



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Conclusions on Further Consultation on the Securities and Futures (Short Position Reporting) Rules

10 February 2012



Table of Contents

Executive Summary	1
SFC's responses to the comments received on the Rules	3
Net short position	3
Jointly owned positions	4
Criminal sanctions.....	4
Reporting in contingency situations.....	5
Modifications to the Rules	5
Concluding remarks and implementation	6
Appendix A - Securities and Futures (Short Position Reporting) Rules (The version attached to the Further Consultation)	8
Appendix B - Securities and Futures (Short Position Reporting) Rules (The Revised Version)	13
Appendix C - Short position reporting procedure and template	20
Appendix D - Lists of non-confidential respondents	23

Executive Summary

1. On 18 October 2011, the Securities and Futures Commission (the SFC) released the Consultation Conclusions and Further Consultation on the Securities and Futures (Short Position Reporting) Rules¹ (the Rules) (the paper hereinafter will be referred to either as the Conclusions or the Further Consultation, as appropriate). The Further Consultation was on the change to reporting of net short positions. The change was made to address the industry's difficulties in reporting gross short positions originally proposed by the SFC. This paper summarises the key comments received and provides the SFC's responses to the feedback.
2. We received 10 written responses which included comments from professional services firms, financial institutions, and professional associations representing the views of their members. The respondents' key comments can be broadly summarised as follows:
 - (a) Most respondents supported reporting of net short positions. However, one respondent submitted that in cases of corporate "umbrella" funds that have a number of sub-funds, it is not appropriate to aggregate the positions of the sub-funds for reporting purposes, as each sub-fund is managed independently;
 - (b) In relation to the proposal for a legal entity, which organises and conducts its trading activities on a trading unit/book basis, to report the sum of the net short positions across trading units/books (the Proposal), a few respondents had concerns as they were uncertain how the Proposal would apply in practice. Two respondents also pointed out that having the Proposal as an alternative approach to reporting would lead to incompatibility of data reported;
 - (c) To avoid multiple reporting, we proposed to lay down in FAQs or guidance that in cases where a reportable short position is jointly owned, a report submitted by a designated joint owner for that reportable short position will be regarded as having complied with the Rules. Three respondents were of the view that FAQs or guidance note would not address the inconsistency with the Rules, which based on a strict reading, have the effect of requiring all joint owners to report; and
 - (d) A few respondents objected to imposing criminal sanctions for a breach of the Rules.
3. After carefully considering all comments received, the SFC's response to the market feedback is as follows:
 - (a) Short positions to be reported to the SFC will be on a net basis;
 - (b) For corporate "umbrella" funds that have underlying sub-funds, we have provided in the Rules that the net short position that is attributable to each sub-fund is to be treated and reported separately and is not to be aggregated with the positions of other sub-funds within the same "umbrella" fund;
 - (c) The Proposal will be retained to enable those market participants whose trading activities are conducted on a trading unit/book basis to leverage on their current trading infrastructure for short position reporting. As mentioned in the Further

¹ http://www.sfc.hk/sfc/doc/EN/speeches/consult/Short_Position_%20Rules_18Oct2011_English.pdf

Consultation, the SFC will issue guidelines on the application of the Proposal in due course;

- (d) On the question of reporting jointly owned positions, we envisage that this issue is most likely to arise in relation to short positions owned by partnerships. Consequently, we have provided in the Rules that if the partners in a partnership have a reportable short position, then a report submitted by a partner or another person authorized by all the partners, on behalf of those partners, is regarded as having complied with the Rules. A person who has a reportable short position as a partner in more than one partnership must treat the short position attributable to each partnership separately; and
 - (e) With regard to imposing criminal sanction for a breach of the Rules, as explained in the Conclusions, this approach is consistent with similar provisions in the SFO and other rules made by the SFC for non-compliance with notification requirements. We do not believe there is any compelling reason to deviate from that approach.
4. The Chief Executive in Council will be invited to amend the Securities and Futures (Offences and Penalties) Regulation (Cap 571AH) (Penalties Regulation) to provide that a person who, without reasonable excuse, contravenes the duty to report under the Rules commits an offence and is liable, on conviction on indictment to a fine at level 6² and a term of imprisonment for two years, and on summary conviction, a fine at level 3³ and a term of imprisonment for six months.
 5. The Rules have been modified. Apart from the changes mentioned in 3(b) and (d) above, the other modifications, which are not substantive changes, are made to enhance clarity. Details of the modifications are set out in this paper. Attached at Appendix A are the Rules that were enclosed with the Further Consultation and at Appendix B, the revised Rules.
 6. The reporting template has been slightly modified; a new reporting field “net short position value” has been added. This change was made to bring the reporting template into line with the Rules. A sample copy of the revised reporting template is attached at Appendix C for reference.
 7. Pursuant to section 397(2) of the Securities and Futures Ordinance (SFO), the SFC has consulted the Financial Secretary on the Rules and on which the Financial Secretary has given his support. The SFC will be submitting the Rules to the Legislative Council for negative vetting following publication of this paper. The proposed commencement date of the Rules is 18 June 2012. We plan to implement the Rules soon after the completion of the legislative process. In this regard, the SFC will announce the implementation time table once it is firmed up. We encourage market participants to start preparing the necessary changes to their systems and procedures.

