

Expedite Drafting Futures Law, Improve Futures Legal System

--- Speech at the Rule of Law Sub-forum

10th Shanghai Derivatives Market Forum

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The Shanghai Derivatives Market Forum this year, unlike the previous ones, has set up a sub-forum on rule of law which invites relevant scholars, experts and practitioners to discuss and exchange views on major and practical issues concerning rule of law in futures market in China. It is very necessary and meaningful to draw attention from the academia and industry to the legal system building of our futures market, promote the research level on futures law in China, broaden the depth of research, improve futures law in China, and contribute to the sustainable and healthy development of futures industry. This is also the intrinsic responsibility of Shanghai Futures Exchange for the healthy development of futures market in China.

The opening of the Forum is just after the formation of the new National People's Congress and State Council. Relevant departments in NPC are

now working on the legislation program for the following 5 years. CSRC(China Securities Regulatory Commission) and futures industry will pay close attention to incorporating the formulation of Futures Law into the legislation program of the Standing Committee of NPC. The Futures Law Forum held this time will listen to the opinions from the academia and industry on important issues in futures legislation. By putting our heads together we hope to contribute ideas to the drafting of Futures Law.

The 10th and 11th NPC Standing Committee both incorporated the formulation of Futures Law to the Tier II legislation program which is “for research and drafting and will be presented for review if opportunity matures”. It is still yet to be presented for review after 10 years, which means the opportunity may not be mature. Are the conditions are ripe now? Could it be listed in the Tier I legislation program and get drawn up and take effect soon? In my opinion, there are two key points: first, in-depth and thorough research is required on the necessity and feasibility of the legislation; second, we need to work on the drafting and speed up formulating a draft that is ready for review. I would like to propose two detailed suggestions:

First, Consensus is needed based on the in-depth and thorough

research on the necessity of the legislation

It must concern two issues to study on the necessity of legislation on a certain law: first, whether the relations in the relevant field need to be adjusted, regulated and protected by law (including regulations); second, if the answer to the first issue is affirmative, the following question is whether the form of legislation has to come as a law instead of regulations or rules to adjust the relations and provide standards.

Consensus has been reached on the first issue. The experience from the development of the futures market home and abroad has proven that futures market is one of the markets that demand a law to be supported, standardized and protected. Ever since the establishment of China's futures market, the State Council has spelt out "standardize the start, strengthen the legislation" as the principles of the development of futures market. It is undeniable that the existing administrative laws and regulations for China's futures market, from the Tentative Regulations for Administration of Futures Trading released by the State Council in 1999 to the Regulations for the Administration of Futures Trading formulated in 2007 and revised last year, together with some released by CSRC, have been playing a significant role in standardizing and protecting the healthy development of China's futures market.

In terms of the form of legislation, when talking about the necessity of legislation, we need to figure out by research whether to thoroughly amend Regulations for the Administration of Futures Trading or to promulgate a new Futures Law? China's legal system, indicated by the Constitution and Legislative Law, is unified and multi-tiered in structure. From the national level, our legal system is composed of the laws formulated by NPC and its standing committee as well as administrative rules and regulations by the State Council. Clause Eight in the Legislative Law stipulates matters in 10 categories for legal reservation, which means these matters can only be incorporated in the laws made by NPC and its standing committee, while futures trading and management does not seem to fall in any of the 10 categories, otherwise the administrative regulations released by the State Council would have clashed with the Legislative Law (Admittedly, some hold that the administrative regulations on futures trading was formulated under the authorization of the Standing Committee of NPC in 1985). This is to say, to improve the legal system of futures industry, in regard to the form of legislation, it can be realized by either an overall amendment to the existing administrative regulations or formulating a new Futures Law. There are pros and cons to the two forms of legislation (e.g. Amendment to the administrative regulations came quick last year). Judging from current research and

