

Content

Title :	Regulations Governing Responsible Persons and Associated Persons of Futures Commission Merchants <b>Ch</b>
Date :	2013.12.30
Legislative :	<ol style="list-style-type: none"><li>1. Twenty-one articles adopted in full and promulgated on May 30, 1997 per Ruling Ref. No. (86)-Taiwan-Finance-Securities-(5)-03216 of the Securities and Futures Commission; Rules in effect from June 1, 1997</li><li>2. Articles 5, 7, 16 amended on January 21 1999 per Ruling Ref. No. (88)-Taiwan-Finance-Securities-(7)-00267</li><li>3. Articles 7, 8, 11, 13, 16, and 21 amended on September 26, 2000 per Ruling Ref. No. (89)-Taiwan-Finance-Securities-(7)-04192; amendments in effect from date of promulgation</li><li>4. Articles 2, 4, 5, 16 amended and Article 19 deleted on December 24, 2002 per Ruling Ref. No. (91)-Taiwan-Finance-Securities-(7)-0910006323</li><li>5. Article 3 amended and new Articles 3-1, 3-2, and 20-1 added on 31 July 2003 per Order No. Taiwan-Finance-Securities-VII-0920003122 of the Securities and Futures Commission, Ministry of Finance</li><li>6. Articles 5 and 7 amended and issued 2 October 2007 per Order No. Financial-Supervisory-Securities-VII-0960052678 of the Financial Supervisory Commission, Executive Yuan</li><li>7. Article 16 amended and issued per 23 October 2007 Order No. Financial-Supervisory-Securities-VII-0960056276 of the Financial Supervisory Commission, Executive Yuan</li><li>8. Articles 2, 3-2, 6, 7, 8, and 11 amended and issued, and Article 5-1 added, 7 July 2008 per Order No. Financial-Supervisory-Securities-VII-0970033572 of the Financial Supervisory Commission, Executive Yuan; for implementation from the date of issuance</li><li>9. Articles 2, 3, 3-1, 5, 7, 20-1 amended and issued, and Articles 7-1 and 18-1 added, per 11 November 2009 Order No. Financial-Supervisory-Securities-Futures-0980060589 of the Financial Supervisory Commission, Executive Yuan</li><li>10. Articles 3-1, 7, and 20-1 amended and issued per 11 October 2010 Order No. Financial-Supervisory-Securities-Firms-0990051567 of the Financial Supervisory Commission, Executive Yuan</li><li>11. Articles 3-1 and 7 amended and issued per 30 December 2013 Order No. Financial-Supervisory-Securities-Firms-1020052674 of the Financial Supervisory Commission</li></ol>
Content :	<p>Article 1</p> <p>These Regulations are adopted pursuant to Article 61 of the Futures Trading Act ("the Act").</p> <p>Article 2</p> <p>The term "responsible persons" in these Regulations shall mean responsible persons as defined in Article 8 of the Company Act or in other laws.</p> <p>The term "associated persons" in these Regulations shall mean persons engaged in the following business activities for and on behalf of a futures commission merchant (FCM):</p> <ol style="list-style-type: none"><li>1. Solicitation, account opening, brokerage order taking, execution, or clearance and settlement in connection with futures trading.</li><li>2. Proprietary trading, and clearance and settlement, in connection with futures trading.</li><li>3. Internal auditing related to futures trading.</li><li>4. Discretionary futures trading.</li><li>5. Self-audit or legal compliance in connection with futures trades.</li></ol>

6. In-charge accountant for futures trading.

7. Risk management for futures trading.

8. Conducting other approved business.

#### Article 3

A managerial officer of an FCM (with the exception of its general manager, and also with the exception of the responsible person of a Republic of China branch office of a foreign FCM) shall meet one of the following qualifications:

1. The managerial officer has graduated from a domestic or foreign junior college or higher-level educational institution recognized by the Ministry of Education, or has achieved an equivalent level of education, and has 3 years or more of operational work experience at a securities, futures, banking, or insurance institution(s), with good performance.

2. The managerial officer has 4 years or more of operational work experience at a futures institution(s), with good performance.

3. has other academic or employment experience sufficient to prove that he/she has professional knowledge and managerial experience in the field of futures, and could soundly and efficiently operate FCM business.

#### Article 3-1

An FCM shall have one general manager, who shall be responsible for the overall administration of the business operations of the entire company, and it may not have any other person in an equivalent position.

