

Responses to Follow-up Issues Arising from the Hearing on 8 May 2009

(a) *The number of Relevant Individuals against whom disciplinary actions had been taken in relation to the mis-selling of investment products between April 2003 and September 2008.*

1.1 As set out in my response dated 23 April 2009 to item (d)(i) of the Subcommittee's information requests regarding follow-up to the hearing on 14 April 2009 (SC Ref. No. M15), during the period specified in the question, disciplinary actions have been taken by the Securities and Futures Commission (SFC) against one former relevant individual (ReI) of a registered institution (RI) found guilty of mis-selling investment products to 6 customers. The former ReI involved was banned from re-entering the industry for 32 months from 26 November 2008 to 25 July 2011 and fined \$260,000.

(b) *Between April 2003 and 14 September 2008, whether the Hong Kong Monetary Authority (HKMA) issued any circulars or additional guidelines to Registered Institutions (RIs) advising them on the safeguards to be put in place to avoid any actual or potential conflicts of interests in the sale of investment products by their staff, with a view to complying with the relevant principles set out in SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.*

2.1 As explained in the third bullet point of paragraph 12.1 of my written statement submitted to the Subcommittee on 26 March 2009 (SC Ref. No. W6(C)), the HKMA has issued to the industry two Supervisory Policy Manual (SPM) modules (i.e. SB-1 and OR-1) which contain regulatory requirements to address possible conflicts of interest including that arising from the conduct of regulated activities by RIs. Specifically, the HKMA's SPM module SB-1 (issued on 28 March 2003) requires that RIs should have clearly defined systems for appraising the performance of ReIs, and such systems should give due weight to compliance with internal guidelines and legal and regulatory requirements. The HKMA's SPM module OR-1 (issued on 28 November 2005) also provides that an authorized institution's (AI) remuneration policies and performance incentives should include consideration of risk management and it should not provide incentives to staff to operate contrary to the desired risk-management values.

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W6(C)-Annex 8

2.2 In addition, according to the SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct"), General Principles GP1, GP2 and GP6 and paragraph 3.10 require that a licensed or registered person (including RIs) should act in the best interest of its clients in providing the services, try to avoid conflicts of interest, and when they cannot be avoided, should ensure that its clients are fairly treated. Under the current regulatory regime of regulated activities, relevant codes, rules and guidelines issued by the SFC are also applicable to RIs.

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(c) *Between April 2003 and 14 September 2008, whether HKMA issued any circulars or additional guidelines on the implementation of incentive schemes by RIs in relation to the sale of investment products by their staff; and whether HKMA received any views or complaints from the staff of RIs about the impact on them of RIs' sale targets and related incentive schemes for investment products.*

3.1 The HKMA's regulatory requirements stated in paragraph 2.1 of the response to item (b) above are also relevant measures in addressing possible conflicts of interest arising from sale of investment products, including those related to incentive schemes implemented by RIs. In addition, relevant regulatory requirements in relation to incentive schemes are also provided in the Code of Conduct¹ and Questions and Answers on Suitability Obligations² issued by the SFC (SFC's FAQ) in May 2006 and May 2007 respectively. These regulatory requirements are also applicable to RIs. **M4**

3.2 Between April 2003 and 14 September 2008, the HKMA has received 3 anonymous complaints about sales targets and related incentive schemes of a RI from complainants who claimed to be staff members of the RI. The HKMA has followed /is following up with the RI concerned to address the issues raised in the complaints.

¹ See paragraph 2.2 above.

² Item 9 of the SFC's FAQ provides that senior management of investment advisers should review, assess, and be satisfied that investment advisers have adequate systems and controls to promptly identify issues and matters that may be detrimental to a client's interest (e.g. cases in which investment advice may have been given merely to meet sales targets or may be driven by financial or other incentives).

- (d) *With reference to HKMA's advice to RIs in early 2008 that "[t]hose credit-linked products with protection of the entire principal may nevertheless be assigned with a lower risk tolerance" (M15, p.4) whether any RIs followed HKMA's advice to assign a lower risk rating to such products; and whether such products included Lehman Brothers-related products.*

4.1 As explained in my response dated 23 April 2009 to item (c) of the Subcommittee's information requests regarding follow-up to the hearing on 14 April 2009 (SC Ref. No. M15), the HKMA's recommendation given to the related eight RIs at the time was to classify credit-linked products without full principal protection as high-risk products and to introduce such products only to clients with high risk tolerance. The HKMA's advice to the related RIs in early 2008 did not apply to credit-linked products with protection of the entire principal which might have been assigned a lower risk rating than high-risk. What the advice was saying was that the HKMA acknowledged that it was acceptable to have a lower risk rating than "high-risk" for credit-linked products with protection of the entire principal. As such, the HKMA was not requesting the RIs involved to lower the risk-rating for such products but merely stating that such products do not have to be rated as "high-risk" as in the case of products of a similar nature but without principal protection. According to the HKMA's records, all the related RIs had no difficulty in understanding the HKMA's recommendation made in the advice and they had not indicated any changes to the risk rating of credit-linked products with protection of the entire principal in their replies to the HKMA.

