

Content

Title :	Regulations Governing Leverage Transaction Merchants Ch
Date :	2014.05.29
Legislative :	<p>1. Full text of 25 articles adopted and issued per 12 July 2012 Order No. Financial-Supervisory-Securities-Futures-1010030578 of the Financial Supervisory Commission; for enforcement from the date of issuance</p> <p>2. Article 20 amended and issued per 30 December 2013 Order No. Financial-Supervisory-Securities-Firms-1020052674 of the Financial Supervisory Commission</p> <p>3. Article 10 amended and issued per 29 May 2014 Order No. Financial-Supervisory-Securities-Futures-1030013322 of the Financial Supervisory Commission</p>
Content :	<p>Chapter I General Principles</p> <p>Article 1</p> <p>These Regulations are adopted pursuant to Article 80, paragraph 4 of the Futures Trading Act ("the Act").</p> <p>Article 2</p> <p>A leverage transaction merchant shall adopt an internal control system pursuant to the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets prescribed by the competent authority, and the Rules Establishing Standards for the Internal Control Systems of Leverage Transaction Merchants jointly prescribed by the GreTai Securities Market (GTSM) and the Taiwan Futures Exchange Corporation (TAIFEX).</p> <p>A leverage transaction merchant shall be operated in accordance with laws and regulations, its articles of incorporation, and the internal control system of the preceding paragraph.</p> <p>For trades of a certain dollar amount or greater, or suspected of involving money laundering, the leverage transaction merchant shall retain documentation sufficient for a full and complete understanding of the trade, records of verification of the customer's identity and relevant reporting, and shall comply with the provisions of the Money Laundering Control Act and the internal control system.</p> <p>The adoption of and any amendments to the internal control system referred to in paragraph 1 shall be reported to the board of directors for approval and retained for reference. Any amendment required by a notice from the competent authority or the GTSM shall be made within the specified time limit.</p> <p>Article 3</p> <p>Given the occurrence of any of the following, a leverage transaction merchant shall report to the competent authority:</p> <p>1.The commencement, suspension, resumption, or termination of business operations.</p> <p>2.The opening, change, or closing of a customer margin account.</p> <p>3.The leverage transaction merchant or any of its responsible persons, associated persons, or other employees, as the result of the conduct of</p>

business, becomes involved in litigation or arbitration or is subject to compulsory execution as an obligor, or the leverage transaction merchant is a bankrupt or has a negotiable instrument dishonored or is refused services by a bank.

4.Any of the circumstances referred to in Article 28 of the Act applies to the responsible persons or any associated persons of the leverage transaction merchant.

5.There is factual evidence that a responsible person or associated person of the leverage transaction merchant has engaged in or been involved in other dishonest or improper activities, demonstrating their unsuitability for conducting futures trading.

6.A responsible person, associated person, or other employee of the leverage transaction merchant has violated the Act or any order issued by the competent authority in accordance with the Act.

7.Any other matter for which the competent authority requires reporting.

The matters under subparagraph 1 of the preceding paragraph shall be reported in advance by the company; the matters under subparagraphs 2 through 6 shall be reported by the company within 5 business days from either the date on which it becomes aware of the matter or the day on which the matter occurs.

Matters that must be reported pursuant to paragraph 1 shall be submitted to the competent authority via the GTSM.

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

Article 4

The provisions of Article 5 and Articles 8 to 10 of the Regulations Governing Futures Commission Merchants apply mutatis mutandis to leverage transaction merchants.

Chapter II Business Permission

Article 5

A futures commission merchant may apply to concurrently operate a leverage transaction merchant and conduct proprietary leverage contract trading at its place of business.

An application to concurrently operate a leverage transaction merchant may only be made by a futures commission merchant that engages in proprietary futures trading and that is not concurrently operated by a non-industry enterprise.

