

立法會
Legislative Council

LC Paper No. CB(3) 61/08-09

Ref : CB(3)/M/MM

Tel : 2869 9205

Date : 17 October 2008

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 22 October 2008

**Proposed amendments to motion on
“Assisting the victims of the Lehman Brothers incident”**

Further to LC Paper No. CB(3) 34/08-09 issued on 9 October 2008, three Members (Hon KAM Nai-wai, Hon WONG Kwok-hing and Hon Alan LEONG Kah-kit) have respectively given notice of their intention to move separate amendments to Hon Jeffrey LAM Kin-fung’s motion on “Assisting the victims of the Lehman Brothers incident” scheduled for the Council meeting of 22 October 2008. As directed by the President, the respective proposed amendments will be “printed in the terms in which they were handed in” on the Agenda of the Council.

2. To assist Members in debating the above motion and amendments, I set out below the procedure to be followed during the debate:

- (a) Hon Jeffrey LAM Kin-fung moves his motion;
- (b) the President proposes the question on Hon Jeffrey LAM Kin-fung’s motion, and orders a joint debate;
- (c) the President calls on the three Members, who intend to move amendments, to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon KAM Nai-wai;
 - (ii) Hon WONG Kwok-hing; and
 - (iii) Hon Alan LEONG Kah-kit;

- (d) the President calls upon the designated public officer(s) to speak;
- (e) joint debate on the motion and the amendments follows thereafter;
- (f) the President gives leave to Hon Jeffrey LAM Kin-fung to speak for the second time on the amendments;
- (g) the President calls upon the designated public officer(s) again to speak;
- (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the three Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon KAM Nai-wai to move his amendment to the motion, and forthwith proposes and puts to vote the question on Hon KAM Nai-wai's amendment;
- (i) after Hon KAM Nai-wai's amendment has been voted upon, the President deals with the other two amendments; and
- (j) after all amendments have been dealt with, the President calls upon Hon Jeffrey LAM Kin-fung to reply. Thereafter, the President puts to vote the question on Hon Jeffrey LAM Kin-fung's motion, or his motion as amended, as the case may be.

3. For Members' ease of reference, the terms of the original motion and of the motion, if amended, are set out in the **Appendix**.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on
“Assisting the victims of the Lehman Brothers incident”
to be held at the Legislative Council meeting
of Wednesday, 22 October 2008**

1. Hon Jeffrey LAM Kin-fung’s original motion

“That, as a large number of investors have complained against the banks and securities companies using misleading marketing practices, which have led to their purchasing of financial products such as Lehman Minibonds without knowing the potential risks, resulting in their suffering substantial losses when the company went bankrupt; this incident has not only caused many members of the public to lose confidence in the above financial institutions, but has also seriously affected Hong Kong’s reputation as an international financial centre; in this connection, this Council urges the Government to immediately take the following actions:

- (a) using all possible means, including setting up an inter-departmental response team to assume overall responsibility for providing comprehensive assistance to affected small investors and protecting their interest;
- (b) expeditiously completing a comprehensive investigation into whether the distributors of Lehman Minibonds and related financial products have violated the relevant regulatory rules or guidelines, including whether these distributors have used improper sales practices to mislead the investors, if it is proved that they have violated the relevant rules or guidelines, the Government should pursue the matter and seek compensation on behalf of the victims;
- (c) supporting the Consumer Council to conduct a study of the suspected cases involving misleading practices and, where necessary, use the Consumer Legal Action Fund to seek compensation from the banks and securities companies concerned for the small investors;
- (d) demanding the authorities to urge the trustees and distributors concerned to appoint an independent notary agency to properly handle the assets of holders of Lehman Minibonds or related financial products, thereby providing the best protection for the interest of small investors; and
- (e) at the same time conducting an investigation into whether there is dereliction of duty on the part of the Hong Kong Monetary Authority and the Securities and Futures Commission in this incident, and making recommendations on how to improve the mechanism for monitoring the sales of financial products, strengthen the protection of investors’ interests and prevent the recurrence of similar incidents.”

