立法會CB(2)6/08-09(01)號文件

(譯文)

香港中環長臣道 立法會 內務委員會秘書 甘伍麗文女士

秘書女士:

2008年10月10日內務委員會議程事宜

本人謹提出建議,要求將於明天下午召開的內務委員會中,決議邀請財政司司長、香港金融管理局總裁及證券及期貨事務監察委員會行政總裁出席特別內務會議向議員匯報有關迷你債券的情況,包括解釋爲何如此複雜及高風險的金融產品能夠直接向公眾銷售、金管局及證監會至今採取了甚麼行動去處理其收到的投訴,會否就其中一些個案進行檢控,及政府有何計劃提出調解機制或其他解決問題方案對已作出投訴及處境相同的人士賠償損失?

就社會廣泛關注的事項召開特別內務委員會會議,過往已有不少先例。本人提出的建議,是最便捷的方法讓內務委員會直接聽取官員的解釋及匯報,毋須等候事務委員會正式成立或由大會通過及委任專責委員會。這個做法,並不影響事務委員會或專責委員會日後就此事的討論。

在過去幾個星期,議員和政黨都竭盡所能幫助迷你債券的苦主,促請銀行關注事件以及監管當局作出回應。現時根據本會於2002年通過立例成立的監管機制,金管局有直接的責任。本人謹此附上與金管局總裁任志剛先生的往來書信,資議員備悉及參考。如經討論後,議員及公眾認爲現行的監管制度未能有效執行,或該制度本身已經失效或不足,本會必須採取跟進行動。

立法會議員 吳蠶儀

PAS

2008年10月9日

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(譯文)

香港金融管理局 國際金融中心二期 55 樓 任志剛先生

2008年10月6日

任先生:

感謝閣下即時回覆,可惜大函並未回應本人信中提到的最逼切的問題,就是那些在銀行力銷之下購買了迷你債券的投資客戶所應得的保障。

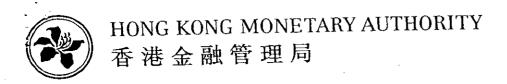
本人的問題十分簡單。迷你債券是一隻既複雜又高風險的財經產品。設若金管局確實已盡責執行其監管職責以保障投資者的話,怎麼可能容許銀行職員直接向客戶推銷此產品,而銷售對象甚至包括一些抵抗風險能力薄弱的人?而今事件既已發生,大群投資客戶蒙受巨大損失,金管局唯一準備承擔的責任,是否只是調查投訴,讓個別苦主(如果他們有能力負擔的話)自尋門路打官司索償?果真如此,金融管理局能不能算得上已兌現了當日在立法會審議和通過《銀行業(修訂)條例》時所作出的承諾?

金融管理局當然沒有強迫有問題的銀行對苦主作出賠償的權力。新加坡的金管局(MAS)同樣也沒有這樣的權力,但這無礙 MAS 願意主動提出保障消費者的措施,以維持社會大眾對新加坡銀行體制的信心。本人無意越俎代庖,指示金融管理局該採取何種措施以達到必要的效果,我正殷切期待早日得知閣下擬爲此事提出什麼進一步的措施。

閣下回函指出,法例中的有關條文,旨在確保銀行在金管局的監察之下,與 在證監會監察之下的認可持牌人士,在同一平台上競爭。然而這正好是當前的極 大疑問:綜觀目下所發生一切,法例的目標真的達到了嗎?

立法會議員 吳蠶儀

95%



Joseph C. K. Yam GBS, JP Chief Executive

任志剛 GBS, JP 练数

Hon Margaret Ng Member of Legislative Council Room 116, New Henry House 10 Ice House Street Hong Kong

(By post and by fax)

3 October 2008

Thank you for your letter of 2 October 2008 regarding complaints by members of the public who purchased investment products related to Lehman Brothers Inc. from banks in Hong Kong. I would like to assure you that the HKMA shares the community's concern over this matter and is giving it urgent attention.

While the HKMA is the frontline supervisor of the securities businesses of those banks in Hong Kong that have been registered with the Securities and Futures Commission (SFC) to conduct regulated activities (banks), it does not authorize the issue of advertisements, invitations or documents relating to investments under the regulatory framework of the Securities and Futures Ordinance (SFO).

In supervising the securities business of banks, the HKMA requires them to comply with the Code of Conduct for Persons Licensed by or Registered with the SFC in selling securities and futures products. The purpose of this requirement is to ensure a level playing field between the banks and persons licensed by the SFC. The Code requires financial intermediaries selling such products to explain the products and the risks they entail to their clients. Banks, like persons licensed by the SFC, are required to comply with relevant regulations under the SFO and to have adequate internal systems of control to ensure that they properly assess the suitability of investment products for their customers and adequately disclose the nature and risks of the products. are also required to disclose whether they are acting as agent or principal and assure themselves that their clients understand the nature and risks of the product

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they are buying and that the clients have sufficient net worth to assume such risks and bear any losses that might ensue. In addition, the HKMA has impressed upon banks the need to assess the risk appetite of customers and explain the risks of investment products. The HKMA conducts regular on-site examinations of banks' securities business and, where weaknesses are identified, issues guidance to the banks requiring them to strengthen their controls. For example, the HKMA has issued guidance emphasising the need to exercise special care in explaining products to vulnerable groups, including the elderly.

