
Enforcement News

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22 January 2009

Sun Hung Kai Investment Services Ltd agrees with SFC to repurchase Minibonds from its clients at original value

The Securities and Futures Commission (SFC) has issued a reprimand to Sun Hung Kai Investment Services Ltd (Sun Hung Kai) in respect of internal systems and controls relating to its sales since 2002 of Lehman Brothers Minibonds to its clients, following an investigation by the SFC (Note 1).

Sun Hung Kai has agreed with the SFC to make a voluntary offer to purchase all outstanding Lehman Brothers Minibonds bought by eligible Sun Hung Kai clients at a price equal to the principal amount invested by them (Notes 2 & 3).

The SFC estimates the total amount of the repurchase offer will be up to \$85 million.

"We are very pleased with the outcome that has been achieved and we believe the approach adopted has produced a result which is in the best interests of the investors," the SFC's Chief Executive Officer, Mr Martin Wheatley said.

"I would like to commend the management of Sun Hung Kai for the responsible and timely approach they adopted in reaching this agreement, which recognises the best interests of their customers," he added.

The decision follows an investigation by the SFC which raised a number of concerns with Sun Hung Kai. Specifically, the SFC's concerns were with respect to:

- the adequacy of product due diligence on Lehman Brothers Minibonds before they were distributed to eligible clients;
- the adequacy of training given to Sun Hung Kai retail sales staff on Lehman Brothers Minibonds to enable them to understand the product and all its material risks;
- the assessment of the level of risk for each particular series of Minibonds, the communication of those risk ratings to its retail sales staff and the measures that ought to have been taken to ensure that its sales staff gave reasonably suitable advice by matching the risk-return profile of each series of Lehman Brothers Minibonds with the personal circumstances of each eligible client; and
- the record-keeping of investment advice given to eligible clients and any queries raised by them.

Sun Hung Kai does not admit any liability or wrongdoing arising from these matters but acknowledges the seriousness of these concerns.

Given the high public interest in resolving these issues quickly, to avoid unnecessary costs and expenses and to affirm its commitment to the highest standards of conduct, Sun Hung Kai has agreed with the SFC to the following (Note 4) :

(a) to offer to its eligible clients to purchase all outstanding Lehman Brothers Minibonds bought through Sun Hung Kai at a price equal to the principal amount invested by those clients (the eligible clients will retain all coupon payments received to date) with payments to be made within 30 days of the date of

acceptance (Note 5);

(b) to engage an independent audit firm to conduct a review of Sun Hung Kai's internal control and compliance systems;

(c) if, within 18 months from the completion of Sun Hung Kai's current enhancement exercise (which shall be completed within six months from the date of this agreement), the SFC finds the same concerns of a materially serious nature as those identified by it in this investigation, Sun Hung Kai's licence will be partially suspended for a period of three years to the extent that Sun Hung Kai will not be allowed to sell or distribute unlisted or structured products to clients and provide advice to clients in relation to these products; and

(d) continue to support and cooperate fully with the SFC.

The SFC acknowledges Sun Hung Kai cooperated fully with the SFC's investigation. Sun Hung Kai has already commenced its own review of internal systems and controls. The SFC's investigation into Sun Hung Kai's sales of Lehman Brothers Minibonds has now concluded.

The SFC has also taken into account:

- Sun Hung Kai's agreement to resolve the SFC's concerns immediately;
- Sun Hung Kai's repurchase offers are being made voluntarily;
- Sun Hung Kai has already made enhancements and will continue to engage an external professional consultant for the further enhancement of its systems and controls;
- Sun Hung Kai's agreement to engage an independent auditing firm for internal control reviews to ensure that similar compliance issues will not reoccur in the future; and
- Sun Hung Kai's clear disciplinary record.

End

Notes:

1. Sun Hung Kai Investment Services Limited is licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.

2. The scheme will involve Sun Hung Kai offering to repurchase Lehman Brothers Minibonds purchased through it by its eligible clients. The population of eligible clients includes all clients of Sun Hung Kai who bought Lehman Brothers Minibonds through Sun Hung Kai except for: (a) those clients who purchased Minibonds only from the secondary market on an execution only basis and had not previously purchased Minibonds through Sun Hung Kai in primary offerings; (b) professional investors, including financial institutions, insurers and other corporations falling under paragraphs (a) to (i) of the definition of "professional investor" in Part 1 of Schedule 1 to the SFO; (c) those clients who had already commenced legal action against Sun Hung Kai unless the clients are willing to stay or end the legal action; or (d) those clients who had concluded a settlement with Sun Hung Kai and already received payments that exceeded the principal they invested.

3. For more details on the repurchase scheme, please visit Sun Hung Kai's website at: www.shkf.com or call Sun Hung Kai's investor hotline at 3761 1492.

4. This resolution by the SFC with Sun Hung Kai is the result of an agreement under section 201 of the SFO which allows the SFC to resolve disciplinary cases without completing the formal hearing process set out in the SFO if the other party, in this case Sun Hung Kai, agrees. The section 201 agreement is dated 22 January 2009.

5. Each eligible client who accepts this offer will be required to transfer their Minibonds (or entitlement thereto) to Sun Hung Kai and sign a release and waiver of claims they may have against Sun Hung Kai.

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