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Dear Sirs

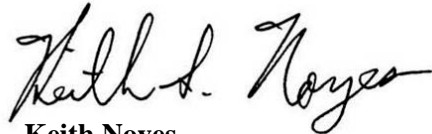
WORKING GROUP ON FOREIGN INVESTMENT IN INDIA

As a follow-up to our submission and the consultation meeting held by the Working Group with private sector persons, please find enclosed a summary of the foreign portfolio investment scheme in China. We are continuing our efforts in regard to obtaining information on other countries.

ISDA would be happy to clarify any points raised in this letter. Please do not hesitate to contact Ms Jacqueline Low (jlow@isda.org, +65 6538 3879) of ISDA.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.



Keith Noyes
Regional Director, Asia Pacific



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FOREIGN PORTFOLIO INVESTMENTS

		China
1.	Are there any restrictions on foreign portfolio investments into domestic equity or debt securities (whether listed or unlisted)? For e.g.:	Yes.
(a)	Does a foreign portfolio investor need to apply for approval or registration?	<p>On November 5, 2002, the China Securities Regulatory Commission (“CSRC”) and the People’s Bank of China (“PBOC”) introduced the Qualified Foreign Institutional Investors (“QFII”) program pursuant to the <i>Provisional Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors</i> (the “Provisional Measures”). The Provisional Measures were superseded on September 1, 2006 by the <i>Measures on Administration of Domestic Securities Investments by Qualified Foreign Institutional Investors</i> (the “QFII Regulations”). The QFII Regulations can be found on the CSRC website at:</p> <p>http://www.csrc.gov.cn/pub/csrc_en/laws/overRule/Decrees/201001/t20100126_175938.htm</p> <p>At the same time, the CSRC also issued the <i>Notice of Regulations Regarding Implementation of the Measures on Administration of Domestic Securities Investments by Qualified Foreign Institutional Investors</i> (the “QFII Notice”, and together with the QFII Regulations, the “QFII Measures”).</p> <p>Under the QFII Measures, a foreign investor must apply to the CSRC for a license for securities investment business. Within one year after obtaining such license from the CSRC, the foreign investor must apply to the State Administration of Foreign Exchange (“SAFE”) for an investment quota or return the license to the CSRC. Upon approval, SAFE will issue a foreign exchange registration certificate to the foreign investor.</p> <p>SAFE’s current regulations and requirements are set out in the <i>Provisions on the Foreign Exchange Administration for Domestic Securities Investments by Qualified Foreign Institutional Investors</i> (the “SAFE Regulations”) issued on September 29, 2009 (which replaced the Provisional Procedures on the Foreign Exchange Administration of Domestic Securities Investments by Qualified Foreign Institutional Investors issued in 2002). An unofficial translation of the SAFE Regulations can be found at:</p> <p>http://www.sipf.com.cn/en/lawsandregulations/linvestors/reguforqfii/11/6634.shtml</p>

