

Content

Title : Regulations Governing Futures Clearing Houses **Ch**

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Legislative : 2. Articles 15 and 44 were amended by the Securities and Futures Commission, Ministry of Finance on September 8, 2000 per letter Ref. No. (89) Taiwan-Finance-Securities (7) 03243
3. Articles 5, 15, 16, and 20 amended and issued per 13 June 2006 Order No. Financial-Supervisory-Securities-VII-0950002741 of the Financial Supervisory Commission, Executive Yuan; for implementation from the date of issuance
4. Articles 9 and 19 amended and issued per 2 August 2010 Order No. Financial-Supervisory-Securities-Futures-0990041012 of the Financial Supervisory Commission, Executive Yuan
5. Article 13 amended and issued per 30 December 2011 Order No. Financial-Supervisory-Securities-Futures-1000063626 of the Financial Supervisory Commission, Executive Yuan
6. Articles 5, 13, 17 and 44 amended and issued per 12 July 2012 Order No. Financial-Supervisory-Securities-Futures-1010030979 of the Financial Supervisory Commission; for implementation from the date of issuance, except for Articles 13 and 17, which shall enter into force from the fiscal year of 2013
7. Articles 7 and 8 amended and issued per 6 January 2015 Order No. Financial-Supervisory-Securities-Futures-1030050108 of the Financial Supervisory Commission

Content : Chapter I General Provisions

Article 1

These Regulations are prescribed pursuant to Paragraph 2 of Article 45, Article 53, Article 55 and Article 97 of the Futures Trading Act (hereinafter "the Act").

Article 2

The businesses of a futures clearing house are the clearance and settlement for futures trading in the centralized futures trading market and to provide guarantee for performance of the futures contracts.

Article 3

For the purpose of these Regulations, "Responsible Persons" shall mean directors, supervisors, managerial officers of a futures clearing house and any other persons who shall be responsible in accordance with laws.

For the purpose of these Regulations, "Managerial Officer" shall mean the president, senior vice president, vice president, and the head of each business department and their deputies.

Article 4

For the purpose of these Regulations, "Associated Persons" shall mean personnel of a futures clearing house who are engaging in the following businesses:

1. conducting audit on the finance and business of the clearing members or futures commission merchants;
2. surveillance, clearance, settlement, the administration of the margin and premium, and risk control of the centralized futures trading market;
3. computer system operation of the futures clearance and settlement and

information management;

4. internal audit of the futures clearing house.

In case where the clearing business is concurrently conducted by a futures exchange or by other institutions, the Associated Persons as referred to in the proceeding Paragraph shall not concurrently perform both duties or concurrently perform the duty of other departments.

Article 5

A futures clearing house shall prescribe the qualifications of each type of clearing members, and report such qualifications to the Financial Supervisory Commission (hereinafter referred to as "the FSC") for approval. The same procedure shall apply with amendments thereto.

The factors to be taken into account in drafting the qualifications as referred to in the proceeding Paragraph include capital, financial structure, credit record and other financial, and business condition. Its directors, supervisors, and managerial officers shall not fall into any one of the categories specified in Article 28 of the Act.

Article 6

A futures clearing house shall submit the following documents to the FSC and obtain the approval before commencing its business:

1. a list of its clearing members (including name and type of the members) and the proof of satisfying the qualifications as referred to in the preceding Article;
2. the operation procedure of and contract between the futures clearing house and the financial and centralized custody institutions related to settlement, clearance, and transfer of monies/certificates;
3. proof evidencing the futures clearing house has contributed the compensation reserve fund in accordance with Article 15;
4. proof evidencing the clearing members have deposited the operation bond in accordance with Article 12 and deposited the settlement and clearing fund in accordance with the rules of the clearing house;
5. the operation procedure relating to the clearing and settlement operation and contracts between the clearing house, clearing members, and non-clearing members;
6. proof evidencing the computerized operation of clearance, settlement, and surveillance can be operated properly;
7. the standard, procedure of market surveillance and operation plan for handling unusual situation;
8. auditing plan regarding the finance, business, and internal audit of the clearing members and the internal audit of the clearing house (including normal and exceptional management);
9. handling procedure as referred to in Article 24;
10. clearing and settlement contract as referred to in Article 27;
11. other documents as required by the FSC.

