

# 立法會

## 研究雷曼兄弟相關迷你債券及 結構性金融產品所引起的事宜 小組委員會

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第十五次研訊的逐字紀錄本

日期： 2009年6月23日(星期二)

時間： 上午10時

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 Fifteenth Hearing  
held on Thursday, 23 June 2009, at 10:00 am  
in the Chamber of the Legislative Council Building

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### Members present

Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)  
Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon LEUNG Kwok-hung  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon KAM Nai-wai, MH  
Hon Starry LEE Wai-king  
Hon Paul CHAN Mo-po, MH, JP  
Hon CHAN Kin-por, JP  
Dr Hon Priscilla LEUNG Mei-fun  
Hon IP Wai-ming, MH  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

### Members absent

Hon CHAN Kam-lam, SBS, JP  
Dr Hon LEUNG Ka-lau

**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"的第十五次公開研訊。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首次出席我們小組委員會的研訊。

我想請各位委員留意，整個研訊的過程必須有足夠法定人數，連主席在內一共是7位委員。另外，《立法會(權利及特權)條例》所賦予的特權，只適用於研訊的過程。小組委員會的《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，都應該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，委員不應該披露任何有關小組委員會閉門會議上的內部討論或曾經考慮的文件的資料。

我想提醒旁聽研訊的公眾人士及傳媒，在研訊過程以外場合披露研訊中的證供，將不受《立法會(權利及特權)條例》所保障。如有需要，各位列席的人士及傳媒應該就他們的法律責任，諮詢法律意見。此外，我亦想提醒在公眾席上旁聽研訊的公眾人士，研訊進行時需要保持肅靜。根據《立法會議事規則》第87條，我有權請任何行為不檢或看來相當可能有不檢行為的公眾人士離開會場。

請各位委員留意，小組委員會的研訊程序須符合《工作方式及程序》第2段的原則，包括有關程序必須公平，而且須要令人看到是公平的，尤其是對利益或名譽可能會被小組委員會的研訊程序影響的各方。另外，《工作方式及程序》第13段及第14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，我會決定哪一條問題或哪一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，委員應該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。我再次提醒，是自行決定。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，所以他不會出席與證監會

證人有關的研訊。此外，梁美芬議員亦申報，她是證監會程序覆檢委員會的委員。

我想藉今日的研訊再次指出，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，小組委員會不可以就個別投訴作出處理，或協助個別人士追討損失。

我現在宣布今日的研訊開始。小組委員會將會就現行"一業兩管"的規管制度下證監會的角色、披露為本制度、銷售點的操守監管、監管標準的一致性及證監會與香港金融管理局的合作等事宜，向證監會行政總裁韋奕禮先生取證。

韋先生，小組委員會已同意由證監會秘書長鞏姬蒂女士及證監會企業融資部高級經理楊國樑先生陪同你出席研訊。請注意，鞏女士及楊先生不可以向小組委員會發言。證人也不可以與陪同的人士討論，亦不得接收該等人士的任何指示(無論是口頭或書面的)。

小組委員會決定證人須要是宣誓作供。我現在以小組委員會主席的身份負責為你監誓。你可以選擇以宗教形式手按聖經宣誓或以非宗教形式宣誓。韋奕禮先生，請你站立並且依照放在你面前的誓詞宣誓。

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

Would you like me to take the oath? Okay. I, Martin Wheatley, swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

***主席：***

Thank you。謝謝韋奕禮先生，你曾經在6月10日向小組委員會秘書提供一份證人陳述書，即是小組委員會文件第W13(C)號。你現在是否正式向小組委員會出示該份證人陳述書作為證據？

***Mr Martin WHEATLEY:***

Yes.

**主席：**

小組委員會已經同意，為方便列席的公眾人士及傳媒跟隨小組委員會的程序，我們會將你的陳述書向他們公開。你對你的陳述書有沒即時的補充？

**Mr Martin WHEATLEY:**

I'd simply like to make an opening statement, but the witness statement stands.

**主席：**

等一等，我會給機會你講。請你等一等，韋先生。韋先生，你曾經向小組委員會秘書提交了多份文件，即小組委員會第S1至S31號，以及S1(C)號。韋先生，你現在是否正式向小組委員會出示這些文件作為證據？

**Mr Martin WHEATLEY:**

Yes.

**主席：**

韋先生，你亦曾向小組委員會秘書提供你的履歷及職責，即是小組委員會文件第W14號及W15號。你是否正式向小組委員會確認這些資料是正確的？

**Mr Martin WHEATLEY:**

Yes.

**主席：**

韋先生，就今日的研訊範圍，你是否想向小組委員會發言呢？

**Mr Martin WHEATLEY:**

Yes, if I may. Thank you, Chairman. I'd like to take just a couple of moments to deliver an opening statement.

I would like to acknowledge and recognise the extremely difficult personal circumstances faced by many investors. The SFC recognizes that

this issue is not just the concern of the legal wording but of community and social concerns about how Hong Kong's regulation works to protect investors.

There has been an unprecedented level of complaint regarding alleged mis-selling following Lehman Brothers' collapse. Notwithstanding the global financial crisis that preceded this, public confidence in Hong Kong's own system has diminished and concerns have been raised about whether or not it is working.

I believe that it is now very important for the recovery and further development of our market that we act to restore public confidence. To do so, we must first address the mis-selling complaints. In the process, we must also identify the underlying factors and move quickly to address them. To this end, the SFC is fully committed to assisting both the Government and this Subcommittee in their review of the underlying causes of these Minibond complaints.

In considering how our market has performed, we must keep in mind the global events that have influenced our market. We have experienced the worst financial crisis in over 50 years. No country has been immune to its effect. Investors around the world have lost money as a result of the multiple failures of financial institutions, which in Hong Kong we have fortunately managed to avoid. While this in no way diminishes the issue of Minibonds, I believe that it is nevertheless important to recognize that, in many respects, our financial infrastructure has survived this crisis better than many others. This is important context in which to place our current considerations.

Of the over 20,000 complaints received, some 8,400 were filed through the SFC. These complaints overwhelmingly alleged that the Minibond product had been mis-sold. When we first started receiving these complaints in September last year, we quickly opened a number of investigations.

As members will be aware, earlier this year we reached a section 201 agreement with two brokers. Let me reassure members of the Subcommittee and members of the public that the completion of our remaining investigations is our highest priority and we are progressing our work as fast as possible.

It is our sincere hope that we will, in due course, be able to reach agreements with the banks that sold Minibonds and avoid lengthy court procedures.

Looking ahead, we have made a number of recommendations in our December 2008 report to the Financial Secretary on issues arising from the



crisis. Many of these recommendations can be introduced relatively quickly and we believe that they will be helpful in improving our regulatory approach.

While I believe that a review of our regulatory structure is important in the context of Hong Kong's future success as a financial centre, I would also caution against reaching any hasty conclusions on this complex issue.

Our regulatory structure has in many respects served us well during the current crisis and its positive features should not be given up too readily. Equally, there are many regulatory changes as well as developments in the mainland which will need to be factored into our considerations. We should proceed carefully and thoughtfully in determining what future structure is right for Hong Kong.

The challenge for all of us, in the face of the losses of so many small investors, is to try to form a balanced a view of all the factors that have contributed to the situation we now face. Some of these factors are macro-economic and, while we need to learn from them, are outside the scope of this review. Other factors, such as the form of rules and regulations we have in place and the degree of compliance with these regulations by market participants, are matters which we as regulators must address.

I look forward to assisting the Subcommittee in their consideration of these issues. I have responded to all of the requests as far as I am able. I am very happy to answer any further questions.

Thank you very much.

**Chairman:**

Thank you, Mr WHEATLEY.

由於韋先生稍後是以英語作答，為方便傳譯工作，請委員避免一次過以中文提出多條或者太長的問題，以便證人可以盡快直接回答。有見及此，小組委員會已經決定，每一位委員將會有10分鐘時間向證人提問及讓證人回答。

是，余若薇議員。

**余若薇議員：**

Mr WHEATLEY給我們的那份英文稿，後面12、13段是有少許不同的，13段是沒講的。

**主席：**

沒錯。

**余若薇議員：**

是否即是我們把它剔除出來？

**主席：**

對，沒錯。

**余若薇議員：**

即是記錄在案，13段是不在文件上的。

**主席：**

是沒有的，不在文件上的，是。

**余若薇議員：**

還有12段，他讀出來的時候有些修改，他加了些東西。

**主席：**

是，沒錯，對，沒錯。之前我們內部會議都提過。

我再說一次，小組委員會已經決定，每位委員將會有10分鐘時間向證人提問及讓證人回應。委員如果想就某份小組委員會的文件的內容向證人提問，請指明該份文件的編號，以方便證人及其他委員參考該份文件。為了善用研訊的時間，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個問題。另一方面，證人也不需要重複已經講過的說話或者大家已經知悉的背景資料。

現在請各位委員想輪流提問的請舉手，秘書會將你的名字寫下。

韋先生，現在我先提出第一個問題。

在銀行"一業兩管"的制度之下，證監會負責制訂監管標準，而金管局作為前線監管者，則按照證監會所制訂的監管標準監

管銀行從事證券相關的業務。請問韋奕禮先生，證監會與金管局有沒有一個常設的機制，討論有關監管標準怎樣制定、怎樣執行，及監管效果是否理想這些問題呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

Okay. The first part of the question: yes, the SFC has the responsibility to set the Code of Conduct. We do that only in consultation with the Hong Kong Monetary Authority and usually after significant market consultation. The mechanism for coordinating our application of those standards is through the MOU that we've signed with the Hong Kong Monetary Authority.

The Hong Kong Monetary Authority has an obligation to ensure that the banks under its supervision operate according to those standards, but the purpose of the MOU meetings is not for the SFC to supervise or in any other way oversee how the HKMA assures that banks meet its standards, the same standards. That's an issue solely for the HKMA.

**Chairman:**

Mr WHEATLEY, do you think the current demarcation of the responsibilities of the two regulatory bodies is clear enough or is there any area where you think that there should still be some improvement that can be carried out? Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think the demarcation is clear. The SFC maintains the standard, maintains the document, in consultation, and then the HKMA and the SFC separately supervise and inspect the organizations under their regulatory authority and we coordinate, as far as possible, through the MOU meetings. So, I think, in terms of the regulatory structure, I think it's a clear structure.

**Chairman:**

Mr WHEATLEY, do you think that the MOU has proved to be giving the desired effect which were expected or is there any area where you think that there should be some amendment to be made to it? Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think the MOU is adequate to deal with a situation where we have two regulators with quite separate but parallel responsibilities. Whether it's achieved the desired effect is clearly a question, given the number of

complaints that we're dealing with currently, and one of the things that did not become obvious through the MOU meetings was the extent to which very complex products were being sold into retail hands.

**主席：**

Thank you。韋奕禮先生，接着我會問，在你的書面陳述書，即文件W13(C)第2.8段及第2.9段提到，在2003年4月至2008年9月15日期間，證監會一共收到9宗由金管局轉介懷疑銀行失當行為的個案；同一期間，證監會亦完成了527宗有關證券行或其代表涉嫌違反《操守準則》的紀律查訊。請問韋奕禮先生，證監會這些紀律查訊是否全部涉及第1類及第4類的受規管活動，即證券交易及就證券提供意見的活動呢？如果是的話，為何兩個監管機構所處理的涉嫌違規的個案數字會有如此大的差別呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

The 527 disciplinary inquiries were of the suspected breaches of the Code of Conduct. They relate to areas where insufficient advice was given, incomplete records were kept and quite a large range of areas. I can't comment on the HKMA numbers. All I can comment on and I can provide a further breakdown of our numbers and precisely the sort of offences that they were in relation to.

**Chairman:**

Mr WHEATLEY, you agree that there's quite a disparity between the number of cases brought up by the two regulatory bodies and there must be certain areas that give rise to such a disparity. Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, clearly, there's a significant difference between the two numbers but we do not have oversight of the HKMA, so it's not our job to judge the extent to which that disparity is a significant issue or not.

**主席：**

OK。截至2009年6月18日，金管局合共收到21 273宗涉及雷曼兄弟相關產品的投訴，並將其中482宗金管局認為有足夠理據的個案轉交予證監會，而證監會則採取由上而下的方式，調查

有關銀行的銷售過程。請問韋奕禮先生，證監會與金管局今次分工合作進行的調查是怎樣達致的呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

The division of labour is that the Monetary Authority will have the ability to inspect banks and will do a first review of the cases referred to it. So, any cases either referred to it directly or sent to it by the SFC will be subject to an initial review by the Monetary Authority. Where the Monetary Authority believes that there is a potential breach, they will refer that to the SFC and then we will investigate that as part of our investigatory powers. But the transfer or the division of labour is always that the HKMA will carry out the initial review of whether there's a prima facie breach.

**Chairman:**

Has there been any argument as to where or at what stage the HKMA should refer the cases to the SFC or you think that they have done it prematurely? Has this happened before?

**Mr Martin WHEATLEY:**

Well, we've never had a situation before like the one we face today, so we're dealing with a new situation. I don't think the HKMA have ever had as many complaints to investigate and we have never had as many major investigations under way. So, given the quite unprecedented circumstances, what we're dealing with is a new situation in terms of the volume. I think the division of labour is working as best it can in this situation.

