



State Street Bank and Trust Company

Beijing Branch

Unit 01-02, 15F East Tower

World Financial Centre

No.1 East 3rd Ring Road

Chaoyang District, Beijing 100020, China

www.statestreet.com

June 23rd, 2020

Department of Fund and Intermediary Supervision
China Securities Regulatory Commission
Focus Plaza, 19 Jin Rong Street
Xi Cheng District
Beijing, P.R. China 100033

Via electronic submission to: jigoubu@csrc.gov.cn

**Re: Consultation Paper on CSRC Administrative Measures on Securities Investment Funds
Custody Businesses**

Dear Sir / Madam

State Street Corporation ("State Street") appreciates the opportunity to provide comments to the China Securities Regulatory Commission ("CSRC") on the proposed consultation paper on the Administrative Measures on Securities Investment Funds Custody Businesses ("Consultation Paper") issued by the CSRC on May 8th, 2020 to solicit public comments.

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management, data and analytics, and investment research and trading. With US\$31.86 trillion in assets under custody and/or administration and US\$2.69 trillion in assets under management as of March 31st, 2020, State Street operates in more than 100 geographic markets globally. In mainland China, State Street provides business functions including but not limit to client service, FX trading, fund accounting, operations, which makes this Consultation Paper highly relevant to us. We are able to provide views, taking into account the perspective from a global custodian.

General

Overall, State Street appreciates the efforts made by the CSRC to meet the U.S.-China Phase One Economic and Trade Agreement signed on January 15th, 2020, to facilitate the application for securities investment funds custody business qualification by local branches of foreign banks. In particular, we welcome the ability for local branches of foreign banks to refer to their parent company's oversea assets in order to fulfill applicable asset requirements. This provides global custodians with helpful clarification and effectively supports carrying out securities investment funds custody business in mainland China. Nonetheless, we have some comments and would like to seek further clarifications on the following aspects of the Consultation Paper.

Article 8/10 Custodian Bank's Responsibility of Settlement and Clearing

We understand the CSRC and the CSDC are promoting the pilot program of broker settlement model for custody business since 2017, and gradually turn it into common practice. If a custodian bank adopts the broker settlement model, the settlement and clearing responsibility is undertaken by a securities firm rather than the custodian bank. Hence, the custodian bank should not be subject to the mandatory requirement to have a safe and efficient clearing and settlement system as foreseen by Article 8 (5), nor should have to establish a sound clearing and settlement system as imposed by Article 10. We suggest separating the clearing and settlement infrastructure requirement from the custodian bank, and instead, requiring those custodian banks which don't assume the responsibility of market settlement participant, to have effective

procedures that facilitate clearing and settlement, and have safe connection with the settlement agent that support clearing and settlement.

Article 9 MOU Between CSRC and Home Country Regulator

State Street is headquartered in the U.S and regulated as a bank under the supervision of the U.S. banking regulator i.e. the U.S. Federal Reserve System ("U.S. Fed"). Importantly, the provision of custody services in U.S. does not require a separate specific license by the U.S. securities regulator i.e. the U.S. Securities and Exchange Commission ("U.S. SEC"). Such a regulatory regime is not unique and could be found in other jurisdictions as well.

Effective Home-Host Regulatory Cooperation:

Given the above, there is limited value in requiring an MOU on "securities regulation cooperation". In addition, it is uncommon for there to be MOUs between a securities regulator (i.e. the CSRC) and a banking regulator (i.e. the US Fed). Supervisory information could be shared on an ad hoc basis to ensure effective supervisory cooperation. We welcome and support the possibility for the CSRC to recognize MOUs and other information sharing mechanisms between the relevant U.S. financial regulator and an authority recognized by the CSRC. Specifically, we would recommend that the already existing MOU between the CBIRC and the U.S. Fed signed in 2004 will satisfy this requirement.

Additional Securities Regulatory Cooperation:

Nonetheless, for additional comfort, we understand that there's currently also an existing MOU covering securities regulation between the CSRC and the U.S. SEC signed in 2006. In fact, CSRC and U.S. SEC are both signatories to the IOSCO Multilateral MOU on cross-border cooperation.

