

2024 年 2 月 23 日

23 February 2024

Offshore Institution Repurchase Transactions 境外机构债券回购

通过电子邮件发送至

中国人民银行金融市场司
北京市西城区成方街 33 号
100800
scshbjc@pbc.gov.cn

BY E-MAIL

Financial Markets Department
People's Bank of China
No.33 Chengfang Street
Xicheng District
Beijing 100800
scshbjc@pbc.gov.cn

针对《关于进一步支持境外机构投资者开展银行间债券市场债券回购业务的公告（征求意见稿）》的意见函

Submission regarding the Announcement on Further Supporting Offshore Institutional Investors Engaging in Bond Repurchase Business on the Interbank Bond Market (Public Consultative Document)

1 简介 Introduction

亚洲证券业与金融市场协会（“ASIFMA”）¹ 和国际资本市场协会（“ICMA”，与 ASIFMA 合称“我们”或“各协会”）²，代表各协会成员，就中国人民银行（“人民银行”）和国家外汇管理局（“外管局”）发布的《关于进一步支持境外机构投资者在银行间债券市场开展债券回购业务的公告（征求意见稿）》（“《征求意见稿》”）及其所附起草说明（“起草说明”）表示欢迎，就我们本次能对前述《征求意见稿》发表意见的机会，我们予以由衷感激。

The Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)¹ and the International Capital Market Association (“**ICMA**”, together with ASIFMA, “**we**”, “**us**” or “**Associations**”),² on behalf of our members, are grateful for and welcome the opportunity to comment on the *Announcement on Further Supporting Offshore Institutional Investors Engaging in Bond Repurchase Business on the Interbank Bond Market (Public Consultative Document)* (“**Consultative Document**”) and the accompanying explanatory statement (“**Explanatory Statement**”) published by the People’s Bank of China (“**PBOC**”) and the State Administration of Foreign Exchange (“**SAFE**”).

¹ 亚洲证券业与金融市场协会（ASIFMA）是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、专业服务机构及市场基础设施服务供应商等超过 165 家领先机构组成。协会的使命是发掘金融行业的共同利益来推动亚洲资本市场的深度和广度发展，为区内的经济发展及增长提供基本条件。ASIFMA 致力于通过清晰而有力的行业共同声音来推动业界就关键议题达成共识、提出解决方案和促进变革。我们所牵头的众多举措包括回应监管机构和交易所的咨询、树立统一的行业标准、通过政策论文倡导更优质的市场，以及为降低亚太区内的业务成本探索可行方案。通过全球金融市场协会（GFMA），ASIFMA 与位于美国的证券业与金融市场协会（SIFMA）以及欧洲的金融市场协会（AFME）形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。详情请参阅 www.asifma.org。

ASIFMA is an independent, regional trade association comprising a diverse range of over 165 leading financial institutions from both the buy and sell side, including banks, asset managers, professional service firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, competitive and efficient Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

² 50 多年来，国际资本市场协会（ICMA）及其会员共同致力于推动国际资本和证券市场的发展，引领制定了众多行业规则、原则和政策建议，为国际资本和证券市场的成功运作奠定了基础。为实现其目标，ICMA 通过地区和行业成员委员会将来自批发和零售债券市场各个领域的成员聚集在一起，并专注于研究影响国际市场运行各个方面的广泛的市场实践和监管问题。ICMA 关注三个核心固定收益市场领域：一级市场发行、二级市场交易、回购市场和抵押品市场；以及两个衍生的新型领域：持续金融和金融科技及数字化。ICMA 目前拥有约 620 名会员，活跃在全球 67 个司法管辖区的国际债券资本市场的各个领域。国际资本市场协会的成员包括非公开或公开发行人、银行和证券交易商、资产和基金管理人、保险公司、律师事务所、资本市场基础设施提供商和中央银行。国际资本市场协会是根据《瑞士民法典》成立的非营利协会（Verein）。ICMA 总部设在苏黎世，在伦敦、巴黎、布鲁塞尔和香港设有办事处，并在苏黎世商业注册局注册。

For over 50 years ICMA and its members have worked together to promote the development of the international capital and securities markets, pioneering the rules, principles and recommendations which have laid the foundations for their successful operation. In pursuit of its objectives, ICMA brings together members from all segments of the wholesale and retail debt securities markets, through regional and sectoral member committees, and focuses on a comprehensive range of market practice and regulatory issues which impact all aspects of international market functioning. ICMA prioritises three core fixed income market areas – primary, secondary, repo and collateral: with two cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA currently has around 620 members active in all segments of international debt capital markets in 67 jurisdictions globally. Among ICMA’s members are private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA is a not-for-profit association (Verein) under the Swiss Civil Code. ICMA is headquartered in Zurich, with offices in London, Paris, Brussels and Hong Kong and registered in the Zurich Commercial Register.

我们同时也感谢人民银行、外管局和其他金融监管部门为进一步向境外投资者开放中国银行间债券市场（“**银行间债券市场**”）债券回购业务（“**回购**”）所做出的努力。该《征求意见稿》的发布也成为人民银行和香港³金融管理局（“**香港金管局**”）于2024年1月24日宣布的深化内地与香港金融合作六项政策措施的重要一环⁴。

We appreciate the on-going efforts of the PBOC, SAFE and other financial regulators in further opening up the market for bond repurchase transactions (“**repos**”) on the China Interbank Bond Market (“**CIBM**”) to offshore investors. The release of the Consultative Document is also a significant step in implementing the six policy measures announced by the PBOC and the Hong Kong³ Monetary Authority (“**HKMA**”) on 24 January 2024 to deepen financial cooperation and interconnection between China Mainland and Hong Kong.⁴

本函中，我们整合了我们的成员对《征求意见稿》的意见，包括：（i）请求对《征求意见稿》中的部分内容给予进一步的指导和澄清；以及（ii）请求增强该业务在法律和监管方面的确定性，从而鼓励更多的境外投资者参与银行间债券回购市场的建议。我们感谢北京市金杜律师事务所基于我们成员的意见起草本函。

In this letter, we set out our members’ consolidated comments in relation to the Consultative Document, including: (i) requests for further guidance and clarifications on certain aspects of the Consultative Document; and (ii) recommendations that would provide greater legal and regulatory certainty to offshore investors, which would in turn encourage greater offshore participation in the CIBM repo market. We are grateful to King & Wood Mallesons for their support in preparing this letter based on input from our members.

除非另有说明或上下文另有所指，本函中提及的“条”均指《征求意见稿》中的相应条文。

Unless otherwise indicated or the context otherwise requires, references to “Article” in this letter are to the relevant article of the Consultative Document.

2 要点概览 Executive summary

我们对《征求意见稿》的主要意见和建议概括如下：

Our key comments and recommendations in relation to the Consultative Document are summarised as follows:

³ 仅为本次意见提交之目的：（1）“香港”系指“中华人民共和国香港特别行政区”；（2）“中国”、“中国大陆”、“境内”或“中国”系指中华人民共和国，不包括香港特别行政区、澳门特别行政区和台湾地区；及（3）“境外”系指“非中国”。

For purposes of this submission: (1) “**Hong Kong**” means “Hong Kong Special Administrative Region of the People’s Republic of China”; (2) “**China**”, “**China Mainland**”, “**onshore**” or “**PRC**” means the People’s Republic of China excluding Hong Kong, Macau Special Administrative Region and Taiwan; and (3) “**offshore**” means “non-PRC”.

⁴ 请见 <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/01/20240124-3/>。

Please see <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/01/20240124-3/>

- (i) **第一条：**我们恳请人民银行就如下问题给予指导：对于目前未开立任何境内债券账户或资金账户的合格境外投资者（例如通过“北向债券通”进入银行间债券市场的投资者），应当如何参与银行间债券市场的回购交易？为此目的，人民银行和境内外相关金融市场基础设施机构或许考虑在适当的情况下对现有的境内外基础设施互联互通机制加以利用、扩容和升级（例如，依托目前“债券通”下建立的互联互通机制）。

Article 1: We respectfully request that the PBOC clarify how offshore eligible investors with no current onshore bond accounts or cash accounts (such as those investors which access the CIBM through Northbound Trading under Bond Connect) may participate in the CIBM repo market. In this respect, the PBOC and relevant onshore and offshore financial market infrastructure (“FMI”) organisations may consider leveraging, where appropriate, existing onshore and offshore infrastructural linkages (e.g., those established under Bond Connect).

