

# 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

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第十八次研訊的逐字紀錄本

日期： 2009年7月7日(星期二)

時間： 上午10時

地點： 立法會會議廳

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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

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Verbatim Transcript of the Eighteenth Hearing  
held on Tuesday, 7 July 2009, at 10:00 am  
in the Chamber of the Legislative Council Building

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### 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

### Members absent

Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Witness**

*Public hearing*

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

**主席：**

各位早晨。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"的第十八次公開研訊。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。此外，《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。如有需要，各位列席人士和傳媒應就他們的法律責任，諮詢法律意見。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，而且須要令人看到是公平的，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，委員只應為確立與今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。證人不得與陪同人士討論，亦不得接收該等人士的任何指示(無論是口頭或書面的)。

韋先生之前出席研訊時已宣誓，所以今天你會繼續在宣誓之下作供。

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。為了善用研訊時間，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同一問題。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。

7月3日的研訊結束時，尚有12位委員輪候提問。現在我將他們的名字讀出：方剛議員、詹培忠議員、葉偉明議員、李慧琼議員、陳健波議員、涂謹申議員、湯家驊議員、葉劉淑儀議員、甘乃威議員、梁國雄議員、余若薇議員及劉慧卿議員。至於今天的第一輪，已舉手排隊的是梁美芬議員及林健鋒議員，還有劉秀成議員，暫時3位。

韋先生，我想先提出第一條問題。根據文件W13(C)第25.3段所載，早在2005年，證監會已經展開研究，要求中介人在銷售點披露他們銷售投資產品可收取的佣金、費用及其他利益。在雷曼破產之前，為何有關規定未曾落實？到現在為止有何進展呢？Mr WHEATLEY？

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

Chairman, we have, at various times looked at the disclosure and commission arrangements at point of sale. We have consulted many other markets around the world who have been going through similar exercises,

notably, ASIC in Australia, the FSA in the UK, and in every case, the issues are very complex and the disclosure of commissions at point of sale, if not implemented correctly, can create the wrong sort of outcome, the wrong behaviour. So, it's something that we did consult the industry. We took the view at the time that it wasn't right to implement that change then; it's something we'll be consulting the industry again on as part of our consultation later this year.

**主席：**

意思就是說，韋奕禮先生，經過4年多的研究諮詢，暫時仍未有決定。但實際上，你是否同意，在一個中介人的角度，其實他亦有他的佣金，有費用可以收取，但對其客人來說，有權知道他在另一方面亦收到有些所謂金錢的利益，這些都是他的權利。這方面，從證監會的角度來說，是否應該有責任盡快處理這樣東西呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

To come back to your question, I think you said no decision has been made. The decision was made not to implement that change at the time but to keep it under review. Under our Code of Conduct, even without that change, there are still obligations of the intermediary to treat the customers fairly, to disclose properly features of the product. The treating-customers-fairly approach is something that's very much embedded in the general principles, rather than requiring a specific change to disclosure on commissions.

**主席：**

是否就是說，韋奕禮先生，這一個看法仍在繼續研究，未曾做最後決定，不是說以後都不會要求所有中介人在銷售點都披露他們所收取的佣金、費用等等這些利益，將來都會繼續研究這樣東西，是嗎？

**Mr Martin WHEATLEY:**

We will include the question in our consultation on Code of Conduct revisions that we're planning to consult later on this year.

**主席：**

業界不同意的理由是甚麼？韋奕禮先生。

**Mr Martin WHEATLEY:**

The commission fees, in particular, in structured products are often embedded in quite complex products and, to require explicit commission at the point of sale, the fear would be that the product issuers would simply create new structures of products which provided no greater degree of transparency. So it would drive a behavioural change which may not be the desired behavioural change.

**主席：**

你剛才提到其他的市場，有哪個市場是有這個要求，一定要他披露這些金錢利益或費用或佣金呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

The most radical proposal is currently, I think, being considered by the UK FSA which is banning – looking to ban commissions in totality, so that clients would pay for their advice to the intermediary selling them the product and it removes a degree of conflict as to whether the intermediary is promoting a product because of the commission he's being paid rather than it being in the best interests of the client. So that's something under discussion currently within the UK under the Retail Distribution Review.

**主席：**

OK。我想繼續問一問，在2003年4月至2008年9月期間，證監會發表了多篇有關結構性金融產品的文章，但它們大部分都是刊登於證監會的《學·投資》網站。請問韋奕禮先生，證監會如何確定這些文章的訊息可以有效地傳達給投資者或投資大眾？

**Mr Martin WHEATLEY:**

We include them all on our website so that there's a repository of information there, so that even some time after the event, people still have access to the information. But, when we publish the articles, we would always press release them as well and we would seek to get coverage in the media. We publish various articles which are covered very strongly by the media and we've also used advertising campaigns to raise awareness of our campaigns and of our website through both the radio and television. So, the website is a useful repository of all of our information but it's not our only route to the market.



**主席：**

但似乎剛才你所說的，韋奕禮先生，你都是主要倚賴上網資料發送這個方式，但很多人不一定有上網的習慣；其他途徑，你說在報章上刊登出來，別人不一定看到。其實是否要靠這樣的訊息、這樣的方式去傳達你的訊息給投資者，尤其小投資者或知識水平不太高的投資者？有否其他方法，例如口頭方面如何可以令他們瞭解到，或者開多些討論班讓大家可以免費參加，聽這些資料，可以大家坐在一起或做個討論，join一些研討會等等，是免費的。有否考慮各方面的形式，而不只是靠上網或登報紙這樣？韋奕禮先生。

**Mr Martin WHEATLEY:**

Yes, we have. And we have conducted workshops and talks. We have ensured that our articles are carried in the widely circulated local newspapers, so, typically, our prominent articles, Dr Wise columns, would be carried by Sing Tao Daily, by the Hong Kong Economic Times. We have used the radio programmes, we've used TV programmes, we've used advertising, we've commissioned drama programmes which feature on TV. So, we've tried to use a wide variety of mechanisms that should reach out to a much broader public. As I say, the website is useful because it's a single point that brings it all together. But we don't rely on the website; we try to use all available media.

**主席：**

但似乎你說了這麼多的各種方法傳遞你的訊息，傳遞你們對投資者的提示，今次這個事件發生了，事實上亦有很多投資者，尤其是小投資者，根本就不是很清楚甚麼叫低風險、高風險，或者這是一個複雜的金融產品、結構性金融產品。其實是否即是說你所提及的這麼多種方式，這麼多教育資料的傳遞，其實都不是很成功？將來會否改變方式，令大家投資者真正可以醒覺到那個知識，對每一個產品的認識，或對風險的認識，或對中介人的責任，在投資者來說有多些瞭解，這方面會加強一點，以彌補以往過去其實做得不足，所以產生這麼大的問題？韋奕禮先生。

**Mr Martin WHEATLEY:**

We will strengthen it. We've put proposals forward to the Government to create a broad-based Investor Education Council with significant resources and funding which will have a very broad mandate, a much broader mandate than the SFC currently has, because it's an important issue. So, yes, we will, as far as possible, look at more resources in this area and greater channels, greater penetration to the market.

**主席：**

還想問一問韋奕禮先生，在2003年4月1日至2008年9月14日期間，證監會總共處理了多少宗有關證券行涉嫌不當銷售投資產品的個案？當中有多少宗是證監會透過日常監管發現的？有多少宗是來自投訴，接到投訴才找到這些個案？

**Mr Martin WHEATLEY:**

We have received or we've dealt with nearly 500 complaints during that period. We have, in addition, had around 430 entities disciplined by us for breaches of the Code of Conduct. Breaches of the Code of Conduct can be a broad range of things; it's not just mis-selling, so it applies to misappropriation, financial resources breaches, corporate finance related issues. So there's a very broad range. The actual number out of the 430 that are specifically mis-selling is around 5%. So, 23 of the cases were specifically mis-selling.

In some cases, they were very large, so one of those cases was the Towry Law settlement (*The buzzer sounded*) which involved over 2 000 individual customers and, in that case, we managed to achieve a settlement where many hundreds of millions of dollars were returned to investors. So, the actual proportion that is mis-selling is around 5% of that total, 23 cases.

**主席：**

對於這5%的違規銷售，韋奕禮先生，你有甚麼跟進行動，有甚麼最後的.....有否處分行動或甚麼其他.....

**Mr Martin WHEATLEY:**

Yes.

**主席：**

.....懲罰的行動？

**Mr Martin WHEATLEY:**

Yes, the 23 cases I talk about, all of them resulted in regulatory outcomes. Sometimes that would be a removal of a licence or a suspension of a licence. Our preferred outcome is generally to reach settlement. So, in some of the cases, we reached a settlement which saw funds returned to individuals. But every one of those 23, there was a regulatory outcome.

**主席：**

副主席。

**黃宜弘議員：**

多謝主席。我想跟進你另一個問題，就是有關中介人自己的 commission 是否需要告知客戶。我相信韋先生都知道，common law 的一個原則是中介人只可以忠於一方面。在這個情況下，如果他告訴客戶，究竟這個成交他可以佔有多少 commission 時，這個嚴格來說，你是否認為抵觸了 common law 的原則？

**Mr Martin WHEATLEY:**

I think, in many, many sales practices, not simply financial services, the agent is earning his income, earning a commission, on the basis of the sale. Now, the requirement is that he doesn't allow that to become a conflict and make an unreasonable recommendation and so our requirement is that, notwithstanding the fact that that's how the agent or the organization is paid, they still have to take account of the characteristics of the individual and ensure that the recommendations are appropriate and suitable. But that potential conflict, I'm afraid, exists very widely and whenever you're buying a product, not just financial products.

**主席：**

副主席。

**黃宜弘議員：**

多謝主席。當然，一般人都知道他當然會有 commission，如果沒有 commission，他怎麼會去做。但我就是說，沒有人知道他的 commission，那個佣金有多大，既然如此，為何不可以將佣金有多少 disclose 出來呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think it's a good question and I think it's one that we need to look at, going forward. There is quite a complex debate about whether disclosure of commission actually acts in the better interest of the individual or whether it creates different practice in structuring a product. But, notwithstanding the commission that's paid, our Code of Conduct requires that the intermediary must always act honestly, fairly and in the best interest of the client, so that general principle overrides any other potential conflict they might have in terms of earning a commission from selling a product.

**主席：**

副主席。

**黃宜弘議員：**

但在雷曼這件案件中，一般市民，一般社會都認為中介人似乎是未盡他那個你剛才所說的fairly那個角度。你有否comment呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we know, from the complaints that have been lodged, that is one of the areas that individuals have said has not worked. It's difficult to comment on whether that is true or not without commenting on our outstanding investigations and, so, the point I've made to this committee before, we're clearly investigating those issues as part of our investigations but we can't form a premature conclusion on those issues.

**主席：**

副主席。

**黃宜弘議員：**

好，多謝主席。我想問第二個問題，就是證監會在2006年11月28日發出一個通函(即S30)，提醒所有非上市零售結構性產品的發行商，注意證監會《結構性產品投資者調查》的結果，並要求發行商將調查結果通知分銷商，以確保有關投資者對產品風險有良好的認識。想請問韋先生，有兩個問題。第一，在雷曼破產前，證監會有否跟進發行商是否有執行證監會的建議？證監會有否透過金管局通知分銷銀行呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The circular referred to was following on from our own survey of investors' needs and the concern that we had that their understanding of products wasn't sufficient; and we asked the issuers to inform the selling agents and distributors of the findings of the survey and, to facilitate prospective investors' understanding of such structured products, we asked the staff of selling agents to ensure all purchasers of their products have a good understanding of the underlying risks. So that was essentially the message that we sent out.

We haven't followed up specifically with the issuers as to whether they did this. We did pass this circular to the HKMA who, obviously, have the direct contact with the distributors but we have clearly followed up insofar as if we'd had complaints received that suggest this isn't being done, then we would have followed up subsequently.

**主席：**

副主席。

**黃宜弘議員：**

OK。第二個問題是，在英國，"公平對待"(即fair treatment)投資者是有關當局的主要監管原則之一。金融產品投資者應在整個產品周期(包括設計、推廣、銷售、售後及投訴處理)內獲得公平對待。在雷曼破產前，證監會有否考慮在香港實施類似的原則？證監會就這方面有否與政府及金管局進行討論？如果有，詳情如何？如果沒有，為甚麼？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The UK Treating Customers Fairly initiative has been a very high profile campaign from the FSA, which is aimed at exactly the sort of issue that this committee's looking at, the extent to which customers are treated fairly at the point of sale by distributors. We have looked at the FSA's model and, in many ways, there's a high degree of overlap between that model and the general principles that we have currently under our Code of Conduct. So the general principles use slightly different language but, essentially, it's the same message, that a licensed or registered person should act honestly, fairly and in the best interests of clients, that they have to show due skill, care and diligence and act in the best interests of clients, they have to have and employ effectively resources and procedures. So, it's a very similar language and so we haven't brought it particularly to the attention of HKMA or the Government because we've felt that our existing code adequately covers the sort of principles that are embodied in the Treating Customers Fairly approach of the FSA.

**黃宜弘議員 :**

你沒有與金管局及政府就這些事情溝通，你估計他們是否瞭解這個原則呢？

**Chairman:**

Mr WHEATLEY?

**黃宜弘議員 :**

政府及金管局。

**Mr Martin WHEATLEY:**

Well, obviously, our own principles, which are the ones in our Code of Conduct, were closely debated and discussed. So, yes, I expect them to know about that. We haven't specifically brought to their attention the UK approach because we didn't feel that it added significantly to the approach we already have. Whether they have independently looked at it, I don't know and you'd have to address that question to them.

**主席：**

副主席。

**黃宜弘議員：**

沒有了，我問完了。

**主席：**

今天在排隊的第一位是方剛議員。

**方剛議員：**

謝謝主席。韋奕禮先生，早晨。我想問，雷曼迷你債券是經過一個很精密的計算和包裝，同時它是得到國際評級機構給予一個triple-A的評級。在推出售賣前，所有這些合同、章程，甚至宣傳單張，全部都得到證監處嚴密審核。所以，如果資料發覺有問題或有虛假時，這些責任是在於國際評級機構或證監處呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The products were not directly rated by the international rating agencies. What was rated was the underlying collateral that was used to support the product and, in that case, the international rating of a triple-A rating was used but that's of the underlying collateral rather than the Minibond itself.