² The current level 6 fine is \$100,000.

³ The current level 3 fine is \$10,000.

SFC's responses to the comments received on the Rules

8. We invited the public to comment on a modification in the Rules to require reporting of net short positions. The change was made to address the industry's concern with difficulties in reporting gross short positions originally proposed by the SFC. In this section, we respond to the feedback we received to the Further Consultation.
9. We received 10 written responses which included comments from professional services firms, financial institutions, and professional associations representing the views of their members. We thank the respondents for their comments. Appendix D lists non-confidential respondents.

Net short position

Market feedback

10. Most respondents supported reporting net short positions to the SFC, while a few objected to reporting per se as they do not see or believe there is a need to do so. However, one respondent submitted that in cases of corporate "umbrella" funds that have a number of sub-funds, it is not appropriate to aggregate the positions of the sub-funds for reporting purposes, as each sub-fund is managed independently.
11. A few respondents had concerns with the Proposal as they were uncertain how it would apply in practice. Two respondents also pointed out that the net short positions reported by legal entities pursuant to the Proposal would not be compatible with the data reported by those that determined their net short positions by aggregating their positions at the legal entity level.

SFC's response

12. In relation to reporting in cases of corporate "umbrella" funds, we see the merit in the argument that it may not be appropriate to aggregate the positions of the underlying sub-funds as we noted that each sub-fund operates as a separate unit and its respective portfolio is segregated from other sub-funds. After due consideration, we decided to provide in the Rules that in determining whether a corporate "umbrella" fund has a reportable short position, the position that is attributable to each sub-fund is to be treated separately and is not to be aggregated with the positions of other sub-funds within the same "umbrella" fund. This means that a corporate umbrella fund would have to report the reportable short position of each sub-fund separately.
13. We will retain the Proposal to enable those market participants whose trading activities are conducted on a trading unit/book basis to leverage on their current trading infrastructure for short position reporting. As mentioned in the Further Consultation, the SFC will issue guidelines on the application of the Proposal in due course.
14. Market participants who choose to determine their reportable short positions following the Proposal will in fact submit themselves to a stricter requirement. The Proposal, which precludes netting of short positions against long positions across trading units/books, will increase the chance of a market participant's short position hitting the reporting threshold. In other words, a legal entity may have to report its short position to the SFC more frequently than if it were to aggregate its long and short positions across trading units/books. Noting that the Proposal is a stricter requirement, market participants would have to decide for themselves whether it is appropriate to follow the Proposal.

Nonetheless, the SFC will lay down in its guidelines that a person who reports to the SFC its short position that is determined in accordance with the Proposal will be regarded as having complied with the duty to report under the Rules. We envisage market participants who may be inclined to adopt the Proposal would be those whose current trading infrastructure monitors positions in shares on a per trading unit/book basis – an approach that is acceptable under The Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements⁴ and widely adopted among financial institutions.

15. We recognised that the Proposal might give rise to some inconsistencies in the short positions data reported to the SFC. However, we believe the short positions reported would nonetheless provide useful information to the SFC in assessing the short selling activities in the marketplace. It is important to point out that those who opt to follow the Proposal are expected to apply that approach consistently.

Jointly owned positions

Market feedback

16. To avoid multiple reporting, we proposed to lay down in FAQs or guidance that in cases where a reportable short position is jointly owned, a report submitted by a designated joint owner for that reportable short position will be regarded as having complied with the Rules. Three respondents were of the view that FAQs or guidance note would not address the inconsistency with the Rules, which based on a strict reading, have the effect of requiring all joint owners to report. One respondent suggested that the Rules should exempt all other joint owners from reporting if proper reporting is done by one of the joint owners.

