15 October 2022

To: The China Securities Regulatory Commission
Focus Place 19, Jin Rong Street, West District
Beijing China 100033

Dear Sirs or Madams,

The Measures for the Administration of Futures Exchange (Consultation draft)

On behalf of its members, the Futures Industry Association (**FIA**)[1] respectfully presents to the Futures Department of the China Securities Regulatory Commission (the "**CSRC**") this letter in relation to the "*Measures for the Administration of Futures Exchange*" (Consultation draft) (the draft "**Measures**").

First and foremost, FIA would like to extend our warmest congratulations to the CSRC on the coming into effect of the Futures and Derivatives Law (the "**FDL**") on 1st August. The FDL provides, for the first time ever, a comprehensive and robust legal framework for the operation of the burgeoning futures market in the People's Republic of China (the "**PRC**" or "**China**"). In this connection, FIA is delighted to see the publication of the draft Measures which implement a number of the key provisions of the FDL including:

- the central clearing counterparty (**CCP**) role played by futures clearing institutions (Article 85);
- margin enforcement and default management measures over defaulting clearing participants (Article 87);
- segregation of futures margin and positions (Articles 75 & 79); and
- separate-tier settlement model (i.e., the futures clearing institution settles with its clearing participant whilst such clearing participant settles with its clients. (Articles 64 & 65)).

FIA considers the draft Measures to be of great significance as they establish a unified framework and lay down common requirements to be adopted by all futures exchanges established in the PRC. We fully support the policy objectives of the draft Measures, including many of the major revisions to the provisions in the Measures. We have also identified some key observations on the draft Measures and set these out for the kind consideration of the CSRC.

[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.

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1 Default of a futures clearing institution

Finality is one of the cornerstones of any sound and robust clearing system, playing a fundamental role in risk management systems. To this end, settlement and default management measures must be final and conclusive not just upon the default of a clearing participant, but also the default of a CCP. FIA notes that this principle is now enshrined in the FDL, which provides for the finality of settlement and default management measures and that they "shall not be stayed, invalidated or revoked due to the bankruptcy of any party to clearing" (Article 43). This critical provision has been included into the FDL notwithstanding the fact that the possibility of a default of a futures cleaning institution may be extremely remote.

However, FIA notes that the draft Measures provide only for the default of a clearing participant but not for the default of a futures clearing institution. The absence of such provisions will have a material adverse impact on clearing participants.

First, there will not be certainty and finality of settlement since clearing participants will not be able to take swift action to terminate transactions and conduct net settlement with the futures clearing institution upon its default. Accordingly, clearing participants would be unable to manage their risk exposures and minimise the impact of such a default.

Second, clearing participants would suffer punitive regulatory capital treatment[2] under applicable Basel rules if they are unable to terminate transactions with a futures clearing institution in the unlikely event of its failure to perform or insolvency. This will prevent clearing participants and end-investors globally from transacting Chinese futures products at significant levels and make futures exchanges in the PRC less competitive and attractive, running counter to the objectives of the FDL and recent relaxation under the Qualified Foreign Investor ("**QFI**") regime for QFIs to access a broad range of onshore futures products.

Therefore, FIA respectfully suggests that default related provisions in the Measures be extended to the default and bankruptcy of the futures clearing institution and also to mandate futures clearing institutions to provide for their own default in their default management rules. This will bring the Measures in line with the FDL (Article 43), as well as global standards and prevailing practices in the international markets. This will also assist futures clearing institutions from the PRC to be recognised as qualified CCPs (QCCPs) in overseas jurisdictions such as the U.S. and E.U., which will in turn enable clearing participants from these jurisdictions to trade more futures products from China.

To this end, we set out suggested language for such amendments in Part 1 of Appendix 1 (*Suggested amendments and issues for further clarification*) to this letter for your kind consideration.

[2] For instance, under U.S. regulatory capital requirements, one of the requirements for treating exposures against a CCP on a net basis (which directly impacts the QCCP determination) is the ability to close-out and net against the CCP. To do so, a clearing participant would need the ability to trigger a "close-out" against the CCP in the event of a CCP insolvency (or equivalent proceeding) or a CCP's failure to perform. There are similar requirements under the EU Capital Requirements Regulation (CRR) as well. For instance, one of the conditions to apply the favourable 2% risk weighting in respect of a CCP is such CCP is a QCCP and the ability of a clearing participant to close-out against the CCP also helps with the third-country CCP recognition in the E.U..

