

Futures Trading Act (Republic of Korea)

By Ministry of Legislation

INTRODUCTION

Details of Enactment and Amendment

- **Enactment:** This Act was enacted on December 29, 1995, as Act No. 5041, in order to contribute to the protection of the trusters and investors and the sound development of futures markets, by ensuring that futures are traded in a fair and smooth manner.
- **Amendment:** This Act has arrived at its present form as the result of being amended five times subsequently to its enactment. The latest amendment was on August 26, 2002.

Main Contents

- Any person who intends to carry on the futures trading shall be a corporation with equity capital of not less than 3 billion won, and shall obtain a permit from the Financial Supervisory Commission.
- Futures trading shall be made through the futures markets opened by the Korea Futures Exchange, and any person other than the Korea Futures Exchange shall not open any futures markets.
- Any person other than the members of the Korea Futures Exchange shall not trade in futures through the Korea Futures Exchange, and the futures dealer shall, in conducting any futures trades, place a specific amount of the security deposit.
- No one shall commit unfair trade activities, such as a manipulation of quotations concerning the futures trades, and any person who has committed such violation shall be punished by imprisonment for not more than 10 years or by a fine not exceeding 20 million won. In this case, where the amount of the profit unjustly gained through such unfair trade activities is not less than five billion won, he shall be punished by punishment of imprisonment for life or for a limited term of not less than five years, with the suspension of qualifications for not more than ten years if necessary.
- The Financial Supervisory Commission may make restrictions on the scale of futures trades by the futures dealers and customers, for the smooth trades in the futures markets.
- A futures dealer shall set forth the standards and procedures (internal control standards) to be observed by his officers and employees, in order to comply with laws and regulations, to make a sound property operation, and to protect the customers.

● A futures dealer in receipt of trade orders shall conduct his futures trades through domestic or overseas futures markets, and shall not conduct any futures trades not through these markets but by becoming the counter-party.

● A futures dealer shall keep the equity capital regulatory ratio by the level of not less than 100 percent, and accumulate the amount equivalent to 1/1,000 of disposable retained earnings as a liability reserve in order to indemnify the losses inflicted on the customers.

● Any foreigner may trade in futures on the position equal to the Korean nationals, and any foreign futures dealer may become a member of the Korea Futures Exchange with permission from the Financial Supervisory Commission.

Dec. 29, 1995 Act No. 5041

Amended by Jan. 13, 1998 Act No. 5504

Feb. 1, 1999 Act No. 5737

May 24, 1999 Act No. 5982

Jan. 21, 2000 Act No. 6171

Aug. 26, 2002 Act No. 6707

CHAPTER I GENERAL PROVISIONS

■ Article 1 (Purpose)

The purpose of this Act is to contribute to protection of customers and investors through promotion of fair and harmonious futures trading and also to national economic development through promotion of the growth of futures business and the development of futures market.

■ Article 2 (Scope of Application)

This Act shall apply to futures trading of products falling under any of the following:

1. Agricultural, livestock, fishery, forestry, mining or energy goods, any good that is manufactured or processed by such goods and other similar goods thereto (hereinafter referred to as "commodity products");
2. Currency, securities, claims, service fees, or similar items other than commodity products (including products for which interest rates and other trading terms are standardized for effective execution of futures trading; hereinafter referred to as "financial products"); and

3. Indexation of prices, interest rates, etc. of the products referred to in subparagraphs 1 and 2 thereof, (hereinafter referred to as "index").

■ Article 3 (Definitions)

The definitions of terms used in this Act shall be as follows:

1. The term "futures trading" means any transaction which is executed on a futures market in accordance with such standards and procedures prescribed in this Act and determined by the Futures Exchange, which falls under any of the following items and other similar transaction:

(a) A transaction in which parties agree to deliver and receive a particular commodity product or financial product at specified prices at the specified time in the future, which may be settled by payment or receipt of the difference between the price agreed in advance and the price for resale or repurchase of the products:

(b) A transaction in which parties agree to pay or receive an amount calculated on the basis of the difference between the agreed-upon value (hereinafter referred to as "agreed value") established in advance with respect to a particular index and the value of such index at a specified date in the future; or

(c) A transaction in which a party agrees to grant to the other party a right to effectuate transaction falling under any of the following and the other party promises to pay an amount in return for such right:

(i) Transaction referred to in item (a) or (b) above;

(ii) Purchase or sale of commodity products or financial products; or

(iii) Transaction for which the subject matter is an index;

2. The term "overseas futures trading" means a transaction conducted in an overseas futures market and falling under any of subparagraph 1 (a) through (c) or other similar transaction as prescribed by the Presidential Decree;

3. The term "futures market" means a market established by a futures exchange which has obtained an approval in accordance with this Act for the purpose of carrying out futures trading;

4. The term "overseas futures market" means a market similar to a futures market which is located overseas;

5. The term "futures business" means a business involving the execution of futures trading or overseas futures trading (hereinafter referred to as "futures trading, etc.") for its own account or on behalf of a customer or business assuming the duties of a broker, intermediary or agent for a customer;

6. The term "futures dealer" means a person who has obtained an approval under this Act and is engaged in the futures business;

7. The term "customer" means a person who entrusts the execution of futures trading, etc. to a futures dealer;

8. Deleted;

9. The term "foreigner" means an individual who is not a citizen of the Republic of Korea or a foreign corporation;

10. The term "foreign corporation" means:

(a) Corporation established under the laws of a foreign country;

(b) International institution or organization as prescribed by the Presidential Decree;

(c) Entity similar to those mentioned in items (a) and (b) and prescribed in the Presidential Decree;
or

(d) Corporation established under the laws of the Republic of Korea, in which persons who do not have Korean nationality or those falling under items (a) through (c) make a capital contribution representing a majority stake or hold a controlling stake.

CHAPTER II FUTURES EXCHANGES

SECTION 1 General Provisions

■ Article 4 (Organization and Legal Status)

A Futures Exchange (hereinafter referred to as the "Exchange") shall be a juristic person formed by membership.

■ Article 5 (Activities)

(1) The Exchange shall open and operate a futures market for the purposes of achieving its goals.

(2) Deleted.

■ Article 6 (Prohibition of Opening Similar Facility)

(1) No entity other than the Exchange may open a facility similar to a futures market.

(2) No entity may carry out transactions similar to futures trading in facilities similar to a futures market referred to in paragraph (1).

(3) Deleted.

■ **Article 7 (Application *Mutatis Mutandis* of Civil Act)**

Except as otherwise provided in this Act, the provisions for incorporated associations in the Civil Act (except for Article 39 of the said Act) shall apply *mutatis mutandis* to the Exchange. In this case, members, members' general meeting and officers of the Exchange are deemed as members, members' general meeting and directors or other representatives of an incorporated association, respectively.

SECTION 2 Establishment and Dissolution

■ **Article 8 (Permission of Establishment)**

(1) Ten or more promoters shall participate in the establishment of the Exchange.

(2) Where promoters referred to in paragraph (1) intend to establish the Exchange, they shall satisfy the relevant capital and facility requirements prescribed by the Presidential Decree and prepare the articles of incorporation referred to in Article 9, business regulations referred to in Article 24, and brokerage contract rules referred to in Article 35 by being equipped with capital stock and facilities as determined by the Presidential Decree and obtain permission thereon from the Minister of Finance and Economy under the conditions as prescribed by the Presidential Decree.

(3) The Minister of Finance and Economy shall, where granting permission referred to in paragraph (2), consult with the other competent Ministers in charge of the pertinent commodity products.

