

Chapter 1 Introduction

Background

1.1 On 15 September 2008, Lehman Brothers Holdings Inc. (LBHI), the fourth largest investment bank in the United States of America (US), filed a petition in the US Bankruptcy Court under Chapter 11 of the Bankruptcy Code. This marked one of the worst failures of major financial institutions in US which gave rise to a series of adverse developments not only in US, but also in many other parts of the world. Locally, there was a public outcry as tens of thousands of investors feared substantial or total loss on the outstanding Lehman Brothers (LB)-related Minibonds and structured financial products held by them.

1.2 According to information of the Hong Kong Monetary Authority (HKMA), some HK\$20.23 billion worth of various LB-related structured financial products (LB structured products) had been sold through banks to over 43 700 investors, including HK\$11.2 billion in Minibonds held by about 33 600 investors¹. HKMA alone received over 9 000 complaints² shortly after the collapse of LBHI. The number stood at 19 699 by December 2008³. Many aggrieved investors said that they were customers of the banks which sold them the LB structured products. However, they complained that when selling these products to them, the bank staff did not explain clearly or fully the risks to which they were exposed, but advised them that the products were safe and of low risk. These investors also queried whether the regulatory authorities, namely HKMA and the Securities and Futures Commission (SFC), as

¹ Table 1 of Report of the HKMA on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies submitted to Financial Secretary in December 2008 (HKMA Review Report) and LC Paper No. CB(2)100/08-09(04) containing the written information provided by HKMA for the special meeting of the House Committee on 13 October 2008.

² As informed by Mr Joseph YAM, then Monetary Authority, at the special meeting of the House Committee on 13 October 2008. The verbatim transcript of the meeting is available on the Legislative Council's website at <http://www.legco.gov.hk>.

³ Paragraph 1.10 of HKMA Review Report.

well as the Administration had exercised effective regulation over banks' sale of complex financial products to their customers. The investors voiced their predicament and urged the authorities concerned to follow up their complaints and assist them in recovering their losses.

1.3 Given the magnitude of the problems and the public concern over how the Administration, the regulatory authorities and the banking sector would deal with the huge number of complaints from investors, the House Committee considered a proposal at its meeting on 10 October 2008 to appoint a select committee⁴ authorized to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (LCPPO) to inquire into matters relating to the sale of LB-related Minibonds and structured financial products. While there was support for the proposal, reservation was also expressed on the immediate appointment of a select committee as there was concern that this might make the banks less prepared to resolve complaints with their customers on a voluntary basis. After deliberation, Members decided by a majority against the immediate appointment of a select committee⁵.

1.4 Subsequently, the House Committee held a special meeting on 13 October 2008 with the Administration, the regulators and representatives of the distributors of LB structured products⁶. Members were deeply concerned about the policy and regulatory issues relating to the sale of LB structured products through retail banks in Hong Kong, as well as the protection available to investors under the prevailing regime. To follow up the matter, Members agreed that a subcommittee should be set up under the House Committee to study issues arising from LB-related Minibonds and structured financial products (the

⁴ On the appointment and procedure of a select committee, please see Rules 78 and 79 of the Rules of Procedure of the Legislative Council which is available on the Council's website at <http://www.legco.gov.hk>.

⁵ The verbatim transcript of the meeting of the House Committee on 10 October 2008 is available on the website of the Legislative Council at <http://www.legco.gov.hk>.

⁶ Representatives from 19 retail banks and two securities brokers attended the special meeting of the House Committee. The meeting was also attended by the Commissioner of Insurance and representatives of Hong Kong and Shanghai Banking Corporation Limited.

Subcommittee)⁷. At the House Committee meeting on 17 October 2008, Members further decided that approval of the Legislative Council (LegCo) should be sought to authorize the Subcommittee to exercise the powers under section 9(1) of LCPPO in performing its functions⁸. A motion to this effect was passed by LegCo on 12 November 2008. The Subcommittee is the first subcommittee set up under the House Committee which has been authorized to exercise the summoning powers under LCPPO.

