



27th May 2021

To: National People's Congress of the People's Republic of China
Legislative Affairs Commission
No.1 Qianmen West Street, Xicheng District
Beijing, China
100805

Dear Sirs,

The Draft Futures Law of the People's Republic of China

On behalf of its members, the Futures Industry Association (FIA)¹ respectfully presents to the Legislative Affairs Commission (the "**Commission**") of the Standing Committee of the 13th National People's Congress this letter of submission in relation to the draft "*Futures Law of the People's Republic of China*" (the "**Futures Law**"), which is currently being reviewed by the Standing Committee of the National People's Congress (NPC).

First and foremost, FIA would like to congratulate the NPC on the publication of the draft Futures Law, which is a truly historic milestone for China's futures markets. We note that the Futures Law will provide a comprehensive legal framework for the operation of the futures market in China, as well as protection for the operation of close-out netting in derivatives transactions. FIA strongly believes that the Futures Law will provide a solid foundation for international financial institutions, investors and end-users to participate in the bustling Chinese financial markets. With the enhanced legal and risk management framework underpinning the Futures Law, Chinese exchanges, securities firms, fund managers and other market participants would also be placed on a strong footing to venture out into the international markets. To this end, FIA members are excited at the publication of the draft Futures Law and wholeheartedly welcome this positive development.

FIA fully supports the policy objectives and key provisions of the Futures Law. We set out in this letter a few key observations on the draft Futures Law for the kind considerations of the Commission.

1 Finality of futures transactions

Article 21 of the draft Futures Law provides that the "outcome of any transaction conducted in accordance with the rules of a futures trading venue shall not be altered". The provisions of Article 21 are similar to the settlement finality provisions in the PRC Securities Law. With settlement finality being a cornerstone for a robust clearing system, FIA strongly supports the introduction of a statutory settlement finality concept in the Futures Law.

¹ FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. 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. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets. Further information is available at www.fia.org.



In light of the paramount importance of the finality concept to the futures market and to comply with Principle 8 (*Settlement finality*) of the CPSS-IOSCO Principles for Financial Market Infrastructures (April 2012) (the “**PFMI Report**”), FIA respectfully suggests further clarifications on the relevant provisions:

- **Settlement/clearing finality:** in addition to the “trading outcome”, any clearing and settlement aspects of any futures clearing institution must also be final and conclusive and not liable to be set aside on the ground of any law (including bankruptcy law). This would include any payment or delivery, the provision of any margin and default fund contribution to and from the futures clearing institution.
- **Default management measures:** in addition to the “trading” and the “clearing and settlement” aspects of futures contracts, settlement finality provisions must also cover any default management measures that a futures clearing institution may undertake in the event of a default by a clearing participant. FIA is pleased to see that Articles 44, 45 and 46 of the draft Futures Law set out a broad range of default management measures that a futures clearing institution may undertake (e.g., forced liquidation, calling for additional margin, liquidation of non-cash collateral and application of margin and other financial resources of such clearing participant) which will be final and conclusive. Given the evolving nature of default management measures, FIA respectfully suggests that the Commission extends the coverage to such other default management measures set out in the clearing rules of a futures clearing institution and thereby provide further flexibility and certainty to the futures clearing institution.
- **Impact of bankruptcy:** FIA notes that the finality concept aims at protecting any settlement and default management process with the futures clearing institution as central counterparty and accordingly such action will be final and must not be affected by the bankruptcy of any party. To this end, while Article 98 of the draft Futures Law specifically provides that close-out netting by a futures clearing institution will be final and will not be affected the bankruptcy of any clearing participant, a similar express statement is not provided in other operative settlement finality provisions (such as Articles 21, 44 to 46). For consistency and to avoid any doubt, we strongly recommend a similar statement that the action will be final notwithstanding any bankruptcy in these provisions (e.g., Articles 21, 44 to 46).
- **Bankruptcy of a futures clearing institution:** the settlement finality provisions in the draft Futures Law currently contemplate the bankruptcy of clearing participants (Article 98) but is silent on the bankruptcy of the futures clearing institution. FIA understands that the possibility of a bankruptcy of the futures clearing institution may be remote. However, the absence of settlement finality provisions with respect to bankruptcy of the futures clearing institution will have a material adverse impact on clearing participants since there is no assurance of legal finality in that event with a variety of consequences including punitive regulatory capital treatment. Therefore, FIA respectfully suggests that settlement finality provisions be extended to the bankruptcy of the futures clearing institution in line with the recommendation of the PFMI Report and prevailing practices in the international markets.