Article 7

In case of any one of the following events, a futures clearing house shall report to the FSC in advance for approval:

1. change of the name of the clearing house;
2. change of the amount of capital or designated operation fund;
3. change of business place;
4. engaging in other business or investing in other business;

5. acquiring all or major part of business or property of other clearing houses; or transfer all or major part of the business or property to others;
6. merger or dissolution;
7. Other matters which shall be reported to the FSC in advance for approval as required by the Act or other rules of the FSC.

Article 8

In case of any one of the following events, a futures clearing house shall immediately report to the FSC for review and recordation:

1. the suspension, resumption, or cessation of business;
2. the execution, amendment, or termination of clearing and settlement contract with its clearing members;
3. change of Articles of Association or other bylaws;
4. entering into any cooperation agreement or memorandum with a foreign exchange, clearing house, self-regulatory organization or other institution;
5. other matters which shall be reported to the FSC for review and recordation under the Act and other rules of the FSC.

Article 9

In case of any one of the following events, besides taking appropriate action immediately according to the circumstances of the matter, a futures clearing house shall also report to the FSC for recordation:

1. a temporary suspension of all or part of the clearance or settlement of the current trading, resulting from the incident caused by force majeure;
2. the breakdown or disruption of the clearing or settlement system or trading information transmission system;
3. where a clearing member delays depositing margin or the premium or defaults on the obligation to deposit the margin or pay the premium;
4. where a clearing member delays performing settlement when due or fails to perform the settlement;
5. where a Responsible Person or Associated Person of a futures clearing house becomes involved in litigation, receives a judgment in litigation, or becomes subject to compulsory execution as an obligor, as a result of or in connection with his performance of job duties, or has any other incident which would cause him to be discharged from the position under the Act.
6. Where any of its directors, supervisors, managerial officers, or associated persons falls within the categories specified in Article 28 of the Act;
7. punishment imposed on the clearing members;
8. matters which shall be reported to Competent Authority pursuant to Article 55 and Article 41 of the Act;
9. the surveillance and handling situation of the centralized futures trading market;
10. any civil litigation, non-litigious matters, administrative measure, administrative litigation, or commercial arbitration or settlement, which have substantial impact on its finance or business;
11. admission or withdrawal of clearing members;
12. the depository institution's name and the account number of the designated account for the clearing bond;
13. minutes of the Board of Directors' meetings;

14. the reviewing reports on the financial report of the clearing members;
15. auditing of the financial and business matters of the clearing members;
16. other matters which shall be reported to the FSC for recordation under the Act or rules of the FSC.

The above events specified in Items 1 to 4 of preceding Paragraph shall be reported to the FSC no latter than one day after the event occurred ; events specified in Item 5 to 10 shall be reported to the FSC within 5 days after it learns of the occurrence of such event or after the procedure for handling it is completed; the events specified in Items 10 to 15 shall be reported to the FSC monthly regarding the enforcement result.

Article 10

A futures clearing house shall establish its auditing system and an independent auditing department.

Article 11

A futures clearing house shall not engage in any one of the following acts:

1. issue bearer stock;
2. provide guarantee or endorsement of negotiable instruments which are not related to its clearing or settlement business, or provide property to others as collateral.
3. other acts as regulated by the FSC.

Chapter II Finance

Article 12

A futures clearing house shall deposit an operation bond to the National Treasury after it obtained the approval from and registered with the FSC. A futures clearing house concurrently operated by a futures exchange or other institutions is subject to the same requirement after it obtained the permission from the FSC.