Terms of Reference

1.5 The Subcommittee's Terms of Reference, as endorsed by the House Committee pursuant to Rule 20(k)(i) of the House Rules, is as follows:

"To study issues arising from Lehman Brothers-related Minibonds and structured financial products and to make recommendations where necessary."

Membership

1.6 After its formation in October 2008, membership of the Subcommittee was called in accordance with the established practice of inviting membership for subcommittees formed under the House Committee⁹. The membership list of the Subcommittee is at **Appendix 1(a)**.

⁷ The verbatim transcript of the special meeting of the House Committee on 13 October 2008 is available on the Legislative Council's website at <http://www.legco.gov.hk>.

⁸ The verbatim transcript of the meeting of the House Committee on 17 October 2008 is available on LegCo's website at <http://www.legco.gov.hk>.

⁹ Under the existing practice, a subcommittee formed under the House Committee shall consist of not less than three members including the chairman.

1.7 Hon LEUNG Kwok-hung, a member of the Subcommittee, resigned from office as a LegCo Member with effect from 29 January 2010 and ceased to be a member of the Subcommittee from that date. He was re-elected in the by-election held on 16 May 2010 and after the commencement of his term of office, Mr LEUNG sought the House Committee's agreement for him to re-join the Subcommittee. In considering Mr LEUNG's request at the House Committee meeting held on 4 June 2010, some Members opined that as Mr LEUNG had been a member of the Subcommittee since it was first set up, he could keep abreast of the Subcommittee's work by studying the relevant documents and the transcripts of proceedings of those hearings not attended by him. Some Members supported Mr LEUNG's request on account of his active participation in the work of the Subcommittee. The House Committee raised no objection to Mr LEUNG's request to re-join the Subcommittee.

Scope of study and work plan

1.8 LB-related Minibonds and structured financial products were distributed by both retail banks and securities brokers in Hong Kong. They were however more widely sold through banks to a much larger number of customers, as reflected by the fact that most of the complaints received by the regulators were made against distributing banks¹⁰. The Subcommittee has therefore decided to focus on the distribution of LB-related Minibonds and structured financial products by retail banks when delineating the scope of its study.

1.9 The Subcommittee recognized that its study would straddle a wide spectrum of issues, mostly complex and controversial. Owing to the evolving developments of some of the issues arising from LB-related

¹⁰ As reported by SFC in "Issues raised by the Lehmans Minibonds crisis – Report to the Financial Secretary" (SFC Review Report) published in December 2008, at the end of November 2008, SFC received 8 055 complaints related to LB, of which only 5.9% related to SFC's area of responsibility. 7 712 of these complaints were made against distributing banks.

Minibonds and structured financial products, the Subcommittee also agreed that certain flexibility should be exercised when dealing with the matters under study. With a view to understanding what had happened in connection with the distribution of LB structured products by retail banks in Hong Kong and to ascertain the efficacy or otherwise of the applicable regulatory regime, the Subcommittee has inquired into the following major areas:

- (a) The legislative framework and regulatory arrangement governing the distribution of LB-related Minibonds and structured financial products by retail banks. This includes the policy-making role of the Government; how the securities business of banks were subject to regulation by HKMA and SFC; the regulatory regime (disclosure-based cum conduct-regulation at the point of sale) applicable to the sale of LB-related Minibonds and structured financial products by banks.
- (b) The systems and practices adopted by banks in relation to their distribution of LB structured products; and what had commonly transpired during the selling process. This includes key activities such as product due diligence, training and guidance to staff, suitability assessment of products for customers, compliance with regulatory requirements in handling customers.
- (c) The systemic issues arising from (a) and (b) above, including the efficacy or otherwise of the regulatory regime in regulating the sale of LB structured products by banks and in providing an appropriate measure of protection to investors.

1.10 The Subcommittee aims to find out the facts relating to the above areas of study. It has abided by the overriding principle not to investigate into specific cases, corporations or individuals; nor to assist individual investors to pursue their complaints and recoup their losses.

