

立法會

研究雷曼兄弟相關迷你債券及 結構性金融產品所引起的事宜 小組委員會

第十六次研訊的逐字紀錄本

日期： 2009年6月26日(星期五)
時間： 上午10時
地點： 立法會會議廳

出席委員

何鍾泰議員, SBS, S.B.St.J., JP (主席)
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證人

公開研訊

證券及期貨事務監察委員會行政總裁
韋奕禮先生, JP

Legislative Council

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

Verbatim Transcript of the Sixteenth Hearing
held on Friday, 26 June 2009, at 10:00 am
in the Chamber of the Legislative Council Building

Members present

Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (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, Mr Hong
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, Mr Hong
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent

Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP

Witness

Public hearing

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

主席：

各位，早晨。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"的第十六次公開研訊。我們歡迎證券及期貨事務監察委員會行政總裁韋奕禮先生繼續出席小組委員會的研訊。

我請各位委員留意，整個研訊過程必須有足夠的法定人數，連主席在內共7位議員。此外，《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《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。

我提醒旁聽研訊的公眾人士及傳媒，在研訊過程以外的場合披露研訊中的證供，將不受到《立法會(權利及特權)條例》的保障。如果有需要，各位列席人士和傳媒應就他們的法律責任，諮詢法律意見。此外，我亦想提醒在公眾席上旁聽研訊的人士，在研訊過程中一定要保持肅靜。根據《立法會議事規則》第87條，我有權請任何行為不檢或者看來相當可能有行為不檢的人士離開會場。

請各委員留意，小組委員會的研訊程序必須符合《工作方式及程序》第2段的原則，包括有關程序必須公平，而且須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。此外，《工作方式及程序》第12及13段訂明，在公開研訊中，委員只應為確立與此次研訊有關的事實而提問。委員不應在公開研訊中發表意見或作出陳述。此外，我會決定哪一條問題或某一項的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。我都有酌情權，決定應否容許委員提出某項問題。

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，繼續向證監會行政總裁韋奕禮先生取證。

韋先生，小組委員會已經同意由證監會秘書長鞏姬蒂女士及證監會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。證人亦不可以與陪同人士討論，亦不可以接收該等人士的任何指示或提示(無論是口頭或書面)。

韋先生上次出席研訊時已經宣誓，所以今日你會繼續在宣誓下作供。由於韋先生是以英語作答，請委員稍後提問時避免一次過以中文提問多條題目或太長的問題，以方便傳譯方面的工作，而且讓證人可以盡快直接回應問題。

我亦提醒大家，每位委員將會有10分鐘時間向證人提問及讓證人回答。委員如想就某份小組委員會文件的內容向證人提問，應該指明該份文件的編號，以方便證人及其他委員參考該份文件。為了善用研訊時間，請委員的提問盡量精簡及具體，而證人亦一定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，證人亦不須重複已經講過的說話或大家已經知悉的背景資料。

在6月23日的研訊結束時，尚有11位委員輪候提問第二輪問題。其實那個名單已在藍紙上，已放在各位桌面。我亦將名單讀一讀，因為有少許修改。是林健鋒議員、涂謹申議員、葉劉淑儀議員、湯家驊議員(因為他和余若薇議員對調)，然後到劉慧卿議員、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、余若薇議員，共11位。

韋先生，現在我會先提出第一個問題。

葉劉淑儀議員：

是否輪到我？我聽不到。

林健鋒議員：

有啊，你第三。

葉劉淑儀議員：

哦，OK。

主席：

藍紙，藍紙有。

葉劉淑儀議員：

是的，主席的聲音很難聽到……

主席：

……現在聽得到嗎？聽到，是嗎？

石禮謙議員：

不大聽到……

主席：

不，我想是麥克風有點問題吧？因為往日我更……今日我特別大聲反而不行，可能麥克風有點問題。

劉慧卿議員：

對着嘴啦，主席。麥克風對着嘴啦，主席。

主席：

移近點……

劉慧卿議員：

你的麥克風不對着嘴，你怎麼能講呢？

主席：

我已經對着了，不過……盡量吧，再移近一點。兩個，是。

是，涂謹申議員，怎麼樣？

涂謹申議員：

主席，我其實是第一輪，因為我上一次沒問過的。

小組委員會秘書：

不要緊的，你照這個好了。

劉慧卿議員：

都是那裏，林健鋒也沒問過。

主席：

你都很快到，你是第二位。

涂謹申議員：

哦，OK。因為我聽到你說是第二輪，即其實我和林健鋒可能是第……

劉慧卿議員：

第一輪最後。

涂謹申議員：

……一輪，最後。是，應該這樣說。

主席：

是，是了，是了。

涂謹申議員：

OK，是，行，OK。

主席：

沒錯，對，你是對的。尚有兩位之前就報了名，說你有點事，說不能來，我是知道的。

涂謹申議員：

是，謝謝。

主席：

所以排了那兩位先開始，和林健鋒議員一樣，即把第二輪拼在一起，我或許……

涂謹申議員：

我也排第二輪吧，主席。

主席：

待會兒吧，待會兒吧。

劉慧卿議員：

主席，主席……

主席：

有機會讓你問的。

劉慧卿議員：

主席？

主席：

是，劉慧卿議員。

劉慧卿議員：

我們的做法是否上一次未問過的同事，現在舉手就會排在前面？

主席：

不是的，再排下去，跟着下去，再排在後面。即上次那兩位碰巧上次不能來，他亦通知了他們不能來，所以我才讓他們排在前面。

劉慧卿議員：

好呀，好，謝謝。

主席：

他有理由的。

好了，我現在想向韋奕禮先生提出兩個問題。韋奕禮先生，就證監會及金管局的調查權力，韋奕禮先生在6月23日回應我的提問時說，在沒有諮詢金管局的情況之下，證監會無權主動調查銀行違規個案，在逐字紀錄初稿的第9頁和第10頁有提及。請問韋奕禮先生，你所指的"諮詢"是甚麼意思呢？是否一定要得到金管局同意，然後才可以由你們主動去調查銀行違規的個案呢？韋奕禮先生？Mr WHEATLEY？

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

Mr Chairman, the MOU doesn't require consent. Consultation means that we would discuss, evaluate, share information but not require explicit consent. So consultation is exactly that. We would have a discussion about the need for and desirability of commencing an investigation.

Chairman:

In fact, what I would like to ask is, is there any flexibility under certain circumstances when you would like to commence with certain investigation of certain cases rather than having or awaiting the HKMA to carry out their own investigation? Is that possible or is there such a flexibility?

Mr Martin WHEATLEY:

It's possible in theory but, in practice, we wouldn't use our investigatory powers unless we had sufficient grounds to do so. So we'd need to have sufficient grounds to launch an investigation and the practice would always be that, if there was a suspicion of a breach, the initial inspection would be carried out by the Monetary Authority and they would gather sufficient information that we would then have a case to launch an investigation. So, in theory, it's possible but, in practice, because we've got no inspection powers or oversight over banks, we would find it very hard to gather a sufficient basis to launch an investigation without a referral.

主席：

韋奕禮先生，是否因為其實你們現在的主要工作都是集中在由上而下，在銀行的調查方面都是用這個方式由上而下，而不是處理個案——注意力就不在個案方面。是否這樣的意思？

Mr Martin WHEATLEY:

Yes, Mr Chairman, we've said, many times, during the course of this particular investigation, that the only practical way to deal with the large number of complaints for investigation and potential disciplinary purposes is to start at an organizational level. The data looking at individual complaints is very complex and very time-consuming and would take, in our view, too long to get us to a point where we felt we had sufficient grounds to commence disciplinary actions. So, the top-down approach is the approach that we've taken from the beginning and we think it's the right approach.

主席：

或者我從另一個角度問，韋奕禮先生，就你所理解，金管局是否可以將銀行涉嫌違規的個案直接由證監會去調查？抑或先前一定要由金管局確立有足夠的表面證據後，才可以交給證監會去調查呢？

Mr Martin WHEATLEY:

Again, I think it's important to separate the practice from the principle. In principle, I don't believe the HKMA – although this would have to be a question for the HKMA – I don't believe that they would have to have a level of evidence that they felt would pass muster or pass a court test before they passed a case to us. But, in practice, it is always the case that cases that are referred to us are only referred after they've given reasonable consideration of the facts which suggest, therefore, that there should be an investigation which could have a disciplinary outcome.

主席：

我亦都想知道，其實在2003年4月到2008年9月中，即雷曼倒閉之前，韋奕禮先生，證監會有否在諮詢金管局之後，對個別銀行展開調查？

Mr Martin WHEATLEY:

During that period, we had a number of referrals from the Monetary Authority and we investigated following those referrals but we did not initiate any investigations prior to receiving a referral from the Monetary Authority, up until the collapse of Lehmans, in that period.

主席：

你剛才的意思是否金管局方面有這個情況，金管局譬如想你調查某些銀行的個案，你剛才說有些轉介的情況、轉介的個案給你，是嗎？韋奕禮先生。你剛才是否這個意思？

Mr Martin WHEATLEY:

Yes, that's correct. In that period from 2003 until September 2008, I think we had had nine referrals from the Monetary Authority which we then subsequently investigated.

主席：

嗯。可不可以講講那9個個案的結果是怎樣？

Mr Martin WHEATLEY:

From recollection, we took a regulatory action, I think, in most cases, but I'd have to refer to notes and perhaps I could come back to you with confirmation of the exact outcome. As I say, I can't recollect the precise outcome in each case but that's obviously something we can provide to you following the hearing.

主席：

或者請你，韋奕禮先生，在會後提供資料給我們，好嗎？

Mr Martin WHEATLEY:

Yes.

主席：

我想知道就是，類似這樣的情況有否試過、有否這樣的需要或者你有否想應該在那個委員會，就是金融市場穩定委員會提出，讓大家討論一下，有這樣的情況，是否需要大家留意某方

面某些情況會發生呢？有否試過在那個委員會提出呢，韋奕禮先生？

Mr Martin WHEATLEY:

Can I understand, Chairman? Do you mean in relation to the particular referrals we had or more broadly than that?

主席：

即是任何的個案，Was there any referral that prompted you to raise this issue at the relevant committee?

Mr Martin WHEATLEY:

There were some concerns that were raised and discussed during committees during that period, yes.

Chairman:

Was any conclusion reached at the committee?

Mr Martin WHEATLEY:

Well, the committee – as I say, because the disciplinary cases are subject to our decision process, the stability committee has no role

Chairman:

I see.

Mr Martin WHEATLEY:

..... in taking decisions on individual cases. Its role is more looking at the systemic health of the market as a whole.

Chairman:

I see. So, you are referring to individual cases rather than a broad issue that could have arisen or might arise following the case that you investigated?

Mr Martin WHEATLEY:

I don't think the individual cases raised broader systemic issues at the time.

Chairman:

I see.

Mr Martin WHEATLEY:

They were very specific

Chairman:

I see.

Mr Martin WHEATLEY:

..... to particular

Chairman:

Okay.

Mr Martin WHEATLEY:

..... concerns.

Chairman:

Not systematic.

Mr Martin WHEATLEY:

Yes.

主席：

Right。好了，韋奕禮先生，我問另外一個問題就是，就現時兩萬幾宗的雷曼相關結構性產品的投訴個案，金管局已經將其中482宗轉介證監會跟進。根據金管局副總裁蔡耀君先生在2009年6月12日作供的逐字紀錄本初稿(即第33頁)，他表示如果證監會說它有資源及人手，它可以將這些個案取去，它有這個權力。他亦說我們沒有說它沒有這個權力。他的意思就是說，他沒說過證監會沒有這個權力。

請問韋奕禮先生，證監會是否有權主動要求金管局將未確立有足夠表面證據的個案交給證監會調查呢？因為上次你說是不可以的，你沒有這個權力。Mr WHEATLEY？

Mr Martin WHEATLEY:

Effectively, the investigations that we have mounted are covering all 20 000 cases but we're not looking at them as individual instances; we're looking at them from the point of view of the controls and systems that operated for each bank in selling the Minibond product. So the top-down approach that we have adopted is effectively covering all 20 000 complaints.

主席：

我的意思是說，蔡耀君先生說你們證監會是有這樣的權力，有權去調查這個工作。他是這樣說的，在33頁那裏提到，即蔡耀君先生出席的研訊逐字紀錄的擬稿初稿，他是這樣說的，他說："但如果證監會說它有資源及人手，它要把那些個案取去，它是有這個權力的，我們沒有說過它沒有。"

韋奕禮先生，你是這樣說的，在你上次的逐字紀錄，即上次出席會議時，在會議紀錄的第9頁，你是這樣說的："We do not have the powers to take the initiative without first consulting the Monetary Authority." 那麼，似乎是否兩者有些矛盾？Is there some discrepancy there, Mr WHEATLEY？

Mr Martin WHEATLEY:

Mr Chairman, if there is, then, perhaps I could clarify. We have the powers to launch an investigation into banks but only after consultation with the Monetary Authority. So, as I understand, the remarks made by Mr CHOI was that we had the powers to take over 20 000 cases; that's correct, but we would need to consult the Monetary Authority first. But, in effect, our investigations (*The buzzer sounded*) and the approach that we've adopted are covering all 20 000 cases.

主席：

OK。好了，我們開始今日11位同事排隊的提問。林健鋒議員。

林健鋒議員：

多謝主席。Mr WHEATLEY之前說過，他說要有一個合理的理據才會批准一些投資產品使用"迷你債券"這個名稱。我想問一

問證監會，它之前是基於甚麼理據批准這些涉及幾百億的雷曼結構性產品使用"迷你債券"這個名字呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think – and again, if I can clarify – what I said was we would, in cases where there was concern about descriptions or names, we would require that the issuer provided additional information or justification for that particular name. In the case of Minibond, we did not think that such concerns were raised because the term "bond" or "note" or "bill" are virtually interchangeable under the Companies Ordinance and all of them can be used equally in the description of a debenture. So we didn't feel that there was a need for additional justifications for the use of this name.

主席：

林議員。

林健鋒議員：

主席，韋先生剛剛提出說沒人提出這些關注，他所指"沒人"是哪些人？他們自己內部的人沒提出？外面的人沒提出？我亦想問一問，韋先生，你個人有否親自去審批這些產品？

Chairman:

Mr WHEATLEY?

林健鋒議員：

以及瞭解整個產品的結構及它們的銷售資料？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As part of the approval process, we have a team of professionals within our Corporate Finance Division who have the responsibility for vetting

documents and authorizing those documents. That team will operate according to the Companies Ordinance, the Third Schedule of the Companies Ordinance, and will vet that a document meets the requirements in the Third Schedule and that it meets our marketing guidelines. They're a team of qualified lawyers who've got corporate finance and structured product experience in the industry and they have the decision-making – the director has the decision-making over the authorization of documents.