2 Client clearing for futures transactions

2.1 Client clearing model

There are two clearing models in the EU and US for the clearing of futures and OTC derivatives; namely “principal” model and “agency” model. Broadly speaking, under the principal model, the clearing participant acts as a principal with respect to the transaction with the central counterparty and, after novation of the underlying transaction, there is (i) a transaction between the central counterparty and a clearing participant and (ii) another back-to-back transaction between such clearing participant and its client. On the other hand, under the agency model, the clearing participant acts as a trustee or an agent for its client with respect to the transaction with the central counterparty (with no back-to-back transaction between such clearing participant and its client).

Given that “principal” and “agency” models are concepts broadly used in the international markets, it is key for international financial institutions (in particular the global systemically important banks and their subsidiaries) to be able to categorise the Chinese futures clearing model into one of these models for regulatory capital requirements and other purposes. For example, there is a surcharge in some jurisdictions on the regulatory capital requirements for the principal model but not for agency model.

We understand that when a clearing participant clears a transaction for its client with a futures clearing institution in China (i) the clearing participant acts as agent for its client and (ii) there is no “back-to-back” transaction (but an agency agreement) between the clearing participant and its client. Accordingly, we understand that market participants generally agree that the futures clearing model in China is more akin to the agency model.

To this end, some participants have expressed concerns over the expression used in Article 98 of the Futures Law (since it provides that futures clearing institution “is central counterparty to the clearing participants”). The concern is that in the case of client clearing this may give a wrong impression that back-to-back principal transaction between the participant and its client are created (more like the principal model). FIA respectfully suggests changing this expression in Article 98 to describe a futures clearing institution as central counterparty that “imposes itself between the trading participants to futures transactions as the seller to every buyer and the buyer to every seller” instead.

In addition, FIA believes this suggested expression can leave room for futures clearing institutions in China and the industry to adopt different models as appropriate in the future as it would not preclude the use of either model.

2.2 Close-out netting between clearing participants and clients

Article 98 of the draft Futures Law expressly protects the enforceability of close-out netting arrangement of a futures clearing institution and provides that such arrangement would be final and conclusive notwithstanding bankruptcy law. Close-out netting arrangement is without doubt one of the most important mechanisms for the reduction of credit risks associated with financial derivatives and futures. Accordingly, FIA strongly supports the recognition for the finality of close-out netting arrangement of a futures clearing institution in Article 98 of the Futures Law.



For the same reason, FIA also notes the critical importance of the close-out netting arrangement between a clearing participant and its client in relation to futures transactions conducted on one or multiple futures trading venues. Such close-out netting arrangement which are typically embedded in the client agreement of the participant for its client allows exposures between such clearing participant and its client to be recognised on a net basis and mitigates the credit risks to which such clearing participant and its client are subject. Therefore, FIA respectfully suggests that the recognition for close-out netting arrangement in Article 98 be extended to cover the finality of the close-out netting between a clearing participant and its clients including protection from any bankruptcy law. To the extent deemed appropriate by the Commission, such finality protection between a clearing participant and its client may also be effected through implementing regulations under the Futures Law or pursuant to the clearing rules of a futures clearing institution provided that they are authorised specifically by the Futures Law.

Our proposed amendments to Article 98 are set out in Appendix 1.

3 Central clearing of OTC derivatives transactions

FIA notes that the clearing process for the central clearing of OTC derivatives transactions is very similar to futures transactions. The clearing and settlement mechanism as well as default management measures applicable to cleared OTC derivatives transactions are also similar to that for futures transactions and would require a similar level of robust legal protection.

