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## 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**) HK\$10,850,000 pursuant to section 196 of the Securities and Futures Ordinance (**SFO**) in relation to its failures, during the period from January 2015 to December 2020 (**Relevant Period**), to:
  - (a) take into account one or more special product features (**Special Features**) of 322 bonds when conducting product due diligence (**PDD**). These include 2 bonds where EFG has failed to classify as “complex” after the “complex product” regime (**Complex Product Regime**) came into effect on 6 July 2019 (collectively, **PDD Failures**);
  - (b) when/after the Complex Product Regime came into effect:
    - (i) update its PDD internal policies (**PDD Policies**) promptly to reflect the regulatory changes (**Policy Delay Failure**); and
    - (ii) ensure sufficient information (such as Special Features or other minimum information) was provided on 29 occasions, and warning statements relating to the distribution of certain complex products were provided to customers on 14 occasions before or at the point of each transaction (**Complex Product Regime Failure**);
  - (c) keep PDD records for 141 bonds (**141 Bonds**) (**Record-keeping Failure**); and
  - (d) immediately report the PDD Failures to the SFC (**Late Reporting Failure**).
2. The disciplinary action came after an SFC investigation which stemmed from EFG’s self-report about its PDD failures in December 2020 (**Self-report**) and a referral of findings from the Hong Kong Monetary Authority (**HKMA**), which also conducted an investigation after the Self-report. The Self-report was triggered by the HKMA’s Survey on Investment Funds, Bonds, and Paper Gold Schemes in June 2020 and follow-up enquiries (**Follow-up Enquiries**) in July 2020.

### Summary of regulatory requirements

3. The Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) provides that a regulated person should:
  - (a) in conducting its business activities, act with due skill, care and diligence, in the best interests of its clients and the integrity of the market (**General Principle (GP) 2 (Diligence)**);
  - (b) make adequate disclosure of relevant material information in its dealings with its clients (**GP5 (Information for clients)**);

- (c) act diligently and carefully when providing advice to client and ensure that its advice and recommendations are based on thorough analysis and take into account available alternatives (paragraph 3.4 (Advice to clients: due skill, care and diligence));
- (d) when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for the client is reasonable in all the circumstances having regard to information about the client of which the registered person is or should be aware through the exercise of due diligence (paragraph 5.2 (Know your client: reasonable advice));
- (e) when providing services to a client in complex products, ensure that:
  - (i) a transaction in a complex product is suitable for the client in all the circumstances;
  - (ii) sufficient information on the key nature, features and risks of a complex product is provided so as to enable the client to understand the complex product before making an investment decision; and
  - (iii) warning statements in relation to the distribution of a complex product are provided to the client in a clear and prominent manner (paragraph 5.5(a) (Know your client: complex products)); and
- (f) immediately report any material (or suspected material) breach, infringement of or non-compliance with any applicable laws and/or regulations to the SFC (paragraph 12.5 (Notifications to the Commission)).

4. Under the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC (**Internal Control Guidelines**):

- (a) management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors and other interested parties, e.g. exchanges, clearing houses and the SFC, to carry out routine and ad hoc comprehensive reviews or investigations (paragraph 6 of Part IV (Information Management));
- (b) policies and procedures shall be established and maintained to ensure the firm's compliance with all applicable legal and regulatory requirements as well as with the firm's own internal policies and procedures (Part V (Compliance)); and
- (c) effective policies and operational procedures and controls in relation to the firm's day-to-day business operations shall be established, maintained and compliance therewith ensured. The effectiveness of such operational procedures and controls will be evaluated in the light of whether they serve to ensure the compliance by the firm and persons acting on its behalf, with relevant legal and regulatory requirements (Part VII (Operational controls)).

## **Summary of facts and breaches**

### **(A) PDD Failures**

5. The PDD Policies effective during the Relevant Period provide, among other things, that EFG's Products Team would assess the general and special features and risk factors of investment products during the PDD process.
6. According to an impact assessment by EFG in January 2022, the Products Team might have omitted to take into account certain Special Features for 351 investment products<sup>1</sup> (**Affected Products**) when conducting PDD during the Relevant Period.
7. During the SFC's investigation, EFG was able to retrieve further evidence (including additional PDD records) and the SFC's examination of this further evidence shows that (a) one or more Special Features have not been considered by EFG for 322 bonds when conducting PDD (including two bonds that were not classified as "complex products" from July 2019 to November 2020), and (b) EFG has not kept PDD records for the 141 Bonds.
8. EFG's failure to take due skill, care and diligence when conducting PDD and consider all Special Features of the bonds prior to making them available for solicitation is a breach of GP2, and paragraphs 3.4 and 5.2 of the Code of Conduct, as well as the PDD Policies.

