

## **LEGISLATIVE COUNCIL BRIEF**

### **SECURITIES AND FUTURES ORDINANCE (Chapter 571)**

### **SECURITIES AND FUTURES (LEVY) (AMENDMENT) ORDER 2014**

#### **INTRODUCTION**

At the meeting of the Executive Council on 27 May 2014, the Council ADVISED and the Chief Executive ORDERED that, having regard to the level of reserves currently held by the Securities and Futures Commission (“SFC”), pursuant to section 394 of the Securities and Futures Ordinance (Chapter 571) (“SFO”), the Securities and Futures (Levy) (Amendment) Order 2014 (“the Order”), at Annex A, should be made to provide for the reduction of the levy payable in respect of any trading in securities and futures/options contracts by ten percent, and to delete some obsolete references in the SFO.

Annex A

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#### **JUSTIFICATIONS**

2. Under section 396(1) of the SFO, if during a financial year of the SFC, the reserves of the SFC after deducting depreciation and all provisions are more than twice its estimated operating expenses for the financial year; and that the SFC has no outstanding borrowings, the SFC shall consult the Financial Secretary (“FS”) with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394 of the SFO. Section 396(2) further provides that the SFC may, after consultation with the FS, recommend to the Chief Executive in Council that the rate or amount of a levy be reduced.

3. As at end February 2014, the reserves (after deducting depreciation and all provisions) of the SFC reached \$7.35 billion, which amounted to 4.9 times of its approved operating expenses for the financial year 2013-14. This is largely due to the transaction levies collected

from high market turnover in particular years. The proposed levy reduction, if implemented, is estimated to reduce the transaction cost to the market, and thus the SFC's income by about \$105 million a year, based on the SFC's assumption that the average daily turnover for 2014-15 is \$65 billion and that the daily turnover of futures/options contracts is 270 000 contracts. We also note that the SFC has no outstanding borrowings.

4. We note that the SFC has made clear publicly that it is projecting an operating deficit in the next few years, and that it would need to consider increasing the levy rate if its reserves are depleted substantially. The proposal has taken into account the need for the SFC to maintain a healthy financial position on the one hand, and the benefit the reduction will bring to the general investing public and the financial industry on the other.

5. Since the Hong Kong Mercantile Exchange Limited has ceased to be an authorized automated trading services provider, we need to remove references to it in related provisions of the Securities and Futures (Levy) Order (Cap. 571, sub. leg. Z).

## **THE SECURITIES AND FUTURES (LEVY) (AMENDMENT) ORDER 2014**

Annex A

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6. The Order, at Annex A, seeks to reduce the levy payable in respect of any trading in securities and futures/options contracts. The main provisions are –

- (a) **Section 3** of the Order reduces the levy payable by a seller or a purchaser in respect of the consideration for a sale and purchase of securities from 0.0030% to 0.0027%.
- (b) **Section 4** of the Order reduces the levy payable by a seller or a purchaser for the sale and purchase of a futures contract from \$0.60 to \$0.54.
- (c) **Section 5** of the Order reduces the levy payable by a seller or a purchaser for the sale and purchase of a Mini-Hang Seng Index Futures Contract, a Mini-Hang Seng Index Options Contract or a Mini-Hang Seng China Enterprises Index Futures Contract from \$0.12 to \$0.108.

- (d) **Section 6** of the Order reduces the levy payable by a seller or a purchaser for the sale and purchase of a stock futures contract or an option for such a contract from \$0.12 to \$0.108.
- (e) **Section 7** of the Order removes the references to the Hong Kong Mercantile Exchange Limited, which ceased to be an authorized automated trading services provider and other related provisions.

Annex B

- 7. The existing provisions being amended are at Annex B.
- 8. The Order will come into operation on 1 November 2014.

## **LEGISLATIVE TIMETABLE**

- 9. The legislative timetable is as follows –

Publication in Gazette 6 June 2014

Tabling at the Legislative Council (“LegCo”) 11 June 2014  
for negative vetting

## **IMPLICATIONS OF THE PROPOSAL**

### **Financial and Civil Service Implications**

10. There are no financial and civil service implications to the Government arising from the proposal. Section 14 of the SFO provides that the Government shall provide funding to the SFC as appropriated by LegCo. In practice, the SFC has not requested appropriation from LegCo since 1993-94. Its funding basically comes from the market in the form of levies, fees and charges.

