

Statement of Disciplinary Action

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined EFG Bank AG (**EFG Bank**) HK\$2,000,000 pursuant to section 196 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that EFG Bank had, during the period from 1 April 2003 to 22 November 2016 (**Relevant Period**), executed certain offshore listed index options for clients without a Type 2 (dealing in futures contracts) registration.

Summary of facts

3. EFG Bank is a registered institution under the SFO to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.
4. Following the SFC's announcement on enforcement action taken against a registered institution on 20 October 2016 for regulatory breaches in, among other things, offering offshore listed index options without the required registration, EFG Bank initiated an internal review on whether it had committed similar regulatory breaches and subsequently sought legal advice from its external lawyers.
5. After receiving external legal advice, EFG Bank self-reported to the SFC that it had executed offshore listed index option transactions for clients which might constitute a Type 2 (dealing in futures contracts) regulated activity under the SFO.
6. The SFC found that EFG Bank had executed 139 offshore listed index option transactions for 11 clients during the Relevant Period, which fell within the definition of "futures contracts" under the SFO, without a Type 2 (dealing in futures contracts) registration. The transactions involved premium of about US\$65 million, and EFG Bank earned US\$27,629 in commission from these transactions over the 13-year period.
7. General Principle 7 (Compliance) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) provides that a licensed or registered person should comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.
8. Paragraph 12.1 (Compliance: in general) of the Code of Conduct provides that a licensed or registered person should comply with, and implement and maintain measures appropriate to ensuring compliance with the law, rules, regulations and codes administered or issued by the SFC.

9. The execution of transactions in offshore listed index options for clients without a Type 2 (dealing in futures contracts) registration shows that EFG Bank has failed to put in place adequate controls to ensure compliance with a registration requirement¹, in breach of General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct.

Conclusion

10. Having considered all the circumstances, the SFC is of the opinion that the fitness and properness of EFG Bank as a regulated person has been called into question.
11. In deciding the disciplinary sanctions, the SFC has taken into account that:
 - (a) EFG Bank initiated a review of its offshore listed index options activities and self-reported the unlicensed activities to the SFC;
 - (b) there is no evidence to suggest that the non-compliance was intentional;
 - (c) EFG Bank co-operated with the SFC in resolving the SFC's concerns;
 - (d) EFG Bank has taken remedial measures to strengthen its internal controls to avoid recurrence of similar issues; and
 - (e) EFG Bank has an otherwise clean disciplinary record with the SFC.

¹ Under section 114 of the SFO, no person shall carry on a business in a regulated activity or hold himself out as carrying on a business in a regulated activity without a licence or registration for the regulated activity.