

22 July 2009

SFC, HKMA and 16 banks reach agreement on Minibonds

The Securities and Futures Commission (SFC), the Hong Kong Monetary Authority (HKMA) and 16 distributing banks (the Banks) (Note 1) today jointly announce that they have reached an agreement in relation to the repurchase of Lehman Brothers Minibonds from eligible customers (Note 2).

The Banks have agreed with the SFC and the HKMA without admission of liability that (Note 3):

- each of the Banks will make an offer to repurchase from each eligible customer all outstanding Minibonds (Note 4) at a price equal to 60% of the nominal value of the original investment for customers below the age of 65 or at 70% of the nominal value for customers aged 65 or above as at 1 July 2009. Customers will be entitled to retain any coupon payments received to date;
- once the underlying collateral is recovered and paid to the Banks, each of them will make a further payment of initially up to 10% (depending on recoveries) of the nominal value of the Minibonds to eligible customers below the age of 65 and, if recoveries exceed 70%, the Banks will pay the entire excess amount to eligible customers who have accepted the repurchase offer (Notes 5 and 6);
- each Bank will make available an amount equivalent to the amount of commission income received by it as a distributor of the outstanding Minibonds to the trustee of the Minibonds to assist in the recovery of the underlying collateral for each outstanding series of Minibonds;
- each of the Banks will immediately implement special enhanced complaints handling procedures to resolve, in a fair and reasonable manner, all complaints in relation to the sale and distribution of other structured products (Note 7); and
- to demonstrate their commitment in serving the investing public with the highest standards of conduct, each of the Banks: (i) will engage an independent reviewer, to be approved by the SFC and the HKMA, to review its systems and processes relating to the sale of structured products, to report to the SFC and the HKMA and will commit to the implementation of all recommendations by the independent reviewer; and (ii) will engage a

qualified third party, as approved by the SFC and the HKMA, to review and enhance complaints handling procedures, and will commit to the implementation of all recommendations by such third party.

People who have previously reached settlement with the Banks in relation to Minibonds will not qualify for the repurchase offer. However, the Banks have undertaken to the HKMA to make ex gratia payments to those customers that have already entered into settlements with the Banks and who would have been eligible to receive the repurchase offer where those customers have received settlement amounts less than they would have received under this agreement. The intention is to bring those customers in line with eligible customers under this agreement.

In consideration of the agreement, the SFC will discontinue its investigations into the sale and distribution of Minibonds by the Banks. The HKMA has also informed the Banks that as the agreement contains detailed arrangements for the settlement of claims and the implementation of robust systems for selling unlisted structured products and dealing with related customer complaints in future, it is not its intention to take any enforcement action against the Banks in relation to Minibond cases that involve eligible customers who accept the offer.

The SFC considers that this agreement meets the SFC's criteria for resolution under section 201 of the Securities and Futures Ordinance for the following reasons:

- The repurchase scheme should ensure that eligible customers who accept the repurchase offer will, subject to the recovery and distribution of the underlying collateral, receive a total amount that is equal to or greater than what they would otherwise recover if they were simply paid the current market value of the collateral.
- The agreement takes into account that the recoverable value of the collateral is not certain. Even if the recoverable value of the collateral is below the values estimated by experts engaged by the Hong Kong Association of Banks in late 2008, the proposal will still deliver a return for the eligible customers that is equal to or exceeds 60% of their investment (or 70% for customers aged 65 or above).
- The agreement includes a commitment by the Banks, as noteholders, to take reasonable steps to expedite the return of the collateral. It is important

that any claim on the collateral that might reduce its recoverable value is negotiated robustly.

- The agreement represents an opportunity to resolve outstanding investigations involving 16 banks in a way that will bring benefits to nearly all holders of outstanding Minibonds.
- The agreement includes special measures in which the Banks will investigate and resolve in a fair and reasonable manner all complaints involving the sale and distribution of other structured products.
- The agreement also remediates the Banks' systems and processes to meet the highest standards that will provide enhanced protection to the investing public in the future and give the investing public an assurance that the parties are determined to ensure these events are not repeated.
- The SFC and the HKMA believe that the repurchase offer by the Banks is a reasonable one and is in the public interest.

