

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (CONTRACTS LIMITS AND REPORTABLE POSITIONS) (AMENDMENT) RULES 2004

INTRODUCTION

Pursuant to section 35(1) of the Securities and Futures Ordinance (Cap. 571) (“SFO”), the Securities and Futures Commission (SFC) has made the Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2004 (the Amendment Rules) at the **Annex**.

BACKGROUND

The existing Rules

2. The Securities and Futures (Contract Limits and Reportable Positions) Rules (the Rules) effective since 1 April 2003 :
 - (a) require a person holding or controlling a position in futures contracts or stock options contracts exceeding limits set out in the Rules to lodge a notice with the relevant exchange company within the prescribed time and with the required information (i.e., reportable positions); and
 - (b) prohibit any person from holding or controlling futures contracts or stock options contracts exceeding the limits set out in the Rules (i.e., the prescribed limits).
3. The purpose of the Rules is to –
 - (a) enable the Hong Kong Exchanges and Clearing Limited (HKEx) and the SFC to perform the surveillance function of identifying persons who are establishing and controlling large derivative positions in the HKEx markets; and
 - (b) prevent concentration of positions in the HKEx markets which may lead to a systemic concern.

THE PROPOSALS

4. Section 7 of the Rules states that the reportable position limits and prescribed limits are applied separately to futures contracts or stock options contracts held or controlled in an exchange participant's own account and positions held or controlled by the exchange participant for each of its clients. That is to say, the exchange participant and each of its clients are permitted to hold or control positions within the prescribed limits. However, a non-Exchange Participant must aggregate its own position with those of its clients in applying the prescribed limits.

5. During the public consultation on the existing Rules in 2002, some non-exchange participant market players expressed concerns over the unlevel playing field and practical difficulties resulting from section 7. Given the severe time constraints on the drafting of the subsidiary legislation underpinning the SFO and that individual positions in the market at the time were far below the prescribed limits, the SFC did not see any urgency to review the Rules then but agreed to a review after the commencement of the SFO.

6. Having reviewed the Rules, the SFC now proposes to extend the application of section 7 of the Rules to any person who holds or controls futures contracts or stock options contracts on behalf of other persons except where the person has trading discretion over the positions he holds or controls for the other persons. The SFC believes that this will level the playing field and reduce the practical difficulties without posing additional risks to market stability or compromising the regulators' ability to monitor large concentrations of positions.

7. In accordance with section 35(2) of the SFO, the SFC has consulted the Financial Secretary in relation to rules made under section 35(1)(e).¹

THE AMENDMENT RULES

8. Section 2 of the Amendment Rules states that where a person holds or controls futures contracts or stock options contracts for other persons, the notice of reportable position lodged with the relevant exchange company must include the identities of the other persons as well as the number of contracts which are held or controlled on their behalf.

¹ Section 35(1)(e) enables the SFC to make rules prescribing the information by which a notice of a reportable position is to be accompanied.

9. Section 3 of the Amendment Rules extends the current section 7 to any person who holds or controls futures contracts or stock options contracts on behalf of other persons. That is to say, for the purposes of determining compliance with the prescribed limits and reportable position limits, a person who holds or controls futures contract or stock options contracts may apply the limits separately to his own account and to each of the positions he holds or controls for the other persons.

PUBLIC CONSULTATION

10. The SFC released a public consultation document and an exposure draft of the Amendment Rules on 17 September 2003. Seven submissions were received, indicating support for the proposed amendments. The SFC has considered all the comments received and no substantive revision of the exposure draft was necessary.

11. The Hong Kong Monetary Authority has been consulted pursuant to section 398(4) of the SFO and offered no comments. HKEx is also supportive of the Amendment Rules.

FINANCIAL AND STAFFING IMPLICATIONS

12. There are no financial or staffing implications for Government.

COMMENCEMENT DATE

13. The commencement date for the Amendment Rules will be 30 April 2004.

PUBLICITY

14. The Amendment Rules will be published in the Gazette on 5 March 2004 . The SFC will issue a press release on the same day.

ENQUIRIES

15. For any enquiries on this brief, please contact Ms Alexandra Yeong of the Supervision of Markets Division of the SFC at 2840 9247 or Ms Mary Ahern of the Legal Services Division of the SFC at 2283 6809.

SECURITIES AND FUTURES (CONTRACTS LIMITS AND REPORTABLE POSITIONS) (AMENDMENT) RULES 2004

(Made by the Securities and Futures Commission under section 35(1) of the Securities and Futures Ordinance (Cap. 571), and in relation to rules made under section 35(1)(e) of that Ordinance after consultation with the Financial Secretary)

1. Commencement

These Rules shall come into operation on 30 April 2004.

2. Notice of reportable positions

Section 6(2)(b) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) is repealed and the following substituted -

- “(b) if the reportable position is held or controlled for another person -
- (i) the identity of that person; and
 - (ii) the number of futures contracts or stock options contracts held or controlled for such person in respect of the reportable position in each relevant contract month.”.

3. Section substituted

Section 7 is repealed and the following substituted -

“7. Compliance by certain persons

- (1) In their application to a person holding or controlling futures contracts or stock options contracts for any other person, the prescribed limits and reportable positions apply separately to any futures contracts or stock options contracts held or controlled by the first person -

- (a) for his own account; and
- (b) for each other person.

(2) For the purposes of subsection (1), a person shall not be regarded as holding or controlling futures contracts or stock options contracts for another person if he has discretion in relation to those futures contracts or stock options contracts.

(3) For the purposes of subsection (2), a person shall be regarded as having discretion in relation to futures contracts or stock options contracts he holds or controls for another person if -

- (a) he may originate orders to acquire or dispose of any of the futures contracts or stock options contracts under a general authorization from the other person, whether the authorization is pursuant to a written agreement, power of attorney or otherwise; and
- (b) such authorization enables the first person to make specific acquisitions or disposals without requiring further consent or instruction from the other person.”.


Andrew Ho, SHENG
Chairman,
Securities and Futures Commission

1 March 2004

Explanatory Note

These Rules provide that the prescribed limits and reportable positions apply separately to futures contracts or stock options contracts held or controlled by a person for his own account and contracts held or controlled by such person for another person. The Rules also require the person holding or controlling a reportable position for another person to notify the recognized exchange company concerned of the identity of the other person and the numbers of contracts held or controlled for such person.