■ **Article 9 (Articles of Incorporation)**

(1) Promoters shall prepare the articles of incorporation of the Exchange containing the following and shall have it sealed with their names written or signed:

1. Purpose;
2. Title;
3. Location of office;
4. Matters relating to capital and contributions;
5. Matters relating to members;
6. Matters relating to contributions and member deposits by members;
7. Matters relating to expenses and losses;

8. Matters relating to officers;
9. Matters relating to members' general meeting and board of directors;
10. Matters relating to execution of business;
11. Matters relating to types and products of futures trading to be handled;
12. Matters relating to settlement of futures trading;
13. Matters relating to accounting; and
14. Method of public notice.

(2) Where the Exchange intends to amend the articles of incorporation, it shall obtain approval from the Minister of Finance and Economy.

(3) Where the Minister of Finance and Economy intends to give approval as referred to in paragraph (2), he shall consult in advance with the Financial Supervisory Commission.

■ Article 10 (Registration of Establishment)

The Exchange shall come into existence upon registration of its establishment at the location of its main office under the conditions as prescribed by the Presidential Decree.

■ Article 11 (Reasons for Dissolution and Authorization of Resolution of Dissolution)

(1) The Exchange shall be dissolved in cases falling under any of the following:

1. Where there occurs a cause for dissolution prescribed in the articles of incorporation;
2. Where a members' general meeting adopts a resolution of dissolution;
3. Where the number of members is less than 10;
4. Where it receives a bankruptcy order; or
5. Where approval of establishment is revoked.

(2) Resolution of dissolution referred to in paragraph (1) 2 shall take effect on the date on which the Minister of Finance and Economy grants authorization.

(3) Where the Exchange is dissolved under paragraph (1) 1, 3 or 4, its representative shall without delay report to the Minister of Finance and Economy.

■ Article 12 (Distribution of Residual Assets)

Except as otherwise provided in the articles of incorporation, remaining assets after dissolution shall be distributed to the members in proportion to their respective contributions.

SECTION 3 Members

■ Article 13 (Qualifications of Members)

(1) Members of the Exchange shall be futures dealers who meet qualification standards referred to in the articles of incorporation.

(2) Promoters referred to in Article 8 (1) who meet qualifications standards referred to in the articles of incorporation shall become members immediately upon the Exchange's establishment.

(3) Persons other than those referred to in paragraph (2) who intend to become members shall obtain approval from the Exchange under the conditions as prescribed by the articles of incorporation.

■ Article 14 (Contributions and Liabilities)

(1) Members shall make contributions in accordance with the articles of incorporation. In this case, contributions made by promoters pursuant to Article 8 (2) shall be deemed as contributions satisfying methods prescribed in the articles of incorporation.

(2) Except otherwise provided in this Act and in the articles of incorporation, a member's liability to the Exchange shall be limited to the respective contributions of such member.

■ Article 15 (Transfer of Shares)

A member may transfer its shares after obtaining approval from the Exchange under the conditions as prescribed by the articles of incorporation.

■ Article 16 (Withdrawal of Member)

(1) A member may withdraw from its membership of the Exchange after obtaining approval from the Exchange under the conditions as prescribed by the articles of incorporation.

(2) A member shall be deemed to have withdrawn from the Exchange where any of the following cases occur under the conditions as prescribed by the articles of incorporation:

1. Failure to satisfy qualification standards under Article 13 (1);
2. Dissolution of a corporation which is a member; or
3. Expulsion.

(3) Where a member withdraws from the Exchange, the Exchange shall return to such member a sum equivalent to its contributions under the conditions as prescribed by the articles of incorporation.

■ **Article 17 (Settlement of Remaining Business in Case of Withdrawal)**

(1) Where a member withdraws from the Exchange, the Exchange shall, in accordance with the articles of incorporation, direct such member or another member to settle futures trading conducted by such member on the Exchange. In this case, the withdrawing member shall be deemed to maintain his membership to the extent of the settlement of such futures trading.

(2) Where the Exchange directs a member other than the withdrawing member to settle the futures trading pursuant to paragraph (1), a mandate contract shall be deemed to have been concluded between the withdrawing member and such other member.

■ **Article 18 (Member Deposits)**

(1) Members shall deposit member deposits with the Exchange to secure the fulfillment of potential liabilities in connection with futures trading.

(2) The Exchange shall not set off the claims obtained pursuant to Article 28 (1) as a result of the fulfillment or acceptance of liabilities on behalf of its members against such member's deposits.

(3) A person who has entrusted futures trading to a member shall have the right to receive payment in preference to other creditors from such member's deposits with respect to claims arising from such entrustment.

(4) The necessary matters regarding the minimum deposit limit, operation and management of member deposits referred to in paragraph (1) shall be determined by the articles of incorporation of the Exchange.

SECTION 4 Organization

■ **Article 19 (Members' General Meeting, etc.)**

(1) The Exchange shall have the members' general meeting and the board of directors as its decision-making bodies.

(2) The articles of incorporation shall prescribe necessary matters with respect to the deliberation and administration of the members' general meeting and the board of directors.

■ **Article 20 (Officers)**

(1) The Exchange shall have one chairman, two or more directors and one or more auditors, as its officers, under the conditions as prescribed by the articles of incorporation.

(2) The chairman shall be elected at a members' general meeting from among individuals who have sufficient experience and expertise in futures trading as well as high moral and shall be approved by the Minister of Finance and Economy.

(3) Election procedures of directors shall be prescribed by the articles of incorporation.

(4) Auditors shall be elected at a members' general meeting.

(5) The term of each of the chairman, directors and auditors shall be three years.

(6) Deleted.

■ Article 21 (Disqualification of Officers)

Persons who fall within any of the following may not become an officer and shall lose his office if he has already become an officer:

1. A person who is not a Korean national;
2. An officer of a Korean corporation in which either at least one half of its capital or a majority of voting rights belongs to foreigners or foreign corporations;
3. An officer of a foreign corporation;
4. A minor, a person of incompetency, or a person of quasi-incompetency;
5. A person who was bankrupt and has not been reinstated;
6. A person who was sentenced to imprisonment without prison labor or a more severe punishment, and five years have not passed since the completion of (including cases where he is deemed to have completed the execution), or exemption from the execution of, such punishment;
- 6-2. A person who was sentenced to the suspension of execution of the punishment of imprisonment and whose probation period has not expired;
7. A person who was sentenced to a fine or a severer punishment under this Act, foreign laws relating to futures trading, or other finance-related laws as prescribed by the Presidential Decree (hereinafter referred to as "finance-related laws"), and five years have not passed since the completion of (including cases where he is deemed to have completed the execution) or exemption from the execution of such punishment; and
8. A person for whom five years have not passed since he was discharged or dismissed under this Act or finance-related laws.
9. A person who was an officer or employee of a juristic person or company whose permit, authorization, etc. for business has been cancelled under this Act, foreign laws relating to futures

trading, or other finance-related laws (limited to a person prescribed by the Presidential Decree who is responsible directly or commensurately with regard to the occurrence of causes for such cancellation), and five years have not passed from the date on which such cancellation was made against the relevant juristic person or company.

■ **Article 22 (Trading Restrictions on Officers and Employees)**

Except as otherwise provided in the Presidential Decree, an officer or an employee of the Exchange may not become a customer or an investor for his account, regardless of whose account name it may be under.

