L.N. 440 of 1994

LEVERAGED FOREIGN EXCHANGE TRADING (BOOKS, CONTRACT NOTES AND CONDUCT OF BUSINESS) RULES

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1994年第440號法律公告

槓桿式外匯買賣(簿冊、成交單據及業務操守)規則

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雜項

LEVERAGED FOREIGN EXCHANGE TRADING (BOOKS, CONTRACT NOTES AND CONDUCT OF BUSINESS) RULES

(Made by the Securities and Futures Commission under sections 21, 22 and 73 of the Leveraged Foreign Exchange Trading Ordinance (53 of 1994))

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Ordinance.

2. Interpretation

In these Rules, unless the context otherwise requires—

"address" (地址) means—

(*a*) in the case of an individual, his residential or office address;

(*b*) in the case of a corporation, its principal place of business; and

(*c*) in the case of a partnership, its principal place of business;

"advertisement" (廣告) has the meaning assigned to it in section 2(2)(*a*) of the Protection of Investors Ordinance (Cap. 335);

"client" (客戶) means any person who has entered into a client agreement with a licensed trader;

"client agreement" (客戶協議書) means a written agreement that complies with section 5;

"contract" (合約) means any contract, other than a client agreement or a discretionary account agreement, that is entered into by a licensed trader with or on behalf of a client and that relates to transactions regulated by the Ordinance;

"discretionary account agreement" (全權委託戶口協議書) means a written agreement that complies with section 8;

"floating loss" (浮動虧損) means unrealized losses calculated by marking to market foreign currency positions;

"floating profit" (浮動利潤) means unrealized profits calculated by marking to market foreign currency positions;

槓桿式外匯買賣(簿冊、成交單據及業務操守)規則

(由證券及期貨事務監察委員會根據《槓桿式外匯買賣條例》(1994年第53號)第21、22及73條訂立)

第I部

導言

1. 生效日期

本規則自本條例獲指定生效的當日起實施。

2. 釋義

在本規則中，除文意另有所指外——

"地址" (address) 指——

(*a*) 如屬個別身分的人，其住址或辦事處地址；

(*b*) 如屬法團，其主要營業地點；及

(*c*) 如屬合夥商行，其主要營業地點；

"交易日" (trading day) 指持牌買賣商公開營業的日子；

"合約" (contract) 指持牌買賣商與客戶所訂立或代其訂立的，並與受本條例監管的交易有關的任何合約，但不包括客戶協議書或全權委託戶口協議書；

"全權委託戶口協議書" (discretionary account agreement) 指符合第8條規定的書面協議；

"客戶" (client) 指與持牌買賣商訂立客戶協議書的任何人士；

"客戶協議書" (client agreement) 指符合第5條規定的書面協議；

"持牌買賣商" (licensed trader) 指持牌槓桿式外匯買賣商；

"浮動利潤" (floating profit) 指以按照市值計算差額的方法來計算外幣持倉量所得出的未實現利潤；

"initial margin" (最初保證金) means the minimum amount required to be deposited by a client with a licensed trader for each contract opened;

"licensed trader" (持牌買賣商) means a licensed leveraged foreign exchange trader;

"maintenance margin level" (維持保證金額) means the minimum balance which must be maintained for each contract by a client subsequent to the deposit of the initial margin;

"net equity" (權益淨額) means the balance in the relevant client's ledger account at any given time, plus any floating profit or less any floating loss, and after adjusting for any income credited to and charges levied against that account;

"trading day" (交易日) means a day on which a licensed trader is open for business.

PART II

KEEPING OF BOOKS, ETC. AND CONTRACT NOTES

3. Keeping of books, accounts and records

(1) For the purposes of section 21 of the Ordinance, a licensed trader shall—

(*a*) keep such accounting, trading and other records as are sufficient to—

(i) explain all transactions undertaken by the licensed trader and the operation of its business;

(ii) reflect the financial position of its business; and

(iii) enable profit and loss accounts and balance sheets which give a true and fair view of its affairs to be prepared from time to time;

(*b*) keep those records in such manner as would enable an audit to be conveniently and properly carried out;

(*c*) make entries in those records in accordance with generally accepted accounting principles; and

(*d*) keep those records at the principal place of business of the licensed trader in Hong Kong and, where the prior written approval of the Commission has been obtained, at any other place or places, whether in or outside Hong Kong.

(2) The records mentioned in subsection (1) shall include—

(*a*) particulars of—

(i) all money received and paid by the licensed trader into accounts kept by it, including money paid to and disbursed from a segregated trust account;

"浮動虧損" (floating loss) 指以按照市值計算差額的方法來計算外幣持倉量所得出的未實現虧損；

"最初保證金" (initial margin) 指客戶就每份已訂立的合約須向持牌買賣商存放的最低款額；

"維持保證金額" (maintenance margin level) 指客戶在存入最初保證金後就每份合約必須維持的最低結餘金額；

"廣告" (advertisement) 具有《保障投資者條例》(第335章) 第2(2)(*a*) 條給予該詞的涵義；

"權益淨額" (net equity) 指客戶的有關分類帳戶口在任何指定時間的結餘，再加上任何浮動利潤或減去任何浮動虧損，以及對記入該戶口的任何收入及對其徵收的任何費用加以調整後所得的數額。

第II部

有關簿冊等的備存及成交單據

3. 簿冊、帳目及記錄的備存

(1) 就本條例第21條而言，持牌買賣商須——

(*a*) 備存有關的會計、買賣及其他記錄適足以——

(i) 解釋該持牌買賣商所進行的所有交易及其業務的運作；

(ii) 反映其業務的財務狀況；及

(iii) 令可以真實和中肯地反映其事務的損益表及資產負債表得以不時擬備；

(*b*) 備存該等記錄而記錄的方式將使審計可方便及妥善地進行；

(*c*) 把項目記入該等記錄，須根據普遍接納的會計原則進行；及

(*d*) 將該等記錄備存於持牌買賣商在香港的主要營業地點，而凡已取得證監會事先的書面批准，亦可將該等記錄備存於任何其他地點，包括在香港境內或境外。

(2) 在第(1)款提到的記錄須載有——

(*a*) 以下的詳情——

(i) 持牌買賣商收入其開立的戶口及從中支付的所有款項，包括存入獨立的信託戶口及從該戶口支付的款項；

(ii) all income received by the licensed trader from any charges, commissions, brokerage, remuneration, interest and other sources;
(iii) all expenses, commissions and interest paid by the licensed trader; and
(iv) all the assets and liabilities, including contingent liabilities, of the licensed trader; and

(*b*) particulars, including those specified in subsection (3), of all contracts and transactions entered into by the licensed trader with or on behalf of—
(i) its clients who have signed the client agreement as specified in section 5;
(ii) its clients who have signed the discretionary account agreement as specified in section 8;
(iii) its representatives, employees and agents;
(iv) its recognized counterparties; and
(v) the licensed trader itself; and

(*c*) copies of all contracts, client agreements, discretionary account agreements, order forms and all other agreements, confirmations and statements, registers, records, memoranda and correspondence made or received by the licensed trader in the course of the business for which it is licensed under the Ordinance.

(3) The additional particulars referred to in subsection (2)(*b*) are—
(*a*) the charges and credits arising from each of those contracts or transactions;
(*b*) the names of the parties to each of those contracts or transactions;
(*c*) the date and time of execution of each of those contracts or transactions; and
(*d*) details of the relevant instructions and other terms and conditions.

