

**Follow-up to the hearing in the morning of 23 October 2010**

**Information (including relevant documents and records, if any)  
on the following issues**

1. Under the Minibonds Repurchase agreement, "experienced investors", i.e., investors who in the three years preceding their first purchase of Minibonds, executed five or more transactions in leveraged products, structured products or a combination of these products, are not eligible for the repurchase offer. Please advise on the number of Minibonds investors of BOCHK who have been excluded from the Repurchase Scheme for being "experienced investors".
  - 1.1 Out of the 14,038 customers who had purchased Minibonds and who were affected by the collapse of LB, 319 customers were classified as "experienced investors".
2. According to the "enhanced complaint handling process" at Item 64b of **W40(C)**, the "Assessor" is responsible for reviewing the investigation result of a complaint case and the "Review Panel" is responsible for making the final decision on compensation. Please advise on the following:
  - (a) The categories and number of personnel taking up the role of "Assessor" and the Terms of Reference of the "Assessor"; and
- 2.1 The Assessor is responsible for reviewing the investigation result of a complaint case. The number of Assessors deployed would be adjusted according to the actual number of cases being investigated. At its peak after the implementation of enhanced complaint handling procedures, the number of Assessors deployed was 9 when the number of investigators was 35. Assessors were drawn from managers or staff of more senior level at Internal Audit Department and Risk Management Department and must have investigation and decision making experience. Please refer to paragraph 3.4 of Item 64a in **W40(C)** for the Terms of Reference of the "Assessor".
  - (b) The categories and number of personnel that make up the "Review Panel" and its Terms of Reference.
- 2.2 Please refer to paragraph 5 of Item 64a in **W40(C)** for the composition and Terms of Reference of the "Review Panel".
3. In respect of the enhanced complaint handling procedures as required under the

Minibonds Repurchase Agreement described in paragraph 64.3 of W40(C), please advise the date on which the enhanced complaint handling procedures were put in place.

3.1 Following the requirement under the Minibond Repurchase Agreement dated 22 July 2009 regarding the review and enhancement of the Bank's customer complaints handling procedures, the Bank introduced the enhanced complaint handling procedures in September 2009. All complaint cases which were unresolved or unsettled as of September 2009 were handled or reviewed in accordance with the procedures.

4. It is noted from Item 67a of W40(C) that out of 8 702 complaint cases in relation to Minibonds that have been settled, 8 608 cases are settled under the Minibonds Repurchase Agreement and 94 cases are settled by the enhanced complaint handling procedures. Please provide (i) a breakdown of these 94 settled cases showing the settlement amount as percentages of the investment amount; and (ii) without disclosing details of individual cases, a breakdown of the broad reasons that led to BOCHK's approval of settlement of these cases.

4.1 The breakdown of cases showing the settlement amount as percentages of the investment amount :

Settlement Amount as Percentages of the Investment Amount	No. of Cases
30% - 39%	3
40% - 49%	4
50% - 59%	15
60% - 69%	22
70% - 79%	24
80% - 89%	20
90% -99%	5
100%	1

4.2 The breakdown of cases in terms of the broad reasons that led to the Bank's approval of settlement :

Broad Reasons for Approval of Settlement	No. of Cases
Family or financial difficulties	3
Customer relationship	5
Health conditions	16
Special consideration on customer background e.g. age, income, education and investment experience	32
Documentation deficiencies (i.e. where any document had not been filled out in the manner that met the bank's strict internal requirements, although it did not constitute non-compliance of regulatory requirements)	38

5. In respect of the 94 complaint cases in relation to **Minibonds** that were received after 15 September 2008 and settled by the enhanced complaint handling procedures (item 67a of **W40(C)**), please advise whether the bank has classified the cases according to the three types of settlement proposal (建議和解方案) as described in paragraph 5.4 at Item 64a of **W40(C)**. If yes, please provide the respective number of cases that were categorized under each of the three types of settlement proposals (namely, "Regulatory Concern", "High Risk" and "Special case").

