

Follow-up to the hearing on 8 October 2010

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

1. It is noted from the copy of post-training test in respect of Minibonds Series 35 (Item 28a of W40(C) (Mr HE Guangbei's written statement)) focused on the facts on the product, but did not test any knowledge on the various risks of the product. Please advise if the sales staff would be tested on the risks of a product; and provide a copy of post-training test of Minibonds Series 35 or any other series that contained questions on risks of the product.
 - 1.1. The post-training tests were designed to test the Relevant Individuals' knowledge of the unique features of the product series in question. The tests were only one of the components of BOCHK's product training to deepen the Relevant Individuals' understanding of the features and risks of the product series. BOCHK's product-specific training also included the study of training materials and offer documents, viewing of VCD, role-play, the provision of the product team's hotline to answer Relevant Individuals' questions and, when requested by branch managers or area managers, product briefings by BOCHK's product team and/or representatives from the arranger or co-ordinating dealer. Regarding the product-specific training in Minibond Series 35, the training material explained, among other things, key risks such as interest rate risk, credit event risk, collateral risk and the structure that Lehman Brothers Holdings Inc. was the guarantor of the swap arrangements. In the post-training test (Item 28a of W40(C)), questions 4 and 7 (which were about the credit ratings and names of reference entities) and question 9 (which was about credit events) were directly related to credit event risk which was a key risk of Minibond Series 35. The remaining 7 questions covered important features and information which were unique to the series.
 - 1.2. Moreover, as mentioned in paragraph 23.3 of W40(C), before a staff member was registered with the HKMA, he/she had to satisfy the SFC's "fit and proper" requirements; thus Preparatory Courses were organized for the staff member taking the Licensing Examination for Securities and Futures Intermediaries organised by the Hong Kong Securities Institute. This Licensing Examination was approved by the SFC as the recognized industry qualifications. The syllabus of Paper 7 of the Licensing Examination covers, among other things, derivatives markets and financial risk management.
2. Please advise whether the Internal Audit Department had conducted any audit in respect of "cold call". If yes, please provide a copy of the relevant audit report. Personal identification of customer(s), if any, contained in the report can be redacted.
 - 2.1. BOCHK prohibits its Relevant Individuals from making unsolicited calls (cold calls) to clients who are not "existing customers" for dealing in securities. "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.

- 2.2. References to “cold call” were made in items 2.3 and 2.8 of Item 59a of W40(C) (ie Excerpts of various audit reports relevant to the selling process of investment products). Those were the only two incidents regarding “cold call” identified by Internal Audit during the Relevant Period.
- 2.3. Out of the three products mentioned in item 2.3 (ie Bullion-Linked Deposit (金權寶), Double Premium Deposit (疊寶存款) and Structured Deposit (零售結構性存款)), only Bullion-Linked Deposit is regulated under the Securities and Futures Ordinance and thus the prohibition against unsolicited calls applies to that product. When Internal Audit Department conducted the relevant audit in April 2005, Bullion-Linked Deposit was a new product launched by BOCHK in about February 2005. To raise the frontline staff’s awareness about the compliance requirements relating to this new product, Internal Audit Department added a reminder in its audit report about the prohibition against making unsolicited calls to clients who were not “existing clients”, although no non-compliance was found in this regard.
- 2.4. The relevant case included in item 2.8 was a complaint case that was examined by an internal investigation team. Although there was no allegation of unsolicited call in the complaint, the internal investigation team would, in its independent investigation, review the whole selling process including whether the prohibition against making unsolicited calls had been complied with. In the end, no non-compliance was found in that case. Internal Audit Department observed this case in the course of its regular audit review, and drew it to the attention of the management. However, the relevant audit report was issued before the internal investigation of that case was completed.
3. The attached written questions raised by Mr LEUNG Kwok-hung at the hearing on 8 October 2010.

梁國雄議員提問

(Oct 8, 2010)

以下問題是根據你提交的書面陳述 W40(C)作出：

- 1 根據你的陳述書 23.8，貴行會針對個別產品進行僱員培訓，請問有否就雷曼產品內的高槓桿比率之 CDS，或具有期權性質的合約，向職員進行培訓？請出示相關培訓文件，請以迷你系列 35 及 Pyxis 21 為例。
- 3.1. 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, collateral risk and the structure that Lehman Brothers Holdings Inc. was the guarantor of the swap arrangements were explained. In the training on selling process and compliance, Relevant

Individuals were required, among other things, to explain the prospectuses, which described all the key risks, to the customers.

