

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Ninety One Hong Kong Limited (**NOHK**)¹ and fined it HK\$1.4 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because NOHK has carried out Type 2 (dealing in futures contracts) regulated activity without the required licence.

Summary of facts

3. On 8 January 2020, NOHK reported to the SFC that it may have conducted dealings in futures contracts from April 2014 to January 2020 (**Relevant Period**) without a Type 2 (dealing in futures contracts) licence².
4. The SFC's investigation found that, during the Relevant Period, NOHK:
 - (a) executed 4,869 futures transactions (**Futures Trading Activities**) with an aggregate exposure of US\$70 billion for the portfolios managed by it and its three overseas affiliates (**Overseas Affiliates**). Of these transactions, 4,864 were trades placed by the Overseas Affiliates over which NOHK had no investment discretion (**No-discretion Futures Trades**), and 5 transactions were conducted for hedging purpose in relation to NOHK's Type 9 business (**Hedging Futures Trades**);
 - (b) provided trading services including trading financial instruments as an agent for client accounts of the Overseas Affiliates, including but not limited to the Futures Trading Activities (**Trading Services**); and
 - (c) received from the Overseas Affiliates an investment support recharge (**Recharge**) of HK\$21.3 million for its provision of the Trading Services to the Overseas Affiliates.
5. During the investigation, NOHK did not dispute that it had conducted the Futures Trading Activities without a Type 2 (dealing in futures contracts) licence but claimed it could rely on the following exemptions under the SFO in dealing in futures contracts:
 - (a) an exemption for the Hedging Futures Trades performed solely for the purpose of carrying on its Type 9 (Asset Management) regulated activity (**Incidental Exemption**); and
 - (b) an exemption for the No-discretion Futures Trades as NOHK did not receive any commission, rebate or other remuneration for these transactions (**No Remuneration Exemption**).

¹ NOHK is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.

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. While NOHK could rely on the Incidental Exemption for the Hedging Futures Trades, the No Remuneration Exemption does not apply to the No-discretion Futures Trades for the reasons that:
 - (a) NOHK had received remuneration in the form of the Recharge for the Trading Services it provided to the Overseas Affiliates during the Relevant Period;
 - (b) the Futures Trading Activities formed part of the Trading Services provided by NOHK to its Overseas Affiliates and were not treated any differently from the equities trades provided by NOHK to other group entities; and
 - (c) while the Futures Trading Activities did not form part of NOHK's main operations of its business, they were carried out on a recurring monthly basis over a period of five years and, in doing so, had made use of NOHK's assets and NOHK had received an income in return, however marginal.

7. NOHK's conduct constitutes a breach of section 114 of the SFO, as well as:
 - (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, the relevant regulatory requirements.

Conclusion

8. Having considered all the circumstances, the SFC is of the view that NOHK is guilty of misconduct.

9. In deciding the disciplinary sanction, the SFC has taken into account all relevant circumstances, including:
 - (a) there is no evidence to suggest that NOHK's failure was intentional or deliberate;
 - (b) there is no evidence that any client has suffered losses as a result of NOHK's Futures Trading Activities;
 - (c) NOHK reported the incident to the SFC shortly after its identification of the suspected breach and ceased its futures trading activities thereafter;
 - (d) NOHK cooperated with the SFC in resolving the SFC's concerns; and
 - (e) NOHK has an otherwise clean disciplinary record with the SFC.