



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

RESPONSES TO THE FOLLOW-UP QUESTIONS RAISED BY THE SUBCOMMITTEE ON 23 JUNE 2009

7 July 2009



3. Please provide the checklist(s)/manual(s) that SFC staff are required to follow when vetting the draft prospectuses and marketing materials of Minibonds and other LB-related structured financial products.
- 3.1 When reviewing a prospectus, the Prospectus Team first checks precedents, consults any relevant internal practices or policy (refer to paragraph 3.3 below) and that the document contains the information specified in the Third Schedule ("Third Schedule") to the Companies Ordinance ("CO"). To facilitate our review process, a structured note issuer or its legal adviser typically submits a completed CO compliance checklist(s) to demonstrate how they have complied with the Third Schedule requirements. The checklist(s) in essence contain(s) the relevant CO provisions prescribing the disclosure requirements and a blank copy of this compliance checklist is attached at **Appendix A**.
- 3.2 In reviewing marketing materials, the Prospectus Team refers to its published and gazetted *Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the CO* ("CO Marketing Guidelines") a copy of which is available on the SFC's official website and attached at **Appendix B** with which issuers are required to comply. Amongst other things, the CO Marketing Guidelines require that the marketing materials must not contain anything that is inconsistent with the information contained in the prospectus, and that the contents must not be false, biased, misleading or deceptive. The Prospectus Team also checks to see if appropriate warnings are included in the marketing materials. S1-Appendix 1
- 3.3 There has also been internal guidance since 2005 on points to note when reviewing prospectuses and marketing materials. For purposes of facilitating Subcommittee members' understanding of the guidance, a summary of points compiled from this internal guidance is attached at **Appendix C**.



4. **Please provide the relevant written records on SFC's authorization of the prospectuses and marketing materials of Minibonds series 27, 34 and 35 (S32) and Constellation Notes series 44, 56 and 58 (S33), including the queries/comments, if any, raised by SFC to the issuers on these documentations.**
- 4.1 The SFC has raised queries and commented on all Minibond prospectuses. In addition, from series 16 onwards (being the first series where marketing materials were submitted to the SFC for authorisation), the SFC also raised queries and commented on the marketing materials.
- 4.2 The SFC has raised queries and commented on all prospectuses for Constellation notes series. In addition, starting from series 10 and 11 (being the first series of Constellation notes where marketing materials were submitted to the SFC for authorisation), the SFC raised queries and commented on the marketing materials.
- 4.3 Examples of queries and comments made by the SFC are set out in the **Appendix D**. In addition, I briefly discuss below the differences in features of Minibonds and Constellation Notes respectively.

Differences in Features of Minibonds

- 4.4 The various series of Minibonds can roughly be divided into three groups in terms of their features: (i) Series 1, (ii) Series 2 to 9 and (iii) Series 10 to 36.
- 4.5 Series 1 - Pacific International Finance Limited issued notes and used (i) the proceeds from the issue of the notes to purchase the underlying securities (US\$ fixed rate notes guaranteed by Hutchison Whampoa Limited) which were held by an independent trustee, and (ii) the interest income and principal repayment from the underlying securities to pay interest and principal repayment due under the notes via swap arrangements with Lehman Brothers Special Financing Inc. ("LBSF"). The swap arrangements are guaranteed by Lehman Brothers Holdings Inc. ("LBHI").
- 4.6 Series 2 to 9 - the payment of interest and repayment of principal of the notes are subject to no credit event occurring to any of the reference entities specified in the prospectuses and no other redemption event occurring prior to the maturity date. The underlying securities used as collateral to back each of series 2 to 9 were guaranteed by LBHI. In respect of series 9, there were swap arrangements with LBSF acting as swap counterparty and LBHI as swap guarantor.
- 4.7 Series 10 to 36: the payment of interest and repayment of principal of the notes are subject to no credit event occurring to any of the reference entities specified in the prospectuses and no other redemption event occurring prior to the maturity date. However, instead of using securities guaranteed by LBHI as collateral, the collateral used to secure the notes were AAA-rated CDO securities (as at the date of issue or purchase of such securities). The criteria for choosing the collateral for each series are set out in the issue prospectus and the collateral is purchased on or after the issue date of the notes. For each series, there were swap arrangements with LBSF acting as swap counterparty and LBHI as swap guarantor.



Differences in Features of Constellation Notes

- 4.8 The issuer is Constellation Investment Ltd. The various series of Constellation Notes can roughly be divided into three main groups: (i) Series 1 to 4 and Series 6 to 13 (credit-linked notes), (ii) Series 14 to 50 and Series 55 to 85 (credit-linked notes) (iii) Series 5 and Series 51 to 54 (equity-linked notes).
- 4.9 All Constellation Notes are credit-linked notes except for Series 5 and Series 51 to 54, which are equity-linked notes. These equity-linked notes are secured by bank deposits and swap arrangements with DBS Bank Ltd acting as swap counterparty.
- 4.10 Series 1 to 4 and Series 6 to 13 used either bank deposit or corporate/government bonds as collateral. All remaining credit-linked series of Constellation Notes used AAA-rated CDO securities (as at the issue date of the notes) as collateral. The selection criteria for choosing the collateral for each series are set out in the issue prospectus and the collateral is purchased after the date of the prospectus. For each series, there were swap arrangements with DBS Bank Ltd acting as swap counterparty.