

Responses to Follow-up Issues Arising from the Hearing on 28 April 2009

- 1. The number in each year of Registered Institutions (RIs) required by the Monetary Authority (MA) since April 2003 to conduct independent self-assessments of regulatory compliance; and the number of times of independent self-assessment that each of the RIs has conducted in each year.*

- 1.1 From 2005, an increasing number of large, complex RIs or RIs which are active in conducting regulated activities (including all active retail banks) have been required by the Hong Kong Monetary Authority (HKMA) to conduct annual independent self-assessment of their compliance with the regulatory requirements imposed by the Securities and Futures Commission (SFC) and the HKMA. Table 1 below lists out the number of participating RIs in each year:

Table 1

Year	2005	2006	2007	2008
Number of RIs	30	40	45	50

- 1.2 During the above period, each of the participating RIs was required to conduct independent self-assessment once every year.

2. *Whether the Hong Kong Monetary Authority (HKMA) had detected any cases of mis-selling by RIs in the sale of investment products to vulnerable customers (with “vulnerable” having the meaning as stated in paragraph 6.11 of HKMA’s Review Report submitted to the Financial Secretary on 31 December 2008) before issuing the circular on retail wealth management to RIs on 3 March 2006 [M3]; and if yes, please provide the details.*

2.1 Between April 2003 and 3 March 2006, cases of possible mis-selling involving 15 vulnerable customers (i.e. of age 65 or above and/or with primary or less than primary level of education) were identified through day-to-day regulatory process or complaints received and referred to the HKMA’s securities enforcement team for appropriate action.

2.2 Among these, cases involving 9 customers were found by the HKMA Event Review Committee (ERC) to lack sufficient prima facie evidence to warrant further investigation. For the remaining cases involving 6 customers, the investigation into these cases has been completed and the HKMA decided not to take any disciplinary action or to refer the cases to the SFC for consideration of disciplinary actions for the following reasons:

- 2 customers declined to provide further information and hence the investigation could not proceed further, and the customers have been offered compensation by the RIs concerned;
- there was insufficient evidence to substantiate the suspected improper practices in respect of cases involving 2 customers;
- the allegation was rebutted by evidence obtained during investigation in respect of a case involving one customer; and
- with regard to the remaining one customer, the interests of the customer had been adequately addressed by the institution involved through offering appropriate redress and the nature of the case was considered not significant enough to justify any disciplinary action¹.

¹ The transaction involved was not a regulated activity as such. However, it cast doubt on the fitness and propriety of the relevant individual (ReI) concerned. The HKMA’s investigation revealed that the ReI concerned provided certain information to the customer in relation to the returns of the insurance products based on some assumptions which could not be verified. The ReI had already been removed from the HKMA register by the institution concerned at the time of the investigation, therefore no disciplinary action

3. *With reference to paragraph 4.2 of the “Responses to follow-up issues arising from the hearing on 14 April 2009” [M15], whether the six customers involved in the substantiated case of mis-selling of investment products were compensated or otherwise able to recoup their investment losses from the RI concerned, and if yes, please provide the details; if no, the reasons.*

3.1 With regard to the 6 customers involved in the substantiated case of mis-selling of investment products, to the HKMA's knowledge, they have not been compensated so far given that the disciplinary proceedings of the RI concerned has not yet been completed (only the Relevant Individual (ReI) concerned has been disciplined by the SFC so far). It should also be noted that the HKMA has no statutory power to order a RI to compensate aggrieved customers.

3.2 As shown in the information provided to the Subcommittee previously², among the 178 cases involving suspected mis-selling which were referred to the HKMA's securities enforcement team from April 2003 to 14 September 2008, the investigations into cases involving 33 customers have been completed. Among them, the cases involving 9 customers have been referred to the SFC for appropriate actions. Of these 9 customers, 6 customers are covered in paragraph 3.1 above while the remaining 3 customers, according to the HKMA's understanding, have been offered compensation by the RI concerned. For the remaining 24 cases, the HKMA understands that the RIs concerned have settled with 13 customers.

was considered warranted.

² Please refer to paragraph 2.4 of my response dated 27 April 2009 to item (b) of the Subcommittee's information requests (follow-up to the hearing on 17 April 2009) enclosed with the letter of the Clerk to the Subcommittee dated 20 April 2009. **M17 (paragraph 2.4)**