

**Information provided in response to letter of 1 December from
the Clerk to Subcommittee to Study Issues Arising from Lehman
Brothers-related Minibonds and Structured Financial Products**

Background

In the letter dated 1 December to the Financial Services and the Treasury Bureau (FSTB), the Clerk to Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products requested the Administration to provide written information about the following issues:

- (a) details of the Government's "buy-back" proposal, in particular the coverage of the proposal and the estimated number of claimants benefited;
- (b) how far the proposal has been taken forward by the banks;
- (c) the legal advice received by Hong Kong Association of Banks (HKAB) and the Administration's response thereto, including the legal advice obtained by the Administration on the legal feasibility of the proposal; and
- (d) the latest state of play and the alternative measures/plans, if any, being pursued or contemplated to assist the affected investors to recover their money.

Information Provided by FSTB

2. The Government proposed to the Task Force on Lehman Incident of the HKAB on 6 October to buy back the Lehman Minibonds at their current estimated value. The aim of the proposal is to use a market solution to save the minibond holders (about 34 000 in number) from going through a long liquidation process. As there are many minibond holders and the current global market is unstable, we hope that the banks can value the minibonds as quickly as possible so that the minibond holders can realize the current value of their investment.

3. We believe this market-based approach is the most practical solution to assist the minibond investors. No conditions are attached to the buy back proposal made. In other words, minibond holders who accept the buy back proposal may still reserve their legal right to pursue the banks for mis-selling.

4. After carefully considering the buy back proposal, the HKAB accepted it on 17 October. The HKAB also set up a Task Force and appointed an independent financial advisor and legal advisor to advise on the details of implementing the proposal, including legal issues. To ensure that the minibond investors are given fair, just and reasonable treatment in the buy back process, the Hong Kong Monetary Authority (HKMA) has appointed PricewaterhouseCoopers as an independent consultant to review the procedures and strategies adopted by the distributor banks in implementing the proposal.

5. The buy back involves liquidating the underlying collateral of the minibonds, and inevitably there will be legal risks involved. As the buy back is adopted by the distributor banks, the legal advisor appointed by the Task Force of the HKAB (the Task Force) is responsible to give legal advice to the banks on the legal issues surrounding the buy back.

6. The Task Force and the distributor banks reached an agreement on the valuation methodology of the underlying collateral on 4 November. HKAB made an announcement on 4 November that they expect the buy back to commence around early December. According to the advice of the independent financial advisor of the HKAB, the current value of each series of minibonds depends on the valuation of their underlying collateral, and different series of minibonds will therefore have different values.

7. The Task Force was advised by Lehman Minibonds' Trustees, HSBC that the legal counsel of Lehman in the U.S. had sent a letter regarding the way which the collateral of the minibonds should be paid out. The Task Force is seeking legal advice on this matter. Con-currently, the Task Force is continuing to make preparations for buying back the Lehman Minibonds.

8. We understand that the investors are concerned about whether and when they can get their money back. Therefore, apart from requiring the distributor banks to offer to buy back the minibonds, we encouraged them to reach a settlement with the affected investors (particularly the elderly or those without prior investment experience) as soon as possible. To help mediate the issue of compensation between the investors of Lehman products and the distributor banks, the HKMA announced on 31 October the provision of mediation and arbitration services, and that it would pay the fees for the services on behalf of the investors who have established a prima facie case against the distributor banks.

9. Investors may wish to seek compensation through legal proceedings. The Consumer Council received thousands of complaints. It has deployed staff to inform the relevant banks of the complaints and try to help a settlement being reached between the complainants and the banks. On the other hand, for obvious case of mis-selling, it is considering using the Consumer Legal Action Fund to instigate proceedings against the banks. The Government has also promised that it will inject money into the Legal Action Fund if necessary.

**Financial Services and the Treasury Bureau
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