For discussion
on 6 January 2012

**Legislative Council Panel on Financial Affairs**

**Proposal of the Securities and Futures Commission for a Short Position Reporting Regime**

## PURPOSE

This paper briefs the Panel on the Securities and Futures Commission (SFC)'s proposal for a short position reporting regime.

## BACKGROUND

2. In view of the experience gained in the global financial crisis in September 2008 and the global efforts to enhance the effectiveness of regulation of short selling[1], the SFC proposes to introduce a short position reporting regime. The SFC consulted the public on its proposal and the draft rules in July 2009 and May 2011 respectively. This Panel was consulted in July 2011. The SFC further consulted the public on a specific issue in October 2011 (see paragraph 6).

3. Key features of the proposed short position reporting regime include -

(a) the threshold of reporting is 0.02% of the issued share capital of that particular listed company or $30 million, whichever is lower, at the end of the last trading day of each week;

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[1] The International Organisation of Securities Commissions (IOSCO) published in June 2009 a report on "Regulation of Short Selling". One of the four principles of the recommended regulatory approach towards short selling activities is that "short selling should be subject to a reporting regime that provides timely information to the market or to market authorities". Reporting requirements have been introduced in a number of markets, including the UK, Germany, the US, Australia, and Japan.

(b) the scope is limited to shares of the constituent companies of the Hang Seng Index, Hang Seng China Enterprises Index and other financial companies specified by the SFC;
(c) the reporting requirement applies to short positions resulted from trading on the Hong Kong Stock Exchange and other trading venues specified by the SFC only;
(d) the person who has a reportable short position has the obligation to report, except for short positions held on trust, in which case the trustee is the reporting party;
(e) the SFC will set up an electronic reporting facility and prescribe a template to be used for reporting;
(f) the reporting will be on a net basis; and
(g) the SFC will be empowered to tighten the reporting requirements in contingency situations.

4. In addition, under the proposed regime, the SFC will publish aggregated short position for each stock, on an anonymous basis, within three business days after the receipt of the reports.

5. The key features of the reporting regime are elaborated in the paper prepared by the SFC at **Annex.**

## COMMENTS FROM THE PUBLIC

6. Respondents to the public consultations supported the proposal in general. The SFC has studied the comments and suggestions received and fine-tuned its proposal accordingly. For example, the SFC's original intention was for short positions to be reported on a gross basis. Taking into account the views from the industry, the SFC decided to change the reporting requirement to a net basis. Major comments raised by the respondents during the public consultations and the SFC's views can be found in SFC's paper at Annex.

7. We understand that the SFC had previously consulted the public on the issue of public disclosure. Respondents were generally opposed to the disclosure of the identity and positions of short sellers, and supported disclosure on an aggregated and delayed basis. However, we

note that recently some market participants have expressed the view that, instead of SFC publishing aggregated short position for each stock on an anonymous basis, the identity of the short sellers should be disclosed to the public. They cited overseas examples, such as the UK, where public disclosure of short sellers' identity is required.

8. In this regard, we would like to point out that the objective of the SFC's proposed short position reporting regime is to enable the SFC to collect more information about short selling activities to strengthen its monitoring efforts. The threshold of reporting is therefore set at a very low level (0.02% of the issued share capital, as compared with 0.25% in the UK). There are also concerns about public disclosure of short sellers' identity. For example, it may have "herding effect" and investors may be led to follow some market participants. It may also expose the short position holders to short squeezes. After considering the pros and cons of public disclosure, we share SFC's view that the current proposal, i.e., publishing the short positions on an aggregated and anonymous basis within three business days after the receipt of the reports, could balance the above-mentioned potential drawbacks and the need of providing useful information to the public. Nevertheless, we have invited the SFC to continue to monitor international developments and local market situation and consider whether any changes are necessary.

**WAY FORWARD**

9. The SFC will implement the short position reporting regime through promulgation of a new set of rules under the Securities and Futures Ordinance (Cap. 571). The SFC will finalise the rules taking into account comments received during the public consultation in October 2011. In parallel, the SFC has proposed and we agreed that a criminal offence should be created for a breach of the short position reporting requirement. Therefore we shall invite the Chief Executive in Council to amend the Securities and Futures (Offences and Penalties) Regulation (Cap. 571AH) to provide for penalties under the reporting regime. The proposed penalty level is a fine at level 6[2] and a term of imprisonment of

[2] The current level is $100,000.

