

# 立法會

## 研究雷曼兄弟相關迷你債券及 結構性金融產品所引起的事宜 小組委員會

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第二十六次研訊的逐字紀錄本

日期： 2010年1月8日(星期五)

時間： 上午9時30分

地點： 立法會會議廳

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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

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Verbatim Transcript of the Twenty-sixth Hearing  
held on Friday, 8 January 2010, at 9:30 am  
in the Chamber of the Legislative Council Building

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### Members present

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

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

Hon James TO Kun-sun

Hon Emily LAU Wai-hing, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Audrey EU Yuet-mee, SC, JP

Hon 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

Dr Hon LEUNG Ka-lau

Hon IP Wai-ming, MH

Hon Mrs Regina IP LAU Suk-yea, 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

**Witness**

*Public hearing*

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

**主席：**

首先歡迎各位出席"研究雷曼兄弟相關迷你債券及結構性金融產品所引起的事宜小組委員會"第二十六次公開研訊。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再次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，連主席在內一共是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，研訊進行時必須保持肅靜。根據《立法會議事規則》第87條，我有權請任何行為不檢或看來相當可能有行為不檢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必須符合《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。此外，我會決定某條問題或某項證據是否與小組委員會的職權範圍有關，以及是否屬於研訊的範圍。我亦有酌情權決定應否容許委員提出某項問題。

小組委員會在2009年6月9日會議上同意，委員應考慮本身與證監會的關係及是否有參與其決策或工作，自行決定是否作出利益申報或是否出席與證監會證人有關的研訊。就此，陳鑑林議員已申報他是證監會現任非執行董事。他表示為免角色衝

突，不會出席與證監會證人有關的研訊。此外，梁美芬議員亦曾申報，她是證監會程序覆檢委員會委員。

我現在宣布今天的研訊開始。

今天研訊的取證範圍主要是有關雷曼兄弟相關迷你債券及其他非迷你債券結構性金融產品事宜的解決方案，以及證監會就迷你債券的銷售進行由上而下的調查所得。

我想藉今天的研訊再次指出，小組委員會進行研訊的目的是確立事實。基於小組委員會的職權範圍，我希望各界理解，小組委員會不可就個別投訴作出處理，或協助個別人士追討損失。

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首席律師楊以正先生陪同你出席研訊。請注意，鞏女士及楊先生不可向小組委員會發言。證人亦不可與陪同人士討論，亦不可接收該等人士的任何指示(無論是口頭或書面的)。

韋先生之前出席研訊時已宣誓，所以今天你會繼續在宣誓下作供。

Mr WHEATLEY, in response to the Subcommittee's summonses issued on 20 May 2009 and 14 October 2009, you have provided four documents to the Clerk to the Subcommittee. These four documents are:

- the full unredacted version of "Issues raised by the Lehman Minibonds crisis – Confidential Report to the Financial Secretary – December 2008" (SC Paper No. S2(C));
- the written exchanges between the Chief Executive Officer of the Securities and Futures Commission, the Hong Kong Monetary Authority and the Government from 7 July 2009 to 22 July 2009 relating to the agreement on the repurchase of Lehman Brothers-related Minibonds by the 16 distributing banks (SC Paper No. S3(C));
- the agreement reached by SFC, HKMA and the 16 distributing banks in relation to the repurchase of Minibonds from eligible customers as announced on 22 July 2009 (SC Paper No. S4(C)); and
- a document entitled "A Thematic Analysis of the Sale of Minibonds" (SC Paper No. S5(C)).

Mr WHEATLEY, are you now going to formally produce these four documents to the Subcommittee as evidence?

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

Yes, Chairman.

***Chairman:***

Thank you. Mr WHEATLEY, you provided two documents to the Clerk to the Subcommittee in response to questions raised by members at the hearing on 3 August 2009. The two documents have been numbered as S49 and S50. Mr WHEATLEY, are you now going to formally produce these documents to the Subcommittee as evidence?

***Mr Martin WHEATLEY:***

Yes, Chairman.

***Chairman:***

Thank you. Mr WHEATLEY, SFC issued a press release on 17 December 2009 on its agreement with Grand Cathay Securities (Hong Kong) Limited on the repurchase of Minibond. This document has been numbered as S51. Mr WHEATLEY, are you now going to formally produce this document to the Subcommittee as evidence?

***Mr Martin WHEATLEY:***

Yes, Chairman.

***Chairman:***

Thank you. Mr WHEATLEY, SFC also issued a press release on 23 December 2009 on the resolution reached by SFC and HKMA with Dah Sing Bank Limited and MEVAS Bank Limited concerning their sale of certain Lehman Brothers-related Principal Protected Notes. This document has been numbered as S52. Mr WHEATLEY, are you now going to formally produce this document to the Subcommittee as evidence?

***Mr Martin WHEATLEY:***

Yes, Chairman.

**主席：**

Thank you。就剛才提及的S2(C)、S3(C)、S4(C)及S5(C) 4份文件，證人曾經以一宗有關迷你債券回購協議的待決司法覆核申請為理由，要求小組委員會以閉門研訊方式使用該4份文件。小組委員會經考慮後，並不接納證人的要求。委員可在公開研訊中使用該4份文件，並且會按照《工作方式及程序》第18段適用於待決民事法律程序的原則進行研訊。倘若委員與證人就某項問題是否會構成妨礙法庭判決而持不同意見，則由我本人作出裁定。

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，並且讓證人可盡快直接回答問題。我亦要求各位提問時速度不要太快，這樣可以幫助我們的傳譯工作。

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。

另外，為了善用研訊時間，請委員的提問盡量精簡及具體，而證人亦須要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，證人亦不須重複已講過的說話或大家已知悉的背景資料。無論證人或委員，須在主席示意後才可發言。

為使輪候提問的次序得到公平處理，秘書稍後記錄委員舉手發問的次序時，今次會由我的右手邊數起，逐一記錄委員姓名。想提問的委員現在可以舉手。

韋先生，我現在想提出第一個問題。S3(C)附件(i)載有財政司司長於2009年6月12日致韋奕禮先生的函件。司長在信中表示，圍繞迷你債券的爭議源於證監會對迷你債券章程及推廣材料的認可。韋先生於2009年7月7日回應司長，並不認同司長的意見(文件S3(C)附件(iii))。請問韋先生，自從雷曼於2008年9月倒閉後，證監會與政府當局是否有討論過現行招股章程認可制度的優劣，並且發現一些弊端呢？如果有的話，詳細情形為何？如果沒有，據韋先生所知，司長為何會得出此看法？是否因為有關認可制度過去曾經出現某些缺失呢？Mr WHEATLEY？



***Mr Martin WHEATLEY:***

Chairman, I don't think I can comment on how the FS has reached the conclusion in the letter. As we pointed out very clearly in the response, it was premature to make conclusions. We were still in the middle of our investigation. This Subcommittee is in the middle of its investigation but, prima facie, the issues arise not from disclosure standards but from the poor quality of selling standards, and that was the point we made very, very strongly.

Yes, we have engaged with the Government, with the FS, subsequent to the collapse, both in our report to the FS, which you now have the full copy of, and in our consultation paper which was published last year and which we've now just completed our consultation period.

So, the answer is, yes, we are reviewing the regime; we're looking at specific areas where we think we can improve the regime and it will take some time to understand the responses that we've had in response to our consultation.

***主席：***

韋奕禮先生，我明白司長一定知道你們的工作當時是需要時間，但他在信中這麼清楚提出，圍繞着迷你債券的爭議，是源於 —— emanated —— 源於證監會對迷你債券章程及推廣材料的認可，即 authorization。是否因為這一點，他之前覺得這可能會是一個因素引致這麼多爭議，我想問，之前有否你們之間的溝通或有任何情況下，令司長有這樣的理解或這樣的想法呢？  
Mr WHEATLEY？

***Mr Martin WHEATLEY:***

From my recollection, Chairman – but, obviously, we'll check our records – there was no written correspondence that dealt with that issue prior to this letter. There were a number of discussions and we had regular, both formal and informal, discussions with the Government over this issue but I don't believe there was any formal correspondence prior to this, but, please, allow me to check records and to check that that is the case.

**主席：**

韋奕禮先生，如果有其他的資料或者紀錄，會後可否提供給小組委員會呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Can I be clear, Chairman? That's records specifically relating to this comment as to whether it was the disclosure that led to this particular problem?

**主席：**

是關於司長那封信裏面所提出的那點，關注的那點。Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Right, yes, Chairman.

**主席：**

Thank you。接着想問一問，證監會在檢討報告(文件S2(C))第21.3段中建議政府研究現行的監管架構是否對香港作為國際金融中心的進一步發展最有利，例如證監會提及雙峰監管模式(the Twin Peaks)。請問韋奕禮先生，雷曼倒閉前，證監會有否考慮需要檢討現行的監管架構，並且與政府當局或金管局討論過此事？如果有，詳細的情形為何；如果沒有，原因是甚麼？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I don't believe there has been any prior discussion with the HKMA over the regulatory structure. We have suggested that the Government needs to take a look at the total structure and this is something that I think many governments around the world are now reviewing. We haven't made a specific recommendation but we've suggested there are a number of different options that could be considered.

**主席：**

韋奕禮先生，我是特別指雷曼倒閉之前，證監會有否考慮過這個需要，在任何時間，即2008年9月15日之前的任何時間，有

否考慮過或者嘗試提出這一點作內部或與有關部門討論。有否嘗試過？有沒有這樣的情況呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Yes, there had been previously a number of debates, both at the time of the passing of the bill and prior to that and subsequent to that about whether the regulatory structure was most appropriate. There were particular concerns raised at the time of the discussion of the bill; there have been discussions subsequently. And it's a question, I'm sure, will come back again. So, I think it's fair to say that the overall regulatory structure has been the subject of considerable debate both since I've been here and prior to that.

**主席：**

Mr WHEATLEY，你剛才說的那些debates，你是說在何種情況之下的討論，即關於那些debates, where did these debates take place, Mr WHEATLEY?

**Mr Martin WHEATLEY:**

And, again, I'll need to check the detailed records but, at the time of the drafting of the bill, there was discussion about the status of banks in terms of their exempt status; there was discussion around the other aspects of the industry, notably the insurance industry, as to which parts and whether these should be brought in under the Securities and Futures Ordinance. So, that was discussed at the initial drafting of the bill and the passing of the bill in this house and subsequently to that.

**主席：**

Mr WHEATLEY，由通過條例之後的時間開始，到2008年9月15日那段時間，你剛才提到可能要在會後回去看看有甚麼紀錄。如果有的話，可否提供給本小組委員會參考呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Yes, Chairman.

**主席：**

Thank you。現時，金管局負責按照證監會的標準監管銀行的受規管活動，改變現行監管架構，例如採用雙峰監管模式，如何能夠解決證監會在專題分析(S5(C))裏面所發現的監管問題，例如確保中介人必須對產品進行盡職審查，以及前線人員有足夠的培訓去瞭解所銷售的產品呢？韋奕禮先生。

**Mr Martin WHEATLEY:**

I think, if you're referring to the alternative models and how they would deal with the particular problems, one of the high-level models that we've suggested needs to be investigated is the so-called Twin Peaks model and that would place all conduct regulation under a single regulator. There's no guarantee that it would prevent the crisis that we've seen but it would certainly ensure that there was a single regulator looking at the conduct of those institutions selling financial products. That's not the case that we have today. We have a functional approach whereby the SFC and the HKMA have very, very different responsibilities.

**主席：**

Mr WHEATLEY，有否討論過或考慮過，是否因為現行的監管制度，例如你說雙峰監管模式，是一個原因引致這麼多問題產生？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I don't think it's fair to say that that was one of the reasons giving rise to the problems. What we've seen is a quite unprecedented financial situation worldwide and the problems – sometimes similar, sometimes worse problems – have arisen in every major financial market and each market has a slightly different model. So I don't think it's fair to say that there is any single model that has been shown to be successful in this crisis.

**主席：**

Mr WHEATLEY，你有甚麼理由或甚麼根據說 —— 這也不公平 —— 說這個雙峰監管模式是其中一個理由，我是說其中一個理由而已。又會不會因為這一個理由，令那個問題從原本沒那麼嚴重變得如此嚴重呢？(計時器響起) Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I don't think that the regulatory structure per se is a factor. I think the question that always needs answering is the implementation of that regulatory structure. So, a regulatory structure properly implemented will work well and the question, I think, to face is whether the implementation of the structure is adequate.

**主席：**

Thank you。

我現在想請委員提問。我先讀一讀名字，首先是余若薇議員、陳健波議員、葉劉淑儀議員、劉慧卿議員、涂謹申議員、甘乃威議員這幾位。稍後如果哪位想提問，請舉手，隨時舉手。

先請余若薇議員。

**余若薇議員：**

謝謝主席。主席，我想問 Mr WHEATLEY 關於文件 SC(1)-S5(C)，這是證監會由上至下那個調查的報告，裏面有很多他們的調查結果我覺得是非常重要的，是對銀行的嚴重指控，我亦認為這些東西是致命的。但因為那份文件是英文的，所以我想讀出那些英文。

Mr WHEATLEY, I'm looking at the Thematic Analysis, in particular, the areas relating to product due diligence, training and guidance to sales staff and, also, suitability of recommendations and solicitations for customers. I want to read out just some of the paragraphs, although many of the paragraphs, actually, are very important and significant but I just want to read out some of them. Paragraph 1.17 on product due diligence, it says, "Most of the Distributors did conduct a certain degree of product due diligence, but their due diligence reviews appear to have been largely superficial and incomplete". And then, you also have a bullet-point which says, "many of the staff responsible for performing due diligence did not fully understand the two fundamental components of the Minibonds, that is the CDS and the separate CDOs that backed the notes both with Lehman Brothers entities as counterparty and Guarantor".