(e) *With reference to a document on a Lehman Brothers-related structured product (Annex 1), please comment on the disclosure approach being used therein, i.e. the nature of the product was described as “保本票據” (principal-protected note) on page 1, but on page 5, there was a proviso that the investor might lose part or all the principal, unless it was stipulated that the note was full principal-protected “全保本”.* Annex 1

5.1 The document at Annex 1 attached to the set of questions contains an extract of a term sheet of a Lehman Brothers (LB)-related equity-linked product. It is difficult, nor appropriate, to assess whether the document has properly disclosed the nature and risks of the product without reading its full version, in conjunction with the full set of documents related to the sale of this particular product.

5.2 However, in order to assist the Subcommittee in its inquiry as far as possible, I am ready to provide some observations solely on the basis of the limited information from this extract of the term sheet, on the clear understanding that these observations are not made on the basis of the full set of documents and are subject to revisions upon receipt of the full information.

5.3 On the basis of the extract, I do not see any contradiction between the principal-protection description in the name of the product on page 1 and the clause under the section of “Principal Loss Risk” (本金損失風險) on page 5. My reading of the clause on page 5 is that this may be a clause constructed by the issuer for use in products with different principal-protection features. The first part of that clause deals with non-principal-protected notes and is therefore not applicable to this product. The second part refers to principal-protected notes and explains that the protection was only good on the date of redemption.

5.4 Indeed, it is specified in the “Redemption Terms” (贖回條款) section on page 2 of the term sheet that the issuer shall pay to the holder of the note upon maturity at least 100% of the nominal amount of the note. The structure of the product is therefore regarded as carrying a principal protection feature as the concept is commonly understood in the market given that the minimum redemption amount at maturity is set at 100% of the nominal amount of the note. It is also specified in the “Credit Risk” (信貸風險) section on page 5 of the term sheet that an investor would bear the risks of the issuer not

being able to honour its obligations to repay the principal or the interest. This risk unfortunately materialised upon the bankruptcy of Lehman Brothers.

(f) *Three written questions raised by Mr LEUNG Kwok-hung and handed to MA at the hearing on 8 May 2009 as set out in Annex 2*

1. 2002 年金管局與證監會簽訂「諒解備忘錄」(MOU)，該「備忘錄」的內容及訂立的過程，有否經過相關的政府官員，例如財政司司長或財經事務及庫務局局長的知悉及批准？
 - A. 如有，我要求公佈相關人士或部門通過該「備忘錄」的文件或通訊，我們需要參考這些文件的原因是因為，小組如果認為需要對「備忘錄」的條款提出修訂，需要知悉應向那一個負責的官員或相關部門提出？
 - B. 如沒有經問責官員批准，是否你們兩個機構私相授授作出決定，因立法會只被照會而並非作出批准？
 - C. 「備忘錄」中雙方的責任(responsibilities)，由於第 4 及 5 條的原故，按你的理解，金管局對銀行銷售證券的前線監管工作，是否只是道義上或行政上的責任，而非法律上或合同上或協議上的責任？

Items A, B and C

6.1.1 The HKMA and the SFC signed a revised Memorandum of Understanding in **S1-Appendix 10** December 2002 (MOU), which replaced and superseded the previous Memorandum of Understanding signed on 23 October 1995 between the two regulators. The Administration was fully aware of the preparation of the MOU. On 29 November 2000, the then Secretary for Financial Services³ (SFS), in moving the second reading of the Securities and Futures Bill (“Bill”) in the Legislative Council, said that the new regulatory framework would be underpinned by a revised MOU to be drawn up between the SFC and the HKMA. During the second reading of the Bill on 13 March 2002, the SFS stated (on page 4340 of the Official Record of Proceedings of the Legislative Council dated 13 March 2002) that “[t]o ensure good co-operation, the SFC and HKMA are revising their existing Memorandum of Understanding (MOU) on co-operation with a view to setting out the specific mode of co-operation. To

³ On 1 July 2002, the Secretary for Financial Services was re-titled as the Secretary for Financial Services and the Treasury (SFST).

enhance transparency, the new MOU, when drawn up, will be uploaded to the web pages of the SFC and the HKMA for public information.”

- 6.1.2 The MOU was entered into pursuant to the Banking Ordinance (BO) and the Securities and Futures Ordinance (SFO) which do not require the approval of either the Financial Secretary (FS) or the SFST. The relevant provisions of the BO and the SFO have been set out in my response dated 27 April 2009 to item (j)(7) 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 (SC Ref. No. M17). Paragraph 15 of the MOU stipulates the procedure for amendment **S1-Appendix 10** of the MOU which again does not require the approval of the Administration. It is open to either the SFC or the HKMA to suggest an amendment to the MOU and if the parties agree following consultation as appropriate, then the MOU may be amended and will take effect only by written agreement of the parties.
- 6.1.3 The HKMA has specific statutory functions under the BO and the SFO in relation to the regulation of the securities business of RIs. For instance, the HKMA is required to take all reasonable steps to ensure that the banks operate in a responsible, honest and business-like manner. The HKMA is also required to take all reasonable steps to ensure that such business is conducted with integrity, prudence and the appropriate degree of professional competence. The MOU merely underpins such statutory **S1-Appendix 10** functions. It was stated clearly in the MOU that the MOU does not detract from the statutory functions of the parties, nor does it amount to a delegation of any of the powers, duties and obligations of the parties (see paragraph 4 of Part III Principles of the MOU).

