[中文翻译]

2023 年 4 月 22 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：

《期货公司监督管理办法（征求意见稿）》

The Futures Industry Association （期货业协会，**“协会”**）[1]谨代表全体会员就《期货公司监督管理办法（征求意见稿）》（**“《管理办法》（征求意见稿）”**），向中国证券监督管理委员会（**“证监会”**）期货监管部提交本意见函。

首先，对于证监会在《中华人民共和国期货和衍生品法》(**“《期货和衍生品法》”**）实施后为中华人民共和国（**“中国”**）期货业建立全面而坚实的制度框架的不断努力，协会深表赞赏。我们欣喜地看到证监会近期发布了多项规章草案向社会公开征求意见，包括《期货市场持仓管理暂行规定》以及即将生效的《期货交易所管理办法》。我们也注意到证监会正在就《期货从业人员管理办法（征求意见稿)》向社会公开征求意见，以完善期货从业人员的监管机制并加强对期货从业人员的监督管理。协会全力支持上述举措。

协会深感鼓舞地看到《管理办法》（征求意见稿）不仅将期货市场长期以来实践中的成熟做法予以制度化，还力求完善和更新对期货公司及其利益相关方的监管要求，其中包括：

- 在证监会批准的前提下允许期货公司拓展业务范围；
- 完善公司治理，强化期货公司对关键人员和重要实体的监管，包括完善和明确期货公司不同类型股东和实际控制人的资格条件；以及
- 提升期货公司防范业务和财务风险的能力，明确公司治理和内控制度的监管要求，包括自有资金的使用，股份转让以及提供融资或担保。

协会深信《管理办法》（征求意见稿）通过完善期货公司监督管理的法律和监管框架，进一步落实了《期货和衍生品法》的相关规定，具有重要意义。协会和我们的会员全力支持《管理办法》（征求意见稿）所体现的政策目标，并且就一些关键问题提出了意见和建议，载于本函及附录中，供证监会参考。

[1] 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。协会的结算公司会员包括全球衍生工具结算所的主要会员，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.

FIA.org

1 对境外股东和实际控制人的要求

《管理办法》（征求意见稿）第十一条规定，期货公司主要股东、控股股东、第一大股东为境外股东的，该股东应是依其所在国家或者地区法律设立、合法存续的金融机构。然而，协会从其会员处了解到，实践中跨国金融集团可能会采用由一家非金融机构的控股公司作为多家运营实体（包括其拟在中国设立的期货公司）的控股股东的股权结构。采用该种股权架构可能是出于与该金融集团或其司法辖区相关的特殊原因，例如监管、税务和其他商业方面的考虑。境外控股公司经营期货公司的资信和能力应当在集团层面进行评估，而未必取决于其本身是否取得金融机构的牌照。因此，协会建议《管理办法》授予证监会允准不同组织架构的境外股东的法定权力。

此外，我们理解《管理办法》（征求意见稿）第七条至第十二条的相关规定应当仅适用于某一主体首次成为期货公司主要股东、控股股东、第一大股东或者实际控制人之时。 此后，前述股东或者实际控制人仍需遵守持续合规要求，例如《管理办法》（征求意见稿）第四十九条和第五十条规定的评估、报告义务等。为避免产生混淆，我们建议《管理办法》明确第七条至第十二条的要求仅适用于某一主体首次成为该类股东或实际控制人的时点。

2 跨境数据传输

《管理办法》（征求意见稿）第七十条和第一百一十六条规定期货公司不得向第三方提供客户信息，但为接受有关部门检查、调查或遵守中国有关法律法规的除外。

然而，日常和频繁的跨境信息交换对于外资期货公司的运营是必要的。这包括期货公司出于内部管理之目的与其境外股东、境外实际控制人或境外分支机构分享客户信息和交易信息。因此，在始终遵守中国关于个人信息保护、国家安全和其他相关领域的法律法规的前提下，该等数据跨境流动得到相关法规的明确认可和支持是十分重要的。

