HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

23 Sep 2008

Investment products related to Lehman Brothers

Our Ref.: B1/15C

23 September 2008

The Chief Executive
All registered institutions

Dear Sir / Madam,

Investment products related to Lehman Brothers

The HKMA notices that there are concerns among members of the public who had purchased from registered institutions (RIs) investment products related to Lehman Brothers (Lehman). These include structured notes issued by Lehman and credit linked notes put out by other issuers with Lehman as one of the reference entities.

Handling of enquiries and complaints

In view of the large number of investors in these Lehman products, I would urge all relevant institutions to be as transparent and forthcoming as possible in providing information to them. In particular I would like to draw your attention to the circular issued by the Securities and Futures Commission (SFC) on 19 September 2008, which is applicable to all RIs. The circular provides that, as institutions are expected to receive enquiries and complaints from their customers about investment products under current market situation, they should deal with these enquiries and complaints fairly and honestly with the level of skill, care and diligence expected under the SFC Code of Conduct and in the best interests of the client. The circular is attached as Annex and is also posted on the SFC's website (www.sfc.hk).

To further assist the relevant investors, the Hong Kong Monetary Authority (HKMA) requires all RIs which had sold Lehman products at the retail level to:

1. write directly to inform their relevant customers to explain clearly the latest situation with regard to these Lehman products, how the customers have been affected, and what options, if any, are available to them;
2. immediately establish a dedicated, manned (not machine-operated) telephone hotline to answer enquiries from their customers who had bought these products and notify the HKMA of the hotline number; and
3. arrange briefings / updates for your customers who had purchased these Lehman products.

Your institution is expected to put in place the above measures as soon as possible. I would appreciate if your institution could provide us in writing, through your usual supervisory contact, what measures are being taken (with dates of implementation) as soon as possible, but in any case, on or before the close of business this Wednesday (24 September).

Selling of investment products

I should remind all institutions that you are required to comply with the SFC Code of Conduct in selling securities and futures products. Among other things, the Code requires intermediaries to explain to the clients the products and the risks involved. Institutions are also required to assure themselves that customers understand the nature and risks of the products and which are consistent with the customers' investment objectives. Institutions should also assure that the customers have sufficient net worth to assume the risks and bear the potential losses of trading in the products. In addition, according to the HKMA Supervisory Policy Manual1, before an institution launches a new product or service, the risk management function (which should be independent from the business units that generate risks and have a direct reporting line to the relevant risk management committee or senior management) should ensure that the risks are well understood and adequately assessed, and all relevant departments, e.g. risk control, accounting, operations, legal and compliance, should be consulted as appropriate.

In view of the current market situation, the risk level of many products may have risen. Your institution is expected to immediately review, if it has not done so already, the risk level of all investment products being sold to ensure that they are sold only to customers with comparable risk appetite.

Moreover, your institution should critically review the selling process for these Lehman products to determine if there are areas which fall short of the requirements under the SFC Code of Conduct and other relevant rules and regulations (such as the Q&As on suitability obligations published by the SFC on 8 May 2007), and implement enhancements where necessary.

Yours faithfully,

Nelson Man
Executive Director
Banking Supervision Department

c.c. SFC (Attn: Mr Martin Wheatley, Chief Executive Officer)

Encl. Annex - Circular by the SFC (PDF file, 276KB)

[1] See sections 4.3 and 5.1 of module IC-1 "General risk management controls" of the HKMA Supervisory Policy Manual.

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