

SFC reprimands and fines Deutsche Bank Aktiengesellschaft \$1.6 million for regulatory breaches

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The Securities and Futures Commission (SFC) has reprimanded and fined Deutsche Bank Aktiengesellschaft (Deutsche Bank) \$1.6 million for regulatory breaches and internal control failings (Note 1).

The disciplinary action follows an SFC investigation into the failure of Deutsche Bank to disclose to Stock Exchange of Hong Kong Limited (SEHK) the changes to its percentage holdings in the issued share capital of Up Energy Development Group Limited on 27 occasions from 21 January 2011 to 25 August 2011. Three of these 27 occasions involved trading activity by Deutsche Bank; the remainder involved increases to the listed company's total issued share capital (Notes 2 to 7).

The SFC found that Deutsche Bank failed to implement adequate internal controls to ensure its positions in Hong Kong listed companies were properly monitored and disclosed to SEHK in compliance with the disclosure of interests requirements.

In particular, the SFC found that although Deutsche Bank had implemented an electronic position monitoring system to capture and monitor its positions globally, the system did not automatically capture equity positions that were processed and settled under the settlement system used in Singapore in its fixed income division. Deutsche Bank was aware of this limitation but failed to implement adequate procedures or training to guide the relevant business groups at Deutsche Bank to identify and report those equity positions that did not automatically feed into its electronic position monitoring system.

In deciding the penalty, the SFC took into account that Deutsche Bank reported the matter to the SFC and has since strengthened its internal controls on the monitoring and disclosure of its equity positions in Hong Kong listed companies.

End

Notes:

1. Deutsche Bank is a registered institution under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising in securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities. Deutsche Bank is also an authorized institution under the supervision of the Hong Kong Monetary Authority.
2. Section 310(1) of the SFO provides that where a person acquires an interest in or ceases to be interested in shares comprised in the relevant share capital of a listed corporation; or where any change occurs affecting a person's existing interest in shares in a listed corporation's share capital, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.
3. Section 311 of the SFO provides that the interests to be disclosed for the purposes of the duty of disclosure arising under section 310 are those in the shares comprised in relevant share capital of the listed corporation concerned.
4. Section 313(1) of the SFO provides that the circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; or (d) has a notifiable interest but the nature of his interest has changed.
5. Section 315 of the SFO provides that the notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.
6. Section 324 of the SFO provides, inter alia, that where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and SEHK of the interests which he has, or ceases to have, in the shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.
7. Section 325(1)(a) of the SFO provides that notification required by section 324 should be given within three business days after the day on which the relevant event occurs.
8. A copy of the [Statement of Disciplinary Action](#) in relation to the matter is available on the SFC website.

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has taken the following disciplinary action against Deutsche Bank Aktiengesellschaft (**DBAG**) pursuant to section 196 of the Securities and Futures Ordinance (**SFO**):
 - (a) publicly reprimanded DBAG pursuant to section 196(1)(b)(ii) of the SFO; and
 - (b) ordered DBAG to pay a pecuniary penalty of HK\$1,600,000 pursuant to section 196(2) of the SFO.
2. The disciplinary action is taken due to DBAG's failure
 - (a) to comply with the regulatory requirements to disclose its interests in the shares of a company listed on the Stock Exchange of Hong Kong (**SEHK**)¹²³⁴⁵⁶; and
 - (b) to implement adequate internal controls to ensure compliance with the regulatory requirements to disclose to the SEHK its interests in the shares comprised in the share capital of corporations listed on the SEHK ("notifiable interests").

Summary of Facts

Failure to disclose notifiable interests and internal control failings

3. On 18 January 2011, Tidetime Sun Group Limited (now known as Up Energy Development Group Ltd ("UEGL")) issued convertible notes to DBAG which were convertible into 507,981,610 ordinary shares, UEGL was a corporation listed on

¹ Section 310(1) of the SFO provides that where a person acquires an interest in or ceases to be interested in shares comprised in the relevant share capital of a listed corporation; or where any change occurs affecting a person's existing interest in shares in a listed corporation's share capital, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.

² Section 311 of the SFO provides that the interests to be disclosed for the purposes of the duty of disclosure arising under section 310 are those in the shares comprised in relevant share capital of the listed corporation concerned.

³ Section 313(1) of the SFO provides that the circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; d) has a notifiable interest but the nature of his interest has changed.

⁴ Section 315 of the SFO provides that the notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.

⁵ Section 324 of the SFO provides, inter alia, that where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and the HKEx of the interests which he has, or ceases to have in the shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.

⁶ Section 325(1)(a) of the SFO provides that notification required by section 324 should be given within 3 business days after the day on which the relevant event occurs.

the SEHK. As a result of this acquisition, DBAG had a notifiable interest in UEGL of 50.72%. On 21 January 2011, DBAG disclosed its notifiable interest to the SEHK.

