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Chinese Securities Law

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The Chinese securities market is a hot area for foreign investment. Currently, China has opened the B-share market to foreign investors, and begun to open the A-share market to qualified foreign institutional investors, which means China has opened its domestic stock market to foreign capital. In terms of securities firms, China is beginning to widen market access to foreign capital. In this report, we give a brief introduction on several important aspects of foreign investment in securities in China.

1. What are qualified foreign institutional investors?

The term of qualified foreign institutional investors (always referred to as QFII) refers to the foreign fund management institutions, insurance companies, securities companies and other assets management institutions that invest in China's securities market in accordance with Chinese laws and regulations after being approved by China Securities Regulatory Commission (CSRC) and granted an investment quota by State Administration of Foreign Exchange (SAFE).

A qualified foreign institutional investors shall entrust an domestic commercial bank as its trustee to manage its assets, and entrust domestic securities company to handle

its domestic securities transaction activities.

2. Advantages of being a qualified foreign institutional investor

- (1) A QFII can invest in 1) publicly listed shares on the Shanghai or Shenzhen Stock Exchange other than B shares; 2) publicly traded treasury bonds, convertible bonds and corporate bonds; 3) other financial instruments approved by CSRC, for example the new stock purchase, participation in placement and additional issuance, etc;
- (2) The capital cost of QFII is very low, when the QFII is approved, the relevant authorities do not require a clear statement on sources of the funds, and what's more, for some big international institutions, comparing with their equity fund, the approved quota of investment is very, very small, and these institutions' market financing capability is strong;
- (3) QFII have mature operation experience in capital market, are not only extremely mindful of fundamental analysis, but also pay great attention to the expected policy changes. QFII have the advantage over domestic institutional investors in stock picking over.

2. How to become qualified foreign institutional investors in China?

To become qualified foreign institutional investors in China, the foreign institutional investors shall first satisfy the following conditions:

- (1) The investor shall be in a sound financial and credit status, and shall meet the conditions set by the CSRC on assets scale and other factors;

The conditions set by the CSRC on assets scale and other factors as referred to in the aforesaid article are:

- 1) For fund management institutions: Having operated fund business for over 5 years with the most recent accounting year managing security assets of not less than US\$50 billion;
- 2) For insurance companies: Having operated for over 5 years with the most recent accounting year holding security assets of not less than US\$50 billion;
- 3) For securities companies: Having operated securities business for over 30 years with paid-in capital of not less than US\$10 billion and managing securities assets of not less than US\$100 billion in the most recent accounting year;
- 4) For commercial banks: Ranking among the top 100 of the world in the total

assets for the most recent accounting year and managing securities assets of not less than US\$100 billion;

- 5) For other institutional investors: Having operated for over 5 years with the most recent accounting year managing or holding security assets of not less;
- (2) The employees of the investor shall satisfy relevant professional requirements of the country or region where the investor is located;
- (3) The investor shall be equipped with sound governance structure and perfect inner control system, conduct business in accordance with the relevant regulations, and have not been subject to any substantial penalties by the supervisory organ of the country or region where it is located;
- (4) The country or region where the investor is located should have a sound legal and regulatory system, and its securities supervisory organ has signed a memorandum of cooperation an understanding with the CSRC and has maintained an efficient regulatory and co-operative relationship;
- (5) Other conditions set by the CSRC in accordance with the principle of prudent supervision

After all the above conditions are satisfied, the foreign institutional investors need to submit relevant application documents to the CSRC, such application form, investment plan, manual funding sources, business license, articles of association , draft of custody agreement, etc.

The CSRC will, within 20 workdays since the receipt of full set of the above application documents, examine and verify the application documents and decide whether to grant approval or not on the basis of the opinion of the SAFE. Where it is decided to approve the application, the CSRC shall issue a securities investment license; where it is decided to disapprove, the CSRC shall send a written notice to the applicant.

