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TABLE OF CONTENTS / 本期内容

CAPITAL MARKET / 资本市场

The Science and Technology Innovation Board Officially Launched / 科创板正式设立 2

China to Combine QFII and RQFII Schemes / 合格境外投资者新规征求意见 3

New Rules on Stock Incentives for Foreign Employees of A-Share Listed Companies Issued / 《境内上市公司外籍员工参与股权激励资金管理办
法》公布 3



CAPITAL MARKET / 资本市场

The Science and Technology Innovation Board Officially Launched 科创板正式设立

在经历了为期一个月的征求意见后，2019年3月伊始，证监会正式公布了《科创板首次公开发行股票注册管理办法（试行）》及《科创板上市公司持续监管办法（试行）》；上海证券交易所（“上交所”）亦随之公布了《上海证券交易所科创板股票上市规则》、《上海证券交易所科创板股票发行上市审核规则》等12项配套规则（合称“科创板规则”）。上述文件的发布，意味着近来受到广泛热议的科创板已正式设立，股票上市注册制正式实施。

较之于相关征求意见稿，正式出台的科创板规则主要着眼于调整和优化以下制度：

1. **明确上市条件** (a)对于红筹企业和存在表决权差异安排的企业，科创板规则以市值作为主要指标明确了其上市标准；以及(b)对于符合科创板定位的其他企业而言，如该企业选择预计市值不低于40亿元人民币这一上市标准，则不再要求该企业需已获得知名投资机构的投资。
2. **完善股份减持制度** (a)科创板规则缩短了征求意见稿中核心技术人员锁定期，由3年调整为1年，限售期届满后每年可以减持25%的首发股份；(b)对于上市时未盈利的企业，明确减持的梯度安排：控股股东和实际控制人自上市之日起3年内不得减持，第4和第5年减持的首发前股份数量不得超过股份总数的2%；董监高及核心技术人员在3年内不得减持。
3. **明确信息披露审核的内容和要求** 科创板规则在企业采用红筹结构或存在表决权差异安排、员工持股计划、累计未弥补亏损、研发支出资本化等具体领域强调了拟上市企业的信息披露要求。
4. **加强退市监管** 科创板规则在既定的强制退市制度基础上，新增了丧失法人主体资格、损害国家利益及社会公共利益等重大违法强制退市的情形，还允许上交所根据实际情况调整财务类强制退市的指标。
5. **实施T+1制度** 出于对市场条件不成熟的考虑，征求意见稿及正式出台的科创板规则中均未引入此前受到热议的T+0交易机制，而采用了T+1交易制度。

科创板的制度设计突破了我国现有资本市场的大量现有规则及实践，是我国与西方资本市场接轨的一项重要试点，为新兴的科技型企业带来了全新的融资方式。但是，科创板的设立是否可能带来资金分流、中小盘股边缘化等问题，尚待观察。

In early March, the China Securities Regulatory Commission (“CSRC”) published the *Trial Administrative Measures for the Registration of Initial Public Offerings on the Science and Technology Innovation Board* and the *Trial Measures for the Continuous Supervision over Companies Listed on the Science and Technology Innovation Board* and the Shanghai Stock Exchange (the “SSE”) also issued 12 implementing rules and guidelines (including, among others, the *Stock Listing Rules on the Science and Technology Innovation Board of Shanghai Stock Exchange*, the *Examination Rules for the Issuance and Listing of Stocks Listed on the Science and Technology Innovation Board of Shanghai Stock Exchange*; together with the abovementioned measures, the “Rules”) after considering opinions and comments from the public on draft regulations that were introduced in late January. The issuance of the Rules indicates that the recently heated discussed Science and Technology Innovation Board (the “Board”) has been formally launched with a pilot registration-based system for initial public offerings at the SSE.

In comparison with the draft regulations, the Rules have provided a few implementation details and clarifications including, among others:

1. **Clarification of Listing Criteria.** The Rules specified the listing criteria (including market value, a key financial indicator) for the “red chip” enterprises and companies with special voting rights mechanism. For other companies that choose predicted market value no less than RMB4 billion as the listing threshold, previous financings from well-known investment institutions are no longer required by the Rules.
2. **Improvement of Stock Selloff System.** Compared with the draft regulations, the lock-up period applicable to key technical personnel of listed companies is generally reduced from 3 years to 1 year under the Rules and such personnel will be allowed to sell their shares by 25% each year after expiry of the applicable lock-up period. However, with respect to the companies not yet profitable when they go public, controlling shareholders and actual controllers are not allowed to transfer any share held by him/her within 3 years from the date of listing, and reduce more than 2% of the shares in the fourth and fifth years; while, directors, supervisors, senior executives and key technical personnel are not allowed to sell their respective shares within 3 years from the date of listing.
3. **Specification of Information Disclosure Requirements.** The Rules emphasized the information disclosure requirements of listed companies for such matters as red-chip structure or special voting rights mechanism, employee stock ownership plan, accumulated unrecovered losses, capitalization of R&D expenditure, etc.
4. **Strengthening Delisting Policies.** In addition to the delisting matters listed in the draft, the Rules incorporated more circumstances and events that may trigger compulsory delisting of the companies, such as disqualification as a legal person, harm to national interests and social public interests. Further, according to the Rules, the SSE has the discretion to amend the existing financial requirements for compulsory delisting on a case-by-case basis.
5. **Adoption of T+1 Mechanism.** Following the draft regulations, the Rules adopted the T+1 settlement cycle for securities transactions on the Board, rather than the T+0 mechanism due to immature China market.

The design of the Board is so creative and even ground-breaking

that brings China's capital market more in line with international practices. This important pilot trial is expected to increase financing channels for emerging technology innovation companies. However, it remains to be seen whether the establishment of the Board will lead to diversion of funds or marginalization of small-caps and mid-caps stocks in the current stock market.