And then, also, you actually say that "Some Distributors mistakenly thought that as SFC authorised the product documentation they could perform less due diligence".

And then, paragraph 1.20, "Many of the Distributors did not perform any formal risk assessment at the inception of marketing a Minibond series, and they did that only several years later."

And then, in paragraph 1.22 on training and guidance to sales staff, it says, "The obligation to train and educate sales staff is a necessary pre-condition to satisfying the suitability obligation and stems from the intermediary having conducted proper due diligence."

Next paragraph, "The Distributors generally failed to provide sufficient training and guidance to their sales staff."

And then, paragraph 1.26, "The information in the training materials was skeletal and incomplete, and it did not provide any explanation or guidance to help understand the nature, structure and risks of Minibonds."

Paragraph 1.28, "It appeared that many of the sales staff learnt about the Minibonds by reading the marketing leaflets and training materials, and they had only skimmed through or read the key sections of the prospectus; and did not understand the structure, product features and risks associated with Minibonds."

Paragraph 1.30, "However, as the Distributors generally failed to provide sufficient training and guidance to their sales staff on Minibonds, it was unlikely that sales staff could provide complete and accurate explanations on the product to their customers."

Paragraph 1.32, "The Distributors generally required their customers to sign a large number of transaction documents at the time the customers purchased the Minibonds, e.g. risk profiling questionnaires, application forms, etc. It appears, however, that many of the Distributors had not properly explained to the customers the terms or implications of these transaction documents, and the customers were not afforded the time to read and understand these documents before they were asked to sign them."

Paragraph 1.35, "Many of the Distributors, however, did not properly take into consideration the customer information obtained when they were recommending and selling investment products to their customers. As a result, their investment advice and recommendations were in many cases unsuitable to the customers' investment needs and personal circumstances."

主席，其實有很多的，我真的讀不完這麼多。但是我讀的那些，說的是大部分銀行都犯了錯的那些，因為，主席，證監會及政府整個制度最重要的都是那兩樣東西，即披露及產品要適合顧客。但你看到我讀出來的那幾段，你看得很清楚，我們亦是看到此份文件才正式確認了我們接到的很多投訴都是正確的，就是說銀行那些職員根本不懂，不知道是甚麼，不可能解釋給顧客聽，而顧客就要簽大量文件，一次過簽很多文件，根本都不知道那些是甚麼。

還有的是，有些銀行的評估根本在當時之前都不做的，要之後才做。這裏也提到，就是說根本那些產品不適合那些顧客。而且你在後面的部分，即是第4.2段那裏說，約75%的迷債都是賣給這5類顧客，他們大部分都是真的不瞭解的，這裏說是家庭主婦、退休人士、自僱人士(但自僱人士不包括專業人士)，以及一些文員、秘書和一些藍領。

我想問韋先生的問題就是，這是明顯的，隨便一個，你中了隨便一個都是違反了你們證監會所說，即銀行要顧及的一些原則。在這樣的情況下，為何你會叫那些銀行只賠六成、七成，而不是好像新鴻基及KGI一樣要賠足100%？

**主席：**

余議員，也許我都說一說，我知道因為你的英文很流利，下次請你如果讀那些內文、text時，請你讀慢一點，幫幫我們的傳譯員，因為你讀得很快。

**余若薇議員：**

好的。不是，我讀了每一段的.....

**主席：**

是，我知道。

**余若薇議員：**

.....即那個段落的數目出來。

**主席：**

因為我相信有些其他人士都想聽得清楚一點，我想你讀慢一點。

**余若薇議員：**

是啊，因為接着我都用中文再說一次大概內容，因為我覺得公道一點，我把它的原文讀出來。

**主席：**

對了，不過……

**余若薇議員：**

但是，真的很清楚，那些指控，即你那些調查結果全部是違反了你們的監管，即要求銀行遵守的兩個原則，隨便中一個都會死的。在此情況下，亦即確認了那些投訴者的投訴，為何證監會可以叫它賠六成、七成，不是賠十足十。

**主席：**

OK，好的。Mr WHEATLEY？

**余若薇議員：**

是這個問題。

**Mr Martin WHEATLEY:**

Mr Chairman, before I answer the question, can I just make one quite important distinction for us? And I appreciate that it's a legal distinction but this document is not a document of findings in a strict legal sense. These are our observations based on the investigations that we've carried out and it was produced for our Board to explain what we thought had happened. But, in terms of it being findings, that is not the case, and that's a very strict legal point for us, so I'd like that to be clearly minuted.

In terms of the level of agreement that was reached, as I've explained before, we have no powers to compel settlement. So, all we can do is work with an organization to achieve what we believe would be the best possible outcome. The factors, the considerations, the scale were very different



between the banks and the brokers. The sums of money involved, the number of people involved, were significantly different; the findings were different. And we believed that the section 201 agreement we entered with the 16 banks was the best regulatory outcome that we could have achieved.

**主席：**

余議員。

**余若薇議員：**

韋先生，那個規模不是問題，我當然明白，16間銀行牽涉的錢是多過兩間證券行的錢很多，但是規模，你對每一個小苦主來講，你不可以跟他說銀行這樣大的規模，或者它牽涉這麼多其他的苦主。而我現在針對的問題就是，你自己作為證監，做了這個由上至下的調查出來，你發現那些事情是完全在原則上違反了你兩個最重要的，即披露為本及產品要適合顧客。那麼，為何在此情況下，你可以容許——當然，我明白你不可以迫那些銀行賠十足，但為何你可以容許一個和解是說六成、七成，而不是採取行動？因為這個明顯地，即根據你自己的調查所得，是違反了你要求銀行應該做到的兩個原則的。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The point – I think I've made before but I'll make again. We could, of course, have taken enforcement action against the banks and we would have felt that we would have had a strong enough case to do so. Had we done so, it would not have achieved compensation for individuals and we felt that the outcome that we've achieved is in the best interests of the public, the best interests of Hong Kong, rather than fining or sanctioning banks which would have resulted in relatively small fines compared to the amount of money that they have voluntarily now paid back to their clients.

**主席：**

余議員。

**余若薇議員：**

為何你不早些公布這份報告呢？因為我相信很多小苦主如果看到你的報告，可能他未必肯接受六成、七成。

**Chairman:**

Mr WHEATLEY?

**余若薇議員：**

他會想知道，譬如你這裏說，大部分銀行沒有做這些，沒有做這些，沒有做這些，那麼那苦主一看，對啊，明明是我那間銀行，我現在就是在投訴這些事情。如果看了你的報告，可能他不會接受六成、七成。為何你不事先公布這個報告呢？

**Chairman:**

Okay. Mr WHEATLEY?

**Mr Martin WHEATLEY:**

This report has not been disclosed. It's an internal report for the Board of the SFC. It's been disclosed to this committee at the request of this committee. It's not something that we produced for public consumption.

**余若薇議員：**

這個就是你的問題了，韋先生。

**主席：**

余議員。

**余若薇議員：**

這都是要我們立法會這個調查委員會很多……秘書給你寫了22封信才能迫到，即我們可以在今天用這一封信。所以，我第一次看到這個報告後，我就說有沒有搞錯，我們一直接受這麼多宗投訴，街上很多人都可能會覺得這些人是否輸打贏要呢？但你的報告是確認這些人的投訴是對的。(計時器響起)我的問題就是說，為何你要我們立法會寫22封信，把你逼到這樣子

你才拿那個報告出來？因為你如果早些拿那個報告出來，可能有些人覺得六成、七成是不公道的，因為明明銀行是犯了規。

**主席：**

是來回22封信，余議員，來回。

**余若薇議員：**

是，來回22封信。

**Chairman:**

Mr WHEATLEY?

**余若薇議員：**

但都是很辛苦才逼出來的。

**主席：**

都是很多的了，是的。

**余若薇議員：**

我的問題就是，為何你不早點公布？早點公布，那些苦主就會知道真的是銀行犯錯。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't believe this report was only disclosed after many attempts. It was disclosed when it was properly called for by this Subcommittee.

**Hon Audrey EU Yuet-mee:**

Yes, but we were not allowed to use it.

**Mr Martin WHEATLEY:**

What the Subcommittee .....

**主席：**

先等他回答。

**Mr Martin WHEATLEY:**

Well, what the Subcommittee had been previously asking for was something quite different to this, which we do not have and, therefore, were unable to provide.

**Chairman:**

Okay.

**余若薇議員：**

主席，我覺得不是用一些技術的問題就說……

**主席：**

問完這一條吧。

**余若薇議員：**

……我們是問哪個文件，你很清楚知道我們這個委員會是有興趣知道你由上至下那個調查的報告。其實這個報告，我都想問韋先生，因為這個很明顯不是唯一的一個報告，因為這是一個所謂summary，即集結了你所做的其他那些。我想問的就是，除了這個報告本身，因為這個報告是沒有說16間銀行哪間是哪間，你應該每個銀行都有一個報告，可否把每個銀行的報告給我們呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think we've explained previously to this committee that we do not have equivalent reports for each individual organization. The section 201 agreement superseded our disciplinary processes and, in some cases, we had moved to draft notices; in some cases, we had not. But there are not equivalent reports for other individual banks.

**主席：**

余議員，你是否想要求證人提供每一個銀行的調查的個別報告……

**余若薇議員：**

是，沒錯。

**主席：**

……是否想這樣要求呢？

**余若薇議員：**

是，沒錯。

**主席：**

如果是，我們可以以小組的名義向這個證人要求。

**余若薇議員：**

好的，謝謝主席。

**主席：**

你想現在提出，抑或我們會後再討論？

**余若薇議員：**

主席，我提出吧，或者不要阻大家時間，同事問問題，我希望稍後我們可以再適當跟進。

**主席：**

稍後再討論，是嗎？

**余若薇議員：**

因為這個報告只是很籠統地說所有的銀行、一般的銀行、大部分的銀行，而沒有逐間銀行分析。一定會有每間銀行的……

**主席：**

是。我的問題就是說，余議員，你想現在向證人提出要求，抑或在會後……

**余若薇議員：**

主席，我正式……

**主席：**

正式要求。

**余若薇議員：**

我正式向證人要求……

**主席：**

OK，行。

**余若薇議員：**

……如果他不回答，或者他不給……

**主席：**

OK，明白。

**余若薇議員：**

……那我稍後才跟進。

**主席：**

明白。

Mr WHEATLEY，可否提供這些資料？

**Mr Martin WHEATLEY:**

No, Chairman, we have made the point before and we'll make the point again that we believe public interest immunity applies to the underlying papers. As I'm at pains to explain, there aren't reports in the sense that you

have described them. There are clearly different levels of documentation, interview records, inspection records, but we would intend to claim PII over those underlying papers.

**主席：**

Mr WHEATLEY，我們的意思就是說，我們明白不一定是每一個情況都有一個完整或已經到達結論的報告。我的要求是每一個調查，每間銀行的調查的資料，無論是否到達最後結論也好，我都希望你可以提供這方面的資料給我們小組委員會。Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I understand that, Chairman and, no, it's not possible. I've explained before and I'll explain it again: it would completely undermine the SFC's ability to conduct its role as a world-class regulator if you force us to put into the public domain information that has been given under oath, that has been given using the powers that we have. It would be a breach of section 378 of the SFO and we do not intend to provide those papers to this Subcommittee.

**主席：**

我其實是想韋奕禮先生你告訴我們，你有多少份資料是可以提供的，即有多少份，那些究竟是甚麼資料，我現在未清楚你那些是甚麼資料。可否提供這方面的資料給我們？

**Mr Martin WHEATLEY:**

I'm sorry, Chairman, that's such a broad question and I don't know how to start it. Can you be more specific, please?

**主席：**

我的意思即是說，每一個銀行有不同的調查的進度，進度的資料，我明白不是已到達最後的結論，那結論或許你認為無法提供，但這個還不是結論的話，那些資料可否提供給我們這個小組委員會？

**Mr Martin WHEATLEY:**

No, Chairman. It's covered again under the point I've made. It would be illegal of me, under section 378 of the SFO, to provide you such

information. The papers have been produced using compelled evidence. It would be completely inappropriate for us to provide that information which would then be used in the public domain and it would be my intention to claim PII over any such documents.

**主席：**

韋奕禮先生，其實我想你再講清楚，你手上有甚麼資料你認為是不可以提供的，我不是現在即時要你立刻……你說不可以提供，我們想你講給我們聽，有甚麼資料不可以提供。Mr WHEATLEY？

**Mr Martin WHEATLEY:**

The information will vary hugely between different banks. In some cases, it would be a draft notice, in some cases it would be interview records, preliminary reports. It will vary. And, in some cases, it will simply be records of investigations, inspections of files. There is a voluminous amount of information that we have collected as part of our investigations.

**主席：**

我們的意思就是，韋奕禮先生，即就每一個調查，每一個銀行的調查，我們希望得到這些資料。可否提供呢？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

No, Chairman, that's not possible.

**主席：**

我的意思即是說，你描述每一個文件是甚麼，而不是一定要說內容，暫時你現在是說不可以提供內容，我只是希望你可以給我們描述每一個調查的報告是甚麼，描述每一個情況是甚麼。我現在不是立刻要你提供那個你說不可以給我們的報告，或是整體資料那方面，而是告訴我們每一樣東西是甚麼，即描述每一個銀行的那堆調查資料是甚麼。Mr WHEATLEY？



**Mr Martin WHEATLEY:**

I can't do that, Chairman. We have 372 lever-arch files of documents. Those documents are internal training materials we've requested from banks; it's assessments of interviews, assessments of discussions with senior management. We've issued 125 production notices to the distributors. We've conducted 257 interviews. It is voluminous and, no, I can't give you a breakdown of every single piece of paper relating to every single bank. But I repeat that I believe it would be prejudicial to the SFC to be required to produce such information.

