

立法會

研究雷曼兄弟相關迷你債券及 結構性金融產品所引起的事宜 小組委員會

第十七次研訊的逐字紀錄本

日期： 2009年7月3日(星期五)

時間： 上午10時

地點： 立法會會議廳

出席委員

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公開研訊

證券及期貨事務監察委員會行政總裁
韋奕禮先生, JP

Legislative Council

Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

Verbatim Transcript of the Seventeenth Hearing
held on Friday, 3 July 2009, at 10:00 am
in the Chamber of the Legislative Council Building

Members present

Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Member absent

Hon CHAN Kam-lam, SBS, JP

Witness

Public hearing

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

主席：

首先歡迎各位出席"研究雷曼兄弟相關迷你債券及結構性金融產品所引起的事宜小組委員會"的第十七次公開研訊。我們歡迎證券及期貨事務監察委員會行政總裁韋奕禮先生繼續出席小組委員會的研訊。

我請各位委員留意，整個研訊過程必須有足夠的法定人數，連主席在內共7位委員。另外，《立法會(權利及特權)條例》所賦予的特權，只適用於研訊的過程。小組委員會《工作方式及程序》第13(g)段訂明，所有議員，包括非小組委員會委員的議員，都應該避免在研訊過程以外的場合發表與研訊有關的意見。《工作方式及程序》第23段亦訂明，委員不應披露任何有關小組委員會閉門會議上的內部討論或曾經考慮的文件的資料。

我想提醒旁聽研訊的公眾人士及傳媒，在研訊過程以外場合披露研訊中的證供，將不受《立法會(權利及特權)條例》所保障。如果有需要，各位列席人士及傳媒應就他們的法律責任，徵詢法律意見。此外，我亦想提醒在公眾席上旁聽研訊的公眾人士，研訊進行時必須保持肅靜。根據《立法會議事規則》第87條，我有權請任何行為不檢或看來相當可能有不檢行為的公眾人士離開會場。

請各位委員留意，小組委員會的研訊程序須符合《工作方式及程序》第2段的原則，包括有關程序必須公平，而且須令人看得到是公平的，尤其是對利益或名譽可能會被小組委員會的研訊程序影響的各方。此外，《工作方式及程序》第12及13段訂明，在公開研訊中，委員只應為確立與此次研訊有關的事實而提問。委員不應在公開研訊中發表意見或作出陳述。此外，我會決定某條問題或某項證據是否與小組委員會的職權範圍有關，以及是否屬於研訊的範圍。我亦有酌情權，決定應否容許委員提出某項問題。

我現在宣布今天的研訊開始。小組委員會將會就現行"一業兩管"的規管制度下證監會的角色、披露為本制度、銷售點的操守監管、監管標準的一致性和證監會與香港金融管理局的合作等事宜，繼續向證監會行政總裁韋奕禮先生取證。

韋先生，小組委員會已經同意由證監會秘書長鞏姬蒂女士及證監會企業融資部高級經理楊國樑先生陪同你出席研訊。請注意，鞏女士及楊先生不可向小組委員會發言。證人不可與陪同人士討論，亦不可接收該等人士的任何指示(無論是口頭或書面的)。

韋先生上次出席研訊時已宣誓，所以今天你會繼續在宣誓下作供。

韋先生，你就委員於6月23日研訊中所提出的關注，於6月26日向小組委員會秘書提交了一份文件，即小組委員會文件第S34號。韋先生，你現在是否正式向小組委員會出示這份文件作為證據？

Mr Martin WHEATLEY, Chief Executive Officer of the Securities and Futures Commission:

Yes, Chairman, I do.

主席：

OK。韋先生，你就委員於6月26日研訊中所提出的關注，於6月30日向小組委員會秘書提交了一份文件，即小組委員會文件第S35號。韋先生，你現在是否正式向小組委員會出示這份文件作為證據？

Mr Martin WHEATLEY:

Yes, Chairman, I do.

Chairman:

I will now ask the following questions in English for the witness to reply directly.

Mr WHEATLEY, the Subcommittee served a summons on you on 22 May 2009, ordering you to produce to the Subcommittee the full text of the report entitled "Issues raised by the Lehmans Minibonds crisis – Report to the Financial Secretary" prepared by the SFC. You have submitted a redacted version of the review report, i.e. LC Paper No. CB(1)552/08-09(01). Now, are you going to formally produce the document to the Subcommittee?

Mr Martin WHEATLEY:

Yes, Chairman, I am.

Chairman:

I now declare the document be admitted as Subcommittee Paper No. S36.

To comply with the order issued by the Subcommittee, the witness also needs to produce the redacted parts of the review report. However, the witness has indicated, earlier on, that he will claim public interest immunity over the redacted parts. Although the Subcommittee later suggested that the witness might block out the references to the names of Registered Institutions that appeared in the report before producing the report, the witness has indicated that this would not assist in resolving the public interest concerns. The Subcommittee subsequently invited the witness to attend a closed meeting to explain his grounds for not producing the redacted parts. The witness, however, has considered that, as he is not able to disclose to the Subcommittee the redacted parts of the report, it would not be practicable to provide any explanation under such circumstances in the abstract.

Mr WHEATLEY, will you produce the redacted parts of the review report to the Subcommittee?

Mr Martin WHEATLEY:

Chairman, according to paragraph 2 of the resolution under the Legislative Council (Powers and Privileges) Ordinance set out in Appendix I to the Subcommittee's Practice and Procedures of 1 December 2008, I would like to claim public interest immunity over the redactions in the FS report prepared by the SFC as the production of the redacted parts would be contrary to the public interest.

Chairman:

Mr WHEATLEY, according to the procedure set out in paragraph 2 of the Appendix I to the Subcommittee's Practice and Procedure, the witness may explain his reasons for not producing the redacted parts of the review report in confidence to me and the Deputy Chairman. The Deputy Chairman and I will then deliver an opinion to the Subcommittee without disclosure of any information or document claimed by the witness to be privileged from disclosure.

Mr WHEATLEY, I will contact you after the meeting through the Clerk to make arrangements to deal with your claim.

Mr WHEATLEY, the summons served on you by the Subcommittee on 22 May has also ordered you to produce the reports containing the findings of SFC upon concluding investigation into the sale of Minibonds by Sun Hung Kai Investment Services Limited and KGI Asia Limited. You have indicated that you would claim public interest immunity over the final draft Notices of Proposed Disciplinary Action against the two securities firms. In this connection, please note that the Subcommittee has made it clear to the witness that the summons does not require him to produce the final draft Notices. The witness has all along been required to produce documents that contain SFC's investigation findings on the two securities firms.

Mr WHEATLEY, will you please confirm that other than the two final draft Notices of Proposed Disciplinary Action, you do not have in your possession or under your control any document containing SFC's reports on its investigation concluded on the two securities firms regarding their sale of Minibonds?

Mr Martin WHEATLEY:

The Notices of Proposed Disciplinary Actions are the relevant documents that contain all of our concerns which were raised in relation to the two brokers. All of our other documents are partial working papers which contributed to that final document.

Chairman:

In other words, there is no report as such as we requested, only working papers?

Mr Martin WHEATLEY:

Yes.

Chairman:

Is this what you are claiming?

Mr Martin WHEATLEY:

There's no other report that brings together all of our findings. The relevant report is the NPDA.

Chairman:

Okay. So, I will now say to you, Mr WHEATLEY, would you please confirm that the two final draft Notices of Proposed Disciplinary Action are all the documents that you will need to produce so as to comply with the Subcommittee's order? I would like you to respond to this very clearly.

Mr Martin WHEATLEY:

Yes, Chairman, I believe that's correct.

Chairman:

Okay. Now, in these circumstances, Mr WHEATLEY, will you please produce to the Subcommittee the two final draft Notices?

Mr Martin WHEATLEY:

According to paragraph 2 of the resolution under the Legislative Council (Powers and Privileges) Ordinance set out in Appendix I to the Subcommittee's Practice and Procedures of 1 December 2008, I would like to claim public interest immunity over the final draft Notices of Proposed Disciplinary Action against Sun Hung Kai Investment Services Limited and KGI Asia Limited as the production of these documents would be contrary to the public interest.

Chairman:

Mr WHEATLEY, the procedure as set out in paragraph 2 of Appendix I to the Practice and Procedure, which I have just mentioned, is also applicable to your claim over the two Notices.

Mr WHEATLEY, I will contact you after the meeting through the Clerk to make arrangements to deal with your claim.

We shall now continue with today's open hearing.

由於韋先生是以英語作答，請委員稍後提問時，避免一次過以中文提出多條或太長的問題，以方便傳譯工作，並且讓證人可以盡快直接回答我們的問題。

我想提醒大家，每位委員將會有10分鐘時間向證人提問及讓證人回答，委員如果想就某份小組委員會文件的內容向證人提問，應指明該份文件的編號，以方便證人及其他委員參考該份文件。為善用研訊時間，請委員的提問盡量精簡及具體，而證

人亦須明確及切實回應問題。委員無須再三向證人追問某一條問題。另一方面，證人亦不須重複已經講過的說話或大家已經知悉的背景資料。

6月26日的研訊結束時，尚有11位委員輪候提問。現在我讀出大家的名字，即大家正在排隊的。有兩位告假。現在我讀出他們的名字，就是劉秀成議員、涂謹申議員、葉劉淑儀議員、湯家驊議員、甘乃威議員、梁美芬議員、梁國雄議員、余若薇議員、陳茂波議員。

我會先問第一條問題。金管局已經轉介了近500宗有足夠表面證據的雷曼兄弟相關投訴個案給證監會，Mr WHEATLEY，以便跟進銀行是否違規。但金管局表示會繼續調查這些個案，以確定涉及的有關人士(即Relevant Individuals)是否違規。根據金管局網站的資料，金管局正考慮對667宗個案採取紀律行動。在現行"一業兩管"的制度下，金管局可以按照《銀行業條例》制裁有關人士，又可以建議證監會按照《證券及期貨條例》制裁銀行或有關人士。

就此，我想請問韋先生，在現時"一業兩管"的制度下，證監會與金管局對於違規的銀行或有關人士採取紀律行動的安排是怎樣分工呢？在甚麼情況下會由證監會制裁？在甚麼情況下由金管局制裁呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

Okay, thank you, Chairman. Can I just respond to the first part of your statement that the HKMA has passed 500 cases relating to Lehman's Minibonds? I think, just to clarify, the 500 cases, the majority of them relate to Lehman Minibonds but a number of them relate to other credit-linked notes and to equity-linked notes as well, so the breadth of the complaints that we've received is more than simply Minibonds.

In terms of the regulatory split, the HKMA will take a view as to whether any misconduct has occurred and whether that misconduct merits the SFC using its greater powers of discipline or whether the HKMA can remedy the misconduct through its own disciplining of relevant individuals or executive officers and the HKMA has the ability to reprimand or remove from the register relevant individuals. So, it's a question of the degree to which additional disciplinary powers are believed to be required that will justify cases that would be referred to the SFC.

主席：

是否就是說，其實兩個規管機構處分的行動或者採取紀律行動是有不同的地方？它們在甚麼情況下用不同的標準或不同的方式去處分或採取紀律行動？Mr WHEATLEY？

Mr Martin WHEATLEY:

The sanctions differ primarily in that the HKMA has the ability to issue a reprimand, a warning, or to affect the registered status of an individual, a relevant individual or an executive officer. The SFC has the statutory powers which allow the ability to fine, reprimand or to remove or impose a licensing condition.

主席：

證監會和金管局決定對有關人士採取紀律行動之前，會否事先知會對方？

Mr Martin WHEATLEY:

The fact that there is an investigation underway will always be known to the relevant party and, at the point at which the referral is made to the SFC, I believe that the party is informed at that stage but I'd need to confirm that.

主席：

I see。證監會對分銷銀行開始了由上而下的調查，以及跟進由金管局轉介的個案，所需的人手及開支會是多少？

Mr Martin WHEATLEY:

Our resources are very stretched, dealing with the number of cases that we're currently dealing with. Where we have been able to brief out legal work, then we have done so, but we do not have the ability to simply add large numbers of staff to process the investigations because they are, by their nature, very complex and very confidential. We, therefore, need to fulfil our duties largely within our existing resources.

主席：

相信原本你的工作量是足夠令你每一位職員都有足夠工作，使他們從早工作到晚。但現在又多了這個由上而下，這麼

多銀行要調查，事實上，證監會是否從來沒有增加人手，是用原有的人手去處理這個新的工作？

Mr Martin WHEATLEY:

We are very stretched, we are very stretched in terms of resources currently, dealing with the huge number of cases that we're dealing with. Ideally, we would have more resources at this stage but it's not simply possible to add resources or to recruit-in people because of the very complex and confidential nature of our work. So we brief out the work that we can brief out; mostly we have to comply within the existing resources that we have.

主席：

剛才我只是問你關於開支，即由上而下這個工作的開支，你可否講清楚一點，實際上會花費多少，或每一間銀行的調查，由上而下這個做法會涉及多少開支，或你預計總共需要多少開支？

Mr Martin WHEATLEY:

I don't think we can break down the expenditure per institution because our work doesn't operate like that. We can certainly look at the overall additional costs that we have borne as a result of this period and we can provide a written answer on that.

主席：

是否會後給我們呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

Yes. Yes, Chairman.