5.1 All settlement proposals were endorsed by the Review Panel according to the enhanced complaint handling procedures. In respect of the 94 cases, 38 cases were categorized as "High Risk", 56 cases were categorized as "Special Case", while none was categorized as "Regulatory Concern".

6. It is noted from Item 67a of **W40(C)** that of the 743 complaints in relation to Lehman Brothers-related **non-Minibonds** structured financial products which had been settled, 612 cases had been settled by the enhanced complaint handling procedures and 131 cases had been settled before the enhanced complaint handling procedures were implemented. Please provide the following information:

- (a) Of the aforesaid 612 cases, (i) the number of cases settled with payment of 100% of investment amount; (ii) a breakdown of the remaining settled cases showing the settlement amount as percentages of the investment amount; (iii) without disclosing details of individual cases, a breakdown of the broad reasons that led to the BOCHK's approval of settlement of these cases and (iv) the respective number of cases that have been categorized under each of the three types of settlement scenarios as described in paragraphs 5.4.1 and 5.4.2 at Item 64a of **W40(C)** (namely, "Regulatory Concern", "High Risk" and "Special case").

6.1 There were no cases settled with 100% of investment amount.

- 6.2 The breakdown of cases showing the settlement amount as percentages of the investment amount:

Settlement Amount as Percentages of the Investment Amount	No. of Cases
20% - 29%	1
30% - 39%	11
40% - 49%	21
50% - 59%	183
60% - 69%	266
70% - 79%	116
80% - 89%	7
90% -99%	7

- 6.3 The breakdown of cases in terms of the broad reasons that led to the Bank's approval of settlement:

Broad Reasons for Approval of Settlement	No. of Cases
Family or financial difficulties	8
Health conditions	53
Customer relationship	60
Documentation deficiencies (i.e. where any document had not been filled out in the manner that met the bank's strict internal requirements, although it did not constitute non-compliance of regulatory requirements)	116
Special consideration on customer background e.g. age, income, education and experience	375

- 6.4 For the respective 612 cases, 116 cases were categorized as "High Risk", 496 cases were categorized as "Special Case", while none was categorized as "Regulatory Concern".

- (b) Of the aforesaid 131 cases, (i) the number of cases settled with payment of 100% of investment amount; (ii) a breakdown of the remaining settled cases showing the settlement amount as percentages of the investment amount; and (iii) without disclosing details of individual cases, a breakdown of the broad reasons that led to the BOCHK's approval of

settlement of these cases.

6.5 There was 1 case settled with 100% of investment amount.

6.6 The breakdown of cases showing the settlement amount as percentages of the investment amount:

Settlement Amount as Percentages of the Investment Amount	No. of Cases
30% - 39%	1
40% - 49%	0
50% - 59%	26
60% - 69%	15
70% - 79%	63
80% - 89%	15
90% -99%	10
100%	1

6.7 The breakdown of cases in terms of the broad reasons that led to the Bank's approval of settlement:

Broad Reasons for Approval of Settlement	No. of Cases
Family or financial difficulties	1
Health conditions	5
Special consideration on customer background eg. age, income, education and experience	54
Documentation deficiencies (i.e. where any document had not been filled out in the manner that met the bank's strict internal requirements, although it did not constitute non-compliance of regulatory requirements)	71

7. It is noted from paragraph 65.1 of W40(C) and Item 67a of W40(C) that prior to the collapse of Lehman Brothers, BOCHK settled 4 complaint cases in relation to alleged mis-selling of Lehman Brothers-related structured financial products. What were the major concerns raised in these complaint cases? Did BOCHK detect any irregularities in the selling process? If yes, please provide details. Did BOCHK take any actions to rectify these irregularities. If yes, please provide details. If no,

please provide the reasons.

