

**Consultation on proposed changes to the Securities and Futures (Contracts Limits and Reportable Positions) Rules and the Guidance Note on Position Limits and Large Open Position Reporting Requirements**

**The Law Society's Submissions**

The Law Society has reviewed a consultation paper issued by the Securities and Futures Commission on 26 April 2022 (the "Consultation Paper") and provides the following responses.

Question 1 (please provide reasons in support of your comments):

- (i) *Do you have any comments on the proposed addition of the New Contracts<sup>1</sup> to the list of "specified contract"?*

**Law Society's response:**

No comments.

- (ii) *Are there any other futures and options contracts traded on HKFE<sup>2</sup> which should also be included on the list?*

**Law Society's response:**

No comments.

Question 2 (please provide reasons in support of your comments):

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<sup>1</sup> "New Contracts" in the Consultation Paper refers to the Weekly HSI options contracts, Weekly HSCEI options contracts, HSI Futures options contracts, HSCEI Futures options contracts and Hang Seng TECH Index futures and options contracts recently launched by Hong Kong Exchanges and Clearing Limited.

<sup>2</sup> "HKFE" refers to Hong Kong Futures Exchange

*Do you have any comments on the proposed reportable position reporting requirements for Holiday Contracts<sup>3</sup>?*

**Law Society's response:**

No comments.

Question 3 (please provide reasons in support of your comments):

*Do you have any comments on the proposal to set out in the Rules<sup>4</sup> that a CP<sup>5</sup> in exercising its right to dispose of its client's position when the client has defaulted on a payment shall not be regarded as having "discretion" as described in section 7(3)?*

**Law Society's response:**

No comments.

Question 4 (please provide reasons in support of your comments):

*Do you have any comments on the proposed authorisation mechanism for CPs which provide clearing services for persons authorised to hold or control contracts in excess of the prescribed limits?*

**Law Society's response:**

No comments.

Question 5 (please provide reasons in support of your comments):

- (i) *Do you have any comments on the proposed changes to require a person, unless the person has discretion over the positions, to apply the prescribed limits and reportable positions separately to: (i) his or her own positions and the positions of a unit trust which he or she holds or controls and (ii) the positions in each unit trust where there is more than one unit trust?*

**Law Society's response:**

We have no comments to the proposed changes.

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<sup>3</sup> "Holiday Contracts" in the Consultation Paper refers to the contracts determined by HKFE to be tradable on public holidays in Hong Kong.

<sup>4</sup> "Rules" refers to the Securities and Futures (Contracts Limits and Reportable Positions) Rules.

<sup>5</sup> "CP" refers to clearing participant.

We note that an approach of form over substance is generally followed in the Hong Kong securities regime, meaning that unit trust funds are treated differently from corporate funds under, for example, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32 and Part XV of the Securities and Futures Ordinance, Cap. 571.

We do not however regard there has been provided a good policy reason to differentiate between unit trust funds and corporate funds under the Rules.

- (ii) *Do you have any comments on the requirement that the name of the unit trust is to be provided in a notice of a reportable position of the unit trust?*

**Law Society's response:**

We do not have particular comments for disclosing the name of a particular unit trust.

Questions 6 (please provide reasons in support of your comments):

- (i) *Do you have any comments on the proposal to require the prescribed limits and reportable positions to be separately applied to each of the sub-funds under an umbrella fund as if each of sub-fund were a stand-alone fund?*

**Law Society's response:**

No comments.

- (ii) *Apart from umbrella funds constituted as unit trusts and corporate funds, are there any other legal forms or structures which should be addressed?*

**Law Society's response:**

We have no comments on other legal forms and structures (and presume no practical problems are being encountered in respect of funds constituted as limited partnerships (including overseas limited partnerships)).

- (iii) *Do you have any comments on the requirement that the name of the sub-fund be provided in a notice of a reportable position of a sub-fund?*

**Law Society's response:**

We expect the name of the umbrella fund will be disclosed along with the name of the sub-fund.

**The Law Society of Hong Kong  
21 June 2022**