主席：

我想問一問Mr WHEATLEY，金管局轉介了接近500宗個案給證監會，意思就是可能會對你們那個由上而下的調查有幫助。你們覺得它轉介這些個案，在哪方面對你們由上而下的調查有幫助？

Mr Martin WHEATLEY:

Chairman, the referrals from the HKMA give us much more clarity and insight into the sorts of allegations that are being made and, therefore, they help us direct our inquiries when we are addressing the bank. So, these referrals allow us to give greater weight to the areas where people have claimed that the products have been misrepresented to them or have been mis-sold to them and that, therefore, helps us to direct the inquiries that we put towards the banks.

主席：

我想跟進另外一點，Mr WHEATLEY，根據證監會的資料，從迷你債券系列19(2005年4月)開始，有關投資產品的推廣材料均顯示，認購那些產品達指定金額的投資者可以獲得贈品。在這方面，想問一問韋奕禮先生，迷你債券事件發生之前，就透過贈品吸引投資者認購產品的招徠方法，證監會有否提出意見或關注，或在這方面訂出任何指引？Mr WHEATLEY？

Mr Martin WHEATLEY:

We have issued guidelines that marketing materials must be consistent with the prospectus and must not make any false claims. The gifts themselves – there isn't a legal basis for us saying yes or otherwise to the use of gifts. It is common practice in certain types of products and our major concern was that the gifts were not presented in such a way as to completely overtake the presentation of the product and the risk features of the product.

主席：

你發出指引之後，是希望他們不要用太過……即超乎合理的贈品或者這些吸引或招徠的方法。但是，你認為在哪個階段你應該要阻止他們，即做得太過分，影響到別人不是以多些解釋金融產品來吸引他們，而是用一些贈品來吸引他們。事實上，你是否認為這也不是一個合適的推銷方法？Mr WHEATLEY？

Mr Martin WHEATLEY:

I think it would be inappropriate if the gifts were presented as the prime reason for acquiring a particular product but, as members will know, our Code of Conduct requires that the bank's staff or the broker's staff selling the product explain the terms and features of the product and assess suitability of the product for the individual and the gift is incidental to that.

主席：

韋奕禮先生，其實你對於銀行及證券行，是否用同類的方式去勸諭他們，抑或用不同的方法去勸諭這兩類機構？

Mr Martin WHEATLEY:

Chairman, insofar as we advise, or otherwise, banks and brokerages, all of them are fully aware of the requirements under the Code of Conduct and all of them are required fully to comply with the Code of Conduct, so the same standard should apply to staff regardless of whether they are employed by a bank or by a brokerage.

主席：

根據證監會所知道，迷你債券的贈品(計時器響起)是由產品發行商提供抑或由中介人提供呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

The gifts primarily were arranged via the intermediaries, I believe.

主席：

嗯。假如有些贈品真的是由迷你債券發行商提供，但現時其他投資產品(如股票)的發行商是不可以向投資者提供贈品的，這個情況是否構成不公平或不一致的規管標準？因為剛才你說相信是中介人，有可能有部分是由發行商提供的。Mr WHEATLEY？

Mr Martin WHEATLEY:

The arranger for the product – in this case, Sun Hung Kai – would have arranged for the gifts, I believe, but the actual party giving the gifts would be the bank distributing the product. It is a fairly common feature of certain types of products, predominantly structured products; it's not a feature that's seen in IPOs. So I'm not aware of any IPOs having used gifts to raise attractions in the IPO but, equally, I'm not aware that there's a legal constraint that would impose. I think the general view would be that there's sufficient demand for certain IPOs that no additional gifts would be necessary.

主席：

副主席。

黃宜弘議員：

多謝主席，我想跟進你的問題。剛才你問的是關於銀行及證券商是否有時會向客戶提供贈品。其實除了贈品之外，銀行或證券商提供其他的方便給客戶，譬如有overdraft(透支)，或者不需要客戶付足費用，這些情況有否出現？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

With respect to the market practice generally, clients would be offered overdraft terms on margin accounts to trade and that's a common feature of Hong Kong's market. I'm not aware that those facilities were used specifically in the case of Minibonds.

主席：

副主席。

黃宜弘議員：

好，多謝主席。我想問一問，韋先生在6月26日的研訊中表示，由證監會企業融資部主管負責對某結構性產品的章程及推廣材料是否認可。就產品章程及推廣材料的認可，證監會是否有任何內部監察機制？如果有，這些機制是甚麼？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The internal monitoring mechanisms are that all of the documents that are sent for authorization are subject to initial screening by a manager – usually, a team of a manager and a senior manager within the organization – and that applies to the marketing materials and the prospectus itself – and they would raise a number of requisitions to the issuer to seek clarifications or to seek justifications for particular descriptions or terms. And then their work would be overseen by a director or assistant director or a senior director, depending on the complexity of the product. So their work is always subject to that review and, of course, all of our work is, in addition, subject to the

additional review of the PRP which would seek to ensure that we're following our procedures and practices.

主席：

副主席。

黃宜弘議員：

多謝主席。自2003年4月開始，這些機制，你認為是否發揮過有效作用？是否因為有這些機制而發現有些問題出現？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, throughout our process of authorizing documents, we would see things that we would feel uncomfortable with and would seek the issuer to either remove certain statements, add certain statements or to clarify and explain. So, as a normal part of our reviewing process, we would raise issues where we felt things weren't addressed properly or were being misrepresented.

黃宜弘議員：

嗯。

主席：

副主席。

黃宜弘議員：

我想問一問韋先生，你知否市面上有一種情況，不知道你有否發覺到，就是當這些前線的銀行職員也好，證券行業的職員也好，他們游說投資者開戶時，見面後就填一張很簡單的開戶表格，接着該前線員工回到自己office時，便將當天所見的這堆開戶表格交給上司，而那個上司就在沒見過這些投資者的情況下自己填寫那些表格，說"我曾經向對方解釋這些結構性機構的資料、章程等等，而且我還問過他們，說你選擇用英文解釋抑或用中文解釋。" 這種情況你知不知道？是否很廣泛？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The requirement of banks and brokers in terms of opening investment accounts is to go through a know-your-client exercise where they can establish adequately the risk appetite and the capital position and the investor attitude of the client and the level of knowledge of the client. Now, that's a clear requirement in the Code of Conduct. Clearly, one of the questions that we're looking at as part of our investigations is to whether that happened properly in every case. But the sort of situation that you've described, where minimal questions were asked and a supervisor would have filled in parts of the form, that would certainly raise concerns for us and that would be one of the areas that we would look very closely at.

主席：

副主席。

黃宜弘議員：

多謝主席。其實有些個案.....因為有人向我投訴，我今天不是針對某一個個案，這是一個類別的個案，就是根本前線員工的上司在那張表格裏面說："你喜歡我用中文或英文向你解釋？"他自己剔了英文，其實對方根本不懂英文。這種情況你又知不知道呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We are aware of some circumstances where individuals have signed off English documents and we've subsequently discovered that they don't understand English. We are aware of that in particular instances, yes.

主席：

副主席。

黃宜弘議員：

對於這些個案，我相信你都會同意，那個前線員工的上司觸犯了一些……他根本就不應該這樣做。對於這些個別的上司，你們對他們採取甚麼態度？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There are two levels. We spoke earlier about the investigation that the HKMA is doing and the HKMA is looking at relevant individuals and whether they have, on an individual level, complied properly with their Code of Conduct or not and, in those sort of circumstances, I'm sure the Monetary Authority would take a view about the behaviour of the individual. We're also looking at whether such practices were endemic within particular institutions and whether such practices were expected or not properly supervised at the institutional level and that's one of the areas of our investigation.

主席：

副主席。

黃宜弘議員：

韋先生，你是否知道，其實你們在調查完成時，已經通知了那些投資者，說你已經完成了你的調查，而這些調查你認為是不需要再跟進的。其實，在這一類對客戶的回應中，其實有很多很多是好像我剛才所說的那種情況。你知不知道？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure I fully understand the question. We haven't yet reached a decision that there are no cases which require further disciplinary action.

主席：

副主席。

黃宜弘議員：

我可以跟你說，幾天前有一些苦主來見我，他們收到你的通知，表示對於他個人的個案——不止一個人，有幾個人來見我——你已經完成了，你認為不需要跟進，而且你這個通知同時已發給對方的銀行。所以有兩方面證實了你已經通知他這個案件已經完成。但在這一類案件中，有很多很多情況是好像我剛才告訴你的那樣，即是有些上司在未見過客戶前便替他填寫那張表格，說"我問過他：你喜歡我用中文或英文作答？"根本沒見過他，他剔英文，而對方根本就不懂英文。

這一類我覺得很奇怪，為何你們會發一封信通知他整個案件已經調查完結？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I am not aware that we have written any such letter, so, perhaps, if you could let us have the documentation and we'll review it but I'm not aware of any letter that's gone from the SFC that deals with the closure of investigations.

黃宜弘議員：

OK。

主席：

副主席。

黃宜弘議員：

我很願意給你看那些信，會後我給你看。

主席：

接着是劉秀成議員。

劉秀成議員：

主席，我想問關於韋先生的陳述書W13(C)，其中一部分，第71條那裏，他說在2001年至2008年期間做了很多關於結構性產品的投資顧問職責及投資者的教育活動，即教人怎樣買或者甚麼問題、違規等等。我想問幾樣，即跟進你們問的問題。其中就是說那些產品的名稱，有些我們看到叫"奪金"，又甚麼"奪標"。這些產品的名稱其實是否有點誤導？為何用這樣的名稱你都覺得是.....又沒有教育這些投資者應該不要考慮這些名稱。即是怎麼樣呢？先問第一樣，謝謝。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Our education throughout that period is aimed at explaining the underlying nature of products and, when structured products first started to be developed and sold, we produced a number of notes explaining how structured products worked, what an equity-linked note was, how a credit-linked note would work, and we urged investors constantly to make sure that they understood the risks before they would make investments in such products. So that was a fairly common theme throughout our investor education programme.

In terms of the names of the products, where a name was obviously misleading or implied something incorrect, then we would have raised requisitions with the issuer and asked them to justify why particular names were used. In terms of the names of products that were used, we didn't feel that any of the names in themselves were misrepresenting the product. The concerns we have today are whether the products were misrepresented in terms of their characteristics and their performance and the risks involved and whether that misrepresentation happened during the selling process.

主席：

劉議員。

劉秀成議員：

我想繼續問一問，其實除此之外，剛才副主席……或主席你自己都問過，關於一些贈品，這些贈品都不便宜。我想問，你剛才說是由中介者付錢的，其實中介者究竟收多少佣金呢？為何能夠提供如此貴重的產品給投資者呢？如果它是用它的錢買這些產品給投資者，有沒虧本呢？我不知道，我想問清楚。謝謝。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The structure of many investment products, not simply structured products, is that the distributor would receive some commission from the issuer for the sale of products and, in the case of Minibonds, there was an arrangement whereby the distributors would all receive a commission via Sun Hung Kai for the sale of those products. I don't know, I doubt very much, whether the distributors would be making a loss. They, obviously, felt that they could afford to make the free gifts available within the income they received in terms of commission

劉秀成議員：

你知不知一個……

主席：

劉議員。

劉秀成議員：

……42吋的高清電視要多少錢？

Chairman:

Mr WHEATLEY?

劉秀成議員：

42吋的高清電視。因為你買一個產品4萬美元，不是，對不起，美金5,000元以上的產品已經可以得到。這個你看價錢是非

常昂貴，為何會有這等做生意不賺錢的事呢？我想問你是否知道，因為我現在問的是你的監察，OK。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I think that the gifts were related to the scale of the original investment, so you mentioned a 42-inch TV set for a \$5,000 investment, generally the more attractive gifts would only be available for a higher subscription level. So, clearly, the subscription level would indicate how much value an individual would get and I'm sure individuals will work out whether a 42-inch TV set is something that is valuable to them or not.

主席：

劉議員。

劉秀成議員：

我想你查清楚這一樣東西。我想問，既然你在這方面做了這麼多教育活動，我也看到你寫了，你知道大約有90%，差不多87%至89%的投資者會在銀行買，即你的調查是正確的，是嗎？其實是否你的教育活動應針對此方面的投資者呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It's certainly correct that the vast majority of the products were bought through the banks. In terms of our targeting our education activity, we would use widespread media to try to make sure that our messages were distributed as widely as possible. So that would include not just the articles that we place on our website or that we encourage the print media to cover but also radio and TV programmes. So we try to reach out with our education as broadly as possible.

劉秀成議員：

這個教育……

主席：

劉議員。

劉秀成議員：

.....做了7年，主席，由01年到08年，做了如此長時間，要是讀書都已拿到兩個學位了。我想問，為何結果還有這麼多人墮入這個陷阱呢？是否整個這個教育是失敗的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No matter how much education we provide – and we provide what we think is relevant because we're very concerned that people do need to understand financial products and we want people to, we don't want people to find themselves exposed to risks that they haven't understood – but there's no requirement for an individual to study our material; it's not like a broker or a bank employee has to pass certain exams, there's no requirement on an individual. So, whilst we can make it available, it clearly has to be read by somebody who wants to read it and that's why, in addition to the education that we provide for individuals, we require that the frontline staff are qualified and that they operate to a code which ensures that, even if the individual isn't sophisticated, that the frontline staff should make sure that only suitable products are sold to that individual and that, in the case of derivatives, all the risks are properly explained.