一些会员担心《管理办法》（征求意见稿）第七十条和第一百一十六条可能会被解释为禁止该等数据传输。 有鉴于此，我们谨建议《管理办法》明确在符合中国有关法律法规以及（在涉及客户信息时）征得客户同意的前提下，允许期货公司与境外实体分享相关数据。我们在附录中列出对第七十条和第一百一十六条的修改建议，以供证监会参考。

3 跨境活动的监管

协会注意到《管理办法》（征求意见稿）并未对跨境活动予以具体规范，例如境内期货公司的境外经纪业务、境内期货公司转委托的境外期货经纪机构的注册、境外机构在中国境内开展业务的监管安排等。 我们也注意到，证监会将对上述问题和其他相关问题进行全面的研究论证。

协会在跨境活动的监管方面积累了丰富的专业知识，并就此与全球各地的监管机构紧密合作。与之相关，协会于 2021 年 9 月发布了“跨境监管原则”[2]白皮书。该白皮书是对一系列全球发展问题的回应，包括中国日益融入全球金融市场，这也意味着需要对跨境活动采取有效和高效的监管方法。 协会倡议将对等的母国监管作为跨境监管的基本要素，并提出了监督和管

[2] https://www.fia.org/fia/articles/fia-releases-principles-cross-border-regulation

理的七项指导性原则。 这些原则包括确定跨境活动的必要性、界定结果、以国际标准为基准、评估结果而非规则、与相对方沟通、采取措施以及建立持续合作的机制。

在《期货和衍生品法》第一百二十条的背景下，协会支持对为中国境内实体提供期货经纪和结算服务的境外期货经营机构采取认可制度，在其他司法辖区的监管制度具有充分对等性的前提下，允许证监会批准其他司法辖区的特定机构在中国境内开展业务。 因此，证监会在根据《期货和衍生品法》第一百二十条制定跨境活动监管规定时，可考虑以下两种方式之一：

- 豁免来自对等司法辖区的境外期货经纪和清算机构的注册要求；或
- 在需要注册或许可的情况下，采取 “替代合规”的方式，在合适的情况下就相关合规事宜遵从境外期货机构所在地监管机构的要求。

证监会还可以考虑在任何注册或许可要求生效之前提供充分的过渡期，以便境外期货机构在申请许可的过程中能够继续为中国的投资者提供有价值的服务。鉴于有资质的中国金融机构和有经验的机构投资者已经被视为有经验的投资者，也可以考虑豁免境外经营机构在面向该等机构进行市场营销和交易时的注册或许可要求。

我们非常乐意以任何可能对证监会有帮助的方式展开合作，包括提供相关信息和参与讨论。

4 其他考量

除了上述对《管理办法》（征求意见稿）的主要意见外，我们还在随函的附录进一步列出了对《管理办法》（征求意见稿）的具体修订建议以及对其他问题的意见。如证监会能够加以考虑并进一步澄清有关问题，我们将不胜感激。

下一步行动

我们非常荣幸能有机会就《管理办法》（征求意见稿）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》的颁布将会是中国朝着落实《期货和衍生品法》并建立健全、完善的期货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）

附录 修改建议和待澄清问题

条款	意见/待澄清问题	修改建议
第二章 设立、变更与业务终止		
第十一条	意见： 协会从其会员处了解到，跨国金融集团可能会采用由一家非金融机构的控股公司作为多家运营实体（包括其拟在中国设立的期货公司）的控股股东的股权结构。因此，协会谨建议《管理办法》授予证监会允准不同组织架构的境外股东的法定权力。 此外，协会建议《管理办法》明确第十一条的要求仅适用于某一主体首次成为期货公司主要股东、控股股东或第一大股东的时点。 详细论述请见本函正文第 1 节。	*协会建议第十一条第一款和第（一）（二）项修改如下：* “境外主体成为期货公司主要股东、控股股东、第一大股东为境外股东之时~~的~~，除应当符合本办法第七条、第九条规定的条件外，还应当具备下列条件： （一） 依其所在国家或者地区法律设立、合法存续的金融机构或者其他证监会认可的机构； （二） 近三年各项财务指标及监管指标符合所在国家或者地区法律的规定和监管机构的要求，或者其他证监会认定的要求；”
第十二条	意见： 协会谨建议《管理办法》明确第十二条的要求仅适用于某一主体首次成为期货公司实际控制人的时点。详细论述请见本函正文第 1 节。	*协会建议第十二条第二款修改如下：* “境外主体成为期货公司的实际控制人~~为境外主体的~~时，应当符合前款以及本办法第十一条第三项、第五项规定。上述实际控制人为境外金融机构的，在其成为期货公司实际控制人之时，还应当符合本办法第十一条第二项规定。”

