

立法會

研究雷曼兄弟相關迷你債券及 結構性金融產品所引起的事宜 小組委員會

第二十一次研訊的逐字紀錄本

日期： 2009年8月3日(星期一)

時間： 下午2時30分

地點： 立法會會議廳

出席委員

何鍾泰議員, SBS, S.B.St.J., JP (主席)

黃宜弘議員, GBS (副主席)

涂謹申議員

劉慧卿議員, JP

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證人

公開研訊

證券及期貨事務監察委員會行政總裁
韋奕禮先生, JP

Legislative Council

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

Verbatim Transcript of the Twenty-first Hearing
held on Monday, 3 August 2009, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present

Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)

Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)

Hon James TO Kun-sun

Hon Emily LAU Wai-hing, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Audrey EU Yuet-mee, SC, JP

Hon Vincent FANG Kang, SBS, JP

Hon Jeffrey LAM Kin-fung, SBS, JP

Hon LEUNG Kwok-hung

Hon WONG Ting-kwong, BBS, JP

Hon CHIM Pui-chung

Prof Hon Patrick LAU Sau-shing, SBS, JP

Hon KAM Nai-wai, MH

Hon Starry LEE Wai-king

Hon CHAN Kin-por, JP

Hon IP Wai-ming, MH

Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent

Hon CHAN Kam-lam, SBS, JP

Hon Ronny TONG Ka-wah, SC

Hon Paul CHAN Mo-po, MH, JP

Dr Hon Priscilla LEUNG Mei-fun

Dr Hon LEUNG Ka-lau

Witness

Public hearing

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

主席：

各位，"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"現在開始第二部分議程。首先歡迎各位出席今天的第二十一次公開研訊。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(權力及特權)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(權力及特權)條例》所保障。如果有需要，各位列席人士及傳媒應就他們的法律責任，徵詢法律意見。此外，我亦想提醒在公眾席上旁聽研訊的公眾人士，研訊進行時須保持肅靜。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。

請各委員留意，小組委員會的研訊程序須符合《工作方式及程序》第2段的原則，包括有關程序必須公平，而且須令人看得到是公平，尤其是對利益或名譽可能會被小組委員會的研訊程序影響的各方。此外，《工作方式及程序》第12及13段訂明，在公開研訊中，委員只應為確立與此次研訊有關的事實而提問。委員不應在公開研訊中發表意見或作出陳述，這點其實我已向各位提出很多次，已提醒各位很多次了。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。委員可以繼續就過去研訊所引起的事宜向證人提問，但委員亦可以就2009年7月22日公布的雷曼兄弟迷你債券回購協議的相關事宜向證人提問。

請各位特別留意，今次召開研訊的目的，是就回購協議有關的事實取證。而今天的研訊旨在瞭解回購協議的具體安排及理據。小組委員會的職權範圍並非協助個別人士爭取任何回購協議方案，亦不會就個別個案請當局置評。請大家特別留意這點。為保持客觀的取證態度，委員應避免就回購協議表達個人意見或立場。希望大家遵守此提示，否則，我亦不會讓大家繼續說下去。

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法規執行部助理總監陳國豪先生陪同你出席研訊。請注意，鞏女士及陳先生不可向小組委員會發言。證人不可與陪同人士討論，亦不可接收該等人士的任何提示(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下作供。

韋先生，你在2009年6月23日、6月26日、7月3日及7月7日出席的研訊中，曾就委員提出的關注先後向小組委員會秘書提交了多份文件，即小組委員會文件第S37至S43及S46號。韋先生，你現在是否正式向小組委員會出示這些文件作為證據？

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

Yes, Chairman.

主席：

謝謝。韋先生，證監會於2009年7月22日發出有關與16間迷你債券分銷銀行達成回購協議的新聞稿。文件已被編號為小組委員會文件第S48號。韋先生，你現在是否正式向小組委員會出示這份文件作為證據？

Mr Martin WHEATLEY:

Yes, Chairman.

主席：

Yes。韋先生，就今天研訊的主要事項，你是否想向小組委員會發言？

Mr Martin WHEATLEY:

Yes, thank you, Chairman.

Chairman:

Please go ahead.

Mr Martin WHEATLEY:

Thank you very much. I'd like to take a few minutes to brief Honourable Members on the agreement that the SFC, the Hong Kong Monetary Authority and 16 distributing banks have reached in relation to the repurchase of Lehman Brothers Minibonds from all eligible investors – that is, 18 separate parties to an agreement which I'm sure you will understand is a complex process.

We have all along sought to reach an agreement which can see the rapid return of a significant part of investors' capital rather than face a very complex and drawn-out set of procedures through the courts with no certainty as to the ultimate outcome.

Under the agreement we announced, the 16 banks will make an offer to repurchase the Minibonds and make payments to investors in return in two stages. This will mean that the majority investors will receive back around 70% of their investment, and potentially more, depending on the collateral.

In the first stage, investors below the age of 65 will receive an upfront payment of 60% of their original investment and, for those investors aged 75 or above, they will receive an upfront payment of 70% of their original investment. This will be in addition to any coupons that they've already received as holders of Minibonds. Any coupon payments are not part of the agreement.

Once the banks have ultimately recovered the collateral, they will pay investors an additional amount as a second stage payment, depending on the level of recovery.

The agreement allows the vast majority of Minibond investors to recover ultimately around 70% of their capital, and possibly more. If the recoveries of the collateral exceed 70%, the banks have committed to return any excess amount to investors.

Under this arrangement, investors will be able to receive full payment if the collateral is worth 100% of their original investment.

For a number of the early Minibond series, investors will likely get substantially more than they would get if they continued to hold the Minibonds until they recovered the collateral.

Apart from the repurchase offer, the agreement also addresses the regulatory concerns which we had during our investigations.

As part of the agreement, the banks will contribute their commission income, which amounts to some HK\$200 million, to a fighting fund to expedite the recovery of the underlying collateral.

The banks will also need to immediately implement special enhanced complaints handling procedures to resolve all complaints in relation to the sale and distribution of other structured products.

The banks have also committed to engage independent third parties to review their systems and processes, as well as their enhanced complaints handling procedures and to implement all the recommendations at the end of those reviews.

I am well aware of the feedback from investors about the repurchase offer and the concerns of those who have bought structured products other than Minibonds.

Let me stress that the SFC has no power to force any parties to compensate investors under the current regulatory framework. Any settlement has to be voluntary. What we do is to look at an offer and take a view as to whether the offer is in the broad interest of investors and of the public and whether it mitigates the regulatory concerns that arise as part of our investigation.

Given that the majority of the investors will ultimately recover around 70% of their original investment, and possibly more, we believe that this agreement is a reasonable outcome, one which is in the public's interest and has addressed our regulatory concerns.

Minibond holders are not obliged to accept this repurchase offer. They may choose to pursue their case through legal means if they so wish.

For investors who have bought other structured products, like ELNs, the 16 banks are required, under the agreement, to resolve all complaints about unlisted structured products through the special enhanced complaints handling procedures in a fair and reasonable manner.

Investors who are not satisfied with the way their complaints are handled can still take their case to the regulators which can open an investigation and take enforcement action if necessary.

In no way are we giving up our rights or abilities to investigate unresolved issues involving products other than Minibonds where there are concerns.

I hope I have addressed some of the issues which investors and Honourable Members may have about the agreement and I'm happy to answer any questions. Thank you.

主席：

謝謝韋先生。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。無論證人或委員，應在主席示意後才可發言。希望委員不要與證人互相直接對話，此舉不符合我們的安排，請大家特別留意。

7月7日的研訊結束時，尚有11位委員輪候提問。現在我先讀出大家的名字：劉秀成議員、石禮謙議員、陳茂波議員、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、梁國雄議員及湯家驊議員。剛剛已舉手的第一輪，我不如也讀出來吧，本來一會兒再讀也可以，因為可能還有其他人舉手。有兩位在排隊，即今天的第一輪，葉劉淑儀議員及劉慧卿議員，暫時兩位。

韋先生，我先提出第一條問題。大家很關注證監會此次宣布將會停止調查銀行銷售迷你債券的事宜。請問韋奕禮先生，為何證監會在未完成對所有分銷銀行的調查前，便與有關銀行達成回購協議，究竟根據甚麼理據，你覺得這是可以接受的回購

協議？亦是基於甚麼因素，你考慮過甚麼因素，你覺得這是值得推薦給大家呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

Okay, thank you, Chairman. As I've explained previously to this committee, our primary purpose and objectives in completing our investigations has been to achieve an outcome which is reasonable and returns significant capital to investors in Minibond products. We have been negotiating with the banks to try to reach an agreement, a section 201 agreement, that provides for a reasonable return in settlement of any regulatory actions and it's typical that, in any settlement that we reach, providing that we are concerned – providing we're comfortable with the terms of repurchase or compensation to investors and other measures that we put in place, that that should act as a settlement of our investigations. We thought that would be the best outcome given all the circumstances.

主席：

韋先生，證監會是對個別分銷銀行停止進行由上而下的調查，抑或是對所有16間分銷銀行都停止進行由上而下的調查呢？

Mr Martin WHEATLEY:

We have ceased our top-down investigations in regard of Minibond products as we believe this settlement achieves our regulatory objectives. We have ceased our investigations into other structured products for the time being, by these particular banks, on the understanding that they will use the expedited complaint-handling measures that we put in place to resolve the outstanding complaints for other structured products.

主席：

是否就是說，如果他們處理了所有有關的個案後，證監會就不會再繼續或恢復調查，是否這樣的意思，韋先生？

Mr Martin WHEATLEY:

If all complaints are satisfactorily completed, we will not resume our top-down investigation into other structured products.

主席：

韋奕禮先生，這次分銷銀行是在不承認任何責任之下接受此回購方案，而新聞稿亦提到，金管局亦不會對銀行採取任何執法行動。如果是這樣的話，即是說以往大家都覺得可能有分銷銀行在平日的分銷工作上有違規行為也說不定，在這個調查上是否已經不會再調查，或者覺得以往那些都不需要再調查，是否已經不再是證監會及金管局的工作？

Mr Martin WHEATLEY:

Chairman, as I explained in my previous appearances, we have a number of objectives in any investigation. Those objectives are broadly to alleviate any losses that have occurred through potential misconduct, to send a strong disciplinary message to the market and to mitigate any future problems. And that, typically, is our objectives.

We believe that we have achieved those regulatory objectives through the outcome to this settlement and that settlement outcome is four-pronged. The first prong is the payment of a settlement amount which will see between 90% and 95% of investors substantially compensated. The second prong is the loss of commission by the banks who have agreed to use any commission earned to set up a fighting fund to pursue recovery of the collateral. The third prong is an internal controls review where each of the banks will set up, to the satisfaction of the HKMA and the SFC, a review of their internal controls, processes and handling and will agree to implement the recommendations of that review. And the fourth prong is a complaint-handling review where each of the banks will put in place expedited complaint handling which will deal with the outstanding issues.

Now, we feel that those four commitments are sufficient to settle our regulatory concerns.

主席：

韋奕禮先生，你給我的感覺是希望盡快處理有關的個案，得到你認為他們應得的賠償後，而分銷銀行，因為你已經提出獨立機構及具資格的第三方等等，它們將來就會自動回到一個正確軌道。但對於過去它們如果有違規行為，這就不會再追究，這不當作是以往證監會或任何監管機構所應負的責任或應做的工作。是否這樣看？

Mr Martin WHEATLEY:

Well, as I've explained, our objective isn't always to punish irregularities: it's to achieve a broad-based regulatory outcome. And we believe that, in this case, the regulatory outcome that we have achieved would be better than pursuing through the courts potential punishments which may never have resulted in any compensation payments being made. And that's why we've taken the conclusion that this section 201 settlement is the best, taking account of all the circumstances.

主席 :

韋先生，如果某間分銷銀行仍有一個個案未肯接受此回購協議的話，是否監管機構都有責任繼續去調查該銀行？

Mr Martin WHEATLEY:

Well, the banks who are named as part of our press agreement have signed up to expressly accept this repurchase agreement, so all the 16 banks that distributed Minibonds are part of this agreement.

主席 :

韋先生，如果某間分銷銀行有很多不合資格的客戶，證監會是否會繼續對該銀行進行由上而下的調查？

Mr Martin WHEATLEY:

I'm sorry, I missed part of the question. Would you

主席 :

如果某間分銷銀行有很多不合資格的客戶，證監會是否會繼續對該銀行進行由上而下的調查？

Mr Martin WHEATLEY:

No. As I've said, we have taken the decision to cease our top-down investigations into banks. If there are a number of unresolved complaints that are not resolved to the satisfaction of ourselves and the HKMA, we will look at each of those individual cases but this agreement resolves and completes any top-down investigation.

主席：

我也想再問一問韋先生銀行回購迷你債券計劃的適用範圍。為何回購計劃只適用於迷你債券，剛才你提到可能會繼續看其他產品，例如Constellation票據、精明債券及股票掛鈎票據等等，是否包括這些在內？剛才你在發言時有提到，但沒有說清楚是哪一類，抑或所有你都會看，是嗎？韋先生。

Mr Martin WHEATLEY:

The reason the agreement covers Minibonds is, one, because we started that process first and, therefore, secondly, we'd reached a stage in our investigation where we were really able to draw some preliminary conclusions and present those to the banks. We hadn't reached the same stage with other structured products because we hadn't started so early.

The situation with structured products is that structured products sold by these 16 distributing banks, we would put on hold our investigation to allow the banks to adequately resolve the complaints. If complainants are not satisfied, they should again complain to the regulators and we would look again into the individual circumstances. Where structured products are sold by banks who are not part of this agreement, our investigation and discussions continue and are very much alive with those other distributing banks.

主席：

韋奕禮先生，剛才我提的那個問題及現在我問到這個關於有
哪些其他產品你會調查的問題，可否在會後書面給我們正式回
應？

Mr Martin WHEATLEY:

Yes, Chairman.

主席：

現行法例沒有"經驗投資者"的提述，為何會提出這樣的界
定，而不將這些投資者納入回購計劃？

Mr Martin WHEATLEY:

Well, one of the major concerns and one of the major areas of complaint to us was that these products were complex products and were not understood by simple investors or investors who did not have significant experience, and

that was one of the major concerns as part of our investigation. But the banks and us have discussed whether that applies to all investors and we have taken a view that certain investors should be excluded from the offer. Those are professional investors, (*The buzzer sounded*) as so defined according to the SFO, and experienced investors who have bought complex structured products and we have chosen a demarcation level of five times over the last three years. It would be very difficult to argue that somebody who has bought complex structured products five times could make the same argument that they're unsophisticated investors without any ability to understand the product and that's why we've chosen to allow that group to be carved out from the agreement as well.

主席：

各位，副主席想把時間留給我繼續問其他餘下的一點問題。

韋奕禮先生，有關界定"經驗投資者"的準則是怎樣釐定的？有關準則是否以每一位投資者在一間銀行的相關投資活動為計算基礎？

Mr Martin WHEATLEY:

We've chosen – and we've placed this on our website through our question and answers, or FAQ, on this. We've adopted a particular definition which is investors who have bought complex products three times or more during the previous – sorry, five times or more during the previous three years, and then we've defined what is meant by those particular types of structured products. So, in practice, that would mean somebody who has bought a complex product through the same bank five times in the previous five years.

主席：

如果投資者不同意被界定為"經驗投資者"，韋先生，有否申訴渠道？

Mr Martin WHEATLEY:

Well, under all of this, there is no compulsion on investors to accept the offer or to accept the definition that the bank has placed on it and investors may submit a subsequent claim or complaint and that would be fully investigated.

主席：

根據回購計劃，合資格客戶接納回購後的30日內，便會從分銷銀行收到投資本金六成或七成的款項。請問韋先生，證監會是否知道銀行在甚麼時候可以將迷你債券系列的抵押品變為現金，並向客戶發出餘下的款項？

Mr Martin WHEATLEY:

The offer doesn't require the recovery of the collateral to be made. We've made that quite separate, so the offer will be made within a very short period of time regardless of the condition of the collateral and the banks have committed that, by 10 August, they will make those offers to the customers. The customers then have a 60-day period in which to accept or otherwise the offer and the banks have committed that, once they receive an acceptance, they will make a payment within 30 days but the collateral is only relevant insofar as the second stage payment which would be, in most cases, another 10%, in some cases less, in some cases more.

主席：

最後的是，有否要求銀行向合資格客戶及監管機構定期報告抵押品變現的進展，韋先生？

Mr Martin WHEATLEY:

Obviously, between ourselves and the HKMA, we will monitor very closely how this repurchase offer proceeds and we will, obviously, be very concerned as to whether it's properly implemented by the banks according to the terms of the agreement. We will, obviously, stay in close contact with them with regard to the collateral recovery but the primary distribution does not rely on the collateral recovery which may take some further time. And we've got no real idea of how much longer that may take.

主席：

韋先生，還有一點就是，現在的時限是60天內可以做決定，假如60天的時間內有某些情況是那些客戶做不到的話，有否其他時間或會否多加一個月給他？在甚麼情況下可以容許他有多一個月時間考慮，韋先生？

Mr Martin WHEATLEY:

I think, if the customers can make an argument that they require an extra 30 days to consider, I don't see that there will be any problem with that and I think the banks have already committed to that.

主席：

OK。接着是劉秀成議員。

劉秀成議員：

多謝主席。主席，我也是想跟進你剛才問的關於沒有資格納入回購計劃，即門檻的問題。韋先生可否再說清楚哪些人不合資格呢？因為你剛才說過會有90%至95%的人有資格參與這個計劃，那麼其他5%至10%是哪些人呢，可否說清楚一點？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes. The remaining 5% to 10% will be those who are specifically defined as professional investors, so that has a very specific meaning under the SFO: it's either organizations or institutional investors or it is private investors who have met our professional investor threshold and that threshold is investors who have sufficient knowledge of complex products, who have significant experience of trading – and, under the Code of Conduct and the SFO, we describe that as around 40 times in the previous year – and who also have a portfolio of HK\$8 million or higher. So that's the type of investor who's already defined.

Non-individual investors are not covered – so, again, institutional or professional; and, also, experienced investors, which is a customer who has, in the three years preceding first purchase of Minibonds, executed five transactions in leveraged products or structured products or a combination of these products. And we've taken the view that such customers ought to have sufficient knowledge and experience of investing that it would be difficult to argue that they didn't understand the risks that were involved.

主席：

劉議員。

劉秀成議員：

主席，關於"專業投資者"，你和我都是專業人士，我們是很理解清楚甚麼叫專業。"專業"是要唸書唸到大學程度，我們要實習，我們要考過專業考試才為之專業。那我便很奇怪，剛才你說的那些東西跟他們有甚麼關係？因為很多人都有很大的意見，關於專業投資者這點。究竟哪些人才是專業投資者呢？我覺得，尤其我作為建築師，我的業主便不是專業，他才要聘請我做專業，我就是專業人士，去幫他投資。但這些投資人士，差不多好像我的那些業主一般，當然有一個人，有一個銀行經理或銀行職員幫他們投資，這些就是專業人士，對嗎？為何他們會因為你剛才所說的東西而變成專業投資者呢？我想在社會上，這是有很大差異的。

可否再說清楚一點，為何你會有一個這樣的法規或是如何提出來的？我也看過一些證監會的資料，但我也很奇怪為何會有一個"專業投資者"這樣的名詞冒出來。謝謝主席。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the professional investor definition is one that is enshrined in the legislation – so it's within the SFO and it's within the Code of Conduct – and it has some fairly specific tests that a broker or a bank has to meet before somebody is classified as a professional investor.

To be classified as a professional investor, the bank has to first provide a written explanation, explaining the risks and the consequences of being treated as a professional investor, in particular, the information that they would not provide. This written information should also inform them that they have the right to withdraw from being treated as a professional investor. They need to obtain a written and signed declaration from the person that the consequences of being treated as a professional investor are understood to them. And they need to have in place procedures to enable them to carry out a confirmation exercise annually. So there's a series of procedural steps.

Prof Hon Patrick LAU Sau-shing:

I see, okay.

Mr Martin WHEATLEY:

And, again, the definition would rely on the broker or the bank assessing the types of products that the person has traded in, the frequency and size of trades, the person's dealing experience and, then, also, their portfolio size. So it's quite specific

Prof Hon Patrick LAU Sau-shing:

Okay.

Mr Martin WHEATLEY:

..... within the SFO and within our Code of Conduct.

主席：

劉議員。

劉秀成議員：

所以，主席，我想問清楚，是否投資者一定會知道他自己是否專業投資者呢？即是否已和銀行同意了或簽了一些文件或怎樣，因為現在很多人被包括為專業投資者。其實是否銀行與投資者有一個協議，這樣才叫專業投資者？我想問清楚這點。如果那個人都不知道，忽然銀行告訴他"你是專業投資者"，這樣是否說不通呢？謝謝。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

With regard specifically to a professional investor, no, that can't happen because the bank is required to explain that they're being treated as a professional investor and to obtain a written and signed declaration from the client

Prof Hon Patrick LAU Sau-shing:

Okay.

Mr Martin WHEATLEY:

..... that they are treated as a professional investor.

劉秀成議員：

所以這個簽字的.....

主席：

劉議員。

劉秀成議員：

.....文件我覺得很重要，因為很多市民都不理解這點。問過這點我比較清楚了。我想繼續，因為梁美芬議員不在香港，她叫我也問一些問題。關於與迷債無關，關於那些協助與雷曼無關的投.....

主席：

余議員。

劉秀成議員：

吓？

主席：

是。

余若薇議員：

我想問一下，那些沒來的人是否可以要求其他人代他問問題呢？因為這樣子，我們每個人是否一樣可以的？

主席：

我相信不一定要這樣看的，因為劉議員可以不出聲，他拿了題目他自己.....

余若薇議員：

不，當然，他如果用那10分鐘，那當然沒問題，但譬如剛才你說你用副主席的10分鐘，而他在這裏同意，我覺得這個都可以接受。

主席：

因為他在這裏嘛。對，他在這裏。

余若薇議員：

但譬如梁美芬她不在這裏……

主席：

就不可以了。

余若薇議員：

……如果超過那10分鐘就應該不行了，對嗎？

主席：

不可以，不行。對，不可以。

余若薇議員：

哦，問清楚了，謝謝。

主席：

但有同事在場，譬如那次你和湯家驊議員在這裏，你們兩個交換就沒問題。

余若薇議員：

我們兩個交換，這當然是不要緊的。

主席：

沒問題，沒問題的。因為副主席說他不問讓我問，事實上我是用了他……

余若薇議員：

是，我明白。

主席：

.....部分時間，這是沒問題的。但是用.....

余若薇議員：

我是想問清楚嘛，因為不然的話，譬如湯家驊不在此，那我可否用20分鐘呢？我要問清楚。

主席：

不行的，不行的。劉議員，請繼續。

劉秀成議員：

不，主席.....

主席：

是，請繼續。

劉秀成議員：

我不是想多問10分鐘，不過梁美芬寫了一張紙給我，我說出來而已。我不會.....

主席：

其實你可以不用說的。

劉秀成議員：

是嗎？

主席：

你不說就沒事了。

劉秀成議員：

無所謂，不要緊，不要緊。

主席：

多給你1分鐘，不要緊，補回1分鐘給你。

劉秀成議員：

是，給回1分鐘給我吧。OK，謝謝。

主席：

沒問題。

劉秀成議員：

我想問股票掛鈎，即ELN這些苦主。你剛才說過，你現在或許會有比較多時間進行調查。是否會好像雷曼迷債一樣，你會和銀行、苦主進行和解，回購這些有關ELN的產品呢？方向是否也是這樣？謝謝。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, as I've explained in regarding to these sorts of investigations, a settlement is always our preferred outcome.

Prof Hon Patrick LAU Sau-shing:

Yes.

