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AMAC Issued Filing Requirements on Providing Investment Advisory Services by Hong Kong Institutions

By Sandra Lu | Tracy Chen

The China Securities Regulatory Commission ("CSRC") promulgated the *Interim Provisions for Securities and Funds Management Institutions to Use Securities Investment Consulting Services from Hong Kong Institutions (" CSRC Interim Provisions")* on 29 June 2018, permitting that securities and funds management institutions, i.e. Mainland securities firms (including their subsidiaries) and retail fund management companies (including their subsidiaries) may entrust Hong Kong licensed institutions fulfilling one of the following requirements to provide investment advisory services in respect of Stock Connect stocks ("HK stock investment advisory services") for the public offering securities investment funds and private asset management plans under their management which participate in the Stock Connect [1]:

(1) There is a relationship of control between the Hong Kong institution and the Mainland securities and funds management institution (for example, the Hong Kong institution is the subsidiary of the Mainland securities and funds management institution) or the Hong Kong institution and the Mainland securities and funds management institution are under the same control of a financial institution;

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(2) The Hong Kong institution has engaged in asset management business for 5 years or above, and the AUM in the most recent fiscal year shall not be less than HK$ 10 billion or equivalent currency; or

(3) If a Hong Kong institution not fulfilling the aforementioned requirements intends to provide HK stock investment advisory services, the securities and funds management institution that intends to use its services shall specifically illustrate the professional competence, internal control and risk management ability, etc. of such Hong Kong institution to the CSRC Bureau in its place of residence and accept the special onsite inspection by the CSRC Bureau, i.e. "Category III Institution".

Since the launch of Stock Connect in 2014, a large number of Mainland securities and funds management institutions have issued asset management products that participate in the investments under Stock Connect. The implementation of the *CSRC Interim Provisions* will significantly promote the communication and cooperation between Mainland and Hong Kong asset management institutions, thus creating better investment returns for investors.

According to the requirements of the *CSRC Interim Provisions*, the aforementioned three categories of Hong Kong institutions shall file their basic information in accordance with the provisions of the Asset Management Association of China ("AMAC"). On 19 September 2018, the AMAC officially issued the *Notice on Filing of Hong Kong Institutions for Providing HK Stock Investment Advisory Services* ("*AMAC Notice*"), formulating specific filing procedures of the first filing, filing regarding changes to major information and annual filing regarding updates on information of Hong Kong institutions that intend to provide HK stock investment advisory services.

I. First Filing of Hong Kong Institutions

The Hong Kong institution that intends to provide HK stock investment advisory services for securities and funds management institutions shall file its basic information with the AMAC before conducting business, i.e. complete the first filing. If the Hong Kong institution has provided HK stock investment advisory services before the issuance of the *AMAC Notice*, it shall, **within 2 months** upon the issuance date of the *AMAC Notice*, supplement the filing procedures with the AMAC in accordance with the *AMAC Notice*.

The Hong Kong institution shall submit the following documents to the AMAC when conducting the first filing (including the supplementary filing mentioned above):

(1) Business Registration of the Hong Kong institution
(2) Certificate of Incorporation of the Hong Kong institution

(3) Licenses of the Hong Kong institution approved by the Hong Kong Securities and Futures Commission (including Type 4: Advising on Securities and Type 9: Asset Management)
(4) Memorandum and Articles of Association of the Hong Kong institution
(5) Compliance Manual of the Hong Kong institution
(6) Audit report of the Hong Kong institution for the most recent year issued by the auditor
(7) Undertaking letter on Regulatory Compliance Status in the most recent three years of the Hong Kong institution
(8) Identification certificate of the Responsible Officer ("RO") of the Hong Kong institution
(9) Authorized Signature of the Hong Kong Institution
(10) Certificate for the paid-in capital of the Hong Kong institution
(11) *Filing Form for Basic Information of Hong Kong Institution* completed by the Hong Kong institution

The Hong Kong institution is required to fill the following information in the information filing form: (a) information of its business licence and licences regarding regulated activities in Hong Kong; (b) information of the controlling shareholder; (c) information of the RO; (d) information of the contact; (e) AUM in the most recent fiscal year; (f) scale of products (products under the *CSRC Interim Provisions* solely, and including public offering funds and private asset management schemes, the same as below) under its management in the most recent year; and (g) compliance status in the most recent three years of the Hong Kong institution.

