

## SFC, HKMA and The Royal Bank of Scotland N.V. reach agreement on Lehman Brothers-related equity-linked notes

18 Jul 2013

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) announced today that an agreement has been reached with The Royal Bank of Scotland N.V. (RBS), formerly known as ABN AMRO Bank N.V. (ABN Amro), in relation to the sale of Lehman Brothers-related equity-linked notes (LB-ELNs) to retail clients between July 2007 and May 2008 (Notes 1, 2 & 3).

RBS has agreed, without admitting any liability, to make a repurchase offer to all eligible customers holding outstanding LB-ELNs sold by the bank (including those sold by ABN Amro in Hong Kong before the acquisition by RBS of ABN Amro's retail and commercial banking business) at 100% of the principal value of each eligible customer's investment in the LB-ELNs. Today's resolution provides them an opportunity to reverse their purchase of the outstanding LB-ELNs.

The SFC estimates about 540 customers are eligible for the repurchase offer under this resolution which, if accepted by all, will lead to payments totalling approximately \$513 million.

The eligible customers are retail customers holding outstanding LB-ELNs who were assessed to have a risk tolerance level that was more conservative than the risk rating assigned to the LB-ELN purchased by the customer. The risk profiling process in issue in this case was developed by ABN Amro prior to RBS' acquisition of ABN Amro's retail and commercial banking business.

The repurchase offer will not be offered to professional investors. The SFC's investigation into the handling of professional investors by RBS in respect to LB-ELNs is continuing (Note 4).

RBS will also make top-up payments to retail customers with whom RBS has entered into settlement agreements in respect of their holding of outstanding LB-ELNs but would otherwise have been eligible to receive a repurchase offer to ensure these customers are treated in the same way as other customers participating in the repurchase scheme.

The offer price will exclude the amount of coupon already paid to eligible customers and any recovery by the eligible customers in respect of the relevant LB-ELNs out of the bankruptcy of Lehman Brothers Holdings Inc. or its related entities. The offer price will include an additional amount representing the interest that would have been earned if the amount invested in the LB-ELNs had been invested with the bank on a savings deposit (Note 5).

During the course of the SFC's investigation, the SFC raised a number of concerns with RBS regarding the risk assessment and the risk matching process used by the bank at the time, in particular:

- Each customer was provided with a risk profiling questionnaire in which answers were scored. The customer's ultimate risk score determined their risk profile or tolerance level which, in turn, was used to assess the relative suitability of LB-ELNs for each customer. However, the scores assigned to two out of 12 questions in the risk profiling questionnaire were weighted erroneously which led to some customers' risk tolerance level being assessed as higher than it should have been if the correct weighting had been applied (Note 6);
- Further, the bank classified all series of LB-ELNs, except for two, as high risk products under its three-level risk rating system. However, the LB-ELNs were sold to customers who were assessed to have a medium or low risk tolerance level without proper records of justification for so doing (Note 7).

In entering into this agreement under section 201 of the Securities and Futures Ordinance (SFO), the SFC has taken into account:

- there is no distributable collateral for the LB-ELNs. As such, there is less chance for LB-ELN customers to receive any substantial payment or dividend in the Lehman Brothers bankruptcy proceedings (Note 8);
- the repurchase scheme will enable eligible customers to receive 100% of the principal value invested in the LB-ELNs without the costs and risks of separate legal proceedings;

- the processes that caused concern for the SFC were not devised by RBS which inherited these issues following its acquisition of ABN Amro's retail and commercial banking business;
- RBS will review complaints lodged by LB-ELN customers who are not eligible for the repurchase offer under its enhanced complaint handling procedures. The case by case enhanced complaint handling procedures should address any other possible irregularities in the sale of the LB-ELNs to customers with high risk tolerance level under RBS' risk profiling processes;
- this outcome could not have been achieved through the imposition of disciplinary sanctions by the SFC against RBS and/or its staff, even if such action was successful; and
- the agreement will bring the matter to an appropriate end for the benefit of RBS and those customers who participate in the repurchase scheme.

"This was a time consuming investigation that involved our investigators combing through tens of thousands of documents and listening to hours of telephone recordings. The problems caused by the errors in ABN Amro's processes should send a warning to all intermediaries who seek to automate suitability processes with matching systems. An automated process cannot replace governance disciplines and professional judgement in assessing whether an investment advice or recommendation is reasonably suitable for the customer," the SFC's Chief Executive Officer, Mr Ashley Alder said.

Ms Meena Datwani, Acting Deputy Chief Executive of the HKMA, said, "This agreement with RBS represents the outcome of the investigatory efforts by the two regulatory authorities. The HKMA considers the agreement to be in the interests of the investing public as it allows eligible customers to recover the money they invested without the need to go through lengthy and costly legal processes."

