



HONG KONG MONETARY AUTHORITY  
香港金融管理局

SC Ref.No.SC(1)-M17

Joseph C. K. Yam GBS, JP  
Chief Executive

任志剛 GBS, JP  
總裁

Our Ref: G14/64C

Your Ref: CB1/HS/1/08

27 April 2009

Miss Polly YEUNG  
Clerk to Subcommittee to Study Issues Arising from  
Lehman Brothers-related Minibonds and Structured Financial Products  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Miss YEUNG,

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

I refer to your letter dated 20 April 2009 ordering me to produce a paper or several papers jointly covering all the issues listed in the Appendix to the letter and where appropriate, together with relevant documents and records.

Please find attached a paper in response to items (a) to (j). As agreed with your staff, the Chinese translation of the attached paper will be provided to you when ready.

It is worth noting that paragraph 13.2 of my Written Statement points out that in reflecting market concerns to the Administration, there was no explicit or specific reference, as stated in the question raised by the Subcommittee, to "the possible impact of the financial difficulties of Lehman Brothers on the market of structured financial products in Hong Kong" (question 13 of Appendix V to the Subcommittee's letter dated 5 March 2009). That paragraph goes on to explain the reasons behind this.

55th Floor, Two International Finance Centre,  
8 Finance Street, Central, Hong Kong  
Tel: (852) 2878 8188 Fax: (852) 2878 8190  
E-mail: [jyam@hkma.gov.hk](mailto:jyam@hkma.gov.hk)  
Website: [www.hkma.gov.hk](http://www.hkma.gov.hk)  
Telex: 74776 XFUND HX

香港中環金融街8號國際金融中心2期55樓  
電話: (852) 2878 8188 傳真: (852) 2878 8190  
電郵: [jyam@hkma.gov.hk](mailto:jyam@hkma.gov.hk)  
網址: [www.hkma.gov.hk](http://www.hkma.gov.hk)  
電訊號碼: 74776 XFUND HX

The email sent to the Financial Secretary on 12 September 2008, as explained in paragraph 13.4 of my Written Statement as well as during the hearing on 17 April 2009, contains a summary record of a meeting between the Chairman of the Hong Kong Association of Banks and me held on that day (please refer to paragraph 8.1 of the attached paper for details of the email).

I also note that the Secretary for Financial Services and the Treasury's (SFST) Written Statement states that from June to mid-September 2008 before Lehman Brothers collapsed, the Administration did not receive any reports or alerts on the possible impact of the financial difficulties of Lehman Brothers on the financial market and on Hong Kong investors of structured financial products relating to Lehman Brothers. Because the e-mail of 12 September 2008 mentioned above refers only to the fact that banks' main dealings with them were mostly to distribute the structured or credit products originated by Lehman, it is clearly not in contradiction to the SFST's Written Statement. It seems to me that the SFST's Written Statement refers specifically to discussions at the Financial Stability Committee and the Council of Financial Regulators. In these forums, as far as we understand, the possible impact of financial difficulties of Lehman Brothers on the financial market and Hong Kong investors of structured financial products relating to Lehman Brothers was not discussed between June and mid-September 2008.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Ma', with a long horizontal flourish extending to the right.

Monetary Authority

Encls

## Responses to Follow-up Issues Arising from the Hearing on 17 April 2009

*(a) The delegation of the Monetary Authority (MA)'s authority to other key executives of the Hong Kong Monetary Authority (HKMA) (i.e. the Deputy Chief Executive and Executive Directors) and any other persons in relation to the regulation of securities-related business conducted by Registered Institutions (RIs). Please also specify the type of actions (e.g. issuance of guidelines or advisory letters to RIs and decisions of taking enforcement actions) which may be carried out by these officers or persons under delegated authority.*

- 1.1 The Monetary Authority (MA) has internally authorised specified staff of the HKMA to exercise some of the powers on his behalf and in his name under the various ordinances that confer powers upon him. These internal authorisations are measures through which the MA ensures that the powers conferred on him by law are carried out by staff in his organisation at the appropriate level, and with appropriate skills and experience. The rank and designation of the officer to whom any authorisation has been made includes any person who might be acting in that position.
- 1.2 Internal authorisations made by the MA in relation to the regulation of securities-related business conducted by registered institutions (RIs) in accordance with the Securities and Futures Ordinance (SFO) and the Banking Ordinance (BO) are attached (see Annex 1).
- 1.3 The MA has authorised a Deputy Chief Executive (DCE) and Executive Directors (EDs) who are responsible for banking matters to carry out the day-to-day regulatory activities such as issuance of guidelines / circulars to authorized institutions (AIs). A copy of such guidelines / circulars will also be provided to the MA. With regard to the performance of on-site examinations, the themes and the target institutions are approved by the ED responsible for banking supervision.

- 1.4 With regard to the enforcement process, securities-related incidents involving possible misconduct are referred to the HKMA's securities enforcement team. The team will assess the information available and submit the matter to the internal Event Review Committee (chaired by an ED) to decide whether a case should be opened and the scope of any investigation. If sufficient evidence is collected during the investigation, the HKMA's securities enforcement team will submit the case to the internal Disciplinary Committee (chaired by a DCE) to consider whether, and if so what, disciplinary sanctions should be imposed. If the MA, on the advice of the Disciplinary Committee, considers that disciplinary sanctions should be imposed, he will consult or make a recommendation to the Securities and Futures Commission (SFC) as appropriate.

- (b) *As stated by MA at the hearings on 14 and 17 April 2009, HKMA handled 178 cases of suspected mis-selling of investment products by RIs from April 2003 to 14 September 2008. Please provide by year the particulars of such cases, including:*
- (i) *the number of affected investors;*
  - (ii) *the date on which each of such cases was received/detected;*
  - (iii) *the date of commencing investigation into each of such cases; and*
  - (iv) *the results of the investigation into each of such cases.*

Item (i)

- 2.1 The number of customers affected is 178.

Items (ii) and (iii)

- 2.2 The date on which each case was received by the HKMA's securities enforcement team and the date of commencing investigation into each of such cases are set out in Annex 2.

Item (iv)

- 2.3 Section 120 of the BO imposes restrictions on the MA's ability to disclose supervisory information of the type requested that was obtained in the course of the exercise of the MA's functions under the BO.
- 2.4 Nevertheless, section 120(5)(a) provides one of the gateways through which the MA may disclose such information provided that it is disclosed in the form of a summary so as to prevent particulars relating to the business of any particular AI being ascertained from it. To assist the Subcommittee in its inquiry, the results of the cases involving the 178 customers referred to in the question are summarised as follows. Of the 178 customers, cases involving 148 customers have been assessed by the internal Event Review Committee up to 24 April 2009. Among these customers, cases involving 83 customers were closed due to insufficient evidence, and investigation into cases involving 33 customers have

been completed. A summary of the results of the completed investigation cases (involving 33 customers) is set out below.