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2 "Separate tier" settlement model

Articles 61 and 65 of the draft Measures provide that the futures settlement model in the PRC is that of "separate tier" settlement.

FIA notes that there are two clearing models in the international markets for futures clearing: namely the "agency" model and "principal" model. Broadly speaking, under the principal model, the clearing participant acts as a principal with respect to a futures transaction with the CCP and, after novation of the transaction, there is (i) a transaction between the CCP 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 an agent for the client with respect to the transaction with the CCP but also "guarantees" the performance of the transaction to the CCP.

Given that "principal" and "agency" models are concepts broadly used in the international markets, it is key for international financial institutions (particularly the globally systemically important banks and their subsidiaries) to be able to categorise the "separate-tier" futures clearing model in the PRC into one of these models for regulatory capital requirements and other purposes. To this end, there are different views in the market as to the precise characterisation of the "separate-tier" futures settlement model which can be potentially confusing. We understand that the "separate-tier" settlement model means that the clearing institution will deal with clearing participants, who will in turn interface with their end-investors (so that the clearing institution will not interface directly with end-investors). The requirement that clearing participants will interface with its end-investors directly does not necessarily require there be any separate back-to-back transactions between clearing participants and their clients. Accordingly, we understand that market participants generally agree that the futures clearing model in China is more akin to the agency model.

To align the understanding in the market and avoid any confusion, FIA believes it would be helpful to clarify in the Measures or by way of Q&A the precise characterisation of "separate-tier" futures settlement. Certainty in the precise characterisation of the clearing model in the PRC will help to clarify the precise legal relationship between the clearing participants and their investors and the regulatory capital treatment in respect of the futures transactions, which will in turn make it more attractive for overseas investors to access China's futures market.

3 Segregation, porting and return of client assets

Principle 14 (*Segregation and portability*) of the PFMI requires a CCP to have rules and procedures that enable the segregation and portability of positions of the clients of a clearing participant as well as the collateral provided to the CCP with respect to those positions. Segregation arrangements are crucial to an end-investor to make sure the positions and assets of such investor are bankruptcy remote in the event of the default or insolvency of the relevant clearing participant or one or more of the other clients of such clearing participant. On the other hand, porting is also critical to make sure such investor's positions would not have to be forcibly liquidated in the event of the default or insolvency of the relevant clearing participant and hence critical to its risk management and business continuity.

FIA is delighted to see that an end-investor's positions and margin are required to be segregated pursuant to both the FDL (Article 40) and the draft Measures (Articles 68 & 79). However, FIA notes that the draft Measures and the FDL are silent in respect of porting. FIA

appreciates that porting is not otherwise prevented by any applicable PRC law and often futures exchanges will provide for porting in their own rules. That being said, given the significance of porting to end-investors and to make sure such porting arrangement is consistent across different futures exchanges and can form part of "settlement conducted in accordance with law" as set out in Article 43 of the FDL and hence covered by finality protection under the FDL, FIA respectfully suggests to expressly cover (or require futures exchanges to cover in their rules) porting in the Measures.[3]

Furthermore, although segregation is expressly provided for under the FDL and the draft Measures, in the event of insolvency of a clearing participant, it appears that any excess margin belonging to an end-investor may only be returned by the futures clearing institution to such end-investor indirectly via the bankruptcy administrator of the insolvent clearing participant, given there is no direct settlement relationship between the futures clearing institution and such end-investor. The primary responsibility of a bankruptcy administrator is to liquidate, manage and distribute bankruptcy estate and therefore it would not be ideal or appropriate for a bankruptcy administrator of a defaulting clearing participant to handle and intervene in the return of excess margin by a futures clearing institution to the end-investor. To this end, FIA respectfully suggests a requirement be added to the Measures for a futures clearing institution to return excess margin to end-investors directly or through another non-defaulting intermediary in the event of the bankruptcy of a clearing participant.

