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A Brief Analysis of the Derivatives Trading Measures

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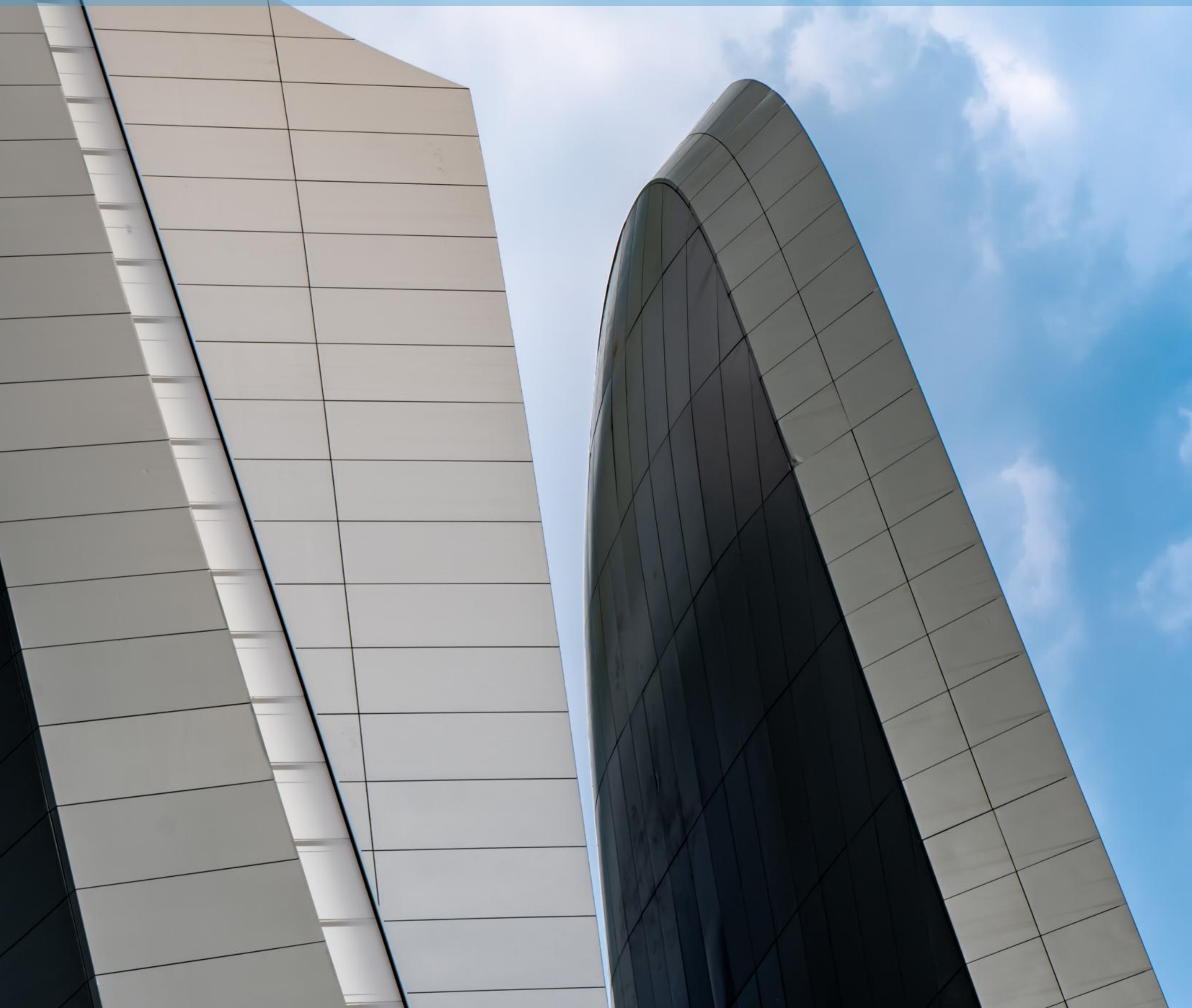

To implement the policy arrangements of the *Several Opinions of the State Council on Strengthening Regulation, Forestalling Risks and Promoting the High-Quality Development of the Capital Market*, implement the provisions of the *Futures and Derivatives Law of the People's Republic of China* (the "**Futures and Derivatives Law**"), and promote the standardized and healthy development of the derivatives market, the China Securities Regulatory Commission (the "**CSRC**") issued the *Measures for the Supervision and Administration of Derivatives Trading (for Trial Implementation)* (the "**Measures**") on 14 May 2026, which will come into effect on 16 November 2026.

As the first departmental rule for the derivatives industry regulated by the CSRC, the Measures stipulate derivatives trading and clearing, derivatives traders, derivatives operating institutions, derivatives market infrastructure, supervision and administration, and legal liabilities. They aim to regulate derivatives trading and related activities, enhance market transparency, protect the legitimate rights and interests of all parties, promote the derivatives market to serve the real economy, and prevent and defuse financial risks.

This article provides a brief analysis of several key points worth noting in the Measures.