(4) For each trading day, the licensed trader shall maintain records which include—
(*a*) the marked to market position for its own accounts and the accounts of each of its clients and recognized counterparties at the end of a trading day;
(*b*) for each contract executed by the licensed trader—
(i) the bid and offer prices quoted by the licensed trader to the client;
(ii) the price at which the contract is executed; and
(iii) the bid and offer prices at the time of execution of the contract as quoted and disseminated to the public, or to subscribers, by a reputable financial information services organization; and

(ii) 持牌買賣商從其收取的任何費用、佣金、經紀佣金、報酬、利息及其他來源得到的所有收入；
(iii) 持牌買賣商所支付的所有支出、佣金及利息；及
(iv) 持牌買賣商的所有資產及負債，包括或有負債；及

(*b*) 持牌買賣商與下列人士所訂立，或代其訂立的所有合約及進行交易的詳情，包括第(3)款所指明的詳情——
(i) 已簽署第5條所指明的客戶協議書的客戶；
(ii) 已簽署第8條所指明的全權委託戶口協議書的客戶；
(iii) 其代表、僱員及代理人；
(iv) 其獲承認對手方；及
(v) 持牌買賣商本身；及

(*c*) 持牌買賣商在經營其根據本條例獲發牌經營的業務的過程中所作出或接獲的所有合約、客戶協議書、全權委託戶口協議書、買賣指示表格及所有其他協議書、確認書及結單、名冊、記錄、備忘錄及通訊文件的副本。

(3) 在第(2)(*b*)款所提述的額外詳情為——
(*a*) 每份該等合約或每宗該等交易所產生的費用及貸項；
(*b*) 每份該等合約或每宗該等交易的當事人的名稱；
(*c*) 每份該等合約或每宗該等交易的執行日期和時間；及
(*d*) 有關指令及其他條款和條件的細節。

(4) 就每個交易日，持牌買賣商須保存包括下列事項的記錄——
(*a*) 在每個交易日終結時，就持牌買賣商本身的戶口及其每名客戶及獲承認對手方的戶口而言，按照市值計算差額的持倉量；
(*b*) 就每份由持牌買賣商執行的合約——
(i) 持牌買賣商向其客戶所報的買入價和賣出價；
(ii) 合約的執行價；及
(iii) 執行合約時由一間聲譽好的財經資訊服務機構向公眾或其訂戶所公布及傳播的買入價和賣出價；及

(*c*) the interest rate differentials which are charged or paid by the licensed trader on a daily basis for being long or short, one currency against another.

(5) The licensed trader shall ensure that its records are sufficient to demonstrate whether or not the Leveraged Foreign Exchange Trading (Financial Resources) Rules (L.N. 443 of 1994) have been complied with at all times.

(6) The licensed trader shall adopt all reasonably necessary procedures for—

(*a*) guarding against falsification of its records; and

(*b*) facilitating discovery of any falsification of its records.

(7) Except as otherwise provided in the Ordinance and these Rules, a licensed trader shall retain the records required by this section for a period of not less than 7 years.

4. Preparation and production of contract notes and statements of account

(1) For the purposes of section 22 of the Ordinance, a licensed trader shall, subject to subsection (4), make out and dispatch to a client no later than the end of the next trading day after the execution of a contract—

(*a*) a contract note in respect of every contract entered into with or on behalf of that client; and

(*b*) a statement of account for the relevant trading day.

(2) A contract note shall include—

(*a*) the name of the licensed trader as registered with the Commission and its address;

(*b*) (i) where the licensed trader is acting as principal, a statement that it is so acting; or

(ii) where the licensed trader is acting as agent, a statement that it is so acting and the name of the person for whom it is acting;

(*c*) the name and address of the client;

(*d*) the date and time of receipt of the client order;

(*e*) the date and time of execution of the contract;

(*f*) particulars of the contract specifying the currency, and if more than one, each currency to which the contract relates, and in relation to each such currency—

(i) the amount involved;

(ii) whether it is a sale or a purchase;

(iii) whether it is for the opening or closing of a position;

(iv) the price at which it is executed; and

(v) the interest rate, if applicable;

(*c*) 持牌買賣商每日就一種貨幣相對於另一種貨幣的好倉或淡倉而收取或支付的利率差額。

(5) 持牌買賣商須確保其記錄足以顯示《槓桿式外匯買賣(財政資源)規則》(1994年第443號法律公告)的規定是否在所有時間都獲得遵守。

(6) 持牌買賣商須採取所有的合理所需程序，以——

(*a*) 防止其記錄被竄改；及

(*b*) 便於發覺其記錄被竄改之事情。

(7) 除本條例及本規則另有規定外，持牌買賣商須保留本條所規定的記錄不少於7年。

4. 成交單據及户口結單的擬備和出示

(1) 就本條例第22條而言，除第(4)款另有規定外，持牌買賣商須在合約執行後的後一個交易日終結之前，擬備及向客戶發送——

(*a*) 與該客戶所訂立或代其訂立的每份合約的成交單據；及

(*b*) 有關交易日的戶口結單。

(2) 成交單據須載有——

(*a*) 持牌買賣商在證監會註冊的名稱和其地址；

(*b*) (i) 凡持牌買賣商是以主事人身分行事，關於此點的聲明；或

(ii) 凡持牌買賣商是以代理人身分行事，關於此點的聲明及其委託人的名稱；

(*c*) 客戶的名稱及地址；

(*d*) 接獲客戶買賣指示的日期及時間；

(*e*) 合約執行的日期及時間；

(*f*) 合約的詳情，指明有關貨幣(如不止一種貨幣，與該合約有關的每種貨幣)，而就該每種貨幣列明——

(i) 所涉及的數額；

(ii) 是出售還是買入；

(iii) 是為了開倉還是平倉；

(iv) 其成交價；及

(v) 利率(如適用)；

(*g*) the rate and amount of commission, if any, payable in respect of the contract;
(*h*) the date of settlement, if any; and
(*i*) the amount of margin deposit required, if any.

(3) A statement of account referred to in subsection (1)(*b*) shall include—
(*a*) the net equity balance of the account as at the beginning of the trading day on which the relevant contract was executed;
(*b*) all income credited to and charges levied against the account during that trading day;
(*c*) all movements of cash and margin deposits during that trading day;
(*d*) all floating profits and floating losses calculated as at the end of that trading day and the prices used for such purposes;
(*e*) all interest income and expenses accrued at the end of that trading day and the interest rates used for such purposes;
(*f*) the net equity balance of the account as at the end of that trading day;
(*g*) the minimum margin requirement for all open positions as at the end of that trading day;
(*h*) the amount of margin excess or margin shortfall as at the end of that trading day; and
(*i*) a list of all open positions as at the end of that trading day.

(4) A licensed trader may, instead of making out and dispatching to the client any contract notes required to be made under subsection (1)(*a*) in respect of a contract or contracts entered into during the same trading day, consolidate the contract note or notes into the statement of account.

(5) For the purposes of this section, delivery of any contract note or statement of account may be made by hand, by post, by facsimile or other mode of electronic transmission.

(6) Except as otherwise provided in the Ordinance, a licensed trader shall retain in its records a copy of every contract note and statement of account required by this section for a period of not less than 2 years.

PART III

CLIENT PROCEDURES

5. Client agreement

(1) A licensed trader shall, before entering into a contract with or on behalf of a person—

(*g*) 就該合約而須支付的佣金比率及數額(如有)；
(*h*) 交收日期(如有)；及
(*i*) 所要求的保證金存款的數額(如有)。

(3) 在第(1)(*b*)款所提述的戶口結單須載有——
(*a*) 執行有關合約的交易日開始時戶口的權益淨額的結餘數目；
(*b*) 該交易日戶口的所有收入及被徵收的所有費用；
(*c*) 該交易日的所有現金和保證金存款的變動；
(*d*) 該交易日終結時計算的所有浮動利潤及浮動虧損，以及計算時所採用的價格；
(*e*) 該交易日終結時計算的所有應計利息收入及支出，以及計算時所採用的利率；
(*f*) 該交易日終結時戶口的權益淨額的結餘數目；
(*g*) 該交易日終結時就所有未平倉合約的最低保證金要求；
(*h*) 該交易日終結時保證金的溢差或逆差的數目；及
(*i*) 該交易日終結時所有未平倉合約一覽表。

(4) 就同一個交易日之內所訂立的合約而言，持牌買賣商可將成交單據綜合在戶口結單之內，以代替擬備及向客戶發送根據第(1)(*a*)款所指的任何成交單據。

(5) 就本條而言，任何成交單據或戶口結單均可通過專人遞送、郵寄、圖文傳真或其他電子傳遞方式送交。

(6) 除本條例另有規定外，持牌買賣商須在其記錄內保留本條所規定的每張成交單據及戶口結單的副本不少於2年。

第III部

客戶程序

5. 客户協議書

(1) 持牌買賣商在與任何人士或代其訂立合約之前，須——

(a) inform the person that a client agreement is required to be entered into between them in writing in either English or Chinese;
(b) explain to that person the contents of the client agreement; and
(c) enter into a client agreement with that person.

