



Level 21 Centennial Tower
3 Temasek Avenue
Singapore 039190
Tel +65 6549.7333

17 November 2016

Supervision of Markets Division
Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Email: position-limit@sfc.hk

Dear Sirs and Madams

Consultation 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 ("*Consultation Paper*")

FIA welcomes the opportunity to respond to the Consultation Paper published by the Securities and Futures Commission (SFC) on 20 September 2016.

1. Background

FIA is the leading global trade organisation for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. Globally, FIA has been active in responding to and addressing issues relating to the regulatory regimes governing position limits in a number of jurisdictions including the U.S, Europe and throughout the Asia-Pacific region. Further information is available at www.fia.org.

We generally support the SFC's proposals to enhance and increase existing position limits in Hong Kong. We believe the revision of position limits is extremely beneficial including to improve risk management capabilities and for Hong Kong to maintain its competitiveness with other global financial centres. In addition, we strongly agree and support the SFC's aims to encourage further participation in Hong Kong's exchange traded derivatives markets which will not only result in greater market transparency but will assist the SFC in monitoring and assessing market stability. Below are our specific responses and more general comments on the Consultation Paper.

2. FIA Response to Consultation Paper Questions

FIA will be focusing our response to the Consultation Paper on the Client Facilitation Excess Position Limit and Large Open Position Reporting Requirements. Below are our responses to specific questions (adopting the numbering set out in the Consultation Paper).

1a: Do you agree with the proposal to raise the cap on the excess position limit for HSI and HHI futures and options contracts from the current level of 50% to 300%?

We support the proposal to raise the cap on the excess position limit for HSI and HHI futures and options contracts to 300% under the Client Facilitation Excess Position Limit. However, we request that the SFC reconsider its position and authorise a 300% excess for all successful applicants rather than it being an upper limit. The proposed increase to 300% is still very conservative compared to higher limits that may be applied for and granted for hedging and other business needs in other markets across the Asia-Pacific region such as Singapore.

We note the SFC's observations in the Consultation Paper that the Client Facilitation Excess Position Limit has not been widely used since its introduction in 2007. The feedback we have received from members is that the current excess position limit of 50% is not sufficient to meet business and hedging needs. Consequently, there has not been a strong incentive to apply for the excess limit taking into account the time, costs and resources needed to apply for, monitor and report on utilisation of the excess limit. We believe authorising an excess limit of 300% to all successful applicants (rather than the SFC determining the excess limit on a case-by-case basis) will provide certainty to market participants and provide greater consistency, uniformity and a 'level playing field' across the industry. We believe this would help to address the reservations currently held by market participants and incentivise greater use of the excess position limit.

If, however the SFC intends to maintain its position that the 300% excess is an upper limit, we urge the SFC to publish further clarity and guidance on the circumstances and factors that will be considered for determining the extent of any excess limit. Under the proposed amended *Guidance Note on Position Limits and Large Open Position Reporting Requirements (Guidance Note)*,¹ the circumstances and factors that the SFC will consider when making its decision on the size of excess positions is not clear. There should be a defined process in place for clients to apply for positions in excess of 300%, through a clearly documented hedge exemption application process, similar to what is done on other exchanges globally.

Lastly, we strongly support the SFC's intention to regularly review position limits to ensure they remain appropriate and will not hinder market development (as noted in paragraph 24 of the Consultation Paper). We urge that the SFC consider conducting these reviews at least every two years.

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

We support the SFC's general policy intent to increase 'adequate financial capability' requirements to accompany an increase in excess positions. However, we do not agree with increasing the net asset value requirement to at least \$5bn for all participants who wish to utilise the excess position limit especially if the 300% excess limit is only an upper cap and will not be uniformly applied across all market participants.

We note the SFC has pre-empted this position and stated in paragraph 26 of the Consultation Paper that "*it is of the view that the adequate financial capability requirement should be kept simple; it should not be overly complicated for compliance by market participants and for the SFC to administer. Thus we would prefer a single requirement*". We respectfully disagree with the SFC's views in this case and strongly believe that if the SFC wishes to keep the requirements simple, the adequate financial capability requirement and the excess position limit should both be uniformly applied across all successful applicants so that they are proportionate.