I. Scope of Application

From the perspective of applicable subjects, the Measures apply to derivatives trading and related activities organized and conducted by derivatives trading venues and derivatives operating institutions regulated by the CSRC in accordance with the law. It should be noted that the Measures do not apply to the interbank market or the over-the-counter ("**OTC**") derivatives market organized by banking and insurance financial institutions; however, when banking and insurance financial institutions participate as traders in derivatives trading organized by derivatives trading venues and derivatives operating institutions regulated by the CSRC, they shall comply with the relevant provisions of the Measures.

From the perspective of trading products, derivatives trading regulated by the Measures refers to the trading of swap contracts, forward contracts, and non-standard option contracts, as well as their combinations, excluding futures trading. This definition aligns with the Futures and Derivatives Law, bringing OTC derivatives trading into a unified regulatory regime and forming a complement to exchange-traded futures trading. The determination of specific products and the detailed rules for business implementation remain to be clarified by subsequent supporting rules to be issued by regulatory authorities, trading venues, and industry associations.

II. Derivatives Trading and Clearing

The Measures regulate derivatives trading and clearing by specifying the rules and procedures for derivatives contract development, clarifying the norms for the promotion and recommendation of derivatives contracts and basic trading rules, establishing a performance guarantee system, requiring that derivatives trading shall be secured by margin collection or other means in accordance with the relevant provisions, and clarifying the requirements for margin management.

1. Contract Design

Regarding contract design, Article 7 of the Measures requires that the underlying assets of derivatives contracts shall possess fair market pricing and good liquidity, and be resistant to manipulation. Contract terms shall be concise, clear, and easy to understand. It also mandates prudence in developing derivatives contracts with overly complex structures. The specific standards and requirements for derivatives contract design remain to be further specified in supporting rules. However, it can be reasonably expected that the threshold for filing and approval of complex structured products may be raised in the future.

2. Promotion and Recommendation

Article 10 of the Measures stipulates that derivatives operating institutions conducting derivatives trading business shall not promote or recommend derivatives contracts via advertisements, public solicitation, or disguised public means. Such requirements aim to protect the legitimate rights and interests of traders and prevent irrational trading behaviors arising from improper marketing, which is consistent with the current core regulatory logic of regulatory authorities regarding the sale of financial products. In addition to the principle-based requirements of the Measures, derivatives operating institutions should also pay attention to the detailed provisions on the code of conduct and prohibitions for the marketing of financial products set forth in relevant laws and regulations, such as the *Measures for the Administration of Online Marketing of Financial Products*.

3. Performance Guarantee

The performance guarantee system is one of the regulatory focuses of the Measures. Pursuant to the Measures, derivatives trading shall be secured by performance guarantees through the collection of margin or other means “in accordance with the relevant provisions”. Forms of margin include cash, highly liquid securities such as bonds, stocks, fund units, and standard warehouse receipts, as well as other forms specified by the CSRC. Our understanding is that if there are relevant "provisions", derivatives operating institutions shall provide performance guarantees "in accordance with the relevant provisions". For instance, the performance guarantee management requirements clearly stipulated in the *Rules for the Administration of Derivatives Trading Business of Futures Risk Management Companies* issued by the China Futures Association should fall under such relevant "provisions". However, in the absence of relevant "provisions", the provision of performance guarantees should still be subject to party autonomy.

The Measures stipulate that derivatives traders may provide performance guarantees for derivatives trading through pledge or the transfer of margin rights in accordance with the law, reiterating the two methods of pledge-style performance guarantee and title-transfer performance guarantee.

The Measures require derivatives operating institutions to implement daily mark-to-market management for margin, record and maintain the margin paid by traders in a safe, clear and reasonable manner, and ensure the rapid separation and transfer of margin upon occurrence of risks. Furthermore, the Measures clarify that margin shall be prioritized for the clearing of derivatives trading.

4. Central Clearing

Regarding clearing methods, Article 14 of the Measures stipulates that derivatives trades characterized by high standardization, strong liquidity, and fair pricing data may be centrally cleared by a derivatives clearing institution acting as a central counterparty. Promoting the adoption of the central counterparty clearing model for eligible products helps reduce counterparty risks and enhance market transparency.

5. Position Management

The Measures grant futures exchanges the administrative authority for aggregated position calculation. Article 15 explicitly provides that "when implementing the position limit system and the large trader reporting system for futures trading, the futures trading venue may stipulate that derivatives contracts linked to the same or similar assets held directly or indirectly by traders shall be aggregated with their futures trading positions for calculation". Regarding the scope of derivatives contracts subject to aggregation, the criteria for defining "same or similar assets", and the specific formulas for such calculations, further attention must be paid to the business implementation rules to be subsequently issued by the relevant exchanges.

III. Restrictions on Equity Derivatives Trading by Listed Companies

In accordance with Article 16 of the Measures: (1) A listed company or a company quoted on the National Equities Exchange and Quotations ("**NEEQ**") shall not engage in derivatives trading with its own stocks or equity-linked securities as the underlying subject; (2) Shareholders holding 5% or more of the shares, actual controller, directors, supervisors, and senior management personnel of a listed company or an NEEQ-quoted company, as well as shareholders holding shares subject to sale or reduction restrictions, shall not engage in derivatives trading with the company's stocks or equity-linked securities as the underlying subject.