We are not aware of any misrepresentations in the prospectus or in the documents. Clearly, if there are misrepresentations, that would represent a potential case that we would need to bring against the issuer. But, at this stage, we're not aware that there are any things that were dishonest or wrong or misrepresented the product in the documentation.

**主席：**

方剛議員。

**方剛議員：**

好，主席。以下的問題是refer to我們的文件CB(1)552/08-09(01)。很可能就這條問題，韋先生，其他議員都有問過，不過我想你再肯定一次。在此文件中，SFC在去年交給財政司司長的報告第16點內的16.2，我現在quote："迷你債券所籌集的資金乃用來買入在購買時擁有AAA評級的抵押品"。那就是說，SFC是知道這些是抵押品，其實不是債券。所以你的名詞，"迷你債券"這個名詞是否有誤導性呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm sorry, I haven't got the direct reference in the report but if I can try to answer the question. The notes are complex instruments and I think we all understand that and everybody recognizes that. We've been asked many times whether this complex instrument should have been called a bond or a note and our position is that the law does not specifically define the terms "bonds" or "notes" and that under the Companies Ordinance, documents which are structured as debentures could use the term a "bond" or a "note". Even though they're not the same as corporate bonds or sovereign bonds, they are instruments of indebtedness and that's essentially what a bond or a note represents. So, I don't think that in itself represents something that is misleading.

Clearly, when you buy a bond, any bond, you buy something where you take on the risk of the issuer, whoever that issuer may be, so that if the bond is issued by a Hong Kong bank or a government, you're always exposed to the issuer risk and, if the issuer fails, then you suffer significant impairment of the value of the product. Now, in this case, it's a bond-type risk that has actually occurred: the issuer has failed and, therefore, people are exposed to receiving whatever they can receive back. Now, generally, that means you're an unsecured creditor against the company. In this case, what you are secured by is the collateral rather than Lehman's credit directly.

**主席：**

方議員。



**方剛議員：**

是。主席，在同樣的文件的16.3那裏，報告寫着："迷你債券的章程已在一定程度上詳述這產品所涉及的風險，並以淺白的語言向投資者作出一般警告"。那是否代表SFC認為售賣文件已作出全面達到風險披露的原則呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The SFC's position has always been that a document itself can never satisfy the risk disclosure requirements fully. So a document is a document which contains those risks but the process of risk disclosure is satisfied by the intermediary selling the product and we've made it very clear that it's not – and we've made this very clear in our various publications – it's not adequate for an intermediary simply to read out the risks or to turn the pages or to ask the client to read out the risks. The proper requirement of the intermediary is to do an assessment and to make a value judgment as to whether the product is suitable, taking account of the particular characteristics of the individual. We are satisfied that all of the risks are disclosed in the documentation but that itself does not satisfy the suitability requirement at the point of sale; that requires something more, which is a value judgment to be made.

**主席：**

方議員。

**方剛議員：**

是，主席。在迷你債券投資者投資出現問題時，問題的癥結在哪裡呢？證監審批和容許這些高風險產品在市場出售，那麼證監有沒有責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The regulatory structure is that we have a responsibility for authorizing the issue of the document and that responsibility is discharged by ensuring

that the document complies with the Third Schedule of the Companies Ordinance. We don't have any responsibility for judging merits or whether a document is complex or simple. That process has to be completed by the intermediary selling the product who is supposed to carry out proper due diligence on the product and assess whether that product is suitable for the particular clients, or a subset of the clients, of the selling institution.

**主席：**

方議員。

**方剛議員：**

主席。在同樣的報告的16.4.2，證監亦說明，"由於迷你債券只以抵押品和掉期安排作出抵押，迷你債券持有人最終收取的金額，可能會遠少於其持有迷你債券的本金。"既然證監都認同，即使沒有金融海嘯這件事，雷曼這個迷你債券的持有人可能都取不回本來的本金。因為當初批准此產品出售的是證監處，現在出了問題，證監處就說這些是銀行要賠償。我想問證監處，你自己有沒有這個責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the structure that we operate is that the law, which obviously governs the way that we do our job, doesn't require us, doesn't allow us to make a judgement based on complexity; that's not embedded in the Companies Ordinance. What we are required to do is to ensure that disclosure is adequate. Now, the fact that these products could result in the loss of capital is disclosed and the factors that would lead to that loss of capital is also disclosed. And I would expect, in any sale process, that those factors be fully explained to an individual so that they understand what those risks are.

Now, I would also expect, in the sale process, that, in terms of knowing your client, the bank or the broker would have assessed whether a client was putting a 100% or a large proportion of their available wealth into a single product if that single product had the possible result of all loss of capital. I would expect that to be part of the process, part of the discussion and that was conducted between the bank staff and the individual. So, the law that we

operate does not dictate, does not allow us to take a view on complexity or merits of a product. That judgement can only be made by the intermediary in consultation with the client.

**方剛議員：**

主席，我……

**主席：**

方議員。

**方剛議員：**

……最後的問題想問一問韋先生，就是新鴻基及KGI兩間證券行結果是賠償了100%。我想問一問，證監處在這兩件事上有否施過壓力，譬如像"如果你不賠償，我就吊銷你的牌照"，有否這樣的事情？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The agreement with the two brokers was something that is structured under section 201 of the SFO which allows us to take into account the actions that a broker takes in reaching the conclusions that we would reach. Now, clearly, we had (*The buzzer sounded*) the potential to revoke a licence and impose a fine and we could have done those things on the basis of the findings or the concerns that we had. We felt it was a preferable outcome that the brokers would compensate their clients but that was a voluntary action from the brokers. We have no power to compel it. But what we have said to the brokers and we've said to the banks is, "Here are the concerns we have, here are the actions we could take based on our regulatory concerns, it is your choice as to whether you wish to do something that would allow us to mitigate those concerns." So, in every case, it has to be the bank or the broker which makes a voluntary decision to enter into a settlement but it's not something that we can force or impose.

**主席：**

接着是詹培忠議員。

**詹培忠議員：**

主席，問題是這件事發生到現在，足證或者令大家懷疑在04年實施"一業兩管"的情形之後，Mr WHEATLEY，你是否覺得證監會和金管局在工作方面有所混淆呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, I think that the division of roles is clear and that both we and the MA and the Government understand quite clearly how the responsibilities are split, that the SFC has the frontline supervisory responsibility for licensed persons, for brokers, and that the MA has the frontline supervisory responsibility for banks and bank staff but that, in the event of a potential serious breach, the Monetary Authority would refer that to the SFC for investigation and potential discipline. I think the structure is quite clear.

**主席：**

詹議員。

**詹培忠議員：**

好了，主席。這件事發生到現在，足證善後的工作不是太流暢，因而令投資者及苦主們覺得投訴無門，這個是否已顯示政策有問題，最低限度在證監會和金管局之內如何保障投資者的做法做得不足夠？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I come back to my point about the division of labour. The Banking Ordinance and the Securities and Futures Ordinance set out quite clearly what the respective areas are and we use the MOU as an administrative means to try to protect – or try to ensure proper co-operation between the two regulatory bodies. Clearly, the question of whether enough has been done to protect investors is the subject of the investigation that we have currently underway. But it's a question as to whether the structure is unclear or whether the

implementation of standards was inadequate and that's really the question that we're trying to probe.

**主席：**

詹議員。

**詹培忠議員：**

主席。我第三個問題是，證監會在以披露為本、披露為主，審批這些產品的期間，剛才Mr WHEATLEY回答方剛議員的問題時就說，發行商——不論是債券或衍生工具的產品——只要它涉及財政問題，例如雷曼兄弟倒閉，始終投資者是要蒙受損失。但問題是，證監會在審批時沒有明確顯示給投資者這些是債券或有關衍生工具的產品，這是否證監會絕大的疏忽及你的失職呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we don't have the direct selling contact with the investors; that's something that is conducted through banks or brokers. So, in terms of pointing out the specific features of a specific product, that is a responsibility of the broker or the bank under our Code of Conduct. That's a very explicit responsibility and that's where it sits.

But, more generally, we have published information that explains how structured products work and what the questions are that investors should be asking of their intermediaries when they're being sold a structured product and we explain in those articles and in those circulars the sorts of features, the derivative features that are embedded, how they work and the questions that investors should ask. But the question can only actually be answered in the conversation between the bank staff and the client. That's where the requirement to explain properly what the product is should happen.

**主席：**

詹議員。

**詹培忠議員：**

主席，剛才Mr WHEATLEY的答案恰恰顯示了金管局與證監會之間的矛盾，因為他批准了這些有關產品之後，就將責任推給金管局和銀行。那麼，銀行作為一個中介人，是否要負責你證監會及金管局的根本責任，以及要承擔如此重大的法律責任呢？這方面，你會否覺得作為一個監管機構是不盡責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The structure is that we have the responsibility for ensuring that the risks are adequately disclosed and we believe that the risks were adequately disclosed; they were disclosed in the documentation, they were there and available for the sales representative of the bank or broker to point them out to the client and explain to the client what those risks were and to understand whether the product was suitable for the client. So that's our first line of responsibility.

The second line of responsibility is clearly that we have published and we maintain the Code of Conduct, so we explain and we frequently publish what we call FAQs to illustrate how the Code of Conduct should be implemented – and that's something we do on a regular basis where we think there are misunderstandings of the Code of Conduct; and then we supervise the frontline activities of brokers and the Monetary Authority supervises the frontline activities of banks.

So we have separate but related responsibilities but I don't think it's correct to say that we have failed because we don't have the direct frontline supervisory role over the bank staff selling the product.

**主席：**

詹議員。

**詹培忠議員：**

主席。作為銀行，即中介人兼前線推廣工作，它只不過賺取佣金，它有甚麼責任去負責政府整套金融政策的監管？這個是否恰恰顯示了政府的金融政策的錯失與不足呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, clearly the frontline staff are not responsible for the Government's policy but they are absolutely accountable to the regulator for their actions and their actions are judged against our Code of Conduct, and our Code of Conduct has very explicit requirements that they should avoid conflicts of interest, that they should ensure that clients are fairly treated and that they should ensure that the product is suitable for the client who's standing in front of them. They are very, very clear. So, while the frontline staff don't have responsibility for Government policy, they do have a responsibility to apply our Code of Conduct in their practices.

**主席：**

詹議員。

**詹培忠議員：**

主席，我們從事件中看到，發行商或安排者(即arranger)在整個事件中是正式收取了投資者的錢，而不是像中介人般只不過賺取部分佣金。在整個事件中，為何證監會及金管局不找出他們的責任，而好像讓他輕輕帶過，或者讓他在整個涉及我們懷疑有刑事詐騙的事件中，就這樣輕輕走過呢？你認為證監會在這方面的工作是否做得不夠呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

You said why is it that the SFC and the HKMA aren't investigating them. It wouldn't be appropriate for the HKMA because the issuers are not subject to their investigation powers. It's appropriate for the SFC and, as I've said in the previous session, we are investigating the issuers.

**詹培忠議員：**

主席。

**主席：**

詹議員。

**詹培忠議員：**

整個事件的責任 —— 因為我們要追究或明白事理究竟發生在哪裏 —— 即是你個人認為，政府的教導對投資者是否不足，而令他們連究竟做過甚麼事都不明白，這是否政策的失敗，即證監會都有很重大的責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think education, certainly investor education, is one of those things that you can never do enough of. So, no matter how much we try to provide materials and try to provide education, there's no guarantee that individuals will read our materials or bother to look at our website or the newspaper adverts. So, I think education, we can always do more and we have said we will continue to do more.

**主席：**

詹議員。

**詹培忠議員：**

主席。證監會在整件事情中，即是我為何整天問你們保障投資者有重大責任，你是否承認，整件事究竟.....你們對債券或對沖基金，甚至對沖的零和遊戲，因為零和必定有一個輸有一個賺，在這種情形下，證監會不但在批准產品時疏忽(計時器響起)，而且在保障投資者各方面都做得不太令投資者滿意？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The question of complexity of product, which I understand is quite central to this, is an important one but, under today's regulatory model, there's



no role for a central regulator to make an assessment of whether the merits of the product or the complexity of the product make it suitable for any particular type of investor. That role falls to the intermediary who operates according to the Code of Conduct. The Companies Ordinance does not allow us to make a complexity judgement or a suitability judgement. What it requires us to do is to ensure that adequate risks and features are included and disclosed properly in the documentation.

**主席：**

葉偉明議員。

**葉偉明議員：**

謝謝主席。我想問韋先生，因為上次你答覆我們委員會的查詢時，提到金管局已轉介了接近500宗所謂有表面證據的個案給證監會。我想問，證監會收到這些個案之後會怎樣處理呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The approach that we have taken is to open investigations into each of the organizations that have been selling the products. So we opened 19 investigations into banks last year to look at the way that controls and procedures operated within the banks, to look at the product due diligence and the documentation, the know-your-client documentation, and that's a process that we started some time ago and I've mentioned to the committee before that we've reached our preliminary conclusions in a number of cases.

**主席：**

葉議員。

**葉偉明議員：**

好。但我又想.....因為有個好奇怪的問題，或者我都想問一問韋先生。因為我在這個委員會裏，我們問過金管局副總裁蔡先生，他就說他調查的時候，金管局調查的時候只會集中調查前線的銷售人員有否違規銷售的情況。但其實在這個委員會，證監會一直強調你們調查的方向會是由上而下的方式去調查。

我就會覺得奇怪，你們兩者的調查方式在如此不同或有矛盾的情況下，會否導致你們在調查金管局轉介給你們的個案時，有先入為主的觀感呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The approach to looking at cases is slightly different because of the different powers and roles that we have. The HKMA have the power to remove relevant individuals or require that banks remove relevant individuals from the list and, therefore, they are looking at conduct at an individual level. Our concern, and given how widespread the complaints are, are more at an organizational level as to whether the organization had adequate procedures in place. We think it will allow us to more quickly conclude an investigation as to whether there is fault and more quickly, therefore, reach settlement discussions with the banks and, hopefully, some recompense. So, I don't think there's a conflict between the two; I think it just reflects the different responsibilities that each regulator has.

