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NEWSLETTER

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卓阅·2020第05期

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## 证监会明确取消或调整证券公司部分行政审批项目等事项

日前，中国证券监督管理委员会发出《关于取消或调整证券公司部分行政审批项目等事项的公告》（下称《公告》）。

《公告》称，据新《证券法》，自2020年3月1日起，证券公司部分行政审批项目取消或调整，具体涉及“证券公司设立、收购或者撤销分支机构审批”等六类。根据《公告》，自3月1日起，证监会及其派出机构不再受理行政相对人提起的新《证券法》取消的证券公司行政审批项目。有关项目取消或调整的后续管理和衔接工作，按照确定的方式执行。财务顾问机构从事证券服务业审批取消，改为事后备案管理，具体以发布的相关规则为准。《公告》还指出，授权中国证券业协会对证券业从业人员实施事后登记管理，具体方案由中国证券业协会制定并报证监会备案后执行。

### **CSRC Clarifies Cancellation or Adjustment of Some Administrative Approval Items for Securities Companies**

The China Securities Regulatory Commission ("CSRC") has recently issued the Announcement on Matters Concerning Canceling or Adjusting Some Administrative Approval Items for Securities Companies (the "Announcement").

The Announcement states that as per the latest Securities Law, from March 1, 2020, six types of administrative approval items for securities companies, including "the examination and approval for a securities company's establishment, acquisition or cancellation of a branch", are canceled or adjusted. According to the Announcement, as of March 1, 2020, the CSRC and its local branches will no longer accept administrative counterparties' applications related to those administrative approval items for securities companies that have been canceled by the latest Securities Law. After the cancellation of relevant administrative approval items, the follow-up management and transitional work should be conducted by the pre-determined means. In addition, the examination and approval process for engagement of accounting consultancies in the securities service

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industry is canceled and replaced by the ex-post record-filing administration which will be further clarified by the relevant rules to be released separately. Moreover, the Announcement notes that the Securities Association of China ("SAC") is empowered to take charge of the ex-post registration of securities practitioners, and the specific implementation plan will be formulated by the SAC and then submitted to the CSRC for record-filing before it takes effect.

## 上清所发布《集中清算业务违约处置指引》

日前，银行间市场清算所股份有限公司制发《集中清算业务违约处置指引》（下称《指引》）。

《指引》分为主体部分与各集中清算业务的“违约处置操作指引”具体章节。《指引》主体部分主要包括违约认定与处置实施框架、风险资源使用与偿还顺序、违约处置专家组等相关原则性内容，各集中清算业务“违约处置操作指引”章节对该业务违约头寸处置操作细则和其他针对性条款进行规定。其中，《指引》明确，清算会员在规定时点前保证金、清算基金、结算资产或违约金未足额到账的，为运营性违约。清算会员未能及时消除该运营性违约情形的，需提供书面承诺，承诺该运营性违约的次一工作日能在违约处置关键时点之前完成相关履约义务，否则，上清所有权对该清算会员进行永久性违约认定。

### SHCH Releases Guidelines for Handling of Defaults in Central Clearing Business

The Shanghai Clearing House ("SHCH") has enacted and formulated the Guidelines for Handling of Defaults in Central Clearing Business (the "Guidelines").

The Guidelines are comprised of the main body and chapters specifically on the guidelines for how to deal with defaults arising in different central clearing business. The main body of the Guidelines deals with the implementing framework for identification and handling of defaults, risk resource utilization and order of repayments, the expert panel for handling of defaults, and other principle contents, while chapters specifically on the guidelines for how to deal with defaults arising in different central clearing business provide for the detailed rules for disposing of the cash position involved in the business defaults and other targeted provisions. Among others, the Guidelines clarify that the failure of a clearing member to deposit the margins, clearing funds, settled assets or default fines in full by the prescribed deadline will constitute an operating default. The clearing member needs to make

## 上清所发布《集中清算业务违约处置指引》

a written commitment if it has not rectified such operating default in a timely manner, to undertake that it will fulfill the obligation to perform the contract by the key timing for disposal of defaults on the next working day following the date of such operating default; otherwise, the SHCH has the right to identify the clearing member's behavior as a permanent default.