(b)	What are the conditions to qualify for approval or registration?	<p>The aim is to encourage medium- and long-term investments by foreign institutional investors. Thus, priority is given to institutions managing long-term funds.</p> <p>The scope of entities qualified to apply for the CSRC license include fund management institutions, insurance companies, securities companies, commercial banks, pension funds, charitable funds, endowment funds, trust companies and government investment management companies.</p> <p>Such entities must meet the following requirements:</p> <ol style="list-style-type: none"> a) The applicant must be in sound financial and credit status, as well as meet certain requirements for assets under management and other conditions (summarized below) as required by the CSRC; b) The employees of the applicant must meet the relevant professional requirements of the applicant's home jurisdiction; c) The applicant must have a sound corporate governance structure and internal control system, and it must conduct business in accordance with the relevant regulations and have not been subject to any major penalty by any regulatory authority in the prior three years; d) The applicant's home jurisdiction must have a sound legal and regulatory system, and the applicant's securities regulatory authority must have signed a memorandum of understanding with the CSRC and have maintained an efficient regulatory and co-operative relationship; and e) Other conditions as required by the CSRC in light of the principle of prudent regulation. <p>The market entry criteria that the applicant must satisfy are as follows:</p> <ol style="list-style-type: none"> a) Fund management institutions – Must have operated fund business for over five years and have managed or held securities assets of not less than US\$5 billion in the most recent fiscal year. b) Insurance companies – Must have operated insurance business for over five years and have managed or held securities assets of not less than US\$5 billion in the most recent fiscal year. c) Securities companies – Must have operated securities business for over 30 years with paid-in capital of not less than US\$1 billion and have managed or held securities assets of not less than US\$10 billion in the most recent fiscal year. d) Commercial banks – Must have ranked among the top 100 in the world in terms of total assets in the most recent fiscal year and have managed or held securities assets of not less than US\$10 billion in the most recent fiscal year. e) Other institutional investors (<i>i.e.</i>, pension funds, charitable funds, endowment funds, trust companies and government investment management companies) – Must have been in business for over five years and have managed or held securities assets of not less than US\$5 billion in the most recent fiscal year.
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(c)	Is there a quota imposed on the investment size per foreign investor or an aggregate investment size for all foreign investors?	<p>The maximum accumulated investment quota of a single QFII is USD1 billion and the minimum investment quota for each application (including applications for increase in quota) should be no less than USD50 million. The quota for all QFIIs combined is US\$30 billion. As of end-September 2009, there were 88 QFIIs. Please refer to the CSRC website for the list of QFIIs:</p> <p>http://www.csrc.gov.cn/pub/csrc_en/affairs/entry/QFIIs/200911/t20091106_167331.htm</p>
(d)	What types of securities can a foreign investor invest in? Are there any limits on investment?	<p>QFIIs can invest in:</p> <ul style="list-style-type: none"> a) Shares listed on China's stock exchanges (excluding 'B' shares); b) Treasuries listed on China's stock exchanges; c) Convertible bonds and enterprise bonds listed on China's stock exchanges; d) Other financial instruments approved by the CSRC. <p>Each underlying investor investing through QFIIs may not hold more than 10 percent of the total outstanding shares of a company; and all such underlying investors together cannot hold more than 20 percent of the total outstanding shares of a company. Thus, a QFII (acting for several underlying investors) may hold more than 10 percent of the total outstanding shares of a company.</p> <p>In calculating the percentage held by an underlying investor under the QFII program, any holding it may have pursuant to the <i>Measures on the Administration of Strategic Investment by Foreign Investors in Listed Companies</i> is not included.</p> <p>Although not expressly addressed in the QFII Measures, it is generally presumed that investments by QFIIs remain subject to the restrictions stipulated in the <i>Catalogue of Industries for Guiding Foreign Investment (2007)</i>.</p>
2.	Once approved/registered, are there any conditions that the foreign investor needs to observe? For e.g.:	Yes.
(a)	Must the foreign investor remit moneys into the country within a certain time after approval/registration?	The time frame for capital injection has been extended from three months to six months starting from the quota approval date. Extension beyond 6 months is possible subject to SAFE's approval. If a QFII has remitted more than USD20 million but failed to remit the full quota amount approved by SAFE within the six-month period, the actual amount of the moneys that have been remitted will be deemed as the investment quota.