The general manager of an FCM shall be of upstanding character and possess the ability to effectively lead and manage an FCM, and shall possess one of the following qualifications (provided that a general manager of an FCM concurrently operated by a securities firm or banking institution may instead be subject to the requirements set forth in other laws or regulations):

1. The general manager has graduated from a domestic or foreign junior college or higher-level educational institution recognized by the Ministry of Education, or has achieved an equivalent level of education, has 5 years or more of operational work experience at a securities, futures, banking, or insurance institution(s), and has served for at least 1 year as assistant general manager of a securities or futures institution(s) (or in an equivalent position), or has served for at least 3 years as a manager at a securities or futures institution(s) (or in an equivalent position), with good performance.

2. The general manager has worked for at least 6 years in futures institution(s), and has served for at least 1 year as assistant general manager of a securities or futures institution(s) (or in an equivalent position), or has served for at least 3 years as a manager at a securities or futures institution(s) (or in an equivalent position), with good performance.

3. The general manager has other academic and employment experience sufficient to prove that he/she has professional knowledge and managerial experience in the field of futures, and could soundly and efficiently operate FCM business.

Before an FCM hires a general manager, it shall first submit to the Taiwan Futures Exchange ("TAIFEX") documentary evidence proving that the person it intends to hire possesses one of the qualifications set forth in the

preceding paragraph. The person to be hired shall not assume the post until after TAIFEX has issued approval and reported the matter to the Financial Supervisory Commission (FSC) for recordation.

The responsible person of the Republic of China branch office of a foreign FCM shall possess one of the qualifications set forth in paragraph 2.

Documentary evidence proving the person's qualifications shall be submitted in advance to TAIFEX, and the person shall not assume the post until after TAIFEX has issued approval and reported the matter to the FSC for recordation.

#### Article 3-2

The term "securities institution" as used in these Regulations means securities firms, stock exchanges, the GreTai Securities Market, the Chinese Securities Association, and enterprises operating securities-related services, as referred to in the Securities and Exchange Act. The term "banking institutions" as used in these Regulations means banks as referred to in the Banking Act. The term "insurance institutions" as used in these Regulations means insurance companies as referred to in the Insurance Act. The term "futures institutions" as these Regulations means FCMs, futures exchanges, futures clearing houses, futures industry associations, the Federation of Futures Industry Associations, leverage transaction merchants, and enterprises operating futures-related services, as referred to in the Act.

#### Article 4

The "managerial officers" referred to in these Regulations shall be governed by the provisions regarding managerial officers under the Company Act, and shall include managerial officers registered with the Ministry of Economic Affairs and those who are authorized by their company's articles of incorporation or by the scope of authority vested in them by contract to manage affairs for and sign documents on behalf of the company.

#### Article 5

An associated person of an FCM, except for one engaged in the operations specified in Article 2, paragraph 2, subparagraph 6 herein, shall possess one of the following qualifications:

- 1.The associated person has passed an associated person qualification examination administered by the Securities and Futures Institute on behalf of a futures industry association.
- 2.The associated person has passed an associated person qualification examination administered by the competent authority of the home country of a foreign futures exchange announced under Article 5 of the Act, and such qualification to practice is still effective; has at least 2 years of practical experience, and has been recognized by the FSC.
- 3.The associated person has passed, before implementation of the amendment to these Regulations, an associated person qualification examination held by the FSC or another institution designated by the FSC.
- 4.The associated person has obtained qualifications as a futures analyst in accordance with the Regulations Governing Managed Futures Enterprises.

Those who become qualified associated persons under the preceding paragraph shall be disqualified if they fail to process registration within 5 years from the issuance date stated in the qualification certificates or if they have departed from work in that capacity for 5 years or longer.

Those who became qualified associated persons before the implementation of these Regulations shall be disqualified if they fail to process registration within 5 years from the date of implementation or if they have departed from work in that capacity for 5 years or longer.

#### Article 5-1

An internal auditor of an FCM shall possess one of the following qualifications:

- 1.The internal auditor has obtained qualification as a futures trading analyst in accordance with the Regulations Governing Managed Futures Enterprises and has 1 year or more of work experience at a securities, futures, banking, or insurance institution.
- 2.The internal auditor has obtained qualification as an associated person in accordance with paragraph 1, subparagraphs 1 to 3 of the preceding article and has 2 or more years of work experience at a securities, futures, banking, or insurance institution.

