



BEA 東亞銀行

17<sup>th</sup> August, 2010

Dear Customer,

Further Frequently Asked Questions ("FAQs") issued by the Receivers of the Mortgaged Properties of Minibonds Series 10 to12, 15 to23 and 25 to36 (the "Minibonds")

We enclose herewith a set of the latest FAQs issued by the Receivers on 13<sup>th</sup> August, 2010 for your attention.

We would like to inform you that the Receivers may from time to time issue new set of FAQs through the following webpage: [http://www.pwchk.com/home/eng/minibonds\\_faq.html](http://www.pwchk.com/home/eng/minibonds_faq.html). If you have any specific queries in relation to the progress of unwinding process or the updated position of the underlying collateral of the Minibonds, you may contact the Receivers by their e-mail at [minibondsenquiry@hk.pwc.com](mailto:minibondsenquiry@hk.pwc.com) or through their telephone hotline on (852) 2289 5066.

You may also visit our website at [www.hkbea.com](http://www.hkbea.com), where we will post notices from time to time as new information in relation to the Minibonds becomes available.

If you have any queries in this regard, please contact your account opening branch or call our Enquiry Hotline on (852) 2211 1311.

Yours faithfully,  
The Bank of East Asia, Limited

Encl.

親愛的客戶：

迷你債券系列 10 至 12、15 至 23 及 25 至 36 (「迷你債券」) 抵押資產接管人發出之最新常見問題補充

本行現隨函附上資產接管人於 2010 年 8 月 13 日所發出之最新常見問題補充，供閣下參考。

資產接管人將不時透過以下網頁 [http://www.pwchk.com/home/eng/minibonds\\_faq\\_chi.html](http://www.pwchk.com/home/eng/minibonds_faq_chi.html) 發放常見問題補充。假如閣下對處理迷你債券抵押資產的進度，或對迷你債券相關抵押品之最新情況有任何疑問，可透過資產接管人之電郵地址：[minibondsenquiry@hk.pwc.com](mailto:minibondsenquiry@hk.pwc.com) 或其電話熱線 (852) 2289 5066 查詢。

此外，本行亦會不時於本行網站 [www.hkbea.com](http://www.hkbea.com) 發布關於迷你債券之最新資訊，讓閣下得悉事態發展。

如有疑問，歡迎與開戶分行聯絡或致電本行查詢熱線 (852) 2211 1311。

東亞銀行有限公司 謹啓

2010 年 8 月 17 日

附件

(注意：此中文版本只供參考之用，文義如有歧異，以英文版本為準。)

## Further Frequently Asked Questions (“FAQs”)

### **IMPORTANT DISCLAIMER**

THIS UPDATE IS PROVIDED FOR INFORMATION PURPOSES ONLY. IT DOES NOT CONSTITUTE LEGAL ADVICE AND IS NOT INTENDED TO BE EXHAUSTIVE. WHILST CARE HAS BEEN TAKEN IN ITS PREPARATION, NO RESPONSIBILITY IS ACCEPTED FOR THE COMPLETENESS OR ACCURACY OF ITS CONTENTS. INTERESTED PARTIES SHOULD NOT RELY ON THIS UPDATE AND SHOULD OBTAIN THEIR OWN LEGAL ADVICE.

INFORMATION IN THIS UPDATE HAS BEEN PROVIDED TO ITS MAXIMUM EXTENT. DISCLOSURE OF ANY FURTHER SENSITIVE INFORMATION MAY PREJUDICE THE PROCESS OF UNWINDING THE MINIBOND STRUCTURE AND/OR REALISING THE UNDERLYING COLLATERAL AND THEREFORE THE INTERESTS OF THE MINIBOND NOTEHOLDERS.

#### **Q1 What is the progress in unwinding the Minibond structure?**

The Receivers are unwinding the Minibond structure with the ultimate goal of realising the underlying collateral securing each series/ tranche of the Minibond Notes. However, litigation has been commenced by third parties in the United States and England on issues that complicate the unwinding of the Minibonds. The litigation relates to the operation of a provision referred as the "Flip Clause" in similar products arranged by Lehman Brothers. The "Flip Clause" is also contained in the Minibond structure and thus the litigation may have a significant bearing on the realisation of the underlying collateral.