- (ii) **第二条：**我们恳请人民银行对以下几个问题给予进一步的指导：（1）《征求意见稿》中对于“债券回购业务”（该概念涉及标的债券的买卖过户）的描述，如何与银行间债券回购市场上传统的质押式回购的运作方式相衔接；及（2）涉及标的债券买卖过户的质押式回购，应当如何在中国法下有效进行并采用适当的合同文件，及其法理基础。

Article 2: We seek further PBOC guidance on: (1) how the description of “bond repurchase business” in the Consultative Document (which envisages a transfer of the underlying bonds) can be reconciled with the way pledged repos have traditionally operated in the CIBM repo market; and (2) how a pledged repo involving a transfer of the underlying bonds can be effected and documented under applicable PRC laws, including the specific PRC legal basis for such a transaction.

- (iii) **第五条：**我们恳请人民银行就如下问题给予指导：《征求意见稿》第五条所述范围的境外自律组织的类型，以及何种情况下自律组织会被视为“向境外机构投资者提供服务”。我们还请求人民银行进一步细化其拟对境外自律组织进行的监管措施。我们特别提请人民银行注意的是，ICMA 与中国银行间市场交易商协会（“交易商协会”）不同，其并不对其会员进行自律监管，也不制定强制性的行业规则。因此，我们谨认为 ICMA（以及其他类似的境外自发性的行业自律组织）不应受人民银行的监管。

Article 5: We recommend that the PBOC clarify the type(s) of offshore self-regulatory organisations (“SROs”) that fall under the intended scope of Article 5, as well as the circumstances in which an in-scope SRO would be considered to be “*provid[ing] services to offshore institutional investors*” for the purposes of Article 5 of the Consultative Document. We also request that the PBOC provide details regarding its proposed regulation and supervision of offshore SROs. In this respect, we note that unlike the National Association of Financial Market Institutional Investors (“NAFMII”), ICMA does not self-regulate its members, nor does it create or enforce mandatory industry rules. Therefore, we respectfully request that ICMA (and other similar offshore voluntary industry associations) should *not* be subject to the PBOC’s regulation and supervision.

- (iv) **第七条：**我们恳请人民银行明确允许境外投资者使用 ICMA 发布的《全球回购主协议》（“GMRA”）规范其在银行间债券回购市场达成的交易。考虑到 GMRA 在国际回购市场的主流地位，以及境外投资者对 GMRA 的熟悉程度（该主协议以英文书写、受英国法律管辖，ICMA 在全球范围内已委托专业法律人士就该主协议文本出具了可执行性法律意见），允许境外投资者在参与银行间债券回购市场时使用 GMRA，将大大提高银行间债券回购市场的吸引力以及相关交易文件制备的效率。

Article 7: We respectfully request that the PBOC expressly allow offshore investors to document transactions on the CIBM repo market using the standard form template of the Global Master Repurchase Agreement (“GMRA”) published by ICMA. Given the predominance of the GMRA in the international repo market and offshore investors’ familiarity with the GMRA (which is written in English, governed by English law and supported by industry legal opinions commissioned by ICMA around the world), allowing the use of GMRA by offshore investors for the CIBM repo market would significantly enhance the attractiveness of, and facilitate the efficient documentation of transactions in, the CIBM repo market.

- (v) **第七条:** 与《中华人民共和国期货和衍生品法》（“《期衍法》”）第三十三条的立法原则类似，《征求意见稿》第七条也不应限定向人民银行进行回购主协议备案的主体身份。当然，如果人民银行仍然要求相关自律组织或行业协会才能对回购主协议提出备案申请，那么 ICMA（作为 GMRA 的发布单位⁵）应当被允许根据前述第七条向人民银行进行 GMRA 备案。我们也建议，出于该备案目的，需要向人民银行进行备案的仅为相关回购主协议的标准格式，而非实际签署的主协议及其任何补充协议或附件。可资参考的是，《期衍法》第三十三条对衍生品主协议提出的备案要求也仅备案主协议的合同范本。同样，我们也注意到，《中国银行间市场债券回购交易主协议（2013年版）》（“NAFMII 回购主协议”）在人民银行完成备案的也只是其格式文本⁶。

Article 7: Consistent with Article 33 of the *Futures and Derivatives Law of the People's Republic of China* (“FDL”), Article 7 of the Consultative Document should not expressly specify the persons that can make a record filing of the relevant master repo agreement with the PBOC. If, however, the PBOC nonetheless decides to retain the requirement that only the relevant SROs can making a record filing, and if ICMA does in fact fall under the intended scope of Article 7, ICMA (as the publisher of the GMRA⁵) should be allowed to make a record filing of the GMRA with the PBOC pursuant to Article 7 of the Consultative Document. We also request that only the standard form template of the relevant master repo agreement, instead of the actual executed master agreements and any supplements or annexes, should be filed with the PBOC for this purpose. This approach would be consistent with the filing requirement for template derivatives master agreements under Article 33 of the FDL. Furthermore, we note that only the standard form template of the 2013 NAFMII Master Bond Repurchase Agreement (“NAFMII Master Repo Agreement”) was filed with the PBOC.⁶

- (vi) **对 GMRA 项下回购终止净额结算的认可:** 鉴于终止净额结算机制对降低与回购相关的信用风险和监管资本成本的高度重要性，我们强烈建议中国立法和/或监管层面明确认可 GMRA 项下规定的回购交易终止净额结算的可执行性和法律可确定性。我们恳请人民银行和外管局能够在《中国人民银行和国家外汇管理局关于进一步支持境外机构投资者在银行间债券市场开展债券回购业务的公告》的最终版本（“《最终公告》”）中明确认可终止净额结算机制。

Recognition of repo close-out netting under the GMRA: Given the critical importance of close-out netting in reducing credit risks and regulatory capital costs associated with repos, we strongly recommend that the enforceability of close-out netting of repos documented under

⁵ 需注意的是，GMRA 是一个公开可用的标准格式文本，其条款可根据双方的具体情况进行定制。

We note that the GMRA is a publicly available standard form document and is tailored by the parties to take into account their specific circumstances.

⁶ 见交易商协会 2013 年 2 号公告，https://www.nafmii.org.cn/ggtz/gg/201301/t20130121_198006.html。

See NAFMII Announcement [2013] No. 2.

the GMRA be expressly recognised at a PRC legislative and/or regulatory level. We respectfully request an express recognition of close-out netting under the GMRA in the finalised version of the PBOC and SAFE's *Announcement on Further Supporting Offshore Institutional Investors Engaging in Bond Repurchase Business on the Interbank Bond Market* ("Finalised Announcement").

- (vii) **其他意见：**我们恳请人民银行就《征求意见稿》的其他关键方面给予具体指导，包括但不限于：
(1) 第六条下自律组织应当采取哪些措施；(2) 第八条下宏观审慎监管的类型为何；(3) 相关金融市场基础设施机构制定回购质押登记和每日保证金标准及流程的要求；以及(4) 境外投资者在银行间债券回购市场进行的交易的会计和税务处理，尤其是买断式回购中标的债券买卖过户的税务处理，以及境内投资者在交易中对境外投资者所负的拟制付息的税务处理。

Other comments: We respectfully request that the PBOC provide detailed guidance on other key aspects of the Consultative Document including, among other things: (1) actions that SROs are required to take under Article 6; (2) the type of macroprudential regulation contemplated by Article 8; (3) the formulation by relevant FMI organisations of standards and processes for pledge registration and daily margining in respect of repos; and (4) the accounting and tax treatment of transactions entered into by offshore investors on the CIBM repo market, particularly the tax treatment of the transfer of the underlying bonds in an outright transfer repo and the tax treatment of manufactured interests payable by onshore market participants to offshore market participants.

3 建议明确：参与中国银行间债券回购市场的境外投资者范围 Request for clarifications regarding expanded offshore investor access to the CIBM repo market

根据《征求意见稿》的规定，在银行间债券市场进行现券交易的境外机构投资者均可参与银行间债券回购市场。也就是说，除现有的三类境外主体可以参与银行间债券回购市场外⁷，各类境外金融机构（包括商业银行、保险公司、证券公司、基金管理公司、期货公司、信托公司及其他资产管理机构）和中长期机构投资者（包括养老基金、慈善基金、捐赠基金）也将被允许参与银行间债券回购市场。《征求意见稿》第十条明确将香港特别行政区、澳门特别行政区和台湾地区的机构投资者视为境外投资者。

Pursuant to the Consultative Document, all offshore institutional investors that engage in cash bond transactions on the CIBM will be able to participate in the CIBM repo market. In other words, in addition to the three existing categories of offshore entities that can access the CIBM repo market,⁷ all types of offshore financial institutions (such as commercial banks, insurance companies, securities companies, fund management companies, futures companies, trust companies and other asset management institutions) and medium and long-term institutional investors (such as pension funds, charitable funds and endowment funds) will be granted access as well. Article 10 of the Consultative Document clarifies that institutional investors in Hong Kong, the Macau Special Administrative Region and Taiwan are considered offshore investors for these purposes.