SFC's response

17. We understand the respondents' concerns, as from market participants' perspective, there might be a perceived risk that the joint owners would still not be regarded as having complied with the Rules notwithstanding explanations set out in the FAQs or guidance. We have addressed the respondents' concerns in the Rules. As we envisaged this question of reporting jointly owned positions is most likely to arise in relation to short positions owned by partnerships, we have provided in the Rules that if the partners in a partnership have a reportable short position, then 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 Rules. We have 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.

Criminal sanctions

Market feedback

18. A few respondents disagreed with imposing criminal sanctions for a breach of the duty to report under the Rules. The main argument was that inadvertent non-compliance which could be due to oversight, miscalculation or system error does not warrant criminal sanctions. One of such respondents also believed that the market impact due to non-

⁴ This guidance was issued to clarify the SFC's policy intent and positions on issues raised by industry so as to facilitate industry compliance with the governing provisions of short selling in the SFO.

compliance with the Rules would be limited as compared to that arising from non-compliance with the notification requirements under Part XV of the SFO.

SFC's response

19. As stated in the Conclusions, imposing criminal sanctions for a breach of the duty to report under the Rules and the proposed penalties would be in line with the offences of a similar nature already prescribed in the SFO, and other rules made by the SFC⁵. We see no merit in the respondents' argument to deviate due to concerns with inadvertent non-compliance as only a contravention of the Rules, *without reasonable excuse*, would constitute an offence. We also do not agree with the respondent's comment regarding the impact of non-compliance as the notification requirements under Part XV of the SFO do not address the same risks as the duty to notify short positions under the Rules.
20. It is to be noted that the Chief Executive in Council will be invited to amend the Penalties Regulation to provide that a person who, *without reasonable excuse*, contravenes the duty to report under the Rules commits an offence and is liable, on conviction on indictment to a fine at level 6 and a term of imprisonment for two years, and on summary conviction, a fine at level 3 and a term of imprisonment for six months.

Reporting in contingency situations

Market feedback

21. Under the Rules, in a contingency situation, where daily reporting of net short positions is required, the reports must be submitted to the SFC by the following business day. One respondent requested to be allowed to report its short positions in the early morning of the second business day. Being a globally active firm, the respondent anticipated some operational challenges in meeting the statutory deadline given that its businesses span across the different time zones.

SFC's response

22. Our position on the timing of submission of reports in a contingency situation was clearly stated in the Conclusions. We believe it is crucial under stressed market conditions that the SFC receives timely information to carry out its functions to achieve its regulatory objectives which include reducing systemic risks in the securities and futures industry. Thus, we will require reportable short positions to be reported on or before the following business day in contingency situations.

Modifications to the Rules

23. The Rules have been modified; some changes were made to address issues raised by respondents as mentioned in paragraphs 10 and 16 above and others are changes to enhance clarity. Apart from Rule 4(6), 4(7) and 4(8) added to reflect our new policies in light of market feedback, we believe the other modifications do not entail substantive changes. The modifications made to the Rules include the following:
 - For clarity, in relation to reportable short positions we have (1) moved the meaning of this term to its own section (Rule 3), and rearranged this so as to more clearly provide for the calculation of a person's net short position and the threshold by

⁵ For example, Section 328 of the SFO and Section 8 of Securities and Futures (Contracts Limits and Reportable Positions) Rules.

reference to formulae; and (2) removed the reference to beneficial ownership of reportable short positions (used in section 3(1) of previous draft), so that references to “a person who has a reportable short position” are now consistent in the Rules.

- The duty to report to the SFC and the time for reporting have been moved into separate provisions dealing with reporting under normal market conditions set out in Rule 4(1) and 4(2) and reporting in contingency situations, Rule 4(3) and 4(4);
- Rule 4(6) provides that in determining whether a corporation has a reportable short position, the position in any specified shares that is attributable to a particular collective investment scheme must be treated separately and is not to be aggregated with the position of other schemes within the same corporation;
- Rule 4(7) provides that in determining whether a person has a reportable short position, this person’s positions in different partnerships must be treated separately and are not to be aggregated;
- Rule 4(8) sets out that if the partners in a partnership have a reportable short position, then 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 Rules;
- The detailed particulars that a person must provide in the reporting form are now included in the Rules (Rule 4(9)(b)); and
- In relation to a daily reporting requirement notice (referred to in previous draft as a “section 5(1) notice”), Rule 7(2)(b) now requires the SFC to publish in the Gazette at least 24 hours before effective date of the notice. The SFC may in addition publish the notice on its website or by other appropriate means.