CHAPTER III FUTURES TRADING

■ **Article 23 (Capacity to Trade)**

(1) No person other than a member of the Exchange shall carry out futures trading on the Exchange: *Provided*, That specific futures trading may be carried out by a person other than a member of the Exchange where the articles of incorporation of the Exchange permit such specific futures trading.

(2) A person who can carry out futures trading on the Exchange pursuant to the proviso of paragraph (1) shall be deemed to be a member of the Exchange in applying the provisions of Articles 9 (1) 5 and 6, 14 (2), 16 through 18, 24 (2) 7, 26 through 29, 34, 35 and 36.

■ **Article 24 (Business Regulations)**

(1) Necessary matters pertaining to the trading on a futures market shall be prescribed in the business regulations of the Exchange.

(2) Business regulations referred to in paragraph (1) shall contain the following matters:

1. Types and products of the futures trading to be handled;
2. Settlement month of futures trading;
3. Opening and closing of the futures market;
4. Suspension of futures trading;
5. Matters relating to the execution of contract relating to futures trading and restrictions thereon;
6. Method of settlement;
7. Matters on the supervision of members, and disciplinary actions against members and the officers and employees thereto; and

8. Additional necessary matters for futures trading other than those matters given in subparagraphs 1 through 7.

(3) Where the Exchange intends to amend its business regulations, it shall obtain approval from the Financial Supervisory Commission.

(4) Where the Financial Supervisory Commission intends to give approval referred to in paragraph (3), it shall consult in advance with the Minister of Finance and Economy.

■ **Article 25 Deleted.**

■ **Article 26 (Trading Margins)**

(1) In order to guarantee the fulfillment of its obligation to the Exchange, a member shall, when carrying out futures trading, deposit a trading margin with the Exchange.

(2) The necessary matters regarding the minimum deposit limit, operation and management of trading margins referred to in paragraph (1) shall be determined by business regulations of the Exchange.

■ **Article 27 (Indemnity Fund for Compensating for Damages)**

(1) In order to compensate for damages arising from the default of obligations with respect to futures trading, the Exchange may have its members reserve an indemnity fund (hereinafter referred to as the "Indemnity Fund").

(2) The necessary matters for the reserve rates, reserve limit, use or operation of the Indemnity Fund shall be determined by the Presidential Decree.

■ **Article 28 (Performance of Obligations, etc. by Exchange)**

(1) For effective futures trading, the Exchange may, in accordance with the articles of incorporation and on behalf of its members, exercise or acquire the rights of claims or fulfill or accept the relevant obligations, with respect to such claims and obligations resulting from the futures trading conducted by such members.

(2) Where the Exchange has incurred a loss as a result of such fulfillment or acceptance of obligations as provided in paragraph (1), the Exchange may, in accordance with the articles of incorporation, hold such member or other members liable for either the total amount or a portion of such loss.

■ **Article 29 (Order of Priority in Discharge of Liabilities)**

(1) Where a member of the Exchange causes loss to the Exchange or other members due to default of his obligations with respect to futures trading, the Exchange or such non-defaulting member holds the right to preference payment over any other creditors against the defaulting

member's member deposits, trading margins (excluding the trading margins belonging to accounts of the customer who is not liable for the default of obligations) and his share in the Indemnity Fund.

(2) Notwithstanding the provisions of paragraph (1), the rights to member deposits by a customer referred to in Article 18 (3) shall prevail over the rights of the Exchange or members.

■ Article 30 (Public Notice of Price Quotations and Submission, etc. of Reports)

(1) The Exchange shall publish its price quotations that detail each trading day's total volume, the opening, the highest, lowest and closing prices quoted or agreed values for each of all listed futures trading product types.

(2) Deleted.

■ Article 31 (Prohibition of Unfair Trading Practices such as Price Manipulation, etc.)

(1) No person shall, in connection with futures trading, commit any of the following:

1. Submission of an offer of futures trading through prior agreement with other person whereby such other person will simultaneously submit a matching offer to necessarily effectuate the relevant futures trading with an identical price or an agreed value;

2. A false or fictitious transaction without the real intention to transfer the concerned rights in the transactions;

3. Entrustment or acceptance of such entrustment with respect to activities referred to in subparagraph 1 or 2;

4. Trading activities, alone or in co-operation with other persons, giving the wrong impression that the pertinent futures trading is experiencing active trading or attempting to either fix or change market prices of futures trading, for the purpose of soliciting a certain futures trading;

5. Dissemination of rumors to the effect that the market price of futures trading shall change as a result of a market manipulation by itself or other person, for the purpose of soliciting a certain futures trading;

5-2. An attempt to fix or change market prices of the product types subject to futures trading by alone or in co-operation with other persons for the purpose of obtaining unjust profits by itself or the third party in futures trading; or

6. Other activities as prescribed by the Presidential Decree that are in conflict with fair execution of futures trading.

(2) Persons that have violated paragraph (1) shall be liable for the pertinent damages incurred by a person who executed the futures trading, entrusted the futures trading or accepted such

entrustment in the futures market based on prices established by such act of violation in connection with the relevant futures trading, and giving or accepting such entrustment.

(3) The right to claim for damages pursuant to paragraph (2) shall lapse by prescription in the event it has not been exercised within 1 year since the claimant became aware of such act of violation of paragraph (1) or within 3 years since such act was committed.

■ Article 32 (Limits on Trading)

The Financial Supervisory Commission may, in accordance with the Presidential Decree, take measures including limitation on the volume of futures trading of futures dealers and customers and other necessary measures in order to maintain order in the futures market.

■ Article 33 (Prohibition of Disclosure of Information Obtained While Performing Duties)

Neither persons falling within any of the following, who have obtained, in connection with the duties of their office, information that may have an impact on the determination of prices in the futures market nor any other who have obtained such information from such persons, shall disclose such information, make a profit for themselves or enable a third party to make a profit by using such information:

1. Persons engaged in licensing, approval, permission or supervision pursuant to this Act over futures-related institutions mentioned in Article 81 (1);
2. Officers and employees of an Exchange; and
3. Persons who prepare, establish or execute the policies which may have an impact on the prices of the product types that are subject to futures trading.

■ Article 34 (Conclusion of Remaining Business in Case of Suspension of Futures Trading)

In the event futures trading are suspended in accordance with this Act or the articles of incorporation or business regulations of an Exchange, Article 17 shall apply *mutatis mutandis* to the settlement of remaining business.

■ Article 35 (Brokerage Contract Rules)

(1) In accepting consignment of futures trading, members of an Exchange shall comply with brokerage contract rules prescribed by the Exchange.

(2) Brokerage contract rules under paragraph (1) shall contain the following:

1. Conditions for entrustment of futures trading;
2. Method of settlement;

3. House margin and method of deposit thereof;
4. Commission fee and method of collection thereof; and
5. Necessary matters other than those given in subparagraphs 1 through 4 with respect to entrustment of futures trading.

(3) Where the Exchange intends to change its brokerage contract rules, it shall obtain approval from the Financial Supervisory Commission.

(4) Where the Financial Supervisory Commission intends to give approval referred to in paragraph (3), it shall consult in advance with the Minister of Finance and Economy.

■ Article 36 (House Margin)

(1) Where a member of the Exchange accepts entrustment of futures trading, he shall receive from the customer the house margin in such amount as prescribed by the Exchange.

(2) The necessary matters regarding the minimum deposit limit, operation and management, etc. of house margin under paragraph (1) shall be determined by brokerage contract rules.

CHAPTER IV FUTURES BUSINESS

■ Article 37 (Permission on Futures Business)

(1) A person who desires to be engaged in futures business shall obtain approval from the Financial Supervisory Commission.