To this end, FIA notes that Article 39 of the draft Futures Law expressly extends the protection in Article 46 (relating to the collection, application and enforcement of margin, settlement security deposit and other financial resources for futures transactions) to the central clearing of OTC derivatives transactions. This would provide a great deal of legal certainty to the finality of the settlement and application of margin, settlement security deposit and other financial resources for centrally cleared OTC derivatives transactions.

Given the significance to the stability of the financial markets of central clearing counterparties and the similarities in the central clearing process of OTC derivatives and futures, FIA respectfully suggest that the protections for clearing and default management process for futures should also be extended to central clearing of OTC derivatives including the following provisions:²

- Settlement finality in Article 21;
- Close-out netting in Article 98³;
- Liquidation of position and disposal of non-cash collateral in Article 44; and
- Application of margin and other financial resources in Article 45.

² As noted in paragraph 1 of this submission, finality provisions should be extended to the bankruptcy of the OTC clearing institution in line with the recommendation of the PFMI Report and prevailing practices in the international markets.

³ As noted in paragraph 2(ii) of this submission, a similar approach should also apply to close-out netting to a clearing participant and its clients in respect of centrally cleared OTC derivatives.



4 Cross-border application

4.1 Cross-border data transfer

FIA notes that there could be great practical difficulties for market participants in implementing paragraph 3 of Article 136 of the Futures Law if the prior consent of the Chinese regulator needs to be obtained each time any information or document can be shared outside China. For a foreign-invested futures company, regular and frequent cross-border information sharing is necessary in its normal operations, including sharing with its offshore shareholders and for outsourcing purpose. A Chinese entity participating in offshore futures business or holding an offshore futures license may also need to provide certain documents and materials pursuant to the reporting and disclosure requirements of the offshore CCP or to regulators in other jurisdictions.

We therefore respectfully suggest that paragraph 3 of Article 136 be deleted or that an exemption be provided for the sharing of documents and information in connection with certain permitted purposes. We set out in Appendix 1 suggested amendments to Article 136 reflecting the scope of information which could be so exempted.

4.2 Regulatory deference or substituted compliance⁴

Chapter 12 provides a framework which enables Chinese regulators to properly regulate and license offshore persons who are carrying on futures business or otherwise targeting Chinese clients in China or on a cross-border basis. This is a milestone development for both onshore and offshore futures market participants and FIA fully supports such development.

An important principle for cross-border regulation and cooperation in the global financial markets is “substituted compliance”, i.e., to rely on counterpart-regulators in other jurisdictions to supervise certain cross-border activities if the national rules in such jurisdictions are benchmarked to internationally agreed upon standards. This principle has been proven to be effective and remains a key plank in ensuring open access to global cleared markets, reducing risk and increasing market efficiency through competition, and avoiding contradictory requirements, duplicative supervision and counter-reactions by global regulatory authorities.

FIA therefore respectfully suggests the Commission and the competent Chinese regulators of the futures and OTC derivatives markets to adopt such “substituted compliance” mechanism when formulating the implementing regulation for such cross-border licensing regime.

⁴ To better identify and address these growing concerns and the cross-border uncertainty driven by a range of geopolitical developments, FIA published a white paper in March 2019 titled: *Mitigating the Risk of Market Fragmentation*). To summarise, FIA has encouraged regulators around the world to:

- rely on counterparts in other jurisdictions to supervise certain cross-border activity through “deference” or “substituted compliance”;
- work collectively to develop international standards and implementation guidelines while recognising local flexibility and conditions; and
- put in place mechanisms for cross-border cooperation, information-sharing, and crisis management planning, which is critical for the day-to-day supervision of cross-border business.



5 Appendices

In addition to setting out our key observations on the draft Futures Law, we have also included into this submission two appendices.

Appendix 1 sets out in more detail our suggested amendments to the text of the draft Futures Law in order to implement the key observations outlined in our submission.

We set out in **Appendix 2** certain questions on the draft Futures Law and also other issues to which we would like to draw to your attention. We should be most grateful for your clarifications to these questions (whether in the form of Questions and Answers (Q&As) or clarifications in the Futures Law itself or implementing regulations).