The amount of above referred operation bond shall be five percent (5%) of its paid-in capital, and shall be deposited in cash, government bond or financial bond. For a futures clearing house which is concurrently operated by a futures exchange or other institutions, the operation bond shall be five percent (5%) of its designated operation fund.

Article 13

A futures clearing house shall make a public announcement and report to the FSC within two months after the end of its semi-annual fiscal year and three months after the end of its fiscal year, its financial report audited and certified by an accountant, and adopted by the Board resolution and recognized by the supervisors.

Where the annual financial report recognized by the shareholders meeting and the annual financial report publicly announced and reported to the FSC are not identical, the futures clearing house shall publicly announce and report to the FSC within two days from the occurrence of the event.

The futures clearing house shall produce an annual report for distribution to the shareholders at the shareholders meeting, and further report to the FSC.

Within the first ten days of each month, the futures clearing house shall report to the FSC the monthly accounting summary, assets and liabilities statement (balance sheet), and statement of comprehensive income for the previous month.

Article 14

A futures clearing house may not lend the clearing and settlement fund to others or use it for other purposes, and such fund may only be used for the following purposes:

1. bank deposit;
2. purchasing treasury bond and government bond;
3. other purposes approved by the FSC.

The maximum amount which is permitted to be used for the purpose specified in Item two of the preceding Paragraph shall not exceed fifty percent of the balance of the settlement and clearing fund.

A futures clearing house shall enter into a custody agreement regarding the time deposit, treasury bond or government bond as referred to in Paragraph 1 with the bank where the designated account was opened; and the said time deposit, treasury bond or government bond shall be kept in custody by the said bank.

Article 15

A futures clearing house shall deposit NT\$300,000,000 compensation reserve fund in one lump sum in accordance with Article 53 of the Act and shall continue to deposit twenty percent (20%) of the income from clearing and settlement fee within 15 days after the end of each quarter, provided that this requirement shall not apply when the compensation reserve fund deposit amount equals the authorized capital amount or allocated operating capital amount.

The compensation reserve fund referred to in the preceding Paragraph shall be deposited in an account in a bank that has been approved by the FSC to engage in custodian business.

A futures clearing house shall not lend its compensation reserve fund to others or use it for other purposes, and its usage shall be limited to the following purposes:

1. bank deposit;
2. purchasing treasury bond and government bond;
3. other purposes as approved by the FSC.

A futures clearing house shall enter into a custody agreement regarding the time deposit, treasury bond or government bond as referred to in the preceding Paragraph with the bank where the designated account was opened; the said time deposit, treasury bond or government bond shall be kept in custody by the said bank; there may not be separate storage, reporting of losses, or cancellation of contracts. Encumbrances may not be created on the objects deposited and the certificates of deposit, and without the approval of the FSC, no withdrawals or replacements may be made.

Article 16

A futures clearing house shall allocate a special reserve from its annual after-tax profit.

The annual special reserve allocation as referred to in the preceding Paragraph may not exceed 80 percent, and shall be designated by the FSC according to the futures clearing house's profitability.

The special reserve as referred to in Paragraph 1 may not be used for purposes other than making up losses of the company or those approved by the FSC.

Article 17

A futures clearing house shall draft the handling procedure for the

acquisition or disposition of its property and equipment and report such procedure to the FSC for approval. The above requirement shall also apply to any amendment to the procedure.

In case where the amount of each acquisition or disposition exceeds NT\$50,000,000 or the transaction amount with the same counterparty within one year has cumulatively reached NT\$50,000,000 or more, a futures clearing house shall follow the procedure referred in the preceding Paragraph.