- 2 證監會在 2006 年向中介人發送了指示，題為《Advice to investors on structured notes》(以下簡稱《Advice》)(見附件一)，目的為向投資者解釋 CLN 及 ELN 等結構性產品的結構、運作和風險，還附上圖表，內容十分複雜難明。請問貴行有否向前線員工，作出類似的培訓及考核？請提供證明。

- 3.2a. The "Advice" was general advice issued to investors by the Investor Education and Communications Department of the SFC in 2003. It advised investors, among other things, to read carefully the contents of the offer document or the term sheet and consult their financial advisers as to the suitability of the note when in doubt.
- 3.2b. In order to equip its Relevant Individuals for explaining adequately LB-related structured financial products (including credit-linked notes and equity-linked notes) 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, collateral risk and the structure that Lehman Brothers Holdings Inc. was the guarantor of the swap arrangements were explained.
- 3.2c. BOCHK required, among other things, its Relevant Individuals to understand customers' needs and 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 the related fees to customers in accordance with the authorized marketing materials and prospectus (please see paragraph 49.4 of W40(C)). 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)).

- 3 請問貴行有否要求前線員工，根據證監會上述的《Advice》，向客戶闡釋這些產品的複雜性及相關風險，特別是對長者、主婦、及缺乏投資經驗的人？

- 3.3. Please see paragraphs 3.2b and 3.2c above.

- 4 根據陳述書第 28.1 段，在員工接受培訓後，會對其測試 10 條問題，以證明他/她已掌握培訓的內容，但是，根據貴行提交給本委員會的測試題樣本(item 28a)，問題的內容非常表面，並沒有測試他們是否明白該等產品內，所含的 CDS 及期權等高槓桿比率的衍生工具的風險。這足以證明，貴行的員工考核，只是為向金管局交差，而未有向客戶負責，對不對？

3.4. There was no regulatory requirement for post-training tests. Please see paragraph 1.2 above on the nature of the post-training tests in the context of BOCHK's product-specific training.

5 雷曼苦主一直投訴貴行職員只告訴他們產品與那些相聯主體作信貸掛勾，但從沒有告訴他們產品內含有 CDO、CDS，或類似期權的對手合約，更沒有解釋什麼是 CDO、CDS，期權等衍生金融工具的性質及其相關風險。這已經是違反了証監會的《持牌人或註冊人操守準則》第 3.10 段及第 5.2 段(見附件二)及其相關指引的要求。對那些信任貴行多年，且年紀較大的老主顧，貴行實在很對不起他們，同意嗎？

3.5. BOCHK required, among other things, its Relevant Individuals to understand customers' needs and 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 the related fees to customers in accordance with the authorized marketing materials and prospectus (please see paragraph 49.4 of W40(C)). 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)).

6 《持牌人及註冊人操守準則》第 3.10 條規定：

「持牌人及註冊人在向其客戶提供服務或向其客戶推介聯繫人士的服務時，應顧及其客戶的最佳利益行事。」但貴行向年紀較大的老主顧售賣這種高槓杆產品，明顯是為貴行增加收入而行事，而非為客戶的最佳利益而行事，對否？

3.6. Mindful of its duty to act in the best interests of its clients, BOCHK implemented a variety of supervision and management measures 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)), and specific measures were implemented to protect the interests of vulnerable customers (including elderly customers) (see paragraphs 39.1 to 39.6 of W40(C)).

7 證監會就《持牌人及註冊人操守準則》第 5.2 條的規定，於 2007 年向中介人發出了題為《有關為客戶提供合理適當建議的責任的《常見問題》》(見附件三)的指引，該文件第 3 條指出：「本會並不建議投資顧問只依靠投資產品發行章程、發售通函、或推廣資料內所載的資料，並將該等資料視作為必定足夠，並自行說明一切所需要

資料」。

但是，你在陳述書 23.8 段說，“All training materials were prepared and provided by the arranger or coordinating dealer and review by BOC”。請出示資料，以證明貴行對「安排人」及「聯系經銷人」的資料曾經作出修正及補充，以讓客戶能更清楚明白風險所在。否則，便是違反了証監會的上述指引，

- 3.7. Apart from the product-specific training materials, which were prepared and provided by the arranger or co-ordinating dealer and reviewed by BOCHK's product team, BOCHK also provided general training and training on selling process and compliance (please see paragraphs 23.2 to 23.10 of W40(C)) to its Relevant Individuals. The general training covered generic market and product knowledge (such as structured financial products), regulatory requirements and compliance issues. BOCHK's product team also answered questions from Relevant Individuals via its hotline and, when requested by branch managers or area managers, visited the branches to give product briefings to Relevant Individuals.

