

February 11, 2015  
(Translated: March 9, 2015)  
Mizuho Bank (China), Ltd.  
Advisory Division

—Monetary Policy—

## **Mizuho China Business Express**

(No. 367)

### **China Banking Regulatory Commission Solicits Opinions on the Management Rules of Entrusted Loans, Specifies Prohibited Fund Sources and Uses**

The China Banking Regulatory Commission (CBRC) has recently issued the [Management Rules of Entrusted Loans of Commercial Banks \(Draft for Public Opinions\)](#) (hereinafter referred to as the “Public Opinions Draft”). The draft rules aim to standardize “entrusted loan” business, a form of inter-company financing through which non-financial enterprises lend surplus funds to other enterprises via a financial institution, and to prevent financial risks, and specify categories of funds that must not be used for entrusted loans and uses for entrusted loan funds that are prohibited.

The public has, until February 16, to suggest amendments to the Public Opinions Draft<sup>1</sup>, after which the CBRC is expected to make further revisions based on opinions received and to officially issue and enforce the rules thereafter. Should the new rules come into effect, they are expected to have considerable impacts on inter-company financing by means of the entrusted loan framework.

#### **□ China has experienced an up-welling in entrusted loans in recent years**

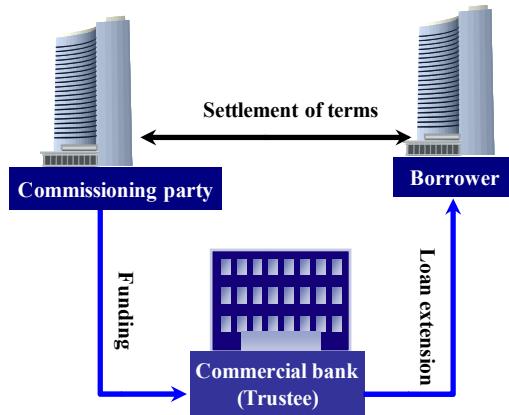
In China, direct lending between commercial enterprises without the qualifications of the lending business is strictly prohibited ([General Rules for Loans](#), Article 61<sup>2</sup>). On the other hand, commercial enterprises are able to extend credit to other enterprises in the form of entrusted loans, which are arranged by banks. In such instances, the commissioning party (as the loan principal or depositor of the funds) and the borrower (as credit recipient) are permitted to negotiate and decide the purpose, amount, maturity, and interest rate on the entrusted loan independently, but the bank that is to act as the trustee simply acts intermediary and collects a fee and does not assume the credit risk associated with such loans. For banks, such entrusted loans are off-balance-sheet

<sup>1</sup> The original CBRC announcement regarding the release of the Public Opinions Draft (in Chinese) is available here:  
<http://www.cbrc.gov.cn/chinese/home/docView/69EC658FA36C451496F4A45E480B4A11.html>

<sup>2</sup> “No administrative department at any level, enterprise or project contractor, co-operative economic organization such as a supply and marketing co-operative, rural co-operative fund or any other fund, may engage in the provision of financial services, such as deposits and loans. Borrowing between enterprises in violation of state regulations and borrowing and lending in other disguised forms is strictly prohibited.”#

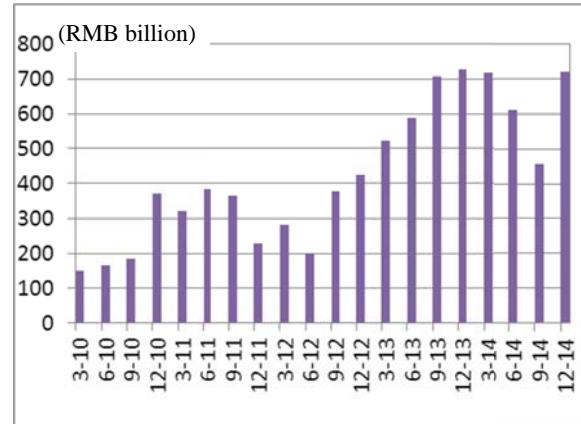
transactions and classify as so-called “**shadow banking**,” though such loans also serve to increase the efficiency of the banking system by providing a facility arrangement for surplus funds.

