

立法會

Legislative Council

立法會CB(1)2346/10-11號文件

LC Paper No. CB(1)2346/10-11

(此份逐字紀錄本經政府當局及其他應邀出席者審閱)

(This verbatim record has been seen by the Administration and other parties attended the meeting by invitation)

檔號Ref : CB1/PL/FA/1

2011年4月21日下午4時30分至6時30分
財經事務委員會特別會議的逐字紀錄本

**Verbatim Record of the Special Meeting of the Panel on Financial Affairs
on 21 April 2011 from 4:30 pm to 6:30 pm**

出席委員 Members present:

陳鑑林議員, SBS, JP
(主席)

陳健波議員, JP
(副主席)

何俊仁議員

涂謹申議員

劉慧卿議員, JP

石禮謙議員, SBS, JP

方剛議員, SBS, JP

李永達議員

黃定光議員, BBS, JP

湯家驊議員, SC

甘乃威議員, MH

李慧琼議員, JP

林大輝議員, BBS, JP

陳茂波議員, MH, JP

葉劉淑儀議員, GBS, JP

Hon CHAN Kam-lam, SBS, JP
(Chairman)

Hon CHAN Kin-por, JP
(Deputy Chairman)

Hon Albert HO Chun-yan

Hon James TO Kun-sun

Hon Emily LAU Wai-hing, JP

Hon Abraham SHEK Lai-him,
SBS, JP

Hon Vincent FANG Kang, SBS, JP

Hon LEE Wing-tat

Hon WONG Ting-kwong, BBS, JP

Hon Ronny TONG Ka-wah, SC

Hon KAM Nai-wai, MH

Hon Starry LEE Wai-king, JP

Dr Hon LAM Tai-fai, BBS, JP

Hon Paul CHAN Mo-po, MH, JP

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

其他出席議員 Members attending:

梁美芬議員	Dr Hon Priscilla LEUNG Mei-fun
梁國雄議員	Hon LEUNG Kwok-hung

缺席委員 Members absent

何鍾泰議員, SBS, S.B.St.J., JP	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
李國寶議員, 大紫荊勳賢, GBS, JP	Dr Hon David LI Kwok-po, GBM, GBS, JP
黃宜弘議員, GBS	Dr Hon Philip WONG Yu-hong, GBS
林健鋒議員, GBS, JP	Hon Jeffrey LAM Kin-fung, GBS, JP
梁君彥議員, GBS, JP	Hon Andrew LEUNG Kwan-yuen, GBS, JP
詹培忠議員	Hon CHIM Pui-chung

出席公職人員 Public officers attending:

<u>財經事務及庫務局</u>	<u>Financial Services and the Treasury Bureau</u>
財經事務及庫務局副局長 梁鳳儀女士, JP	Ms Julia LEUNG, JP Under Secretary for Financial Services and the Treasury
財經事務及庫務局局長政治助理 伍潔鏞女士	Ms Katherine NG Political Assistant to Secretary for Financial Services and the Treasury
<u>香港金融管理局</u>	<u>Hong Kong Monetary Authority</u>
副總裁 阮國恒先生	Mr Arthur YUEN Deputy Chief Executive
萬少焜先生 助理總裁(銀行監理)	Mr Nelson MAN Executive Director (Banking Supervision)

應邀出席者 Attendance by invitation:

<u>證券及期貨事務監察委員會</u>	<u>Securities and Futures Commission</u>
施衛民先生 法規執行部執行董事	Mr Mark STEWARD Executive Director, Enforcement Division
<u>香港上海滙豐銀行有限公司</u>	<u>The Hongkong and Shanghai Banking Corporation Limited</u>
伍成業先生 亞太區首席法律顧問	Mr Kenneth NG General Counsel Asia Pacific
<u>羅兵咸永道會計師事務所</u>	<u>PricewaterhouseCoopers</u>
合夥人 包思偉先生	Mr Anthony BOSWELL Partner
合夥人 區兆邦先生	Mr Ted OSBORN Partner
合夥人 布鑾先生	Mr Jan BLAAUW Partner
安理國際律師事務所合夥人 傑大偉先生	Mr David KIDD Partner Allen & Overy
<u>香港銀行公會雷曼事件專責小組</u>	<u>Task Force re Lehman Incident of The Hong Kong Association of Banks</u>
中國銀行(香港)有限公司 個人金融業務主管(總經理) 龔楊恩慈女士	Mrs Ann KUNG Head of Personal Banking (General Manager) Bank of China (Hong Kong) Limited
東亞銀行有限公司 副行政總裁兼營運總監 唐漢城先生	Mr TONG Hon-shing Deputy Chief Executive and Chief Operating Officer The Bank of East Asia, Limited

大新銀行有限公司
法律及合規處副主管
陳健文先生

Mr Derek CHAN
Deputy Head of Legal and
Compliance Division
Dah Sing Bank Limited

富邦銀行(香港)有限公司
執行董事
葉強華先生

Mr James YIP
Executive Director and Alternate
Chief Executive
Fubon Bank (Hong Kong) Limited

中信銀行國際有限公司
零售銀行業務執行總經理
王美珍女士

Ms Phoebe WONG
Executive General Manager
Retail Banking Group
CITIC Bank International Limited

萬盛國際律師事務所合夥人
馬紹基先生

Mr Richard MAZZOCHI
Partner
Mallesons Stephen Jaques

萬盛國際律師事務所律師
古偉恆先生

Mr William KU
Senior Associate
Mallesons Stephen Jaques

列席秘書 Clerk in attendance:

總議會秘書(1)5
薛鳳鳴女士

Ms Anita SIT
Chief Council Secretary (1)5

列席職員 Staff in attendance:

高級助理法律顧問3
顧建華先生

Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

議會秘書(1)5
趙汝棠先生

Mr Hugo CHIU
Council Secretary (1)5

議會事務助理(1)5
張婉霞女士

Ms Haley CHEUNG
Legislative Assistant (1)5

主席：現在有足夠的法定人數，我們請官員及銀行界代表進來。

各位同事，今天的會議最主要是想瞭解及討論有關雷曼兄弟迷你債券收回抵押品的協議及相關的事宜，迷你債券系列10至12、15至23、25至36的抵押品接管人於2011年3月28日公布，接管人及Lehman Brothers Special Financing Inc.已就迷你債券相關系統的抵押品達成有關的協議，而分銷銀行也於2011年3月28日公布有關若干雷曼迷你債券系列最終處理方案的協議，公眾及立法會亦十分關注此事項的發展，所以財經事務委員會安排今天這個特別會議，邀請政府當局、金管局、證監會、迷你債券信託人、抵押品接管人、分銷銀行等代表出席這次會議，以解釋有關收回抵押品協議及最終處理方案的建議，並回答議員的問題。研究雷曼兄弟相關迷你債券及結構性金融產品所引起事宜的小組委員會的委員亦被邀請出席此會議。

我想問各位同事，過去幾次涉及雷曼在我們這個事務委員會的會議都是有逐字紀錄本，大家是否同意這次會議也是以逐字紀錄本作為我們的會議紀要，有沒有反對？沒反對，okay。大家都知道，製作逐字紀錄本是要用很多錢的。

我亦代表財經事務委員會歡迎各有關方面的代表出席這次特別會議，由於出席人數眾多，我不在此一一介紹，各位可以參考桌上的座位表，大家都坐好了，請各位戴上耳機及擴音器，按照大家所需選擇頻道，"零"是現場收音，頻道一是粵語，頻道二是英語。

另歡迎幾位政府官員出席我們今天的會議，包括副局長梁鳳儀女士、證監會法規執行部執行董事施衛民先生、金管局副總裁阮國恒先生、助理總裁萬少焜先生及財經事務及庫務局政治助理伍潔鏞女士，歡迎各位。

首先請政府發言，然後再請銀行界的朋友發言，好嗎？副局長。

財經事務及庫務局副局長梁鳳儀女士：多謝主席。我想說幾點，在3月27日，16間分銷銀行及接管人公布的雷曼債券收回抵押品的安排，其實是分銷銀行履行他們於2009年7月22日與證監會、金管局達成的協議中有關回購迷債的承諾。此承諾就是分銷銀行要竭力收回迷債的價值，為了此承諾，他們用了分銷迷債所得的佣金來設立基金，而債券受托人——即滙豐，也聘用了專業的第三方羅兵咸永道——即PwC——為接管人，經過長達21個月艱辛的談判過程，終於在3月27日與雷曼的清盤人達成

協議，估計可以取回的價值比率平均是70至93%，加上分銷銀行自願推出的特惠款項，合資格的投資者可望收回的投資金額平均是85至96.5%，當然，這要視乎最終這個方案是否在5月中的債券持有人大會中得到75%出席人士的贊成。

根據2009年7月的安排，其實有98.9.....即係差不多99%的合資格客戶接受了這個安排，那裏的總人數是32 000人，而此安排令他們當時就收取了六成至七成他們原本的投資金額，並且免去了他們冗長的等待或焦慮。今天如果通過了這個方案，是可望收回超出的部分及特惠款項。設立此基金，也令接管人有足夠的籌碼與雷曼清盤人周旋談判取回這個價值。

在這個最終的處理方案上面，今天出席此委員會的各方目標是一致的，是為投資者追回最佳的價值。PwC是一個獨立專業的第三方，他們也聘用了專業的估算師；滙豐作為受託人，也有它專業的責任；而分銷銀行因為要攤分損失，與投資者沒有利益的分歧，一樣是想追回多些價值。

所以，我們認為並無理由支持由政府或監管當局再聘用第三者對迷債的抵押品進行估值，加上如果再請一個第三者進行估值的話，就會拖延大家收回抵押品價值的過程。

多謝主席，我講的就這麼多。

主席：好，謝謝。現在請羅兵咸永道會計師事務所包思偉先生發言。

羅兵咸永道會計師事務所合夥人區兆邦先生： Mr OSBORN, I think. Good afternoon, Mr Chairman. Thank you for providing us with the opportunity to discuss with you today the work we have undertaken in finding a solution to the complex Hong Kong minibond situation. My name is Ted OSBORN and I am a partner at PricewaterhouseCoopers Hong Kong. I lead the PWC business recovery services team in Hong Kong and China. This is the team that deals with insolvencies and debt recovery actions such as receiverships.

Seated next to me is Anthony BOSWELL and Jan BLAAUW. Both are experienced insolvency practitioners and PwC partners. Seated next to Mr BOSWELL is David KIDD, a senior partner in Allen & Overy. David has acted as the receivers' chief legal adviser throughout the receivership.

On 30 June 2009, Anthony, Jan and I were appointed as receivers of the minibond collateral of series 10 to 12, 15 to 23 and 25 to 36 by the minibond trustee. I think it is important to note that, as receivers, we are an independent party tasked with finding a solution in what is a difficult and complex legal and factual situation.

Our objective has been to take steps to preserve the value of the minibonds' underlying collateral and to recover as much value as possible, in the circumstances, for all minibond holders. In doing so, we have had to have regard to the legal obligations contained in the minibond contracts. The two key ones are the contractual obligations to Lehman Brothers as swap counterparty in what is referred to as the top-level swap and Lehman Brothers' assertion that it has priority over the minibonds' underlying collateral in what is referred to as the lower-level swap. This is often referred to as the "flip-clause issue", a complex legal problem made even more difficult by the diametrically opposite rulings of the UK and US courts as to its enforceability.

