



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

## **A Consultation Paper on the Guidance Note on Position Limits and Large Open Position Reporting Requirements**

《持倉限額及大額未平倉合約的申報規定指引》  
諮詢文件

Hong Kong  
January 2003

香港  
2003年1月

## Consultation

This consultation document invites public comments on the draft **Guidance Note on Position Limits and Large Open Position Reporting Requirements** (“Guidance Note”) which the Securities and Futures Commission (“SFC”) proposes to issue under section 399 of the Securities and Futures Ordinance (“SFO”) when it comes into operation.

### Introduction

1. The SFC has made the Securities and Futures (Contracts Limits and Reportable Positions) Rules (“Rules”) under section 35(1) of the SFO to (i) prescribe limits on the number of futures contracts or options contracts that may be held or controlled by a person and (ii) require a person holding or controlling a reportable position to notify the recognized exchange company. The Rules shall come into operation when the SFO commences.

2. To help market participants better understand how the Rules operate in practice, the SFC proposes to issue a Guidance Note to explain compliance requirements of the Rules. The draft Guidance Note (see Attachment 1) is now released for public consultation.

3. The SFC has used the FinNet Communication network to send copies of this consultation document to all registrants. The public may obtain copies of the consultation document 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 The SFC invites interested parties to submit written comments on the draft Guidance Note no later than 25 February 2003. 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 In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Guidance Note.

### Background to the Guidance Note

5. The Guidance Note will apply to futures and options contracts traded on the recognized exchange company. It attempts to provide guidelines on compliance requirements of the prescribed limits and reportable position requirements as set out in the Rules.

6. To clarify issues that may be raised by market participants, the Guidance Note also explains the application of the Rules to different entities.

7. The Rules provide that the prescribed limits apply unless a person is authorized by the SFC or the recognized exchange company to hold or control positions in excess of the limits. In this regard, the Guidance Note contains a section to explain the application procedures for a person wishing to hold or control excess positions and a section on procedures for appealing against the decision of the SFC under the Rules.

## **Other matters**

8. Please note that the names of the commentators and the contents of their submissions may be published on the SFC's 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 document.

9. 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.

10. Written comments may be sent

By mail to: SFC (Contract Limits Guidance Note)  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road Central  
Hong Kong

Attn: Supervision of Markets Division

By fax to: (852) 25217917

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

By e-mail to: [contractlimits\_guidance@hksfc.org.hk]

11. The draft Guidance Note should be read in conjunction with the Rules 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 Data<sup>1</sup> 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.

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

**Guidance Note on Position Limits  
and Large Open Position Reporting Requirements**

**Draft**

**Hong Kong  
March 2003**

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## **1. Introduction**

- 1.1. Section 35(1) of the Securities and Futures Ordinance (Cap. 571) (“SFO”) empowers the SFC to make rules to (i) prescribe limits on the number of futures contracts<sup>1</sup> or options contracts<sup>2</sup> that may be held or controlled by a person; and (ii) require a person holding or controlling a reportable position to notify the recognized exchange company or the SFC<sup>3</sup>.
- 1.2. The Securities and Futures (Contracts Limits and Reportable Positions) Rules (“the Rules”) have been made by the SFC under Section 35(1) of the SFO to prescribe limits and reportable positions applicable to futures contracts and stock options contracts traded on the recognized exchange company. The Rules shall come into effect when the SFO commences on 1 April 2003.
- 1.3. The Rules have been made based on the Securities (Exchange-Traded Stock Options) Rules and the Commodities Trading (Trading Limits and Position Limits) Rules which will cease operation when the SFO commences.
- 1.4. This Guidance Note is issued to help market participants better understand how the Rules are intended to operate in practice and explain compliance requirements of the Rules.
- 1.5. The Guidance Note is intended to clarify the SFC’s policy intent and positions on issues raised by the industry and does not have the force of law. The SFC will revise the Guidance Note to clarify its position in response to market developments and to reflect legislative changes in the future.