(b)	Is there a lock-up period that applies, whether to the principal investment, capital gains or dividends/interest?	<p>There is a lock-up period during which the investment principal cannot be remitted out of China. Pension funds, insurance funds, mutual funds, charity funds, endowment funds, government and monetary authorities and open-ended China funds are subject to a three-month lock-up period. For all other QFIIs, the lock-up period is one year. The lock-up period starts running from the date on which the full quota amount has been remitted inward (or, if not fully remitted inward by the prescribed deadline, from the date which is 6 months after the approval of the investment quota).</p> <p>All QFIIs can repatriate investment principal after their respective lock-up periods.</p> <p>An open-ended China fund¹, after the end of the lock-up period, can make outward/inward remittances on a monthly basis based on the net amount of redemptions/subscriptions in the fund as at the end of the prior month. Prior approval of such outward/inward remittances will not be required if the amount is less than US\$50 million or equivalent at any one time. However, a report will have to be filed by the fund's custodian following the remittance at the local SAFE office. Amounts exceeding US\$50 million will require prior approval by the local SAFE office. Repatriated principal amounts can be remitted inwards in future (i.e., the original investment quota remains in place).</p> <p>All other QFIIs require prior SAFE approval before repatriating investment principal after the end of the applicable lock-up period. The QFII's investment quota will be reduced by the principal amount repatriated.</p> <p>All other QFIIs may repatriate accumulated realized profits at any time, but must first obtain approval from the local SAFE. An audit report on investment profits by a PRC certified public accountant and a tax clearance certificate must be provided to SAFE when applying for approval.</p>
(c)	Are there rules regarding custody, brokerage or bank accounts that must be opened?	<p>A QFII must appoint one licensed QFII custodian (the QFII Measures also sets out the conditions that need to be met by a custodian who wishes to be approved by CSRC and SAFE as a licensed QFII custodian).</p> <p>A QFII may open multiple securities accounts. Specifically, a QFII may open a:</p> <ul style="list-style-type: none"> a) Direct account for holding the QFII's own assets; b) Nominee account for holding assets of customers to whom the QFII provides asset management services; and c) Special direct accounts for funds such as public funds, insurance funds, pension funds, charitable funds, endowment funds, and government investment funds under its management. Such accounts may be opened in the name of "QFII + fund".

¹ An open-ended China fund is defined in Article 9 of the SAFE Regulations to mean an open-ended securities investment fund that is publicly raised offshore by a QFII, with at least 70 percent of the fund assets being invested in the China domestic securities market. The QFII is required to submit an original of the fund prospectus (together with a Chinese translation of its key contents) to SAFE within 20 working days of the establishment of the fund.

		<p>A QFII may open a RMB special account and a corresponding foreign currency account for its own proprietary funds and client funds respectively. A separate RMB special account and a corresponding foreign currency account must be opened for each open-ended China fund.</p> <p>The SAFE Regulations expressly prohibit any transfer of funds between proprietary accounts, client accounts and open-ended China fund accounts opened by a QFII.</p>
3.	<p>Are there any restrictions on the foreign investor offering market access products or engaging in any other type of offshore transaction or dealing referencing and/or hedged by its onshore portfolio investments?</p>	<p>When the QFII program was introduced in 2002, the CSRC expressly opined that they did not regulate offshore market access products linked to 'A' shares. However, the CSRC also indicated that they did not want QFIIs to sell such products to PRC residents (essentially, PRC nationals resident in China and PRC corporates). This restriction has never been written into the regulations. Instead, it has been implemented by the CSRC by requiring a QFII to provide a written undertaking to the CSRC that it will not, directly or indirectly, sell such products to any PRC resident. CSRC also requests the QFII to set out the procedures that the QFII has/will put in place to ensure that it can comply with the undertaking. The wording of these undertakings are not standard and varies from one QFII to another depending on the time when the QFII obtained its license from the CSRC. Some undertakings are limited to not selling to PRC residents and some are drafted more broadly to cover selling to offshore entities, directly or indirectly, controlled or owned by PRC residents as well.</p> <p>The SAFE Regulations expressly prohibit the transfer or sale of the QFII's investment quota. SAFE has clarified that any QFII that had transferred or sold its investment quota prior to the issuance of the SAFE Regulations must report the same to SAFE and stop any further transfer or sale of the investment quota. Thus, the prior practice of 'renting out' investment quotas is no longer permitted. SAFE and CSRC have also clarified that an issuance of offshore market access products by QFIIs will not constitute a transfer or sale of investment quotas. However, they have also indicated that an application for an increase in the investment quota will not be considered so long as the applicant has outstanding offshore market access products.</p>
4.	<p>Are there any reporting or other on-going requirements? (Please provide any reporting or other templates.)</p>	<p>Yes, a QFII is required to appoint an internal compliance officer who directly reports on the compliance status of the QFII to the CSRC on a regular basis. Please refer to the <i>CSRC Announcement [2008] No. 40 – Guidance Opinions on Supervisors of Qualified Foreign Institutional Investors</i> which can be found on the CSRC website at:</p> <p>http://www.csrc.gov.cn/pub/csrc_en/laws/overRule/Announcement/200910/t20091022_165680.htm</p> <p>QFIIs are required to file quarterly reports (please see attached) with the CSRC. The report includes "structured products" and requires a breakdown of investors by region (Europe, North America, Asia and Others) and by type (Private Clients, Institutional Clients and Retail Clients). In practice, QFIIs will often attach an explanatory note about the structure of their outstanding market access products.</p> <p>http://www.isda.org/uploadfiles/docs/CSRC Quartly Report - Bank.xls</p>