1.11 The Subcommittee commenced work in October 2008 and took forward its study in stages and by phases according to the following work plan :

- (a) **Stage 1** for undertaking preparatory work. This included drawing up the Subcommittee's Practice and Procedure, obtaining background information from relevant parties for determining the scope of study and issues to be examined, drawing up the work plan and identifying the witnesses to be summoned in different phases.
- (b) **Stage 2** for conducting hearings in four phases to receive evidence from the following groups of witnesses –
 - the Administration and regulators (Phase I);
 - the top/senior management of distributing banks of LB structured products (Phase II);
 - the frontline bank staff involved in the sale of LB structured products (Phase III); and
 - investors of LB structured products (Phase IV).
- (c) **Stage 3** for considering the evidence obtained and preparing the report of the Subcommittee.

1.12 At its meeting held on 22 October 2010, the House Committee noted the progress report of the Subcommittee and gave approval for it to continue its work up to the end of the 2011-2012 session pursuant to Rule 26(c) of the House Rules.

1.13 Unlike past inquiries which mostly looked into past events, new developments arising from the LB incident had taken place while the Subcommittee's study was underway. Some notable examples were the settlement agreements announced by the regulators and certain distributing banks in July and December 2009, July 2010, March and July 2011, as well as the Minibonds collateral recovery agreement announced in March 2011. On whether the Subcommittee should follow up new developments, members were of the view that the Subcommittee should focus on the decided areas of study and not take up new issues as and when they arose. Members also agreed at the meeting held on 9 December 2008 that the Subcommittee should carry on its study in accordance with its work plan, while the Panel on Financial Affairs would be the forum for receiving briefings on new developments relating to the LB incident.

Witnesses

1.14 The Subcommittee decided that all witnesses should be summoned under section 9(1) of LCPPO to attend before the Subcommittee and be examined on oath.

The Administration and the regulators

1.15 For the purpose of studying the policy and the prevailing regulatory regime governing the sale of LB-related Minibonds and structured financial products by banks, the Subcommittee took evidence from the Secretary for Financial Services and the Treasury (SFST), the Financial Secretary (FS), the Monetary Authority (MA), the Deputy Chief Executive of HKMA (DCE/HKMA) responsible for banking-related matters, as well as the Chief Executive Officer of SFC (CEO/SFC) and the executive director (ED) of SFC responsible for overseeing the

authorization of product documentation. The Subcommittee also received evidence from Mr Harold KO, a former employee of SFC.

Banks which distributed LB-related Minibonds and structured financial products and investors of such products

1.16 To understand how LB-related Minibonds and structured financial products were distributed by retail banks, the Subcommittee decided to summon witnesses from the following groups:

- (a) the top/senior management of distributing banks;
- (b) frontline bank staff who had been personally involved in matters related to the sale of LB structured products; and
- (c) investors of such products.

1.17 In deciding to summon witnesses from banks and investors as listed above, it is not the Subcommittee's intention to investigate into the performance of individual banks or their staff in specific cases, or to follow up the complaints of individual investors. Based on the information then available to the Subcommittee, no less than 19 retail banks were known to have distributed a wide range of LB structured products to tens of thousands of investors. The Subcommittee therefore decided that it should select a reasonable number of witnesses from each of the above groups to assist the Subcommittee.

Distributing banks

1.18 The Subcommittee took into consideration a combination of factors to identify the banks for the purpose of summoning witnesses. Members considered that the number of banks should be manageable and they should represent an appropriate mix of local and overseas banking

corporations of various sizes. On account of some of them being the major distributors of certain widely sold products (e.g. Minibonds, LB-related Constellation Notes (LB-CLNs) and LB-related equity-linked notes (LB-ELNs))¹¹, their volumes of sales, the number of investors and complaints involved, the following six banks were selected:

- (a) DBS Bank (Hong Kong) Limited (DBSHK);
- (b) Standard Chartered Bank (Hong Kong) Limited (SCBHK);
- (c) Citibank (Hong Kong) Limited (CHKL);
- (d) The Royal Bank of Scotland N.V. (RBS) (formerly known as ABN AMRO Bank N.V.);
- (e) Bank of China (Hong Kong) Limited (BOCHK); and
- (f) Dah Sing Bank, Limited (DSB).

