

Responses to Follow-up Issues Arising from the Hearing on 17 November 2009 (letter of 20 November 2009 from the Clerk to the Subcommittee)

1. According to the table “Complaints statistics concerning Lehman-related investment products (Up to 12 November 2009)” (the Table) posted on HKMA’s website, a total of 822 cases are under disciplinary consideration. They comprise 56 Minibonds cases, 438 ELNs cases and 328 cases involving products referenced to Lehman Brothers. Please provide information on the following:
- (a) the procedural steps that need to be taken or phases of work that need to undergo in relation to a case under HKMA’s “disciplinary consideration” before disciplinary measures will be taken;
  - (b) a breakdown of the 822 cases of the aforesaid 3 product types showing which of the respective procedural steps/work phases described in (a) has been reached for the cases; and
  - (c) an estimate of when HKMA is able to make an announcement on the disciplinary action taken/to be taken in the first or first batches of the 822 cases.

Item (a)

1.1 The procedural steps that need to be taken in relation to a case under disciplinary consideration before disciplinary measures will be taken are set out as below:

- (1) Upon the completion of investigation, the Monetary Authority (MA) makes a decision on whether to impose disciplinary sanction by the MA or refer the case to the Securities and Futures

Commission (SFC) for taking disciplinary sanction;<sup>1</sup>

- (2) For cases in which a decision is made to impose disciplinary sanction by the MA:
- (a) The Hong Kong Monetary Authority (HKMA) issues a “Notice of Intention to Impose Disciplinary Sanction” (NID) to the person implicated (“the person concerned”). The person concerned will be given an opportunity to make representations to the MA within 30 days upon the issuance of the NID. The person concerned may also apply for an extension if more time is required;
  - (b) Upon receiving representations (if any) from the person concerned, the HKMA reviews the representations. After reviewing the representations and consultation with the SFC, the MA will finalize his disciplinary decision in respect of exercising his disciplinary powers on the person concerned as appropriate;
  - (c) Upon finalizing his disciplinary decision, the MA will inform the person concerned of his decision by issuing a “Notice of Disciplinary Decision” (NDD). The person concerned could apply to the Securities and Futures Appeals Tribunal (SFAT) for a review of the MA’s decision within 21 days after the NDD has been served;
  - (d) If the person concerned applies to the SFAT for a review of the MA’s decision, the SFAT will conduct the review and decide whether to, among other things, confirm, vary,

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<sup>1</sup> If the disciplinary sanction involved is within the statutory powers of the MA (e.g. removing or suspending all or part of the particulars of a relevant individual (ReI) from the HKMA register, or withdrawing or suspending the consent granted to an executive officer (EO)), the MA will exercise his disciplinary powers accordingly. However, if the disciplinary sanction involved is outside the statutory powers of the MA (e.g. revocation or suspension of the registration of a registered institution (RI), public or private reprimand of a ReI, an EO and/or a RI, imposing a pecuniary penalty on a ReI, an EO and/or a RI), the case will be referred to the SFC for taking the appropriate disciplinary sanction.

substitute for or set aside the MA's decision; and

- (e) Subject to the decision of the SFAT<sup>2</sup>, the MA will impose the relevant disciplinary sanction accordingly.

Item (b)

1.2 The breakdown of the 822 cases concerned (as of 12 November 2009) is set out in Table 1 below.

Table 1

Stage	Minibonds <sup>3</sup>	ELNs	Products referenced to Lehman Brothers	Total
1(a): Investigation completed and a decision made to refer the case to the SFC for taking disciplinary sanctions	-	23	277	300
1(b): Investigation completed and a decision made to impose disciplinary sanctions by the MA	56	13	39	108
2(a): Issued NID and awaiting representations (if any)	-	401	-	401
2(b): Reviewing representations (if any) received and consultation with the SFC	-	1	11	12
2(c): Issued NDD and the person concerned may apply to the SFAT for a review of the MA's decision within 21 days	-	-	-	-
2(d): Review of the MA's decision by the SFAT	-	-	1	1*
2(e): Disciplinary sanction taken	-	-	-	-
<b>Total</b>	<b>56</b>	<b>438</b>	<b>328</b>	<b>822</b>

\*: Disciplinary sanction was taken for this case and was announced on 20 November 2009. (See paragraph 1.3 below)

<sup>2</sup> A party to a review may, at any time after the determination of the review, apply to the SFAT for a stay of execution of its decision. Such party who is dissatisfied with a decision of the SFAT relating to the review may appeal to the Court of Appeal against the decision on a point of law.