**Fig 1: The Entrusted Loan Framework**



(Source: Compiled by the Advisory Division)

**Fig 2: Quarterly Trends in the Scale of Entrusted Loans**



(Source: People's Bank of China, CEIC Data)

The scale of entrusted loans has increased sharply in recent years (see Fig. 2). It had reached RMB 2.51 trillion by the end of 2014, accounting for 15.2 percent of “aggregate financing to the real economy (社会融资规模)” (this compared to figures of 8.1% or RMB 1.28 trillion at the end of 2012).

In the background lies a surge in lending that has deviated from the original purpose, including banks acting as intermediaries for commercial enterprises not free to extend credit through the regular channels, providing brokered loans via the commissioning party, but in the process having to assume the credit risk that would normally be borne by the commissioning party, whilst commercial enterprises borrowing from the banks then extend high-interest entrusted loans in a bid to earn interest margins, etc. The CBRC is becoming increasingly vigilant about the financial risks associated with the entrusted loan framework.

The *General Rules for Loans* provide only a definition for entrusted loans (Article 7), but provide no rules on their practical operation. In releasing a Public Opinions Draft, the CBRC aims to standardize the entrusted loan framework, eliminate deviant practices, and prevent the financial risks.

**PBOC General Rules for Loans, Article 7 (Excerpt)**

“Entrusted loans” refers to loans under which funds are provided by a government department, enterprise or institution, individual or other commissioning party, with a lender (or “trustee”), acting as agent extending such loans on the basis of the terms, including eligible borrowers, purpose of use, amount, maturity, and interest rate, fixed thereby, supervising the use thereof and cooperating in the collection of principal and any interest. The lender (“trustee”) shall collect a fee for handling such transactions and shall not assume any risks thereof.

## Certain restrictions to apply to entrusted loan extensions

The Public Opinions Draft defines entrusted loans as: “Loans under which funds are provided by the commissioning party, with a commercial bank (the “trustee”) acting as agent extending such loans on the basis of the terms, including borrower, purpose of use, amount, currency, maturity, and interest rate, fixed thereby, supervising the use thereof and cooperating in the collection of principal and any interest.” The scope of entrusted loans covered by the rules is also clarified, with the Public Opinions Draft stating: “Entrusted loans as an instrument for cash management and personal housing accumulation fund loans are not included” (Article 3).

In [the Circular regarding the Standardization of Entrusted Loan Statistics](#) (Yinfa [2014] No. 154), which was distributed to banks on May 29, 2014, the CBRC divides entrusted loans into “entrusted loans as an instrument for cash management” and “ordinary entrusted loans.” The former are defined as “entrusted loans that are generated by financial institutions that are utilizing the entrusted loan framework to develop a cash management business through inter-account fund pooling and transfers, balance adjustment, fund pricing, fund settlement and other related transactions in response to customer requirements.” Entrusted loans are used as a facility for extending credit to other companies within a group that is engaged in centralized fund management (cash pooling), but the CBRC definition effectively excludes entrusted loans within a pooling arrangement from the scope of the regulations.

The Public Opinions Draft enumerates the categories of funds prohibited to be used for entrusted loans (Article 11), prohibited uses for entrusted loan funds (Article 12), the conditions necessitating stricter bank supervision of the sources of entrusted loan funds of the commissioning party (Article 10), and prohibited acts by banks (trustees) (Article 20) (see Table. 3). Of particular note is the relationship between the commissioning party and its bank line. Where the commissioning party has an existing credit balance with its bank, the Public Opinions Draft requires that such banks strengthen the assessment to the commissioning party, and states: “(Banks) shall make a reasonable estimate of the commissioning party’s funds and shall use its findings as the principal basis for entrusted loan extension” (Article 10), whilst banks: “shall not, in principle, provide additional credit to a commissioning party with an existing entrusted loan balance” (Article 21). Accordingly, banks and the commissioning parties with which they have credit transactions are bound by certain restrictions on their entrusted loan extensions, and it is possible that the auctioning of such loans may be prohibited.