- The cases involving 9 customers have been referred to the Securities and Futures Commission (SFC) for appropriate actions.
- The remaining cases involving 24 customers were closed and the HKMA decided not to take any disciplinary action or to refer the cases to the SFC for the following reasons:
  - 2 customers declined to provide further information and hence the investigation could not proceed further;
  - there was insufficient evidence to substantiate the suspected improper practices in respect of cases involving 5 customers;
  - the allegations were rebutted by evidence obtained during investigation in respect of cases involving 3 customers; and
  - with regard to the other 14 customers, the interests of all of them had been adequately addressed by the institutions involved through offering appropriate redress and the nature of these cases was considered not significant enough to justify any disciplinary actions. In particular:
    - one customer's case involved a service quality issue and a minor breach of internal policies and procedures;
    - another customer's case was related to a product data input error; and
    - the remaining 12 customers' cases concerned a relevant individual (ReI) in conducting business not being a regulated activity but might have implication on his fitness and propriety. The HKMA's investigation revealed that the ReI concerned provided certain information to these customers in relation to the returns of the insurance products based on some assumptions which could not be verified. The ReI had already been removed from the HKMA register by the institution concerned, therefore no disciplinary action was considered warranted.

*(c) Where appropriate, the full report of each of the on-site examinations and off-site reviews conducted by HKMA from April 2003 to 14 September 2008 about RIs' sale of structured financial products including HKMA's assessment of the training provided by individual RIs to their frontline staff involved in the retail sale of such products.*

- 3.1 Section 120 of the BO imposes restrictions on the MA's ability to disclose supervisory information of the type requested that was obtained in the course of the exercise of the MA's functions under the BO.
- 3.2 Nevertheless, section 120(5)(a) provides one of the gateways through which the MA may disclose such information provided that it is disclosed in the form of a summary so as to prevent particulars relating to the business of any particular AI being ascertained from it. To assist the Subcommittee in its inquiry, a summary of key findings identified during our on-site examinations and off-site reviews will be included in my response to item (e) of the Subcommittee's information requests (follow-up to the hearing on 14 April 2009) enclosed with the letter of the Clerk to the Subcommittee dated 17 April 2009.
- 3.3 With regard to the adequacy of training provided to relevant individuals involved in the sale of investment products, the scope of most of our securities-related on-site examinations covered this area. Through interviewing a sample of relevant individuals and reviewing training materials on selected investment products of the examined RIs during our securities-related on-site examinations, the HKMA identified several cases where the front-line staff concerned had shown insufficient product knowledge in structured financial products or were not fully familiar with the internal sales guidelines of the RIs. These findings were reported to the relevant RIs' senior management together with recommendations on appropriate rectification

measures. The HKMA case officers subsequently followed up to ensure appropriate remedial actions were taken by the RIs concerned.



*(d) The particulars (set out by year) of HKMA's on-site examinations conducted on RIs between April 2003 and 14 September 2008 the main theme of which was the sale practice of investment products including:*

- (i) the date on which each of such examinations was conducted;*
- (ii) the target RI or RIs of each examination and the RIs inspected;*
- (iii) the number of cases of suspected mis-selling of investment products detected during each examination and the irregularities detected (e.g. the suitability test not conducted, the relevant prospectus not provided to investors, etc.); and*
- (iv) the follow-up actions taken after each of such examinations.*

4.1 Regarding the requested information on items (ii), (iii) and (iv) about the name of target RIs, the related irregularities detected during each examination and the follow-up actions taken after each examination, section 120 of the BO imposes restrictions on the MA's ability to disclose supervisory information of the type requested that was obtained in the course of the exercise of the MA's functions under the BO as explained in the response to item (b) above. Nevertheless, section 120(5)(a) provides one of the gateways through which the MA may disclose such information provided that it is disclosed in the form of a summary so as to prevent particulars relating to the business of any particular AI being ascertained from it. To assist the Subcommittee in its inquiry, the requested information is summarised in the following paragraphs.

Items (i), (ii) and (iii)

4.2 Between April 2003 and 14 September 2008, the HKMA performed 85 thematic examinations<sup>1</sup> of which the scope included, among other things, the

---

<sup>1</sup> According to the paragraph 4.17 of the "Report of the Hong Kong Monetary Authority on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies", the HKMA conducted a total of 158 on-site examinations of registered institutions between April 2003 and October 2008. Of these 158 examinations, 86 were thematic examinations. Upon further verification of the detailed internal records after the publication of the Report, it should be clarified that the HKMA in fact conducted a total of 170 on-site examinations of RIs between April 2003 and 31 December 2008 which covered the regulated activities of RIs. Of these 170 examinations, 85 were thematic examinations in relation to the sale of investment products.

sale practice of investment products. A list of such on-site examinations, which indicates the month in which each examination was conducted and the number of customers affected by the suspected mis-selling cases identified during the examinations, is attached at Annex 3. The suspected cases had been referred to the HKMA's securities enforcement team for investigation as appropriate.

Item (iv)

- 4.3 As regards follow-up actions, the normal practice is for the relevant case officers of the HKMA's Banking Supervision Department to monitor, on an ongoing basis, the implementation by the RI of the measures recommended by the HKMA in accordance with the implementation plans and timetable agreed with the HKMA. Furthermore, upon completion of the implementation of these measures, the HKMA will review the effectiveness of the implemented measures during the next round of on-site examination on the institution concerned.

(e) *Whether any of the 19 RIs which sold Lehman Brothers (LB)-related Minibonds and structured financial products were involved in the 178 cases of RIs' suspected mis-selling of investment products handled by HKMA from April 2003 to 14 September 2008, and whether HKMA's on-site examinations and off-site reviews conducted between April 2003 and 14 September 2008 had detected any mis-selling of investment products by any of the 19 RIs which sold LB-related Minibonds and structured financial products; and if yes, what measures were recommended by HKMA to individual RIs to rectify the irregularities detected, how the measures were implemented by the RIs concerned, and what follow-up actions were taken by HKMA to ensure the implementation of these measures.*

5.1 Out of the 19 RIs which sold LB-related Minibonds and structured financial products and were the subject of customer complaints since the collapse of LB, 15 of them were involved (together with some other RIs) in the 178 cases of suspected mis-selling of investment products identified during the period from April 2003 to 14 September 2008.

5.2 With regard to the suspected mis-selling cases identified in the HKMA's day-to-day regulatory process, the measures recommended by the HKMA, the RIs' implementation of these measures and the HKMA's follow-up actions, please refer to my response dated 23 April 2009 to item (d)(iii) of the Subcommittee's information requests (follow-up to the hearing on 14 April 2009) enclosed with the letter of the Clerk to the Subcommittee dated 17 April 2009.

