

Our Ref.: B1/15C

25 March 2009

The Chief Executive
All Authorized Institutions

Dear Sir/Madam,

附件 25
Annex 25

**Implementation of recommendations in the HKMA's Report on Issues
Concerning the Distribution of Structured Products Connected to
Lehman Brothers ("the HKMA's Report")**

Further to my circular of 9 January 2009 requesting all Registered Institutions (RIs) to implement a number of recommendations in the HKMA's Report, the HKMA and the Hong Kong Association of Banks (HKAB) have, through the Retail Banking Taskforce on Sale of Investment Products established by the HKAB, further discussed and worked out the implementation details for these recommendations. All RIs are expected to implement these recommendations according to the implementation details set out in the two Annexes to this letter. The HKMA will in due course conduct onsite examination to review RIs' implementation of these recommendations.

If you have any questions on the above, please get in touch with your usual supervisory contact at the HKMA.

Yours faithfully,

Nelson Man
Executive Director
(Banking Supervision)

c.c. Chairman, Hong Kong Association of Banks
Chairman, The Deposit-taking Companies Association

Encl. Annex 1 (PDF file, 1.1MB)
Annex 2 (PDF file, 396KB)

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Registered Institutions (“RIs”) are required to implement the following recommendations in accordance with the timetable specified

	Recommendations ¹	Requirement and Implementation Timetable	Detailed Guidance on Implementation (Timeline of implementation follows the original timetable unless otherwise stated)
5	“Health-warnings” should be attached to retail structured products with embedded derivatives or to retail derivative products generally.	<p>RIs should include a “health warning” statement, printed in reasonable font size, to all existing derivative products and structured products with embedded derivatives that are being sold to investors. RIs should draw investors’ attention to the “health warning” statement when selling such products to them.</p> <p>Immediately</p>	<p>After consultation with the Securities and Futures Commission (SFC), a health warning statement with the following wording will be included in the marketing materials and offering documents of all structured investment products:</p> <p><i>“This is a structured product involving derivatives. The investment decision is yours but you should not invest in the [product name/type] unless the intermediary who sells it to you has explained to you that the product is suitable for you having regard to your financial situation, investment experience and investment objectives.”</i></p> <p><i>“此乃涉及金融衍生工具的結構性產品。投資決定是由閣下自行作出的，但閣下不應投資在該《產品名稱/類型》，除非中介人於銷售該產品時已向閣下解釋經考慮閣下的財務情況、投資經驗及目標後，該產品是適合閣下的。”</i></p> <p>For existing marketing materials and offering documents of structured products already authorized by the SFC, the health warning statement may be included on a separate sheet attaching to the materials. When the remaining printed stocks of these materials have been used up and need to be replenished, the health warning statement should be incorporated into the newly printed materials and a copy of the revised materials should be submitted to the SFC for record. The above is subject to due compliance with the relevant requirements under the SFO</p>

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		<p>or the Companies Ordinance and applicable SFC codes and guidelines.</p> <p>The requirement applies equally to phone banking transactions where the health warning statement should be provided verbally over the phone during the sales process and audio recorded for audit trail purposes.</p> <p>Notes:</p> <ol style="list-style-type: none"> 1. The definition of structured investment product (for the purposes of the health warning requirement) is an investment product with embedded derivatives that fall within the coverage of the Securities and Futures Ordinance. By this definition, stock trading is deemed to be excluded. 2. The wording of the health warning statement for structured investment products stated above was finalised in consultation with the SFC. The health warning statement is meant to be a warning to investors. Where an investor insists on buying a product despite a risk mismatch to his investment appetite or investment objectives, banks must demonstrate and prove that it has during the selling process complied with all applicable laws and regulations including the SFC’s Code of Conduct e.g. they have properly conducted suitability assessment and clearly explained the risk to the investors, with adequate documentation and evidence to demonstrate that this has been done.

