



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

**Consultation Conclusions and Further Consultation on  
proposed changes to the Securities and Futures  
(Contracts Limits and Reportable Positions) Rules and  
the Guidance Note on Position Limits and Large Open  
Position Reporting Requirements**

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November 2022

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## Foreword

The Securities and Futures Commission (**SFC**) invites market participants and interested parties to submit written comments on the proposals discussed in this paper or on related matters that might have a significant impact upon the proposals by no later than 23 Dec 2022.

Written comments may be sent as follows:

Mail :           The Securities and Futures Commission  
                  54/F One Island East  
                  18 Westlands Road  
                  Quarry Bay, Hong Kong

Re: Consultation on changes to the Position Limit Regime

Fax :           (852) 2521 7917

Online :       <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=22CP5>

Email :        [position-limit@sfc.hk](mailto:position-limit@sfc.hk)

Any person who wishes to submit comment on behalf of any organisation should provide the details of the organisation whose views are represented.

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 paper.

If you do not want your personal information, affiliation or the contents of your submission to be disclosed to the public, please state this clearly in your submission. In this regard, a standard confidentiality statement in an email will not be considered as a request for non-disclosure.

After the consultation ends, a consultation conclusions paper will be published in due course.

Securities and Futures Commission  
Hong Kong

November 2022

## Personal Information Collection Statement

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 Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

### Purpose of collection

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:

- (i) to administer the relevant provisions<sup>2</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
- (ii) in performing the SFC's statutory functions under the relevant provisions;
- (iii) for research and statistical purposes; or
- (iv) for other purposes permitted by law.

### Transfer of Personal Data

Personal Data may be disclosed by the SFC to 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 this consultation paper, together with the whole or part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

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 this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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

<sup>2</sup> The term "relevant provisions" is defined in Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).



## **Enquiries**

Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

Data Privacy Officer  
Securities and Futures Commission  
54/F One Island East  
18 Westlands Road  
Quarry Bay, Hong Kong

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

## Executive summary

1. On 26 April 2022, the SFC published a public consultation proposing several enhancements to the position limit regime (**First Consultation Paper**) to align its requirements with the SFC's regulatory policies and objectives in light of recent developments in Hong Kong's derivative market. The SFC sought comments on proposed enhancements and related amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (**Rules**), as well as proposed updates to the Guidance Note on Position Limits and Large Open Position Reporting Requirements (**Guidance Note or GN**). The consultation period ended on 27 June 2022.
2. The SFC received 11 written submissions (including three late responses) from various market participants and professional bodies. The list of respondents is set out in Appendix C and their comments can be viewed on the SFC's website. In response to the feedback, the SFC proposes to make further amendments to the Rules and the Guidance Note.
3. Separately, on 2 June 2022, Hong Kong Exchanges and Clearing Limited (**HKEX**) launched a consultation<sup>3</sup> on proposed enhancements to the exchange-level position limit regime. This consultation was concluded on 28 July 2022<sup>4</sup>. As the implementation of HKEX's proposed enhancements will require amendments to the Rules, the SFC would like to take this opportunity to consult the public on these additional amendments together with those related to the First Consultation Paper.
4. This paper comprises four sections:
  - Section A sets out our responses to market participants' comments on the proposals discussed in the First Consultation Paper. While some proposals will be concluded, there are a few matters that may require further amendments to the Rules, on which the SFC would like to further consult the public;
  - Section B discusses the proposed amendments related to HKEX's proposed enhancements to its position limit regime;
  - Section C sets out the amendments to the Rules to reflect the proposed changes stated above. Moreover, we explain our intention to update the list of contracts in Schedule 1 to the Rules; and
  - Section D sets out the changes to the Guidance Note.

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<sup>3</sup> HKEX's Consultation: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2022-Position-Limit/cp202206.pdf>

<sup>4</sup> HKEX's Consultation Conclusions: [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2022-Position-Limit/Conclusions-\(Jul-2022\)/cp202207cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2022-Position-Limit/Conclusions-(Jul-2022)/cp202207cc.pdf)

## Section A

### Responses to the First Consultation Paper – Our Views and Further Consultation

#### I. Expanding the list of contracts that the SFC may authorise a person to hold or control in excess of the prescribed limit

##### *Public comments*

5. Most respondents supported or had no comments on the proposal to add the Weekly Hang Seng Index (**HSI**) options contracts, Weekly Hang Seng China Enterprises Index (**HSCEI**) options contracts, HSI Futures options contracts, HSCEI Futures options contracts and Hang Seng TECH Index futures and options contracts (**New Contracts**) to the list of “specified contracts”. One respondent suggested adding commodities contracts to the list, while another suggested that going forward, all contracts with the HSI and HSCEI as underliers should be added to the list based on the same principle underlying the proposal.
6. Further to the underlying principle, one respondent highlighted a related issue where market participants may be required to observe two different limits (ie, the exchange-level position limit and the statutory limit) for products with the same underliers. This could happen when HKEX introduces new products based on that underlier when the Rules are not yet amended to reflect their limits. The respondent therefore suggested that the SFC not prescribe specific statutory position limits in the Rules but provide that the statutory position limits for new products be the same as those prescribed by HKEX.

##### *The SFC’s response*

7. We acknowledge market participants’ concerns about having to observe two sets of position limits in the time required for amending the Rules to include HKEX’s new products. To address this issue, the SFC will introduce standardised terms to cover futures and options contracts which are based on underliers related to the HSI, HSCEI and Hang Seng TECH Index so that in future all new contracts based on these indices will be covered and subject to statutory position limits when they are launched.
8. To illustrate, the standardised term for HSI contracts will cover:
  - i. all futures contract whose underlying index is the HSI, HSI (Gross Total Return Index) or HSI (Net Total Return Index);
  - ii. all options contract whose underlying index is one of the indices referred to in paragraph (i) above; and
  - iii. all options contract whose underlying asset is one of the contracts referred to in paragraph (i).

With this definition,

- part (i) will cover index futures such as the HSI futures, Mini-HSI futures, HSI (Gross Total Return Index) futures and HSI (Net Total Return Index) futures;
- part (ii) will cover index options such as the HSI options, Mini-HSI options and weekly HSI options; and
- part (iii) will cover options on futures such as the HSI Futures options.

Accordingly, for example, if HKEX launches a new futures contract referencing the HSI, that contract will be automatically covered by part (i) and there is no need for the SFC to amend the Rules.

The HSI contracts under the standardised terms will share an aggregate limit of *“10,000 net long or short position delta limit for all contract periods combined”* and have a reporting level of *“500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier”*. The prescribed limit and reporting level are proposed to be generalised as well to cater for contracts with different contract periods or contract sizes. For example, HSI options with a multiplier of \$100 per index point, if launched, will be subject to a reporting level of 250 open contracts (ie,  $500 \times \$50 / \$100$ ) immediately.

9. To align with the proposed standardised terms, the definition and scope of “specified contracts” will also be correspondingly amended for products based on the HSI, HSCEI and Hang Seng TECH Index.
10. With the amendments, if HKEX launches any new products based on the three indices or their related underliers in the future, those products will have their statutory position limits and reporting levels prescribed in the Rules automatically. The proposed amendments to the Rules to reflect the above changes are highlighted in Appendix A1.
11. As for the inclusion of commodities contracts to the list of “specified contracts”, the SFC has reviewed these trading activities, including the data for their limit usage. Overall, the existing position limits are sufficient for the trading and hedging activities of market participants. At this point, the SFC does not see a need to introduce excess position limits for commodities contracts.

## **II. Reporting requirements for contracts traded on holidays**

### *Public comments*

12. Most respondents supported or had no comments on the proposal. Only one respondent suggested the SFC reconsider the imposition of the requirement, noting

that it may not be worthwhile if the trading volume of Holiday Contracts<sup>5</sup> is not significant.

*The SFC's response*

13. We would like to clarify that HKEX has already imposed reporting requirements for Holiday Trading Days and market participants have already been required to comply with those requirements. The reporting requirements during Holiday Trading Days proposed in the First Consultation Paper mirror the existing requirements stipulated in HKEX's rules. The SFC is not introducing any new requirements.

### **III. Clearing participants have no “discretion” in relation to clearing clients' positions**

*Public comments*

14. Most respondents had no comments on the proposal. One respondent supplemented that apart from payment defaults, a Clearing Participant (**CP**) may also need to close out a client's positions upon another material breach of contract by its client, such as when the client has made a material misrepresentation prompting the CP to terminate the agreement. In this case, the CP should not be regarded as having the kind of discretion as described under section 7(3) of the Rules.
15. Another respondent suggested that the SFC clarify a CP's discretion in the GN instead of in the Rules, given the issue is relatively minor and it seems more appropriate to address it by adding examples to the GN rather than revising the Rules.
16. One respondent would like the SFC to clarify the circumstances when a CP should aggregate or disaggregate its client's position with its own positions, as it seems unclear why a CP would need to apply for excess position limits when its client is authorised to hold or control excess positions.

*The SFC's response*

17. The SFC agrees with the suggestion to expand the descriptions in section 7(4) of the Rules to also cover other circumstances which may trigger a CP to close out its clients' positions. A further amendment to the Rules is reflected in Appendix A1.
18. Regarding the second comment, while elaborations could be provided in the GN, the SFC considers that having the clarifications stipulated in the Rules could provide better legal certainty and reduce the compliance burden for participants. Nevertheless, we also acknowledge the suggestion to provide further guidance in the GN to help market participants understand when a CP is not regarded as having

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<sup>5</sup> Holiday Contracts refer to the derivative contracts determined by HKEX to be tradable on public holidays in Hong Kong.

discretion over clients' positions. Corresponding changes are reflected in the further revised GN in Appendix B.

19. As regards the circumstances when a CP should aggregate or disaggregate client positions, provided that its arrangements with the clients do not fall within the descriptions in section 7(3), in general a CP does not need to aggregate its positions with its clients' as it does not have discretion over its clients' positions. However, if a client of the CP has been authorised to hold or control excess positions of HSI futures and options contracts (eg, up to 20,000 position delta) and the excess positions are held under the CP, the CP will breach the statutory position limit of 10,000 position delta as holder of the positions. The proposed excess position limit regime for CPs is to deal with this situation. In view of the questions raised, we will provide more clarity on this in the GN.

#### IV. Excess position limit for clearing participants

##### *Public comments*

20. While most respondents were supportive of or had no comments on the proposal, one respondent disagreed that CPs should apply for excess position limits for holding client positions, as the positions cleared with CPs ultimately belong to their clearing clients and CPs generally do not have the capability to restrict the clearing clients' positions to within the approved position limit. Moreover, if a clearing client keeps its excess positions at multiple CPs, its CPs may not have complete information about the client's positions and this could make it difficult for a CP to monitor clients' overall positions. Apart from that, the respondent is concerned about the implications of this proposal on the capital-based position limit (**CBPL**) and concentration margin requirements on CPs.
21. We also received comments from other respondents that the excess position limit applications for CPs should be submitted by clearing clients to streamline the process and avoid ambiguity, especially when the clients have appointed multiple CPs.
22. Some respondents sought the SFC's clarification of the rationale for requiring CPs to obtain authorisation for excess positions, the application process and approval authority for cases where CPs clear positions for different types of clearing clients, including market makers of the Hong Kong Futures Exchange (**HKFE**), as well as the relevant financial requirements and the application of CBPL and concentration margin framework.

##### *The SFC's response*

23. The SFC would like to reiterate that the Rules are applicable to any person (including CPs) who holds or controls futures and options contracts, thus nobody (including CPs) could hold or control positions beyond the statutory position limit unless they are authorised under the appropriate excess position limit regime. At present, positions in futures and options contracts are held under the accounts of CPs at the respective

clearing houses. Hence, whether or not the positions ultimately belong to a third party, the CPs, as holders of those positions, are still subject to the Rules.

24. The SFC is not introducing any new requirements for CPs. Instead, we are enhancing the Rules to facilitate CPs' holding of excess positions on behalf of their clearing clients who have been authorised for excess positions by the SFC or HKEX. Without a proper regime for the SFC to grant excess position limits for CPs, the SFC would not be able to grant excess position limits to an Exchange Participant (**EP**) should it choose to clear its positions through a third-party CP.
25. The SFC would also like to clarify that this proposal should not have any direct impact on HKEX's CBPL and concentration margin framework. CPs should continue to adhere to the risk management framework according to the requirements set out by the clearing house.
26. On the other hand, the SFC is of the view that CPs which apply for excess position limits should also be subject to similar financial and internal control requirements to those currently imposed on EPs and their affiliates who apply to the SFC for excess positions limits. As mentioned in the First consultation Paper, this aligns with the practice over the years. When EPs and CPs applied for excess position limits were the same persons, they were essentially subject to the same application requirements (including their financial conditions and internal control measures). For consistency, it is proposed that if CPs need to hold excess positions for their clients, their excess position limit applications should be subject to similar requirements. We have further amended the new section 4F of the proposed Rules in Appendix A1 to reflect these requirements.
27. We noted a comment that CPs may have difficulty monitoring a clearing client's positions if the clearing client keep them at multiple CPs. To address this issue, the SFC will require that a clearing client who applies for excess position limits should (i) appoint only one CP to hold its positions (including the excess positions) in the relevant contracts and (ii) notify the appointed CP of its excess position limit application. In this respect, both the clearing client and the CP should have the obligation and ability to ensure the position is within the approved excess position limits.
28. In the First Consultation Paper, we proposed to expand section 4A to enable HKEX to grant authorisation to CPs which clear positions for persons authorised for excess position limits under its rules. In future, a CP should seek HKEX's authorisation if it is to hold excess positions for clearing clients which have been authorised by HKEX (eg, market makers) and seek the SFC's authorisation for other cases. In this connection, while CPs should have the responsibility to apply, the SFC appreciates that some CPs may find it more convenient to ask their clearing clients to submit the application on their behalf. To accommodate participants' operational needs and provide flexibility, we have elaborated in the GN that clearing clients may submit applications on behalf of their CPs.

## V. Prescribed position limits and reporting levels for unit trusts and sub-funds of umbrella funds

### *Public comments*

29. We received some comments about the proposed application of position limits and reporting requirements to unit trusts and sub-funds of umbrella funds. It appears that some market participants are confused about how the Rules apply and therefore have a misconception that the proposal would result in duplicated efforts to comply with the position limits and reporting requirements.
30. We also received comments from an industry association that trustees are not in a position to comply with the position limits and reporting requirements due to operational difficulties. For example, trustees do not have timely access to funds' position information, nor do they have the expertise to monitor and calculate funds' positions and reporting obligations.
31. Some respondents asked whether the Rules would also cover funds constituted in other legal forms or structures.
32. One respondent viewed that the disclosure of the name of a unit trust or sub-fund in a reportable notice would be sensitive.

### *The SFC's response*

33. The SFC would like to reiterate that the policy intention is to impose position limits and reporting requirements at the individual fund level because each fund is distinct and has its own investment mandate. Hence, where a person holds or controls positions for more than one fund, the SFC will require the person to apply the position limits and reporting levels to the position of each fund. However, if the person has discretion over the funds' positions as described in section 7(2) of the Rules, for the purpose of compliance with the Rules, the person will have to aggregate the positions of all the funds together with his or her own position.
34. Similarly, for umbrella funds, the policy intention is to apply position limits and reporting requirements to positions of each of the sub-funds under an umbrella fund because each sub-fund is managed independently, like a standalone fund, according to its investment mandate or strategy. Therefore, applying the position limits and reporting requirements at the sub-fund level would be sensible and in line with how each sub-fund's positions and the associated risks are managed.
35. In terms of scope, the Rules are intended to cover funds of all legal forms and structures. We highlighted unit trusts in the First Consultation Paper mainly because it came to our attention that unit trusts were not caught by the definition of "person" in the Interpretation and General Clauses Ordinance and hence there could be uncertainties about whether unit trusts were subject to the Rules. The proposed amendments to the Rules were intended to provide clarity on this.

36. The newly added section 7A was to clarify the application of the Rules to sub-funds of unit trusts or corporate funds, considering that the two forms are the dominant fund types in Hong Kong. Nevertheless, we noted from the responses that the proposed amendments raised questions as to the types of funds covered by the Rules. In view of this, we propose to further amend the Rules to clarify how they should apply to funds and umbrella funds in general.
37. Regarding the concerns about duplicated efforts in reporting (ie, multiple parties having to report the same position), this is a misconception because asset managers generally have discretion over the positions of their funds and hence they will need to aggregate the positions of the funds under their control to comply with the position limits and reporting requirements. In addition, the position limits and reporting requirements should also apply separately at the individual fund or sub-fund level. This enables the SFC to monitor exposures and prevent the build-up of massive positions at both the individual fund and sub-fund levels as well as the asset manager level, all of which are different and warrant oversight.
38. In view of the operational difficulties facing trustees, after further discussion with market participants, the SFC considers that it would be more appropriate for the person responsible for the day-to-day investment and operation of funds (ie, the asset manager) to have the primary responsibility for observing position limit compliance and reporting obligations at the individual fund and sub-fund level because they control trading and have first-hand information about the funds' positions. Nevertheless, as the Rules apply to any person who "holds or controls" positions, trustees are still subject to the requirements of the Rules. In this connection, we accept that if a trustee can demonstrate that it has measures in place to ensure the asset manager who manages its unit trusts has observed position limit compliance and reported positions on its behalf, the SFC will consider that the trustee has discharged its obligations under the Rules.
39. Based on our assessment, the SFC considers that imposing the primary responsibility on asset managers will not create an undue burden on them. Asset managers already have a practice of providing breakdowns of the positions contributing to their reportable positions. In other words, in fulfilling the current reporting requirements, asset managers have already complied with the proposed reporting requirements.
40. We understand that some fund managers and brokers (eg, EPs) are only observing position limits at the fund level. Accordingly, we have amended section 7A of the Rules to require that persons who have discretion over positions of funds or sub-funds should also comply with position limits and report positions at the sub-fund level. We will provide more information in the GN to explain how different parties can discharge their obligations to comply with the requirements of the Rules in this regard.
41. Regarding the comment that the disclosure of the names of unit trusts or sub-funds in large open position reports is sensitive, we would like to reiterate that this information is essential for market monitoring by the SFC and HKEX. Nevertheless, we understand participants' concerns and will continue to ensure that the information will

not be disclosed to the public and only be accessible by the staff of the SFC and HKEX on a need-to-know basis.

**Question 1** (please provide reasons in support of your comments):

(i) Do you have any comments on the proposed requirements for asset managers to observe position limit compliance and report positions at the individual fund or sub-fund level?

(ii) Do you have any comments on the proposed requirements for determining trustees' compliance with the requirements of the Rules?