To achieve our objective and return as much value as possible to all minibond holders, we have had to consider all available options to unwind the minibond structure and find a solution to the claims made by Lehman Brothers that would release the minibond collateral. This involved a two-track strategy in which we negotiated with Lehman Brothers while, at the same time, we prepared to litigate, if necessary.

Prior to reaching the agreement with Lehman Brothers, we were in regular dialogue with them for more than one year. The negotiations leading to the agreement were long, complex and difficult.

On 27 March 2011, we announced that we had signed a conditional agreement with Lehman Brothers that allows for the return of minibond collateral to its Hong Kong investors. More than two thirds of the investors will recover in excess of 80 per cent of their original investment. The lowest forecast recovery that will result from the agreement is 70 per cent, with the highest 93 per cent. In addition to the recovery from the collateral, the distributing banks will be offering ex-gratia payments for eligible customers. This increases their recoveries to between 85 and 96-and-a-half per cent.

The receivers believe this is a very good result, in the circumstances. We believe this because the settlement allows for very substantial recoveries to be made without further delay and it avoids the risk and uncertainties of the only real alternative to the settlement: prolonged, costly and very complex litigation. We believe that, if litigation was pursued, there would be little prospect of doing better than the substantial

recoveries obtained under the agreement and a very real chance of doing much worse. An adverse outcome would result in very low or even no returns to the minibond note holders.

Let me say a few words about the agreement itself. It has two conditions: first, the US Bankruptcy Court must confirm that an order it made in December 2008 applies to the minibond collateral. This order was made on 13 April, so the first condition has been met. The second condition is that holders of the notes must pass extraordinary resolutions, at meetings to be held here in Hong Kong on 18, 19 and 20 May, in which they accept their tranche-specific recoveries in full and final settlement of their claims under the notes. For this condition to be satisfied, all of the 24 relevant series must pass the resolutions.

Notices to those persons who continue to own the minibonds and are, therefore, eligible to attend and vote at the meetings were sent out earlier this week. A sample copy of a notice was provided to this Panel in our response to the Honourable Mr KAM's written questions.

You will see the notice contains information to assist the noteholders in their decision-making, including an analysis of the risks at the top- and lower-level swaps, a discussion of the complexities around the "flip-clause issue" and the litigation option and, finally, the receivers' recommendation that minibond noteholders should vote in favour of the extraordinary resolutions.

We believe the notice contains the information noteholders need to determine whether or not they should vote in favour of the resolutions. If the noteholders still have any questions, they will be able to ask them at the meetings before they vote. If the resolutions are passed, we expect the available minibond collateral to be released for ultimate distribution to the minibond investors by the end of June 2011.

Let me close today by saying that the receivers believe the conditional agreement reached with Lehman Brothers provides the minibond holders with the best recovery in the circumstances. We are pleased with the result and feedback we have received to date from minibond holders who have contacted us is that they are very pleased, as well. We hope the successful implementation of the agreement will help bring to a close what has been a difficult period for many minibond investors.

Thank you.

主席： 謝謝。現在請銀行公會雷曼事件專責小組發言人龔楊恩慈女士發言。

銀行公會雷曼事件專責小組發言人龔楊恩慈女士：我們16間雷曼迷你債券的分銷銀行感謝主席及各位議員邀請我們的代表今天出席財經事務委員會的會議，讓我們有機會向各位解釋有關雷曼迷你債券若干系列最終處理方案的建議。

各分銷銀行希望大家明白，這個最終的處理方案是我們與雷曼迷債的受託人及接管人經過長久努力所爭取到的最佳方案，可以令絕大多數迷債投資者有機會收到額外的款項。自2008年雷曼兄弟申請破產保護以來，雷曼迷債的分銷銀行一直竭盡所能為迷債投資者爭取最大的利益，期間，分銷銀行於2009年7月主動提出迷債回購計劃，同時也將歷年銷售迷債的佣金收入大約2.91億港元撥作受託人的可用資金，令受託人可以委託獨立及專業接管人與雷曼展開談判，也協助客戶盡快取回迷債的抵押品。

在此安排的實際支持及推動下，接管人、受託人及其他關聯方面，最近與雷曼兄弟取得突破性的發展，達成了有關迷債系列，即10至12，15至23及25至36的有條件和解協議，此協議會在兩項前提條件獲得通過後正式生效。上星期美國破產法院確認，雷曼兄弟先前就若干衍生工具合約所產生的申索達成和解的程序的法令，適用於這次所涉及的抵押品，已經令第一項前提條件獲得通過。而分銷銀行也於日前向有資格出席會議的相關迷債客戶發出會議通告，如果這一批相關迷債系列的每一個系列均獲得最少75%出席會議的債券持有人通過接納最終處理方案，屆時，投資者無論之前有否與銀行和解，都可以按其所購迷債的不同系列收回投資款項的70%至93%。

此收回比例顯示，即使在金融海嘯之後，迷債相關系列的抵押品仍然保持相對較高的價值，接管人認為，考慮到迷債抵押品上仍然存在法律不確定的因素，而法律訴訟也可能會非常昂貴和涉及冗長的過程，因此目前能夠達成此協議，對投資者來說，已經是可以爭取到的最佳結果，分銷銀行尊重接管人的專業判斷，因此也議決會投票接納最終的處理方案。

除在抵押品收回款項外，分銷銀行對於客戶也以最大的誠意，決定向合資格的客戶作出特惠款項的安排，特惠款項相當於客戶收回抵押品的款項及其投資本金之差的一半，按剛才所講的抵押品收回比率，加上特惠款項的安排，合資格的客戶應可收回投資本金的85%至96.5%。另外，我們也同意增加受託人的可用資金至6.62億港元，用以支付所有收回現有迷債抵押品

及受託人責任相關的費用，令可以付予迷債持有人的款項不會因此而被扣減。

分銷銀行以最大的誠意，盡了最大的努力，作出了重大的財務承擔，推動、促成迷債事件的解決。我們希望，也相信這一建議方案會得到客戶及大眾的支持，可以早日順利落成。這兩年來，迷債投資的客戶、分銷銀行及員工，以至社會大眾都承受了很大的壓力、受到很大的困擾。分銷銀行希望隨着迷債問題的最終解決，香港社會可以真正放下包袱，同步向前。多謝主席。

主席：謝謝，現在我會給時間同事發問。有兩位同事已經舉手，甘乃威和涂謹申，每位5分鐘，好嗎？連問連答。李慧琼。甘乃威議員。

甘乃威議員：主席，我想先問證監會的施衛民先生，因為在這次所謂的和解方案事件上面，有關這些迷債的負責銀行所賠償的金額，遠遠低於有關其他銀行，譬如有關ELN的賠償。我想問問，這麼大規模的違規行為出現後，銀行只是作出這麼少的賠償，因為公眾覺得.....有很多賠償方案出來了，可能大家都有點誤會，其實最主要就是那些抵押品本身的價值是高的，如果大家看看那個表就可以看到，由七成到九成三是那些抵押品現有的價值，銀行只是付出大概5%至15%這些所謂的特惠補償，我稱這是賠償。

我想問，作為證監會，你如何去評論呢？為何如此大規模違規銷售的情況，銀行作出賠償的金額只是這麼少呢？這是第一個問題。

第二個問題，我想問羅兵咸永道會計師有關這個抵押品現在的價值，我聽政府說不會找第三者估值，我想問，你們一定有資料，現在你這個只是一個協議，與對方一個所謂協議的抵押品價值。你們應該知道有關這些抵押品最新的價值是多少錢，請你們向我們委員會回覆，究竟這個價值實際是多少錢？是否高於現在你們於表裏列出來讓公眾見到的金額？現有的價格是否會高於抵押品的價值？

同樣地，我想問滙豐銀行，我看見滙豐銀行給了我們一份文件。我曾詢問究竟在抵押品扣除多少金額，滙豐銀行在文件裏說有US\$12.2 million。我想問問，我看見文件裏說不會在抵押品的價值裏扣除，以免令苦主少收了錢。那麼除了這個金額之外，你們是否不會有任何金額從抵押品.....即苦主所擁有的價值裏

扣除，讓他們可全數獲取抵押品的價值作為他們的賠償金額？
3個問題。

主席：好的，有請證監會 Mr STEWARD.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Thank you, Chairman.

In response to the first question, that the amount paid by the banks under this minibond agreement is meagre in comparison, I think, with the agreements in relation to equity-linked notes, I think is what the question related to. The two agreements, the one with Standard Chartered Bank and the minibond agreement, are completely separate agreements, they're dealing with quite different things, different products and very different circumstances and they're not structured in the same way; they're not apples and apples, they're apples and oranges. The issue of the amount that's paid by the banks is an important issue because, in arranging these agreements, we don't have ... the SFC nor the MA, for that matter, has any power to compel any payments to be made by anyone other than a fine. The SFC has the ability to impose a fine but no power to compel any repurchase agreement, any repurchase amount or any compensation, for that matter.

What we set about here was to enter into an agreement that would secure a sufficient expiation for the internal systems and controls concerns that we discovered during our investigations. And then, together with the other regulatory measures embedded in the section 201 agreement that we entered into with the banks, we considered that, in the public interest, what was being offered to each eligible investor was worthwhile and should be given to those members, those investors, who could receive that offer.

Under the powers that we have, we had the ability, in theory, to impose a fine of ... to the 16 banks who entered into this agreement, a total fine of no more than \$873 million across all 16 banks; it would have been different amounts for each bank but, in theory, at maximum. The amount that's been paid out by the 16 banks to fulfill all of the financial commitments under this agreement is far in excess of that amount and, so, in our way of thinking, securing a substantially excessive amount of money to be paid out by the banks that will be directed to those people who were most affected by the losses consequent to the collapse of Lehmans was far preferable and far better than extracting the most maximum fines we could have extracted in theory where the money would have gone to the government and not to any of the customers who had suffered losses.

主席：好，有請羅兵咸永道會計師，哪一位代表回答？好的。

羅兵咸永道會計師事務所合夥人包思偉先生： Thank you, Mr Chairman. I can answer the question on behalf of PwC in relation to the value of the collateral.

I think the first thing that it's important for members and for investors to understand is that you shouldn't confuse the collateral with what the recoveries are. If we look at the totality of the minibond structure, as my colleague Ted OSBORN mentioned in his earlier comments, there is a structure put in place where the collateral is held for a variety of stakeholders that was used to support both the top-level and the lower-level swaps. Lehman has a claim at the top level and they have argued that they have a priority claim at the bottom-level swap, as well, and, as Ted mentioned, these are the key issues that we've been working through in coming to the settlement.

Turning directly to the collateral, we've provided several updates to noteholders during the course of the receivership on our Frequently Asked Questions via our specific website and, on 28 March, the day after we announced the settlement, on our Frequently Asked Questions, we advised that the collateral has a current value of, approximately, US\$1.5 billion but, again I reiterate, that is not directly translatable to recoveries because there are other competing claims for that money.

Under the agreement we've reached with Lehman, Lehman has agreed to release its claims on that collateral. If they don't agree to release their claims on the collateral, the only real alternative is to litigate. If we were to litigate, as Ted mentioned, the potential downsides may outweigh the benefits and it could be that, if litigation was to proceed and the litigation was to be lost, the returns could be very low or they could even be nil and, in our judgement, the recoveries that we've outlined in our announcement is better to take than the risk of losing most, if not all, of the remaining collateral.

