SC Ref.No.SC(1)-S59

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

SFC
證監會

Responses to the follow-up questions arising from the hearing held on 9 February 2010

9 March 2010

1. **In connection with the authorization granted by SFC to the offering documents of unlisted structured financial products (such as Lehman Brothers (LB)-related Minibonds and Constellation Notes), please advise:**

(i) whether SFC has the same powers under section 342A(2) of CO or section 105 of SFO to impose conditions; and if yes, whether the same conditions can be imposed under either of the aforesaid provisions of the respective Ordinances;

1.1 We presume that this question is asking about section 342A(1) of the Companies Ordinance("CO") rather than section 342A(2) of the CO as the latter provision is concerned with class exemptions. There is no provision in section 105 of the Securities and Futures Ordinance ("SFO") for class exemptions and so the two provisions cannot really be compared.

1.2 The SFC has power under section 342A(1) of the CO to grant waivers from the requirement that a prospectus contains the information set out in the Third Schedule to the CO. However, the applicant for a waiver must satisfy the SFC that the exemption will not prejudice the interest of the investing public and justify the waiver by reference to one of the two grounds laid down in the section i.e. that compliance with any or all of those requirements -

(a) would be irrelevant or unduly burdensome; or
(b) is otherwise unnecessary or inappropriate.

1.3 Under section 342A(1) of the CO the SFC can agree to waive a requirement and impose a condition related to the requirement in the Third Schedule to the CO which has been waived. However, the SFC cannot agree to waive a requirement and subsequently impose a condition relating to a completely different matter such as the structure of the product. To do so would be ultra vires.

1.4 Section 105 of the SFO provides that the SFC may authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 103(1)(a) or (b) of the SFO. As subsections 103(2) to (11) of the SFO provide that subsection 103(1) does not apply to a wide range of documents, the power to authorize documents under section 105 is more restricted than might appear at first sight. For example it does not apply to –

(a) Prospectuses which comply with or are exempt from compliance with Part II or XII of the CO (see section 103(3) of the SFO). This means that structured products which are debentures (a form of "securities") are not subject to the general prohibition in section 103(1).

(b) Marketing materials falling within section 38B(2) of the CO which mainly relates to extracts from or an abridged version of a prospectus (see section 103(3) of the SFO).

1.5 There is power in section 105 of the SFO to authorize the issue of any advertisement, invitation or document subject to the condition specified in subsection (2) and to any other conditions it considers appropriate "on the matter to which the advertisement, invitation or document relates". The SFC also has a power under section 105(5) to refuse to authorize the issue of an advertisement, where it is not satisfied that "the matter to which the advertisement, invitation or document relates" is not in the interest of the

investing public.

1.6 Marketing materials for unlisted structured financial products (such as Lehman Brothers (LB) - related Minibonds and Constellation Notes) would not normally be required to be authorized under section 105 of the SFO as they would fall within section 38B(2) of the CO. Even If the SFC was asked to authorize a leaflet or an advertisement for an unlisted structured financial product under section 105 of the SFO, the SFC would still not be able to require changes to be made to the structure of the product as a condition of authorizing the leaflet or advertisement. The imposition of such a condition in these circumstances (i.e. where the prospectus itself was required to be authorized under the CO regime) would not be reasonable and proportionate.

1.7 Accordingly the answer is "No". The SFC does not have the same powers under section 342A(1) of the CO and section 105 of the SFO.

(ii) whether SFC has powers to impose a condition to the effect that the above-mentioned products may not be sold to particular class of investors or sector of the public; and

1.7 There are no powers under the CO to impose conditions to the effect that unlisted structured financial products (such as Lehman Brothers (LB)-related Minibonds and Constellation Notes) may not be sold to a particular class of investors or sector of the public. However, the SFC has effectively imposed a requirement that the products should not be sold to investors for whom they are not suitable by including this requirement in the Code of Conduct which is published under section 169 of the SFO. **S1-Appendix 11**

1.7.1 Under the Code of Conduct and the Internal Control Guidelines provide that intermediaries must - **S1-Appendix 12**

(a) Know their clients – collect from each client information that includes their investment knowledge, investment horizon, risk tolerance (including risk of loss of capital) and capacity to make regular contributions and meet extra collateral requirements, where appropriate (see GP4 and para 5.1 to 5.3 of Code of Conduct);

(b) Understand the investment products they recommend to clients (i.e. they must conduct product due diligence) (see GP2 and para 3.4 of Code of Conduct and Section VII para 3 of the ICG and para 3a of the Appendix to the ICG);

(c) Provide reasonably suitable recommendations by matching the risk return profile of each investment product with the personal circumstances of each client to whom it is recommended (see GP2, para 3.4, 3.10 & 5.2 of Code of Conduct);[1]

Regardless of whichever public offering regime is opted, the Code of Conduct, made under SFC's authority under SFO, applies anyway.