**主席：**

Mr WHEATLEY，就這一點，可否會後書面提供給我們，每一個銀行所做的調查工作的那些資料的描述，是甚麼文件，我們想要這個，每一個調查方面的情況，那些是甚麼資料，可否會後提供給我們，書面提供給我們？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

As I've explained, Chairman, no. The answer is we've got 372 lever-arch files of documents. It is a very, very long list of information that we have. What I can provide you is an explanation as to why we think it's inappropriate for us to provide you this information.

**主席：**

我不是.....可能你還沒明白，韋奕禮先生，我不是說.....你說每一樣有幾百件東西在裏面，我是說那個名單，你說名單，我是要那是甚麼東西的名單，只是名字而已，我是說 description —— 描述，我不是說要整個名單，幾百件東西列出來，我只是說那件東西叫甚麼名字，我相信一定有個名字的。我只是說想要知道，每一個調查，究竟那堆東西叫甚麼，你必定有給它取個名字，A、B、C也好，甚麼都總會有的。我說的是這方面的描述，我想你會後提供，可不可以呢？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Again, Chairman, we don't have any such description and it would be inappropriate for us to provide it.

**主席：**

好，明白。

好。或許我們在會後再討論。下一位是陳健波議員。

**陳健波議員：**

多謝主席。我都是跟進剛才那個文件——專題分析(S5(C))。大家看到，這16家分銷銀行違反監管規定的程度是不一樣的，譬如舉例，有些是分銷銀行進行產品盡職審查的程度、廣度及質素都有很大的差異，即有很多做得很好，也有很多做得不好，部分分銷銀行亦沒有強制銷售員工參加培訓課程。我想Martin WHEATLEY先生講一講，證監會其實當時在這個和解之前有否考慮過，其實可以按照每一間銀行的違反程度去決定它的補救措施或與它談判，即逐個談判，根據它的違反的嚴重性決定它要賠多少。有沒有想過這樣做？如果有，為何沒有做到呢？如果沒有，為甚麼沒有呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, Chairman, we had considered that. We took the view that the process of trying to conduct 16 separate section 201 agreements would be very complex, very convoluted and would substantially increase the amount of time taken to reach an outcome without necessarily providing any better outcome for individuals. So we took the view that, once it was clear that the 16 banks were prepared to enter into an overall agreement, that that would be in the best interests of investors.

**主席：**

陳議員。

**陳健波議員：**

我想接着問的是，其實現在從這份報告裏面看到，證監會對銀行的銷售的要求其實都很嚴格，但為何會出現證監會的要求或金管局的要求與銀行高層，或者他們實際下達叫職員做的要

求的程度相差這麼遠呢？譬如舉例，他們可以要求，就算不符合雙方的風險的程度，也可以要求客戶簽一份文件，說他完全知道這些情況，就這樣繼續銷售了。很明顯，證監會的要求是很高的，銀行做到的則相當低。為何會出現這個差異呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

That's a difficult question for us to answer because we don't have front-line supervisory role over the bank staff selling the products.

**主席：**

陳議員。

**陳健波議員：**

好了，我想再另外問一樣，如果我們從這份文件見到銀行的失誤是這麼多，會不會在非迷債的銷售方面都有同樣情況呢？有沒有做一些類似的調查，而引致其實非迷債方面都應該跟他們大家做一個和解呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

There are investigations under way relating to other products which are affected by Lehman's collapse. We can't predict what the outcome of those investigations will be.

**主席：**

陳議員。

**陳健波議員：**

我希望政府會繼續想這件事，因為應該集中火力研究一下他們有沒有類似的問題。我想轉去另一個問題，證監會在你自己

的檢討報告(S2(C))第40.7段都是建議賦予證監會權力，對犯有失當行為或被證監會認為不是適當人選的受規管機構作出賠償的命令，其中作為一種紀律處分。我想問一問，在雷曼事件之前，其實有沒有任何討論要早些去考慮接受這做法，或授予SFC這個權力？政府之內有否討論過你應該早些有這個權力呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I don't believe there has been. We have, in the past, reached settlements which have resulted in large amounts of money being paid back to investors but, from my recollection, we've never had policy discussion as to whether that should be a power that's given to the SFC. It's something we've suggested that the Government might like to consider now but I don't think it's been raised in the past.

**主席：**

陳議員。

**陳健波議員：**

我想問，如果假設你有這種權力，你覺得會如何令你更加加快與銀行去和解呢？

**Chairman:**

Mr WHEATLEY?

**陳健波議員：**

或者解決這些迷債的問題呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, clearly, if that legislative power existed, then the process would be slightly different. It's hard to say how it would have been different without knowing exactly how the legislation would have been formed.

**主席：**

陳議員。

**陳健波議員：**

我沒有其他問題。

**主席：**

好。下一位是葉劉淑儀議員。

**石禮謙議員：**

主席，可否再讀名字？

**主席：**

好的，我再讀一次。葉劉淑儀議員之後是劉慧卿議員、涂謹申議員、甘乃威議員、石禮謙議員。

請葉劉淑儀議員。

**葉劉淑儀議員：**

主席，我也是看了證監會那個主題分析，即SC(1)-S5(C)那個文件之後，都頗震驚的，即銀行在賣這些迷債的時候，對於 product due diligence、training and guidance to staff、handling customers，這些全都做得如此粗疏。特別是剛才陳健波議員就說有些銀行做得好，有些做得不好，但我看到證監會用的字眼很多時都是"generally"，譬如第1.22段"Training and guidance to sales staff"——訓練銷售人員，證監會用的字是"The Distributors generally failed to provide sufficient training and guidance to their sales staff." 在很多段用的字都是"generally"，即是一般來說都是做得不好，亦是指出那些銷售人員自己都不瞭解這些迷債產品的風險性質。

我想問一下韋先生，他這個分析出來之後，政府的反應是怎樣？無論是財政司、財經庫務局長或是你的同事金管局的反應是怎樣？為何銀行可以如此粗疏馬虎地去賣這些產品，而金管局卻沒有察覺，財經庫務局又沒有察覺，財政司又好像沒有察覺。他們的反應是怎樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Mr Chairman, I don't think I can comment on – I don't think I can speak for the FS or for the SFST. These are the observations that we had based on our investigations. You'll have to ask them what their response is.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

你這個文件出來之後，你都一定會交給你的同事看的，是嗎？不過，我都明白你不方便複述他們的反應，但你可不可以證實，confirm你是有交給你這些上司、財政司、財經庫務局和金管局的同事看，即是銀行的銷售是有這麼多問題。有沒有做到呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

This paper will have been shared with all of those parties, yes.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

好了，我想問，較早前，剛才主席都說過，財政司有一封信給你，是說迷債的問題出於你批……證監會批那些章程及宣傳單張的問題。你是否同意這個看法？他說整個迷債風波是因為你批出的那些章程及你手下人員批出的那些宣傳文件方面是有問題。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, you will have seen, Chairman, my response to the letter was that that was both a premature conclusion and at odds with our observations from our investigations. Our response was that the problem appeared to have emanated from the sales practices within the distributing organizations.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

我想問韋先生，其實我發覺另一個文件 SC Ref. No. SC(1)-S17，即較早前你給我們的文件，你們06年的"Consultation Conclusions on the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance"。06年9月，你們做了那個諮詢之後的文件，當中都有很多建議提出修改這個批核單張，即是章程，那些是諮詢之後的建議，你有很多這些建議，合共有很多個。你提出了這個諮詢文件，給了你的上司也好，甚麼都好，即你的財經庫務局長或財政司之後，你是否在09年完成這個文件後提交給政府，之後他們有甚麼反應？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm sorry, I'm unclear. Which paper are you referring to .....

***Hon Mrs Regina IP LAU Suk-ye:***

Your .....

***Mr Martin WHEATLEY:***

..... in the part of the question .....

**主席：**

葉劉淑儀議員。

***Hon Mrs Regina IP LAU Suk-ye:***

Your September 06 paper, "Consultation Conclusions .....

***Mr Martin WHEATLEY:***

Right.

***Hon Mrs Regina IP LAU Suk-ye:***

..... on the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance". Presumably, after you completed the consultation document, you submitted your proposals to the Financial Services and Treasury Bureau .....

***Mr Martin WHEATLEY:***

Yes.

***Hon Mrs Regina IP LAU Suk-ye:***

..... and Financial Secretary.

***Mr Martin WHEATLEY:***

Yes.

***Hon Mrs Regina IP LAU Suk-ye:***

That was more than three years ago.

***Mr Martin WHEATLEY:***

Yes.



***Hon Mrs Regina IP LAU Suk-ye:***

What happened? Weren't you supposed to draw up drafting instructions to amend Companies Ordinance and Securities and Futures Ordinance?

***Mr Martin WHEATLEY:***

Yes.

***Hon Mrs Regina IP LAU Suk-ye:***

What happened since then?

***Chairman:***

Mr WHEATLEY?

***Mr Martin WHEATLEY:***

Well, those drafting instructions have been produced; a preliminary draft was completed in mid-2008. We've been consulting with the various committees and market practitioners on the implementation of those proposals. So that work has continued since that date.

***Hon Mrs Regina IP LAU Suk-ye:***

So you .....

***主席 :***

葉劉淑儀議員。

***Hon Mrs Regina IP LAU Suk-ye:***

So you actually received authorization from your policy bureau to go ahead with the drafting instructions. Does it mean that your proposals were accepted in principle by your policy bureau and the Financial Secretary?

***Chairman:***

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think the answer to this is "Yes" but I'd prefer to come back to you and provide you a fuller answer to that.

**Hon Mrs Regina IP LAU Suk-ye:**

Yes.

**Mr Martin WHEATLEY:**

But, yes, and the drafting instructions were, obviously, started and they've been completed.

**主席：**

韋奕禮先生，你即是說，這方面的資料會在會後用書面提供，是嗎？

**Mr Martin WHEATLEY:**

Yes. Yes, Chairman.

**主席：**

Thank you。

葉劉淑儀議員，請繼續。

**Hon Mrs Regina IP LAU Suk-ye:**

So you have completed the drafting instructions?

**Mr Martin WHEATLEY:**

Yes.

**Hon Mrs Regina IP LAU Suk-ye:**

And in the process – have you completed the process of consulting with the financial services industry?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the process will go through a number of phases. We've produced a consultation paper on possible reforms to the prospectus regime which we published last year; we've had a number of responses to that and we're now evaluating those responses.

**主席：**

葉劉淑儀議員。

**Hon Mrs Regina IP LAU Suk-ye:**

I mean, one of your proposals is to pull out the provisions governing the prospectus regime from the Companies Ordinance and to put them under the SFO, so as to introduce a unified regime. Can you explain what are the advantages of this approach?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

One of the advantages of this approach would be to allow the Companies Ordinance to continue to be used for corporate transactions, genuine corporate transactions, and to allow us to have an overall code which covers not just structured products but unit trust insurance-linked products and that we'd be able to have a single code that covered all of those products, which we haven't been able to do under the existing regime.

**主席：**

葉劉淑儀議員。

**Hon Mrs Regina IP LAU Suk-ye:**

Do you think this proposal, if implemented earlier, would have abated some of the problems associated with the sale of Minibonds or private placement products under the Companies Ordinance?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

As regards Minibonds, no, because Schedule 3 of the Companies Ordinance provided the disclosure standard and that disclosure standard isn't changing. As regards private placement notes, possibly, because one of the things that we are evaluating is the extent to which the safe harbours that exist under the Companies Ordinance should be transferred into the SFO. And it may be that some of those safe harbours are changed, which would change the ability of, for example, private placement notes to be distributed in the way they have been.

**主席 :**

葉劉淑儀議員。

**Hon Mrs Regina IP LAU Suk-ye:**

What about another proposal in your paper – paper 15 – about the inequality of information and inaccurate information? You know, basically, the asymmetry of information between the investor and the issuer, you know, of the notes, you know. And then your proposal concerned the provision of more independent research analysts. What happened to that?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, I don't have the paper specifically in front of me. Regarding the question of asymmetry of information, the requirement is that the prospectus contains sufficient information that an individual should be able to form a judgment but that requirement goes hand-in-hand with the conduct requirement that the distributor needs to ensure that a buyer of a product understands the risks of that product and that it's suitable taking account of the circumstances. So, I don't think there's any gap there, in terms of the information that should be available to an individual as part of the selling process.

**主席 :**

葉劉淑儀議員。

**葉劉淑儀議員：**

主席，我明白我剛才問的那些問題是有關這個06年的報告，韋先生可能手上沒有，所以我現在這麼詳細地問可能不太公道，或許稍後我再會書面寫給主席，讓韋先生跟進。

**主席：**

好的，行，沒問題。

**葉劉淑儀議員：**

我想問最後一個問題，就是既然你那個Thematic Analysis看到銀行銷售有這麼多問題，即正如我的同事們問過那樣，那些沒有和解的銀行，有3間銀行是不肯和解的(計時器響起)，你覺得是否其實它們應該賠足100%？

**Chairman:**

Mr WHEATLEY?

**葉劉淑儀議員：**

你會怎樣處理這些沒有和解的銀行？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Apart from these 16 banks, there are, as I've mentioned before, other investigations that are under way. They may or may not lead to a settlement. We'll complete those processes as quickly and efficiently as we can do.

