

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

第三十次研訊的逐字紀錄本

日期： 2010年2月9日(星期二)

時間： 上午9時30分

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 Thirtieth Hearing
held on Tuesday, 9 February 2010, at 9:30 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)

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

Hon James TO Kun-sun

Hon Emily LAU Wai-hing, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Audrey EU Yuet-mee, SC, JP

Hon Jeffrey LAM Kin-fung, SBS, JP

Hon WONG Ting-kwong, BBS, JP

Hon Ronny TONG Ka-wah, SC

Hon CHIM Pui-chung

Prof Hon Patrick LAU Sau-shing, SBS, JP

Hon KAM Nai-wai, MH

Hon Starry LEE Wai-king

Hon Paul CHAN Mo-po, MH, JP

Hon CHAN Kin-por, JP

Dr Hon Priscilla LEUNG Mei-fun

Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent

Hon CHAN Kam-lam, SBS, JP

Dr Hon LEUNG Ka-lau

Hon IP Wai-ming, MH

Witness

Public hearing

Mr Martin WHEATLEY, JP

Chief Executive Officer of the Securities and Futures Commission

擬稿

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主席：

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"的第三十次研訊。我們歡迎證券及期貨事務監察委員會行政總裁韋奕禮先生再次出席小組委員會的研訊。

我請各位委員留意，整個研訊過程必須有足夠的法定人數，連主席在內共6位委員。此外，《立法會(權力及特權)條例》所賦予的特權，只適用於研訊的過程。小組委員會《工作方式及程序》第13(g)段訂明，所有議員，包括非小組委員會委員的議員，都應避免在研訊過程以外的場合發表與研訊有關的意見。《工作方式及程序》第23段亦訂明，委員不應披露任何有關小組委員會閉門會議上的內部討論或曾考慮的文件的資料。

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

請各委員留意，小組委員會的研訊程序須符合《工作方式及程序》第2段的原則，包括有關程序必須公平，而且須令人看得到是公平的，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，我會決定某條問題或某項證據是否與小組委員會的職權範圍有關，以及是否屬於研訊範圍。我亦有酌情權，決定應否容許委員提出某項問題。

小組委員會在2009年6月9日會議上同意，委員應考慮本身與證監會的關係及是否有參與其決策或工作，自行決定是否作出利益申報及是否出席與證監會證人有關的研訊。就此，陳鑑林議員已申報其為證監會現任非執行董事。他表示為避免角色衝突，不會出席與證監會證人有關的研訊。此外，梁美芬議員亦曾申報，她是證監會程序覆檢委員會委員。

擬稿

我現在宣布今天的研訊開始。

今天研訊的取證範圍，主要是有關今年1月26日及29日高秉忠先生出席本委員會公開研訊所作證供的內容、現行審批金融產品銷售文件的制度，以及"一業兩管"政策的事宜。請各位委員注意，提問應與本委員會的研訊範圍有關，否則我會裁定證人無須作答。請留意剛才我提的3點。

我請委員特別留意，根據小組委員會2月5日會議的決定，小組委員會在今天的研訊中不會使用高秉忠先生陳述書(即W23(C)號文件)的附件及其中所載的資料。小組委員會較早前亦已決定將該等附件列作機密文件處理。

韋先生，小組委員會已同意由證監會秘書長鞏姬蒂女士及證監會首席律師楊以正先生陪同你出席研訊。請注意，鞏女士及楊先生不可向小組委員會發言。證人不得與陪同人士討論，亦不得接收該等人士的任何提示(無論是口頭或書面的)。

韋先生之前出席研訊時已宣誓，所以今天你會繼續在宣誓下作供。

Mr WHEATLEY, on 21 January 2010, you provided a copy of the written submissions of SFC on certain legal issues that have arisen in recent hearings before the Subcommittee. This document has been numbered as S6(C). Mr WHEATLEY, are you going to formally produce this document to the Subcommittee as evidence?

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

Yes, Chairman.

Chairman:

Thank you. Mr WHEATLEY, SFC issued a press release on 13 January 2010 on its agreement with Karl Thomson Investment Consultants Limited concerning sale of Lehman Brothers Minibonds. This document has been numbered as S53. Mr WHEATLEY, are you going to formally produce this document to the Subcommittee as evidence?

Mr Martin WHEATLEY:

Yes, Chairman.

擬稿

Chairman:

Thank you. Mr WHEATLEY, you provided two written responses on the issues arising from the hearing held on 8 January 2010. The two documents have been numbered as S54 and S55. Mr WHEATLEY, are you going to formally produce these documents to the Subcommittee as evidence?

Mr Martin WHEATLEY:

Yes, Chairman.

Chairman:

Thank you. Mr WHEATLEY, in the written responses numbered S55, which you have just produced to the Subcommittee, there is an Appendix A which contains a copy of your letter dated 14 February 2006 to the then Financial Secretary and a paper on regulation of Registered Institutions and Relevant Individuals. This document has been separately numbered as S7(C). Mr WHEATLEY, are you going to formally produce this document to the Subcommittee as evidence?

Mr Martin WHEATLEY:

Yes, Chairman.

Chairman:

Thank you. 就我剛才提及的S7(C)的文件，證人曾經要求小組委員會以《工作方式及程序》第19段的保密方式去處理。小組委員會經過審慎考慮之後，並不接納證人的要求。委員可在公開研訊中使用該份文件。

韋先生，就今天的研訊範圍，你是否想向小組委員會發言呢？

Mr Martin WHEATLEY:

Yes, Chairman, if I could make a short introductory statement.

Chairman:

Yes, okay.

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Mr Martin WHEATLEY:

As the Chief Executive Officer of the Securities and Futures Commission, I am very proud of the dedication and diligence of the SFC staff, no more so than in the last 12 to 18 months, which have been testing times for many in the Hong Kong community, including us as a market regulator.

The record of the SFC is a very strong one. The efforts and hard work of its staff is an important element in assisting the Commission to pursue its regulatory objectives.

The SFC has performed, and will continue to perform, an invaluable service to the Hong Kong community and it would be disappointing to see this tainted by personal opinions or speculation.

Whilst we will continue to co-operate to the fullest with the work of the Subcommittee, I hope honourable members will take into account the facts and evidence in reaching its conclusion and not rely on opinions or speculation, no matter how well intentioned they may be.

I am happy to continue assisting the Subcommittee in its inquiry to the best of my knowledge. Thank you.

Chairman:

Thank you, Mr WHEATLEY.

由於韋先生是以英語作答，請委員稍後提問時避免一次過提出多條或太長的問題，以方便傳譯工作，並且讓證人可以盡快直接回答你們的問題。

我想提醒大家，各位委員將會有10分鐘時間向證人提問和讓證人回答。委員應指明該份文件的編號，以方便證人及其他委員參考該份文件。

此外，為善用研訊時間，請委員的提問盡量精簡及具體，而證人亦須明確及切實回應問題。委員無須再三向證人追問同一問題。另一方面，證人亦不需要重複已講過的說話或大家已知悉的背景資料。無論證人或委員，須在主席示意後才可發言。

為使輪候提問的次序得到公平處理，秘書稍後記錄委員舉手發問的次序時，今次會由我的左邊數起，逐一記錄委員的姓名。現在，想提問的委員，請舉手示意。

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韋先生，現在我首先問第一條問題。在現行的《公司條例》招股章程制度下，證監會企業融資部負責認可雷曼相關迷你債券及結構性金融產品的銷售文件。請問韋先生，除確保產品資料有足夠披露之外，企業融資部會否亦審查產品的結構，例如產品中掉期安排的擔保人是否具備適當資格等？如果不是，原因是甚麼？Mr WHEATLEY？

Mr Martin WHEATLEY:

Chairman, thank you very much. The process for approving a prospectus is two-fold. One is to ensure that Schedule 3 of the Companies Ordinance, the requirements on information, are met; and, secondly, to ensure that the issuer meets the standards set down in the Listing Rules under Chapter 15A which place some restrictions on the type of issuers that would be able to issue structured products.

主席：

Mr WHEATLEY，其實我是問會否在有需要時附加一些條件，would you impose additional conditions？即是說，根據《公司條例》，證監會就迷你債券及其他雷曼相關結構性產品的銷售文件發出認可時，可不可以向發行商附加一些條件，即impose conditions 給他們？如果沒有，原因是甚麼？如果有，證監會所附加的是甚麼條件呢？

Mr Martin WHEATLEY:

Well, the primary condition, as explained, is set out in Chapter 15A of the Listing Rules and that is that the issuer has adequate capital and is of an investment grade rating.

主席：

是否就是說，你通常不會附加任何條件在他的申請方面呢？Mr WHEATLEY？

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Mr Martin WHEATLEY:

Beyond the Companies Ordinance and the Chapter 15A^[Note] of the Listing Rules, it would be unusual for other conditions to apply.

主席：

"Unusual"即不是常規性，有沒有甚麼情況下你會附加條件呢？

Mr Martin WHEATLEY:

I'm not sure I understand the question. The normal practice would not be that conditions were imposed.

Chairman:

There are no exceptional situations?

Mr Martin WHEATLEY:

Not that I'm aware of.

主席：

無論根據《公司條例》第342A(2)條或《證券及期貨條例》第105條，證監會是否擁有同樣權力，對產品銷售文件發出認可時，可以附加一些條件？如果是的話，所附加的條件會否一樣呢？

Mr Martin WHEATLEY:

I'm afraid, Chairman, I'll have to get back to you. I can't answer that. I don't know the answer to that. I'll have to provide you an answer.

主席：

其實我這個問題還沒問完，問完之後我都不想請韋先生會後以書面再清清楚楚回應我們關於那個內容，或者準確一些回應內

^[Note] The witness clarified after the hearing that it should be "15A" instead of "15" as mentioned at the hearing.

擬稿

容。其實有部分剛才你已說了不能即時回應，這個不要緊，會後再全部回應一次，好嗎？即現在我問的這個問題，好嗎？

Mr Martin WHEATLEY:

Um hum.

主席：

謝謝。我繼續問同一個問題的另一部分。證監會內部分別負責執行《公司條例》及《證券及期貨條例》的部門(例如企業融資部及投資產品科)對《公司條例》有關條文的應用是否有不同意見呢？如果有，證監會如何處理？韋先生。

Mr Martin WHEATLEY:

Again, I'm not quite sure I understand the question. The corporate finance team has had the responsibility for applying the Companies Ordinance. Obviously, there have been different views at different times in the evolution of the products that are launched under the Companies Ordinance and, as in any organization, those views get resolved through discussion within the organization and at the board.

主席：

但以你在各個部門的位置來說，或架構的位置來說，對於兩個部門用不同的條例去處理類似的工作，如果它們有不同的意見，韋奕禮先生，你是否都會知道？

Mr Martin WHEATLEY:

Yes, I would know about that because anything where there were differences of views which affected our regulatory objectives would be discussed at the most senior level within the organization. When you talk of the different divisions making different use of ordinances, they're effectively bound by, clearly, the ordinance itself and the type of product that is brought to them. So, there's no decision that's made when a product comes to the organization as to which ordinance it's dealt with under. That depends on the product and that is determined by the structure that the issuer or the organizer of the product decides.

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主席：

其實在過去那段日子，我剛才提到的企業融資部及投資產品科，有沒有高級職員向你或你的機構提出一些對這兩條條例的看法，要求找時間跟你討論。有沒有試過這種情況？

Mr Martin WHEATLEY:

Not since I have been in my position as CEO.

主席：

從未有過，是嗎？Mr WHEATLEY？

Mr Martin WHEATLEY:

Well, again, if I understand, so that I can be clear in answering the question – in fact, I'm not sure what the question is. Are you simply questioning whether there were differences of view? And the answer is, yes, invariably, there are. Most of those differences of view were discussed some time before my arrival as CEO when it became clear that different sorts of products were being developed in the market.

主席：

韋先生，其實我是問，當你已擔任了行政總裁之後，有沒有剛才我提到的兩個部門的高層人士向你提出過一些意見，尤其是關於剛才我提到，對於該兩條條例，雖然所做的工作或許類似，但在使用上有些不同的看法，想向你提出和想跟你討論，有沒有試過這樣的情況呢？Mr WHEATLEY？

Mr Martin WHEATLEY:

I think, again, I'd need to check my records. I mean, obviously, lots of things get discussed. I don't think we had particularly a debate about whether the Companies Ordinance and the SFO had significant differences. It's an issue that had been under discussion, I think, since around 2001, and so, yes, I was aware of it; much of the discussion predated me, some of the discussion was since I've been in position and some of it relates to the reforms of the Companies Ordinance.

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Chairman:

Mr WHEATLEY, I was particularly referring to the differences or different approaches in the implementation of these two ordinances, i.e. Companies Ordinance and SFO, any senior member of these two organizations or departments ever came to you for discussion or requesting for discussions to thrash out whether or not there are different approaches to the implementation of these two ordinances which he or they thought would be of significance to the actual operation of the organization. Did it happen at all, Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think the answer has to be "Yes". And I think, probably, I'd have to provide you the specifics as to how and when that debate occurred.

Chairman:

Could you give a written response to the whole question which I've just raised with you,

Mr Martin WHEATLEY:

Okay, yes, Chairman.

Chairman:

..... afterwards?

Mr Martin WHEATLEY:

Yes.

Chairman:

Okay, thank you. 我繼續問一問，根據文件S7(C)有關韋奕禮先生於2006年2月14日致當時的財政司司長的信件，當中提到由銀行及證券行所進行的證券業務，我引述韋先生的說法是這樣的，quote, "while this business", referring to securities – I will start again. I will start the quotation: "while this business is all subject to the same provisions of the SFO, some brokers have complained that the two regulators implement the rules differently." Close quotation. 請問韋先生，根據證券行的投訴，兩間監管機構執行有關條例的差異是甚麼呢？Mr WHEATLEY？

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Mr Martin WHEATLEY:

I think the primary concern was that the brokers felt that the banks were subject to a different type of regulation to the brokers and had complained that there wasn't an adequate level playing field. (*The buzzer sounded*)

主席：

OK。證監會認為證券行的看法是否有事實根據呢？如果有，詳情是甚麼？包括出現差異的原因及監管機構的跟進行動。Mr WHEATLEY？

Mr Martin WHEATLEY:

Well, in terms of follow-up, you'll be aware that I wrote this letter to the then Financial Secretary to suggest what might be alternative approaches. As for the basis of the complaint, it's very difficult to form a view as to its validity from our perspective as we don't have the oversight over the regulation of banking staff. So, the complaint was addressed to the Administration to consider.

主席：

我的其他問題稍後再問，因為有幾位同事排了隊。我現在讀出他們的名字，第一輪的提問有林健鋒議員、涂謹申議員、余若薇議員、劉慧卿議員及陳健波議員5位。首先請林健鋒議員。

林健鋒議員：

多謝主席。首先我想問一問韋先生，我們理解到證監會裏面有不同的小組去處理不同的投資產品申請，在處理或審查這些產品的申請時，你怎樣決定哪些產品去哪個小組？這是第一個問題。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Two parts to that question. Firstly, in terms of the committees, the committees are generally there to provide us guidance on policy and to provide general market intelligence but are not involved in the operational decisions. So, when there is a new product or a change to a code, we would

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consult the committee and seek the committee's view. They typically wouldn't be involved in an operational question.

In terms of how products are assigned, they're not assigned as such. That's a decision that's made by the product issuer when they determine the form of the product. So, effectively, it's the issuer that determines which part of the organization deals with the application because the issuer structures the product either as a debenture or a collective investment scheme.