We set out some suggested language for the amendments in Part 1 of Appendix 1 (*Suggested amendments and issues for further clarification*) for your kind consideration.

4 Program trading

Article 90 of the draft Measures sets out the reporting regime that a futures exchange shall maintain in relation to program trading. FIA appreciates the benefits of transparency such reporting regime can bring to the markets, but FIA notices there is no statutory definition for program trading in either the FDL or the draft Measures. Although futures exchanges would be free to adopt such definition in their own rules, FIA strongly believes that having one single statutory definition in the Measures outlining the scope of program trading captured by such Measures would likely provide the market with a more desired level of legal certainty and consistency, which would also make the reporting regime more effective.

Further, FIA notes that the draft Measures require future exchanges to adopt the appropriate measures to properly supervise activities and maintain market order. We fully support this approach as we believe that this provides the flexibility necessary to accommodate and react appropriately to new technologies and practices in such a dynamic and evolving marketplace.

FIA also sets out in Appendix 2 (*Material in relation to program trading*) links to various papers recommending industry best practices and guidelines for identifying risks and strengthening safeguards in program futures markets prepared by us in recent years for your ease of reference.

[3] You may also refer to the recent CPMI-IOSCO paper on "Client clearing: access and portability" (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD712.pdf) that supports the recommendations in the letter in its 'Porting Section' to foster possible changes to mitigate impediments to portability.

5 Other observations

In addition to setting out our key observations on the draft Measure, we have also set out in Part 2 of Appendix 1 (*Suggested amendments and issues for further clarification*) to this letter certain questions on the draft Measures and other issues which we would like to draw to your attention. We should be most grateful for your clarifications of these questions (whether in the form of Questions and Answers (Q&As) or clarifications in the Measures itself).

Next steps

FIA is extremely grateful for the opportunity to comment on the draft Measures and would be pleased to discuss the issues addressed above further or otherwise to assist in any way that the CSRC deems appropriate. Publication of the Measures will be another 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 CSRC in relation to our comments and to 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.

Yours faithfully,

Bill Herder
Head of Asia Pacific
Futures Industry Association (FIA)

Copy: Dr. FANG Xinghai, Vice Chairman of the CSRC

Appendix 1 – Suggested amendments and issues for further clarification

Part 1: We set out below sample language for some of the amendments to the draft Measures suggested in the letter for your kind consideration.

Issues	Recommended changes
Default of a futures clearing institution as discussed in Section 1 of the letter	Article [X] A futures clearing institution shall provide in its rules default management measures dealing with its own failure to pay or deliver and its own bankruptcy or similar proceedings which will allow clearing participants to terminate and net settle transactions and shall bear liability for its default accordingly.
Porting as discussed in Section 3 of the letter	Article [X] A futures clearing institution shall provide in its rules arrangements relating to porting of clients' margin and positions in the event of default or bankruptcy or similar proceedings in respect of the relevant clearing member.
Return of client assets as discussed in Section 3 of the letter	Article [X] Upon commencement of bankruptcy or similar proceedings in respect of a clearing member, any excess margin posted by a client of such clearing member to a futures exchange via such member, after setting all the liabilities born, and discharging all the amounts payable, by such client in relation to its futures trading, shall be returned by the futures exchange to such client directly without going through the bankrupt member or the administrator of such bankrupt member.

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Part 2: We set out below certain questions on the draft Measures 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 Measures).