A futures commission merchant concurrently operating a leverage transaction merchant shall establish a dedicated unit to handle the leverage transaction business, and based on management requirements with respect to its enterprise size, business conditions, and internal controls, shall allocate a sufficient number of competent managerial officers and associated persons who satisfy the eligibility requirements set out in these Regulations.

Article 6

A futures commission merchant applying to concurrently operate a leverage transaction merchant shall satisfy the following eligibility requirements, and shall comply with GTSM regulations:

- 1.It must have engaged in proprietary trading business for a full 3 years.
- 2.Its CPA audited and attested financial report for the most recent period

must show a net worth of NT\$1 billion, with no accumulated deficits, while meeting the provisions of Article 17 of the Regulations Governing Futures Commission Merchants.

3.The monthly simple arithmetic mean of the percentage accounted for by adjusted net capital in the total amount of customer margins required for the open positions of futures traders during the preceding 6 months must not have been lower than 40 percent in any month.

4.It must not have been subject to any sanction under Article 100, paragraph 1, subparagraph 1 of the Act, Article 103, subparagraph 1 of the Securities Investment Trust and Consulting Act, or Article 66, subparagraph 1 of the Securities and Exchange Act during the preceding half year.

5.It must not have been subject to any sanction under Article 100, paragraph 1, subparagraphs 2 to 4 of the Act, Article 103, subparagraphs 2 to 5 of the Securities Investment Trust and Consulting Act, or Article 66, subparagraphs 2 to 4 of the Securities and Exchange Act during the preceding 2 years.

6.It must not have been subject to a suspension or restriction of trading by the TAIEX, the futures clearing house, the TWSE, or the GTSM pursuant to their operating rules or bylaws during the preceding year.

7.Any other requirements set by the competent authority.

If a futures commission merchant does not meet the requirements of subparagraphs 4 to 6 of the preceding paragraph, but has shown a concrete improvement of the circumstances and the competent authority has recognized the improvement, it may be exempted from those restrictions.

Article 7

A futures commission merchant applying to concurrently operate a leverage transaction merchant shall apply to the competent authority for approval by filling out an application form and attaching the following documents:

1.A business plan setting out the operating principles of the leverage transaction merchant, its business development plan, internal organization and division of responsibilities, personnel recruitment and training plan, and financial forecasts for the year in which operations commence and the following year.

2.The minutes of the directors' meeting containing the resolution for concurrent operation of a leverage transaction merchant.

3.A declaration that none of the circumstances under Article 28 of the Act applies to its directors and supervisors.

4.The CPA audited and attested financial report for the most recent period.

5.A document evidencing compliance with paragraph 1, subparagraph 6 of the preceding Article, provided that exemption from this requirement is allowed when no contract for market use has been entered into with the relevant institution.

6.An application checklist.

7.A declaration stating that the application and its attachments contain no misrepresentation or concealment of information.

Article 8

Within 6 months from the date of approval by the competent authority, a futures commission merchant applying to concurrently operate a leverage transaction merchant shall amend its articles of incorporation and carry out the required amendments to company registration for concurrent

operation of a leverage transaction merchant, and shall further fill out an application form, with the following documents attached, and apply to the competent authority for a certificate of license:

1. Its articles of incorporation and documents evidencing amendment of company registration.
2. A description of its internal control system for the concurrently operated leverage transaction merchant.
3. A review opinion issued by the GTSM on the appropriateness of the risk management of the futures commission merchant concurrently operating a leverage transaction merchant.
4. A register issued by the Chinese National Futures Association ("Futures Association") of the managerial officers and associated persons for the leverage transaction merchant who have passed the review of their qualifications, with documentation showing their qualifications.
5. A declaration stating that none of the circumstances under Article 28 of the Act applies to the persons serving as the managerial officers and associated persons of the leverage transaction merchant.
6. The CPA audited and attested financial report for the most recent period. The financial report need not be attached if it is for the same period as the report attached with the application for approval to concurrently operate a leverage transaction merchant.
7. Documentary proof that an operating bond has been furnished pursuant to the provisions of Article 10.
8. A document evidencing compliance with Article 6, paragraph 1, subparagraph 6, provided that exemption from this requirement is allowed when no contract for market use has been entered into with the relevant institution.
9. An application checklist.
10. A declaration stating that the application and its attachments contain no misrepresentation or concealment of information.