(2) The client agreement shall include—
(a) the full name and address of the client;
(b) the full name and address of the licensed trader and details of the licence it holds, including any conditions imposed on the licence;
(c) a statement by the client—
(i) that the client is trading on his own behalf; or
(ii) if the client is not trading on his own behalf, of the name of the ultimate beneficiary on whose behalf the client is trading;
(d) a statement by the client as to whether he is to operate his account by giving orders himself or by appointing another person to give orders on his behalf, and in the latter case, the name and address of the person appointed, to be accompanied by an appointment in writing;
(e) a statement by the licensed trader that none of its employees or representatives shall accept appointment by the client as agent to operate the client's account for the purposes of paragraph (d) unless a separate agreement is entered into in accordance with section 8;
(f) a statement by the licensed trader as to whether it may take the opposite position to a client's order;
(g) a statement as to whether or not any employee or representative of the licensed trader may be allowed to trade contracts on his own account pursuant to the policy established under section 17(3);
(h) a statement that all telephone conversations between the licensed trader and the client made in the course of business will be recorded on a centralized tape recording system operated by the licensed trader;
(i) details of the basis on which charges, commission, brokerage and other remuneration are to be paid by the client;
(j) specification of all services and contracts which the licensed trader may provide to, transact with, or undertake on behalf of, the client and of all terms and conditions attached to those services and to the trading of contracts;
(k) where the terms of its licence so requires, a statement that in relation to any dispute between the licensed trader and the client, the licensed trader shall, if the client so requires, agree to refer the dispute to arbitration in accordance with the Leveraged Foreign Exchange Trading (Arbitration) Rules (L.N. 439 of 1994);

(a) 告訴該名人士在他們之間須訂立一份以英文或中文寫成的客戶協議書；
(b) 向該名人士解釋客戶協議書的內容；及
(c) 與該名人士訂立客戶協議書。

(2) 客戶協議書須載有——
(a) 客戶的全名及地址；
(b) 持牌買賣商的全名及地址，以及其持有的牌照的詳情(包括附加在牌照上的任何條件)；
(c) 由客戶所作出的聲明，表示——
(i) 客戶是為自己進行買賣；或
(ii) 如客戶並不是為自己進行買賣，其代表進行買賣的最終受益人的名稱；
(d) 由客戶所作出的聲明，說明在操作其戶口時，是否由其本人或由其委任另一名人士代表其發出買賣指示，如為後一種情況，並提供該名獲委任人士的名稱及地址及委任書；
(e) 由持牌買賣商所作出的聲明，表示其僱員或代表不得接受客戶委任為(d)段所指的代理人，以操作客戶的戶口，除非其依照第8條的規定另立協議；
(f) 由持牌買賣商所作出的聲明，表示其是否可以與客戶的買賣指示進行對盤；
(g) 一項聲明，說明持牌買賣商的任何僱員或代表是否可以根據第17(3)條所規定的政策獲准為其本身的利益買賣合約；
(h) 一項聲明，表示持牌買賣商與客戶之間在業務過程中的所有電話談話將會被持牌買賣商所操作的中央錄音系統錄音；
(i) 客戶須支付的費用、佣金、經紀佣金及其他報酬的計算基準的詳情；
(j) 持牌買賣商可為客戶提供的所有服務及其與客戶或代表客戶進行交易的所有合約的詳述，以及附加於這些服務及合約買賣的所有條款和條件的詳述；
(k) 凡牌照的附加條款有此規定，持牌買賣商所作出的聲明，表示凡涉及其與客戶之間的任何爭議，如客戶提出要求，持牌買賣商須同意依照《槓桿式外匯買賣(仲裁)規則》(1994年第439號法律公告)將爭議提交仲裁；

(*l*) details of margin requirements and the time within which any initial margin or other margin deposits must be paid;

(*m*) the circumstances in which contracts transacted with or undertaken on behalf of the client may be closed out without the client's consent;

(*n*) a statement as to whether the client, the licensed trader or any other person will be entitled in whole or in part to interest, dividends or other benefits derived from the client's margin collateral;

(*o*) a description of the methods or procedures adopted by the licensed trader in choosing the prices or interest rates for the purposes of marking to market the client's open positions and in calculating the client's interest income and expenses;

(*p*) a statement that the client may be affected by any curtailment of, or restriction on, the capacity of the licensed trader to deal in respect of open positions as a result of action taken by the Commission under the Ordinance or for any other reason, and that in such circumstances, the client may be required to reduce or close out his open positions with the licensed trader; and

(*q*) a statement to the effect that the client agreement and all rights, obligations and liabilities under it shall be governed by and construed in accordance with Hong Kong law.

(3) The following items, which shall be placed on separate sheets of paper forming part of the client agreement, are required to be signed or acknowledged, as the case may be, by the client under each item—

(*a*) the risk disclosure statement prescribed by section 7(2);

(*b*) undertakings by both the licensed trader and the client that each will notify the other of any material change to the information provided in the client agreement;

(*c*) a statement by the client that he will immediately notify the licensed trader of any change in his address; and

(*d*) a statement by the client that he understands the contents of the client agreement and accepts its terms and conditions.

(4) No licensed trader shall include terms and conditions in any agreement or documentation with the client which are inconsistent with its obligations to the client under the Ordinance or any rules made thereunder.

(5) A licensed trader shall file with the Commission its standard form of client agreement together with—

(*a*) confirmation from its responsible director that the standard form of client agreement will govern all contracts entered into with or on behalf of its clients; and

(*l*) 有關保證金要求的詳情及最初保證金或其他保證金存款的繳款時限；

(*m*) 在沒有得到客戶的同意時而可將與其交易或代其執行的合約平倉的情況；

(*n*) 一項聲明，說明客戶、持牌買賣商或任何其他人士是否可以享有全部或部分來自客戶的保證金抵押品的利息、股利或其他利益；

(*o*) 一項描述，指明持牌買賣商以何種方法和程序挑選價格和利率，用以計算客戶按照市值計算差額所算出的未平倉合約的持倉量及客戶的利息收入與支出；

(*p*) 一項聲明，表示客戶可能因證監會根據本條例或任何其他原因為削減或限制持牌買賣商處理客戶的未平倉合約的能力而採取的行動所影響，並且在這些情況下，客戶可能被要求減少其未平倉合約的數目或將其平倉；及

(*q*) 一項聲明，表示客戶協議書及根據客戶協議書產生的所有權利、義務及責任，均須受香港法律管轄及按照香港法律解釋。

(3) 以下各項文件須另紙載明並作為客戶協議書的組成部分，同時每項文件均須由客戶簽署或確認(視屬何情況而定)——

(*a*) 第7(2)條所訂明的風險披露聲明；

(*b*) 由持牌買賣商及客戶作出的承諾，表示如雙方在客戶協議書內提供的資料有任何重要改變，將會通知對方；

(*c*) 由客戶所作出的聲明，表示如其地址有任何改變，將會即時通知持牌買賣商；及

(*d*) 由客戶所作出的聲明，表示其明白客戶協議書的內容及接納其條款和條件。

(4) 持牌買賣商不得在其與客戶所訂立的任何協議或文件中，載有任何與其在本條例或任何根據本條例所制定的規則下對客戶所負的義務有矛盾的條款和條件。

(5) 持牌買賣商須將其標準格式的客戶協議書呈交證監會存檔，並須同時附上以下文件——

(*a*) 其責任董事的確認書，表示該標準格式的客戶協議書將統管其與客戶訂立或代其訂立的所有合約；及

(*b*) confirmation from its responsible director and the legal advisers of the licensed trader that the standard form of client agreement complies with the requirements of subsections (2) and (3).