**主席：**

好的。劉慧卿議員，你想你先問還是涂謹申議員？涂謹申議員先吧。

**涂謹申議員：**

主席，因為10時45分有個保安……

**主席：**

沒問題，我明白。

**涂謹申議員：**

.....事務委員會會議，不好意思。我多謝劉慧卿議員。

韋奕禮先生，那個主題研究裏面1.14段說，你是詳細研究過及審核過那些分銷者，即分銷銀行的內部系統及控制，而主題就是這裏所說，即是那些產品的盡職研究、訓練、如何處理、如何建議那些客戶買甚麼、監管他們自己銷售的程序、紀錄等等。你是用"thoroughly"，詳細研究，是嗎？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes.

**涂謹申議員：**

OK。

**主席：**

涂議員。

**涂謹申議員：**

而1.15段，你是發了125個出示通告，即強制他們交些資料，然後是看過372份大的所謂厚file文件，做了257次面見，這個就是你們所說的"thoroughly"，即詳細審核的、可以說出的主要文件了。是嗎？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, this is to give you a sense of the scale of the investigations.

**主席：**

涂議員。

**涂謹申議員：**

主席，我觀察到這個主題研究裏面，正如很多同事都說，其實他用很多.....剛才所說的甚麼盡職研究等等那些東西，一直往下，很多個主題也好，他用的字是"most"。既然1.14段你是詳細研究過這麼多銀行，然後有很多這些根據證監會要求的標準，是"most"，很多都是，"most"我想是譯作"大多數"吧，對嗎？或者"很多"吧。剛才有同事問你，如果很多銀行都不符合這些標準，那為何你不逐個擊破呢？你的主要答案是說，因為逐個擊破浪費時間，我所理解的主要答案是這樣的。

但是，你有沒有曾經想過，你全部研究過了，總有一些可以說是在這麼多種主題、要求中都"衰晒"的，我們說得俗一點，即全部不合規。你是握着一張王牌，尤其是如果你對比新鴻基及凱基的情況，當然那個不在這裏說的銀行當中，OK。但是，你有否想過，譬如說從那些你握着王牌的那幾間做得特別差的開始，我說得俗一點，"鍊"到它100%賠足了，好像凱基、新鴻基那樣，讓其他那些都看到，嘩，不對勁，分分鐘如果真是下刀的話，開刀揭開來查，我們銀行便糟了。會不會你想過由最差的那些先行，用我的字眼就是"先易後難"，最容易的那些就是你握有最多王牌的，它犯錯最多的，在最多的主題中是差的、不合規的。有沒有想過用這樣的方法，起碼一路有進展，兼且那些緊接下來的那些都知道糟了、會死的，再不投降就死了。這樣會不會都是一個.....有沒有想過用這個策略去做呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm not really quite sure how to answer that question. As I've explained, we took what we thought was, and believed subsequently to be, the most expedient and efficient way of dealing with this issue.

**涂謹申議員：**

主席。

**主席：**

涂議員。

**涂謹申議員：**

我再說一遍。你這個主題研究裏面一定有看到某些銀行是特別差一些，某些銀行.....正如你所說，每一個主題你都有提到，有些是說"很多銀行"，有些則是"有些銀行"。那你會不會類集那五、六大犯錯的，而有幾間銀行都是特別差的，先拿那些來開刀，跟它談和解，要它賠足100%、99%、90%呢？

**Chairman:**

Mr WHEATLEY?

**涂謹申議員：**

抑或你完全沒想過用這個方法來為那些客戶爭取最大的賠償可能性呢？

**Chairman:**

Mr WHEATLEY?

**涂謹申議員：**

而放棄了你的調查責任呢？

**Mr Martin WHEATLEY:**

I repeat: we took the approach that we thought was most appropriate given the circumstances and the information that we had.

**涂謹申議員：**

主席。



**主席：**

涂議員。

**涂謹申議員：**

我問你有沒想過要抓住那些犯錯最多的銀行，跟它談100%和解？有沒有想過？因為你剛才說，你剛才回答陳健波議員的時候，你說有想過的，那你想過些甚麼呢？

**主席：**

Mr WHEATLEY, 問題是有沒有想過; 如果想過, 是想些甚麼? Have you ever considered; considered what? That's the question.

**涂謹申議員：**

他剛才回答說他有想過嘛。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, you will be aware, because it's a point that we've made before, that our decision is subject to an application to court to judicially review our decision. As such, providing any sort of detail about our decision process would potentially be *sub judice*, so I'm not able to provide any more information.

**主席：**

就這點我都想提一提證人，雖然你是有個*sub judice*，即"在審議中"的情況，但如果是事實的，我還是請你回應；但如果不是事實方面，而是你的判斷方面，你可以不回應。也許你可以再考慮這一點，回應涂議員那個問題。

**涂謹申議員：**

主席，也許我先用另一個角度問一問。

**主席：**

涂議員。

**涂謹申議員：**

你在第1.14段所說的這麼多個主要……即所謂 *main focus*，即是那些要求，譬如盡職審查、訓練之類，如果它根本做得不好的話，根本就不符合你的要求了，你有否發現那16間銀行裏面，有些銀行是特別差，中了很多範疇，"衰"很多樣，有沒有這些情況？抑或每一間都全部"衰晒"，或者每一間全部都"衰"的是很少呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think the thematic report stands as it says. We make a number of observations where we felt that standards had fallen short. We haven't particularly drawn out any one single bank to which all of these observations would apply.

**主席：**

涂議員。

**涂謹申議員：**

主席。你每一個主題，例如，我舉例 *product due diligence*，E部分的1.16段開始，盡職審查。你說，1.17段說"*Most of the Distributors*"，當然有些是沒有犯的，但很多有犯，於是這裏有一堆銀行，那16間裏面有的犯了，譬如說——也不一定是16間，因為有幾間沒有和解——有一堆銀行是有犯的。然後，好了，到下一個章節——訓練，你又用了一個字眼，就是"*generally failed*"(1.23)，這裏還"*generally*"呢，一般地都死，對吧？每一個題目中犯錯的都有一堆銀行，那你有沒有觀察到有一些銀行特別在很多範疇都"衰"的，"衰晒"的，是特別差的，特別離譜的？有沒有一些這樣的觀察呢？我且不說有甚麼結論了。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, you are asking me to comment on areas that are part of the application for judicial review and I don't think I can answer that.

**涂謹申議員：**

主席，我是講事實。

**主席：**

涂議員。

**涂謹申議員：**

請你裁決。

**主席：**

我認為證人應該回應，這個是有關事實的問題。請回應，Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Again, as observed in this paper, there are broadly seven areas where we say that there were problems and, in each case, we used the term "many" or "most" or "some". All banks, in our judgement, had shortcomings in a number of these areas. We took the view that an overall agreement for 16 banks was the most efficient way to get a good regulatory outcome for the investing public.

**涂謹申議員：**

主席。

**主席：**

涂議員。

**涂謹申議員：**

我要求證人回答問題，不是做錄音機啊。那個問題就是，是不是有一些銀行，你們是知道，根據這個主題研究，它們在盡職審查等等6大主題方面是比其他銀行差很多的，是特別離譜的。是不是在那十多二十間銀行裏面是有這樣的情況呢？如果是，你有否曾經想過——有否曾經想過，這個是事實——用最差的那些銀行開始，跟它做一個商討，迫使它賠償100%，或者起碼多過現在的60%、70%。有否曾經想過？因為你剛才回答陳健波議員的時候，你說曾經想過這一點嘛，那我現在就具體一些問你，有否這樣想過。這個是事實的問題。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, could I (*The buzzer sounded*) ask for your permission to consult with my counsel as to whether this violates our analysis of the JR claim and our potential *sub judice* issue?

**主席：**

可以。你是想現在用一兩分鐘時間，還是想多一點時間？

**Mr Martin WHEATLEY:**

Well, if I'm required to answer this now, I need to consult with my legal counsel first.

**主席：**

就在現在這個時候諮詢吧，或許等一會。

我想問一問，涂議員，你想——因為他要主持會議，一會兒在上面有個會議——你想多給他一點時間想一想，抑或你……

**涂謹申議員：**

主席，不如這樣吧，你讓他想一會兒，其他同事先問。

**主席：**

OK。

**涂謹申議員：**

因為沒辦法，我的時間也差不多完了。

**主席：**

是，沒錯。

**涂謹申議員：**

然後，我稍後待他問過了，可能1個小時後他才回答，這不就行了。

**主席：**

是，沒問題。

**涂謹申議員：**

到時我再回來。

**主席：**

我主要想問一問你的看法。

**涂謹申議員：**

是，OK，行。

**主席：**

好了。各位，我現在宣布小組委員會休息大約15分鐘。請各位在11時10分返回會議廳，請各位準時回來。請委員留意，我們要有足夠法定人數才可以繼續舉行研訊。在休息期間，請證人不要與其他人士討論他的證供。現在宣布暫時休會。

**(研訊於上午10時47分暫停)**

**(研訊於上午11時16分恢復進行)**

**主席：**

我現在宣布研訊繼續。韋先生，你現在是繼續在宣誓下作供。  
現在應該輪到劉慧卿議員。

**Hon Emily LAU Wai-hing:**

Thank you, Chairman. Chairman, I am sorry for being late because many of us are actually upstairs attending .....

**Chairman:**

Yes, I understand.

**Hon Emily LAU Wai-hing:**

..... the Security Panel meeting .....

**Chairman:**

Yes.

**Hon Emily LAU Wai-hing:**

..... and very important things are being discussed upstairs.

But, anyway, Chairman, first of all, I want to follow up on your question about the FS's letter to Mr WHEATLEY last June and also Mr WHEATLEY's reply, which, in a way, actually, I can understand Mr WHEATLEY's reply because they are conducting an investigation and the FS seemed to have jumped to some conclusion without – I don't know what facts he has when he made the allegation about saying that the controversy emanated from the SFC authorizing the registration of prospectus and the issue of marketing materials for the Minibonds. So, Chairman, what I would like to do is to ask our Clerk to write to the FS to ask him why he made the allegation in his letter in June 09, what basis did he have for making the allegations. So that's one point I want to follow up.

**主席：**

剛才我正是跟秘書在談剛才你說的這一點。

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

Okay, thank you very much, Chairman. That's very good. Great minds think alike.

***Chairman:***

We've got to be.

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

Thank you, Chairman.

Chairman, the other thing I want to ask is to follow up on the points raised by my colleagues arising from this Thematic Analysis of the Sale of Minibonds. And, of course, I mean, this is a very damning document, Chairman, and if it had been released earlier, when many of the victims, when they see this, I think they will be horrified. And because some people say that they make all these allegations up but, if you read the paragraphs of this report, you will see that, actually, the Code of Conduct which supposed to be there almost did not exist and that's what Mr WHEATLEY said. He said many of the problems arose from the very poor quality of the selling. And this, I am quite sure, will seriously tarnish Hong Kong's reputation as an international financial centre.

That's the first point I want to ask Mr WHEATLEY. Is he very, very sorry that this has happened, that these banks have shown, for all to see, that that's the way they conduct themselves, which is quite appalling, utterly appalling.

And that, of course, comes to the second point. Is that, if they have made so many mistakes – and I guess Mr WHEATLEY will also help us because they say they have completed all the investigations and they will not continue except where there is dishonesty, fraud, deceit or criminal offence involved. So, I don't know whether this kind of behaviour, whether any of them amount to dishonesty, deceit or fraud, or whether you have already studied this and made a judgement. That's my second question.

And then, Chairman, if you look at the – Mr WHEATLEY said this is not findings but, to many people, I mean, this is some kind of findings. And one thing is about the supervision of the investment sales process in paragraph 1.39, and Mr WHEATLEY and his colleagues found that some of the distributors did not have any system or process to monitor their staff and they

did not check what advice and recommendations had actually been given by their staff to their customers.

And then the following paragraph said that, in some cases, they found out that the distributors did not require the sales staff to document or record the information. So, actually, the distributors have no way of properly supervising the conduct of their staff and that thing is really appalling. So, when the banks come – Chairman, you have told the press that we are inviting the banks to come soon – how can we ask them? There's no document, Chairman, except what they have, which they refuse to give us. How can we conduct our investigation? We have got this information here but we need more.

And then the following paragraph is even more stunning, Chairman. It's about complaints handling. And they said that the distributors did not contact the relevant customers at any time during the investigation process and made no attempt to establish or even understand the allegations or concerns of the complainants. Hah! This is the way they handle complaints. They should have all gone to Mr Abraham SHEK, like Mr Donald TSANG's sister-in-law. Maybe they would get much better result.

Then the following .....

**主席：**

石議員 .....

**Hon Abraham SHEK Lai-him:**

..... (inaudible) ..... after they go to the Democratic Party .....

**主席：**

我想 .....

**Hon Emily LAU Wai-hing:**

Okay, Chairman.

**Hon Abraham SHEK Lai-him:**

..... they are the more successful Democratic Party .....



**Chairman:**

Okay.

**Hon Emily LAU Wai-hing:**

Okay.

**Hon Abraham SHEK Lai-him:**

..... and why don't you help those people whom you represent?

**主席 :**

我想大家.....

**Hon Emily LAU Wai-hing:**

Okay, Chairman, sorry.

**主席 :**

.....集中於這個問題吧.....

**Hon Emily LAU Wai-hing:**

Okay, Chairman.

**主席 :**

.....別岔開去第二方面。

**Hon Emily LAU Wai-hing:**

Then the following paragraph, Chairman. Hah! I can't believe my eyes. 1.42, in many cases, the banks seemingly assessed the customer complaints based on incomplete evidence and their complaints handling procedure inevitably led to deficient or inadequate outcomes for the customers. As a result, Chairman, a substantial number of customers' complaints remained unresolved up to July 2009. That's when they came out with the agreement. So they would have not even looked at it and not resolved.