⁷ 目前，能够参与银行间债券回购市场交易的境外主体仅包括境外央行、货币当局、主权财富基金等主权实体，多边金融机构和离岸人民币清算行及参加行。

Currently, only (1) offshore sovereign entities such as central banks, monetary authorities and sovereign wealth funds, (2) multilateral financial institutions and (3) offshore Renminbi clearing and participating banks can access the CIBM repo market.

目前通过银行间债券市场直接投资模式（CIBM Direct）及（人民币）合格境外机构投资者计划（“QFI”）进入银行间债券市场的境外投资者已在中央国债登记结算有限责任公司（“中央结算公司”）和/或银行间市场清算所股份有限公司（“上海清算所”）开立境内债券账户。因此，《征求意见稿》使得该等境外投资者能够直接在银行间债券市场进行回购交易。但是，通过“北向债券通”进入银行间债券市场的境外投资者（“北向债券通投资者”）并未开立任何境内债券账户或资金账户，且其购买的债券是通过香港金管局的债务工具中央结算系统（“CMU”）在境外代为持有的。因此，北向债券通投资者如何在银行间债券市场进行回购交易，还有一定的未知性。

Offshore investors that currently access the CIBM through CIBM Direct and the Qualified Foreign Institutional Investor and RMB Qualified Foreign Institutional Investor (“(R)QFII”) schemes already have onshore bond accounts at China Central Depository and Clearing Co., Ltd. (“CCDC”) and/or Shanghai Clearing House (“SCH”). Accordingly, the Consultative Document would naturally pave the way for these types of offshore investors to directly trade on the CIBM repo market. However, offshore investors that access the CIBM through Northbound Trading under Bond Connect (“Northbound Bond Connect Investors”) do not have any onshore bond accounts or cash accounts, and bonds purchased by them are held offshore through the Central Moneymarkets Unit (“CMU”) of the HKMA. Therefore, it is presently unclear how Northbound Bond Connect Investors can trade in the CIBM repo market.

我们恳请人民银行在《最终公告》或随附的答记者问（“《答记者问》”）中澄清北向债券通投资者在银行间债券市场进行回购交易的机制和流程⁸。在这方面，人民银行和相关境内外金融市场基础设施机构或可考虑在适当的情况下对现有的境内外基础设施互联互通机制（例如“债券通”）加以利用、扩容和升级⁹。因此，如果人民银行及相关境内外金融监管机构能够进一步明确跨境基础设施互联互通机制在处理跨境回购业务方面的更多细节，我们将不胜感激，这对于境外投资者参与银行间债券市场回购交易也将提供更多灵活性和便利性。

We respectfully request that the PBOC clarify, either in the Finalised Announcement or any accompanying frequently asked questions (“FAQs”), the mechanism and process through which Northbound Bond Connect Investors will be able to transact on the CIBM repo market.⁸ In this respect, the PBOC and other financial regulators (including the HKMA) may consider leveraging existing offshore and onshore infrastructure linkages (e.g., those established under Bond Connect⁹). Therefore, we

⁸ 需要进一步澄清的潜在问题包括但不限于：(i) 在涉及“债券通”债券的质押式回购中，是否还需要按香港法设立担保物权（押记）；(ii) 如何对现有的债券通托管和交易基础设施互联互通进行扩容，以支持债券通债券质押式回购的达成和处置（包括通过出售质押的债券通债券进行出质）；以及 (iii) CMU 是否会作为代理人参与相关担保利益的设立和处置。

Potential issues that require further clarification include, among other things: (i) whether a Hong Kong law-governed charge would be required in connection with a pledged repo over Bond Connect securities; (ii) how the existing Bond Connect custody and trading link infrastructure will be updated to support the creation and enforcement of a pledged repo in respect of Bond Connect securities (including enforcement by way of selling the pledged Bond Connect securities); and (iii) whether the CMU would be acting as an agent in respect of the creation and perfection of the relevant security interest.

⁹ 我们理解，这一方法符合人民银行对“债券通”的最初愿景。事实上，早在2017年“债券通”首次推出时，“债券通”下的“北向通”交易就在包括现券交易的基础上，前瞻性地试图将银行间债券市场的回购交易包含在内。特别值得一提的是，在人民银行2017年6月的《内地与香港债券市场互联互通合作管理暂行办法》答记者问中，发言人表示“北向通”交易将逐步扩展到债券回购、债券借贷、债券远期，以及利率互换、远期利率协议等交易。见 <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3331208/index.html>。

We understand that this approach aligns with the PBOC's original vision for Bond Connect. Indeed, the potential for Northbound Trading under Bond Connect to cover not only cash bond transactions but also repo transactions in the CIBM was contemplated as early as 2017, when Bond Connect was first launched.

would be grateful if the PBOC and the relevant onshore and offshore FMI organisations can provide more details on any proposed cross-border infrastructural linkages that will facilitate offshore investor participation in the CIBM repo market.

此外，各协会成员希望人民银行进一步澄清境外投资者参与银行间债券回购市场的如下方面问题，并给予详细指导：

In addition, our members seek the PBOC's clarification and detailed guidance on offshore investors' participation in the CIBM repo market:

- (i) 我们理解，三方回购属于《征求意见稿》的适用范围内，但我们希望人民银行及相关金融市场基础设施机构能够澄清相关实操细节¹⁰。三方回购是指在回购交易双方之间，三方代理作为中间人（既不是正回购方，也不是逆回购方），为回购交易双方提供资金支付、结算、担保品选择、担保品托管等服务的一种回购交易方式。

While we expect that tri-party repos will be accommodated pursuant to the Consultative Document, we would be grateful if the PBOC and relevant FMI organisations can clarify the relevant operational details.¹⁰ By way of background, tri-party repo is a type of repo transaction where a tri-party agent (which is neither the repo party nor the reverse repo party) acts as an intermediary between the two parties to the repo to provide services such as payment, settlement, collateral selection, custody and management.

- (ii) 我们恳请人民银行就如下场景给予指导：如果交易双方均为境外投资者（包括通过不同渠道进入银行间债券市场的两家境外投资者，例如一方通过“债券通”进入银行间债券市场，一方通过银行间债券市场直投模式（CIBM Direct）或 QFI 计划进入银行间债券市场，或双方均通过“债券通”进入）是否可以在银行间债券市场进行回购交易。

We respectfully request that the PBOC clarify whether two offshore investors (including two offshore investors that access the CIBM through different channels, e.g., one accessing through Bond Connect and the other accessing through the CIBM Direct or (R)QFII schemes or both accessing through Bond Connect) can enter into repos with each other on the CIBM repo market.

- (iii) 我们建议人民银行及相关金融市场基础设施机构允许同名“债券通”账户与银行间债券市场直投模式（CIBM Direct）或 QFI 账户之间的债券划转过户。我们谨提出，应当允许同名账户之间的流通与划转。

Specifically, in a June 2017 Q&A on Bond Connect, a PBOC spokesperson stated that Northbound Trading under Bond Connect will be gradually extended to cover bond repos, bond lending and other types of transactions. See <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3331208/index.html>

¹⁰ 这些实操细节包括但不限于，是否会对当前的“债券通”托管模式进行调整，以允许境外投资者在多个中央结算机构托管处持有其债券，或是否允许他们就其银行间债券回购交易与全球托管人或三方代理一同在中央结算公司层面另行开立账户等。

Such operational details would include, among other things, whether adjustments will be made to the current Bond Connect custodian model to allow offshore investors to hold their bonds with more than one CMU custodian, or to allow them to open accounts at the CCDC level with global custodians or triparty agents in connection with CIBM repo transactions.

We recommend that the PBOC and relevant FMI organisations should clarify whether there will be any restrictions on the movement of bonds between Bond Connect accounts on the one hand and CIBM Direct / (R)QFII accounts on the other. We respectfully submit that portability of CIBM bonds between Bond Connect and CIBM Direct accounts should be allowed.