**主席：**

在這個調查機制之下，為何金管局確立某些個案有足夠的理據之後便不再調查下去，反而轉介證監會調查？本來可以由它繼續調查下去，它亦可以作出適當的處分，為何它在那個階段轉介給證監會那邊呢？是否那個情況……有何情況之下它應該可以多做些，或者它太早轉交了這些個案給證監會呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

I think the division of enforcement powers between the Monetary Authority and the SFC is such that it's appropriate that the cases are referred to us. Clearly, whilst, on the one hand, they maintain the register, they don't have the same penalties to reprimand, to fine and take regulatory actions that

the SFC does. So, the structure, as it was established, was always established that the SFC would be referred cases where there was reasonable evidence of a breach of code or rules.

**主席：**

最後我還想問一問就是，在甚麼情況之下，韋奕禮先生，證監會可以率先對銀行違規銷售個案進行調查，而無須倚賴金管局轉介呢？Mr WHEATLEY？

**Mr Martin WHEATLEY:**

We do not have the powers to take the initiative without first consulting the Monetary Authority. So the way that the regulatory structure is established, we have no inspection powers over banks, so we wouldn't, as a matter of course, discover areas that we felt required further investigation. We do, occasionally, receive complaints directly to us; we always pass those complaints to the Hong Kong Monetary Authority for them to do a first review as to whether an investigation is required and, if an investigation is required, that's always done after consultation with the HKMA. But, in practice, we would not – well, we cannot initiate an investigation without that consultation.

**Chairman:**

Thank you。副主席。

**黃宜弘議員：**

多謝主席。我想問一問韋奕信先生……

**主席：**

韋奕禮。

**黃宜弘議員：**

……韋奕禮先生，在2006年3月，證監會發表了一份題為《監管挑戰及回應》(Regulatory Challenges and Responses)的文件，就是S23那份文件，關注到零售客戶接觸愈來愈多複雜的結構性產品，以及各類金融產品的監管方式不同。根據同一年11月的結構性產品投資者調查，即S25第2頁，那裏說"近五成投資者並不完全瞭解有關產品的性質"。請問韋奕禮先生，自從03年4月開

始，證監會有否就上述的重要關注向金管局及政府當局反映，並尋求他們合作，作出跟進？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, we conducted a number of surveys over the years where we have tried to get as clear an understanding as we can about the sorts of products that investors are buying and their understanding of those products and the service levels that they receive. And, during those surveys, we have consistently found that investors either did not understand or weren't given adequate information about the sorts of products; their perceptions were often slightly at odds with the reality of the products. In our Structured Product Investor Survey in 2006, we found that around half of investors claimed that they had never received proper sales advice.

So, it's an issue that we've consistently come back to over the last six or seven years when structured products had become more popular in Hong Kong. Our actions each time have been to publish the results of our surveys, so to warn the market and, in warning the market, I understand that the HKMA also sent the results to banks to warn banks of the perceptions about the levels of service.

In addition to warning the market, we have also taken follow-up action in our own inspection surveys and we've selected samples and we have done themed surveys of investment advisers to look at the extent at which the investor surveys were carried out in practice. And, again, we have found failings in a number of cases and where we've found failings we've taken regulatory action.

**黃宜弘議員：**

主席，他沒有回答我的問題。我問你有沒有向金管局及政府當局反映你們這方面的關心？如果有，你可不可以告知我們，金管局及政府的態度當時是怎麼樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Sorry if I didn't answer the question.

Yes, it was raised with both the Government and with the Monetary Authority. The Monetary Authority's response was to publish the results of our survey and warn banks of the findings that we had received and to conduct a concurrent inspection round in 2006 where, at the same time as we were inspecting our regulated entities, the HKMA was also conducting a themed inspection of banks.

**主席：**

副主席。

**黃宜弘議員：**

那政府方面呢？韋先生，政府方面有沒有表態？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the Administration were aware, in general terms, of the issues and were aware of the actions that we were taking.

**主席：**

副主席。

**黃宜弘議員：**

OK，另外一個問題。根據《證券及期貨條例》第5(1)條，證監會有一項法定的職能，就是確保公眾投資者或者持有金融產品時獲得的適當程度的保障。有鑒於此，證監會是否亦有責任檢視或者留意金管局所採取的規管措施，以確保有關措施能為投資大眾提供足夠的保障？

**Chairman:**

Mr WHEATLEY?



**Mr Martin WHEATLEY:**

With respect to the Monetary Authority's oversight of banks in selling products, we have no role in overseeing that function.

**主席：**

副主席。

**黃宜弘議員：**

你認為這不是你的責任去看他們那個 Monetary Authority 的職責？你是否說確實是這樣相信？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The strict responsibility does not lie with us and it's not a question of thinking: in law, we have no legal oversight of the HKMA. And, in fact, in the SFO, we're specifically carved out and we are told that we may rely on the HKMA's oversight of banks. But to say there's no role at all, I think, it's too strong. We do, through the MOU meetings, attempt to coordinate the actions we take, the findings we take, and we share information with the HKMA but it's very much a coordination role; it's not a supervisory or an oversight role.

**主席：**

副主席。

**黃宜弘議員：**

主席，我想又再問一問關於你剛才所提的 MOU 方面，自從你們兩個簽了之後到事件發生的那段時間，你們兩個機構有否曾經檢討 MOU 是否起到作用呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The MOU has not been reviewed specifically following the outbreak of this particular incident, so we operate according to the MOU. That MOU has been in place since 2003 and we have very regular ongoing contact with the Monetary Authority but we have not sought to review whether the principles of the MOU, at this stage, whether that MOU still works. I think that is a piece of work that we need to do but that's possibly a forward-looking piece of work once we have better understanding of exactly how the current situation has evolved.

**主席：**

副主席。

**黃宜弘議員：**

韋先生，你說將來可能會重新檢討MOU是否有地方需要修改，不知道Hong Kong MA是否和你已經有初步瞭解，認為此項工作應該在何時展開呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think, at the moment, we're both – the organizations are very focused on two sets of issues. One of those issues is the resolution of the complaints and the completion of the investigation and, as I said in my opening statement, that's our highest priority. The second issue is a forward-looking piece of work. We both reported to the Financial Secretary in December with some initial views as to the changes that could be made and we're working through and we have an action plan to make those changes. I think a review of the MOU structure is a policy question for the Government that will come as a next stage after that but it's not part of the current work stream.

**黃宜弘議員：**

我沒有其他問題。

**Chairman:**

Mr WHEATLEY, in response to the Deputy Chairman's question, second question, would you be expected to tell us a bit more how you will ensure there's absolute consistency between the two regulatory bodies, SFC and HKMA, to ensure that the current regulatory regime is working and there is no unfair or differences in the implementation of the current system? Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have, in law, no oversight role that would allow us to ensure absolute consistency and, under the SFO, we're specifically mandated that we may require on the HKMA's oversight of banks. We try to ensure consistency through the coordination and co-operation meetings which operate under the MOU, so that's the process by which we seek to ensure consistency but we don't have an oversight or a supervisory role over the way the HKMA supervises its banks.

**Chairman:**

Thank you.

現在有11位同事已舉手輪候提問，我將名單讀出來，就是葉劉淑儀議員、陳健波議員、余若薇議員、劉慧卿議員、甘乃威議員、梁國雄議員、梁美芬議員、李慧琼議員、劉秀成議員、詹培忠議員及湯家驊議員，11位。首先是葉劉淑儀議員。

**葉劉淑儀議員：**

多謝主席。我看完所有文件，我當然知道這些投資產品根據我們披露為本的制度是不需要證監會批准，但是我知道那些章程及宣傳單張則需要證監會批准。章程倒沒有很大問題，我們看過，人人都知道，章程是法律、金融專家所作，是一個template，法律上完全沒問題，但那些宣傳單張就看到很多問題。我想問Mr WHEATLEY，在證監會內是甚麼層次的官員批核這些宣傳單張？迷債，Minibond，我是說Minibond。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Can I be clear? We authorize both the documents and the marketing materials.

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

Yes.

**Mr Martin WHEATLEY:**

And, in each case, we're authorizing, in the case of the prospectus, that it's compliant with Schedule 3 of the Companies Ordinance; in the case of the marketing materials, that it is compliant with our marketing guidelines which ensure that there is nothing misleading or inaccurate introduced into the marketing materials from the prospectus. It's approved by a team within our corporate finance function where, typically, a manager and a senior manager would review the materials, come up with recommendations and make recommendations to the director of that area.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

即不是你本人批核的，是嗎？是你的手下做的？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

剛才韋總裁說了是確保那些宣傳單張不會 misleading，誤導市民。但其實看看這些迷債的宣傳單張，很多都說是和中國、和特區信貸掛鉤。這些是否準確呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, these products are structured; they are credit-linked products and they will vary slightly from series to series but, typically, the headline feature of each of these products is the payment of a particular coupon for taking credit exposure to a basket of names, and those names may be sovereign names or corporate names.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

但是，Mr WHEATLEY，你是否同意這樣寫是令投資者，其實很多是小市民，以為這些迷債真的很穩定，不會出事，因為和中國、和特區的信貸掛鉤，這樣不可能出事的。你是否同意這樣其實是有誤導成分？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think we have to be quite clear about what the status is. These are marketing flyers; they're intended to raise awareness of a particular product, that these products are not off-the-shelf products, they're complex products and they're supposed to be sold in an advised way that ensures that all of the features are explained at the point of sale. So the marketing flyer is just that: it's a flyer intended to raise initial awareness. It is not the sales materials, it is not the prospectus.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

剛才 Mr WHEATLEY 自己都說了，這些是複雜的產品，complex products。你覺得那個 flyer 只提信貸跟中國及特區掛鉤，而不提其他風險，例如 counterparty，CDS counterparty，那個掉期對手的風險，或者是它的 underlying assets，即它的那些資產，CDO，synthetic CDO，合成 CDO。這麼多風險不提出來，令投資者以為很穩固。這樣有否誤導的成分呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, two points let me make. Again, they are flyers which are intended to attract initial awareness but they're supposed to be sold on an advised basis where all of those risks will be disclosed at the point of sale. But most of the risks, if not all the risks, are actually on these documents. Now, it's in – if we asked for every single feature of a prospectus to be included in a marketing flyer, it would be impossible to read because, as you know, the prospectuses themselves run to over a hundred pages, so we ask the issuer to include the material risks. And, so, each of them will have the material risks included in the marketing flyer.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

我再想問韋先生的就是，譬如這些 flyer 除了叫投資者火速認購，只有兩個星期，還送很多免費禮物，超市的 coupon，甚至 40 吋的 LCD TV。這些手法你覺得怎樣？這些促銷的手法你覺得怎樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, if pressured sale tactics were used during the sales process, that's clearly a concern that we would have. We are, obviously, trying to

investigate, at the moment, the extent to which the features were misrepresented, the free gifts were played up over and above the risks of the document or whether people were subject to high-pressure sales techniques. That's something that we are concerned about.

But, as I say, the features of the – the risks are included in the marketing flyer. It's not a case that they've been excluded.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

韋總裁都說了，即一頁 flyer 不可能將如此複雜的風險全都寫出來，章程裏面是有的，我們全看過，其實章程裏面已說了。但是很多時候買這些迷債的人很相信銀行，因為他們很多是銀行的長期客戶。銀行職員，其實前線職員叫他們買了之後才寄章程給他，一兩個星期才收到章程。你覺得有否問題？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, if the frontline staff are asking them to buy and that's all they're doing, there's a question as to how far they have met their obligations under the Code of Conduct because the Code of Conduct requires that the frontline staff ensure that the investors do understand the product, that they have sufficient knowledge to understand the risks and features and that they have sufficient capital to withstand the potential losses. That's the obligation that sits on the frontline staff. So, if they failed to do that, then that's a potential breach.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

主席，這點其實韋先生剛才講過，他說這些產品是 "supposed to be sold on an advised basis"。即你重複你的意思，就是說其實賣的時候是應該很小心全部解釋，銀行職員是應該很小心解釋

所有的風險，是不是？如果沒做，其實是否已經違反你說的Code of Conduct?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think we have to look at every case but it's a potential breach if the bank has not taken account of the customer's characteristics and ensured that the product is suitable for the customer.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

但是這些銀行職員自己也要瞭解產品的風險，你認為誰應該負責職員瞭解產品風險，及對他們的客戶解釋所有產品的風險？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, each organization selling financial products has a central function within that organization. It will have different names in different cases but it will be a risk committee, a due diligence committee, with experts supporting it who are responsible for doing the initial due diligence on a product. Typically, as well as doing the initial due diligence, they would either review or develop training material and that training material would be used to ensure that frontline staff understand the product and have the relevant information available to them.

**主席：**

葉劉淑儀議員。



**葉劉淑儀議員：**

主席。韋總裁，你從英國來的，因為我知道你在英國監管金融市場很有經驗。你可否告知我們，如果這些產品在英國售賣會如何監管？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The products weren't sold in exactly the same form but there are a number of Lehman-arranged structured products that have been sold in the UK. There is a serious debate in the UK about the extent to which there has been mis-selling and the FSA, together with the Financial Ombudsman in the UK, have recently announced a major review to look at the sales by intermediaries of Lehman-related products. They would be broadly regulated in the same way in that it's a combination of ensuring that adequate risks are disclosed and that the code of conduct applies to the investment advisers or the brokers or the banks at the point of sale. So, the overall structure is broadly similar.

