

立法會
Legislative Council

LC Paper No. CB(1)1105/08-09

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Panel on Financial Affairs

**Minutes of special meeting
held on Tuesday, 30 December 2008 at 9:00 am
in the Chamber of the Legislative Council Building**

- Members present :** Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Members attending :** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEE Wing-tat
Hon Tommy CHEUNG Yu-yan, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
- Members absent :** Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP

Public officers attending : Agenda Items I & II
Prof K C CHAN, SBS, JP
Secretary for Financial Services and the Treasury

Ms Julia LEUNG, JP
Under Secretary for Financial Services and the Treasury

Attendance by invitation : Agenda item I
PricewaterhouseCoopers

Mr Simon COPLEY
Partner

The Hongkong and Shanghai Banking Corporation Limited

Ms Letitia CHAU
Senior Vice President & Head of Asia-Pacific
Corporate Trust & Loan Agency
HSS Securities Services

Ms Susan SAYERS
Deputy Head of Legal

Distributor banks

Mr Alexander CHU
Country Executive Hong Kong
ABN AMRO Bank N. V.

Mr Barry LO
Head of Branch Network (Deputy General Manger),
Channel Management
Bank of China (Hong Kong) Ltd

Ms Nancy CHAN
Deputy General Manager
Bank of Communications Co Ltd

Mr TONG Hon-shing

General Manager & Head of Personal Banking Division
The Bank of East Asia, Limited

Mr FUNG Tak-hee
Head of Retail Banking Department
Chiyu Banking Corporation Ltd

Mr Kevin CHU
General Manager Wealth Management Division
Chong Hing Bank Ltd

Mr C. Y. LING
Alternate Chief Executive Officer &
Chief Operating Officer
CITIC Ka Wah Bank Ltd

Mr John LAM
Executive Director
Dah Sing Bank Ltd
Mevas Bank Ltd

Mr Paul AU
SVP & Head of Marketing – Financial Markets Group
Fubon Bank (Hong Kong) Ltd

Mr Peter HUI
Assistant General Manager
Nanyang Commercial Bank, Ltd

Mr Andrew SIU
Senior Deputy General Manager
Public Bank (Hong Kong) Ltd

Mr Edward CHU
Director & Assistant General Manager
Shanghai Commercial Bank Ltd

Mr Edmund WU
Head of Wealth Management Department
Wing Hang Bank Ltd

Mr Ronald TAM
Assistant General Manager
Wing Lung Bank Ltd

Mr Rob MORRIS
Managing Director

Ernst & Young

Mr Richard MAZZOCHI
Partner
Mallesons Stephen Jaques

Agenda item II

Securities and Futures Commission

Mr Paul KENNEDY
Acting Chief Executive Officer

Mr Charles GRIEVE
Senior Director, Corporate Finance Division

Hong Kong Exchanges and Clearing Limited

Mr Richard WILLIAMS
Head of Listing Division

Mr Michael CHENG
Senior Vice President, Listing Division

Clerk in attendance: Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Issues relating to the Government's "buy-back" proposal for Lehman Brothers-related minibonds

- (LC Paper No. CB(1)489/08-09(01) List of follow-up actions for the special meeting on 18 December 2008 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)489/08-09(02) — Letter dated 24 December 2008 from the Hong Kong and Shanghai Banking Corporation Limited (English version only)
- LC Paper No. CB(1)489/08-09(03) — Submission dated 29 December 2008 from the Hong Kong Association of Banks' Task Force on Lehman Incident (English version only)

Papers issued for the special meeting on 18 December 2008

- LC Paper No. CB(1)412/08-09(01) — Administration's paper on issues relating to the Government's "buy-back" proposal for Lehman Brothers-related minibonds
- LC Paper No. CB(1)422/08-09(01) — Letter dated 15 December 2008 from the Hong Kong and Shanghai Banking Corporation Limited (attaching a copy of the letter dated 25 November 2008 from the legal counsel of Lehman in the United States) (English version only)
- LC Paper No. CB(1)436/08-09(01) — Submission from distributor banks on Government's "buy-back" proposal for Lehman Brothers-related minibonds (English version only)
- LC Paper No. CB(1)457/08-09(01) Speaking note of Prof K C CHAN, SBS, JP, Secretary for Financial Services and the Treasury (Chinese version only)
- LC Paper No. CB(1)457/08-09(02) Press release issued by distributor banks on 17 December 2008

regarding latest developments on the buy back proposal for Lehman Brothers related mini-bonds)

The verbatim record of this item is attached in **Appendix**.

II Issues relating to the Hong Kong Exchanges and Clearing Limited's consultation papers on proposed changes to the Listing Rules and periodic financial reporting

- (LC Paper No. CB(1)460/08-09(01) Letter dated 17 December 2008 from Hon Abraham SHEK, Hon Vincent FANG Kang, Hon Jeffrey LAM Kin-fung and Hon CHIM Pui-chung (Chinese version only)
- LC Paper No. CB(1)484/08-09(01) — Hon CHIM Pui-chung's letter dated 23 December 2008 on the Hong Kong Exchanges and Clearing Limited's proposed extension of blackout period (Chinese version only)
- LC Paper No. CB(1)493/08-09(01) — Hong Kong Exchanges and Clearing Limited's paper on amendments to Listing Rules arising from the Combined Consultation Paper and proposals to mandate quarterly reporting)

Submissions from deputations/individuals not attending the meeting

- (LC Paper No. CB(1)484/08-09(02) — Submission from Asia Orient Holdings Limited
- LC Paper No. CB(1)484/08-09(03) — Submission from Asia Standard Hotel Group Limited
- LC Paper No. CB(1)484/08-09(04) — Submission from Asia Standard International Group Limited
- LC Paper No. CB(1)484/08-09(05) — Submission from Big Media Group Limited
- LC Paper No. CB(1)484/08-09(06) — Submission from B M Intelligence

International Limited

- LC Paper No. CB(1)489/08-09(04) — Submission from Brilliant Arts Multi-media Holding Limited
- LC Paper No. CB(1)484/08-09(07) — Submission from Capital Estate Limited
- LC Paper No. CB(1)484/08-09(08) — Submission from Capital Strategic Investment Limited
- LC Paper No. CB(1)484/08-09(09) — Submission from C C Land Holdings Limited
- LC Paper No. CB(1)484/08-09(10) — Submission from The Chamber of Hong Kong Listed Companies
- LC Paper No. CB(1)484/08-09(11) — Submission from Cheuk Nang (Holdings) Ltd.
- LC Paper No. CB(1)484/08-09(12) — Submission from Cheung Kong (Holdings) Limited
- LC Paper No. CB(1)484/08-09(13) — Submission from Cheung Kong Infrastructure Holdings Limited
- LC Paper No. CB(1)484/08-09(14) — Submission from Chi Cheung Investment Co., Ltd.
- LC Paper No. CB(1)484/08-09(15) — Submission from China Chief Cable TV Group Limited
- LC Paper No. CB(1)489/08-09(05) — Submission from China Fortune Group Limited
- LC Paper No. CB(1)484/08-09(16) — Submission from China Grand Forestry Green Resources Group Limited
- LC Paper No. CB(1)484/08-09(17) — Submission from China Metal Resources Holding's Limited
- LC Paper No. CB(1)484/08-09(18) — Submission from China Power New Energy Development Company Limited
- LC Paper No. CB(1)484/08-09(19) — Submission from China Railway

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| LC Paper No. CB(1)484/08-09(20) | — Submission from China Sci-Tech Holdings Limited |
| LC Paper No. CB(1)489/08-09(06) | — Submission from China Star Entertainment Limited |
| LC Paper No. CB(1)489/08-09(07) | — Submission from China Star Investment Holdings Limited |
| LC Paper No. CB(1)484/08-09(21) | — Submission from China Strategic Holdings Limited |
| LC Paper No. CB(1)484/08-09(22) | — Submission from China Yunnan Tin Minerals Group Co. Ltd. |
| LC Paper No. CB(1)484/08-09(23) | — Submission from China Wind Power Group Limited |
| LC Paper No. CB(1)484/08-09(24) | — Submission from Chinese Estates Holdings Limited |
| LC Paper No. CB(1)489/08-09(08) | — Submission from The Chinese General Chamber of Commerce |
| LC Paper No. CB(1)484/08-09(25) | — Submission from Chuang's China Investments Ltd. |
| LC Paper No. CB(1)484/08-09(26) | — Submission from Chuang's Consortium International Ltd. |
| LC Paper No. CB(1)484/08-09(27) | — Submission from CK Life Sciences Int'l., (Holdings) Inc. |
| LC Paper No. CB(1)484/08-09(28) | — Submission from Computer and Technologies Holdings Limited |
| LC Paper No. CB(1)484/08-09(29) | — Submission from The Cross-harbour (Holdings) Limited |
| LC Paper No. CB(1)489/08-09(09) | — Submission from Mr David M Webb |
| LC Paper No. CB(1)484/08-09(30) | — Submission from DVN (Holdings) Limited |

- LC Paper No. CB(1)484/08-09(31) — Submission from Emperor International Holdings Ltd.
- LC Paper No. CB(1)484/08-09(32) — Submission from EPI (Holdings) Limited
- LC Paper No. CB(1)484/08-09(33) — Submission from eSun Holdings Limited
- LC Paper No. CB(1)484/08-09(34) — Submission from GFT Holdings Limited
- LC Paper No. CB(1)484/08-09(35) — Submission from G-Prop (Holdings) Limited
- LC Paper No. CB(1)489/08-09(10) — Submission from Golden Harvest Entertainment (Holdings) Limited
- LC Paper No. CB(1)484/08-09(36) — Submission from Golden Resorts Group Limited
- LC Paper No. CB(1)484/08-09(37) — Submission from Great Eagle Holdings Limited
- LC Paper No. CB(1)484/08-09(38) — Submission from GR Vietnam Holdings Limited
- LC Paper No. CB(1)484/08-09(39) — Submission from Hanny Holdings Limited
- LC Paper No. CB(1)484/08-09(40) — Submission from Hongkong Electric Holdings Ltd
- LC Paper No. CB(1)484/08-09(41) — Submission from The Hong Kong Institute of Chartered Secretaries
- LC Paper No. CB(1)489/08-09(11) — Submission from Hua Yi Copper Holdings Ltd
- LC Paper No. CB(1)484/08-09(42) — Submission from Hutchison Harbour Ring Limited
- LC Paper No. CB(1)484/08-09(43) — Submission from Hutchison Telecommunications International Limited

- LC Paper No. CB(1)484/08-09(44) — Submission from Hutchison Whampoa Limited
- LC Paper No. CB(1)484/08-09(45) — Submission from ITC Corporation Limited
- LC Paper No. CB(1)484/08-09(46) — Submission from ITC Properties Group Limited
- LC Paper No. CB(1)484/08-09(47) — Submission from Kee Shing (Holdings) Ltd.
- LC Paper No. CB(1)484/08-09(48) — Submission from Lai Fung Holdings
- LC Paper No. CB(1)484/08-09(49) — Submission from Lai Sun Development
- LC Paper No. CB(1)484/08-09(50) — Submission from Lai Sun Garment
- LC Paper No. CB(1)484/08-09(51) — Submission from Lifestyle International Holdings Limited
- LC Paper No. CB(1)484/08-09(52) — Submission from Linefan Technology Holdings Limited
- LC Paper No. CB(1)484/08-09(53) — Submission from MAE Holdings Limited
- LC Paper No. CB(1)484/08-09(54) — Submission from Mei Ah Entertainment Group Ltd.
- LC Paper No. CB(1)484/08-09(55) — Submission from Midas International Holdings Limited
- LC Paper No. CB(1)489/08-09(12) — Submission from Nan Fung Development Limited
- LC Paper No. CB(1)489/08-09(13) — Submission from Nan Luen International Limited
- LC Paper No. CB(1)484/08-09(56) — Submission from Paul Y. Engineering Group Limited
- LC Paper No. CB(1)484/08-09(57) — Submission from PME Group Limited
- LC Paper No. CB(1)484/08-09(58) — Submission from PYI Corporation