主席：

林議員。

林健鋒議員：

主席，過去曾否有小組的委員或主管向上頭表示這個產品有可能在另外一個委員會做審批比較適合？如果有這樣的情況，韋先生或你手下的主管會怎樣去處理這些問題呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I understand that such a discussion was held. It was some time before my appointment at the SFC, so I can't provide specific reflections on how that process was resolved. Certainly, under my leadership, any divisional differences are discussed and thrashed out within our Executive Committee but I can't comment on how previous incumbents would have tackled that issue.

林健鋒議員：

主席。

主席：

林議員。

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林健鋒議員：

當一個小組處理了一些產品的審批之後，那份報告會不會交給另外那個小組去研究或討論或提供意見？或者我首先請韋先生先回答這個問題。

Chairman:

Okay. Mr WHEATLEY?

Mr Martin WHEATLEY:

Not in the normal course of events. It would be processed and handled within whichever division has the prime responsibility. If products come forward which have novel or innovative or different features, then it might be discussed more generally but, in the normal course of events, the responsibility sits within the division that approves that particular type of product.

主席：

林議員。

林健鋒議員：

如果小組完成整份報告之後，他們會不會將這份完整報告交給其他小組去研究，然後再作出一個整體的討論呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

As I've explained, not in the normal course of events. It would simply be the division, the department within the division that has responsibility for that product.

主席：

林議員。

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林健鋒議員：

除了小組的成員知道整個過程的資料之外，證監會裏面其他知道整個過程的資料的會有哪些人？會不會包括其他小組或其他員工？他們知道的又會有多少呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, it would not normally include other teams or other divisions. If the product is simply something that we processed before and the team feel comfortable that they understand the features, if the market or practitioners want to do something that is very different, then that may be discussed more widely. But, in the normal course of events, it is simply down to the team with responsibility for the product and, usually, a director within that team.

主席：

林議員。

林健鋒議員：

主席，韋先生可否告訴我們，好像雷曼債券這一類產品，有否一些情況是小組提出了一些意見之後，有其他小組的成員向韋先生或你的主管提出一些個人的意見？如果有，是用甚麼方式提出，是以正式的書面意見提出，抑或以口頭的方式提出？而你們又怎樣處理這些意見呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

You've asked the question in relation to Lehman Brothers Minibonds. There was a debate about structured products and the extent to which the Companies Ordinance was the most appropriate regulatory route for those products at the time when those products were starting to be introduced to Hong Kong. I believe that that was a lively debate that involved the Chairman of the Commission at that time, but I can't provide – I can check the

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records but I've got no personal recollection of that because I wasn't here at the time .

主席：

林議員。

林健鋒議員：

主席，我想跟進的是，如果有一些意見提出來，而亦是經過討論的，那個意見是不是一個很強的意見，就是對這些產品在結構上或在推銷手法上或其他方面有意見，證監會不應批准，或者證監會應該用其他方法要求發行商改變它在結構上或銷售上的手法呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, if I can deal with the last part first, the selling practices should be no different. So, regardless of whether the product is structured as a debenture or a collective investment scheme or an investment-linked note or a credit-linked note, our Code of Conduct on selling practices is exactly the same. And that Code of Conduct is that the distributor of the product has to understand the product, has to have done due diligence on the product and has to make sure it's suitable for the client. So, that part doesn't change at all.

Clearly, there were two ordinances under which similar types of products were structured and brought forward. I believe that debate was held within the Commission between 2001 and 2003. I know that there was a lively debate at the time which I think was resolved via discussion with the Chairman. But, again, all I can say is that that whole discussion, I can't offer personal reflections on it.

主席：

林議員。

林健鋒議員：

在這個委員會，即審核的委員會裏面，有沒有人向你們表示這些產品是不適合在香港銷售的？我第二個問題就是，在這個

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委員會以外，有沒有人向你表示這些產品是不應該或不適合在香港銷售的？

Chairman:

Mr WHEATLEY?

林健鋒議員：

如果有，他的原因是甚麼？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Certainly, since I've been in Hong Kong, I'm not aware of a particular debate about whether they were suitable to be sold. There's clearly a question about whether they were sold suitably but that's a quite different question. Regarding the question of whether they were suitable to be sold in Hong Kong, structured products, over the last eight years, have become a worldwide phenomenon and are sold in slightly different but broadly similar form in most major jurisdictions around the world. So the question of whether they were suitable to be sold wasn't the question; the question that we faced and that we have had serious reservations about is whether they were sold suitably.

主席：

林議員。

林健鋒議員：

主席，如果委員會提供一些意見，亦推薦這些產品在市場銷售，在證監會裏面如果有人提出不同的意見，希望高層去重新審核有關產品，那你們會用一個甚麼上訴機制來處理這些產品，或者意見或投訴呢？

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

Well, in that situation, that would be discussed at an interdivisional level, at our Executive Committee, as appropriate. But, as I say, the discussion about which ordinance such products should be issued took place well before my time with the Commission.

主席：

林議員。

林健鋒議員：

換句話說……或者我再跟進剛才的問題。在你任內並沒有收過有關這些上訴的要求，這些要求是有關迷你債券產品的意見，即是希望他們收回或者停售的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, clearly, there have been lots and lots of discussion and lots of views since the collapse of Lehmans but, prior to the collapse of Lehmans, I think we had only had one complaint of possible mis-selling and it wasn't a debate that was had prior to Lehman's collapse as far as I'm aware. (*The buzzer sounded*)

林健鋒議員：

主席。

主席：

是。

林健鋒議員：

我剛才不是說 mis-selling 的問題，而是在證監會裏面有沒有人認為這些產品是不適合，向你提出一個上訴，希望你將有關的決定收回，或者改變有關的決定？

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Chairman:

Mr WHEATLEY, are you clear on the question?

Mr Martin WHEATLEY:

I am not aware of any such request.

主席：

接着是涂謹申議員。

涂謹申議員：

主席，我想問一問韋先生，你有沒有看過高秉忠先生的供詞？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman.

主席：

涂議員。

涂謹申議員：

你今天.....或者我這樣說，高先生基本上 —— 從我的角度 —— 是有兩點所謂質疑，第一就是兩個部門的審批，剛才主席都問了一部分的問題，就是採取不同的標準，但及至某一個時間，可能是05、06年左右，則開始有一個叫做harmonization，即統一化，但搞到現在都沒搞成，後來證諸於最近你們發出的諮詢文件，似乎都開始循這個方向走了，這是第一。第二個大項就是說，當時的證監會主席沈聯濤先生直接找很低層、中層、低層，去拿一些所謂"快贏"，即quick wins，因而導致可能有很多那些審批或其他東西的制度出現一些變化。這裏有兩個大點。

我覺得很奇怪的是，韋先生，你有個開場白，你的開場白也都似乎講到說，證監會是做得很好、很行的，但如果有人有一

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些揣測或個人意見而令證監會的表現蒙上陰影，那就令人失望了。我似乎覺得你這個開場白是針對剛才提到的高先生的供詞，為甚麼呢？因為我們找你來就是回應高先生的供詞，剛才主席讀過出來了，這是我們的目的。但你卻不決定用一個書面的供詞，詳細將你認為高先生供詞裏面有甚麼事實不妥當，有甚麼是揣測，在你的文件裏面全部抖出來，然後說這裏錯、那裏錯，這裏是揣測，那裏錯，這裏是個人意見，完全是不對的，全部是錯的，可你又不選擇這樣做。你為何不選擇這樣做呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, we've been provided with a number of detailed questions which I think arise from Mr KO's statement, which we are preparing answers for and we've explained that we were unable to, within the time available, present those today. We've also asked for the underlying documents that support Mr KO's statement so that we can understand the points made better. And the committee has, so far, declined to provide us that underlying information.

主席：

涂議員。

涂謹申議員：

要多給你多少時間才可以做到那個書面回應呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I hope we will have a reply to the questions by the end of this week.

主席：

涂議員。

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涂謹申議員：

唉呀！那就真失望了，我們豈不是太早傳你來，沒辦法了，可能要多來幾次了，OK。但不要緊，在這個時間，因為韋先生在此，我也盡管問，希望他可以 —— 或者憑空吧 —— 基本上可以回答到。

主席，我首先要說的，或者第一點，就是高先生所說的兩套標準的問題。剛才你回答林議員的時候似乎講到很奇怪，即對我來說很奇怪的是，原來發行商好像有得挑選由哪一個部門去審批，當然，我明白你後來所講，即再說得詳細點，你說如果他是用一個債券形式或其他形式則不同，去了另一個部門。我想問，因為根據高先生所說，其實兩個部門確實是採取不同的標準來審批，而導致有一個我們所稱的harmonization project。我首先問一問，韋先生，你同不同意有個叫做harmonization project在05年發生？這個建議。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, there was a project, a harmonization project.

主席：

涂議員。

涂謹申議員：

那是用來做甚麼的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The project is intended to review the way that different types of structured products can be issued and, where possible, bring the issue of those different structured products within a single regime.

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主席：

涂議員。

涂謹申議員：

這樣有沒有好處的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

There are certain administrative advantages in terms of our allocation of resources, our development of codes as they apply to the products, but the underlying assumption that Mr KO seems to be saying is that these standards are somehow different. Clearly, they're different ordinances but I wouldn't agree to the inference that somehow one offers a lower degree of protection than the other. Regardless of which regime they operate under, the selling of the product is still subject to our Code of Conduct, our suitability requirements, our due diligence requirements and that's no different between the two products. They simply historically have grown up such that they are handled under two different regimes.

主席：

涂議員。

涂謹申議員：

你的供詞是否說這兩套標準是沒有分別的？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, clearly, they're different. What I stated was that there's no difference in the level of investor protection that's provided under the two ordinances.

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主席：

涂議員。

涂謹申議員：

你會怎樣形容那個分別呢？你剛才就說不是高低的要求、標準，那麼，分別是甚麼呢？分別就是純粹我們叫甚麼……表面的，或是形式的，沒有實質的分別。是否這樣呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

One standard is as set out in the Companies Ordinance and, therefore, there's a very prescriptive schedule of requirements in terms of disclosure. One standard is set out under the SFO which allows us to write and impose codes of disclosure on the products. But, in broad sense, they both operate to broadly the same standard in providing information and protection.

主席：

涂議員。

涂謹申議員：

高先生在他的供詞裏面……主席，韋先生有供詞，是嗎？有高先生的供詞，是嗎？

主席：

嗯。

涂謹申議員：

W23(C)。

Chairman:

Mr WHEATLEY?

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涂謹申議員：

OK。

Mr Martin WHEATLEY:

Yes, Chairman,

Chairman:

Have you got it?

Mr Martin WHEATLEY:

..... I've been given

涂謹申議員：

好。

Mr Martin WHEATLEY:

..... Mr Harold KO's statement.

涂謹申議員：

他第6段那裏.....

主席：

涂議員。

涂謹申議員：

高先生的第6段供詞，開始時他說如果是企業.....等一下，OK，企業.....CFD，即企業融資部，主要是一個所謂披露的要求，但高先生工作的那個叫做保險有關產品甚麼的，當然，根據他的供詞，他說那個其實不限於保險產品，名字是叫做保險產品部吧，它會看product structure，即產品結構，是深入許多的，包括譬如它的所謂擔保人，即不僅僅是發行人，擔保人等等，是比較全面去審查產品的結構。但如果是企業融資部，則只是你披露些甚麼及那個披露是否正確而已；而保險產品部那邊，insurance product division甚至很多時會加一些條件，甚至是

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詳細審閱。你同不同意這個說法呢？如果你不同意，基礎在哪裏呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think it's a simplification. We have been asked a detailed question and we will provide a written answer to that. There are requirements imposed on products and product issuers under the two different regimes. I find it hard to understand how the suggestion that if the products had been dealt with under a different department, we somehow wouldn't have had the losses that have been created by Lehman's collapse. I don't really understand how that comes about. But we'll provide you with a written analysis of how the two different regimes differ.

涂謹申議員：

主席。

主席：

涂議員。

涂謹申議員：

我們先不要跳步，不是說這兩個標準不同便會與雷曼產品"爆煲"直接有關，我們還沒去到這一步。我現在是問，究竟這兩個部門事實上在審查方面是否有不同程度的要求，以及審查的細緻程度(計時器響起)，尤其是譬如高先生講到的，不僅僅是發行人，你講的那兩次都是發行人而已，高先生講到的是擔保人，甚至擔保人的某一些產品的對家，所謂counterparty等等，全部都要一起看，但企業融資部則是披露，披露就行了。是否有這兩個不同的標準，因此對買的人的保障有所不同呢？

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

Again, Chairman, if I can repeat my point, regardless of which ordinance a product is structured under, it's subject to exactly the same Code of Conduct when the product is sold through intermediaries, so that level of investor protection is the same regardless of which ordinance they're structured under and that requires proper due diligence, proper know-your-client rules and proper suitability judgements that are made. In terms of the ordinances, they are two separate and different ordinances,

涂謹申議員：

主席，對不起.....

Mr Martin WHEATLEY:

..... so they're clearly different.

涂謹申議員：

主席，對不起.....

主席：

涂議員。

涂謹申議員：

.....剛才韋先生誤會了我的說法。

主席：

OK。

涂謹申議員：

或者他是故意說些不同的東西吧。

主席：

你再澄清你的問題。

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涂謹申議員：

因為我現在說的是你的部門審批，我不是說後面售賣的時候，你不要再在這裏……你整個部門所有到來的證人都是這樣，你就拼命着重後面，說"我無論怎樣審批都不要緊，你賣的那個守關不就行了，你們這些銀行依足我那六大要求不就行了。"我不是問後面那些，你回答過很多次後面那些了，我現在是問審批的時候，是否有不同的標準？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, the conduct is important because you're asking a question about investor protection and investor protection is clearly a number of different things

Hon James TO Kun-sun:

No, but investor protection can be on the first step, that on the approval. Okay, I'm asking on the question on the approval and authorization, not on the selling at the end of the line. Please answer my question.

Mr Martin WHEATLEY:

Well, the question is

主席：

涂議員，答完這點要輪到另一位同事了。

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, they are different ordinances, so, clearly, there are different laws that are applicable in the two instances. My contention is that in no way does that reduce investor protection under one route rather than another.

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主席：

OK，你再排隊吧。

余若薇議員。

Hon Audrey EU Yuet-mee:

Thank you, Chairman. Mr WHEATLEY, if you look at the statement from Mr Harold KO, which is W23(C), in paragraph 12, he mentions that the Government policy, at one time, was to have "quick wins" and that was a buzzword in the daily conversations and emails among colleagues. You see that reference. Have you heard this term before, "quick wins"?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman.

Hon Audrey EU Yuet-mee:

In what context?

Mr Martin WHEATLEY:

Well, in

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

In many contexts but particularly in reference to this, it was part of the conclusions of the Financial Market Development Task Force.

主席：

余議員。

Hon Audrey EU Yuet-mee:

And when was that?

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think, 2001.

Hon Audrey EU Yuet-mee:

And was it

主席 :

余議員。

Hon Audrey EU Yuet-mee:

..... part of the job of the SFC to help the Government to generate and promote "quick wins"?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think it was agreed, at the time, that there were certain areas which could be called "quick wins", which the SFC could contribute to.

主席 :

余議員。

Hon Audrey EU Yuet-mee:

What were those areas?

Mr Martin WHEATLEY:

Again, there were a number of amendments to the Companies Ordinance that were proposed which were intended to facilitate the offer of shares and debentures and these included things like guidelines on the content, the manner of publications, allowing a repeat programme through separate registered prospectuses and the like. So there were a number of measures

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which were designed to facilitate what was the clear development policy at the time, facilitate the development of a deeper and more widespread debt market.