2. Motion as amended by Hon KAM Nai-wai

“That, as *under the existing financial monitoring mechanism, there is still* a large number of investors have complained *bank clients and investors complaining* against the banks and securities companies using misleading marketing practices, which have led to their purchasing of financial products such as Lehman Minibonds *and notes* without knowing the potential risks, resulting in their suffering substantial losses when the company went bankrupt; this incident has not only caused many members of the public to lose confidence in the above financial institutions *and the system for monitoring banks and the financial system*, but has also seriously affected Hong Kong’s reputation as an international financial centre; in this connection, this Council *condemns the Government for its inadequate monitoring, and* urges the Government to immediately take the following actions:

- (a) using all possible means, including setting up an inter-departmental response team to assume overall responsibility for providing comprehensive assistance to affected small investors and protecting their interest;
- (b) *urging distributors to expeditiously disclose information on the underlying assets of Lehman Minibonds or related financial products, including the nature of the underlying assets, their prices and liquidity;*
- (c) expeditiously completing a comprehensive investigation into whether the distributors of Lehman Minibonds and related financial products have violated the relevant regulatory rules or guidelines, including whether these distributors have used improper sales practices to mislead the investors; *and whether they have breached the regulations or deviated from the guidelines, and expeditiously disclose the nature and number of cases involving improper sales practices and violation of and deviation from the guidelines;* if it is proved that they have violated the relevant rules or guidelines, the Government should pursue the matter and seek compensation on behalf of the victims;
- (d) *urging the Police to expeditiously complete their investigations for the authorities concerned to institute prosecutions against illegal acts, so as to severely penalize such acts;*
- (e) *urging various distributors to expeditiously propose to their clients compensation options for improper sales practices and violation of regulations;*
- (f) *with reference to the practice of Singapore in handling disputes resolution in the financial sector, considering the setting up of an independent commission or institution to provide one-stop service for disputes resolution, so as to enable the victims to seek compensation through such means as mediation and adjudication;*
- (g) supporting the Consumer Council to conduct a study of the suspected cases

involving misleading practices and, where necessary, use the Consumer Legal Action Fund to seek compensation from the banks and securities companies concerned for the small investors;

- (d)(h) demanding the authorities to urge the trustees and distributors concerned to appoint an independent notary agency to properly handle the assets of holders of Lehman Minibonds or related financial products, thereby providing the best protection for the interest of small investors; and
- (e)(i) at the same time conducting an investigation into whether there is dereliction of duty on the part of *the Financial Secretary, the Financial Services and the Treasury Bureau*, the Hong Kong Monetary Authority and the Securities and Futures Commission in this incident, and making recommendations on how to improve the mechanism for monitoring the sales of financial products, strengthen the protection of investors' interests and prevent the recurrence of similar incidents.”

Note: Hon KAM Nai-wai's amendment is marked in *bold and italic type* or with deletion line.

3. Motion as amended by Hon WONG Kwok-hing

“That, as *the Financial Secretary has given advance warning that the second wave of the financial tsunami may strike Hong Kong shortly, and at present* a large number of investors have complained against the banks and securities companies using misleading marketing practices, which have led to their purchasing of financial products such as Lehman Minibonds without knowing the potential risks, resulting in their suffering substantial losses when the company went bankrupt *and the problem remains unresolved; at the special meeting of the House Committee of this Council on 13 October, the Financial Secretary advised that a proposal had been made to distributors to buy back all Lehman Minibonds from the investors at the market value of their collaterals, and the Secretary for Financial Services and the Treasury also advised that the Government had suggested the banks and securities companies which distributed Lehman Minibonds to buy back the bonds from the bond-holders at the estimated market value of the bonds; however, neither the Government nor the representatives of distributors gave any response at the meeting to the implementation timetable of the above proposed solutions put forward by the Government*; this incident has not only caused many members of the public to lose confidence in the above financial institutions, but has also seriously affected Hong Kong's reputation as an international financial centre; in this connection, this Council urges the Government to immediately take the following actions:

- (a) *expeditiously providing the details about implementing the plan for distributors to buy back the bonds from the bond-holders and the implementation timetable;*