## Section B

### HKEX's Proposed Enhancements to its Position Limit Regime

42. On 2 June 2022, HKEX issued a consultation paper on (i) proposed revisions to the single stock options (**SSO**) and single stock futures (**SSF**) exchange-level position limit models, (ii) removing the additional position limits for Mini-HSI and Mini-HSCEI contracts at the exchange level, and (iii) standardising the large open position reporting requirements for Mini-HSI and Mini-HSCEI contracts. After considering the feedback from market participants, HKEX concluded on 28 July 2022 that they would proceed with the implementation of proposals (i) and (ii), but not (iii). The adoption of proposals (i) and (ii) requires further amendments to the Rules and is subject to the SFC's approval.

43. The SFC has reviewed HKEX's proposals and considered them reasonable and conducive to market growth and development. To facilitate the implementation of HKEX's proposals, the SFC proposes to make additional amendments to the Rules.

#### I. Revision of the position limit model for single stock options

44. The existing three-tier exchange-level position limit regime for SSO has been in place since 2017<sup>6</sup>. Under the regime, position limits for different classes of stock options<sup>7</sup> are determined based on the underlying stock's liquidity and market capitalisation and subject to a liquidity threshold. At present, the limits are assigned at the level of 50,000, 100,000 or 150,000 contracts for all contract months combined per market direction.

<sup>6</sup> In 2017, the SSO exchange-level position limit was revised from a two-tier system to a three-tier system with position limits 50,000, 100,000 and 150,000 contracts for all contract months combined per market direction.

<sup>7</sup> Stock options contracts based on the same underlying stock are collectively called a stock options class.

45. In light of market growth, HKEX proposed to add two more tiers of 200,000 and 250,000 contracts on top of the existing three-tier model, ie, to adopt a five-tier model of position limits at 50,000, 100,000, 150,000, 200,000 and 250,000 contracts based on the existing position limit determination methodology.
46. The SFC considers that the revision is reasonable and will not introduce additional systemic risk to the Hong Kong financial market, as each of the stock option contracts (and their underlying stocks) only accounts for a limited percent of the overall market. In addition, the position limit of a stock option class is capped by the liquidity threshold, which is based on the liquidity of its underlying stock. Hence, the trading and settlement of the stock options should not cause significant liquidity risks in the stock market. Furthermore, the existing reporting requirements would enable the SFC to monitor build-ups of large open positions and help contain concentration risks at an early stage.
47. The SFC reviewed the existing risk management arrangements at the clearing house and considers them scalable to mitigate any additional risk arising from the proposal. Overall, the proposal should not have any significant negative impact on the financial position of the clearing house.
48. To facilitate the implementation of HKEX's proposal, the SFC proposes to increase the existing statutory limit for stock options contract from 150,000 to 250,000 contracts for all contract months combined per market direction.

## **II. Revision of the position limit model for single stock futures**

49. The existing exchange-level position limit regime for SSF has been in place since it was introduced in 1995. All SSF are subject to the same position limit of 5,000 open contracts per contract month. The position limit is measured on a gross basis and positions in one contract month cannot be offset with opposite positions in other contract months.
50. Similar to the SSO model, HKEX proposed to implement a five-tier model for the exchange-level position limit for SSF. Under the proposal, the position limit would be set with reference to the liquidity and market capitalisation of the underlying stocks, and subject to a liquidity threshold of the respective underlying stock (for the detailed position limit calculation methodology, please refer to HKEX's consultation paper). The position limit for each tier would be 5,000, 10,000, 15,000, 20,000 and 25,000 net long or short contracts for all contract months combined.
51. The SFC considers that the revision is reasonable and appropriate because (i) it is more risk-based taking into account the liquidity profile and market capitalisation of the underlying stocks; (ii) the change of basis from gross positions per one contract month to net positions per all contract months could facilitate netting of positions, which is more appropriate from a risk perspective; (iii) the adoption of a model similar to that of the SSO should also limit the potential compliance risks from market participants having to adapt to a new methodology, as they are familiar with the SSO model; and (iv) the maximum directional exposure that one can establish shall remain

unchanged, ie, 25,000 contracts (5,000 open contracts per contract month x five contract months<sup>8</sup>) vs. 25,000 net long or short contracts for all the five contract months combined. Furthermore, the existing large open position reporting requirements would enable the SFC to monitor build-ups of large open positions and help contain concentration risk at an early stage.

52. As with the SSO proposal, the SFC has reviewed the existing risk management arrangements at the clearing house and considered them scalable to mitigate the potential additional risk arising from the SSF proposal. Overall, the proposal should not have any significant negative impact on the financial position of the clearing house.
53. To facilitate the implementation of HKEX's proposal, the SFC proposes to revise the existing statutory limit for stock futures contract from 5,000 open contracts for any one contract month to 25,000 net long or short contracts for all contract months combined.

### **III. Removal of additional position limits for Mini-HSI and Mini-HSCEI futures and options contracts**

54. Currently, in addition to the aggregate position limit of 10,000 and 12,000 contracts on HSI and HSCEI contracts, the mini futures and options contracts on HSI and HSCEI are subject to additional position limits of 2,000 and 2,400 contracts, respectively.
55. To facilitate efficient price discovery in the mini contracts, HKEX proposed to remove the additional position limits for the Mini-HSI and Mini-HSCEI contracts so that market participants would be subject to one aggregate limit.
56. The SFC agrees that the additional position limits for mini contracts can be removed because the mini contracts are fungible with their respective standard contracts.

**Question 2** (please provide reasons in support of your comments):

Do you have any comments on the proposed amendments to the Rules in response to HKEX's proposals?

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<sup>8</sup> At present, there are five contract months available for SSFs, ie, spot month, the next two calendar months and the next two calendar quarter months.

## Section C

### Proposed amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571Y)

57. We recently reviewed our policy in relation to prescribing the position limits and reporting levels of futures and options contracts in Schedule 1 of the Rules. We are mindful that the primary objective of establishing the statutory position limits is to contain systemic risk in the Hong Kong market by limiting large positions. Considering that international contracts may have a different systemic impact on the Hong Kong financial market compared to domestic contracts, it is appropriate to adopt a separate regulatory approach for international contracts.
58. In future, while HKEX will continue to set position limits and reporting levels under its rules, as a general policy, the SFC will not prescribe the limits and reporting levels for international futures and options contracts in the Rules. This policy does not cover Mainland-related contracts and renminbi currency contracts given the close relationship between Hong Kong and Mainland markets.
59. The underlying assets of some products may consist of both domestic and international assets, eg, a futures contract based on a regional index comprising constituents from different countries. In this case, the SFC would have discretion to determine whether to include the product in the Rules on a case-by-case basis, taking into account factors such as the weighting of Hong Kong or Mainland constituents in the underlying index.
60. If the position limits for international contracts are not prescribed in the Rules, HKEX could be more flexible to adjust the exchange-level position limits in response to market demands to maintain its competitiveness. The SFC believes this would be beneficial for Hong Kong to maintain its international financial centre status while not compromising the stability of the Hong Kong financial market.
61. The following tables summarise the contracts to be added and removed from the Rules. Items 1-12 in Table A are to be added as discussed in the First Consultation Paper. Items 13-21 in Table A (which are non-international products launched by HKEX) and items 1-6 in Table B (which are regarded as international products) are proposed to be added and removed respectively based on the policy as discussed above. Items 7-8 in Table B are proposed to be removed as they have been delisted by HKFE.

**Table A - Contracts to be added**

1	Weekly Hang Seng Index options contract
2	Weekly Hang Seng China Enterprises Index options contract
3	Hang Seng Index Futures options contract
4	Hang Seng China Enterprises Index Futures options contract

5	Hang Seng Index (Gross Total Return Index) futures contract
6	Hang Seng China Enterprises Index (Gross Total Return Index) futures contract
7	Hang Seng Index (Net Total Return Index) futures contract
8	Hang Seng China Enterprises Index (Net Total Return Index) futures contract
9	Mini US Dollar vs Renminbi (Hong Kong) futures contract
10	Hang Seng TECH Index futures contract
11	Hang Seng TECH Index options contract
12	MSCI China A 50 Connect (USD) Index futures contract
13	CES China 120 Index futures contract
14	Hang Seng Mainland Banks Index futures contract
15	MSCI China (USD) Index futures contract
16	MSCI China Net Total Return (USD) Index futures contract
17	MSCI Hong Kong Net Total Return (USD) Index futures contract
18	Australian Dollar vs Renminbi (Hong Kong) futures contract
19	Euro vs Renminbi (Hong Kong) futures contract
20	Indian Rupee vs Renminbi (Hong Kong) futures contract
21	Japanese Yen vs Renminbi (Hong Kong) futures contract

**Table B - Contracts to be removed**

1	London Copper Mini futures contract
2	London Aluminium Mini futures contract
3	London Zinc Mini futures contract
4	London Nickel Mini futures contract
5	London Lead Mini futures contract
6	London Tin Mini futures contract
7	Gold futures contract
8	FTSE/Xinhua China 25 Index futures contract and options contract

62. Separately, as we have discussed in the First Consultation Paper, the SFC proposes to revise the spot month and aggregate position limits for the USD/CNH futures and options contracts. The SFC will proceed with the proposal.
63. Appendix A1 contains the proposed amendments discussed in the First Consultation Paper (in blue) and the further amendments proposed in this consultation paper (in red). Appendix A2 is a clean version of the amended Rules incorporating the previous proposed amendments and the further amendments discussed above. The further proposed amendments discussed in this consultation paper are as follows:
- i. *Standardising the terms to cover contracts which are based on related underliers* – the contract descriptions in Schedule 1 to the Rules will be standardised for contracts based on the HSI, HSCEI and Hang Seng TECH Index. The respective

descriptions for the contracts' prescribed limit and reporting levels will be revised generically to cover contracts with different contract periods or multipliers.

- ii. *Expanding the list of contracts which the SFC may authorise a person to hold or control in excess of the prescribed limit* – the definition of “specified contract” in section 2 of the Rules will be further amended to align with the standardised terms mentioned in item i above;
- iii. *Clearing participants have no “discretion” in relation to clearing clients’ positions* – the new section 7(4) regarding the type of “discretion” that CP is not regarded to have will be revised to also cover “contractual breach”;
- iv. *Excess position limit for clearing participants* – the new section 4F will be further revised to cover the financial and internal control requirements to be imposed on CP applicants;
- v. *Prescribed limits and reporting obligations in relation to funds* – the new section 7A will set out how the Rules shall apply to the positions of funds and sub-funds and the parties holding or controlling those positions;
- vi. *Addition and removal of futures and options contracts* – the changes are self-explanatory and marked on Schedule 1;
- vii. *Revision of the SSO position limit model* – the statutory SSO position limit stipulated in Schedule 2 to the Rules will be increased;
- viii. *Revision of the SSF position limit model* – the statutory SSF position limit stipulated in Schedule 1 to the Rules will be revised;
- ix. *Removal of additional position limits for Mini-HSI and Mini-HSCEI contracts* – the respective limits will be removed from Schedule 1 to the Rules.

The SFC invites the public to comment on the proposed changes to the Rules.

## Section D

### **Proposed amendments to the Guidance Note on Position Limits and Large Open Position Reporting Requirements**

64. The further proposed changes would necessitate amendments to the Guidance Note which has been issued to help market participants better understand how the Rules are intended to operate. The further proposed revisions to the Guidance Note are set out in Appendix B (in red) together with the proposed revisions discussed in the First Consultation Paper (in blue).



## **Appendix A – Proposed amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571Y)**

Appendix A1 – Marked-up changes of proposed amendments to the Rules

Appendix A2 – Clean version of the amended Rules

## Securities and Futures (Contracts Limits and Reportable Positions) Rules

(Cap. 571, section 35(1))

(*Enacting provision omitted—E.R. 1 of 2012*)

[1 April 2003] L.N. 12 of 2003

(*Format changes—E.R. 1 of 2012*)

1. (*Omitted as spent—E.R. 1 of 2012*)

### 2. Interpretation

(1) In these Rules, unless the context otherwise requires—

**adequate financial capability** (充足財政能力),—

(a) in relation to a clearing participant, means any of the clearing participant or its holding company has—

(i) a net asset value of not less than \$5 billion as set out in its latest audited financial statements; or

(ii) a qualifying credit rating;

(b) in relation to an exchange participant or an affiliate of an exchange participant, means any one of the exchange participant, the affiliate of the exchange participant or their holding company, has—

(a) a net asset value of not less than \$5 billion as set out in its latest audited financial statements; or

(b) a qualifying credit rating; (~~L.N. 44 of 2017~~)

**affiliate** (聯屬公司), in relation to an exchange participant, means any corporation belonging to the same group of companies as the exchange participant; (*L.N. 44 of 2017*)

**constitutive documents** (組成文件), in relation to a collective investment scheme, means the principal documents governing the establishment of the scheme; (*L.N. 228 of 2015*)

**contract multiplier** (合約乘數), means—

(a) in relation to a futures or options contract specified in item 4, 5 or 21 in Schedule 1 with an index as an underlying, the cash value of one point of the index or otherwise as specified by the Futures Exchange Company to be the “contract multiplier” for the contract in its contract specifications set out in the rules of the Futures Exchange Company; or

(b) in relation to an options contract specified in item 4, 5 or 21 in Schedule 1 with a futures contract as an underlying, the cash value of one point of the futures contract’s underlying index or otherwise as specified by the Futures Exchange Company to be the “contract multiplier” for the options contract in its contract specifications set out in the rules of the Futures Exchange Company;

**corporate fund** (法團基金) means a collective investment scheme constituted as a corporation including an open-ended fund company;

**entity** (實體) means—

(a) a natural person;

(b) a body of persons; or

(c) a legal arrangement, including—

(i) a corporation;

(ii) a trust; and

(iii) a sub-fund of an umbrella fund;

**exchange traded fund** (交易所買賣基金) means an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market; (L.N. 228 of 2015)

**fund** (基金) means a collective investment scheme and includes but is not limited to a unit trust and a corporate fund;

**HKFECC** (期貨結算公司) means the recognized clearing house known as HKFE Clearing Corporation Limited;

**Listing Rules** (《上市規則》) means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited made by the Stock Exchange Company;

**offering document** (要約文件), in relation to a collective investment scheme, means a document—

- (a) inviting participation in the scheme by prospective shareholders or prospective unit holders of the scheme; and
- (b) containing information relating to the establishment or administration of the scheme; (L.N. 228 of 2015)

**open-ended collective investment scheme** (開放式集體投資計劃) means a collective investment scheme the shares or units of which may be repurchased or redeemed at the request of any of its shareholders or unit holders—

- (a) at a price calculated wholly or mainly by reference to the net asset value of the scheme; and
- (b) in accordance with the frequency for repurchase or redemption, requirements and procedures set out in the offering document or constitutive documents of the scheme; (L.N. 228 of 2015)

**prescribed limit** (訂明上限), in relation to a futures contract or a stock options contract, means the limit on the number of contracts prescribed for it under section 5;

**reportable position** (須申報的持倉量) means an open position in futures contracts or stock options contracts the number of which is—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, in excess of ~~the reporting level of the contract that specified opposite to it in column 4 of that Schedule~~; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, in excess of ~~that specified opposite to it in column 4~~ the reporting level of that Schedule ~~the contract~~; (9 of 2012 s. 55; L.N. 44 of 2017)

**reporting level** (須申報水平) means—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, the number of contracts specified opposite to it in column 4 of that Schedule; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, the number of contracts specified opposite to it in column 4 of that Schedule;

**scheme property** (計劃財產), in relation to a ~~unit trust or a corporate fund~~, means the property under the ~~unit trust or the corporate fund (as the case may be)~~;

**SEOCH** (期權結算公司) means the recognized clearing house known as The SEHK Options Clearing House Limited;

**specified contract** (指明合約) means ~~any of the following futures contracts—~~

- (a) ~~a futures contract whose underlying index is one of the following—~~
- ~~(i) Hang Seng Index futures contracts and options contracts;~~
  - ~~(ii) Hang Seng Index (Gross Total Return Index);~~
  - ~~(iii) Hang Seng Index (Net Total Return Index);~~
  - ~~(iv) (b) Hang Seng China Enterprises Index futures contracts and options contracts;~~
  - ~~(v) Hang Seng China Enterprises Index (Gross Total Return Index);~~
  - ~~(vi) Hang Seng China Enterprises Index (Net Total Return Index);~~
  - ~~(j) (L.N. 44 of 2017)~~
- ~~—(c) Weekly Hang Seng Index options contracts;~~
- ~~(d) Weekly Hang Seng China Enterprises Index options contracts;~~
  - ~~(e) Hang Seng Index Futures options contracts;~~
  - ~~(f) Hang Seng China Enterprises Index Futures options contracts;~~
  - ~~(vii) (g) Hang Seng TECH Index futures contracts and options contracts;~~
  - ~~(viii) Hang Seng TECH Index (Gross Total Return Index);~~
  - ~~(ix) Hang Seng TECH Index (Net Total Return Index);~~
- ~~(b) an options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (ix); or~~
- ~~(c) an options contract whose underlying asset is one of the contracts referred to in paragraph (a);~~

**specified percentage** (指明百分率) means 300%; (L.N. 44 of 2017)

(9 of 2012 s. 55)

**sub-fund** (子基金), in relation to an umbrella fund, means a separate part of the scheme property of the umbrella fund where assets of the part belong exclusively to the part and cannot be used to discharge the liabilities of, or the claims against, any other entity including the umbrella fund and any other part of the scheme property;

**umbrella corporate fund** (傘子法團基金) means an umbrella fund constituted as a corporation including an open-ended fund company;

**umbrella fund** (傘子基金) means a collective investment scheme whose constitutive documents provide for the division of its scheme property into separate parts and may be constituted under the laws of Hong Kong or elsewhere, and includes but is not limited to an umbrella unit trust and an umbrella corporate fund;

**umbrella unit trust** (傘子單位信託) means an umbrella fund constituted as a unit trust;

**unit trust** (單位信託), means a collective investment scheme that is a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation or receipt by them, as beneficiaries under the trust, in any profits, income or other returns arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) For the purposes of these Rules, a reference to control, in relation to futures contracts or stock options contracts, shall be construed as a reference to control of such futures contracts or stock options contracts, either directly or indirectly.

(3) For the purposes of these Rules, if a collective investment scheme is constituted in the form of an umbrella fund with one or more sub-funds, each sub-fund is to be regarded as a separate entity in relation to the umbrella fund and any of the other sub-funds of the umbrella fund.

(4) For the purposes of these Rules, a unit holder is not regarded, only by virtue of the unit holder's holding one or more units in a unit trust, as holding or controlling futures contracts or stock options contracts in respect of a unit trust.

### 3. Application

These Rules apply to futures contracts and stock options contracts that are traded through the facilities of a recognized exchange company in accordance with the rules of the recognized exchange company.

