

## Financial

### CSRC Solicits Comments on the Administrative Measures for Futures Exchanges

On September 16, 2022, the China Securities Regulatory Commission (CSRC) issued the *Administrative Measures for Futures Exchanges (Draft for Comments)* (the "Draft Measures") for public comment. In line with the current legal framework established in the *Administrative Measures for Futures Exchanges (amended in 2021)* (the "2021 Measures"), the Draft Measures provide for certain detailed rules based on the *Futures and Derivatives Law* (the "FDL"), which took effect on August 1, 2022, and aims to improve the relevant provisions in light of recent market developments and regulatory needs. Below are our observations on some of the key points.

#### **I. Implements the Requirements Stipulated in the FDL and Improves Relevant Rules**

Based on Article 85 of the FDL, Article 10 of the Draft Measures further specifies the duties of a futures exchange, such as providing trading venues, facilities and services, arranging the listing of futures contracts, supervising and monitoring the market, conducting self-disciplinary regulation and education on market participants, and ensuring the safety and stability of the information technology systems.

The Draft Measures make new provisions on the listing of futures contracts. According to the 2021 Measures, *"the listing, suspension, cancellation or resumption of trading products shall be subject to the approval of the CSRC"*. The Draft Measures no longer require such approval; instead, it provides that the listing of futures contracts and standardized options contracts shall be registered with the CSRC through the futures exchanges, while the suspension, resumption or delisting of futures contracts and standardized options contracts shall be filed for record with the CSRC through the futures exchanges. In addition, the Draft Measures provide detailed requirements for futures contracts, i.e., *"Trading products shall have economic value, the contracts shall be difficult to be manipulated and adhere to the social public interest. The trading products subject to physical delivery shall be sufficient for delivery, and the trading products subject to cash settlement shall have an open, authoritative and fair benchmark price"*. The foregoing provisions have echoed the relevant rules on the listing of products in the FDL.

#### **II. Further Clarifies the Regulatory Duties of Futures Exchanges regarding Program Trading**

The FDL stipulated that program trading conducted through automatic generation and the delivery of trading orders by computer programs shall be reported to the futures exchanges. On that basis, the Draft Measures further require futures exchanges to establish and improve the program trading reporting regime, which is a new requirement and highlights the regulatory duties of futures exchanges regarding program trading and the reporting obligations of program traders. This is consistent with the current market practice of program trading reporting as implemented by futures exchanges. Notably, the Draft Measures allow futures exchanges to differentiate management measures on different program trading behaviors in terms of reporting requirements, information technology systems, transaction fees etc.. This provides a legal basis for futures exchanges to further formulate relevant self-disciplinary rules.

### **III. Strengthens the Management of *De Facto* Control Relationships**

Reporting and filing of *de facto* control relationships is a unique regime of the China futures market and the relevant rules have been embedded in the current rules of each futures exchange. The Draft Measures echo the FDL as to the reporting requirements of a *de facto* control relationship in futures trading and specify detailed rules as follows: (1) it requires each futures exchange to clarify in its business rules the specific determination criteria of *de facto* controlled accounts, the determination procedures, and the reporting and filing requirements; (2) it clarifies the definition of a *de facto* control relationship, i.e., the act of having or the fact that an entity or an individual has the authority to manage, use, obtain earnings from or dispose of the futures accounts of another person or entity and thus has decision-making power or significant influence upon another person or entity's trading decisions; (3) it proposes a requirement of calculating in aggregate *de facto*

controlled accounts in terms of the order placement, trading, and positions holding.

### **IV. Recognizes the Market-Making Regime for Futures Trading**

In practice, each futures exchange has implemented a market-making regime and has formulated the relevant rules. The Draft Measures further specify that futures exchanges may establish a market-making regime, for which each exchange shall establish and improve the relevant rules for, among others, the market-maker qualifications, the market-making transactions and the rights and obligations of market-makers.

