

立法會
Legislative Council

LC Paper No. CB(1)1174/08-09

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Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 2 February 2009 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 Emily LAU Wai-hing, JP
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 WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
- Members attending** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Tanya CHAN

**Public officers
attending**

: Agenda Item IV

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

Miss Mandy WONG
Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)

Mr CHOI Yiu-kwan, JP
Deputy Chief Executive
Hong Kong Monetary Authority

Mr Martin WHEATLEY, JP
Chief Executive Officer
Securities and Futures Commission

Agenda item V

Mr Joseph YAM, GBS, JP
Chief Executive
Hong Kong Monetary Authority

Mr Peter PANG, JP
Deputy Chief Executive (Development)
Hong Kong Monetary Authority

Mr CHOI Yiu-kwan, JP
Deputy Chief Executive (Banking)
Hong Kong Monetary Authority

Mr Eddie YUE, JP
Deputy Chief Executive (Monetary)
Hong Kong Monetary Authority

Agenda item VI

Mr John LEUNG
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Ada CHUNG
Registrar of Companies

Ms Grace KWOK

Principal Assistant Secretary for
Financial Services and the Treasury (Financial Services)

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

Staff in attendance : Mrs Constance LI (Agenda Item IV)
Assistant Secretary General 1

Mr KAU Kin-wah (Agenda Item IV)
Assistant Legal Adviser 6

Ms Elyssa WONG (Agenda Item IV)
Deputy Head (Research and Library Services Division)

Mr Michael YU (Agenda Item IV)
Research Officer 7

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)682/08-09 — Verbatim record of special
meeting on 18 December 2008

LC Paper No. CB(1)680/08-09 — Minutes of meeting on
1 December 2008)

The verbatim record of the special meeting held on 18 December 2008 and the minutes of the meeting held on 1 December 2008 were confirmed.

II Information papers issued since the last meeting

(LC Paper No. CB(1)545/08-09(01) — Letter dated 25 November 2008
from "a helpless investor"
(Chinese version only)

- LC Paper No. CB(1)545/08-09(02) — Administration's written response to the letter
- LC Paper No. CB(1)627/08-09(01) — Administration/the Mandatory Provident Fund Scheme Authority's paper on Government injection into mandatory provident fund accounts of eligible persons — arrangements for handling requests for review of eligibility
- LC Paper No. CB(1)645/08-09(01) — Administration's paper on fourth quarterly report of 2008 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism
- LC Paper No. CB(1)653/08-09(01) — Press release on People's Bank of China and Hong Kong Monetary Authority (HKMA) sign Currency Swap Agreement
- LC Paper No. CB(1)688/08-09(01) — Administration/HKMA's paper on the fees and charges for banking services)

2. Members noted the information papers issued since the last meeting.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)678/08-09(01) — List of outstanding items for discussion

LC Paper No. CB(1)678/08-09(02) — List of follow-up actions)

3. Members agreed that the item on the "Budget of the Securities and Futures Commission for the financial year of 2009-2010" should be discussed at the next meeting scheduled for Thursday, 26 February 2009 at 4:30 pm.

4. Mr KAM Nai-wai recapped his earlier concern about the regulation of credit card business and measures to protect the interest of credit card customers in respect of the terms and conditions for credit card services and Ms Emily LAU's related concern about the impact of banks' fee charging on the public. He requested that

arrangements be made for early discussion of the subject, say, at the Panel meeting scheduled for 26 February 2009. The Chairman advised that the concerns of Mr KAM and Ms LAU could be dealt with under the subject on "Impact of banks' branch closure and fee-charging on the public", which had been placed on the Panel's list of outstanding items for discussion and the Hong Kong Association of Banks had agreed to report progress to the Panel at the regular meeting in May 2009. For the next regular meeting on 26 February 2009, the Chairman advised that in light of the recent financial turmoil, flexibility should be allowed for the Panel to incorporate urgent items for discussion at the meeting so as to respond promptly to issues of public concern arising from the latest market developments.

(Post-meeting note: The item on "Issues related to the proposed extension of the "black out" period and introduction of quarterly financial reporting" was incorporated into the agenda for the meeting on 26 February 2009 at the request of Hon James TO and Hon KAM Nai-wai. Members were informed of the revised meeting arrangements vide LC Paper No. CB(1)821/08-09 on 18 February 2009.)

#IV Briefing on the reports prepared by the Hong Kong Monetary Authority and the Securities and Futures Commission on the Lehman Brothers Minibonds incident

(LC Paper No. CB(1)678/08-09(03) — Paper provided by Administration

IN06/08-09 — Information note on regulation of the sale of retail structured financial products in selected places prepared by the Research and Library Services Division of the Legislative Council Secretariat

LC Paper No. CB(1)708/08-09(01) — Securities and Futures Commission(SFC)'s paper on recommendations in report to the Financial Secretary on issues raised by the Lehman's Minibonds crisis (power-point presentation materials)

LC Paper No. CB(1)708/08-09(02) — HKMA's paper on HKMA's Report on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies (power-point presentation materials)

LC Paper No. CB(1)709/08-09(01) — Speaking note of Mr Martin WHEATLEY, Chief Executive Officer of Securities and Futures Commission)

Relevant papers previously issued by the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

(LC Paper No. CB(1)552/08-09(01) — Report of SFC entitled "Issues raised by the Lehman Minibonds crisis – Report to the Financial Secretary"

LC Paper No. CB(1)552/08-09(02) — Report of HKMA entitled "Report of the Hong Kong Monetary Authority on Issues concerning the Distribution of Structured Products Connected to Lehman Group Companies")

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

(Post-meeting note: A special meeting was arranged on 23 February 2009 for members to follow up the discussion on the review reports prepared by HKMA and SFC on the Lehman Brothers Minibonds incident. Members were informed of the meeting arrangement vide LC Paper No. CB(1) 725/08-09 on 4 February 2009.)

V Briefing on the work of the Hong Kong Monetary Authority

(LC Paper No. CB(1)678/08-09(04) — Paper provided by HKMA

LC Paper No. CB(1)709/08-09(02) — Speaking note of Mr Joseph YAM, Chief Executive of the Hong Kong Monetary Authority)

Briefing by the Hong Kong Monetary Authority

6. At the invitation of the Chairman, the Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) gave a power-point presentation on the work of HKMA. The salient points in his presentation were summarized below:

- (a) Market participants had used the term "second wave" to describe the latest developments in global finance. The key to solving the current problem laid in restoring financial stability, so that financial institutions and the markets could quickly return to normal to support the economy. On the monetary policy front, credit costs needed to be kept low and credit supply eased as much as possible. On the fiscal front, an expansionary approach was necessary to stimulate the economy and the job market. Emerging markets should pay particular attention to the contagion effect of the second wave, which might be more potent than that of the first wave. Everyone should be vigilant, seek to understand more background information, and manage risks prudently taking into account own circumstances.
- (b) On exchange rate, the long term stability of the Hong Kong dollar was a clear goal of the HKMA's continuous efforts to strengthen the Linked Exchange Rate (LER) system. HKMA had bought a total of US\$23 billion both actively within the Convertibility Zone and passively at the strong-side Convertibility Undertaking, injecting HK\$179 billion into the local money market. During this time, the Hong Kong dollar spot rates remained stable and forward discount narrowed, the one-year forward rate also returned to within the Convertibility Zone. This reflects the positive response by the market to HKMA's operations. HKMA would take action as necessary to maintain currency stability and an accommodative monetary environment.
- (c) In view of the nervousness of the Hong Kong interbank market following the outbreak of the financial crisis, HKMA had injected liquidity into the interbank market and introduced temporary measures to provide liquidity to the banking system. As the interbank market had continued to operate normally in the past two months or so, HKMA was inclined to withdraw the temporary measures at the end of March 2009 as planned. To enable branches and subsidiaries of Hong Kong banks on the Mainland to obtain renminbi (RMB) liquidity to meet contingency needs, HKMA had signed a currency swap agreement with the People's Bank of China, providing liquidity support up to RMB200 billion or HK\$227 billion. In view of the strong demand for the Exchange Fund (EF) Bills and the capital inflows since the outbreak of the crisis, HKMA increased the supply of EF Bills by HK\$30 billion.
- (d) The banking system in Hong Kong remained robust and resilient despite that some of the banks in the United States (US) and Europe

badly hit by the global financial crisis had to be bailed out by their governments. Although the falling prices of financial assets, the economic downturn and other unfavourable factors would inevitably affect asset quality and drive up the ratio of non-performing loans of banks in Hong Kong, preliminary figures showed that the non-performing loan ratio was at very low level, but had risen from below 1% before the global financial crisis to just above 1% at the end of 2008. The capital adequacy ratio of local banks remained high.

- (e) Credit provided by banks shrank slightly after the outbreak of the global financial crisis. Lending by retail banks declined by an average of about 3% in the last quarter of 2008. Loans relating to trade finance decreased more significantly by nearly 15%. The Hong Kong-dollar loan-to-deposit ratio of retail banks also declined to 69.4% at the end of December from 72.9% at the end of September 2008. On the whole, there was adequate credit supply to meet demand. However, the situation might change significantly in the coming months as the terms of more than \$100 billion of syndicated loans would expire in 2009. These loans might or might not be rolled over, particularly when the attitude of some foreign banks might change. HKMA would monitor the situation closely and take appropriate actions if necessary.
- (f) On the work related to the Lehman Brothers incident, HKMA had completed the initial assessment of the nearly 20 000 complaints, and had opened investigations in about 5 000 cases. HKMA had so far identified 280 cases involving 15 banks with prima facie evidence of mis-selling and referred the cases to SFC for investigation as to whether the banks had mis-sold financial products and whether enforcement actions were warranted.

Discussion

Credit supply

7. Mr Andrew LEUNG expressed concern about the triggering of a second wave of financial turmoil, its impact on the economy of Hong Kong and measures to cope with the problem. Mr LEUNG also expressed concern about the expiry of more than \$100 billion of syndicated loans in 2009.

8. CE/HKMA said that the second wave might possibly be triggered through three channels: the residual effects of the first wave; the vicious cycle of economic slowdown and credit tightening; and the emergence of financial protectionism, which might mean, for example, that countries with ample reserves would not buy US Treasury bonds or financial instruments of other countries. While the economy of Hong Kong would inevitably be affected by a second wave of the financial turmoil, CE/HKMA believed that Hong Kong would be able to cope with the difficulties. As regards concerns about expiry of the terms of syndicated loans,

CE/HKMA advised that whether or not these loans would be extended or restructured would hinge on the attitude of individual banks. Foreign banks might have to adopt a conservative lending policy given the need to address their problems at home, and the availability of loans to the affected enterprises would depend on whether local banks would be willing to make up the gap left by foreign banks. HKMA would monitor the situation closely and take appropriate actions if necessary.

9. Mr Andrew LEUNG was concerned about the credit crunch facing the small and medium-sized enterprises (SMEs) and measures to assist them in securing loans during the financial turmoil. He asked whether the Government would offer loans direct to SMEs and enterprises affected by the expiry of syndicated loans if they had difficulties in extending the loans or obtaining new loans. Ms Emily LAU expressed concern that only a small number of SMEs had benefited from the Government's loan guarantee schemes as banks had tightened their credit policies and charged high interests for the loans.

10. CE/HKMA said that to safeguard banking stability and ease credit supply, HKMA had introduced two measures in October 2008, namely, the full deposit protection and the Contingent Bank Capital Facility. These temporary measures would help credit easing, hence facilitating SMEs in securing loans and help prevent a vicious cycle of credit tightening and economic slowdown. CE/HKMA said that he believed the Government, while introducing enhancements to the loan guarantee schemes for SMEs, would remain open-minded on the issue of whether direct lending to enterprises would be necessary and appropriate.

Performance of the banking sector

11. Mr CHIM Pui-chung noted with concern some recent market analyses/rumors about upcoming incidents in the banking sector of Hong Kong. He doubted whether these had been related to the result announcements that would be made by the Hong Kong and Shanghai Banking Corporation Limited in early March 2009. Mr CHIM was concerned that analyses/rumors about the performance of individual banks might affect market sentiment and create opportunities for speculative activities. He asked whether HKMA could take actions to stop the spreading of such analyses/rumors.

12. CE/HKMA advised that in the free market of Hong Kong, it would not be possible to prevent speculative activities. As these activities could give rise to market volatility and affect the price discovery mechanism of the stock market, HKMA had reminded market practitioners and investors to remain vigilant in a volatile market. With the freedom of speech in a liberal society like Hong Kong, people should be free to express their views and make market analyses. Comments made by credible individuals in an objective manner should be considered acceptable by the market. He believed that market participants and the investing public could judge for themselves whether the analyses were objective and supported by facts.

13. Mr Albert HO pointed out that under the recent financial crisis, some authorized institutions (AIs) might suffer significant losses in their investments in financial products. Mr HO enquired about the regulatory requirements for AIs to issue profits warnings and make timely disclosure of major business losses and/or other price sensitive information to safeguard the interests of their shareholders and the investing public.

14. CE/HKMA advised that HKMA had all along encouraged AIs to make timely and appropriate disclosure of their business information, including investment losses. AIs which were listed corporations had to comply with the disclosure requirements under the Listing Rules. Responding to Mr Albert HO's further enquiry, CE/HKMA said that from the supervision experience of HKMA, AIs had always responded positively to HKMA's calls for expeditious and timely disclosure of business information.

15. Noting the possible development of a second wave of financial turmoil, Mr Andrew LEUNG and Mr Paul CHAN were concerned about the outbreak of a credit card default crisis in the US as a result, and the impact of such a crisis on Hong Kong. Mr CHAN opined that the consequences of a US credit card default crisis might be more destructive than those of the sub-prime crisis, and enquired about the loan quality of banks in Hong Kong in relation to credit cards. Mr CHAN also expressed concern about the financial position of the US car-making industry, as a significant portion of the credit default swaps (CDS) market of the US was related to its car-making industry.

