



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 3 JULY 2009**

9 July 2009



Q.1 Under the current regulatory structure, whether the Securities and Futures Commission (SFC) has to inform the Hong Kong Monetary Authority (HKMA) or vice versa, before deciding to take disciplinary action against Registered Institutions (RIs) or their Relevant Individuals.

- 1.1 In short, the allocation of responsibilities and functions between the SFC and HKMA is a direct consequence of the provisions of the Banking Ordinance ("BO") and the Securities and Futures Ordinance ("SFO").
- 1.2 The exercise of disciplinary powers against banks and their staff by the SFC and the HKMA is governed by the SFO and the BO and the allocation of responsibilities is reflected in the Memorandum of Understanding entered into between the SFC and the HKMA on 12 December 2002 ("MOU").
- 1.3 Under section 196 of the SFO, the SFC can take disciplinary action against regulated persons. Regulated persons, for the purposes of section 196 of the SFO, means registered institutions (banks which have been registered to carry out securities and futures related businesses), relevant individuals, executive officers and management staff of a registered institution.
- 1.4 As far as registered institutions and their staff are concerned, following disciplinary proceedings, the SFC may impose one or more of the following sanctions under section 196 of the SFO:
- (i) revocation or suspension of registration of a registered institution,
 - (ii) a prohibition order, i.e. , prohibiting the entity or the person from:
 - applying to be licensed or registered,
 - applying to be approved as a responsible officer of a licensed corporation,
 - applying to be given consent to act as an executive officer of a registered institution under section 71C of the BO,
 - seeking through a registered institution to have his name entered into the register maintained by the HKMA under section 20 of the BO,
 - (iii) fines up to HK\$ 10 million or three times the profit made or loss avoided for the conduct (whichever is greater), and
 - (iv) public or private reprimand on the entity or the person.
- 1.5 Before exercising any disciplinary power against registered institutions and/or their staff, the SFC has to consult the HKMA under section 198(2) of the SFO.
- 1.6 In the case of a relevant individual and an executive officer of a registered institution, the power to remove or suspend that individual's particulars from the HKMA's register, and to withdraw or suspend the consent given to an executive officer rests with the HKMA under sections 58A and 71C of the BO.
- 1.7 The HKMA is required to consult the SFC before exercising its power under sections 58A(1) and 71C(4) of the BO. The SFC has no powers and functions under the BO



and those functions belong solely to the HKMA. The HKMA is therefore able to take remedial action where individuals have fallen short of regulatory requirements.

- 1.8 Apart from the requirements for the SFC and the HKMA to consult under the SFO and BO respectively, the MOU addresses the same requirements.



Q.2 The additional expenditure that SFC has incurred for taking up investigations into RIs and Licensed Corporations involved in the sale of Minibonds and other Lehman Brothers (LB)-related structured financial products.

2.1 In conducting the 25 investigations (involving 19 RIs and 6 LCs) into the alleged mis-selling of Minibonds and Lehman Brothers related products, the SFC is taking a top-down approach. The top-down approach was the result of a strategic assessment of the nature of the cases to be investigated and the complexities involved in assessing conduct by so many parties over a period of time from 2002 to 2008. The SFC used its knowledge and experience of what has worked well for other regulators faced with the unique challenges of these investigations. The SFC views the top-down approach as the most efficient way of getting quickly to the heart of these types of cases.

2.2 We are undertaking these top-down investigations by deploying existing staff within the Enforcement Division.

2.3 Between 24 September 2008 and 2 July 2009:

- a total of 55 executive and support staff have participated in these investigations,
- a total of 13,492 man-hours have been spent on these investigations, and
- this amounts to a total staff cost of \$6,435,088.



Q.3 With reference to the attached extract of the verbatim transcript for the hearing on 26 June 2009, please advise when SFC commenced investigation into complaints relating to LB-related structured financial products other than Minibonds (such as credit-linked notes and equity-linked notes), and the number of RIs involved in these product areas.

3.1 We commenced our first investigation into the alleged mis-selling of Minibonds and other Lehman Brothers related products on 24 September 2008 (as we announced publicly on that day). The remaining investigations commenced on various dates thereafter. The SFC has commenced 25 such investigations, involving 19 RIs and 6 LCs.

3.2 We are organising our priorities in accordance with the volumes of complaints, which means we are giving priority to our investigation into the sale of Minibonds. We are also investigating the sale of other Lehman Brothers products by some banks where the numbers justify doing so as a more pressing priority, especially private placement notes.



- Q.4 During its meetings with the Administration and other regulators between April 2003 and 14 September 2008, whether SFC has drawn their attention to its regulatory concerns and survey/inspection findings about the increased exposure of retail investors to complex and structured financial products; and if yes, please provide those details.**
- 4.1 As stated at paragraphs 5.2 and 5.9 of my written statement, all our survey and inspection findings were published. We also brought to the attention of the Administration and HKMA the findings of our surveys that were relevant to them, and final draft reports on our thematic inspections were sent to HKMA.