### **(B) Policy Delay Failure**

9. Although EFG had taken initiatives and deployed resources since August 2018 to address the regulatory changes brought about by the Complex Product Regime, it failed to formally update the PDD Policies to reflect the regulatory changes until three months after the Complex Product Regime came into effect.
10. EFG's delay in establishing the PDD Policies that reflect regulatory changes under the Complex Product Regime is contrary to Parts V and VII of the Internal Control Guidelines.

### **(C) Complex Product Regime Failure**

11. The available evidence also shows that after the implementation of the Complex Product Regime, there were:
  - (a) 29 occasions where EFG has not provided sufficient complex product information to the customer for the Affected Product in question; and
  - (b) 14 occasions where EFG has not provided adequate warning statements in relation to the distribution of certain complex products to the customer before or at the point of transaction,

contrary to GP5 and paragraphs 5.5(a)(ii) & (iii) of the Code of Conduct.

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<sup>1</sup> A list of the 351 Affected Products is set out in the Appendix.

*(D) Record-keeping Failure*

12. The PDD Policies effective during the Relevant Period require PDD records to be archived for ten years.
13. In practice, the Products Team would record the relevant product details, including the product's identified features and product risk rating (**PRR**), in a spreadsheet, and together with the PDD supporting documents, save them in the team's shared drive.
14. Nevertheless, EFG was unable to locate PDD records for the 141 Bonds. Its failure to keep these PDD records has breached the PDD Policies, and fallen short of the standards set out in paragraph 6 of Part IV (Information Management) of the Internal Control Guidelines, of which regulated persons have been repeatedly reminded by circulars issued by the HKMA and the SFC<sup>2</sup>.

*(E) Late Reporting Failure*

15. Following EFG's two responses to the Follow-up Enquiries (**Revised Responses**) in July 2020, the Products Team was requested to review, among other things, the inconsistencies in the Revised Responses to the HKMA.
16. At the time, EFG suspected that the failures might have affected over 100 bonds. However, instead of reporting the matter to the SFC, it decided to engage a reviewer to assess its PDD framework in August 2020 (**Assessment**) and a review report was issued in October 2020, where among other things, it was found that some products in EFG's approved product list have a PRR which was too low.
17. While the Assessment was underway, EFG also undertook a review of the approved products and summarised its initial view of the PDD Failures to seek advice from another reviewer in early December 2020 on whether the matter should be reported to the HKMA and the SFC. The Self-report was eventually submitted on 11 December 2020.
18. In the circumstances, it is clear that EFG did not immediately report to the SFC the PDD Failures when it first suspected of them in July 2020, in breach of paragraph 12.5 of the Code of Conduct.

**Conclusion**

19. Having considered all relevant circumstances, the SFC is of the view that EFG is guilty of misconduct for the purpose of section 196 of the SFO.
20. In deciding the sanctions set out in paragraph 1 above, the SFC has taken into account all relevant considerations, including:

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<sup>2</sup> The HKMA's circular dated 30 July 2014 on "Issues and good practices in relation to the sale of investment products" and the SFC's circulars dated 8 May 2007 on "Questions and Answers on Suitability Obligations" and 23 December 2016 on "Frequently Asked Questions on Compliance with Suitability Obligations" reminded regulated persons about the need to maintain proper documentation on PDD work done (including verification work and enquiries made in relation to investment products and approvals obtained from senior management for promoting the products).

- (a) the duration of the PDD Failures;
- (b) a strong message has to be sent to the market to deter other market participants from committing similar misconduct;
- (c) EFG has taken remedial measures to enhance its PDD framework;
- (d) EFG's cooperation with the HKMA and the SFC in resolving the concerns identified in the investigations; and
- (e) EFG will implement Enhanced Complaint Handling Procedures to review any complaints which may be made by customers who have acquired the Affected Products during the Relevant Period.