Next steps

FIA is extremely grateful for the opportunity to comment on the draft Futures Law and would be pleased to discuss the issues addressed above further or otherwise to assist in any way that the Commission deems appropriate. Publication of the Futures Law will be a key milestone in the history of futures legislation in China and an important step towards the establishment of a sound and comprehensive legal framework for China's futures markets.

We would be delighted to engage in further discussions with the Commission in relation to our comments and provide further industry input. If you have any questions, please do not hesitate to contact Bill Herder, FIA Head of Asia Pacific, at bherder@fia.org or +65 6549 7333 or Tze Min Yeo, FIA Head of Legal & Policy of Asia Pacific, at tmyeo@fia.org or +65 9111 0717.

In the meantime, to facilitate dialogue, we will also share a copy of our submission with Dr. FANG Xinghai, Vice President of China Securities Regulatory Commission.

Yours faithfully,

Walt Lukken

President and Chief Executive Officer Futures
Industry Association (FIA)

(This submission is made in English and Chinese)



Appendix 1 Other Observations and Suggested Amendments

| Clause | Comments | Suggested Amendments |
|--|--|--|
| Chapter 1 General Principles | | |
| <p>Article 3 Under this Law, “futures” refer to standardised contracts uniformly formulated by the futures trading venues for the settlement of a certain amount of the relevant underliers at a specific time and place in the future.</p> <p>Under this Law, “other derivatives” refer to a contract that is in non-standard form and calls for settlement in the future, with the value of the contract derived from changes in the value of an underlying asset, including non-standardised option contracts, swap contracts and forward contracts.</p> <p>The underliers of futures and other derivatives transactions include agricultural products, industrial products, energy and other commodities, services and related indexes, marketable securities and other financial products linked to interest rates, foreign exchange rates and related indexes, etc.</p> | <p>We suggest that:</p> <ul style="list-style-type: none"> the definition of the “futures” be expanded to include all standardised contracts uniformly formulated by futures trading venues; the definition of "other derivatives" be expanded to cover any combination of options, swaps and forwards; and drafting to be amended as the value of forward may not rely on the “changes” of the underliers. | <p><i>We suggest the first paragraph under Article 3 be amended as follows:</i></p> <p>"Under this Law, “futures” refer to standardised contracts uniformly formulated by the futures trading venues for the settlement of a certain amount of the relevant underliers at a specific time and place in the future and other standardised contracts formulated by a futures trading venue."</p> <p><i>We suggest the second paragraph under Article 3 be amended as follows:</i></p> <p>"Under this Law, “other derivatives” refer to a contract that is in non-standard form and calls for settlement in the future, with the value of the contract derived from changes in the value of an underlying asset, including non-standardised option contracts, swap contracts and forward contracts, and any combination of the aforementioned products."</p> |



| Clause | Comments | Suggested Amendments |
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| Chapter 2 Futures Transactions | | |
| <p>Article 21 Where a transaction is conducted pursuant to the business rules promulgated by a futures trading venue in accordance with the law, the trading outcome shall not be altered.</p> <p>In the event that any circumstance as specified in Article 91 of this Law has led to significant abnormalities in the prices of futures transactions, the futures trading venue may cancel such transactions or adjust the transaction prices in accordance with the business rules, and promptly report to the futures regulatory authority under the State Council and make an announcement.</p> <p>The futures trading venue shall not bear civil liability for losses caused by any measures taken in accordance with the preceding paragraph, except in the event of gross negligence.</p> | <p>According to Section 3.1.6 of “Principles for Financial Market Infrastructures”, as for settlement finality, "a key question is whether transactions of an insolvent participant would be honored as final, or could be considered void or avoidable by liquidators and relevant authorities." Therefore, we submit that Article 21 make it clear that the transactions cannot be altered even in bankruptcy procedure.</p> <p>We also suggest that in addition to the “trading outcome”, any clearing and settlement aspects and default management process of a futures clearing institution should also be covered by settlement finality.</p> <p>In addition, settlement finality provisions in the draft Futures Law should not be limited to the bankruptcy of clearing participants (Article 98), and should be extended to include bankruptcy of the futures clearing institution.</p> <p>We have included in the right column suggested amendments to Article 21 in order to cover finality in respect of clearing and default management process for your ease of reference. If you consider it is more appropriate to incorporate this into</p> | <p><i>We suggest the first paragraph under Article 21 be amended as follows:</i></p> <p>"Where a transaction is conducted or settled pursuant to the business rules promulgated by a futures trading venue or a futures clearing institution in each case in accordance with the law, or where any default management measure is taken by the futures clearing institution pursuant to the business rules promulgated by a futures clearing institution in accordance with the law, the trading, payment and settlement outcome and the outcome from such default management measure shall not be altered, and shall not be stayed, invalidated or revoked due to the commencement of any bankruptcy or liquidation proceedings with respect to any futures clearing institutions, future trading venues, futures brokerage institutions, futures traders or other entities."</p> |