“Strong markets, like Hong Kong’s, need strong regulations. This agreement will provide substantial benefits for the vast majority of customers holding Minibonds that would not otherwise be received by them and, given the number of Banks and customers involved, the agreement is a watershed in the regulation of financial services in Hong Kong,” said the SFC’s Chief Executive Officer, Mr Martin Wheatley.

“Specifically, the agreement paves the way for customers who hold Minibonds to receive a substantial return of their capital. Secondly, the financial support of the Banks, using the commission income received in the sale of Minibonds, will expedite the return of the underlying collateral to Hong Kong Minibond holders. This aligns the interests of the Banks and customers holding Minibonds. Thirdly the agreement provides the framework for the Banks to develop higher standards of practice in the future and to resolve complaints in relation to other structured products. For these reasons, the SFC firmly believes it is an appropriate resolution of the Minibond issue with these banks,” remarked Mr Wheatley.

Mr Y K Choi, Deputy Chief Executive of the HKMA, said: “The HKMA welcomes and supports the repurchase scheme and considers it to be practical, reasonable and in the interests of the great majority of Minibond investors. The HKMA encourages eligible customers to consider the repurchase offer by the Banks.”

Dr The Hon Sir David Li Kwok Po, Chairman and Chief Executive of The Bank of East Asia, Ltd, said on behalf of the Banks: “The Banks are pleased to have reached this agreement with the SFC and the HKMA which we believe will benefit Hong Kong as an international financial centre. It evidences our joint effort to assist the Minibond investors in Hong Kong who have been impacted by the sudden collapse of the Lehman Brothers Group, and to reinforce public confidence in Hong Kong’s banking, financial and regulatory systems. This agreement demonstrates our unwavering commitment to the good of Hong Kong and the welfare of our customers. We will continue to work with the SFC and the HKMA to maximise the confidence of our customers in Hong Kong’s banks, and to ensure that the standards maintained by Hong Kong’s banks will be in line with international best practice.”

The SFC acknowledges the substantial assistance of the HKMA in the investigation of these cases.

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Notes :

1. The Banks are: (1) ABN AMRO Bank N.V.; (2) Bank of China (Hong Kong) Ltd; (3) Bank of Communications Co Ltd; (4) The Bank of East Asia, Ltd; (5) Chiyu Banking Corporation Ltd; (6) Chong Hing Bank Ltd; (7) CITIC Ka Wah Bank Ltd; (8) Dah Sing Bank Ltd; (9) Fubon Bank (Hong Kong) Ltd; (10) Industrial and Commercial Bank of China (Asia) Ltd; (11) Mevas Bank Ltd; (12) Nanyang Commercial Bank, Ltd; (13) Public Bank (Hong Kong) Ltd; (14) Shanghai Commercial Bank Ltd; (15) Wing Hang Bank Ltd; and (16) Wing Lung Bank Ltd.

2. Eligible customers will not include professional investors, corporate/non-individual investors (with specified exceptions) or experienced investors (meaning investors who in the three years preceding their first purchase of Minibonds, executed five or more transactions in Leveraged Products, Structured Products or a combination of these products. The definition also excludes those customers who have previously settled claims in relation to Minibonds with the Banks.

3. Please follow this link for the Questions and answers about Lehman Brothers Minibonds Repurchase Scheme by Distributing Banks.

4. Outstanding Minibonds refers to the following series of Minibonds: series 5-7 inclusive, series 9-12 inclusive, series 15-23 inclusive, series 25-36 inclusive.

5. Table setting out the projected recovery (%) by eligible customers below the age of 65 as at 1 July 2009:

Collateral amount recovered	0%	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Total recovery by eligible customers	60%	65%	70%	70%	70%	70%	70%	70%	70%	80%	90%	100%

6. Table setting out the projected recovery (%) by eligible customers aged 65 or above as at 1 July 2009:

Collateral amount recovered	0%	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Total recovery by eligible customers	70%	70%	70%	70%	70%	70%	70%	70%	70%	80%	90%	100%

7. The Code of Conduct for Persons Licensed by or Registered with the SFC provides that licensees and registered institutions should ensure customer complaints are handled in a timely and appropriate manner, steps are taken to investigate and respond promptly to complaints and, where a complaint is not remedied promptly, the client is advised of further steps available under the regulatory system.