

LEGISLATIVE COUNCIL BRIEF

LEVERAGED FOREIGN EXCHANGE TRADING ORDINANCE

LEVERAGED FOREIGN EXCHANGE TRADING (ANNUAL RETURNS) (AMENDMENT) RULES 2002

INTRODUCTION

1. The Securities and Futures Commission (“**the Commission**”) has made the Leveraged Foreign Exchange Trading (Annual Returns) (Amendment) Rules 2002 (“**the Amendment Rules**”) at the Annex.

BACKGROUND

2. Rule 2(1) of the Leveraged Foreign Exchange Trading (Annual Returns) Rules (Cap. 451 Sub. Leg.) (“**LFET (AR) Rules**”) requires every licence holder¹ to submit an annual return to the Commission by completing the form specified in the Schedule to those rules (“**the Schedule**”). Submission has to be made on or before every anniversary of the date on which the licence was granted.
3. There is a proviso to Rule 2 whereby, with the prior consent of the

¹ A “licence holder” is one who is licensed as a leveraged foreign exchange trader or a representative under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451).

Commission, a licence holder may submit a Commission-prescribed notice (“**the notice**”) confirming that the last annual return filed by him remains correct, thus saving the effort of filing a new return.

4. The Commission proposes to –
 - (a) amend the Schedule by including new reporting requirements;
and
 - (b) amend the proviso to Rule 2 of the LFET (AR) Rules by extending the circumstances in which the notice may be submitted instead of requiring annual returns in the prescribed form.

Amendment to Schedule

5. From 1 April 2001, the Commission started to implement a Continuous Professional Training programme (“**CPT programme**”). This programme obliges all individual licensees to complete 5 hours of CPT every year and all corporate licensees to develop, provide and facilitate continuous training for their staff.
6. To facilitate the reporting and monitoring of compliance with the CPT programme, the Commission proposes to amend the annual return form in the Schedule by adding reporting requirements regarding such compliance. More specifically, pursuant to the revised form –

- (a) Corporate licensees will have to declare if they have implemented a training programme for their staff and evaluated it at least once a year. They will also have to report whether all their licensed staff have complied with the CPT requirements and whether sufficient records have been kept to indicate such implementation and compliance.
- (b) Individual licensees will have to declare whether they have completed the number of CPT hours in the last calendar year as required and whether they have kept sufficient records to indicate such compliance.

Amendment to Rule 2

- 7. Pursuant to Rule 2, instead of filing an annual return in the form of the Schedule, a licence holder may submit a notice confirming that the last annual return filed by him remains correct. Currently, only licensees who are participants of Commission's Common Anniversary Date programme ("**CAD programme**") may enjoy the simplified filing arrangement.
- 8. Under the CAD programme –
 - (a) Corporate licensees and their licensed group companies and staff may adopt a common date for submitting annual returns. This reduces the administrative burden for licence holders who would

otherwise have to submit annual returns of their respective licences separately.

- (b) Licensed group companies and staff of a corporate licensee need only submit notices to it (ie the corporate licensee) confirming that their particulars, as submitted previously, remain correct. The corporate licensee will then collect all these notices and condense them into a single combined return to the Commission in a format prescribed by the Commission.
9. The simplified filing arrangement is possible under the current proviso to Rule 2. However, since the Schedule will be amended to incorporate reporting requirements regarding compliance with the CPT programme, any notice confirming that the last annual return filed remains correct will become inadequate given that no CPT reporting requirement was in place before.
10. We therefore need to amend the proviso in Rule 2 of the LFET (AR) Rules to allow licensees, which are CAD participants, to use the notice to –
- (a) confirm that the particulars submitted in the last annual returns remain correct; and
 - (b) submit a one-off confirmation reporting their compliance with CPT requirements.

Identical to the practice of submitting notices, corporate licensees will

aggregate confirmations from their licensed group companies and staff and submit a single combined return to the Commission.

THE AMENDMENT RULES

11. The Amendment Rules amend the Leveraged Foreign Exchange Trading (Annual Returns) Rules to –
 - (a) include new particulars in the Schedule regarding compliance with the CPT requirements; and
 - (b) extend the proviso to Rule 2 to allow the continued use of the simplified filing arrangement even after introduction of the CPT reporting requirements in the Schedule, or any other new requirements that may arise.

PUBLIC CONSULTATION

12. Public consultation regarding the CPT requirements was carried out in March 2000 and the result of the consultation was published in July 2000. The Commission subsequently issued a Guidance Note on Continuous Professional Training in December 2000, which sets out the continuous training requirements expected of licensees and the means of reporting compliance. The Guidance Note was updated in June 2001 following the implementation of the CPT requirements in April 2001.