Thank you.

主席： 滙豐銀行伍成業先生。

滙豐銀行亞太區首席法律顧問伍成業先生： 謝謝主席，謝謝甘議員你的問題。我們滙豐銀行，即美國滙豐銀行作為我們這個迷債的受託人，是沒有在抵押品裏面扣除任何我們的費用，這是……

主席： 好的，涂謹申議員。

涂謹申議員：主席，由於歷史的緣故，紀錄上我說說自己過往曾經做過及說過一些關於今天的結果的事情。主席，在去年過了10月有一次雷曼數百人的遊行，在之前一個公開聚會裏我簡單提過，之後，我曾經與特首、財政司司長、財經事務局局長、金管局總裁會面，並和一班苦主會見信託人的代表伍成業先生，在這5個情景之下，我是說.....不知是幸運還是不幸運.....如果今天的結果發生，之後銀行取回六、七成，散戶最後可能要輸兩、三成，在這情況下，如果銀行不撥出一部分它們能夠得到的資金給散戶的話，我預測可能有4萬至5萬人出來遊行。

因此，在今天的結果裏所謂"特惠款項".....雖然我知道很多迷債持有人不喜歡這個字.....但是我曾經在上述的5個場合裏.....雖然都是閉門的場合.....我曾經與幾位官員及伍成業先生說過。我不會因為今天的結果而特別感到自豪，因為這只是一個最低的底線。

以下是我的問題。主席，在發行人給現在的迷債持有人的通告裏有.....中文版本第5頁，**heading**是訴訟方案，當中說到"基於任何情況"，然後一直說"發行人就是由接管人擔任其代理，在考慮到獨立價值評估以及訴訟所引起的延誤"等等等等，於是他們認為現在的方案.....應該說訴訟方案是不及和解方案的分派。然後在下一段裏就建議他們投贊成票。

我的問題是，那些持有人需要考慮投甚麼票的時候，可能要考慮兩件事情。最基本的，第一就是訴訟輸贏的可能性，這是牽涉到法律意見的分析；第二就是如果贏了，剛才所說的獨立價值的評估或者種種，上層下層那些**claim**。這兩個是主要因素。我問的是發行人透過接管人會否在開會前公開獨立價值評估及所收到的法律意見，使持有人在5月20幾日的會議上，能在一個有基礎的情況下作出判斷？

主席：好的，你想問羅兵咸永道會計師，是嗎？

涂謹申議員：可能是滙豐，可能是羅兵咸永道。

主席：不，我希望大家都可以說明到底由哪一位回答，因為坐在這裏的各位代表都需要準備，而你問的問題最好具針對性，那麼他們便比較方便和.....

涂謹申議員：我是具針對性的。

主席：有請.....

涂謹申議員：主席，因為這裏的通告說的是發行人……

主席：……羅兵咸永道，好嗎？因為你說到評估價值的問題。好嗎？

涂謹申議員：主席，問題是會不會公開？我的意思是公開給有權投票的人。

主席：你讓他們先回答。

涂謹申議員：不是公開給全世界社會。

主席：有請羅兵咸永道會計師，好嗎？包先生。

安理國際律師事務所合夥人傑大偉先生： Mr Chairman, I've been asked to answer this question asked by the Honourable Member, for which I thank him.

The position regarding detailed valuations and legal advice is complicated by the fact that we do not yet have a completed settlement.

甘乃威議員：主席，我不知道……這位先生……代表是誰？

主席： David KIDD. Mr David KIDD.

涂謹申議員：好，他代表誰？他是誰的律師呀？他沒說代表羅兵咸還是代表滙豐。

主席：他是羅兵咸的律師，okay。

涂謹申議員：行。

主席：好。

安理國際律師事務所合夥人傑大偉先生： Thank you. I apologise for not introducing myself more thoroughly.

The position regarding the detailed valuations and the legal advice that the receivers have been given is complicated by the fact that we do not yet have a completed settlement and it is still possible, if the settlement cannot be completed, for litigation to take place with Lehman Brothers over the complex issues that have been described earlier.

In order to protect the interests of the noteholders and to maintain as strong a position as possible, it is important that details of valuations and legal advice are not made available to the public at this stage. The receivers have obtained independent valuations and have obtained extensive legal advice upon the position, not just in Hong Kong but also in New York and London, concerning the issues that surround the minibonds. And the judgement that the receivers have reached is that the result from the litigation would probably be no better than that that can be achieved in the settlement and that the risk of litigation could result in a significantly worse outcome. Now, in those circumstances, the receivers have formed the view that the settlement is preferable to litigation in order to protect the interests of the noteholders. And, again, in order to protect those interests, it is important not to disclose publicly and, in particular, to Lehman Brothers, the details of the valuations and the legal advice which may be relevant to any litigation if that should still be necessary.

涂謹申議員：主席，我沒有說要公開資料給公眾任何一個人，而是說要公開給有權投票的人。

主席：好的，涂謹申議員，你第二輪再發問，好嗎？李慧琼議員。

李慧琼議員：是，主席，時間有限，短問短答，我也想跟進涂謹申議員的問題。剛才羅兵咸永道的律師已經清楚說明他們的立場，我想瞭解政府局方的立場，會否在這方面可以有任何的法律意見或者工作可以幫助雷曼的小投資者，讓他們在投票時知道更多？這個希望政府回答，這是第一個問題。

第二個問題就是假設如果通過，也有很多苦主擔心。我們最近接觸了渣打的苦主，苦主說當時公布的方案是他們可以賠償九成半，但因一些其他條款，實際賠償只有七至八成。其實我想清楚確定，如果假設剛才在這次會議上所說的通過了，苦主是否真的可以取回現在公布的最少七成的款項？我希望局方能回答，這是第二個問題。

第三個問題是想瞭解一下……雖然我知道主席說這次會議是關於雷曼的，但事實上在這段時間也公布了渣打的方案，不知道局方或者SFC能否說說，因為很多渣打的苦主都跟我說，當日公布和解方案後，公眾都認為渣打的苦主可拿到九成半，但事實只是拿到六、七成，甚至更低的賠償，因為銀行按他們在渣打的資產淨值扣除了一部分金錢。我想問問局方，你們是否

已經同意這個做法？而這個做法背後基於甚麼理由？這是第三個問題。

第四個問題，更多.....

主席：李議員，時間只夠回答3個問題，不如先讓他們回答。

李慧琼議員：不是，只是用了1分鐘，有5分鐘的，對不對？你讓我問完吧。

主席：不，先讓他們回答，你第二輪再問吧。

李慧琼議員：最後一個問題，第四個問題就是很多沒有集體和解方案的苦主，其實他們更着急，包括花旗、蘇格蘭銀行、荷蘭銀行，甚至當年透過恒生銀行所買的ELN、MLN的苦主，甚至是精明債券的苦主，證監會可否.....因為沒有其他場合.....講一講這些沒有和解協議的個案，你們的調查進度現在怎樣，讓他們知道自已的位置。謝謝。

主席：好的。副局長，是否可以回答？

財經事務及庫務局副局長梁鳳儀女士：主席，我回答李議員第一個問題，就是關於政府有沒有東西幫助.....提供更多資料讓債券持有人可以作出決定。剛才PwC的律師亦解釋清楚，PwC根據律師的意見作出了專業的意見，就是說根據訴訟的勝算作出判斷，從而推薦債券持有人接受此方案。剛才律師也提出，因為擔心如果訴訟的話，資料拿出來會.....這是屬於他們專業的判斷及評估，因為整個過程也牽涉到與雷曼清盤人的一些商業協議。在整件事情的處理上，政府覺得已經委任專業人士作出專業決定，所以應該由他們作出推薦，然後讓債券持有人作出決定。

第二、第三個問題，或者我請施衛民先生.....

主席：好的。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, let me try and answer the other questions, if I can.

I think the first issue related to the Standard Chartered agreement. The Standard Chartered agreement, we have not said, and it would not be right to say, that that agreement will return 90 or 95 per cent of anyone's

investment. That's not what we've said and, to the extent that there's a belief that that's what the agreement does, then that belief is not correct.

What the agreement does is it returns ... it's designed to cap every eligible investor's loss to no more than five per cent or ten per cent of their available assets for investment held at Standard Chartered at the relevant time. So the 90 or 95 per cent is a reference to their assets held at Standard Chartered, not a reference to the amount of money that they've invested in the relevant equity-linked note or market-linked note. So, as I said in response to an earlier question, it's a different kind of agreement because the issue in relation to the Standard Chartered investigation was concentration risk. It wasn't a case of the product being unsuitable; it was a case of whether the exposure to the product by a particular investor was too much, given the amount of assets they actually held that were available for investment.

So concentration risk is designed to prevent people from exposing themselves to one risk or a single set of risks that would be imprudent and so the resolution here is designed to reverse the consequences of any imprudent concentration risk in each person's investment in equity-linked notes or market-linked notes. So it's a very different type of agreement.

I think the second issue, you asked about progress in relation to other investigations. I think, as you probably know, I can't give that information because the legislation, the SFO, restricts us from being able to disclose that information but I think it's fair to say we know full-well that our work is not yet done in relation to these matters and, perhaps, I should say no more than that.

主席：好，關於最後一個問題，阮國恒先生可否介紹一下，除了已經解決了的問題外，其他投訴的調查進度如何？

金管局副總裁阮國恒先生：主席，我想剛才施先生已經回答最後一個問題。

主席：是，你沒有其他補充嗎？

金管局副總裁阮國恒先生：因為法律上的規範，我們不可以就這一方面評估。

主席：好的，梁美芬議員。

梁美芬議員：是，主席。其實我也是跟進渣打的個案，我跟進得比較長時間，而且也見過很多苦主。他們給了我一個列表，

根據現在這個所謂95%，當中差不多……起碼有三成以上……其實當最後計算完剛才所說的available assets之後，只有30%或者45%。當然，有一些人更絕對希望100%，這個先別說了。我想很多人都歡迎這個回購方案，都以為起碼可取回95%，但是在計算那個資產的時候，我很詳細看過很多個案，他們把計算好的給我看，其中有一些個案是把他們其他的保險都包括在內，作為他們的available asset。當然，他們在那間銀行其他的資產全部都計算在內，以致其實他們……我覺得是很大的諷刺，就是他越信任這間銀行，他把他的資產和保險都放進去……譬如他加上其他甚麼保險有1,000萬的話，他買了50萬雷曼，其實只得一個零。

所以這個方案本身，我覺得，我希望……其實我想問問政府的態度，財經局及金管局怎麼看這個方案，因為很多苦主都問，其實你們是否都覺得很endorse？我們起初覺得95%都不錯，接近100%，但如果你看他這麼"算死草"，這樣的計算方法的確很不公平，而且我覺得帶有很大的誤導性，如果我不是逐一個案去看，我看了10多個個案，為他們計算，有些只有43%，有些只有30%，這樣絕對遠遠不是95%。他們很徬徨，因為不知道要怎樣做，所以我想聽聽政府的看法。

第二，我希望政府可以提醒一些事情。很多苦主在此階段收到美國一些信件，說向他們收購，好像我們的"田生"一樣，要簽一些東西。有些人不懂英文，銀行或者offer給他們的人就叫他們問獨立意見，他們連甚麼是"獨立意見"都不懂。所以在這方面我們希望幫助他們，尤其是立法會及政府、金管局，我想在這方面，應該要提醒他們，我看是"田生"翻版，其實就是拿走了他們的追討權。

這兩方面我都覺得是帶有誤導性，我們應該公開清楚，究竟對於這95%，政府的態度怎樣，我們可否要求渣打準確一點，那個95%就是他們買雷曼related的，這才是真正的95%。

主席：好的，副局長。

財經事務及庫務局副局長梁鳳儀女士：是，或者我回答梁議員第一個問題，就是政府對於渣打的方案有沒有endorsement。我想說清楚，如果金融機構有違規銷售或者各方面，即與證券大法有相違背的地方時，證監會是一個獨立……經過獨立的調查，並引用他們的權力作出懲處，他們是獨立作出意見，政府不會在這方面干預。

至於梁議員第二個問題，有關收購或者獨立意見方面，我交給施先生回答。

主席：施衛民先生。

財經事務及庫務局副局長梁鳳儀女士： Mr STEWARD.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

財經事務及庫務局副局長梁鳳儀女士： The second question?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, again, we have never said that the Standard Chartered agreement is designed to offer 90 or 95 per cent of anyone's investment. In fact, our media release explains quite succinctly that that is not what's happening. The issue is concentration risk and the relevant percentage is in reference to the available assets that a person has. Now, in looking at available assets, again, it's defined in the agreement, it's set out in the press release. In considering concentration risk, the issue is what should be the ... what would be the ideal exposure to a product like this in a diversified portfolio. And a diversified portfolio will include all sorts of other different kinds of investment products including, potentially, insurance.