第十五条	意见： 协会谨建议允许境外股东在提交申请文件方面有更大的灵活性，这与《管理办法》（征求意见稿）第十一条的拟议修订相对应，也与《关于实施<证券公司股权管理规定>有关问题的规定》（证监会于 2021 年 3 月 18 日发布的最新修订版本）相协调。	*协会建议第十五条第二款第（二）项修订如下：* “境外股东所在国家或者地区的相关监管机构，或者证监会认可的境外机构或律师事务所、会计师事务所等中介机构出具的关于其符合本办法第七条第九项、第十项和第十一条第一项、第二项规定条件的说明函。”
第十七条	意见： 协会谨建议证监会在相关法规中就期货公司内部控制的要求制定具体指引，以保障其自营业务及代客业务的风险隔离，或授权中国期货业协会制定相关规定。	
第十九条	意见： 不同于第二十四条变更股权的申请材料，期货公司变更业务范围的申请材料基本为事实材料而非法律文件。因此，协会谨建议删除“律师事务所出具的法律意见书”这一要求，或明确需要发表法律意见的问题（例如确认公司提交材料的真实性或确认公司符合资质要求）。	*协会建议删除第十九条第（七）项“律师事务所出具的法律意见书”。*
第二十六条	待澄清问题： 协会谨建议进一步明确第二十六条第一款中的“穿透式监管”是否仅指向第二十六条第二款和第三款的要求。	*如是，为避免疑义，协会建议删除第二十六条第一款。*

第三章 公司治理		
第四十四条	意见： 协会谨建议第四十四条的表述与《公司法》第十九条的规定保持一致。	*协会建议第四十四条第一款修订如下：* “在期货公司中，~~应当按照~~根据《中国共产党章程》的规定，设立党的组织机构，开展党的活动~~，~~。~~并~~期货公司应当为党组织的活动提供必要条件。”
第五十条	意见： 出于特定的实际情况（例如除时差的原因外，中国的工作日在其他的司法辖区也可能是公众节假日），境外主要股东或实际控制人可能无法在三个工作日的时限内采取行动，就特定事项通知期货公司。因此，协会谨建议将第五十条项下的通知时限延长至五个工作日。	*协会建议第五十条第一款修订如下：* “期货公司主要股东或者实际控制人出现下列情形之一的，应当真实、准确、完整地在~~三~~五个工作日内通知期货公司：”
第五十九条	意见： 协会谨建议《管理办法》仅要求期货公司对其分支机构进行合规检查或稽核审计中的一项，因为任何一项措施都足以保证分支机构的有序运营。此外，协会建议对分类评级结果在 BBB 级及以上的公司，降低该等合规检查或稽核审计的频率要求，以减轻风险较低的期货公司的负担。	*协会建议第五十九条修订如下：* “期货公司应当加强对分支机构的合规检查~~和~~或稽核审计，保障分支机构规范、安全运营。 期货公司应当在每年度结束之日起四个月内将期货公司对分支机构的合规检查~~和~~或稽核审计情况报告公司住所地证监会派出机构。 期货公司最近三年分类评级结果连续为 BBB 级及以上的，对其分支机构的合规检查或者稽核审计可以调整为每三年进行一次。”