In view of the repurchase scheme, the SFC will not impose disciplinary sanctions against the bank and its current or former officers or employees in relation to the sale of the LB-ELNs to RBS' retail customers (other than professional investors), save for any acts of dishonesty, fraud, deception or conduct that is criminal in nature.

The HKMA has also informed the bank that it does not intend to take any enforcement action against their executive officers and relevant individuals in connection with the sale of LB-ELNs to customers who have accepted the repurchase offers or the top-up payments under the repurchase scheme, except for any acts of dishonesty, fraud, deception or conduct that is criminal in nature.

End

Notes:

1. RBS is a registered institution under the SFO to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities) and Type 6 (advising on corporate finance) regulated activities. RBS acquired ABN Amro's retail and commercial banking business in October 2007 during the period in which the SFC's concerns arose. However, the resolution agreement is with RBS and RBS is responsible for implementing and performing the repurchase agreement.
2. Between July 2007 and May 2008, the bank sold to its customers equity-linked notes issued by Lehman Brothers Treasury Co. B.V. and equity-linked notes issued by Allegro Investment Corporation of which Lehman Brothers Holdings Inc. was one of the referenced entities. The LB-ELNs were sold by RBS on a private placement basis.
3. Among the LB-ELNs sold by the bank to its customers, 44 series were outstanding at the time Lehman Brothers Holdings Inc. filed for bankruptcy on 15 September 2008. The total principal value of the outstanding LB-ELNs is approximately \$784 million.
4. Professional investors are those customers who: (a) fall under paragraphs (a) to (i) of the definition of "professional investors" in Part 1 of Schedule 1 of the SFO; or (b) fall under section 3 of the Securities and Futures (Professional Investor) Rules (Cap. 571D) and classified by the bank and agreed by the customers to be treated as such in accordance with paragraphs 15.3 and 15.4 of the Code of Conduct at the time they purchased the relevant LB-ELNs. Based on evidence gathered to date, there are about 10 professional investors who purchased LB-ELNs from the bank that remain outstanding.
5. The calculation of the interest is based on the full nominal value of the eligible customer's total investment in outstanding LB-ELNs using the bank's savings deposit rates for the period from the issue date of the relevant LB-ELNs up to today's date.
6. Under ABN Amro's scoring system, a lower score indicated a higher tolerance of risk. Two questions were scored incorrectly with one question giving customers with less investment experience a lower rather than a higher score and another question giving a lower rather than higher score to customers who wished to invest lower proportion of assets in other than risk free deposits. About 80 out of 1115 transactions were affected by this issue. The scoring errors were rectified by the bank in June 2008. In determining whether the client is eligible for a repurchase offer, the client's risk tolerance level will be computed based on the rectified scores.
7. Among the 44 outstanding series of the LB-ELNs, two series were principal-protected, i.e. the issuer will pay back 100% of the principal amount to the investor at the maturity date. The bank had rated these principal-protected LB-ELNs as "Balanced" product. The rest of the outstanding series were not principal-

protected and the bank had rated these non-principal protected LB-ELNs as "Growth" product.

8. In the unlikely event that it is determined at a later date that a customer accepting a repurchase offer would have received a greater amount as an unsecured creditor in the Lehman Brothers bankruptcy proceedings, RBS has agreed to pay the difference to that customer, such that no customer shall be disadvantaged by participating in the repurchase scheme.
9. Please follow this [link](#) for a set of questions and answers about the Repurchase Scheme.

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**Frequently Asked Questions about the Repurchase Scheme offered by The Royal Bank of Scotland N.V. in relation to Lehman Brothers-related Equity-Linked Notes**

**1. What is RBS' Lehman Brothers-related Equity-Linked Notes Repurchase Scheme?**

The Repurchase Scheme is the result of an agreement between the SFC, the HKMA, and RBS pursuant to section 201 of the Securities and Futures Ordinance (SFO) to resolve the regulatory concerns of the SFC.

Under the agreement and on a non-admission of liability basis, RBS agrees to make a repurchase offer to eligible customers holding outstanding Lehman Brothers-related Equity-Linked Notes (**LB-ELNs**) at a price equal to:

- 100% of the principal value of their investment in outstanding LB-ELN(s):
  - less any coupon payments under the relevant LB-ELNs received by the eligible customer;
  - less any recovery by the eligible customers in respect of the relevant LB-ELNs out of the bankruptcy of Lehman Brothers Holdings Inc. or its related entities;
  - plus interest calculated in accordance with FAQ 5 below between the issue date of the relevant series of LB-ELNs and [date of the s201 agreement].

**2. What are those LB-ELNs covered in the Repurchase Scheme?**

The Repurchase Scheme covers all LB-ELNs sold by RBS in Hong Kong between July 2007 and May 2008 that were outstanding (i.e. uncalled or unredeemed) at the time of the Lehman Brothers bankruptcy filing on 15 September 2008. The outstanding LB-ELNs include:

- equity-linked notes issued by Lehman Brothers Treasury Co. B.V.; and
- equity-linked notes issued by Allegro Investment Corporation of which Lehman Brothers Holdings Inc. was one of the referenced entities.