**主席：**

葉議員。

**葉偉明議員：**

你這個做法對我們一些所謂前線的銷售人員，特別是銀行的前線銷售人員是否不公平？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't think so. We've had to conduct both reviews of the files and the procedures within the bank organizations. We've obtained documents about the sales processes and we've obtained management control processes and due diligence records; we've asked for the training and supervision of sales staff. And, of course, we've had to interview the frontline sales staff as well to form an assessment as to whether they have received adequate information such that they could properly sell the product.

So, no, I don't think it's unfair. We're trying to take a holistic view to the organization as a whole and form a judgement as to whether there had been failings against the standards expected in our Code of Conduct.

**主席：**

葉議員。

**葉偉明議員：**

你不承認不公平，但問題我有一點，你既然是調查，證監會是對那些證券機構，你們自己去調查的；但對銀行，你就是等金管局調查完之後你再去調查。我上次都問過蔡耀君先生，就是有否想過或有否打算兩個機構聯合進行調查。為甚麼？有沒有呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The question as to whether we're waiting for investigations to complete, that would normally be the case in a normal situation. So, in a normal situation, if there was a potential fault amongst bank staff, the HKMA would conduct its own investigation into that and they would deem it appropriate – whether it's appropriate to sanction the individual or the management of the company or whether to pass that for us for disciplinary action. And, so, in the normal course of events, we would wait for a referral from the Monetary Authority.

We're not dealing with a normal situation. So, in this situation, we're dealing with a very large number of complainants; we're dealing with a failure of a product following the collapse of the world's fourth largest investment bank. So, we're dealing with quite unprecedented circumstances and we're dealing with a very, very large number of potential complaints. So, we are not following what would be the normal process; we're not waiting for investigations or files to be passed across; we've opened investigations into all of the institutions that were selling these products.

So, it's slightly different from normal but I think it's appropriate for the circumstances.

**主席：**

葉議員。

**葉偉明議員：**

不是，我是問你們為何不與金管局聯合調查。到現在這麼大的個案，牽涉如此多人，為何金管局與證監會不去合作做這件事呢？其實是否你們怕得罪金管局呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, no, I think it's simply a practical one. We have a particular set of legal powers which allow us to investigate in ways that aren't open to the Monetary Authority, so we're using our resources and legal powers in a way that's different to the way that the Monetary Authority operates. I think it's entirely appropriate that the Monetary Authority continues to look at the individual complaints and that we continue to look at the organizations and I think that's a sensible division of responsibilities and a sensible reflection of the regulatory structure.

**主席：**

葉議員。

**葉偉明議員：**

好，我們都想問，在這方面來說，你調查的時候，你有否調查過銀行一些所謂壓迫性的管理手法，包括強迫提供.....即提出一些強迫的銷售額給前線員工。這種管理手法，是否你們的調查重點之一？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We're looking at how the products were sold, how assessment was made of the product, what the conduct was of the individuals, what materials they

had. So, it's a wide range that would encompass all of the allegations that are currently being made.

**主席：**

葉議員。

**葉偉明議員：**

我想問，具體上，現在你說已經有一些個案是你們有結論的。我想問一下，你可否在此透露，究竟這些個案中有多少牽涉到所謂前線銷售人員的銷售手法？有多少牽涉到你們覺得是機構管治的問題？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I updated the committee that we had reached preliminary conclusions and I think it's very important to bear in mind they are preliminary conclusions in a number of cases and that we have opened discussions with a number of banks on the result of our preliminary conclusions. It's not appropriate for me to disclose any more about what those preliminary conclusions might be as that may jeopardise the discussions that we're having.

**主席：**

葉議員。

**葉偉明議員：**

但如果.....因為我覺得，你如果對銀行的銷售手法，加上你與金管局亦不合作，其實最終來說，你是否會將這些責任全部都轉嫁給我們的前線銷售人員？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, I think it's not appropriate for me to comment further on how we might conclude the investigations.

**主席：**

葉議員。

**葉偉明議員：**

那麼，你現在這樣的說法是否在推卸責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The point I've made at the previous meeting is that our responsibility is primarily to try to get an equitable outcome for Minibond holders who have suffered hugely from this whole process. And we're very concerned at the length of time it's taken and the distress that it's caused. So, our primary responsibility and duty is to try to reach an outcome that satisfies the broad needs of the largest number. Disclosing prematurely the basis on which we do that would jeopardise that.

So, no, I don't believe we're ducking our responsibility; we're taking the responsibility very seriously.

**主席：**

葉議員。

**葉偉明議員：**

但是因為我覺得，證監會及金管局的調查方向，我們很關注。我們當然希望能夠保障苦主的利益，但我們亦恐防證監會及金管局現在的做法，給人的感覺是在包庇一些銀行，其實你最後是將責任全部推給我們前線的銷售人員，而不去理會整個(計時器響起)管治機構的管理手法。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Our investigation is not intended, in any way, to create a cover-up or give the impression of a cover-up or try to pass judgements inappropriately onto frontline staff. Our investigations are looking at the organizations and looking at the extent to which there were adequate systems, controls and management oversight of the whole process.

**主席：**

李慧琼議員。

**李慧琼議員：**

主席，根據韋先生給我們的文件W13(C)第82段指出，"在2003年4月至2008年9月15日期間，證監會完成了527宗有關經紀行或其他代表涉嫌違反《操守準則》的紀律調查。" 這段最後那一句就說，"此外，有168宗個案以和解協議方式處理，涉及最大筆和解金額是羅德利個案中向客戶提供達2.55億元的特惠款項。" 我想瞭解一下，在這段供詞裏，你們證監會有時候會採取用和解的方式，有時候就會採取用懲處的方式。在決定用甚麼方式去對付違規的中介人，你們其實最大的考慮是甚麼呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The considerations on our part are obviously the severity of the breach, the extent to which the organization has taken actions and agreed to take actions which will remedy the breach and ensure that it does not occur again, and the extent of direct losses that may have been achieved by clients as a result of that breach. They're predominantly the issues that we take into account.

And we look to achieve an outcome that has three components. One is one that mitigates the losses, so, if, as far as possible, an outcome mitigates any losses that have been the result of a breach, then we would see that as a high priority. Secondly, something that remediates the breach, i.e. that puts in place controls, procedures or commitments to ensure that it does not occur again. And thirdly, something that creates a deterrent effect to other institutions such that we would publicise our findings, the reason for our

findings and the actions we have taken with the intention of sending a very strong message to other institutions. So there are usually three components of any outcome that we seek to achieve.

**主席：**

李議員。

**李慧琼議員：**

我想問問韋先生你自己的看法，在527宗有關經紀行或其他代表違規的紀律調查裏面，我相信都有投訴者，有部分他們是得不到賠償的。其實你們.....他們所涉及的投資金額有多大？他們之後有否向你們反映，對於證監會現有權力的局限而感到無奈呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have, as part of our regulatory responsibilities, we have powers to fine, to discipline, to revoke licenses, a number of powers. One power we do not have is the power to enforce a settlement, so we cannot require that a settlement happens. We can open a discussion that, hopefully, will result in a settlement but any settlement action has to be a voluntary act on the part of the bank or the broker against whom we have a disciplinary action. So, if we can achieve a settlement, that is our preferred outcome but it's not something that is a power that is 100% in our hands; it has to be a voluntary act by the bank or the broker.

We have been urging, from last October, all of the organizations involved to reach out to their clients and offer settlement terms where they think it's appropriate and we have made it clear that we would take those into account in any conclusions that we reach.

No bank requires our permission to settle. What it does do is allows us to take into account how far we use those other powers in mitigating or sanctioning a bank or a broker for misconduct.

**主席：**

李議員。



**李慧琼議員：**

是。韋先生，你這個觀點其實已在你給我們的供詞91段反映了。其實在雷曼發生之後，你們已建議希望日後賦予你們權力，要求有關違規者作出賠償。但在今次的事件中，雷曼發生之後，即你們調查到現在，坊間廣泛報道你們已和銀行在談和解。昨天我自己看報紙，《星島日報》有一份報道令我很憂心，亦看到早前有一班雷曼苦主到禮賓府請願，亦發生有人因為這些投資而導致死亡的個案。如果這件事情不繼續加快處理，確實令社會上很多不想見到的事情，我擔心會發生。那份報道提到，其實銀行提出的和解方案在新年前後已交給你們，證監會一直都沒有積極回應。你也理解到，你剛才亦已回答過，正正因為你們現在權力的限制，因為你們沒有辦法要求銀行或相關違規者作出賠償，所以協商或達成和解，你都認為是一個比較好的方案。

對於相關報道，你的看法是怎樣呢？因為根據我的理解，那個報道就是說，相關的協商、相關的方案在新年中已經提出，但因為你們比較不太積極去回應，導致現在仍未見到有一個向前行的跡象。

**主席：**

韋奕禮先生，因為賠償……

**Mr Martin WHEATLEY:**

The……

**主席：**

……並不是今次 —— Mr WHEATLEY，今次的研訊範圍未包括賠償那方面，或者請你就傳票上所寫的範疇回應這個問題。

**Mr Martin WHEATLEY:**

Okay. The media reports are not something that we would comment on. We're not prepared to negotiate through the media. Any discussions we have – and it's a fact, and it's a known fact, that there are discussions because one of the banks announced the fact that they were in discussions, we have told this committee that there are a number of discussions – that is the only fact about the discussions that we will confirm either here or in any other

forum. All of the discussions are subject to section 378 restrictions, which means that it's an offence, and potentially a criminal offence, to disclose the details of those discussions in the media.

There have been speculation in the media. We can only speculate as to where the source of that speculation is and what the intention is but we won't comment on any particular points or facts that have been made in the media.

I repeat that our primary focus is to achieve a regulatory outcome which is fair to all concerned and that's what we're working on and we'll continue to work on.

**主席：**

李議員。

**李慧琼議員：**

是。理解你的答覆。我希望你剛才告訴我們的、你說的第一個priority，就是希望讓投資者或讓受害人得到最多的賠償，是你今次談判裏面一個比較重要的考慮。你自己對於達成和解有沒有信心？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Our experience with dealing with other cases is that, when there's a recognition from both the institution and the regulator that there has been a potential regulatory breach and there's a desire to reach a preferred outcome, then that preferred outcome can be reached. I wouldn't like to put a quota on whether I'm confident or not that we'll reach that outcome; I'm very hopeful that that would be the outcome that we reach.

**主席：**

李議員，因為你很多個問題已大大超越了我們的研究範疇……

**李慧琼議員：**

知道。

**主席：**

.....亦不是很適合，我相信你不要繼續朝這個方向問下去。轉一轉方向吧。

**李慧琼議員：**

是。韋先生，我想瞭解一下，你在168.....剛才的82段，我繼續問你最初我開始問的那點——有168宗個案以和解方式處理。我想瞭解一下，這個和解的百分比是多少？即對方賠償給相關投訴者，平均百分比達到多少成呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't have that information. I can try to find it for the cases where there was a settlement but I haven't got that information with me.

**李慧琼議員：**

好，另外一樣我想.....

**主席：**

李議員。

**李慧琼議員：**

.....瞭解一下，跟進上一次我問的問題。上一次向你提問，就是說.....其實你們一直都知道結構性產品在市場廣泛流傳，你們都做過(計時器響起)相關的調查，瞭解到市民在銀行買得到這些結構性產品。我當時問過你們，在審批章程方面有否加緊內部監控，有否更改你們的內部要求，以至更嚴格地限制相關產品流入市面。

**Chairman:**

Mr WHEATLEY?

**李慧琼議員：**

而你當時，我理解你的答覆就是說沒有。我想再澄清，你們當時做完調查後，你們知道大量的結構性產品透過銀行流入消費者手裏，亦知道很多受訪者其實不太瞭解這些產品的性質，你們自己內部有否更改流程的要求，加強審批？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The concerns that were raised in our surveys were not specifically that the documents were deficient but that the features – well, either people didn't see documents or that the features weren't properly disclosed. So, the sorts of findings that we found were that there were very strong focus on the potential benefits but limited focus on the potential risks of a product, that very few discussions disclosed the fact that there might not be an exit mechanism if people made a choice to exit the product. So, the concerns that came through our surveys were less about the disclosure of risks in the documentation than about the sales process and the explanation of the product and the suitability assessment.

So what we did in response to that was we published that survey; we sent that survey to all of our brokers. We sent them the information. And we conducted themed inspections to find out from our own inspections the extent to which the concerns that were being expressed were validated. And we found, in a number of cases, that there were not adequate internal systems and controls or adequate internal due diligence and we took actions on the basis of that.

**主席：**

Mr WHEATLEY，剛才提到的百分比方面，你會後會把資料給我們，是嗎？

**李慧琼議員：**

第82段提到168宗個案……

**主席：**

168宗個案。

**李慧琼議員：**

.....和解的百分比。

**Mr Martin WHEATLEY:**

I will try. I.....

**Chairman:**

Can you provide the information after the meeting?

**Mr Martin WHEATLEY:**

Yes, I'll try as far as possible, if we have the information, if we have the data.

**主席：**

接着是陳健波議員。

**陳健波議員：**

雷曼債券涉及很多種風險，我以雷曼系列35為例，風險起碼有3種：第一就是第一層掛鈎的藍籌公司；第二層掛鈎的所謂AAA級CDO；還有發行人及擔保人雷曼兄弟破產的風險。面對如此複雜的產品，其實證監會有甚麼培訓計劃給那些批核人員，去確保批核人員本身都明白這些產品的風險？因為如果他自己都不明白，他又怎懂得去把關，怎懂得說哪些較高，哪些較低，哪些要多寫一點，哪些要少寫一點呢？我想問問有甚麼培訓計劃給SFC的批核人員呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The team of people vetting the documents would all be either corporate finance lawyers or people who've got experience in structured products, either structuring them or vetting them. So there's an experienced team. In every case, the assessment would be made, initially, by a manager and an assistant manager and then a series of requests for information would be sent back to the issuer. So, if we had felt that the products were either inadequately

explaining the risks or were misrepresented to them, we would ask further questions, further requisitions of the issuer, and that process would take many, many iterations where we would ask for further information.

