



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

《證券及期貨(認可對手方)規則》 草擬本諮詢總結報告

HONG KONG
APRIL 2002

香港
2002年4月

引言

1. 2001年11月30日，證券及期貨事務監察委員會(“證監會”)發表有關《證券及期貨(認可對手方)規則》草擬本的諮詢文件(“諮詢文件”)，當中載列建議規則，以訂明作為認可對手方的合資格準則。
2. 上述的諮詢期在2001年12月29日結束，期間證監會接獲6份意見書。
3. 證監會在考慮過所接獲的意見後，認為應該修訂原本的草擬規則。證監會將會因應接獲的意見，就草擬規則作進一步的修訂。
4. 本報告旨在向有關人士分析該次諮詢期間提出的主要意見及證監會得出的總結背後的理據。本報告應與諮詢文件一併閱讀。

公開諮詢

諮詢程序

5. 證監會除發表公布邀請公眾提交意見外，亦將諮詢文件分發予所有持牌槓桿式外匯買賣商(“外匯交易商”)及不同專業團體。諮詢文件亦載於證監會的互聯網網站上。
6. 證監會其後接獲6份意見書，回應者包括現有外匯交易商、專業團體及學術界人士。
7. 上述的意見所涵蓋的範圍和深度有相當差別。若干回應者提出一些具體建議，而其他則要求澄清某些疑點。
8. 證監會經詳細考慮過有關意見後，已修訂原本的草擬規則。我們已就建議修訂進一步諮詢業界人士，而該等修訂獲得相當程度的接納，並且構成修訂規則的基礎。

諮詢總結

9. 草擬規則第3(c)段現已納入以下有關合資格準則的主要修改：
 - (1) 獲認可對手方將包括在指明司法管轄區成立和受有關銀行規管當局規管的銀行。為進一步說明有關銀行規管監督的適用

準則，我們已在規則附表 1 中載入有關指明司法管轄區的主要銀行規管當局的名稱。

- (2) 我們已重新考慮應否在有關條文中豁除“商人銀行”及“投資銀行”，最後認為該等豁除屬冗餘規定，理由是“銀行”一詞已於《證券及期貨條例》附表 1 中界定如下：

“指經營的業務與認可財務機構所經營的以下業務相似的機構，不論該機構是否認可財務機構 –

- (a) 《銀行業條例》(第155章)所指的銀行業務；或
- (b) 該條例所指的接受存款業務”。

10. 此外，“等公司法團”的定義亦作出若干修訂，以免對證監會採用的合資格準則產生不必要的混淆。然而，該等修訂將不會更改證監會的政策意向。

意見摘要及證監會的回應

11. 就草擬規則所接獲的意見摘要及證監會的有關回應，請參閱諮詢總結報告英文本的附錄。

生效日期及過渡安排

12. 《證券及期貨(認可對手方)規則》自《證券及期貨條例》第 XVI 部的指定生效日期起實施。

**Summary of comments received on the Draft
Securities and Futures (Recognized Counterparty) Rules**

	Section reference	Details of the Rules	Respondent's comments	SFC's response
<i>General comments</i>				
1.	-		[Dr Louis Cheng] It appears that the reason and the motivation for broadening the qualification of recognized counterparties in the new legislation are not clearly stated. In order to allow the public to better understand why the SFC is doing this, a paragraph explaining the reasons should be added.	The reasons and motivation for broadening the qualification of recognized counterparty have already been set out in the consultation document, which are: <ul style="list-style-type: none"> • To enhance transparency (<i>paragraph 1</i>); and • To allow the SFC to have the flexibility to quickly address changing market practices and global conditions, by amending the rules rather than the primary legislation (<i>paragraph 2</i>).
2.	-		[Dr Louis Cheng] The 3% maintenance margin requirement mentioned in point 6(b)(ii) of the consultation document should be "maintained" by the trader and not to be "collected". The amount to be "collected" should be the 5% initial margin requirement and not the 3% maintenance margin.	Noted. No amendment to the draft Rules is necessary.
3.	-		[SHK Forex] The SFC should disclose publicly the list of recognized counterparties that have been designated as such so that relevant party can check before entering into trading arrangement with any prospective counterparty.	When the Rules become effective, institutions which meet the qualifying criteria will automatically become recognized counterparties. The institution which is designated by the Commission as recognized counterparty according to clause 3(e) of the draft Rules will be listed in Schedule 2 of the Rules and will be gazetted.

Note : Please refer to the derivation table at the end of this document for cross references to the section numbers under the Securities and Futures Ordinance as gazetted on 28 March 2002.

