



State Street Bank and Trust Company
Beijing Branch
Unit 01-02, 15F East Tower
World Financial Centre
No.1 East 3rd Ring Road
Chaoyang District, Beijing 100020, China
Tel: (8610) 6627 1900
Fax: (8610) 6657 4505
www.statesstreet.com

September 13, 2024

Department of Legal Affairs
National Financial Regulatory Administration
Jia 15 Financial St, Xi Cheng District
Beijing, P.R. China 100033

Via electronic submission to: gzzx@cbirc.gov.cn

2024年9月13日

法规司
国家金融监督管理总局
西城区金融大街甲15号
北京, 中国 邮编 100033

电子邮件通过: gzzx@cbirc.gov.cn

Re: Consultation on the National Financial Regulatory Administration Measures on Compliance Management of Financial Institutions

关于：国家金融监督管理总局《金融机构合规管理办法》（征求意见稿）

Dear Sir / Madam
尊敬的先生/女士：

Headquartered in Boston, Massachusetts, State Street Corporation ("State Street") specializes in providing institutional investors with investment servicing, investment management, data and analytics, and investment research and trading. With US\$44.3 trillion in assets under custody and/or administration and US\$4.4 trillion in assets under management as of June 30, 2024, State Street operates in more than 100 geographic markets globally. In mainland China, State Street Bank and Trust Company Beijing Branch ("SSBT Beijing Branch") was established in 2011, mainly providing business functions including client service and FX trading, which makes this consultation paper highly relevant to SSBT Beijing Branch's compliance management.

道富集团（“道富”）总部位于美国马萨诸塞州，波士顿市，致力于为机构客户提供投资服务，投资管理，数据分析，以及投资研究和交易。截至2024年6月30日，道富托管资产达44.3万亿美元，管理资产达4.4万亿美元。道富目前在全球100多个市场运营。在中国大陆，美国道富银行有限公司北京分行（“道富北京分行”）于2011年设立，主要提供客户关系服务以及外汇交易服务。本次征求意见稿的内容与道富北京分行的合规管理紧密相关。

SSBT Beijing Branch appreciates the opportunity to provide comments to the National Financial Regulatory Administration ("NFRA") on the proposed consultation paper on the Measures on Compliance Management of Financial Institutions ("Consultation Paper") issued on August 16, 2024 to solicit public comments. In general, we welcome the NFRA's efforts to further promote unified compliance management duties, strengthen financial institutions' compliance management capabilities in accordance with law. Meanwhile, we have some comments and would like to seek further clarifications on the following aspects of the consultation paper.

道富北京分行很荣幸有机会递交国家金融监督管理总局（“金融监管总局”）2024年8月16日发布的《金融机构合规管理办法》（征求意见稿）（“《征求意见稿》”）的意见。总体来说，我们十分赞赏金融监管总局进一步统筹推进合规管理工作，提升金融机构依法合规经营水平。同时，我们注意到仍有一些尚未明确的问题亟待进一步澄清，我们的建议主要涉及征求意见稿的以下内容：

Article 8 Ultimate Responsibility

第八条 最终责任

Article 8 of the consultation paper requires the Board of Directors of a financial institution to bear the ultimate responsibility for the effectiveness of compliance management, and perform the compliance management duties. Due to the limited presence, foreign branches usually set up local management committee to resume the function of Board of Directors. Meanwhile, according to international financial institutions' common practice, compliance departments' establishment and management, compliance managers' appointment and dismissal, etc. should follow the international financial institutions' vertical compliance management control. Local management committee does not bear the ultimate responsibility of compliance department management. In turn, we recommend that the NFRA consider the exemption for foreign branches.

征求意见稿第八条要求，金融机构董事会对合规管理的有效性承担最终责任，履行合规管理职责。由于外资分行在华规模有限，通常只设立分行管理委员会履行董事会职能。同时，依据国际金融机构惯例，合规部设置、管理，合规管任免、解聘等，需要符合国际金融机构总部的合规条线垂直管理政策。分行管理委员会并不对合规部门的管理承担最终责任。因此，我们建议金融监管局对外资分行给予豁免。

Article 11 Chief Compliance Officer

第十一条 首席合规官

Article 11 of the consultation paper provides requirements on appointment of the Chief Compliance Officer (CCO) of the financial institution. According to this article, a financial institution shall appoint a CCO at the headquarters level, meanwhile, the financial institution shall appoint compliance officer(s) at the provincial level or primary branch level. The requirement is not clear for an international financial institution who establishes one single foreign branch in China mainland. We suggest that the NFRA to further clarify whether the China head of compliance hired by the single foreign branch in China mainland should be considered as a CCO or a compliance officer.