So, Chairman, the thing is, there is quite a bit of damning evidence here and what we want is for the SFC to co-operate and to assist our Subcommittee in the discharge of our duty. And the best thing they can do is to provide

further and better particulars to help this committee because, unlike you, we are inviting individual banks to come here and we have to have the ammunition, the evidence, Chairman, to ask them. And you've done the groundwork, so can the SFC assist this Subcommittee?

So, three questions. Thank you, Chairman.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Perhaps, I can deal with the last question first. We have endeavoured, as far as practically possible, to support this committee and provide information to this committee. But what the committee is suggesting we do would, in my view, have a significant impact on the ability of the SFC to continue its role as a world-class regulator and you should be aware that the SFC has a world-class reputation; it has a very high standing. For us to divulge details of informations that was given under compulsion<sup>[Note]</sup>, for us to breach section 378 of the SFO, which makes it a criminal offence to provide such information, would seriously undermine our reputation and our ability to do our job. And that's why our position is that we help this committee as far as we can do but the specific request for information we cannot agree to.

As far as the other questions raised, your first point, in terms of are we sorry that this has happened. Yes, of course we are. I think everybody is. Nobody wants to see large numbers of people feeling compelled to march on the street because they can't get an adequate response to their questions as to what happened. We do. And that's why we've been putting so much effort into, from our point of view, getting to the bottom of this and getting what we think has been a positive regulatory outcome where the vast majority of people will get 60%, 70% of their investment returned to them.

In terms of the question about dishonesty or fraud, we have, in our investigations, been looking at breaches of conduct. If there are broader dishonest or criminal acts, they would be passed to the appropriate authorities. But we have completed our investigations based on an assessment as to whether our Code of Conduct was properly implemented.

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[Note] The witness clarified after the hearing that it should be "compulsion" instead of "compelled evidence" as mentioned at the hearing.

**Hon Emily LAU Wai-hing:**

Chairman, .....

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

..... first of all, I want to know whether any cases have been passed to the authorities for further investigation because of criminal elements.

And the second question is about the world-class reputation of the SFC. Do you think there is any of that left after the revelations in this report? You think your colleagues overseas, if they know of the content of this report, what do you think they will think of the SFC, in particular, and of Hong Kong as an international financial centre in general?

**Mr Martin WHEATLEY:**

Well, I .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... I think the broader issue is that every single market in the world has been shocked and shaken by the failure of Lehman Brothers, every single market in the world, and no single regulatory system in the world has been completely immune from the shocks that have been created. Now, Hong Kong has fared (*The buzzer sounded*) much better, much, much better than most other major jurisdictions, so I think Hong Kong's standing is high and remains high both as a regulated centre and as a market. And I don't think the events that we're talking about in this room have changed that position for Hong Kong globally.

**Hon Emily LAU Wai-hing:**

What about, Chairman, the number of cases .....

**主席：**

把這一條問完吧，劉議員。

**Hon Emily LAU Wai-hing:**

..... passed on to the .....

**Mr Martin WHEATLEY:**

I don't know specifics. I can provide that as a written answer.

**主席：**

OK。接着是甘乃威議員。

**甘乃威議員：**

主席，我可能要多花一點時間去讀一讀有關證監會在2008年12月交給財政司司長的報告內機密的部分，文件編號是S2(C)。這個部分，其實剛才很多同事都把剛才證監會交給我們的那份Thematic Analysis的一部分內容讀了出來。如果我稍後讀這些資料時，韋奕禮先生，要是你覺得這些資料——因為這份報告的內容是一些初步及臨時基礎上的調查的結論——如果跟你剛才提交給我們的Thematic Analysis有分別的話，請你指正我有關這些資料。

在這份報告裏面，第19.5段亦有這樣說："在初步及臨時基礎上，一個可能的結論是有證據顯示某些註冊機構或持牌法團在盡職審查及培訓層面，可能出現嚴重的監控缺失，並且沒有確保具備充分的監督或紀錄以控制銷售點程序。"

在19.5.1，這些包括甚麼呢？"沒有適當的措施管理監控迷你債券的銷售，原因是註冊機構或持牌法團也不了解有關產品或沒有對產品性質作出評估"。

19.5.2段，"沒有就產品向前線職員提供有關資訊或培訓，以確保前線職員能夠正確地評估產品是否合適投資者，及向投資者講述產品的主要特點"。

19.5.3段，"就有關產品的主要特點向職員提供不當的培訓或指引，包括在若干個案中，就迷你債券提供具誤導性或不準確的資料"。

19.5.4段，"沒有透過設立充分的質素監控機制，或確保職員接獲指示，為每次銷售討論即時備存適當紀錄"。

在第19.6段，"儘管所有迷你債券投資者均必須簽署免責聲明，並確認他們已閱讀及明白章程，但假如分銷商向有責任在銷售點講解產品詳情的職員提供不準確或具誤導成分的產品資料，而又沒有證據顯示投資者實際上倚賴章程的內容去作出認購迷你債券的決定，則有關聲明的作用可能不大甚或毫無作用。"

在19.7段，我簡述，就是"每家銷售機構或持牌法團到底如何看待本身的職能及法律責任"呢？

看第19.8段，原來你們的調查發現"分銷商大多先向雷曼兄弟旗下公司買入迷你債券，然後再轉售予客戶。因此，大部分個案所涉及向投資者銷售迷你債券的交易，是在各分銷商與投資者之間直接進行的，而不是在Pacific與投資者之間透過分銷商進行"。

第19.9段，簡述就是"分銷商的責任衝突的程度"。

第19.10段是"產品盡職審查"。我亦簡述，特別提到的是19.10.2段，"有資料顯示若干持牌法團或註冊機構進行的產品盡職審查嚴重不足，包括在部分個案中完全沒有任何專項的專職審查....."

**主席：**

盡職審查。

**甘乃威議員：**

.....或只是粗略進行。" 當中(a)段講述："盡職審查職員在審查初期推出的迷你債券系列後，錯誤地假設其後的系列都是一樣的，沒有因應市場環境變遷，或沒有察覺產品的重要特點已經改變而更新審查程序"；(b)："盡職審查職員犯了基本錯誤，誤解監管規定，或未能就產品的風險狀況達致結論"。

到19.11段的"銷售人員的培訓"。我亦簡述，抽取了第19.11.2，"有跡象顯示前線職員缺乏或完全沒有得到培訓"。第19.11.3段亦簡述："有跡象顯示多家註冊機構或持牌法團可能倚賴同一套含有相同嚴重錯誤的培訓資料"。

第19.12段是有關"備存有關適合性分析的紀錄及向客戶披露風險"。19.12.1段，我簡述："很少註冊機構或持牌法團會備存有關銷售點過程的即時紀錄或任何其他紀錄。"

到最後我要提的是第19.12.3段，"由於迷你債券看來曾銷售予所有階層的投資者，當中有些投資者的承受風險能力很低或等於零，因此不清楚這些評核制度如何被運用，以及如何配合銷售程序。客觀來說，證監會認為承受風險能力較低的客戶在認購迷你債券前，會較承受風險能力較高的客戶獲得額外資料或警告。"

主席，我引述完畢，有關這些引述。我想問韋奕禮先生，有關這些資料，剛才我們的同事說，為何你不願意早於你公布這個回購方案之前，向有關苦主作出披露呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The information in the paragraphs that you have read out were very much preliminary views based on incomplete investigations. We felt that, if that was given a public airing, it would be given the status of being a final finding and would have created an environment where, without any proper and due process, the banks would have been judged as guilty before a proper investigation had been completed. And that's why we felt it was important that this report remained a private report until we'd conducted and completed our investigations.

**甘乃威議員：**

我剛才……

**主席：**

甘議員。

**甘乃威議員：**

.....主席，剛才我開始時已問，究竟我剛才讀的這些內容，跟你那個Thematic Analysis有沒有具體的分別？即是說，你初步的結論、初步的調查，跟你最終的調查結果是否有分別呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Please, can I just, please, clarify the point? The Thematic Analysis does not constitute full and final findings but, between the two documents, the initial views that we had were broadly confirmed in the Thematic Analysis. There may be some differences but, in most cases, we found that our initial views were still our views after the investigation.

**主席：**

甘議員。

**甘乃威議員：**

剛才我們的同事有問過，我再問你一次，就是有關那個Thematic Analysis，你是否覺得你們是有責任在你公布回購之前，將這些資料向有關的苦主公布，讓他們獲悉，然後讓他們自己作出評估是否接受這個回購方案？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, it would not have been possible to achieve an agreement. An agreement requires two parties to agree to certain elements. The elements were that we would discontinue our disciplinary action and that the banks and brokers – or the banks, sorry, in the case of the agreement – that the banks would, in response to that, make a number of voluntary offers and those offers were to make a repurchase offer to investors, and to submit the commission earned to a fighting fund to recover the collateral, to carry out a review of their processes and to review their complaint handling procedures. And we

would not have achieved an agreement unless those two components were in place.

**主席：**

甘議員。

**甘乃威議員：**

有關這些調查的分析，其實在很多苦主的投訴當中，包括精明債券、Constellation、PPN、ELN，這些苦主基本上遇到銀行的一些不良銷售手法，都是與你有關迷你債券的調查如出一轍的(計時器響起)。我想問你，有關這些調查是否適用於其他產品的苦主身上呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, you've drawn some conclusions there. They're not yet our conclusions because we're still in our investigations. So we have a number of investigations which remain under way.

**主席：**

把這一條問完吧，甘議員。

**甘乃威議員：**

主席，我的意思就是，有關這裏所述的培訓人員的情況、有關銷售的盡職審查、儲存的紀錄，很多時都出現於同一個銀行的銷售職員去賣不同的產品，即很可能我們會遇見，特別是現時的情況，你們界定了經驗投資者，出現的情況是他又買ELN，可能他又買精明債券，又買了Constellation，被你界定為經驗投資者，他根本不能獲得賠償。實際上，他遇到的情況與迷你債券銷售的情況是一樣的。你如何令這些苦主覺得公平呢？

**Chairman:**

Mr WHEATLEY?



***Mr Martin WHEATLEY:***

Just to be absolutely clear, for the 16 banks who are parties to the agreement, they have agreed, under a series of enhanced complaint handling procedures, to review all of the initial complaints that they received about other products and that's a process that's currently under way and they're working with us and the HKMA to look at their complaint handling procedures. With regard to banks who are not parties to this agreement, those investigations remain under way.

**主席：**

現在是石禮謙議員。

***Hon Abraham SHEK Lai-him:***

Thank you, Chairman.

Martin, I think, when you talk about SFC being a top-class world regulator, I agree with you because the report has actually been produced by a world-class regulator and identifying issues that related to this whole issues of Minibond and other products. You have done a great job.

But this job is rather mean with the truth to the extent that the – when I say mean with the truth, that is, a lot of the truths are there. Because, last night, when I read the whole report, I have my memory flashed with scenes of very sad cases, not movies, sad cases of people coming to talk to us, not only to me myself, about the way that they're being trapped and tricked into buying products, particularly from DBS.

I have a gentleman and his wife up there; every time you see them coming here in the heat of the summer, in the cold of the winter. They come every day, every session, they come. Why did they come? In hope of getting some of their savings which is now being banished away from their life. It's a very sad case. And your report has actually highlighted all the truths or the allegations they made to us. It's really sad. And they are waiting for your reply and for a world-class regulator to do them justice, to do them right, to bring back the money they spent.

In reading the report, you highlighted the whole principles of SFC guidelines – know your client, know your product, know about the risk that your client's being given – that all we know. We've read all the documents. And you highlighted with a number of cases but then you don't tell us the cases, what are those cases? You use words like "many", "most"; what are

those "many"? How many of the "many" cases? Like 6.2, "A number of Distributors", what do you mean by that "number of Distributors"? And then, you said, in 6.4, "some Distributors", "many" of them; how many or what is the percentage of the "many" of them? Say, whose fault was that? The fault is that SFC or HKMA have not supervised the banks properly. The banks have been mis-selling the products and who are the sufferers? There are 34 000 people who have earned their money in a very honest way, deposited in the bank, trust the bank but they were failed by the banks, by the monitors, by the regulators. But then they are the sufferers, not you, not the banks. But how are you going to remedy the situation?

The report highlighted all the issues the bank should not do. They have highlighted all the practices that the SFC and the HKMA should do and have not done. So can you tell me, in all honesty, as a man of reason, as an ordinary citizen, if he reads this report, what conclusion could they draw from this report, a reasonable man from Tsim Sha Tsui Station, when he reads this report? This highlighted total failure of the system but that is okay if the system failed but then people suffers. How are you going to right their wrong? And people sitting up there expecting you to do something. Banks, like AMRO, like DBS, have been turning them out. Citibank.

What are you going to do? How long you want them to wait? Their life is in misery; they are suffering day by day, minute by minute and second by second. In fact, some of those are having trouble making ends meet. We have a gentleman, many, many gentlemen up there. Can you give your reply to give them some sort of a comfort that an ordinary person should have?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, thank you. We are very, very conscious of the suffering that this incident has created. We are trying as hard as we can within the legal powers that we have, to understand where fault has lain and, where we find a failure, acting on that by – and again, we cannot force banks – but by urging banks to make compensation where that compensation is due. We have no power to force that and that's a point I've made many times. We can investigate, we can take action against a bank for failures, we can remove or suspend licences, we can fine banks. And they're all powers that we have but what we cannot do is to force compensation.

