

L.N. 48 of 2012

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 subrule (2), these Rules come into operation on 18 June 2012.
- (2) Rule 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 rule 7(1);

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

reporting day (申報日) means—

- (a) unless paragraph (b) applies, the day specified in rule 4(1); or
- (b) if a daily reporting requirement notice is in force, the day specified in rule 4(3);

reporting deadline (申報期限) means—

- (a) unless paragraph (b) applies, the period specified in rule 4(2); or
- (b) if a daily reporting requirement notice is in force, the period specified in rule 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 subrule (2)(b).
- (2) For the purposes of this rule—
 - (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;

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- 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 subrule (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.

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(3) In this rule—

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.
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Part 2

Reportable Short Positions

4. Reportable short positions to be notified to Commission

- (1) Unless a daily reporting requirement notice is in force, subrule (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 subrule applies must notify the Commission of the reportable short position within 2 business days after the day specified in subrule (1) in accordance with this rule.
- (3) If a daily reporting requirement notice is in force, subrule (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 subrule applies must notify the Commission of the reportable short position within 1 business day after the day specified in subrule (3) in accordance with this rule.
- (5) If a reportable short position in any specified shares is held on trust, the duty to notify under subrule (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—

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- (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 subrule (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 subrule (9).
 - (9) Notification to the Commission required under subrule (2) or (4) must—
 - (a) be in the form specified by the Commission under section 402 of the Ordinance for the purposes of this rule;
 - (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 rule 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 subrule (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 subrules (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 rule 4(2) or (4) that it considers appropriate.
 - (2) Subrule (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 subrule (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 rule 4(2) or (4) and that person's reportable short position from being ascertained from it.
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Part 3

Daily Reporting Requirements

7. Daily reporting requirement notice

- (1) The Commission may publish a daily reporting requirement notice in accordance with this rule 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.

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- (4) Neither a daily reporting requirement notice nor a cessation notice is subsidiary legislation.
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Schedule 1

[r. 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.
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Schedule 2

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Schedule 2

[r. 2]

Specified ATS

[This schedule is deliberately left blank]

Ashley ALDER
Chief Executive Officer,
Securities and Futures Commission

13 February 2012

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. Rule 2 sets out the definitions to be used in the Rules.
3. Rule 3 provides for the meaning of reportable short position by reference to a threshold.
4. Rule 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.

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Explanatory Note
Paragraph 5

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- (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 rule 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. Rule 5 provides that the Commission may designate an online communication system for the purposes of reporting under the Rules.
- 6. Rule 6 requires the Commission to publish particulars of the reportable short positions notified to it.
- 7. Rule 7 empowers the Commission, in a contingency situation, to require daily reporting of reportable short positions. Rule 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.