

L.N. 189 of 2002**SECURITIES AND FUTURES (LEVERAGED FOREIGN EXCHANGE TRADING—EXEMPTION) RULES**

(Made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Interpretation

In these Rules, “listed currency warrant” (上市貨幣權證) means a warrant—

- (a) that gives the holder of the warrant a right to receive from the issuer of the warrant a cash payment, on exercise, in the event that one specified currency is worth more or less (as the case may be) in relation to another specified currency on a specified date; and
- (b) that—
 - (i) is listed; or
 - (ii) is not listed, but it is reasonably foreseeable will be listed within 14 days after the day on which the warrant is first offered for sale.

3. Persons prescribed for purposes of paragraph (xiii) of definition of “leveraged foreign exchange trading”

For the purposes of paragraph (xiii) of the definition of “leveraged foreign exchange trading” in Part 2 of Schedule 5 to the Ordinance, a person described in—

- (a) section 4(1);
- (b) section 5; or
- (c) section 6,

is prescribed as a person referred to in that paragraph for the purposes of any provision of the Ordinance.

4. Person referred to in section 3(a)

- (1) The person referred to in section 3(a) is a corporation that—
 - (a) satisfies the conditions set out in subsection (2); and
 - (b) complies with the requirement in subsection (3).
- (2) The conditions referred to in subsection (1)(a) are that—
 - (a)
 - (i) the corporation has a qualifying credit rating or has such a rating for any of its debt instruments; or
 - (ii) the shares of the corporation are wholly owned, directly or indirectly, by another corporation, or by a partnership, which has a qualifying credit rating or has such a rating for any of its debt instruments; and
 - (b)
 - (i) the principal business of the corporation is not in leveraged foreign exchange spot transactions; or
 - (ii) the average principal amount of each leveraged foreign exchange spot transaction entered into by the corporation, calculated for each financial year of the corporation, is not less than \$7.8 million.
- (3) The corporation shall, annually, within 4 months after the end of its financial year—
 - (a) notify the Commission in writing that it satisfies the conditions set out in subsection (2); and
 - (b) provide the Commission with such information as the Commission may reasonably require to enable the Commission to verify that the corporation does satisfy the conditions set out in subsection (2).
- (4) If a corporation ceases to satisfy the conditions set out in subsection (2)(a), it shall within 7 days thereof notify the Commission in writing of the cessation.
- (5) For the purposes of this section, the average principal amount of each leveraged foreign exchange spot transaction entered into by a corporation shall be computed by dividing the aggregate of all principal amounts of leveraged foreign exchange spot transactions entered into by the corporation during the relevant financial year by the total number of such transactions entered into by the corporation during that financial year.

5. Person referred to in section 3(b)

The person referred to in section 3(b) is—

- (a) a licensed person in so far as the licensed person performs an act for or in connection with a contract or arrangement or a proposed contract or arrangement for the sale, purchase or transfer of a listed currency warrant; or

- (b) a client of a licensed corporation in so far as the client performs an act for or in connection with a contract or arrangement or a proposed contract or arrangement between the licensed corporation and the client for the sale, purchase or transfer of a listed currency warrant.

6. Person referred to in section 3(c)

The person referred to in section 3(c) is a corporation which is the issuer of any listed currency warrant or a corporation in the same group of companies as the issuer of any listed currency warrant in so far as the corporation performs an act for or in connection with a contract or arrangement or a proposed contract or arrangement for the sale, purchase or transfer of the listed currency warrant—

- (a) between a corporation (whether or not it is the corporation first referred to in this section) which is the issuer of the listed currency warrant or a corporation in the same group of companies as the issuer of the listed currency warrant, and a licensed corporation;
- (b) between a corporation (whether or not it is the corporation first referred to in this section) which is the issuer of the listed currency warrant and a corporation in the same group of companies as the issuer of the listed currency warrant; or
- (c) between corporations which are both in the same group of companies as the issuer of the listed currency warrant but are not themselves the issuer.

Andrew Len Tao SHENG
Chairman,
Securities and Futures Commission

25 November 2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (Cap. 571). They prescribe certain persons as belonging to a class of persons for the purposes of paragraph (xiii) of the definition of “leveraged foreign exchange trading” in Part 2 of Schedule 5 to the Ordinance. This means that any act performed by such persons for or in connection with any contract or arrangement or a proposed contract or arrangement is excluded from that definition. A consequence is that the prescribed persons need not be licensed for such activities.