I have no direct role in the review or authorization of those documents, so I would not have been involved in that approval process. Clearly, I have spent a lot of time, subsequently, understanding and looking at the documentation and the marketing materials but would not have done prior to the collapse of Lehman Brothers.

主席：

林議員。

林健鋒議員：

是，主席。一直以來他們都沒察覺到這些迷你債券是有問題的。其實，我看這些迷你債券，第一次看，我根本都不知道它說甚麼，我亦都曾經找過一些專業人士，金融界的專業人士，有很多都不是很理解裏面的結構及產品的內容。當然，有些看了三兩次之後就理解了，但是他們亦向我解釋說，這個結構是很複雜的，即市民不是很容易理解的。

我想問一問，證監會有否覺得，在推售這些迷你債券的章程或者這些推廣材料裏面有一些註釋，它裏面已經足夠披露了這個迷你債券產品潛在的風險？或者它的披露是否已經足夠？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, the process of authorizing the documents and the marketing flyers is one where we do establish that sufficient information is available in those documents and each of the documents will have a number of risk warnings as well as the product features that's described in the documents and we're content that sufficient information is in the document or is available in the marketing material but we would also have had concerns,

and we did have concerns, as to whether the product was being correctly sold. And so we carried out a number of inspections, a number of surveys during the course of 2003, 2004, 2005, where we were trying to establish the extent to which the products were correctly sold through the distributors. And we had concerns and we raised those concerns a number of times.

The documents – we'll ask individuals to talk to the distributing bank. They will ask people, if they want more information, to talk to the sales staff. Our Code of Conduct places a clear obligation on the distributor to have done proper due diligence, to have created sufficient training material such that the sales staff can establish that the product is suitable, taking account of all the circumstances of the individual. That's how the Code of Conduct is designed to work but we did have concerns as to whether it was operating correctly and we did a number of things over those years to try to establish the extent to which sales were correctly conducted and the Code was correctly followed.

主席：

林議員。

林健鋒議員：

主席，我的理解是，在這些推廣材料裏面，在這些註釋方面，韋先生都認為可能未必足夠令市民或者購買者完全理解這些債券的內容，是需要銀行在推售這些債券時，由一些在場的人士、註冊人士來介紹。他有否發出一份完整的指引？如果有，可否提供給我們？之後，韋先生亦說到，他有派員去監察……

Mr Martin WHEATLEY:

Um

林健鋒議員：

……以及監察有關的銷售進行。這些資料，他可否再詳細一點告訴我們，他進行的情況是怎麼樣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay, if I can deal with the first point, the guidelines, we have a Code of Conduct which we maintain and publish and frequently publish guidance as to how to comply with that Code of Conduct. There are FAQs published occasionally to elaborate on it. The primary guidance for banks and brokers is the Code of Conduct and the code on policies and procedures and we can provide – I think we have provided that but we're happy to provide that again to this committee.

In addition to the Code, we publish what we call FAQ, frequently asked questions, which are available on our website and they're published to the industry as a whole. I believe the HKMA also publishes additional guidelines as to how banks should comply with the Code of Conduct and we publish reminders where we think that there are potential shortcomings against the Code.

In terms of the second part of your question, surveys, we've carried out a number of either direct investor surveys or themed inspections of brokers to establish the extent to which we feel that good practice is being followed. And each time we conducted one of those surveys we have found shortcomings. We've taken regulatory action in response to those shortcomings; we have published our findings and we've warned the industry that we expect better behaviour in terms of their ability to do due diligence and ensure that suitable products are available to customers. And so we've done that many times over the last five or six years during the period that these products have been sold.

主席：

林議員。

林健鋒議員：

主席，在這個迷債事件發生之前，我們已經知道美國的次按事件很嚴重，一些國際上有名的金融機構亦將它們的信貸評級調低。證監會有否考慮過規定這些文件要進一步披露有關這個產品的風險，令投資者可以更加作出一個有效的評估呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We constantly publish marketing materials information through our Dr Wise column or through direct (inaudible)

林健鋒議員：

主席，我是問.....

主席：

是。

林健鋒議員：

.....有關在次按發生之後，他有否做這些工夫，不是說他日常性的工作。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We specifically – after the subprime crisis, we specifically asked all producers of notes to disclose the extent to which subprime instruments underpinned these instruments and, therefore, the marketing materials subsequent to that would always have included a statement that "This instrument does not use subprime assets as collateral." (*The buzzer sounded*)

主席：

OK。下一位是.....

Mr Martin WHEATLEY:

..... (inaudible)

主席：

OK, thank you. 下一位，涂謹申議員。

涂謹申議員：

主席，或者第一part我先跟進上一次會議同事關於迷你債券的提問。6月23日，Mr WHEATLEY的答案裏面，我讀一段出來給Mr WHEATLEY聽，43頁："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."

我想問一問Mr WHEATLEY，似乎你的答案裏面好像只是用法律角度來考慮發行商的那些描述是否你可以反對，你有否用一個會購買這個產品的普羅大眾的角度來看看那個字會不會產生誤導呢？這是兩個不同的角度，單單用法律，似乎你的答案就是說"我們反對不了"。但是你的下屬，或者你知不知道你的下屬是否單單用這個法律角度呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, the process of approving the documents is quite a formal legal process because it is conducted against the requirements that are set out in the Companies Ordinance but the process of selling the product is one where we expect the features of the product to be properly explained and that's where we have some reliance, or we hope we have some reliance, on the intermediaries.

Hon James TO Kun-sun:

Mr WHEATLEY, I am sorry to interrupt.

主席：

涂議員。

Hon James TO Kun-sun:

Because I am not asking about the second step, about the bank, whether they are mis-selling or not. I am asking about the vetting by you and your

staff, whether you only use the legal angle, what's in the law, or that you will consider the person who is going to buy the product, whether he or she will be misled by using – by the bank or the issuer using such a term.

Mr Martin WHEATLEY:

We um

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If I can answer the two parts of the question, we look at both. Clearly, the legal framework is what sets the construct for how we operate and we have to make sure that legally the document meets all the requirements but, also, if the representation in the document or the marketing flyer is, we think, misleading, we would also ask the issuer to provide additional explanations or justifications as to why certain terms or images would be used. Now, we didn't feel that was the case, or necessary in the case of Minibonds because the legal requirement for Minibonds, in itself, was not misleading according to the Companies Ordinance.

Before the collapse of Lehman Brothers, I don't believe we'd had any or perhaps one complaint about the name and the use of the name. After the collapse of Lehman Brothers, we've analysed very carefully the complaints that we've received and we've got a lot of complaints about mis-selling; we've got complaints about the product being represented as an alternative to a deposit, complaints that the exposure to Lehmans wasn't adequately explained; we've got complaints that the reference entities were giving undue

Hon James TO Kun-sun:

Mr WHEATLEY, you

Mr Martin WHEATLEY:

Sorry, can I complete

Hon James TO Kun-sun:

You have repeated all this

Mr Martin WHEATLEY:

..... because it's an important point

Hon James TO Kun-sun:

..... answer.

Mr Martin WHEATLEY:

Sorry, can I complete because I think it's

Chairman:

Let him finish the response.

Mr Martin WHEATLEY:

..... it's an important point. In analysing.....

Hon James TO Kun-sun:

No, no, because I am asking about the process before the vetting, the consideration, not after that.

Mr Martin WHEATLEY:

Okay, well, I think I

Hon James TO Kun-sun:

Okay?

Mr Martin WHEATLEY:

I think I

Hon James TO Kun-sun:

Can I concentrate on that?

Mr Martin WHEATLEY:

I think I

Chairman:

Okay. Mr WHEATLEY?

Mr Martin WHEATLEY:

..... have explained that. Yes. I think I have explained that. The point I wanted to make, but you've stopped me, is that in analysing all of those complaints, only about just over 1% felt the name itself was part of what people were misled by.

Hon James TO Kun-sun:

No.

主席：

涂議員。

Hon James TO Kun-sun:

No, we cannot justify by the subsequent event. I am asking you or your staff or your whole organization whether you think, on the second angle, that is, from the person who is going to buy the Minibond, okay, before the collapse of Lehman Brothers, whether, at that time, you thought or your staff thought that the use of "minibond", the use of the term, is misleading or not. Well, you can answer "Yes" or "No".

Mr Martin WHEATLEY:

We

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... take comfort from the professional selling the product who has an obligation to explain all of the features of the product. Now, the name is one aspect of that; it's not the most important aspect. The most important aspect of that process is what the risks are when you're buying such a product.

Hon James TO Kun-sun:

So, can I take it that

主席：

涂議員。

Hon James TO Kun-sun:

..... your answer is that it can be misleading or not but we have a second fence that we can rely on the bank, on the frontline staff of the bank, to correct the possible misunderstanding of the use of the term "minibond"? Is that your answer?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure that that correctly characterizes my answer. Our view was that the term "minibond" is not, in itself, a misleading term.

Hon James TO Kun-sun:

So now you say

主席：

涂議員。

Hon James TO Kun-sun:

..... the use of term "minibond" is not misleading?

Mr Martin WHEATLEY:

I think

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think you have to qualify that. It's not in itself misleading. If it's used in a way that suggests the product is the equivalent of a corporate or a safe sovereign bond, then that clearly could be misleading but that's about how it's presented at the point of sale. The term itself in the documentation

cannot be misleading unless representations are made about it which represented as something different.

Hon James TO Kun-sun:

Okay.

主席：

涂議員。

Hon James TO Kun-sun:

Suppose the bank staff, without saying a word, just present, well, all these brochure or leaflet to the potential customer – you saw all these, well, at least subsequently – whether you will say the use of the term "minibond" here is misleading or not?

Chairman:

Mr WHEATLEY?

Hon James TO Kun-sun:

Without saying a word by the frontline staff.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the frontline staff have a duty to ensure that the product is suitable and that the person who is buying the product understands it. And, to do that, they would take the product as a whole. The prospectus will always qualify the word "minibond" with the nature of the instrument, that it's a callable credit-linked note. So it's always included in the documentation that would be placed before staff.

Hon James TO Kun-sun:

Well, I

主席：

涂議員。

Hon James TO Kun-sun:

I invite your comment. Can I fairly say that you allow this potentially misleading wording to be put in in the leaflet in order to, hoping for the best, that the frontline staff can fully explain that this is not a bond?

Chairman:

Mr WHEATLEY?

Hon James TO Kun-sun:

Is it a responsible attitude?

Mr Martin WHEATLEY:

Well, I'm not sure I'd accept

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... the premise that it's a potentially misleading word. Again, the obligation is to explain the note in its entirety and the features and risks in their entirety.

Hon James TO Kun-sun:

So you won't even agree that

主席 :

涂議員。

Hon James TO Kun-sun:

..... the use of "minibond" is potentially misleading, so you said it is a clearly – no doubt that it will not mislead any customer?

Chairman:

Mr WHEATLEY?

Hon James TO Kun-sun:

So you seem to go even further and further into that direction.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure what the question is, Mr Chairman.

Hon James TO Kun-sun:

Well, I am saying that

主席 :

涂議員。

Hon James TO Kun-sun:

..... can you agree that the use of the term "minibond", without saying a word by the frontline staff of the bank, can be a potentially misleading term.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The product is a complex product. The bank staff have a duty to represent it correctly. If they've represented it incorrectly, then that's a potential mis-selling case and what you seem to be saying is that they have misrepresented it incorrectly and we should have known that they would do that at the time we authorized the document.

Hon James TO Kun-sun:

Well, the point is that

主席 :

涂議員。

Hon James TO Kun-sun:

I will ask you again. That would you – so, to be fair to you, whether the use of "minibond", you approved that to be used in the leaflet, can be a potentially misleading term, "Yes" or "No"?

Chairman:

Mr WHEATLEY?

Hon James TO Kun-sun:

You can say "No,

Mr Martin WHEATLEY:

Well, I

Hon James TO Kun-sun:

..... it's absolutely not. No misleading at all. No possible misleading effect."

主席 :

讓他答吧。

Mr Martin WHEATLEY:

I'm not sure what

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... the premise of the question is. As I've explained to you many, many times, when selling the product, it's the product in its entirety that should be explained, not one word, not selecting just the coupon (*The buzzer sounded*) or just one name or just one single part. It's the entirety of the product and the documentation includes all of the risks that should be explained at that point.

主席：

OK。葉劉淑儀議員。

葉劉淑儀議員：

多謝主席。我還是想再問韋先生那些marketing flyers，宣傳單張。我發現那些宣傳單張，雷曼迷債那些宣傳單張，新鴻基投資服務公司是所有單張都列明它是co-distributor，即共同分銷商。系列1至22甚至說明新鴻基負責單張的內容，如果有甚麼liability，有甚麼就找它。

我想問韋先生，你們查distributor(分銷商)、銀行及brokers的時候，有否也查新鴻基投資服務公司呢？因為我收到市民，甚至銀行都向我投訴，說其實新鴻基投資服務是包辦宣傳、推廣，兼且訓練銀行的員工。有銀行跟我們說，根本它們也不是很認識產品，是靠新鴻基幫它訓練的。那麼是誰去管這些co-distributor?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, as you know, we have investigated Sun Hung Kai and we reached a settlement agreement under our section 201 of the SFO. We are not able to discuss the specific findings as our belief is that may prejudice any ongoing investigations we have against other banks.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

主席。我知道證監會查了新鴻基有否不當銷售，對它的clients，它賣給它那幾百個客戶有否不當銷售。但作為銀行的co-distributor，幫它設計單張、安排獎品、拿獎品都要經過它，問它，甚至直到22，大概是22.....21，系列21都是說那個單張的內容是它負責。作為一個包銷商，又訓練銀行員工，你覺得新

鴻基投資服務公司有沒有責任呢？證監會或者金管局應否都要查他們在宣傳、推廣、訓練方面有否不當呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, Chairman, if I can repeat, we have investigated Sun Hung Kai. We raised certain concerns and those concerns did relate to the quality of training, the quality of due diligence, but I can't give the answer that the Honourable Member would like because of the risk, in our view, that that could prejudice our ongoing investigations.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

多謝韋先生的答案，但我還是，我自己 —— I'm greatly intrigued by this, you know. Series 21 in the disclaimer, it says, up to – from the earliest series, up to series 21 of Minibond, it says, "This advertisement is issued by Sun Hung Kai Investment Services and not issued by or on behalf of PFIL or Lehman Brothers Asia Limited.", etc. "Sun Hung Kai takes responsibility for the issue and contents of the aforementioned." However, from series 22 onwards, the wording has changed: "The leaflet is issued by PFIL Limited and is not issued by or on behalf of Lehman Brothers Asia Limited or any of their directors or affiliates. PFIL takes responsibility for the issue and contents of the leaflet."