7.1 Prior to the collapse of Lehman Brothers, BOCHK received 5 complaint cases in relation to alleged mis-selling of Lehman Brothers-related structured financial products, 4 of which were resolved by settlement after the collapse of Lehman Brothers (the remaining one by early redemption before the collapse of Lehman Brothers). Of these 4 settled cases, 2 were settled pursuant to the Repurchase Scheme and 1 case was settled on compassionate grounds. The remaining 1 case was settled out of consideration of the customers' background including their age, investment experience and the proportion of their investment in the product to their total assets, as well as the documentation record of the sales process. No allegations of irregularities were substantiated after investigation.

8. Please confirm whether the underlying collaterals of any series of Minibonds and LB-related Constellation Notes sold by BOCHK consisted of sub-prime assets.

8.1 According to the arranger/coordinating dealer's confirmation, in none of those series of Minibonds and LB-related Constellation Notes distributed by BOCHK did their underlying collateral consist of sub-prime assets.

9. According to Mr HE Guangbei, commission (獎金) and bonus (花紅) are both payable to the sales staff of BOCHK. Please explain the differences between commission (獎金) and bonus (花紅) payable by BOCHK, the time of the year when they are payable, and the conditions under which the sales staff can be entitled to payment of commission and/or bonus.

9.1 Bonus is payable in arrears on an annual basis to all BOCHK staff (including sales staff). The amount of bonus payable to each BOCHK staff is affected not only by individual staff performance, but also by BOCHK's business performance for that year and the overall performance of the department to which the relevant staff member belongs. For sales staff working in branches, not only his/her sales performance is taken into consideration, but also other factors such as customer service quality, business skills, expertise and compliance, etc.

9.2 On the other hand, during the Relevant Period, incentive payment under the sales incentive scheme was payable in arrears on a quarterly or semi-annual basis to sales staff working in branches. Incentive payment was based on the staff member's overall sales performance in all product categories, e.g.

mortgage, deposit, credit card, investment product, etc., and was affected by BOCHK's overall business performance.

10. According to Mr HE Guangbei, there was a scoring methodology for calculating a customer's score after he has answered all the questions in the Questionnaire on Investment Preference (QIP) (Item 36a of W40(C)).

(a) Please provide a copy of the scoring methodology applicable to the QIP.

10.1 Please refer to paragraph 3.1 of our responses to the follow-up questions to the afternoon hearing on 23 October 2010.

(b) Out of the customers who had purchased Lehman Brothers-related structured financial products, how many of them were assessed to be unsuitable for purchasing such products according to their scores in the QIP?

10.2 In 57.6% of transactions of LB-related structured financial products which were affected by the collapse of Lehman Brothers, the customer confirmed that although the risk rating of the product was higher than those that were comparable with the risk appetite indicated by the scores in his/her QIP, he/she still wished to invest in the LB-related structured financial products.

11. In respect of each series of Minibonds distributed by BOCHK, please advise whether BOCHK had conducted due diligence on each series on a continuous basis to confirm whether the issuer had purchased the requisite underlying collaterals as stated in the prospectus (e.g. AAA-rated CDOs) and to keep track of whether there were any changes which affected the quality of the underlying assets.

11.1 BOCHK had on a continuous basis kept track of whether there were any changes which affected the quality of the underlying assets. We had distributed update circulars to all frontline staff to inform them of the latest credit rating of the collateral of Minibond and other LB-related structured financial products in order to equip them for customer enquiries.

12. According to Mr HE Guangbei, Minibonds and other LB-related structured financial products sold by BOCHK were not within the scope of retail structured deposits (零售結構性存款). Please confirm whether BOCHK has any internal document which sets out the products that fall within and / or outside the scope of retail structured deposits (零售結構性存款). If yes, please provide a copy of the document.

12.1 Structured Deposits (結構性存款) available to BOCHK's retail customers include the following products :-

1. Equity-linked Deposit (股權寶), which is an equity-linked product;
2. Bullion-linked Deposit (金權寶), which is a precious metal-linked product and has been suspended since January 2009;
3. Premium Deposit (期權寶), which is a currency-linked product; and
4. Step-up Deposit (晉息存款), which is an interest-rate linked product.