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| LC Paper No. CB(1)484/08-09(59) | — Submission from QPL International Holdings Limited |
| LC Paper No. CB(1)489/08-09(14) | — Submission from The Real Estate Developers Association of Hong Kong |
| LC Paper No. CB(1)484/08-09(60) | — Submission from Rising Development Holdings Limited |
| LC Paper No. CB(1)489/08-09(15) | — Submission from SEA Holdings Limited |
| LC Paper No. CB(1)484/08-09(61) | — Submission from See Corporation Limited |
| LC Paper No. CB(1)489/08-09(16) | — Submission from Sino Prosper Holdings Limited |
| LC Paper No. CB(1)489/08-09(17) | — Submission from Solartech International Holdings Limited |
| LC Paper No. CB(1)484/08-09(62) | — Submission from Starlight International Holdings Ltd. |
| LC Paper No. CB(1)484/08-09(63) | — Submission from Sun Innovational Holdings Limited |
| LC Paper No. CB(1)489/08-09(18) | — Submission from Sunny Global Holdings Limited |
| LC Paper No. CB(1)484/08-09(64) | — Submission from Swire Pacific Limited |
| LC Paper No. CB(1)484/08-09(65) | — Submission from Tiger Tech Holdings Limited |
| LC Paper No. CB(1)484/08-09(66) | — Submission from Tom Group Limited |
| LC Paper No. CB(1)493/08-09(02) | — Submission from Town Health International Holdings Co. Ltd. |
| LC Paper No. CB(1)484/08-09(67) | — Submission from Trasy Gold Ex Limited |

- LC Paper No. CB(1)484/08-09(68) — Submission from Vision Tech International Holdings Limited
- LC Paper No. CB(1)484/08-09(69) — Submission from Wing On Travel (Holdings) Limited
- LC Paper No. CB(1)484/08-09(70) — Submission from Wonderful World Holdings Limited
- LC Paper No. CB(1)484/08-09(71) — Submission from Y. T. Realty Group Limited
- LC Paper No. CB(1)484/08-09(72) — Submission from Yugang International Limited)

Briefing by the Hong Kong Exchanges and Clearing Limited

2. Mr Richard WILLIAMS, Head of Listing Division, Hong Kong Exchanges and Clearing Limited (H(LD)/HKEx), briefed the meeting on the proposed amendments to the Listing Rules arising from the Combined Consultation Paper (CCP), highlighting the background and consultation process of the proposal to extend the "black out" period. He advised that HKEx had written to the authorized representatives of all listed companies at the start of the consultation in January 2008 to invite their views on the proposals, as well as after the publication of the consultation conclusions in November 2008, to advise them of the new rules and the additional guidance materials published. H(LD)/HKEx further said that the Listing Committee would meet in the afternoon of the day of the meeting to consider the recent comments from listed issuers, media and Members of the Legislative Council (LegCo) together with views from the statutory regulator and decide what action or actions HKEx should take in response to these developments.

(Post-meeting note: H(LD)/HKEx's speaking note was tabled at the meeting and circulated to members vide LC Paper No. CB(1)498/08-09(01) on 31 December 2008.)

Declaration of interests

3. Dr David LI, Dr Philip WONG, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG and Mr Jeffrey LAM declared that they were directors of listed companies. Dr WONG also declared that he was the chairman of a listed company. The Deputy Chairman declared that he held shares of listed companies.

Discussion

4. Dr Philip WONG stated his strong objection to the proposed extension of the "black out" period and his dissatisfaction about the approach and process of consultation on the proposed extension. Pointing out that the proposed extension of the "black out" period was put forward for market consultation through CCP, which was a voluminous document, Dr WONG queried whether stakeholders had been thoroughly consulted in the process and whether the Listing Committee of the Stock Exchange of Hong Kong Limited had given due consideration to the opposing views received from listed issuers and market practitioners during the consultation in a fair manner, having regard to the circumstances specific to the Hong Kong market. Dr WONG requested the Listing Committee to withdraw the proposal to extend the "black out" period, as this was detrimental to the securities market and interests of stakeholders. He also queried the motive of the Listing Committee in putting forward the proposal, given the divided views of respondents in the consultation. Dr WONG considered that members of the Listing Committee should be responsible collectively for the improper decision of the proposal and resign from their offices.

5. H(LD)/HKEx advised that the reasons for the proposed extension were set out in CCP and recapped in HKEx's paper for the meeting. In brief, the proposal aimed to address the issue of enhancing investor confidence and increasing the attractiveness of the Hong Kong market to investors. The proposed extension would address the perception issue of investors perceiving an uneven playing field where company insiders might trade when possessing unpublished price sensitive information between the year/period end and the results announcement. H(LD)/HKEx added that consultation on the proposed extension of "black out" period was taken forward in a comparatively efficient manner through a combined paper, in which over 40 proposals were grouped under 18 policy issues for market responses. The responses received in the consultation had been analyzed and given due consideration by the Listing Committee before arriving at the consultation conclusions published in November 2008 for implementation of the amendments to the Listing Rules on 1 January 2009.

6. Mr Jeffrey LAM pointed out that a large number of stakeholders had expressed strong objection to the proposed extension of the "black out" period, including the Hong Kong General Chamber of Commerce (HKGCC). HKGCC was concerned about the adverse impact of the proposed extension to the Hong Kong securities market, and its attractiveness as a place for listing. Pointing out that the maximum "black out" period in the United Kingdom was 60 days, Mr LAM

considered the proposed extension over-restrictive, as it would result in a maximum "black out" period of seven months in a year, which would be further extended if mandatory quarterly financial reporting would be introduced. The long "black out" periods would reduce the flexibility for directors in trading of their companies' shares for protection of shareholders' interests, and create a window of opportunities for corporate snipers under a volatile market. Pointing out that among the respondents giving views on the proposal, the number of objections was larger than that in support, Mr LAM questioned the process of market consultation for the proposed extension and whether the views received had been given due consideration. He considered the implementation of the proposed amendments on 1 January 2009 too hasty as the consultation conclusions were only published in late November 2008. Mr LAM called on HKEx to defer the implementation of the proposed extension and HKEx to conduct consultation on the proposal afresh.

7. Mr Vincent FANG expressed similar concern about the process of market consultation. He said that Members belonging to the Liberal Party agreed that directors should be subject to trading restrictions during certain periods, but considered the existing "black out" period effective and adequate. Instead of imposing more restrictions on directors' trading through amendment of the Listing Rules, reinforcing the vigilant application and enforcement of the existing rules should suffice.

8. H(LD)/HKEx stressed that the proposed extension of the "black out" period had been developed through a due process, after market feedback from the consultation was considered by the Listing Committee and brought to the attention of the Securities and Futures Commission (SFC). The consultation conclusions had been published for public information. H(LD)/HKEx advised that in analyzing market feedback and arriving at the consultation conclusions, HKEx had taken into consideration the views and concerns received and examined alternative options for the proposals. The analysis of market feedback was however not simply based on the number of opposing and supporting submissions. Noting the recent comments and concerns put forward by listed issuers, media and some LegCo Members, H(LD)/HKEx recapped that the Listing Committee would meet that afternoon to discuss further the implementation of the proposed extension. The Listing Committee would focus on reviewing new issues of concerns raised recently, such as the impact of the proposed extension on market liquidity.

9. On the impact of the proposed extension to directors' trading, H(LD)/HKEx referred to the findings of a survey conducted by Mr David WEBB, which indicated that directors' trading constituted about 0.06% of the overall market transactions during the survey period. As regards the practice in overseas markets, H(LD)/HKEx highlighted that similar concern about directors' trading during the annual/period end and results announcement had been expressed by the Australian Minister of Superannuation and Corporate Law, who had commissioned a study on the subject, with a view to making recommendations in June 2009 on measures to instill investor confidence in the Australian stock market.

10. Mr Vincent FANG further enquired whether the proposed extension was considered necessary due to detected increase in market misconduct such as insider trading. Mr FANG opined that given the current market downturn amid the global financial crisis, it was not the right time for imposing further restrictions on trading.

11. In reply, H(LD)/HKEx advised that an analysis of the disclosure of interests forms submitted between 1 January 2008 and mid December 2008 showed that amongst the trading transactions of directors, 35% were conducted during the proposed extended "black out" period, which was a level of transaction warranting regulatory concern. Mr Paul KENNEDY, the Acting Chief Executive Officer, SFC (CEO/SFC Atg), supplemented that the Listing Rules governing the "black out" period aimed to deal with corporate governance of listed companies rather than market misconduct governed by provisions under the Securities and Futures Ordinance (SFO) (Cap. 571). The "black out" period during which directors were prohibited from trading in their companies' stocks would help prevent the sending of misleading signals to the market before results announcement by the companies. CEO/SFC Atg said that such trading restrictions complemented the insider trading provisions in that company insiders could not abuse the market whilst in possession of unpublished price sensitive information. While there had been an increase in the number of alleged cases of insider trading that the SFC had and was pursuing, this was not directly related to the proposals to extend the "black out" period.

12. Given that directors had access to unpublished price sensitive information of the company during the annual/period end and the results announcement, Mr Albert HO questioned why their trading of the company's stocks during that period would not be considered as cases of insider trading. In reply, H(LD)/HKEx advised that the proposed extension would enhance investor confidence by reducing the perception risk of shareholders or investors perceiving an uneven playing field where a privileged few were able to profit unduly from trading on insider information. Cases constituting a breach of insider trading provisions had to be substantiated with facts of individual cases, such as the highly price sensitive nature of the information involved.

13. The Deputy Chairman expressed support to the proposed extension for enhanced protection of investors' interests and their confidence in the Hong Kong market. He asked the regulatory authorities not to withdraw the proposal despite recent objections raised by directors of some sizeable listed companies. The Deputy Chairman enquired whether all stakeholders, including the investing public, organizations representing their interests and international investors, had been consulted on the proposed extension during the market consultation. He stressed that enhancing investor confidence of a level playing field was crucial to maintaining the position of Hong Kong as an international financial centre (IFC). Miss Tanya CHAN shared his view. As regards the concern about the impact of the proposed extension on market transactions, the Deputy Chairman, Miss CHAN and Mr Albert HO opined that HKEx should consider measures to minimize the period during which directors' trading would be prohibited, such as shortening the deadlines for annual and half-year reporting. Miss CHAN also opined that HKEx should consider

advancing the introduction of mandatory quarterly reporting to enhance information disclosure by listed issuers.

14. H(LD)/HKEx said that listed issuers, investors and market practitioners, had been invited to give views on the proposals under CCP. Responses were received from individual investors and organizations representing the shareholders. On the views of the investing public, H(LD)/HKEx referred to a survey conducted by Mr David WEBB on the proposed extension which had received over 400 responses. Over 94% of the respondents considered that directors of listed companies often benefited by share dealings between the annual/period end and results announcement, and over 97 % supported the proposed extension. The proposed extension was also supported by institutional investors. H(LD)/HKEx advised that the proposed extension would provide an incentive for listed issuers to publish the results earlier, instead of making full use of the period permitted to publish the results. An analysis of the reporting practice of the Hang Seng Index constituent companies showed that the impact of the proposed extension would normally subject directors to a "black out" period of about four and a half months, instead of the maximum period of seven months claimed by the objecting parties. Responding to the Deputy Chairman's further enquiry, H(LD)/HKEx advised that company directors were required under SFO to disclose their dealings of the company's shares within three days of the transactions.

15. Miss Tanya CHAN and Mr Albert HO opined that the proposed extension was finalized after thorough and proper consultation. Mr HO said that deferring the implementation of the proposed extension for further consultation would only invite submissions with repetitive arguments. Miss CHAN noted that HKEx had set out the pros and cons of the proposals in CCP, provided forms for interested parties to make submissions on the proposals, and considered the responses from different stakeholders. Miss CHAN pointed out that some major listed companies had also given support to the proposed extension in their submissions. Noting the joint effort of some 200 listed companies which raised objection to the proposed extension recently, Miss CHAN queried why these companies took action just before the proposed implementation date (1 January 2009).

16. Mr KAM Nai-wai expressed a similar view as Miss CHAN. He queried why objecting views had not been submitted earlier during the market consultation. Mr KAM pointed out that if the Listing Committee withdrew the proposed extension because of the recent objections from directors of some major listed companies, the reputation of Hong Kong as an IFC would be adversely affected. Mr KAM considered that the proposed extension had been decided after a long period of consultation. He did not subscribe to the view that consultation should be undertaken afresh.

17. Referring to the arguments put forward by the objecting parties that the proposed extension would unduly restrict directors from trading to preserve the value of the company's share and create a window of opportunities for corporate snipers, Mr James TO sought SFC's view on such argument. In response to concerns about

reduced liquidity in the market as a result of the extension of the "black out" period, CEO/SFC Atg advised that according to the analyses of market transactions done by SFC in 2008, while directors had conducted share transactions occasionally, the volume of directors' trading was insignificant compared with the total market turnover.

18. Mrs Regina IP noted HKEx's view that the proposed extension would provide investors with better protection by reducing the risk that company insiders might trade or fell under suspicion of trading when possessing unpublished price sensitive information. As about 70% of the investors of the Hong Kong stocks market were institutional investors, Mrs IP asked what type or group of investors the proposed extension aimed to protect. Mrs IP did not consider the analyses on directors' past trading pattern relevant to the future need for them to deal with the shares of their companies to preserve the value of the shares in the face of extreme market volatility. Mrs IP was concerned that the proposed extension of the "black out" period would impose undue restrictions on directors' trading equivalent to having their hands tied under extreme market conditions when they needed to restore liquidity for their companies.

