

Margaret Ng
Member of Legislative Council

Room 116, New Henry House
10 Ice House Street
Hong Kong
Tel: (852) 2537 2725 Fax: (852) 2801 7134
E-mail: margaret@margaretnng.com
Website: <http://www.margaretnng.com>

9th October 2008

Mrs. Vivian Kam
Clerk to the House Committee
Legislative Council
Jackson Road
HONG KONG

Madam

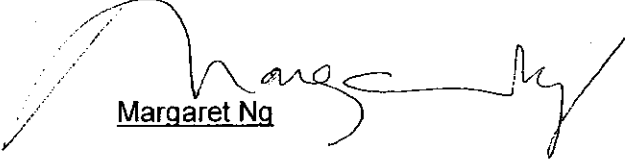
Agenda Item for 10 October 2008
House Committee meeting

I herewith propose that at the meeting of the House Committee to be held tomorrow afternoon, a resolution be passed to invite the Financial Secretary, the CEO of the Hong Kong Monetary Authority (HKMA) and CEO of the Securities and Futures Commission (SFC) to brief members on the present situation regarding minibonds including an account of how such a complex high risk financial product was allowed to be sold directly to members of the public, what action has been taken so far regarding complaints made to the HKMA and SFC, whether prosecution will be instituted in any of the cases, and what plans does the Government have to devise mediation and settlement to compensate the complainants and potential complainants of their loss.

There are ample precedents for special House Committee meetings on issues of wide public concern. I suggest this as the most expeditious way to enable this House to hear directly from officials, rather than waiting for the panels to be activated or a Select Committee to be appointed, and will in no way prejudice further discussions in either of the above.

In the past weeks, members and political parties have been doing whatever they could to help the victims and press the banks concerned as well as the regulatory authorities to respond. Under the present regulatory system established by law enacted by this Council in 2002, the HKMA has a direct responsibility. I enclose for members' information and reference an exchange of correspondence between myself and Mr. Joseph Yam (translation to follow). Should members and the public come to the view that the present regulatory system has not been effectively enforced or that the system is itself ineffective and inadequate, follow up action will have to be taken.

Yours faithfully


Margaret Ng

Margaret Ng
Member of Legislative Council

Room 116, New Henry House

10 Joo Koo Street

Hong Kong

Tel: (852) 2537 2725 Fax: (852) 2801 7134

E-mail: margaret@margareting.com

Website: <http://www.margareting.com>

BY HAND

6th October 2008

Mr. Joseph Yam
Chief Executive Officer
Hong Kong Monetary Authority
55th floor
IFC 2
HONG KONG

Dear Joseph

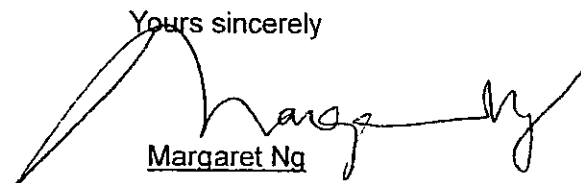
Thank you for your prompt reply which, unfortunately, does not answer the most pressing issue in my letter which is the protection of consumer-investors who were persuaded to buy minibonds from banks.

My question is a simple one. Given that the minibond is a complex high risk financial product, how did it come about that it was allowed to be sold by bank staff directly to consumers including vulnerable groups if the HKMA had been performing its proper regulatory function to protect investors? Further, now that this has nevertheless happened resulting in substantial loss to a large number of consumer investors, is it the case that investigating complaints and leaving the victims to take legal action individually (if they can afford it) the only action the HKMA is prepared to take? If that is indeed the case, can HKMA be said to have fulfilled its assurance to the legislature at the time the Banking (Amendment) Bill was vetted and passed? If the HKMA is unwilling and unable to do more, then how can we say the present regulatory system is adequate in relation to banks?

No one is suggesting that the HKMA has the power to force culpable banks to pay compensation. Neither does the Monetary Authority of Singapore have such powers. But the MAS has shown itself to be willing to take proactive steps to protect consumers and in so doing safeguard confidence in its banking system. It is not for me to tell the HKMA what measures to adopt to achieve the requisite results. Rather, I am waiting with some anxiety to hear what further measures you propose to take.

In your reply, you pointed to the purpose of the provisions in the relevant ordinance ensuring a level playing field between the banks and persons licensed by the SFC. The big question posed by the recent situation is, in all the circumstances, has that been achieved?

