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The Requirements for the Application of the Fund Distribution License in China by Foreign-funded Banks

By Sandra Lu and Sue Sun

The New *Measures for the Administration of Sale of Securities Investment Fund* ("**New Measures**") promulgated by the China Securities Regulatory Commission ("**CSRC**") on 21 June 2011 will come into effect as of 1 October 2011. The New Measures has comprehensively amended the former *Measures for the Administration of Sale of Securities Investment Fund* ("**Former Measures**"). One of the main amendments therein is to allow foreign-funded banks and independent funds distributors (similar to IFA in western countries) to apply for the fund distribution license ("**License**"). Pursuant to the New Measures, eligible foreign-funded banks may apply with the CSRC for the License from 1 October 2011 on. For the purpose hereof, "funds" as referred to herein shall mean the mutual funds launched and established in China.

During the third round of the U.S.-China Strategic and Economic Dialogue in May 2011, China pledged to permit those eligible foreign-funded banks in China, which meet the relevant prudential regulatory requirements, to enjoy equal rights as Chinese domestic banks with respect to the distribution of mutual fund and the acquisition of mutual fund custody. Therefore, the New Measures has honored the undertaking made by the Chinese government with regard to foreign-funded banks' participation in mutual fund distribution business.

It should be made clear that "foreign-funded banks" as mentioned herein mean particularly the "foreign-funded banks registered and incorporated in China" as referred to in the New Measures. According to the statistics from the website of the China Banking Regulatory Commission ("**CBRC**"), there are currently 33 "foreign-funded banks in China" approved by CBRC. All these 33 foreign-funded banks may apply for the License as long as they meet the requirements provided in the New Measures.

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The Requirements for the Application of the Fund Distribution License in China by Foreign-funded Banks

According to the New Measures, the requirements for the application of the License by foreign-funded banks are divided into general requirements and special requirements. General requirements refer to those requirements that all institutions which may apply for the License as stipulated by the CSRC should meet (including commercial banks, securities firms and independent funds distributors), which include:

- to have sound corporate governance structure, sophisticated internal control and risk control systems which are effectively executed;

- with financial status in good condition and operating in compliance and with stability;

- to have business premises, safety protection facilities and other facilities corresponding to fund distribution business;

- to have safe and highly efficient technical facilities for handling the businesses of the launch, subscription and redemption of funds, etc., which meet the relevant requirements of the CSRC for information management platforms of fund distribution business; an interconnection test has already been conducted on the technical systems for fund distribution business with the corresponding technical systems of the fund manager and the China Securities Depository and Clearing Co., Ltd. and the test results meet the national standard;

- to have formulated a sophisticated process for fund settlement; and the capital management are in compliance with the relevant requirements of the CSRC in respect of capital management in fund distribution settlement;

- to have the methods and systems to assess fund investors' risk tolerance and risk levels of fund products;

- to have established sound fund distribution business management systems for business process, professional conduct of sales personnel and emergency treatment measures, etc., which meet the relevant requirements of the CSRC for the internal control of fund distribution institutions;

- to have an internal control system for anti-money laundering which satisfies the requirements of the laws and regulations; and

- other conditions as prescribed by the CSRC.

As to foreign-funded banks, besides meeting the aforementioned general requirements, they shall also satisfy the special requirements prescribed by the New Measures while applying for the License, which include:

- the capital adequacy ratio meets the requirements;

- to have a special department in charge of the fund distribution business;

- to have no record of administrative or criminal penalties in the past three years;

- the number of personnel who have obtained the fund practice qualification in the department of fund distribution business is no less than half of the number of personnel in such department;

- the management personnel of the department of fund distribution business shall have obtained the fund practice qualification, are familiar with fund distribution business, and have work experiences of engaging in fund business for more than two years or in other relevant financial institutions for more than five years; and

- the persons in charge of the fund distribution business of the major branches of the foreign-funded banks applying for the License shall all have obtained the fund practice qualification.

According to the media, as the implementation date of the New Measures draws nearer, the leading foreign-funded banks have made thorough preparations for the application of the License. According to the relevant instructions of the CSRC, detailed rules for the implementation of the New Measures will be promulgated by the CSRC before 1 October 2011, and the application materials list in respect of the application and the content and format thereof will be further specified in such detailed rules.

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