Minibonds and other LB-related structured financial products distributed by BOCHK fall within the category of Structured Notes (結構性票據) (under Credit Linked Notes / Equity Linked Notes / Fund Linked Notes) but not that of Structured Deposits.

The above product classification is made available on BOCHK's intranet which is accessible by all BOCHK's staff and covered in the bank's internal training.

13. On the wealth management information system (中銀理財系統) ("the system") of BOCHK referred to in para. 2.3 of Item 59a of W44(C), please provide the following information:

(a) What categories of customers were included in the system?..

13.1 BOCHK's higher net worth customers, i.e. Wealth Management and iFree customers, were included in the system.

(b) Were the frontline staff of BOCHK allowed to make use of the customers' information in "the system" (e.g. maturity of their time deposits) to approach the customers in (a) for introducing products such as Minibonds and other LB-related structured financial products?

13.2 Even though BOCHK Relevant Individuals were given access to customer information in the "system", they were forbidden from making unsolicited calls to any person who was not our existing customers. However, if customers expressed an interest in investment products, Relevant Individuals were required to understand customers' needs by obtaining information on customers' financial position, investment experience, investment objectives and risk tolerance. Besides, Relevant Individuals were required to provide adequate product information to enable customers to make an informed



investment decision. In particular, Relevant Individuals were required to explain to customers the product nature, features, tenor, risks and related fees to customers in accordance with the authorized marketing material and prospectuses. A variety of supervision and management measures were adopted to ensure that Relevant Individuals would follow the proper procedures stipulated in the Code of Conduct, other regulatory requirements and BOCHK's internal policies during the selling process (see paragraph 58.3 of W40(C)). Special measures were implemented to protect the interests of vulnerable customers (see paragraphs 39.1 to 39.6 of W40(C)) and customers who bought risk-mismatched products (see paragraphs 44.1 and 44.2 of W40(C)).

- (c) As far as Minibonds and other LB-related structured financial products were concerned, what types of customers were regarded by BOCHK as "existing customers" to whom BOCHK sales staff could introduce such products?

13.3 BOCHK prohibits its Relevant Individuals from making unsolicited calls to clients who are not "existing customers" for dealing in securities. Based on the definition of "existing client" provided under Section 174 of the Securities and Futures Ordinance, "Existing customers" are defined as clients who opened a securities account with BOCHK within the preceding 3 years and still held the account when the call was made, or who effected a securities transaction within the preceding 3 years.

14. The attached written questions raised by Mr LEUNG Kwok-hung at the hearing in the morning of 23 October 2010.

# 梁國雄議員提問

(Oct 23, 2010)

## ELN 廣告的誤導與中銀的錯誤評級

- 1 雷曼的 ELN, Pyxis 的抵押品是雷曼母公司担保的債券，上次你說雷曼母公司的評級是 A+已是很高的投資評級，故此你們將 Pyxis 20. 21 評為最安全的一級。但據我所知，有些 ELN 是以美國國家 3A 的債券為抵押品。若這些以美國國家 3A 的債券為抵押品的 ELN 被評為一級，那 Pyxis 的 A+是否應被評為 3 級？所以我說你們評錯級。把 3 級貨賣給要求有 1 級安全性的客戶，根本就違反了「合適評估 Suitability Test」的守則。中銀是否要向客戶全數賠償？
- 2 Pyxis 的廣告說，若掛勾的股票沒有跌穿某些指定價位，則 100% 保本，否則最低亦可拿回 80%。這根本是誤導，因為除非抵押品是 3A 的美國國家債券，才可以說是 100% 保本，但它是雷曼的 A+，這與 3A 比較，是風馬牛不及，是明顯的誤導(misrepresent)。你們在銷售時只強調保本，沒有將雷曼母公司的 A+債券，跟美國聯邦政府的 3A 債券，比較兩者風險的不同。因此而誤導了客戶，導致客戶受損，你們會否對客戶作出全數賠償？

14.1 In reply to 1 and 2 above - Standard & Poor's assigns long-term credit ratings on

a scale from AAA to D, with ratings of investment grade between AAA and BBB. Lehman Brothers Holdings Inc, being the swap guarantor and the guarantor of the collateral for the Pyxis Notes, had credit rating of A+, which was regarded as an indication of strong capacity to meet its financial commitment.