Top and senior management of the six banks

1.19 The Subcommittee has decided to examine the policies and management systems adopted and implemented by the banks in distributing LB structured products. It considered that the chief executive officers and, where appropriate, their deputies and other senior executives in charge of retail banking services of the six banks would be in the best position to assist the Subcommittee. A total of 13 witnesses from the top and senior management of the six banks had been summoned to give evidence to the Subcommittee.

¹¹ For more details, please see Chapter 2.

Frontline bank staff

1.20 Given the large network of bank branches and the staffing structures of frontline staff with responsibilities related to the sale of LB structured products which varied among banks, the Subcommittee decided to summon a team of relevant frontline staff from the branch(es) of each of the six banks that had recorded the highest volume of transactions and the highest number of complaints in respect of their distribution of LB structured products. With a view to understanding the overall supervision exercised by the branch management over the sale of LB structured products, how training and guidance was provided to the sales staff and how the selling process was actually conducted, the Subcommittee had summoned teams of frontline staff comprising the branch managers (BMs), the training/investment consultants and the relationship managers (RMs) who had personally conducted the sale of LB structured products. Their evidence is needed in order to shed light on how the banks' policies and guidelines had been put into practice. A total of 26 frontline staff¹² had been summoned to testify to the Subcommittee. They included both former and existing employees of the six banks and had been selected mainly on account of their length of service during the period when their banks distributed LB structured products. The Subcommittee also agreed that the frontline bank staff should not be asked to testify on specific cases or complaints of individual customers.

1.21 On being notified in writing that they would be summoned, some frontline staff wrote to the Subcommittee and requested to testify in camera in order to protect their identity and relieve them of the pressure arising from giving evidence in public. A few of them also submitted reasons in writing and requested the Subcommittee to consider not to summon them. After thorough consideration of their requests and in

¹² Of the 26 witnesses, six were branch/district managers, four were investment/portfolio consultants and 16 were RMs or equivalent.

pursuit of its objective to obtain the necessary evidence, the Subcommittee decided to hold closed hearings to take evidence from all frontline bank staff. It also agreed that the identity of these 26 witnesses would not be disclosed.

Investors of LB structured products

1.22 The Subcommittee has decided to take evidence from investors of LB structured products in order to understand the entire selling process and what typically had transpired at the point of sale. In particular, members are concerned about how LB structured products could have been sold to bank customers who had no previous experience in investing in structured financial products, or to general depositors who used to place time deposits with the banks. They also consider it necessary to examine how banks had handled the sale of LB structured products to elderly and vulnerable customers.

1.23 It is not the Subcommittee's intention to conduct a general survey on the population of over 40 000 investors affected by the default of LB. The Subcommittee has specified a number of requirements in order to identify the profile of investors whose evidence is considered pertinent to the Subcommittee's study. For completeness of evidence, the Subcommittee has decided that the prospective witnesses from investors of LB structured products must be customers of the six selected banks whose top/senior management and frontline staff had testified to the Subcommittee; and they must have purchased one or more of the LB structured products specified by the Subcommittee. In addition, the prospective witnesses must also meet at least two of the three specified criteria relating to age, investment experience and whether the purchase had been made with proceeds of matured time deposits. Details of the eligibility criteria are at **Appendix 1(b)**.

1.24 To source eligible investors, the Subcommittee published a notice on the website of LegCo to invite investors who met the requisite criteria to indicate their interest in assisting the Subcommittee¹³. The Subcommittee was subsequently informed by some of the investors who had previously volunteered their assistance that they would no longer wish to testify to the Subcommittee. Finally, a total of 16 investors gave evidence to the Subcommittee.

1.25 In taking evidence from investors, the Subcommittee has adhered to the overriding principle not to investigate into specific cases, or to assist individual investors to seek compensation or redress their complaints.