## **2. Prescribed Limits on Futures and Stock Options Contracts**

### ***Prescribed limits***

- 2.1. Section 4(1) of the Rules imposes restrictions on the maximum number of futures contracts or stock options contracts that may be held or controlled by a person. The prescribed limits on futures

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<sup>1</sup> Section 35(1)(a)

<sup>2</sup> Section 35(1)(b)

<sup>3</sup> Section 35(1)(c)

contracts<sup>4</sup> and stock options contracts are specified respectively in Schedule 1 and Schedule 2 of the Rules.

- 2.2. Except for the Hang Seng Index (“HSI”) futures contract, HSI options contract, Mini-HSI futures contract and Mini-HSI options contract, Schedule 1 of the Rules specifies the maximum number of futures contracts for any one contract month that may be held or controlled by a person. In other words, the prescribed limits in this Schedule apply to individual contract months. *For example, the prescribed limit on a particular futures contract is 5,000 contracts for any one contract month. If a person longs 3,000 contracts of the September futures contract and longs 2,000 contracts of the October futures contract, he will not reach the prescribed limit on this contract.*
- 2.3. The prescribed limit on the HSI futures and options contracts as well as the Mini-HSI futures and options contracts are calculated on a net basis for all contract months combined<sup>5</sup>. The futures-equivalent positions in options contracts are added to the positions in futures contracts for purposes of determining compliance with the prescribed limit. The futures-equivalent position in an option contract is the delta value<sup>6</sup> of the option contract determined by the Hong Kong Futures Exchange (“HKFE”) at the close of market on each trading day multiplied by the number of contracts held or controlled.

Example:

*A person holds the following positions:*

- *Long 8,000 September HSI futures contracts*
- *Short 1,000 October HSI futures contracts*
- *Long 2,500 November Mini-HSI futures contracts*
- *Long 5,000 September HSI calls with a delta value of 0.5*

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<sup>4</sup> In accordance with Schedule 1 of the SFO, the definition of “futures contract” includes not only a futures contract but also an option on a contract made under the rules or conventions of a futures market. In other words, futures and options contracts traded on the Hong Kong Futures Exchange are referred to as “futures contracts” in the Rules.

<sup>5</sup> Prescribed limits are also imposed separately on the Mini-HSI futures contracts and Mini-HSI options contracts for all contract months combined.

<sup>6</sup> Delta is the amount by which the price of an option will change for a corresponding change in price of the underlying market. Delta can be used to equate the directional risk of an option position with a position of similar size in the underlying market. For example, if a person holds 1,000 HSI options contracts (delta value of the contract is +0.6), he is long 600 deltas or in equivalent terms, 600 HSI futures contracts.

*Since the contract value of the Mini-HSI futures contract is one-fifth of that of the HSI futures contract, 2,500 Mini-HSI futures contracts are equivalent to 500 HSI futures contracts. The futures-equivalent positions in September HSI calls are 2,500 contracts which are obtained by multiplying the delta value (0.5) with the number of contracts held (5,000 contracts). In deciding whether the person has reached the prescribed limit of 10,000 contracts, positions in all contracts are netted, i.e. 8,000 contracts (long September HSI futures contract) minus 1,000 contracts (short October HSI futures contract) plus 500 contracts (long November Mini-HSI futures contract) plus 2,500 contracts (long September HSI calls). That means the person holds a net position of 10,000 contracts and has reached the prescribed limit.*

- 2.4. Schedule 2 of the Rules specifies the maximum number of stock options contracts in any one expiry month that may be held or controlled by a person. In determining whether the prescribed limit is exceeded, all options contracts expiring in the same month including all option types (i.e., calls and puts), strike prices, long and short positions are taken into consideration. *For example, the prescribed limit on a stock options contract is 5,000 contracts in any one expiry month. If a person holds 3,000 long calls with strike price A, 1,000 short calls with strike price B and 1,000 long puts with strike price C (all these calls and puts are in the same expiry month), he will reach the prescribed limit on this contract.*
- 2.5. The prescribed limits in Schedule 1 and Schedule 2 are also reflected in rules of the HKFE and the Stock Exchange of Hong Kong (“SEHK”). Market participants should note that in addition to the prescribed limits, the HKFE and SEHK may impose other position limits on a particular contract, Exchange Participant or client where situations warrant such action.

