

## Offshore Overseas Chinese and Foreign Nationals

### Qualification

According to the article I-1-(2) of the “Operation Directions for Applications by Overseas Chinese, Foreign Nationals, and Mainland China Area Investors for Registration to Invest in Domestic Securities or Trade Domestic Futures”, the term "offshore overseas Chinese and foreign nationals" means overseas Chinese, foreign natural persons and foreign institutional investors outside the territory of the Republic of China (ROC).

1. Offshore overseas Chinese and foreign natural persons mean those who have a nationality other than the Mainland China area, are at least 20 years old and hold an identification certificate.
2. Offshore foreign institutional investors mean those institutions incorporated outside the territory of the ROC, according to the laws and regulations of the locale.

### Appointing a Local Agent

To engage in futures trading, an overseas Chinese or foreign national outside the ROC shall appoint a local agent or representative to carry out procedures as follows:

1. Identity Registration (individual traders under the undisclosed omnibus account may choose not to apply for IDs).
2. File and pay taxes on client's behalf.
3. Open a futures trading account.
4. Exercise rights related to futures trading
5. Apply for foreign exchange settlement.
6. Apply for opening a foreign exchange deposit account for futures trading.
7. Handle matters related to clearing and settlement after futures trading, which also include deposit/withdraw of margin and deposit fund after receiving a margin call.
8. Record and report to the competent authority of foreign exchange business the information about client's capital utilization.

Note 1: When a futures commission merchant acts as agent for an offshore overseas Chinese or foreign national investor, it may not act as an

agent for the trading of securities, opening of an NT Dollar deposit account, or conducting of physical delivery.

Note 2: Before acting as agent for an offshore overseas Chinese or foreign national, a futures commission merchant shall verify that the appointing offshore overseas Chinese or foreign national, has not opened with a custodian bank any custodial securities trading account, NT Dollar deposit account, or securities custody account.

### **Applying for an ID**

To engage in futures trading, an overseas Chinese or foreign national except individual traders under the undisclosed omnibus account shall carry out identity registration to Taiwan Stock Exchange (TWSE) online, and obtain the ID code authorized by TWSE in accordance with the Operation Directions for Applications by Overseas Chinese, Foreign Nationals, and Mainland China Area Investors for Registration to Invest in Domestic Securities or Trade Domestic Futures. The ID registration process for futures trading is not required for those who already registered with TWSE and obtained the qualification to invest in domestic securities. The procedure of registration may differ by the types of overseas investors. For the overseas Chinese and foreign nationals outside the ROC may only carry out ID registration through appointed local agent or representative.

#### **■ Application Registration Form**

The agent (or the representative) of the offshore overseas Chinese and foreign nationals shall fill out the application form

#### **■ Documents Enclosed**

When applying for registration, offshore overseas Chinese and foreign nationals shall prepare the following documents:

1. Power of attorney to agent or letter of appointment to representative.
2. Identification certificates:
  - (1) Offshore Overseas Chinese and Foreign Natural Persons:  
passport, identification certificate or other documents with a photo attached which can prove the applicant's nationality or status.

- (2) Offshore Foreign Institutional Investors: Certificate of incorporation issued by a local governing authority.
3. When necessary, the TWSE or TAIEX may require the offshore foreign institutional investors of the fund type which checks "hedging" or "investment" and "hedging" in Point 2 of the Declaration Items in the Registration Application Form to provide its articles of incorporation or the establishment contract, or documents explaining the investment or trading strategies.

#### ■ **Flow of Processing**

1. Once the agent (or the representative) of the offshore overseas Chinese or foreign national applying for registration transmits the Registration Application Form online through the TWSE system, the TWSE will, after on-line review of information transmitted through computer has been completed, issue the "Certificate of Completed Registration for
2. The agent (or the representative) of the offshore overseas Chinese or foreign national shall deliver to the TWSE the English version of the registration form signed personally by the applicant for registration (identical to the contents of the information transmitted to TWSE), along with the Chinese version of the registration form and the certificate for registration completion for recordation. The TWSE will review these documents periodically. The agent (or representative) of the offshore overseas Chinese or foreign national shall retain a full set of application documents.

#### **Opening a Futures Account**

There are 2 methods for an offshore overseas Chinese or a foreign national to engage in futures trading. One is signing the brokerage contract with a domestic futures commission merchant (FCM) directly to open a futures trading account (hereafter referred to as "direct account"). The other is trading through an omnibus account opened by an offshore foreign FCM with a domestic FCM. If adopting the second method, an offshore overseas Chinese or a foreign national does not need to sign a brokerage contract. However, the offshore foreign FCM, who opens the omnibus account with

a domestic FCM, will be the party to sign the brokerage contract with the domestic FCM. The procedures for opening a direct account or an omnibus account are explained as follows:

### ■ **Direct Account**

A futures commission merchant that processes the account opening for domestic futures trading of an offshore overseas Chinese or foreign national, shall open such account only after receiving the following documents submitted by the offshore overseas Chinese or foreign national, and signed by its respective domestic agent or representative:

1. Photocopy of certification of completion of identity registration.
2. Photocopy of the national identity card, alien resident certificate or company registration (or amendment registration) certification of the domestic agent or representative.
3. The photocopy of the contract with the domestic agent or power of attorney for the agent, the content of which shall comply with the applicable provisions of these Rules and the laws and regulations of the competent authority. The photocopy of the contract may be replaced by a statement submitted by the domestic agent.