**主席：**

葉劉淑儀議員。

**葉劉淑儀議員：**

英國和香港的分別.....我不清楚那個監管制度，是否他們不是"一業兩管"(計時器響起)，而是他們的FSA全部負責呢？即前線的intermediaries怎樣去售賣這些產品，那個分別是否這樣？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think that, yes, the major difference, at an overall structural level, is that the UK has, obviously, a single integrated regulator but that has not protected the UK system as a whole. Just as there are aggrieved investors here in Hong Kong, there are aggrieved investors in the UK who are complaining that they also suffered because products weren't properly sold to

them. So, I don't know that the regulatory structure itself has changed the outcome in different regimes.

**主席：**

下一位是陳健波議員。

**陳健波議員：**

是，多謝主席。我想問證監會批核那些銷售文件，包括leaflet都是以披露為本的。我想問證監會有甚麼標準或者指引給批核的官員或者職員，讓他們決定怎樣才足夠呢？即有否甚麼標準或者有甚麼指引給職員去批核，以決定該產品的披露是否足夠呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Okay. The disclosure-based approach which we've talked about is the model that we have adopted here. So there's a policy in Hong Kong; that's the model and, broadly, it's the policy in most parts of the world and the policy always relies on the twin pillars of ensuring that adequate disclosure is made in the document and ensuring that the conduct at the point of sale ensured the product is suitable.

In terms of the standard of disclosure, that's set out in Schedule 3 of the Companies Ordinance, where the required information is listed under Schedule 3 and, in addition to that, we have a code on guidelines for the development of marketing materials which sets out the standard that's expected. So they're the two key areas that set out the standards for disclosure.

**主席：**

陳健波議員。

**陳健波議員：**

是，主席，我想看看文件S32，剛才葉劉淑儀議員也提過這個。S32是說，其實這個就是迷你債券的第35系列。這個產品其實是有兩個信貸掛鈎的產品。銷售單張集中火力說它第一層掛

鈎的風險，寫得很清楚就是跟滙豐、和黃、中國及其他藍籌公司掛鈎。但其實如果你再細心看，第二層其實就是說一些叫CDO的東西，它說得很清楚，用AAA的評級的抵押債務債券.....

**主席：**

陳議員，你是說S33，不是32。

**陳健波議員：**

S32吧？

**主席：**

33。

**陳健波議員：**

主席，這裏是32。

**主席：**

有同事說是33，我知道。哦，OK。

**陳健波議員：**

應該是32。

**主席：**

證實是32，OK，對不起。

**陳健波議員：**

變成第二層只是用AAA的評級的抵押債務債券去交代。但是其實最高風險就在這一層的CDO裏面，因為其實裏面有超過100間公司的信貸掛鈎，只要有幾間出現事故，投資者可能已經全部失去本金了。你會不會同意，第二層這個抵押品的披露其實是不足的呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the marketing flyer doesn't contain the full 100 pages of the prospectus and it can't possibly do that and still be at all readable. It contains a reference to the material risks and the collateral is referenced in each of the marketing flyers. The underlying documentation would tell the potential purchaser the criteria for choosing the collateral, that it would be credit-linked and that it would be AAA-rated at the time of purchase but the hundred names are not known at the time of purchase because they're bought on the day the product is issued and, so, again, the marketing prospectus – oh, sorry, the prospectus would state how an individual buyer would be able to access those names. So that information is included in the prospectus.

**主席：**

陳議員。

**陳健波議員：**

是。我想提的是，如果大家看看這份宣傳品，你看到低風險的佔很多篇幅，高風險的就只有幾行字去交代。其實如果你就這樣……當然，我們現在是事後再往回看，因為事情發生了，大家都明白。我想以前或許你批核是沒有問題，但是我相信將來你批核時你都不會這樣做，是嗎？即低風險的就寫到像“雞乸”那麼大個字，但那些真正高風險的其實根本都還沒買，將來買甚麼都不知道。如果在這樣的安排下，對消費者是否很不公道呢？因為第一就是說，他簽的時候，即他決定買的時候是資料不足的；第二就是說，即使他後來知道，他想退出都很困難，為甚麼呢？因為他已經買了，如果他退出，很可能有金錢的損失。現在往回看，這方面的監管是否應該要做得好些呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think, yes, we obviously must do better in terms of monitoring but again I come back to the point – the marketing flyer is simply there to attract attention. Our Code of Conduct places an obligation .....

*(Some people in the public gallery clamoured)*

Our Code of Conduct places an .....

**主席：**

請公眾人士保持肅靜。

**Mr Martin WHEATLEY:**

The Code of Conduct places the obligation on the frontline staff, whether that be a bank or a broker, to ensure suitability and that's where the key requirement to ensure that the complex product is suitable for the person that's standing at the counter at that point in time. It's not done on this leaflet; it's done through a complex understanding and know-your-client process where the client's particular characteristics have been assessed by the bank and through a due diligence on the product and that is how the system is supposed to work.

**主席：**

陳議員。

**陳健波議員：**

主席，我想大家要很小心，就是說這個雖然是銷售文件的一部分，證監會可能覺得這個不太重要。但其實，實際上市民或者投資者真的是看這一份為主，即我們考慮的是實際情況、銷售情況。第一，時間未必足夠；第二，甚至那些銷售人員自己都可能很倚賴這一份文件。如果買賣雙方都是靠這份文件，其實真的是市民都不知道自己買了甚麼，亦不知道風險。所以我覺得如果這樣做，其實披露方面真是做不到的。我希望證監會在將來的新文件亦要小心。

但另一方面，據我所知，最近這些銷售文件的批核亦慢了很多，我希望證監會也不能夠矯枉過正，即一方面應該做的就要做，不能夠以後樣樣都不批。

**主席：**

即現在這個是你自己的言論？

**陳健波議員：**

是，這是我的言論。

**主席：**

我相信你提問題就好，不要……

**陳健波議員：**

OK。

**主席：**

……提出言論。

**陳健波議員：**

我想問證監會有否因為這件事，所以現在又批得過嚴呢？對批核的文件又怎樣呢？即你現在最新的要求是怎樣，對文件的披露，最新的做法是怎樣呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The practice hasn't changed significantly. We have asked that the credit risk of the counterparty be given more prominence because, prior to the collapse of Lehman Brothers, there was generally lower awareness of counterparty risk. So we have asked firms to give greater focus to that.

There has been a slowdown in products coming to the market, partly because there's been a slowdown in demand. So, generally, the market has slowed down because people are very concerned and very nervous about the current market conditions. But, yes, we are asking more questions of product information when it comes to us and I think that you would expect us to do that, given the very, very volatile market situation that we find ourselves in.

**主席：**

陳議員。

再提醒大家，不要發表個人言論或者提出自己的意見。接着是余若薇議員。

**余若薇議員：**

謝謝主席。主席，我想問Mr WHEATLEY關於他今天早上的開場白。他的文件那裏，特別是第6段及第7段，他在第6段說，即他向我們保證，證監會是最高優先地進行這些調查及會盡快進行。接着那段他就說，英文是說："It is our sincere hope that we will, in due course, be able to reach agreements with the banks that sold Minibonds and avoid lengthy court procedures."。我看這兩段的感覺就是說，調查的目的是用來達成一個和解，讓銀行跟苦主和解。我不知道是否這個意思。我想就這兩段問Mr WHEATLEY一些問題。第一個問題就是，你現在跟這些銀行磋商，是否只包括迷債呢？還是包括譬如CLN、ELN那些呢？因為這裏有很多苦主，就是想問清楚。這是第一個問題。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The current investigation is the one concerning Minibonds. If there are other complaints of products that are forwarded to us, then they will become new and separate investigations.

**余若薇議員：**

接着的問題.....

**主席：**

余議員。

**余若薇議員：**

.....是想問，他現在說會跟銀行，即他相信會跟一些銀行達成協議，是否包括全部19間銀行呢？他們現在是否正在跟19間銀行進行調查及磋商，以至達成協議呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The current process is that we have investigations under way in relation to all 19 banks. In seven of those, we have reached our preliminary conclusions where we have either filed a preliminary notice of disciplinary action or we have opened settlement investigations. In a further seven cases, we are in the process of concluding our initial investigation and preparing a notice which will either result in the issue of a notice or the opening up of settlement talks.

Our objective, in every case, is to try to reach three outcomes: firstly, an outcome that remediates any damage to Minibond holders where we have reasons to believe that the systems and controls have failed, so remediation is an important part of those discussions; secondly, to try to ensure that any systems and control deficiencies are rectified and will not happen again; and thirdly, to take disciplinary and enforcement action to act as a sufficient deterrent to any further breaches. We are prepared to be flexible on those different objectives depending on the extent to which remediation is achieved.

**主席：**

余議員，因為我們這次研究的範疇是不包括這方面的.....

**余若薇議員：**

主席，你不要佔用我的10分鐘時間了。

**主席：**

我會補回1分鐘給你，但我想提醒的就是，我已經讓你問了一些，但是我相信還是集中於我們現在研究的範疇比較好。



**余若薇議員：**

是，主席，這個是他的開場白嘛，我當然可以跟進他的開場白了。

**主席：**

是，所以我讓你再跟進一點就是……即我相信他已經回答你了。

**余若薇議員：**

是。但是，主席，我想問清楚，他剛才說了，19間當中他說了7間加7間，7間已經完成，已經發出一個通知要做這個紀律的問題，另外7間他正準備發出通知做這個紀律的問題，即見到有14間。那餘下的5間呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We are trying to complete all of our investigations as quickly as we can do. We have made, I think, good progress in the cases that we've taken on. We have settled, as you know, the two brokers which were the first two cases that we took on. We've now got 14 other cases which are in or close to final discussion stages.

**余若薇議員：**

是，你說……

**主席：**

余議員。

**余若薇議員：**

……14個個案，即14間銀行。你亦跟我們說，你們證監會的做法、手法是由上至下，看看他們在管理上面是否出現一個系統的問題。你的意思是否說，在這14間銀行裏面，證監會初步的建議或者初步的證據就是有系統方面的管理問題呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

In following due process – and I'm sure you'll appreciate this – we cannot form premature judgments but we believe – and let me just clarify the numbers. Of the first seven I mentioned, they are all banks; we believe that, subject to the response we get from the banks, there's a prima facie case that there has been a failure of control. The other seven I mentioned includes four banks and three brokers where we're in the process of completing our notice, our preliminary notices, but we cannot jump from the state we're at to conclude, yes, there have been failings. We have to go through a proper process to achieve that stage.

**余若薇議員：**

總之有表面的……

**主席：**

余議員。

**余若薇議員：**

……證據，即你進行這個紀律處分的行動，如果不賠錢那方面。主席，我亦想跟進這個問題，因為有很多報道，我希望 Mr WHEATLEY 有機會解釋，因為現在這裏有很多報道說中國銀行準備和解，用六成的賠償，但卻說證監會在阻撓，因為證監會需要十足的賠償。我不知是否因為鑒於上兩次有關證券方面，證券行給予十足賠償，接着證監會便沒有採取紀律處分的行動。中國銀行方面，既然現在有這麼多報道，我希望 Mr WHEATLEY 用這個時間向我們解釋一下，究竟情況是怎麼樣？

**Chairman:**

Mr WHEATLEY? You respond in accordance with the three investigation areas as stipulated in the summons.

**Mr Martin WHEATLEY:**

Yes. Firstly, I can't comment on any specific investigation. So I know there's been some media coverage; we cannot carry out investigations or

negotiations in the public domain and so I'm not going to comment on any specific case.

In terms of whether an organization wishes to make a payment, there is no requirement that the SFC blesses or agrees. That can be a voluntary action that a bank can take. A number of banks have made those actions already, in regard to individual cases. If a bank chose to make such an action in regard to a wide range of customers, that's entirely a decision for the bank.

In terms of the statement about whether the initial agreements the SFC reached with the brokers is the only model, the answer is no. We're not dogmatic. We have said that we will take account of the extent to which any bank mitigates the losses in the enforcement actions that we take.

**主席：**

余議員。

**余若薇議員：**

想再問Mr WHEATLEY，第7段那裏，因為你自己這個開場白就是說"in due course"，即是說你期望，亦覺得是有機會跟銀行達成協議——關於迷債方面——而不需要去法庭打官司。這個"in due course"可否詳細一點告訴我們，即我們何時會見到這個結果呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I know that there's been a strong interest in the timetable. The timetable that we follow – and let me explain what our timetable is – once we've issued a notice, a bank will have 30 days to respond to that notice. Now, in order to allow full consideration of the facts and for the bank to take legal advice, they may ask for an extension to that but it is not indefinite. There is a fixed period of time that a bank has to respond. Once a bank has responded, we will then form a final decision. Once we've formed a final decision of the action we would like to take, we would then have to discuss that decision and agree that with the Hong Kong Monetary Authority. And then, having issued that decision, the bank has 21 days in which to decide to launch an appeal. So there are set timetables that we're operating to, at the moment.

At any time during that formal process, a bank could decide that it wishes to make a settlement approach and make arrangements that mitigate the losses for its clients and would ask us to take that into account in our final enforcement decision.

**主席：**

余議員。

**余若薇議員：**

Mr WHEATLEY剛才回答這方面時說了，有7間銀行已經收到通知，另外還有4間他正在準備，即證監會準備發出通知，所以加起來一共有11間銀行，但是我們知道牽涉售賣這些產品的其實一共有19間銀行。那麼，餘下8間銀行呢？Mr WHEATLEY，你可否告知我們情況如何呢？你是仍在進行調查，還未達致結論；還是你已經完成調查，這8間銀行你覺得沒有表面證供，你不會再繼續採取行動呢？

**Mr Martin WHEATLEY:**

No, the .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, the other eight banks we're still in the process of concluding our investigation, so we have not completed the investigation in the other cases.