Practice and Procedure

1.26 Being a subcommittee set up under the House Committee and authorized to exercise the powers under LCPPO, the Subcommittee has drawn up its practice and procedure with reference to the relevant provisions in the Rules of Procedure and the House Rules applicable to subcommittees of committees of LegCo. The Subcommittee's practice and procedure are also regulated by relevant provisions of LCPPO. In determining its practice and procedure, the Subcommittee has made reference to those adopted by select committees and given due regard to a number of principles including the following:

- (a) the Subcommittee is not tasked to investigate into specific cases, or to assist individual persons to pursue their claims or complaints;

¹³ The Subcommittee posted a notice on LegCo's website in November 2010 to invite investors who met the requisite criteria to indicate their interest in assisting the Subcommittee by responding to the invitation in writing for consideration by the Subcommittee. It also placed an advertisement in three local newspapers to draw readers' attention to the Subcommittee's invitation on the Internet.

- (b) the Subcommittee's proceedings should be fair and seen to be fair; and
- (c) the Subcommittee's practice and procedure should facilitate the ascertaining of facts relevant to and within its terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals.

The Subcommittee's Practice and Procedure was endorsed by the House Committee on 28 November 2008 in accordance with Rule 20(k)(i) of the House Rules, and is at **Appendix 1(c)**.

Hearings conducted by the Subcommittee

1.27 The Subcommittee has agreed that as a general rule, the taking of evidence should be conducted at open hearings. However, if any witness wished their evidence or any part thereof to be taken at closed hearings, they should submit their reasons in writing to the Subcommittee for decision. The Subcommittee might also decide to take evidence in camera where circumstances so warranted. In considering whether to conduct closed hearings, the Subcommittee would have due regard to the circumstances of each case, including the need to protect the identity of the witnesses, the impact on the well-being of a witness if the hearing was to be held in public, and the confidentiality of the evidence to be obtained.

1.28 Under its Stage 2 study from 20 February 2009 to 31 May 2011, the Subcommittee held 106 hearings which were attended by 62 witnesses, as follows:

- (a) Phase I – 32 hearings, including 30 open hearings and two closed hearings¹⁴, attended by seven witnesses from the Administration, HKMA, SFC and a former employee of SFC;
- (b) Phase II – 32 hearings, including 24 open hearings and eight closed hearings¹⁴, attended by 13 witnesses from the top/senior management of six selected banks which had distributed LB-related Minibonds and structured financial products;
- (c) Phase III – 26 closed hearings¹⁵ attended by 26 witnesses from the frontline staff of the six selected banks; and
- (d) Phase IV – 16 open hearings attended by 16 witnesses who were customers of the six selected banks and had invested in LB structured products.

1.29 The total number of hearing hours under the four phases was 206 hours. A schedule of the hearings and the attending witnesses is at **Appendix 1(d)**.

1.30 The witnesses lawfully ordered to attend the hearings of the Subcommittee to give evidence or to produce documents are entitled, in respect of such evidence or documents, to the same right or privilege as before a court of law by virtue of section 14(1) of LCPPO.

1.31 The Subcommittee also agreed that a witness might request to be accompanied by up to two persons, one being a legal adviser and another person to assist the witness with documents. The accompanying

¹⁴ These closed hearings were held as the Subcommittee considered that the witnesses should be ordered to produce certain written evidence to the Subcommittee in confidence.

¹⁵ These closed hearings were held for the frontline bank staff to testify to the Subcommittee in confidence.

persons could not address the Subcommittee. To ensure fairness of proceedings, the witnesses were reminded that they must not engage in discussion with the accompanying persons, or receive any prompting, whether oral or in writing, from such persons. Most of the witnesses had requested to be accompanied by specified persons and the Subcommittee had acceded to all such requests.

Other meetings held by the Subcommittee

1.32 Between 27 October 2008 and mid February 2009, the Subcommittee held eight meetings (including three open and five closed meetings) totalling some 15 hours to undertake preparatory work for commencing its inquiry. In addition, about 24 hours were spent on preparation for the hearings and discussing follow-up action where required.

1.33 During Stage 2 of its study, the Subcommittee held closed meetings from time to time to consider legal and procedural matters, the progress of its work, the summoning of witnesses, requests from witnesses and logistical arrangements for hearings. A total of 34 closed meetings of some 48 hours were held for these purposes. The Subcommittee also held 15 closed meetings comprising 30 hours to discuss the evidence obtained and its report, as well as other matters relating to the inquiry.