Concluding remarks and implementation

24. This paper summarises the comments received in response to the Further Consultation and sets out our responses to the feedback.
25. Pursuant to section 397(2) of the SFO, the SFC has consulted the Financial Secretary on the Rules and on which the Financial Secretary has given his support.
26. Following publication of this paper, 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. We plan to implement the Rules soon after the completion of the legislative process. In this regard, the SFC will announce the implementation time table once it is firmed up.
27. Market participants are encouraged to subscribe to an email alert service named “Short Position Reporting Related Matters” that will be provided by the SFC. This service will be opened for subscription on the SFC’s website upon publication of this paper. Through this service, subscribers will receive email alerts of the latest developments in relation to the short position reporting regime such as:
 - the implementation time table;
 - publication of FAQs or guidance note;

- publication of the list of specified shares and subsequent changes to the list;
- notification that the reporting system is ready for testing;
- notification that daily reporting of short position requirement is invoked in a contingency situation and the corresponding notification relating to the cessation of daily reporting requirement.

The version attached to the Further Consultation

SECURITIES AND FUTURES (SHORT POSITION REPORTING) RULES

(made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (Cap. 571), and under section 397(2) of that Ordinance after consultation with the Financial Secretary)

PART 1

PRELIMINARY

1. Commencement

- (1) Subject to subsection (2), these Rules come into operation on [date].
- (2) Section 4 comes into operation on a day to be appointed by the Commission by notice in the Gazette.

2. Interpretation

In these Rules –

“business day” has the meaning given by section 1 of Part 1 of Schedule 1 to the Ordinance except that it does not include Saturday;

“reportable short position” has the meaning given by section 3(2);

“reporting day” means –

- (a) Friday, or if the Stock Exchange does not open for trading on that day, the last weekday before Friday on which the Stock Exchange is open for trading; or
- (b) when a notice under section 5(1) is in force, each day on which the Stock Exchange is open for trading;

“reporting deadline” means –

- (a) within two business days after the reporting day; or
- (b) when a notice under section 5(1) is in force, within one business day after the reporting day.

“specified ATS” means an authorized automated trading service specified in Schedule 2;

“specified shares” means shares in a corporation which are listed or admitted to trading on the Stock Exchange and specified in Schedule 1;

“Stock Exchange” means the recognized stock market operated by the Stock Exchange Company.

PART 2

REPORTABLE SHORT POSITIONS

3. Notice of reportable short positions to be given to the Commission

- (1) Subject to subsection (3), a person who beneficially owns a reportable short position at the close of trading on the Stock Exchange on the reporting day must notify the Commission in accordance with this section by the reporting deadline.
- (2) For the purposes of subsection (1), a person has a reportable short position when the person has a position in specified shares -
 - (a) as a result of selling specified shares at, on, through or by means of any one or more of the Stock Exchange or a specified ATS where –
 - (i) at the time of each sale comprised in the position, the person did not have a presently exercisable and unconditional right to vest the shares in the purchaser; or
 - (ii) each sale comprised in the position was the subject of a short selling order; and
 - (b) the number of specified shares in the position remaining after deducting the number of specified shares beneficially owned by the person (if any), multiplied by the closing price of the specified shares on the reporting day as determined in accordance with the rules of the Stock Exchange (or, if on the reporting day the shares are suspended from trading on the Stock Exchange, the last closing price before the suspension) is equal to or more than the lower of –
 - (i) 0.02% of that closing price multiplied by total number of specified shares issued by the corporation; and
 - (ii) \$30 million.
- (3) Where a position in specified shares is held on trust –
 - (a) subsection (1) does not apply to a beneficiary of the trust and instead applies to the person who is the trustee of the trust; and
 - (b) in determining whether that person has a reportable position, the position in specified shares attributable to each such trust is to be treated separately and not aggregated.
- (4) A notice required to be submitted to the Commission under subsection (1) must -
 - (a) be in the form specified by the Commission under section 402 of the Ordinance for the purposes of this section;
 - (b) contain the particulars specified in the form including particulars relating to the person and the reportable short position; and
 - (c) be submitted to the Commission electronically by means of an online communication system approved by the Commission under subsection (5) for the purposes of this section.
- (5) The Commission may, for the purposes of this section, approve an online communication system.
- (6) Where the Commission approves an online communication system under subsection (5), it must as soon as reasonably practicable publish directions and instructions for the use of that

system in the manner that it considers appropriate.

