

L.N. 198 of 2007**SECURITIES AND FUTURES (CONTRACTS
LIMITS AND REPORTABLE POSITIONS)
(AMENDMENT) (NO. 2) RULES 2007**

(Made by the Securities and Futures Commission under section 35(1)(a) and (b) of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules shall come into operation on 21 December 2007.

2. Restrictions on number of contracts held or controlled

Section 4(4) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) is repealed and the following substituted—

“(4) A person may hold or control a futures contract or stock options contract in excess of the prescribed limit if—

- (a) the person—
 - (i) is authorized under subsection (5) to hold or control such excess; or
 - (ii) is authorized under subsection (6) to hold or control such excess;
- (b) the Commission is satisfied that the excess would not be prejudicial to the interest of the investing public having regard to the prescribed limit and the liquidity of the futures contract or stock options contract in question; and
- (c) the Commission has given the person notice in writing that it is satisfied—
 - (i) where paragraph (a)(i) applies, of the matters referred to in paragraph (b) and subsection (5); or
 - (ii) where paragraph (a)(ii) applies, of the matters referred to in paragraph (b) and subsection (7)(a), (b) and (c).

(5) The Commission may authorize a person, other than a person who may be authorized under subsection (3), to hold or control a futures contract or stock options contract in excess of the prescribed limit if the Commission is satisfied that there are special circumstances which warrant the person holding or controlling such excess.

(6) Subject to subsections (7) and (8), the Commission may authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit by up to the specified percentage.

(7) The Commission shall not authorize an exchange participant or an affiliate of an exchange participant to hold or control a specified contract in excess of the prescribed limit unless the exchange participant satisfies the Commission that—

- (a) the exchange participant or the affiliate (as the case may be) has a relevant business need for the excess for which authorization is sought;
- (b) either the exchange participant or the affiliate has adequate financial capability to cover the potential risks arising from such excess; and
- (c) the exchange participant has effective internal control procedures and risk management systems to manage the potential risks arising from such excess.

(8) The Commission shall not grant an authorization under subsection (6) if the excess for which authorization is sought may be authorized under the rules of the recognized exchange company concerned as referred to in subsection (2).

(9) An authorization granted under subsection (5) or (6)—

- (a) subject to paragraph (b), shall be valid for such period as the Commission may specify in the notice given under subsection (4)(c);
- (b) may be withdrawn by the Commission, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant; and
- (c) shall be subject to such reasonable conditions as the Commission may specify in the notice given under subsection (4)(c) and the Commission may, at any time, by at least 5 business days' notice in writing to the person authorized and, where the person authorized is an affiliate of an exchange participant, also to the exchange participant, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(10) In this section—

“adequate financial capability” (充足財政能力), in relation to an exchange participant or an affiliate of an exchange participant, means such exchange participant or affiliate or his holding company having—

(a) a net asset value of not less than \$2 billion as set out in his or its latest audited financial statements; or

(b) a qualifying credit rating;

“affiliate” (聯繫人), in relation to an exchange participant, means any corporation belonging to the same group of companies as the exchange participant;

“relevant business need” (相關業務需要), in relation to an exchange participant or an affiliate of an exchange participant, means a business need that requires such exchange participant or affiliate to engage in hedging activities to facilitate the provision of services to his clients;

“specified contract” (指明合約) means any futures contract or stock options contract that is specified by the Commission by notice published in the Gazette for the purposes of this definition;

“specified percentage” (指明百分率) means the percentage specified by the Commission by notice published in the Gazette for the purposes of this definition.

(11) A notice referred to in the definition of “specified contract” or “specified percentage” in subsection (10) is not subsidiary legislation.”.

Martin WHEATLEY
Chief Executive Officer,
Securities and Futures Commission

23 October 2007

Explanatory Note

Section 4 of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) (the “principal Rules”) prohibits a person (except an authorized person) from holding or controlling a futures contract or stock options contract in excess of the prescribed limit.

2. The purpose of these Rules is to amend section 4 of the principal Rules to provide that the Securities and Futures Commission (the “Commission”) may authorize an exchange participant or his affiliate to hold or control a specified contract in excess of the prescribed limit up to the specified percentage if the Commission is satisfied that there is a business need for the excess and that the exchange participant or the affiliate has adequate financial capability and effective internal control procedures and risk management systems to manage the potential risks arising from such excess.