主席：

余議員。

Hon Audrey EU Yuet-mee:

And the promotion of structured products like Minibonds or ELNs, and so on, would they be part of the process to facilitate the market and generate "quick wins"?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

When you talk about the promotion of them, the SFC has a statutory objective to develop and promote the competitiveness of the market to facilitate innovation in the market. So that's part of our statutory remit. We're not given a remit to promote any particular product or type of product or issue of a product.

Hon Audrey EU Yuet-mee:

Right.

主席：

余議員。

Hon Audrey EU Yuet-mee:

So the approval and the sale or the approval for the documents relating to the sale of these structured products, including things like Minibonds, ELN and Constellation, and so on, would they be part of the facilitation and innovation of the market?

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

I think I'd put it that the policy to change guidelines on disclosure materials to allow for dual prospectuses. I think the policy was designed to facilitate the development of the market. The actual approval is just part of our normal operational role within the framework of the policy objectives.

Hon Audrey EU Yuet-mee:

But do you

主席 :

余議員。

Hon Audrey EU Yuet-mee:

Yes. Mr WHEATLEY, do you see a conflict there? Because, I mean, the SFC should be a regulator and, therefore, as a regulator, you ought to make sure that the products are suitable and, also, that they are sold suitably and they are sold to the suitable purchasers. Now, that role as a regulator, would that conflict with the role as a facilitator and the innovation of the market?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we clearly would never allow any development that consciously undermined our investor protection requirements. So, no, we would, where that was identified, we would have a very, very strong responsibility to say, actually, investor protection is the most important issue.

Hon Audrey EU Yuet-mee:

Well,

主席 :

余議員。

擬稿

Hon Audrey EU Yuet-mee:

..... you used the word "consciously", Mr WHEATLEY; does it mean that subconsciously it might undermine the investor's protection?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't think that the changes that we have made in terms of allowing the development of the debt market, which as I said was the policy at the time, had the effect of reducing investor protection.

Hon Audrey EU Yuet-mee:

If you look

主席 :

余議員。

Hon Audrey EU Yuet-mee:

If you look at Mr KO's statement, the same document I was referring to, in particular, page 18 – sorry, paragraph 18. He quotes from a First Report in 2004, from Stephen PO, the then Senior Director of IIP, who talks about mis-selling. He said, "mis-selling problems at banking and insurance sector is more prevalent" than among SFC licensees. And he also said, "The key issue is that the paper as it is currently drafted makes the SFC in the entire opposite position of the IA industry. The downside risk of this paper is that retail investors will think SFC's licensed IAs are not good and then shifted all the businesses to banking or insurance side. This will backfire the SFC". And he said, therefore, this gives rise to a question of self-interest, in other words, that the SFC would be seen to be more stringent in the regulation than the banking or the insurance sector and, therefore, this really encourages the SFC to be more complacent and less, you know, restrictive. Do you agree with that?

Chairman:

Mr WHEATLEY?

擬稿

Mr Martin WHEATLEY:

Well, can I make two comments first? Firstly, I don't know what context this is written in, so I don't know what document this is drawn from and I'd need to understand that really to put a full answer to it. Secondly, if it is, whatever context, it's one person's personal opinion. But I have already given, exhaustively, this committee statements about the concerns we have had about mis-selling across the industry and the number of activities, the number of actions we took to raise that concern and I think, Ms EU, you remember that, in our Regulatory Challenges paper, we talked at length about the risk of mis-selling and our concern about mis-selling and the actions that we had taken. So, I think the point raised that we have concerns that mis-selling occurs across the financial sector is and was our view and that there needed to be actions taken to address that.

I don't think it suggests complacency. And, again, it's difficult to comment without seeing the whole context of this statement.

Hon Audrey EU Yuet-mee:

Yes, but the

主席 :

余議員。

Hon Audrey EU Yuet-mee:

But the crucial issue here is one of self-interest, in other words, I mean, does the SFC see itself as a competitor, for example, with the regulators of the banking industry and the insurance industry and, therefore, insofar as a lesser standard is adopted in the other two industries, then the SFC would want to be seen to be at par and, therefore, would be less stringent as a regulator? Would you agree with that?

Mr Martin WHEATLEY:

No.

Chairman:

Mr WHEATLEY?

擬稿

Mr Martin WHEATLEY:

No, in fact quite the opposite. And you asked me earlier about the letter to the then Financial Secretary. The general complaint from the sector wasn't that our standards were too high; it was that other parts of the financial sector were not regulated to the same standard and we believed that all parts of the sector should be subject to the same standards.

主席：

余議員。

Hon Audrey EU Yuet-mee:

Now, you deny that, in fact, mis-selling was very serious but, if you look at, again, Mr KO's statement, paragraph 16, he said that he was a member of the Complaints Control Committee and he said, for many years, he always had a pretty good idea how serious the issue of mis-selling by the intermediaries was and, therefore, it actually prompted him to volunteer himself to produce guidelines and he eventually did produce a set of detailed suitability guidelines and you see that mentioned in paragraph 17. And he said that was supposed to be sent to the Hong Kong Monetary Authority and Insurance Authority for soft consultation pending the green light but then that green light was never forthcoming. Can you tell us what happened to that and why it never came into being and, instead, FAQs were then issued?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not quite sure what the "green light" that it refers to relates to. The product of that project became a set of FAQs which extended our Code of Conduct and which are there to guide the market on how to operate, how to provide advice, how to provide suitability recommendations to their clients. As I said, I'm not quite sure what the "green light" that was sought was but this project wasn't dropped; it became an addendum to our Code of Conduct.

Hon Audrey EU Yuet-mee:

Yes, but

擬稿

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... there is a huge difference, Mr WHEATLEY, between the suitability guidelines as drafted or produced involving Mr KO and eventually the FAQs. I mean, the suitability guidelines were a very detailed set of guidelines. (*The buzzer sounded*) You know, basically, the banks or whoever was promoting the product would have to go through each and every step, would have to ask all sorts of questions, whereas, the FAQs were much more general and also it does not have the status of guidelines. So it was really, in the end, a sort of watered-down version or watered-down requirement. Can you tell us why, eventually, that the very detailed suitability guidelines were watered down to become really very general FAQs?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I don't think I'd accept the contention that that is somehow a lesser standard. In practice, there's no difference between the FAQ and guidelines and we do take actions, under our Code of Conduct, for non-compliance with the Code and we take full cognisance of whether our FAQs have been followed. So I'm not really sure there's a difference in effect of having them as guidelines or as FAQs attached to our Code of Conduct.

主席：

劉慧卿議員。

Hon Emily LAU Wai-hing:

Thank you, Chairman. Chairman, Mr WHEATLEY said, in his opening statement, he called on our Subcommittee, when we draft our report, to take into account the facts and evidence. Of course, that's what we would do, Chairman. And he asked us not to rely on opinion and speculations. I think, when we produce our report, we hope it will be very solid and concrete and I hope Mr WHEATLEY understands that it's up to him and his colleagues to co-operate fully with us. And the Clerk has sent you some questions, very detailed questions, and I am sorry that we don't have your written reply today.

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And, also, of course, we would welcome all your comments on Mr KO's statement, as well, and we hope that would be forthcoming.

And you talk about the two regimes and we would like to see your analysis of how investors are being protected fully and adequately under the two different regimes because the information we've been given may lead us to the conclusion that one regime offers much less protection. So we hope that you would help us, you know, by giving us all the facts and figures so that we can come to a conclusion that the two regimes are equally adequate in protecting investors.

Chairman, according to Mr KO, he said, in the months following the collapse of Lehman Brothers in September 08, the SFC held up the authorization of all offers of investment products. Is that true and, if so, why did that happen and how long were the authorizations held up?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't believe we held up the authorization of investment products. Clearly, after the collapse of Lehmans, there was a high degree of concern in the market about all sorts of products, so we saw many less products coming to us and we issued, at the beginning of October, a circular asking all product issuers to ensure that their risk warnings were appropriate given the market conditions. So, I can only assume that a combination of the fall-off in demand and the need to review the risk warnings meant a significant slow-down in the number of products that we were asked to approve.

主席：

劉議員。

Hon Emily LAU Wai-hing:

Chairman, Mr WHEATLEY did not seem to be very certain of his reply. He said, you "believe". I hope you can give this Subcommittee the facts. If you are not able to do so today, please go back and check them out.

Okay, there may be less coming in, yes, but whether it is also true that even those that did come in were not processed quickly and, if that is the case, we would like to know why. Because we are given the impression that you

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people were at sixes and sevens because you were so shocked by what happened, you didn't know how to go forward.

So I think it would be very helpful if you had given us written replies instead of relying on your memory and saying you believe this, you believe that. That's not good enough. If you are unable to assist this Subcommittee this morning, please say so and we will give you an opportunity, but do give us the facts because I am asking for the facts.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, that's a written question we've had and we will provide you a written answer to it.

Hon Emily LAU Wai-hing:

Chairman.

主席：

劉議員。

Hon Emily LAU Wai-hing:

If we look at paragraph 6 of Mr KO's statement, he's talking about this one regime of authorization based on the Companies Ordinance. He said, "This disclosure-based approach is awfully inadequate as these structured products were not the traditional, 'plain vanilla' fund raising debt instruments issued by ordinary business concerns. These products were issued by newly established special purpose vehicles or shell companies having no track records on business performance." Now, mark this, "This explains why exemptions had to be granted to most, if not all, of the structured notes in connection with paragraphs 27 and 31 of the Third Schedule of the Companies Ordinance which required issuers to produce three years financial statements and auditors reports."

So, you haven't given us a written reply. Are you able to tell us whether this is true or not? We're talking about all these exemptions.

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm not sure which part you want to know is true. The phrase "awfully inadequate" is a

Hon Emily LAU Wai-hing:

The last sentence, Chairman, "This explains why exemptions had to be granted".

Mr Martin WHEATLEY:

Okay. Waivers were.....

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... granted and all of those waivers are on our website and fully public. I'm not sure that it follows that the explanation is as set out. Waivers were granted because it wasn't deemed to be appropriate to have all of that information included, not because they were businesses with no track record or business performance. So the basis of the statement is incorrect, although waivers were granted.

Hon Emily LAU Wai-hing:

So you have

主席 :

劉議員。

Hon Emily LAU Wai-hing:

Chairman, you have armed with the information that, the waivers were granted to these companies, they had a solid business record? So what he said here is not correct?

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Mr Martin WHEATLEY:

Sorry, the

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The assertion that the waivers were as a result of no track record is not correct.

Hon Emily LAU Wai-hing:

No, but

主席 :

劉議員。

Hon Emily LAU Wai-hing:

..... whether they have track record or not, that is a fact.

Mr Martin WHEATLEY:

Yes, that's right.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

And these are special purpose vehicles which are collateralised.

主席 :

劉議員。

Hon Emily LAU Wai-hing:

So do they have a solid track record? Chairman, I mean, that is the point. He said people come to us with speculations, with their opinion. Fine. But there are certain things that can be proven right or wrong. If all these things are proven wrong, then we don't believe in all these assertions.

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But if they are correct, then we would like to know why the SFC granted such waivers. And he hasn't got the written reply before us, so are you telling us that all these companies which received the waivers had very solid, strong track records?

Mr Martin WHEATLEY:

It's

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

With respect, Chairman, it's irrelevant because you're not backing the management of a company; you're buying into a collateralised vehicle. It's a completely different structure from a listed vehicle where you need to understand the track record because it's the management of the company that you're investing in.

Hon Emily LAU Wai-hing:

Well, Chairman,

主席 :

劉議員。

Hon Emily LAU Wai-hing:

..... that's the thing that we disagree on and Mr KO spent a lot of time explaining to this Subcommittee and we had hoped that you would have come with your explanation on why what you are asserting right now offer equally adequate protection to the investors, and that goes back to the two regimes, Chairman, that we referred to earlier. Many members have asked questions and the fact that we are putting all these questions to you shows that we are not convinced, Mr WHEATLEY. So, we hope you will come back with a very solid paper, telling us exactly how the two regimes operate, how these things which are given waivers are still offering adequate protection to investors. Would you like to do that?

Mr Martin WHEATLEY:

Yes.

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Chairman:

Mr WHEATLEY,

Mr Martin WHEATLEY:

Yes, Chairman, we've already committed.

Chairman:

..... would you do it now?

Mr Martin WHEATLEY:

Yes, we will do that.

Hon Emily LAU Wai-hing:

Chairman,

主席 :

劉議員。

Hon Emily LAU Wai-hing:

..... another question I want to put to Mr WHEATLEY is, before he became the chairman – or the CEO

Chairman:

The CEO.

Hon Emily LAU Wai-hing:

..... of the SFC, but whether he can help this Subcommittee. It's paragraph 11 about the exodus of experienced senior staff in 2001. Paragraph 11, "The year of 2001 was particularly critical for the SFC as we saw a major exodus of highly experienced regulators in top management." "Laura CHA, Andrew PROCTER, Paul BAILEY and David STANNARD all left in that same year." Have you bothered to check the record, before coming to us this morning, to find out why these people left in such a short time, all experienced people? Have you looked at the record of the management, at that time, they thought it was okay for them to depart in such a way?

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, Chairman, I haven't.

Hon Emily LAU Wai-hing:

Chairman, so how can we

主席：

劉議員。

Hon Emily LAU Wai-hing:

How can we proceed if the witness comes here knowing what we want to do and he just takes a couldn't-care-less attitude? These things are written down and he knows we will ask him questions. He said, "Oh, I haven't bothered to find out." So how can he assist this Subcommittee? Really, Mr WHEATLEY, what do you think you are doing here this morning? (*Observers on the public gallery applauded*)

主席：

請安靜，請公眾人士肅靜，請公眾人士肅靜。

Hon Emily LAU Wai-hing:

Now, actually, Mr WHEATLEY could have written to you, Chairman, to say "I need more time to reply to the questions raised and to look at this statement of Mr KO and I will give you a full written reply and then I'll be ready to attend your hearing" but he didn't do that. He didn't come prepared and, when I ask him these things, (*The buzzer sounded*) which he had for weeks, and he said, "Oh, I haven't bothered to look it up." So what sort of attitude is this? If you continue to behave like that, you are not doing what you said in your opening statement. Chairman, I mean, what should we do?

Chairman:

Mr WHEATLEY, any remarks from you?

擬稿

Mr Martin WHEATLEY:

Well, Chairman, as I understood it, the assertion in the statement wasn't that the exodus of the previous directors was under question. It's whether the replacements had adequate experience, so the question you're now raising is a slightly different one.

Hon Emily LAU Wai-hing:

No, Chairman, the two are related. You have the exodus of these senior people, experienced people, within a short time and then they were replaced by people who have no experience in that area. So, of course, they're all related. So, but if you are not prepared, don't try to answer my question, don't waste our time.

Chairman:

Mr WHEATLEY,

Mr Martin WHEATLEY:

Well,

Chairman:

..... members are expecting full answers from you, so, please,

Mr Martin WHEATLEY:

Well, Chairman, I'm being

Chairman:

..... provide full answers.

Mr Martin WHEATLEY:

..... presented questions that have never been raised before. The question that I thought was raised was whether the incoming executives had sufficient regulatory experience and, with respect, you've asserted that they did not. That is incorrect. They did have relevant regulatory experience and we can provide information to support that. But to challenge me for failure to research points that have never been raised before, which predate me, I think it's unreasonable of this committee.