In order to encourage middle and long-term investments, preference shall be given to the pension funds, insurance funds, common funds, charity funds and other long-term capital management institutions

The CSRC will need 20 workdays to examine and verify the application documents and decide whether to grant approval or not; The SAFE will need 20 workdays to examine and verify the application documents and decide whether to approve the investment quota, the aforesaid applications can be done simultaneously. However, a qualified foreign institutional investor must submit relevant application documents to

the CSRC for securities investment license, and apply to the SAFE for investment quota through its trustee, which means that the foreign investors must complete relevant preparation work first before submitting such applications, for example to entrust an domestic commercial bank as its trustee, to choose domestic securities companies as its domestic securities trading agent, etc. Considering the aforesaid situation, it may take a long time to do the preparation work.

3. How to apply for investment quota and open the foreign exchange account and special RMB account?

A qualified foreign institutional investor shall, within 1 year since the obtain of a securities investment license, apply to the SAFE through the trustee for investment quota. The SAFE shall, within 20 workdays since the receipt of a full set of application documents, examine and verify the application documents and decide whether to grant approval or not on the basis of the opinion of the CSRC. Where it is decided to approve the application, the SAFE shall give a written reply and issue a foreign exchange certificate; where it is decided to disapprove, the SAFE shall send a written notice to the applicant.

Upon the approval of the SAFE, the qualified foreign institutional investor shall open a foreign exchange account and a special RMB account at the place of the trustee. For opening the special RMB account, the qualified foreign institutional investor shall apply to the SAFE with the following documents:

- (1) A written application for opening a special RMB account;
- (2) The Foreign Exchange Registration Certificate;
- (3) The official custodianship agreement signed with its custodian;
- (4) A written commitment by the custodian to supervise the use of funds in the special RMB account;
- (5) Other materials required by the SAFE.

The SAFE shall issue an approval document within 5 business days after the receipt of the complete application documents. The custodian may open a special RMB account for the qualified foreign institutional investor with the approval document, and report relevant information to the SAFE for record within five business days after the opening of the account.

4. Repatriation of Funds for qualified foreign institutional investors

If a qualified foreign institutional investors that needs to remit its principal abroad, it

shall apply to the SAFE with the following documents 5 business days in advance:

- (1) A written application for the repatriation;
- (2) The Foreign Exchange Registration Certificate;
- (3) Other documents required by the SAFE.

Within 5 business days after receiving the complete application documents, the SAFE shall issue an approval document if it approves such a remittance, and shall reduce the investment quota of the qualified foreign institutional investor accordingly. The custodian shall go through the procedures of purchase of foreign exchange and remittance of the principal for the qualified foreign institutional investor with the approval document.

If qualified foreign institutional investor needs to purchase foreign exchange to repatriate their post-tax profits of the previous accounting year which have been audited by Chinese CPA, the qualified foreign institutional investor should mandate its custodian to apply to SAFE 15 days prior to repatriation together with the following documents:

- (1) Repatriation Application Form;
- (2) Financial reports of the accounting year in which the profits are generated;
- (3) Auditor's report issued by Chinese CPA;
- (4) Profits distribution resolutions or other effective legal documents;
- (5) Tax payment certificates;
- (6) Other documents as required by SAFE.

The overseas receivers of the above-mentioned repatriation should be the qualified foreign institutional investor themselves.

If a qualified foreign institutional investor needs to purchase foreign exchange in order to repatriate its realized after-tax gains that has been audited by a Chinese certified public accountant, it shall submit, in addition to the documents prescribed above, its Foreign Exchange Registration Certificate and other documents required by the SAFE.

A qualified foreign institutional investors shall entrust an domestic commercial bank as its trustee to manage its assets, and entrust domestic securities company to handle

its domestic securities transaction activities.

5. Chinese new GEM and whether a QFII restrict can in shares on the new GEM

On 8 May 2009, the SZSE released the draft ***Rules Governing the Listing of Shares on the Growth Enterprises Market of the Shenzhen Stock Exchange***, seeking public comment. The GEM board is expected to expand financing channels for small and medium-sized enterprises, and start-up businesses, as the GEM board emphasises growth potential more than profitability.