1.34 In sum, during the three stages of its study, the Subcommittee held a total of 163 meetings, as follows:

Purpose of meetings	Number
(a) Hearings to receive evidence from witnesses	106 (70 open and 36 closed hearings)
(b) Meetings for the Subcommittee to deliberate on matters relating to its work	57 (3 open and 54 closed meetings)
Total	163

Verbatim transcripts of hearings

1.35 The minutes of evidence, in the form of verbatim transcripts made from the sound recordings of the proceedings of the hearings at which witnesses were examined, form part of the Subcommittee's report. In order that witnesses could have a fair and reasonable opportunity to consider whether their oral evidence had been accurately transcribed, the Subcommittee has sent to all witnesses the parts of the draft verbatim transcripts of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Subcommittee before a specified date. The Subcommittee accepted corrections proposed so long as they did not materially alter the general sense of the evidence so recorded.

1.36 The Subcommittee also agreed that copies of the transcripts of evidence taken in public could be provided to witnesses and prospective witnesses on request upon payment of a fee, subject to the unpublished and/or uncorrected status of the transcripts being stated clearly, and also subject to the conditions that the witnesses or prospective witnesses shall not make public use of the transcripts, or quote directly from the

transcripts, or use the transcripts in a manner prejudicial to the interest of the Subcommittee or other persons. Requests from other parties for the provision of transcripts were considered by the Subcommittee on a case by case basis; and a fee is also charged for such provision.

Handling of classified documents

1.37 For the purpose of its study, the Subcommittee had ordered witnesses from the Administration, HKMA, SFC and banks to produce specified papers, records and documents in their possession. Some witnesses from the Administration and the two regulators had requested the Subcommittee to treat certain documents produced by them as confidential, mainly on the grounds that the documents covered internal exchanges within high-level government; they might reveal information on enforcement methods; and might prejudice ongoing investigation, court proceedings or negotiations. The Subcommittee considered each of these requests on their merits and had not acceded to most of them as the Subcommittee considered that there were insufficient grounds to justify confidentiality. It decided that the documents could be used at open hearings and some of these documents were handled in accordance with Paragraph 19 of the Subcommittee's Practice and Procedure. At the same time, the Subcommittee made it clear to the witnesses that it would not make available such documents to the public before it publishes its report.

1.38 Some witnesses from the bank management considered that their written statements and other documents to be produced to the Subcommittee were private and confidential, on the grounds that disclosure of the information contained in these documents might prejudice their interests in various ways. The Subcommittee did not consider that there were sufficient grounds for confidential treatment, lest the purpose of the proceedings to take evidence at open hearings would be defeated. Nevertheless, the Subcommittee followed the established

practice as specified in Paragraph 37 of its Practice and Procedure that the written evidence/documents received from witnesses would not be published before the Subcommittee publishes its report¹⁶.

Disclosure of interests

1.39 In addition to Rules 83A and 84 of the Rules of Procedure providing for the disclosure of pecuniary interest by Members, the Subcommittee also considered related arrangements to facilitate members in disclosing their interests. It was agreed that it would be for individual members to decide whether they should disclose an interest, pecuniary or non-pecuniary, that might give rise to any real or perceived conflict of interests. The Subcommittee also agreed that individual members who wished to declare an interest should do so in writing. At the start of the relevant hearings, the Chairman would report the declarations orally on behalf of the members who had declared their interests in writing.

1.40 A member declared that he was a non-executive director of SFC, and decided not to take part in the hearings involving witnesses from SFC. Written declarations were also received from some other Subcommittee members mainly in connection with their being customers of the banks summoned by the Subcommittee, or their acquaintance with some of the bank staff and investors testifying to the Subcommittee. The Subcommittee also noted that members' written declarations would be available for public inspection on request.

Claim of public interest immunity

1.41 For the purpose of its study, the Subcommittee ordered Mr Martin WHEATLEY, CEO/SFC, to produce two final draft Notices of

¹⁶ As decided by the Subcommittee, copies of the written statements produced by witnesses at the Subcommittee's open hearings were made available to members of the public observing the hearings. This arrangement is for the sole purpose of assisting them to follow the proceedings of the Subcommittee. Please see paragraph 1.42 below.