- 8 證監會 2006 的《操守準則》的第 5.2 節要求中介人要給予客戶合理的建議，上述《常見問題》的第 4 點指出，「合理建議」應包括：「顧及客戶的投資目標、投資期、風險承受能力及財政狀況」，特別要注意的是：「向長者、或對投資於投投資產品缺乏認識的客戶，或那些未能就複雜的投資產品作出獨立投資決定並需要倚賴投資顧問的意見的人士提供意見時，必須格外審慎」。

從貴行向大量的長者、及對投資產品缺乏認識的客戶，出售了大量這些包含高槓桿比率的結構性產品中可看出，貴行的員工，並未能做到証監會《操守準則》的要求，你是否同意呢？

- 3.8. BOCHK required, among other things, its Relevant Individuals to understand customers' needs and 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 the related fees to customers in accordance with the authorized marketing materials and prospectus (please see paragraph 49.4 of W40(C)). 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)).

9 《操守準則》在第 5.3 節關於「衍生產品」中指出：「應確保客戶已明白該產品的性質及風險，並有足夠的淨資產來承擔因買賣該產品而可能招致的風險及損失」，但是，根據實行的客戶投訴，不少人不單不理解產品的潛在風險及損失，更是將一生全部或大部份積蓄投下去，實行為社會帶來了這樣大的損害，你們有否總結出這是誰的過錯？

3.9a. BOCHK required, among other things, its Relevant Individuals to understand customers' needs and 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 the related fees to customers in accordance with the authorized marketing materials and prospectus (please see paragraph 49.4 of W40(C)). 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)).

3.9b. The collapse of the Lehman Brothers Group was one of the most unpredictable and unfortunate consequences of the global financial tsunami. It caused not only distress among tens of thousands of local and international investors, but also widespread concerns in the society particularly as to the financial impact on individual investors of Minibonds. In the light of the highly unusual and unprecedented circumstances, BOCHK and other Distributing Banks offered to the affected Minibonds customers the Repurchase Scheme, which was agreed by both the SFC and the HKMA, and which BOCHK and other Distributing Banks considered reflects the proactive approach taken by the Distributing Banks in lending assistance to investors affected by the insolvency of the Lehman Brothers Group.

10 是實行的錯？是「披露為本」與「合適評估」政策的錯？是政府的監管法例不健全，沒有很好地貫徹上述政策的錯？是「一業兩管」監管體制混亂的錯？請閣下為特區金融監管體制的改善，提出實行的專業意見，以讓立法會可督促政府作出改革，避免日後再出現同類問題，可否？

3.10. New regulatory requirements on selling process of investment products have been introduced since the collapse of the Lehman Brothers Group to enhance investor protection and rebuild investors' confidence. BOCHK will continue to cooperate with regulators to implement such measures.

11 貴行是否同意政府應成立一個獨立的「非專業投資者保障局」，以加強保障特區內、外的小投資者，及讓證券、保險、貸款、信用卡、及財富管理業的零售市場，能夠更公平地運作及更健全地發展？

12 《操守準則》是有法律效力的文件，貴行既已違反了《操守準則》的規定，在不太認識你的客戶及在對產品風險一知半解下，讓老弱及非專業投資者蒙受了如此具大的傷害，貴行是否要作出真誠的懺悔，及補償他們的全部損失？不單要賠償給迷債苦主，也要賠償給其他非迷債的老弱及「非專業投資者」的客戶損失。同意否？

- 3.12. BOCHK did not detect any substantiated non-compliance cases in relation to the sale of LB-related structured financial products during its internal investigation. Whether for Minibonds or non-Minibond structured financial products, BOCHK required, among other things, its Relevant Individuals to understand customers' needs and 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 the related fees to customers in accordance with the authorized marketing materials and prospectus (please see paragraph 49.4 of W40(C)). BOCHK adopted a variety of supervision and management measures 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)).