- (f) *HKMA's communication in whatever form (e.g. letters, notices, written advice, etc.) to individual RIs requesting any of them to rectify the irregularities detected by HKMA's on-site examinations and off-site reviews conducted between April 2003 and 14 September 2008 on RIs' sale of investment products.*

- 6.1 The HKMA communicates the findings of an on-site examination and the related recommendations through issuing an examination report to the RI examined. Following the receipt of the HKMA's examination report, the RI concerned will provide a written implementation plan setting out the specific actions to be taken to rectify the identified issues with details of the implementation timeframe. The implementation plan needs to be agreed by the HKMA. The relevant case officer of the HKMA's Banking Supervision Department will monitor, on an ongoing basis, the implementation of the recommended measures by the RI in accordance with the agreed implementation plan by following up with the RI concerned through various communication means (including meetings, emails and letters).
- 6.2 Section 120 of the BO imposes restrictions on the MA's ability to disclose supervisory information of the type requested that was obtained in the course of the exercise of the MA's functions under the BO. However, pursuant to section 120(5)(a) of the BO, a summary of the key findings of the HKMA's on-site examinations will be provided in my response to item (e) of the Subcommittee's information requests (follow-up to the hearing on 14 April 2009) enclosed with the letter of the Clerk to the Subcommittee dated 17 April 2009.

*(g) A table setting out the issuing dates and a summary of HKMA's circulars and additional guidelines to RIs from April 2003 till present in relation to RIs' sale of investment products.*

7.1 The HKMA issued a total of 21 circulars to RIs from April 2003 up to 27 April 2009, in relation to RIs' sale of investment products. A table setting out the issue date and the summary of each of the circulars is attached at Annex 4.

- (h) *A copy of the email containing the summary record (referred to in paragraph 13.4 of MA's written statement (W6(C)) sent by MA to the Financial Secretary following the meeting held on 12 September 2008 with the Chairman of the Hong Kong Association of Banks; and any other relevant information on the discussion of the matters at the meeting.*

8.1 The email sent to the Financial Secretary by the HKMA on 12 September 2008, as explained in paragraph 13.4 of the written statement of the MA (W6(C)) as well as during the hearing on 17 April 2009, contains a summary record of the meeting between the MA and the Chairman of the Hong Kong Association of Banks held on that day, which specifically discussed the banks' exposure to investment banks such as Lehman Brothers (LB) in terms of both credit risk and their dealings with LB in the over-the-counter derivatives markets. In relation to the latter, it was noted that the impact on banks might not be large because banks' main dealings with them were mainly to distribute the structured products originated by LB. The MA also emphasized the need to keep a close watch on the vulnerabilities of the banking system in Hong Kong as the credit crisis and its impact on US financial institutions continued to unfold. As stated at paragraph 13.2 of my witness statement provided to the Subcommittee on 26 March 2009, there was no explicit or specific reference to "the possible impact of the financial difficulties of LB on the market of structured financial products in Hong Kong" before the collapse of LB. A copy of the email requested is attached at Annex 5. The names of some of the recipients of the e-mail as well as the paragraphs that are not relevant to this subject have been excised from the attached copy.

- (i) *HKMA's consideration, if any, before 14 September 2008, of the feasibility of conducting "mystery shopper" surveys by its own supervisory staff on RIs' sale of investment products, and, where appropriate, the documents recording details of such consideration.*

9.1 In November 2003, the HKMA considered the issue of “mystery shopping” by its own supervisory staff. During one of the meetings of the HKMA’s Event Review Committee, members considered whether it would be appropriate to send a supervisory staff as a “mystery shopper” to ascertain the selling approach of a RI. At that time, the HKMA obtained information verbally from the SFC that the SFC did not have the practice of performing “mystery shopping” in their regular inspection programme. In order to maintain a supervisory approach that was consistent with that adopted by the SFC, the HKMA decided not to send “mystery shoppers” to RIs. A relevant extract of the meeting note is enclosed at Annex 6.

9.2 It is also relevant to point out that, according to information available to the HKMA before the collapse of LB, it had not been a common practice among financial regulators in major financial centres to conduct “mystery shopping” by their supervisory staff on the sale of investment products by intermediaries. As set out in the Report of the Hong Kong Monetary Authority on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies dated 31 December 2008, one of the recommendations is that the HKMA will institute a “mystery shopper” programme to test the sales processes of RIs. The report nevertheless also points out that there may be some limitations in the operation of a mystery shopper programme for the securities business of RIs in that it is difficult for a mystery shopper programme to cover all aspects of a selling process which might involve several face-to-face meetings between a customer and an intermediary. In any event, the HKMA is now working with the SFC on details about the implementation of this measure.

- (j) *Seven questions raised by Mr LEUNG Kwok-hung in writing and handed to MA at the hearing on 17 April 2009 as set out in the attached copy.*

### 法定職責

1. 根據《銀行業條例》(第 155 章) 第 7(2)(g)(ii) 條，金管局要確保銀行業務是以無損存款人的利益經營，你認為阻止及防止銀行向存戶違例銷售金融產品是否你在這條條款下的法定職責呢？

10.1.1 Section 7 of the BO sets out the functions of the MA. Section 7(2)(g) of the BO stipulates that the MA shall take all reasonable steps to ensure that any banking business, any business of taking deposits, or any other business, carried out by an AI is carried on (i) with integrity, prudence and the appropriate degree of professional competence; and (ii) in a manner which is not detrimental, or likely to be detrimental, to the interest of depositors or potential depositors. Therefore, one of the MA's key focuses in his day-to-day regulation of the securities business of banks is investor protection in particular prevention and detection of mis-selling of financial products to investors.

10.1.2 In exercising his functions under the BO and the SFO, the MA carries out day-to-day regulation (including on-site examinations and off-site reviews) to help ensure that RIs conduct their regulated activities according to the legal and regulatory requirements. Where the day-to-day regulatory process or any complaint received reveals possible misconduct (including mis-selling of investment products), the incident is referred to the HKMA's securities enforcement team for investigation using powers under the BO and /or the SFO and disciplinary proceedings or referral to the SFC as appropriate. The RI concerned and its staff are subject to the same range of disciplinary sanctions as would be the case of firms or individuals regulated directly by the SFC if sufficient evidence is found after investigation into those cases.



2. 根據證券及期貨條例(第 571 章)第 5(1)(1)證監會有責任確保投資者有獲得適當程度的保障。由於簽訂《諒解備忘錄》\*，證監會對註冊機構的監管主導權被金管局取去，金管局既接收了證監會的權力，你是否覺得金管局應同時負責履行上述條例的職責呢？

*\*2002 年 12 月 12 日，金管局與證監會簽定諒解備忘錄，證監會將對註冊機構的前線監管權及調查權交給金管局，完成調查後才交給證監會處理。*

10.2.1 The SFO and the Banking (Amendment) Ordinance 2002 (BAO) were enacted in March 2002. The functions and powers of the SFC are set out in section 5 of the SFO. Section 5(3) of the SFO provides, among other things, that the SFC, in performing any of its functions in relation to any registered institution, may rely, in whole or in part, on the supervision of such registered institution by the MA. Further, the BO empowers the MA to regulate the regulated activities conducted by executive officers and relevant individuals.

