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RESEARCH WORKSHOP ABSTRACT

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Plain Language Risk Disclosure: The Lehman Minibonds Crisis in Asia

Plain language is now widely promoted and applied in the drafting of contracts and prospectuses. In Australia, it has recently been part of the effort to improve product disclosure in areas such as margin lending and investment products. It also makes an appearance in the proposed national unfair contract terms law, which was released on 11 May 2009. This provides that in determining whether a term of a standard form contract is unfair, a court must take into account 'the extent to which the term is transparent' and whether it is 'expressed in plain language'.

My paper considers the effectiveness of plain language techniques in disclosing the risks associated with complex retail investment products. The issues are considered in the context of a case study - the Minibonds crisis in Asia - which sparked street protests by retail investors in Hong Kong and Singapore and is likely to result in significant regulatory reforms. My paper argues that in the case of complex investment products, the ability of the conventional plain language approach to disclose risk in terms that retail investors can understand is limited. In such cases, it is necessary to look beyond, and supplement, the conventional plain language approach that has applied to date in respect of disclosure documentation.