A brokerage contract of a futures broker engaging in futures trading on behalf of offshore overseas Chinese and foreign nationals in addition to containing the content set out in the preceding paragraph, shall also expressly stipulate that the receipt and payment of margins shall be done in a foreign currency

The FCM shall notify the TAIEX by uploading account opening data of the offshore foreign investor to Message Transport System (MTS) after completing the account-opening procedures.

### ■ **An Offshore Foreign FCM Open an Omnibus Account**

#### **1. Qualification to process omnibus account opening:**

An offshore foreign FCM shall select a local FCM to open an omnibus account. To qualify as a local FCM, it shall meet the following qualifications and conditions with respect to financial structure.

A. Other businesses operating concurrently as futures commission merchants shall allocate at least NT\$80 million in designated

operating funds; futures commission merchants shall have minimum paid-in capital of NT\$200 million.

- B. Total current liabilities may not exceed total current assets.
- C. Total liabilities less futures traders' equity shall not exceed 80 percent of its owner's equity.
- D. Owner's equity shall not be less than 80 percent of paid-in capital.
- E. The designated operating funds allocated by another business operating concurrently as a futures commission merchant are less than NT\$100 million: Adjusted net capital shall not be less than 30 percent of the total client margins required for outstanding positions.

The designated operating funds allocated by another business operating concurrently as a futures commission merchant are over NT\$100 million but less than NT\$200 million: Adjusted net capital shall not be less than 25 percent of the total client margins required for outstanding positions.

The minimum paid-in capital of a futures commission merchant or the designated operating funds allocated by another business operating concurrently as a futures commission merchant are NT\$200 million or more: Adjusted net capital shall not be less than 20 percent of the total client margins required for outstanding positions.

## **2. Qualification to open an omnibus account:**

An offshore foreign FCM that intends to open an omnibus account with a local FCM shall meet the following criteria:

- A. A certification that proves the applying party is a qualified ~~clearing~~ member of a foreign futures exchange recognized by the competent authority.
- B. A statement that shows within the past 1 year, it, in its home country, or its branch unit in Taiwan, has not been sanctioned by a relevant authority or self-regulatory institution for

securities or futures by the suspension of the securities or futures brokerage business of its head (or a branch) office;

- C. A statement that shows within the past 3 years, it has not breached a futures trading contract or securities trading contract in its home country or Taiwan, or violated the reporting obligations where the circumstances are serious.
- D. A statement shows that within the past 3 years, it has not had its omnibus account cancelled by TAIFEX.

An overseas subsidiary in which the securities firm or the futures commission merchant has shareholdings in excess of 50 percent with approval to operates futures brokerage business from the local competent authority meeting the conditions of B,C and D may open an omnibus account with a local FCM.

**3. Number of accounts:**

For strategic trading purposes or attributes of different clients, an offshore foreign FCM may open more than one omnibus account with a local FCM or with several local FCMs.

**4. Eligibilities of traders trading through omnibus account:**

An offshore foreign FCM opening an omnibus account may not accept orders to engage in domestic futures trading through the omnibus account from any persons other than offshore overseas Chinese and foreign nationals or investors of Mainland China, and it also may not use the omnibus account to engage in proprietary trading .

**5. Eligible trading contract types:**

An FCM accepting orders to engage in domestic futures trading under an omnibus account may not accept any trading order for a futures trading contract that stipulates physical delivery, unless otherwise provided by the TAIFEX.

**6. Agreeing on the declarer for the omnibus account positions:**

An offshore foreign FCM should abide by the agreement of the outcome of negotiations in respect of the omnibus account position declarer and let the declarer of each omnibus account to report the

omnibus account positions to TAIFEX. The declarer of the omnibus account positions must be the offshore foreign FCM, the domestic agent of the offshore foreign FCM, or the FCM processing the opening of the omnibus account.

**7. Signing consignment contract and risk disclosure statement**

An FCM processing omnibus account opening for an offshore foreign FCM to engage in domestic futures trading shall comply with the rules governing offshore foreign investors' direct account and keep the required documents. In addition, it shall obtain the following documents which are signed or sealed by the domestic agent before it may open an account:

- A. A certification that proves the applying party is a qualified ~~clearing~~ member of a foreign futures exchange recognized by the competent authority.
- B. A statement that shows within the past 1 year, it, in its home country, or its branch unit in Taiwan, has not been sanctioned by a relevant authority or self-regulatory institution for securities or futures by the suspension of the securities or futures brokerage business of its head (or a branch) office;
- C. A statement that shows within the past 3 years, it has not breached a futures trading contract or securities trading contract in its home country or Taiwan, or violated the reporting obligations where the circumstances are serious.
- D. A statement shows that within the past 3 years, it has not had its omnibus account cancelled by TAIFEX.

