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China Regulator Proposes to Permit Designated Domestic Futures Contracts to be Traded by Foreigners

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The China Securities Regulatory Commission (CSRC) is soliciting public comment on proposed rules (Interim Measures) that would open Chinese futures markets to direct trading by non-Chinese persons apparently for both speculative and hedging purposes.

The Interim Measures, if adopted, will permit certain foreign persons and brokerage firms (defined respectively as Overseas Traders and Overseas Brokers) to trade “Specific Futures Contracts” that will be designated by the CSRC and listed for trading on China’s futures exchanges. CSRC published the Interim Measures on December 31, 2014, and comments are due by January 31, 2015 in China (this likely means by 11:00 a.m. (ET) on January 31 in light of the time differences).

Crude oil futures contracts traded on a subsidiary of the Shanghai Futures Exchange (the Shanghai International Energy Exchange) appear likely to be the first beneficiary of the new rules.

Currently, only a stock index futures contract listed on the China Financial Futures Exchange² is available for hedging purposes to a limited group of foreigners—so-called “qualified foreign institutional investors”—under very limited conditions.

Under the Interim Measures, Overseas Traders would be permitted to access Specific Futures Contracts either through Chinese or Overseas Brokers, or trade directly through exchange facilities, subject to exchange approval.³ Although Overseas Brokers may become members of authorized China futures exchanges to process trades of Overseas Traders, it appears that only local brokers can ultimately clear approved products for Overseas Traders. However, it may be possible for Overseas Brokers that establish or control entities in pilot free trade zones in China (one is located in Shanghai) to become clearing members. The proposed rules are not clear on this point.

CSRC, the relevant exchange, the China Futures Association (CFA) and the China Futures Margin Monitoring Center (CFMMC) would all play a role in monitoring aspects of trading by Overseas Traders and Brokers.

¹ Translation provided by Min Li and Jia Fei of the Shanghai office of Katten Muchin Rosenman LLP.

² www.cffex.com.cn/en_new/

³ Third country laws and regulations governing the conduct of non-Chinese customers and brokers may also be relevant. For example, a non-US exchange may not permit a US customer or trader to access the exchange directly unless it is registered with the Commodity Futures Trading Commission as a foreign board of trade. See CFTC Rule 48.3.

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CFA is China's national self-regulatory organization for the futures industry, overseen by the CSRC. It functions very much like the US National Futures Association.⁴ CFMMC, a nonprofit corporation registered with the State Administration for Industry and Commerce and also overseen by the CSRC, is responsible for overseeing and providing early warning of potential issues with the handling of customer margin by Chinese futures brokers.⁵

Among other things, qualified Overseas Traders would have to satisfy eligibility requirements established by CSRC and the relevant exchange. Authorized Overseas Brokers would have to be subject to oversight by a regulator in their home jurisdiction. The regulator would have to enter into a memorandum of understanding with CSRC governing cooperation where the Overseas Broker is a member of an authorized China futures exchange and directly facilitates the trading by Overseas Traders. Relevant futures exchanges, domestic futures companies and Overseas Brokers would have to establish and administer a suitability system in connection with trading by Overseas Traders.

Trades placed by Overseas Traders must "follow the principle of free will." This appears to suggest that accounts traded for Overseas Traders by third party managers will be permitted provided they are appropriately authorized.⁶

CSRC contemplates a large trader reporting regime in connection with futures positions, and would require Overseas Traders and Brokers to submit to regular or random on-site inspections.

Separately, the International Board of the Shanghai Pilot Free Trade Zone was launched by the Shanghai Gold Exchange⁷ in September 2014. It trades both spot and forward gold and is accessible to qualified international investors; the Exchange does not offer futures contracts.

The following is a translation of the Interim Measures as well as drafting notes provided by the CSRC:⁸

境外交易者和境外经纪机构从事境内特定品种期货交易管理暂行办法

(征求意见稿)

Interim Measures on Administration of Trading of Specific Futures Contracts in China by Overseas Traders and Overseas Brokers

(Draft for Comment)

第一条【目的和依据】为了促进期货市场对外开放，加强对境外交易者和境外经纪机构从事境内特定品种期货交易的管理，维护期货市场秩序，保护交易者合法权益，促进期货市场创新发展，根据《期货交易管理条例》及其他有关法律法规，制定本办法。

Article 1 [Purpose and Basis] These Measures are adopted, in accordance with the Regulations on Administration of Futures Trading and other related laws and regulations, for the purpose of promoting the opening-up of the domestic futures market, strengthening the oversight of trading of Specific Futures Contracts in China by Overseas Traders and Overseas Brokers, maintaining the efficient operation of the domestic futures market, protecting legitimate rights and interests of traders, and facilitating innovation and development of the domestic futures market.

第二条【概念界定】境外交易者、境外经纪机构从事我国境内特定品种期货交易及其相关活动，应当遵守本办法。

本办法所称境外交易者，是指从事期货交易并承担交易结果，在中华人民共和国境外依法成立的法人、其他经济组织，或者依法拥有境外公民身份的自然人。

⁴ <http://eng.cfachina.org>

⁵ www.cfmcc.com (Chinese only)

⁶ The relevant Chinese phrase, which also could be translated as "follow the principles of trading at one's own discretion," appears to emphasize that Overseas Traders may not be forced or induced by fraud to trade. It does not seem to prohibit validly authorized third-party trading.

