How to Prevent the Next Lehman-Minibond Debacle?
如何防止雷曼迷債事件重演？

by

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Working Paper No. 10

June 2012
二零一二年六月

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Acknowledgements

The Institute of Global Economics and Finance is grateful to the following individuals and organizations for their generous sponsorship (in alphabetical order):

Individuals

Vincent H.C. Cheng

C.K. Chow

Victor K. Fung

Lawrence J. Lau

K.L. Wong

Organizations

BCT Financial Limited

China Development Bank

Henderson Land Development Company Limited

The Bank of East Asia, Limited

The Hongkong and Shanghai Banking Corporation Limited

Sun Hung Kai Properties Ltd.

鳴 謝

全球經濟及金融研究所衷心感謝以下捐助人及機構的慷慨捐贈
及對我們的支持 (以英文字母順序)：

捐助人	捐助機構
鄭海泉	BCT銀聯集團
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馮國經	恒基兆業地產有限公司
劉遵義	東亞銀行有限公司
黃桂林	香港上海匯豐銀行有限公司
	新鴻基地產發展有限公司

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Lawrence J. Lau*

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The Legislative Council Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products has now published its Report, which is focussed on the regulatory issues related to the distribution of Lehman Minibonds and the practice of the retail banks engaged in such distribution. The Report has reached conclusions, assigned responsibilities and made recommendations. At the same time, three LegCo members on the Subcommittee have also issued their own minority report on the same subject.

The purpose of this article is not to duplicate their very comprehensive efforts but to examine two more fundamental questions. First, should these complex financial investment products be allowed to be sold at the retail level? Second, if the answer to the first question is yes, should they be sold by commercial banks, or should they be sold by securities brokerages?

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If such products are not allowed to be sold at the retail level, that is, to the average retail investors, but restricted to be sold to what one may call sophisticated investors, then the entire problem would not have arisen. A product such as the Lehman Minibond was not approved for sale at the retail level in the U.S. and in many other jurisdictions because of its complexity and its potential risk. Yes, it was approved for sale at the retail level in Singapore, but just because Hong Kong's principal competitor as an international financial centre approved it did not have to mean that Hong Kong must approve it.

Why should such a complex and potentially risky financial product be allowed to be sold at the retail level? The Securities and Futures Commission (SFC) should bear the primary responsibility. Of course, the SFC may claim that it does not approve products per se, but only the disclosure documents related to the product. But surely the disclosure documents must have been approved relative to a certain class of investors. They must have been deemed sufficient for the average bank depositor by the SFC. Thus the SFC cannot shirk the responsibility for the "approval".

Similarly, it is also not clear why commercial banks that take retail deposits should be in the business of selling these investment products at the retail level, other than the fact that it may make money for them. It might have been all right

if these products were marketed in the trust departments, or in the wealth management units, but not to the average depositors. Commercial banks in the U.S. are not allowed to sell investment products to their retail depositors. Retail depositors typically look to their banks for safety, security, liquidity and predictability of return. There should have been a strict separation between the roles and functions of commercial banks and securities brokerages. If there were such separation, then at least the brokers selling these products would be appropriately trained and supervised—not so for the average cashier clerks at commercial banks—and there would not have been so much mis-selling. And if the commercial banks were not allowed to sell these products, as in other jurisdictions, the entire problem would not have arisen either. Asking ordinary bank clerks to explain these complex products to their retail customers is an impossible mission.

There is therefore a structural problem to be addressed: that commercial banks should not be allowed to engage in the distribution of investment products to their retail customers. They can, if they wish, set up separate securities brokerages to distribute these products totally independently and separately from the banking operations. If these products are only sold through securities brokerages, then the approval of the product as well as the regulation and supervision of its distribution will all become properly the sole responsibility of

the SFC, and the Hong Kong Monetary Authority (HKMA) will no longer need to supervise the sale of a product that it plays no role in approval.