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主席：

OK。或許你再排隊好嗎，劉議員？

陳健波議員。

陳健波議員：

多謝主席。其實我想跟進涂謹申議員的問題，因為他的問題其實是很重要的。我們也看到，其實保障投資者有兩個關口，第一個是證監會，除了披露之外，如果能夠確保產品的結構，例如保證人有足夠的資產等，即使有事發生，其實客戶的損失都會少很多。第二個才是銀行的不當銷售，包括有否說明產品是否適合客戶，有否清楚說出風險。其實你可以看到，其實我自己覺得根本證監會的關口還更重要，因為如果證監會能夠確保產品是有真材實料，是好東西，即使銀行沒說清楚，也未必是這麼大的事情，因為那件產品始終是好東西，於是損失就會少很多。

但Martin WHEATLEY先生似乎沒講到的是，在審批方面，其實是否真的如此重要呢？假設那件雷曼產品不是在公司法下審批而是在投資產品科，而投資產品科，高先生已經說清楚，他們除了披露之外，還會看結構上的要求，例如保證人要有實力等。我想問，究竟韋奕禮先生是否認同這點，就是說如果將這個產品拿到投資產品科，其實可能這個產品根本出不了街，或者有特別的要求令產品更加扎實呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, I have to take issue. There's nothing in our regime which suggests that, had the product been structured as a different product and not treated as a debenture, that it wouldn't have had the same features with Lehman as an arranger, with special purpose vehicles fully collateralised as the underlyings, and that people would have been protected from their losses when Lehman collapsed. I have no idea what the basis for that assertion is.

擬稿

主席：

陳議員。

陳健波議員：

主席，所以我要求韋奕禮先生用書面詳細解釋，因為他也有高先生的證供，希望他能夠詳細解釋為何他不認同高先生的看法。我想，正如今天其他同事所說，我們今天可能未必問到很多東西，但我都希望韋奕禮先生解釋剛才我們眾人的問題。

另外我想問的，亦是高先生的證供有談及的，因為公司法與投資產品科的處理不同，於是產生了所謂監管套戩，關於這方面，亦希望韋奕禮先生將來在書面上解釋，你是否認同有監管套戩。

另外，我想多問一條，這裏有說，根據《操守準則》第5.2段，當中提到要提供一些適當的產品給客戶，後來證監會在2007年5月8日發出一份叫做“有關為客戶提供合理適當建議的責任的《常見問題》”。我想問，高先生也有說，如果你用《常見問題》，其實法律效力沒有《證券及期貨條例》section 399那麼有效力。為何當時證監會選擇用《常見問題》而不用section 399呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I don't think it's correct to say that there is a difference in terms of the application of FAQs rather than developing a new code. Our view is that either route is equally strong in us enforcing our rules against our regulated entities.

主席：

陳議員。

擬稿

陳健波議員：

OK，同樣地，我希望韋奕禮先生將來會在他的書面陳述裏讓我們可以看得多一點，但我也希望我們今天提的問題，你明白我們在問甚麼，希望你有一個公正的回答。

我想說，翻看高先生的書面證供第21段，裏面說到建議將來立法會要審批高層的委任，他亦有講到為何他要這樣做，他說因為證監會的重點應該是保障投資者利益，而不是"facilitating market development"，即不是利便市場發展。但我又看到《證券及期貨條例》裏面其實也有提到，都是要協助香港作為一個金融中心要做的事情。我想問你如何平衡這兩方面？一方面，我想剛才你都說過，其實你最大的重點是要保障消費者，但另一方面也要確保香港是一個國際金融中心，因為如果香港不是一個金融中心，根本就不需要SFC，如果我們甚麼都沒得賣的話。所以，我看到職能上是有這樣的需要。你如何看這一點？怎樣能夠有一個平衡呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think it's a very good question. It's a balance that's difficult but necessary to strike and we strike the balance by ensuring that whatever regulatory developments we're encouraged to pursue, that we point out whether there are any investor protection issues that arise from those.

主席：

陳議員。

陳健波議員：

但你如何確保你的同事不會為了要利便市場而放棄保障消費者呢？

Chairman:

Mr WHEATLEY?

擬稿

Mr Martin WHEATLEY:

Well, largely through the objective setting and counselling system that we have within the organization. We don't have significant incentives built in for staff to develop new products or bring new products to the market. People generally know what their responsibilities are and that the investor protection responsibility can never be compromised.

主席：

陳議員。

陳健波議員：

因為今天韋奕禮先生有很多問題都回答不了，我想我們都希望將來在書面上再問一次，但我想再多問一兩條問題，就是高先生這裏其實讓我們看到很多新的東西，以前我們向證人取證是拿不到的，包括在批核產品方面的問題、在監管中介等方面都有問題。

我想問，如果將來在書面上或從我們的研訊都證明到SFC真的有一個責任，你會不會重新檢討ELN或者.....因為我相信那些都有類似的問題，或許你要解釋在那方面有何問題，你會否重新考慮跟那些苦主和解，提供一個好的解決方案給他們呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, that investigation, I think, as I've said in the past, is something that is under way. I'm not sure if your question refers to the prior sale of ELNs or to the future sale of different products but, certainly, allegations of mis-selling of ELNs is something that we've been investigating.

主席：

陳議員。

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陳健波議員：

主席，我其實是說一直以來這麼多的投訴，即無論是雷曼、非雷曼，有很多苦主還是未解決的，我希望證監會，如果你將來真的是……事實上高先生亦有把很多事實指出來——我不知道是不是事實，但起碼可以給我們提供不同的角度去看。如果憑高先生這裏，是看到很多地方有問題的，我希望如果將來真的有事實能夠證明，希望你能夠承擔責任。

主席：

不過還是盡量集中於今天的3個範疇，陳議員。

陳健波議員：

OK。

主席：

我讓你問了……

陳健波議員：

我沒有其他問題。

主席：

OK。葉劉淑儀議員。

葉劉淑儀議員：

主席，不好意思，我現在才能下來，因為上面鐵路小組在開會，人不夠。

主席：

我也開過。

葉劉淑儀議員：

我關注法律修改的問題，我不知道剛才有沒有同事提過。我想問韋先生，證監會做過諮詢，06年是有一些建議對於《公司條例》及證監條例作出修訂，將產品的審批放回在一起，劃一

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放在一條條例——證監條例，如果我的理解沒有錯誤，是有些法律修改的建議，到底做得怎樣呢？證監會提了給決策局沒有呢？抑或提了上去後有甚麼進展呢？即是將產品劃一的這個事情。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The proposals were ones that we consulted on or part of the proposals consulted on last year. We've had a number of comments on those and we're trying to resolve our final proposition which we will pass to the policy bureau and which will then be discussed within LegCo.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

作出這些法律修改之後，會否改善了……即避免了譬如高秉忠先生跟我們說的regulatory arbitrage？有些產品用《公司條例》當作購股的debenture這樣的方法，批出會較容易；有些用證監條例則較嚴謹。不劃一標準的問題會否得以避免，能夠解決這個問題呢？

Chairman:

Mr WHEATLEY?

葉劉淑儀議員：

有甚麼好處呢？再詳細告訴我們，這些修訂有甚麼好處？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Regarding the question of whether it would resolve the potential for regulatory arbitrage; there is a much bigger question about the regulatory

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structure for Hong Kong and the fact is that products can be structured as banking products, insurance products, MPF products or securities products and, therefore, they're subject to completely different oversight, completely different regulation. I don't think that's being addressed here. It will address and make it easier for us to administer the products through a single team and using simple codes and I think that would provide some benefits for us as an organization in terms of processing the products.

It's not going to provide a solution to prevent people losing money if a major investment bank fails and I think that we shouldn't forget that all investment products have risks embedded within them and those risks have materialized in this case. I don't think any regulatory structure can protect ultimately against those risks.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

當然，我明白所有產品都有風險，但高先生提出的監管套戩問題，我覺得都是需要解決的。當然，你們可以做到保護投資者的就是，譬如高風險、複雜的只可以賣給機構、某些機構，或者真的很有經驗的專業投資者，而其他低風險的才可以賣給一般市民，這是你們可以做得到的，是嗎？

我想問韋先生，監管套戩這個問題，你覺得是否嚴重及應該如何解決，以及會建議政策局和財政司如何解決？有甚麼構思呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, we've proposed two suggestions, one of which is the area that's within our jurisdiction and that's to propose a removal of certain aspects of the Companies Ordinance to merge it under the SFO, and that's something that we'd consulted on, we're pulling views together on.

The second is a much broader review of the regulatory structure where we have proposed that the bureau do a proper review of Hong Kong's

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regulatory structure. It's not for us to present the answers because, obviously, we're an interested party in that outcome but we have suggested that that's an important review as many, many other jurisdictions around the world are doing at the moment.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

我知道韋總裁時常飛來飛去，參加很多國際會議，可否跟我們分享一下，譬如國際金融社會對於這些規管的改革有何看法，讓我們的決策局可以借鏡。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I am very happy to share with you what experience I have but I think it's absolutely true to say that there's no single model that the rest of the world has evolved to. The UK, which has had a single regulator, is in the process of breaking up that structure as is Germany. The US, which has the most convoluted structure, I think, of any jurisdiction, has talked a lot about merging elements of the structure but there appears to be little appetite to do this. So, in truth, I'm very happy to share more experience of what the other responses are to this crisis but there isn't a single model that would be an ideal model for Hong Kong. I think we have to look at the particular characteristics of Hong Kong.

主席：

葉劉淑儀議員。

葉劉淑儀議員：

沒問題了。

主席：

OK，好。

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現在我宣布小組委員會休息一會，十多分鐘吧。請各位準時在11時15分返回會議廳，以便委員會有足夠的法定人數繼續進行研訊。在休息期間，請證人不要與其他人士討論他的證供。

(研訊於上午10時57分暫停)

(研訊於上午11時17分恢復進行)

主席：

OK，研訊繼續。韋先生，你現在是繼續在宣誓下作供。

我再次提醒委員，按照小組委員會先前的決定，小組委員會在今天的研訊中不會使用高秉忠先生提交的陳述書(即W23(C)文件)的附件及其中所載的資料。

現在甘乃威議員舉了手，請甘議員。

甘乃威議員：

主席，不好意思，因為早上要參加立法會另一個會議，所以遲來了。

我想問韋奕禮先生，在09年9月，你們發表了一份叫《建議加強投資者保障措施的諮詢文件》，是嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman.

甘乃威議員：

OK。在這份文……

主席：

甘議員。

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Mr Martin WHEATLEY:

Actually, I think it was September^[Note] 09.

Chairman:

Okay.

甘乃威議員：

9月份，對了。在那份文件裏面，我想我不詳盡說出所有內容了，當中有提到要提高產品的透明度，包括證監會會建議發行人及保證人的資格規定等等，要求在結構上有一些規定。這些規定是否你們作出的一些新建議？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, Chairman, these are new proposals to go on top of the existing requirements.

主席：

甘議員。

甘乃威議員：

我想問一下，如果有這個規定，套用到雷曼產品上，如果根據你們這些規定的話，雷曼產品可不可以沿用現在這個方式在市面上售賣，而無須改變它結構上的要求呢？

Chairman:

Mr WHEATLEY?

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

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Mr Martin WHEATLEY:

I don't think that proposal, in itself, would have changed in any way the way that Lehman products have been sold.

主席：

甘議員。

甘乃威議員：

我不是說銷售方法，而是當你們去 —— 你們用的字眼叫做 authorize，即是認可這些產品時，如果用現在這個所謂提高產品透明度的話，如果現在任何雷曼產品用現在這個.....即在你們所謂審批的過程當中，雷曼產品能否符合你們在9月諮詢文件所說的內容呢？是否已經能夠完全符合，現在雷曼產品，所有這些條件，已經符合了你們諮詢文件的內容呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I'm not sure of the answer. I'll have to provide you a written answer to that.

主席：

甘議員。

甘乃威議員：

我想問，因為雷曼事件你才有這個諮詢文件出來，如果你都不敢肯定的話，你這份諮詢文件是不是"廢"的呢？即如果你都不敢肯定去做..... (公眾席上有人喧嘩)

主席：

請安靜，請安靜。

擬稿

甘乃威議員：

如果你都不敢肯定你的諮詢文件是加強透明度的話，而你又不敢肯定當你這些諮詢文件的內容提了出來，是令到現在的雷曼產品，簡單說，Minibond，即迷你債券，究竟是否需要改變——要麼它不要銷售，要麼就要改變它的結構，要符合你的要求。為何你自己都不能夠肯定呢？究竟你知不知道自己的諮詢文件是說甚麼呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't think anything in our structure paper would have prevented Lehmans collapsing or people losing money as a result of Lehmans collapsing. We believe that there may be some enhancements we can make to transparency of products and to the ease of understanding products. The new product code would put additional requirements on disclosure but we're not fundamentally changing the system, which is a combination of disclosure and conduct. And the majority, in our review, the majority of faults that we found is the way the product was sold, not the structure of the product.

主席：

甘議員。

甘乃威議員：

韋先生，你問非所答，我現在說的是，如果雷曼迷你債券的產品，我特別指明迷你債券產品，譬如有幾隻都是差不多，迷你債券、Constellation、精明債券，都是類似同一種結構性的產品。

我現在的問題是問，根據你的諮詢文件，如果是根據你的諮詢文件的內容，沿用現在所謂你們審批的.....即認可的條文，是否有東西要改變呢？要不然，它就不可以售賣。我不是說將兩者作為一個必然的關係，是導致到會不會有人有損失，這個大家都不知道。我只是說，如果沿用你現在建議的諮詢文件的內容，有關的產品如果要售賣的話，是否要改變有關它的結構，才可以在市面上售賣呢？根據你諮詢文件的內容。

擬稿

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't believe there would be a significant structural change. There would be some additional documentation requirements that would have fallen on the company but it wouldn't have substantially changed the structure of the product.

主席：

甘議員。

甘乃威議員：

我舉一個例子，你的文件內有提到，第86段有提到，證監會建議那些SPV，中文叫做特別目的投資公司，第86段提到SPV的發行人的基本條件，或者他要.....第二就要委任香港領有牌照的產品安排人，第三是按照一套以原則為本的準則挑選抵押品，以至抵押品、SPV的結構加強。這些應用到雷曼產品上，我再強調一點，是否需要改變它有關的結構，才可以在市面上售賣？如果根據你的諮詢文件的內容。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Effectively, the consultation paper is suggesting that we codify our current administrative practice, so the product would have had to have certain different requirements; it wouldn't substantially have changed the product or substantially have changed the fact that people have lost money as a result of Lehman's collapse.

主席：

甘議員。

擬稿

甘乃威議員：

我再強調一點，韋奕禮先生，我不是說是否因為這樣而令到苦主沒有受到損失，我不是問這個問題。我問的問題是，你是否在那個……即當你審批——你們用的字眼叫 **authorize**——的情況下，你們要將有關審批的內容有所改變，即你在銷售這些產品時，不論在單張或章程內都要有所改變，這些產品才可以售賣？我想你重新確認這點，究竟是否需要改變才可以讓雷曼產品售賣？即現在的雷曼產品，如果根據這份文件是不可以賣的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I think the reality is that, had we had this structure in place, the products would have been altered slightly to conform with this structure. It's not a significant change but it's a slight change. But we would have still had broadly the same structure of a collateralised note where, unfortunately, the underlying collateral and the legality of the underlying collateral under the ISDA agreement have been challenged in the US Bankruptcy Court.

主席：

甘議員。

甘乃威議員：

你的意思即是說，你都同意，根據你的諮詢文件的內容，是需要有所修改，雷曼產品才可以售賣，是否同意這點？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, it's obviously an important question that I have to get accurate, so may I provide you a written answer?

