SC Ref.No.SC(1)-S14
~~A-03(03)-SFC(11)-E(O)~~

5 September 2008

Market participants, investors urged to exercise collective discipline to defend against financial crisis

Market stability is best achieved when investors, market participants and regulators exercise discipline and avoid excesses, Mr Eddy Fong, Chairman of the Securities and Futures Commission (SFC), told a gathering of securities industry participants today.

At the luncheon address of the Asia Securities Forum 2008 starting today, Mr Fong noted that the underlying cause of the present global financial crisis is a weak risk management culture, not unlike earlier crises in financial markets.

"The ultimate stability of markets, however, is dependent also on self-discipline and market discipline," he stressed. He likened the "collective exercise of self-discipline, market discipline and regulatory discipline by respective stakeholders" to a "three-legged stool" that "would not stand if one leg is absent."

As a regulator, the SFC helps Hong Kong tackle the current challenges by adopting "a consultative approach in introducing new rules and regulations," Mr Fong explained. "The due process of consultation facilitates the making of informed decisions to serve the best interests of the market as a whole and of Hong Kong as an international financial centre."

He said he believed robust risk management and internal control systems can help guard against excessive risk-taking by market participants. To this end, investors can play a key role by exercising due diligence and their voting rights to provide the pressure and incentives for market participants to strengthen risk management.

The global nature of the current credit crunch "has revealed structural, operational and regulatory shortcomings" requiring "solutions that cut across markets, regulators and borders," Mr Fong also said. The "silver lining" lies in the "concerted efforts" now being exercised to "restore market confidence."

Mr Fong's speech is available on the SFC website www.sfc.hk.

End

Page last updated: 5 September 2008

0001

~~A-03(03)-SFC(16)-E(O)~~

12 September 2008

Subprime crisis highlights need for regulatory cooperation

The current credit crisis triggered by subprime-related mortgage problems underscored the need for a coordinated global response by both regulators and the private sector to address infrastructural deficiencies, said Mr Martin Wheatley, Chief Executive Officer of the Securities and Futures Commission (SFC).

Speaking at the Corporate Governance Conference of the Hong Kong Institute of Chartered Secretaries, Mr Wheatley noted that the subprime crisis has severely tested the resilience of financial systems in the advanced economies and regulators have had to resort to their full armoury of tools to improve liquidity, restore investor confidence and strengthen the financial system, including having the US government take over mortgage corporations Fannie Mae and Freddie Mac.

"The regulatory framework has not kept pace with market developments," Mr Wheatley said. Although "institutions operate globally and markets are integrated beyond national borders," regulators operate separately at local and national levels.

As the financial sector gains in scope and complexity, the "challenge" for regulators is "to strike the appropriate balance between stability and efficiency," he said. It is also important for regulators to maintain regular dialogue with the financial industry "on emerging issues that could potentially affect stability."

He attributed today's turmoil to poor risk management involving incentive structures that rewarded short-term gains, a securitisation process allowing institutions to pass on risks, valuation models that "forgot about liquidity risk," and the "procyclical" nature of regulation that encouraged more risk-taking as asset prices rose.

End

Page last updated: 12 September 2008

0002

~~A-03(03)-SFC(18)-E(O)~~

24 September 2008

SFC to investigate Lehman Brothers Minibond mis-selling complaints

The Securities and Futures Commission (SFC) today announced its decision to commence formal investigation into allegations that Lehman Brothers-related retail structured notes may have been misrepresented to Hong Kong investors in the selling process.

"Having conducted several meetings with Minibond investors in the last few days to hear their grievances, we have decided to conduct formal investigation into allegations of mis-selling by certain licensed intermediaries," said the SFC's Chief Executive Officer Mr Martin Wheatley.

The SFC's investigation will look at the conduct of the three SFC-licensed distributors of Lehman Brothers-related retail structured notes.

In addition, the SFC will examine whether any facts, matters or circumstances that should have been disclosed to the SFC were not disclosed by the Minibond issuers and their advisers at the time the offer prospectuses and marketing materials for each series of Minibonds were submitted for vetting.

The SFC's investigation will not cover the conduct of the 21 banks involved in selling Lehman Brothers-related retail structured products, which come under the supervision of the Hong Kong Monetary Authority (HKMA). However, the SFC will continue to offer assistance and work closely with the HKMA.

End

Page last updated: 25 September 2008

0003

~~A-03(03)-SFC(20)-E(O)~~

3 October 2008

SFC urges issuers of retail investment products of risk-disclosure duty

In view of widespread public concern over the marketing of retail structured products triggered by the collapse of Lehman Brothers Holdings Inc, the Securities and Futures Commission (SFC) today issued a circular to require all issuers of retail investment products to review whether risk disclosure and product descriptions are adequate, given the current market conditions.

Directed at issuers of all retail investment products, including retail collective investment schemes and retail structured products, the circular says marketing materials issued "must be clear, fair and present a balanced picture with adequate and prominent risk disclosure in compliance with all applicable regulations (Note 1)."