19. In response, H(LD)/HKEx said that the proposed extension was put forward for creation of a non-discriminatory environment for all shareholders and investors, with a view to ensuring a level playing field, as directors possessed information not available to other investors during the "black out" period. H(LD)/HKEx pointed out that directors would not be prohibited from trading the shares of other companies during the "black out" period. The Secretary for the Financial Services and the Treasury (SFST) added that from the market regulation perspective, SFC worked with HKEx for the making and amendments to the Listing Rules governing regulation of listing matters, through consultation with stakeholders including listed issuers, market practitioners and investors. SFST stressed that public consultation was important in drawing up the rules and regulations for the listing regime. In view of the recent comments on the proposed extension, the Listing Committee would meet and discuss the subject again.

20. Mr James TO asked whether major listed companies would encounter technical difficulties in meeting the shortened reporting deadlines if they were mostly engaging one of the "big four" audit firms for report preparation. Mr KAM Nai-wai shared Mr TO's concern and asked whether other audit firms were capable of preparing financial reports for listed companies apart from the "big four",.

21. H(LD)/HKEx advised that there were about 60 audit firms in Hong Kong from which listed companies might choose to engage for financial reporting, but as a matter of fact, a large number of the auditing work was taken by the four major audit firms. Audit firms should be aware of the need for additional manpower to cope with the requests of listed companies for completion of the reports within a shorter timeframe following the implementation of the proposed extension of the "black out" period. HKEx would ensure that listed companies would not compromise the quality

of reporting in their attempts to minimize the "black out" period through reporting before the deadlines.

22. Mr Tommy CHEUNG opined that while a balance had to be struck between protection of the interests of company directors and those of small investors, such a balance could hardly be achieved. Mr CHEUNG stated that if the market consultation on the proposed extension had been conducted in a proper and thorough manner, directors of major listed companies would not have expressed such concerns and opposition. In this connection, Mr CHEUNG requested HKEx to provide written responses to the following:

- (a) the necessity and effectiveness of the proposed extension in improving the corporate governance of listed companies in Hong Kong; and
- (b) whether the proposed extension would continue to apply upon the implementation of the mandatory quarterly reporting and if so, the impact of the trading restrictions imposed on directors of listed companies.

23. Mr Abraham SHEK said that in view of the strong objection raised by the directors of over 200 listed companies and the challenges posed by the global financial crisis, the Government should explain its stance on the proposed extension. Mr SHEK recalled that in the Penny Stock incident, the Government had put on hold the consultation process in view of the strong opposition from the listed companies and small investors. Mr SHEK stressed that a genuine consultation should take into account both the consenting and dissenting views of the stakeholders, and the Listing Committee should not only give recognition to submissions supporting the proposed extension. Mr SHEK considered it unreasonable that HKEx only announced the implementation of the proposed extension in November 2008, shortly before the effective date on 1 January 2009. In order to protect the interests of all investors and uphold Hong Kong's position as an IFC, Mr SHEK called on HKEx to review the proposed extension.

24. In response, SFST said that it was the Government's responsibility to put in place an effective regulatory regime for the stocks market, ensuring adequate checks and balances, and proper consultation for proposals to amend the rules and regulations governing listing matters and market operations. The proposals in CCP, including the proposed extension of the "black out" period, had been worked out by the regulators after market consultation. The Government would not and should not intervene in the making and/or amendment of the Listing Rules. The proposals should be finalized having regard to the views received during the consultation and the need to balance the interests of different stakeholders.

25. As Mr CHIM Pui-chung was unable to attend the meeting, the Chairman drew members' attention to Mr CHIM's strong objection to the proposed extension set out in his letter dated 23 December 2008 (LC Paper No. CB(1)484/08-09(01)).

26. The Chairman said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong believed that the proposed extension aimed to provide better protection to investors through ensuring a level playing field in the stocks market. Since the announcement of the implementation of the proposed extension, there were divergent views in the community. He said that the interests of major and small shareholders should be equally protected in the market. The Chairman requested that HKEx deal with the subject of the proposed extension prudently, having regard to the divergent views in the market. He opined that more time should be allowed for stakeholders to discuss the proposal.

Motion moved by Mr Abraham SHEK

27. Mr Abraham SHEK proposed the following motion which was seconded by Mr Jeffrey LAM:

"鑒於港交所對《上市發行人董事進行證券交易的標準守則》有關延長'禁止買賣期'的修訂引起市場強烈反響，本委員會要求有關當局取消原定於2009年1月1日對該守則修訂後的執行，並就有關問題重新展開為期6個月的諮詢，以妥善解決市場的疑慮。"

(Translation)

"That, given that the HKEx's amendments to the Model Code for Securities Transactions by Directors of Listed Issuers relating to the extension of the 'blackout period' have aroused strong reaction in the market, this Panel requests the authority concerned not to effect the amended Rules as scheduled on 1 January 2009 and launch a six-month consultation on the issue afresh, so as to address properly the market concerns."

28. The Chairman considered that the proposed motion was directly related to the agenda item under discussion and members agreed that the motion should be dealt with at the meeting. The Chairman put the motion to vote. Among the members present, eight members voted for and five members voted against the motion. The Chairman declared the motion passed.

(Post-meeting Note: The Administration's initial response to Mr Tommy CHEUNG's concern and the motion were circulated to members vide LC Paper Nos. CB(1)697/08-09(01) and CB(1)696/08-09(04) on 30 January 2009.)

III Any other business

29. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
20 March 2009

(此份逐字紀錄本經政府當局審閱)
(This verbatim record have been seen by
the Administration)

**2008年12月30日財經事務委員會特別會議
議程項目I -與政府所提的雷曼兄弟相關迷你債券"回購"建議相關
的事宜逐字紀錄本**

**Special Meeting of the Panel on Financial Affairs on 30 December 2008
Verbatim Record of Agenda Item I –
Issues relating to the Government's "buy-back" proposal for Lehman
Brothers-related minibonds**

主席：時間已到，人數亦已足夠，今日的特別會議現在開始。首先，第一項議程是繼續討論上一次會議有關雷曼兄弟相關債券的問題，因為上一次會議時間不足，散會時仍有很多同事準備發問。自上一次會議後，應大家的要求，信託人和銀行公會提交了一些補充資料。

首先，我代表財經事務委員會歡迎局長及其他官員，分銷銀行及信託人的代表出席今日的會議。大家就座後，請帶上耳筒和咪高峰。我亦順道提醒大家，各位銀行代表今天所提交的文件和今日在會議上的發言均不受到《立法會(權力及特權)條例》的保障。

我們手上已有文件，由於假期的關係，大家可能比較匆忙。不過，我相信大家有足夠時間閱讀有關文件。我們現在開始討論，首先請議員提問。

局長。你想先發言嗎？

財經事務及庫務局局長陳家強教授：是的。

主席：好的，我們先請局長發言。

財經事務及庫務局局長：多謝主席。12月18日，在這個委員會的會議上，議員曾討論雷曼兄弟相關迷你債券的回購建議的相關事宜。當中議員特別關注到，迷你債券抵押品的價值、迷你債券分銷商墊支以支付法律和財務服務諮詢的安排，以及相關的法律問題。為了回應議員的關注，政府已要求迷你債券受託人及香港銀行公會就議員提出的事宜提交回應資料，並邀請他們派員出席今日的會議。

可以的話，現在我想請迷你債券受託人滙豐銀行的代表就墊支安排先作解釋，如果主席容許的話。

主席：好的。請受託人。Ms SAYERS.

滙豐法律部副主管施素珊小姐：Thank you. We haven't yet received any details from the distributor banks as to the 100 million dollar financing that is proposed. We would welcome details of that as soon as possible. As regards the other proposal made at the end of the submission that we resort to third party funding, that indeed is a power that is given to us as a trustee, but we would prefer, first of all, to hear from the distributor banks the details of that proposed funding before we consider resorting to funding from third parties.

主席：大家都清楚了嗎？

余若薇議員：主席，上次開會至今相隔那麼久，關於那筆錢如何墊支及如何處理，我以為他們今天會來解釋有關進展，但聽Ms SAYERS發言後，她一點也沒有交代，只是說還在等候資料。

主席：他們仍在商討這個問題。

余若薇議員：即是由上次開會到現在？

主席：好的，我們看看周小姐可否詳細解釋一下？周家琮小姐。

滙豐證券服務(信託代理服務)高級副總裁兼亞太區主管周家琮小姐：我們尚未收到任何 financing proposal。我們知道 distributor banks 正在進行有關的安排工作。待他們稍後提供 terms and conditions 後，我們便可跟他們 study。至於剛才提到我們是否有權取用這筆錢，根據法律文件，trustee 是可以進行 financing 的，但是否需要進行 financing，則須研究文件所載有關 financing package 的 terms and conditions，方可作實。

主席：好的，銀行公會的代表可否解釋一下？

萬盛國際律師事務所合夥人馬紹基先生：With the public announcement of the expenses to be provided to HSBC, since the last meeting, the distributor banks have been in long discussions with each other, trying to work out the precise terms and conditions on which they would be prepared to provide the funding to HSBC. An agreement - a formal agreement - between the banks is currently being settled. It's a large sum of money involved: we are talking about 100 million Hong Kong Dollars. There are 18 banks involved and that necessarily means that negotiation has to take place and there are terms to be considered and agreed. Distributor banks are close to agreeing the terms of that agreement. And as soon as they agree to those terms and conditions, the draft documents will be provided to HSBC.

主席：同事如有問題，可以繼續發問。第一位是甘乃威議員。

甘乃威議員：主席，你剛才提到我們有時間閱讀文件，我告訴你，我們閱讀文件的時間非常不足。因為我們在29日才收到這份文件，即是昨天才收到..... 其實我今天早上才拿到這份文件。我不太明白銀行界、金融界的運作為何如此混亂及緩慢，從上次開會到現在..... 我今天提早半小時回來才拿到這份文件翻閱。

我先問第一個問題，是問滙豐銀行的。剛才你們提到..... 因為根據你們的文件，"The trustee does not need to obtain the consent of the investors before borrowing money to assist in the enforcement process."

我想問問，你可否指出在這些章程中，哪裡提到你們可以利用這項條款，無須事先諮詢投資者便可進行你們剛才一直提及的訴訟？這是第一點。

第二點，你們的章程提到，發行人，即 issuer —— Pacific International Finance Limited，本身的 shareholder 是 HSBC Financial Services Limited。他們的 directorship，即董事，也是來自 HSBC Financial Services Limited。換句話說，發行人，即售賣這些產品給投資者的人，與背後控制的人，同是滙豐銀行，而抵押品也在滙豐銀行手上。當售賣這些產品給投資者並且出了事後，滙豐銀行作為抵押品持有人，便說要動用投資者的錢。據你們所說，滙豐無須諮詢投資者便可進行訴訟工作。這是否一個大騙局？你售賣產品給人家，而當抵押品出現問題並要變賣來還錢給投資者時，你卻要在投資者..... 不需要諮詢他們..... 然後你又要拿1億元，並可以自己 raise funding 進行訴訟。這種騙人的手法，滙豐銀行怎可做得出來？我想你清楚解釋，滙豐銀行在此處所謂的發行人中扮演甚麼角色？為何可以利用如此欺詐的手法欺騙香港的投資者？

主席：好的。周小姐，你可否清楚說明信託人到底是New York還是香港的滙豐銀行？

滙豐法律部副主管施素珊小姐：Yes, may I answer this question on behalf of HSBC?

Thank you for giving me the opportunity to clarify what appear to be a few misconceptions in the understanding regarding the role of HSBC in this structure.

HSBC were not involved in putting together this programme. HSBC are a service provider. We have a number of roles. One of which is as trustee. The other is providing corporate services to the issuer. Those two roles are quite separate and undertaken quite separately. And I should... let's look first at the corporate services role. As we say, we are indeed the shareholder of the issuing company and we provide directorship services. This is at the behest of Lehman Brothers after the programme was structured. Our role as trustee is quite separate from that.

I think also one of the points raised was that HSBC had sold this programme. Perhaps I could just clarify that HSBC had not sold the minibond programme here in Hong Kong or indeed elsewhere.