**余若薇議員：**

你可否告知我們.....

**主席：**

余議員。

**余若薇議員：**

你估計大約何時你會完結對於這8間銀行——其餘該8間銀行——的調查，而達至一個認為有否表面證供的階段，你認為距離現在還有多久呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We will complete them as quickly as we can do. We are very focused; we are very concerned about the losses to individuals and the effect on society and we're putting (*The buzzer sounded*) all of our resources into this process.

**余若薇議員：**

你可否告知我們那個……

**主席：**

余議員。

**余若薇議員：**

……原因，為何需要這麼久呢？因為由9月到現在都已經一段時間了，我們當然高興知道，至少有11間銀行你做了調查，你達致這個結論，你準備採取行動或者已經採取行動。餘下那8間，你可否解釋給我們聽為何要那麼久呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, in every case, we have huge amounts of documentation to review; we have a large number of interviews to carry out. All of these processes take a long time. We have to conduct those interviews and usually produce translations. Every stage of the process is a complex stage of the process and it takes time and we have to give the banks themselves due process, administrative fairness, in allowing them to respond to the concerns that we

raise. But I can assure members here and the public we are working as hard as we possibly can to get a quick resolution to this problem.

**主席：**

OK。

**余若薇議員：**

主席，我可不可以再排過？

**主席：**

再排過，是。

**余若薇議員：**

謝謝。

**主席：**

我再提醒，我剛才已提醒余議員，在整個調查中，現在這個階段仍是我們那3個範疇，即規管機構、制度等等。當然，如果超越了，由於我們是沒有寫在傳票上的，對證人不是很公道。當然，現在外面報道那些和解、賠償等等，有很多報道，這個是在進展中，我相信大家應盡量避免問太多關於這方面的問題，應集中於我們想要的那3個範疇的資料。現在是取證階段。

接着是劉慧卿議員。

**劉慧卿議員：**

多謝主席。主席，我也是想就韋奕禮先生的口頭發言方面先問他少許問題。

主席，他提到當金融風暴爆發，香港的金融制度是可以抵禦這個危機，沒甚麼倒閉之類，其他官員也是這樣說。他覺得這個是看到我們的優勢。但他也承認，自從雷曼倒閉之後，引起前所未見那麼多的投訴，主席，金管局二萬多宗，他自己那邊就八千多宗。這就是說令公眾對這個制度的信心搖動，亦要問這個制度是否真的發揮到它的功能。所以我希望證監會明白，不是有那麼多間銀行或者甚麼倒閉，不等於說我們很好，

因為現在這裏有幾萬個苦主，現在說的是二百幾億的錢或者更多的錢。我相信韋先生都知道，現在人人都在準備七一遊行，有些又說不止5萬，有些則說10萬，我就當然希望它弄個幾十萬出來，主席。所以，我希望你們證監會也好，金管局也好，盡快，即消消氣，好像以前朱鎔基所說，即幫幫他們，盡快去做。因為其實已經由9月到現在6月，主席，做事做得這麼慢，即很多人都應該"炒魷魚"。所以我希望盡快去做，所以剛才其他議員問的就是，何時可以做呢？

我想問一下，主席，第5段說的八千多宗的投訴是證監會的。在這八千多宗裏面有多少只涉及迷債，有多少是涉及剛才提到的ELN、CLN各樣呢？你有沒有這個分類？因為剛才提到就是，你現在正在做的好像只做迷債，抑或其其實這8 000宗是很多樣都有，即各樣你都是正在做的呢？

謝謝，主席。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The initial eight thousand complaints that we received directly and the total that HKMA received – and there's a high degree of overlap because a number of the complaints we passed across – that initial 20 000 or so was relating, almost exclusively, to minibonds. Of the complaints we received, the vast majority of those were complaints against minibonds purchased from banks, so the vast majority of the 8 000 or so cases we passed to the HKMA.

More recently, the complaints have now been extending to other areas. I don't have the statistics in front of me but I'm sure we can provide members with the statistics for the extent to which other products, other types of notes, are now being affected by the complaints we're receiving.

**劉慧卿議員：**

主席。

**主席：**

劉議員。

**劉慧卿議員：**

韋先生說他是會查的，最要緊是要交給他，無論是金管局轉介或者那些苦主自己直接去證監會，即如果現在他還沒給你的就真的立即湧過來了。一，你是會查的；二就是，但那是需要苦主自己或者是金管局轉介給你。我希望他會後把那個分開的數字給我們。但是你現在先告知苦主是否就是這樣？

**Chairman:**

Mr WHEATLEY, you'll be providing us with information, is that fine?

**Mr Martin WHEATLEY:**

Well, if people have a concern that they have been affected by regulatory failures on other products, they should send that complaint either to us or to the Monetary Authority. If it's relating to banks, the Monetary Authority is the appropriate body and we would pass any complaints on.

**Chairman:**

You'll be providing us with information asked for .....

**Mr Martin WHEATLEY:**

Yes, we'll provide you with a breakdown of .....

**Chairman:**

..... after the meeting? Okay.

**Mr Martin WHEATLEY:**

..... what we've received so far.

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

But I think Mr WHEATLEY, Chairman, Mr WHEATLEY must understand that some people who are holding ELN or CLNs, they are very concerned and they think that the investigation conducted by the SFC or the HKMA may not be in their area. But what you are telling our Subcommittee



this morning is that those complaints would also be addressed very vigorously, so long as they are placed with the MA or, of course, if they bought them through the banks, they should go to the MA first and then the MA will refer them to you, or are you suggesting they should come to you directly? Because people need very quick – actually, to use the word "quick" is really laughable because we're talking from September up to June now, but they want a speedy resolution. So what do you think they should do?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, in regard to complaints against potential misconduct against banks, that should be passed to the Monetary Authority; if it's brokers, that should be passed directly to the SFC, and that's the quickest way of getting those complaints into the system.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

Chairman, if we look at the 20 000 complaints received by the HKMA and the 8 400 received by the SFC, how many of these 8 400 are referred to you by the HKMA?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Very, very few. It would be a tiny percentage because .....

**Hon Emily LAU Wai-hing:**

A handful?

**Mr Martin WHEATLEY:**

Yes. It would be a handful.

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

Well, this is terrible, Chairman. I mean, we have been telling Joseph YAM and the lot at the HMKA that this is totally unacceptable and they are spending tens of millions of dollars a month and they still are working on all these 20 000 and they've passed only a handful to you?

**Mr Martin WHEATLEY:**

Sorry, can I clarify?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Sorry, I misunderstood the question.

**Hon Emily LAU Wai-hing:**

I'm speaking in English. That's why I want – I hope you understand my question.

**Mr Martin WHEATLEY:**

Okay, I'm sorry, I still .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I still misundertood. But I .....

**Hon Emily LAU Wai-hing:**

I am very sorry. You want me to speak in Putonghua?

**Mr Martin WHEATLEY:**

Ha! I .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Can I come back to you? When you say .....

**Chairman:**

Give him the chance to respond to you.

**Mr Martin WHEATLEY:**

Yes, yes.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Now, when you say the complaints that have been transferred across, there are two phases. When each of the regulators receives a complaint, it gets passed to whoever is the appropriate body to do the initial screening, so, for the initial screening, most of the complaints that we've received we passed to MA because that's where the initial screening needs to happen. Very few of the initial complaints were passed from the Monetary Authority to us. Subsequent to the initial screening, there's something like four or five hundred complaints that have now been passed across to us as being of prima facie evidence of a breach.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

Chairman, what we are interested in is a speedy resolution and if there are 20 000 stuck in the HMKA and the answer they gave us, Joseph YAM and others who came here, they say their target is, by March next year, they hope to complete 70%, and that, to us, is unacceptable. But, after they have completed

their investigation, that's not the end of the story. They still have to come to you. Is my understanding correct?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We have opened investigations against all 19 banks who were selling the product, so we're not waiting for complaints in order to open and complete our investigations and we expect to complete investigations against particular banks before we have received all of the relevant complaints against that institution. What we are looking to achieve with those institutions where we think there have been control failings, we're looking to achieve global settlements. That is our aim, not to wait for every individual complaint.

**主席：**

劉議員。

**Hon Emily LAU Wai-hing:**

That's a bit funny, Chairman. You finish the investigation before you receive the complaint. Of course, I am all in favour of you working, you know, very fast but the complaints are there, stuck with Joe YAM, and then you are going to finish your own investigation and you'll have the settlement and then the complaints still have not arrived at the SFC. I mean, I don't understand how this works.

**Mr Martin WHEATLEY:**

Well, perhaps, I can give .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... you the example of the area where we did complete our investigation: Sun Hung Kai, which was the broker who only had two or three hundred customers and we probably had something like 40% or 50% of those customers had complained. But we went and looked at the controls and processes that the broker had in place. We found that there was – our concerns that we raised – and, again, I have to be careful of my language, so we didn't achieve final findings because we didn't go through a court – but we

raised concerns with the broker that they had had inadequate due diligence on the product, that they had had inadequate .....

**Hon Emily LAU Wai-hing:**

But, Chairman, Chairman, don't waste my time.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

That's the Sun Hung Kai. That's a broker. I'm talking about banks. But you are also conducting your investigation on the banks and the MA is also doing something but you are going to finish your investigation before you receive the complaints from the MA. So, will you do something else after, you know, you finish your thing – which I think is good, you go ahead – but then the complaints arrive at the SFC, then what will you do with the complaints? Will you just dump them into the waste paper basket, or what?

**Mr Martin WHEATLEY:**

Well, we hope .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... that we will reach a resolution that deals with all of the complaints.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

And then they will withdraw the complaints?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we hope that the resolution is sufficient and that people will feel comfortable that it's an adequate result.

**主席 :**

劉議員。

**Hon Emily LAU Wai-hing:**

So, Chairman, MA is spending tens of millions of dollars, (*The buzzer sounded*) maybe for nothing, because they've done their investigation, they hope that everybody's happy, so Joe YAM is spending so much money every month and maybe that would all be reduced to nothing because they've done the work. I just think the two institutions must talk to each other and try to resolve it. Can you see? I mean, this is laughable, isn't it, that they are working so slowly and you are going ahead without receiving their complaints? Ah, really, this is crazy.

**Chairman:**

Any short response from you, Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we work and .....

**Chairman:**

Time is up for this question.

**Mr Martin WHEATLEY:**

..... co-operate very closely with the Hong Kong Monetary Authority. We're dealing with slightly different sets of issues: they're looking at the complaints at an individual case-by-case level; we are investigating banks at a global level and it's a different approach.

**Hon Emily LAU Wai-hing:**

But you will give individual compensation.

**主席 :**

劉議員，我想你要再排隊，OK。甘乃威議員。

**甘乃威議員：**

主席，我都想跟進這一點，究竟金管局轉介給你們的投訴，現在只有四百多宗，速度非常慢，這些速度這樣慢的轉介，其實對你現在進行這個有關整體系統性的調查有沒有實質的影響？抑或根本金管局不需要轉介個案給你，你自己已經弄妥了？我想你澄清這點，好不好？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The way we are approaching our investigation is that we have opened investigations into all of the organizations, 19 banks and six brokers, who sold Minibonds. We do not require – I think we've got enough of a picture of the sorts of allegations being made for us to investigate the bank. We don't need every single complaint before we can do that job.

**主席：**

甘議員。

**甘乃威議員：**

不是，我想問清楚究竟 —— 你沒有回答我的問題，就是說究竟這些轉介的個案、這些投訴，對你的調查是有實質影響抑或完全沒有影響呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think the referral of cases clearly has some impact but it is not absolutely essential that we have all the complaints before we are able to reach our conclusions. So, clearly, we need to know the sorts of areas that people have concerns about but we don't need a 100% of those complaints before we can reach a final conclusion.

**主席：**

甘議員。

**甘乃威議員：**

主席，我覺得兩間機構本身的做法真的是匪夷所思。主席，我想問韋奕禮先生的陳述書第25段及第26段。在25段裏面有提到傳媒對迷你債券究竟是否"債券"、"票據"或是"衍生工具"頗有爭議。我自己想跟韋奕禮先生講一講，不是頗具爭議，其實公眾都有頗一致性的看法，包括特首都說迷你債券根本就不是債券，是一種複雜的衍生工具。

這個看法也不只是特首的看法，我想現在在座這麼多普羅的一般市民都會覺得，債券其實有一個特定的說法才叫債券。我不知道韋奕禮先生你們的同事或者你們這個機構是否生活在辦公室裏面，完全都不是生活在我們公眾之中，即關注我們公眾小投資者保障權益的問題。

你在第26段裏面就說法例沒有禁止使用這些名稱。我想問，你們作為監管機構，你有沒有權要求發行商，不准它用這個名稱？你們有否實質的權力不准它用"迷你債券"也好，"精明債券"也好，用"債券"這兩個字呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, if I may, we would always ask an issuer to provide justification to us for the descriptions or the images or the phraseology that they use. There is nothing in the law that would render "minibond" or the use of "bond" as an incorrect description of a note that's structured as a debenture. So, in the law, a debenture, whether it's called a "note" or a "bill" or a "bond", there's no real distinction between those. It's not, therefore, in itself something that we could object to as being clearly misleading.

**主席：**

甘議員。



**甘乃威議員：**

主席，我的問題是問，究竟你們FSC有沒有權不准它用.....

