Hong Kong Monetary Authority 香港金融管理局

Banking Policy Department

Our Ref. : CB/POL/2/2/1 26 July 1995

The Chief Executive
All authorized institutions

Dear Sir/Madam,

Guideline on Leveraged Foreign Exchange Trading issued under section 7(3) of the Banking Ordinance (Cap. 155)

I write to inform you that the Monetary Authority (MA) has reached agreement with the Securities and Futures Commission (SFC) for the latter to make rules ("Call Rules") under sections 39(2)(b) and 73 of the Leveraged Foreign Exchange Trading Ordinance (the Ordinance) to exempt calls by authorized institutions to sell leveraged foreign exchange trading contracts from section 39 of the Ordinance where such calls comply with guidelines issued by the Monetary Authority.

After consultation with the industry Associations and the SFC, the MA has finalised the guideline which sets out the parameters for the making of such calls by authorised institutions. The statutory guideline, issued under section 7(3) of the Banking Ordinance, was published in the Gazette on 21 July. A copy is attached for your reference. Please note that paragraph 5 of the guideline requires authorised institutions that are already engaged in leveraged foreign exchange trading to confirm in writing to the MA that they will follow the guideline. Institutions that are not presently engaged in margin trading but wish to start such a business are advised to discuss their plans with the MA in advance to ensure that the proposed operations are in line with the guideline.

Following publication of the guideline, the SFC made the Call Rules on 24 July which will be published in the Gazette on 28 July. The Rules will come into effect on the same date of its publication in the Gazette.

Yours faithfully,

(Peter S. T. Pang)
Executive Director (Banking Policy)

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c.c.: Chairman, HKAB
Chairman, DTCA
Secretary for Financial Services
Securities and Futures Commission
(Attention : Mr Michael Wu)

b.c.c.: DCE(B)
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Leveraged Foreign Exchange Trading

A Guideline issued by the Monetary Authority
under section 7(3) of the Banking Ordinance

(CAP. 155)

Introduction

Authorized institutions have been granted an exemption under the Leveraged Foreign Exchange Trading Ordinance ("the Ordinance") from the licensing related requirements in relation to leveraged foreign exchange trading, including the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules ("the Rules"), the Leveraged Foreign Exchange Trading (Financial Resources) Rules and the Leveraged Foreign Exchange Trading (Accounts and Audit) Rules issued by the Securities and Futures Commission ("the SFC"). However, they are subject to section 39 of the Ordinance which, with certain limited exceptions, prohibits the making of unsolicited calls. Currently, authorized institutions may only market leveraged foreign exchange trading products through:

(a) providing promotional literature to potential customers who walk into their offices seeking advice on investment or banking products; and

(b) displaying promotional literature and brochures in offices.

2. The Monetary Authority has reached agreement with the SFC that Rules will be made under section 39(2)(b) and 73 of the Ordinance ("the Calls Rules") to exempt calls by authorized institutions to sell leveraged foreign exchange contracts where such calls comply with guidelines issued by the Monetary Authority. This guideline contains the parameters for the making of such calls by authorized institutions when the Calls Rules come into effect. Authorized institutions are reminded that they remain subject to section 40 of the Ordinance (on employment of fraudulent and deceptive devices).

Meaning of leveraged foreign exchange trading

3. For the purpose of this Guideline, leveraged foreign exchange trading has the meaning assigned to it under section 2 of the Ordinance. It includes, but is not confined to, "margin trading" which means for the purpose of this guideline any transaction between an authorized institution and a counterparty for the purchase or sale of foreign currencies, where the counterparty is only

required to put up a small proportion of the value of the contract with an authorized institution, with settlement being made by reference to differences in rates rather than actual delivery.

Marketing of leveraged foreign exchange trading contracts through calls

4. The Monetary Authority believes that authorized institutions should be selective in the marketing and promotion of leveraged foreign exchange trading contracts. As a result, for the purpose of soliciting persons to enter into leveraged foreign exchange trading transactions, an authorized institution may:

(a) call any person who has entered into a written agreement with the authorized institution for it to provide, transact with, or undertake on behalf of, that person, leveraged foreign exchange trading contracts;

(b) call any person who, at the date of such call, has deposits in excess of $500,000 with the authorized institution or assets in excess of $500,000 under management, whether on a discretionary or non-discretionary basis, by the authorized institution or a related corporation or one or more of them;

(c) call any person who, at the date of such call, has deposits in excess of $200,000 with the authorized institution or assets in excess of $200,000 under management, whether on a discretionary or non-discretionary basis, by the authorized institution or a related corporation or one or more of them, provided that such call is made by post only;

(d) call a corporation which is a related corporation of a corporate customer which meets the deposit or asset tests as set out in (b) and (c) above;

(e) call a corporation that is listed on a recognised stock exchange or a related corporation of such corporation;

(f) call a corporation with a paid-up share capital that is not less than the minimum expected market capitalisation of a new applicant at the time of listing under the Listing Rules of the Stock Exchange of Hong Kong Limited, or a related corporation of such corporation;

(g) in relation to contracts other than margin trading contracts, call any corporation;

(h) call another authorised institution or a related corporation of such institution; or

(i) call an insurer authorised under the Insurance Companies Ordinance

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(Cap. 41) or a related corporation of such insurer.

In the above, "corporation", "related corporation" and "recognised stock exchange" have the meanings given to them respectively in the Ordinance.

Where the call is made to a corporation, it should be made to the treasurer or other person whom the caller believes is authorized to trade on behalf of the corporation.

5. The Monetary Authority expects all authorized institutions that are already engaged in leveraged foreign exchange trading to comply with the above guideline. Such institutions should confirm in writing to the Monetary Authority that they will follow the guideline. For those institutions that are not presently engaged in margin trading but wish to start such a business, they are advised to discuss their plans with the Monetary Authority in advance to ensure that the proposed operations are in line with the guideline.

6. All client agreements and promotional literature relating to margin trading contracts should contain a risk disclosure statement, similar to that set out in section 7(2) of the Rules, warning of the risks of dealing in margin trading.

Best practice in Margin Trading

7. The Monetary Authority has already issued a letter dated 19 December 1994 making it clear that it expects authorized institutions to conduct the business of margin trading in accordance with standards which are at least equivalent to those set out in the Rules issued by the SFC.

Hong Kong Monetary Authority
July 1995