(6) A licensed trader shall submit to the Commission any proposed amendments to the standard form of client agreement, together with confirmation from its responsible director and legal advisers that the standard form of client agreement as so amended complies with the requirements of subsections (2) and (3).

(7) A licensed trader shall not—

(*a*) enter into an agreement with a client on the basis of the standard form of client agreement; or

(*b*) implement any changes to the standard form of client agreement,

before a copy has been filed with the Commission in accordance with subsections (5) and (6), provided that a breach of this provision shall not of itself invalidate any agreement that is otherwise valid.

(8) A licensed trader shall notify each of its clients in writing as soon as possible of any change to its licence, including changes to the conditions imposed thereon.

6. Statement of client information

(1) A licensed trader shall obtain from each of its clients a written statement which contains the following information about that client—

(*a*) the name, address, telephone number and facsimile number, if any, of the client;

(*b*) (i) in the case of an individual, details of that individual's Hong Kong identity card or, if the client is not the holder of an identity card, details of his passport, travel or other document issued by a competent government agency providing proof of identity;

(ii) in the case of a corporation, details of its certificate of incorporation or similar document issued by the relevant authority of the country of incorporation;

(iii) in the case of a partnership, details of its business registration certificate or similar document issued by the relevant authority of the country where the partnership was formed or, where not available, the partnership agreement or other document constituting the partnership;

(*c*) (i) in the case of an individual, his occupation, position and years spent in that occupation;

(*b*) 其責任董事及法律顧問的確認書，表示該標準格式的客戶協議書符合第(2)及(3)款的規定。

(6) 持牌買賣商須向證監會呈交其標準格式的客戶協議書的任何修訂建議，並須同時附上其責任董事及法律顧問的確認書，表示按建議修訂後的標準格式的客戶協議書仍符合第(2)及(3)款的規定。

(7) 持牌買賣商不得——

(*a*) 以標準格式的客戶協議書與客戶訂立協議；或

(*b*) 對標準格式的客戶協議書進行任何修改，

除非其已依照第(5)及(6)款將有關副本呈交予證監會存檔，但違反本款不會使任何有效的協議書變為無效。

(8) 持牌買賣商須盡快以書面通知其每一名客戶有關其牌照的任何改變，包括附加於其牌照上的條件的任何改變。

6. 客户資料聲明

(1) 持牌買賣商須向其每一名客戶取得一項載有下列資料的書面聲明——

(*a*) 客戶的名稱、地址、電話號碼及圖文傳真號碼(如有)；

(*b*) (i) 如屬個別身分的人，其香港身分證的詳情，但如該名個別身分的人並非身分證持有人，其護照、旅行證件或由主管政府機構所簽發可提供身分證明的其他文件的詳情；

(ii) 如屬法團，其註冊證書或由其成立地的有關當局所簽發的同類文件的詳情；

(iii) 如屬合夥商行，其商業登記證書或由其成立地的有關當局所簽發的同類文件(或如缺乏上述文件，合夥協議書或其他組成該合夥商行的文件)的詳情；

(*c*) (i) 如屬個別身分的人，其職業、職位及在該職業的從業年數；

(ii) in the case of a corporation, the type of business and the number of years in the business;

(iii) in the case of a partnership, the type of business and the number of years in that business;

(*d*) details of the financial position of the client; and

(*e*) details of the client's investment objectives and strategy.

(2) Where a client has appointed another person to trade on his behalf, the licensed trader shall obtain the information required in subsection (1)(*a*), (*b*) and (*c*) in relation to that person and a statement of his relationship with the client.

(3) A licensed trader shall obtain from each of its clients, and from any person who is authorized by the client to trade on his behalf, a written declaration to the effect that—

(*a*) the statement provided under subsection (1) is true, complete and correct; and

(*b*) the client and the authorized person will notify the licensed trader of any material changes to that information.

(4) A sole proprietor shall, notwithstanding that he is trading in the name of his firm, be deemed to be trading as an individual for the purposes of these provisions.

7. Risk disclosure statement

(1) A licensed trader shall include in every client agreement a risk disclosure statement which shall be in bold print not smaller than the ordinary print for the text of the agreement.

(2) The risk disclosure statement shall provide the following warning—

"The risk of loss in leveraged foreign exchange trading can be substantial. You may sustain losses in excess of your initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. You may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, your position may be liquidated. You will remain liable for any resulting deficit in your account. You should therefore carefully consider whether such trading is suitable in light of your own financial position and investment objectives.".

8. Discretionary accounts

(1) A licensed trader who wishes to offer discretionary account services to its clients shall enter into a separate written discretionary account agreement

(ii) 如屬法團，其業務類別及經營該業務的年數；

(iii) 如屬合夥商行，其業務類別及經營該業務的年數；

(*d*) 客戶的財務狀況的詳情；及

(*e*) 客戶的投資目標及策略的詳情。

(2) 凡客戶已委任另一名人士代其進行買賣，持牌買賣商須取得第(1)(*a*)、(*b*)及(*c*)款所要求與該名人士有關的資料及其與客戶的關係的書面聲明。

(3) 持牌買賣商須取得其每一名客戶及獲該客戶授權代其進行買賣的任何人士的書面聲明，表示——

(*a*) 根據第(1)款提供的客戶資料聲明是真實、完整和正確的；及

(*b*) 客戶及獲授權人士將會通知持牌買賣商有關上述資料的任何重要改變。

(4) 就這些條文而言，獨資經營人以其商號的名義進行買賣，須視為以個人身分進行買賣。

7. 風險披露聲明

(1) 持牌買賣商須在每份客戶協議書載入一項風險披露聲明，並須以不小於協議書正文一般印刷字體的粗體字體印刷。

(2) 風險披露聲明須提供以下的警告——

"槓桿式外匯買賣的虧損風險可以十分重大。你所蒙受的虧損可能超過你的最初保證金款額。即使你定下備用買賣指示，例如"止蝕"或"限價"買賣指示，亦未必可以將虧損局限於你原先設想的數額。市場情況可能使這些買賣指示無法執行。你可能被要求一接到通知即存入額外的保證金款額。如你未能在所訂的時間內提供所需的款額，你的未平倉合約可能會被了結。你將要為你的戶口所出現的任何逆差負責。因此，你必須仔細考慮，鑑於自己的財務狀況及投資目標，這種買賣是否適合你。"。

8. 全權委託戶口

(1) 持牌買賣商如希望向其客戶提供全權委託戶口服務，便須與客戶另行訂立一份全權委託戶口協議書。此協議書與第5條所規定的客戶協議書將一併規範持牌買賣商與客戶之間的關係。

with the client which, together with the client agreement required by section 5, will govern the relationship between the licensed trader and the client.

(2) A licensed trader shall, before entering into any contract with or on behalf of a client under a discretionary account—

(*a*) inform the client that a discretionary account agreement is required to be entered into between them in writing in either English or Chinese;

(*b*) explain to the client the contents of the discretionary account agreement; and

(*c*) enter into a discretionary account agreement with the client.

