

立法會
Legislative Council

LC Paper No. LS 48/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 18 January 2002**

**Legal Service Division Further Report on
Securities and Futures Commission (Levy) (Futures Contracts)
(Amendment) (No. 3) Order 2001 (L.N. 296 of 2001) and
Commodities Trading (Contract Levy) (Amendment)
(No. 3) Rules 2001 (L.N. 301 of 2001)
Gazetted on 28 December 2001**

At the House Committee meeting on 4 January 2002, members agreed to defer their decision on the Securities and Futures Commission (Levy) (Futures Contracts) (Amendment) (No. 3) Order 2001 (L.N. 296 of 2001) ("the Amendment Order") and Commodities Trading (Contract Levy) (Amendment) (No. 3) Rules 2001 (L.N. 301 of 2001) ("the Amendment Rules") pending our further report.

2. The Amendment Order amends the Securities and Futures Commission (Levy)(Futures Contracts) Order (Cap. 24 sub. leg.) so as to reduce the levy in relation to all options on stock futures contracts from \$1.0 to \$0.20 for every leviable transaction payable to the Securities and Futures Commission ("the SFC"). The Amendment Rules amend the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg.) so as to reduce the compensation fund levy payable in respect of all options on stock futures contracts from \$0.50 to 0.10 for every leviable transaction.

3. We have asked the SFC to explain the reason for the Amendment Rules to adopt a drafting style different from that of the Amendment Order, despite the similarity in nature of the two items.

4. In synchronizing the provisions, in drafting terms, of the Amendment Order and Amendment Rules, the SFC proposes to repeal the Amendment Rules by the Commodities Trading (Contract Levy) (Amendment) Rules 2002 ("the Amendment Rules 2002"). The Amendment Rules 2002 also seek to achieve the same policy object as that in the Amendment Rules but in

drafting terms similar to those of the Amendment Order. Copies of the correspondence between the SFC and Legal Service Division are at the **Annex**. A copy of the draft Amendment Rules 2002 (English version only) is attached to the SFC's letter of 16 January 2002 for Members reference. The SFC proposes to gazette the Amendment Rules 2002 on 25 January 2002. The SFC further intends to bring the Amendment Rules 2002 to come into operation on the same day as the commencement of the Amendment Order.

5. The legal and drafting aspects of the Amendment Rules 2002 are in order.

6. Members are recommended to support the Amendment Order. In relation to the Amendment Rules, members may wish to, either—

- (a) amend by resolution the Amendment Rules along the line as proposed in the Amendment Rules 2002; or
- (b) support the SFC to repeal the Amendment Rules by the Amendment Rules 2002 together with the amendments therein.

Encl

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
16 January 2002

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Ms Thrity Mukadam,
Senior Counsel
Legal Services Division
The Securities and Future Commission
12/F Edinburgh Tower
The Landmark
15 Queen's Road, Central
Hong Kong

31 December 2001

BY FAX

Fax No. : 2293 5649
Total no. of page(s) : 2

Dear Ms Mukadam,

**Commodities Trading (Contract Levy)
(Amendment) (No. 3) Rules 2001
(L.N. 301 of 2001)**

We are scrutinizing the legal and drafting aspects of the Amendment Rules. We should be grateful for your clarification of the following points.

The empowering provision

Would it be necessary to add "the" before "Hong Kong Futures Exchange Limited"?

Rule 2(a)

Why is it necessary to use capital letters for "Stock Futures Contracts"? (c.f. new paragraph 2(2) in section 2 of the Securities and Futures Commission (Levy) (Futures Contracts) (Amendment) (No. 3) Order 2001 (L.N. 296 of 2001)).

Rule 2(b)

Why is it necessary to define the terms "Options on Stock Futures Contracts" and "Stock Futures Contracts"? (c.f. section 2 of the Securities and Futures Commission (Levy) (Futures Contracts) (Amendment) (No. 3) Order 2001).

In facilitating us to report to the LegCo House Committee meeting to be held on 4 January 2002, it is appreciated that your reply, in both languages, could reach us by mid-noon of 2 January 2002.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. SFS (Attn: Ms Salina Yan, PAS) (Fax No. 2861 1494)
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SECURITIES AND FUTURES COMMISSION 證券及期貨事務監察委員會

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Thrity Mukadam
Senior Counsel

Our ref : 126/LG/4250/0100/002
126/LG/4024/1100/002
Your ref : LS/S/13/01-02

8 January 2002

Mr Stephen Lam
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat

BY FAX (Fax No : 2877 5029)

Dear Stephen,

LN 301/2001 : Commodities Trading (Contract Levy) (Amendment) (No. 3) Rules 2001
(“Amendment Rules”)

LN 296/2001 : Securities and Futures Commission (Levy) (Futures Contracts)
(Amendment) (No. 3) Order 2001 (“Amendment Order”)

I refer to your faxes of 31 December 2001 and 7 January 2002 and our various telephone discussions.