Mr Martin WHEATLEY:

It's impossible to say whether the terms of that settlement will follow this particular settlement or be different because each case will depend on the particular findings of our investigation. And, so, we will seek to pursue a settlement. We can't particularly comment on how far it will follow this sort of settlement or be different to it.

Prof Hon Patrick LAU Sau-shing:

I see.

主席：

劉議員。

劉秀成議員：

即是現在還不行。還有一樣，剛才主席也有問過。其實現在來說，六成或65歲者七成這個準則是如何定出來的？為何不是多一些呢？我不是很清楚。因為我知道你的理解，你在六成、七成之後，還有所謂collateral，之後可以再取回。但為何現在是六成或七成，這是怎樣計算出來的？謝謝，主席。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the nature of a settlement is that it has to be a voluntary payment by the banks.

Prof Hon Patrick LAU Sau-shing:

Right.

Mr Martin WHEATLEY:

We cannot predict – well, we cannot force a particular level or decree a particular level of settlement. We have to look at what the banks are prepared to offer and form a judgment as to whether we believe that's enough for us to resolve our regulatory concerns. So, that level is the level that the banks are prepared to offer and we've had to make a judgment that that, along with the other reviews and the giving-up of commission income, that the combination of those four things is enough to settle our concerns but it's not for us to dictate what the level will be.

主席：

劉議員。

劉秀成議員：

這麼說，主席，是否即是這個六成、七成是銀行提議的呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, that's correct.

主席：

劉議員。

劉秀成議員：

我想問一問，現在很多人在街上，剛才那些苦主在外面喊口號，他們不同意六成、七成，但剛才韋先生說將來會取得多一些，視乎那些掛鈎是怎麼等等。這個程序大概需時多久，他們才可以知道究竟能夠從這個迷債取回多少呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the agreement was that the banks would write to their customers between 3 and 10 August, so by 10 August is when customers will know. For those aged over 65, they know that they will receive an offer of 70%.

Prof Hon Patrick LAU Sau-shing:

Right.

Mr Martin WHEATLEY:

For those aged below 65, they know they will receive an offer of 60% plus a potential top-up at a future date.

Prof Hon Patrick LAU Sau-shing:

Right.

Mr Martin WHEATLEY:

The unknown, at this moment, is the future date at which that 10% top-up will be made

Prof Hon Patrick LAU Sau-shing:

Right, yes.

Mr Martin WHEATLEY:

..... because it's that component, and only that component, that relies on the recovery of the collateral.

主席：

劉議員。

劉秀成議員：

這樣大概需要多少時間？即這個程序是不同的，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The timetable that the banks have committed to, as I've said, is that they will send the letters out by 10 August, and from the moment the letters have gone out, (*The buzzer sounded*) the investors will have up to 60 days to accept, or otherwise, the offer.

Prof Hon Patrick LAU Sau-shing:

Right.

Mr Martin WHEATLEY:

And the banks have committed that, from the point they receive an acceptance letter, they will make a payment within 30 days.

Prof Hon Patrick LAU Sau-shing:

Okay.

Mr Martin WHEATLEY:

So the timetable is fairly clearly set out and, obviously, if there's more information needed, then we'll seek to provide that through our website on our FAQs.

主席 :

劉議員。

劉秀成議員 :

OK，其他那些我也想問，其他那些大概會是多久，大概需要多少時間呢？

Chairman:

Mr WHEATLEY?

劉秀成議員 :

即銀行幫他們.....

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That's the element that we can't easily predict because that does require the recovery of the collateral.

劉秀成議員 :

是的，這個.....

Mr Martin WHEATLEY:

What we do think is that that will now be much quicker because we've created this \$200 million fund

劉秀成議員 :

我明白。

Mr Martin WHEATLEY:

..... which will fund whatever legal or other costs are required. So we've got no precise timetable but we hope it will be much quicker through this process than it would have been.

劉秀成議員：

OK，謝謝。

主席：

OK，好。接着是葉偉明議員。

葉偉明議員：

你好。多謝主席。我想問韋先生，我比較俗，你憑甚麼會覺得——你說了很多——覺得苦主是會接納這個方案呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That's a choice that each individual will have to make. We've laid out, as clearly as we can do, what the value of the offer will be. Each individual has a time to make that decision or not but it's an offer and that alone. People are not compelled to accept it and, if they choose not to accept it, they can pursue their full legal rights as they would have been able to without this offer being made. So, that really is a basis for each individual to decide.

主席：

葉議員。

葉偉明議員：

但是，如果你覺得這是個別的選擇，如果真是有太多人不選擇這個方案，其實是否政府或有關部門在這方面捉摸不到或是仍然沒有瞭解到所有苦主的要求呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, clearly, we hope and believe that this is a reasonable outcome and we've worked very hard to get something that we think is a reasonable outcome. If a very large number of individuals choose not to, which is entirely their right, they will continue to pursue the banks that sold them the product through whatever legal means are available to them. And, so, I think that's an option that remains on the table. I'm sure some people will choose to take that option and we hope that the majority of people will choose to accept the offer.

主席：

葉議員。

葉偉明議員：

一定有投資者會接納的。問題是我們看看證券行方面，只有兩間證券行，取得的是百分之百的回購。但為何對銀行方面有這樣的差異，或證監會又願意推出一個這樣的方案讓苦主去選擇呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As I say, the choice to the victims isn't made by us; it has to be made by the selling institution, by the bank or the broker. The situation regarding the banks and the brokers are obviously different: they're different in terms of the findings that we have received; they're different in terms of the number of people involved; they're different in terms of the sums of money involved. So, in terms of the brokers, we were dealing with less than \$100 million and a couple of hundred people; in terms of the banks, we're dealing with over \$6 billion and nearly 30 000 individuals. So, I think the scale of the issue is different, I think that the basis, the findings, were different in each case.

But the offer ultimately is not made by the SFC; it's made by the organizations concerned. And bear in mind, in the case of the banks, they've also given up any commission income and agreed to particular reviews. So there are a number of differences in the outcome between the two, not just the payment that's made.

主席：

葉議員。

葉偉明議員：

但是，主席，我剛才聽完之後，是否因為其實.....現在的方案，我會覺得似乎就是政府與有關機構.....因為你剛才說牽涉1億元的是很少的，如果我沒聽錯的話，銀行方面會比較大些。其實，即你說用這個來看的情況下，容許我說俗點，你是否擺明欺負這些.....

主席：

葉議員，你不可以評論，我剛才說過不可以。你要再問過。

葉偉明議員：

OK。在這方面的情況來說，其實你是否沒有照顧到這一羣可能少數但追討的金額又可能未必很多的人的利益呢？

主席：

其實都是評論，你可否再改一改？用另一個方法問。

葉偉明議員：

我覺得這不是評論啊，我在問啊，他沒有照顧到.....

主席：

你說不照顧嘛，不照顧就是評論，你說沒有照顧到嘛。

葉偉明議員：

沒有考慮吧，好不好？我不用"照顧"，我用"考慮"好了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure that I fully understand the question but let me try to answer it. We have accepted that this offer is a reasonable offer from banks for the majority of investors. It will see some 90% to 95% of investors receive capital repayment of 70%, and potentially more. There is a minority of investors who are not catered for under this agreement. That minority of investors are professional investors or otherwise experienced investors who we believe should have known enough about the risks of such products to have understood those risks in entering into the purchase, but 90% to 95% of investors are catered for with this agreement.

主席：

葉議員。

葉偉明議員：

但問題是，我想剛才我們很多同事，包括主席在內，或者剛才劉議員都問過，因為所謂"經驗投資者"、"專業投資者"的定義，很多時候是你們自己去定義的，實際上在這個過程中，他是沒有任何參與的。在這方面來說，對他們是否公平呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, sorry, to be clear to the question, there are two types of individuals who are not covered by the agreement, or broadly two types of individuals, one of which is the specific professional investors under the SFO, and they have taken part, in the definition of them, so these are professional investors who are defined as those with experience, knowledge and a large – a portfolio of HK\$8 million or above, so that set have taken part in that categorization. The other part, which are what we are calling experienced investors, have not taken part in that classification of them but we have accepted, with the banks, that investors who have bought complex structured products many times before would find it hard to argue that they didn't understand the risks involved in buying such a product. So that's how we've achieved the identification of that small subset of investors who won't be part of the repurchase offer.

主席：

葉議員。

葉偉明議員：

但是我想，韋先生，你知不知道可能有個別老人家根本真的不知道自己買了甚麼，他其實只是到期你叫我贖我就贖，你叫我續期我就繼續續期。你有沒有考慮這一點？因為那些老人家實際上真的不知道，他不過是相信銀行，我這二、三十年都是光顧這家銀行，你叫我續期我就續期吧。這些其實你是否又當他們是經驗投資者？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, no, not simply by virtue of being a customer of a bank for 30 years but, if they have been multiple purchasers of complex financial products, then it's more difficult for them to argue that they could not have understood the complex nature of a structured product when buying Minibonds. And so that's what we're looking at, people who have many times before bought complex structured financial products. Now, there's still a process that they can go through to lodge a complaint with the bank if they think they've been misclassified and we expect some people will want to do that.

主席：

葉議員。

葉偉明議員：

向銀行投訴，這其實就是.....為何證監會不處理呢？實際上你還是將分類的權、最後決定權給回銀行而已。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, the classification has been established as part of this agreement. The decision as to whether that classification is correctly applied in each case will, in the first case, be made by the bank. If people remain uncomfortable with that classification, then people have the ability to complain to the bank's frontline regulator, which is the HKMA, and, ultimately, if there are significant problems unresolved, then cases will be referred to us for further investigation. But we expect that, with the additional complaint-handling processes, there will be many fewer cases that need to go through that process.

主席：

葉議員。

葉偉明議員：

韋先生，我的意思是說，如果聽完你所講，其實始終都是銀行去操作。經過過去幾個月的聆訊，我們聽到、看到政府在監察這些所謂迷債的事宜上的一些做法，而且我覺得你們都好像有推介或建議這些苦主去考慮這方案，你會覺得其實還有多少人會相信政府這個推介或推薦呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In terms of the comment you made about handing process to the banks, it's the banks that have the information: they know what the customer records are, they know what their experience is with customers. (*The buzzer sounded*) But what we're asking them to do now is to create much clearer procedures for handling and investigating complaints, to have somebody at a properly senior level overseeing that complaint process, to have an independent third party which reviews the way they handle complaints and to require that they implement the recommendations of that third party. And all parts of that process will be overseen by the HKMA and the SFC.

So the proper place to assess the complaint is at the point where people have all the information available but it will be very closely scrutinized by the Hong Kong Monetary Authority and by the SFC. So I think the process will be different going forward from the way the process has been handled in the past.

主席：

李慧琼議員。

李慧琼議員：

主席。韋先生，現在投資者只有60日左右的時間選擇接受還是不接受。我想，在大家選擇接不接受之前，最重要是清晰瞭解接受與不接受會面對或未來會得到的事情是甚麼。我想就着你們說會停止向16間銀行進行調查作出提問。我先舉個例子，因為涉及16間銀行，若然有個別銀行所涉及的投資者有過半數選擇不接受，你們這個"不繼續調查"會否有改變？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If more than half of the customers choose not to accept the offer, those customers, presumably, will be making further complaints that the offer is unsatisfactory and those complaints will be handed to the Hong Kong Monetary Authority who will look at the complaints individually. We have said we have stopped our top-down investigation and that remains the position. That's part of the settlement. So we will not reopen the top-down investigation into Minibonds. Each complaint will be dealt with individually.

主席：

李議員。

李慧琼議員：

是，主席。那就是說，無論在任何情況下，無論多少投資者接受與不接受，其實當這個方案推出，你們就會停止向這16間銀行進行由上而下的調查，沒有轉彎的餘地。是嗎？我想確定。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That is the effect of the agreement that we have reached, yes.

主席：

李議員。

李慧琼議員：

那我又要瞭解一下，若然投資者選擇不接受，你剛才提到你們會就個別個案再進行調查，但大家都理解，很多個別個案未必有辦法提供足夠證據或甚至找不到前線銷售的那些同事，而你們又停止了由上而下的調查，在這方面，你們怎樣協助假若最後選擇不接受的投資者去處理他們的追討呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Those investors should make a further complaint. In fact, the complaints – if they choose not to accept the offer, the complaints that they've lodged with the Monetary Authority will continue to be investigated. So those complaints are in the system already and will continue to be investigated and the Monetary Authority will attempt to reach a conclusion. It may require that it goes to outside arbitration or it may be that the individuals pursue their claim through the court but we will not restart our investigation because that's a part of the agreement that we've now reached.

主席：

李議員。

李慧琼議員：

主席。那就是說，若然這羣投資者選擇不接受的時候，之前提過甚麼仲裁，又或你們會不會就個別個案，例如假設真的立案，真的有違規銷售，會不會就個別個案再和銀行商討賠償，還是他是否沒得選擇，最後一定要由個別投資者提上法庭處理呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the individual investor has a number of options available. One is to accept the arbitration process that's already in place; one of them is to pursue through the court. There are different routes that are available. But the fundamental belief we have is that we think that the offer of what would be around 70% for most individuals is a reasonable offer.

主席：

李議員。

李慧琼議員：

韋先生，我想清楚瞭解，若然有部分投資者不接受的時候，假如這些case去到你們手中，最後立案，證明有違規銷售，你們會不會再個別替他要求銀行達成一些和解協議？因為大家都理解，他們未必願意再上法庭，但他們可能又覺得應該取得多於現在你offer的這個amount。你們會不會這樣做？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The complaints should not come to us as they will be handled, in the first instance, by the bank. If the complainant is unhappy with the way the bank has handled the complaint, they will be handled by the HKMA and may go to arbitration. We don't expect those complaints on Minibond products to come back to the SFC. If they do come back to the SFC, we'll simply be looking at them as individual cases. We will not reopen our top-down investigation.

主席：

李議員。

李慧琼議員：

是，我理解。其實剛才我不是太理解你的答案，我再想問一次，就是剛才你說若然個別投資者選擇不接受，他們在金管局的投訴是會繼續的，若然證實有違規銷售便會轉介給你們。轉介給你們後，你們其實有一個選擇，就是好像這樣按個別情況與銀行為他們達成和解協議。會不會有這樣的可能性？但剛才我掌握你的意思是說不會這樣做，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm sorry, I'm not sure I fully understand the question. As the structure under this agreement is set, we have ceased our top-down investigations into Minibonds and we will not reopen them. The offer, which we believe is a reasonable one, taking all the circumstances into account, is for individuals to accept an offer from the bank, which will be made shortly, which will lead to a payment of, in most cases, 70%, in some cases more. If the individual chooses not to accept that offer, they have a complaint, in most cases, already lodged with the MA, who will continue to investigate and try to resolve that complaint.

If that complaint cannot be resolved, they have arbitration or the courts as potential routes. We would not expect those complaints to be routed onwards to the SFC unless there was some criminal or other mischief component of it. But, in terms of pure Code of Conduct issues, we have stopped our top-down investigation and it will remain that way.

主席：

李議員。

李慧琼議員：

好，主席。我另一個想問抵押品。其實，在投資者決定接不接受你這個建議之前，其中一個考慮就是想知道抵押品的價值。在這方面，你在這60天裏面，其實有沒有可能有多一些資料提供給投資者呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I would be surprised if more information is available within 60 days; it's possible but I don't think it will be. But the agreement attempts to deal with that by making it obligatory for the banks, if they recover more than the amount that they have paid out, to pay out that additional amount at a subsequent date. So, the fact that the collateral may be worth more than 60% or 70%, in some cases, shouldn't be a concern to individuals because the banks have all committed to paying that additional amount to the individuals when the recovery is made.

主席：

李議員。

李慧琼議員：

我亦想跟進"專業投資者"的定義。其實剛才主席都問過，我想韋先生清楚回答多一次，若然投資者不同意被界定為經驗投資者，其實他有甚麼渠道去申訴？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If it's a complaint as to how they are classified as an experienced investor, that's a complaint that should be lodged initially with the bank and then, if they're not satisfied, again, that can be handled by the HKMA. If it's a definition as to whether they are a professional investor or not, that's a question that should be easily answered because they should have signed the document saying "I agree that I'm classified as a professional investor and I agree that I'm subject to treatment in these ways as a professional investor." So, I think there should be relatively little dispute about whether people are professional investors or not.

主席：

李議員。

李慧琼議員：

主席。剛才韋先生回答時說你相信爭拗不是太大，但其實大家都理解，在你的調查過程中有一些可能的系統性違規銷售，我們老是聽到投資者說他們簽文件時是很快的，有的甚至不太理解自己簽了哪類型的文件。若然當中包括他簽名承認自己作為經驗投資者，那麼，在你這個offer裏面他不就沒得選擇嗎？你怎樣處理呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, if they have signed a document that they are a professional investor, they have assured the bank that they have significant dealing experience, they have assured the bank that they have knowledge of investment products and they have assured the bank that they have a portfolio of more than HK\$8 million; and I think, if they've made that set of assurances to a bank, it's very difficult to argue that they couldn't understand complex products.

主席：

李議員。

李慧琼議員：

但若然真的有很多人.....現在大家都在看，若然有很多人不同意被界定成為經驗投資者，你剛才的提議是叫他回去找銀行幫他處理。但若然還是處理不了，大家有很不同的意見時，這方面你們會怎樣處理？因為其實這羣人是沒得選擇的了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, there will be some – the ultimate choice they have is to pursue a claim through the court. That's ultimately the choice that they have available to them. The banks will put in place an expedited complaint-handling process which is subject to greater senior management oversight. That

process is also subject to an external review and also subject to review by the SFC and the HKMA. (*The buzzer sounded*) So there are a number of layers looking at the way that banks handle complaints but, ultimately, if a customer still remains unsatisfied, they can go to the court and that's an option that remains today for them and will remain for them in the future if they don't accept the buyback offer.

主席：

詹培忠議員。

詹培忠議員：

主席。Mr WHEATLEY，在這次事件中，你是否覺得能夠取得解決是因為有政治壓力和你們各方面的壓力，才能這麼快有結果呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think everybody in Hong Kong, whether this legislature, the media or the Government, would want this issue to be resolved and I think that's quite natural. We have not been subject to what I would call unreasonable pressure in trying to force us to reach a result that's not what we considered to be the best possible result.

主席：

詹議員。

詹培忠議員：

主席。在整個事件中，我覺得銀行也蒙受很多損失，但如果你跟它們協議以後不再調查，而其中確實有部分涉及刑事欺詐，你的部門採取甚麼工作呢？目前有部分苦主去了商業犯罪科(CCB)投訴，它一收到投訴後，看完就交給金管局再轉交你們。好了，如果你確實覺得它們有刑事欺詐，你如何處理呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If there are criminal elements – and, I'm sorry, Chairman, perhaps I should have clarified this earlier. Whilst this settlement resolves our investigation, it in no way resolves any criminal investigations that may be underway. So, if the CCB has concerns that there may have been a criminal element, those investigations will continue regardless of this settlement.

主席：

詹議員。

詹培忠議員：

所以，主席，在這一點上，我期望證監會要特別聲明，雖然你們說幫銀行和大家整體上達成和解，但你要再次聲明，在政府的合法證據下，如果有涉及刑事欺詐，你們絕對、亦鼓勵苦主再次向商業犯罪科去做他們的工作才對，不是說聲明你們已經取得協議，不可以像剛才所說不再追究，這個是很嚴重誤導的一回事。你是否同意呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, I'd agree that there are – if there are frauds or deceit or criminal cases, then they will continue to be investigated and we would be involved with the CCB in pursuing those.

主席：

詹議員。

詹培忠議員：

主席。我個人歡迎證監會能夠幫銀行取得大家的諒解及理解，但你對發行商，即安排商(arranger)那方面如何追究下去呢？因為他們可能在整個事件中是罪魁禍首，而一直沒有追究他們的責任。你作為證監會，會採取甚麼步驟，甚至防止以後再次嚴重發生呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The two questions – prevent similar occurrences and what actions will be taken – if I can deal with each of those separately.

Prevent similar occurrences. Obviously, there's a very greater degree of the obligations under our Code of Conduct now in Hong Kong, both by the distributors of the products and by the issuers of the products and we're working with the industry to look at the extent to which either our Code of Conduct or the product codes need to be enhanced to remind people of their obligations under the SFO. So, the future prevention work is all part of a consultation process that we'll come out with later on this year.

In terms of investigations into the issuers, I've confirmed previously to this Subcommittee that we are pursuing such investigations and that's all we can say about those investigations.

主席：

詹議員。

詹培忠議員：

主席。這次雖然你們的監管權力與金管局是平行的，你不可以評論他們，但從這次金管局對銀行屬下證券部的運作，你作為專業人士，有甚麼意見呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I don't think it's my position to comment on the HKMA. All I can provide you information on is the role of the SFC and how we discharge that role.

主席：

通常，詹議員，你不是去問證人的意見，你是取證，去拿一些事實出來。

詹培忠議員：

明白，主席，我瞭解，主席。目前來說，是否從這件事來說，可以足以證明"一業兩管"是有偏差及有偏錯，而令事件更加惡化，不能立刻解決呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, I think the system that we've got and the MOU that we've got with the HKMA works well and the two organizations work well together. Whether the regulatory structure in Hong Kong should be reviewed is something that we've recommended to the Financial Secretary, as our report to him in December last year, and it's interesting that most other jurisdictions in the world are getting through a similar scrutiny.

主席：

詹議員。

詹培忠議員：

主席。從這次事件，兩間涉及的證券行，直接受證監會所管轄的，要100%全面回購；而16間銀行，在金管局屬下的，只是60%至70%的回購。雖然你剛才解釋說是銀碼不同，但這是否足以反映"一業兩管"政府政策的錯誤，以致造成社會的不公平而有嚴重的怨氣。你是否同意這樣的看法？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, I think, obviously, the offers are different but the facts and the circumstances are different in each case. We are not statutorily empowered to force or dictate the compensation level, so we have to rely on what the institutions are prepared to offer and take a view as to whether we think that's satisfactory. The differences between the two, obviously, are in terms of the concerns that we had but also the scale. And, in the bank's case, the settlement repurchase offer is around six billion rather than under a hundred

million for the brokers concerned, and the number of clients involved is around 30 000 rather than 300 or so in terms of the brokers. So, I think the scale of it is different, the issues are different.

主席：

詹議員。

詹培忠議員：

主席。雖然這次事件能夠得到表面上的和解及解決，但是否顯示，銀行肯拿錢出來賠償，就當他觸犯很多不公平的條例呢？在特區政府管轄下，或是證監會，都是以金錢解決。以後任何人士如果犯了這些法例，是否可以同樣的手法去取得結果呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we hope that they will be able to settle matters through this route and we've asked them to put in place a number of reviews, so to employ experts who will review their internal controls, who will review their complaints handling and they will be obliged to implement the recommendations of those reviews. And those reviews will be subject to agreement by the SFC and the HKMA and the output will be reviewed. So, we hope we're putting in place a system here which will stand Hong Kong in good stead going forward, not simply for the resolution of this issue.

主席：

詹議員。

詹培忠議員：

主席。證監會的責任是以披露為本、為主，去批准有關申請的業務，但從這次事件，證監會得到甚麼教訓而令以後做得更好，從而保障投資者呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think there's a number of issues that we've learnt through this process and we are working, at the moment, to look at the Code of Conduct, whether it needs changes to it or whether it needs greater compliance checks within organizations. We're looking at the way that products are authorized and approved and, again, looking at whether different types of disclosure or different types of structural safeguards should exist within products. And both of those processes, I think, will provide more information for people and more information for banks and brokers as to how to comply with their responsibilities in the future.