2. 金管局是監管銀行從事證券業務的前線機構，職責是去確保中介人的銷售行為和內部監管是已遵從(compliance)證監會制訂的《操守準則》。據此，作為專責調查有關雷曼產品事宜的小組，我的問題是：金管局在2003年4月至2008年10月進行了158次現場審查(on-site examination)，有否在這些審查中，針對中介人在銷售雷曼結構性產品時，是否已遵從《操守準則》的如下條款？這些條款包括：

第2.4項 確保廣告不會有虛假、具誤導成分或有欺騙性的資料

第3.4項 確保向客戶提供的建議都是經過透徹分析才作推薦及建議

第3.10項 註冊人應顧及客戶的最佳利益

第4.3項 註冊人有妥善的內部監控程序，以免客戶因欺詐、不誠實及專業失當等行為或不作為而蒙受損失。

第5.2項 確保向客戶所作的建議在所有情況下都是合理

第5.3項 確保客戶已明白該產品的性質及風險

第10.1項 當有利益衝突時，註冊人已採取一切合理的步驟確保客戶獲得公平對待；

2. 甲、如果有，請你以列表的方式公佈在金管局每一次對中介人是否遵從《操守準則》的審查中，金管局就中介人銷售雷曼產品所採取的審查程序、方法和判斷中介人是否遵從(compliance)的標準。如果出現不遵從(non-compliance)的個案，金管局有否採取進一步行動，或者交給證監會進行懲處，包括公開譴責、罰款或暫時停牌？請列出所有違反上述《準則》的懲處個案。

2. 乙、就上述《操守準則》第10.1項所提的公平及合理，金管局有否按普通法(Common law)的不合情理行為(unconscionable conduct)的標準對銀行作出要求，即有利益衝突時，中介人應確保較弱的一方有獨立的金融及法律專業人士陪同及對其提供獨立的專業意見？

6.2.1 Before responding to item (2) of the question, it should be noted that the requirement that a licensed or registered person should ensure that invitations and advertisements do not contain information that is false, disparaging, misleading or deceptive is stipulated in paragraph 2.3 of the SFC's Code of Conduct instead of paragraph 2.4 as S1-Appendix 11 mentioned in item (2) of the question.

6.2.2 Between the commencement of the SFO in April 2003 and December 2008, the HKMA conducted 170 on-site examinations of RIs that included in whole or in part review of aspects of their securities business. One of the key objectives of on-site examinations is to ensure that the RIs examined are in compliance with relevant legal and regulatory requirements, including the SFC's Code of Conduct.

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6.2.3 A majority of on-site examinations conducted so far covered the selling practices of investment products of RIs. The focus of these examinations, however, was to review the overall selling practices of investment products instead of concentrating on any issuer-specific products such as LB-related structured financial products. When selecting a sample of securities-related transactions conducted by the examined RIs for review during on-site examinations, the HKMA adopts a risk-based approach in determining what investment products and the number of transactions to be selected, based on criteria such as the popularity of the investment product (i.e. high sales volume), the number of customer complaints about possible mis-selling of the product, and the sales commission attached to the product. Furthermore, the focuses of each examination vary depending on the objective, nature and type of the examination (e.g. the specific theme determined for a round of thematic examinations).

6.2.4 Where incidents involving possible misconduct or breach of the relevant statutory provisions or regulatory requirements (such as the SFC's Code of Conduct) are identified in the on-site examinations, such cases are referred to the HKMA's securities enforcement team for appropriate action.

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Item 2.甲

6.2.5 Section 120 of the BO imposes restrictions on the MA's ability to disclose supervisory information of the type requested that was obtained in the course of the exercise of the MA's functions under the BO.

6.2.6 Nevertheless, section 120(5)(a) provides one of the gateways through which the MA may disclose such information provided that it is disclosed in the form of a summary so as to prevent particulars relating to the business of any particular AI being ascertained from it. To assist the Subcommittee in its inquiry, we would like to

provide a summary of how a typical on-site examination of selling practices of a RI was conducted below. For a summary of findings identified in the 170 on-site examinations conducted by the HKMA between April 2003 and December 2008 that covered, in whole or in part, the conduct of the securities businesses by RIs, please refer to the response to be provided to item (e) of the Subcommittee's information request regarding follow-up the hearing on 14 April 2009 enclosed with the letter of the Clerk to the Subcommittee dated 17 April 2009.