主席：

劉議員。

劉秀成議員：

你現在收到這麼多投訴，副主席都說了很多問題出來。其實這個教育.....即這麼多年的教育似乎實在很失敗。From your point of view, in your hindsight, do you think you spend so much time, okay, educating everybody and yet the result is so poor? Are you now thinking of something different or are you actually recommending something different?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, in terms of whether it's successful or a failure, we have to remember that we are dealing with a quite unprecedented financial crisis. Before this crisis, we had some, but not many, complaints about the extent to which products were misrepresented or not. But, to answer the second part of the question, are we looking at change, yes, we are. We think that it's very important, given what we've discovered through this process and through our surveys, it's very important that we step up the level of financial literacy and we have been working with the Government to create a new body, an Investor Education Council, which will have a much broader remit than the SFC and a much broader budget than the SFC to carry out investor education.

主席：

劉議員。

劉秀成議員：

我想問，主席，關於HKMA與SFC的關係，在這方面你是怎樣統籌？它們跟你說做了很多這樣的工作，你們又做，結果都是不理想。以後這兩個機構，金管局及證監會應怎樣一起做呢？如果要做的話，你也不會說聽到不同的一方面，會否一起去做還是怎樣？謝謝。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, clearly, it's very important that we continue to work together. We have related but separate responsibilities for the financial industry. The modus of co-operation is through us both implementing our responsibilities according to the relevant ordinances – so the SFO, as far as the SFC is concerned, and the Banking Ordinance in relation to the HKMA – and that we also co-operate and share information and intelligence through the MOU meetings which were structured pursuant to the two ordinances but as an additional mechanism that allowed us to co-ordinate our activities. (*The buzzer sounded*)

主席：

OK。

劉秀成議員：

我還有沒有時間問？有沒有時間？

主席：

或許再排隊吧。

劉秀成議員：

OK，謝謝。

主席：

接着是涂謹申議員。

涂謹申議員：

我的問題就是，我先請韋先生看S21那個文件，那就是證監會關於新鴻基投資服務有限公司的新聞公布，第6段提到有4點關注。

好，或者我先問韋先生，譬如說第3項，第3項說到關於評估迷你債券各系列的風險水平，即這方面的關注。因為我們知道迷你債券似乎理論上新鴻基應該最熟，因為是他們引入，或者構思吧，可以這樣說，由它那裏來的。我看到這裏說你連新鴻基自己評估各迷你債券系列的風險水平都有關注。這個關注，我想問，對於那些只負責賣的，即那些銀行，你的關注是更大或更小呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The concern that we have – and, again, in the case of Sun Hung Kai, we had reached our preliminary conclusions whereas, in the case of the banks, we're still going through that process – but the concern would apply equally to

whichever institution is selling the product. The institution is required to do adequate due diligence such that it understands and can explain the product to its customers.

主席：

涂議員。

涂謹申議員：

如果新鴻基評估這隻它自己創造出來或構思出來的產品的風險，你都對它這方面有關注，那麼其他分銷銀行，你是否在這方面都特別關注呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We would be just as concerned for each of the institutions selling the product. One of the lines of our inquiry is whether they had completed sufficient due diligence and we would expect that standard to be the same whether it's Sun Hung Kai or any of the banks.

主席：

涂議員。

涂謹申議員：

你有否在查其他銀行分銷這方面，看看它們有否從新鴻基創造的產品那裏得到甚麼資料，來進一步使它們理解這個產品的風險？有否查這方面的關係？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In investigating any institution selling a product, we would look at all of the due diligence that they have carried out, we would look at the materials that they have relied upon, we would look at the extent to which they've relied

only on third party materials or carried out their own investigations; all of those would be part of an inquiry.

主席：

涂議員。

涂謹申議員：

主席，這一項的第4點就是"給予合資格客戶的投資意見及客戶提出的疑問備存紀錄"。這一點裏面，我想韋先生看看他M4那個文件。M4就是我們俗稱的"FAQ"，即07年5月時你們發出的，似乎金管局和你們都很重視這份文件。它的第6條問題是說"投資顧問在擬備文件紀錄時應符合哪些標準？"

我曾於較早前問過蔡耀君先生，很詳細問了這堆東西。蔡先生是代表金管局看這一份文件的某一種是否遵守標準。因為這份文件是你們證監會發出的，我想從證監會的最高層，即包括你，看看你怎樣理解這份你自己發出的文件，應該符合的標準是甚麼？

好了，它的第一句說："投資顧問應以文件載明及記錄向每名客戶所提供的投資建議的依據，並向每名客戶提供依據的副本。"我想問問韋先生，這些是甚麼？你可否用你的字詞解釋一下，譬如你的同事，會有前線去執法、抽查，你期望這些投資建議的依據是寫甚麼、有多詳細呢？是否一個範本這樣剔、剔、剔，抑或其其實都要按每一個客戶，然後寫一篇文章來說明為何適合他、適合他，哪方面適合他，還是可否用一個範本這樣剔、剔、剔，然後便說這個就是投資的依據的建議？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I clarify, first of all, that the FAQs are meant to provide helpful advice and clarification of the Code, that is, the Code that provides the primary requirement. And the relevant codes are the Code of Conduct and the code relating to control guidelines, controls and guidelines, and both of those codes were published in 2003. All of them state that adequate records

must be kept and that banks or brokers must carry out proper know-your-client routines and do proper product due diligence.

What we don't try to do is prescriptively say exactly how an organization should do that. We will review an organization's compliance with the Code and, where we find it deficient, we will make recommendations to put right that deficiency but we don't design the process on behalf of brokers or banks. It's a principle that they have to work out how they comply with that.

主席：

涂議員。

涂謹申議員：

我舉一個例子，看看你覺得這樣是否足夠。譬如你也說了，那份幾十頁甚至幾百頁的章程、迷債，你前面都說，你不可以說我就只是交給你，你看吧這樣子。你要中介人、前線人員將那些重大的風險給個別的客戶解釋。這樣說對不對？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The requirement in the Code of Conduct is two-fold and it's under 5.2 and 5.3 of the Code of Conduct. It's a requirement that the product is suitable, taking into account the individual's circumstances. Now, clearly,

涂謹申議員：

主席，我.....

主席：

涂議員。

涂謹申議員：

我想韋先生誤會了我的問題。我的意思是說，你給他看一本大的書，這是不足夠的，你還要口頭解釋給他聽一些基本重要的風險，是嗎？你是否這樣期望有這個要求？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I agree that it is not enough simply to pass the big book and say to the client, "Please sign that you have understood it." That is not enough. That does not meet our requirement

涂謹申議員 :

OK。我舉例，譬如.....

主席 :

涂議員。

涂謹申議員 :

.....我給你一本大書，接着我向你解釋10分鐘，究竟那些重大風險是甚麼。我向你解釋10分鐘那些重大風險的東西，根據你的Code of Conduct或根據你現在這裏的第6條，是否需要將那10分鐘向你講了甚麼重要風險給寫下來，以及要給一份給那個客戶？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We expect brokers and banks to maintain records of how an investment decision was reached.

涂謹申議員 :

主席。

主席 :

涂議員。

涂謹申議員：

現在是說給一份給客戶，你看到第6點問題嗎？"A copy to each client"。我現在問你，你給一份(計時器響起)給客戶的是甚麼？韋先生，其實你知不知道這個內容？你懂不懂解釋這個內容？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The Code of Conduct that we had is based on principles, broad principles. We do not define exactly what the content, how long any written statement has to be that's given to a client. What we do is make it very clear that the bank or the broker has to do proper product due diligence, proper know-your-client procedures and go through a process of assessing suitability and to document that process of assessing suitability but what we don't do is, in a prescriptive way, describe what the chapter or paragraph headings need to be.

涂謹申議員：

主席。

主席：

涂議員。

涂謹申議員：

韋先生，可否看看第6條？"IAs should document and provide a copy to each client of the rationale underlying investment recommendations made to the client" —— "should"。為何你要回到Code of Conduct，你明明這裏寫"should"，你是否想說連證監會現在都幫銀行，說這份東西是廢的？

主席：

Mr WHEATLEY，回答完這條問題便到下一位。Mr WHEATLEY？

Mr Martin WHEATLEY:

What I'm saying is that

Hon James TO Kun-sun:

You are using the word "should".

主席 :

讓他把這個答完。

Hon James TO Kun-sun:

Are you going to scrap this requirement?

Mr Martin WHEATLEY:

What I'm saying is that the FAQ provides additional advice and clarification to the banks as to how they meet their obligations under the Code. They should document and record the information. The only point I'm making is that we don't prescribe all of the chapter headings or paragraph headings that need to go into that written confirmation. We expect them to judge what is suitable and adequate, given the particular circumstances.

涂謹申議員 :

主席，你讓我多問一條，最後的。

主席 :

OK，好。

涂謹申議員 :

我剛才問你的那條問題就是，我假設我給你一本大書，你是客戶，我接着向你解釋了10分鐘那本書裏面的重大風險。我要不要根據你這裏第6條，將我那10分鐘給你解釋的重大風險寫下來，以及給你一個副本呢？要還是不要？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

What has to be put in writing is the basis for the recommendation. I think that's quite clear. I don't see the confusion.

主席：

OK。好了，各位……

涂謹申議員：

主席，主席，韋先生沒有回答我這個問題。用剛才那個例子，這麼簡單，我給你一本書，我向你解釋了10分鐘，接着你簽合約買。那我這10分鐘解釋的重大風險及內容，我需不需要根據你第6條寫下來及給你一個copy呢？你作為客戶的話。你不要迴避這個問題，行不行？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the question's based on a false premise. What you have described is not a suitability assessment; it's a description of the product. And our requirement is that both a description of the product is provided and that a suitability assessment is made.

涂謹申議員：

主席，我不是問其他事情。

主席：

我想你要再排隊。

涂謹申議員：

我問的純粹就是……

主席：

涂議員。

涂謹申議員：

.....你需不需要將那10分鐘解釋給你聽的重大觀點、重大風險寫下來及交給客戶？

主席：

給你答完，我想該下一位了，因為13、14分鐘了。

涂謹申議員：

是，對不起，我再排隊。

主席：

是，讓他..... Any further response from you, Mr WHEATLEY?

涂謹申議員：

你不要迴避這個問題，行不行？

Mr Martin WHEATLEY:

Chairman, again, if I could respond, the requirement is that the basis for the recommendation is documented.

主席：

OK。接着是葉劉淑儀議員。

可以再排隊。

葉劉淑儀議員：

多謝主席。主席，我想問韋先生有關私人配售的問題。因為私人配售的問題，韋先生在他的statement W13(C)的第4至第5頁，以及第69至71頁都討論得很詳細。他這些資料告訴我們修改《公司條例》的背景，其實那個政策的改動是由2001年開始，可以說是韋先生來證監會之前。所以我希望他可以給我們一個比較客觀的意見。

我第一個問題就是，2001年我們開始檢討，政策檢討，成立了Financial Market Development Task Force。我想問韋先生，我

以下的理解是否正確。當時香港作出這個檢討，亦是跟隨世界趨勢，因為美國在1999年撤回Glass-Steagall's Act，即准許銀行進行證券業務。當時檢討《公司條例》及證監條例就是方便銀行賣結構性產品或證券，是否這樣？背景是否這樣？是放寬讓銀行去賣，讓它們的章程不用給證監會批核？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I believe that the policy intent, at that time, was not specifically to facilitate banks to sell structured products but was to develop the bond markets in Hong Kong post the 1997 crash. There'd been a general concern that Hong Kong – or that Asia's debt markets weren't sufficiently developed and I believe this initiative was partly in response to that.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

聽見韋先生這樣說真的覺得很好笑。01年到現在，2009年政府才說開始賣官債，賣官債之前就讓銀行賣這麼多這些結構性產品。我想問韋先生，即你的文件當中都解釋了很多甚麼叫.....有12個"安全港"類的產品，章程都不需要給證監會批核。那些"安全港"—— safe harbour categories，我看的文件，我的理解是否正確？是否說這些"安全港"條款適用的人，當時政府假設他們全部都是很聰明、很有錢、很瞭解這些結構性產品，所以不需要證監會的保護呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think the safe harbour regime was to recognize that, for more sophisticated individuals, it should be possible to create and sell products without the prior authorization of the prospectus but, in terms of the protection of the SFC regime, all sales, even if they are of products where we have not

authorized the prospectus, all sales are still subject to the provisions of the Code of Conduct.

葉劉淑儀議員：

嗯，我想……

主席：

葉劉淑儀議員。

葉劉淑儀議員：

……在你的statement第71頁，你解釋了那些作為structured as shares and debenture的product及those not legally structured as a share or debenture的products，你們的處理方法。第71頁你就說……

主席：

即是那裏的第幾段，葉劉淑儀議員？

葉劉淑儀議員：

不就是這個文件W13(C)的第71頁。

主席：

71頁。

葉劉淑儀議員：

你的答案的26.12。

Chairman:

Mr WHEATLEY?