### 4. Restrictions on number of contracts held or controlled

(1) No person, other than a person referred to in subsections (2) and (3), may hold or control futures contracts or stock options contracts in excess of the prescribed limit. *(L.N. 44 of 2017)*

**Note—**

*For funds, see also section 7A.*

(2) A person specified in section 4A may be authorized under the rules of the recognized exchange company concerned to hold or control futures contracts or stock options contracts in excess of the prescribed limit. *(L.N. 44 of 2017)*

(3) A person may hold or control a futures contract or stock options contract in excess of the prescribed limit if the person is authorized by the Commission to do so under section 4B, 4C, 4D, 4E or 4E4F. *(L.N. 44 of 2017)*

(4) The Commission may, under section 4B, 4C, 4D, 4E or 4E4F, authorize a person to hold or control a futures contract or stock options contract in excess of the prescribed limit—

- (a) except in circumstances where holding or controlling the excess for which authorization is sought may be authorized under the rules of the recognized exchange company concerned as referred to in subsection (2);
- (b) only if the Commission is satisfied that the excess would not be prejudicial to the interest of the investing public having regard to the prescribed limit and the liquidity of the futures contract or stock options contract in question; and
- (c) by giving the person a notice of authorization in writing. *(L.N. 44 of 2017)*

(5) An authorization granted under section 4B, 4C, 4D, 4E or 4E4F—

- (a) subject to paragraph (b), is valid for the period (if any) that the Commission may specify in the notice of authorization given under subsection (4)(c);
- (b) may be withdrawn by the Commission, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant; and
- (c) is subject to any reasonable conditions that the Commission may specify in the notice of authorization given under subsection (4)(c) and the Commission

may, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant, amend or revoke any condition or impose new conditions as may be reasonable in the circumstances. (L.N. 44 of 2017)

(6)-(10) (Repealed L.N. 44 of 2017)

(11) (Added L.N. 198 of 2007 and repealed L.N. 241 of 2007)

#### **4A. Authorization under rules of recognized exchange company to hold or control contracts in excess of prescribed limit**

A person who may be authorized for the purposes of section 4(2) is—

- (a) a person registered with the Futures Exchange Company for the purpose of performing market making or liquidity providing activities in respect of futures contracts in accordance with its rules;
- (b) a person registered with the Stock Exchange Company for the purpose of performing market making or liquidity providing activities, in accordance with its rules—
  - (i) in respect of stock options contracts; or
  - (ii) in respect of exchange traded funds, where the person holds or controls futures contracts or stock options contracts in the course of hedging the risks arising from performing market making or liquidity providing activities;
- (c) 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; ~~or~~
- (d) a related corporation 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; ~~or~~ (L.N. 44 of 2017)

(e) a clearing participant of HKFECC or SEIOCH who clears futures contracts or stock options contracts for a person who is—

- (i) specified in subsections (a) to (d); and
- (ii) authorized under the rules of the recognized exchange company concerned to hold or control futures contracts or stock options contracts in excess of the prescribed limit.

#### **4B. Authorization by Commission to hold or control contracts in excess of prescribed limit in special circumstances**

Subject to section 4(4)(a) and (b), the Commission may authorize a person to hold or control a futures contract or stock options contract in excess of the prescribed limit if the Commission is satisfied that there are special circumstances which warrant the person holding or controlling the excess. (L.N. 44 of 2017)

#### **4C. Authorization by Commission to hold or control contracts in excess of prescribed limit for purposes of facilitating provision of services to clients**

(1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit unless the exchange participant satisfies the Commission that—

- (a) the exchange participant or the affiliate (as the case may be) has a relevant business need for holding or controlling the excess for which authorization is sought;
- (b) either the exchange participant or the affiliate has adequate financial capability to cover the potential risks arising from the excess; and
- (c) the exchange participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) In this section—

**relevant business need** (相關業務需要), in relation to an exchange participant or an affiliate of an exchange participant, means a business need that requires the exchange participant or the affiliate to engage in hedging activities to facilitate the provision of services to its clients. (*L.N. 44 of 2017*)

#### **4D. Authorization by Commission to hold or control contracts in excess of prescribed limit for purposes of index arbitrage activity**

(1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit unless the exchange participant satisfies the Commission that—

- (a) the exchange participant or the affiliate (as the case may be) engages in index arbitrage activities, and will, if authorization is granted, hold or control the excess for the purposes of those activities;
- (b) either the exchange participant or the affiliate has adequate financial capability to cover the potential risks arising from the excess; and
- (c) the exchange participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) In this section—

**index arbitrage** (指數套戩), in relation to an exchange participant or an affiliate of an exchange participant, means a trading strategy engaged in by the exchange participant or the affiliate—

(a) involving—

- (i) the purchase (or sale) of a stock index futures contract; or
- (ii) the purchase (or sale) of a stock index call options contract together with the sale (or purchase) of a stock index put options contract, where both contracts have the same underlying index, expiry date and strike price;

- (b) in conjunction with the sale (or purchase) of some or all of the stocks comprised in the underlying basket of stocks used to compile the index underlying the stock index futures contract or the stock index options contracts; and
- (c) with a view to securing a profit from any difference in price between the stocks and the stock index futures contract or the stock index options contracts. (*L.N. 44 of 2017*)

**4E. Authorization by Commission for asset manager to hold or control contracts in excess of prescribed limit for purposes of asset management activity**

- (1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.
- (2) The Commission must not authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit unless the person satisfies the Commission that—
  - (a) the person has a need for holding or controlling the excess for which authorization is sought, for the purposes of the asset management activity for which the person is licensed or registered; and
  - (b) the person has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.
- (3) Subsection (1) applies to a person that—
  - (a) is a licensed corporation that is licensed for, or a registered institution that is registered for, Type 9 regulated activity; and
  - (b) in the course of that regulated activity, manages assets having a total value of not less than \$80 billion. (*L.N. 44 of 2017*)

**4F. Authorization by Commission for clearing participants**

- (1) Subject to section 4(4)(a) and (b), the Commission may authorize a person referred to in subsection (23) to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.
- (2) The Commission must not authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit unless the person satisfies the Commission that—
  - (a) the person has adequate financial capability to cover the potential risks arising from the excess; and
  - (b) the person has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.
- (3) Subsection (1) applies to a person that—
  - (a) is a clearing participant; and
  - (b) clears the specified contract for another person that has been authorized by the Commission under 4C, 4D or 4E to hold or control the specified contract in excess of the prescribed limit.

**5. Prescribed limits**

For the purposes of section 4(1), the limit on the number of contracts that may be held or controlled is—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, that specified opposite to it in column 3 of that Schedule; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, that specified opposite to it in column 3 of that Schedule.

## 6. Notice of reportable positions

(1) ~~Any~~Subject to subsection (1A), any person who holds or controls a reportable position ~~shall~~must lodge a notice in writing of that reportable position with the recognized exchange company concerned within one business day following— (9 of 2012 s. 56)

- (a) the day on which the person first holds or controls that reportable position; and
- (b) each succeeding day on which the person continues to hold or control that reportable position.

### Note—

For funds, see also section 7A.

(1A) If the reportable position held or controlled by a person is in any holiday contract, the person must lodge a notice in writing of the reportable position with the Futures Exchange Company within one holiday contract trading day following—

- (a) the day on which the person first holds or controls the reportable position; and
- (b) each succeeding day on which the person continues to hold or control the reportable position.

(1B) For the avoidance of doubt, for the purposes of subsection (1A), section 71(1)(b) and (c) of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply.

(2) ~~A~~Subject to subsections (3) and (4), a notice referred to in ~~subsections~~subsections (1) ~~shall~~and (1A) must be accompanied by the following information—

- (a) the number of futures contracts or stock options contracts held or controlled by the person ~~in respect of which comprise~~ the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series; and
- (b) subject to section 7A(5), if the reportable position is held or controlled for one or more persons (including for his own account, where applicable) another person—
  - (i) the identity of ~~that~~each other person; and
  - (ii) the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and for each such other person which comprise in respect of the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series. (L.N. 35 of 2004)

~~(3) If a person holds or controls a reportable position in respect of a unit trust, a notice referred to in subsections (1) and (1A) must be accompanied by the following information—~~

- ~~(a) the name of the unit trust; and~~

~~(b) the number of futures contracts or stock options contracts held or controlled in respect of the unit trust for the reportable position in each relevant contract month or option series.~~

~~(4) If a person holds or controls a reportable position in respect of a sub-fund of an umbrella fund, a notice referred to in subsections (1) and (1A) must be accompanied by the following information—~~

~~(a) the name of the sub-fund; and~~

~~(b) the number of futures contracts or stock options contracts held or controlled in respect of the sub-fund for the reportable position in each relevant contract month or option series.~~

~~(53) In this section—~~

~~**holiday contract** (假期合約) means a futures contract that is determined by the Futures Exchange Company to be a “holiday trading exchange contract” in accordance with the rules of the Futures Exchange Company;~~

~~**holiday contract trading day** (假期合約交易日) means in relation to a holiday contract, a day determined by the Futures Exchange Company to be a day on which the holiday contract may be traded through the facilities of the Futures Exchange Company in accordance with the rules of the Futures Exchange Company.~~

## 7. Compliance by certain persons

(1) ~~In~~ Subject to section 7A, in their application to a person holding or controlling futures contracts or stock options contracts for any other person, the prescribed limits and ~~reportable positions reporting levels~~ apply separately to any futures contracts or stock options contracts held or controlled by the first person—

(a) for his own account; and

(b) for each other person.

(2) For the purposes of subsection (1), a person ~~shall~~ is not ~~to~~ be regarded as holding or controlling futures contracts or stock options contracts for another person if he has discretion in relation to those futures contracts or stock options contracts.

(3) ~~For~~ Subject to subsection (4), for the purposes of subsection (2), a person ~~shall~~ is to be regarded as having discretion in relation to futures contracts or stock options contracts he holds or controls for another person if—

(a) he may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the other person, whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and

(b) such authorization enables the first person to make specific acquisitions or disposals without requiring further consent or instruction from the other person.  
(L.N. 35 of 2004)

~~(4) A clearing participant of HKFECC or SEOCH is not to be regarded as having discretion in relation to futures contracts or stock options contracts he holds or controls for another person if the clearing participant’s power to acquire or dispose of the other person’s futures contracts or stock options contracts (as the case may be) may only be exercised in the event of a default in meeting any ~~payment contractual~~ obligation by the other person.~~

~~(5) This section does not apply to a person holding or controlling futures contracts or stock options contracts in respect of funds.~~

## 7A. Compliance by persons with respect to ~~a unit trust or a corporate funds~~

- (1) Subject to subsections (2), (3) and (4), in their application to a person holding or controlling futures contracts or stock options contracts in respect of one or more ~~unit trust funds~~, the prescribed limits and ~~reportable positions-reporting levels~~ apply separately to any futures contracts or stock options contracts held or controlled by the person—
  - (a) for the person's own account; and
  - (b) in respect of each ~~unit trust fund~~.
- (2) Subject to subsections (3) and (4), ~~in their application to a person holding or controlling futures contracts or stock options contracts in respect of a one or more sub-funds of an one or more umbrella unit trust or umbrella corporate funds~~, the prescribed limits and ~~reportable positions-reporting levels~~ apply separately to any futures contracts or stock options contracts held or controlled by the person—
  - (a) for the person's own account; and
  - (b) in respect of each sub-fund.
- (3) For the purposes of ~~section 4 subsections (1) and (2)~~, the prescribed limits and ~~reportable positions do not apply separately to any a person who holds or controls futures contracts or stock options contracts held or controlled by the person for the person's own account and in respect of one or more funds each unit trust or each sub-funds of an one or more umbrella unit trust or umbrella corporate funds if the person and has discretion in relation to those futures contracts~~ must, in applying the prescribed limits, ensure that none of the following exceeds the prescribed limits for such contracts—~~or stock options contracts the person holds or controls in respect of the unit trust or the sub-fund (as the case may be).~~
  - (a) the aggregate number of contracts he holds or controls—
    - (i) for his own account; and
    - (ii) in respect of all funds and sub-funds (as the case may be);
  - (b) the number of contracts he holds or controls for his own account;
  - (c) the number of contracts he holds or controls in respect of each fund;
  - (d) the number of contracts he holds or controls in respect of each sub-fund.
- (4) For the purposes of section 6(1), a person who holds or controls futures contracts or stock options contracts in respect of one or more funds or sub-funds of one or more umbrella funds and has discretion in relation to those contracts, is regarded as holding or controlling a reportable position when the aggregate of the following reaches a reporting level—
  - (a) the number of contracts he holds or controls for his own account;
  - (b) the number of contracts he holds or controls in respect of all funds and sub-funds (as the case may be).
- (5) For the purpose of subsection (4), if a person holds or controls a reportable position, a notice referred to in section 6(1) and (1A) must be accompanied by the following information—
  - (a) the name of each fund and sub-fund (if applicable); and
  - (b) the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and in respect of each fund and sub-fund (if

applicable) which comprise the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series.

(4) For the purposes of subsection (3), a person is to be regarded as having discretion in relation to futures contracts or stock options contracts the person holds or controls in respect of a unit trust or a sub-fund of a unit trust if—

(a) the person may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the trustee of the unit trust or the sub-fund, whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and

(b) the general authorization enables the person to make specific acquisitions or disposals without requiring further consent or instruction from the trustee of the unit trust or the sub-fund.

(56) For the purposes of subsections (3) and (4) and subject to subsection (7), a person is to be regarded as having discretion in relation to futures contracts or stock options contracts the person holds or controls in respect of a fund or a sub-fund of an umbrella ~~corporate~~ fund if—

(a) the person may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the fund or umbrella ~~corporate~~ fund (as the case may be), whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and

(b) the general authorization enables the person to make specific acquisitions or disposals without requiring further consent or instruction from the fund or umbrella ~~corporate~~ fund (as the case may be).

(67) Subject to subsection (3), ~~f~~For the purposes of subsections (46), if the fund or sub-fund of an umbrella fund does not have the status of a legal person under the law of the place under which it is constituted, the general authorization referred to in subsection (6)(a) and the further consent or instruction referred to in subsection (6)(b) shall be from the legal person holding the legal title to the ~~and~~ ~~(2) in determining whether the positions in any futures contracts or stock options contracts held or controlled by a person have exceeded the prescribed limits or reached the reportable positions, the person must not aggregate or net such positions which are held or controlled by the person—~~

(a) for the person's own account; and

(b) in respect of each unit trust or each the fund or the sub-fund of an umbrella unit trust or umbrella ~~corporate~~ fund.

(7) For the purposes of these Rules, a unit holder is not regarded, only by virtue of the unit holder's holding one or more units in a unit trust, as holding or controlling futures contracts or stock options contracts in respect of a unit trust.

## **8. Penalties**

Any person who, without reasonable excuse, fails to comply with section 4(1) or 6 commits an offence and is liable—

(a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

## Schedule 1

[ss. 2(1) & 5(a)]

### Prescribed Limit and Reporting Level for Futures Contracts

Item	Futures contract	Prescribed limit	Reporting level
1.	Stock futures contracts on shares listed on a stock market operated by the Stock Exchange Company	<u>25 000 open-net long or short contracts for any-all one-contract-months combined</u>	1 000 open contracts for any one contract month
2.	Three-Month Hong Kong Interbank Offered Rate futures contract	Nil	1 000 open contracts for any one contract month; 4 000 open contracts for all contract months
3.	One-Month Hong Kong Interbank Offered Rate futures contract	Nil	1 000 open contracts for any one contract month; 4 000 open contracts for all contract months
4.	<p><u>(a) All futures contract whose underlying index is one of the following—</u></p> <p><u>(i) Hang Seng Index;</u></p> <p><u>(ii) futures contract and options contract, and Mini-Hang Seng Index futures contract and options contract (L.N. 44 of 2017);</u></p> <p><u>Weekly Hang Seng Index options contract;</u></p> <p><u>Hang Seng Index Futures options contract;</u></p> <p><u>Hang Seng Index (Gross Total Return Index) futures contract;</u></p> <p><u>(iii) and Hang Seng Index (Net</u></p>	<p>10 000 <u>net</u> long or short position delta limit for all contract periods (including but not limited to <u>contract months and contract or weeks</u>) combined, provided that the position delta for the Mini-Hang Seng Index futures contracts or Mini-Hang Seng Index options contracts must not at any time exceed 2 000 long or short for all contract months combined</p>	<p><del>500 open Hang Seng Index futures contracts for any one contract month; 500 open Hang Seng Index options contracts for any one series; 2 500 open Mini-Hang Seng Index futures contracts for any one contract month and; 2 500 open Mini-Hang Seng Index options contracts for any one series; 500 open Weekly Hang Seng Index options contracts for any one series; 500 open Hang Seng Index Futures options contracts for any one series; 500 open Hang Seng Index (Gross Total Return Index) futures contracts for any one</del></p>

Item	Futures contract	Prescribed limit	Reporting level
	<u>Total Return Index</u> ;		<del>contract month and 500 open Hang Seng Index (Net Total Return Index) futures contracts for any one contract month</del>
	(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and		<del>For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract</del>
	(c) all options contract whose underlying asset is one of the contracts referred to in paragraph (a) <u>futures contract</u>		
5.	<u>(a) All futures contract whose underlying index is one of the following—</u> (i) <u>Hang Seng China Enterprises Index futures contract and options contract;</u> (ii) <u>—and— Mini-Hang Seng China Enterprises Index futures contract and options contract (L.N. 44 of 2017); Weekly Hang Seng China Enterprises Index options contract; Hang Seng China Enterprises Index Futures options</u>	12 000 <u>net</u> long or short position delta limit for all contract periods (including but not limited to <u>contract months and contract or weeks</u> ) combined, provided that the position delta for the Mini-Hang Seng China Enterprises Index futures contracts or Mini-Hang Seng China Enterprises Index options contracts must not at any time exceed 2 400 long or short for all contract months combined	<del>500 open Hang Seng China Enterprises Index futures contracts for any one contract month; 500 open Hang Seng China Enterprises Index options contracts for any one series; 2 500 open Mini-Hang Seng China Enterprises Index futures contracts for any one contract month and; 2 500 open Mini-Hang Seng China Enterprises Index options contracts for any one series; 500 open Weekly Hang Seng China Enterprises Index options contracts for any one</del>