第六十三条	待澄清问题： 协会谨建议进一步澄清第六十三条所述的“关联方的股票、基金份额、债券等金融资产”是指关联方发行的金融资产，还是关联方承销的金融资产。	
第四章 业务规则		
第七十条	意见： 日常和频繁的跨境信息交换对于外资期货公司的运营是必要的。因此，协会谨建议《管理办法》明确在符合中国有关法律法规以及（在涉及客户信息时）征得客户同意的前提下，允许期货公司与境外实体分享相关数据。详细论述请见本函正文第2节。	*协会建议在第七十条第一款后加入下面一段：* “期货公司应当根据法律法规和证监会的规定，制定数据跨境传输的内部政策和程序，并且可以根据该等内部政策和程序，向境外股东、境外实际控制人、境外分支机构、境外客户等提供相关数据。”
第七十六条	意见： 考虑到未来期货公司的业务范围将逐步扩展到信用相关业务，在客户资信状况恶化的情况下，期货公司需要积极控制其经纪业务的风险。 因此，协会建议明确期货公司可以根据自身风险控制要求和客户资信状况，对期货经纪合同的相关条款进行修改。	*协会建议第七十六条第二款修订如下：* “《〈期货经纪合同〉指引》和《期货交易风险说明书》由中国期货业协会制定。期货公司可以根据内部风险控制要求和客户资信状况对《期货经纪合同》进行修改。”
第七十七条	意见： 考虑到信息和交易技术的不断演进和发展，协会谨建议拓展下达交易指令的委托方式的范围。	*协会建议第七十六条第一款修订如下：* “客户可以通过书面、电话、自助终端、网络等委托方式中的一种或多种委托方式的组合下达交易指令。交易指令应当明确、具体、全面。”

FIA
FIA.org

第五章 客户资产保护		
第一百零七条	意见： 《期货和衍生品法》第四十三条保护用于结算和交割的资产（例如期货保证金、权利金、结算担保金、风险准备金等）在任何情形下（包括为了偿还客户自己的债务）不被查封、冻结、扣押或者强制执行。因此，协会建议第一百零七条的表述与《期货和衍生品法》第四十三条的规定相协调。	*协会建议第一百零七条修订如下：* “期货公司的自有资产应当与客户资产相互独立、分别管理。除期货保证金、权利金、结算担保金和风险准备金外，非因客户本身的债务或者法律、行政法规规定的其他情形，不得查封、冻结、扣划或者强制执行其他客户资产。期货公司破产或者清算时，客户资产不属于破产财产或者清算财产。”
第一百零九条	意见： 协会谨建议明确（为参与不同期货交易所的交易而开立的）任何期货结算账户均可用于存取期货保证金，以提高资金使用效率并实行净额结算。	*协会建议第一百零九条第二款修订如下：* “期货公司和客户应当通过备案的期货保证金账户和登记的任何期货结算账户转账存取保证金。”
第一百一十六条	意见： 请见协会对第十七条的意见。	*协会建议第一百一十六条第一款修订如下：* “期货公司应当通过自身具有管理权限的信息技术系统直接接受客户交易指令，不得允许或者配合其他机构、个人截取、留存客户信息，不得以任何方式向其他机构、个人违规提供客户信息，经相关客户同意或者法律、行政法规以及证监会另有规定的除外。”

22 April 2023

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

Dear Sirs/Madams,

The Measures for the Supervision and Administration of Futures Companies (Consultation draft)

On behalf of our members, the Futures Industry Association (**FIA**)[3] respectfully presents to the Futures Department of the China Securities Regulatory Commission (the "**CSRC**") this letter in relation to the "*Measures for the Supervision and Administration of Futures Companies*" (Consultation draft) (the draft "**Measures**").

First and foremost, FIA commends the CSRC's continuous efforts to establish a robust and comprehensive framework for the futures industry in the People's Republic of China (the "**PRC**" or "**China**") following the implementation of the Futures and Derivatives Law (the "**FDL**"). We are pleased to see the CSRC's recent publication of several draft regulations for public consultation, including the *Interim Measures for the Management of Open Positions in Futures Market* and the soon-to-be-effective *Measures for the Administration of Futures Exchanges*. We also note that the CSRC is currently seeking public feedback on its draft *Measures for the Administration of Futures Practitioners*, which aims to improve the regulatory mechanism for futures market practitioners and strengthen supervisory oversight over them. FIA fully supports these efforts.

