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Proposed changes to position limits and large open position reporting requirements

Pinky Siu

The Hong Kong Securities and Futures Commission (**SFC**) has launched a two-month consultation on proposed changes to the position limits and large open position reporting regime in Hong Kong.

By way of background, the Securities and Futures (Contract Limits and Reportable Positions) Rules (**Rules**) (i) impose restrictions on the maximum number of futures contracts or stock options contracts traded in Hong Kong that may be held or controlled by a person, and (ii) require a person holding or controlling a reportable position for futures contracts or stock options contracts to file a notice.

Key proposals related to funds

One of the SFC's key proposals is to provide clarity and legal certainty about how the Rules are to be applied to unit trusts and mutual funds, which is summarised below:

Application to unit trusts

- The SFC noted there might have been misconception that a fund established as a unit trust (which does not have a legal personality) is not subject to the position limits and reporting requirements under the Rules. The proposed amendments seek to clarify that, for a unit trust, the **trustee** shall have the obligation to observe the prescribed limits in relation to the positions of the unit trust, as well as to report the unit trust's reportable positions.
- 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**. Therefore, 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 discretion to comply with the Rules.
- For reporting on behalf a unit trust, the **unit trust's name** should be specified in the notice rather than the trustee's identity.
- For the purposes of the Rules, a unitholder is not regarded, only by virtue of the unitholder holding one or more units in a unit trust, as holding or controlling futures contracts or stock option contracts in respect of a unit trust.

Application to umbrella funds

- Given that each sub-fund is managed independently accordingly to its own investment policy, the SFC would like to clarify that the prescribed limits and reportable positions are applicable to **each sub-fund** individually and separately, as if each sub-fund were a stand-alone fund.

- However, for a fund manager who has discretion over the positions of all the sub-funds in question, aggregation would still be expected. As the fund manager has discretion in relation to the positions held or controlled for the funds it manages, it is not allowed to disaggregate the positions for each fund for the purposes of applying the Rules.

The SFC believes the proposed changes would ensure that unit trusts and sub-funds of an umbrella fund observe prescribed limits and report reportable positions in a manner which is consistent with how these positions are managed and monitored in practice.

However, unit trusts, umbrella funds and their key operators such as the trustees, custodians and fund managers will have to adjust their monitoring arrangements and systems to ensure compliance with the prescribed limits and reporting requirements, if they are currently monitoring the positions in a different manner. Nevertheless, the SFC considers that overall the proposed amendments should not create undue burden on the fund management industry.

Other proposals

The other proposals in the consultation include:

- expanding the list of specified contracts so as to enable exchange participants and asset managers to seek authorisation from the SFC to hold or control certain new contracts in excess of the prescribed limit;
- amending the Rules to provide for reporting of positions traded during holidays;
- clarifying that a clearing participant is not considered to have discretion over a client's position when it exercises its right to dispose of its client's position due to the client's default;
- introducing an authorisation mechanism for a clearing participant to hold excess positions when providing clearing services; and
- prescribing the position limits and reportable positions for new futures and options contracts.

Market participants and interested parties are invited to submit their comments on the proposals by 27 June 2022. The SFC has not indicated any proposed implementation timeline in the consultation paper.

Mainland China briefing – May 2022

Taylor Hui and Faye Meng

Recent developments in cross-border channels

Earlier this month, the Shanghai Municipal Financial Regulatory Bureau (**SMFRB**) announced that a number of global asset management companies including Hamilton Lane, CCB International, CDH Investments and JAFCO Asia have been approved as Qualified Foreign Limited Partners (**QFLP**), whereas BlackRock and Anzhong Investment have been granted approval to participate in Qualified Domestic Limited Partners (**QDLP**) business.

BlackRock's retail fund management company has become the first wholly foreign-owned retail fund manager to be granted a QDLP licence in China, meanwhile Anzhong Investment has become the first wholly-foreign-owned-enterprise private fund management (**WFOE PFM**) to conduct QDLP business in China.

