

URGENT BY HAND

2nd October 2008

Mr. Joseph Yam
Chief Executive Officer
Hong Kong Monetary Authority
55th floor
IFC 2
HONG KONG

Dear Mr. Yam

I write as member and Vice Chairman of the Bills Committee which was responsible for the scrutiny of the Securities and Futures Bill (SFB) and Banking (Amendment) Bill which were passed in 2002. These were the main statutory instruments which set up the present regulatory system under which banks are allowed to sell financial products directly to the consumer under the supervision of the Hong Kong Monetary Authority. As may be seen from the Bills Committee's report to the Legislative Council, the Bills Committee was particularly concerned about adequate protection for the consumer-investor who had little expertise in such products. While brokers and brokerage firms were under the stringent supervision and regulation of the Securities and Futures Commission under the SFB, there was a question as to whether sufficient safeguards apply to banks which enjoyed many advantages, including proximity to consumers and the confidence consumers were urged to place in the banking system. At the time, the HKMA assured members that under the bills to be passed, consumers would be adequately protected, as the HKMA had a duty to take all reasonable steps to ensure that any business of the banks (referred to as "Authorised Institutions") is conducted with integrity, prudence and the appropriate degree of professional competence. As an issue thoroughly canvassed in the process of scrutiny, the overall effect of the new provisions was that the HKMA takes on the role of consumer protection regarding the conduct of the banks in promoting and selling such financial products to the consumer. The two bills were passed upon such assurances to the legislature. Indeed, the additional duty of the HKMA was enacted into the Banking Ordinance, Cap.155 where they are still in force today.

The recent public concern arising from the "mini bonds" 迷你債券 is now putting to the test these assurances of consumer protection under our regulatory system. As reported in the press, a great majority of the consumers who are facing substantial financial loss had purchased from banks under aggressive marketing methods. The question is, how effectively has the HKMA been protecting their interest, and to what extent will HKMA act towards procuring their redress?

While I was not in Hong Kong at the time the crisis broke, I returned to see groups of panicking citizens rushing to the banks in desperate attempts to meet the management staff in order to get an explanation and some form of redress. Has our regulatory system failed so that law-abiding citizens are driven to self-help? How can that be conducive to confidence in our banking system or Hong Kong's image as a well-regulated world financial centre?

I learned from the press that the HKMA has agreed to investigate complaints and report on the matter in three months. This appears to me an unaccountably slow response by any efficient body to a crisis which is aggravated by the context of a global financial meltdown. It is now not in doubt that the "mini bond" is far from a "low-risk" investment and that the description is completely misleading (possibly calculated to mislead). What it really is is in fact extremely difficult to understand even to a lawyer who has conscientiously studied the full set of relevant documents. But the true nature of the product must have been easily appreciated by the experts of the HKMA. The discrepancy is strong prima facie evidence of impropriety and misrepresentation. The large number of complaints – now in thousands – is itself evidence of the marketing strategy adopted. It cannot be in the interest of the Hong Kong SAR or HKMA to take such an aloof position as to drive each victim to take court action against each banking institution with vast amounts of time and funds wasted in identifying the individual bank and bank staff and factual events in each case. Many of these victims may not have the knowledge or the funds to sue. Should we then expect them in their numbers to apply for legal aid? Would that be a reassuring sight to anyone who wishes Hong Kong well?

It is unfortunate that LegCo being prorogued, members can only act individually. I have informed the LegCo Secretariat to make all preparations it can to facilitate a discussion between the House and the Authorities, including HKMA, the SFC and the Financial Secretary. In the meantime, I am writing to seek your personal attention in this matter in the hope that HKMA will see fit with expedition to discharge its duty and exercise its powers to intervene. Should the banks be found to have fallen short of the requisite standards, a collective settlement would be undoubtedly the least damaging for all.

Yours sincerely

Margaret Ng

c.c. Mr. John Tsang, Financial Secretary
c.c. Mr. Martin Wheatley, Chief Executive Officer, Securities and Futures Commission