4. Commission to publish particulars of reported short positions

- (1) Subject to subsections (2) and (3), the Commission must, as soon as reasonably practicable after the reporting deadline, publish such particulars of the reportable short positions notified to it under section 3(1) as it considers appropriate.
- (2) Subsection (1) does not require the Commission to publish particulars –
 - (a) earlier than five business days after the reporting day; or
 - (b) when a notice under section 5(1) is in force, more frequently than once a week.
- (3) Any particulars published under subsection (1) must be, so far as reasonably practicable, presented in a way which prevents the identity of a person who has submitted a notice under section 3(1) and that person's reportable short position being ascertained from it.
- (4) Particulars published under this section are not subsidiary legislation.

PART 3

DAILY REPORTING REQUIREMENTS

5. Commission may require daily reporting

- (1) The Commission may publish a notice in accordance with this section declaring that paragraph (b) of the meanings given by section 2 to "reporting day" and "reporting deadline" will have effect from the date specified in the notice, if the Commission believes that –
 - (a) circumstances exist, in Hong Kong or elsewhere, which threaten or may threaten the financial stability of Hong Kong; and
 - (b) as a result of those circumstances, the Commission needs to be notified of reportable short positions on a daily basis.
- (2) A notice under subsection (1) must be –
 - (a) published on the Commission's website at least 24 hours before the date specified in the notice; and
 - (b) published or announced in the ways (if any) and at the times that the Commission considers appropriate to bring the notice to the attention of persons likely to be affected by the notice.
- (3) If a notice published under subsection (1) is in force and the Commission believes that it no longer needs to be notified of reportable short positions on a daily basis, the Commission must publish on its website a notice declaring that the notice under subsection (1) will cease to have effect from the date specified in the notice.
- (4) A notice published under subsection (1) or (3) is not subsidiary legislation.

SCHEDULE 1

[section 2]

SPECIFIED SHARES

1. Shares which are a constituent of the Hang Seng Index.
2. Shares which are a constituent of the Hang Seng China Enterprises Index.
3. Shares which are –
 - (i) determined by the Stock Exchange to be a “designated security” in accordance with the rules of the Stock Exchange; and
 - (ii) classified by the Hang Seng Indexes Company Limited as financial stocks in accordance with the Hang Seng Industry Classification System.

SCHEDULE 2

[section 2]

SPECIFIED ATS

Note: the Commission intends to recommend to the Chief Executive in Council that the Securities and Futures (Offences and Penalties) Regulation (Cap. 571AH) be amended pursuant to section 398(6) of the Securities and Futures Ordinance (Cap. 571) to provide that a person who contravenes section 3(1) commits an offence and is liable on conviction to a penalty to be specified. The maximum penalties that may be specified by the Chief Executive in Council are –

- (a) on conviction on indictment a fine of \$500,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

The Revised Version

Securities and Futures (Short Position Reporting) Rules

(Made by the Securities and Futures Commission under section 397(1) and (2) of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary)

Part 1

Preliminary

1. Commencement

- (1) Subject to subrule (2), these Rules come into operation on 18 June 2012.
- (2) Rule 6 comes into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette.

2. Interpretation

In these Rules—

business day (營業日) means a day other than—

- (a) a public holiday;
- (b) a Saturday; and
- (c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

daily reporting requirement notice (每日申報規定公告) means a notice published under rule 7(1);

reportable short position (須申報淡倉) has the meaning given by rule 3;

reporting day (申報日) means—

- (a) unless paragraph (b) applies, the day specified in rule 4(1); or
- (b) if a daily reporting requirement notice is in force, the day specified in rule 4(3);

reporting deadline (申報期限) means—

- (a) unless paragraph (b) applies, the period specified in rule 4(2); or
- (b) if a daily reporting requirement notice is in force, the period specified in rule 4(4);

specified ATS (指明自動化交易服務) means an authorized automated trading services specified in Schedule 2;

specified shares (指明股份) means shares in a corporation which are listed or admitted to trading on the Stock Exchange and specified in Schedule 1;

Stock Exchange (證券交易所) means the recognized stock market operated by the Stock Exchange Company.

3. Reportable short position

- (1) In these Rules, a person has a reportable short position in any specified shares if the person has a net short position value in the specified shares that is equal to or more than the threshold specified in subrule (2)(b).
- (2) For the purposes of this rule—

- (a) the net short position value that a person has in any specified shares is calculated in accordance with the following formula—

$$(A - B) \times C$$

Where—

- A is the number of the specified shares in the person's short position;
- B is the number of the specified shares in the person's long position;
- C is the specified closing price of the specified shares;

- (b) in subrule (1), the threshold in relation to a reporting day is the lower of—

- (i) \$30 million; and
- (ii) 0.02% of the value of the total number of the specified shares issued by the corporation concerned, calculated in accordance with the following formula—

$$C \times D$$

Where—

- C is the specified closing price of the specified shares;
- D is the total number of the specified shares issued by the corporation, as at the close of trading on the Stock Exchange on the reporting day;

- (c) in paragraphs (a) and (b), specified closing price, in relation to any specified shares, is—

- (i) the closing price of the specified shares on the reporting day; or
- (ii) if on the reporting day the specified shares are suspended from trading on the Stock Exchange, the last closing price of the specified shares before the suspension,

as determined in accordance with the rules of the Stock Exchange Company.

