

**Subcommittee on
Securities and Futures (Contracts Limits and Reportable Positions)
(Amendment) (No.2) Rules 2007**

First meeting on 16 November 2007

**List of follow-up actions to be taken by
the Administration/the Securities and Futures Commission**

1. To address members' concern about the propriety of the amendments to section 4 of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (the Rules) which empowered SFC to authorize exchange participants or their affiliates to hold or control specified contracts in excess of the statutorily prescribed limits but up to a limit specified by SFC by notice published in the Gazette which, according to the new section 4(11), is not subsidiary legislation and hence would not be subject to the scrutiny of the Legislative Council, the Administration/ SFC were requested to:
 - (a) respond to a member's query that the new arrangement of specifying the contract(s) in question and the upper limit in excess of the statutorily prescribed limits by Gazette notice which is not subsidiary legislation as provided under the Securities and Futures (Contracts Limits and Reportable Positions)(Amendment)(No. 2) Rules 2007 (the Amendment Rules) may be ultra vires, given that the rules to be made by SFC under section 35(1) of the Securities and Futures Ordinance (Cap. 571) are subsidiary legislation;
 - (b) assuming that the Amendment Rules have come into operation, the sanctions or penalties that can be imposed on a person in breach of the limit specified in the Gazette notice;
 - (c) re-consider the feasibility of adopting SFC's original proposal that went to consultation, namely, specifying in the Rules (which are subsidiary legislation) the 50% upper limit in excess of the prescribed limits of which an exchange participant (or his affiliate) authorized by SFC may hold or control; and
 - (d) consider an alternative approach suggested by members at the meeting, i.e. instead of giving SFC a discretionary power to authorize the holding or controlling of futures contracts or stock options contracts in excess of the prescribed limits, a more desirable approach would be to prescribe a higher limit in the relevant Rules and to empower SFC to impose a lower limit on the number of contracts which could be held or controlled by a person under specified circumstances.
2. The Administration/SFC noted the Assistant Legal Adviser's comments on the bilingual texts of the new section 4(7)(a) and section 4(8) and would re-examine whether the relevant texts should match as far as possible in terms of the language used.