An incumbent internal auditor at the time these Regulations are amended and issued who is not in compliance with these provisions shall, within 1 year from the amendment and issuance date, attend 30 hours or more of professional training courses for audit-related business held by the Chinese National Futures Association, Securities and Futures Institute, Accounting Research and Development Foundation in Taiwan, or the Internal Auditors' Association, R.O.C., provided that those who have already held the position of internal auditor of an FCM for 1 year or longer are exempted from the aforesaid training hour requirement.

#### Article 6

A director or managerial officer undertaking or directly engaging in the duties referred to in Article 2, paragraph 2 herein, or a managerial officer in charge of a department involved in brokerage trading, proprietary trading, or settlement and clearing, shall possess one of the qualifications referred to in Article 5 or the preceding article.

#### Article 7

The chairman of an FCM may not concurrently serve as the general manager. This restriction, however, does not apply if any of the following circumstances exists and if approval is obtained from the FSC:

- 1.The FCM does not concurrently operate another enterprise, and operates only in one line of business and has only one business location.
- 2.The FCM will cease to exist as a result of a merger or dissolution, and its chairman or general manager has resigned, been removed from office, or otherwise been unable to continue the performance of duties.
- 3.The FCM's business permission was voided by the FSC, and its chairman or general manager has resigned, been removed from office, or otherwise been unable to continue the performance of duties.
- 4.For any other special cause.

An associated person of an FCM may not concurrently hold any position at another FCM either domestically or in a foreign country. This, however, does not apply to an internal auditor, risk management personnel, or in-charge accountant of an FCM concurrently holding a position of the same nature at a futures affiliate enterprise in a foreign country.

An affiliate enterprise as referred to in the preceding paragraph shall be governed by the Affiliated Enterprises chapter of the Company Act.

The respective managerial officers in charge of an FCM's departments involved in brokerage trading, proprietary trading, and settlement and clearing may not concurrently hold any other of those positions.

The following associated persons of an FCM may not perform business activities beyond the scope of registration, nor may such business activities be concurrently performed by other associated persons, provided that where other laws or regulations provide otherwise, such laws and regulations shall govern:

1. Persons engaged in proprietary futures trading.
2. Internal auditors.
3. Risk management personnel.

Persons engaged in brokerage trading and in executing futures transactions may not concurrently hold a position involved in account opening or clearing and settlement for futures trading or concurrently serve as in-charge accountant.

In the case of a securities firm that concurrently operates futures business, if any associated person thereof is qualified both as a securities agent and futures associated person, that associated person may simultaneously handle both securities and futures operations that are of the same nature and are within the scope of the operations of account opening, brokerage trading, proprietary trading, clearing and settlement, internal audit, self-audit, legal compliance, risk management, or in-charge accountant operations for which the person is registered.

In the case of a securities firm that concurrently operates futures business, a managerial officer of its department handling securities brokerage trading business, securities proprietary trading business, or securities clearing and settlement business, who furthermore meets the qualifications set out in Articles 3 and 5 herein, may concurrently serve as a managerial officer of its department handling futures business of the same nature.

Except as otherwise provided by other laws and regulations, paragraph 7 and the preceding paragraph shall apply mutatis mutandis to banks concurrently operating futures business.

An FCM shall establish internal audit and control mechanisms for any concurrent holding of positions by its associated persons, to ensure that the concurrent holding of positions is limited to the scope necessary for the effective execution of the associated person's principal duties and concurrently held duties, and for maintaining the business operations of the FCM. The concurrent holding of positions may not involve any conflict of interest or any violation of applicable futures regulations or internal control system provisions, and the rights and interests of futures traders and shareholders shall be protected.

#### Article 7-1

A responsible person of an FCM may not serve as a responsible person of a bank, financial holding company, trust company, credit cooperative, credit department of a farmers' (fishermen's) association, bills finance company, securities enterprise, insurance enterprise, or another futures enterprise. However, this restriction shall not apply in the following circumstances:

1. Where it is for purposes of an investment relationship between the FCM and such institutions, and there is no overlapping of the chairmen and/or

managerial officers thereof, and the FSC has granted approval.

2. Where it is for purposes of conducting a merger or consolidation, and the FSC has granted approval, a responsible person may serve as the chairman of such an institution.

3. Where an FCM is a subsidiary of a financial holding company, a responsible person of the FCM may concurrently serve as a responsible person of such financial holding company or of another of its subsidiaries; provided, that there may not be overlapping of managerial officers between the subsidiaries.