Yours sincerely



Margaret Ng

c.c. Mr. John Tsang, Financial Secretary
c.c. Mr. Martin Wheatley, Chief Executive Officer, Securities and Futures Commission



HONG KONG MONETARY AUTHORITY
香港金融管理局

Joseph C. K. Yam GBS, JP
Chief Executive

任志剛 GBS, JP
總裁

Hon Margaret Ng
Member of Legislative Council
Room 116, New Henry House
10 Ice House Street
Hong Kong

(By post and by fax)

3 October 2008

Dear

Thank you for your letter of 2 October 2008 regarding complaints by members of the public who purchased investment products related to Lehman Brothers Inc. from banks in Hong Kong. I would like to assure you that the HKMA shares the community's concern over this matter and is giving it urgent attention.

While the HKMA is the frontline supervisor of the securities businesses of those banks in Hong Kong that have been registered with the Securities and Futures Commission (SFC) to conduct regulated activities (banks), it does not authorize the issue of advertisements, invitations or documents relating to investments under the regulatory framework of the Securities and Futures Ordinance (SFO).

In supervising the securities business of banks, the HKMA requires them to comply with the Code of Conduct for Persons Licensed by or Registered with the SFC in selling securities and futures products. The purpose of this requirement is to ensure a level playing field between the banks and persons licensed by the SFC. The Code requires financial intermediaries selling such products to explain the products and the risks they entail to their clients. Banks, like persons licensed by the SFC, are required to comply with relevant regulations under the SFO and to have adequate internal systems of control to ensure that they properly assess the suitability of investment products for their customers and adequately disclose the nature and risks of the products. Banks are also required to disclose whether they are acting as agent or principal and assure themselves that their clients understand the nature and risks of the product

55th Floor, Two International Finance Centre,
8 Finance Street, Central, Hong Kong
Tel: (852) 2878 8188 Fax: (852) 2878 8190
E-mail: Joseph_CK_Yam@hkma.gov.hk
Website: www.hkma.gov.hk
Telex: 74776 XFUND HX

香港中環金融街8號國際金融中心2期55樓
電話: (852) 2878 8188 傳真: (852) 2878 8190
電郵: Joseph_CK_Yam@hkma.gov.hk
網址: www.hkma.gov.hk
電訊號碼: 74776 XFUND HX

they are buying and that the clients have sufficient net worth to assume such risks and bear any losses that might ensue. In addition, the HKMA has impressed upon banks the need to assess the risk appetite of customers and explain the risks of investment products. The HKMA conducts regular on-site examinations of banks' securities business and, where weaknesses are identified, issues guidance to the banks requiring them to strengthen their controls. For example, the HKMA has issued guidance emphasising the need to exercise special care in explaining products to vulnerable groups, including the elderly.

The HKMA has now received around (5,000) complaints regarding Lehman Brothers-related investment products sold by banks and we have begun processing them. As I am sure you will understand, it is essential that every complaint is dealt with thoroughly on its merits and without prejudging the issue. We are deploying significant resources to this task. While we expect to reach initial conclusions on some cases shortly, it will obviously take some time to complete all the work, particularly since we continue to receive new complaints.

As we arrive at a conclusion on individual cases, we will inform the complainants of our conclusions. In cases where we conclude that banks or their staff have been guilty of mis-selling the investment product which is the subject of the complaint, the HKMA may take appropriate disciplinary action against the Relevant Individuals, the executive officers or the bank concerned. The bank, the Relevant Individuals or the executive officers concerned may appeal to the Securities and Futures Appeals Tribunal. The HKMA does not have the power to order banks to compensate customers. However, where we conclude that banks or their staff have mis-sold investment products, customers are put in a better position to pursue their own civil remedies.

As you may be aware, the HKMA will provide the Financial Secretary with a report on the lessons to be learned from this incident within three months. In the meantime, the HKMA will be happy to brief Members of the Legislative Financial Affairs Panel on the matter when the new Council session begins.