## 国办部署做好修订后的证券法贯彻实施工作

近日，国务院办公厅印发《关于贯彻实施修订后的证券法有关工作的通知》（下称《通知》）。

《通知》提出，要稳步推进证券公开发行注册制：一是分步实施股票公开发行注册制改革；二是落实好公司债券公开发行注册制要求，依据修订后的证券法规定，公开发行公司债券应当依法经证监会或国家发展改革委注册；三是完善证券公开发行注册程序。同时，《通知》明确，要依法惩处证券违法行为。加大对欺诈发行、违规信息披露、中介机构未勤勉尽责以及操纵市场、内幕交易、利用未公开信息进行证券交易等严重扰乱市场秩序行为的查处力度。要加强投资者合法权益保护，稳妥推进由投资者保护机构代表投资者提起证券民事赔偿诉讼的制度。此外，《通知》还强调要加快清理完善相关规章制度等。

### State Council Specifies Requirements for Implementation of the Amended Securities Law

The General Office of the State Council has recently issued the Circular on Work Related to Implementation of the Amended Securities Law (the "Circular").

The Circular lays down the requirements for steady implementation of the registration system for publicly issued securities. First, the registration-based reform for publicly issued securities will be carried out in steps. Second, as required by the registration system for public issuance of corporate bonds, public issuance of corporate bonds should be registered with the China Securities Regulatory Commission ("CSRC") or the National Development and Reform Commission ("NDRC"), pursuant to the provisions of the amended Securities Law. And third, the procedures for registration of public issuance of securities are improved. In addition, the Circular stresses the imposition of punishments for securities-related violations and crimes in accordance with law. Efforts will be ramped up to investigate and deal with issuance of securities in a deceptive manner, illegal information disclosure,



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failure of intermediary agencies to work diligently and responsibly, and acts that seriously disrupt the market order, including market manipulation, insider trading and use of non-public information to trade securities. Also, it is of significance to strengthen the protection of legitimate rights and interests of investors and make steady progress in implementing the regime whereby an investor protection institute could file a civil lawsuit, on behalf of investors, to claim compensation for securities. Moreover, the Circular urges efforts to straighten out and improve the relevant rules and regulations as early as possible.



## 证监会就《证券服务机构从事证券服务业务备案管理规定》征求意见

日前，中国证券监督管理委员会起草了《证券服务机构从事证券服务业务备案管理规定（征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈截止于3月30日。

《征求意见稿》共20条，主要规定了备案主体、备案范围、备案时点和备案程序。《征求意见稿》严格遵循“放管服”要求，坚持“备案”的非行政许可法律定位，明确证券服务机构备案属于“事后备案”“告知性备案”的法律性质，不对证券服务机构从事证券服务业务设定前置性条件。同时，《征求意见稿》兼顾不同类别证券服务机构及其备案要求的普遍性与特殊性，以提高监管工作的针对性和有效性，并从便于证券服务机构进行备案出发，规定了比较简洁的备案程序要求。

### CSRC Invites Comments on Administrative Provisions on Record-filing of Securities Service Business Conducted by Securities Service Agencies

The China Securities Regulatory Commission ("CSRC") has recently drafted and issued the Administrative Provisions on Record-filing of Securities Service Business Conducted by Securities Service Agencies (Draft for Comment) (the "Draft for Comment") for public comment by March 30, 2020.

The Draft for Comment, containing 20 articles, mainly deals with the subjects of record-filing, scope of record-filing, timing of record-filing, and record-filing procedures. In strict accordance with the requirements for reform of "delegating powers, streamlining administration and strengthening regulation, and improving services" and under the principle that "record-filing" is not an administrative licensing item in a legal sense, the Draft for Comment clearly states that the nature of record-filing of securities service agencies in law is "post record-filing" and "notification record-filing", adding that there will be no precondition for engagement of securities service business by securities service agencies. Meanwhile,

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the Draft for Comment gives consideration to different types of securities service agencies and the generality and particularity of the record-filing requirements, to ensure the regulatory efforts will be made in a targeted and efficient manner, and sets out concise record-filing procedures for the convenience of securities service agencies.

## 国家发改委：企业债券发行全面施行注册制

近日，国家发展和改革委员会发布《关于企业债券发行实施注册制有关事项的通知》（下称《通知》）。

《通知》包含以下六部分内容：一、企业债券发行全面施行注册制；二、明确企业债券发行条件；三、强化信息披露要求和中介机构责任；四、落实省级发展改革部门监管职责；五、加强与有关部门的协调配合；六、稳妥做好新旧制度衔接。其中，《通知》明确，企业债券发行由核准制改为注册制。国家发改委为企业债券的法定注册机关，发行企业债券应当依法经国家发改委注册。同时，《通知》规定，企业债券发行人应当具备健全且运行良好的组织机构，最近三年平均可分配利润足以支付企业债券一年的利息等条件。此外，《通知》还要求，确立以信息披露为中心的注册制监管理念，明确发行人是信息披露的第一责任人。

### Registration System for Corporate Bond Issuance Kicks in

The National Development and Reform Commission ("NDRC") has recently issued the Circular on Matters Concerning the Implementation of the Registration System for Corporate Bond Issuance (the "Circular").