| Clause | Comments | Suggested Amendments |
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| | Chapter 4, please feel free to reflect such amendments in Chapter 4. | |
| Chapter 3 Other Derivatives Transactions | | |
| <p>Article 39 Where other derivatives transactions are required to be centrally cleared in accordance with the regulations of the department authorized by the State Council, the relevant clearing institutions shall act as the central counterparty to conduct central clearing of such transactions in accordance with the relevant provisions of this Law.</p> <p>The clearing institutions responsible for other derivatives transactions shall follow the examination and approval procedures of the departments authorized by the State Council.</p> <p>The safeguarding and protection of the property involved in the clearing of other derivatives transactions shall be implemented according to Article 46 of this Law.</p> | <p>Clearing process for the central clearing of OTC derivatives transactions is very similar to futures transactions. The clearing and settlement mechanism as well as default management measures applicable to cleared OTC derivatives transactions are also similar to that for futures transactions and would require a similar level of robust legal protection.</p> <p>Therefore, we respectfully submit that the protection given by Articles 21 (settlement finality), 44 (liquidation of position and disposal of non-cash collateral), 45 (application of margin and other financial resources), 46 (safeguarding and protection of the property involved in the clearing activities) and 98 (close-out netting) to futures clearing institutions should also apply to other cleared derivatives.</p> <p>Also, we respectfully suggest making it clear that the protection granted in this Article 39 applies to both mandatorily cleared and voluntarily cleared OTC derivatives.</p> | <p><i>We suggest the third paragraph under Article 39 be amended as follows:</i></p> <p>"The safeguarding and protection of the property involved in the clearing (including both mandatory clearing and voluntary clearing) of other derivatives transactions shall be implemented according to Article 21, Article 44, Article 45, Article 46 and Article 98 of this Law."</p> |



| Clause | Comments | Suggested Amendments |
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| Chapter 4 The Clearing and Settlement of Futures | | |
| <p>Article 44 Where the margin of a clearing participant does not meet the prescribed standards and fails to make margin calls or liquidate his own position within the prescribed time, the futures clearing institutions shall in accordance with the provisions notify the futures trading venue of forced liquidation of the position. The relevant costs and losses incurred in forcibly closing out the position shall be borne by the clearing participant.</p> <p>Where a futures trader's margin does not meet the prescribed standards and fails to make a margin call or liquidate his own position within the prescribed time, the clearing participant shall forcibly liquidate the position in accordance with the agreement. The relevant costs and losses incurred in forcibly liquidating the position shall be borne by the futures trader.</p> <p>Where marketable securities are used as margin, futures clearing institutions or clearing participants may liquidate the securities directly if one of the two situations in the preceding paragraphs occurs.</p> | <p>We suggest making it clear that the liquidation right of the clearing participants will not be stayed due to the bankruptcy administrator's review or decision.</p> <p>We also suggest Article 46 should be expanded to allow clearing participant to apply margin posted by its clients in accordance with the business rules of the relevant futures clearing institution and clearing participant's such right shall not be stayed after the commencement of bankruptcy proceedings in respect of the futures clearing institution as well.</p> | <p><i>Further amendments would need to be made to Articles 44, 45 and 46 (in order to achieve finality for default management measures taken by futures clearing institutions in accordance with these articles) by adding the paragraph below at the end of each such article if amendments proposed in Article 21 are not reflected:</i></p> <p><i>“Any action taken by a futures clearing institution or a futures clearing participant in accordance with this Article [44/45/46] shall not be stayed, invalidated or revoked because the relevant trader, futures clearing participant or futures clearing institution is subject to bankruptcy proceedings in accordance with the laws.”</i></p> |