**主席：**

SFC。

**甘乃威議員：**

....."迷你債券"、"精明債券"，用"債券"——"bond"，我的意思是用"bond"這個字眼呢？我想問你們有權抑或無權去行使你們的權力呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we would normally require that an issuer justify any particular name and, if they're unable to provide a justification, then that wouldn't be acceptable.

**甘乃威議員：**

即你們.....

**主席：**

甘議員。

**甘乃威議員：**

.....有權可以不准它用"債券"這個名稱的，是嗎？簡單的說法。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, again, the requirement that we place on the issuer is to come up with a justification. These notes were structured – they are complex

structured products and I've said that and I accept that – but they were structured in the law as debentures and, in the law, something which is a debenture can equally be called a bond or a note or a bill.

**主席：**

甘議員。

**甘乃威議員：**

我想問的是，究竟你覺不覺得，當用了"債券"這個字眼的時候，是會引起一個很明顯……對公眾引起一個誤導的情況？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We've analysed – we talked about complaints and we analysed very carefully the complaints that we received, and we received something like 95% of the total complaints were that people were mis-sold and, when we break down those complaints, we would look at people, about a quarter of people said they were persuaded to turn fixed deposits into Minibonds. Some complained about a risk profile mismatch, some complained that the product, the features were not explained. Of the total complaints that we've analysed, very few isolate the name itself as being the main issue. Now, some did and there were a small proportion that did, but, most of the time, the complaint is that the features of the product were not properly represented or were misrepresented.

**主席：**

甘議員。

**甘乃威議員：**

我想問你，韋奕禮先生，你們過去有沒有因為產品的名稱而不准這些產品發售，或者不准它用那個名稱去發售？你們過去有沒有試過不批准用有關的名稱去發售？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm not aware of any instances where that has been the case.

**主席：**

甘議員。

**甘乃威議員：**

你可不可以會後答覆，確實告訴我有還是沒有？如果你現在即時回答不到的話。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, Chairman.

**甘乃威議員：**

OK。

**主席：**

甘議員。

**甘乃威議員：**

我想再問就是，如果我再給你一次機會，你們作為監管機構，如果有人再申請用"迷你債券"、"精明債券"這個名稱的話，你會不會批准他用這個名稱去賣？即直到今天為止，你會不會再讓他用這個名稱去賣呢？如果再有同樣的申請的話。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, we would look at every case on its merits. I think, given everything that's gone previously, people are unlikely to ask to use those names, given the negative connotations. But we would look .....

*(Unintelligible interjection from the public gallery)*

**主席：**

請公眾肅靜。

**Mr Martin WHEATLEY:**

We would look at every product on its merits. I don't think we could make a preordained decision about how we would treat a product that comes to us.

**主席：**

甘議員。

**甘乃威議員：**

我說的是"債券"，我說的是，當然不會有人這樣傻還用"迷你債券"，我現在說的是用"債券"——"bond"這一個字眼，它不是一些正正式式大家公眾所理解的作為"債券"這個字眼去發售。"債券"這兩個字，你會不會對這些如此複雜的衍生工具，你再次容許用"債券"這兩個字、"bond"這個字去賣呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, as I've said, we would ask any issuer to justify the name. We are very conscious of the allegations that the products have been misrepresented in the past and we'd be very sensitive to that because, clearly, we don't want a recurrence of this situation. We have proposed to the Financial Secretary that, going forward, we'll develop more guidelines and codes over the marketing for such documents or for such products and that's something that we're working on and hope to come out with some consultation paper later on this year.

But, under the law, the law hasn't changed. We can have new codes but the law has not changed.

**主席：**

甘議員。

**甘乃威議員：**

主席，我要重新再問韋奕禮先生，由於這個……即剛才提到，你的做法就是叫他披露所有東西，但是你完全沒有汲取到這個教訓，如果日後你繼續讓人用“債券”——“bond”這樣的字眼去賣一些不是大家公眾認為是債券的產品的話，你覺得你是否沒有汲取今次雷曼事件的教訓呢？仍然生活在你的辦公室裏面，以為你自己所有東西都是對的呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think we have learned and I think all of us have learned that risk in markets always exists and that the credit risk of a counterparty is something that needs to be taken account of when buying a product. And I think, before the failure of Lehman, there was an expectation that no large organization could fail. But what we've seen is an unprecedented event. The failure of the fourth largest investment bank in the world has caused us all to reappraise (*The buzzer sounded*) the sort of products that are sold and the way those products are sold and described.

So, we have learned from this process and we're trying to apply that learning in developing some clearer documentation, clearer materials that would be used going forward.

**Chairman:**

Okay. Now, Mr WHEATLEY, actually, in paragraph 26 of your statement, you did say that "the law did not prohibit Lehman from using that name", but, even if you want to register a company, the Company Registry may not allow you to use any name you like. Why do you say that the law did not actually prevent you from stopping them using the name?

**Mr Martin WHEATLEY:**

The point is that, under the Companies Ordinance, a company that structures a product which is a debenture, there's no particular distinction as to

whether a note or a bond or a bill is a more accurate or less accurate name for that debenture. If we were presented with a name that we felt was unjustified, that completely misrepresented the product, we would ask the issuer to provide us some clarification and assurances as to why a name was appropriate.

**主席：**

各位，現在我宣布小組委員會休息10分鐘，請各位準時在11時45分返回會議廳。在休息期間，請證人不要跟其他人士討論他的證供。謝謝。

**(研訊於上午11時32分暫停)**

**(研訊於上午11時48分恢復進行)**

**主席：**

時間差不多了，請就坐。請通知證人進入會場。請證人返回會議廳。

**(韋奕禮先生進入會議廳)**

各位，我宣布研訊繼續。

Mr WHEATLEY, you continue to give evidence under oath.

**Mr Martin WHEATLEY:**

Yes.

**主席：**

第一位提問的是梁國雄議員。

**Hon LEUNG Kwok-hung:**

多謝主席。Good morning. I will read out a few questions, so, please, take attention to it. Number one. I think it's all related to the warning of structured products.

1. Please submit us a list of major communications between SFC and HKMA with summaries of the topics covered, days of communications,

warnings made and response to the warnings from January 2003 to September 2008.

2. Please give us the hyperlinks of the articles you mentioned in paragraph 74 of your written statement on 10 June.

3. Please list the names of those committees that you said you have not participated which is in the paragraph 1.13 of your written submissions.

4. Referring to paragraph 5.12 of your written submissions, why HKMA has not started thematic review on structured product earlier under your warning in 2003?

5. Did they give any explanation to you?

6. If not, why you do not press for it?

7. Do you have the impression that HKMA has understood your warning, the risks and the complexity of the structured product, particularly those containing CDS or any kind of high-leverage derivatives?

8. Do you think that CDS, by itself, is highly leveraged?

9. Do you think that a CDS is a high-risk commitment of its seller.

So I would like to read out the Document 3 but, according to the advice of the Honourable 何鍾泰, I will cut it short. So, I will give it to you – the Document 3. Please answer it.

**Chairman:**

Mr WHEATLEY, I understand a copy of Mr LEUNG's list of questions will be given to you shortly. Please .....

**Hon LEUNG Kwok-hung:**

I think, to cut it short, I do not want to waste the time of my colleagues, so I will provide three documents to you and then I think you would have enough time to respond to it by the time you come back here or later. So, if you wish to ask my question of – the previous question I asked, please, go ahead.

**Chairman:**

Now, Mr WHEATLEY, in accordance with our usual practice, a copy of the list will be given to you later on. You can respond to the full list after the

meeting but I will still suggest that you respond verbally as far as possible within these 10 minutes, okay?

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Okay, thank you very much, Chairman.

**梁國雄議員：**

給他一份。

**Mr Martin WHEATLEY:**

Obviously, we will provide written comments insofar as we are able to provide the information and as quickly as we can provide the information.

The final comments about whether CDS are complex and highly-leveraged products, CDS products are complex products. They are not specifically the product that was sold but they were structured as a part of the product, so the disclosure of the CDS is one of the issues that would need to have been properly explained to customers and it's a complex concept and one of our significant areas of investigation is the extent to which that feature of the product was properly understood and explained. So, I think it's a very valid question and, even though CDS itself wasn't the product, the way that structured products were created, it was an important feature of the creation of the product by Lehman Brothers. So, I agree that it's a complex product and it would need to have been properly explained.

**主席：**

還有沒有其他要提問的，梁議員？

**Hon LEUNG Kwok-hung:**

So, I think I would like to emphasize that whether you have warned the HKMA from time to time, my first question is that, well, if you can submit us a list of the major communication between SFC and HKMA, it might be very helpful, though.

**Mr Martin WHEATLEY:**

Yes, we .....



**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, we're very happy to provide that information. We have, at various times, conducted our own surveys, whether directly surveying intermediaries or through investor surveys where we have tried to understand the extent to which complex products were being sold, the channels through which they were sold and whether there was adequate understanding and, each time, we have raised concerns in a generic sense, so general concerns about these products being complex and concerns about whether they were properly sold. But we'd be very happy to provide each of those instances and how they were followed up and dealt with.

**Hon LEUNG Kwok-hung:**

So, according to my knowledge, .....

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

..... I think John TSANG, the Financial Secretary, actually is the supervisor of Joseph YAM and you because you guys met from time to time under the umbrella of a certain committee. So don't you think it's better for the public to understand the function and the agenda of those meetings of the committee in order to make the public to know more about what happened there?

**Mr Martin WHEATLEY:**

Well, I think .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... all I can comment on is the role and responsibilities and the activities of the SFC. Obviously, you have a broader interest and I think

that's a question you must direct to the Government as to what was discussed and how those committees proceeded.

**Hon LEUNG Kwok-hung:**

I think, well, .....

**主席：**

梁議員。

**Hon LEUNG Kwok-hung:**

Well, may I suggest that, if John TSANG gives the order to release all of those documentation of the committee, it will be helpful to this hearing? Don't you think so? Would you like to make any comment on it or make any suggestion on it?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think the committee has already made that request and the Government have provided relevant extracts.

**主席：**

梁議員。

**Hon LEUNG Kwok-hung:**

Well, we haven't known enough. We haven't got enough information from that committee, so, well, according to your statement, I think there is some loophole there, you know. I don't know, well, what is the role of John TSANG there. I think it's very, very important for the public to know who is the guy who has the authority to supervise you and the head of HKMA. It seems that you and Joseph YAM have some kind of dogfight, you know. (Laughter)

**主席：**

不要評論吧，梁議員。

**Hon LEUNG Kwok-hung:**

So there should be a referee.

**Chairman:**

You should not be making your own comments or .....

**Hon LEUNG Kwok-hung:**

It seems to be, I .....

**Chairman:**

..... suggestion. No, no, no.

**Hon LEUNG Kwok-hung:**

..... said it seems to be. I didn't say .....

**Chairman:**

Restrict to your questions.

**Hon LEUNG Kwok-hung:**

I didn't say it did happen. It seems to me that.

**Chairman:**

Well, the comments made by Mr LEUNG are not comments of the Subcommittee. It .....

**Hon LEUNG Kwok-hung:**

It seems to be.

**Chairman:**

..... is his own comment.

**Hon LEUNG Kwok-hung:**

I didn't say that it did happen.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, all I can stress is that we have a very good and close working relationship with the HKMA within the regulatory structure that is adopted here in Hong Kong. If your questions are about the regulatory structure, then that's properly a question to address to the Administration.

**Hon LEUNG Kwok-hung:**

Yes, I .....

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

..... I need your comment on it since I am a small potato. I am a small potato, so I think you should be in a position to have a fair comment on it, since you have involved in that kind of meeting for quite a long time now, isn't it?

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

As I mentioned earlier, we, obviously, talk very closely to the Monetary Authority and to the Government about issues regarding the financial sector in Hong Kong and financial stability in Hong Kong and those issues are properly discussed within a committee, the Financial Stability Committee which I understand the Government has provided extracts already. But we do not, as the Securities and Futures Commission, have oversight or supervisory oversight or powers to oversee the way that the HKMA discharges its functions, so our job is to fulfil our role within the overall structure.

**主席 :**

梁議員。

**Hon LEUNG Kwok-hung:**

But, according to my knowledge, I think (*The buzzer sounded*) the SFO have the last say, according to the SFO and also the MOU. Do you agree

that you have the final say? If Joseph YAM have done something wrong, you are .....

**Chairman:**

Okay.

**Hon LEUNG Kwok-hung:**

..... entitled to tell him .....

**Chairman:**

Mr WHEATLEY?

**Hon LEUNG Kwok-hung:**

..... what to do or what not to do, or he need to report to you.

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, that's not true. We don't have the final say and Joseph doesn't report to us. It is a structure that's set out by the Government where .....

**Hon LEUNG Kwok-hung:**

Yes, so that's .....

**Chairman:**

Okay.

**Hon LEUNG Kwok-hung:**

That's what I .....

**主席 :**

時間到了，梁議員，時間到了。Now, I think members should refrain from making their own comments or criticizing any particular aspects. Right? You should be asking question. Put your question direct to the witness.