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6.2.7 In general, during an on-site examination, the HKMA typically:

- reviews the applicable policies, procedures, management reports and internal audit reports;
- evaluates the effectiveness of internal control process;
- discusses existing operational practices with relevant management and staff at different level; and
- conducts sample checks of securities-related transactions to evaluate the effectiveness of relevant internal controls as well as compliance with the relevant regulatory requirements.

6.2.8 In respect of Tier-2 and some of the thematic examinations, the examination team normally also selects frontline staff and interviews those staff in order to assess the adequacy of their knowledge on the investment products and ability to explain the nature and risks of products distributed by them.

6.2.9 After completion of the field work of an on-site examination, the HKMA communicates the findings of the examination (including non-compliance issues identified, if any) and related recommendations through issuing an examination reports to the RI concerned. The senior management of the RI concerned would then agree with the HKMA an implementation plan, with timetable, regarding necessary enhancement measures identified in the examination. The relevant case officer of the HKMA's Banking Supervision Department monitors the implementation of the recommended measures by the RI through the ongoing supervisory process.

6.2.10 Where possible misconduct of the RI and/or staff of the RI is identified in the examination, they are referred to the HKMA's securities enforcement team for

necessary investigation, disciplinary actions and, where appropriate, referrals to the SFC. If sufficient evidence is found after investigation into those cases, the RI concerned and its staff are subject to the same range of disciplinary sanctions as would be the case of firms or individuals regulated directly by the SFC.

6.2.11 Please refer to paragraph 1.1 above for the disciplinary actions taken so far by the SFC in relation to possible mis-selling cases received by the HKMA from April 2003 to 14 September 2008. The HKMA has also completed the investigation into 3 customers' cases concerning 3 ReIs, a former ReI and an executive officer of a RI and these cases have already been referred to the SFC for its decision on possible disciplinary action against the staff concerned.

Item 2.Z

6.2.12 At common law, a party's conduct would be regarded as "unconscionable" if such conduct is morally reprehensible. The Unconscionable Contract Ordinance (Chapter 458, Laws of Hong Kong) ("the Ordinance") empowers the court to give relief in relation to certain contracts found to be unconscionable. The Ordinance applies to a contract for the sale of goods or supply of services in which a party to a contract deals as consumer in relation to another party. However, whether at common law or under the Ordinance, a contract will not be set aside merely because the aggrieved party did not have independent legal advice. Also, the fact that a party had been offered independent advice would not necessarily save a transaction which was so harsh that no competent advisor could have recommended it.

6.2.13 Under the SFC's Code of Conduct, intermediaries are required to act honestly, fairly and in the best interests of its clients and the integrity of the market (GP1). GP6 further provides that such person should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that its clients are fairly treated. Paragraph 10.1 of the Code of Conduct provides that where a licensed or registered person has a material interest in a transaction with or for a client or a relationship which gives rise to an actual or potential conflict of interest in relation to the transaction, it should neither advise, nor deal in relation to the transaction unless it has disclosed that material interest or conflict to the client and has taken all reasonable steps to ensure

fair treatment of the client.

- 6.2.14 The Code of Conduct is principles-based and intermediaries are expected in all situations to follow not only the letter but the spirit of the Code of Conduct particularly the General Principles. In the SFC's FAQ, it provides that each client should be given sufficient time to digest, consider and evaluate the information and recommendations provided by an investment adviser and be given sufficient opportunity to raise queries with the investment adviser. Under no circumstances should investment advisers use high-pressure or unfair techniques to force or entice any client to make hasty investment decisions. Therefore, investors are protected by being given sufficient time and opportunity to evaluate the information and recommendations provided by RIs and they may seek independent financial and/or legal advice if they consider it necessary. **S1-Appendix 11**
M4
- 6.2.15 Enhanced requirements are applicable to marketing of investment products to the more vulnerable (e.g. the elderly). For instance in March 2006, the HKMA issued a circular to all AIs in respect of the Retail Wealth Management (RWM) Business and asked AIs among other things when selling RWM products to vulnerable customers to advise the customers to avoid hasty decisions, invite their relatives or friends to attend, and/or assign more than one staff to conduct the suitability assessment interview and product presentation to safeguard the interests of these customers and to mitigate any legal and reputational risks the AIs might be exposed to. In particular, AIs were asked not to sell complex RWM products to customers who might have difficulty in fully understanding the nature and risks of these products. **M3**
- 6.2.16 If the day-to-day regulatory process of the HKMA or any complaint received by the HKMA reveals possible misconduct in the sale of investment products (e.g., any breach of legal or regulatory requirements including that the intermediary was in a conflict of interest situation), the incident is referred to the HKMA's securities enforcement team for investigation, possible institution of disciplinary proceedings or referral to the SFC as appropriate and could result in the imposition of disciplinary sanctions under the BO or the SFO, the most serious of which is a life ban from re-entering the industry.