The approval granted to the futures commission merchant concurrently operating a leverage transaction merchant will be revoked upon failure to apply to the competent authority for the issuance of a certificate of license for concurrent operation of a leverage transaction merchant within the time period set by the preceding paragraph. Given a legitimate reason, an application may be made to the competent authority for an extension prior to the deadline; such an extension may not exceed 6 months and will be granted one time only.

A futures commission merchant concurrently operating a leverage transaction merchant that enters the Futures Association under any designation other than leverage transaction merchant may not commence the business operations of a leverage transaction merchant.

Article 9

If an incomplete set of documents is submitted for an application under these Regulations or the documents are not fully filled out, and if the applicant fails to correct the deficiency within a prescribed time after being so notified by the competent authority, the application will be returned.

Under any of the following circumstances, the competent authority may refuse to issue an approval or a permission license for an application by a

futures commission merchant to concurrently operate a leverage transaction merchant:

- 1.A misrepresentation is found in any content or item in the application documents.
- 2.The business plan or the internal control system is insufficiently concrete or cannot be effectively executed.
- 3.One of the circumstances set out under Article 28 of the Act applies to a director, supervisor, or a person appointed as a managerial officer of the leverage transaction merchant.
- 4.The futures commission merchant is not in compliance with the provision of Article 6.
- 5.Any other circumstance where withholding approval is deemed necessary for protection of the public interest.

Chapter III Supervision and Administration

Section 1 Finance and Business

Article 10

A futures commission merchant approved by the competent authority for concurrent operation of a leverage transaction merchant shall first carry out amendment of its company registration, then deposit an operating bond of NT\$10 million with a financial institution meeting the requirements of paragraph 2.

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

The operating bond under paragraph 1 shall be in the form of cash, domestic government bonds, or securities that have a rating of a specified level or higher from a credit rating institution approved or recognized by the competent authority.

The operating bond deposited by a futures commission merchant concurrently operating a leverage transaction merchant may not be separately deposited in multiple accounts, reported lost, or cancelled. No encumbrance may be created on either the underlying subject of the deposit or the custody certificates, nor may they be withdrawn or replaced with other items without the prior approval of the competent authority. However, a withdrawal may be made for the purpose of replacing the operating bond with a different type of bond, provided that the total amount remains the same and that the circumstances of the change are reported to the competent authority within 3 days by the custodian institution.

Article 11

In calculating the percentage accounted for by adjusted net capital in the total amount of customer margins required for the open positions of futures traders under Article 72, paragraph 1 of the Act, a futures commission merchant concurrently operating a leverage transaction merchant shall include leverage contract trading business, and the method of calculation shall comply with the rules of the competent authority.

When the net worth of a futures commission merchant concurrently operating a leverage transaction merchant is lower than NT\$800 million, or the percentage accounted for by adjusted net capital in the total amount of customer margins required for the open positions of futures traders is lower than 20 percent, it shall file a report with the competent authority,

the TAIFEX, and the GTSM.

When the net worth of a futures commission merchant concurrently operating a leverage transaction merchant is lower than NT\$600 million, or the percentage accounted for by adjusted net capital in the total amount of customer margins required for the open positions of futures traders is lower than 15 percent, then except where necessary to deal with currently outstanding trades, it shall immediately cease trading leverage contracts, and submit a plan for corrective action to the competent authority, the TAIFEX, and the GTSM.

The competent authority may adjust the monetary amounts and percentages of the preceding two paragraphs in view of domestic and foreign economic and financial conditions and the business conditions of leverage transaction merchants.