梁美芬議員。

**梁美芬議員：**

Mr WHEATLEY，剛才你回答梁國雄議員的問題時提到，規管的架構就是要問政府。我其實都想問，因為我們上次問金管局的時候，基本上令我們委員會很清晰的，就是日常的監管屬於證監會，那就是說現時我們在市面上見到雷曼債券這一類所謂迷你債券在市面出現的那些很濫的廣告、5A級的安全度、很多銀行硬銷(即cold call)的這些情況，亦包括銀行或者跟他們相關的、附屬的投資機構的客戶的資料，譬如有些機構是做地產的，會轉移給這些金融機構，成為它們進行硬銷的對象，硬銷這一類迷債的對象。

這一類的監管工作，我想問問Mr WHEATLEY，你認為是否應該屬於證監會的工作範圍？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Can I just be clear so that I understand the question? As far as the marketing flyers are concerned, we are responsible for authorizing the marketing flyers and we're also responsible for authorizing the prospectus. So they are operationally what fit within the responsibility of the SFC.

When it comes to day-to-day supervision, we have oversight of brokers. So, when brokers are selling the product, they are subject to our oversight. We do not have day-to-day oversight of banks. What we do have is the responsibility to maintain the Code of Conduct. So we create the Code of Conduct in consultation with the MA, we amend it from time to time, but, as far as it goes to people's compliance with that Code of Conduct, if it's a bank, that is the sole area of the HKMA, if it's a broker, that's the sole area of the SFC.

**主席：**

梁議員。

**梁美芬議員：**

如果你們制定了一些守則給銀行，在我們處理過很多迷債苦主的個案中，亦有很多的確是銀行去銷售的時候，似乎跟你們

要求的守則有一個很大的距離。你們作為監管機構，有否在任何這些事情發生的過程中，主動做一些所謂我們說"放蛇"的工作？你們有實地視察、實地監察。你們是證監會，這些東西已經是滿街滿巷，我們在地鐵都會見到的時候，你們有否曾經質疑過，我應該要看看，它們可能很多水準不符合你們定出來的這個守則呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Chairman, we have no mandate to oversee whether banks are in compliance with our Code. That is properly the job of the Monetary Authority and the SFO tells us that we may rely on the Monetary Authority in fulfilling that function. So, under the structure that we have, that's not part of our remit.

**主席：**

梁議員。

**梁美芬議員：**

Mr WHEATLEY，你應該會聽到金管局的負責人，他在這麼久的聆訊中說到具體的日常監管工作，他們的多次答覆都是說，是證監會負責這個事情。我們很疑惑，究竟現在這個"一業兩管"是否即是沒人管呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, I think the system is quite clear. It is a twin system, so, obviously, there is an overlap, but let me recap again. We authorize the marketing flyers, we authorize the prospectus, and then we maintain the Code of Conduct and we maintain the Code of Conduct in conjunction with the MA because we consult them.

In terms of the day-to-day oversight, we have day-to-day oversight over brokers and the HKMA has day-to-day oversight over banks and we don't

have any supervisory or oversight role over the HKMA in terms of how they perform that function; we rely on them performing that function.

**梁美芬議員：**

好，我再具體一點。

**主席：**

梁議員。

**梁美芬議員：**

Mr WHEATLEY剛才說，你們的責任是維持、確保前線的專業守則的問題、他們的水準的問題，而金管局，你認為它們是處理銀行的問題。好了，我首先就談你剛才說的那部分，現時起碼在我們前線接觸裏面，大部分給我們的證供(書面或口頭的)，都是前線的員工在銷售時出了一個差距，即是你們要求說其實他們應該如何如何解釋，但事實上很多個案，我相信你們都會看到，是沒做到這麼多的情況。你們是否完全後知後覺，是完全不知道那些中介人(即brokers)在執行及銷售這些產品的時候出了這麼大的疏漏呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We were aware, in a general sense, because of the previous themed inspections, that, in some cases, the brokers did not live up to our Code of Conduct. And they were the themed inspections that we carried out in 2004, again in 2006, where we reviewed their performance against the Code of Conduct and we made a number of conclusions and we took a number of disciplinary actions because we felt that they had failed to perform adequately. After those inspections, we published our findings and we shared those findings with MA, who also published those findings to their members.

But we did not have, at any stage, information to us about the banks' observation of our Code of Conduct. Prior to Lehman's collapse, there was no suggestion, in the level of complaints we received or our discussions with the Monetary Authority, that they had felt that there were problems at the front of bank staff, bank dealing rooms.



**主席：**

梁議員。

**梁美芬議員：**

Mr WHEATLEY，其實在雷曼"爆煲"之前沒有投訴，會不會就是因為根本投資者或相關的銷售員，包括銀行的前線員工，根本都不是很意識到現在整個市面上出現的現象是不符合標準的呢？

**Chairman:**

Mr WHEATLEY?

**梁美芬議員：**

所以便沒有人去投訴呢？

**Chairman:**

Okay. Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, I think the reason there were no complaints was that, prior to Lehman failed, the products were paying the coupon as predicted initially when people bought the products. They hadn't been aware of the additional risks in the product but, equally, those additional risks hadn't materialized at that point.

**主席：**

梁議員。

**梁美芬議員：**

因為我的時間有限，我要集中。我問過金管局，我亦問過政府，特別是證監會，我們是很倚重你們幫我們守門口，即是說當其他人可能沒有意識到現在出現的所有東西是有問題的時候，你們應該可以先知先覺，起碼察覺到那些廣告不應該這樣推銷，那些硬銷的手法不應該這樣，又或者起碼應該收到訊息，

連很多完全不適合購買這類產品的人都去瘋狂購買的時候，你覺不覺得你們在幫我們守門口這方面有失職呢？

**Chairman:**

Mr WHEATLEY?

**梁美芬議員：**

是看走眼呢？

**Mr Martin WHEATLEY:**

You mentioned that we should have the foresight. We did, at many times over the last four or five years, publish either warnings to the public or to our brokers that we were concerned about the complexity of products and where those products were being sold to – so, many, many times, over the last five years, we've done that.

I don't think it would have been possible for anybody to have the foresight to predict Lehman's failure. There were a lot of concerns throughout 2007 and 2008 but those concerns related to a very wide range of financial institutions and it would have been very difficult for us or any other regulator to pinpoint one and say that institution is going to fail.

**梁美芬議員：**

我明白的。

**主席：**

梁議員。

**梁美芬議員：**

我其實預計到Mr WHEATLEY會這樣回答。但是你所說的4至5次警告是指這類產品是非常複雜(計時器響起)，我說的是滿街的廣告，很多人隨便看到，是很容易理解為這類產品並不複雜而是5A級的投資產品，與一些定期存款的風險差不多，你說的那個警告跟在市面上出現的那個差距.....

**Chairman:**

Okay.

**梁美芬議員：**

.....你們有否想過已經是有問題呢？

**Chairman:**

Okay. Mr WHEATLEY, you have to be brief.

**Mr Martin WHEATLEY:**

Sorry, Chairman, Miss, would you like me to answer?

**Chairman:**

Yes, please.

**Mr Martin WHEATLEY:**

Shall I continue?

**Chairman:**

But be brief.

**Mr Martin WHEATLEY:**

The products are complicated products and we've recognized that but the structure of regulation in Hong Kong and in most major parts of the world is not one of product regulation where a central regulator deems who the product is suitable for; it's one of disclosure and conduct regulation where the range of risks and features are properly disclosed and then the intermediary, through observance of a code of conduct, makes an assessment as to whether the product is suitable for a particular individual, understanding all of that individual's personal characteristics.

So, we've said many times this is not a product that's suitable for all investors; it's a product which is a sophisticated product and has a particular mix of risk and returns but it should be at the point of sale that the assessment is made as to whether the product is suitable for a particular individual.

**主席：**

李慧琼議員。

**李慧琼議員：**

是，多謝主席。韋先生，我都是想跟進你剛剛回應議員有關調查的安排。因為我想先搞清楚，你們現在已經展開由上而下的調查的有11間銀行，本身涉及有賣迷債或者相關票據、其他相關掛鈎產品的，其實有19間銀行。我想瞭解一下，為何你們只是先對11間銀行進行調查而不是19間呢？因為你剛剛說過，其實你不需要MA refer任何case給你，你都可以去展開調查的。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Let me clarify. We haven't said we're targeting 11 banks. We're carrying out 25 investigations. Nineteen of those are banks and six of those are brokers. Two of the brokers we've completed; three we're close to writing up our notice. As far as the banks go, 11 of them are at the stage where we feel we can move to the next stage of discussion.

It's not a question of targeting them; it's just where the particular investigation is. Two of them we've issued draft notices to; another five, the draft notices are ready but those banks have said they want to have settlement discussions with us first. Another seven, we're in the final stages of preparing our notices.

But, if I gave the impression we're targeting 11, I didn't mean to do that. We're simply at that stage with that range of institutions.

**主席：**

李議員。

**李慧琼議員：**

是。韋先生，我理解你剛才的答覆，但是剛才你亦說過，現在你準備去談的這些銀行，主要是跟迷債相關的，而ELN、CLN相關的銀行則未開始做。我也想瞭解一下，為何那些銀行不在你.....即由9月到現在，這麼長時間，為何還未開始處理？你是覺得不需要處理，還是在之後的時間你才會開始處理它們呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The trigger point for our investigation is a referral from the Monetary Authority that there is a prima facie case that a bank may have failed in terms of conduct against the Code of Conduct. We simply haven't had those referrals in relation to a wide range of other notes. I think we may have had in relation to one other note.

**李慧琼議員：**

主席，我要……

**主席：**

李議員。

**李慧琼議員：**

……澄清。剛剛因為韋先生你在回答其他議員時提過，你其實不需要有MA的refer都可以展開對銀行的調查，但是剛剛你回覆我的時候就說，因為你沒有MA轉介的case，所以你未對那些售賣ELN、CLN的銀行進行調查。其實你是否需要有MA的refer才能開始調查，還是不需要呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We require a prima facie case to investigate, so there has to be, on the face of it, some evidence that there has been a breach. Given that we don't have inspection powers over banks, we rely on the Monetary Authority to tell us when they think there may have been a breach. So that's what has happened with Minibonds. We don't require all 19 000 complaints to be filed to us but, once we've got a sufficient number of complaints, that itself raises sufficient suspicion that there may have been a breach and we will act on that basis.

**李慧琼議員：**

那可否……

**主席：**

李議員。

**李慧琼議員：**

……再清楚一點告知大家，在你的準則之下何謂sufficient？你剛才提到的就是——如果以我的理解——就是連一個case由MA轉介過來給你們、關於ELN這類產品的都未有，是否可以這樣理解？還是你覺得有，可能是很少量，但未足夠讓你對這些銀行展開調查？因為迷債的苦主心急，但ELN、CLN產品的苦主都很心急。如果迷債的銀行你們都調查這麼久，9月到現在都未有一個很明顯令大家滿意的進展，那麼，那些其他銀行如果要調查，豈不是要再多等一年甚至更長的時間？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The point I tried to make earlier is the vast majority of the original cases referred to us were regarding Minibonds, so that has been the most widely-sold product and the product that's triggered the most number of complaints. So that created, therefore, the first wave of investigations that were raised.

We have received some complaints relating to other products; I'm sure we can provide you with a breakdown of those other products. It's a relatively small number compared to Minibonds but where we have received those, then our investigation has expanded to cover those other products but there are a relatively limited number that we've received so far.

**李慧琼議員：**

那就是說……

**主席：**

李議員。

**李慧琼議員：**

.....在你的理解裏面，就是你要更多的轉介case才可以對其他售賣非迷債的銀行進行調查。但現實就是，其實在金管局方面，亦有很多不是買了迷債的苦主已在進行他們的投訴。當然，金管局還沒完成。在之前的取證過程中，我們知道金管局已經加強了它們的人手去調查，這方面我相信你都知道。你們其實會不會也能在這方面為這羣非迷債苦主想想呢？你現在其實都有一些case已轉介過來，你如果要再等的時候，那個調查豈不是可能要很長很長時間？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Each time there is a referral to us from the MA that suggests there's a suspected breach, then that will itself trigger an investigation but we don't trigger investigations before that stage, unless there're very good reasons to. And, at the moment, the MA is, quite rightly, the frontline investigator of the initial complaints. They're running an expedited process, so they're running through those as quickly as possible so that they can send those in batches to us and, as soon as they do, that triggers either a broadening or a new investigation.

**主席：**

李議員。

**李慧琼議員：**

但我又覺得你剛才說的有點自相矛盾，因為你說MA已經轉介了少量非迷債的投訴給你，但是你剛才又說等到多一些case才可以再trigger到你開始對這些銀行的調查。你是以轉介的數字作為trigger point，還是怎樣呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No, no, the trigger point is not by number; it is that there has been a serious breach and we need to have some evidence that there has been a serious breach. And, typically – or, as I say, some suspicion of a serious breach, and, typically, that arrives through a referral to us from the Monetary Authority.

**主席：**

李議員。

**李慧琼議員：**

你剛剛都提到你跟MA有緊密的接觸，在調查方面都經常有溝通，我建議你回去跟MA再瞭解多一點，因為如果你之前說trigger到你開始調查11間銀行，調查了這麼久，由上而下，到今天已快一年了，都還沒有甚麼圓滿結果，其他銀行你還沒開始調查哩，我相信那些苦主要再等了。我希望你可以看看會不會掌握到更多資料，可以trigger到你開始對其他銀行的調查，這是第一。

**主席：**

你是在說你自己的言論。

**李慧琼議員：**

是，沒錯，這個都是。

**主席：**

不要說自己的言論了，你提問題吧。

**李慧琼議員：**

好。接着我想回到審批的程序。我想瞭解一下，剛才都有委員問過你，是你的同事批准那些prospectus或者flyer發出的，你



們有沒有一些 checklist 讓你們的同事去依着審批的呢？這個 checklist 可不可以提供給我們瞭解一下呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, the team would have a procedures manual which is approved and subject to regular review by the PRP, so, yes, we do have a checklist.