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主席：

剛才你提到的兩方面，請你會後提交給我們，Mr WHEATLEY。

甘乃威議員：

主席。

主席：

是，甘議員。

甘乃威議員：

既然韋奕禮先生都覺得這是很重要的問題，我想問韋先生，你們一直強調披露為本，我想問你的諮詢文件的內容是否已經超越了你們所提的披露為本，作為你們監管機構去——再強調那個字眼叫做authorize——即認可這些產品，根本已經超越了披露為本？因為披露為本只是信息的披露為本，現在你的諮詢文件很清楚說到，你要提高產品透明度，包括結構上的要求。這個是否跟你所講的所謂披露為本已經有違背呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, when I use the term "disclosure-based", I use that as a way of distinguishing between the opposite extreme, which is merit-based regulation. It's not to say that the regulation is only disclosure-based and I've been consistent, from my first appearance in front of this committee, to talk about the different levels of protection which are necessary, of which disclosure and conduct are the two principal areas. In our approach, we've used disclosure to distinguish it from merit-based but it's never been the case that it's only disclosure, it's disclosure with a number of other (*The buzzer sounded*) important protections in place as well.

主席：

接着是詹培忠議員。

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詹培忠議員：

多謝，主席。我們今天有一個問題討論到"一業兩管"，我想問一問韋先生，從賠償上已經是不公平，因為有3間涉及經紀行賠百分之一百，而銀行卻賠不足此數。是不是"一業兩....."

主席：

詹議員，我想提醒你，今天我們只集中於3個範疇，看到嗎？藍色那張紙.....

詹培忠議員：

沒錯，就是說，我已經講明是涉及"一業兩管".....

主席：

OK，行。

詹培忠議員：

.....故此是否.....

主席：

集中在那裏就行了。

詹培忠議員：

..... "一業兩管"的錯失或者是證監會條例的不足呢？

主席：

你是問他的意見嗎？

詹培忠議員：

他是屬"一業兩管"，導致賠償不一樣。

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

I think the fact that there's different levels of compensation paid reflect the facts being different in each case. The power that we have, as you know, does not extend to forcing compensation, so that has to be a voluntary action from the organizations affected and that action is made in response to the concerns that we present to the companies. So, no, I wouldn't say that that aspect is about dual regulation; it's because the facts are very different in each case.

主席：

詹議員。

詹培忠議員：

主席，第二個問題就是，證監會自己有兩個不同的部門審核有關的產品，你自己會否覺得有些錯失及不妥當，令大家不知在哪一方面去認同你證監會的監管，而將權力交給你，你要歸納它是哪部分就哪部分呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, no, we do not make any assessment as to which department the products come under. Effectively, that decision is made by the product issuer when they determine the structure of the product. So an issuer will make a decision as to whether it's a debenture or a CIS and they will make the application to the appropriate department.

主席：

詹議員。

詹培忠議員：

第三個問題，主席，剛才韋先生提及發行商，理論上，發行商是否屬於你證監會管的呢？而這次發行商的責任究竟在哪裏，你的政策是否有不足，因而間接、直接"放生"了發行商以至他們的責任呢？

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the issuer's responsibility is as set down in the document and the prospectus document states all the responsibilities that the issuers undertake.

主席：

詹議員。

詹培忠議員：

主席，追問這個問題，你會否覺得你證監會始終是條例不足，而將來這件事是"放生"了發行商，只要他自己說他清盤結業便沒有責任呢？這件事對銀行的銷售及投資者間接直接都要蒙受損失，是否公平合理？你又作出甚麼建議呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I am confused as to how to answer the question. There are a number of deficiencies in the SFO which we've pointed out before but, insofar as this particular circumstance, I'm not sure what deficiencies there are that could have been corrected and avoided these losses.

主席：

詹議員。

詹培忠議員：

主席，第四個問題，我們瞭解到，整件事之中有個託管人——滙豐銀行，你證監會如何去批准……為何不說一定滙豐香港，可以批准滙豐美國去做託管人呢？是否你證監會有權去批准外國的經營商，或者究竟是否條例不足？而在整件事之中，滙豐作為託管人是要收取費用的，而發生事情後，你有否追究它呢？

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, Chairman, you will know, as part of the agreement, the section 201 agreement that we've reached with the selling institutions, we've asked each of them to contribute their commission earned to a fighting fund which will be used jointly with HSBC to seek the return of value of the collateral. So, HSBC's role, at this point, is to work with the liquidators to try to achieve the maximum recovery of the underlying collateral.

主席：

詹議員。

詹培忠議員：

主席。這個你是否包括滙豐作為託管人呢？我認為整件事，滙豐曾經派律師陪同他們的代表坐在立法會，但一點都沒碰到它，你是否覺得滙豐很大，證監會無權，不敢去問它或碰它呢？否則，你怎樣去批准他作為當其時的託管人，你基於甚麼理由、甚麼權力，你整個證監會可以這樣做呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The use of custodian and international custodians in these products is fairly common and is widely accepted. We don't have regulatory oversight of the custodian role and, unless we suspect there is a serious breach or market misconduct, we don't have power simply to demand information from the custodian. But my belief is they're operating to the best of their ability to recover the underlying collateral value.

主席：

詹議員。

擬稿

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詹培忠議員：

主席，證監會可不可以承認，你們的監管甚至條例還是有不足的地方，以後在託管人的職責上還要做得更清楚一點，從而不會被人利用託管人的知名度及地位去吸引其他沒有智慧、沒有知識的投資者呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I don't believe that the custodian or any particular choice of custodian was a particular feature that would have been used to attract investors. There are a number of different parties in this trade and the major concerns we have are the distributors of the product.

主席：

詹議員。

詹培忠議員：

主席，涉及第五個問題就是，你證監會鑒定的所謂經驗投資者，在這次事件引起大家很大的爭議及不同。主席，我想問一問韋奕信先生，你同不同意……

主席：

韋奕禮先生。

詹培忠議員：

是，Mr WHEATLEY，你同不同意，界定任何資格，事先的界定是否比發生事情後才說你是這樣的資格更公平？

Chairman:

Mr WHEATLEY? (公眾席上有人拍掌)

請安靜，我不再說了，我最後一次請各位肅靜，否則我要請各位離開這個會場，OK？

韋奕禮先生。

擬稿

Mr Martin WHEATLEY:

Primarily, the delineation in the law is of the professional investor category and that, clearly, is done in advance. We have also asked each of the institutions selling products to do their own assessment of the sophistication of their clients before they sell them very complex products and we're consulting with the industry on exactly how that structure should be put in place. The delineation used for the section 201 agreement was agreed with the banks as part of the settlement process. It was only used for that purpose, rather than existing – either in our rule book or guidelines – prior to that.

主席：

詹議員。

詹培忠議員：

主席，剛才Mr WHEATLEY所回答的只是事後，你跟銀行大家達致這樣的見解而已，但銀行也好，證監會也好，有沒有事先提醒投資者，你有這樣的資格，你已經被定為有經驗的投資者呢？還是發生事情之後才說，我說你是有經驗的投資者，而就這樣一棍打下去呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

We published many, many documents advising investors to understand the risk of the products in which they're investing; we've published FAQs, guidelines and updates and circulars to the industry advising them of the need to do proper due diligence of their clients first. So, it's a very important part of the Code of Conduct that distributing organizations do understand the sophistication of their client-base before they sell products to them.

主席：

詹議員。

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詹培忠議員：

主席，Mr WHEATLEY所講的是那些去推銷這些產品的有關機構，包括銀行在內，是它知道而已，但那些投資者事先卻不知道，如果知道，他會覺得很光榮，我是一個經驗投資者，我要保障我自己。所以我的問題，始終證監會你自己的條例是否(討時器響起)還是不清晰，不能夠令投資者瞭解自己本身是否一個.....事先不知道自己是否一個經驗投資者，而在事後被光榮犧牲掉呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The SFO defines "professional investors". We've suggested, in our Code of Conduct, that banks need to do more to identify and segregate those experienced investors and whether products are suitable for them. Obviously, it's very important in advance that investors know the basis on which their intermediary is dealing with them.

主席：

OK。有兩件事想提醒大家，第一，之前我說了兩次，今天的研訊集中在3方面，在那張藍紙上寫得很清楚的，希望大家參考一下，即是關於高秉忠先生在兩次公開研訊的證供內容、現行認可金融產品銷售文件的制度，以及"一業兩管"的政策，希望大家集中這3方面。

另外，我再提醒公眾人士，我們是在進行一個非常複雜、嚴肅的研訊，如果大家不保持肅靜的話，就會影響我們的研訊，希望大家合作，我不想老是提醒大家。這個是一個非常嚴肅的調查，一個非常複雜的調查，我們委員都要很集中精神去做，請大家合作，多謝。

今次的第一輪已問過了，或許我先跟進一兩個問題，接着第二輪有3位，不如我先讀出他們幾位的名字：涂謹申議員、劉慧卿議員及甘乃威議員，3位暫時在排隊。如果有需要，一會兒請舉手。

擬稿

我想問問韋奕禮先生，我想跟進S7(C)，韋奕禮先生曾於2006年2月向當時的財政司司長提交一份文件，當中提及證券行及銀行的證券業務的監管工作可否由單一監管機構負責這個問題。請問韋先生，當時的財政司司長或政府當局有否回應到證監會的文件，Mr WHEATLEY？

Mr Martin WHEATLEY:

There were a number of discussions in various forums where we meet with the Government about whether such a proposal should be further discussed. There wasn't a written response to it.

主席：

是有紀錄的，是嗎？韋奕禮先生。沒有紀錄的？即任何的紀錄都沒有？

Mr Martin WHEATLEY:

I think we included in our submission a number of extracts and, in fact, I think they've been presented before to the committee, extracts from the committee where these issues were discussed.

主席：

可否請韋奕禮先生在會後完整地將這個資料書面提交給我們？完整地。因為似乎如果是集中地給我們的，我們倒看不到，請你會後提供給我們。

我想繼續問，證監會曾否將文件交給金管局或與金管局討論有關的議題呢？如果有，金管局有甚麼回應？如果沒有，原因是甚麼？Mr WHEATLEY？

Mr Martin WHEATLEY:

The paper itself wasn't submitted to the Hong Kong MA because, clearly, it affected the operation of the Hong Kong MA, so it was presented to the Government for consideration. The issues were discussed many, many times with the Monetary Authority over our concern of selling practices and that was discussed in our regular meetings, it was discussed as part of the discussion of the concurrent reviews that we agreed to carry out. So, this paper, not itself, but the discussion existed many times.

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主席：

請問韋奕禮先生，這個討論有否嘗試過在任何正式的會議上進行，例如金融市場穩定委員會或金融機構監管議會等等，在一些正式的會議上，有紀錄的會議，可以有一些資料提供給我們，Mr WHEATLEY？

Mr Martin WHEATLEY:

I believe that any formal records have already been submitted to the committee but I can confirm if that's the case. But I believe you already have any formal notes of meetings.

主席：

或許也請你會後看看有哪些其他資料或是我剛才所提到的，完整地提供資料給我們，因為似乎可能有某些地方提過，但又不是太完整地可以找出來，或許請你會後提供。

再繼續問一問，由財政司司長主持的金融監管機構議會對這個有關議題有何共識或跟進行動？如果有，詳情是甚麼？最終有甚麼結果，Mr WHEATLEY？

Mr Martin WHEATLEY:

I don't believe any consensus was reached. As I've said, there are some references to discussion which we have supplied you but I'm happy to supply those again. I don't believe it was something that became a major agenda item which required any final decision.

主席：

我剛才提到的整個問題都請Mr WHEATLEY完整地再一次提供給我們，可能在幾方面都有提過部分資料，但我請你完整地再提供一次，好嗎？如果真的已全部交給我們的話，也請你告訴我哪份參考文件有提供所有資料，如果有的話；否則，請你再一次提供給我們，完整地交給我們，謝謝。

接着我想問一問，根據文件A32附件第6(c)段，證監會表示，在2009年10月發表的《有關對〈公司條例〉的招股章程制度及〈證券及期貨條例〉的投資要約制度的可行性改革諮詢文件》(即立法會文件CB(1)220/09-10(02)號文件)，可以令證監會有更大彈

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性規管非上市結構性產品的公開要約，即 public offers of unlisted structured products。請問韋先生，證監會所指的更大彈性是甚麼意思，Mr WHEATLEY？

Mr Martin WHEATLEY:

Sorry, Chairman, I've only just got the paper. Which section were you referring to?

Chairman:

Paragraph 6(c), paper A32, the annex to it. Paragraph 6(c), lower case "c".

Mr Martin WHEATLEY:

Okay, thank you, Chairman, I now have it. Under the Companies Ordinance, our disclosure requirements are set out in a fairly prescriptive manner as part of schedule 3^[Note] and it says exactly what information should be included. Our general view is that the market is evolving fast and that we need to be able to evolve our codes and guidelines in order to respond to market demand, market practice and that, under the SFO, we have greater ability to do that than we do under the Companies Ordinance.

主席：

如果證監會有更大彈性規管非上市結構性產品的公開要約，這樣對保障投資者會有甚麼影響，Mr WHEATLEY？

Mr Martin WHEATLEY:

Well, one of the areas that we've already consulted on is the standards of documentation and the requirements of product issuers to include simple fact statements. Our concern has been that, whilst a prospectus will meet the prospectus requirements, it's, by necessity, a very large document and a very difficult document to access and it would be advantageous if investors had a document that was a simpler document but, nonetheless, presented risks and benefits in a cogent and simplified way.

[Note] The witness clarified after the hearing that it should be "schedule 3" instead of "a schedule to Part III" as mentioned at the hearing.

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主席：

問一問韋奕禮先生，如果說你真的有更大彈性去規管這些非上市結構性產品，如果有個部門，有這麼多職員參與此類工作，怎樣可以令整個架構、整個機構的工作保持一致性，即不會因為你有多些靈活性、多些彈性便等於有多些酌情權在審批工作方面做一個決定，這樣在你們的監管上或在監管職員方面，對於酌情權的使用或對彈性的使用會不會有困難，Mr WHEATLEY？

Mr Martin WHEATLEY:

Chairman, just to clarify, I think the greater flexibility comes not in the individual decision-making on particular products or particular applications; it comes in our ability to create and amend codes and guidelines that will apply to those products when they're brought forward. So it's policy flexibility that I think is more possible under that structure, not flexibility in terms of operational decision-making.

主席：

如果說有一個政策上的彈性或靈活性，在提出時會是在部門之間的討論中產生一些最後的結論，讓你們的高層方面做決定，抑或是你們整體大家不斷有些例行的討論，即部門的高層，包括中高層的職員一起討論，得到運作上的經驗及你們的員工的看法，你是否會很廣泛地討論至得到結論，才達致最後你所用的彈性方面，達致最後你所要求的結論、結果，Mr WHEATLEY？

Mr Martin WHEATLEY:

All of our codes and guidelines are subject to public consultation. Our Board will always sign off on any document prior to going to consultation and would also sign off on the amended code or a new code after consultation. So our corporate governance is, effectively, the control that we have in place.

主席：

現在我們開始第二輪提問。涂謹申議員。

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涂謹申議員：

主席，韋先生是2005年到任證監會，而根據高秉忠先生所說，那個harmonization project，即兩個部門採取相同的標準，亦是在05年頭開始做，即是開始考慮吧，但到現在.....我應該這樣問，就是韋先生到任後，你剛才說，你都知道有一個叫harmonization project，你個人在領導、去將這個harmonization project貫徹做好這方面，做了些甚麼呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Two phases of the project have already been delivered. The first phase was gazetting guidelines on dual prospectuses; the second phase on giving statutory backing to a dual prospectus regime and power over the marketing materials. The third phase is something that we've consulted on. We've retained an external consultant to draft drafting instructions and we were at a stage to present this to the Bureau for policy implementation at or around the time that Lehmans collapsed. Obviously, since then, a lot of our time has been spent reviewing the structure but the piece of work, much of it had been delivered; the remaining part of it was on schedule.