It should also be noted that, whilst entrusted loans may currently be processed through a general deposit account, the Public Opinions Draft states that: “Commercial banks shall require the commissioning party to set up a special account for entrusted loans” (Article 16). It is thus possible that commissioning parties will need to open a special deposit account.

**Table. 3: Management Rules of Entrusted Loans presented in the Public Opinions Draft**

<b>Conditions necessitating stricter supervision of the commissioning party</b>	<ul style="list-style-type: none"> <li>✓ Where the commissioning party has an existing credit balance with a bank</li> <li>✓ Where the entrusted loans of the commissioning party exceed their normal revenue sources and financial resources</li> <li>✓ Where the commissioning party has commercial debt/credit, external guarantees, or other credit and/or debts</li> </ul>		
<b>Funds prohibited to be used for entrusted loans</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> <ul style="list-style-type: none"> <li>✓ The various special-purpose funds the usage of which is regulated by the State</li> <li>✓ Bank credit funds</li> </ul> </td> <td style="width: 50%;"> <ul style="list-style-type: none"> <li>✓ Funds raised through bond issuance</li> <li>✓ Funds collected for another party</li> <li>✓ Funds with an unsubstantiated source</li> </ul> </td> </tr> </table>	<ul style="list-style-type: none"> <li>✓ The various special-purpose funds the usage of which is regulated by the State</li> <li>✓ Bank credit funds</li> </ul>	<ul style="list-style-type: none"> <li>✓ Funds raised through bond issuance</li> <li>✓ Funds collected for another party</li> <li>✓ Funds with an unsubstantiated source</li> </ul>
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<b>Prohibited uses for entrusted loan funds</b>	<ul style="list-style-type: none"> <li>✓ The production and management of or investment in products and/or projects that are expressly prohibited by the State</li> <li>✓ Investment in bonds, futures, financial derivatives, wealth management products, share rights and interests, etc.</li> <li>✓ For registered capital, capital verification, capital increases or shareholding increases</li> <li>✓ Other uses that are expressly prohibited by the State</li> </ul>		
<b>Prohibited acts by banks (trustees)</b>	<ul style="list-style-type: none"> <li>✓ The making of decisions on borrowers on behalf of a commissioning party</li> <li>✓ Any involvement in the loan decisions of a commissioning party</li> <li>✓ The advance of funds for the extension of an entrusted loan on behalf of a commissioning party</li> <li>✓ The advance of funds for payment of taxes on behalf of a commissioning party</li> <li>✓ The making of decisions on guarantors on behalf of a borrower</li> <li>✓ The advance of funds for repayment of an entrusted loan on behalf of a borrower</li> <li>✓ The substitution of an entrusted loan with a bank loan and the undertaking of contingent loan risk on behalf of a commissioning party</li> <li>✓ The provision of guarantees in any form for entrusted loans</li> <li>✓ The conclusion of a contract or agreement that alters the nature of the entrusted loan business</li> <li>✓ Any other actions that necessitate the undertaking of contingent loan risk on behalf of a commissioning party</li> </ul>		
<b>Other rules</b>	<ul style="list-style-type: none"> <li>✓ Commissions shall be collected from the commissioning party</li> <li>✓ The commissioning party shall set up a special bank account for entrusted loans</li> <li>✓ Banks shall not divert entrusted loan funds into other entrusted loans</li> <li>✓ Banks shall not, in principle, extend additional credit to a commissioning party with an existing entrusted loan balance</li> </ul>		

(Compiled by the Advisory Division from the Public Opinions Draft)

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A provisional translation of the Public Opinions Draft together with the original Chinese document is presented below for further reference. Note that the Public Opinions Draft is a draft document and may be revised by the CBRC prior to its official release.

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(Provisional translation)

**China Banking Regulatory Commission**  
**Management Rules of Entrusted Loans of Commercial Banks**  
(Draft for Public Opinions)

**Chapter 1: General Provisions**

**Article 1:** These Rules have been formulated on the basis of the *Law of the People's Republic of China on Banking Regulation and Supervision*, the *Law of the People's Republic of China on Commercial Banks*, and other relevant laws and regulations, to further standardize the operation of entrusted loan business, strengthen the management of the entrusted loan business, and promote the sound development of the entrusted loan business of commercial banks.