Going forward, the regulatory and supervisory agencies should realise that their primary duty is to protect investors, depositors and consumers and not to help the banking and security industries make money or to encourage unproven financial innovation (the “accumulator” comes to mind). The best and surest way to prevent another debacle similar to that of the Lehman minibonds is: first, for such complex financial products not to be approved for retail distribution, and second, to have the distribution of investment products done only by licensed securities brokerages and not by commercial banks.

如何防止雷曼迷債事件重演？

劉遵義[#]

2012 年 6 月

立法會「研究雷曼兄弟相關迷你債券及結構性金融產品所引起的事宜」小組委員會已經發表報告，專注於討論雷曼迷債分銷的相關規管事宜，和從事這產品銷售的零售銀行的銷售手法。該報告已作出結論、分配責任、以及提出建議。與此同時，三名該小組委員會的議員亦就相同議題發表另一份小眾報告。

本文目的並非再次綜論雷曼迷債事件，而是希望檢視兩個更根本的問題。首先，這類複雜的金融投資產品應否獲准在零售層面發售？其次，倘若第一個問題的答案是「應當獲准」，那麼這類產品應該由商業銀行發售？還是由證券商發售？

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假如這類產品不允許在零售層面發售，即不允許售予一般零售投資者，而限制只可售予所謂富有經驗的投資者，那麼這類事件便不會發生。在美國等不少地方，雷曼迷債等產品是不會獲准在零售層面發售的，因爲有關產品複雜，而且有潛在風險。的而且確，新加坡容許這類產品在零售層面出售，但純粹只因爲香港的主要國際金融中心競爭對手許可，並不表示香港必須依樣葫蘆，同樣批准。

爲何這類既複雜又包含潛在風險的金融產品獲准在零售層面出售？證券及期貨事務監察委員會應負上主要責任。當然，證監會或許會解釋，它們並沒有批准過產品本身可發售，只是批准了與產品有關的披露文件。但這類披露文件肯定必須針對某類級別的投資者才獲批准。證監會必定認爲，這類披露文件對一般銀行存戶來說已經足夠。所以，證監會不能逃避給予「認可」的責任。

同樣地，究竟接受零售存款的商業銀行，除了可以從中賺錢之外，爲何會從事把這類投資產品售予一般零售投資者的業務，這一點亦不清楚。假使由銀行的信託部門或財富管理部門來銷售這類產品，而且不是以一般零售存戶爲對象，也許沒有問題。美國的商業銀行不獲准把投資產品售予其零售存戶。零售存戶通常是爲了安全、有保障、流動性和確定的回報，才選擇銀

行。商業銀行與證券商的角色和功能應嚴格分開。如果各司其職，那麼銷售這類產品的證券經紀至少會得到適當培訓及監督----而不是商業銀行的一般出納員----而且亦不會有那麼多錯誤銷售的個案。假若一如其他國家及地區，商業銀行不獲准銷售投資產品予其零售存戶，這類事件亦不會發生。要求一般銀行文員向零售客戶解釋這類複雜產品，是不可能完成的任務。

所以，有一個需要解決的結構性問題，就是商業銀行不應獲准從事向其零售顧客分銷投資產品。倘若商業銀行想銷售這類產品，他們可以成立證券部門，以便完全獨立分銷這類產品，與銀行業務並不相關。假如這類產品只是經證券商銷售，那麼批准這類產品和分銷這類產品的監管工作，便理所當然完全成爲證監會的單獨責任，香港金融管理局也不再需要監督一些不是經它們批准的金融投資產品的銷售。

展望未來，監管機構應認識到他們肩負保障投資者、存戶及消費者的基本職責，而不是幫助銀行和證券業賺錢，或鼓勵未經驗證的金融創新產品（令人想起「累計期權」accumulator）。防止另一次類似雷曼迷債事件再次發生的最好及最可靠方法就是：首先，不允許這類複雜的金融產品在零售層面分銷；其次，只有領有牌照的證券商而不是商業銀行，才可分銷這類投資產品。