3 上次我問你有否按証監會的要求，讓投資者認識迷債的風險，及有否對你的員工作出相關的培訓。你要求我參看你提供的相關資料。但我看完後，發現你們並未有作出有關的培訓，只是指出一些一般性的及表面上的風險，且主要是抄了迷債發行人的資料，而沒有深入分析各個環節的風險，從而提出你們的看法。這是違反了証監的守則，即「不應只按發行人給予的資料為準」，你有何解釋？你們這樣做算是對客戶負責任嗎？

14.2 The product-specific training provided to the Relevant Individuals covered the features and key risks of each series of LB-related structured financial products. For example, in the training materials for Minibond Series 35, interest rate risk, credit event risk and collateral risk were explained.

14.3 The product-specific training was organized by BOCHK's product team in the form of workshops prior to the product launch. The training materials prepared by the arranger or coordinating dealer were reviewed by BOCHK's product team and provided to the Relevant Individuals in preparation for the launch of each series of product. BOCHK also conducted series-specific post-training tests for the frontline sales staff to test their knowledge of the product before conducting sales to customers.

## 關於 CDO 及其風險的認知培訓

4 根據貴行對 RM 關於迷債 35 系列的培訓資料<sup>1</sup>，你們就抵押品的風險評估中只指出：「若抵押品(強調為 AAA)未能償還債項，投資者可能招至嚴重損失」。既然說「投資者可能招至嚴重損失」，但為何你又多次及反覆地說，只要是 AAA 便很安全，為何會有這種互相矛盾的認知呢？這證明你們對這種投資產品是一知半解，但又推薦給客戶，這樣既害了客戶，又損了自己的商譽，你們的做法是否很有問題？

14.4 Standard & Poor's assigns long-term credit ratings on a scale from AAA to D, with ratings of investment grade between AAA and BBB. Investment grade AAA is the highest credit rating under such credit rating system. According to the global corporate default history from 1981 to 2006, Standard & Poor's rating of AAA had a statistical likelihood of default of 0.00% in the first and second year and 0.09% in the third year (Minibond Series 35 had a tenor of 3 years).

5 迷債的抵押品，主要是由合成 CDO 組成。但你們並未有培訓及考核員工對合成 CDO 的認識。你同意嗎？

6 貴行那一份培訓文件，有培訓上述的知識？你之前所提交的資料，皆證明沒有。若有請交出。

7 請你兩位任何一位，告訴我甚麼是合成 CDO？及這些合成 CDO，有那些可能的風險？

8 你能否告訴我，究竟迷債 35 系列有那幾隻合成 CDO？每隻合成 CDO 的結構？

9 若你們不知，我告訴你。後期所發行的迷債中的抵押品，主要是由合成 CDO 組成，合成 CDO 會跟過百間公司組成一攬子的信貸保險或包含多款 CDS。在合成 CDO 中，若有一定數目的公司(一般是總數的 7-10% 的公司)發生信貸事件時，就要提前贖回。迷債投資者因而會損失部份或全部本金，雖然合成 CDO 是被評為三個 A，但與它掛勾的百多間公司，並非全部皆是三個 A，而只要在百多間公司中，有少量的公司出了事，客戶便血本無歸。風險就在這裡！你們有否向員工指出？

