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## SFC reprimands and fines EFG Bank AG \$2 million

11 Jan 2018

The Securities and Futures Commission (SFC) has reprimanded and fined EFG Bank AG (EFG Bank) \$2 million for dealing in futures contracts without the required registration (Note 1).

The SFC found that between 1 April 2003 and 22 November 2016, EFG Bank executed 139 transactions in offshore listed index options for 11 clients without the required registration to deal in futures contracts (Notes 2 & 3).

The SFC is of the opinion that EFG Bank's failure to ensure compliance with a registration requirement under the Securities and Futures Ordinance, amounting to a breach of the Code of Conduct, called into question the fitness and properness of EFG Bank as a regulated person (Notes 4 & 5) .

In deciding the disciplinary sanctions, the SFC took into account that:

- EFG Bank initiated a review of its offshore listed index options activities and self-reported the unlicensed activities to the SFC;
- there is no evidence to suggest that the non-compliance was intentional;
- EFG Bank co-operated with the SFC in resolving the SFC's concerns;
- EFG Bank has taken remedial measures to strengthen its internal controls to avoid recurrence of similar issues; and
- EFG Bank has an otherwise clean disciplinary record with the SFC.

End

Notes:

1. EFG Bank is a registered institution under the Securities and Futures Ordinance (SFO) to carry on business in 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 or hold himself out as carry on a business in a regulated activity without a licence or registration for the regulated activity.
3. The offshore listed index option fell within the definition of "futures contracts" under the SFO.
4. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct).
5. General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct require a licensed or registered person to comply with, and implement and maintain measures appropriate to ensuring compliance with, all regulatory requirements applicable to the conduct of its business activities.

[A copy of the Statement of Disciplinary Action is available on the SFC website.](#)

Page last updated : 11 Jan 2018

## Statement of Disciplinary Action

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### 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 requirement<sup>1</sup>, 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.

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<sup>1</sup> 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.

[主頁](#) ▶ [新聞稿及公布](#) ▶ [新聞稿](#) ▶ [所有新聞稿](#)

## 瑞士盈豐銀行遭證監會譴責及罰款200萬元

2018年1月11日

瑞士盈豐銀行股份有限公司（盈豐銀行）因未獲所需註冊以進行期貨合約交易，遭證券及期貨事務監察委員會（證監會）譴責及罰款200萬元（註1）。

證監會發現盈豐銀行於2003年4月1日至2016年11月22日期間，在未獲所需註冊以進行期貨合約交易的情況下，為11名客戶執行了139宗離岸上市指數期權交易（註2及3）。

證監會認為，盈豐銀行沒有確保遵守《證券及期貨條例》下的註冊規定，違反了《操守準則》，使盈豐銀行作為受規管人士的適當人選資格受到質疑（註4及5）。

證監會在決定上述紀律處分時，已考慮到：

- 盈豐銀行主動就其離岸上市指數期權活動進行檢討，並自行向證監會匯報其無牌活動；
- 並無證據顯示有關不合規情況是蓄意造成的；
- 盈豐銀行與證監會合作解決證監會提出的關注事項；
- 盈豐銀行已採取補救措施加強其內部監控制度，以避免同類問題再次發生；及
- 盈豐銀行以往並無遭受證監會紀律處分的紀錄。

完

備註：

1. 盈豐銀行是一間根據《證券及期貨條例》（該條例）獲准經營第1類（證券交易）、第4類（就證券提供意見）及第9類（提供資產管理）受規管活動的業務的註冊機構。
2. 該條例第114條規定，任何人如未就某類受規管活動獲發牌或註冊，不得經營該類受規管活動的業務，或顯示自己經營該類受規管活動的業務。
3. 該離岸上市指數期權屬該條例所界定的“期貨合約”。
4. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《操守準則》）。
5. 《操守準則》第7項一般原則（遵守法規）及第12.1段（合規事宜：概論）規定，持牌人或註冊人須遵守、實施及維持適當的措施，以確保一切適用於其業務活動的監管規定獲得遵守。

有關紀律處分行動聲明載於證監會網站。

最後更新日期：2018年1月11日

## 紀律處分行動聲明

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### 紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）依據《證券及期貨條例》（**該條例**）第 196 條，對瑞士盈豐銀行股份有限公司（**盈豐銀行**）作出公開譴責並罰款 200 萬港元。
2. 證監會發現於 2003 年 4 月 1 日至 2016 年 11 月 22 日期間（**有關期間**），盈豐銀行在未獲註冊以進行第 2 類（期貨合約交易）受規管活動的情況下，為客戶執行若干離岸上市指數期權交易。

### 事實摘要

3. 盈豐銀行是一家根據該條例獲准經營第 1 類（證券交易）、第 4 類（就證券提供意見）及第 9 類（提供資產管理）受規管活動的業務的註冊機構。
4. 當證監會於 2016 年 10 月 20 日公布對一家違反監管規定（其中包括在未獲所需註冊的情況下發售離岸上市指數期權）的註冊機構採取處分行動後，盈豐銀行便主動就其有否干犯類似違規行為進行內部檢討，並在檢討後徵詢其外聘律師的法律意見。
5. 盈豐銀行於取得外間法律意見後，自行向證監會匯報其曾為客戶執行離岸上市指數期權交易，而這些交易或構成該條例下的第 2 類（期貨合約交易）受規管活動。
6. 證監會發現，盈豐銀行在未獲註冊以進行第 2 類（期貨合約交易）受規管活動的情況下，在有關期間為 11 名客戶執行了 139 宗離岸上市指數期權交易，而這些交易均屬該條例所界定的“期貨合約”。有關交易涉及約 6,500 萬美元的期權金，而盈豐銀行於 13 年期間內從這些交易賺取了 27,629 美元佣金。
7. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《**操守準則**》）第 7 項一般原則（遵守法規）規定，持牌人或註冊人應遵守一切適用於其業務活動的監管規定，維護客戶的最佳利益及促進市場廉潔穩健。
8. 《操守準則》第 12.1 段（合規事宜：概論）規定，持牌人或註冊人應遵守、實施及維持適當的措施，以確保有關的法例、證監會所執行或發出的規則、規例及守則獲得遵守。
9. 盈豐銀行在未獲註冊以進行第 2 類（期貨合約交易）受規管活動的情況下為客戶執行離岸上市指數期權交易，由此可見其並未設立適當的監控措施以確保符合註冊規定<sup>1</sup>，因而違反了《操守準則》第 7 項一般原則（遵守法規）及第 12.1 段的規定（合規事宜：概論）。

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<sup>1</sup> 該條例第 114 條規定，任何人如未就某類受規管活動獲發牌或註冊，不得經營該類受規管活動的業務，或顯示自己經營該類受規管活動的業務。

## 結論

10. 證監會經考慮所有情況後，認為盈豐銀行作為受規管人士的適當人選資格受到質疑。
11. 證監會在決定上述紀律處分時，已考慮到：
  - (a) 盈豐銀行主動就其離岸上市指數期權活動進行檢討，並自行向證監會匯報其無牌活動；
  - (b) 並無證據顯示有關不合規情況是蓄意造成的；
  - (c) 盈豐銀行與證監會合作解決證監會提出的關注事項；
  - (d) 盈豐銀行已採取補救措施加強其內部監控制度，以避免同類問題再次發生；  
及
  - (e) 盈豐銀行以往並無遭受證監會紀律處分的紀錄。