A futures clearing house which acquires or disposes its property and equipment in accordance with the rules set forth in the preceding Paragraph shall publicly announce and submit a report to the FSC containing the following items and related materials within two days after its Board of Directors adopted the resolution in this connection:

1. the name and nature of the acquired or disposed asset;
2. the location, size and appraisal result of the real property by the professional appraisal institution;
3. the transaction counterpart; if the counterpart is a related person, their mutual relationship;
4. the owner, transaction price, and registration date of the previous transfer;
5. the transaction price or estimated price for current transaction;
6. the condition of delivery or payment;
7. the method of conclusion of this transaction (e.g. bidding, price comparison or price negotiation).
8. where there is a broker, the broker who handled the transaction and the brokerage fee;
9. purposes or usage of the acquisition or disposition.

Article 18

A futures clearing house shall prepare the following documents at its business place for the FSC's review and auditing:

1. documents related to clearing, settlement, surveillance, and administration of the margin and premium;
2. reports and documents related to the auditing of the finance and business of the clearing members.

With regards to the preservation period, except otherwise prescribed by the Commercial Accounting Law and other related rules regarding the preservation period of the documents referred to in the preceding Paragraph, a futures clearing house shall prescribe a preservation period and report to the FSC for review and recordation.

Article 19

A futures clearing house shall prepare and keep at designated locations the clearing members' finance and business materials for public access.

The designated locations referred to in the preceding Paragraph are main business place of a futures clearing house, the Chinese National Futures Association, the Securities and Futures Institute, and other institutions or groups designated by the FSC.

Chapter III Business

Article 20

A futures clearing house shall draft its annual business plan and submit it to the FSC for ratification three months before the beginning of the next fiscal year, and shall draft an annual budget and submit it to the FSC for

ratification two months before the beginning of the next fiscal year, and shall do the same for any amendments to the business plan and budget; it shall prepare a quarterly implementation report regarding the annual business plan and budget and file them with the FSC for recordation within 15 days after the end of each quarter.

A futures clearing house shall operate in accordance with the annual business plan and budget ratified by the FSC, and submit the performance evaluation and assessment methods adopted for its departments and personnel, and any subsequent amendments thereto, to the FSC for ratification.

Article 21

A futures clearing house shall pay attention to the financial, business and internal auditing situation of its clearing members, and shall prescribe auditing rules and report to the FSC for recordation. Upon discovery of any violation of laws/regulations or improper situation, a futures clearing house shall immediately handle it appropriately and inform the FSC and the Futures Exchange.

In the event that a futures clearing house discovers its clearing member's business operation is not sound and is experiencing a loss which caused its credit default, or experiencing emergency events, or has material failure of its internal auditing operation, it shall immediately conduct a special examination and provide guidance.

In the event that a clearing member cannot perform its obligation of clearing or settlement, a futures clearing house shall immediately conduct a special examination and supervise the assigned clearing member to take over its clearing and settlement matters.

The handling procedure and rules regarding the auditing and guidance referred to in the preceding Paragraph shall be drafted by the futures clearing house and futures exchange, and shall be reported to the FSC for approval. Any amendment to the said procedure and rules shall also be submitted to the FSC for approval.

Article 22

A futures clearing house shall establish and strictly implement the surveillance system.

Article 23

When implementing its market surveillance, a futures clearing house shall draft the standard for the influence on the order of the futures markets and report to the FSC for approval. The above requirements also apply to any amendment to the standard.

Article 24

A futures clearing house shall prescribe the percentage of loss to be borne by other clearing members in accordance with Item 5 of Paragraph 1 of Article 49 of the Act and shall draft the related handling procedure and report to the FSC for approval. Any amendments to the above rules shall also be reported to the FSC for approval.

Article 25

The business permission obtained by the futures clearing house in accordance with the Act and these Regulations shall not be used in any way as the object of any right.

Article 26

A futures clearing house shall establish a business committee and a discipline committee and at least one-third of the committee members shall be clearing members of the futures clearing house.

The organization and responsibility of the committees referred to in the preceding Paragraph shall be reported to the FSC for approval before commencing implementation.