Article number	Issues
53	Unlike the FDL, the draft Measures do not distinguish between trading venue and futures clearing institution and uniformly uses the term "futures exchanges" to describe them. We note that the trading venue and clearing institution are usually the same entity in the Chinese futures markets. However, given the FDL applies different terminologies which seems to suggest it is possible for trading venue and clearing institution to be different, we would suggest that the Measures align its expressions to that of the FDL for consistency and provide more flexibility for future developments.
68	Apart from the statutory protections over clients' margin that have been provided for under current regime, it would be helpful to allow for an additional option where an end-investor may elect to have sub-account opened in its own name (for instance, can be opened in the name of "X clearing participant/Y client") under the omnibus client margin account opened by either the futures clearing institution or the clearing participant with their respective custodian bank. This would enable the cash margin posted by a client to be deposited in an individually segregated account should such client opt for such arrangement. This can provide even better protection over client assets, makes it easier for excess margin to be returned by futures clearing institution to the end-investors in the event of default or insolvency of the relevant clearing participant and also helpful for the end-investors' regulatory capital purposes.
95	Even in an emergency situation, forced liquidation is still an extreme measure that has a significant impact on investors' positions, hedging strategies and overall portfolio management. It would therefore be very helpful if further guidance can be issued to limit or clarify as to in what circumstances will such forced liquidation power be exercised by a futures exchange and what restrictions would apply when a futures exchange exercises such power.
105	How should "information exchange arrangement" and "market impact assessment" be understood? What contents would such "information exchange arrangement" need to contain? Does this Article apply to arrangements that already exist between onshore futures exchanges and overseas futures exchanges? More clarity on those requirements would be appreciated.
106	What detail in relation to the futures, options and derivatives contracts that fall into the scope of Article 106 should be reported to the CSRC and in what way? Does this Article apply to arrangements that already exist between onshore futures

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	exchanges and overseas futures exchanges? More clarity on such reporting requirement would be appreciated.
126	We understand the reference here to trading venue refers only to onshore trading venues which is consistent with the scope of application of the Measures as set out in Article 2 but would be grateful if such understanding can be confirmed.
Other	We suggest to also consider the appropriate recovery tools for the futures exchanges. For instance, upon the occurrence of default or insolvency of a clearing participant, as of today the futures exchange is responsible for closing out all the outstanding positions of such default clearing participants primarily by way of taking on offsetting trades on the market and the losses resulting from that will be absorbed in accordance with the waterfall as described in the draft Measure. It probably worth also considering what if the positions subject to such close-out are illiquid. It would be helpful for the relevant futures exchanges in that case to have guidance on how to close out such positions, for instance, by adopting tools such as auction, tear up and allocation depending on the underlying contracts.

Appendix 2- Material in relation to program trading

Since April 2010, FIA has published various papers recommending industry best practices and guidelines for identifying risks and strengthening safeguards in electronic futures markets globally, we set out below link to the relevant material for your ease of reference.

- Market Access Risk Management Recommendations (Click here, Apr. 2010);
- Recommendations for Risk Controls for Trading Firms (Click here, Nov. 2010);
- Order Handling Risk Management Recommendations for Executing Brokers (Click here, Mar. 2012);
- Software Development and Change Management Recommendations (Click here, Mar 2012);
- Drop Copy Recommendations (Click here, Sept. 2013);
- FIA and FIA Europe Special Report Series: Algorithmic and High Frequency Trading (Click here, Feb. 2015);
- Guide to the Development and Operation of Automated Trading Systems (Click here, Mar. 2015);
- FIA MiFID II Due Diligence Assessment of Prospective DEA Clients (Click here, Sept. 2017);
- FIA Summary of MIFID II DEA Requirements (Click here, Dec. 2017); and
- FIA Guidance for Firms and Third Party Algorithmic Trading Providers (Click here, Dec. 2018).

[Chinese Translation – 中文翻译]

2022 年 10 月 15 日

致：　中国证券监督管理委员会
中国北京市西城区金融大街 19 号富凯大厦
邮编：100805

敬启者：

《期货交易所管理办法（征求意见稿）》

The Futures Industry Association （期货业协会，“**协会**”）[4]谨代表全体成员就《期货交易所管理办法（征求意见稿）》（“**《管理办法（草案）》**”），向中国证券监督管理委员会（“**证监会**”）期货部提交本意见函。

协会首先希望就于 8 月 1 日生效的《中华人民共和国期货和衍生品法》（“**《期货和衍生品法》**”）向证监会表示衷心祝贺，该法为中华人民共和国（“**中国**”）欣欣向荣的期货和衍生品市场的运行首次建立了全面且有力的法律框架。就此，协会会员非常欣喜地看到旨在落实若干《期货和衍生品法》关键条款的《管理办法（草案）》的发布，该等关键条款包括：