All of our team are experienced; they have been on training, they have experience in the industry, and all of the work is overseen by a director or a senior director.

**主席：**

陳議員。

**陳健波議員：**

我想再問，你覺得那些職員根本是很有經驗，當中有律師，但大家要明白，那些衍生工具其實也不是真的如此容易明白，我們初期都花了很多時間去瞭解才清楚。我的問題是，你是否覺得他們有一個律師背景或者是專業人士，就不需要與時並進？我的問題就是說，怎樣能夠確保他們的專業知識能夠追上時代？因為當年其實衍生產品真的非常多，亦很複雜。我也很奇怪，你為何覺得他有一個這樣的背景就會知道呢？我可否講多一些？你有沒有譬如給他們考試，有沒有給他們測驗？甚至有否去現場，去銀行看看銀行究竟怎樣售賣東西，銀行會說些甚麼或不說甚麼？這樣你才能夠看到那個情況。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Keeping abreast with product development is a challenge and it's a challenge because the industry is constantly innovating and constantly creating products which provide particular types of return to investors but, in doing that, they often become more complex. So, this was a particular product that was offering investors a higher return than was available on deposits and it offered that return by giving people exposure not to equities, as many products are structured, but to the credit of institutions. So that was the particular structure of this product and clearly it was a relatively new product in 2002, 2003. So we would spend a lot of time looking at the extent to which there are similar experiences elsewhere; we would spend time and second our teams to the bank departments who are creating the products so that we got a very good understanding; and, in terms of the process of

authorizing the products, we would go through a large number of iterations where our team would work through, line by line, the product documentation, would ask questions of the bank, would seek further clarification or changes to the document.

So we'd go through a process, a very detailed process, before we'd actually approve the product. But it does require constant training and constant development because products are always changing.

**主席：**

陳議員。

**陳健波議員：**

我想再說的就是，如果大家看看最近SFC審批的產品及以前審批的產品，看到一個很明顯的分別，就是以前譬如剛才我說的情況，即是第一層風險是滙豐那些大公司就用很大的字體，而那些所謂AA的CDO就用很小的字體。然後，發行人的風險及雷曼的字體都是相當小的。但現在卻不然，當然是寫成每一樣都很危險，大家要小心。

這個所謂如此大的轉變，你覺得是否反映出，即現在回看，是否反映當時真的是對這些風險的適當的披露？當然，你那個文件、舊文件是有披露的，但重要性沒有提高出來，即是令市民、買的那人都不知道原來是如此大的事情。當然，我們是有點事後孔明，但大家要明白，事實上真的有人損失了。我想說的就是，其實我們現在這個委員會都是希望將來可以做得好一點。其實是否如果當時做了這樣東西，就可以避免當時發生這麼多問題呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We did.....It's certainly correct that any products that have been issued recently we require a much greater upfront disclosure of risk in bold type and you'll see that the recent products have that very, very clearly explained. Previously, all of the products would have strongly featured that the products were not principal-protected, that there was credit risk of the reference entities but some of the risks in the marketing materials were not so prominently

disclosed. They were usually in the marketing materials but not prominently disclosed.

But our expectation has always been that the marketing material is intended to raise awareness but, if you look at the marketing notes, I think every one says "Talk to our customer representative" and our expectation has always been and remains that that is the point at which the risks and the suitability of the product are discussed and properly explained. So, even though we have bolder disclosure of risks now in the documents, that does not in any way take away the requirement for the point-of-sale to assess and judge suitability of the product.

**主席：**

陳議員。

**陳健波議員：**

主席。我想問的就是，其實這樣會否大家又誤會了？為甚麼呢？銀行可能覺得既然是你審批出來的東西，他根據你審批的文件去講已經可以了。但聽你剛才所說，或者你反覆說了很多次，在這個委員會都說過，這個只是吸引客戶而已，其實銀行有責任去詳細解釋。但銀行是否很瞭解呢？因為銀行有聲音說，"既然你都審批出來，那麼你的責任就在這裏，我只是依照你那些東西講解而已"。究竟你怎樣看銀行與SFC對這些宣傳品的作用的差別？你怎樣看呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think one of the things that we published in 2007 was an FAQ to explain how banks should operate – or, sorry, how banks and brokers, and if I can just – bear with me for a moment. We said, very explicitly, there's a question: how can IAs help clients make informed decisions? IAs should provide each client with recommended investment products, prospectuses or offering circulars and other documents relevant to the investments. It is not enough for IAs to hand over these documents, ask the client to read them or merely read the documents to the clients. So, we've said that very clearly and it's always been part of our Code: it's not enough just to give the document to the client or read out the risk. The responsibility is to make an



informed decision, a judgement taking account of the particular investor's characteristics; and that judgement is that the product is suitable.

Now, that has always been the requirement; it still is the requirement today and it will be the requirement going forward. And I think the question is whether that requirement has been properly met in all cases. But it's certainly not enough to say, "Here is the document", it's not enough to say, "This document was approved by the SFC". What they're required to do is their own due diligence of the product and make sure it's suitable for the client.

**主席：**

陳議員。

**陳健波議員：**

我想再問，你發出這些所謂通函給銀行，但你怎樣確定這些所謂通函能夠充分由最高層傳達到下面，確保銀行的銷售人員的層次都知道這個一定要很小心，一定要除了依照宣傳品之外，還有其他，即宣傳品只是一個初步，其他一定要全部。你怎樣確定銀行有做到這一點呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, partly, we try to ensure that through our regular discussions and inspections of brokers – and I know the HKMA goes through the same process with banks – to ensure that there are good governance and control systems in place within the organization. So the first line of ensuring it happens properly is the responsibility of the management of the organization. And the second line of ensuring it works adequately is through inspections and going and looking and checking and looking at files and asking "Have these guidelines been followed properly?" and that's what we do when we carry out our inspections. The third line is to send a very strong message when we find there are failures. So, if we find there are failures – and occasionally there are – we will take strong action and send a message to the market that standards have fallen below the accepted standard. And that's what we do.

**主席：**

陳議員，OK。接着是涂謹申議員。

**涂謹申議員：**

主席。我知道現在證監會就是.....即你較早前說你會調查系統性的失誤，方法是由上而下，而並非一些個案的調查，並且你回答我們議員的提問時說，希望可以獲得一個整體的解決，好像新鴻基及凱基那兩次一樣。

主席，我想先澄清一點，就是在7月3日，Mr WHEATLEY回答問題的第53頁，我們那個草稿裏面，因為現在很多就是說調查系統性失誤及已向十多間銀行提出一些要求的問題。我想問一問，現在這裏卻很特別，53頁那裏，Mr WHEATLEY提到，你說有人用傳媒試圖造成壓力。但你的看法就是，你要得到一個你相信是"defensible solution"，即我譯作言之成理或可以是合理的一個解決方案。而你最後又說，但是你們不會被迫去做一些事情是違反你們的原則的。

Mr WHEATLEY，看到了嗎？看到那個.....

**Mr Martin WHEATLEY:**

Yes.

**涂謹申議員：**

OK。我想問一問，甚麼是"defensible solution"？甚麼是你們要持守的原則呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think, as I said earlier, that we look for three features, typically, of any outcome. We look for an outcome that, as far as possible, will mitigate any loss that has occurred through shortcomings against our Code of Conduct; we would look for a solution which provides remediation such that any problems will not re-occur; and we will look for solutions that send – may be punitive but may send a strong message to the industry as to what is

acceptable and not acceptable. And they're typically what we look for in terms of a regulatory outcome.

Our principles are very much set out in the SFO that we have a responsibility to protect investors; we have a responsibility for the health and competitiveness of the system as a whole and a number of other areas that set out the broad principles as to what the SFC is accountable for.

**主席：**

涂議員。

**涂謹申議員：**

主席。因為你上一次的證供裏面，在54頁及55頁裏面提到，你瞭解到滙豐作為信託人，已找了PwC去做估值。因為較早前，在去年11月說回購時，似乎政府會多找一個人去檢討當時那個估值師的程序是否恰當。我想問一下，你們會倚靠這個估值？會否好像去年那樣，會有一個覆檢或看看那個估值的方法等等是否正當？這個是不是你們的考慮呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The responsibility is that HSBC, as trustees, have appointed a receiver to recover the value of the collateral. That's the process that they have announced last week. I don't really understand what the question was beyond that.

**涂謹申議員：**

會否……

**主席：**

涂議員。

**涂謹申議員：**

……有另外一個第三者 —— 在PwC以外 —— 會覆核PwC的程序、估值是否正當，或者獨立地去估值呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think that that's a question that should properly be addressed to the trustees, to HSBC. It is not something that we're a party to.

**涂謹申議員：**

主席。

**主席：**

涂議員。

**涂謹申議員：**

因為去年08年11月，當時的財經事務局長說會有一個第三者去覆檢那個估值師的程序，是不是今次.....主席，或者我解釋一下，我不是只說估值的問題，而是因為剛才Mr WHEATLEY說，有3個因素是他們的原則，那就是減少損失、糾正將來的程序及帶懲罰性，因為這樣會有一個強烈的警號，這件事就不會再犯。如果那個估值本身很影響證監會考慮這3個原則時的問題，如果證監會沒辦法有自己獨立的估值，或者有起碼不單止銀行方面的估值，那你怎麼可以呢？那你豈不是受制於單單銀行所得出的那個估值師的結論來考慮這3個因素？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

At this stage, at the last stage, when I think the Government talked about the buyback proposal, the valuation was essentially an estimate of what value may be there. This is quite a different process. This is actually recovering the value. So, once the value is recovered, there's no uncertainty but the uncertainty is in the process of recovering the value. So, I'm not sure – I don't think – and, again, I think these are properly questions addressed to HSBC but I don't think PwC have been appointed as a valuation agent; they've been appointed as a receiver to receive the value that remains.

**主席：**

涂議員。

**涂謹申議員：**

或者我用這樣的問題去問，看看能否解釋到。主席，我想 Mr WHEATLEY 看他上一次7月3日第54頁的口供。那裏他談到很有趣的一個地方，這個是與我剛才問的那3個原則有關。他說如果有一個建議去回購，只是60%的話，那麼就有一個很重要的問題要考慮了，就是究竟那些抵押品應該屬於銀行抑或屬於那些散戶，即迷債持有人？

我想問一下，你這樣的答案與你剛才所說的3個原則——即減少損失、糾正錯誤及帶有懲罰性，使到有一個強烈訊息不會再犯——有甚麼關係呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the link, clearly, is the extent to which the banks are prepared to mitigate the loss and be buying back at a reasonable value from clients. The link is that we would have less need to impose any punitive fine because that wouldn't be appropriate on top of an additional – a payment that's already been made. So, that's essentially the link. It's a link between the regulatory outcome that we would need to impose absent a settlement and the regulatory outcome that we can impose with a settlement.

**主席：**

涂議員。

**涂謹申議員：**

主席。我試試這樣去測試吧，因為我其實想瞭解那3個原則，因為這3個原則是重要的，因為這是將來你對那些銀行的看法。現在……我只是舉例，好讓我容易明白你的想法。譬如有一個建議是六成回購，但如果將來有更多的抵押品的價值是得到

的話，那些更多的抵押品的價值都會歸還給那些散戶，這個方案能否滿足到你A、B、C的3個原則呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We're not going to negotiate in public or in this forum.

**涂謹申議員：**

主席，我不是去跟你……

**主席：**

涂議員。

**涂謹申議員：**

……因為我又不是銀行，所以我不會跟你討價還價。我是想明白你這3個原則的運用，以及甚麼是違反你的原則，因為這個是很重要的。我想過有幾個情景，或者我起碼讓Mr WHEATLEY可以回應，如果可以的話就回應。如果是六成，多出的便還給散戶，那就一定能反映A那個原則，即是減少損失，OK？但是，我又這樣想，如果一定要懲罰性，我就想，譬如假設那個價值是100%，他沒有損失，那豈不是銀行要多付一成、兩成給散戶作為懲罰，變成他收取多於他原本所得的？但反過來，舉個例子，如果最後的價值只有六成，他就給六成，那豈不是完全不能反映有懲罰性，因為你連一點點都不多給(計時器響起)那些發現有系統失誤的。在這個問題裏面，是否能夠……即我這樣思考，跟你所堅持的3個原則有否任何關係呢？

**Chairman:**

Mr WHEATLEY, you respond on principles.

**Mr Martin WHEATLEY:**

Again, Chairman, if I may, the discussions are very important and very delicate discussions. Even a hypothetical discussion about how certain types

of pay-off may affect our actions is, I think, damaging to that process. So it's not something I think I should entertain here.

**主席：**

OK。各位，現在剛好是11時半，我們休息10分鐘。請各位在11時40分返回會議廳。在休息期間，請證人不要與其他人士討論他的證供，謝謝。

**(研訊於上午11時31分暫停)**

**(研訊於上午11時47分恢復進行)**

**主席：**

我宣布研訊繼續。韋奕禮先生，你現在是繼續在宣誓下作供。

下一位同事是余若薇議員。

**余若薇議員：**

謝謝主席。想問韋先生，他的書面陳述書裏有附件8，這是有關新鴻基證券的新聞稿，其中提到有4點關注。我想問韋先生，那個關注是否就是有表面證據的意思？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Perhaps, I can state why the document is stated in the way it is. They are stated as concerns because the process that we would normally go through is to present our concerns to the broker or the bank, the institution, and give them a right to reply and then we would reach a final conclusion based on our original assessment of evidence and then the representations that a bank or a broker would want to make to us. These are drafted as concerns because we didn't complete that process because we reached a settlement before the completion of that process.

**余若薇議員：**

那就是說……

**主席：**

余議員。

**余若薇議員：**

……證監會就這4點是有表面證據的，是嗎？對不對？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, they were clearly the basis on which we presented the concerns to Sun Hung Kai but we don't state them as conclusions because we didn't give that administrative fairness right of reply.

**余若薇議員：**

是呀……

**主席：**

余議員。

**余若薇議員：**

……我沒說這個是結論，韋先生，我問你這個是否表面的證據？即prima facie case。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes. Yes, that was the basis for our stating the concerns.

