



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

**Responses to the issues arising from the hearings
attended by Mr Harold Ko**

10 February 2010



9. **Whether the relevant divisions (such as CFD and IPD in SFC) or SFC's Complaints Control Committee have had any discussion, or conducted any study, on the suitability of credit-linked/equity-linked notes (such as LB-related Minibonds and structured financial products) for retail investors since April 2003. If yes, please give particulars of the time and occasion of each such discussion or study, how each was documented or recorded, and the conclusion(s) of such discussion or study.**
- 9.1 As stated in FS Report (December 2008), the SFC does not believe that it is appropriate for regulators to assess suitability of products for consumers at the point of reviewing of offering documents or advertisements, and use suitability as a criteria for authorising or refusing to authorise offering documents or advertisements in relation to products¹. It is the duty of the intermediary to assess suitability at the point of sale of the product based on the personal circumstances of the particular investor.

¹ Para 24.4 of FS Report.



- 11. In the months following the collapse of LB, whether SFC had held up the authorization of all offers of investment products? If yes, what were the reasons for doing so and for how long was the authorization work suspended?**
- 11.1 On 3 October 2008, the SFC issued a circular (the "3 October Circular") to remind product issuers of their duty to ensure their offering documents continue to be up-to-date and to contain sufficient information necessary for investors to make an informed decision to purchase investment products given the new circumstances that arose following the collapse of Lehman. The 3 October Circular also reminded product issuers to ensure that their marketing materials must be clear, fair and present a balanced picture with adequate and prominent risk disclosure, including any new risks that may have emerged in the then prevailing market circumstances.
- 11.2 In light of the Lehman incident, and pursuant to the 3 October Circular, issuers had generally taken considerable time to revise and enhance the disclosure in the offering documents. The SFC has continued to process applications for authorization of offering documents under the Companies Ordinance and the SFO despite the onset of the financial crisis.



12. Please explain how SFC has perceived its regulatory roles in securing investor protection and in facilitating financial innovation? Since about 2001, has there been any change in the way the Government pursues its policy objectives through SFC?

12.1 The statutory functions of the SFC, as set out in the SFO include provisions directed at promoting an understanding of financial products and securing an appropriate degree of protection for members of the public investing in financial products. These include provisions in section 5 of the SFO that require the SFC, so far as reasonably practicable, to –

- “(a) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (c) promote and develop an appropriate degree of self-regulation in the securities and futures industry;
- (e) encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
- (i) promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
- (j) encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;
- (k) promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor; and
- (l) secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products.”

12.2 In response to the Government’s policy to encourage development of the bond market to further enhance Hong Kong’s position as an international financial centre since 2001, the SFC was asked to come up with proposals to reduce the burden on the part of the issuers. Hence, the SFC developed the specific proposals on streamlining the prospectus regime in consultation with the Government. Details of the SFC’s actions can be found in paragraphs 4 - 7 of my written statement submitted to the Subcommittee on 10 June 2009 which are reproduced below:

“4. The Financial Market Development Task Force (“FMDTF”) was established in December 2001 following initiatives announced by the Financial Secretary in his 2001 Budget Speech. In June 2002, the FMDTF issued its first report recommending, inter alia, “clarifying” the



existing CO provisions to facilitate debt issuers' publishing "offer awareness materials" to increase public awareness of debt offerings.

5. In response the SFC published three sets of guidelines to facilitate offers of shares and debentures in February and March 2003 –
 - (a) Guidelines on the content and manner of publication of certain publicity and disclosure materials that may be issued to the public in Hong Kong;
 - (b) Guidelines facilitating offers of shares or debentures on a repeat or programme basis using separately registered programme and issue prospectuses; and
 - (c) Guidelines providing for relaxations so that faxed copies of experts' consent letters and a bulk print proof of the prospectus may be accepted for registration under the CO in certain circumstances.
 6. Product development was further encouraged by the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions)(Amendment) Notice 2003 which exempts the issuer of debentures from providing certain information in the prospectus that is irrelevant to investors and/or that will impose an undue burden on the issuer².
 7. The Companies (Amendment) Bill 2003 was also introduced which, among other things, entrenched the regulatory approach set out in the Guidelines regarding offer awareness materials and the use of a "dual prospectus" structure for programme offerings. In addition, the Bill also expressly excluded from the definition of "prospectus" documents containing or relating to offers and invitations that fall within 12 categories set out in the 17th Schedule to the CO – "the safe harbours" (for ease of reference these are listed in Appendix 3). After a period of public consultation and scrutiny by the Bills Committee, the Bill was enacted as the Companies (Amendment) Ordinance 2004 on 22 July 2004 and came into effect on 3 December 2004."
- 12.3 It is important to note that these specific proposals and measures are not intended to, and do not, adversely affect our regulatory standard applied to the issuers and regulatory function to secure an appropriate degree of protection for investing public.

² For instance, a prospectus is exempted from compliance with paragraphs 4, 5 and 22 of the Third Schedule to the CO regarding, amongst others, (i) the number of founders or management or deferred shares; (ii) directors' qualification shares and (iii) any borrowing power exercisable by directors respectively.



13. **In 2001, four Executive Directors (EDs) left SFC and were replaced by Alexa LAM, Ashley Alder and Alan Linning. To what positions were they appointed and what kind of regulatory experience, if any, was possessed by each of them prior to joining SFC?**
- 13.1 Mrs Alexa Lam, Mr Ashley Alder and Mr Alan Linning were all experienced legal practitioners when they were appointed to the Board of the SFC in 2001. In particular, Mrs Lam had acted in various senior positions within the SFC before 2001, including that of Chief Counsel who had dealt with all legal matters in connection with the Commission.