



Llinks Asset Management Bulletin
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China's Ease of Foreign Shareholding Limit in Fund Management Companies

By Sandra Lu

The further opening up of the Chinese financial market is a keynote policy agreed at the 19th CPC National Congress.

On 10 November 2017, a press conference was held by the State Council Information Office to introduce the economic topics covered by PRC President Xi and US President Trump during their recent summit meeting. The Vice Finance Minister Mr. Zhu Guangyao took this opportunity to announce the highly significant news that China will further open up its banking, insurance, securities, futures and fund industries to foreign investors. Mr. Zhu stated that one of the new policies will be an initial lifting of the limit on foreign shareholding in publicly-offered securities investment fund management companies ("FMC") from 49% to 51%, with the foreign shareholding limit being totally removed after a three-year period. That means after such a three-year period, an FMC may be a wholly foreign owned enterprise ("WFOE").

We can expect this radical new policy will be implemented by the State Council and relevant competent authorities within a very specific and certain timeline.

Unlike the private fund management ("PFM") license which has been available to a WFOE since 30 June 2016¹, an FMC could be considered as a full license in the asset management area. An FMC, in addition to being engaged in publicly-offered fund management business, will

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be permitted at the same time to conduct segregated account management business, and can set up a subsidiary to specialize in alternative investment, a subsidiary to specialize in private equity investment and a subsidiary to carry out fund distribution business. An FMC may apply for the QDII license and quota when certain criteria have been met, which allows the FMC to launch China domiciled public-offered funds and segregated account management schemes to invest in the offshore securities. In the meanwhile, an FMC may manage China social security fund and pension funds after obtaining separate approvals from the competent governmental authorities. With this new FMC license, global asset managers will have more flexibility in implementing their multi-asset investment strategies and set up comprehensive and diversified product lines in China.

Although this long-awaited opening up of the FMC business will definitely happen, the mechanics of becoming a WFOE FMC will be set out in implementation regulations which will be adopted by the State Council and/or the China Securities Regulatory Commission. We believe that the date when these implementation regulations become effective will be taken as the commencement date for calculating the three-year qualifying period.

Many details have yet to be worked out, and we might witness a comprehensive overhaul of current regulations concerning FMC setup and the granting of publicly-offered fund management license. Some of the issues which need to be clarified include:

- (1) What will be the qualification requirements on foreign shareholder and the actual controller of a WFOE FMC?
- (2) Whether a WFOE PFM will be upgradable to a WFOE FMC after three years?
- (3) In the case that a global asset manager has owned a WFOE PFM, is it still eligible to set up a WFOE FMC to conduct publicly-offered fund management business, where the WFOE FCM and WFOE PFM will be under the same control of certain global firm?
- (4) How to evaluate and void the potential conflict of interest between WFOE PFM and WFOE FMC?
- (5) If a global asset manager has owned a JV FMC in China with less than 49% shareholding, is it still eligible to set up a new WFOE FMC? If so, how to evaluate and avoid potential conflict of interest between JV FMC and WFOE FMC?
- (6) What will be the method of calculating direct and indirect foreign shareholdings?

In addition to the regulatory perspective, global asset managers who already hold minority shareholdings in JV FMCs may review their current strategies in China and consider whether it is necessary and possible to increase or decrease the equity interest in FMCs; those who already possess WFOE PFMs may keep their eyes on the subsequent implementation regulations and see if it is possible to upgrade current WFOE PFMs to WFOE FMCs and how they will achieve it; those who are on the way to set up WFOE PFMs may revise their strategies and consider the option of directly setting up WFOE FMCs; and those who have not yet initiated WFOE PFM projects and have more interest in FMC business may directly explore the opportunities of WFOE FMCs by way of greenfield or M&A.

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¹ As of today, Fidelity, UBS, Man, Fullerton, Value Partners, Invesco and Neuberger Berman have set up PFM WFOEs and are allowed to launch private securities investment funds and raise money from qualified investors.

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