不知道韋總裁或者你的手下有否留意到為甚麼，為甚麼有這樣的改動呢？是否後來做着做着，新鴻基覺得不妥，就將責任拋回給PFIL，而PFIL只是一間開曼群島上市的空殼公司，沒辦法追究它。所以有市民跟我們說，有苦主跟我說，整個迷債銷售的結構是一個騙局。你同不同意？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The change of issuer of the marketing flyers, yes, we were aware of that in our approval process. I can't tell you, at the moment. I'll investigate and come back but I can't tell you the precise reason as to why the responsibility shifted from Sun Hung Kai to PFIL, but we'll provide further information.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

多謝。我想再問問，在上次23日，即上一個會，韋先生回答詹培忠議員的答案，詹培忠議員是問他，發行商都有責任，不只是分銷商，他問證監會有否追究發行商。我可否讀韋先生你的答案？是page 83.....

主席：

第幾頁呀？葉劉淑儀議員。

Hon Mrs Regina IP LAU Suk-ye:

Page 83 of the draft minutes of meeting, of the last meeting. Mr WHEATLEY, your answer was this: "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."

在這裏，"arranger", who do you mean by "the arranger"? Is it the arranger as in the prospectus of the Minibond? In the prospectus of the Minibond, the arranger is Lehman Brothers Asia Limited and is that company now not in bankruptcy proceedings? Are you taking investigative action against Lehman Brothers Asia Limited?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, as you know, we do not provide general updates of our investigations during the process but we have confirmed that we are investigating Lehman Brothers, the issuer, and you may have seen a court application that we made one or two weeks ago seeking to force the disclosure of certain risk assessment documents. So that is in the public domain.

主席：

葉劉淑儀議員。

Hon Mrs Regina IP LAU Suk-ye:

Well, my follow-up may be a technical one but, under the prospectus, the issuer of the Minibond series is actually PFIL, which is a shell company incorporated in Cayman Islands. The arranger is Lehman Brothers Asia Limited. There are other parties, guarantors and all that, subscribers, all that; do you mean, by "arranger", you meant Lehman Brothers Asia Limited? Can you confirm that?

Mr Martin WHEATLEY:

Yes.

Chairman:

Mr WHEATLEY?

Hon Mrs Regina IP LAU Suk-ye:

Thank you.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

我還有少許時間，我再問一問調查工作。Mr WHEATLEY, you explained to us very clearly, several times, the division of labour between HKMA and your organization and it's pretty clear to us that you don't have the power to initiate investigation into the banks, you know. The right of first review rests with HKMA and you could only investigate the banks after consultation with HKMA. But you have also said, yourself, you know, that

the power to take disciplinary action ultimately rests with you, you know, and it seems to us, as a layman, and many citizens, that this system, this arrangement is pretty ridiculous because you are the party with enforcement powers, real investigative powers, and the powers to take disciplinary action, and yet you are precluded from reviewing the banks without approval from HKMA.

I know there is a MOU between you and HKMA and is this sort of arrangement really necessary? What do you see as the rationale for this sort of arrangement?

Chairman:

Mr WHEATLEY.

Mr Martin WHEATLEY:

Please, can I clarify, firstly, about the powers and the initiative? You said we don't have the power to take the initiative. We do. We do have the power to take the initiative but only after consultation.

Hon Mrs Regina IP LAU Suk-ye:

Yes.

Mr Martin WHEATLEY:

But it is consultation and, again, you used the word "approval" by the HKMA

Hon Mrs Regina IP LAU Suk-ye:

Consultation, all right.

Mr Martin WHEATLEY:

Yes. So there's nothing which specifically requires consent or approval; it's simply that we consult.

主席 :

你問的，他剛才已答了我第一個問題的第一部分。
Mr WHEATLEY, please carry on.

Mr Martin WHEATLEY:

Yes. The question as to whether this is a sensible arrangement or not, our view is that it has worked well from the date of the SFO to this date. It allows us to co-operate and share information. I think it's clear between the two regulators how responsibility sits.

主席：

葉劉淑儀議員。

Hon Mrs Regina IP LAU Suk-ye:

You said, in your statement, that "This arrangement worked well until the Lehman incident which is a new situation because there is an unprecedented number of complaints", you know. Does it not mean that this arrangement is okay insofar as there is no eruption of large-scale incidents involving a large number of complaints, like the Lehman saga?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we have – from 2003 until September 2008, the system, (*The buzzer sounded*) as you say, hasn't been stressed in the way it's now being stressed. I think it has put huge stresses on both ours and HKMA's resources to respond to a crisis of this nature. It's unprecedented in size and impact globally and I think it does raise questions about whether we need to review this structure going forward.

主席：

湯家驊議員。

湯家驊議員：

主席，我想跟進上一次我的問題。我想問一問韋先生，在他的陳述書第25段，他一方面說他認為"債券"及"票據"沒有清晰的定義；但另一方面，他又說結構性票據是有別於傳統的普通債券的。我想問問韋先生，如果有人將這些結構性的票據當作傳統的普通債券去銷售，會不會算是違規？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, it would depend on the individual circumstances but potentially, if a product is misrepresented to be something other than it is, then that's potentially a case of mis-selling but we would have to look at the individual circumstances.

主席：

湯議員。

湯家驊議員：

韋先生，我當然明白你不懂看中文，但是我不知道你有否察覺到，在迷你的銷售文件，特別是單張方面，很多時候英文文本描述這個產品為票據，但中文文本就翻譯為"債券"。注意，它不是用"迷你債券"，而是用一個普通的"債券"的名稱。我想知道，第一，你有否察覺到這個情形？如果有，你何時察覺到？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, you describe it as a problem. We're aware of – that there is a difference but, as we've said, the terms are, under the law, fairly interchangeable so there was no particular concern that one word would be used or represented or – sorry, translated slightly differently but it still doesn't get away from the fundamental protection that investors should have is that the marketing leaflet, the marketing flyer, is meant to attract interest and attract people to talk to a sales representative, and that's what it says: "Come and talk to a sales representative." And that's where we expect a proper explanation of the product.

主席：

湯議員，當然，你亦可以……

湯家驊議員：

主席，我覺得……

主席：

……遲些問何賢通先生，都可以的，這條問題。

湯家驊議員：

對不起？

主席：

遲些亦可以向何賢通先生提問。

湯家驊議員：

我明白。不是，我明白。所以，其實我問韋先生的問題就是他有否察覺到，以及他如果察覺到，是何時察覺到。

主席：

嗯。

湯家驊議員：

韋先生沒有回答我的問題。我相信你不是很瞭解我的問題。我的問題是，你知不知道在那些中文文本裏，這個產品被描述為"債券"，不是"迷你債券"，只是債券，即是一個普通債券，而英文文本用的字則是"票據"——notes。我想問你的就是，你知不知道有這個情形出現？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As I explained earlier, I have no direct responsibility in approving or authorizing the documents. That's something that is part of the corporate finance team who review each of the documents. So I wouldn't have been aware of it under the normal course of events of approving the documents.

Clearly, I'm aware of it as part of our analysis of the issues post Lehman's collapse.

湯家驊議員：

我不是問你一般的情況，韋先生，你當時有否察覺到？

Chairman:

Mr WHEATLEY?

湯家驊議員：

抑或你事後才察覺到？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In terms of awareness of the detailed features of the products and the terms used, it's something that I'm aware of after the collapse of Lehmans.

湯家驊議員：

多謝你。你剛才都提過.....

主席：

湯議員。

湯家驊議員：

.....上一次你給證供時都提過，你承認這種產品的章程非常複雜，你亦承認你瞭解前線推銷人員推銷這個產品的時候會倚賴一些簡單的單張。我想問你的就是，你有否看過這些單張？有否察覺到在這些單張裏面沒有在明顯的地方清楚說明購買者必須閱讀詳細章程，你有否察覺到這點？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I come back to the point you made, which is that we expected the frontline staff to sell the product on the basis of the flyers or pamphlets? That's absolutely not what we expected. The pamphlets were there to get interest, to get people interested, but the pamphlets would have said "Talk to a customer service representative." That's what the pamphlets would have said. We expect the customer service representative not to rely just on a marketing flyer but to have properly-constructed training material that has been developed by the distributing bank so that they can properly explain the product.

湯家驊議員：

我理解……

主席：

湯議員。

湯家驊議員：

……這個亦是你上次給我的答案。但韋奕禮先生，你自己上一次都承認，你是知道會有前線人員會依靠一些比較簡單的單張去推銷這個產品，你是知道這件事的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No. And I don't think I did say that. I said it would be a concern for us if that was the case and we had concerns which had been raised through some of our previous surveys that the products were not being – or suitability wasn't being adequately assessed. So we had raised concerns through the surveys and the themed inspections and we raised those concerns with the industry and we told ……

湯家驊議員：

我……

Mr Martin WHEATLEY:

..... the industry what we expected

湯家驊議員：

主席，我覺得韋先生過於自衛了。

主席：

湯議員。

湯家驊議員：

他很小心的希望保護他自己或者他自己的部門。我問他的問題很簡單，是一個事實。你知不知道，當前線人員去推銷這些產品的時候，是會用一些簡單單張？

Chairman:

Mr WHEATLEY?

湯家驊議員：

這是一個很簡單的事實問題，你知不知道？

Mr Martin WHEATLEY:

We do not have inspection powers over the banks. I think I've explained that. That's not a role that the SFC has, so we wouldn't have had any means or reason to look at the way that banks' frontline staff were selling the product until after the collapse of Lehmans when we've launched a number of investigations.

湯家驊議員：

韋先生，我希望你.....

主席：

湯議員。

湯家驊議員：

.....不要轉彎抹角，那些簡單的單張你們都有審批的，不是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not trying to avoid the question. Yes, we are responsible for vetting of the marketing flyers but we don't have oversight of the operations of banks.

湯家驊議員：

但是這個不是.....

Mr Martin WHEATLEY:

So,

湯家驊議員：

.....我的問題。韋先生，這個不是.....

主席：

湯議員。

湯家驊議員：

.....我問你的問題。你既然有審批這些簡單的單張，你當然會意味到前線人員會利用這些單張去推銷吧，如果不是，要你審批來幹麼？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We were concerned as to whether products were being correctly sold and we did a number of surveys and inspections in order to satisfy ourselves as to whether that was the case or not. We did find a number of shortcomings in

our investment advisers; we published best practice, we told them what we expected, we told them where there were shortcomings and we took regulatory enforcement actions against a number of those advisers on the basis of those surveys.

湯家驊議員：

所以當你審批這些……

主席：

湯議員。

湯家驊議員：

……文件的時候，特別是這些簡單單張的時候，你是否應該要求推銷者用很大的字寫着"這個不是一個普通債券，你須要閱讀清楚所有有關的章程"，用很大的字寫的。你覺不覺得應該這樣要求？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, it was printed in all the pamphlets that you should not simply rely on a marketing document. That was very much in every one of the documents.

湯家驊議員：

你明不明白，韋先生，你明不明白那個分別？

主席：

湯議員。

湯家驊議員：

用很大的字寫着"這個不是債券，你須要閱讀章程"，以及用很大的字寫着"這是風險很低、保本的產品"，你明不明白那個分別在哪裏？

Chairman:

Mr WHEATLEY?

湯家驊議員：

大字跟小字的分別，你明不明白？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The contract or the – sorry, the notes typically were not stated that these are principal-protected products. It's explicitly (*The buzzer sounded*) stated in reasonable typeface that these are not principal-protected products. So a number of the risks, the important risks, are quite clearly stated in the marketing flyers.

主席：

劉慧卿議員。

Hon Emily LAU Wai-hing:

Thank you, Chairman.

Chairman, I want to ask Mr WHEATLEY about the division of labour between the MA and the SFC. Some questions were asked at the hearing on Tuesday and some were asked this morning. And Mr WHEATLEY told us that the SFC has this top-down approach but the MA investigates individual cases and then you referred to the MOU, saying that they start it and they refer to you and then you have to investigate the cases, you are required to investigate all the cases referred to you by the HKMA. And, right now, of course, the HKMA is still labouring on the 20 000-odd complaints and you have received about 8 400 and, out of that, we are told only about 482 were referred to you by the HKMA.

And then, at Tuesday's hearing, Chairman, if we look at the verbatim transcript, page 41, Mr WHEATLEY said that, you know, you have opened investigations into all the organizations, the 19 banks and six brokers, who sold the Minibonds. You are not required to – you said you think you've got enough of a picture of the sorts of allegations being made for you to investigate the bank. You don't need every single complaint before you can

do the job. And you said you have actually finished some of the investigations.

And then we also asked – I asked you about the – then you have a resolution. But some of the complaints have not even arrived at the SFC from the MA. And I asked you then, what will happen to those complaints if you finish the investigation before the complaints arrive. And you said that you "hope that the resolution is sufficient that people will feel comfortable that it's an adequate result".

So what is it that you are telling us? As I said last time, I said I'm very pleased that you can, you know, proceed very swiftly with the investigation and get a good result, you know, people are happy, but then we've got all these 20-odd thousand complaints stuck with the MA. And I checked the figures, Chairman, the MA is spending \$9.1 million a month on the staff, staff costs, to do the investigation. So what will happen?

Because, Chairman, if we look at the report that the SFC submitted to the FS in December last year, paragraph 18.6, which is page 38, you said, "when the HKMA refer cases to the SFC what is provided for is", you know, "a complaint assessment". "This is a useful starting point. The cases referred by the HKMA then require formal investigation by the SFC." But you did not go on to tell the Financial Secretary in the report that, actually, you can finish your investigation without looking at the complaints referred by the MA.

But then, also in this very report, paragraph 18.4, at that time, you have received only 164 complaints from the MA and now it's gone up to 482. But you said that you expect to receive referrals from the MA for many months to come as the MA processes increasing volume of individual complaints. Of course, now it's shot up to over 20 000. So, what should we – I mean, how should we look at this process? You said you hope they are happy if they got adequate results. What will you do when you finally – I don't know when – receive the complaints from the MA?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, the approach that we're taking and that we've mentioned earlier, the top-down approach, is one that effectively allows us to deal with all the complaints in one go because we're dealing with the bank as an

institution. And, if we find that there have been significant breaches of controls, significant breaches of good practice, then we have the potential to take action against the bank. Now, what we would like to do is, rather than us impose sanctions such as fines or removal of a licence, what we'd like to do is that, where we find there is a justification for a penalty, we'd like the banks to volunteer a solution for all of their customers. That's what we would like to happen. It's what happened in the case of the two brokers and, as we've mentioned, we're in discussions with a number of banks with that as our ultimate output in mind.