(iii) whether the Corporate Finance Division and Investment Product Department have any differences in opinion over SFC's powers to impose conditions when authorizing prospectuses for

[1] See paragraph 32 of my first written statement.

registration under CO since early 2000s; and if yes, what are the differences?

1.8 We have not been able to identify any papers showing differences of opinion being expressed between CFD and IPD on the SFC's powers to impose conditions when authorizing prospectuses for registration under the CO. The imposition of conditions would normally be a matter for CFD alone and the occasion would not arise for IPD to comment.

2. **CEO/SFC stated at the hearing on 9 February 2010 that between 2001 and 2003 there were a lot of discussions/debates within SFC on whether structured financial products (being structured as debentures) should be regulated under the CO prospectus regime. Please provide the details of such discussions/debates.**

2.1 In 2001, there was an internal debate on how structured products including listed ones should be regulated. Part and parcel of this debate related to whether structured products in the form of debentures should remain to be regulated under the CO or should there be changes for them to be regulated under the Protection of Investors Ordinance ("PIO") having regard to the greater flexibility afforded in that latter regime. However, after some discussion, the SFC recognized that the proposal could not be implemented without at the same time conducting a wholesale review of the relevant legislation.

2.2 Ultimately we achieved the flexibility required by : (1) the Commission delegating powers to staff within CFD to approve documents under the PIO (these powers had formerly been reserved to staff in IPD); (2) issuing the three sets of guidelines I referred to in paragraph 5 of my first statement; (3) introducing the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2003 which I explained in paragraph 6 of my first statement; and (4) introducing the Companies (Amendment) Bill 2003 which provided for the use of a "dual prospectus" structure for programme offerings and added various exemptions as described in paragraph 7 of my first statement. One of the most significant measures towards enhancing investor protection was the extension of prospectus liability to advertisements issued in connection with public offers of shares and debentures under the CO. This extension in effect closed the so-called "regulatory gap" under the PIO.

2.3 As I explained at paragraph 4 of my first written statement the former Financial Secretary ("FS") stated in his Budget Speech in 2002 that the Government would work together with the regulators to increase liquidity, attract more financial product issuers to Hong Kong, as well as capital and investors from the Mainland and overseas. The Financial Market Development Task Force, set up under the former FS's direction to provide a high level forum to coordinate new initiatives on the development of Hong Kong's financial markets, endorsed a three-phase approach to review and reform the Companies Ordinance which was designed to modernize the regime for the public offering of shares and debentures, which had been in place since the 1980s. W13(C)

3. **Paragraph 50 under Part II of SFC's "Consultation Paper on Proposals to Enhance Protection for the Investing Public" issued in September 2009 (September 2009 Consultation Paper) sets out the proposals to increase product transparency. Please explain, if the proposals are implemented, the changes, if any, that SFC would require the product issuers to make to the structure of LB-related Minibonds, Constellation Notes and Octave Notes, in order that the product documentation would be authorized by SFC.**

3.1 The consultation is still underway. Some or all of the proposals may or may not be implemented in their proposed forms or at all. The SFC is now reviewing the feedback and all the opinions will be considered carefully.

3.2 As is explained at paragraph 25(b) of Part I, and paragraphs 33 to 36 of Part II, of the Consultation Paper (both in respect of the review of the 2 public offering regimes), there will need to be legislative reform (i.e. changes to both the SFO and the CO) in order to begin implementing changes to the regulation of products such as LB-related Minibonds, Constellation Notes and Octave Notes.

3.3 On the other hand, many of the proposals in the draft Code on Unlisted Structured Products have previously applied by way of administrative measures. In the light of the expectation that the structured products market will re-establish itself after the current financial crisis, the SFC believes that it is important to codify certain existing practices and augment certain existing requirements into the proposed draft Code.