16. In response, CE/HKMA said that the US financial sector would be facing a difficult time this year. The sub-prime crisis had triggered a confidence crisis and credit tightening in the US and affected the business of different sectors, including the car-making industry and credit card business of banks. The financial viability of some state or municipal governments might be in trouble if the economic recession continued. To maintain banking stability and restore confidence, the US government had introduced a number of rescue plans such as injecting liquidity into the banking system. He said he believed that the US government would stand ready to rescue various businesses of the banking sector, including its credit card business. As regards the impact on the banking sector of Hong Kong, CE/HKMA advised that the banking system remained robust amid the global financial crisis. Banks in Hong Kong had been adopting prudent risk management and HKMA had advised them to deal with any deteriorating assets, including CDS, in a timely manner. HKMA would monitor closely retail banks' loan portfolio and their capital adequacy.

17. Mr Paul CHAN noted that HKMA had introduced the Contingent Bank Capital Facility and would adopt a flexible approach to adjusting the "premium" over the statutory capital adequacy ratio on individual local banks to help them maintain adequate capital. He sought elaboration from HKMA on how banks would be encouraged to create flexibility in their capital structures to enable them to use these arrangements when necessary. In response, CE/HKMA said that as the capital adequacy ratio of local banks remained high, there were rooms for creating

flexibility in their capital structures. CE/HKMA said that while he was unable to specify the concrete measures adopted by individual banks, a bank might consider whether it was opportune to obtain support of its shareholders at the Annual General Meeting or during result announcements for capital raising measures such as issuance of new shares.

18. Ms Starry LEE noted with concern that the number of residential mortgage lending (RML) in negative equity more than doubled to 2 568 cases in September 2008 from 936 cases in June 2008 as property prices declined during the period. Ms LEE asked how HKMA monitored the quality of retail banks' loan portfolios and measures to be taken if the number of RML in negative equity increased further.

19. In response, CE/HKMA advised that the number of RML in negative equity was expected to increase rapidly after September 2008. He pointed out that the 2 568 cases in September 2008 was not a high record compared with the situation in 2003 when property prices dropped by about 65% from the peak in 1998. The current decline of the property market was not expected to be as acute as in 2003. Responding to Ms Starry LEE 's further enquiry, the Deputy Chief Executive (Banking), HKMA (DCE/Banking) advised that HKMA monitored closely the quality of the banks' loan portfolios, requiring them to make regular reports in this regards and to make timely reports of any major incidents affecting their loan portfolios. DCE/Banking said that the banks' non-performing loan ratio had only risen from below 1% before the global financial crisis to just above 1% at the end of 2008, which was well below the "normal level" of 2.5% seen before 1997.

20. The Chairman was concerned that if the number of RML in negative equity and the non-performing loan ratio were expected to increase in the coming months, whether and how could HKMA balance the needs of monitoring the quality of retail banks' loan portfolio and credit easing to facilitate lending to business enterprises.

21. CE/HKMA said that HKMA would monitor closely the changes in lending by banks and take necessary actions to avoid the development of a vicious cycle of credit crunch and economic downturn. The drop in total loans of retail banks by 3.1 % in the fourth quarter of 2008 was mainly due to the drop in demand for loans under the economic downturn, rather than the change in the lending policy of banks. He pointed out that individual banks would have to make prudent risk assessments in processing loan applications from business enterprises.

Economic growth and development on the Mainland

22. Referring to the Central Government's target of maintaining an 8% growth in the Gross Domestic Product (GDP) in 2009, Mr Jeffrey LAM was concerned whether the target could be achieved, in view of the global economic downturn and the International Monetary Fund (IMF)'s forecast of only a 6.7% GDP growth for the Mainland in 2009. Mr LAM sought CE/HKMA's view on the likelihood for the Mainland to achieve the target and the possible impact on Hong Kong's economy if the target could not be achieved.

23. CE/HKMA said that the target of maintaining an 8% GDP growth would not be easy to achieve, but he was confident that the Mainland would be able to meet the target, given the unique characteristics of a socialist market economy. Responding to Mr Jeffrey LAM's enquiry about the economic forecast of Hong Kong in the medium and longer terms, CE/HKMA said that the Financial Secretary (FS) was the authority for making economic forecast for Hong Kong. He said that in the face of the global financial crisis, the Government had devised a number of measures to prevent the development of a vicious cycle of credit crunch and economic downturn.

24. Ms Starry LEE enquired about the progress of development of RMB business in Hong Kong, in particular the increase in the amount of RMB deposits. In reply, CE/HKMA said that HKMA had made necessary preparation for further expansion of the scope of Hong Kong banks' RMB business, and Hong Kong would be well positioned to provide better and more financial services to the Mainland. Focuses of HKMA's work in this area included RMB-Hong Kong dollar currency-swap agreement with the People's Bank of China and promotion of the use of RMB for trade settlement.

Full deposit protection

25. Mr KAM Nai-wai noted with concerned that some deposits were not covered under the temporary full deposit protection introduced in October 2008, e.g. deposit accounts used for settling securities transactions or with overdraft facilities. Mr KAM questioned whether the publicity of the full deposit protection had been misleading.

26. In response, CE/HKMA advised that HKMA and the Hong Kong Deposit Protection Board (DPB) had undertaken a series of measures to promote the understanding of the coverage of the full deposit protection and a new round of publicity programme had recently been launched in this regards. DCE/Banking added that HKMA had issued a statutory guideline to formalize the representation regime applicable to the full deposit protection, including requiring all AIs to issue a letter to all account holders with non-protected deposits, notifying them which part of their money was not protected. At the request of the Chairman, DCE/Banking undertook to provide the Panel with a copy of the relevant guideline after the meeting.

(Post-meeting note: The required information was issued to members vide LC Paper No. CB(1)835/08-09 on 18 February 2009.)

27. Mrs Regina IP criticized the Administration for not explaining in clear terms the scope of coverage of the full deposit protection upon announcement of the temporary measure. Mrs IP considered it unfair to depositors concerned that they were given to note, only recently, that some parts of their deposits were not protected under the scheme. She requested to put on record her dissatisfaction of the misleading message sent to the public that the temporary measure would provide

100% deposit protection. Mrs IP was also concerned that while small banks and deposit-taking companies might take advantage of the full deposit protection to attract more deposits and expand their business, they might face liquidity problem when customers withdrew their money upon the lifting of the temporary measure in 2010. Mrs IP asked whether HKMA had any measures to maintain the liquidity and stability of these AIs upon the lifting of the full deposit protection.

28. CE/HKMA said that the eligible deposits covered under the deposit protection scheme were stipulated in the Deposit Protection Scheme Ordinance (Cap. 581). He noted Mrs IP's criticism on the publicity of the coverage of the full deposit protection and advised that DPB would take necessary actions to increase publicity of the temporary measure. As to Mrs IP's concern about business of small banks and deposit-taking companies, CE/HKMA said that he had already highlighted the moral hazard involved in the provision of full deposit protection. DCE/Banking added that HKMA monitored closely the deposit taking of AIs after introduction of the full deposit protection, and required them to provide regular reports on the amount of deposits and the interest rates offered. Where necessary, HKMA would ask the relevant AIs to review their risk management strategies.

Complaints relating to the Lehman Brothers Minibonds

29. Ms Emily LAU opined that HKMA should deploy more manpower resources to expedite the process of complaint handling and investigation in relation to the Lehman Brothers Minibonds. Given the large number of some 20 000 complaints received by HKMA, Ms LAU was of the view that the existing arrangement of deploying about 200 staff for the task would not be adequate.

30. In reply, CE/HKMA said that HKMA had endeavoured to complete investigation of the complaints related to the Lehman Brothers Minibonds as soon as possible. HKMA had almost completed the initial assessment of the nearly 20 000 complaints, and had opened investigations in about 5 000 cases. HKMA had so far reviewed 280 cases involving 15 banks, determining that there were prima facie evidence for referring the cases to SFC for investigation of whether these banks had mis-sold financial products and whether enforcement actions were warranted. CE/HKMA stressed that HKMA had taken measures to prevent mis-selling of structured financial products, and would take necessary actions against any misconduct of AIs.

31. The Deputy Chairman opined that the large number of complaints against mis-selling of structured financial products by banks was an evident that the existing regulatory sanctions did not have sufficient deterrent effects. In order to enhance the regulatory regime, the Deputy Chairman was of the view that consideration should be given to imposing heavier penalties, and disclosing information on cases of misconduct. The Deputy Chairman opined that disclosure of the name of a bank found guilty of a misconduct or offence would have a significant deterrent effect on other banks, and at the same time would enhance public confidence in the banking system.

32. CE/HKMA appreciated the Deputy Chairman's concern. He said that consideration could be given to conferring on HKMA the power to impose a range of sanctions on AIs which had committed misconduct or engaged in mis-selling of financial products. This was in line with the view of Mr David CARSE, an independent consultant commissioned to review HKMA's work on banking stability. CE/HKMA advised that under the existing legislation, HKMA as the licensing authority might revoke the license of an AI in case of serious misconduct, having regard to whether the sanction imposed would be in the best interest of the depositors concerned. CE/HKMA said that HKMA would endeavour to handle all alleged cases of misconduct of AIs in a transparent manner.

Linked Exchange Rate system

33. Mr Albert HO opined that as the US economy had been badly hit by the financial tsunami and might further deteriorate, the Government might have to review the existing arrangement of using US dollar as the anchoring currency under the LER system, and consider pegging Hong Kong dollar to a basket of other currencies. Mr Paul CHAN shared Mr HO's concern. Mr CHAN opined that in light of the drastic changes in the global market after the onset of the financial tsunami and the fact that the US government had used substantial resources for the rescue plans, the propriety of using US dollar as an anchoring currency might have to be reviewed.

34. CE/HKMA advised that, since its implementation in 1983, the LER system had been functioning effectively in supporting financial development and maintaining monetary stability of Hong Kong, even during very difficult times such as the Asian financial crisis in the 1990s. While HKMA had kept the LER system under continual review, the Government had no plan to change the LER system, which had all along been operating effectively.

Investment and management of the Exchange Fund

35. Given the deteriorating US economy, the Chairman was concerned about the amount of US Treasury paper held in EF. In response, CE/HKMA said that there was a large amount of US Treasury paper in the Backing Portfolio of EF, as required under the LER system for the entire Monetary Base to be fully backed by highly liquid US dollar-denominated securities. CE/HKMA said that he did not expect the status of the US dollar as the world's most important reserve currency would change as a result of the global financial crisis. While HKMA would take heed of any new developments in the global market, such as the emergence of financial protectionism, CE/HKMA stressed that HKMA would manage EF in a prudent manner in accordance with the investment objectives and benchmark of EF.

36. With reference to Slide 62 of HKMA's powerpoint presentation on the performance of EF, Ms Emily LAU sought information on the \$6.4 billion interest and other expenses, and the \$8.9 billion reduction in valuation change of Strategic Portfolio in 2008.

37. In reply, CE/HKMA advised that the expenditure for interest and other expenses mainly covered the payment of interest to the holders of EF paper. The Deputy Chief Executive (Monetary), HKMA added that the Strategic Portfolio was established in 2007 to hold shares in the Hong Kong Exchanges and Clearing Limited (HKEx) acquired by the Government for the account of EF for strategic purpose. The valuation of the Strategic Portfolio had declined by \$8.9 billion in 2008 as a result of the drop in HKEx's share prices.

38. The Deputy Chairman was concerned whether Hong Kong had sufficient financial resources to cope with the challenges posed by the global financial tsunami. He enquired about the investment performance of EF in 2008 in comparison with similar funds in other jurisdictions.

39. CE/HKMA said that the capability of the Government to safeguard financial stability would hinge on the asset level of EF. He advised that as at 31 December 2008, the total assets of EF was \$1,557.7 billion, which was a historical high level. He pointed out that in the extremely unfavourable investment environment amid the global financial crisis, the losses of 5.6% of EF in 2008 was relatively low compared with other public funds in overseas jurisdiction, as a number of these funds had recorded double-digit losses in the same period. Responding to the Deputy Chairman's further enquiry, CE/HKMA advised that there were still great uncertainties in the global financial markets in the near future and there were market concerns about a possible bubble-burst of the bond market given the price depreciation of the US Treasury paper.

40. Mr KAM Nai-wai noted that despite the losses incurred in the investment of EF in 2008, a payment of \$46.4 billion was still made to the Treasury in the year. He enquired about details of the arrangement.

41. CE/HKMA advised that under the existing fee arrangement, the fiscal reserves placed with EF would be paid an annual fee at a pre-determined rate fixed each year, being the higher of the average annual rate of return of EF's Investment Portfolio in the past six years, or the average annual yield of three-year EF Notes of the preceding year. The fixed rate of fee payment to the Treasury for 2008 was over 9% and the full-year payment was \$46.4 billion, but the rate for 2009 would be lower taking into account the investment loss of EF in 2008. This fee arrangement would provide stability and predictability to the Treasury's share of investment income.

42. Given the unprecedented investment loss of EF amounting to over \$70 billion in 2008, Mr KAM Nai-wai queried whether CE/HKMA and other senior staff of HKMA should receive a bonus for 2008. Ms Emily LAU shared his concern and opined that it would not be justified to offer a bonus to the senior staff of HKMA for 2008. In reply, CE/HKMA said that remuneration for HKMA staff was determined by FS based on the advice of the Governance Sub-Committee of the Exchange Fund Advisory Committee. He would not comment on his own remuneration.

