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## High Court rules Lehman Brothers must turn over documents to SFC

21 Aug 2009

The High Court has ruled that Lehman Brothers Asia Ltd (in liquidation) (Lehman Brothers) must disclose records to the Securities and Futures Commission (SFC) in connection with its investigation of the offer and marketing of Minibonds (Note 1).

The Honourable Mr Justice Barma also ruled that Lehman Brothers must pay the SFC's costs in bringing an application before the High Court.

The SFC applied to the High Court in June 2009 (Note 2) for an order directing Lehman Brothers to comply with an SFC Notice (Note 3) to produce all documents relating to the assessment of Minibonds by an internal Lehman Brothers committee called the New Product Review Committee. The SFC believes the New Product Review Committee oversaw or approved products like the Minibonds and that these documents are relevant to its investigation.

In response to the SFC Notice, the liquidators for Lehman Brothers objected to the production of 17 documents in their entirety on the grounds that those documents were the subject of a claim of legal professional privilege because a member of the New Product Review Committee was an in-house lawyer at Lehman Brothers.

The SFC disputed that the entire contents of the 17 documents could be the subject of a valid claim of legal professional privilege and brought the application to vindicate the request for disclosure and to compel the production of the documents.

After these proceedings were commenced, the liquidators provided excerpts of the documents to the SFC. However, the SFC was not satisfied the disclosure was sufficient and the case proceeded in the High Court on 19 August 2009.

The Honourable Mr Justice Barma ruled that withheld sections of seven documents were not subject to valid claims of privilege and further material should be produced to the SFC.

"The SFC respects valid claims of legal professional privilege. However, the SFC will not hesitate to challenge claims that it considers do not have a valid foundation. It is unfortunate that the SFC would not have obtained any of these documents without having to take these proceedings against Lehman Brothers. The decision this week by the court vindicates our action. Our investigation into Lehman Brothers will now continue," said Mr Mark Steward, the SFC's Executive Director of Enforcement.

The SFC will not disclose any further details about the investigation which is continuing.

End

Notes:

1. Please see SFC press release dated [24 September 2008](#) for details.
2. Please see SFC press release dated [10 June 2009](#) for details.
3. The SFC issued a notice to Lehman Brothers on 31 October 2008 requiring production of specified documents under section 182 of the Securities and Futures Ordinance.

Page last updated : 1 Aug 2012