(3) The discretionary account agreement shall include—

(*a*) a description by the licensed trader as to the way in which the discretionary account will be managed by it, including information required pursuant to subsection (5);

(*b*) a statement that the client appoints the licensed trader to manage his account;

(*c*) a statement by the licensed trader of—

(i) the name of the representative managing the account;

(ii) the name of the supervisor of that representative; and

(iii) whether that representative is permitted to deal for his own account pursuant to the policy established under section 17(3);

(*d*) details of the terms and conditions specified by the client for management of the account, which shall include—

(i) the amount deposited by the client;

(ii) the terms and conditions of any "stop-loss" or "stop-limit" order by the client; and

(iii) any specifications imposed by the client concerning his investment objectives and strategy including the size of transactions, frequency of trading and the currencies to be traded in;

(*e*) details of all charges, commission, brokerage or remuneration payable by the client in addition to the charges, commission, brokerage or remuneration payable under the client agreement;

(*f*) a statement that any modifications to the discretionary account agreement must be in writing and accepted by both parties in writing except for the terms and conditions specified in paragraph (*d*), which may be amended unilaterally at any time by the client;

(*g*) a statement that either party may suspend or terminate the discretionary account agreement at any time by giving notice of suspension or termination to the other by telephone or in writing, such suspension or termination to take effect upon receipt of the notice;

(2) 持牌買賣商在根據全權委託戶口與客戶訂立或代其訂立任何合約之前，須——

(*a*) 告訴客戶在他們之間須訂立一份以英文或中文寫成的全權委託戶口協議書；

(*b*) 向客戶解釋全權委託戶口協議書的內容；及

(*c*) 與客戶訂立全權委託戶口協議書。

(3) 全權委託戶口協議書須載有——

(*a*) 由持牌買賣商所作出關於其將會以何種方式管理全權委託戶口的描述，包括依據第(5)款所要求的資料；

(*b*) 一項聲明，表示客戶委任持牌買賣商管理其戶口；

(*c*) 由持牌買賣商作出的聲明，包括——

(i) 管理戶口的代表的名稱；

(ii) 該名代表的主管的名稱；及

(iii) 該名代表是否可依據第17(3)條所確立的政策獲准為其本身利益進行交易；

(*d*) 客戶就管理戶口而指明的條款和條件的詳情，須載有——

(i) 客戶所存入的款額；

(ii) 客戶所作出的任何"止蝕"或"限價"買賣指示的條款和條件；及

(iii) 任何客戶所附加有關其投資目標及策略的說明，包括交易額、買賣頻率及將會買賣的貨幣；

(*e*) 除根據客戶協議書所須支付的費用、佣金、經紀佣金或報酬以外客戶須支付的所有費用、佣金、經紀佣金或報酬的詳情；

(*f*) 一項聲明，表示對全權委託戶口協議書所作的任何改動必須以書面提出，並須由雙方以書面接納，但(*d*)段所指明的條款和條件除外，這些可由客戶於任何時間單方面作出修訂；

(*g*) 一項聲明，表示任何一方可在任何時間以電話或書面方式通知對方暫停或終止全權委託戶口協議書，並在通知被接獲時生效；

(*h*) a statement by the client that he understands that he is not obliged to enter into a discretionary account agreement before he can retain other non-discretionary services of the licensed trader, that he understands the contents of the discretionary account agreement and that he accepts the terms and conditions contained therein;

(*i*) the risk disclosure statement prescribed by section 7(2);

(*j*) an explanation of the additional risks of giving discretionary powers to a licensed trader to manage an account on his behalf, including the total dependence by the client on the integrity and skill of the licensed trader and the inherent risk of conflict of interest in that a licensed trader may take the opposite position to a client's order while acting for the client.

(4) A licensed trader shall not accept or carry a discretionary account unless it—

(*a*) has obtained, in addition to a duly signed discretionary account agreement under subsection (1), a signed copy of a power of attorney or other document by which trading authority is given or restricted; and

(*b*) has designated such an account in its books and records as a discretionary account.

(5) A licensed trader shall comply with the following procedures in managing a discretionary account—

(*a*) whenever the net equity in a discretionary account falls during any one calendar month by more than 30% from the level at which it stood at the beginning of that month, the licensed trader—

(i) shall immediately notify the client of the level of net equity, the amount of trading loss and the amount of income generated to the licensed trader from the account during that month;

(ii) shall not, except in order to close out existing open positions, initiate any new contracts in respect of the discretionary account unless the client consents and subject to such conditions as may be imposed by the client;

(*b*) in the case of any discretionary account to which paragraph (*a*)(ii) applies—

(i) the licensed trader shall assign a director to review and approve every contract executed for the discretionary account before the consent of the client has been received; and

(*h*) 由客戶所作出的聲明，表示明白其無須先訂立全權委託戶口協議書才可聘用持牌買賣商作其他非全權委託的服務，並且表示明白全權委託協議書的內容及接納其中所載的條款和條件；

(*i*) 第7(2)條所訂明的風險披露聲明；

(*j*) 解釋賦予持牌買賣商全權委託權代其管理戶口的額外風險的文字，包括客戶完全依賴持牌買賣商的操守及技巧，以及持牌買賣商在為客戶行事時，可以與客戶的買賣指示對盤而有內在利益衝突的風險。

(4) 持牌買賣商不得接納或持有全權委託戶口，除非其——

(*a*) 除取得在第(1)款所指已正式簽署的全權委託戶口協議書之外，還取得一份授予或限制買賣權的授權書或其他文件的簽署本；及

(*b*) 在其簿冊及記錄內指明該戶口為全權委託戶口。

(5) 持牌買賣商在管理全權委託戶口時須遵守以下程序——

(*a*) 每當全權委託戶口的權益淨額在任何一個公曆月的期間內從期初的水平下跌超過30%，持牌買賣商——

(i) 須立即通知客戶其戶口的權益淨額水平、在該月內的買賣虧損數額及該戶口帶給持牌買賣商的收入的數額；

(ii) 除非是為了將現有的未平倉合約平倉，不得就全權委託戶口訂立任何新合約，但客戶同意及根據其所附加的條件而訂立的除外；

(*b*) 如屬(*a*)(ii)段所適用的任何全權委託戶口——

(i) 持牌買賣商在取得客戶的同意前，須指派一名董事審查及批准為該全權委託戶口而執行的每份合約；及

(ii) where the consent of the client to continue trading is duly given, the licensed trader shall continue to comply with the requirements of paragraph (*a*), by using the net equity standing at the beginning of the day on which his consent is given as a new starting point.

(6) For the purposes of subsection (5)(*a*), the net equity standing at the beginning of any calendar month shall be treated as including any cash deposits made to, and as excluding any cash withdrawal made from, the account by the client during that month.

(7) For the purposes of this section, the consent of the client is duly given only if it is given in writing or is recorded on the centralized tape recording system of the licensed trader.

(8) A licensed trader shall not maintain a trading position for a client where the client holds an equal outstanding long and short position of the same foreign currency at the same time, unless such position is specifically requested by the client in each instance.

(9) All attempts to telephone the client shall be recorded on the centralized tape recording system.

(10) Each discretionary account shall be reviewed by a responsible director of the licensed trader at least once every 3 trading days to ensure that it is being operated in conformity with the specific instructions of the client, if any, the client agreement, the discretionary account agreement and these Rules.

(11) A licensed trader shall submit a standard form of discretionary account agreement to the Commission and section 5(5), (6) and (7) shall apply to such an agreement in the same way as it applies to a standard form of client agreement under that section.

9. Client orders

(1) A licensed trader shall—

(*a*) ensure that all telephone orders from a client are recorded on the centralized tape recording system operated by it; and

(*b*) record in writing each order, whether made by telephone or otherwise, immediately after it is received.