**余若薇議員：**

是了，我用了一分半鐘……



**主席：**

余議員。

**余若薇議員：**

.....問一個很簡單的問題。韋先生，這裏第2點的表面證供就是證監會覺得新鴻基沒有給予前線員工足夠的培訓，讓他們可以解釋有關的產品。但我們亦知道，新鴻基證券其實是推廣及設計此迷你債券的。你是否可以確認這一點？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

They were responsible for promoting, designing much of the marketing materials and acting as an agent on behalf of the arranger.

**余若薇議員：**

是。而且.....

**主席：**

余議員。

**余若薇議員：**

.....我們亦聽到新鴻基是有負責和提供培訓給其他銀行。你是否可以確認這一點？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I believe that they provided some of the training but that itself doesn't obviate the need for the banks to do their own due diligence and training materials.

**主席：**

余議員。

**余若薇議員：**

當然，銀行可以額外做的，但你是否可以確認新鴻基是有負責提供訓練給銀行方面的一些人員？.....

**Mr Martin WHEATLEY:**

I believe.....

**余若薇議員：**

.....有關迷你債券的。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I believe that they provided some of the training and some of the marketing or training materials.

**主席：**

余議員。

**余若薇議員：**

這個是否足夠令證監會可以關注其他銀行，如果它的消息和它的培訓都是從新鴻基而來，而新鴻基本身都被你證監會認為沒有提供足夠的培訓，那是否有表面證據或有關注是其他銀行都犯同樣的錯誤呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, clearly, the extent to which frontline staff understood the product is an area of concern for us and, therefore, it's part of our investigation. We

are looking at the extent to which banks relied solely on Sun Hung Kai materials or the extent to which they augmented that with their own internally-developed materials.

**主席：**

余議員。

**余若薇議員：**

是了，既然證監會你都一直跟我們說你的調查是用由上至下的方式，是不是你就會針對銀行給員工方面的培訓，以及它培訓員工所用的文件和資料。你是否有調查這一方面呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yeh, they're all part of the investigation process.

**主席：**

余議員。

**余若薇議員：**

現在你調查的結論，或者不要說結論吧，對不起，說表面的關注或者表面的證供，你看到銀行在培訓員工的資料方面是否足夠呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I'm afraid that's now moving us into the territory of providing conclusions on the investigations and, as I've pointed out.....

**余若薇議員：**

我不是問結論.....

**主席：**

余議員。

**余若薇議員：**

.....我問表面證供而已，有否足夠的表面證供令你關注其他銀行對於其前線員工的培訓？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm not sure what the difference you draw between a conclusion and a prima facie evidence. If we believe there's prima facie evidence, then that would be, effectively, our preliminary conclusion and I don't think we can talk about our preliminary conclusions here.

**余若薇議員：**

即是你不願意.....

**主席：**

余議員。

**余若薇議員：**

.....告訴我們，你到目前為止看了銀行方面有關培訓前線員工的資料後，你暫時的想法是怎樣，即證監會的看法暫時是怎樣。即你不願意告訴我們，是嗎？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Because we are in delicate discussions, anything we say here could prejudice those discussions.

**主席：**

余議員。

**余若薇議員：**

另外，跟進這一點，韋先生。我看你們那個守則，即有關給員工看他們的資歷那方面，也是你在附件7給我們的文件。我們看到，前線員工來說，他們所需要的學歷只是中學會考任何一科，中文或英文任何一科及格，再加數學。另外就是他要考試，關於這個考試，我之前也問過金管局，他們說考試並不包括這些如此複雜的結構產品的資料。所以，它當時告訴我們的是，如果你就這樣看這些前線員工所需要符合的資格或資歷，其實是不足夠用來解釋這些產品，或者明白這些產品至足以向那些投資者解釋的。你是否同意這個說法？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think the qualifications that you refer to are the entry qualifications for somebody to operate within the industry and that's the minimum standard to operate. We expect every organization selling to provide additional training and select the sort of people who can explain complex products over and above that. So.....

**余若薇議員：**

所以你亦是同意一點，.....

**主席：**

余議員。

**余若薇議員：**

.....就是說那些基本要求他入行的資格，根本並不足夠令銀行的前線員工可以明白這些如此複雜的產品，即你都同意這一點？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the entry requirements are general requirements for entering into the industry. They're not specific to products.

**余若薇議員：**

對了，所以都……

**主席：**

余議員。

**余若薇議員：**

……不足夠令他可以明白如此複雜，好像迷你債券這類產品或者ELN產品，即你都同意了，對不對，韋先生？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I would expect every organization to arrange sufficient additional training in order to enable the staff to sell products.

**余若薇議員：**

是，你即是直接……

**主席：**

余議員。

**余若薇議員：**

……回答我的題目，即是你同意，入行的資歷是不足夠令他明白這些如此複雜的產品，你同意這個說法，你認為是需要更多的培訓。對不對？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Additional detailed training would be necessary.

**余若薇議員：**

好。那……

**主席：**

余議員。

**余若薇議員：**

……足夠的培訓，你認為是應該需要多久的培訓才能令員工明白這些如此複雜的產品呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't think I can take a view as to how long it would take; largely would depend on the previous experience of the individual and the sort of products that are being sold.

**余若薇議員：**

好。

**主席：**

余議員。

**余若薇議員：**

你不願意回答這個問題，或者你覺得答不來，那麼問你另一個問題好了。證監會有做這些專題審查，去看這些前線的員工。在這些審查當中，你有否面試過這些前線員工？當然，我明白你不是去審查銀行，我明白你是去審查證券行的前線員工。你

有否去面試過，叫他解釋，即是把你們去做專題審查的人當成顧客，叫這些前線員工解釋一次這些迷你債券或ELN的產品給你們的調查人員聽，有否試過？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We would certainly interview the staff within brokers and we'd interview staff at many different levels. And what we'd be looking to understand is the extent to which the procedures and controls that are established within the broker are actually applied in practice and, to do that, we'd do a combination of interviews and a combination of looking at specific case documentation.

**余若薇議員：**

是。這些……

**主席：**

余議員。

**余若薇議員：**

……這些面試所得，你認為一個前線員工要介紹一個如此複雜的產品，解釋給顧客聽，最少需要多少時間呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, that would largely depend on the complexity of a particular product and the previous experience of a customer.

**余若薇議員：**

是了，我們當作是……

**主席：**

余議員。



**余若薇議員：**

.....一般的顧客吧，但我們說的產品，大家都知道是甚麼，說的是迷你債券。你覺得需要多少時間才可以足夠的解釋給顧客聽呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We don't set (*the buzzer sounded*) very prescriptive rules as to how long to spend in an explanation. The requirement is sufficient time to make sure that the product is properly explained and that the selling agent can gain a sufficient understanding to ensure the product is suitable. There's no time limit on that; it is an absolute requirement.

**余若薇議員：**

我知道你沒有寫下.....

**主席：**

余議員。

**余若薇議員：**

.....多久，但我問你是有關那些面試，即你們去審查前線員工時進行的面試，你有否做這個測試？我問你的就是，得出來的結論是最低限度需要多少時間才可以解釋一個如此複雜的產品給顧客聽呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think you're asking for our conclusions again, in terms of investigations, which I've already explained.

**余若薇議員：**

不是，對不起，韋先生，我不是問你結論，亦不是問你今次調查的結論。我問以前進行的那些專題審查，你們要派人去監察前線員工時，要他做一個面試，叫他猶如解釋給顧客聽一樣解釋一次。我問你，那些專題審查做出來的結果，應該最低限度要多少時間才可以將一個如此複雜的產品介紹、解釋給顧客聽？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We don't – I'm afraid we don't take a view on the minimum or maximum or optimum time required to explain the product to a customer. What we require is that the selling agent spends enough time to ensure the suitability of the recommendation and that they spend enough time to ensure that the individual client understands the nature and the risks of the product and has sufficient net worth to be able to assume the risk and potential losses. That's the requirement. We don't specify how long that should take.

**主席：**

下一位應該是葉劉淑儀議員，不過她未出席。現在，甘乃威議員先吧。

**甘乃威議員：**

主席，我想問Martin WHEATLEY，在雷曼事件"爆煲"之後，我想問你有否與政府舉行定期會議去討論有關你們調查的進展？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have regularly met the Administration to discuss the implementation of the recommendations that we made in the FS report. Our investigations, our operations are not something that's subject to ongoing discussion with the Administration.

**主席：**

甘議員。

**甘乃威議員：**

你說你只從報告上面有討論，但調查你就沒有進行討論。我想問有沒有政府官員或局長或司長問過你，究竟何時可以完成你的調查？有否有關的官員問過你呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think, given the broad social importance of this issue in Hong Kong and the number of people are suffering, the Government, quite rightly, will have an interest in whether we can proceed and complete these investigations quickly but that's a general interest. We've had no specific inquiries or specific pressure to try to conclude the investigations prematurely. We will take the time to do them properly.

**主席：**

甘議員。

**甘乃威議員：**

我想問有沒有官員，有哪位官員問過你呢？你說過有，你又覺得不是壓力，你可否講解一下哪個官員曾經問過你呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think there's a concern, clearly, and a very real concern, that this is taking too long and we are very concerned that it's taking too long; I think the Government are very concerned that it's taking too long. I have numerous meetings with Government on various issues. It's an issue that may have come up not formally through any minuted meetings but as a

general discussion, but there's no specific pressure that's – or questions that have been brought to bear on us.

**主席：**

甘議員。

**甘乃威議員：**

主席。我問你，你剛才說沒有會議，但你又有一些非正式的會議。我想問是有會議還是沒有會議？有哪一位官員曾經跟你說過你的調查太慢？我想清楚知道究竟是哪一位官員。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

There have been no meetings to discuss specifically the investigations. We have not been told specifically that the investigations are too slow. We have been urged to reach a resolution, expediently and quickly, that is fair for all concerned.

**甘乃威議員：**

主席。

**主席：**

甘議員。

**甘乃威議員：**

我希望證人應該正面回答，究竟有哪個官員曾經跟他談過，說過有關他的調查進度太慢。你剛剛才說過，Martin WHEATLEY，我希望你不要迴避及正面回答，好不好？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Okay. It can be quite specific. We haven't, as far as I'm aware, been told the pace is too slow. We have been urged by FS to reach an outcome that meets the needs – our needs as a regulator and the needs of Hong Kong generally. So that's a reasonable request that we act and put all resources available to achieve that outcome.

**主席：**

甘議員。

**甘乃威議員：**

你剛才提到FS，即是FS曾經向你查詢過有關你的進度，是嗎？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, the FS has asked that we do everything we can to reach a speedy and fair solution.

**主席：**

甘議員。

**甘乃威議員：**

你自己是否覺得你現在的調查進度如此緩慢，有很多公眾的批評，你又沒有講過你的進展是怎樣，公眾的批評是說你黑箱作業，一個獨立王國。究竟你是否認同這些指控呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, can I deal with the question about "slow"? We achieved very, very quick outcomes in the case of the two brokers where it took four and six months respectively from the start of investigation to a settlement agreement,

so we've moved very, very quickly. The process that we're in with most of the banks is not an investigation stage; it is settlement discussion stage. So I wouldn't say that that is something that's slow; it's a settlement discussion. And, as I've explained to members previously, we don't have the power to force settlement; any settlement has to be a voluntary act by the banks and that is the process that is slow.

**甘乃威議員：**

主席。

**主席：**

甘議員。

**甘乃威議員：**

我想再提出的是，其實早前.....今天都有同事問有關銀行界收取佣金的問題。早前我記得.....我記不清楚，好像蔡耀君先生都有提過，有關迷你債券，銀行收取大概兩至三個percent的commission。其實，剛才Martin WHEATLEY都有提到，有關佣金的披露，將來都可能會有改善。我想問一下，根據你們的調查，有關ELN、CLN這一類產品，銀行其實是收取多少佣金呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Any information we've gathered as part of our investigation has been gathered using our formal powers to compel evidence. It's not appropriate for us to subsequently disclose that evidence to this body. You may directly ask the banks, when you interview them, what their commission structures are. But I don't think we can allow the information we've collected as part of our formal process to be put into the commission's considerations.

**甘乃威議員：**

主席。

**主席：**

甘議員。

**甘乃威議員：**

我不同意Martin WHEATLEY的說法，我不是需要哪一間銀行，我只是generally，即整體上究竟這些銀行一般收取多少佣金，我不是需要特別指明哪一間銀行，而是那個range，即那個範圍，收取的範圍究竟有多少。早前蔡耀君先生都已說過迷你債券是兩至三個percent，他也沒有說是哪一間銀行。我希望Martin WHEATLEY不要再迴避我們小組所提出的問題。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think, if you've had the answer from Mr Y K CHOI, then I wouldn't disagree with that answer. If he said two to three percent, I think that's probably about right in general terms.

**甘乃威議員：**

你是說.....

**主席：**

甘議員。

**甘乃威議員：**

.....有關.....我現在說的是ELN，我想說有關ELN，銀行方面收取的佣金一般的情況是怎樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't know the general situation. I thought we were talking about Minibonds and I think the situation for Minibonds is, as Mr CHOI has said, around two to three percent. I don't know what the figure is for ELNs, and I don't know if it's different to that figure.

**甘乃威議員：**

你作為調查機構，……

**主席：**

甘議員。

**甘乃威議員：**

……你都不知道究竟迷你債券及ELN有多少，那麼你怎樣進行調查？我非常驚訝，就算你不講有關雷曼兄弟事件，之前你都做過一些審查了，你為何不可以說出來呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We can certainly go back to our previous studies and surveys and disclose any figures to you from those. From our current investigations, it's not appropriate for us to disclose information that we have gathered in the course of those investigations.

**主席：**

甘議員。

**甘乃威議員：**

主席，我希望你能夠迫令證人講出來，我們generally是在說ELN的佣金收取多少。你就算不講雷曼兄弟，之前你都做過相關的調查，為何你不可以提出來呢？為何你如此偏幫銀行呢？為何不可以告訴公眾，究竟這些銀行收取的佣金是多少呢？

**主席：**

甘議員……

**甘乃威議員：**

你在雷曼兄弟"爆煲"之前，你都做了這些調查了。



**主席：**

甘議員，剛才證人是說他會回去看看有沒有那些資料，可以會後提供給我們的。

Mr WHEATLEY, did you say that you are going to find out later on whether or not you had this information and you.....