2 years on conviction on indictment, and a fine at level 3[3] and a term of imprisonment of 6 months on summary conviction. Both the rules and the amendment regulation will be subject to negative vetting of the Legislative Council.

**Financial Services and the Treasury Bureau**
**29 December 2011**

[3] The current level is $10,000.

# LEGISLATIVE COUNCIL PANEL ON FINANCIAL AFFAIRS

# PROPOSAL FOR SHORT POSITION REPORTING REGIME

## Purpose

1. On 4 July 2011, Members were informed that the Securities and Futures Commission (**SFC**) had issued a consultation paper on 25 May 2011 on proposed subsidiary legislation – the Securities and Futures (Short Position Reporting) Rules. The consultation period ended on 30 June 2011.

2. This paper updates Members of developments since then.

## Background

3. As a result of the global financial crisis in September 2008, regulators in various jurisdictions have taken steps to amend their short selling regulations. In June 2009, the International Organisation of Securities Commissions (**IOSCO**) published a report entitled "Regulation of Short Selling". The report specifies four high level principles for the effective regulation of short selling[1]. One of these principles is that short selling should be subject to a reporting regime.

4. Hong Kong has a robust regulatory framework for short selling. Under the Securities and Futures Ordinance (**SFO**), naked short selling is generally prohibited. In other words, short sellers are required to borrow shares before a short selling order can be submitted to the Stock Exchange of Hong Kong (**SEHK**) for execution. Further, short selling orders must be "marked" so that short selling transactions are traceable by the SFC. On top of these statutory requirements, the SEHK has an uptick requirement to prevent short sales at successively lower prices and has established eligibility criteria such that only the more liquid securities are allowed for short selling.

[1] The four principles in the IOSCO report are –
1. Short selling activities should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets.
2. Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities.
3. Short selling should be subject to an effective compliance and enforcement system.
4. Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.

5. In light of the recent financial crisis and IOSCO's new principles for the regulation of short selling, the SFC decided to introduce a short position reporting regime and has consulted the public on three occasions. The first consultation paper was issued on 31 July 2009, where we consulted on our conceptual framework to increase short position transparency. A conclusions paper was published on 2 March 2010 (**March 2010 consultation conclusions)**, in which we announced the introduction of a new short position reporting requirement.

6. The other two consultations papers were on the proposed short position reporting rules which would give effect to the new regime. These consultation papers were issued on 25 May 2011 and 18 October 2011 respectively (referred to as the **May 2011 consultation** and the **October 2011 consultation**).

7. The majority of respondents supported the proposals in the May 2011 consultation, although many also had comments, suggestions and questions. In view of the feedback from the market, we decided to adopt the rules largely as we had proposed in the May 2011 consultation save for one aspect. The original intention was for short positions to be reported on a gross basis. However, there were concerns from the industry about the operational difficulties it would face in doing so. In view of this and to avoid delay in the implementation of the reporting regime, we decided to change the reporting requirement from a gross basis to a net basis. Please refer to paragraphs 17 to 19 below for a more detailed explanation of this issue.

8. In view of the change, it was necessary to consult on the draft rules again, hence the October 2011 consultation. The consultation period ended on 4 November 2011. We are currently considering the issues raised by respondents and will be issuing a conclusions paper soon.

9. The paragraphs below highlight some of the key aspects of the latest proposals, as well as some of the concerns raised in the May 2011 consultation and October 2011 consultation and our views on these.

## Key features of the short position reporting regime

*Parties required to report*

10. The person who has a reportable short position is required to report. The exception to this is when the short position is held on trust, in which case

the trustee of the trust has the obligation to report as the trustee is in a better position to monitor the short position.

11. Respondents were generally supportive of this scheme. There was however some uncertainty on how the reporting obligation would operate where, outside the trust exception, more than one person beneficially owns a reportable short position and also in the case of corporate 'umbrella' funds with underlying sub-funds.