10.2.2 The HKMA and the SFC signed a revised Memorandum of Understanding (MoU) in December 2002, which replaced and superseded the previous MoU signed on 23 October 1995 between the two regulators. Before the revised MoU was signed, during various meetings<sup>2</sup> of the Bills Committee on the Securities and Futures Bill and the Banking (Amendment) Bill 2000, the HKMA and/or the Administration had informed the Bills Committee that the HKMA and the SFC would revise their existing MoU to set out the specific mode of co-operation under the new regulatory regime for regulated activities.

10.2.3 The revised MoU became effective on 1 April 2003 (the same date when the SFO and the BAO came into operation). It aims to strengthen the co-operation between the two regulators; to set out the respective roles and responsibilities of the two regulators under each major functional aspect of the new regulatory regime as well as the arrangements between the parties in relation to the exchange of relevant information and notification or referral

---

<sup>2</sup> Including Bills Committee meetings on 3 February 2001, 16 February 2001 and 29 June 2001, and 13 March 2002 (Second Reading of the Bills).

of relevant matters; and to achieve the regulatory objective that all intermediaries (whether they are supervised by the SFC or the HKMA) carrying out regulated activities in Hong Kong are subject to consistent regulatory measures.

10.2.4 Paragraph 4 of the MoU sets out the overriding principles of the MoU. Paragraphs 4(a), (b) and (d) specifically provide that the MoU does not modify or supersede any law or regulation; that it does not detract from the respective statutory functions of the SFC and the HKMA; and that it does not create any rights, obligations or liabilities, enforceable by the SFC, the HKMA or any third party. Therefore, the MoU does not modify or fetter the SFC's powers and functions under the SFO. The SFC is still responsible for the SFO and related regulations, developing the regulatory standards and requirements for carrying on regulated activities and facilitating and encouraging the development of the securities and futures markets. In addition, the SFC has statutory power under the SFO to investigate whether any registered institution, relevant individual or executive officer or other management staff (collectively, the "regulated person") is or was at any time guilty of misconduct or is no longer fit and proper and to discipline such regulated person.

10.2.5 The HKMA acts as the "front-line regulator" of RIs in respect of their conduct of regulated activities and performs its regulatory functions according to standards that are consistent with those applied by the SFC to its licensed persons. Therefore, the SFC's statutory function is in no way hampered by the revised MoU. The revised MoU merely strengthens the co-operation between the HKMA and the SFC and as a result facilitates both regulators in exercising their statutory functions related to the regulation of RIs.

10.2.6 One of the express functions of the SFC is to secure an appropriate degree of protection for members of the public investing in or holding financial

products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products. Although investor protection is not expressly stated in the BO, it is also a function of the HKMA that can be construed from the relevant provisions of the BO.

3. 證監會界定「合適性」是包括三方面：1.銀行銷售職員充分明白產品性質、第二，充份明白投資者承受風險的能力，第三，投資者承受風險能力與購買的投資產品是否適應。你認為銀行在銷售過程中，違反任何其中一項是否已違反了合適性的要求？

10.3.1 The SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct") sets out the general principles for the licensed or registered persons with regard to suitability assessments. These include the following:

1. section 5.1 of the Code of Conduct requires licensed or registered persons to establish their clients' financial situation, investment experience and investment objectives;
2. section 5.2 of the Code of Conduct provides that "[h]aving regard to information about the client of which the licensed or registered person is or should be aware through the exercise of due diligence, the licensed or registered person should, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for that client is reasonable in all the circumstances". As a result, the suitability of the product for that individual customer should be assessed; and
3. section 5.3 of the Code of Conduct further provides that "a licensed or registered person providing services to a client in derivative products, including futures contracts or options, or any leveraged transaction should assure itself that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risks and bear the potential losses of trading in the products".

10.3.2 In May 2007 the SFC issued a set of frequently asked questions and answers

(FAQs) on suitability obligations to provide practical guidance to licensed or registered persons engaged in financial planning and wealth management business activities relating to the provision of investment advice, making of recommendations and/or solicitation on how they may fulfil the suitability obligations required of them under the SFC's Code of Conduct. Such licensed or registered persons should:

- know their clients;
- understand the investment products they recommend;
- provide reasonably suitable recommendations by matching the risk return profile of each investment product with each client's personal risk appetite;
- provide all relevant material information to clients and help them make informed investment decisions;
- employ competent staff and provide appropriate training; and
- document and retain the reasons for each product recommendation made to each client.

10.3.3 In this connection, client suitability assessments should take into account the relevant information and circumstances in each individual case. It is therefore not appropriate to formulate a set of general rules and simply apply them to each individual case without considering the specific circumstances involved. For instance, a customer with a low risk tolerance level may choose to invest a small portion of his net worth in a high risk product for higher returns. In this circumstance, RIs are required by the HKMA to carry out special handling procedures, such as supervisor's approval or declaration by client, in order to ensure that the suitability obligations as set out in the Code of Conduct are complied with. The licensed or registered person should also provide and document the rationale for recommending the product to the customer.

4. 你認為銀行如果違反了「合適性」的準則而去銷售產品給客戶，並因此令客戶蒙受金錢損失，是否已違反了證券及期貨條例(第571章)下的《證券及期貨事務監察委員會持牌人或註冊人操守準則》(《操守準則》)？

10.4.1 If a RI fails to conduct client suitability assessment properly, it would be regarded as a breach of the SFC Code of Conduct. Nevertheless, as mentioned in the response to Question 3 above, client suitability assessments should take into account the relevant information and circumstances in each individual case and the Code of Conduct and FAQs have already laid down the requirements to be observed by licensed or registered persons in carrying out sale of investment products. Failure to comply with these provisions may amount to misconduct and could also call into question the fitness and properness of the relevant licensed or registered persons to remain licensed or registered.

5. 根據我在上面提及過的《銀行業條例》(第 155 章) 第 7(2)(g)(ii)條的金管局責任，金管局是否應主動防止或阻止因註冊機構違反《操守準則》進行銷售而對存戶做成的傷害？

10.5.1 Please refer to the response to Question 1 above. The role of the HKMA, as the “front-line regulator” of RIs’ securities business, is to take all reasonable steps to ensure that the banks operate in a responsible, honest and business-like manner. The HKMA is also required to take all reasonable steps to ensure that such business is conducted with integrity, prudence and the appropriate degree of professional competence.

6. 你在雷曼事件發生前，共處理過多少宗投訴是有關銀行銷售手法違反證監會《操守準則》所制定的「合適性」呢？事發後，你轉介給證監會的百多宗個案中，有多少是涉及違反「合適性」的投訴？你有沒有將違反「合適性」作為重點調查的方向呢？

10.6.1 Among the suspected mis-selling complaints involving 106 customers received by the HKMA during the period from April 2003 to 14 September 2008, cases involving 92 customers have already been closed following the detailed assessment or investigatory process. Among these closed cases, complaints involving 79 customers were related to the issue of client suitability assessment.

