



22 December 2022

To: The Securities and Futures Commission
54/F One Island East
18 Westlands Road
Quarry Bay, Hong Kong
Email: position-limit@sfc.hk

Dear Sirs/Madams

Consultation Conclusions and Further 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

FIA¹ would first like to express its appreciation to the Securities and Futures Commission (SFC) for considering and addressing the key observations set out in its conclusions to the First Consultation Paper. In particular, FIA's members welcome the proposal to align the SFC and HKEX position limit regimes in relation to any new futures and options contracts based on underliers relating to the HSI, HSCEI and Hang Seng TECH Index. Such harmonisation will not just reduce the operational burden to participants, but, more importantly, ensure that they will not be subject to additional regulatory risks.

FIA also appreciates the opportunity to respond to the proposals set out in the “**Consultation Conclusions and Further 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**” consultation paper (the **Further Consultation**) issued by the SFC in November 2022. FIA's members are generally supportive of the proposals, particularly the SFC's decision to amend the Rules to facilitate the implementation of the HKEX's proposed enhancements to the position limit regime.

We also wish to highlight some specific comments for the consideration by the SFC. These follow the numbering set out in the Further Consultation. Unless otherwise defined, capitalised terms used in this letter will bear the same meanings ascribed to them in the Further Consultation.

¹ FIA is the leading global trade organization 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. As the principal members of derivatives clearinghouses worldwide, FIA's member firms play a critical role in the reduction of systemic risk in global financial markets. Further information is available at www.fia.org.



SECTION A

Question 1

- (i) Do you have any comments on the proposed requirements for asset managers to observe position limit compliance and report positions at the individual fund or sub-fund level?**
- (ii) Do you have any comments on the proposed requirements for determining trustees' compliance with the requirements of the Rules?**

Section 7A of the Rules require persons who have discretion over contracts in respect of one or more sub-funds to be subject to the position limits and report positions at the sub-fund level. While the SFC acknowledges the operational difficulties facing trustees and will consider that a trustee has discharged its obligations under the Rules if it has measures in place to ensure the asset manager who manages its unit trusts has observed position limit compliance and reported positions on its behalf, CPs too may face the same challenges in observing position limit compliance and reporting obligations at the sub-fund level as they also rely heavily on information provided by their clients and fund managers to monitor position limits and reports.

We note that the SFC will provide more information in the GN to explain how different parties can comply with the Rules in this regard. We would welcome such clarity, especially in respect of how CPs can demonstrate their compliance with the Rules (for example via communication of the relevant obligations to fund managers).

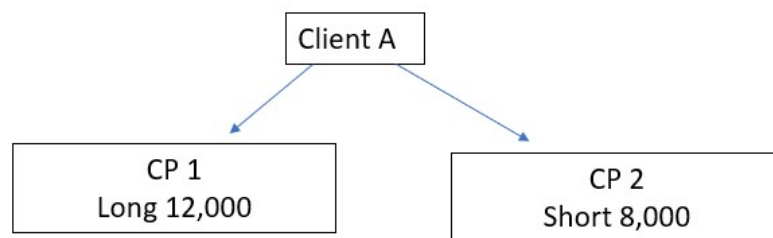
We would also highlight again that a requirement to report reportable positions down to each sub-fund level may require significant infrastructure changes with brokers. These could include changes not just in their reporting systems but even in how accounts are set-up. As with the changes to the BCAN reporting regime currently underway in the cash equity space, there will be significant challenges to implementing this process. It is therefore important to better understand the impact to the ETD market before any changes are effected.

Further Comments

- (i) Paragraph 27, Part IV (*Excess position limit for clearing participants*) states that “the SFC will require that a clearing client who applies for excess position limits should (i) appoint only one CP to hold its positions (including the excess positions) in the relevant contracts and (ii) notify the appointed CP of its excess position limit application.” We seek further details on how such requirement will be enforced. One suggestion is for the SFC introduce a requirement for the**

clearing client to represent in its application for excess position limits that it will (i) notify its clearing broker of such application and (ii) appoint only one CP to hold its positions. In addition, where clients submit applications on behalf of their CPs, one condition precedent to granting that client excess position limits could be for that client's one appointed CP to have also been granted authorisation to hold such excess positions.

- (ii) It appears that a CP would be in breach of the Rules if it clears positions in excess of its client's applicable position limits even if that client's net overall positions across multiple CPs are below such limits. Using the below illustration, we would like SFC to provide some clarification in the Guidance Note on this point, to ensure clients do not clear positions over the prescribed limits via a single CP.



- Assuming the prescribed position limit on XYZ contracts is 10,000
 - Client A holds long 12,000 contracts with CP1 and short 8,000 contracts with CP2.
 - Client A's overall position is long 4,000 and is within the prescribed limit.
 - In this case, would CP1 be in breach of the position limit rules?
- (iii) There could be situations where a clearing broker has difficulty rejecting further give-up positions from the clearing client's executing broker(s) as these may be automatically accepted by the clearing broker's systems. We would like to clarify with the SFC that the onus should be on clearing client to ensure that it does not exceed any applicable position limit, rather than on the clearing broker to reject further positions give-up in this scenario.
- (iv) Under Section 3.38 of the revised GN set out in Appendix B, a CP authorized to hold excess positions for its clearing clients is required to submit a quarterly report detailing the amount of the excess positions used for clearing its client's positions. Section 3.39 requires such report to be submitted within two weeks of the end of the relevant quarter. As such information should already be covered in the clearing client's reporting obligation in relation its authorization to hold excess positions, this requirement will result in duplicative efforts in reporting and increase CPs' operational burden.



- (v) The SFC has clarified and set out the responsibilities of CP on the basis that the CP is the one holding positions. Would an EP (who is not a CP and does not have discretion over positions) be obliged to comply with position limit monitoring and reporting under the Position Limit Regime?

SECTION B

Question 2

Do you have any comments on the proposed amendments to the Rules in response to HKEX's proposals?

As mentioned above, we are supportive of the SFC's decision to amend the rules to facilitate implementation of the revised position limit model for SSO and SSF, removal of additional position limits for Mini-HSI and Mini-HSCEI contracts and removal of the statutory limit for international futures and options contracts.

We welcome the opportunity to work with the SFC to address these comments.

Please feel free to contact me at bherder@fia.org, or TzeMin Yeo, Head of Legal & Policy, Asia Pacific at tmyeo@fia.org should you wish to further discuss.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bill Herder', written in a cursive style.

Bill Herder
Head of Asia-Pacific