主席：

詹議員。

詹培忠議員：

主席，我另外一個問題剛才很多同事都問過，就是涉及所謂職業或經驗投資者，即現在證監會所規定，當然……

主席：

專業投資者。

詹培忠議員：

……他的投資多於美金100萬或港幣800萬就會被視為最基本的經驗或所謂職業投資者。你有否考慮過這樣的界定是非常草率的，以後會否有一個考試，很簡單的考試，讓證監會考驗投資者是否職業或經驗投資者，從而不會造成冤案及對他們不公平呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the current definition of professional investor has the size of a portfolio as just one of five tests, so it's not simply the case that somebody with a portfolio of \$8 million would be deemed a professional investor. The licensed or registered person has to do an assessment (*The buzzer sounded*) of their experience and, in doing that assessment, they take account of the types

of products in which the person has traded, the frequency and the size of trades, the person's dealing experience and the person's awareness of the risk involved. So there are a number of tests; it's not simply the eight million test. But, having said that, we've committed to review the professional investor definition and we'll look at whether that series of five tests is sufficient or whether we need either additional tests or a higher threshold, and that's something that we will look at.

主席：

涂謹申議員。

詹培忠議員：

主席，對不起，我有個補充，Mr WHEATLEY剛才沒有回答我……

主席：

要簡短一點。

詹培忠議員：

……會不會有一個很簡單的考試，例如考駕駛執照的筆試。證監會可以很簡單的，誰想投資就去證監會拿張表格，然後經過問題後便提供一個證明，表示他是合格的投資者，以免日後大家再有爭拗。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, I don't think we should be in the position of assessing the level of experience of individuals as to whether they should be clients of brokers or banks as professional investors but all brokers and banks know what the standard is, so they have developed their own tests to assess whether a person is a professional investor.

主席：

涂謹申議員。

涂謹申議員：

主席。證監會同意達成這個協議，我想問是否韋奕禮先生你一個人決定？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It's a decision of the SFC and the Hong Kong Monetary Authority

涂謹申議員：

不，我是說證監會.....

主席：

涂議員。

涂謹申議員：

.....是否你一個人決定？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, it's our sole decision but the Monetary Authority are a party to the decision.

主席：

涂議員。

涂謹申議員：

我現在說的是，證監會是否你一個人決定，抑或你開過board來決定？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Oh, sorry, no, it was a decision within the SFC.

主席：

涂議員。

涂謹申議員：

我想問是你一個人決定抑或是board決定？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, the decision – all of the powers under the SFO are either reserved for the board or delegated to individuals as appropriate. The decision was a decision of the director of enforcement with my full support.

主席：

涂議員。

涂謹申議員：

我想問，證監會現在達成這個協議，是那個board決定抑或是你決定，抑或哪個人決定？請你回答清楚，好不好？我問了5次了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The decision structure is that certain decisions are reserved for the board and cannot be delegated and certain decisions can be delegated. This was a decision

涂謹申議員：

我現在是問達成這一個協議呀。

Mr Martin WHEATLEY:

Mr TO

主席：

你等一等，先讓他回答。

Mr Martin WHEATLEY:

Mr TO, can I answer the question, please?

主席：

先讓他回答。

Mr Martin WHEATLEY:

Because I believe I have answered it but I'll repeat what I said. In this case, the decision was delegated. The decision was made by the director of enforcement with my full support.

主席：

涂議員。

涂謹申議員：

Director of enforcement是誰？請你把名字說出來。

Mr Martin WHEATLEY:

Yes,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... Mr Mark STEWARD is the director of enforcement.

涂謹申議員：

OK。

主席：

涂議員。

涂謹申議員：

你說 full support，你是否當時 full support 的時候不在香港？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, I was in Hong Kong. But whether I'm in Hong Kong or not is irrelevant. I'm in constant contact with the issues.

涂謹申議員：

我現在是問，你……

主席：

先讓他回答吧。你等我指示才問，否則變成翻譯方面有困難。

涂謹申議員：

對不起。

主席：

涂議員。

涂謹申議員：

那個 board 是甚麼時候 delegate 給 Mark STEWARD？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

At the time of the passage of the SFO.

主席：

涂議員。

涂謹申議員：

特別是這個協議之前，有否再授權給他？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, it didn't require specific authorization because that was delegated at the time of the passage of the SFO.

主席：

涂議員。

涂謹申議員：

是否最後這個協議大家達成的時候你不在香港？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As I've explained, whether I was or not

涂謹申議員：

主席，我問是否在香港，這是一個事實，主席，我們在取證呀。

主席：

先讓他回答你吧。

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr TO, I'm very happy to answer each of your questions twice.

Hon James TO Kun-sun:

I'm asking the fact that whether, when this agreement is concluded and agreed upon by the SFC, are you in Hong Kong at that time.

Mr Martin WHEATLEY:

Mr TO, as I said,

主席 :

先等韋先生回答問題吧，涂議員。

Mr WHEATLEY ?

Mr Martin WHEATLEY:

I'm very happy to give you the facts twice to each of your questions, if that's helpful, because I have answered that question. But let me repeat it. I was in Hong Kong at the time the settlement was reached but whether I was or not is irrelevant because the decision is delegated but I would remain in constant contact with any important decisions.

主席 :

涂議員。

涂謹申議員 :

你是否有一些重要的情況，最後達成協議之前，你是不在香港的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr TO, I have been in Hong Kong

Hon James TO Kun-sun:

I'm asking as a matter of fact, okay?

主席：

先等一下。Mr WHEATLEY？

Mr Martin WHEATLEY:

Chairman, I think this line of question is completely irrelevant. I've been in Hong Kong when the agreement was reached; I've been in constant contact with the issues.

主席：

其實，涂議員，他已回答了你的問題。

涂謹申議員：

不是。我是說這個協議在達成的最後階段，例如那一個月或兩個星期內，你是有時間不在香港，是或不是？這個是事實而已。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, I think I've answered the question.

涂謹申議員：

主席……

主席：

涂議員。

涂謹申議員：

……你裁決吧。請你裁決證人繼續回答這個問題。

主席：

我覺得他已回答你的問題，涂議員。

涂謹申議員：

你覺得他回答了甚麼問題，主席？

主席：

我認為他已回答了你的問題，我不需要解釋。他已回答了你的問題。

涂謹申議員：

他回答了甚麼問題？可能我來不及抄寫，你提醒我一下也可以吧，對嗎？我沒能寫下他有沒有說他在香港抑或不在香港。

主席：

他說在作決定時他在這裏，以及他在不在，對協議的決定不是最重要，是沒有關係的。

涂謹申議員：

不，主席，這個判斷是我們將來做的，是嗎？

主席：

是啊，他……

涂謹申議員：

但我現在問他，是否在達成協議的最關鍵的兩三個星期，他有一些時間是不在香港的。你理解他的答案是說全部在香港抑或有時間不在香港呢？

主席：

他已告訴你，他說無關，因為他隨時跟香港這邊有接觸，他是回答了你。

涂謹申議員：

是否即是有時間不在香港呀？你的理解是否這樣，主席？不然，我就要再問他了。

主席：

你再問多一次，簡單的……

涂謹申議員：

主席。

主席：

……讓他再回答一次好了。我想他會回答你。

涂謹申議員：

我重複我的問題吧，是否在最後這個協議達成的3至4個星期之內，你有一段時間，有多少天不在香港？我想問你，多少天不在香港？我不是說你不知道這個協議啊。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I repeat ……

涂謹申議員：

多少天不在香港？

Mr Martin WHEATLEY:

Mr TO, as I've said, I think the question is irrelevant. The ……

涂謹申議員：

主席。是否relevant不是你決定的。

Chairman:

Mr WHEATLEY, I think you should try

涂謹申議員：

我們現在要取證嘛，我不是問你三圍尺碼啊。

主席：

涂議員，等一等。

Mr WHEATLEY, I think you try to answer this question with some data, if possible, according to the question asked.

Mr Martin WHEATLEY:

Well, the data is that I have been constantly in contact with these discussions but I am not the ultimate decision-maker. I have been present in Hong Kong for and leading up to the decision being made. Mr Mark STEWARD has my full support and the full delegation of the board.

涂謹申議員：

主席，我問.....

主席：

涂議員。

涂謹申議員：

.....最後協議達成之前3個星期，你有多少天不在香港？請證人回答，你是在宣誓下的。

Chairman:

Mr WHEATLEY?

涂謹申議員：

多少天？你要時間，你可以回去查。

Mr Martin WHEATLEY:

Mr Chairman, as I've said, I don't consider this to be a relevant line of questioning. I have been in constant contact with the issue throughout the period

Chairman:

Mr WHEATLEY, I think the question was, in this case, rather explicit, the last part of the question: in the last three weeks, how many days you were out of Hong Kong.

Mr Martin WHEATLEY:

Mr Chairman, it may be an explicit question but I'm not quite sure how it's relevant to the deliberation of this inquiry.

Chairman:

It's not up to you to decide whether it's relevant or not, Mr WHEATLEY.

Mr Martin WHEATLEY:

Well, then, please allow me to take legal advice and respond independently.

主席：

涂議員。

涂謹申議員：

主席，我們應該怎樣處理？我們是先讓他取得法律指導還是怎樣？

不，主席，現在是我問，問主席。

主席：

因為他說要求法律指導，會後我們再處理吧。

涂謹申議員：

不，或者你需不需要有一個break，讓證人考慮一下呢？因為理論上他可以帶法律顧問到場，他沒有帶來，他又沒有特別可以說得出我們在這個.....

主席：

如果你認為.....

涂謹申議員：

.....取證中哪一點可以不回答的。

主席：

涂議員，可以的。如果你認為需要，可以休息5分鐘。

涂謹申議員：

好的。

主席：

可以，可以。

涂謹申議員：

讓證人想一想。

主席：

我們休息5分鐘。請證人考慮你的答案。

(研訊於下午3時49分暫停)

(研訊於下午4時05分恢復進行)

主席：

各位，我們繼續我們的研訊。首先，我想請涂議員說明兩點。第一點，你想問證人在做最後決定前3個星期，你想由哪一天開始計算？

涂謹申議員：

不就是那個……

主席：

第二點，你要說一說，證人要求你說出有關係的理由。請你回答這兩點。

涂謹申議員：

主席，我說過了，我問了這個問題了。相關就是因為我想知道在協議前後究竟他的參與，以及有哪個人、所有人的參與。我沒有說他不可以聯繫，不過我是問作為一個事實。然後接下來當然我有很多問題要問，對嗎？

主席：

是，沒問題，OK。還有，那3個星期由哪一天算起？

涂謹申議員：

由協議達成。

主席：

協議達成，而不是宣布那天，是達成那天？

涂謹申議員：

達成那天。

主席：

達成那天。

涂謹申議員：

因為達成是哪天，我們還未知道。

主席：

OK。

涂謹申議員：

那份新聞稿沒說"今天"。

主席：

對，沒錯，我都知道。

涂謹申議員：

但如果是"今天"，就用那天好了。

主席：

我之所以特別問你就是這個原因。

涂謹申議員：

是，就是這樣。

主席：

OK。韋奕禮先生，我相信剛才你都聽到涂議員說他想問的是達成協議那天前的3個星期，你有多少天不在香港。他說過關於有關係、有相連關係那點，我相信他的解釋你已明白。我認為行政機關的高層人員離開香港並不是私隱，應該是一個公開資料，我希望你可以直接回答這個問題，Mr WHEATLEY。

Mr Martin WHEATLEY:

Mr Chairman, the date of the agreement was not known until the date of the agreement. We are talking about a negotiation that was very complex, involved 16 banks. Such processes inevitably have a number of hiccups in them. So, three weeks, four weeks, five weeks before, we would not have known what the potential date of an agreement would have been. That's the first point I'd like to make.

涂謹申議員：

主席，這裏已經說了達成協議……

主席：

等一等，先等他答完。

涂謹申議員：

不是，這裏……這裏……

主席：

不，我待會會幫你跟進這點，等一等，一會兒我再給你時間，不用急，我再給你時間。

涂謹申議員：

不，你完全變了……

主席：

不，我再給你時間，沒問題。

涂謹申議員：

OK，OK。

主席：

我會把時間全給回你，不要緊。

Mr Martin WHEATLEY:

Sorry, sorry, we know now what the date of the agreement was, clearly, because we signed it on that date,

Hon James TO Kun-sun:

Yeah.

Mr Martin WHEATLEY:

..... but it wasn't signed until that date and the day before or three days before or five days before, we did not know when the agreement would be signed because we were still negotiating. And I think it's an important point because there's no way we would have known whether it was possible to achieve an agreement in July or in August or September. So that's the first point I'd like to make.

Second point is, I took some leave earlier in July. I had a duty visit and I was away for some days earlier in July but I was back – I was involved fully

in the negotiations up until that point. I was involved fully in the discussion all the time I was away and I was in Hong Kong for the critical days leading up to the agreement.

主席：

韋奕禮先生，我想這樣吧，因為要數算多少天你不在香港，可能要回去翻查紀錄也不一定，這個我容許你會後才回應，這個沒問題，你可以回去check一下有多少天你不在香港。不過，我想說清楚，你說是簽文件那天，那當然會有一天是簽文件，而不會是3天、5天，不知道哪一天，你簽了即是知道是哪天，簽的那天不一定等於你公布新聞稿那天。可以告訴我是哪一天你們正式簽了……

Mr Martin WHEATLEY:

No, no, sorry, Chairman, ……

主席：

……那個協議呢？

Mr Martin WHEATLEY:

Okay – no, so – given the level of media interest and leakages, it would have not been possible to have an assigned date that was somehow kept secret. So the date of the press announcement was the date the agreement was signed.

主席：

OK。或者請你回去看看你的紀錄，即簽協議前的3個星期，你有多少天不在香港，這個是涂議員想知道的資料，或許你回去check一下才回覆我們，可否這樣做？

黃宜弘議員：

書面回覆。

主席：

書面回覆我們。

Mr Martin WHEATLEY:

If, Chairman, you consider that to be relevant to the terms of reference of the committee.

主席：

對，沒錯，是。好了，涂議員……

涂謹申議員：

即是我們會有的，對嗎？

主席：

是，會有的，他會後會書面回應我們。

涂謹申議員：

主席，我想問韋奕禮先生……

主席：

請你繼續。

涂謹申議員：

是，你給我補回時間。

主席：

我補回3分鐘給你。

涂謹申議員：

豈止啊，大哥。

主席：

那4分鐘吧。講價？不要講價了。

涂謹申議員：

主席，我想跟韋奕禮先生說，我不是怪責你任何事情，我只想知道我接下來的問題應該問你還是問Mark STEWARD而已。

主席：

你直接問問題。

涂謹申議員：

我先試試問吧。

主席：

直接問問題吧。

涂謹申議員：

這裏有一個協議，這個協議，剛才有同事問過你為甚麼不是100%，就像新鴻基一樣，而是60%、70%，你其中一個說法是銀碼。我現在問，你達成這個協議的時候考慮的所有因素，包括銀碼——你說了一個——我應該問你還是問Mark STEWARD呢？

Chairman:

Mr WHEATLEY? (*The buzzer sounded*)

Mr Martin WHEATLEY:

The question of why not a hundred percent or a different level is largely irrelevant because that wasn't an offer that was made by the banks. So, as I've explained to you earlier, a settlement has to rely on a voluntary agreement from the banks to be prepared to pay a certain amount. We had to form a judgment as to whether we were prepared to resolve our regulatory issues, given the offer that they were prepared to make.

Hon James TO Kun-sun:

No, Mr WHEATLEY,

主席：

涂議員。

Hon James TO Kun-sun:

..... my question is whether I should ask – all the relevant factors – to ask you or to ask Martin WHEATLEY – to Mark STEWARD, I'm sorry.

Mr Martin WHEATLEY:

No, please, by all means, address them to me and I will

主席：

涂議員。

Mr Martin WHEATLEY:

..... satisfy them as far as I believe, either I or Mark

Hon James TO Kun-sun:

So you confirm that you know all the factors involved – considered?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes.

Hon James TO Kun-sun:

Okay.

主席：

涂議員。

涂謹申議員：

那可不可以請你說所有因素，除了銀碼之外 —— 剛才你說銀碼是一個因素，你說為甚麼不是100% —— 還有甚麼因素不

能是100%，考慮到有這個差別呢？可否全部說出來，行不行？
一、二、三、四、五、六、七這樣全部說出來。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm sure Mr TO will understand that any agreement is subject to a large number of without prejudice discussions which occur prior to that. I cannot give you any details of those discussions, one, because the discussions were

Hon James TO Kun-sun:

Mr WHEATLEY, I am not asking for the detail of the negotiation or discussion.

主席：

涂議員，先讓他答完吧。

Hon James TO Kun-sun:

I am asking for the factors you considered relevant to deviate from the precedent of Sun Hung Kai, giving the compensation to the victim, 100%

Mr Martin WHEATLEY:

Okay. Conversely,

Hon James TO Kun-sun:

..... compensation.

主席：

先讓他回答吧，涂議員。

Mr Martin WHEATLEY:

Chairman, if

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If I may,

涂謹申議員 :

因為他耍我嘛，主席。

主席 :

不，先讓他回答你吧。

Mr Martin WHEATLEY:

Well, Mr Chairman, I will address the question as best I can. Firstly, can I, please, make the point that we did not consider Sun Hung Kai to be a precedent that was set and we made it quite clear that we did not believe that would be a precedent for the settlement of all cases. The objectives that we take into account in reaching a settlement are: one, to what extent does it alleviate the losses that investors may have occurred through potential control failings; secondly, does it send a strong message to the market that certain types of control failings will not be tolerated; and, thirdly, have we put in structures which could mitigate the future occurrence of similar problems. And they are primarily the objectives we take into account.

涂謹申議員 :

主席，我就.....

主席 :

涂議員。

涂謹申議員 :

.....問一條而已。因為韋奕禮先生較早前來的時候，他真的義正詞嚴，說在協議裏面一定要有懲罰。我想問，對於那些系列，如果將來售出的抵押品是超過七成、八成，銀行的損失在哪裏？

Chairman:

Mr WHEATLEY?

涂謹申議員：

你怎樣能夠傳達一個強烈的訊號，就是那些銀行原來做錯事或者不愁會有懲罰呢？因為你現在說的那些，那協議就是抵押品現在一般估計都有七八成，很多系列吧，當然不是全部，對嗎？那你對那些情況，哪裏有一點點懲罰的機制存在呢？所以為何我懷疑當時你為何不在香港，就被人"揸"你，被人"挾"你。

主席：

不要，這即是你的評論，你不要評論。

涂謹申議員：

我懷疑好了吧。

主席：

是，不要評論。

涂謹申議員：

為何會這樣，就是這個原因了。

主席：

你不需要評論。

涂謹申議員：

所以我便問那個懲罰的點在哪裏呢？

主席：

是，OK。

涂謹申議員：

他較早前在我們這裏作證時是這樣說的。

Chairman:

Okay. Mr WHEATLEY.

涂謹申議員：

他自己說的，原來實際上是Mark STEWARD決定的。

主席：

Mr WHEATLEY，懲罰在哪裏？

Mr Martin WHEATLEY:

Mr Chairman, can I comment on the potential recovery of collateral? You mentioned a figure of between 70% and 80%. We don't expect that to be the case for the vast majority of Minibond series. It may be the case for one or two but we know that most of the series under series 10, the recovery is close to zero and we know that most of the series between 15 and 20, the recovery is below 20%. So, on all of those series – and, sorry, when I say we know the recovery, that was based on the December estimate of recovery and we've no reason to believe it will be significantly different. So, for a large number of the series, the banks won't be able to recover the amount that they pay out.

If any series do pay out more than the payment that the banks are making, then the banks will make that payment subsequently to clients. So there's no sense in which the banks will use the recovery of the collateral to offset their losses. They're not able to do that.

So, the \$6.2 billion, roughly, of settlement payment, they won't be recovering that. The actual amount they'll recover we'll only know once the collateral values are known. They're also giving up all of the commission earned, so that we know over \$200 million of commission will go into a fighting fund to fund the subsequent recovery of collateral; and they have agreed to, at their own expense and subject to our approval of the terms of reference, put in place both an internal controls review and a complaint handling review.

So they are the four components of the regulatory outcome that satisfy our overall objectives.

主席：

涂議員，問多一條。

涂謹申議員：

主席，還有一題而已。

主席：

問多一條，是。

涂謹申議員：

我這裏有上一次幾個月前的估值，是政府給我們的，這裏絕大多數的series說的是58以上，有的去到差不多73，絕大多數，九成多series是這樣。韋奕禮先生是否有一個update，即我們不知道的估值呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, Mr Chairman, we have the same information. I don't believe the information you have shows that 90% of the series have 70% or 80% recovery. If you do

Hon James TO Kun-sun:

No, I mean I'm talking about 50% to 60%, at least.

主席：

讓他回答你。

Mr Martin WHEATLEY:

If you do, you have better information than we do. We do not have that information.

Hon James TO Kun-sun:

No, I took this from your web page.

Mr Martin WHEATLEY:

Okay. I believe, then, it shows that the early series, up to series 10, there is close to zero recovery, that a number of the series between 15 and 18 or 19 have recovery of around 11% to 17%, and then, beyond that, there are some series where the recovery is between 50% and 70%. So, there are a wide range of recoveries. And the point that – if I may complete, the point you're making that the banks will not have any cost from this, I don't think that's true.

涂謹申議員：

主席。

主席：

你再排隊好不好，涂議員？

涂謹申議員：

不是，為了對他公道，我不知道我跟他是否在說同一樣東西，因為這張文件裏面真的九成是五成、六成以上的。

主席：

你再排隊，OK。我想你可能還有其他東西要跟進，因為……

涂謹申議員：

或者這樣好不好？不，還是穩妥一點好，因為我第二輪都要把這份給他，再問這個……

主席：

或者你影印給他。

涂謹申議員：

我不如現在影印給他，看看……

主席：

OK。

涂謹申議員：

.....他那份跟我這份是否一樣，如果不是，倒過來他影印給我，對嗎？

主席：

好的，行。

涂謹申議員：

OK。

主席：

好的，請再排隊。余若薇議員。

余若薇議員：

今次說這個.....

主席：

我聽不清楚，聲音很小。

余若薇議員：

(調校麥克風)現在能聽到嗎？

主席：

現在可以，現在很大聲。

余若薇議員：

OK。主席，想問韋先生，這個協議(電話鈴聲響起)，證監會與該16間銀行的協議是否書面協議？

主席：

請關手機。

余若薇議員：

我不知道這是甚麼聲音，因為不是我的電話聲。

主席：

請繼續，余議員。

余若薇議員：

是。請問韋先生，與銀行的那個協議是否書面協議？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, of course. It's a detailed written agreement, signed up to by all parties.

余若薇議員：

可否提供一份……

主席：

余議員。

余若薇議員：

……給我們立法會呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the agreement is subject to confidentiality arrangements.

余若薇議員：

但問題是……

主席：

余議員。

余若薇議員：

.....韋先生，我們不斷問你的問題都跟協議有關，我想問你的問題也跟協議有關，你回答我們的問題，要浪費好幾個小時問。但事實上最簡單就是你給我們看一份書面的協議，我們很多問題都可以更有效率地處理。為甚麼不可以這樣做呢？

Chairman:

Mr WHEATLEY?

余若薇議員：

如果真的好像你說的那樣，所謂要守秘密的話，我們很多問你的問題都不能問了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Mr Chairman, the agreement is subject to confidentiality and for us to voluntarily produce an agreement would be in breach of our agreement with the banks. If the committee wishes to use its powers and privileges to demand the agreement, then, clearly, that's how the process needs to go.

Chairman:

Mr WHEATLEY, this is not yet the decision of the Subcommittee, at this moment.

余議員。

余若薇議員：

但韋先生，可笑的地方就是，我們可以口頭問你協議裏面的內容，你又回答我們的問題，但同時你又說這個協議是要守秘密的。兩者根本是矛盾的，你同不同意？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the terms of the agreement or most of the significant terms of the agreement are subject to a press release which is, therefore, all in the public domain or a part of our FAQ which are on our website. Such agreements are, under section 201, always confidential between the parties.

余若薇議員 :

韋先生，我在這個階段不想利用那10分鐘跟你糾纏在這個問題上，我希望一會兒我們會跟進，即是拿那個.....