10.6.2 With regard to the 433 Lehman-Brothers-related cases referred to the SFC for further action so far, the investigations of these cases are currently being conducted by the HKMA and the SFC. The HKMA is therefore unable to provide any information about the investigations or the nature of these cases.

10.6.3 Client suitability is one of the key areas of our investigation into the Lehman Brothers-related complaints.



7. 《諒解備忘錄》是跟據那一條法例的那一款而作出的？《諒解備忘錄》有否違反證券及期貨條例(第 571 章)？

10.7.1 The revised MoU was entered into pursuant to the following provisions of the BO and the SFO:

1. section 7(2)(e) of the BO which provides that one of the functions of the MA is to:

“co-operate with and assist recognized financial services supervisory authorities of Hong Kong or of any place outside Hong Kong, whenever appropriate, to the extent permitted by this or any other Ordinance;”

The MA has on the basis of this section entered into MoUs not only with the SFC but also other financial regulators in Hong Kong and overseas.

2. section 5(1)(h) of the SFO which provides that one of the functions of the SFC is:

“to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;”

3. section 5(3) of the SFO further provides that:

“The Commission [i.e., SFC], in performing any of its functions in relation to-

- (a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or

(b) any person as an associated entity of an authorized financial institution that is a registered institution,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.”

10.7.2 As explained in paragraph 10.2.34 above, the MoU does not modify or supersede any law or regulation, does not detract from the respective statutory functions of the SFC and the HKMA, and does not create any rights, obligations or liabilities, enforceable by the SFC, the HKMA or any third party. In other words, the SFC’s statutory function is in no way hampered by the revised MoU. It is clear that the MoU does not contravene any provisions of the SFO.

**Annex 1: Internal authorisations made by the Monetary Authority in relation to the regulation of securities-related business conducted by registered institutions in accordance with the SFO and BO**

<b>Ordinance and Section</b>	<b>Powers and Duties</b>	<b>Exercising Person<sup>1</sup></b>
SFO s.119(3)	<p>To consult the Securities and Futures Commission (SFC) upon the merits of an application to become a registered institution (RI).</p> <p>To advise the SFC on the applicant's fitness and propriety.</p>	<p>Senior Managers</p> <p>Division Heads</p>
SFO s.129	To consider matters as set out in s.129(1) and (2) of the SFO when considering whether the applicant is fit and proper for registration.	Division Heads
SFO s.180	To authorize a person to perform inspection and inquiries of a RI or an associated entity of a RI.	Executive Directors
BO s.7(3)	To prepare and publish by notice in the Gazette guidelines indicating the manner in which the MA proposes to	Deputy Chief Executive (Banking Supervision)

<sup>1</sup> "Exercising Person" indicates the lowest rank at which the power in question may be exercised.

Ordinance and Section	Powers and Duties	Exercising Person <sup>1</sup>
	exercise functions conferred or imposed upon him by BO.	
BO s.20(1)  s.20(2) and (5)  s.20(3)  s.20(4B)  s.20(6)(b)	To maintain the HKMA register.  To notify the public in the Gazette the location of the HKMA register and the date and hours during which the public may inspect the register.  To require banks etc. to submit information reasonably required to maintain the register.  To cause the register of RIs and its relevant individuals to be made available to public inspection in the form of an on-line record.  To sign and certify a document from the register as a true copy of the entry, extract or document.	Division Heads
BO s.55(1)	To examine and investigate the books, accounts and transactions of any institution and, in the case of an institution incorporated in Hong	Senior Managers (in respect of local examinations)



Ordinance and Section	Powers and Duties	Exercising Person <sup>1</sup>
	decision made against a relevant individual under s.58A(1), the reasons for which the decision was made, and any material facts relating to the case.	
BO s.63(2)  s.63(2A)	To require institutions to submit further information.  To require any subsidiary, holding company or subsidiaries of any such holding company of an institution to submit information.	Division Heads
BO s.71C(1)  s.71C(2)  s.71C(3)	To give consent to a person becoming or acting or continuing to act as an executive officer of a RI.  To refuse to give consent and power to give consent subject to conditions to a person becoming or acting or continuing to act as an executive officer of a RI.  To notify the executive officer and the RI in writing of any consent specifying any condition or refusal	Division Heads  Executive Directors  Division Heads (in the case of consent) Executive Directors

Ordinance and Section	Powers and Duties	Exercising Person <sup>1</sup>
s.71C(4) and (12)	<p>to give consent under s.71C(1) and to specify the reasons for the refusal.</p> <p>To consider whether an executive officer is guilty of misconduct or has ceased to be fit and proper or has ceased to have sufficient authority and to consult the SFC before withdrawing or suspending the consent given to an executive officer of a RI.</p>	<p>(in the case of refusal)</p> <p>Executive Directors</p>
s.71C(6)	<p>To give the executive officer concerned an opportunity of being heard before withdrawal or suspension of the consent.</p>	<p>Executive Directors</p>
s.71C(7)	<p>To notify the executive officer concerned in writing of a decision under s.71C(4) and specifying the reasons, effective date, and (in so far as applicable) the duration and terms of the withdrawal or suspension of the consent given to an executive officer of a RI.</p>	<p>Executive Directors</p>
s.71C(7A)	<p>To disclose to the public details of the decision the MA made against</p>	<p>Executive Directors</p>

Ordinance and Section	Powers and Duties	Exercising Person <sup>1</sup>
s.71C(9)	<p>an executive officer under s.71C(4), the reasons for which the decision was made, and any material facts relating to the case.</p> <p>To attach or amend conditions to the consent given to an executive officer of a RI.</p> <p>To give the executive officer 7 days' advance notice of the MA's decision, specifying the reasons, and duty to consider any written representations before serving a notice in writing attaching or amending conditions to the consent.</p>	Executive Directors
BO s.71E(1)	Upon request to give provisional consent to a person becoming an executive officer of a RI.	Division Heads
s.71E(2)	To refuse to give provisional consent to a person becoming an executive officer of a RI, if this will prejudice interests of depositors etc.	Executive Directors
s.71E(3)	To attach or amend conditions attached to the provisional consent	Executive Directors



Ordinance and Section	Powers and Duties	Exercising Person <sup>1</sup>
s.71E(6)	<p>given under s.71E(1).</p> <p>To notify a person and the RI in writing of attaching conditions or amending conditions attached to the provisional consent given under s.71E(1).</p> <p>To notify the person concerned and the RI concerned in writing of withdrawing the provisional consent given under section 71E(1).</p>	Executive Directors
BO s.72A	To require specified persons to submit information.	<p>Division Heads (in respect of written requests)</p> <p>Managers after consultation with Division Heads (in respect of verbal requests)</p>
BO s.120(5)(fa)	To disclose information to the SFC relating to the carrying on of a regulated activity by a RI or the carrying on by an authorized institution of the business of	