### **V. Makes Detailed Regulations regarding Cross-border Cooperation of Futures Exchanges**

The FDL has for the first time set out provisions on cross-border futures business at a statute level. It stipulates that the contracts listed on overseas futures trading venues and settled at a price linked to the price of contracts listed on domestic futures trading venues, shall comply with the provisions stipulated by the CSRC. The Draft Measures stipulate that where domestic futures exchanges authorize overseas futures exchanges to list futures contracts, options contracts, and derivatives contracts that will be settled at a price linked to the price of relevant domestic-listed contracts, they shall conduct a market impact assessment, establish information sharing arrangements, and report to the CSRC in advance. In addition, the futures regulatory authority of the country (region) where the overseas futures exchange is located must have signed a regulatory cooperation memorandum of understanding (MOU) with the CSRC. Currently, the CSRC has signed MOUs with 66 countries (regions), including the United States, the United Kingdom, Singapore, Hong Kong and some other major countries (regions). This leaves room for the future collaboration between domestic and

overseas futures exchanges.

## **VI. Clarifies the Specific Contents of Market Quotations of Futures Trading**

Based on the principle stipulated in the FDL that futures exchanges shall be entitled to rights and interests in relation to market quotations of futures trading, the Draft Measures further specify the specific contents of the market quotations of futures trading. This includes the names of contracts, contract delivery months, opening prices, latest prices, price change, closing prices, settlement prices, highest prices, lowest prices, trading volumes, positions and trading amounts, as well as improving the provisions on the protection of the rights and interests relating to market quotations of futures trading. The FDL provided in principle that "*The rights and interests in relation to the market quotations of futures trading shall be enjoyed by the futures trading venue. Without permission of the futures trading venue, no entity or individual shall announce market quotations of futures trading*". On that basis, the Draft Measures further propose that

*"without permission of the futures exchanges, no entity or individual shall use the market quotations of futures trading for any commercial purposes. Any institution or individual authorized to use trading information shall not provide such information to other institutions or individuals without the permission of the futures exchanges"*. In practice, the market participants use the publicized quotations of futures exchanges or purchase Level-2 market data of futures exchanges mainly for their trading, investment research, or other commercial purposes. This stipulation in the Draft Measures may arise confusion with the current market practice. We recommend that it be changed to "*Futures exchanges may authorize institutions or individuals to use market quotations information and specify the obligations and liabilities of the authorized institutions or individuals in the relevant agreements or authorization documents*".

We will continue to monitor the situation and keep our clients apprised of the latest updates.

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## 金融法律热点问题

### 证监会就《期货交易所管理办法》征求意见

2022年9月16日，中国证券监督管理委员会（以下简称“证监会”）发布《期货交易所管理办法（征求意见稿）》（以下简称“《征求意见稿》”），向社会公开征求意见。此次修订以《期货交易所管理办法（2021修正）》（以下简称“现行办法”）现有法律框架为基础，一方面，围绕近期生效的《期货和衍生品法》（以下简称“《期货法》”）的相关制度安排作出细化规定，另一方面，结合市场发展和监管实际，对相关内容进行修订完善。结合修订说明，下面我们总结了《征求意见稿》的修订要点。

#### 一、落实《期货法》要求，健全和完善相关制度规定

根据《期货法》第八十五条的规定，《征求意见稿》第十条进一步明确了期货交易所的职责，包括提供交易的场所设施和服务、安排交易品种上市、对市场监控监测、对市场参与者进行自律管理和开展教育以及保证信息技术系统的安全、稳定等职责。《征求意见稿》增加了关于期货品种上市制度相关规定。现行办法规定：“上市、中止、取消或者恢复交易品种，应当经中国证监会批准。”《征求意见稿》就此不再要求需经证监会批准，对于期货品种和标准化期权品种的上市，由期货交易所依法报经证监会注册；对于中止上市、恢复上市、终止上市，由期货交易所向证监会备案即可。同时，《征求意见稿》对于交易品种作出如下细化要求：“交易品种应当具有经济价值，合约不易被操纵，