(2) The record required to be made under subsection (1) shall include—

(*a*) the name of the client and, if applicable, the person who is authorized by the client to give the order and the account number of the client;

(*b*) the time and date at which the order was received;

(*c*) the method by which the order was given;

(ii) 凡客戶已正式同意繼續買賣，持牌買賣商須繼續遵守(*a*)段的規定，並以客戶作出同意當日開始時的權益淨額作為新的起點計算。

(6) 就第(5)(*a*)款而言，在任何一個公曆月的期間開始的權益淨額，須被當作包括在該月由客戶存入該戶口的任何現金及減去客戶從該戶口提取的任何現金所得的數額。

(7) 就本條而言，客戶的同意只有在以書面作出或被錄入持牌買賣商的中央錄音系統之內才算是適當地作出。

(8) 持牌買賣商不得為客戶同時持有相同外幣及相同數額的好倉及淡倉合約，除非客戶每一次特別指明有此要求。

(9) 任何嘗試致電給客戶均須錄入中央錄音系統之內。

(10) 每一個全權委託戶口至少每隔3個交易日須由持牌買賣商的責任董事進行一次審查，以確保它的運作符合該客戶的特別指示(如有)、客戶協議書、全權委託協議書及本規則的規定。

(11) 持牌買賣商須向證監會呈交其標準格式的全權委託戶口協議書，而第5(5)、(6)及(7)條適用於該條所指的標準格式的客戶協議書的規定同樣地適用於全權委託戶口協議書。

9. 客户買賣指示

(1) 持牌買賣商須——

(*a*) 確保所有來自客戶的電話買賣指示已被錄入由其操作的中央錄音系統之內；及

(*b*) 在接獲客戶的買賣指示後立即以書面方式記錄每個買賣指示，不論這些指示是透過電話或其他方式作出。

(2) 根據第(1)款的要求而作出的記錄須載有——

(*a*) 客戶的名稱及(如適用)獲得該客戶授權發出買賣指示的人士的名稱，以及客戶的戶口號碼；

(*b*) 接獲買賣指示的日期及時間；

(*c*) 作出買賣指示的方法；.

(*d*) the type, price and quantity of the contracts ordered;
(*e*) the name of the representative or employee of the licensed trader who received the order; and
(*f*) detailed particulars of the instructions in respect of the order.

(3) A licensed trader shall confirm the details of each order executed as soon as possible with that client or his agent, as the case may be, through a telephone connected to the centralized tape recording system.

(4) Where the voice of a client cannot be recorded on the centralized tape recording system for any reason, the licensed trader shall—
(*a*) in the absence of any written instructions given by the client in respect of the order, require the client to sign an order form; and
(*b*) confirm details of the contract with the client once an order has been executed.

(5) Where a licensed trader does not have the client's confirmation on tape or on an order form as required by subsection (4)(*a*) and the client disputes the order within 10 trading days of its execution, it shall be voidable at the option of the client.

(6) Where a client gives any instructions involving closing positions or closing an entire account, a licensed trader shall ensure that all necessary contracts that may be required in order to implement those instructions are executed promptly and that the price and terms and conditions of such contracts do not differ in any material respect from contracts entered into with or on behalf of other clients.

10. Payment to clients

A licensed trader shall ensure that any instructions given by a client relating to payment to the client of any net equity, floating profit or margin excess are complied with within 1 trading day.

11. Statement of account

(1) A licensed trader shall, within 7 trading days of the end of each calendar month, provide to each of its clients a monthly statement of account which shall include—
(*a*) all contracts entered into with or on behalf of the client during that period;
(*b*) the net equity balance of the account as at the beginning of that period;
(*c*) all income credited to and charges levied against the account during that period;

(*d*) 被指示訂立的合約的類別、價格及數量；
(*e*) 接獲買賣指示的持牌買賣商的代表或僱員的姓名；及
(*f*) 該買賣指示中指令的詳情。

(3) 持牌買賣商須透過與中央錄音系統接駁的電話盡快向客戶或其代理人(視屬何情況而定)確認每個執行了的買賣指示的詳情。

(4) 凡客戶的聲音因任何原因未能錄入中央錄音系統之內，持牌買賣商須——
(*a*) 在沒有客戶就有關的買賣指示作出的任何書面指令的情況下，要求客戶簽署買賣指示表格；及
(*b*) 在買賣指示被執行後即向客戶確認合約的詳情。

(5) 凡持牌買賣商沒有客戶確認的錄音帶或第(4)(*a*)款所指的經客戶簽署的買賣指示表格，而該客戶又在執行指示日起計的10個交易日內質疑該買賣指示，客戶可選擇將該買賣指示作廢。

(6) 凡客戶作出任何涉及平倉或終止整個戶口的指令，持牌買賣商須確保為執行這些客戶指令可能要求的所有必要合約均得以迅速執行，而且這些合約的價格、條款和條件及持牌買賣商與其他客戶訂立或代其訂立的合約在實質方面沒有任何分別。

10. 對客户的付款

持牌買賣商須確保客戶所作出的有關向其支付任何權益淨額、浮動利潤或保證金溢差額的任何指令在一個交易日內執行。

11. 户口結單

(1) 持牌買賣商須在每一個公曆月終結後的7個交易日內，向其每一名客戶提供戶口月結單，並須載有——
(*a*) 該期間內與該客戶訂立或代其訂立的所有合約；
(*b*) 該期間開始時戶口的權益淨額的結餘數目；
(*c*) 該期間內記入戶口的所有收入及被徵收的所有費用；

(*d*) all movements of cash and margin deposits during that period;
(*e*) all floating profits and floating losses calculated as at the end of that period and the prices used for such purposes;
(*f*) all interest income and expenses accrued at the end of that period and the interest rates used for such purposes;
(*g*) the net equity balance of the account as at the end of that period;
(*h*) the minimum margin requirement for all open positions as at the end of that period;
(*i*) the amount of margin excess or margin shortfall as at the end of that period;
(*j*) a list of all open positions as at the end of that period; and
(*k*) a list of the balances of all holdings of cash and other assets held in the client's account as at the end of that period.

(2) A licensed trader shall, upon a client's request, disclose to the client the financial condition of its business by—
(*a*) providing him with a copy of its latest accounts as filed with the Commission under the Leveraged Foreign Exchange Trading (Financial Resources) Rules (L.N. 443 of 1994); and
(*b*) disclosing any material changes since its latest accounts which may adversely affect its financial condition.

PART IV

MARGINS

12. Client's margin

(1) A licensed trader shall set the initial margin and maintenance margin level for its clients at not less than 5% and 3% respectively of the principal amount of the contract offered by the licensed trader.

(2) Except as provided in subsection (3), no licensed trader shall execute any contract for a client until and unless the licensed trader has received from the client a margin deposit adequate to cover the initial margin required.

(3) A licensed trader may execute a contract for a client, other than a discretionary account client, without first having received the initial margin from that client if it is reasonably satisfied that, given the investment objectives, investment strategy and financial position of that client, the full amount of the initial margin will be deposited by the client within the next trading day or such shorter period as may be specified by the licensed trader.

(4) Subsection (3) does not apply to a client—
(*a*) who has never entered into a contract through or with the licensed trader;

(*d*) 該期間內現金及保證金存款的所有變動；
(*e*) 該期間終結時計算的所有浮動利潤及浮動虧損，以及計算時所採用的價格；
(*f*) 該期間終結時計算的所有應計利息收入及支出，以及計算時所採用的利率；
(*g*) 該期間終結時戶口的權益淨額的結餘數目；
(*h*) 該期間終結時所有未平倉合約的最低保證金要求；
(*i*) 該期間終結時保證金的溢差或逆差的數目；
(*j*) 該期間終結時所有未平倉合約一覽表；及
(*k*) 該期間終結時客戶的戶口內的所有現金及其他資產的結餘一覽表。

(2) 持牌買賣商須應客戶的要求，透過以下方式向客戶披露其業務的財務狀況——
(*a*) 向其提供根據《槓桿式外匯買賣(財政資源)規則》(1994年第443號法律公告)而向證監會呈交存檔的最近期帳目的副本；及
(*b*) 披露自其最近期帳目以來，可能會負面地影響其財務狀況的任何實質改變。

第IV部

保證金

12. 客户保證金

(1) 持牌買賣商須將客戶的最初保證金及維持保證金額，分別定於不少於持牌買賣商所提供的合約的本金數額的5%及3%。

(2) 除第(3)款另有規定外，持牌買賣商不得為客戶執行任何合約，直至及除非持牌買賣商已從該客戶收到足以符合該客戶的最初保證金要求的保證金存款。

(3) 持牌買賣商可以在沒有事先收到該客戶的最初保證金的情況下，代客戶(全權委託戶口的客戶除外)執行合約，如果其合理地認為，根據該客戶的投資目標、投資策略及財務狀況，客戶會在下一個交易日內或由持牌買賣商指定的更短時間內將該筆最初保證金的足額存入。

(4) 第(3)款不適用於下列客戶——
(*a*) 其從未與該持牌買賣商或由其代表訂立過合約；

(b) who has never paid, or been asked to pay, any initial margin to the licensed trader; or

(c) who has failed to satisfy the initial margin requirement as specified in subsection (3) on at least 2 occasions during the period of 1 year immediately preceding the transaction for which the deferral of the deposit of initial margin is requested by the client.

