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Paper for the House Committee meeting on 4 June 2010

**Membership of the Subcommittee to Study Issues Arising from Lehman
Brothers-related Minibonds and Structured Financial Products**

Purpose

This paper invites the House Committee ("HC") to consider:

- (a) whether new members should be allowed to join subcommittees of HC authorized to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382); and
- (b) the request from Mr LEUNG Kwok-hung for joining the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products ("the Lehman Subcommittee").

Background

2. The Lehman Subcommittee is the first, and so far the only, subcommittee of HC authorized by resolution of the Council to exercise the powers conferred by section 9(1) of Cap. 382. It was established under House Rule 20(j)(ii) on 17 October 2008 to study issues arising from Lehman Brothers-related Minibonds and structured financial products and to make recommendations where necessary. Accordingly, the Subcommittee's practice and procedure is based not only on the relevant provisions in the Rules of Procedure ("RoP") and the House Rules applicable to subcommittees of committees of the Council, but is also subject to the relevant provisions of Cap. 382.

3. In view of the wide range and complexity of the issues involved in its inquiry, the Lehman Subcommittee has drawn up its major areas of study, and has taken forward its study by stages and in phases in accordance with its work plan. The

Subcommittee has decided that all witnesses would be summoned and examined on oath. Up to 2 June 2010, the Subcommittee held a total of 73 meetings, including 41 hearings to obtain evidence from witnesses (including senior officials and executives from the Administration, regulatory authorities and banks), as well as 29 closed meetings to deal with, among others, various procedural and legal issues (such as claims of public interest immunity) arising from the hearings. The progress of work of the Subcommittee is in **Appendix I**.

4. The Lehman Subcommittee does not have a fixed membership size. When the Subcommittee commenced work in October 2008, it comprised 27 members. So far, seven members have ceased to be members, including Mr LEUNG Kwok-hung who resigned as Member of the Council on 28 January 2010. The Subcommittee currently consists of 20 members, and the membership list is in **Appendix II**.

5. At the meeting of the Lehman Subcommittee held on 25 May 2010, members noted the request from Mr LEUNG Kwok-hung, who was returned by the Legislative Council by-election held on 16 May 2010, for joining the Subcommittee. The Subcommittee agreed that in the absence of any express provision for admission of new members to committees/subcommittees of this nature, his request for joining the Subcommittee should be put to HC for consideration.

Existing rules and practices

6. At present, there is no express provision in RoP, the House Rules or the Practice and Procedure of the Lehman Subcommittee that governs whether new members should be admitted to the Subcommittee. While House Rules 21(d) and 22(d) allow a Member who joins the Council after the start of a session to signify membership for Panels and Bills Committees, it is unclear whether the same principle should apply, by virtue of House Rule 26(f), to the Subcommittee which has been authorized to exercise the powers under Cap. 382. It is also questionable whether House Rules 23(c) and (e) relating to application for late membership are intended to apply to the Subcommittee to deal with a request to join the Subcommittee which is at this stage of its work.

7. For a select committee which may also exercise the powers under Cap. 382 in conducting an inquiry, there is a fixed membership size determined by HC. At the HC meeting on 26 February 2010, Members agreed to the recommendation of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man ("the Select Committee") that as the Select Committee had completed its hearings and was in the report drafting stage, it was not necessary to fill the vacancy in the membership of the Select Committee arising from the resignation of Mr LEUNG Kwok-hung with effect from 29 January 2010.

Matters for consideration

8. Matters relating to admission of new members to the Lehman Subcommittee were first considered by the Subcommittee at its meeting held on 11 May 2010. The following concerns were noted by members:

- (a) Given that the Subcommittee had a fact-finding role similar to a tribunal, due regard should be given to the principles of natural justice, such as the principle of "he who decides must hear", in considering whether it would be appropriate to have new members admitted to the Subcommittee.
- (b) If new members were to be admitted, the Subcommittee would need to take all reasonable and necessary remedial measures to assist those new members in keeping abreast of all the evidence that they previously had not heard, and such measures might not be practically feasible. The Subcommittee would also need to consider whether the taking of such remedial measures, if any, would be sufficient to ensure procedural fairness for all the affected parties.