3. 如過去從來沒有具體就雷曼產品作出上述的審查，則

- (1). 是否由於金管局一直按章工作，未有察覺到雷曼迷債是較其他市面上的迷債為複雜及風險為高，購買人數亦較多，一旦出事對特區金融中心的聲譽破壞較大？金管局對雷曼迷債的可能影響，是否事前估計不到，故未有給予重視？
- (2). 若未特別就雷曼產品及其迷債作出專門審查，那請按第 2 條問題的提問，列出針對其他結構性產品的審查。

Items (1) & (2)

- 6.3.1 As mentioned in paragraph 6.2.3 above, the focus of the examinations was not on any issuer-specific products such as LB-related structured financial products, but was to review the overall selling practices of investment products (including equity-linked product, credit-linked notes (CLNs), mutual funds and units trust) depending on the major product types offered by the RIs examined.
- 6.3.2 CLNs (including LB-related Minibonds) only represented a small portion of structured products distributed to retail customers by retail banks. By comparison, other products such as equity-related structured products were much more widely distributed through RIs.
- 6.3.3 Regarding the number of complaint cases, there had been only a few cases relating to the possible mis-selling of CLNs received by the HKMA prior to the collapse of LB. The HKMA had received 5 complaint cases relating to suspected mis-selling of CLNs (including 2 complaint cases involving LB-related Minibonds) from April 2003 to 14 September 2008. From the survey on the distribution of retail CLNs by retail banks conducted in late 2007 with 16 selected RIs, it was also noted that there were only 2 complaint cases relating to selling of credit-linked products received by the selected RIs between 2006 and 2007.
- 6.3.4 As a result of above factors, on-site examinations conducted by the HKMA before 2008 which covered the sale practices of investment products generally would tend to cover a larger sample of other products such as equity-linked products than CLNs.
- 6.3.5 Notwithstanding the small market share and small number of complaint cases

reported on the sale of credit-linked products, the HKMA stepped up its regulatory efforts on such products between late 2007 and mid September 2008 in view of the significant changes in market conditions. A survey on the distribution of retail CLNs by retail banks was conducted in late 2007 and a round of thematic examinations on retail CLNs was conducted in 2008. A number of possible mis-selling cases were identified during this round of thematic examinations and all the cases have been referred to the HKMA's securities enforcement team for appropriate action.

6.3.6 Several rounds of thematic examinations covering the selling practices of investment products, including structured financial products, have also been conducted since 2005. Please refer to the response to be provided to item (e) of the Subcommittee's information request regarding follow-up to the hearing on 14 April 2009 enclosed with the letter of the Clerk to the Subcommittee dated 17 April 2009 for details of these thematic examinations.

M15

(g) *To confirm MA's understanding of whether the Questions and Answers on Suitability Obligations issued by the Securities and Futures Commission (SFC) contains a requirement for RIs to continuously apprise their clients of changes in the risk assessments of the investment products they had purchased.*

7.1 Whether an intermediary has a duty to communicate changes relating to the risk level of a client's investments is a matter to be determined by the scope of the agreed services to be provided in accordance with the client agreement. Where there is an ongoing relationship (i.e. providing continuous advice and performing ongoing review and monitoring of the client's investment portfolio after the initial sale) between an intermediary and its client (e.g. in private banking), where appropriate, any changes relating to that client's investments should be communicated to the client. According to the HKMA's understanding, during the period from April 2003 to 14 September 2008, there was no similar regulatory requirement imposed if the contractual relationship between an intermediary and its client only involved a one-off investment advisory transaction.

7.2 With respect to the regulatory requirements of product due diligence, the SFC's FAQ **M4** requires, among other things, that investment advisers should ensure that product due diligence is conducted on a continuous basis at appropriate intervals having regard to the nature, features and risks of investment products (item 3 of the SFC's FAQ). As set out in paragraph 7.1 above, the SFC's FAQ does not contain a requirement in general for, or intend to require, intermediaries to continuously apprise their clients of changes in the risk assessments or the risk rating of the investment products they have purchased if the contractual relationship between the intermediary and the client only involves a one-off investment advisory transaction.

條款及條件

雷曼兄弟 2 年期港元指數紅利定息保本票據

於 2008 年 8 月 8 日的條款及條件

警告

本條款表的內容並未經香港任何監管機關審閱。閣下對本條款表所述的票據，應審慎行事。如閣下對本條款表的任何內容有任何疑問，閣下應聽取獨立專業意見。於作出投資決定前，準買家應仔細考慮本條款表的內容，特別是下文所載的風險因素。