(5) For the purposes of calculating the amount of any margin deposit required under this section, the basis and method of valuation applicable to margins as provided in the Leveraged Foreign Exchange Trading (Financial Resources) Rules (L.N. 443 of 1994) shall be adopted.

13. No credit on margin

Except as expressly provided in section 12(3), a licensed trader shall not extend any credit or give any rebate of any kind to a client which has the effect of circumventing or evading the margin requirements specified herein.

14. Restricted use of margin collateral

(1) A licensed trader shall ensure that margin deposits and other assets of its clients and recognized counterparties are properly safeguarded and are held separately from the assets of the licensed trader.

(2) A licensed trader shall not use the margin collateral of its clients as security for loans or advances made to it or to any other person.

PART V

STAFF AND STAFF DEALINGS

15. Representatives and employees

(1) A licensed trader shall be responsible for all acts carried out and omissions made on its behalf by—

(a) its representatives and all persons for whose registration it is responsible under the Ordinance; and

(b) any other persons employed by it for the purposes of carrying on its business as a licensed trader,

provided the acts or omissions are within the ostensible authority of that person.

(2) A licensed trader shall ensure that its representatives and employees comply with the licensing requirements of the Ordinance.

(b) 其從未向該持牌買賣商支付過或曾被該持牌買賣商要求支付任何最初保證金；或

(c) 在其要求延遲存入最初保證金的緊接本交易之前一年內，其已至少兩次未能滿足第(3)款所列明的最初保證金要求。

(5) 為計算本條所要求的保證金金額，須採用《槓桿式外匯買賣(財政資源)規則》(1994年第443號法律公告)所適用於保證金的計算基礎及方式。

13. 不得就保證金提供信貸

除第12(3)條有明確規定外，持牌買賣商不得向客戶提供任何信貸或給予任何種類的回扣，使客戶得以迴避或逃避本規則內所列明的保證金要求。

14. 保證金抵押品的限制使用

(1) 持牌買賣商須確保其客戶及獲承認對手方所存入的保證金存款及其他資產得到適當保障，並且與持牌買賣商的資產分開持有。

(2) 持牌買賣商不得將其客戶的保證金抵押品用作為提供貸款或墊款予該持牌買賣商或任何其他人士的保證物。

第V部

職員及職員的交易

15. 代表及僱員

(1) 持牌買賣商須對下述人士代表其進行或作出的所有作為及不作為負責——

(a) 其代表及持牌買賣商根據本條例須對其註冊地位負責的所有人士；及

(b) 其他由持牌買賣商為經營其作為持牌買賣商之業務而僱用的任何人士，

但這些作為或不作為須在該名人士的表面權力範圍之內。

(2) 持牌買賣商須確保其代表及僱員符合本條例有關牌照的規定。

16. Register of representatives and employees

(1) A licensed trader shall maintain a register of all of its representatives and employees.

(2) The register shall include the following particulars with respect to each representative and employee—

(*a*) the name, residential address and telephone number of each individual;
(*b*) details of that individual's Hong Kong identity card or, if the individual is not the holder of an identity card, details of his passport, travel or other document issued by a competent government agency providing proof of identity;
(*c*) the job title and description of responsibility of each individual;
(*d*) the amount of any charges, commission, brokerage and remuneration to which that individual is entitled at each monthly interval or such shorter period and the means by which it is paid;
(*e*) the date of becoming or ceasing to be an employee or representative;
(*f*) the name, address and telephone number of every former employer of the individual within 5 years immediately preceding the commencement of his employment with the licensed trader;
(*g*) the education of the individual; and
(*h*) particulars of every licence in respect of the individual.

17. Personal dealings by staff

(1) No representative or employee of a licensed trader shall be a client of another licensed trader.

(2) A licensed trader must make reasonable enquiries to ensure that none of its representatives or employees contravenes subsection (1).

(3) A licensed trader shall have a policy, which shall be communicated in writing to its representatives or employees, as to whether they are permitted to deal for their own account.

(4) A licensed trader who permits its representatives or employees to deal for their own account shall ensure that—

(*a*) contracts undertaken for the account of a representative or employee must be separately recorded and clearly identified as such in the records of the licensed trader; and
(*b*) contracts undertaken for the account of a representative or employee must be reported to and reviewed on a daily basis by a director of the licensed trader.

16. 代表及僱員名冊

(1) 持牌買賣商須保存其所有代表及僱員的名冊。

(2) 名冊須載有關於每一名代表及僱員的詳情如下——

(*a*) 每一名個別身分的人的姓名、住址及電話號碼；
(*b*) 該人的香港身分證的詳情，但如該人並非身分證持有人，其護照、旅行證件或由主管政府機構所簽發可提供身分證明的其他文件的詳情；
(*c*) 每個人的職銜及職責的描述；
(*d*) 該人以每個月或更短的期間為單位所應得的任何費用、佣金、經紀佣金和報酬的數額及支付方式；
(*e*) 該人成為或終止為僱員或代表的日期；
(*f*) 緊接被該持牌買賣商僱用開始之前的5年內，該人每名前僱主的名稱、地址及電話號碼；
(*g*) 該人的教育水平；及
(*h*) 有關該人的每個牌照的詳情。

17. 職員的個人交易

(1) 持牌買賣商的代表或僱員不得成為另一名持牌買賣商的客戶。

(2) 持牌買賣商須作出合理查詢，以確保其代表或僱員中沒有人違反第(1)款的規定。

(3) 持牌買賣商須訂立政策，並以書面向其代表或僱員傳達，表示他們是否獲批准為其本身利益進行交易。

(4) 持牌買賣商如批准其代表或僱員為其本身利益進行交易，須確保——

(*a*) 為代表或僱員的利益而執行的合約，必須在持牌買賣商的記錄內分別作出記錄並明確地識別為該等記錄；及
(*b*) 為代表或僱員的利益而執行的合約，必須每日向持牌買賣商的董事報告，並由董事進行審查。

PART VI

MISCELLANEOUS

18. Advertisements

(1) Where a licensed trader issues an advertisement in relation to its business, it shall ensure that—

(*a*) the advertisement is not misleading or deceptive; and

(*b*) the advertisement contains a risk disclosure statement as prescribed by section 7(2).

(2) The Commission may—

(*a*) prohibit the continued use of any advertisement by a licensed trader which contravenes subsection (1); or

(*b*) permit the use of such advertisement provided that—

(i) the licensed trader removes any reference in the advertisement which is misleading or deceptive;

(ii) the licensed trader reformulates any advertisement which is misleading or deceptive in such a way that it is no longer misleading or deceptive; and

(iii) the provisions of section 7(2) are satisfied.

(3) Where any advertisement by a licensed trader is prohibited under subsection (2)(*a*), the licensed trader shall ensure that publication or distribution of such advertisement is stopped immediately.

(4) Any material issued by the licensed trader which is intended to promote, or which has the effect of promoting, interest in the business of the licensed trader shall be deemed to be an advertisement for the purposes of this section.

(5) If a licensed trader is aggrieved—

(*a*) where the Commission prohibits the use of any advertisement in relation to its business, by that prohibition; or

(*b*) where the Commission permits the use of such advertisement subject to any condition imposed under subsection (2)(*b*), by that imposition,

it may appeal to the Securities and Futures Appeals Panel.

(6) An appeal referred to in subsection (5) shall not affect the coming into force of any prohibition or imposition to which the appeal relates.

19. Taping

(1) A licensed trader shall install at its place of business a centralized tape recording system to record all telephone conversations conducted by it or its representatives with prospective clients, clients and recognized counterparties.