**Article 2:** The entrusted loan business transactions handled by commercial banks that have been legally established within the territory of the People's Republic of China shall be undertaken in due compliance with these Rules.

**Article 3:** As cited in these Rules, entrusted loans refers to loans under which funds are provided by the commissioning party, with a commercial bank (the “trustee”) acting as agent extending such loans on the basis of the terms, including borrower, purpose of use, amount, currency, maturity, and interest rate, fixed thereby, supervising the use thereof and cooperating in the collection of principal and any interest. Entrusted loans as an instrument for cash management and personal housing accumulation fund loans are not included in the category of entrusted loans cited herein.

The commissioning party refers to the government departments, corporate (institutional) entities, other economic organizations, individual businessmen and natural persons with full capacity for civil conduct that provide funding for entrusted loans.

The commissioning party shall not be asset management companies or institutions that are qualified to engage in lending business.

**Article 4:** The entrusted loan business is an agency service provided by commercial banks. Commercial banks shall, pursuant to the provisions of these Rules, via contract with the relevant parties to the entrusted loan business, agree the rights and obligations of the parties, perform the commensurate duties, and collect an agent's commission, and shall not assume any credit risk.

**Article 5:** The entrusted loan business transactions handled by commercial banks shall be in compliance with the principles of legal compliance, equality and spontaneity, rights and responsibilities, and prudential management.

**Article 6:** The China Banking Regulatory Commission (hereinafter referred to as the “CBRC”) shall supervise and administer the entrusted loan business of commercial banks pursuant to these Rules.

## Chapter 2: Business Management

**Article 7:** Commercial banks shall, pursuant to these Rules, formulate a management system for their entrusted loan business, reasonably determine the division of departments, positions and official responsibilities, clarify the scope, qualifications and eligibility criteria for commissioning parties as well as the entrusted loan business processes and risk control measures, and evaluate them on a periodic basis.

**Article 8:** The acceptance of entrusted loan business applications by commercial banks is premised on fulfillment of the following conditions.

- (1) The commissioning party and the borrower have agreed to the terms of the entrusted loan and are jointly submitting the entrusted loans business application.
- (2) Where either the commissioning party or the borrower is a non-natural person, the institution with the relevant controlling authority shall furnish proof in the form of a board resolution, written document or other document with equivalent legal weight in respect of the entrusted loan business transaction.

**Article 9:** Commercial banks entrusted with the handling of entrusted loan business transactions shall require the commissioning party to undertake the following duties and to explicitly agree in writing.

- (1) To identify the borrower of the entrusted loan, and undertake an assessment of the borrower eligibility, loan articles, guarantor qualifications, and the collateral or other assets pledged.
- (2) To ensure that the entrusted fund sources are in compliance with the law and that the commissioning party has independent authority, and to furnish the entrusted funds to the commercial bank in accordance with its contractual agreement without delay.
- (3) To supervise the use of loan funds by the borrower pursuant to its contractual agreement, ensure that the loan use is in compliance with the law, and assume the credit risk of the borrower.

**Article 10:** Commercial banks shall, when assessing the fund sources of the commissioning party, require the commissioning party to furnish relevant documents pertaining to the legal compliance of its fund sources or documents with equivalent legal weight, shall conduct the necessary assessments and calculations for the commissioning party's financial statements, credit records and other relevant financial documents, and shall strengthen the assessment of the following circumstances.

- (1) Where the commissioning party has an existing credit balance with a bank
- (2) Where the entrusted loans of the commissioning party exceed their normal revenue sources and financial resources
- (3) Where the commissioning party has commercial debt/credit, external guarantees, or other credit and/or debts

Where the commissioning party has an existing credit balance with a bank, the commercial bank shall make a reasonable estimate of the commissioning party's funds and shall use its findings as the principal basis for its entrusted loan extension.

**Article 11:** The acceptance by commercial banks of the following funds for the purpose of extending entrusted loans is strictly prohibited.