| Clause | Comments | Suggested Amendments |
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| <p>Article 45 Where a clearing participant defaults, futures clearing institutions shall, in accordance with the business rules, bear the default liability on behalf of the clearing participant with its margin, risk reserve fund, settlement security deposit and proprietary fund, etc., and accordingly obtain the corresponding right of recovery against the clearing participant.</p> <p>Where a futures trader defaults, the clearing participant entrusted by the futures trader shall first bear the default liability with the futures trader's margin; where the margin is insufficient, the clearing participant entrusted by the futures trader shall bear the default liability with the risk reserve fund and its proprietary fund, and thereby obtain the corresponding right of recourse against the futures trader's corresponding right of recovery.</p> <p>The settlement security deposit referred to in this Law means the clearing participant's proprietary fund paid to the futures clearing institution for the purpose of guaranteeing performance.</p> | <p>See above.</p> | <p>See above.</p> |
| <p>Article 46 All assets collected and withdrawn by a futures clearing institution in accordance</p> | <p>See above.</p> | <p>See above.</p> |



| Clause | Comments | Suggested Amendments |
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| <p>with its business rules (including margin, option premium, settlement security deposit and risk reserve fund) shall not be impounded, frozen, seized or subject to any compulsory enforcement.</p> <p>Upon commencement of a bankruptcy or liquidation proceeding in respect of a clearing participant or a delivery warehouse, all margin and assets that are due for settlement process shall be applied first for clearing and settlement.</p> <p>Upon commencement of a bankruptcy or liquidation proceeding in respect of a futures trader, the margin and assets that are due for settlement process shall be first applied for clearing and settlement, and the clearing participant appointed by the futures trader is entitled to proceed with forced liquidation of the futures trader’s outstanding contractual positions.</p> <p>Pending completion of the clearing and settlement of a trade, no person shall use any margin (that are designated to secure the performance and settlement) or any asset due for settlement process of the trade.</p> | | <p><i>We also suggest Article 46 be amended as follows:</i></p> <p>“All assets collected and withdrawn by a futures clearing institution or a clearing participant in accordance with its business rules (including margin, option premium, settlement security deposit and risk reserve fund) shall not be impounded, frozen, seized or subject to any compulsory enforcement.</p> <p>Upon commencement of a bankruptcy or liquidation proceeding in respect of a futures clearing institution, a clearing participant or a delivery warehouse, all margin and assets that are due for settlement process shall be applied first for clearing and settlement.</p> <p>Upon commencement of a bankruptcy or liquidation proceeding in respect of a futures trader or a futures clearing institution, the margin and assets that are due for settlement process shall be first applied for clearing and settlement, and the clearing participant appointed by the futures trader is entitled to proceed with forced liquidation of the futures trader’s outstanding contractual positions immediately.</p> <p>Pending completion of the clearing and settlement of a trade, no person shall use any</p> |