VI Rewrite of the Companies Ordinance

(LC Paper No. CB(1)678/08-09(05) — Administration's paper on progress update on the Companies Ordinance rewrite exercise

LC Paper No. CB(1)677/08-09 — Updated Background Brief on the Companies Ordinance rewrite exercise prepared by the Legislative Council Secretariat)

43. Due to insufficient time, the Chairman proposed and members agreed that this item be deferred to the special meeting to be arranged in February 2009.

(Post-meeting note: The item was subsequently deferred to the meeting on 26 February 2009. Members were informed of the changes in meeting arrangements vide LC Paper No. CB(1) 760/08-09 on 11 February 2009.)

VII Any other business

44. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 1
Legislative Council Secretariat
2 April 2009

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

**2009年2月2日財經事務委員會會議
逐字紀錄本
議程項目IV -就香港金融管理局及證券及期貨事務監察委員會擬備的
雷曼兄弟迷你債券事件報告作簡報
Meeting of the Panel on Financial Affairs on 2 February 2009
Verbatim Record of Agenda Item IV –
Briefing on the reports prepared by the Hong Kong Monetary
Authority and the Securities and Futures Commission on the
Lehman Brothers Minibonds incident**

主席：這個項目是金管局及證監會就雷曼兄弟事件提交的報告作簡報。我們請政府及兩個監管機構的代表進來。因為今日的議程項目比較多，3個議題都是重要的項目，我希望稍後大家在會議過程中可以抓緊時間。我亦會因應實際時間看看可否進行第二輪發問，好嗎？

我們歡迎財經事務及庫務局副局長，以及證監會和金管局的同事出席今日的會議。政府及兩個監管機構均有向我們提交文件，大家檯面上應有最新的文件。

首先，請副局長講幾句說話。副局長。

財經事務及庫務局副局長梁鳳儀女士：多謝主席。

《證券及期貨條例》自2003年實施以來，理財業務發展迅速，各類型新穎的投資產品應運而生。證監會及金管局亦因應市場日益創新不斷修訂規管守則和要求，務求做到與時並進，這是他們持續不斷的工作。

雷曼兄弟倒閉之後所引發的迷債事件帶出了不少關注。兩間監管機構在迷債事件報告中，對投資產品的銷售和披露的要求、中介人的業務操守，以及投資者教育，作出了多方面徹底的檢討，並提出了合共30多項改善建議，以加強對投資者的保障。財政司司長在上月8日公布兩份調查報告，當中載有處理投訴期間的觀察、汲取的教訓和發現的問題。今天，我與兩間監管機構的代表為議員簡介一下報告的內容，簡介會分3部分。先請金管局發言，再請證監會講解，最後我會以政府制訂的行動綱領作結尾，全程我們會盡量精簡。

甘乃威議員：主席，如果是重要的話，為何今天不是陳家強局長和任志剛總裁來開會？我見到證監會找他們的CEO來，我想問為何有關安排會這樣？

主席：他們委派甚麼官員出席我們的會議，是由他們決定，而不是由我們決定。另外，我想跟大家講講，因應雷曼事件，我們立法會亦設有一個小組委員會，任何涉及雷曼的會議，大家是否同意以逐字紀錄作記錄，以便日後雷曼工作小組作參考。大家同意嗎？如果同意的話，我們便照這樣安排吧。

石禮謙議員：主席。

主席：石禮謙議員。

石禮謙議員：我覺得政府有權派甚麼人來開會，但這兩份報告全香港均有興趣知道，而我們這個委員會亦不是一個普通的委員會，而是一個立法會的委員會。對於這兩份報告，我覺得相當遺憾。政府的局長和主要官員到了這時也不向香港作交代，我覺得他們不單只須向立法會交代，還須向全香港交代。此點我們要反映一下，主席。我們亦有權邀請他們來，主席。

主席：好，聽到你的意見。

余若薇議員：給他們機會解釋一下，好嗎？因為你剛才說任由他們派甚麼人來，但為何任志剛不來，或者陳家強不來呢？他們可能有其說法，讓我們知道。

主席：好。副局長知不知道是甚麼原因？

財經事務及庫務局副局長：多謝主席。

我們聽到議員的意見，我亦會反映，局長今早有其他安排。我希望能夠代表局長盡量回答議員的問題。

主席：好。那麼，任總沒有來是.....

香港金融管理局副總裁蔡耀君先生：主席，任總亦安排了其他會議，所以不能在這個時間來，但稍後10點半那個項目，任總是會出席的。

主席：好，跟着我們請蔡先生講講有關金管局的報告。

金管局副總裁蔡耀君先生：多謝主席。

在雷曼兄弟倒閉後，金管局收到大量買了與雷曼相關投資產品的投資者的投訴，而財政司司長亦要求金管局及證監會就在調查這些投訴的過程中所看到的，以及所汲取的經驗和發現提交報告，看看可如何就產品銷售和現行監管制度方面作出改善，為投資者提供較佳的保障。

在檢討過程中，我們參考了外國的做法，並從一些投訴案例中所發現的問題總結經驗。報告內合共提出了19項建議，以加強銀行在銷售投資產品時的監控及風險披露，並就加強現行監控制度方面提出建議。我們相信這些建議落實後，應會對投資者提供更好的保護。

首先，我們看看現時在銷售和監管方面的做法。

在產品銷售方面，香港沿用一套披露為本的制度，投資產品的發行人和中介人，需要為產品向投資者提供足夠有關產品類別、性質和風險的披露，而中介人則需為客戶提供合理及適當的建議。我們所沿用的做法，其實與很多其他國家的做法相若。

在監管銀行——即認可機構的證券業務方面，證監會是主導的監管機構，而金管局則是一個前線的監管機構，負責監管銀行在證券方面的業務。金管局在進行監管期間，會按照證監會所訂定的標準執行，以維持銀行與證券雙方之間的一個公平競爭環境。金管局與證監會亦有不同的紀律處分權力。不過，金管局在這方面的權力相對較小，只可對售賣證券的人員進行譬如將他從我們的名冊除名，或者停止他工作一段時間。至於罰款或公開譴責，以及銀行方面的所有處分，均屬於證監會的權力範圍。我們亦與證監會訂立了一個諒解備忘錄，確保監管與執法的標準一致。

說回那19項建議，其實首4項是關乎政策方面。我們認為這個披露為本的制度跟其他國家所沿用的做法一致，所以建議將其保

留。不過，我們覺得政府有需要重申這個披露為本的制度，而在保障投資者的政策目標方面，亦應加強教育投資者，加深他們對這方面的認識。

監管架構方面亦需適當地加強，以配合投資產品的數量和複雜性的上升，以及公眾和投資者在承受風險能力方面的轉變。

至於披露方面，我們其中有4項建議是加強披露。在銷售時，尤其是一些零售的結構性產品，我們建議設立一個所謂的健康警告，即在銷售時，例如有一個很簡單的聲明，註明這是一個結構性產品。如投資者對這產品認識不足的話，便建議他們不要購買。

另外，在售賣時，亦可以……舉例說，有兩個比較簡單的聲明，一個是產品重要事項聲明，扼要及清楚地註明產品的內容及其風險。另外，亦應有一個銷售的重要事項聲明，說明銷售銀行在銷售過程中，究竟扮演甚麼角色？是作為一個交易對手，抑或是一個銷售代表，以及其收費等等，這些事項均會具體說明。

另外，在雷曼迷你債券中，我們亦看到銀行有以贈品形式吸引投資者。譬如說，如果你的投資金額較少的話，可取得某項禮品；如果你的投資金額較高的話，便可取得價值較高的禮品。這有吸引投資者投資一個較高金額作用。我們認為在利用贈品作為推廣手法這方面，亦應考慮加以限制。另外，我們亦看到，部分雷曼相關產品利用一個所謂私人配售的制度，即每隻產品賣給不超過50個投資者，而每個投資者的投資金額不少於50萬元。這亦可能避過了售賣章程需要證監會審批的要求。我們亦建議就這方面作出檢討。

在監管架構方面，我們建議銀行在進行證券業務時，所有與註冊、制訂標準、監管調查及處分等相關事宜，應集中由金管局負責。但在這方面，我們有需要與證監會加強協調，制訂一些大致相若的操守標準，以維持銀行和證券業一個公平的競爭環境。

而在銷售點方面的監管，我們看到很多投訴均指客戶原本只是處理一些存款業務，但卻被銀行的有關同事促銷，因而購買了這些證券。我們覺得，如果銀行在售賣這些產品時，與正常的一般銀行業務有適當的分隔，這種情況便可減少。第一，在售賣位置方面可以有所分隔；第二，在負責的職員方面，處理銀行業務與售賣證券方面亦可有所分隔。

此外，銀行亦應有清楚的標誌警告投資者。譬如說，當進入投資部分時，告訴他們投資產品的風險與存款業務並不相同。

至於客戶資料方面，兩者亦應有一個適當的分隔。鑒於現時保險業務很多產品亦有投資性質，我們認為應把上述分隔建議擴展至保險業務方面。

而在銷售點的監管，銀行在每個客戶開戶進行證券投資時，均會進行一個風險評估。現時，這些評估很多是由負責售賣產品的同事進行。為了可以進行一個公平的風險評估，我們建議，這個風險評估應由一些不負責售賣產品的銀行職員進行，並應把有關風險評估的副本提供給客戶，而上述評估的過程亦應錄音。另外，在銀行售賣產品予客戶後，產品的風險評級，即銀行的內部評級，如有任何變動，亦應通知客戶，讓他們可作一個投資的決定。

在銷售點的監管方面，我們亦看到一些個案，客戶風險胃口的評級低於其買入產品後本身的風險評級。我們認為，在這些情況下，銀行應清楚向客戶解釋，並應保存完整的紀錄，說明為何客戶有此風險錯配，仍然願意購買這個產品。有關原因應該妥善記錄，並且需要錄音。此外，亦應有主管人員加簽，以確認這個情況。

針對部分投訴指客戶被介紹產品當日已立即購買有關產品。我們建議可以考慮設立一個投資冷靜期，容許客戶在某些情況下，如於冷靜期內覺得產品不適合時，可決定不購買有關產品。

在我們進行監管時，議員以前亦有提過，我們會否派出一些喬裝客戶進行突擊檢查，看看銀行的銷售人員，即前線同事，在銷售時的專業性。我們現在亦建議金管局進行這樣的喬裝客戶檢查，而事實上，銀行亦應有同樣的安排，以測試自己的員工在售賣產品時的專業性。

此外，亦應就前線員工的花紅、薪酬結構等進行檢視，避免他們的薪酬只跟售賣數量這個單一因素掛鈎，以決定其花紅的多少。我們覺得這方面並不合適，應該加強檢視。

最後，為了更有效率地處理有關投訴，我們認為可以仿倣其他國家，設立一個金融服務申訴專員，負責接受及處理這些投資者的投訴。我們於12月31日把報告提交予財政司司長後，亦於1月9日去信銀行，要求他們：第一，研究報告的內容；第二，我們認為報告中提出的個別建議可以立刻實行，並要求銀行落實這些建議；部分已經立刻實行，而部分則於3月底落實。部分建議，譬如關於剛才所說的分隔建議，在技術上比較困難。我們亦要求銀行在3月底向我們提交計劃，看看在執行時可以如何處理，讓大家一起商討。

主席，我的介紹到此為止。多謝。

主席：好，謝謝蔡先生。跟着，我們請Mr Martin WHEATLEY。

證券及期貨事務監察委員會行政總裁韋奕禮先生： Thank you very much, Chairman and Honourable Members. I would like to make clear a few comments before the slides and then go through our recommendations. As a regulator charged with overseeing the institutions which sold Minibonds, we understand and sympathize with the feelings of investors who have suffered losses, and we are committed to establishing the underlying reasons for this. However, as I am sure Honourable Members will recognize, we have been impacted by unprecedented events in the global financial market, the so-called financial tsunami, which has resulted in investors all over the world suffering significant losses.

The challenge for us all, in the face of the personal suffering of so many small investors, is to try and form a balanced view of all the inter-related factors which have contributed to the situation that we now face. How much is attributable to a global collapse of confidence in financial markets; how much to the failure of the sub-prime mortgage market and the credit squeeze; and how much to subsequent institutional failings. And how much is due to the particular rules and regulations we have in place and the degree of compliance with these regulations by market participants. It is these latter issues which we as regulators must and will address.

The report we have prepared, at the request of the Financial Secretary, attempts to identify weaknesses in our regulatory structure, which may have contributed to the Minibonds crisis or that have otherwise been exposed to the financial crisis. However, our report does not attempt to determine whether any individual or institution should bear any direct responsibility for the losses of Minibond holders. That job will be done through our ongoing investigations into the institutions that sold Minibonds.

While we are very pleased to have completed and publicly announced the outcome of our first investigation into a distributor of the Minibonds, Members will be aware that we still have a large number of ongoing investigations. I can fully understand the desire of Minibond investors, the public and Honourable Members to have more details about these investigations but I must ask for your patience. We are working as fast as we can to complete our work but we must ensure that we follow due process, that we work in a way which cannot be subsequently challenged and that we are fair to all parties concerned. This requires that we maintain confidentiality until such time as an investigation is completed. While it may be frustrating, I would ask for your understanding and trust in allowing us time to complete these remaining investigations.

I would now like to highlight some of the key recommendations contained in our report. I will do this briefly as I am aware that Members already have copies of the full report and I will then be happy to respond to Members' questions.]

The background, I think as everybody knows, is that we were asked by the Financial Secretary to submit a report within three months of the lessons learned from Lehman Minibonds, how to enhance the regulatory structure, and how to enhance investors' education and protection.

We submitted this report on 31 December last year. We are now exploring areas of enhancement and reforms to meet the objectives of our recommendations.

The report was based on the information we had at that time, and we made it quite clear that this is a preliminary view. As we continue with our investigations, we expect to find better what had happened, what went wrong, and potentially, we will have more recommendations coming forward in the future.

