

LEGCO QUESTION No. 17

(Written Reply)

Asked by: Hon James TO

Date of Meeting: 23 April 2008

Replied by: Secretary for Financial Services and the Treasury

Question:

Recently, several members of the public, who have entered into contracts of stock options known as "accumulators" with banks, have sought my assistance. They claimed that some bank staff had sold these accumulator contracts in a misleading manner, resulting in substantial financial losses on their part. Moreover, it has been reported that claims for default payments and interests in connection with these contracts have recently been filed with the court by banks against their clients. I have also received complaints about warrants and other derivatives. In this connection, will the Government inform this Council:

- (a) in the past two years, whether the Hong Kong Monetary Authority, other government departments, the Consumer Council or the Securities and Futures Commission ("SFC") have received any complaint regarding accumulator contracts, warrants or other derivatives; if they have, of the number of complaints received, broken down by the type of complaints (such as sales practices and unclear contract terms);
- (b) given that at present, the selling of investment products by securities firms must be conducted by persons holding relevant licences issued by SFC, whether such selling activities conducted by banks are subject to any regulation;
- (c) although I understand that the Government should not intervene in private contractual matters, however, since some market participants have recently stated that the design of accumulator contracts are unfair to investors, and that the issue is worth the Government's concern, whether the Government has examined the problems brought about by these contracts, or strengthened education for consumers and reminded them of the risks inherent in the relevant investment products; and
- (d) whether it knows the number of claims for compensation in respect of accumulator contracts filed with the court in the past three years?

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Reply:

Madam President,

- (a) The number of complaints received by the Hong Kong Monetary Authority (“HKMA”), the Securities and Futures Commission (“SFC”) and the Consumer Council regarding accumulator contracts, derivative warrants or other derivatives since 2006 is set out in the following tables:

Number of Complaints regarding Accumulator Contracts

	2006	2007	2008 (Jan - Mar)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients’ suitability in investing in the product	0	1	9
SFC			
- Failure to explain clearly the investment risks and/or to assess the clients’ suitability in investing in the product	0	0	3*
- Unclear contract terms	0	0	1
Consumer Council	0	0	0
Total	0	1	10*

* Remarks: As all three complaints received by SFC were related to banks, SFC had referred them to the HKMA and these cases were already included in the nine complaint cases received by the HKMA. Therefore the total number of complaints received in 2008 (January to March) should be ten.

Number of Complaints regarding Derivative Warrants

	2006	2007	2008 (Jan - Mar)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	1	1	0
SFC			
- Price movements	117	85	24
- Obligations of liquidity providers	17	32	9
- Others	1	3	0
Consumer Council			
- Failure to explain the nature of the product and the issues concerned in relation to its trading	1	0	0
- Unclear price quotes	0	1	0
- Unclear transaction fees	0	1	0
- Selling price different from normal price	0	1	0
Total	137	124	33

Number of Complaints regarding Other Derivatives

	2006	2007	2008 (Jan - Mar)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	3	7	6
SFC			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	1	4	1
Consumer Council	0	0	0
Total	4	11	7

- (b) Under the existing legislation, the HKMA is the frontline regulator for banks in relation to their securities and futures business, and is responsible for the day-to-day supervision of banks' securities and futures business and carrying out supervisory duties in line with those exercised by the SFC in relation to brokers. Banks and their relevant staff carrying out securities and futures business are subject to comparable regulatory standards and the same range of disciplinary sanctions in the event of breaches as non-bank intermediaries.

Regardless of who the client is, the sale process for all securities and futures products by both banks and SFC licensees is governed by the Code of Conduct for Licensed and Registered Persons. The Code requires intermediaries to explain to the clients the products and the risks involved.

- (c) Like other derivatives, accumulators are high risk investment products. In choosing which products to invest, investors should first understand the sale and purchase, contract terms, operational and potential risks of the products concerned.

As regards market education, the Government and various financial regulators have all along attached great importance to investor protection and education. In fact, the Consumer Council is also concerned about the possible lack of understanding by general investors of equity linked instruments and related investment products, and has published an article entitled "Potential risks are high for 'high yield' equity linked products" in the March 2008 issue (issue 377) of its monthly CHOICE magazine, so as to explain the characteristics of equity linked investment products in detail and to educate investors to be aware of the potential risks of such products.

The financial regulators and the Consumer Council will continue to actively carry out investor education activities to enhance investors' awareness of various investment products, so that they can have a deeper understanding of the benefits and risks of investment.

- (d) The Financial Services and the Treasury Bureau, the HKMA, the Consumer Council and the SFC do not have figures in respect of the number of claims filed with the court for compensation arising from accumulator contracts.

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