

New Short Position Reporting Regime in Hong Kong

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A new reporting regime for holders of net short positions in shares traded on the Hong Kong Stock Exchange is proposed to come into effect on 18 June 2012.

Hong Kong already has a stringent short selling regime that was introduced after the market turmoil of the 1998 Asian Financial Crisis (only "covered" short selling is now permitted subject to the seller meeting certain eligibility requirements). Following the Lehman collapse in September 2008, the Securities and Futures Commission (SFC) considered it unnecessary to make any immediate changes to the existing regime, unlike regulators in some other markets where short selling activities were either restricted or banned. Instead, in 2009, the SFC embarked on a market consultation process with a proposal to make short selling activities more transparent to the SFC.

Objective of the new regime

The objective of the new regime is to increase the SFC's understanding of any stock-specific or marketwide risks on a weekly (and, if necessary, daily) basis by increasing overall transparency of short selling activities in the market. Principally, this will enable the SFC to assess whether it needs to take any regulatory action to prevent disruption to the market.

The new rules will require that a person holding a short position as beneficial owner of "specified shares" (the scope of the regime does not extend to positions held through derivatives), the value of which equals or exceeds the prescribed thresholds, report its position to the SFC on a weekly basis. The SFC will then publish the aggregated reported short position for each stock on its Web site, but this disclosure will not reveal publicly the names or positions of individual short sellers. Failure to comply with the new reporting regime will be a criminal offence unless the person with the reportable short position has a reasonable excuse.

Preparation for compliance

In anticipation of the rules coming into force, the SFC is encouraging market participants to start preparing now for changes to their systems and procedures to make sure they will be in a position to comply with the new reporting requirements. The SFC also is encouraging participants to subscribe to an email service that will provide subscribers with alerts on matters such as: the implementation timetable; the publication of FAQs; and the publication of the list of specified shares subject to the reporting regime. The subscription for these alerts can be accessed [here](#); (tick the box for "Short Position Reporting Related Matters").

Key features of the regime

Particular features of the reporting requirements are:

- A short position in relation to any specified shares is defined as the position in those shares that a person has as a result of selling the shares at or through the Hong Kong Stock Exchange or by means of any one or more specified authorized automated trading services, 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 those shares in the purchaser, or (b) each sale comprised in the position was the subject of a short selling order.
- A net short position must be reported to the SFC if as at the close of trading on the Friday of any week (reporting day) the short position value held in a stock equals or exceeds the lesser of (i) HK\$30 million (approximately US\$3,870,000), and (ii) 0.02% of the value of the total number of specified shares issued by the applicable listed company. The value is calculated by multiplying the closing price of the shares on the reporting day by the total number of shares of the applicable listed company then in issue.
- A reportable short position held on a reporting day must be reported to the SFC within two business days after that reporting day.
- The list of "specified shares" will be published on the SFC's Web site. Subscribers to the SFC's email service (see above) will receive notice of any changes to that list.
- The SFC will introduce a Short Positions Reporting Service to its Online Services Portal for market participants to submit the reportable short positions online using a downloadable template.
- There are specific reporting requirements where the short position is held in trust, or by a collective investment scheme, or by a partnership (such as an investment fund).

- The SFC also will be empowered in contingency situations to make reporting a daily obligation, requiring reporting by the next business day.

The SFC will announce the actual implementation timetable once it is finalized.