**李慧琼議員：**

OK。

**主席：**

李議員。

**李慧琼議員：**

以你的瞭解，一個新款的迷債產品或者信貸掛鈎產品來到你們SFC要多長時間才可以審批完成呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

It would partly depend on the complexity of the product, the quality of the documentation we receive, the extent to which it has novel or slightly different features. So there's no single timeline and it partly depends on how many iterations we need to go through in providing comments back and seeking further clarifications. So, it will take a different length of time depending on the quality of the documentation and the complexity of the product.

**主席：**

李議員。

**李慧琼議員：**

你剛剛提過是很取決於你們的同事跟issuer的那些問題，究竟進展的程度怎樣？這些關於你們問issuer的問題，有沒有相關的紀錄呢？例如，舉一個例子，迷債系列，某個系列，如果要求你們提供，例如這個系列你們曾經問過issuer甚麼問題，會不會有相關的紀錄呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Where the questions are put in written form, yes, some of the questions would be made in formal written form. Some of our questions would be either in meetings or over the telephone where we're trying to clarify. So, the significant written comments would be – we would keep a record.

**李慧琼議員：**

那可否……

**主席：**

李議員。

**李慧琼議員：**

……麻煩你會後拿出來，我真的很想瞭解一下你們在審批時一般會問些甚麼問題及大概的程序，我建議你們可以整理32、33，即剛剛你已附錄給我們的(計時器響起)這兩個sample，那個過程是怎樣的，讓大家都可以更瞭解你們中間問過issuer甚麼問題。

**Chairman:**

Mr WHEATLEY, can you give us the information after the meeting?

**Mr Martin WHEATLEY:**

Yes, we will provide something after the meeting but, obviously, to just – if I may make the point, given that series 32 and 33 were continuation series, many of the questions would have been asked against earlier products,

so I'd be very happy to provide that but it won't necessarily be a complete check of all the questions.

**主席：**

OK。接着是劉秀成議員。

**劉秀成議員：**

主席，我都想問韋先生關於他開場的發言第5、第6、第7、第8段，因為那裏提到他現在正進行很多調查，投訴方面，他正跟進8 400宗，但投訴又有2萬宗。我首先問一下，其他的那些有何理由不調查呢？2萬宗才做8 000多宗，其他那萬多宗是怎樣的？OK，謝謝。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The division of labour is such that, of the 20 000 cases, where they relate to brokers, they would be initially investigated by us and, where they relate to banks, they'll be initially investigated by the Hong Kong Monetary Authority. The Hong Kong Monetary Authority, therefore, has dealt with the vast majority because I think something like 96% of the Minibonds were sold through banks. Once the Hong Kong Monetary Authority has completed its initial investigation, it will then refer to us those that it feels there may have been a breach of the Code.

**Prof Hon Patrick LAU Sau-shing:**

I see.

**主席：**

劉議員。

**劉秀成議員：**

如果是這樣的話，我就想問一問，接着這裏第5段你說，你都有些事情做了出來，兩個brokers已同意，是第6段那裏。我跟進剛才余議員問你進展情況怎樣，你就說將有14個這些cases會進入最後的程序。其實有沒有一個時間表，可以讓大家都知道何

時會全部完成呢？你說盡快做，但是我想你都會知道的，因為你剛才說了你的程序等等，那麼你一定會知道究竟大概何時會完成你的調查。

**Chairman:**

Mr WHEATLEY?

**劉秀成議員：**

即是有一個結果。謝謝。

**Mr Martin WHEATLEY:**

The 14 cases – so, the cases that 11 brokers – sorry, 11 banks and three brokers .....

**Prof Hon Patrick LAU Sau-shing:**

Brokers.

**Mr Martin WHEATLEY:**

..... are all at or near a final stage.

**Prof Hon Patrick LAU Sau-shing:**

Alright.

**Mr Martin WHEATLEY:**

Some of those we've commenced disciplinary hearings. When we are in the disciplinary process, there's a very strict timetable that's followed which is that, after we have issued our initial notice, there is a 30-day period to respond. Now, banks may ask for more because of the complexity but we always have a fixed end date to that process. Once we receive a response, we will then consider that response and take a view as to whether our original proposed notice is justified because we will then have the benefit of the bank's response. If we believe that it is justified, we will then have a discussion with the Monetary Authority about proposed disciplinary action and, following agreement, we would publish that disciplinary action to the bank concerned who would then have 21 days for appeal.

So, that's the formal timetable that is followed.

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

Where we are in settlement discussions, .....

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

..... clearly, we don't want these settlement discussions to drag on but they're very much at the – they very much depend on a bank's willingness to come forward with something that we think is a reasonable response that mitigates the damage that has been done if they have system and control weaknesses. Now, when we say "mitigate the damage", we have not got a dogmatic position on how they can do that but, clearly, we need to listen to the proposal and take account of that proposal in determining how we would vary our enforcement action depending on the mitigating payments that they're prepared to make.

**劉秀成議員：**

你剛才說.....

**主席：**

劉議員。

**劉秀成議員：**

.....有些已經同意了，有個 settlement 了。I think, maybe I should ask it in English. You have said that there are a number of investigations that led to settlement already. How many cases are there that have been settled? And can you also tell us what are the – when in your investigation, what are the most problematic reasons, okay?

**Mr Martin WHEATLEY:**

Okay.

***Prof Hon Patrick LAU Sau-shing:***

Is it Code of Conduct or disclosure, non-compliance? What are they, okay, that led to certain settlements?

***Mr Martin WHEATLEY:***

Okay. In the .....

***Chairman:***

Mr WHEATLEY?

***Mr Martin WHEATLEY:***

..... two settlements we've reached, the brokers agreed to settle with us and have now, I believe, redeemed the Minibonds at par for all the investors in those brokers, except for three, and I think .....

***Prof Hon Patrick LAU Sau-shing:***

Alright.

***Mr Martin WHEATLEY:***

..... they're just trying to complete the final three individuals.

***Prof Hon Patrick LAU Sau-shing:***

Yes.

***Mr Martin WHEATLEY:***

The findings were – I'm sorry. Please, let me be correct.

***Prof Hon Patrick LAU Sau-shing:***

Yes.

***Mr Martin WHEATLEY:***

The concerns we raised with them, because we didn't get to the final findings stage .....

***Prof Hon Patrick LAU Sau-shing:***

Right.

**Mr Martin WHEATLEY:**

..... because we were able to settle, the concerns that we raised were that there were serious failures in the adequacy of product due diligence before they were distributed; that the training material given to the broker's frontline staff was insufficient to enable the frontline staff to understand the product and its risks; that the assessment of the level of risk for each series of Minibonds and the communication of those risks to the frontline staff was inadequate, so it could not have allowed the frontline staff to give suitable advice about matching the risk-return profile of the Lehman Brothers Minibonds with the personal circumstances of the clients; and that the record keeping of the investment advice given to clients was insufficient. And they were broadly the set of concerns that we put to both Sun Hung Kai and KGI. And, in response to those concerns, they were prepared to enter into an agreement with us to repurchase the notes.

**主席：**

劉議員。

**Prof Hon Patrick LAU Sau-shing:**

Okay, very good. Well, in that case, I now notice that the banks are selling these products in a quite different manner. Now, they have now set up different venue, okay, for normal banking and selling products - some of the banks, anyway, okay? And, also, I notice that, when they're selling this product, they now have very bold lettering, okay, or whatever, to show their clients the risk involved. That's what I notice.

Is that something through your recommendation or this is the mitigation measures they initiate themselves?

**Mr Martin WHEATLEY:**

No, this is .....

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

..... in response – Chairman, if I may, .....

***Prof Hon Patrick LAU Sau-shing:***

Yes.

***Mr Martin WHEATLEY:***

..... when we first realized the extent of the problem, we were asked by the Financial Secretary, .....

***Prof Hon Patrick LAU Sau-shing:***

Right.

***Mr Martin WHEATLEY:***

..... both the SFC and the Monetary Authority, to prepare a report, which we did in December, to present our initial view, at that stage, of where there were problems and our initial recommendations on changes. And these bank changes have, I believe, come in response to requirements from the HKMA as to how the banks organize their business.

***Prof Hon Patrick LAU Sau-shing:***

Okay.

***主席 :***

劉議員。

***Prof Hon Patrick LAU Sau-shing:***

So why did you not show us these details, I mean, you know? I mean, these are very good moves, okay, for the control of the product in Hong Kong but you are not willing to disclose these things to us, Mr Chairman, okay, in relation to that. I'm just asking, you know, why is it not – because this is what's happening in Hong Kong.

***主席 :***

我想你已經離開了那個範疇一點。你再問，再reframe.....

***Prof Hon Patrick LAU Sau-shing:***

I'll reframe my question again. Because you said, okay, these are because you made the report to the Financial Secretary and this, perhaps, is



why the banks are doing these things. So I thought it would be a very good reason for you to disclose your report to the Financial Secretary to us .....

**Mr Martin WHEATLEY:**

Right.

**Prof Hon Patrick LAU Sau-shing:**

..... so that we know, I mean, we are legislators in Hong Kong; we want Hong Kong to be doing a good job, so I thought it will be .....

**主席 :**

這個不是.....

**Prof Hon Patrick LAU Sau-shing:**

..... a very good idea for you to tell us.

**主席 :**

.....這個不是我們現在要取證的範疇，劉議員。

**劉秀成議員 :**

嗯？

**主席 :**

不是我們現在今天要取證的範疇。

**劉秀成議員 :**

取證？

**主席 :**

不是那個.....

**劉秀成議員 :**

OK, OK, 不要緊吧。那麼，你可否.....即有甚麼好的行動？如果這樣說，有甚麼好的行動繼續可以給予銀行，讓香港成為一個真正良好的金融中心呢？

**主席：**

其實跟那3個.....

**劉秀成議員：**

是問題而已，只是一個問題。

**主席：**

.....範疇是沒甚麼關係，不是那個.....

**劉秀成議員：**

怎麼沒有關係？

**主席：**

你其實超出了那個範圍.....

**劉秀成議員：**

OK。

**主席：**

.....不是傳票上面寫的。

**Prof Hon Patrick LAU Sau-shing:**

All right. Then I'll ask another question, then, okay.

So, if the banks are doing these things, okay, in that case, are they doing the wrong thing before?

**Mr Martin WHEATLEY:**

Can I, perhaps, .....

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

..... deal with – I appreciate, Chairman, that you are concerned .....

**Chairman:**

You respond according to the .....

**Mr Martin WHEATLEY:**

..... about the previous question.

**Chairman:**

..... three areas.

**Mr Martin WHEATLEY:**

Yes. But, of course, in terms of what we had published, we had shared .....

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

..... publicly what we thought were the good measures .....

**Prof Hon Patrick LAU Sau-shing:**

Right.

**Mr Martin WHEATLEY:**

..... that should be .....

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

..... introduced now. In terms of whether this change means the banks were doing things wrong in the past, .....

**Prof Hon Patrick LAU Sau-shing:**

Yes.

**Mr Martin WHEATLEY:**

..... I think that the recommendation reflects a concern – although you'll have to ask the HKMA – that there was insufficient delineation or segregation of different types of business within the bank, .....

**Prof Hon Patrick LAU Sau-shing:**

Right.

**Mr Martin WHEATLEY:**

..... and that, therefore, customers could get confused and this is intended (*The buzzer sounded*) to provide a clearer demarcation line as to when people are getting investment advice and when they're getting deposit advice. But I think that's probably something that's better asked of the HKMA.

**主席：**

OK，時間夠了。

**劉秀成議員：**

主席，對不起。OK，我最後一個問題。

**主席：**

不好了，我還.....

**劉秀成議員：**

因為時間表那一點他還沒回答我，我想知道何時會.....

**主席：**

OK。

**劉秀成議員：**

.....做完這些。

**主席：**

嗯。

**劉秀成議員：**

謝謝。

**Chairman:**

Mr WHEATLEY, can you respond to this one, ..... (inaudible) .....

**Mr Martin WHEATLEY:**

We are working as hard and as fast as we can. We recognize the genuine hardship that's been .....

**Prof Hon Patrick LAU Sau-shing:**

Right.

**Mr Martin WHEATLEY:**

..... created and we're very sorry and sympathetic for the problems that this has created but we do have to follow proper process.

**Prof Hon Patrick LAU Sau-shing:**

I understand; you told us.

**Mr Martin WHEATLEY:**

And, therefore, we're working to complete these investigations as quickly as we possibly can but we – and I appreciate the frustration it creates. I can't give a deadline .....

**Prof Hon Patrick LAU Sau-shing:**

Okay.

**Mr Martin WHEATLEY:**

..... as to when they will be completed. It will partly depend or largely depend on the extent to which banks are prepared to co-operate with us.

**Prof Hon Patrick LAU Sau-shing:**

One month, two months .....

**主席：**

詹培忠議員。

**Prof Hon Patrick LAU Sau-shing:**

..... or three months?

**詹培忠議員：**

主席，我個人認為這件事已經屬於香港金融一個不幸事件。我的問題是問韋奕禮先生，第一，整件事情，這些所謂迷你債券或者雷曼產品，第一個涉及是否審批的責任？即任何發行商第一個行為必定是要去申請審批，這個審批的責任以披露為主是否亦屬於你證監會的職責？是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, that's right. The document approval approach to products is the structure in Hong Kong and, as I've said earlier, it's broadly the structure in most other places.