- (iv) 我们请求人民银行对于回购交易的结算规则（例如，净额结算机制）给予明确认可，并就银行间债券回购交易的跨境现金结算给予指导。我们谨建议，跨境资金清算和债券结算应同时进行。此外，银行间债券回购交易中因标的债券偿付变现产生的现金收益跨境汇款，应遵循现行的银行间债券市场现券交易现金汇划程序。

We seek the PBOC's clarification on the settlement conventions applicable to repo transactions (e.g., whether net settlement will be available), as well as how cash settlement of cross-border CIBM repo transactions will be conducted. We respectfully submit that cross-border cash and securities settlements should occur simultaneously. In addition, the cross-border remittance of cash proceeds derived from the liquidation of the underlying bonds in CIBM repo transactions should follow the existing cash remittance procedures for cash bond transactions on the CIBM.

我们期待有机会进一步与人民银行、外管局、其他相关金融监管机构（如香港金管局等）和金融市场基础设施机构讨论境外投资者（包括“北向债券通”投资者）进入银行间债券回购市场的法律、运营和技术问题。

We would be grateful for further opportunity to discuss with the PBOC, SAFE, other relevant financial regulators (including the HKMA, where appropriate) and FMI organisations regarding the legal, operational and technical aspects of enabling offshore investors (including Northbound Bond Connect Investors) to access the CIBM repo market.

4 请求澄清“质押式回购”中涉及的标的债券买卖过户 Request for clarifications regarding “pledged repos” that involve the transfer of the underlying bonds

《征求意见稿》第二条将回购交易定义为：正回购方将债券“卖出”给逆回购方融入资金的同时，双方约定在未来某一日期，正回购方再以约定价格从逆回购方“买回”相关债券并支付资金的交易，“包含质押式回购和买断式回购两种形式”。

Article 2 of the Consultative Document describes a repo as a transaction where the repo party “sells” the underlying bonds to the reverse repo party and both parties agree that the repo party will “buy back” the underlying bonds from the reverse repo party for an agreed price on a certain future date, and “includes pledged repos and outright transfer repos”.

《征求意见稿》对“债券回购业务”的定义包含了对标的债券真实出售（true sale）后随之回购的交易安排，且该定义的句末写道“包括质押式回购和买断式回购”，这表明该定义描述将同时适用于质押式回购和买断式回购，且将二者等同起来。具体而言，《征求意见稿》对于买断式回购的定义与人民银行和交易商协会此前发布的有关办法中的定义具有一致性，但是质押式回购的定义与之前相比则大相径庭¹¹。对于质押式回购而言，新定义并非仅在标的债券上设立担保权益（不涉及所有权转移），而是与买断式回购实质相同，体现标的债券的完全转让。起草说明中对此的解释是，为了支持银行间债券回购

市场与国际通行做法相衔接，《征求意见稿》要求境外机构投资者参与银行间债券回购市场时，“**无论质押式回购还是买断式回购，均须实现标的券的买卖过户，便利逆回购方处置**”。以上表述实质上将质押式回购和买断式回购合二为一，二者都必须实现标的债券的买卖过户。

The Consultative Document's definition of "bond repurchase business" appears to envisage an outright transfer repo that involves the actual sale and subsequent buy back of the underlying bonds, as opposed to a pledged repo which merely involves the creation of a security interest over the underlying bonds without transferring title. Accordingly, while the Consultative Document's definition is consistent with the definitions of *outright transfer* repos previously published by the PBOC and NAFMII, it is different from the previously published definitions of *pledged* repos.¹¹ However, we note that the Consultative Document's definition of "bond repurchase business" ends with the phrase "*includes pledged repos and outright transfer repos*", which suggests that the definition is purporting to describe both pledged repos and outright transfer repos. The explanation for this in the Explanatory Statement is that, in order to support the convergence of the CIBM repo market with international practices, the Consultative Document requires that when offshore institutional investors engage in repos on the CIBM, "**whether in the form of pledged repos or outright transfer repos, they must effect the transfer of the underlying bonds to facilitate the disposal of the bonds by the reverse repo party** (emphasis added)". This statement appears to suggest that both pledged repos and outright transfer repos must involve a transfer arising from the sale and purchase (in Chinese: 买卖过户) of the underlying bonds.

我们认为，《征求意见稿》关于回购交易的描述，在涉及质押式回购时，不太符合目前银行间债券市场中的交易实务，也不符合以 NAFMII 回购主协议为交易主协议等交易文件描述的质押式回购的法律特征。当前，银行间债券回购市场的质押式回购并未涉及标的债券的买卖过户，而只是设立担保物权。因此，一方面出质人对标的债券设立质权，另一方面标的债券又完全转予质权人，并可由质权人在回购期限内使用债券，目前难以在《中华人民共和国民法典》（“《民法典》”）层面找到可以令二者共存的法律依据¹²。

We note that the description of repo in the Consultative Document is different to how pledged repos currently work in the CIBM and how they are documented under the NAFMII Master Repo Agreement. Currently, pledged repos in the CIBM repo market do not involve transfers of the underlying bonds. It

¹¹ 例如，人民银行制定的《全国银行间债券市场债券交易管理办法》（2000年）将质押式回购定义为涉及债券质押的短期资金融通业务。具体而言，回购方为获取资金向逆回购方出质债券，双方同意在将来某个确定的日期，回购方必须将按约定回购利率计算的资金额返还给逆回购方，逆回购方则必须将原出质债券返还给回购方。

For example, the PBOC's *Measures for the Administration of Bond Transactions in the National Inter-Bank Bond Market* (全国银行间债券市场债券交易管理办法) (2000) defines pledged repo as a short-term financing transaction which involves pledging bonds. Specifically, the repo party receives funds and pledges bonds to the reverse repo party, and both parties agree that, on a certain date in the future, the repo party must return the funds to the reverse repo party together with interest, and the reverse repo party must release the originally pledged bonds to the repo party.

同样地，NAFMII 回购主协议中对于质押式回购的定义为：一方（“正回购方”）在将回购债券出质给另一方（“逆回购方”）、逆回购方在首期结算日向正回购方支付首期资金结算额的同时，交易双方约定在将来某一日期（即到期结算日）由正回购方向逆回购方支付到期资金结算额，同时逆回购方解除在回购债券上设定的质权的交易。

Similarly, the NAFMII Master Repo Agreement (published in 2013) defines a pledged repo as a transaction where one party (the repo party) pledges the underlying bonds to the other party (the reverse repo party) and the reverse repo party pays the purchase amount on the purchase date to the repo party. The parties also agree to a certain date (the repurchase date) on which the repo party will pay the repurchase amount to the reverse repo party and the reverse repo party must release the pledge over the underlying bonds.

is also unclear how a pledge can be effectively created over the underlying bonds in favour of the pledgee if the bonds are transferred by the pledgor to the pledgee (to facilitate the usage of the bonds by the pledgee during the repo tenor), and how such pledge can be recognised as a valid pledge or security interest under the *Civil Code of the People's Republic of China* (“**PRC Civil Code**”).¹²

尽管我们理解并欢迎人民银行将银行间债券回购市场与国际通行做法（包括国际上普遍采用的所有权转移式/买断式回购）相接轨的总体政策目标和初衷，我们仍恳请人民银行就涉及标的债券买卖过户的质押式回购应当如何在中国法下有效进行并簿记，及其法理基础给予更多的指导和澄清¹³。

While we welcome the overall policy objective of converging the CIBM repo market with international practices (including the prevalence of title transfer repos internationally), we respectfully request further guidance and clarification from the PBOC on how exactly a pledged repo involving a transfer of the underlying bonds can be effected and documented under PRC law, including the specific PRC legal basis for such a transaction.¹³

就与国际通行做法相衔接这一政策目的而言，出台政策允许并鼓励境内外投资者使用 GMRA 等文件开展买断式回购，并明确认可 GMRA 终止净额结算机制的可执行性，即足以实现这一目标（详见以下第 6 部分和第 7 部分），*无需*特别将标的债券的买卖过户机制也照搬或套用至质押式回购中，否则，这将导致质押式回购的性质发生根本性改变¹⁴。此外，区分质押式回购（不涉及标的债券的买卖过户）与买断式回购（涉及标的债券的买卖过户）对于丰富市场产品的多样性、灵活性具有重要意义，应当交由市场参与者根据其商业目标和其他考量选择参与哪种类型的回购交易。

We further submit that if the PBOC's policy objective is to converge with international practices, this objective can be adequately achieved by permitting offshore investors to enter into *outright transfer repos* using the GMRA and by expressly recognising the enforceability of close-out netting of outright transfer repos documented under the GMRA (these issues are further discussed in paragraphs 6 and 7 below) – *without* the need to fundamentally transform the nature of pledged repos by stipulating that pledged repos must also involve a transfer of the underlying bonds.¹⁴ Moreover, it may be desirable to

¹² 《民法典》第四百四十一条规定，除法律另有规定外，债券出质的质权自权利凭证交付质权人时设立，或在无权利凭证的情况下，自办理出质登记时设立。如果标的债券已经转让给逆回购方，那么回购方还应如何办理出质登记？

Article 441 of the *Civil Code of the People's Republic of China* provides that unless the law stipulates otherwise, a pledge is created over debt securities upon the delivery of the certificate evidencing the debt security, or if no certificate evidencing the debt security is available, upon registration of the pledge. It is unclear how the pledge can be registered by the repo party in a situation where the underlying bonds have been transferred to the reverse repo party.