Item	Futures contract	Prescribed limit	Reporting level
	<p><del>contract, Hang Seng China Enterprises Index (Gross Total Return Index)- futures contract; and</del></p> <p><u>(iii) Hang Seng China Enterprises Index (Net Total Return Index);- futures contract</u></p> <p><u>(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and</u></p> <p><u>(c) all options contract whose underlying asset is one of the contracts referred to in paragraph (a)</u></p>		<p><del>series, 500 open Hang Seng China Enterprises Index Futures options contracts for any one series, 500 open Hang Seng China Enterprises Index (Gross Total Return Index) futures contracts for any one contract month and 500 open Hang Seng China Enterprises Index (Net Total Return Index) futures contracts for any one contract month</del></p> <p><u>For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract</u></p>
6.	Hang Seng China H-Financials Index futures contract	10 000 <u>net</u> long or short <del>position delta limit contracts</del> for all contract months combined	500 open contracts for any one contract month
7.	<del>Gold futures contract</del>	Nil	<del>500 open contracts for any one contract month</del>
8.	Three Year Exchange Fund Note (EFN) futures contract	5 000 open contracts for any one contract month except that the limit	1 000 open contracts for any one contract month except that the <del>reportable</del>

Item	Futures contract	Prescribed limit	Reporting level
		for the spot month contract during the last 6 trading days is 1 000 open contracts	<del>position-reporting level</del> for the spot month contract during the last 6 trading days is 200 open contracts
9.	<del>FTSE/Xinhua-China 25 Index futures contract and options contract (L.N. 44 of 2017)</del>	<del>6 000 long or short position delta limit for all contract months combined</del>	<del>500 open FTSE/Xinhua-China 25 Index futures contracts for any one contract month and 500 open FTSE/Xinhua-China 25 Index options contracts for any one series</del>
10.	HSI Dividend Point Index futures contract	Nil	1 000 open contracts for any one contract month
11.	HSCEI Dividend Point Index futures contract	Nil	1 000 open contracts for any one contract month
12.	HSI Volatility Index futures contract (L.N. 13 of 2013)	10 000 open contracts for any one contract month	1 000 open contracts for any one contract month
13.	US Dollar vs Renminbi (Hong Kong) futures contract and options contract, <a href="#">Mini US Dollar vs Renminbi (Hong Kong) futures contract</a> , and Renminbi (Hong Kong) vs US Dollar futures contract- (L.N. 44 of 2017)	<del>830 000 net</del> long or short position delta limit for all contract months combined, provided that the position delta for the spot month US Dollar vs Renminbi (Hong Kong) futures contracts and the spot month US Dollar vs Renminbi (Hong Kong) options contracts combined during the last 5 trading days must not exceed <del>2-15</del> 000 long or short	500 open US Dollar vs Renminbi (Hong Kong) futures contracts for any one contract month; 500 open US Dollar vs Renminbi (Hong Kong) options contracts for any one series; <del>2 500 open</del> <a href="#">Mini US Dollar vs Renminbi (Hong Kong) futures contracts for any one contract month</a> and 500 open Renminbi (Hong Kong) vs US Dollar futures contracts for any one contract month
14.	<del>London Copper-Mini futures contract</del>	<del>50 000 net long or short contracts for all contract months</del>	<del>500 open contracts for any one contract month</del>

Item	Futures contract	Prescribed limit	Reporting level
	<del>(L.N. 228 of 2015)</del>	<del>combined</del>	
15.	<del>London Aluminium Mini futures contract (L.N. 228 of 2015)</del>	<del>25 000 net long or short contracts for all contract months combined</del>	<del>500 open contracts for any one contract month</del>
	-		
16.	<del>London Zinc Mini futures contract (L.N. 228 of 2015)</del>	<del>25 000 net long or short contracts for all contract months combined</del>	<del>500 open contracts for any one contract month</del>
17.	Stock futures contracts on shares or units of exchange traded funds (L.N. 228 of 2015)	<u>25 000 net long or short open contracts for any one contract months combined</u>	1 000 open contracts for any one contract month
18.	<del>London Nickel Mini futures contract (L.N. 44 of 2017)</del>	<del>50 000 net long or short contracts for all contract months combined</del>	<del>500 open contracts for any one contract month</del>
19.	<del>London Lead Mini futures contract (L.N. 44 of 2017)</del>	<del>25 000 net long or short contracts for all contract months combined</del>	<del>500 open contracts for any one contract month</del>
20.	<del>London Tin Mini futures contract (L.N. 44 of 2017)</del>	<del>15 000 net long or short contracts for all contract months combined</del>	<del>500 open contracts for any one contract month</del>
21.	<u>(a) All futures contract whose underlying index is one of the following—</u> <u>(i) Hang Seng TECH Index;- futures contract and options contract</u> <u>(ii) Hang Seng TECH Index (Gross Total Return Index);</u> <u>(iii) Hang Seng TECH Index (Net Total Return</u>	<u>21 000 net long or short position delta limit for all contract periods (including but not limited to contract months or weeks) combined</u>	<u>500 open Hang Seng TECH Index futures contracts for any one contract month and 500 open Hang Seng TECH Index options contracts for any one series</u> For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures

Item	Futures contract	Prescribed limit	Reporting level
	<p><u>Index);</u></p> <p><u>(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and</u></p> <p><u>(c) all options contract whose underlying asset is one of the contracts referred to in paragraph (a)</u></p>		<p><u>contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract</u></p>
22.	<u>MSCI China A 50 Connect (USD) Index futures contract</u>	<u>28 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
23.	<u>CES China 120 Index futures contract</u>	<u>30 000 net long or short contracts for all contract months combined</u>	<u>1 500 open contracts for any one contract month</u>
24.	<u>Hang Seng Mainland Banks Index futures contract</u>	<u>15 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
25.	<u>MSCI China (USD) Index futures contract</u>	<u>35 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
26.	<u>MSCI China Net Total Return (USD) Index futures contract</u>	<u>53 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
27.	<u>MSCI Hong Kong Net Total Return (USD) Index futures contract</u>	<u>8 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
28.	<u>Australian Dollar vs Renminbi (Hong Kong) futures contract</u>	<u>12 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
29.	<u>Euro vs Renminbi (Hong Kong) futures contract</u>	<u>12 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>

Item	Futures contract	Prescribed limit	Reporting level
30.	<u>Indian Rupee vs Renminbi (Hong Kong) futures contract</u>	<u>30 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>
31.	<u>Japanese Yen vs Renminbi (Hong Kong) futures contract</u>	<u>12 000 net long or short contracts for all contract months combined</u>	<u>500 open contracts for any one contract month</u>

(Schedule 1 replaced L.N. 117 of 2011)

## Schedule 2

[ss. 2(1) & 5(b)]

### Prescribed Limit and Reporting Level for Stock Options Contracts

#### Stock options

Item	contract	Prescribed limit	Reporting level
1.	Stock options contracts on shares listed on a stock market operated by the Stock Exchange Company	<del>450-250</del> 000 open contracts per option class in any one market direction for all expiry months combined <i>(L.N. 44 of 2017)</i>	1 000 open contracts per option class per expiry month
2.	Stock options contracts on shares or units of exchange traded funds <i>(L.N. 228 of 2015)</i>	<del>450-250</del> 000 open contracts per option class in any one market direction for all expiry months combined <i>(L.N. 44 of 2017)</i>	1 000 open contracts per option class per expiry month

3-4. *(Repealed L.N. 228 of 2015)*

(Schedule 2 replaced L.N. 117 of 2011)

### Securities and Futures (Contracts Limits and Reportable Positions) Rules

(Cap. 571, section 35(1))

(*Enacting provision omitted—E.R. 1 of 2012*)

[1 April 2003] *L.N. 12 of 2003*

(*Format changes—E.R. 1 of 2012*)

1. (*Omitted as spent—E.R. 1 of 2012*)

#### 2. Interpretation

(1) In these Rules, unless the context otherwise requires—

**adequate financial capability** (充足財政能力)—

(a) in relation to a clearing participant, means any of the clearing participant or its holding company has—

(i) a net asset value of not less than \$5 billion as set out in its latest audited financial statements; or

(ii) a qualifying credit rating;

(b) in relation to an exchange participant or an affiliate of an exchange participant, means any one of the exchange participant, the affiliate of the exchange participant or their holding company, has—

(i) a net asset value of not less than \$5 billion as set out in its latest audited financial statements; or

(ii) a qualifying credit rating;

**affiliate** (聯屬公司), in relation to an exchange participant, means any corporation belonging to the same group of companies as the exchange participant; (*L.N. 44 of 2017*)

**constitutive documents** (組成文件), in relation to a collective investment scheme, means the principal documents governing the establishment of the scheme; (*L.N. 228 of 2015*)

**contract multiplier** (合約乘數), means—

(a) in relation to a futures or options contract specified in item 4, 5 or 21 in Schedule 1 with an index as an underlying, the cash value of one point of the index or otherwise as specified by the Futures Exchange Company to be the “contract multiplier” for the contract in its contract specifications set out in the rules of the Futures Exchange Company; or

(b) in relation to an options contract specified in item 4, 5 or 21 in Schedule 1 with a futures contract as an underlying, the cash value of one point of the futures contract’s underlying index or otherwise as specified by the Futures Exchange Company to be the “contract multiplier” for the options contract in its contract specifications set out in the rules of the Futures Exchange Company;

**corporate fund** (法團基金) means a collective investment scheme constituted as a corporation including an open-ended fund company;

**entity** (實體) means—

(a) a natural person;

(b) a body of persons; or

(c) a legal arrangement, including—

- (i) a corporation;
- (ii) a trust; and
- (iii) a sub-fund of an umbrella fund;

**exchange traded fund** (交易所買賣基金) means an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market; (*L.N. 228 of 2015*)

**fund** (基金) means a collective investment scheme and includes but is not limited to a unit trust and a corporate fund;

**HKFECC** (期貨結算公司) means the recognized clearing house known as HKFE Clearing Corporation Limited;

**Listing Rules** (《上市規則》) means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited made by the Stock Exchange Company;

**offering document** (要約文件), in relation to a collective investment scheme, means a document—

- (a) inviting participation in the scheme by prospective shareholders or prospective unit holders of the scheme; and
- (b) containing information relating to the establishment or administration of the scheme; (*L.N. 228 of 2015*)

**open-ended collective investment scheme** (開放式集體投資計劃) means a collective investment scheme the shares or units of which may be repurchased or redeemed at the request of any of its shareholders or unit holders—

- (a) at a price calculated wholly or mainly by reference to the net asset value of the scheme; and
- (b) in accordance with the frequency for repurchase or redemption, requirements and procedures set out in the offering document or constitutive documents of the scheme; (*L.N. 228 of 2015*)

**prescribed limit** (訂明上限), in relation to a futures contract or a stock options contract, means the limit on the number of contracts prescribed for it under section 5;

**reportable position** (須申報的持倉量) means an open position in futures contracts or stock options contracts the number of which is—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, in excess of the reporting level of the contract; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, in excess of the reporting level of the contract; (*9 of 2012 s. 55; L.N. 44 of 2017*)

**reporting level** (須申報水平) means—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, the number of contracts specified opposite to it in column 4 of that Schedule; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, the number of contracts specified opposite to it in column 4 of that Schedule;

**scheme property** (計劃財產), in relation to a fund, means the property under the fund;

**SEOCH** (期權結算公司) means the recognized clearing house known as The SEHK Options Clearing House Limited;

**specified contract** (指明合約) means—

- (a) a futures contract whose underlying index is one of the following—
  - (i) Hang Seng Index;
  - (ii) Hang Seng Index (Gross Total Return Index);
  - (iii) Hang Seng Index (Net Total Return Index);
  - (iv) Hang Seng China Enterprises Index;
  - (v) Hang Seng China Enterprises Index (Gross Total Return Index);
  - (vi) Hang Seng China Enterprises Index (Net Total Return Index);
  - (vii) Hang Seng TECH Index;
  - (viii) Hang Seng TECH Index (Gross Total Return Index);
  - (ix) Hang Seng TECH Index (Net Total Return Index);
- (b) an options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (ix); or
- (c) an options contract whose underlying asset is one of the contracts referred to in paragraph (a);

**specified percentage** (指明百分率) means 300%; (L.N. 44 of 2017)

(9 of 2012 s. 55)

**sub-fund** (子基金), in relation to an umbrella fund, means a separate part of the scheme property of the umbrella fund where assets of the part belong exclusively to the part and cannot be used to discharge the liabilities of, or the claims against, any other entity including the umbrella fund and any other part of the scheme property;

**umbrella corporate fund** (傘子法團基金) means an umbrella fund constituted as a corporation including an open-ended fund company;

**umbrella fund** (傘子基金) means a collective investment scheme whose constitutive documents provide for the division of its scheme property into separate parts and may be constituted under the laws of Hong Kong or elsewhere, and includes but is not limited to an umbrella unit trust and an umbrella corporate fund;

**umbrella unit trust** (傘子單位信託) means an umbrella fund constituted as a unit trust;

**unit trust** (單位信託), means a collective investment scheme that is a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation or receipt by them, as beneficiaries under the trust, in any profits, income or other returns arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) For the purposes of these Rules, a reference to control, in relation to futures contracts or stock options contracts, shall be construed as a reference to control of such futures contracts or stock options contracts, either directly or indirectly.

(3) For the purposes of these Rules, if a collective investment scheme is constituted in the form of an umbrella fund with one or more sub-funds, each sub-fund is to be regarded as a separate entity in relation to the umbrella fund and any of the other sub-funds of the umbrella fund.

(4) For the purposes of these Rules, a unit holder is not regarded, only by virtue of the unit holder's holding one or more units in a unit trust, as holding or controlling futures contracts or stock options contracts in respect of a unit trust.

### 3. Application

These Rules apply to futures contracts and stock options contracts that are traded through the facilities of a recognized exchange company in accordance with the rules of the recognized exchange company.

### 4. Restrictions on number of contracts held or controlled

(1) No person, other than a person referred to in subsections (2) and (3), may hold or control futures contracts or stock options contracts in excess of the prescribed limit. (*L.N. 44 of 2017*)

**Note—**

*For funds, see also section 7A.*

(2) A person specified in section 4A may be authorized under the rules of the recognized exchange company concerned to hold or control futures contracts or stock options contracts in excess of the prescribed limit. (*L.N. 44 of 2017*)

(3) A person may hold or control a futures contract or stock options contract in excess of the prescribed limit if the person is authorized by the Commission to do so under section 4B, 4C, 4D, 4E or 4F. (*L.N. 44 of 2017*)

(4) The Commission may, under section 4B, 4C, 4D, 4E or 4F, authorize a person to hold or control a futures contract or stock options contract in excess of the prescribed limit—

- (a) except in circumstances where holding or controlling the excess for which authorization is sought may be authorized under the rules of the recognized exchange company concerned as referred to in subsection (2);
- (b) only if the Commission is satisfied that the excess would not be prejudicial to the interest of the investing public having regard to the prescribed limit and the liquidity of the futures contract or stock options contract in question; and
- (c) by giving the person a notice of authorization in writing. (*L.N. 44 of 2017*)

(5) An authorization granted under section 4B, 4C, 4D, 4E or 4F—

- (a) subject to paragraph (b), is valid for the period (if any) that the Commission may specify in the notice of authorization given under subsection (4)(c);
- (b) may be withdrawn by the Commission, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant; and
- (c) is subject to any reasonable conditions that the Commission may specify in the notice of authorization given under subsection (4)(c) and the Commission may, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant, amend or revoke any condition or impose new conditions as may be reasonable in the circumstances. (*L.N. 44 of 2017*)

(6)-(10) (*Repealed L.N. 44 of 2017*)

(11) *(Added L.N. 198 of 2007 and repealed L.N. 241 of 2007)*

**4A. Authorization under rules of recognized exchange company to hold or control contracts in excess of prescribed limit**

A person who may be authorized for the purposes of section 4(2) is—

- (a) a person registered with the Futures Exchange Company for the purpose of performing market making or liquidity providing activities in respect of futures contracts in accordance with its rules;
- (b) a person registered with the Stock Exchange Company for the purpose of performing market making or liquidity providing activities, in accordance with its rules—
  - (i) in respect of stock options contracts; or
  - (ii) in respect of exchange traded funds, where the person holds or controls futures contracts or stock options contracts in the course of hedging the risks arising from performing market making or liquidity providing activities;
- (c) 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;
- (d) a related corporation 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; or *(L.N. 44 of 2017)*
- (e) a clearing participant of HKFECC or SEOCH who clears futures contracts or stock options contracts for a person who is—
  - (i) specified in subsections (a) to (d); and
  - (ii) authorized under the rules of the recognized exchange company concerned to hold or control futures contracts or stock options contracts in excess of the prescribed limit.

**4B. Authorization by Commission to hold or control contracts in excess of prescribed limit in special circumstances**

Subject to section 4(4)(a) and (b), the Commission may authorize a person to hold or control a futures contract or stock options contract in excess of the prescribed limit if the Commission is satisfied that there are special circumstances which warrant the person holding or controlling the excess. *(L.N. 44 of 2017)*

**4C. Authorization by Commission to hold or control contracts in excess of prescribed limit for purposes of facilitating provision of services to clients**

(1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize an exchange participant or an affiliate of an exchange participant to hold or

control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit unless the exchange participant satisfies the Commission that—

- (a) the exchange participant or the affiliate (as the case may be) has a relevant business need for holding or controlling the excess for which authorization is sought;
- (b) either the exchange participant or the affiliate has adequate financial capability to cover the potential risks arising from the excess; and
- (c) the exchange participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) In this section—

**relevant business need** (相關業務需要), in relation to an exchange participant or an affiliate of an exchange participant, means a business need that requires the exchange participant or the affiliate to engage in hedging activities to facilitate the provision of services to its clients. (*L.N. 44 of 2017*)

#### **4D. Authorization by Commission to hold or control contracts in excess of prescribed limit for purposes of index arbitrage activity**

(1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit unless the exchange participant satisfies the Commission that—

- (a) the exchange participant or the affiliate (as the case may be) engages in index arbitrage activities, and will, if authorization is granted, hold or control the excess for the purposes of those activities;
- (b) either the exchange participant or the affiliate has adequate financial capability to cover the potential risks arising from the excess; and
- (c) the exchange participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) In this section—

**index arbitrage** (指數套戩), in relation to an exchange participant or an affiliate of an exchange participant, means a trading strategy engaged in by the exchange participant or the affiliate—

(a) involving—

- (i) the purchase (or sale) of a stock index futures contract; or
- (ii) the purchase (or sale) of a stock index call options contract together with the sale (or purchase) of a stock index put options contract, where both contracts have the same underlying index, expiry date and strike price;

- (b) in conjunction with the sale (or purchase) of some or all of the stocks comprised in the underlying basket of stocks used to compile the index underlying the stock index futures contract or the stock index options contracts; and
- (c) with a view to securing a profit from any difference in price between the stocks and the stock index futures contract or the stock index options contracts. (*L.N. 44 of 2017*)

**4E. Authorization by Commission for asset manager to hold or control contracts in excess of prescribed limit for purposes of asset management activity**

(1) Subject to subsection (2) and section 4(4)(a) and (b), the Commission may authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit unless the person satisfies the Commission that—

(a) the person has a need for holding or controlling the excess for which authorization is sought, for the purposes of the asset management activity for which the person is licensed or registered; and

(b) the person has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) Subsection (1) applies to a person that—

(a) is a licensed corporation that is licensed for, or a registered institution that is registered for, Type 9 regulated activity; and

(b) in the course of that regulated activity, manages assets having a total value of not less than \$80 billion. (*L.N. 44 of 2017*)

**4F. Authorization by Commission for clearing participants**

(1) Subject to section 4(4)(a) and (b), the Commission may authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(2) The Commission must not authorize a person referred to in subsection (3) to hold or control a specified contract in excess of the prescribed limit unless the person satisfies the Commission that—

(a) the person has adequate financial capability to cover the potential risks arising from the excess; and

(b) the person has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

(3) Subsection (1) applies to a person that—

(a) is a clearing participant; and

(b) clears the specified contract for another person that has been authorized by the Commission under 4C, 4D or 4E to hold or control the specified contract in excess of the prescribed limit.