有意購買票據之人士應細閱本條款表之內容，包括本文件所載之風險因素。除非閣下完全了解票據之條款及有關風險，否則不應購買該等票據。

Lehman ID:	4000967
ISIN:	
發行人:	Lehman Brothers Treasury Co BV
擔保人:	Lehman Brothers Holdings Inc (穆迪 A2 / 標普 A)
發行類別:	歐元中期票據
票據身份:	優先
票據評級:	本票據並無獲評級
發行金額:	港元 35,300,000
指定面額:	50,000 港元
貨幣:	港元
發行價:	100%
交易所:	香港證券交易所
交易所營業日:	香港
結算營業日:	香港、倫敦
預期交易日:	有關證券交易所預期於固定交易時段營業的任何日子
估值時間:	於有關證券交易所正式收市時
營業日慣例:	遵從
交易日:	2008 年 8 月 8 日
發行日:	2008 年 8 月 22 日
裁定日:	2008 年 8 月 8 日
初始價:	於裁定日的估值時間的股份價格
最後估值日:	2010 年 8 月 23 日，或若該日並非一個預期交易日，則為下一個預期交易日
到期日:	2010 年 8 月 31 日
掛鈎資產:	恆生指數 ("HSI")
固定票息:	就付息日 1 至 8 而言:

條款及條件

指定面額 * 3.80% * ¼

票息日:

下文指定的日期，但可根據營業日慣例調整：

日期	票息日
1	2008年12月1日
2	2009年3月2日
3	2009年6月2日
4	2009年9月1日
5	2009年11月30日
6	2010年3月1日
7	2010年6月1日
8	2010年8月31日

贖回條款

贖回金額

發行人須於到期日向票據持有人支付一筆港元金額，該金額由計價代理於最後估值日根據下列算式釐定：

1. 如果 $\text{表現}_{HSI}^{Final} \geq 100\%$:

指定面額 $\times (100\% + 0.20\%)$

或

2. 如果 $\text{表現}_{HSI}^{Final} < 100\%$:

指定面額 $\times 100\%$

跟據：

在估值日，該指數表現（以百分比表示），由計價代表，根據以下公式釐定：

$$\text{表現}_{HSI}^{Final} = \left(\frac{HSI^F}{HSI^0} \right)$$

其中：

HSI^0 為 21,885.21，於裁定日於證券交易所掛鉤資產的指數價格，由計價代理決定

HSI^F ，於最後估值日於證券交易所掛鉤資產的指數價格，由計價代理決定

結算貨幣：

港元

條款及條件

計價代理：	Lehman Brothers International (Europe)
結算：	歐洲結算系統
上市：	無
監管法律：	英國
文件：	本條款表必須與 Lehman Brothers Holdings Inc.、Lehman Brothers Treasury Co. B.V.、Lehman Brothers Bankhaus AG 的歐洲中期票據零售計劃章程(經補充章程補充)，以及載有本特別發行票據最終條款的相應文件一併閱讀。
市場中斷及非經常事件：	於發生市場中斷事件、潛在調整事件、合併事件、收購要約、國有化、無力償債、撤銷上市地位及/或該等其他類似調整或非經常事件時，指定須對票據的條款及條件作出調整的詳細條文，須載入文件內。所有票據的購買被視為受條款所規限。 因本票據的付款或股票交收安排經於不同時差的計算系統處理，票息、贖回金額或股票有機會未能於付息日、到期日、提早贖回日或股票交收日(視情況而定)即時提供

銷售限制：

一般銷售限制:每名購買票據之人士均須遵守其可能提呈、出售或交付票據之任何司法權區之所有適用法律及法規，除非據其深知及確信，有關情況將導致符合所有適用法律及法規之規定，否則其不得直接或間接提呈、出售、轉售、再次提呈或交付任何票據。票據不會在任何司法權區公開出售。

美國銷售限制: 票據並未亦不會根據一九三三年美國證券法（經修訂）登記，亦不得在美國境內或向美籍人士或為該等人士或為其利益提呈或出售，惟根據有關證券法 S 規例或第 144A 條獲批准者除外。

香港銷售限制: 票據不可作配售或轉售除非 a.) 票據之最低面值或有意投資者就票據應付之最低代價不少於 500,000 港元或根據香港法例第 32 章公司條例（「公司條例」）附表 17 第 1 部第 4 條當時規定之其他款額或以另一貨幣計算之等值，否則不得提出票據之銷售或轉售要約，公司條例附表 18 所載之警告性陳述已載於提出票據要約後向有意投資者提供之發售文件內。b.) 在香港境內不可向超過五十人配售本票據（不論最終接受該配售的人數），及本票據不會出售或提供予銷售人員相信為最終投資者以外的人士；本豁免規條應獨立看待及不可與豁免規條 a.) 共同使用。

新加坡銷售限制: 本條款表並無根據新加坡證券及期貨法（「證券及期貨法」）（第 289 章）向新加坡金融管理局登記為章程。因此，本條款表及有關提呈、出售票據或其認購或購買要約之任何其他文件或資料，不得向新加坡人士傳閱或分派，票據亦不得提呈或出售予有關人士，或作為向有關人士提出之認購或購買要約之對象（不論直接或間接），惟（i）向證券及期貨法第 274 條所指之機構投資者，（ii）向證券及期貨法第 275 條指定之有關人士，或符合第 275(1A)條規定之任何人士並根據該條指定之條件或（iii）以其他方式遵照並根據證券及期貨法任何其他適用條文之條件作出以上事宜，則屬除外。