10 有否要求員工告知客戶，這些合成 CDO 的結構，及上述所提及的各種風險所在之處？請提供證明。

11 根據我在 10 月 19 日向你提交的一篇名為，《剖析迷你債券》的文章中指出，SPV 可能會投資於回報率較高的 CDO，以取得更高的利潤，並將這些較高的利潤，與「掉期對手」交換較低的迷債利率，但合成 CDO 的違約風險，則要迷債持有人去承擔。這是一些非常之不公平的

安排，而這些獲得了好處的 Swap 對手，竟然是雷曼自己的圈內公司，你們有否向員工說明？有否向客戶說明？

(事實是，不少苦主說，中銀員工沒有向他們說明上述風險)

12 以迷債 35 系列為例，它是定息為 5.6%，迷債 35 系列的發行章程第 21 頁指出，SPV 會將抵押品 CDO 的利息給與掉期對手，而對手則給予 5.6% 作交換，請問你知不知道該系列的 CDO 回報率是多少？是否高於 5.6%？

13 你們有否告知購買系列 35 的客戶關於這些不公平的交易？如有，請出示證明？

In reply to 5 to 13 above -

14.5 In order to equip its Relevant Individuals for explaining adequately LB-related structured financial products to customers, BOCHK provided product-specific training for each series to its Relevant Individuals. The training covers the features and key risks of each product series (please see paragraph 23.8 of W40(C)). For example, in the training materials for Minibond Series 35, interest rate risk, credit event risk and collateral risk were explained. It is also mentioned in the issue prospectus and marketing materials of Minibond Series 35 that the collateral for the notes would consist of synthetic AAA-rated CDO securities. The CDO would be linked to a portfolio of international credits. Repayment in full of the principal of the notes at maturity would be dependent upon the redemption in full of the CDO and as such the CDO was a significant component of the risk and return profile of the notes.

14.6 The swap arrangement and the rate of interest provided by Minibonds to investors are mentioned in the issue prospectus and marketing materials of Minibonds. The identity and the role of the swap counterparty and swap guarantor are mentioned in the issue prospectus.

14.7 BOCHK required its Relevant Individuals to understand customers' needs and provide adequate product information to enable customers to make an informed investment decision. In particular, the Relevant Individuals were

required to explain to customers the product nature, features, tenor, risks and related fees to customers in accordance with the authorized marketing material and prospectus. (please see paragraph 49.4 of W40(C)).

## 投訴程序處理

14 根據你的陳述書 64.3 表示，在回購迷債協議後，貴行會加強處理迷債的投訴程序。在第(v)項中，貴行聲稱對每一位投訴人及相關證人都會進行面談。請你告訴本會，是否所有的投訴客戶，都得到上述的處理？

15 但有些苦主告訴我，他們從未得到與 “中銀” 面談的機會。為何你在第(v)項中所說的，與事實不乎？

In reply to 14 and 15 above -

14.8 Under the enhanced complaint handling procedures as set out in Item 64a of W40(C), all complainants will be invited for a face-to-face interview to obtain details of the complaint, e.g. the details of the allegations and the grounds for the same, the details of the selling process, the demands and background of the complainant. Some complainants may prefer the interview to be conducted on the telephone. It is always the choice of customers as to what form the interview will take, although the Bank would prefer face-to-face interview. In addition, some customers may decline the invitation for an interview or do not contact the bank, in which cases the Bank will still proceed with the investigation of the complaint based on information available to it.

16 在陳述書 64.3 段第(viii)項中，你聲稱會通知投訴客戶「初步調查的結果」，並在做最後報告前，會聽取投訴人意見。但有些苦主說，貴行並無告知他們「初步調查的結果」。請你解釋。

14.9 Under the enhanced complaint handling procedures (Item 64a of W40(C)), a written preliminary reply will be sent to the complainant after the completion of investigation and the complainant can provide further information to the Bank for its consideration. If no further feedback is received from the complainant after five working days, a final reply will be issued. In addition, there is also an appeal mechanism for those complainants who do not agree with the final investigation result. Complaints may be re-considered on receipt of any further information from the complainant.