葉劉淑儀議員：

剛才韋先生都說了，就算你不需要審批那個章程，你都要確保他們遵守那個Code of Conduct。接着你就說，26.13那裏，你的意思是否這些如果是當作股票，即股份般售賣的產品，你們

會不會做這些 thematic inspections and investigations？做不做呢？你們主動做不做呢？你怎樣監管呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, our thematic inspections were carried out in relation to brokers based on our view as to where additional risks might occur and we judge those additional risks through the market intelligence that we collect through the normal course of our business through our retail surveys that we carried out; and we would then focus-in our inspections on particular institutions and particular areas of business of those institutions.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

韋先生，那就是說你這些主題的檢視、審查只是對brokers做，而銀行，是否你以前給過的同一理由，因為你無權去監管銀行，所以銀行你就不管？那麼，誰負責監管銀行賣這些產品？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The thematic inspections that we carried out were only carried out on brokers. The HKMA conducted their own thematic inspections into banks.

葉劉淑儀議員：

嗯，但是……

主席：

葉劉淑儀議員。

葉劉淑儀議員：

.....我留意到證監會，其實你都很關注這些產品的複雜性，我看到你們那個Dr Wise —— 慧博士，你給我們看過起碼有兩段文字是解釋甚麼叫結構性票據之類的東西。我不知道我算不算精明的投資者、sophisticated investor，但是我看了幾次都看不明白這些產品，看不明白這些是甚麼，非常複雜。韋先生，我想問問你，以你如此專業的經驗，你覺得應不應該讓銀行在零售層面賣這些產品給很多不止公公婆婆，而是一些普通的退休人工、在職人士，你覺得一般市民明不明白這些結構性產品的風險？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think the products have become increasingly complex over the last six or seven years and it's difficult for ordinary people to understand such levels of complexity and it's for that reason that our rules require that the products only be sold to people who have, first of all, been explained and, therefore, understand what the products are and people for whom there is an assessment that the product is suitable. So we have raised our concerns many times and we have done our investigations many times on the extent to which products were being sold into unsuitable hands.

We found some failings with respect to investment advisers and we took regulatory action as a result of that. And we published our findings and we told the market generally that we had serious concerns and that investment advisers needed to do better in terms of their due diligence and sales processes. That was all part of the combination of our surveys and thematic inspections that were carried out throughout 2005, 2006, 2007.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

既然你有這麼嚴重的關注，我想知道證監會有否向金管局或財政司提過，說這些產品如此複雜，其實不應該在零售層面賣給一般市民？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We've raised the concerns through the publication of our various papers and when we've shared our findings with the HKMA and I know that, based on our discussions, we agreed concurrently with the HKMA that we would both carry out themed inspections of our respective regulated institutions.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

有很多來找我們，向我們投訴買了這些結構性股票掛鈎票據的市民都說，銀行對他說，最壞的情況都是接股票而已。你覺得這樣的描述是否準確？有否誤導性？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Without seeing a specific document, I can't confirm whether that is misleading or not but the general structure of such products was that the outcome would be taking delivery of the underlying shares.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

但是如果那個發行的公司自己倒閉，issuer及guarantor自己都倒閉，是否即等於血本無歸？(計時器響起)現在這些投資者血本無歸，是否就是因為這個issuer及guarantor都是Lehman Brothers而它倒閉了？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Where the arranger or the issuer of the product has gone bankrupt, as in the case of Lehmans, then people bear, in addition to the product risk, the counterparty risk of the issuer.

主席：

OK。湯家驊議員。

湯家驊議員：

主席，我還是想跟進上一次的問題，因為韋先生完全沒有回答到我的問題。我上次的问题是問他是否覺得在銷售單張裏面應該有大字說明，"這產品不是一個普通債券，你亦須閱讀清楚所有有關的章程"？這個是我的問題，我問了3次，韋奕禮先生都是沒有回應。

我現在想用另外一個方式問他，任志剛先生在給我們證供的時候有一個這樣的答案，我現在想讀給他聽："風險的披露的篇幅亦應該.....譬如跟產品的回報那方面的篇幅有平衡才行，不可以是'回報'的字很大，'風險'的字很小。"

我想問問韋奕禮先生.....

主席：

湯議員，可不可以說是哪一頁，哪一天，哪一頁？最主要是頁數。

湯家驊議員：

這個是2009年5月20日發出的紀錄，第九次研訊的紀錄第65頁。

主席：

65頁，OK。

湯家驊議員：

第65頁。我想首先問問韋奕禮先生，他是否同意任志剛先生的證供？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think our expectation that the risks would be properly explained at the point of sale is something that, obviously, is questioned by the number of complaints that we've had. So we are asking now for the risks to be more prominently disclosed in any documentation and any marketing flyers going forward. But many of the risks were prominently disclosed. The fact that the notes were not principal-protected was always very prominent and in bold. Other risks were included in the document. Always, the individuals were told that the document did not contain all the risks and they would need to read the prospectuses and that they should talk to a customer representative.

But I think, in general terms, if people have relied on the marketing flyer for the disclosure of risks, then those risks do need to be more prominently disclosed.

湯家驊議員：

即是說你同意……

主席：

湯議員。

湯家驊議員：

……任志剛先生的證供，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I can't recall the exact words that Mr YAM said but we have already put out a circular asking for product issuers to reflect the higher risk environment that we're now in by putting those risks much more prominently on documents.

主席：

湯議員。

湯家驊議員：

你說你提供了一個指示，提供指示這個事情是何時發生？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We've given the instruction many times over the last six or seven years in relation to specific events. When the subprime crisis became apparent, we asked all document-producers – issuers to disclose whether there was any subprime component in their products, backing the products, and to assure us that that was properly disclosed. After the Lehman's collapse, in October, we issued a circular which asked all product issuers to ensure that their marketing materials properly reflected the higher risks that people were exposed to in a very volatile market.

So, we've done it at many different times over the last five or six years that the products have existed.

主席：

湯議員。

湯家驊議員：

但是為甚麼，如果你回看S32、S33，一些銷售單張的樣本，你可以看到最大字標題的就是派息多高，及"債券發售期有限"、"緊握增值良機"，但卻沒有我剛才所講的字樣，即是說這個產品不是債券及希望購買者要詳細閱讀章程，是沒有同樣大小的字眼的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, clearly, a one-page marketing flyer cannot include all of the information that's necessary in the prospectus.

湯家驊議員：

對不起，這個不是我的問題。

主席：

湯議員。

湯家驊議員：

這個不是我的問題。我的問題，我相信所有人，正在聽我們這個聆訊的都明白，問題是你剛才同意披露風險的字眼應該和回報的字眼得到平衡，大家都要同樣大小，而這些單張在披露風險方面的字就小到我不戴眼鏡都看不見，但是在回報方面，或者"發售期有限"、"緊握增值良機"這些字眼則是很大的字。為何有這種情況出現，你可否解釋？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Anybody buying an investment product, the primary interest is the return that the product will offer and so that is the primary focus of the leaflet but every one of them does have, in bold, the facts that the notes are not principal-protected and every one of them does have, in bold, that you should talk to a customer service representative. And it's during that discussion that the risks are supposed to be explained adequately and the judgement as to whether the product is suitable should be made.

湯家驊議員：

韋先生。

主席：

湯議員。

湯家驊議員：

在這次我的詢問開始時，你已經同意了任志剛先生的證供，即是說在披露風險方面是需要令閱讀者瞭解那個重要性，而這些單張差不多沒有一張達到這個標準。你有甚麼解釋？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, again, the pamphlet is meant to attract awareness; it's meant to encourage an individual to talk to a customer sales representative. We did insist that the risks are included, the predominant risks are included in the pamphlet but they're not as predominant as the product features. I do agree with Joseph that, given that people and, perhaps, sales people, have relied on these marketing flyers more than they should have done, then there should be greater prominence to those risks going forward but they are simply marketing flyers; they were not intended to be the primary sales document.

主席：

湯議員。

湯家驊議員：

這些銷售單張當然是會被銷售人員作為推銷之用，否則就不會有這些單張了，對不對？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

They would be used to attract interest in the product. I would not expect that they were the primary document on which a product was sold.

湯家驊議員：

我另外想問.....

主席：

湯議員。

湯家驊議員：

.....你的就是，在上一次我問你問題時，你堅持在審批這些單張方面，特別是審批中文版本方面，你自己本人是沒有參與的。這是你上次的證供。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That's correct. That's a function within the organization.

湯家驊議員：

但是在你們.....

主席：

湯議員。

湯家驊議員：

.....證監會的架構裏，在審批工作方面，你會不會和真正作審批的那個部門或主管不時交換意見？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I would exchange views very regularly with all of the departments within the SFC regarding what we see as developments within the market. Clearly, those discussions are more prevalent at the time when a new concept or a new product or a new type of institution would want to operate and that's when the policy issues are much more predominant. When it's a reissue of an existing structure, then that becomes much more of an operational issue.

主席：

湯議員。

湯家驊議員：

但在審批方面，負責審批的部門或主管，他不會來找你，問你審批的問題或應否審批某一些單張？他會否問你？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Generally, where it's a repeat of a product that is already broadly familiar, I wouldn't become involved. Sometimes, when there are new innovations or new products, it would become much more of a policy issue that would be discussed with myself and other senior colleagues.

湯家驊議員：

即是說有，……

主席：

湯議員。

湯家驊議員：

……會問你的？在新產品的時候。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Potentially. It depends on the policy questions that are being raised.

主席：

湯議員。

湯家驊議員：

我剛才所談及的當然就是說，在披露風險方面做得不足之處，那些問題其實你是否關注？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think – again, you've used the word "deficiency" – the disclosure of risks is disclosed through a combination of the marketing flyer (*The buzzer sounded*) which has them in very summary form, the prospectus which has them in detail but is a very long and complex document, and in the sales process which is the interaction between the individual and the customer service representative. And I would expect an individual to rely primarily on that interaction to make sure that they have a good understanding of the product and the risks.

湯家驊議員：

主席，那個答案……

主席：

湯議員。

湯家驊議員：

……他已經重複了很多次，但不是一個回應我問題的答案。我的問題很簡單，我就是問他，在一個新產品出售時，在審批方面，他是否關注審批過程及披露風險的要求？

主席：

嗯。

湯家驊議員：

可否回答我的問題？

Chairman:

Mr WHEATLEY, can you respond to this one?

Mr Martin WHEATLEY:

Again, I'm slightly confused, then, as to what you mean by a "new product".

湯家驊議員 :

是你剛才用這個字眼，不是我用。

Mr Martin WHEATLEY:

Okay,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... clearly, when products are first launched in the Hong Kong market, so for the very first time, there would be a number of policy considerations about whether the form of the product or the way that the product is described or marketed fits with either the Companies Ordinance or the SFO and we'd have to make policy interpretations at that time and, depending on the complexity, I and other colleagues may be involved at that stage. I wouldn't be involved in the normal authorization of marketing flyers or prospectuses if it is a continuation of a type of product that's familiar already within Hong Kong.

主席 :

其實當然，這些問題亦可以遲些問何賢通先生，這些問題.....

湯家驊議員 :

不是。但主席，我們都要確定韋先生自己的責任所在。

主席 :

是，他上次已回答你，不過如果需要時.....

湯家驊議員：

我再排隊。

主席：

.....排隊再繼續問。OK，石禮謙議員，你準備好問問題沒有？

石禮謙議員：

我準備好了，主席。

Chairman:

Okay.

石禮謙議員：

不好意思，我今天不太舒服。

Chairman:

Okay.

Hon Abraham SHEK Lai-him:

Martin, sorry, I might have asked you questions that you have replied before. As chief executive of SFC, how much time you have put in on the subject of Lehman Brothers before the blow-up of Lehman Brothers or collapse of Lehman Brothers?

Mr Martin WHEATLEY:

Okay,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... before the collapse of Lehman Brothers, it's hard to put a precise allocation of time because there were concerns about most major financial institutions and, in the period leading up to the collapse of Lehman Brothers, there was constant rumours and stories about many other institutions, investment banks, insurance companies and others. So, I would have put a lot of time into

understanding very broadly the sort of risks that we thought were emerging; I can't really allocate a particular figure to Lehmans as part of that.

主席：

石議員。

Hon Abraham SHEK Lai-him:

You are well aware of the problems in the States with the housing loans, with all the problems that the United States financial markets were facing then. Were you not aware that this might be a problem for the small investors of Hong Kong to be subjected to the same type of problems?

Mr Martin WHEATLEY:

Yes, yes, we were concerned and, therefore,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... we, quite earlier, once it became clear the extent of the apparent problems, we required all issuers to confirm back to us whether the collateral that backed their different structured products, whether that was exposed to asset-backed securities or subprime mortgages and, where they confirmed to us that it wasn't, we asked for a specific confirmation in the documents as to whether or not there were subprime or asset-backed securities behind the collateral. So, from that date onwards, all of the structured products would have a clear statement that there were no subprime or asset-backed securities that supported the product

主席：

石議員。

Hon Abraham SHEK Lai-him:

Are you aware of the answers given by Mr Joe YAM that he was only able to monitor the banks because you were the one that approved the products or you were the one that approved the marketing documents? Have you heard what Mr Joe YAM said: indirectly, you were the one that lead him to allow the bank to sell the products?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... what Joseph has said is absolutely correct. It's that the HKMA does not have a role in approving or overseeing our work in authorizing documents.

