“**wealth management subsidiaries**” or “**subsidiaries**”).

As we reported in a Client Briefing earlier this month, the Measures focus on establishing a set of regulations in line with those that govern “other similar financial institutions” (such as the securities investment fund management companies (“**FMC**”) regulated by the China Securities Regulatory Commission (**CSRC**)), thereby ensuring that wealth management subsidiaries are able to compete in the asset management market. In its responses to the press Q&A about the Measures, the CBIRC further clarified its intention to encourage commercial banks to establish wealth management subsidiaries and consolidate existing wealth management businesses. The

CBIRC is of the view that most commercial banks have already completed the internal restructuring of their wealth management businesses, thereby laying the foundations for their independent operation, and that the time is now ripe to establish subsidiaries to undertake wealth management activities. In terms of the application of the law, the CBIRC has indicated that wealth management subsidiaries shall comply with the *Guiding Opinions on Regulating the Asset Management Business of Financial Institutions* (“**Guiding Opinions**”), the Wealth Management Regulations and the Measures, with the Measures detailing how the various provisions of the Guiding Opinions and Wealth Management Regulations should be applied or exempted. In the press Q&A, the CBIRC stated that as the next step, a commercial bank can elect to establish a new wealth management subsidiary or to consolidate its wealth management activities under an existing subsidiary that is already engaged in wealth management. Upon establishment of the wealth management subsidiary, the CBIRC further requires such bank to cease any wealth management activities, except for the disposal of any existing products.

Below is a summary of some of the key content of the Measures.

Nature of Institution and Scope of Business. A wealth management subsidiary is defined in the Measures as a type of non-bank financial institution that is regulated by the CBIRC. According to the Measures, a wealth management subsidiary may apply to undertake all or some of the following activities:

- (i). issuing wealth management products to non-specific targets or the general public, and investing and managing the assets entrusted by those investors, i.e. publicly-raised wealth management;
- (ii). issuing wealth management products privately to investors, and investing and managing the assets entrusted by those investors, i.e. privately-raised wealth management;
- (iii). asset management advisory and consulting services; and
- (iv). other businesses as approved by the CBIRC.

Shareholding Structure. A wealth management subsidiary shall be established and majority-owned by a commercial bank. Domestic and foreign financial institutions or domestic non-financial enterprises may invest in the subsidiary as a minority shareholder. The Measures stipulate the qualification requirements for both sponsoring shareholders and other shareholders, and describe in the form of a negative list the circumstances under which an investor cannot become a shareholder in a wealth management subsidiary. The CBIRC encourages commercial banks to attract experienced and high-profile foreign financial institutions to invest in their wealth management subsidiaries. It is worth noting that the Measures provide that any investor, together with their affiliates and persons acting in concert, shall not invest in more than two

wealth management subsidiaries or control more than one wealth management subsidiary. We also note that the restrictions on the number of wealth management subsidiaries in which banks are allowed to invest does not include any FMCs regulated by the CSRC in which they have already invested.

Registered Capital and Other Requirements. The minimum registered capital of a wealth management subsidiary shall be RMB 1 billion, and it shall abide by all relevant requirements on corporate governance, risk management, internal control, practitioners, management information system and so on.

Business Rules. In order to ensure that the regulations governing wealth management businesses are consistent with the regulatory standards of other types of asset management institutions, the Measures differ from the earlier Wealth Management Regulations in that the Measures:

- (i). allow publicly-raised wealth management products issued by subsidiaries to directly invest in stocks;
- (ii). require no minimum sales threshold amount of wealth management products;
- (iii). allow for subsidiaries' wealth management products to be distributed by banking financial institutions or other institutions approved by the CBIRC;
- (iv). do not require an individual to sign documents on site at the business premises when purchasing wealth management products for the first time;
- (v). require the investment balance of non-standardized credit assets to not exceed

35% of the net assets of the wealth management product;

- (vi). allow subsidiaries to issue structured wealth management products; and
- (vii). require wealth management subsidiaries to maintain a reserve fund of 10% of management fees collected from wealth management products, and to abide by relevant requirements on net capital.

The Measures require wealth management subsidiaries to establish effective risk isolation systems between their shareholders and other affiliates. In addition, wealth management subsidiaries are required to comply with regulations relating to leverage ratios, liquidity, concentration ratio management and other qualitative and quantitative regulatory requirements.

Wealth Management Partnering Institutions.

The Measures list three main types of wealth management partnering institutions (“**partnering institution**”), namely:

- (i). the issuer of an asset management product that receives an investment from a wealth management product;
- (ii). an institution that is granted an investment mandate by a wealth management product; based on the terms of the mandate, and
- (iii). an investment advisor engaged for the investment management of a wealth management product.

In contrast to the Wealth Management Regulations, the Measures detail the circumstances where a partnering institution must be a licensed financial institution (i.e., a financial institution that is approved or approved by a

financial regulator) or not, namely:

- (i). an issuer or institution contracted to undertake the investment for a publicly-raised wealth management product must be a licensed financial institution having professional qualifications and regulated by the financial regulatory authorities in accordance with the law;
- (ii). either (a) an investment advisor of a publicly-raised wealth management product, or (b) an issuer of, an institution that is granted a contract to invest on behalf of, or an investment advisor to a privately-raised wealth management product, may be other than a licensed financial institution, and would only be required to hold the necessary professional qualifications, to meet the requirements of the law, the administrative regulations, the Guiding Opinions and any other relevant regulatory requirements of the financial regulatory authorities, and be regulated by financial regulatory authorities in accordance with the law.

The Measures indicate that a private investment fund manager that has been a member registered with the Asset Management Association of China (**AMAC**) for more than one year without any record of material violation against any laws or regulations, and that has met all other requirements prescribed by the financial regulatory authorities is qualified to act as a partnering institution. Additionally, the Measures require that, in order to act as an investment advisor of a wealth management subsidiary, a private fund manager must be a private securities investment fund manager with at least three investment management personnel with three or more consecutive years of traceable securities or futures investment management experience, and

there have been no records of bad practice.

The Measures further stipulate that an investment advisor engaged by a wealth management subsidiary or an affiliate of such investment

advisor shall not invest its proprietary funds in a junior class of the structured wealth management products issued by such wealth management subsidiary.

Natasha XIE	Partner	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Tianyu QIN	Associate	Tel: 86 21 2208 6140	Email: qinty@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”.