Proposed Disciplinary Action (NPDAs). At the open hearing held on 3 July 2009, Mr WHEATLEY claimed public interest immunity against the production of the two documents under Paragraph 2 of Appendix I of the Subcommittee's Practice and Procedure. The relevant body, namely the Chairman and Deputy Chairman of the Subcommittee, dealt with the witness's claim in accordance with the procedures set out in the aforesaid Paragraph. The Chairman subsequently delivered his opinion that CEO/SFC's claim of public interest immunity was not justified. In compliance with the Subcommittee's order, the witness produced the two final draft NPDAs to the Subcommittee at a closed hearing. Pursuant to the Subcommittee's decision, the documents were handled in accordance with Paragraph 22 of its Practice and Procedure, which stipulates that "[a]ny information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed".

Transparency of the Subcommittee's work

1.42 So far as the circumstances allowed and where legally feasible, the Subcommittee has strived to achieve the greatest transparency possible in relation to its work. The Subcommittee usually conducted hearings in public, unless decided otherwise by the Subcommittee. The audio recordings of all open hearings are posted on LegCo's website, copies of which can be obtained upon payment of a fee. Members of the public accessing such audio recordings are reminded to seek legal advice on the proper use of the recordings. The Subcommittee also decided to make available copies of the written statements (exclusive of any appendices) produced by witnesses at the Subcommittee's open hearings for the sole purpose of assisting members of the public observing the hearings to follow the proceedings. They were reminded that the use of the contents of the written statements for other purposes was not protected under LCPPO and they should obtain legal advice before doing so.

1.43 To keep the media and the public informed of the work of the Subcommittee, the Chairman conducted briefings for the media after closed meetings. To enhance transparency, the Subcommittee took the initiative to publish a gist of the major decisions reached at closed meetings on its webpage.

Draft findings and observations

1.44 In accordance with the requirements under Paragraph 35 of its Practice and Procedure, the Subcommittee has provided relevant parts of the draft findings and observations of its report to parties/persons against whom adverse comments are intended to be made to give them an opportunity to comment on these parts. The comments received have been carefully considered by the Subcommittee before finalizing its report.

Written submissions

1.45 A general notice inviting members of the public to give views on the matters under study by the Subcommittee was posted on the website of LegCo in January 2009. The Subcommittee had since received over 5 000 written submissions, most of which were from investors who had purchased LB structured products from banks and incurred losses. They recounted their own experience in subscribing for the products in question at individual banks and complained that the products had been mis-sold to them by bank staff without due regard to their investment needs and risk tolerance levels. While it is not the purpose of the Subcommittee's study to look into individual cases, members had taken into consideration some of the matters raised in the submissions when drawing up the line of inquiry.

Report

1.46 Under Rule 20(k)(iii) of the House Rules, a subcommittee formed under the House Committee should report to the House Committee as soon as it has completed work.

1.47 The Report of the Subcommittee consists of the main report, the lists of written evidence and relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim transcripts in the original language used at the open hearings. To economize on the use of paper, the minutes of evidence are available on CD-ROM only. This Report is also available on the website of LegCo at <http://www.legco.gov.hk>.

1.48 The main report consists of eight chapters. This chapter is mainly an introduction to the background leading to the formation of the Subcommittee, as well as important matters relating to the work of the Subcommittee. Chapter 2 describes the impact of the collapse of LB on retail investors in Hong Kong. Chapter 3 examines the regulatory roles and responsibilities of HKMA and SFC in regulating the securities business conducted by banks. Chapter 4 examines the disclosure-based cum conduct-regulation approach in regulating the distribution of LB structured products by banks. Chapter 5 provides a thematic analysis of issues relating to the sale of LB structured products to bank customers. Chapter 6 discusses how LB-related complaints were dealt with by the regulators. Chapter 7 examines the subject of investor protection. Chapter 8 sets out the Subcommittee's concluding observations and recommendations.