The China Securities Regulatory Commission (CSRC) said in an online statement that all individual investors that had no less than two years of experience in stock trading in China could apply to trade on the GEM, the country's first Nasdaq-style stock market. Counting of such experience would start from the day when the investor made his or her first trading either in Shanghai or Shenzhen. The majority of current investors registered on either exchange fall in that category, according to the commission.

Foreigners are not allowed to open A-share accounts on the mainland, but they could indirectly trade RMB-denominated A-share stocks via QFII funds that purchase such stocks.

According to the ***Interim Provisions on Appropriate Management of GEM Market Investors (Draft)*** issued on 8 June 2009, the investors of the GEM market can only be investors that are qualified to invest in A-share market. A QFII can invest in publicly listed shares on the Shanghai or Shenzhen Stock Exchange other than B shares, so a QFII is qualified to invest in GEM market its trustee.

However, China has not yet announced the specific timetable for the launch of the GEM.

6. Related Chinese laws and regulations

- (1) ***Measures for the Administration of Securities Investment within the Borders of China by Qualified Foreign Institutional Investors*** (Effective date: 09-01-2006; Department: China Securities Regulatory Commission, People's Bank of China, State Administration of Foreign Exchange);
- (2) ***Administration of Foreign Exchange in Domestic Securities Investments of Qualified Foreign Institutional Investors*** (Effective date: 12-01-2002; Department: State Administration of Foreign Exchange);
- (3) ***Notice of China Securities Regulatory Commission on the Relevant Issues Concerning the Measures for the Administration of Securities Investment***

within the Territory of China by Qualified Foreign Institutional Investors
(Effective date: 09-01-2006; Department: China Securities Regulatory Commission);

(4) *Provisional Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors* (Invalid)

(5) *Interim Provisions on Appropriate Management of GEM Market Investors* (Draft)

(6) *Rules Governing the Listing of Shares on the Growth Enterprises Market of the Shenzhen Stock Exchange* (Draft)

7. List currently registered QFII (By 2009 April)

| No. | Chinese Name | English Name | Date of Approval |
|-----|--------------|--|------------------|
| 1 | 瑞士银行 | UBS AG | 2003/5/23 |
| 2 | 野村证券株式会社 | Nomura Securities Co.,Ltd. | 2003/5/23 |
| 3 | 摩根士丹利国际有限公司 | Morgan Stanley & Co. International Limited | 2003/6/5 |
| 4 | 花旗环球金融有限公司 | Citigroup Global Markets Limited | 2003/6/5 |
| 5 | 高盛公司 | Goldman, Sachs & Co. | 2003/7/4 |
| 6 | 德意志银行 | Deutsche Bank AG 或 Deutsche Bank Aktiengesellschaft | 2003/7/30 |
| 7 | 香港上海汇丰银行有限公司 | The Hongkong and Shanghai Banking Corporation Limited | 2003/8/4 |
| 8 | 荷兰商业银行 | ING Bank N. V. | 2003/9/10 |
| 9 | 摩根大通银行 | Jpmorgan Chase Bank | 2003/9/30 |
| 10 | 瑞士信贷（香港）有限公司 | Credit Suisse (HongKong) Limited | 2003/10/24 |
| 11 | 渣打银行香港分行 | Standard Chartered Bank (HongKong) Limited | 2003/12/11 |