We suggest minor amendment to the following CSRC draft regulation:

"...the sound ~~securities~~ financial laws and regulatory systems have been established in the country or region where it is located; relevant financial regulator has concluded the memorandum of understanding ~~on securities regulation cooperation~~ or has in place other arrangement for information sharing with the CSRC or an authority recognized by the CSRC, and maintains an effective relationship of regulation cooperation;"

Article 12 Evidence of No Penalty in the Past 3 Years

As a foreign bank branch under supervision by the CBIRC, it shall timely report to the CBIRC of the following material events of its parent bank, according to Article 69 of *Implementing Rules of the Administrative Regulations of the People's Republic of China on Foreign-Invested Banks*, i.e. "8. major cases involving head offices of branches of foreign banks, wholly foreign-owned banks or shareholders of Sino-foreign joint venture banks; 9. material regulatory measures implemented by the financial regulatory authorities of the countries or regions of head offices of branches of foreign banks, wholly foreign-owned banks or foreign shareholders of Sino-foreign joint venture banks, or of the countries or regions of other overseas branches, against said head offices, banks, shareholders or branches;". We also observed there's no precedent for US banking regulator to issue a cover letter to indicate the compliance status and confirm there's no significant breach/penalty in the past 3 years.

As prescribed in Provisions on Issues Concerning the Implementation of the Administrative Measures for Domestic Securities Investments by Qualified Foreign Institutional Investors issued by the CSRC, the evidence requirement is more flexible and practicable, by requesting the applicant to submit a statement on whether it has been imposed with any substantial punishment by any regulatory authority in the past three years or since its establishment. During the practice, applicant submit self-undertaking as well as provided disclosures of all the regulatory proceedings as completeness and transparency. We suggest the CSRC take the same approach and standard for the custody license application.

Article 12/17 Liquidity Support by Parent Bank

For a foreign bank branch, liquidity is managed in a global context in which liquidity risk controls and measures are monitored, supervised, and integrated on a global basis. A foreign bank branch may rely on the parent bank to support a special liquidity need or a crisis that may impact local operations. The centralized approach to liquidity management assures that ample liquidity is available to fund its branches, regardless of the business type. We consider the centralized liquidity management mechanism stipulated in the branch's Liquidity Risk Guideline is sufficient in meeting the liquidity support requirements and suggest the CSRC to remove the wordings of "for the branch's fund custody business" and "according to the custody scale of its branches" in Article 12(9)(3) and Article 17 respectively.

Article 12 Data Localization Requirement

The PRC Cybersecurity law provides the basic legal framework of information security, which require citizens' personal information and important business data collected and generated in the operation of key information infrastructures operators (CIIO) within the territory of the PRC shall be stored within the territory. We understand there are some data localization requirements imposed by the financial regulator, given the assumption that the financial infrastructure is classified as CIIO considering its broad impact to the national economy if there's any destruction, unavailability of their functions or data leakage. However, given its limited service scope of foreign custody bank and commercial bank, not all the banking system should be classified as CIIO according to the draft standards provided in Regulations on the Protection of the Security of Critical Information Infrastructure (draft for comment 2017). Hence, the localization requirements shall not be imposed on a foreign bank branch by default (although there might be some system classified as CIIO and subject to localization requirements after assessment).

Foreign bank branches are leveraging on its parent banks' IT infrastructure which are deployed offshore, including data server and resiliency arrangement. The bank's global IT infrastructure is established by adopting the applicable international security control standards included in ISO 27001/2 to ensure data security, including physical and environment security, access control, system maintenance, incident management, etc., which meet the CSRC regulatory requirements of information security standards.

We appreciate that the CSRC doesn't request localization of the banking system in the consultation paper, but instead requests the foreign bank branch applicant to *submit documents stating the security systems and measures such as system isolation, access control and information isolation from the branch, as well as the regulation of the management of cross-border data flow* in Article 12.

However, given there are no existing legislation or interpretation by CSRC or other competent authorities on the detail requirements regarding cross-border data transfer for financial sector, we hope CSRC to further provide clearance that as long as the cross-border data transfer managements meet the requirements of Cybersecurity Law and its associated Measures. If there's any specific requirements in addition to the Cybersecurity Law and associated measures, it shall be prescribed in the Regulation.

In addition, system isolation can be achieved by different approaches, e.g. physical segregation, logistic segregation or rely on users' access control. Considering the practice of global banking system setup, we would suggest CSRC to further clarify the required segregation approach, i.e. system segregation by strict access control on "need to know" and "minimum required privileges" principle to carry out the custodian activity.

