

SFC issues final conclusions on Securities and Futures (Short Position Reporting) Rules

On 10 February 2012, the Securities and Futures Commission (SFC) published the final conclusions (Conclusions) in respect of the Securities and Futures (Short Position Reporting) Rules (Rules), concluding three rounds of consultation starting in July 2009.

The SFC has provided the following feedback in its Conclusions:

- short positions must be reported on a net basis;
- generally, reporting must occur on a legal entity basis by the beneficial owner of the position. However, a legal entity which organizes and conducts its trading activities through different trading units or trading books, each of which has its own trading objectives and strategies, may choose to report short positions on a trading units/book basis instead. The SFC will issue guidelines on how this should be done in practice;
- an umbrella fund will be required to report net short positions of particular sub-funds separately i.e. the positions of different sub-funds under the same umbrella fund are not aggregated;
- for partners in a partnership that have a reportable short position, a report submitted by a partner or another person authorized by all the partners of the partnership, on behalf of those partners, is regarded as having complied with the reporting obligations. The SFC has also clarified in the Rules that a person who has a reportable short position as a partner in more than one partnership must report the short position attributable to each partnership separately; and
- the SFC maintains that imposing criminal sanctions for a breach of duty to report is in line with offences of similar nature already prescribed under the Securities and Futures Ordinance. Accordingly, a person who breaches the reporting requirements without reasonable excuse will be subject to a fine or imprisonment of up to two years.

Key issues

- SFC Conclusions feedback
- Reporting obligations in the proposed rules that have not changed
- Commencement date

The other proposed rules in respect of the reporting obligations have not changed. In summary:

- the reportable threshold is the lower of (i) 0.02% of the value of all issued specified shares of the relevant company based on closing price, and (ii) HK\$30 million;
- only direct short positions in shares are relevant, not short positions entered into through derivatives;

- only short positions arising from trades through the Stock Exchange of Hong Kong (Stock Exchange) or a specified Automated Trading System are reportable, not short positions arising from off-exchange trades;
- only short positions relating to "specified shares" will be relevant, that is, initially, shares that are constituents of the Hang Seng Index or the Hang Seng China Enterprises Index;
- a report is required if a reportable short position exists at the close of the last trading day of the week of the Stock Exchange, i.e. short positions existing on other trading days are not relevant in normal circumstances;
- the report must be made within two business days (excluding Saturdays) of the last weekly trading day of the Stock Exchange, i.e. usually by Tuesday of the next week. In special circumstances, the SFC may require daily reporting within one business day after each trading day;
- the SFC will aggregate the short position reports and publish them on an anonymous basis; and
- the Rules complement, and do not replace, the existing short position reporting regime under the Securities and Futures Ordinance (where an obligation to disclose short positions arises for persons with a discloseable long position).

Commencement date

The SFC will be submitting the Rules to the Legislative Council for negative vetting. The proposed commencement date of the Rules is 18 June 2012.

For our previous briefings on this topic, please see:

[Further consultation on Securities and Futures \(Short Position Reporting\) Rules ends on 4 November](#)

[SFC launches consultation on Securities and Futures \(Short Position Reporting\) Rules implementing new reporting regime](#)

[SFC to introduce a short position reporting regime in 2010](#)

[SFC's consultation paper on increased transparency of short positions](#)

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