

## **Guidance Note on the Application of the Electronic Transactions Ordinance to Contract Notes**

The Electronic Transactions Ordinance (“ETO”) makes it possible for dealers to issue electronic contract notes. However, a number of conditions set by the ETO must first be satisfied. Dealers who wish to issue electronic contract notes should familiarise themselves with the relevant limitations and conditions to ensure compliance with the law. The following summarises the current position but is intended for general guidance only. Dealers who are not sure of their obligations should seek legal advice.

### **A. Contract Notes under the Securities Ordinance (“SO”)**

Once a purchase, sale or exchange of securities is effected by a dealer in Hong Kong, a contract note must be made under SO (section 75). Additionally, section 19(1) of the Stamp Duty Ordinance (“SDO”) requires any person who effects any sale or purchase of Hong Kong stock to make and execute a contract note. A contract note under the SDO should be in paper format unless it is a contract note relating to the collection agreement under section 5A of the SDO. Section 5A relates to transactions on the Stock Exchange of Hong Kong Limited (“SEHK”) and it provides that contract notes may be made in electronic form if:

- (1) the stamp duty charged thereon is paid to the Collector of Stamp Revenue (“Collector”) through the SEHK; and
- (2) the dealer is authorised by the Collector, pursuant to section 5(2A) of the SDO, to stamp the contract note by imprinting on the electronic contract note the amount of stamp duty chargeable and a note as directed by the Collector as follows:

The stamp duty imprinted herein has been/will be paid through The Stock Exchange of Hong Kong Limited.
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*Currently many exchange participants of the SEHK and dealers are authorised to make this imprint and any new applications for authorisation can be made to the Collector directly.*

*If a contract note requires stamping and does not fulfil the requirements of the SDO, then dealers cannot issue it electronically and the paper format must be used.*

Contract notes in electronic form are also acceptable for transactions in foreign securities not publicly listed in Hong Kong. In these circumstances, the contract note provisions of the SO (section 75) and the conditions in the ETO (essentially set out in section B below) will apply.

A transaction in Hong Kong stock where there has been no change in the beneficial ownership of the securities is not a sale or purchase of Hong Kong stock. The contract notes issued in such transactions are not required to be stamped under the SDO and are acceptable in electronic form if the conditions under the ETO are satisfied.

Options Trading Participants of the SEHK are also required to issue “options trade confirmations” under Options Trading Rule 414, which requires additional information for options trades. The options trade confirmations may also be issued in electronic form if the conditions under the ETO are satisfied.

## **B. The Provisions of the ETO**

The provisions of the ETO require the following:

- (1) The relevant client must consent to the contract note being in electronic form and to receiving it in electronic form.
- (2) When delivering or retaining original contract notes, dealers must ensure that:
  - (a) there is a reliable assurance as to the integrity of the information contained in the electronic contract note from the time it was first generated; and
  - (b) the information can be displayed in a legible form to the recipient and is accessible so as to be usable for subsequent reference.
- (3) When delivering copies of contract notes, dealers must ensure that the information contained in the electronic contract note is accessible so as to be usable for subsequent reference.
- (4) When retaining copies of contract notes, dealers must ensure that:
  - (a) the information remains accessible so as to be usable for subsequent reference;
  - (b) the electronic record is retained in the format in which it was originally generated, sent or received or can be demonstrated to represent accurately the information originally generated, sent or received; and
  - (c) information enabling identification of (i) the origin and destination of the electronic record and (ii) the date and time of its being sent or received, is retained.

Dealers may wish to note that as there is no requirement for contract notes made under the SO (in the circumstances described at section A above), the CTO or LFETO to be signed, digital signatures are not required if they are in electronic form.

**C. Contract Notes under Commodities Trading Ordinance (“CTO”) and Leveraged Foreign Exchange Trading Ordinance (“LFETO”)**

Contract notes that are made pursuant to the CTO or of the LFETO, may also be in electronic form and must comply with the requirements with respect to the ETO as set out in section B above.