

Press release

LCQ4: Proposed cooling-off period for sales of investment products

Wednesday, October 21, 2009

Following is a question by the Hon Jeffrey Lam and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (October 21):

Question:

The Securities and Futures Commission (SFC) recently issued the Consultation Paper on Proposals to Enhance Protection for the Investing Public to put forward a series of improvement proposals to address the various problems with the regulation of investment products and selling practices, as exposed by the Lehman Brothers Minibonds incident, including the introduction of a cooling-off period to allow an investor to cancel the order or exit the investment within a specified period after he has placed an order or acquired an investment product. In this connection, will the Government inform this Council whether:

- (a) it has studied who should bear the price difference of the investment product during the cooling-off period when the investor ultimately decides to cancel the order, and if the difference is to be borne entirely by the issuer or its agents (including banks), whether it will cause any damage to the operation of the relevant industries;
- (b) the authorities can implement the aforesaid proposals in the form of temporary contract, which allows the price of a product to be determined only after the investor has confirmed the transaction upon the expiry of the cooling-off period; and
- (c) the authorities have studied the feasibility of introducing cooling-off periods for different investment products; in respect of products whose prices can be highly volatile within a short period, whether the setting up of cooling-off periods will give speculators the opportunity to disrupt the smooth operation of the financial market?

Reply:

President,

In its "Consultation Paper on Proposals to Enhance Protection for the Investing Public" released on September 25, 2009, the Securities and Futures Commission (SFC) has put forward a number of proposals to enhance the regulation of intermediaries selling investment products to the public. We understand that before formulating these proposals, the SFC has looked into the regulatory regimes in a number of overseas jurisdictions, including how a "cooling-off period" is implemented, and informally consulted the local industry.

"Cooling-off period" is one of the proposals in the SFC's consultation paper. The consultation is underway. With regard to the specific questions raised by Hon Jeffrey Lam Kin-fung, at this stage we are only in a position to give a general reply having taken into account SFC's views.

(a) SFC is consulting the public on the circumstances under which a "cooling-off period" should be introduced, and on specific ways of implementing it. This relates to the question on who should bear the price difference of an investment product during the "cooling-off period" when the investor ultimately decides to cancel the order. We encourage the industry and the public to actively respond to the proposals in the SFC's consultation paper. It has been mentioned in the consultation paper that where a "cooling-off period" applies overseas, investors can generally obtain the full refund of the principal less certain reasonable administration costs and market value adjustments. SFC considers that this arrangement will help prevent investors from changing their mind lightly.

(b) SFC's consultation paper has not touched on the proposal of introducing a "cooling-off period" in the form of a temporary contract, but it has discussed the feasibility of introducing such a period during which the execution of the trade is suspended. We believe that SFC will thoroughly analyse views collected when considering the feasibility of a temporary contract. I encourage the industry to give comments to SFC during the consultation period.

(c) As to whether the setting up of a "cooling-off period" will encourage speculation for products prices of which can be highly volatile within a short period, SFC has pointed out in its consultation paper that in order to discourage speculation, the refund payable in respect of the product upon investors' exercise of the rights during the "cooling-off period" would need to be capped at the total principal amount invested.

We hope that both market participants and the public will actively make their views known to the SFC during the consultation period. We believe that SFC will thoroughly consider all views collected before deciding on whether to introduce a "cooling-off period" or how to finalise the implementation details.

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