

Content

Title : Regulations Governing Futures Advisory Enterprises [Ch](#)

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Content : Chapter I General Provisions

Article 1

These Regulations are promulgated pursuant to Article 82, paragraph 3 of the Futures Trading Act.

Article 2

A futures advisory enterprise may operate the following types of business:

1. Accepting mandates to provide research and analysis opinions or recommendations on matters relating to futures trading, futures trust funds, futures-related commodities, or other trades or investments announced or approved by the competent authority.
2. Producing publications or lecture courses related to the matters of the preceding subparagraph.
3. Related types of business as approved by the competent authority.

A futures advisory enterprise that operates the futures trading and futures trust fund advisory business of subparagraph 1 of the preceding paragraph shall do so only with respect to the types of futures trades for which a futures commission merchant may be mandated, as publicly announced by the competent authority pursuant to Article 5 of the Futures Trading Act, and futures trust funds whose offering is approved by the competent authority.

A securities broker or a securities investment consulting enterprise ("SICE") concurrently operating a futures advisory enterprise as referred to in paragraph 1 shall be restricted to securities-related futures consulting, and shall comply with Article 3, paragraph 2 of the Standards Governing the Establishment of Futures Advisory Enterprises.

A futures broker, managed futures enterprise, or securities broker that concurrently operates a futures advisory enterprise and provides advisory services on securities other than futures trust funds shall first obtain a business license for concurrent operation of securities investment

consulting business.

Article 3

The term "responsible person" as used in these Regulations means the person who shall bear responsibility under Article 8 of the Company Act or the provisions of other laws.

Article 4

The term "associated persons" as used in these Regulations means those handling the following operations for a futures advisory enterprise:

1. Providing opinions on research and analysis or recommendations on matters relating to futures trading, futures trust funds, futures-related commodities, or other trades or investments announced or approved by the competent authority.
2. Engaging in promotions, solicitations, lectures courses, or publication activities related to the matters of the preceding subparagraph.
3. Performing internal auditing.
4. Other approved business.

Article 5

A futures advisory enterprise shall establish internal control systems pursuant to the competent authority's Regulations Governing Establishment of Internal Control Systems in Securities and Futures Service Enterprises and the standards for futures advisory enterprises' internal control systems prescribed by the Chinese National Futures Association ("the Futures Association") and other futures-related institutions.

Future advisory enterprise business shall be operated in accordance with applicable laws and regulations, the enterprise's articles of incorporation, and the internal control systems referred to in the preceding paragraph.

Internal control systems formulated under paragraph 1, and any amendments thereto, shall be reported to the board of directors for their approval and retained on record; where the competent authority or a futures-related institution gives notice to amend an internal control system, the amendment shall be adopted within the prescribed time limit.

Article 6

When any of the following circumstances occurs with respect to a futures advisory enterprise, the enterprise shall report to the competent authority via the Futures Association:

1. Commencement, suspension, resumption, or termination of operations.
2. Involvement by the futures advisory enterprise or by the responsible person or any associated person or other personnel of the futures advisory enterprise, in the course of enterprise operations, in litigation, arbitration, or being the obligor in a compulsory execution, or the futures advisory enterprise being a bankrupt or being refused service or having a negotiable instrument dishonored by a bank.
3. Any circumstance in Article 19 herein that applies to the responsible person or an associated person.
4. An act of the responsible person, an associated person, or any other personnel violates the Futures Trading Act or any competent authority order promulgated pursuant to the Futures Trading Act.
5. Any other matters requiring reporting under the regulations of the competent authority.

The enterprise shall report the circumstances under subparagraph 1 of the preceding paragraph prior to the fact; the enterprise shall report the circumstances under subparagraphs 2 through 4 by letter to the Futures Association within five business days from the day on which the company learned of the occurrence of the fact.

The term "business day," as used in these Regulations, means one trading day on the domestic futures markets.

Article 7

A futures advisory enterprise shall display its certificate of license prominently in its place of business.

Article 8

A futures advisory enterprise shall establish internal auditing systems to audit its finances and operations at regular periods or from time to time; the audit reports shall be compiled in an audit report.

The audit reports referred to in the preceding paragraph shall note whether the enterprise's finances and operations are in compliance with applicable laws and regulations and the enterprise's internal control system.