In terms of the recommendations, the broad view of the regulatory structure is something that we have suggested the Government needs to review, and to review whether today's structure remains the best regulatory structure to support Hong Kong's position as an international financial centre. Or whether that structure can be changed or amended in some way. And this is the debate that many major jurisdictions around the world are having at the same time. There are different structures, the single regulator, the inter-regulatory approach, the "twin peaks" regulator, and of course, what we currently have in Hong Kong, separate regulators. And yet within that separate regulatory structure, there is clearly a need for close communication and consultation, and again we are looking at how we can enhance the process. But we also considered that the disclosure based regulatory philosophy that we have is the right one in line with other major jurisdictions, and we are not recommending a change to that disclosure based regime.

In terms of investor education, we have already put significant new resources behind our efforts. We have recommended the creation of a broad based investor education council, that will require some degree of legislative amendment, that is something that we will work on as part of our ongoing plan. But in the meantime, we know that there are some very specific areas that we have to make sure that people understand much more clearly. People need to understand the role of the intermediaries in providing them with advice and selling products, they need to understand what the obligations of the regulators are, what the intermediaries are and indeed their own obligations in buying the products. And we need to ensure that people understand the philosophy of disclosure based coupled with conduct regulation of intermediaries.

We have also said that we intend to harmonize our product and marketing code and guidelines for all financial products. We will expect all financial products to include plain and concise product summaries. And we have recently published additional guidance for marketing materials, and again we expect to enhance that further when we are bringing together the various regimes that are in place. And we have started the process of establishing our website as a central collation point for information about understanding investment products where the documents have been authorized by the SFC.

One of the areas that has attracted most comments and one of the areas that clearly is an area of concern is conduct, the conduct of the intermediaries. And we have made a number of recommendations on areas where the code of conduct can be reviewed. We will look at changes to our existing inspection regime, the way that we inspect the sales process of intermediaries. We expect to come forward with changes to intermediaries' own procedures and controls, the way that they conduct themselves, the record keeping, the way that they follow the code in selling products.

We think there is a strong need to look again at both how the code defines investors, and in particular, professional investors, and also how intermediaries themselves classify investors. While the definition of professional investors is provided in the code of conduct, most of the classification of investors is done at the point of sale by the intermediaries through their set procedures. And we need to look at consistency across different intermediaries, between brokers and banks, as to how they carry out that process.

And we stated that we would also look at some of the requirements around, say, of investment products, particularly what is required to be disclosed pre-sale. And we will look at not just the information about the products, but commissions. And also whether we can introduce a cooling-off period for complex products as it happens today in certain insurance products.

There are a number of areas where we think legislative reform will be needed and these therefore will take slightly longer for us to work with the Government to bring forward the appropriate recommendations. Issuers' ongoing disclosure obligations, and intermediaries' obligations to ensure such information is brought to investors' attention. The disclosure obligations are set out in the Companies Ordinance and the intermediary obligations are set out in the combination of our code and the SFO. We have stated that we should look at whether Hong Kong should retain the two public offering regimes under the Companies Ordinance and the SFO, or whether we should combine them into a single regime. And regardless of whether we need a single regime, we should ensure the standard between those different regimes are common and that the same standards are applied to product structure under the Companies Ordinance as products that are sold under the Securities and Futures Ordinance.

There are certain powers that we would like to have enhanced, in particular the ability to seek injunction and issue restriction notices to be delegable, and at

the moment that is a non-delegable function of the SFC Board, which requires additional process and additional time. Seeking injunction and issuing restriction notices in many cases need to be done urgently, and also to seek orders for a breach of the code of conduct. We are also seeking an additional power which is the ability to impose compensation orders, and as Members will know from our report, we currently have no statutory ability to impose compensation order on an intermediary. It is always a voluntary act from the intermediary.

These recommendations we have made reflect concerns we have about both our regulatory structure and also the level of compliance with that structure. Some of the recommendations represent significant changes and have widespread implications for how intermediaries would conduct their business. In considering these I would urge everybody to recognize that while our current structure may not be perfect, it also has its strengths. Many so-called advanced economies have experienced serious problems in their financial sector over the past year including the collapse of financial institutions, and the need to introduce emergency regulations at very short notice. By comparison with these economies we could be said to have done reasonably well. In recognition of this we are recommending a measured approach to the introduction of changes, so that we retain what is good while appropriately addressing the issues that have been identified. This will also, as far as possible, involve full consultation with the market before the introduction of regulatory changes. We are confident in the recommendations that we have made but we are also open to dialogue about how we achieve our objectives. Thank you very much.]

主席： Thank you. 跟着，請副局長作總結。

財經事務及庫務局副局長： 多謝主席。我用3分鐘的時間總結一下。

迷債事件令政府能夠重新檢視投資產品的監管制度，尤其是有關規管銀行的證券業務。政府收到金管局與證監會兩份報告後，經諮詢兩個監管機構，整合了30多項建議，並制訂一個行動綱領，分階段跟進這些報告的內容。

首階段的目標是要落實以下3個範疇的改善措施。第一個是提高投資產品的銷售和披露要求。兩個報告均建議保留現行以披露為本的制度。這是一個符合國際慣例和發展市場的做法，但這個制度需要優化，所以我們針對銷售投資產品所披露的內容、方式及質素，提出了多項改善建議。第二個範疇是加強中介人業務操守的要求及監管。有很多項措施都是要求中介人提高對這些投資產品的風險的瞭解，減低對客戶風險承受能力的錯配，以及加強巡查檢視。第三，就是加強投資者的教育，在這裏我不再重複了。

上述3個範疇，部分措施已經立即落實，而部分則需按有關規定，包括法定的要求，作出市場和公眾的諮詢。金管局及證監會已經展開工作，致力於今年第三個季度推出這些諮詢。

下一階段會集中檢討規管架構的結構，重點包括以下4個課題：

第一個課題是，是否應該保留《公司條例》及《證券及期貨條例》下兩套公開招售的制度？

第二個課題是，是否要成立財經事務申訴專員？

第三，是否需要調整銀行經營證券業務的監管？

最後，是否需要成立一個跨界別的投資者教育協會？

上述4個課題均涉及修訂主體法例，變動比較大，所需時間亦比較長，但我們會爭取時間，在現在開始為下一階段的檢討工作進行前期研究。財經事務局會統籌兩個監管機構的工作及定期檢討進度，並會諮詢這個委員會，向議員匯報。多謝主席。

主席：好，謝謝你，副局長。

副局長，你剛才在文件內提到有部分措施已經落實，你可否說得清楚一點？因為我相信稍後同事都很想知道，你可先告訴大家第一階段有哪些措施已即時叫銀行推行。而第二階段，大家都知道要經過一些諮詢，或者會有一些法例修改。你可否先在這裏介紹，免得同事稍後向你提出一些早應告訴大家的問題。副局長。

財經事務及庫務局副局長：我想先把這個問題交給兩個金管機構回答，因其可更加詳細羅列哪些措施已經開始。有關銷售產品的警告字眼，所訂的內容已經即時生效，或者由蔡先生補充一下。

主席：蔡先生。

金管局副總裁蔡耀君先生：多謝主席。正如我剛才介紹，我們已於1月9日發信給銀行，要求銀行即時實行其中7項建議，或者在3月底之前實行，當中包括：第一，售賣結構性產品時要有一個所謂的健康警告；第二，評估客戶風險承受能力的過程須由非前線銷售人員負責。這項建議須在3月底前實行，而剛才有關健康警告的

建議，則需立即實行。至於有關在售賣過程需要錄音的建議，則須在3月底前實行。

何俊仁議員：主席，這些建議已在報告中詳細列明。

主席：是。

何俊仁議員：如果再講下去，我們便沒有時間提問。

主席：好，Mr WHEATLEY有沒有特別的事項需要補充？

證監會行政總裁韋奕禮先生：I need to add that we have required additional disclosure in products that were sold, we required this in a circular issued in October and then again at the end of December, we required advertisements to comply with an enhanced regime, so we have done a number of things already. We have enhanced our investor education efforts.

主席：好，現在有9位同事舉了手，或者由我讀一讀名次，好嗎？詹培忠、甘乃威、湯家驊、劉慧卿、余若薇、涂謹申、葉劉淑儀、石禮謙、何俊仁。還有哪位想發問？那麼，先到此為止。每一位同事發言5分鐘，因為今天時間相當緊張，我希望大定能抓緊些。詹培忠議員。

詹培忠議員：主席，今天是第一次會議，祝大家牛年更好。

主席，我的問題是，我看過該兩份報告，誰應就這事件負責？第一，我們要收窄範圍，究竟陳家強局長、證監、金管局，3個部門哪一個要負責？我看不到哪個夠膽承認自己的錯誤。第二，這件事是否整體上用者自付，購買了的投資者"佢死佢賤"，政府就置身事外。你究竟有沒有監管，是誰監管誰？我說的是過去，但你們兩個卻在說以後，想取得更多權力，不是趁火打劫是甚麼呀？好了，這個問題是，究竟過去金管局管過甚麼？證監管過甚麼？陳局長又管過甚麼？第三個問題，政府的制度是高官負責制，我們瞭解金管局及證監並不屬於政府架構的機構，但可以置身事外嗎？甚麼也不用負責？拿這麼高人工，任志剛又不夠膽來，他來到我也會照樣批評。這並不是我跟他有私人恩怨，而是要向全港市民負責，無論局長還是副局長，都是這個道理。

好了，主席，請他們分別先回答這3個問題，我會繼續跟進。他們要向全港市民、苦主負責。

主席：局長。

財經事務及庫務局副局長：多謝主席，多謝詹議員的意見。

第一個問題是，究竟誰要負責？我們的調查報告最主要是針對發生這事件造成我們制度上甚麼紕漏的地方，然後在提出.....

詹培忠議員：對不起，你直接說誰要負責，你負責還是局長，抑或是那兩個部門負責，你不要說來說去，你沒資格在我面前"踢波"，OK？

財經事務及庫務局副局長：我要重申，在這件事件中，政府當然有責任保障投資者，而兩個監管機構亦有責任令我們.....

詹培忠議員：做不做到？報告為何不檢討？

財經事務及庫務局副局長：我們報告檢討的重點是汲取教訓 以及如何改善。

詹培忠議員：甚麼教訓？你多領一點人工就是好教訓？

財經事務及庫務局副局長：第二個問題是應否用者自付。兩份報告均強調需要保留這個以"披露為本"的制度。"披露為本"的制度本身也是世界的趨勢，亦是世界的.....

詹培忠議員：主席，這番話剛才我已聽過，我不想多聽一遍。我問她究竟是否任由投資者"佢死佢賤"。政府在這裏.....有沒有回答.....你是否抱着這個態度？你日後如何解決這個問題？拖3、4年後不了了之？

財經事務及庫務局副局長：我們已有指引，兩個監管機構亦有指引，說明怎樣依從這些指引。當然，如有疏漏，我們會盡量依法辦事。如果有違規情況，我們現正進行調查。

詹培忠議員：主席，那兩個其他部門呢？

主席：讓他們回答吧，好嗎？蔡先生。

金管局副總裁蔡耀君先生：主席，我們的報告是應財政司司長的要求而擬備的，當中檢討現行證券售賣制度及監管方法等，以及查看有何地方可以改善及加強，從而為投資者提供最佳的保護，我們的報告已達到此目的。至於現時有投資者因購買雷曼相關產品而蒙受損失或提出投訴等問題，兩個監管機構均已調配大量人手處理和調查這些投訴。我們的態度很明確，如有違規銷售，便須嚴肅處理。多謝主席。

主席：好的。證監會 Mr WHEATLEY 有何補充？

證監會行政總裁韋奕禮先生：I think, again, if I can come back to the focus of the report, it was to look at the structure and what changes needed to be made to the structure. What went wrong in each individual case is subject to detailed investigation of the cases. We made a number of statements as to what we felt had been problems in Sun Hung Kai Securities, which is a firm that ran certain kind of investment services, and is the first investigation that we have completed. We raised concerns about product due diligence, poor training, poor assessment to risk level and poor record keeping. So I think it's through this specific investigation that we will find out what has gone wrong in each case.