<b>Ordinance and Section</b>	<b>Powers and Duties</b>	<b>Exercising Person<sup>1</sup></b>
	<p>receiving or holding client assets, within the meaning of Schedule 1 to the SFO, or intermediaries, within the meaning of Schedule 1 to the SFO, of which the institution is an associated entity within the meaning of Schedule 1 to the SFO.</p> <ul style="list-style-type: none"> <li>- routine matters (investigations, discipline and appeals, day-to-day complaints and exceptional findings, other than serious matters)</li> <li>- non-routine or serious matters</li> </ul> <p>To attach condition to any disclosure of information</p> <ul style="list-style-type: none"> <li>- routine matters (investigations, discipline and appeals, day-to-day complaints and exceptional findings, other than serious matters)</li> <li>- non-routine or serious matters</li> </ul>	<p>Division Head (Securities Enforcement)</p> <p>Executive Directors</p> <p>Division Head (Securities Enforcement)</p> <p>Executive Directors</p>

**Annex 2: Number of customers affected by suspected mis-selling cases received by the HKMA's securities enforcement team between April 2003 and 14 September 2008**

<b>Year</b>	<b>Date of receiving the case by the HKMA's securities enforcement team</b>	<b>Date of commencing investigation by the HKMA's securities enforcement team</b>	<b>Number of affected customers</b>
2003	07/04/2003	Closed following assessment <sup>1</sup>	1
	30/04/2003	Closed following assessment	1
	05/05/2003	Closed following assessment	1
	15/05/2003	Closed following assessment	1
	20/10/2003	Closed following assessment	1
	10/12/2003	18/12/2003	12
2004	30/03/2004	Closed following assessment	1
	20/05/2004	30/09/2004	1
	20/05/2004	Closed following assessment	1
	20/05/2004	Closed following assessment	1
	02/06/2004	Closed following assessment	1
	26/07/2004	Closed following assessment	1
	25/08/2004	Closed following assessment	1
	01/09/2004	Closed following assessment	1
	03/09/2004	06/09/2004	1
	22/11/2004	15/12/2004	6
	09/12/2004	Closed following assessment	1
2005	03/01/2005	Closed following assessment	1
	24/02/2005	19/04/2005	1
	06/04/2005	16/08/2005	1
	21/04/2005	Closed following assessment	1
	24/05/2005	30/08/2005	1
	30/05/2005	Closed following assessment	1
	17/06/2005	Closed following assessment	1
	24/06/2005	Closed following assessment	1
	30/06/2005	22/12/2005	1
	04/07/2005	18/12/2006	1
	14/07/2005	Closed following assessment	1
	19/07/2005	Closed following assessment	1
	29/08/2005	Closed following assessment	1
	01/09/2005	14/12/2005	1
	30/11/2005	Closed following assessment	1
	01/12/2005	Closed following assessment	1
2006	20/02/2006	Closed following assessment	1
	21/02/2006	Closed following assessment	1
	08/05/2006	29/06/2006	1
	11/05/2006	Closed following assessment	1
	24/05/2006	Closed following assessment	1
	26/05/2006	Closed following assessment	1

<sup>1</sup> Cases reviewed by the internal Event Review Committee and decided not to open investigation

Year	Date of receiving the case by the HKMA's securities enforcement team	Date of commencing investigation by the HKMA's securities enforcement team	Number of affected customers
	07/07/2006	Closed following assessment	1
	12/09/2006	Closed following assessment	1
	24/10/2006	18/12/2006	1
	31/10/2006	Closed following assessment	1
	29/12/2006	Closed following assessment	1
	29/12/2006	Closed following assessment	1
2007	11/01/2007	30/04/2007	1
	28/03/2007	18/05/2007	1
	16/04/2007	Closed following assessment	1
	14/06/2007	Closed following assessment	1
	28/09/2007	Closed following assessment	1
	23/10/2007	Closed following assessment	1
	12/11/2007	Closed following assessment	1
	12/11/2007	31/01/2008	1
	12/11/2007	Closed following assessment	1
	29/11/2007	Closed following assessment	1
	29/11/2007	Closed following assessment	1
	29/11/2007	31/01/2008	1
2008	31/01/2008	Closed following assessment	1
	05/02/2008	Closed following assessment	1
	12/02/2008	Closed following assessment	1
	14/02/2008	Closed following assessment	1
	21/02/2008	23/04/2008	1
	22/02/2008	23/04/2008	9
	22/02/2008	Closed following assessment	1
	29/02/2008	Closed following assessment	1
	06/03/2008	Closed following assessment	1
	11/03/2008	29/05/2008	1
	27/03/2008	Closed following assessment	1
	31/03/2008	Closed following assessment	1
	03/04/2008	Closed following assessment	1
	07/04/2008	Closed following assessment	1
	09/04/2008	Closed following assessment	1
	14/04/2008	Closed following assessment	1
	14/04/2008	Closed following assessment	1
	17/04/2008	Closed following assessment	1
	18/04/2008	Closed following assessment	1
	18/04/2008	Closed following assessment	1
	24/04/2008	Closed following assessment	1
	25/04/2008	Closed following assessment	2
	25/04/2008	Closed following assessment	1
	29/04/2008	Closed following assessment	1
	02/05/2008	Closed following assessment	1
	05/05/2008	Closed following assessment	1

Year	Date of receiving the case by the HKMA's securities enforcement team	Date of commencing investigation by the HKMA's securities enforcement team	Number of affected customers
	05/05/2008	Closed following assessment	1
	06/05/2008	Closed following assessment	1
	06/05/2008	Closed following assessment	1
	08/05/2008	Closed following assessment	1
	13/05/2008	Closed following assessment	1
	16/05/2008	Closed following assessment	1
	19/05/2008	Closed following assessment	1
	30/05/2008	Closed following assessment	1
	30/05/2008	Closed following assessment	1
	04/06/2008	Closed following assessment	1
	04/06/2008	Closed following assessment	1
	13/06/2008	Closed following assessment	1
	17/06/2008	Closed following assessment	1
	23/06/2008	Closed following assessment	1
	23/06/2008	Closed following assessment	1
	23/06/2008	Closed following assessment	1
	24/06/2008	Closed following assessment	1
	03/07/2008	26/09/2008	20
	03/07/2008	Assessment in progress <sup>2</sup>	8
	03/07/2008	Assessment in progress	2
	03/07/2008	Assessment in progress	3
	03/07/2008	Assessment in progress	1
	03/07/2008	Assessment in progress	1
	03/07/2008	Assessment in progress	2
	08/07/2008	Closed following assessment	1
	11/07/2008	Assessment in progress	1
	29/07/2008	Assessment in progress	1
	29/07/2008	Assessment in progress	1
	29/07/2008	Assessment in progress	1
	05/08/2008	Assessment in progress	1
	07/08/2008	Assessment in progress	1
	27/08/2008	21/11/2008	1
	27/08/2008	Assessment in progress	1
	27/08/2008	Assessment in progress	1
	29/08/2008	21/11/2008	1
	03/09/2008	Assessment in progress	1
	03/09/2008	Assessment in progress	1
	05/09/2008	Assessment in progress	1
	10/09/2008	Assessment in progress	1
	11/09/2008	Assessment in progress	1
			<b>Total : 178</b>

