



Submission to Consultation Paper 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

Josephine Chung

Director

CompliancePlus Consulting Limited

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For inquiries 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 to the public.

Introduction

This submission responds to the questions raised by the Consultation Paper issued by the Securities and Futures Commission on the 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. It is noted that our submission was sent to the Commission after the end of the Consultation Period. We hope that our comments can be relayed to the Commission for their reference unofficially.

CompliancePlus acknowledges that the SFC will regularly review the position limit regime and make changes accordingly. However, 5 years has passed since the SFC revised the regime requirements in 2017. Hence, to maintain the transparency and orderliness of Hong Kong securities and futures markets and develop a more comprehensive framework for investment products, we support the proposal in general and have made the following suggestions:

Question 1: (i) Do you have any comments on the proposed addition of the New Contracts to the list of “specified contract”?

CompliancePlus agrees with the proposed addition of the New Contracts to the list of “specified contract”. Under the current rules, SFC would only grant authorization to an exchange participant or asset manager to hold or control “specified contract” in excess of the prescribed statutory limit. By having this proposed change, the list of “specified contract” will be expanded and market participants may have excess position limits for the Hang Seng TECH index contracts as well. In general, this will better fulfil different investors' needs and facilitate the provision of services to clients, index arbitrage, and asset management activities.

In addition, even if the New Contracts are incorporated into the list of “specified contract,” the SFC would still possess the discretion to grant or withdraw excess position limits, which suggests the SFC's gatekeeper role remains unchanged.

However, to minimise the SFC's amendment of the Rules whenever there is a new proposed change to the current Rules, we believe it is necessary for the SFC to preserve a degree of flexibility when drafting any proposed changes in the future.

(ii) Are there any other futures and options contracts traded on HKFE which should also be included on the list?

We have no comment on this now. Yet, to avoid the SFC from amending the Securities and Futures (Contracts Limits and Reportable Positions) Rules and expanding the list of “specified contract” whenever there are new future contracts launches, the SFC should once again adopt a flexible approach in drafting the new amendment.

For instance, under the definition of ***specified contract*** (指明合約) in s.2 **Interpretation** in Appendix A1 of the Consultation Paper, the SFC may consider include the following:

“(h) or any future contracts as specified in a notice and the Commission shall cause notice of that fact to be published in the Gazette”

after “(g) Hang Seng TECH Index futures contracts and options contracts;”.

Question 2: Do you have any comments on the proposed reportable position reporting requirements for Holiday Contracts?

CompliancePlus agrees with the proposed reportable position reporting requirements for Holiday Contracts. Under the current practice, market participants will only be required to report their reportable position established during Holiday Trading Days on the next business day. Proposed amendment on reportable position is necessary as it ensures that SFC's capability to monitor build-ups of large position during Holiday Trading Days remains unaffected. This new infrastructure can further strengthen HK's role as a financial hub and better cater to investors' needs. Furthermore, the proposed amendment can allow investors to look at the big picture of their investment portfolio which in turn helps them to manage risk.

Question 3: Do you have any comments on the proposal to set out in the Rules that a CP in exercising its right to dispose of its client's position when the client has defaulted on a payment shall not be regarded as having “discretion” as described in section 7(3)?

CompliancePlus agrees with the proposal to set out in the Rules that a CP in exercising its right to dispose of its client's position when the client has defaulted on a payment shall not be regarded as

having “discretion” as described in s. 7(3). With this new amendment, it can allow clients to have a better idea in terms of ascertaining CP’s exercise of discretion and certainty of regulations would be achieved.

Question 4: Do you have any comments on the proposed authorisation mechanism for CPs which provide clearing services for persons authorised to hold or control contracts in excess of the prescribed limits?

CompliancePlus endorses the proposed authorization mechanism for CPs. The new authorization mechanism enhances clarity on which governing regimes regulate the CPs or GCPs which provide clearing services to the persons who are authorised to hold or control contracts in excess of the prescribed limits. For instance, HKFE or SEHK will authorise the CPs or GCPs which provide clearing services to the persons who are authorised by HKFE or SEHK.

On the other hand, the SFC will authorise those CPs or GCPs which provide services to persons who are authorised by the SFC. This proposed change can generate layers of protection for clients and provide transparency.

Question 5:

(i) Do you have any comments on the proposed changes to require a person, unless the person has discretion over the positions, to apply the prescribed limits and reportable positions separately to: (i) his or her own positions and the positions of a unit trust which he or she holds or controls and (ii) the positions in each unit trust where there is more than one unit trust?

CompliancePlus agrees with the proposed changes as it is in line with the SFC’s policy intention that where a person holds or controls positions of more than one unit trust, the SFC will require the person to separately apply the prescribed limits and reportable positions to the positions of each unit trust. To illustrate, if a trustee acts for multiple unit trusts, it should report the reportable positions for each unit trust separately and ensure that all positions comply with the prescribed limits. In contrast, an asset manager would have to aggregate the positions of all the funds over which it has the discretion to comply with the Rules.

(ii) Do you have any comments on the requirement that the name of the unit trust is to be provided in a notice of a reportable position of the unit trust?

CompliancePlus also agrees with the requirement of unit trust name disclosure. For reporting on behalf of a unit trust, the unit trust's name should be specified in the notice rather than the trustee's identity. The number of contracts for the reportable position held or controlled by a unit trust is also required to be disclosed.

By doing so, it can enhance transparency and provide better protection to the investors' interests. Additionally, we notice that the definition of **corporate fund** (法團基金) is part of the proposed amendment to the Rules in s.2 Interpretation in Appendix A1 of the Consultation Paper, and the Commission may need to study whether the amended wording would also apply to limited partnership fund structure (LPF) as well.

Question 6:

(i) Do you have any comments on the proposal to require the prescribed limits and reportable positions to be separately applied to each of the sub-funds under an umbrella fund as if each of sub-fund were a stand-alone fund?

CompliancePlus agrees with the proposal to require the prescribed limits and reportable positions to be separately applied to each of the sub-funds under an umbrella fund as if each of sub-fund were a stand-alone fund.

Given that each sub-fund is managed independently in accordance with its investment mandate or strategy, the separate application of prescribed limits and reportable positions to each sub-fund would be in line with the way in which each sub-fund's positions and the associated risks are managed. This will help the SFC to achieve its regulatory objective of preventing a build-up of large positions which may pose a threat to the orderly functioning and stability of the market.

(ii) Apart from umbrella funds constituted as unit trusts and corporate funds, are there any other legal forms or structures which should be addressed?

No comment.

(iii) Do you have any comments on the requirement that the name of the sub-fund be provided in a notice of a reportable position of a sub-fund?

CompliancePlus agrees with the requirement that the name of the sub-fund be provided in a notice of a reportable position of a sub-fund. This will be in line with the existing Rules and will enhance the transparency and orderliness of the market.

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