主席：

涂議員。

涂謹申議員：

主席，我是問韋先生，我深入一點說吧，就是由雷曼事件發生、"爆煲"之前，你上任之後，你在這個harmonization project做過些甚麼？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Regarding the phase 3 project, we've consulted the market by publishing our potential reforms. We received a lot of very complex responses indicating there was quite a lot of difference of views within the market, but,

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on the back of that, we have drafted the drafting instructions for the Government.

涂謹申議員：

主席……

Mr Martin WHEATLEY:

And they were the pieces of work that had happened up until the point when Lehman collapsed.

主席：

涂議員。

涂謹申議員：

主席。你可否講一講，由05年你上任到雷曼"爆煲"之前，你個人在督導這個 harmonization project 方面，做過哪幾樣工作呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The project was under the leadership of the Executive Director of Corporate Finance and it was under his responsibility, so when you asked personally what I had done, I had talked to him, I had consulted with him, I discussed the issues with him and ensured that it was brought forward to the Board at appropriate times.

主席：

涂議員。

涂謹申議員：

你有多重視這個 harmonization project ？

Chairman:

Mr WHEATLEY?

擬稿

涂謹申議員：

因為剛才我聽你的答案，在較早前一輪，你好像覺得其實——即我的印象吧——有沒有這個 harmonization project，其實消費者都會得到同樣的保障的。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the harmonization project, as I said, it's covering quite a lot of ground but the particular area that we're focused on in relation to this Subcommittee is the fact that the debenture route was used by a significant number of market professionals to launch complex structured products under the Companies Ordinance and our concern had been that that wasn't the initial intention of the Companies Ordinance whose history goes way back but it never envisaged that structured products would be developed in that way. So our concern was whether that was the most appropriate place to regulate structured products.

主席：

涂議員。

涂謹申議員：

如果我聽你這樣說，其實某程度來說，你也承認，一些很複雜的產品可以經過公司法包裝成為一個債券、debentures的形式，其實某程度上是削弱了你們審批的能力，或者是一個漏洞，而由05年開始，從你所有調查中已發現因為利息低而出了很多、很多這些產品。如果你們內部已經知道這個事情，豈不是應該比較重視、快點做的嗎？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the project was seen as an important project. It was also a very complex project and we had to ensure that we understood fully what the market issues were in moving to a new structure. But the idea that it was a

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loophole: I repeat my earlier statement, under the Companies Ordinance there's an explicit requirement that sufficient information is included within the prospectus to allow an individual to have a proper understanding. Now, that proper understanding will only come at the point of sale, and that's why I keep coming back to my point: you can't look at these things in isolation. But the Companies Ordinance had an absolute requirement that full information was included in the prospectus.

涂謹申議員：

主席。

主席：

涂議員。

涂謹申議員：

主席，這方面，稍後我們會做一個判斷，即究竟是否所謂之後銷售的銀行做得不好，或沒有根據你們那些去解釋是主因，抑或其實是你們審批方面不守關是主因呢？我現在是想拿出事實。

或者換另一個角度，請證人看一看W23(C)，即高先生的證人陳述書。其實高先生在第6、7、8、9、10段，尤其是在第9、10段，他有一個這樣的邏輯，或者我邀請證人可以評論一下，這個邏輯究竟是不是足以令我們本來可以防止雷曼這件事呢？高先生的看法就是說，這些雷曼債券，第9段說，據他瞭解，根據公司法342A(1)是有豁免的。首先，第一件事，是不是呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

If it means waivers, then, yes, that is the case.

涂謹申議員：

OK。

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主席：

涂議員。

涂謹申議員：

但是根據342A(1)，高先生說，其實你可以加一些條件，尤其是擔保人資格等等的問題，但是他第10(1)段裏面說，既然他那個部門，IPD，即保險及.....sorry，投資產品部，對不起，我總是記錯，投資產品科是可以加這些條件、嚴格的條件，但企業融資科卻不加條件，但其實是可以加的，根據342A。好了，我又再問，為何企業融資科不加這個條件呢？是否應該由企業融資科的主管回答，抑或你可否代他回答呢？或者你是否知悉有這個現況呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'm slightly confused by the statements in here and I think it comes from a misunderstanding of the underlying structure of the product. There were requirements on the issuer and those requirements, as I've explained earlier, are established in parallel with the Listing Rules, Chapter 15A^[Note] of the Listing Rules. The major protection against failure in the product wasn't the existence of a guarantor, it's the existence of collateral, and this seems to ignore the point of collateral but that's the primary protection that an investor should be afforded under the instruments. That collateral is enforced under an ISDA agreement and, as I've mentioned earlier, the courts in the US and the UK have recently adopted completely different interpretations as to who should have primacy over the collateral in a bankruptcy situation. But it's the collateral that is the primary protection for an investor.

涂謹申議員：

主席。

[Note] The witness clarified after the hearing that it should be "15A" instead of "15" as mentioned at the hearing.

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主席：

涂議員。

涂謹申議員：

意思是否就是說，你們認為那些collateral，那些抵押品很有保證，所以企業融資科就決定不將他們本來可以根據公司法342A加諸的條件，譬如對guarantor，即擔保人或者那個叫做counter-swap party.....swap counterparty，是沒有要求這個條件呢？

Mr Martin WHEATLEY:

Well, again,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... I'm not sure what conditions that you would have wanted or that anybody would have asked for. I really don't understand. What conditions would have protected an investor given what's happened? The arranger of the product, the guarantor, was the world's fourth largest investment bank; it was an investment-grade rated organization. (*The buzzer sounded*) I really don't understand and I'd be very interested in any proposal as to what sort of conditions could have been imposed which would have prevented this loss.

涂謹申議員：

主席.....

主席：

OK。

涂謹申議員：

.....或者這樣，好不好？

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主席：

把這一條問完。

涂謹申議員：

韋先生，你可否回去提供一個詳細的資料，就是當你或者你的同事審批那些迷債的時候，他們在思考的過程中沒有考慮根據公司法342A加諸一些條件，原因是甚麼呢？很簡單，如果你說是因為第一層是大公司，第二層是大公司，第三層 swap counterparty是大公司，你記住啊，是否每一個名叫雷曼產品的系列都是這樣呢？而不需要再加一些條件，就是說譬如他有些甚麼要求，是否這樣呢？如果是，你就將他那些考慮寫出來好了，或者甚至第四，你說根本所買的那些債券全部都是最top的，即那個抵押品，sorry，抵押品，OK，可不可以將這個寫出來呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Yes, I'm very happy to write it down but I go back to my point. If you can tell me what condition you believe could have been applied that would have prevented this loss, I'd be very interested because I don't know what it is.

涂謹申議員：

主席。

主席：

我想.....

涂謹申議員：

這個是高秉忠先生，根據他第9段所說，是可以加諸一個條件給——例如他這裏所說——一個叫做 guarantor 或 swap counterparty，來保障那個叫做 structural safeguards，可以更加穩當。如果你認為不是，不需要加這個才更穩當，因為已很穩當了，那你就將你認為很穩當的那樣東西寫出來好了，就是這個意思。你記住，是否能夠防止雷曼這個產品"爆煲"與是否有足夠

擬稿

保障是兩件事，可能有其他產品不爆，那是幸運而已，是嗎？所以我們要審議的是，既然兩個部門有不同標準的要求來保障不同高度，在審批的時候，那個產品本身的結構性風險及那些公司擔保的風險等等，那為何不做呢？我就希望你能夠說出是否考慮過呢？考慮的過程是甚麼呢？為何不做呢？就是這個意思。

主席：

Mr WHEATLEY回應這個問題之後，我們便輪到另一位委員。Mr WHEATLEY？

Mr Martin WHEATLEY:

Chairman, I confess myself to be completely confused by the line of questioning. Had we imposed conditions on Lehman Brothers, we would be in the same position today because Lehman Brothers is bankrupt. I mean, that's a simple fact. What conditions would we have imposed that would have protected us against a bankrupt organization? What we did have was collateral in place and the biggest question that we're struggling with at the moment is how to achieve a return of the value of that collateral. It's the collateral that's the best protection for investors.

涂謹申議員：

主席……

主席：

我想你要再排隊了。

涂謹申議員：

……我很簡單說一句，主席。

主席：

嘎？

涂謹申議員：

主席，簡單說一句而已。

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主席：

我想……

涂謹申議員：

就是如果……

主席：

問完這個便不要再問，因為超出很多時間了。

涂謹申議員：

不，很簡單，我說一句。

主席：

OK，好。

涂謹申議員：

如果是這樣，有一個所謂系統性風險，就是它全部都是"藤連瓜，瓜連藤"，都是同一間公司，可能它impose的condition就是有另一個independent identity了，如果你全部一起倒閉，那就沒話說，全球都倒了，是嗎？就是這個意思嘛，可以是這個意思的。當然，這個是否應該要做呢？就是說，你們監管當局的人當時有否想過這個事情，譬如同一個系列裏面，甲又死，乙又死，丙又死，全部是同一組公司，全部就是那間公司死光了，那可不可以有另一間呢？如果另一間公司都死掉，全部四大投行都死掉，那就全世界一起死吧。

主席：

OK。

涂謹申議員：

但現在是一間死嘛。

Chairman:

Okay. Mr WHEATLEY, any response?

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Mr Martin WHEATLEY:

Again, Chairman, I don't fully understand the question. The swap counterparty is what has crystallized the loss, the collapse of the swap counterparty, but that loss should be offset, under the structure of this product, by a recovery of collateral value. That collateral recovery has not happened because of the complexity of the bankruptcy proceedings that are occurring all over the world at the moment.

主席：

好了，接着是梁美芬議員，你今天第一次問。

梁美芬議員：

多謝主席。

主席：

請留意，依照藍紙那3個範疇。

梁美芬議員：

是，我就想問Mr WHEATLEY，我最近又有機會被接觸，有些人向我推銷某些投資產品，大家已經有經驗了。但我也順帶一提，他們現在講的時候，說以前他們也是一樣，有些產品要我們make sure我不是美國籍的人才可以考慮去買，即只可以給香港人去買，這些是一些外國的結構性產品。我就再一次看到，其實外國對於他們美國公民去買這類產品，包括美國人在香港，都不准他們買的，我們香港是否門檻特別低呢？第一，這個問題……

主席：

梁美芬議員。

梁美芬議員：

是。

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主席：

請你看看藍色那張紙，依照那3個範疇，今天不會問其他事情，OK？只是3個範疇。我今天說過很多次，不過你剛到，你不知道。

梁美芬議員：

是。

主席：

一定要集中那3個範疇，否則我不會讓你問，亦不會讓證人回應。3個範疇，很清楚吧，OK？

梁美芬議員：

我先看看……好吧，我讓其他……

主席：

是，我再排次序，等一會兒才讓你問，好不好？

梁美芬議員：

好的。

主席：

是，涂議員。

涂謹申議員：

不是，剛才梁議員的問題在高先生陳詞的第10(4)段裏面有講到的。

主席：

不，她要帶回去那裏，她剛才問，一路問下來去了很遠。

涂謹申議員：

不是，可能她不知道在第10(4)段而已。

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主席：

我知道，好的，OK。

涂謹申議員：

不，第10(4)段裏面是說在美國是不能賣的……

主席：

OK。

涂謹申議員：

……引伸到香港，不能賣給美國公民，都是同樣的概念。

主席：

你帶回到這個文件那裏。

梁美芬議員：

很多謝James。

主席：

你可以問，不過你要帶回去，所以我等你準備一下。

梁美芬議員：

我明白，我明白，不好意思，因為剛才我主持了另外一個會議。我接受涂謹申議員的補充，即如果在那個情況下，為何在香港我們又被容許可以這樣去買？這是近期，是兩個星期之前的事，是我自己本人一個切身的經驗。在香港，我想問Mr WHEATLEY，我們的門檻是否真的比別人低很多，我們對自己的永久性居民去買這些如此複雜的結構性產品，是差很遠的呢？

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

Mr Chairman, under UK securities rules, under FINRA Code of Conduct, US brokers are only allowed to sell structured products to clients that they consider to be sophisticated clients. Now, I think that's exactly the same rule as we have in Hong Kong but, unfortunately, it hasn't operated in the same way in Hong Kong. The truth is that different types of structured products, not necessarily called Minibonds, but different but related structured products have been sold in most markets around the world and significant losses have been incurred in most markets around the world.

主席：

梁議員。

梁美芬議員：

Mr WHEATLEY，因為證監會是監管其中一個，在前線你們做很多即時、on-spot的監督，最近我收到消息，你們都查到有幾十位前線員工可能在這方面出了問題，但據我所知道，美國那些銀行，譬如花旗銀行或者一些外國有分行的銀行，它們的態度很強硬，但他的銀碼並不高，你剛才說的是銀碼很高的，要達到某個銀碼，我們都問過，是嗎？100萬美金或者定期收入相當高。但香港不是這樣，我們最近接觸的譬如一些ELN或甚至雷曼與某些ELN有關的產品，30萬、50萬也有，為何會這樣？而且它們都是花旗銀行或大型的美國有關銀行。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Under the Companies Ordinance, the banks are allowed to sell products, which were referred to as private placement notes, under various safe harbours within the Companies Ordinance. One of the thresholds – it's interesting you say 300,000. One of the thresholds is 500,000 which allows them to sell products to individuals without the documentation for the product being authorized by anybody, neither the SFC nor the HKMA. So that's a structure that exists today in Hong Kong.

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主席：

梁議員。

梁美芬議員：

我為何要追問這個問題，因為我們都跟了這麼久，我們知道有些銀行的態度軟化了，會跟不同的一些投資者和解，但態度最強硬的，以我所知道，有花旗銀行，有恒生銀行，有渣打——我知道渣打有個別都已和解了——這些態度如此強硬的銀行，據我看過這些銀行的個別個案，倒不是說全部都符合你剛才所說的情況，可能那些美國籍的人就沒問題，因為它可能不讓他買。在這個情況下，你們對這一類銀行，態度如此強硬的銀行，你們在其前線員工的監管上有否發現問題呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Mr Chairman, the role as a frontline regulator for the SFC is only fulfilled insofar as it applies to brokers. We're not the frontline regulator for banks or bank selling staff. So, our difficulty is we don't have the ability to look at those sales practices; that's a question you'll have to address to the Hong Kong Monetary Authority.

主席：

梁議員。

梁美芬議員：

但在你們之間的合作上，即現在兩個監管機構，其實金管局始終都經常說，他們是在政策上去做那件事，你們證監會在operational方面做得更多，而這一方面就是operational，因為其實這些是實實際際正在發生的個案，那麼證監會是否覺得你們是沒有角色的，這個又拋回給金管局呢？

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

Mr Chairman, it's not a question of passing the buck. The system is designed that we neither rely on nor delegate nor have any authority with regard to frontline staff of banks. That is how the regulatory structure in Hong Kong has been set up.

