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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 8 July 2011**

Date of tabling in LegCo : 13 July 2011

Amendment to be made by : 19 October 2011 (or 9 November 2011 if extended by resolution)

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Levy) (Amendment) Order 2011 (L.N. 115)

Securities and Futures (Levy) (Amendment) Rules 2011 (L.N. 116)

Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2011 (L.N. 117)

L.N. 115

Under section 394(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), a levy (if any) at the rate specified by the Chief Executive (CE) in Council by order published in the Gazette shall be payable to the Securities and Futures Commission (SFC) by the person or persons so specified by the CE in Council for-

- (a) every sale and purchase of any securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules;
- (b) every sale and purchase of any futures contract traded on a recognized futures market; and
- (c) every sale and purchase of any securities or futures contracts traded by means of authorized automated trading services (ATS).

2. The levies specified under section 394(1)(a) and (b) but not (c) of the SFO are set out in the Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z) (the Levy Order).

3. Hong Kong Mercantile Exchange Limited (HKMEx) obtained authorization from the SFC on 26 April 2011 to provide ATS and has commenced trading of gold futures contracts since 18 May 2011. According to paragraph 5 of the LegCo Brief, HKMEx is not the first ATS provider to be authorized by the SFC. Nevertheless, its authorization is unique in that it is the first authorized ATS to-

- (a) offer an exchange-like platform for the trading of futures contracts (i.e. a platform that matches buy and sell orders for futures contracts); and
- (b) be solely or primarily regulated by the SFC.

Its position is similar to that of the Hong Kong Futures Exchange Limited (HKFE), which also operates a futures market in Hong Kong, albeit as a recognized exchange company rather than as an authorized ATS provider.

4. Futures contracts traded by means of authorized ATS provided by HKMEx are not subject to SFC levies. In contrast, futures contracts traded on HKFE are subject to SFC levies under Part 3 of the Levy Order, generally at \$0.60 payable by both the seller and the purchaser. The existing arrangements regarding SFC levies have thus created an unlevel playing field between HKFE and HKMEx.

5. L.N. 115, made by the CE in Council under section 394 of the SFO, amends the Levy Order by adding a new Part 4 to impose, for the purposes of section 394(1)(c) of the SFO, a levy payable to the SFC in respect of a sale and purchase of futures contracts traded by means of authorized ATS. The effect of L.N. 115 is that a levy of \$0.60 on each of the seller and purchaser is payable in respect of a sale and purchase of a futures contract traded by means of authorized ATS provided by HKMEx. However, payment of the levy of \$0.60 is exempted for a period of six months commencing on the first day of trading in the futures contract by means of authorized ATS provided by HKMEx. No levy is payable if the futures contract is traded by means of authorized ATS provided by other operators.

L.N. 116

6. The Securities and Futures (Levy) Rules (Cap. 571 sub. leg. AA) (the Levy Rules) provide for various matters relating to the payment of levies payable to the SFC in respect of the sale and purchase of futures contracts and securities, including the imposition of charges for late payment of such levies and the keeping and inspection of accounts relating to the collection and payment of such levies.

7. L.N. 116, made by the CE in Council under section 394 of the SFO, amends the Levy Rules to extend the application of the Levy Rules to cover levies payable in respect of the sale and purchase of futures contracts traded by means of authorized ATS. This is effected by replacing the definition of "Exchange Company" by the new definition of "Market Operator" which includes the Stock Exchange Company, a recognized exchange company and an authorized ATS provider. Consequential amendments are also made to the relevant sections of the Levy Rules including the addition of a definition of "rules of the Market Operator" in section 3 as the new subsection (2).

8. L.N. 116 also amends section 10(2)(b) of the Levy Rules to include an auditor appointed by a Market Operator otherwise than under the Companies Ordinance (Cap. 32) if it is a non-Hong Kong company registered under Part XI of that Ordinance.

9. Members may refer to the LegCo Brief (File Ref.: SUD/42/11 (2011)) issued by the Financial Service Branch, Financial Services and the Treasury Bureau on 6 July 2011 for background information relating to L.N. 115 and L.N. 116.