One of the other issues raised was the litigation and the use of, I believe, the term "investors' funds" to fund litigation. If HSBC is involved in litigation in the US, this would be at the instigation of Lehman Brothers and/or their liquidator. It would not be at the instigation of HSBC. If the litigation is to proceed in the US, it would be to clarify priority payments and therefore the value of the notes for the benefit of the investors in Hong Kong so that it would be clear. And we hope there would be some benefits to the investors should the litigation proceed. As regards the use of funds pursuant to the terms of the trustee, trustee is entitled to an indemnity before it takes action to enforce the collateral. The indemnity has not been forthcoming. And that is why there has been a proposal by the distributor banks that this "fighting fund", if you wish to call that, be put forward. And as I mention before, we welcome the receipt of details of this fighting fund. The suggestion in the submission made by the distributor banks which, like those we saw yesterday, that the trustee borrows money from a third party financier to finance all of the aspects of the enforcement. It's an interesting idea. There is indeed power in the trustee to do so. It is not a power that, overall, has been utilized, ordinarily funding is provided by way of the indemnity. I don't think it will be necessary to pursue that avenue since we are confident that, as Mr MAZZOCHI has said on behalf of the distributor banks, the terms of the funding will be agreed shortly and we will see details of those. There shouldn't be then any need to raise money by any other means.

I hope that covered all the aspects you raised, but if there are any aspects that I haven't...

主席：甘議員可作簡短的跟進。

甘乃威議員：主席，我希望她清楚說明滙豐銀行所扮演的角色。因為很清楚，滙豐銀行既是Pacific International Financing Limited的持股人，而公司的directorship，亦是滙豐銀行。你製作迷你債券這個產品時，必然存在..... 你知道風險究竟在哪裡。為何當你現在要變賣這些抵押品時，不需要徵求投資者的同意，便可進行訴訟工作？這個設計是否一個大騙局？

我想問問政府，為何容許這種事情在香港發生？可以一手由滙豐銀行負責設計、發行，然後串通這些零售銀行欺騙投資者。當要變賣時，就拿投資者的錢來打官司呢？

主席：好的，你簡潔一點，好嗎？

甘乃威議員：另一個問題，我想問問銀行公會.....

主席：甘議員，請你等等，讓她先回答，好嗎？如果你再問下去，便要再排隊，好嗎？

甘乃威議員：主席，你剛才沒有說明時限.....

主席：我知道，但我總不可以讓一位同事一直問下去。

甘乃威議員：你倒不如訂明時間限制，好嗎？主席。

主席：請你尊重我的安排。

甘乃威議員：主席，你要不就給時間我發問，你又不讓我提問，在一開始時又沒有說清楚.....

主席：我剛才已跟你說過，希望你作出簡短的跟進，對嗎？

甘乃威議員：主席，如你一開始便說明只可提出一個問題，我才可清楚自己要提出甚麼問題，主席。

主席：你要尊重我。

甘乃威議員：你要不就限時，主席。從現在開始限時，好嗎？

主席：好的。

甘乃威議員：那麼，我才可清楚有關情況。

主席：好的。周小姐。

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：或者由我解釋一下。在這些structure deals上，很多special purpose vehicle是set up by有關的arranger。這個雷曼迷你債券產品，其實是由雷曼自己arrange的。

甘乃威議員：你覺得滙豐銀行不需要負上責任嗎？

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：我想向你解釋，special purpose vehicle.....

主席：請你先讓她回答，不要插嘴，好嗎？有點規矩，好嗎？

甘乃威議員：主席，這是我發問的時間。

主席：不是你插嘴的時間！周小姐，請你繼續。

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：在market上，很多special purpose vehicle都是這樣set up，不是由滙豐銀行擁

有，滙豐只代表做了兩件事：provide directorship及provide share trustee。這些special purpose vehicles是owned by charity trust，而不是owned by HSBC。HSBC不是shareholders，我們扮演一個administrative role，而通常在transaction及structure完成後，我們才獲邀provide service，所以滙豐銀行絕對沒有設計或參與這個design structure。我想這一點必須澄清，而且這是market practice，滙豐銀行做了很多，而其他很多service providers也有provide directorship或擔任share trustee，但這並不代表我們own這間special purpose vehicle，它是owned by charity trust。

主席：好的。下一位是副主席。從現在起，每位同事可發言5分鐘。

副主席：多謝主席。主席，其實很多同事對信託人的權限和利益關係可能認識不多。最重要的是信託人有權採取任何法律行動以保障信託的資產，而取回的利益須先用以支付信託人的費用，然後才可分給受益人。這是一般的法律規限，相信所有信託文件都會遵循法律訂立這些原則。因此，我覺得在這方面繼續糾纏下去，其實是無助於幫助苦主的。

至於資產的定價，我覺得糾纏下去也沒有用，因為100個專家有100個不同的意見，與律師一樣。這樣糾纏下去無助於幫助苦主。反而，我想問問當局，在現在這個情況下，我覺得唯一可以幫助苦主的，除了真真正正解決大家的爭拗之外，政府曾否考慮要求銀行直接把這些苦主所持有的產品takeover，即是"收取"，把苦主的風險轉嫁給銀行。那麼，銀行便無須採取任何法律行動，它只是代入苦主的法律權益。日後銀行如何贖回那些產品、進行回購，又或跟issuer——發行人處理這個問題，銀行可以慢慢來。但是作為一個幫助苦主的措施，政府其實應考慮一下這個方向。

我不知道局長是否明白我的要求，或者我說英文會較易理解，是嗎？

財經事務及庫務局局長：Julia，你可否代我回答？

財經事務及庫務局副局長梁鳳儀女士：多謝議員的提問。其實，整個以市值回購的建議，本身的精神和目標也是希望銀行能夠回購，即如湯議員剛才所說，把苦主持有的產品收購回來，免去他們長時間的焦慮和等待……

副主席：不錯。

財經事務及庫務局副局長：尤其是進入這些訴訟程序。這個建議本身的原意也是這樣。可是，當收到那封信的時候，根據銀行公會的法律意見，他們認為無法估計…… 因為這個法律訴訟所需要的時間令他們難以估價、無法估價，所以他們提出要先清除這個障礙，才可恢復回購工作。此處本身是有一個法律訴訟的……

副主席：我明白，但你可能並非完全瞭解我的看法和要求。

財經事務及庫務局副局長：是。

副主席：當然，所謂估價，其實只須雙方同意便可。即是說銀行和苦主雙方如能議定一個價格，便應該沒有問題。至於銀行如何評估風險，又或有何法律程序，他們可以自行處理。只要政府能夠說服銀行，這個回購計劃完全不是建基於銀行可否即時贖回那些債券或變賣那些資產，只要不是建基於這個條件之上，銀行任何時候也可以跟苦主達成協議，雙方以一個中間價或雙方同意的價格回購這些產品，讓苦主無須面對未來一年多至兩年的風險和憂慮。我希望銀行界可以仔細思量，這是對社會的一點付出或承擔某些責任。對你們來說，可能會負起某些法律風險，甚或可能…… 比方說你現在以100元買回來，但最終贖回或變賣資產時，只能取回50元或60元，但大家卻能夠解決這個問題，幫助到4萬多個香港的苦主。這個不是一個商業決定，不是純粹的商業決定，而是一個關乎社會責任的決定。

我希望雙方或政府在這方面能夠多作努力，特別是政府，我希望它可以說服銀行。他們也要付出一點，不要完全視為一個商業決定：認為我在這裡向你付出500元，便一定要在那裡收回500元，才願意做這件事。如果是這樣的話，並不是一個幫助苦主的計劃，而只是由銀行擔當中介人的角色。我覺得這樣做完全不是朝着為社會盡一份責任的方向。我希望陳教授，局長，你能明白我的看法。我相信這也是政府最初的原意，對嗎？

財經事務及庫務局局長：多謝你。湯議員的建議是好的。政府當時的原意…… 直到現在也是希望銀行可以幫助苦主取回現值。當然，現在出現這樣的法律爭拗，已是一個現實。我想下一步應該怎樣做，會有很多可能性。我們希望銀行和受託人在這方面能就

法律情況多作瞭解，待清晰後再研究如何重新進行回購程序。剛才你所說的話及所提的意見，我相信銀行都已聽到。

主席：好的。下一位，涂謹申議員。

涂謹申議員：主席，其實我想再追問滙豐銀行，因為剛才滙豐的兩位同事都說他們沒有參與設計，但你要記住，現在這個世界基本上只有三大組合，一個是你所謂的發行人，但最後並非由發行人擁有所有東西，因為他最後會offload給所有的持有人，即那些所謂的minibond holders，所謂的minibond，我用回這個字眼——迷債的持有人。但在發行文件中，則把滙豐列作trustee，OK？接着，發行人就叫滙豐同時提供信託服務。到了最後，只有幾個可能性。第一，你是自主性的董事，即你無須聽命於發行人，但我相信這會很難。為甚麼呢？因為發行人，如你所說，產品本身是由他負責設計的，即是說你須聽命於那個發行人。如你聽命於發行人，而你本身又是信託人的話，就可能會有衝突。

舉例而言，發行人說："根據那個..... 我們把其稱作prospectus，即發行文件，你根據這份文件應可買入一些有毒的債券。"信託人卻說："不是，根據文件，我未必可以購買，用這些錢來換這些債券。"但問題是，如果你聽命於發行人，即是說他可以吩咐你這個董事做甚麼也可以。如果是這樣的話，就可能會有利益衝突，因為你同時擔當兩個角色。但如果你說："不是，我是自主董事，我平時有一些信託的可能性，就是我根本從來不需聽命於發行人或製造這個信託的人，我是自主董事，我作為那間special services vehicle，OK....." 如果是這樣的話，即是本身你在這個過程中，最終可能買入很多有毒的債券，你所謂根據prospectus，就是說你自己也要負上責任，因為你是自主董事。

因此，我想問問，你說你們沒有參與設計，但其實從一開始對那些迷債買家來說，整事件你已參與其中，成為整個發行與設計的一部分，這點已經看到，而不是你純粹說你的信託..... 如果有些信託人，譬如他純粹擔當信託人，而沒有擔任special purpose vehicle的董事，那就可能沒有陷得那麼深。別人會說："說不定你沒有參與設計。"可是，現在對社會來說，滙豐真是"水洗都唔清"，因為沒有人知道你有沒有參與設計，到最後issuer完全沒有任何其他角色，最終要由擔當董事的你善後。如果有事發生，董事和信託人的角色出現衝突，不知道你應站在哪一方。你究竟應站在迷債持有人的一方，還是你覺得應自主地作出一些決定呢？真是不得而知。甚或你是否須聽命於那個發行人呢？這點也不知道。如果你須聽命於發行人，情況就更糟糕，因為發行人已經清盤，清

盤人可能是由美國法院委託，於是你又要聽命於美國法院委託的清盤人，與迷債的發行人也有衝突。我想問問滙豐，你現在究竟擔當甚麼角色？

主席：好的。

涂謹申議員：無論從任何角度來看，你所擔當的角色也一定會有衝突。

主席：好的，讓她解釋一下。

滙豐法律部副主管施素珊小姐： Thank you very much for your question. If I could just reiterate, HSBC did not have any part in the design of this programme. This programme is part of a large programme and there were many issuances linked to the core programme. HSBC's role is as trustee of this particular programme and it provides corporate services to this special purpose vehicle. This special purpose vehicle has one purpose, and that is simply to issue the notes to the retail investors through the distributor banks. As part of your question, it may have been lost somewhat in the translation, but there appeared to be a suggestion that HSBC was buying the bonds or selling the bonds. But HSBC did not...

涂謹申議員： No. I am not saying that you're selling the bonds. I am saying you provide service, the so-called corporate service, but whether actually you are providing that service with the role of active director or passive director, OK? And there may be conflict between your directorship in the SPV and your role as a trustee.

滙豐法律部副主管施素珊小姐： I see. Thank you very much.

涂謹申議員： Especially if you are obeying the order from the issuer or you are now taking the instruction from the liquidator, so there would be bound to be a conflict of interest.

滙豐法律部副主管施素珊小姐： Thank you very much. I am very grateful for your clarification. Something was lost in the translation. I appreciate that. If I could perhaps explain...

I don't think there is any conflict between the two roles that HSBC has as director of this special purpose vehicle or as the trustee. It's simply because this special purpose vehicle has such a limited role and that is simply to issue the notes. The instructions you say we are receiving from the liquidator, they are not instructions as such. Certainly, the Lehman liquidator is involved in so far as it has now sought to challenge the flow of payments following the enforcement of the collateral. That is somewhat separate from the SPV. This is Lehman in their role as counterparty to the swaps which comprise part of the underlying collateral. It is in that capacity that Lehman under their liquidator has sought to challenge the structure of the programme, so to speak. It is not in any way connected with the SPV or our role as director of the SPV. But we are certainly not...in the translation, the word came through is "instruction"...we are not following any instruction of Lehman or their liquidator. We have certainly received the letter from their lawyers, challenging certain parts of the terms of the trustee which would provide for flow of funds to the investors. And it is the challenge that we need to meet, either we or the trustee of the lower level swap, which is Bank of New York. I do hope that answered your questions to this.

