

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined FIL Investment Management (Hong Kong) Limited (FIMHK)¹ HK\$3,500,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because FIMHK had carried on Type 2 (dealing in futures contracts) regulated activities without the required licence and provided incorrect information to the SFC during an application for authorisation of a new fund.

Summary of Facts

Dealing in futures contracts without a Type 2 licence

3. On 10 August 2018, FIMHK reported to the SFC that it had conducted the regulated activity of dealing in futures contracts from August 2007 to July 2018 (**Relevant Period**) without a Type 2 (dealing in futures contracts) licence (**Incident 1**)².
4. According to FIMHK, it relied on the following exemptions (**Exemptions**) under the SFO in dealing in futures contracts for its managed accounts whilst not being licensed for Type 2 regulated activity:
 - (a) performing the activity solely for the purposes of carrying on its Type 9 (Asset Management) regulated activity; and/or
 - (b) performing the activity through a futures dealer who is licensed or registered for Type 2 regulated activity without receiving any commission, rebate or other remuneration in return for the activity.
5. However, during a licensing review performed by FIMHK's Business Compliance team in May 2018 (**Licensing Review**), FIMHK identified instances where orders for futures contracts originated outside FIMHK were placed through FIMHK which do not qualify for the Exemptions (**Trading Activities**):
 - (a) the orders originated from FIMHK's overseas affiliates for funds or accounts managed by them which FIMHK had no investment discretion over; and
 - (b) FIMHK had received fees from its affiliates for the Trading Activities on a cost-plus basis.

¹ FIMHK has been licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities since 29 March 2005. It has also been licensed to carry on Type 2 (dealing in futures contracts) regulated activity since 30 May 2019.

² Under section 114 of the SFO, no person shall carry on a business in a regulated activity unless it is licensed or registered for such regulated activity.

6. The Trading Activities involved 6,738 trades in futures contracts (with an aggregate transaction value of about US\$39.7 billion) executed by FIMHK for its affiliated entities during the Relevant Period.
7. FIMHK's conduct constitutes a breach of:
 - (a) General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires a licensed corporation to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market; and
 - (b) General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct, which require a licensed corporation to comply with, and implement and maintain measures appropriate to ensure compliance with, relevant regulatory requirements.

Delay in reporting Incident 1 to the SFC

8. FIMHK identified Incident 1 during the Licensing Review conducted between 1 May and 1 June 2018. However, it did not report Incident 1 to the SFC until 10 August 2018, after it had obtained external legal advice on the matter, i.e. about 2 months after it identified the incident.
9. FIMHK's failure to report Incident 1 to the SFC immediately upon discovery of the incident was in breach of paragraph 12.5(a) of the Code of Conduct, which requires a licensed person to report to the SFC immediately upon the happening of any material breach, infringement of or non-compliance with any law, rules, regulations, and codes administered or issued by the SFC, or where it suspects any such breach, infringement or non-compliance whether by itself or persons it employs to conduct business with clients or other licensed or registered persons.

Submission of incorrect information checklist to the SFC during an application for authorisation of a new fund

10. In March 2017, FIMHK submitted an information checklist (**Checklist**) to the SFC in support of an application for authorisation of a new fund (**Incident 2**).
11. In the Checklist, FIMHK confirmed that "...all information contained in this Information Checklist (including all confirmations and undertakings) and the documents submitted relating thereto are true and accurate; and unless otherwise specifically allowed for in this Information Checklist, no deletion, addition or amendment has been made to the standard templates of these current prescribed documents as published on the SFC's website."
12. It turns out that, due to inadvertent human errors, the Checklist was prepared based on an outdated template, with the version date at the footer and effective period shown on the first page of the template amended to give the appearance that the document was prepared using the latest version of the template. As a result of using an outdated template, certain required information was not completed or provided in the Checklist submitted to the SFC.
13. FIMHK conducted an internal investigation into Incident 2 (**Investigation**). It also engaged an independent reviewer to review its internal systems and

controls in relation to the fund application process (**Reviews**). The Investigation and Reviews identified certain deficiencies and weaknesses in FIMHK's internal controls and systems, for example, there were no formally documented maker/checker controls in place regarding the legal team's drafting of documents submitted to the SFC.

14. The SFC is of the view that FIMHK failed to:
 - (a) act with due skill, care and diligence in submitting the Checklist to the SFC in breach of General principle 2 (Diligence) of the Code of Conduct; and
 - (b) put in place satisfactory and effective systems and controls to ensure the accuracy of information submitted to the SFC, in breach of General Principle 3 (Capabilities) of the Code of Conduct and paragraph 1.2(c) of the Fund Manager Code of Conduct.

Conclusion

15. Having considered all relevant circumstances, the SFC is of the opinion that FIMHK is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.
16. In deciding the disciplinary sanctions set out in paragraph 1 above, the SFC has taken into account that:
 - (a) there is no evidence to suggest that FIMHK's failures were intentional or deliberate;
 - (b) there is no evidence of clients having suffered any financial loss;
 - (c) FIMHK engaged an independent reviewer to review its internal controls in relation to the fund application process and took steps to rectify the deficiencies identified;
 - (d) FIMHK took remedial actions to strengthen its internal systems and controls;
 - (e) FIMHK co-operated with the SFC in resolving the SFC's concerns; and
 - (f) FIMHK has an otherwise clean disciplinary record with the SFC.