

# China Finance Bulletin

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**Welcome to this month's issue of White & Case's China Finance Bulletin. This bulletin offers you regular updates on the PRC finance sector ensuring you stay up to date with the latest legal, regulatory and practice developments.**

## The NAFMII Issued Rules for the Non-Public Directional Issuance of Debt Financing Instruments by Non-Financial Enterprises in the Inter-Bank Bond Market

On April 29, 2011, the National Association of Financial Market Institutional Investors ("NAFMII") issued the *Rules for the Non-Public Directional Issuance of Debt Financing Instruments by Non-Financial Enterprises in the Inter-Bank Bond Market* (银行间债券市场非金融企业债务融资工具非公开定向发行规则 (中国银行间市场交易商协会公告【2011】6号)) (the "Rules"), which came into effect on the issuance date. The Rules have provided for detailed regulations regarding the issuance, registration, custody, settlement and circulation of the directional instruments. The Rules represent a further effort to increase the proportion of direct financing and to expand financing channels for non-financial enterprises, and are made in accordance with the *Administrative Measures for Debt Financing Instruments of Non-Financial Enterprises in the Inter-Bank Bond Market (Order of the People's Bank of China [2008] No. 1* (《银行间债券市场非金融企业债务融资工具管理办法》) (中国人民银行令【2008】第1号)).

For the purposes of the Rules, "Non-Public Directional Issuance" refers to the issuance of debt-financing instruments by non-financial enterprises to specific institutional investors (defined as the "Directional Investors" under the Rules) in the inter-bank market and circulating the instruments among the specific institutional investors. "Directional Investors" refers to institutional investors who understand the investment risk of Directional Instruments, have the power and willingness to invest in Directional Instruments (as defined under the Rules), have the ability to take such risks and voluntarily accept the self-regulatory management of the NAFMII. "Directional Instruments" means debt-financing instruments which are issued by means of non-public directional issuance and are referred to as non-public directional debt financing instruments. The first batch of "Directional Instruments" in an aggregate amount of RMB 15 billion were issued by three large Chinese state-owned companies on May 4, 2011 and the issuance was underwritten by commercial banks including, among others, China Everbright Bank and Bank of China.

The key provisions of the Rules are set out below:

- **Registration:** An enterprise shall present related registration documents and register with the NAFMII when issuing Directional Instruments (for a list of registration documents, please see Appendix 2 of the Rules). The NAFMII only checks the completeness of the registration documents and does not make judgments on the investment value or risk. When the NAFMII accepts the application for registration, it shall present the enterprise with a Notice of Registration Application Acceptance which holds a two year period of validity. The enterprise may issue Directional Instruments in installments within the period of validity provided the initial issuance is completed within six months of registration.
- **Issuance:** The Directional Instruments are not issued to the general public. The Directional Investors shall be selected and determined by the issuer and the lead underwriter before the issuance of the Directional Instruments. An agreement on Directional Issuance (“**Directional Issuance Agreement**”) shall be reached by and between the enterprise and Directional Investors who intend to invest in the current Directional Instruments before the issuance of the Directional Instruments to such Directional Investors (for details on the contents of the Directional Issuance Agreement please see Article 19 of the Rules). The Directional Instruments of the enterprise shall be underwritten by the qualified underwriting institutions.
- **Circulation:** The Directional Instruments shall be circulated among the Directional Investors as specified in the Directional Issuance Agreement.
- **Custody:** The Directional Instruments shall, by the real name bookkeeping method, be registered with and kept in the custody of the institutions for registration and custody recognized by the People’s Bank of China.
- **Disclosure:** After the registration of claims and liabilities for the Directional Instruments, the enterprise may release the actual size of issuance, duration, number of original investors, scope of circulation and other basic information of the current Directional Instruments through websites recognized by the NAFMII.

For more information on the Rules, please visit the following Chinese language link:

<http://www.shclearing.com/Regulations/ShowInfo.asp?Infoid=509>

## The People’s Bank of China Issued an Announcement Regulating Activities on the National Interbank Bond Market

On April 9, 2011, the People’s Bank of China issued the *Announcement of the People’s Bank of China [2011] No. 3* (中国人民银行公告【2011】第3号) (“**Announcement**”) regulating bond transaction activities on the national interbank bond market, which took effect on the same day. The Announcement and the rules contained therein focus on improving the administration of transactions on the national interbank bond market. According to the Announcement, the National Interbank Lending Center (“**NILC**”), the China Government Securities Depository Trust & Clearing Co. (“**CDC**”) and the Shanghai Clearing House (“**SCH**”) shall formulate and implement business rules in accordance with this Announcement and file such rules with the People’s Bank of China.

The key provisions are described below:

- The NILC, CDC and SHC are to conduct regular monitoring and administration of bond transactions, settlements and clearings of the national interbank bond market. If abnormalities are found, they must deal with the issue in a timely manner, report it to the People’s Bank of China and forward a copy to the National Association of Financial Market Institutional Investors (“**NAFMII**”). They may also disclose the abnormal market transactions to the market based on the specific circumstances.
- National interbank bond market settlement agents (“**Agents**”) may conduct bond transactions on behalf of clients via the transaction system of the transaction center. If a transaction is not conducted through the transaction system of the NILC, the principals or the Agents involved shall file the related transaction with the NILC on the date the transaction closes.
- Market participants shall abide by all rules and regulations of the national interbank bond market, strengthen internal control and risk systems, regulate their own settlement activities and shall not manipulate or fabricate prices or otherwise mislead the market. Market participants shall cooperate with regular monitoring and administration by NILC, CDC and SHC, and provide written materials as required. If market participants conduct abnormal transaction activities, including the occurrence of a transaction price deviating from the fair market value due to special circumstances, they shall file details with the NILC, CDC or SHC for their records prior to the closing of the transaction.

- Agents shall provide agency transaction settlement services to clients on a fair basis and may not mislead or defraud clients. Agents may not conspire with clients or facilitate the conduction of false transactions or irregular operations. Agents shall supervise clients' transaction settlement activities and if they find abnormal settlement activity with considerable deviation from market prices, Agents shall issue a risk warning and ask the clients to explain the situation and have them report it to the NILC, CDC and SHC.

For more information on the announcement, please visit the following Chinese language link:

<http://www.pbc.gov.cn/publish/goutongjiaoliu/524/2011/20110413103302565390843>

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- Tier One in China Banking & Finance (Foreign Firms)—*Chambers Asia* 2009

Our noted areas of expertise include acquisition finance, bank advisory, credit transactions, derivatives, leasing and other asset-backed activity, and structured finance. In China and globally, our experienced team is intimately familiar with every aspect of deal structure, negotiation and documentation, and we aim to give precisely the right level and type of support at each stage of the deal—starting with strategic advice on alternative structures through negotiation and documentation, keeping your deal on track.

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- Leading Innovative US Firm in M&A, Restructuring, Litigation, Financial Services and Pro Bono and Leading Innovative UK Firm in Financial Services—*Financial Times* 2010