(2) Deleted.

(3) Where a futures dealer which is a foreign corporation (hereinafter referred to as "foreign futures dealer") wishes to open a branch or other forms of business office in order to be engaged in futures business in Korea, it shall obtain approval from the Financial Supervisory Commission.

(4) The branch or other forms of business office of foreign futures dealer established with an approval under paragraph (3) shall be deemed as a futures dealer for the purpose of this Act, and its operating fund shall be deemed as its capital.

(5) The Financial Supervisory Commission may impose certain conditions to an approval under paragraphs (1) and (3).

■ Article 38 (Requisites for Permission)

(1) A person intending to obtain the permission for the futures business under Article 37 (1) shall satisfy any of the following:

1. A company with the capital of not less than three billion won;
2. To be capable of protecting the customers, and fully equipped with the manpower and physical facilities such as the computer facilities, etc. sufficient to operate the futures business;
3. Its business plans shall be adequate and sound; and
4. Major shareholders prescribed by the Presidential Decree shall have the sufficient ability for contribution, sound financial status and social standings or credibility.

(2) The foreign futures dealer wishing to obtain an approval to establish a branch or other forms of business offices under Article 37 (3) shall satisfy the any of the following:

1. Operating fund for a branch or other forms of business offices shall be not less than three billion won;
2. To be engaged in and operate futures business under foreign laws;
3. The status of assets, financial soundness and business soundness are sufficient to operate futures business in Korea, and having a high international credibility; and
4. To satisfy the requirements set forth in paragraph (1) 2 and 3.

(3) Matters necessary for the detailed requirements for approval under paragraphs (1) and (2) shall be prescribed by the Presidential Decree.

■ Article 39 (Public Notice of Approval)

Where a license is granted pursuant to Article 37 (1) and (3), the Financial Supervisory Commission shall, without delay, publicly notify its content on the Gazette as well as notify the public by utilizing a form of computer communications, etc.

■ Article 39-2 (Maintenance of Quality in Asset Holdings)

(1) A futures dealer shall observe the matters prescribed by the Presidential Decree with respect to the operation of assets, maintenance of sound management, and improvement in business operation in carrying out the futures business.

(2) A branch or other business office of a foreign futures dealer shall hold assets equivalent to the total amount of its operating fund and liabilities in Korea.

(3) A branch or other business office of a foreign futures dealer shall settle accounts independently of its head office, and if the assets held in Korea pursuant to paragraph (2) fall, as a result of the settlement, short of the total amount of its operating fund and liabilities, it shall compensate for such deficiency within sixty days from the date on which its accounts are finalized.

(4) Where a branch or other business office of a foreign futures dealer is liquidated or bankrupt, it shall preferentially appropriate its assets held in Korea for the performance of obligations payable to parties related to carrying out the futures business of the branch or other forms of business office, who have their addresses in Korea at the time of performing the business activities.

■ Article 39-3 (Ineligibility of Officers)

The provisions of subparagraphs 4 through 9 of Article 21 shall apply *mutatis mutandis* to the officers of futures dealer.

■ Article 40 (Internal Control Standards)

(1) The futures dealer shall set forth the basic procedures and standards (hereinafter referred to as "internal control standards" in this Article) to be observed by its officers and employees in carrying out their duties, in order to observe the Acts and subordinate statutes, keep a sound asset management, and protect the customers.

(2) Detailed matters to be included in the internal control standards under paragraph (1) shall be prescribed by the Presidential Decree.

■ Article 41 (Permission for Change of Business, etc.)

If falling under any of the following, a futures dealer shall obtain authorization from the Financial Supervisory Commission:

1. Merger, dissolution, or closure of its business;
2. Changes in matters as determined by the Presidential Decree in connection with approval referred to in Article 37 (1) and (3); and
3. Transfer or assumption of all of its business operations (including the cases corresponding thereto).

■ Article 41-2 (Matters for Report)

The futures dealer shall without delay report on its content to the Financial Supervisory Commission in case it falls under any of the following:

1. Where the trade name is changed;
2. Where the officers are appointed or dismissed;
3. Where there exist changes in the largest shareholders;
4. Where a branch or other form of business office is newly established;

5. Where the location of head office, branch or other form of business office is altered, or its business is suspended, reopened or discontinued; and
6. Where the matters prescribed by the Presidential Decree, which would have a material impact on the performance of its duties, occur.

■ **Article 42 (Settlement of Remaining Business)**

In case of revocation of permission, the suspension of all or partial business operations, etc. the futures dealer or its successor shall be deemed to be a futures dealer to the extent of the settlement of futures trading which were executed by such futures dealer.

■ **Article 43 (Prior Notification of Risk in Trading, etc.)**

(1) A futures dealer shall, prior to execution of a contract with a customer, notify in writing the customer of potential risk exposure associated with price fluctuation arising from futures trading as well as the possibility of additional liabilities.

(2) A futures dealer shall deliver in writing to the customer the terms and conditions of the contract for the pertinent futures trading with respect to business operations of such futures trading.

(3) The matters to be entered in the written documents, and necessary matters for the notification and delivery referred to in paragraphs (1) and (2) shall be determined by the Presidential Decree.

■ **Article 44 (Prohibition of Self-Contracts)**

Where a futures dealer receives an entrustment of a futures trading, etc. or is engaged in brokerage, intermediary or agency of such entrustment (hereinafter referred to as "brokerage, etc."), it shall not become the counter-party effectuating the transaction without filing an application pertaining to the pertinent entrustment with the Exchange or an overseas futures market, or performing the pertinent brokerage, etc.

■ **Article 45 (Prohibition of Improper Solicitation, etc.)**

(1) A futures dealer and its officer and employees shall not do any of the following:

1. To solicit the execution of a contract by making a promise to compensate for all or part of the losses incurred by a customer or to guarantee a profit to a customer;
2. To solicit the execution of a contract by presenting a conclusive judgement that leads the customer to the wrong impression that a profit would be guaranteed;
3. To make an offer or a brokerage, etc. without executing a contract and then seek ex post facto confirmation from a customer;

4. To acquire entrustment margins or brokerage commissions by using false prices or by employing unjust methods in connection with a contract;
5. To refuse or to unjustifiably delay either the making of an offer or brokerage, etc. of a futures trading, etc. pursuant to a contract or the fulfillment of all or part of the obligations arising from such contracts; or
6. Other acts of conduct prescribed by the Presidential Decree that are in conflict with customer protection in the acceptance of entrustment with respect to futures trading, etc. or that are harmful to the fair execution of futures trading, etc.

(2) A futures dealer and its officers and employees who have violated paragraph (1) shall be liable for the damages incurred by the customer resulting from such transaction.

■ **Article 46 (Documents on Business Operations)**

A futures dealer shall prepare and maintain documents on business operations in such manner as prescribed by the Financial Supervisory Commission.

■ **Article 47 (Submission of Business Reports)**

A futures dealer shall every financial year prepare a business report in such manner as prescribed by the Financial Supervisory Commission and shall submit the same to the Financial Supervisory Commission within three months after the close of each financial year.

■ **Article 48 (Trading Limits of Officers and Employees, etc.)**

(1) Except for cases prescribed by the Presidential Decree, officers and employees of a futures dealer may not commit an entrustment of futures trading, etc. on their account, no matter in what account name it may be under.

(2) A futures dealer may not accept an entrustment of futures trading, etc. whereby the customer gives the futures dealer the full discretion to decide all or a part of trade terms such as the types of futures trading, the price or the volume.