主席 :

余議員，你想不想他會後書面回應這個問題？關於那個協議。

余若薇議員 :

主席，這是一定的了，而且我亦希望在內部會議裏向主席提出，我正式要求他提供協議的副本，因為我覺得我們問他很多問題，甚至很簡單，譬如李慧琼問他一些問題，說如果超過50%的人不接受，那些苦主不接受，你是否繼續去做這個由上至下調查。這些都是內容的一部分，亦不是他已有的一些新聞發布表裏面或他的website裏面的東西，如果是，我們也不用問你了。是嗎？

主席 :

是。

余若薇議員 :

很明顯，我們這次搜證的範圍是超出你那個新聞發布會或你那個網站所講的問題，你要我們口頭問，又不給我們一份正本或者那份協議的副本。

主席：

我們在第二部分商議時討論，好嗎？

余若薇議員：

對了，我們商議，我希望不要浪費我的10分鐘時間，希望主席補回給我。

主席：

我會的。

余若薇議員：

韋先生，我想問你，我看到證監會最大的殺手鐮，對於這16間銀行來說，最大的殺手鐮就是由上至下的調查，現在你就告訴我們，你會終止這個由上至下的調查。我想問清楚，這個是否只是說關於迷你債券的？現在證監會終止的由上至下調查，即跟銀行的協議裏面的一個我叫quid pro quo，即你跟它交易的最重要東西，就是你們證監會終止由上至下的調查，是不是只局限於迷你債券，還是包括其他結構性產品？如果是的話，是哪幾種？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The specific agreement is that the top-down approach on the investigation of Minibonds is finished and there is no further work to be done. On other structured products, we've agreed to suspend our investigation pending the banks' handling of complaints under the new handling procedures.

余若薇議員：

這個有關迷你債券的.....

主席：

余議員。

余若薇議員：

.....即你已終止的由上至下的調查，是不是最終的，是否final的？有否任何情況是證監會可以重開對任何一間銀行、對這16間銀行的由上至下的調查？會不會因為那16間銀行不遵守某個條款，譬如這樣說，有否任何情況會令證監會重開這個由上至下的調查？有關這16間銀行來說。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the agreement is binding on all parties, so – you asked to what extent this is final. This is final. But clearly, breach of an agreement would be reasonable grounds to take further action and we will

余若薇議員：

這個就正正是我想問你的問題。

主席：

余議員。

余若薇議員：

很明顯，主席，如果我們看不到那個協議，我們很難知道詳情。那怎樣才為之那16間銀行違反協議呢？在甚麼情況下這16間銀行是違反協議，使證監會可以重開由上至下的調查？有關迷你債券來說。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the banks will be required to account to both the HKMA and the SFC for their implementation of the agreement. We'll monitor that very, very closely and we will form a view as to whether they have implemented the agreement both to the letter and the spirit of the agreement. And that's something that will be subject to our oversight.

余若薇議員：

是了。

主席：

余議員。

余若薇議員：

韋先生，這個很明顯不是一個令人滿意的答案，因為我們一定要看到協議裏面的條文才知道在甚麼情況下銀行是違反協議內的一些條款。但我想跟進的問題就是，有關迷你債券來說，現在你說已終止了那個由上至下的協議，而銀行要做甚麼呢？就是要在這段時間內付錢給這些苦主，六成或將來再看是多少，你就給那些苦主60天的時間去考慮。

我想請問，這些苦主如果在60天內不接受，剛才李慧琼問你，你說或者可以延遲多30天。但銀行要做的事情只是提供這個所謂offer，但苦主接不接受卻不關銀行的事。換句話說，現在我們聽到很多苦主說"不了，六成七成不要接受了"。

我想知道，是否這個時限過了就沒得回頭？那些苦主譬如看看不對勁了，過了60天他覺得不對勁，他想說我現在可不可以接受那六成或七成的offer，是否不行的？銀行是再沒有責任去提供這個offer？我想你說清楚，因為要讓苦主聽到，知道這是一個有時限還是沒有時限的條件，即一個offer，我不懂"offer"怎麼說，一個"要約"吧。

主席：

要約，是的。

余若薇議員：

即他過了這個時間，就"蘇州過後無艇搭"，他不可以說我等一下，看看12月股票是否漲得很厲害我才接受，是否不行呢？即銀行再沒有責任重開這個要約。你說清楚，好嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Under the agreement, there is no responsibility to re-open the offer. Very specifically, the banks have said that they will communicate with their customers between 3 and 10 August and that customers will then have 60 days to accept. If they have not accepted within 60 days, they will be deemed to have rejected the offer unless they can provide a valid reason as to why they were not able to accept in that period; and, if such valid reason is produced, they will have another 30 days. But the offer is limited to a time; it's not an open-ended offer.

余若薇議員：

OK。

主席：

余議員。

余若薇議員：

我相信這些苦主聽到會明白的。另外，我想問你有關其他的結構性產品，特別是關於星展銀行那些Constellation，它們都有collaterals，都有抵押品，但為何沒有同樣的一個條件給他們接受呢？是否純粹因為證監會還沒調查到那個地步呢？你們是否會進一步去調查這些其他的結構性產品？你可不可以告訴我們那個時間表呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

With regard to structured products sold by banks other than the 16 banks, those investigations and negotiations are ongoing so we continue. They're not part of this agreement; we continue to work on those and we will try to reach, if we can, an acceptable agreement within the shortest time-frame possible. I can't give you a precise time-frame because, as I've explained, these are subject to detailed negotiations which may or may not produce an acceptable result.

主席：

余議員。

余若薇議員：

因為對於其他的結構性產品來說，你在你今天早上剛剛給我們的那份口頭及書面的(計時器響起)陳詞裏面說，就說只是要求銀行"實施加強的特別投訴處理程序，務求以公平合理的方式解決所有非上市結構性產品投訴個案。"但這個是很含糊的，亦不具體地告訴我們怎樣才叫合理公平的方式。這個有沒有時間表？即有沒有說這些銀行到某一個時間如果還未能解決或已解決的達不到百分之多少，你就會開始由上至下的調查。是否會這樣呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In terms of it being vague and general, the complaints handling procedures review is set out in the agreement. And I appreciate your comments about the agreement. We've set a number of parameters as to how that complaints handling process should work and it involves clear procedures for handling investigating complaints, the functions being performed by appropriate staff and appropriate level of seniority within the banks. So there are a range of elements to that which we expect to be put in place very quickly and we've also required that the banks engage an external party to review their complaint handling and to implement the results of that review. Now, all of those are set out in some detail in the agreement.

主席：

余議員。

余若薇議員：

那你要給它多少時間去處理這個特別投訴的處理程序呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We're in the process of agreeing that with the banks. We haven't finalized the timetable for that.

主席：

余議員，最後一條問題。

余若薇議員：

如果你在已決定的時間內不能達到這些公平合理的方式解決，是不是證監會就會做那個由上至下的調查？包括迷你債券以外的一些產品你都會這樣做呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We've made it very clear to the 16 banks that this agreement does not hamper or inhibit or close out our ability to continue those reviews into other structured products. We'd like to allow this complaint handling process that we've designed to be effective first but, if it fails, then we'll return to our investigations.

余若薇議員：

即top-down那種？

Mr Martin WHEATLEY:

Yes.

主席：

各位同事，現在剛好4時半，我們已進行了兩個小時的公開研訊，現在我想休息20分鐘，請各位於4時50分回來。

請證人不要跟其他人士討論今天的研訊，謝謝。

(研訊於下午4時30分暫停)

(研訊於下午4時53分恢復進行)

主席：

各位，我宣布研訊繼續。

韋先生，你現在繼續在宣誓下作供。

下一位是甘乃威議員。

甘乃威議員：

韋奕禮先生，我想問你，股票掛鈎、星債(即Constellation)、精明債券及迷你債券是否同屬結構性產品？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes. They're all structured products and they're all credit-linked structured products.

主席：

甘議員。

甘乃威議員：

根據你們給中介人的《操守準則》，如果中介人售賣這些產品，他們是否也要根據你們的《操守準則》去銷售這些產品？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes.

甘乃威議員：

是否全部……

主席：

甘議員。

甘乃威議員：

.....這幾隻產品都應該用同一種《操守準則》去銷售這些產品？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, the Code of Conduct doesn't vary and it is consistent across all products.

甘乃威議員：

OK。

主席：

甘議員。

甘乃威議員：

我想問一下，我剛才拿了一份有關你們這個所謂給持牌法團的通函內的《常見問題》——我們簡稱叫做FAQ——裏面第一條問題是，投資顧問應該——有6點，我不全部讀出來，我只讀兩點：(a)認識他們的客戶；(b)了解向客戶推介的投資產品(產品盡職審查)。這些是否就是你們要中介人守的操守準則之一？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes. Chairman, the FAQ, just to be clear, is something that we publish on occasion to explain how people meet their obligations under the Code of Conduct, so this is to be taken in conjunction with the Code of Conduct but it

is explaining how institutions are expected to meet their obligations under the Code, yes.

主席：

甘議員。

甘乃威議員：

我想問的是，早前你們就新鴻基證券發出的新聞稿裏面都有提出關注，包括我剛才提到新鴻基裏面對那些產品進行的盡職審查是否足夠，你在新鴻基做了回購時，你發出你們的關注點是包括盡職審查這一部分？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes. I haven't got the press release in front of me but we raised a number of concerns with Sun Hung Kai and they were about the extent of product due diligence, about the extent of customer suitability checking.

甘乃威議員：

OK。

主席：

甘議員。

甘乃威議員：

由你所說的系統性由上而下的調查，是否亦會包括所說的這些盡職審查？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, it would.

主席：

甘議員。

甘乃威議員：

我想問，現在你放棄進行迷你債券、這些苦主、這16間銀行的系統性調查，換句話說，在系統裏面如果出現有關沒進行盡職審查的調查，你們都會終止的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Let me be clear. What we have done as part of the agreement is, in response to the settlement offer and the other conditions, agreed to cease the top-down investigations into Minibonds and that will cover due diligence, training and a number of questions related to the sale of Minibonds.

主席：

甘議員。

甘乃威議員：

明白。如果客戶是買入了迷你債券，在整個系統性上，在為該客戶進行風險評估的時候或"認識你的客戶"裏面，如果他有錯誤的話，現在你這個調查都會終止？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The top-down investigation in Minibonds has ceased, yes.

甘乃威議員：

OK。

主席：

甘議員。

甘乃威議員：

如果這個客戶同時又買了ELN，又買了星債（即Constellation），又買了精明債券，在這一個個案裏面，在該客戶的個案裏面，有系統性的調查是否都會終止？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No. What we have said in relation to those other products is that, where those products were sold by banks other than the 16 banks, so all the banks except those included in this agreement, those investigations continue. So

甘乃威議員：

我想說的就是.....

主席：

甘議員。

甘乃威議員：

.....某一個客戶，譬如舉個例子，他在一間銀行買了3隻產品，被你界定為經驗投資者，因而沒有迷債回購方案可以提供給他，因為他可能買了其他產品，包括ELN、Constellation或精明債券。在這種情況下，其實你覺不覺得因此而終止對這間銀行的調查，對於非迷債的苦主，即買入了ELN、星債、精明債券的苦主是非常不公平？兼且——主席，我想再說下去——兼且他在回購方案裏面是沒份的，對這些苦主來說，是否變相是一種雙重的懲罰？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The repurchase agreement or the settlement that we've reached doesn't cover other products because we simply hadn't reached such a stage of finality in our investigations, so we're not making any statement as to the likely outcome of those investigations. Where those other products were purchased through one of the 16 banks who are part of the agreement, what we've agreed with the banks is that we will suspend that investigation to allow them time to properly handle the complaints. So that's the distinction that we've reached. Products bought through these 16 banks, we're giving a pause to allow them to complete a proper internal investigation and to handle the complaints properly; products bought through other banks, we continue those investigations.

主席：

甘議員。

甘乃威議員：

主席，現在說的是，原本你手頭上有很多資料是關於那16間銀行系統性的失誤，這些系統性的失誤就是主要去銷售這些結構性產品。你怎樣解釋，這些銀行賣迷你債券就有系統性的失誤，同一間銀行賣精明債券、賣星債、賣股票掛鈎產品卻沒有系統性的失誤呢？同一間銀行、同一個職員去賣同等的結構性產品。你覺不覺得你是用了迷你債券回購協議而犧牲了非迷你債券，即ELN、精明債券及星債Constellation這些苦主的利益呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, what the agreement is saying is we simply haven't reached – we're not close to any conclusions for those other products. So what we would like to do is to allow the banks a period in which to resolve their complaints that they've received from clients for other products. If they can't be resolved satisfactorily, then we've reserved the right that we will re-open those investigations but we're giving the banks the chance to look again at the way they've handled complaints and take a decision as to whether they've handled those complaints properly.

主席：

甘議員。

甘乃威議員：

主席。在調查裏面，從去年10月開始，即9月底10月開始，調查了這麼長時間，現在你又將最大一羣苦主的調查，對銀行由上而下的調查停止了。現在換句話說，你又要從頭就非迷債的產品進行系統性調查，你覺不覺得這樣是浪費了之前的時間？

第二，究竟你現在有多少間銀行被進行所謂由上而下的系統性調查，就一些非迷債產品，包括ELN、精明債券及星債 Constellation接受系統性調查的銀行，正在進行的究竟有多少間？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Chairman, I don't believe our effort has been wasted because we could not have got to the agreement that we've got to without getting as far as we did with the investigations into Minibonds. So, the only reason we have any form of settlement available is because we reached a point where we were able to present to the banks our concerns about the way the products were handled. In no way does it make wasted the resources that we've put into looking into other products because we'll still be looking at how the banks resolve the outstanding complaints and we've reserved the right that we may re-open those investigations if we don't feel that they're adequately dealing with complaints.

甘乃威議員：

主席，我想問……

主席：

甘議員。

甘乃威議員：

剛才第二個問題是問你，究竟有多少間銀行正在進行非迷你債券、ELN、精債、星債這些牽涉系統性由上而下的調查，究竟有多少間銀行現時正在進行呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, if you'll allow me, can I provide that as written information afterwards? Because I'm not sure of the exact numbers.

主席：

可以。

甘乃威議員：

如果你沒有一個準確的數字，可不可以大約說說數字是多少間，可不可以告訴我們？

主席：

他說會後給你嘛。

甘乃威議員：

主席，因為很多苦主……因為昨天我開了一個苦主大會，有超過1 000人，都是一些非迷你債券的苦主，他們很關心究竟你正在對多少間進行調查，如果你沒有確實的數字，大約的數字(計時器響起)，你正在對多少間進行調查呢？

主席：

Mr WHEATLEY, 可不可以說說大約有多少間？

Mr Martin WHEATLEY:

Well, I know there's a handful of other banks beyond the 16 involved here but I'd rather give you the exact number for them. I don't think I've got that number with me.

主席：

OK。梁國雄議員。

梁國雄議員：

多謝主席。Mr Martin WHEATLEY，你在證監會交給財政司司長關於雷曼事件的報告第40.2段那裏，你就說證監會可以根據SFO section 201去與違規機構解決紛爭，而那3個條件就是，第一是"to ensure problems do not arise again"；第二是"to mitigate the financial consequences of misconduct to the investing public"；and 第三就是"to increase the confidence in the capacity of Hong Kong regulatory systems to solve problems beneficially."。關於這一條條例，我現在要問問你，證監會在那些註冊機構或你們證監會直接管轄的那些股票公司與客戶和解的方案中扮演甚麼角色呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the role was one of discussing with the banks the emerging findings that we have and explaining to them the process that we could go through and inviting them, if they chose, to make a settlement offer to us.

主席：

梁議員。

梁國雄議員：

你對你管轄的那些證券公司，好像被你公開譴責的新鴻基，你又扮演甚麼角色？你對銀行就是跟它談，給它介紹一些東西，那麼你對自己管轄的，你自己職權管轄的證券公司，你又扮演甚麼角色？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, essentially, the same role in relation to both the brokers and the banks, so the role would be that we would have investigated potential failings with both organizations. At the time we were reaching our conclusions, we would present those and invite them to enter into without prejudice discussions with us to see if settlement could be reached. But there was no difference between the process we followed for banks or brokers. The only difference, of course, for the banks, was that it became a negotiation not with one bank but with 16 banks.

梁國雄議員：

我明白。

主席：

梁議員。

梁國雄議員：

但為何對你自己管轄的證券公司，你就公開，即很明顯地譴責那些證券公司做錯事，亦建議它們賠100%；而當你面對銀行的時候，就完全是兩回事呢？你的報告裏面沒有說到那些銀行犯了甚麼錯誤，而且只是賠60%至另加10%。這兩個，你既然說是同一個平台做事，為何會產生這麼大的分別？為何你不譴責那些銀行？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, firstly, in terms of the broker announcements we made, they were both on a no admission basis. So, even so we said we had concerns raised, they were on a no-admission-of-liability. With the banks, we haven't set out concerns in the same way but we've set out a slightly different set of regulatory outcomes. And I think the simple fact is that the facts and issues that we discovered as part of our investigation process will differ in each case and the scale of the problem and the scale of the potential payout was different in each case. So we've ended up with different outcomes because the facts and the issues are different and the amount of money and the numbers involved are different.

主席：

梁議員。

梁國雄議員：

剛才我問你有3個目的，第一個就是保證那些發生了的問題不再發生，你又停止由上而下的調查，如果那些受害人同意賠償的話。而你又不譴責銀行，你怎樣保證那些問題不再發生？我們現在是完全不知道那些銀行做了甚麼的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think there're two, primarily two, factors. One is the example factor, that the banks have given up 200 million-worth of commission and have paid out over 6 billion-worth of principal; so I think the banks themselves will find that a painful process and will want to put in, themselves, different measures to mitigate it and make sure the same problem doesn't arise. And, secondly, as part of our section 201 agreement with the banks, we require them to appoint an external third party who will review how they sell products, will review how they train staff, how they do due diligence, how they exercise their obligations under the Code of Conduct, and will make recommendations; and it will be obligatory for the banks to implement those recommendations. And that whole process will be subject to oversight by the SFC and by the HKMA.

主席：

梁議員。

梁國雄議員：

我剛才聽你說，你說過銀行與證券商不同，因為有很多間銀行，涉及的金額又很大。你的意思是否說，如果銀行涉及的金額大，或者銀行的勢力較大的時候，你們證監會執法又不同？因為你今天向這些苦主推薦，你是用你們證監會推薦、endorse 這個方案，你剛才回答這是他們兩個人之間私下的協議。其實不是這樣的，是你出來宣布，亦是由證監會授權你的手下去做。其實，換言之，今天證監會是向全香港推薦這個方案，為何你

會推薦一個賠70%的方案，又不譴責銀行，為何會是這樣？為何對新鴻基證券卻不是這樣呢？這個是完全不同的，你認為涉及的金額較大就應該不受譴責嗎？涉及的金額較大就不應該要它賠十足嗎？

Chairman:

Mr WHEATLEY?

梁國雄議員：

你現在是endorse那些人去接受，是嗎？為何你不endorse那些人取回100%？

Mr Martin WHEATLEY:

Well, the offer isn't one for us to make. The offer has to be made by the banks and, clearly, they're not prepared to make a 100% offer. So, we could have chosen to reprimand the banks but had we done so, we wouldn't have this agreement on the table.

主席：

梁議員。

梁國雄議員：

那為何你不加快調查，好像對付新鴻基證券那樣公開譴責它，公開指出它的錯誤呢？這個對於所有索償人都會有幫助的。你現在這個方法則是對索償人沒有幫助的。

Chairman:

Mr WHEATLEY?

梁國雄議員：

如果它是錯就是錯。

主席：

你讓他回答。

Mr Martin WHEATLEY:

Well, compensation for victims is something that can only come from the organization selling the product. The brokers were prepared to offer 100% and were prepared to reach a settlement with us on the terms that they did. The banks were not prepared to reach the same terms. So, we could have reprimanded the banks and we could have continued our investigations but it wouldn't have resulted in \$6 billion of return, it wouldn't have resulted in 90% to 95% of investors getting back around 70% of their money, and it wouldn't have resulted in us having reviews of the banks' processes which they have agreed to implement. It would have resulted in a court case that would run for months, years, with no certain outcome. So we took the decision that, on balance, this was the best solution that we could reach.

主席：

梁議員。

梁國雄議員：

我想請教你，你剛才回答涂謹申議員時就說，那些你在不在香港的日子是不相關的。我現在正式向你詢問，在你跟銀行談判的過程中，HKMA金融管理局、任志剛及香港的財金官員有否跟你聯絡？或者就你所知，有否跟證監會聯絡？你可不可以提供這些資料？或者你將你在過去一個月，即你7月7日在這裏回答完我們的問題之後的所有來往電郵交給我們，如果你認為有些是跟你的私隱有關的就可以不交。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the HKMA were fully involved in the discussions throughout the process and that process was a series of physical meetings along with a development of a potential section 201 agreement and a number of without prejudice discussions. I can't reveal any of that data without breaching our obligations under section 378.

Hon LEUNG Kwok-hung:

But can you provide (*The buzzer sounded*)

主席：

梁議員。

Hon LEUNG Kwok-hung:

..... all the email which is involved of this kind of discussion?

Mr Martin WHEATLEY:

Well, in

Hon LEUNG Kwok-hung:

Or the minutes of the meetings?

Mr Martin WHEATLEY:

Well,

Hon LEUNG Kwok-hung:

I think you need to talk to us

Mr Martin WHEATLEY:

Right.

Hon LEUNG Kwok-hung:

..... because we are the only regime to make the Hong Kong public to understand all the activity behind the screen. You need to talk or you need to provide the document.

Mr Martin WHEATLEY:

I understand that.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

But any such disclosure would be, for us, a breach of our responsibilities under the SFO.

Hon LEUNG Kwok-hung:

So are you telling us that you

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... are not going to provide those document

Mr Martin WHEATLEY:

Well, I

Hon LEUNG Kwok-hung:

..... to facilitate us to see all the truth?

Mr Martin WHEATLEY:

Well,

Hon LEUNG Kwok-hung:

You are coming here to tell us all the truth.

Mr Martin WHEATLEY:

What I'm saying is that I would be acting

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... unlawfully if I did that.

Hon LEUNG Kwok-hung:

So how come it's

主席 :

梁議員，梁議員。

Hon LEUNG Kwok-hung:

..... "unlawfully"?

Mr Martin WHEATLEY:

I hope

Hon LEUNG Kwok-hung:

Are you, are you, are you trying to say that you will follow the same procedure

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... to tell the court?

主席 :

梁議員，你這個要求.....

Hon LEUNG Kwok-hung:

To take us to court?

主席 :

.....因為他現在說不肯給你，我們會後再商量好不好？

Hon LEUNG Kwok-hung:

But he need to talk to us at all

主席 :

我們待會在會後的內部會議再討論這個情況，因為他認為這個不能給你，他說這個是有機密性。

Hon LEUNG Kwok-hung:

So

主席：

現在我想一會兒再討論，好不好？

Hon LEUNG Kwok-hung:

What's the purpose for him to come here?