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			<p>3. The HKMA and SFC are working on Key Facts Statements which should be provided by the product issuer and RIs respectively. These will be released in due course for market consultation. When the Key Facts Statements are finalised and introduced, the HKMA will consider whether there is still a need for a separate health warning statement.</p> <p>4. Some RIs may wish to apply the above health warning statement to investment products which are not structured products. In such circumstances, RIs may suitably replace the words “structured product involving derivatives” in the first sentence of the health warning statement with words like “investment product” which would provide more accurate description of the relevant investment product while keeping the rest of the health warning statement intact.</p>
12	To provide further protection for investors, the assessment of a customer’s risk profile be separated from the sales process and be carried out by non-sales staff and that the customer be provided with a copy of the risk profile and asked	RIs should put in place appropriate structure and procedures for the separation of risk assessment and sales process. Also adequate records (including audio records) must be maintained as evidence of the risk assessment process and confirmation of agreement to the risk assessment by the investor.	<p>The HKMA expects that the assessment of a customer’s risk profile should be carried out by non-sales staff. However, in situations where this is not practicable, an independent review must be performed on the risk assessments conducted by sales staff. The independent review should satisfy the following criteria:</p> <ul style="list-style-type: none"> • 100% check on risk assessments with customers graded above the medium risk category • 100% check on risk assessments involving vulnerable

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to confirm his agreement that the risk profile is accurate. Mandatory requirements to audio record the assessment process should be introduced.	As soon as possible but no later than end of March 2009.	<p>customers graded above the lowest risk category</p> <ul style="list-style-type: none"> • Sample check (at least 20%) on risk assessments of all other customers graded above the lowest risk category • The independent review should cover <u>all</u> sales staff who have performed assessment of customers' risk profile • In case exceptions are noted with the risk assessments performed by a sales staff, the RI should perform a more comprehensive review on the risk assessments performed by that staff. <p>As part of its ongoing supervision, the HKMA will collect from RIs details of exceptions identified in independent reviews and will assess the effectiveness of independent reviews performed by RIs.</p> <p>In consultation with the SFC, it is considered that the independent non-sales staff performing the customer risk profiling does not have to be a relevant individual provided that the staff will not be involved in any activities that will fall within the definition of the various types of regulated activities and on the basis that:</p> <p>(i) the staff will only perform the customer risk profiling process, i.e. ask the customer to provide information for completion of a standardised questionnaire, record the answers (e.g. inputting into system) and inform the customer of the resultant risk rating assigned by the system as well as the</p>

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		<p>corresponding allocation among different asset classes (but not specific products); and</p> <p>(ii) the staff will not induce client to deal in securities and will not talk about specific investment products with client.</p> <p>On the same basis, it is considered that the staff responsible for conducting the independent review for cases where the risk profiling is done by sales staff would not be required to be registered as relevant individual.</p> <p>Customers should be provided with a copy of the risk profile and asked to confirm his/her agreement that the risk profile is accurate. The assessment process should be audio recorded and the audio records should be retained for seven years.</p> <p>Timeline for implementation of the audio recording requirement will follow that of Recommendation 13.</p>
13 The regulatory requirements at point of sale should be reviewed with a view to introducing mandatory requirements for the audio-recording of	RIs should ensure adequate records and audit trail (including audio records) are in place to show that due selling process is being followed for all investors.	<p>The audio records should be retained for seven years.</p> <p>Given the system changes required in implementing this recommendation, the HKMA is prepared to allow RIs more time to set up the audio-recording system but full implementation of this recommendation should be achieved by end of June 2009. Individual</p>

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	the sales process and ancillary arrangements.	As soon as possible but no later than end March 2009.	RIs requiring more lead time for implementation due to technical difficulties should liaise with their usual HKMA contact directly with justifications for requiring a longer lead time.
14	Where the continuous review by a registered institution of the risk ratings of the investment products it sells results in a higher risk rating being attributed to a product, the institution should disclose this to customers to whom it recommended and sold the product.	This is a requirement in the HKMA circular of 28 October.	<p>RIs should notify customers directly of the higher risk rating through monthly statement or a separate letter. The HKMA notes that this may necessitate system changes by RIs and some RIs might need more time to comply with this recommendation. In any case, RIs are expected to achieve full implementation of this recommendation as soon as practicable but no later than 30 June 2009. Individual RIs requiring more lead time for implementation due to technical difficulties should liaise with their usual HKMA contact directly with justifications for requiring a longer lead time. Before this is done, RIs should, as an immediate and interim measure, take appropriate actions to alert customers of the higher risk rating and provide a channel (e.g. website or dedicated telephone line) through which the customer could access the relevant information.</p> <p>RIs have no further obligation to make the disclosure to a customer who has closed his/her account or has the relevant investment product transferred to another bank's account.</p>
15	In cases of sales of investment products where there is a risk mismatch	Adequate documentation of the investor's reasons, understanding and agreement to the risk mismatch,	Bank staff has a heightened responsibility in ensuring that the suitability requirements are met and that risks are clearly explained to investors in the selling process. Whenever a product with a risk rating higher than