3.4 The recent financial crisis has led to calls by many countries, including the G20 group, to enhance the transparency and liquidity of the derivatives market and to strengthen the regulation of such financial instruments. In line with the global regulatory approach, we have re-examined the collateral requirements for unlisted structured products and propose in the draft Code that the assets constituting the collateral should be based on the above principles of greater transparency and liquidity.

3.5 As a result of requiring greater transparency and liquidity of the derivatives market, structured products or securities issued by SPVs or similar entities that have the same structure as LB-related Minibonds, Constellation Notes and Octave Notes would need to meet these revised collateral requirements, if such proposals are to be implemented by codifying such requirements in the draft Code administratively.

4. **Please confirm whether SFC's Investment Product Department (IPD) has all along been applying standards covering all the item listed in paragraph 50 (i.e. proposals on enhancing disclosure and increasing product transparency) under Part II of the September 2009 Consultation Paper to vet the offering documents of investment products.**

4.1 As we explain at paragraph 51 of Part II of the Consultation Paper –

> "Our research indicates that few financial centers have yet issued any regulatory codes or guidelines specifically targeting structured products as a class. Leading jurisdictions such as the U.S., the U.K. and other countries within the E.U. adopt a largely disclosure-based approach for most financial products, which is the approach that the Commission believes should continue to be adopted in Hong Kong. As stated in the FS Report, the Commission recommends that Hong Kong maintain the regulatory philosophy of disclosure coupled with conduct regulation of intermediaries, rather than "product" or "merit" regulation."

4.2 The proposed Code on Unlisted Structured Products is the first SFC code proposed for authorizing structured products in the Hong Kong regulatory framework.

4.3 At the time of the collapse of Lehman, the unlisted structured products vetted by IPD were mainly a small number of equity linked deposits ("ELDs"). By definition, only banks can take "deposits". Therefore ELDs are invariably issued by banks, and accordingly ELDs have no guarantor and do not need to have a guarantor. The SFC required that a letter of no objection be obtained from the HKMA before the banks could first offer ELDs. All of the issuers of the documents which SFC authorized were therefore prudentially supervised by HKMA. IPD relied on a set of internal guidelines to review applications for authorization of offering documents for ELDs (which were quite different from the standards in paragraph 50 (i.e. proposals on enhancing disclosure and increasing product transparency). The majority of investment products authorized by IPD are collective investment schemes (CIS). CIS are authorized by IPD pursuant to powers under section 104 of the SFO and their related offering documents and advertisements are authorized under section 105 of the SFO. The more common type of CIS are funds and investment-linked assurance schemes. IPD refers to a set of non-statutory codes and guidelines, namely the Code on Unit Trusts and Mutual Funds and Code on Investment-Linked Assurance Schemes, issued by the SFC in carrying out the vetting functions and authorization in respect of these products and their offering documents and advertisements.

4.4 The draft Code on Unlisted Structured Products has been developed having regard to international regulatory trends, market development and our prior regulatory experience in relation to structured products

4.5 A number of administrative measures adopted by CFD in the past include eligibility requirements relating to issuers and guarantors as well as reference assets. These are good practices that the SFC believes should be upheld, codified and applied across the board to all unlisted structured products in future. At the same time, we are also cognizant of the global regulatory trend that calls for enhancing product transparency and disclosure relating to OTC

derivatives. We have therefore also augmented practices on collateral such that clear guidance is given on the types of collateral that could be posted for structured products. For instance, investment grade is a key requirement that CFD looked for in authorizing the prospectuses for the above-named structured products. This requirement still plays a role in the newly released Draft Code on Unlisted Structured Products.

4.6 Apart from those which are irrelevant due to differences in product structure, the standards on disclosure which apply to ELDs are comparable to those required for ELNs/CLNs.

4.7 Specifically, in relation to the question whether IPD has all along been applying standards covering all the item listed in Paragraph 50 (i.e. proposals on enhancing disclosure and increasing product transparency) the following 6 measures would not be directly applicable in the case of ELDs: –

(a) eligibility requirements for Issuers and Guarantors (including special purpose vehicle Issuers);

Since ELDs are issued by banks, they are prudentially regulated by the HKMA and it follows that the banks meet the eligibility requirement. For the same reason, there is no need for ELDs to have a guarantor.

(b) a requirement for the appointment of, and obligations and responsibilities imposed on, Product Arrangers, in certain cases;

This requirement is not applicable for ELD as they are issued by banks and ELDs are not collateralised products.