12. We will provide further clarification in respect of the application of the reporting obligation in respect of jointly owned positions and 'umbrella' funds.

*Scope of reporting - proposed thresholds*

13. Short positions which are reportable are those –

(a) which are established via trades executed on the SEHK and other trading venues specified by the SFC[2],

(b) of shares of the constituent companies of the Hang Seng Index, the Hang Seng China Enterprises Index and other financial companies specified by the SFC, and

(c) which amount to or exceed 0.02 % of the issued share capital of that particular listed company or $30 million, whichever is lower, at the end of the last trading day of each week.

14. Respondents were generally supportive. Some respondents, however, raised concerns about the proposed thresholds in paragraph 13 (c). They felt that they were too low and might overburden the industry, and some respondents suggested that we should consider setting thresholds which mirror some other markets (e.g. in the UK and Japan, the reporting thresholds are currently set at 0.25% of the issued share capital of a listed company). In the March 2010 consultation conclusions, we explained why we decided on these thresholds and we reiterated our position in the May 2011 consultation.

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[2] This refers to automated trading services authorised by the SFC under Part III of the SFO.

15. In considering the appropriate threshold for our regime, we were mindful that our regulatory objective for introducing a short position reporting regime was to enable the SFC to obtain a more in-depth understanding of outstanding short positions in the market. The reporting regimes in some other markets are mainly intended to capture relatively large short positions only.

16. The SFC, in arriving at the thresholds of 0.02% and $30 million, drew reference from other markets' experience and also took into account local market characteristics (such as the size of listed companies in terms of market capitalisation, the free float of listed companies, the daily turnover, and investors' demographics). We believe that these thresholds enable us to more effectively monitor the build up of short positions in the Hong Kong market and help us achieve our regulatory objectives.

*Reporting of short positions on a gross or net basis*

17. The original intention was for short positions to be reported on a gross basis. Gross positions represent accumulated open short positions as at a particular point in time, without taking into account any long positions held in the same stock. Reporting on a gross basis would enable the SFC to understand the total outstanding short positions in a particular stock at any given point in time. However, this does not capture the net short exposure of short position holders in a particular stock.

18. A number of respondents, mainly large financial institutions, had concerns with the proposal of reporting on a gross basis because their existing operational systems were designed to provide, monitor and capture their short selling activities on a net basis and this practice has been the general approach adopted by them in other leading jurisdictions as well. Considerable system changes would be necessary if reporting on a gross basis is required. This would involve significant costs for the firms, particularly in the case of firms which operate globally because system changes would have implications for their operations in other markets. Moreover, substantial time would be required to implement such system changes.

19. Globally most other major jurisdictions have adopted the practice of reporting on a net basis. In view of this feedback, we decided to require short positions to be reported on a net basis. This will still provide the SFC with adequate information to properly understand the dynamics of short selling activity, but without placing undue burden on the industry. Nevertheless, after implementation, we will continue to monitor the situation to assess if any changes to the proposal may be required. The proposed rules were revised to reflect the change from reporting on a gross basis to reporting on a net basis and were issued for consultation in the October 2011 consultation.

*When to report*

20. A person who has a reportable short position as at the last trading day of the week must report the short position to the SFC within two business days. The person must continue weekly reporting until his short position falls below 0.02 % of the issued share capital and $30 million.

*How to report*

21. The reportable short positions must be submitted on-line to the SFC and, in this regard, the SFC will create an electronic reporting facility. A reporting template will be provided to market participants.

*Publication by the SFC*

22. The SFC will publish on its website aggregated short positions for each stock, on an anonymous basis, within three business days after the receipt of the reports. We will not do this immediately when the reporting regime is first implemented because there may be operational and other factors which could impact the integrity of data at the initial stage. Once any teething issues have been resolved, we will move to public dissemination of the data.

23. Most respondents supported this proposal. A few respondents asked whether the SFC could reduce the time between receiving the short position reports and publishing the data.