So the only way we can achieve that is by presenting to a bank a sufficiently compelling case that says, "If you do not provide adequate levels of compensation, then the alternative is that we will provide a very public statement of the disciplinary actions that we take." Now, we have moved as fast as we can in the cases that we've expedited so far; we dealt with the brokers early, we dealt with the 16 banks in last September, October. Just before Christmas, there was an announcement from MEVAS and Dah Sing Bank about a settlement that they were providing for five private placement notes. We're moving as fast as we can with each of the banks to get to a satisfactory outcome.

***Hon Abraham SHEK Lai-him:***

Thank you.

**主席：**

石議員。

***Hon Abraham SHEK Lai-him:***

Martin, I appreciate what you have done but what I would also like you to do is to follow up with cases that are outside the 16 banks, cases that they are waiting. In fact, there're a lot of cases which I've written to – I think not only myself but many of my colleagues, or else I will be accused by Emily – on cases that are yet to be followed.

And, secondly, I'd like to follow up with the issues raised by Audrey that, in the report, that you used "many", in the report where you used "most cases"; can you identify the banks, how many of those banks, what banks they are and what cases they are so that when we question the banks, we have those right in front of us? In fact, we have all the cases already but we have to marry the two together. So, were you prepared to do that?

***Chairman:***

Mr WHEATLEY?

***Mr Martin WHEATLEY:***

Chairman, as I've explained earlier, no, we cannot do that.

***Hon Abraham SHEK Lai-him:***

No, you can. You can do it but you will not do it.

**Mr Martin WHEATLEY:**

Well, we don't believe .....

**主席：**

先讓他回答吧。

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

It would be legal for us to do it.

**Hon Abraham SHEK Lai-him:**

Chairman, .....

**主席：**

先讓他回答吧，石議員。

**Hon Abraham SHEK Lai-him:**

..... he has given the answer already. What is legal? It's totally illegal for a lot of banks to have mis-sold a lot of the products. It's illegal that the SFC has not conducted their work and now you talk about legality. This is the total – who start the illegality? It's the people who have failed the ordinance, failed the guidelines and then you have not taken the action. And then you talk about not co-operating with us, hiding under the umbrella of legality.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we have taken action and you've seen that we've taken action in a number of cases already.

*(Clapping from public gallery)*

**主席：**

請保持肅靜，公眾人士。

**Mr Martin WHEATLEY:**

Where we are completing investigations and we believe action should be taken, then we will take action there, as well. So we are taking action. I'm not hiding behind legality; it's a fact of life that we are constrained under the SFO as to what we can say publicly about the detail of our investigations but, much more significantly, there's a public interest question that, if we are forced to divulge information, it would undermine our ability to act as an effective regulator and I don't think anybody in this chamber would want that to happen.

**Hon Abraham SHEK Lai-him:**

No, .....

**主席：**

石議員。

**Hon Abraham SHEK Lai-him:**

..... we don't want that to happen, Chairman. But we want an effective regulator can do justice to people who have suffered by banks failing to do what they have supposed to do, by HKMA failing to do what they should do, and this is exactly what we want – fairness to be done.

**Chairman:**

And what's your question?

**Hon Abraham SHEK Lai-him:**

My question is, will he prepare to give us all the details as Audrey has asked and I totally support what she asked.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, Chairman, I've answered that question and my response remains the same.

**Hon Abraham SHEK Lai-him:**

Chairman, I think we do need .....

**主席：**

石議員。

**Hon Abraham SHEK Lai-him:**

..... to take this further. I think he cannot hide under PII.

**主席：**

我們在會後再討論吧。

**Hon Abraham SHEK Lai-him:**

And, secondly, I think this report is such a good report and highlight the truth. As Emily said, this is a totally damning report to what the banks should have done, what the regulator should have done. We should invite the SFC and the HKMA to come and answer each and every single paragraphs in this report and highlight what are that "many" banks, how many of those "many" are the many banks; of the 16 banks, "many" banks, are that 15 out of 16? And "most" banks, is it 95% out of the 100%? What do you mean by using the word "many" and using the word "most" in most of your paragraphs, in many of your paragraphs in this report?

**Chairman:**

Any further response from you, Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, Chairman.

**主席：**

我們會後再討論。

**石禮謙議員：**

多謝主席。

**主席：**

接着是梁國雄議員。

**梁國雄議員：**

韋先生，早晨。我有很多東西問你，有3張紙，我現在盡快問吧。

第一個是關於披露為本。披露為本是金融監管的一個重大政策。根據何賢通先生回答我的質疑，證監會所倚賴的《公司條例》附表3，法律上具有很大的漏洞。為了使本委員會查證，我之前要求證監會交出結構性產品發行人的10份招股章程的證監會審批報告，以及發行人根據附表3填寫的詳細報表，以及證監會審批人員跟進的問題及申請人的答案。我請你抽選由2003年至2008年期間每一年最少一份這方面的資料，而其中應該包括雷曼、渣打、星展、花旗等銀行為發行人或申請人，而且要求你盡快交給本委員會。你是否同意？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, I think we've provided this information before but let me check my records. If there's .....

**Hon LEUNG Kwok-hung:**

No.

**Mr Martin WHEATLEY:**

..... a gap between what we've provided .....

**Hon LEUNG Kwok-hung:**

It didn't happen.

**Mr Martin WHEATLEY:**

Okay.

**Hon LEUNG Kwok-hung:**

It didn't happen. So, if you .....

**Mr Martin WHEATLEY:**

Okay.

**Hon LEUNG Kwok-hung:**

Would you like to promise to .....

**Mr Martin WHEATLEY:**

Well, if I understand, so you're asking for .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... 10 specific bond prospectuses and all the requisitions and all the questions and responses in relation to them?

**梁國雄議員 :**

因為這是非常 .....

**主席 :**

梁議員。

**梁國雄議員 :**

.....非常重要的，對於預防以後，以及好像剛才所說，令苦主快點追回金錢，是非常重要的，因為這個就是很重要的證據。你們用《公司條例》去批核發行人或申請人的時候，是非常重要的，這些才是證據。你說要採取行動，這些就是證據。證據在你那裏，你不公布，第一，不能做行動；第二，沒辦法去衡量你有沒有盡責。這個是很明顯的漏洞。你是否打算拿給本會？



**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, I think what we gave previously was a procedure binder with all the questions raised and our precedent checklist, so, perhaps, through correspondence, we could check whether that meets the question or, if it falls short, what are the additional things. And maybe if we could do that in writing and then we'd find a way to meet the request.

**梁國雄議員 :**

不是，其實這是一個很簡單的請求而已.....

**主席 :**

那麼，Mr WHEATLEY.....

**梁國雄議員 :**

.....別無其他。我是很具體的，你4個.....

**主席 :**

明白，我們會後.....

**梁國雄議員 :**

.....你4間銀行每年之中拿10份招股章程及證監會批核的報告，以及你怎樣問人家問題，人家怎樣回答你，這就是你監察的工作。你這個監察的工作，你要給我看到，我才知道你是否能監察到。

**Chairman:**

Mr WHEATLEY?

**Hon LEUNG Kwok-hung:**

It's a hard evidence of your performance and the lega- .....

**主席：**

梁議員在問的是那些個案的詳細資料，而不是如以前證人給我們的那些資料。

Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Okay, well, let me review how we could respond to that. So, rather than give an immediate response here, let me review how we can do that.

**主席：**

是否會後會提供那些資料給我們小組委員會，Mr WHEATLEY？

**梁國雄議員：**

是。……

**主席：**

我是在問證人。

Mr WHEATLEY，你會在會後提供這些資料給小組委員會，是嗎？

**Mr Martin WHEATLEY:**

Well, I think what I have to do – and I'll have to check our legal position because what you're asking for now is a specific transaction and disclosures on a specific transaction. And I'd have to look at ……

**Hon LEUNG Kwok-hung:**

It's not transaction.

**主席：**

不，讓我問他，等一下。

**Mr Martin WHEATLEY:**

And I think I just need to understand whether we would need to redact any of that information or whether it would be possible to disclose all of the elements of the transaction. And it's against .....

**主席：**

請韋奕禮先生你提供資料給我們之後，我們會先看看是否足夠，我們認為是否足夠，好嗎？你會後給我們，書面給我們。

**梁國雄議員：**

是。何賢通先生.....

**主席：**

先讓他回應我，我在問。

**梁國雄議員：**

先把它停掉吧，阿哥，浪費了一點時間。

**主席：**

你在會後會提供那些資料給我們，是嗎？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Chairman, if I understand it, then you're asking me that we will provide to you as the Chairman that document with any arguments we want to .....

**Chairman:**

Mr WHEATLEY.....

**Mr Martin WHEATLEY:**

..... apply .....

**Chairman:**

Yes.

**Mr Martin WHEATLEY:**

..... which would determine how much can be further disclosed. And that's fine. I'm very happy to do that.

**Chairman:**

Yes, I'm making the request on behalf of this Subcommittee.

**Mr Martin WHEATLEY:**

Mm.

**主席：**

OK，請繼續。

**梁國雄議員：**

何賢通先生在回答我的第4條問題的時候，那是4.1，他說：  
"《公司條例》並無禁止以特別目的投資公司....."

**主席：**

你在說哪一份文件，梁議員？

**梁國雄議員：**

是SC(1)-S47。

**主席：**

好。

**梁國雄議員：**

這份文件，這裏有沒有？

**主席：**

是，請你問問題。不要緊，我會補回時間給你，不要緊，別擔心。

請職員把文件拿給證人，S47。

**Mr Martin WHEATLEY:**

Right, I think I have the document.

**Hon LEUNG Kwok-hung:**

Yes.

**主席：**

是，請你問問題，梁議員。

**梁國雄議員：**

問題是第4條，他在4.1回答我說："《公司條例》並無禁止以特別目的投資公司作為債權證的發行人。"這是他的說法。其實這裏只說出問題的一部分，即是說結構性產品是鑽了法律空子，證監會其實應該在2006年立即修改不合適的法例或守則，而不是看看他是否合乎《公司條例》。2006年的諮詢文件中亦說過有這個漏洞，而證監會仍然讓這個發行者繼續發行這些股票而賣給非專業投資者。你是否同意證監會已經違反了《證券及期貨條例》(SFO)第4條的法例及立法原意呢？這立法原意，我不知道你有沒有文件，這是2002年葉樹堃局長在本會的立法過程中說過的。你要不要我說給你聽？

**主席：**

你是不是有資料要讀出來，梁議員？

**梁國雄議員：**

我不就告訴了他嗎？葉樹堃局長是說，這個證券條例最主要是保護投資者，而證監會的責任.....即它賦予證監會的責任就是保護投資者。我剛才問你的問題就是你保護不到投資者，那麼你是否認為你的行為已經違反了證監條例賦予你的職權？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, no. I don't think we have. Clearly, it's one of our objectives to protect investors and we have measures in place to do that, in particular, in relation to Minibond, those measures relate to the disclosure requirements under Schedule 3 of the Companies Ordinance and the conduct requirements under our Code of Conduct and we believe that framework, if properly implemented, would have protected investors. The question that we've been dealing with and this committee is concerned with is whether all of the measures were properly implemented.

**主席：**

梁議員。

**梁國雄議員：**

主席。你的《公司條例》是查不到那些發行人有多少錢的，根據你這份東西，你給我們的這份文件，Ref. No. SC(1)-S5(C)，裏面第11頁，你講明那些SPV好像孤兒一樣。在2.1那裏，"orphan special purpose vehicle ("SPV")"，講明的。你看看2.1那裏，你講明是這樣的，是不用負責任的，好像一個孤兒一樣，即是與其他東西割斷關係。而在你這個報告裏面，開始的時候(計時器響起)，雷曼公司發行的東西，你們的的確確有查核它有沒有資產，做着做着就沒有了，這中間為何會發生這個情況呢？你這樣如何保障投資者呢？你用《公司條例》是沒辦法查到他們的，你如何保障投資者，你如何披露風險？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, again, I come back to my point. The Companies Ordinance has a requirement that there are sufficient particulars to enable an individual to make an investment decision and those particulars are then set out in a schedule and we then have a checklist to ensure that all of those particulars are adequately disclosed in the documentation and then the distributing agent, whether a bank or a broker, has the responsibility to ensure that the product is suitable for the investor and the risks are properly understood. And that's

how the regulatory system works. I don't see that there's any loophole or gap in the structure of the system.

**主席：**

梁議員。

**梁國雄議員：**

我再問你一次，你是否認為把《公司條例》用來監管那些衍生產品是合適的？你是否認為是這樣？如果是的話，你如何查到他有多少資產，實際上有沒有資產？我告訴你，這個SPV，即那些SPV是1,000元股本，在開曼群島註冊，是無須負責的。你怎樣查它？你明知道的，在你這個文件裏面你已說出來，而我向你指出，開始的時候證監會不是這樣，開始的時候真的有監察，用《公司條例》叫它填寫了，然後它有多少資產、在哪裏。雷曼銀行發行的初期的產品是這樣的，為何做着做着就沒有了？這是在2006年那時發生的，如果你早點說，你披露這一樣東西，投資者怎會買這些債券呢？投資者是不會用錢去買一間只有1,000美金股本、在開曼群島註冊、無須為那隻產品負責的公司賣出來的迷你債券的。你是否承認是這樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm slightly .....

**主席：**

回答這個問題之後.....

**Mr Martin WHEATLEY:**

Sorry.

**主席：**

.....我們到第二位同事了。Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Okay, Chairman, I'm slightly confused at the issued share capital of the SPV and the assets that the SPV would hold. The SPV would fully collateralise the investments that were made and so it's not simply the case that an investor is exposed to a thousand-dollar company; he's exposed to that company and the underlying collateral which is held against the principal that he's invested in the first place. So, if I've misunderstood it, I'm very happy that we'll have a follow-up in writing to provide more detail but I'm a bit confused as to what the statement relates to.