主席：

劉議員。

Hon Emily LAU Wai-hing:

So, Chairman, you want the banks to offer a solution, some kind of settlement with the customer, but you, the SFC, has not seen the particular, the individual complaints or have you actually also got sight of the complaints without the MA referring them to you? Because you are looking at it globally; globally, you say, "Oh, 19 banks, six brokers, you have, you know, made such violations" or whatever, but how do you then – because then you're talking about individual settlements between the customers and the institutions but you say you can do it without looking at the details of the complaints which the MA is still studying; is that what you are telling us?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

That's, in our view, the only way we can complete this process in a reasonable time. We've seen many of the complaints and so we have a broad understanding of the issues that have been raised but, no, we haven't analysed and looked in depth at all 20 000 complaints. That's sitting with the Monetary Authority.

主席：

劉議員。

Hon Emily LAU Wai-hing:

So how can you get a fair assessment of each individual case of the compensation that each customer should get without looking at their individual complaints?

Mr Martin WHEATLEY:

Well, we would present our findings to the bank, and that's what we have been doing. The bank will judge, on our findings, whether they feel that they've got a significant case to answer and we expect them to come forward and design a solution that would be acceptable to all of their customers. That's what we would expect them to do. We cannot design the ultimate solution to all of their customers.

主席 :

劉議員。

Hon Emily LAU Wai-hing:

Chairman, the SFC is going to present certain findings without looking at quite a number of specifics; you just have a global investigation, some global findings but you expect the banks to offer compensation or settlement with – I mean, do they have different kinds of settlement with different customers, isn't it? But yours is a global approach. How do you expect the banks to respond?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the banks have been settling individual cases so a number of cases – I understand quite a large number of cases have been settled on a bilateral basis, individual-to-individual. We expect the banks to – if there is significant findings of control failings, we expect them to design a system that deals with the different categories of customers. Now, they may decide that they want to do that in one way, they may decide they want to do that in a number of different ways but that's not something we can do for the banks.

Hon Emily LAU Wai-hing:

So, Chairman,

主席：

劉議員。

Hon Emily LAU Wai-hing:

..... so the obvious question is: What the hell is the HKMA doing? Spending – how much money? – over nine million dollars a month? I mean, what will you do? Because, in your report to the FS, you say you are required to have formal investigation – to investigate the complaints they send you but now you seem to have finished or will finish the investigation before you receive their complaints. So what use will you put to the cases when they refer them to you ultimately?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we may not be successful in achieving the aims that we wish to achieve, so, whilst we would like to achieve a settlement solution, which is the ideal outcome, we may not. And, if we don't achieve a settlement solution, the alternative for us is to reprimand, to fine and to impose or remove a licence from a bank. Now, in that circumstance, the MA's ongoing investigation of individual complaints will provide some additional comfort to those individuals where we haven't been able to reach a sensible settlement.

主席：

劉議員。

Hon Emily LAU Wai-hing:

So, Chairman, what Mr WHEATLEY is saying is that for those that you can reach settlement, that's it, isn't it? Even though the cases will be referred to you ultimately, but you won't go any further; you won't re-open investigation? It's only those that you cannot solve, then you look at the cases referred by the MA; is that your approach?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If we can resolve a settlement agreement with a bank, that should deal (*The buzzer sounded*) with all of the individual complaints against that individual bank. If we're unable to do that, we can still reprimand but we cannot – and I think I've told the committee before we don't have power to force settlement; it has to be a voluntary action from the bank.

主席：

甘乃威議員。

甘乃威議員：

主席，上次Martin WHEATLEY回應我們同事的提問時說，SFC除了迷你債券以外，一些非迷你債券的結構性金融產品，你們都未向銀行展開調查。上次Martin WHEATLEY有這樣的回覆，令一些相關投訴的苦主非常震驚。我希望Martin WHEATLEY可否清楚解釋一下，為何由事發，即去年9月"爆煲"到現在，已經大半年，你對於這些非迷你債券的有關產品，為何還沒展開調查呢？

你在上次的回覆裏面，在page 62，給我們議員的回覆裏面說，在最後那段："We simply haven't had those referrals in relation to a wide range of other notes."。這個就是你的回覆，是說因為沒有一個廣泛的轉介。但是我翻看一些數字，實際上其實Hong Kong MA到今日為止，剛才我們同事說有482個個案已經轉介了給你，迷你債券的是367，其他的是91，即是說已轉介給你們的已經有20%是非迷你債券的一些投訴，已經由Hong Kong MA轉介過來。我的理解，這91宗絕大部分都是一些ELN或者CLN。

另一方面，在M16，M16就是金管局交給財政司司長那份報告，當中第6.8段，M16的6.8段，我等你的同事把那份資料找出來給你。在當時報告的內容.....我看看Martin WHEATLEY是否拿着那份。

主席：

是，先等他把文件找出來。

甘乃威議員：

拿到沒有？M16。有了吧？

Mr Martin WHEATLEY:

I've found it.

甘乃威議員：

在6.8段。

Mr Martin WHEATLEY:

M16, is that the right report?

甘乃威議員：

M16的6.8段，因為這份報告裏面，當時Hong Kong MA只給了證監會238宗個案，其實這裏說"有87宗涉及註冊機構於08年8月、9月仍繼續向客戶銷售由雷曼相關實體發行的結構性產品，當其時雷曼的信貸風險已顯著增加，不少業內人士已停止銷售雷曼相關產品。與這些個案有關的調查帶出的問題....."我不再讀下去了。其實，我的理解，這些都是ELN的產品或者CLN的產品。我就是想瞭解一下，為何你在這一刻，其實這個產品.....即轉介的個案中有36%都是這類型的產品，為何你覺得沒有一個很重要，即剛才你所說重要的違規情況？為何你不展開這些調查呢？可否解釋一下你所謂啟動你的調查，是要甚麼情況下你才可以啟動你的調查呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay. Mr Chairman, I'm sorry if I would have given an incorrect perception at the last meeting. The point I was trying to make is that the number of complaints and referrals related to other products is much smaller than related to Minibonds. So the Minibonds have been the first investigations that we have commenced and have taken up a significant amount of our resources but where we have been referred complaints relating to other products, we have also raised – started investigations into those other

areas. So I'm sorry if I misled people at the last meeting but we have commenced investigations into other product areas.

主席：

甘議員。

甘乃威議員：

你剛才說你上次有些錯了，即實際上你已經展開其他調查。我想你再澄清，再說一次，所謂其他產品的調查是包括ELN、CLN這些產品的調查，是否你已經展開了，向銀行系統性的調查已經展開了呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, they involve investigations into other credit-linked notes, CLN products and some private placement notes.

甘乃威議員：

OK。

主席：

甘議員。

甘乃威議員：

我想問問在另外一份文件，就是M2(C)，你說你已經展開調查，我想問M2(C)這份文件，這份文件就是On-site Examination on Regulated Activities on RI。我想問這份文件，這個所謂on-site examination，我們叫checklist，由Hong Kong MA去進行這些銀行的調查，這份資料，是否你們在雷曼"爆煲"之前已經掌握這份checklist？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Sorry, the "checklist" being the HKMA's checklist?

主席 :

甘議員。

甘乃威議員 :

你拿着那份 checklist 了，是嗎？On-site Examination on Regulated Activities of

Chairman:

Document M2 M2(C).

甘乃威議員 :

M2(C)。

Chairman:

M2(C).

Mr Martin WHEATLEY:

Okay. I can't tell you specifically. I can check and let you have that information. We would generally share information about our inspection approaches but I can't confirm specifically, so perhaps I can come back after the meeting and confirm whether we've had this document.

甘乃威議員 :

我想問的就是.....

主席 :

甘議員。

甘乃威議員 :

.....如果你稍後回覆我們，我想知道當你向你們的broker，即你們的證券行，進行所謂on-site examination時，與Hong Kong MA的on-site examination，是否都用同樣的有關checklist？我想

知道。如果你今天不能回答，我希望你會後告訴我。如果你有 on-site examination 的 checklist 是不同於 Hong Kong MA 的，請你把你去證券行，即那些 brokers，做 on-site examination 的 checklist 也提供給我們。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The checklist is very much an internal working document which we would share with the bank, we share our approaches but the requirements of banks and brokers are all established in the public codes and the FAQs that are set out. So we'd be very happy to share our checklist but it's our working document. The requirements that we're checking for are all set out in the codes and guidelines that we've published over the years.

Chairman:

Mr WHEATLEY, are you saying that you will be able to provide the document to us

Mr Martin WHEATLEY:

Yes.

Chairman:

..... after the meeting?

Mr Martin WHEATLEY:

Yes .

Chairman:

Okay, thank you. 甘議員。

甘乃威議員：

另外我想問，現在你正進行由上至下的調查，你可否簡單簡述你怎樣進行這個調查？甚麼叫做"由上而下"？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The approach is to look at the extent to which controls and procedures are properly implemented in the broker or the bank. We would look at the extent to which there are guidelines on product due diligence. We would examine files as to how far product due diligence has been done against individual products. We would interview staff at many different levels of the organization. We would review sales records, individual account-opening records, individual records of transactions to form a judgement as to whether, overall, the control guidelines have been complied with within any particular institution.

主席：

甘議員。

甘乃威議員：

我想問你這些所謂由上而下的調查，你會不會向有關的——我們叫苦主，你們叫投資者——進行調查？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The investigations that we are conducting, as I've explained, cover all the potential victims. Because of the approach we're taking, we will reach some conclusions with an individual institution as to whether we believe they have been in breach of the SFO and, if we conclude that that is the case, then we will be looking for some resolution that meets the needs of all of their individual customers.

主席：

甘議員。

甘乃威議員：

我的意思就是你一開始進行調查的時候，你會不會向有關投資者錄取口供，作為一個所謂cross-examination的方法呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

(The buzzer sounded) If we feel that's necessary at the end of our investigation using the top-down approach, then we will do that but our initial approach is to look very much at the bank's own controls, guidelines and compliance with our codes.

Chairman:

Okay. Now, Mr WHEATLEY, I'm asking is it possible for you to give us a document laying out the details of your top-down investigation procedures after the meeting?

Mr Martin WHEATLEY:

There isn't – I mean, the investigation will follow a slightly different route depending on what we find. We can give you a document explaining in broad terms how we would approach that but it's not something that lends itself to a very prescriptive checklist but I'm very happy to describe in more detail how the approach works.

Chairman:

That means, prior to investigation of any institution,

Mr Martin WHEATLEY:

Yes.

Chairman:

..... you have something to follow, whether it's just principles or just guidelines.

Mr Martin WHEATLEY:

Yes.

Chairman:

I would like to have a document with as much detail as possible, as far as you can go, okay, after the meeting.

Mr Martin WHEATLEY:

Okay, that's fine.

主席：

是，甘議員。

甘乃威議員：

剛才你提的那個問題，我想要的文件不是他想用一個他解釋的方法怎樣解釋，我是要求他拿他前線的調查人員去到現場，他一定有一些 manual、guideline 去進行這個所謂由上而下的調查。我是需要那份資料，我不是需要他再分析過，然後再解釋過而給我們的資料。

主席：

這個問題.....

甘乃威議員：

我是需要他.....

主席：

.....我先前問過他，他回答說"會"，不過我再問吧。

Mr KAM is asking – in fact, this is what I asked you to confirm and, in fact, you did say "yes" – a kind of checklist that you would

Mr Martin WHEATLEY:

Okay.

Chairman:

..... be providing to your frontline people

Mr Martin WHEATLEY:

Okay,

Chairman:

..... for use in the institutional examination. We would like to

Mr Martin WHEATLEY:

But may – perhaps, Mr Chairman, if I may explain. We can provide a general approach to how a top-down investigation works. To provide the very specifics, I think, would be hugely damaging to our ability to do our job.

甘乃威議員 :

主席，我.....

主席 :

甘議員。

甘乃威議員 :

.....我想因為我們.....他可以用一個所謂保密的文件，其實剛才說過，我們上次有關這個所謂 on-site examination 的 checklist，同樣地 Hong Kong MA 都給我們，我們都是用一個保密方式，我希望有關這個資料，Martin WHEATLEY 能夠提供給我們。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, Mr Chairman, if I can repeat, there are certain elements of the way we approach investigations that are necessarily kept confidential and would not be appropriate. What I will do is to look at what we feel we could provide to the committee that wouldn't compromise our ability to investigate and reach a resolution.

Chairman:

I think what Mr KAM is asking is also what I'm asking, is that we are not asking for the specifics that you might be giving to your frontline people for any particular institution for the investigation but the general guidelines as we have received from the HKMA for use for any institutional examination.

Mr Martin WHEATLEY:

Again, then, Mr Chairman, if I may, I will look at what we feel we are able to provide without compromising

Chairman:

Okay.

Mr Martin WHEATLEY:

..... our ability.

Chairman:

Okay, fine. 現在差不多11時半，我建議現在這個時間休息10分鐘，下一位應該是梁國雄議員，OK。請各位準時在11時40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27分暫停)

(研訊於上午11時44分恢復進行)

主席：

各位，我宣布研訊繼續。

Mr WHEATLEY，你現在繼續在宣誓下作供。現在輪到梁國雄議員。

Hon LEUNG Kwok-hung:

Mr WHEATLEY, I got a few questions on the function of the SFC, that means the power and duty. So the question is that, after studying your written statement submitted to this committee on 10 June, I have the following questions for you to answer:

1. Have you stated all the important functions of SFC in paragraph 3 of your statement? Have you got it?

Mr Martin WHEATLEY:

No.

Hon LEUNG Kwok-hung:

Paragraph 3 of your statement.

Chairman:

Mr WHEATLEY, have you got Mr LEUNG's paper?

Mr Martin WHEATLEY:

Yes. Yes, I have, thank you, Chairman.

Chairman:

Document 1?

Mr Martin WHEATLEY:

Yes.

主席 :

梁議員，你是否想逐條問，逐條等他答，還是怎樣呢今次？

Hon LEUNG Kwok-hung:

So,

Chairman:

Yes, you may respond to Mr LEUNG's first question, Mr WHEATLEY.

Mr Martin WHEATLEY:

Well, clearly, the paragraph doesn't include the entirety of the SFO where all of our functions are. This restates the statutory functions under section 5. So there clearly will be other functions

Hon LEUNG Kwok-hung:

Okay.

Mr Martin WHEATLEY:

..... but these are the ones that we judged were the more important functions.