- (3) In this rule—

long position (好倉), in relation to any specified shares, means the number of the specified shares that a person beneficially owns;

short position (淡倉), in relation to any specified shares, means the position in the specified shares that a person has as a result of selling the specified shares at or through the Stock Exchange or by means of any one or more specified ATS, or any combination of these methods of selling, where—

- (a) at the time of each sale comprised in the position, the person did not have a presently exercisable and unconditional right to vest the specified shares in the purchaser; or
- (b) each sale comprised in the position was the subject of a short selling order.

Part 2

Reportable Short Positions

4. Reportable short positions to be notified to Commission

- (1) Unless a daily reporting requirement notice is in force, subrule (2) applies to a person who has a reportable short position in any specified shares at the close of trading on the Stock Exchange on—
 - (a) the Friday of any week; or
 - (b) if the Stock Exchange does not open for trading on the Friday of any week, the last weekday before Friday on which the Stock Exchange is open for trading.
- (2) A person to whom this subrule applies must notify the Commission of the reportable short position within 2 business days after the day specified in subrule (1) in accordance with this rule.
- (3) If a daily reporting requirement notice is in force, subrule (4) applies to a person who has a reportable short position in any specified shares at the close of trading on the Stock Exchange on each day on which the Stock Exchange is open for trading.
- (4) A person to whom this subrule applies must notify the Commission of the reportable short position within 1 business day after the day specified in subrule (3) in accordance with this rule.
- (5) If a reportable short position in any specified shares is held on trust, the duty to notify under subrule (2) or (4) does not apply to a beneficiary of the trust and instead applies to the person who is the trustee of the trust as if that person were the beneficiary.
- (6) In determining whether a corporation has a reportable short position in any specified shares—
 - (a) the short position and the long position (if any) in the specified shares attributable to a particular collective investment scheme; and
 - (b) those attributable to another collective investment scheme,are to be treated separately and not to be aggregated.
- (7) In determining whether a person has a reportable short position in any specified shares—
 - (a) the short position and the long position (if any) in the specified shares attributable to any partnership; and
 - (b) those attributable to another partnership,are to be treated separately and not to be aggregated.
- (8) If the partners in a partnership have a reportable short position in any specified shares attributable to the partnership, those partners are regarded as having complied with the duty to notify under subrule (2) or (4) in respect of those specified shares if one of those partners or another person authorized by all those partners has submitted, on behalf of those partners, a notice that complies with subrule (9).
- (9) Notification to the Commission required under subrule (2) or (4) must—
 - (a) be in the form specified by the Commission under section 402 of the Ordinance for the purposes of this rule;
 - (b) contain—
 - (i) particulars identifying the person who has a reportable short position in specified shares;

- (ii) particulars of the net short position value and number of specified shares comprised in the reportable short position; and
 - (iii) the name and stock code of the specified shares comprised in the reportable short position; and
- (c) be submitted to the Commission electronically by means of an online communication system designated by the Commission under rule 5(1) for the purposes of these Rules.

5. Commission may designate online communication system

- (1) The Commission may, for the purposes of these Rules, designate an online communication system.
- (2) Where the Commission designates an online communication system under subrule (1), it must as soon as reasonably practicable publish directions and instructions relating to the use of that system in the manner that it considers appropriate.

6. Commission to publish particulars of reported short positions

- (1) Subject to subrules (2) and (3), the Commission must, as soon as reasonably practicable after the reporting deadline for a reporting day, publish in the manner that it considers appropriate the particulars of the reportable short positions notified to it in respect of the reporting day under rule 4(2) or (4) that it considers appropriate.
- (2) Subrule (1) does not require the Commission to publish particulars—
 - (a) earlier than 5 business days after the reporting day; or
 - (b) if a daily reporting requirement notice is in force, more frequently than once a week.
- (3) Any particulars published under subrule (1) must be, so far as reasonably practicable, presented in a way which prevents the identity of a person who has submitted a notice under rule 4(2) or (4) and that person's reportable short position from being ascertained from it.