The Circular touches upon contents in six aspects as follows: 1. regulating corporate bond issuance through the registration system; 2. stipulating the conditions for issuing corporate bonds; 3. intensifying the information disclosure requirements and the responsibilities of intermediary agencies; 4. urging provincial development and reform commissions to fulfill their regulatory duties; 5. improving coordination and collaboration with relevant departments; and 6. ensuring a smooth transition from the old system to the new one. Among others, the Circular clearly states that issuance of corporate bonds will be subject to the registration system, instead of the previous examination and approval system. The NDRC is the statutory registry in charge of registration of corporate bonds, and issuance of corporate bonds should be registered

## 国家发改委：企业债券发行全面施行注册制

with the NDRC in accordance with law. In addition, the Circular clarifies that a corporate bond issuer shall meet certain conditions, including having a complete and well-functioning organizational structure and the average distributable profits of the most recent three years being sufficient to cover the one-year interest accrued on corporate bonds. Moreover, the Circular requires that the information-disclosure-centered regulatory philosophy for the registration regime shall be established, and makes it clear that corporate bond issuers are the parties held primarily responsible for information disclosures.

## 五部门：对中小微企业贷款实施临时性延期还本付息

日前，中国银行保险监督管理委员会等五部门联合发布《关于对中小微企业贷款实施临时性延期还本付息的通知》（下称《通知》）。

《通知》包含关于贷款到期本金安排等六个方面的内容。其中，《通知》明确，2020年1月25日至6月30日期间，如果中小微企业受疫情影响不能按时还本付息，可以向银行提出延期申请。银行可根据企业受疫情影响和经营状况，给予企业一定期限的延期还本付息安排，最长可以延长至2020年6月30日，免收罚息。同时，《通知》规定对湖北地区有特殊安排：湖北地区各类企业（包括大型企业）适用上述政策。银行业金融机构应为湖北地区配备专项信贷规模，实施内部资金转移定价优惠，力争2020年普惠型小微企业综合融资成本较上年平均水平降低1个百分点以上。

### **MSMEs Granted Temporary Deferment of Loan Principal and Interest Payments**

Recently, five departments including the China Banking and Insurance Regulatory Commission ("CBIRC") have jointly issued the Circular on the Provisional Postponement of Principal and Interest Payments for Loans to Micro, Small and Medium-sized Enterprises (the "Circular").

The Circular touches upon six aspects, including the arrangement for the principal of a loan that comes due. Among others, the Circular expressly states that during the period between January 25, 2020 and June 30, 2020, micro, small and medium-sized enterprises (MSMEs) may file applications with banks to postpone the principal and interest payments, if they cannot make such payments as scheduled due to the impact of the novel coronavirus (COVID-19) epidemic. Banks may give consideration to the extent to which enterprises are affected by the COVID-19 epidemic and their business conditions, to allow enterprises to make the principal and interest payments by an extended deadline which should not be later than June 30, 2020, and charge no interest penalty during such

## 五部门：对中小微企业贷款实施临时性延期还本付息

period. Meanwhile, the Circular maps out a special arrangement for the Hubei region. Specifically, the above-said policy applies to all types of enterprises (including large businesses) in the Hubei region. Financial institutions in the banking sector shall set aside the quota of special credit loans for the Hubei region, give preference to transfer pricing of internal capital, and endeavor to reduce the overall cost of inclusive financing for small and micro firms by over one percentage point in 2020, compared with the average level of the last year.



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2019、2018、2017《钱伯斯亚太区法律指南》“东南沿海（北京）受关注律所”

CHAMBERS

2014年“中国十五佳律师新星” | 2015年“ALB中国最佳雇主”

2016年“ALB2016年客户最青睐的20位中国顶级律师” | 2018年“ALB中国最佳雇主”

2018年“ALB最具潜力律师事务所” | 2019年“ALB CHINA精品律所”

ASIAN  
LEGAL  
BUSINESS  
ALB

2014年 卓越律所大奖 | 2016年“2016年度杰出交易”

2016年、2017年“THE A LIST 法律精英100强”

2018年 卓越律所大奖——结构性融资/资产证券化业务领域

2019年 卓越律所大奖——资本市场领域

CHINA BUSINESS  
LAW JOURNAL  
CB

2015年度能源和基础设施领域推荐律师事务所

2019年“并购领域中国区域受关注律所”

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电话 Tel: +86 10 8587 0068 传真 Fax: +86 10 8587 0079  
北京市东城区长安街1号东方广场E2办公楼2107-2112/100733  
2107-2112, Office Building E2 Oriental Plaza, No.1 East Chang  
An Ave, Beijing PRC 100738