Article 9

The business of a futures advisory enterprise shall be carried out by qualified, registered associated persons; qualified, registered personnel shall wear identification badges when engaging in operations.

Chapter II Supervision and management

Section I Finances and operations

Article 10

A futures broker, managed futures enterprise, securities broker, or SICE approved by the competent authority for concurrent operation of a futures advisory enterprise shall first carry out company amendment registration, then deposit an operating bond of NT\$10 million with a financial institution designated by the competent authority.

The financial institution referred to in the preceding paragraph shall be a bank that is approved by the competent authority to operate custodial business, and meets the conditions prescribed by the competent authority.

The operating bond referred to in the preceding paragraph shall be deposited in the form of cash, domestic government bonds, or securities with a credit rating at or above a prescribed level issued by a credit rating agency approved or recognized by the competent authority.

The operating bond deposited by an enterprise named in paragraph 1 that concurrently operates a futures advisory enterprise may not be deposited in multiple accounts, reported lost, or rescinded; no security interest may be created on the things deposited or on their certificates of custody, nor may those items be withdrawn or swapped for other items without the approval of the competent authority. When a withdrawal is made to exchange one form of operating bond for another, and the total monetary amount of the bond remains unchanged, the custodian institution shall report the circumstances of the change to the competent authority within three days of its occurrence.

Article 11

Before a futures advisory enterprise accepts a commission from a principal to provide futures trading consultation services, a registered, qualified associated person shall inform the principal of the natures of the various

futures products, trading terms and conditions, and possible risks. The futures advisory enterprise shall sign a written mandate contract with the principal, which shall include the following main content:

- 1.The names and addresses of the parties to the contract.
- 2.The conditions and time limit under which the contract may be rescinded after signing.
- 3.Stipulations regarding the scope of research, opinions, and recommendations to be provided, and any amendment of the same.
- 4.The manner in which services will be provided (including reporting obligations).
- 5.The futures advisory enterprise's duty of care of a good custodian and its confidentiality obligations.
- 6.The means of calculating expenses and compensation for the commissioned services, and the manner and time of payment.
- 7.The date on which the contract takes effect and the valid duration of the contract.
- 8.Provisions for amendment and termination of the contract.
- 9.The obligation to give notice of any material change and the means of notice.
- 10.The rate of refund on compensation already paid and to which the principal is entitled after termination of contract, and the means of payment. The contract shall also state which fees cannot be returned and their amounts or method of calculation.
- 11.Provisions for bankruptcy, dissolution, dispositions requiring suspension of business, or cancellation or revocation of the business permission.
- 12.Provisions for dispute resolution, and the relevant jurisdictional court.
- 13.Other necessary provisions in regard to the rights and obligations of the parties to the contract.

A contract template for the mandate contract referred to in the preceding paragraph shall be drafted by the Futures Association and submitted to the competent authority for recordation; the same shall be true for any amendments to the contract template.

The mandate contract entered into by the futures advisory enterprise pursuant to paragraph 2 of this article shall be retained for a period of five years from the date on which the mandate relationship is extinguished, provided that where there is any dispute, the contract shall be retained until the conclusion of the dispute.

Article 12

A futures advisory enterprise providing the advisory services of Article 2, paragraph 1, subparagraph 1 shall produce a research report providing the analytical basis and research sources.

Prior to being provided to the principal, the futures trading research opinions and recommendations and related information referred to in the preceding paragraph may not be provided or transmitted to any futures broker, managed futures enterprise, securities broker, or SICE department other than that responsible for futures advisory business, and the information or opinions of another department may not be used as an analytical basis or research source.

Copies and records of the research reports referred to in paragraph 1 shall be retained for a period of five years from the date of provision of the reports. Electronic formats may be employed as the method for retention of those reports and records.

Article 13

Regulations relating to the form, content, production, and dissemination of promotional and advertising materials by a futures advisory enterprise, and any amendments thereto, shall be drafted by the Futures Association and submitted to the competent authority for recordation.

The promotional and advertising materials referred to in the preceding paragraph and related records shall be retained for a period of two years.

The competent authority may at any time make a spot check of the promotional and advertising materials and related records, and the futures advisory enterprise may not refuse or impede such inspection.