主席：

梁議員。

梁美芬議員：

我想會很短的，留給其他同事問。我很希望證監會現在看看這些態度如此強硬的銀行及其前線員工，因為我知道你們可能集中在其他早期有些面額更小的，可能是中銀或者其他銀行，但其實這些大銀行現在的態度其實也令人頗憤怒，它根本動都不動，最好你們來和我打官司。這個不是我們能做到的，我們立法會是要問你，你要向這些銀行施加你們調查的壓力，那裏才動得了，才可以解決剩下的問題，所以我們一定要逼你們去做事。

主席：

你的問題是甚麼，梁議員？你的問題。

梁美芬議員：

我就是想跟他講，最後不要又拋回給金管局。

主席：

不是，你的問題是甚麼呢？你的問題。

梁美芬議員：

完的了，不再問了。

主席：

你給了意見，我不想你自己給意見，我想你問問題，即不要表達自己的意見，我是想你問問題。沒有問題？

擬稿

梁美芬議員：

沒有了。

主席：

OK，好的。接着是劉慧卿議員。

Hon Emily LAU Wai-hing:

Thank you, Chairman. Chairman, I want to ask Mr WHEATLEY questions on the supervision of the intermediaries and, just then, a few members have asked questions on the FAQs versus Code of Conduct or Control Guidelines. And Mr WHEATLEY told us, Chairman, that either route is equally strong. And, Chairman, if you look at paper M4, which is a letter from the HKMA to the banks and with the attachment of a circular from the SFC, going to the IAs, saying that they should note that in addition to the requirements in the Code of Conduct and the guidelines, the SFC will take into account compliance with guidance in the FAQ. Chairman, I mean, can Mr WHEATLEY tell us what is the compliance obligation regarding the FAQs?

And, if you look at paragraph 15 of Mr KO's statement, he was saying that, you know, he quoted from one of your directors, Mr Hing Hing CHUNG, saying the FAQs which were issued in May 07, which I just referred to, they were crafted so carefully that "they do not introduce any new requirements to the broad principles" already contained in the Code or in the Guidelines. So, what value is it?

And, also, in subparagraph (2) of that paragraph 15, Mr KO said the FAQs were issued after the second round of thematic inspections which, like the first round two years ago, Chairman, found the same problems. What are they? Insufficient knowledge of clients, no proper due diligence on products sold, lack of justification to illustrate suitability of advice, ineffective management supervision, poor documentation, non-compliance with licensing requirements. And he said that, faced with all these serious problems, there are no new measures but just some FAQs. So how is the SFC protecting the investors?

Chairman:

Mr WHEATLEY?

擬稿

Mr Martin WHEATLEY:

Chairman, again, I see the quote here in the submission that you've received. We've asked for the materials that were submitted to you but, in the absence of those, it's difficult to comment on this out of context. So I don't know the context in which this statement was made.

The approach of not adding to the existing Code is one that makes it simpler and quicker for us to get additional guidance to the market because it doesn't have to go through a formal consultation or formal approval process. So, I think, in the context of the quote, it's more about the need to, or the ability to, get such FAQs established.

In terms of the question about whether it adds to the existing Code, the existing Code is principle-based and it's broadly crafted, so we didn't feel the need to add additional requirements to the Code. The FAQs are there to clarify the Code and we've made it quite clear, in the introduction to the FAQs, that compliance with guidance in the FAQ will be taken into account in our investigations, in our supervision, and in assessing whether a registered person is fit and proper. So that's the extent to which we say the FAQs have the same effect as an additional guideline.

Hon Emily LAU Wai-hing:

But, Chairman,

主席：

劉議員。

Hon Emily LAU Wai-hing:

..... do they? Can they? If it does not have any force of law then it doesn't. You cannot say they do. And, in fact, can you give us some example of your enforcement to show that you regard and all the institutions regard them as guidelines having legal effect? Please, don't mislead this Subcommittee. If they are toothless things, then that's what they are. And, if they have real effect, okay, tell us. Show us.

And, also, the two reports, Chairman. Mr KO, in paragraph 15(2), they are referring to the two thematic inspection reports, so you should have them. And they say they come up with – they uncover the same problems. So, if, in two years' time, you find the same problems, then, naturally, people would expect you to have much harsher enforcement. I can't understand why Mr

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WHEATLEY is telling this Subcommittee that the FAQs seem to have the same effect as guidelines or the Code. Is that exactly what you are telling us?

Mr Martin WHEATLEY:

In practice, yes,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... they have the same effect. And, Chairman, I'm happy to provide further information on how and why that's the case.

Hon Emily LAU Wai-hing:

Ha ha, so

主席：

劉議員。

Hon Emily LAU Wai-hing:

..... how do we progress, Chairman, if he takes this attitude and if he comes so unprepared? So we are just, sort of, half wasting our morning, Chairman.

主席：

我們再.....

Mr Martin WHEATLEY:

Mr Chairman, may I respond to that?

Chairman:

Mr WHEATLEY?

擬稿

Mr Martin WHEATLEY:

Because the point's been made a number of times that I've been not helpful enough with this committee or haven't provided information. We were given four days to provide answers to a number of complex questions. Those questions go back nearly 10 years, which meant we've had to go back to our archives. We asked for the documents on which the questions were based and we've been refused access to them and, therefore, we told you, in advance of today's meeting, that we wouldn't be able to provide written information but you have chosen to have this hearing despite that.

So, in the context of that, this is what you've got: a meeting where you haven't got written^[Note] responses from us because we told you, in advance of this meeting, that we didn't have time to do it and you failed to provide us with the documents that would have made it easier for us to do that quickly.

主席：

韋奕禮先生，要對我們委員會公平，我們希望你能夠在今個研訊之前可以提供書面回應給我們，但你也通知我們來不及做，這是沒有問題的。但我們同事所問的問題，我都覺得是合理的問題。韋奕禮先生，你在你現在的職位做了一段時間，亦在該機構做了一段時間，對於今天所提的問題應該很熟悉，就算你的文件還沒做出來，文件還沒完全做到最後的模式交給我們，不等於你不可以有足夠的資料及沒有足夠瞭解整個機構的運作和整個事件發生的前因後果，我們期望你可以提供資料給我們，我相信大家的看法就是這樣，不是說你沒有一個文件交給我們就完全不預備回應我們。希望你不要給我們這樣的印象，我也希望我們的印象不準確。希望你能答的便答，不等於要提供到文件你才肯回答那些問題，我希望韋奕禮先生你明白我所說的這點。

也許請劉議員繼續。

Hon Emily LAU Wai-hing:

Yes, Chairman, I think that, if Mr WHEATLEY thinks that we have not given him enough time to prepare for the hearing, he should have asked you,

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

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Chairman, for more time and then he would present us with the written submission, then we can have a proper hearing. Now I'll ask him a question that he just told us he's prepared.

Paragraph 11. I asked about the departure of the experienced senior management team and he said he had not looked into that but he did say he was prepared

主席：

你是說文件W23(C)，是嗎？

Hon Emily LAU Wai-hing:

Yes, that's right, the statement by Mr KO. He was prepared to answer questions on the replacement, Alexa LAM, Ashley ALDER, Alan LINNING, because Mr KO told us that, as far as he knew, none of them had any regulatory experience, either locally or overseas, prior to joining the SFC. Please tell us. You said that's wrong. What's their experience?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, well, Mrs LAM had been in the Commission for a number of years; she'd worked in our legal services department and, therefore, had had access and exposure to all aspects of our work. Ashley ALDER was an experienced partner with a legal firm in Hong Kong who had been working in corporate finance for a number of years; and Alan LINNING is a very experienced litigator who took over our enforcement function.

主席：

劉議員。

Hon Emily LAU Wai-hing:

Chairman, these are not jobs that have anything to do with regulatory experience, so if he's a lawyer, he took part in litigation, and Mrs LAM worked with the legal service. I mean, do they have experience in regulating the financial sector?

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Mr Martin WHEATLEY:

Yes, of course.

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Of course, they do.

Hon Emily LAU Wai-hing:

What is it?

Mr Martin WHEATLEY:

Well, Ashley ALDER worked in corporate finance for a law firm, he did regulatory work in that law firm; he came in to work in our corporate finance function. That's directly relevant. Alan LINNING was a litigator; he worked in our enforcement function. That's directly relevant. Alexa LAM worked in our legal services department and had access to all aspects of the SFC's regulatory work. It's directly relevant. *(The buzzer sounded)*

Hon Emily LAU Wai-hing:

Chairman,

主席 :

劉議員。

Hon Emily LAU Wai-hing:

..... I hope he will provide us with written information on how these people are relevant, have relevant regulatory experience, and also tell us why the other four left in that year and what the management did, whether they assessed the situation, whether it was good for the SFC to have such an exodus at the same time.

主席 :

可不可以提供.....

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Mr Martin WHEATLEY:

Chairman,

主席：

.....這些資料，會後書面提供給我們，Mr WHEATLEY？

Mr Martin WHEATLEY:

Chairman, can I beg your indulgence? I can't possibly commit to giving you the reasons why people left. I can ask them; they may or may not provide that answer. You could ask them as a committee, if you chose to. As far as the appointments are concerned, they're all appointments that are made after a global, worldwide search, and they're appointments made by a panel after assessing their relevant experience. They're not simply choices made by the SFC management.

Hon Emily LAU Wai-hing:

Chairman,

主席：

不過我相信，韋奕禮先生，你起碼可以提供到你請的那幾位新的同事、你們的同事的理由，我相信你可以給我們，是不是？韋奕禮先生。

Mr Martin WHEATLEY:

Subject to any data privacy concerns.

主席：

即是可以了，是嗎？OK，劉議員。

Hon Emily LAU Wai-hing:

Chairman, Chairman, my question regarding the exodus was not going to interview the various individuals on why they left; was whether the management – I put it to you when I first asked this question – whether the management had any discussion at the time and whether they had expressed concern that, within a period of a few months, you have such departure. That is my question, so don't twist it to say that I asked you now and go and interview those people. Of course, you can interview them and give us the

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answers but that's not what I asked. But, of course, the Board may not have any discussion at all; the Board might think it was very natural for four senior people to just leave like that. And, if that's the case, this Subcommittee would like to know, too.

主席：

Mr WHEATLEY.....

Mr Martin WHEATLEY:

Well, I suggest

主席：

.....我希望你明白問題。

Mr Martin WHEATLEY:

..... you ask people who have that information because I don't.

Hon Emily LAU Wai-hing:

Well, Mr Chairman,

主席：

劉議員。

Hon Emily LAU Wai-hing:

..... he's here representing the SFC and, if we don't ask him, then maybe we should summons the chairman at the time, Chairman, since we've got several years to finish our report. Of course, if that's

主席：

我們.....

Hon Emily LAU Wai-hing:

..... the co-operative attitude of Mr WHEATLEY, well, we will do that.

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主席：

可能我們沒有several years這麼久。劉議員，我建議，這個問題我們清晰地書面寫給韋奕禮先生，等他回應，好不好？不同意？清晰提出你的問題。

劉慧卿議員：

我希望那是證監會去回應，如果他沒有能力代表證監會就沒有能力好了。

主席：

我正式書面寫給他們，因為他剛才已承諾，但只承諾了一半，所以我就說我們正式發信給韋奕禮先生，這其實是一個很公道的問題。

OK，第二位，有兩位的，希望今天能完成這個第二輪的提問。甘乃威議員，之後是余若薇議員。甘議員先吧。

甘乃威議員：

主席，我再跟進問有關諮詢文件的問題。剛才Martin WHEATLEY提到他會後會提供資料，我很想清楚知道，包括你審批這些結構性的產品，我特別指明是迷你債券，Constellation及精明債券這一類型的產品，如果根據你的諮詢文件裏面所提的，你可否清楚指出，發行人、保證人、安排人、抵押品及參考的資產，我特別提這5點，如果根據現在你的諮詢文件，有關剛才我提及以上的產品，有些甚麼改動，如果這些改動不作出的話，是否不可以——不可以在香港的市場上售賣？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, I've already said that I'll give a written response as to how the consultation might have affected the previous structure of products. I think that would cover the area that I'm being asked about now.

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主席：

甘議員。

甘乃威議員：

主席，我主要為何重複問這個問題呢？因為高秉忠先生在上一次即26日來我們立法會作供時，他作供的供詞裏面有這樣講，他是說現在有關那些資料要求的，即提供的時間，就很清楚叫做 **structural requirement**，與證監會一直所講的披露為本，只講披露產品的風險，是有很明顯的不同。我想問韋奕禮先生，你可不可以講，究竟現在你在諮詢文件裏面所提的是否正如高秉忠先生所講，這些是一些所謂 **structural requirement**，一如他所說是正確的呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Chairman, if I may, I tried to clarify earlier but maybe I should again. When we talk about a disclosure-based regime, that's largely a shorthand measure for distinguishing between that regime and a merit-based regime and, in a merit-based regime, it's one where a central body would determine all of the products that were suitable for all of the investors. But, having said that, disclosure-based regime does not mean just disclosure-based, so there are a number of parts of the structure of our regime which are more than disclosure. There are certain structural requirements that apply to all types of products and all products are sold according to a Code of Conduct which is common to all.

So, I don't think – if I've characterized it that disclosure means only disclosure and nothing else, then that's a mistake. That's not what we meant by that.

主席：

甘議員。

擬稿

甘乃威議員：

OK，如果你這樣講的話，往回說，我們很多同事都有提到高秉忠先生提到的，在他負責的部門，IPD及CFD兩個部門，即公司融資部……公司產……CF……中文應該是……我不記得了——公司融資部及產品投資……

主席：

企業融資部。

甘乃威議員：

企業融資部及產品投資部兩個部門有不同的時候……

主席：

產品投資科。

甘乃威議員：

……我想問的是，韋奕禮先生，你可否確認一下，企業……IPD吧，簡單說，IPD，它本身在產品審批的時候，是否已是用現在你們在諮詢文件所提出來的，對發行人、保證人、安排人、抵押品以至參考資產的這些要求，其實已經早在05年或者再早之前，說的是IPD去審批產品的時候，已經在用這種方法呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The Investment Products Department would be approving products according to the code of unit trusts or the code of insurance products and I think it's fair to point out that Harold, you say he ran IPD department, he was responsible for insurance products. That was the specific area. But that code had been developed over many years and developed in consultation with the market. It had certain structural requirements in it but as do structured products. So, one is according to the SFO, one is according to the Companies Ordinance. So they're different structures but they're different products. I mean they're fundamentally different products. So, I think it's very difficult to conclude that all products should be operated to exactly the

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same standard or that somehow one of those standards was providing a lesser degree of protection than the other.

主席：

甘議員。

甘乃威議員：

我現在說的是IPD那個部門本身，雖然你說有不同的產品，但它同樣地有產品、有發行人、有保證人，譬如舉個例子，他有提出有關這個信託基金、互惠基金或者保險產品的一些守則，這些都要寫出，譬如舉個例子，某種產品有基金經理，這些基金經理都要領牌，在甚麼情況受到監管，很清楚寫下來，即等如你現在諮詢文件裏面所提的資料。譬如舉一個例子，你們有提到有關未來的，如果是SPV的話，要委任香港領有牌照的產品安排人，過去你沒要求這樣，現在你在諮詢文件則有要求這樣。其實這些要求，類似相對的要求，在IPD內是否都有這樣的要求呢？當他處理這些產品的時間。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Again, Chairman, the need for guarantors or collateral or counterparties will vary depending on the product. If it's a fund manager selling a fund, then the fund manager owns, in many cases, the underlying fund and, therefore, the requirements are that the fund manager is fit and proper to manage that fund and that they've got separate custody arrangements. If it's a fund manager or an institution offering an exchange-traded fund, again, there'll be different requirements depending on whether that exchange-traded fund holds the underlying swap or replicates performance through a swap. Structured products typically are products that embed certain products, typically debt products, with derivative products but will have some collateral sitting below them and, again, the requirements will be different.

