

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (LEVERAGED FOREIGN EXCHANGE TRADING - EXEMPTION) RULES

INTRODUCTION

Pursuant to section 397(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) has made the Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules (the Rules) at the Annex.

BACKGROUND

The SFO

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the SFC to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council established the Subcommittee on Draft Subsidiary Legislation to be made under the SFO (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of draft subsidiary legislation, including the vires to make them.

THE PROPOSALS

Major policy considerations

4. The Rules supplement the regulatory regime in Part V of the SFO in

respect of persons carrying on the business of leveraged foreign exchange trading. The term “leveraged foreign exchange trading” in Part 2 of Schedule 5 of the SFO is described in broad terms but a range of acts and transactions are excluded from the definition. The acts excluded include, under paragraph (xiii) of the definition, acts performed for or in connection with any contract or arrangement by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made by the SFC under section 397 of the SFO. Persons excluded by such rules do not have to be licensed under Part V to carry on a leveraged foreign exchange trading business.

5. The Rules set out the three classes of persons that are excluded. The first class replicates that in the Leveraged Foreign Exchange Trading (Exemption) Rules (Cap. 451 Sub. Leg. E) prescribed under the Leveraged Foreign Exchange Trading Ordinance, as set out in paragraph 8 below. The corporations concerned generally target the non-retail market and therefore excluding them from the licensing regime would not compromise investor protection.

6. The second and third classes (see paragraphs 9 and 10 below) have been included to facilitate the development of the listed currency warrant market by removing unnecessary technical obstacles without compromising investor protection.

THE RULES

7. Section 3 of the Rules prescribes that the three classes of persons to be excluded from the definition of “leveraged foreign exchange trading” are those set out in sections 4, 5 and 6 respectively.

8. Section 4 prescribes that a corporation is to be excluded if it has, or whose parent company has, a qualifying credit rating, provided that either (a) the principal business of the corporation is not in leveraged foreign exchange spot transactions; or (b) the average principal amount in each leveraged foreign exchange spot transaction entered into by the corporation is not less than \$7.8 million. It also requires the corporation in question to notify the SFC within 4 months after the end of its financial year that it satisfied the condition for exclusion and provide the SFC with necessary information for verification. The corporation also needs to notify the SFC within 7 days of its ceasing to satisfy the conditions.

9. Section 5 prescribes that a person is to be excluded if it is a licensed corporation or a client of such a licensed corporation performing an

act in connection with the sale, purchase or transfer of a listed currency warrant.

10. Section 6 prescribes that a person is to be excluded if it is an issuer, or a corporation in the same group of companies as the issuer, of a listed currency warrant performing an act in connection with the sale, purchase or transfer of the listed currency warrant within the same group or with a licensed corporation.

PUBLIC CONSULTATION

11. The SFC released a consultation document and an exposure draft of the Rules on 5 June 2002 for comment by the public. Two submissions were received. The Rules were refined to better reflect the policy intention and to improve drafting

12. A draft of the Rules was considered by the Subcommittee at its meeting on 15 July 2002. The SFC provided further clarification to the Subcommittee after the meeting. No further concerns were expressed by members of the Subcommittee.

FINANCIAL AND STAFFING IMPLICATIONS

13. There are no financial or staffing implications for the Government.

COMMENCEMENT DATE

14. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the commencement date by the end of 2002.

PUBLICITY

15. The Rules will be published in the Gazette on 29 November 2002. The SFC will issue a press release on the same day.

ENQUIRIES

16. For any enquiries on this brief, please contact Mr. Alvin Lok of the Licensing Department of the SFC at 28427695 or Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.

The Securities and Futures Commission
25 November 2002