主席 :

石議員。

Hon Abraham SHEK Lai-him:

And, in the Government policies and in your guidelines what constitute a good investment brokers, that you have four main pillars: the pillars of the products, those people sell the product must know the product; and the second main area is know-thou-client, know-your-client; and thirdly is that knowing that the product you sell to the client, that you can have the ability – that they can have the ability to buy the products; and, lastly, that they bought the product with a known awareness of what the product is. You know, the four major pillars which I think highlighted many times.

Now, do you have a responsibility as SFC to ensure that the bank carry out these four major pillars of what constitute a good seller of products?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We have, as I've provided in my written statement, a number of responsibilities. We've got the responsibility to ensure that the prospectus and the marketing flyers are not misleading and that they comply with the Companies Ordinance in terms of what is properly disclosed. We've got a principal responsibility to maintain the Code of Conduct and, as part of that Code of Conduct, the suitability assessment is something that should be carried out by the person selling the product. We have a responsibility for

supervising brokers insofar as they are complying with the Code of Conduct; we do not have a responsibility for supervising the extent to which banks comply with that Code of Conduct.

主席：

石議員。

Hon Abraham SHEK Lai-him:

But the earlier question I asked you, that Joe YAM said that, because you have approved all those documents, and then they sell the products. So, does it mean that there is a responsibility vacuum on the part of SFC having approved the product and HKMA do the monitoring? You also have an indirect role of ensuring HKMA, who are your agent or who are your partners, to deal with all those products that ensure that they comply to those regulations.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't think there is a vacuum. We authorize the issue of a prospectus. That's what our role is. And in authorizing it, we ensure that it meets the schedule of the Companies Ordinance but the part of the process that allows the product to be sold to an individual is the due diligence that's done by a bank or a broker which assures itself that it understands that that product is suitable for its particular customers and it then does a know-your-client exercise at establishing, for each individual customer, that it's an appropriate product.

What we don't do, and what no regulator in the world does, is to say, "We approve that here's a product that's suitable for everybody." Nobody does that. What you do is you say, "There's adequate disclosure such that you could form a view" and that there are professionals selling the product who have duties to the individuals they're selling the product to. So that's not a vacuum. There may be a question as to whether the latter part properly worked but that's not a vacuum in the regulatory structure.

主席：

石議員。

Hon Abraham SHEK Lai-him:

You use the word "adequate"; can you define what is adequate? You approve the marketing materials and some of those marketing materials, all written in Chinese, which says that – I presume that many of my colleagues have already asked you on – guaranteed return of capital. And, having seen this type of advertisement and approving this advertisement, you also allow those products to be sold off the counter. I mean, you have been a regulator in UK, you ensure that this – the banks don't sell this type of products and why you allow this bank to sell these products with all this misleading information? And you call those "adequate"? You use the word "adequate". Is it that they are adequate that they reflect the true nature of the product?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I just – there's a couple of things that you've said there that the marketing materials contained information that said they were capital-guaranteed. That's not true. Every marketing material, every leaflet, every flyer would have had a statement that they are not principal-protected. So that was very clear and it was something very important.

Hon Abraham SHEK Lai-him:

Ah

Mr Martin WHEATLEY:

Sorry, there's another point that you made which I think is an important one. When you say that we allowed the products to be sold over the counter, absolutely not. These are not over-the-counter products. They're complex products that should be only sold on an advised basis where a proper suitability assessment can be made.

Hon Abraham SHEK Lai-him:

Thank you.

主席：

石議員。

Hon Abraham SHEK Lai-him:

That's exactly where the problem is. You allow the product to let HKMA allow the bank to sell the products, that they know the products, know-thou-clients, know that they have the ability to sustain the risk, and then they buy the product. But, somehow, there is somewhere, some problem missing, that the problem arises and that's why we have 40 000-odd Lehman Brothers holders subjected to this type of unfortunate incident. So where went wrong?

Now that everybody's said you have done your duty, you have approved all those documents, you have carried out all your task, so there shouldn't be any problem. If there are problems, there shouldn't be a massive problem of 40 000 investors. If it's a hundred, two hundred, that's okay. I mean, you also have a problem in the SFC areas where the Sun Hung Kai issues actually arise that they did right under your supervision. So, do you have a responsibility or where went wrong? Can you tell us where went wrong?

I mean, Joe was here; he tell us he did everything right. You sit here for a number of times, that you – I have listened very carefully, I have read all the answers that you did the right thing. Who did the wrong thing? The investors did the wrong thing to buy a product that you guys have done all the good things and the right things? Who actually did the wrong thing?

Mr Martin WHEATLEY:

We

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I understand the frustration because everybody wants to get to that answer. We are carrying out investigations into all of the banks that sold this product and, as I explained to members the first time I appeared here, in many of those cases, (*The buzzer sounded*) we are reaching the position where we believe that there is a regulatory case to answer and we have entered into settlement discussions with those banks.

We can only say that the concerns that were raised by us for the two brokers, which were concerns that there was a lack of due diligence, a lack of proper know-your-client, unsuitable products were sold, those concerns, when played to those brokers, resulted in them making an offer to repurchase and,

yesterday, we announced that those brokers had completed 100% of those repurchases. Now, we can't conclude today – we can't prematurely conclude our case in relation to the banks but I think people understand that that's an area that we are focusing our attention on.

Chairman:

Okay.

Hon Abraham SHEK Lai-him:

Chairman, I ask one last question.

Chairman:

Yes, okay.

Hon Abraham SHEK Lai-him:

Mr WHEATLEY,

主席：

石議員。

Hon Abraham SHEK Lai-him:

..... can I ask you just what's your view on that? Do you think that the banks have a fiduciary duty to explain to all their customers when they buy this product? Because this is know-your-product and knowing a lot of those investors are small-time investors, investors of elderly age, investors who do not understand much of English, do you think, as a CEO of SFC, that they have know their client, that they have know the product?

Mr Martin WHEATLEY:

Clearly,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Under our Code of Conduct, there is clearly a duty to know your client, to do proper due diligence and to make sure that only suitable products are sold to your clients. I think that's very clear.

Hon Abraham SHEK Lai-him:

Yes, so they do have a fiduciary

主席 :

石議員。

Hon Abraham SHEK Lai-him:

..... duty to their clients?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'd rather not comment, "fiduciary" being a very technical legal term. It would partly depend on the individual contract

Hon Abraham SHEK Lai-him:

Because

Mr Martin WHEATLEY:

..... they have with individual clients.

Hon Abraham SHEK Lai-him:

Fiduciary – because they owe a duty to the people they're supposed to take care of. They are financial advisers to those people, right? As stockbrokers are.

Mr Martin WHEATLEY:

Yes.

Hon Abraham SHEK Lai-him:

So know your client and know thou product is very important. And, if they don't know the product themselves and knowing very well that the clients who are just very ordinary hawkers from the street that have been investing and by fixed depositing

Chairman:

Okay.

Hon Abraham SHEK Lai-him:

..... their savings for practically all their lives, they put them into such high risk or medium risk, whatever risk, and so they first reflect that they don't know their products and they don't know their clients and these two violations is very important as a regulator, on that basis. They do then have a fiduciary duty, don't they? I mean, I'm putting that word not in a legal context; I'm not a lawyer.

Mr Martin WHEATLEY:

Right.

Hon Abraham SHEK Lai-him:

But I'm just an ordinary person that understand what's the duty that owes to

Chairman:

Okay.

Hon Abraham SHEK Lai-him:

..... other people who trust, entrusted them with their money and with their life's savings.

Chairman:

Okay. Mr WHEATLEY, answer this question and then we'll have a break.

Mr Martin WHEATLEY:

Well, clearly, they do have duties to their clients and those duties are set out very clearly in our Code of Conduct. The question as to the extent to which that's a fiduciary duty is very much a legal question and I'd leave that to our lawyers to give a strict interpretation of that. But there's clearly a duty to ensure suitable product.

Chairman:

Okay.

Hon Abraham SHEK Lai-him:

So you agree that they have a duty of – I don't use the "fiduciary duty" – a duty of care under the two

Mr Martin WHEATLEY:

Yes.

Hon Abraham SHEK Lai-him:

..... very guideline that you laid down in your book?

Mr Martin WHEATLEY:

Yes.

主席：

OK。各位，現在我宣布小組委員會休息10分鐘，請各位準時於11時50分返回會議廳。休息期間，請證人不要跟其他人士討論他的證供。

(研訊於上午11時37分暫停)

(研訊於上午11時55分恢復進行)

主席：

我們繼續我們的研訊。不過，首先說一說，稍後第三部分的內部商議要進行，不過會很短，先告訴大家，很短的。

韋奕禮先生，你現在繼續在宣誓情況下作供。

下一位同事是甘乃威議員。

甘乃威議員：

主席，我想問韋奕禮先生，昨天我見到證監會發出了一個新聞稿，證監會的新聞稿主要是說新鴻基投資服務有限公司及凱基證券有限公司完成了迷你債券的回購計劃。證監會新聞稿內最後那段說，"證監會讚揚新鴻基及凱基證券顧及客戶利益，迅速解決有關事宜。" 其實，過去一個星期都有相當多報道說有銀行提出六成的回購建議，今天甚至有報紙提到有16間銀行正式致函證監會，就解決迷你債券有初步方案，都是說它們補償六成。

我想問韋奕禮先生，其實證監會跟這些相關的金融機構討論時，是否容許他們有集體的一個所謂補償的行動呢？你們會否容許這個集體行動？

主席：

甘議員，因為你說到回購、補償那些，其實不在我們現階段的研究範疇，不過現在我看看韋奕禮先生就現在傳票上所寫的，看看他願意回答多少。

甘乃威議員：

主席，我的引子就是看看他過去有否做，即我只是先……

主席：

我知道，我明白。

甘乃威議員：

好嗎？OK。

主席：

所以我要提一提韋奕禮先生，就是這個意思。Mr WHEATLEY？

Mr Martin WHEATLEY:

The discussions – we've mentioned that we were in discussions, and we confirmed that at my first hearing in front of this committee, but our view is that those discussions have to remain confidential. Now, obviously, not everybody shares that view because a large amount of information has been put into the public domain.

In terms of responding to the specific question, is it our practice, we've never been in this situation before. So, we've never had a situation where we have alleged mis-selling covering such a wide range of institutions, so there's no previous precedent or practice that we could call on. It has happened in other markets – it's happened in the UK, it's happened in the US – and we remain open to a sensible settlement proposal whether from individual banks or from a collection of banks. We're prepared to have a discussion with either group but what we're not prepared to do is negotiate through the media.

主席：

甘議員。

甘乃威議員：

我想問，剛才韋奕禮先生說過去沒有例子，包括香港或外地的地方，但證監會會否覺得這些所謂集體行動對證監會會造成壓力？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think the use of the media is an attempt to create pressure. Obviously, I think that some people are taking the view that that will create pressure. Our view is that we will come up with what we believe is a defensible solution whether it's a collection of banks or individual banks but we won't allow ourselves to be pressured to do something which would be against our principles or against the law.

主席：

甘議員。

甘乃威議員：

主席。當然，剛才你提到，即你都覺得這個可能透過媒介做出一些壓力，但基於你早前在剛才提到新鴻基投資及凱基用百分之百進行回購，其實這個會否是一些例子，作為一個先例去引證未來有關相關的這些所謂補償行動，這些情況都會用百分比作為一個例子去處理呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We have made it quite clear that we remain open to any particular proposal that banks wish to put forward, so we haven't said the Sun Hung Kai arrangement is the only precedent that we're prepared to accept. Obviously, we think that was a good solution for individuals but we haven't said it's the only one.

But, equally, the press comment about the level of so-called compensation, I think it fails to take account of the fact that, in many cases, the collateral is worth more than 60%, so we would look very poorly on any proposal that was offering to give back to individuals less than is already rightfully theirs.

主席：

甘議員。

甘乃威議員：

主席，因為我看到在新鴻基，即剛才提到證監會那份新聞稿、昨天的新聞稿裏面有提到，在回購計劃完成後，代迷你債券持有人持有的那些抵押品，即新鴻基及凱基將會持有的那些抵押品，兩家公司將有權獲分配款項，雖然目前仍未確定抵押品最終的價值，但獲分配的款項很可能足夠支付相當比例的回購款項。當你們考慮這些所謂補償計劃時，這點是一個很重要的考慮因素，他們要作出一些甚麼補償計劃，這是一個重要的考慮因素。在這個情況下，你們估計這些迷你債券現在的價值是多少？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In terms of the assessment, clearly, the brokers took a view, at the point that they made their buyback offer, that they would recover some of what they were offering. The value of the collateral, there is some uncertainty about the actual value of that collateral but I noticed, earlier this week, HSBC have now appointed PwC to act as receivers for the collateral, so that process is underway. We'll only finally know the value of the collateral when that process is completed but, clearly, in the case of the brokers, where they have bought back at 100%, it's perfectly reasonable for the brokers to then have subsequent title to the collateral to offset some of their costs.

If there are offers to purchase, buy back the Minibonds at only 60%, then there's a serious question as to whether the banks should still have full title to the collateral or whether that collateral should still be held to the benefit of the individual Minibond holder.