documents, this issue is open to more in-depth and thorough investigation. Some think there is a specific law for many fields in finance including banking, securities, insurance, funds and trust, leaving a blank only for futures industry. It is indeed a reason calling for Futures Law but does not seem to be adequate. In my opinion, in the early stage of development of futures market, with lack of experience and immature conditions for making Futures Law, it is necessary and workable for the State Council to promulgate administrative regulations. From a more basic and longer-term perspective and from the different ruling scopes of laws and administration regulations, however, laws seem more reasonable than administrative regulations for futures market, considering futures trading as civil and commercial affairs. It may be more suitable to have relevant laws for adjusting the rights and duties of participants in futures trading, for special mandatory measures in preventing and controlling risks in futures market, and for special civil liability concerning futures trading etc. In addition, are there any other issues that are better stipulated by laws? An in-depth and thorough investigation into these matters will help to gain consensus from a wider scope.

The feasibility of formulating Futures Law is now widely recognized. China's futures market has developed for over two decades, having accumulated a wealth of practices and experience; the implementation of

Regulations for the Administration of Futures Trading has also laid an institutional foundation for formulating Futures Law. It is quite workable to formulate the Futures Law that corresponds with the objective law of the market development within a certain period by learning from practices and experience from the development of China's futures market and from implementing Regulations for the Administration of Futures Trading, as well as by borrowing experiences in futures legislation overseas.

Second, work on the drafting in a more careful, concrete and detailed way and speed up formulating a draft that is ready for review

Apart from the consensus achieved based on the thorough study on the necessity and feasibility of formulating Futures Law, it is more important to focus on the actual drafting of Futures Law as “action speaks louder than words”. CSRC is making a lot of preparation for formulating Futures Law, and Shanghai Futures Exchange has also designated a team for the research on the legislation including compiling a Research Report on Legislation of Futures Law, which includes the proposal for each article in Futures Law, by comparative study on the futures legislation in different countries and regions. We applaud such fruitful work, which has laid a solid foundation for the future legislation of Futures Law, and hope

it could be carried forward with more depth.

First, carry on in-depth investigation and research and listen to more voices. Based on the practices and experience learnt from the development of China's futures market, especially the existing Regulations for the Administration of Futures Trading, make it clear that what institutional regulations are needed to standardize and protect the healthy development of futures market.

Second, by comparing the institutional regulations required to be added and relevant articles in the existing Regulations for the Administration of Futures Trading, we need to find out which institutional regulations are needed and which existing regulations are apparently no longer suitable thus requiring revision and which regulations need to be retained. During the investigation for revising Regulations for the Administration of Futures Trading two years ago, CSRC and its agencies, futures exchange, futures companies, securities, and legal experts put forward a lot of opinions on revision of Regulations for the Administration of Futures Trading based on the new conditions and issues emerging from the development of futures market. Because the focus was on regulations for illegal futures trading in bulk commodities market at that time, other suggestions in improving the legal system in futures industry were not

given adequate scrutiny nor adopted in the amendment. We agreed with CSRC last time that once the amendment is adopted we will study and bring the new conditions and issues in the development of futures market for discussions in the next phase of improving the futures legislation. During the drafting of Futures Law this time, we shall give these issues a careful study and make it clear that whether relevant regulations shall be written in the law.

Third, we ought to scrutinize, analyze and study the existing institutional regulations, and incorporate the basic rules which are mature and stable for futures market into the law based on the varied conditions of the regulations; the operational and complementary rules are suggested to be written in the regulations by CSRC or in the self-discipline regulations by exchange houses, open to changes and modifications with the actual conditions, in order to leave room for reforms, development and innovation of the futures industry and meet the needs of the developing practices. The draft shall avoid being too basic, general, inoperable, nor shall it become too complicated and trivial because it will affect the legislation efficiency and compromise the tolerance, adaptability and stability of the legislation. The legislation in standardizing futures market is still supposed to be unified and multi-tiered.

CSRC has submitted the proposal of incorporating the formulation of Futures Law into the legislation program of the Legal Council of the Standing Committee of 12th NPC and suggested that it be reviewed in the Year 2014. We are pressed for time with challenging work to be done. It is advised that we take effective measures to expedite and consolidate our work, and that we consider both concrete and pragmatic issues, in an effort to work out a draft as early as possible for review.

Thank you all.