### ***Aggregation requirements***

- 2.6. The prescribed limits apply to all positions held or controlled by any person including positions in any account(s) for which such person controls trading directly or indirectly. While the word “control” is not defined in the SFO or the Rules, there are circumstances where the SFC takes the view that a person is regarded as having control of positions as for example where a person is allowed to trade or dispose of the positions independently

without the day-to-day direction of the beneficial owner of positions or a person has a financial interest of more than fifty percent (50%) in an entity holding the positions.

- 2.7. Notwithstanding the foregoing, the SFC accepts that the prescribed limits do not apply to a person who controls positions merely by virtue of its corporate relationship (e.g. a parent company indirectly controls positions held by its affiliates/subsidiaries) provided that such person (i) does not give its affiliates/subsidiaries any day-to-day direction with respect to trading; and (ii) does not have knowledge of or gain access to trading activities of its affiliates/subsidiaries except for the information which is reasonably necessary for the person to perform its supervisory role of a parent company.

### ***Penalties***

- 2.8. Except as otherwise authorized by the SFC, HKFE or SEHK (please refer to paragraphs 3.1 to 3.16), a person who contravenes Section 4(1) of the Rules without reasonable excuse is liable (i) on conviction on indictment to a fine of HK\$100,000 and to imprisonment for 2 years; or (ii) on summary conviction to a fine of HK\$10,000 and to imprisonment for 6 months.
- 2.9. In addition to any other powers and sanctions contained in the SFO or the Rules, the HKFE and SEHK may require an Exchange Participant carrying an account in which a position is in excess of the prescribed limit to take immediate steps to reduce the position below the prescribed limit. Where the HKFE or SEHK becomes aware that any person maintains positions in accounts with more than one Exchange Participant such that the aggregate position in all accounts exceeds the prescribed limit, the HKFE or SEHK may require any of the Exchange Participants carrying such accounts to reduce positions in the relevant accounts so that the aggregate position in all accounts will comply with the prescribed limit.

### **3. Application to Exceed Prescribed Limits**

- 3.1. No person may hold or control futures contracts or stock options contracts in excess of the prescribed limits except as otherwise

authorized by the SFC, HKFE or SEHK (as the case may be) in accordance with Sections 4(2) and 4(4) of the Rules.

***Authorization for excess positions by the HKFE/SEHK***

- 3.2. Section 4(2) of the Rules provides that the HKFE or SEHK may authorize a person to hold or control futures contracts or stock options contracts in excess of the prescribed limits under the situations set out in Section 4(3) of the Rules.
- 3.3. In accordance with Section 4(3), the following persons may be authorized for holding or controlling excess positions by the HKFE or SEHK:
- (i) a person registered with the SEHK for the purpose of performing market making or liquidity providing activities in respect of stock options contracts in accordance with its rules (*e.g. an Options Trading Exchange Participant holds excess positions in stock options contracts for which it is registered with the SEHK to make a market*);
  - (ii) a person registered with the HKFE for the purpose of performing market making or liquidity providing activities in respect of futures contracts in accordance with its rules (*e.g. an HKFE Participant holds excess positions in futures contracts for which it is registered with the HKFE to make a market*);
  - (iii) an issuer of securities listed under Chapter 15A of the Listing Rules who holds or controls futures contracts or stock options contracts in the course of hedging the risks of positions previously acquired in such listed securities for the purpose of performing liquidity providing activities in respect of such listed securities (*e.g. an issuer of structured products like derivative warrants and equity-linked instruments holds excess positions in futures contracts or stock options contracts to hedge the risks of positions in the structured products issued by it*); or

- (iv) a related corporation<sup>7</sup> of an issuer of securities listed under Chapter 15A of the Listing Rules, where the related corporation holds or controls futures contracts or stock options contracts in the course of hedging the risks of positions previously acquired in such listed securities for the purpose of performing liquidity providing activities in respect of such listed securities (*e.g. an associate of an issuer of structured products like derivative warrants and equity-linked instruments holds excess positions in futures contracts or stock options contracts to hedge the risks of its positions in the structured products issued by the issuer*).