主席：

甘議員。

甘乃威議員：

主席。根據你最後的資料——剛才你提到HSBC正在做相關的估值——但在你最後的資料裏，據你所理解，這些迷你債券的抵押品現在的市值，根據你最後的資料是多少呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we've got no specific knowledge of the value. That's the job that PwC have been appointed to carry out. I know that, when a buyback was discussed back in October/November last year, the general view was that the collateral was, on average, worth between 50% and 60% but, in some cases, it was worth much less and, in some cases, much more than that. But we've got no specific information on the current value but HSBC announced, earlier this week, that they've appointed PwC to carry out that process.

主席：

甘議員。

甘乃威議員：

主席。我想除了迷你債券之外，上次在逐字紀錄內Martin WHEATLEY回答我有關進行ELN那個……即CLN的調查那裏……

主席：

第幾段？

甘乃威議員：

……那裏的回應是說……

主席：

第幾頁？

甘乃威議員：

……其實你們已經……

主席：

第幾頁？

甘乃威議員：

那個版本第43頁。

主席：

43頁。

甘乃威議員：

找到了吧？

主席：

43頁。

Mr Martin WHEATLEY:

Sorry, which is the reference document?

甘乃威議員：

6月26日的逐字紀錄。主席，鐘還繼續走動，主席。

主席：

嗯。請繼續，甘議員。

甘乃威議員：

OK？你在那裏回應我的問題，你最後那段說："..... I misled people at the last meeting but we have commenced investigations into other product areas."。我想問你，究竟這些ELN及CLN的調查，你們是何時展開的？有關所謂的top-down approach這個調查，你們是何時進行的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We started the full set of investigations in around November, I believe. We'd started some prior to that but all 19 banks we started in November. I can't tell you exactly when investigations into ELNs or other products commenced but we have had (*The buzzer sounded*) a number of referrals from the Monetary Authority. In fact, something like a quarter of the total referrals refer to products other than Minibonds, so, clearly, the concerns that have been raised in relation to Minibonds also extend to other credit-linked notes and equity-linked notes. So, there are other investigations covering these other areas. I can't tell you exactly when those investigations would have commenced.

甘乃威議員：

主席，我想會後.....

主席：

多問一條。

甘乃威議員：

.....Martin WHEATLEY要給我們提供一個準確的時間，究竟是何時正式展開這個調查。還有，我想問，究竟這個調查，有關這些所謂"other product areas"的調查，究竟牽涉多少間銀行？因為有人說你們不敢就一些外資.....因為賣這些產品有很多是外資銀行，有很多說法是你們不敢進行一些外資銀行的相關的所謂top-down approach的調查。這是否一個事實呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It is a fact that we do not take the nationality or the size or the profile of any suspected breach into account in deciding whether to carry out investigation. We do not carry any fear or favour in regard to particular institutions; we look at all cases on their merits.

Chairman:

Can you provide the information that's required

Mr Martin WHEATLEY:

Yes.

Chairman:

..... after the meeting? Okay.

甘乃威議員：

主席。

Chairman:

Okay.

甘乃威議員：

你說不會管它是否外資銀行，我想問，就這些外資銀行進行 top-down approach 的調查，會不會比本地銀行來得困難呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Regardless of the type of institution, our powers are the same and we would exercise those powers in a fair way with regard to that institution. The type or the nature or the nationality of an institution is irrelevant to our investigation.

主席：

OK。梁美芬議員。

梁美芬議員：

多謝主席。我也是看報紙，現在拋出來的中銀那個60%的大和解方案，看到證監會的一些消息，就是說你們希望銀行百分百。近期我收到銀行的一些回應，就是說沒理由只是銀行的問題，證監會自己會否也有問題呢？我上次讀出一份文件，其實我們只想瞭解一下，關於這份文件，你覺得容許這類產品在香港銷售，究竟是哪一方面的責任？我想今天Mr WHEATLEY有我那份文件了，就是渣打銀行一份雷曼兄弟的銷售文件。第1頁就已經說"本文件的內容並未經在香港的規管當局審核"。在第10頁及第15頁亦提到，這一類產品在美國不可以銷售，在台灣亦然。

我想問問，偏偏在香港卻如此容易隨便銷售，其實這一個責任，容許這類產品可以在香港隨處賣，我想問Mr WHEATLEY，這個是否證監會的責任呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

This product which I've been given here is not the responsibility of the SFC because this prospectus has been issued under the safe harbours, the exemptions within the Companies Ordinance. But it is not available for sale to the public, it's not a public offer document; it's a private placement document. But the same sort of restrictions as you mention in other markets, in the US and other markets, applies here: it's not a general offer; it's not available for distribution to the public.

主席：

梁議員。

梁美芬議員：

如果不是證監會的責任，是誰的責任去監管這一類的產品在香港銷售呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the supervision – again, if I can draw the distinction, the documentation has not been authorized for sale to the public, so this is a private placement note which is structured under the Companies Ordinance. The sales process is subject to the SFC's Code of Conduct and where that sales process is via a bank, then the HKMA will supervise the bank pursuant to the Code of Conduct.

梁美芬議員：

是否就是說……

主席：

梁議員。

梁美芬議員：

……應該是金管局的責任？

Mr Martin WHEATLEY:

Well, again,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... if I can be quite clear about it, there's two distinctions here. The product itself is a private placement product; it's not been authorized by the SFC or anybody else. The conduct of the bank in selling it would be subject to the relevant authority which is, if it's a bank, would be the Hong Kong Monetary Authority.

梁美芬議員：

OK。

主席：

梁議員。

梁美芬議員：

我想問問，剛剛Mr WHEATLEY提到一個私人認購。在這些私人認購的政策，在香港，我們說在外面人家有個門檻是很高的。我亦多次說在外國有些規定，可能要超過某些資金，甚至可能是100萬美金去私人認購。我現在手頭上這份文件，那個苦主只是買了50萬，現在入場費是50萬。銀行跟他說，因為他亦在該銀行買了一些保險，那些保險又是.....你知道，現在的保險有很多方程式，最近去跟進時，就說他應該是屬於專業投資者。他沒有其他任何投資的紀錄。

這些所謂私人配售，其實證監會有甚麼責任去監管呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The safe harbours are set out in law under the Companies Ordinance which means that the documents are not required to be authorized by the SFC, so the SFC has no direct responsibility for such products. They are not for public offer, so they're sold to a subset of the public and the Companies Ordinance sets out what that subset of the public is.

One of the safe harbours is for sale to a professional investor and a professional investor has a very distinct definition but it's somebody who has sufficient experience, sufficient knowledge of the nature of the products and a portfolio of at least one million US. That's one of the exemptions. One of the other exemptions is that the minimum consideration is not less than half a million Hong Kong dollars and the description you gave sounds like that's the exemption that's been relied upon.

But there's no regulatory oversight from the SFC over these products other than through our approval of the Code of Conduct which is subsequently supervised by the HKMA, where the distributor is a bank.

主席：

梁議員。

梁美芬議員：

你認為這一類產品可以不須經過審批而在香港隨便銷售，今天你回看，是否在制度上及你們的監管上，金管局也好、政府也好、你們也好，其實是一個很大的疏漏呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think that there's a question as to whether the safe harbour regime which was originally designed primarily to allow professionals or high net worth clients to have access to products. I think there's a question as to whether that regime is being used to distribute the products much more widely and I think that is a regulatory issue which we need to look at and review with the Government.

主席：

梁議員。

梁美芬議員：

Yes, Mr WHEATLEY。這個是很認真的問題，因為你一直都堅持披露原則似乎已經足夠。從各個個案顯示，其實當整個監管的情況已經到了滿街滿巷，我想連我們很多.....其中有些議員自己都可能被銀行叫我們去買的時候，證監會是否覺得完全沒問題，當時是無動於中，覺得這個就是這樣的問題，香港可以容許這樣呢？這個不光是有否雷曼事件出現的問題。雷曼之前，其實是否根本政策上，你現在都覺得容許這樣的產品無須審核而隨處賣，是一個合適的做法呢？你們自己會否在監管上出了問題？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, again, every market in the world has a structure that would allow products to be sold to certain types of clients without the documentation for those products being authorized and that's a common feature which allows people to have, where they have sufficient wealth and knowledge, access to products without having to go through a cumbersome authorization process. The question here is whether these safe harbours have been used to sell the products much, much more widely than the original policy intent and I think that's the question: has this structure moved away from the original policy intent so that it's now allowing sales to a much wider proportion of the investing population.

主席：

梁議員。

梁美芬議員：

我想，說到這一點，我希望證監會再認真去看看，這一類產品可以在香港銷售，證監會的責任其實也是難辭其咎的。但是，亦有個別銀行真的在雷曼的負面消息、危在旦夕的消息已經公

布後，還不斷再銷售這些高風險產品，其中一間，我說過是大新。我亦收到不少數據，裏面提到大新銀行的處理是很奇怪的。在9月.....即8月底賣出的那些產品，那些苦主有部分它肯跟他們和解，比例高些；但同一個月份，8月初的它就拒絕和解。

在這種情況下，在現時來說，到了8月、9月還在銷售，我覺得可以說得到，而且銀行在提供如此高佣金的情況下繼續銷售，我想問證監會是否完全不知道呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think, again I come back to my point. These are private placement products; they don't require and, in fact, we have no authority over the authorization of these documents.

主席：

梁議員。

梁美芬議員：

你覺得你們沒有authority —— 權威性去管轄這些，是否正常？是否合理？是否其他國家就要有這種審核才可以賣，香港就不能賣.....

Chairman:

Mr WHEATLEY?

梁美芬議員：

.....香港就可以賣呢？不需要，你是覺得正常的，沒有authority、沒人監管這樣實屬正常？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think every market in the world – and you refer to the disclaimer in here about US selling restrictions – it says that the notes (*The buzzer sounded*) have not been registered with the US under the Securities Act and they cannot be sold except under Rule 144A. So, in the US, these sorts of products are not for sale to the public except under a specific rule and the same is true in Hong Kong. These products are not for sale to the general public unless they are structured under an exemption to the Companies Ordinance and that's what has been happening.

So it's not a question whether I feel we have authority. The law is very clear: these are not subject to authorization by the SFC.

梁美芬議員：

最後一句。

主席：

OK。

梁美芬議員：

是否其實……

主席：

梁議員。

梁美芬議員：

……Mr WHEATLEY認為這些問題都是出現在銀行方面呢？不在證監會，證監會沒問題，全部都是銀行的問題呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think, when you talk about problems, what we have here is products that have failed because of a quite unprecedented event in global financial markets. The failure of the world's fourth largest investment bank is what has caused these products to fail. Now, nobody anywhere in the world

expected or could have predicted that. So that's not a failure of the regulatory system, it's a quite extraordinary unprecedented event which every market in the world is still reeling from.

主席：

OK。

梁美芬議員：

一句……

主席：

梁國雄議員。

Hon LEUNG Kwok-hung:

Good morning, I've got a few questions for you. Have you got it, my copy of it? So, the present agreement under the MOU has caused the SFC to lose its discretionary power in the supervision of the RIs conferred to it by the SFO. MA holds the decision power as to whether to open a file for investigations and as to whether to pass the preliminary investigation result to SFC for further action or to close the file without SFC's approval. In paragraph 1.3 of your written statement from you, it indicates that the present practice has, in substance, made the MA become the true decision maker in the approval of an application to be a RI but the law only designates the MA to offer advice to the SFC and the SFC could be the decision maker by law in the registrations of RIs.

The above practices are examples demonstrating that, in substance, the discretionary power of the SFC in the supervision, investigations, regulations and registrations of RIs are illegally fettered. According to the common law doctrine of non-delegations and unfettering of discretionary power, the above are unlawful. Do you agree with that?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, if I can respond to Mr LEUNG Kwok-hung's question, which is an extension, I think, to the discussion which was raised at the previous meeting, we don't have discretionary power in the supervision of RIs.

The powers that we have and that the MA have are specifically set out in the SFO and the Banking Ordinance and the SFO specifically sets out that we must supervise licensed and regulated entities but may rely on the HKMA in the supervision of registered institutions. So, I don't believe we have fettered illegally or otherwise our powers.

The MOU itself does not in any way override the law. The law is set out in the ordinances, the MOU is an administrative measure to allow us to co-operate and share information. We are preparing a detailed written response to this question and we will let the committee have that as soon as possible.

Hon LEUNG Kwok-hung:

So, another question is

主席：

梁議員。

Hon LEUNG Kwok-hung:

..... the prima facie, ultra vires, for the Administration to decide the regulatory structure not in accordance with law. No. 1 is, in answering my questions in the last hearing, you mentioned that, as regard to the regulatory structure, it should be addressed to the Administration. That means the regulatory structure set in the MOU is a decision of the Administration and not a decision made just between SFC and HKMA. Is it right?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the MOU does not set out a regulatory structure. The MOU is an administrative arrangement between the SFC and the HKMA but which does not fetter in any way the obligations and requirements of both organizations set out in the SFO and the Banking Ordinance, respectively. The question as to what should be addressed to the Administration was not in reference to the MOU but it's in reference to whether the supervisory functions that have been given to the HKMA and the SFC are correct, and that's a major policy question.

主席：

梁議員。

Hon LEUNG Kwok-hung:

Under which sections of which ordinances the Administration obtains the power in designing the present regulatory structures of the SFC and HKMA?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We will provide you with a detailed written response as to where the powers are set out but I would point out that the decisions were made by this LegCo. It's not something that the Administration had taken absent this law-making forum.

