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CSRC to Exempt Foreign Investors from Short Swing Profit Rule

Authors: TieCheng YANG | Yin GE | Ting ZHENG | Eryin YING | Krystal HE

According to news reports issued on October 16, 2022, to further facilitate foreign capital investment in China A shares, the China Securities Regulatory Commission ("**CSRC**") is considering formulating a special exemption rule for the short swing profit rule ("**SSPR**")[1] for foreign investors (e.g. qualified foreign investors/QFIs and foreign investors under the Stock Connect scheme).

Exemption for foreign mutual funds

Under current PRC rules, an investor must generally aggregate its positions with all its concerted parties for purposes of disclosure of interest ("**DOI**") rules[2] and SSPR; thus, in principle, an asset manager must aggregate all the positions held by different products under its management. However, CSRC has granted an exemption from this requirement to domestic mutual funds managed by CSRC-licensed fund management companies ("**FMCs**") with respect to their managed mutual funds (but not private funds or managed accounts); these FMCs may instead opt to comply with DOI rule and SSPR based on the positions held by each single mutual fund ("**CSRC Exemption**").

The CSRC Exemption is currently not available for foreign mutual funds managed by foreign asset managers that invest in A shares either via QFI or the Stock Connect scheme. The foreign asset management community has long been seeking a similar exemption by reference to the CSRC Exemption available to domestic asset managers. In particular, without the CSRC Exemption, managers who manage index-tracking and passive-investment products may easily trigger the reporting and trading limitation thresholds under the DOI rules and SSPR. Such a potential risk has become more realistic after the MSCI inclusion of A shares.

[1] SSPR refers to that a shareholder holding 5% or more shares or securities with equity nature in a listed company may not sell or purchase such securities in no more than 6 months after purchase or sale (as applicable) of the same; otherwise, the short swing profit shall be vested in the listed company.

[2] DOI refers to the disclosure and trading suspension obligations imposed on a shareholder that holds more than 5% shares or securities with equity nature in a listed company.

Now, reportedly CSRC is considering granting a special exemption to foreign mutual/public funds managed by foreign managers for SSPR purposes, by reference to the CSRC Exemption. Furthermore, it is anticipated that the same aggregation exemption will also apply for DOI rule purposes from a regulatory consistency perspective.

Exemption for HKSCC

Under Stock Connect rules, Hong Kong Securities Clearing Company Limited ("**HKSCC**") acts as the nominee holder for all foreign investors under the Stock Connect scheme and has been granted an exemption from complying with DOI rules for its nominee holdings. CSRC is also considering clarifying that HKSCC is exempted from complying with SSPR for its nominee holdings as well.

Reportedly, CSRC is in the process of formulating the special exemption rule and will officially issue the rule after its internal procedures are completed. This move by CSRC reveals a positive signal to the market particularly the international investors community, which will almost certainly stimulate foreign capital investment in A shares. We will continue to monitor the developments and provide further insight on a timely basis.

Important Announcement

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If you have any questions regarding this publication, please contact:

TieCheng YANG

Tel: +86 10 8516 4286
Email: tiecheng.yang@hankunlaw.com

Yin GE

Tel: +86 21 6080 0966
Email: yin.ge@hankunlaw.com

Ting ZHENG

Tel: +86 21 6080 0203
Email: ting.zheng@hankunlaw.com