第VI部

雜項

18. 廣告

(1) 凡持牌買賣商發出有關其業務的廣告，須確保——

(*a*) 該廣告沒有誤導或欺騙成份；及

(*b*) 該廣告載有第7(2)條所訂明的風險披露聲明。

(2) 證監會可以——

(*a*) 禁止持牌買賣商繼續使用任何違反第(1)款的廣告；或

(*b*) 允許持牌買賣商使用該廣告，但須符合以下條件——

(i) 持牌買賣商從這些廣告中刪除所有誤導或欺騙性的提述；

(ii) 持牌買賣商重新製作該帶有誤導或欺騙成份的廣告，以使其不再帶有誤導或欺騙成份；及

(iii) 該廣告符合第7(2)條的規定。

(3) 凡任何由持牌買賣商使用的廣告根據第(2)(*a*)款被禁止，持牌買賣商須確保該廣告的公布或分發將立刻停止。

(4) 就本條而言，任何由持牌買賣商所發出而旨在促使人們對其業務產生興趣，或將產生這樣效果的材料須被視為廣告。

(5) 如持牌買賣商因下列情況而受屈，可向證券及期貨事務上訴委員會提出上訴——

(*a*) 證監會禁止其使用與其業務有關的廣告；或

(*b*) 證監會根據第(2)(*b*)款在允許其使用該廣告時施加條件。

(6) 第(5)款所提述的上訴不會影響與該項上訴相關的禁制或附加條件的決定發生效力。

19. 錄音

(1) 持牌買賣商須在其營業地點安裝一部中央錄音系統以錄下所有由該買賣商或其代表與可能成為客戶的人、客戶及獲承認對方的電話談話。

(2) All telephone lines used by staff of the licensed trader responsible for making calls within the meaning of section 39(2) of the Ordinance, confirming orders, executing contracts, transferring funds, or carrying out instructions incidental thereto, shall be routed through the centralized tape recording system.

(3) Tapes from the centralized tape recording system shall be kept for at least 2 months.

(4) A licensed trader shall ensure that access to tapes of the centralized tape recording system, whether in use or in storage, is strictly controlled.

(5) A licensed trader shall—

(*a*) use its best endeavours to ensure that the centralized tape recording system functions properly at all times; and

(*b*) carry out random checks at intervals of not less than once every week to ensure that the provisions of the Ordinance and any rules made thereunder have been complied with.

20. Dealing practices

(1) A licensed trader shall—

(*a*) disclose its trading hours to its clients, specifying the beginning and ending hours of a trading day; and

(*b*) display at each of its places of business a prominent notice which shows the information as specified in paragraph (*a*).

(2) A licensed trader shall quote both the bid and offer prices at the request of a client.

(3) A licensed trader shall not quote a price for a contract without specifying whether the price is, for a given quantity of contracts, a firm one or merely indicative.

(4) A licensed trader quoting a price for a contract to any person shall inform that person that the price given by it is available only for a limited period of time and, where practicable, specify the time period in question.

(5) A licensed trader quoting a firm price shall deal at that price.

(6) All contracts shall be recorded in dealing slips which are time stamped.

21. Licence to be exhibited

A licensed trader shall exhibit—

(*a*) its licence in a prominent place at its principal place of business; and

(*b*) a certified copy of its licence at each of its other places of business, if any.

(2) 所有持牌買賣商的職員用作本條例第39(2)條所指的造訪、確認買賣指示、執行合約、轉撥款項或其他附帶引起的指示的電話線路,均須經中央錄音系統轉駁。

(3) 中央錄音系統的錄音帶須保存至少2個月。

(4) 持牌買賣商須確保接觸中央錄音系統的錄音帶(不論是在使用或儲存中)受到嚴格控制。

(5) 持牌買賣商須——

(*a*) 盡最大努力確保中央錄音系統在所有時候都運作正常;及

(*b*) 每星期對中央錄音進行不少於一次隨機檢查,以確保本條例及任何根據本條例所制定的規則內的條文均獲得遵守。

20. 交易慣例

(1) 持牌買賣商須——

(*a*) 向其客戶披露其交易時間,並指明交易日開始及終結的鐘點;及

(*b*) 在其每一個營業地點,展示載有(*a*)段所列明的資料的一項顯眼的通告。

(2) 持牌買賣商須應客戶的要求同時報出買入價及賣出價。

(3) 持牌買賣商在未指明該價格就某指定數量的合約是實價還是僅為參考價時,不得就一份合約報價。

(4) 持牌買賣商就一份合約而向任何人士報價時,須告知該名人士其所提供的價格只在某個限定期間內有效,並在可行的情況下指明該期間。

(5) 持牌買賣商報出實價就須以該價格進行交易。

(6) 所有合約須被記錄在蓋有時間戳記的盤紙之上。

21. 牌照的展示

持牌買賣商須展示——

(*a*) 其牌照於其主要營業地點的顯眼處;及

(*b*) 其牌照的認證副本於其每一個其他的營業地點(如有)。

22. Location of business

A licensed trader shall carry on a business of leveraged foreign exchange trading only at an address or addresses approved by the Commission for that purpose.

23. Record of client's complaints

(1) A licensed trader shall—
(*a*) maintain a written record of any complaints from clients; and
(*b*) establish and implement proper procedures for handling and investigating such complaints.

(2) A licensed trader shall ensure that client complaints are dealt with promptly and remedial action is taken as soon as possible.

(3) A licensed trader shall inform a client of the results of any complaints made by him as soon as practicable and in any event within 3 days of determining the results of that complaint.

24. Obligation to notify the Commission

A licensed trader and its representatives shall notify the Commission in writing immediately upon its becoming aware of any breach of the provisions of the Ordinance or any rules made thereunder.

25. Penalties

Any person who contravenes section 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 or 24 commits an offence and is liable to a fine of $50,000 and to imprisonment for 6 months.

Robert NOTTLE,
Chairman,
Securities and Futures Commission.

18 July 1994.

22. 業務地點

持牌買賣商只可在獲證監會批准作為經營槓桿式外匯買賣業務的一個或多個地址經營其槓桿式外匯買賣業務。

23. 客户投訴的記錄

(1) 持牌買賣商須——
(*a*) 保存來自客戶的任何投訴的書面記錄；及
(*b*) 設立及執行處理和調查這些投訴的適當程序。

(2) 持牌買賣商須確保客戶的投訴得到迅速處理，並須盡快採取補救行動。

(3) 持牌買賣商須在可行的情況下，盡快通知客戶其作出的任何投訴的結果，並無論如何都須在作出決定後的3日內，將該宗投訴的結果通知客戶。

24. 通知證監會的義務

持牌買賣商及其代表一旦知悉任何違反本條例或根據本條例所制定的任何規則內的條文的事宜，須立即以書面通知證監會。

25. 罰則

任何人士違反第5、6、7、8、9、10、11、12、13、14、15、16、17、18、19、20、21、22、23或24條，即屬犯罪，可處罰款$50,000及監禁6個月。

羅德滔
證券及期貨事務監察委員會主席

1994年7月18日

Explanatory Note

These Rules are made by the Securities and Futures Commission under sections 21, 22 and 73 of the Leveraged Foreign Exchange Trading Ordinance (53 of 1994). They prescribe the appropriate standard of conduct which must be observed by licensed traders operating their business under the Ordinance, including mandatory provisions to be incorporated into its agreements with clients, the issue of contract notes and statements of account, the installation of centralized tape recording systems, the imposition of margin requirements and the adoption of certain operating procedures.

註 釋

本規則由證券及期貨事務監察委員會根據《槓桿式外匯買賣條例》(1994年第53號)第21、22及73條制訂。本規則指定持牌買賣商根據本條例經營業務時必須遵守的適當操守準則，包括必須在持牌買賣商與客戶訂立的協議書中載有的必備條款、成交單據及戶口結單的發出、中央錄音系統的裝置、保證金規定的制訂及某些運作程序的採用。