We will, obviously, together with the MA, supervise and monitor the way in which Standard Chartered undertakes to implement the agreement and, if there's any concern about the way in which the agreement is being implemented by Standard Chartered, then I'm sure we'd be very glad to hear that from anyone who's concerned about it and would take that issue up with Standard Chartered. But it is important to understand that the Standard Chartered agreement is not a promise to pay 90 or 95 per cent of anyone's individual investment because that wasn't the way the agreement was structured; it wasn't the issue in the agreement.

梁美芬議員：我知道，但我希望Mr STEWARD不是說他們把保險計算在內是合理的。這樣絕對不合理，那只是買保險。我們現在說的問題是希望settle，和解，他應該實實在在告訴我們，他offer甚麼給投資者。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
There ...

主席：Okay，好。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：

I mean, I can't really give you a precise answer in the abstract because there are some insurance products that have elements of an investment as well; they act a little bit like a deposit or an equity investment so, without knowing exactly what kind of insurance products are being referred to, it's very difficult to give a precise answer. But, in respect to anyone who is concerned about the way in which the agreement is being implemented by Standard Chartered, we are more than happy to listen to those concerns and take those issues up with Standard Chartered if we need to.

梁美芬議員：不是，我希望……

主席：陳茂波議員。

陳茂波議員：多謝主席。主席，我希望我問的人，我短問，你短答。我這條問題問羅兵咸永道。根據你們預備的資料，常見問題回覆的補充資料，FAQ的supplementary第五條問題，你們說在24項迷你債券之中，18項的抵押品已經足額贖回。足額贖回，換句話說，我的理解就是100%收回。

那為甚麼在你們的 announcement 裏說 recovery 的 rate 只有 70% 至 93%，而不是說有一些是 100% 的 recovery？

主席：好的，哪一位回答？

羅兵咸永道會計師事務所合夥人區兆邦先生： I can answer that.

主席：好的。

羅兵咸永道會計師事務所合夥人區兆邦先生： Thank you for the question.

I think you're confusing a little bit, again, as what Mr BOSWELL talked about, the value of the collateral itself and the actual recovery that needs to be ... that will be paid to the minibond holders.

As I've said before, the settlement really necessarily has to take into account the legal obligations under the structure and what that means is that a payment needs to be made to Lehman Brothers in respect of the top-swap in which they have priority. And, essentially, in respect of the lower-level swap, you do have that issue whether a claim has priority or not. That's debatable; that's the "flip clause" issue. So the settlement itself takes into

account, really, two factors. One, a payment to Lehman in respect of the top-level swap and then, again, an amount to procure Lehman Brothers to release all of their claims in respect of the lower-level swap or its claim on the collateral by virtue of the flip clause.

So that is why the full amount of the collateral itself is not being distributed to the minibond holders.

陳茂波議員：好，主席……

主席：陳茂波議員。

陳茂波議員：主席，我跟進的問題是問證監會的，證監會去年7月發了一個新聞稿，當時是第一次拿方案出來希望大家同意。在7月22日新聞稿第二段裏說："If recoveries ..." 我看看有沒有中文翻譯。中文版是這樣說的："如果可取回的抵押品價值超過70%，分銷銀行會將變現所得減去70%價值後，再向接納回購建議的合資格客戶支付全數餘額"，是全數給回客戶。在這一項refer兩個列表，第五表和第六表。第五表和第六表述明這些抵押品可以……所取回抵押品的總額是多少。你看在表內已列出來，一直由0%、5%，一直到100%。

我的問題是第一，其實表內所指的是不是剛才所說的lower-level collateral的100%，在收到後就應該全數給回客人，而上面要給出去的錢，就應該銀行負責全數？否則，為何那時候會列出這樣一個表，讓人看見有機會收回100%？是否證監會本身在當時也誤導了那些接受此和解方案的人呢？

主席：好的，Mr STEWARD？

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：Yes, I can answer that question. There's no misleading. That statement is entirely accurate and that is, in effect, what is happening with or what is proposed to happen with the collateral. So what this means is, if the bank has paid someone 70 per cent in relation to a repurchase offer that they made back in 2009 under this agreement and then the bank recovers, say, 90 per cent of the collateral for that particular series, then the bank will make up the difference and pay a further 20 per cent to that person as a second tranche payment which is the very reason why this agreement contained within it the process which required the banks to take all steps to expedite the return of the capital, the collateral, to Hong Kong and disgorging their commission income in order to fund the receiver to do that.

So that's exactly what's happening and that sentence refers to exactly the proposal that is to be considered by the minibond holders in the meetings.

陳茂波議員：主席，我一句簡短的跟進。

主席：好。

陳茂波議員：我希望他們回去書面回覆我剛才的問題，這是第一點。第二就是說計算的問題，當然，剛才羅兵咸永道的朋友就講了怎麼計算，麻煩將那些計算方式列出來，這樣就有透明度，可讓大家都知道和看看是否合理。

主席：好的，okay，好。希望羅兵咸永道會計師樓留意陳茂波議員的要求，好嗎？梁國雄議員。

梁國雄議員：主席，再說渣打，其實很多渣打的苦主找我，我是特意到這裏來說說這個問題，我覺得那件事非常荒謬，證監會那位只講了到底發生甚麼事，卻沒講這樣發生合不合理。一個客戶信渣打，在那裏投資也好，在那裏買保險也好，存款也好，是因為信任你們銀行。沒理由因為信任你們，你們就把他當人質一樣，hostage一樣。現在銀行賠給客戶，不過銀行要扣客戶的錢。對於這種做法，那天我都已經調侃過，就是說一夜情不及婚姻，一夜情就是我跟你一次買賣，無論我是否有心掙錢都好。銀行向客戶說："你對我這麼忠誠，我是banker，你相信我。"現在客戶有東西在銀行裏，好像hostage一樣，銀行在賠給客戶時要扣錢。

我覺得這個完全.....我不是說你，我說渣打這間bank其實需要HKMA去管。這是甚麼銀行？你去做一件事，做一個deal的時候，對長期客戶竟相對苛刻，甚麼人來的？你說："這個協議不關我事，是他們的。"大哥，你們SFC加上HKMA是代表香港的投資者去談判的，是嗎？你們有"證監條例301"，你可以與對付新鴻基一樣，一樣譴責他，向他罰款，因為他錯了。你不去談，來到這裏，渣打的苦主都哭喪着臉，外面說賠九成，現在有一些計算出來只有三成多。撫心自問，你們到底有沒有給banker壓力？HKMA每一次上來.....在我們調查的時候，苦主總是說，"昨天剛剛打電話給我，說賠給我了"。要苦主上來提供statement，擔任witness，銀行才賠償，你們有沒有盡責呢？你們去年的回購方案都不清不楚，剛才羅兵咸回答，我都聽不明白。第一個方案，如果這麼多人聽不明白，很明顯是misleading，即是說sounds

good。那些苦主個個都如此徬徨，接受了，那現在怎麼辦？是否要JR你的決定呢？當天如果你做任何事.....你們所有人都是有體面的，穿得這麼漂亮，工資這麼多，都是有體面的人，任何誤導都是不可以的，因為你第一次已經誤導了那些買的人。如果在這個會議上，立法會議員都覺得是誤導，我們每人聽完後，都覺得原來可以取回九成或者一百。現在才說原來不是，Chartered Bank那個方案是自己訂的，當局不保障的。你們在幹甚麼？還有那個匯豐銀行 guarantor，他要 guarantee 甚麼呢？那些東西就在這裏，他在幹甚麼呢？我們問他，卻由羅兵咸替他回答，他有責任將那些錢，將那些剩下的東西盡量保持，然後再分，是嗎？要不然，他在幹甚麼？

我的問題是，你可不可以用SFO的301條去處分那些人呢？你不可以叫他賠錢，你可以處罰他，你處罰他，他就會怕。我問你，為甚麼你們處罰新鴻基時要他全數賠款？301就是為了保障.....減輕投資者的痛苦，維護香港的金融穩定和香港的信譽，你有權利做這些事情，你做了甚麼？你HKMA做了甚麼？

(旁聽席上掌聲響起)

叫你調查，幾千個case，查不到，HKMA不可以調查，你沒有去做判斷，現在你做了甚麼，我問你？你被人騙了一次，再代表別人去談判，再有另外一個條件，再欺騙那些人一次，這怎麼搞.....羅兵咸當然不關他事，他們只是technocrat.

你們是問責的，你們是負責監管banker的，現在banker最惡，我去示威也把我推出來。可以這樣誤導全香港人嗎？所有人都以為渣打賠九成半，我去示威的時候，有人說我們貪得無厭。

你說說為甚麼一夜情比結婚差？

主席： Mr STEWARD?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Chairman, can I try and give some response?

The first issue is, as I've said before, neither the SFC nor the MA has any power under any provision of the SFO to compel compensation ...

梁國雄議員： Yes, I know that.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
... for anyone.

梁國雄議員： But you can punish them.

主席： 梁議員，你讓他先回答，好嗎？他回答了...

梁國雄議員： They need to comply. That is your weapon.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
The ... as well, the maximum amount we can punish by way of a fine is three times the profit that a bank may have earned in selling the relevant product. In relation to the minibond banks, that total profit, if you accept revenue as a proxy for profit - and many would say it's too high - that amount is far less than the amount that, in fact, has been paid out already by the banks and will be paid out under all of the commitments that have been made. And, under these resolutions, that money gets paid to the very people who were applauding what you were saying whereas, under the proposal that you're suggesting, ...

梁國雄議員： But it's not ... they are not ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Can I ...

梁國雄議員： ... paying their money.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Perhaps I can finish? Under the proposal ...

