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## PRIVATE FUNDS / 私募基金

### AMAC Released Naming Rules for Private Investment Funds 中基协发布《私募投资基金命名指引》

2018年11月20日，中国证券投资基金业协会（“中基协”）发布了《私募投资基金命名指引》（“《指引》”），自2019年1月1日起按照“新老划断”原则施行：在中基协新申请备案的私募投资基金相关命名事宜应当按照《指引》执行，而在2019年1月1日前已完成备案或已提交备案申请的私募投资基金可以按照《指引》调整基金名称。

《指引》主要对私募投资基金名称提出下列规范性要求：(i)不得明示、暗示基金保本保收益，不得含有可能误导或者混淆投资人判断的字样；(ii)不得含有虚假记载和误导性陈述，不得对投资业绩进行预测，不得在未提供客观证据的情况下使用夸大或误导基金业绩的字样；(iii)应当列明体现基金业务类别的字样。对于私募股权投资基金而言，基金名称中可以使用“创业投资”、“并购投资”等体现具体投资领域特点的字样，如未体现具体投资领域特点，则应当使用“股权投资”字样；以及(iv)为避免与公开募集投资基金混淆，契约型私募投资基金名称中应当包含“私募”及“基金”字样；对有分级安排的，名称中应当含有“分级”或“结构化”字样。

《指引》的发布将境内私募投资基金的名称规范纳入了行业协会自律规则，系私募基金自律管理的基础性步骤，也有利于对中小投资者的保护。

On November 20, 2018, the Asset Management Association of China (the “AMAC”) released the *Naming Guideline for Private Investment Funds* (the “Guideline”), pursuant to which any private investment fund filing to register with AMAC after January 1, 2019 shall name itself according to the Guideline, while the funds that have completed the filings or already submitted for filings with AMAC before January 1, 2019 may adjust their names according to the Guideline.

The Guideline stipulated a few naming rules for the private investment funds. According to the Guideline, (i) the name of a fund shall not express or implies principal or return guarantee, or contain any word that may mislead or confuse investors; (ii) the fund shall not make any false record or misleading statement, forecast investment performance, or exaggerate or mislead fund performance without providing objective evidences in its name; and (iii) the name of the fund shall include the words describing the category of the fund business. With respect to a private equity fund, it may use the words to reflect the characteristics of specific investment fields such as “venture capital investment”, “buy-out investment” in its name, or use the word “equity investment” if no specific investment field is specified; and (iv) to avoid confusion with publicly offered funds, the name of a contractual private investment fund shall contain the words “private” and “fund”, and shall further include “structured” if the fund has structural arrangements.

The promulgation of the Guideline signaled that the naming rules for onshore private investment funds have been included in the self-discipline regime formulated by the fund industry association, which represented a basic step for self-discipline of private funds to strengthen the protection of the small and minority investors.

## CAPITAL MARKET / 资本市场

### China Plans to Establish a Science and Innovation Board 中国拟设立科创板

2018年11月5日，国家主席习近平宣布“将在上海证券交易所设立科创板并试点注册制”。同日，证监会以答记者问的形式回应了上述消息，并表示证监会和上海证券交易所将依据国家有关法律法规和政策，抓紧完善科创板的相关制度规则安排。上交所亦于同日确认：(i)科创板是独立于现有主板市场的新设板块，并在该板块内进行注册制试点；以及(ii)上交所将在证监会的统一部署下，制订工作方案、各项规则以及配套制度。市场普遍认为，科创板的设立将为早期科技公司搭建新的融资平台，同时也将为PE、VC等投资基金提供重要的退出渠道。我们将持续关注科创板具体配套规则的制定与落实情况。

On November 5, 2018, President Xi Jinping announced that China will establish a science and innovation board on the Shanghai Stock Exchange (the “SSE”) and is currently experimenting with a new registration-based system for IPO. The China Securities Regulatory Commission (the “CSRC”) echoed this message in the form of a Q&A session in a press conference held on the same day and stated that the CSRC and the SSE would promptly formulate and perfect the legislative regime governing the new board according to relevant laws, regulations and policies. The SSE also confirmed that: (i) the new board is independent of the existing main board market and a pilot registration-based system will be trialed on such board; and (ii) the SSE will formulate the work program, rules and supporting measures under the unified deployment and guidance of the CSRC. The market generally believes that the establishment of the science and innovation board will provide a new financing platform for high-tech startups and will offer another exit channel for PE/VC funds. We will continue to monitor and update on regulatory developments and the corresponding PRC practice in this connection.