## 5. Prescribed limits

For the purposes of section 4(1), the limit on the number of contracts that may be held or controlled is—

- (a) in the case of a futures contract specified in column 2 of Schedule 1, that specified opposite to it in column 3 of that Schedule; and
- (b) in the case of a stock options contract specified in column 2 of Schedule 2, that specified opposite to it in column 3 of that Schedule.

## 6. Notice of reportable positions

(1) Subject to subsection (1A), any person who holds or controls a reportable position must lodge a notice in writing of that reportable position with the recognized exchange company concerned within one business day following— (*9 of 2012 s. 56*)

- (a) the day on which the person first holds or controls that reportable position; and
- (b) each succeeding day on which the person continues to hold or control that reportable position.

### **Note—**

*For funds, see also section 7A.*

(1A) If the reportable position held or controlled by a person is in any holiday contract, the person must lodge a notice in writing of the reportable position with the Futures Exchange Company within one holiday contract trading day following—

- (a) the day on which the person first holds or controls the reportable position; and
- (b) each succeeding day on which the person continues to hold or control the reportable position.

(1B) For the avoidance of doubt, for the purposes of subsection (1A), section 71(1)(b) and (c) of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply.

(2) A notice referred to in subsections (1) and (1A) must be accompanied by the following information—

- (a) the number of futures contracts or stock options contracts held or controlled by the person which comprise the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series;
- (b) subject to section 7A(5), if the reportable position is held or controlled for one or more persons (including for his own account, where applicable)—
  - (i) the identity of each other person; and
  - (ii) the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and for each other person which comprise the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series. (*L.N. 35 of 2004*)

(3) In this section—

**holiday contract** (假期合約) means a futures contract that is determined by the Futures Exchange Company to be a “holiday trading exchange contract” in accordance with the rules of the Futures Exchange Company;

**holiday contract trading day** (假期合約交易日) means in relation to a holiday contract, a day determined by the Futures Exchange Company to be a day on which the holiday contract may be traded through the facilities of the Futures Exchange Company in accordance with the rules of the Futures Exchange Company.

## **7. Compliance by certain persons**

(1) Subject to section 7A, in their application to a person holding or controlling futures contracts or stock options contracts for any other person, the prescribed limits and reporting levels apply separately to any futures contracts or stock options contracts held or controlled by the first person—

- (a) for his own account; and
- (b) for each other person.

(2) For the purposes of subsection (1), a person is not to be regarded as holding or controlling futures contracts or stock options contracts for another person if he has discretion in relation to those futures contracts or stock options contracts.

(3) Subject to subsection (4), for the purposes of subsection (2), a person is to be regarded as having discretion in relation to futures contracts or stock options contracts he holds or controls for another person if—

- (a) he may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the other person, whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and
- (b) such authorization enables the first person to make specific acquisitions or disposals without requiring further consent or instruction from the other person.  
(*L.N. 35 of 2004*)

(4) A clearing participant of HKFECC or SEOCH is not to be regarded as having discretion in relation to futures contracts or stock options contracts he holds or controls for another person if the clearing participant’s power to acquire or dispose of the other person’s futures contracts or stock options contracts (as the case may be) may only be exercised in the event of a default in meeting any contractual obligation by the other person.

(5) This section does not apply to a person holding or controlling futures contracts or stock options contracts in respect of funds.

## **7A. Compliance by persons with respect to funds**

(1) Subject to subsections (2), (3) and (4), in their application to a person holding or controlling futures contracts or stock options contracts in respect of one or more funds, the prescribed limits and reporting levels apply separately to any futures contracts or stock options contracts held or controlled by the person—

- (a) for the person’s own account; and
- (b) in respect of each fund.

- (2) Subject to subsections (3) and (4), in their application to a person holding or controlling futures contracts or stock options contracts in respect of one or more sub-funds of one or more umbrella funds, the prescribed limits and reporting levels apply separately to any futures contracts or stock options contracts held or controlled by the person—
  - (a) for the person's own account; and
  - (b) in respect of each sub-fund.
- (3) For the purposes of section 4(1), a person who holds or controls futures contracts or stock options contracts in respect of one or more funds or sub-funds of one or more umbrella funds and has discretion in relation to those contracts must, in applying the prescribed limits, ensure that none of the following exceeds the prescribed limits for such contracts—
  - (a) the aggregate number of contracts he holds or controls—
    - (i) for his own account; and
    - (ii) in respect of all funds and sub-funds (as the case may be);
  - (b) the number of contracts he holds or controls for his own account;
  - (c) the number of contracts he holds or controls in respect of each fund;
  - (d) the number of contracts he holds or controls in respect of each sub-fund.
- (4) For the purposes of section 6(1), a person who holds or controls futures contracts or stock options contracts in respect of one or more funds or sub-funds of one or more umbrella funds and has discretion in relation to those contracts, is regarded as holding or controlling a reportable position when the aggregate of the following reaches a reporting level—
  - (a) the number of contracts he holds or controls for his own account;
  - (b) the number of contracts he holds or controls in respect of all funds and sub-funds (as the case may be).
- (5) For the purpose of subsection (4), if a person holds or controls a reportable position, a notice referred to in section 6(1) and (1A) must be accompanied by the following information—
  - (a) the name of each fund and sub-fund (if applicable); and
  - (b) the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and in respect of each fund and sub-fund (if applicable) which comprise the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series.
- (6) For the purposes of subsections (3) and (4) and subject to subsection (7), a person is to be regarded as having discretion in relation to futures contracts or stock options contracts the person holds or controls in respect of a fund or a sub-fund of an umbrella fund if—
  - (a) the person may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the fund or umbrella fund (as the case may be), whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and
  - (b) the general authorization enables the person to make specific acquisitions or disposals without requiring further consent or instruction from the fund or umbrella fund (as the case may be).

- (7) For the purposes of subsection (6), if the fund or sub-fund of an umbrella fund does not have the status of a legal person under the law of the place under which it is constituted, the general authorization referred to in subsection (6)(a) and the further consent or instruction referred to in subsection (6)(b) shall be from the legal person holding the legal title to the futures contracts or stock options contracts in respect of the fund or the sub-fund.

## **8. Penalties**

Any person who, without reasonable excuse, fails to comply with section 4(1) or 6 commits an offence and is liable—

- (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

## Schedule 1

[ss. 2(1) & 5(a)]

### Prescribed Limit and Reporting Level for Futures Contracts

Item	Futures contract	Prescribed limit	Reporting level
1.	Stock futures contracts on shares listed on a stock market operated by the Stock Exchange Company	25 000 net long or short contracts for all months combined	1 000 open contracts for any one contract month
2.	Three-Month Hong Kong Interbank Offered Rate futures contract	Nil	1 000 open contracts for any one contract month; 4 000 open contracts for all contract months
3.	One-Month Hong Kong Interbank Offered Rate futures contract	Nil	1 000 open contracts for any one contract month; 4 000 open contracts for all contract months
4.	<p>(a) All futures contract whose underlying index is one of the following—</p> <p>(i) Hang Seng Index;</p> <p>(ii) Hang Seng Index (Gross Total Return Index);</p> <p>(iii) Hang Seng Index (Net Total Return Index);</p> <p>(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and</p> <p>(c) all options contract whose underlying asset is one of the contracts referred</p>	10 000 net long or short position delta limit for all contract periods (including but not limited to contract months or weeks) combined	For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract

Item	Futures contract	Prescribed limit	Reporting level
	to in paragraph (a)		
5.	<p>(a) All futures contract whose underlying index is one of the following—</p> <p>(i) Hang Seng China Enterprises Index;</p> <p>(ii) Hang Seng China Enterprises Index (Gross Total Return Index);</p> <p>(iii) Hang Seng China Enterprises Index (Net Total Return Index);</p> <p>(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and</p> <p>(c) all options contract whose underlying asset is one of the contracts referred to in paragraph (a)</p>	12 000 net long or short position delta limit for all contract periods (including but not limited to contract months or weeks) combined	For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract
6.	Hang Seng China H-Financials Index futures contract	10 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
8.	Three Year Exchange Fund Note (EFN) futures contract	5 000 open contracts for any one contract month except that the limit for the spot month contract during the last 6 trading days is 1 000 open contracts	1 000 open contracts for any one contract month except that the reporting level for the spot month contract during the last 6 trading days is 200 open contracts
10.	HSI Dividend Point Index futures contract	Nil	1 000 open contracts for any one contract month

Item	Futures contract	Prescribed limit	Reporting level
11.	HSCEI Dividend Point Index futures contract	Nil	1 000 open contracts for any one contract month
12.	HSI Volatility Index futures contract (L.N. 13 of 2013)	10 000 open contracts for any one contract month	1 000 open contracts for any one contract month
13.	US Dollar vs Renminbi (Hong Kong) futures contract and options contract, Mini US Dollar vs Renminbi (Hong Kong) futures contract, and Renminbi (Hong Kong) vs US Dollar futures contract	30 000 net long or short position delta limit for all contract months combined, provided that the position delta for the spot month US Dollar vs Renminbi (Hong Kong) futures contracts and the spot month US Dollar vs Renminbi (Hong Kong) options contracts combined during the last 5 trading days must not exceed 15 000 long or short	500 open US Dollar vs Renminbi (Hong Kong) futures contracts for any one contract month; 500 open US Dollar vs Renminbi (Hong Kong) options contracts for any one series; 2 500 open Mini US Dollar vs Renminbi (Hong Kong) futures contracts for any one contract month and 500 open Renminbi (Hong Kong) vs US Dollar futures contracts for any one contract month
17.	Stock futures contracts on shares or units of exchange traded funds (L.N. 228 of 2015)	25 000 net long or short contracts for all contract months combined	1 000 open contracts for any one contract month
21.	(a) All futures contract whose underlying index is one of the following—  (i) Hang Seng TECH Index;  (ii) Hang Seng TECH Index (Gross Total Return Index);  (iii) Hang Seng TECH Index (Net Total Return Index);	21 000 net long or short position delta limit for all contract periods (including but not limited to contract months or weeks) combined	For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the

Item	Futures contract	Prescribed limit	Reporting level
	(b) all options contract whose underlying index is one of the indices referred to in paragraph (a)(i) to (iii); and		ratio of HK\$50 per index point to the contract multiplier in relation to the options contract
	(c) all options contract whose underlying asset is one of the contracts referred to in paragraph (a)		
22.	MSCI China A 50 Connect (USD) Index futures contract	28 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
23.	CES China 120 Index futures contract	30 000 net long or short contracts for all contract months combined	1 500 open contracts for any one contract month
24.	Hang Seng Mainland Banks Index futures contract	15 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
25.	MSCI China (USD) Index futures contract	35 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
26.	MSCI China Net Total Return (USD) Index futures contract	53 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
27.	MSCI Hong Kong Net Total Return (USD) Index futures contract	8 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
28.	Australian Dollar vs Renminbi (Hong Kong) futures contract	12 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
29.	Euro vs Renminbi (Hong Kong) futures contract	12 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month
30.	Indian Rupee vs Renminbi (Hong	30 000 net long or short contracts for all	500 open contracts for any one contract

Item	Futures contract	Prescribed limit	Reporting level
	Kong) futures contract	contract months combined	month
31.	Japanese Yen vs Renminbi (Hong Kong) futures contract	12 000 net long or short contracts for all contract months combined	500 open contracts for any one contract month

*(Schedule 1 replaced L.N. 117 of 2011)*

## Schedule 2

[ss. 2(1) & 5(b)]

### Prescribed Limit and Reporting Level for Stock Options Contracts

#### Stock options

Item	contract	Prescribed limit	Reporting level
1.	Stock options contracts on shares listed on a stock market operated by the Stock Exchange Company	250 000 open contracts per option class in any one market direction for all expiry months combined <i>(L.N. 44 of 2017)</i>	1 000 open contracts per option class per expiry month
2.	Stock options contracts on shares or units of exchange traded funds <i>(L.N. 228 of 2015)</i>	250 000 open contracts per option class in any one market direction for all expiry months combined <i>(L.N. 44 of 2017)</i>	1 000 open contracts per option class per expiry month

3-4. *(Repealed L.N. 228 of 2015)*

*(Schedule 2 replaced L.N. 117 of 2011)*



## **Appendix B – Proposed amendments to the Guidance Note on Position Limits and Large Open Position Reporting Requirements**



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

**Appendix B**

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

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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”) were made by the SFC under Section 35(1) of the SFO to prescribe limits and ~~reportable positions reporting levels~~ applicable to futures contracts and stock options contracts traded on the recognized exchange company.
- 1.3. 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.
- 1.4. The Guidance Note is intended to clarify the SFC’s policy intent and position 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 contracts<sup>4</sup> and stock options contracts are specified respectively in Schedule 1 and Schedule 2 of the Rules.
- 2.2. Schedule 1 of the Rules specifies the maximum number of futures contracts ~~for any one contract month or series~~ that may be held or controlled by a person. ~~In other words, the prescribed limits in this Schedule apply to individual contract months or options series. For futures contracts such as stock futures, stock index futures, stock index options contracts and currency futures contracts, the prescribed limits are calculated on a net basis for all contract months combined. For example, the prescribed limit on any stock futures contract is 25,000 net long or short contracts for any one all contract months combined. If a person is longs 30,000 contracts of the September futures contract and longs short 20,000 contracts of the October futures contract, he will not reach the prescribed limit on this contract.~~

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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)

<sup>4</sup> In accordance with Schedule 1 to 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.

- 2.3. ~~The prescribed limits on certain futures contracts such as stock index futures and stock index options contracts, currency futures contracts and commodity futures contracts are calculated on a net basis for all contract months combined.~~ Moreover, for stock index futures and stock index options contracts with the same underlying index, as well as currency futures and currency options contracts with the same underlying currency pair, the futures-equivalent positions in options contracts are added to the positions in futures contracts for purposes of determining compliance with the prescribed limits. The futures-equivalent position in an options contract is the delta value<sup>5</sup> of the options 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

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) by 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 market direction<sup>6</sup> for all expiry months combined that may be held or controlled by a person. For example, the prescribed limit on any stock options contract is ~~150250~~,000 contracts in any one market direction. If a person holds 30,000 long calls in month A, ~~100200~~,000 short calls in month B and 50,000 long puts in month C, he will reach the prescribed limit on this contract for the short market direction, but will still be able to hold ~~120220~~,000 more contracts for the long market direction. (The position in the long market direction is 30,000 contracts (i.e. 30,000 long calls) and the position in the short market direction is ~~150250~~,000 contracts (i.e. ~~100200~~,000 short calls plus 50,000 long puts).)
- 2.5. ~~In general, Market participants should note that in addition to~~ 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~~

<sup>5</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.

<sup>6</sup> Long calls and short puts are in the same market direction; and short calls and long puts are in the same market direction.

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

(This section should be read in conjunction with paragraph 5 ~~below~~ on Compliance by Agents.)

- 2.6. The prescribed limits apply to all positions held or controlled by any person including positions held by the person for his own account and positions belonging to other persons but under the control of such person. 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 exercise discretion<sup>7</sup> to trade or dispose of the positions independently without the day-to-day direction of the owner of 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 in relation to positions held by its affiliates/subsidiaries) provided that such person does not give its affiliates/subsidiaries any day-to-day direction with respect to trading.

## Penalties

- 2.8. Except as otherwise authorized by the SFC, HKFE or SEHK (please refer to paragraph 3 below), 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 pursuant to their rules. Where the HKFE or SEHK becomes aware that any person holds or controls 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. Authorization 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 HKFE or SEHK (as the

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<sup>7</sup> Sections 7(3), ~~7A(4)~~ and ~~7A(56)~~ of the Rules explains the situations in which a person is considered to have discretion to trade or dispose of positions independently. Section 7(4) of the Rules explains the situation in which a clearing participant is not considered to have discretion over its client’s positions.

case may be) in accordance with Section 4(2) of the Rules, or by the SFC in accordance with Section 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 if the person is one of those described in Section 4A of the Rules.
- 3.3. In accordance with Section 4A, the following persons may be authorized by the HKFE or SEHK to hold or control excess positions:
- (1) a person registered with the SEHK for the purpose of performing market making or liquidity providing activities in accordance with its rules (i) in respect of stock options contracts (*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*) or (ii) in respect of exchange traded funds where the person holds or controls futures contracts or stock options contracts in the course of hedging the risks arising from performing market making or liquidity providing activities;
  - (2) 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*);
  - (3) 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](#)
  - (4) a related corporation<sup>8</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*); [or](#)
  - (5) [a Clearing Participant of HKFE Clearing Corporation Limited \(“HKCC”\) or The SEHK Options Clearing Limited \(“SEOCH”\) who provides clearing services to a person specified in paragraphs 3.3\(1\)-\(4\).](#)

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<sup>8</sup> The term “related corporation” is defined in Section 3 of Schedule 1 to the SFO.

- 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~~their 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 provides that the SFC may authorize a person to hold or control futures contracts or stock options contracts in excess of the prescribed limits if (i) special circumstances exist (Section 4B); or if the person (ii) has a relevant business need (Section 4C); (iii) carries out index arbitrage activity (Section 4D); ~~or~~ (iv) is an asset manager that meets the specified criteria (Section 4E); or (v) is a Clearing Participant that clears the excess positions of a person that has been authorized by the SFC to hold or control the excess positions concerned (Section 4F). Section 4(4) is however only applicable to situations falling outside Section 4(2). That is, the SFC will not accept applications which may be dealt with by the HKFE or SEHK in accordance with Section 4(2).
- 3.6. Pursuant to Section 4(4), the SFC may authorize a person to hold or control futures contracts or stock options contracts in excess of the prescribed limits under Section 4B, 4C, 4D, 4E or 4E4F by giving the person a notice of authorization if:
- (1) the person is not one of those described in Section 4A; and
  - (2) 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.