You have enquired why it is necessary to define the terms “*stock futures contracts*” and “*options on stock futures contracts*” in the Amendment Rules.

The Amendment Rules adopt a drafting style different from that of the Amendment Order. Definitions were used in the Amendment Rules in view of the drafting style adopted there. They were not intended to restrict in any way the range of options in respect of which the reduced levy would apply. In fact, the policy intention has always been for the levy reduction to apply to all options on stock futures contracts.

Given the above, and in order to avoid any possible doubt as to the implications of including definitions in the Amendment Rules we are prepared to invite the Commission to consider repealing the Amendment Rules (L.N. 301/2001) and making new rules. The new rules will be drafted in terms similar to those of the Amendment Order. I shall keep you advised of progress in this regard. In the meantime, if you have any questions or need any clarification, please feel free to call.

Yours sincerely,

Thrity Mukadam

c c Ms Salina Yan, PAS, FSB (2528 3345)

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Ms Thrity Mukadam,
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9 January 2002

BY FAX

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Total no. of page(s) : 2

Dear Thrity,

**Securities and Futures Commission (Levy) (Futures Contracts)
(Amendment) (No. 3) Order 2001 (L.N. 296 of 2001) and
Commodities Trading (Contract Levy)
(Amendment) (No. 3) Rules 2001 (L.N. 301 of 2001)**

Thank you for your letter of 8 January 2002, we have the following points arising from the letter for your clarification.

In paragraph 4 of the letter, when you say repeal of the Amendment Rules (L.N. 301 of 2001) and making of new Rules, would you confirm you mean that—

- (a) no amendment procedure under section 34 of Cap1 will be involved in respect of the Amendment Rules (L.N. 301); and
- (b) the Securities and Futures Commission will make new Amendment Rules 2002 to repeal the Amendment Rules (L.N. 301) and make new provisions therein similar, in drafting terms, to those of the Amendment Order (L.N. 296 of 2001)?

What is your time schedule to gazette the Amendment Rules 2002?

In the light of your proposal to make the Amendment Rules 2002, would you still intend that the Amendment Rules 2002 to come into operation on the same day as the commencement of the Amendment Order (L.N. 296)?

We would also like to emphasize that your proposal to make the Amendment Rules 2002 will not prejudice the LegCo's power to make amendments to the Amendment Rules (L.N. 301) under section 34 of Cap. 1, if Members decide to do so.

We would be grateful for your reply, in both languages, to us at your earliest convenience.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. SFS (Attn: Ms Salina Yan, PAS) (Fax No. 2861 1494)
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SECURITIES AND FUTURES COMMISSION 證券及期貨事務監察委員會

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Thrity Mukadam
Senior Counsel

Our ref : 126/LG/4250/0100/002
126/LG/4024/1100/002
Your ref : LS/S/13/01-02

16 January 2002

Mr Stephen Lam
Legal Service Division
Legislative Council Secretariat

BY FAX (Fax No : 2877 5029)
pages (including this sheet)

Dear Stephen,

**LN 301/2001 : Commodities Trading (Contract Levy) (Amendment) (No. 3) Rules 2001
("Amendment Rules")**

I refer to your fax of 9 January 2002 and, as requested, confirm that the matters noted in paragraphs (a) and (b) of your said letter are correct.

I also confirm that the Commission has made the Commodities Trading (Contract Levy) (Amendment) Rules 2002 ("**New Rules**"). A copy of the same is attached for your reference. Please note that the enclosed are in the process of being vetted by DoJ for form. There may therefore be further changes, but only as to form and not as to substance.

As regards the commencement date for the New Rules, you will see from the attached that the New Rules are intended to come into operation on the same day as the commencement of the Securities and Futures Commission (Levy) (Futures Contracts) (Amendment) (No. 3) Order 2001 (L.N. 296 of 2001).

Lastly, I note your comments regarding LegCo's power to amend the Amendment Rules (L.N. 301 of 2001). I trust however that you will keep them informed of the Commission's intention to repeal the same and make the New Rules so that they are aware of this when taking any decision to amend the Amendment Rules.

I hope the above clarifies your concerns. Please feel free to call if you have any further questions or need any further clarification.

Yours sincerely,

Thrity Mukadam
Senior Counsel

c c Ms Salina Yan, PAS, FSB (2861 1494)