


V I L A F
VIETNAM INTERNATIONAL LAW FIRM

NEW REGULATION ON DERIVATIVE SECURITIES AND FUTURES EXCHANGE

One year after the Prime Minister approved Vietnam's Project for the Development of the Derivative Securities Market, the Government issued the long-awaited Decree 42/2015/ND-CP on derivative securities ("DS") and the DS market ("Decree 42"). Decree 42 outlines the basic legal framework for a futures exchange tentatively to be developed in 2016 in Vietnam. Vietnam's stock exchanges are working on the technical infrastructure to put this DS trading system into operation. This briefing summarizes important contents of Decree 42.

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Types of DS Traded on Vietnam Stock Exchanges

Only the following types of DS are recognized:

- Futures;
- Options; and
- Forward contracts and other types of derivatives of which underlying assets are listed securities.

The settlement of payment for a trade of listed DS must be made via clearing members and Vietnam Securities Depository ("VSD") as the central clearing house and must comply with Decree 42.

The settlement of payment for an over-the-counter ("OTC") trade of DS need not be made via VSD unless otherwise agreed by the trading parties. Nevertheless, the parties are required to notify VSD of the intended OTC trade and report to VSD of the completed OTC trade in writing.

Stock exchanges are generally empowered to prescribe specific trading limitations for DS.

Licensing Requirements

Investors

Any person may invest in DS except that certain institutional organizations may have to satisfy certain requirements as follows before they can invest in DS for their own account.

A securities company must have a certificate of satisfaction of the DS dealer conditions issued by the State Securities Commission of Vietnam ("SSC"). The minimum equity capital requirement for being granted this certificate is VND600 billion.

A fund management company may only use entrusted funds to invest in DS if its portfolio management contracts and the charters of the funds it manages permit the use of those funds to invest in DS. A fund management company may not use its own funds, even loan capital, to invest in DS.

A credit institution or a branch of a foreign bank may only invest in DS if it has the State Bank of Vietnam ("SBV")'s license for DS trading.

An insurance firm or a branch of a foreign insurance firm may only invest in DS if it has the Ministry of Finance ("MOF")'s license for DS trading.

A State economic group or corporation, state-owned enterprise or wholly state-owned enterprise may only invest in DS if permitted by the relevant supervising authority and its owner.

Service vendors

1. A securities company acting as a DS broker must have a certificate of satisfaction of the DS broker-dealer conditions issued by the SSC, which requires, inter alia, a

minimum equity capital of VND800 billion.

2. A securities company, commercial bank or branch of a foreign bank providing DS settlement and clearing services must have a certificate of satisfaction of the conditions for DS settlement and clearing services issued by the SSC, which requires the following minimum equity capital:

- For a direct clearing member: VND5,000 billion for a commercial bank and VND900 billion for a securities company;
- For a common clearing member: VND7,000 billion for a commercial bank and VND1,200 billion for a securities company.

A direct clearing member may only provide settlement and clearing services for its clients.

A common clearing member may provide settlement and clearing services for its clients and also for non-clearing trading members and clients of those non-clearing trading members.

Additionally, a clearing member must also satisfy certain business results and capital adequacy requirements amongst others to be stipulated by the MOF in a future implementing circular.

Decree 42 refers to "commercial banks" and "commercial banks, branches of foreign banks" at different instances and it is confusing whether references to "commercial banks" where not accompanied with "branches of foreign banks" also intend to cover "branches of foreign banks." It seems however that the intent of Decree 42 is to give "branch of foreign bank" the same treatment as "commercial bank" in almost instances, except where limited by other regulations. This hopefully will be clarified in implementing circulars.

Members of the DS Trading System

Decree 42 recognizes three types of professional members of a DS trading system:

1. A trading member is a securities company or commercial bank that may trade DS for its own account and provide DS brokerage services (i.e. broker-dealer). If a trading member is not a clearing member, it must have a clearing contract with a common clearing member before it may provide DS brokerage services.

2. A special trading member is a trading member that is a commercial bank and that is licensed to invest in DS of which underlying assets are Government bonds.

3. A market driving member is a trading member or special trading member that is authorized to create the market for one or more DS based on a contract with the stock exchange.

A trading member can be a clearing member or a non-clearing trading member.