#### **Q2 What is the “Flip Clause”? Why is it important?**

The “Flip Clause” affects the priority of claims against the underlying collateral that underpins the Minibond structure. It is important for Minibond noteholders as it affects how the proceeds of the realisations of the underlying collateral will be distributed. The collateral that underpins each series and tranche of the Minibonds consists of securities issued under the Dante Finance Limited secured note programme (the “Underlying Notes”). The Minibond structure contains a

Flip Clause provision similar to those being litigated whereby in normal circumstances Lehman Brothers Special Financing Inc. ("LBSF"), the counterparty of the Underlying Notes, has a priority claim to the underlying collateral underpinning the Minibond structure. However, the Minibond structure also provides that the priority claim to the underlying collateral 'flips' to the Minibond noteholders (meaning the Minibond noteholders have a priority claim to the underlying collateral) in the event of default caused by LBSF (which has occurred on its bankruptcy filing).

The enforceability of the Flip Clause has been challenged by LBSF through Court proceedings in England and the United States in respect of unrelated but similarly structured products. The English courts held in July and November 2009 that the Flip Clause is enforceable as a matter of English law (meaning, if applied to the Minibonds, that noteholders have priority to the underlying collateral). LBSF has obtained leave to appeal this decision to the English Supreme Court. The appeal is due to be heard in March 2011. The United States Bankruptcy Court however, has held by order dated 19 July 2010, that the Flip Clause violates United States Bankruptcy Law and is therefore invalid (meaning, if applied to the Minibonds, that LBSF has priority to the underlying collateral). BNY Corporate Trustee Services Limited ("BNY") filed a notice of appeal of this order on 2 August 2010. The different rulings in the English and US Courts on this critical point, has effectively resulted in a judicial stalemate. The Receivers continue to monitor the status of these legal proceedings and are seeking to resolve other derivative claims and related issues required to unwind the Minibond structure.

**Q3 Are there any other actions being undertaken by the Receivers to unwind the Minibond structure?**

Progress has been made in an effort to unwind the Minibond structure and to realise the underlying collateral. As part of this work, the Receivers have been in discussions with the principal stakeholders, primarily LBSF and BNY to seek alternative means to litigation to resolve the legal and technical issues in realising the underlying collateral. These discussions continue. However, BNY is not in a position to release any of the underlying collateral until the legal proceedings referred above are resolved and/or an alternative resolution is agreed by the stakeholders.

**Q4 Has the funding provided by 16 distributing banks been utilised to unwind the Minibond structure?**

The Receivers have utilized funding provided by the 16 distributing banks pursuant to the Repurchase Agreement in preparing for litigation they will take against LBSF and other relevant parties if no meaningful progress from the discussions referred above is made. The issues for determination are substantially similar to the issues currently under review by the English Court and United States Bankruptcy Court in the LBSF and BNY proceedings referred above.

**Q5 What is the current position of the underlying collateral?**

The underlying collateral is currently held by Bank of New York Mellon ("BNYM") in London, United Kingdom. Out of the 24 Minibond Series which the Receivers have been appointed over, the underlying collateral for 18 Minibond Series have been redeemed in full and the proceeds are held in US treasury bills by BNYM as custodian.

The remaining collateral is held in corporate bonds with various maturity dates in 2010 and 2011. When these bonds mature the proceeds will also be placed by BNYM in US treasury bills.

**Q6 When will the Receivers provide another update?**

The Receivers will provide further updates to the Minibond noteholders in relation to the progress in unwinding the Minibond structure as and when relevant information becomes available. We suggest Minibond noteholders refer back to this website from time to time for further updates.