Article 27

A futures clearing house shall enter into a futures clearing and settlement contract with its clearing members containing the following particulars:

1. the matters prescribed in Item 5 of Paragraph 1 of Article 49 and Article 54 of the Act;
2. the fee collection standard for futures clearance and settlement;
3. that any clearing member who violates any provisions of Paragraph 1 of Article 30 of the Act shall be punished with fines for breaching contracts, have its trading suspended or restricted, or have its clearing and settlement contract terminated;
4. that any futures clearing member who has been designated to wind up or settle the clearing and settlement matters for other members shall have the obligation to perform such agreement.

Article 28

The contract referred to in the preceding Article shall be terminated either pursuant to the provisions of the contract, or upon the dissolution, revocation of the business license, or cessation of business of either party to the contract.

Article 29

A clearing member has the obligation to wind up its trading in the centralized futures exchange when it terminates the contract in accordance with the preceding Article or was ordered to be suspended from trading.

Article 30

In case of any of the following acts by a clearing member, the futures clearing house shall impose upon the member a fine and may further warn, suspend or restrict such member's clearing and settlement in the said futures clearing house, or may expel the member should the offense be of a serious nature:

1. Any act in violation of laws and regulations, or any failure to comply with the administrative orders issued by the Competent Authority pursuant to laws and regulations;
2. Any act in violation of the Articles of Association, bylaws, standards for consignment contracts, or any other rules of the futures clearing house;
3. Any act of clearing or settlement in violation of the principles of integrity and good faith which may cause damage to others.

The expulsion of a member as referred to in the preceding Paragraph shall be reported to the Competent Authority for recordation.

Chapter IV Personnel

Article 31

A futures clearing house shall prescribe its organization rules regarding the organization, personnel, and title of position of its internal divisions and report said rules to the FSC for approval; any amendment to such rules shall also be submitted to the FSC for approval.

Article 32

A futures clearing house shall draft its personnel governance rules regarding recruitment, salary, attendance, award and punishment, training, studying, retirement, severance, compensation etc., and shall report the rules to the FSC for approval; any amendment to the said rules shall also be submitted to the FSC for approval.

A futures clearing house shall not pay its personnel salary under any other titles except for those specified in the personnel governance rules as referred to in the preceding Paragraph.

Article 33

No person who falls within the categories specified in Paragraph 1 of Article 28 of the Act shall serve as a director or supervisor of a futures clearing house. In addition, to serve as a director or supervisor of a futures clearing house, one shall satisfy one of the following qualifications:

1. has at least two years experiences in a futures institution and had worked in the position as the manager or higher position of a futures institution or other equivalent positions;
2. has at least five aggregate years of experience in futures, securities, or financial institutions, and worked as a manager or higher or other equivalent positions in such institutions;
3. has at least five aggregate years of experience in administrative or managerial work in futures, securities, or financial institution and worked as an appointee level or higher;
4. graduated from national or foreign professional school or with equivalent degree and has fact evidencing his futures related professional knowledge and is capable to operate futures business with efficiency.

If the director or supervisor is a juristic person, the preceding Paragraph shall apply *mutatis mutandis* to its (statutory) representative or representative designated to perform its duty.

For directors and supervisors who shall be designated by the FSC pursuant to Article 55 *mutatis mutandis* applying Article 27 and Article 36 of the Act, the candidates shall meet the qualifications set out in the selection rules of the FSC.

Article 34

No person who falls within the categories specified in Paragraph 1 of Article 28 of the Act shall serve as a manager of a futures clearing house. In addition, to serve as a manager of a futures clearing house, one shall satisfy one of the following qualifications:

1. have at least two years working experiences in futures institutions and worked as the manager or higher position of a futures institution or in other equivalent positions;
2. has in aggregate at least three years working experience in futures, securities, or financial institution, and work as manager or in higher or equivalent positions in futures, securities, or financial institutions;
3. has in aggregate at least five years administrative or managerial working experience in futures, securities, or financial institution and worked as an appointee level or higher;
4. has in aggregate at least five years working experience in futures, securities, or financial institution, and worked in a position higher or

equivalent to a vice manager of futures, securities, or financial institutions;

5. graduated from national or foreign professional school or with equivalent degree and has fact evidencing his professional knowledge of futures business and is capable to operate futures business with efficiency.