### **Authorization under Section 4B – in “special circumstances”**

- 3.7. An authorization under Section 4B may only be granted where such person can show that there are special circumstances which warrant his holding or controlling the excess positions in question.
- 3.8. The phrase “special circumstances” is not defined in the SFO. However, the SFC considers that the reference to “special” implies that the circumstances should normally be unique or unusual (i.e. out of the ordinary) in some way. So, for example, requiring excess positions to serve a regular business need would not be regarded as constituting special circumstances.

### **Authorization under Section 4C – for purposes of facilitating provision of services to clients**

- 3.9. An authorization under Section 4C may only be granted:
- (1) to an Exchange Participant or an affiliate of an Exchange Participant; and
  - (2) where such person has a relevant business need for the excess positions in question.

- 3.10. The phrase “relevant business need” is defined in Section 4C(3) and essentially means a need to engage in hedging activities as a result of providing client facilitation services (i.e. services to facilitate client transactions – whether conducted on exchange or off exchange, and in futures or options contracts or other products). The definition is designed to ensure that excess positions are sought and authorized only for the purposes of helping Exchange Participants and their affiliates to better serve their clients, and not for purely proprietary trading. For instance, a client wants to buy a large number of futures contracts, but is concerned that the purchase will push up market prices materially and thus increase his execution prices. The Exchange Participant may facilitate this client’s purchase of the futures contracts by selling the contracts to the client as principal over-the-counter (“**OTC**”) and then buying the futures contracts in the exchange market throughout the day to minimize the impact on market prices and to cover the OTC position established for the client. In this case, the futures contracts traded on the exchange are the proprietary positions of the Exchange Participant resulting from client facilitation activities.

### **Authorization under Section 4D – for purposes of index arbitrage activity**

- 3.11. An authorization under Section 4D may only be granted:
- (1) to an Exchange Participant or an affiliate of an Exchange Participant; and
  - (2) where such person engages in index arbitrage activities and will hold or control the excess for the purposes of those activities.
- 3.12. The phrase “index arbitrage” is defined in Section 4D(3) to mean a trading strategy engaged in by the person-
- (a) involving (i) the purchase or sale of a stock index futures contract (**the futures contract**); or (ii) the purchase (or sale) of a stock index call options contract together with the sale (or purchase) of a stock index put options contract, where both contracts have the same underlying index, expiry date and strike price (**the options contracts**);
  - (b) in conjunction with the sale or purchase of some or all of the stocks comprised in the underlying basket of stocks (**the stocks**) used to compile the index underlying the futures contract or the options contracts; and
  - (c) with a view to securing a profit from any difference in price between the stocks and the futures contract or the options contracts.

The SFC accepts that “the stocks” do not necessarily include all the components stocks of the underlying index of the futures or options contracts, the SFC however expects the applicant to demonstrate that the tracking error of the stocks is immaterial.

- 3.13. The SFC may grant authorizations under Sections 4C and 4D to an Exchange Participant or persons who belong to a group of companies that includes an Exchange Participant. This is because Exchange Participants and their affiliates generally have a greater need for holding excess positions to provide client facilitation services. In addition, Exchange Participants are licensed corporations under the SFO

and therefore the SFC can better assess whether they would have the capabilities to hold excess positions and manage the resultant risks.

- 3.14 The SFC will determine the size of excess positions to be authorized for an applicant on a case by case basis after taking into consideration various factors including the prevailing market situation. It should be noted that although the upper limit set by the specified percentage is a per applicant upper limit, the SFC will take into account any excess positions already authorized to other members within the same group as the applicant. Under Section 4(4)(b), the SFC may authorise the excess sought only if it is satisfied that the excess would not be prejudicial to the interest of the investing public having regard to the prescribed limit and the liquidity of the futures contract or stock options contract in question.
- 3.15 Additionally, the SFC may only authorize excess positions under Sections 4C and 4D if –
- (1) the Exchange Participant or affiliate in question has adequate financial capability to cover the potential risks arising from any authorized excess position; and
  - (2) the Exchange Participant in question has effective internal control procedures and risk management systems to manage such risks.

This is irrespective of whether the person authorized is the Exchange Participant or one of its affiliates.

- 3.16 The SFC will normally look to the Exchange Participant to ensure that excess positions are properly used and any resultant risks properly managed, as that is the regulated entity within the group. Consequently, the SFC will expect a single entity within the group (normally the Exchange Participant, as that is the regulated entity) to carry the relevant positions. In other words, if any member within a group (including the Exchange Participant) is authorized to hold excess positions in a particular specified contract<sup>9</sup>, the SFC will normally expect all of such person's holdings in that contract (i.e. not just the excess positions) to be held through an account carried by the Exchange Participant. Additionally, if the group Exchange Participant is not a ~~clearing participant~~ Clearing Participant (of a recognized clearing house), those positions must be carried through both the group Exchange Participant and a ~~general clearing participant~~ Clearing Participant (of a recognized clearing house) appointed by the group Exchange Participant. The following further points should be noted also –
- (1) Positions can be carried through any affiliate, but must be carried through the group Exchange Participant at the Exchange level. Hence, if an affiliate is not an Exchange Participant but the group wants the positions to be carried through that affiliate, then the positions must be carried through both the group Exchange Participant (at the Exchange level) and that affiliate.

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<sup>9</sup> The term “specified contract” is defined in the Rules.

- (2) It is not necessary for execution (i.e. acquisitions and disposals) to be conducted through the group Exchange Participant. Accordingly, any execution broker may be used (including the group Exchange Participant).
- (3) If the ~~excess~~ positions are to be carried through a Clearing Participant appointed by the group Exchange Participant, the Clearing Participant will need to seek authorization for excess positions by the SFC under Section 4F. Although Clearing Participants generally do not have discretion over clients' positions and can apply the prescribed limits separately to their own account and to each of their clients' accounts, if one of their clients is authorized and holding or controlling excess positions, the appointed Clearing Participant will therefore be holding excess positions for that authorized client. As a result, the appointed Clearing Participant is required to be authorized for excess positions in order to clear trades for the client.
- (4) Further to point (3) above, it should be noted that the group Exchange Participant may appoint only one Clearing Participant to carry its positions in the relevant contract(s) and should notify the appointed Clearing Participant of its excess position limit application. This is to facilitate the Clearing Participant's monitoring of the Exchange Participant's positions. In this respect, both the Exchange Participant and the Clearing Participant should have the obligation and ability to ensure the positions are within the approved excess position limits.

The above requirements will facilitate the SFC in monitoring compliance with the prescribed limits and any authorized excesses.

### **Authorization under Section 4E – for purposes of asset management activity**

3.17. An authorization under Section 4E may only be granted:

- (1) to an intermediary that is (i) licensed or registered for Type 9 regulated activity under the SFO (asset manager); and (ii) manages assets having a total value (“**AUM**”) of not less than HK\$80 billion;
- (2) where such asset manager needs excess positions to facilitate its asset management activity; and
- (3) the asset manager has effective internal control procedures and risk management systems to manage the potential risks arising from the excess.

3.18. For the purposes of Section 4E, the AUM of an asset manager is determined as follows:

- (1) in the case that the applicant is a Licensed Corporation (“**LC**”) under the SFO, it is the “Total aggregate net value of assets under management” figure reported in its latest filing to the SFC under the Securities and Futures (Financial Resources) Rules; and

- (2) in the case that the applicant is a Registered Institution under the SFO, the applicant is to use the figure reported under its asset management activity in its latest filing to the Hong Kong Monetary Authority under Section 63 of the Banking Ordinance on securities related activities. This figure is to be used as the basis for further adjustment by the applicant to arrive at an adjusted figure equivalent to the “Total aggregate net value of assets under management” figure mentioned in sub-paragraph (1) above.

3.19. The SFC is mindful that any excess positions granted should be commensurate with the asset manager’s business need. Under Section 4(4)(b), the SFC may authorise the excess sought only if it is satisfied that the excess would not be prejudicial to the interest of the investing public having regard to the prescribed limit and the liquidity of the futures contract or stock options contract in question. In this regard, the SFC in determining the size of the excess position to be granted to an asset manager under Section 4E will take into account the following:

- (1) investment mandates and size of all the funds managed by the asset manager; and
- (2) the investment strategies of the asset manager.

#### **Authorization under Section 4F – for purposes of client clearing activity**

3.20. An authorization under Section 4F may only be granted to a person that:

- (1) ~~to a person that~~ is a Clearing Participant of HKCC; and
- (2) clears the excess positions for another person that has been authorised by the SFC under sections 4C, 4D or 4E to hold or control the excess positions in question.
- (3) has adequate financial capability to cover the potential risks arising from any authorized excess position; and
- (4) has effective internal control procedures and risk management systems to manage such risks.

#### **Application process for authorizations by the SFC**

~~3.20-3.21.~~ An application for authorization from the SFC to hold excess positions may be submitted by the following persons:

- (1) where authorization is sought under Section 4B, either:
  - (a) the person acting as principal for the account(s) for which the authorization is sought; or
  - (b) a person who acts as an agent for the principal;

(2) where authorization is sought under Sections 4C and 4D, the Exchange Participant concerned; ~~and~~

(3) where authorization is sought under Section 4E, the asset manager concerned; and

~~(3)~~(4) where authorization is sought under Section 4F, either the Clearing Participant concerned or its clearing client. The SFC appreciates that some clearing participants may find it more convenient to request their clearing client to submit the application on their behalf. To accommodate participants' operational needs and provide flexibility, the clearing client is allowed to submit the application on behalf of the Clearing Participant if it is considered more convenient and agreeable to both parties.

~~3.21-3.22.~~ In the case of an authorization sought under Sections 4C and 4D, although the application must be submitted by the Exchange Participant concerned, the SFC will not dictate which members of its group should take the excess positions and hence need authorization. However, where any member of a group is authorized to hold or control excess positions in respect of a particular contract, the SFC will normally expect all of its holdings in that contract (i.e. not just the excess positions) to be carried through the Exchange Participant. It follows therefore that the Exchange Participant will in any event need to be authorized under Sections 4C and 4D of the Rules.

~~3.22-3.23.~~ All applications to the SFC should be made in writing to the Supervision of Markets Division of the SFC. Applications may be made on the basis of an immediate need, or in advance in anticipation of prospective needs based on past experience.

~~3.23-3.24.~~ 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.

~~3.24-3.25.~~ In the case of an application for authorization under Section 4C, the SFC will require the applicant to provide the following information:

- (a) 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);
- (b) a full and complete explanation of the needs for holding or controlling excess positions and how the excess positions will be used to support the business of the relevant Exchange Participant and (if applicable) the affiliate and such explanation to include:
  - the nature and size of the positions established, or to be established, in connection with the excess positions for which authorization is sought, and on which market (e.g. OTC market, overseas exchange markets) such positions have been, or will be executed;

- an estimate of the maximum level of the excess positions intended to be established; and
  - the estimated duration of holding or controlling the excess positions.
- (c) details of the relevant Exchange Participant's and (if applicable) the affiliate's or their holding company's financial position, such information to be sufficient to demonstrate that the Exchange Participant or affiliate or their holding company meets the adequate financial capability requirement and should normally include at least its latest annual audited financial statements or information on its credit rating (if any);
- (d) details of the relevant Exchange Participant's internal control procedures and risk management systems, such information to be sufficient to demonstrate that the Exchange Participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess positions, and should normally include at least the following:
- (i) a brief summary of the risk management policies and procedures that will be adopted to monitor and address the key risks connected with the excess positions (such as market risk, concentration risk, etc.), including:
    - *the counterparty due diligence process* that the Exchange Participant or its affiliate (as the case may be) will use when assessing the counterparty risk of clients who are, or will be, provided with client facilitation services by the Exchange Participant or its affiliate in relation to the excess positions held or controlled by it
    - *the contingency measures* that will be applied to minimize the impact of a default by the counterparties, including the procedures for dealing with the excess positions in the event of such default
    - *the techniques that will be used to measure, monitor, control and reduce various types of risks* arising as a result of the excess positions and the related position
  - (ii) a brief summary of the internal control procedures that will be put in place to ensure implementation of the risk management policies and procedures mentioned in the preceding sub-paragraph (i).

3.25-3.26. In the case of an application for authorization under Section 4D, the SFC will require the applicant to provide the following information:

- (a) the index arbitrage trading strategy and the relevant positions, which include:

- a description of how index arbitrage activities are conducted, or will be conducted, in connection with the excess positions for which authorization is sought;
  - a description of the current nature and size of the positions related to the index arbitrage trading strategy in question (including positions in other related markets which are an integral part of the index arbitrage portfolio);
  - the methodology adopted to determine the underlying stocks involved in the index arbitrage portfolio and their relative weighting of the entire portfolio;
  - the timing of execution in the stock market and the relevant stock index derivatives market;
  - an estimate of the maximum level of the excess positions intended to be established;
  - an estimate of the duration of holding or controlling the excess positions; and
  - the circumstances under which the index arbitrage portfolio will be unwound and the detailed unwinding strategy and process.
- (b) the monitoring process to ensure that the excess positions sought are executed according to the strategy described above;
- (c) information to demonstrate that the trading desk/book for index arbitrage activities is standalone;
- (d) details of the internal control measures and compliance monitoring process to prevent and detect potential misuse or abuse of the excess positions which should include a Chinese Wall (or equivalent internal control measures) in place between the index arbitrage trading desk and other trading desks;
- (e) details of the relevant Exchange Participant's and (if applicable) the affiliate's or their holding company's financial position, such information to be sufficient to demonstrate that the Exchange Participant or affiliate or their holding company meets the adequate financial capability requirement and should normally include at least its latest annual audited financial statements or information on this credit rating (if any);
- (f) details of the relevant Exchange Participant's internal control procedures and risk management systems to demonstrate that the Exchange Participant has effective internal control procedures and risk management systems to manage the potential risks arising from the excess position, and should normally include at least the following:
- (i) a brief summary of the risk management policies and procedures that will be adopted to monitor and address the key risks connected with the excess position (such as market risk, concentration risk, tracking error etc.). The summary should cover *the techniques that will be used to*

*measure, monitor, control and reduce various types of risks arising as a result of the excess positions and the related position; and*

- (ii) a brief summary of the internal control procedures that will be put in place to ensure the implementation of the risk management policies and procedures mentioned in the preceding sub-paragraph (i).

~~3.26-3.27.~~ In the case of an application for authorization under Section 4E, the SFC will require the applicant to provide the following information:

- (a) a summary of the investment objectives and characteristics of each of the funds under its management and a description of the nature of positions held or controlled by each of the funds (including investments in other related markets which are an integral part of the entire portfolio);
- (b) a full and complete explanation of the needs for holding or controlling excess positions and how the excess positions will be used for asset management purposes;
- (c) an estimate of the maximum level of the ~~excess~~ positions intended to be established for each of the funds and an estimate of the excess positions hence required by the asset manager;
- (d) the relevant asset manager's internal control procedures and risk management systems to demonstrate that the asset manager has effective internal control procedures and risk management systems to manage the potential risks arising from the excess position, and should normally include at least the following:
  - (i) a brief summary of the risk management policies and procedures that will be adopted to monitor and address the key risks connected with the excess position (such as market risk, concentration risk, etc.). The summary should cover the techniques that will be used to measure, monitor, control and reduce various types of risks arising as a result of the excess positions and the related position; and
  - (ii) a brief summary of the internal control procedures that will be put in place to ensure implementation of the risk management policies and procedures mentioned in the preceding sub-paragraph (i).
- (e) information showing that the applicant's total assets under management is not less than HK\$80 billion:
  - (i) For licensed corporations, the latest filing made by the applicant to the SFC under the Securities and Futures (Financial Resources) Rules which contains a "Total aggregate net value of assets under management" figure.

- (ii) For registered institutions, the latest filing made by the applicant to the Hong Kong Monetary Authority under Section 63 of the Banking Ordinance on securities related activities should be used as the basis for further adjustment by the applicant to arrive at a figure equivalent to the “Total aggregate net value of assets under management” figure mentioned in (i).

3.27-3.28. In the case of an application for authorization under Section 4F, the SFC will require the applicant to ~~submit an application with include~~ information of the identity of the clearing client, the name of the specified contract that it will be clearing for the client and the excess positions that it is applying for (which will be the same as that of its clearing client). For a more efficient and streamlined application process, the clearing client may submit the application on behalf of its Clearing Participant together with its application to the SFC for excess positions made pursuant to Sections 4C – 4E.

### Other considerations for authorization

3.28-3.29. Depending on the facts and circumstances of each individual case, the SFC may also request other information as it considers necessary. The SFC may also have regard to any information or material in its possession which it considers relevant.

3.29-3.30. The SFC will determine an application 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 other factors as the SFC deems appropriate.

3.30-3.31. As a guiding principle, the SFC will not grant an authorization for any excess if the relevant preconditions set out in the Rules are not satisfied, or if the authorization is inconsistent with the SFC’s regulatory objectives in Section 4 of the SFO, in particular:

- (1) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (2) to reduce systemic risks in the securities and futures industry; or
- (3) 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.

3.31-3.32. The SFC may decide to approve or deny the application or impose conditions on the authorization. Conditions imposed on an authorization may be varied or revoked subsequently on at least five business days’ notice. New conditions may also be imposed (Section 4(5)(c)). A notice of authorization will be provided to the applicant in writing (Section 4(4)(c)).

~~3.32-3.33.~~ The SFC will endeavour to notify the applicant of its decision within four weeks 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 4B 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.

### Use and evidencing use of excess positions

~~3.33-3.34.~~ Excess positions authorized under Section 4C must be used to hold positions that facilitate client transactions. However, the SFC will not require that they be used in relation to a particular client transaction, or a particular client. Similarly, the SFC will not impose any limitation on the order in which excess positions are used. Example 1 in Appendix 1 further illustrates how excess positions may be used.

~~3.34-3.35.~~ The SFC will expect Exchange Participants/their affiliates to evidence the use of their excess positions. To this end, the SFC will expect authorized Exchange Participants/affiliates to submit regular reports (normally on a quarterly basis) confirming providing the following information:

- (1) the amount of excess used;
- (2) the type of clients involved;
- (3) a general description of the nature of the client transactions including their notional and market values; and
- (4) an overall description of the positions they have taken, but not details in relation to each client on an individual basis.

~~3.35-3.36.~~ Excess positions authorized under Section 4D must be used solely for index arbitrage activities. Please refer to Example 2 in Appendix 1 which illustrates how excess positions may be used for index arbitrage activities. The SFC will expect Exchange Participants/their affiliates to evidence the use of their excess positions. To this end, the SFC will expect authorized Exchange Participants/affiliates to submit regular reports (normally on a quarterly basis) confirming providing the following information:

- (1) the amount of excess used;
- (2) a general description of the size of the stock index derivatives positions used for index arbitrage activities;
- (3) details of the stock portfolio established; and
- (4) the daily risk position of the entire index arbitrage portfolio containing the stock index derivatives positions and the stock positions.

