



SECURITIES AND FUTURES COMMISSION  
證券及期貨事務監察委員會

**WRITTEN RESPONSE TO THE FOLLOW-UP  
QUESTIONS RAISED BY THE SUBCOMMITTEE ON  
26 JUNE 2009**

**29 June 2009**



1. **Please provide the Securities and Futures Commission (SFC)'s investigation results on each of the nine cases of suspected misconduct involving Registered Institutions (RIs) referred to SFC by the Hong Kong Monetary Authority (HKMA) between April 2003 and 15 September 2008.**
  - 1.1. Out of the 9 cases of suspected misconduct involving RIs referred to the SFC by the HKMA between April 2003 and 15 September 2008, we:
    - took enforcement action in 4 cases (as set out below),
    - issued 3 warning letters in 1 case,
    - advised the HKMA to take other action in 2 cases,
    - referred 1 case to the CCB and
    - took no further action in 1 case.
  - 1.2. The 4 cases in which we took enforcement action involved:
    - ICICI Bank Ltd. ("ICICI ") (press releases dated 10.4.07 and 4.5.07) and 7 of its senior officers and employees. ICICI and 5 employees (4 of whom received a conditional discharge) were convicted of unlicensed dealing in securities. The other 2 employees were senior officers of ICICI who were convicted of aiding and abetting ICICI in carrying on unlicensed dealing activities,
    - Hung Sum Yee who was banned from re-entering the industry for 5 months (press release dated 24.8.07). This action followed allegations that Hung, while working at Hang Seng Bank Ltd., accepted and mishandled blank investment order forms and time deposit forms pre-signed by clients, and engaged in trading activities without disclosing this to her employer,
    - Chan Pak Kong Chris who was reprimanded and fined \$25,000. He concealed his trading activities from his employer by conducting joint trading with a client and breached his employer's staff dealing policy (press release dated 4.8.08),
  - 1.3. Standard Chartered Bank (Hong Kong) Ltd. ("SCB ") which was reprimanded (press release dated 6.1.09) and entered into a s201 agreement to pay compensation to eligible clients. The SFC found that SCB gave preferential treatment to one client over other clients by allowing the client to get same day pricing for switching in and out of mutual funds, and the same day pricing arrangement was not made known nor available to other clients who received next day pricing. As well, SCB was found to have failed to act in the best interests of its clients and to have exercised due skill, care and diligence to reasonably ensure that its clients were treated fairly. SCB agreed with the SFC to make compensation payments to eligible clients who invested in the relevant funds. In entering into this agreement, SCB did not accept that it had done anything wrong and it made the payments voluntarily.



2. **With reference to the sample checklists used by HKMA to conduct Tier 1 and Tier 2 on-site examinations on regulated activities of RIs (Annex 2A of M2(C)) and the thematic examination on RIs' investment advisory and dealing activities in credit-linked investments (Annex 2B of M2(C)), please advise whether HKMA has provided SFC with a copy of these checklists, and provide a copy of the checklist(s) used by SFC in conducting inspections on Licensed Corporations (LCs).**
  - 2.1. Please note that we need more time to address this request.



3. Please provide a document to explain how SFC conducts top-down investigations into RIs and LCs involved in the sale of Minibonds and other Lehman Brothers-related structured financial products. If practicable, please provide a copy of the guideline(s) for such investigations.
- 3.1 We are happy to explain how we conduct our top-down investigations.
- 3.2 The SFC's approach is to obtain relevant documents dealing with the sale process in each distributor examining key issues such as the:
- management controls,
  - due diligence process,
  - training and supervision of sales staff,
  - record keeping, and
  - procedures used at point of sale especially the way in which suitability was determined.
- 3.3 The SFC has called this a top down approach because we are assessing the distributor's systems and controls over the selling process.
- 3.4 In these investigations, the SFC's objectives are:
- to respond quickly to the maximum number of complaints in the shortest possible time, and
  - to obtain a full and proper understanding of the position of each organization without taking short cuts that would prejudice our assessment or our legal obligations to act fairly.
- 3.5 This approach is consistent with the SFC's overall enforcement strategy as exemplified in the SFC's published guidelines on fines. The guidelines make it clear that the SFC's assessment of the amount of a penalty involves an assessment of *the whole of the conduct* in question. For example, relevant factors identified in the guidelines include:
- the impact of the conduct on the integrity of the market,
  - whether significant losses have been incurred by clients or the investing public generally,
  - whether the conduct is widespread,
  - whether the conduct was engaged in by the whole firm or only by an individual, and
  - whether the conduct reveals serious or systemic weaknesses in respect to management systems or internal controls.
- 3.6 Regardless of whether the top down approach is used, an investigatory process normally involves compelling production of relevant documentation (which will often be voluminous and complex), interviewing witnesses/suspects and analysing the evidence obtained. Each investigation aims to gather the most relevant documents, identify the most relevant witnesses for interview and then to marshal the evidence in a logical and rational way so the case can be assessed accurately.
- 3.7 We hope this suffices to answer your query.



4. **The attached written questions raised by Mr LEUNG Kwok-hung and handed to the Chief Executive Officer of SFC at the hearing on 26 June 2009.**
- 4.1. Please note that we need more time to address this request.