¹³ 例如，人民银行应在中国司法机关指导下，澄清涉及标的债券买卖过户的质押式回购是否构成《最高人民法院关于适用〈中华人民共和国民法典〉有关担保制度的解释》第六十八条新创设的名为“让与担保”的非典型担保安排。根据“让与担保”的定义，出让人仅在“形式上”（而非“实质上”）将担保品转让给受让人，以担保其对受让人所欠的债务。

For example, the PBOC, in consultation with the PRC judiciary, should clarify whether a pledged repo involving a transfer of the underlying bonds would constitute the new form of security arrangement called “security interest by way of assignment” (in Chinese: 让与担保) recognised under Article 68 of the *Judicial Interpretation of the Supreme People's Court Concerning the Security-related Provisions in the Civil Code* (“**SPC Security Interpretation**”), pursuant to which the assignor transfers the collateral “in form” only (but not “in substance”) to the assignee to secure obligations owed to the assignee.

¹⁴ 质押式回购是银行间债券回购市场的主流形式。目前，质押式回购并未涉及标的债券的买卖过户。如果按照《征求意见稿》第二条所设想的方式改变这种做法，除了会产生新的法律问题和不确定性外，现有的质押登记

maintain the existing distinction between pledged repos (which do not involve a transfer of the underlying bonds) and outright transfer repos (which do involve a transfer of the underlying bonds) because it gives market participants the flexibility to choose which type of repo transaction to enter into based on their commercial objectives and other relevant considerations.

5 关于境外自律组织 Offshore SROs

《征求意见稿》第五条规定，境外金融市场基础设施、自律组织“为境外机构投资者开展银行间债券市场债券回购业务提供服务的”，应当受人民银行的监督管理。

Article 5 of the Consultative Document provides that offshore FMI organisations and SROs that “provide services to offshore institutional investors engaging in bond repo business in the [CIBM]” shall be subject to the regulation and supervision of the PBOC.

我们建议人民银行澄清第五条所适用的境外行业协会或组织的类型及范围，并就“为境外机构投资者开展银行间债券市场债券回购业务提供服务”的具体内容给予指导（或给出具体示例）。这将使得境外组织更加明确其在何种情况下会受到人民银行监管。同样，我们也希望人民银行能够进一步细化其对相关境外自律组织拟提出的监管措施。

We recommend that the PBOC clarify the types of offshore industry associations or organisations that fall under the intended scope of Article 5, and provide guidance and examples on what would constitute “provid[ing] services” to offshore investors that participate in the CIBM repo market. This would provide clarity and certainty to offshore associations and organisations regarding the triggers for PBOC regulation and supervision. Similarly, we also request that the PBOC provide details regarding how it proposes to regulate and supervise in-scope offshore SROs.

敬请人民银行注意的是，尽管一些自律组织（如交易商协会）通过制定和执行强制性规则对其成员实施自律管理，但一些国际行业协会（如 ICMA）并不会对其成员实施自律管理。ICMA 会员入会完全出于自愿。作为一个全球性的行业协会，ICMA 在国际回购市场的主要角色是发布和更新回购主协议标准范本（例如 GMRA），并委托各司法管辖区的专业法律人士就主协议标准范本在该辖区的可执行性出具行业法律意见。尽管 GMRA 在国际回购市场广泛应用，但 ICMA 不会也没有权力强制其会员或其他市场参与

和债券托管流程以及质押回购的现行会计和税收处理也可能发生根本性的改变。这可能给市场参与者带来许多意料之外的后果，并增加交易的复杂性。

Pledged repo is the dominant form of repo in the CIBM repo market. Currently, pledged repos do not involve a transfer of the underlying bonds. If this practice were to change in the manner contemplated by Article 2 of the Consultative Document, besides creating new legal issues and uncertainties, the existing pledge registration and bond depository processes as well as the existing accounting and tax treatment of pledged repos may also need to be fundamental changed, which may lead to a number of unintended consequences and complexities for market participants.

我们进一步建议，目前尚无针对涉及境外投资者持有的债券通债券的质押式回购的行业标准文件，因为 NAFMII 回购主协议仅适用于境内质押。此外，境外投资者跨境进行质押式回购交易时可能会遇到会计处理和其他问题。这些问题可能会降低境外投资者进入银行间债券回购市场开展质押式回购的积极性。

We further note that there is currently no industry standard documentation for pledged repos in respect of Bond Connect securities held by offshore investors because the NAFMII Master Repo Agreement only caters for onshore pledges. Furthermore, offshore investors may encounter accounting and other issues when engaging in pledged repo transactions on a cross-border basis. These issues pose additional obstacles for offshore investors that wish to enter into pledged repos on the CIBM repo market.

者使用 GMRA 来规范他们的回购交易。由于成为 ICMA 会员、使用 GMRA 系列协议均出于自愿，并且 ICMA 不对其会员实施自律管理，ICMA 并非国内意义的自律组织，因此人民银行很难、不应也不需要 ICMA 实施监管。

We would like to draw the PBOC's attention to the fact that while some SROs (such as NAFMII) perform a self-regulatory function by creating and enforcing mandatory rules against their members, international industry associations such as ICMA do *not* impose self-regulation on their members. Membership to ICMA is entirely voluntary. As a global industry association, ICMA's primary role in the international repo market is to publish and update standard master repo documents (such as the GMRA) and to commission industry legal opinions regarding the enforceability of standard master repo documentation templates in various jurisdictions. Although the GMRA is widely used in the international repo market, ICMA does not (nor does it have the authority to) mandate its members or other market participants to use the GMRA to document their repos. The voluntary nature of ICMA membership and the GMRA, and the fact that ICMA does not impose self-regulation on its members, renders it difficult, if not impractical, for ICMA to be subject to the regulation and supervision by the PBOC.

由于 ICMA 是一个非营利性会员协会，不提供或参与金融服务或自律监管，因此在国际上，ICMA 既不需受任何国家证券监管机构的规管，也不被这些监管机构视为自律组织。打破 ICMA 现有的不受规管状态可能会限制 ICMA 为其会员和中国内地金融市场提供服务的能力，并对 ICMA 会员（即国际回购市场参与者）产生不良影响。

ICMA is not required to be regulated or supervised by any national securities regulators, nor is it regarded as an SRO by those regulators. This is because ICMA is a not-for-profit membership association and does not provide or engage in financial services or self-regulation. Any alternation of ICMA's current non-regulated status may restrict ICMA's ability to serve its members and the PRC financial markets, and may give rise to other unwelcome ramifications for international repo market participants.