倘有關人士根據第 275 條認購或購買票據，而其為：

- (a) 一家公司（並非認可投資者（以證券及期貨法第 4A 條所界定者為準）），其唯一業務乃持有投資，而其悉數股本由一名或多名個人擁有，且各名擁有人均為認可投資者；或

條款及條件

- (b) 一個信託（受託人並非認可投資者），其成立之唯一目的乃持有投資，而該信託之每名受益人均為屬於認可投資者之人士；則該公司或該信託在以按照第 275 條作出之要約為依據購買票據後六個月內，該公司之股份、債權證及股份及債權證基金單位，或該信託之受益人權利及權益均不得轉讓，惟以下情況除外：
- (1) 轉讓予證券及期貨法第 275(2)條界定之機構投資者（如屬公司，根據證券及期貨法第 274 條）或轉讓予有關人士，或根據要約轉讓予任何人士，而該要約乃按某些條款作出，致使有關權利或權益按每項交易不少於 200,000 新加坡元（或其外幣等值）之代價獲得，而不論款額以現金或交換方式或證券或其他資產支付，另就公司而言，須根據證券及期貨法第 275 條指明之條件轉讓；
 - (2) 轉讓並無亦不會涉及任何代價；或
 - (3) 轉讓乃藉法律進行。

台灣銷售限制: 票據不得於中華民國（「中華民國」）出售或提呈，而僅可按遵照有關跨境活動適用之台灣證券法律及法規之方式，向來自台灣境外之中華民國居民投資者提早及出售。

恒生指數免責聲明

恒生指數（「該（等）指數」）乃由恒生指數有限公司根據恒生資訊服務有限公司之批准發布及編製，恒生指數之標記及名稱之所有權權益由恒生資訊服務有限公司擁有。恒生指數有限公司及恒生資訊服務有限公司已同意雷曼兄弟可就（「該產品」）使用及引述該（等）指數，惟恒生指數有限公司及恒生資訊服務有限公司並無就（i）任何該（等）指數及其計算或任何其他與之有關的資料的準確性及完整性；或（ii）任何該（等）指數或其中任何成份或其所包涵的資料作任何用途之適用性或適合性；或（iii）任何人士因使用任何該（等）指數或其中任何成份或其所包涵的資料作任何用途而引致之結果，而向該產品之任何經紀或該產品持有人或任何其他人士作出保證或聲明或擔保，亦不會就任何該（等）指數提供或默示任何保證、聲明或擔保。恒生指數有限公司可隨時更改或修改計算及編製該（等）指數及其任何有關程式、成份股份及系數之過程及基準，而無須作出通知。於法律容許的範圍內，恒生指數有限公司及恒生資訊服務有限公司不會因（i）雷曼兄弟就該產品引用及/或參考任何該（等）指數；或（ii）恒生指數有限公司在計算任何該（等）指數時的任何失準、遺漏、失誤或錯誤；或（iii）與計算任何該（等）指數有關並由任何其他人士提供的資料的任何失準、遺漏、失誤或錯誤；或（iv）任何經紀、該產品持有人或任何其他處置該產品的人士，因上述原因而直接或間接蒙受的任何經濟或其他損失承擔任何責任。任何經紀、該產品持有人或任何其他處置該產品的人士，不得因有關該產品的事宜，以任何形式向恒生指數有限公司及/或恒生資訊服務有限公司進行索償、法律行動或法律訴訟。任何經紀、該產品持有人或任何其他處置該產品的人士，須完全了解此免責聲明，並且不能依賴恒生指數有限公司及恒生資訊服務有限公司。為免產生疑問，本免責聲明並不會於任何經紀、該產品持有人或任何其他人士與恒生指數有限公司及/或恒生資訊服務有限公司之間構成任何合約或準合約關係，而亦不應視作已構成該等合約關係。

條款及條件

風險因素

閣下在作出投資決定前，務請審慎考慮本條款表之內容，尤其下文載列之風險因素。閣下閱讀本條款表時，務須連同法律文件一併閱讀，有關法律文件載有關於計劃及根據計劃發行之票據之重要資料。然而，有意購買票據之人士應明白，本條款表及法律文件未必可披露票據之所有風險。本文件所載資料旨在讓有意購買票據之人上評估票據之條款及投資票據之一般風險。除非了解票據之性質及潛在虧損之風險程度，否則概無人士應購買票據。因此，有意購買票據之人士應徵詢其法律、稅務、會計及其他專業顧問，協助彼等決定票據是否適合投資。

票據的適合性

投資票據等結構性產品涉及重大風險，包括市場風險、流通量風險及發行人無法根據票據履行其責任的風險。閣下在決定投資票據前，應確保閣下明白所有該等風險的性質。閣下須因應閣下的經驗、目標、財務狀況及其他相關情況，審慎考慮票據是否適合。票據等結構性產品並不適合投資經驗尚淺的買家。