Date: 13 August 2010

## 常見問題補充

### 重要免責聲明

此更新只供參考之用，並不構成法律意見，亦不可能盡列所有相關資料。接管人編制以下資料時已盡力嚴謹處理，但不會就資料的準確性或完整性承擔任何責任。有關人士不應依賴以下資料而需就其本身情況尋求獨立法律意見。

本更新已涵蓋接管人現階段所能披露的資料。進一步披露其他敏感資料將可能對處理迷你債券結構及/或變現相關抵押品的有關程序帶來負面影響，繼而損害迷你債券持有人的利益。

#### 1 處理迷你債券事宜有何進展？

接管人現正處理迷你債券的結構問題以變現各系列迷你債券的相關抵押品。處理迷你債券結構的程序因美國及英國法院正各自處理由第三方所提出的訴訟而變得複雜。該等訴訟均與雷曼兄弟所發行的類似產品中一名為「優先索償權變更條款」之運作有關。由於迷你債券的結構中亦包含「優先索償權變更條款」，該等訴訟之結果可能因而對迷你債券相關抵押品的變現產生重大影響。

#### 2 何謂「優先索償權變更條款」？此條款為何重要？

「優先索償權變更條款」會影響對相關抵押品作出索償的優先次序。由於該條款對抵押資產的分派造成影響，因此該條款對迷你債券持有人而言尤其重要。各系列迷你債券票據的抵押品均包含根據Dante Finance Limited抵押票據計劃所發行的債券（「相關票據」）。迷你債券的結構包含一項於上述訴訟中存在爭議的條款。該條款指出在一般情況下Lehman Brothers Special Financing Inc.（「LBSF」）作為掉期交易對手對相關票據享有優先索償權。然而，該條款亦規定若LBSF違約（LBSF因破產已構成違約），其對相關票據的優先索償權將會有所改變並落入票據持有人手上。

LBSF對「優先索償權變更條款」的法律效力作出質疑並在英國和美國就其他相類似的結構產品提起法律訴訟。英國法院於2009年7月和11月基於英國法律裁定「優先索償權變更條款」有效（意指若套用於迷你債券此個案上，票據持有人對相關抵押品將可優先索償）。LBSF已獲准就此判決向英國最高法院提出上訴，聆訊日期訂於2011年3月。然而，美國聯邦破產法院於2010年7月19日發出命令裁定「優先索償權變更條款」違反美國聯邦破產法，該條款被裁定無

效（意指若套用於迷你債券此個案上，LBSF對相關抵押品將可優先索償）。BNY Corporate Trustee Services Limited（「BNY」）已就此裁決於2010年8月2日提出上訴。兩個司法管轄區在此關鍵問題上所作出的不同判決令此爭議陷入司法僵局。接管人將繼續密切留意此等法律訴訟的進展並努力解決其他掉期合約的申索及相關事項，從而處理迷你債券的結構。

### **3. 接管人有否採取其他行動以處理迷你債券結構的事宜？**

有關處理迷你債券結構及變現相關抵押品一事現正取得進展。於處理迷你債券結構的工作中，接管人正透過與LBSF和BNY等主要利害關係人進行討論，尋求以訴訟以外的方式解決有關變現相關抵押品所牽涉的法律及技術問題。此等討論正持續進行。然而，在上述段落中所提及的訴訟獲得完滿解決和/或落實其他解決方案前，BNY不會放棄持有相關抵押品。

### **4. 接管人有否動用 16 家分銷迷債銀行所提供的資金進行法律行動？**

接管人已動用由16家分銷銀行根據回購協議所提供的資金以準備當上述討論未能達致任何有意義的進展時對LBSF及其他相關公司提出訴訟。該訴訟需解決的爭議與上述段落中有關英國法院及美國聯邦破產法院處理LBSF和BNY的訴訟中所涉及的爭議大致相同。

### **5. 相關抵押品現況如何？**

所有相關抵押品現時由位於英國倫敦的Bank of New York Mellon或其聯屬公司（「BNYM」）託管。在接管人受委託處理的24項迷你債券系列中，18項迷你債券系列的相關抵押品已足額贖回，贖回所得款項現正由託管人BNYM保管，並再投資於美國國庫債券。

餘下的相關抵押品皆為於2010年及2011年不同日期到期的企業債券。當這些企業債券到期後，贖回所得款項將由BNYM再投資於美國國庫債券。

### **6. 接管人何時會進一步通知有關處理迷你債券結構事宜的進展？**

接管人將於獲得進一步資料後向債券持有人就處理迷你債券結構的進展作進一步通知。我們亦建議債券持有人不時留意接管人網址以獲得最新訊息。

日期：2010年8月13日