梁國雄議員： It's not even a punishment.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Under the ... well, it's the maximum that we're allowed to impose and, under that proposal, that money would not go anywhere near those who have suffered losses as a result of the collapse of Lehman Brothers. That's the first point to make in response.

The second point is that what that means is the only other avenue by which people can obtain some financial redress for the circumstances they're in is for them to bring their own proceedings in court. Now, there is no doubt in my mind that the returns that we've managed to secure for customers under all of these agreements are much better than they could

have obtained through individual litigation on a net basis taking into account the time involved, the costs involved in litigation, as well as the considerable logistical, administrative and forensic challenges that anyone, that any individual, would face in taking on a bank in court.

And that's because of the course that we adopted in negotiating these resolutions and these solutions. Now, anyone who is offered one of these resolutions can say "No" and they can pursue their own litigation if they want to but the ...

梁國雄議員： But some of them, they're even illiterate, so how can they? So you are their guardian angels; you need to do your job.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, well, ...

梁國雄議員： You are paid by doing that kind of job.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
It's ...

梁國雄議員： Come on.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
It's ...

梁國雄議員： "Individual"? What do you mean by "individual"? You are a regime. You are part of the regime to protect the people of Hong Kong.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Well, I'm sorry you see it that way but I think the returns that we have secured through these arrangements have been enormously beneficial for the vast majority of people who have been affected and those people have accepted willingly and gladly ...

梁國雄議員： They were misled.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： ...
the resolutions that ...

梁國雄議員： They have been misled by ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： ... the resolutions that have been offered.

梁國雄議員： ... you guys for months.

主席： 梁國雄議員，你不要插嘴，先讓他回答，好嗎？

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： And the resolutions that I think we've managed to secure are far more rational outcomes than any other alternative that we had available under the present framework in which we operate.

梁國雄議員： But don't you think the banker will do the charity for them?

主席： 梁國雄議員.....

梁國雄議員： It's under the pressure.

主席： 你的發問時間已經到了。副主席。

梁國雄議員： You are not doing the charity; they are not doing the charity. They are not paying their own money. It's not even a punishment for them.

主席： 副主席

副主席： 多謝主席，我現在問一問，跟進梁美芬議員詢問的渣打個案。根據施衛民先生講，他說是否計算在資產內要視乎個別情況，看個別情況才再決定是否計算在總資產內。我想問的問題是，其實究竟有沒有一個原則？是否如果是投資相連的保險產品，就當它是一個可投資的產品？如果是一個非投資相連的產品，就不計算在資產內呢？我想知道你的大原則是怎麼計算的。

主席： Mr STEWARD?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： I think - I mean, I'm relying on memory here - I think that kind of product is included within the definition of "available assets" for the purposes of the Standard Chartered agreement.

副主席： Yes, but is it investment-linked you would consider that ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

副主席： ... qualified ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

副主席： ... asset?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

副主席： Whereas those non-linked, they are not qualified asset, right?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
I'm not ... from memory, I'd have to go back and look at the definition but I'm reasonably certain that investment-linked would be included within the definition of "available assets" in that agreement.

副主席： Can you support us with more details later?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

副主席： Okay.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

主席：好，石禮謙議員。

石禮謙議員：主席，我想問Mr STEWARD.

Mark, I have listened very carefully to your answers to both Priscilla LEUNG's and LEUNG Kwok-hung's questions regarding the Standard Chartered Bank and I realise that you do not have the power under the SFC Ordinance, neither do the HKMA have that power through their existing ordinances. But you have exercised your influence over Sun Hung Kai financial institution in helping those Lehman Brothers investors getting 100 per cent. Your influence is very powerful to the extent that you have actually acted upon the banks in this regard. Can you also help

those victims of Standard Chartered under the same technique that you have exercised with the Sun Hung Kai financial institution? Because there is an element of fiduciary duty of the bank in terms of misselling which is a matter of investigation by this particular Council.

To alleviate the problems and the suffering of all those victims, could you step forward, a minor step, to the extent that alleviating their troubles and worries over the last few years? I think you can do it, not talking about legal issues. This is not even a political issue, this is an issue which you have a duty to act on that ... protect them on your behalf.

主席： Mr STEWARD?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： Chairman, we have pursued a consistent approach in respect to every bank and every broker who has been the subject of one of these investigations. Keeping in mind that our investigations have primarily been what we call top-down investigations into the management systems and processes that were involved in the sale of all of these products by each of these financial institutions, the process of then, at the completion of the investigation, then turning to the organisation and saying ... and having a conversation about what the consequences and about what the potential range of outcomes might be, is something that we've done in every situation. We've done it in the same way. You talk about influence over the first broker to enter into one of these agreements; I'm not sure our influence is any greater there than it is with anyone else. The word "influence" is not one I'd use either.

I think we do need to be attentive to our legal obligations; we do need to be fair and reasonable when we're entering into these negotiations, when we're discussing outcomes. We have to ensure that what we do is based on cogent and probative evidence, that we have a position we can justify; that we're accountable for what we're doing and that we're being fair not only to the stakeholders who have been adversely affected by what we're concerned about but we're also fair to the brokers and the banks, ...

石禮謙議員： Yes.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： ... as well.

石禮謙議員： Chairman, Mr STEWARD have used the words "fair and reasonable". In your own humble opinion, do you think that this Standard Chartered settlement is fair and reasonable, to take into account of their clients who have deposits, who have other assets within their control, to

take that into consideration of a settlement? Is this fair? Is this reasonable? I mean, as an administrator in the SFC, please, answer this particular question.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, I'm happy to answer that question, Chairman, very quickly.

Yes, I am satisfied it's fair and reasonable because the purpose of the agreement is to cap every eligible investor's loss to no more than five or ten per cent of the assets that they have available for investment and I think, compared to what they might receive or what they're likely to receive in the winding up of ... in the bankruptcy of Lehman Brothers, I think that's an absolutely outstanding result.

石禮謙議員： But isn't the bank acting ultra vires to that extent that they are using other deposits to calculate on their settlement, which other banks are not doing that? And you still call that reasonable? You still call that fair to those people who actually have saved their money with the bank?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
The ...

石禮謙議員： Then how can you take that into account of a settlement which is not in the other common people's fair nor reasonable?

主席： Mr STEWARD?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
The agreement is very favourable to Standard Chartered customers because, in the definition of "available assets", it doesn't require anyone to include assets or deposits held outside Standard Chartered.

石禮謙議員： No, it's within ... even it's within Standard Chartered, because, by the time that they put deposits in Standard Chartered, that was nothing to do with Lehman Brothers. They trust the bank; this is the whole basis of trust, is that the bank is not acting in their fiduciary duty to look after the deposits which is not related to that particular incident. That's why Leung Kwok-hung was talking about one-night stand and marriage.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
I'm not sure if there's a misunderstanding about how the agreement operates but there is no deduction of any money from anyone under this agreement. There is ... no deposits, no other investments, are being affected. The

calculation is simply a calculation for the amount that would be paid if the person accepts the offer.

石禮謙議員： Yes, Mr STEWARD. This is not Chinese loss although it's not being taken out of their deposits nor their other assets but, because they have deposits and assets in there, their settlement is being affected. This is exactly how the calculation is.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
I follow, yes.

石禮謙議員： Do you understand that?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： I think you'd better understand ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： ... what is the Standard Chartered ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, I follow what you're saying.

石禮謙議員： ... proposal which is the members of this Council were asking. You seems to answer in a different angle, you know, and ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
I think it's because the Standard Chartered agreement is quite different to the minibond agreement.

石禮謙議員： So that's why I ask you this question.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： Is their settlement fair and ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： ... is the settlement reasonable?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： And you answer "Yes".

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes.

石禮謙議員： How can this be fair and reasonable ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, because ...

石禮謙議員： ... when the other ... when their Standard Chartered clients have deposits and assets held by the bank on a different aspect?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
The reason is because the issue that is being addressed in the Standard Chartered agreement is concentration risk. The issue is not the collapse of Lehman Brothers; the issue is not the losses flowing from the collapse of Lehman Brothers. The issue is concentration risk. So does the mechanism for calculating the price of the repurchase offer, does it correspond to concentration risk and is it a fair measure of what the concentration risk issue actually is? Yes, it is. It does address concentration risk because it reverses ... it puts the person back in the position they would have been in if they had made the decision to invest in equity-linked notes and concentration risk had been applied to that decision by Standard Chartered in a way that we think was more appropriate. That's what this agreement does and that's all it does.

石禮謙議員： If I ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
So, it's not designed ...

石禮謙議員： Chairman, if I may ask ...

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： ...
to indemnify anyone for loss ...

石禮謙議員： ... the same question on HKMA although, I mean, Mr Mark STEWARD doesn't represent the HKMA. I'm asking this question on HKMA. Is it fair and reasonable? This actually put a different interpretation of "trust in bank".

金管局副總裁阮國恒先生： 主席。

主席： 阮先生。

金管局副總裁阮國恒先生： 或者允許我很快回答，因為施先生其實對於渣打和解方案的理念都解釋得很清楚，這個和解方案不是關於對銀行信任與否，它主要是處理客戶在銀行投資的風險集中問題，剛才施先生已經很詳細地嘗試解釋這方面，而這個事實上也是整個回購理念.....不是回購，而是和解方案理念背後的精神。我們處理的是一個所謂風險集中的問題，所以才有這個計算方案。所以，這個計算方案不是關乎信不信任銀行的問題，當我們處理一個風險集中的問題時，就必定有這個計算方法。

石禮謙議員： 主席，香港官字有幾個口，主席，我的問題很簡單。

主席： 石議員。

石禮謙議員： 他這樣回答.....讓我說完，主席。問題是客戶在銀行有些儲蓄，他教別人在銀行儲蓄，但和解跟儲蓄是沒有關係的，他怎麼可以說這個風險這樣去計算呢？因為他儲蓄.....他一輩子的儲蓄，現在他一輩子的儲蓄已經失了一半，幸好他還有少許儲蓄在這間銀行，他信任這間銀行。你要公平合理，對於其他沒有儲蓄的人，銀行就賠，但有儲蓄在這間銀行的人.....使整個信託的責任，主席.....對這間銀行.....即這是令香港銀行一個很大的打擊，這個是從.....

主席： 明白。

石禮謙議員： 所以我覺得HKMA是失職，主席。

主席： 好的，有幾位.....

(旁聽席上掌聲響起)

主席：希望公眾人士可以靜一靜，好嗎？第二輪有4位同事，甘乃威、涂謹申、梁美芬及梁國雄。每位3分鐘，好嗎？甘乃威議員。

甘乃威議員：主席，我想現在最主要的問題是監管當局……

涂謹申議員：主席。

主席：是。

涂謹申議員：我們一直至6時半，是嗎？

主席：我知道。

涂謹申議員：那為甚麼會3分鐘呢？

主席：最初我們有兩位同事，我們都有5分鐘。你知道現在已經是……我會一直控制時間，好嗎？

Okay，甘乃威議員。

甘乃威議員：主席，最大的問題其實是監管當局說不同產品有不同的對待方法，但其實大家都看到一個很重要的……一個所謂大規模違規銷售的情況在銀行出現，但關於賠償的方法，這些監管機構卻為苦主做了一個決定：怎樣去劃一條線，哪些有賠償，哪些沒有賠償，哪些獲得多少賠償。你會使苦主非常困擾，也非常不滿，這就是癥結所在。這樣做之後，你把所有大規模違規銷售的情況就埋在沙堆裏面，根本沒辦法令銀行做出改善的措施。

我想問施衛民先生，剛才你提到雷曼迷債這個事件，現在賠償的金額遠遠高於你們去判罰他們的金額。你可否告訴我們，現在就雷曼迷債而言，實際上銀行賠償了多少錢？我是指特惠金，他們叫特惠金，我叫賠償。這筆特惠金跟你剛才說8億多元那個所謂你們可以叫他們作出的賠償，分別在哪裡？這是第一個問題。

第二，我想問羅兵咸，有關現在這個過程……

主席：這樣好嗎，甘議員？你先問這個，等會兒再問，好嗎？

哪一位回答？施衛民先生。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Yes, thank you, Chairman.

