

December 2023

Preparing for the changes: a guide to the new Securities and Futures (Contracts Limits and Reportable Positions) Rules



Introduction

After two rounds of public consultations, on 5 June 2023, the Securities and Futures Commission (the "**SFC**") published the [Consultation Conclusions](#) (the "**Consultation Conclusions**") on proposed changes to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (the "**Rules**") and the Guidance Note on Position Limits and Large Open Position Reporting Requirements (the "**Guidance Note**").

The relevant amendments to the Rules have been published on the Government Gazette on 27 October 2023, and tabled at the Legislative Counsel on 1 November 2023. The amended Rules will be **effective on 22 December 2023**.

Appended to the Consultation Conclusions are the final drafts of the amended Rules and Guidance Note. The current Guidance Note can be found here: [Guidance Note on Position Limits and Large Open Position Reporting Requirement](#). This client alert summarises the key changes to the amended Rules.

What's changed?

The revisions to the Rules are intended to align the position limit regime with the latest market developments as well as trading needs in order to ensure that the requirements remain relevant to the regulatory objectives of reducing systemic risks in the securities and futures industry and safeguarding market stability. The main changes to the Rules include:-

- (a) clarifying the applicable statutory requirements for clearing participants, so that clearing participants are generally not regarded as having discretions;
- (b) clarifying that the existing statutory requirements for large open position reporting requirements for futures and options contracts are also applicable during holiday trading days;
- (c) clarifying the existing statutory requirements for the application of prescribed position limits and reporting levels for sub-funds of umbrella funds on an aggregated or separate basis;
- (d) prescribing the position limits and reporting levels for new contracts and removing the position limits and reporting levels for certain international products; and
- (e) making consequential amendments for implementing enhancements proposed by the Hong Kong Exchanges and Clearing Limited (the "**HKEX**") in relation to position limits for single stock futures, Mini-HSI and Mini-HSCEI futures as well as options contracts and single stock options.

Consequential amendments to the Guidance Note have also been made in order to achieve consistency with the amended Rules.

What does it mean for the industry participants?

Fund Managers

The amended Rules and Guidance Note clarified how the statutory prescribed limits and reporting requirements are to be applied to unit trusts and sub-funds under an umbrella fund. Specifically, the amended Rules provide that the prescribed limits and reporting requirements should apply to each individual fund and each sub-fund of umbrella funds, given that each of them is distinct and has its own investment mandates. Furthermore, if a fund manager has discretion over the positions in more than one fund, the positions of all the funds should be aggregated for compliance purpose.

For further guidance, the SFC has set out in section 6.5 of the amended Guidance Note some examples illustrating how a fund manager is expected to report positions and comply with the prescribed limited under the amended Rules.

In the Consultation Conclusions, the SFC also made it clear that fund managers who are responsible for the day-to-day operation of funds have the primary responsibility for position limit compliance and reporting obligations at the individual fund and sub-fund level, because they control trading and have first-hand information about fund positions. Accordingly, fund managers should report the reportable positions to the Hong Kong Futures Exchange or the Stock Exchange of Hong Kong (as the case may be) whether by itself or through its agent (e.g. an exchange participant) which agrees to make the report on its behalf.

Trustees

The SFC confirmed that, as the Rules apply to any person who "holds or controls" positions, trustees are still subject to the requirements of the Rules. In general, the SFC requires trustees to take an active role in overseeing and ensuring the fund managers who manage their funds and sub-funds comply with the requirements of the Rules.

Nevertheless, acknowledging the operational difficulties facing trustees, the SFC confirmed in the Consultation Conclusions that a trustee will be considered as having discharged its obligations under the Rules if the trustee has measures in place to ensure an asset manager managing its unit trusts has observed position limit compliance and reported positions according to the requirements of the Rules. In this regard, the SFC will consider:-

- (a) whether the trustee 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;
- (b) whether the trustee has sample checked the relevant reports on a regular basis; and
- (c) whether the trustee has established mechanism with the fund manager or the delegated party (if applicable) to handle breaches of prescribed limits and reporting errors, etc.

Clearing Participants

Although the amended Rules clarify that clearing participants are generally not regarded as having discretions, they are nonetheless specifically required to observe the prescribed limit and must not hold specified contracts in excess of the limit unless authorised by the SFC. A clearing participant should also monitor its clearing clients to ensure that the specified contracts that it holds for such clearing clients will not cause the clearing participant itself to be holding in excess of the prescribed limit without the necessary SFC authorisation, even when such clearing client was already authorised by the SFC. To provide flexibility, the SFC permits a clearing client to also apply for authorisation for and on behalf of the clearing participant.

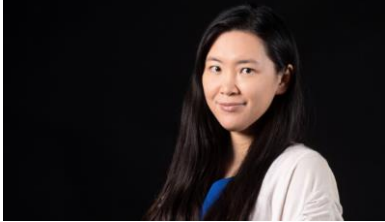
Actions to take

As the commencement date of the amended Rules approaches, it is crucial for the fund managers, trustees and clearing participants in Hong Kong to take proactive steps to ensure compliance with the amended Rules. Fund managers should start reviewing their existing contract limits and reporting procedures, familiarising itself with the amended Rules and Guidance Note, and making necessary adjustments and arrangements to comply with the revised Rules, including the consequential amendments to HKEX's proposed enhancements to its exchange-level position limit regime.

How we can help?

We advise many clients in the asset management industry on matters involving SFC rules and regulations. We are well-equipped to navigate you through the amended Rules. Should you require any assistance with respect of the amended Rules, please feel free to reach out to one of our team members.

Contact us



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