- (1) The various special-purpose funds the usage of which is regulated by the State
- (2) Bank credit funds
- (3) Funds raised through bond issuance
- (4) Funds collected for another party
- (5) Funds with an unsubstantiated source

**Article 12:** The entrusted loans extended by commercial banks on trust shall have clearly designated purposes, and the uses of such funds shall be consistent with the relevant legal provisions and credit policies. Such funds shall not be used for any of the following purposes.

- (1) The production and management of or investment in products and/or projects that are expressly prohibited by the State
- (2) Investment in bonds, futures, financial derivatives, wealth management products, share rights and interests, etc.
- (3) For registered capital, capital verification, capital increases or shareholding increases
- (4) Other uses that are expressly prohibited by the State

**Article 13:** Commercial banks shall, in accordance with the principle that: “commensurate with the quality and price of the services rendered” and “the commissioning party shall pay a fee,” collect an agent’s commission from the commissioning party.

**Article 14:** Commercial banks, commissioning parties and borrowers shall, once agreed to the matter of the entrusted loan, enter into a tripartite entrusted loan agreement. Such agreement shall clearly state the purpose of use, amount, currency, maturity, interest rate, and the schedule for its repayment, together with the respective rights and obligations of the commissioning party, the trustee and the borrower.

**Article 15:** Where the entrusted loan is to be extended under guarantee, the commissioning party and the guarantor are to agree on the form of the guarantee and the guarantor (or collateral), and shall enter into a joint entrusted loan guarantee agreement. Where the entrusted loan is to be guaranteed by the establishment of the right of pledge, the commissioning party shall have such right of pledge.

**Article 16:** Commercial banks shall require the commissioning party to set up an account exclusively for entrusted loans. The commissioning party shall transfer the entrusted funds into its special account prior to the extension of the entrusted loan, and the commercial bank shall extend said entrusted loan by means of a contractual agreement. Commercial banks shall not divert such funds to a different commissioning party.

**Article 17:** Commercial banks, commissioning parties and borrowers shall clarify the major details and concrete measures to be undertaken with respect to cooperation, supervision and use of the entrusted loan in the entrusted loan agreement, and shall perform the commensurate duties set forth in the contractual agreement.

**Article 18:** Commercial banks shall, in accordance with the stipulations of the entrusted loan agreement, cooperate in the collection of the entrusted loan principal and any interest, and shall transfer such funds into the account of the commissioning party without delay. Where such principal and interest cannot be deposited promptly, the commercial bank shall notify the commissioning party to this effect without delay.

**Article 19:** Upon reaching maturity, commercial banks shall, in accordance with the stipulations of the entrusted loan agreement or written notice from the commissioning party, stop performing the responsibilities and duties as a trustee, and shall process the accounts accordingly.

## Chapter 3: Risk Management

**Article 20:** Commercial banks shall strictly separate their entrusted loan business from other businesses under their operation, and are strictly prohibited from undertaking the following actions.

- (1) The making of decisions on borrowers on behalf of a commissioning party
- (2) Any involvement in the loan decisions of a commissioning party
- (3) The advance of funds for the extension of an entrusted loan on behalf of a commissioning party
- (4) The advance of funds for payment of taxes on behalf of a commissioning party
- (5) The making of decisions on guarantors on behalf of a borrower
- (6) The advance of funds for repayment of an entrusted loan on behalf of a borrower, or the substitution of an entrusted loan with other businesses under their operation and the undertaking of contingent loan risk on behalf of a commissioning party
- (7) The provision of guarantees in any form for entrusted loans
- (8) The conclusion of a contract or agreement that alters the nature of the entrusted loan business
- (9) Any other actions that necessitate the undertaking of contingent loan risk on behalf of a commissioning party

**Article 21:** Commercial banks shall not, in principle, provide additional credit to a commissioning party with an existing entrusted loan balance, unless otherwise specified by a regulatory department.

**Article 22:** Where the borrower of an entrusted loan has an existing line of credit with the commercial bank, the commercial bank shall, once the borrower has obtained the entrusted loan, give due and comprehensive consideration to the effects of such increased credit risk exposure to its credit operations.

**Article 23:** Commercial banks shall implement hierarchical authorization in respect of their entrusted loan business, and branch organizations of commercial banks shall not handle entrusted loan business without authorization or in excess of authorization.