征求意见稿第十一条对金融机构首席合规官的设立做出要求。根据本条描述，金融机构应当在机构总部设立首席合规官；应当在所设省级分支机构或者一级分支机构设立合规官。我们认为本条对国际金融机构在华仅设立单一外资分行的情况适用性不明确。我们建议：进一步明确阐述任职于在华单一外资分行的中国区合规总监是首席合规官还是合规官。

Article 12 Conflict of Interest

第十二条 利益冲突

According to Article 12, a financial institution could appoint independent CCO and compliance officer(s), or allow the person in charge of the financial institution at headquarters level or provincial level or primary branch level, to serve the compliance role concurrently. We would like to point out that the dual-hatting arrangement of the person in charge of the financial institution and compliance officer function may trigger conflict of interest, the arrangement may also conflict with the three lines of defense internal control principle as a common practice adopted within international financial institutions, e.g. the responsible person of a financial institution shall belong to the first line of defense while the compliance function shall belong to the second line of defense.

~~We suggest to remove: Financial institutions may independently appoint chief compliance officers and compliance officers based on their own business conditions, and may also be concurrently served by the person in charge of the financial institution, a provincial level (city specifically designated in the state plan) branch, or a first-level branch. If the president or general manager of a financial institution is concurrently concurrent, he is not subject to the restrictions on the position of the chief compliance officer or compliance officer as stipulated in these Measures, and does not need to separately obtain a qualification license from the State Administration of Financial Supervision or its dispatched agencies.~~

We suggest to amend: financial institutions **shall** ~~are encouraged to~~ set up separate chief compliance officers and compliance officers.

征求意见稿第十二条要求金融机构可以单独设立首席合规官、合规官，也可以由金融机构负责人、省级分支机构或者一级分支机构负责人兼任。我们认为由金融机构负责人兼任合规官职能本身存在利益冲突，这也与国际金融机构惯例执行的三道防线内控原则不一致：金融机构负责人为第一道防线，而合规官为第二道防线，因此不可兼任。

~~我们建议删除：金融机构可以根据自身经营情况单独设立首席合规官、合规官，也可以由金融机构负责人、省级（计划单列市）分支机构或者一级分支机构负责人兼任。由金融机构行长或者总经理兼任的，不受本办法规定的首席合规官或者合规官的任职条件限制，不需要另行取得国家金融监督管理总局或者其派出机构的任职资格许可。~~

我们建议更改：鼓励金融机构 **“应当”** 单独设立首席合规官和合规官。

Article 14/15 Personnel Qualification

第十四条/第十五条 任职资格

Article 14(2) and 15(2) of the consultation paper require that the COO and compliance officer(s) shall have legal compliance working experience in the past certain years. However, according to the international financial institution's management regime, legal and compliance are two distinct functions. The consultation should further clarify the relationship between the requirements on legal working experience and compliance working experience. In principal, legal working experience for compliance officers should not be mandatory. We would suggest NFRA amending the consultation as below:

Article 14(2), engaged in financial work for more than eight years and engaged in legal **“or”** compliance work for more than three years; or have been engaged in legal **“or”** compliance work for more than eight years and have been engaged in financial work for more than three years; or have been engaged in financial work for more than eight years and have obtained a legal professional qualification certificate.

Article 15(2), engaged in financial work for more than six years and engaged in legal **“or”** compliance work for more than three years; or have been engaged in legal **“or”** compliance work for more than six years and have been engaged in financial work for more than three years; or have been engaged in financial work for more than six years and have obtained a legal professional qualification certificate.

征求意见稿第十四条第二款以及第十五条第二款对首席合规官和合规官从事法律合规工作的相关年限提出要求。然而，在国际金融机构的管理框架中，法律职能与合规职能是分工明确不同的两个职能。草案似乎应该对合规官们具备的法律与合规工作经验之间的关系进一步厘清。原则上，合规官的任职并不一定需要具备法律工作经验。我们建议征求意见稿更改如下：

第十四条第二款，从事金融工作八年以上且从事法律“或”合规工作三年以上；或者从事法律“或”合规工作八年以上且从事金融工作三年以上；或者从事金融工作八年以上且取得法律职业资格证书。

第十五条第二款，从事金融工作六年以上且从事法律“或”合规工作三年以上；或者从事法律“或”合规工作六年以上且从事金融工作三年以上；或者从事金融工作六年以上且取得法律职业资格证书。

Article 20 Regulatory Reporting Standard

第二十条 监管报告标准

According to Article 20, when a financial institution has a major violation of laws or regulations or a major compliance risk, compliance officer shall report to the NFRA promptly. We suggest that the NFRA shall provide detailed reporting standard for banks to mirror in order to formulate report and conduct reporting. At the same time, please include the clear definition/threshold of "major reputational losses", no sample threshold for "major reputational losses" may result in inconsistent reporting standards related to reputational loss for each of the institution.