Article 14

None of the following may be employed by a futures advisory enterprise in its text, graphic, or verbal promotions, or in advertising produced for dissemination in newspapers, magazines, radio, television, electronic transmission systems, or other mass media in the course of soliciting business:

1. The use of false statements, high-pressure sales tactics, or claims that futures trading is suitable for all individuals.
2. Concealment of important facts with the likelihood of creating mistaken belief.
3. Emphasizing profits while failing to explain related risks.
4. The use of graphs, formulas, computer software or other tools for technical analyses of futures without a clear explanation of their functional limitations.
5. An unbalanced presentation in advertisements of the facts which are advantageous or disadvantageous to the futures advisory enterprise itself, or other types of exaggerated representation of content.
6. Making representations that it guarantees profits or will bear losses.
7. Using letters of recommendation, thank-you letters, records of past performance, or any other text or representation that could easily cause people to believe in the certainty of profit.
8. Any other circumstance in which exaggeration, bias, or the likelihood of misleading the counterparty would occur.

Article 15

A futures advisory enterprise which by means of publications, lectures, or courses, or through other media including television, telephone, telegraph, facsimile, the Internet, or other forms of electronic transmission or broadcast media engages in the consulting services of Article 2, paragraph 1, subparagraph 1 with respect to unspecified persons other than principals, in addition to conduct prohibited under Article 25 herein, also may not engage in the following conduct:

1. Judgments or recommendations involving the future trading price of individual futures contracts or the provision of recommendations about trading strategies;
2. Advertising activity of any kind for the purpose of soliciting clients during the course of futures trading analyses offered over broadcast media;

3. Any conduct that involves conflicts of interest, fraud, misrepresentation, or an attempt to influence market conditions;
4. Failure to provide a reasonable analytical basis for any judgment on or analysis of market conditions;
5. Engaging in futures trading analysis or the production and issuance of written materials under anything other than the company name, such as the name of an associated person or an internal research unit;
6. Violation of the self-regulatory rules of the Futures Association.

The self-regulatory rules referred to in the preceding paragraph shall be adopted by the Federation of Futures Industry Associations and implemented after submission to the competent authority for approval; the same shall apply to any amendments thereto.

Article 16

Futures advisory enterprises shall keep all certificates, vouchers, account books, statistical forms, records, contracts, and related evidentiary documents at their places of business, available at all time for inspection by the competent authority, the Futures Exchange, or institutions designated by the competent authority.

The period for which the certificates, receipts, account books, statistical forms, records, contracts, and related evidentiary documents referred to in the preceding paragraph shall be retained shall be determined according to the Business Accounting Act and other applicable laws and regulations.

Article 17

The competent authority, the Futures Exchange, or institutions designated by the competent authority may undertake inspections of the futures advisory enterprise's operations, finances, or other necessary matters.

Futures advisory enterprises shall provide explanations and relevant documentation in regard to the inspections referred to in the preceding paragraph.

Article 18

Articles 5, 8, and 13 of the Rules Governing Futures Commission Merchants shall apply mutatis mutandis with regard to futures advisory enterprises.

Section II Personnel

Article 19

Where any of the following circumstances apply, a person may not serve as the responsible person or an associated person of a futures advisory enterprise; any such person already serving in such capacity shall ipso facto be dismissed:

1. Any of the circumstances in the subparagraphs of Article 30 of the Company Act.
2. Such person served as a director, supervisor, managerial officer or other equivalent position of a juristic person at the time it was adjudicated bankrupt, and less than three years have elapsed since the finalization of the bankruptcy proceedings or where reconciliation has not been fulfilled.
3. Such person has a record of having a negotiable instrument dishonored at a financial institution within the past three years.
4. Such person has been discharged from his position under Article 101, paragraph 1 of the Futures Trading Act, or Article 56 or Article 66, subparagraph 2 of the Securities and Exchange Act, Article 104 of the Securities Investment Trust and Consulting Act, or Article 44, subparagraph

1 of the Trust Enterprise Act within the past five years.

5. Such person has been sentenced to a punishment under the Futures Trading Act, the Foreign Futures Trading Act, the Company Act, the Securities and Exchange Act, the Securities Investment Trust and Consulting Act, the Banking Act, the Central Bank of China Act, the Regulations for Management of Foreign Exchange, the Insurance Act, the Credit Union Act, the Trust Enterprise Act, or the Financial Holding Company Act, and less than five years has elapsed since execution of the sentence, the expiration of probation, or the pardon of such punishment.