FIA is encouraged to see that the draft Measures not only codify long-standing best practices in the futures market, but also seek to refine and update regulatory requirements on futures companies and their stakeholders. These include:

- allowing futures companies to expand their scope of business, subject to CSRC's approval;
- improving governance and strengthening futures companies' supervision of key personnel and entities, including refining and clarifying the requirements for different types of shareholders and actual controller of a futures company; and
- improving the ability of futures companies to prevent business and financial risks by specifying regulatory requirements on corporate governance and internal controls, including the use of proprietary funds, share transfers, and the provision of financing or guarantees.

FIA considers the draft Measures to be of great significance as they implement the provisions of the FDL by optimizing the legal and regulatory framework for the supervision and administration of futures companies. FIA and our members fully support the policy objectives of the draft Measures and have

[3] 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.

identified some key observations and suggestions. These are as set out in this letter and the appendix for the kind consideration of the CSRC.

1. Requirements on offshore shareholders or actual controller

Article 11 of the draft Measures provides that where a major shareholder, the controlling shareholder or the largest shareholder of a futures company is an offshore shareholder, such shareholder shall be a financial institution incorporated and legally subsisting in accordance with the laws of the country or jurisdiction of its domicile. However, in practice, FIA understands from its members that multi-national financial groups may adopt a shareholding structure where a holding company that is not a financial institution will act as a controlling shareholder of various operating entities (including the PRC futures company they intend to establish). Such shareholding structure may be adopted for a number of reasons specific to the financial group or their particular jurisdiction, such as regulatory, tax and other commercial considerations. The offshore holding company's credit and capability to operate a futures company should be evaluated at the group level and does not necessarily depend on its licensing status. Accordingly, FIA respectfully submit that the Measures give statutory power to CSRC in authorizing foreign shareholders with different organization structures.

In addition, we understand that the requirements under Articles 7 to 12 of the draft Measures only apply when an entity first becomes the major shareholder, controlling shareholder, largest shareholder or actual controller of a futures company. Afterwards, such shareholder or actual controller will be subject to continuing compliance requirements such as the evaluation and reporting obligations under Articles 49 and 50 of the draft Measures. To avoid any confusion, we suggest that the Measures clarify that the requirements under Articles 7 to 12 of the draft Measures apply only at the point where an entity first falls into the applicable category.

2. Cross-border data transfer

Articles 70 and 116 of the draft Measures mandate that a futures company must not disclose client data to third parties except during inspection or investigation by relevant authorities or in compliance with relevant PRC laws and regulations.

However, the routine and frequent cross-border exchange of information is necessary to the operations of a foreign-invested futures company. This includes the sharing of client data and trade information with its offshore shareholders, offshore actual controller or offshore branches for the purposes of internal management. It is therefore important that such cross-border data flow be expressly recognized and facilitated under the relevant regulations, while always remaining subject to applicable PRC laws and regulations concerning personal information protection, national security and other relevant areas.

Some members have concerns that Articles 70 and 116 of the draft Measures could be interpreted as prohibiting such data transfer. To address these concerns, we respectfully recommend that the Measures expressly permit a futures company to share relevant data with offshore entities in accordance with applicable PRC laws and regulations, and subject to client consent where client information is involved. The suggested amendments to Articles 70 and 116 are set out in the Appendix for your kind consideration.

FIA
FIA.org

3. Regulations on cross-border activities

FIA notes that the Measures do not specifically regulate cross-border activities such as offshore brokerage business of onshore futures companies, registration of offshore futures brokerage institutions appointed by onshore futures companies, and regulatory arrangements for offshore institutions conducting business in China. We further note that the CSRC will carry out comprehensive research and analysis on these and other relevant issues.