**Article 24:** Commercial banks shall develop standard entrusted loan agreement and entrusted loan guarantee agreement forms. Where the use of non-standard forms is necessary for business purposes, commercial banks shall submit the matter to head office for examination and approval.

**Article 25:** Commercial banks shall set up separate accounting units for their entrusted loan business and other businesses under their operation, shall record their entrusted loan business in strict accordance with

accounting system requirements, simultaneously reflecting their entrusted loans and entrusted loan funds, and not reflecting the netted position, and shall ensure the credibility, accuracy and completeness of their entrusted loan business account.

**Article 26:** Commercial banks shall construct and perfect a system for managing entrusted loan data, shall register fund sources, subjects (borrowers), maturity, interest rates, and other relevant information on commissioning parties and borrowers, and shall ensure the completeness, continuity, accuracy and traceability of such information.

**Article 27:** Commercial banks shall, having extended an entrusted loan and in strict accordance with the requirements of the CBRC client risk statistics system, forward a detailed and accurate statement of such entrusted loan.

Commercial banks shall establish a statistics system for their entrusted loan business in accordance with regulatory requirements, and shall perform appropriate statistical calculations, meta-analysis and the forwarding of such data on their entrusted loan business.

**Article 28:** Commercial banks shall analyze their entrusted loan risk on a periodic basis and shall develop systematic business monitoring.

#### Chapter 4: Legal Responsibility

**Article 29:** Where a commercial bank handles entrusted loan business in violation of these Rules, the CBRC or its agency shall issue a correction order with a deadline to the commercial bank. Where such commercial bank fails to correct such violation by the deadline or where such action is significantly impairing the sound operation of such commercial bank and causes its customers to forfeit their legal rights, the CBRC or its agency may take reasonable remedial regulatory measures in accordance with the provisions of Article 37 of the *Law of the People's Republic of China on Banking Regulation and Supervision*, or, in the event of a serious violation of these Rules, may take punitive action in accordance with the provisions of Article 46 of the *Law of the People's Republic of China on Banking Regulation and Supervision*.

**Article 30:** Where a commercial bank assumes loan risk on behalf of a commissioning party in violation of the provisions of Article 20 of these Rules, the CBRC or its agency shall issue a correction order with a deadline to the commercial bank, and simultaneously may take reasonable remedial regulatory measures in accordance with the provisions of Article 37 of the *Law of the People's Republic of China on Banking Regulation and Supervision*.

*China on Banking Regulation and Supervision*, and may take punitive action in accordance with the provisions of Article 46 of the *Law of the People's Republic of China on Banking Regulation and Supervision*.

**Article 31:** Where a commercial bank fails to forward accurate information on its entrusted loan business to the regulatory department in a timely manner in violation of the provisions of Article 27 of these Rules, the CBRC or its agency shall issue a correction order with a deadline to the commercial bank. Where such commercial bank fails to correct such violation by the deadline, the CBRC or its agency may take punitive action in accordance with the provisions of Article 47 of *Law of the People's Republic of China on Banking Regulation and Supervision*.

## Chapter 5: Supplementary Provisions

**Article 32:** These Rules shall apply to the entrusted loan business of other financial institutions qualified to engage in lending business that have been approved and/or set up by the CBRC in accordance with the law.

**Article 33:** The CBRC shall bear responsibility for the interpretation of these Rules.

**Article 34:** These Rules shall enter into force sixty days after their promulgation. Any entrusted loans extended by commercial banks prior to the promulgation of these Rules shall be settled upon maturity in accordance with the principle of non-retroactivity.