Article 12

A leverage transaction merchant conducting leverage contract trading business that involves foreign exchange operations shall apply to the Central Bank for permission for the related inward or outward remittances. If, after obtaining permission, the leverage translation merchant violates relevant Central Bank rules in carrying out the operations under this paragraph, and further fails to take corrective action within the specified deadline after being instructed to do so by the Central Bank, or if the violation is of a material nature, the Central Bank may revoke the permission or make another appropriate disposition.

When a leverage transaction merchant conducts the business of the preceding paragraph and undertakes related hedging transactions, foreign exchange settlement matters shall be carried out in accordance with the Regulations Governing the Declaration of Foreign Exchange Receipts and Disbursements or Transactions and related provisions.

A leverage transaction merchant conduct hedge trading in the capacity of a customer through a designated bank that has been approved by the Central Bank to handle foreign exchange derivatives or an overseas financial institution.

For a leverage transaction merchant operating the business under paragraph 1, matters relating to settlement of funds, payment and receipt of fees, and payment of funds upon early rescission or expiration of contracts shall be carried out in compliance with the following provisions:

1. When denominated in New Taiwan Dollars, all settlement of funds and payments and receipts of fees with a customer shall be in New Taiwan Dollars.
2. When denominated in a foreign currency, all settlement of funds and payments and receipts of fees with a customer shall be in foreign currency. The customer may carryout payment of funds by transfer from its own foreign exchange deposit account. When foreign exchange settlement is required, it shall be carried out by the customer at a designated foreign exchange bank in accordance with the Regulations Governing the Reporting of Foreign Exchange Receipts and Disbursements or Transactions.
3. Upon early rescission by the customer or the expiration of the contract, the leverage transaction merchant shall deposit the funds receivable by the customer in the customer's New Taiwan Dollar or foreign exchange deposit account on the settlement date in the currency stipulated in the contract.

A leverage transaction merchant conducting the business under paragraph 1 shall submit a monthly operations statement to the foreign exchange authority and the GTSM by the 5th day of the following month.

A leverage transaction merchant conducting trades in structured instruments linked to foreign financial products shall submit a monthly operations statement on such trading business to the foreign exchange authority and the GTSM by the 5th day of the following month.

Article 13

A leverage transaction merchant conducting leverage contract trading business may not link to any of the following underlying instruments unless the trade is with a professional institutional investor and an application has been made in accordance with Article 14, paragraph 1:

1. Securities privately placed domestically or abroad.
2. Securities issued overseas by domestic enterprises or certificates of beneficial interest issued overseas by domestic securities investment trust enterprises.
3. Any Taiwan stock index compiled by a domestic or foreign institution and related financial commodities, provided that this restriction shall not apply to an index compiled by the GTSM, the TWSE, or the TAIEX, either singly or in cooperation with another institution.
4. Securities of a mainland area securities market.

A leverage transaction merchant conducting leverage contract trading business may not link to any underlying instrument involving New Taiwan Dollar Exchange rates.

Article 14

A leverage transaction merchant that undertakes a trade with a professional institutional investor of a leverage contract with any of the linked underlying instruments named in the subparagraphs of Article 13, paragraph 1 shall submit an application to the GTSM along with the relevant documentation. The GTSM will forward the application to the competent authority, and such a trade may take place only after the competent authority issues an approval to a first leverage transaction merchant for such a trade.

The term "professional institutional investor" as used in the preceding Article and the preceding paragraph means a domestic or foreign bank, insurance company, bills finance company, securities firm, fund management company, government investment institution, government fund, pension fund, mutual fund, unit trust, securities investment trust company, securities investment consulting company, trust enterprise, futures commission merchant, leverage transaction merchant, futures service enterprise, or other institution approved by the competent authority.

Article 15

When a leverage transaction merchant conducting leverage contract trading business collects margins from its clients, it shall open a customer margin account with the institution designated by the competent authority, and such account shall be designated as a customer margin account for leverage contracts.