4. Where an FCM is a juristic-person director or supervisor of a financial holding company, its responsible person, for purposes of serving as a responsible person of that holding company, may concurrently serve as a director or supervisor of a subsidiary of that holding company.

Where there is an investment relationship between an FCM and an institution other than the ones specified in paragraph 1, no responsible person of the FCM may concurrently serve as the chairman or a managerial officer of such an investee company.

Any concurrent holding of positions by a responsible person of an FCM shall be limited to the scope necessary for ensuring the effective performance of the responsible person's duties as such and duties in the concurrently held position, and for maintaining the business operations of the FCM; it may not involve any conflict of interest or violation of applicable futures regulations or the internal control system provisions, and the rights and interests of shareholders shall be protected.

#### Article 8

The registration and change of a responsible person or an associated person of an FCM shall be recorded with the Federation of Futures Industry Associations through the FCM where such person is employed. The said persons shall not commence duties without registration.

A person to whom any of the following conditions apply shall not be registered under the preceding paragraph. If such person has been registered, the registration shall be revoked:

1. The person falls under any of the categories listed under Article 28 of the Act.

2. The person does not possess the qualifications or meet the requirements set forth under Article 3, Article 5, Article 5-1, or Article 6.

3. The person has violated Article 7.

4. The person has failed to participate in pre-employment training or on-the-job training or obtain a passing grade therein, as required under Article 11 or 13.

5. The person has been proven to have engaged or been involved in other dishonest or improper activities, such that he/she is demonstrably unsuitable to be a responsible person or associated person.

If there is any change of the responsible person or an associated person of an FCM, within 5 days of the change such FCM shall report it to the Federation of Futures Industry Associations and replace or surrender the work certificate. Before registering the change, such FCM cannot be held harmless for the acts of the said person.

#### Article 9

Where an FCM accepts an order for a brokerage trade, such order shall be

handled by a registered qualified associated person. When executing the brokerage trade, such person shall wear a work permit.

#### Article 10

If a managerial officer or associated person of an FCM takes leave of absence, ceases engaging in business activities, or is absent from his/her post for other reasons, the FCM employing such person shall appoint a deputy with equivalent qualifications to take over the work. Such deputy shall not violate the provisions of Article 7 herein.

With respect to the deputation referred to in the preceding paragraph, the FCM shall prepare a special document to record the reason and period of deputation as well as the name and duties of the deputy, to be kept on file for future reference.

#### Article 11

The associated persons of an FCM shall participate in the pre-employment and on-the-job training provided by the institution designated by the FSC. A new associated person or an associated person returning to the position after 2 or more years since departing shall participate in pre-employment training within 6 months after reporting to work. Associated persons currently on the job shall participate in on-the-job training every 2 years.

An associated person who has undertaken the FSC-approved pre-employment training with a passing grade within 6 months before becoming a qualified associated person, may be exempted from the pre-employment training for new associated persons referred to in the preceding paragraph if, within 6 months after such person has become qualified as an associated person of an FCM, he or she is registered as an associated person and begins engaging in business activities.

An associated person of another futures enterprise of a different type who has previously attended pre-employment training for FCM associated persons is exempted from the requirement of attending pre-employment training when, within 2 years after resigning, the person transfers into a position as an associated person of an FCM.

After personnel referred to in the preceding paragraph transfer into the position of associated person of an FCM, the deadline by which the person shall attend on-the-job training shall be calculated beginning from the time when they previously attended pre-employment or on-the-job training at the other futures enterprise.

#### Article 12

The associated persons of an FCM who pass pre-employment or on-the-job training shall receive a course completion certificate from the training institution, and the performance evaluation for the training shall be sent to the FCM where such persons are employed as reference for performance evaluation, promotion, and assignment of work. Those who achieve an outstanding evaluation shall be awarded by the FSC or the training institution.

#### Article 13

In the event that an associated person of an FCM fails to participate in or pass on-the-job training, he/she shall be retrained within 1 year. Should he/she not pass the re-training, the training institution will notify the Federation of Futures Industry Associations to revoke his/her qualification

as an associated person.

#### Article 14

Actions taken by an associated person of an FCM while engaging in the business activities listed under Article 2, paragraph 2 herein shall be deemed within the scope of authorized activities for such FCM.

#### Article 15

If the responsible person or an associated person of an FCM is suspected of violating futures laws and regulations, or if there is any inquiry about such person's performance of their duties, he/she shall appear before the FSC to give explanations or provide a written report within the period specified by FSC.

#### Article 16

The responsible person and associated persons of an FCM shall faithfully perform their business in honesty and good faith.