(Original document)

**中国银行业监督管理委员会  
商业银行委托贷款管理办法**  
(征求意见稿)

**第一章 总则**

**第一条** 为规范商业银行委托贷款业务经营，加强委托贷款业务管理，促进委托贷款业务健康发展，依据《中华人民共和国银行业监督管理法》、《中华人民共和国商业银行法》等法律法规，制定本办法。

**第二条** 中华人民共和国境内依法设立的商业银行办理委托贷款业务应遵守本办法。

**第三条** 本办法所称委托贷款，是指委托人提供资金，由商业银行（受托人）根据委托人确定的借款人、用途、金额、币种、期限、利率等代为发放、协助监督使用并收回的贷款。不包括现金管理项下委托贷款和住房公积金贷款。

委托人是指提供委托贷款资金的政府部门、企（事）业法人、其他经济组织、个体工商户和具有完全民事行为能力的自然人。

委托人不得为金融资产管理公司和具有贷款业务资格的各类机构。

**第四条** 委托贷款业务是商业银行的委托代理业务。商业银行依据本办法规定，与委托贷款业务相关主体通过合同约定各方权利义务，履行相应职责，收取代理手续费，不承担信用风险。

**第五条** 商业银行办理委托贷款业务，应当遵循依法合规、平等自愿、责利匹配、审慎经营的原则。

**第六条** 中国银行业监督管理委员会（以下简称银监会）按照本办法对商业银行委托贷款业务实施监督管理。

**第二章 业务管理**

**第七条** 商业银行应依据本办法制定委托贷款业务管理制度，合理确定部门、岗位职责分工，明确委托人范围、资质和准入条件，以及委托贷款业务流程和风险控制措施等，并定期进行评估。

**第八条** 商业银行受理委托贷款业务申请，应具备以下前提：

- (一) 委托人与借款人就委托贷款条件达成一致，共同提出委托贷款业务申请。
- (二) 委托人或借款人为非自然人的，应出具其有权机构同意办理委托贷款业务的决议、文件或具有同等法律效力的证明。

**第九条** 商业银行受托办理委托贷款业务，应要求委托人承担以下职责，并在合同中作出明确约定。

- (一) 自行确定委托贷款的借款人，并对借款人资质、贷款项目、担保人资质、抵质押物等进行审查。
- (二) 确保委托资金来源合法合规且委托人有权自主支配，并按合同约定及时向商业银行提供委托资金。
- (三) 监督借款人按照合同约定使用贷款资金，贷款用途合法合规，并承担借款人的信用风险。

**第十条** 商业银行审查委托人资金来源时，应要求委托人提供证明其资金来源合法合规的相关文件或具有同等法律效力的证明，对委托人的财务报表、信用记录等进行必要的审核和测算，并加强对下列情况的审查：

- (一) 委托人在银行有授信余额。
- (二) 委托人的委托资金超过其正常收入来源和资金实力。
- (三) 委托人涉及民间借贷、对外担保等其他债权债务关系。

委托人在银行有授信余额的，商业银行应合理测算委托人自有资金，并将测算情况作为发放委托贷款的重要依据。

**第十一条** 商业银行严禁接受下述资金发放委托贷款：

- (一) 国家规定具有特殊用途的各类专项基金。
- (二) 银行授信资金。
- (三) 发行债券筹集的资金。
- (四) 筹集的他人资金。
- (五) 无法证明来源的资金。