主席：好的，余若薇議員。

涂謹申議員： I will follow up in the second round.

余若薇議員： 是的。多謝主席。主席，首先，我覺得非常遺憾，因為上次開會至今已差不多相隔兩個星期，但卻沒有甚麼進展。上次曾提到會由銀行方面集資1億元打官司，但至今仍不知道有關條款如何。這件事是否說說便算？主席，這是第一個問題。又或將會設定一個期限，我們何時才知道下一步會如何呢？

主席，我的第二個問題是，剛才滙豐銀行Ms SAYERS說，其實他們也很被動。美國那邊打官司控告它，它就稍作反應，否則就只有乾等。聽她所說，這件事可能會拖至美國清盤程序完結為止。雷曼兄弟的清盤人一定會這樣做，他當然會寫信告訴你："我有權，我有優先權。"但據你的文件所載："This is contrary to the expressed terms of the minibond documents."即是別人胡說，你就認為："既然你說了，我便等你控告我。"如果別人沒有等你，一直進行清盤程序，可能會歷時數年，事情是否如此？我們香港的主動權是否完全落入美國的清盤官手上？這是第二個問題。

主席，第三個問題，我想問安永。那些抵押品，是我們暫時唯一知道的值錢資產。究竟何時出售會對苦主最為有利？你可否告訴我們，滙豐銀行作為信託人，是否至少也有責任，不可一直等下去呢？對市場來說，這些抵押品何時出售會較好？我們是否

應該…… 信託人是否有責任在那個時候將其出售呢？我希望知道這點。

主席，第四個問題，我想問問銀行，自從9月中"爆煲"，即雷曼"爆煲"，至今已有3個月，銀行方面所有的內部調查是否已經完成？即是在外面等候的苦主，倘若沒有收到消息告知他們可獲賠償的話，就等於要控告銀行，否則便沒有商量餘地，是否這樣？

主席：好的，我們首先問問銀行公會有關集資1億元的事宜，下一步將會如何？

東亞銀行總經理兼個人銀行主管唐漢城先生：剛才我們的法律代表也曾提到，第一稿已經備妥，現正送交銀行傳閱，以收集它們的意見。我希望很快便可集齊銀行的意見，然後擬訂第二稿。完成後，我們會把文稿送交滙豐，看看它有何意見。之後，我們便會一起進行詳細討論。我相信需時不會太久。我想補充一句，剛才大家一直提到，分銷銀行似乎會出錢打官司，但實際上，我想澄清一點，這個financing不是用來打官司的，主要是用來幫助trustee採取任何它認為適當的行動，以保障投資者的利益。

主席：好的。周小姐，你們可否回應一下，到底現在的主動權是在你方還是在美國方面？

余若薇議員： Ms SAYERS, according to what you said, you are just going to wait until you are being sued and you are not going to do anything. I mean it sounds as if, you know, Lehman Brothers just made the claim which you said is contrary to the expressed terms of the minibond document, and you are just going to wait! I mean it's easy for them to make a claim and you are not going to do anything.

My question is, depending on the value of the collaterals, but in fact you have a duty to sell them at the right moment to protect the investors, or you are going to wait forever, and that can mean until the end of the liquidation. Whether that is the scenario?

滙豐法律部副主管施素珊小姐： Thank you for your question. It's not correct that we are going to sit on our hands or do nothing or wait forever until the liquidation...

余若薇議員：You haven't told us what you are going to do.

滙豐法律部副主管施素珊小姐：We have sought legal advice in the US, and have been in extensive discussions with our lawyers there as to the most appropriate steps to take in the US. As you may imagine, we are not the only trustee that was in receipt of the challenge by Lehman's lawyers. There are many other trustees that have been in receipt of that letter. And indeed, the trustee of these swaps of the... and the issuer of the notes, the lower level Bank of New York. We are also in extensive discussions with them as to the most appropriate action and the timing of that action to take, as I'm sure you appreciate it does raise very complex issues of US Law that need to be looked at. We have also been trying to liaise with the US lawyers for Bank of New York and the distributor banks so that we can gather information to ensure that the action we do take, which I assure you, will be timely, will be the best actions to take for the protection of collateral and for the investors. It is certainly not our intention to do nothing and it is certainly not our intention to sit on our hands until the conclusion of the liquidation.

主席：好的，銀行公會可否簡單講解一下，你們的內部調查是否已經完成，還是尚有工作仍未完成？

東亞銀行總經理兼個人銀行主管唐漢城先生：我很難代表.....因為不同銀行處理的進度不一，但我想銀行均會按照銀行守則所訂的規矩和時限處理客戶的投訴。今天應集中討論 minibonds 的 buyback，所以我不說太多了.....

主席：我也希望銀行公會可於會後向各銀行的代表收集多些資料，告訴我們到底你們的內部調查是否已經完成。因為正如余議員所關注，是否所有調查已經完成，持股人都已收到通知，有些獲悉經調查後他們沒事，又或銀行準備跟他們和解。銀行可能發出了不同的信息，到底沒有收到通知的苦主是否真的須透過訴訟以保障自己的利益？我希望你們可於會後向我們提供這些資料，好嗎？

余若薇議員：主席，可否請安永回答那個問題，即有沒有一個適當的出售時間，is there a best time to sell these things or I mean is waiting in the interest of the victims or is it against their interest?

主席：是的。Mr MORRIS.

安永會計師事務所董事總經理莫禮詩先生：Just first, I am sure this is already realized that obviously the collateral is not the only matter of materiality that affects the actual value of the minibond, albeit it is a very material aspect to the value of the minibonds. In terms of when is the best time to sell the collateral, it's obviously a very volatile market. The value of collateral is capable of going down. It is also capable of going up. What selling the collateral would do... would be to, if you like, remove the risk of the volatility, and therefore remove the risk of potential further downturn in the value of that collateral, or indeed the upside of appreciation in the value of that collateral. So, remove that risk and replace it with actually having cash, which obviously has a very finite value.

主席：何俊仁議員。

何俊仁議員：Thank you. Can I follow up on the question just raised by James TO. Ms SAYERS, you just told us that the Hongkong Bank Trustee at all time only acted as, you know... professional... only provided professional services to the issuer, Pacific International. So more or less your duty... so you are more or less acting in a very neutral capacity with regard to these issuing services. Now, can you tell us from whom did the trustee take instructions, at the time when you acted as... at the time when the issuing company is still operating in issuing the notes?

主席：Ms SAYERS.

滙豐法律部副主管施素珊小姐：Thank you for your question. You want to know from whom we took instructions at the outset when we...

何俊仁議員：At the outset and during the time when the notes were being issued to the retail banks... to the buyers.

滙豐法律部副主管施素珊小姐：Thank you. At the outset, we were approached by Lehman Brothers to take on the role, and of course, follow their instructions or acted on their request to take on the role. Thereafter, in the issuance of the notes, the terms and conditions set out very specifically how the notes should be issued, so there was no need to follow or take instructions from anybody. It was an administrative action in terms of the issuance of the notes. There were no instructions to be taken or to be followed. The terms and conditions were sufficiently specific.

何俊仁議員：So you would continue to issue the notes, notwithstanding that there are fluctuations in the market? And then you know, maybe the value of the collateral has kept on deteriorating, you would just keep a blind eye on this conditional market. You just automatically continue to issue the notes.

滙豐法律部副主管施素珊小姐：I think there are a number of series of notes. And within each series, there are a number of tranches, and each tranche of each series has a set number of notes. And the notes can be issued up to the maximum permitted for that tranche within that series. And once that level is reached, no further notes would be issued. And then we would go on to the next tranche, to the next series. It is not a question of continuing to issue ...

何俊仁議員：No, I think my simple question is, you said that you would take instructions from Lehman Brothers at the outset, near the time when the products were put together. And then, you know, after the company started to issue notes on the instructions of the arranger, then you'll just continue to do it automatically and you will not look at the condition of the market, you will not examine the conditions of the collateral?

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：We are being appointed by Lehman Brothers as the trustee. However, all the duties and responsibilities are clearly laid out in the trust deed. And all the terms and conditions about the issuances are also clearly laid out in the prospectus. So, as a trustee, we only act according to what is being laid out in the document.

何俊仁議員：OK. So, in other words, you would only provide professional services in the issuance of the notes. But at the same time you also said that you are responsible for the publication of the prospectus, right? So, are you responsible for the contents of the prospectus?

滙豐法律部副主管施素珊小姐：No, that's not at all.

何俊仁議員：That is not correct? You are the issuer. And the people would buy the notes after they read the prospectus. So, do you think you are charged to the duty to be satisfied that the contents of the prospectus were accurate and fair? Otherwise, how could you have issued the notes without satisfying yourself that the prospectus are true and fair, the contents of the prospectus?

滙豐法律部副主管施素珊小姐：I think there are a number of parties who have responsibility for ensuring that the contents of the prospectus are true and fair. And I'm not aware that there is any suggestion that the contents are not true and fair.

何俊仁議員：But my question is, do you have a responsibility to be assured and then to assure others that the contents of the prospectus in respect of the minibonds are true and fair? ...very simple question, because you are providing directorship services.

滙豐法律部副主管施素珊小姐：The prospectus for each series was compiled by those who designed the product, by Lehman Brothers.

何俊仁議員：Yes, but in acting as directors for the issuers, were you at least holding out to the public, including the buyers of the minibonds, that the prospectus are accurate and fair, and could be relied upon?

主席：Ms SAYERS.

滙豐法律部副主管施素珊小姐：In our capacity as director of the issuers, it would indeed be our responsibility to ensure or to be satisfied that the contents of the prospectus that is put together by Lehman was correct.

何俊仁議員：So you just give an inconsistent answer. You said you were not responsible and now you say you are responsible.

滙豐法律部副主管施素珊小姐：No, I did not say we were not responsible, I said there are a number of parties that would have responsibility for ensuring that the content of the prospectus was correct.

何俊仁議員：Yes, but you accept that you have the responsibility with regard to the truthfulness of the contents of the prospectus.

滙豐法律部副主管施素珊小姐：Yes. As the director of the issuer, we would have the responsibility to ensure that the content was correct.

何俊仁議員：對嗎？我想這一點沒有爭議。

滙豐法律部副主管施素珊小姐：Perhaps, I do make a point if I could just clarify. The SPV, the issuer as has been described earlier, is a special purpose vehicle. It has, in effect, one purpose, and that is to issue the notes. It is to an intentional purpose, a creature of Lehman's design, and to set up simply to perform a role, a function within the larger structured product. It is not an active company as such and HSBC's role as director is not an active role. It is an administrative corporate services role.

何俊仁議員：主席，我不再提問了，但我只想透過你告訴大家，在prospectus statement中有一句話，我唸出來："Who is responsible for this issue prospectus and programme prospectus?"以下這句話我是quote出來的。"Our directors, being Hongkong Bank Trustee, collectively and individually accept full responsibility for the accuracy of the information contained in this issue prospectus and in our programme prospectus."