Firstly, in relation to the improvement in the future, this section 201 agreement in relation to minibonds required each of the 16 banks to undergo a complete re-engineering of their internal systems and controls in relation to the sale of structured products and that process has occurred under the supervision of the HKMA. In addition, each of the 16 banks also had to undergo a complete re-engineering of their complaints-handling processes and that, too, has been undertaken since July 2009. So it's not true to say that we have not also paid attention to the future needs in securing these agreements. It's absolutely critical to the achievement of these agreements that we also pay attention to the systems and controls issues that gave rise to our concerns in the first place.

Secondly, in relation to the amount that's been paid out by the banks in compensation in total, it's over ... it's about \$5.5 billion in relation to minibonds, it's over \$8 billion in total if I include also the \$600 million that's been paid out under the enhanced complaints-handling process that was also embedded in this section 201 agreement. By comparison, the amount that, in theory, the maximum fine that could have been imposed on the 16 banks, as I said, was \$873 million. Arguably, that's completely overstated, as well, because I'm using revenue instead of profit.

And I think, when this proposal was announced by the distributing banks on 28 March, this year, Bank of China made a statement to the market which indicated that their out-of-pocket expense in completing all of their financial commitments under this proposal will be in the order of \$1 billion. So one bank, by itself, its loss will be in excess of the total fine that could have been imposed on all of the 16 banks. So that's a measure of how significantly more in the money is the solution we have sought to achieve here than the solution that we could have imposed through a punitive or deterrent response using the powers that we have under the SFO.

主席： 涂謹申議員。

涂謹申議員： 主席，我還是跟進剛才第一輪的問題，就是我覺得羅兵咸在發此通告時，他剛才的解釋是不會提供那個獨立價值，或者評估、或者法律意見，免得對方雷曼那個清盤人知道，影響他的權益。可是你記住，我現在不是叫你把這兩份報告給我看，而是叫你給那些有權投票的人看，也不是叫你給對方看。

我希望你想清楚，如果你有一個這樣的評估，然後接着對苦主說："對不起，你可相信我，或不相信我"。我覺得這不是對那些個別持有人應有的態度。還有，你不要以為說："好，我不給你，你喜歡投就投，不投就不投，我反正有多數票，後面那些銀行都全拿了"。你記住，只要有一個人去法院申請禁制令或者司法覆核，你有都等於沒有。我不希望沒有，不希望沒有這個協議，但問題是，如果程序上你是這麼隨便，或者應該要給的不給，因為這樣而失去一個人，事情就大了，我希望你臨崖勒馬，最後考慮一下。

第二，主席，你的通告裏面竟然這樣寫，你做了那個分析後，接着就說接管人擔任發行人代理，但在不承擔任何個人責任之下，就相信這個協議是公平合理，然後叫人投贊成票。大哥，你連承擔責任都不承擔，你就告訴別人，建議別人。這也可以嗎？你是專業人士，你可以不承擔責任去出這樣的通知嗎？嚇死人了，大哥。

主席：好的，你讓他回答，好嗎？哪一位回答？

涂謹申議員：主席，他應該說，他是在承擔法律責任之下.....

主席：你讓他回答，好嗎？

涂謹申議員：他們的專業判斷相信是這樣，這樣才叫別人押注下去，別人可以告你疏忽，專業失當。不過，他說："我在不承擔責任下跟你說"，那我們怎麼樣？我們就不相信你。

主席：布先生，是嗎？

涂謹申議員：不承擔，有沒有攪錯？

主席：布鑾先生。

羅兵咸永道會計師事務所合夥人布鑾先生： Do I need to press this button? Sorry, yes. I am Jan BLAAUW.

主席： Yes, you can speak now.

羅兵咸永道會計師事務所合夥人布鑾先生： As we've said, we believe that all the key facts are disclosed in the notices of the meetings to enable noteholders to decide whether they want to accept a substantial

return in two months or risk a much higher ... or a much smaller or even no return in three to five years.

Lehmans have insisted on confidentiality of certain aspects of the settlement, in particular the settlement amount, as we've stated in the notice of the meeting. The reason for that is that they have a number of other settlements around the world and, therefore, have a commercial interest that they need to protect. We've agreed to this confidentiality in our settlement. And, in the same way, we expect Lehmans to fulfil its obligations, they have a right to expect us to fulfil our obligations on confidentiality. We do not intend to breach the agreement as there could be unknown consequences leading to the possibility that, as in any commercial agreement, it may either be terminated or frustrated which we do not believe would be in the best interests of the noteholders.

涂謹申議員： ... without shouldering any professional duty is a shock to the world.

羅兵咸永道會計師事務所合夥人布鑾先生： Sorry, I don't ...

涂謹申議員： In your circular, you said you will not shoulder any responsibility but you are professional. You must place your stake there by saying that "by our professional judgement", but you are not shouldering any responsibility ...

羅兵咸永道會計師事務所合夥人布鑾先生： Sorry ...

涂謹申議員： ... by issuing such a circular.

羅兵咸永道會計師事務所合夥人布鑾先生： I think we do shoulder responsibility in the recommendation that we make.

涂謹申議員： Yes, you said, "但不承擔任何個人責任". It's in your circular. I read it out. Whether you want to amend it?

羅兵咸永道會計師事務所合夥人布鑾先生： Sorry, what ...

主席：他可能不太清楚你想說的那個部分。

涂謹申議員：主席。

主席：第幾頁？

涂謹申議員：建議那部分。

主席：第幾頁。不是，你是指第幾頁，第幾條？

涂謹申議員：Circular第5.....中文，我看了中文，我劃了中文。

羅兵咸永道會計師事務所合夥人布鑾先生： I think ...

主席：是。

涂謹申議員：第5頁，建議那部分："發行人(接管人擔任其代理，但不承擔任何個人責任)因此相信，在全面考慮了其他方案後，和解方案可說是解決迷你債券系列相關爭端的最佳辦法"，然後就建議投贊成票。你說你不承擔任何責任，你是專業人士，可以發出一張這樣的circular嗎？

主席：他好，你先讓他回答，好嗎？哪一位可以回答？

羅兵咸永道會計師事務所合夥人布鑾先生： I think it's ...

安理國際律師事務所合夥人傑大偉先生： I can answer that.

主席： David.

安理國際律師事務所合夥人傑大偉先生： The receivers act on behalf of the issuer, which is Pacific, and, in doing that, they, of course, discharge all of their professional responsibilities to the best of their ability but I have to say that it is standard practice for receivers to act without personal liability because they are acting on behalf of the company and not in an individual capacity. They are agents of the company and they are representing the company. But that should not be confused with the very high professional standards that PricewaterhouseCoopers can be expected to employ with their independence, with their experience and with the integrity with which they have entered into the judgements that they have reached, which, I think, speaks for itself.

And, to follow up on one of the other questions that the Honourable Member raised concerning the disclosure of information, following up on my earlier answer, I hope that I did not mislead by saying that I did not believe and the receivers do not believe that it is safe to disclose detailed valuations or detailed legal advice at this point. There is, nonetheless, in the notice of meeting - and there will be in the questions and answers that are available at the meeting - a great deal of information about the legal

position and about the reasons why the receivers have entered into the settlement that they have. And there will be ample opportunity at the meetings for those issues to be explored further and for information, yet further information, to be given if investors require.

主席：梁美芬議員。

梁美芬議員：是，主席，我想進一步……就是剛才聽了Mr STEWARD及Mr YUEN一直解釋他們如何理解渣打銀行提的available asset。在此我很清楚說明，我們不可以接受這樣計算所謂投資總額的比例，因為如果這個95%你們都很認同……剛才我們一直細心聽，這樣是完全不可以接受的。我們不會因為他提出了這個方案，就說現在渣打已經辦妥了，解決了這個問題。有3間銀行，包括其他我認為在整個解決雷曼事件裏面……渣打、荷銀、Citibank都非常強硬，我也跟他們交手很多次，他們鼓勵苦主去告，大家都看到，一己之力如何去對付這麼多專業人士？我們自己也是專業人士。

我們想解決這件事，我希望金管局及證監會不要站在銀行一方，你們有絕對的談判能力，你們應該嚴打，這幾間銀行想出這樣的辦法，還要想一個available asset。我曾告訴陳健波議員，我見到一個case，竟連不是渣打銀行的保險都要計算在內。這樣是否合理？你怎麼還可以告訴我們知道這個95%是這樣計算，我也知道是這樣計算。現在我要知道你的態度，你的態度好像覺得他們很合理，這個是不可以接受的。

這些銀行現在沒有解決問題，可能部分人拿到了80%，90%、95%，真的有，但這是因為這些人把資產都放在該銀行，才這樣計算。這樣是不可以接受的，這並不是我們接受可以拿出來的解決方案，其他銀行還沒做的也跟這個方式去做，絕對不行。我們立法會繼續跟進下去，還要追究你們證監會及金管局，為何剛才可以這樣站在一起，好像為他們解釋。我多麼希望你們說："其實我們也不希望這樣，我們都努力勸他們再繼續……"，你們是可以做得到的，你們有談判能力，我絕對相信你們的能力。

他們有很多個案，我們看到是有問題的，你們定斷了，所以他們也願意和解。可是他們拿出一個這樣的方案，我們如何"收貨"呢？我真的越聽越生氣，我提出第一個問題的時候很客氣，聽完之後，我真的火了，我們在雷曼事件中一直做了……第三年了，我們希望全部解決，不要總在中環敲鑼打鼓，你明白嗎？很多苦主的情緒都出現問題。我真的很希望你們……

(旁聽席上掌聲響起)

你們真的要有同情心，因為這樣對着……他根本沒可能……總是叫他諮詢獨立法律意見，我們都代表了那些……已經為他們提供了很多意見。他怎麼"磨"下去呢？第四年快到了，我整個任期都不能解決這件事，我受不了。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Can I ...

主席： Mr STEWARD.

證券及期貨事務監察委員會法規執行部執行董事施衛民先生： ...
respond briefly, Chairman?

I think I've explained already that the Standard Chartered arrangement is dealing with concentration risk; it is not requiring Standard Chartered to indemnify investors for the insolvency of Lehman Brothers. There is no legal mechanism for us to make Standard Chartered responsible for the collapse of Lehman Brothers in terms of the losses suffered by Standard Chartered's customers.

I think the issue of concentration risk is one that needs to be very carefully understood in assessing whether or not the arrangement is a sensible, fair or reasonable one.