- 期货交易所作为中央对手方的职能（第八十五条）；
- 对违约结算参与人的保证金执行和违约处置措施（第八十七条）；
- 期货结算担保金和头寸的隔离安排（第七十五条和七十九条）；及
- 分级结算制度（即期货结算机构对结算参与人结算，而该等结算参与人对其受托的客户结算）（第六十四和六十五条）。

协会深信《管理办法（草案）》具有重要意义，其为所有在中国成立的期货交易所提供了统一框架和共同适用要求。协会全力支持《管理办法（草案）》所体现的政策目标，并支持其中对过往《管理办法》条款的若干重大修订。此外，协会也在本函中提出了一些有关《管理办法（草案）》的意见，供证监会参考。

1　期货结算机构的违约

结算终局性是任何健全稳定的结算系统的基石之一，并在风险管理系统中发挥着基础性作用。为此，结算和违约管理措施不仅在结算参与人违约时必须是最终的和决定性的，在中央对手方违约时也应是如此。协会认为，这一原则现已被载入《期货和衍生品法》——它确定了结算和违约管理措施的终局性，即“依法进行的结算和交割，不因参与结算的任何一方依法进

[4] 期货业协会是国际领先的期货、期权和中央结算衍生工具市场贸易组织，分别在布鲁塞尔、伦敦、新加坡和华盛顿设有办事处。协会会员基础广泛，包括遍布约 50 个国家的结算公司、交易所、结算所、交易公司、商品专业人士，以及服务业界的技术供应商、律师事务所和其他专业机构。协会致力创造公开、透明和具竞争力的市场，保护并健全金融体系，促进高标准的专业操守。协会的结算公司成员包括全球衍生工具结算所的主要成员，在减少全球金融市场系统风险方面发挥着重要作用。更多资料请查阅：www.fia.org.

入破产程序而中止、无效或者撤销”（第四十三条）。尽管期货结算机构违约的可能性极小，但这一关键条款也已被《期货和衍生品法》所反映。

然而，协会注意到《管理办法（草案）》只对结算参与人的违约做了规定，但并未对期货结算机构的违约做出规定。缺乏此类规定将对结算参与人产生重大不利影响。

首先，由于期货结算机构违约后，结算参与人将无法迅速采取行动终止与期货结算机构的交易并进行净额结算，因此结算将不具有确定性和最终性。因而结算参与人也无法管理他们的风险敞口并将期货结算机构违约所带来的影响降至最低。

其次，在期货结算机构未能履约或发生破产事件的小概率情况下，如果结算参与人不能终止与期货结算机构的交易，根据适用的巴塞尔协议规则，他们将受到惩罚性的监管资本待遇。[5] 这将在很大程度上阻碍全球结算参与人和最终投资者交易中国期货产品，随即带来的是中国期货交易所竞争力和吸引力的降低，这与《期货和衍生品法》的目标以及近期合格境外投资者（QFI）制度的进一步放宽（QFI 被允许交易范围更广的境内期货产品）的举措是背道而驰的。

因此，协会谨建议将《管理办法》中有关违约的规定进行扩大，也覆盖期货结算机构的违约和破产，并要求期货结算机构在其违约管理规则中规定自己的违约情况。这样的做法将和《期货和衍生品法》（第四十三条）以及国际市场的准则、通行做法同步，也将有助于中国的期货结算机构在美国和欧盟等海外司法管辖区获得合格中央对手方的认定，从而使这些司法管辖区的结算参与人能够交易更多来自中国的期货产品。

为此，我们谨在附录一（*修改建议和待澄清问题*）的第一部分列明提议的示例语言，供您参考。

2 分级结算制度

《管理办法（草案）》第六十一条和第六十五条规定，我国的期货结算制度为“分级”结算。

协会表明国际期货结算市场存在两种结算模式，即“代理人”模式和“当事人”模式。从广义上讲，在当事人模式下，结算参与人作为当事人与中央对手方进行期货交易，并且在交易完成约务更替（novation）后，存在（i）中央对手方与结算参与人之间的交易，以及（ii）该结算参与人与其客户之间的另一项背靠背交易。从另一方面来看，在代理人模式下，结算参与人在与中央对手方的交易中充当客户的代理人，同时也向中央对手方“保证”该交易的履行。