So, I think it's very difficult to say that the same structure should fit every product; every product is different. And they're only the products that we see. There are a lot of products that are effectively the same but are structured as insurance products or structured as bank products that we don't have any approval route over. So, I think it's

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甘乃威議員：

主席，我……

Mr Martin WHEATLEY:

…… very difficult to answer should there be one system that applies. All the products are different.

主席：

甘議員。

甘乃威議員：

我想，主席，可能韋奕禮先生講得比較複雜。簡單的講法就是，當高先生提出——剛才我想韋奕禮先生都同意——兩個部門就審批產品的一些標準可能有不同的意見，這些意見早在05年或者再之前已經提出來，現在提了這些意見出來，我想問，有多少正正就是你諮詢文件裏面所提的內容？這些內容如果你能夠吸納到的話，早在05年就已經可以應用於產品的審批，就不會導致現在迷你債券或雷曼兄弟這些產品用現在的結構，當然，我不敢說不會有苦主有損失的問題，但起碼產品在現在售賣的情況，與現在的產品的標準是有不同。你同不同意這個觀點？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The consultation document is applying some new requirements – or is proposing, because we're still consulting on it – is proposing some new requirements. They are being proposed to take account of a market that has evolved quite a long way from the market that was envisaged when the Companies Ordinance was put in place.

Your question about whether some of these proposals have been discussed before: yes, that's the case. And some of these proposals were discussed many years ago, some many years before my time.

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The question as to whether, had these proposals been in place, it would have prevented the losses: I think the answer is almost certainly "No".

主席：

甘議員。

甘乃威議員：

我想問一下，剛才我很高興聽見韋奕禮先生說之前有人提出過，在你們SFC有人提出過，第一，是甚麼人提出？第二，為何當時你不接納相關的建議，要到了這麼多年後你才放在市場上作為一個諮詢文件，抑或要到"爆煲"了，沒人批評你了，你才放膽"去得盡"一點呢？是否因為市場有壓力給你呢？第一個問題，誰提供這些資料要求你有這樣的建議？第二，為何你當時否決？第三，為甚麼在現時的情況又要提出呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

The first question: the proposal was discussed well before my time and I don't know where the original proposal was put forward from within the organization. (*The buzzer sounded*) Therefore, it follows the second question, I didn't veto them and I don't know how or why the proposals evolved the way they did. And, sorry, I've missed the third question.

主席：

甘議員。

甘乃威議員：

我主要是問，你剛才提到你上任之前已有人提出，你又不知道的，但是為何沒有實施去做呢？因為實際上有.....我都希望你會後提供資料，究竟有多少你諮詢文件內的建議是之前已有人提出了？大家不是事後孔明、馬後炮，而是之前，你說你是05年上任的，05年上任之前已經有人提出，但為何當時你們內部不接納這些建議，任由現在的產品用現在這種方式進行售賣呢？

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Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I'd have to check the records. I've got no personal recollection of that, so I'd need to look at what records we do have. But I repeat my point: it's doubtful whether any change or any proposals would have prevented the losses that have occurred as a result of Lehman's collapse.

主席：

OK。今天最後一位同事提問，就是余若薇議員。

余若薇議員：

謝謝主席。主席，我想跟進我剛才問韋先生的問題，就是高先生的書面證供第16、17段那裏。高先生說因為他在投訴科方面，所以他知道誤導銷售的情況非常嚴重，所以他自動請纓，雖然不是他的職責範圍，但他覺得需要做一套比較詳盡的指引，讓中介人賣這些產品時有一個詳細的指引。你看到他第16段說，這一件事，他說在2005年中的時候同意由Alexa LAM去領導做這件事，一直一直這樣做、做、做，做到.....你看到第17段，他說經過很多部門、很多科都同意了，於是做了這一套很詳盡的指引出來，這個當然是指附件，我們不要說附件的內容，但這個是很詳盡的指引，這是06年2月、3月的事。你看到其實整件事做了大半年，亦牽涉證監會內很多人、很多部門。後來卻沒有了，即不了了之，然後就在07年5月做了一些FAQ。

我知道，韋先生，我聽到你說的，你說FAQ其實跟那些指引是一樣的。先不要說它是否一樣，但你可否回答我們，解釋給我們聽，為何最終不做那個指引？我不管它是否一樣，我不管FAQ是否與指引一樣，是否淡化了，但因為你看到大半年的工作做過了，已經有了成果，已經有一些很詳盡的指引，為何扔掉它呢？是誰決定的呢？理由在哪裏呢？如果你不能向我們解釋那個理由，我們就看第15段，因為第15段中，高先生就說為何扔掉呢？就是因為後來出FAQ的時候，你看這裏，剛才劉慧卿都讀了那段出來，就是說有證監會的人說不如做FAQ好了，因為做FAQ是沒有新的要求，所以就可以避免公開諮詢。即好

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像變成為何最後不出那個做了大半年的指引的理由，就是因為.....

主席：

湯議員，湯家驊議員，暫時請留下，因為不夠人.....

余若薇議員：

.....打算找個FAQ而已。

主席：

.....離開了就不夠法定人數，不好意思。請你先等一等，看看能否找到其他同事進來。

余若薇議員：

所以，韋先生，你可否講一講給我們聽，為何扔掉那個做了大半年的工作呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, I don't think the project was dumped. I think the end-result was the FAQs that were published and, as I stated earlier, I think that was an adequate interpretation of our existing Code rather than needing new requirements to add to the Code.

余若薇議員：

韋先生.....

主席：

余議員。

余若薇議員：

.....我不是跟你辯論FAQ是否等於指引一樣如此有法律效力，或者如此有份量，我不是跟你辯論這一點。我的問題很簡

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單，即這件事做了大半年，SFC做了那麼多工作，是有一個成果，得出一大疊東西，那為何後來那疊東西不用作公開諮詢，不去發布，而變了另一樣東西？必然是有一個決定的，那個決定是誰做的？又是為甚麼呢？因為你將大半年的工作變了另一樣東西，那個理由在哪裏？那個決定又是誰做的呢？

主席：

Mr WHEATLEY，我們很多人都想知道這個答案。

Mr Martin WHEATLEY:

Well, I'm afraid, then, I'll have to make sure that I've got a full and complete answer to give you because I don't know exactly how the decision process from the project that was started ended up in the FAQs. The point I would make is that I think the FAQs are adequate.

主席：

或許會後.....

Mr Martin WHEATLEY:

..... And I don't know the evolution of that project.

余若薇議員：

韋先生。

主席：

會後或許提供一些更充足的回應給我們，好嗎？給我們書面回應。

余若薇議員：

對了，即.....

主席：

可不可以，韋先生？

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Mr Martin WHEATLEY:

Yes. Yes, Chairman.

主席：

余議員。

余若薇議員：

我想，主席，同樣的問題，即很失望，因為事實上這不是說10年前的事，這個文件，這個書面供詞是給了證監會，我亦相信韋先生是有充足的準備，知道我們今天來是問他這個文件的。你可看到，很明顯一個問題，你說你沒有調查過這件事，沒看過這一樣東西來準備這個聆訊，我覺得很遺憾。但韋先生，我想問你另一件事情，我也問過高先生，就是把關的問題。你今天回答問題的時候你有提過，你就說這些迷你債券，這些雷曼產品是適宜售賣的，你說"suitable for sale"，你回答我們時是這樣說的。

當然，任何東西都是可以售賣的，但問題是它適合賣給哪類人，這就是問題所在，因為我問過高先生為何外國沒有我們香港如此嚴重的問題呢？因為我們翻看證監會的報告，都是說其實賣了給很多人，根本是一些譬如退休人士或一些長者，或者學歷不是很高，或者是一個家庭主婦的積蓄，諸如此類。很明顯，這些人也未必真的可以瞭解一些如此複雜的產品。剛才你回答梁美芬的時候，你也說外國是有規矩的，這些產品只可以賣給一些有經驗的投資者。所以我就想問你這個問題，因為我已問過高先生，高先生就說把關的責任絕對在證監會。所謂把關，意思就是說這類如此複雜的產品應該可以賣給甚麼類型的買家。

我想問韋先生，你是否同意高先生這個說法，就是證監有責任把關，確保一些不適合所謂over-the-counter這樣子賣給一些普通投資者的產品，是不應該賣給所有的買家？

Chairman:

Mr WHEATLEY?

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Mr Martin WHEATLEY:

We do have a gatekeeping role and that's clearly to ensure that any products that are sold are sold pursuant to the regulations and that the conduct of those people under our jurisdiction is compliant with the Code of Conduct. That is our gatekeeping role.

余若薇議員：

韋先生……

主席：

余議員。

余若薇議員：

……你逃避了我的問題，這個其實也是涂謹申問了你幾次的問題。後面去銷售的時候，當然，那些中介人，那些銀行的前線職員有一個責任，我不是跟你說這個，我是說你還沒決定批這些產品或文件出去時的那個責任，那個把關的責任。

你同不同意，當你見到一些如此複雜的產品，是不應該賣給所有類型的顧客，特別是在銀行做長期定期存款的那些，說的是那些真的不是做投資，而是打算放在那裏做定期存款收取利息的，這一類顧客根本不適宜買這一類產品，而證監會應該有一個把關責任，就是說有些產品基於其複雜程度，是不應該賣給所有類型的投資者。你是否同意在這方面證監會有把關的責任？如果沒做到這個把關責任，你同不同意證監會是失職呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Well, the question, "Were they suitable for all investors?" is clearly, "No", they weren't suitable for all investors. The documentation said that and it made it quite clear these are not suitable for all investors, these are not suitable for investors with a low-risk tolerance or with a lack of understanding. So that was very, very clearly stated in the document. What we don't have is the ability to police that at the point of sale.

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So, we do have a gatekeeping role; I absolutely agree. I'm not disputing that for a second but it's how that gatekeeping role is exercised and we don't have, under the regulatory structure, under the powers that we are given, we don't have the ability to manage that gatekeeping role from the start of authorization of the product to the product ending up in a person's hands.

余若薇議員：

你說……

主席：

余議員。

余若薇議員：

……你無權，你說證監會無權去做這個把關的工作，但事實上是這樣呢？因為你看看高先生的文件第8段，你看《公司條例》第342A(1)條，他說證監會是可以施加條件。例如你如果見到這些產品根本不適宜賣給所有類型的顧客，而你也知道如果在銀行銷售的時候，銀行是有機會賣給真正在做定期存款的一些顧客，特別加上你們做過的那些專題研究，你知道一次又一次，那些銀行有誤導性的銷售手法，你自己後來那個由上至下的報告其實都已反映出來，就是說很廣泛存在這些誤導性銷售的情況，甚至那些銀行職員根本不瞭解產品。知道這麼多事情的時候，你回想，其實證監會應該在施加條件的時候，至少有一個條件，就是說你可以規定有一些產品不應該賣給某一類型的顧客，你不是將責任完全推給前線的銀行或者前線的銀行職員，就說你去搞定，(計時器響起)而是你在審批的時候，作為證監會，你是有權去施加條件的，不是無權，不是像你剛才所說你無權監管。

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

No, there's a slight confusion there. At the point of authorizing the document, any conditions that we have would be subject to the structure of the product; they're not conditions that would apply to the intermediaries selling the product. We did have concerns and we've raised those concerns based on

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our inspections of brokers; we raised those concerns as widely as we could through our own publications, with the government, with the Monetary Authority, to say we believe there is a risk that these products could end up in the wrong hands. And that's what we did.

余若薇議員：

主席。

主席：

余議員。

余若薇議員：

很簡單的跟進。

主席：

好的。

余若薇議員：

因為這條很關鍵，因為剛才你都承認外國可以有這類規矩，就是說一些複雜的產品只可以賣給一些經驗投資者。我現在的問題就是，同樣道理，如此複雜的產品為甚麼可以如此廣泛地賣給所有類型的人？你的意思是否說，任何法例，無論我看《公司條例》也好，看SFC方面的證券大法也好，你的意思是說，你作為證監，是無權作出這些規定，無權規定如此複雜的產品只可以賣給有經驗的投資者。你是否這個意思呢？

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

Our Code of Conduct is fairly clear that conduct

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

余若薇議員：

主席，對不起，我不是想問他關於守則，我只是問他，在法例上，作為證監，他的意思，他的證供是不是他無權規定這一類如此複雜的產品只可以賣給有經驗的投資者？

Chairman:

Mr WHEATLEY, can you focus on the question?

Mr Martin WHEATLEY:

Each of the documents included information that said these products are not suitable for everybody; they're products that you could lose part or, possibly, all of your investment and that investors needed to make sure that they properly understood. That was in every document, every prospectus that was published.

Hon Audrey EU Yuet-mee:

I'm sorry, Chairman.

主席：

余議員。

Hon Audrey EU Yuet-mee:

I'm asking you a very simple question that's capable of a "Yes" or "No" answer. My question is very simple. Are you saying, in law, the SFC has no power to limit the sale of these complicated products only to sophisticated and experienced investors?

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I think, when a document is approved for public distribution, it's approved for public distribution. There's not segments of the public for which it's approved. So, once a document is approved, it's approved for public distribution.

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

Hon Audrey EU Yuet-mee:

Mr WHEATLEY,

主席：

余議員。

Hon Audrey EU Yuet-mee:

..... I don't think my English is so poor that you can't understand a simple question. As I said, my question is capable of a "Yes" or "No" answer. In law,

Mr Martin WHEATLEY:

Well, I don't believe it is.

Hon Audrey EU Yuet-mee:

In law,

Mr Martin WHEATLEY:

..... I think it is more complicated than that.

In the law, we have the ability to approve products under ordinances, whether the Companies Ordinance or the SFO, and when we approve a product, we approve it for public distribution.

Hon Audrey EU Yuet-mee:

Yes, but

Mr Martin WHEATLEY:

Now, we don't have, within that, a public distribution but only this bit of the public.

Hon Audrey EU Yuet-mee:

Are you saying, in law,

主席：

余議員。

擬稿

Hon Audrey EU Yuet-mee:

..... the SFC has no power to limit the sale of these products only to a sector of the public?

Mr Martin WHEATLEY:

Well, if you

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

I appreciate that the question you're asking is simple but it's a combination of our Code and the ordinance; it doesn't sit just in the Code and it doesn't just sit in the ordinance. So, an ordinance allows us to approve a product for public distribution, the Code says what segment of the public a product should be sold to. So, it is a combination of both of those.

Chairman:

Okay.

Hon Audrey EU Yuet-mee:

In other words, you're saying you have the power?

Mr Martin WHEATLEY:

Well, I'm saying – well, sorry,

Chairman:

Mr WHEATLEY?

Mr Martin WHEATLEY:

..... again, you come back to the question. We set the rules but, in some instances, we don't enforce the rules.

Chairman:

Okay. It's a complex response to a simple question.

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立法會研究雷曼兄弟相關迷你債券及結構性金融產品所引起的事宜小組委員會
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Minibonds and Structured Financial Products

Mr Martin WHEATLEY:

I don't want – but, with respect, Chairman, I don't think it is a simple question.

主席：

OK。韋先生，多謝你今天出席。由於今天研訊的時間已到，小組委員會將會另訂日期請韋奕禮先生出席研訊，繼續向小組委員會作供。2009年5月20日向你發出的傳票依然有效。

今年半年所安排的公開研訊，今天是最後一次。半年大家辛苦了，在此謹祝各位同事，包括各位公眾人士及各位傳媒，明年虎年虎虎生威，事事順利。

待會我們的內部商議，我沒有事情提出，因為我已安排了本月26日舉行閉門的內部商議，在10時45分，兩個小時。如果各位同事沒有其他問題需要稍後討論的話，我宣布散會，謝謝。

(研訊於下午12時52分結束)