



HONG KONG MONETARY AUTHORITY  
香港金融管理局

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Your Ref: CB1/HS/1/08

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Miss Polly YEUNG  
Clerk to Subcommittee to Study Issues Arising from  
Lehman Brothers-related Minibonds and Structured Financial Products  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Miss YEUNG,

**Subcommittee to Study Issues Arising from Lehman Brothers-related  
Minibonds and Structured Financial Products**

From the discussions of the recent Subcommittee hearings, we noted that some misunderstandings may have arisen in relation to the work of supervision and enforcement of regulated activities carried out by the Hong Kong Monetary Authority (HKMA). In order to assist the Subcommittee in its inquiry, I would like to provide the information below for clarification.

The HKMA's investigation process

At the hearing held on 23 June 2009, questions were asked by some Subcommittee members (a) why the HKMA simply referred the Lehman Brothers (LB) related cases to the Securities and Futures Commission (SFC) after finding prima facie evidence in these cases, but did not continue to investigate them; and (b) whether it was necessary for the HKMA to conduct any investigation into the cases given that the SFC has already commenced investigation into all 19 registered institutions (RIs) concerned. These questions suggest a misunderstanding of the HKMA's investigation process of LB-related cases by some members of the Subcommittee. First, it is important to note that the HKMA has continued and will continue to conduct detailed investigations into all cases that have been referred to the SFC for determining whether and what disciplinary actions on the RI's staff concerned are warranted. Secondly, as explained in the letter issued by the Monetary Authority (MA) to the Subcommittee on 15 June 2009, the objective of such referral of cases to the SFC is to speed up the SFC's "top-down" investigation of the RIs concerned; to help

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the SFC focus on possible areas of concern; and to identify any systemic failure at the RI level. At the same time, the HKMA is investigating at the individual-case level focusing on the possible misconduct of relevant individuals or executive officers of RIs involved in each case. The HKMA believes that the division of duties between the HKMA and the SFC can avoid any overlap of investigation work and is effective for handling the large number of complaint cases. The investigation process for LB-related complaints was also explained in Annex 1 of the MA's letter mentioned above.

The HKMA's supervisory work

In addition, during the hearing on 26 June 2009, a comment was made by a Subcommittee member that the HKMA only conducted thematic examinations regarding selling practices of RIs in 2008. This is a misunderstanding of the supervisory work done by the HKMA. As indicated in paragraph 9.13 of my written statement (SC Ref. W11(C)), thematic examinations focusing on the selling practice of investment products of RIs have been conducted since 2005. During the hearing on 2 June 2009, I also informed the Subcommittee that thematic examinations on selling practices of investment products (e.g. thematic examinations on retail wealth management) had been conducted since 2005 (see page 67 of the preliminary draft of the verbatim transcript of the hearing on 2 June 2009). In addition, the HKMA conducted a total of 74 Tier-1 and Tier-2 on-site examinations between April 2003 and December 2008, which also covered, among other things, RIs' selling practices of investment products.

Enforcement figures prepared under different bases

At the hearing held on 23 June 2009, we also noticed that the Subcommittee appeared to use the 9 cases referred by the HKMA to the SFC for its action (see paragraph 5.7 of my written statement (SC Ref. W11(C))) and compared the figure with the 527 disciplinary inquiries completed by the SFC in relation to suspected breaches of the Code of Conduct by brokers or their representatives. The Subcommittee may wish to note that the two figures were prepared on different bases and should not be compared directly. The 9 cases that the HKMA referred to earlier were suspected mis-selling cases referred to the SFC for proposed disciplinary actions. With regard to suspected breaches of the Code of Conduct by RIs (which cover not only suspected mis-selling cases but also other types of misconduct), the HKMA's securities enforcement team has, up to 23 June 2009, completed investigation of 47 cases which were referred to the team between April 2003 and 15 September 2008.

I hope the clarifications above will assist the Subcommittee in its further inquiry.

Yours sincerely,