In addition, according to the SMFRB, a number of global asset management companies have been granted additional QFLP or QDLP quotas, and in the meantime several managers such as Neuberger Berman are planning to apply for additional quotas. It is considered as a sign of their confidence in Shanghai's financial market in the long term, despite the uncertainties brought by the COVID-19 situation in the city.

In May 2021, the Shanghai Government issued *Several Opinions on Accelerating the Construction of Shanghai Global Asset Management Centre (Opinions)*, which include its plan to improve the QDLP and QFLP regimes, such as to encourage eligible institutions to apply for QDLP or QFLP licences, and for the first time to allow foreign asset management institutions to use the same entity to operate its QDLP and WFOE PFM business. We consider the above recent developments are further steps following the Opinions, and we expect that in the long term more international fund managers may expand their business in China to take advantage of the cross-border regimes.

China adopts the Futures and Derivatives Law

On 20 April 2022, China adopted the Futures and Derivatives Law (the **FDL**, available [here](#) in Chinese). It will take effect on 1 August 2022.

The FDL will be the fundamental law in China regulating the futures market and the over-the-counter derivatives market in China. It is composed of 13 chapters focusing on trading in futures and derivatives, settlement and delivery, protection of investors, supervision of institutions, cross-border trading and regulatory cooperation, and legal liability.

It is worth noting that there is a chapter in the FDL specifically regarding cross-border trading and regulatory cooperation, which provides for the legal basis for foreign participants to participate in the Chinese futures market. According to the FDL, an overseas institution that plans to engage in marketing, promotion, or trade solicitation in the futures market within China shall obtain the approval of the China Securities Regulatory Commission, and the relevant provisions of the FDL shall apply.

Hong Kong SFC licensing and compliance hints – May 2022

Connie Chan

What needs to be done if a licensed firm wants to appoint someone who is not a responsible officer to submit its financial returns?

The licensed firm would need to obtain the SFC's prior approval for the person to be an authorised officer for signing financial resources returns by submitting an application through the [WINGS platform](#). Aside from providing information on the identity, experience and qualification of the proposed signatory and submitting an organisational chart of the licensed firm, the new electronic application form requires explanation as to how the firm would ensure the proposed signatory will be able to exercise independent judgement as to the truth and correctness of the financial returns, as well as how the knowledge and experience of the proposed signatory will enable them to understand the contents of the financial returns and related regulatory requirements. Once the person becomes an authorised person, they can then register a WINGS user account for submitting the financial returns of the licensed firm.

As part of the review of the competence of an individual to submit the financial returns, the licensed firm needs to assess whether the person has knowledge and experience in connection with the Securities and Futures (Financial Resources) Rules, which are very specific rules and may differ from the generally accepted accounting principles in certain instances. The individual is also expected to be senior enough in the licensed firm (e.g. assuming the position of Manager-in-Charge of the Finance and Accounting function) to be responsible for making the filings.

Recent publications

[Listing Rule amendments to complement SFC's new Code of Conduct requirements on bookbuilding and placing activities in ECM transactions](#)

Want to know more?

Jeremy Lam
Partner

jeremy.lam@deacons.com
+852 2825 9732

Su Cheen Chuah
Partner

sucheen.chuah@deacons.com
+852 2825 9651

Pinky Siu
Partner

pinky.siu@deacons.com
+852 2825 9568

Taylor Hui
Partner

taylor.hui@deacons.com
+852 2826 5368

Fiona Fong
Partner

fiona.fong@deacons.com
+852 2826 5316

Joyce Li
Partner

joyce.li@deacons.com
+852 2825 9318

Alwyn Li
Partner

alwyn.li@deacons.com
+852 2825 9627

Ming Chiu Li
Partner

mingchiu.li@deacons.com
+852 2825 9752

Scott Carnachan
Consultant

scott.carnachan@deacons.com
+852 2825 9265

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