24. Under the proposal, reportable short positions will be reported to the SFC within two business days after the end of each week, and upon receipt of the reports, the SFC will review and aggregate the data for publication purposes. We expect that this process – to ensure the integrity of aggregated data - will take about 2 to 3 days to complete, hence the time lag.

25. After the reporting regime is up and running, we will assess whether the process could be streamlined so that the data may be published earlier.

26. We wish to emphasize that 'publication' does not entail publication of short sellers' names and their positions. Our regulatory objective for introducing a short position reporting regime is to obtain more information on short selling activities for monitoring purposes and in particular to understand if any stock-specific or market wide risks may arise as a result of short selling activity. We will therefore publish the short position data on an aggregated basis, i.e. without disclosing the short sellers' names and positions.

27. When we first consulted the public in July 2009 on the initiative to increase the transparency of short selling activities to the SFC, we consulted the public on whether the information should be reported privately to the regulator or disclosed publicly. We also consulted the public on whether the information reported to us should be published on an aggregated basis.

28. Some of the key concerns about the extent of public disclosure are as follows –

(a) Disclosure of individual names would unfairly prejudice short position holders in terms of conducting their business, and in the execution of their trading strategies. This may become a disincentive for market participants from engaging in legitimate short selling activities such as hedging, risk management and arbitrage (which are generally beneficial to the market and enhance its overall efficiency). Disclosure could expose the positions of legitimate users of short selling, thereby providing 'free-ride' opportunities to third parties which would adversely affect the interests of these market participants and may potentially distort the market.

(b) Disclosure could also render short position holders vulnerable to short squeezes. If their identities and the size of their short positions are made known to the public, this would make it easier for other market participants to deploy strategies to take advantage of this information, to the detriment of the short position holders.

(c) Publication of names may lead to 'herding' where investors may follow a market participant whom they believe may have a "winning" strategy. A related concern is that investors may overreact and, in particular, in times of market fragility, this may exacerbate the situation.

29. There is no international standard for public disclosure. Other then Japan and Europe, no other jurisdictions require public disclosure of individual short positions. For those jurisdictions with public disclosure requirements, the reporting thresholds are set much higher (e.g. 0.25% in the case of the UK and Japan and 0.5% under the proposal in Europe). We believe that our proposal of publishing the short positions on an aggregated, anonymous basis strikes a proper balance between providing useful information to the public whilst addressing concerns arising from disclosure of identities of short sellers. Nevertheless, after the implementation of the short position reporting regime in Hong Kong, we will continue to monitor international developments and consider whether any changes are necessary.

*Daily reporting during contingency situations*

30. In contingency situations involving unusual market conditions, two aspects of the reporting obligations will be enhanced to facilitate timely monitoring of the market situation. Firstly, reporting must be done on a daily basis (as opposed to weekly) and secondly, the lead time for short position reports to be submitted to the SFC would be reduced to one business day (from two business days).

31. The SFC will determine the situations which may trigger the daily reporting obligation and we will give market participants prior notice of at least 24 hours before the enhanced reporting requirements take effect. Similarly, when the SFC believes that enhanced reporting is no longer necessary, the SFC will publish advance notice announcing the cessation date.

*Consequences for breaching the reporting obligations*

32. A breach of the reporting obligation under the proposed subsidiary legislation would constitute a criminal offence.

33. A majority of respondents were concerned that non-compliance with the short positing reporting obligations constitutes a strict liability offence. We noted their concern and would therefore clarify that a person would be liable only if he has contravened the rules without reasonable excuse.

34. In the October 2011 consultation, we also informed the market that we will be recommending that a person who, without reasonable excuse, contravenes the reporting obligation under the proposed subsidiary legislation is liable, on conviction on indictment to a fine of $100,000 and a term of imprisonment of 2 years, and on summary conviction to a fine of $10,000 and a term of imprisonment of 6 months. This would be in line with the penalties already prescribed in the SFO, and other rules made by the SFC, for offences of a similar nature.

