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A Comment on the Revised Measures for Asset Management Services to Specific Clients by Fund Management Companies

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On 25 August 2011, China Security Regulatory Commission (the "CSRC") promulgated revised *Measures for Asset Management Services to Specific Clients by Fund Management Companies* (the "*Revised Measures*"). The *Revised Measures* and its supporting contract guidelines provided several new requirements for qualification and business standards for fund management companies engaged in the asset management for Segregated Managed Account (the "SMA"). As a result of the changes, entry opportunities are expected to be broadened to allow small and medium sized companies to enter and engage in the SMA market and to seek the late-development advantage three years from now. These changes will have a significant impact on the asset management industry.

The *Revised Measures* included several important provisions:

- reduction of the thresholds for the application for SMA qualification

  The *Revised Measures* did not impose specific qualification indicators for entry into the SMA market. The *Revised Measures* modified several entry conditions such as the managing securities investment funds experience requirement of two(2) years or more and a minimum net worth requirement of no less than RMB two hundred million (200,000,000), and the total assets under management requirement of no less than RMB twenty billion (20,000,000,000). These changes allowed that all applicant fund management companies with regulated operations, professional business personnel and sound business systems to apply for the SMA qualification.

  Among the clients that the Llinks Law Office serves, ten (10) fund management companies have submitted their SMA application to the CSRC in accordance with the *Revised Measures.*

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The *Revised Measures* eliminated the requirement that offices of the SMA investment managers and fund managers be strictly separated. This change is conducive to the reduction of costs of the fund management companies, but also for the formation of the fund management companies' investment research integration platform.

- reduction of the financial qualification thresholds for asset owner

For the purpose of facilitating the fund management companies to expand the Segregated Account Management and to improve the efficiency, the *Revised Measures* lowered the initial size limitation of the "one-to-one" and "one-to many" Segregated Account products from RMB fifty million (50,000,000) to RMB thirty million (30,000,000). This change allows more qualified investors to entrust fund management companies for the SMA services, and to expand the overall SMA market.

- expansion of permissible SMA investment scope

For further increase the diversity of the Segregated Account product, and to better address specific financial needs for certain individual investors, the CSRC allowed the introduction of commodity futures into the investment scope of approved Segregated Account products. In addition to the approval of stock index futures in July, 2010, the CSRC allows commodity futures as permissible SMA investments. (Previously, public-offering fund is not permitted to invest in commodity futures). This change allows greater possibility in the design of SMA products as well as in the distinctive development of the fund management companies, it will also require greater care in the selection of personnel as well as technical equipment for the fund management companies which engaging in the SMA marketplace.

- relaxation of the operational requirements for the "one-to-many" account

One the one hand, the *Revised Measures* increased the proportion of investment in a single stock by a "one-to-many" account from ten percent (10%) to twenty percent (20%).

On the other hand, the *Revised Measure* increased the frequency of the asset management plan to open the account for participation from "once a year" to the "every quarter" comparing to the original *Measures.*

In comparing with the original *Measures*, the *Revised Measure*s provided more flexible investment mechanism and frequent opening period. It is expected that this will attract more investors to the SMA, especially in the light of the "one-to-many" products.

- relaxation the provisions on the managers' performance reward

Similar to the management fee, the performance reward is another major reward for the asset manager. The *Revised Measures* deleted the original requirement of the performance reward only upon the withdrawal of the asset owner or the termination of the contract, the *Revised Measures* provided for the payment of performance reward upon the mutual agreement of the parties. After the relaxation of the clauses of the performance reward paying method, the asset manager is free to negotiate the accrued proportion and frequency with the asset owner. This change will provide a more flexible bargaining regime with the possibility of broader revenue streams to the fund management company.

Finally, the *Revised Measures* did not impose new requirements for fair trade, prohibition of benefit transfers, and the reporting obligations of the fund management companies to the regulatory authorities. The existing strict and prudent legislation remain unchanged on these aspects. The Re*vised Measures* reflects a policy of "deregulation" while simultaneously strengthening the powers of the regulatory authorities.

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