**Mr Martin WHEATLEY:**

Yes.

**Chairman:**

.....would provide that to us, later on?

**Mr Martin WHEATLEY:**

Anything that's in those previously completed and published surveys, we're very happy to provide that, but I draw the distinction between that and information that we've gathered as part of the current investigation process.

**主席：**

甘議員。

**甘乃威議員：**

主席，其實有關這些資料，有很多ELN的苦主都提出，譬如舉個例子，事後他們才收到有些條文，裏面說譬如"內容未經香港任何監管機構的審批"、"本票據並無抵押品"、"本票據並非保本票據"等，全部都是苦主買了這些產品後才收到這些資料。其實這亦引證了你們的S25，即"結構性產品投資者調查"。其實這個也不是特有的現象，在你的調查裏面都有說，S25第2頁也提到，在你們的調查當中，做過的問卷調查，其實只有十分之一的相關投資者記得他們曾收取、閱讀及明白銷售文件，即九成人是沒有收取、閱讀及完全明白有關銷售文件。這個調查，其實我們早前有同事都說過，就是06年11月，你這個調查已進行過了。你可否證實，其實如果他們沒有收取、閱讀及明白這些銷售(計時器響起)文件的話，是否那個銷售人員已經違反了你們的銷售一般指引呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think, as I explained to you earlier in regard to the FAQ, our Code of Conduct does not require or it's not sufficient for our Code of Conduct to simply read a document or ask the customer to read the document or to simply hand over the document. The Code of Conduct requirement is that the bank explains the product fully and that it assures the customer that it's suitable, taking account of the customer's considerations.

The products that you refer to – and I don't know specifically but if you're referring to ELNs where the documentation wasn't approved by us – are private placement products which can be placed with subsections of the public through the private placement rules in the Companies Ordinance and, therefore, there isn't the disclosure protection that exists under the Companies Ordinance but the Code of Conduct applies in every case still, so it's still the case that the staff selling the product are required to make a proper assessment of the individual and make sure that the product is suitable and understood by the individual.

**甘乃威議員 :**

其實……

**主席 :**

梁國雄議員。

**甘乃威議員 :**

主席，我想跟進。

**主席 :**

已過了時間，等一等，再排隊。

梁國雄議員。

**Hon LEUNG Kwok-hung:**

Okay, I am going to ask you the question about the duty to protect investors shall not be transferred. So I want to ask you, one of your statutory

duties is to protect the investors. Do you recognize that the SFC has to bear the ultimate responsibility for the failure to deliver the outcome of protecting investors?

**Chairman:**

Mr WHEATLEY?

**Hon LEUNG Kwok-hung:**

Do you know it?

**Mr Martin WHEATLEY:**

Okay. It's absolutely our responsibility. One of our organizational objectives is to protect investors, so we absolutely accept that and that falls squarely on our organization but, nonetheless, there are, from time to time, regulatory lapses and those lapses have occurred in the past, I'm sure they'll occur in the future. Obviously, what we try to do is to minimize those lapses and, where those lapses occur, make sure there's an appropriate action taken in response to that. But it's absolutely our duty and responsibility to try to protect investors.

**Hon LEUNG Kwok-hung:**

Thank you.

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

So have you ever suggested to the Administration, before the collapse of Lehmans, that the present power you have is fettered to such an extent that the effectiveness of delivering the outcome of protecting investors will be hampered? If not, why not?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The regulatory structure that we operate within was one that was very much debated within this house in the period leading up to the passage of the

bill in 2003 and the passing of the ordinance in 2004 and the debate was a very lively one, I know, at that stage, as to whether adequate investor protection would still happen with the responsibilities split between two organizations. And it was argued at the time that it would, so we have not taken the view that we are subsequently fettered. That was the policy decision taken at the time and discussed at length in LegCo.

**Hon LEUNG Kwok-hung:**

Okay.

**主席：**

梁議員。

**Hon LEUNG Kwok-hung:**

So, the SFC has issued a number of warnings to HKMA before the collapse of Lehman. It indicates that the SFC was aware of the risks of the investors; however, the SFC has not exercised directly the supervisory power conferred by the law to scrutinise the misconduct of the RIs to prevent harm to investors as it did against the LCs in the same period. It is a prima facie reckless omission of duty of the SFC. What is your comment to this conclusion?

**Mr Martin WHEATLEY:**

The warnings.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The warnings that we gave broadly to the market were not specific to Lehmans but were concerning the extent to which complex products were being properly sold, so that was the concern we had and we published, through various forums, that warning. We carried out inspections on our investment advisers to try to verify the extent to which those concerns were true and we found failings and we acted on those failings. But we don't have the direct oversight of frontline staff of banks and that is a structure that was put in place after much debate and we are able to rely on the Monetary Authority's oversight of banks' frontline staff.

**Hon LEUNG Kwok-hung:**

So, do you agree that the present agreement is a typical buck-passing practice among the Administration, HKMA and SFC which is purposely designed to avoid legal and administrative accountability for the three parties?

**Mr Martin WHEATLEY:**

I.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't accept the statement. I think the structure that we had was a compromise that was taken to minimize the burden that would fall on banks if they were subject to two separate regulators. So, I think that was a compromise that was understood and agreed at the time because the banks felt that, operationally, it would be very difficult to be accountable separately to two regulators. So, the compromise was that the same standards would apply but the two – one regulator would regulate the frontline staff of banks and one regulator would regulate the frontline staff of brokers.

**Hon LEUNG Kwok-hung:**

So.....

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

Do you agree that this is a serious loophole in your regulatory system that leads to harm to investors of this unprecedented size and yet no one will be accountable for harm which may be avoided or reduced considerably if due care, diligence, skill and better co-operation are to be exercised by the SFC and the HKMA?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think it's wrong to describe it as a "loophole". A loophole would imply that there was an inadvertent or accidental gap. This division of labour was a very conscious decision, so I don't think that means it was a loophole. The question of accountability is clearly an important one but I think we have to complete our investigations in order to have really the full understanding of what has gone wrong and I do think we have to learn from this and, in our presentation to FS, we've made it clear that we think that the regulatory structure needs to be reviewed to look at what we can learn out of this particular process. So I do think we've got to learn from this and look at whatever changes to the structure are necessary to try to ensure that the same thing doesn't happen again.

**主席：**

梁議員。

**Hon LEUNG Kwok-hung:**

So it's the question about the MOU. Although paragraph 4(c) of the MOU claims that no power, duty and obligation have been transferred, this claim cannot conceal the arrangements and practices which are, in substance, amounting to a delegation power. It turns "may rely" into "must rely" compared to section 5(3)(b) of SFO and paragraph 5 of the MOU. It fetters the supervisory function of SFC under section 5(1)(b)(ii). It imposes rigidly fixed roles and responsibilities to two regulators without citing any legal authority or provisions or ordinances that authorize this division of roles and responsibilities. The MOU and the present practices as testified by SFC and HKMA are prima facie ultra vires. Do you agree? If not, why not?

**Mr Martin WHEATLEY:**

We will.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....provide you a detailed written response to this question. It is not ultra vires. The MOU does not change the legal structures that are enshrined in the Banking Ordinance and the SFO. They both explain the respective powers and specifically explain that the SFC may rely on the HKMA and, to

use your words, that doesn't imply "must rely" on the HKMA. We may rely on the HKMA. But the policy intent, very clearly, at the time of the passage of the bill was that we should rely on the HKMA. So it is not ultra vires and the MOU does not change the legal obligations set out in the respective ordinances.

**Hon LEUNG Kwok-hung:**

Okay.

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

So, according to your statement released in 22 January 2009, the SC Reference No. SC(1)-S21, you claim that "Given the high public interest in resolving these issues quickly, to avoid unnecessary costs and expenses and to affirm its commitment to the highest standards of conduct, Sun Hung Kai has agreed with the SFC to the following....." and then you turn to the Note 4. It says so, according to section 201 of the SFO, you can do something to save those investors without investigation. I ask you, would you like to use this authority again or you would like to talk to Mr Joseph YAM to make a quicker pace for the investigations, not to wait until next March to fulfil 70% of the investigation. Do you agree that you should talk to him or even to scold him for not doing his job because it's vital. He's got the authority to open a file, to dismiss a file. You, (*The buzzer sounded*) you are the one who's got the last say. Would you agree?

**Mr Martin WHEATLEY:**

We have the.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....disciplinary powers and we also have the ability to enter into a section 201 agreement which is the one you mentioned that we entered into with Sun Hung Kai. It is our hope that we can enter into such agreements with other banks that would achieve a much speedier outcome than the outcomes that you've talked about. So, it's very much our hope that we do

enter into further section 201 agreements and that, I think, would be the speediest outcome to that.

**Hon LEUNG Kwok-hung:**

So don't you think.....

**主席 :**

時間夠了.....

**Hon LEUNG Kwok-hung:**

.....you will be satisfied with the pace? 70% of the complaints will be investigated in next year, March. Do you know one of the clients of the ELN has committed suicide? So how many victims do you want to see? If you don't do your job, you can victimize.....

**Chairman:**

Okay.

**Hon LEUNG Kwok-hung:**

.....those people's life. Do you feel the responsibility? Do you?

**Chairman:**

Mr WHEATLEY, you respond to this one and I'll come to the next member.

**Mr Martin WHEATLEY:**

Chairman, we're very, very conscious of our responsibilities. We really are conscious of the responsibilities, we're conscious of the suffering that is being suffered. We want an outcome as quickly as possible and that's what we're trying to achieve.

**主席 :**

湯家驊議員。時間到了。

**Hon LEUNG Kwok-hung:**

The point is that.....



**主席：**

湯家驊議員。

**Hon LEUNG Kwok-hung:**

.....you need to give order to Mr Joseph YAM.

**主席：**

梁議員.....

**Hon LEUNG Kwok-hung:**

He is the one who needs to be accountable to you. You know what I mean? He's got every authority to open a file, to investigate, .....

**主席：**

梁議員。

**Hon LEUNG Kwok-hung:**

.....to dismiss the file.

**主席：**

讓他答完這一條就到第二位，已經十幾分鐘了。

**Hon LEUNG Kwok-hung:**

Well, it's common sense.

**Chairman:**

Any further response from Mr WHEATLEY.....

**Mr Martin WHEATLEY:**

I don't – I'd repeat.....

**Chairman:**

.....before we go to the next member?

**Mr Martin WHEATLEY:**

I'd repeat very much what I said. We want to resolve this, we really do. It's dragged on already too long. We don't want this to string out. Everybody wants this resolved. But the best way to have this resolved is through a voluntary agreement from the banks. That would be the quickest way to have this resolved and that's what we're trying to get to.

**主席：**

湯家驊議員。

**湯家驊議員：**

主席，我想繼續上一次的提問。首先，韋先生在他上一次的回應中同意，披露為本的最基本要求就是要將風險及銷售的吸引力，同樣以大字標題讓買家知道。我在這個同意的情況下，我想他看一看我們的S34，就是證監會在休會期間提交給立法會的書面答覆，我希望他看一看S34第2頁的圖表。

主席，在這個圖表，證監會羅列了所有的基本投訴是甚麼。主席，我希望韋先生看一看，這個是他自己的資料。26%的投訴者投訴銷售者引誘他們將存款轉為買一些高回報的雷曼產品；31%是說銷售者沒有考慮到購買雷曼產品的風險的背景；38%是說銷售者沒有將這些金融產品的詳細資料提交給他們，甚至乎是誤導他們以為這些產品沒有風險存在；33%是說完全沒有足夠的風險披露。換句話說，主席，95%的投訴都是關乎風險披露不足。

主席，我想問問韋先生，既然如此，他看過這些數字後，他是否同意證監會所批出的銷售文件，特別是那些銷售單張，在披露風險方面是完全達不到披露為本裏面的基本原則？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The marketing leaflet is a subset of the terms in the prospectus and it focuses on some of the major terms and involves a number of statements. But it also involves a statement that you should talk to a customer

representative and, in every one of the Minibond leaflets, that was the requirement. And it's at that point when the disclosure and explanation of risks and features should occur. That's where the disclosure is supposed to occur, at the point of sale, and that's where the suitability assessment is supposed to occur.

**湯家驊議員：**

但事實告訴我們.....

**主席：**

湯議員。

**湯家驊議員：**

主席，事實告訴我們，我相信韋先生亦同意，就是說為何我們這次會坐在這裏，要檢討這個迷你債券的銷售問題呢？就是正正因為風險披露不足。如果他回看這些銷售單張，上次他都同意，就是說提供風險披露的字眼，是遠遠小於吸引購買者關於回報有多高、關於有時間迫切性、必須要盡快認購這些字眼。

我想問韋先生的問題就是，既然如此，他回看這麼多的投訴，他是否同意證監會在批核這些銷售單張方面是未能盡責，未能確保披露為本的原則得以達到？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The leaflets are there to attract interest. They can't possibly consolidate a hundred-page document into one page. So I don't see that the sales leaflet is the primary disclosure document.....

**湯家驊議員：**

主席。

**Mr Martin WHEATLEY:**

.....but, equally.....

**湯家驊議員：**

我不是提議說……

**主席：**

湯議員。

**湯家驊議員：**

……要將所有資料寫進推銷單張內。上一次我問韋先生的時候，他都同意任總的看法，就是說在披露風險方面，我們是應該要求有大字標題提醒買家，他們須要仔細閱讀銷售的詳細單張。在這方面，韋先生在上次的證供裏面是同意的。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

But that doesn't satisfy our Code of Conduct. No matter how bold the statement is that said "Read the Document", that doesn't satisfy the requirements under the Code. Our Code of Conduct requires – and, in fact, can I quote you from our FAQ? "It is not enough for IAs to hand over these documents, ask the client to read them, or merely read the documents to the client. IAs should help each client to make informed decisions by giving the client proper explanations of why recommended investment products are suitable for the client and the nature and extent of the risks the products bear." So, that is what disclosure means. It means taking the document, analysing it, presenting a story to the client and making a judgement as to whether it's suitable for the client. That's how disclosure is supposed to work, not through simply handing over a document or paging through a number of pages. It's an active judgement that's required.