主席：

一會兒我們會後再討論吧，OK？下一位是石禮謙議員……

好的，今天的第一輪，葉劉淑儀議員。

葉劉淑儀議員：

Mr WHEATLEY，我昨天也和甘乃威議員一樣，出席了一個迷債以外的投資者的申訴大會，那些在場人士很多都是持有ELN、Constellation Notes、Octave Notes，亦有些是透過該16間以外的銀行買的，當然，星展及恒生都有，亦有些說他們持有ELI。說真的，我都沒聽過ELI，不知道他們有否搞錯，ELN的苦主我就見了很多羣。

我再想問問韋總裁，是否這次你跟銀行的和解方案只能拿到60億——你付出了很多努力——只包括持有迷債的投資者？是否就是說，銀行已經沒意思或沒能力再有一個集體方案賠償給其他投資者？即ELN也好，Constellation Notes也好，Octave Notes也好，ELI也好，是否銀行沒有了，不會再拿錢出來，政府亦不會扮演任何角色，除非個別投訴如剛才你所說，最終去告它，循民事程序。是否說沒有了，你們不再理這班人了，是否這個意思？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

With relation to the other types of structured products that you've discussed, there are a number of banks who are not party to this initial agreement who we have been investigating and we continue to be in discussion with them. We can't predict or comment on what sort of settlement they might reach or whether it would be similar to this settlement

and the facts and circumstances are likely to be different and we simply have to complete each of those processes and see what the best settlement outcome we can achieve is. But they remain underway and we're working as hard as we can to get to what might be an acceptable outcome.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

韋總裁，你說的那些是……你們繼續商談的那些是否16間銀行以外的銀行？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, there are two classes of people that we're talking about here. There are the 16 banks who are party to this settlement and, for those 16 banks, what we have agreed with is that, for Minibond products, our top-down investigations cease subject to them meeting the terms of the agreement. And, for other structured products, we will effectively suspend our investigations to give them the opportunity to settle with their clients, and we will monitor how that process develops. For those banks who are separate to this agreement, those investigations continue.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

我明白了。但那16間銀行當中，我昨天收到很多投訴，很多是牽涉那16間之一，渣打、荷銀、上海商業銀行、中信嘉華一大堆。雖然剛才你說過，你停止了那個由上至下的調查，是給時間讓銀行自己去調查及覆檢它們的程序。事實上，這些苦主很多已被銀行拒絕了，他們覺得投訴無門，以及他們向我提出的指控都是說職員誤導，沒有披露風險，持有ELN的那些，銀行都是告訴他說最大的風險是接貨而已，即是接股票，沒有向他們提過雷曼，也沒有讓客戶看條款表。有的甚至 suitability

assessment，即關於是否專業投資者的那些，有一個苦主說其實是叫他簽blank的，簽了他有一份在手，事後銀行才剔、剔、剔，說他是專業投資者。這些要怎樣處理呢？因為很多銀行已經拒絕了他們，那麼他們是否投訴再無門呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The structure of the agreement is that even complaints that those banks have resolved or say that they have resolved with the clients, we've asked them to look again. We've asked them to put in a different complaint handling process and look again at all of those complaints; and that's a part of this agreement. If people still are not satisfied, those complaints will then be accelerated to the HKMA who already have investigations underway. But we're asking each of the banks, each of the 16, to review again the way they've been handling complaints and the outcome of their reviews of complaints.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

韋總裁，你即是叫銀行，你協議的部分只是叫銀行自己再查，但銀行已經拒絕了他們，而且我接觸過一些銀行，它們的態度都是說，"我有律師全部看過，我的文件全部是合法的"。其實它自己覆檢自己，會有不同結論的可能性是很低的，你同不同意？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we have asked them to return – we've set out what we consider to be a more effective complaint handling process, so we've asked them to change their internal methodology. We've asked them to appoint an external third party to review their complaint handling process and we've asked them to look again at the complaints that they've dealt with. So, we're expecting

them, who are the people, ultimately, who know the clients best, to renew those reviews against a new set of criteria.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

韋總裁，你是否就是說要等到它再覆檢完，銀行再拒絕那些苦主一次，苦主又可以向金管局或證監會追查，是否這個意思？即是追究吧，是否會這樣呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We're asking the banks who've sold the products to look again at their own processes and the way they sold the products and the validity of the complaints. That's where we think the most appropriate place for that review will be albeit it will be subject to oversight from the HKMA and the SFC. And, if individuals still don't receive satisfaction, they will have those complaints looked at by the HKMA and we've reserved the right to re-open our top-down investigations if we're not happy with the way that the process is resolved.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

不知道這個程序要搞多久，聽來都要有一段時間，這些苦主很慘了，很多苦主真的等錢用，連供小孩子讀書都供不起，不知要等多久，這是第一點。第二點是，為何證監會可以與銀行公會達成一個協議是只照顧迷債的持有人，而這班人則讓他們跟隨另一個程序呢？因為其實對這些ELN、Constellation Notes的holders，他們也一樣，他們認為他們都是被銀行誤導，都是一樣的痛苦。為何這個協議要犧牲他們？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We're obviously very concerned and aware of the financial hardship people have suffered. We have put a huge amount of resource into trying to resolve the maximum number of cases as quickly as we can and achieving this level of agreement within 10 months is something – I know legislators feel it's slow – it's something that's pretty unprecedented globally, in terms of the speed of resolution of such issues. But we're working very hard on all of the other issues. We haven't sacrificed anybody. We're trying to get the best outcome for the maximum number of people.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

韋總裁，政府沒有正式說過他們會怎樣處理，很直接地說過怎樣處理這些迷債以外的雷曼相關投資者。但銀行和你們很明顯是對他們有一個不同的處理，你可否再解釋一下，理據是甚麼？是否好像一些政府放出來的消息說，因為他們是私人配售，不是公開認購，又或他們購買的面額較大，起碼50萬，他們較富裕或買得較多、較專業，是否因為這樣就要歧視他們呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There's no attempt on our part or, I believe, anybody else's part, to discriminate between different types of investors who have bought different types of products. It's simply the practical issue of Minibonds were the first set of complaints that we were handed and, therefore, the first investigations that we commenced; the others are following on. It's simply a practical issue. There's no sense in which there is discrimination or differential treatment between different classes of asset holders.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

還有一點我要告訴你，昨天在大會上有好多ELN的投資者都提出，你那個有經驗投資者的定義，如果是3年買過5次，對他們是很不公平的，因為他們說ELN的notes是較快到期的，6個月或1年，到期銀行會叫他再買，所以很多人是3年買了6次。如果再有同類的和解，他們豈不是全部都沒有機會？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, (*The buzzer sounded*) I think the point of the definition is to recognize that there are some investors who will have had sufficient experience to understand or have experience of dealing in complex structured products. Our definition means that 90% to 95% of investors will receive the offer under this agreement and they should receive 70% or potentially more in terms of settlement. But some investors who have been investing in products for many years and have made multiple investments should be sufficiently aware to understand and ask the right questions about those products.

Chairman:

Okay.

葉劉淑儀議員：

主席，讓我問多一句吧。

主席：

OK。

葉劉淑儀議員：

你自己都問了將近14分鐘了，是嗎？

主席：

不是，我已說過我是用副主席的時間，很清楚的，葉劉淑儀議員，我沒有多用時間，OK？

葉劉淑儀議員：

嗯。

主席：

請繼續。

葉劉淑儀議員：

那即是我……

主席：

短的可以，長的不行。

葉劉淑儀議員：

不是吧，你自己都用了十多分鐘了，對嗎？

主席：

請繼續，不要浪費時間。

葉劉淑儀議員：

韋總裁，我想再問你一樣東西，是ELN的苦主很關心的，就是你們會不會再跟銀行做一個這類你認為相當成功、世界罕見，10個月便泡製出來，牽涉60億的和解方案給這些其他的苦主？會否繼續以此作為你們的工作目標？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't think we can commit, just as we didn't with Sun Hung Kai; we cannot commit to that being a model that would be acceptable in other cases. We have to look at each case on the facts and circumstances that we find.

葉劉淑儀議員 :

韋總裁.....

主席 :

OK。

葉劉淑儀議員 :

.....我想你會繼續很忙的。

主席 :

OK。韋奕禮先生，剛才梁國雄議員給你一系列的問題，小組委員會正式向你提出，要你在會後書面回應梁議員那一系列的問題。OK？

Mr Martin WHEATLEY:

Yes, we've got the written questions and we'll provide written answers to them.

主席 :

OK，好的。接着是劉慧卿議員。

劉慧卿議員 :

多謝主席。主席，剛才韋奕禮先生說10個月算快了，即可能用國際標準吧，我可以告訴他，其實都不需要說的了，立法會裏面大部分人都"扎扎跳"，社會上亦覺得這個真的處理得很差勁，我現在不知道你怎樣"收科"，但我希望盡快處理。

主席，如果我們天天在中環行走，尤其是在畢打街那間花旗銀行，你都會聽見它吵到像市場一樣，但我卻看不到它的名字出現在這裏，本來說過有19間的，現在是16間，剛才有議員都

提到荷蘭或渣打那些，實在你可否告訴我們有多少間，抑或其他那些是不管的了，就只有這16間呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the 16 banks involved included ABN-AMRO which you mentioned but did not include Standard Chartered. The list is available and we're very happy to provide that as a written answer, but it's also available on our website. So all of the 16 banks who are party to this agreement, that's part of the release and it's available on the website.

劉慧卿議員：

不是，主席。

主席：

劉議員。

劉慧卿議員：

我最初以為有19間，現在是怎麼樣？你說一說這點，我當然知道是16間，是否已沒有19間這件事呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, there were – there are 16 banks who are distributors of Minibond products. Other banks sold other credit-linked products but not Minibond products.

主席：

劉議員。

劉慧卿議員：

即所有雷曼的迷債已經處理了。好的，謝謝。

剛才很多議員都問過，關於為何處理那兩間股票行，新鴻基及凱基可以取回百分百，而現在這個只得六成或七成。剛才韋先生都說過幾次，他說有些事實呀，案件又不同呀，還有就是人數啊，主席。他說股票行方面只有幾百人而已，才1億而已，他說這裏卻是60億，差不多3萬人。是否證監會就是用人數和金錢，這個就是你的原則了，是嗎？即錢多一點、人多一點的就賠少一點；錢少一點、人少一點的就可以賠十足。是否這樣呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, there's no threshold as such but, as I've explained earlier, any settlement offer has to be a voluntary one made by the selling institutions. Now, what we have available today that we're discussing is what the 16 banks were prepared to sign up to. The sums involved for those 16 banks are large and there are uncertainties involved in that. But, no, there's no calibration of payment or settlement depending on the number of people or the sums involved.

劉慧卿議員：

不是，主席。

主席：

劉議員。

劉慧卿議員：

剛才是他自己說的，我全寫下了，他說這裏很多人、很多錢，那裏就人少一點、錢少一點，所以我才問他。我希望證監會自己有原則，不是說你少一點的就多賠一點，多一點的就少賠一點，這樣不行的。但是，因為以前就有人說過證監會提這提那，不過今天你自己告訴我們好了，在這個談判過程，是否證監會都有提出，而且你們都有調查，你們該有些東西在手，不光是

空口跟它們說吧。你又做了這個由上而下的調查，你就跟它說：“喂，其實你們應該好像那兩間股票行一樣賠百分百的。”證監會自己是否這樣提出過呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, again, if I may, all of those discussions were conducted as without prejudice discussions during the negotiation process. It's not appropriate or I'm not able to disclose the nature of those discussions. We've reached, here, what we think is the best outcome that we could have achieved.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

你就說最好了，但如果你是當事人，可能就覺得不足夠，而且給市民一個印象，就是我們政府當局，證監會也好，金管局也好，好像對銀行就鬆很多，小股票行就要賠百分百，這些就可以賠少一點。我覺得有這樣的印象出來，我覺得市民心裏是不服的，主席。

我想問韋先生，你明不明白市民為何會有一個這樣的印象？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The size of the outcome, maybe I give a misimpression. The size of it, to a degree, would affect the ability of different institutions to make an offer. Clearly, for the brokers, the sums involved were relatively lower, so they clearly felt able to make a significant offer; the sums involved for the banks were much higher. But the point I've made repeatedly is we do not have any

ability to tell the banks what to offer; all we can do is to say to them, in response to a certain offer, we'll be able to deal with our regulatory concerns in a particular way. We could have – and, as I've mentioned to some members, we could have – chosen not to accept an offer like this and we would still be going through a legal process for many months or years with no payment.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

如果當局不是抓着一些東西跟銀行去談，還有你那個由上而下的調查，如果不是你們查到一些東西，你信不信銀行會拿60億出來呢，主席？你以為你和我是昨天才出生嗎？9個月了，才拿出60億，完全甚麼籌碼都沒有，"我銀行真是很慈善的，我就給你一點"。不要在這裏跟我們說這些吧。不過，總言之，我說的就是因為有兩個不同的處理，而你自己都親口說，這個是幾百人，這個是1億，那個3萬人這麼多，這樣便給市民一個印象，就是你好像怕那些銀行。

主席，另外我也問問，剛才很多同事都問過的其他那些結構性產品。我跟同事一樣，我是不同意證監會這樣做的。現在你就說你們銀行繼續幫他搞吧。如果當局，主席，如果證監會停止了由上而下的調查，它說現在停止了，然後任由人們跟銀行談。我相信這樣做，說難聽一點，是沒甚麼好結果的，主席。你一定要去查它，有事的，然後一起有個結論。

主席：

不過我想不要評論了，劉議員。

劉慧卿議員：

不是，主席，我就是說 —— 不是我說覺得沒有用，很多人都這樣說，所以我就問一下韋奕禮先生，看見現在這9個月如此辛苦的談判而得到這個結果，如果我們不用那個由上而下的調

查，光說你們自己去談吧，然後不成的又回來，我們逐一查；然後再不成的，我們才由上而下。這是否一個很合理的建議？而且你是否想香港再拖多兩年呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think we wouldn't have got to this particular position had we not conducted the top-down investigation. I don't think we could have achieved this. We said, from the start, that our objectives were three-fold: to alleviate losses, to send a strong message and to mitigate the problem arising again. Now, had we continued the investigations, we could probably have achieved the second of our objectives so we could have sent a very strong message by removing licences or fining banks; we could have sent a strong message by requiring internal control reviews, but we wouldn't have alleviated any losses and our judgement was that that was a more important issue to resolve than

劉慧卿議員：

主席。

Mr Martin WHEATLEY:

..... simply penalizing banks.

劉慧卿議員：

主席，他怕.....

主席：

劉議員。

劉慧卿議員：

.....怕是有人譯錯了我的問題，我不是問那個。其實，他自己竟又回答了，他真的好笑。我就是說，如果你不用那個由上而下的調查，對那些ELN、其他那些是沒有好結果的。而他就說："我們有這個，現在9個月如此辛苦就是因為我們用由上而下，不然也沒有今天這個協議。"那就是了，如果你沒有再做由上而下，

其他那些結構性產品的紛爭，又怎麼會有一個今天這個你認為算是比較圓滿的結果呢？你自己都回答了，因為那條問題不知道譯成了甚麼給他聽。不過你明不明白我說甚麼？你現在說.....你剛才都回答了。所以，其實你現在應該再回答的就是說："對，這個由上而下的調查應該繼續做，所有其他結構性產品都繼續做。" 希望你兩三個月再拿個答案出來給我們。可不可以呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay. Again, if I've understood the question correctly, the structured product investigation in reference to other banks not included in this settlement, they continue, so we continue with that investigation, we continue with our discussions with them. The structured products sold by these 16 banks, we have paused that investigation to give them the ability to put their house in order. If they don't put their house in order, we will continue that process.

Hon Emily LAU Wai-hing:

Chairman, I thought I heard Mr WHEATLEY said earlier that the investigation

主席：

劉議員，最好不要評論，一會兒都是不要評論了。

Hon Emily LAU Wai-hing:

No. The investigation of the other structured products will cease or the complaints will be investigated individually. That's what you said in your statement.

Mr Martin WHEATLEY:

That

Hon Emily LAU Wai-hing:

Under this enhanced scheme.

Mr Martin WHEATLEY:

Yes.

Hon Emily LAU Wai-hing:

You are not going to conduct the top-down approach, the investigation, with the ELN and the other products, are you?

Mr Martin WHEATLEY:

We've reserved the right

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... to recommend (*The buzzer sounded*) – recommence those investigations if that complaint handling process doesn't yield an acceptable result.

Hon Emily LAU Wai-hing:

That's exactly what I'm saying, Chairman.

主席 :

劉議員。

Hon Emily LAU Wai-hing:

I think this complaint process is not going to be very fruitful and you said, earlier, had not there been that top-down approach, that investigation, we wouldn't have got this, you know, so-called resolution before us today. So the same would apply to the investigation of the ELN and the other structured products. That's why I, together with other colleagues, urge you to go ahead with this top-down approach to investigate those structured products

主席 :

劉議員。

Hon Emily LAU Wai-hing:

..... as well and not to wait until the other investigations have failed.

主席：

劉議員，劉議員，其實這個你是在評論，你是提建議.....

Hon Emily LAU Wai-hing:

No, I'm asking

主席：

.....是在評論。

Hon Emily LAU Wai-hing:

Oh, sorry, sorry, Chairman.

Chairman:

Anyway, Mr WHEATLEY, you try to

Mr Martin WHEATLEY:

Yes. No, I understand the point

Chairman:

..... answer, respond to the question in accordance with the summons.

Hon Emily LAU Wai-hing:

He understands the question.

Mr Martin WHEATLEY:

Yes. No, I

Hon Emily LAU Wai-hing:

Can you let him answer it?

Mr Martin WHEATLEY:

Yes. No, I understand fully. And, again, what we've taken a view on is that this settlement with these banks has required that they put in place very significant complaint handling procedures so we want to give the bank the chance to make those procedures work.

劉慧卿議員：

真難看呀，主席。

主席：

OK。現在還有一位，第一輪的，就是陳健波議員。

陳健波議員：

我想所謂專業投資者其實有一個很清晰的定義，而且都頗嚴格，有一系列的測試要做，他甚至要簽署文件才能證明他是一個所謂專業投資者。證監會甚至說將來會再檢討甚麼叫專業投資者。但現在有一個新類別叫有經驗投資者，他們的處理方法是一樣的，即無論有經驗投資者或專業投資者都不可以參與回購。回購應該是一個好東西，因為大家都想參加回購。

專業投資者反而一向都有定義的，但有經驗投資者卻有一個新的定義。其實這是否對消費者公道呢？即他根本都不知道原來現在有一個新的，好像突然間出了這個新的定義，其實是否一個公道的安排呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the category is something that we have created for the purpose of this agreement, so you're right in the sense it's not something that's published previously or has existed previously. But it recognizes the principle that certain people have experience and have knowledge and should have the ability to understand the risks that they were undertaking. But the structure gives 90% to 95% of investors the ability to participate in this offer, so I think, for the vast majority of people, it gives them the ability to participate in what we think, in the circumstances, is a reasonable offer.

主席：

陳議員。

陳健波議員：

我留意到現在那個賠償方法，就是即使沒有投訴的人其實都可以參加回購。現在問題就是說，當時如果銀行都是拿60億出來，有否想過其實是否應該把這些錢給有投訴的所謂有經驗投資者，甚至專業投資者——錢就只有這60億，究竟是否應該分配去同時照顧這班人好呢？還是說現在連沒有投訴的都可以照顧呢？即哪個優先呢？其實有否想過這個問題？銀行既然肯拿60億出來，除了現在這個方案外，有否想過第二個方案，就是這筆錢，不如將這十幾億現在拿不到錢的人給處理了。為何我們會讓那些沒有投訴的人反而有優先呢？有否考慮這個問題？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, that seems to imply that we should not pay certain people who would otherwise benefit, simply because they've kept quiet or haven't been knowledgeable, and use that money to benefit people who are knowledgeable investors and I find that, as a regulator, quite a difficult outcome to justify.

主席：

陳議員。

陳健波議員：

是的，但是你有否想過，其實他不作聲，但有些人就吵得很厲害。其實那些真的，可能真的，我想有較大機會是那些投訴人真是有冤情多一點。如果那些沒有投訴的可能沒那麼大的冤情，有可能吧……

主席：

這是你的評論。

陳健波議員：

.....我不知道。

主席：

這是你的評論。

陳健波議員：

不，我就是說會不會有這樣的考慮呢？

OK，我不評論這個了。但我想問多一個問題，就是證監會與新鴻基、凱基證券達成的協議，其實裏面有叫它做一系列的事情，即包括它有獨立的核數師事務所檢討它的監控、系統與程序。但如果在獨立的內部監控完成18個月內，證監會再發現它用同樣的.....要做的東西又再重犯，而這些事項是很嚴重的，這兩間經紀行在3年內不能向客戶銷售任何非上市或結構性產品，亦不能向投資者提供意見。

我想問一問，對這16間銀行有否類似的阻嚇性條款呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, we've chosen a different approach with the 16 banks and what we are requiring them to do is to carry out two internal reviews using an external third party, one looking at their own internal control processes and the way that they do product due diligence, the way they carry out their know-your-customers, the way their frontline staff are trained and monitored, and once they've got the results of that review, to implement all of the recommendations – and that will be subject to oversight by the HKMA and the SFC – and then, separately, to carry out a review of their complaint handling processes and look at the extent to which they are compliant with our codes and guidelines, and again, they are obliged to implement all of the recommendations that come out of that review and that will again be overseen by the SFC and the HKMA. So, a slightly different approach we've taken with the two classes.

主席：

陳議員。

陳健波議員：

那麼，證監會有否要求銀行究竟在甚麼時間內解決其他投訴，才不會再做那個由上而下的調查呢？有否給它們一個時間性呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, as part of the agreement, we've set out a fairly specific approach to internal complaint handling and we are requiring them to re-open the cases and look again at the complaint cases that they've received and to resolve them in accordance with the procedures that we have set out and we're in the process of agreeing a final timetable for that with the banks and with the Monetary Authority.

主席：

陳議員。

陳健波議員：

OK，主席，我沒有其他問題，交回其他同事問吧。

主席：

OK。各位同事，接着是第二輪。今天第二輪有5位排隊，我把名字讀出來：涂謹申議員、余若薇議員、甘乃威議員、梁國雄議員及劉慧卿議員。

現在是5時45分，如果7分鐘的話即是35分鐘，直到6時20分，因為我們可以做到完成。

現在還有哪位想舉手提問？我要不要在這裏劃一條線？想今天.....方剛議員，對嗎？OK，那即是6位。你是第一輪的，我應該讓你先問。

方剛議員：

不要緊的，我跟在最後。

主席：

依我們的安排，好不好？

方剛議員：

好。

主席：

你要先問，除非你沒準備好，我可以讓你晚一點，遲一點。

方剛議員：

沒準備好。

主席：

沒準備好？那可以。

好了，我們盡量做完這一系列，好不好？我們暫時先劃一條線。如果真的必須問，我都會讓你問的。方剛議員先吧。噢，對不起，你要遲一點喔？涂謹申議員先吧。噢，出去了？

余若薇議員。

余若薇議員：

主席，我剛才問韋先生的時候問他，在此協議下叫另外那些銀行及那16間銀行處理結構性產品，即除了迷你債券以外的結構性產品，我問他再給多少時間銀行去用這個所謂叫 enhanced —— 中文叫甚麼？叫做"實施加強的特別投訴處理程序"，我剛才問他準備給多少時間銀行做這件事，他不肯回答我，他又不肯給那個合約我們看，所以我們看不到這一方面的處理，不過剛才他跟我們講的時候就說這個還在與銀行商討。

我相信韋先生你聽了很多我們同事的意見，都覺得這個加強的特別投訴處理程序，相信成效都不大。因為事實上很多ELN及其他的，譬如星展的苦主已經投訴了很久，現在等了10個月

都未有結論，所以你再給時間銀行再重新看一次，也不知道會有甚麼結果，相信出來的情況都是跟現在差不了多遠。

韋先生，你現在心目中，即證監會會否給一個很短的時間處理呢？因為如果你說這個加強特別處理的程序，聽起來又再10個月都不足為奇，我們擔心苦主不可能再等你的時間。你是否可以最低限度不要——即suspend，不要凍結由上至下的程序，至少你繼續那個由上至下的程序，等你可以做完那個由上至下的程序時再處理這些除了迷你債券以外的一些產品呢？

主席：

即你問他會不會考慮這樣做。

余若薇議員：

對了，沒錯。

主席：

不是說你叫他這樣做。

余若薇議員：

你明白我的問題吧，韋先生？

Chairman:

Mr WHEATLEY?

