



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 -
Arbitration) Rules**

**《證券及期貨(槓桿式外匯交易-仲裁)規則》
諮詢文件**

Hong Kong
March 2002

香港
2002年3月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Leveraged Foreign Exchange Trading - Arbitration) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 118(2) of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Like the Leveraged Foreign Exchange Trading Ordinance, the Ordinance does not contain detailed provisions prescribing the procedure for the settlement by arbitration of any dispute between a client and a licensed corporation in relation to leveraged foreign exchange trading. It merely gives the SFC the necessary rule-making power, under section 118(2), to prescribe the procedure in subsidiary legislation.
2. 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. Therefore, the SFC now releases the draft Rules (see Attachment 1) for public consultation.
3. The public may obtain copies of the consultation document and the attachments free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.
4. 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 11 April 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.

Background to the draft Rules

5. A copy of the draft Rules is attached. In short, they prescribe, for the purposes of section 118(1)(b) of the Ordinance, the procedure for the settlement by arbitration of any dispute between a client and a licensed corporation in relation to leveraged foreign exchange trading.
6. The draft Rules have been prepared having regard to, and are largely based on, the existing Leveraged Foreign Exchange Trading (Arbitration) Rules made under sections 7(5) and 73 of the Leveraged Foreign Exchange Trading Ordinance. The only changes are to make the draft Rules technologically neutral and therefore to modernize the procedure. The draft Rules provide for the establishment and constitution of the Arbitration Panel, selection and replacement of the Arbitrator, the procedural rules for the commencement, conduct and termination of the proceedings and other miscellaneous matters.

7. It is the intention of the SFC that the draft Rules should be user-friendly and they have been drafted so as to streamline the procedure with notices and other documents now able to be served electronically. Furthermore, the draft Rules no longer rely on an arbitration clause in the client agreement. The SFC would welcome suggestions from industry participants on any specific improvements that could be made to the draft Rules to make them user-friendly for participants.

New Policy Initiatives

8. No major policy changes have been incorporated into the draft Rules, which on the whole re-enact the existing Leveraged Foreign Exchange Trading (Arbitration) Rules, with the following minor changes:

- (a) Under section 118(1)(b) of the Ordinance it must be a condition of a license for the carrying on of leveraged foreign exchange trading, that a client may require a dispute to be referred to arbitration. In contrast, under the existing law, this is not mandatory. The draft Rules reflect this and they are also less technically reliant on an arbitration clause in view of the broad scope of section 118(1)(b);
- (b) The draft Rules are now technologically neutral, reflecting section 400 of the Ordinance, so that documents are not precluded from being sent or served electronically

Other matters

9. Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site 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.

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

11. Written comments may be sent

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

Attn: Intermediaries Supervision Department

By fax to: (852) 2526 5304

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

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

12. 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.

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.

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