<sup>2</sup> Assessment is underway to decide whether a case should be opened and the scope of any investigation

**Annex 3: HKMA's on-site examinations of RIs conducted between April 2003 and 14 September 2008  
of which the main theme was related to the sale practice of investment products**

Year	Type of examinations	Commence- ment of examinations	Number of RIs	Number of customers affected in suspected mis-selling cases identified in the examinations
2005	Retail Wealth Management Business (first round)	Apr	1	-
		Jun	1	
		Jul	4	
		Sep	3	
		Oct	3	
		Nov	1	
2006	Investment Advisory Activities	Sep	4	3
		Oct	3	
		Nov	3	
	Retail Wealth Management Business (second round)	Mar	1	-
		Apr	2	
		May	7	
		Jun	6	
		Jul	1	
		Aug	4	
		Sep	1	
2007	Controls to Ensure Fitness and Propriety of Relevant Individuals	May	1	3
		Jun	1	
		Jul	1	
		Aug	2	
		Sep	2	
		Oct	3	
		Nov	1	
	Retail Wealth Management Business (third round)	Jan	2	-
		Feb	1	
		Mar	2	
		May	1	
		Jun	3	
		Aug	4	
		Sep	2	
2008	Compliance Function in relation to Regulated Activities under the Securities and Futures Ordinance	Mar	1	-
		Jul	1	
	Investment Advisory and Dealing Activities in Credit-linked Investment Products	Feb	2	52
		Mar	1	
		Jul	1	
	Investment Advisory and Dealing Activities in Stock Accumulators	Mar	1	71
		Apr	1	
		Jun	1	
		Jul	2	
	Total			

\* Of the cases involving 129 customers, those related to 43 customers did not involve the 19 RIs which sold Lehman Brothers (LB) related Minibonds and structured financial products and which were the subject of customer complaints since the collapse of LB.

**Annex 4: Summary of the HKMA's circulars<sup>1</sup> issued from April 2003 till 27 April 2009 in relation to RIs' sale of investment products**

Issue Date	Title	Summary
21 August 2003	New Publications of the Securities and Futures Commission (SFC) and the HKMA	This circular informed authorized institutions (AIs) of a new series of publications on investor education issued by the SFC. The HKMA recommended that the RIs distribute the relevant SFC publications to their securities clients where appropriate, particularly at the retail level. The HKMA also issued a number of publications (in Quarterly Bulletin) to facilitate RIs in complying with the new statutory and regulatory requirements.
8 November 2004	SFC Guidelines for Addressing Analyst Conflicts of Interest	This circular informed RIs of the circular issued by the SFC regarding its consultation conclusions on the regulatory framework and guidelines for addressing possible conflicts of interest of analysts in investment research on securities that were traded in Hong Kong and investment research that had an influence on such securities. RIs were told that they were expected to establish and maintain proper policies, procedures and controls to ensure compliance with the related guidelines.
21 February 2005	Register of Relevant Individuals under Section 20(1) (ea) of the Banking Ordinance (BO)	This circular reminded RIs of the importance of maintaining accurate information in the HKMA register of relevant individuals (ReIs) established under section 20(1)(ea) of the BO. The circular also recommended a number of control measures that RIs should adopt to help ensure proper registration and maintenance of ReIs' particulars in the register.
1 March 2005	The Securities and Futures Commission's Report (the Report) on Selling Practices of Licensed Investment Advisers	This circular informed RIs of the Report on Selling Practices of Licensed Investment Advisers issued by the SFC. The Report set out the regulatory concerns on the selling practices of certain licensed investment advisers (which were under the SFC's direct supervision) and provided clarifications on some existing regulatory requirements. RIs were reminded to study the Report carefully and put in place systems and controls to ensure compliance with the recommendations set out in the Report.
31 March 2005	SFC press release – Extracts and Advertisements Concerning	This circular informed RIs of the press release issued by the SFC which reminded all intermediaries that it was unlawful to advertise any extract from or abridged version of a

<sup>1</sup> All the circulars have been submitted to the Subcommittee previously (please refer to Annex 5 "Circulars Issued by the HKMA in relation to the Conduct of Regulated Activities" of the Written Statement of the Monetary Authority submitted to the Subcommittee on 26 March 2009)

Issue Date	Title	Summary
	Prospectuses under the Companies Ordinance	prospectus without proper authorisation. RIs were required to put in place adequate controls and procedures to ensure compliance with relevant provision (section 38B) of the Companies Ordinance.
3 March 2006	Retail Wealth Management (RWM) Business	This circular shared with AIs some of the best practices on customer suitability management observed by the HKMA during a round of on-site examinations on AIs which were active in selling wealth management products to retail customers. In particular, AIs were told that they should regularly put in place systems and controls in respect of compliance with relevant codes of conduct, customer profiling, product suitability assessment, risk disclosure and management oversight.
28 September 2006	Controls to ensure the fitness and propriety of staff of authorized institutions	This circular highlighted certain internal control measures that AIs should consider adopting to ensure fitness and propriety of their employees. These measures covered, among other areas, regular internal audit of controls over Rels' registration, "fit and proper" assessment, and verification of relevant industry experience.
1 March 2007	Thematic Examinations on Investment Advisory Activities	The circular shared the good practices and key issues identified in the thematic examinations on investment advisory activities conducted by the HKMA.
7 May 2007	Questions and Answers on Suitability Obligations Published by the Securities and Futures Commission (SFC)	The circular informed RIs of the list of questions and answers on the suitability obligations of investment advisers ("FAQ") published by the SFC. RIs were required to review their existing systems and practices and where necessary, enhance the systems and controls to meet the required standards.
1 June 2007	The Securities and Futures Commission's Report on Findings of Second Round of Thematic Inspection of Licensed Investment Advisers (the Report)	The circular informed RIs of the Report issued by the SFC which set out the common issues identified during the SFC's second round of thematic inspections on 10 selected licensed investment advisers conducted in 2006. RIs were required to study the Report carefully and put in place proper controls and procedures to ensure compliance with the regulatory standards.
13 June 2007	Controls to ensure compliance	The circular reminded RIs of the importance of having adequate controls to ensure compliance