## International practice

35. As the recommendations in the IOSCO report on short selling are high level principles, they should be adapted appropriately to meet the needs of each individual jurisdiction. As a result, we have seen that different approaches are adopted in different markets. The characteristics of each local market play a significant role in shaping the regulatory approach of short position reporting. The design of a new short position reporting regime needs to take into account the local market structure and practice, any existing short selling related regulation and the larger regulatory framework and focus. There is no “one-size-fits-all” regulatory approach, in particular, in respect of

whether to include derivatives[3] in calculating short positions, the setting of threshold levels and the way to publish short positions to the public.

36. We provide below some information of the practices in other jurisdictions –

(a) In the UK, the scope of reporting includes derivatives (whereas our proposed reporting regime excludes derivatives). Once short sellers have reached the reporting threshold (i.e. 0.25% of the issued capital of a listed company), their names and positions will be disclosed to the public.

(b) In Japan, the names of short sellers and their positions are published. The reporting regime in Japan excludes derivatives and the reporting threshold is set at 0.25%.

(c) In Europe, the current proposal, which includes derivatives, contains two reporting thresholds, one for private reporting to regulators (0.2%) and one for disclosing names of short sellers to the public (0.5%). Germany has implemented this proposal except that names of short sellers are not published.

(d) The regime in the US imposes the reporting obligations on brokers or securities firms, i.e. all short positions (excluding derivatives) held by brokers and securities firms must be reported. Reporting is only required every two weeks and names of short sellers are not published.

(e) The reporting threshold in Australia is similar to ours as it is also a combination of a dollar value and number of shares. All short positions (excluding derivatives) must be reported unless they are lower than AUD$100,000 and 0.01% of the

[3] In line with the global initiative to reform the OTC derivatives market, on 17 October 2011, the SFC and HKMA jointly issued a consultation paper on the proposed regulatory regime for the Hong Kong OTC derivatives market. One of the proposals is for certain OTC derivatives transactions (including short positions) to be reported to a trade repository in Hong Kong.

issued capital. Public disclosure is made on an aggregate basis without providing information on the names of individual short sellers.

(f) There is currently no short position reporting regime in Singapore.

**Way forward**

37. The SFC is now working on the conclusions to the October 2011 consultation. The latest draft of the rules, as revised taking into account views received during the consultation and which may be subject to further revisions, is attached at **Appendix**. We will implement the short position reporting requirement after the completion of the legislative process.

**Securities and Futures Commission**
**December 2011**

# Draft

# Securities and Futures (Short Position Reporting) Rules

(Made by the Securities and Futures Commission under section 397(1) and (2) of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary)

## Part 1

## Preliminary

### 1. Commencement

(1) Subject to subsection (2), these Rules come into operation on .

(2) Section 6 comes into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette.

### 2. Interpretation

In these Rules—

***business day*** (營業日) means a day other than—

(a) a public holiday;

(b) a Saturday; and

(c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

***daily reporting requirement notice*** (每日申報規定公告) means a notice published under section 7(1);

***reportable short position*** (須申報淡倉) has the meaning given by section 3;

***reporting day*** (申報日) means—

(a) unless paragraph (b) applies, the day specified in section 4(1); or

(b) if a daily reporting requirement notice is in force, the day specified in section 4(3);

***reporting deadline*** (申報期限) means—

(a) unless paragraph (b) applies, the period specified in section 4(2); or

(b) if a daily reporting requirement notice is in force, the period specified in section 4(4);

***specified ATS*** (指明自動化交易服務) means an authorized automated trading services specified in Schedule 2;

***specified shares*** (指明股份) means shares in a corporation which are listed or admitted to trading on the Stock Exchange and specified in Schedule 1;

***Stock Exchange*** (證券交易所) means the recognized stock market operated by the Stock Exchange Company.

## 3. Reportable short position

(1) In these Rules, a person has a reportable short position in any specified shares if the person has a net short position value in the specified shares that is equal to or more than the threshold specified in subsection (2)(b).