"Recent events show that investors need to be presented with a clearer picture of product risks – they need to understand better how products will operate in extreme market conditions or in the face of bankruptcy," said the SFC's Chief Executive Officer Mr Martin Wheatley. "We are reminding issuers of retail investment products, therefore, that they must exercise their duty more diligently within the current regulatory framework to disclose risks and explain their products."

The circular further reminds issuers to include in their marketing materials "upfront, prominent and adequate warnings" of all risks, including "new risks" emerging from prevailing market conditions. Issuers seeking authorisation from the SFC to market retail investment products also are advised to "revise their documents in light of the recent market events."

End

Note:

1. Collective investment schemes are authorised under section 104 of the Securities and Futures Ordinance (SFO) while the offering documents and marketing materials of retail investment products are authorised either under section 105 of the SFO or authorised for registration under the Companies Ordinance.

Page last updated: 3 October 2008

0004

~~A-03(03)-SFC(23)-E(O)~~

14 October 2008

SFC provides information on structured products

The Securities and Futures Commission (SFC) has today posted a list of unlisted retail structured products on InvestEd (Note 1) as a useful reference summary for investors.

The list contains a brief description of the product type (Note 2), the underlying assets and the total issue size or outstanding amount. In the case of products issued by special purpose vehicles, the list also sets out details of their ultimate counterparty (Note 3).

"Depending on the underlying assets and the features, each type of structured products will have a different risk and return profile. Investors should ensure that they understand a product before making an investment decision. If they require more information, we encourage them to discuss this with their intermediary," the SFC's Chief Executive Officer Mr Martin Wheatley said.

Investors should note that the list only includes retail structured products for which offer documents and marketing materials were authorised for issue by the SFC. Structured products sold through private placement, or those for which documents have not been authorised by the SFC are not included in the list.

The InvestEd website, which has just undertaken a major facelift, provides investors with a comprehensive database ranging from generic product knowledge, key risk factors for different types of investments, regulations for investor protection and interactive games to test investment knowledge. The recent website revamp has also rearranged the existing materials to make them more user-friendly and more easily understood by investors.

End

Notes:

1. InvestEd -- an interactive investor portal operated by the SFC.
2. Unlisted retail structured products include equity-linked deposits, equity-linked notes, equity-linked investments, credit-linked notes, fund-linked notes, commodity-linked notes and index-linked notes.
3. Ultimate counterparty in general means: (i) the issuer in the case of a direct issue; (ii) the guarantor in the case of a guaranteed issue; (iii) the collateral issuer / collateral guarantor and/or swap counterparty / swap guarantor in the case of an issue secured by collateral and/or swap arrangement.
4. The information is provided in addition to the latest issue of Monthly Focus that draws investors' attention to the risk profile of credit-linked notes and equity-linked notes. Monthly Focus is an e-newsletter on InvestEd which helps investors to keep track of prevailing investment issues. It is open to subscription.

Page last updated: 15 October 2008

0005

~~A-03(03)-SFC(25)-E(O)~~

17 October 2008

SFC to initiate mis-selling investigation against banks

As the regulatory body to initiate disciplinary proceedings, the Securities and Futures Commission (SFC) welcomes the first referral of Lehman Brothers Minibond mis-selling cases from the Hong Kong Monetary Authority (HKMA), which has front-line responsibility over the products' distribution by banks.

"The SFC will adopt a systemic top-down approach to ensure that allegations of mis-selling of Minibonds are investigated efficiently, effectively and expediently," the SFC's Chief Executive Officer, Mr Martin Wheatley, said.

"Since a single selling organisation is often the subject of multiple allegations, the SFC will examine whether the evidence exposes any systemic weakness in management controls. This is consistent with the SFC's normal approach and the approach taken in other developed jurisdictions to allegations of widespread mis-selling," he added.

As with any enforcement action, the SFC will apply investigation guidelines under the Securities and Futures Ordinance to these mis-selling allegations. During an investigation, the SFC will take a number of steps to gather evidence and to allow the alleged violator an opportunity to respond.

Evidence must be gathered properly before prosecution. No short cuts will be taken to compromise the SFC's objective to get it right. The SFC is very experienced in dealing with investigations and will complete them as quickly as possible.

The penalties available to the SFC, which would first be discussed with the HKMA, include public reprimands, fines and suspension or removal from the list of licensed or registered persons.

In addition to this, the SFC has the potential to agree a voluntary settlement. This would take into account what actions the person or institution has taken to remedy or mitigate the misconduct.

As for the 24 cases referred by the HKMA today, the SFC is not in a position to comment until it has had a chance to examine the evidence. Any ensuing action taken will be made public at an appropriate point in time.

End

Page last updated: 17 October 2008

~~A-03(03)-SFC(27)-E(O)~~

22 October 2008

SFC urges structured notes holders to seek updated information

The Securities and Futures Commission (SFC) today urges investors to be as up to date as possible about the factors that could impact their investments and the options open to them, as investigations into widespread allegations of mis-selling of certain structured notes (including Minibonds) continue. Only when armed with up to date information will investors be able to make informed decisions as to what course of action is in their best interest, the SFC says.