<sup>3</sup> For Minibonds cases in which the complainant either was not eligible for the repurchase scheme or rejected the offer under the repurchase scheme.

Item (c)

- 1.3 The first disciplinary case was announced by the HKMA on 20 November 2009. Please refer to the related press release issued by the HKMA available on the HKMA's public website.

2. *As indicated in the Table, HKMA has referred a total of 334 Lehman-Brothers-related non-Minibond cases (201 ELNs cases and 133 cases involving products referenced to Lehman Brothers) to Securities and Futures Commission (SFC) for further action; while HKMA is continuing its investigation into these cases to establish if there has been a failure by the Relevant Individuals concerned. Please provide a breakdown on the latest position of these cases showing whether any of them are under “disciplinary consideration” by HKMA and if yes, what stage or phase has each case reached.*

2.1 The breakdown on the latest position of the 334 cases (as of 19 November 2009) is set out in Table 2.

Table 2

<b>Stage</b>	<b>ELNs</b>	<b>Products referenced to Lehman Brothers</b>	<b>Total</b>
Detailed investigation	115	119	<b>234</b>
Under disciplinary consideration (see Table 3)	86	14	<b>100</b>
<b>Total</b>	<b>201</b>	<b>133</b>	<b>334</b>

2.2 Among the 334 cases, 100 cases<sup>4</sup> are under disciplinary consideration (as of 19 November 2009). The various stages of the 100 cases under disciplinary consideration are set out in Table 3.

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<sup>4</sup> The 100 cases under disciplinary consideration have already been included in the cases reported in Table 1 under paragraph 1.2.

**Table 3**

<b>Stage</b>	<b>ELNs</b>	<b>Products referenced to Lehman Brothers</b>	<b>Total</b>
1(a): Investigation completed and a decision made to refer the case to the SFC for taking disciplinary sanctions	-	12	12
1(b): Investigation completed and a decision made to impose disciplinary sanctions by the MA	1	1	2
2(a): Issued NID and awaiting representations (if any)	85	-	85
2(b): Reviewing representations (if any) received and consultation with the SFC	-	1	1
2(c): Issued NDD and the person concerned may apply to the SFAT for a review of the MA's decision within 21 days	-	-	-
2(d): Review of the MA's decision by the SFAT	-	-	-
2(e): Disciplinary sanction taken	-	-	-
<b>Total</b>	<b>86</b>	<b>14</b>	<b>100</b>

3. *Please provide the numbers of complaint cases referred to SFC before reaching the agreement on the repurchase of Minibonds by 16 distributing banks as announced on 22 July 2009 in respect of each of the following types of products:*

- (a) Lehman Brothers Minibonds;*
- (b) ELNs issued/arranged by Lehman Brothers;*
- (c) other products issued/arranged by Lehman Brothers; and*
- (d) products referenced to Lehman Brothers.*

3.1 The HKMA issues a press release to inform the public of the investigation progress on a weekly basis. The numbers of complaint cases referred to the SFC as reported in the HKMA's press release on 17 July 2009<sup>5</sup> and before reaching the agreement on the repurchase of Minibonds by 16 distributing banks are set out in Table 4 below.

Table 4

<b>Product</b>	<b>Number of complaint cases referred to the SFC (up to 16 July 2009)</b>
(a) Lehman Brothers Minibonds	366
(b) ELNs issued/arranged by Lehman Brothers	91
(c) Other products issued/arranged by Lehman Brothers	0
(d) Products referenced to Lehman Brothers	25
<b>Total</b>	<b>482</b>

<sup>5</sup> Reporting the investigation progress as of 16 July 2009