**Hon LEUNG Kwok-hung:**

Okay.

**主席：**

可不可以澄清這點，梁議員？或者你再排隊稍後再問，我知道你還有其他問題。好嗎？

**梁國雄議員：**

OK。讓下一個問。

**主席：**

現在第一輪剛剛問完，我有些問題想問。Mr WHEATLEY，從這個專題分析，即文件S5(C)所見，證監會發現的大部分問題都是涉及分銷銀行未有遵循證監會所訂的監管標準。請問韋奕禮先生，自從2003年4月以來，證監會是否只是依賴金管局的審查來確定銀行是否適當理解並且遵循證監會所訂的監管標準？證監會還有甚麼其他方法及途徑確定銀行是遵循它的監管標準？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

I think it's quite important to make the point: no, we don't rely on the HKMA to conduct that function, nor do we have any other methods of overseeing it because we have no responsibility for banks and their conduct. So it's not a case that we either rely on the banks or the HKMA or have other reasons. We do not have responsibility for supervision and oversight of banks.



**主席：**

韋奕禮先生，這個答案令我覺得頗奇怪，因為一個監管機構，你頒發了一些標準、一些要求、一些運作上的要求，你卻不需要理會那些要求有否獲得遵循，那個操作者真的有遵循。其實情況是否都是這樣呢？

**Mr Martin WHEATLEY:**

Yes, that's the case. Yes, Chairman, .....

**Chairman:**

Mr WHEATLEY.

**Mr Martin WHEATLEY:**

..... that is the case.

**主席：**

因為我剛才所說的是，其實你都是兩個監管機構之一，那即是說你主要的其中一個功能就是擬訂一些標準，令到證券業務在規管之下運作，能夠符合你的要求。你都是其中一個獨立的監管機構，我相信，你會不會考慮，就算你前線方面的監管交了給金管局，或者由金管局方面來處理，亦可能因為你們之間簽訂了一個MOU —— 《諒解備忘錄》。但是，你自己本身會不會有興趣或者很想知道你們所訂出來的那些標準，大家是否真的跟循呢？這是否亦是一個監管機構需要考慮的一個重要因素呢？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Well, the first point is, yes, we are responsible for stipulating standards. So the Code of Conduct is our responsibility and we set that Code and we would amend that Code at different times. In terms of ensuring compliance with the Code, that is our responsibility for brokers. In terms of bank staff, you used the phrase "handed over", are we happy that the responsibility is handed over; it's not handed over because we have no responsibility. So the system is designed such that we have responsibility for frontline supervision of brokers, the HKMA has the responsibility for frontline supervision of banks. But it's not handed over from us.

**主席：**

因為，韋奕禮先生，事實上剛才我不是說你將這個權力交了給它，我不是這個意思，我不知道剛才怎樣傳譯。但是如果你只是完全讓金管局去操作，那麼，你自己來說，是否都有責任去看看你那些標準在哪個情況下或者需要修改也說不定，或者要增加也說不定，而不是說訂出這些要求之後，你就任他自己"自動波"去執行。你有時也要知道那些是否過分的要求或不足的要求，這個不可以說你定了就是了，你即是變成很主觀地定下你的標準，交給金管局，你照着這些去監管銀行吧，前線人員依足我這些去做吧，而你不理會那些標準是否到某一個時間要再檢討、是否足夠或過分呢？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Chairman, we are responsible for setting standards and we are responsible for maintaining those standards over time and, in order to maintain them over time, we need intelligence about how those standards are being operated, how they're being implemented, whether they're achieving their effect. So, clearly, we have an ongoing responsibility to making sure that the standards are relevant and they're up-to-date and reflect the market reality. And we do that partly through the MOU meetings that we have with the Monetary Authority. But we do not – you used the phrase "we ask the HKMA to enforce"; we don't. It's not something that is in our gift. So, we don't ask them to enforce; we don't hand over the responsibility to enforce; we don't delegate; we don't, in any way, ask the HKMA to perform its role in overseeing the standards. That's something that's separately delegated to the HKMA by the Government through the Banking Ordinance. So, our job is to maintain the standards and, to do that, clearly, we need to understand where they are falling short or whether they're being applied and we achieve that through our discussions with the MA in our MOU meetings but we do not have any responsibility nor delegate the responsibility nor rely on the HKMA to oversee the standards. That's completely separate legislation; that's not part of our responsibility.

**主席：**

因為，韋奕禮先生這個回應，我相信可能跟我剛才所說、所提到，或者傳譯方面有少許出入也說不定。

I'll ask you in English. Now, what I am asking is, since SFC is one of the two monitoring organizations, since you have already set down the standards and requirements, I am sure you would like to see whether or not these requirements and standards are met or carried out, too, to these standards and requirements and whether or not these should be reviewed from time to time and you can assess them whether they are over-requirements or exceeding the necessary standards or levels or whether or not some of the standards should be lowered to meet the reality or situation, real situation. This must be done continuously as one of your duties. But you said this can be or has been or is being done through a kind of co-operation meeting in the form of this MOU meetings. Is that adequate? Is that what you have been doing? Can you provide evidence that this is a kind of effective approach, Mr WHEATLEY?

***Mr Martin WHEATLEY:***

Through our inspections of brokers, our normal oversight, we review the extent to which the standards are being properly implemented and, if we find that there are either faults in implementation or a need to update those standards, then we will consult with the MA and look at what needs to be done to update them. If the Monetary Authority tell us that the standards are not being adequately pursued within banks or they're not fit for purpose for the way the banks operate, then again we will look at how the standards need to be reviewed and need to be updated. But we don't have the ability to go and look at banks in terms of their own application of those standards. We have to rely on the HKMA to let us know if there is any deficiency or any shortcoming in those standards. But our regulatory remit does not extend to us independently reviewing whether banks are properly applying those standards.

***Chairman:***

Mr WHEATLEY, on what basis would you have in carrying out certain reviews or amendments to the existing or to the current standards and regulations? And you just have to rely on what's given to you by the HKMA? You have to rely on their supply of information regarding any problems in carrying out of these standards and requirements? Is that the case, Mr WHEATLEY?

***Mr Martin WHEATLEY:***

That is the case. In the normal course of events, that is the case but, clearly, we're in an unusual situation now where the MA have passed to us a

number of potential breaches of the Code and we're therefore investigating those directly. But that investigation work is in response to a request to investigate; we wouldn't, as a matter of course, have an oversight or a supervisory role in looking at how banks implement their standards.

**Chairman:**

But, before 15 September 2008, there were very serious signs and clear signs in the market then that certain very serious situation would arise very, very shortly. Did that give you any signal at all? Were you alert and then ask yourself, see whether you should have done something differently, something urgently, Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think the date you mention, there was certainly (*The buzzer sounded*) concern at a number of financial institutions and their prudential soundness, not just Lehman Brothers but AIG and the big mortgage operators in the US. So there were quite a large number. So there was a concern at an overall systemic risk level but there had been no indicators, up until that point, that there were mis-selling issues or that people had been sold very complex products. There'd been very, very few – I think, maybe one or two – complaints prior to that date about product complexity or product suitability.

**主席：**

現在第二輪正排隊的有余若薇議員、甘乃威議員及梁國雄議員，暫時3位。先請余議員。

**余若薇議員：**

主席，我還是想跟進我剛才在第一輪問的問題，有關那個文件SC(1)-S5(C)，我剛才一口氣讀了很多段落出來。正如石禮謙所說，這個報告在事實披露方面其實是比較薄弱的，這不是說它所說的東西不真實，不過卻不是全面，因為很多時它說銀行都是籠統地說有很多間。所以，主席，我想跟進，每一段地跟進。例如，主席，我第一段讀出的是第1.17段，這一段是說很多銀行的分銷商都有去研究一下那些產品，不過它們的研究或者它們的檢討，關於產品方面的檢討，這裏用的英文是說它很大部分都是非常表面化及不夠全面。我就想問Mr WHEATLEY，這一段裏面說的銀行是哪幾間銀行呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We haven't – we've specifically not mentioned the banks. It means what it says, "most of the distributors".

**余若薇議員：**

但是我現在就是問你呀。

**主席：**

余議員。

**余若薇議員：**

你說的是哪幾間銀行呢？你都知道，韋奕禮先生，我們接下來要去問那些銀行，你的責任亦是需要幫助這個議會去向那些銀行取證據。既然你已經做了一個調查，你亦是以公帑調查的，你調查了這十多間銀行，你做了這個總結的報告，你就要幫我們去跟進這些事情，我們要在公眾前問這些銀行。現在你第1.17段說，大部分的銀行分銷商對於它們的產品方面的認識及研究，大部分都是表面化及不全面。你說的是哪幾間銀行呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, I think I've given my answer on this. I don't think there's any purpose served by me repeating the answer several times.

**余若薇議員：**

對不起，韋先生。

**主席：**

余議員。

**余若薇議員：**

這不是由你去判斷我的問題有沒有作用，我現在覺得很有作用，主席都沒有停止我問這個問題。我想知道你1.17段——我會逐段問你的，韋先生，因為你不肯幫我們，那我惟有浪費時間逐段問你好了。1.17段，你說的這幾間分銷商是哪幾間分銷商？

**Chairman:**

Mr WHEATLEY，請你回答。

**余若薇議員：**

為甚麼沒用？很有用呀。

**主席：**

請你回答這個問題。

**Mr Martin WHEATLEY:**

The paragraph, as it stated, is the information that we have given. And can I just point out that this document refers to banks and brokers. So when we talk about distributors, we're talking about 16 banks .....

**余若薇議員：**

那你說吧.....

**Mr Martin WHEATLEY:**

..... and three brokers .....

**余若薇議員：**

.....哪幾間銀行？哪幾間經紀行？

**Mr Martin WHEATLEY:**

..... and the statement .....

**主席：**

等他答完。

**Mr Martin WHEATLEY:**

..... "most of the distributors" is as it says, most of the distributors.

**余若薇議員：**

對了，哪幾間銀行，哪幾間分.....這個是.....你說它的名字吧，銀行的名字及.....

**主席：**

她問哪幾間，Mr WHEATLEY。

**余若薇議員：**

.....及證券行。

**Mr Martin WHEATLEY:**

Chairman, would you like me to repeat my previous answer again?

**余若薇議員：**

我不需要你重複你剛才的答案。

**主席：**

不，我們需要你回應那些.....

**余若薇議員：**

我希望你回答我的問題。

**主席：**

.....余若薇議員所問到的那些有關機構的名稱。

**余若薇議員：**

這個不是PII的問題，我現在不是問你拿文件，我是問你做過的，你用公帑，我再重複一次，你用公帑做的調查，你查出來的報告。我現在問你的報告，你這裏說有很多間分銷商，我現在是問你名字，為甚麼不能說？

**Chairman:**

Mr WHEATLEY?

**余若薇議員：**

我會逐段問你的，可能不知要去到多少次。

**Mr Martin WHEATLEY:**

Okay, Mr Chairman, it's not appropriate for me to mention the individual organizations.

**余若薇議員：**

為甚麼？為甚麼不可以說？

**主席：**

甚麼理由呢？Mr WHEATLEY。

**Mr Martin WHEATLEY:**

Under section 378 of the SFO, as you will be aware, it is an offence for me to reveal specific information about individual institutions that has come to us as part of our investigation.

**余若薇議員：**

我不是問你拿你那些.....

**主席：**

余議員。



**余若薇議員：**

.....一手資料或文件。我只是說你做了個結論，你做了個報告出來，你說很多間分銷商，我現在就問你哪一間？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, Chairman, I'll repeat, I don't think it's appropriate for me to provide that information.

**主席：**

我不是很清楚，韋奕禮先生，你所指的有關條例哪一部分、怎樣說法，說你不可以提供余議員所要求的這些資料呢？可不可以告訴我們，這條例的哪一個條款、怎樣說法呢？

**Mr Martin WHEATLEY:**

Section 378 of the SFO which regards preservation of secrecy, etc., "Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person – (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;", and it goes on.

**余若薇議員：**

主席，我不同意韋先生現在這個說法。

**主席：**

余議員。

**余若薇議員：**

因為現在他給我們的這個報告說有很多分銷商，這對其他沒有犯這事的分銷商都不公平吧，是嗎？這裏有甚麼秘密呢？你可以告訴我們有很多分銷商犯了這些重罪，那我就問你是哪幾間。為何你說不出來，為何如此神秘呢？怎麼可能378這一條容許你告訴我們有很多間，但又不能說是哪間的名字呢？你對那些沒有犯這事的銀行、分銷商都不公平吧。

**Chairman:**

Mr WHEATLEY, in accordance with clause (2)(e), it says, from the beginning, "Nothing in subsection (1) applies to – ", please go to (e), "the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law"。我的看法是你應該提供這些資料。

**Mr Martin WHEATLEY:**

Chairman, it would be a breach of due process, a breach of natural justice, to name banks where we have not reached formal findings as part of our investigations. It is not appropriate for us to provide the names under this Thematic Analysis which is not a document of formal findings.

**主席：**

余議員。

**余若薇議員：**

主席，我看不到為何韋先生可以這樣說，因為既然他現在說這不是一個最終的結論，我們是明白的，這是一個初步的結論，那麼你就告訴我們你的初步結論吧，你達致了這一段，1.17段，那裏說的是哪幾間分銷商。如果你覺得有困難，你反過來說哪幾間沒有犯這件事好了，這我都接受的。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Again, Chairman, I think I've said it's not appropriate. If it's appropriate for me to go and seek independent legal advice, then I suggest this line of questioning is going to waste time until we've done that.

