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# SFC’s New Short Position Reporting Regime Expected To Take Effect On 18 June 2012

## Introduction

On 10 February 2012, the Securities and Futures Commission (**SFC**) published its Conclusions to the Further Consultation on the Securities and Futures (Short Position Reporting) Rules (the **Conclusions**). The Conclusions attach a revised version of the Securities and Futures (Short Position Reporting) Rules (the **SPR Rules**) which take into account market feedback to the further consultation on the SPR Rules published on 18 October 2011. The Conclusions complete three rounds of consultation which started in July 2009.

The SPR Rules will be submitted to the Legislative Council for negative vetting and, subject to the legislative process, are expected to come into effect on 18 June 2012. The SFC will announce the implementation timetable once the proposed SPR Rules are approved. The SFC also encourages market participants to subscribe to an email alert service called “Short Position Reporting Related Matters” which is available on its website and will provide email alerts on the latest developments. The purpose of this note is to provide a summary of the new short position reporting regime.

The revised version of the SPR Rules is set out in Appendix B of the Conclusions which are available on the SFC website here.

The new reporting regime is separate from and complementary to the existing transactional reporting requirements for short sales conducted on the Stock Exchange of Hong Kong (**Stock Exchange**). It is also separate from the disclosure of interests regime under Part XV of the Securities and Futures Ordinance (**SFO**) which requires the reporting of short positions of 1% or more by persons with a discloseable long position.

## The reporting threshold

A person is required to file a report with the SFC, if as at the close of trading on the last trading day of each week (a **reporting day**), he has a **net short position** in specified shares that is equal to or exceeds the lower of:

* 0.02% of the issued share capital of the particular listed company; and
* HK$30 million.

The net short position is calculated by deducting the number of shares beneficially owned from the number of shares in the person’s short position (i.e. after netting off his long position in the shares). The closing price of the shares and the number of shares in issue on the reporting day are used to determine whether the above thresholds have been exceeded.

## Scope of the reporting obligation

The reporting obligation applies only to short positions in “specified shares”, which are the shares of the constituent companies of the Hang Seng Index and the Hang Seng China Enterprises Index and other financial shares specified by the SFC (i.e. shares determined by the Stock Exchange to be “designated securities” and classified as financial stocks under the Hang Seng Industry Classification System). The updated list of such “specified shares” will be provided on the SFC’s website.

In addition, the reporting requirement applies only to short positions resulting from trading on the Stock Exchange or through specified SFC authorized automated trading systems. Short positions created by over-the-counter (**OTC**) trading and short positions created by derivatives are excluded from the new reporting regime. In its May 2011 Consultation on Securities and Futures (Short Position Reporting) Rules (the **May 2011 Consultation**), the SFC noted market comments that reporting systems maintained by financial firms often do not distinguish between positions created on or off the Stock Exchange. In response, the SFC stated that market participants are allowed to report a short position reaching the specified threshold even if the position does not result solely from trades executed on the Exchange.

The SFC also indicated in the May 2011 Consultation that it would allow voluntary reporting of short positions which would allow a market participant to submit reports of all its short positions even if they did not meet the statutory threshold.

## Timing of reports

Reports of short positions must be submitted online via the electronic reporting facility within two business days (which exclude Saturdays) of the day on which the reporting obligation arose. Since Friday will generally be the last trading day of the week (unless it is a public holiday), the deadline for reporting short positions will usually be the following Tuesday.

Reportable short position reports will be required to be submitted through a new Short Positions Reporting Service (**SPR Service**) which will be accessible via [the SFC’s Online Services Portal](https://portal.sfc.hk/sfcportal/sfc_online_portal/online_service.html). The SPR Service will prescribe a template for reporting short positions, a sample copy of which is included at Appendix C to the Conclusions. Persons who will be under a duty to report under the SPR Rules will need to register with the SPR Service before submitting a report for the first time.

## The reporting obligation

Generally, the person legally obliged to report is the beneficial owner of the short position. Agents (e.g. brokers, custodians or fund managers) may be authorized to report the information on behalf of beneficial owners. However, the principal remains legally responsible for reporting and would be held responsible for an agent’s failure to comply with the reporting obligation or filing of inaccurate information.

In the case of a fund taking the form of a corporate entity, the corporate entity is responsible for reporting under the SPR Rules and not the primary fund manager or custodian.

Where a fund is constituted as a unit trust, the reporting obligation will fall on the trustee, as the person best placed to know the total outstanding position. Where a trustee administers a number of funds, it must treat the short position of each trust separately and must not aggregate such positions.

## Reporting on a legal entity basis

In the case of a group structure with multiple legal entities, the reporting obligation falls on the individual legal entities within the group who must report their short positions on a separate basis. They are neither permitted nor required to aggregate the short positions within the group.

In the case of corporate “umbrella” funds that have underlying sub-funds, reports of the net short position of each sub-fund are required to be reported separately and should not be aggregated with the positions of other sub-funds within the same “umbrella” fund.

## Reporting of jointly owned positions

In the case of a short position held by a partnership (and thus jointly owned by all the partners), the SPR Rules provide that the partners will be regarded as having complied with the reporting obligation provided that one of the partners or another person authorized by all the partners has submitted a report of the short position on behalf of those partners. Furthermore, a person who has a reportable short position as a partner in more than one partnership must report the short position attributable to each partnership separately and must not aggregate the positions.

## Reporting of positions where trading activities of firms are on a trading unit/book basis

In the case of firms whose trading activities are conducted on a trading unit/book basis, each trading unit/book monitors its long/short position and determines its net position by reference to its overall position, an approach which is acceptable under The Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements.

As regards short position reporting, the SFC has confirmed that firms conducting their trading activities on a trading unit/book basis will be allowed to aggregate the net short positions across the trading units/books and report to the SFC the consolidated net short position of the different trading units/books if the reporting threshold is hit. However, the netting off of positions against different trading units/books is prohibited. The SFC will provide further guidance in relation to this approach in due course.

## Daily reporting in contingency situations

The SFC may require daily reporting of net short positions if it considers that circumstances exist, in Hong Kong or elsewhere, which threaten or may threaten the financial stability of Hong Kong. The SPR Rules require the SFC to give at least 24 hours’ notice of the commencement of the daily reporting obligation. When daily reporting is required, reportable net short positions must be reported within the following business day.

## Criminal sanctions for breach

A person who without reasonable excuse breaches the duty to report a net short position under the SPR Rules will commit a criminal offence. This is in line with the imposition of criminal liability for breaches of other notification requirements of the SFO and other SFC Rules. The maximum penalties for such offence will be, in the case of a conviction on indictment, a fine of HK$100,000 and two years’ imprisonment, and on summary conviction, a fine of HK$10,000 and six months’ imprisonment.

## SFC publication of information

The SFC will publish the aggregated short positions for each stock, on an anonymous basis, one week after the receipt of such reports. The SFC intends to publish such data on its website, and will monitor any significant issues (if any) that may impact the integrity of the data during the early stages of implementation of this new short position reporting regime.

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