

Implementing Rules of the Super Guidance issued by CBIRC and CSRC Underway - Impact on PFMs

Recently China Banking and Insurance Regulatory Commission and China Securities Regulatory Commission issued a few new rules that aim to supplement the framework constructed by the “Super Guidance” issued in April 2018 by providing further implementation guidance to specific types of asset management companies.

Submitted	23 November 2018
Applicable Law	People's Republic of China
Topic	Asset Management
Sector Focus	Asset Management and Investment Funds
Contact	Melody Yang

On 28 September 2018, China Banking and Insurance Regulatory Commission (CBIRC) issued the Measures for Supervision and Administration of Wealth Management Business of Commercial Banks ([《商业银行理财业务监督管理办法》](#)) (**Wealth Management Measures for Banks**) and on 19 October 2018, a draft rule named Measures for Administration of Wealth Management Subsidiaries of Commercial Banks ([《商业银行理财子公司管理办法\(征求意见稿\)》](#)) (**Wealth Management Measures for Subsidiaries of Banks (Draft)**) (Collectively, the **Bank Wealth Management Measures**).

Shortly after, on 22 October 2018, China Securities Regulatory Commission (CSRC) issued Administrative Measures on the Private Business of Securities and Futures Institutions ([《证券期货经营机构私募资产管理业务管理办法》](#)) and Administrative Provisions on the Operation of Private Asset Management Plans of Securities and Futures Institutions ([《证券期货经营机构私募资产管理计划运作管理规定》](#)) (Collectively, the **Securities and Futures Measures**).

Each rule aims to supplement the framework constructed by the “Guidance Opinions Concerning Standardisation of Asset Management Operations by Financial Institutions” ([《关于规范金融机构资产管理业务的指导意见》](#)) (the **Super Guidance**) issued in April 2018 by providing further implementation guidance to specific types of asset management companies.

For more information on the Super Guidance, please refer to our article "['Super Guidance' Set to Change Asset Management in China](#)".

Key Implications on the PFMs

None of these measures seem to intend to regulate private fund managers (PFMs) directly. Further, unlike the Super Guidance, which provides that the same regulatory standard may apply unless there are separate rules addressing

PFMs, the Bank Wealth Management Measures limit their application to commercial banks and their wealth management subsidiaries. Similarly, the Securities and Futures Measures confine their scope to the securities and futures operation institutions (including securities companies, public fund management companies, futures companies) and subsidiaries established by such institutions to undertake private asset management activities only.

PFMs may nonetheless be significantly impacted by such rules for the following reasons:

1. privately raised products launched by eligible wealth management subsidiaries, securities and futures operation institutions may invest in private funds or engage private fund managers to provide advisory services, and
2. as one of the main goals for Super Guidance and its implementation measures is to reduce the regulatory arbitrage by standardising similar products launched by different types of asset management firms, the new rules, especially the Securities and Futures Measures, serve as an essential reference for future legislation concerning the PFMs' product.

Investment into the Private Fund Managed by the PFMs

The rules applicable to Bank Wealth Management Measures and Securities and Futures Measures are not fully consistent in this regard. Wealth Management Measures for Banks prescribe that wealth management assets of banks may not directly invest in the products issued or managed by an institution established "without the authorisation of the financial supervision and regulation department and financial license". Since PFMs are not strictly authorised/licensed financial institutions, this has been interpreted as a prohibition for wealth management assets of banks to directly invest in the PFMs' product.

As for the wealth management subsidiaries of Bank, the current draft of Wealth Management Measures for Subsidiaries of Banks seems to be indicating that wealth management assets private raised by the subsidiaries may invest into a private fund managed by eligible PFMs. Yet, whether this provision will survive the officially launched version after consultation remains to be seen.

The Securities and Futures Measures, on the other hand, provide that asset management plans (**AMP**), ie the asset management products launched by securities and futures companies, may invest into, among others, other asset management products issued by institutions "under the supervision of the financial supervision and administration institutions of the State Council". This loosely defined scope has been triggering questions among PFMs. As most PFMs are under the supervision of Asset Management Association of China (**AMAC**), a self-regulatory body designated by the CSRC for regulating and supervising PFMs, the question becomes whether AMAC is a financial supervision and administration institution and therefore may qualify the private fund managed by the PFMs under the scope above. The prevailing interpretation in the market is that when the Securities and Futures Measures are read together with the Super Guidance, the CSRC indicates answer yes for the aforesaid questions and private funds may, therefore, be a qualified investment targets for the AMPs.

Can the following entities invest into the private funds managed by PFMs?		
	Public-raised wealth management assets	Private-raised wealth management assets
Banks	No	No

Wealth management subsidiaries of the banks	No	Yes (based on the draft of the Wealth Management Measures for Subsidiaries of Banks)
	AMPs*	
Securities and futures institutions	Indicating Yes	
Subsidiaries of securities and futures institutions	Indicating Yes	

Note*: AMPs should be raised privately from the qualified investors only.

Investment Advisory Services

In the past, there were situations that banks would engage certain PFMs for the provision of advisory services, but no rules confirmed or disapproved such arrangement. The Wealth Management Measures for Banks suggests the investment advisory of banks must be a financial institution or otherwise recognised by the CBIRC. Therefore, currently, PFMs are not qualified as the investment advisor of banks.

Wealth Management Measures for Subsidiaries of Banks (Draft), however, has opened a window by providing that eligible PFMs can offer advisory services to wealth management subsidiaries of banks regarding their privately raised wealth management assets. When determining the eligibility of the PFMs, it seems that CBIRC will largely adopt the same “3+3+1” criteria used by the CSRC, which means a PFMs should:

1. Hold an AMAC membership that have been registered with the AMAC for at least **one** year with no record of major violations of laws and regulations.
2. Have at least **three** investment managers that:
3. Have more than **three** years of continuous and traceable performance in securities or futures investment management and having no bad practicing record. That said, CBIRC indicates that they may also issue additional eligibility requirements that apply to PFM advisor without specifying what are they.

The Securities and Futures Measures restate its previous position and allow the PFMs that are qualified under those mentioned above “3+3+1” criteria to act as the investment advisors.

Investment Restrictions and Question for PFMs

Securities and Futures Measures provide that, other than a few notable exceptions, the proportion of the funds invested by a collective AMP in the “same underlying asset” shall be no more than 25% of the net value of such AMP. The percentage of funds invested by all collective AMPs managed by one such institution in the “same underlying asset” shall be no more than 25% of such underlying asset. Such rule introduces a mandatory diversification on the portfolio investments for AMPs.

The question for PFMs is that whether the restrictions imposed are on the underlying assets only by looking through the intermediate investment fund, or the limits are extended to each level. In case of the latter, the practice of having one AMP, ie, the wrapper product, as the sole fundraising channel for a private fund will be prohibited in the future. Further, AMPs must proactively diversify its investments as a bona fide investment fund instead of acting as a fundraising channel. Until further clarification is provided by the CSRC, PFMs may need to address this potential issue by expanding their fund-raising channels.

Although the new measures have been triggering inquiries on how to interpret certain provisions, the new rules do clarify the implementation of the Super Guidance for banks and securities and futures companies. Global PFMs have become an increasingly important component of the ever-evolving PRC asset management market. Local financial institutions will need to rely on the expertise and experience shared by PFMs, embracing opportunities and challenges at the very same time.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.

© Simmons & Simmons LLP 2019. All rights reserved. Registered in England & Wales Registered Number OC352713

elexica Limited, CityPoint, One Ropemaker Street, London EC2Y 9SS