⁷ www.en.sge.com.cn/

⁸ Katten Muchin Rosenman LLP provides this translation on a reasonable efforts basis only. No warranty or representation is made regarding the accuracy of the translation. Many phrases in Chinese do not have a precise translation into English. Rely on the Chinese language version for the authoritative text.

本办法所称境外经纪机构，是指在中华人民共和国境外依法设立、具有所在国（地区）期货监管机构认可的可以接受交易者资金和交易指令并以自己名义为交易者进行期货交易资质的金融机构。

本办法所称境内特定品种由中国证券监督管理委员会（以下简称中国证监会）确定并公布。

Article 2 [Definitions] Overseas Traders and Overseas Brokers shall comply with these Measures when trading Specific Futures Contracts in China and conducting other related activities.

For the purpose of these Measures, an “Overseas Trader” refers to a non-natural legal person or other economic organization duly established outside the territory of the People’s Republic of China or a natural person with foreign citizenship, that trades futures contracts for its own account.

For the purpose of these Measures, an “Overseas Broker” refers to a financial institution⁹ which is duly established outside the territory of the People’s Republic of China and is qualified to accept funds and orders for trades from traders and to conduct futures trading in its own name for traders, with such qualifications being recognized by the futures regulatory authority(ies) of the country (region) where the Overseas Broker is located.

For the purpose of these Measures, the “Specific Futures Contracts in China” shall be determined and published by the China Securities Regulatory Commission (hereinafter referred to as “CSRC”).

第三条【监督管理】中国证监会及其派出机构依法对境外交易者和境外经纪机构从事境内特定品种期货交易实行监督管理。期货交易所依据自律规则对境内特定品种期货交易及相关业务活动实行自律管理。

中国期货业协会依据自律规则对境内特定品种期货交易及相关业务活动实行行业自律管理。

中国期货保证金监控中心有限公司（以下简称期保监控中心）依法对境内特定品种期货交易及相关业务活动实施监测监控。

Article 3 [Supervision and Administration] CSRC and its regional offices shall supervise and administer the trading of Specific Futures Contracts in China by Overseas Traders and Overseas Brokers.

Futures exchanges shall oversee the trading of Specific Futures Contracts in China and the related business activities in accordance with their rules.

The China Futures Association shall oversee the industry regarding the trading of Specific Futures Contracts in China and the related business activities in accordance with its self-oversight rules.

The China Futures Margin Monitoring Center Co., Ltd. (hereinafter referred to as “CFMMC”) shall monitor and supervise the trading of Specific Futures Contracts in China and the related business activities in accordance with relevant laws.

第四条【守法以及反洗钱义务】境外交易者和境外经纪机构应当遵守中华人民共和国法律法规和本办法，并切实履行反洗钱、反恐融资、反逃税等义务。

Article 4 [Compliance with Laws and Anti-Money Laundering Obligations] Overseas Traders and Overseas Brokers shall comply with the laws and regulations of the People’s Republic of China and these Measures, and shall effectively perform the obligations of anti-money laundering, anti-terrorism financing, anti-tax evasion, etc.

第五条【境外交易者参与模式】境外交易者可以委托境内期货公司（以下简称期货公司）或者境外经纪机构参与境内特定品种期货交易。

经期货交易所批准，符合条件的境外交易者可以直接在期货交易所从事境内特定品种期货交易。

⁹ The term “financial institution” does not appear to be defined, but would appear to include futures commission merchants registered with the Commodity Futures Trading Commission.

前款所述直接入场交易的境外交易者应当具备下列条件：

- （一）所在国（地区）具有完善的法律和监管制度；
- （二）财务稳健，资信良好，具备充足的流动资本；
- （三）具有健全的治理结构和完善的内部控制制度，经营行为规范；
- （四）期货交易所规定的其他条件。

Article 5 [Participation Mode for Overseas Traders] Overseas Traders may use Chinese futures companies (hereinafter, the “Futures Companies”) or Overseas Brokers to trade Specific Futures Contracts in China.

With the approval of futures exchanges, qualified Overseas Traders may trade directly Specific Futures Contracts in China on the futures exchanges.

An Overseas Trader that directly conducts trading as provided in the preceding paragraph shall satisfy the following conditions:

- (1) the country (region) where it is located shall have sound legal and regulatory systems;
- (2) it shall have sound financial condition, good credit standing and sufficient liquid assets;
- (3) it shall have a robust governance structure and sound internal control system, and its business standards shall be consistent with industry custom; and
- (4) other conditions as may be specified by futures exchanges.

第六条【境外经纪机构参与模式】境外经纪机构在接受境外交易者委托后，可以委托期货公司进行境内特定品种期货交易。期货公司接受委托后，以自己的名义为该境外经纪机构进行交易。

经期货交易所批准，符合条件的境外经纪机构可以接受境外交易者委托，直接在期货交易所以自己的名义为境外交易者进行境内特定品种期货交易。

前款所述直接入场交易的境外经纪机构应当符合本办法第五条第三款的规定，且其所在国（地区）期货监管机构已与中国证监会签署监管合作谅解备忘录。

符合本条第三款条件的境外经纪机构可以向中国证监会申请在自由贸易试验区试点设立独资或者控股的期货公司。该期货公司仅允许接受境外交易者和境外经纪机构委托从事境内特定品种期货交易。

Article 6 [Participation Mode for Overseas Brokers] An Overseas Broker that has been engaged by an Overseas Trader may use a Futures Company to trade Specific Futures Contracts in China. The Futures Company that accepts such appointment shall trade in its own name for the Overseas Broker.