FIA has developed significant expertise around the regulation of cross-border activity and has engaged with regulators across the globe in this regard. In line with this, FIA published a white paper on "*Principles for Cross-Border Regulation*[4]" in September 2021. The paper is a response to a range of global developments, including China's growing integration into global financial markets, which necessitate effective and efficient approaches to cross-border activity. FIA advocates for the reliance on comparable home country regulation as a fundamental element of cross-border regulation and proposes seven principles to guide regulation and supervision. These principles include determining the necessity of cross-border activity, defining outcomes, benchmarking against international standards, assessing outcomes over rules, communicating with counterparts, adopting measures, and creating mechanisms for ongoing cooperation.

In the context of Article 120 of FDL, FIA supports a recognition approach for overseas futures business institutions that offer futures brokerage and clearing services to onshore entities in the PRC. Such an approach would allow the CSRC to permit offshore institutions from other jurisdictions to operate within the PRC, provided that the regulatory regime of that other jurisdiction is sufficiently comparable. When formulating regulations for cross-border activities under Article 120 of the FDL, the CSRC could therefore consider either:

- exempting offshore futures brokerage and clearing institutions from comparable recognized jurisdictions from licensing requirements; or
- where registration or licensing were to be required, adopting a "substituted compliance" approach and deferring (as appropriate) relevant compliance matters to the home regulator of offshore futures institutions.

The CSRC could also consider providing a sufficient transitional period before any licensing requirements come into effect, so that offshore futures institutions can continue to provide valuable services to investors in the PRC while in the process of applying for licensing. Offshore business institutions could also be exempted from licensing requirements when marketing and dealing with qualified financial institutions and sophisticated institutional investors from the PRC, given that these entities are already considered sophisticated.

We would be happy to work with the CSRC in any way that might be helpful, including providing relevant information and participating in discussions.

4. Other observations

In addition to setting out our key observations on the draft Measures, we have also set out in the Appendix further detailed amendments to the text of the draft Measures and other issues. We should be most grateful for your kind consideration and further clarifications.

[4] https://www.fia.org/fia/articles/fia-releases-principles-cross-border-regulation

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 an important step towards implementation of the FDL and 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)

Appendix

Suggested Amendments and Issues to Be Clarified

Clause	Comments / Issues to Be Clarified	Suggested Amendments
Chapter 2 Establishment, Change and Termination of Business		
Article 11	**Comments:** FIA understands from its members that multi-national financial groups may adopt a shareholding structure where a holding company which is not a financial institution will act as a controlling shareholder of various operating entities (including the PRC futures company they intend to establish). Accordingly, FIA respectfully submit that the Measures give statutory power to CSRC in authorizing foreign shareholders with different organization structures. FIA further suggests that the Measures clarify that the requirements under Article 11 apply only when an entity first becomes a major shareholder, the controlling shareholder or the largest shareholder of a futures company. Please refer to section 1 of the cover letter for more details.	*FIA suggests the first paragraph and items (1) and (2) of Article 11 be amended as follows:* "At the time when an offshore entity becomes ~~Where~~ a major shareholder, the controlling shareholder or the largest shareholder of a futures company ~~is an offshore shareholder~~, such shareholder shall meet the following requirements in addition to those set out in Articles 7 and 9 of the Measures: (1) it shall be a financial institution incorporated and legally existing in accordance with the laws of the country or region of its domicile or any other institution recognized by the CSRC; (2) all its financial and regulatory indicators in the last three years shall comply with the provisions of the laws of the country or region of its domicile and the requirements of regulatory authorities thereof or other requirements set out by the CSRC;"
Article 12	**Comments:** FIA respectfully suggests that the Measures clarify that the requirements under Article 12 apply only when an entity first becomes the actual controller of a futures company. Please refer to section 1 of the cover letter for more details.	*FIA suggests the second paragraph of Article 12 be amended as follows:* "At the time when an offshore entity becomes, ~~If~~ the actual controller of a futures company ~~is an offshore entity~~, it shall comply with the provisions of the preceding paragraph and Items 3 and 5 of Article 11 of the Measures. If such ~~the~~ actual controller is an offshore financial institution, at the time when

