

MEMO# 32611

July 17, 2020

China Published Amended Fund Custody Rules to Allow Foreign Banks to be Fund Custodians

[32611]

July 17, 2020 TO: ICI Global Members

ICI Global Pacific Chapter

ICI Global Regulated Funds Committee SUBJECTS: Bank Regulation

Compliance

International/Global

Operations

Recordkeeping RE: China Published Amended Fund Custody Rules to Allow Foreign Banks to be Fund Custodians

As part of its commitment to open up the fund custodian business to foreign players, the China Securities Regulatory Commission (CSRC) issued a consultation paper (CP) on 9 May 2020, outlining the proposed requirements for domestic branches of foreign banks to offer fund custody services in China. Requirements for custody business conducted by non-bank financial institutions were also incorporated into the CP to unify entry criteria and regulatory requirements for commercial banks and non-bank financial institutions acting as fund custodians. We published a memorandum for members on 19 May 2020,[\[1\]](#) highlighting the proposed requirements for foreign banks to qualify as fund custodians in China.

On 10 July 2020, the China Banking and Insurance Regulatory Commission (CBIRC) and the CSRC jointly published the *Measures for the Administration of Securities Investment Fund Custody Business*[\[2\]](#)(Measures). The Measures, which came into effect immediately on the date of publication, largely follow the proposals set out in the CP, with some minor adjustments made to certain eligibility and risk management requirements.

This memo will summarize the key differences between the provisions in the Measures and proposals in the CP.

Relaxed Eligibility Requirements for Foreign Banks

The Measures have relaxed some of the eligibility requirements for foreign banks acting as custodians of securities investment funds. The original proposal that domestic branches of foreign banks must have been operating in China for at least three consecutive years and

have sufficient working capital for developing fund custodian business was not adopted in the Measures. Furthermore, the proposal in the CP that, when filing an application with the CSRC, the applicant must submit a letter issued by the home regulator confirming that, in the recent three years, its parent company has been in compliance with the law and regulation of its home country, has not been subject to any material regulatory sanctions and is not currently under investigation for gross violations of law or regulation, did not make its way into the Measures.

Other eligibility requirements in the Measures are consistent with proposals in the CP. For instance, the proposal that applicants should have net assets of RMB 20 billion to be eligible for conducting fund custodian activities, and the parent company's overseas assets will be taken into consideration in the calculation in case of domestic branches of foreign banks, was reflected in the Measures.

Revised Internal Control and Risk Management Requirements for Fund Custodians

The Measures largely followed the proposals in the CP to strengthen existing internal control and risk management requirements. There are two proposed provisions in the CP that were not adopted in the Measures. First, the CP proposal requiring fund custodians to draw a certain proportion from custodian revenues as risk reserves for compensating losses to property/assets or fund unit holders due to violation of law, rule, or fund contracts was not adopted in the Measures. Second, the Measures have abandoned the CP suggestion that a fund custodian may provide short-term financing to the fund manager in order to meet investors' redemption requests arising from sudden liquidity needs.

Fund custodians are required to keep records of important documents and records of the fund managers, including accounting records, transaction records and agreements. The Measures extend the record retention period to a minimum of 20 years, in contrast with a minimum of 15 years as proposed in the CP.

Strengthened Collaboration between the CBIRC and the CSRC

There is a new provision added in the Measures concerning regulatory supervision and enforcement over commercial banks acting as fund custodians. Both the CBIRC and the CSRC have the power to supervise commercial banks' daily operation of fund custody business and take regulatory measures against banks if they violated relevant laws, regulations, or rules when carrying out fund custodian activities. It is also stated that the CBIRC and the CSRC would strengthen information sharing and regulatory collaboration regarding funds' custody business conducted by commercial banks.

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endnotes

[1] *The memorandum is available*

at: <https://www.iciglobal.org/iciglobal/pubs/memos/memo32465>

[2] *The Measures (available in Chinese) are available*

at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=915460&itemId=928&generaltype=0>

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