主席：

梁議員。

Hon LEUNG Kwok-hung:

No. 3, the interference of the Administration in deciding the regulatory structures of HKMA and SFC seems to lack the support of law and is ultra vires of the Administration. Do you agree?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the regulatory structure of HKMA and SFC is not set out independently by the Administration; it was discussed and approved by the Legislative Council.

主席：

梁議員。

Hon LEUNG Kwok-hung:

Well, I would like to have your explanation on the following prima facie and ultra vires acts. No. 1, according to section 5(3)(b) of SFO, SFC should have the discretionary power of either "to relay" or "not to relay" on MA in performing its function. The MOU and the present practices

Chairman:

No, "rely", "to rely", 是嗎? "To rely or not to rely"?

Hon LEUNG Kwok-hung:

"Not to rely", "to rely" or "not to rely" – present practices as testified by SFC and HKMA has, in substance, turned it into a "must". It is ultra vires. What is your comment?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The language used in the SFO is "may rely" but there is no additional explanation as to how that should be interpreted. The interpretation can be based on the policy discussions within the LegCo at the time when it was made very clear that the policy intent was that we should rely on the HKMA.

主席 :

梁議員。

Hon LEUNG Kwok-hung:

So, instead of submitting the on-site examination report or complaints to SFC for them to decide whether to open a file for investigation, the MA makes decisions on whether to open a file for investigation itself. It is an ultra vires act because if MA decides not to open a file, SFC cannot take any action beyond what MA had decided. However, this power is conferred by the SFO to the SFC and not to the MA. What is your comment?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the SFC may open an inquiry without prior reference of materials from the Monetary Authority. If we choose to go down that route, we are required to consult the Monetary Authority before commencing an inquiry. In practice, we generally would need to have sufficient grounds to open an investigation and those grounds would, in practice, be provided to us by the frontline regulator, which is the Monetary Authority, but it's not true to say that we are fettering our discretion to never open an investigation if we chose.

主席：

梁議員。

Hon LEUNG Kwok-hung:

The MOU which empowers the MA to decide if an opened file is to be closed and not to submit to SFC is ultra vires because under such arrangement in the MOU, the MA shall, in effect, have the discretionary power as to whether a possible breach of code should be put under further investigation by the SFC or not. However, this power is conferred to SFC under the SFO. So it is a case of ultra vires. What is your comment?

Mr Martin WHEATLEY:

The SFC

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... may open an inquiry but it would do so in consultation with the Monetary Authority and that's not itself a fetter of our power to open an inquiry.

主席：

梁議員。

Hon LEUNG Kwok-hung:

So, in the paragraph 1.3, Question 1, of your written statement, it shows that the present practice has, in substance, made the MA become the true decision maker in the approval of an application to be a RI. It is a case of ultra vires. You said, in paragraph 1.3, that "undermine the role that HKMA was intended to play in this process". Please advise:

(a) Who intend HKMA to play such role? The MA or the Administration?

(b) Do you agree that this fettering of SFC's power has amount to ultra vires? If not, why not?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the policy intent of the division of responsibilities between the SFC and the HKMA is set out both in the Banking Ordinance and the SFO and was clearly established in front of this Legislative Council at the passing of both of those bills and the policy intent was very clear.

主席：

梁議員(計時器響起)。OK。

梁國雄議員：

還能不能問？

主席：

你要讀的還多着哩。

Hon LEUNG Kwok-hung:

So I want to ask a question

主席：

或者這樣吧.....

Hon LEUNG Kwok-hung:

..... the last question

主席 :

問一條吧。

Hon LEUNG Kwok-hung:

When you respond to Ronny TONG's questioning, you say that, okay, I am not – you are not – have a very regular check on those pamphlets about the products, so I want to ask you, how come a football commentator will be a good commentator if he or she does not watch the match at all?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We do comment on the pamphlets. It is our job as part of authorizing the issue of the prospectus that we also authorize the issue of the marketing pamphlet and we do require clear statements that the notes are not principal-protected, of the risks that are involved, that there may not be a liquid secondary market and that the individuals should talk to the customer representative. So, all of those are very important disclaimers and they are included within the notes. So we do oversee and comment on those notes. It's not true to say that we have no role.

Hon LEUNG Kwok-hung:

If you don't understand the exact context of those pamphlets, it's innumerable, it's in piles, so how can you make sure you can do your job in the end of the day?

主席 :

如果有問題，這類問題也可以問何賢通先生。

Hon LEUNG Kwok-hung:

Okay.

Chairman:

Mr WHEATLEY? Any response?

Hon LEUNG Kwok-hung:

I mean, it's common sense.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, again, our expectation is that these are marketing pamphlets. These are complex products; the complex products have a hundred-page prospectus that sits behind them. We wouldn't expect anybody, on the basis of a pamphlet, to feel they know everything they need to know about the product.

What we'd expect people to do is to do what the pamphlet says, which is, talk to a customer – a sales representative; that's what the pamphlet says you should do. If you're interested in the product, talk to a representative.

Hon LEUNG Kwok-hung:

But it

Mr Martin WHEATLEY:

And our expectation

Chairman:

Okay.

Mr Martin WHEATLEY:

..... is that

Hon LEUNG Kwok-hung:

One final question. But it's the job of the MA; that means it's not your job, about the RIs, whether they have done their job, in the end of the day. So it's problematic here that you don't have some kind of power on top of the HKMA, so you let those people in HKMA decline to do their job and you cannot do anything. That is all the questions I ask about,

Chairman:

Okay.

Hon LEUNG Kwok-hung:

..... whether you have the power that was assigned by the authority of Hong Kong to give you the authority to do the job, to protect the investors.

Chairman:

Okay.

Hon LEUNG Kwok-hung:

Do you understand?

Mr Martin WHEATLEY:

Yes. No, I understand

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... entirely and the legislation was very clear. The SFC had the responsibility as the frontline supervisor of brokers and the HKMA had the responsibility as the frontline supervisor of banks. And I think that's very clear.

Hon LEUNG Kwok-hung:

..... (inaudible)

主席：

OK。再排隊，快14分鐘了。

Hon LEUNG Kwok-hung:

..... (inaudible)

Chairman:

Mr WHEATLEY,

Hon LEUNG Kwok-hung:

..... who can be accountable?

Chairman:

..... Mr WHEATLEY, there are other points given in Mr LEUNG's paper.

Mr Martin WHEATLEY:

Yes.

Chairman:

I think you might wish to respond to this in writing after the meeting, okay?

Mr Martin WHEATLEY:

Yes, Chairman, if we may

Chairman:

..... (inaudible)

Mr Martin WHEATLEY:

The points build on the comments that were made at the previous hearing and we're preparing a

Chairman:

Okay, yes.

Mr Martin WHEATLEY:

..... comprehensive response to both sets of points.

Chairman:

Yes, okay. 下一位是余若薇議員。

Hon Audrey EU Yuet-mee:

Mr WHEATLEY, just now, in your answer to Mr LEUNG, you said that there were these hundred-page thick prospectus and you expect people to talk

to their investment adviser before making a decision. Yet it is also your own evidence that, in all these surveys conducted by the SFC, you have consistently – and I underline the word "consistently" – found that investors either did not understand or weren't given adequate information. So, surely, Mr WHEATLEY, SFC realized that these investors cannot be expected to understand the hundred-page prospectus and would not be told sufficient or correct information by these investment advisers. SFC knew exactly the problem; isn't that right?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... to say we knew exactly the problem, I think, overstates it. We had a concern and that concern was that complex products were being sold in unsuitable ways and we tried to probe that concern by carrying out inspections and by doing surveys and each time we got back more information that said, in particular cases, that concern is justified and we took action in those cases. But what we didn't have was large numbers of complaints that suggested that the concerns we had were very, very widespread. So we had concerns and those concerns were based on surveys, based on our visits; when we carried out visits to find out whether those concerns were justified, we found particular cases where they were but we had no evidence that there was a widespread issue.

Hon Audrey EU Yuet-mee:

Mr WHEATLEY,

主席 :

余議員。

Hon Audrey EU Yuet-mee:

..... you said you had concerns. Did you raise these concerns in the regular meetings with the Financial Secretary and the regulatory bodies?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The concerns were published in our documents; we discussed the reviews, we discussed those concerns in our MOU meetings with the HKMA; they were published and given to the Government. I can't recall whether they were specifically discussed in any of the regular meetings with the Government.

主席：

余議員。

Hon Audrey EU Yuet-mee:

Well, Mr WHEATLEY, you know exactly my question and that relates to the regular meetings of these regulatory bodies, which includes the SFC and the Financial Secretary. Did you ever, in those meetings, raise the concern that investors could not be expected to understand these complex products and that the investment advisers were not adequately trained to explain to them? Did you ever discuss that at those meetings with the Financial Secretary?

Chairman:

Mr WHEATLEY?

Hon Audrey EU Yuet-mee:

Or K C CHAN, for that matter?

Mr Martin WHEATLEY:

I would have to check records. I think they would have certainly been discussed in a general sense. What I don't recall is whether we had any specific discussion that said, "Here's a set of concerns that need to be addressed" but we did publish our findings and the Government, obviously, were recipients of those publications.

Hon Audrey EU Yuet-mee:

Did this

主席：

余議員。

Hon Audrey EU Yuet-mee:

Were these concerns sufficient to prompt the SFC to make sure that the marketing leaflets would be clear to the investors as to the risks involved?

Mr Martin WHEATLEY:

Well, I think the marketing

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... leaflets are inclusive in terms of including the significant proportions of the risk but a marketing leaflet is not the prospectus and it would be impossible to expect that a hundred-page document could somehow be consolidated into one colour brochure.

Hon Audrey EU Yuet-mee:

Well, would that be, therefore,

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... sufficient for at least you to ban these marketing leaflets?

Mr Martin WHEATLEY:

We had

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, Chairman, we had not sufficient evidence – we had a general concern that the products were being sold to people who weren't sophisticated to understand the products. We had a concern when we reviewed our investment advisers that we found evidence of inadequate due diligence and failure to know your client and ensure suitability. It didn't become apparent that the marketing flyers were being used as the sole marketing or sales document. That wasn't something that emerged from our discussions or our investigations.

主席：

余議員。

Hon Audrey EU Yuet-mee:

Well, I would think it's common sense but then, Mr WHEATLEY, I look, also, at your press release when SFC reprimanded KGI and also reprimanded SHK and they, of course, promised to give full compensation to the investors. In both those press releases, one of the concerns was the inadequacy of training and guidance to the sales staff. Do you agree with that?

Mr Martin WHEATLEY:

Yes.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes.

主席：

余議員。

Hon Audrey EU Yuet-mee:

You also told us that the SFC has issued or is in the process of issuing notices to 11 – sorry, 14 institutions, 11 banks and three brokers. Would those prima facie cases, or those notices, also include the concern that there

had been inadequacy in the training and guidance given to frontline sales staff?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I can't comment on the specifics of investigations because, as I've mentioned before, they are still subject to investigation and we can't draw premature conclusions but the sort of concerns that were raised in relation to the two brokers are clearly the sorts of concerns that we have in relation to the wider range of selling institutions. But I don't think I can go further than that and say that they're the particular areas of concern that we've highlighted in notices.

Hon Audrey EU Yuet-mee:

In other words,

主席 :

余議員。

Hon Audrey EU Yuet-mee:

..... it's a common concern that relates to all these institutions which are facing your disciplinary action, that there had been inadequate training of frontline staff; is that right?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, I don't feel I can comment specifically that that is a common concern in each of our cases but I think that you would be able to draw a conclusion that, having faced those concerns in certain cases, we'd be looking at similar issues in other cases.

Hon Audrey EU Yuet-mee:

Well, Mr WHEATLEY, I'm not asking

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... for your comment; I'm asking for your evidence. You know the SFC has carried out investigations and you've told us, on one of your last hearings, that, in fact, we have 14 institutions, 11 banks and three brokers, in addition to KGI and SHK, that are facing disciplinary actions. My question to you is a simple one: Is the inadequacy of training frontline staff, is that a common feature in all these cases?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, we are in the midst of very delicate settlement negotiations with a number of institutions. Those negotiations may or may not result in an acceptable outcome but our primary aim is to reach an acceptable outcome. I believe it would prejudice our ability to reach that outcome if we're required to answer further questions or disclose further concerns about the specific issues that we are discussing. So I'd rather leave it that we are in discussions with a number of organizations; we hope those discussions will reach settlements but I don't think it's appropriate to discuss the detail of those investigations here.

Hon Audrey EU Yuet-mee:

Mr WHEATLEY,

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... there is nothing secretive about it because we've all met these victims of the Lehman products and we've all been reading newspapers and you've been receiving complaints and you know that it is a common feature for all these complaints that the frontline staff who sell them these Lehman products gave them the wrong advice, gave them the wrong information, gave them the wrong description. They were told, for example, that, "Well, the

worst case scenario, you will only get shares", they were told that "It doesn't matter because these products are linked to, you know, very important and sound institutions; even if one of them goes into problem, you will only lose one seventh of your investment." I mean, they were all told the wrong information and it's common and it's prevalent.

So, would you agree that this is at least an indication that the frontline staff had not been properly trained and this is a systematic failure?