## Appendix - List of the 351 Affected Products

No.	ISIN	No.	ISIN	No.	ISIN
1.	USG8539EAB14	33.	XS2043949200	65.	XS1954963580
2.	XS2127855711	34.	US59156RAP38	66.	XS2101310196
3.	XS2122990570	35.	XS1498440079	67.	XS2098096568
4.	XS1960476387	36.	XS2099272846	68.	XS2122990810
5.	XS2051371222	37.	XS2050914832	69.	XS0878083517
6.	XS1719264324	38.	XS1506085114	70.	XS1157365070
7.	XS2079096884	39.	XS1555076162	71.	XS1330188910
8.	XS1023280271	40.	USQ3919KAK71	72.	XS1485578535
9.	XS2034822564	41.	XS1943451788	73.	USG84228CE61
10.	USQ12441AA19	42.	XS1974522853	74.	XS1841083485
11.	XS1567389728	43.	XS2076078513	75.	XS1839375539
12.	XS2099273737	44.	XS1795479291	76.	XS1243885388
13.	XS2100655807	45.	USY39698AA65	77.	XS1580430681
14.	XS1751178499	46.	USY56607AA51	78.	XS1596795358
15.	XS2016010881	47.	US03674PAL76	79.	XS1068221230
16.	XS2075784103	48.	XS1893648904	80.	US92553PBD33
17.	USG24524AH67	49.	XS1924328807	81.	USG21184AA79
18.	XS2022434364	50.	XS2109191986	82.	HK0000216157
19.	XS2082380515	51.	XS0900763029	83.	XS1508842256
20.	XS1607974877	52.	XS1759179002	84.	XS1422790615
21.	XS1969792800	53.	XS2014454933	85.	XS0872804207
22.	XS1366918305	54.	US88032XAW48	86.	XS1163228627
23.	XS2078814147	55.	XS1508493498	87.	XS1164776020
24.	XS1750118462	56.	XS1953029284	88.	XS1266590089
25.	XS1580431143	57.	XS2031924108	89.	XS1265418217
26.	XS2029997942	58.	XS2073593274	90.	XS1637274124
27.	USY39694AA51	59.	XS2013512608	91.	XS1974522937
28.	XS1589745170	60.	XS2030531938	92.	USY1391CAJ00
29.	XS1106513762	61.	XS2121187962	93.	USG21184AB52
30.	XS2049804896	62.	XS2099677747	94.	XS1165659514
31.	XS2057076387	63.	XS1781824393	95.	XS1325756572
32.	XS2100658066	64.	XS1513700127	96.	XS1810003332

No.	ISIN	No.	ISIN	No.	ISIN
97.	XS1054375446	131.	XS1248248343	165.	XS1081321595
98.	XS1254119750	132.	USG79456AJ12	166.	XS1165128585
99.	XS1139661224	133.	US36164QNA21	167.	XS1488459485
100.	XS1822793821	134.	XS1790624883	168.	XS1599173470
101.	US404280BR94	135.	XS0851996925	169.	XS1627599498
102.	USY97279AB28	136.	XS1202237712	170.	XS1959497782
103.	XS0852986313	137.	USY3R559AE22	171.	XS1972092248
104.	XS0876766766	138.	USY3R559AD49	172.	XS1090864528
105.	US61746BEE20	139.	XS1805611610	173.	XS1088292815
106.	XS1125272143	140.	HK0000181906	174.	XS1202242712
107.	US06120TAA60	141.	HK0000188166	175.	XS1293482599
108.	XS1234958459	142.	HK0000199114	176.	USJ54675AC78
109.	XS1317967492	143.	HK0000203924	177.	XS1341169867
110.	XS1567423766	144.	XS1561673804	178.	XS1385999492
111.	XS1677026350	145.	XS1727231281	179.	XS1252209322
112.	US09681MAG33	146.	XS1098688929	180.	XS1910150702
113.	US36962GW752	147.	AU3CB0229680	181.	XS1641479750
114.	USG81877AA34	148.	AU3CB0225324	182.	XS0841191991
115.	XS1822794555	149.	AU3CB0221141	183.	XS1326527246
116.	XS1800164904	150.	AU3CB0240059	184.	XS1602111566
117.	XS1839763114	151.	XS1900869683	185.	US744320AV41
118.	USG24524AG84	152.	XS0856597314	186.	XS0767140022
119.	XS1716970345	153.	XS1138687162	187.	AU3FN0031167
120.	XS0852986156	154.	US404280AW98	188.	AU3CB0242527
121.	XS1143041314	155.	XS1133586963	189.	XS1028955844
122.	XS1308339420	156.	XS1132375897	190.	USG3777BAB92
123.	XS1394990003	157.	XS0744757526	191.	XS0897923719
124.	US88032XAD66	158.	XS0794823152	192.	USU2526DAG44
125.	HK0000193976	159.	HK0000205267	193.	USU2526DAH27
126.	XS1234958376	160.	XS0877742105	194.	XS1020462930
127.	XS1213235085	161.	XS1170096454	195.	USJ77549AC73
128.	XS1262889998	162.	XS1637076164	196.	US71654QCC42
129.	XS1515239942	163.	XS1856094724	197.	US06051GHE26
130.	US780097BF78	164.	XS0858461758	198.	US46647PAW68

