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SFC reprimands and fines Merrill Lynch HK\$3 million for internal control failings

12 May 2011

The Securities and Futures Commission (SFC) has issued a reprimand to Merrill Lynch (Asia Pacific) Ltd (Merrill Lynch) and fined it HK\$3 million for inadequate systems in relation to the sale of two index-linked notes to 72 clients in 2007 (Note 1, 2 and 3).

This decision follows an SFC investigation in which the SFC raised concerns that Merrill Lynch had failed to properly assess the financial situation and investment objectives of over 40 of the 72 customers who invested in the index-linked notes during 2007. The SFC was also concerned that key product information was only provided to clients after they had agreed to invest in the index-linked notes and that Merrill Lynch kept inadequate documentation to explain the rationale behind the advice they had given to their customers.

Merrill Lynch has agreed to implement a resolution scheme in which it will make payment to repurchase from customers holding the outstanding index-linked notes within 30 days of Merrill Lynch receiving valid acceptance forms from customers at 100% of the principal amount invested (Note 4 and 5). The value of the repurchase offers is expected to be approximately US\$3,674,405 (equivalent to HK\$28,660,359).

In addition, Merrill Lynch has agreed to offer top up payments to customers who bought the index-linked notes through Merrill Lynch and redeemed them for less than their principal invested.

Merrill Lynch will implement Enhanced Complaint-Handling Procedures (ECHP) to review client complaints regarding its distribution, sale, and provision of investment advice in relation to unlisted structured products other than the two index-linked notes (Note 6 & 7). The firm will also engage an independent audit firm to conduct a review of its internal distribution systems and controls.

The SFC acknowledges Merrill Lynch's full cooperation to resolve the SFC's concerns and notes that Merrill Lynch has already commenced its own review of internal systems and controls.

End

Notes:

1. Merrill Lynch is a licensed corporation under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 7 (providing Automated Trading Services) regulated activities. Merrill Lynch was acquired by Bank of America in September 2008.
2. Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct) provides that intermediaries have to know and assess the investment experience of the clients in terms of the investment products they have traded, the frequency and size of their trades, the years of experience in the relevant market, and their awareness of risks involved in the relevant market.
3. "Notes" are the two structured investment products issued by Merrill Lynch: (i) 5 Year Quarterly Callable USD Quanto Accrual Notes with Knock-In Linked to Nikkei 225 Index; and (ii) 5 Year Quarterly Callable USD Quanto Accrual Notes with Knock-In Linked to Tokyo Stock Exchange Mothers Index.
4. The repurchase offer will involve Merrill Lynch offering to repurchase the Notes purchased through it by its eligible clients in accordance with the resolution scheme. Each eligible client who accepts the repurchase offer will be required to transfer their Note to Merrill Lynch and sign a release and waiver of claims they may have against Merrill Lynch. The top-up offer will involve Merrill Lynch offering to pay to its eligible clients who have purchased the Notes through it and have received payments on redemption that are less than the principal amount invested in accordance with the resolution scheme. Each eligible client who accepts the top up offer will be required to sign a waiver of claims he/she may have against Merrill Lynch in respect of the Notes. Each eligible client who accepts the repurchase offer or the top up offer will recover 100% of the nominal value of the principal amount invested. Those clients who have purchased the Notes through Merrill Lynch and have received payments on redemption that are at par value or exceeding the principal amount invested will not be entitled to make a claim under the resolution scheme.

5. For more details on the resolution scheme, please visit Merrill Lynch's website at: www.ml.com or call Merrill Lynch's investor hotline at +852 2844 5382.
6. Unlisted structured investment products are "securities" within the meaning under the SFO.
7. ECHP was designed by the SFC to ensure that an intensive review is conducted by Merrill Lynch into relevant transactions to ensure complaints are resolved in a fair and reasonable manner. Merrill Lynch shall apply the ECHP to all client complaints relating to the distribution, sale or provision of investment advice for unlisted structured products effected from January 2007 and received by Merrill Lynch no later than 6 months from 9 May 2011.
8. Merrill Lynch has been previously disciplined by the SFC. For further details, please see SFC [press release](#) dated 31 May 2010.

Page last updated : 1 Aug 2012