6. Such person has been removed or dismissed from his/her position under Article 100, paragraph 1, subparagraph 2 of the Futures Trading Act, Article 103, paragraph 1, subparagraph 2 of the Securities Investment Trust and Consulting Act, or Article 44, subparagraph 1 of the Trust Enterprise Act within the past five years.

7. Where such person is proven to have improperly been used by others to fill a post of responsible person or associated person of a futures commission merchant.

8. Where such person is proven by facts to have engaged in or been involved in other bad faith or improper activities, demonstrating his or her unsuitability to work in the futures industry.

Where the responsible person is a juristic person, the provisions of the preceding paragraph shall apply mutatis mutandis to the juristic person's representative or designated representative in the performance of their duties.

The responsible person of a futures advisory enterprise may not concurrently serve as the responsible person of any other futures advisory enterprise or managed futures enterprise.

Article 20

Except where otherwise provide in these Regulations, an associated person engaged in the operations set out in the subparagraphs of Article 4 shall possess one of the following qualifications:

1. Having obtained qualification in accordance with the Regulations Governing Managed Futures Enterprises.

2. Having obtained qualification as an associated person of a futures commission merchant in accordance with Article 5, paragraph 1, subparagraph 3 of the Regulations Governing Responsible Persons and Associated Persons of Futures Commission Merchants, while having also engaged in securities- or futures-related work at a securities or futures institution for a period of two years or more.

Article 21

A managerial officer executing the business defined in Article 4 or an associated person engaging in the consulting services of Article 4, subparagraph 1 shall possess one of the following qualifications:

1. Qualification as a futures trading analyst.

2. Qualification as an associated person of a futures commission merchant in accordance with Article 5, paragraph 1, subparagraph 3 of the Regulations Governing Responsible Persons and Associated Persons of Futures Commission Merchants, while having also engaged in securities- or futures-related work at a securities or futures institution for a period of two years or more.

Any personnel of a futures advisory enterprise who engage in futures

trading analysis over any broadcast media shall possess the qualification of subparagraph 1 of the preceding paragraph.

Any person who engages in futures trading analysis over any broadcast media prior to the amendment and issuance of these Regulations but who does not conform to the provisions herein shall supplement their qualifications prior to 28 June 2009. Any such person who fails to supplement their qualifications by that date may not engage in futures trading analysis over any broadcast media.

Article 22

The term "securities institution" as used in the preceding two articles refers to securities firms, securities exchanges, OTC securities exchanges, securities industry associations, securities service enterprises, securities investment consulting enterprises, securities investment trust enterprises, and The Securities Investment Trust and Consulting Association of the R.O.C. (SITCA), as so named in the Securities and Exchange Act and the Futures Investment Trust and Consulting Act. "Futures institution" refers to futures commission merchants, futures exchanges, futures clearing houses, futures industry associations, the Futures Association, leverage transaction merchants, and futures service enterprises.

Article 23

Internal auditing personnel at futures advisory enterprises may not engage in operations outside the registered scope of their positions, nor may the operations of internal auditing personnel be concurrently undertaken by any other associated person.

Operations listed under Article 4, subparagraph 1 herein may be undertaken concurrently by futures broker personnel registered for consigned futures trading and execution of futures trading operations who possess the qualifications given under Article 21 herein.

Operations listed under Article 4, subparagraph 2 may be undertaken concurrently by associated persons of futures brokers, other than those registered as internal auditors, who possess the qualifications specified in Article 20 herein.

Operations specified in Article 4, subparagraph 3 may be undertaken concurrently by personnel at a futures broker, managed futures enterprise, securities broker, or SICE who are registered as internal auditors without being subject to the restrictions of Article 20 herein.

The internal auditing personnel acting concurrently as referred to in the preceding paragraph may participate in pre-service training within three months from initially assuming their position or returning to it after a resignation of a full two years without being subject to the Article 27 mutatis mutandis application of Article 11, paragraph 2 of the Rules Governing Responsible Persons and Associated Persons of Futures Commission Merchants regarding the requirement for participation in pre-service training within the six months prior to assuming their position.

Article 24

The head office of a securities firm or a SICE that concurrently operates a futures advisory enterprise shall establish an independent department exclusively responsible for advisory business, and shall appoint a director and associated persons to that department to carry out the business set forth under Article 4, subparagraphs 1 and 2. A branch office shall appoint

associated persons exclusively responsible for the same.