本金損失風險

如果本條款表無說明票據為全保本，投資者有可能損失全部或部份本金，票據價格可能在贖回前明顯低過其發行價。

如果票據為全保本性質，需注意本金保證只適用於到期日。投資者如選擇提早贖回可能損失全部或部份本金。

提早贖回風險

參與任何票據應視為中至長期「持有至到期日」投資。票據的價值可於票據的有效期內上升或下跌，而倘閣下擬於到期日前出售票據，閣下須明白到在此情況下並無本金保障，而閣下須承擔損失部份或全部初始投資價值的風險。

信貸風險

閣下承擔發行人未能履行支付票據本金或票息的風險。此外，閣下應知悉票據發行人或擔保人(如有)的信貸評級如出現任何變動，將影響票據的價格及價值。

流動資金風險

有關票據可能並無莊家安排。因此，閣下須知悉閣下能變現其投資的情況可能有限。票據缺乏活躍交易市場，令買家在第二市場以場外方式出售票據可能遇到困難。在這些情況下，不再希望持有票據投資的買家將要持有票據直至到期為止。

概不保證票據的第二市場將會存在，亦不保證買盤的出價。提出的買盤價(如有)可能受多個因素影響，包括(但不限於)票據的餘下年期、相關項目的表現、利率、匯率及信貸息差波動。

潛在利益衝突

閣下應知悉雷曼兄弟就票據擔當的不同角色可能會產生潛在及實際的利益衝突。雷曼兄弟將為發行人的調期對手方，對沖票據項下發行人的市場風險。雷曼兄弟及其聯屬公司亦為票據的安排行、經銷商及計價代理。Lehman Brothers Holdings Inc. 亦可擔任調期擔保人。閣下應尋求閣下認為適合的獨立意見，以評估此項潛在利益衝突的風險。

儘管發行人、調期對手方及調期擔保人並無任何職責或責任避免閣下面對該等衝突，然而，倘若有任何利益衝突產生，雷曼兄弟將採取合理措施，以保障所有受影響方的利益，並將會以公平及商業合理的方式行事。

條款及條件

商品相關風險

如票據與商品掛鈎，你需注意商品的價格及商品指數可能波動不定及大幅波動，例如倘出現自然災害或大災難如颶風、火災或地震，將影響該等商品的供應或生產。

結算風險

倘由於緊急事項或特殊情況、市場情況或法定假期，導致(i)進行票據結算的結算系統或(ii)用作計算相關項目的任何股票的交易或結算系統所在國家的交收規則出現變動，結算可能遭受暫時性阻礙或延遲。

通脹風險

通脹可能導致票據的實質回報率減少。

外匯風險

票據以美元列值，並將以美元贖回。因此，需要其他貨幣的買家將要面對美元兌其他所須貨幣的外匯風險。

事件風險

票據的條款或會因若干事件而作出調整，如(但不限於)法律文件所載的指數修訂、指數中斷、價格來源中斷、暫停交易及稅法改變。

購買能力

每票據投資者有責任衡量自己是否有法律能力及權利去購買該票據。

免責聲明

本條款表僅屬指示性質，並無確認任何交易。於任何情況下，本條款表均不得展示、複印或以其他方式提呈予閣下之授權代表以外之任何人士。本資料僅供閣下參考，而雷曼兄弟並無據此游說閣下作出任何行動。本條款表之資料可能不完整或經撮要，且不包括任何實際交易中將包含之若干條款及條文。交易一經訂立，該等條款及條文將於有關文件內反映，有關文件將取代及代替本概要。條款及條件或會因應市場波幅及/或根據監管或主管機構及雷曼兄弟內部政策可能實施之條件修改。儘管憑上文所載列之資料可對截至指定日期之條款略知一二，而雷曼兄弟相信可能根據有關條款組織上述工具(「工具」)之發行事宜，惟概不保證發行事宜可確實進行。本公司將應閣下要求提供上文之交易中所涉及風險之範例分析。

雷曼兄弟並無擔任顧問，故不會對任何財務後果或購買及/或持有工具導致之其他後果承擔受信責任或法律責任。在購買工具前，閣下應考慮工具是否切合閣下之個別情況，並(於必要時與專業顧問，獨立審閱特定財務風險及法律、監管、信貸、稅務及會計後果)。

本文件並不構成工具或發行人其他證券之任何認購或出售要約或邀請，或任何認購或購買要約之游說行動，亦不構成當中之部分，本文件亦非作邀請用途，亦不允許為取得現金或其他代價而向公眾人士提出工具或發行人其他證券之認購或購買要約。

發行人、其聯屬人及附屬公司及/或彼等之董事、高級人員及僱員或會(i)擁有相關股份之好倉或淡倉，亦可能擔任主事人、代理或市場莊家買賣相關股份(按上文所述為準)或相關股份之發行人發行之其他證券，而有關好倉或淡倉於日後或會增加或減少，及(ii)與相關股份發行人或有關實體維持商業或投資銀行關係或擔任該發行人或有關實體之董事。

本條款表須受相關基本章程及/或其他適用發售文件所限(將應要求提供)，並受相關最終條款所規限。