- (b) using all possible means, including setting up an inter-departmental response team to assume overall responsibility for providing comprehensive assistance to affected small investors and protecting their interest;
- ~~(b)~~(c) expeditiously completing a comprehensive investigation into whether the ~~distributors~~ **issuers, sponsors and distributors, etc** of Lehman Minibonds and related financial products have violated the relevant regulatory rules or guidelines, including whether these ~~distributors~~ **institutions** have used improper sales practices to mislead the investors, if it is proved that they have violated the relevant rules or guidelines, the Government should pursue the matter and seek compensation on behalf of the victims;
- ~~(c)~~(d) supporting the Consumer Council to ~~conduct a study of~~ **follow up** the suspected cases involving misleading practices and, ~~where necessary, use~~ **when conciliation fails, actively consider using** the Consumer Legal Action Fund to seek compensation from the banks and securities companies concerned for the small investors, **so as to ensure the interest of consumers**;
- ~~(d)~~(e) demanding the authorities to urge the trustees and distributors concerned to appoint an independent notary agency to properly handle the assets of holders of Lehman Minibonds or related financial products, thereby providing the best protection for the interest of small investors; ~~and~~
- ~~(e)~~(f) at the same time conducting an investigation into whether there is dereliction of duty on the part of the Hong Kong Monetary Authority and the Securities and Futures Commission in this incident, and making recommendations on how to improve the mechanism for monitoring the sales of financial products, strengthen the protection of investors' interests and prevent the recurrence of similar incidents; **and**
- (g) ***demanding the Hong Kong Monetary Authority to investigate the unreasonable management measures adopted by the relevant banks to coerce their employees to achieve sales targets of the bonds concerned, establish channels for employees of banks to reflect such situations to the Hong Kong Monetary Authority and, at the same time, monitor bank management not to use high-handed and target-oriented approach in marketing products to protect front-line employees from becoming scapegoats, so as to restore public confidence in banks.***

Note: Hon WONG Kwok-hing's amendment is marked in ***bold and italic type*** or with deletion line.

4. Motion as amended by Hon Alan LEONG Kah-kit

“That, as a large number of investors have complained against the banks and securities companies using misleading marketing practices, which have led to their purchasing of financial products such as Lehman Minibonds without knowing *the product contents and* the potential risks, resulting in their suffering substantial losses when the company went bankrupt; this incident has not only caused many members of the public to lose confidence in the above financial institutions, but has also seriously affected Hong Kong’s reputation as an international financial centre; in this connection, this Council urges the Government to immediately take the following actions:

- (a) using all possible means, including setting up an inter-departmental response team to assume overall responsibility for providing comprehensive assistance to affected small investors and protecting their interest;
- (b) expeditiously completing a comprehensive investigation into whether the distributors of Lehman Minibonds and related financial products have violated the relevant regulatory rules or guidelines, including whether these distributors have used improper sales practices to mislead the investors, if it is proved that they have violated the relevant rules or guidelines, the Government should pursue the matter and seek compensation on behalf of the victims;
- (c) supporting the Consumer Council to conduct a study of the suspected cases involving misleading practices and, where necessary, use the Consumer Legal Action Fund to seek compensation from the banks and securities companies concerned for the small investors;
- (d) *demanding the authorities to appoint, with the highest efficiency and within the shortest possible time, independent persons of credibility and authorize them to deal with the following tasks respectively:*
 - (i) *monitoring the process of various banks for investigating complaint cases and instituting conciliation with the affected persons regarding the settlement offers proposed by the banks; and*
 - (ii) *with the consent of the parties concerned, arbitrating those cases which cannot be settled by way of conciliation,*

so as to reduce the anxiety and dissatisfaction of the affected persons;
- (e) demanding the authorities to urge the trustees and distributors concerned to appoint an independent notary agency to properly handle the assets of holders of Lehman Minibonds or related financial products, thereby providing the best protection for the interest of small investors; and

~~(e)~~(f) at the same time conducting an investigation into whether there is dereliction of duty on the part of the Hong Kong Monetary Authority and the Securities and Futures Commission in this incident, and making recommendations on how to improve the mechanism for monitoring the sales of financial products, strengthen the protection of investors' interests and prevent the recurrence of similar incidents.”

Note: Hon Alan LEONG Ka-kit's amendment is marked in ***bold and italic type*** or with deletion line.