

**HKMA's response to information requests of
Legislative Council Panel on Financial Affairs
Follow-up to meeting on 2 November 2009**

2. *In relation to the concern of Hon CHAN Kin-por and Hon Abraham SHEK on the need to keep complainants informed of the progress of investigation on cases of Lehman-related investment products other than Minibonds, such as equity-linked notes, the Hong Kong Monetary Authority (HKMA) was requested to provide the following information on the 610 cases under disciplinary consideration:*
- (a) whether all of the complainants concerned were informed when their cases proceeded to the stage of disciplinary consideration, and the number of the complainants informed if only some but not all of them were informed; and*
 - (b) if the complainants were not informed, whether there was any legal restriction which prohibited the regulators from informing the complainants concerned of the investigation progress at certain stages.*

HKMA's response on item (a)

2.1 To ensure that the complainants of Lehman-related investment products are kept informed of the investigation progress, the HKMA notifies the complainants in writing of the investigation status at different stages. These stages include preliminary assessment, detailed investigation, referral to the Securities and Futures Commission (SFC) for its appropriate action at the bank level, and completion of disciplinary process. However, there is no arrangement to inform complainants of the fact that their cases have proceeded to the disciplinary stage which typically concerns relevant individuals (ReIs) and/or executive officers (EOs) of registered institutions (RIs).

HKMA's response on item (b)

2.2 There are existing legal restrictions which prohibit the HKMA from informing the complainants concerned of the investigation progress at certain stages. For cases under disciplinary consideration, according to sections 58A, 71C and 132A of the Banking Ordinance (BO), the Monetary Authority (MA) may disclose to the public (including the complainants) details of the decision he has made regarding disciplinary action in respect of ReIs and EOs of RIs only after he has exercised his powers in this regard (i.e., removing or suspending all or part of the ReIs' particulars from the HKMA register and withdrawing or suspending the consent granted to the EOs). To ensure fair treatment to the person implicated, before exercising the above powers, the MA is required to give the relevant ReI or EO a reasonable opportunity of being heard and lodging an application for review of the MA's decision to the Securities and Futures Appeals Tribunal under section 132A(6) of the BO. Pre-mature disclosure of the decision would not be fair to the person implicated and could jeopardise the whole disciplinary proceedings.

3. *To address Hon Ronny TONG's concern about the transparency of the investigation process of complaints about Lehman-related investment products, HKMA was requested to provide information on the legal basis which had given rise to its view that information on the investigation progress of these complaints could not be disclosed to the public before completion of the whole investigation process, including the appeal procedures. HKMA was also requested to seek legal advice on the feasibility of disclosing relevant information of the complaints at an earlier stage of the investigation*

HKMA's response

3.1 As set out in paragraph 2.1, to ensure that the complainants of Lehman-related investment products are kept informed of the investigation progress, the HKMA notifies the complainants in writing of the investigation status at different stages. These stages include preliminary assessment, detailed investigation, referral to the SFC for its

appropriate action at the bank level, and completion of disciplinary process. However, when the cases proceed to the stage of disciplinary consideration, the HKMA will only be able to notify the complainant upon completion of the disciplinary process (including the review procedures).

Hong Kong Monetary Authority
November 2009