Issue Date	Title	Summary
	with Section 114(3) of the Securities and Futures Ordinance (SFO) and Section 20(4) of the Banking Ordinance (BO)	with the prohibition of unregistered dealing under section 114(3) of the SFO. RIs were also reminded of their obligation under section 20(4) of the BO to have in place proper procedures to ensure that the HKMA was notified promptly of changes to any information of relevant individuals, including removal of the relevant individual's particulars from the register.
12 March 2008	Thematic examinations on Controls to Ensure Fitness and Propriety of Relevant Individuals	The circular shared the good practices and key findings identified in the thematic on-site examinations on Controls to Ensure Fitness and Propriety of Relevant Individuals conducted.
23 September 2008	Investment products related to Lehman Brothers	In view of the Lehman Brothers incident and the large number of investors involved, RIs were urged to be as transparent and forthcoming as possible in providing information to these investors. In particular, RIs were asked to deal with the enquiries and complaints from investors fairly and honestly with the level of skill, care and diligence expected under the SFC Code of Conduct and in the best interests of the clients.
23 October 2008	Selling of investment products to retail customers	The circular reiterated the general requirements for RIs selling investment products. In particular, it reminded RIs to have adequate controls and procedures for complying with the SFO, Code of Conduct issued by the SFC, the Supervisory Policy Manual (SPM) and circulars issued by the HKMA. RIs were also reminded to handle customers' complaints relating to Lehman-related investment products in a fair and speedy manner as required under the Code of Banking Practice and the HKMA's SPM module IC-4.
5 November 2008	Access to recordings of telephone conversation and Lehman Minibonds collaterals information	The circular set out the HKMA's view that banks should allow customers who had been sold investment products to listen to the recordings of their telephone conversations with bank employees and take notes of these recordings. The circular also stated that distributing banks of Lehman Minibonds should make available the information on the collateral of the Minibonds for review by their investors.
10 December 2008	Despatch of information to investors of retail investment	In view of the current market conditions, RIs were required to put in place adequate procedures to ensure that their customers were made aware of all relevant information issued or made

Issue Date	Title	Summary
	product	available by the issuers of investment products in a timely manner. RIs were also asked to ensure that their relationship managers were well briefed on such information so that they could competently handle enquiries from their customers.
2 January 2009	Circular Issued by the Securities and Futures Commission (SFC) on the Revised Advertising Guidelines Relating to SFC-authorized Collective Investment Schemes	The circular informed RIs of the circular issued by the SFC, setting out the phased approach to the full implementation of the revised Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes. RIs were also reminded of the obligations of intermediaries to undertake proper product due diligence on the CIS to be marketed and ensure sales staff thoroughly understand the risks of the products.
9 January 2009	Report of the HKMA on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies	The circular informed all AIs that the Financial Secretary published the reports of the HKMA and the SFC on the sale of structured products related to Lehman Brothers on 8 January 2009. RIs were reminded to take note of the 19 recommendations in the HKMA's report and to implement a number of the related recommendations accordingly.
26 February 2009	Circular Issued by the Securities and Futures Commission (SFC) Regarding Self-Examination of Controls and Procedures on Suitability Obligations	The circular informed RIs of the circular issued by the SFC regarding self-examination of controls and procedures on suitability obligations. The circular clarified that RIs participating in the HKMA's Self-assessment on Compliance with the HKMA's SPM SB-1 and Other Requirements over Regulated Activities ("CSA") process in 2009 were not required to separately conduct such formal self-examination.
5 March 2009	Fair and reasonable arrangements for settling complaints related to the selling of investment products	The circular reminded RIs of their obligations to deal with all complaints honestly and fairly, and set out certain key requirements for RIs in handling customers' complaints and discussing settlement arrangements with customers. Specifically, the circular mentioned that the process should be conducted in a fair and reasonable manner.
25 March 2009	Implementation of recommendations in the HKMA's Report on Issues Concerning the Distribution of Structured Products Connected	The circular indicated that the HKMA and the Hong Kong Association of Banks (HKAB) have discussed and worked out the implementation details for a number of the recommendations made in the HKMA's Report. RIs were told that they were expected to implement these recommendations according to the implementation details set out in the circular. The circular also mentioned that the HKMA would in due course conduct on-site examinations to review

Issue Date	Title	Summary
	to Lehman Brothers ("the HKMA's Report")	RIs' implementation of these recommendations.



HONG KONG MONETARY AUTHORITY  
香港金融管理局

☒ Confidential  
☐ Copy to CR

To: John TSANG/FSPO/HKSARG@CSO  
cc: Joseph CK YAM/HKMA/HK@HKMA

CE

bcc:  
Tips

From:  
Date: 12/09/2008 03:50 PM

Subject: Record of Meeting with HKAB - 12 September 2008

## Confidential

Friday 12 September 2008

Mr He Guangbei, the Chairman of the Hong Kong Association of Banks (HKAB), called on CE/HKMA this afternoon for the regular bi-weekly meeting between the HKMA and HKAB. The key issues discussed are as follows:

- **Exposures to Investment Banks** - on the banks' exposure to investment banks such as Lehman, Mr He said that his sense was that the exposure of banks to Lehman should be limited both in terms of credit and counterparty risks, given that Lehman's operations in Hong Kong was smaller than the other investment banks. It was, however, harder to gauge Lehman's activities in the OTC derivatives markets, but the impact on banks might also not be large because banks' main dealings with them was mostly to distribute the structured or credit products originated by Lehman. Mr Yam said that it was important to keep a close watch on the vulnerabilities of the banking system in Hong Kong as the credit crisis and its impact on US financial institutions continued to unfold.

**CONFIDENTIAL****Event Review Committee**  
**Notes of Meeting**

**Date** : 7 November 2003  
**Time** : 11:15 a.m.  
**Venue** : Room 3051, 30<sup>th</sup> Floor, 3 Garden Road, Hong Kong

---

**Action**  
**Officer**

- (c) In respect of the proposal to send a member of the Securities On-site Team as a "mystery shopper" to check whether the alleged selling approach is being used in the branch concerned. [REDACTED] considered that unless it is a normal practice of the SFC to send "mystery shoppers" to inspect brokers, it would be against the principle of level playing field if the HKMA uses a "mystery shopper". [REDACTED] instructed the PAT to check with SFC whether it is a normal practice of the SFC to send "mystery shoppers" to inspect brokers

**CONFIDENTIAL**

---

**Action  
Officer**

and report the result as supplementary information in the meeting notes. All members agreed that if it is not a normal practice of the SFC, no "mystery shopper should be sent.

(Note: After the meeting, [REDACTED] contacted [REDACTED] of the Intermediaries Supervision Department of the SFC. In response to our enquiry, [REDACTED] advised that the Intermediaries Supervision Department would not conduct undercover inspection of brokers, i.e. they do not send "mystery shoppers" to check the activities of brokers in the course of their regular inspection. However, their Enforcement Division may send an undercover officer to conduct an investigation when cases are opened, e.g. to investigate unregistered dealings. In view of the above, it is considered that it is not consistent with the practice of the SFC to send a "mystery shopper" to check the branch concerned as it has been decided that the complaint is not a TE and no case should be opened for investigation.)