



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

**Responses to the issues arising from the hearing
on 26 March 2010**

13 April 2010



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1. **Has the Securities and Futures Commission (SFC) sought any external legal advice on the legal basis for it to apply the eligibility requirements applicable to listed structured products under Chapter 15A of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and require issuers/guarantors/swap counterparty/swap counterparty guarantors of unlisted structured products to comply with such requirements? If yes, please provide the details of such advice. If no, the reasons.**
 - 1.1 We do not see the need to seek legal advice (whether external or internal) as our Corporate Finance Division has been applying the eligibility requirement under Chapter 15A of the Main Board Listing Rules to unlisted structured product issuers, guarantors and swap guarantors through administrative means.
 - 1.2 As stated in paragraph 12 of my second written statement submitted to the Subcommittee on 8 March 2010, the market accepted that SFC imposed these administrative measures because the market was familiar with the requirements relating to issuers and guarantors of listed structured products under Chapter 15A of the Main Board Listing Rules, and could comply. It is also important to note that there was no dispute about compliance by any unlisted structured product issuers, guarantors or swap guarantors.

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2. **Has SFC sought external legal advice on its view that under section 342A(1) of the Companies Ordinance (Cap. 32), SFC may only impose conditions related to the requirement waived, instead of having wide discretionary powers to impose conditions (such as structural or other requirements) as it thinks fit? If yes, please provide the details; if no, the reasons.**
 - 2.1 We have sought external legal advice confirming our longstanding view that under section 342A(1) of the Companies Ordinance the SFC can agree to waive a requirement and impose a condition related to the requirement in the Third Schedule which is being waived. We do not think it appropriate to disclose the external legal advice to the Subcommittee as it is covered by legal professional privilege.



3. In connection with paragraph 27 of S57, please provide documentary proof which contains specific references or statements that investor protection has always been and will remain SFC's first priority and primary objective.
- 3.1 Please see extracts of SFC's annual reports from 2004/2005 to 2008/2009 marked as "Appendix 1" demonstrating very clearly that SFC has been always putting investors' interest first. We do so through regulation, enforcement and education as detailed in the extracts.



4. In connection with paragraph 17 of S57 stating that Lehman Brothers (LB)-related structured financial products were available for sale to retail investors in some overseas jurisdictions, please provide further information, with reference to some major international centres in North America, Europe and Asia as examples, on the following:
- (a) how the sale of structured financial products (such as LB-related products) to retail investors was regulated;
 - (b) the requirements, if any, applicable to the retail investors (e.g. their net worth, etc.) who purchased such products; and
 - (c) the protection accorded to these investors.
- 4.1 We will provide the response as soon as practicable.



5. Please provide a copy of SFC's internal grievance handling procedures for its employees, and whether there are any constraints on (a) their attendance at hearings conducted by authorities (such as the Legislative Council and its committees), and (b) their access to documentation in SFC's possession for the purpose of assisting such hearings.
- 5.1 Please find attached a copy of SFC's Grievance Procedures marked as "Appendix 2" that are publicly available on our corporate website <www.sfc.hk>.



6. In connection with paragraph 138 of S57 on the use of the term "quick wins", please advise:
- (a) whether SFC had used the term "quick wins" in any of its documents relating to the pursuit of its regulatory objectives. If yes, please provide the details; and
 - (b) the "quick-wins" that SFC has come up with and delivered since June 2002.
- 6.1 We will provide the response as soon as practicable.