10. L.N. 115 and L.N. 116 will come into operation on 18 November 2011.

L.N. 117

11. Under section 35(1) of the SFO, the SFC may prescribe limits on the number of futures contracts and options contracts that may be held or controlled by any person. It may also prescribe the reportable positions in respect of such contracts. "Reportable position" means an open position of such contracts the number of which is in excess of the number specified in the relevant rules. Those limits and reportable positions are established and fixed for the futures contracts and stock options contracts specified respectively in Schedules 1 and 2 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) (the principal Rules).

12. L.N. 117, made by the SFC under section 35(1) of the SFO, amends the principal Rules by repealing the existing Schedule 1 and Schedule 2 and substituting each with a new one. However, the net effects are:-

- (a) in relating to Schedule 1,
 - (i) the renumbering of existing items;
 - (ii) the addition of the HSI Dividend Point Index futures contract and the HSCEI Dividend Point Index futures contract as items 10 and 11; and

- (iii) no statutory position limit is set for each new item and the open position reporting level is set for each at 1 000 open contracts for any one contract month;
- (b) in relation to Schedule 2,
- (i) the renumbering of existing items;
 - (ii) the addition of the iShares FTSE A50 China Index ETF stock options contract and the W.I.S.E. - CSI 300 China Tracker stock options contract as items 3 and 4; and
 - (iii) the position limit and open position reporting level for each new item are the same as the existing items, i.e. 50 000 open contracts per option class in any one market direction for all expiry months combined and 1 000 open contracts per option class per expiry month.

13. Members may refer to the LegCo Brief (with no reference number) issued by the SFC on 4 July 2011 for background information. According to the LegCo Brief, the additions to Schedule 1 follow the large open position reporting level and position limits specified in the contract specifications of the HKFE. The additions to Schedule 2 largely follow the position limits and the large open position reporting levels stipulated in the rules for most stock options contracts on shares listed on a stock market operated by the Stock Exchange of Hong Kong Limited.

14. L.N. 117 will come into operation on 25 November 2011.

15. The Panel on Financial Affairs has not been consulted on L.N. 115 to L.N. 117.

**Mandatory Provident Fund Schemes Ordinance (Cap. 485)
Mandatory Provident Fund Schemes (Contributions for Casual Employees)
(Amendment) Order 2011 (L.N. 118)**

16. The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Amendment Notice) was approved by the Legislative Council on 30 June 2011. It amends Schedule 2 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) by adjusting the minimum level of relevant income (Min RI) from \$5,000 to \$6,500 per month (and from \$160 to \$250 per day for employees who are members of an industry scheme) for contribution purposes under the MPFSO. The mandatory

contribution to be made in respect of a casual employee of an industry scheme under different income bands is prescribed with reference to the daily Min RI. The Amendment Notice necessitates the amendment to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg. E) (the principal Order).

17. L.N. 118 is made by the Mandatory Provident Fund Schemes Authority under section 7A(6) of the MPFSO. It amends the scales of amounts of contributions prescribed in the Schedule to the principal Order that employers participating in industry schemes need to make as mandatory contributions to the schemes in respect of their casual employees with the effect that the contribution amount for the income band of "\$250.00 or more but less than \$260.00" is \$13 instead of \$7.5.

18. Members may refer to the LegCo Brief (with no reference number) issued by the Mandatory Provident Fund Schemes Authority on 6 July 2011 for background information.

19. L.N. 118 will come into operation on 1 November 2011 which is the same as the commencement date of the Amendment Notice.

20. The Panel on Financial Affairs has not been specifically consulted on the proposed amendments under L.N. 118. However, the Panel has been consulted on a related subject, i.e. the review of the minimum and maximum levels of relevant income for contributions. At the special meeting held on 20 April 2011 to receive views from concerned parties and members of the public, there was a general consensus that the minimum relevant income level for contributions should be revised to about \$6,500. As for the maximum relevant income level, the views were rather diverse regarding the extent of increase. Noting that some low-income workers would become obliged to make contributions after the implementation of the statutory minimum wage on 1 May 2011, Members urged the Administration to expedite the legislative work to revise the minimum and maximum relevant income levels for contributions, and where necessary to take forward the upward revision of the minimum relevant income level in the first place.

21. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

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