**第十二条** 商业银行受托发放的贷款应有明确用途，资金用途应符合法律规定和信贷政策。资金用途不得为以下方面：

- (一) 生产、经营或投资国家明令禁止的产品和项目。

- (二) 从事债券、期货、金融衍生品、理财产品、股本权益等投资。
- (三) 作为注册资本金、注册验资或增资扩股。
- (四) 国家明确规定的其他禁止用途。

**第十三条** 商业银行应按照“质价相符”、“谁委托谁付费”的原则向委托人收取代理手续费。

**第十四条** 商业银行与委托人、借款人就委托贷款事项达成一致后，三方应签订委托贷款借款合同。合同中应载明贷款用途、金额、币种、期限、利率、还款计划等内容，并明确委托人、受托人、借款人三方的权利和义务。

**第十五条** 委托贷款实行担保方式的，委托人和担保人应就担保形式和担保人（物）达成一致，并共同签订委托贷款担保合同。委托贷款为抵质押担保的，抵质押权人应为委托人。

**第十六条** 商业银行应要求委托人开立专用于委托贷款的账户。委托人应在委托贷款发放前将委托资金划入专用账户，商业银行按合同约定方式发放委托贷款。商业银行不得串用不同委托人的资金。

**第十七条** 商业银行和委托人、借款人应在委托贷款借款合同中明确委托贷款协助监督使用的主要内容和具体措施，并按合同约定履行相应职责。

**第十八条** 商业银行应按照委托贷款借款合同约定，协助收回委托贷款本息，并及时划付到委托人账户。对于本息未能及时到账的，应及时告知委托人。

**第十九条** 委托贷款到期后，商业银行应根据委托贷款借款合同约定或委托人的书面通知，终止履行受托人的责任和义务，并进行相应账务处理。

### 第三章 风险管理

**第二十条** 商业银行应严格隔离委托贷款业务与自营业务风险，严禁以下行为：

- (一) 代委托人确定借款人。
- (二) 参与委托人的贷款决策。
- (三) 代委托人垫付资金发放委托贷款。
- (四) 代委托人垫付应纳税金。
- (五) 代借款人确定担保人。
- (六) 代借款人垫付资金归还委托贷款，或者以自营贷款置换委托贷款代委托人承担风险。

- (七) 为委托贷款提供各类形式担保。
- (八) 签订改变委托贷款业务性质的合同或协议。
- (九) 其他代为承担风险的行为。

**第二十一条** 商业银行原则上不得向有委托贷款余额的委托人新增授信，监管部门另有规定的除外。

**第二十二条** 委托贷款的借款人是商业银行存量授信客户的，商业银行应综合考虑借款人取得委托贷款后，信用风险敞口扩大对本行授信业务带来的风险影响。

**第二十三条** 商业银行应对委托贷款业务实行分级授权管理，商业银行分支机构不得未经授权或超授权办理委托贷款业务。

**第二十四条** 商业银行应制定统一制式的委托贷款借款合同和委托贷款担保合同。因业务需要使用非统一制式合同的，须经总行审查同意。

**第二十五条** 商业银行应对委托贷款业务与自营贷款业务实行分账核算，严格按照会计核算制度要求记录委托贷款业务，同时反映委托贷款和委托资金，二者不得轧差后反映，确保委托贷款业务核算真实、准确、完整。

**第二十六条** 商业银行应建立、完善委托贷款管理信息系统，登记资金来源、投向、期限、利率以及委托人和借款人等相关信息，确保该项业务信息的完整、连续、准确和可追溯。

**第二十七条** 商业银行发放委托贷款后，应严格按照银监会客户风险统计制度要求，准确报送委托贷款明细信息。

商业银行应按照监管要求建立委托贷款业务统计制度，做好委托贷款业务的分类统计、汇总分析和数据报送。

**第二十八条** 商业银行应定期分析委托贷款业务风险，并组织开展业务检查。

#### 第四章 法律责任

**第二十九条** 商业银行违反本办法办理委托贷款业务的，由银监会及其派出机构责令其限期改正。逾期未改正的，或者其行为严重危及商业银行的稳健运行、损害客户合法权益的，银监会及其派出机构可根据《中华人民共和国银行业监督管理法》第三十七条的规定采取相应的监管措施；严重违反本办法的，可根据《中华人民共和国银行业监督管理法》第四十六条的规定实施处

罚。

**第三十条** 商业银行违反本办法第二十条规定，代为承担风险的，由银监会及其派出机构责令其限期改正，同时可根据《中华人民共和国银行业监督管理法》第三十七条的规定采取相应的监管措施，并可根据《中华人民共和国银行业监督管理法》第四十六条的规定实施处罚。

**第三十一条** 商业银行违反本办法第二十七条规定，未及时、准确向监管部门报送委托贷款业务信息的，由银监会及其派出机构责令其限期改正。逾期未改正的，银监会及其派出机构可根据《中华人民共和国银行业监督管理法》第四十七条的规定实施处罚。

## 第五章 附则

**第三十二条** 银监会依法批准设立的具有贷款业务资格的其他金融机构办理委托贷款业务适用本办法。

**第三十三条** 本办法由银监会负责解释。

**第三十四条** 本办法自发布之日起 60 日后施行。本办法发布前，商业银行已发放的存量委托贷款，按照法不溯往原则，自然到期结清。

年 月 日

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