With the approval of futures exchanges, qualified Overseas Brokers may open accounts for Overseas Traders and directly trade Specific Futures Contracts in China on the futures exchanges in their own name for the Overseas Traders.¹⁰

An Overseas Broker that directly conducts the trading as provided in the preceding paragraph shall meet the requirements set forth in Paragraph 3 of Article 5 of these Measures, and the futures regulatory authorities of the country (region) where the Overseas Broker is located shall have executed a Memorandum of Understanding on Cooperation in Supervision and Administration with CSRC.

¹⁰ The Interim Measures do not precisely describe the mechanics by which accounts would be set up at the futures exchanges. It appears that where an Overseas Broker places trades on behalf of Overseas Traders, the Overseas Broker places the trades on behalf of an omnibus account in its own name. Give-up arrangements are not described in the Interim Measures.

An Overseas Broker that satisfies the conditions set forth in Paragraph 3 of this Article may apply to CSRC for a pilot establishment of a wholly owned or controlled Futures Company in the pilot free trade zone. Such Futures Companies shall only be allowed to be used for trading Specific Futures Contracts in China for Overseas Traders and Overseas Brokers.

第七条【禁止性业务规范】境外经纪机构不得接受境内交易者和《期货交易管理条例》第二十六条规定的单位和个人的委托，为其进行境内期货交易。

Article 7 [Regulations on Prohibited Business] Overseas Brokers shall not trade futures in China for domestic traders or entities or individuals set forth in Article 26 of the Regulations on Administration of Futures Trading.

第八条【直接入场交易资格的依据】对直接入场交易的境外交易者和境外经纪机构，期货交易所应当规定其资格取得与终止的条件和程序，明确其权利和义务。

Article 8 [Basis for Qualifications to Trade Directly] With respect to qualifications of the Overseas Traders and Overseas Brokers that trade directly on futures exchanges, the futures exchanges shall prescribe conditions and procedures for obtaining and terminating such qualifications, and specify rights and obligations of such qualified Overseas Traders and Overseas Brokers.

第九条【风险自担原则】境外交易者从事境内特定品种期货交易，应当遵守期货交易所的自律规则，遵守“买卖自愿、风险自担、盈亏自负”的原则，承担期货交易的履约责任和交易结果。

Article 9 [Principle of Assuming One's Own Risks] Overseas Traders that trade Specific Futures Contracts in China shall comply with the self-oversight rules of futures exchanges, follow the principles of “trading at one's own discretion, assuming one's own risks, receiving one's own profits and bearing one's own losses,” and shall be responsible for contracts performance and the trading results.

第十条【境外交易者的开户义务】境外交易者应当以真实合法身份办理开户，如实提供境外公民身份证明、境外法人资格或者其他经济组织资格的合法有效证明文件。境外交易者的身份证明文件及要求由期保监控中心另行规定。

Article 10 [Overseas Traders' Obligations to Open Accounts] Overseas Traders shall open accounts under true and lawful identification, and shall provide true copies of lawful and valid supporting documents for foreign citizenship, foreign legal person qualification or other economic organization qualification. The Overseas Traders' identity supporting documents and requirements thereof shall be separately prescribed by CFMMC.

第十一条【统一开户】境外经纪机构接受境外交易者委托进行境内特定品种期货交易的，应当按照《期货市场客户开户管理规定》和期保监控中心的业务规则，为境外交易者办理账户开立等手续，并为每个境外交易者单独申请交易编码，不得进行混码交易。

接受境外经纪机构委托交易的期货公司，应当按照期保监控中心的业务规则，为境外经纪机构办理前款所述手续提供必要的协助。

直接入场交易的境外交易者应当向期货交易所办理账户开立等手续并申请交易编码，期货交易所应当在其开始交易之前将有关材料向期保监控中心备案。

Article 11 [Unified Account Opening] An Overseas Broker that trades Specific Futures Contracts in China for Overseas Traders shall complete account opening procedures for the Overseas Traders and separately apply for a trading code¹¹ for each such Overseas Trader in accordance with the Provisions on Administration of Futures Client Accounts Opening and the rules issued by CFMMC, and shall not conduct omnibus transactions.

A Futures Company that is engaged by Overseas Brokers shall, in accordance with the rules issued by CFMMC, provide any necessary assistance to Overseas Brokers in completing the procedures as set forth in the preceding paragraph.

¹¹ This appears to be an account identifier.

An Overseas Trader that trades directly on a futures exchange shall open an account with the futures exchange and apply for a trading code. The Futures exchange shall submit relevant materials to CFMMC for a record prior to the trading.

第十二条【适当性管理】境内特定品种期货交易实行交易者适当性制度。期货交易所、期货公司和境外经纪机构应当执行交易者适当性制度。境外交易者应当遵守交易者适当性制度。

Article 12 [Suitability Management] Suitability systems for traders shall apply to trading of Specific Futures Contracts in China. Futures exchanges, Futures Companies and Overseas Brokers shall implement suitability policies and procedures for traders.¹² Overseas Traders shall comply with the suitability systems for traders.

第十三条【基本经纪业务规则】境外经纪机构接受境外交易者委托的，应当事先向境外交易者出示风险说明书，与境外交易者签订书面合同，不得未经境外交易者委托或者不按照境外交易者委托内容，擅自进行期货交易，不得隐瞒重要事项或者使用其他不正当手段诱骗境外交易者发出交易指令。

Article 13 [Basic Rules for Brokerage] Overseas Brokers that trade for Overseas Traders shall provide a risk disclosure statement to the Overseas Traders in advance,¹³ enter into written contracts with the Overseas Traders, and shall not conduct futures trading without or inconsistent with the Overseas Traders' authorization, nor shall they conceal material matters or induce Overseas Traders to send orders for trades by other improper means.

