

Financial

CSRC Solicits Comments on Draft Trading Server Colocation Rules

On April 21, 2023, the China Securities Regulatory Commission (“CSRC”) issued the *Administrative Provisions on Trading Server Colocation for the Securities and Futures Markets (Consultation Paper)* (the “Administrative Provisions”). The Administrative Provisions fill a legal gap with respect to securities and futures trading server colocation. It has been common market practice for securities or futures companies to lease cabinets in an exchange or its subsidiary’s data center and sublease it to customers to host their servers, although neither the CSRC nor exchanges have formulated specific regulatory rules on server colocation. The Administrative Provisions will be the only administrative departmental rules that directly regulate colocation activities. The promulgation of the Administrative Provisions improves regulations regarding market infrastructures and is conducive to the safe and stable operation of the securities and futures markets.

The high-level legal foundations referenced by the Administrative Provisions include the *Securities Law*, the *Futures and Derivatives Law*, the *Cybersecurity Law*, the *Administrative Measures on Securities Exchanges*, the *Administrative Measures on Futures Exchanges*, and the *Administrative Measures on Cybersecurity and Information Security for the*

Securities and Futures Industries. Consistent with the underlying principles established by the CSRC regarding cybersecurity and information security, the Administrative Provisions introduce comprehensive regulatory requirements for exchanges and securities and futures business operating institutions (i.e. brokers), fully implement the principles of “safety, fairness and reasonableness”, and emphasize “safety management” throughout the whole process of the colocation services and related leasing activities of the exchanges and brokers.

I. Scope of Application

The Administrative Provisions regulate trading server colocation activities from the perspectives of exchanges and brokers. The Administrative Provisions apply to exchanges’ provision of trading server colocation services using trading server colocation resources and brokers’ leasing of trading server colocation resources from exchanges. “Trading server colocation resources” refer to resources such as data centers and cabinets, communication networks, and software and hardware equipment provided by exchanges, the information systems deployed in which may be connected to the trading system of the

exchanges.

II. Principles for Business Operation

The Administrative Provisions highlight the principles of “safety, fairness, and reasonableness” in all aspects of the trading server collocation service and related leasing activities. Brokers shall establish a sound governance structure and effective compliance, risk control, and internal control policies to engage in trading server collocation activities. Exchanges shall formulate self-disciplinary rules and technical specifications.

III. Requirements of Exchanges

Exchanges shall implement the management of trading server collocation resources in dedicated areas and ensure the communication latency from relevant dedicated areas to the front-end communication processor of the core trading system remains consistent. The requirements on the development, operation and maintenance of trading server collocation resources shall not be more relaxed than the requirements on the entrusted parties of level-III systems as specified in the *Basic Requirements for Hosting of Information Systems for the Securities and Futures Industries*. Exchanges shall ensure the fairness and reasonableness of relevant services in terms of resource guarantee, resource allocation, service application, service agreements, charging standards, service exit, and re-allocation of resources.

With respect to resource reservation mechanisms, exchanges shall, based on the volume of order or the client’s volume of trade, formulate categorized allocation rules and reserve for members trading server collocation resources that can fit their basic trading needs. If a member applies for

additional trading server collocation resources on top of the reserved resources, the exchanges shall impose a necessary upper limit of resources in each application and the interval of applications.

Exchanges that provide trading server collocation services shall enter into service agreements with members, which shall include the content of service, rights and obligations, conditions for recovering resources, confidentiality requirements, terms of service and emergency handling requirements. The Administrative Provisions also set out rules for an exchange’s charging standards for trading server collocation services. If any abnormality arises in trading server collocation services, the exchange shall, according to its emergency plan, take timely measures such as limiting trading speed and restricting order placement and notify and guide the concerned brokers in a timely manner to prevent and resolve potential risks.

IV. Requirements of Brokers

The Administrative Provisions clarify requirements for brokers from three aspects. First, it sets out general requirements regarding security protection. Second, it requires brokers to ensure the safe operation of customers’ equipment in terms of capacity assessment, governance structure, and due diligence. Third, it specifies brokers’ reporting obligations to exchanges.

Pursuant to the Administrative Provisions, brokers shall make comprehensive evaluations in terms of personnel, capital injection, and customer needs, prudently onboard customers, ensure that it has the capability to ensure the safe operation of the customer’s software or hardware equipment, and effectively segregate the information systems of different customers, and that of

the customers and the broker itself. Brokers shall fully understand and track the intended purpose, technology implementation, type of trading strategy, order velocity, handling of abnormalities and other information of the customer's software or hardware equipment and shall not provide services to any customer that does not have the corresponding capacity for risk management and control. These requirements specify a broker's obligation to operate prudently, and a broker may be held liable if they fail to comply with these requirements.

The Administrative Provisions also specify the contents of the service agreement entered between brokers and customers. As required by the exchanges, brokers shall report their relevant management policies and the implementation of such policies, as well as their customer information to the exchanges and update the information in a timely manner.

Provisions are general in principle, leaving room for the CSRC and exchanges to formulate specific operational rules in the future. The Administrative Provisions provide that, "where the trading server collocation resources leased by securities and futures business operating institutions involve program trading or system connectivity, relevant provisions of the CSRC shall be complied with", which implies that the CSRC may formulate rules on program trading and system connectivity separately.