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	between the risk rating applied to the product and the customer’s risk profile, full and complete documentation should be retained of the reasons why the customers made the investment decision, the sales process should be audio-recorded, and endorsement should be sought from supervisory staff within the institution.	<p>and seeking of supervisor’s endorsement, are existing requirements. To enhance audit trail, RIs should take steps to have relevant discussions with the investors audio- recorded.</p> <p>Adequate Documentation and supervisor’s endorsement to be implemented immediately</p> <p>Audio recording – as soon as possible but no later than end March 2009.</p>	<p>the customer’s risk tolerance level is sold to the customer, the bank staff should ensure the following: (i) remind the customer of the risk mismatch and that the product may not be suitable for him/her; (ii) document the reasons of any product recommendations as well as the reasons of the customer’s choice of products; (iii) the customer should sign his/her acknowledgement of the risk mismatch; and (iv) the full conversation should be appropriately audio-recorded. In the event of inconsistent answers given by a customer, the bank staff should seek clarification from the customer and document the reasons given by the customer. Endorsement should be sought from supervisory staff within the institution.</p> <p>Timeline for implementation of the audio recording requirement will follow that of Recommendation 13.</p>
17	A mystery shopper programme be instituted periodically by the HKMA (as well as by registered institutions themselves) to test sales processes, and a pilot programme of customer surveys be commissioned by the HKMA to gauge whether	<p>RIs should put in place appropriate “mystery shopper” programme to test sales procedures.</p> <p>As soon as possible but no later than end March 2009.</p>	<p>RIs are expected to put in place appropriate “mystery shopper” programme as soon as possible.</p> <p>The HKMA and SFC will jointly develop an external “mystery shopper” programme and will further work out the timeframe of the pilot programme of customer surveys.</p>

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	such surveys can provide information useful for the examination of specific issues in the context of the longer-term customer relationship.		
18	Remuneration structures for staff engaged in AIs’ securities business be subject to greater focus in the HKMA’s on-site examinations and off-site surveillance of AIs’ securities business.	<p>RIs should have adequate procedures and controls to ensure that frontline sales staff are not remunerated with bonuses calculated solely on the basis of financial performance but that other factors (including adherence to best practices guidelines and code of conduct) are in fact taken into account.</p> <p>Immediate</p>	RIs are expected to implement this improvement measure immediately in case they have not already done so.

¹ The recommendation numbers are those referred to in paragraphs 8.1 to 8.50 of the HKMA’s Report.

Registered Institutions are required to formulate a plan on how to implement the following recommendations for discussion with the HKMA by the end of March 2009

Recommendations	Implementation plan agreed by the HKMA and the banking industry
<p>Recommendation 10</p> <p>AIs, which are registered institutions, continue to be permitted to undertake securities business (including selling investment products to retail customers), but steps should be taken to ensure clearer differentiation between traditional deposit-taking activities and retail securities business, including:</p> <ul style="list-style-type: none"> - physical segregation of AIs' retail securities business from their ordinary banking business - a requirement that staff involved in selling investment products to retail customers should not be involved in ordinary banking business - a requirement that AIs make clear, through physical signs and warnings, the distinction between deposits and investments and particularly the risks attached to the latter - a requirement that there be complete information separation between a retail customer's deposit accounts and his investment accounts and a 	<p>Following discussions with the Retail Banking Taskforce on Sale of Investment Products ("the Retail Banking Taskforce") of the Hong Kong Association of Banks (HKAB), the HKMA sets out below the implementation arrangement for this recommendation:</p> <ol style="list-style-type: none"> 1. RIs will set up designated "investment corner" with proper "signage" in the banking hall away from the general banking area. All sales of investment products must be conducted in the investment corner by qualified staff. Staff in the investment corner may provide full banking services to customers provided that the customer has provided consent for the RI to access and utilise his/her deposit information for investment and wealth management purposes. 2. For existing active investment customers, banks are not required to seek positive consent from these customers for accessing and utilising their deposit information in the investment corner. However, banks should notify these customers of the new segregation arrangement and provide them with an option to refuse the bank's utilisation of their deposit information for sales/solicitation by the bank staff in the investment corner. 3. For (i) existing inactive investment customers, (ii) existing customers who have previously lodged complaints alleging mis-selling of investment products by the RI and (iii) new customers, the RI will need to seek specific consent from these customers prior to offering full banking services at the investment corner. 4. RIs should ensure that a robust system is in place to ensure that both customers and