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| 12 | 日兴资产管理有限 公司 | Nikko Asset Management Co.,Ltd. | 2003/12/11 |
| 13 | 美林国际 | Merrill Lynch International | 2004/4/30 |
| 14 | 恒生银行有限公司 | Hangseng Bank | 2004/5/10 |
| 15 | 大和证券 SMBC 株 式会社 | Daiwa Securities SMBC Co.,Ltd. | 2004/5/10 |
| 16 | 雷曼兄弟国际（欧 洲）公司 | Lehman Brothers International (Europe) | 2004/7/6 |
| 17 | 比尔及梅林达盖茨 基金会 | Bill & Melinda Gates Foundation | 2004/7/19 |
| 18 | 景顺资产管理有限 公司 | INVESCO Asset Management Limited | 2004/8/4 |
| 19 | 荷兰银行有限公司 | ABN AMRO Bank N.V. | 2004/9/2 |
| 20 | 法国兴业银行 | Société Générale | 2004/9/2 |
| 21 | 邓普顿资产管理有 限公司 | Templeton Asset Management Ltd | 2004/9/14 |
| 22 | 巴克莱银行 | Barclays Bank PLC | 2004/9/15 |
| 23 | 德雷斯登银行股份 公司 | Dresdner Bank Aktiengesellschaft | 2004/9/27 |
| 24 | 富通银行 | Fortis Bank SA/NV | 2004/9/29 |
| 25 | 法国巴黎银行 | BNP Paribas | 2004/9/29 |
| 26 | 加拿大鲍尔公司 | Power Corporation of Canada | 2004/10/15 |
| 27 | 东方汇理银行 | Calyon S.A. | 2004/10/15 |
| 28 | 高盛国际资产管理 公司 | Goldman Sachs Asset Management International | 2005/5/9 |
| 29 | 马丁可利投资管理 有限公司 | Martin Currie Investment Management Ltd | 2005/10/25 |
| 30 | 新加坡政府投资有 限公司 | Government of Singapore Investment Corporation Pte Ltd | 2005/10/25 |
| 31 | 美国国际集团 | AIG Global Investment Corp | 2005/11/14 |

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| 32 | 淡马锡富敦投资有限公司 | Temasek Fullerton Alpha Investments Pte Ltd | 2005/11/15 |
| 33 | 怡富资产管理有限公司 | JF Asset Management Limited | 2005/12/28 |
| 34 | 日本第一生命保险相互会社 | The Dai-ichi Mutual Life Insurance Company | 2005/12/28 |
| 35 | 新加坡星展银行 | DBS Bank Ltd. | 2006/2/13 |
| 36 | 安保资本投资有限公司 | AMP Capital Investors Ltd. | 2006/4/10 |
| 37 | 加拿大丰业银行 | Scotia Bank 或 The Bank of Nova Scotia | 2006/4/10 |
| 38 | 比联金融产品英国有限公司 | KBC Financial Products UK Limited | 2006/4/10 |
| 39 | 法国爱德蒙得洛希尔银行 | La Compagnie Financiere Edmond de Rothschild Banque | 2006/4/10 |
| 40 | 耶鲁大学 | Yale University | 2006/4/14 |
| 41 | 摩根士丹利投资管理公司 | Morgan Stanley Investment Management Inc. | 2006/7/7 |
| 42 | 英国保诚资产管理(香港)有限公司 | Prudential Asset Management (Hongkong) Limited | 2006/7/7 |
| 43 | 斯坦福大学 | Stanford University | 2006/8/5 |
| 44 | 通用资产管理公司 | GE Asset Management Incorporated | 2006/8/5 |
| 45 | 大华银行有限公司 | United Overseas Bank Limited | 2006/8/5 |
| 46 | 施罗德投资管理有限公司 | Schroder Investment Management Limited | 2006/8/29 |
| 47 | 汇丰投资管理(香港)有限公司 | HSBC Investments (Hongkong) Limited | 2006/9/5 |
| 48 | 新光证券株式会社 | Shinko Securities Co.Ltd | 2006/9/5 |
| 49 | 瑞银环球资产管理(新加坡)有限公司 | UBS Global Asset Management | 2006/9/25 |

