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

by

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How to Prevent the Next Lehman-Minibond Debacle?

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.

如何防止雷曼迷债事件重演？

刘遵义[#]

2012 年 6 月

立法会「研究雷曼兄弟相关迷你债券及结构性金融产品所引起的事宜」小组委员会已经发表报告，专注于讨论雷曼迷债分销的相关规管事宜，和从事这产品销售的零售银行的销售手法。该报告已作出结论、分配责任、以及提出建议。与此同时，三名该小组委员会的议员亦就相同议题发表另一份小众报告。

本文目的并非再次综论雷曼迷债事件，而是希望检视两个更根本的问题。首先，这类复杂的金融投资产品应否获准在零售层面发售？其次，倘若第一个问题的答案是「应当获准」，那么这类产品应该由商业银行发售？还是由证券商发售？

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假如这类产品不允许在零售层面发售，即不允许售予一般零售投资者，而限制只可售予所谓富有经验的投资者，那么这类事件便不会发生。在美国等不少地方，雷曼迷债等产品是不会获准在零售层面发售的，因为有关产品复杂，而且有潜在风险。的而且确，新加坡容许这类产品在零售层面出售，但纯粹只因为香港的主要国际金融中心竞争对手许可，并不表示香港必须依样葫芦，同样批准。

为何这类既复杂又包含潜在风险的金融产品获准在零售层面出售？证券及期货事务监察委员会应负上主要责任。当然，证监会或许会解释，它们并没有批准过产品本身可发售，只是批准了与产品有关的披露文件。但这类披露文件肯定必须针对某类级别的投资者才获批准。证监会必定认为，这类披露文件对一般银行存户来说已经足够。所以，证监会不能逃避给予「认可」的责任。

同样地，究竟接受零售存款的商业银行，除了可以从中赚钱之外，为何会从事把这类投资产品售予一般零售投资者的业务，这一点亦不清楚。假使由银行的信托部门或财富管理部门来销售这类产品，而且不是以一般零售存户为对象，也许没有问题。美国的商业银行不获准把投资产品售予其零售存户。零售存户通常是为了安全、有保障、流动性和确定的回报，才选择银

行。商业银行与证券商的角色和功能应严格分开。如果各司其职，那么销售这类产品的证券经纪至少会得到适当培训及监督----而不是商业银行的一般出纳员----而且亦不会有那么多错误销售的个案。假若一如其他国家及地区，商业银行不获准销售投资产品予其零售存户，这类事件亦不会发生。要求一般银行文员向零售客户解释这类复杂产品，是不可能完成的任务。

所以，有一个需要解决的结构性问题，就是商业银行不应获准从事向其零售顾客分销投资产品。倘若商业银行想销售这类产品，他们可以成立证券部门，以便完全独立分销这类产品，与银行业务并不相关。假如这类产品只是经证券商销售，那么批准这类产品和分销这类产品的监管工作，便理所当然完全成为证监会的单独责任，香港金融管理局也不再需要监督一些不是经它们批准的金融投资产品的销售。

展望未来，监管机构应认识到他们肩负保障投资者、存户及消费者的基本职责，而不是帮助银行和证券业赚钱，或鼓励未经验证的金融创新产品（令人想起「累计期权」accumulator）。防止另一次类似雷曼迷债事件再次发生的最好及最可靠方法就是：首先，不允许这类复杂的金融产品在零售层面分销；其次，只有领有牌照的证券商而不是商业银行，才可分销这类投资产品。