Clause	Comments / Issues to Be Clarified	Suggested Amendments
		it becomes the actual controller, it shall also comply with the provisions of Item 2 of Article 11 of the Measures."
Article 15	**Comments:** FIA respectfully suggests allowing more flexibility in terms of application documents to be submitted by an offshore shareholder, which is compatible with the proposed amendment to Article 11 of the draft Measures and also aligned with the *Rules on Issues Relating to Implementation of the Administrative Provisions on Equities of Securities Companies* (latest amendment issued by the CSRC on 18 March 2021).	*FIA suggests item (2) under the second paragraph of Article 15 be amended as follows:* "a statement issued by the relevant regulatory authorities of the country or region of the offshore shareholder's domicile, ~~or~~ an offshore institution recognized by the CSRC or an intermediary (such as a law firm or an accounting firm) recognized by the CSRC that the offshore shareholder satisfies the requirements stipulated in items 9 and 10 under Article 7 and items 1 and 2 under Article 11 of this Measures."
Article 17	**Comments:** FIA respectfully suggests that CSRC provides detailed guidelines in respect of the internal control requirements of the futures company for the purpose of ringfencing agency and principal activities in relevant regulations or delegates the China Futures Association to formulate such rules.	
Article 19	**Comments:** Different from changes in equity ownership in Article 24, the materials submitted for change of business scope are basically factual materials rather than legal documents. Therefore, FIA respectfully suggests removing the requirement for legal opinions from law firms or clarifying the issues to be opined on	*FIA suggests deleting item (7) "legal opinions issued by law firms" under Article 19.*

Clause	Comments / Issues to Be Clarified	Suggested Amendments
	(e.g. confirming the authenticity of the company's materials submitted or the satisfaction of qualification requirements).	
Article 26	**Issues to Be Clarified:** FIA respectfully suggests that further clarification be made as to whether the “see-through supervision” in the first paragraph of Article 26 refers only to the requirements under the second and third paragraphs of Article 26.	*If so, to avoid ambiguity, FIA would suggest deletion of the first paragraph of Article 26.*
Chapter 3 Corporate Governance		
Article 44	**Comments:** FIA respectfully suggests that the drafting of Article 44 be aligned with Article 19 of the *Company Law*.	*FIA suggests that the first paragraph of Article 44 be amended as follows:* “In a ~~A~~ futures company ~~shall~~, in accordance with the provisions of the *Constitution of the Communist Party of China*, ~~establish~~ the organization of the Communist Party of China (the “**CPC**”) is established to~~,~~ carry out CPC activities~~,~~. ~~and~~ The futures company shall provide necessary conditions for such activities.”
Article 50	**Comments:** Three working days may not provide sufficient time to offshore major shareholder or actual controller to take steps to notify the futures company of certain events, due to specific factual situations (for example, working day in China may well be a public holiday in other jurisdictions besides time zone differences). Therefore, FIA respectfully suggests that the time	*FIA suggests that the first paragraph of Article 50 be amended as follows:* “A major shareholder or actual controller of a futures company shall notify the futures company truthfully, accurately and completely within ~~three~~ five working days under any of the following circumstances:”

FIA.org

Clause	Comments / Issues to Be Clarified	Suggested Amendments
	limit for notification under Article 50 be extended to five working days.	
Article 59	**Comments:** FIA respectfully suggests requiring either compliance inspection or auditing of branches, as any one of the measures should already be sufficient to ensure the orderly operation of branches. FIA also suggests reducing the frequency for compliance inspection or auditing for companies with classification evaluation results of BBB or above so as to eliminate burden on futures companies where risks are low.	*FIA suggests that Article 59 be amended as below:* "A futures company shall strengthen compliance inspection ~~and~~ or auditing of its branches to ensure their compliant and safe operation. A futures company shall, within four months from the end of each year, report the results of compliance inspection ~~and~~ or auditing of its branches to the local CSRC office at the place where the company is domiciled. For futures companies with classification evaluation results of BBB or above in the past three consecutive years, the compliance inspection or auditing of branches may be adjusted to be carried out every three years."
Article 63	**Issues to Be Clarified:** FIA respectfully suggests that further clarification be made as to whether "the financial assets such as stocks, fund shares and bonds of the related parties" referred to in Article 63 mean the financial assets issued by the related parties or those underwritten by related parties.	
Chapter 4 Business Rules		
Article 70	**Comments:** Routine and frequent cross-border exchange of information is necessary to the operations of a foreign-invested futures	*FIA suggests the following paragraph be inserted immediately following the first paragraph of Article 70:*