Recommendations	Implementation plan agreed by the HKMA and the banking industry
<p>prohibition on an AI's making use of deposit-related information to target and channel retail customers into investment activities.</p>	<p>bank staff are aware of the differentiation between the designated "investment corner" and the general banking area, and there will be procedures in place to ensure that customers will not be lured into the "investment corner" but use it only at their own initiatives.</p> <ol style="list-style-type: none"> 5. RIs may continue to display marketing materials at bank halls as they are doing currently. However, as this may be considered as part of the solicitation process, care must be taken to handle follow-up enquiries and/or sales to persons who are not yet a customer of the bank to avoid breaching the cold-calling rules. If customers, after reading the marketing materials, want to know more about the investment products or show interests to buy them, then normal suitability procedures must be conducted (as set out in SFC Code of Conduct 5.1 and 5.2 and FAQs on suitability obligations), and under the new segregation arrangement, should be done at the investment corner. 6. The "physical segregation" requirement would not be applicable to general phone banking on the basis that (i) it will be audio recorded and (ii) complicated and high risk investment products will not be marketed or solicited to customers through this channel. For the avoidance of doubt, phone banking between relationship managers and their customers will follow all procedures applicable to the investment corner. 7. Taking into account the time needed for operation and system changes, RIs are expected to achieve implementation by 30 September 2009. Individual RIs requiring more lead time for implementation due to technical difficulties should liaise with their usual HKMA contact directly with justifications for requiring a longer lead time. For the purpose of consent seeking, customers who open investment accounts on or after RI's implementation of this segregation arrangement will be considered "new customers".
<p>Recommendation 11</p> <p>- the above forms of segregation should apply to AIs' insurance activities and other investment</p>	<p>The HKMA and the HKAB's Retail Banking Taskforce agree that the above arrangement will apply to RIs' insurance activities and other investment activities, except for the following list of general insurance and traditional life insurance products on the basis that customers could generally distinguish them from deposit products and</p>

Recommendations	Implementation plan agreed by the HKMA and the banking industry
activities.	<p>that cooling-off period applies for traditional life insurance products. For life insurance products, RIs should include the following risk disclosure statement:</p> <p><u>Specimen Warning Statement</u></p> <p><i>"[Plan name] is an insurance plan with a savings element. Part of the premium pays for the insurance and related costs. If you are not happy with your policy, you have a right to cancel it within the cooling off period and obtain a refund of any premiums paid. A written notice should be received by us within the cooling off period (that is, 21 days from the date of the application, 14 days from the date of issue of the policy, or 5 days from the date of delivery of the policy/a notice (informing you/your representative about the availability of the policy and expiry date of the cooling-off period), whichever is later). After the expiration of the cooling off period, if you cancel the policy before the end of the term, the projected total cash value may be less than the total premium you have paid."</i></p> <p><u>List of general insurance and traditional life insurance products that may be sold outside the investment corner</u></p> <p>(a) General Insurance</p> <ul style="list-style-type: none"> ▪ Accident ▪ Sickness ▪ Land vehicles ▪ Fire and natural forces ▪ Damage to property ▪ Motor vehicle liability ▪ General liability ▪ Credit ▪ Miscellaneous financial loss ▪ Legal expenses <p>(b) Traditional Life Insurance Products</p> <ul style="list-style-type: none"> ▪ Life and annuity (including endowment) ▪ Permanent health

Recommendations	Implementation plan agreed by the HKMA and the banking industry
	<ul style="list-style-type: none"> ▪ Retirement scheme management (except MPF products)