詹培忠議員：主席，我想稍作跟進。

主席：詹議員，你的時間已經夠了，等候第二輪吧。

主席：甘乃威議員。

甘乃威議員：多謝主席。首先，我強烈不滿陳家強和任志剛沒有出席今日的會議，既然大家均認為這兩份報告能為香港金融制度和銀行日後售賣這些產品提供很重要的未來路向。我想問問，任

志剛早前提到，作為金管局的監管機構，他自己先知自覺。今日這份報告提出了19項建議，其實有些建議——剛才也提到——已經推行。為何如此後知後覺呢？現在發現實際上有接近兩萬宗投訴，要在接獲兩萬宗投訴後才有這些建議出現。金管局、任志剛，包括蔡副總裁，是否嚴重失職？我看到你在8.24段提到，你們建議不斷擴大自己的權力，包括註冊、制訂標準、監管、調查和處分，即把所有權力納入金管局，為何提出這項具體建議呢？

第二方面，證監會及金管局均提到會繼續沿用"披露為本"的監管原則。很多人說，關於迷你債券，無論你如何披露風險，如何向客戶介紹，也無法清楚說明這些產品的結構。為何在零售市場上可繼續售賣這些產品？為何你覺得可繼續採用"披露為本"的原則？

第三方面，我想問證監會，新鴻基是你首間調查的公司，並發現其有問題。對於銀行，為何你們的調查進度如此緩慢？銀行方面，現在我實際上看到金管局已經把280宗個案轉介予證監會，但至今仍未有一間銀行被懲處。究竟你的時間表為何？3個問題。

主席： 副局長。

財經事務及庫務局副局長： 甘議員的第一個問題是為何現在才提出該19項建議。其實，我剛才已表示，自從證券法出台後，證監會及金管局均不斷修訂和提高其規管要求，務求與時並進。雷曼事件可說是帶出了不少新的關注點。我請蔡先生補充。

主席： 蔡先生。

金管局副總裁蔡耀君先生： 多謝主席。自從《證券條例》於2003年4月實施後，我們一直與證監會緊密合作，根據該條例所訂立的標準進行前線監察。過去數年，我們幾乎每年均會就實際監管中所發現的問題，向銀行提出新要求。這點我不再重複。

在雷曼事件發生後，接獲這麼多宗投訴，而我們在處理這些投訴的過程中，也看到一些我們過往沒有發現的問題。我們的報告便就這些新發現的問題作出建議，例如如何加強這方面的監管及制度等，希望能為投資者提供較佳的保障。在我們的建議中，提議把監管銀行售買證券的權力集中於金管局，其實是從實際情況出發，因為銀行已有很好的分銷網絡，有很多分行，能為投資者帶來便利。我們認為應容許投資者繼續享有此便利，也就是說

銀行可以繼續售賣這個產品。不過，在監管方面，現時證券法中的權力主要集中在證監會方面，譬如標準制訂的工作由證監會負責。不過，我們現在看到，銀行的客戶對風險的"胃口"可能與證券商的客戶有所不同，即銀行的客戶較為保守。如有需要，在售賣個別產品時，對銀行的操守要求必須更為嚴格，即較諸對證券商的要求更為嚴格。其實，這點已在我們過去數年發出的附加指引體現出來，只是在今次的雷曼事件中，我們看到有進一步加強的需要，所以我們在報告中提出這些建議。

主席：好的，下一位是湯家驊議員。

甘乃威議員：主席，他有些問題還未回答。

主席：沒辦法了，因為你問了3個問題，他答不完也沒有辦法。

副主席：主席，其實最重要的問題是，現在雖然已有較詳細的監管條例作規範，但我們發覺仍然出現一些非常嚴重的違規問題。這兩份報告和最近關於新鴻基的事件均顯示，政府及兩個監管機構均沒有就為何現時出現如此嚴重的違規事件作出結論。究竟問題出在哪裏？是否現行的條例過於寬鬆，還是缺乏阻嚇作用？我覺得這是我們需要面對的問題，譬如最近發生了新鴻基事件，我們仍然看不到監管機構對新鴻基有何懲處。調查報告是否應該最少有一個範疇，包括將來是否需要增加一些"牙力"或增加一些阻嚇作用？譬如這些違規機構，而非負責推銷的持牌人士，本身是否應該負上法律責任，甚至在嚴重違規的情況下被吊銷牌照呢？譬如在新鴻基事件中，現在新鴻基究竟須面對甚麼懲處，讓公眾可以看到，發生違規事件是會帶來法律後果的呢？我覺得這是一個非常重要的重點，我想聽聽你們的回應。

主席：好的。副局長。

財經事務及庫務局副局長：或者我請Mr WHEATLEY回答有關懲處是否足夠的問題。

主席：好的，Mr WHEATLEY。

證監會行政總裁韋奕禮先生：We clearly have the ability to remove a licence, if that's appropriate, to impose financial penalties and to suspend licence at the level of individual or institution. But what we are dealing with here is potential misconduct and huge losses of individuals, and what we have taken as our approach all along is we want to have an appropriate outcome for investors. We raised concerns about serious failures and finally agreed a settlement.

副主席：We are not talking about losses due to the fall of the market. We are talking about losses due to misbehaviour, misconduct on behalf of the institution distributing these products. Take the case of the Sun Hung Kai, what happened? Were there a serious infraction? If there were, were there any penalties...

證監會行政總裁韋奕禮先生：The penalties again... One of the points I made earlier is that we do not have the power to impose a settlement on an institution.

副主席：I am not talking about settlement. I am talking about what penalties, what things you are going to do to the institution to make them realise that in future they have to adhere to the regulations faithfully.

證監會行政總裁韋奕禮先生：Well, we've done a number of things. We've clearly publicly reprimanded them.

副主席：Well, public reprimand. Do you think that is enough if their infraction is serious? Would you please answer this question first?

證監會行政總裁韋奕禮先生：Well, they've agreed to pay back HK\$85 million.

副主席：That's a serious infraction, right?

證監會行政總裁韋奕禮先生：Yes.

副主席：So, you're saying that with such a serious infraction, you would only issue a reprimand? Is that all that you can do?

證監會行政總裁韋奕禮先生：No. As I said, we've done a number of things. We've agreed with them that they will return money. We've agreed that they engage an independent audit firm to conduct a review on any changes. And we've agreed with them that there will be a subsequent licence suspension if we find any of the problems not addressed.

副主席：You've released your suspended sentence, is that right?

證監會行政總裁韋奕禮先生：That's part of the settlement that we've reached. Yes.

副主席：Yes, but, you know, do you think that's enough? Do you think that is probably the reason why we face such a colossal breach of regulation by a number of institutions? If there is, you really ought to put it in your report. And say, look, we have to increase the level of penalties and the ambit of the penalties to all these institutions and not to allow them to go free or to be given a suspended sentence after a serious infraction.

證監會行政總裁韋奕禮先生：One of the things that we've made clear in our report is that we don't currently have the power to impose a settlement, and therefore we have to reach a voluntary agreement...

副主席：I am not simply talking about settlement. Settlement deals with compensation to people who have suffered losses. I am talking about what penalties there are to dish out to institutions who committed serious infraction of the regulations.

證監會行政總裁韋奕禮先生：Yes, and clearly there are penalties which are suspension of sentence or fines, but that does not get money back into people's hands.

副主席：I know, but I am talking about in what way you can force the institutions to realise it is a serious matter to comply faithfully regulations. Why did you not issue a fine against Sun Hung Kai?

證監會行政總裁韋奕禮先生：Because we chose and decided that getting compensation for clients was the most important issue.

副主席：But is it also important that they should realise that it should not happen again?

證監會行政總裁韋奕禮先生：But I think the message we've given is a very strong one. I think the combination of fines and the suspended sentence is a very strong message.

副主席：主席，我可不可以再排隊？

主席：好的，可以排隊。劉慧卿議員。

劉慧卿議員：多謝主席。主席，我覺得局長和任先生沒有前來應該受到譴責，因為他們應該到此交代。不過，今日的報告這麼厚，每人5分鐘也很滑稽，所以我覺得我們的小組委員會要盡快展開聆訊，你們等着回答問題吧。

主席，我想問金管局兩個很簡單的問題。第一，關於銷售點的監管，在幻燈片第9頁，說要分隔，即把接受存款及零售證券這兩項業務分隔開，位置要分開，職員也要分開，還說有甚麼警告，好像變了吸煙似的，要有"健康警告"。此外，兩項業務的客戶資料也要分開。我想問，現在的規矩是不分開的嗎？我們是有個人資料私隱的！市民進來說："我要存款，我有多少千萬元的定期。"銀行現在是否可以利用這些資料，說知道你陳大文擁有幾千萬元，就在這邊游說你購買迷你債券？現在的規矩容許這種情況的嗎？剛才亦有同事問到，甘乃威也問了，其實很多規矩應該已經存在，否則便笑死人，如何稱得上是"國際金融中心"？但你現在是否告訴我們，現行安排是"撈亂"的呢？職員也是"撈亂"的，每個職員都把客戶的資料放在口袋裏。客戶進來，這個職員說："你來存款？"那個職員又說："不如你買這些迷你債券。"結果全部虧損了，也沒有"健康警告"。是否個人資料.....還是有沒有其他規矩，還是甚麼也沒有？在銀行中，人家給你資料，卻被其他職員拿去用。還有，主席，剛才說到最後一點，指銷售點的安排會立刻推行，但我翻看剛才這疊文件，當中卻載明於下一階段才推行，究竟何時推行呢？我相信市民.....老實說，現在不知道還有多少人敢買這些東西，但此項措施到底何時才推行？謝謝。

主席：好的，蔡先生。

金管局副總裁蔡耀君先生：多謝主席。現時來說，銀行職員如負責存款工作，若他沒有銷售證券的牌照，他在存款櫃位工作時，應該只能看到存款資料。還有，如果這個客戶沒有開設證券投資戶口，他不可以……譬如說，與這個客戶進行證券銷售。因為若他這樣做，而那個客人從未開設證券戶口的話，他這個行為屬於所謂的cold calling，是抵觸條例的。可是，若客戶已經開設證券戶口，證券部的職員現時是可以看到他的存款及投資的資料，所以我們現在建議位置要分隔，將來即使客戶來到證券部，負責證券售賣的同事也不會看到他的銀行戶口有多少存款，那個是要分隔開的。

劉慧卿議員：主席，我的問題是，現時私隱條例或其他條例有沒有規範，訂明我向你提供資料處理這件事，這些資料便只可用於處理這件事？為何其他銷售證券的部門也知客戶有4,000萬元定期存款，並說："利息那麼低，不如搬過去。"即是說現在是完全予取予攜？完全沒有規範的嗎？

主席：蔡先生。

金管局副總裁蔡耀君先生：主席，因為銀行的存款及證券業務都是在銀行這個機構中進行，即是說你向銀行提供資料，資料便由那個機構所擁有。

劉慧卿議員：它拿到甚麼地方使用都可以？主席，那豈不很大件事？銀行有那麼多部門，資料提供予一個部門，所有部門都知道，並且可以使用？客戶並不知情啊！

金管局副總裁蔡耀君先生：不是這樣的，而是說在銀行中，與他的資料無關的同事應該不會看到的，但問題是如果他開設了證券銷售戶口，並且已是銀行的存戶，銷售部門便可看到這兩種資料。

劉慧卿議員：你回答這個分隔措施何時會執行吧！

金管局副總裁蔡耀君先生：關於這個分隔措施，我們現時要求每間銀行在3月底前提出一個具體建議，說明將如何落實，然後跟我們討論。因為在時間上，每間分行本身可能要裝修，要改變安排才能做到。

主席：余若薇議員。

余若薇議員：我想問提出最核心的監管問題，就是"一業兩管"。在金管局的幻燈片第8頁，你看到他們的立場是想要更多權力，因其指認可機構，即銀行，所有的事項，包括註冊、制訂標準、監管、調查及處分，均由金管局負責。即是說，除現有的權力外，還要再多一點。

主席，在這個問題上，你可以說有一些好處，因為至少銀行犯了錯，便不用在金管局調查後再由證監會調查。可是，另一個引發的問題是，變成有雙重標準，即銀行的證券業務由金管局監管，經紀的證券業務則由證監會監管。我想問問，金管局是否覺得這樣有問題？特別是看到最近新鴻基的事件，由證監會監管便會快很多，即作出suspended sentence，你快點賠足款項，即8,500萬元，而證監會那邊就做得快一點。我想問問金管局，這樣會否引起同一項業務，即證券業務，如果你在銀行做便由金管局監管，而證券那邊，如果由經紀做，便由證監會監管，證監會會否有"一業兩管"、"雙重標準"的問題？證監會方面，它說得有點曖昧，它一直提出問題卻不回答。我想問問，究竟它們現時有何立場，特別在是"Twin Peaks"("雙峰")的問題上。

第二個問題，主席，我希望Mr WHEATLEY回答，現在金管局把這麼多關於銀行的個案撥給他們，叫他們處理，而他們剛才又叫我們耐心等待，我想問要等多久？是否會像新鴻基證券事件般處理，因為我看到投訴內容是一樣的，無論是投訴經紀行還是投訴銀行，投訴內容都是一樣，他們是否會以相同的方式處理？我們是否很快便會等到他們告訴我們，其他被投訴的違規銀行也會向客戶作出賠償？

主席：好的，蔡先生。

金管局副總裁蔡耀君先生：多謝主席。我們的建議，一如剛才所說，我們希望提高監管銀行證券業務的效率。此外，由於看到銀行的客戶承受風險的能力或"胃口"與證券方面的客戶有所不同。如果我們擁有制訂標準的權力，便可制訂一些較適合銀行投資客戶的標準。至於雙重標準的問題，即使我們擁有這項權力，並不等於我們會"悶埋門去做"，我們也會與證監會繼續保持緊密聯繫，以確定我們所採納的標準不會低於證監會，而我們一向也有做.....

余若薇議員：主席，我聽到金管局說是有雙重標準的。那麼，我想聽聽證監會對於雙重標準的看法。

主席：Mr WHEATLEY。

證監會行政總裁韋奕禮先生：Can I answer the question about the timetable because that's a concern that has come up a couple of times? The Sun Hung Kai case was the first investigation we started, so we commenced that case before we had any cases passed to us by the Monetary Authority. So, in a sense that's the first to start and the first we completed. We have investigations running into all of the organisations that had sold Minibonds, about twenty odd organizations. We are moving those investigations forward as fast as we can, but we can't give any specific timetable for them. The complex processes, and we have to give appropriate procedural fairness to the institutions that we are investigating. So, I am afraid that we will move as quickly as we can. There is no preference of dealing with brokers over banks. We're simply dealing with all of them as quickly as we can taking the same approach which we've explained before, which is looking at a top-down approach, which is the way the organization has conducted itself, the way it exercises due diligence of both the product and the individual, the way that its training materials have been used, the way it assesses the level of the risk of the products and the individuals. So we're taking that approach with each of these organizations, but we have to follow procedural fairness.

余若薇議員：Double standards, what's your view on double standard that's proposed by the HKMA?

證監會行政總裁韋奕禮先生：We work closely with the MA to ensure that there aren't double standards, so we have a code of conduct that applies equally to banks...

余若薇議員：But Mr CHOI just told us that HKMA thinks there should be double standards, because they think that clients that go to banks are different from clients that go to brokers. What do you say to that?

