

Position Limit and Large Open Position Reporting Requirements for Options and Futures Traded on the Hong Kong Exchanges

The Hong Kong regulatory regime imposes position limit and reportable position requirements for stock options and futures contracts traded on the Stock Exchange of Hong Kong and on the Hong Kong Futures Exchange.

These requirements are set out in the Hong Kong Securities and Futures (Contracts Limits and Reportable Positions) Rules (as amended) (the “**Hong Kong Rules**”) made by the Securities and Futures Commission (“**SFC**”) under the Securities and Futures Ordinance. The Hong Kong Rules impose monitoring and reporting obligations with regard to large open positions. It is the responsibility of the person holding or controlling a position to comply with the prescribed limits and to fulfil its reporting obligations under the Hong Kong Rules. For the purposes of the Hong Kong Rules, a client is the person who is ultimately responsible for originating instructions you receive for transactions, i.e. the transaction originator.

Further guidance on the Hong Kong Rules and what they require is set out in the SFC’s Guidance Note on Position Limits and Large Open Position Reporting Requirements (“**Guidance Note**”). Copies of the Hong Kong Rules and Guidance Note can be downloaded from the SFC’s website (www.sfc.hk).

Purpose of the Hong Kong Rules

The purpose of the Hong Kong Rules is to avoid potentially destabilizing market conditions arising from an over-concentration of futures/options positions accumulated by a single person or group of persons acting in concert, and to increase market transparency.

Some of the major requirements of the Hong Kong Rules and Guidance Note are summarised below. However, you should review the Hong Kong Rules and Guidance Note in their entirety, and consult with your legal counsel in order to ensure that you have a full understanding of your obligations in connection with trading in Hong Kong.

Please note that the Hong Kong Rules make you responsible for ensuring that you comply with the Hong Kong Rules. Section 8 of the Hong Kong Rules makes it a criminal offence not to comply with the Hong Kong Rules (subject to a maximum fine of HK\$100,000 and imprisonment for up to 2 years).

It should be noted that the SFC has expressly stated that it is not sympathetic to claims by overseas persons that they are not aware of the Hong Kong restrictions, and that a failure to trade within the limits or make reports reflects badly on a firm’s internal control measures (which might itself lead to disciplinary actions).

Position Limits

The Hong Kong Rules say that you may not hold or control futures contracts or stock options contracts in excess of the prescribed limit, unless you have obtained the prior authorisation of the Hong Kong regulators. For example, for stock index futures and/or options contracts that have either the Hang Seng Index, the Hang Seng Index (Gross Total Return Index) or the Hang Seng Index (Net Total Return Index) as an underlying index, the prescribed limit for such contracts is 10,000 net long or short position delta limit for all contract periods (including contract months or contract weeks) combined. Please note that stock index futures options contracts that have such aforementioned stock index futures contract as an underlying contract might also be captured.

The prescribed limit for each contract traded on the Hong Kong exchanges (any one Hong Kong exchange being an "Exchange") is set out in Schedules 1 and 2 to the Hong Kong Rules. 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.

Reportable Positions

If you hold or control an open position in futures contracts or stock options contracts in excess of the reporting level, the Hong Kong Rules require you to report that position in writing to the relevant Exchange (i) within one business day¹ (or in the case of holiday contracts, within one holiday contract trading day²) of first holding or controlling that position, and (ii) on each succeeding day on which you continue to hold or control that position. For the avoidance of doubt, once you hold or control a reportable position, you will be required to file the notice of the reportable position to the relevant Exchange on each reporting day even though your position remains unchanged.

The report must state:

(a) the number of futures contracts or stock options contracts held or controlled by the person that comprise the reportable position in each relevant contract period (including contract month or contract week) or option series; and

(b) if the position is held or controlled for any other person(s) (e.g. a client or clients), the identity of each other person, and the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and for each other person that comprise the reportable position in each relevant contract period (including contract month or contract week) or option series.

Where the reportable position is held or controlled for one or more funds or sub-funds of one or more umbrella funds, the name of each fund and sub-fund (if applicable) and the number of futures contracts or stock options contracts held or controlled for his own account (if applicable) and for each fund and sub-fund (if applicable) that comprise the reportable position in each relevant contract period (including but not limited to contract month or contract week) or option series.

The reporting level for each contract traded on the relevant Exchange is set out in Schedules 1 and 2 to the Hong Kong Rules. 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.

Scope of the Hong Kong Rules

You should note:

¹ "Business day" means a day other than a Hong Kong public holiday, a Saturday, and a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

² "Holiday contract trading day", in relation to a holiday contract, means a day determined by the Hong Kong Futures Exchange Limited to be a day on which the holiday contract may be traded through the facilities of the Hong Kong Futures Exchange Limited in accordance with the rules of the Hong Kong Futures Exchange Limited.

- The prescribed limits and reporting levels apply to all positions held or controlled by any person, including positions in any account(s) that such person controls, whether directly or indirectly. The SFC takes the view that a person is regarded as having control of positions if, for example, the person is allowed to exercise discretion to trade or dispose of the positions independently without the day-to-day direction of the owner of the positions. (Section 4 of the Hong Kong Rules and Para. 2.6 of the Guidance Note).
- A person who holds or controls futures contracts or stock options contracts for another person should disaggregate his own position and the positions he holds or controls for each of the other person in the application of prescribed limits and reporting levels, provided that he does not have discretion over the positions in question. 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 reporting requirements. (Section 7 of the Hong Kong Rules and Paras. 5.1 and 5.3 of the Guidance Note).
- In situations where a person holds or controls positions for another person who is acting as agent, such person should obtain the ultimate client's identity information from the agent in order to decide whether the agent complies with the prescribed limits. If such person is unable to do so (e.g. the agent does not want to disclose the information for commercial reasons), such person should aggregate all positions held by this agent account in applying the prescribed limits. (Para. 5.6 of the Guidance Note).
- A person³ 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. (Sections 7A(1) and 7A(2) of the Hong Kong Rules and Para. 6.1 of the Guidance Note).
- A person⁴ 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. (Sections 7A(3) and 7A(4) of the Hong Kong Rules and Para. 6.2 of the Guidance Note).
- If a person holds or controls positions in accounts at more than one intermediary, the Hong Kong Rules require him to aggregate the positions for the purposes of applying the prescribed limits and reporting requirements. (Para. 7.1 of the Guidance Note).
- The person holding or controlling a reportable position in accounts at more than one intermediary has the sole responsibility to notify the relevant Exchange of the reportable position. The person may request its intermediary to submit the notice of the reportable position. If a firm agrees to submit the notice on his behalf, the person should provide to the firm its total positions held at other intermediaries so that the firm can submit the notice of the reportable positions to the relevant exchange on the person's behalf. Alternatively, the

³ In this context, the “person” refers to 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.

⁴ In this context, the “person” in general refers to the fund manager of the funds or sub-funds.

person can ask all of his intermediaries to report the positions in each of the accounts separately to the relevant Exchange, even if the positions in the individual accounts may not exceed the reportable level. (Paras. 4.6 and 7.2 of the Guidance Note).

- The Hong Kong Rules apply separately to the positions held by each of the underlying clients of an omnibus account, except where the omnibus account operator has discretion over the positions in which case the account operator must also aggregate these positions with his own positions. 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. (Para. 7.11 of the Guidance Note).