~~3.36-3.37.~~ Excess positions authorized under Section 4E must be used for asset management purposes. The SFC will expect asset managers to evidence the use of excess positions. To this end, the SFC will expect the asset manager authorized to submit regular reports (normally on a quarterly basis) providing details of the following:

- (1) ~~The~~ the amount of the excess positions used for ~~each of the funds under~~ its management;
- (2) ~~The~~ the total number of futures positions held by each of the funds under its management; and
- (3) ~~The~~ the notional value of futures positions as a percentage relative to the fund size for each of the funds under its management.

3.38. ~~For excess positions authorized under Section 4F, the authorized Clearing Participant will be holding the excess positions for its clearing client that has been authorized by the SFC under Sections 4C or 4D or 4E. To this end, the SFC will expect the Clearing Participant to submit regular reports (normally on a quarterly basis) providing details of the amount of the excess positions used for clearing its client's positions. Since a clearing client can only appoint one Clearing Participant to carry its position the information should be readily available to the Clearing Participant. The clearing client will be required to submit quarterly reports to evidence the use of excess positions as stipulated in the above paragraphs. Since the authorization granted to the Clearing Participant would be related to the same excess positions, there is no need for the authorized Clearing Participant to submit any quarterly reports.~~

~~3.37.~~3.39. The SFC will normally require reports mentioned above to be submitted ~~quarterly~~ within two weeks of the end of the relevant quarter. However, more frequent or additional reporting requirements may be required in individual cases as necessary.

### Validity and renewal of authorizations by the SFC

~~3.38.~~3.40. A person who has been authorized by the SFC under Section 4B, 4C, 4D, 4E or ~~4E~~4F should submit a new application to the SFC if he wishes to continue to hold or control the excess positions after the expiration date of the initial authorization. The new application should be submitted to the SFC no later than two months prior to the expiration date of the initial authorization. If the SFC does not grant any further authorization for the excess positions, the person will be required to close out the position in excess of the prescribed limit upon the expiration date of the initial authorization.

### Withdrawal of authorizations by the SFC

~~3.39.~~3.41. The SFC may at any time withdraw an authorization granted under Section 4B, 4C, 4D, 4E or ~~4E~~4F by giving at least five business days' notice to the person (Section 4(5)(b)). Upon a withdrawal coming into effect, the authorization will cease to apply.

~~3.40.~~3.42. In determining the effective date of a withdrawal, the SFC will consider:

- (1) whether any excess positions are already held or controlled and if so, whether they are within the limits of the authorization previously granted;
- (2) when the relevant contracts are due to expire; and

- (3) whether the withdrawal may be delayed until the time of such expiry taking into account the reasons for the withdrawal.

3.41-3.43. As a guiding principle, the SFC will not normally consider withdrawing an authorization unless it believes:

- (1) one or more of the relevant preconditions set out in the Rules in respect of the authorization in question cease to exist;
- (2) the authorization ceases to be consistent with the SFC's regulatory objectives in Section 4 of the SFO; or
- (3) one or more of the conditions attached to the authorization have failed to be met and adequate steps have not been taken, or cannot be taken, to rectify the failure and avoid similar failures in future.

## Appeals

3.42-3.44. A person may appeal against a decision of the SFC to refuse to authorize excess positions under Section 4B, 4C, 4D, 4E or 4E4F of the Rules to the Securities and Futures Appeals Tribunal ("**Tribunal**") pursuant to Section 216 of the SFO (Section 4(4)(c) and item 78 under Division 1 of Part 2 of Schedule 8 of the SFO). 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 in accordance with the decision of the SFC.

## Positions held or controlled indirectly by virtue of corporate relationship

3.43-3.45. As discussed in paragraph 2.7 above, 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 (including any holding company), which indirectly controls the same positions by virtue only of the corporate relationship, will not be required to seek approval from the SFC separately to control the positions.

## 4. Notice of Reportable Positions

### Reportable positions

- 4.1. In order to facilitate the HKFE and SEHK in monitoring market activities, ~~Section~~Sections 6(1) and 6(1A) of the Rules ~~requires~~require a person holding or controlling a reportable position to notify the recognized exchange company of that reportable position in writing.

4.2. Reportable positions-Reporting levels 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-Reporting levels~~ for futures contracts are calculated based on the number of contracts held or controlled for a contract period (e.g. a contract month or contract week) or series while the ~~reportable positions-reporting levels~~ for stock options contracts are calculated based on the number of contracts held or controlled in an expiry month.

For example, the reporting level for HSI contracts is specified as “For a futures contract, for any one contract period (including but not limited to contract month or week), 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the futures contract; for an options contract, for any one series, 500 open contracts multiplied by the ratio of HK\$50 per index point to the contract multiplier in relation to the options contract”. As the Mini-HSI futures contract has a contract multiplier of HK\$10 per index point, the reporting level applicable to each contract month of the Mini-HSI futures contract is therefore 2,500 open contracts (i.e. 500 open contracts multiplied by HK\$50/HK\$10). Likewise for Mini-HSI options contract, the reporting level applicable to each of the option series is 2,500 open contracts based on the same calculation.

4.2.4.3. The aggregation requirements as mentioned in paragraphs 2.6 and 2.7 above equally apply to the reportable positions for futures contracts and stock options contracts.

## Responsibilities of reporting

4.3.4.4. The notice of a reportable position specified in ~~Section~~Sections 6(1) and 6(1A) may be submitted by:

- (1) a person (e.g. the Exchange Participant) acting as an agent for the principal to carry the account of the reportable position; or
- (2) the person acting as principal for 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-party~~ will not be required to notify the Exchange of the same reportable position under ~~Section~~Sections 6(1) and 6(1A).

4.4.4.5. 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 an Exchange Participant or its agent where the latter agrees to make the report on the person's behalf. However, no matter which party is chosen by the person to submit the notice to the Exchange, it is the responsibility of each person holding or controlling the reportable position to fulfill its obligations under ~~Section~~Sections 6(1) and 6(1A).

4.5.4.6. In the event that a person holds or controls a reportable position in accounts at more than one agent, 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 agents, it should provide to one agent with its total positions held at other agents so that the agent can submit the notice of the reportable position to the Exchange on its behalf. Alternatively, the

person can ask all agents to separately report positions in each of the accounts to the Exchange even though positions in the individual accounts may not exceed the reportable level.

4.6.4.7. 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

4.7.4.8. In accordance with Sections 6(1)(a), 6(1A) and ~~(6(1B))~~, the notice of reportable positions should be made within one reporting business day (or in the case of holiday contacts, the next holiday contract trading day) following:

- (1) the day on which the person first holds or controls the reportable positions; and
- (2) 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, it 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.

4.8.4.9. ~~Section~~Sections 6(2) ~~— (4) and 7A(5)~~ of the Rules further ~~requires~~require that the notice of a reportable position shall be accompanied by the following information:

- (1) the number of futures contracts or stock options contracts held or controlled by the person ~~in respect of which comprise~~ the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series; and
- ~~(2)~~ (3) where the reportable position is held or controlled for ~~another one or more persons~~ (e.g. a client or clients), the identity of ~~that each other person, where it is for a unit trust or a sub-fund, the name of the unit trust or sub-fund~~ and the number of futures contracts or stock options contracts held or controlled for ~~his own account (if applicable) and for each other such person, unit trust or sub-fund in respect of which comprise~~ the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series.

In respect of the information about the identity of a client, the requirements are set out in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the Client Identity Rule Policy.

**4.9.4.10.** 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), 6(1A) and 6(2) of the Rules.

**4.10.4.11.** Appendix 2 provides examples to illustrate the application of the prescribed limits and ~~reportable positions~~reporting levels. Examples to illustrate the application of the prescribed limits and reporting levels with respect to funds are detailed in paragraph 6.

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

**4.11.4.12.** 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>.

**4.12.4.13.** The HKFE and SEHK also request Exchange Participants and the person reporting to provide additional information other than those specified in ~~Section~~Sections 6(2) ~~—(4)~~ such as (i) the account number, account name and identity of the transaction originator of a reportable position; (ii) the nature of a reportable position (i.e. for hedging, arbitrage or trading purposes); and (iii) the account type (i.e. house account, client account or market maker account). Exchange Participants should refer to the relevant position reporting procedures prescribed by the HKFE or SEHK for details.

**4.13.4.14.** In order to assess the systemic impact of large reportable positions on the market and monitor concentration risk more effectively, the HKFE and SEHK may make enquiries into transactions/positions in other markets (e.g. OTC market) underlying the reportable positions held by Exchange Participants. For this reason, Exchange Participants may be requested by the HKFE or SEHK to obtain details of such transactions/positions from the clients or their counterparties. Failure to provide such information to the HKFE or SEHK could lead to the imposition of position limits other than the prescribed limits according to the HKFE or SEHK rules.

### Penalties

**4.14.4.15.** 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.

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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).

## 5. Compliance by Agents

5.1. ~~Section~~Sections 7 and 7A of the Rules ~~enables~~stipulate that a person who holds or controls futures contracts or stock options contracts for ~~other persons~~another person or a unit trust or a sub-fund should apply the prescribed limits and ~~reportable positions-reporting levels~~ separately to his own position and to ~~each of~~ the positions he holds or controls for ~~the each~~ other ~~persons~~person or unit trust or sub-fund except where the person has discretion over the positions held or controlled by him for the other ~~persons~~person or unit trust or sub-fund. In other words, a person ~~can~~should disaggregate his own position and the positions he holds or controls for each of the other ~~persons~~person or unit trust or sub-fund in the application of prescribed limits and ~~reportable positions-reporting levels~~ provided that he does not have discretion over the positions ~~held or controlled for the other persons~~. ~~A typical example in~~question. Examples of such ~~person is~~persons are an Exchange Participant or a person providing intermediary services to its clients, ~~a trustee of a unit trust or trustee of a sub-fund of an umbrella unit trust~~.

5.2. In accordance with Sections ~~7(2)-(3) and 7A(3)-(5)~~ of the Rules, a person will be considered to have discretion in relation to a position he holds or controls for another person ~~if:~~ or a unit trust or a sub-fund if:

- (1) he may originate orders to acquire or dispose of any position in futures contracts or stock options contracts under a general authorization from the other person, ~~whether the authorization is pursuant to a written agreement, power of attorney or otherwise~~ or in the case of a unit trust or a sub-fund of an umbrella unit trust, a general authorisation from the trustee of the unit trust, and in the case of a sub-fund of a corporate fund, a general authorisation from the company; and
- (2) such authorization enables him to make specific acquisitions or disposals without requiring further consent or instruction from the other person ~~or trustee or company,~~

and in such case, he will not be regarded as holding or controlling the position for the other person, ~~unit trust or sub-fund~~ for the purpose of applying the disaggregation provision to this position.

~~An E~~Examples of such person ~~would be include a fund manager controlling positions for his funds and~~ a trader managing discretionary accounts. However, it does not include a trader with a short-term discretion from his client to manage an order (e.g. if a client leaves an order to buy or sell futures contracts at any price within a specified range, the agent will not be regarded as having discretion) or a firm initiating orders to close out a position held for its client for risk control purposes or due to contractual breaches (e.g. the client has defaulted on his payment to the firm or has made material misrepresentation to the firm). In this regard, Section 7(4) provides that a Clearing Participant in exercising its right to initiate orders to close out a client's positions in the event of the client's default in meeting any contractual obligation defaulting on a payment is not to be regarded as having discretion over the positions of its clearing client.

5.3. If a person has discretion over positions held with him for other persons, all these positions should be aggregated with his own position in the application of the prescribed limits and reportable positions reporting requirements.

5.4. For example, an agent holds ~~400~~800 long, 3,000 long, and 8,000 long futures contracts for Clients A, B and C respectively. Client A is a discretionary account operated by the agent. The agent ~~also~~ holds 200 short futures contracts for his own account. Since the agent has discretion over the position held for Client A, the agent's own position and Client A's position should be aggregated in the application of the prescribed limits and reportable positions reporting levels.

Assume that the reportable level is 500 open contracts and the prescribed limit is 10,000 contracts.

For reporting, ~~t~~The agent should notify the Exchange of each of the reportable positions held with him (i.e. ~~600~~1,000 open contracts held by him (with the breakdown of 200 short contracts for its own account and 800 long contracts for Client A), 800 long contracts held by Client A, 3,000 long contracts held by Client B and 8,000 long contracts held by Client C) and identities of the persons.

For determination of compliance with the prescribed limits, the agent, Client A, Client B and Client C are regarded as holding or controlling 600 net long contracts (800 long minus 200 short contracts), 800 net long contracts, 3,000 net long contracts and 8,000 net long contracts respectively. Since these ~~reportable~~ positions are within the prescribed limit, the agent and all the clients fully complies with the Rules.

5.4.5.5. If a person is aware that a number of its client accounts are held for the same person, all positions in these accounts should not be treated separately. They should be aggregated for purposes of determining compliance with the Rules.

5.5.5.6. There are situations where a person holds or controls positions for the other person who is acting as agent. In accordance with the Client Identity Rule Policy, a person holding or controlling positions for an agent should find out who are the ultimate clients and obtain the client identity information from the agent. As an agent is allowed to disaggregate positions held for his clients, his total positions may exceed the prescribed limits even though each of the client positions is within the limits. The SFC accepts that a person is in compliance with the prescribed limits in respect of the positions held for an agent provided that he has obtained the client identity information to determine that the agent is allowed to hold excess positions in accordance with the Rules. If the person is not able to obtain the client identity information to decide whether the agent complies with the prescribed limits (e.g. the agent does not want to disclose the information for commercial reasons), the person should not apply the disaggregation provision to this agent account (i.e. all positions held by the agent should be aggregated in applying the prescribed limits).

## 6. Compliance by Persons with respect to Funds

6.1. Sections 7A(1) and 7A(2) of the Rules stipulate that a person who holds or controls futures contracts or stock options contracts for one or more funds or sub-funds should apply the prescribed limits and reporting levels separately to his own position and to the positions he holds or controls for each fund or each sub-fund. The "person"

referred to in these sections is the legal holder of the positions of the funds or sub-funds. If the fund is constituted in a structure with legal personality, e.g. a corporate fund, then the legal holder is the corporate fund itself. If the fund is constituted in a structure with no legal personality, e.g. a unit trust, then the legal holder is the legal person holding the legal title to the positions of the funds or sub-funds, i.e. the trustee.

6.2. Sections 7A(3) and 7A(4) of the Rules further stipulate that a person who holds or controls futures contracts or stock options contracts for one or more funds or sub-funds and has discretion in relation to those contracts should apply the prescribed limits and reporting levels at two layers – (i) aggregately to his own position and the positions he holds or controls for each fund or each sub-fund; and (ii) separately to his own position and to the positions he holds or controls for each fund or each sub-fund. In general, the “person” referred to in Sections 7A(3) and 7A(4) is the fund manager of the funds or sub-funds.

6.3. For market monitoring purposes, it is our policy intention to require both the legal owners and fund managers of funds and sub-funds to fulfil the requirements of the Rules. We note that some legal holders such as trustees may not have the necessary information and expertise to comply with the requirements of the Rules. On the other hand, fund managers who are responsible for the day-to-day investment and operation of the funds or sub-funds are more capable to comply with the requirements.

6.4. Although some legal owners such as trustees may not have the necessary information or expertise, they are not exempted from the obligations of compliance with the Rules. For those legal persons, generally the SFC will require them to take an active role in overseeing and ensuring the fund managers who manage their funds and sub-funds are in compliance with the requirements of the Rules. In this regard, the SFC will consider the following:

- (i) Whether the legal person has ensured the prescribed limits and reporting requirements and any other related obligations have been clearly communicated to the fund manager or the delegated party (if applicable) and the arrangements have been properly documented;
- (ii) Whether the legal person has sample checked the relevant reports on a regular basis; and
- (iii) Whether the legal person has established mechanism with the fund manager or the delegated party (if applicable) to handle breaches of prescribed limits and reporting errors, etc.

6.5. Below are some examples illustrating how a fund manager is expected to report positions and comply with the prescribed limits under the Rules.

Assume that the reporting level is 500 open contracts and the prescribed limit is 10,000 net long or short contracts.

Example 1: A fund manager managing multiple funds

Assume Fund A holds 300 long futures, Fund B holds 200 short futures and Fund C holds 100 short futures.

For reporting, the fund manager should first determine whether the aggregate position under its control exceeds the reporting level of 500 open contracts. In this case, it is yes because the aggregate position is 600 open contracts. The fund manager should notify the Exchange that it has a large open position of 600 contracts and the breakdown is as follows:

- 300 long futures held by Fund A
- 200 short futures held by Fund B
- 100 short futures held by Fund C

(Note: If the aggregate position under its control does not exceed the reporting level, no reporting is needed. As the reporting requirement is measured on a gross basis (i.e. number of open contracts), if any one of the funds exceeds the reporting level, the aggregate position will exceed the reporting level, hence triggering the fund manager's reporting requirement. The fund manager is required to report all the funds' positions contributing to the reportable position even though all or some of them are below the reporting level.)

For determination of compliance with the prescribed limit, fund manager should calculate both the aggregate position under its control and the positions of each of the funds and ensure none of them exceeds the prescribed limit of 10,000 net long or short contracts. In this case,

- The fund manager is not holding any position on its own
- Fund A is holding 300 long futures
- Fund B is holding 200 short futures
- Fund C is holding 100 short futures

As the aggregate net position is zero, and the fund manager and each of the funds has an open position below the prescribed limit, the fund manager is considered to have complied with the requirements stipulated in Section 7A(3).

#### Example 2: A fund manager managing multiple sub-funds of an umbrella fund

Assume an umbrella fund comprises Sub-fund A which holds 3,000 long futures, Sub-fund B which holds 300 short futures and Sub-fund C which holds 200 short futures. The fund manager is not holding any position on its own.

For reporting, the fund manager should first determine whether the aggregate position under its control exceeds the reporting level of 500 open contracts. In this case, it is yes because the aggregate position is 3,500 open contracts. The fund manager should notify the Exchange that it has a large open position of 3,500 contracts and the breakdown is as follows:

- 3,000 long futures held by Sub-fund A
- 300 short futures held by Sub-fund B
- 200 short futures held by Sub-fund C

For determination of compliance with the prescribed limit, the fund manager should calculate both the aggregate position under its control and the positions of each of the

sub-funds and ensure none of them exceeds the prescribed limit of 10,000 net long or short contracts. In this case,

- The fund manager is considered holding or controlling on an aggregate basis of 2,500 long futures
- Sub-fund A is holding 3,000 long futures
- Sub-fund B is holding 300 short futures
- Sub-fund C is holding 200 short futures

As all of the positions are under the prescribed limit, the fund manager is considered to have complied with the requirements stipulated in Section 7A(3).