- 3.4. A person who has the need to exceed the prescribed limits pursuant to Section 4(2) should make an application to the HKFE or SEHK (as the case may be) in accordance with its rules. The approval from the HKFE or SEHK must be received prior to entering into positions which exceed the limits.

***Authorization for excess positions by the SFC***

- 3.5. Section 4(4) of the Rules empowers the SFC to authorize a person to hold or control futures contracts or stock options contracts in excess of the prescribed limits in special circumstances. Section 4(4) is only applicable to situations falling outside Section 4(3). That is, the SFC will not accept applications which will be dealt with by the HKFE and SEHK in accordance with Section 4(3).
- 3.6. Pursuant to this section, a person may hold or control futures contracts or stock options contracts in excess of the prescribed limits if:
- (i) the person is able to satisfy the SFC that special circumstances exist which warrant the person holding or controlling excess positions (Section 4(4)(a));
  - (ii) the SFC is satisfied that the excess positions would not be prejudicial to the interest of the investing public having regard to the prescribed limits and the liquidity of the futures contracts or the stock options contracts in question (Section 4(4)(b)); and

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<sup>7</sup> The term “related corporation” is defined in section 3 of Schedule 1 of the SFO.

- (iii) the SFC has given the person notice in writing that it is satisfied of the matters referred to in Sections 4(4)(a) and (b) (Section 4(4)(c)).
- 3.7. An application for excess positions under Section 4(4) may be submitted by
- (i) the beneficial owner of the account(s) for which the authorization is sought;
  - (ii) the person who has the discretion to trade for the account(s); or
  - (iii) an intermediary who acts as an agent for the beneficial owner of the account(s).
- 3.8. The application should be made to the Enforcement Division of the SFC in writing. There is no prescribed format for the application. It can be a letter or any written document supported by reasons and/or supporting documents for the application. The application must be approved by the SFC before positions in the relevant futures contracts or stock options contracts may be increased above the prescribed limit.
- 3.9. To meet the conditions as described in Sections 4(4)(a) and (b), the SFC will normally require the applicant to provide the following information to support the application:
- (i) A description of the nature of positions held or controlled (including transactions in other related markets which are an integral part of the entire portfolio);
  - (ii) A full and complete explanation of business needs for holding or controlling excess positions;
  - (iii) An estimate of the maximum level of positions intended to be established; and
  - (iv) The estimated duration of holding or controlling the excess positions.

Depending on each individual case, the SFC may request other information as it considers necessary.

- 3.10. The SFC will determine whether the applicant shall be approved to hold or control excess positions on the basis of the information supplied, the relevant prescribed limits, the liquidity of the futures contracts or stock options contracts for which the authorization is sought and such factors as the SFC deems appropriate to ensure that the circumstances in Sections 4(4)(a) and (b) are satisfied.
- 3.11. As a guiding principle, the SFC will not grant an authorization for any excess if the circumstances in Sections 4(4)(a) and (b) are not satisfied, or if the authorization is inconsistent with the SFC's regulatory objectives in Section 4 of the SFO, in particular,
  - (i) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
  - (ii) to reduce systemic risks in the securities and futures industry;  
or
  - (iii) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.
- 3.12. The SFC may decide to approve or deny the application or impose conditions on the authorization. A notice of decision will be provided to the applicant in writing.
- 3.13. The SFC will endeavour to notify the applicant of its decision within ten business days after all information as requested by the SFC to support the application is provided to its full satisfaction. However, since authorizations that may be granted by the SFC under Section 4(4) are special cases, it may take more time for the SFC to consider and review some particular cases. A person who has the need to exceed the prescribed limits is advised to submit an application accompanied by the supporting information to the SFC as soon as practicable.
- 3.14. A person who has received the authorization from the SFC to hold or control an excess position within a certain period of time should

submit a new application to the SFC if he wishes to continue to hold or control the excess position after the expiration date of the initial authorization. The new application should be submitted to the SFC no later than five business days prior to the expiration date of the initial authorization. If the SFC does not grant any further authorization for the excess position, the person will be required to close out the position in excess of the prescribed limit upon the expiration date of the initial authorization.