主席：好的。大家日後可在小組委員會中再作跟進，好嗎？葉劉淑儀議員。

葉劉淑儀議員：多謝主席。我不想糾纏在HSBC的角色。我只是想問政府，既然政府建議由銀行全數負責的回購方案已經無限期擱置，而政府又無法說出何時可以進行，那麼，何不考慮其他方案呢？例如很多獨立議員提出的回贖方案。

用一個回贖基金，成立一個基金，由政府 and 銀行墊支。我已經多次致函局長，你已知道當中的細節。我們這個方案不會違反你所說不用納稅人付款和由市場解決問題的原則，因為只是墊支，最終你可以出售那些資產，並就銷售衍生工具及結構性金融產品收取徵費，長遠來說可以收回全部款項。

在10年前，政府解決CA Pacific Group倒閉問題時，也是以徵費方式解決，由市場解決，有何不可呢？剛才湯家驊說得很有道理，他請銀行盡點社會責任，我覺得政府也應盡點社會責任。政府是ultimate caregiver，何不以具想像力的方法解決問題呢？由政府 and 銀行出錢墊支，先向bond holders購買，然後assign予這個fund，將來再以所出售的underlying assets和收得的levy，或者銀行被調查mis-selling的compensation，償付全數墊款，納稅人並不需要付鈔，政府何不加以考慮呢？

主席：局長。

財經事務及庫務局局長：我想請副局長代我回答這個問題。

主席：好的。副局長。

財經事務及庫務局副局長：多謝主席。我們原先覺得以市值回購的方案是最佳的方案，這也是以市場的方法去解決問題。至於其他方案，我們早已訂立一項原則，就是不會動用公帑解決因市場上出現問題而引發的事件。因此，如需政府墊支或動用公帑，都會引起其他……市場上有不少投資產品，如果其他投資產品也出現失利的情況，是否亦應以同一方法解決呢？我們覺得目前最迫切、最需要解決的問題仍是如何應付法律爭拗，所以我們促請銀行和受託人盡快解決這個糾紛。即使利用任何一個基金的方法，眼前最需要處理的仍是解決這個問題。我們亦繼續與受託人和銀行公會商討，究竟在徵詢美國法律的意見後，如何……希望受託人以保障投資者的最佳利益出發，採取最合適、最適時的行動，盡快取回這些權益。多謝。

主席：葉太。

葉劉淑儀議員：主席，我對梁局長的答案非常不滿，她沒有回答我的問題。

我已指明，納稅人無須付款，政府和銀行只是墊支而已，最終可以收取徵費。正達集團事件也是以徵費解決。很多行業也有徵費，外訪旅遊業、保險業，有甚麼問題呢？並非由納稅人付款。再者，收取徵費，將來可以恢復投資者對衍生工具的信心。我不知道梁局長、陳局長是否知道，在國際上，**International Swaps and Derivatives Association**也希望恢復市場對這些衍生工具的信心，長遠希望成立一個**central clearing house**，待將來這些**transaction**的**volume**回升，便可收回墊款，有甚麼問題呢？不是要納稅人付款。因為現在無了期擱置進行銀行的回購。政府自己不負責任，並把責任全部推到銀行身上，銀行也要保護自己的利益。那些投資者……現在年關迫近，很多人也很徬徨，政府是否要迫使再有投資者燒炭呢？

主席：局長。

財經事務及庫務局副局長：或者我再重申一下。投資者買了產品，如果涉及失實陳述或誤導，便應透過現行投訴或法院訴訟機制解決問題。回購本身是個很好的方案，但現在已擱置了。另外，如有意索償的話，亦可透過其他方法。我們也要考慮，除了迷你債券之外，還有很多其他的衍生工具或投資，是否都可同樣通過墊支或基金的方式，讓投資者取回金錢呢？我們需要考慮其他因素才可以……

葉劉淑儀議員：主席，我想問問政府，現在證監會完成了多少宗個案的調查？透過金管局及證監會的調查，有多少宗個案已經完成而可幫助那些苦主呢？確立是否有mis-selling，以及時間表為何？那些人是否要等3年、5年呢？

主席：葉太，你的問題有別於剛才的問題，不如我們排隊，好嗎？

葉劉淑儀議員：好的。

主席：石禮謙議員。

石禮謙議員：主席，多謝。我想提出兩個問題。第一，我想跟進，剛才我聽到滙豐銀行回答何俊仁和涂謹申的問題時，答得並不很清楚。簡單來說，假設我代表4萬名苦主，我實在很難明白整個概念和執程序，致使他們可以買到這些迷你債券。滙豐銀行表示，從一個很中肯、neutral的角度來看，它只是信託人。信託人對買家存有責任，而非對雷曼等各方，才有一個中間…… neutral position。剛才他們回答涂謹申時，表示完全沒有參與設計這個產品，但作為信託人，應該瞭解產品是由黃泥變成黃金。表面上有很大的欺騙程度。由黃泥變成黃金，而且有毒，卻叫那些人去吃，明知這是有毒的。從它的角度來看，明知這個產品有毒，卻叫你去吃，叫你去死，我替你保管。它對那些買家，即所謂的迷你買家，也應有責任。它有沒有這個責任，即duty of care，作為信託人的責任呢？它說沒有。可是，剛才何俊仁問到，它同時是這個special vehicle的director。如果沒有參與設計，怎樣擔當special vehicle的director，又怎樣負起trustee的責任呢？這是第一個問題，主席。

主席：好的。請周小姐或Ms SAYERS。

滙豐法律部副主管施素珊小姐：Thank you very much. You finished by asking how would we discharge our duty as trustee. Our duty, as trustee under normal circumstances, is to hold any collateral that supports the notes, to act as a conduit for information to the investors. And more importantly, as a conduit for the funds, should there be interest that's generated during the life of the bonds, and then repayment of principal at maturity. Ordinarily, that would be the extent of our role. Of course, in this unfortunate circumstance, where we have seen the demise of Lehman Brothers, our role in a default is to take action to enforce the collateral for the benefit of the investors to ensure that they receive whatever value is raised from that collateral. It is not our responsibility as trustee to comment or have any view on the product that is being sold, that as I say is designed by third party, by Lehman, is authorized by the Administration and was sold by the distributor banks. HSBC's role is not, as you say, to look at something you described as gold and went to mud. Of course...

石禮謙議員：No, sorry, Chairman. It's from mud to gold.

滙豐法律部副主管施素珊小姐：Mud to gold?

石禮謙議員：You know, Chairman, my question is very simple. As a trustee, you have a responsibility to the minibond holders as well as to who appointed you. So, you have that neutral position. But you have also a fiduciary duty to ensure that what are being sold to the minibond holders are a good products. So, you, as a bank like HSBC, you have a moral obligation to ensure that those people who bought that product are not taking in poison, mud, and thinking those are gold. So, basically where is your obligation? You said you are not a designer of that scheme, but knowing that as a bank, an experienced bank, an international bank, you must be aware that this is a product that has an entrapment of people, turning those mud into gold, you know. And how can you still act as trustee, saying that you have no responsibility? My question is that simple.

主席：Ms SAYERS.

滙豐法律部副主管施素珊小姐：I am sorry, Sir, but I must disagree with your description of our role as having a moral obligation...

石禮謙議員：OK, you mean that, as a trustee, you think that is a good product?

滙豐法律部副主管施素珊小姐：Sir, that is not our role to determine whether it is good or other...

石禮謙議員：If it is not a good product, why should you be a director to that SPV, as Albert HO just asked? And not being a designer of that product, how can you not being a designer of that product and can still be a director of that special vehicle? And then you still act as a trustee to ensure that the minibond holders are being protected? Where is your fiduciary duty, to who and to whom?

主席：你們讓她回答。

滙豐法律部副主管施素珊小姐：Should I answer, Chairman?

主席：Ms SAYERS. Yes.

滙豐法律部副主管施素珊小姐：Thank you. Sir, the product, as you are aware, was approved for sale by the Administration.

石禮謙議員：The Administration is not God. You are a separate entity...

主席：你先讓她回答。

石禮謙議員：主席，我知道她答甚麼。她現在把責任推給政府。你也知道，我們是保護政府的，主席。政府不是天父，政府也會犯錯。她不要把責任推給政府，滙豐也是聰明人，怎可以把責任推給政府，說因政府 agree, SFC approve 了，就去做呢？Can you tell me as an institution, why do you trust the Government? Don't you have a mind of your own? Can't you judge that product is good or bad?

滙豐法律部副主管施素珊小姐：Sir, of course we trust the Government, but none of us are God, none of us have the opportunity or the ability...

石禮謙議員： But you trust the Government and the minibond people trust you!
You betray them!

主席： 你先讓她回答，好嗎？

石禮謙議員： 主席，不用回答，她回答不了。我問這些問題是要她思考一下而已。

主席： 好的。

滙豐法律部副主管施素珊小姐： Perhaps Chairman, if I could answer. Sir, at the time there was a requirement, at the time that these products were sold, Lehman Brothers, of course, had a, I think, double A credit rating given by various credit rating agencies. It was on that basis that, I believe, the product was all priced and sold, and none of us unfortunately had the benefit of foresight to know what terrible circumstances would happen...

石禮謙議員： Because the whole project is to turn mud into gold, and because of this, they said that the Lehman Brothers at the time they sold, it was a double A and that is the whole concept of cheating. This is what makes one wonder why Hongkong Bank agreed to act as a trustee. If you said that you don't know the product, tell us the truth. But if you know the product, why you still act as a trustee? This is a simple question.

主席： 好的，石議員，我想她已經回答你的問題。

石禮謙議員： 好的，謝謝。

主席： 只是你不太滿意她的答覆。

第一輪的發問已經結束。接着，有5位同事.....有6位同事準備繼續發問。我先讀出次序，甘乃威、湯家驊、涂謹申、葉劉淑儀、何俊仁、石禮謙。

余若薇議員： 對不起，主席，我舉了手，我看到你向我點頭，我以為你知道。你肯定是沒有吩咐秘書寫低我的名字，我第二次有舉手。

主席：OK，合共有7位，每位發言3分鐘，希望大家簡潔一點。甘乃威議員。

甘乃威議員：主席，我想問，我聽到梁副局長說回購會擱置，我剛才聽到這個term。究竟現在回購是否擱置？有沒有時間表？何時可以進行回購？政府可否向公眾清楚解釋？這是第一點。

第二點，上次銀行公會發給我們的文件提到："A number of proposals are under discussion between the Distributors and the Government."除了現在提出的回購方案外，銀行公會和政府有沒有其他alternative measure，以進行另類的回購呢？這是第二個問題。

第三，我想問問安永，現在提到各個series的minibond在11月21日的pricing？可否說明最新的估值是多少？此外，為何有些只值0.82%，有些值11點多個巴仙，有些則值70多個巴仙？可否解釋一下，為何pricing在不同的series中有不同價值？如果現在未能圓滿解答，請以書面回覆我有關pricing的問題。

主席：OK，好的。請政府先作答，好嗎？

財經事務及庫務局副局長：多謝主席。關於回購建議..... 在12月17日，銀行公會已發出聲明，說明回購須在甚麼條件下才可繼續進行，就是必須清除這個法律障礙後才可繼續進行，故此並無提供時間表。剛才聽滙豐(即受託人)所說，根據美國法例，他們仍在諮詢美國方面的意見，究竟甚麼才是最佳的行動。這方面的訴訟行動在時間上有不確定性。就這方面，我相信銀行公會可派代表回答，他們並無提出時間表。

關於甘議員的第二個問題.....

甘乃威議員：主席，剛才我問她的問題是，回購是否已經擱置.....

主席：先讓她回答。

甘乃威議員：她剛才回答說已擱置了。

主席：她剛才已經回答。先讓她繼續作答，好嗎？

財經事務及庫務局副局長：12月18日呈交的文件是由銀行公會撰寫的。我們注意到，當中載明有多項建議仍在討論中。其後，我已跟他們澄清，你可請他們正面回答。他們的意思是，呈交那份文件的時間，是在提出銀行墊支1億元的方案之前。其後，大家也同意他們所提出的1億元方案，而最終亦採納了這個方案。先前提及有多個方案仍在討論中，是指他們早前內部的一些討論。在現階段與銀行公會討論的就只有這個墊支方案，有關討論仍在進行中。

主席：好的。銀行公會可否說說有沒有最新估值，又或有關情況為何？Mr MORRIS?

安永董事總經理莫禮詩先生：Yes, two questions. First of all, with regard to the updated valuation, there has been no updated valuation since 21 November. The reason that there has been no updated valuation is because of the fundamental uncertainty that exists around the legal aspects of the structure of the minibond and specifically the structure of the waterfall. To undertake a valuation, given those circumstances, would essentially be incurring additional costs, both in terms of the advice to HKAB, and also in terms of liaising with the Government and the Government advisors. And therefore, as I say, it hasn't been undertaken. In terms to your second question as to why the valuations of the minibonds and the individual series and tranches of the minibonds are different, that is purely a function of principally the underlying collateral and the valuation of the first-to-default swap.

