SFC's Consultation Conclusions and Further Consultation on the Securities and Futures (Short Position Reporting) Rules issued on 18 October 2011

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CompliancePlus Consulting Limited provides comprehensive compliance support and solutions to hedge fund managers and mutual fund management companies. For enquiries on this submission, please contact **Josephine Chung** at jchung@complianceplus.hk. **CompliancePlus Consulting Limited** understands and agrees that our name and/or submission may be published by the SFC.

Introduction

In the SFC's Consultation Conclusions and Further Consultation on the Securities and Futures (Short Position Reporting) Rules issued on 18 October 2011, it is suggested that:

"On balance, the SFC proposes that a person/legal entity will be required to report to the SFC short position on a net basis... Section 3(2) of the Rules will be modified as a result of the change. Section B of this paper invites the public to comment on the revised Section 3(2). The public consultation closes on 4 November 2011."

It was previously suggested that short position should be reported on a gross basis. This submission is written in response of the aforementioned consultation.

An international survey

It is acknowledged that both net and gross positions reporting are acceptable arrangements. To this end, the Regulation of Short Selling: Final Report issued by the Technical Committee of the International Organization of Security Commissions (IOSCO) stated that:

"Net or gross positions reporting

3.23.3 The requirement of short positions reporting raises the question of whether the reporting ought to be done on gross or net basis. The Technical Committee is aware that in some markets, reporting of gross short positions is required while in others, the approach taken is to impose reporting of net open short positions. National market authorities should consider, against the background of their objectives and usage of the data collected, whether reporting of short positions on gross or net basis, is more appropriate."

This is echoed by the Committee of European Securities Regulators (CESR) in their Report on the Model for a Pan-European Short Selling Disclosure Regime issued in March 2010, observing that:

"Calculation of short positions can be done on either a gross basis or a net basis."

The Financial Services Authority (FSA) of the United Kingdom adopts the net positions reporting, while the US Securities and Exchange Commission (SEC) adopts the gross positions reporting under Rule 10a-3T.

On the same topic, the Committee of European Securities Regulators tends to support reporting on net basis as quoted in the report on this area below:

"CESR considers that using a net basis would mean that a more accurate picture of the actual short position would be disclosed. This information would be more useful to both regulators and market participants and the costs for calculating these positions would fall on the short seller."

Our Views

We support the amended approach of reporting the short position on net basis as actually it will give the market a clearer picture of the open short position. Given that the reporting threshold of 0.02 percentages is already very low and rigid compared with other financial markets, we believe that the new reporting regime can enhance the short position transparency in the market.

We appreciate SFC's understanding on the difficulties in the industry if firms are required to report short position on gross basis. We always believe that it is important to consider the practical implications of any new proposed rules or regulatory requirements to market participants once it is implemented. It is important to have compliance and regulator requirements that can achieve its purpose and yet can be effectively implemented in the market.

END