第十四条【运营要求】直接入场交易的境外经纪机构应当建立、健全并严格执行业务管理规则、风险管理制度，遵守信息披露制度，保障境外交易者保证金的存管安全。

Article 14 [Operation Requirements] Overseas Brokers that trade directly on futures exchanges shall establish, and strictly implement business management rules and risk management systems, observe information disclosure rules, and ensure the safety of Overseas Traders' margins.

第十五条【结算安排、保证金收取、结算结果通知、强行平仓及违约处理】承担结算职能的期货交易所作为中央对手方，统一组织境内特定品种期货交易的结算。境外交易者、境外经纪机构应当根据期货交易所的规定委托具有结算资格的期货公司或者其他机构进行结算，并适用《期货交易管理条例》第二十九条、第三十四条、第三十五条、第三十七条对客户和期货公司的规定。

前款所称中央对手方，是指期货交易达成后介入期货交易双方，成为所有买方的卖方和所有卖方的买方，以净额方式结算，为期货交易提供集中履约保障的法人。

Article 15 [Arrangement of Settlement, Collection of Margins, Notice of Settlement Results, Mandatory Closing-out of Positions, and Breach] A futures exchange that performs the functions of clearing shall, acting as a Central Counterparty, uniformly organize the clearing of trading of Specific Futures Contracts in China. Overseas Traders and Overseas Brokers shall, in accordance with the rules prescribed by the futures exchange, use qualified Futures Companies or other organizations to conduct settlement. Articles 29, 34, 35, and 37 of the Regulations on Administrations of Futures Trading on clients and futures companies shall apply to such settlement.

The term "Central Counterparty" specified in the preceding paragraph refers to a legal person that is involved in transactions between the futures trading parties after conclusion of the transaction, becoming the buyer to every seller and the seller to every buyer, conducts the clearing on a net basis,¹⁴ and provides centralized performance guarantee for futures trading.

第十六条【期货结算账户】直接入场交易的境外交易者和境外经纪机构，以及委托期货公司进行境内特定品种期货交易的境外交易者和境外经纪机构，应当在境内开立符合条件的银行账户，并将其设定为期货结算账户。

¹² It is unclear whether the suitability assessment by Overseas Brokers should be by customer or by transaction. It is also unclear what would be expected in a suitability system for Overseas Traders.

¹³ CFA prescribes standard risk disclosure statements for futures brokers.

¹⁴ The Interim Measures do not address whether margining at futures exchanges is on a gross or net basis.

Article 16 [Futures Settlement Account] Overseas Traders and Overseas Brokers that trade directly on futures exchanges or use Futures Companies to trade Specific Futures Contracts in China shall open qualified bank accounts in China and designate such bank accounts as futures settlement accounts.

第十七条【保证金存管和运行】境外交易者和境外经纪机构应当遵守中国证监会关于保证金安全存管的规定。

期货公司应当将向委托其结算的境外交易者和境外经纪机构收取的保证金存放在期货公司的保证金专用账户。期货公司应当将来源于境内和境外的保证金分账户管理。

期货交易所、期货公司、本办法第十六条所指的境外交易者和境外经纪机构之间的境内账户资金划转，应当通过专用结算账户、保证金专用账户和期货结算账户进行。

Article 17 [Depository and Operation of Margins] Overseas Traders and Overseas Brokers shall comply with the margin depository provisions prescribed by CSRC. Futures Companies shall deposit margins collected from Overseas Traders and Overseas Brokers, which use the Futures Companies to conduct settlement, into the Futures Companies' special margin accounts. The Futures Companies shall manage the margins from domestic clients and from overseas clients under separate accounts. Funds transfer of domestic accounts among futures exchanges, Futures Companies, and Overseas Traders and Overseas Brokers as referenced in Article 16 of these Measures shall be conducted through special settlement accounts, special margin accounts and futures settlement accounts.

第十八条【大户持仓报告】境外交易者和境外经纪机构持仓达到期货交易所规定的持仓报告标准的，境外交易者和境外经纪机构应当向期货交易所报告。境外交易者未报告的，受托交易的期货公司、境外经纪机构应当向期货交易所报告。

Article 18 [Reporting of Large Trader Positions] Where positions held by an Overseas Trader or Overseas Broker reach the reporting standard as specified by the futures exchange, it shall report such positions to the future exchange. In case of Overseas Traders' failure to report, the Futures Companies or Overseas Brokers that trade for such Overseas Traders shall report to the futures exchanges.

第十九条【保证履约】保证金只能用于担保期货合约或期权合约的履行，除法定情形外，严禁挪作他用。

境外交易者和境外经纪机构被接管、破产或者清算的，其保证金均应当优先用于履行在期货交易所未了结的期货合约或期权合约。

Article 19 [Guarantee of Performance] Margins shall only be used to secure the performance of futures contracts or option contracts; except as otherwise stipulated by the laws, it is strictly prohibited to use margins for other purposes.

Where an Overseas Trader or Overseas Broker is taken over by a receiver, becomes bankrupt or goes into liquidation, its margins shall be preferentially used to satisfy its obligations regarding outstanding futures contracts and options contracts at futures exchanges.