		<p>In addition to the quarterly reports, QFIIs are also required to file an annual compliance report (please see attached), including information regarding structured products.</p> <p>http://www.isda.org/uploadfiles/docs/Annual Compliance Report 2009.doc</p> <p>A QFII is responsible for any information disclosure obligations to a stock exchange that may apply to the underlying foreign investor investing through such QFII.</p> <p>Further, QFIIs are required to report to the CSRC and SAFE any material change within five working days, e.g., change of custodian, controlling shareholder or registered capital, occurrence of material litigation or material regulatory penalty in other jurisdictions, and changes in the prospectus of an open-ended China fund.</p> <p>The QFII's custodian is also required to file various reports to the CSRC and SAFE on an on-going basis.</p>
5.	Are there any restrictions on the foreign investor hedging his currency risk onshore?	<p>The permissible activities of QFIIs in China are limited to securities investments. Thus, QFIIs are not able to enter into RMB derivatives to hedge their local currency exposure onshore. However, there is an offshore RMB NDF/NDS market and QFIIs should be able to hedge their exposure offshore should they wish to do so.</p>
6.	Are there any capital gains tax or any withholding tax on dividends/interest?	<p>On January 23, 2009, the State Administration of Taxation issued the <i>Circular on Relevant Issues on the Withholding of Enterprise Income in relation to the Payment of Dividend, Bonus and Interest to Qualified Institutional Investors by PRC Resident Enterprises</i> (the "Tax Circular"). The Tax Circular clarifies that, according to the Enterprise Income Tax Law and its Implementation Rules (which took effect on January 1, 2008), withholding tax shall be levied at a rate of 10 percent on QFIIs' PRC-sourced dividend and interest income upon payment of such dividend and interest by PRC resident enterprises. If the QFII is eligible for a reduced withholding tax rate under an applicable tax treaty, the QFII may apply to the Chinese tax authority for a tax refund (if so provided for in such tax treaty).</p> <p>Notwithstanding the Tax Circular, the following remains unclear:</p> <ol style="list-style-type: none"> a) Whether gains on disposal of investments (i.e., capital gains) are also subject to the 10 percent withholding tax. b) Where the QFII is not the beneficial owner of the income, whether the relevant tax treaty is that between the beneficial owner's (rather than the QFII's) country of residence and China. <p>It should be noted that, according to the <i>Provisional Measures for the Administration of Withholding of Enterprise Income Tax for Non-resident Enterprises (Guoshuifa [2009] No. 3)</i>, if a withholding agent fails to withhold tax, the non-resident enterprise is required to report and pay tax within seven days from the date of payment or due date of payment by the withholding agent. QFIIs should therefore be aware of their potential tax compliance obligations.</p>

7.	Are there any other relevant taxes or duties, e.g. securities transaction tax or stamp duty on contract notes?	Yes, currently, stamp duty is levied at 0.1 percent on stock sellers (but not buyers).
8.	Can the foreign investor use its onshore portfolio investments as collateral for onshore or offshore borrowings?	The permissible activities of QFIIs in China are limited to securities investments. Thus, QFIIs are not able to borrow money onshore. For offshore transactions, theoretically, QFIIs should be able to pledge the China shares as collateral for offshore borrowings as there is no express prohibition against QFIIs pledging their shares. However in practice, this rarely happens. This is due to a number of reasons, e.g., collateral enforcement issues (the collateral taker may have to go to a PRC court to enforce against the collateral) and exchange control issues (the conversion of the sale proceeds from RMB into a foreign currency and remittance of the moneys overseas will need SAFE approval).