**湯家驊議員：**

韋先生……

**主席：**

湯議員。

**湯家驊議員：**

.....我相信韋先生應該明白我的問題所在，我並不是說如果這些銷售單張只是有很大個字說明你須要閱讀這個章程，或者這並不是一個債券產品，便已經完成了證監會要求的一些準則，我不是這個意思。我的意思是說，當你審批這些銷售單張時，如果你有要求銷售人員提醒買家詳細閱讀章程或清楚說明迷你債券不是債券的話，那個買家可能會要求銷售者向他詳細解釋。但正正是因為沒有這些提醒的字眼，這個銷售者便有機可乘，所以達至我們現在所見，有95%的投訴都是銷售者沒有向買家詳細解釋產品的風險。所以，證監會在這方面是完全失責，亦完全沒有符合披露為本的原則裏面的最低要求。你是否同意？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think you're misunderstanding how the system works. The documents would explain the main features of the product, so, clearly, they would explain the potential coupon, the tenure of the product and how the product worked. But, also, the marketing flyer would always say, in bold, that the notes are not principal-protected. It would always say, in bold, "Talk to one of our customer service representatives." It would probably say, "Don't rely on this. Rely on the underlying documents."

But the truth is, what the individual should be able to rely on is the sales practices of the intermediary which is where the responsibility is to properly explain the product and its features, and where the responsibility is to ensure that the client understands the risks and has sufficient capital to withstand any potential losses, and where the responsibility sits to make a judgement that the product is suitable for that particular client. That's where the core responsibility lies.

**湯家驊議員：**

對不起，韋先生.....

**主席：**

湯議員。

**湯家驊議員：**

.....我覺得你這番回應是一個推卸責任的回應。或許我用另一個方式去問你，你認為究竟為何會有95%的人覺得披露風險的工作做得不足？究竟是誰的責任？

**Chairman:**

Mr WHEATLEY?

**湯家驊議員：**

為何會有95%的人提出這樣的投訴？

**Chairman:**

Mr WHEATLEY?

**湯家驊議員：**

是買家的錯？

**Mr Martin WHEATLEY:**

Well, I think, if I can refer you to the table that you're deriving the 95% from. Every single paragraph starts (*The buzzer sounded*) "frontline staff proactively induced", "frontline staff failed to consider", "frontline staff did not include product information", "frontline staff only highlighted".

**湯家驊議員：**

你的意思即是說.....

**Mr Martin WHEATLEY:**

I think that's a fairly clear.....

**湯家驊議員：**

.....這是.....

**主席：**

湯議員。

**湯家驊議員：**

.....前線推銷人員的錯，你沒有責任去監管他們？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, what we're looking at is the analysis of the complaints that have been received. What we're doing separately.....

**湯家驊議員：**

是誰的錯，韋先生？是買家的錯？前線銷售人員的錯？還是你們監管不力的錯？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Can I repeat? What we've got here is an analysis of the complaints; it's not the conclusions. The conclusions can only come out of the completion of an investigation.

**湯家驊議員：**

即是你可能認為95%的投訴都是不可以落實的，他們全部都在說謊，是否這個意思？你這樣都說得出口？

**Mr Martin WHEATLEY:**

No.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, all I'm suggesting is that the table you're referring to is simply an analysis of what the reasons for complaint was.

**湯家驊議員：**

主席，我想……

**主席：**

OK……

**湯家驊議員：**

……我想證人回答我剛才的問題。

**主席：**

我想時間已過了，你再……

**湯家驊議員：**

不，他可以回答剛才的問題，很簡單地回答，主席，我知道時間已過了。

**主席：**

OK。

**湯家驊議員：**

他究竟認為是買家的錯，還是前線銷售人員的錯，還是監管者的錯呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think, as I've explained to the Subcommittee before, the only way to get to a proper understanding of that is to complete the investigation and reach conclusions and we're in the middle of that process.

**主席：**

劉慧卿議員。



***Hon Emily LAU Wai-hing:***

Thank you, Chairman. Well, Mr WHEATLEY is also here to assist this Subcommittee to reach conclusions. So the more forthcoming you are the better it would be to all of us.

Chairman, at the hearing on the 26th of last month, Mr WHEATLEY said he was surprised that, before the collapse of Lehmans, there were very, very few complaints about mis-selling and we referred to this point again earlier this morning, like paragraph 82 of Mr WHEATLEY's written statement, saying that, between April of 03 and 15 September last year, the fateful day, SFC only completed 500-odd inquiries and then disciplined 430 persons or companies. And, out of that, only 5% were about mis-selling. Is that correct, Mr.....

***Mr Martin WHEATLEY:***

Yes.

***Chairman:***

Mr WHEATLEY?

***Hon Emily LAU Wai-hing:***

And then, of course, if.....

***主席 :***

劉議員。

***Hon Emily LAU Wai-hing:***

.....Chairman, if we look at the document that Mr Ronny TONG just referred to, S34, suddenly, if you look at paragraph 1.1, you said, following the collapse of Lehman Brothers, you've received a total of 8 421 complaints. And then the mis-selling ones constituted the bulk of it, on page 2. You said this is an analysis of the complaints. Fair enough. What is your analysis of why there is such, you know, a stark change? You were surprised that, prior to September 15, there were so few; after September 15, the collapse of Lehman, boom, it shot up like that!

And, actually, you were trying to tell us about your surveys, your investigations. Many of these mis-selling, on page 2, probably took place prior to September 15 last year, so would you admit to this Subcommittee that

the work of the SFC prior to that was woefully inadequate? You were not able to fish out all these problems. Is that correct?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Firstly, why the change? I mean, obviously, the substantial change over night was the unexpected event of Lehman Brothers' failure; nobody particularly expected that despite the amount of financial turmoil. I think, generally, the expectation was that there would be some sort of rescue package put together. So that is what triggered the range of complaints.

And then, secondly, the people who then found themselves exposed to a product that had lost significant value were saying that they never understood the product in the first place and they didn't understand. So, that's the trigger for the 8 000-odd complaints that we received.

95% of the product was sold via banks. So I can only really comment on the part of it that was sold via brokers where we do have the frontline oversight and, clearly, in the case of the brokers who were selling the product, we had not detected that there was mis-selling amongst those brokers prior to this. Now, we had a general concern and we raised that general concern several times but we hadn't specifically detected, in relation to Sun Hung Kai and the other couple of brokers, that there was a problem prior to this.

**Hon Emily LAU Wai-hing:**

Chairman, .....

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

.....first of all, talking about the loss of value because of the collapse of Lehman, so is Mr WHEATLEY trying to tell this Subcommittee that the mis-selling probably had taken place but, if they had not lost the money, then they would not have complained, then the mis-selling would not have been uncovered? Is that what you are saying?

**Mr Martin WHEATLEY:**

Well, I think, .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....prior to Lehman's collapse, I think we had one complaint. Had the products continued to maturity, they would have operated as people expected, paying a regular coupon of 5% or 6% or 7%, and would have been redeemed at par at maturity.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

And then those points on page 2, those things would not be true then, isn't it? "Frontline staff proactively induced complainants to turn their matured fixed deposits into investments." Because, although they induce them, they make money, so that would not be a valid complaint. Is that what you are trying to tell this Subcommittee? Or like they "failed to consider their risk profile"? Because they make money, then none of these complaints would be valid?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I don't think it says none of the complaints would be valid. I think it means that we would have seen fewer complaints because people would not have focused on the way they were sold the product in the first place if the product operated as they had expected it would operate.

**Hon Emily LAU Wai-hing:**

So, Mr.....

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

Chairman, I want to ask Mr WHEATLEY: Do you also accept that the fact that there are 8 000 complaints, does that reflect some failure in the SFC's investigations and surveys? Should your investigation have uncovered some of these failures?

**Mr Martin WHEATLEY:**

Well, the investigations.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....did uncover failures. We did. When we looked at investment advisers, we found, each time, that there were control lapses, there was inadequate documentation, there wasn't proper suitability rankings, and we took action in each case. In 2005, we studied 15 investment advisers, we published a report that said we had found unsatisfactory practice and we required them to put in place additional systems and controls, and to put in place or conduct better due diligence.

When we did our second thematic inspection on 2006, again we found problems. We looked at 10 investment advisers. Out of the 10 we looked at, we took disciplinary action against five of them.

**Hon Emily LAU Wai-hing:**

Chairman, are these.....

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

.....investment advisers the same as the frontline staff that you refer to in your table on page 2?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, these are investment advisers within SFC-regulated entities. The frontline staff in the table would be a combination of licensed persons and banks' representatives but predominantly they would be banks' representatives.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

Chairman, just then, Mr WHEATLEY said that he cannot comment on the banks but he could comment on the brokers. But now, it seems you are trying to get the banks to settle with some of the complainants. So, if you have not looked at, you know, what they are up to, how can you offer those proposals?

**Mr Martin WHEATLEY:**

Well, we have.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have looked at what they're up to because we've commenced investigations into all of the banks. So we.....

**Hon Emily LAU Wai-hing:**

But why did you say you cannot comment? What were you trying to say, just a few minutes ago about the 19 banks?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm sorry, I'm not quite sure what the question is. We only look at banks when we've commenced an investigation. We wouldn't be looking at banks as a normal course of business, so we would have no normal oversight of banks' activities.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

But, Chairman, if we look at the 8 000-odd complaints, how many of them involve – most of them involve banks, isn't it?

**Mr Martin WHEATLEY:**

That's right.

**Hon Emily LAU Wai-hing:**

And you did not look at the banks? Is that what you are telling us?

**Mr Martin WHEATLEY:**

When we.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....receive a complaint, we pass it to the appropriate regulator to investigate. So, if the complaint is about an insurance company, we pass it to the Insurance Commissioner; if it's about a bank, we pass it to the bank, because they have the frontline relationship with the organization.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

But now you are offering settlement proposals.....

**Mr Martin WHEATLEY:**

That's right.

**Hon Emily LAU Wai-hing:**

.....relating to the banks, to the complainants.

**Mr Martin WHEATLEY:**

That's right. Because we've moved beyond.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....the referral stage and we've now got investigations opened into all of the banks. In some of those, we are close to or have reached our preliminary conclusions.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

That's what I can't understand, Chairman, because these investigations, the results, should be useful but you said you've moved beyond that. So what are you going to do with the results when they do come about?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we have two options. One of them is that we'll use the results to discuss with the bank why it would be in their best interests to reach a section 201 agreement which would see them offer to repurchase the Minibonds. That is one option. If we can't achieve that, we'll use the investigation to take disciplinary action which is the second but not preferred option.

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

But, Chairman, the timing is very odd. You are now offering – you are asking the banks to make the settlements but the detailed investigations of all these 8 000 or whatever – you know, Joseph YAM's dealing with 20 000 complaints, we don't know how long that that would take. He said, in March next year, he would only complete 70%. So, you will have to wait quite a long time to wait for the ultimate result of those investigations to help you to bring about the settlement, isn't it?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the way that we are conducting our investigation, we don't require the completion of all of those investigations. We are working at the institutional level and looking at whether adequate systems and controls were in place to ensure that they could comply with the Code of Conduct. We don't need a conclusion on all thousand cases to reach a conclusion.

**Hon Emily LAU Wai-hing:**

But, Chairman, are you.....

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

Is Mr WHEATLEY saying that, if – of course, if they reach a settlement, that's fine; but, if there's no settlement, (*The buzzer sounded*) then the result of the investigation would help?

**Mr Martin WHEATLEY:**

Yes, the result of.....



**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....the investigation that the HKMA is conducting clearly helps both the individual and the MA in reaching a solution on a case-by-case basis. What our investigation is trying to do is to reach a conclusion for all of the banks' clients in one go.

**Hon Emily LAU Wai-hing:**

I know, but for those.....

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

.....you can't reach settlement, then if the HKMA would come up with the investigation result, that would help but they are taking such a long time, so I don't know how long it's going to drag on because you've put certain proposals there and some may say "Yes", some may say "No", and for those who say "No", then the result, the individual investigation, the result would help, isn't it?

**Mr Martin WHEATLEY:**

For those who.....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

.....we can't reach an agreement with, ultimately, those individual investigations will help the individuals who may have to take their own legal action against the bank.

**主席 :**

各位同事，先前排隊的十幾位同事已問過了，現在紀錄上在排隊的第一輪是.....我把名字讀出來：林健鋒議員、梁美芬議員

(因為你兩位對調了)、劉秀成議員、石禮謙議員。第二輪有葉偉明議員、李慧琼議員、詹培忠議員、涂謹申議員、余若薇議員、甘乃威議員及梁國雄議員，即是還有好幾位。我們盡量做吧，做到1時吧。首先是林健鋒議員。

**林健鋒議員：**

主席，韋先生之前說過，很多迷債的抵押品的價值其實是超過六成的。我想問一問韋先生，他基於甚麼數據而有這樣的說法呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I hope I was careful in explaining to the committee it's not a view that we have reached independently; it was based on an analysis that was done late last year by Ernst & Young where they were the figures that, I think, were given to the Government and to the banks.

**主席：**

林議員。

**林健鋒議員：**

即你沒有看過每一個產品，每一個系列的產品的價值。你是根據你看到、你聽來的數字，你是完全沒有分析過的？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, in terms of the current collateral value, we rely on the experts who've done their analysis. We don't have a separate analysis of that.

**林健鋒議員：**

那麼你說……

**主席：**

林議員。

**林健鋒議員：**

主席，韋先生說最少值六成。你有沒有分析——你說你的 analysis 裏面都不會說一個大數出來的——有多少個系列是少於六成？一成、兩成、三成？有多少個系列是超過六成，達到八成、九成？你有沒有這些數據呢？還是你就這樣拿一個喜歡講的數字"六成"出來做一個答案呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I haven't come up with the figure of 60% as an answer. When the analysis was initially done, I think slightly more than half the series had a value that was in excess of 60%, some of the series had very low value, but each of the series has a different value attached to it.