<i>Specific comments</i>				
4.	3	Qualifying criteria of recognized counterparties	<p>[SHK Forex] The SFC should consider to accept any corporation exempted under section 3(1) of the Leveraged Foreign Exchange Trading (Exemption) Rules as recognized counterparty.</p>	<p>It is not appropriate to treat all exempt corporations as recognized counterparties. We do not see a need to subject exempt corporations to detailed regulations because they only conduct their leveraged foreign exchange trading business on a wholesale level. However, this does not mean that all exempt corporations are financially strong posing close to no default risk to our licensed traders.</p>
5.	3 (c)	<p>According to paragraph 3(c) of the draft Rules, the following institution is a recognized counterparty:</p> <p>(c) a bank carrying on deposit-taking business that is incorporated and regulated in a specified jurisdiction, except where the bank –</p> <ol style="list-style-type: none"> i. is a merchant bank; ii. is an investment bank; or iii. ceases to be permitted to operate as a bank as a result of the action of the authority that regulates it in the specified jurisdiction. <p>The specified jurisdictions are Australia, Canada, The Federal Republic of Germany, The French Republic, Japan, The Swiss Confederation, The United Kingdom of Great Britain and Northern Ireland and The United States of America.</p>	<p>[SHK Forex] The draft Rules only include banks regulated in specified jurisdictions, which are set out in Schedule 1 as recognized counterparties. However, Singapore or New Zealand or some other OECD countries are not included as specified jurisdictions. In addition, branches of those banks may be excluded.</p>	<p>The SFC considers that Schedule 1 to the draft Rules has already covered all major countries in which existing recognized counterparties are incorporated.</p> <p>A bank, which is incorporated in a specified jurisdiction and is regulated by a relevant banking regulatory authority, will be a recognized counterparty. To elaborate further on the criteria for regulatory oversight over a bank, we have included in Schedule 1 the main banking regulatory authorities in the corresponding specified jurisdictions.</p> <p>We do not see any need specifically to include branches of a bank as they are of the same commercial entity.</p>
6.	3(c)		<p>[LSHK and Wocom] The terms “merchant bank” and “investment bank” are not defined in either the draft Rules or the Securities and Futures Bill. There are no clear criteria to assess whether a bank can be regarded as a merchant bank or investment bank.</p> <p>It is not clear why the SFC wishes to exclude merchant banks or investment banks from being treated as recognized counterparties.</p>	<p>We have reconsidered the need to exclude “merchant bank” and “investment bank” and concluded that such exclusion is superfluous given that “bank” is already defined in Schedule 1 to the Securities and Futures Ordinance to mean</p> <p>“any institution carrying on business similar to –</p> <ol style="list-style-type: none"> (a) the banking business within the meaning of the Banking Ordinance (Cap. 155) as carried on by an authorized financial institution; or

				<p>(b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,</p> <p>whether it is an authorized financial institution or not”.</p> <p>Hence, paragraph 3(c) of the Rules is revised as follows:</p> <p>“a bank that is incorporated in a specified jurisdiction and regulated by a specified bank regulator in that jurisdiction, except where it ceases to be authorized to operate as a bank as a result of the action of the specified bank regulator;”</p>
7.	3 (d)	<p>According to paragraph 3(d) of the draft Rules, the following institution is a recognized counterparty:</p> <p>(d) a corporation that has issued debt instruments which continue to attract a qualifying credit rating.</p>	<p>[Dr Louis Cheng] The credit rating for corporation changes from time to time. The SFC should better define the condition “which continue to attract a qualifying credit rating”. Also, certain guideline might be required in order to determine when a corporation would be or cease to be treated as a recognized counterparty.</p>	<p>A licensed trader has the responsibility to monitor the credit rating of its recognized counterparty. Once the credit rating has been downgraded to below the required level, the licensed trader should immediately cease to treat the relevant corporation as a recognized counterparty.</p> <p>“Qualifying credit rating” is defined in Part 4 of Schedule 1 to the Bill. SFC may, by notice published in the gazette, amend the Schedule to reflect changes of qualifying rating in view of market conditions.</p>
8.	3 (e)	<p>According to paragraph 3(e) of the draft Rules, the following institution is a recognized counterparty:</p> <p>(e) an institution -</p> <p>(i) in respect of which the Commission is satisfied that recognition as a counterparty is appropriate; and would not prejudice the interests of the investing public; and</p> <p>(ii) which is specified in Schedule 2.</p>	<p>[Dr Louis Cheng] The SFC does not specify the criteria for the category in paragraph 3(e) of the draft Rules.</p>	<p>The SFC needs flexibility to grant relief where particular circumstances and anomalous cases do not come within the main categories but it is still appropriate to grant recognition as a counterparty. The concept is little different from the modification powers provided to the SFC in clause 131 of the Securities and Futures Bill.</p>

List of Respondents

Date received	Respondent
28 December 2001	The Law Society of Hong Kong (“LSHK”)
28 December 2001	Dr Louis Cheng, Associated Professor of the Finance Department of Business Studies of The Hong Kong Polytechnic University (“Dr Louis Cheng”)
14 December 2001	Sun Hung Kai Forex Limited (“SHK Forex”)
6 December 2001	Wocom Foreign Exchange Co. Ltd (“Wocom”)
<i>Respondents with no specific comments on the Rules</i>	
3 January 2002	Hong Kong Association of Banks
17 December 2001	Hong Kong Bar Association

Derivation Table

Clause/Schedule in the Securities and Futures Bill	Section/Schedule in the Securities and Futures Ordinance
131	134
Schedule 1, Part 4	Schedule 1, Part 5