■ **Article 49 (Management of Customer's Assets and Accounting Treatment in Connection with Acceptance of Entrustment of Futures Trading, etc.)**

A futures dealer shall comply with the matters prescribed by the Financial Supervisory Commission with respect to the management of monies or securities deposited by the customer in connection with the futures trading, etc. and any other assets belonging to the customer's account, and with respect to the accounting treatment.

■ **Article 49-2 (Separate Custody of Customer Deposits)**

(1) A futures dealer shall deposit money deposited from customers, in connection with futures trading or other money belonging to customer's property (hereinafter referred to as "customer deposits") separately from its own property, with a securities finance company referred to in Article 145 of the Securities and Exchange Act (hereinafter referred to as "depository institution").

(2) Where a futures dealer deposits customer deposits with a depository institution pursuant to paragraph (1), it shall specify that such deposits are customer's property.

(3) A futures dealer who has deposited customer deposits pursuant to paragraph (1) (hereinafter referred to as "depository futures dealer") shall not assign or offer customer deposits as security and no person shall set off or attach (including provisional attachment) them, unless the Presidential Decree may otherwise determine.

(4) A depository futures dealer shall withdraw customer deposits deposited with the depository institution and preferentially pay them to customers where the futures dealer falls hereunder. In this case, the futures dealer shall make public notice of such facts such as payment time and place of customer deposits, and other matters relating to the payment of customer deposits in at least two daily newspapers within the period as prescribed by the Presidential Decree:

1. Where it resolves to discontinue its business operations;
2. Where it receives an order for suspension of business operations;
3. Where it has his permission cancelled;
4. Where it resolves to be dissolved;
5. Where it is declared bankrupt; and
6. Where any equivalent cause listed in subparagraphs 1 through 5 occurs.

(5) The depository institution, where it falls under any of the items under paragraph (4), shall preferentially pay customer deposits to the depository futures dealer.

(6) The depository shall operate customer deposits in any method hereunder:

1. Purchase of government bonds and/or municipal bonds;
2. Purchase of bonds for which payment is guaranteed by the Government, local governments or financial institutions; and
3. Other method, prescribed by the Presidential Decree, by which it is deemed possible to operate customer deposits safely.

(7) The scope, deposit ratios, matters on the withdrawal, and matters on the management of customer deposits to be deposited by a futures dealer with the depository institution under paragraph (1), and other matters necessary for depositing customer deposits shall be determined by the Presidential Decree.

■ **Article 49-3 (Deposit of Customer Securities in Custody)**

(1) A futures dealer shall promptly deposit customer securities and bonds or deeds as determined by the Presidential Decree which he is entitled to hold under entrustment of futures trading or other transaction with the Korea Securities Depository established pursuant to Article 173 of the Securities and Exchange Act (hereinafter in this Article referred to as the "Korea Securities Depository").

(2) A futures dealer shall promptly deposit securities, bonds and deeds which he is entitled to hold in connection with management of assets, and which are determined by the Presidential Decree, with the Korea Securities Depository.

■ **Article 50 (Liability Reserve)**

(1) A futures dealer shall accumulate a liability reserve to indemnify the customers from any losses that may be incurred due to the default of obligations, violation of laws or negligence by its officers or employees during the course of carrying out futures business.

(2) A futures dealer shall comply with the matters prescribed by the Presidential Decree with respect to the accumulation, operation and management of liability reserves.

■ **Article 51 (Overseas Futures Trading)**

(1) Any person wishing to carry out overseas futures trading shall do so through a futures dealer.

(2) Necessary matters pertaining to a futures dealer's acceptance of entrustment with respect to overseas futures trading and fulfillment of a pertinent brokerage, etc. shall be prescribed by the Presidential Decree.

■ **Articles 52 through 60 Deleted.**

CHAPTER V (Articles 61 through 74)

Deleted;

CHAPTER VI FUTURES ASSOCIATION

■ **Article 75 (Establishment)**

(1) Futures dealers may, on permission by the Financial Supervisory Commission, establish a futures association (hereinafter referred to as the "Association") for the purpose of maintaining the business order and pursuing sound development of the futures industry.

(2) The Association shall be a juristic person.

(3) If the association want to change matters as determined by Presidential Decree in articles of association, it shall obtain approval from the Financial Supervisory Commission.

■ Article 76 (Member Fees)

The Association may, in accordance with the articles of incorporation, impose membership fees on its members.

■ Article 77 (Affairs)

(1) The Association shall carry out any of the following:

1. Maintenance of mutually autonomous operating environment and protection of the customers;
2. Operation and management of the specialized manpower for the promotion of specialty of the futures dealers;
3. Survey and research of the futures-related systems;
4. Training affairs in regard to the futures transactions;
5. Affairs incidental to the affairs under subparagraphs 1 through 4; and
6. Other affairs prescribed by the Presidential Decree.

(2) The Association shall, in case where it enacts, amends or repeals the regulations concerning its affairs, report thereon without delay to the Financial Supervisory Commission.

■ Article 78 (*Mutatis Mutandis* Application of Civil Code)

Except for special provisions in this Act pertaining to the Association, provisions for corporate juridical persons in the Civil Act (except for Article 39 of the Civil Act) shall apply *mutatis mutandis* to the Association.

■ Article 79 (Provisions Applied *mtatis mutandis*)

The subparagraphs 4 through 9 of Article 21 shall be applied *mutatis mutandis* to the officers of the Association, and Article 22 to its officers and employees.

■ Article 80 (Futures Research and Training Institute)

The Association may establish a futures research and training institute for the purposes of enhancing expertise of persons engaged in futures business and spreading expert knowledge of futures trading.

CHAPTER VII SUPERVISION

■ Article 81 (Report and Inspection)

(1) The Financial Supervisory Commission may order the Exchange, the Association, and futures dealers (hereinafter referred to as "futures-related institutions") to make a report or submit data on their business and property and may have the Governor of the Financial Supervisory Service established under the Act on the Establishment, etc. of Financial Supervisory Organization (hereinafter referred to as the "Financial Supervisory Service") inspect their business, financial status, books, documents or other articles.

(2) A person who conducts an inspection pursuant to paragraph (1) shall carry a certificate showing his powers and produce it to the persons concerned.

(3) The Financial Supervisory Commission may determine the methods and procedures of an inspection and standards for measures for results thereof and other necessary matters.

■ Article 81-2 (Investigations by Financial Supervisory Commission and Securities and Futures Commission)

(1) Where there exists a violation of this Act, an order under this Act, or any rules or order of the Financial Supervisory Commission or where it is deemed necessary for public interests or the protection of investors, the Financial Supervisory Commission (or the Securities Futures Commission under the Act on the Establishment, etc. of Financial Supervisory Organizations (hereinafter referred to as the "Securities and Futures Commission") where Articles 31 through 33, 44, 45, 48, 51, 93 and 94 are violated; hereinafter in this Article the same shall apply) may order the persons concerned to make a report or submit data for reference or may have the Governor of the Financial Supervisory Service (hereinafter referred to as the "Financial Supervisory Service Governor") inspect books, documents or other articles.

(2) The Financial Supervisory Commission may, if it is deemed necessary for an investigation under paragraph (1), request the persons concerned to perform the following:

1. Submission of a statement on the fact and situations relating to matters to be investigated;
2. Presence for a testimony relating to matters to be investigated; and
3. Submission of books, documents or other articles necessary for an investigation.