## CRSC Tightens Restrictions on Trading Suspension and Resumption of Listco Stocks 上市公司停复牌监管收紧

2018年11月6日，证监会发布了《关于完善上市公司股票停复牌制度的指导意见》（“《指导意见》”），从部门规章层面对原本主要适用交易所自律监管规则的停复牌问题做出了全面性、系统性规定，明确了审慎停牌、分阶段披露和严格保密的基本原则：(i)符合规定事由方可申请停牌，不得随意停牌、无故停牌或者拖延复牌时间；(ii)上市公司发生重大事项，应当分阶段披露有关事项的具体情况，不得以相关事项不确定为由随意申请股票停牌；以及(iii)在筹划、实施可能对公司股票交易价格产生较大影响的重大事项过程中，相关主体应当切实履行法定保密义务，不得以申请上市公司股票停牌代替相关各方的保密义务。为贯彻落实《指导意见》的要求，上海证券交易所、深圳证券交易所于2018年11月21日发布了各自关于停复牌业务指引的征求意见稿，向市场公开征求意见。

证监会以及沪深交易所接连出台的上述规定系对于A股上市公司停牌事项多、次数多、时间长等乱象的进一步规制，在保护中小投资者的同时也试图引导上市公司停复牌制度回归其功能本源。

The CSRC issued the *Guiding Opinions on Improving the System of Trading Suspension and Resumption of Listco Stocks* (the “Opinions”) on November 6, 2018, providing the basic principles of prudent suspension, phased disclosure and strict confidentiality for A-share listed companies. The release of the Opinions indicated that a comprehensive and systematic legal framework for trading suspension and resumption of listed companies from self-regulated level to departmental rule level has been established.

According to the Opinions, (i) only eligible parties are allowed to apply for trading suspension, and any suspension without proper reason or delay in trading resumption is not permitted; (ii) if a major event occurs, the listed company involved shall disclose the specific circumstances in stages and shall not arbitrarily apply for suspension on the grounds of uncertainty of such event; (iii) in the process of planning and implementing significant corporate matters that may affect the trading price of the company’s stocks, the relevant parties shall earnestly fulfill the confidentiality obligation and shall not seek to skirt such obligations by applying for trade suspensions. In order to implement the requirements of the Opinions, the SSE and Shenzhen Stock Exchange have solicited public comments on the draft suspension and resumption of the stocks of the listed companies respectively on November 21, 2018.

The CSRC and the stock exchanges mainly target to resolve the current problems of untimely, frequent and long-time trading suspensions of the A-share listed companies to protect small and minority investors by performing the originally designed function of the suspension and resumption system under the above regulations.

## EDUCATION / 教育

### New Rule Issued to Curb Excessive Profit-Seeking in Pre-School Education Area 学前教育新规出台，禁止资本过度逐利

中共中央、国务院于2018年11月7日发布《关于学前教育深化改革规范发展的若干意见》（“《意见》”），要求遏制学前教育领域的资本过度逐利行为，并主要提出了下列禁止性规范：(i)社会资本不得通过兼并收购、受托经营、加盟连锁、利用可变利益实体、协议控制等方式控制国有资产或集体资产举办的幼儿园、非营利性幼儿园，已违规的，由教育部门会同有关部门进行清理整治，清理整治完成前不得进行增资扩股；以及(ii)民办园一律不准单独或作为一部分资产打包上市，上市公司不得通过股票市场融资投资营利性幼儿园，不得通过发行股份或支付现金等方式购买营利性幼儿园资产。

上述禁止性规范是对2018年8月10日公布的《民办教育促进法实施条例（修订草案）（送审稿）》中有关非营利性民办学校相关规定的进一步体现（具体分析请见我所《每月立法动态》2018年9月刊），将对学前教育领域的投融资活动产生重大影响，缩窄民办幼儿园资本化的通道。我们将持续关注《意见》及配套政策的后续落地以及在实践中的执行情况。

The Central Committee of the Communist Party of China and the PRC State Council issued *Several Opinions on Deepened Reform and Standardized Development for Preschool Education* (the “Opinions”) on November 7, 2018, with an aim to curb the excessive profit-seeking activities of private capitals in preschool education area.

Highlights of the Opinions include: (i) private capitals are not allowed to control any for-profit or non-profit kindergartens built on state-owned or collectively-owned assets by means of M&A, entrusted operation, franchising, variable interest entity or contractual arrangements. The education department will work with other relevant government agencies to crack down on previous violations in this regard and those kindergartens that have engaged in non-compliances in this connection are not allowed to further increase capitals until they have rectified; and (ii) no private kindergarten may be listed on any stock market in whole or in part. Listed companies shall not invest in for-profit kindergartens through capital markets, nor purchase assets of any for-profit kindergarten whether in cash or shares.

The Opinions provided a few details on the regulation of non-profit private schools under the *Implementing Rules of the Law on the Promotion of Private Education (Revised Draft) (Draft for Review)* (please refer to our September 2018 issue of China

*Regulatory Updates for details*) promulgated on August 10, 2018, which will have a significant influence on the investment and financing activities in the preschool education area and will further limit the financing sources for private kindergartens. We will continue to monitor the implementation process of the Opinions and the follow-up legislative developments.

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