Notification of the issue of this Guidance Note and the revised version was sent to all corporate licensees at the same time.

13. The Commission has sounded out industry bodies on the proposed amendments to the annual return form and the declaration arrangements. No adverse feedback has been received. In line with past practice, the Commission will be issuing letters to licensees reminding them to submit their annual returns, or in the case of licensees participating in the CAD programme, the prescribed notices. The Commission will take this opportunity to highlight the changes to the forms as a result of the new CPT reporting requirements introduced this year.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial or staffing implications for the Government.

COMMENCEMENT DATE

15. The Amendment Rules will come into operation on 15 March 2002.

PUBLICITY

16. The Amendment Rules will be published in the Gazette on 1 February 2002. The Commission will issue a circular to licensees after the negative vetting by the Legislative Council but before the new

requirements take effect.

ENQUIRIES

17. For any enquiries on this brief, please contact Ms Thrity Mukadam, Senior Counsel of the Legal Services Division of the Commission, at 2840 9209 or Ms Pamela Chew of the Licensing Department of the Commission, at 2842 7632.

The Securities and Futures Commission

31 January 2002

**LEVERAGED FOREIGN EXCHANGE TRADING (ANNUAL
RETURNS)(AMENDMENT) RULES 2002**

(Made by the Securities and Futures Commission under sections
45 and 73 of the Leveraged Foreign Exchange
Trading Ordinance (Cap. 451))

1. Commencement

These Rules shall come into operation on 15 March 2002.

2. Section substituted

Section 2 of the Leveraged Foreign Exchange Trading (Annual Returns) Rules (Cap. 451 sub. leg.) is repealed and the following substituted -

"2. Licence holders to make annual returns

(1) Subject to subsection (2), every person licensed as a leveraged foreign exchange trader or a representative (both are referred to as "licence holder") under the Ordinance shall make an annual return to the Commission -

(a) to be received by the Commission on or before each successive anniversary of the date on which he was granted a licence under the Ordinance; and

(b) in the form and containing the particulars specified in the Schedule.

(2) A licence holder or a person acting on his behalf may, with the prior consent of the Commission, give notice in a form approved by it in lieu of an annual return in the specified form, stating -

(a) any particulars required to be reported to the Commission as a result of any amendment to the

Schedule since the date of the last annual return made by that licence holder; and

(b) that the following particulars remain correct -

(i) the particulars contained in the last annual return made by that licence holder; and

(ii) the particulars reported under paragraph (a).

(3) Every person who makes an annual return under subsection (1) or gives notice under subsection (2) shall provide to the best of his ability accurate and complete information in the return or notice, as the case may be."

3. Schedule amended

The Schedule is amended -

(a) in Part B, by adding -

"Continuous Professional Training ("CPT")

27. State whether the licence holder has implemented a training programme to meet the training needs of its licensed representatives (including responsible directors).

N/A N/A

28. State whether the licence holder has evaluated its training programme at least once during the last calendar year.

N/A N/A

29. State whether all of the licensed representatives of the licence holder have attained the required number of CPT hours during the last calendar year.

N/A N/A

30. State whether the licence holder has maintained sufficient records as evidence of its training programme and the CPT activities undertaken by its licensed representatives.

N/A N/A";

Note: The licence holder may be requested to produce the records for inspection.

(b) in Part C, by adding -

"Continuous Professional Training ("CPT")

23. State whether you have attained the required number of CPT hours during the last calendar year.

N/A N/A

24. State whether you have retained sufficient records of all your CPT activities undertaken during the last calendar year.

N/A N/A".

Note: You may be requested to produce the records for inspection.

Andrew Len Tao SHENG
Chairman,
Securities and Futures Commission

January 2002

Explanatory Note

Section 2 of the Leveraged Foreign Exchange Trading (Annual Returns) Rules (Cap. 451 sub. leg.) ("the Rules") requires a licensed leveraged foreign exchange trader and its licensed representatives (both are referred to as "licence holder") to make annual returns to the Securities and Futures Commission ("the Commission") in the form and containing the particulars specified in the Schedule to the Rules or, in certain situations, in the form of a notice approved by the Commission.

2. Section 2 of the Rules is amended by extending the situations in which notice may be given in lieu of an annual return in the specified form. The Schedule is also amended by including new reporting requirements relating to licence holders' continuous professional training obligations.