As above, we suggest the CSRC amends Article 12 (9)(4) as ***"the documents stating the security systems and measures such as system isolation by strict access control on "need to know" and "minimum required privileges" principle, access control and information isolation from the branch, as well as the regulation of the management of cross-border data flow which meet the requirements of Cybersecurity Law and its associated Measures."***

Article 21 Custodian's Responsibility of NAV Oversight

According to the Securities Investment Fund Law, the valuation calculation is the responsibility of the fund manager, while the custodian bank is taking on an oversight role in relation to those calculations. To better clarify the responsibility of the custodian, we suggest the CSRC re-words the article as *"Fund manager shall conduct valuation calculation in accordance with the Accounting Standards for Business Enterprises and relevant regulations of the CSRC and evaluate the valuation methods of various financial instruments on a regular basis. Custodian shall review the valuation methods and require the fund manager to make explanation if there's objection. When fund custodian recheck and review of net asset value of the fund, and is aware of any error in the calculation of the net value of fund units"*

Article 26 Clarification on "Long Period Without Conducting Custody Business"

Read from Article 44, if the fund custodian having not conducted the fund custody business for three consecutive years; it's subject to punishment and even withdraw the license. Suggest CSRC to clarify whether "long period" refers to 3 years in Article 26. And if so, also set forth 3 years as long period in this article.

Article 29/31 Outsourcing Model of Custody Business (Hub Operating Model)

To achieve efficiency, lower costs and risk excellence in providing modern financial services, global custodians as well as commercial banks are setting up operating centres locally and globally to centrally processing certain functions. In addition, financial institutions also pursue financial service outsourcing in seek of cost effectiveness.

From a regulatory perspective, financial outsourcing is encouraged by government and financial regulator, as stated in the Several Opinions on Providing Financial Support for the Development of the Service Outsourcing Industry (2009). Regulators also issue outsourcing guidance to regulate outsourcing activity and manage regulation risk, by requesting financial institution to establish sound internal controls related to business outsourcing, including the business outsourcing decision-making procedures, evaluation and management of outsourcers, measures for controlling the confidentiality and security of bank information, and emergency plans. (e.g. *CBRC Outsourcing Risk Management of Financial Institutions in the Banking Sector (2010)*)

Article 29 of the consultation paper prescribed that the custodian shall not carry out the fund custody business by means of authorization, contracting, cooperation, etc. We suggest the CSRC allows the outsourcing of back-office operation activity for custody business, by requesting the custodian bank to take the ultimate liability for outsourcing activities and prescribing the controls such as service provider selection, outsourcing assessment and reporting, etc.

Based on the outsourcing business arrangement, the fund custodian shall to be able to share fund information with its affiliates, delegates, and service providers for purposes of its own internal management, and in order to provide the services. However, in the consultation paper, Article 18.3 and Article 31 prescribe the fund custodian should not disclose relevant data to any institutions or individual unless otherwise required by law, administrative regulations. We suggest the CSRC also allows the data sharing if there's a business need for sharing data with affiliates, delegates or third-party servicer providers, where the custodian shall ensure the data security and obtain explicit consent of the client/investor.

Article 30/35/37 Requirements on COI Management

The information barrier requirements overlap to some extent with Article 30, 35 and 37 on the specific segregation requirements between custody, sales and fund outsourcing. We would suggest combining the relevant requirements regarding conflict of interest management into Article 30, and remove Article 35 and Article 37, to avoid potential confusion and redundancy. Amendments for Article 30 as: *"A fund custodian shall establish a strict separation wall system to ensure that the custody business is independent from its*

fund Sales business, Fund Service Outsourcing business and other business of the institution, isolate business risks, and effectively prevent conflicts of interest and interest transfer. "

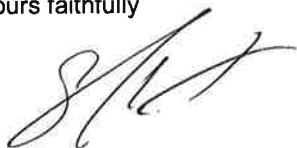
Further Clarification on Foreign Branches Qualification to Apply for the CSDC Settlement Membership

Given the current market trend, we understand that the broker settlement model is a preferred mechanism promoted by the CSRC. In the mid-long run, as a commercial institution, we would like to be given flexibility to choose either the custodian or the broker settlement model, depending on our operating model and the overall market functioning and efficiency. The provision of settlement services is an important part of custodian banks' services and they often are the settlement participants in local markets. It is hence important that foreign branch applicants could enjoy a level playing field to obtain the CSDC settlement qualification in mainland market.

We recommend CSRC to further urge the CSDC to update the relevant regulations for qualified foreign branches to apply for the CSDC settlement membership. To be in line with the CSRC's regulation, in case where a foreign branch does not reach the net asset threshold or need to get liquidity support, the foreign branch's parent bank's net asset and liquidity qualification should be considered.

Thank you again for the opportunity to provide our comments. We appreciate your consideration of this letter and the recommendations we propose. Please feel free to contact me if you wish to discuss State Street's submission in further details.

Yours faithfully



Lisa Lou
General Manager of State Street Beijing Branch