In addition to the acts prohibited under Article 63 of the Act and Article 53 of the Regulations Governing Futures Commission Merchants, the responsible person and associated persons of an FCM may not engage in any of the following:

1. Produce advertising or promotional materials in violation of relevant laws and regulations.
2. Fail, prior to opening a futures trading account, to inform a futures trader of futures transaction procedures, transaction expenses, and the manner of paying margins and premiums, provided that where otherwise provided by FSC regulations, this restriction shall not apply.
3. Improperly delay the execution of orders of futures traders.
4. Intermingle the balance of the margin and premium accounts of individual futures traders.
5. Open an account for a person acting in the name of another person, or for a person ineligible to open an account, provided that where otherwise provided by FSC regulations, this restriction shall not apply.
6. Accept an order for futures trading from an agent who does not have a power of attorney from the futures trader that he/she represents.
7. Accept an order for futures trading from a futures trader who has not executed a brokerage contract.
8. Accept an order for futures trading despite knowledge that the futures trader intends to manipulate the futures market.
9. Accept an order for futures trading despite knowledge that the futures trader is engaging in futures trading in the name of another person.
10. Perform business in the name of another person or allow another person to perform business in the name of the responsible person or associated person.
11. Open an account or engage in futures trading for other persons; however, if the FSC has provided otherwise, this restriction shall not apply.
12. Solicit, broker, or promote the sale of futures contracts which have not been publicly announced by the FSC in accordance with Article 5 of the Act or approved in accordance with Article 12 of the Act.
13. Violate other futures laws and regulations or engage in activities prohibited by the FSC.

In carrying out business activities, the personnel referred to in the preceding paragraph shall not commit any act prohibited in the laws and



regulations governing the administration of FCMs.

An employee other than an associated person shall not commit any act listed under the two preceding paragraphs, nor perform the duties of an associated person or act as the deputy of an associated person.

#### Article 17

The responsible person or an associated person of an FCM shall open trading accounts only with the FCM by which they are employed.

#### Article 18

The responsible person or an associated person of an FCM shall be awarded or commended by the FSC if one of the following applies to such person:

- 1.The person has made a significant contribution to the establishment of the futures market system and has performed outstandingly.
- 2.The person has published research that offers creative new ways to develop the futures market or carry out futures business activities, and the ideas contained therein have been adopted.
- 3.The person has informed the authorities regarding illegal matters in the market which have been confirmed to be true.
- 4.The person has made some other achievement deserving of commendation.

#### Article 18-1

In performing internal audit work, an internal auditor of an FCM may not do any of the following:

- 1.Without approval from the FSC, disclose, deliver, or make known any content of the financial examination report, in whole or in any part, to personnel not related to the performance of occupational duties.
- 2.Issue an untrue internal audit report in connection with internal audit work.
- 3.Fail to follow the FSC's instructions in conducting audit work or to provide relevant information.

#### Article 19

(deleted)

#### Article 20

Those who acquired their qualifications as an associated person of a futures brokerage firm in accordance with a foreign futures law before the Act entered into force may, after the Act enters into force, continue to carry out business activities under the original license.

#### Article 20-1

A person who was already serving as a general manager of an FCM or as a responsible person of the Republic of China branch office of a foreign FCM before the enforcement of the 31 July 2003 amendment to these Regulations may continue serving in that capacity, or for the remainder of any current term, without being subject to requirements set forth in Article 3-1.

A person who was already serving as a general manager, or a managerial officer other than a general manager, of an FCM, or as a responsible person of the Republic of China branch office of a foreign FCM before the enforcement of the 11 November 2009 amendment to these Regulations may continue serving in that capacity, or for the remainder of any current term, without being subject to requirements set forth in Articles 3 or 3-1. Any person referred to in paragraph 1 or 2 who is promoted or appointed to that position after the enforcement of the amendment to these Regulations shall possess the qualifications and meet the requirements set forth in

these Regulations, otherwise they shall be discharged.

If before the 11 October 2010 amendment to these Regulations enters into force, an FCM does not meet the requirements under Article 3-1, paragraph 1, it shall make the adjustments within 6 months starting from the date the amendment enters into force, and if it does not meet the requirements under Article 7, paragraph 1, it shall make the adjustments within 1 year starting from the date the amendment enters into force.

Article 21

These Regulations shall enter into force from 1 June 1997.

Amendments to these Regulations shall enter into force from the date of promulgation.

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Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System