With warmest regards.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Tsang', with a long horizontal flourish extending to the right.

cc Mr John Tsang, Financial Secretary
Mr Martin Wheatley, Chief Executive Officer, Securities and Futures Commission

Margaret Ng
Member of Legislative Council

Room 116, New Henry House

10 Ice House Street

Hong Kong

Tel: (852) 2537 2725 Fax: (852) 2801 7134

E-mail: margaret@margareting.com

Website: <http://www.margareting.com>

2nd October 2008

URGENT BY HAND

Mr. Joseph Yam
Chief Executive Officer
Hong Kong Monetary Authority
55th floor
IFC 2
HONG KONG

Dear Mr. Yam

I write as member and Vice Chairman of the Bills Committee which was responsible for the scrutiny of the Securities and Futures Bill (SFB) and Banking (Amendment) Bill which were passed in 2002. These were the main statutory instruments which set up the present regulatory system under which banks are allowed to sell financial products directly to the consumer under the supervision of the Hong Kong Monetary Authority. As may be seen from the Bills Committee's report to the Legislative Council, the Bills Committee was particularly concerned about adequate protection for the consumer-investor who had little expertise in such products. While brokers and brokerage firms were under the stringent supervision and regulation of the Securities and Futures Commission under the SFB, there was a question as to whether sufficient safeguards apply to banks which enjoyed many advantages, including proximity to consumers and the confidence consumers were urged to place in the banking system. At the time, the HKMA assured members that under the bills to be passed, consumers would be adequately protected, as the HKMA had a duty to take all reasonable steps to ensure that any business of the banks (referred to as "Authorised Institutions") is conducted with integrity, prudence and the appropriate degree of professional competence. As an issue thoroughly canvassed in the process of scrutiny, the overall effect of the new provisions was that the HKMA takes on the role of consumer protection regarding the conduct of the banks in promoting and selling such financial products to the consumer. The two bills were passed upon such assurances to the legislature. Indeed, the additional duty of the HKMA was enacted into the Banking Ordinance, Cap.155 where they are still in force today.

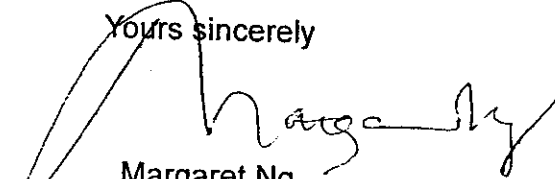
The recent public concern arising from the "mini bonds" 迷你債券 is now putting to the test these assurances of consumer protection under our regulatory system. As reported in the press, a great majority of the consumers who are facing substantial financial loss had purchased from banks under aggressive marketing methods. The question is, how effectively has the HKMA been protecting their interest, and to what extent will HKMA act towards procuring their redress?

While I was not in Hong Kong at the time the crisis broke, I returned to see groups of panicking citizens rushing to the banks in desperate attempts to meet the management staff in order to get an explanation and some form of redress. Has our regulatory system failed so that law-abiding citizens are driven to self-help? How can that be conducive to confidence in our banking system or Hong Kong's image as a well-regulated world financial centre?

I learned from the press that the HKMA has agreed to investigate complaints and report on the matter in three months. This appears to me an unaccountably slow response by any efficient body to a crisis which is aggravated by the context of a global financial meltdown. It is now not in doubt that the "mini bond" is far from a "low-risk" investment and that the description is completely misleading (possibly calculated to mislead). What it really is is in fact extremely difficult to understand even to a lawyer who has conscientiously studied the full set of relevant documents. But the true nature of the product must have been easily appreciated by the experts of the HKMA. The discrepancy is strong prima facie evidence of impropriety and misrepresentation. The large number of complaints – now in thousands – is itself evidence of the marketing strategy adopted. It cannot be in the interest of the Hong Kong SAR or HKMA to take such an aloof position as to drive each victim to take court action against each banking institution with vast amounts of time and funds wasted in identifying the individual bank and bank staff and factual events in each case. Many of these victims may not have the knowledge or the funds to sue. Should we then expect them in their numbers to apply for legal aid? Would that be a reassuring sight to anyone who wishes Hong Kong well?

It is unfortunate that LegCo being prorogued, members can only act individually. I have informed the LegCo Secretariat to make all preparations it can to facilitate a discussion between the House and the Authorities, including HKMA, the SFC and the Financial Secretary. In the meantime, I am writing to seek your personal attention in this matter in the hope that HKMA will see fit with expedition to discharge its duty and exercise its powers to intervene. Should the banks be found to have fallen short of the requisite standards, a collective settlement would be undoubtedly the least damaging for all.

Yours sincerely



Margaret Ng

c.c. Mr. John Tsang, Financial Secretary

c.c. Mr. Martin Wheatley, Chief Executive Officer, Securities and Futures Commission