US-China Business Council Comments on The Draft Administrative Measures on Equity Interest in Securities Companies

April 29, 2018

On behalf of the more than 200 members of the US-China Business Council (USCBC), we appreciate the opportunity to provide comments to the China Securities Regulatory Commission (CSRC) on the Draft Administrative Measures on Equity Interest in Securities Companies (the draft measures).

The release of these and other measures for public comment represents an effort to integrate the opinions of a variety of stakeholders into the ultimate liberalization of the financial services sector. USCBC encourages CSRC to continue to engage proactively and openly with industry as these and other implementation regulations are drafted.

We appreciate steps taken by CSRC in other measures to raise the cap on foreign financial institutions' investment in Chinese securities companies from 49 percent to 51 percent; and to raise the cap on total foreign ownership in a listed Chinese brokerage from 25 percent to 51 percent. However, the new qualification requirements and disclosure obligations for shareholders of securities, as outlined in these measures, will be difficult for existing companies to comply with in practice. Furthermore, it is unclear if these measures require the existing shareholders of securities companies, who have already gone through CSRC approval processes prior to the implementation of these measures, will still be subject to these new requirements.

For example, **Articles 9 through 14** set out a variety of requirements for equity shareholders in securities companies. However, the draft measures are silent on how existing securities brokers should comply with the new rules -- whether they apply to all existing securities companies, or only when there is an equity transfer or other change to the capital of an existing securities company. Given that many foreign investors in the existing foreign-invested securities companies will seek to increase their interest in these companies, and these existing securities joint ventures and their respective foreign investors have already been approved by CSRC

review, these measures should not apply retroactively to the increase of shareholding in an existing securities company, whether by equity transfer or capital injection.

USCBC recommends that the draft rules be amended to allow shareholders of existing securities companies to continue holding their equity interests, with only new shareholders being obligated to meet the requirements in the draft measures. Furthermore, we recommend amending Chapter VI (Supplementary Provisions) to include: "If there are material adjustments to the shareholding structure of a securities company, its shareholders, major shareholders, largest shareholder, the controlling shareholder or actual controller shall meet the requirements of these measures."

Our member companies have some additional questions and concerns with the proposed changes and with other conditions for foreign invested securities joint ventures to operate in China's market. To that end, USCBC is pleased to provide specific recommendations as follows.

Article 12 states that qualified controlling shareholders shall have net assets of RMB 100 billion or above. However, this requirement is far too high, qualifying only three domestic Chinese securities companies, no more than ten non-financial institutions, and a small number of foreign investment banks. The entities that do satisfy this requirement are likely to be holding companies, which are often not operating vehicles without licenses. Furthermore, no other major jurisdiction imposes such high requirements, which are disproportionate relative to the requirements for commercial banks and insurance companies. For example, the Interim Measures on the Administration of Equity Interests in Commercial Banks do not contain any financial qualification requirements for controlling shareholders. Likewise, the Measures on the Administration of Equity Interests in Insurance Companies require controlling shareholders to have net assets of no less than RMB 1 billion, and total assets of no less than RMB 10 billion. As domestic securities companies are unable to match commercial banks and insurance companies in terms of overall scale, capital, and influence, financial requirements on the controlling shareholders of securities companies should not exceed those of commercial banks and insurance companies.

USCBC therefore recommends that Article 12.2 and 12.3 be revised to read "the net assets are not less than RMB 1 billion and the total assets are not less than RMB 10 billion." Additionally, we recommend adding a sentence to the end of this article to state that "where the controlling shareholder is a financial institution, the requirements set forth in 12.2 and 12.3 above may be fulfilled by the consolidated financial statements of the parent company of its group."

Article 17 limits the investment of a non-financial institution, as a joint venture partner, to holding a maximum of 33 percent of a joint venture. This limitation severely restricts the flexibility of a foreign securities company in selecting a joint venture partner; under these requirements, an overseas investor will be unable to partner with a single domestic non-financial institution in setting up a foreign-invested securities company. Beyond limiting flexibility in selecting a partner, these regulations do not rule out the possibility that a securities company could be controlled by two or more non-financial institutions acting in tandem.

USCBC recommends revising article 17.2 to read "where a securities company does not have a controlling shareholder or its controlling shareholder is not a financial institution, no single non-financial institution may hold more than one-third of the equity interests in the securities company. Where a securities company has a financial institution as its controlling shareholder, no single non-financial institution may hold more than 49 percent of the equity interest in the securities company."

Article 57 states that the controlling shareholder and actual controller of a securities company shall take effective measures to prevent business competition between the securities company and the other enterprises it controls. However, this restriction of competition between a securities company and its controlling shareholder will not benefit investors or the market. Rather, these types of competition restrictions usually protect controlling shareholders, and do not benefit the operation and development of securities companies controlled by them.

As such, USCBC recommends removing this do-not-compete clause in article 57, and instead include precautions to avoid the improper transfer of benefits. Specifically, we recommend revising the second paragraph of article 57 to read: "the controlling shareholder and actual controllers of a securities company shall take effective measures to prevent the improper transfer of benefits between the securities company and themselves or other enterprises controlled by them. The controlling shareholder and the actual controllers shall not take advantage of their controlling position and infringe the lawful interests of the securities company, other shareholders, or the clients of the securities company."

Conclusion

USCBC thanks the China Securities Regulatory Commission for providing this opportunity to comment on the draft administrative measures. We hope that these comments are constructive and useful to the CSRC as it reviews the draft measures. We would appreciate the opportunity for further dialogue on these issues and are happy to follow up as appropriate.

−END−

The US-China Business Council
Contact: Jake Parker, Vice President, China Operations
Tel: 010-6592-0727
Fax: 010-6512-5854
E-Mail: jparker@uschina.org.cn