When a leverage transaction merchant operates leverage contract trading with its clients, the receipts and payments of margins shall be made through the customer margin account. All withdrawals shall be made through

account transfers, with detailed and accurate records and receipt and payment documents.

Article 42, paragraphs 2 and 4, Article 45, and Article 47, paragraph 1 of the Regulations Governing Futures Commission Merchants apply mutatis mutandis to the margins and customer margin accounts under the preceding two paragraphs.

Article 16

A leverage transaction merchant shall keep at its place of business all the certificates, vouchers, account books, statements, records, contracts, and related evidentiary documents for trades and for their clearing and settlement to make them available for audit by the competent authority, the TAIFEX, the GTSM, or an institution designated by the competent authority. The period of retention for the certificates, vouchers, account books, statements, records, contracts and evidentiary documents referred to in the preceding paragraph shall be as prescribed by the Business Accounting Act and relevant laws and regulations.

Article 17

The competent authority, the TAIFEX, the GTSM, or an institution designated by the competent authority may perform audits of a leverage transaction merchant's business, finance, and other necessary matters.

A leverage transaction merchant shall provide explanations and relevant documents in audits performed pursuant to the preceding paragraph.

Article 18

A leverage transaction merchant conducting leverage contract trading shall retain sufficient records to evidence the facts of the transactions.

A leverage transaction merchant that engages in hedging operations for leverage contract trades shall do so in accordance with the requirements of the competent authority.

A leverage transaction merchant's hedging operations, calculation of product gains or losses, and settlements upon cancellation or expiration may not be detrimental to fair market price formation or investor rights and interests.

A leverage transaction merchant conducting leverage contract trading may not make any use of such trading to carry out mergers or acquisitions or unlawful trades, either on its own behalf or in cooperation with clients.

Section II Personnel

Article 19

The term "associated persons" as used in these Regulations refers to those personnel carrying out the following operations on behalf of a leverage transaction merchant:

1. Research and analysis or product design for leverage contracts.
2. Recommendation or sale of leverage contracts.
3. Clearing and settlement for leverage contracts.
4. Internal audits in connection with leverage contracts.
5. Legal compliance in connection with leverage contracts.
6. Serving as in-charge accountant for leverage contracts.
7. Risk management for leverage contracts.
8. Conducting other approved business.

Article 20

The following associated persons of a leverage transaction merchant shall

not perform business activities beyond the scope of their registration, nor shall 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.Internal auditors.

2.Risk management personnel.

Associated persons of a leverage transaction merchant who are engaged in research and analysis or in product design or recommendation or sale may not concurrently hold a position involved in clearing and settlement or concurrently serve as in-charge accountant.

The position of associated person handling research and analysis or product design or recommendation or sale at a leverage transaction merchant may be concurrently held by an associated person registered to handle proprietary trading for the futures commission merchant; the position of associated person handling clearing and settlement, internal auditing, legal compliance, or risk management, or serving as in-charge accountant, may be concurrently held by an associated person engaged in operations of the same nature for the futures commission merchant.

The position of managerial officer in the dedicated unit for leverage transactions at a futures commission merchant concurrently operating a leverage transaction merchant may be concurrently held by the managerial officer of the futures commission merchant's proprietary trading department.

A leverage transaction merchant shall establish internal audit and control mechanisms to ensure that any concurrent holding of positions by any of its associated persons is limited to the scope necessary for the effective execution of the associated person's principal duties and duties of the other position concurrently held, and for maintaining the business operations of the leverage transaction merchant. The concurrent holding of positions 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 customers and shareholders shall be protected.

Article 21

The business of a leverage transaction merchant shall be carried out by qualified, registered associated persons; when engaging in business, qualified, registered associated persons shall wear identification badges. Registration, and any change in registration, of a responsible person or associated person at a leverage transaction merchant shall be carried out through the Futures Association by the leverage transaction merchant to which they belong; responsible persons and associated persons may not engage in their appointed duties without such prior registration.