Hon LEUNG Kwok-hung:

So I got the

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... question no. 2 for you: Why you jump from (a) to (e) in paragraph 3 and (b) to (d) are missing? Are they not important?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If you'll bear with me and I'll check the exempted sections.

Hon LEUNG Kwok-hung:

Yes, the section 5, section 5 of the

Mr Martin WHEATLEY:

Have you got the SFO?

Hon LEUNG Kwok-hung:

..... SFO. Have you got it?

梁國雄議員：

主席，可不可以把鐘停了？把鐘停了吧，對了，他在找東西嘛。 Fair enough.

So, have you got a copy of section 5 of the SFO in your hand?

Mr Martin WHEATLEY:

Not yet.

Hon LEUNG Kwok-hung:

Well, I can give it to you, though. Do you have one?

主席：

梁議員。

Hon LEUNG Kwok-hung:

I got one for you.

Mr Martin WHEATLEY:

Okay.

Hon LEUNG Kwok-hung:

Okay? So, this one. And, also, do you want the – so, the section 5 of the SFO, so

Chairman:

Have you found it, Mr WHEATLEY?

Hon LEUNG Kwok-hung:

..... (b) to (d).

Chairman:

Page 3.

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

I have already underlined it, (b) to (d).

Mr Martin WHEATLEY:

Uh-huh.

Hon LEUNG Kwok-hung:

Do you have it?

Mr Martin WHEATLEY:

I have the page that you've now given me.

Hon LEUNG Kwok-hung:

So (b) to (d), have you recognized it?

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

Are they not important at all?

Mr Martin WHEATLEY:

Well, all of our powers and duties are important. We chose to try to give a subset of them but it's not to say that any others that we've excluded are not also important.

Hon LEUNG Kwok-hung:

Okay.

主席：

梁議員。

Hon LEUNG Kwok-hung:

So I've got another question for you, then. Why the very important function of SFC as provided in section 5(1)(b)(ii) is missing? I hope it is not on purpose. Surely, it's not on purpose, is it?

Mr Martin WHEATLEY:

Well, in the sense

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... that – we haven't deliberately tried to mislead the committee, if that's the question. Clearly, we've made a decision as to what we thought the most important areas were.

主席 :

梁議員。

Hon LEUNG Kwok-hung:

So, no. 4, in paragraph 47, you said – in your statement, so have you got it in your hand?

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

You said, "the SFC has no statutory powers to supervise RIs". I think it is a wrong interpretation of section 5(1)(b). My reason is, section 5(1)(b)(ii) provides that, I quote it, "The functions of the Commission are, so far as reasonably practicable to supervise, monitor and regulate such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions"

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm obviously looking at this document which isn't our full SFO but the SFO does specifically provide that we rely on the HKMA in performing functions in relation to banks and registered institutions. That's in section 5(3) of the SFO. So, if there's a conflict between different parts of the SFO – maybe I need to get a legal interpretation as to whether they're in conflict – but we have relied on 5(3) which provides that we rely on the HKMA in supervising banks as registered institutions.

Hon LEUNG Kwok-hung:

Yes. So, but

主席：

梁議員。

Hon LEUNG Kwok-hung:

..... in my own opinion, what is inside the article I cite, "such activities" should mean the regulated activity under Schedule 5, SFO. Have you got a copy in your hand, as well? Schedule 5,.....

Mr Martin WHEATLEY:

I've only

Hon LEUNG Kwok-hung:

..... SFO.

Mr Martin WHEATLEY:

I've only got the

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... extract that you've just given me. I haven't got the SFO here with me, I'm afraid.

Hon LEUNG Kwok-hung:

So I've got it somewhere. Okay, so here. The Schedule 5, Regulated Activities. It's a lengthy schedule.

Chairman:

Mr WHEATLEY?

Hon LEUNG Kwok-hung:

So, I mean, "such activities" should mean the regulated activities under Schedule 5 of SFO. Hence, the law clearly states that your powers and duties are not merely to regulate but also to supervise and monitor the RIs in their regulated activities. Do you agree with that?

Mr Martin WHEATLEY:

Well,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, if I may, it says – what we relied on in our statement is the part of the SFO which states that we may rely on the HKMA in conducting supervision of banks as registered institutions. I think, perhaps, if we can provide a written answer to this because I'll need to do a legal analysis as to whether there's a conflict between the two relevant parts.

Hon LEUNG Kwok-hung:

Can you give me back the copy I give it to you? Because I need it to read it to you.

Can you – 如果把鐘停了會好一些，把鐘停了好一些，我沒有時間了 – I'm sorry about that. So

主席：

梁議員，有些資料其實在.....

Hon LEUNG Kwok-hung:

So the

主席：

.....書面陳述書，梁議員，書面陳述書裏面都有給你，W13(C)附件2那裏.....

Hon LEUNG Kwok-hung:

So if you

主席：

.....附件2那裏有的。問題就是這樣，梁議員，待會我會補回少許時間給你，因為我們所有人都沒有SFO在手，那本很厚很厚的東西，以致我們其他委員跟不上，他現在即時亦不能回答你。要不你可以告訴他.....

Hon LEUNG Kwok-hung:

So I

主席：

.....他能回答就回答，不能回答就會後再回答你，是嗎？不如這樣吧。

Hon LEUNG Kwok-hung:

I think I

主席：

因為你那個是很厚的文件，我們大家都沒有，又跟不上你想問的東西。

Hon LEUNG Kwok-hung:

I

主席：

而事實上有部分，他的陳述書……

Hon LEUNG Kwok-hung:

Okay.

主席：

……亦給了我們。

Hon LEUNG Kwok-hung:

Okay.

主席：

但那是一部分，有的有，有的沒有，即我們大家跟不上，我覺得你可能或者叫他回去再回答你更好。但是他能回答的就回答吧，是嗎？好不好？

Hon LEUNG Kwok-hung:

So I'm sorry about that but – so, I think you need to answer my question whether your interpretation of SFO is wrong or right but, anyway, I don't want you to respond now because to be fair to you. So maybe you need some time to go through all the ordinance and the ……

Chairman:

I suggest, Mr WHEATLEY, that, now you've got the document from Mr LEUNG, ……

Hon LEUNG Kwok-hung:

So, I ……

Chairman:

…… you may choose to answer or respond as far as possible, if you wish.

Hon LEUNG Kwok-hung:

I ……

Chairman:

But you may also choose to respond in writing after the meeting.

Hon LEUNG Kwok-hung:

So, I would submit the question to you

Chairman:

Because we all don't have the document, the

Hon LEUNG Kwok-hung:

..... and then I hope

Chairman:

..... ordinance.

Hon LEUNG Kwok-hung:

..... you can answer it

Mr Martin WHEATLEY:

Yes,

Hon LEUNG Kwok-hung:

..... very soon because it's quite fundamental about whether you've got the responsibility or not. If you've got the power and duties and then you need to, you know, be responsible.

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

I'm not going to trap you but, so I save my time, I will ask other question, though.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Mr Chairman, it's an important point and it's important for us to be accurate.

Chairman:

Yes.

Mr Martin WHEATLEY:

So let's do the legal analysis and we'll provide a written response to it.

Chairman:

Sure. Okay.

Hon LEUNG Kwok-hung:

So I am going to ask you

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... something about the discretionary power. So, no. 1 is, does the division of responsibility between HKMA and SFC as set out in the MOU form part of the structure of regulatory structure? If not, why not?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The MOU is a practical document. I will have to, again, take advice if it's constructed pursuant to the SFO or is simply a non-binding code but it's a practical document which allows coordination and facilitation between the two organizations. But it doesn't, itself, override any other legal powers that either of us have either under the Banking Ordinance or under the SFO.

Hon LEUNG Kwok-hung:

Okay, no. 2,

主席：

梁議員。

Hon LEUNG Kwok-hung:

..... very quick. In answering my question in the last hearing, you mentioned that, regarding to regulatory structure, it should be addressed to the Administration. That means the structure set out in the MOU is a decision of the Administration and not a decision made just between SFC and HKMA, is it right?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think that the structure we have today was very much constructed in 2002, 2003, at the bills-reading stage of the SFO when banks lost their previous exempt status in dealing in licensed securities. And, at that point, the carve-out was, I think, a policy issue that the Government and this LegCo chamber would have discussed.

主席：

梁議員。

Hon LEUNG Kwok-hung:

So, (*The buzzer sounded*)

主席：

問吧，可以問。

Hon LEUNG Kwok-hung:

So, where does the Administration get such power of deciding the regulatory structure as said in the MOU, under which sections of which ordinance?

Mr Martin WHEATLEY:

Well, I

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The regulatory structure, I think, was a decision taken by LegCo at the time of the decision of the SFO and that's where, I believe – and, again, this is before my time, but I believe – it was agreed

Chairman:

2003.

Mr Martin WHEATLEY:

..... as to how – yes, in 2003 – as to how the division between the SFC and the bank

Hon LEUNG Kwok-hung:

So, do you

主席 :

梁議員。

Mr Martin WHEATLEY:

..... (inaudible)

Hon LEUNG Kwok-hung:

Do you really mean that the LegCo decide it or the LegCo doing certain legislation in order to do so?

Mr Martin WHEATLEY:

To my understanding, there was

Chairman:

Mr WHEATLEY.

Mr Martin WHEATLEY:

..... a very lengthy debate in LegCo about the extent to which banks should or should not be subject to the SFO when conducting securities business and I'm sure LegCo records will show the different arguments that were put forward.

Hon LEUNG Kwok-hung:

But my question is that,

主席 :

梁議員。

Hon LEUNG Kwok-hung:

..... which sections of which ordinance. So, you know, you need to have some kind of legal ground on your power and

Mr Martin WHEATLEY:

Yes. I

Hon LEUNG Kwok-hung:

Do you know what I mean?

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

We are talking about a very serious

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

..... matter.

Mr Martin WHEATLEY:

Yes.

Hon LEUNG Kwok-hung:

Do you know that?

Mr Martin WHEATLEY:

Yes. No, I'm well aware of that.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The SFO, section 5(3) of the SFO, is where it provides that the SFC, in performing its functions in relation to a bank as a registered institution, may rely on the supervision by the Hong Kong Monetary Authority. So that's specifically set out in the SFO. And then there are also provisions in the Banking Ordinance which explain the functions of the HKMA.

Hon LEUNG Kwok-hung:

But I

主席 :

OK, 其他等他會後回答你, 好嗎?

Hon LEUNG Kwok-hung:

Okay. So,

主席 :

已12分鐘多了。

Hon LEUNG Kwok-hung:

Well, I'm sorry

Chairman:

Okay.

Hon LEUNG Kwok-hung:

..... because you need to

主席 :

他回去可能要翻看那份文件哩。

Hon LEUNG Kwok-hung:

Okay.

主席 :

.....這麼厚.....

Hon LEUNG Kwok-hung:

You need to cite it precisely because you are holding a very important

主席 :

OK, 行。

Hon LEUNG Kwok-hung:

..... statutory power.

主席 :

會後回答我們吧。OK, 行。亦有很多紀錄, 可以翻看我們立法會的紀錄。梁美芬議員。

梁美芬議員 :

Mr WHEATLEY, 韋先生, 上次我問你們覺不覺得在監管這些雷曼相關的衍生工具的時候有疏漏, 你的答案都是重複說香港是披露為本的原則, 基本上這個原則你亦覺得應該繼續的。我在這裏想用一個個案, 就是渣打銀行其中一個客戶, 裏面第1頁的內容是這樣寫的: "本文件的內容並未經在香港的規管當局審核。" 這份文件據我的苦主說, 是他簽完所有東西、相信了銀行, 簽完所有東西之後, 後來追問銀行才寄給他的一份文件, 第1頁就是這樣記載的。

在這份厚厚的文件裏面的第10頁，亦有提到"有意購買票據的人士應細閱本條款。本條款表的內容未經香港任何監管機構審閱。"接着下去是我一直有興趣追問的一個問題，就是說究竟在你們的監管，在整個體制，我們怎樣跟別人比較呢？這裏有一個小段寫着："美國銷售限制：票據並未亦不會根據1933年美國證券法登記，亦不得在美國境內或向美籍人士或為該等人士或為其利益提請或出售。"這個又在同一份文件寫明，原來是不可以賣給美國的。

接着下面有一段："台灣銷售限制：票據不得於中華民國出售或提請，而僅可按遵照有關跨境活動適用之台灣證券法律或法規之方式向台灣境外投資者出售。"我一直看下去，其實我覺得很震驚，真的看了這些細節，你便印證了某一些具有很高風險的衍生工具，第一，是未經香港的規管當局審核，而現在卻在銀行銷售；第二，它裏面寫明不可以賣給美國，因為美國規定不可以賣給他們，因為未經批核。

我想問Mr WHEATLEY怎樣看這類產品在香港這麼大的銀行裏面銷售？很多人就這樣買了這些衍生工具，而這一份我記得是買了50萬。我想Mr WHEATLEY回覆。

主席：

是私人配售那些嗎？

梁美芬議員：

是。

Chairman:

Okay. Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay. I'm not familiar with the precise instrument that you're discussing there and I don't know if that's a document that's been submitted previously, so

Chairman:

I don't think so. I think this is to do with private placement.

梁美芬議員：

我可以之後……

Chairman:

It seems that the ……

梁美芬議員：

……交給他。

Chairman:

…… SFC is not really handling ……

Mr Martin WHEATLEY:

Okay.

Chairman:

…… private placement matters.

Mr Martin WHEATLEY:

Okay.

Chairman:

You may answer in your way but ……

Mr Martin WHEATLEY:

Yes.

Chairman:

…… we don't have that document either.

Mr Martin WHEATLEY:

Okay. There are, within our structure, again, within the Companies Ordinance, a number of safe harbours where documents don't require authentication or approval. So, I don't know in this particular instance but it may be a document that is one that has been structured under the safe harbours

of the Companies Ordinance. But, notwithstanding that, the Code of Conduct would still apply with the exception of certain provisions if it's sold to professional investors.

So, again, if this document is targeted at professional investors, certain regulatory protections would fall away. Because, if it's a private placement note, it wouldn't require our approval of the documentation, we wouldn't have established the level of disclosure that's necessary in the document although, clearly, the bank is still subject to – or the issuer is still subject to potential criminal penalties if there have been material misrepresentations or omissions in the document. But the bank, in selling the product, is still generally subject to our Code of Conduct and would still have the responsibility to ensure that the product is properly disclosed and it is suitable for the individual and if there is a derivative embedded within it that also the individual has the knowledge and the financial ability to withstand any losses that may occur.

So, certain parts of our regulatory structure still apply with those type of documents but not all of the regulatory structure would apply.