(3) The Financial Supervisory Commission may request futures-related institutions to submit data necessary for an investigation on conditions as the Presidential Decree may determine in case where deemed necessary for conducting an investigation referred to in paragraph (1).

(4) Where there exists a violation of this Act, or an order under this Act or any rules or an order of the Financial Supervisory Commission as a result of an investigation referred to in paragraph (1), the Financial Supervisory Commission may give a corrective order or take other measures as determined by the Presidential Decree.

(5) Where it deems that any act is in violation of this Act or an order under this Act or any rules or an order of the Financial Supervisory Commission as a result of surveillance of suspicious transactions, the Exchange shall notify the Financial Supervisory Commission.

(6) The Financial Supervisory Commission may determine standards for procedures and measures necessary for an investigation referred to in paragraph (1) and measures referred to in paragraph (4) or other necessary matters.

■ **Article 82 Deleted.**

■ **Article 83 (Supervisory Measures against Exchange)**

(1) The Minister of the Ministry of Finance and Economy may revoke the approval for establishment of the Exchange if any of the following occurs:

1. Where it has obtained the approval for establishment in a wrongful manner;
2. Where it violates the content or condition of such approval; or
3. Deleted;

(2) Deleted.

(3) Where the Financial Supervisory Commission finds out that an officer or employee of the Exchange has been appointed or employed in a wrongful manner or has violated this Act, orders under this Act, the articles of incorporation, business regulations, or brokerage contract rules of the Exchange, or other rules relating to business, it may, with presenting the reasons, request that the Exchange suspend the exercise of duties of such officer or employee or dismiss such officer or employee.

(4) The Minister of Finance and Economy may, if deemed necessary for maintaining fair trading in the Exchange or for protecting interests of customers or investors, order that such Exchange amend its articles of incorporation, after consultation with the Financial Supervisory Commission.

(5) Where it is deemed necessary for the maintenance of fair trading in the Exchange or the protection of the customers' and investors' interests, the Financial Supervisory Commission may order the Exchange to amend business regulations or brokerage contract rules, after consultation with the Minister of Finance and Economy.

■ **Article 84 (Supervisory Measures against Futures Dealers)**

(1) The Financial Supervisory Commission may revoke the business approval of a futures dealer where such futures dealer does any of the following:

1. Where it obtains approval under Article 37 (1) and (3) in a wrongful manner;
- 1-2. Where it violates the content and condition of the permission under provision of Article 37 (1), (3) or (5)
2. Where it violates the provisions of Article 41;
3. Where it continues to be engaged in business in violation of a business suspension order pursuant to paragraph (2) or receives a business suspension order more than twice; or
4. Where it violates this Act, other than subparagraphs 1 and 3, or orders under this Act and therefore is deemed to be unfit to conduct business activities as a futures dealer.

(2) The Financial Supervisory Commission may order the suspension of the whole or part of a futures dealer's operation for the specified period of one year or less if any of the following occurs:

1. Where the futures dealer violates Articles 39-2, 40, or 43 through 50; or
2. Where the futures dealer is likely to be insolvent in view of his business operations and financial standing and such suspension is deemed inevitable for protecting investors.

(3) Deleted.

(4) The provisions of Article 83 (3) shall apply *mutatis mutandis* to other supervisory measures against futures dealers. In this case, the Exchange and its officers or employees shall be deemed to be a futures dealer and its officers or employees, respectively.

(5) The provisions of Article 39 shall apply *mutatis mutandis* to the revocation of approval under the provision of paragraph (1).

■ Article 84-2 (Hearing)

Where the Minister of Finance and Economy or Financial Supervisory Commission shall hold hearings if it intends to take the following dispositions:

1. Revocation of approval for establishment of the Exchange referred to in Article 83 (1); and
2. Revocation of approval for futures business referred to in Article 84 (1).

■ Article 85 (Supervisory Measures against Association)

(1) The Financial Supervisory Commission may order the partial suspension of business operations, or other necessary measures against the Association if deemed necessary for public interest and protection of investors.

(2) The provisions of Article 83 (3) shall apply *mutatis mutandis* to other supervisory measures against the Association. In this case, the Exchange and its officers and employees shall be deemed to be a member of the Association and its officers and employees, respectively.

■ Article 86 (Measures in Emergency Situations)

The Minister of Finance and Economy may order the closure of the futures market or other appropriate measures, in case where it is deemed that the normal execution of futures trading is impossible due to natural disaster, war, national emergency, radical changes in the economic situation or incidents equivalent to the foregoing.

■ Article 87 (Consultation)

The Minister of Finance and Economy or the Financial Supervisory Commission determines that the measures taken pursuant to Articles 83, 84, 85, and 86 are deemed to have a material impact on the commodity products market, it shall consult with the relevant Minister in charge of such general commodity.

CHAPTER VIII SUPPLEMENTARY PROVISIONS

■ Article 88 Deleted.

■ Articles 89 through 91 Deleted.

■ Article 92 (Relation with Other Acts)

(1) The Exchange, futures dealers and depository institution shall be deemed as a foreign exchange agency under Article 8 of the Foreign Exchange Transactions Act, in connection with intermediary business of foreign exchange transactions accompanied by futures trading: in case where there are special provisions in this Act pertaining to the Exchange, futures dealers and depository institution, such provisions shall prevail over the Foreign Exchange Transactions Act.

(2) Where foreign exchange transactions (excluding the acceptance and delivery of foreign exchange) of a resident are accompanied by the futures trading under this Act, Article 18 of the Foreign Exchange Transactions Act shall apply only to cases prescribed by the Presidential Decree.

■ Article 93 (Orders on Over-the-Counter Trading)

(1) Where certain transactions between concerned parties are pursued for the purposes of making a profit or averting risk without going through a futures market (including similar facilities prohibited from being established pursuant to Article 6 (1)) or overseas futures market, which

are similar to those of a futures trading, and are in conflict with the underlying purposes of this Act or are deemed to be harmful to the public interest or to the sound order of the market. the Financial Supervisory Commission may issue an order of disclosure of information on transactions or an order of implementation of internal control system or other necessary orders against concerned parties to the relevant transactions in accordance with the Presidential Decree,

(2) The Financial Supervisory Commission may entrust the operation on the supervision of futures trading in other places than futures markets to the Financial Supervisory Service Governor as prescribed by the Presidential Decree.

■ Article 94 (Restrictions on Futures Trading by Foreigners)

The Financial Supervisory Commission may, if deemed necessary, impose restrictions on the futures trading by foreigners.

■ Article 95 (Delegation and Entrustment of Powers)

(1) The Financial Supervisory Commission may delegate part of the powers under this Act to the Securities and Futures Commission on such terms and conditions as the Presidential Decree may determine.

(2) The Minister of Finance and Economy may delegate part of the powers under this Act to the Financial Supervisory Commission and the Securities and Futures Commission on such terms and condition as the Presidential Decree may determine.

(3) The Minister of Finance and Economy or the Financial Supervisory Commission may entrust part of the powers under this Act to the Exchange or the Association on such terms and conditions as the Presidential Decree may determine.

(4) The Financial Supervisory Commission and the Securities and Futures Commission may delegate the power to administer the matters of urgency under this Act to the Chairman of the Financial Supervisory Commission or the Chairman of the Securities and Futures Commission, and minor matters thereof to the Financial Supervisory Service Governor, on such terms and conditions as the Presidential Decree may determine.

(5) The scope of matters of urgency and minor matters referred to in paragraph (4) shall be determined by the Presidential Decree.