The Administrative Provisions strengthen the duties of brokers, requiring brokers to prudently select clients and ensure the compliance of clients when engaged in collocation activities. We suggest concerned brokers and clients pay close attention to the relevant provisions of the Administrative Provisions and the relevant self-disciplinary rules of the exchanges in terms of server collocation, program trading and system connectivity and engage in compliance with these provisions.

Our Observations

The relevant rules provided in the Administrative

Natasha XIE	Partner	Tel: 86 21 2208 6238	Email: xieq@junhe.com
Austin ZHANG	Partner	Tel: 86 21 2208 6177	Email: zhangchi_Austin@junhe.com
Danchen LUO	Associate	Tel: 86 21 2283 8320	Email: luodch@junhe.com

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金融法律热点问题

证监会就主机交易托管规定征求意见

2023年4月21日，证监会发布《证券期货市场主机交易托管管理规定(征求意见稿)》(以下简称“《管理规定》”)。《管理规定》在部门规章的层面填补了有关证券和期货交易主机服务器托管的规则空白。尽管市场实践中常见证券公司或期货公司租用交易所或其子公司指定机房的机柜并转租给其客户以托管相关服务器，但证监会和交易所尚未专门制定有关服务器托管安排的监管规则，因此，《管理规定》将是直接规范服务器托管业务的唯一一部部门规章，它的出台预示着市场基础设施相关服务规范进一步完善，有助于国内证券期货市场的安全平稳运行。

《管理规定》的上位法包括《证券法》《期货和衍生品法》《网络安全法》《证券交易所管理办法》《期货交易所管理办法》及《证券期货业网络和信息安全管理办法》。与证监会有关网络和信息安全立法的原则一致，《管理规定》比较全面地规定了对交易所以及证券期货经营机构(即经纪商)的监管要求，贯彻了安全、公平、合理三原则，在交易所以及经纪商从事相关托管服务以及租用活动的各个环节强调安全管理的要求。

一、适用范围

《管理规定》从交易所和经纪商两个角度规范主机交易托管业务：(1)交易所利用主机交易托管资源提供主机交易托管服务，(2)经纪商租用主机交易

托管资源。此处的主机交易托管资源是指交易所提供的机房机柜、通信网络、软件或硬件设施，而部署在这些资源的信息系统可以直接连接到交易所的交易系统。

二、业务开展的原则

《管理规定》规定了提供服务和开展业务应遵循安全、公平、合理的原则。经纪商必须建立完善的治理架构、有效的合规风控及内部控制制度以从事相关业务，而交易所则必须制定相关自律规则和技术规范。

三、对交易所的要求

交易所应当对主机交易托管资源实施专区管理，并确保相关专区到核心交易系统通信前端的通信时延保持一致，且建设运维要求不得低于《证券期货业信息系统托管基本要求》中三级系统的受托方要求。交易所在资源保障、资源分配、服务申请、服务协议、收费要求、服务退出与资源再分配等方面也需要保障提供有关服务的公平合理。

在预留资源方面，交易所应以交易报盘数量或客户交易量为基准，制定分类分配规则，为会员预留能够满足其基础交易需求的主机交易托管资源。会员在预留资源外另行申请主机交易托管资源的，交易所应当对单次申请的资源上限和申请时间间隔作必要限制。

交易所提供主机交易托管服务的，应当签订服务协议，协议应当包含服务内容、权利与义务、资源回收条件、保密要求、使用期限、应急处置要求等内容。《管理规定》还对交易所的收费标准作出了规定。主机交易托管服务出现异常情形的，交易所应当按照应急预案，及时采取交易限速、限制报单等应急处置措施；涉及经纪商的，交易所应当及时告知并指导相关机构。

四、对经纪商的要求

对经纪商的要求分为三个方面：一是安全保障的一般要求。二是要求从能力评估、治理架构、尽职调查等方面确保经纪商保障客户设施的安全运行。三是对交易所的报告要求。

《管理规定》要求经纪商从人员保障、资金投入、客户需求等方面充分评估，审慎选择服务客户，确保自身能力可以保障客户软件或硬件设施的安全运行，并将不同客户的信息系统、客户与其自身的信息系统进行有效隔离。经纪商的义务包括充分了解并持续跟踪客户软件或硬件设施的使用目的、技术实现、交易策略类型、订单流速、异常处理等情况，不得为不具有相应的风险管控能力的客户提

供服务。上述规定明确了经纪商审慎经营的义务，也意味着如果未能遵守上述规定经纪商也需要承担相应的责任。

《管理规定》还规定了经纪商与客户签署的服务协议应包含的内容以及经纪商的报备义务，即按照交易所的要求报告管理制度及执行情况、客户情况并持续更新。

我们的观察

总体而言，《管理规定》的规定都比较原则性，为证监会和交易所后续制定具体的操作规范留出了充分的空间。特别是，《管理规定》提到经纪商租用的主机交易托管资源涉及程序化交易或者系统对接的，应当符合中国证监会的有关规定，这表明证监会仍可能就程序化交易和系统对接做出进一步规范。

《管理规定》强化了经纪商的责任，包括审慎选择客户以及在服务过程中确保客户合规性的责任。建议经纪商和客户持续关注《管理规定》以及交易所相关自律规则有关服务器托管、程序化交易以及系统接入的规定，确保在合规的前提下开展业务。

谢青 合伙人 电话：86 21 2208 6238
张弛 合伙人 电话：86 21 2208 6177
罗丹晨 律师 电话：86 21 2283 8320

邮箱地址：xieq@junhe.com
邮箱地址：zhangchi_Austin@junhe.com
邮箱地址：luodch@junhe.com

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