**林健鋒議員：**

主席。

**主席：**

林議員。

**林健鋒議員：**

韋先生其實是這樣說的："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."。他說得出六成，就不可以很輕易地說出來的，要有根有據。他現在就說"我看到一些資料"，他又不去做審查，就說根據某些資料就是六成了。這是否有點胡說八道呢？他查也不查，就這樣看一看那些東西，這樣是否有點不負責任？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The 60% figure was not my figure; it was a figure that was reported in the media as being the figure that was available and on offer. So I was responding to that.

**主席：**

林議員。

**林健鋒議員：**

那麼，即是報紙寫甚麼，你都可以拿出來做證供。你認為合理的，你就拿出來做證供。我覺得你坐在你這個位子，你應該是有真憑實據，自己親力親為去瞭解這些數字，而不是說報章——剛剛你說的——你說報章是這樣報道的，你就說最少值六成了。你是否有點失職？有點不負責任？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The statement – as I say, in response to the press claim that that was a reasonable settlement, the statement was related to the fact that, where the valuations had been done, more than half the series had been valued at excess of 60% and that, on average, the valuation was somewhere between 50% and 60%.

**主席：**

林議員。

**林健鋒議員：**

這個是根據何時的數字？你理解是根據何時何日的數字計算出來的？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Based on the figures that Ernst & Young concluded in their analysis in October and November last year.

**主席：**

林議員。

**林健鋒議員：**

你在這個時候說出來，主席，是不是有點在時間上脫節呢？你說去年11月、12月有這個數字估計出來，你現在再重複說，在這個時間，這些迷債最少值六成。你查也不查，就這樣有報紙登出來你就說，我不知道你有否問過你的同僚。你是否不負責任呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The figures I was referring to were figures that were already in the public domain. The actual valuation will be the result of PwC's work. They've been appointed recently as receivers on behalf of HSBC Trustees. So that will be the process where the final valuation is established. The previous figures were estimates of value.

**林健鋒議員：**

主席。

**主席：**

林議員。

**林健鋒議員：**

韋先生剛剛提到，現在HSBC已經宣布委派或委任PwC去做有關的調查及估計。而他亦這樣說過，他說："We've got no specific information on the current value"。他都不知道現在的價值是多少就講一些數字出來，又不去做調查，那你坐在這個位子上是幹甚麼的？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I'm explaining the available information.

**林健鋒議員：**

主席。

**主席：**

林議員。

**林健鋒議員：**

他說是可以得到的資料，剛才韋先生對我說是從報章上看到，是報章上報道的，那你是根據報章做事的嗎？你現在是一個監管機構，為何你不去做一些實實際際的調查就講一個數字出來？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the figures were the most authoritative evaluation that has been conducted to date. We don't have the resources to do that at the same time as carrying out our investigations. It was a statement in response to what was reported to be a very definitive figure in the press.

**主席：**

林議員。

**林健鋒議員：**

主席，我想問一問韋先生，在一個如此關鍵的時候，你胡亂說一些數字出來，或者你沒有一個真憑實據而將這些數字公布出來，是否誤導了我們立法會議員、誤導了公眾、誤導了迷債債主，甚至誤導銀行，你是否失職？因為你不可以隨隨便便就說一個數字出來而沒有真憑實據，你亦沒有自己親自去調查，你看報紙，是否看報紙就做夠你的8小時——你每日就是8個小時看報紙或上網看東西，而不是真真正正將資料查實是真還是假呢？你應不應該天天都出來講有關這些的言論而沒有作出調查呢？

多謝主席。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We are, as I've mentioned to this Subcommittee, involved in a number of investigations and we're involved in settlement discussions which are supposed to be private and confidential settlement discussions with a number of banks. Specific details of those settlement discussions have been leaked. I can only speculate on the objective of leaking but specific details have been leaked and, given that specific details and specific wording from letters between us and the lawyers representing the banks have been deliberately leaked to the press, I felt it was important to put a marker down as to what was and was not acceptable.

The press is being used as a medium to try and put additional pressure on us; we don't accept that we can have additional pressure put on us. It's a message that we won't accept the media being used as a negotiating tool.

**林健鋒議員：**

主席。

**主席：**

林議員。

**林健鋒議員：**

我們不可以因為有壓力就在此speculate，我們要的是真憑實據，我們要的是factual information。所以，我希望韋先生，如果你繼續作供，你不要在此speculate，你要將真實的資料提交或向我們立法會講出來。

多謝主席，我發問的就這麼多了。

**主席：**

OK，好。接着是梁美芬議員。

**梁美芬議員：**

多謝主席。我都想問Mr WHEATLEY，其實所謂和解，一定是很難達到百分百，當我們說要求.....應該是一方完全錯的時候，你就可以要求百分百。在我僅有看過的個案裏面，有一些個案銀行是錯的，有一些個案可能投資者自己都會負部分責任，即可能不小心。在這種情況下，其實大和解，所謂大和解，即你將它們全部合併一起是有一定的難度，但可能對有些投資者來說，它可能會是一個可以快點拿到錢的方式，我只是針對這一點去說。證監會現在的站位是百分百，當然，百分百對某一些個案來說，它是應該百分百，我們都會建議給他，銀行是認錯的。但你很普遍地這樣說是全部百分百收貨，其實這一樣東西可能在對症下藥方面，你自己有否想過，你是看了多少類的個案，所謂百分百，你是說多少類的個案？因為現在來說，即我們其實很簡單，我們想盡快幫助投資者，而證監會——其實問了這麼多次，問你們的權責——就算賠了百分百，其實證監會都很難開脫你們的責任。我現在想問你，你基於甚麼去判斷全部大和解時要用百分百呢？

**主席：**

梁議員，我們不可以要求或指定應該是百分百，現在差不多是你做了判斷，即是告訴你.....



**梁美芬議員：**

不是我判斷，是Mr WHEATLEY在報紙……

**主席：**

……我想這條問題要問得很小心，因為你這樣子問法。

**梁美芬議員：**

不，所以我就是要Mr WHEATLEY自己解釋。

**主席：**

我們不可以指明他要多少賠多少，不可以的。

**Chairman:**

Mr WHEATLEY, you respond in accordance with what's on the summons.

**Mr Martin WHEATLEY:**

Chairman, if I may respond to that because I think it's an important point and it comes back to the point I made earlier about the way the media is being used.

We are being characterized as only allowing one model to be the solution and that's how it's been presented in the media and, therefore, inflexible. But I've explained, I think at least twice, to this committee that we are prepared – we are open and prepared to look at a range of different outcomes. But it's not for us to say what the ultimate outcome will be. That has to be something that any particular bank will volunteer and when they volunteer a model for how they will deal with this, then we can evaluate that and see the extent to which it meets our three tests. And if I remind you, our tests are: how far does it go towards mitigating the loss that investors incurred; how far is it remedial in dealing with any lapses and therefore ensuring that any further lapses don't reoccur; and how far is it punitive in sending a strong message to the market about what we will and what we won't accept as adequate behaviour. But we have not said 100% is the only solution. We've offered a number of different models to banks. We're expecting them to try to respond with their own analysis of how they can deal with this issue.

**梁美芬議員：**

那麼……

**主席：**

梁議員。

**梁美芬議員：**

……我想問清楚，傳媒報道關於你們證監會要求百分百，算不算並不很確鑿是你們的看法呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think that is people trying to negotiate and put pressure on us through the media. It is not our position.

**梁美芬議員：**

OK，不是……

**主席：**

梁議員。

**梁美芬議員：**

……我就是給你機會在此說清楚，因為我們都要瞭解你的情況。我們的聆訊對各方都是要公平的，因為你說了百分百之後，我反而收到很多銀行的指控，是指控你們都有責任。所以，其實各方在這個時候都應該說清楚，其實因為我們委員會都是聽你們給我們的資訊，你們究竟到現在來說那個跟進是怎樣。

我想問多一個問題。這個真的是一個ELN的問題，因為我上次都一直追問，在你們的定義裏面何謂專業投資者。我手頭上有一個個案，他本身是1,000萬的退休金，銀行叫他再借1,000萬，變成2,000萬，那是一個公務員。現在他全部虧光了，每個月仍要還3萬元利息，他其實已面臨崩潰的邊緣。銀行就解

釋 —— 那是一間很有名的銀行，我還是給它一個機會，現在我不說這間銀行的名字，不在19間裏面。它就說，因為他有買一些藍籌股的經驗，可能過去10年都是投資藍籌股，一隻而已。這一種投資者是否適合買ELN，甚至都退了休還要建議他多借1,000萬，現在退了休真的等於沒退休，一身債務，還要每一天都哭，一個月不平倉他就怕出問題，現在反過來，每一個月還3萬元。我想問Mr WHEATLEY，這種純粹買了一些十分經典的藍籌股，是一隻，是否專業投資者呢？

**主席：**

梁議員，你這個是否指明和雷曼有關的產品？

**梁美芬議員：**

ELN，我所瞭解，我們都可以問，因為……

**主席：**

是與雷曼有關的ELN，與雷曼兄弟有關的。

**梁美芬議員：**

是，與雷曼有關的ELN。

**主席：**

是否有關？

**梁美芬議員：**

與雷曼有關的ELN。是。

**Mr Martin WHEATLEY:**

Chairman, obviously, we'd need to understand the specific facts of the case. If it was a private placement ELN, which I think it may be from the discussion we've had, there are particular threshold levels as to how and where it is sold. But one of the private placement carve-outs in the Companies Ordinance is for sale to professional investors and "professional investors", in our term, has a quite specific and narrow meaning but that's not the only client base that can buy into ELNs. So it may have been through one of the other

exemptions in the Companies Ordinance. But we'd have to understand the specific facts of the case in order to form a judgement.

**主席：**

梁議員。

**梁美芬議員：**

我可以說清楚，他就是買滙豐而已，他過往的紀錄我看過，就是在那間銀行只買過滙豐的藍籌股，應該是"5號仔"了。這樣算不算是.....

**主席：**

盡量不要說.....

**梁美芬議員：**

.....專業的投資者呢？

**主席：**

.....個別的個案了，梁議員，因為最好.....

**梁美芬議員：**

不，這個是重要，因為很多所謂被人說是專業投資者的，不是買保險就是買這類藍籌股，這點我們很想清楚，究竟那個界定是怎樣呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The definition of professional investor relies on three tests. There is a knowledge test and that the broker or the bank concerned has to establish themselves that the person has sufficient understanding of knowledge of the particular types of product. There's an experience test and that's generally taken as meaning that the person would have dealt 40 times in the previous year in similar structures. And there's a wealth test which is that the person

has to have a portfolio of a million US. And they're the three tests for professional investors.

**主席：**

梁議員。

**梁美芬議員：**

剛才那個個案還建議多借1,000萬給他啊。

**主席：**

梁議員，現在最好不要集中在一個個案上，因為我們是取證……

**梁美芬議員：**

不，這個其實是普遍性。

**主席：**

……而且因為我們現在還沒查到銀行，你要小心，即銀行方面你點了名，小心點處理，好不好？提醒你而已。

**梁美芬議員：**

剛才我說的那個個案是否屬於專業投資者的個案呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Obviously, I can't make a judgement on all of the factors but, given the three tests I've given you, if what you've told me is the person has only dealt once in HSBC before, that would not normally qualify somebody to be treated as a professional investor.

**梁美芬議員：**

好，多謝。

**主席：**

梁議員。

**梁美芬議員：**

我繼續想問就是，其實在這一類的個案，銀行還要多借1,000萬給他，即他不止原本的沒有了，他還要多借1,000萬，在這種情況下，是否隨意現在的遊戲規則下可以這樣做，搞到人人"雞毛鴨血"這樣子？

**Chairman:**

Mr WHEATLEY?

**梁美芬議員：**

這一類情況是再多借1,000萬給他，是主動叫他去借，說買這一類產品是很穩當的，而他就全份退休金押下去，多借1,000萬了。

**主席：**

我想問完這個問題就應該不要再在此問題上糾纏下去了，已糾纏了相當長時間，而且亦超越了我們的範疇很多。Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, obviously, we're very concerned about all the individual cases and any complaints that we receive we look at diligently. If it's a customer of a bank then that should appropriately be addressed to the HKMA who will do the frontline investigation of that particular.....

**梁美芬議員：**

好。

**Mr Martin WHEATLEY:**

.....individual case. But, obviously, what we are doing is the broad-based investigation and, if it's helpful, we'd be welcome to take the information to feed into our broad-based approach.

**梁美芬議員：**

好。

**主席：**

OK，梁議員。

**梁美芬議員：**

最後了，因為主席說了很多次不准問ELN，但是我都.....

**主席：**

不是不准問ELN，我沒說過不可以問ELN，你問了很多次，公開研訊很多場合都有，不過你現在問的問題已經超越了我們的範圍，而且和雷曼無關就不可以問。還有，現在還沒去到銀行那部分，你就多次點銀行的名字，一個個名字，我便提醒你要小心這樣子問問題。

**梁美芬議員：**

我還沒點銀行的名字呀。

**主席：**

以及.....

**梁美芬議員：**

那間銀行未有在我們的19間裏面。

**主席：**

.....以及不要太長糾纏在一個問題上。

**梁美芬議員：**

是。

**主席：**

我一直都是這樣說的，是嗎？

**梁美芬議員：**

是。

**主席：**

想節省你的時間罷了。(計時器響起)

**梁美芬議員：**

是。

**主席：**

你問多一個吧。

**梁美芬議員：**

好。我其實還想問Mr WHEATLEY，在現時來說，證監會，其實我們收到很多是現在我們沒有處理的ELN個案，你們會否有系統去協助他們一併解決？就一句而已。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Where we have received complaints regarding ELNs, again, we will open investigations specifically to look at the institutions and the product line, so it's the same mechanism as for Minibonds. We would take a top-down investigation of the particular institution and look at the way the products have been sold.

**梁美芬議員：**

嗯，OK。

**主席：**

各位同事，現在是1時多一點，正在排第一輪及第二輪，即今天第一輪及第二輪的有10位之多。我相信應該在此暫時結束今天的公開研訊。



韋奕禮先生，多謝你出席今天的研訊，時間已到了，小組委員會會另訂研訊時間，請韋奕禮先生出席研訊，繼續向小組委員會作供。

我想告訴各位，今天第三部分的議程已不需要，即第二部分的內部商議。現在我宣布今天的議程結束。謝謝。

**(研訊於下午1時06分結束)**