第二十条【处置措施】期货市场出现《期货交易所管理办法》第八十五条、第八十七条规定情形的，期货交易所可以按照对客户和会员的规定，对境外交易者和境外经纪机构采取措施。

Article 20 [Measures] Upon occurrence of events in the futures market as described in Articles 85 and 87 of the Measures for Administration of Futures Exchanges, futures exchanges may take actions against Overseas Traders and Overseas Brokers in accordance with the rules on clients and members.

第二十一条【纠纷的调解处理】期货公司与境外交易者或者境外经纪机构发生期货业务纠纷的，可以提请中国期货业协会、期货交易所以及其他调解组织调解处理。

Article 21 [Mediation of Disputes] Any dispute between Futures Companies and Overseas Traders or Overseas Brokers over futures business may be submitted to the China Futures Association, the relevant futures exchange and other mediation organizations for mediation.

第二十二条【期货公司定期报告】期货公司应当在月度、年度报告中报送接受境外交易者和境外经纪机构委托进行境内特定品种期货交易的情况。

期货公司首席风险官应当负责对本公司境内特定品种期货交易相关业务活动进行监督和检查，并履行督促整改和报告等义务。

Article 22 [Regular Reporting by Futures Companies] Futures Companies shall report in their monthly and annual reports information regarding their trading of Specific Futures Contracts in China for Overseas Traders and Overseas Brokers.

Chief Risk Officers of Futures Companies shall supervise and inspect activities of their companies in relation to trading of Specific Futures Contracts in China, and perform obligations of urging the companies' rectification, reporting, etc.

第二十三条【指定资料报送】中国证监会及其派出机构可以根据监管职责要求期货公司、境外交易者和境外经纪机构提供下列信息或者书面资料，并进行必要的询问和检查：

（一）境外交易者和境外经纪机构的账户、所有子账户的最终受益人姓名（名称）、国籍、有效身份证件（号码）、联系方式及相关信息、资金来源等；

（二）境外交易者和境外经纪机构的账户、所有子账户的指令下达人姓名、国籍、有效身份证件（号码）、联系方式及相关信息；

（三）境外交易者和境外经纪机构的账户、所有子账户资金划拨、使用的明细资料；

（四）境外交易者和境外经纪机构的账户、所有子账户交易的明细资料；

（五）中国证监会根据审慎监管原则要求的其他材料。

Article 23 [Submission of Specified Materials] CSRC and its regional offices may, pursuant to their supervision functions, request Futures Companies, Overseas Traders and Overseas Brokers to provide the following information or written materials, and may conduct necessary investigation and inspection:

(1) names, nationality, valid identity documents (number), contact information and other relevant information, source of funds, etc. of ultimate beneficiaries of the accounts and all the sub-accounts of the Overseas Traders and Overseas Brokers;

(2) names, nationality, valid identity documents (number), contact information and other relevant information of persons who give instructions to the accounts and all the sub-accounts of the Overseas Traders and Overseas Brokers;

(3) detailed materials regarding the transfer and use of funds in the accounts and all the sub-accounts of the Overseas Traders and Overseas Brokers;

(4) detailed materials regarding transactions in the accounts and all the sub-accounts of the Overseas Traders and Overseas Brokers; and

(5) other materials that may be requested by CSRC according to the principle of prudent supervision.

第二十四条【临时报告】发生下列重大情形之一的，期货公司应当在知情后5个工作日内或者按照规定向其住所地的中国证监会派出机构报告：

（一）境外交易者或者境外经纪机构发生违规、被接管、破产或者其他风险事件；

（二）发生涉及境外交易者或者境外经纪机构的期货纠纷、仲裁或者诉讼；

（三）其他影响境外交易者或者境外经纪机构从事境内特定品种期货交易的情形。

期货公司的报告应当包括事件的起因、目前的状态、可能发生的后果以及应对方案或者措施等内容。

Article 24 [Interim Report] Upon the occurrence of any of the following material events, a Futures Company shall report to the regional office of CSRC of its domicile within five working days after it learns such situation, or otherwise in accordance with the relevant regulations:

- (1) the Overseas Traders or Overseas Brokers violate rules, are taken over by receivers, become bankrupt or suffer other risk events;
- (2) the Overseas Traders or Overseas Brokers are involved in any disputes, arbitrations or actions in relation to futures; or
- (3) other situations affecting the Overseas Traders' or Overseas Brokers' trading of Specific Futures Contracts in China.

Reports of the Futures Companies shall include contents such as cause and current status of the events, potential consequences, and plans or measures to address such events, etc.

第二十五条【对期货公司的监督管理】期货公司及其从业人员违反本办法的，依照《期货交易管理条例》的有关规定，采取责令限期整改、监管谈话、责令更换有关责任人员等监管措施，并记入诚信档案。

Article 25 [Supervision and Administration over Futures Companies] In the event a Futures Company and its staff violate these Measures, in accordance with relevant provisions of the Regulations on Administration of Futures Trading, supervision and administrative measures such as ordering the rectification of an issue within a specified period, conversation with and warning to senior officers ordering the replacement of responsible persons shall be adopted, and such violation shall be recorded in the credit record.