The president and senior vice president shall not perform their duty unless reported to and approved by the FSC.

Article 35

No person who falls within the categories specified in Paragraph 1 of Article 28 of the Act shall be employed as an associated person of a futures clearing house. In addition, an associated person of a futures clearing house shall satisfy any one of the following qualifications;

1. passed the test of futures associated persons held by the FSC or the institutions designated by the FSC;
2. have diploma from a national or foreign professional school or above or with equivalent degree, and worked in the business or financial department of a futures, securities, or financial institution for at least two years.

Article 36

A futures clearing house shall report any changes of its directors, supervisors, and managerial officers to the FSC for review and recordation within five days after such changes.

Article 37

A futures clearing house shall submit the report on the registration or changes of its associated persons to the FSC or other institutions designated by the FSC every month.

Article 38

The managerial officers and associated persons of a futures clearing house shall not work, in any form, or on an honorary basis for futures clearing members, futures commission merchants or any other enterprises which engages in futures business concurrently, except for those approved by the FSC.

Article 39

A futures clearing house shall discharge, terminate, or impose other proper disposition to its managerial officers and associated persons who failed to carry out their mandatory business duties or failed to carry out in a diligent manner.

Article 40

The managerial officers and associated persons of a futures clearing house shall not commit any of the following acts:

1. using the information gained from their business work to participate directly or indirectly in futures trading;
2. in response to inquiries made not in accordance with the laws, disclosing secrets gained from the business work;
3. Borrowing money from or loaning to persons related to the business;
4. Demands, agrees to accept, or accepts improper benefit for a business act or a breach of his business responsibilities.
5. Failed to withdraw from duties which involves in his/her own interests;
6. has any deceptive, fraudulent practice or other actions which may mislead others, when engaging in clearing, settlement, margin, and premium

administration and surveillance;

7. other violation of futures regulations, or of actions required or prohibited under the rules of the FSC.

The directors, supervisors, or members of any one of the committees or other persons in equivalent positions shall not commit any one of the actions specified in the preceding Paragraph.

If the director, supervisor, or member of any one of the committees is a juristic person, the first paragraph shall apply mutatis mutandis to its (statutory) representative or representative designated to perform its duty.

Article 41

An associated person of a futures clearing house shall wear the uniform as prescribed when performing his/her business duties in the business place of the futures clearing house, and wear the identification card issued by the futures clearing house; Without registration, an associated person of the futures clearing house shall not perform the duties prescribed in Article 4 of these Regulations.

Chapter V Supplementary Provisions

Article 42

The directors, supervisors, and members of any committees or other persons in equivalent positions or managerial officers and associated persons who violate these Regulations, in addition to the punishment prescribed under the Act, the FSC may inform the futures clearing house to additionally punish such persons when the violation is substantial enough to influence the normal performance of its business and is of a serious nature.

Article 43

Upon changes of the registration matters on the license, a futures clearing house shall submit two copies of the documents related to the changes to the FSC for changing its license and pay NT\$2,000 licensing fee.

The licensing fee shall be one four thousandth of the actual increased capital if the change of license referred to in the preceding Paragraph is due to the capital increase. Where the business is concurrently operated by a futures exchange or other institutions, the licensing fee shall be one four thousandth of the dedicated operating capital.

The change of license which is due to the change of address resulting from the adjustment of the administrative districts or door card shall be exempt from the above licensing fee requirement.

Article 44

These Regulations shall enter into force on June 1, 1997.

Amendments to these Regulations shall enter into force on the date of their issuance, except for Articles 13 and 17 amended and issued on 12 July 2012, which shall enter into force from the fiscal year of 2013.