4. Following the acquisition, from 21 January 2011 to 25 August 2011, DBAG's notifiable interest in UEGL moved above or below at least one percentage point on 27 occasions to trigger a disclosure. However, DBAG failed to disclose these changes to its UEGL holdings to the SEHK. DBAG also failed to disclose to the SEHK when its notifiable interest in UEGL ceased on 25 August 2011⁷.
5. On 24 of the 27 occasions, the percentage changes in DBAG's notifiable interest in UEGL were apparently caused by increases to UEGL's issued share capital as a consequence of other convertible note holders exercising their conversion rights.
6. On three of the 27 occasions, the changes in DBAG's notifiable interest in UEGL were caused either by DBAG's acquisition or its disposal of UEGL shares⁸.
7. It was not until 15 January 2013 that DBAG finally submitted a notification to the SEHK disclosing that its notifiable interest in UEGL had ceased and that its holdings in UEGL as at 10 January 2013 was significantly reduced to 2.23% of its issued share capital.
8. Regarding the internal controls for monitoring and reporting its equity positions in Hong Kong listed corporations, DBAG submitted it had:
 - (a) implemented an electronic global equity monitoring system ("eGEM") to automatically capture changes in DBAG's global equity positions in Hong Kong listed corporations;
 - (b) a dedicated team, the Position Reporting Group ("PRG"), to monitor, identify and validate any changes to DBAG's equity positions in Hong Kong listed corporations and to make the necessary relevant disclosures to the regulatory authorities;
 - (c) written policies and procedures for monitoring and reporting equity positions in Hong Kong listed corporations. These procedures included requirements for each business group to regularly report DBAG's position data in equity and equity linked securities to Compliance and also provide position reports manually to Compliance if the reports cannot be automatically fed from the local systems to eGEM ("Manual Positions").

⁷ On 25 August 2011, DBAG sold 500,000 shares in UEGL. This reduced DBAG's holdings in UEGL to 52,177,031 shares and a corresponding percentage reduction in its notifiable interest from 5% to 4.95%.

⁸ On 23 March 2011, DBAG acquired additional convertible notes in UEGL and, on the same day, exercised its conversion rights. This resulted in an increase in DBAG's holdings in UEGL from 507,981,610 shares to 1,117,356,610 shares and a corresponding increase in the percentage level of its notifiable interest from 10.66% to 23.45%. On 14 April 2011, DBAG sold 26,784,000 shares in UEGL. This resulted in the percentage level of DBAG's notifiable interest in UEGL being reduced from 11.85% to 10.98%. On 25 August 2011, following a share consolidation in UEGL, DBAG sold a further 500,000 shares in UEGL. This further reduced the percentage level of DBAG's notifiable interest from 5% to 4.95%.

9. According to DBAG, the failure to disclose its notifiable interests in UEGL was because the UEGL transactions were settled through DBAG Singapore under an internal settlement system used by its fixed income division that was not configured to automatically feed into eGEM. In order for the UEGL positions to appear on the daily review list generated by eGEM, daily manual adjustments had to be made to the UEGL positions in eGEM. However, due to an oversight, no such manual adjustments were made to the UEGL positions in eGEM.
10. DBAG admitted there were four other Manual Positions that its PRG did not know about and therefore did not monitor prior to the SFC's investigation. These positions were not updated in eGEM and therefore not monitored by DBAG. However, disclosure obligations were not triggered for these four Manual Positions as DBAG held less than 5% of the respective issued share capital of the four relevant Hong Kong listed corporations.
11. Although DBAG had in place a system, eGEM, and written policies and procedures for the monitoring and disclosure of its equity positions in Hong Kong listed corporations, these did not adequately address the monitoring and disclosure of Manual Positions. In particular, no guidance was provided to the relevant business groups on how to identify the Manual Positions for reporting to Compliance. The gaps in the procedures were further exacerbated by DBAG's lack of training to relevant business groups regarding the reporting of equity positions. There were also no clear delineation and documentation of the responsibilities of Compliance and PRG in relation to the monitoring and reporting of Manual Positions.
12. Furthermore, although DBAG was aware its UEGL positions did not automatically feed into eGEM, there is no evidence that DBAG actively followed up and periodically checked on its holdings in UEGL.
13. DBAG has since taken steps to strengthen its internal controls and have made modifications to its system so that the settlement system used in Singapore in its fixed income division is now fed into eGEM automatically.

Conclusion

14. Having considered all the circumstances, the SFC is of a view that DBAG's fitness and properness as a registered institution has been called into question.
15. The SFC has decided that the sanction of public reprimand and fine of HK\$1,600,000 is most appropriate and commensurate with the view of the SFC on the gravity of the failure.
16. In coming to the decision to take disciplinary action against DBAG for its failures, the SFC has taken into account:
 - (a) the duration of DBAG's failure to monitor and disclose its notifiable interests in UEGL to the SEHK;
 - (b) DBAG's immediate report to the SFC upon discovery of its failure to disclose its notifiable interests in UEGL;

- (c) the measures taken by DBAG to improve its systems to ensure that notifiable interests in equity positions in Hong Kong listed corporations are properly disclosed; and
- (d) a clear message should be sent to the market on the importance of compliance with regulatory requirements.