因此，为了更好地便利银行间债券市场的跨境回购交易的开展，并进一步增强国际金融机构对境内金融市场的信心，基于《征求意见稿》第五条的目的，建议明确自律组织与金融市场基础设施组织的内涵和外延。我们不排除一些境外金融市场基础设施组织会就境外投资者参与银行间债券回购市场制定强制性规则（这种情况下，人民银行对其的监管则具有合理性），但像 ICMA 这样的自愿性行业协会扮演着完全不同的角色，则不应受到中国人民银行的监管。可资参考的是，在跨境衍生品交易语境下，我们注意到境外行业协会在《期行法》下也并不受监管，故我们谨建议在银行间债券市场跨境回购交易语境下对 ICMA 也采取类似的做法。

Therefore, to best facilitate cross-border repo transactions in the CIBM and to further enhance the confidence of the international financial institutions in the onshore financial markets, it will be helpful to draw a clear distinction between SROs on the one hand and FMI organisations on the other for the purposes of Article 5 of the Consultative Document. While there are legitimate reasons to regulate offshore FMI organisations that prescribe mandatory rules for offshore investors to participate in the CIBM repo market, voluntary industry associations such as ICMA play an entirely different role and should not be subject to the PBOC's regulation and supervision. Furthermore, we note that offshore industry associations are also not subject to regulation and supervision under the FDL in the context of cross-border derivatives transactions, and we respectfully request that a similar approach be taken in respect of ICMA in the context of the cross-border repo transactions in the CIBM.

综上，鉴于 ICMA 与交易商协会等境内自律组织和金融市场基础设施机构承担的职责之间存在显著差异，我们特此请求，ICMA（及其他类似的境外行业协会）不应受限于人民银行的监管。

In conclusion, having regard to the significant differences between the functions performed by ICMA on the one hand, and by onshore SROs (such as NAFMII) and FMI organisations on the other, we respectfully request that ICMA (and other similar offshore voluntary industry associations) should *not* be subject to the PBOC's regulation and supervision.

6 关于境外投资机构参与银行间债券回购市场的主协议安排

Master agreements for offshore investors to document transactions on the CIBM repo market

《征求意见稿》第七条规定，境外机构投资者应当与交易对手签署债券回购主协议，相关自律组织应将主协议向人民银行备案。

Article 7 of the Consultative Document provides that offshore investors must sign a master repo agreement with their counterparties, and the relevant SRO(s) must make a record filing of the master repo agreement with the PBOC.

6.1 应允许境外投资机构使用

GMRA Allowing offshore investors to use the GMRA

《征求意见稿》并未列明境外投资者参与银行间债券回购市场时可以使用的回购主协议类型。鉴于以下原因，我们恳请人民银行允许境外投资者使用 GMRA 规范其在银行间债券回购市场开展的交易。

The Consultative Document does not specify the master repo agreements which offshore investors are allowed to use to participate in the CIBM repo market. For the reasons set out below, we respectfully request the PBOC to expressly allow offshore investors to document transactions on the CIBM repo market using the standard form template of the GMRA.

GMRA 是国际市场上公认适合规管回购交易的行业标准主协议。在银行间债券回购市场中，NAFMII 回购主协议规范的质押式回购占主流地位，但在国际回购市场上，境外投资者主要使用 GMRA 规范和开展买断式回购。例如，根据 ICMA 欧洲回购市场的最新调查数据¹⁵，截至 2023 年 6 月，GMRA 在欧洲回购市场的法律协议中占比约为 87%。因此，境外投资者更熟悉 GMRA，也习惯于接受并认可其法律效力和可执行性的认可，这对于境外金融机构而言非常必要，因为这样才能使境外金融机构获得净额结算机制的保护，并降低其巴塞尔协议 III 的资本成本。而 ICMA 也已在近 70 个司法管辖区委托当地专业法律人士出具行业法律意见书，确认了 GMRA 在当地的法律效力和可执行性。

The GMRA is universally regarded as the industry standard master agreement used to document repos in the international market. While pledged repo documented using the NAFMII Master Repo Agreement has been the dominant form of repo in the CIBM repo market, in the international repo market, offshore investors predominantly use the GMRA to document and transact outright transfer repos. For example, based on data from the latest ICMA European Repo Market Survey¹⁵, as of June 2023, the GMRA accounted for approximately 87 per cent of legal agreements in the European repo market. Therefore, offshore investors are familiar with the GMRA and are comfortable with its legal validity and enforceability, which are necessary for offshore financial institutions to recognise the benefits of netting

¹⁵ 见 <https://www.icmagroup.org/assets/ICMA-Repo-Survey-December-2023.pdf>。

See <https://www.icmagroup.org/assets/ICMA-Repo-Survey-December-2023.pdf>

and reduce their Basel III capital costs. The legal validity and enforceability of the GMRA has been confirmed by industry legal opinions commissioned by ICMA in almost 70 jurisdictions.

GMRA 与 NAFMII 回购主协议（及其下的买断式回购特别条款）具有许多共性（例如合同框架、单一协议概念、发生违约事件时提前终止以及终止净额结算机制），具体而言：

The GMRA shares many common features (such as contractual architecture, the single agreement concept, early termination upon the occurrence of events of default and the close-out netting mechanism) with the NAFMII Master Repo Agreement and the outright transfer special provisions thereunder. In particular, under both the GMRA and the outright transfer special provisions of the NAFMII Master Repo Agreement:

- (i) 回购方均以购买金额将标的债券完全出售给逆回购方，双方同意回购方在约定的未来日期以回购金额从逆回购方回购标的债券的等同物；

the repo party sells the underlying bonds outright to the reverse repo party for a purchase amount, and the parties agree that the repo party will repurchase equivalent underlying bonds from the reverse repo party for a repurchase amount on an agreed future date;

- (ii) 主协议（经过任何补充协议或附件的修改）及其项下的每一笔回购交易均共同构成单一协议；以及

the master agreement (as amended by any supplements or annexes) and each repo transaction under it constitute a single agreement; and

- (iii) 在发生特定事件的情况下，主协议项下的交易均可能根据终止净额结算机制被终止，在进行终止净额结算后，由一方向另一方支付单一净额。

upon the occurrence of certain specified events, the transactions under the master agreement may be terminated pursuant to the close-out netting mechanism, under which a single net amount shall become payable by one party to the other.

鉴于 GMRA 在国际回购市场的主流地位以及境外投资者对 GMRA 的熟悉程度（（该主协议以英文书写、受英国法律管辖，ICMA 在全球范围内已委托专业法律人士就该主协议文本（尤其是其净额结算机制）出具了可执行性法律意见），明确允许境外投资者使用 GMRA 规范银行间债券回购市场的交易将大大提高银行间债券回购市场对全球金融机构和其他境外机构投资者吸引力。此外，明确允许使用 GMRA 不但可以提高银行间债券回购市场上交易文件制备的效率，也符合起草说明中所述的政策目标，即支持银行间债券市场回购业务与国际通行做法相衔接。在此方面，我们注意到人民银行最近允许了境外投资者使用国际上普遍接受的主协议，例如 ISDA 主协议，参与其他互联互通机制¹⁶。

Given the predominance of the GMRA in the international repo market and offshore investors' familiarity with the GMRA (which is written in English, governed by English law and supported by legal opinions commissioned by ICMA around the world), expressly permitting offshore investors to document transactions on the CIBM repo market using the GMRA would significantly enhance the attractiveness of the CIBM repo market to global financial institutions and other offshore institutional investors. In addition, expressly permitting the use of the GMRA would facilitate the efficient documentation of transactions in the CIBM repo market and would also be consistent with the policy objective stated in the Explanatory Statement, which is to support the CIBM repo market's convergence with international practices. In this respect, we note that the PBOC has recently allowed offshore investors to use

internationally accepted master agreements such as the ISDA Master Agreement to participate in other connect schemes.¹⁶

6.2 备案要求 The record filing requirement

有关自律组织需要就相关回购主协议向人民银行备案的要求，我们谨请人民银行：

In relation to the requirement for a relevant SRO to make a record filing of the relevant master repo agreement with the PBOC, we respectfully request the PBOC to:

- (i) 考虑取消《征求意见稿》第七条仅允许相关自律组织进行主协议备案的要求。如果要求备案的目的是为了方便监察银行间债券市场中使用的回购主协议，我们谨建议，该目的的实现无需限定备案主体身份。可资参考的是，《期衍法》第三十三条并未明确限定相关衍生品主协议备案的主体身份¹⁷。我们建议《最终公告》也可参照该条的做法。但是，如果人民银行仍然要求相关自律组织或行业协会才能对回购主协议提出备案申请，那么 ICMA（作为 GMRA 的发布单位）应当被允许根据前述第七条的规定向人民银行进行 GMRA 备案；以及

consider removing the requirement in Article 7 that only SROs are allowed to make a record filing of the relevant master repo agreement. If the purpose of imposing the record filing requirement is to maintain regulatory oversight of the master repo agreements used in the CIBM, we respectfully submit that this purpose can still be achieved regardless of the identity of the person making the record filing with the PBOC. In this respect, we note that Article 33 of the FDL does not expressly specify the persons that can make a record filing of the relevant master derivatives agreement.¹⁷ We suggest a similar approach be adopted in the Finalised Announcement. If, however, the PBOC nonetheless decides to retain the requirement for the relevant SRO to make a record filing under Article 7 of the Consultative Document, and to the extent that ICMA (as the publisher of the GMRA) falls under the intended scope of Article 7, ICMA should be allowed to make a record filing of the GMRA with the PBOC; and