余若薇議員：

我的意思是叫你不要現在凍結那個由上至下的程序。

主席：

你不可以叫他這樣做，你問他會不會考慮……

余若薇議員：

你會不會考慮？

主席：

.....那又不同。

余若薇議員：

對了。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay. In terms of the timetable, it's not our intention to allow this to move out a long time. We haven't yet finalized the timetable, so I can't give a specific date but it's our intention to actually force that to be a tight timetable. In terms of ceasing or otherwise the top-down approach, we've agreed to a position and we have to stick to that, so that position is we do pause that while the complaints are re-looked at,

主席：

余議員。

Mr Martin WHEATLEY:

..... and we can't change that position.

主席：

余議員。

余若薇議員：

韋先生，我們說的是多少投訴呢？即除了迷你債券以外的一些結構性產品，說的是多少投訴呢？我擔心的是你說所謂tight的timetable，說的可能是月而不是天。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure if we've got the precise number of other – or the up-to-date number. I know that, the last time I looked, there were about 500 complaints relating to products, in relation to these banks, other than Minibonds. That number may grow, obviously, in response to this announcement but it is our intention to force as tight a timetable as we can do onto those banks but, because we haven't agreed to that yet, it would be unfair of me to try to give any estimate today as to what that timetable would be.

主席：

余議員。

余若薇議員：

就算不是很準確的，粗略的可否告訴我們，你心目中所謂 tight 的時間表究竟是說多久呢？說的是多少個月，說的是多少個星期，還是說多少天呢？因為我……

Mr Martin WHEATLEY:

Again, Chairman, ……

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

…… with respect, I can't give an estimate of that because that is subject to a further level of agreement with the banks and I'd rather achieve that agreement first.

余若薇議員：

如果你……

主席：

余議員。

余若薇議員：

.....開始，即如果證監會開始這個由上至下的調查，有關其他結構性產品，你估計證監會需要多少時間呢？

迷你債券我們知道用了大概10個月的時間，那麼，其他的結構性產品如果要做這個由上至下的調查，你估計證監會需要多少時間？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, I'm not sure – the question – we're somewhere – we're quite a long way along in terms of our investigation into other products and the banks know what our concerns are, so they know exactly what the concerns are that we will be presenting to them. We're saying to them, "You have an opportunity to handle the complaints taking full knowledge of the sort of concerns we have before we continue that top-down approach", and that's what we've said to them. But we haven't given a timetable for that.

主席：

余議員。

余若薇議員：

韋先生，我相信你聽到其他同事的問題，你都知道我們的關注點是甚麼，我暫時不想追問你這一樣東西，因為不管怎麼問你，你都不肯說那個時間表給我們聽。

我反而想問你另外一樣東西，就是那些抵押品。它們的價值是很視乎時間的，是嗎？我想問你一系列有關抵押品的問題，因為好多時候你要一些苦主去和解，他都應該知道究竟他們的抵押品值多少錢。

我想問你，現在那些抵押品在哪裏？是否全部都由滙豐銀行持有？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I believe a significant number of them, but not all, are held in trust in New York by a custodian on behalf of HSBC but there's slightly different treatment of each series. But HSBC have now appointed PwC to act as a receiver and I know PwC have started that process.

余若薇議員 :

現在是否他們.....

主席 :

余議員。

余若薇議員 :

.....開始售賣或已在售賣那些抵押品呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In a number of cases, the original instrument collateral has been sold and the money has been placed in short-term treasuries but it's being held until the trust details can be properly resolved.

余若薇議員 :

你可不可以.....

主席 :

余議員。

余若薇議員：

.....給我們一個書面的報告，告訴我們究竟每一個系列的迷你債券的抵押品的情況如何？例如說它已經賣了，賣了多少錢，或正在售賣中，這類資料可否書面提供給我們？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm afraid I can't. We don't have that information. That's only information that the trustee will have,

余若薇議員：

那你是否可以.....

Mr Martin WHEATLEY:

..... and they may not have all of that information.

余若薇議員：

.....你可否問.....

主席：

余議員。

余若薇議員：

.....那個信托人 —— 滙豐銀行拿這個資料，或向PwC方面拿這些資料，行不行？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we can ask but we wouldn't be exerting any regulatory role in asking for that, so that may or may not be forthcoming.

余若薇議員：

你那個協議……

主席：

你可以嘗試去問它拿。

余若薇議員：

……裏面沒有包括這樣東西，是嗎？

Mr Martin WHEATLEY:

As I say, we can certainly do that but, please, understand that we wouldn't be exercising a regulatory authority, so it's entirely up to them as to how much information they would want to provide to us.

余若薇議員：

是，我們希望知道這個資料。

主席：

是，或者我們會後請韋奕禮先生書面回應我們。

余若薇議員：

韋先生，另外就是因為……

主席：

可不可以，韋奕禮先生？會後書面回應。

Mr Martin WHEATLEY:

Well, just to be very clear, we don't have the information. We can present a request for information to the trustee and they may or may not respond to that request because we wouldn't be acting in a formal regulatory capacity, but I'm very happy to share the request that we would make with the Subcommittee.

余若薇議員：

因為，韋先生，這個很重要。

主席：

余議員。

余若薇議員：

當然，對於這些苦主，他是否願意接受你的和解。因為每一個系列都不同，你一定有責任讓苦主都知道他那個有關係的抵押品的價值，以及是否被人賣掉了，賣了多少錢，這個是很重要的，所以我希望你盡快拿到這個資料，因為他們只有60天時間考慮，所以我希望這個你可以拿到給我們。

另外就是剛才我說的那個問題，抵押品值多少錢是很視乎時間的，你老是告訴我們說六成、七成，甚至有時是十足。你是基於甚麼時間去說這些抵押品的價值呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There was an estimate of collateral values that was presented to this committee in December by the Hong Kong Association of Banks and that was based on an Ernst & Young report from, I think, around October, but PwC now have the formal job of recovering the value.

But can I just come back to the earlier point you made about investors need to know the value of collateral? Under the terms of the agreement, if the collateral is worth more than the offer that the bank makes, the offerer is obliged to provide the additional value to the client. So it makes it less important that the client knows today what the ultimate value of the collateral with because, under the terms of our agreement, the banks have agreed that they will top up that excess if they recover excess.

余若薇議員：

我明白，韋先生。

主席：

余議員。

余若薇議員：

但是苦主有權知道抵押品的價值，他要知道才可以考慮是否接受和解。但我希望問你的就是.....

Mr Martin WHEATLEY:

Sorry, could

余若薇議員：

.....你基於甚麼時間計算，你說他的抵押品都可以值六成或七成。你是怎樣，你用甚麼日子呢？因為去年12月來說，即你說我們立法會收到的資料說的是去年12月，這是很久以前的事，大家都知道股票價值都已經漲了很多，由12月到現在，對嗎？所以你現在跟我們說他可以取回本金的六成、七成，你是基於甚麼日子計算抵押品可以達到本金的六成、七成的百分比呢？你肯定是有個日子的，你這個日子是基於甚麼呢？是基於今天的日子、上個月的日子，還是你基於抵押品被賣的日子呢？誰告訴你值六七成呢？因為你自己又說不知道抵押品現在被售賣的情況，那你基於甚麼說這六七成呢？(計時器響起)

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The 60% or 70% number is a commitment that the banks will repurchase at that level irrespective of the value of the collateral, so the banks are taking the risk. They have said, "We will repurchase the golden-age customers, today, at 70%, all other customers, today, at 60%", and they are on risk. If the collateral is worth significantly less, then that's a larger cost to the banks. If the collateral in any series comes to more than they have paid out, they have to pay that amount out to the investors. So, your point you made earlier that the investors have to know the collateral to know whether to accept it, I don't believe that's true. It's the banks that are on risk; they have made the commitment that they will pay regardless of the value of the collateral and, if the collateral is worth more, the banks will then pay that extra amount to the customers.

主席：

甘乃威議員。

陳健波議員：

涂謹申。

主席：

涂謹申議員先吧，OK，你回來了？OK。

涂謹申議員：

是。

主席：

讓你先問。

涂謹申議員：

主席。

主席：

因為剛剛你出去了。

涂謹申議員：

剛才韋先生說非迷債的調查暫時停止了，等一個所謂特別調查程序，即是那些銀行的。我想問，這個你是何時答應銀行停止一個你的法定的調查責任？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That's all part of the same settlement agreement.

主席：

涂議員。

涂謹申議員：

還有甚麼在協議裏面是我們不知道的？即你答應了多少東西，停止了多少事情不做，是我們不知道的？抑或是這兩頁紙，即你的開場白裏面所說的。因為老實說，如果是這樣，我不知道你還答應了多少東西不調查，是嗎？因為你不調查一些法定責任的東西是很嚴肅的事情，對嗎？照理你應該……如果協議裏面……我們最擔心就是你還答應了很多東西，犧牲了公眾利益，是我們不知道的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The point I was made was in the original announcement; there aren't other secret – there is more detail in the agreement but there aren't other significant components of commitments that we've made that haven't been announced.

主席：

涂議員。

涂謹申議員：

如果你不給 —— 我希望說服你 —— 如果你不提供那份原裝協議，我們一定會懷疑你出賣了香港人。我覺得，如果你說你那些只是技術性，即不是真的有事情你做得不妥當，我覺得你應該在我們傳召你，用強制權力的時候，你就被迫要提供，是嗎？因為這樣對你……

主席：

涂議員，我想你還是不要評論，即你說他出賣香港人利益那些，我想你……

涂謹申議員：

不是，主席，我不知道有……

主席：

.....這是你的評論，你還是不要說，我們不需要說。

涂謹申議員：

.....我就問他，我不知道嘛，他說那些是detail.....

主席：

你不要評論，不要評論了。

涂謹申議員：

不，我的評論就是我問他是不是，他評論也可以的。因為我不知道裏面有甚麼細節嘛，對嗎？所以我是說服，主席，我是在說服證人提供協議的版本給我們，就是這樣的意思。

主席：

嗯，盡量不要評論吧，是，你繼續。

涂謹申議員：

不是，我一定要說一說，讓他明白為甚麼我要他提供，這是一個說服他的原因，因為我不評論，外面的人都可以這樣評論，對嗎？就是這樣的意思。

主席，我想問一問韋奕禮先生，你都支持不.....我們說的是，迷債的協議是對非迷債的東西暫時不調查。我想問韋先生，是否他也同意呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Sorry, I heard the first part

涂謹申議員：

對不起。

Mr Martin WHEATLEY:

..... of the question but I missed the last part.

主席：

或許再問一次。

Hon James TO Kun-sun:

Now we are talking about Minibond agreement

Mr Martin WHEATLEY:

Yes.

Hon James TO Kun-sun:

..... with the banks but you take away – well, you suspend your statutory duty, voluntarily suspend yourself the statutory duty to investigate the non-Minibond systematic failure. 你是否自己都同意呢？

Mr Martin WHEATLEY:

Yes.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, it's part of the agreement that we have made. And can I just be clear? You mentioned that were there other secret elements. This isn't a secret element. This was part of our initial release that we made this part of the initial announcement, so everything we've talked about today was in the public announcement.

涂謹申議員：

不是，但是我們.....

主席：

涂議員。

涂謹申議員：

不，我想先說回這一點。因為我們不知道還有甚麼東西你沒有宣布過，你說你那些是技術細節，技術細節都可以死人的，因為裏面的東西可能是那些不需要offer，那些又不包括。所以我們要看到細節，因為我們要監察你、監察銀行有否耍賴，有否出offer。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I think the point I made earlier with regard to the agreement: it contains a confidentiality agreement between us and the banks which we would be breaching if we

Hon James TO Kun-sun:

But can I know what is the confidential nature if all the essential thing is released?

主席：

涂議員

Hon James TO Kun-sun:

Is it only the name of the signing officer?

主席：

涂議員，我們剛剛同意了，余若薇議員提出過，我們在會後的內部會議討論怎樣處理。

涂謹申議員：

不是，主席，現在是我問證人，這個協議為何這麼秘密，我們會後討論的是我們要不要強制他。

主席：

OK，你明白這點吧？

涂謹申議員：

我明白，當然明白，剛才我在這裏。

主席：

嗯，OK。

Hon James TO Kun-sun:

What's the confidentiality in nature? If all the essential thing, as you said, is released already?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

All of our settlement 201 – sorry, all of our section 201 agreements are invariably confidential between us and the other party.

Hon James TO Kun-sun:

No, I'm asking you

主席：

涂議員。

Hon James TO Kun-sun:

..... about the substance of confidentiality,

Mr Martin WHEATLEY:

Right.

Hon James TO Kun-sun:

..... not the format or the usual practice or the tradition or what you want.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think the point I made, Chairman, to Miss EU's question earlier is we can't voluntarily release that absent you compelling us to because to do so would be for us to breach a confidentiality agreement. I think you need to think about the processes through which the committee needs to ask that question.

Hon James TO Kun-sun:

Yes, the final question

Chairman:

Mr TO is asking for the essence, not the details, of the agreement.

Mr Martin WHEATLEY:

Well, I think

Chairman:

Are you able to answer this question?

Mr Martin WHEATLEY:

Well, the essence we've discussed. There aren't secret components to it. There are more detail in certain areas and we'd be very happy to discuss those but, in terms of actually passing the agreement across, that's still subject to the agreement being signed as confidential by the signing parties.

涂謹申議員 :

主席.....

主席 :

涂議員。

涂謹申議員 :

.....我不如這樣問吧。除了你release這麼多之外，你可否不提供那份原裝的給我，現在立刻告訴我，還有甚麼 secret element？他說可以嘛，他說不可以提供原裝協議，我不想等你這麼久，因為有60天時間，那些苦主要考慮的嘛。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Sorry, I'm not sure what the question is.

Hon James TO Kun-sun:

Well, you said that there is a technical or detailed – secret detail,

Mr Martin WHEATLEY:

Right.

Hon James TO Kun-sun:

..... in detail, okay, apart from those already released.

Mr Martin WHEATLEY:

Well,

Hon James TO Kun-sun:

Please, use the four minutes to tell us as far as possible

Mr Martin WHEATLEY:

Well,

Hon James TO Kun-sun:

..... without producing the original copy.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I wouldn't describe them as secret details. They are further details of the two reviews that we're expecting the banks to conduct. So

Hon James TO Kun-sun:

So can you tell us more now?

Mr Martin WHEATLEY:

Yes. In terms of the complaints handling review, we are suggesting the review parameters, timely complaint handling, the steps that they need to investigate and respond to complainants; we're looking at the power of the reviewer who does the independent third party review; what the final report should cover and a requirement that the recommendations are implemented. So that's a set of areas regarding complaints handling.

Similarly with the internal control review, it will cover the review parameters, the areas that need to be covered. Again, it will cover the power of the reviewer, what the reviewer would have access to in terms of interviewing bank staff, reviewing documents, etc.; the need to report to HKMA and the SFC and what the report's contents need to be.

They're the sorts of areas that are included in detail in the agreement.

主席：

涂議員。

涂謹申議員：

你有否想過，其實立法會，尤其是這個小組會要求你出示，或者你要向社會交代那些東西不是有甚麼秘密協議，是需要出示原裝協議，你有否在討論的過程爭取可以公布這份原裝協議？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, I can't comment on our process of negotiation. Obviously, the document that we've signed is confidential to the two organizations but we recognize that there may be procedures that this committee wishes to put in place.

Hon James TO Kun-sun:

No, I'm asking you

主席：

涂議員。

Hon James TO Kun-sun:

..... whether you have tried your best to release this confidentiality.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we haven't yet been required to release this confidentiality.

Hon James TO Kun-sun:

No, no, no, so you have

主席：

涂議員。

Hon James TO Kun-sun:

..... you don't have the public interest in mind.

Mr Martin WHEATLEY:

We

Hon James TO Kun-sun:

You feel the public interest is to keep this secret as far as possible.

Mr Martin WHEATLEY:

No, we very much have the public interest in mind,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... and we've tried to achieve an overall agreement which acts in the best interests of the public.

Hon James TO Kun-sun:

So,

Mr Martin WHEATLEY:

That's very much been at the forefront of our minds.

Hon James TO Kun-sun:

So you think that

主席 :

涂議員。

Hon James TO Kun-sun:

..... not to release the original copy is in the best interests of the public?

Mr Martin WHEATLEY:

I don't really believe that the original copy adds much information that isn't already publicly available.

Hon James TO Kun-sun:

But you said there are something.

Mr Martin WHEATLEY:

Oh yes. And the details between us and each of the banks.

主席 :

涂議員。

Hon James TO Kun-sun:

You don't think it is essential to the public monitoring of your work?

Mr Martin WHEATLEY:

I think

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... it's essential that we and the HKMA have a strong handle on how the banks conduct their reviews.

Hon James TO Kun-sun:

No, but the public

主席 :

涂議員。

Hon James TO Kun-sun:

..... have also a role to play to monitor you, whether you make use of those strong-hand element in the agreement to monitor the banks' review.

Mr Martin WHEATLEY:

Well, we're very conscious that

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... this committee is in the process of conducting such a review and the documents you need to conduct that, I'm sure you will ask us for, formally.

主席 :

涂議員。

涂謹申議員：

主席，我問的就是，將那些非迷債的調查暫停，是否你們提出？抑或對方提出？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, you're asking me to disclose details of without prejudice negotiations which I can't do.

涂謹申議員：

我想問，為何……

主席：

涂議員。

涂謹申議員：

……證監會覺得要暫停那些，明明我現在與它和解迷債，為何暫停調查非迷債，你是否想幫它忙，讓它有多幾個月，有一個所謂特別程序去毀屍滅跡，將那些證據毀滅？

主席：

你不可以如此評論他那個……

涂謹申議員：

會不會造成客觀的效果，我問他，毀滅證據或製造一些證據，令將來其他非迷債的那些，使到你系統性的調查愈來愈難，自我設限，讓你自己難以查到這樣東西呢？你會不會覺得這個客觀效果就是多給了時間銀行去做"蠱惑"呢？(計時器響起)我不是說你故意，我是說會不會客觀效果是這樣呢？

Chairman:

Mr WHEATLEY?

涂謹申議員：

為何你需要這樣考慮，多給幾個月時間它去做這個特別程序呢？

主席：

盡量避免 accusation.....

涂謹申議員：

不是，主席，我說的是客觀效果，他說不同意就解釋他為何不同意，他可以詳細解釋他為何不同意的，主席。

Chairman:

Okay. Mr WHEATLEY?

Mr Martin WHEATLEY:

We have collected a substantial amount of the evidence that we need as part of our top-down process, so we don't believe that there's an opportunity or, indeed, professionally a likelihood that the banks will use that opportunity to destroy evidence. I don't believe that's a correct assumption. That we are offering the banks the opportunity to resolve correctly outstanding complaints.

涂謹申議員：

主席，我最後一句，很簡單。

主席：

要短的，因為還有4位.....

涂謹申議員：

是，我明白。

主席：

.....沒甚麼時間了。

涂謹申議員：

我不知韋奕禮先生知不知道何賢通先生在此作證時說：我沒理由假設銀行會錯誤銷售；我沒理由假設它拿着那份像電話簿般厚的東西而不詳細向客戶解釋；我沒理由假設它用那張勞什子單張，一兩頁紙，用完應該馬上扔掉的，就用那個作為銷售基礎。你跟他說的東西一模一樣，你說你沒理由懷疑他會這樣做，要不是這樣，就不會搞到滿城風雨了。

主席：

我想不要評論這個。

涂謹申議員：

不是，我不是評論，我是告訴他，事實上過往他所說……

主席：

你還有沒有問題？

涂謹申議員：

主席，他說他沒有理由相信銀行會做這種事情。

主席：

但你不要指責證人。

涂謹申議員：

我不是指責他，我是告訴他，他這個相信的基礎是否穩固，主席，你是否聽得懂我的問題呀？

主席：

我聽得明白。你……

涂謹申議員：

就是了，我現在的問題就是invite他……

主席：

對他指責那方面，我主要是說……

涂謹申議員：

我不是指責他，我是說你是否聽得明白，就是你以前所懷着的假設跟現實的情況有可能是錯的，而且錯得很離譜呢？我是邀請你去想一想，你剛才的答案是否永恆的真理，是否會正確的呢？我是這個意思，主席。

主席：

這樣就可以，這樣問就可以，剛才是直接指責，有點不同。

涂謹申議員：

不是，主席。

主席：

OK。

涂謹申議員：

你記住，那個flow，有時一個question，我說出來……

主席：

但我們要避免指責及指控。

涂謹申議員：

……其實意思就是這樣了。

主席：

是。

涂謹申議員：

是吧？你可以有正反兩面的嘛。

主席：

總之我們盡量避免指責及指控，你都清楚吧。

涂謹申議員：

不是，我的意思是說……

主席：

你後來這樣問就可以，後來這樣問……

涂謹申議員：

OK。

主席：

但我們時間要控制得好一點。

涂謹申議員：

是嗎？

Chairman:

Mr WHEATLEY? Last question.

Mr Martin WHEATLEY:

I think the point I had made is that you appear to be making a suggestion that the banks would improperly destroy evidence during this period and ……

Hon James TO Kun-sun:

No, no, no. Sorry, I must correct myself. I'm not making a suggestion. I said objectively they will have more room, more opportunity.

Mr Martin WHEATLEY:

Okay.

Hon James TO Kun-sun:

Are you ……

主席：

讓他答完這條問題。

Hon James TO Kun-sun:

Are you agreeing to that?

Mr Martin WHEATLEY:

Well, the

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The two points I would make is that, one, we have collected the vast majority of evidence that we need as part of our top-down investigations; we're not

Hon James TO Kun-sun:

No, but you said you are far away from having any conclusion.

Mr Martin WHEATLEY:

I didn't say that.

主席：

你答完這條問題，我叫另一位。

Hon James TO Kun-sun:

No, no, we check the record. You have said that

Mr Martin WHEATLEY:

No, I didn't

Hon James TO Kun-sun:

..... to several of our colleagues.

Mr Martin WHEATLEY:

No, Mr TO, I've never said that. I have said.....

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... we haven't reached conclusions yet. That's different from saying we're far away from conclusions.

Hon James TO Kun-sun:

Good. I'm glad to hear that.

主席：

OK，好了。下一位是.....這裏還有4位，我們其實剩下20分鐘，我們會超時，餘下時間要討論余若薇議員及梁國雄議員兩個要求證人出示那些資料，所以我要控制時間，希望大家明白。

甘乃威議員。

甘乃威議員：

Yes。首先，我要求韋奕禮先生亦同樣地，早前我們要求拿新鴻基及凱基證券有關他調查的報告，同樣地，我要求你向本委員會提供你調查那16間銀行系統性的失誤究竟有甚麼失誤的調查報告，我同樣地要求你向本委員會提供。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, the position regarding the banks is similar to Sun Hung Kai and KGI in that there is not an investigation report as such. There are notices at different stages of final preparation. So there isn't a final agreed report, which I think is one important point.

And the second point I would make is that the same claim for PII would apply to those papers in relation to the 16 banks.

主席：

這個我們再討論，因為現在我們不想立刻牽涉到公眾利益的申請……

甘乃威議員：

主席，我已經在會上提……

主席：

……之前那兩個報告已經是我們正要處理的事情。

甘乃威議員：

明白。主席，我看，因為……

主席：

我想你要想一想你怎樣問，不要立刻牽涉到公眾利益那部分，我們要討論的。

甘乃威議員：

主席，我作為委員，有權利去提這個問題，也有權要求證人……

主席：

你可以，但證人已回答……

甘乃威議員：

……證人可以提供這個問……

主席：

是，他已經回答你。

甘乃威議員：

……即他可以有回應，但是他亦可以claim PII。

主席：

是，他已回答了……

甘乃威議員：

主席，究竟會後怎樣處理，我覺得這是我基本的權利。

主席：

是。

甘乃威議員：

究竟這16間銀行，證監會查到任何系統性失誤的內容，他剛才說沒有報告的，OK？任何系統失誤的內容，我都要求證監會向本委員會提供。

主席：

是，你等他先回答，我們稍後內部處理，即加入這個問題，我們不可以立刻要他回答，除非他願意……

甘乃威議員：

我沒有叫他立刻……我沒有叫他立刻……

主席：

……除非他願意回答，除非他願意回答，好嗎？

甘乃威議員：

……我沒有叫他立刻提供，他可以會後給我們也行。

主席：

其實他已回答了，不過……

Any further to add, Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think, as I've explained, the same concerns for us would apply to the proposed notices for the 16 banks as applied to the brokers and, therefore, were that claim to be made, were that summons to be made, we would respond in the same vain.