No.	ISIN	No.	ISIN	No.	ISIN
199.	XS0850023093	233.	USG05891AA76	267.	XS1726328310
200.	XS1903671698	234.	XS1711992716	268.	XS1712239463
201.	XS1523130984	235.	XS0619547838	269.	XS1744630341
202.	XS1716631301	236.	XS1784060359	270.	XS1821408215
203.	XS1545743442	237.	XS1252209249	271.	USG23530AA92
204.	USG81877AD72	238.	XS1867560028	272.	USU2526DAD13
205.	XS0875624099	239.	XS1064021246	273.	US00772BAR24
206.	XS1107172535	240.	XS1561673986	274.	XS1064799841
207.	XS1227947097	241.	US37045XBR61	275.	US2027A1HX82
208.	XS1677024579	242.	US38141GWD23	276.	USU46009AD51
209.	US25470DAL38	243.	XS1711550290	277.	US49456BAF85
210.	XS1538864825	244.	US251526BM07	278.	AU3FN0037388
211.	XS1908374322	245.	US06051GGN34	279.	AU3FN0034005
212.	XS1645684827	246.	US949746SP73	280.	XS1891434604
213.	XS0979772596	247.	XS1824431313	281.	CA36158ZBK18
214.	XS1590507775	248.	USP84523AB85	282.	USY39656AA40
215.	XS1562574431	249.	XS0996662853	283.	XS1512953040
216.	XS1639826251	250.	XS1327049703	284.	USQ66511AC26
217.	XS1635992529	251.	XS1411405233	285.	XS1401816761
218.	XS1100009874	252.	XS1528227744	286.	AU3FN0035523
219.	XS1318014831	253.	XS1720885463	287.	XS0767865263
220.	XS1668531335	254.	USU5933LAF86	288.	AU3CB0240109
221.	XS1245212037	255.	XS0565475505	289.	XS1602259985
222.	XS1387644864	256.	XS0493535966	290.	AU3CB0246676
223.	XS1432554761	257.	XS1617128928	291.	XS1556395710
224.	XS0972980097	258.	XS1551761999	292.	XS1860402954
225.	USJ54675AA13	259.	US71654QBH48	293.	XS1799588642
226.	HK0000139235	260.	XS1165980274	294.	XS1013209017
227.	XS1242768536	261.	US71656MBP32	295.	XS1317967146
228.	HK0000175114	262.	XS1814979123	296.	XS1590508153
229.	XS1618163452	263.	XS1492597676	297.	XS1751002707
230.	XS1649885974	264.	US44987DAF33	298.	XS1592506957
231.	XS1250898100	265.	XS1795323952	299.	XS1549621586
232.	HK0000098928	266.	XS1452346973	300.	XS1808311424

No.	ISIN
301.	XS1768437300
302.	XS1951935847
303.	XS1880450140
304.	XS1810003928
305.	USG4673GAA34
306.	USY3R559AF96
307.	XS1380286663
308.	XS1499209861
309.	US71654QBW15
310.	US03938LAP94
311.	XS1615078141
312.	USG24524AJ24
313.	US71654QBG64
314.	XS1057659838
315.	US71656MBM01
316.	XS1789509160
317.	XS1720054383
318.	XS1940128371
319.	XS1695301900
320.	US053773AV98
321.	XS1960762554
322.	USG91703AC56
323.	XS1083298668
324.	US38141GWN05
325.	XS1596795275
326.	XS1165659357
327.	XS1082890317
328.	XS1788498167
329.	XS1602480334
330.	XS1954961295
331.	USU05375AP26
332.	XS1627599654
333.	XS1113240268
334.	HK0000223849

No.	ISIN
335.	HK0000261336
336.	XS1793351237
337.	XS1807202350
338.	XS1711550456
339.	XS1437622621
340.	XS1226628961
341.	USU9547KAB99
342.	US81180WAL54
343.	XS1575079402
344.	USC98874AH09
345.	IE00BD8DFW88
346.	IE00B8K7V925
347.	LU0820561818
348.	IE00B7KFL990
349.	IE00BH6XX795
350.	IE00B11XZ988
351.	IE00B3K7XK29