證監會行政總裁韋奕禮先生：Well, I think all clients deserve a duty of care from their intermediary. All clients deserve to be assessed properly for their tolerance of risk. And the fact that brokers have a different type of clients from banks doesn't change the core requirement, which is to understand the client and to understand the product ...

余若薇議員：So you don't think there should be double standards?

證監會行政總裁韋奕禮先生：No, I don't think there should be double standards.

余若薇議員：Alright, thank you.

主席：涂謹申議員。

涂謹申議員：主席，我第一點說程序事宜。我近期看到，譬如說是檢討，經歷了這麼大的事情，是證監會及金管局自己檢討自己，我覺得這很有問題。報告發表後，你也看到，甲說自己多點權力便可以，乙也說自己多點權力便可以。我覺得香港的制度不應該是這樣，應由一個獨立的第三者進行檢討，不應由它們自己檢討自己，這很有問題。

此外，請看第二個具體的問題，是在金管局報告第4.13段的(f)分段至4.14段。你說是先知先覺，其實早在2007年6月1日，證監會在其第二輪主題調查中似乎已察覺到一些問題，這裏也寫道："insufficient knowledge of clients, insufficient product due diligence, lack of justification to illustrate suitability of advice"。接着，到了4.14段，正是我上次問蔡先生和任志剛的問題："你叫那些機構自行把這些結構產品列作高風險，要它們自行界定。"金管局有沒有作出跟進呢？因為你由2008年1月起才這樣界定，那麼，在2008年1月之前，如果它把產品界定為非高風險而售予不適當的客戶，這就是2007年6月1日所說的情況，你們有沒有再作跟進呢？蔡先生當時答了一句："沒有。"

我想問，你現在在這兒自己檢討自己，然後寫了這些報告。我可以想像，這若是別人的檢討，他一定會說："這樣也可以？是有人為錯誤，甚至是有問題，執法不力或執法不嚴，或執法缺乏力度，看到問題後便擱在一旁。"金管局一直也是這樣，有甚麼問題它就要求銀行自己給一個答案，會怎樣做。我不知道你現在說，現在才想起金管局可以突擊巡查，接着你建議銀行你自己也應該突擊巡查。像這些問題，如果是由外人進行檢討，這些段落是不會這樣寫的。在寫了某個現象後，一定會下結論，一定會寫一些評論。所以，我現在覺得，如果這樣做下去的話，我希望，當然，這是由財政司司長負責order的，現在最高.....今次出席的是副局

長。我同意很多議員的看法，其實今天任志剛和陳家強局長兩位沒有出席，我覺得他們實在愧對市民。社會發生這麼重大的金融問題，數萬人要投訴，進行檢討，檢討完成後，報告呈交立法會——正式的民意代表，他們兩個竟然"縮埋"，我不明白他們為何會這樣。這已是一個羞恥，即"縮頭龜"，"縮埋個頭"。

我不知道這份報告對他們來說.....其實對他們來說似乎已算輕描淡寫，但他們是否害怕出席要面對市民代表的質詢呢？沒理由是這樣的，這是很重要的事件。別的地方可能要由特首親自回答這個問題，要財政司司長帶同他們前來。他們兩個出席已是最基本、最低限度的要求。我希望副局長可以代我們反映。如果他們兩個聽到的話，不用害怕，主席，我們還可以多開一次特別會議，找他們兩個全日進行這個檢討，星期六，一整天，應該可以做的。因為這是重大的問題，是嗎？

主席：好的，哪一位想回答？

金管局副總裁蔡耀君先生：主席，我只想補充一下。其實，我們去年10月已去信銀行，要求銀行在產品的內部評級有變時通知客戶，這一點在我們這次的建議、幻燈片第10頁中也有提及。

主席：副局長。

財經事務及庫務局副局長：我想補充一下，有關監管架構的檢討，財政司司長及財經事務局也會全盤研究和檢討，而並非單單由那兩個監管機構負責。我們收到監管機構的意見，一個意見是他們可以制訂懲處的規定，另一個是由他們自己的出發點、有他們的意見，我們也會一併考慮。我們也會聽取雷曼小組委員會和這個委員會的意見，然後最後作出一個.....重新檢討這個制度，還是如何修訂這個制度？此事政府方面是會負責的。

涂謹申議員：主席，這樣寫.....兩份報告寫了會主導整個.....

主席：不好意思，涂謹申議員。你的時間已經夠了。

涂謹申議員：我只是說一句評論罷了。主席。

主席：葉劉淑儀議員。

葉劉淑儀議員：主席，我很高興看到證監會及金管局的報告，兩方面均承認，與美國相比，我們是沒有命令賠償的權力。關於此點，在數個月前，我看到美國對[auction-rate securities](#)(拍賣利率證券)的處理方法後，已向陳家強局長提問，因為美國的情形也牽涉[mis-selling](#)，人家的Attorney General Andrew CUOMO在6個月內完成調查，向那些全球最大的財經機構罰款500億美元，還有[civil penalties](#)，即湯家驊問及的事項。我覺得這些賠償的權力較停牌或吊銷牌照為佳，因為這些權力太大，你不會隨便使用。如果你真的查到有不當銷售行為，便懲罰他，要他賠償兼受罰。

因此，我希望證監會也好，金管局也好，要作出一個比較，撰寫一份報告，美國有甚麼權力呢？我們自稱是New-Lon-Kong，是嗎？說自己是三大金融機構，跟人家一樣厲害。那麼，為何人家可在6個月內完成調查，人家花了多少調查人手呢？這令市民覺得，人家那個Andrew CUOMO是民選的，民選檢察長，他要向選民負責，並且他可能將來會出來競選總統，做事便賣力一點。我不希望是因為這個原因，很難看。所以，我真的希望證監會或金管局進行詳細的法例比較。我還想問問他們，如果有這些權力，應該歸予哪個機構？還有，那些[civil penalties](#)如何釐定？

主席：副局長會否回答這個問題？

財經事務及庫務局副局長：請Mr WHEATLEY回答。

主席：Mr WHEATLEY.

證監會行政總裁韋奕禮先生：The power to award compensation is something we've made quite clear in our report that the absence of that power is, I think, an important gap. We've got some information about other jurisdictions. We can provide to Members the information we have and do some further research but I don't feel like I can give a full answer on how compensation and legal structure in the US works today.

葉劉淑儀議員：你提供文件給我們吧。人家的法律架構與我們的比較為何，有甚麼權力，我們需要如何填補這個空隙，應該由哪個機構擁有這些權力，以及如何加入民事懲罰。我想，如果訂明上述各點，阻嚇作用會很大，將來那些中介機構便不敢胡亂推銷

這些產品。主席，我還有時間，我想多問一條問題。證監會和金管局這兩個機構都說自己的系統是disclosure-based，披露為本的，但我覺得你們那些披露是紙上談兵，因為正如證監會報告所說，那些迷債的章程有幾十頁，我也算是個受過教育的人也要看上好一會，還要請專家解釋給我聽，我才明白。那麼，小市民怎會明白呢？此外，你們所批准的宣傳單張就像是賣樓似的，"火速認購"，還送洗衣機等。如果你的宣傳單張說明風險是不保本，是沒有二手市場，很大可能在信貸事件中"一個仙都冇"，又怎會有人買呢？你根本是披露不足。

還有一點披露不足，就是整體性的披露不足。這是全球專家也發現的問題，只有你們的報告隻字不提，就是這類衍生產品缺乏透明度。每天的交投有多少，即underlying assets價值是多少，一直下跌等，市民是不知道的。我知道國際方面有很多建議指需要設立一個中央結算系統，將來提高它的透明度，你們有何看法？你們是否承認這方面根本披露不足？

主席： Mr WHEATLEY.

證監會行政總裁韋奕禮先生： I think, again, if I could...the Minibond products were structured under the Companies Ordinance, which has a requirement for sufficient information to be disclosed to allow a reasonable person to draw a conclusion. But it is necessary for the reasonable person to be given the opportunity to read the whole document. The code of conduct requires that the intermediary explains the document. That is how our code of conduct works currently. That they should be...they have their document explained to them. One of the concerns that we had in the initial investigation is that it was questionable whether that was done properly. It's something that we are looking at in each of our investigations. But that's not to say that the disclosure-based philosophy itself is flawed. It was the application of the conduct, at least, that's what we raised in the individual case that we've completed so far.

主席： 石禮謙議員。

石禮謙議員： 多謝主席。很多同事提出很多問題，因為時間關係，對方回答不到。這些問題真的回答不到，留了下來，令香港很多市民，尤其是那4萬個苦主，得不到答案。這不單是那4萬個苦主，因為香港金融中心受到打擊。

我們這個委員會和雷曼小組委員會，擔當兩個不同的角色。我們維護香港金融中心的地位，一方面要做工夫。所以，剛才很多同事問的問題，他們真的回答不了，他們來這裏坐幾個小時便算數，但我覺得這是不可接受的。主席。我們是否需要多開一次會議？我們的角色和小組委員會的角色不同，我們的角色是維護香港金融中心的地位。這是我們四大支柱之一，主席。我們不要讓他們蒙混過關。主席，我覺得這非常重要。

第二點，我想問政府，你看完這兩份報告這麼好，檢討有甚麼事情發生，是向前看。可是，政府今時今日也沒有一個立場，你好像在"卸膊完"，叫他們完成報告，你自己卻不加理會，亦不知情。不知道你是不知情還是不理會？你覺得這兩份報告可以接受嗎？誰要負起責任呢？你要看到有血流在街上才進行檢討，你有沒有問問為何會有血流出來，為何有這些情況出現？是的，我們是要面對將來，但你們看不到那情況，治標要治本，不是只治標，要同時治本。你們現在每次也是逐少逐少地做，政府的角色在哪兒？我想問問政府，你看完這兩份報告，你覺得誰要負起責任，而責任何在？這是第一點。

第二個問題，主席，我仍有時間。我想問問，現在你們這兩個機構擬備了報告，要求獲得更多權力。給予你們權力沒有問題，你覺得做得到便應該要做。可是，你有權而不用，這個傷害就更大。你現在不是沒有權力進行調查、沒有權力進行監管，而是你有權而不用，令這麼多人蒙受損失，影響到香港的金融地位。剛才你要求的權力是出事後如何作出懲罰，但你有權進行監管，為何不使用這些權力呢？你有權而不用，這也是一個錯誤，政府有沒有監管這些呢？有沒有責任去查看一下呢？先回答這兩個問題，主席。

主席：好的，謝謝你。政府的立場。

財經事務及庫務局副局長：多謝主席。在發生雷曼事件後，財政司司長已馬上請兩個監管機構就整個制度作出全面檢討，所以我們政府的立場當然是有責任保障小投資者，尤其是在理財產品方面。看完了報告……

石禮謙議員：主席，不要浪費我的時間，因為我的時間很寶貴。這兩份報告已經說明將來如何保障投資者，但我的問題是，我現在問政府，你怎樣監管它們，知不知道它們怎樣出錯？

主席：好的。你讓她回答吧。

石禮謙議員：她現在不答，主席，我的時間用盡了。

主席：副局長。

財經事務及庫務局副局長：其實監管……當然，我們曾經敦促，亦曾協調兩個監管機構盡其責任去做。那份報告的重點、焦點在於檢討制度，制度的改善是很重要的。還有，雷曼事件是由很多因素造成，其中包括投資者的教育，這個我們是要提高……

石禮謙議員：主席，別再提那份報告。我想問政府，如何監管這兩個機構？現在發生了這麼多事情，它只在談論制度，為何政府一早不知情？為何現在事情發生了，它才知道？錯在哪裏？政府有沒有犯錯？回答我"有"還是"沒有"！

主席：副局長。

財經事務及庫務局副局長：我一再強調的是，我們的監管……過多的監管會窒礙市場的發展，過少的監管也會造成投資者的損失。很多時候，我們在不斷有新產品在市場出現的時候，我們的法例……

石禮謙議員：主席，即是說過多不可以，過少也不可以，是否沒有就可以呢？現在是否沒有監管，你沒有做嘛！

主席：你讓她回答吧！

石禮謙議員：她沒有回答，她不回答我，因為我的時間"燒緊"，主席。

主席：你可以等第二輪。

石禮謙議員：我第二輪……沒有用……第二輪，因為這麼重要的報告……

主席：你的時間夠了，你多說兩句。

石禮謙議員：主席，時間夠了便要一直開會，直至"開完"為止。

主席：我同意，大家都很關心這個問題，所以除了我們的雷曼小組委員會外……

石禮謙議員：因為他們知道我們只得5分鐘，於是"一路拖"，永遠不回答問題，主席。

主席：好的。除了雷曼小組委員會的研訊外，我會盡可能把這些可以在小組之外處理的事情，盡量在事務委員會中處理。今天他們不過是前來簡介這份報告。當然，深入探討如何改革，將來很可能……因為我們小組委員會其中一個很重要的項目，就是要向政府提出一些建議，所以時間上的錯配也很難說，但我們會盡可能催促政府立即處理市場範圍或立法等各方面可以做到的事情，盡快去做。我希望大家能夠體諒，其實我們立法會正在進行一些工作，政府可能也在進行一些工作，但要互相配合，好嗎？

石禮謙議員：多謝主席。我……是point of order，不是要陳局長來，應該要財政司來……

主席：我們還有機會繼續跟進，好嗎？我們繼續。還有兩位是第一輪，就是何俊仁和李慧琼。何俊仁議員。

何俊仁議員：主席，其實你看看這次兩個監管機構的報告書所載的建議，便可看到現有制度的疏漏和不足之處，也更能瞭解為何在雷曼事件中有這麼多人強烈投訴自己是受害者、自己受到蒙騙，以及自己受到誤導。其實，現在提出的事情很多也是常識。很多人會驚訝，為何不是這樣做？這次我們當中很多人也沒有購買那些產品，但大家看到那些銷售章程，真是相當繁複和深奧，看到那些小市民可接觸到的推銷宣傳產品的誤導性和誇張性，還有利用物質引誘別人"落搭"的那種……我覺得是欺騙性。一言以蔽