符合社会公共利益。实物交割的交易品种应当具备充足的可供交割量，现金交割的交易品种应当具备公开、权威、公允的基准价格。”这两条的调整均呼应了《期货法》关于期货品种上市制度的相关规定。

#### 二、进一步明确期货交易所对程序化交易的监管责任

《期货法》规定通过计算机程序自动生成或者下达交易指令进行程序化交易的，应向期货交易所报告。在该等规定的基础上，《征求意见稿》规定期货交易所应建立健全程序化交易报告制度。此为《征求意见稿》相较于现行办法的新增内容，对于程序化交易，强调了期货交易所的监管责任和程序化交易者的报告义务。这也与目前各期货交易所施行的程序化交易报备的市场实践保持一致。同时，《征求意见稿》还允许期货交易所对于不同程序化交易在报告要求、技术系统、交易费用等方面采取差异化管理措施，为期货交易所制定相关自律规则提供了法律依据。

#### 三、强化期货交易所对实际控制关系管理

实际控制关系报备制度是期货交易特有的制度，在各期货交易所现有规则中均有体现。《征求意见稿》呼应了《期货法》，规定期货交易实行交易者实际控制关系报备管理制度，同时进一步作出细化规定：第一，要求期货交易所业务规则中明

确实际控制关系账户的具体认定情形、认定程序和报备要求等内容。第二，明确实际控制关系定义：任何单位或者个人对其他期货账户具有管理、使用、收益或者处分等权限，从而对其他期货账户的交易决策拥有决定权或者重大影响的行为或者事实。第三，对于实际控制账户的委托、交易和持仓等提出合并计算的要求。

#### 四、明确期货交易可以实行做市商制度

实践中目前各期货交易所均已施行了做市商制度，并制定了做市商相关规则。《征求意见稿》进一步明确了期货交易所可以实行做市商制度，并应建立健全做市商管理制度，对做市商的做市资格、做市交易、权利义务等作出规定。

#### 五、细化期货交易所跨境合作相关规定

《期货法》首次在法律层面对跨境期货业务做出了原则性的规定，规定境外期货交易所上市的合约以境内期货交易所上市的合约价格进行挂钩结算的，应当符合证监会的规定。《征求意见稿》对境内期货交易所授权境外期货交易所上市挂钩境内合约价格结算的期货、期权和衍生品合约作出了规定，要求期货交易所进行市场影响评估，建立信息交流安排，并需事前向中国证监会报告。此外，境外期货交易所所在国(地区)的期货监管机构须已与中国证监会签署监管合作谅解备忘录。目前中国证监会已与 66 个国家(地区)建立监管合作备

忘录安排，其中包括美国、英国、新加坡和香港等主要金融交易活跃的国家(地区)。该等规定也为将来境内外期货交易所建立合作留出了空间。

#### 六、明确期货交易行情的具体内容

根据《期货法》中期货交易行情的权益由期货交易场所享有的原则性规定，《征求意见稿》明确了期货交易行情信息的具体内容，包括合约名称、合约交割月份、开盘价、最新价、涨跌、收盘价、结算价、最高价、最低价、成交量、持仓量、成交金额等。同时完善了期货交易所行情信息相关权益保护的规定，在《期货法》“期货交易行情的权益由期货交易场所享有。未经期货交易场所许可，任何单位和个人不得发布期货交易行情”的要求下，《征求意见稿》进一步提出“(未经许可)不得以商业目的使用。经许可使用交易信息的机构和个人，未经期货交易所同意，不得将该信息提供给其他机构和个人使用。”目前市场参与者使用期货交易所的公开行情或购买期货交易所的深度行情主要是为了其交易、投研等商业目的，《征求意见稿》中有关未经期货交易所同意，任何单位和个人不得以商业目的使用期货交易所行情的表述值得商榷，建议修改为：“期货交易所可许可机构或个人使用交易行情信息，并在相关协议或授权文件中对被许可机构或个人的义务和责任做出规定”。

我们将持续关注并及时与我们的客户分享最新的进展。

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