The worsening of the credit market in recent weeks has resulted in a number of credit defaults around the world. Investors in structured notes need to understand what impact this may have had on the underlying value of their specific investment. In particular, investors need to be aware that further defaults of companies, which form part of the collateral for some notes, could have a significant impact on the value of their investment.

Holders of structured products, particularly credit linked notes, are urged to seek information from distributors regarding the changed risks of their investment following recent events.

“As investors in the notes may suffer a substantial loss as a result of credit defaults, we consider it appropriate for issuers to give notice to registered note holders, for forwarding to the end investors, providing information that may be expected to significantly affect the ability of the issuer to meet its commitments under the notes,” said the SFC’s Chief Executive Officer Mr Martin Wheatley. “This is in accordance with issuers’ undertaking to do so, as disclosed in the prospectuses.”

The SFC has written to note issuers requiring that they notify distributors of information that may materially affect the issuers’ ability to perform their obligations; this should include any credit downgrade of the underlying reference entities or the collateral. Investors can then receive this information, including collateral information, directly from distributors.

In seeking to understand the current situation and the market prices of their structured notes, investors are encouraged to contact the relevant distributor from whom they bought the product directly. Examples of questions they may wish to ask to get a better understanding of their current position would include:

- What is the buy-back price of the note? (Note 2)
- What are the security arrangements backing this investment? This may include:

\- the mark-to-market value of the collateral;

\- whether the issuer has advised of any credit rating downgrade of collateral or any other event which may affect the value of the note (Note 3); and

\- the nature of the collateral (Note 4) e.g. whether it includes collateralised debt obligations (CDOs) and, if so, the portfolio reference entities; the recent collapse of three Icelandic banks and Washington Mutual, for example, may result in a significant reduction in value of CDOs that reference those entities and further defaults may lead to early termination of the notes.

End

Notes:

2. Investors should receive monthly statements with mark-to-market value of their investments as at month end.

0007

~~A-03(03)-SFC(29)-E(O)~~

23 October 2008

Intermediaries should accelerate internal mis-selling inquiries

The Securities and Futures Commission (SFC) has started to ask banks and brokerages to help accelerate the investigation process into alleged mis-selling of Lehman Brothers-related products, said the SFC's Executive Director of Enforcement, Mr Mark Steward.

Speaking at the Wealth Management Conference today, Mr Steward said banks and brokerages should not wait for the completion of the SFC's investigations before discussing any potential misconduct issues with the SFC.

"We encourage them to undertake their own internal inquiries into their selling practices, to speak to us about the scope of these inquiries and if necessary, engage external consultants to conduct a review," he said.

Mr Steward said the SFC has already discussed this process with some banks and will be asking others to take steps to speed up their internal investigations and reviews and report progress to the SFC.

"This approach is in the best interests of both the investors and the banks and brokerages," he said. "It will help accelerate a resolution of regulatory issues, it is the best way to reduce overall costs and expenses and it will mitigate the risk of a multitude of separate and competing legal claims," he added.

For banks or brokerages setting out to compensate affected clients, Mr Steward said they must make sure the population of the affected clients is clearly defined; the identification of affected clients is sound and covers the field of potential liability; and that the compensation is fair and reasonable.

Mr Steward's speech centred on how the SFC will respond to the allegations of mis-selling against banks and brokerages, including the best way to resolve mis-selling issues benchmarked against overseas experiences.

Mr Steward stressed a top-down approach will be taken to investigate the selling practices and policies of each bank and brokerage instead of investigating each complaint individually. "Our objective is to respond quickly to the maximum number of complaints in the shortest possible time," he said.

Mr Steward reiterated that there is no shortcut to the investigations. "No outcome will be pre-judged, and our conclusions will be based on evidence, not on supposition, speculation or any external pressure for a particular desired result," he said.

Mr Steward's speech is available on the SFC website www.sfc.hk.

End

Page last updated: 29 December 2008

0008

~~A-03(03)-SFC(37)-E(O)~~

29 October 2008

Global crisis demands cross-border regulatory co-operation

Different jurisdictions must work together to build a new financial order and an appropriate supervisory architecture that are capable of addressing the challenges of globalisation, according to Mrs Alexa Lam, the Deputy Chief Executive Officer and Executive Director, Policy, China and Investment Products, of the Securities and Futures Commission (SFC).

Speaking today at a Conference titled "SEC Regulation outside the United States", Mrs Lam said the current financial crisis calls for a co-ordinated, consistent response by authorities around the world in order to restore market confidence and stability.

"One of the inevitable results of globalisation is that there are no effective firewalls between markets," explained Mrs Lam. The recent collapse of Lehman Brothers Holdings highlighted the extent of global reverberations and market dislocations that one global player can potentially cause, she added.

"The experience points to the need to review the regulatory framework and structure in a global context in order for regulation to be more effective in today's financial landscape and global marketplace," Mrs Lam told the conference.

Mrs Lam also highlighted the need for financial institutions to work closely with regulators in times of serious market dislocations. Firms should increase stress testing, examine risk management models and functions and make sure they are in compliance with changing regulatory requirements.

Mrs Lam's speech is available on the SFC website www.sfc.hk.

End

Page last updated: 29 October 2008

0009