- (ii) 澄清仅需对回购主协议的标准范本（例如 GMRA）而非双方实际签署的回购主协议（包括任何补充协议或附件）提交备案。需要注意的是，出于保密和/或监管原因，交易实际签署的协议并非总是适合提交备案。此外，可资参考的是，（a）《期衍法》第三十三条仅要求“合同范本”（即主协议模板，而非实际签署的主协议）进行备案；以及（b）NAFMII 回购主协议在人民银行完成备案的也仅是其格式文本¹⁸。我们建议在《最终公告》中采用类似标准的主协议范本备案方法。

¹⁶ 见中国人民银行有关部门负责人就《内地与香港利率互换市场互联互通合作管理暂行办法》答记者问，https://www.gov.cn/zhengce/2023-04/29/content_5753728.htm。

See PBOC Q&As on Interim Administrative Measures for the Interconnection and Cooperation in the Interest Rate Swap Markets between China Mainland and Hong Kong.

¹⁷ 《期衍法》第三十三条规定：“本法第三十二条规定的主协议等合同范本，应当按照国务院授权的部门或者国务院期货监督管理机构的规定报送备案”。

Article 33 of the FDL provides that: “The templates of the master agreements and other contracts referred to in Article 32 of this Law shall be filed in accordance with the rules of the relevant authority authorised by the State Council or the futures regulatory authority of the State Council.”

clarify that only the standard form template of the relevant master repo agreement (such as the GMRA), instead of the actual master repo agreements (including any supplements or annexes) executed by the parties, is required to be filed. In this respect, we note that it is not always practicable to file the actual executed agreements due to confidentiality and/or regulatory restrictions. We further note that: (a) Article 33 of the FDL only requires “templates of the master agreements” (as opposed to actual executed master agreements) to be filed; and (b) only the standard form template of the NAFMII Master Repo Agreement was filed with the PBOC.¹⁸ We recommend that a similar template master agreement filing approach be adopted in the Finalised Announcement.

7 明确认可使用 GMRA 的买断式回购中终止净额结算机制的法律效力 Express legal recognition of close-out netting for outright transfer repos documented under the GMRA

《征求意见稿》未对买断式回购中终止净额结算机制的可执行性进行说明¹⁹。相比而言，《期衍法》在国家立法层面明确认可了衍生品交易中终止净额结算机制的可执行性。但是，《期衍法》对于“衍生品交易”的定义并未涵盖回购交易²⁰。因此，回购交易并不直接受《期衍法》中终止净额结算机制的立法保护。

The Consultative Document is silent on the enforceability of close-out netting in respect of outright transfer repos.¹⁹ The FDL expressly recognises and confirms, at a national legislative level, the legal enforceability of close-out netting in respect of *derivatives* transactions. However, the definition of “derivatives transaction” under the FDL does *not* cover repos.²⁰ Therefore, repos do not enjoy the legislative protection of close-out netting under the FDL.

终止净额结算机制对于降低与金融交易（如回购交易）相关的信用风险至关重要。终止净额结算机制的其他好处包括使得风险敞口以净额而非总额的方式计算，降低了受监管金融机构的监管资本成本，为创建高流动性、高效率的回购市场奠定基础。

Close-out netting is of paramount importance to the reduction of credit risks associated with financial transactions such as repos. Among other benefits, close-out netting allows exposures to be recognised on a net instead of gross basis, which lowers regulatory capital costs for regulated financial institutions and is a prerequisite to the creation of a liquid and efficient repo market.

¹⁸ 见交易商协会 2013 年 2 号公告，https://www.nafmii.org.cn/ggtz/gg/201301/t20130121_198006.html。

See NAFMII Announcement [2013] No. 2.

¹⁹ 对于质押式回购而言，终止净额结算机制的相关性较小，因为 NAFMII 回购主协议规定，每一笔质押式回购都构成双方之间的**单独**协议。换句话说，以 NAFMII 回购主协议规范的质押式回购并不构成**单一**协议，因此不同的交易之间不可以相互轧差以实现净额结算。

Close-out netting is less relevant for *pledged* repos because the NAFMII Master Repo Agreement provides that *each* pledged repo constitutes a *separate* agreement between the parties. In other words, pledged repos under the NAFMII Master Repo Agreement do *not* form a single agreement under which different transactions can be netted against each other.

²⁰ 《期衍法》第三条将“衍生品交易”定义为“期货交易以外的，以互换合约、远期合约和非标准化期权合约及其组合为交易标的的交易活动”。

Article 3 of the FDL defines “derivatives transaction” to mean a “swap contract”, a “forward contract”, a “non-standardised option contract”, and any combination of such contracts, other than a “futures transaction”.

2021年11月，原中国银行保险监督管理委员会（“**CBIRC**”，现为国家金融监督管理总局）发布了《中国银保监会办公厅关于衍生工具交易对手违约风险资产计量规则有关问题的通知》（银保监办发〔2021〕124号）和有关部门负责人就该通知的答记者问（统称为“**CBIRC通知**”），该通知明确了中国法下终止净额结算机制的可执行性问题。尽管**CBIRC通知**的法律效力位阶不及《期衍法》等法律，但该通知在法律和实践中的重要意义在于其汇总了中国立法机关、司法机关和其他金融监管机构对于破产程序开始前中国法下终止净额结算机制可执行性的一致意见。特别值得一提的是，**CBIRC通知**明确指出：“立法和司法机关均对终止净额结算机制表示支持。”

In November 2021, the then China Banking and Insurance Regulatory Commission (“**CBIRC**”), which has since been replaced by the NAFR, published the *Notice on Issues Concerning the Measurement Rules for the Default Risk Assets of Derivatives Counterparties (No. 124 [2021] of the General Office of the CBIRC)* and accompanying Q&As (collectively, “**CBIRC Notice**”) regarding the enforceability of close-out netting under PRC law. Although the **CBIRC Notice** does not have the same legal status as national legislation such as the FDL, the legal and practical significance of the **CBIRC Notice** stems from its expression and confirmation of the uniform views across the PRC’s legislature, judiciary and other financial regulators regarding the enforceability of close-out netting under PRC law, both before and during bankruptcy proceedings. In particular, the **CBIRC Notice** expressly states that “*both legislative and judicial bodies have expressed support for close-out netting.*”

值得注意的是，**CBIRC通知**将“终止净额结算机制”广泛定义为“金融交易”的终止过程，这一术语将涵盖衍生品交易以及如回购交易的其他金融交易，这些交易均在**CBIRC通知**中明文列出。然而，该通知明确提及《中国银行间市场金融衍生产品交易主协议》《中国证券期货市场衍生品交易主协议》《国际掉期及衍生工具协会2002年主协议》等包含终止净额结算机制的其他主协议，但遗憾的是，同样具有终止净额结算机制的**GMRA**则未在**CBIRC通知**中并未被明确提及或认可为“合法有效净额结算主协议”。如前所述，**GMRA**是国际回购市场用于规范买断式回购的行业标准主协议。**GMRA**与其他衍生品主协议在许多方面存在共性，包括但不限于第6.1段所述的单一协议概念和终止净额结算机制。因此，我们谨建议，使用**GMRA**规范买断式回购时，其中的终止净额结算机制至少应享有与其他衍生品主协议相同水平的法律保护 and 认可。

Significantly, the **CBIRC Notice** broadly defines “close-out netting” as a process for closing out “financial transactions”, a term which would cover derivatives transactions as well as other financial transactions such as repos, which are expressly mentioned in the **CBIRC Notice**. However, unlike other master agreements that similarly rely on the close-out netting mechanism such as the NAFMII Master Agreement, the China Securities and Futures Markets Financial Derivatives Master Agreement and the ISDA Master Agreement (collectively, “**Other Master Agreements**”), the **GMRA** is *not* expressly recognised in the **CBIRC Notice** as a lawful and effective master netting agreement. As noted above, the **GMRA** is the industry standard master agreement for documenting outright transfer repos in the international market. The **GMRA** also shares many common features with the Other Master Agreements, including but not limited to the single agreement concept and the close-out netting mechanism as described in paragraph 6.1 above. Therefore, we respectfully submit that the close-out netting of outright transfer repos under the **GMRA** should enjoy at least the same level of legal protection and recognition as the Other Master Agreements.