The HKMA has now received around (5,000) complaints regarding Lehman Brothers-related investment products sold by banks and we have begun processing them. As I am sure you will understand, it is essential that every complaint is dealt with thoroughly on its merits and without prejudging the issue. We are deploying significant resources to this task. While we expect to reach initial conclusions on some cases shortly, it will obviously take some time to complete all the work, particularly since we continue to receive new complaints.

As we arrive at a conclusion on individual cases, we will inform the complainants of our conclusions. In cases where we conclude that banks or their staff have been guilty of mis-selling the investment product which is the subject of the complaint, the HKMA may take appropriate disciplinary action against the Relevant Individuals, the executive officers or the bank concerned. The bank, the Relevant Individuals or the executive officers concerned may appeal to the Securities and Futures Appeals Tribunal. The HKMA does not have the power to order banks to compensate customers. However, where we conclude that banks or their staff have mis-sold investment products, customers are put in a better position to pursue their own civil remedies.

As you may be aware, the HKMA will provide the Financial Secretary with a report on the lessons to be learned from this incident within three months. In the meantime, the HKMA will be happy to brief Members of the Legislative Financial Affairs Panel on the matter when the new Council session begins.

With warmest regards.

Yours sincerely,

(譯文)

香港金融管理局 國際金融中心二期 55 樓 任志剛先生

2008年10月2日

任先生;

本人曾任《證券及期貨條例》及《銀行業(修訂)條例》草案委員會的成員及副主席,這兩條條例草案均於2002年經立法會審議通過,建立了現行的監管機制:令銀行在金融管理局(金管局)監管下,可向消費者直接售賣金融產品。從草案委員會向立法會提交的報告可見,草案委員會當時特別關注這套監管機制能否為對這些金融產品認知不多的一般投資者,提供足夠保障。證券業經紀及經紀行均須受證券及期貨事務委員會(證監會)嚴格監管,但本身佔盡各種優勢一例如貼近公眾,以及一直標榜爲公眾應予信賴一的銀行業,是否同樣受到充分監管,是一個關鍵問題。在兩條條例草案審議過程中,金管局會向各委員保證,有關的條例草案能給予消費者充分保障,因爲金管局有責任採取一切合理步驟,以確保銀行「認可機構」所經營的業務,是「以持正、審慎的方式,以及適度的專業能力」經營。條例草案委員會在審議過程中在這方面經過詳細討論,理解是新訂的條文的整體效果,便是金管局會負起保障消費者權益的角色,監管銀行推銷和售賣這些金融產品的經營方式。這兩項條例草案便是基於金管局曾向立法會所作的保證而獲通過。金管局所需履行的額外責任,現存於香港法例第155章《銀行業條例》之下。

最近「迷你債券」事件在社會引起廣泛關注,是對金管局能否兌現承諾,充分保障小投資者權益,是一大考驗。根據傳媒報道,絕大多數這類「迷你債券」持有人都是在銀行力銷下購入此類「債券」而將要蒙受嚴重的財政損失。到底金管局對這些消費者所提供的保障有多大成效?金管局會如何爲蒙受損失的消費者討回公道?

「迷你債券」事件爆發時我身在外地,回港所見是,大批驚惶失措的市民蜂 湧至各銀行,力爭與銀行高層會面,要求了解所面對的處境和討回公道。這情况 不禁令人質疑,是否我們的監管機制失效,至使守法的市民迫上自救的途徑?如 這情況繼續下去,對於公眾對銀行業的信心以至香港這個被標榜爲一個監管完善 的世界金融中心的聲譽,又會帶來什麼影響?

從傳媒報道得悉,金管局的回應是在三個月內就所接獲的投訴進行調查及作

報告。我認爲對於任何有效率的機構,特別是在面對全球金融危機的情景之中,這個「慢郎中」的回應,實在是不可接受的。到了現階段,「迷你債券」顯然不是一種「低風險」的投資產品;在銷售過程中對這些產品的描述顯然有嚴重的誤導成份(甚至有可能是存心誤導)。到底「迷你債券」是什麼一回事,即使是一位法律專業人士在花上時間認真細讀有關這項金融產品的整套資料之後,仍會覺得艱避難明。但金管局的專家對這類產品的實質內容,瞭如指掌。產品介紹與實質組成兩者之間的嚴重落差,已能構成錯誤陳述失實的有力表面證據。投訴的龐大量質(迄今已達數千宗),更顯示涉及所採用的銷售手法大有問題。對這些苦主採取疏離的姿態,而令他們只有個別興訟向銀行追討一途,迫使他們在過程中耗費大量時間和金錢,向法庭逐一證明所涉的銀行機構、職員和搜集相關事實和資料,無論對香港特區或金管局而言,都沒有好處。更甚者是即使要循法律途徑追討,大多數的苦主都不熟悉法律程序或缺乏經濟能力,難道我們樂見大批苦主去申請法援來興訟?

由於新一屆立法會會期仍未展開,個別黨派或議員只能各自跟進事件。我已知會立法會秘書處在可能範圍內作一切準備,以便日後立法會安排與有關機構,包括金管局、證監會及財政司司長商討和跟進此事件。我謹此希望 閣下能親自關注此事,以期金管局能從速履行其監管責任和行使權力處理此事。設若有銀行的行為未能符合應達標準,則尋求及促進集體和解的良方,無疑有助將損害性減至最低限度。

立法會議員 吳靄儀

二零零八年十月二日