- 3.15. After an authorization is granted by the SFC, if there are any material changes in the information previously provided to the SFC, the applicant must immediately submit the updated information to the SFC. The SFC will decide if the authorization granted is still valid. Should the applicant fail to submit such information, he may not continue to rely upon the authorization granted. That is, he may be requested to close out the excess positions.
- 3.16. A person may appeal against a decision of the SFC to refuse to authorize an excess position under Section 4(4) of the Rules to the Securities and Futures Appeals Panel Tribunal (“Tribunal”) pursuant to Section 216 of the SFO<sup>8</sup>. An application for review of the decision must be made to the Tribunal by the person against whom the decision is made within 21 days of notice of the decision. Upon review of the decision under appeal, the Tribunal may confirm, vary or set aside the decision or substitute any other decision which the Tribunal considers more appropriate or it may remit the matter to the SFC with directions to revisit the decision. For the avoidance of doubt, before the Tribunal determines otherwise, the decision of the SFC shall remain valid and the person is required to act on the decision of the SFC.
- 3.17. As discussed in paragraph 2.7, the SFC considers that the prescribed limits do not apply to a person who controls positions merely by virtue of its corporate relationship. In view of this, if a person is permitted by the SFC to hold or control excess positions, its affiliates or holding company, which indirectly control the same positions by virtue of the corporate relationship, will not be required to seek the approval from the SFC separately to control the positions.

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<sup>8</sup> As set out in Part 2 of Schedule 8 of the SFO, the Tribunal has jurisdiction over the decision made by the SFC under Section 4(4) of the Rules.

#### **4. Notice of Reportable Positions**

##### ***Reportable positions***

- 4.1. In order to facilitate the HKFE and SEHK in monitoring market activities, Section 6(1) of the Rules requires a person holding or controlling a reportable position to notify the recognized exchange company of that reportable position in writing.
- 4.2. Reportable positions for futures contracts and stock options contracts are specified in Schedule 1 and Schedule 2 of the Rules respectively. Similar to the prescribed limits, the reportable positions for futures contracts are calculated based on the number of contracts held or controlled for a contract month<sup>9</sup> while the reportable positions for stock options contracts are calculated based on the number of contracts held or controlled in an expiry month.
- 4.3. The aggregation requirements as mentioned in paragraphs 2.6 and 2.7 equally apply to the reportable positions for futures contracts and stock options contracts.

##### ***Responsibilities of reporting***

- 4.4. The notice of a reportable position specified in Section 6(1) may be submitted by
  - (i) the intermediary (e.g. the Exchange Participant) carrying the account of the reportable position;
  - (ii) the beneficial owner of the reportable position; or
  - (iii) the person controlling the reportable position.

If one of the above parties has submitted the notice of the reportable position to the Exchange, the SFC accepts that the other parties will not be required to notify the Exchange of the same reportable position under Section 6(1).

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<sup>9</sup> The reportable positions for HSI futures contract, HSI options contract, Mini-HSI futures contract or Mini-HSI options contract are also based on the number of contracts held or controlled.

- 4.5. In other words, a person holding or controlling a reportable position can choose to submit the notice of the reportable position to the Exchange directly or through its intermediary or an Exchange Participant.
- 4.6. In the event that a person holds or controls a reportable position in accounts at more than one intermediary, the person should have the sole responsibility to notify the Exchange of the reportable position. If the person decides to submit the notice of the reportable position to the Exchange through the intermediaries, it should provide to one intermediary its total positions held at other intermediaries so that the intermediary can submit the notice of the reportable position to the Exchange on its behalf. Alternatively, the person can ask all intermediaries to separately report positions in each of the accounts to the Exchange even though positions in the individual accounts may not reach the reportable level.
- 4.7. Similar to the prescribed limits, the SFC agrees that a person controlling a reportable position merely by virtue of its corporate relationship is not required to submit the notice of the reportable position to the Exchange.

#### ***Reporting requirements***

- 4.8. In accordance with Sections 6(1)(a) and (b), the notice of reportable positions should be made within one reporting day following
  - (i) the day on which the person first holds or controls the reportable positions; and
  - (ii) each succeeding day on which the person continues to hold or control the reportable positions.