主席：

梁議員。

梁美芬議員：

我想問問Mr WHEATLEY，是否到現在這一刻，你都認為這些可能沒有給香港規管當局審核，屬於頗為普遍在香港大型銀行銷售，容許它們可以這樣銷售，相對其他國家是不容許的。這是否沒有問題？是否仍然覺得只是披露原則就足夠呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think the products were primarily targeted at what the banks would call their high net worth individual market. Again, if these products have got beyond that to people who are less sophisticated and less able to bear losses, then I think we've got serious questions about whether the private placement market ought not also to be subject to a review. So, I think there are questions

梁美芬議員：

我……

主席：

先讓他答完。

Mr Martin WHEATLEY:

…… that this raises.

梁美芬議員：

好。

主席：

梁議員。

梁美芬議員：

Mr WHEATLEY，我其實想問清楚一點的就是，第一，是否你仍然覺得可以有一些這樣帶有高風險的產品未經你們規管當局審核而可以售賣，你認為仍然是正常的？第二，如果你認為不正常，是否你們在監管上根本都不知道銀行可以用這一類銷售的所謂規程？我暫時還未問他為何之後才給，我先針對這一點，在體制上，你是否仍然覺得沒問題？別的国家不准賣，在香港到處在賣，你是覺得沒問題？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I comment on the point you made about other countries? All other countries have structures where there are products that can be placed privately which are not approved or not – where the document hasn't been authorized by the regulator. So the same has occurred in many other countries and I know all regulatory authorities are asking the same question, which is, have products become too complicated to be sold through banking channels, whether it be at the high-net worth end or the retail end. You say do I still

view them as being possible; again, the Companies Ordinance, as it's structured today, has a number of safe harbours, I think we should review it and I think it's something we need to look at.

梁美芬議員：

是，Mr WHEATLEY。

主席：

梁議員。

梁美芬議員：

我很希望你們不要再迴避這個問題，這個問題是出了問題，因為上次我問任總的時候，他開始是說他不意識到外國有規管，我追問了幾次之後，他終於承認原來是有的。我希望，證監會其實已經參考了上次我跟任總談及究竟在外國有沒有規管，我希望得到一些實質一點的答覆，以作我們將來的參考。但是，在這個問題上，剛才Mr WHEATLEY提到，其實你們是預期銀行賣給一些所謂很專業的投資者。我手頭上有幾個個案，銀行告訴他它認為他是專業投資者，是因為他在該銀行買過保險。那些保險是屬於我想是每個月要付一萬、兩萬元，加起來不知是否有90萬的那些，我看過他那份。那個買的人，香港到處都有人買保險，可能駕車的也會買保險，人人都買保險。可能在買保險的時候，當事人根本沒想過這樣就會被視為一個專業投資者。你怎樣看這個問題？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the banks – "professional investor" has quite a strict meaning under the regulatory structure in Hong Kong, so you cannot be classified as a professional investor unless you're a fund manager or a bank or an individual who passes certain tests. And the tests for an individual to be considered a private investor are that they have experience and significant experience in dealing in products, that they have a good understanding and knowledge and that they have a one million US portfolio in place. That's the test, the strict professional investor test but, as I understand, the banks were selling these

products not just to the strict definition of professional investors but to a wider range of people who they would consider to be their premium customers. I think we have to review where those threshold levels are set and it's something that we'll be working with HKMA to look at the way that banks classify their customers and, therefore, the products that they sell to customers.

主席：

梁議員。

梁美芬議員：

就專業投資者，剛才你都有提及100萬美金或以上，這是一個普遍的標準，事實上我希望證監.....證監會亦知道銀行已經大量賣給那些根本不是這樣情況的投資者(計時器響起)。這方面是否銀行，你們認為.....

Chairman:

Okay.

梁美芬議員：

.....究竟是符合現在的政策，還是政策本身有問題呢？

Chairman:

Mr WHEATLEY? Please be brief.

Mr Martin WHEATLEY:

I think we need to understand all the facts, and I'm not aware of the particular product you have, but the question is always whether it's the policy that is incorrect or whether it's the implementation that's incorrect and part of our investigation process is looking at that: is it implementation that's wrong or is it the policy that's wrong. And we'd have to investigate this particular product to really understand that.

主席：

李慧琼議員。

梁美芬議員：

不是，我是……哦。

主席：

超時了。

李慧琼議員：

主席，我還是想跟進我上一次問到的問題。剛才韋先生都應該澄清了，我想再一次澄清，就是現在你展開的調查，對銀行的調查，包括了售賣CLN、ELN、非迷債類產品的銀行。是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The investigation will cover any areas where we've had a referral that suggests there is a potential breach of our Code of Conduct and those referrals have extended beyond simply Minibonds.

主席：

李議員。

李慧琼議員：

我的理解是已經展開了，如果不是，請韋先生在下一次回答時清晰指出。我亦想跟進你交給我們的陳述書，英文版第30頁說到你們SFC的人手，我亦想你在此清楚告訴大家，現在你對這麼多間銀行展開了由上而下的調查，苦主很期望你們盡快有一個結果。在人手方面，我看到你們是有增加的，但現在你自己估計，增加的人手是否足夠應付你要對這麼多間銀行展開調查呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Okay, can I deal with the first question? You asked the question, "Has the investigation started already?" In some cases, yes; in some cases, it's been extended into other areas.

In terms of our resources, we are extremely stretched. We are not – and I don't think anybody is – used to dealing with the fallout from the failure of the world's fourth largest investment bank. So we're dealing with a huge, huge workload that we have never before had to deal with and, so, yes, we're stretched. We're working as hard as we can to focus on resolving these issues but our work, by its nature, is very confidential, very sensitive and doesn't lend itself to rapidly expanding our workforce to meet the volumes. So, we have extended, we have expanded to a degree. We will be continuing to recruit but we cannot rapidly add large amounts of resource to what is a very, very sensitive piece of work.

主席：

李議員。

李慧琼議員：

我想跟進，你剛才提到你不能夠短時間內增聘大量人手去處理這些調查，因為它是機密，不是因為資源的問題，有否任何你自己這方面的困難，導致現在的調查進展不能進一步加快？我只是想確定，因為這點是非常重要的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, we are operating as fast as we can. I don't believe we could accelerate the current progress.

主席：

李議員。

李慧琼議員：

好。資源上，即是說在現階段你認為已經去到一個你盡力去處理銀行的投訴的地方。我亦想跟進，你在交給我們的陳述書第31頁提到，是英文版，提到你們SFC做的一些調查，顯示越來越多複雜的產品滲入市場，亦有很多是透過銀行……

主席：

第幾段呀，李議員？

李慧琼議員：

第4.6段，31頁4.6段——透過銀行賣給投資者。及後在4.9段你亦提到，現在有一些挑戰要怎樣處理。我看到你在這個statement裏面寫了你做了很多工作，特別是投資者教育。但是我想你告訴我們，你有否在你們審批那些章程方面加強，令小投資者可以更掌握，即透過那些章程可以更掌握這些產品的內容呢？因為你自己都意識到這個情況非常普遍，越來越多投資產品、結構性投資產品在市場上發售。上一次你都承認很多單張都不是這麼容易理解的。

除了投資者教育方面，在實際你可以掌控的，你自己的程序，你有否因為做過這些調查而改變了工作的流程，又或者要求你的同事在審批那些單張方面作出一些改變呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In terms of the disclosure, one of the things that we did very quickly after Lehman collapsed was issue a circular reminding people that they need to be very clear and upfront with their risks and we've requested that all product issuers review their existing marketing materials to assess whether they take account of what is a changed market condition. So, since the collapse of Lehman's, we clearly have a changed market condition where counterparty credit failure is now something that's much more prevalent in people's minds than it was previously. So we have been asking all product issuers to do that, to review their documentation, their marketing material, and

we have been applying that standard since that day to products that are coming through to the market.

In terms of education, we're working with the Government to propose the establishment of a much bigger educational front. We have an education responsibility insofar as it relates to securities but we believe financial education is a much broader issue than that; it's something that we're talking to the Government about, about how we give an Investor Education Council the resources and the powers to provide much, much more education in financial terms across all products in Hong Kong. So that's something that the Government have as a policy initiative currently.

李慧琼議員：

主席。

主席：

李議員。

李慧琼議員：

剛才我解讀你的答案就是說，在雷曼兄弟清盤之後，你才發出一些指引，那就是說，在你做了這麼多調查之後，即你在你的陳述書31頁內說到，其實你理解市場的變化。你沒有就着這些市場變化而更改你自己內部的流程，令到——雖然是披露為本，但是更加嚴謹地希望在保障小投資者方面去多想一些，令到單張不致這麼誤導。你會不會覺得自己在這方面的意識不足呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Can I come back to the point you mentioned that it was only after Lehman's collapse that we issued a circular? We had issued a large number of circulars prior to that. So, in the period over 2004, 2005, 2006, 2007, where we realized that more complex products were being sold, we had issued, many, many times, investor education articles, FAQs to our Code of Conduct, results of surveys where we were constantly trying to explain the obligations

of intermediaries in selling products and the nature of those products to clients. So that's a high degree of activity that's been operating throughout that period.

In terms of vetting, we have always vetted documents to a high standard, so we haven't stepped up our level of vetting of documents because that's not an issue. What we have asked for is additional disclosures and more prominent upfront disclosures of risks rather than those risks to be, in lots of ways, less prominent than the positive features of a product. So we've asked people to rebalance that and get the product risks much more clearly upfront.

主席：

李議員。

李慧琼議員：

那即是說.....其實你剛才說的那些，我從你的陳述書裏面已經知道你發出了很多通告去談你剛才所提的投資者教育等方面，但是你剛才其實並沒有正式回答我。其實在內部指引方面，你沒有因為做過這麼多的survey而改變或者要求，更加要求你的同事在審批或者限制那些單張在發出之前做多些工夫，你們是沒有更改過你們內部的指引。

Chairman:

Mr WHEATLEY?

李慧琼議員：

因為這樣才是最重要的，其實你要理解，你都明白這麼多產品在市面上發售，投資者只是看那張單張，雖然這不是唯一一個工具，即向消費者銷售的那個人有責任去解釋，但是最根本的問題，你有否想過，當你做過這麼多survey之後，怎樣從你的角度去限制那些單張，讓那些單張不要這麼誤導呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We are currently requiring much more upfront disclosure or a much more prominent disclosure of risks and features. So that's something that we are doing as of now.

We are also in the process of developing a new code, a new product code, where we are expecting to require a (*The buzzer sounded*) key facts statement that will be more accessible and more readable in products going forward. And we're also looking again at our Code of Conduct to see whether we need to strengthen areas of the Code of Conduct. So there's a large range of initiatives, some of which are already in place, some of which we've implemented already, some of which we're working on and we'll bring forward later this year.

主席：

詹培忠議員。

詹培忠議員：

主席，香港是一個所謂世界性金融中心，這次發生這樣的事件，大部分人士將眼光都集中在所謂中介人的責任，即銀行界的責任。我想問一問Mr WHEATLEY，你會不會覺得奇怪，銀行及其職員作為一個中介人，它協助銷售一種產品而它是有發行商的，是經過證監會審核批准的。最大的責任，你認為是誰呢？中介人先呢？還是批准的那個先呢？還是發行商先呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure that we've yet got to the end of the process of understanding exactly where the problems have occurred. As I've said, we've got a large number of investigations which we are getting close to the end of but I think it would be premature to try to apportion overall responsibility as to where most responsibility would sit. And we will, no doubt – and I'm sure this committee will – take a view at the end of this process.

主席：

詹議員。

詹培忠議員：

主席，Mr WHEATLEY同意銀行作為其中一個負責者、中介人，倘若照傳媒所報道要它負責絕對的賠償，而你剛才的結論是說整件事還未有結論，未有結論為何可以將責任全部推給任何一方？你覺得是否合理呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't have any comment on the media and any stories that have been repeated. In terms of where the responsibility is being pushed, as I say, we are still in the process of concluding, so we cannot take final decisions at this stage, as to where, ultimately, the responsibility rests.

詹培忠議員：

主席。

主席：

詹議員。

詹培忠議員：

我想透過你問一問Mr WHEATLEY，就是倘若這樣的衍生工具，這樣的產品，是否在香港發行可以造成一個零和的投資？所謂零和的投資即是有一個賺就必定有一個蝕，你憑甚麼理由在發行商的一切責任未清晰之時去批准這樣的產品呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The products are approved because they comply with Schedule 3 of the Companies Ordinance which allows institutions, arrangers, to issue products structured as debentures. So they're approved because they comply with the law.

主席：

詹議員。

詹培忠議員：

Mr WHEATLEY，你會不會覺得奇怪，透由發行商由雷曼兄弟的機構發生這樣的產品，全部涉及會清盤；而其他沒發行這些產品的機構，我們發覺在香港都沒有涉及清盤。你會否覺得這裏有一個欺詐的陰謀的可能性存在呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As I mentioned earlier, there is a separate investigation into Lehman Brothers as the arranger because I think that's an important line of inquiry that we have to pursue. But you've used the word "scam". All around the world, financial institutions were creating products that provided different returns to customers from shares or normal deposits, so the phenomenon of complexity is something that every market has seen.

These products were being launched at a time after the bursting of the technology boom when many people lost significant amounts of money on technology stocks that they thought would rise in large value; they'd lost significant capital. It was a low interest rate environment and, at the time, these products were structured as a way that people believed, the structure was believed, were a relatively low-risk way to provide enhanced yield. And that's how the products were initially designed.

Clearly, what we've subsequently seen is the unprecedented failure of the world's fourth largest investment bank which nobody could have expected and nobody could have predicted and, so, the losses that have now incurred are because of a quite unprecedented event. But the products initially were not

intended to provide high degrees of risk; they were intended to provide a moderately increased return.

主席：

詹議員。

詹培忠議員：

主席，我想問Mr WHEATLEY，你會否覺得奇怪，整件事發生後，發行商置身事外，錢已被它取去了，它一聲清盤，那麼你作為一個監管機構，如何.....即譬如它涉嫌欺詐，為何有很多投資者，即苦主們向有關商業犯罪機構投訴，而它不是將有關的案件處理，又不是交給你去處理，而是再交給金管局。根本上會否違背你們一個監管的原意呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think, potentially, what has happened has gone against the original intent of the regulatory setup. We have a Code of Conduct in place which is designed to ensure that, when products are sold, they're suitable for the individuals buying them. It appears that, in a large number of cases, the products were not suitable for the individuals that were buying them and our job is to find out whether the extent to which a regulatory failure has led to that.