之，為何香港常常要付出如此大的代價，要等到這麼多人"雞毛鴨血"，才進行這些全面的檢討？

檢討方面，我同意剛才涂謹申所說，是不應該由機構自行檢討，因為如果自己檢討自己，很多時候會以自己的角度為中心進行檢討，這會出現很多問題。至於將來怎樣做，當然我們樂於跟政府繼續探討，跟監管機構一起研究如何盡量作出改善。不過，我們不要說日後，先說說現在正在做甚麼？你現在行使自己的權力，你做了甚麼，你行使既有的權力，是否令我們有信心？單單看新鴻基這件事，現在證監會好像已經非常滿意，新鴻基現在願意全面回購。不過，你要緊記，第一，你的報告完全不公開，沒有人知道在甚麼情況下，它要全面回購，新鴻基這間證券機構發生了甚麼事情，它現在這個制裁是否合理、是否相稱，沒有人知道。再加上我們從報道得知，新鴻基並不承認，它是不認錯、不承認責任的。不過，它只是跟你和解，不再跟你爭拗，大家無謂浪費律師費而已。這樣，我們能學到東西嗎？我們能汲取教訓、汲取經驗嗎？剛才Mr WHEATLEY好像很滿意似的說我們有很大的成就。我不說金管局和那些銀行，它們現在完全交不出任何東西。你叫我們耐心等待，但我想問Mr WHEATLEY，為何不公開新鴻基的報告，讓我們瞭解和評價你所作的懲處是否公道？為何容許新鴻基證券，不承認責任，只是回購便可以呢？如果你有罰款的權力，正如湯家驊和葉劉淑儀剛才所說，我寧願先向它罰款，再以那些款項成立基金，賠償予投資者，那個訊息不就更清楚和更公道？為何讓它像恩人般向他們回購，還要他們感恩呢？

主席：好的，Mr WHEATLEY。

證監會行政總裁韋奕禮先生： Firstly, it comes back to the structural point, we have no power to force compensation. It's not a legal redress that is open to us. So, it has to be voluntary. It has to be a negotiated settlement. There is no legal power to make a fine that can then be used and be distributed to individuals. And again that's not a legal power that is open to us, and it's negotiated, therefore, the terms of it are negotiated. We have taken the view all along that getting compensation back to investors is the most important part of this investigation process. Imposing a fine would not achieve that, so we've taken the view that on balance the combination of a public reprimand and a statement of our concerns, a suspended sentence and compensation to investors is the best outcome we could achieve in that individual case.

何俊仁議員：主席，問題就在這裏。證監會覺得自己英明神武，覺得自己所做的絕對正確，但是沒有人可作評論，因為你的報告並不公開。如果你把報告公開，大家便可以知道，新鴻基證券做

了甚麼，為何值得與它和解，那麼，我們可能會拍掌，但是我們可能在看完報告之後，覺得不單止是這樣，可能要律政署作出檢控。我想問你一句，為何你不把報告公開，不公開如何能令我們有信心？一句就可以的了。

主席：好，Mr WHEATLEY。

證監會行政總裁韋奕禮先生：Again the agreement with Sun Hung Kai, we made a statement which was agreed.....

何俊仁議員：Why did you make such a stupid agreement?

證監會行政總裁韋奕禮先生：It was in our view necessary to ensure the HK\$85 million would return to the investors.

何俊仁議員：Is it the only way to achieve that end?

證監會行政總裁韋奕禮先生：I think so, yes.

主席：好，李慧琼議員。

何俊仁議員：Oh, come on, we can never agree.

證監會行政總裁韋奕禮先生：It might have been a different end, but it would probably...

何俊仁議員：But we don't know, we are all kept in the dark.

證監會行政總裁韋奕禮先生：You are not kept in the dark because we published the reservations that we had about their processes. We made it quite clear what our concerns were and they had responded to that.

主席：好，李慧琼議員。

李慧琼議員：據副局長剛才所說，政府在保障小投資者方面是有責任的。我想瞭解一下，其實你們看完這兩份報告後，也沒有講到……這兩個監管機構其實也沒有講到責任，因為你們說重點在於整體的制度方面，我覺得小投資者一定很失望。我想副局長正面回答，你們覺得在保障小投資者方面，這兩個監管機構以至政府有沒有一些失責的成分，因而導致這次如此大規模的事件，這是第一點。

第二，我亦想問問SFC。我記得你們第一次來立法會時，很多議員均有問到，你對迷你債券這個名字有何看法？因為迷你債券這個名字導致很多小投資者被誤導，相信它是一些比較穩健的投資產品。我從你的報告第16段所述的內容感受到，或者希望稍後你再說給大家聽，其實你覺得已有足夠的披露了，而在那些好幾十頁的投資產品說明書內，亦已說明這些不是保本產品等等。但是其實你這個報告中亦沒有講到，對於一些銷售單張，你們亦有參與審批，讓投資者覺得此類產品非常穩健，好像"長城債券 穩如泰山"，還跟很多重量級的藍籌股票連成掛鉤，給人一種錯誤的感覺。在這一方面，你們究竟有何看法及得出一個結論，你們在這方面有沒有責任呢？

主席：好，副局長。

財經事務及庫務局副局長：多謝李議員的提問。

在看完兩份報告後，兩個監管機構提出了30多項建議，正如議員所述，那些建議是有需要改善的地方，亦代表現行制度很多地方有疏漏。政府在這件事上，議員亦一再提問，究竟政府的責任在哪裏？兩間監管機構的責任在哪裏？我們要提供一個完整、公平的平台保障投資者，亦要在保障投資者的同時發展市場。我們不能窒礙市場的發展，亦要考慮給予投資者選擇，所以我們確立了一個披露為本的原則。在負上這個責任的時候，我們當然要督促兩個監管機構盡快落實這兩個階段的一些改善建議。這是我們履行這個責任的最佳做法。

主席：第二個問題是關於迷債的披露問題，你們覺得證監會方面所做的是否足夠？

財經事務及庫務局副局長：在披露方面，其實在銷售產品的披露，剛才議員也曾提到，這麼厚的章程，現在的制度是沒有規定把其

簡短縮短，以及如何更精簡地將風險披露出來。現在是要提出這個建議。在現行的制度上，我們覺得是要改善的地方。

主席： Mr WHEATLEY有沒有補充？

證監會行政總裁韋奕禮先生： Well, I think the sad fact is not many people read the prospectus, although unfortunate, but that's the reality. And the prospectus does indeed contain the information; they didn't make claims that were false. The vast majority of the complaints we received were not concerning the prospectus or concerning the name, they were concerning the sales process and that the products were misrepresented as something else. And this is mainly what we are looking at in the investigations, not the documents themselves which were thick documents, complex documents, but did involve the risk features.

李慧琼議員： 主席，即是說現在證監會"死不悔改"，還是覺得迷你債券，尤其是這些簡單的章程，沒有誤導成分。我認為，政府作為我們的把關人，最重要的是從市民的角度去看這件事。我同意那些幾十頁的章程已經寫明，並有足夠的披露，但坦白說，到銀行買的那些人有多少個真的會看這些章程？主要是取決於那份簡短的單張，而簡短的單張，銀行也說你們已經審批，市民亦不明白我們以披露為本為原則，就是這一重加一重的誤會也好、制度也好，導致市民相信單張上所說的產品真的穩如泰山。我希望你們將來審批這些名稱時，真的要從市民的角度去看，而不是你們覺得寫了在這幾十頁厚的章程內已經足夠。

主席： 好，下一位是陳健波議員。

陳健波議員： 多謝主席。

我想香港如要作為一個金融中心，一方面我們固然要保障消費者，但另一方面亦不能過分監管，並要鼓勵創新，即產品的創新，同時亦應容許投資者根據自己的風險程度選擇產品。我們不可以一下子個個都爭着要監管，這或會消滅了香港的金融業，所以我希望大家明白，監管是與時並進的。隨着時代不同，有不同的監管尺度。如果不是因今次金融風暴而發生這麼嚴重的事情，我們也不知原來有這麼多問題，亦因為有這個金融風暴，我們才看到不單是香港有問題，全世界都有問題。大家明白，美國——我們認為監管最好的地方、最嚴厲的地方，亦發生了這麼多問題，而且遠比香港嚴重。英國、歐洲也是如此，情況亦非常嚴重。很

多金融機構的市值只剩下十分之一，甚至更低。大家明白，這並非香港獨有。希望大家明白，香港只是其中一個受害者。

我想講的是，我們故然要追查將來如何可以做得更好。我亦相信，雷曼小組的工作需要很多時間，逢星期二及星期五開會，每次3小時，我覺得這工作非常繁重。不過，我發現有時在開會期間，我們爭論一些無謂的事情。我覺得很多是原則上的問題，大家既然具備基本的金融知識，便無謂再去爭論，因為這會浪費大家的時間。我反而想問政府，就個人來說，我非常希望瞭解雷曼苦主怎樣才可取得他們的賠償，所以我希望政府在回購之外要有兩手準備。我想知道，除回購外，政府還有甚麼方法可以真真正正幫助這些雷曼苦主？我相信我們一定會追究，並預計就雷曼進行的調查需時約一年。因此，追究何時進行也沒有問題，但我覺得苦主問題應該盡快解決，所以我會比較關心，除回購外，政府還有甚麼其他辦法？希望政府解答這個問題。

主席： 副局長。

財經事務及庫務局副局長： 多謝議員提問。

關於回購，我們在處理雷曼事件時，一直說有兩個途徑，一個就是希望通過回購，另外一個途徑就是現有的申訴機制。現有的申訴機制，本身是通過調查，通過證監會現正密鑼緊鼓進行的調查，希望能夠看看是否有違規事件，或者通過和解處理。這些都是我們現有機制已有的東西，現正密鑼緊鼓地進行。一如韋奕禮先生所述，給他們一點時間，他們已盡快去做，希望能夠為苦主討回公道。

陳健波議員： 我想再追問，新鴻基的例子其實是一個很好的例子。如果每間銀行都可以這樣做，問題便真正能夠解決。希望政府依循這個方向。因為很多時候……其實我以前也曾在銀行工作，情況是文件上十分充足，但客戶則很慘，因為銷售可能是很短的時間，文件上已做到足，但實際上，客戶甚麼也不知道，完全信任銀行，故此雙方也有責任。但問題是，我們也不能只看文件，可能銀行是做得很足，但問題在於真真正正是怎樣做，我覺得政府應要追查。此外，如果他們有錯誤，或者很明顯有大規模的錯誤，銀行其實真的要考慮負責向苦主作出賠償，並且要有充足的賠償。

主席： 好，何鍾泰。

何鍾泰議員：講一、兩句我的感受吧。主席，多謝你讓我講這番話。

財經事務委員會上次及今次開了個多小時會議，我知道政府及兩個監管機構一直在迴避，並且不會向我們提供任何實質的資料。我很同意，同事所提出的問題均十分重要，而大家亦很不耐煩及感到很遺憾。我覺得這情況已在預計之內，因為政府和兩個監管機構一定會覺得，暫時來說，迴避是一個最好的方法。因此，我們一定要有這個雷曼小組委員會，正如陳健波所說，我非常同意，大家要有一個團隊精神，一條心去調查這件事，運用《立法會(權力及特權)條例》，他們避無可避，我們一定會查到底。

在這個會議上，我很多謝主席能夠作出配合，因為調查工作是另一類的工作，沒有任何資料可讓我們即時改變工作的計劃，整套工作計劃是按照時間表進行，一早已定下來，完全沒有改變，完全按時間去做，而進度亦十分滿意。大家應該清楚，調查及現有的工作有別於普通的事務委員會的工作。希望大家同事一條心，就像我們以往多次所做的專責委員會工作一樣，有很好的團隊精神，撇除黨派之爭。我希望以後都是這樣，盡快為香港市民進行有關檢討整個金融制度的工作。謝謝主席。

主席：好。十分多謝你這個新年願望。你有沒有問題想問？

何鍾泰議員：我沒有問題，我知道問也沒有用，只會浪費時間。

主席：好。各位同事，現在是10時44分，已超出了我們預算討論此事項的時間。我們還有6位同事舉手，準備進行第二輪提問。葉劉淑儀議員，你是不是想……

葉劉淑儀議員：你會否給時間讓我們進行第二輪提問？

主席：我想跟大家討論一下，因為如果讓大家進行第二輪提問的話，就有6位，如果加上你，你可能再問第二輪問題，便有7位。那麼，到底應該用多少時間呢？我準備把這個事項延至11時，好嗎？其實，如果今日大家意猶未盡的話，我們還可以安排第二次會議，作進一步跟進。好嗎？

葉劉淑儀議員：這個一定需要，一定要。

主席：如果大家同意的話，我們先討論至11時為止。倘若尚有需要，我再跟秘書安排時間作另一次討論，好嗎？

葉劉淑儀議員，你是否準備作第二輪提問？好的。7位同事，有15分鐘，每人兩分鐘。那麼，簡短問、簡短答，好嗎？因為還有機會再提問。我先讀一讀次序。詹培忠、甘乃威、湯家驊、劉慧卿、石禮謙、何俊仁、葉劉淑儀。

第一位，詹培忠議員。

詹培忠議員：主席，問題是你再問甚麼也沒有用，根本上這個廢的政府、不負責任的政府、愧對市民政府。我的發表是這樣，整個報告根本上是大家在推卸責任，最重要的是，為何雷曼發行這麼多債券會"執笠"，但銀行為何不"執笠"？這是一個世界的騙局，香港政府協助外國欺騙香港人，這樣的作風，這樣的所作所為，怎樣有資格再在這裏解釋他的報告？

主席，以前，我們記得，在20多年前、40多年前，基金一樣曾經"執笠"，雪廠街的地址仍在。20年後，人家忘記了，它便捲土重來。我問政府，你想結果如何？如何向市民負責？是否3、4年後拖到不了了之，便把事情了結？目的是否這樣？不然的話，你想怎樣？此外，你屬下兩個機構，他們的所作所為，你滿意嗎？他們的報告，你還會遵守嗎？他們根本上不能負起自己的責任。如何.....