Part 3

Daily Reporting Requirements

7. Daily reporting requirement notice

- (1) The Commission may publish a daily reporting requirement notice in accordance with this rule if the Commission believes that—
 - (a) circumstances exist, in Hong Kong or elsewhere, which threaten or may threaten the financial stability of Hong Kong; and
 - (b) as a result of those circumstances, the Commission needs to be notified of reportable short positions on a daily basis.
 - (2) A daily reporting requirement notice—
 - (a) must declare that, from the date specified in the notice, a person who has a reportable short position on each day on which the Stock Exchange is open for trading must notify the Commission of the reportable short position within 1 business day;
 - (b) must be published in the Gazette at least 24 hours before the date specified in the notice; and
 - (c) may be published or announced on the Commission's website and in any other manner and at the times that the Commission considers appropriate.
 - (3) If a daily reporting requirement notice is in force and the Commission believes that it no longer needs to be notified of reportable short positions on a daily basis, the Commission must publish on its website a notice (**cessation notice**) declaring that the daily reporting requirement notice is to cease to have effect from the date specified in the cessation notice.
 - (4) Neither a daily reporting requirement notice nor a cessation notice is subsidiary legislation.
-

Specified Shares

1. Shares which are a constituent of the Hang Seng Index.
 2. Shares which are a constituent of the Hang Seng China Enterprises Index.
 3. Shares which—
 - (a) are shares determined by the Stock Exchange Company to be a “designated security” in accordance with the rules of the Stock Exchange Company; and
 - (b) are shares classified by the Hang Seng Indexes Company Limited as financial stocks in accordance with the Hang Seng Industry Classification System.
-

Schedule 2

[r. 2]

Specified ATS

[This schedule is deliberately left blank]

Chief Executive Officer,
Securities and Futures Commission

2012

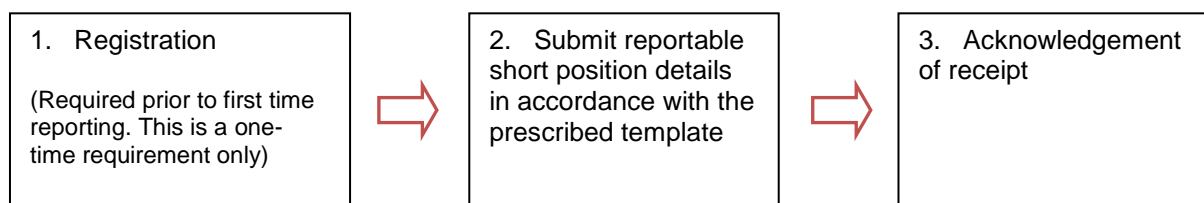
Short position reporting procedure and template

An overview

The SFC Online Services Portal (the Portal) provides access to a number of electronic services offered by the SFC to intermediaries and the investing public. Examples of the services include Electronic Submission of Financial Return, Subscription to SFC Update Alert, etc. The Portal can be accessed through SFC's website (www.sfc.hk) or the link: https://portal.sfc.hk/sfcportal/sfc_online_portal/online_service.html

For reporting of short positions pursuant to the Rules, a new service, Short Positions Reporting Service (the SPR Service) will be introduced on the Portal. Reportable short position reports are to be submitted electronically through this service.

The diagram below lays out the steps in the reporting procedure through the SPR Service. To assist market participants in preparing for reporting, prior to the Rules coming into effect, a user guide on the SPR Service will be provided as soon as possible following publication of the Conclusions paper.



Registration

Prior to first time reporting, a person who has the duty to report under the Rules must register with the SPR Service. A unique identity reference, the Short Position Reporting ID (SPRID), will be assigned to the registrant upon successful registration. Registration is only required once. The SPRID, being the identity reference of the registrant, must be cited in all his future submissions of reportable short position.

The registrant is required to provide the following information during registration:

Registrant's identification information including its:

- Name;
- Identification document type, (e.g. SFC Central Entity Reference, Hong Kong Business Registration, ISIN Code, Passport, Hong Kong ID, etc);
- Corresponding identification number;
- Nature of business (such as fund, financial institution etc.);
- Website address (if applicable); and
- Contact information - the name, correspondence address, email address, telephone number and facsimile number of at least one contact person who is able to answer to any queries from the SFC in relation to the registration and future notifications of reportable short position in respect of the registrant.

If an agent is reporting on his behalf, his agent will also be required to register and obtain a SPRID. The agent will, likewise, have to quote his SPRID when he submits the short positions reports for his principal.

