



## Capital Markets

### State Council amended the Regulations on the Administration of Futures Trading

To serve the need of further creative development in the futures industry, State Council issued the Decision of the State Council regarding Amendment to the Regulations on the Administration of Futures Trading on October 24, 2012, with effect on December 1, 2012.

#### Highlights of the Amendments

- **Clarifying the definition of futures trading**

The amended Regulations on the Administration of Futures Trading (the "Amended Regulations") provided the definition of "futures trading" for the first time. "Futures trading" was defined in the Amended Regulations as "trading activities on futures contract or options contract by adopting a centralized trading method or other methods approved by the futures regulatory authority of the State Council". Meanwhile, the provisions regarding futures trading in a disguised form were deleted.

The purpose of such amendment is to strengthen regulatory measures and rectify illegal futures trading activities. All trading activities that fall out of the definition of futures trading is illegal and therefore futures trading in a disguised form is not necessary to be otherwise defined.

- **Opening of specific futures to qualified foreign investors**

New provision was added in Article 24 of the Amended Regulations. "Foreign institution meeting specified conditions may engage in futures trading regarding specific futures in futures exchange. Detailed measures shall be formulated by the futures regulatory authority of the State Council."

According to the plan of the regulatory authorities, several creative businesses in futures industry including crude oil futures will be introduced in the near future. In January 2012, Premier Wen said in the national financial work conference that commodity futures like crude oil futures and other financial derivatives products shall be introduced in a moderate manner. The aforesaid amendment not only provides the room for foreign investors to directly engage in crude oil futures trading but also internationalizes the crude oil

futures trading in China through which China may strive for international pricing power.

- **Exemption of administrative approval procedure for certain circumstances**

Certain circumstances that require administrative approval in the original Regulations were exempted in the Amended Regulations such as changing company form, business address or person-in-charge, qualification for providing intermediary business to futures companies, engaging in futures settlement and margin deposition and etc.

Such amendment on one hand improves efficiency of operation of futures companies, on the other hand facilitates carrying out business in margin deposition by small and mid-sized banks other than the big five state banks.

- **Clarifying the duty of futures exchange as central counter party**

Central counter party system was generated in the development of futures market. It plays a key role in prevention of counter party's credit risk, control of multilateral netting risk and facilitation of futures trading. One of the basic rules for futures trading is that settlement institution shall act as the central counter party as opposed to other parties in the futures trading and making clearance on a daily basis under the daily no debt clearing system. The Amended Regulations further clarify the duty of futures exchange as a central counter party by stipulating futures exchange's duty of provision of centralized performance guarantee for futures trading.

#### Remarks

The Amended Regulations provide basis for developing creative futures business and internationalizing the futures market. However, it remains to be seen how the Amended Regulations will impact on futures trading practice and what subsequent rules would be issued.

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## 资本市场的法律热点问题

### 国务院修订《期货交易管理条例》

为适应期货业进一步创新、发展的需要，2012年10月24日，国务院公布了《国务院关于修改〈期货交易管理条例〉的决定》，自2012年12月1日起实施。

#### 本次修订的主要内容

##### ● 明确“期货交易”的定义

修改后的《期货交易管理条例》（下称“《条例》”）首次明确了“期货交易”的定义。《条例》规定，“本条例所称期货交易，是指采用公开的集中交易方式或国务院期货监督管理机构批准的其他方式进行的以期货合约或者期权合约作为交易标的的交易活动。”于此同时，删除了原先对“变相期货交易”的规定。

此修改意在加强期货监管及清理整顿非法期货交易活动。凡属期货交易定义范围内的交易活动均可依法认定为期货交易，无须对变相期货交易另作规定。

##### ● 允许符合条件的境外投资者从事特定品种的期货交易

《条例》第二十四条新增：“符合规定条件的境外机构，可以在期货交易所从事特定品种的期货交易。具体办法由国务院期货监督管理机构规定。”

根据监管部门的计划，期货业多项创新业务将在近期陆续出台，原油期货将是其中之一。2012年1月，在全国金融工作会议上，温家宝总理明确提出，要稳妥推出原油等大宗商品期货品种和相关金融衍生产品。此修改适应推出原油期货的需要，为境外投资者直接进入期货交易所进行原油期货交易预留了空间，同时也为提高我国原油期货交易国际化程度和争取大宗

商品国际定价权奠定了基础。

##### ● 简化了相应行政审批程序

《条例》删除了期货公司变更公司形式、经营场所和负责人，为期货公司提供中间介绍业务的资格以及银行业金融机构从事期货保证金存管、期货结算业务的资格须经国务院期货监管机构批准的规定。

此修改大幅减少事前准入审批，提高了公司决策有效性以及经营与资本运作的效率，并为五大国有银行之外的其他中小银行进入保证金存管结算打开方便之门。

##### ● 明确期货交易所的中央对手方职责

中央对手方制度是期货市场发展过程产生的一项交易结算制度，该项制度对预防交易对手方信用风险、控制多边净额结算风险以及活跃期货交易发挥了关键作用。期货交易的基本规则之一，是由结算机构作为交易各方的中央对手方，按照当日无负债制度统一对各方交易结果进行结算。《条例》进一步明确了期货交易所的“中央对手方”职责，规定期货交易所的职责包括“为期货交易提供集中履约担保”。

#### 评述

《条例》的颁布为出台创新期货业务和推进期货市场国际化进行了铺垫。对于本次修订对我国期货交易实践的影响以及随后的相应配套规则和制度，有待进一步观察和研究。

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