The director and associated persons of the exclusive department referred to in the preceding paragraph shall respectively possess the qualifications set forth under Articles 21 and 20, and may not undertake operations outside the registered scope of their positions, nor may their duties be concurrently undertaken by any other associated person.

Article 25

The registration of responsible persons and associated persons of futures advisory enterprises, and any changes thereto, shall be carried out through the Futures Association by the futures advisory enterprise to which they belong; responsible persons and associated persons may not engage in their appointed duties without such prior registration.

Under any of the following circumstances, the registration referred to in the preceding paragraph may not be effected, and where registration has already been effected, it shall be revoked:

1. Circumstances set out in Article 19.

2. Where the registrant does not possess the qualifications set out under Articles 20 or 21.

3. The registrant has violated the provisions of Article 23 or Article 24 herein.

4. The registrant has failed to participate in pre-service training or on-job training pursuant to Article 23, paragraph 5 or Article 27 or to obtain a passing grade in such training.

Any change in the position of the responsible person or an associated person of a futures advisory enterprise shall be reported to the Futures Association, and return or re-issuance of identification badges carried out, within five business days of the occurrence of the change; prior to registration of any such change, the futures advisory enterprise to which the responsible person or associated person belongs shall not be immune from liability for the conduct of the person.

Article 26

The responsible person and associated persons of a futures advisory enterprise shall faithfully carry out their duties in keeping with the principle of good faith and honesty.

In addition to conduct prohibited under Article 63 of the Futures Trading Act, the enterprise and the persons referred to in the preceding paragraph may not engage in the following conduct:

1. Entering into futures advisory mandate contracts by means of fraud, coercion, or other improper methods.

2. Engaging in conduct involving falsehood, concealment, fraud, or other conduct obviously inconsistent with fact or that would be sufficient to cause mistaken confidence on the part of others.

3. Using the futures trading research, opinions, recommendations, published materials, or lecture courses produced for a principal with the intent of seeking benefits for oneself, another principal, or a third party.

4. Engaging in futures trading analysis under an unregistered name or a name other than one's real name.

5. Directly or indirectly establishing a fixed place of business outside the place of business of the company or a branch office for the signing of mandate contracts with principals, provided that where otherwise provided

by the competent authority, this restriction shall not apply.

6. Disclosing matters entrusted by a principal or other secrets gained in the course of business, except in accordance with an inquiry undertaken pursuant to the law.

7. Handling the production, reporting, announcement, display, or safekeeping of any account books, statistical tables, or documents required by law or regulation in contravention of regulations or making false entries.

8. Failing to provide account books, statistical tables, documents, promotional materials, advertisements, or other reference reporting materials within the specified time per order of the competent authority, or refusing or impeding an investigation of the competent authority undertaken pursuant to applicable law.

9. Taking into custody or appropriating the funds, personal seal, or passbook of a principal.

10. Borrowing funds from a principal or acting as an intermediary in such borrowing.

11. Agreeing to undertake futures trading on a fully discretionary basis.

12. Producing advertising or promotional materials in contravention of laws or regulations.

13. Using another's name or allowing another to use one's name to carry out business operations.

14. Opening a futures trading account or making futures trades on behalf of another.

15. Using persons not employed by the enterprise to carry out futures advisory related business.

16. Violating the self-regulatory rules of the Futures Association.

17. Engaging in any other conduct in violation of laws and regulations governing securities and futures management or prohibited by the regulations of the competent authority.

Persons referred to in the preceding paragraph also may not engage in any other conduct which, by law and regulation, is prohibited for securities advisory enterprises.

Personnel other than associated persons may not engage in any conduct set out in the preceding two paragraphs, nor may they carry out the duties of an associated person or act as proxy for them.

Administrative regulations governing futures trading by the responsible person, associated persons, or other personnel at a futures advisory enterprise or their spouses shall be adopted by the Futures Association and submitted to the competent authority for recordation; the same shall be true for any amendments thereto.

Article 27

Articles 10 through 15 and Article 18 of the Rules Governing Responsible Persons and Associated Persons of Futures Commission Merchants shall apply mutatis mutandis to futures advisory enterprises.

Chapter III Supplementary Provisions

Article 28

These Regulations shall be enforced from the date of promulgation.