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| | 司 | (Singapore) Ltd | |
| 50 | 三井住友资产管理株式会社 | Sumitomo Mitsui Asset Management Company, Limited | 2006/9/25 |
| 51 | 挪威中央银行 | Norges Bank | 2006/10/24 |
| 52 | 百达资产管理有限公司 | Pictet Asset Management Limited | 2006/10/25 |
| 53 | 哥伦比亚大学 | The Trustees of Columbia University in the City of New York | 2008/3/12 |
| 54 | 保德信资产运用株式会社 | Prudential Asset Management Co.,Ltd. | 2008/4/7 |
| 55 | 荷宝基金管理公司 | Robeco Institutional Asset management B.V. | 2008/5/5 |
| 56 | 道富环球投资管理亚洲有限公司 | State Street Global Advisors Asia Limited | 2008/5/16 |
| 57 | 铂金投资管理有限公司 | Platinum Investment Company Limited | 2008/6/2 |
| 58 | 比利时联合资产管理有限公司 | KBC Asset Management N.V. | 2008/6/2 |
| 59 | 未来资产基金管理公司 | Mirae Asset Investment Management Co., Ltd | 2008/7/25 |
| 60 | 安达国际控股有限公司 | ACE INA International Holdings,Ltd. | 2008/8/5 |
| 61 | 魁北克储蓄投资集团 | Caisse de dépôt et placement du Québec | 2008/8/22 |
| 62 | 哈佛大学 | President and Fellows of Harvard College | 2008/8/22 |
| 63 | 三星投资信托运用株式会社 | Samsung Investment Trust Management Co., Ltd. | 2008/8/25 |

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| 64 | 联博有限公司 | AllianceBernstein Limited | 2008/8/28 |
| 65 | 华侨银行有限公司 | Oversea-Chinese Banking Corporation Limited | 2008/8/28 |
| 66 | 首域投资管理（英国）有限公司 | First State Investment Management (UK) Limited | 2008/9/11 |
| 67 | 大和证券投资信托委托株式会社 | DAIWA Asset Management Co. | 2008/9/11 |
| 68 | 壳牌资产管理有限公司 | Shell Asset Manafement Company B.V | 2008/9/12 |
| 69 | 普信国际公司 | T. Rowe Price International, Inc. | 2008/9/12 |
| 70 | 法国兴业资产管理 有限公司 | Société Générale Asset Management SA | 2008/10/14 |
| 71 | 瑞士信贷 | Credit Suisse | 2008/10/14 |
| 72 | 大华投资管理有限 公司 | UOB Asset Management LTD | 2008/11/28 |
| 73 | 阿布达比投资局 | ABU Dhabi Investment Authority | 2008/12/3 |
| 74 | 德盛安联资产管理 卢森堡 | Allianz Global Investors Luxembourg S.A. | 2008/12/16 |
| 75 | 资金国际公司 | Capital International,inc. | 2008/12/18 |
| 76 | 三菱日联证券股份 有限公司 | Mitsubishi UFJ Securities Co., Ltd. | 2008/12/29 |
| 77 | 韩华投资信托管理 株式会社 | Hanwha Investment Trust Management Co., Ltd | 2009/2/5 |
| 78 | 新兴市场管理有限 公司 | Emerging Markets Management, L.L.C. | 2009/2/10 |
| 79 | 德意志资产管理有 限公司 | DWS Investment S.A. | 2009/2/24 |

8. Possible policy changes related to foreign investment in Securities in China

Chinese foreign exchange regulator is to loosen its control over the Qualified Foreign Institutional Investor (QFII) program, which allows overseas institutions to invest in Chinese securities market.

The State Administration of Foreign Exchange (SAFE) is revising rules concerning restrictions on QFII money, and may cut down the lock-up period required before QFII money is allowed to invest in the mainland market, however no timetable for implementation of the reforms was given, nor were further details of how it would be carried out released. It will be another major move in China's plan to further develop its capital market through the introduction of QFII system since 2002, after the regulator tripled the investment quota from US\$10 billion to US\$30 billion in December in 2007.

According to the development of the Chinese securities market conditions, the supervisory ability and the related WTO commitments, the opening of the securities market of China will adopt the principle of gradual and orderly progress, proceed in a positive and sound manner. The policy of opening to the outside world of the Chinese securities market will progress, The Chinese securities market will continue to improve its opening-up to the outside.