主席：好的。下一位是湯家驊議員。副主席。

副主席：主席，我依然想問問局長，在估價方面，大家也明白估價並非一個數學方程式，也不是實際、確實的學問。即使現在不用打官司，你的估價也只是一個估算，而不是真實的。打官司只是多添一個變數，而即使要打官司，律師也應可告訴你，勝算是百分之五十，抑或百分之八十。這樣也可幫助你估價。剛才我發言時已清楚表明，這項回購計劃不應建基於銀行最終可以討回多少款項。若然如此，銀行其實一點損失也沒有，完全是作出商業決定。所以，如果我們從這個角度去看，政府可否就此與銀行商量，在中間落墨的地方作出一個..... 即銀行和苦主均認為可能是合理的價值，並以這個價值作為標準來回購現時的產品呢？這才是解決問題最快捷和最實際的方法。如果要等到官司打完，根本

沒有可能可以完成這項計劃，也違反了局長剛才所說的計劃的基本精神。我想聽聽局長對此事有何意見，還是局長現在已經洗手不幹，不再理會這件事，任由銀行去打官司。他們怎樣打官司及有何看法，是否對你完全沒有影響呢？我希望情況並非如此。

主席：局長。

財經事務及庫務局局長：首先，政府提出的建議是建基於一項市場原則，因為這個回購的建議是整套安排的其中一部分。若有其他具誤導性的銷售，會按其他情況處理。這個回購是建基於市場原則，希望銀行根據此項原則早日協助苦主取回現值。在過程中，銀行可能會乾等一段時間，即持有那些抵押品一段時間，但原則上仍會按市場原則處理此事。到了今天，我們最需要解決的問題是，第一，那個法律爭拗如何處理？我們如何透過大家的努力解決此事？銀行已清楚表明他們仍會支持這個計劃，但在過程中需要澄清這個法律爭論點。我希望這並非代表不知道官司要打到何年何月，但以目前的情況來說，我無法提供清晰的時間表，因為我相信受託人和銀行仍在徵詢法律意見。

副主席：主席，我不是詢問時間表。也許你不明白我的問題。其實，現時有很多……例如有些物業正在打官司，有官司纏繞，或者資產有官司纏繞，但仍然有人願意購買。只是在市價上打了一個折扣。即使從市場的角度來看，你仍可從中找到一個中間落墨的價錢，只要雙方同意便可以進行買賣。這個價錢未必可以確實反映出最終真正的價錢，但那是一個雙方同意的價錢。何不從這方面想辦法呢？

財經事務及庫務局局長：我明白你的意思。我們也希望銀行在瞭解這個法律爭拗後，可在這方面再研究整個回購計劃如何進行。我希望他們在完成法律風險的評估和作出適當部署後再作研究。

主席：好的。梁美芬議員屬於第一輪提問，不過你的發言時間亦只有3分鐘。

梁美芬議員：沒問題。今天滙豐在座，我想問問滙豐的負責人，為何香港會出現大批大家認為根本不適合購買這類產品的投資者？我想問問，如果回購方案因為這次法律訴訟而長期拖延，根本是無了期的話，滙豐是否願意帶頭考慮，令參與這個投資項目、

這種計劃的銀行，每間也出資1億元成立應變基金。如此一來，須以官司解決的問題，美國也好，香港也好，可以雙軌進行，讓大部分根本不適合購買這類雷曼產品的苦主，可在短期內獲得基本的賠償或補償。我希望滙豐的負責人回答。

主席：你是想問滙豐？

梁美芬議員：是的，滙豐。

主席：滙豐是信託人。滙豐，周小姐。

滙豐法律部副主管施素珊小姐：Perhaps I could answer, if I may, Ms LEUNG. There appeared to be two questions, I think. The first was why there was such a large quantity of these products on the market. The second was would HSBC take the lead to work with the banks to persuade them to put up the funds to pursue the litigation. Is that correct?

梁美芬議員：不單是litigation，是真的成立一個應變基金，叫那些銀行…… 很大機會誤導了不適合購買這類產品的苦主…… 真正賠償給他們，而不用等候訴訟，是一個帶頭…… 一個新的政策，銀行可否這樣做呢？你們作為龍頭大哥，是否願意帶頭這樣做呢？

主席：Ms SAYERS.

滙豐法律部副主管施素珊小姐：The first question why there is such a large quantity of these products on the market is... I'm afraid that's rather difficult for me to answer that one. I assume that they were popular at the time and were sold as popular product by banks...

梁美芬議員：The product has been forbidden to sell to this kind of investors in other countries, but it has been widely sold in Hong Kong.

滙豐法律部副主管施素珊小姐：I can't comment on that. It may indeed have been forbidden for sale in other countries but that's beyond my knowledge. Here in Hong Kong, it was authorized for sale and I assume a large quantity was sold because it was a popular product.

The second question is will HSBC take the lead in establishing some form of contingency fund, I think it's your question. That's a very interesting question and not one that I, in my capacity, am able to answer. It may be something that we can discuss later with the Hong Kong Association of Banks and we certainly will do. I do apologize that I am not able to answer that question here now.

梁美芬議員：剛才你說" certainly will do"，就是說你肯定會與其他銀行業界討論這個方案，是認真討論，對嗎？

滙豐法律部副主管施素珊小姐： If invited to attend the meeting of the Hong Kong Association of Banks Task Force with this item on the agenda, we would most certainly attend and discuss it with them.

主席：今天銀行公會的代表亦在座，我相信他們也聽到你的意見，希望他們回去後可以研究你的建議，好嗎？下一位是涂謹申議員。

涂謹申議員：主席，我非常同意湯家驊議員剛才所說的話，因為上次我也曾提出類似的意見。不過，我想問問銀行公會，因為他們是處理此事的主要機構。

何不在評估的時候..... 其實法律風險是一個風險，加上這個風險進行評估，然後定出一個合理的水平。上次我甚至提出可以分期進行，因為你可能覺得所承擔的風險實在太大，那麼，你或可分兩次或3次進行。你評估法律風險後，便可以此作為基數。當然，日後如能消除法律風險，價值變得更高時，你亦可改以那個較高的價值進行回購。何不從這個角度開展回購工作呢？

例如以價值最高的計算，例如七成，在有法律風險的情況下，價值是多少呢？比方說是六成或五成，因為是你告訴我有好case的。這是政府律師所說的。這已經不苛求了，就以一半計算吧。你先付三成價值向迷債苦主進行回購。日後如能消除風險，價值回升至七成，甚至更高的話，對他們來說也是一個開始，這樣做是否也正確呢？因為即使原本沒有法律風險，也有市場風險，市場風險若令價值下降，你們也要承受。

主席：好的，讓他回答吧。Mr MORRIS.

安永董事總經理莫禮詩先生：Yes, if I can answer your question. You can make assessments as regards what the legal risk that is inherent within the challenge coming in from the external counsel for Lehman. And you can try to quantify what that risk is in terms of a likelihood of success. What makes that risk fundamental in trying to assess the underlying value, market value of these minibonds is the fact that if that challenge from the US, from the Weil, Gotshal in the US, proves to be successful - regardless of how much weight you attach to the chance of it being successful - if it were to be successful, the impact on the valuation of the minibonds would be very significant. And therefore, it is... I use the word "fundamental" to the underlying value of the minibond. And by virtue of that, it is not possible to actually put a valuation on the minibond because of the fundamental nature of that risk.

涂謹申議員：主席，我不同意，因為市場風險也可以跌至零。

主席：好的，我想我們不要再爭辯這一點，現在最主要是.....

涂謹申議員：還有，我已經告訴你，你可以分期開始，我不是要你在七成discount變成六成、五成後，全數支付五成給他們，對嗎？現在你是零的風險。你願意承擔的法律風險是零，你根本沒有誠意。

主席：好的。葉劉淑儀議員。

葉劉淑儀議員：主席，我也要問問政府。我同意湯家驊議員和剛才梁美芬議員所提建議的精神，政府不可以只得一招。其實你已承認，逼迫銀行全數承擔的回購方案將會無了期擱置，那麼，你如何能夠幫助苦主呢？這個問題再拖下去，打官司可能需要1年、兩年甚或3年的時間，使那些苦主一直受到困擾、上街，這會影響香港作為金融中心的聲譽。政府應該考慮一些更加積極及具想像力的解決方案。我所說的回贖基金方案得到多位議員支持，當年正達集團事件也是這樣解決。如果你想到辦法，我們可以一起討論。我們一定有辦法界定哪些苦主是被人誤導，並先向他們作出賠償，因為這個基金可以承受風險。你持有那些CDO，可以等到市場恢復過來才出售。剛才專家也提到，那些CDO也有upside，你現在將其出售並無意義。會計師計算所得的只是一個估值，市價是由市場決定。如果推出150億元迷債，只有最初的一、兩千有人認購，餘下的迷債能值多少錢呢？這是自欺欺人的做法。政府何不考慮另類方案呢？

主席：局長。

葉劉淑儀議員：不可以這樣再拖下去。

財經事務及庫務局局長：劉議員，其實政府有許多不同的方案，整套正在討論中。今天所討論的是回購方案。

剛才湯家驊議員、涂謹申議員和葉劉淑儀議員均提到很多……我希望把集中點放在這個回購建議目前遇到甚麼法律障礙。當然，有些建議提出，銀行可否承受更多法律風險呢？我們原本提出的建議至今也是根據市場原則制訂，因為我們覺得這樣做才可公平對待各方。出現這個法律風險，我覺得銀行需要作出評估，但我們仍然覺得銀行應該履行責任，協助投資者取回現值。因此，在我們的立場，希望銀行和受託人盡快澄清法律上出現的問題，重新啟動回購建議。

主席：好的。

葉劉淑儀議員：我還有時間剩，主席，3分鐘，對嗎？

主席：是，還有15秒。

葉劉淑儀議員：銀行要盡責任，為何政府不盡責任呢？10年前正達集團倒閉，牽涉的金額少很多，只有9億元，但不出6日，當年的財經事務局局長已提出方案，利用墊支的方法，證監會出一些，聯交所出一些，以徵費解決所有問題。為何現在政府不可以呢？

主席：好。此點很清楚。何俊仁議員。

何俊仁議員：主席，根據有關文件，我們可以看到，這些CDO——抵押品，主要是用來保障發行人能夠履行責任。換句話說，如果現在場下來，即未能履行責任的話，其實有一點很清楚，就是那些minibond holder應該首先得益。這是我們一直以來所得的理解，包括政府也是這樣想，否則政府不會提出這個方案。因此，我剛才也問滙豐，作為信託人，必須確保銷售章程所載的信息正確。銀行也是一樣，銷售時會發放信息給公眾。這是整個銷售的條件

之一，利用抵押品來保障購買債券的人。現在發覺突然殺出一個"程咬金"，政府也不知道銀行"攪到亂晒籠"，連信託人也估不到。其實，你們誤導了所有人，此點已很清楚，我上次也曾提出此觀點。這個風險已不用再提，無論如何，現在也要承受。現在為何.....其實各位同事也提到，就是銀行把它買下來，當這個風險不存在，並去承受這個風險，這是一個訴訟的風險。如果你由頭到尾都覺得這個法律觀點是對的，你不怕打官司，日後便跟它打吧，但現在不要把整件事拖延。政府言而無信，銀行則誤導公眾，包括信託人，何必這樣呢？所以我再問一次，銀行是否覺得不可以繼續進行這個回購方案？就好像以前一樣，官司是另一個問題，自己照打，但你穿了那對鞋，step into the shoes of the minibond holders，你便要付錢，當那個法律風險不存在，把其放在一邊，並去承擔這個風險，為何不可以這樣做呢？

主席：好。我們問問銀行公會，好嗎？請銀行公會作答。

萬盛合夥人馬紹基先生： The answer to this question is whether the buy-back will proceed. The banks intend, at this stage, to proceed with the buy-back, but subject to a resolution of the issues in the United States. Until the issues in the United States are resolved, it is not possible to proceed with the buy-back because, as has been agreed with the Government and the HKMA, the buy-back would proceed on market principles, and at the moment, it is not possible to establish the market price at all.

何俊仁議員： My question is, at all time, I think the retail banks have given a general impression to the public that the collaterals could be relied upon in case the issuers failed to fulfill obligations. So, you know it's sort of assurance, it's sort of securities for the benefit of the investors. This is also the message given by the trustee, I think, you know, by publication of the prospectus. So it seems that all these are misconceptions given to the public. So you would be liable in any event for creating these false perceptions in case you lose in the litigation in the US. So why can't you accept the legal risk and proceed as if the legal risk did not exist at all. In other sense, you just assume the legal risk and proceed to the redemption program as suggested earlier?

主席：好的。Mr MAZZOCHI.

萬盛合夥人馬紹基先生： I'm sure I can reiterate my previous answer. The agreement with the Government is that the banks proceed with the buy-back at the market value of the minibonds. The claim is being made by Lehman and goes to the nature of the derivatives to establish the market price. Until that

uncertainty can be removed, the banks are unable to proceed with the buy-back because they can't establish the market price at all. The point about the collateral is correct. The collateral is there and remains available. But the question is: who has priority to the proceeds that are available from selling the collateral?

何俊仁議員：That means it may not available in case you lose in the action?

