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Futures Department  
China Securities Regulatory Commission  
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Dear Sirs and Madams

### **Consultation on Administrative Measures for Foreign-Invested Futures Companies**

On behalf of the membership of FIA, we welcome the opportunity to respond to the Consultation on Administrative Measures for Foreign Invested Futures Companies ("**Administrative Measures**").

FIA is the leading global trade organisation for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 jurisdictions as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. Further information is available at [www.fia.org](http://www.fia.org).

FIA commends the steps taken so far to provide the structure necessary to allow cross-border business to flow into and out of China. FIA is very supportive of further foreign investment into futures companies and the opening of domestic futures markets to overseas participation. We strongly encourage the opening of China's markets to a wide range of market participants who are active in global markets including banks, principal trading firms, asset managers and other institutional investors which can help to increase liquidity and reduce volatility in underlying markets. We believe this will assist greatly in strengthening not only China's capital markets but the global capital markets.

In response to the Consultation on Administrative Measures, we respectfully request the Commission to consider the following:

#### **1. Application to existing foreign shareholders**

We respectfully request the Commission to clarify:

- (a) if any exemptions will be provided to existing foreign shareholders; and
- (b) if there are no exemptions, if existing foreign shareholders will be given a sufficient transition period to comply with the new requirements.

#### **2. Qualification requirements for foreign shareholders**

In addition to existing rules in place for futures companies, the new Administrative Measures require foreign shareholders:

- to have at least five consecutive years of business operations. As many overseas financial firms operate on a global group basis, we propose that the futures business operations of the larger corporate group be considered by the Commission when assessing this requirement.
- to have internationally leading business scale, revenue and profits for the previous three years. There are different methods of measuring financial performance for futures businesses which may differ by

firm, such as profit or return on equity, so it may be difficult to apply a consistent set of criteria to all foreign shareholders. Therefore, we propose that any assessment of financial soundness should consider the relevant group's performance and not just the direct shareholding entity.

- to have maintained a high-level long-term credit rating in the previous three years. As financial and administrative costs are associated with obtaining a credit rating, financial institutions typically only have entities rated where necessary. The lack of credit rating does not always mean an entity is not creditworthy or is not financially sound. The lack of credit rating could be due to a streamlined group structure, a business of a smaller scale or a smaller closely held company without public debt. We respectfully request that the credit rating requirement be considered as an alternative to other financial criteria, and not a strict requirement, given the intention to attract a diverse range of foreign investors.
- to not be subject to any material punishment for violations of law or regulations for the past three years. We request that further clarification be given on this requirement. It would be helpful if the Commission could provide clear guidance and examples on what it will focus on when assessing these requirements and what is considered to be 'material punishment'. What is considered material in one jurisdiction may not be considered material in another jurisdiction as different regulators have different approaches to enforcement. We believe the appropriate standard should be whether a violation was deemed material in the jurisdiction which it occurred.

### **3. Senior Management**

Under the Administrative Measures, all senior management personnel must work within the People's Republic of China (PRC) and at least one third of senior management must be PRC nationals. We respectfully request the Commission to provide further guidance on what positions are considered 'senior management personnel' and to outline if there are any other qualifying criteria for senior management.

We note that whilst the senior managers directly responsible for the day-to-day operations of the futures business would need to reside within the PRC, global financial institutions often have regional and global reporting lines to senior managers residing outside of the PRC. Therefore, we wish to confirm that there is no objection to these organizational reporting arrangements.

### **4. Infrastructure and IT systems**

Under the Administrative Measures, the primary server used for trading, settlement and risk control systems and the data devices for recording and storing client information shall be located within mainland China (excluding Hong Kong, Macao and Taiwan).

We note that such segregation and localising of IT infrastructure may incur significant costs for firms and create increased operational risks especially for business continuity planning. It may also restrict a firm's ability to comply with reporting or other data transfer obligations under home jurisdiction regulatory rules. We respectfully request that the Commission consider if more systems integration is permissible to ensure that the systems in the PRC can be connected to regional and global systems as this would enhance risk management capabilities, operational efficiencies and minimise operational and other risks.

### **5. Legal framework**

Whilst not directly the subject of the Consultation, we note that FIA and our members fully support the finalisation of the Futures Law as soon as possible. We remain available to discuss any questions and can share the experience from other markets around the world if that is helpful.

Specifically, we wish to highlight the importance of ensuring there is close-out netting in providing legal certainty for derivatives markets. Close-out netting is a process designed to apply on the default of a counterparty when all outstanding obligations between counterparties are combined and reduced to a single

net sum for the non-defaulting party to either pay or receive. This process leads to more effective risk management, lowers regulatory capital requirements and ultimately reduces systemic risks in derivatives markets. We encourage the introduction of clear close-out netting provisions to ensure legal certainty and to help support the development of China's futures markets.

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Thank you for the opportunity to share our views. We strongly support the continued development and growth and stability of China's derivatives markets to facilitate the risk management, investment and trading needs of both domestic and international market participants.

We welcome the opportunity to discuss these issues in further detail with you. In the meantime, if you have any questions, please contact me or Phuong Trinh, Vice President, Legal & Policy at [ptrinh@fia.org](mailto:ptrinh@fia.org).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bill Herder', is positioned above the printed name.

Bill Herder  
Head of Asia-Pacific  
FIA