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Session 1: Are Consumer Protection Initiatives Meeting Expectations?

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We live in an age of bank consolidations and mergers, of cross-border ownership and control, of e-commerce, e-payment and e-banking, where non-bank financial intermediaries are sprouting up (and failing), where assets are being pooled and unitized, and where investment products, including derivatives, are originated and marketed, many on a third-party basis and many to unsuspecting individuals. Underlying these are the age-old concerns of cost, quality and choice of financial services, difficult goals to achieve in the best of times, much less in an environment of increasing market power. This brings us to the question 'Are consumer protection initiatives meeting expectations?' It would be pedantic to say that this would depend on what the exact initiatives and how high and whose the expectations are. There are a number of countries that have taken such initiatives and it would be instructive to understand the reasons for them and also differences if any.

The paper by Bill Knight provides a valuable overview into financial consumer protection practices in Canada from the perspective of a practitioner. One cannot but be impressed at the amount of thoughtfulness and detail that has, since the MacKay Task Force, gone into development of the Canadian consumer protection framework. Similar developments also followed the Cruickshank Report (2000) in the case of the UK and the Wallis Report (1997) in Australia. This is not to imply that we do not also think deeply about consumer protection in this part of the world. Malaysia's Financial Sector Master Plan, for example, specifically envisages consumer protection infrastructure to be in place in the first, domestic capacity building phase, prior to the second, increasing domestic competition and third, opening up and integrating with world markets. The Plan therefore calls for the establishment of a competitive and fair financial system, consumer information and education and means of speedy redress such as the Financial Mediation Bureau and the Credit Counselling and Debt Management Agency.

Policy approaches and priorities towards consumer protection differ depending on how important the banking and finance sector is relative to the economy. Canada, Australia and the UK have put in place formal regulatory frameworks to ensure that competition and consumer protection are provided for. Thus, Canada has the Competition Bureau, armed with the provisions of the Competition Act and the Financial Consumer Agency of Canada (FCAC), of which Knight was the first Commissioner. The UK has the Office for Fair Trade (OFT) and the Competition Authority, and the Financial Services Authority (FSA), which has the mandate to protect consumer interests. In Australia, the Australian Competition and Consumer Commission (ACCC) has the responsibility for competition and consumer protection, empowered by the Trade Practices Act, while the Australian Securities and Investment Commission (ASIC) is vested with authority for consumer protection in financial services. In all three countries, there are also financial ombudsman to settle disputes between financial service providers and consumers, not to mention codes of banking conduct which are monitored by these agencies and/or industry bodies.

Given the alphabet soup of institutions and the multiple overlays of arrangements, one may ask whether these countries are guilty of regulatory overkill or whether there is in fact a cogent case for separate agencies with explicit mandates to deal with consumer protection matters. How

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difficult is it for a single monetary authority to be fully responsible for both prudential regulation and consumer protection? Are there inherent tensions, if not irreconcilable contradictions that induce organisational schizophrenia and permit one at the expense of the other or is this just a myth? Even with elaborate legislation and industry codes in place, how can consumers find easy redress for their complaints? These are some basic yet critical questions that need to be addressed if we are to hope to get anywhere close to answering whether consumer protection initiatives meet expectations.

A quick contrast between Canada and two Asian economies whose financial institutions are inordinately important to the economy may be instructive. In the case of Hong Kong, the following is a quote from an Information Note produced for the Legislative Council Panel on Financial Affairs in 2002: "The Hong Kong Monetary Authority (HKMA) has a general function 'to provide a measure of protection to depositors' and also a duty 'to promote and encourage proper standards of conduct' of authorised institutions. However, such functions must be viewed in light of the principal function of the HKMA which is 'to promote the general stability and effective working of the banking system'. As this principal function basically relates to macro issues concerning the health of the banking system as a whole, as a consequence the HKMA's formal powers under the Banking Ordinance are not well suited to dealing with consumer matters." Nevertheless, it goes on to state that the consumer code of banking practice, moral suasion and "other means" are adequate to protect consumers' interests. How it arrived at this conclusion is not stated but at least one is grateful for the frank admission that prudential regulation matters more in the order of priorities and that consumer protection is not best administered by a single agency.

In the case of Singapore, financial services (excluding money lending and pawn broking) have now been brought within the ambit of the Consumer Protection (Fair Trade) Act of 2004. Consumers now have the option to pursue remedies under the Act for unfair practices and unconscionable conduct (such as high-pressure selling) by financial institutions. Dispute resolution is delegated to the Financial Industries Disputes Resolution Centre Ltd although only cases of up to S$50,000 will be heard. Interestingly, in 2004 the President of the Consumer Association of Singapore, who is also a Member of Parliament, raised the issues of high pressure sales tactics, the high rates of interest charged on credit card balances and the 'cartel-like manner' in which banks maintained interest rates of 24 per cent when other financial borrowings incurred interest of less than 5 per cent. The Second Minister of Finance responded by saying that the Monetary Authority of Singapore does not consider its role to include directly settling commercial disputes between financial institutions and their customers. The Authority also does not interfere in the setting of interest rates and prices or what terms and conditions should govern commercial transactions. Rather, the Authority provides the regulatory framework for the necessary disclosure and the proper business conduct standards to be undertaken so as to ensure that the consumer is fairly treated.

In the light of the above, how might one evaluate Bill Knight's conclusion that "the importance of the consumer to a vibrant and healthy economy has moved non-prudential/market conduct regulation to a place at the table beside prudential regulators in the financial services regulatory structures around the world"? This might be true of OECD countries generally but significant developments in other parts of the world seem less apparent. Could one possibly envisage conditions where governments "move forward to adjust regulatory structures (and) pay close attention to the consumer and their needs"? Consumers are unable to generate any degree of countervailing weight while governments still seem be too protective of, and too hesitant to 'fetter' their financial institutions, to do anything dramatic in this direction. One may not be far wrong to say that most countries are, to some degree or other, behind the best-practice curve and perhaps Asian countries are further behind than where they ought to be.