These restrictions primarily target violations such as major shareholders conducting disguised share reductions through equity return swaps, directors, supervisors, and senior management personnel using options to lock in future selling prices and circumvent short-swing trading limits, and restricted shareholders "cashing out" profits in advance through OTC derivatives. This also serves as a specific implementation of the principle-based provisions in Article 4 of the Measures prohibiting illegal and irregular activities such as market manipulation, insider trading, trading using non-public information, irregular share reductions, and illicit transfer of benefits through derivatives trading.

From a legislative technique perspective, Article 16 of the Measures reserves room for exemptions, namely "unless otherwise provided by laws, administrative regulations, or the CSRC". As for the specific circumstances where exemptions apply, further observation in future regulatory practice is required.

IV. Trader Suitability and Qualification Requirements for Operating Institutions

1. Suitability Requirements for Derivatives Traders

In terms of trader protection, the Measures clarify the standards for trader suitability, stipulating that traders shall meet the professional trader standards prescribed by the CSRC. Derivatives industry associations and derivatives trading venues may set differentiated trader standards based on factors such as the type of underlying assets, provided that they are not lower than the professional trader standards set by the CSRC. Moreover, no entity or individual may directly or indirectly circumvent the aforementioned trader standards.

Unlike the investor suitability management system in the securities market, derivatives trading is generally restricted to professional traders, excluding ordinary investors. The establishment of professional trader standards and the strengthening of suitability management obligations mean that the threshold for individual investors and non-professional institutions to participate in derivatives trading will be significantly raised.

An exception to trader suitability applies to risk management activities such as hedging. The Measures specify that those engaging in risk management activities like hedging may be exempted from part or all professional trader standards in accordance with the relevant provisions. However, the exemption is not automatically applicable and still requires application and confirmation "in accordance with the relevant provisions".

2. Qualification Requirements for Derivatives Operating Institutions

Regarding the industry entry of operating institutions, pursuant to Article 21 of the Measures, securities companies and futures companies applying to conduct derivatives trading business shall meet requirements in aspects such as risk control indicators or risk regulatory indicators, corporate governance structure and internal compliance and risk control, business premises, facilities and systems, professional personnel, as well as legal and regulatory compliance. The industry access threshold has been significantly raised. Notably, the net capital for the most recent six months must continuously be no less than RMB 500 million, which means a considerable number of small and medium-sized institutions will be unable to conduct derivatives trading business.

Additionally, Article 22 of the Measures stipulates that the CSRC may, based on prudential regulatory principles, implement tiered and classified management for derivatives operating institutions engaging in derivatives trading business. The specific tiering and classification standards (for example, whether to follow the existing tiered and classified management mechanisms for securities and futures companies) are yet to be further clarified, but this implies that institutions of different scales will obtain a varying scope for business development in derivatives trading.

V. Cross-border Regulatory Cooperation

Article 53 of the Measures stipulates that "where an offshore operating institution conducts derivatives trading offshore and its hedging transactions take place within China, the CSRC shall strengthen regulatory cooperation with relevant offshore supervisory and regulatory authorities in accordance with the law."

Previously, the *Measures for the Supervision and Administration of Derivatives Trading (Second Consultation Paper)* (the "**Second Consultation Paper**") required that if an offshore operating institution conducts derivatives trading offshore and its hedging transactions take place within China, the relevant provisions of the measures should directly apply. This included complying with the rules of securities and futures trading venues, providing counterparty, contract, and transaction details when requested by such venues for monitoring purposes; and requiring that offshore derivatives trading related to onshore underlying assets must comply with regulations on position limits, large position reporting, aggregated position calculation, information disclosure, and prohibited trading behaviors. These requirements in the Second Consultation Paper triggered significant attention and discussion among relevant market participants, including cautious opinions regarding practical feasibility. The Measures uphold the principle of territorial regulation and clarify a cross-border regulatory cooperation mechanism, which is more consistent with the regulatory logic governing such trading behaviors. Regarding matters such as the scope of "offshore operating institutions" and the definition of "hedging transactions take place within China" are yet to be clarified by relevant implementation rules or practical standards.

Pursuant to the implementation arrangements of the Measures, as of the effective date of the Measures, derivatives trading and related activities conducted by all relevant entities must comply with the provisions of the Measures; those failing to comply shall not launch new business, and existing business shall be wound down upon maturity. Given that the Measures will come into effect on 16 November 2026, market entities should take full advantage of the transition period of less than six months to conduct proactive compliance self-inspections. While ensuring they meet the industry entry standards, they should continuously optimize business processes and strengthen risk control. Overall, the promulgation of the Measures improves the top-level design of the OTC derivatives market; while filling regulatory gaps, it will significantly enhance the market's transparency and long-term stability.

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