For the avoidance of doubt, once a person has held or controlled a reportable position, he will be required to file the notice of the reportable position to the HKFE or SEHK (as the case may be) on each reporting day even though his position remains unchanged.

- 4.9. Section 6(2) of the Rules further requires that the notice of a reportable position shall be accompanied by the following information:

- (i) the number of futures contracts or stock options contracts held or controlled by the person in respect of the reportable position in each relevant contract month; and
- (ii) if the reportable position is held or controlled for a client, the identity of the client.

In respect of the information about the identity of a client, registered or licensed persons of the SFC should refer to the requirements as set out in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the Client Identity Policy.

4.10. In the stock options market, positions held by a market maker are recorded by the SEHK Options Clearing House in a segregated clearing account. Under SEHK rules, positions held by market makers in segregated clearing accounts are treated as having been reported to the SEHK. The SFC accepts that if the segregated clearing account is used exclusively to keep positions of a single market maker, the market maker will be deemed to have fulfilled the reporting requirements as stated in Sections 6(1) and 6(2) of the Rules.

***Other reporting requirements specified by the HKFE/SEHK***

- 4.11. The HKFE and SEHK have developed more detailed reporting requirements to facilitate their monitoring of reportable positions as required under Section 6 of the Rules. These requirements include the use of a prescribed form for reporting and the specific deadline for submission of the notice of reportable positions<sup>10</sup>.
- 4.12. The HKFE and SEHK also request Exchange Participants to provide additional information other than those specified in Section 6(2) including (i) the account number, account name and identities of the ultimate beneficial owner and transaction originator (if the instruction in relation to a transaction is not originated by the beneficial owner) of a reportable position; (ii) the nature of a reportable position (i.e. for hedging, arbitrage or trading purposes); (iii) the account type (i.e. house account, client account or market

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<sup>10</sup> HKFE requires Exchange Participants to submit the notice of reportable positions by 12:00 noon on the reporting day (T+1).

maker account); and (iv) the nature of the entity holding or controlling the reportable position (i.e. the entity is the ultimate beneficial owner, transaction originator or omnibus account operator).

### ***Penalties***

- 4.13. A person who contravenes Section 6 of the Rules without reasonable excuse is liable (i) on conviction on indictment to a fine of HK\$100,000 and to imprisonment for 2 years; or (ii) on summary conviction to a fine of HK\$10,000 and to imprisonment for 6 months.

## **5. Compliance by Exchange Participants**

- 5.1. Section 7 of the Rules provides that the prescribed limits and reportable positions apply to (i) positions in futures contracts or stock options contracts held or controlled by an Exchange Participant for its own account; and (ii) separately to positions in futures contracts or stock options contracts held or controlled by the Exchange Participant for each of its clients.
- 5.2. This section allows an Exchange Participant to disaggregate positions held for its own account and positions held for each of its clients in the application of the prescribed limits and reportable position requirements. An Exchange Participant's own positions and positions held for each of its clients are treated separately for purposes of determining compliance with the prescribed limits and reportable position requirements.
- 5.3. In respect of reportable positions, Section 7 requires Exchange Participants to notify the HKFE or SEHK (as the case may be) of reportable positions held or controlled by each of their clients. For this purpose, the HKFE and SEHK have established detailed reporting requirements for Exchange Participants to submit the notice of reportable positions (please refer to paragraphs 4.11 to 4.12).
- 5.4. If an Exchange Participant is aware that a number of its client accounts are held for the same beneficial owner, all positions of these accounts should be aggregated for reporting purposes.

## 6. Application of the Rules to Different Entities

### *Persons holding or controlling positions at multiple firms*

- 6.1. If a person holds or controls positions in accounts at more than one firm, the positions should be aggregated for purposes of applying the prescribed limits and reportable position requirements.
- 6.2. If a person holding or controlling positions at multiple firms chooses to submit the notice of reportable positions to the Exchange through one of the firms (e.g. an Exchange Participant), it should provide to the firm its total positions held at other firms.