3. Other FIA comments

¹ Appendix B of the Consultation Paper

Comments on Guidance Note: Application and authorisation of excess limits

We would like to make the following comments on the proposed amended Guidance Note:

- (a) **Paragraph 3.24(c) – Adequate Financial Capability:** We note the entity that is required to meet the adequate financial capability requirement has been amended to being either the Exchange Participant, the affiliate or the holding company. We assume this means any holding company in the corporate chain and is not necessarily the direct immediate holding company of the applicant. We would be grateful if the SFC can provide clarity on this.
- (b) **Paragraph 3.31 – Response and decision making timeframe:** Currently the Guidance Note states that the SFC will endeavor to notify the applicant of its decision within four weeks after all information requested by the SFC to support the application for an excess limit has been received. We urge the SFC to consider shortening this decision making period. We note that in other markets, excess limits are approved within days which allows participants to better manage client demands. A period of at least four weeks is not commercially practicable for participants.
- (c) **Paragraph 3.37 – Validity and renewal of authorisations by the SFC:** Under the Guidance Note, a person who has an authorisation for an excess limit is required to submit a renewal application prior to expiry of the initial authorisation. We note the SFC has proposed to increase the period for submitting renewal applications from 10 business days prior to two months prior to the expiration date of the initial authorisation. We would be grateful if the SFC could clarify the reasons for the proposed longer period which is significantly longer than the current period. We strongly urge the SFC to reconsider this amendment as the need to renew an authorisation can arise quickly.

Comments on Guidance Note: Large Open Position Reporting Requirements

We would like to take this opportunity to highlight a number of concern areas that our members have regarding the large open position reporting requirements set out in the Guidance Note.

We understand the policy objective of the reporting requirements is to avoid potentially destabilising market conditions arising from an over-concentration of futures/options positions accumulated by a single person or group of persons, to increase market transparency and to assist the exchange in monitoring market activities. However, we understand Hong Kong is quite unique in imposing these reporting obligations when other markets across the region require daily reporting of all positions rather than making a distinction for large open positions and reportable positions.

The Hong Kong reporting requirements are causing continued implementation and operational challenges for market participants including:

- (a) **Reporting required at various layers of trading chain:** Under the Guidance Note, exchange participants and their clients are required to notify the relevant exchange of reportable positions. However, the Guidance Note is not clear on how many layers down the chain the reporting obligation extends to.

For exchange participants who operate a global business with global clients, there are a multitude of layers that potentially comprise the overall client relationship and all are potentially subject to the

reporting obligations due to their direct or indirect control of the position and trying to assess who the 'transaction originator' is.

To assist with facilitating consistent interpretation and application across the industry, we request the SFC provide further clarity in the Guidance Note to limit how many layers of the chain the reporting obligation extends to. We would encourage the SFC to consider extending reporting to only the Exchange Participant and its immediate direct client. This approach would be similar to reporting obligations in other markets across the Asia-Pacific region. In the majority of other markets, we understand daily reporting of all positions is required for the exchange participant and their immediate direct client.

(b) Aggregation rules

The SFC has provided clarification in the Guidance Note on aggregation rules for customer positions. However we respectfully request the SFC consider providing clarity on how the aggregation rules apply to 'house' business for market participants. We believe further clarification and guidance would greatly assist with facilitating consistent interpretation and application across the industry especially at larger firms where there may be a number of trading desks and legal entities involved.

4. Conclusion

Thank you for the opportunity to share our views and we would appreciate the opportunity to continue to work with the SFC on all areas relating to the exchange-traded derivatives markets in Hong Kong. We welcome the opportunity to discuss these issues in further detail with you.

In the meantime, if you have any questions, please feel free to contact me on bherder@fia.org or +65 6549 7333.

Yours faithfully



Bill Herder
Head of Asia-Pacific