### **Other Implications**

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the existing provisions of the SFO and its subsidiary legislation. The proposed levy reduction will reduce the transaction cost to be borne by investors and thus be conducive to the development of

Hong Kong's securities and futures markets. It has no environmental or sustainability implications. As regards family implications, we do not consider that the proposal has any significant or direct impact on families.

## **PUBLIC CONSULTATION**

12. The Panel on Financial Affairs of LegCo was briefed on the proposal at the meeting on 7 February 2014 in the context of the budget for the SFC in 2014-15, and members generally supported the proposed reduction.

## **PUBLICITY**

13. A press release will be issued when the Order is gazetted on 6 June 2014. A spokesman will be available to handle media enquiries.

## **BACKGROUND**

14. Pursuant to section 394 of the SFO, the SFC is entitled to a levy at a rate specified by the Chief Executive in Council by order published in the Gazette. From its levy on securities and futures/options contracts, the SFC derived respectively 92.7% and 7.3% for its total levy income of \$929.86 million in 2012-13. The levy income in turn accounts for about 79.5% of its total income in 2012-13, the remaining being income from fees and charges and investment. Annex C sets out the reductions made to the levy on securities transactions over the years in light of the level of reserves held by the SFC. Over the past two years, the SFC has also waived the licence fees for its regulatees including about 40 000 licensed intermediaries in the securities and futures industry.

Annex C

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## **ENQUIRIES**

15. Enquiries on this brief should be directed to Ms Joyce Ho, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)<sup>1</sup>, at 2810 2054.

**Financial Services Branch**  
**Financial Services and the Treasury Bureau**  
**4 June 2014**

**Securities and Futures (Levy) (Amendment) Order 2014**

(Made by the Chief Executive in Council under section 394 of the Securities and Futures Ordinance (Cap. 571))

**1. Commencement**

This Order comes into operation on 1 November 2014.

**2. Securities and Futures (Levy) Order amended**

The Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z) is amended as set out in sections 3 to 7.

**3. Section 4 amended (securities)**

(1) Section 4(b)(i)—

**Repeal**

“0.003%”

**Substitute**

“0.0027%”.

(2) Section 4(b)(ii)—

**Repeal**

“0.003%”

**Substitute**

“0.0027%”.

**4. Section 9 amended (futures contracts)**

(1) Section 9(b)(i)—

**Repeal**

“\$0.60”

**Substitute**

“\$0.54”.

(2) Section 9(b)(ii)—

**Repeal**

“\$0.60”

**Substitute**

“\$0.54”.

**5. Section 10 amended (Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts)**

(1) Section 10(b)(i)—

**Repeal**

“\$0.12”

**Substitute**

“\$0.108”.

(2) Section 10(b)(ii)—

**Repeal**

“\$0.12”

**Substitute**

“\$0.108”.

**6. Section 13 amended (stock futures contracts)**

(1) Section 13(b)(i)—

**Repeal**

“\$0.12”

**Substitute**

“\$0.108”.

- (2) Section 13(b)(ii)—

**Repeal**

“\$0.12”

**Substitute**

“\$0.108”.

7. **Section 15 amended (futures contracts traded by means of authorized automated trading services)**

- (1) Section 15—

**Repeal subsection (1).**

- (2) Section 15(2)—

**Repeal**

everything after “trading services”

**Substitute**

“is nil.”

- (3) Section 15—

**Repeal subsections (3) and (4).**

**Explanatory Note**

This Order amends the Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z) to reduce the levy payable by a seller or a purchaser in respect of the sale and purchase of the following items—

- (a) the securities;
  - (b) a futures contract;
  - (c) a Mini-Hang Seng Index Futures Contract, a Mini-Hang Seng Index Options Contract or a Mini-Hang Seng China Enterprises Index Futures Contract; and
  - (d) a stock futures contract or an option on such a contract.
2. Since the Hong Kong Mercantile Exchange Limited has ceased to provide authorized automated trading services, the Order also repeals the references to the Hong Kong Mercantile Exchange Limited and other related provisions.