| Clause | Comments | Suggested Amendments |
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| | | margin (that are designated to secure the performance and settlement) or any asset due for settlement process of the trade.” |
| Chapter 6 Futures Brokerage Institutions | | |
| <p>Article 70 Where a futures brokerage institution accepts an appointment from a futures trader to carry out futures transactions on behalf of such futures trader, it shall enter into a written appointment agreement and carry out futures transactions in its own name for such futures trader. The futures trader will be responsible for the trading outcome.</p> <p>....</p> | <p>We suggest amending the wording of Article 70 as a futures brokerage institution is a broker agency for futures traders and is not entering into the relevant futures transactions for its own account.</p> | <p><i>We suggest the first paragraph under Article 70 be amended as follows:</i></p> <p>"Where a futures brokerage institution accepts an appointment from a futures trader to carry out futures transactions on behalf of such futures trader, it shall enter into a written appointment agreement and carry-out provide brokerage services in relation to futures transactions in its own name for such futures trader. The futures trader will be responsible for the trading outcome."</p> |
| <p>Article 83 A futures brokerage institution and its practitioners are not allowed to engage in any of the following conduct that may harm the interests of a futures trader:</p> <p>...</p> <p>(7) failing to submit the trading instructions of the futures traders to the futures trading venues;</p> <p>...</p> | <p>In practice, a futures broker needs to verify a trading order and is entitled to reject trading instructions from its clients under certain circumstances. Therefore a futures broker may not submit all the trading instructions it receives from its clients to the futures trading venues. Therefore, we suggest amending the wording in this Article 83 to allow futures broker to reject trading instructions in certain circumstances.</p> | <p><i>We suggest item 7 under Article 83 be amended as follows:</i></p> <p>"(7) failing to submit the trading instructions of the futures traders to the futures trading venues without any reasonable cause;"</p> |



| Clause | Comments | Suggested Amendments |
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| Chapter 8 Futures Clearing Institutions | | |
| <p>Article 98 A futures clearing institution, acting as a central counterparty, is the counterparty to all clearing participants. It conducts net settlement and provides centralised performance assurance for futures transactions.</p> <p>The close-out and net settlement in accordance with the provisions of the preceding paragraph shall not be invalidated or revoked because the clearing participant is subject to bankruptcy proceedings in accordance with applicable laws.</p> | <p>We note the critical importance of the close-out netting arrangement between a clearing participant and its client in relation to futures transactions conducted on one or multiple futures trading venues. Such close-out netting arrangement which are typically embedded in the client agreement of the participant for its client allows exposures between such clearing participant and its client to be recognised on a net basis and mitigates the credit risks to which such clearing participant and client are subject. Therefore, we respectfully suggest that the recognition for close-out netting arrangement in Article 98 be extended to cover the finality of the close-out netting between a clearing participant and its clients including protection from any bankruptcy law.</p> <p>To the extent deemed appropriate by the Commission, such finality protection between a clearing participant and its client may also be effected through implementing regulations under the Futures Law or pursuant to the clearing rules of a futures clearing institution provided that they are authorised specifically by the Futures Law.</p> | <p><i>We suggest the second paragraph under Article 98 be amended as follows:</i></p> <p>"A futures clearing institution, acting as a central counterparty, is the counterparty which imposes itself between the trading participants to futures transactions as the seller to every buyer and the buyer to every seller to all clearing participants. It conducts close-out and net settlement and provides centralised performance assurance for futures transactions.</p> <p>The close-out and net settlement made by a futures clearing institution in accordance with its business rules the provisions of the preceding paragraph shall not be stayed, invalidated or revoked because such futures clearing institution or the relevant clearing participant is subject to bankruptcy proceedings in accordance with applicable laws.</p> <p>The close-out and net settlement made by a futures clearing participant or its client in accordance with the business rules of the relevant futures clearing institution and the relevant contracts between a futures clearing participant and its client shall not be stayed,</p> |