As for whether I'm on the side of the banks, the staff that have been working on these cases since October 2008, I think, are absolute heroes and I think Hong Kong should be very proud of the young men and women who have worked tirelessly to secure the outcomes that have been secured in this affair so far. Over \$8 billion has been paid out already to about 30 000 or more than 30 000 customers who have suffered losses arising from the acquisition of structured products connected to Lehman Brothers. I think that is a result that has not occurred in any other jurisdiction anywhere in the world and the outcome is absolutely outstanding. And for their efforts to be traduced in this way is really very disappointing and I think I find that personally extremely disappointing.

The second thing I want to say is, in your first round, you asked a third question in relation to some funds who are sending letters to Standard Chartered customers in Hong Kong, seeking to purchase their interest in the equity-linked notes that they hold. We're aware of that matter and Standard Chartered's aware of that matter and has spoken to both the SFC

and the HKMA and I understand that, today, Standard Chartered has posted a notice on its website advising customers how they should be dealing with those letters. So I think that's a matter that's well under hand and we're monitoring what is going on, as well.

梁美芬議員：主席，我一定要問完。

主席：梁國雄議員。

梁美芬議員：不，你讓我多說一分鐘.....半分鐘。

主席：不，你已經到時間，過了時間了。

梁美芬議員：不，因為很多人都超時很多。

主席：我知道。

梁美芬議員： Mr STEWARD.

主席：是。

梁美芬議員：你知不知道很多投資者是不看互聯網的？第二，我只要求一件事情，就是要嚴打這些無動於衷的銀行，以及還在.....我們自己是法律.....也不懂跟他們這樣計算，你們一定要嚴打，態度要嚴肅處理，不要你們先"收貨"，這樣就沒法談判，一定要解決這個問題，不要計算出這樣的"一盤數"來。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
The packages have been proposed by the SFC, not by the banks.

主席：好的，梁國雄議員。

梁國雄議員：主席，這位先生說如果不接受那個協議，你就自己去打官司吧。你也讀過聖經，大衛打死巨人哥尼亞，你以為真的是大衛打死的嗎？有上帝幫他的，有guardian angel，說的就是你，大哥。你叫大衛就這樣跟哥尼亞打，早死了，真的以為拿一塊石頭就可以扔死他嗎？你就是那個guardian angel，angel，對嗎？你是有這樣的權力，他沒有.....如果你condemn他，你openly condemn them，他們就不行了，一間有頭有臉的銀行，好似滙豐銀行如果被人這樣.....就好像你對付新鴻基證券一樣，直接罵他，以及叫他不要賣那些產品一年，你看看他怎麼樣？你是有那些武器的，你用不用而已。這是第一點。

第二，渣打銀行的概念是錯的，你進去賭場，你賭blackjack，輸了錢，或者你贏了錢，不會因為你同時賭過輪盤而扣你的錢，不會的，一盤歸一盤。就算那個是gambling，就算是騙，都也只是騙一次，你不可能這.....你明白嗎？一件事情聽起來不make sense，不同common.....違反常識，違反常理就不行，這是《普通法》的要義，大哥。你這樣搞，你有沒有common sense？你會不會這樣做？Would you put your foot into their shoe？你不會吧，如果你在渣打，你會不會自己去打官司？你當然會，因為你有錢，有這樣的知識。那些人是文盲、半文盲、退休人士，不懂英文的。你叫他跟他們打官司？你有病嗎？Are you sick？

你明白嗎？你不以這樣對待他們。老實說，如果你SFC開始時做好一點宣傳單張，不讓他們亂賣，如果你HKMA有去過看他們賣的時候是怎樣的，已經不用你現在去做慈善。你們早就應該像澳洲一樣，不許他們賣給這些人，只有職業投資者才可以買。好像美國一樣限制.....為何你做不到呢？你不做而已。不做，你第一就是錯在這裏，拿了權力不做事。

然後第二錯，就是你跟別人make了一個deal，接着你recommend，其實等於你recommend，因為你SFC跟他談的，是你主動的，知道嗎？You give them a weapon. 我告訴你利比亞那個例子就最好了，如果北約跟這個NATO不是弄一個no-fly zone，卡達菲是不會跟他談判的。

They need to bombard, the bombardment for the negotiation。你知道嗎？你要"炸"他，他才會跟你談判的。如果讓你去利比亞就死人了，沒有no-fly zone，甚麼都沒有，就向利亞比，向卡達菲說："你不要再屠殺人民"，這不行的。Do you understand it? You need to act as UN and NATO.

主席：好。

梁國雄議員： You know?

主席：好的。李慧琼議員。

李慧琼議員：主席。 I would like to confirm what I've heard from Mr STEWARD because, when you answer Priscilla's question, you have mentioned that the arrangement now we have for the Standard Chartered Bank settlement is proposed by SFC and it's not a result of the negotiation. If it is the case, I think I will be very, very disappointed because, if it is the

things proposed by SFC, I think it is something really unacceptable because it is so unfair, because you are punishing those who trust ...

(旁聽席上掌聲響起)

主席：公眾人士，請肅靜。

李慧琼議員： ... Standard Chartered Bank's moves.

主席：否則我們很難進行這個會議。

李慧琼議員： Can I confirm it is your proposal, not as a result of the negotiation? Because, if it is the case, I think it is the SFC's responsibility. If you let me know it is the result of the negotiation, I will, to a certain extent, accept that because I understand that it is ... it will have no ...

主席： Mr STEWARD?

李慧琼議員： ... ideal case in the world, right?

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Chairman.

主席：好的。

證券及期貨事務監察委員會法規執行部執行董事施衛民先生：
Of course, it's the result of a negotiation but the mechanism is something that was proposed by the SFC. I think it is entirely defensible and entirely justifiable in the circumstances in which ... based on the evidence that we had and we have. It's entirely supportable and it seems to me that there is still some misconceptions about it.

It's certainly not the case in any of the discussions we've had with other parties about this agreement but it seems there are some misconceptions about how the agreement actually operates and what it's intended to do. And we're quite happy to sit down again and explain it in clearer terms if anyone misunderstands it but we haven't had that feedback from people so far.

李慧琼議員：主席，我還想跟進，就是除了SFC之外，財經事務局的角色。你們都覺得這個是合情合理，是這樣嗎？有沒有為苦主爭取一些更合理.....因為真的很不合理，我寧願你大大方方說賠，你不是賠九成半，你是賠七、八成，但每個人都一樣。

你不可能扣除一些人……在渣打銀行有更多錢的人，扣得更多，這個真的是很不合理的安排。我想聽聽局方的想法，這是第一點。

第二就是我還想問關於沒有和解協議的苦主方面，他們更等候你們的工作，我希望如果你說你回答不了，你可否會後補充文件給我？荷蘭銀行、精明債券，有一些透過恒生銀行買的。可否告訴我們現在你手上有多少個案？你們由上而下的調查是否繼續？起碼我要知悉你的進展如何，不要就這樣一句說法律不允許你們說，你就不說，起碼你有多少個案都可以告訴我們，你們由下而上進行到甚麼階段，希望有一個明確的回覆，不要就這麼一句，太不公道了，對他們來說。

主席：好，誰可以回答？阮先生。

金管局副總裁阮國恒先生：主席，就第二個問題，我想我簡短地講一講。第二個問題，事實上我希望你們都了解，在法律上，無論我們或證監會都受到很大的規範，在我們進行一些調查，然後我們決定是否要採取一些法律行動，一些懲罰性的行動，中間都是有一個法律上的要求，我們要完成所有程序才能公開。

李慧琼議員：主席，可否……

金管局副總裁阮國恒先生：當然，我知道李慧琼議員剛才講的是會否還有一些其他和解方案正在商討，剛才施先生已經講得很清楚，因為法律的規範，我們真的沒法在這個公開的場合去討論這些問題，希望大家理解我們的困難。

李慧琼議員：主席，可否只是作事實的交代，說說關於其他沒有和解協議的銀行，他們收到了多少個案，有多少完成、多少還沒調查，以及由上而下的調查是否正在進行？起碼這些基本的資料，我都要確認，可以嗎？

金管局副總裁阮國恒先生：主席，其實……

主席：是。

金管局副總裁阮國恒先生：……或者允許我再補充一點。因為其實每個星期的星期五，今天……因為明天是假期，所以星期四，我們都會有一個列表公布究竟在金管局方面處理的個案中，有多少宗在不同的階段進行，其實如果你看我們今天的數據，我們正在進行一些我們希望採取所謂監管的行……不是監管行動，而是懲罰性行動，所謂法規執行的行動。那些個案總數大

約是1 500宗個案，那裏有一些數字，但我沒法將那些數字再分拆出來，多少宗關於這一間銀行、那一間銀行，因為這就涉及剛才所講的法律規範的問題。

李慧琼議員：.....局方答應統籌金管局及證監會對其他銀行調查的進度，因為很多苦主都不斷追問，局長可否承諾在會後給我們一份文件？

涂謹申議員：根本應該.....根據程序.....

主席：你等等，你等等。

涂謹申議員：不是。

主席：你等等，你等等。

涂謹申議員：我意思是希望.....程序的問題。應該是在另外一個會議專門討論剛才那些問題。

主席：我知道，我知道。我明白，我明白。

涂謹申議員：要另外開一個會。

主席：我知道，我知道，好嗎？

(旁聽席上掌聲響起)

主席：阮先生，你剛才的答案包括.....有沒有包括渣打銀行的那些個案？

金管局副總裁阮國恒先生：其實不同的個案會放在不同的格子內，這要看該個案本身是甚麼情況。剛才提到說，大家談了很多關於渣打銀行那個方案，我希望強調，個案的本質，我們想處理的那個問題，其實阮先生已經解釋了很多次，我們正處理一個所謂風險集中的問題。有一些.....我們處理的風險集中問題，有一些剛才提出來的那些特徵，就沒法避免了。

主席：好。

金管局副總裁阮國恒先生：另外，方案提出來了，我的理解是現在銀行發了信給有關的客戶，我完全理解，客戶當然希望可以拿到的賠償是越多越好，這個我完全理解，但如果真的有客戶.....我們之前也講得很清楚，如果有客戶對這個賠償不滿意，不接受這個方案，我們會繼續查有關個案。

主席：好，我想解釋一下。我也知道剛才有很多同事發問的那些是關於渣打銀行的個案，跟我們今天要處理的個案完全不同，但由於議員已經提出了問題及質詢，所以我惟有讓他繼續問，希望可以透過同事的發問，可以向政府或者證監會、或者銀行監管部門取得一些答案，我相信這些都是公眾人士所關心的事情，所以我沒有即時停止發問。我希望這個會議都能夠使大家瞭解雷曼或者相關銀行處理一些問題的資料，或者希望可以使監管當局能夠更明白公眾對這方面關注的問題，所以我沒有停止大家在這方面發問。

至於是否需要另外開會處理這些事情，這是另外一回事。好嗎？第三輪就是涂謹申議員及梁國雄。

涂謹申議員：主席。

主席：由於時間問題，我在此劃一條線，直至6時半，每位3分鐘，繼續好嗎？涂謹申議員。

涂謹申議員：我建議另外開一個會議，為甚麼呢？因為渣打的協議或其他……

主席：我們不要再討論那些問題了，好嗎？

涂謹申議員：不是……

主席：因為今天的會議……

涂謹申議員：主席，我現在要求你開另外一個會議，你明不明白？因為坦白講，我很遵守規矩，我當時也沒有在程序上阻止其他同事，因為我也想知道答案，但問題是我還有很多那方面的問題。

