

Legislative Council (LegCo) Panel on Financial Affairs

Issues relating to Government's "Buy-back" Proposal for Lehman Brothers-related Minibonds

Purpose

This paper sets out the Administration's response to the two letters dated 10 December from the Panel requesting the Administration to provide written information about the latest state of play in respect of the "buy-back" proposal. In providing written information to the Panel, the Administration is also requested to address the concerns raised by Hon Audrey EU in her letter dated 1 December to the LegCo Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and structured financial products.

Response

Background

2. The Lehman Minibonds Incident involves a large number of retail investors and a substantial amount of investment. Thus, when learning that the liquidation process could take well over years, the Government proposed to the Hong Kong Association of Banks ("HKAB") on 6 October a buy-back proposal for their consideration to provide assistance and relieve Minibonds holders of the waiting time and anxieties.

Key Features

3. The buy-back proposal essentially suggests the banks purchase the Minibonds from the retail investors at their estimated market value so as to allow Minibonds holders to realize the current value of their investment as quickly as possible. After banks buy back the Minibonds, they would use their expertise to work together with Trustee to extract the best value out of the Minibonds in the liquidation process. Any liquidation proceeds they receive over and above the original offer price will be returned to the retail investors. It is not meant to be a form of compensation for mis-selling, which is separately handled through investigation of complaints.

HKAB Task Force (“Task Force”)

4. The HKAB set up a Task Force on Lehman Minibonds Incident which is advised by an independent financial advisor and a legal advisor on the technical and legal feasibility of the buy-back plan. Having carefully considered the feasibility of the proposal, the risks and the special circumstances involved, 16 distributor banks announced their decision on 17 October to accept the buy-back proposal.

Government’s Involvement

5. The Government acts as a facilitator under the buy-back proposal. Separately, to ensure that the Minibonds investors are given fair, just and reasonable treatment in the buy-back process, the Hong Kong Monetary Authority appointed PricewaterhouseCoopers as an independent consultant to review the procedures and strategies adopted by the distributor banks in implementing the proposal.

Legal Issues

6. We understand that the legal advisor to the Task Force advised that the Trustee of the Minibonds received a letter dated 25 November from the lawyers that act for the liquidator of Lehman. The lawyers alleged that, according to the US Bankruptcy Code, the Trustee’s action since 15 September (the date which Lehman went into bankruptcy) might be invalid; and that the Trustee might not lawfully realize the collateral and pay the money to Minibond investors, and should refrain from taking any further action.

Administration’s Stance

7. Notwithstanding the legal challenges, we hope that the Task Force would continue to mobilize its professional knowledge in helping the Minibonds holders. We also urge the Trustee to take all necessary action to safeguard the assets of the Minibonds holders and realize their current values as soon as practicable. The Administration is of the view that the buyback option remains the best option and trust that HKAB would continue to work closely with all relevant parties in the interest of the investors.