鉴于终止净额结算机制对降低与回购交易相关的信用风险和监管资本成本的高度重要性，我们建议在《最终公告》中明确认可**GMRA**规范的回购交易终止净额结算机制的可执行性。此外，我们恳请人民银行与立法机关合作，在国家立法层面赋予以**GMRA**规范的回购交易类似于《期衍法》下衍生品交易终止净额结算机制的立法保护。

Given the importance of close-out netting in reducing credit risks and the regulatory capital costs associated with repos, we recommend that the enforceability of close-out netting of repos documented under the GMRA be expressly recognised in the Finalised Announcement. In addition, we respectfully request that the PBOC work with the PRC legislature to confer such recognition at the national legislative level, similar to the legislative protection afforded to close-out netting of derivatives transactions under the FDL.

请参阅我们在 2023 年 5 月向国家金融监督管理总局提交的信函（见本函附录 A），信中详细讨论了有关 GMRA 终止净额结算机制在中国的确认性立法，并提出了相关立法建议。

Please also refer to our joint submission to the NAFR in May 2023 (set out in **Annex A** to this letter), which contains further discussions and recommendations regarding PRC legislative protection and recognition of close-out netting for repos documented under the GMRA.

8 其他意见 Other comments

本协会成员还希望就该《征求意见稿》的以下内容向人民银行寻求进一步澄清和指引：

Our members wish to seek clarification and further guidance from the PBOC on the following aspects of the Consultative Document:

- (i) 《征求意见稿》第六条规定，银行间债券市场的自律组织应加强回购业务的自律管理。我们恳请人民银行就自律组织为遵守本条要求而应采取哪些措施给予进一步指导。

Article 6 of the Consultative Document provides that SROs in the CIBM should strengthen self-regulation of the repo business. We seek further guidance from the PBOC regarding the actions expected to be taken by the SROs to comply with the requirements of this article.

- (ii) 《征求意见稿》第八条概括性地提出人民银行对境外机构投资者参与银行间债券市场回购业务实施宏观审慎管理。我们恳请人民银行就本条下宏观审慎管理的类型为何给予进一步的指导。

Article 8 of the Consultative Document broadly states that the PBOC will implement macroprudential management of offshore institutional investors that engage in repos on the CIBM. We would be grateful if the PBOC can provide further guidance on the type of macroprudential regulation contemplated by Article 8.

- (iii) 我们恳请人民银行澄清，除托管、结算和清算服务外，相关金融市场基础设施机构（例如中央结算公司和上海清算所）是否将制定有关以下内容的行业标准和操作流程：（1）逐日保证金安排，以应对回购交易中标的的债券价值的逐日无负债变动；及（2）考虑到境外投资者具体需求和情况的质押式回购的质押登记安排。

We respectfully seek clarification on whether, in addition to custody, settlement and clearing services, relevant FMI organisations (such as CCDG and SCH) will be developing standards and processes for, among other things: (1) daily margining arrangements to address mark-to-market changes in the value of the underlying bonds in a repo transaction; and (2) pledge registration arrangements for pledged repos that take into account the specific needs and circumstances of offshore investors.

- (iv) 我们恳请人民银行和外管局能够与财政部、国家税务总局一同就银行间债券市场回购交易的会计和税务处理进行澄清，尤其是买断式回购中标的债券买卖过户的税务处理，以及境内投资者在交易中对境外投资者所负的拟制付利的税务处理，这可以增强银行间债券市场回购业务（尤其是买断式回购）在法律和监管方面的确定性²¹。

We respectfully request that the PBOC and SAFE, working together with the Ministry of Finance (“MOF”) and the State Taxation Administration (“STA”), clarify the accounting and tax treatment of transactions entered into by offshore investors on the CIBM repo market, particularly the tax treatment of the transfer of the underlying bonds in an outright transfer repo and the tax treatment of manufactured interests payable by onshore market participants to offshore market participants. These clarifications would provide onshore and offshore investors with greater certainty when they participate in the CIBM repo market, particularly in relation to outright transfer repos.²¹

9 结论 Conclusion

借本函之机，我们期待和支持人民银行能够就《征求意见稿》及相关政策措施持续与市场参与者保持建设性对话。

We take this opportunity to convey our support and desire for continued constructive and on-going dialogue between the PBOC and market participants regarding the Consultative Document and related policy measures.

我们及我们的成员将积极协助人民银行、外管局和其他监管部门，进一步发展和完善相关法律和基础设施框架，以方便境外投资者更好地参与银行间债券回购市场。我们也期待相关金融市场基础设施机构、自律组织在《最终公告》公布后及时制定相应的实施细则。我们非常期待与人民银行、外管局、相关金融市场基础设施机构及自律组织就此类实施细则进行沟通。

We and our members are committed to assisting the PBOC, SAFE and other regulators in further developing and refining the legal and infrastructural framework to facilitate greater offshore investor

²¹ 我们还注意到，“债券通”推出时，其中北向通对于投资者免征所得税和增值税，并且该税收豁免范围随后得到扩大。见

https://english.www.gov.cn/statecouncil/ministries/202112/02/content_WS61a8ccd9c6d0df57f98e5f24.html

We further note that when Bond Connect was launched, Northbound Bond Connect Investors were granted exemptions from income tax and value-added tax in relation to their Bond Connect investments, which exemptions were subsequently extended. See State Council, China extends tax exemption for overseas investors in bond market (2 December 2021), available at:

https://english.www.gov.cn/statecouncil/ministries/202112/02/content_WS61a8ccd9c6d0df57f98e5f24.html.

我们鼓励中国监管机构考虑给予银行间债券回购市场的境外投资者类似的税收豁免，以吸引他们参与银行间债券回购市场。

为了吸引更多境外投资者参与银行间债券回购市场，我们鼓励中国有关当局考虑就境内外投资者在银行间债券回购市场上进行的质押式回购和买断式回购交易给予中国企业所得税和增值税的税收豁免。

In order to attract more offshore investors to the CIBM repo market, we encourage the relevant PRC authorities to consider granting PRC Corporate Income Tax (“CIT”) and Value Added Tax (“VAT”) exemptions on CIBM repo trades for both onshore and offshore participants, covering pledged repos as well as outright transfer repos.

participation in the CIBM repo market. We also expect relevant FMI organisations and SROs to formulate detailed implementing rules in due course after the Finalised Announcement is published. We look forward to engaging with the PBOC, SAFE, relevant FMI organisations and SROs regarding these implementing rules.

我们欢迎有机会进一步与人民银行、外管局和其他监管机构（如香港金管局等）讨论本函所述的问题。如您有进一步问题或希望跟进相关事宜，敬请通过 pdirckx@asifma.org 联系 ASIFMA 固定收益部主管狄辉立 Philippe Dirckx，或通过 ricco.zhang@icmagroup.org 联系 ICMA 亚太区资深总监张顺荣 Ricco Zhang。如您认为合适，我们也非常愿意与您会面，进一步讨论本函所述问题。

We welcome further opportunity to discuss the issues set out in this letter with the PBOC, SAFE and other regulators (including the HKMA, where appropriate). If you have further questions or would otherwise like to follow up, please contact Philippe Dirckx, ASIFMA's Managing Director and Head of Fixed Income, at pdirckx@asifma.org or Ricco Zhang, ICMA's Senior Director, Asia Pacific, at ricco.zhang@icmagroup.org. We would also be happy to meet with you to discuss this letter if you deem it appropriate.

专此，顺颂

春安！

Sincerely,

**Asia Securities Industry & Financial Markets
Association (ASIFMA)**



Philippe Dirckx (狄辉立)

Managing Director – Head of Fixed Income
固定收益部主管

**International Capital Market Association
(ICMA)**



Ricco Zhang (张顺荣)

Senior Director – Asia Pacific
亚太区资深总监

附录见后

Encl.

附录 A

Annex A

ASIFMA 和 ICMA 于 2023 年 5 月向国家金融监督管理总局提交的有关净额结算确认性立法的信函

**Submission Letter by ASIFMA and ICMA to the NAFR in May 2023 on Recognition and Legislation
Protecting Netting of Repurchase Transactions**