



**Consultation Paper on Proposed Enhancements to the Position  
Limit Regime and the Associated Amendments to the Securities and  
Futures (Contracts Limits and Reportable Positions) Rules and Guidance  
Note on Position Limits and Large Open Position Reporting Requirements**

**The Law Society's Submission**

The Law Society has reviewed the captioned consultation paper issued by Securities and Futures Commission ("SFC") on about 20 September 2016, and rendered the following responses to the consultation paper.

***Question 1a:** Do you agree with the proposal to raise the cap on the excess position limit for Hang Seng Index ("HSI") and Hang Seng China Enterprises Index ("HHI") futures and options contracts from the current level of 50% to 300%?*

**Law Society's response:**

We agree with the proposal to raise the maximum cap, noting that the SFC will determine at its discretion the cap for a particular Exchange Participant ("EP") or EP affiliate.

***Question 1b:** Do you agree with the proposal relating to tightening the "adequate financial capability" requirement as set out in paragraph 25 of the Consultation Paper?*

**Law Society's response:**

We have no particular view on the NAV Requirement threshold amount to be used but suggest the SFC may consider whether to keep a lower minimum threshold and then use its discretion to require greater thresholds on a case by case basis.

***Question 2:** Do you have any comments on the proposed exchange traded funds ("ETF") Market Maker Excess Position Limit, ie, an ETF market maker or liquidity provider may be authorized under the rules of the relevant recognized*

*exchange company to hold or control futures or stock options contracts in excess of the statutory prescribed limit for hedging the risks arising from their ETF market making or liquidity providing activities?*

**Law Society's response:**

No comments.

***Question 3a:** Do you have any comments on the proposed Index Arbitrage Activity Excess Position Limit, ie, the SFC may authorize an EP or its affiliate to hold or control HSI and HHI futures and options contracts in excess of the prescribed limit for index arbitrage activities? Do you have any comments on the definition of "Index arbitrage" set out in the proposed new section 4D(3) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571Y) ("CLRP Rules") (see Appendix A to the Consultation Paper)?*

**Law Society's response:**

No comments.

***Question 3b:** Do you have any comments or suggestions on the proposed eligibility criteria for an EP or its affiliate to be authorized by the SFC to hold or control excess position limits for index arbitrage activities?*

**Law Society's response:**

We have no particular concern with introducing an exception for index arbitrage. We presume that the SFC will receive reports to verify the purpose of the excess position limit rather than seeking to consider the merits of a particular arbitrage strategy.

***Question 4a:** Do you have any comments on the proposed Asset Manager Excess Position Limit, ie, the SFC may authorize an asset manager to hold or control HSI and HHI futures and options contracts in excess of the statutory prescribed limit?*

**Law Society's response:**

We have no comment on the proposed discretionary cap of 300%.

***Question 4b:** Do you have any comments or suggestions on the eligibility criteria for asset managers to qualify for the Asset Manager Excess Position Limit?*

**Law Society's response:**

It would be helpful to be provided with further explanation of the assets under management ("AUM") threshold of HKD100 billion. This threshold will likely exclude the vast majority of asset managers.

As AUM 'belongs' to a particular fund/account (which bears the credit risk), a more natural mechanic would be to apply the cap and AUM threshold to the fund manager on a fund by fund basis, rather than simply looking at the aggregate AUM of all funds managed by an asset manager.

***Question 5:** Do you think it is appropriate to set the statutory position limit of all stock options contracts at 150,000 contracts?*

**Law Society's response:**

We have no comment on the increase of the statutory position limit for stock options to 150,000 contracts.

**The Law Society of Hong Kong  
8 November 2016**