Example 3: A fund manager managing multiple funds and sub-funds of multiple umbrella funds

Assume a fund manager manages the following funds:

- Fund A holds 300 long futures
- Fund B holds 200 short futures
- Fund C holds 100 short futures
- Umbrella fund D comprises Sub-fund D1 which holds 3,000 long futures, Sub-fund D2 which holds 300 short futures and Sub-fund D3 which holds 200 short futures
- Umbrella fund E comprises Sub-fund E1 which holds 8,000 short futures, Sub-fund E2 which holds 400 long futures and Sub-fund E3 which holds 1,000 short futures.

The fund manager is not holding any position on its own.

For reporting, the fund manager should first determine whether the aggregate position under its control exceeds the reporting level of 500 open contracts. In this case, it is yes because the aggregate position is 13,500 open contracts. The fund manager should notify the Exchange that it has a large open position of 13,500 contracts and the breakdown is as follows:

- 300 long futures held by Fund A
- 200 short futures held by Fund B
- 100 short futures held by Fund C
- 3,000 long futures held by Sub-fund D1
- 300 short futures held by Sub-fund D2
- 200 short futures held by Sub-fund D3
- 8,000 short futures held by Sub-fund E1
- 400 long futures held by Sub-Fund E2
- 1,000 short futures held by Sub-Fund E3

For determination of compliance with the prescribed limit, the fund manager should calculate both the aggregate position under its control and the positions of each of the funds and each of the sub-funds and ensure none of them exceeds the prescribed limit of 10,000 net long or short contracts. In this case,

- The fund manager is considered holding or controlling on an aggregate basis of 6,100 short futures
- Fund A is holding 300 long futures
- Fund B is holding 200 short futures
- Fund C is holding 100 short futures
- Sub-fund D1 is holding 3,000 long futures
- Sub-fund D2 is holding 300 short futures
- Sub-fund D3 is holding 200 short futures
- Sub-fund E1 is holding 8,000 short futures
- Sub-fund E2 is holding 400 long futures
- Sub-fund E3 is holding 1,000 short futures

As all of the positions are under the prescribed limit, the fund manager is considered to have complied with the requirements stipulated in Section 7A(3).

5.6.6. A Fund manager may report the reportable position to the HKFE or SEHK (as the case may be) itself or through its agent (e.g. an Exchange Participant) which agrees to make the report on its behalf.

## **6.7. Application of the Rules to Different Entities**

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

6.1.7.1. If a person holds or controls positions in accounts at more than one firm, the person should have the obligation to aggregate positions for purposes of applying the prescribed limits and reportable position-reporting requirements.

6.2.7.2. 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) where the firm agrees to submit the notice on the person's behalf, it should provide to the firm with its total positions held at other firms.

6.3.7.3. For the avoidance of doubt, if a person holds a reportable position but only part of the position (which has not exceeded the reportable level) is held by a firm, the firm will not need to report that position to the Exchange unless it knows that the total position held by the person in other firms has exceeded the reportable level.

### **Transaction originators**

6.4.7.4. A transaction originator is a person who is ultimately responsible for originating instructions for transactions on behalf of the other person. ~~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.~~ As explained in paragraph 5.2 above, since the transaction originator has discretion in relation to positions he holds or controls for his principals, he is not allowed to disaggregate the positions held or controlled for each of the principals for the purpose of applying the Rules.

**6.5.7.5.** If the total positions controlled by a transaction originator (including positions belonging to different principals, ~~e.g. different funds,~~ but under his control) have exceeded the reportable-reporting 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 of his principals whose positions have exceeded contributed to the transaction originator's reportable level position. For example, assume a fund-manager-trader is in charge of the investment of three discretionary accountsfunds, namely, Fund-Account A, Fund-Account B and Fund-Account C. Currently, there are 1,000, 800 and 200 futures contracts held by Account Fund-A, Fund-Account B and Fund-Account C respectively. If the reportable level for the futures contract is 500 open contracts, the fund-manager-trader should notify the Exchange of the total positions under his control (i.e. 2,000 open contracts), names of the accounts contributing to the trader's reportable position funds in which position has exceeded the reportable level (i.e. Fund-Account A, and Fund Account B and Account C) and the positions held in these fundsaccounts.

**6.6.7.6.** A transaction originator can choose to notify the HKFE or SEHK (as the case may be) of the reportable positions by himself or through its agent (e.g. an Exchange Participant) which agrees to make the report on his behalf.

**6.7.7.7.** The prescribed limits apply to the total positions controlled by a transaction originator even if the positions are held for different principals.

## Unit trusts and corporate funds

### Unit trusts

~~A unit trust is a collective investment scheme ("CIS") constituted under a trust deed which pools investors' money into a single fund managed by a fund manager. In most cases, the trustee is the legal holder of positions of the unit trust. As the holder of positions of a unit trust, the trustee is required to comply with the prescribed limits and report reportable positions in relation to the positions of the unit trust of which it is acting as the trustee.~~

~~As the trustee does not typically have discretion over the positions of the unit trust or the positions of the sub-funds under an umbrella unit trust, if a trustee is acting for multiple unit trusts, it must apply the prescribed limits and the reportable positions separately to each of the unit trusts (i.e. no netting of positions between different unit trusts), and in the case of sub-funds under an umbrella unit trust, apply the prescribed limits and the reportable positions separately to each of the sub-funds (i.e. no netting of positions between different sub-funds under an umbrella unit trust).~~

~~For example, assume a trustee holds positions for two unit trusts (UT A and UT B) and one umbrella trust where there are three sub-funds (SF X, SF Y and SF Z) under the umbrella trust. UT A has 6,000 long futures contracts, UT B has 6,000 short futures contracts, SF X has 200 long futures contracts, SF Y has 500 short futures contracts and SF Z has 800 long futures contracts. Assume that the reportable level is 500 contracts and the prescribed limit is 10,000 contracts. The trustee should notify the Exchange of each of the reportable positions held by him at the unit trust~~

level or at the sub-fund level of an umbrella trust (i.e. 6,000 contracts each held by UT A and UT B respectively, 500 contracts held by SF Y and 800 contracts held by SF Z). Since these reportable positions are within the prescribed limit, the trustee fully complies with the Rules.

- If the above unit trusts and umbrella unit trust are managed by the same fund manager, the fund manager would have to aggregate all the positions of the unit trusts and the umbrella trust in the application of the prescribed limits and reportable positions, i.e. the fund manager should notify the Exchange of 500 long futures contracts under his control and the aggregated positions should not exceed the prescribed limits of 10,000 contracts.
- A trustee may report the reportable position to the HKFE or SEHK (as the case may be) itself or through its agent (e.g. an Exchange Participant) which agrees to make the report on its behalf.
- Fund manager(s) of unit trusts or of sub-funds of an umbrella unit trust will have to comply with the prescribed limits and report positions in respect of the positions held by the unit trust or sub-funds of an umbrella unit trust as explained in the previous section on “Transaction originators”.

## Corporate funds

- In the case of a standalone corporate fund, the company should comply with the prescribed limits and report reportable positions in respect of the standalone corporate fund. In the case of an umbrella corporate fund that have sub-funds, the company should apply the prescribed limits and the reportable positions separately to each of the sub-funds under the umbrella corporate fund, i.e. no netting of positions between different sub-funds under an umbrella corporate fund.
- For example, assume there are three sub-funds under an umbrella corporate fund (SF X, SF Y and SF Z), SF X has 200 long futures contracts, SF Y has 500 short futures contracts and SF Z has 800 long futures contracts. Assume that the reportable level is 500 contracts and the prescribed limit is 10,000 contracts. The company should notify the Exchange of each of the reportable positions of each of the sub-funds (i.e. 500 contracts held by SF Y and 800 contracts held by SF Z). Since these reportable positions are within the prescribed limit, the company fully complies with the Rules.
- The company may report the reportable positions to the HKFE or SEHK (as the case may be) itself or through its agent (e.g. an Exchange Participant) which agrees to make the report on his behalf.
- Fund manager(s) of sub-funds of an umbrella corporate fund will have to comply with the prescribed limits and report positions in respect of the positions held by the sub-funds as explained in the previous section on “Transaction originators”.

## Omnibus accounts

**6.8-7.8.** In the case of an omnibus account, the Rules apply separately to the positions held by each of the underlying clients of the omnibus account except where the omnibus account operator has discretion over the positions. For this reason, positions held by different underlying clients should not be netted off for purposes of calculating and reporting reportable positions or determining compliance with the prescribed limits.

**6.9-7.9.** If an underlying client of the omnibus account holds or controls a reportable position, the omnibus account operator should inform the HKFE or SEHK (as the case may be) of such reportable position. An omnibus account operator can notify the Exchange of the reportable positions by itself or ask its agent (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 positions have exceeded the reportable level.

**6.10-7.10.** 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 accounts. If the omnibus account operator in one layer has notified the Exchange of the reportable positions held by the ultimate clients including identities of each of them (either by itself or through its agent), 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 open contracts. Exchange Participant A should inform the Exchange of the position held by the omnibus account B (i.e. 1,000 long contracts). If the operator of omnibus account B has obtained the information about the ultimate client 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.*

**6.11-7.11.** Where the omnibus account operator has discretion over positions held with it, it should aggregate such positions with its own position in the application of the prescribed limits.

### Examples illustrating the use of excess positions

#### Example 1:

Assume a firm's proprietary trading desk has a position of HSI futures contracts equivalent to 9,000 position delta, and that its sales desk wants to facilitate clients' trades resulting in the use of about 30,000 HSI futures contracts for hedging purpose. Assume also that the specified percentage is 300%. Can the firm apply for excess?

- Yes, it can apply for excess of up to 30,000 contracts. However, the size of excess positions authorized for an applicant will be determined on a case by case basis after taking into consideration various factors such as the prevailing market situation.

If an excess of 30,000 contracts is authorized, the firm's limit will increase to 40,000 contracts—

- The firm can use up to 10,000 contracts for proprietary trading purposes and any remaining balance for client facilitation purposes. The firm may therefore also use the entire 40,000 limit for client facilitation purposes if it holds no proprietary trading position.
- The SFC is not concerned as to the order in which the limit is consumed (i.e. whether the limit is first used to acquire contracts for client facilitation purposes and then for proprietary trading purposes or vice versa). ~~However, the firm should be concerned to~~ ensure that any holdings over 10,000 contracts are held only for client facilitation purposes – i.e. that holdings for proprietary trading purposes do not exceed the statutorily prescribed limit.

#### Example 2:

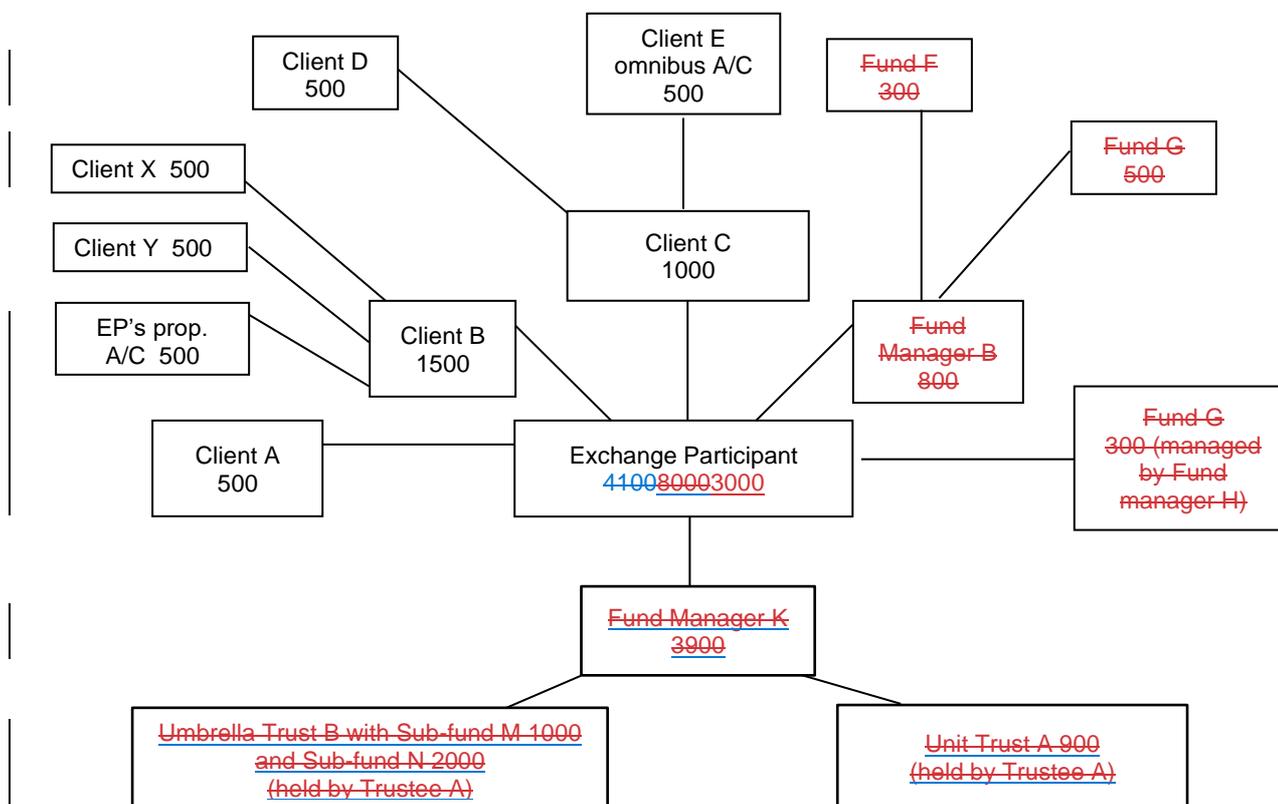
Assume a firm already holds a short position in HSI futures contract equivalent to 8,000 position delta for its proprietary trading business, and that it wishes to hold another 30,000 position delta for its index arbitrage activities in the same short direction. Assume that the specified percentage is 300%. Can the firm apply for excess?

- Yes, it can apply for excess of up to 30,000 contracts. However, the size of excess positions authorized for an applicant will be determined on a case by case basis after taking into consideration various factors such as the prevailing market situation.

If an excess of 30,000 contracts is authorized, the firm's limit will increase to 40,000 contracts—

- The firm can use up to 10,000 contracts for its proprietary trading business (not including index arbitrage activities) and any remaining balance for its index arbitrage activities. The firm may therefore also use the entire 40,000 limit for its index arbitrage activities if it holds no other proprietary trading position.

For example: Reportable Position is 450 contracts



**Client A** has an account with the Exchange Participant which contains 500 contracts.

The Exchange Participant has a client account under the name of **Client B** which it uses for booking transactions for his **proprietary trading** and for the trading of **Clients X and Y**. Client X and Client Y each holds 500 contracts. The Exchange Participant's proprietary position booked into the Client B account is also 500 contracts. The Client B account therefore has a total of 1500 contracts. Provided that the Exchange Participant does not have discretion over Client X's and Client Y's positions, Client X, Client Y and the Exchange Participant's proprietary position can each be treated separately (i.e. disaggregated) by virtue of Section 7 of the Rules.

**Client C** is a non-exchange participant agent. He holds positions for Clients D and E who have 500 contracts each. Client E is an omnibus account. Provided that Client C does not have discretion over Client D's and Client E's positions, positions held for Clients D and E can be treated separately. In respect of the omnibus account itself, if the operator of Client E does not have discretion over positions in the account, it can apply disaggregation to the positions held for each of the underlying clients.

~~**Fund Manager B** has an account with the Exchange Participant. He manages **Funds F and G** which hold 300 and 500 contracts respectively. Separately, Fund G has an account with the Exchange Participant. This account is managed by Fund Manager H. Fund G, through this account, holds 300 contracts. Funds F and G's trades held by Fund Manager B are executed by him. The positions held~~

~~for Funds F and G cannot be treated separately as Fund Manager B has discretion over these positions.~~

~~Trustee A acts for Unit Trust A which holds 900 contracts and Umbrella Trust B which has Sub-fund M with 1,000 contracts and Sub-fund N with 2,000 contracts. Both Unit Trust A and Umbrella Trust B are managed by Fund Manager K. Trustee A should disaggregate the positions of Unit Trust A, Sub-fund M and Sub-fund N as it does not have discretion over these positions. However, Fund manager K should aggregate the positions of Unit Trust A, Sub-fund M and Sub-fund N.~~

#### **Notices of Reportable Positions to be filed –**

(a) the Exchange Participant should notify the Exchange of –

- 500 contracts each for its proprietary position and Client A, 1500 contracts held by Client B, 1000 contracts held by Client C, ~~and 800 contracts held by Fund Manager B and 3,900 contracts held by Fund Manager K.~~

(b) Client B should notify the Exchange of 500 contracts each held by the [EP's Exchange Participant's](#) proprietary account, Client X and Y.

(c) Client A, Client X, Client Y, Client D, Client E, should each notify the Exchange of their own positions of 500 contracts.

(d) Client C should notify the Exchange of 500 contracts each held by Client D and Client E.

~~(e) Fund Manager B should notify the Exchange of the 800 contracts he controls and that 500 contracts are for Fund G.~~

~~(f)(e) Fund G should notify the Exchange of its 800 contracts, 500 of which are held by Fund Manager B and 300 held by Fund Manager H.~~

~~(g)(f) Trustee A should notify the Exchange separately of the 900 contracts held for Unit Trust A, the 1,000 contracts held for Sub-fund M under Umbrella Trust B, and the 2,000 contracts for Sub-fund N.~~

~~(h) Fund manager K should notify the Exchange of 3,900 contracts he controls that comprises of 900 contracts of Unit Trust A, 1,000 contracts of Sub-fund M under Umbrella Trust B and 2,000 contracts of Sub-fund N.~~

Notwithstanding the above filing requirements, the notice of a reportable position may be submitted by the agent or the person acting as principal (see paragraph 4.4). As long as there is an arrangement in place for reporting such positions, the SFC accepts that if ~~one of the~~ [parties appointed agent](#) has submitted the notice of reportable position, the ~~other parties~~ [principal](#) will not be required to notify the Exchange of the same reportable positions.



## **Appendix C – List of Respondents to the First Consultation**

(in alphabetical order)

1. CompliancePlus Consulting Limited
2. Futures Industry Association
3. Hong Kong Investment Funds Association
4. Hong Kong Trustees' Association
5. Ms. Eva Chen
6. Optiver Trading Hong Kong Limited
7. S2 Compliance Limited
8. The Law Society of Hong Kong
9. Submissions of three respondents are published on a “no-name” basis