第二十六条【软件要求】直接入场交易的境外交易者和境外经纪机构的交易结算软件，应当满足期货交易所风险管理以及中国证监会有关保证金安全存管监控规定的要求。不符合要求的，中国证监会将有权要求直接入场交易的境外交易者和境外经纪机构予以改进或者更换。

中国证监会可以要求直接入场交易的境外交易者和境外经纪机构的交易软件、结算软件的供应商提供该软件的相关资料，供应商应当予以配合。中国证监会对供应商提供的相关资料负有保密义务。

Article 26 [Requirements for Software] Trading and settlement software used by Overseas Traders and Overseas Brokers that trade directly on futures exchanges shall meet the requirements for risk management of the futures exchanges and the requirements of CSRC's regulations regarding supervision of margin depositories. In case the software fails to meet such requirements, CSRC shall have the right to require Overseas Traders and Overseas Brokers that trade directly on futures exchanges to improve or replace the software.

CSRC may require providers of trading or settlement software used by Overseas Traders and Overseas Brokers that trade directly on futures exchanges to provide materials in relation to the software, and the providers shall cooperate in providing such materials. CSRC shall keep confidential the relevant materials provided by such providers.

第二十七条【现场检查】中国证监会及其派出机构可以根据监管职责对境外交易者或者境外经纪机构进行境内特定品种期货交易及相关业务活动进行定期或者不定期现场检查。

Article 27 [Onsite Inspection] CSRC and its regional offices may, pursuant to their supervision functions, conduct regular or irregular on-site inspection on trading of Specific Futures Contracts in China and related business activities by Overseas Traders or Overseas Brokers.

第二十八条【期货交易所的法律责任】期货交易所违反规定接纳直接入场交易的境外交易者或者境外经纪机构，依照《期货交易管理条例》第六十五条的规定处罚、处分。

期货交易所允许直接入场交易的境外交易者或者境外经纪机构在保证金不足的情况下进行期货交易的，依照《期货交易管理条例》第六十六条的规定处罚、处分。

Article 28 [Legal Liabilities of Futures Exchanges] Where a futures exchange violates the regulations in allowing Overseas Traders or Overseas Brokers to trade directly on the futures exchange, it shall be penalized or punished according to Article 65 of the Regulations on Administration of Futures Trading.

In the event a futures exchange permits Overseas Traders or Overseas Brokers to trade directly on the futures exchange without sufficient margins, it shall be penalized in accordance with to Article 66 of the Regulations on Administration of Futures Trading.

第二十九条【境外经纪机构的法律责任】境外经纪机构有《期货交易管理条例》第六十七条第一款第一项、第七项至第九项、第十一项、第十四项至第十六项所列行为之一的，依照《期货交易管理条例》第六十七条第一款规定处罚。

境外经纪机构有《期货交易管理条例》第六十八条第一款所列欺诈行为的，依照《期货交易管理条例》第六十八条第一款的规定处罚。

Article 29 [Legal Liabilities of Overseas Brokers] Overseas Brokers that commit any of the acts as set out in Items 1, 7-9, 11 and 14-16, Paragraph 1 of Article 67 of the Regulations on Administration of Futures Trading shall be penalized in accordance with Paragraph 1 of Article 67 of the Regulations on Administration of Futures Trading.

Overseas Brokers that commit fraudulent acts as set out in Paragraph 1 of Article 68 of the Regulations on Administration of Futures Trading shall be penalized in accordance with Paragraph 1 of Article 68 of the Regulations on Administration of Futures Trading.¹⁵

第三十条【软件供应商的法律责任】直接入场交易的境外交易者或者境外经纪机构的交易软件、结算软件供应商拒不配合中国证监会及其派出机构调查，或者未按照规定向中国证监会及其派出机构提供相关软件资料，或者提供的软件资料有虚假、重大遗漏的，依照《期货交易管理条例》第七十六条的规定处罚。

Article 30 [Legal Liabilities of Software Providers] If any provider of trading or settlement software used by Overseas Traders or Overseas Brokers that trade directly on futures exchanges refuses to cooperate with CSRC and its regional offices in their investigation, or fails to provide CSRC and its regional offices with relevant software materials according to the regulations, or provides false software materials or software materials with material omission, it shall be penalized in accordance with Article 76 of the Regulations on Administration of Futures Trading.

第三十一条【行政处罚及刑事犯罪】期货交易所、期货公司、境外交易者或者境外经纪机构违法经营或者出现重大经营风险，严重危害中国期货市场秩序、损害交易者合法权益，依法应予以行政处罚的，依照《期货交易管理条例》进行处罚；涉嫌犯罪的，依法移送司法机关，追究刑事责任。

Article 31 [Administrative Penalties and Criminal Offenses] If any futures exchange, Futures Company, Overseas Trader or Overseas Broker conducts business in violation of relevant laws or is subject to major risks, which severely jeopardizes the orderly functioning of Chinese futures market and impairs the legal rights and interests of traders, then it shall be penalized in accordance with the Regulations on Administration of Futures Trading. If it is suspected of having committed a crime, it shall be referred to a judicial authority and prosecuted for its criminal liabilities according to the laws.

第三十二条【跨境执法、查处】境外交易者或者境外经纪机构违反《期货交易管理条例》和中国证监会有关规定的，中国证监会依法进行查处。需要境外交易者或者境外经纪机构所在地监管机构协助的，中国证监会可以根据与其签署的双边或者多边监管合作谅解备忘录等跨境监管合作机制进行跨境监管合作。

Article 32 [Cross-border Enforcement, Investigation and Punishment] If Overseas Traders or Overseas Brokers violate the Regulations on Administration of Futures Trading or relevant regulations issued by CSRC, CSRC shall conduct an investigation and impose punishment in accordance with the laws. Where assistance from regulatory authorities in the domicile of such Overseas Traders or Overseas Brokers is required, CSRC may conduct cross-border cooperation for supervision and administration

¹⁵ Among the types of offenses covered by this provision are guaranteeing a customer against loss or failing to provide a required disclosure statement; offering to share profits or losses with a customer; trading for a customer without authorization; deceiving a customer; providing a customer a false statement of trading activities; misappropriating or mishandling customer funds; or engaging in other acts of fraud that may be prohibited by regulation.

with such regulatory authorities in accordance with cross-border cooperation mechanisms such as bilateral or multilateral Memorandum of Understanding for Cooperation in Supervision and Administration entered into by and between them.