9. At the aforesaid meeting, members generally agreed that since the Lehman Subcommittee was set up under HC and in the absence of provisions governing admission of new members, it might be more appropriate for HC to consider requests, if any, from Members for joining the Subcommittee.

Advice sought

10. Members' views are sought on:

- (a) whether new members should be allowed to join subcommittees of HC authorized to exercise the powers under Cap. 382; and
- (b) the request from Mr LEUNG Kwok-hung for joining the Lehman Subcommittee.

**Subcommittee to Study Issues Arising from Lehman Brothers-related
Minibonds and Structured Financial Products**

Progress of work up to 2 June 2010

Period	Major works undertaken
Stage I Late-October 2008 to mid-February 2009	8 meetings including 5 closed meetings were held to undertake the preparatory work for the Lehman Subcommittee's study, including the Subcommittee's Practice and Procedure, major areas of study and work plan.
Stage II <i>First phase</i> Mid-February 2009 to mid-April 2010	55 meetings were held, which comprised 31 hearings to obtain evidence from the following witnesses, and 24 closed meetings to deal with, among others, various procedural and legal issues (such as confidentiality of documents and claims of public interest immunity) arising from the hearings: <ul style="list-style-type: none"> - Professor K C CHAN, Secretary for Financial Services and the Treasury; - Mr Joseph YAM, former Monetary Authority; - Mr Y K CHOI, former Deputy Chief Executive, Hong Kong Monetary Authority; - Mr Martin WHEATLEY, Chief Executive Officer of the Securities and Futures Commission (SFC); - Mr Brian HO, Executive Director, Corporate Finance Division of SFC; - Mr John TSANG, Financial Secretary; and - Mr Harold KO, former employee of SFC
<i>Second phase</i> Mid-April 2010 to 2 June 2010	10 hearings were held to obtain evidence from the top and senior management staff of the following three banks: <ul style="list-style-type: none"> - DBS Bank (Hong Kong) Limited; - Standard Chartered Bank (Hong Kong) Limited; and - Citibank (Hong Kong) Limited. <p>Preparatory work is undertaken to summon senior executives from three other banks (i.e. The Royal Bank of Scotland N.V. (formerly known as ABN AMRO Bank N.V.), Bank of China (Hong Kong) Limited and Dah Sing Bank, Limited) to give evidence in the next several months.</p>

Appendix II

Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

Membership list (up to 2 June 2010)

Chairman	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Deputy Chairman	Dr Hon Philip WONG Yu-hong, GBS
Members	Hon Albert HO Chun-yan (<i>up to 17 November 2008</i>) Dr Hon David LI Kwok-po, GBM, GBS, JP (<i>up to 27 October 2008</i>) Dr Hon Margaret NG (<i>up to 15 January 2009</i>) Hon James TO Kun-sun Hon CHAN Kam-lam, SBS, JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, SBS, JP (<i>up to 21 October 2009</i>) Hon Jeffrey LAM Kin-fung, SBS, JP Hon LEUNG Kwok-hung (<i>up to 28 January 2010</i>) Hon WONG Ting-kwong, BBS, JP Hon Ronny TONG Ka-wah, SC Hon CHIM Pui-chung Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KAM Nai-wai, MH Hon Starry LEE Wai-king Dr Hon LAM Tai-fai, BBS, JP (<i>up to 3 February 2009</i>) Hon Paul CHAN Mo-po, MH, JP Hon CHAN Kin-por, JP Hon CHAN Tanya (<i>up to 30 October 2008</i>) Dr Hon Priscilla LEUNG Mei-fun Dr Hon LEUNG Ka-lau Hon IP Wai-ming, MH Hon Mrs Regina IP LAU Suk-ye, GBS, JP

(Total : 20 members)