Mr Martin WHEATLEY:

I think

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... Chairman, that the point I would like to make is not what the common perceptions are because, clearly, a lot has been reported, but more that the position of the SFC cannot be to prematurely draw conclusions or expect me today to prematurely present you with conclusions about our investigations because that could be taken by the lawyers representing those institutions as us not dealing fairly with the investigation. So, I cannot give you the information regarding those investigations without compromising our ability to achieve a settlement and our primary aim is to achieve a settlement.

Hon Audrey EU Yuet-mee:

Now, Mr WHEATLEY,

主席 :

余議員。

Hon Audrey EU Yuet-mee:

..... you say we should not act prematurely but you remember last time I asked you to look at S23 which was your own report about the challenges ahead, done in March of 2006, and there you stated, in Challenge Two, all the issues which provides fertile ground for mis-selling (*The buzzer sounded*), and one of the issues was the "increased exposure of retail clients to complex and structured products"; in other words, the SFC anticipated the problem, knew exactly what the problem was, and, therefore, should have been able to avert

the problem, yet, when there is the collapse, we see hundreds of thousands of people – or tens of thousands, perhaps I should say – tens of thousands of people complaining. Whose fault is it?

Chairman:

Mr WHEATLEY?

Hon Audrey EU Yuet-mee:

Who should bear responsibility for a problem, a disaster which was anticipated, we can see, in March 2006?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We raised the question because it was evident from our surveys and our investigations that, one, retail investors didn't completely understand the nature of the complex structured products and that, secondly, they may not be receiving proper suitability advice or proper product information, and that was a concern that came out of our surveys. What we did to try to establish the extent to which that was a widespread problem was carried out inspections within our regulatory community, so within the brokers, and we found, in a number of cases, there were deficiencies and we took actions on the back of those deficiencies and we published our findings and shared those findings with our industry; and we published circulars as to what their responsibilities were and we reminded our brokers how they should comply with the Code of Conduct and we did that through the FAQ in 2007.

Hon Audrey EU Yuet-mee:

But, Mr WHEATLEY,

Mr Martin WHEATLEY:

But

Hon Audrey EU Yuet-mee:

..... can I ask you the other way? Is there any reason for you to feel complacent, to feel reassured that the concern you detected was not a widespread concern but was only a small concern that happens to individual cases only?

Mr Martin WHEATLEY:

There's no basis

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... at all for us to feel complacent. We recognize our responsibilities very strongly. We

Hon Audrey EU Yuet-mee:

So why didn't you consider that to be a widespread concern?

Mr Martin WHEATLEY:

Well, we did consider it was a potentially widespread concern but we carried out our inspection surveys. We found, in a number of cases, our concerns were justified but there was not, prior to Lehman's collapse, a large body of complaints saying that mis-selling was prevalent. And the fact is, the Lehman's collapse is something that nobody did or could have expected; it's an unprecedented event.

Hon Audrey EU Yuet-mee:

Well, it has nothing to do with the Lehman collapse, as such, Mr WHEATLEY. But my question is whether there was anything to indicate to you that the concern related only to isolated cases instead of a widespread situation, a prevalent situation. That's really my question. I mean, you've detected the concern rightly but you kept explaining that, well, because it's not a widespread concern, it's really not prevalent. And my question is, what makes you think it's not prevalent. Why didn't you do something to stop it before it actually

Mr Martin WHEATLEY:

We did.

Chairman:

Mr WHEATLEY,

Hon Audrey EU Yuet-mee:

..... occurred.

Chairman:

..... you respond to this question and we'll go to the next member.

Mr Martin WHEATLEY:

Okay.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think the point is, we did do something about it and what we did was a number of things. One was that we carried through our own survey and our own inspections to find out whether, within the brokers, there was a problem. We shared the findings with the Monetary Authority.

Hon Audrey EU Yuet-mee:

And there was.

Mr Martin WHEATLEY:

There was, in some cases, absolutely. We shared the information with the Monetary Authority and they also carried out their own themed inspections. So we did as much as we felt we were able to within our regulatory powers to pursue, as far as possible, finding out the extent to which this was a problem.

Hon Audrey EU Yuet-mee:

So, in retrospect,

主席 :

陳茂波議員。

Hon Audrey EU Yuet-mee:

..... do you think you have

主席：

我想要再排隊了，余議員。

Hon Audrey EU Yuet-mee:

..... done everything possible?

主席：

再排隊吧。陳茂波議員。

余若薇議員：

不，可否叫他把這句答完？In retrospect, do you think the SFC has done everything possible?

Mr Martin WHEATLEY:

I'm not

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... sure what additionally – given the regulatory powers we have, what additionally we could have done at that stage.

主席：

OK。陳茂波議員。

陳茂波議員：

多謝主席。主席，我接着的問題與監管制度上可能存在的漏洞有關係。Mr WHEATLEY，我想你看看文件L7，就是關於集體投資計劃——collective investment schemes。我相信你很清楚甚麼是集體投資計劃。

所謂集體投資計劃就是投資者將錢集合一起，交給一個第三者，通常是基金經理，代他去投資。這些錢集合一起去投資之後，這些投資者的回報都是經投資經理拿着這些錢去投資之

後，回來得到再分給他們的。在這方面，這些是指市面上，有時我們常叫的基金或者一些強積金裏面的計劃。

Mr Martin WHEATLEY:

Yes.

陳茂波議員：

是。這些計劃裏面的產品，即不同的基金，是需要證監會認可才可以拿出來發售，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Collective investment schemes. Again, we have to authorize the product documentation before they can be distributed.

主席：

陳議員。

陳茂波議員：

會不會不是只看產品本身的文件，而是產品本身要經過你們認可才可以拿出來售賣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We have a slightly different set of requirements for collective investment schemes because of the different nature of the product. CIS, as you rightly say, are effectively giving capital to a manager to manage on behalf of the investor but the manager has considerable discretion as to how to invest and where to invest that within the overall scheme. So, the difference between collective investment schemes and structured products is that, with a structured product, all the facts are known at the point the product is bought and there are no changes made to the underlying during the life of the product. With collective investment schemes, they are actively managed by the fund

manager and, therefore, we require some additional safeguards in terms of protecting investors because the manager has such discretion.

主席：

陳議員。

陳茂波議員：

主席。Mr WHEATLEY，剛才你sidetrack了一點，其實我的重點是想問你在collective investment scheme這些集體投資計劃裏，這些產品要拿出來賣之前是要證監會認可的，authorize的。是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, that's correct.

陳茂波議員：

是。目的是要保護投資者，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes.

陳茂波議員：

剛才你提到structured product，結構產品。其實在迷你債券現在發出的這麼多系列裏，如果說到性質，性質是否其實和這些集體計劃很相似呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Collective investment schemes can be structured in very different ways. Some of them, at the extreme end, could be closer to structured products but most of them are not. The most common form of a collective investment scheme is simply the manager investing directly in the underlying shares which are then kept in trust or under custody on behalf of the investor.

主席：

陳議員。

陳茂波議員：

對，不過在集體投資計劃裏，你們有相當嚴謹的規矩，哪些能做，哪些不能做，譬如他可以冒多大風險，可以做多少對沖活動，諸如此類，你們是有比較嚴謹的要求。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The requirements are different, yes, and, in some cases, more stringent because of the wide discretion that the manager has in managing the money.

主席：

陳議員。

陳茂波議員：

主席。好像迷你債券這些產品，其結構很複雜，大家都知道，現在知道裏面牽涉到很多信貸掉期合約，這些差不多好像和莊家對賭一樣。為何在這些結構性產品中，不會好像剛才所說的集體投資計劃一樣——其實大家都是pool一些錢給人去投資——有一個相應的認可(authorization)制度呢？是否就是因為你剛才所說的safe harbour那一點呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, it's not specifically because of the safe harbour issue but it's because they're structured as debentures under the Companies Ordinance rather than CIS under the SFO, so they're two different routes that allow people to create and structure products.

主席：

陳議員。

陳茂波議員：

由這兩個不同的途徑去產生這些產品是知道的，說過很多次。不過如果從性質來說，這些迷你債券的結構產生出來的產品，如果說風險，是否其實比很多在集體投資計劃裏面我們要規管的那些還要高風險，其實都應該納入一個認可的過程裏面呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It's difficult to compare the risks directly because collective investment schemes, in the most common form, are direct investments in equities and those equities themselves could be relatively less volatile bluechips or they could be quite volatile smaller or high-technology companies. So, CIS can involve different risks but there are safeguards such as the maximum amount of the exposure to any one particular company within the portfolio.

One of the things that we have recommended to the FS as part of our report is that these two regimes, as far as possible, should be brought together so that we can have a single regime covering, broadly, both structured products and CIS.

主席：

陳議員。

陳茂波議員：

換句話說，可否這樣說，就是汲取今天的經驗，這些結構性產品日後的監管其實都應該好像強積金，好像基金一樣，都需要有一個認可的過程，看看是否適合賣給投資者才可以拿出來賣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, one of the things that we've recommended is that there is a product code that will apply across all of the instruments such that there are similar levels of disclosure or risk warning that is required, and that's a process that we're going through which will mean some legislative change to the Companies Ordinance and the SFO but it is our view – and, interestingly, it's both our view and the view of the European Union who are going through a very similar process – that these products ought to be subject to a similar level of regulation, oversight and disclosure.

主席：

陳議員。

陳茂波議員：

換句話說，好像過去那一兩年迷你債券在市場上零售、推銷給小投資者的情況不會再出現，你的意思是這樣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think it's hard to say that that won't recur because, as long as we have a disclosure-based regulatory system, we still rely on the conduct of the party selling the product to be good and, if the party selling the product has not got good conduct, then mis-selling may occur in the future. So, the structure that we are looking at and that others are looking at will still require that there is an important role for the intermediary to play in selling such products.

One of the questions we have is whether there need to be additional safeguards when selling very, very complex products but we haven't gone down the route of restricting the availability of products to different classes of investors. That's not something, I think, that would be appropriate for Hong Kong or any other major market.

主席：

陳議員。

陳茂波議員：

當然，我們未必值得將不同的產品對不同的客戶加一個限制。不過，將一些產品推銷給一些不適合那種產品的客戶，那個監管及執法的力度就不可以放輕了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, I agree. And there would be no intention of reducing the level of protection that investors have but products today, unsuitable products, should not be sold to investors today or last year or two years ago and that won't be – that will still be the case in the future: there will still be a clear suitability requirement for the intermediary.

陳茂波議員：

主席。

主席：

陳議員。

陳茂波議員：

我第二個問題是文件S34。S34就是Mr WHEATLEY給我們委員會的一個書面文件，日期是6月26日。我這條問題是關於這份文件，他回答我們上次問的第二條問題，上次我們同事(計時器響起)問的第二條問題就是，在證監會來說，由2003年4月到現在，有否曾經因為一些產品的名稱不合適而沒有批准該些產

品。他的回覆沒有直接回答這個問題，我想他回覆我們，就是究竟在過去這麼多年裏，有否一些產品因為名稱不合適而被他們拒絕？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Generally, the way that we would operate is that, when we first receive the documentation, if we felt there were inconsistencies or poor disclosures or misrepresentations, we would raise a number of questions and the issuer would reissue us with a document that responded to our questions. So, usually, through that process, we get to a point where we've got a product that's acceptable to us in terms of all its features rather than us having to go through a clear rejection. It's quite unusual that we'd have an absolute rejection; it's usually a case that the comments go through several rounds of requisition and, during that process, any deficiencies are resolved.

主席：

陳議員。

陳茂波議員：

即在你們與那些產品發行商的反覆書面來回的交換裏，如果你們發現有地方需要他們改，他們改，回來後你認為可以的話就批准，是否這個意思？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Usually, the process would go through many, many drafts before we felt that we had something that was completely compliant with the Companies Ordinance and it's during those drafts that any problems that we notify to the issuer get corrected so that, ultimately, we have a product that we can sign off.

Chairman:

Okay.

陳茂波議員：

主席，最後一句，主席。

主席：

好，問多這一條。

陳茂波議員：

主席。Mr WHEATLEY，我想draw你的attention去……其實證監會發出過不同的指引，有個指引是給那些pooled retirement funds，即集體退休計劃基金。當中你在附錄A那裏很清晰地說，那些基金的名稱不可以misleading，即不可以誤導，以及名稱必須是一個正確的描述，反映出那個基金裏面是些甚麼及投資的目的。我希望你日後檢討現在那個結構性產品機制及產品批核時，都同樣考慮這一點，而這一點在我們委員會內不同的同事都提出了很多次。……

主席：

你不要提建議，你要問問題。

陳茂波議員：

……多謝主席。

主席：

你取證便好，你不要提建議。

Okay. Any response from you, Mr WHEATLEY?

Mr Martin WHEATLEY:

No, thank you.

Chairman:

…… (inaudible) ……

Mr Martin WHEATLEY:

I mean, it's a helpful suggestion. We will look at that.

Chairman:

I don't think we should be making suggestion, at this stage, actually. Okay.

Now，韋奕禮先生，多謝你今天出席，因為時間到了，小組委員會將於7月7日上午10時繼續進行研訊，請韋先生屆時出席，繼續向小組委員會作供。多謝你。

請工作人員盡快安排公眾人士包括傳媒人士離開本會議廳。各位傳媒人士亦要帶走所有攝錄及電子器材或儀器，以便小組委員會繼續我們的內部商議。

(研訊於下午1時01分結束)