主席：

待會兒會後再討論。

甘乃威議員：

主席，我只想記錄在案，我已經在此提出了。

主席：

行，行。

甘乃威議員：

主席，我想問剛才提到有關那份協議，我想問究竟這個協議裏面有否一個條款是有關調查了那些迷債的銀行的系統性失誤，查了這些資料不能夠應用於非迷債的系統性失誤上面，即它不可以引用那些資料應用於非迷債苦主的投訴上面呢？在協議內有沒有這樣的內容，或者你們與銀行有否任何其他的相類似的協議呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As of this date, we have, in regard to the banks, only the one agreement with regard to the 16 banks. Our procedures would always be that we do not have secret agreements. At the point an agreement is reached, we will announce it immediately and that was the position with this agreement and it would be the same with other banks. We're still in discussion and, therefore, we're not in a position to announce what an agreement might look like at this stage.

主席：

甘議員。

甘乃威議員：

主席，我想再問就是，如果你查到這些系統性失誤，在迷債方面這些銀行系統性的失誤，這些資料可否應用於非迷債苦主相關的銀行的調查裏面，可否應用這些資料呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I don't think you can reach those public conclusions. Clearly, we are raising similar concerns but we haven't completed those investigations and it's again premature to state conclusions when we're still in the process of completing investigations.

主席：

甘議員。

甘乃威議員：

主席。我沒有要求你作任何結論啊，我只是說你在調查過程發現了迷債有關銀行系統性的——你的關注，你不要當它失誤，你的關注。這些關注，譬如舉個例子，新鴻基裏面所提的有否盡職的審查、有否將給予客戶的投資意見及客戶提出的疑問全部備案、有否將這些產品重大的風險向投資者披露。這些關注，在迷債方面系統性的失誤、系統性的關注，你見到有的，這些資料可否應用於非迷債的調查上呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We are clearly pursuing similar lines of inquiry so that the sort of issues that we have reached concerns on in the case of the brokers are similar cases

in other areas and we will apply the same regulatory principles when we're investigating other products from other organizations.

甘乃威議員：

主席，可能翻譯方面不是.....

主席：

甘議員。

甘乃威議員：

.....很準確。我的意思就是說，你對那16間銀行就迷你債券查到的關注，這些關注是否可以同樣應用？譬如舉個例子，A銀行，你調查後有這樣的關注，但同樣A銀行本身是有賣非迷債產品，舉個例子，Constellation。如果在這樣的情況下，你可否引用到，因為大家都是說系統性的關注，而不是單一的個案，是整個系統出現問題，這些問題會應用於其他結構性產品上面。是否可以這樣應用呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, there clearly are some common themes in terms of all the sale of complex products and we're investigating those common themes across different products and different banks and we will apply the same principles. We can't be sure that we'll reach exactly the same conclusions because there will be differences in terms of the product complexity: maybe the training process, maybe the issuer, maybe the distributor will be different. So even though so we'll apply the same investigatory approach, we may reach different conclusions based on slightly different observations.

主席：

甘議員。

甘乃威議員：

主席，我想跟進那些抵押品。剛才你拿着我提供給你有關立法會財經事務委員會在去年11月我們取得的資料，我想問，我不知道你拿着的資料跟我們拿着的資料是否一樣，這份東西是我剛剛給你的。

我想問一下，在你達成這個協議前，有關迷債回購方案協議前，你們有否計算過，第一，如果你的估值純粹只有11月這個估值，對吧，在這個估值下，你有否計算過銀行實際最終如果賣出抵押品後，他實際要付多少金錢作為他們的回購方案可能需要的實際支出呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the banks have committed to pay a settlement amount which equates to around 6.2 billion, 6.3 billion. That includes covering all Minibond series regardless of where the underlying collateral value is. For those series where the underlying collateral value turns out to be higher than the settlement amount they've agreed, they will pay that addition to the Minibond holders. For those series where the collateral value is lower than the settlement amount, the bank will absorb that loss.

甘乃威議員：

主席.....

主席：

甘議員。

甘乃威議員：

.....我的問題是問，基於11月有關這些的估值，現在大家都只是拿着11月的估值，我的假設是。我問的問題就是，你們有否計算過，基於11月的估值，應用於你那個回購方案，銀行實際上最終要拿多少錢出來？現在你說的是63億，這個就是它進行回購時要拿出來的錢。根據我的計算，銀行如果根據11月的

估值，只是付出19億。用回購方案這個協議，其實它只是付出19億。究竟你們證監會有否曾經做過這個計算？如果有的話，你計算究竟是多少錢呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We have no better information than the sheet that you're holding which was the sheet that was calculated last November. PwC have been appointed and the numbers may be similar to this, they may vary from this. But the point I've made is this, those series where there's very low recovery value, the banks will make considerable losses; those series where the recovery value is high, they banks will simply pass on that additional recovery to their clients. The actual amount that it costs the banks ultimately is subject to a scenario analysis as to what the collateral is worth and we don't know that figure at this level but the banks are taking on the risk today that they may or may not recover their value.

甘乃威議員：

主席……

主席：

甘議員。

甘乃威議員：

……我的問題是問證監會有否曾經計算過，基於11月的估值，銀行最終要付多少錢？即他那個情……我想主要的問題在於，第一，你要回答我，究竟你有否估算過究竟銀行最終要付多少錢；第二，如果你有估算的話，這筆錢究竟能否達到懲罰性的因素？因為較早前你說過，你能否達到協議，其中一個因素就是考慮究竟它有沒有懲罰性。這方面究竟你有否計算過，能否達到懲罰性的協議呢？

最後一個問題，我恐怕時間關係，主席。有關經驗投資者這點，你們會不會考慮跟銀行……現在來說，實際上，我自己覺得，可能很多人都覺得，這是對那些經驗投資者的一種懲罰。有關

這些ELN，你又停止調查，精債你又停止調查，星債你又停止調查，由上而下的調查。而他們如果又買入迷債的話，便沒有回購方案。這方面究竟你們(計時器響起)會不會重新檢視你這個協議對於這些經驗投資者是否非常不公平？

主要是3個問題，主席。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

A couple of points. In terms of the extent to which this is punitive or not, obviously, that's based on a whole set of assumptions as to what the ultimate collateral is. Now, you've mentioned that, on your calculation, the banks – it may cost the banks, ultimately, 1.9 billion.

Hon KAM Nai-wai:

Yes.

Mr Martin WHEATLEY:

And, in addition, there's the 200 million of lost commission income. If that is the final figure, I do think that's a punitive figure for the banks and I think, over and above the financial cost, there's a high reputational cost of this process that we've been through and there's a high cost to relationship with their customers. So they're all costs; not just the financial cost.

Sorry, I forgot the second part of your question.

主席：

甘議員。

甘乃威議員：

剛才是說如果你基於 —— 純粹是我的估計 —— 19億，再加上你剛才提過2億，實際上是21億。21億，你覺得是否已經達到所謂懲罰性的一個原則，令你去接受這樣的一個回購方案而你又去推薦呢？這個是否達到所說的懲罰性的原則？

經驗投資者那點，剛才我提到，究竟你們有否覺得這樣對那些經驗投資者來說是一種懲罰？

Chairman:

Mr WHEATLEY?

甘乃威議員：

你們會不會考慮.....

Chairman:

Okay.

甘乃威議員：

.....可以有機會更改這一部分的協議，令經驗投資者能夠參與回購計劃呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay. The question of whether it's punitive enough: it's a much higher figure than we could have imposed as a fine. So, under the law that we operate, all we can ever impose as a fine would be \$10 million or three times the profit. And if the profit they're giving up is 200 million, clearly, three times that would be far less than it is under this agreement. So, I think the numbers that you've talked about, I think that would be sufficiently punitive

Chairman:

Okay.

Mr Martin WHEATLEY:

..... but it's certainly much higher than any fine we could have imposed. And, clearly, any fine we could have imposed would not have meant any compensation to investors because that's not what fines are used for.

In terms of whether it punishes experienced investors, you mentioned Octave and Constellation Notes and a number of other notes. Those investigations continue, so where they are sold by other banks that are on this list – and there are a number of other banks who weren't Minibond distributors – we're still in the process of determining exactly how those investigations should be resolved. Whether it's a punishment to experienced investors, I think one of the difficult questions that this committee and we have been struggling with is how far we are dealing here simply with investors who have been duped because they didn't have sufficient information to make investment decisions and how far we're dealing with experienced investors who simply took a risk and lost money because of that risk. And there's clearly a combination of the two.

Under the agreement that we've reached, we are seeking a pay-out of around 70% to 90 to 94% of all investors and I think that's an acceptable outcome given the circumstances that we're dealing with.

主席：

OK。剛才甘議員所要求有關16間銀行的資料，證人就說沒有，不過如果我們想要怎樣去取得資料呢，我們稍後內部商議再討論，好不好？

接着是梁國雄議員。

梁國雄議員：

多謝主席。

韋先生，你在你這本報告內強調，說如果你們去解決紛爭，有3個條件。第一個就是保證那些問題不會再發生，你今天一而再、再而三不肯將你調查到的結果交給本會，那又怎樣保證那些問題不會再發生？我們怎樣ensure the problems do not arise again? Your problem, I mean, your problem, your mistake.

Mr Martin WHEATLEY:

Well, the process that

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... we are engaged in is trying to make sure that the banks and the brokers properly understand their obligations under our Code. So that's the reviews that we've asked for. We've also said, separately to that, that we would review the codes that we operate – so, in terms of product approvals, in terms of conduct approval – and look at whether those codes and, therefore, the way that we operate need to be improved as well. And that will be subject to public consultation.

主席：

梁議員。

梁國雄議員：

不，但現在我們說的就是，你們查到的東西，你覺得不應該給我們，即那16間銀行裏面那些misconduct，或者有些根本是詐騙的東西。你在現階段已經不提供給我們，第一就是令我們沒法瞭解，第二就是令苦主沒法瞭解，亦從而令到那些苦主的律師沒法瞭解。你這樣做，你已經調解了紛爭，但第一個目的你已經達不到。

第二個目的，就是你要減輕公眾投資者的損失，是嗎？要令他們減輕。我想請教你，現在說的不是銀碼大小，是說銀行有否做過好像新鴻基及凱基的那些事情，有的話，它應該賠百分之百。你現在不肯提供那些資料給我們，我們如何判斷你有否做事情呢？因為上次你賠了百分之百，我們都不看你的資料，其實也是不應該的。你這是兩種不同的處理嘛。

第二個objective你已辦不到了。第三個你還說"to increase confidence in the capacity of Hong Kong's regulatory systems to solve problems beneficially"。現在人家那些苦主及我們說你不是beneficially，大哥，現在在這個moment已經說了。你卻跟我說："我是不會給那些東西給你看的"。那你在這裏幹甚麼？你要明白，證監會、金融管理局全部都是香港人付錢的。

主席：

梁議員，你不要評論，好不好？

梁國雄議員：

不是，我要讓他明白啊。

主席：

不，你是在評論，你一直在評論。

梁國雄議員：

所以你的job就是要讓我們知道你怎樣做事嘛。

主席：

你現在要取證，不是評論。

梁國雄議員：

如果你說那是非法的，即是說如果你給我們提供那些東西是非法的.....

主席：

你問問題吧。

梁國雄議員：

.....的話，我想請教你，如果你執行你的職務是非法的話，那就是說你們是沒辦法執行職務了，那個職務不是說你們去調解，是你給我們提供一些東西。我想請教你這件事。

主席：

你的問題是甚麼？

梁國雄議員：

你是否詳細考慮過的？

Mr Martin WHEATLEY:

Well, I understand

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... it's a very difficult issue but I am subject to the SFO and section 378 of the SFO imposes secrecy provisions on me. That would be unlawful were I to breach those secrecy provisions. So it puts me in a very difficult position with this committee. I've tried to be as open as I possibly can without breaching the law but my lawyers would tell me that, if I go beyond the stage I've gone to, I am myself breaching the law in giving evidence to this committee.

主席：

梁議員。

梁國雄議員：

我再請教你幾個問題。第一個就是，你們SFC和那16間銀行做的和解協議，是SFC主席個人做的決定，抑或是董事局通過，抑或是你個人作出的，還是你推薦的？

主席：

這個剛才問過了，梁議員，問過也回答過了。

梁國雄議員：

不，他說得很含糊，他說是board給的。

主席：

他已回答了你。

Hon LEUNG Kwok-hung:

Did you recommend

主席：

全部回答過了的。

Hon LEUNG Kwok-hung:

..... recommend to the board

主席 :

你有沒有別的問題要問？

Hon LEUNG Kwok-hung:

..... in order to let them give the order to your colleagues?

Mr Martin WHEATLEY:

Okay, if

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If my answer was vague

Hon LEUNG Kwok-hung:

Did you?

Mr Martin WHEATLEY:

..... it wasn't

Hon LEUNG Kwok-hung:

Did you?

Mr Martin WHEATLEY:

..... it wasn't intended to be. Let me explain exactly the decision-making process. A number of powers were delegated by the board at the commencement of the SFO, one of which was to achieve settlements with organizations. That power is delegated to the director of enforcement

Hon LEUNG Kwok-hung:

I know that.

Mr Martin WHEATLEY:

..... so that's where the decision was made, not at the board level, not at the chairman level but at the director of enforcement but with my full support and with full briefing given to the board. But, technically, the decision was made at that level, not at the board, not at the chairman level.

主席：

涂謹申議員問過，他也全部回答過了，梁議員，你問別的問題吧。

梁國雄議員：

不，我問他是否.....他有否 recommend

主席：

都問過了，他回答過很多了，你再問別的吧.....

Hon LEUNG Kwok-hung:

Have you recommend this to the board

Mr Martin WHEATLEY:

Well, the board

Hon LEUNG Kwok-hung:

..... as a director?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The board are fully informed and supportive of the position we've taken but, technically, the decision is taken at the director of enforcement level.

主席：

梁議員。

梁國雄議員：

我想再請問你的就是，財政司及其他金融官員還有任志剛，有否叫你們這樣做？

Mr Martin WHEATLEY:

We have not been asked

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... by anybody to take this decision. Clearly, everybody is concerned about the continued unrest caused by this and the continued concern and, certainly, the concern of individuals who are facing hardship. So, everybody is concerned about that: I know this committee is; we are, at the SFC; the Government is; the HKMA are. But we have not been subject to inappropriate influence to try to affect the way we take our decisions.

梁國雄議員：

OK。

主席：

梁議員。

梁國雄議員：

我想你描述一下整個過程，就你所知。到底是那些銀行家把條件提出來問你們；抑或你們叫銀行家接受；還是由金融管理局對你們說銀行家這樣做，你們接不接受；又或者是曾俊華，John TSANG也有份拿個proposal給你們，叫你們這樣做。是怎樣開始的呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The proposal, as with all settlements, starts with us presenting to an organization under investigation the concerns that we believe may be justified and, at every stage, we would say to the organization under investigation, "If you would prefer to enter into without-prejudice settlement discussions, then we're prepared to have that discussion as well." So, it's purely a discussion, it's purely a process between the SFC and, in this case, the banks.

Hon LEUNG Kwok-hung:

Purely?

Mr Martin WHEATLEY:

Yes.

主席：

梁議員。

Hon LEUNG Kwok-hung:

Just between the SFC and the bankers?

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

Not the – the HKMA did not involve?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... we kept the HKMA

Hon LEUNG Kwok-hung:

So how can't

主席：

我想兩位不要對話，好不好？

Hon LEUNG Kwok-hung:

How can't it be?

主席：

梁議員，你先通過主席，好不好？我一早提過了，你們兩位對話，我沒法子主持會議。

Hon LEUNG Kwok-hung:

Okay.

主席：

梁議員，你先問。你問吧。

梁國雄議員：

這個金管局是完全沒參與的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The HKMA – Chairman, the HKMA were clearly involved because they were providing us information through their own investigations. They were involved or they were present at all the discussions so they were aware of the development of the settlement negotiations and they were very supportive of our approach. But, ultimately, it's a section 201 settlement under the SFO which is the responsibility of the SFC.

主席：

梁議員。

梁國雄議員：

我明白你是根據201條，但問題就是，我問的問題就是，金管局和曾俊華有沒有份做這個決定？你說他一定有involvement，那麼他的involvement是甚麼呢？到底他是say "Yes, go ahead" or not? Or the banker say "Yes"?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We, at no stage, needed or are required to ask permission of either the Government or the HKMA to agree a settlement. It's a settlement that's made between us and the banks. The HKMA were fully informed of the development of that

Hon LEUNG Kwok-hung:

I know that because

主席：

梁議員。

Hon LEUNG Kwok-hung:

..... it was only provided by the section 201, so you must be the agents to talk with the bank to make the negotiations but what I'm asking is that whether the HKMA and John TSANG were involved or giving direction.

Mr Martin WHEATLEY:

There was no

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There was no sense of giving direction. They were involved to the sense that we kept them informed of developments in a broad sense but, no, there was no coercion or pressure or direction from those parties.

Chairman:

Okay.

Hon LEUNG Kwok-hung:

No, no, I am not

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... I am not asking whether

主席 :

梁議員，我想不要繼續了。

Hon LEUNG Kwok-hung:

..... there were pressure or not.

主席 :

梁議員。

Hon LEUNG Kwok-hung:

I want to

主席 :

梁議員，我想，已超時了，因為還有兩位，肯定超時很多了，好像很多。

如果你們每個人都直接問，便做不到翻譯了(計時器響起)，你知道嗎？一直下去。

劉慧卿議員。

劉慧卿議員：

多謝主席。主席，我想問一問韋先生，關於剛才他那份發言稿第2頁的第二段及第三段。第二段是說那些分銷銀行，其實現在這裏說的是其他的結構性產品的投訴。他就說分銷銀行"須立即實施加強的特別投訴處理程序"，去解決這些投訴，接着他又說"分銷銀行同時承諾委聘獨立第三方檢討本身的系統、程序及加強的投訴處理程序，並在檢討完成後落實所有建議"。即其實是未做的，你要先找到這個獨立的第三方，我想問那是誰。你要找到它，它又要檢討，然後建議，但是你上一句又叫它立刻實施，那是實施甚麼呢？韋先生，可不可以幫幫我們委員會呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, what they're implementing immediately are a set of requirements that we are requiring under the agreement as to how the current complaints are being reviewed, so that each customer complaint relating to the purchase or sale of investment products would be handled and investigated promptly and objectively, that each investigation involves an assessment of the relevant staff involved, dealing with the customer, that each complaint involves an interview with the customer, that each investigation analyses the bank's conduct against its obligations – so we have reminded them what those obligations are – that each customer complaint is subject to the separate written report, and so on. So there's a set of steps which we're asking for immediately and that all of that is overseen at a sufficiently senior level within the bank.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

你又說要它委聘獨立第三方去檢討整個程序，但現在已經有一套程序，而你是想銀行立刻實行，用現有的程序去查，但又

有個獨立第三方，不知何時會委聘的，又去完成檢討。那麼檢討完了，新的程序，是否又會用新的程序又再看一看那個投訴？抑或其實現在那個投訴.....因為你說，主席，他是說用這個所謂叫做加強的特別投訴處理，我就以為是這個獨立第三方看過才加強，其實卻不是的。抑或其實兩者的關係是怎樣呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, obviously, that would be the ideal situation and then all the recommendations would be implemented and complaints would be handled according to that but that simply will delay the process further. So, we're requiring – there's a set of changes that we have identified be implemented immediately, the third party review be commenced as soon as possible and recommendations from it be then implemented as well.

主席：

劉議員。

劉慧卿議員：

真的亂七八糟，主席。即是日後第三方查完出來的那套東西叫"加強加強"，現在加強了一次，日後又再加強。是否這樣？

我希望證監會真的給社會一些較清晰的東西。如果你覺得要有一個獨立第三方去看，那就趕快看了，然後去做。因為要不然，你都給苦主有個想法，就是你現在查了我，如果查過你是滿意，那當然沒事了。如果不滿意，他日後必定會吵，我等你日後獨立第三方出來，我又再查過。

我想問韋先生，你是否覺得這個程序很合理和真的很公道呢？如果你弄了這個，又明知有個檢討。還有，哪個是獨立第三方？你一併告訴我們吧。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Chairman, firstly, the third parties will be independent bodies that have to be approved by us and the Monetary Authority and it's likely to be significant, large firms of lawyers or accountants. In terms of the process, clearly, it would be ideal and cleaner if that could be completed first and the recommendations implemented but that would delay further the handling of complaints, so we felt it was more important to start the process of handling complaints against a set of guidelines that we have identified and then to increase that level, if necessary, once the third party process is completed.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

如果現在那套所謂加強的制度是這麼好的話，你就不會建議找獨立第三方，又去找律師，又去找會計師，又去做一大堆工夫。即是很.....

主席：

邊做邊加強。

劉慧卿議員：

呃？

主席：

邊做邊加強。

劉慧卿議員：

所以你說證監會建議這些東西是否有問題呀，主席？即不是主席你有問題，那是他。

主席：

我沒問題。

劉慧卿議員：

你一方面又說要去做，另一方面又說要有個獨立第三方。如果我是苦主，我無論如何都要等獨立第三方，因為比較公正、獨立嘛。你自己搞這麼多程序出來。我很希望證監會真的找一些很"硬掙"、很公正的程序去處理。其實我們剛才說的就是那個由頂到下的獨立的甚麼……

主席：

調查。

劉慧卿議員：

……那個叫甚麼調查？即是由上而下那個最好。

主席：

由上而下，top-down。

劉慧卿議員：

你現在搞出三胞胎，主席。現在有個加強的，日後就加強再加強的。唉！

韋先生，你告訴委員會，你現在這個建議，你覺得是否很合理及是否很有效率呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think it's a necessary recommendation. In terms of whether it's the most efficient, there is a trade-off. Clearly, it would be more efficient for that third party review to be done first but that would delay the handling of complaints. And we're very concerned about the hardship that people are suffering and wanting to get this resolved. So, we've given the banks what

we believe are a set of requirements which are significantly enhancing their current processes.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

他如此關心那些苦主，你就趕快做那個由上而下最有效的那個吧。所以有時證監會在這裏講的東西，我們都不懂如何演繹。

剛才他自己都說了，9個月就是因為有由上而下才能把這個搞定。現在又說要搞這個加強的，日後又獨立第三方再加強，然後又再由上而下。

你這樣聽到，我們聽了這幾個字，都知道這樣搞下去是不行的。我希望韋先生再考慮一下，大家都想，因為這些人都熬了這麼多月，證監會是否應該拿出一套很公道的，可以真的查到結果的東西，快點拿出來把事情處理掉。

現在，主席，我想問韋先生，如果以他自己估計，先做這個加強的，然後獨立第三方再加強，然後再由上而下，你估計是否起碼要再拖一年多呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Mr Chairman, we will be closely monitoring this process, so both us and the HKMA will keep a very close scrutiny on the extent to which the banks have complied with the terms of the agreement and any breaches of the terms of the agreement we will treat very seriously. So, I can only assure the committee that we'll make sure the process works as best possible by keeping a very close eye on the way that the recommendations are implemented.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

我不是只問他監不監察，我是問他如果用這三部曲，是否又要再搞超過一年？

Chairman:

Mr WHEATLEY,

Mr Martin WHEATLEY:

I hope not.