**3. Who is eligible to receive a repurchase offer from RBS?**

A repurchase offer will only be made to customers who:

- (a) have open position(s) in the outstanding LB-ELNs purchased through RBS; and
- (b) were assessed, by RBS's risk profiling questionnaire based on the customers' answers on RBS' records at the material time, to have a risk tolerance level which is more conservative than the risk rating assigned by RBS to the LB-ELN(s) purchased by them through RBS;



but do not include:

- (i) professional investors under paragraphs (a) to (i) of the definition of “professional investors” in Part 1 of Schedule 1 of the SFO;
- (ii) professional investors under section 3 of the Securities and Futures (Professional Investor) Rules (Cap. 571D) and classified by RBS and agreed by the customers to be treated as such in accordance with paragraphs 15.3 and 15.4 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission at the time they purchased the relevant LB-ELNs; or
- (iii) those who have previously settled their claims in relation to the LB-ELN(s) with RBS.

Customers who had previously reached settlement with RBS in relation to outstanding LB-ELNs and would otherwise be eligible for the repurchase offer but for the previous settlement they reached with RBS in relation to LB-ELNs would receive a top-up payment (see FAQ 6).

#### **4. What does it mean by having a risk tolerance level more conservative than the risk rating assigned by RBS to the LB-ELN(s)?**

In the sale of LB-ELNs, RBS by way of its risk profiling questionnaire categorised its customers into three-levels of investment profile, namely “Conservative”, “Balanced” and “Growth”, with “Conservative” being the lowest risk tolerance level and “Growth” being the highest risk tolerance level.

A customer would be considered to have a risk tolerance level more conservative than the risk rating of the relevant LB-ELN if, at the time the customer purchased the LB-ELN:

- (a) the LB-ELN had a risk rating of “Growth” and the customer was assessed to have a risk tolerance level of “Conservative” or “Balanced” under RBS’ risk profiling questionnaire; or
- (b) the LB-ELN had a risk rating of “Balanced” and the customer was assessed to have a risk tolerance level of “Conservative” under RBS’ risk profiling questionnaire.

#### **5. How is the interest earned from fixed term deposit calculated?**

The interest payment is calculated based on the full nominal value of the customer’s total investment in outstanding LB-ELNs using RBS’ savings deposit rates for the period from the date of issuance of the relevant series of the LB-ELNs up to 18 July 2013.



**6. How about customers who had previously settled with RBS in relation to LB-ELNs?**

A top-up payment will be made to each of the customers who had previously reached settlement with RBS in relation to LB-ELNs and would otherwise be eligible for the repurchase offer but for the previous settlement they reached with RBS in relation to LB-ELNs, to the extent that such payments are needed to ensure those customers are treated in the same way as eligible customers covered by the Repurchase Scheme. For the avoidance of doubt, no top-up offer will be made to those customers who previously received settlement payment from RBS/ABN Amro in relation to the LB-ELNs equal to or in excess of the repurchase amount under the Repurchase Scheme.

**7. What about customers who have purchased LB-ELNs through RBS but were not classified to have a risk tolerance level more conservative than the risk rating of the relevant LB-ELNs?**

For customers who purchased LB-ELNs from RBS and were classified by RBS' risk profiling questionnaire to have a risk tolerance level higher than or equal to the risk rating of the relevant LB-ELNs at the time the customer purchased the LB-ELNs (e.g. a customer with "Growth" risk tolerance level bought an LB-ELN of "Growth" or "Balanced" product risk rating), their complaints, should they choose to complain, will be reviewed on a case by case basis under RBS' enhanced complaint handling procedures.

If RBS finds any breach of the applicable legal or regulatory requirement or upholds the customer complaint, RBS will consider offering financial redress to the customer in view of his/her loss or damage suffered.

**8. What about LB-ELN transactions involving joint account holders?**

For a joint account, if any of the joint account holders was assessed to have a risk tolerance level more conservative than the risk rating of the relevant LB-ELN at the time, the joint account will be treated to have a risk tolerance level more conservative than the risk rating of the relevant LB-ELN.

Additionally, for a joint account, the repurchase offer can only be accepted if all joint holders of the account sign the relevant form of acceptance.

**9. On what terms can the repurchase offer be accepted?**

On accepting a repurchase offer, customers will be asked to:

- give up all civil claims/discontinue legal proceedings against RBS and/or its present and past officers and employees in relation to LB-ELNs; and
- withdraw complaints about LB-ELNs lodged with RBS, the SFC, the HKMA, the Consumer Council and other relevant authorities (excluding the Police).