### *Transaction originators*

- 6.3. A transaction originator is a person who is ultimately responsible for originating instructions of transactions. For the purpose of applying the Rules, a transaction originator will be treated as a controlling person if he has the discretion to initiate transactions on behalf of the beneficial owner. The most common type of transaction originator is a fund manager who manages assets of a fund at his own discretion according to the investment policy of the fund.
- 6.4. If the total positions controlled by a transaction originator (including positions belonging to different beneficial owners but under his control) have reached the reportable level, the transaction originator will be required to notify the HKFE or SEHK (as the case may be) of such positions. As required in Section 6(2) of the Rules, the transaction originator should also provide the information about identities of each beneficial owner whose position has reached the reportable level. *For example, a fund manager is in charge of the investment of three funds, namely, Fund A, Fund B and Fund C. Currently, there are 1,000, 800 and 200 futures contracts held by Fund A, Fund B and Fund C respectively. If the reportable level for the futures contract is 500 contracts, the fund manager should notify the Exchange of the total positions under his control (i.e., 2,000 contracts), names of the funds in which position has reached the reportable level (i.e., Fund A and Fund B) and the positions held in these funds.*

- 6.5. A transaction originator can choose to notify the HKFE or SEHK (as the case may be) of the reportable positions by himself or the intermediary (e.g. an Exchange Participant) through which his positions are held.
- 6.6. The prescribed limits apply to the total positions controlled by a transaction originator even if beneficial owners of the positions are different.

### ***Omnibus accounts***

- 6.7. In the case of an omnibus account, the Rules apply to the aggregate positions held in the omnibus account and to the positions held by each of the underlying clients of the omnibus account.
- 6.8. An omnibus account operator should inform the HKFE or SEHK (as the case may be) of the aggregate positions held in the account if they have reached the reportable level. If an underlying client of the omnibus account holds a reportable position, such reportable position should also be reported to the Exchange. An omnibus account operator can notify the Exchange of the reportable positions by itself or ask its intermediary (e.g. an Exchange Participant) carrying the account to submit the notice of reportable positions. The notice of reportable positions should be accompanied by the information about identities of the underlying clients whose position has reached the reportable level.
- 6.9. There are situations where an underlying client of the omnibus account is also an omnibus account, i.e., there are more than one layer of omnibus account. If the omnibus account operator in one layer has notified the Exchange of the reportable positions held by the ultimate beneficial owners including identities of each of them (either by itself or through its intermediary), the SFC accepts that the other omnibus account operators below this layer will not be required to notify the Exchange of any reportable positions held in their accounts.

### ***Example:***

*Suppose that Exchange Participant A has an omnibus account B holding 1,000 long futures contracts. One of the underlying clients of omnibus account B is also an omnibus account (account C)*

*which holds 900 long futures contracts. Positions in omnibus account C are owned by Company D (800 long futures contracts) and other small investors (a total of 100 long futures contracts).*

*Assume that the reportable level is 500 contracts. Exchange Participant A should inform the Exchange of the position held by the omnibus account B (i.e. 1,000 contracts). If the operator of omnibus account B has obtained the information about the ultimate beneficial owners from the operator of omnibus account C and notified the Exchange of the reportable position held by Company D including its identity (the reportable position can be reported to the Exchange by the operator B itself or through the Exchange Participant A), the operator of omnibus account C will not be required to submit any notice of reportable positions to the Exchange.*

- 6.10. The prescribed limits apply to the aggregate positions held in an omnibus account and separately to the positions held by each of the underlying clients of the omnibus account.

#### ***Non-Exchange Participant intermediaries***

- 6.11. Non-Exchange Participant intermediaries carrying omnibus accounts with other intermediaries to hold client positions should refer to paragraphs 6.7 to 6.10 regarding the application of the Rules to omnibus accounts.
- 6.12. Even though individual clients of an intermediary do not hold positions in excess of the prescribed limits, the aggregate positions held by an intermediary may exceed the prescribed limits. Section 7 of the Rules allows an Exchange Participant to disaggregate its own positions and positions held for each of its clients in the application of the prescribed limits, but this disaggregation provision is not applicable to non-Exchange Participant intermediaries. Non-Exchange Participant intermediaries cannot hold aggregate positions in excess of the prescribed limits except as otherwise authorized by the SFC pursuant to Section 4(4).