**主席：**

詹議員。

**詹培忠議員：**

主席，審批方面，倘若發行商或者是中介人那張宣傳單張裏面有不盡不實的地方，如果令到投資者誤解，是否證監會的責任？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

If there is a breach of the Code of Conduct, then it is the SFC that ultimately has the powers to investigate and take disciplinary action. What we don't have is the ongoing oversight of day-to-day activities within banks.

So the only point that we can get involved is when we've had a referral that there has been a suspected breach.

**主席：**

詹議員。

**詹培忠議員：**

主席，我的問題就是，那個單張或任何審批的文件——我沒有涉及稍後的一步——是你證監會去監管發行商或者中介人的行為，即是它要監管。當然，他說"我沒義務去監管"，這個只是你說而已。即它的責任就是去審核、批核這些有關的文件，全部不是金管局的責任，而是證監會的責任。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, that's correct. We have the responsibility to authorize the marketing flyers and the prospectus documents in accordance with the companies law.

**主席：**

詹議員。

**詹培忠議員：**

好了，主席，我第二個問題就是發牌。任何涉及證券的發牌，包括向銀行屬下的證券部門或其職員發出的牌照，是全部要證監會發出。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

That's correct. We issue licences for both individuals and organizations who are subject to our regime.

**主席：**

詹議員。

**詹培忠議員：**

故此，主席，無論銀行屬下的職員他們有沒有違例犯規、是否適當人選的審核，這個責任都是屬於證監會的責任。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

No. If I can just be clear, when it comes to brokers and their staff, we are responsible for licensing both the individuals and the organizations and then we're responsible for ongoing oversight. When it comes to banks and their staff, the relevant individuals of banks are not licensed by us; they're entered into a register that's maintained by the HKMA but the responsibility of fit and properness is the bank, the employer of those staff.

**主席：**

詹議員。

**詹培忠議員：**

主席。沒錯，銀行是它登記，但是發牌給它們去經營業務的始終是證監會。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We would enter the registered institutions into a list based on a referral to us by the Hong Kong Monetary Authority but, again, the supervisory or the licensing approach is different for banks and banks staff than it is from brokers and brokers staff.

**主席：**

詹議員。



**詹培忠議員：**

主席，第三步就是監管。證監會在監管方面就是普通股票經紀一切的業務都是屬於證監會管的，而銀行屬下證券部的業務及其職員的行為則不是屬於證監會管的，而是屬於金管局管的。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The day-to-day oversight of banks and their staff falls on the Monetary Authority.

**主席：**

詹議員。

**詹培忠議員：**

故此，主席，銀行屬下的證券部如果涉及幾樣可能觸犯證券條例的事情，例如剛才我們提及的違例銷售、《操守準則》；第二，觸犯硬銷；第三，不瞭解其產品是否適宜於投資者參與；第四，中介人及其代表是否充分瞭解產品的性質；第五，中介人及其代表在銷售其產品時是否有交給投資者充分的招股章程；第六，中介人及其代表是否確認產品是債券而不是其他的衍生工具。

主席，我說這6樣事情，作為銀行屬下的證券部可能涉嫌有這樣的錯。如果有錯失，不是證監會調查的範圍，即不是其監管的範圍。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

If I understand it, you're suggesting that, if a range of potential regulatory failings had occurred, the SFC wouldn't have oversight of that until such point as the HKMA decided that there was a regulatory oversight. So,

we would generally not get involved in terms of investigating because we don't have inspection regime that allows us to look at the front line of banks' operations.

**主席：**

詹議員。

**詹培忠議員：**

主席，即平時審視這些銀行屬下證券部的責任是屬於金管局負責。是不是？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

That's correct.

**主席：**

詹議員。

**詹培忠議員：**

主席，第四就是追究。換一句話說，這次這些迷你債券、雷曼產品發生了這樣的事情，追究起來，理論上是發行商的責任，為何大家都沒有提及？因為證監會是批准發行商發行這樣的產品，你證監會對發行商有沒有採取任何行動呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

That is a separate investigation that is current and under way, so we've mainly been talking today about the investigations against the distributors. Clearly, there's a separate investigation which is whether the arranger of the products properly represented them in the documentation.

**主席：**

詹議員。

**詹培忠議員：**

主席，我們現在將責任大部分向着銀行方面，大家要瞭解到，銀行只不過是從中賺取佣金，但是那些資金，證監會有沒有去監督發行商將收了的錢放到哪裏去呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I'm sorry, could I perhaps ask for a clarification? I didn't quite understand the question.

**主席：**

你可再重複你的問題。

**詹培忠議員：**

即是那個發行商收到銀行拿給它，代銷售拿來的資金，發行商取得資金，拿了去哪裏？你證監方面有沒有——現在已經是事後——有沒有去追究呢？或者關注呢？從而達致保障投資者的利益呢？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the money that is paid to the issuers has gone into primarily purchasing collateral and the collateral should be there to protect both the investor and the arranger in the event of some sort of early redemption or default. And then, clearly, (*The buzzer sounded*) there are other parts of what has been paid which is to pay for the swaps or to pay the earnings of the issuer. The question that is something that has remained unresolved to this date is how the collateral can best be recovered to the benefit of the investors. But the predominant way – if you ask where the money went, most of the

money went to purchase the collateral and that collateral is now subject to a discussion between the trustees and the liquidators of Lehman.

**主席：**

湯家驊議員。

**湯家驊議員：**

主席，我想問一問韋先生，他同不同意披露為本不但只着重披露的資料，亦須要着重受披露者要清楚瞭解披露的資料？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Disclosure-based approach doesn't work in isolation. It does require that the conduct at the point of sale ensures that proper information is passed across and that a suitability assessment is made.

**主席：**

湯議員。

**湯家驊議員：**

沒錯，就是因為這樣，其中一個重要的元素就要確保受披露者是清楚瞭解披露的資料。你同不同意？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Under the Code, there are a number of requirements. Suitability is one obligation. The other obligation is that the product is sufficiently well explained that the individual can understand it and, also, that the individual has sufficient capital to bear any losses that might crystallize.

**主席：**

湯議員。

**湯家驊議員：**

即你的答案是同意我剛才的問題，受披露者是需要清楚瞭解披露的資料，這個是披露為本的一個重要元素。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think that there's two elements to it. It's not just that the individual understands it fully but that the intermediary has made sure that it's also suitable. I think there are two quite important elements.

**湯家驊議員：**

同意。

**主席：**

湯議員。

**湯家驊議員：**

亦因為這樣，所以你在你的陳述書裏亦有提及到，你說招股章程應該以淺白語言撰寫的。

**Chairman:**

Mr WHEATLEY?

**湯家驊議員：**

這是你的陳述書第16段所提及。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Yes, I've got paragraph 16.

**湯家驊議員：**

主席……

**主席：**

湯議員。

**湯家驊議員：**

……我看韋先生有點困難，因為我們那個陳述書是中文的，我不知道他在看中文還是英文。

**主席：**

也可以有英文的，有英文那份。

**湯家驊議員：**

在看英文，OK。我想問一問你，你覺不覺得今次這個雷曼金融產品的章程是用淺白的中文撰寫？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, you asked "clear and easy-to-understand Chinese" and do I think. I can't give you my thoughts on whether they're written in clear and easy-to-understand Chinese. I can give you my thoughts on the English version. For the Chinese version, I rely on my colleagues.

**主席：**

可否把問題留給何賢通先生？

**湯家驊議員：**

好，好。那你說，你覺得英文的章程是否容易理解？

**Mr Martin WHEATLEY:**

I don't think it's easy to understand.

**湯家驊議員：**

多謝你。

**Mr Martin WHEATLEY:**

I think these are complex instruments.

**湯家驊議員：**

多謝你。

(公眾席上有人叫囂)

**主席：**

請公眾人士保持肅靜。

**湯家驊議員：**

因為我想告訴你，我作為一個……

**主席：**

湯議員。

**湯家驊議員：**

……資深的律師，我都要個多兩個小時才明白，所以這不是一份淺易的文件。我亦希望你瞭解，既然章程本身不是一份淺易的文件，銷售者必然會倚賴一些比較簡單的宣傳文憲……簡單的宣傳單張去推售，這個我相信你會理解到。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

I think that misses a very important point of the distributor's obligation which is to do proper product due diligence and to make sure that they have independently verified that they understand the product and that they understand all of its features and that they develop their own materials to explain that and to train their staff in the sale of the product. I don't expect

any distributor to simply rely on a third party's leaflet in order to ensure that they can explain the product properly to the clients or to ensure suitability.

**主席：**

湯議員。

**湯家驊議員：**

韋先生，我不是跟你爭論這一點，我只是問你會不會同意，在銷售一個如此複雜的產品的時候，你應該會知道前線的推銷人員一定會倚賴一些比較簡單的單張去推銷。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

They would have to rely on internal training and training guidance materials that ensure the frontline staff are aware of how the product can be sold and they also have to have ensured that they understand the client's circumstances so that they can ensure their obligation of suitability is met.

**湯家驊議員：**

主席，我重複……

**主席：**

湯議員。

**湯家驊議員：**

……我不是爭論這一點，我們一會兒可以討論到分銷商怎樣訓練前線人員或者採取甚麼措施，但是我想在這一點上得到韋先生的同意，就是證監會應該注意到，在推銷這種產品的時候，最前線的員工是會倚賴一些簡單的單張去推銷的。這個你們證監會有沒有察覺到？

**Chairman:**

Mr WHEATLEY?



**Mr Martin WHEATLEY:**

They would clearly rely on something more simplified than the full hundred-odd page prospectus but a leaflet cannot ensure suitability.

**湯家驊議員：**

我同意，我們一會兒去……

**主席：**

湯議員。

**湯家驊議員：**

……討論這個問題。第二點我想問你，從你的陳述書裏面，你自己在第25段那裏說："對於甚麼構成'債券'或'票據'，目前並無清晰明確的定義。"你自己是這樣說的。

**Chairman:**

Mr WHEATLEY?

**湯家驊議員：**

第25段。

**Mr Martin WHEATLEY:**

Yes, that's correct.

**湯家驊議員：**

你在金融業已經可以說是打滾了幾十年，仍然覺得那個定義是不清晰。作為一個普通的存款客戶，他們當然更加不清晰了。你同不同意？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The normal depositor would have somebody standing in front of him, I hope, who has done or whose firm has done an analysis of the product and whose responsibility is to explain its features.

**湯家驊議員：**

對不起，韋先生。

**主席：**

湯議員。

**湯家驊議員：**

你的責任不是希望前線人員會解釋，你的責任是要確保前線人員會解釋。

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Well, the point that we've made earlier, it's our responsibility to maintain the Code of Conduct and we share with the Hong Kong Monetary Authority the frontline supervisory responsibility, so .....

**湯家驊議員：**

多謝你。

**主席：**

湯議員。

**湯家驊議員：**

你們證監會有否嘗試去瞭解普通的客戶，普通的存款客戶會覺得債券比之於票據是一種比較風險低的一種產品。你有否嘗試去瞭解這些民情？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

Is that a question before or after the Lehman's failure?

**主席 :**

湯議員。

**湯家驊議員 :**

當然是在此之前了。

**Chairman:**

Mr WHEATLEY?

**湯家驊議員 :**

即是說，你在審批……

**Mr Martin WHEATLEY:**

Yes.

**湯家驊議員 :**

……這些文件的時候，你們證監會有否嘗試去瞭解一些存款的客戶，他們一般對於債券來說是覺得風險低於一些所謂票據。你有否去瞭解這種民情？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

The process of – I'm trying to understand how they see it. It was very much something that we did through our themed inspections and our investor surveys where we took samples of the population and asked them questionnaires about the sorts of products that they were investing in, their understanding of the standing of those products and the extent to which risks

or features were properly explained at the point of sale. So, that was very much part of our ongoing monitoring of the market.

**湯家驊議員：**

韋先生。

**主席：**

湯議員。

**湯家驊議員：**

你和我都是生活在同一個社會裏面，你不是一個香港以外的人(計時器響起)，你有否嘗試去瞭解一般香港人，我說的是存款的客戶，他們對於票據其實不是那麼瞭解，但是對於債券，他們覺得瞭解多一點，亦認為風險是低一些的。你明不明白香港人這方面的看法？

**Chairman:**

Mr WHEATLEY?

**Mr Martin WHEATLEY:**

We've spent, through our inspections and our research, a lot of time trying to understand what customers do and do not understand when they're buying products and each time we've carried out such a survey, we've had serious concerns.

**主席：**

OK。

**湯家驊議員：**

主席……

**主席：**

各位同事，現在應該輪到林健鋒議員及涂謹申議員，不過兩位都走開了。

**湯家驊議員：**

主席，我再輪候。

**主席：**

但是因為第二輪排隊的一共有9位，我想將各位的名字讀出來，依照次序：葉劉淑儀議員、余若薇議員、劉慧卿議員、甘乃威議員、梁國雄議員、梁美芬議員、李慧琼議員、詹培忠議員、湯家驊議員。因為差不多1時了，我建議今天這個公開研訊到此為止，我們會安排另外的時間繼續研訊。

韋先生，多謝你出席今天的研訊。我們將會在6月26日上午10時繼續進行研訊，請韋先生屆時出席，繼續向小組委員會作供。謝謝你。

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55分結束)**