鉴于“代理人”和“当事人”模式是国际市场广泛使用的概念，国际金融机构（尤其是在全球系统性重要的银行及其子公司）能否将中国的“分级”结算制度归类为这两种模式之一对于满足监管资本要求和其他相关目的而言是至关重要的。市场目前对“分级”结算制度的具体定性存在不同的看法，这可能会造成误解。我们理解，“分级”结算制度意味着结算机构将直接面对结算参与人，结算参与人将直接面对最终投资者（因此结算机构不会直接面对最终投资者）。结算参与人直接面对其最终客户的要求并不一定要求结算参与人与其客户之间

[5] 例如根据美国监管资本要求，以净额为基础处理针对中央对手方的风险敞口（直接影响合格中央对手方认定）的前提之一是能够针对中央对手方进行净额结算，结算参与人要能够在中央对手方破产（或者同等程序）或中央对手方未能履行义务的情况下触发对中央对手方的“平仓”。同样，在欧盟《资本要求条例》（CRR）下也有类似规定。比如，适用有利的 2% 风险权重的条件之一是该中央对手方是一个合格的中央对手方。并且结算参与人对中央对手方进行平仓的能力也有助于第三国中央对手方在欧盟的认可。

存在任何单独的背靠背交易，因此我们了解到市场参与者普遍认同中国的“分级”结算制度更接近于代理人模式。

为统一市场理解避免误解，协会认为可以在《管理办法》中或通过问答的方式明确“分级”结算制度的准确特征。明确中国结算模式的具体特征将有助于明确结算参与人与其投资者之间的准确法律关系，以及投资者期货交易的监管资本计提标准，以此来进一步吸引海外投资者进入中国期货市场。

3 客户财产的隔离、移仓与返还

《金融市场基础设施准则》第十四号准则（隔离和移仓）要求中央结算对手方制定相关的规则和程序，以实现结算参与人客户头寸的隔离和移仓，以及该客户向中央结算对手方提供的与这些头寸相关的抵押品的隔离和移仓。隔离安排对最终投资者至关重要，目的是为了确保在相关结算参与人或该结算参与人的一个或多个其他客户违约或破产的情况下，该投资者的头寸和资产能免受该等破产的影响。另一方面，移仓安排对于实现在结算参与人违约或破产的情况下相关投资者的头寸不被强制平仓也至关重要，因而这对投资者的风险管理和业务连续性有重要影响。[6]

协会高兴地看到，《期货和衍生品法》（第四十条）和《管理办法（草案）》（第六十八条和第七十九条）要求对最终投资者的头寸和保证金都进行隔离。然而，协会注意到《管理办法（草案）》和《期货和衍生品法》尚未提及在移仓方面的相关事宜。协会理解适用的中国法律并未限制投资者进行移仓，并且期货交易所通常会在自己的规则中提供移仓的选项。尽管如此，考虑到移仓对最终投资者的重要性，以及确保此类移仓安排在不同的期货交易所之间得以保持一致、并可构成《期货和衍生品法》第四十三条规定的“依法进行的结算”的一个环节而受《期货和衍生品法》中终局性保护，协会恭敬地建议《管理办法》明确涵盖（或要求期货交易所在其规则中涵盖）移仓的安排。

此外，尽管《期货和衍生品法》和《管理办法（草案）》明确规定了隔离，但在结算参与人破产的情况下，鉴于期货结算机构与最终投资者之间没有直接结算关系，似乎属于最终投资者的任何超额保证金只能由期货结算机构通过结算参与人的破产管理人间接退还给该最终投资者。破产管理人的主要责任是结算、管理和分配破产财产，因此违约的结算参与人的破产管理人处理和干预期货结算机构向最终投资者返还超额保证金这一行为并非理想或合适的安排。为此，协会恭敬地建议在《管理办法》中增加一项要求，要求境内期货结算机构在结算参与人破产的情况下，直接或通过另一个非违约中介机构向最终投资者返还超额保证金。