Reporting template

The SPR Service will prescribe a template for reporting short positions which can be downloaded for use. The template will be in Comma Separated Value (CSV) format, which is commonly used for exchanging data. It can be edited by common spreadsheet program like Microsoft Excel or common text editor. A sample of the template is provided below for reference. Some important elements of the template to note:

- the first row of the template must be column headers, as shown; and
- in view this is in CSV format, there should be no comma or any sign inserted in completing the last two columns (i.e. the “Reportable short position (No. of shares)” column and the “Net short position value” column).

This refers to the Short Position Reporting ID (SPRID) of the person who has the duty to report under the Rules. SPRID is a unique 10-character alphanumeric code assigned by the SFC upon successful registration with the SPR Service.

This is the name of the person who holds the SPRID stated in the first column. It should be the name of the person who has the duty to report under the Rules. The name cited must be identical to that provided to the SFC to obtain the SPRID stated in the first column.

Short Position Reporting ID	Name	Stock code of the specified shares	Stock name of the specified shares	Reportable short position (No. of shares)	Net short position value
G3VA8F69MT	ABC Growth Fund	5	HSBC HOLDINGS	1000000	65250000
G3VA8F69MT	ABC Growth Fund	1	CHEUNG KONG	2000004	208200416.4
G3VA8F69MT	ABC Growth Fund	941	CHINA MOBILE	1000005	75850379.25

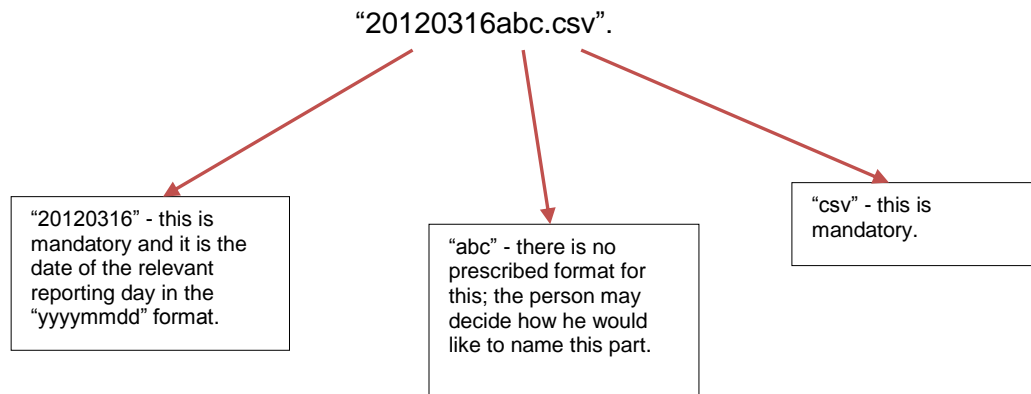
No leading zero is required for the stock code. The stock codes and names of the specified shares in CSV format will be available for downloading on SFC’s website.

It refers to the number of the specified shares in the person’s reportable short position.

It refers to the value of the reportable short position in Hong Kong Dollar. It should be calculated in accordance with the Rules. Up to 3 decimal places is allowed for this field.

File naming format

It is important to note that the name of the file to be submitted must start with the date of the “reporting day”, as specified in the Rules in “yyyymmdd” format, to which the report is related to, and end with “csv”. For example, a report from ABC Growth Fund in respect of the reporting day dated 16 March 2012 may be named as:



Lists of non-confidential respondents

(in alphabetical order)

1. Alternative Investment Management Association
2. Clifford Chance
3. ComplianceAsia Consulting Ltd
4. CompliancePlus Consulting Limited
5. Deacons
6. Hong Kong Investment Funds Association
7. Nomura International (Hong Kong) Limited on behalf of 15 Financial Institutions
 - i. Barclays Capital Asia Limited
 - ii. Citigroup Global Markets Asia Limited
 - iii. Credit Suisse (Hong Kong) Limited
 - iv. Goldman Sachs (Asia) L.L.C.
 - v. J.P. Morgan Securities (Asia Pacific) Limited
 - vi. Macquarie Capital Securities Limited
 - vii. Merrill Lynch Asia Pacific Limited
 - viii. Mizuho Securities Asia Limited
 - ix. Morgan Stanley Hong Kong Securities Limited
 - x. Nomura International (Hong Kong) Limited
 - xi. Societe Generale
 - xii. Standard Chartered Bank (Hong Kong) Limited
 - xiii. The Hongkong and Shanghai Banking Corporation Limited
 - xiv. The Royal Bank of Scotland plc
 - xv. UBS AG
8. Optiver Trading Hong Kong Limited
9. The Law Society of Hong Kong