| Clause | Comments | Suggested Amendments |
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| | <p>We also suggest making it clear that close-out netting will not be stayed due to the bankruptcy administrator’s review or decision, and would be applicable to any of the CCPs, clearing participants and clients.</p> | <p>invalidated or revoked because the relevant futures clearing institution, the relevant futures clearing participant or the client of such futures clearing participant is subject to bankruptcy proceedings in accordance with applicable laws."</p> |
| <p>Chapter 12 Cross-Border Jurisdiction and Coordination</p> | | |
| <p>Article 136 ...No entity or individual shall provide documents or information relating to futures business activities to foreign countries without the consent of the futures regulatory authority under the State Council and the relevant competent departments under the State Council.</p> | <p>With respect to Article 136, as far as a foreign-invested futures company is concerned, cross-border information sharing is necessary in its normal operations, including sharing with offshore shareholder, sharing for outsourcing purpose, etc. A Chinese entity participating in offshore futures business or holding an offshore futures license may also need to provide certain documents and materials pursuant to the reporting and disclosure requirements of the offshore CCP or to regulators in other jurisdictions.</p> <p>We therefore respectfully suggest that paragraph 3 of Article 136 be deleted or that an exemption be provided for the sharing of documents and information in connection with certain permitted purposes.</p> | <p><i>We suggest that paragraph 3 of Article 136 be deleted or amended as below:</i></p> <p>“No entity or individual shall provide documents or information relating to futures business activities to foreign countries without the consent of the futures regulatory authority under the State Council and the relevant competent departments under the State Council unless such provision of documents or information is carried out during its ordinary course of business, for risk management, tax or auditing purposes, or in order to perform its regulatory obligation under any applicable law or pursuant to the request made by any competent authority and does not otherwise violate any mandatory requirement under any applicable law in the People’s Republic of China.”</p> |

Appendix 2 Issues for further clarification

We set out in this Appendix 2 certain questions on the draft Futures Law from our members. We would be most grateful for your clarifications to these questions (whether in the form of Questions and Answers (Q&As) or in the Futures Law or implementing regulations).

| Article number | Issues |
|----------------|--|
| 2 | <p>Some market participants have concerns as to how Article 2 may be interpreted and applied in practice and would be grateful if there is guidance on the following aspects of Article 2:</p> <ul style="list-style-type: none"> • whether such offshore activities might be limited to transactions involving either onshore entities or onshore underliers; and • in order to fall within the scope of Article 2, whether the conditions: <ul style="list-style-type: none"> ○ “disrupt the China domestic market order” and ○ “have damaged the legitimate interests”, need to be both satisfied, or would it be sufficient if only one of them is satisfied? |
| 17 | <p>What are the types of "other contracts with security features" covered here? In particular, market participants are keen to know whether it is meant to cover “title transfer” collateral arrangements.</p> |
| 31 | <p>As the reference to other derivatives transactions "conducted through transfers by agreements" is quite broad and may give rise to uncertainties and confusions, could you illustrate the types of other derivatives transactions "conducted through transfers by agreements"?</p> |
| 131/133 | <p>Questions relating to outbound futures investments:</p> <ul style="list-style-type: none"> • Direct participation via offshore broker: paragraph 1 of Article 133 seems to contemplate only the scenario where an onshore investor engaging an onshore broker who may then engage an offshore broker. Could you clarify whether an onshore investor can directly engage an offshore broker (who may have already applied for a registration or exemption with the offshore regulator) for engaging in offshore futures transactions or does such onshore investor have to go through an onshore broker? • Clearing vs trading: paragraph 2 of Article 133 seems to contemplate registration requirement applicable only to the provision of trading services by offshore intermediaries but not the provision of clearing services. Where an offshore clearing participant is appointed by an onshore broker to provide client clearing services in respect of the futures trades of onshore clients, would such offshore clearing participant be subject to any registration requirement? In such |

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| | <p>scenario, the relevant offshore clearing participant may not always be the same person as the one who is being appointed as offshore broker.</p> <ul style="list-style-type: none"> • Procedures/requirements registration/exemption: We should be grateful if you would set out the detailed registration/exemption requirements for offshore futures brokers and offshore futures exchanges in the implementing regulations. <p>Questions relating to inbound futures investments:</p> <ul style="list-style-type: none"> • Offshore intermediaries: Does paragraph 3 of this Article 133 also apply to offshore intermediaries who participate in China futures markets through PRC futures companies? • Offshore traders: Can offshore traders directly participate in futures trading in China without going through onshore futures brokers? |
| 134 | <p>There are offshore exchanges who may have made a filing in accordance with the <i>Measures for the Administration Offices of Foreign Securities and Futures Exchanges</i> issued by the China Securities and Regulatory Commission in 2019. Could you please confirm that, when the Futures Law becomes effective, such offshore exchanges would be eligible for grandfathering and be exempted from making another filing in accordance with this Article 134?</p> |