**主席：**

即是你要求取得獨立的法律意見，你是可以的。你是否想休會數分鐘讓你跟你的法律顧問討論，還是怎樣？

**Mr Martin WHEATLEY:**

Well, .....

**Chairman:**

Mr WHEATLEY.

**Mr Martin WHEATLEY:**

I think, if you want to challenge this point, we would have to do it through a proper written exchange. I don't believe it's something that I'm going to resolve simply by two minutes talking to my Chief Counsel.

**Chairman:**

Okay, that's understood. 余議員。

**余若薇議員：**

主席，這個我覺得是很重要的，因為用另外一個方法去做，當然他可以省點時間，不用我逐段問，或者我們討論這件事，就是他可以告訴我們，即我不是要他第一手調查那些分銷商時取得的資料，而是他做每一個分銷商，他應該有一個結論報告。關於這個，你可不可以告訴我們，你是否每一個分銷商都有一個報告是對於那個分銷商的初步結論 —— preliminary findings 呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, no, we don't.

**主席：**

余議員。

**余若薇議員：**

可不可以告訴我為何沒有呢？你怎樣可以達至這一個總結的報告呢？如果你就每一個分銷商沒有一個報告是關於那個分銷商。譬如我們看看兩間證券行——新鴻基及KGI，你一定是做了一個結論報告，你才會跟它說要它賠百分之一百、十足，對嗎？我就想知道，銀行那方面，你應該都有做同類的事情的，為甚麼沒有呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

As we've explained to this committee before, we have completed or substantially completed all of our investigations before entering into a section 201 agreement. Some of those investigations had resulted in a disciplinary notice being formulated, some of them had not. So there is not a case of there being a single document applicable to every organization which contains the initial findings.

**主席：**

余議員。

**余若薇議員：**

韋先生，你可不可以向我們解釋一下，你以甚麼準則在這些回購方案中有不同的水平，例如我剛才說過了，證券行方面你是百分之一百，這些迷你的就六成七成，另外最近大新、豐明那些(計時器響起)定息保本票據則是80%，為何會有這個分別呢？還有，大新、豐明那些保本定息票據是沒有分的，沒有分

甚麼呢？就是沒有分甚麼經驗投資者、專業投資者，那裏你是全部都包括的。為何有如此不平等或不對等的一種待遇呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, the factors were different in different cases but, please, can I also point out that this decision is subject to an application for judicial review and that any further detail could potentially be *sub judice*.

**余若薇議員：**

主席。

**主席：**

余議員。

**余若薇議員：**

我不是問他終止調查那方面，也不是問他司法覆核那方面。我是問他，證監會根據甚麼準則去決定有些賠百分之一百，有些賠80%，有些則賠60%、70%；有些有區分經驗投資者，有些則沒有區分經驗投資者。那是用甚麼準則？

**主席：**

Mr WHEATLEY，我認為你要回應這條問題。

**余若薇議員：**

我是問他準則，主席。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

With respect, Mr Chairman, I disagree. All of those factors are part of the challenge to our decision.

**余若薇議員：**

主席。

**主席：**

余議員。

**余若薇議員：**

我不是叫他評論，我只是叫他將事實告訴我們，那時還沒有法律程序。我是問他當時證監會考慮甚麼因素，為何會有不同的待遇而已。

**主席：**

Mr WHEATLEY，我認為這個跟*sub judice*.....我們是要取得事實，所以跟那方面應該是不受影響的，請你回應這條問題。

**Mr Martin WHEATLEY:**

With respect, Chairman, all of these questions are relevant to our decision to cease the investigations and to agree a certain degree of settlement and that is the basis of the challenge that has been filed against us.

**余若薇議員：**

主席。

**主席：**

把這條問題問完吧，余議員。

**余若薇議員：**

主席，我的理解就是說，如果我問的是事實的話，我是有權問的，我不是叫他評論嘛。你現在*sub judice*那樣東西，只是不能評論而已，我沒有評論，我亦沒有叫他評論。我只是叫他說，我現在是事實的取證而已，你不要誤解*sub judice*的原則，那個原則就是你不要做評論去影響法庭將來的判決。我現在不是問你要任何評論，我是問你當時證監會是考慮甚麼準則，以達致

你會對不同的銀行、不同的分銷商、不同的產品有不同的賠償準則而已。

**主席：**

Mr WHEATLEY，我已裁決了，這個問題是要求事實，應該與 *sub judice* 無關，我已裁決你要回應這個問題。Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I am sorry, Chairman, with respect, I disagree. I don't see how providing additional information cannot be potentially undermining the ability of the court to reach its decision.

**余若薇議員：**

主席，我真是覺得很嚴重地失望。

**主席：**

稍後我……

**余若薇議員：**

我問他很多問題，我覺得是完全合適的。主席，你亦同意是合適。韋先生其實是在用公帑，他的調查亦是用公帑，我們所做的也是為公眾服務的事。我覺得很不能接受，他在我那十多分鐘內是完全沒有幫到我們的。

**主席：**

我已裁決證人要回應這個只是要求提供事實的一個問題。我想再問一次，Mr WHEATLEY, are you willing to respond to this question?

**Mr Martin WHEATLEY:**

Mr Chairman, as I explained earlier, I don't believe I can safely answer the questions that are being asked. I think the best way to proceed is to have a written submission as to why that's not the case.

**主席：**

或許請你會後提供這一方面的資料。我們亦在研訊後再討論這方面的問題，好嗎？

下一位是甘乃威議員。

**甘乃威議員：**

主席，因為有這個回購協議存在，證監會停止了調查有關16間分銷銀行的投訴的工作。我想問一問，因為這16間銀行除了賣迷你債券之外，同樣有賣精明債券、Constellation或者一些ELN、PPN這些產品。究竟在停止調查之後，相關的資料，譬如剛才提到這些分銷行、這些銀行有些對員工培訓的方法，所謂對產品的認識等。這些調查，應用於其他迷你債券以外的產品，是否同樣已停止了？如果已停止的話，這些原本關於迷你債券的調查的這些資料，會不會又應用於將來你再展開的有關迷你債券以外的產品的投訴調查上呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The position that we announced at the time of the agreement was that with respect to other products sold by those 16 banks, those investigations would be paused until those banks had completed a review of all the complaints under their enhanced complaint handling procedures which we had defined with the HKMA. So they're in the process of reviewing all of those original complaints relating to other products.

**主席：**

甘議員。

**甘乃威議員：**

究竟你何時才會展開你相關的調查？你容許它有一個所謂加強版，但很多苦主告訴我們這些所謂加強版是一些門面的工作，實際上，對他們來說是沒有任何進展的。所以你們的時限是何時會再展開相關的調查呢？



**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

There is no time limit that we have adopted. We are monitoring the enhanced complaint handling procedures. If we feel that they're not adequately dealing with the complaints, then we will start the investigation process again, but there is no time limit.

**主席：**

甘議員。

**甘乃威議員：**

你又沒有時限，你又不告訴苦主們何時會再展開調查的話，你覺得這樣對苦主公平嗎？特別是你究竟用一些甚麼標準去衡量。譬如舉個例子，由你在7月份公布這個回購協議，停止對16間銀行的調查，直到今天，我不知道你手頭上是否已有一些數據，是關於這些所謂加強版的個案有多少已經成功，你可否提供數據？這些成功的數據佔投訴的多少百分比？譬如舉個例子，超過50%你就覺得已經可以接受，或者低於50%。你有沒有甚麼標準用來衡量，去繼續展開你的調查呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

You'll have seen that we announced, on 23 December, the agreement with Dah Sing and MEVAS Bank. That was specifically pursuant to the enhanced complaint handling procedures, so that was an announcement that the banks would repurchase PPNs from their customers and that was pursuant to the section 201 agreement. So we've achieved a success in that case; in other cases, we will keep monitoring but, as I've said, we put no particular deadline on that monitoring.

**主席：**

甘議員。

**甘乃威議員：**

主席，我想跟你說，大新、豐明這些個案的苦主都跟我們說，即那些PPN的苦主，實際上所謂加強版就是那些銀行逐少逐少跟你"鍊"，先是賠五成，然後賠六成，六成不行便跟你再拖幾個星期，最終現在原來可以達至八成。其實，我不知道韋奕禮先生你知不知道，這些對苦主是一種精神上的折磨？實際上，原來其實一早可以達到一個協議是八成的。為何你覺得這些加強版的程序是達到效果呢？而你又沒有一個時間的限制去處理有關這些所謂加強版的程序，對於仍有數千個未得到賠償的苦主，你覺得這種做法，你作為拿取公帑的人，你覺得適合嗎？你對得起那些苦主嗎？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, again, I'd reiterate the point. We have no power to force compensation and the banks have agreed to enter into enhanced complaint handling procedures; we're reviewing that on a regular basis with each of the banks.

**主席：**

甘議員。

**甘乃威議員：**

不，我是說你這些加強版的程序，你又沒有時間限制的話，你會不會重新再考慮會有一個時間限制，會重新啟動對這16間銀行的調查，讓那些在這些銀行買了其他產品的人獲得一些整體賠償？這是第一點。

第二點是，究竟你會不會正在考慮，其實現在都有其他的所謂整體回購安排，開始時是Minibond，然後是PPN，接下來會有其他產品，譬如Constellation或者精明債券，都會有類似的回購安排呢？或者ELN都會有類似的回購安排呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We would have to judge each case on its merits.

**主席：**

甘議員。

**甘乃威議員：**

我想問，究竟你這個所謂回購的安排，是否在考慮當中？雖然你會看每一個個案，但你是否在考慮當中，都是有這個計劃在內呢？整體回購的安排。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

All of the 16 banks who entered into the original agreement have agreed to implement enhanced complaints handling procedures. We're meeting with those banks regularly; we will have to judge each on its merits to assess whether the investigation should be re-opened or not.

**主席：**

甘議員。

**甘乃威議員：**

主席。你們其實有否檢討過，如果同一間銀行、同一個職員去賣這個Minibond，都出現剛才你那個分析裏面所說，包括對產品的認識，所謂培訓不足。同一個職員，他賣迷你債券出現這種情況，他去賣精明債券，他賣Constellation，他賣ELN，是否都會同樣出現這種情況？在你的調查裏面有沒有得到這些數據呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Each case would have to depend on the circumstances and the circumstances would be different in every case.

**主席：**

甘議員。

**甘乃威議員：**

我說的是.....當然，每個情況都有不同，所以我現在是說，基本上，整體情況會不會出現一如你現時在報告裏面所說，"most of the distributors"，你都是用一個整體概括的情況去看。會不會出現一個概括的情況，在你調查的過程中，你有沒有發現，他賣Minibond時出現的情況，同樣在很多.....即用你的形容詞可能是"most"，可能是"many"，可能是"some"，用你這種演繹的情況去說，其實這些所謂分銷商，它去賣其他產品都有出現一些所謂不良銷售的情況，而這情況在你的調查中是有出現呢？你可不可以整體做個分析、做個報告，交給本委員會呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, I can't give you an overall analysis and report. We are in the middle of our investigations into other products; we'll have to treat each case on its merits.

**主席：**

甘議員。

**甘乃威議員：**

主席，剛才他還在說他調查的那些產品，其實他已停止了調查的工作。在你的調查過程，到7月份，當你簽了回購協議之後，

對那16間銀行，你已停止調查的工作。我現在是說，你在調查的過程中一定會牽涉到那個職員去賣Minibond以外的產品的資料。在這些資料裏面，在這些分析裏面，包括你那個報告1.15段裏面提到，你做了257次的interview, 125次的product notes, 372份file, 你看過所有這些資料。這些資料裏面有沒有除Minibond以外的一些產品？我剛才提過，包括ELN、Constellation、精明債券，這些苦主正正是等待你的調查的展開，但你的調查現在又停止了。究竟你會不會就過去的調查的紀錄，做一些整體的分析，向本委員會作出報告？你有沒有這些資料？有這些資料的話，會不會做報告，然後向本委員會提交呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have no intention to compile another report for this Subcommittee. We'll continue with our investigations and, where we're able to reach a satisfactory regulatory outcome, then we will do so as quickly as we possibly can.

**主席：**

我想問Mr WHEATLEY，根據甚麼理由不可以提供議員所要求的這些資料？(計時器響起)基於甚麼理由不可以提供？

**Mr Martin WHEATLEY:**

We don't have the information that Mr KAM is asking for.

**甘乃威議員：**

主席，我.....

**主席：**

甘議員，或許請你再澄清這條問題。我相信你的問題其實很清楚，不過我想你就這點再問一次。

**甘乃威議員：**

主席，我主要是.....因為你在調查這16間銀行有關Minibond的一些不良銷售手法的過程中，包括你有很多次interview，一些product notes的issue這些資料裏面，你是否察覺到這些銷售人員涉及的不良銷售手法亦涉及其他產品？這些資料，你是否可以提供給本委員會呢？如果有的話，為何你不可以提供呢？

**Chairman:**

Mr KAM is asking about information related to products other than Minibonds. Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, clearly, we have investigations under way, partially completed investigations that have been halted in relation to a number of banks in relation to a number of different products. It would be completely inappropriate of me to provide partially-completed information to this committee as if it were final findings.

**主席：**

甘議員，因為今天已超過了一點時間，我相信今天的研訊應該在此暫時結束。我們將於2010年1月12日上午9時30分繼續進行研訊。請韋奕禮先生屆時出席，繼續向小組委員會作供。

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或器材，以便小組委員會繼續我們的內部商議。

**(研訊於下午12時40分結束)**