China to Combine QFII and RQFII Schemes 合格境外投资者新规征求意见

为完善合格境外机构投资者（QFII）和人民币合格境外机构投资者（RQFII）制度，实施资本市场高水平对外开放，引进更多境外长期资金，2019年1月31日，证监会公布了《关于就〈合格境外机构投资者及人民币合格境外机构投资者境内证券期货投资管理办法（征求意见稿）〉及其配套规则公开征求意见的通知》（“新规”），以完善并替代现行的QFII及RQFII制度（包括《合格境外机构投资者境内证券投资管理办法》、《人民币合格境外机构投资者境内证券投资试点办法》及其各自的配套规则（统称“旧规定”））。

相较于旧规定和目前的相关实践，新规在整合现有QFII及RQFII制度的基础上，加强了持续监管的力度，并主要修改了以下内容：

1. **合并现有规定** 新规合并了现有的QFII和RQFII制度，境外机构投资者只需申请一次即可获得QFII和RQFII两项资格。但是对于尚未获得RQFII额度的国家和地区的机构，仅能申请获得QFII资格；
2. **降低准入门槛** 新规基本沿袭了旧规定中对于投资人申请资格的规定，但取消了申请人需满足资产规模、设立年限等数量型指标的要求；
3. **增加可投资的品种** 在原有可投资品种的基础上，增加了存托凭证、债券回购、资产支持证券、新三板挂牌股票、私募投资基金（仅限于私募证券投资基金）、金融期货、商品期货及期权等新的投资品种。另外，合格境外机构投资者可以参与证券交易所融资融券交易；以及
4. **优化托管人制度** 新规明确了托管人资格实行备案管理，并详细规定了托管人首次开展托管业务时应履行的备案程序。此外，新规取消了合格境外机构投资者只能委托一名托管人的限制，允许在指定一个主托管人的前提下委托多名托管人。

With an aim to attract more long-term foreign funds and reinvigorate China's onshore capital and financial markets, on January 31, 2019, CSRC unveiled *the Notice of Solicitation of Public Comments on the Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors and the Implementing Rules* (the "New Measures"). The New Measures will replace the existing QFII and RQFII programs (including *the Measures for the Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors, the Measures for the Pilot Program of Domestic Securities Investment by RMB Qualified Foreign Institutional Investors* and their respective implementing rules; collectively, the "Old Measures") once they are finalized and officially released.

Compared with the existing QFII and RQFII regulations and current practice, the New Measures strengthened the continuous supervision to prevent regulatory arbitrage, and made the following major changes:

1. **Combining Existing Schemes.** The new Measures combined existing QFII and RQFII schemes, according to which, the foreign institutional investors could apply for both QFII and RQFII licenses at the same time with one set of application documents. Note that institutional investors located in countries and regions without RQFII investment quotas can only apply for QFII qualifications.
2. **Lowering Market Access Threshold.** The New Measures have generally kept the existing entry requirements for foreign institutional investors under the current regulations, but have removed the quantitative criteria such as asset scale and term of existence previously set for QFIIs.
3. **Broadening Investment Scope.** The new Measures expanded the scope of investment to include such new derivatives as depository receipts, bond repurchases, asset-backed securities, stocks traded on the National Equities Exchange and Quotations, private security investment funds, financial futures, commodity futures and options. In addition, the QFIIs and RQFIIs will also have access to the margin trading and short selling transactions according to the New Measures; and
4. **Optimizing Administration Rules for Custodian Banks.** The New Measures clarified that the banks will be eligible to provide custody services to QFIIs and RQFIIs after filing with CSRC and further specified the detailed filing procedures. Moreover, QFIIs and RQFIIs are allowed to designate one or more custodian banks in China according to the New Measures.

New Rules on Stock Incentives for Foreign Employees of A-Share Listed Companies Issued 《境内上市公司外籍员工参与股权激励资金管理暂行办法》公布

2019年2月12日，中国人民银行、国家外汇管理局发布了《境内上市公司外籍员工参与股权激励资金管理暂行办法》（“《办法》”），对境内上市公司的外籍员工参与A股股权激励进行了指引。

On February 12th, 2019, the People's Bank of China and the State Administration of Foreign Exchange ("SAFE") jointly issued *the Measures for the Administration of Funds for Participation in Stock Incentives by Foreign Employees of Domestic Listed Companies* ("the Measures").

《办法》规定，境内上市公司的外籍员工参与股权激励实行登记管理，相关境内上市公司在对股权激励计划进行公告后的30日内应至其所在地的外汇局进行统一登记。在取得相关业务登记凭证后，境内上市公司及外籍员工可直接在银行办理与股权激励相关的跨境收支、资金划转及汇兑业务，无需事前审批。外籍员工用于参与股权激励的资金，可以来源于其在境内的合法收入，也可来源于境外汇入的资金。

《办法》的出台，有力支持了境内上市公司外籍员工股权激励政策的落地实施，提升了境内资本市场对外开放程度。

According to the Measures, if foreign employees of an A-share listed company participate in the company's employee stock incentive plan ("ESOP"), the company shall, within 30 days after the disclosure of such plan, go through the ESOP registration with the competent local SAFE office. Thereafter, the listed company and foreign employees could directly handle the cross-border receipts and payments, capital transfers and remittances with relevant banks without obtaining any prior approval from any government authority. The foreign employees of domestic listed companies could tap the funds needed for ESOP either from their legitimate income in China or inward remittances.

The introduction of the Measures strongly supports the implementation of the stock incentive policy for foreign employees of A-share listed companies, and thus would accelerate the opening up of China capital market.

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