主席：是。好的，石禮謙議員。

石禮謙議員：多謝主席。主席，據局長所答，即是叫銀行進行回購，而銀行也說會回購，有關價值如何等等。不過，我看到那些銀行，一方面說會回購，但第二方面卻沒有心去進行回購。你看到銀行所謂會去做，尤其是永亨銀行，一方面說會回購，但第二方面又不肯負起責任，檢討自己有沒有做錯，主席。他們很多誤導了苦主購買迷你債券，然後自己查自己，說自己無錯，沒有誤導苦主購買迷你債券。我想問問那些銀行，除了從回購的角度外，會否考慮邀請獨立調查隊到銀行調查自己有沒有誤導那些人，尤其是永亨銀行？

很多苦主曾寫信給我，而我也曾與他們會面。他們說銀行發信給他們，表示自己沒有錯。那麼，如果你說自己沒有錯，其實已經關上後門。當不進行回購時，就說因為自己沒錯，所以不回購是天公地道。就此，我想問問那些銀行，會否考慮邀請獨立調查隊，調查自己有沒有誤導苦主購買迷你債券，主席。

主席：好的。銀行公會。

大新銀行及豐明銀行執行董事藍章華先生：我想銀行公會的會員(member bank)當中，每間銀行在調查客戶投訴方面都要遵守金融管理局的指引。就這方面進行的調查，當然，由於今次雷曼事件的個案相當多，我相信每間銀行都會動用大量人力物力跟進這件事。個別銀行有自己的獨立部門進行調查，我相信每間銀行都會根據這個準則去做。

主席：即是獨立的調查……

石禮謙議員：主席，如果自己沒有做錯就不怕別人去查。如果要自己查自己，從銀行與客戶的互信角度來看，很多客人其實已對銀行失信心。銀行還要自己查自己，指客人講大話，對於這點……一方面他們已損失很多錢，第二方面銀行又說他們講大話，我覺得這點很難接受，主席。

主席：好。余若薇議員。

余若薇議員：多謝主席。主席，剛才石禮謙問到自己查自己，自己告自己就更加荒謬。

主席，我想問問滙豐銀行所擔當的角色。翻看我們今天的文件，特別是那幾間銀行向我們提交的文件曾提到，滙豐銀行作為信託人的角色，詳情載於第4頁。當中提到，信託人要代表投資者，即那些苦主，作為 **representative of the investors**，即是要為這些投資者的利益作最大的保障，應該如此。當中包括做些甚麼呢？其中第4點提到：“**if necessary, take action against the issuer to enforce the issuer's undertaking.**”即是說滙豐銀行作為信託人，有責任要告這個發行人，但發行人又是它自己。所以我想問滙豐銀行，怎可能一方面做這個發行人，即雷曼兄弟委任它作為 **Pacific International Finance Limited** 這間公司的董事。如果有需要的時候，它又要戴另一頂帽子，代表投資的苦主去告自己。在這件事情上為何沒有利益衝突？可否向我們解釋，它怎可以同時戴兩頂帽子，自己告自己，這是第一個問題。

第二個問題就是抵押品，剛才也有同事提到，抵押品是用來保障投資者，保障苦主。有事的時，抵押品應該交給那些苦主。但我們看到，原來這些抵押品可以隨時換來換去。所以我想問問安永，是否確認這裡的投資抵押品是否曾經換過？滙豐銀行，請問你作為信託人，是否聽雷曼指使，叫你換那些抵押品你便換？如果是這樣的話，你可否告訴我，在此事上怎會沒有利益衝突呢？你一方面拿着抵押品保障苦主，另一方面又聽雷曼指使你換來換去。怎樣可以保障這些投資者而沒有利益衝突呢？此外，主席，這個責任不是說被動地坐着乾等，等人有錢借給你墊支，你才去採取行動。你採取行動保障投資者的責任是持續的，由設計文件開始到現在一直都是這樣。現在出了事，雷曼兄弟說那些資產和抵押品是屬於他們的，但另一方面，你戴着另一頂帽保障那些投資者。請你向我們解釋，怎樣可以圓滿地 **discharge**、履行你兩頂不同角色衝突的帽子呢？

主席：讓她回答。Ms SAYERS。

滙豐法律部副主管施素珊小姐：Thank you, Mr Chairman. There are two levels. I put it very simply as I believe Mr MORRIS has explained last time before this Chamber on 18 December. The product has in effect two levels: the upper level and the lower level. The collateral is held at the lower level. We are not the trustee of the trust at the lower level, nor are we the director of the issuer of the notes at the lower level. It is at the lower level that has been a challenge by Lehman or their liquidators...

余若薇議員：主席，如果它不是那些抵押品的保障人或信託人，又怎樣履行保障投資者的責任呢？它當然兩方面都要做，一方面要保障投資者的抵押品，另一方面，在有需要的時候，這裡又說它要告發行人，而發行人又是自己。如果它不保障抵押品，它做信託人來做甚麼？主席。

主席：Ms SAYERS.

余若薇議員：I mean you are the custodian. Obviously, you have to protect the collaterals. I mean they belong to the victims. But then, according to this, you have to sue yourself, you have to sue the issuer. How can you discharge both duties at the same time? Surely, there is a clear conflict of interests, isn't there?

滙豐法律部副主管施素珊小姐：No, I have to express that I don't think there is a conflict of interests. There is no suggestion that the issuer has to be sued by us.

余若薇議員：That is what it says here, unless they are wrong. That is what it says on page 4, "if necessary, take action against the issuer to enforce the issuer's undertakings, including enforcing the security." I mean if you are on one hand the custodian of the trustee with duty to enforce the security and sue the issuer, and you are the issuer according to page 3. According to this document, you are the issuer. You have been appointed by Lehman Brothers to be directors of the Pacific International Finance. I mean that is the question I can't understand. How can you sue yourself?

滙豐法律部副主管施素珊小姐：Perhaps, I may explain. We are not the issuer. We do provide corporate services to the issuer at the upper level. As part of the enforcement process, there will be a request made of the issuer at the upper level for redemption of the notes. The issuer will not be...

余若薇議員：她一時說自己是issuer，一時又說自己不是issuer。主席，她剛才回答何俊仁時才說自己是issuer。雷曼兄弟委任滙豐銀行做發行人，這裡又寫明它要告發行人，去enforce、執行那些抵押品。我的問題是，為何這不是一個利益衝突？

主席：我們不如請周小姐解釋一下，好嗎？

余若薇議員：好呀。

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：我們真的不是發行人，Pacific International Finance是issuer。

余若薇議員：但你們是那間公司的董事！

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：我們是corporate service provider，做director，但這間不是一間active的公司……

余若薇議員：那不是一樣嗎？

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：它只有一個single purpose，就是issue那些notes，它沒有其他……

余若薇議員：即是我做傀儡就不關我事，我獲別人委任做董事……

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：不是這樣……

主席：你讓她答，好嗎？因為我們今天主要是討論回購。

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：我們是directors，但directors只是做一些corporate service，做filing、

returns，因為我們沒有actively去run這間公司，它只是一個special purpose vehicle去issue那些notes。

余若薇議員：中央委任特首做特首，他都不是……

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：As a trustee，我們履行trustee的責任，剛才我的同事已清楚說明有幾個duties。

第一，我們是 conduit of information between issuers 和 noteholders；第二，我們負責保管underlying collateral；第三，如有event of default而需要take action的話，subject to directions及 indemnity from noteholders，我們會履行這個責任，去enforce collateral，然後base on trust deed給我們行使的conditions分配資產。我們本身不是一個issuer，所以如果你說將來要enforce或take actions，as a trustee，我們絕對可以做這件事。Director只是一個administrative的角色。

余若薇議員：主席，即是……

主席：我相信我們在這裡很難一下子完全攪得清楚。

余若薇議員：是，不過我聽後很震驚，主席。滙豐銀行作為專門提供這些服務的公司，你可以告訴我，雖然是被人委任做董事，但只負責簽署文件，甚麼也不知道，不關我事，有無攪錯呀？

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：在這個market中有很多……

余若薇議員：是，我知，但你不可以說不用負責，簽了名就要負責，現在這麼多人簽了名不見了錢，你應該告訴他們你要負責，你不可能說被人委任做董事，只負責簽名而不關你事！

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：不是，所以我們有責任，那個責任就是……

余若薇議員：那麼，你簽了名便要負責！

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：以trustee的責任是要履行……當我們收到direction要變賣資產時，我們會履行這個責任，as a trustee，這點已說得很清楚。

余若薇議員：你說要履行這個責任，這個責任是誰指使你的呢？指使你去簽名，並不代表你在法律上沒有責任。你一方面是發行人，簽署這些文件，你是董事，另一方面，你又要自己負責告自己，我看不到你怎樣可以同時做這兩件事。

滙豐證券服務高級副總裁兼亞太區主管周家琮小姐：我相信滙豐銀行作為受託人，絕對會履行它的責任。如果我們知道需要行使我們的權利去enforce collateral時，我們絕對會去做。

余若薇議員：你怎會知道呢？我們現在就是坐着等你何時才知道……

主席：余若薇議員，你的時間已遠遠超出所限。

余若薇議員：謝謝，主席。

主席：最後，我想問一問，因剛才亦有很多同事質疑目前的回購程序會否因為法律爭議而擱置。我想瞭解一下，信託人方面可否告訴我們，因為你們也覺得，現在美國方面的意見與你們發行時的基本原則互相違背，你們對這次法律爭議的信心到底有多大？會不會贏？回購最終可否進行？可否給我們一個清楚的答覆？

滙豐法律部副主管施素珊小姐：The two are related insofar as the legal wranglers you put it are impacts on the value of the collaterals that would be available for distribution. The legal wrangle doesn't impact on the buy-back as a principle, as a theoretical possibility, that they are quite separate. The legal wrangler as what Lehman has sought to do is to prevent those counterparties to various swaps and documentation which they have entered into... how should I put it, unwinding those various structures. And following the terms in the documents supporting these structures to pay the funds out, they have sought to establish a priority to those funds over in this case. The priority which we would say, is in favour ultimately of the noteholders. Their challenge does not impact directly on the buy-back as such, on the principle of buy-back.

主席：但是如果將來的補償程序在美國行先的話，即代表我們現時在香港進行的回購建議計劃完全不可行，可否這樣理解？

滙豐法律部副主管施素珊小姐：No, Mr Chairman, I think perhaps there has been some misunderstanding. As Mr MORRIS and Mr MAZZOCHI have resorted to explain that the challenge impacts primarily the value that will be available, but not the buy-back or the principle of buy-back per se.

主席：Mr MORRIS可否再補充一下？現在出現的法律爭議，就是美國方面不同意銀行公會所有銀行進行buy-back，是嗎？如果不可以進行的話，我們現在準備跟它抗辯。我們認為是可以做這項工作的。但是如果最終因為美國方面不同意，即如要付錢給證券持有人，便應先付錢給美國的話，整項回購便不能進行，是否這個意思？

安永董事總經理莫禮詩先生：I mean the buy-back was put in place to buy back from the minibond holders the minibonds at the market value. So, obviously, part of that process is establishing what the market value is. What the legal challenge in the US does is, as I say, to make it impossible to actually come up with a market value for those minibonds. So, that is what, if you like, puts the buy-back on hold. But I don't think it alters the fundamental point of actually moving forward with the buy-back unless once the situation is resolved.

涂謹申議員：在這個會議之後叫政府.....

主席：涂謹申議員。

涂謹申議員：我想政府.....剛才也聽到，至少有5位議員曾提到一間銀行會否有利益衝突的問題。我知道香港的銀行監管很嚴格，我們亦不會容許銀行在左手跟右手提供服務時有衝突，或者對客戶有利益衝突。我想問一問，政府可否提供.....希望金管局向我們提供文件，說明有沒有這方面的監管。因為我們其實對香港銀行沒有監管，即銀行喜歡左手交右手，對客戶可能造成利益衝突是否也可以呢？此外，如果可以的話，希望法律顧問在這個會議之後向我們提供一些資料，讓我們考慮將來如何跟進。

主席：好，不如這樣吧，因為我們超過時限已有15分鐘，而下一個議程亦具爭議性，我們需要時間進行討論。我建議大家把想要的資料寫給秘書處，然後由秘書處請銀行公會、政府或信託人跟進，向我們進一步提供有關資料，好嗎？另外，我還要看看大家所需的東西，以決定這個委員會是否需要召開其他會議以作跟進，否則，很可能要將其交回有關的小組委員會繼續跟進，好嗎？

副主席：主席，我有意見。

主席：是。

副主席：其實今天很多同事提出的問題可能屬於我們雷曼小組的工作範圍，但這個回購方案則未必是，因為回購方案是政府提出的建議，以解決現時的問題，沒有甚麼可以調查。因此，我們或可在這方面繼續跟進，而其他需要調查的事宜則留給小組跟進。

主席：我同意，這方面我們要進一步商討。

葉劉淑儀議員：主席，有關回購，既然政府已承認無了期擱置，我要求政府提供文件，列明還有甚麼其他方案去解決這個問題，因為不可以拖一年、兩年、三年，不可以這樣再拖下去。

主席：是。我們會議這個事項到此結束，好嗎？我希望同事如有其他問題或資料需要索取的話，請寫信給秘書處，然後由秘書處請政府和有關方面提交更多資料。當然，那些資料同樣會交給有關的小組委員會，希望日後我們可以繼續跟進，好嗎？

多謝銀行公會的代表、各位銀行的代表及信託人出席今日的會議。多謝局長和他的同事。

立法會秘書處
議會事務部1
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