为此，我们谨在附录一（*修改建议和待澄清问题*）的第一部分列明提议的示例语言，供您参考。

4 程序化交易

《管理办法（草案）》第九十条规定了期货交易所对程序化交易应当设立报告制度。协会认可这种报告制度可以为提高市场透明度带来好处，但协会同时也注意到无论是《期货和衍生品法》还是《管理办法（草案）》都未对程序化交易提供法定的定义。尽管期货交易所可以在自己的规则中自由定义程序化交易，但协会相信《管理办法》若能有一个法定定义来描述《管

[6] 您也可以参考 CPMI-IOSCO （国际清算银行支付和市场基础设施委员会-国际证券委员会组织）最近关于《客户清算：通道和移仓》的论文 (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD712.pdf)，该论文的“移仓”章节支持此意见函中的建议，促进可能的变化以减少移仓的障碍。

理办法》所涵盖的程序化交易范围，这将会为市场提供法律确定性和一致性，也将促进报告制度更加有效实施。

此外，协会注意到《管理办法（草案）》要求期货交易所采取适当措施来进行妥善监管、维护市场秩序。我们完全支持这种做法，并相信这样能提供必要的灵活性以适应市场中不断动态发展的新技术和实践操作。

协会还在附录二（*程序化交易相关材料*）中列出了一些我们近年来编写的用于识别程序化期货市场风险和加强保护措施的行业最佳实践和指南的文献链接，以供您参考。

5 其他考量

除了上述对《管理办法（草案）》的主要意见外，我们还在随函的附录一（*修改建议和待澄清问题*）的第二部分中提出了对有关《管理办法（草案）》的一些问题以及我们希望提请您进一步阐明的其他要点。我们非常感谢您对这些问题的解释（无论是以问答的形式还是在《管理办法》中进行澄清）。

下一步行动

我们非常荣幸能有机会就《管理办法（草案）》提出意见，也非常乐意与证监会进一步探讨上述问题，或者以证监会认为合适的任何方式提供协助。《管理办法》的颁布将是国内期货立法史上的又一个重要里程碑，也是中国朝着建立健全、完善的期货和衍生品市场法律框架的目标迈出的重要一步。

我们很乐意与证监会进一步探讨我们的意见，并进一步提供业界意见。如证监会有任何问题，请随时通过 bherder@fia.org 或+65 6549 7333 与协会亚太区主管 Bill Herder 联系，或者通过 tmyeo@fia.org 或+65 9111 0717 与协会亚太法律政策事务总监 Tze Min Yeo 联系。

此致！

Bill Herder

期货业协会亚太区主管

（本函以英文和中文同时书就）

本函抄送：中国证券监督管理委员会副主席方星海博士

FIA.org

附录一 修改建议和待澄清问题

第一部分：我们在下面列出了意见函中对《管理办法（草案）》一些修改提议的示例语言，以供您考虑。

所涉问题	建议修改
第一部分期货结算机构违约中所提及的修改建议	第[●]条 期货结算机构应当在其规则中对如何处理自身未能支付或交割以及发生自身破产或类似程序的违约管理措施进行规定，允许结算参与人终止交易并进行净额结算，并承担相应的违约责任。
第三部分关于客户财产的隔离、移仓的修改建议	第[●]条 期货结算机构应当在其规则中对结算会员违约或者破产时该会员客户保证金和头寸的移仓安排进行规定。
第三部分客户财产的返还中所提及的修改建议	第[●]条 在结算会员进入破产或类似程序时，其客户在履行完毕其承担的和期货交易相关的所有责任并清偿完毕和其期货交易相关所有应付款项后，该客户通过该结算会员向期货交易所提供的任何超额保证金应由该期货交易所直接退还给该客户，而无需经过破产结算会员或者其管理人。

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第二部分：我们在本附录中列出了我们成员对《管理办法（草案）》的某些问题。我们将非常感谢您对这些问题的澄清（无论是以问答 (Q&A) 的形式，还是以《管理办法》或实施条例的形式）。