(2) For the purposes of this section—

(a) the net short position value that a person has in any specified shares is calculated in accordance with the following formula—

$$(A - B) \times C$$

Where—

A is the number of the specified shares in the person's short position;

B is the number of the specified shares in the person's long position;

C is the specified closing price of the specified shares;

(b) in subsection (1), the threshold in relation to a reporting day is the lower of—

(i) $30 million; and

(ii) 0.02% of the value of the total number of the specified shares issued by the corporation concerned, calculated in accordance with the following formula—

$$C \times D$$

Where—

C is the specified closing price of the specified shares;

D is the total number of the specified shares issued by the corporation, as at the close of trading on the Stock Exchange on the reporting day;

(c) in paragraphs (a) and (b), specified closing price, in relation to any specified shares, is—

(i) the closing price of the specified shares on the reporting day; or

(ii) if on the reporting day the specified shares are suspended from trading on the Stock Exchange, the last closing price of the specified shares before the suspension,

as determined in accordance with the rules of the Stock Exchange Company.

(3) In this section—

***long position*** (好倉), in relation to any specified shares, means the number of the specified shares that a person beneficially owns;

***short position*** (淡倉), in relation to any specified shares, means the position in the specified shares that a person has as a result of selling the specified shares at or through the Stock Exchange or by means of any one or more specified ATS, or any combination of these methods of selling, where—

(a) at the time of each sale comprised in the position, the person did not have a presently exercisable and unconditional right to vest the specified shares in the purchaser; or

(b) each sale comprised in the position was the subject of a short selling order.

# Part 2

# Reportable Short Positions

## 4. Reportable short positions to be notified to Commission

(1) Unless a daily reporting requirement notice is in force, subsection (2) applies to a person who has a reportable short position in any specified shares at the close of trading on the Stock Exchange on—

(a) the Friday of any week; or

(b) if the Stock Exchange does not open for trading on the Friday of any week, the last weekday before Friday on which the Stock Exchange is open for trading.

(2) A person to whom this subsection applies must notify the Commission of the reportable short position within 2 business days after the day specified in subsection (1) in accordance with this section.

(3) If a daily reporting requirement notice is in force, subsection (4) applies to a person who has a reportable short position in any specified shares at the close of trading on the Stock Exchange on each day on which the Stock Exchange is open for trading.

(4) A person to whom this subsection applies must notify the Commission of the reportable short position within 1 business day after the day specified in subsection (3) in accordance with this section.

(5) If a reportable short position in any specified shares is held on trust, the duty to notify under subsection (2) or (4) does not apply to a beneficiary of the trust and instead applies to the person who is the trustee of the trust as if that person were the beneficiary.

(6) In determining whether a corporation has a reportable short position in any specified shares—

(a) the short position and the long position (if any) in the specified shares attributable to a particular collective investment scheme; and

(b) those attributable to another collective investment scheme,

are to be treated separately and not to be aggregated.

(7) In determining whether a person has a reportable short position in any specified shares—

(a) the short position and the long position (if any) in the specified shares attributable to any partnership; and

(b) those attributable to another partnership,

are to be treated separately and not to be aggregated.

(8) If the partners in a partnership have a reportable short position in any specified shares attributable to the partnership, those partners are regarded as having complied with the duty to notify under subsection (2) or (4) in respect of those specified shares if one of those partners or another person authorized by all those partners has submitted, on behalf of those partners, a notice that complies with subsection (9).

(9) Notification to the Commission required under subsection (2) or (4) must—

(a) be in the form specified by the Commission under section 402 of the Ordinance for the purposes of this section;

(b) contain—

(i) particulars identifying the person who has a reportable short position in specified shares;

(ii) particulars of the net short position value and number of specified shares comprised in the reportable short position; and

(iii) the name and stock code of the specified shares comprised in the reportable short position; and

(c) be submitted to the Commission electronically by means of an online communication system designated by the Commission under section 5(1) for the purposes of these Rules.

**5. Commission may designate online communication system**

(1) The Commission may, for the purposes of these Rules, designate an online communication system.

(2) Where the Commission designates an online communication system under subsection (1), it must as soon as reasonably practicable publish directions and instructions relating to the use of that system in the manner that it considers appropriate.

**6. Commission to publish particulars of reported short positions**

(1) Subject to subsections (2) and (3), the Commission must, as soon as reasonably practicable after the reporting deadline for a reporting day, publish in the manner that it considers appropriate the particulars of the reportable short positions notified to it in respect of the reporting day under section 4(2) or (4) that it considers appropriate.