■ Article 95-2 (Deliberation by Securities Futures Commission)

The Financial Supervisory Commission shall refer to the Securities and Futures Commission for prior deliberation in case of any of the following:

1. Where it determines any of the following items:

- (a) Deleted;
 - (b) Matters on the preparation of documents by futures dealers referred to in Article 46;
 - (c) Matters on the preparation of business reports by futures dealers referred to in Article 47;
 - (d) Matters on the management and accounting of entrusted property by futures dealers referred to in Article 49;
 - (e) and (f) Deleted;
2. and 3. Deleted;
4. Where it takes measures or gives orders falling under any of the following items:
- (a) Restriction on the size of futures trading and other measures referred to in Article 32;
 - (b) Order for business suspension to futures dealers referred to in Article 84 (2);
 - (c) Deleted;
 - (d) Orders for partial suspension of business operation, etc. against the Association referred to in Article 85 (1);
 - (e) Orders in respect of over-the-counter transactions referred to in Article 93;
 - (f) Measures to impose restriction on futures trading by foreigners referred to in Article 94;
5. Where it consults with any competent Minister under Article 87;
6. Where it imposes a fine for negligence pursuant to Article 101 (3); and
7. Where the Financial Supervisory Commission deems that it needs any prior deliberation by the Securities and Futures Commission other than subparagraphs 1 through 6.

■ Article 95-3 (Direction to and Supervision over Financial Supervisory Service Governor)

The Financial Supervisory Commission or the Securities and Futures Commission may, in case where deemed necessary for the exercise of powers under this Act, give orders to the Financial Supervisory Service Governor such as directions, supervision, and alteration in the method of execution of its affairs, and other orders necessary for supervision.

■ Article 95-4 (Operations of Financial Supervisory Service)

The Financial Supervisory Service shall carry out the following affairs under directions or supervision of the Financial Supervisory Commission or the Securities and Futures Commission under this Act:

1. Affairs on the inspection of futures-related institutions subject to inspection by the Financial Supervisory Service pursuant to this Act;
2. Affairs on the supervision of futures trading in places other than futures markets;
3. Affairs entrusted from the Government;
4. Affairs assigned under this Act other than subparagraphs 1 through 3; and
5. Affairs incidental to those listed in subparagraphs 1 through 4.

■ **Article 95-5 (Sharing Expenses)**

(1) A person who falls under any of the following subparagraphs shall share part of operating expenses of the Financial Supervisory Service:

1. Futures dealers who receive commission fees from customers;
2. Deleted; and
3. Futures-related institutions which undergo an inspection by the Financial Supervisory Service Governor pursuant to Article 81.

(2) The necessary matters for the sharing ratio, limit or the payment of the part of expenses referred to in paragraph (1) shall be determined by the Presidential Decree.

■ **Article 95-6 (Restrictions on Trading by Members and Employees of Financial Supervisory Commission, Securities and Futures Commission, and Financial Supervisory Service)**

Article 22 shall apply *mutatis mutandis* to the restrictions on trading by persons falling under any of the following subparagraphs:

1. Commissioners and public officials belonging to the Financial Supervisory Commission;
2. Members of the Securities and Futures Commission; and
3. Governor, Vice Governor, assistant vice governors, auditor and employees of the Financial Supervisory Service.

■ **Article 95-7 (Information Exchange with Foreign Futures Supervisory Authorities)**

(1) The Financial Supervisory Commission may exchange information with foreign futures supervisory authorities.

(2) Where the Financial Supervisory Commission intends to exchange information referred to in paragraph (1), it shall consult in advance with the Minister of Finance and Economy: *Provided*, That this shall not apply where the Presidential Decree may otherwise determine.

(3) The Financial Supervisory Commission (or the Securities Futures Commission in case of matters in violation of the provisions of Articles 31 through 33, 44, 45, 48, 51, 93 and 94) may render assistance to the foreign futures supervisory authorities in case where they request the survey or investigation under Articles 81 and 81-2 with the clear statement of purposes and scopes, etc.

CHAPTER IX PENAL PROVISIONS

■ Article 95-8 (Penal Provisions)

(1) A person who violates the provisions of Article 31 (1) or 33 shall be punished by imprisonment of not more than 10 years or a fine not exceeding 20 million won (or the amount equivalent to three times the profits or evaded loss amount, in case where the amount corresponding to three times the profits gained by the violating acts or evaded loss amount is in excess of 20 million won).

(2) Where the amount of profits or losses obtained or evaded by a person due to violations of the provisions of Article 31 (1) or 33 is not less than 500 million won, he shall be punished according to the following classification:

1. Where the amount of obtained profits or evaded losses is not less than 5 billion won, he shall be punished by life imprisonment or by imprisonment for a limited term of not less than 5 years; and

2. Where the amount of obtained profits or evaded losses is not less than 500 million won but less than 5 billion won, he shall be punished by imprisonment for a limited term of not less than 3 years.

(3) In pronouncing the penalty of imprisonment under paragraph (1) and (2), a suspension of qualification for not more than 10 years may be concurrently imposed.

■ Article 96 (Penal Provisions)

A persons falling under any of the following cases shall be punished by imprisonment of not more than 3 years or a fine not exceeding 20 million won:

1. A person who violates the provisions of Article 6 (1);

2. A person who establishes and operates the Exchange without obtaining approval pursuant to Article 8 (2) or obtains such approval in a wrongful manner;

3. A person who is engaged in futures trading in violation of Article 23;
4. A person who violates the provisions of Articles 44 or 45 (1);
5. A person who is engaged in futures brokerage business without obtaining approval pursuant to Article 37 (1) and (3) or has obtained such approval in a wrongful manner; and
6. Deleted;

■ **Article 97 (Penal Provisions)**

A person falling under any of the following cases shall be punished by imprisonment of not more than 2 years or a fine not exceeding 10 million won:

1. A person who violates Article 6 (2);
2. A person who violates Article 9 (2), 24 (3) or 35 (3);
3. Deleted;
4. A person who violates Article 41 ;
5. A person who violates Article 51 (1);
6. Deleted; and
7. A person who violates an order issued pursuant to Articles 83 (4) and (5), 84 (2), 85 (1), 86 or 93.

■ **Article 98 (Penal Provisions)**

A person falling under any of the following cases shall be punished by imprisonment of not more than 1 year or a fine not exceeding 5 million won:

1. Deleted;
2. A person who violates Article 22 (including the cases where that Article shall apply *mutatis mutandis* pursuant to Articles 79 and 95-6) or 48 (1) and (2);
3. A person who announces a false price chart under Article 30 (1);
4. A person who fails to fulfil written notification or delivery or fulfilled the same in violation of Article 43;
5. Deleted; and

6. A person who refuses to comply with a request for investigation by the Financial Supervisory Commission referred to in Article 81-2 (2) (or the Securities and Futures Commission where Articles 31 through 33, 44, 45, 48, 51, 93 and 94 are violated).

■ **Article 99 (Cumulative Imposition of Imprisonment and Fine)**

(1) Imprisonment and a fine may be cumulatively imposed on persons who have committed an offence referred to in Articles 95-8, 96 through 98.

(2) In concurrent imposition of a fine under paragraph (1) on a person who has violated the provisions of Article 95-8 (2), the amount of the fine equivalent to or less than three times the amount of profits or losses obtained or evaded due to the act of violation shall be made.

■ **Article 100 (Joint Penal Provisions)**

Where a representative of a juristic person, or an agent, employer or other employee of a juristic person or individual, violates Articles 96 through 98, during the course of carrying out business of such juristic person or individual, such juristic person or individual, in addition to the very person who committed such offence, shall be subject to a fine to the extent of the amount prescribed in respective Articles.