履歷

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教育 : 1957-1965年 香港聖類斯中學
1965-1967年 聖保羅書院
: 1967-1970年 香港大學
社會科學學士(一級榮譽)
1973-1974年 荷蘭海牙社會研究學院
統計及國家會計學文憑(優異)

工作 : 1970-1971年 香港大學
經濟學助教

香港公務員隊伍

1971-1976年 政府統計處統計師
1976-1977年 政府總部經濟科經濟主任
1977-1979年 高級經濟主任
1979-1982年 首席助理經濟司
1982-1985年 政府總部金融科
首席助理金融司
1985-1991年 副金融司
1991-1993年 外匯基金管理局局長

香港金融管理局

1993- 總裁

專業委任／獎項 : 1995 CBE(英帝國司令勳章)
1995 「銀行家年獎」(香港銀行學會)
1996 「全年亞洲最佳中央銀行家」獎項(《Euromoney》)
1997 「全年最佳中央銀行家」獎項(《Euromoney》)
1998 「全年最佳央行行長」(《Asiamoney》)
1999 澳洲麥考瑞大學名譽理學博士
2001 金紫荊星章
2001 香港公開大學榮譽工商管理博士
2002 香港大學經濟金融學院榮譽教授
2006 香港中文大學工商管理學院榮譽教授
2006 香港城市大學商學院客席教授
2006 西安交通大學榮譽教授
2008 香港大學名譽社會科學博士

金融管理專員的職能與責任

金融管理專員是根據《外匯基金條例》委任，金融管理專員的辦公室稱為香港金融管理局（金管局），金融管理專員即為金管局的總裁。金融管理專員的職責如下。¹

貨幣政策

財政司司長負責釐定香港的貨幣政策目標及貨幣體制。金融管理專員自行負責達成貨幣政策目標，包括決定有關的策略、工具及執行方式，以及確保香港貨幣制度的穩定與健全。

金融體系的穩定與健全

財政司司長在財經事務及庫務局局長的協助下，負責有關維持香港金融體系穩定與健全的政策。

為推行這些政策，金融管理專員負責：

- (a) 按照《銀行業條例》的規定，透過規管銀行業務及接受存款業務及監管認可機構，以便提供措施以保障存款人及促進銀行業體系的整體穩定與有效運作；
- (b) 就規管銀行業務及接受存款業務自行釐定審慎監管政策、標準及指引；
- (c) 考慮並建議與規管銀行業務及接受存款業務有關的法律改革；
- (d) 與其他有關機構合作，監管認可機構從事除銀行業務及接受存款業務以外的其他業務；
- (e) 與其他有關機構及組織合作，發展債務市場；
- (f) 處理與法定紙幣及硬幣的發行及流通有關的事宜；
- (g) 透過發展涉及認可機構的本地大額及零售支付、結算及交收系統，以及在適當情況下負責操作有關系統，以促

¹ 摘錄自財政司司長與金融管理專員於 2003 年 6 月 25 日題為《貨幣與金融事務方面的職能與責任》的互換函件，該函件全文附於 2009 年 3 月 26 日提交與研究雷曼兄弟相關迷你債券及結構性金融產品所引起的事宜小組委員會的陳述書。

進金融基礎設施的安全與效率；及

- (h) 其他適當的行動及計劃。

保持香港的國際金融中心地位

財政司司長在財經事務及庫務局局長的協助下，負責有關保持香港的國際金融中心地位的政策。

為推行這些政策，金融管理專員在履行其維持香港的貨幣與金融體系穩定與健全的職責時，與其他有關機構與組織合作，從而：

- (a) 促進支付、結算及交收系統的發展，促使國際及跨境金融活動以安全及有效率的方式在香港進行；
- (b) 透過積極參與國際金融及中央銀行論壇，促進對香港貨幣及金融體系的信心；及
- (c) 推行適當的發展市場措施，以協助加強香港金融服務在國際上的競爭力。

外匯基金

根據《外匯基金條例》的規定，外匯基金由財政司司長掌有控制權。

金融管理專員根據財政司司長的轉授權限及轉授條款，就外匯基金的運用及投資管理向財政司司長負責。