(2) Subsection (1) does not require the Commission to publish particulars—

(a) earlier than 5 business days after the reporting day; or

(b) if a daily reporting requirement notice is in force, more frequently than once a week.

(3) Any particulars published under subsection (1) must be, so far as reasonably practicable, presented in a way which prevents the identity of a person who has submitted a notice under section 4(2) or (4) and that person's reportable short position from being ascertained from it.

# Part 3

# Daily Reporting Requirements

### 7. Daily reporting requirement notice

(1) The Commission may publish a daily reporting requirement notice in accordance with this section if the Commission believes that—

(a) circumstances exist, in Hong Kong or elsewhere, which threaten or may threaten the financial stability of Hong Kong; and

(b) as a result of those circumstances, the Commission needs to be notified of reportable short positions on a daily basis.

(2) A daily reporting requirement notice—

(a) must declare that, from the date specified in the notice, a person who has a reportable short position on each day on which the Stock Exchange is open for trading must notify the Commission of the reportable short position within 1 business day;

(b) must be published in the Gazette at least 24 hours before the date specified in the notice; and

(c) may be published or announced on the Commission's website and in any other manner and at the times that the Commission considers appropriate.

(3) If a daily reporting requirement notice is in force and the Commission believes that it no longer needs to be notified of reportable short positions on a daily basis, the Commission must publish on its website a notice (***cessation notice***) declaring that the daily reporting requirement notice is to cease to have effect from the date specified in the cessation notice.

(4) Neither a daily reporting requirement notice nor a cessation notice is subsidiary legislation.

# Schedule 1

[s. 2]

## Specified Shares

1. Shares which are a constituent of the Hang Seng Index.

2. Shares which are a constituent of the Hang Seng China Enterprises Index.

3. Shares which—

   (a) are shares determined by the Stock Exchange Company to be a “designated security” in accordance with the rules of the Stock Exchange Company; and

   (b) are shares classified by the Hang Seng Indexes Company Limited as financial stocks in accordance with the Hang Seng Industry Classification System.

# Schedule 2

[s. 2]

# Specified ATS

[This schedule is deliberately left blank]

Chief Executive Officer,
Securities and Futures Commission

## Explanatory Note

The object of these Rules is to impose a duty on a person who has a net short position in certain shares that amounts to or exceeds certain threshold to report the short position to the Securities and Futures Commission (***Commission***) on or before a reporting deadline.

2. Section 2 sets out the definitions to be used in the Rules.

3. Section 3 provides for the meaning of reportable short position by reference to a threshold.

4. Section 4 sets out who has the duty to report, when the duty arises and how the report is to be made. The details are as follows—

   (a) The duty to report is imposed on a person who has a reportable short position in any specified shares at the close of trading on a reporting day.

   (b) Unless a notice requiring daily reporting is in force, the reporting day is the last trading day of each week and a reportable short position must be reported within 2 business days after the reporting day.

   (c) If a notice requiring daily reporting is in force, every trading day is a reporting day and a reportable short position must be reported within 1 business day after the reporting day.

   (d) If the short position in specified shares is held on trust, then the trustee has the duty to report.

   (e) For corporations, the short position in any specified shares that is attributable to more than one collective investment scheme must be reported separately.

   (f) If the partners in a partnership have a reportable short position, then a notice submitted by a partner or another person authorized by all the partners in the partnership is regarded as having complied with the statutory duty to notify under section 4.

(g) A person who has short positions in any specified shares as a partner in more than one partnership must report the short position attributable to each partnership separately.

5. Section 5 provides that the Commission may designate an online communication system for the purposes of reporting under the Rules.

6. Section 6 requires the Commission to publish particulars of the reportable short positions notified to it.

7. Section 7 empowers the Commission, in a contingency situation, to require daily reporting of reportable short positions. Section 7(1) defines the contingency situation.

8. Schedule 1 specifies the shares to be specified shares.

9. Schedule 2 is for specification of the authorized automated trading services to be specified ATS. Schedule 2 is currently left blank and the Commission may later amend the Schedule to specify the authorized automated trading services.