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中国证监会期货监管部
Futures Supervisory Committee, China Securities Regulatory Commission
北京市西城区金融大街 19 号富凯大厦 A 座
19, Finance Street, Fu-kai Building, Tower A, Xi-Cheng District, Beijing, China 100033

Email: qhbzhc@csrc.gov.cn

Dear Sirs

Re: Public Consultation for Interim Measures on the Administration of Overseas Trading Participants' and Overseas Brokers' Engagement in Trading of Domestic Specified Futures Products ("Interim Measures")

On behalf of the membership of FIA Global we are grateful for and welcome the opportunity to respond to the matters set out in the Interim Measures. FIA Global, the alliance of FIA, FIA Europe and FIA Asia, is the primary global industry association for centrally cleared futures, options and swaps. Our members include banking organizations, futures exchanges, clearinghouses, brokers, vendors and trading participants.

We are supportive of the opening of domestic futures markets to overseas participation and believe it will assist in the development and strengthening of global capital markets. We respectfully request the Commission to consider the following key areas:

1. Harmonization of rules and standards

Recognition of host country rules and standards

We note that certain articles within the Interim Measures require overseas brokers and overseas trading participants to comply with the relevant laws and regulations of the People's Republic of China ("PRC") and those specified by the various supervisory and regulatory bodies (eg the China Futures Association). We fully appreciate the requirement to ensure market participants comply with sovereign laws but we wish to highlight that overseas brokers and overseas trading participants will already likely be subject to similar or conflicting rules and regulations in their host countries. Conflicting rules can lead to unintended consequences including fragmentation of markets.

We therefore strongly urge where possible, that a recognition and exemption framework be considered and established to minimize duplicative, inconsistent and conflicting regulatory requirements. This will also minimize compliance burdens, increased costs and unnecessary barriers to cross border trading and investment.

Adoption of International Standards

We also respectfully request that the PRC Futures Exchanges involved in the trading and clearing of the domestic specified futures products are required to adopt common international standards and industry best practice. The relevant standards include those set out in the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs)¹.

¹ <http://www.bis.org/cpmi/publ/d101a.pdf>

In addition to ensuring consistent global market standards and transparency, the adoption of common international standards will further assist PRC futures exchanges when seeking recognition, authorisation or exemption under the European, US or other third country rules which will further foster international participation (as set out in further detail below).

2. Authorisation of PRC Futures Exchanges and PRC Brokers

Under the various participant routes set out in the Interim Measures, overseas brokers and overseas trading participants may trade and clear domestic futures products directly on the PRC Futures Exchanges or engage a PRC broker. We wish to highlight that for the PRC Futures Exchanges and PRC brokers to validly offer these services to overseas participants, the PRC Futures Exchange and the PRC Brokers will need to be licensed, authorized or exempted in that overseas country for trading and clearing. The type of authorization or exemption required for each country will depend on the nature of the services provided, the products offered and the types and location of customers.

By way of example, in the US, the PRC Futures Exchange would be required to seek authorization as a “Foreign Board of Trade” with the U.S Commodity Futures Trading Commission (“CFTC”) if it sought to provide direct access to electronic trading systems to US participants. Similarly, if a PRC Broker wanted to provide trading and clearing services to a US customer, that broker would require registration as a futures commission merchant or an exemption under CFTC Part 30 Rules from the CFTC.

In Singapore, the PRC Futures Exchange would be required to seek authorization as a “Recognised Market Operator” or exemption as an “Exempt Market Operator” with the Monetary Authority of Singapore (“MAS”) to provide direct access to electronic trading systems for futures products to Singapore based participants. A PRC Broker would also require exemption or authorization from the MAS depending on the type of activity and customer it is targeting.

There would be further licenses, authorizations or exemptions required in Europe and other countries in the Asia Pacific region depending on the location of the overseas broker or overseas trading participant.

We would be happy to provide further information on these matters if required.

3. Clearing and Central Counterparties

We support the central clearing of domestic futures products as set out in Article 15 of the Interim Measures. However in order for the relevant PRC Futures Exchanges to be able to operate effectively as central counterparties, we wish to highlight the following:

- (a) Close-out Netting Rights: We encourage the introduction of close-out netting legislation that protects a central counterparty’s members’ close-out netting rights in the event of an insolvency of the central counterparty. These rights assist in facilitating effective risk management including mitigating credit risks and are consistent with international standards and global best practice.
- (b) Contractual Novation to a central counterparty: We encourage, to the maximum extent possible under PRC law, that the clearing structure for domestic futures products allow for legal title to be transferred or novated to the central counterparty. This will help to align the clearing structure with international standards and global best practice.
- (c) Finality of Payments: We would welcome the introduction of rules ensuring finality of settlement and payments to a central counterparty to mitigate risks including liquidity, credit and settlement risks. The introduction of such rules would also be aligned with international standards and global best practice.

4. Remittance of Funds

The draft Interim Measures do not currently describe if there are any restrictions on the flow of Renminbi (RMB) for remittance of funds relating to the trading, clearing and settlement of domestic futures products. We look forward to more detailed rules and guidance being promulgated on this issue.

5. Trading and Intermediary Issues

Our membership have raised a number of questions arising from the Interim Measures and we look forward to further guidance and clarification on the following issues:

- (a) Will there be restrictions imposed on the number of Chinese or international brokers an overseas trading participant can open an account with?
- (b) Will there be restrictions for an overseas broker to entrust themselves for trading on their own account?
- (c) Can an overseas entity perform both roles of overseas broker and overseas trading participant?
- (d) What are the capital and other incorporation requirements necessary for the establishment of a wholly owned or foreign controlled entity?
- (e) Will the Commission require any further licenses or authorizations for overseas brokers or overseas trading participants in order to conduct the activity or will host country licenses be recognized?

Thank you for considering the issues raised in this letter.

We would be happy to discuss these issues in further detail with you if required. Please contact Phuong Trinh at ptrinh@fiaasia.org or telephone: +65 6549 7335.

Yours faithfully,



Walt L. Lukken
President and Chief Executive Officer