

**Subcommittee to Study Issues Arising from Lehman Brothers-related
Minibonds and Structured Financial Products**

**Proposed major areas of study^{Note 1 and Note 2}
(as at 25 November 2008)**

I. The existing regulatory regime

- (a) The overall policy and regulatory regime governing the development, launch and sale of structured financial products.
- (b) An overview of the relevant statutory provisions and other non-statutory rules/codes/guidelines governing the development, launch and sale of structured financial products, especially when such products are marketed and distributed/sold by banks to retail investors.
- (c) The respective regulatory roles of the Government, the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and any other regulator or body in the development, launch and sale of structured financial products in the Hong Kong market.
- (d) Disparity, if any, of regulatory standards and requirements for banks and securities firms in providing securities and investment services.
- (e) The regulatory framework for structured financial products in overseas jurisdictions (e.g. whether they can be sold to retail investors).

II. The approval or vetting mechanism, if any, applicable to Lehman Brothers-related minibonds and structured financial products

- (a) With reference to I(a), (b), (c), (d) and (e) above, an analysis of the vetting and/or approval process applicable to Lehman Brothers-related minibonds and structured financial products, including but not limited to:

^{Note 1} Members are invited to note that this list may be revised in the light of new developments and as agreed to by the Subcommittee.

^{Note 2} The Subcommittee's sequence of study will not necessarily follow the ordering of the proposed major areas of study as set out in this paper.

- (i) the procedure(s), if any, for seeking approval in connection with the launch/sale of minibonds and structured financial products;
- (ii) the person(s) responsible for the vetting and approval process, the statutory basis, if any, for granting approval, and any mechanism to safeguard against conflict of interests in granting approval;
- (iii) the approval criteria and factors taken into consideration ; and
- (iv) the post-launch monitoring mechanism, if any, for such products.

III. Sale of Lehman Brothers-related minibonds and structured financial products

- (a) Types of Lehman Brothers-related minibonds and structured financial products sold to retail investors through banks and securities firms and the risks associated with these products.
- (b) Relationship between the Lehman Brothers-related entities and individual banks and securities firms selling the Lehman Brothers-related minibonds and structured financial products.
- (c) With reference to alleged mis-selling by bank staff :
 - (i) the procedures and mechanism adopted by banks to market and sell Lehman Brothers-related minibonds and structured financial products to their clients;
 - (ii) the product information, guidelines, sales targets and other directives issued by bank management to their frontline staff and the feedbacks, if any, received from frontline staff;
 - (iii) measures, if any, to ensure full disclosure of risks and related information by bank staff to their clients when selling minibonds and structured financial products;
 - (iv) measures, if any, to ascertain that the structured financial products in question are suitable for the potential investor and that the latter is fully aware of the nature and risks of such products; and
 - (v) the mechanism or internal control, if any, adopted by banks to prevent mis-selling of minibonds and structured financial products.

IV. Protection for investors of minibonds and structured financial products and the mechanism of investigating complaints and imposing sanctions

- (a) The protection, statutory or otherwise, available to investors of structured financial products
- (b) The implementation of investor education in Hong Kong.
- (c) The complaint-handling mechanism currently available to aggrieved investors of Lehman Brothers-related minibonds and structured financial products and whether it can redress complaints effectively.
- (d) How alleged mis-selling by banks is being investigated, and the progress of work undertaken by HKMA, SFC, Police and any other authorities.
- (e) The transparency of investigation by various regulators and authorities.
- (f) Details of the sanctions imposed on non-complying financial institutions for substantiated breaches or offences.

V. Assistance to investors of Lehman Brothers-related minibonds and structured financial products

The buy-back proposal

- (a) The Government's reasons for putting up the proposal.
- (b) Detailed arrangements of the proposal including the valuation process, and how far the proposal can assist investors in recouping their investment.
- (c) Progress of the buy-back proposal and its acceptance or otherwise by the affected investors.

Other forms of assistance

- (d) The feasibility of other options to facilitate expeditious settlements, such as but not limited to the following :
 - (i) banks to set up a special fund to provide timely assistance to vulnerable groups;
 - (ii) the Government to provide one-stop service to facilitate mediation and arbitration and other related assistance; and

- (iii) the Consumer Council to institute class action on behalf of the aggrieved investors.
- (e) any measure or mechanism adopted by the regulatory authorities in overseas jurisdictions to assist investors in recouping their losses or resolving disputes with financial institutions.

VI. Restoring confidence in Hong Kong's banking system and maintaining Hong Kong's status as an international financial centre

- (a) Impact of the Lehman Brothers minibond incident on banks and on public confidence in Hong Kong's banking system
- (b) Arising from the incident, to consider whether the existing regulatory regime is able to meet challenges posed by the fast-changing financial sector and safeguard the interest of the investing public against, for example, mis-selling or other inappropriate business practices. Where necessary, to make recommendations for improvement.

Council Business Division 1

Legislative Council Secretariat

25 November 2008