



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

**Responses to the follow-up questions arising
from the Subcommittee hearing on 8 January
2010**

29 January 2010



2. **Please provide information/documents, if any, on SFC's discussion with the Government and/or the Hong Kong Monetary Authority between April 2003 and 15 September 2008 on the efficacy of the existing regulatory structure governing the banks' regulated activities and the need or otherwise for reviewing it.**
- 2.1 Before the enactment of the Securities and Futures Ordinance ("SFO") in April 2003, the Bills Committee on the Securities and Futures Bill and Banking (Amendment) Bill had thorough discussions and debates on, inter alia, the regulatory structure governing banks' regulated activities, the level playing field between banks and brokers and the considerations that were taken into account when deciding upon the division of labour between the SFC and the Hong Kong Monetary Authority ("HKMA").
- 2.2 In general, the SFC has worked closely with HKMA and the Administration in keeping our regulatory regime under constant review. Following the commencement of the SFO in 2003, the regulation of banks' securities business has been discussed at various CFR meetings from 2004 to 2007 relevant excerpts of which as I understand have been produced to the Subcommittee¹.
- 2.3 I also wrote to the then FS at his request in February 2006 (see Appendix A) providing information on the regulatory structure with regard to securities services undertaken by financial institutions in the banking and securities sectors. S7(C)

¹ Please refer to paragraphs 8.4 - 8.9 of the Annex to the Written Statement of the Financial Secretary about the discussion of CFR on the regulation of banks' securities business as appended below:

- 8.4 Following the commencement of the SFO in 2003, regulation of securities business conducted by banks was reported and discussed at CFR meetings on a number of occasions.
- 8.5 At the CFR meeting on 10 October 2003, CFR noted that HKMA had been liaising with SFC on the implementation of the SFO and the BO. The regulation of the securities business conducted by banks was another area of joint efforts by the two regulators.
- 8.6 At the CFR meeting on 13 May 2004, HKMA reported that it would continue to work together with SFC on the regulation of the securities business conducted by banks.
- 8.7 At the CFR meeting on 3 December 2004, CFR noted that the cooperation between HKMA and SFC had been working well, and there had not been many concerns raised.
- 8.8 At the CFR meeting on 22 June 2006, CFR noted that there had been continued cooperation between HKMA and SFC on the regulation of securities business, and there were no other cross-sector regulatory issues which warranted the meeting's attention.
- 8.9 At the CFR meeting on 9 July 2007, CFR noted that the implementation of the revised MOU concerning the supervision of banks' securities activities between HKMA and SFC had helped enhance the effectiveness of the communication and cooperation on enforcement matters; and that the two regulators worked closely to review the policy on the imposition of disciplinary sanctions."



5. Further to the evidence already produced by SFC to the Subcommittee on SFC's authorization of the draft prospectuses of LB-related structured financial products, please provide the following documents where appropriate:
- (a) SFC's reports relating to its authorization of the draft prospectuses of 10 structured financial products which met the following criteria: (i) the prospectuses of such products were authorized by SFC in each of the years between April 2003 to 15 September 2008; and (ii) the relevant products covered by such prospectuses were issued/distributed by LB, Standard Chartered Bank (Hong Kong) Limited, DBS Bank (Hong Kong) Limited and Citibank (Hong Kong) Limited;
 - (b) the checklist completed by the relevant issuers in accordance with Schedule 3 of the Companies Ordinance (Cap. 32) in respect of each application for authorization of the prospectus of the product mentioned in (a) above; and
 - (c) SFC's follow-up questions to the relevant issuers on the aforesaid checklists, and the written responses received by SFC from the issuers.
- 5.1 The SFC had not authorised any prospectuses of LB-related unlisted retail structured products issued/arranged by Standard Chartered Bank (Hong Kong) Limited or Citibank (Hong Kong) Limited during the period from April 2003 to 15 September 2008. Normally, in any application for registration for authorization of prospectus of unlisted retail structured products, the issuer would be the applicant, assisted by the arranger where necessary. Distributors in such capacity do not play a part in this process. For information on the distributing banks of LB-related products, the Subcommittee may wish to contact their frontline regulator HKMA.
- 5.2 The law provides for certain exemptions pursuant to which prospectuses of investment products may be issued without seeking authorisation. For example, there is an exemption in respect of investment products which are offered to professional investors only or which are not offered to the Hong Kong public. Nonetheless, intermediaries selling those products are still subject to the obligation to ensure that the product is suitable for the particular investor.
- 5.3 Minibonds and Constellation notes are the main LB-related structured products arranged by LB and DBS Bank (Hong Kong) Limited respectively during the above period. Copies of examples of the comments raised by the SFC on the draft prospectuses of certain series of Minibonds and Constellation notes and the Companies Ordinance Compliance Checklist were provided to the Subcommittee in Appendices E and A to the Written Statement of Mr Brian Ho dated 7 July 2009 respectively. To the extent the issuer was unable to comply with any of the items set out in the Checklist with legal grounds, waivers would have been sought and granted by the SFC under the CO. Details of these waivers, including the supporting reasons, are available on the SFC's website. The SFC's reports relating to the authorisation of the draft prospectuses of these products would typically set



out a summary of the key features of the relevant product and the details of any waivers sought. The prospectuses of all series of Minibonds and Constellation notes are available on the SFC's website.