Given any of the following circumstances, the registration referred to in the preceding paragraph may not be made, and if already made, shall be revoked:

1.Any of the circumstances under Article 28 of the Act.

2.The provisions regarding qualification for managerial officer or associated person applied mutatis mutandis under Article 23 are not met.

3.Violation of the provisions of the preceding Article.

4.Failure to participate in pre-service training or in-service training and

to obtain a qualifying grade in such training pursuant to the provisions applied mutatis mutandis under Article 23.

5. Factual evidence of being engaged in or connected with other bad faith or inappropriate activities, demonstrating unsuitability to serve as a responsible person or associated person.

If there is any change of a responsible person or associated person at a leverage transaction merchant, the leverage transaction merchant shall report the change to the Futures Association and replace or surrender their identification badges within 5 business days of the occurrence of the change; prior to the registration of any such change, the leverage transaction merchant to which the responsible person or associated person belongs remains liable for the conduct of the person.

Article 22

The responsible person and associated persons of a leverage transaction merchant 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 Act, the enterprise and the persons referred to in the preceding paragraph may not engage in the following conduct:

1. Conducting trading of leverage contracts by means of fraud, coercion, or other improper methods.
2. Entering into any agreement with a customer to share benefits or bear losses, or directly or indirectly soliciting, agreeing to accept, or accepting improper benefits.
3. Engaging in conduct involving falsehood, deception, or other conduct obviously inconsistent with fact or that would be sufficient to cause mistaken confidence on the part of others.
4. Engaging in any act contrary to the intent of the instructions of a client or the client's interests without the consent of such client.
5. Allowing a third party to use the name of the enterprise or the person to engage in leverage contract trading business.
6. Directly or indirectly setting up a fixed place outside the place of business of the company to sign written agreements with customers, except when the competent authority has provided otherwise.
7. Misappropriating the funds or securities of a client.
8. Keeping custody of a customer's funds, personal seal, or passbook on their behalf, except when the competent authority has provided otherwise.
9. Failing to provide the necessary reply or handling in response to a client's inquiry regarding the particulars of a trade, thus causing damage to the client's rights and interests.
10. Making false statements in account books, statements, or documents required by acts and regulations, or failing to prepare, report, publicly announce, make available, or retain such items.
11. Failing to submit, within the prescribed time limit, account books, statements, documents, or other reference materials or reports required by order of the competent authority, or refusing or interfering with an inspection conducted by the competent authority pursuant to laws.
12. Lending to or borrowing from clients, or acting as an intermediary for such lending or borrowing.
13. Producing false trading records.

14.Using information obtained through business relationships to conduct trading on one's own account, or to provide others with such information for their use in trading.

15.Making use of non-employees to carry out business relating to leverage contract trading.

16.Carrying out the duties of one's position under another's name or having another carry out one's duties under one's own name.

17.Conducting other acts in violation of laws and regulations or orders of the competent authority mandating or prohibiting certain acts.

In conducting business, the persons referred to in the preceding paragraph may not engage in any conduct that a leverage transaction merchant is prohibited from engaging in by law or regulation.

Personnel other than associated persons are likewise prohibited from the conduct referred to in the preceding two paragraphs, and furthermore may neither perform the duties of an associated person nor act as a deputy for an associated person.

Article 23

The provisions of Article 2, paragraph 1, Articles 3, 3-2, and 4, Article 5, paragraphs 1 and 2, Article 5-1, paragraph 1, Articles 6, 7-1, 10 through 15, 18, and 18-1 of the Regulations Governing Responsible Persons and Associated Persons of Futures Commission Merchants apply mutatis mutandis to leverage transaction merchants.

Chapter IV Supplementary Provisions

Article 24

The format of written forms required by these Regulations shall be prescribed by the competent authority.

Article 25

These Regulations shall enter into force from the date of issuance.