征求意见稿第二十条要求金融机构存在重大违法违规行为或者重大合规风险隐患的，应当及时报告。我们提请金融监管总局发布细化标准样本，由金融机构参照制定并汇报。同时，我们希望由总局发布“重大声誉损失”的量化标准，以免没有参考标准导致行业对于涉及重大声誉损失的报告标准不统一，各机构自定义可能差异极大。

Article 29 Part-time Personnel Arrangement

第二十九条 兼职人员配备

According to Article 29, financial institutions shall assign full-time or part-time personnel to departments other than the compliance management department to engage in compliance work. We would like to propose to change "to department other than the compliance management department" to "to business departments other than the compliance department". In that case, foreign branches can leverage the existing business risk management personnel to fulfil the requirement.

征求意见稿第二十九条要求金融机构应当为合规管理部门以外的其他部门配备专职或者兼职从事合规工作的人员。我行希望将“合规管理部门以外的其他部门”改成“合规管理部门以外的其他业务部门”。这样对于外资分行来说，可以由现行配备的业务风险管理承担此职责。

Article 35 Educational Background

第三十五条 教育背景

Article 35 of the consultation requires that “the compliance department shall be primarily composed of personnel with a background in law or economics and finance. Among them, those who are engaged in the legal review of important business decisions, rules and regulations, and contracts of institutions for the first time, as well as those who provide legal opinions on major matters such as institutional restructuring and reorganization, mergers and acquisitions, listing, property rights transfer, bankruptcy reorganization, reconciliation and liquidation, shall have a legal professional background or have passed the legal professional qualification examination.” We concern that there is no clear separation between legal and compliance departments in regarding of educational background and responsibility assignment requirements. As a common practice, the international financial institutions usually establish sperate legal and compliance departments, each managing clear different corporate functions. Conducting legal review and providing legal opinions are the functions of legal department.

We suggest to amend: the compliance management department **is encouraged to be** ~~shall be~~ primarily composed of personnel with a background in law or economics and finance, **or be composed of personnel with compliance working experience.**

We suggest to remove: ~~among them, those who are engaged in the legal review of important business decisions, rules and regulations, and contracts of institutions for the first time, as well as those who provide legal opinions on major matters such as institutional restructuring and reorganization, mergers and acquisitions, listing, property rights transfer, bankruptcy reorganization, reconciliation and liquidation, shall have a legal professional background or have passed the legal professional qualification examination.~~

征求意见稿第三十五条要求，“合规管理部门应当主要由具有法律或者经济金融专业学历背景的人员组成。其中，初次从事对机构重要经营决策、规章制度、合同进行法律审核的人员，以及为机构改制重组、并购上市、产权转让、破产重整、和解及清算等重大事项提出法律意见的人员应当具有法律专业背景或者通过法律职业资格考试”。我们认为此条要求与法律部对员工的教育背景以及职责分工厘划不清。国际金融机构普遍设立独立的法律部与合规部，且职能分工明确不同，进行法律审核、出具法律意见等是明确的法律部职责。

我们建议更改： 合规管理部门**鼓励**应当主要由具有法律或者经济金融专业学历背景的人员组成，**或者由有合规工作经验的人员组成。**

我们建议删除：~~其中，初次从事对机构重要经营决策、规章制度、合同进行法律审核的人员，以及为机构改制重组、并购上市、产权转让、破产重整、和解及清算等重大事项提出法律意见的人员应当具有法律专业背景或者通过法律职业资格考试。~~

Article 44 Remuneration

第四十四条 薪酬水平

Article 44 generally requires that the compliance officers' total annual remuneration income should not be lower than the average level of personnel with the same qualifications including same job type, same rank and same assessment results of the same financial institution. Since foreign branches' compliance department have smaller presence, e.g. foreign branches may only assign 3 compliance officers, we suggest foreign bank's remuneration should be based on the internal remuneration evaluation system, as well as market remuneration level.

征求意见稿第四十四条基本要求合规官的年度薪酬收入水平参考且并不低于本机构同岗位类型、同职级、同考核结果人员平均水平。基于外资银行分行在华业务规模较小，如分行只设置 3 名合规官的情况下，我们建议可以由本机构按照内部薪酬考核机制及参考外部市场薪酬水平进行决定。

Thank you again for the opportunity to provide our comments. We appreciate your consideration of this letter and the recommendations we propose. Please feel free to contact us if you wish to discuss State Street's submission in further details.

道富对有机会提供意见再次表示感谢。我们赞赏金融监管总局对我们提出意见的考虑。如局里希望讨论道富提交意见的相关细节欢迎随时与我行工作人员联系。

Yours faithfully
敬祝商祺

State Street Bank and Trust Company Beijing Branch
美国道富银行有限公司北京分行