(c) criteria for eligibility of collateral;

This requirement is not applicable for ELDs because they are deposits.

(d) criteria for eligibility of reference assets;

This requirement is not applicable because the SFC required that banks have to obtain a letter of no objection from HKMA before they could offer ELDs.

(e) a requirement for provision of regular indicative valuations of the structured product; and

(f) a requirement for regular liquidity provision.

With respect to the requirements in (e) and (f), during the soft consultation of the Draft Code on Unlisted Structured Products, the SFC understood from the issuers of unlisted structured products (including ELN/CLN and ELD) that on a voluntary basis, they may sometimes (upon request) provide investors with indicative pricing. Also, some issuers may allow investors to redeem their investment in structured products earlier than the term initially fixed for that product. We believe these are good practices that should be codified and applied in the future and hence we have consulted the market on the viability of imposing them as part of the requirements.

5. If the offering documents of LB-related Minibonds, Constellation Notes and Octave Notes had been vetted by IPD in accordance with the standards applied by IPD to investment products under its charge, would these offering documents still be authorized without the imposition of any conditions? Please provide reasons for your answer.

5.1 Applications in respect of credit-linked notes such as Minibonds, Constellation Notes and Octave Notes were never processed by IPD of the SFC. If applications for authorization for registration of prospectuses of credit-linked notes were to be handled by IPD, IPD would be bound by law to rely on the powers under the CO (which have been delegated to the executive directors of all Divisions). We have no reason to believe that IPD would have refused to authorize the prospectuses, or would have imposed any different conditions from those imposed by CFD, since each Division/Department would have been dealing with an application for authorization of registration of the same documentation under the same statutory regime – the CO regime.

6. **With reference to paragraph 6 of Mr Harold KO's written statement (W23(C)), please explain what considerations had moved SFC deciding to grant to the issuers of LB-related Minibonds and structured financial products exemptions or waivers in respect of paragraphs 27 and 31 of the Third Schedule of CO; and why the lack of track records on business on the part of the special purpose vehicles as issuers was not a factor for SFC to consider whether the CO prospectus regime was at all applicable.**

6.1 The reasons for granting the exemptions under section 342A of the CO are set out in our website. Exemptions in respect of paragraphs 27 and 31 of the Third Schedule to the CO in respect of Minibonds were typically granted on the grounds that producing financial statements or auditor's report would be unduly burdensome for the Issuer since the Issuer is not required to do so by Cayman Island laws, furthermore, the inclusion of such financial statements or auditor's report would be irrelevant in the context of the Issuer as a special purpose company and would not impact in a prospective investor's decision to purchase the notes and the obligations of the Issuer under the notes being secured on the collateral and the swap arrangements. Since Minibonds were structured as debentures, the CO prospectus regime applied.

7. In connection with the "Harmonization Project" stated in paragraph 7 of W23(C), please advise:

(a) what proposals under the "Harmonization Project" have been incorporated in the relevant proposals stated in SFC's September 2009 Consultation Paper;

7.1 Please see the answer to Q. 2

(b) the reasons for not adopting the proposals in (a) before mid-September 2008;

7.2 Please see the answer to Q. 2

(c) the identity of the proponent(s) of the proposals in (a); and

7.3 The Harmonization Project and the larger project to update the CO are projects of the SFC and the Administration

(d) CEO/SFC's involvement in the Harmonization Project since he took office in 2005.

7.4 The Harmonization Project and the larger project to update the CO have been discussed at various meetings at which CEO/SFC was present. The Consultation Papers issued in 2005 and 2009, as well as the Consultation Conclusions published in 2006 were approved by the Board of the SFC, of which CEO/SFC is a member. Further, ED/CFD reports to CEO/SFC from time to time on matters that CEO/SFC should be aware of and/or his direction is needed.

S1-Appendix 7

S17

8. **As stated in paragraphs 16 and 17 of W23(C), all departments/divisions within SFC agreed on a set of detailed suitability guidelines, please advise:**

(a) the decision-making process, including particulars of the relevant officer(s) who made the relevant decision, that led to the issue of a set of FAQ in lieu of the detailed guidelines prepared after extensive work; and

8.1 The overall direction, policies and strategies of the SFC are determined by the SFC Board, but each division is responsible for determining how to implement the policies and strategies.