The aforementioned application documents shall be organized and submitted in the order of the above numbers. If such documents are complete, the AMAC may issue an electronic document of the filing certificate **within 5 working days** upon receiving such documents and disclose the filing information on the official website of the AMAC.

II. Filing regarding Changes to Major Information of Hong Kong Institutions

The Hong Kong institution shall file changes to major information with the AMAC **within 7 working days** after any change to the following major information occurs:

(1) Change of the Hong Kong institution's controlling shareholder;

(2) Change of the Hong Kong institution's RO; or

(3) Punishment imposed on the Hong Kong institution due to major violations of laws and regulations.

The Hong Kong institution shall submit the following documents in respect of the filing regarding changes to major information:

(1) The *Filing Form for Changes to Major Information of Hong Kong Institution* completed by the Hong Kong institution

The filing form for changes lists the specific contents to be filled therein after any change to the aforementioned three major information occurs. The Hong Kong institution is only required to make ticks and fill in such items relating to major changes, the items without any change is not required to be filled in.

(2) The *Filing Form for Basic Information of Hong Kong Institution* updated by the Hong Kong institution based on the changes to major information

(3) Other relevant documents

For instance, in case of any change of the RO, the identification certificates of the changed RO shall be submitted meanwhile.

In addition, the AMAC also requires that, to ensure smooth communication between the AMAC and the Hong Kong institution, in case of any change to the contact, the contact information shall be updated promptly.

III. Annual Filing regarding Updates on Information of Hong Kong Institutions

In addition to irregular filings regarding changes to major information, the Hong Kong institution shall complete the annual filing regarding updates on information **within 6 months** upon the end of each calendar year.

The Hong Kong institution shall submit the following documents to the AMAC in respect of annual filing regarding updates on information:

(1) The *Annual Filing Form for Updates on Information of Hong Kong Institution*

In addition to the information required by the *Filing Form for Basic Information of Hong Kong Institution*, the Hong Kong institution shall also fill the scale and quantity (including the newly added scale and quantity of the year, as well as the existing scale and quantity of products accumulated as of the end of the year) of products for which it provides HK stock investment advisory services in the annual filing form, and provide the "List of Products regarding Providing HK Stock Investment

Advisory Services" as appendix to the filing form.

(2) Other relevant updated documents.

For instance, in case of any change relating to the registered capital of the Hong Kong institution, relevant certificates for the paid-in capital shall be submitted meanwhile.

IV. Requirements for the Preparation and Submission of Filing Documents

The preparation and submission of filing documents shall satisfy the following requirements when Hong Kong institutions apply to the AMAC for the first filing, the filing regarding changes to major information and the annual filing regarding updates on information:

(1) All filing documents shall be written in simplified Chinese, and relevant terms shall conform to the market practice and language custom in Mainland. In case of the original copy of any documents written in other languages, the true, accurate and complete translated copy in simplified Chinese shall be provided, and such Chinese version shall prevail.

(2) The electronic scanned filing documents shall be submitted. However, in respect of the information filing form, such filing form in Word format shall be submitted together with the electronic scanned copy signed by the authorized signatory of the Company as well.

(3) All filing documents shall be sent by email to the designated filing email box: hktgba@amac.org.cn. Specially, the subject of the email shall be "Filing of Basic Information/Changes to Major Information/Annual Updates on Information of XX Company". The context of the email shall specify (i) name of the Company; (ii) name of the contact, contact number and the email address receiving the filing certificate and other materials sent by AMAC.

V. Self-regulation

The *AMAC Notice* stipulates that, during the period when the Hong Kong institution is providing HK stock investment advisory services, in case of any violation of the *CSRC Interim Provisions*, or failure to submit relevant information of its changes, or failure to complete the annual filing regarding updates on information on time, etc., the AMAC will cancel its filing and remove the disclosure from the website.

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[1] For the analysis of the *Interim Provisions* promulgated by the CSRC, please refer to the *New Business for HK Licensed Entity: Providing Investment Advisory Services to Mainland FMC* published by the lawyers of Llinks in July 2018 （http://www.llinkslaw.com/uploadfile/publication/17_1531209558.pdf）.