主席：

詹議員。或者不要糾纏同一個問題，問不同的問題。

詹培忠議員：

Mr WHEATLEY，你會否覺得很奇怪，這樣東西當它的發行商得到你們批准而在市面發行之時，它叫債券，你亦瞭解到債券的含意及它的實際意義。在這樣的情形下，為何投資者最多只能夠得到4至5個百分點的所謂利益，其他的投資可能利益則屬於發行商，而損失就是投資者的。這方面，你作為一個監管，如何保障投資者的權益呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, even bonds – and, obviously, these are not simple bonds – but even bonds carry risk and I think this point has been made before, that, if you buy bonds, debt issued by whoever, you are taking on exposure to the credit quality of that person. So, if you buy HSBC debt, you take on credit exposure to HSBC. So, in a sense, bonds don't imply no risk, they imply that you take on the credit quality of the person issuing it and, if the person issuing it fails, then you lose. And now, in this case, that's exactly what's happened: the person issuing it, the arranger, has failed and, therefore, losses have occurred.

The 4% to 5% yield that these products were paying, or sometimes more, was a yield for, effectively, writing credit insurance for Lehman Brothers and that was the way that the product was issued. It's an option premium that's being received by the individual.

主席：

詹議員。

詹培忠議員：

主席，現在證監會就銀行作為一個中介人的職責，由於將來可能銀行屬下的證券部都要屬於金管局及證監會管轄，故此，你絕對有權力追訴它。問題是你仍然會對這個發行商作出的其他未明朗的追討，你有否這個安排呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The potential for compensation for investors has to be down to the voluntary actions of the issuer – sorry, the distributor. In the case of the two brokers, who admittedly issued and sold a very, very small amount of the total, but, in the case of the two brokers, when we presented our concerns to them, they felt the best route for them was to provide compensation or a buyback

arrangement for their clients and they saw that as the quickest and simplest way of resolving the regulatory concerns that we have raised.

We're having similar discussions with a number of banks. We do not have any power to enforce compensation from the banks. It will only happen if the banks feel that one, we have a strong case that represents that they have failed in their duties and that they breached our Code of Conduct and, therefore, there's a potential offence under the SFO; and if they feel it's in their interests in maintaining their relationship with their customers to provide an equitable solution. But it has to be a voluntary action from the bank. We do not have any regulatory powers to enforce such an outcome. (*The buzzer sounded*)

主席：

接着是余若薇議員。

余若薇議員：

主席，首先想簡單確認，證監會其中一個職責就是要保障消費者。這個你在給我們的W13(C)都寫了。你同意嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

It is one of our duties, yes.

主席：

余議員。

余若薇議員：

我另外想問你，就是關於你保障消費者這方面的問題。任志剛告訴我們他先知先覺，但是我們比較金管局及證監會兩方面的專責調查，看到一個很強烈的對比，因為對銀行做的兩次專責調查是找不到問題的，每間銀行都說很好，沒甚麼問題。但證監會做的兩個專責調查，我們看到的是，即S20及S27，一個是04年做的，一個是06年做的。兩個專責調查，一個就是.....

主席：

專題審查。

余若薇議員：

專題……

主席：

專題審查。

余若薇議員：

專題，專題。是，專題審查。

主席：

Thematic examination.

余若薇議員：

Thematic examination。兩個都找到很多問題出來，那些問題正正是我們現在看到的那些問題，全部的那些。很明顯，一直以來，證監會都知道那個問題是存在的。我特別想你看看S23，S23不是那兩個專題審查，是你們有一個報告，是《監管挑戰及回應》，日期是06年3月，有英文、有中文的。特別想看"挑戰二"，這裏你說出了那個問題，亦正正是我們現在的問題。這裏提到："零售客戶接觸愈來愈多複雜及結構性的產品，以及各類金融產品的監管方式不同。"

第28段亦有提到，就說："如果投資者未能適當地了解該等產品，或沒有得到適當的意見，便會對他們構成風險。"第29段亦說到很多這些問題，即是說有法律不同的形式，又說保險產品與基金，又有這樣的特質，這樣的投資目標，又有不同的監管，即一業不知多少管這些東西。然後又說："上述問題均使不當的銷售手法有機可乘。"

第30段又說到，整個金融界內如果採取貫徹一致的金融方式會是重要的。另外31段亦說："由於人口老化及為退休收入作好打算的個人責任加重，如出現不當的銷售手法，影響會更大。"你

看到這個問題，正好全部說中了我們現在遇到的問題，特別是說到老人家遇到的問題。你看中文的都沒那麼嚴重，看英文的更厲害，即如果你從英文看，那個問題更大，因為你看看英文所說，第29段索性說這個是"fertile ground for mis-selling"，即是說簡直是"肥沃的土地導致這個誤導的銷售手法"。這個是06年3月。"溫床"，沒錯，長毛說得對。所以你看到那個問題，你是一直都知道。

另外，我亦看到你的書面陳述書，說的是第57段至第62段，這是說你們在市場調查那些投資者的認知問題。這個調查每一次在在看到那些投資者是不知道發生甚麼事的。你看第57段，那是說05年那個調查，第59段說的是06年。另外，當然，63段說的又是另外那個06年說的"挑戰"。

你看第60段，很恐怖的，那裏說你的調查發現只有11%的投資者——這些投資者投資甚麼呢？就是ELN、CLN這些東西——這些投資者只有11%曾看過或明白或曾收到這些銷售文件，這亦當然是我們現在遇到的問題。62段亦說只有少數投資者曾收到這些銷售文件，而這裏還說八成人都是經過銀行買這些東西的。

也是上一次開會的時候，聆訊的時候，黃宜弘問你，即問你這些調查，你知道你怎樣回答嗎？你說："during [these] 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."。即是說這是consistent，即一直都是這樣，那些投資者一直都是不明白的，你們是知道的。

所以，既然你知道這些產品又複雜，你又知道投資者不明白，你的答案，你在陳述書就說，你一味做投資者教育，做投資者教育。但是你自己的調查回來，那些投資者都是不明白的，即你看到這裏說只有大約一成的人明白或者收到銷售手冊，另外一個調查則說一半的人是不明白的。

韋先生，我想問你這個問題，只有兩個結論：一個結論就是你們對投資者的教育做得不足夠；另外一個結論就是，你已經做得很足夠，你全都做了，但是別人還是不明白。這便證明你這個披露為本的政策是不奏效的，即對於這些如此複雜的結構

性產品在零售層面在銀行出售，是很危險的。兩者，你選哪樣？究竟是你們的消費者教育做得不足，還是你做足你所有能做的事情，但是你一直以來，所有一直以來的調查都是說那些消費者根本是不明白的。這兩樣，你選哪樣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm sure, in practice, it will be elements of both that have contributed. We put a lot of effort into investor education. One of the consistent messages we put out to investors, whether on television, radio or through printed media, is to make sure that you understand the product and do not invest unless the product has been properly explained to you. But no matter how much investor education we put out, for it to work people have to take notice of and read and absorb the messages that we are putting out.

We have been concerned, as you rightly say, about this phenomenon for a number of years and we have been putting out not just warnings to investors but warnings to the market about what we expect of intermediaries and, in a number of cases, we've taken enforcement actions where we've disciplined or removed licences from firms that we felt were not selling properly. So, I think the truth is, it will be a combination of a number of things. We do put a lot of effort into investor education but it does require that people take note of the messages that we give and we don't necessarily reach all people with our messages, even though we use radio, TV, internet and printed media.

We have put a lot of emphasis on telling our brokers what we expect of them and we've taken actions against them where they've fallen short of that.

主席：

余議員。

余若薇議員：

韋先生，你說兩者都有一部分，即表示你承認我剛才問你那個問題，其中一個元素就是你……即證監會在投資者教育上是做得不足夠。我看了你的附件7裏面所有的投資者教育，你大部分都在那個叫Dr Wise column那裏。那個是否你們網上，是否要上

你們證監會的網頁才看到的？這個Dr Wise column在哪裏可以看到？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Sorry, firstly, it's not the case that most of our investor education work is done through the Dr Wise column. It's one of the many vehicles we use. We have TV programmes. We've run, in the last six months, three radio programmes, seven television programmes; we've given numerous speeches,

余若薇議員：

Mr WHEATLEY，不用說了。

主席：

余議員。

余若薇議員：

我已全部看過你的附錄7，但那個結論，你自己都承認嘛，你說不足夠，你自己都承認，你自己的調查都看到至少有一半人都不知道發生甚麼事，只有一成人有看銷售文件及明白或者收到銷售文件。明顯這是一個問題，你怎樣解決呢？那個答案是否應該是披露為本不適合，這個原則不應適用於如此複雜的結構性產品，在零售層面賣給一些尤其是你所說的，你自己的文件所說的老人家、退休人士？真是很"大鑊"的，他們"中了招"。

你自己在06年的文件裏是這樣說的，為何在08年還會"爆煲"呢？你可否解給向我們聽？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the product was complicated and I have said that and I think everybody understands that. Whether we move away from a disclosure-based (*The buzzer sounded*) policy is actually quite a significant decision for Hong Kong. Hong Kong wants to be an international financial centre. Generally that means people are allowed choice and products aren't withdrawn from people simply on grounds of complexity. Now I do think the products have got too complex to be sold through some of the channels that they've been sold through and that's one of the sets of changes that we're looking to go through. Whether we roll back the whole disclosure-based policy would be a very significant move for Hong Kong because that implies that you're not going to give people choice, you're not going to give them choice of products. Somebody, may be us, the regulators, somebody else, would choose, "Here's a set of products that are suitable for you but you can't have those products".

余若薇議員：

但韋先生.....

主席：

OK。

余若薇議員：

.....我的問題的核心是，其實你06年的報告，06年3月談自己面對的挑戰，已講出所有這些問題。你亦看到那個問題，因為你去做調查，你在發現問題。你去做那個專題，即thematic那個調查，看到了那些問題。你去問市民、做調查，你又看到那個問題。為甚麼你不可以早些把這個如此重要的原則性問題提出來？要到完全"爆煲"了，現在你才來說這個事情。

主席：

OK，行。Mr WHEATLEY，把這個問題答完吧。

Mr Martin WHEATLEY:

Well, something was done earlier. We published the results of our surveys and we said people do not understand always the products. We also said that the intermediaries selling the products aren't explaining them

adequately. In a number of cases, we took enforcement action against brokers where we had inspected them. We inspected 10 investment advisers following that publication; half of them we punished. That's what we found when we went in and looked at them. So, we published the reports, we acted on it, we punished people who were not operating to the Code of Conduct.

Chairman:

OK，11位排隊的同事已問過了。我想跟進一點，是剛剛余若薇議員和李慧琼議員都問過的。

Mr WHEATLEY, in your document "Structured Product Investor Survey", document S25, issued in November 2006, page 13, where your report said that two-thirds of the people interviewed or surveyed said that they found "the offering documents contained too much jargon or the product concept was too complicated", this is what you admitted also. Now, in such a case, Mr WHEATLEY, before the saga of the Minibonds, did SFC adopt any measures to urge or to ask the issuers to improve on the marketing flyers or the prospectus, improve on the expression how – whether they can make all the documents, all the marketing materials more easily understood so that they can make sure that the investors can understand what they are investing in?

Mr Martin WHEATLEY:

Yes, very much so. We were

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... conscious of the complexity of the documents and the language and we worked with the legal advisers to start to introduce simplified language in the document but, even with plain English prospectus, it's still a hundred-page document because it describes a very complicated product. So we did push the lawyers working with the issuers to simplify the terms and to make the documents more accessible but they're still a complex product, so, even though there were changes made, it doesn't change the fact that it's still a complex hundred-page document.

Chairman:

You're saying that the issuers were prepared to carry out some improvements on their documents?

Mr Martin WHEATLEY:

Yes. Yes, and if you look at the actual documentation from early '05, from about series 18 onwards, there was a significant change in the quality of the language that was used to describe the product.

主席：

OK。我想問另外一個問題，Mr WHEATLEY。小組委員會文件S32及S33所指的迷你債券及Constellation債券，請問Mr WHEATLEY，你認為這些產品章程及推廣材料應該披露產品哪類的風險呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

Well, in the prospectus, all risks must be disclosed and we've asked that all of the issuers of the products include all the features and all the risks. The marketing flyer clearly is a one-page document; it would find it more difficult to include everything that's disclosed in a hundred-page document. So, typically, the marketing flyers, in the case of Minibonds, would have a clear statement that the notes are not principal-protected, that there's no liquid trading market, that there would be redemption following a credit event, and that they're exposed to the credit risk of the reference entities and would, also, always say "Talk to one of our customer representatives." So, those are the predominant risks that would be involved in all of the marketing flyers.

In the case of the Octave notes, there are additional risks: one, investors could lose part and, possibly, all of their investment – and that was a clear note in the Octave notes marketing materials; and secondly, that the notes are not suitable for inexperienced investors – and that, again, was in the marketing materials for the Octave notes.

主席：

但Mr WHEATLEY，問題出在另外一個地方，因為這些產品的章程，投資者認購這些產品時，不會知道確實的抵押品是甚麼，他是不知道的，發行商亦在無須向投資者披露那些產品的抵押品的情況下出售有關產品，因為這些是它之後才買的。其

實，這是否構成風險披露不足，這個辦法令投資者根本不知道買了之後會發生甚麼事，因為不知道遲一步、接下來他們的抵押品是哪一個類別或者哪一隻，他們是不會知道的。是嗎？Mr WHEATLEY？

Mr Martin WHEATLEY:

The documents would give the criteria for the collateral so it would be stated very, very clearly that the proceeds would be purchased to buy collateral; they would be told the credit rating and some of the features of that collateral and they would be told immediately after purchase it would be available for inspection. So, the information about how the collateral would be selected was included and the availability of information the day after was also included.

主席：

OK。我相信這一點同事會一直跟進。我想問的另外一點就是，自從2007年底至2008年9月，美國次按危機不斷惡化，不少知名的金融機構(包括雷曼兄弟)的信貸評級亦被調低。對於在這個階段、這個期間推出市場的結構性金融產品，證監會有沒有考慮要求發行商須要在產品的章程及推廣材料裏面加強披露產品的風險，特別是相關抵押品，即剛才所說的collaterals因為信貸市場惡化而大幅貶值的風險呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

Yes, well, one of the first things that we did, when it became clear how the subprime market was deteriorating, was require all issuers to confirm back to us the extent to which mortgage-backed or asset-backed securities featured as components of their collateral or their products. And, following that, each of the issues had a clear statement that the CDO will not be linked to asset-backed or mortgage-backed securities.