8.2 After the first thematic inspection conducted in 2004 the SFC decided to take further regulatory initiatives to address selling practices issues. These included issuing specific interpretations and clarifications of expected standards under the Code of Conduct and working with the HKMA by sharing the SFC's findings with it and encouraging the HKMA to conduct a similar inspection on banks. Mr. Harold Ko then volunteered to develop further guidance on the suitability requirements under the Code of Conduct. Mr. Ko issued the first draft of the guidelines in November 2005 for internal comment. An informal IIP working group chaired by Mrs. Alexa Lam, Executive Director IIP was formed to consider the draft. The working group consisted of Senior Director, several directors in the different departments within IIP, and relevant Senior Managers and others, all in the IIP Division. Mr. Ko was a member of the working group. **S1-Appendix 11**

8.3 Meanwhile, IS Department, the department responsible for issuing the Code of Conduct and supervising SFC licensees' conduct, commenced the second round of thematic inspections in January 2006. Preliminary findings from the second round of inspections suggested that selling practices had not improved substantially from what was seen in the first thematic inspection. In view of the findings, the IIP working group meeting held on 29th May 2006 agreed that selling practices by investment advisors remained a problem and had to be addressed immediately. Mr. Ko was present at the meeting. Mr. Chung Hing Hing, a director, was tasked to work together with Mr. Ko's team and those staff in the IS Department that were involved in the ongoing second round thematic inspections. They were required to make sure that more practical guidance could be provided to the industry to explain how the suitability requirement under paragraph 5.2 of the Code of Conduct should be interpreted. In the afternoon of 29th May, after the working group meeting, the major findings of the second round thematic inspections were circulated by email to all working group members. Mr Ko was one of the recipients. He continued to remain as part of the IIP working group.

8.4 On 11th January 2007, Mr. Chung sent an email to the IIP working group including the witness, stating –

> "We have now reviewed all the issues pertaining to Investment Advisers and summarised them in a table format. Included in the summary (last column) are recommendations on the way forward in respect of each of the issues identified. Details of the rationales (sic) of the proposals are also set out in the table.

In relation to the issue of suitability of advice tendered by IAs to their clients, it has been proposed that guidance be provided to the market in the form of FAQs format. The FAQs clarify the suitability obligations of licensed and registered persons engaging in financial planning and wealth management business (IAs). The scope is set out in this way to exclude brokers buying and selling listed securities for clients, but will cover brokers' financial planning and wealth management side of business, where appropriate.

We have crafted the FAQs carefully such that they do not introduce any new requirements to the broad principles already contained in the Code of Conduct or Internal Control Guidelines. This approach has the advantage of obviating the need to go for formal consultation and in the short run, at least, codified the practices and the expectations that have been generally conveyed to the market with no apparent great resistance. However, it may be useful to expose the FAQs, say to IFPHK and selected individuals. Before that, I would also be consulting ENF, LSD and HKMA. In this regard, I appreciate your steer as how the documents could be exposed with minimum reaction as there no doubt will be opposition to any perceived increased regulation of the licensees." [Emphasis added.]

W23(C) (Para. 15)

8.5 The IIP working group eventually decided to issue the FAQs as we were articulating our understanding of what paragraph 5.2 of the Code of Conduct already required and no new requirements were to be introduced. This decision was also supported by the Enforcement Division and Legal Services Department of the SFC.

M4

(b) the legal effect of FAQ, not being guidelines or codes issued under section 399 of SFO.

8.6 Issuing guidance in the form of FAQ is one of the tools SFC uses to explain to the market how we interpret certain regulatory requirements, including the Code of Conduct. Other tools are guidelines and circulars. Whether they take the form of FAQs or guidelines, these do not have the force of law but non-compliance with such would affect the fitness and properness of licensed persons.

8.8 Although the FAQ were not issued under section 399 of SFO, it is clearly specified in the introduction to the FAQ that "the SFC will take into account compliance with guidance in the FAQ to determine whether a licensed or registered person is fit and proper to carry out financial planning and wealth management business in Hong Kong." In taking regulatory action against intermediaries in mis-selling cases for their breach of suitability obligations under the Code of Conduct the SFC has taken into account the extent to which the guidance set out in the FAQ has been followed. Hence, in practice, there is no difference between FAQ and guidelines in terms of compliance since an intermediary's failure to comply with FAQ will be equally relevant to an assessment of its fitness and properness as its failure to comply with guidelines.

