



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

**A Consultation Paper on the Securities and
Futures (Leveraged Foreign Exchange Trading
– Exemption) Rules**

《證券及期貨(槓桿式外匯交易 — 豁免)規則》
諮詢文件

Hong Kong
JUNE 2002

香港
2002年6月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397(1) of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Under the existing Leveraged Foreign Exchange Trading Ordinance (“LFETO”), the term “leveraged foreign exchange trading” is initially described in broad terms and then a range of acts and transactions are excluded from the definition. A similar approach is followed in the Ordinance where items excluded from the definition of “leveraged foreign exchange trading” include:

- a transaction executed solely for the purpose of an insurance business by an authorized insurer;
- a contract executed on a specified futures or stock exchange through a licensed person;
- a transaction in an authorized collective investment scheme; and
- an act performed for or in connection with any contract or arrangement by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of the Ordinance.

2. The draft Rules set out the acts carried on by certain classes of persons that the SFC proposes should be excluded from term “leveraged foreign exchange trading”.

3. There are controls built into the legislative system, whereby any rules made by the SFC must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398 of the Ordinance for such rules. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.

4. The public may obtain copies of the consultation document and the attachment free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.

5. The SFC invites interested parties to submit written comments on the draft Rules or to comment on related matters that might have a significant impact upon the draft Rules **no later than 26 June 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Rules.

The draft Rules

6. The draft Rules prescribe, for the purposes of the definition of “leveraged foreign exchange trading” in Part 2 of Schedule 5 to the Ordinance, that certain acts (except cold calling) performed by any person belonging to three qualifying classes are to be excluded from the definition. This means that persons belonging to the qualifying classes, if they perform these acts, need not be licensed for carrying on a business in activities that may constitute leveraged foreign exchange trading.

7. The first qualifying class consists of corporations that carry on any form of leveraged foreign exchange trading but whose principal business is not in leveraged foreign exchange spot transactions, provided:

- the average principal amount in such transactions is not less than \$7.8 million; and
- the corporation or its sole holding corporation or partnership has a qualifying credit rating.

8. Persons constituting the second qualifying class are licensed persons who are performing an act in connection with the sale, purchase or transfer of a currency warrant that is to be listed, and clients of the licensed persons undertaking such transactions through the licensed persons.

9. The third class consists of:

- issuers of such a currency warrant; and
- corporations belonging to the same group of companies as the issuer

who are undertaking the above transactions through licensed persons, or undertaking intra-group purchases, sales or transfers of such a currency warrant.

New Policy Initiatives

10. While the first qualifying class replicates that of the Leverage Foreign Exchange Trading (Exemption) Rules prescribed under the LFETO, the latter qualifying classes constitute a new policy initiative. The aim is to facilitate the development of the listed currency warrant market by removing unnecessary technical obstacles. As with the exclusion for the non-retail end of the foreign exchange market in the first qualifying class, the Commission believes that the extension of this exclusion to the second and third qualifying classes should not pose a material regulatory concern. Further, investor protection should not suffer, as the exempted classes of persons are limited to licensed persons and their clients carrying out a limited category of transactions, and certain companies with a defined relationship with an issuer carrying out intra-company transactions not involving investors.

Other matters

11. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

12. You may not wish your name to be published by the SFC. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

13. Written comments may be sent -

By mail to: SFC (LFET Exemption Rules)
12/F, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

By fax to: (852) 2293-5755

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: LFET_Exemption_Rules@hksfc.org.hk

14. The draft Rules should be read in conjunction with the Securities and Futures Ordinance itself.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines
 - made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen's Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.