主席：

但其實，Mr WHEATLEY，他們投資者根本沒可能知道，因為事實上他買的時候沒有這麼多資料，很多事情後來才發生，亦不是很肯定他是否真的得到這些資料，是否及時得到資料，有任何市場變化他不一定得到這些資料，因為他亦不會常常去check究竟他投資那個產品之後，它裏面的抵押品最終買到甚麼

產品，產品每隻怎樣變化，我相信，事實上，Mr WHEATLEY，你都會理解到，不是那麼容易前線人員會依足你們所定下來的標準、操守標準去做，令每一位投資者都知道，跟得上他所買的產品及產品之下的抵押品有甚麼變化，那些變化是大的變化，嚴重、重要的變化時能夠告訴他們。你是清楚知道這是不可能發生的，是嗎？Mr WHEATLEY？

Mr Martin WHEATLEY:

Yes, it would have been very difficult for either the frontline staff or the individuals to get the level of information about how the collateral quality was changing but what they did have was that each of the issuers was, on a regular basis, would make a price to the distributing bank and clearly that price itself would reflect the quality of the underlying collateral. So, even though it would be quite difficult to analyse the collateral credit downgrades, you would see very, very clearly from the price being offered what was happening to the underlying product.

主席：

其實我真正想問的問題，Mr WHEATLEY，就是在這麼多年以來，2003年4月開始以來，你見到很多衍生工具日趨複雜，很多產品一直變化，很多新的產品亦不是那麼容易明白，剛才你亦說是很厚的文件，一、二百頁的文件，根本連很多專業投資者也不一定明白。在這種情況下，證監會有否想過整個監管制度，在過去這麼多年都應該要看看，雖然其他國家不一定像我們的情況般，他們一定要在那個監管制度看得那麼足。是不是我們過去這麼多年都應該醒覺，現在情況變化得如此快，如此多新產品，大家能否跟得上，投資者的保障是否足夠。你們有沒有嘗試過在這些架構裏面或者在金融市場穩定委員會裏提出過、討論過這些問題？Mr WHEATLEY？

Mr Martin WHEATLEY:

The complexity of products has been a phenomenon that every market has seen; it's not just simply Hong Kong. You'll see similar issues in Australia, in the UK, in European countries. And products have become much, much more complex and they have been sold to more of the retail population.

Our reliance on the Code, on institutions who are selling the products to understand the products and make sure they're properly understood has been a linchpin of the policy that Hong Kong and most other markets have adopted. Now, the question we face today is was that policy wrong – and that's one of the questions, so should we restrict the products that people can buy on the basis of complexity, should we simply stop certain products being sold – or was the implementation of our codes and guidelines in banks and brokers, was that wrong and (*The buzzer sounded*) is it that that needs to be tightened up. We're reviewing, obviously, the second as part of our regulatory reviews, investigations currently, but we've proposed to the Government that we need to take an all-round review as to the total regulatory structure.

And I think it's a valid question but that's the policy that we've had for the last five, six years, in fact, much longer, has been one of disclosure where you don't restrict the availability of the product simply based on its complexity.

主席：

Mr WHEATLEY，你給我的印象就是，在2003年4月至雷曼“爆煲”那個時間，其實你是看着外國都沒有發生，即沒有人看過監管制度有否需要因應這麼多新的、複雜的、大家都不容易明白的衍生工具，這麼多金融產品，別人不做，你們也沒有想過一定要所謂“拉brake”，一定要看一看、停一停，是否要看清楚我們的監管制度是否夠緊密，從我們現在香港的投資者、我們香港的現況，看看我們的監管制度、操守方面是否做得足，是否有新一套操守守則拿出來，其實是沒有積極看過的。剛才你是否這樣回答我呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

No, I think we do have to question, I think we do have to challenge, whether the regulatory regime that we have is the correct one. But, please, let's not forget that, in Germany, we've seen the failure of numerous Landesbanks, we've seen Northern Rock in the UK, we've seen the Icelandic banking system collapse, we've seen, in the US, Bear Stearns, Lehmans, AIG and numerous other institutions need taxpayer bailout. We haven't had those issues in Hong Kong. Now, we have this issue that we're dealing with and the subject of this Subcommittee but most other areas, Hong Kong's financial structure has stood up very well to this crisis. And I don't think we should forget that in looking at the extent to which we need to overhaul the structure.

主席：

今天，時間已接近1時。新一輪排隊的有陳茂波議員、石禮謙議員、劉秀成議員。再看下去還有第二輪，我把大家的名單讀出來：涂謹申議員、葉劉淑儀議員、湯家驊議員、劉慧卿議員、甘乃威議員、梁美芬議員、梁國雄議員、余若薇議員。

因為現在剩下5分鐘時間，我建議今天的公開研訊到此為止。

劉慧卿議員：

主席。

主席：

是，劉慧卿議員。

劉慧卿議員：

(聲音模糊).....為甚麼不讓他問？他是唯一一個在這裏，其他兩個都不在，他都沒問過。

主席：

我沒看，我沒所謂在不在。因為我任何時候都假設每一位都在，所以我剛才沒看有誰不在。

劉慧卿議員：

你真行，你假設我們二十多個都在。

主席：

因為我很相信我們的同事.....

劉慧卿議員：

你的眼睛是否有問題？

主席：

.....任何時間開會都應該在這裏。多謝劉慧卿議員提醒我，原來有兩位在排隊的不在這裏。OK，好吧，順應民意，陳茂波議員，你問吧，完了我們可以休息。

陳茂波議員：

多謝主席，多謝同事們給機會讓我發問。

我想問Mr WHEATLEY，其實你多次提到證監會在這次調查與雷曼相關的產品上都是採取從上而下的做法，一個top-down approach。你可否很簡單說一下為何你用這個方法，而不是逐個case去看？

Chairman:

Mr WHEATLEY?

陳茂波議員：

很簡單就可以了。

Mr Martin WHEATLEY:

Okay. The problem with looking at individual cases is that, with relatively few exceptions, there aren't adequate records to assess the validity of the claim and counterclaim. So, one person will say, "I was misrepresented, I was sold this, I wasn't told this" and another would say, "You signed a document saying that you understood everything." And that is very often the case in mis-selling claims.

The only way, effectively, to investigate is to look at the overall procedures and policies that exist within a bank,

陳茂波議員：

OK。

Mr Martin WHEATLEY:

..... look at whether there was adequate training material, whether there are due diligence records, a wide range of things which would tell us whether we believe a bank could have properly represented the product.

主席：

陳議員。

陳茂波議員：

Mr WHEATLEY，請問你，在你們調查那兩間證券行的時候，你是否也是採取這個top-down approach？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, we're adopting the same approach with the banks as we adopted with the two brokers, yes.

陳茂波議員：

OK。

主席：

陳議員。

陳茂波議員：

如果我沒聽錯，之前你回答我們同事時說過，在top-down approach裏面，你主要是從制度方面去看，從制度的運作、監管及程序去針對3方面，一個是產品的盡職調查，product due diligence；第二個是銷售過程，selling process；第三個是know your client及 suitability test，即銀行有否因應客戶個別的情況向他銷售這些產品。我剛才所簡述的情況，是否就是你們用top-down approach想找出的東西？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think what you've described is exactly the range of things that we look at. In order to form a judgement on these things, we clearly have a

document-based component and an interview-based component. On the document-based component, we're examining internal process manuals, records of due diligence meetings, minutes of those meetings where products were discussed; we're looking at the marketing materials that were developed – or, rather, the training materials that were developed internally. So, a lot of it is about looking at materials and looking at what records are kept, but also a lot is based on interviews where we ask people to explain to us

陳茂波議員：

OK。

Mr Martin WHEATLEY:

..... what the products are.

陳茂波議員：

OK。

主席：

陳議員。

陳茂波議員：

換句話說，上次你提到有7間銀行你發了通知給它們，有可能會有紀律程序；另外7間，你們即將完成調查，都會給它們發出類似的紀律通知。可否這樣說，在你給它發出紀律通知的銀行來說，它也是在這方面，即從你的top-down approach看，它是出了問題的。換句話說，它賣那些產品給投資者時，它是在剛才那個不同的地方都出了問題，以致這些產品可能不應售賣給這些人？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, as the honourable gentleman will be aware, we cannot prejudge that. So we have concerns and we've raised those concerns; we've presented

those concerns to the institutions but we cannot prejudge an outcome. So we're in the process of determining whether there has been a failing.

主席：

陳議員。

陳茂波議員：

在那兩間證券行來說，你同樣是用top-down approach，同樣發現它有問題，結果那兩間證券行是百分之百賠償給它的客戶，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In the vast majority of cases, yes.

陳茂波議員：

同樣地.....

主席：

陳議員。

陳茂波議員：

.....針對這些銀行，你們用同樣的方法查出來，發現它有問題。在你的程序上或者在你現在所做的工作中，你的目標是否都是要銀行百分之百賠償給客戶？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't think we can assume that exactly the same problems will occur in every case, so there are going to be different findings with different institutions. The extent to which the banks will feel the need to buy back or

compensate is their commercial decision. We cannot direct them or force them or in any other way use a regulatory power. That has to be a decision that they reach and they would reach a decision as to exactly if and, if so, how they would want to reach some sort of settlement with their clients.

主席：

陳議員。

陳茂波議員：

在目前的法例裏面，你無權要求它們與客戶達成協議，亦無權罰款，對嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman, we have the power to fine but that itself doesn't necessarily benefit individuals. But we don't have the power to require compensation or buy-back. That has to be a commercial decision.

主席：

陳議員。

陳茂波議員：

在我們檢討這個機制時，這個是否我們展望未來要針對性改善的地方呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We've suggested to the Government, as part of our initial report, that powers to force compensation may be an additional power that they might like to consider, so it is something we've suggested needs to be on the agenda.

主席：

陳議員。

陳茂波議員：

你知道，譬如在美國這些地方，它的個案之所以可以——當然不是相同個案，但出現違規銷售的問題、出現投資者被誤導的問題時，為何它這麼快解決呢，都是因為執法機構有這個權力。你是否認同？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think, in the case of auction-rate securities, which may be what you're referring to, the major banks moved very, very quickly to buy back the securities at 100% and I do think it is because there are some additional regulatory tools available to both the SEC and the New York attorney.

主席：

陳議員。

陳茂波議員：

主席，根據證監會提供的資料，2004年它們做過一個關於證券行內負責銷售產品的人士的調查，發覺那些人沒有遵守證監會要求的行為守則，於是發了通告，亦知會了金管局。在2006年，它們同樣再做一次，再做一次亦有發覺這些證券行內售賣這些產品的人士對行為守則——Code of Conduct——都是沒有遵守的，或者說都出現違規的情況。於是它們又知會了金管局。金管局似乎直到2008年才就銷售行為實行專題審查。

我想問Mr WHEATLEY，你覺得金管局在這方面得到你們多次提示，仍然這麼遲緩才做主題審查，在整件事情上是否應該負上最大責任？

Chairman:

Mr WHEATLEY?

(公眾席上有人喧嘩)

請安靜，請各位安靜。

(公眾席上的人士繼續喧嘩)

請各位安靜，請各位公眾人士安靜，一定要保持肅靜，我說過很多次了。

Mr WHEATLEY?

Mr Martin WHEATLEY:

We pursued our investigations, our themed inspections and actions following on from that; we took action against a number of the investment advisers that we surveyed and we published the results and the issues that we found. So, they were the actions we took. I don't think I can comment – it's not for me to comment on how the HKMA would have responded or would have taken forward its own actions.

主席：

陳議員。

陳茂波議員：

主席。Mr WHEATLEY，我想請問你，你們做一個個案的 top-down approach 的審查，通常要用上多少時間？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Normally, much longer than we have currently taken. They're invariably complex discussions. We have set ourselves targets in terms of how long it takes us to complete. In many other jurisdictions you can find that these sort of investigations will take, if not months, years. I think we've moved our investigations to this stage very quickly, given the volume of work

that we've had to deal with. So, we're moving them forward as quickly as we can and we hope that we can get a resolution as quickly as we can.

主席：

陳議員。

陳茂波議員：

主席。Mr WHEATLEY，當然，我知道你們是盡全力、盡快去做的。我的問題就是在你們的經驗裏，做一個這類機構的 top-down approach (計時器響起)的調查需要多少時間？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The investigation itself is a relatively easily defined part. The complex part is the subsequent discussion with a bank as to the extent to which any failings that we present are accepted by the bank and then the extent to which a bank is prepared to respond to that. Now, we have a timetable which is the disciplinary timetable which, effectively, is the backstop. If discussions aren't fruitful, then we simply go through the disciplinary timetable which has very strict deadlines in place in terms of response to us and then the time to appeal.

陳茂波議員：

主席，簡短跟進。Mr WHEATLEY.....

主席：

要很簡短才好。

陳茂波議員：

..... 你會否覺得奇怪，你們證監會去做銀行的 top-down approach，這麼快就找到這麼多問題。但金管局08年做了4個實地審查，直到雷曼"爆煲"之前，好像一點問題都找不到。你是否覺得奇怪？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think one of the things that I find surprising is that, before the collapse of Lehmans, there were very, very few complaints about mis-selling, so we had carried out our inspections, we had an ongoing concern that we've spoken about and that we'd surveyed

陳茂波議員 :

Mr WHEATLEY, 對不起, 打斷你。我不是問你那部分, 我是說, 對比你們做這些機構的top-down approach的調查的速度, 與金管局做主題審查的速度及發現, 差距如此大, 你是否覺得奇怪?

主席 :

OK。Mr WHEATLEY, 你答完這一part就結束。

Mr Martin WHEATLEY:

I'm not sure how I can compare the two because I know how our investigation processes work. I don't know the scale or the size of the themed inspections that the MA carried out at that stage.

陳茂波議員 :

作為.....

主席 :

我想時間到了, 下次再排隊。

陳茂波議員 :

讓人家問完這個吧.....

Chairman:

Okay. Mr WHEATLEY, thank you for coming to today's open hearing. The time is up and the Subcommittee has arranged for you to return to this

Chamber on 3 July at 10 o'clock. And, please attend punctually at that time, okay, and continue to give us your evidence. Thank you very much.

各位同事，我想問一問大家，待會兒的內部商議有沒有哪位想提出問題，有議程要提出？不要說議程的內容，只說有沒有。如果有，請舉手。

劉慧卿議員：

即是沒有就不用開了，是嗎？

主席：

我不是……你讓我說吧，好嗎？(笑聲)

有沒有？今早的討論都相當詳細，所以我現在是問，如果有便請舉手，但不要說內容。有沒有？

劉慧卿議員：

沒有，沒有。

主席：

沒有。那麼，我現在宣布今天的議程結束。我們下一次在3日繼續。謝謝。

(研訊於下午1時08分結束)