Clerk to the Executive Council

COUNCIL CHAMBER

2014

Chapter:	571Z	Securities and Futures (Levy) Order	Gazette Number	Version Date
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		Empowering section	E.R. 1 of 2012	09/02/2012
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(Cap 571, section 394)

(Enacting provision omitted—E.R. 1 of 2012)

[1 April 2003] L.N. 12 of 2003

(Originally L.N. 221 of 2002)

(\*Format changes—E.R. 1 of 2012)

**Note:**

\*The format of the whole Order has been updated to the current legislative styles.

Part:	1	Preliminary	E.R. 1 of 2012	09/02/2012
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Section:	1	(Omitted as spent—E.R. 1 of 2012)	E.R. 1 of 2012	09/02/2012
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Section:	2	Interpretation	E.R. 1 of 2012	09/02/2012
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In this Order, unless the context otherwise requires-

*currency futures contract* (貨幣期貨合約) means a futures contract in respect of any currency;*Mini-Hang Seng China Enterprises Index Futures Contract* (小型恒生中國企業指數期貨合約) means a futures contract entitled "Mini-Hang Seng China Enterprises Index Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company; (L.N. 121 of 2008)*Mini-Hang Seng Index Futures Contract* (小型恒生指數期貨合約) means a futures contract entitled "Mini-Hang Seng Index Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company;*Mini-Hang Seng Index Options Contract* (小型恒生指數期權合約) means a futures contract entitled "Mini-Hang Seng Index Options Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company;*new futures contract* (新期貨合約) means a futures contract that-

- (a) has been approved by the Commission for the purposes of section 20(2)(a) of the Ordinance; and
- (b) has not been traded on a recognized futures market operated by the Futures Exchange Company prior to the commencement of this Order;

*relevant period* (有關期間), in relation to a new futures contract, means the period of 6 months commencing on the first day of trading in the contract on a recognized futures market operated by the Futures Exchange Company;*securities market maker permit* (證券莊家執照) means a permit which is issued to an exchange participant by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company to carry out market making activities in respect of certain securities; (L.N. 121 of 2008)*stock futures contract* (股票期貨合約) means a futures contract entitled "Stock Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company.

(L.N. 121 of 2008)

Part:	2	Levy Payable in respect of Sale and Purchase of Securities Described in Section 394(1)(a) of Ordinance	E.R. 1 of 2012	09/02/2012
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Section:	3	<b>Application of Part 2</b>	E.R. 1 of 2012	09/02/2012
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This Part does not apply in relation to a sale and purchase of securities unless it is recorded on a recognized stock market or notified to a recognized exchange company under its rules.

Section:	4	<b>Securities</b>	E.R. 1 of 2012	09/02/2012
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Subject to sections 5 and 7A, for the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of securities- (L.N. 121 of 2008)

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, 0.003% of the consideration for the sale; or
  - (ii) in the case of the purchaser, 0.003% of the consideration for the purchase. (L.N. 142 of 2006; L.N. 56 of 2010)

Section:	5	<b>Stock options</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of a stock option-

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, 0% of the consideration for the sale; or
  - (ii) in the case of the purchaser, 0% of the consideration for the purchase.

Section:	6	<b>(Repealed L.N. 121 of 2008)</b>	L.N. 121 of 2008	12/07/2008
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Section:	7	<b>(Repealed L.N. 121 of 2008)</b>	L.N. 121 of 2008	12/07/2008
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Section:	7A	<b>Sale and purchase of securities by securities market maker permit holders</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale or purchase of securities by an exchange participant is nil, if the exchange participant-

- (a) holds a securities market maker permit in respect of the securities that is in force at the time of the sale or purchase; and
- (b) makes the sale or purchase in the course of making a market for the securities.