章节序号	问题
53	与《期货和衍生品法》不同的是《管理办法（草案）》不区分交易场所和期货结算机构，而统一使用“期货交易所”一词进行描述。我们注意到，在中国期货市场，交易场所和期货结算机构通常是同一实体。但是，鉴于《期货和衍生品法》使用了不同的术语，这似乎表明交易场所和期货结算机构可以有所不同，因此我们建议《管理办法》将其表述与《期货和衍生品法》的表述保持一致，并为未来的发展提供更大的灵活性。
68	除了现行制度规定的对客户保证金的法定保护外，允许最终投资者可以选择以自己的名义（例如，可以以“X 结算参与人/Y 客户”名义开立）在期货结算机构或结算参与人各自托管银行开立的综合客户保证金账户（omnibus client margin account）下开设子账户。如果客户选择这种安排，这将使客户提供的现金保证金可以存入单独的隔离账户。那么在相关结算参与人违约或破产的情况下就能更好地保护客户资产，使得期货结算机构能更容易地将超额保证金返还给最终投资者，也有利于最终投资者的监管资本计提的目的。
95	即使在紧急情况下，强制平仓仍然是一种会对投资者的头寸、对冲策略和整体投资组合管理产生重大影响极端措施。因此，如果可以发布进一步的指导来限制或澄清期货交易所在什么情况下会行使这种强制平仓权，以及当期货交易所行使这种权力时会受到哪些限制，将是非常有帮助的。
105	如何理解“信息交流安排”和“市场影响评估”？这种“信息交换安排”需要包含哪些内容？本条是否适用于境内期货交易所与境外期货交易所之间已经存在的安排？希望这些要素可以得到进一步的解答。
106	符合第一百零六条范围的期货、期权和衍生品合约应当向证监会报告哪些细节，以什么方式报告？本条是否适用于境内期货交易所与境外期货交易所之间已经存在的安排？希望这些要素可以得到进一步的解答。
126	我们理解，此处所称交易场所仅指境内交易场所，从而和本《管理办法》第二条规定的适用范围一致，希望能予以确认。
Other	我们建议还考虑期货交易所的适当追偿/资源补充工具。例如，在结算参与人发生违约或破产的情况下，现在期货交易所主要是通过在市场上进行对冲交易的形式

	将此类违约结算参与人的所有未平仓头寸进行平仓，由此产生的损失将根据《管理办法（草案）》中所述的资源补充工具吸收。 可能还值得考虑的是，如果要强制平仓的头寸缺乏流动性的怎么办。在这种情况下，希望有关期货交易所能就如何平掉此类头寸有相关的指引，例如对标的合约采用拍卖、撕毁头寸(tear-up)和损失分担等工具手段。

附录二 程序化交易相关材料

自 2010 年 4 月以来，FIA 发表了多篇文章来推荐行业最佳实践和出台指南，以帮助识别全球电子期货市场的风险和加强保护措施，我们在下面列出了相关材料的链接并保留原英文标题，以便您确认和参考。

- Market Access Risk Management Recommendations (链接点击这里) 市场准入风险管理建议（2010 年 4 月）；
- Recommendations for Risk Controls for Trading Firms (链接点击这里) 交易公司风险控制建议（2010 年 11 月）；
- Order Handling Risk Management Recommendations for Executing Brokers (链接点击这里)执行经纪人的订单处理风险管理建议（2012 年 3 月）；
- Software Development and Change Management Recommendations (链接点击这里) 软件开发和变更管理建议（2012 年 3 月）；
- Drop Copy Recommendations (链接点击这里) 删除副本建议（2013 年 9 月）；
- FIA and FIA Europe Special Report Series: Algorithmic and High Frequency Trading (链接点击这里) 期货业协会和协会欧洲特别报告系列：算法和高频交易（2015 年 2 月）；
- Guide to the Development and Operation of Automated Trading Systems (链接点击这里) 自动交易系统开发和操作指南（2015 年 3 月）；
- FIA MiFID II Due Diligence Assessment of Prospective DEA Clients (链接点击这里) 期货业协会 -对潜在 DEA 客户的 MiFID II 尽职调查评估（2017 年 9 月）；
- FIA Summary of MIFID II DEA Requirements (链接点击这里) 期货业协会 MIFID II DEA 要求摘要（2017 年 12 月）；和
- FIA Guidance for Firms and Third Party Algorithmic Trading Providers (链接点击这里) 期货业协会就公司和第三方算法交易提供商指南（2018 年 12 月）。