An overseas subsidiary in which the securities firm or the futures commission merchant has shareholdings in excess of 50 percent with approval to operates futures brokerage business from the local competent authority meeting the conditions of B,C and D may open an omnibus account with a local FCM.

**8. Uploading the omnibus account opening data:**

After accepting the opening of an omnibus account, the local FCM shall upload account opening data of the offshore foreign investor to Message Transport System (MTS) following the procedure for a

regular trader.

**9. Written declaration of omnibus account data to TAFEX by a local FCM**

An FCM processing omnibus account opening to engage in domestic futures trading shall, after having completed the procedures for opening an account and keyed the account information and number into the computer files of TAFEX, file a report together with the documents listed below to the TAFEX within three business days:

- A. A Photocopy of the omnibus account mandate contract
- B. A Photocopy of the contract signed between the offshore foreign futures commission merchant and the domestic agent, the power of attorney for the agent, or the statement issued by the domestic agent
- C. A Photocopy of certification that the offshore foreign futures commission merchant has completed identity registration
- D. A Photocopy of certification that the offshore foreign futures commission merchant meets the conditions for opening an omnibus account
- E. A Photocopy of the identity document of the domestic agent
- F. A Photocopy of the agreement of the outcome of negotiations in respect of the declarer for reporting omnibus account position
- G. Other documents required by TAFEX

**10. Opening a foreign exchange deposit account with a bank by offshore foreign FCM:**

An offshore overseas Chinese or foreign national, engaging in domestic futures trading shall designate a domestic agent to apply to open a segregated foreign exchange deposit account for futures trading. The agent it designates to open the account must be an onshore FCM or financial institution. The segregated foreign exchange deposit account for futures trading referred to in the preceding wording must be opened at a domestic financial institution under the name of a segregated custodial account



mandated with the custodian institution. For an offshore overseas Chinese or foreign national, that engages only in domestic futures trading and furthermore does not handle physical delivery and does not invest in domestic securities, its segregated foreign exchange deposit account for futures trading may be opened under its own name, or its futures trading payment/receipt operations may be done through its offshore deposit account, free of any requirement to open a segregated account for futures trading at a domestic institution.

An offshore overseas Chinese or foreign national engaging in domestic futures trading shall do so in a foreign currency announced by the TAIFEX.

The custodian bank or futures commission merchant designated as agent shall establish accounts in which information on the utilization of the funds of each offshore overseas Chinese and foreign national shall be fully recorded on a daily basis, and report to the competent authority for foreign exchange business the previous day's foreign exchange settlement of funds, foreign exchange deposit balance, and summary information on the equity in the customer margin account with the futures commission merchant by 12 noon of the next business day; within ten days from the end of each month, the custodian institution shall prepare for the previous month an itemized statement of the equity in the customer margin account with the futures commission merchant and the cumulative foreign exchange settlement amount, and report the same to the competent authority for foreign exchange business with a copy to the TAIFEX for registration.

**11. Applying to TAIFEX for a digital signature for the electronic reporting system by offshore foreign FCM and its local agent**

A. After entering a consignment contract with a local FCM, the offshore foreign FCM and its local agent can apply to TAIFEX for a digital signature for the electronic reporting system. The purpose of the digital signature is to enter the TAIFEX electronic reporting system to report the omnibus account positions.

- B. The local FCM or the local agent of the offshore foreign FCM should submit the application documents and fees (decided by certificate authorization company) for the digital signature to TAIFEX, which will forward the documents and payment to the certificate authorization company thereafter.
- C. The certificate authorization company, upon the completion of issuance formalities, will mail the IC card for digital signature, password, and manual to the local agent of the offshore foreign FCM.
- D. The certificate authorization company currently appointed by TAIFEX is TWCA Inc. If the offshore foreign FCM uses a digital signature issued by another certificate authorization company, this company should establish a mutual certification mechanism with TWCA.

**12. Reporting of each individual client's detailed information under an omnibus account:**

Where an offshore overseas Chinese or foreign national places orders with an offshore foreign futures commission merchant that has opened an omnibus account at a domestic futures commission merchant to engage in domestic futures trading, the itemized futures transactions of the individual client under omnibus accounts shall be reported to the TAIFEX by the offshore foreign futures commission merchant, the domestic agent of the offshore foreign futures commission merchant, or the futures commission merchant processing the opening of the omnibus account, in accordance with the rules publicly announced by the TAIFEX.

**13. Position limits under the omnibus account**

The open positions of individual traders under the omnibus account may not exceed the position limits set out in the trading rules for individual futures trading contracts of the TAIFEX. An institutional investor that has applied for a position limit exemption under the TAIFEX Directions for the Handling of Applications by Institutional Investors for Position Limit Exemptions may not use omnibus accounts to execute futures trades while the period of the

position limit exemption is in effect.

The open positions of the master account under the disclosed omnibus account are not subject to the position limits.

The open positions of the master account under the undisclosed omnibus account aggregated on the basis of the holder's ID number, may not exceed the position limits for the juristic person set out in the trading rules for individual futures trading contracts of the TAIFEX.