■ **Article 101 (Fine for Negligence)**

(1) A person falling under any of the following cases shall be subject to a fine for negligence not exceeding 5 million won:

1. A person who fails to make a report under Article 11 (3) or makes a false report;
2. A person who violates Article 49;
3. through 5. Deleted;
6. A person who fails to prepare or maintains a report pursuant to Article 46 or make a false representation in such report;
7. A person who fails to submit a business report pursuant to Article 47 or make a false representation in such business report;
8. A person who fails to submit a report or other materials pursuant to Article 81 (1), or makes a false representation in such reports or submits false materials; and
9. A person who refuses, interrupts or avoids an inspection pursuant to Article 81 (1).

(2) A person falling under any of the following cases shall be punished by a fine for negligence not exceeding 3 million won:

1. A person who has failed to keep on file a property ownership list or a register of members or has made a false representation in such list or register in violation of Article 55 of the Civil Code which shall apply *mutatis mutandis* pursuant to Article 7;

2. Deleted;

3. A person who has violated limits under Article 32;

4. A person who has violated Article 41-2, 50 (1) and (2) or 77 (2); and

5. Deleted;

(3) A fine for negligence referred to in paragraphs (1) and (2) shall be imposed and collected by the Financial Supervisory Commission on such term and conditions as the Presidential Decree may determine: *Provided*, That a fine for negligence referred to in paragraph (1) 1 shall be imposed and collected by the Minister of Finance and Economy.

(4) A person who objects to the imposition of a fine for negligence referred to in paragraph (3) may file an objection with the person who is authorized to impose such fine for negligence not later than 30 days after the notification date of such imposition.

(5) Where a person subject to the imposition of a fine for negligence under paragraph (3) files an objection under paragraph (4), the person who is authorized to impose such fine for negligence shall without delay notify the competent court of such fact, which shall judge the fine for negligence in accordance with the Non-Contentious Case Procedure Act.

(6) Where neither an objection is filed nor a fine for negligence is paid within the period referred to in paragraph (4), the fine for negligence shall be collected according to the examples of the disposition of national taxes in arrear.

ADDENDA

■ Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 1996: *Provided*, That Article 6 of this Addenda shall come into force starting from the date prescribed by the Presidential Decree.

■ Article 2 (Example of Application on Stock Futures Trading)

Among trading set forth in subparagraph 1 of Article 3 of this Act, the trading of which the subject products are shares certificates under Article 2 (1) 6 of the Securities and Exchange Act and indices based on the same (hereinafter referred to as "share futures trading") shall be subject to this Act starting from the date prescribed in the proviso of Article 1 of this Addenda.

■ Article 3 (Transitional Measures on Stock Futures Trading)

A futures investment fund businessperson may, notwithstanding Article 58, manage its investment fund in the share futures trading among trading set forth in the items of subparagraph 1 of Article 3, by way of the entrustment thereof with a securities company until the date under the proviso of Article 1 of this Addenda.

■ **Article 4 (Transitional Measures on Approval of Futures Brokerage Business)**

(1) A foreign exchange bank under the Foreign Exchange Control Act shall as of the enforcement of this Act be presumed to be a futures broker which has obtained approval pursuant to this Act with respect to overseas futures trading on financial products and indices relating thereto (exclusive of service fees) only: *Provided*, That foreign exchange banks under the Foreign Exchange Control Act which concurrently engage in trust business as their additional business may, notwithstanding Article 40, engage in futures investment fund business subject to the approval of the Minister of Finance and Economy.

(2) Futures intermediaries designated by the head of the Supply Administration as of the enforcement of this Act shall be deemed as a futures broker which has obtained approval pursuant to this Act to the extent of its originally designated business scope.

■ **Article 5 (Transitional Measures on Establishment of Commission)**

(1) The Commission shall not be established until a date prescribed by the Presidential Decree, taking into consideration the size of futures trading and number of futures-related institutions.

(2) The Minister of Finance and Economy shall take over the authority and duties of the Commission under this Act until the date under paragraph (1). In this case, the Minister of Finance and Economy may delegate a part of such duties to the Superintendent of the Office of Bank Supervision of the Bank of Korea or other organizations prescribed by the Presidential Decree.

■ **Article 6** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 1998: *Provided*, That the amendment to Article 84-2 shall enter into force on January 1, 1998.

■ **Article 2 (Example of Application of Provisions on Disqualifications for Officers)**

The amendment to Article 21 shall apply to officers elected on or after the enforcement date of this Act.

■ **Article 3 (Transitional Measures on License for Overseas Futures Brokerage Business)**

Any person who has obtained a license for operating overseas futures brokerage business under the former provisions at the time of entry into force of this Act shall be deemed to have made a report under the amendment to Article 37 (2).

■ **Article 4 (Transitional Measures on Penal Provisions and Fine for Negligence Provisions)**

Acts committed prior to the entry into force of this Act shall, in applying the penal provisions and fine for negligence provisions, be governed by the former provisions.

■ **Article 5 (Transitional Measures on Operations Done by Minister of Finance and Economy)**

Operations done by the Minister of Finance and Economy pursuant to Article 5 (2) of the Addenda of Act No. 5041 Futures Trading Act prior to the entry into force of this Act shall be deemed operations done by the Financial Supervisory Commission under this Act.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation: *Provided*, That the amendments to Articles 49-2 and 49-3 shall enter into force on March 1, 1999.

(2) (Transitional Measures on Disqualifications for Officers) The amendment to Article 21 shall apply to officers elected on and after the entry into force of this Act.

(3) (Transitional Measures on Penal Provisions) The application of penal provisions and fine for negligence provisions to acts committed prior to the entry into force of this Act shall be governed by the previous provisions.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

■ **Articles 2 through 6 Omitted.**

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 2000.

■ **Article 2 (Transitional Measures concerning License for Futures Trading Business)**

Any person who has his futures trading business licensed under the previous provisions of Article 37 (1) at the time that this Act enters into force shall be deemed to have his futures trading business licensed under the amended provisions of Article 37 (1).

■ **Article 3 (Transitional Measures concerning Disqualifications)**

(1) Where a person who is the officer of the Exchange at the time that this Act enters into force is disqualified due to causes that have accrued prior to the enforcement of this Act in accordance with the amended provisions of subparagraph 9 of Article 21, his case shall be governed by the previous provisions notwithstanding the amended provisions.

(2) Where a person who is the officer of a futures company or the Association at the time that this Act enters into force falls under any of subparagraphs 4 through 9 of Article 21 which are applied *mutatis mutandis* under the amended provisions of Articles 39-3 and 79 due to causes that have accrued prior to the enforcement of this Act, his case shall be governed by the previous provisions notwithstanding the amended provisions.

■ **Article 4 (Transitional Measures concerning Internal Control Standards of Futures Companies)**

Any futures company at the time that this Act enters into force shall set its internal control standards in accordance with the amended provisions of Article 40 (1) within 6 months from the date on which this Act enters into force.

■ **Article 5 (Relations with Other Acts and Subordinate Statutes following Change in Name of Futures Trading Business, etc.)**

Where any futures business, any futures company or any foreign futures company is cited by other Acts and subordinate statutes at the time that this Act enters into force, such futures business, futures company or foreign futures company shall be deemed to be cited by this Act.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Transitional Measures concerning Application of Penal Provisions) In application of penal provisions to any offence committed prior to the enforcement of this Act, the previous provisions shall prevail.

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