第三十三条【期货交易场所的适用依据】在中国证监会批准的其他期货交易场所从事境内特定品种期货交易及相关业务活动的，适用本办法。

Article 33 [Basis for Application to Futures Trading Markets] Where trading of Specific Futures Contracts in China and related business activities are conducted through other futures trading markets approved by CSRC, these Measures shall apply.

第三十四条【港澳台适用】香港特别行政区、澳门特别行政区和台湾地区设立的法人、其他经济组织或者拥有香港特别行政区、澳门特别行政区和台湾地区居民身份的自然人从事境内特定品种期货交易的，适用本办法。

Article 34 [Application to Hong Kong, Macau and Taiwan] Where a non-natural legal person or other economic organization established in Hong Kong Special Administration Region, Macau Special Administration Region or Taiwan or a natural person with citizenship in Hong Kong Special Administration Region, Macau Special Administration Region or Taiwan trades Specific Futures Contracts in China, these Measures shall apply.

第三十五条【实施时间】本办法自 年 月 日起施行。

Article 35 [Effective Date] These Measures shall come into force as of [].

《境外交易者和境外经纪机构从事境内特定品种期货交易管理暂行办法（征求意见稿）》起草说明

Drafting Notes to the Interim Measures on Administration of Trading of Specific Futures Contracts in China by Overseas Traders and Overseas Brokers (Draft for Comment)

一、起草背景

我国已成为世界第二大经济体，是多种大宗商品的生产国、消费国和贸易国。满足国民经济发展需要，为实体经济发展提供优质高效的价格发现和风险管理服务，有必要引入境外交易者和境外经纪机构参与我国期货市场交易，以提高我国期货市场的国际化程度和定价能力。我会已批准上海期货交易所及其国际能源交易中心开展原油期货交易。原油期货作为我国第一个国际化的期货品种，将建设国际化交易结算平台，全面引入境外交易者和境外经纪机构。为此，有必要专门制定引入境外交易者和境外经纪机构从事境内特定品种期货交易的管理办法。

I. Drafting Background

As the world's second largest economy, China manufactures, consumes and trades various bulk commodities. To meet the needs of national economic development and provide price discovery and risk management services of high quality and high efficiency for economic development, it is essential to attract Overseas Traders and Overseas Brokers to participate in trading on the Chinese futures market so as to improve the internationalization and pricing power of the Chinese futures market. The China Securities Regulatory Commission (hereinafter referred to as the "CSRC") has approved Shanghai Futures Exchange to organize crude oil futures trading on its international energy exchange center. An internationalized clearing platform will be established for trading of crude oil futures contracts, which are the first futures contracts of China that will be made available. The platform will accept Overseas Traders and Overseas Brokers in a comprehensive manner. Therefore, it is necessary to specially formulate administrative measures for permitting Overseas Traders and Overseas Brokers to trade specific futures contracts in China.

二、起草依据

2012年10月24日国务院公布了修订《期货交易管理条例》（以下简称《条例》）的决定，增加了第二十四条第二款：“符合规定条件的境外机构，可以在期货交易所从事特定品种的期货交易。具体办法由国务院期货监督管理机构制定”的规定。根据《条例》第五条第一款“国务院期货监督管理机构对期货市场实行集中统一的监督管理”和第二十四条第二款的授

权，中国证监会起草了《境外交易者和境外经纪机构从事境内特定品种期货交易管理暂行办法（征求意见稿）》（以下简称《办法》），对境外交易者和境外经纪机构从事境内特定品种期货交易的条件、参与规则、监督管理等事项进行规定。

II. Drafting Basis

The State Council promulgated the decision on amendment of the Regulations on Administration of Futures Trading (hereinafter referred to as the “Regulations”) on October 24, 2012, which added Paragraph 2 to Article 24, reading: “An overseas organization that meets required conditions may trade specific futures contracts on futures exchanges, and specific measures therefor shall be formulated by the futures regulatory authority under the State Council.” As authorized by Paragraph 1 of Article 5 of the Regulations which reads “The futures regulatory authority under the State Council shall conduct centralized and unified supervision and administration over the futures market” and Paragraph 2 of Article 24, CSRC has drafted the Interim Measures on Administration of Trading of Specific Futures Contracts in China by Overseas Traders and Overseas Brokers (Draft for Comment) (hereinafter referred to as the “Measures”) to provide for the conditions, participation rules, supervision and administration, and other matters with respect to trading of specific futures contracts in China by Overseas Traders and Overseas Brokers.