主席：Okay，這是另外一回事。你……

涂謹申議員：不是，主席，所以我要求你……

主席：你先繼續問你今天這個問題，你要……

涂謹申議員：我知道，我會。我浪費了25秒就是希望你再多開一個會議，因為關於concentration risk，我很多問題要問，我告訴你，主席。

主席：好，好，好。

涂謹申議員：Okay？

主席：好的，我們考慮及安排，好嗎？

涂謹申議員：主席，我先不問那方面的問題，因為我等下一個會議再問。這次我再說剛才羅兵咸那方面的問題，剛才的答案最"離譜"的是他說他跟雷曼的清盤人有一些協議，那些協議就是有一些東西要保密，okay，我當你是這樣說，這circular裏面哪處寫了這些東西？記住，我不是說要你把保密那些內容寫了出來，當然不行，但你要說有哪些我應該.....不過不能寫，因為保密。現在你直接回答我才這樣說，你是不是應該要.....如果今天你不回答我，我不問，或者沒有議員懂得問，那麼那些持有人就不知道有些事情你是withdraw from他，保密了？最後他有沒有權力追究你的專業責任，有沒有權力阻止這個會議是另外一回事，但問題這是基本的東西，你要說出來。

第二，主席，"法律意見"4個字，你找出來給我看，你只是寫了"獨立價值評估"，你沒有說你有法律意見做了分析，如果你有一個獨立的法律意見，你是不是應該寫在這裏？或者那個提供獨立法律意見的律師是不是說不能引述有這個獨立法律意見，連這些也要保密呢？當然不是。你有獨立價值評估，你應該同時有一個獨立的法律意見，你在這裏沒有引述，我告訴你，現在你的這個circular是faulty的，這個notice，如果別人真的要"砌"你的話，你已經死掉了。不會吧，大哥？後面的bank set aside兩億...

主席：讓他回答。

涂謹申議員：很多都是散戶來的，大哥。

主席：讓他回答。

涂謹申議員：這樣做？

(旁聽席上有喧嘩聲)

主席： Mr David KIDD?

安理國際律師事務所合夥人傑大偉先生： I'm happy to provide an answer.

The notice of meeting, I think, does refer, in places, to the matters that the Honourable Member has asked about. On page 5 of the English version, it's stated clearly that Lehman advised that it's very important that the amount payable under the settlement be kept strictly confidential and so noteholders are made very well aware that there is information that the receivers are not at liberty to disclose to them. Elsewhere, in fact, further down that same page, there's a section that deals with the litigation option in which the receivers say that they've considered the merits of the claims, they talk about the claims under the top-level swaps and the priority that is given to Lehman Brothers' claims under those swaps. They talk about the legal decisions that have been granted by courts in England and in the United States. They talk about the stalemate that has been reached as a result of the irreconcilable decisions.

And all of those matters are referred to in this notice of meeting. They are complex matters and a balance has to be struck between providing information which is comprehensible and digestible as opposed to providing so much information that people get lost in the detail. If, having read the notice of meeting, investors wish to ask further questions, then it's already been stated on a number of occasions that the receivers will be more than willing to answer those questions within the restrictions of confidentiality that they have had to agree to with Lehman Brothers.

涂謹申議員：主席，但是連"法律意見"這4個字都沒有，你說有一個法律意見，那法律意見得出的結論是甚麼？沒有。是吧？很簡單，你有"獨立價值評估"，你就寫了出來，但有沒有獨立法律意見，那些法律意見得出的結論是甚麼？有甚麼事必要時.....如果有事reopen的時候，可以追究，告那個律師疏忽都可以，但如果你不寫，那就變成你來承擔。

另外剛才說保密那一點，主席，我不是說個別的情況，而是你有甚麼東西，有哪一方面保密了是不能說的，你要告訴那些持有人，這方面我不能講，因為有關的內容要保密，連這些都沒有寫出來。

主席：好，哪一位可以回答？布先生。

羅兵咸永道會計師事務所合夥人布鑾先生： Sorry. In terms of the legal advice that we've received, I think, when you go through the notice of the meeting, you'll see a précis not of the specific legal advice that we've received but our conclusions that we've reached based on the advice that we have received. So that will give information to the noteholders ...

涂謹申議員： There can be two interpretation.

羅兵咸永道會計師事務所合夥人布鑾先生： Yes.

涂謹申議員： One is you ... those précis is the conclusion of the legal advice ...

羅兵咸永道會計師事務所合夥人布鑾先生： Yes.

涂謹申議員： ... but also without mentioning a independent legal advice, that can be ...

羅兵咸永道會計師事務所合夥人布鑾先生： I think ...

涂謹申議員： ... the conclusion that independently drawn by PriceWaterhouse without any independent legal advice.

羅兵咸永道會計師事務所合夥人布鑾先生： No, no, no, ...

涂謹申議員： Well, because it doesn't say that. It doesn't state to that effect.

羅兵咸永道會計師事務所合夥人布鑾先生： I think we do state that we've taken independent valuation advice, independent legal advice ...

涂謹申議員： But no mention of legal advice. Please, refer me to the wordings of "independent legal advice".

羅兵咸永道會計師事務所合夥人布鑾先生： Okay. I think, if you go to page 3, at the bottom of the page, the paragraph that starts "In July 2009", the second sentence,

"The funding has enabled the receivers to fully explore the litigation option referred to below. All such costs, including the fees of the receivers, their legal advisers and independent valuation experts and all meeting costs have, therefore, been paid by the banks and have not reduced the amounts available for distribution."

I think that indicates that we have been taking legal advice, we've taken it, and valuation advice. When we receive that information, we then have to decide how to proceed with that information. And we have disclosed, in the reasons for the settlement, the conclusions that we've reached in relation to the legal advice.

涂謹申議員： No, it refers to the spending of money on legal advice.

羅兵咸永道會計師事務所合夥人布鑾先生： Yes.

涂謹申議員： But it doesn't say that the conclusion on the litigation under the paragraph of the litigation matter or preference is the conclusion of independent legal advice, so it can be ... the Pricewaterhouse in its own, its own conclusion, without listening to the legal advice.

羅兵咸永道會計師事務所合夥人布鑾先生： Right, um, ...

涂謹申議員： You see the point? That's not clear enough.

羅兵咸永道會計師事務所合夥人布鑾先生： We have a professional responsibility to act ...

涂謹申議員： But you refer to ...

羅兵咸永道會計師事務所合夥人布鑾先生： ... in a reasonable way.

涂謹申議員： ... independent valuation.

羅兵咸永道會計師事務所合夥人布鑾先生： Yes.

涂謹申議員： Yes, but without saying that the précis is the conclusion drawn from independent legal advice. You see the point?

羅兵咸永道會計師事務所合夥人布鑾先生： I see your point but I think we disclosed sufficiently that there is ... that we have taken legal advice and I think, in the response that we've given to your questions, that we referred to the amounts that have been spent. That demonstrates that we have taken full legal advice in relation to the matters that we've had to deal with here.

主席： Yes. 好的，梁國雄議員。

梁國雄議員：我還是問關於金管局及證監會的事情。我們問你HKMA拿資料，你就說放了這些東西在這裏，不過沒有分類，即沒有分類別。首先，這是你第一個失職，你上來立法會，你怎麼知道我不問這些問題？這個世界有電腦，一個很差的電腦都能查到，如果你是有這個category，你有想過有這樣的東西，你已經放進去了，有軟件，一按下去就已經是了。你現在就跟我說沒有，我只有一條大數，我完全不"收貨"。如果你有的話，你

就給我們；如果你沒有，你回去做。還有，麻煩你趕快付錢做軟件吧。

(旁聽席上有笑聲)

對吧？電腦時代，你以為還是我16歲讀中學時做作業那樣嗎？有沒有攪錯？這是第一點。

第二，我聽見SFC說offer一些東西，其實第一次的offer也是你們offer的，即是去年6月。Martin WHEATLEY去了渡假，所以好像是派你出來的。其實這是充滿疑點的，其實這樣，作為一個由公帑去營運，由特首委任的機構，你有責任解釋你行事的邏輯，你不可以說："我是為你好"，北京政府就是這樣說的，"我為你好"，你明白嗎？你要說出來的，你要講你的邏輯是甚麼，你碰到甚麼difficulty。公共行政第一，你有沒有mission？有沒有vision，vision你知道，你要為香港人。第二，你有法律，有一個mission，你有vehicle。對嗎？

現在你遲遲沒有，你只是告訴我"我是為大家好，所以我offer這些東西"。你要明白，你offer的東西.....其實你是代表了所有人，因為只有你才有權力去跟他negotiate，難道他請我negotiate嗎？對不對？這是很簡單的道理，你不能卸責的。你講的那個原則，我不同意，但你可以再拿上來講，主席可能會安排或不安排會議，就算不安排會議，我也要問你。我跟你說一件事，就是渣打的邏輯是絕對行不通的，渣打的邏輯是保護他自己的利益，你作為談判的一方，你應該馬上指正他。明白嗎？你作為一個談判的.....我和警察談判也是這樣說："喂，這樣不行，我不會答應你的"。你要告訴他，You give them headache. You offer them headache. Come on。你要讓他覺得頭疼，知道嗎？你不要說："他一頭疼就不跟我談"，這個就是HKMA去查銀行的時候任志剛跟我說的話："我要與銀行家保持良好關係，所以我們不會查他的"。

Do you understand me? You need to offer them headache in the first place and then they will ask the painkiller and then you will get your job done. Come on.

主席：阮先生。

金管局副總裁阮國恒先生：主席，首先我澄清，剛才梁國雄最後說我們不會查銀行，我不知道我們甚麼時候說過這句話，我們從沒說過不會查銀行，我們絕對不會採取這個立場。

第二，我很多謝梁國雄這麼支持我們改善電腦系統，因為我們用的電腦真的很舊了。不過，不過，我相信梁國雄議員是誤解了我的意見。我剛才說的不是我們做不了這件事，剛才不是說分類，是說我沒辦法在法律允許我的情況下，告訴大家有哪一間銀行正在被我查，所以對於那條大數，我們不可以按銀行分開，這不是我們做不到，而是法律不允許我們這樣做，而我絕對尊重法律給我的框架。

梁國雄議員： But we have a different opinion. Anyway, we can use the P&P to summon you, anyway. You deploy a very, very good lawyer to confront us. You are wasting the public money.

涂謹申議員：主席，我希望你認真考慮開會，討論剛才那個渣打方案或者其他相關事情，為甚麼呢？因為如果那個和解方案真的只是concentration risk，只是這樣。

主席： 嗯。

涂謹申議員：那意味其實可以爭取其他，再爭取多30%回來，沒問題的，是吧？如果抓到另一方面的錯處。

梁國雄議員：讓主席說。

涂謹申議員：但我希望.....因為我還有很多意見想說。

梁國雄議員：讓主席安排。

涂謹申議員：主席，再開一次會議吧，真的。

主席：我們再考慮。好嗎？

梁國雄議員：我們事後再搞。

(旁聽席上掌聲響起)

主席：好的。今天的會議到此結束，好嗎？我們要多謝銀行界的朋友，以及這次處理雷曼事件的相關部門和機構出席這次會議，多謝各位。現在宣布結束今天這個會議。

(會議於下午6時40分結束。)

立法會秘書處
議會事務部1
2011年6月3日