S1-Appendix 11

8.9 As to the legitimacy of taking the FAQs into account in a fitness and properness assessment, section 129(1) of the SFO provides that –

"In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission...shall, in addition to any other matter that the Commission...may consider relevant, but subject to section 134, have regard to - (a)...". (Emphasis added)

8.10 In the disciplinary context, section 194(3) provides as follows:

"The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case". (Emphasis added)

8.11 There is therefore no need for the FAQs to be made under section 399 of the SFO. The FAQs will be taken into account in assessing the fitness and properness of an intermediary and the SFC may impose sanctions on an intermediary, ranging from fines to revocation of licence, where its fitness and properness has been impugned.

8.12 SFC's enforcement experience is that the FAQs have been instrumental in enforcing key conduct requirements in the Code of Conduct as well as in establishing key criteria in assessing fitness and properness in the sale of securities. The FAQs need to be read with the Code of Conduct. No material difference arises by virtue of the fact that the FAQs were not made under s399.

9. **In connection with the departure of four experienced senior staff (namely Laura CHA, Andrew PROCTOR, Paul BAILEY and David STANNARD) in 2001 as stated in paragraph 11 of W23(C), please provide information on the following:**

(i) the circumstances of the departure of each of the above-mentioned officers; and

(ii) whether the Commission had any concern about the departure of the four senior staff within a short period of time; and if yes, please provide the details.

9.1 Pleaser refer to the table below for the circumstances of the departure of these officers :

	SFC Staff	The circumstances of and the reasons for the departure
1	Laura CHA	End of contract
2	Andrew PROCTOR	End of contract.
3	Paul BAILEY	Retirement.
4	David STANNARD	End of Contract.

9.2 We agree that it is unfortunate that four executive directors left during the course of one year. We would point out that new executive directors were appointed in their place promptly on 3 year terms. It is also important to bear in mind that executive directors of the SFC are supported by senior members of their respective divisions including Senior Directors and Directors. We are not aware of any specific concerns being raised at the time about the departure of the four executive directors.

10. In connection with a letter dated 14 February 2006 from CEO/SFC to the then Financial Secretary (FS), which attached a paper covering whether the securities business conducted by the brokers and by the banks should be under the supervision of one single regulator (S7(C)), please advise:

(a) whether SFC received any response from the then FS or the Administration;

10.1 Although the Administration had not issued a written response to CEO/SFC's letter to the then FS dated 14 February 2006 attaching a paper on "Regulation of Registered Institutions and Relevant Individuals", the subject matter had been reported and discussed at various meetings of the Council of Financial Regulators (CFR). Specifically, after the Administration received the said letter from CEO/SFC, the CFR noted at its subsequent meeting held on 22 June 2006 that there had been continued cooperation between the Hong Kong Monetary Authority ("HKMA") and SFC on the regulation of securities business, and there were no other cross-sector regulatory issues which warranted the meeting's attention.[2] These discussions did not propose a change to the existing regime under which the SFC sets the standards in respect of the conduct of regulated activities (e.g. by publishing the Code of Conduct and the Internal Control Guidelines) whilst the HKMA is the frontline regulator for banks and their staff. S7(C) S1-Appendix 11 S1-Appendix 12

(b) whether SFC had forwarded the above-mentioned paper to HKMA or had any discussion with HKMA on the relevant issue; and

10.4 No.

(c) whether the Council of Financial Regulators chaired by FS discussed the matter or came to any consensus/conclusion, or took any follow-up action, on the relevant issue.

10.5 Following the letter dated 14 February 2006 from CEO/SFC to the then FS, the CFR did not discuss whether the securities business conducted by the brokers and by the banks should be under the supervision of one single regulator. S7(C)

10.6 CEO/SFC's letter dated 14 February 2006 duly reflects the fact that a communication channel has been put in place to discuss the implementation of the regulatory regime since it came into operation in 2003. This regulatory regime is as described in Appendix 1 to the letter dated 14 February 2006 to the then FS.

---

[2] For the avoidance of doubt, the said references made to the various CFR meetings in this response were made without prejudice to the claim for confidentiality previously made by the Administration in relation to the extracts of the agenda and minutes of these CFR meetings which were confidential in nature as discussions at these meetings might be sensitive and leakage of such information might not be conducive to the financial stability of Hong Kong, in respect of which the Subcommittee notified the Administration vide its letter dated 17.3.2009 that the Subcommittee decided by a majority that the above said materials would be handled in accordance with the paragraph 19 of the Subcommittee's Practice and Procedure.