三、《办法》的主要内容

《办法》是专门规定境外交易者和境外经纪机构从事境内特定品种期货交易的规范，共35条，按照“总则—参与模式—基本交易规则—监督管理—法律责任”的逻辑作出规定。对于《条例》规定的期货交易基本规则、监督管理等事项，《办法》作为部门规章按《条例》有关规定执行；《期货交易所管理办法》、《期货公司监督管理办法》中在市场监管和公司监管方面的有关未尽事宜，《办法》进行了补充性规定。

III. Main Contents of the Measures

The Measures, which comprise 35 articles in total, specially provide for the trading of specific contracts in China by Overseas Traders and Overseas Brokers. The provisions of the Measures follow the logic of “General Provisions—Participation Mode—Basic Trading Rules—Supervision and Administration—Legal Liabilities.” Provisions of the Measures regarding basic rules for futures trading, supervision and administration and other matters, being “department regulations,” shall be implemented in accordance with applicable provisions of the Regulations. The Measures also provide for, as a supplement, certain matters in respect to market and corporate supervision and administration that are not covered in the Measures on Administration of Futures Exchanges and the Measures on Supervision and Administration of Futures Companies.

（一）境内特定品种的确定

从我国商品现货和期货市场的发展实际出发，期货市场对外开放遵循循序渐进的原则，统筹考虑人民币资本项目开放进程、实体企业及金融机构参与程度，期货市场的风险控制能力等诸多因素，稳步有序推进期货品种的国际化步伐，并在实践中不断积累监管经验。原油期货是我会确定的第一个允许境外交易者和境外经纪机构参与期货交易的特定品种。

1. Determination of Specific Futures Contracts in China

Based on the current situation of China’s commodities spot and futures market, the futures market will be opened in step-by-step manner. Taking into account the progress in the opening of the RMB Capital account, the level of participation by non-financial enterprises and financial institutions, the risk management capability of the futures market and other relevant factors, it is necessary to steadily and progressively open up futures contracts and constantly gain experience in the related supervision and administration. Crude oil futures contracts are the first category of futures contracts determined by the CSRC that may be traded by Overseas Traders and Overseas Brokers.

（二）规范境外交易者和境外经纪机构的多种参与模式

境外交易者可以根据自身情况和业务需要，选择通过以下模式参与：通过境内期货公司或者境外经纪机构从事境内特定品种期货交易；符合条件的境外交易者经期货交易所批准，可以直接在期货交易所从事境内特定品种期货交易。

境外经纪机构可以根据情况，选择通过以下模式参与：境外经纪机构在接受境外交易者委托后，委托境内期货公司进行境内

特定品种期货交易；符合条件的境外经纪机构经期货交易所批准，可以接受境外交易者委托，直接在期货交易所进行境内特定品种期货交易。

此外，为引导期货市场的有序良性发展，境外经纪机构仅能接受境外交易者委托进行境内特定品种期货交易。

2. Multiple Participation Modes for Overseas Traders and Overseas Brokers

Overseas Traders may choose the following participation modes based on their own circumstances and business needs: Overseas Traders may trade specific futures contracts in China through a domestic futures company or an Overseas Broker; and with the approval of futures exchanges, qualified Overseas Traders may trade directly specific futures contracts in China on the futures exchanges.

Overseas Brokers may choose the following participation modes based on the circumstances: after being engaged by an Overseas Trader, an Overseas Broker may use a domestic futures company to trade specific futures contracts in China; and with the approval of futures exchanges, qualified Overseas Brokers may be engaged by Overseas Traders to directly trade specific futures contracts in China on the futures exchanges.

In addition, for the steady and sound development of the futures market, Overseas Brokers may only be used to trade specific futures contracts in China for Overseas Traders.

(三) 明确基本交易规则及监督管理

《办法》主要明确了境内特定品种期货交易涉及的主要业务环节，包括开户、运营要求、结算安排、保证金收取及存管要求、大户报告、强行平仓、违约处理、纠纷调解处理等。

《办法》还明确了我会对境外交易者、境外经纪机构从事境内特定品种期货交易及相关业务活动的现场检查、违法违规查处和跨境执法等监督管理职责。这些规定是在梳理《条例》和《期货交易所管理办法》对期货交易所会员的监管要求的基础上，将有关条款引入《办法》，规范境外交易者和境外经纪机构。此外，《条例》中针对客户的相关条款，在《办法》中也明确同样适用境外交易者。

3. Basic Trading Rules, and Supervision and Administration

The Measures mainly specify major procedures with respect to trading of specific futures contracts in China, including requirements for account opening and business operation, settlement, requirements for collection and depositories of margins, reporting by large traders, mandatory closing-out of positions, default liabilities and disputes resolution.

The Measures also specify CSRC's functions for supervision and administration over trading of specific futures contracts in China and related business activities by Overseas Traders and Overseas Brokers, such as onsite inspection, investigations on and punishment for violations of laws and regulations, and cross-border enforcement of laws. Based on the existing requirements for supervision and administration of members of futures exchanges under the Regulations and the Measures on Administration of Futures Exchanges, the aforementioned provisions incorporate relevant contents into the Measures to regulate Overseas Traders and Overseas Brokers. In addition, the provisions in the Regulations applicable to clients shall also expressly apply to Overseas Traders for the purpose of the Measures.

(四) 跨境监管协作

《条例》第六十三条第二款已经授权我会可以和其他国家或者地区的期货监管机构建立监管合作机制，实施跨境监督管理，《办法》据此作出规定。

4. Cross-Border Cooperation in Supervision and Administration

Paragraph 2 of Article 63 of the Regulations authorizes CSRC to establish a mechanism for cooperation in supervision and administration with futures regulatory authorities of other countries or regions to conduct cross-border supervision and administration, based on which relevant provisions are made in the Measures.

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