Chairman:

..... how long would that be?

Mr Martin WHEATLEY:

We are putting a lot of pressure on resolving these processes as quickly as possible.

劉慧卿議員：

那大概.....

主席：

劉議員。

劉慧卿議員：

.....多久呢，主席？

Chairman:

How long would that be?

Mr Martin WHEATLEY:

Well, because we haven't agreed that with the banks yet, it would be premature to me to give you that information but we are in the process of trying to agree that timetable.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

我還想問韋先生，在他那個新聞稿第1頁，他除了提到這個獨立第三方，他還說那些銀行會委聘一個經證監會及金管局批准的"獨立機構"，去檢討結構性產品的銷售程序。這個又是甚麼獨立機構？又是律師和會計師嗎？又是他們，又有多些工作做嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, they will be bodies who we consider to have an adequate understanding of internal control procedures. So, it may be consultants, it may be lawyers, it may be accountants, but it would have to be somebody that we feel confident to be able to complete that sort of work.

劉慧卿議員：

主席。

主席：

劉議員。

劉慧卿議員：

這個獨立機構的工作會不會影響我們剛才說的那些調查？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, it shouldn't affect the investigation. It's separate to that.

主席：

劉議員。

劉慧卿議員：

主席，我真的希望韋先生聽見我們所說的。現在社會想要的是一個更快的決定，亦是公平公正的去做。剛才韋先生亦告訴委員會，其他產品的銷售都同樣用這些規則去規管，我希望你今天聽完我們所說，回去證監會再想一想，看看剛剛說的三部曲的處理是否真的公正，抑或可以有一個更快的方法。可不可以承諾我們再去看看呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, I'm sorry, if you've got that impression that we'll review the three-step approach. This is now a signed agreement which is binding on the SFC and on the banks, so, no, we won't be reviewing the terms of that agreement unless we feel that there is a material breach by one of the countersignatories to the agreement.

主席：

劉議員。

劉慧卿議員：

這樣便很不公道了，對那些人，你這樣做。不過，總而言之，我們今天是取證，我也同意主席所說，不是說要怎麼樣，但我們提出那些問題(計時器響起)，韋先生應該看到委員會的看法吧。謝謝主席。

Chairman:

Mr WHEATLEY, will you be able to stay for another

Hon Emily LAU Wai-hing:

Ten minutes.

Chairman:

..... twenty minutes or so? Because we've still got two members waiting to raise questions.

Mr Martin WHEATLEY:

Of course, Chairman.

Chairman:

Would that be possible?

Mr Martin WHEATLEY:

Yes.

Chairman:

Okay, thank you.

現在還有方剛議員，接着第三輪的有涂謹申議員，他稍後會問。方議員先吧。

方剛議員：

謝謝主席。

韋先生，我想問一問你，關於你那些定義，譬如你說的有經驗的投資者那些定義，你是怎樣定出來的？

主席：

這個問過了，也回答得很詳細了。

方剛議員：

好的。

主席：

你有否第二個問題？

方剛議員：

我問的就是，譬如你現在說要分兩類，有些65歲以上，有些65歲以下。這些東西，你如此分類，即有些是800萬，有些是800萬以下，甚至有的投資了3次，3年之內如果投資過5次，就是一個有經驗的投資者。這些定義是誰想出來？以及你取過甚麼諮詢？有否向業界諮詢過？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, firstly, the "private investor" definition is something that was the subject of consultation, including at this Legislative Council, at the time the SFO was put in place and, so, the definition of "professional investors" has been subject to considerable public comment but there are questions now as to whether we need to review that and so we've made a commitment that, after the summer, later on this year, we will put out a consultation paper that will review the definition of "professional investor" and seek to look at whether we need further changes to it.

The category of "experienced investor" is not something that's been subject to public review but, clearly, has been part of the discussion that we have had with the 16 distributing banks and that recognizes the fact that, amongst all the categories of investors who would have invested in these products, while for many they wouldn't have had either the education or the investment experience to understand the risks and the natures of the product, there may be some who do have sufficient experience to understand the risks and nature of the product. And we agreed with the banks that we needed a simple enough definition that would, therefore, be administratively simple to implement but without affecting a large number of investors. And that's where we came up with the definition of an experienced investor as being somebody who has dealt five times in the previous three years with a complex financial product. The nature of the agreement, therefore, is such that, of the total population, between 90% and 95% of investors will be considered eligible and, therefore, will be given a repurchase offer.

主席：

方議員。

方剛議員：

是。韋先生，我最擔心的反而是，我們向前看，我知道現在證監會打算有很多新措施會加進去做，這些措施將來會不會寫得很清楚呢？即是不會有灰色地帶，最重要的是這樣。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman, it's our intention that, on a number of these areas, we will produce a public consultation document later on this year and the public consultation document will cover a number of issues about products and product disclosure, what products can be created under the Companies Ordinance and what products have to be created under the SFO. We will consult on the use of gifts and whether those sorts of incentives are conducive to selling complex products. We will consult on a "mystery shopper" programme and we'll consult on our Code. So all of the things that we've been talking about in this committee will be the subject of a public consultation process later on this year.

方剛議員：

你預計這些事情你何時會做得到呢？因為，譬如很多銀行，譬如證券行，它們要繼續做生意，現在它們對這些都非常混淆。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, even – Mr Chairman, even before that process has been completed, we are engaged in a very active dialogue, both as part of the investigation and separately as part of our ongoing discussion with banks and brokers, about their obligations under their code and explaining very clearly what those obligations are and how they have to be discharged. So that's something that has been happening, effectively, since last September in terms of trying to

make financial intermediaries much more aware of what their obligations are. So that's an ongoing process. What we'll be looking at, later on this year, is whether those codes themselves need to be changed or whether it's the implementation of the existing codes which has been the problem.

主席：

方議員。

方剛議員：

主席，我想舉個例子。韋先生，好像最近有些銀行售賣人民幣債券，現在他們差不多要在那裏站兩個小時才買到。這個事件和這些事情發生後，對買債券的顧客來說，是一個很大的騷擾。是否需要花兩個小時的時間去做呢？你不要忘記，我們香港是希望成為一個金融中心，如果買一樣東西要兩個小時……

主席：

我想，你在取證，你不要說到另一個範圍，方議員。

方剛議員：

是嗎？即我問你，如果這些……

主席：

你回到這個範圍吧。

方剛議員：

我就是問你，現在這些監管得如此嚴格的措施，是否每一樣東西，將來要買的人要花兩個小時去瞭解這樣東西呢？

主席：

其實你超出了範圍，人民債不屬於這個調查。

Mr WHEATLEY, can you respond to this one?

Mr Martin WHEATLEY:

Well, Chairman, I know there's been a general concern about whether the regulation has moved too far in the other direction. I don't think it should

take two hours to sell a renminbi bond; it's a relatively simple instrument. It's not as complex as Minibonds but it still involves a suitability assessment because the renminbi bonds are still issued by, effectively, foreign companies because they're Hong Kong incorporated banks; it involves exposure to a foreign currency and it involves liquidity risk because they're not traded on the Stock Exchange. So, it shouldn't take two hours but it still requires that suitability is assessed because that may not be suitable for everybody.

主席：

方議員。

方剛議員：

是。主席，我想再問一問關於你說的那些雷曼的ELN，ELN即是equity-linked note，如果雷曼破了產，這些ELN是否全部都沒錢收呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Anybody who has bought ELNs issued by Lehman Brothers is clearly – ends up as an unsecured creditor of Lehmans. There are other products which reference Lehmans as an entity and there are significant losses in that space, as well. So, almost any products where Lehmans is either a party as an issuer or a reference entity will have suffered severe losses and we are investigating and looking into a large number of cases of complex products which include both credit-linked notes and equity-linked notes.

主席：

方議員。

方剛議員：

主席，我想問一問，一些私人配售的雷曼ELN，那些章程是不需要證監會批核的。是否不需要證監會批核？

Chairman:

Mr WHEATLEY?

這個以前問過，回答過，不過看他再回答吧。

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman, there are – there is a regime which allows for the private placement of notes where the documentation doesn't require any prior approval by the regulator. So, these are notes typically placed by banks with their private wealth investors but even if the documentation doesn't require prior approval, they're still subject to our Code of Conduct in the selling process. So there is still – unless they're sold to professional investors, there is still a suitability requirement which has to be met.

主席：

方議員。

方剛議員：

主席，我想問一問就是，韋先生你在opening speech那裏說，現在那16間銀行多數會付六成至七成，這是第一個payment，第二個payment就要等你贖回後，看看有多少錢，你才再付第二個payment。你估計那個可能是超過七成以上甚至更多。這第二批資金是否要根據當時股票或證券贖回來有多少資金，然後再分呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman, the way that we have structured the second stage payment is that that will be paid once the value of collateral is recovered. If the value of collateral, at that second stage, is any value above 10%, then an additional 10% will be paid to the investors. If the recovery of the value at that second stage is above 60% or 70%, then all of the additional amount would be repaid to the investors but it does rely on the recovery of the collateral value.

主席：

方議員。

方剛議員：

我的意思是想問那10%是否你guarantee呢？要是超過，那當然沒問題了；要是低於，你那10%是否一樣要付給他們？抑或你是說市價多少錢就多少錢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

At the second stage, if the value of the collateral is between zero and 10% (*The buzzer sounded*), then that's exactly what gets paid out. If it's 3%, then 3% gets paid out; if it's 9%, then 9% gets paid out. If it's above 10%, then the full 10% gets paid out; if it's above 60%, then any additional amount gets paid out.

Chairman:

OK。各位同事，現在還有第三輪，剛剛有兩位舉手，有涂謹申議員、余若薇議員。現在已差不多7時，我建議延長會議半個小時至7時半，因為我們還有內部商議，有3樣事情要討論。如果大家同意，我把時間縮短一點，7分鐘一位，好不好？

劉慧卿議員：

主席，因為我要上一個電視節目……

主席：

因為現在……

劉慧卿議員：

我要走了。

主席：

因為剛才我說了，這個已經……

劉慧卿議員：

因為你的會議本來直到7時，所以我答應別人上一個8時的電視節目……

主席：

是的，7時，是的。

劉慧卿議員：

……很公道吧。你現在延至7時半，然後再要去到8時內部討論……

主席：

因為現在還有兩位同事要問，那麼……

劉慧卿議員：

不，我待會兒要走了，主席，我不想你流會，但你一定要搞清楚時間。

主席：

沒辦法，因為還有3樣事情稍後我們內部要討論，剛才因為有3位已要求了，我都要處理的，對嗎？

劉慧卿議員：

是的，我知道，我先告訴你罷了。

主席：

對了，好的，OK。每位7分鐘，涂謹申議員先吧。

涂謹申議員：

我很簡單。我不知道韋奕禮先生有否想過，你覺得這個協議都很合理，挺好的，OK，我不會懷疑你這樣想。但你有否想過，其實如果真的這麼好，是否原本的協議裏面應該有一個條款，就是說讓迷債持有人，過半數的人或有過半數價值的——或者過半數吧，我不知道是哪一樣——同意接受這個回購，你

便運用你的權力不再去作系統性的調查。即是起碼有一半以上的人或價值都同意，這樣起碼是否都公道一點呢？但現在你似乎扮演上帝的角色，說："我是上帝，我覺得六成、七成是公平合理的，你們要也罷，不要也罷，我也不會調查了。"

這樣是否會變得公平一點呢？讓他們去做一個決定，過半數便無話可說，過半數都說合理，即變相確認你不調查也是對的。你有否想過這樣的做法呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the deal, I think, is the best that we could have achieved. Any such clauses as you've suggested would have required agreement amongst 16 banks and ourselves and I'm not sure whether that would have been possible. So, I can accept your point that you're making, that maybe it would have been nice to have other clauses in; I think the clauses that we've got provide as best that we could have achieved.

主席：

涂議員。

涂謹申議員：

主席，第二個問題就是，那些經驗投資者在法律裏面是沒有的，你的靈感從何而來？3年5次。

Mr Martin WHEATLEY:

Well, I think, again, that we

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, we recognize that there may be some classes of investors who were sufficiently experienced that they could have and perhaps should have understood the nature of the product and, whilst that was a small

minority of investors, we needed to identify a relatively simple mechanism, that was administratively simple, for the 16 banks to administer. The measure that we came up with was the result of a discussion between us and those banks.

主席：

涂議員。

涂謹申議員：

你看不看到馬上有一顆滄海遺珠？因為你說3年5次，我假設譬如有一個100萬的投資者，他在3年內買了一張結構性產品，另一個是銀行叫他把5張單同一天拆成20萬一張單，那就變成5個transaction了。其實兩個人，你對我來說，你說對呀，因為他同一天內考慮過5次，因為有5張單，每次考慮1秒嘛。而這個100萬一張單，就考慮了一次，那麼他就是沒甚麼經驗了。這個考慮5次，20萬，5張單，花了5秒，不就是5次經驗嗎，那便是很有經驗了。你覺不覺得這是很粗糙呢？很多很大的問題出現呢？我還可以舉很多例子，不過我希望舉一個最極端的例子，是你令這個投資者被遺漏了，我不知道你有沒有甚麼可以幫他跟進呢？

Chairman:

Mr WHEATLEY?

涂謹申議員：

即打個譬如，OK。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Mr Chairman, the point I made earlier is that we expect the banks to adhere to both the letter of the agreement and the spirit of the agreement and, if we find that there are odd anomalies or odd situations, then that's something that we'd expect to discuss with the banks as to whether there could be a complaint upheld in the sort of circumstances that hypothetically you've described. I'm sure there will be some at the margin that we have to have an

interpretation of but I think this definition is as simple administratively as we could have come up with. Anything more complex would have lent itself to much more confusion, I think.

主席：

涂議員。

涂謹申議員：

主席，我想問一問韋先生，如果真有這樣的滄海遺珠，我可否帶他來找你，特別找銀行商量？或者起碼讓你作為合約的一方，覺不覺得這個因為協議的所謂精神——你用的字眼是“精神”——應該可以包含在內。可否直接找你們商量呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, clearly, we can be approached directly. We'd expect that the original point of complaint of any dissatisfaction with complaint handling would be the HKMA but, nonetheless, we expect that we'll get some references directly and we'll engage with the HKMA on those.

主席：

涂議員。

涂謹申議員：

最後，主席，我問那個……因為韋先生的開場白倒數第五段，他說分銷銀行，對於非迷債那些，該16間銀行必須按照協議規定，實施加強的特別投訴處理程序，即是叫做投訴處理加強版，現在很流行加強版。因為我們沒有那份協議，當然他剛才唸過一些，我都沒抄完，不過翻看逐字紀錄應該可以找到一些吧。

我想問你給它多長時間去做這個加強版，然後你才會……或者協議裏面有沒有說，這個特別程序加強版，你容許它有多長時間可以調查，然後你就會重新展開那個由上而下、非迷債的可能的調查呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, that question I answered earlier and we don't have a precise timetable for that. We will have one because it's important that we decide it but that's something that's still part of a discussion between us and the banks.

主席 :

涂議員。

涂謹申議員 :

你原本那個.....現在的協議裏面是寫明還會有補充協議的嗎?

Chairman:

Mr WHEATLEY?

涂謹申議員 :

這裏沒寫的。

Mr Martin WHEATLEY:

There are

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There are a number of supplementary agreements that are necessary to effect the overall agreement.

涂謹申議員 :

何時會有.....

主席：

涂議員。

涂謹申議員：

.....這些協議？會不會在60天之內？

Mr Martin WHEATLEY:

Well,

涂謹申議員：

不，主席，我覺得公道的問題，就是你原來這份協議還有另一些補充協議才能夠實施這份協議，但是這幾天已發信提出回購了。你究竟要多長時間，你會不會在這60天內解決呢？那幾份補充協議又會不會公開呢？不然，市民真的不知道怎樣去決定。(計時器響起)

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, I don't believe that any of that supplementary work affects the information that clients would need to accept the offer. The information that we've referenced to a couple of times today that people would most like to accept the offer is knowledge of the value of the collateral and what we've tried to do here is structure an offer that is independent of the value of the collateral. So the banks are on the hook for 70% or 60% regardless of the level of the collateral and, if the recovery of the collateral is greater than 60% or 70%, the banks are obliged to distribute that at a later stage. So, the ultimate value of the collateral shouldn't affect an investor's ability to take a decision on this today.

主席：

余若薇議員。

Hon Audrey EU Yuet-mee:

Yes. Mr WHEATLEY, if the collateral, when they are sold, actually realizes more than a 100% of the capital, where would the surplus go? Would it go to the customers?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We hadn't – given the nature of the products, we hadn't considered that possibility.

(Witness seeks instructions from the accompanying person)

Hon Audrey EU Yuet-mee:

Well, why not? I mean, if the securities rise in value,

主席：

請陳先生不要這樣跟證人討論，不可以的，我在開始時已說過不可以。

Mr Jimmy CHAN:

Sorry, Chairman.

Hon Audrey EU Yuet-mee:

Yes, I

主席：

余議員。

Hon Audrey EU Yuet-mee:

Mr WHEATLEY, it is important and that's why earlier I asked you about the valuation of the collaterals. I mean, we now see, looking at the stock market, for example, securities are going up in value. What if, ultimately, when the collaterals are realized, they are sold for more than a 100% of the capital? Who

Mr Martin WHEATLEY:

Well, these

Hon Audrey EU Yuet-mee:

..... gets the entitlement to the surplus?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

These – I think, the surplus would be distributed to the investors, because they are entitled to the ultimate value of the collateral, but the reality of these products aren't like equities. They're not prices that have a huge volatile upside. But, clearly, the Minibond holders are the people who are entitled to the ultimate value of the collateral.

Hon Audrey EU Yuet-mee:

Yes, I don't understand

主席 :

余議員。

Hon Audrey EU Yuet-mee:

..... why you say "I think", because you premised your answer by saying

Mr Martin WHEATLEY:

Right.

Hon Audrey EU Yuet-mee:

..... "I think". It is a matter of agreement, who gets the

Mr Martin WHEATLEY:

Okay.

Hon Audrey EU Yuet-mee:

..... money which is obtained or

Mr Martin WHEATLEY:

Okay, let me

Hon Audrey EU Yuet-mee:

..... as a result of the sale of the collaterals. Can you be absolutely clear on this, that whatever the collaterals are sold for, the Minibond holders are entitled to the full realization, the full realized value, and, in any case, even if they are realized for less than 60%, the Minibond holders are entitled to at least 60% of the capital?

Mr Martin WHEATLEY:

Okay.

Hon Audrey EU Yuet-mee:

Is that the deal?

Mr Martin WHEATLEY:

That is the deal.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

But let me confirm that in writing so that there's no ambiguity about that.

Chairman:

Okay.

Hon Audrey EU Yuet-mee:

Yes. All right. The other thing, Mr WHEATLEY, I want to ask you is about what you say here. You said, in your opening remarks, that, "Apart from the repurchase offer, the agreement also addresses the regulatory concerns which we had during our investigation." What are these regulatory concerns in relation to the 16 banks? We know the regulatory concerns in

relation to SHK and KGI, the two securities firms; are we here talking about the same regulatory concerns in relation to the 16 banks?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... as part of the – Chairman, as part of the agreement, we haven't stated what those regulatory concerns are.

Hon Audrey EU Yuet-mee:

You haven't stated?

主席 :

余議員。

Mr Martin WHEATLEY:

We have not stated them. We

Hon Audrey EU Yuet-mee:

Well, then, what do you mean here when you say that "the agreement also addresses the regulatory concerns which we had during our investigation"? I assumed, when I read this, this applies to your investigation in relation to the 16 banks, so what are the regulatory concerns in relation to the 16 banks and how are they addressed by using this agreement?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, they're addressed by the fact that our objectives are met and our objectives in any investigation, particularly of mis-selling, is to alleviate to the extent possible, any losses that have occurred from mis-selling, to send a strong message to the market and to put in place structures that prevent the

recurrence of such problems. They're the objectives. We are saying that this agreement allows those objectives to be met and, therefore, we will not deal with any concerns through other regulatory means.

Hon Audrey EU Yuet-mee:

Well, I can see that

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... one of the objectives is met, and that is making a reasonable compensation to the Minibond holders or the investors, but the other very important objective is to prevent future occurrence and to punish, of course, the banks which have been mis-selling. So, how does your agreement address those concerns, I mean, if you don't identify what are the regulatory concerns, what are the reasons behind the mis-selling, for example, whether it's inadequate staff training or whether there is, in fact, a system default in relation to your disclosure mechanism? I mean, if all these are not identified, how can they be addressed and in what way does this agreement address those concerns?

Mr Martin WHEATLEY:

Well, they are

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, they are addressed to our satisfaction in completing our settlement investigations but part of the agreement is that they are not publicly disclosed. So the agreement is that we accept the payment and the, effectively, giving up of commission as being a strong regulatory message that this should not occur again, that the payment alleviates losses to the extent which we believe we can achieve, and the review processes that we have demanded be put in place meet our requirement that the problem does not reoccur in the future.

主席：

余議員。

Hon Audrey EU Yuet-mee:

Can you also clarify one thing, Mr WHEATLEY? That the third party that you refer to, the job of the third party is only to review the process, is that right? Or this third party is not destined or not appointed to review the individual cases, is that right?

Mr Martin WHEATLEY:

That's correct.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It's two internal review processes; it's complaint handling and internal reviews and controls.

主席：

余議員。

Hon Audrey EU Yuet-mee:

Mr WHEATLEY, your approach seems to be slightly contradictory in terms because, on the one hand, you say that your top-down investigation had been completed and this is how this agreement addresses the regulatory concerns but, on the other hand, you are telling us that the SFC has suspended the top-down investigation. Can you reconcile these two contradictions?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Mr Chairman, this is an agreement under section 201 which implies that we accept certain things from, in this case, the banks in full and final settlement of any regulatory concerns that we may otherwise have had to punish through fines or reprimands. That's how we reconcile it, that we are

comfortable to accept this set of measures, if you like, in settlement of what otherwise would have been a fine or a reprimand. And, had we gone down the route of fining or reprimanding, which I know certain members would have preferred, then we wouldn't have been able to achieve the payment and the recompense that's been achieved. So that is the balance. It's a settlement discussion where we drop our regulatory concerns in response to an offer to make substantial compensation payments and a number of other things under the agreement.

主席：

余議員。

Hon Audrey EU Yuet-mee:

And, finally, Mr WHEATLEY, in relation to all the other non-Minibond holders, when are we going to see (*The buzzer sounded*) the SFC addressing the regulatory concerns in relation to those cases?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, those cases – Mr Chairman, those cases are well advanced in terms of our own investigation. We have entered into discussions with those banks. As soon as we have achieved something that we believe would receive broad agreement, then we will announce that agreement.

Hon Audrey EU Yuet-mee:

You see, the problem, Mr WHEATLEY, is that the regulatory concerns must be exactly the same in relation to Minibond or non-Minibond structural products because we are talking about the same mis-selling, the same kind of inadequacy in the training of staff or disclosure mechanism and so on. It's exactly the same. So why is it that you are only able to address the regulatory concerns in relation to Minibond holders but not in relation to the other structured products?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... there are high degrees of similarity in terms of some of the issues but they're not exactly the same.

Hon Audrey EU Yuet-mee:

What are the differences?

Mr Martin WHEATLEY:

Well, clearly, the products will have different issuers and, therefore, there will be different amounts of training material or advice given by the different issuers; the products will have different degrees of complexity and sophistication and, therefore, be more or less difficult to be explained during the sale process. So there are a number of differences between different products.

主席：

OK。各位，韋先生，因為今天的研訊時間已過了一點，小組委員會會另訂研訊日期請韋先生出席研訊，繼續向小組委員會作供。小組委員會在5月20日向你發出的傳票依然有效，多謝你今天出席。

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

(研訊於下午7時15分結束)