(L.N. 121 of 2008)

Part:	3	<b>Levy Payable in respect of Sale and Purchase of Futures Contracts Described in Section 394(1)(b) of Ordinance</b>	E.R. 1 of 2012	09/02/2012
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Section:	8	<b>Application of Part 3</b>	E.R. 1 of 2012	09/02/2012
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This Part does not apply in relation to a sale and purchase of a futures contract unless it is traded on a recognized futures market.

Section:	9	<b>Futures contracts</b>	E.R. 1 of 2012	09/02/2012
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Subject to sections 10, 11, 12 and 13, for the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a futures contract-

- (a) is payable by the seller and purchaser; and
- (b) is-



- (i) in the case of the seller, \$0.60; or
- (ii) in the case of the purchaser, \$0.60. (L.N. 142 of 2006; L.N. 56 of 2010)

Section:	10	<b>Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts*</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a Mini-Hang Seng Index Futures Contract, a Mini-Hang Seng Index Options Contract or a Mini-Hang Seng China Enterprises Index Futures Contract- (L.N. 121 of 2008)

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, \$0.12; or
  - (ii) in the case of the purchaser, \$0.12. (L.N. 142 of 2006; L.N. 56 of 2010)

**Note:**

\* (Amended L.N. 121 of 2008)

Section:	11	<b>Currency futures contracts</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a currency futures contract-

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, nil; or
  - (ii) in the case of the purchaser, nil.

Section:	12	<b>New futures contracts</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a new futures contract during the relevant period of the contract-

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, nil; or
  - (ii) in the case of the purchaser, nil.

Section:	13	<b>Stock futures contracts</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a stock futures contract or an option on such a contract-

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, \$0.12; or
  - (ii) in the case of the purchaser, \$0.12. (L.N. 142 of 2006; L.N. 56 of 2010)

Part:	4	<b>Levy Payable in respect of Sale and Purchase of Futures Contracts Described in Section 394(1)(c) of Ordinance</b>	L.N. 115 of 2011	18/11/2011
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(Part 4 added L.N. 115 of 2011)

Section:	14	<b>Application of Part 4</b>	E.R. 1 of 2012	09/02/2012
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This Part applies in relation to a sale and purchase of a futures contract traded by means of authorized automated trading services.

Section:	15	<b>Futures contracts traded by means of authorized automated trading services</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsections (2) and (3), for the purposes of section 394(1)(c) of the Ordinance, the levy payable for a sale and purchase of a futures contract traded by means of authorized automated trading services provided by Hong Kong Mercantile Exchange Limited-
  - (a) is payable by the seller and purchaser; and
  - (b) is-
    - (i) in the case of the seller, \$0.60; or
    - (ii) in the case of the purchaser, \$0.60.
- (2) For the purposes of section 394(1)(c) of the Ordinance, the levy payable for a sale and purchase of a futures contract traded by means of authorized automated trading services provided by a person other than Hong Kong Mercantile Exchange Limited is nil.
- (3) During the period of 6 months commencing on the first day of trading in a futures contract by means of authorized automated trading services, the levy payable under subsection (1) by the seller and purchaser for the sale and purchase of the futures contract is nil.
- (4) If a sale and purchase of a futures contract traded by means of authorized automated trading services occurs before the commencement date\* of the Securities and Futures (Levy) (Amendment) Order 2011 (L.N. 115 of 2011)-
  - (a) subsection (3) does not have the effect of specifying a rate or an amount of levy on that sale and purchase; and
  - (b) in calculating a period of 6 months for the purposes of subsection (3), regard may be had to any period of trading conducted before that date.

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**Note:**

\* **Commencement date: 18 November 2011.**

**Reduction to Securities Levy Rate since 2006**

<b>Financial Year</b>	<b>Levy Rate</b>	<b>Percentage of Reduction</b>
2005-06	0.0050%	-
2006-07	0.0040%	20%
2007-08	0.0040%	-
2008-09	0.0040%	-
2009-10	0.0040%	-
2010-11	0.0030%	25%
2011-12	0.0030%	-
2012-13	0.0030%	-
2013-14	0.0030%	-
2014-15	0.0027%	10% (proposed)