**10. Is it advisable to accept RBS' repurchase offers?**

Customers receiving RBS' repurchase offer should carefully consider the terms of the offer, the conditions for acceptance, and their personal circumstances before deciding whether to accept the repurchase offer. If necessary, they should consider seeking independent professional advice before accepting the offer.

**11. When will RBS issue the repurchase offers/top-up payment offers?**

RBS will, on or before 1 August 2013, send a notification letter on their eligibility of the Repurchase Scheme to customers with outstanding LB-ELNs bought from RBS. RBS will send to eligible customers an offer letter setting out details of their respective offer within 25 calendar days of the date of the notification letter.

**12. How does a customer accept or reject the repurchase offer/top-up payment offer?**

The steps for accepting or rejecting the repurchase offer/top-up payment offer are set out in RBS' offer letter. The acceptance form and rejection form will be enclosed with each offer letter.

A customer has 60 calendar days to return the acceptance form or the rejection form to RBS. If no acceptance form or rejection form is received by RBS by the stipulated deadline, the customer is deemed to have rejected the repurchase offer/top-up payment offer.

Customers may return the acceptance form or the rejection form to RBS via the mail or deposit the forms with the designated office of RBS.

**13. Can the acceptance contained in the acceptance form be qualified?**

No, any qualifications made in relation to the acceptance form will be treated as a rejection of the repurchase offer/top-up payment offer.

**14. Can a customer accept RBS' repurchase offer in relation to some but not all of the LB-ELNs in which they purchased?**

No, the customer cannot accept the repurchase offer/top-up payment offer in respect of some but not all of the relevant series of LB-ELNs. Any acceptance of the repurchase offer/top-up payment offer in respect of some but not all of the relevant series of LB-ELNs will be treated as a rejection of the offer.

**15. What can a customer do if the offer is rejected?**

An eligible customer who rejects a repurchase offer made under the Repurchase Scheme will not receive a repurchase payment. The rejection will not affect his/her



pre-existing legal rights, if any. He/she may lodge a complaint with RBS, since the bank will handle his/her complaints under its enhanced complaint handling procedures in accordance with the settlement agreement.

Customers who are aggrieved with the outcome of the bank's enhanced complaint handling procedures may complain to the HKMA, take legal action or seek mediation or arbitration.

The HKMA will handle complaints, should a customer choose to complain, made by eligible customers who reject a repurchase offer or LB-ELN customers who are not eligible for an offer if it has not already done so. However, the HKMA/SFC has no power to order a bank to pay compensation. A customer who wants to take their own action against RBS should seek legal advice.

A rejection of the top-up payment offer by a settled customer will not affect his/her rights and obligations under the settlement agreement previously entered into between him/her and RBS.

**16. What is the deadline for a customer to accept or reject the repurchase offer/top-up payment offer?**

Customers have 60 calendar days from the date of the offer letter to consider RBS' repurchase offer(s)/top-up payment offer(s).

**17. Will customers who are not eligible for the repurchase offers/top-up payment offers be notified?**

RBS will, on or before 1 August 2013, send a notification letter on their eligibility of the Repurchase Scheme to clients with outstanding LB-ELNs bought from RBS. Customers who are not eligible for any repurchase offers/top-up payment offers will be notified accordingly.

**18. What if the date for accepting RBS' repurchase offer/top-up payment offer is missed?**

If a customer decides to accept RBS' repurchase offer/top-up payment offer, he/she should do so within 60 calendar days from the date of the offer letter. Otherwise the repurchase offer/top-up payment offer will lapse except for customers who can provide a valid explanation as to why he/she was prevented from accepting the offer within the stipulated deadline.

If the customer can offer a valid explanation acceptable to RBS, RBS will treat the repurchase offer/top-up payment offer as being open for acceptance for another 30 calendar days. If the customer again fails to accept the repurchase offer/top-up payment offer within the new deadline, the offer will lapse permanently.



**19. If customers accept the offer, when will they receive the repurchase payment or top-up payment?**

RBS has agreed to make payments within 30 calendar days from the day RBS receives a valid acceptance form from a customer and the payment will be paid by cheque to the customer.

**20. What is the currency of payment?**

The payment will be made in Hong Kong Dollars, Australian Dollars, or US Dollars depending on the denomination of relevant series of LB-ELNs.

**21. How does a customer contact LB-ELNs in relation to the Repurchase Scheme?**

If a customer who purchased LB-ELNs has any queries about the Repurchase Scheme (including his/her eligibility or the terms of the repurchase offer or top-up payment offer) or any complaint about the way the Repurchase Scheme is administered, he/she should contact RBS through:

Hotline: (852) 3961-3018

The hotline service is available during office hours, Monday to Friday (except public holidays).

Email: [HK.CustomerResponse@rbs.com](mailto:HK.CustomerResponse@rbs.com)