主席：好，給些時間讓他回應，否則時間又到。

詹培忠議員：是，我以發表為主。

主席：副局長。

財經事務及庫務局副局長：詹議員，我不同意詹議員所說，指政府在拖。其實我們有30多個建議，當中很多是十分基本和全面的建議。在落實有關建議後，我們相信，一如雷曼事件這類違規的誤導性銷售將會減少。多謝。

詹培忠議員：主席，政府披露為本，我根本上對這個政府……其實特首已經說過，這些根本上不是債券，整個政府內的意見和見解均不相同，你如何能夠解決問題？拿出誠意吧，謝謝。

主席：好。下一位是甘乃威議員。

甘乃威議員：主席，我想針對披露為本發言，因兩個監管機構均認為應繼續維持這個披露為本，但實際上，我們很多苦主都覺得，根本無法在這些所謂披露為本中清楚瞭解有關產品的情況。

我想問政府，對這個披露為本有何看法？究竟會否……雖然我聽到世界性都是這樣，但世界性未必一定準確，很多世界性……格林斯潘都覺得自己過去所做的方法也是錯的。因此，究竟這個披露為本有沒有檢討價值，究竟實際上未來的路向，會否有一些產品在零售市場上是不容許的，特別是在銀行售賣這些產品？

主席：Mr WHEATLEY.

證監會行政總裁韋奕禮先生：Again if I could come back to disclosure based approach, it's very important to understand, it's not purely disclosure. It is disclosure in combination with conduct and suitability. We, as the approver of the documents, don't ultimately have the relationships with the end clients. The person who has relationships with the end clients is the person who judges whether it is suitable for the clients or not. It's apparent, in some cases, in fact in many cases, they were sold to unsuitable clients, but that's not a problem with the disclosure regime, it's a problem with the conduct at the point of sale.

主席：是。

甘乃威議員：我想問問金管局在這方面的看法。為何金管局也同意這個情況？但實際上……現在是否所謂純粹的 mis-selling 問題？但實際上，很多人都覺得這些產品不應該在銀行售賣。

主席：金管局的看法是怎樣？

金管局副總裁蔡耀君先生：多謝主席。

這個披露為本，我們亦參考過很多國家的做法，這是國際公用的。我亦同意韋奕禮先生的說法，就是在銷售時如何確定客戶是否適合投資這些產品，這點很重要。

主席：好，湯家驊議員。

副主席：主席，我想繼續跟進罰則的問題。我覺得有阻嚇作用的罰則和法律後果十分重要。但大家均看到，醉酒駕駛最近引起軒然大波，人人都說要加重罰則。這次雷曼事件，我覺得跟醉酒駕駛同樣重要。我想問問證監會，可否將其調查新鴻基事件的所有細節，如違規的程度、甚麼地方違規等，將所有細節公開，以書面提交立法會。

主席：Mr WHEATLEY.

證監會行政總裁韋奕禮先生： Well, I think as I've tried to explain earlier, because we do not have power to enforce settlement, the only way to achieve compensation was to agree to a completion of the investigation and to agree to certain measures that the institution would take. And those measures were the repayment of money, a reprimand and a suspended sentence. And it's not possible had we gone down the route of publishing a full and final report, which would have been many, many months away, and we may or may not have achieved recompense for the individuals affected.

副主席：主席，我想問，他進行調查後一定會有一些決定，然後才可按這些決定要求新鴻基作出適當的賠償。為何有關決定不可以公開呢？

主席：Mr WHEATLEY.

證監會行政總裁韋奕禮先生： The nature of an agreed settlement is the statement that is agreed as part of the settlement.

副主席：我現在所問的並非那個賠償協議，而是要求他公開有關調查發現有違規事實的決定。這些決定對教育同業及香港投資人士甚具指導性的意義。我希望他盡快公開調查決定的細節，而不是那個協議的內容。

主席：好。Mr WHEATLEY。

證監會行政總裁韋奕禮先生：But again, the concerns that we had were published as part of our public statement at that time. We didn't publish pages and pages of details. We published the high level statements - what we thought the problems were.

副主席：主席，我要求他向我們交出有關細節，是否要我們引用特權法，你才可交出來？你是否想我們引用特權法？我們可以要求小組引用特權法傳召你前來，將你進行調查後得出的所有結果和決定交給我們，是否要這樣呢？

主席：Mr WHEATLEY.

證監會行政總裁韋奕禮先生：I think you have to realize that it would make any negotiations we had with any of the banks concerned more difficult if we couldn't achieve an agreement ...

副主席：如果你已作出懲罰的決定，你覺得他們不是要作出賠償嗎？他們可以不作出賠償嗎？

證監會行政總裁韋奕禮先生：They can seek to ask for time to respond to our notice. They can seek to have any decisions reviewed in the Appeals Tribunal.....

副主席：他們可以，當然可以，但如果你作出決定後.....

證監會行政總裁韋奕禮先生：.....if we can't achieve a voluntary settlement, then we'll have a very long legal process that we have to go through, it may be what we have to go through. We thought this was the best outcome on this case.

副主席：如果你作出決定，所有其他同業可能亦會即時作出回應，你知道嗎？

證監會行政總裁韋奕禮先生：Again, we have to judge the best way to achieve recompense for individuals, and this is the approach we thought is the best approach.

主席：好，劉慧卿議員。

劉慧卿議員：主席，我希望當局盡快多加努力幫助苦主，但現在金管局指有兩萬宗投訴，而立案的，主席，則只有四千多宗，還有很多投訴有待處理。如你參閱文件6.2段、6.3段的列表，真的"有排搞"。據6.1段所載，現在有203人負責處理這些投訴，但有些人是從外邊調來的。金管局現想增聘人手，然後再把那些人調走，來來去去，只得200多人處理有關投訴。如果這樣下去，我真的不知道，蔡先生，請你告訴我們要處理多久？其實你上一、兩次前來時，我們也請你們盡量投放多些資源、聘請多些人手去查，快些找出結果。現在你這樣做，即是"完全唔掂"。如果按照你的數字，即6.2、6.3、6.4段所載的數字，調查數年"都未掂"？

主席：蔡先生。

金管局副總裁蔡耀君先生：主席，我們已盡最大的努力調配人手，並很多謝兩間會計師事務所，於9月雷曼倒閉之後，在很短時間內借調了一些同事來幫助我們。但是，現已進入每年核數的高峰期，他們的同事亦需返回自己的公司，因此，我們需要增聘一些短期合約的員工，協助進行這項調查。我們現正盡最大的努力調配最多的人手。

劉慧卿議員：主席，如果是這樣的話，再多四、五年也未能完成第一輪的調查，對嗎？

主席：蔡先生。

金管局副總裁蔡耀君先生：主席，我們的報告亦有提述，現時有接近兩萬宗投訴，而我們的初步評估幾乎全部完成。至於一些我們覺得表面證據可以確立，並需進一步取證的個案，則有四千多宗，我們現正進一步取證，並會盡快處理有關工作。

主席：好，石禮謙議員。

石禮謙議員：主席，我很同意陳健波所述，不可以有過分的市場監管，但我們現在不是討論這點，而是討論如何監管有關機構，令市場可以運作，這正是我們所討論的問題。我想問政府，如何監管這兩個機構，金管局和SFC？如何監管它們，令市場可以運作？現在表面上有很多問題。

第二方面，我想問為何新鴻基的報告不可以公開？因為不單止那310個苦主，還有很多人買了這產品。他們在銀行買了這產品，因為新鴻基把這產品賣給銀行，銀行再把它向外發售。如果不公開這份報告的話，其他銀行又不賠償給那些亦買了雷曼兄弟這產品而受影響的人，這是一個完全不公平的待遇。主席。

主席：你亦認為應該要公布？

石禮謙議員：我覺得，香港每件事情都要做好。即要賠償，但賠償之中，還有另外的影響，亦有其他人在銀行買了這產品，都會受到影響。

主席：好，政府有甚麼回應？

財經事務及庫務局副局長：石議員問怎樣監察這兩間監管機構……

石禮謙議員：我是問財政司、陳局長怎樣監察？

主席：你讓她回答吧！

財經事務及庫務局副局長：其實，除了政府財政司司長……金管局是向財政司司長負責的，金管局亦有一個董事會監察其日常工作。除了政府之外，這個委員會、立法會及雷曼小組亦會調查雷曼這件事，兩個監管機構或政府所做的一切，所以我們覺得在這方面是有足夠的監察的。

主席：好，何俊仁議員。

何俊仁議員：主席，我真的再要跟進新鴻基這件事。當然，我瞭解從投資者的角度來看，取回金錢是很重要的，我亦替他們高興，但我並非認為證監會在這方面盡其努力做得不對，這樣做是對的。

但為何我如此重視這件事應具透明度，以及證監會應該說清楚，讓大眾瞭解其處事原則。因為證監會本身的主要職責不是為苦主追錢。當然，你這樣做是好的。如我賦予你這樣的權力，你便負責去追。然而，情況並非如此。你的職責最重要是要維持專業水平和監管行業，確保其符合你們的指引和監管要求。

你今次進行調查並非擔當主導，予人的感覺是，你不是從主導原則出發，設立一個先例。我現在監管進行這件事，第一個調查報告公開後，讓別人知道，日後所謂的benchmark準則，例如這樣做原來會出現很多問題，所以我們認為剛才一定要繼續跟進。

第二方面，我要問問Mr WHEATLEY，或者金管局也一樣。這是否一個樣本？日後銀行肯付些錢，賠償一部分，叫你不要再查。銀行不會承認責任，亦沒有任何失誤，你們是"庸人自擾"，你們進行調查只會浪費時間。總之，銀行向每人付些錢便了事。情況是否這樣？金管局以後是否這樣做？是否沒有原則、沒有方針呢？這正是我所關心的問題。日後怎樣做？新鴻基是否你們的先例？

主席：日後怎樣做？我希望有幾秒鐘讓你作答。

證監會行政總裁韋奕禮先生：I'll answer that. The approach that we've taken in the Sun Hung Kai case which is a top-down approach, is trying to achieve a settlement which is in the best interest of the clients, will be the approach we'll take in other cases. As we have explained before, it relies on the other party to be prepared to reach settlement. So, because we can't enforce it, while we can follow that approach, we can't guarantee that other brokers or banks would also follow that approach.

何俊仁議員：主席，在這件事情上，紀律問題對他來說並不重要。我希望政府日後表態，是否紀律並不重要？總之拿到錢便可以。我想知道，日後證監會原來是會這樣做的。

主席：好。政府對於今次證監會與新鴻基所訂的協議有何意見或態度？

財經事務及庫務局副局長：證監會是有法定權利執行此事及作出最佳的懲處方法，我們當然尊重證監會的決定。

主席：葉劉淑儀議員。

葉劉淑儀議員：主席，財經事務及庫務局已表明回購無期。至於賠償方面，剛才韋奕禮先生回答劉慧卿議員的問題時，我們得悉賠償亦是無期，沒有時間表。現在政府靠差不多"講數"叫新鴻基作出賠償。政府會否考慮，既然現在證監會也承認沒有叫人賠償的權力，而有關權力並不足夠，立法會或可緊急通過條例，讓他們有"追數"的效力，那麼，便可迫使銀行作出賠償。如果查到有不當銷售，就全數賠償給他們，一如美國的做法，那就最好了。直截了當，對嗎？這是可行的。雖然很少法例有"追數"權力，但如果立法會同意，可以賦予有關權力。

主席：副局長。

財經事務及庫務局副局長：我剛才已經重申，證監會現正調查其他20多間機構，看看它們有沒有出現同樣的情況，有沒有違規。我亦相信，證監會對於各方面，包括苦主、被調查的機構，均會採取最公平的方法……

葉劉淑儀議員：副局長，你給我們一個時間表吧！你可否給我們一個時間表？還有，你是否需要這個two-step-procedure，為何要金管局先作審批，花這麼多時間，單是這個procedure已經不好了。先作審批、然後立案、再作轉介，為何這樣分工？浪費那麼多時間。

財經事務及庫務局副局長：據我所知，那不是浪費時間，所有調查內容均會轉交證監會。至於時間表方面，剛才韋奕禮先生亦已作解釋，需要程序上……香港是一個法治的地方，需要程序上的公平……

葉劉淑儀議員：為何美國又可以？美國沒有法治嗎？

財經事務及庫務局副局長：其實牽涉了20多間機構，涉及的投訴差不多有2萬宗。

葉劉淑儀議員：人家涉及500億美元，為何又可以呢？你人手不夠，便要想辦法爭取。

主席：好，各位同事，這個議程已超出了15分鐘的時間。大家可能還有很多問題想提出。我會跟秘書再安排一下，訂定一個適當的時間繼續跟進這些問題，好嗎？這個議程.....

何俊仁議員：我想澄清一下，會否多開一個特別會議只談這個議題？因為很多問題未問。

主席：我都未問，我今天只是照顧了大家，你們問完我還未問，我都有幾個問題要問。

何俊仁議員：多謝你。

主席：我會跟秘書談談，安排一個時間再舉行另一次會議。多謝副局長，以及金管局和證監會的代表，出席今次的會議。

(此議題的討論於上午11時05分結束。)

m435