Clause	Comments / Issues to Be Clarified	Suggested Amendments
	company. FIA therefore respectfully recommend that the Measures expressly permit a futures company to share relevant data with offshore entities in accordance with applicable PRC laws and regulations, and subject to client consent where client information is involved. Please refer to section 2 of the cover letter for more details.	"A futures company shall, in accordance with laws and regulations and the provisions of the CSRC, formulate an internal policy and procedure for cross-border data transfer, and may provide relevant data to offshore shareholders, offshore actual controllers, offshore branches, offshore customers, etc. in accordance with such internal policy and procedure."
Article 76	**Comments:** Considering that the business scope of a futures company will gradually expand to credit business in the future, a futures company needs to actively control risks of its brokerage business when the client's credit status deteriorates. Therefore, FIA suggests clarifying that the futures company can modify the relevant terms of the futures brokerage contract according to its own risk control requirements and the client's credit status.	*FIA suggests that the second paragraph of Article 76 be amended as below:* "The Guidelines for Futures Brokerage Contracts and the Futures Trading Risk Statement were formulated by the China Futures Association. A futures company may revise the Futures Brokerage Contract according to its internal risk control requirements and customer credit conditions."
Article 77	**Comments:** FIA respectfully suggests broadening the scope of entrustment methods to place order in light of the constantly evolving and developing of information and trading technology.	*FIA suggests that the first paragraph of Article 77 be amended as below:* "A client may place transaction orders through any one or a combination of the entrustment methods such as written instruction, telephone, self-service terminal, and network. The trading order shall be clear, specific and comprehensive."
Chapter 5 Protection of Client Assets		
Article 107	**Comments:** Assets used for clearing and settlement such as futures margin, premium, settlement deposit, risk reserve are	*FIA suggests that Article 107 be amended as below:* "The self-owned assets of a futures company shall be managed independently and separately from the assets of clients. With the exception

Clause	Comments / Issues to Be Clarified	Suggested Amendments
	protected under Article 43 of the FDL from being seized, frozen, seized or enforced under any circumstances including for the purpose of repaying client's own debts. FIA therefore suggests the drafting of Article 107 to be aligned with Article 43 of the FDL.	of margin, premium, settlement deposit and risk reserve, other assets of the client shall not be sealed up, frozen, deducted or enforced except for the purpose of repaying the client's own debt or under any other circumstances as stipulated by laws or administrative regulations. When a futures company goes bankrupt or liquidates, the client's assets are not bankruptcy property or liquidation property."
Article 109	**Comments:** FIA respectfully suggests clarifying that any of the futures settlement accounts (for the purpose of trading on different futures exchanges) may be used for margin deposit and withdrawal, in order to improve the efficiency of capital utilization and implement the netting system.	*FIA suggests that the second paragraph of Article 109 be amended as below:* "The futures company and the client shall deposit and withdraw margin by transfer under the futures margin account that has been granted recordation and any of the futures settlement accounts that has been registered."
Article 116	**Comments:** Please refer to the comments under Article 70.	*FIA suggests that the first paragraph of Article 116 be amended as below:* "A futures company shall directly accept clients' trading orders through its own information system with relevant management authority, and shall not allow or cooperate with any other institution or individual to intercept and retain clients' information, or provide clients' information to any other institution or individual in violation of relevant regulation in any form, except with the consent of relevant clients or is otherwise prescribed by any law, administrative regulation or the provisions of the CSRC."